DRAFT

IMPLEMENTING AGREEMENT

for the

STANFORD UNIVERSITY HABITAT CONSERVATION PLAN

by and between

THE BOARD OF TRUSTEES OF LELAND STANFORD JUNIOR UNIVERSITY
UNITED STATES FISH AND WILDLIFE SERVICE
NATIONAL MARINE FISHERIES SERVICE

April, 2010

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1.0 PARTIES

This Implementing Agreement is made by and between the Board of Trustees of Leland Stanford Junior University (Stanford University), the United States Fish and Wildlife Service (FWS), and the National Marine Fisheries Service (NMFS).

These entities may be referred to as the "Parties" and individually as a "Party." The FWS and NMFS may be referred to collectively as the "Wildlife Agencies" and individually as a "Wildlife Agency," and Stanford University may be referred to as the "Permittee."

2.0 RECITALS AND PURPOSES

2.1 Recitals. The Parties have entered into this Agreement in consideration of the following facts:

(a) Stanford University has been determined to provide, or potentially provide, habitat for the following Listed Species: California tiger salamander, California red-legged frog, San Francisco garter snake, and Central California Coast (CCC) steelhead;

(b) Stanford University has also been determined to provide, or potentially provide, habitat for the following Unlisted Species: Western pond turtle;

(c) The FWS has jurisdiction over the conservation, protection, restoration and management of native wildlife species, including the California tiger salamander, California red-legged frog, and San Francisco garter snake and the habitat necessary for biologically sustainable populations of these species within the United States pursuant to the Endangered Species Act (ESA), and other provisions of federal law;

(d) NMFS has jurisdiction over the conservation, protection, restoration and management of anadromous fish and marine species, including CCC steelhead, and the habitat necessary for biologically sustainable populations of these species within the United States pursuant to the ESA, and other provisions of federal law; and

(e) Permittee has developed a series of measures, described in the habitat conservation plan (HCP), to minimize and mitigate to the maximum extent practicable, the effects of Take of Covered Species incidental to Permittee's Covered Activities.

2.2 Purposes. The purposes of this Agreement are:

(a) To ensure implementation of each of the terms of the HCP;

(b) To describe remedies and recourse should any Party fail to perform its obligations as set forth in this Agreement; and,

(c) To provide assurances to Permittee that, pursuant to the "No Surprises" regulations, as long as the terms of the HCP, the Permits, and this Agreement are properly implemented, FWS and NMFS will not require any conservation and mitigation measures in addition to those provided for in the Plan without the consent of

the Permittee, with respect to Covered Species, except as provided for in this Agreement or required by law.

3.0 DEFINITIONS

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

3.1 Terms defined in Endangered Species Act. Terms used in this Agreement and specifically defined in the Endangered Species Act (ESA) or in regulations adopted by the Wildlife Agencies under the ESA have the same meaning as in the ESA and those implementing regulations, unless this Agreement expressly provides otherwise.

3.2 "Agreement" means this Implementing Agreement, which incorporates the HCP and Permits by reference.

3.3 "Changed Circumstances" means changes in circumstances affecting a Covered Species or the geographic area covered by the HCP that can reasonably be anticipated by the Parties and that can reasonably be planned for in the HCP (e.g. the listing of a new species, or a fire or other natural catastrophic event in areas prone to such event.) Changed Circumstances and the planned responses to those circumstances are described in section 6.6 of the HCP. Changed Circumstances are not Unforeseen Circumstances.

3.4 "Covered Activities" means certain activities carried out by Permittee on Covered Lands that may result in incidental Take of Covered Species. Covered Activities means the academic programs, ongoing operation and maintenance of Stanford University and a certain amount of future development described in section 3.0 of the HCP for which incidental Take is authorized by the FWS and NMFS pursuant to the Permits.

3.5 "Covered Lands" means the lands owned by Permittee upon which the Permits authorize incidental Take of Covered Species and the lands to which the HCP's conservation and mitigation measures apply. These lands are described in section 1.1.2 of the HCP.

3.6 "Covered Species" means the following species, each of which the HCP addresses in a manner sufficient to meet all of the criteria for issuing an incidental Take Permit under ESA § 10(a)(1)(B): California tiger salamander (*Ambystoma californiense*), California red-legged frog (*Rana aurora draytonii*), CCC steelhead (*Oncorhynchus mykiss*), San Francisco garter snake (*T.s. tetrataenia*), western pond turtle (*Emys marmorata*).

