

Draft MCA Guidelines and Template for Public Review

This document contains the following two draft sections that, once finalized, will be included in the Regional Conservation Investment Strategies (RCIS) Program Guidelines:

- *Section 2 (Standard Terminology) includes some revisions and new terms added in association with the Mitigation Credit Agreement Guidelines. Section 2 will replace the existing Section 2 in the current RCIS Program Guidelines.*
- *Section 5 (Mitigation Credit Agreements) will be added to the RCIS Program Guidelines. Section 5 includes the Mitigation Credit Agreement (MCA) Guidelines, MCA Template, and two completeness checklists included as appendices.*

In finalizing these sections, CDFW will consider all public comments submitted in the comment table (available on [RCIS Program web page](#)). Comments submitted in other formats will not be considered. Comments must be submitted to rcis@wildlife.ca.gov by 5:00 p.m. on October 1, 2019. In addition, if you wish to submit specific questions during the comment period, you can send them to the same email address, and they may be added to the FAQ on the [RCIS Program web page](#). Please note that CDFW is not required to respond to comments concerning the draft MCA Guidelines and Template.

Thank you for your interest in the RCIS Program.

The RCIS Program Team

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Section 2
Standard Terminology

Terms, Abbreviations, Acronyms, and Definitions

Term/Acronym/Abbreviation	Definition¹
AB – Assembly Bill	A draft of a proposed law introduced by a member of the California Assembly. ²
ACE—Areas of Conservation Emphasis	A project that provides data to help guide and inform conservation priorities in California launched by CDFW in 2010, ³ or the latest update of that analysis.
adaptive management and monitoring strategy	A component of an RCIS that incorporates an adaptive management process that is informed by periodic monitoring of the implementation of both conservation actions and habitat enhancement actions. ⁴ Adaptive management means using the results of new information gathered through a monitoring program to adjust management strategies and practices to help provide for the conservation of focal species and their habitats. A monitoring strategy is the periodic evaluation of monitoring results to assess the adequacy of implementing a conservation action or habitat enhancement action and to provide information to direct adaptive management activities to determine the status of the focal species, their habitats, or other natural resources. ⁵
administrative draft NCCP	A substantially complete draft of a Natural Community Conservation Plan (NCCP) that is released after January 1, 2016, to the general public, plan participants, and CDFW.
advance credit purchase	The transfer of credits prior to regulatory agency approval of their use for future project(s). May also be referred to as “bulk credit purchase”. Only released credits may be purchased in advance. See also “transfer of credits” and “use of credits.”
advance mitigation	Compensatory mitigation for impacts on ecological resources (species and their habitats) and other natural resources that is implemented prior to impacts occurring.

¹ Unless cited otherwise, all definitions are excerpted or modified from AB 2087 or are modified from the State Wildlife Action Plan.

² California State Legislature Glossary of Legislative Terms, definition of “Bill.” Available: <http://www.legislature.ca.gov/quicklinks/glossary.html>.

³ <https://www.wildlife.ca.gov/Data/Analysis/Ace>

⁴ Fish & G. Code, § 1856, subdivisions (b)(1) and (f)(14)

⁵ Adapted from Fish & G. Code, § 2805, subdivisions (a) and (g)

Term/Acronym/ Abbreviation	Definition¹
biodiversity	The full array of living things considered at all levels, from genetic variants of a single species to arrays of species and arrays of genera, families, and higher taxonomic levels; includes natural communities and ecosystems.
CDFW – California Department of Fish and Wildlife	California Department of Fish and Wildlife
CEHC—California Essential Habitat Connectivity Project: A Strategy for Conserving a Connected California	A statewide assessment of essential habitat connectivity completed by consultants and commissioned by CDFW and Caltrans; ⁶ the assessment used the best available science, data sets, and spatial analysis and modeling techniques to identify large remaining blocks of intact habitat or natural landscape and model linkages between them that need to be maintained, particularly as corridors for wildlife.
CEQA – California Environmental Quality Act	California Environmental Quality Act (California Public Resources Code, sections 21000 - 21178, and Title 14 CCR, section 753, and Chapter 3, sections 15000 - 15387).
CESA – California Endangered Species Act	California Endangered Species Act (Fish and Game Code § 2050-2100).
climate change vulnerability	Refers to the degree to which an ecological system, natural community, habitat, or individual species is likely to be adversely affected as a result of changes in climate and is often dependent on factors such as exposure, sensitivity, and adaptive capacity.
CNDDDB – California Natural Diversity Database	California Natural Diversity Database is an inventory of the status and locations of rare plants and animals in California. ⁷
compensatory mitigation	Actions taken to fulfill, in whole or in part, mitigation requirements under state or federal law or a court mandate.
conservation, conserve	The use of habitat and other natural resources in ways such that they may remain viable for future generations. This includes permanent protection of such resources. See “permanently protect.”

⁶ *California Essential Habitat Connectivity Project*. Available: <https://www.wildlife.ca.gov/conservation/planning/connectivity/CEHC>.

⁷ <https://www.wildlife.ca.gov/Data/CNDDDB>

Term/Acronym/ Abbreviation	Definition¹
conservation action	An action identified in an RCIS that, when implemented, would permanently protect or restore, and perpetually manage, conservation elements, including focal species and their habitats, natural communities, ecological processes, and wildlife corridors. In contrast, a habitat enhancement action would have long-term durability but would not involve acquiring land or permanently protecting habitat – see “habitat enhancement action.” A conservation action is developed to achieve one or more conservation objectives. A conservation action may be implemented through a variety of conservation investments or MCAs. A conservation action that is implemented through an MCA would create conservation credits to be used as compensatory mitigation.
conservation easement	A perpetual conservation easement that complies with Chapter 4 (commencing with Section 815) of Title 2 of Part 2 of Division 2 of the Civil Code. ⁸
conservation element	An element that is identified and analyzed in an RCIS that will benefit from conservation actions and habitat enhancement actions set forth in the RCIS. Conservation elements include focal species and their habitats, natural communities, biodiversity, habitat connectivity, ecosystem functions, water resources, and other natural resources. Conservation elements may benefit through both conservation investments and MCAs.
conservation goal	Broad, guiding principle that describes a desired future condition for a focal species, other species, or other conservation element. Each conservation goal is supported by one or more conservation objectives.
conservation investment	Conservation actions or habitat enhancement actions that are implemented under an approved RCIS, but the implementer does not create credits through an MCA with CDFW. Conservation investments are typically funded by public agencies and nonprofit or other philanthropic organizations.
conservation priority	A conservation or habitat enhancement action (e.g., land acquisition, restoration, or habitat enhancement) that is identified based on its importance for benefiting and contributing to the conservation of focal species and their habitats, or other conservation elements within an RCIS area.
conservation purpose	Statement or statements in an RCIS that identify focal species and other conservation elements within the RCIS area and which outline conservation actions or habitat enhancement actions that, if implemented, will sustain and restore these resources.

⁸ “Conservation easement” includes a conservation easement as defined in Civil Code section 815.1 and an agricultural conservation easement as defined in Pub. Resources Code, § 10211.

Term/Acronym/ Abbreviation	Definition¹
construction security	A financial assurance to guarantee completion of the construction period obligations as described in the MCA, Section 6.1.
create, creation	A manipulation of the physical, chemical, or biological characteristics of a site to develop ecological value and ecosystem functions that did not previously exist at the site. Creation results in a gain in ecological resource area and function.. Creation generally results in a gain in permanently protected land. See “establishment.” Compare to “enhancement,” “preservation,” “rehabilitation,” and “restoration.”
credit	The unit of measure representing the accrual, attainment, or protection of aquatic functions and/or the focal species or other conservation elements on the MCA site. The value of one credit is defined in the MCA, Exhibit P.
credit release	An action by CDFW over specified credits created, pursuant to the MCA, that makes the credits available for use or transfer. credits are released as set forth in the credit release schedule of the MCA, Exhibit R.
critical habitat	Habitat designated as critical ⁹ refers to specific areas occupied by a federally listed species at the time it is listed, and that are essential to the conservation of the species and that may require special management considerations or protection. Critical habitat also includes specific areas outside occupied habitat into which the species could spread and that are considered essential for recovery of the species.
CWHR—California Wildlife Habitat Relationships	System that contains the life history, geographic range, habitat relationships, and management information for over 700 regularly occurring species of amphibians, reptiles, birds, and mammals in the state; allows users to produce queries to generate lists of species by geographic location or habitat type and provides information on expert opinion–based habitat suitability ranks for each species within each habitat type. ¹⁰
development plan	The document attached to the MCA as Exhibit L that is the overall plan governing construction and habitat establishment, restoration and enhancement activities required to be conducted on the MCA site to establish credits.
ecological function	Ecological function refers to the roles and relationships (e.g., predator and prey relationships) of organisms within an ecological system, and the processes (e.g., pollination, decomposition) that sustain an ecological system. See also, “ecosystem function.”

⁹ 16 U.S.C. § 1532(5)(a)

¹⁰ <https://www.wildlife.ca.gov/Data/CWHR>

Term/Acronym/ Abbreviation	Definition¹
ecological resources	Species, habitats, biological resources, and natural resources identified in an RCA or RCIS. See “conservation element” and “natural resources.”
ecoregion, sub-ecoregion	As used in this document, ecoregion means a U.S. Department of Agriculture (USDA) Section ¹¹ and sub-ecoregion means a portion of the USDA Section or USGS Hydrological Units (assigned hydrological unit codes; HUC). ¹² USDA describes four geographic levels of detail in a hierarchy of regional ecosystems including domains, divisions, provinces, and sections. Sections are subdivisions of provinces based on major terrain features, such as a desert, plateau, valley, mountain range, or a combination thereof.
ecosystem	A natural unit defined by both its living and non-living components; a balanced system of the exchange of nutrients and energy. Compare with “habitat.”
ecosystem function	The ecosystem processes involving interactions between physical, chemical, and biological components, such as dynamic river meander, floodplain dynamism, tidal flux, bank erosion, and other processes necessary to sustain the ecosystem and the species that depend on it.
ecosystem services	The beneficial outcomes to humans from ecosystem functions such as supplying of oxygen; sequestering of carbon; moderating climate change effects; supporting the food chain; harvesting of animals or plants; providing clean water; recharging groundwater; abating storm, fire, and flood damage; pollinating and fertilizing for agriculture; and providing scenic views.
endemic	A species, subspecies, or variety found only in a specified geographic region.
endowment amount	The amount that the MCA, Exhibit N, requires the MCA sponsor to provide as endowment deposits to the endowment holder to fund the endowment fund.

¹¹ Goudey, C.B., and D.W. Smith, eds. 1994. *Ecoregions California07_3*. McClellan, CA. Remote Sensing Lab. Updated with ECOMAP 2007: Cleland, D.T.; Freeouf, J.A.; Keys, J.E., Jr.; Nowacki, G.J.; Carpenter, C; McNab, W.H. 2007. *Ecological Subregions: Sections and Subsections of the Conterminous United States [1:3,500,000] [CD-ROM]*. Sloan, A.M., cartog. Gen. Tech. Report WO-76. Washington, DC: U.S. Department of Agriculture, Forest Service. Miles and Goudey 1997. *Ecological Subregions of California*. Technical Report R5-EM-TP-005, USDA Forest Service, Pacific Southwest Region, San Francisco, CA.

¹² The United States Department of Agriculture-Natural Resources Conservation Service (USDA-NRCS), the United States Geological Survey (USGS), and the Environmental Protection Agency (EPA). The Watershed Boundary Dataset (WBD) was created from a variety of sources from each state and aggregated into a standard national layer for use in strategic planning and accountability. Available: <http://datagateway.nrcs.usda.gov>.

Term/Acronym/ Abbreviation	Definition¹
endowment deposit	The deposit or series of deposits made or required to be made by the MCA sponsor to the endowment holder to fund the endowment fund. Endowment deposits received by the endowment holder shall be deposited into the endowment fund.
endowment fund	A financial account held in trust for the benefit of the long-term stewardship of the MCA site. The endowment fund is intended to be maintained and managed in perpetuity in accordance with Government Code §§ 65965-69568, Probate Code §§18501-18510, the MCA, and the endowment agreement. The endowment fund is intended to be invested in accordance with an investment policy statement that is designed to generate earnings and appreciation in value over the long-term. The endowment fund is to be used in funding perpetual management, maintenance, monitoring, and reporting pursuant to the long-term management and monitoring plan. The term “endowment fund” as used in this MCA shall include the endowment deposits and all interest, dividends, gains, other earnings, additions and appreciation thereon, as well as any additions thereto.
endowment holder	An entity qualified to hold the endowment pursuant to Government Code §§ 65965-65968.
enhance, enhancement	A manipulation of the physical, chemical, or biological characteristics to heighten, intensify, or improve an existing resource. Enhancement results in a gain in ecological function but may also lead to a decline in other ecological functions. Enhancement does not result in a gain in ecological resource area. Enhancement may not result in a gain in permanently protected land. See “establishment.” Compare to “creation,” “preservation,” “rehabilitation,” and “restoration.”
essential connectivity areas	Those areas essential for ecological connectivity between natural landscape blocks, as depicted in the Essential Connectivity Map prepared as part of CEHC Project, ¹³ or other connectivity report, plan, or map approved by CDFW or that represents best available science.
established bank	A conservation or mitigation bank (bank) is considered established when the bank has met the bank establishment date criteria required in the banking program and the bank may begin transferring credits.

¹³ *California Essential Habitat Connectivity Project*. Available: <https://www.wildlife.ca.gov/conservation/planning/connectivity/CEHC>.

Term/Acronym/ Abbreviation	Definition¹
establish, establishment	The manipulation of the physical, chemical, or biological characteristics to develop or improve ecological value and ecosystem functions on a site. Establishment may include creation and/or enhancement. Establishment may result in a gain in permanently protected land. See “creation,” “enhancement,” “rehabilitation,” and “restoration.” Compare to “preservation.”
extraordinary circumstances	An event or circumstance that has a material and detrimental impact on the MCA site or on the ability of MCA sponsor to attain performance standards and: (1) was neither foreseen nor foreseeable by the MCA sponsor, property owner, or CDFW; and (2) neither MCA sponsor nor property owner (or anyone acting on behalf or under the control of either of them) caused or could have prevented; and (3) prevents MCA sponsor or property owner from achieving an objective or undertaking an action required of it under this MCA. Extraordinary circumstances exclude mere economic hardship.
focal species	Species identified and analyzed in an RCIS that will benefit from conservation actions and habitat enhancement actions set forth in the RCIS. Focal species may benefit through both conservation investments and MCAs. See also, “sensitive species”, “special-status species”, and “non-focal species”.
fully executed MCA	An MCA is designated as approved on the date that all signatories have signed the MCA.
grant deed	A deed conveying fee title of the MCA site property.
grantee	The entity that holds the conservation easement for the MCA site. The grantee must be authorized to hold a conservation easement pursuant to California Civil Code §815.3 and Government Code §§ 65966 and 65967 and is otherwise approved by CDFW.
Guidelines	Regional Conservation Investment Strategies Program Guidelines
habitat	An ecological or environmental area that is, or may be, inhabited by a species of animal, plant or other type of organism. It is also the physical and biological environment that surrounds, influences, and is utilized by a species’ population and is required to support its occupancy.
habitat connectivity	The capacity of habitat to facilitate the movement of species and ecological functions.