3.7 "ESA" means the Federal Endangered Species Act of 1973, as amended (16 U.S.C § 1531 et seq.) and all rules, regulations and guidelines promulgated pursuant to that Act.

3.8 "FWS" means the United States Fish and Wildlife Service, an agency of the United States Department of Interior.

3.9 "HCP" means the habitat conservation plan prepared by Stanford University.

3.10 "Listed Species" means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is listed as endangered or threatened under the ESA.

3.11 "NMFS" means the National Oceanic and Atmospheric Administration, National Marine Fisheries Service, an agency of the United States Department of Commerce.

3.12 "Permit" or "Permits" means the incidental Take Permits issued by the Wildlife Agencies to Permittee pursuant to Section 10(a)(1)(B) of the ESA for Take incidental to Covered Activities at Stanford University, as the Permits may be amended from time to time.

3.13 "Permittee" means Stanford University.

3.14 "Remediation Study" means the Lagunita Diversion Facility Remediation Study, prepared by Wood Rodgers, dated June 13, 2006.

3.15 "Stanford University" means The Board of Trustees of Leland Stanford Junior University.

3.16 "Take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect any listed or unlisted Covered Species or attempt to engage in any such conduct. Harm means an act that actually kills or injures a member of a Covered Species, including an act that causes significant habitat modification or degradation where it actually kills or injures a member of a Covered Species by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding or sheltering.

3.17 "Unforeseen Circumstances" means changes in circumstances affecting a Covered Species or geographic area covered by the HCP that could not reasonably have been anticipated by plan developers and the Wildlife Agencies at the time of the HCP's negotiation and development, and that result in a substantial and adverse change in the status of the Covered Species.

3.18 "Unlisted Species" means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is not listed as endangered or threatened under the ESA.

3.19 "Wildlife Agencies" means the FWS and NMFS.

4.0 OBLIGATIONS OF THE PARTIES

4.1 Obligations of Permittee. Permittee will fully and faithfully perform all obligations assigned to it under this Agreement, the Permits, and the HCP.

4.2 Obligations of the Wildlife Agencies. Upon execution of this

Agreement by all Parties, and satisfaction of all other applicable legal requirements, the Wildlife Agencies will each issue Permittee a Permit under Section 10(a)(1)(B) of the ESA, authorizing incidental Take by Permittee of the listed Covered Species resulting from Covered Activities on Covered Lands.

4.2.1 Permit coverage. The Permits will identify all Covered Species. The Permits will take effect for the Listed Covered Species at the time each Permit is issued. Subject to compliance with all other terms of this Agreement, the Permits will take effect for an Unlisted Covered Species upon the listing of such species.

4.2.2 "No surprises" assurances. Provided that Permittee has complied with its obligations under the HCP, this Agreement, and the Permits, the Wildlife Agencies can require Permittee to provide mitigation beyond that provided for in the HCP only in accordance with the "no surprises" regulations at 50 C.F.R. §§ 17.22(b)(5), 17.32(b)(5), 222.307(g).

4.3 Interim obligations upon a finding of Unforeseen Circumstances. If the responsible Wildlife Agency makes a finding of Unforeseen Circumstances, during the period necessary to determine the nature and location of additional or modified mitigation, Permittee will avoid contributing to appreciably reducing the likelihood of the survival and recovery of the affected species.

5.0 INCORPORATION OF HCP

The HCP and each of its provisions are intended to be, and by this reference are, incorporated herein. This Agreement is intended to specify, in contract language, the obligations of the Parties under the HCP, recognizing that the HCP is a conservation plan and was not drafted as a contract. In the event of any direct contradiction, conflict or inconsistency between this Agreement and the HCP, the terms of this Agreement shall control. In all other cases, the provisions of this Agreement and the HCP shall be interpreted to be consistent with and complementary to each other.

6.0 TERM

6.1 Initial Term. This Agreement and the HCP shall be effective with regard to each Permit upon the date that the applicable Wildlife Agency issues the Permit. This Agreement, the HCP and each Permit will remain in effect for a period of fifty (50) years from the issuance of the original Permit, except as provided below.

6.2 Permit Suspension or Revocation.

6.2.1. Generally. Either of the Wildlife Agencies may suspend or revoke their respective Permit, in whole or in part, for cause in accordance with applicable laws and regulations in force at the time of such suspension or revocation. (These regulations are currently codified at 50 C.F.R. §§13.27, 222.306). Such suspension or revocation may apply to an entire permit, or only to specific Covered Species, Covered Activities or portions of the Covered Lands. Except where the Wildlife Agencies determine that emergency action is necessary to avoid irreparable harm to a Covered Species, they will not suspend or revoke the Permits without first (1) requesting the Permittee to take appropriate remedial actions, and (2) providing the

Permittee with written notice of the facts or conduct which may warrant the suspension or revocation and an adequate and reasonable opportunity for the Permittee to demonstrate why suspension or revocation is not warranted. Permittee and the applicable Wildlife Agency will act in good faith to identify mutually agreeable modifications of the action(s) or conduct that may warrant a suspension or revocation, remedial actions, and any other actions necessary to avoid the suspension or revocation of the Permit(s). The Parties may choose to use the dispute resolution procedures described in section 12.5 of this Agreement to facilitate their good faith efforts to avoid Permit suspension or revocation.

6.2.2 Circumstances Likely to Constitute Jeopardy to Species. In the event of circumstances which appreciably reduce the likelihood of survival and recovery of a Covered Species in the wild, the Wildlife Agencies may suspend the Permits on an emergency basis, in whole or in part, without resorting to the procedures specified above. The period of such emergency suspension shall not last longer than ninety (90) days.

6.2.3 Reinstatement of Suspended Permit. In the event a Wildlife Agency suspends a Permit, in whole or in part, as soon as possible but no later than ten (10) days after such suspension, the suspending Wildlife Agency shall meet and confer with the Permittee concerning how the suspension can be lifted. At the conclusion of any such conference, the Wildlife Agency shall identify reasonable, specific actions, if any, necessary for the Permittee to effectively redress the deficiencies giving rise to the suspension. In making this determination, the Wildlife Agencies shall consider the requirements of the ESA and its regulations, the conservation needs of the Covered Species, the terms of the Permit and of this Agreement and any comments or recommendations received during the meet and confer process. As soon as possible, but not later than thirty (30) days after the conference, the suspending Wildlife Agency shall send Permittee written notice of any available, reasonable actions, necessary to effectively redress the deficiencies giving rise to the suspension. Upon performance or completion, as appropriate, of such actions, the Wildlife Agency shall immediately reinstate the Permit. It is the intent of the Parties that in the event of any total or partial suspension of the Permit(s), all Parties shall act expeditiously and cooperatively to reinstate the Permit(s).

6.3 Relinquishment of the Permit(s).

6.3.1 Generally. Permittee may relinquish either Permit in accordance with the regulations of the Wildlife Agencies in force on the date of such relinquishment. (These regulations are currently codified at 50 C.F.R. §§ 13.26, 17.22(b)(7), 17.32(b)(7), and 222.306(d).)

6.3.2 Procedure for Relinquishment. If Permittee elects to relinquish one or both Permits before expiration of the full term of the HCP, Permittee will provide notice to the applicable Wildlife Agency at least 120 days prior to the planned relinquishment. Such notice will include a status report detailing the nature and amount of Take of the Covered Species, the mitigation provided for Take of those species prior to relinquishment, and the status of Permittee's compliance with all other terms of the HCP. With regard to relinquishment of either Permit, the applicable Wildlife Agency will give notice to Permittee stating whether any post-relinquishment

mitigation is required for Take of any Covered Species. If post-relinquishment mitigation is owed, the applicable Wildlife Agency will identify the amount and terms of such mitigation, and the basis for the conclusions. If the applicable Wildlife Agency determines that no post-relinquishment mitigation is required, then all obligations assumed by the Parties under the applicable Permit and this Agreement will terminate upon the issuance of such determination. If Permittee disagrees with the applicable Wildlife Agency's determination regarding post-relinquishment mitigation for any Covered Species, the Permittee will provide the applicable Wildlife Agency with a written statement explaining the basis for any disagreement, and if applicable, alternative mitigation and the basis for the conclusion that such alternative mitigation is adequate. The Parties will act in good faith to resolve their differences regarding post-relinquishment mitigation, and may choose to use the dispute resolution procedures described in section 12.5 of this Agreement.