Term/Acronym/ Abbreviation	Definition¹
habitat enhancement action	An action identified in an RCIS that, when implemented, is intended to improve the quality of wildlife habitat, or to address risks or stressors to wildlife. A habitat enhancement action is developed to achieve one or more conservation objectives. A habitat enhancement action would have long-term durability ¹⁴ but would not involve acquiring land or permanently protecting habitat. Long-term durability shall be through an enforceable legal instrument, such as a deed restriction, contract, or other type of non-perpetual easement. In contrast, a conservation action would permanently protect or restore, and perpetually manage, conservation elements – see “conservation action”. Examples of habitat enhancement actions include improving in-stream flows to benefit fish species, enhancing habitat connectivity, and controlling or eradicating invasive species. A habitat enhancement action may be implemented through a variety of conservation investments or MCAs. A habitat enhancement action that is implemented through an MCA may create credits intended for use as compensatory mitigation for temporary impacts.
HCP – Habitat Conservation Plan	Habitat Conservation Plan. A planning document that is required as part of an application for an incidental take permit under the federal Endangered Species Act. HCPs provide for partnerships with non-federal parties to conserve the ecosystems upon which listed species depend, ultimately contributing to their recovery. HCPs describe the anticipated effects of the proposed taking, how those impacts will be minimized or mitigated, and how the HCP is to be funded. ¹⁵
HUC – Hydrologic Unit Code	A code identifying a unique hydrologic unit. ¹⁶
implementing entity	The organization designated in an NCCP and associated implementing agreement that is responsible for implementing the NCCP. Implementing entities can be non-profit organizations, joint-powers authorities, local governments (such as cities or counties), or others.
interim management and monitoring plan	The document attached to the MCA as Exhibit V that describes the adaptive management, monitoring, reporting, and other activities to be implemented by the MCA sponsor during the interim management period.

¹⁴ Fish & G. Code, § 1856, subdivision (d)

¹⁵ <https://www.fws.gov/endangered/esa-library/pdf/hcp.pdf>

¹⁶ The United States Department of Agriculture-Natural Resources Conservation Service (USDA-NRCS), the United States Geological Survey (USGS), and the Environmental Protection Agency (EPA). The Watershed Boundary Dataset (WBD) was created from a variety of sources from each state and aggregated into a standard national layer for use in strategic planning and accountability. Available: <http://datagateway.nrcs.usda.gov>.

Term/Acronym/ Abbreviation	Definition¹
interim management period	The period from the date that the MCA site has been authorized to use or transfer credits until performance standards have been met and the third anniversary of the full funding of the endowment amount has occurred.
interim management security	A financial assurance to guarantee the implementation of the interim management and monitoring plan and to guarantee all remedial action(s) required under Section 8.3 of the MCA are completed during the interim management period.
invasive species	Invasive species means, with regard to a particular ecosystem, a non-native organism whose introduction causes or is likely to cause economic or environmental harm, or harm to human, animal, or plant health. ¹⁷
letter of credit (LOC)	A guarantee, issued by the MCA sponsor's financial institution, that the LOC holder (generally CDFW) would be entitled to draw upon the security if the MCA sponsor is found to be in default.
long-term management and monitoring plan	The document attached to the MCA as Exhibit W that provides measures intended to ensure the MCA site is managed, monitored, and maintained in perpetuity to conserve and protect its Waters of the U.S., Waters of the State, focal species, non-focal species and/or other conservation elements covered by the MCA.
long-term management period	The period beginning upon conclusion of the interim management period and continuing in perpetuity, during which the MCA site is to be managed, monitored, and maintained pursuant to the long-term management and monitoring plan.
LSA – Lake and Streambed Alteration	Lake and Streambed Alteration Program (Fish and Game Code sections 1600-1617). ¹⁸

¹⁷ Obama, Barack – the White House, Executive Order -- Safeguarding the Nation from the Impacts of Invasive Species. December 5, 2016. Available: <https://obamawhitehouse.archives.gov/the-press-office/2016/12/05/executive-order-safeguarding-nation-impacts-invasive-species>.

¹⁸ Fish & G. Code, §§ 1600 – 1617

Term/Acronym/ Abbreviation	Definition¹
MCA—Mitigation Credit Agreement	An agreement between CDFW and one or more persons or entities that identifies the types and numbers of credits the person(s) or entity(ies) proposes to create by implementing one or more conservation actions or habitat enhancement actions. An MCA includes the terms and conditions under which those credits may be used. The person or entity may create and use or transfer the credits upon CDFW’s approval that the credits have been created in accordance with the MCA. ¹⁹ To enter into an MCA with CDFW, a person or entity shall submit a draft MCA to CDFW for its review, revision, and approval. An MCA may only be created within an area where an RCIS has been approved.
MCA site	The geographic location upon which conservation actions or habitat enhancement actions are conducted in order to create credits under an MCA.
MCA sponsor	The person or entity responsible for establishing and operating an MCA.
metric	The ecologically-based indicator (e.g., area, habitat quality, known or estimated population size, etc.) by which the net ecological change can be measured, using existing methods or technology, relative to performance standards. Net change should be measured starting from implementation of the proposed conservation actions or habitat enhancement actions to determine achievement of the RCIS’s objectives.
natural community	A group of organisms living together and linked together by their effects on one another and their responses to the environment they share. ²⁰ A general term often used synonymously with vegetation community and aquatic community.
natural resources	Biological and ecological resources including species and their habitats, Waters of the State, Waters of the United States, wetlands, and natural communities. See “ecological resources” and “conservation element.”

¹⁹ Credits may only be transferred to or from the MCA sponsor. Credit recipients may not transfer unused credits to another party. However, the recipient may return them to the MCA sponsor at the MCA sponsor’s discretion. The MCA sponsor must update the credit ledger and may then use the credits or transfer them to another recipient.

²⁰ Sawyer, J.O., T. Keeler-Wolf, and J.E. Evens. 2009. *A Manual of California Vegetation*. Second Edition. Sacramento, CA: California Native Plant Society.

Term/Acronym/ Abbreviation	Definition¹
NCCP—Natural Community Conservation Plan	A plan developed pursuant to the Natural Community Conservation Planning Act (Fish and Game Code sections 2800-2835) which identifies and provides for the regional protection of plants, animals, and their habitats, while allowing compatible and appropriate economic activity. ²¹ An NCCP allows for take of species listed under CESA, fully protected species, ²² as well as other, non-listed species.
NCCPA – Natural Community Conservation Planning Act	Natural Community Conservation Planning Act (Fish and Game Code sections 2800-2835).
NEPA – National Environmental Policy Act	The National Environmental Policy Act requires federal agencies to assess the environmental effects of their proposed actions prior to making decisions. ²³
NMFS – National Marine Fisheries Service	National Marine Fisheries Service, or the National Oceanic and Atmospheric Administration (NOAA) Fisheries, is the federal agency responsible for the stewardship of the nation’s living marine resources and their habitat.
non-focal species	Species that are not focal species, as defined in these Guidelines, but which are associated with a focal species or other conservation element and will benefit from conservation actions and habitat enhancement actions set forth in the RCIS. Non-focal species may benefit through both conservation investments and MCAs. See also, “focal species,” “sensitive species,” and “special-status species.”
objective	A concise, measurable statement of what is to be achieved and that supports a conservation goal. The objective should be based on the best available scientific information to conserve the focal species or other conservation elements for which the conservation goal and objective is developed. It should be measurable by using a standard ecologically-based metric or scale (i.e., number, percent), in a region (e.g., county, watershed, jurisdictional area) over a period of time (e.g., years).
performance-based milestones	Specifically identified steps in the implementation of a conservation action or habitat enhancement action, such as site protection, initiating implementation, completing implementation, or achieving performance standards.

²¹ Fish & G. Code, §§ 2800 – 2835

²² Fish & G. Code, §§ 3511, 4700, 5050, & 5515,
https://www.dfg.ca.gov/wildlife/nongame/t_e_spp/fully_pro.html

²³ Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended by Pub. L. 94-52, July 3, 1975, Pub. L. 94-83, August 9, 1975, and Pub. L. 97-258, § 4(b), Sept. 13, 1982.

Term/Acronym/ Abbreviation	Definition¹
performance security	A financial assurance to guarantee completion of all performance period obligations as described in the MCA, Section 6.1.
performance standards	Observable or measurable physical or biological attributes that are used to determine if a conservation action or habitat enhancement action has met its objectives. ²⁴
permanently protect	Permanent protection means: (1) recording a conservation easement or establishing perpetual protection of land that prevents development, prohibits inconsistent uses, and ensures that habitat for focal species is maintained. In areas with any overlapping draft or approved NCCP, the form and content of the perpetual land protection must be consistent with requirements of the NCCP and (2) providing secure, perpetual funding for management of the land, monitoring, legal enforcement, and defense.
population	The individuals of a particular species inhabiting a defined geographic area.
preserve, preservation	The removal of a threat to, or preventing the decline of, ecological resources by an action in or near those ecological resources. Preservation includes activities commonly associated with the protection and maintenance of ecological resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions. Preservation must result in a gain in permanently protected land. Compare to “creation,” “enhancement,” “establishment,” “rehabilitation,” and “restoration.”
pressure	See “stressor, pressure.”
Property Assessment and Warranty	The written property evaluation that provides a summary and explanation of each recorded or unrecorded lien or encumbrance on, or interest in, the MCA site, including each exception listed in the preliminary title report covering the MCA site.

²⁴ Fish & G. Code § 1851, subsection (i)

Term/Acronym/ Abbreviation	Definition¹
RCA—Regional Conservation Assessment	An assessment that provides information and analyses that document the ecosystems, ecosystem functions, species, habitat, protected and conserved areas, and habitat linkages within an ecoregion to provide the appropriate context for nonbinding, voluntary conservation strategies and actions. These assessments include information for the identification of areas with the greatest probability for long-term ecosystem conservation success incorporating co-benefits of ecosystem services, such as carbon cycling, water quality, and agricultural benefits. An RCA may be used to provide context at an ecoregional or sub-ecoregional scale to assist with the development of an RCIS. RCAs are intended to provide scientific information for the consideration of public agencies and their preparation is voluntary.
RCA or RCIS area	The geographic area encompassed by an RCA or RCIS.
RCA or RCIS proponent	The public agency or group of public agencies developing an RCA or RCIS for review and approval by CDFW and who is responsible for the technical and administrative updates of an RCA or RCIS.
RCIS—Regional Conservation Investment Strategy	Information and analyses to inform nonbinding and voluntary conservation actions and habitat enhancement actions that would advance the conservation of focal species and their habitats, natural communities, and other conservation elements. The RCIS provides nonbinding, voluntary guidance for the identification of conservation priorities, investments in ecological resource conservation, or identification of priority locations for compensatory mitigation for impacts on species and natural resources. RCISs are intended to provide scientific information for the consideration of public agencies and are voluntary. RCISs do not create, modify, or impose regulatory requirements or standards, regulate the use of land, establish land use designations, or affect the land use authority of, or exercise of discretion by, any public agency. RCISs are required if MCAs are to be developed.

Term/Acronym/ Abbreviation	Definition¹
recovery	The process by which the decline of an endangered or threatened species is halted or reversed or threats to its survival are neutralized, so that its long-term survival in nature can be ensured. Recovery entails actions to achieve the conservation and survival of a species, ²⁵ including actions to prevent any further erosion of a population’s viability and genetic integrity. Recovery also includes actions to restore or establish environmental conditions that enable a species to persist (i.e., the long-term occurrence of a species through the full range of environmental variation).
recovery plan	A document published by USFWS, NMFS, or CDFW that lists the status of a listed species and the actions necessary to remove the species from the endangered species list.
rehabilitate, rehabilitation	A manipulation of a the physical, chemical, or biological characteristics of a site with the goal of repairing natural or historic ecosystem functions to a degraded ecological resource. Rehabilitation results in a gain in ecological functions, but it does not result in a gain in ecological resource area. Rehabilitation may result in a gain in permanently protected land. See “establishment.” Compare to “creation,” “enhancement,” “preservation,” and “restoration.”
remedial action	Any measures needed to remedy any failure to achieve the performance standards or any injury or adverse impact to the MCA site.
restore, restoration	A manipulation the physical, chemical, or biological characteristics of a site with the goal of returning species, habitat, and ecological and ecosystem functions to a site that historically supported such species, habitat, and functions, but which no longer supports them due to the loss of one or more required ecological factors or as a result of past disturbance. A restoration generally results in a gain in permanently protected land. See “establishment.” Compare with “creation,” “enhancement,” “preservation,” and “rehabilitation.”
sensitive species	Any special-status species identified by a state or federal agency. See also, “focal species” and “special-status species.”
service area	The geographic area(s) within which impacts to focal species, non-focal species, and/or other conservation elements covered by the MCA may be mitigated or compensated through transfer of credits from the MCA.

²⁵ U.S. Fish and Wildlife Service and National Marine Fisheries Service. 1998. *Recovery Plan for Upland Species of the San Joaquin Valley, California*. Portland, OR: Region 1.

Term/Acronym/ Abbreviation	Definition¹
SCV – Survey of California Vegetation	The Survey of California Vegetation is the vegetation mapping standard developed and maintained for the state by CDFW (Fish and Game Code, section 1940). ²⁶
special-status species	For the purpose of the RCIS Program, a species identified as endangered, threatened, or candidate under state or federal law; as rare or fully protected under state law; or otherwise identified by CDFW through the approval of an RCIS. See also, “focal species” and “sensitive species.”
SGCN – species of greatest conservation need	Species of greatest conservation need are selected, for each state, to indicate the status of biological diversity in the state, specifying at-risk species that have the greatest need for conservation. The latest SGCN list for the state of California is found in the California State Wildlife Action Plan 2015 Update. ²⁷
SSC – species of special concern	Species of special concern ²⁸ is an administrative designation and carries no formal legal status. The intent of designating SSCs is to: 1) focus attention on animals considered potentially at conservation risk by CDFW, other state, local and federal governmental entities, regulators, land managers, planners, consulting biologists, and others; 2) stimulate research on poorly known species; and 3) achieve conservation and recovery of these animals before they meet CESA criteria for listing as threatened or endangered.
stressor, pressure	Stressor is a degraded ecological condition of a focal species or other conservation element that resulted directly or indirectly from a negative impact of pressures, such as habitat fragmentation. A pressure is an anthropogenic (human-induced) or natural driver that could result in changing the ecological conditions of a focal species or other conservation element. Pressures can be positive or negative depending on intensity, timing, and duration. Negative or positive, the influence of a pressure to the target focal species or other conservation elements is likely to be significant.
sub-ecoregion	See “ecoregion, sub-ecoregion.”

²⁶ <https://www.wildlife.ca.gov/Data/VegCAMP/Mapping-Standards>

²⁷ California Department of Fish and Wildlife. 2015. California State Wildlife Action Plan, 2015 Update: A Conservation Legacy for Californians. Appendix C: Species of Greatest Conservation Need. Available: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=109224&inline>.

²⁸ <https://www.wildlife.ca.gov/Conservation/SSC>

Term/Acronym/ Abbreviation	Definition¹
SWAP– California State Wildlife Action Plan	The California State Wildlife Action Plan (SWAP) is a CDFW publication developed to address the highest conservation priorities of the state, providing a blueprint for actions necessary to sustain the integrity of California’s diverse ecosystems. ²⁹
transfer of credits	The sale or conveyance of the ownership of credits by the MCA sponsor. ³⁰ Compare to “use of credits.” See also “advance credit purchase.”
use of credits	The application of a credit to satisfy compensatory mitigation requirements specified for a project. Compare to “transfer of credits.”
USDA – U.S. Department of Agriculture	The federal agency providing leadership on food, agriculture, natural resources, rural development, nutrition, and related issues based on public policy, the best available science, and effective management.
USFWS – U.S. Fish and Wildlife Service	The federal agency responsible for conserving, protecting and enhancing fish, wildlife and plants and their habitats.
USGS – U.S. Geological Survey	The federal agency that provides science about natural hazards and natural resources.
VegCAMP – Vegetation Classification and Mapping Program	The Vegetation Classification and Mapping Program develops and maintains California’s expression of the National Vegetation Classification System. ³¹
watershed	An area or ridge of land that contains a common set of streams and rivers that all drain into one location such as a marsh, stream, river, lake, or ocean.
working land	An area where people live and work in a way that allows ecosystems or ecosystem functions to be sustained (e.g., farms, ranches). Human activities are done in a way that minimizes disturbance on native plants and animals while still retaining the working nature of the landscape.

²⁹ <https://www.wildlife.ca.gov/SWAP/Final>

³⁰ Credits may only be transferred to or from the MCA sponsor. Credit recipients may not transfer unused credits to another party. However, the recipient may return unused credits to the MCA sponsor at the MCA sponsor’s discretion. The MCA sponsor must update the credit ledger and may then use the credits or transfer them to another recipient.