6.4 Treatment of Unlisted Species. For the purposes of Paragraphs 6.2 and 6.3, Unlisted Covered Species will be treated as though they were Listed Species in determining the amount of Take and the mitigation required.

6.5 Extension of the Permit. Upon Agreement of the Parties and compliance with all applicable laws, the Wildlife Agencies may extend the Permit under their respective jurisdiction beyond its initial term. Permit extensions may be granted under the regulations then in effect. If Permittee desires to extend the Permit(s), it will so notify the Wildlife Agencies at least 180 days before the then-current term is scheduled to expire. Extension of the Permit(s) constitutes extension of the HCP and this Agreement for the same amount of time, subject to any modifications that the Wildlife Agencies may require at the time of extension.

7.0 FUNDING

7.1 General funding obligation. Permittee warrants that it has, and will expend, the funds identified in Section 6.5 of the HCP, as such funds may be necessary to fulfill its obligations under the HCP. Permittee will ensure that all required mitigation, conservation, monitoring, and reporting and adaptive management measures are adequately funded throughout the term of this Agreement. Permittee will promptly notify the Wildlife Agencies of any material change in Permittee's financial ability to fulfill its obligations. In addition to providing any such notice, Permittee will provide the Wildlife Agencies with an annual report for each year during the term of the Permits, or with such other reasonably available financial information that the Parties agree will provide adequate evidence of Permittee's ability to fulfill its obligations.

7.2 Lagunita diversion dam facility. The Lagunita diversion dam facility consists of a dam and fish ladder on San Francisquito Creek, a water directing gate, and a flume that parallels the creek and extends to the Lagunita reservoir. Permittee commits to adequately funding the removal of this fish passage impediment for the purpose of improving adult and juvenile anadromous fish passage at the location of this facility pursuant to the Lagunita Diversion Facility Remediation Study, Wood Rodgers (June 13, 2006) (the "Remediation Study"). The Remediation Study found that removing the dam and existing fishway, concrete weir, and apron between the abutments (dam abutments built into the existing banks would be left in place to prevent destabilization), and restoring the creek to a more natural configuration would best improve juvenile and adult CCC steelhead passage.

The Permittee's removal of the facility is subject to its ability to secure a number of Federal, State, and local permits, including but not limited to, a Department of the Army permit pursuant to Section 404 of the Federal Clean Water Act, California Department of Fish and Game Streambed Alteration Agreement pursuant to Section 1600, et seq. of the California Fish and Game Code, and local grading permits. As part of the permitting process, Permittee will have to comply with the California Environmental Quality Act and the National Environmental Policy Act, which may require the preparation of additional environmental documents and other environmental studies, including the effect of dam removal on upstream and downstream hydraulic conditions and impacts to significant cultural or historic resources.

The Permittee will initiate the permitting process within 3 years of NMFS issuance of a Permit and approval of the HCP. The Permittee will use its best efforts to secure all applicable permits as soon as possible, but the Parties recognize that it may take several years to secure the necessary permits. The Parties also recognize that until final plans are prepared and permits are issued, Permittee cannot guarantee that all of the in-stream structures will be removed, and it is likely that the existing abutments built into the surrounding stream banks will have to be left in place, or other bank stabilization structures will have to be built, to prevent destabilization of the stream bank. The Permittee will confer with NMFS on the design of the fish passage remedy and any new bank stabilization structures needed to stabilize the embankments.

As part of the permitting process, the Wildlife Agencies may be asked to consult pursuant to Section 7 of the ESA. The Wildlife Agencies agree to carry out the Section 7 consultation in accordance with Section 13.1 of this Agreement.

8.0 MONITORING AND REPORTING

8.1 Generally. The Permittee will implement the HCP monitoring and adaptive management program as provided in this Section and further described in Section 4.5 and 4.6 of the HCP. The Permittee may delegate monitoring responsibilities to other Parties or qualified third parties, including but not limited to public agencies, private conservation organizations, the HCP Conservation Program Manager, Stanford University scientists and qualified University personnel, and contractors. However, the Permittee will remain responsible for ensuring that the monitoring and adaptive management program is fully funded and implemented.