³¹ <https://www.wildlife.ca.gov/Data/VegCAMP>

5.1 Introduction

This section provides guidance to aid in the preparation of a Mitigation Credit Agreement (MCA) using the MCA Template, which is part of these Guidelines and is included in Appendix A – MCA Template. MCA sponsors shall use the MCA Template. Changes to the template must be made in track changes and require the approval of the California Department of Fish and Wildlife’s (CDFW) Office of General Counsel (see Section 5.3 – Information Required in an MCA).

MCAs shall only be created within the area of an approved Regional Conservation Investment Strategy (RCIS). An RCIS must be approved before an MCA located within that RCIS area can be reviewed and approved by CDFW. A conservation action or habitat enhancement action that measurably advances the conservation objectives of an approved RCIS may be used to create credits that can be used to compensate for impacts to conservation elements including focal species, non-focal species, habitat, and other ecological and natural resources.³² Any person or entity, including a state or local public agency, may enter into an MCA, approved by CDFW, to create credits.³³ Released credits may be used by the MCA sponsor or transferred by the MCA sponsor to another entity to fulfill, in whole or in part, compensatory mitigation requirements established under any state or federal environmental law, including, but not limited to the California Environmental Quality Act (CEQA)³⁴ and the California Endangered Species Act (CESA)³⁵ or Lake and Streambed Alteration (LSA)³⁶ programs.³⁷ Once a credit is transferred by the MCA sponsor, that credit may not be transferred by the recipient to another entity. Transferred credits may only be transferred back to the MCA Sponsor at the MCA Sponsor’s discretion.

The use of MCA credits to mitigate for project impacts will depend upon project-specific permits or agreements issued by the regulatory agency. It is the responsibility and discretion of the regulatory agencies to determine the appropriateness of MCA credits to fulfill the mitigation obligations required in their permits. The approval or existence

³² Fish & G. Code, § 1856 subdivision (a)

³³ Fish & G. Code, § 1856 subdivision (e)

³⁴ Pub. Resources Code, §§ 21000 – 21189

³⁵ Fish & G. Code, §§ 2050 – 2100

³⁶ Fish & G. Code, §§ 1600 – 1617

³⁷ Fish & G. Code, § 1856(c)

1 of an MCA does not create the presumption or guarantee that any proposed project will
2 be approved or permitted, or that any proposed impact will be authorized.³⁸

3 MCAs must be developed based on conservation actions and habitat enhancement
4 actions of an approved RCIS; therefore, MCAs have the advantage of being consistent
5 with a regional conservation strategy based on the best available scientific information.
6 In addition to credits typically covered by conservation and mitigation banks, such as
7 creation, restoration, enhancement, and preservation of conservation elements, MCAs
8 are intended to enable the creation of credits, where ecologically appropriate and
9 approved by CDFW, for conservation actions and habitat enhancement actions such as:

- 10 a. Fish and other wildlife corridors and habitat connectivity;
- 11 b. Passages and crossings to infrastructure to benefit species;
- 12 c. Beneficial project actions that exceed the project’s mitigation requirements;
- 13 d. Temporary mitigation actions that can offset temporary impacts; and
- 14 e. Mitigation actions on public lands, including CDFW-owned lands, and permanently
15 protected lands.

16 CDFW recommends early consultation with stakeholders, proponents of adjacent and
17 overlapping conservation plans, and CDFW Program staff early and ongoing through
18 the development of MCAs. See Section 1.2 for information regarding recommendations
19 to consult and for an explanation of the terms “shall”, “must”, “should” and “may”, as
20 they are used in these Guidelines.

21 Requirements within these Guidelines apply only to MCAs pursuant to the RCIS
22 Program and do not establish requirements for other forms of compensatory
23 mitigation.³² Nothing in these Guidelines is intended to limit or impose additional
24 conditions on the creation or sale of credits by a conservation bank or mitigation bank
25 approved by CDFW.³⁹

26 **5.2 MCA Relationship to Other Regulatory Structures**

27 **5.2.1 Coordination with Federal, State, and Local** 28 **Agency Use of MCAs**

29 MCAs can be established to meet the requirements of CESA, CEQA, and LSA. Other
30 federal, state or local agencies may propose requirements that can also be met by the
31 measures provided for in an MCA. When that is the case, the MCA sponsor shall use the

³⁸ Fish & G. Code, § 1855, subdivision (b)(4)

³⁹ Fish & G. Code, § 1856 subdivision (i)

1 MCA Template (Appendix A) and propose only the necessary changes to secure federal,
2 other state agency, or local approvals. CDFW will consider the proposed changes to the
3 MCA Template and may accommodate them if they do not conflict with statute, affect
4 consistency across MCAs, and/or do not conflict with the goals of the MCA and
5 associated RCIS.

6 Any federal, state and local agencies that participate in an MCA should be part of the
7 MCA review team and should be part of any team established to monitor the
8 establishment, use, and operation of the MCA, in accordance with those agencies'
9 requirements.

10 If other federal, state, and local agencies are not a signatory to the MCA it is the
11 responsibility and discretion of those agencies to determine the appropriateness of
12 MCA credits to meet their compensatory mitigation requirements.

13 **5.2.2 Protection of Existing NCCPs**

14 In recognition of the resources expended to develop NCCPs, both Fish and Game Code
15 Sections 1850-1861 and these Guidelines include certain provisions to protect existing
16 NCCPs. The protections involving MCAs include:

- 17 a. The conservation easement or other instrument for the perpetual protection of land
18 that will be used for the MCA site must be consistent with any approved NCCP
19 within the area of the applicable RCIS (see Section 5.3.5.1 – Land Use Consistency
20 Declaration).⁴⁰ For example, if the MCA site overlaps an approved NCCP, the MCA
21 must comply with any requirements of the NCCP pertaining to the perpetual
22 protection of mitigation lands.
- 23 b. The creation of MCA credits within the NCCP plan area requires the advance written
24 approval of the NCCP implementing entity. The MCA sponsor shall include, as
25 Exhibit C to the MCA, a copy of the NCCP implementing entity's written approval to
26 create credits within the NCCP plan area.⁴¹
- 27 c. When an MCA overlaps an existing NCCP, the use of MCA credits is limited in several
28 ways:
 - 29 1. MCA credits may be used as mitigation for covered activities under an approved
30 NCCP only in accordance with any mitigation credit requirements of the NCCP.⁴¹
 - 31 2. If an individual or entity that could qualify as a participating special entity under
32 an approved NCCP seeks to use MCA credits for covered activities within the

⁴⁰ Fish & G. Code, § 1856, subdivision (f)(12)

⁴¹ Fish & G. Code, § 1856, subdivision (j)

1 NCCP plan area, the individual or entity must first seek approval from the NCCP's
2 implementing entity to be a participating special entity.⁴¹

- 3 3. If the NCCP implementing entity grants the request for participating special
4 entity status, the individual or entity must comply with the participating special
5 entity provisions of the NCCP with respect to mitigating project impacts.
- 6 4. If the NCCP implementing entity does not grant the request for participating
7 special entity status, the individual or entity may purchase MCA credits to satisfy
8 their regulatory requirements and NCCP fees will not be required.⁴¹ The
9 individual or entity seeking to purchase MCA credits must provide CDFW with
10 documentation of the denial for participating special entity status.

11 MCA credits cannot be used to fulfill an NCCP's conservation requirement if the
12 proposed project does not qualify as a covered activity under the NCCP.

13 **5.2.3 Protection of Established Conservation and** 14 **Mitigation Banks**

15 In recognition of the resources expended to develop conservation and mitigation banks
16 (banks), both Fish and Game Code sections 1850-1861 and these Guidelines include
17 certain provisions to protect established banks. Nothing in these Guidelines are
18 intended to limit or impose additional conditions on the creation or transfer of
19 mitigation credits by a bank approved by CDFW.⁴²

20 Where an MCA and established bank(s) have service areas that overlap, an MCA
21 sponsor must identify the established bank(s) approved by CDFW that have similar
22 credit types. The MCA sponsor shall explain how available mitigation credits at those
23 established banks will be purchased or used in combination with the mitigation credits
24 created under the MCA. If those available mitigation credits from the established banks
25 will not be purchased or used, the MCA sponsor shall explain why they will not be
26 purchased or used.⁴³ This information shall be included in the bill of sale (see Section
27 5.3.7.4 – Credit Reporting).

28 **5.2.4 Mitigation on Public and Protected Private Lands**

29 In determining whether to approve an MCA, CDFW will consider the ecological needs of
30 the focal species or other conservation elements regardless of land ownership or
31 protection status. The following are minimum requirements and considerations that
32 apply for CDFW to approve MCAs on public or protected private lands:

⁴² Fish & G. Code, § 1856, subdivision (i)

⁴³ Fish & G. Code, § 1856, subdivision (f)(6)

- 1 a. MCA credits shall not be created on a site that has already been permanently
2 protected and has been used, or is currently in use, to fulfill compensatory
3 mitigation requirements for one or more projects.⁴⁴ However, in cases where lands
4 have only been permanently protected and not used for mitigation, there may be
5 MCA opportunities. See Section 5.3.7.1 (Credit Type and Quantity) for examples of
6 feasible mitigation options.
- 7 b. Use of MCA credits to fulfill a specific mitigation requirement is not guaranteed. It is
8 the discretion of the agencies permitting the project for which mitigation is required
9 to determine the appropriateness of MCA credits to fulfill specific mitigation
10 obligations required in permits. As such, use of credits from an MCA created on
11 publicly owned or existing permanently protected land may not be allowed when
12 mitigation obligations require the long-term preservation or protection of land or
13 otherwise conflict with the nature of the credits created pursuant to the MCA.
- 14 c. MCAs proposed on public or permanently protected private lands will be considered
15 when the availability of non-permanently protected private lands for those MCAs is
16 restricted, and depending on the relative habitat values of the available lands.
- 17 d. If an MCA is proposed on public lands or lands that are already protected or
18 enhanced in some way, the number and type of credits to be issued for conservation
19 actions and habitat enhancement actions on those lands will likely be reduced as
20 compared to the number and type of credits that would be issued for comparable
21 actions on similar, but unprotected, private lands. In making this determination,
22 CDFW will consider a variety of factors, including, but not limited to, the extent to
23 which the land is already protected and (for habitat enhancement actions) the
24 duration of existing protections. The MCA shall propose the number of credits along
25 with a supporting analysis.
- 26 e. The MCA must not preclude, diminish, or interfere with the funding or purpose of
27 acquisition, encumbrances, or management plan for the proposed MCA site.
- 28 f. For MCAs proposed on CDFW lands, the full cost of the MCA must be accounted for,
29 including, but not limited to, all capital improvements, restoration, enhancement,
30 monitoring, long-term management and maintenance, and reimbursement for all
31 CDFW staff time including enforcement.

32 If an MCA includes public lands, the MCA sponsor shall submit, with the draft MCA, a
33 letter or document signed by the public agency landowner indicating their approval to
34 include those lands in the MCA.

⁴⁴ Fish & G. Code, § 1856, subdivision (e)

5.3 Information Required in an MCA

The following subsections describe the information that must be included in the MCA for CDFW's review and approval. MCA sponsors and preparers should refer to these Guidelines when filling out the MCA Template. Within the template, language that is bracketed, bold, and italicized provides directions for items or information that the MCA sponsor must provide. This text must be replaced with information relevant to the MCA. Text that is within brackets, but not bold or italicized is template language that must be selected based on the proposed MCA and shall not otherwise be edited. All other language within the template shall not be edited without the approval of CDFW's Office of General Counsel. Proposed changes to template language must be made in track changes to facilitate review and approval or editing by CDFW's Office of General Counsel.

The MCA shall be based on the requirements in the version of the RCIS Program Guidelines that is current when the draft MCA package is submitted to CDFW for review. The RCIS Program Guidelines version used must be indicated in the MCA.

5.3.1 MCA Name

The MCA must include the full name of the MCA, as indicated in the MCA Template, Section 1.⁴⁵ The MCA sponsor may choose to provide both the full name and an abbreviated name. Both the full and abbreviated names must be unique and not previously used by another MCA.

5.3.2 Supporting RCIS

The MCA must identify the RCIS in which the MCA is located and provide a one- or two-paragraph description of the RCIS, as indicated in the MCA Template, Section 2. Describe the geographic extent of the RCIS, the principal species, habitats, and other conservation elements it addresses, and how the conservation actions and/or habitat enhancement actions proposed in the MCA will measurably advance the conservation goals and objectives of the RCIS.⁴⁶ Indicate that the MCA's actions are conservation actions or habitat enhancement actions consistent with the permanent or temporary nature of the MCA credits, and reference the source of those actions in the approved RCIS. Finally, document that the RCIS includes the following components required to create credits through the MCA:

- a. An adaptive management and monitoring strategy for conserved habitat and other conserved natural resources;⁴⁷

⁴⁵ Fish & G. Code, § 1798, subdivisions (b)(2)(A)

⁴⁶ Fish & G. Code, § 1856, subdivisions (a)

⁴⁷ Fish & G. Code, § 1856, subdivisions (b)(1)

- 1 b. A process for updating the scientific information used in the RCIS, and for tracking
2 the progress of, and evaluating the effectiveness of, conservation actions and habitat
3 enhancement actions identified in the RCIS, in offsetting identified threats to focal
4 species and in achieving the RCIS’s biological goals and objectives, at least once
5 every 10 years, until all mitigation credits are used;⁴⁸ and
6 c. Identification of a public or private entity that will be responsible for the updates
7 and evaluation.⁴⁹

8 **5.3.3 Purpose of the MCA**

9 The MCA must describe the purpose and need of the MCA, as indicated in the MCA
10 Template, Section 3.⁵⁰ Retain in the agreement, as applicable, the federal and state laws
11 that apply and the MCA’s relationship to regulatory programs and authorities. These
12 may include, but are not limited to, providing compensatory mitigation for unavoidable
13 impacts to CESA-listed species, wetlands and waters, and/or other state and federally
14 protected resources.⁵¹ The MCA must also describe any other MCA objectives, including
15 how the proposed MCA site would contribute to wildlife and habitat connectivity and
16 ecosystem function.⁵²

17 **5.3.4 MCA Site and Service Area Information**

18 **5.3.4.1 Property Ownership Description**

19 The MCA must provide a description of the proposed property ownership of the MCA
20 site, as indicated in the MCA Template, Section 4.1.⁵³

21 **5.3.4.2 Contact Information**

22 The MCA must include contact information for the MCA sponsor, property owner, land
23 manager, contractors and consultants, grantee, if applicable, and endowment holder, if
24 applicable (see MCA Template, Section 4.2). Contact information shall include mailing
25 address, email address, and phone numbers.⁵⁴ Notice must be provided to CDFW within
26 30 days of any change in contacts or contact information.

⁴⁸ Fish & G. Code, § 1856, subdivisions (b)(2)

⁴⁹ Fish & G. Code, § 1856, subdivisions (b)(3)

⁵⁰ Fish & G. Code, § 1856, subdivision (c)

⁵¹ Use of MCA credits to fulfill mitigation requirements is not guaranteed. It is the responsibility and discretion of the regulatory agencies to determine the appropriateness of MCA credits to fulfill the mitigation obligations required in their permits.

⁵² Fish & G. Code, § 1798, subdivision (b)(2)(K)

⁵³ Fish & G. Code, § 1856, subdivision (f)(11) and § 1798, subdivision (b)(2)(F)

⁵⁴ Fish & G. Code, § 1856, subdivision (f)(1) and § 1798, subdivision (b)(2)(B)

1 **5.3.4.3 Qualifications**

2 The MCA must provide the qualifications for the MCA sponsor, property owner, grantee
3 (if applicable), land manager, endowment holder (if applicable), and any of their
4 contractors or consultants (see the MCA Template, Section 4.3).⁵⁵ The processes for
5 verifying qualifications are dependent on the role, as follows:

- 6 a. CDFW is required to conduct due diligence when approving entities to manage and
7 steward mitigation lands, as stated in Government Code section 65967(c). The roles
8 of the MCA sponsor, property owner, grantee and land manager may be held by one
9 or more persons or entities in a variety of combinations so long as they are qualified
10 pursuant to Government Code sections 65965-65968. Some combinations are not
11 allowed except under limited circumstances. For instance, a property owner cannot
12 be the grantee. Any entity proposed to manage and steward the MCA lands shall be
13 evaluated under CDFW's due diligence process.⁵⁶
- 14 b. Any entity proposed to hold an endowment for an MCA shall meet the criteria in
15 Government Code section 65965-65968 and shall certify to CDFW that they meet
16 the requirements under Government Code section 65968, subdivision (e)(1)-(5).⁵⁷
17 This certification shall be in the form of a letter from the proposed endowment
18 holder and shall be included with the Draft MCA.

19 **5.3.4.4 Location Information**

20 The MCA must provide location information to identify the MCA site (see MCA Template
21 Section 4.4). Location information must include address, site coordinates
22 (latitude/longitude), assessor parcel number (APN), access points, and size (in acres) of
23 the proposed MCA site.⁵⁸ If a street address is not available, the MCA shall include a
24 written legal description (including county, Section, Township and Range) of the
25 location and driving instructions to the MCA site. The MCA must also provide maps and
26 photos of the site as follows:

- 27 a. General vicinity map(s) showing:
 - 28 1. Cities, roads, or other visual markers.
 - 29 2. Public lands and permanently protected lands - identify all public lands and
30 permanently protected lands in the vicinity of the MCA site,⁵⁹ including NCCPs,

⁵⁵ Fish & G. Code, § 1856, subdivision (f)(1) and § 1798, subdivision (b)(2)(G)

⁵⁶ <https://www.wildlife.ca.gov/Conservation/Planning/Endowments>

⁵⁷ <https://www.wildlife.ca.gov/Conservation/Planning/Endowments>

⁵⁸ Fish & G. Code, §§ 1856, subdivision (f)(3) and 1798, subdivision (b)(2)(C)

⁵⁹ Fish & G. Code, § 1856, subdivision (f)(8) and 1798, subdivision (b)(2)(J)

- 1 conservation and mitigation banks, and any other public and permanently
2 protected lands.
- 3 b. Site map(s) showing:
- 4 1. The property or parcel boundaries and MCA site boundary on a 7.5-minute U.S.
5 Geologic Survey (USGS) map, with the name of the quadrangle identified.⁶⁰
- 6 2. The zoning of the site and surrounding properties (should include county or city
7 land use and zoning as well as floodplain distribution or occurrence).
- 8 c. Color aerial photographs that reflect current conditions of the proposed site and
9 surrounding properties, and a brief discussion of the compatibility of the proposed
10 site with adjacent property land uses including known present and proposed zoning
11 designations.⁶¹
- 12 d. Ground-level color photographs taken onsite that reflect the current conditions of
13 the proposed site and surrounding properties. A description of each photograph
14 should include the date, location, direction, and an explanation of what is being
15 captured in the photograph.⁶¹
- 16 e. Include a brief description of the factors considered during the site-selection
17 process utilizing information from the RCIS as appropriate, including ecoregional
18 features such as aquatic habitat diversity, habitat connectivity, relationships to
19 hydrologic sources, land use trends, ecological benefits, and compatibility with
20 adjacent land uses.

21 **5.3.4.5 Service Area**

22 The MCA must include an ecologically based explanation on how the service area was
23 determined. This shall include consideration of the current and historic range of the
24 species or other conservation elements, key habitat features in the service area
25 required by the species or other conservation elements, and anticipated range shifts
26 due to climate change (see Section 4.2.9.8 – Climate Change Vulnerability Assessment).

27 The MCA must provide a map and written description of the proposed site service area
28 (see MCA Template Section 4.5).⁶² The service area map(s) and description shall include
29 the service area boundary, MCA site location, cities, counties, roads, and other key
30 features relevant to clearly identify the service area boundary. It shall also indicate the
31 Hydrologic Unit Code (HUC) and USDA ecoregion subsection(s) in which the proposed
32 service area is located. The description must also explain how the service area overlaps

⁶⁰ Fish & G. Code, § 1798, subdivision (b)(2)(D)

⁶¹ Fish & G. Code, § 1856, subdivision (f)(4) and § 1798, subdivision (b)(2)(E)

⁶² Fish & G. Code, §§ 1798, subdivision (b)(2)(I) and 1798.5, subdivision (a)(2)(D)

1 with CDFW’s Regions, established banks and their service areas, NCCPs, other RCISs,
2 and the legal Delta (Sacramento-San Joaquin River Delta)⁶³.

3 **5.3.5 MCA Site Evaluation and Development**

4 **5.3.5.1 Land Use Consistency Declaration**

5 The MCA must include a declaration that the proposed site has not been used for
6 permanent mitigation and is not currently being used for temporary mitigation, is not
7 designated or dedicated for park or open space use, or designated for purposes that
8 may be inconsistent with habitat preservation (see MCA Template Section 5.1).⁶⁴
9 Guidance regarding the approval of MCAs on public and protected private lands is
10 discussed in Section 5.2.4 – Mitigation on Public and Protected Private Lands. If the
11 MCA service area overlaps with an NCCP or another RCIS, justification must be provided
12 explaining how the MCA is consistent with the NCCP or another RCIS and all other
13 requirements of Section 5.2.2 (Protection of Existing NCCPs) must be met.

14 **5.3.5.2 Public Funding**

15 The MCA must include details of any public funding received for acquisition,
16 restoration, or other purposes related to the proposed MCA site (see MCA Template
17 Section 5.2).⁶⁵ For MCAs proposed on public lands, the MCA must not preclude,
18 diminish, or interfere with the funding or purpose of acquisition of the land (see Section
19 5.2.4 – Mitigation on Public and Protected Private Lands).

20 **5.3.5.3 MCA Site Inspection by CDFW**

21 Prior to MCA approval, CDFW must inspect the MCA site and evaluate the MCA
22 sponsor’s proposed habitat development for focal species, non-focal species, other
23 conservation elements, Waters of the U.S., and/or Waters of the State, as described in
24 the development plan (see Section 5.3.5.9 – Development Plan; see also MCA Template
25 Section 5.3).⁶⁶ CDFW and the MCA sponsor shall also agree upon the assignment of
26 credits.

⁶³ Water Code, § 12220

⁶⁴ Fish & G. Code, § 1798, subdivision (b)(2)(M)

⁶⁵ Fish & G. Code, § 1798, subdivision (b)(2)(N)

⁶⁶ Use of MCA credits to fulfill mitigation requirements is not guaranteed. It is the responsibility and discretion of the regulatory agencies to determine the appropriateness of MCA credits to fulfill the mitigation obligations required in their permits.

1 **5.3.5.4 Natural Resources Evaluation**

2 The MCA shall include a natural resources evaluation that documents biotic and abiotic
3 baseline conditions, including past, current, and adjacent land uses, vegetation types,
4 species information, topography, hydrology, and soil types (see MCA Template Section
5 5.4).⁶⁷ At a minimum, the natural resources evaluation shall include:

- 6 a. Site history, including past and present land uses (e.g., grazing practices, dryland
7 farming practices), and location in a floodplain.
- 8 b. A description of the general site conditions including topography, soils, and
9 hydrology. For wetlands and other water bodies, include the hydrologic regime.
- 10 c. A map, list, and description of vegetation community types based on A Manual of
11 California Vegetation, Second Edition,⁶⁸ which is the California expression of the U.S.
12 National Vegetation Classification,⁶⁹ and it is developed and maintained by CDFW's
13 Vegetation Classification and Mapping Program (VegCAMP).⁷⁰
- 14 d. A complete plant species list.
- 15 e. The presence of endangered, threatened, other sensitive species, and/or their
16 habitats (as determined by protocol surveys or other appropriate survey
17 methodology). This shall include information about the known or potential presence
18 of species and other conservation elements identified in the RCIS for which MCA
19 credits are proposed, including their current and past use of the site and the
20 surrounding area (including range maps and description), CNDDDB records, and the
21 results of any site surveys. All survey methods and results shall be described.
- 22 f. The presence and general extent of invasive species.
- 23 g. If the MCA proposes to create species credits, appropriate datasets, such as the
24 California Natural Diversity Database (CNDDDB), should be used to show known
25 species occurrences or distributions within a 5-mile or other species-appropriate
26 radius of the MCA site.
- 27 h. If mitigation credits are proposed for aquatic species, aquatic natural communities,
28 or jurisdictional waters or wetlands, include a description of existing wetlands and
29 other Waters of the United States, Waters of the State⁷¹, lakes, streams, and other
30 aquatic habitats present at the site. The description should include the onsite and

⁶⁷ Fish & G. Code, §§ 1856, subdivision (f)(7) and 1798, subdivision (b)(2)(H)

⁶⁸ <https://www.wildlife.ca.gov/Data/VegCAMP/Publications-and-Protocols/Vegetation-Manual>

⁶⁹ https://www.fgdc.gov/standards/projects/FGDC-standards-projects/vegetation/NVCS_V2_FINAL_2008-02.pdf

⁷⁰ <https://www.wildlife.ca.gov/Data/VegCAMP>

⁷¹ Water Code, § 13050, subdivision (e)

1 offsite hydrology affecting the aquatic resources for which mitigation credits are
2 proposed. The description should use the most relevant ecologically-based metrics
3 (e.g., acreage, linear feet) for the aquatic resource. Include a wetland delineation of
4 Waters of the U.S. and/or Waters of the State and jurisdictional determination
5 issued by USACE and/or appropriate Regional Board, if applicable.

6 **5.3.5.5 Tribal Resources Evaluation**

7 To facilitate compliance with CDFW’s Tribal Communication and Consultation Policy,
8 which states that CDFW will seek in good faith to consult with tribes whenever CDFW
9 actions may significantly impact tribal interests, CDFW will require MCA sponsors to
10 perform a cultural resources records search on all proposed MCA sites. The MCA
11 sponsor must summarize the results of the records search in a tribal resources
12 evaluation (see MCA Template, Section 5.5).

13 Based on the tribal resources evaluation and the records search results, CDFW will
14 evaluate whether MCA approval and the ensuing MCA site establishment and
15 management activities may have an impact on tribal interests. If CDFW determines that
16 such activities may have an impact on tribal interests, CDFW will follow the procedures
17 in CDFW’s Tribal Communication and Consultation Policy prior to approving the MCA.

18 **5.3.5.6 Phase I Environmental Site Assessment**

19 The MCA shall include a Phase I environmental site assessment for the MCA site (see
20 MCA Template Section 5.6). The assessment must be dated no more than six months
21 prior to the date the MCA is submitted to CDFW for review and approval. This
22 assessment shall be performed in accordance with the American Society of Testing and
23 Materials (ASTM) Standard E1527-05 *Standard Practice for Environmental Site*
24 *Assessments: Phase I Environmental Site Assessment Process* or any successive ASTM
25 standard active at the time of the assessment.⁷²

26 **5.3.5.7 Real Estate Records and Assurances**

27 **Preliminary Title Report, Legal Description, and Parcel Maps**

28 The MCA must include a current preliminary title report covering the proposed site that
29 identifies the owner of the fee simple title and shows all liens, easements, and other
30 encumbrances on the MCA site that may affect the property’s conservation value (e.g.,
31 mineral rights). The preliminary title report must be less than one-year old. The future
32 uses of the land, including liens, easements, and other encumbrances, must not
33 preclude or diminish the MCA site’s values.

⁷² Fish & G. Code, § 1798.5, subdivision (a)(2)(H)

1 The preliminary title report must depict all relevant property lines, easements,
2 dedications, and other features.⁷³ The MCA must also include the legal description of the
3 property, parcel map(s), and copies of all title encumbrance documents such as
4 easements and reservations (see MCA Template Section 5.7.1).

5 **Property Assessment and Warranty**

6 The MCA must include a property assessment and warranty (see MCA Template Section
7 5.7.2) that is prepared in accordance with the property assessment and warranty
8 template,⁷⁴ including a plat map that depicts the physical extent of the title exceptions
9 and identify the locations of all structures, roads, fences, and other physical
10 improvements.

11 **Real Estate Instrument**

12 An MCA that proposes permanent credits must include a draft conservation easement
13 (see MCA Template Section 5.7.3)⁷⁵ that is prepared in accordance with the
14 conservation easement template.⁷⁶ If an MCA is located within an approved NCCP and is
15 proposing permanent credits, the conservation easement or other perpetual real estate
16 instrument must be consistent with the NCCP (see Section 5.2.2 – Protection of Existing
17 NCCPs).

18 If CDFW is being granted a conservation easement deed, then the preliminary title
19 report shall not be dated more than one year before the date the MCA is submitted to
20 CDFW for review and approval. If CDFW is being granted a grant deed (fee title), then
21 the preliminary title report shall not be dated more than six months before the date the
22 MCA is submitted to CDFW for review and approval.

23 An MCA proposing temporary credits must include an explanation regarding how the
24 long-term durability of the site will be ensured.⁷⁷ Long-term durability shall be through
25 an enforceable legal instrument, such as a deed restriction, contract, or other type of
26 non-perpetual easement, which must remain in effect at least as long as it would take
27 for the potential impacts covered by the credits to be returned to pre-impact ecological
28 conditions.⁷⁸ MCA Sponsors should consult with CDFW as to the appropriateness of any
29 particular durability tool for any particular habitat enhancement feature, as not all tools
30 listed can be used for all habitat enhancements.

⁷³ Fish & G. Code, § 1798, subdivision (b)(2)(L)

⁷⁴ See template available at <https://www.wildlife.ca.gov/Conservation/Planning/Banking/Templates> (note – replace “bank” with “MCA site” and replace “BEI” with “MCA” in the referenced templates)

⁷⁵ Fish & G. Code, § 1798.5, subdivision (a)(2)(C)

⁷⁶ See template available at <https://www.wildlife.ca.gov/Conservation/Planning/Banking/Templates> (note – replace “bank” with “MCA site” and replace “BEI” with “MCA” in the referenced templates)

⁷⁷ Fish & G. Code, § 1856, subdivision (f)(12)

⁷⁸ Fish & G. Code, § 1856, subdivisions (d)

1 **Title Insurance**

2 Title insurance is required for final MCA approval for all MCAs proposing conservation
3 actions and may be required for MCAs proposing certain habitat enhancement actions
4 (see MCA Template Section 5.7.4).

5 **5.3.5.8 Approvals**

6 The MCA sponsor must obtain all permits, authorizations, and other approvals
7 necessary or appropriate to construct, operate, and maintain the MCA site, including
8 those of CDFW. An approved MCA does not constitute or substitute for any such
9 approval (see MCA Template Section 5.8). Once obtained, copies of all approvals shall
10 be included in the MCA as Exhibit K. The MCA sponsor must meet and confer with
11 CDFW regarding CEQA.

12 **5.3.5.9 Development Plan**

13 The MCA must include a development plan if the MCA proposes the creation of
14 establishment credits (see MCA Template Section 5.9). An MCA that proposes the
15 creation of preservation credits must also include a development plan when MCA site
16 development includes ground disturbing activities, such as the installation of a fence or
17 well. The development plan shall explain how the credits will be created, including all
18 planned phases of implementation.⁷⁹ The development plan should include:

- 19 1. Map(s) and a discussion of the current condition of the site and an explanation of
20 the ecological suitability of the site;
- 21 2. A discussion of the anticipated activities and methods that will be used for
22 establishing, restoring, and/or enhancing species or other conservation elements
23 (see the subsections below for more detail) and include site designs;
- 24 3. A discussion of the desired future condition of the site (i.e., site objectives) and
25 map(s) of the overall MCA site design indicating the location, extent (e.g., acreage;
26 linear feet; and type, size and number of crossings), and types of proposed credits;
- 27 4. A description of the surrounding land uses and zoning and the anticipated future
28 development planned in the area;
- 29 5. Historic aerial photographs and/or historic topographic maps (if available) to
30 compare to aerial photographs of the current condition (see Section 5.3.4.4 –
31 Location Information); and

⁷⁹ Fish & G. Code, §§ 1856, subdivision (f)(5) and 1798, subdivision (a)(2)(B)

1 6. A discussion of how and to what extent the action(s) will measurably achieve the
2 goals and objectives of the MCA site, the RCIS,⁸⁰ and any other relevant plans (e.g.,
3 watershed management plans, critical habitat designation, NCCP, HCP, species
4 recovery plans). The development plan shall also identify the performance
5 standards to be used in measuring the achievement of the desired site conditions
6 (see subsections below for more detail), monitoring methods, a schedule for
7 reporting monitoring results, and a discussion of possible remedial actions.