The overarching purpose of the Stanford HCP monitoring and adaptive management program is to inform and refine HCP implementation so that it may achieve the Plan's biological goals and objectives.

8.2 Planned periodic reports. As described in the HCP, Permittee will submit periodic reports describing its activities and results of the monitoring program provided for in the HCP pursuant to Section 6.4 of the HCP.

8.3 Other reports. Permittee will provide, within 30 days of being requested by the Wildlife Agencies, any additional information in its possession or control related to implementation of the HCP that is requested by the Wildlife Agencies

for the purpose of assessing whether the terms and conditions of the Permits and the HCP, including the HCP's adaptive management plan, are being fully implemented.

8.4 Certification of reports. All reports will include the following certification from a responsible Stanford University official who supervised or directed preparation of the report:

> I certify that, to the best of my knowledge, after appropriate inquiries of relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

8.5 Monitoring by Wildlife Agencies. Permittee acknowledges that the Wildlife Agencies may conduct inspections and monitoring in connection with the Permits in accordance with their regulations. (See 50 C.F.R. § 13.47; 50 C.F.R. § 220.301(j)). Permittee shall cooperate fully with such inspecting and monitoring.

9.0 CHANGED CIRCUMSTANCES

9.1 Permittee-initiated response to Changed Circumstances. Changed Circumstances identified and planned for in the HCP are specifically listed in section 6.6.2 of the HCP. In the event one of those specific Changed Circumstances occurs, Permittee shall implement the remedial conservation measures identified in section 6.6.2 for the specific Changed Circumstance. As long as the HCP is being properly implemented, the Wildlife Agencies shall not require Permittee to implement any conservation measures that are not listed in section 6.6.2 of the HCP to respond to Changed Circumstances. The Parties agree that section 6.6 of the HCP addresses all reasonably foreseeable Changed Circumstances and describes specific responses for them; other changes not identified as Changed Circumstances shall be treated as Unforeseen Circumstances.

Permittee shall notify the Wildlife Agencies in accordance with Section 6.6.2 of the HCP within 10 days upon learning that any of the Changed Circumstances listed in section 6.6.2 of the HCP has occurred. After learning of the Changed Circumstances, Permittee will initiate responsive actions in the manner described in section 6.6.2 of the HCP, to the extent necessary to mitigate the effects of the Changed Circumstances on Covered Species, and will report to the Wildlife Agencies on its actions. Permittee will initiate such actions without awaiting notice from the Wildlife Agencies. Such actions are provided for in the HCP, and hence do not constitute Unforeseen Circumstances or require amendment of the Permits or HCP.

9.1.1 **Addressing drought conditions.** Permittee may temporarily reduce water diversions to reduce the effects of a drought on the Covered Species in accordance with Section 6.6.2 of the HCP. However, Permittee will not be required to reduce creek water diversions or otherwise relinquish any of its water rights to reduce such adverse affects. If Permittee chooses to reduce water diversions to reduce the effects of a drought on the Covered Species it shall not constitute a waiver or relinquishment of Permittee’s water rights.

9.2 Wildlife Agency-initiated response to Changed Circumstances. If a Wildlife Agency determines that a Changed Circumstance has occurred and that Permittee has not responded in accordance with section 6.6.2 of the HCP, the Wildlife Agency shall notify Permittee specifically what Changed Circumstance has occurred,

any known or suspected effects on the Covered Species, and the remedial measures that the Wildlife Agency deems appropriate. The Permittee will then have 30 days to respond to the notice, and if Permittee does not concur with the Wildlife Agency, the Wildlife Agency and Permittee will confer to develop a mutually agreeable solution. Following the meet and confer, Permittee shall make the required changes expeditiously. Within thirty (30) days after the meet and confer, Permittee shall report on its action(s). Such changes are provided for in the HCP, and hence do not constitute Unforeseen Circumstances or require amendment of the Permits or HCP.