8 **Description of Conservation Actions and Habitat Enhancement Actions**

9 The MCA sponsor shall provide a full description of the conservation actions or habitat
10 enhancement actions, including phases of implementation, proposed by the MCA to
11 create credits.⁸¹ The description shall indicate that the MCA's actions are conservation
12 actions or habitat enhancement actions consistent with the permanent or temporary
13 nature of the MCA credits. The description must also reference the source of those
14 actions in the approved RCIS. Actions that may be implemented to create credits
15 include preserving, restoring or rehabilitating, and/or establishing or creating habitat
16 for the focal species or other conservation elements. The MCA sponsor shall use the
17 best available scientific information, as well as any site-specific information derived
18 from MCA site surveys, in developing the MCA actions, including information from the
19 approved RCIS. The description shall include a science-based explanation for how, and
20 to what extent, the conservation or habitat enhancement actions will measurably
21 advance the RCIS conservation objectives.

22 The description shall provide details of the actions and methods that will benefit the
23 focal species and their habitats, and other conservation elements covered by the MCA. If
24 the MCA intends to provide credits for non-focal species, additional analysis shall be
25 provided justifying how the actions of a focal species or other conservation element
26 provide for the conservation needs of a non-focal species. The proposed locations of
27 each resource type and the estimated acreage and/or linear dimensions shall be
28 indicated.

29 **Metrics Used to Measure Goals and Objectives**

30 The MCA sponsor shall identify the ecologically-based metrics or indicators by which it
31 will measure (1) the net ecological gain from implementation of conservation actions or
32 habitat enhancement actions that include habitat restoration and (2) their contribution
33 to achieving the RCIS conservation goals and objectives.⁸² The net ecological
34 improvement in site conditions from the implementation of conservation actions and

⁸⁰ Fish & G. Code, §§ 1856, subdivision (f)(2)

⁸¹ Fish & G. Code, §§ 1856, subdivision (f)(2)

⁸² Fish & G. Code, § 1856, subdivision (f)(10)

1 habitat enhancement actions shall be reported using consistent ecologically-based
2 metrics as described in the RCIS.

3 The ecologically-based metrics should measure the increment of ecological
4 improvement in the size and the quality of habitat or other natural resource values. The
5 ecological improvement should be described in relation to the RCIS's conservation
6 objectives and compared to baseline conditions as described in the natural resources
7 evaluation for the MCA site (see Section 5.3.5.4 – Natural Resources Evaluation). The
8 MCA sponsor shall use the best available scientific information, site-specific information
9 derived from MCA site surveys and, if appropriate, ecological resource information
10 from the RCIS in developing the MCA's proposed conservation and habitat
11 enhancement actions and to determine appropriate measurable, ecologically-based
12 metrics or indicators, and the performance standards, to measure achievement of the
13 conservation goals and objectives.

14 **5.3.6 Financial Assurances**

15 The MCA sponsor is responsible for providing financial assurances to guarantee that
16 construction, management, monitoring, reporting, and remedial actions, are completed
17 as described in the MCA and that performance standards are reached.

18 **5.3.6.1 Security**

19 Security is required to ensure funding of tasks that are to be completed during specified
20 periods of MCA development and management (see MCA Template Section 6.1). Types
21 of security required for each MCA will depend on the type of credit and/or action
22 proposed and may include construction, performance, interim management security,
23 and endowment. Performance and interim management security is generally required.
24 Construction security is required if credits may be sold prior to completion of
25 construction activities.

26 The MCA must describe the period (e.g., construction phase) and tasks or performance
27 standards that are to be covered by the security. If the MCA is proposed on CDFW lands,
28 refer to Section 5.2.4(**Error! Reference source not found.**) regarding costs that must b
29 e accounted for. The security will be returned to the MCA sponsor after all tasks and
30 performance standards described in that period have been completed.

31 The MCA must describe the proposed form and estimated value of each security.
32 Proposed forms of security may be either a letter of credit (LOC), check, or cashier's
33 check.⁸³ The analysis or third-party estimate used to determine the amount of each
34 security must be provided. The content of any LOC must be approved in advance in

⁸³ Fish & G. Code, § 1798.5, subdivision (a)(2)(G)

1 writing by CDFW’s Office of General Counsel. The MCA sponsors must use the LOC
2 template as the starting point.⁸⁴

3 **5.3.6.2 Long-term Management Funding**

4 The MCA shall describe how the long-term protection and management of the site will
5 be adequately funded through an endowment (see MCA Template Section 6.2). The
6 proposed endowment value shall be supported by an economic analysis of the funding
7 necessary to fully fund the maintenance and long-term management activities of the
8 site, including monitoring and reporting, in perpetuity.⁸⁵ The entity proposed to hold an
9 endowment must meet the qualifications indicated in Section 5.3.4.3 – Qualifications.

10 The endowment analysis and schedule shall include a table and/or spreadsheet that
11 shows the projected annual capitalization rate; all of the tasks (management,
12 monitoring, reporting); task descriptions; labor (hours); materials; equipment; cost per
13 unit and frequency; timing or scheduling of the tasks; the total annual funding
14 necessary for each task; and any assumptions for each task required by the long-term
15 management and monitoring plan. The total annual expenses should also include
16 administration and contingency expenses. Cost estimates should be calculated with the
17 assumption that tasks may be implemented by a third-party in present day dollars or
18 equipment prices in present day dollars. If the MCA is proposed on CDFW lands, refer to
19 Section 5.2.4(**Error! Reference source not found.**) regarding costs that must be a
20 ccounted for.

21 For MCAs with public-entity sponsors or for MCAs with temporary credits, an
22 alternative funding mechanism may be proposed. Any alternative funding mechanism
23 must be proposed in advance and approved by CDFW’s Office of General Counsel. For
24 public entity sponsors of permanent credits, the alternative funding mechanisms must
25 be comparable to an endowment and ensure perpetual funding. Alternative funding
26 mechanisms proposed for any MCA that would create temporary credits must ensure
27 that the maintenance and management activities of the site, including monitoring and
28 reporting, are fully funded at least as long as the duration of the credit, as it is described
29 in the MCA.

30 **5.3.7 Credit Type, Release, Transfer and Use, and** 31 **Credit Reporting**

32 MCA credits are organized into three general types. The general types include
33 permanent preservation credits, permanent establishment credits, and temporary
34 establishment credits, as described below. The use of the different types to mitigate for

⁸⁴ See template available at <https://www.wildlife.ca.gov/Conservation/Planning/Banking/Templates> (note – replace “bank” with “MCA site” and replace “BEI” with “MCA” in the referenced templates)

⁸⁵ Fish & G. Code, §§ 1856, subdivision (f)(13) and 1798.5, subdivision (a)(2)(F)

1 project impacts will depend on many factors such as the species or other conservation
2 element affected, the quality of the impacted habitat, the ability or inability to lose any
3 habitat for that species without detrimental effects to its survival or recovery, and the
4 duration of the impact.

5 Permanent credits must be based on conservation actions and must provide permanent
6 protection of the land and funding for land management. Temporary establishment
7 credits must be based on habitat enhancement actions and must ensure that those
8 habitat enhancement actions and protection of the land remain in effect at least until
9 the site of the environmental impact is returned to pre-impact ecological conditions.⁸⁶

10 Permanent preservation credits are created when the land is permanently protected
11 through the MCA through the use of a conservation easement or by establishing
12 perpetual protection of land in a manner consistent with an approved NCCP. Permanent
13 preservation credits must be managed to maintain enhanced habitat and species values,
14 and permanently kept in a state that is valuable as habitat for focal species or other
15 conservation elements with *little to no improvements to the land*. Permanent
16 establishment credits are created through the implementation of conservation actions
17 to *restore, rehabilitate, enhance, and/or create* ecological resources.

18 No MCA credits may be created on land that is already permanently protected and has
19 been used for temporary or permanent mitigation.⁸⁷

20 In general, both permanent and temporary credits may be considered for fulfilling
21 mitigation requirements of temporary impacts so long as the credit duration is
22 concurrent with and at least as long as the impact duration.⁸⁸ In general, establishment
23 credits will be needed to mitigate for project impacts resulting in habitat losses.
24 Ultimately, the type and combination of credit types used to mitigate for impacts will be
25 determined at the time that regulatory permits are issued.

26 Credits may be proposed on existing public or protected lands. However, credits may
27 only be considered on public lands for ecologically beneficial actions that are above and
28 beyond those the public agency or landowner is already obligated to do.

29 **5.3.7.1 Credit Type and Quantity**

30 The MCA must describe the proposed type and quantity of credits to be created and the
31 supporting justification (see MCA Template Section 7.1).⁸⁹ To the extent possible, MCAs
32 should propose a standard MCA credit type, as follows:

⁸⁶ Fish & G. Code, § 1856, subdivision (d).

⁸⁷ Fish & G. Code, § 1856, subdivision (e)

⁸⁸ Fish & G. Code, § 1856, subdivision (d)

⁸⁹ Fish & G. Code, § 1856, subdivision (e) and (f)(9)

1 a. Permanent preservation credits are created through the implementation of
2 conservation actions to *preserve* ecological resources, including habitat, natural
3 communities, ecological processes, wildlife corridors and habitat connectivity, to
4 protect those resources permanently, and to provide for their perpetual
5 management, so as to help to achieve one or more biological goals and objectives for
6 one or more focal species or other conservation elements. The land must be
7 permanently protected through a conservation easement or by establishing
8 perpetual protection of land in a manner consistent with a draft or approved NCCP,
9 and permanently kept in a state that is valuable as habitat for focal species or other
10 conservation elements with little to no improvements to the land. Permanent
11 preservation credits may only be created on lands that are not yet permanently
12 protected and have never been used for any mitigation or have only been used for
13 temporary mitigation that expired. See Section 5.2.4 regarding mitigation on public
14 and permanently protected land, including the discussion of reduced credit values
15 on lands previously protected or enhanced. The following are examples of
16 permanent preservation credits.

17 1. Example #1 (permanent preservation credits for CESA species mitigation on
18 unprotected private land) – CESA species are found on unprotected private land
19 and an MCA is approved. These permanent preservation credits might generally
20 be used to mitigate for temporary or permanent impacts. For permanent impacts
21 to listed species, however, permanent preservation credits may need to be used
22 together with *permanent establishment* credits to make sure the credits are
23 creating, enhancing, or restoring habitat to offset the loss of existing habitat.

24 2. Example #2 (permanent preservation credits for CEQA mitigation on
25 unprotected private land) - A western burrowing owl (*Athene cunicularia*)
26 nesting pair is found on an unprotected private parcel of grassland and an MCA
27 is approved to put a CE on the land. The MCA includes long-term management to
28 allow ground squirrels to persist onsite and a continued mowing regime to keep
29 the grasses at the preferred height for burrowing owl. These permanent
30 preservation credits might generally be used to mitigate for temporary or
31 permanent impacts.

32 b. Permanent establishment credits are created through the implementation of
33 conservation actions to *enhance or restore* ecological resources, including habitat,
34 natural communities, ecological processes, wildlife corridors and habitat
35 connectivity, to protect those resources permanently, and to provide for their
36 perpetual management, so as to help achieve one or more biological goals and
37 objectives for one or more focal species or other conservation elements. The land
38 must be permanently protected through a conservation easement or by establishing
39 perpetual protection of land in a manner consistent with a draft or approved NCCP,
40 and permanently kept in a state that is valuable as habitat for focal species or other

1 conservation elements. Permanent establishment credits may be created on lands
2 that are not yet permanently protected and have not been used for any mitigation or
3 have only been used for temporary mitigation that has expired. Permanent
4 establishment credits may also be created on lands that are already permanently
5 protected but have never been used for any mitigation. See Section 5.2.4 regarding
6 mitigation on public and permanently protected land, including the discussion of
7 reduced credit values on lands previously protected or enhanced.

8 The following are examples of permanent establishment credits. All permanent
9 establishment credits generally may be used to mitigate for temporary or
10 permanent impacts.

- 11 1. Example #1 (permanent establishment credits for CEQA mitigation on
12 unprotected private land) – A highway cuts through a critical deer migration
13 corridor and an MCA is created to construct a wildlife overcrossing that may be
14 used to offset future widening and interchange projects of that highway. The
15 MCA includes the implementation of the conservation action, a conservation
16 easement, and the long-term management of the site to maintain the migration
17 corridor.
 - 18 2. Example #2 (permanent establishment credits for CESA species mitigation on
19 unprotected private land) – A perched culvert prevents spring-run Chinook
20 salmon (*Oncorhynchus tshawytscha*) from reaching a historic spawning stream
21 and an MCA is approved to remove that fish barrier by replacing the culvert with
22 a clear-span bridge or natural bottom arch culvert. The MCA includes the
23 implementation of the conservation action, a conservation easement, and the
24 long-term management of the site to maintain fish passage.
 - 25 3. Example #3 (permanent establishment credits for LSA mitigation on
26 unprotected private land) – Riparian habitat is found on private land with no
27 existing conservation easement (CE) on it. An MCA is approved and provides
28 ecological improvements to the degraded portions of the riparian habitat, such
29 as through enhancement or restoration actions.
- 30 c. Temporary establishment credits are created through the implementation of habitat
31 enhancement actions in which the MCA site is temporarily improved and protected
32 with a long-term durability instrument. These may include actions such as the
33 removal of barriers to fish passage, reduction of invasive species stressors, and
34 other temporary improvements to wildlife habitat. Temporary establishment
35 credits must include a defined duration that ensures the site’s habitat enhancement
36 actions will be concurrent with the impact and remain in effect at least until the site
37 of the environmental impact is returned to pre-impact ecological conditions.⁹⁰

⁹⁰ Fish & G. Code, § 1856, subdivision (d)

1 Therefore, some temporary establishment credits may be short-term (e.g., 10 years)
2 or long-term (e.g., more than 100 years). Temporary establishment credits may be
3 created on lands that are not yet permanently protected and have not been used for
4 any mitigation or have only been used for temporary mitigation that has expired.
5 Temporary establishment credits may also be created one time (i.e., not recurring
6 after the term expires) on lands that are permanently protected but have not
7 previously been used for any mitigation. See Section 5.2.4(c) for the discussion of
8 reduced credit values on lands previously protected or enhanced. The following are
9 examples of temporary establishment credits.

- 10 1. Example #1 (Temporary, short-term establishment credits for CESA species
11 mitigation) – Giant garter snake (*Thamnophis gigas*; Federal and State
12 Threatened) is found on private working land and an MCA is approved for
13 enhancing habitat by altering agricultural practices to ensure water is kept in
14 adjacent canals year-round for 10 or 20 years, enhancing and protecting the
15 species and its habitat by ensuring the landowner continues to keep the fields in
16 rice for the 10 or 20 years. This would include a long-term agreement to commit
17 from the landowner to maintain the habitat's functions and values for 10 or 20
18 years. These *short-term temporary establishment* credits could only be used on
19 projects with temporary impacts concurrent with the credits and anticipated or
20 known to last less than the time commitment of the credits – i.e., less than 10 or
21 20 years in this case. It may be necessary to also include permanent preservation
22 or *establishment* credits to offset temporary losses sufficiently. In many cases
23 onsite restoration of the temporarily disturbed habitat will also be a
24 requirement of the permit for the impacted site, in addition to any MCA credits
25 used.
- 26 2. Example #2 (Temporary, short-term establishment credits for LSA mitigation)
27 An MCA is created to remove invasive *Arundo donax* and replant with native
28 riparian trees and shrub plantings that will be actively maintained, monitored,
29 and managed for 10 years. After the 10 years the plantings may continue to
30 flourish; however, there will be no obligation on the part of the MCA sponsor to
31 replace any failed plantings or protect the restored area in perpetuity. Credits
32 for these actions may be considered to help offset loss of riparian habitat from a
33 temporary bridge installed on a project in addition to onsite restoration of the
34 temporary impact site.
- 35 3. Example #3 (Temporary, short-term establishment credits for CEQA mitigation)
36 - Wooden or concrete panels added to a bridge may create day or night roost
37 habitat for some species of bats. An MCA could be created to add wooden or
38 concrete panels to bridges within the boundaries of an RCIS that may be used to
39 offset the loss of roosting habitat that occurs when a bridge that currently

1 provides roosting habitat will be retrofitted creating a temporary loss (two
2 seasons) of roosting habitat for the bats.