9.3 Listing of species that are not Covered Species. In the event that a non-Covered Species that may be affected by Covered Activities becomes listed under the ESA, Permittee will implement the "no take/no jeopardy/no adverse modification" measures identified by the Wildlife Agency with jurisdiction over the species until the Permit is amended to include such species, or until the Wildlife Agency notifies Permittee that such measures are no longer needed to avoid jeopardy to, Take of, or adverse modification of the critical habitat of, the non-Covered Species.

10.0 ADAPTIVE MANAGEMENT

10.1 Permittee-initiated adaptive management. Permittee will implement the adaptive management provisions in section 4.5 of the HCP, when changes in management practices are necessary to achieve the HCP's biological objectives, or to respond to monitoring results or new scientific information. Permittee will make such changes without awaiting notice from the Wildlife Agencies, and will report to the Wildlife Agencies on any actions taken pursuant to this section.

10.2 Wildlife Agency-initiated adaptive management. If the Wildlife Agencies determine that one or more of the adaptive management provisions in the HCP have been triggered and that Permittee has not changed its management practices in accordance with section 4.5 of the HCP, the responsible Wildlife Agency shall notify Permittee and specifically identify the adaptive management measure(s) that the Wildlife Agency deems appropriate. The Permittee will then have 30 days to respond to the notice, and if Permittee does not concur with the Wildlife Agency, the Wildlife Agency and Permittee will confer to develop a mutually agreeable solution. Within 30 days after the meet and confer, Permittee will make the required changes and report to the Wildlife Agency that initiated the adaptive management on its actions. Such changes are provided for in the HCP, and hence do not constitute Unforeseen Circumstances or require amendment of the Permit or HCP, except as provided in this section.

10.3 Reductions in mitigation. Permittee will not implement adaptive management changes that may result in less mitigation than provided for Covered Species under the original terms of the HCP, unless the Wildlife Agency with jurisdiction over the affected Covered Species first provides written approval. Permittee may propose any such adaptive management changes by notice to the responsible Wildlife Agency, specifying the adaptive management modifications proposed, the basis for them, including supporting data, and the anticipated effects on Covered Species, and other environmental impacts. Within 120 days of receiving such a notice, the responsible Wildlife Agency will either approve the proposed adaptive management changes, approve them as modified by the Wildlife Agency, or notify Permittee that the

proposed changes constitute permit amendments that must be reviewed under Section 11.2 of this Agreement.

10.4 No increase in Take. This section does not authorize any modifications that would result in an increase in the amount and nature of Take, or increase the impacts of Take, of Covered Species beyond that analyzed under the original HCP and any amendments thereto. Any such modification must be reviewed as a permit amendment under Section 11.2 of this Agreement.

11.0 MODIFICATIONS AND AMENDMENTS

11.1 Minor modifications.

(a) Any Party may propose minor modifications to the HCP or this Agreement by providing notice to all other Parties in accordance with Section 6.7.2 of the HCP. If, for any reason, a receiving Party objects to a proposed modification, it must be processed as an amendment of the Permit in accordance with subsection 11.2 of this section. The Wildlife Agencies will not propose or approve minor modifications to the HCP or this Agreement if the Wildlife Agencies determine that such modifications would result in operations under the HCP that are significantly different from those analyzed in connection with the original HCP, adverse effects on the environment that are new or significantly different from those analyzed in connection with the original HCP, or additional Take not analyzed in connection with the original HCP.

(b) Minor modifications to the HCP and Agreement processed pursuant to this subsection may include but are not limited to the following:

(1) corrections of typographic, grammatical, and similar editing errors that do not change the intended meaning;

(2) correction of any maps or exhibits to correct errors in mapping or to reflect previously approved changes in the Permits or HCP;

(3) minor changes to survey, monitoring or reporting protocols;

(4) addition of new Covered Activities provided the Wildlife Agencies conclude that the activity will not result in an adverse effect on the environment that is new or significantly different from those analyzed in connection with the original HCP and associated biological opinions, or result in the additional Take of a Covered Species; and

(5) other changes that do not result in adverse effects to Covered Species beyond that analyzed in the HCP and the associated biological opinions, and do not limit the ability of the Permittee to achieve the biological goals and objectives of the HCP.

(c) Any other modifications to the HCP or Agreement will be processed as amendments of the Permit(s) in accordance with subsection 11.2 of this section.