Table 1. Land Situations Where MCA Credit Types May be Created

	Not permanently protected & not used for any mitigation	Not permanently protected but used for temporary mitigation	Not permanently protected but used for permanent mitigation	Permanently protected but not previously used for any mitigation	Permanently protected & used for any mitigation
Permanent Preservation Credits	Yes	Yes ³	No ¹	No ¹	No ²
Permanent Establishment Credits	Yes	Yes ³	No ¹	Yes ³	No ²
Temporary Establishment Credits	Yes	Yes ³	No ¹	Yes ³	No ²

¹ Disallowed by policy, due to limited additional ecological benefit, or “double dipping/stacking”
² Disallowed pursuant to Fish & G. Code, § 1856, subdivision (e)
³ See Section 5.2.4(c) for the discussion of reduced credit values on lands previously protected or enhanced.

3 When necessary, the MCA sponsors may suggest other credit types for CDFW
4 consideration. However, all proposed credit types must be consistent with the RCIS
5 Program statute and requirements of these Guidelines. Credits shall directly correlate
6 to the conservation needs of the focal species, other species, their habitats, and other
7 conservation elements addressed by the conservation actions or habitat enhancement
8 actions.⁹¹

9 The MCA shall describe the intended relationship to regulatory programs and
10 authorities for each credit type, as applicable (for example, to provide compensatory
11 mitigation for unavoidable impacts on species under CESA). Only credits for species
12 listed under the federal ESA or under CESA at the time an MCA is established can be
13 used to provide compensatory mitigation for impacts to those species.

14 Use of MCA credits to fulfill mitigation requirements is not guaranteed. The permittee
15 must obtain approval from the appropriate regulatory agency. Subsequent listing of any
16 non-listed covered species and covered habitat would require review of the MCA
17 documents by CDFW to ensure the MCA actions and other requirements are consistent

⁹¹ Fish & G. Code, § 1856, subdivision (f)(9)

1 with the needs of the covered focal species, non-focal species and their habitats. An
2 amendment, as described in Section 5.7 (Amending an MCA), may be required.

3 The MCA shall also indicate the unit of measurement (e.g., acres, linear feet) and the
4 quantity of each credit type and provide supporting rationale. The description of
5 temporary credits shall indicate the credit duration period and the start and end dates.
6 The start date may be the date the first credits are released or later, such as the date the
7 credits are used or transferred. The end date should be based on the start date and the
8 duration to which the MCA commits and must be at least as long as the duration of the
9 impact for which the credits are used.⁹²

10 The MCA must provide a credit evaluation and credit table. The credit evaluation must
11 explain the evaluation undertaken to formulate the quantity and value of each type of
12 credit for each covered focal species, non-focal species, and other conservation
13 elements. The credit table must show the number and type of credits to be released.
14 The credit table should distinguish between credits intended for specific regulatory
15 uses (e.g., CESA, LSA, CEQA).⁹³

16 **5.3.7.2 Credit Release Schedule**

17 The credits described in the Credit Table for each focal species, non-focal species, and
18 other conservation element covered by the MCA shall be released in accordance with
19 the credit release schedule (see MCA Template Section 7.2).⁹⁴ Credit release schedules
20 must be tied to performance-based milestones and performance standards. Permanent
21 credits may be released by phase, as described in the credit release schedules in the
22 MCA Template, Exhibit R. Temporary credits should follow the credit release schedules
23 included in Exhibit R of the MCA Template with proposed modifications regarding
24 endowment requirements (see Section 5.3.6.2 – Long-term Management Funding). For
25 non-standard credit types, the MCA sponsor may propose credit release schedules for
26 CDFW’s review and approval.⁹⁵ The credit release schedule must clearly state the
27 performance-based milestones associated with each credit release. Performance-based
28 milestones shall include, but are not limited to, the following:

- 29 a. A fully executed MCA.
- 30 b. One of the following real estate instruments is in place, as applicable:

⁹² Fish & G. Code, § 1856, subdivision (d)

⁹³ Use of MCA credits to fulfill mitigation requirements is not guaranteed. It is the responsibility and discretion of the regulatory agencies to determine the appropriateness of MCA credits to fulfill the mitigation obligations required in their permits.

⁹⁴ Fish & G. Code, §§ 1856, subdivision (f)(18) and 1798.5(a)(2)(E)

⁹⁵ Fish & G. Code, § 1856, subdivision (g)(1)

WORKING DRAFT

- 1 1. A conservation easement that has been (1) accepted by a grantee that has been
2 determined to be qualified by CDFW through the due diligence process; (2)
3 deemed consistent with an approved NCCP within the area of the applicable
4 RCIS on the site of a conservation action⁹⁶; and (3) recorded in the official
5 records of the county in which the MCA property is located;
- 6 2. A long-term durability instrument (i.e., a deed restriction, contract, non-
7 perpetual easement, or other , legally-enforceable instrument) approved by
8 CDFW that ensures the site’s habitat enhancement actions will remain in effect
9 at least as long as it would take for the potential impacts covered by the credits
10 to be returned to pre-impact ecological conditions;⁹⁷ OR
- 11 3. If fee title to the State, a grant deed to the State of California has been (1)
12 accepted on behalf of the State by CDFW (as evidenced by a duly executed
13 Certificate of Acceptance) and (2) recorded in the official records of the county
14 in which the MCA property is located.
- 15 c. Any applicable financial assurance(s) has been furnished (see Section 5.3.6 –
16 Financial Assurances).
- 17 d. Any applicable subordination agreement(s) has been executed and recorded.
- 18 e. Implementation of a conservation action (e.g., habitat restoration) or a habitat
19 enhancement action has been completed.⁹⁸ If the MCA includes a development plan,
20 as-built drawings of the MCA site, with accurate maps of the constructed habitats,
21 must be submitted to CDFW no later than 90 calendar days following the completion
22 of all construction activities. The as-built drawings shall consist of full-size
23 construction plans, with as-built conditions clearly shown. The as-built drawings
24 and any attachments must describe in detail any deviation from the development
25 plan.
- 26 f. Temporal ecological performance standards for habitat restoration have been
27 achieved (e.g., standards established for one year, three years, or five years
28 following the initiation of habitat restoration).⁹⁹ Generally, monitoring of credit
29 release performance standards is for a minimum of five years.
- 30 g. Ecological performance standards are fully achieved.¹⁰⁰ Generally, monitoring for
31 performance standards for credit releases is for a minimum of five years.

⁹⁶ Fish & G. Code, § 1856, subdivision (g)(2)(A)

⁹⁷ Fish & G. Code, § 1856, subdivisions (d) and (g)(2)(A)

⁹⁸ Fish & G. Code, § 1856, subdivision (g)(2)(B)

⁹⁹ Fish & G. Code, § 1856, subdivision (g)(2)(C)

¹⁰⁰ Fish & G. Code, § 1856, subdivision (g)(2)(D)

1 All proposed credit release schedules shall reserve a substantial share (minimum of
2 15%) of the total credits for release after the ecological performance standards are fully
3 achieved.¹⁰¹ Credits may be released in full upon meeting the performance standards
4 and full funding of the endowment for three years, if applicable.

5 Credit releases are also contingent upon the MCA sponsor's submission of the annual
6 report for the current reporting period, when required (see Section 5.3.9.2 – Annual
7 Report), the MCA sponsor's payment of the implementation fee to CDFW, and CDFW
8 site visit(s) at the appropriate time of year, as determined by CDFW. The
9 implementation fee (see Section 5.8 – MCA Fee Schedule) may be payable in
10 installments. Each installment shall be in an amount that equals the ratio of the number
11 of the credits released to the total number of credits in the MCA. Each installment shall
12 be due following each credit release and no later than the due date for submission of
13 the MCA's annual report. The implementation fee shall be paid in full by the MCA
14 closure date. CDFW may require the MCA sponsor to cease transferring credits and may
15 stop credit releases until the amount due is paid in full. CDFW shall assess, and the MCA
16 sponsor shall pay to CDFW upon demand, a penalty of 10% of the amount of fees due if
17 the MCA sponsor fails to remit the amount payable when due.

18 CDFW may approve the release of credits for use or transfer under an MCA.¹⁰² Requests
19 for credit releases shall be submitted in writing to CDFW for review and approval. For
20 credits to be released, the MCA sponsor shall demonstrate to CDFW that the applicable
21 performance-based milestones for the credit release have been met and the associated
22 fees have been paid. CDFW shall determine whether the performance-based milestones
23 are met and if credits may be released in accordance with the credit release schedule.¹⁰³
24 If a conservation or habitat enhancement action does not meet performance-based
25 milestones, CDFW may suspend the further release of credits, reduce the total number
26 of credits, or otherwise modify the credit release schedule accordingly.¹⁰⁴ If the
27 maximum percentage of released credits is not authorized at the time of each credit
28 release phase indicated, subsequent credit releases may be authorized.

29 **5.3.7.3 Transfer and Use of Credits**

30 Upon CDFW approval, the MCA sponsor may use or transfer the mitigation credits that
31 have been released in accordance with the MCA.¹⁰⁵ The MCA credits may be used to

¹⁰¹ Fish & G. Code, § 1856, subdivision (g)(2)

¹⁰² Use of MCA credits to fulfill mitigation requirements is not guaranteed. It is the responsibility and discretion of the regulatory agencies to determine the appropriateness of MCA credits to fulfill the mitigation obligations required in their permits.

¹⁰³ Fish & G. Code, § 1856, subdivision (g)(4)

¹⁰⁴ Fish & G. Code, § 1856, subdivision (g)(3)

¹⁰⁵ Fish & G. Code, § 1856, subdivision (e)

1 fulfill the mitigation obligations as approved by the regulatory agency.¹⁰⁶ The MCA must
2 include the terms of the transfer and use that explain the conditions under which the
3 proposed credits may be used or and how unused credits may be returned to the MCA
4 sponsor (see MCA Template Section 7.3).¹⁰⁷ Once a credit is transferred by the MCA
5 sponsor, that credit may not be transferred to another entity. Transferred credits may
6 only be transferred back to the MCA Sponsor at the MCA Sponsor's discretion.

7 **5.3.7.4 Credit Reporting**

8 The MCA must include an explanation of how the proposed credits will be accounted
9 for, including the specific methods proposed for reporting and maintaining a record of
10 credit creation, credit release, and the use or transfer of credits.¹⁰⁸ This shall include a
11 bill of sale and a credit ledger (see MCA Template Section 7.4).¹⁰⁹

12 a. The bill of sale shall include:

- 13 1. MCA name;
- 14 2. Name, address and phone number of entity that credits are being transferred
15 to/from;
- 16 3. Date of credit transfer;
- 17 4. Type(s) of credit(s) transferred;
- 18 5. Number of credits transferred;
- 19 6. Number of credits applied or, if applicable, indicate an advance credit transfer;
20 and
- 21 7. Project name that credits are being applied to, if applicable;
- 22 8. Permit type and number, if applicable;
- 23 9. CEQA clearing house number, if applicable;
- 24 10. Resource agency project file numbers, if applicable;
- 25 11. A statement that the MCA sponsor represents and warrants that it has good title
26 to the credits, has good right to transfer the same, and that they are free and
27 clear of all claims, liens, or encumbrances;

¹⁰⁶ Use of MCA credits to fulfill mitigation requirements is not guaranteed. It is the responsibility and discretion of the regulatory agencies to determine the appropriateness of MCA credits to fulfill the mitigation obligations required in their permits.

¹⁰⁷ Fish & G. Code, § 1856, subdivision (f)(15)

¹⁰⁸ Fish & G. Code, § 1856, subdivision (f)(15)

¹⁰⁹ Fish & G. Code, §§ 1856, subdivision (f)(18) and 1798.5, subdivision (a)(2)(E)

- 1 12. A statement that the MCA sponsor covenants and agrees with the buyer to
- 2 warrant and defend the transfer of the credits hereinbefore described against all
- 3 and every person and persons whomsoever lawfully claiming or to claim the
- 4 same;
- 5 13. Signature of the MCA sponsor.
- 6 b. The credit ledger shall include, at a minimum:
- 7 1. MCA name;
- 8 2. Name, address and phone number of entity that credits are being transferred
- 9 to/from;
- 10 3. Date of credit transfer;
- 11 4. Type of credit transfer (e.g., sale or return);
- 12 5. Total number of each type of credit released to date;
- 13 6. Total number of each type of credits sold to date (inclusive);
- 14 7. Total number of credits returned to date (inclusive);
- 15 8. Type(s) of credit(s) transferred;
- 16 9. Number of credits transferred;
- 17 10. Balance of each type of credit remaining;
- 18 11. Project name;
- 19 12. Permit type and number;
- 20 13. CEQA clearing house number (if applicable);
- 21 14. Agency project file numbers;

22 **5.3.8 Management and Operations**

23 **5.3.8.1 Interim Management and Monitoring Plan**

24 The MCA shall include an interim management and monitoring plan (see MCA Template
25 Section 8.1).¹¹⁰ The interim management and monitoring plan identifies the interim
26 management activities, including adaptive management strategies, monitoring,
27 reporting and other activities to be implemented by the MCA sponsor during the
28 interim management period. If there are separate construction phases, the interim
29 management and monitoring plan should include provisions for managing each

¹¹⁰ Fish & G. Code, § 1798.5, subdivision (a)(2)(B)

- 1 construction phase independently as well as together. At a minimum, the interim
2 management and monitoring plan must include:
- 3 a. The purpose for establishing the MCA and purpose of interim management and
4 monitoring plan.
 - 5 b. A description of the setting, location, history and types of land use activities,
6 geology, soils, climate, hydrology, and species and habitats present.
 - 7 c. A description of any habitat enhancement actions, if applicable.
 - 8 d. The requirements and schedule of the overall management, including adaptive
9 management strategies, maintenance and monitoring goals, specific tasks and
10 timing of implementation, and a discussion of any constraints which may impede
11 achieving goals.
 - 12 e. The interim management security analysis and schedule

13 **5.3.8.2 Long-term Management and Monitoring Plan**

14 The MCA shall include a long-term management and monitoring plan (see MCA
15 Template Section 8.2).¹¹¹ The long-term management and monitoring plan identifies
16 the perpetual management, including adaptive management strategies, monitoring, and
17 reporting activities to be conducted after completion of the interim management
18 period, and should include, at minimum:

- 19 a. Purpose for establishing the MCA and purpose of long-term management and
20 monitoring plan.
- 21 b. A description of the setting, location, history and types of land use activities,
22 geology, soils, climate, hydrology, and species and habitats present once the MCA
23 meets performance standards.
- 24 c. Overall management, including adaptive management strategies, maintenance and
25 monitoring goals, specific tasks and timing of implementation, and a discussion of
26 any constraints which may impede achieving goals.
- 27 d. The long-term management needs (e.g., management of invasive species, property
28 inspections, fencing, etc.) on the site and any temporary or long-term structural
29 management requirements (e.g., levees, weirs, culverts, water development for
30 grazing, etc.) needed to ensure hydrological or vegetative restoration and functions.
- 31 e. The endowment fund analysis and schedule.
- 32 f. Discussion of adaptive management actions for reasonably foreseeable events and
33 possible thresholds for evaluating and implementing adaptive management.

¹¹¹ Fish & G. Code, §§ 1856, subdivision (f)(14) and 1798.5, subdivision (a)(2)(B)

- 1 g. Monitoring and reporting requirements and schedule. The long-term management
2 and monitoring plan must include requirements for reporting MCA monitoring
3 results to CDFW and to the RCIS proponent or entity that will be responsible for
4 reporting on the RCIS.
- 5 h. Rights of access to the MCA site property and prohibited uses of the MCA site
6 property as provided in the conservation easement or other perpetual real estate
7 instrument .
- 8 i. Procedures for amendments and notices.
- 9 j. Include a reference to a cultural resource protection plan, if applicable.

10 **5.3.8.3 Remedial Action Plan**

11 The MCA must include a remedial action plan, which describes the requirements of all
12 parties if the MCA fails to achieve their performance standards. Required language for
13 the remedial action plan is included in the MCA Template, Section 8.3.