11.2 Amendment of the Permit(s). Amendments to the Permits may be proposed by any Party. The Party proposing the amendment shall provide a statement of the reasons for the amendment and an analysis of its environmental effects, including its effects on operations under the HCP and on Covered Species. All Permit amendments are subject to all then applicable legal requirements, including but not limited to the ESA, the National Environmental Policy Act, and the Wildlife Agencies' permit regulations. All Permit amendments are subject to the written approval of the Permittee and the Wildlife Agency with jurisdiction over the affected Covered Species and will not take effect until such written approval is provided to all Parties.

11.3 Future Land Transactions. Nothing in this Agreement, the HCP or Permits limits the Permittee's right to acquire additional lands. Any lands that may be acquired, however, will not be covered by the Permits except upon amendment of the Permits as provided in Section 11.2 of this Agreement.

12.0 REMEDIES, ENFORCEMENT, AND DISPUTE RESOLUTION

12.1 In general. Except as set forth below, each Party shall have all remedies otherwise available to enforce the terms of this Agreement, the Permits, and the HCP.

12.2 No monetary damages. No Party shall be liable in damages to any other Party or other person for any breach of this Agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement or any other cause of action arising from this Agreement.

12.3 Injunctive and temporary relief. The Parties acknowledge that the Covered Species are unique and that their loss as species would result in irreparable damage to the environment, and that therefore injunctive and temporary relief may be appropriate to ensure compliance with the terms of this Agreement.

12.4 Enforcement authority of the United States. Nothing contained in this Agreement is intended to limit the authority of the United States government to seek civil or criminal penalties or otherwise fulfill its enforcement responsibilities under the ESA or other applicable law.

12.5. Dispute Resolution. The Parties recognize that disputes concerning implementation of, compliance with, or termination of this Agreement, the HCP, and the Permits may arise from time to time. The Parties agree to work together in good faith to resolve such disputes, using the informal dispute resolution procedures set forth in this section, or such other procedures upon which the Parties may later agree. However, if at any time any Party determines that circumstances so warrant, it may be any available remedy without waiting to complete informal dispute resolution.

12.5.1 Informal Dispute Resolution Process. Unless the Parties agree upon another dispute resolution process, or unless an aggrieved Party has initiated administrative proceedings or suit in federal court as provided in this section, the Parties may use the following process to attempt to resolve disputes:

(a) The aggrieved Party will notify the other Parties of the provision that may have been violated, the basis for contending that a violation has occurred, and the remedies it proposes to correct the alleged violation.

(b) The Party alleged to be in violation will have 30 days, or such other time as may be agreed, to respond. During this time it may seek clarification of the information provided in the initial notice. The aggrieved Party will use its best efforts to provide any information then available to it that may be responsive to such inquiries.

(c) Within 30 days after such response was provided or was due, representatives of the Parties having authority to resolve the dispute will meet and negotiate in good faith toward a solution satisfactory to all Parties, or will establish a specific process and timetable to seek such a solution.

(d) If any issues cannot be resolved through such negotiations, the Parties will consider non-binding mediation and other alternative dispute resolution processes and, if a dispute resolution process is agreed upon, will make good faith efforts to resolve all remaining issues through that process.

13.0 CONSULTATIONS WITH OTHER PUBLIC AGENCIES

13.1 Section 7 Consultations with Wildlife Agencies. Nothing in this Agreement is intended to alter the obligation of a federal agency to consult the Wildlife Agencies pursuant to Section 7 of ESA (16 U.S.C. §1536(a)). Unless otherwise required by law or regulation, in any consultation under Section 7 involving the Permittee and a proposed development project, enhancement, or other activity contemplated by the scope of the HCP on the Covered Lands that may adversely affect one or more Covered Species, the Wildlife Agencies shall ensure that the biological opinion for the proposed project is consistent with the biological opinion issued for the HCP and Permits, provided that the proposed project is consistent with the HCP and the Permits. Unless otherwise required by law or regulation, the Wildlife Agencies shall not impose measures on Permittee for Covered Species in excess of those that have been or will be required by this Agreement, HCP, and Permits. Before completing a Section 7 consultation for a Covered Activity in which a Wildlife Agency proposes to require a measure in excess of the requirements of this Agreement, the HCP, or the Permits, the Wildlife Agency shall meet and confer with Permittee to discuss alternatives to the imposition of the measures that would meet the applicable legal or regulatory requirements.

14.0 MISCELLANEOUS PROVISIONS

14.1 No partnership. Neither this Agreement nor the HCP shall make or be deemed to make any Party to this Agreement the agent for or the partner of any other Party.

14.2 Notices. Any notice permitted or required by this Agreement shall be in writing, delivered personally, or by overnight mail, to the persons listed below, or shall

be deemed given five (5) calendar days, excluding weekends and federally recognized holidays, after deposit in the United States mail, certified and postage prepaid, return receipt requested and addressed as follows, or at such other address as any Party may from time to time specify to the other Parties in writing. Notices may be delivered by facsimile or other electronic means, provided that they are also delivered personally or by overnight or certified mail. Notices shall be transmitted so that they are received within the specified deadlines.

Deputy Manager
United States Fish and Wildlife Service
Pacific Southwest Region
2800 Cottage Way, Room W-2606
Sacramento, California 95825
Telephone: 916-414-6464
Facsimile: 916-414-6486

Assistant Regional Administrator for Protected Resources
National Marine Fisheries Service
650 Capitol Mall, Suite 8-300
Sacramento, California 95814
Telephone: 916-930-3600
Facsimile: 916-930-3629

Stanford University
Vice President for Land, Buildings and Real Estate
3145 Porter Drive
Los Trancos (F) Building
Palo Alto, CA 94304-8442

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

14.4 Elected officials not to benefit. No member of or delegate to Congress shall be entitled to any share or part of this Agreement, or to any benefit that may arise from it.

14.5 Availability of funds. Implementation of this Agreement and the HCP by the Wildlife Agencies is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this Agreement will be construed by the Parties to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury. The Parties acknowledge that the Wildlife Agencies will not be required under this Agreement to expend any federal agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

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

14.7 No third-party beneficiaries. Without limiting the applicability of rights granted to the public pursuant to the ESA or other federal law, this Agreement shall not create any right or interest in the public, or any member thereof, as a third-party beneficiary hereof, nor shall it authorize anyone not a Party to this Agreement to maintain a suit for personal injuries or damages pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third Parties shall remain as imposed under existing law.

14.8 Relationship to the ESA and other authorities. The terms of this Agreement shall be governed by and construed in accordance with the ESA and applicable federal law. In particular, nothing in this Agreement is intended to limit the authority of the Wildlife Agencies to seek penalties or otherwise fulfill their responsibilities under the ESA. Moreover, nothing in this Agreement is intended to limit or diminish the legal obligations and responsibilities of the Wildlife Agencies as agencies of the federal government. Nothing in this Agreement will limit the right or obligation of any federal agency to engage in consultation required under Section 7 of the ESA or other federal law; however, it is intended that the rights and obligations of Permittee under the HCP and this Agreement will be considered in any consultation affecting Permittee's use of the Covered Lands.

14.9 References to regulations. Any reference in this Agreement, the HCP, or the Permits to any regulation or rule of the Wildlife Agencies shall be deemed to be a reference to such regulation or rule in existence at the time an action is taken.

14.10 Applicable laws. All activities undertaken pursuant to this Agreement, the HCP, or the Permits must be in compliance with all applicable state and federal laws and regulations.

14.11 Successors and assigns. This Agreement and each of its covenants and conditions shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns. Assignment or other transfer of either of the Permits shall be governed by the Wildlife Agencies' regulations in force at the time.

14.12 Severability. If any provision of this Agreement or the HCP is found invalid or unenforceable, such provision shall be enforced to the maximum extent possible, and the other provisions shall remain in effect to the extent they can be reasonably applied in the absence of such invalid or unenforceable provision.

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Implementing Agreement to be in effect as of the date the Permits are issued.

BY _____ Date _____

Deputy Manager
United States Fish and Wildlife Service
California and Nevada Region
Sacramento, California

BY _____ Date _____

Rodney R. McInnis
Assistant Regional Administrator, Southwest Region
National Marine Fisheries Service
Southwest Regional Office
Long Beach, California

BY _____ Date _____

Vice President, Land, Building, and Real Estate
The Board of Trustees of Leland Stanford Junior University
Stanford, California