14 **5.3.8.4 MCA Site Closure Plan**

15 The MCA must include a site closure plan, which outlines the procedures for closing an
16 MCA.¹¹² Required language for the site closure plan is included in the MCA Template,
17 Section 8.4.

18 **5.3.9 Reporting**

19 The MCA sponsor and the property owner are responsible for meeting the reporting
20 requirements for the MCA, as identified in the subsections below. All reports must be
21 submitted in both Word and PDF electronic file formats. Reports must be submitted for
22 subsequent credits to be released.

23 **5.3.9.1 Annual Inflation Adjustments to Endowment Fund Report**

24 By April 1st of each year following the first credit release until the endowment is fully
25 funded, the MCA sponsor must submit a report to CDFW and the endowment holder.
26 Requirements of this report are described in the MCA Template, Section 9.1.

27 **5.3.9.2 Annual Report**

28 The MCA sponsor or property owner, as indicated below, are responsible for submitting
29 an annual report to CDFW each year. Requirements of the annual report are described
30 in the MCA Template, Section 9.2.¹¹³

¹¹² Fish & G. Code, § 1798.5, subdivision (a)(2)(B)

¹¹³ Fish & G. Code, § 1856, subdivisions (f)(10) and (f)(15)

1 **5.3.9.3 Credit Transfer Reporting**

2 The MCA sponsor shall submit a copy of bill of sale and an updated credit transfer
3 ledger to CDFW upon every transaction of credits. Requirements of credit transfer
4 reporting are described in the MCA Template, Section 9.3.

5 **5.3.9.4 Reporting Compliance Measures**

6 If the MCA sponsor fails to submit complete reports on time, the MCA sponsor may be
7 considered in default. Default measures are indicated in the MCA Template, Section 9.4.

8 **5.3.10 Responsibilities**

9 The MCA must describe the responsibilities of the MCA sponsor, CDFW, and the
10 property owner. Language for standard responsibilities are included in the MCA
11 Template, Section 10.

12 **5.3.11 Other Provisions**

13 The MCA shall include enforcement provisions for the site,¹¹⁴ including but not limited
14 to, provisions for notification of violations, opportunity to cure or remedy any violation,
15 length of time to cure or remedy any violation, dispute resolution procedures, sanctions
16 for minor violations, and suspension and revocation for significant uncured violations.

17 The MCA must also include other provisions such as controlling law, no limitation of
18 authority, modification and amendment, termination of agreement, entire agreement,
19 successors and assigns, partial invalidity, notices, counterparts, no third-party
20 beneficiaries, and applicability of funds. The enforcement and other provisions are
21 included in the MCA Template, Section 11.

22 **5.4 Procedures for Creating Credits from a Project's**
23 **Excess Ecological Benefits**

24 If the proponent of a project intends to create ecological benefits that exceed the
25 compensatory mitigation requirements for the project pursuant to CESA,¹¹⁵ LSA
26 agreements,¹¹⁶ or CEQA,¹¹⁷ the project proponent may seek to establish credits for the
27 project's excess ecological benefits through an MCA.¹¹⁸

¹¹⁴ Fish & G. Code, § 1856, subdivision (f)(16)

¹¹⁵ Fish & G. Code, §§ 2050 – 2100

¹¹⁶ Fish & G. Code, §§ 1600 – 1617

¹¹⁷ Pub. Resources Code, §§ 21000 – 21189

¹¹⁸ Fish & G. Code, § 1856, subdivision (h)(1)

- 1 Examples of such projects include, but are not limited to:
- 2 a. Creation or modification of setback levees that result in the creation of more
 - 3 floodplain or riparian habitat than is required to compensate for construction
 - 4 impacts.
 - 5 b. Transportation improvements that remove barriers to fish or wildlife movement
 - 6 and improve the quality of habitat or address stressors to wildlife more than is
 - 7 required to compensate for identified construction impacts.

8 For projects where improvements to conservation elements are anticipated to exceed
9 the mitigation needed to offset a project’s impacts, the project proponent may propose
10 the terms and conditions under which credits may be created from the excess
11 mitigation. The MCA may be submitted concurrently with or following submittal of a
12 CEQA document, LSA notification, or CESA individual take permit (ITP) application.
13 When an MCA is submitted concurrently with a CEQA document, LSA notification or ITP
14 application, CDFW shall, to the maximum extent practicable, complete reviews of the
15 MCA concurrently with its review of those documents.¹¹⁹

16 MCA packages submitted concurrently with or after a CESA ITP application or LSA
17 notification is submitted shall meet the same MCA requirements indicated in the statute
18 and in these Guidelines, including a credit-release schedule.¹²⁰ For those projects that
19 improve ecological benefits such as improved wildlife habitat or reduced stressors to
20 wildlife, implementation of the project itself may be a performance-based milestone.¹²⁰

21 **5.5 Review and Approval Process**

22 All MCA submittals, including MCA Concepts and draft MCAs, shall be submitted in both
23 Word and PDF electronic formats and must contain all information and documents
24 described in Fish and Game Code section 1856(f) and these Guidelines. The MCA shall
25 be based on the requirements of the version of the RCIS Program Guidelines that is in
26 effect at the time the draft MCA package is submitted to CDFW for review.
27 Requirements of the MCA Concept and draft MCA are summarized in the checklists
28 provided in Appendices B and C, respectively. See Section 1.4 (Program Contacts) of
29 these Guidelines for how to submit all documents and files. Fees for each of the MCA
30 submittal phases are listed in the Fee Schedule (see Section 5.8 – MCA Fee Schedule).
31 CDFW reserves the right to reject any package that is not in the order requested or does
32 not adhere to the MCA Template. Minor suggested changes to the MCA Template will be
33 considered, provided the changes are made in track changes. MCA Template suggested
34 changes will require review and approval by CDFW’s Office of General Counsel.

¹¹⁹ Fish & G. Code, § 1856, subdivision (h)(2)

¹²⁰ Fish & G. Code, § 1856, subdivision (h)(1)

1 **5.5.1 MCA Concept**

2 An MCA concept is a brief concept-level proposal that is optional but recommended
3 when an MCA sponsor is scoping for an MCA or contemplating a specific MCA idea, or
4 for those new to the MCA process. See Appendix B – MCA Concept Checklist for a
5 complete list of the information required. The MCA concept allows CDFW to determine
6 if the MCA proposal is adequate to support development of a complete draft MCA. The
7 MCA concept review process allows for early collaboration between CDFW and the MCA
8 sponsor to clarify the intent of the MCA and to identify potential benefits and issues.
9 The MCA concept will be reviewed and evaluated by CDFW to determine if it is
10 acceptable and whether the MCA sponsor may submit a draft MCA package. CDFW may
11 require a visit to the proposed MCA site.

12 This step is intended to identify potential obstacles early so that the MCA sponsor may
13 resolve issues, revise the proposal, or decide not to pursue the MCA prior to investing in
14 the full requirements of a complete draft MCA. The MCA sponsor is not required to
15 submit an MCA concept and may instead elect to begin preparation of a draft MCA.
16 However, if CDFW determines that the draft MCA is not complete, CDFW may decide, in
17 consultation with the MCA sponsor, that the MCA sponsor should first submit an MCA
18 concept.

19 **5.5.2 Submission and Review of the Draft MCA**

20 The draft MCA shall be developed using the MCA Template (see Appendix A), including
21 all exhibits and information as described in Fish and Game Code section 1856(f) and
22 these Guidelines. Minor suggested changes to the MCA Template will be considered,
23 provided the changes are made in track changes and will require review and approval
24 by CDFW’s Office of General Counsel. The MCA shall be based on the requirements of
25 the version of the RCIS Program Guidelines that is in effect at the time the draft MCA
26 package is submitted to CDFW for review. See Appendix C – Draft MCA Checklist for a
27 complete list of the information required.

28 The MCA sponsor must submit a complete draft MCA package to CDFW for review.¹²¹
29 The draft MCA package must include the draft MCA document, the required MCA review
30 fees (see Section 5.8 – MCA Fee Schedule), an approval letter from the public agency
31 landowner if the proposed MCA site is on public lands (see Section 5.2.4 – Mitigation on
32 Public and Protected Private Lands), a certification letter from the proposed
33 endowment holder, geospatial data in an industry-standard (Environmental Systems
34 Research Institute [ESRI]-readable) geospatial format and include metadata that meets
35 CDFW’s minimum metadata standards¹²², and the draft MCA checklist completed by the

¹²¹ Fish & G. Code, § 1856, subdivision (f)

¹²² <https://wildlife.ca.gov/Data/BIOS/Metadata>

1 MCA sponsor. If the draft MCA package does not contain all of these required
2 components, the package will be rejected and CDFW will not begin the completeness
3 review until the MCA sponsor provides the missing components.

4 **5.5.2.1 Completeness Review**

5 After receipt of a complete draft MCA package, CDFW will review the draft MCA for
6 completeness. If CDFW deems the draft MCA incomplete, CDFW will explain, in writing
7 to the MCA sponsor, what additional information is required to complete the draft MCA.
8 CDFW may also recommend that the MCA sponsor submit an MCA concept instead of a
9 revised draft MCA. CDFW will not resume the MCA review process until it receives the
10 information needed to deem the draft MCA complete. A determination that the draft
11 MCA is complete does not indicate that the draft MCA's content is adequate for CDFW
12 to approved it as a final MCA. Rather, a determination of completeness indicates that, at
13 a minimum, some portion of each required component has been provided. CDFW will
14 review the adequacy of the draft MCA's content during the substantive review (See
15 Section 5.5.2.3). Once the draft MCA is deemed complete, CDFW will provide written
16 notification to the MCA sponsor.

17 **5.5.2.2 Public Review**

18 Within five (5) days of deeming a draft MCA complete, CDFW shall:

- 19 a. File a notice of availability of the draft MCA with the Governor's Office of Planning
20 and Research and the city and county clerks of any cities or counties whose
21 jurisdictions overlap the draft MCA area, in part or in whole.¹²³
- 22 b. Make the draft MCA available to the public on CDFW's website (see Section 1.4 –
23 Program Contacts) for review and comment for a period of at least 45 days. At that
24 time, CDFW shall send an email notification to announce the availability of the draft
25 MCA to any public agency, organization, or individual who has filed a written
26 request to CDFW to receive such notifications.¹²³ Depending on the scope, length,
27 and complexity of the draft MCA, CDFW may determine that the public review
28 period must be longer than 45 days.

29 At the end of the comment period the MCA sponsor and CDFW must coordinate to
30 ensure that both entities have a copy of all public comments received. Within thirty (30)
31 days of the close of the public comment period, the MCA sponsor shall provide CDFW
32 with written draft responses to comments. CDFW shall review the draft responses and
33 will respond to written comments submitted during the public comment period by
34 posting responses to comments on CDFW's website.¹²³

¹²³ Fish & G. Code, § 1856, subdivision (f)

1 **5.5.2.3 CDFW Substantive Review**

2 After deeming the draft MCA complete and generally concurrent with the public review,
3 CDFW will conduct the substantive review. The substantive review is an extensive
4 review by CDFW of the accuracy and adequacy of the draft MCA's content. Depending
5 on the scope, length, and complexity of the draft MCA, CDFW may require additional
6 time beyond the public review period to complete the substantive review. Upon
7 completion of the substantive review, and with consideration of the public comments
8 and responses, CDFW shall inform the MCA sponsor in writing whether CDFW approves
9 the draft MCA, approves it with revisions, or disapproves it.¹²⁴ If CDFW approves the
10 draft MCA, the draft will be considered a final MCA for the purposes of approval and
11 implementation (see Section 5.5.4). If the draft MCA is approved with revisions, CDFW
12 shall include comments in the letter to the MCA sponsor that identify any required and
13 suggested changes to the draft MCA. If CDFW rejects a draft MCA, fees shall not be
14 returned to the MCA sponsor.

15 **5.5.3 Submission and Review of the Final MCA**

16 If the draft MCA is approved contingent on revisions, the MCA sponsor shall make the
17 revisions and submit a final MCA to CDFW within 120 days. If the final MCA is
18 submitted after that time, it will be treated as a new application and be subject to new
19 fees. If CDFW determines that the revisions are substantial, then CDFW may conduct a
20 new public review process.

21 **5.5.4 Final MCA Approval**

22 Once CDFW has determined the final MCA to be complete and adequate, CDFW will sign
23 the MCA. The MCA sponsor must coordinate with the other signatories to obtain
24 signatures. The MCA sponsor may begin implementing the MCA, once the final MCA has
25 been signed by all signatories and the MCA sponsor has obtained all other necessary
26 local, state, and federal authorizations and has met and conferred with CDFW regarding
27 CEQA.

28 **5.6 Publicly Available MCA Credit Information**

29 Once CDFW approves the release of credits (see Section 5.3.7.2 – Credit Release
30 Schedule), CDFW shall make the MCA's credit and release information available on
31 CDFW's website. This shall include documentation, provided by the MCA sponsor,
32 demonstrating that the appropriate performance-based milestones for the credit
33 release have been met.¹²⁵

¹²⁴ Fish & G. Code, § 1856, subdivision (f)

¹²⁵ Fish & G. Code, § 1856, subdivision (k)

5.7 Amending an MCA

An MCA may only be amended if CDFW and the MCA sponsor agree to the amendment in writing or if CDFW determines, in its sole discretion, that an amendment is required by law or changed circumstances. A person or entity that has entered into an MCA can propose a minor or major amendment by submitting a draft of the proposed amendment to CDFW for review and approval.

A minor amendment is any amendment that relates to the organization or administration of the MCA including, but not limited to, changes in MCA name, property ownership, address, MCA sponsor, endowment holder, a decrease in the number of credits, or reduction in the MCA service area. A minor amendment would not modify the scope or nature of the MCA or any MCA action.

A major amendment means any amendment that relates to the operation, management, or other material element of the MCA. Review and approval of major amendments will vary depending on the nature of the amendment. Major amendments may include, but are not limited to the following:

- a. Adding proposed conservation actions and habitat enhancement actions;
- b. Altering existing credits or proposing the creation of additional credits;
- c. Transferring the conservation easement;
- d. Altering the credit-release schedule;
- e. Expanding the service area;
- f. Adding a site.

A major amendment would have to go through the same submittal, review and approval process as in Sections 5.5 (Review and Approval Process) above and requires submittal of the appropriate amendment fees.

5.8 MCA Fee Schedule

Fees will be collected for all reviews related to approving MCAs and other reviews related to the RCIS Program including, but not limited to, grant deed reviews as part of land transfers to the State.¹²⁶ The current fee schedule for MCAs is available on CDFW's website (see Section 1.4 – Program Contacts).

¹²⁶ Fish & G. Code, § 1857

1 **Appendix A – MCA Template**
2

DRAFT

MITIGATION CREDIT AGREEMENT

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1 **[MCA Name] MITIGATION CREDIT AGREEMENT**

2
3 The Mitigation Credit Agreement Guidelines ***[Insert date of the RCIS Program Guidelines in effect at***
4 ***the time of MCA submission]*** provide information on required information and suggestions and
5 shall be used in conjunction with this template. Section 5.3 of the Guidelines describes the required
6 information to be included in this Mitigation Credit Agreement. Language that is bracketed, bold,
7 and italicized provides directions for items or information that the MCA sponsor must provide. This
8 text must be replaced with information relevant to the MCA. Text that is within brackets, but not
9 bold or italicized, is template language that must be selected based on the proposed MCA and shall
10 not otherwise be edited. All other language within the template shall not be edited without the
11 approval of CDFW’s Office of General Counsel. Proposed changes to template language must be
12 made in track changes to facilitate review and approval or editing by CDFW’s Office of General
13 Counsel.
14

15 This Mitigation Credit Agreement (MCA) is made by and between the California Department of Fish
16 and Wildlife (CDFW) and ***[Insert name of person or entity]***, as the sponsor (MCA Sponsor) of the
17 ***[Insert MCA name]*** Mitigation Credit Agreement, as of the date ***[Insert date of approval]*** on which
18 CDFW approves this MCA. CDFW and the MCA sponsor are referred to in this MCA collectively as the
19 “parties” and individually as a “party.” Definitions are found in the Guidelines.

20 **RECITALS**

- 21 A. The MCA sponsor is ***[Identify whether the MCA sponsor is an individual or an entity. If the***
22 ***latter, specify the type]***.
- 23 B. CDFW is an agency of the State of California with jurisdiction over the conservation, protection,
24 and management of fish, wildlife, native plants, and habitat necessary for biologically
25 sustainable populations of those species. CDFW serves as the state trustee for fish and wildlife
26 resources and is charged with the interpretation, administration, and implementation of Fish
27 and Game Code sections 1850-1861.
- 28 C. Fish and Game Code sections 1850-1861 establish a new program for voluntary species and
29 habitat conservation at a regional scale, including mechanisms for advance mitigation through
30 an MCA.
- 31 D. Fish and Game Code section 1856 authorizes CDFW, in its discretion, to enter into an MCA with
32 an individual or entity to facilitate conservation actions and habitat enhancement actions within
33 an approved regional conservation investment strategy (RCIS) and to authorize the creation,
34 use, and transfer of mitigation credits deriving from those actions.
- 35 E. The ***[Insert the name of RCIS in which the MCA is located]*** (***[Insert the short name of RCIS]***) was
36 approved by CDFW on ***[Date of CDFW approval]*** and ***[Provide a one or two sentence***
37 ***description of the geographic location and extent of the RCIS]***.
- 38 F. The MCA sponsor seeks to design and implement ***[Insert one of the following: conservation***
39 ***actions, habitat enhancement actions, or conservation actions and habitat enhancement***

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1 actions] that measurably advance the conservation goals and objectives of the **[Insert the short**
2 **name of RCIS]** and to create mitigation credits that can be used to compensate for impacts to
3 focal species **[if applicable insert:** and other species, habitat, and natural resources].

- 4 G. The MCA sponsor and CDFW thus seek to enter into this Agreement to facilitate the design,
5 implementation, protection, and management of **[Insert one of the following: “conservation**
6 **actions”, “habitat enhancement actions”, or “conservation actions and habitat enhancement**
7 **actions”]**, the creation of Mitigation Credits based on those actions, and to establish the terms
8 and conditions under which those Mitigation Credits may be used, sold, or transferred.

9
10 **AGREEMENT**

11 NOW, THEREFORE, in consideration of the foregoing Recitals, the parties hereby agree as follows:

12 1 Name of the MCA

13 **[Insert the full name and, if necessary, an abbreviated name for the MCA, as indicated in the**
14 **Guidelines, Section 5.3.1]**¹

15 2 Supporting Regional Conservation Investment Strategy

16 The Regional Conservation Investment Strategy on which this MCA is based is the **[Insert name of**
17 **RCIS and provide a brief description of the RCIS in which the MCA is located, as indicated in the**
18 **Guidelines, Section 5.3.2]**.²

19 3 Purpose of the MCA

20 **[See the Guidelines, Section 5.3.3]** The purpose of this MCA³ is to set forth the agreement of the
21 parties regarding the establishment, use, operation, and maintenance of the MCA. The purpose of
22 the MCA is to compensate for unavoidable impacts to, and conserve and protect, resources under
23 the following: **[delete as applicable:** federal Clean Water Act,⁴ federal Rivers and Harbors Act,⁵
24 Porter-Cologne Water Quality Control Act,⁶ Lake and Streambed Alteration Program,⁷ federal
25 Endangered Species Act,⁸ federal Magnuson-Stevens Fishery Conservation and Management Act,⁹
26 California Endangered Species Act,¹⁰ California Environmental Quality Act¹¹]. The MCA sponsor **[if**
27 **different from MCA sponsor, add:** and property owner] shall preserve, restore, establish, and/or
28 enhance and then manage and maintain Waters of the U.S., Waters of the State, covered focal
29 species, non-focal species and/or other conservation elements in accordance with this MCA
30 template, the development plan, interim management and monitoring plan and long-term
31 management and monitoring plan.

32 4 MCA Site and Service Area Information

33 4.1 Property Ownership Description

34 **[Describe the proposed property ownership of the site or sites of the conservation actions or**
35 **habitat enhancement actions, as indicated in the Guidelines, Section 5.3.4.1.]**¹²

36 4.2 Contact Information

37 **[Insert name and contact information for MCA sponsor, MCA site property owner, MCA site**
38 **manager, conservation easement grantee, endowment holder, any contractors or consultants, as**
39 **indicated in the Guidelines, Section 5.3.4.2.]**¹³

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1 4.3 Qualifications

2 ***[Insert description of the qualifications of the MCA sponsor, property owner, grantee (if***
3 ***applicable), land manager, endowment holder (if applicable), and any of their contractors or***
4 ***consultants, as indicated in the Guidelines, Section 5.3.4.3.]***¹⁴

5 4.4 Location Information

6 ***[Insert description of the MCA Site location as indicated in the Guidelines and reference the maps***
7 ***and photographs in Exhibit A, as indicated in the Guidelines, Section 5.3.4.4.]***¹⁵

8 4.5 Service Area

9 ***[Include a written description of the proposed MCA Site service area and reference the map in***
10 ***Exhibit B, as indicated in the Guidelines, Section 5.3.4.5.]***¹⁶

11 5 MCA Site Evaluation and Development

12 5.1 Land Use Consistency Declaration

13 ***[See the Guidelines, Section 5.3.5.1] The MCA site [select one: has/has not] been used for***
14 ***permanent mitigation and [select one: is/is not] currently being used for temporary mitigation,***
15 ***[select one: is/is not] designated or dedicated for park or open space use, or [select one: is/is not]***
16 ***designated for purposes that may be inconsistent with habitat preservation.***¹⁷

17 ***[If MCA is located within the boundary of an existing Natural Community Conservation Plan,***
18 ***include the following statement:*** The creation of MCA credits has been approved in writing by the
19 implementing entity of the existing Natural Community Conservation Plan within which the MCA is
20 located. This written approval is attached as Exhibit C.]

21 5.2 Public Funding

22 ***[Insert a description of any public funding received for acquisition or restoration of, or other***
23 ***purposes related to, the MCA Site, as indicated in the Guidelines, Section 5.3.5.2.]***¹⁸

24 5.3 MCA Site Inspection by CDFW

25 ***[See Guidelines, Section 5.3.5.3] Representatives of CDFW have inspected the MCA site property***
26 ***and have evaluated the MCA Sponsor's proposed development of [delete as necessary: Waters of***
27 ***the U.S., Waters of the State, covered focal species, non-focal species and/or other conservation***
28 ***elements] in the development plan (Exhibit L) and agreed upon the assignment of credits set forth in***
29 ***the credit table (Exhibit Q).***

30 5.4 Natural Resources Evaluation

31 ***[See Guidelines, Section 5.3.5.4] MCA sponsor has provided a current natural resources evaluation***
32 ***(Exhibit D).***¹⁹

33 5.5 Tribal Resources Evaluation

34 ***[If it is determined that a tribal resources evaluation is required, as indicated in the Guidelines,***
35 ***Section 5.3.5.5, include the following:*** MCA sponsor has provided a current tribal resources
36 evaluation (Exhibit E).²⁰ ***[If it is NOT determined that a tribal resources evaluation is required,***
37 ***include the following:*** MCA sponsor is not required to provide a tribal resources evaluation at this
38 time. However, if resources are discovered during MCA site development or maintenance, the MCA
39 sponsor may be required to provide a tribal resources evaluation at that time.²¹

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- 1 5.6 Phase I Environmental Site Assessment
2 [See Guidelines, Section 5.3.5.6] MCA sponsor has provided a current Phase I Environmental Site
3 Assessment (Exhibit F).²²
- 4 5.7 Real Estate Records and Assurances
5 [See Guidelines, Section 5.3.5.7.]
- 6 5.7.1 Preliminary Title Report, Legal Description, and Parcel Maps
7 MCA sponsor has provided a current preliminary title report, legal description, and parcel maps
8 (Exhibit G).²³
- 9 5.7.2 Property Assessment and Warranty
10 MCA Sponsor has provided a current property assessment and warranty (Exhibit H).
- 11 5.7.3 Real Estate Instrument
12 MCA Sponsor has provided a [**select one:** template conservation easement/grant deed/**or specify**
13 **another real estate instrument that has been approved by CDFW**] (Exhibit I).²⁴
- 14 5.7.4 Title Insurance
15 [**If it is determined that title insurance is required, include the following:** MCA Sponsor will obtain
16 title insurance and, once obtained, will attach proof of title insurance as Exhibit J.] [**If it is**
17 **determined that title insurance is NOT required, include the following:** MCA sponsor is not required
18 to provide title insurance, because **state reason that title insurance is not needed.**]
- 19 5.8 Approvals
20 The MCA Sponsor will obtain [**list all permits, authorizations, and other approvals necessary or**
21 **appropriate to construct, operate, and maintain the MCA Site, including those of CDFW, as**
22 **indicated in the Guidelines, Section 5.3.5.8**] and, once obtained, will attach them as Exhibit K.
- 23 5.9 Development Plan
24 [See Guidelines, Section 5.3.5.9] [**If a development plan is needed, include:** MCA sponsor has
25 provided a development plan (Exhibit L).] [**If a development plan is not needed, include:** This MCA
26 does not propose restoration or other development of the MCA site; therefore, a development plan
27 is not included.]²⁵
- 28 6 Financial Assurances
- 29 6.1 Security
30 [**List all securities that will be needed (e.g., construction, performance, interim management,**
31 **endowment) and describe what period they will cover (e.g., construction phase, interim**
32 **management phase) and the tasks or performance standards to be completed within that period.**
33 **State whether they will be in the form of an irrevocable standby letter of credit, check, or a**
34 **cashier's check (check or cashier's check may only be used if CDFW is holding the security). State**
35 **their estimated values and reference the supporting documentation in Exhibit M, as indicated in**
36 **the Guidelines, Section 5.3.6.1 and Section 5.2.4(e).**]²⁶
- 37 A. CDFW, as the holder of the security, shall be entitled to draw upon the security for default,
38 including but not limited to failure to perform any tasks, as required under the development
39 plan or the interim management and monitoring plan.

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- 1 B. If any portion of any security is drawn upon pursuant to this Section, then the MCA sponsor shall
2 replenish the security to the amount specified in Exhibit M within 90 calendar days after written
3 notice from CDFW.
- 4 C. The securities shall be cancelled, or the monies provided as security returned to the MCA
5 sponsor by CDFW, only after the MCA sponsor completes all tasks as follows: **[list the milestones**
6 **for each period that would define the end of each period]**
- 7 D. Any letter of credit should be issued for at least one year and shall provide that the expiration
8 date will be automatically extended for at least one year on successive expiration dates until
9 which time the security is no longer required.

10 6.2 Long-term Management Funding

11 **[Explain how the draft MCA ensures that the implementation of the conservation action or habitat**
12 **enhancement action will be adequately funded and that long-term protection and management of**
13 **the site will be funded in accordance with Chapter 4.6 (commencing with Section 65965) of**
14 **Division 1 of Title 7 of the Government Code or, if a public entity proposed to enter into a**
15 **mitigation credit agreement, other comparable funding mechanism approved by CDFW in**
16 **accordance with an adopted statewide policy regarding funding for long-term management and**
17 **operations of mitigation sites. State the estimated value and reference the supporting**
18 **documentation in Exhibit N, as indicated in the Guidelines, Section 5.3.6.2 and 5.2.4(e).]**²⁷

19 6.2.1 Endowment Fund

- 20 A. The endowment fund shall be held by the endowment holder, in an amount sufficient to fully
21 provide for the financial requirements of the long-term management of the MCA in accordance
22 with the long-term management and monitoring plan (Exhibit W) and the endowment fund
23 analysis (Exhibit N) and schedule (Exhibit O). The MCA sponsor shall fully fund the endowment
24 amount through endowment deposits according to the schedule below. The endowment
25 amount shall be 100% funded by the 10th anniversary of the first credit release.
- 26 B. Each year in which the endowment amount is not 100% funded, the MCA sponsor shall adjust
27 (increase, not decrease) the total endowment amount to keep pace with inflation. The MCA
28 sponsor shall calculate inflation based on changes in the Annual Consumer Price Index (CPI) for
29 California, for All Urban Consumers, All Items, published by the California Department of
30 Industrial Relations, Division of Labor Statistics and Research, and shall adjust the endowment
31 amount proportionally with the inflation rate. The MCA sponsor shall measure inflation by
32 calculating the percent change between the CPI value published for the year the MCA was fully
33 executed and the CPI value published for the adjustment year. MCA Sponsor shall multiply the
34 inflation rate by the endowment amount in Exhibit N. The product will be the increase in the
35 endowment amount. If deflation occurs (CPI is less than the previous year), then the MCA
36 sponsor shall not adjust the endowment amount until the Annual CPI exceeds the value from
37 the most recent inflation year.
- 38 C. MCA Sponsor shall provide CDFW a paper copy of the receipt for each endowment deposit
39 within 30 calendar days of such deposit.

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1 D. The endowment deposits that the endowment holder receives are to be held in the endowment
2 fund.

3 **6.2.2 Endowment Fund Management:**

4 A. The endowment fund should be governed by an investment policy statement that is designed,
5 over long periods of time, to generate investment returns sufficient to keep pace with inflation
6 and pay the costs of long-term management and monitoring, net of any financial investment
7 and administrative fees. After the endowment amount is 100% funded, no additional
8 endowment amount monies will be required from the MCA sponsor.

9 B. Disbursements shall not be made from the endowment fund any earlier than three years after
10 the endowment amount has been 100% funded.

11 C. The parties anticipate that disbursements from the endowment fund will be made available by
12 the endowment holder to the property owner to fund annual long-term management of the
13 MCA property as anticipated in the long-term management and monitoring plan and estimate of
14 costs.

15 D. Notwithstanding Probate Code sections 18501-18510, in the event either (a) the value of the
16 endowment fund has decreased to levels that may threaten its continued existence as a source
17 of perpetual funding for long-term management, whether due to unexpected investment
18 performance or otherwise; or (b) if long-term management expenses exceed those estimated in
19 the endowment fund analysis and schedule (Exhibit N and Exhibit O, respectively), long-term
20 management expenses the property owner shall consult with CDFW and the grantee to identify
21 the most effective means to implement the management measures and tasks with the resources
22 available. Property owner shall submit a proposed temporary revised long-term management
23 and monitoring plan and endowment fund analysis in writing to CDFW and grantee within 60
24 calendar days after completion of property owner's consultation with CDFW and grantee. Upon
25 written approval of the temporary revised long-term management and monitoring plan by
26 CDFW and any required notification to the endowment holder, the property owner shall
27 implement the approved revised management measures and tasks. The original long-term
28 management and monitoring plan shall be restored in full force and effect upon expiration of
29 the temporary revised long-term management and monitoring plan or sooner if the
30 circumstances in subsections (a) or (b) above, as the case may be, cease to exist.

31 **6.2.3 Financial Records and Auditing**

32 A. MCA sponsor and property owner are required to maintain complete and accurate financial
33 records relating to the operation of the MCA for which it is responsible, using generally accepted
34 accounting principles (GAAP), developed by the Federal Accounting Standards Advisory Board.
35 At the request of CDFW, no more frequently than annually, the MCA sponsor and property
36 owner shall each have its financial records relating to the operation of the MCA audited by an
37 independent licensed Certified Public Accountant and shall submit the auditor's report to CDFW
38 upon completion.

39 B. CDFW shall also have the right to review and copy any records and supporting documentation
40 pertaining to the performance of this MCA. MCA sponsor and property owner agree to maintain
41 such records for possible audit for a minimum of three years after MCA closure, or three years
42 after the date of performance, whichever is later. MCA sponsor and property owner agree to
43 allow the auditor(s) access to such records during normal business hours and to allow interviews

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1 of any employee or representative who might reasonably have information related to such
2 records. Further, MCA sponsor and property owner agree to include a similar right of State and
3 federal auditors to audit records and interview employees and representatives in any contract
4 related to the performance of this MCA.

5 7 Credit Type, Release, Transfer and Use, and Reporting

6 7.1 Credit Type and Quantity

7 **[Fully describe the proposed type of mitigation credits and reference the credit evaluation and**
8 **credit table (Exhibit P and Exhibit Q, respectively), as indicated in the Guidelines, Section 5.3.7.1.]²⁸**

9 7.2 Credit Release Schedule

10 **[See Guidelines, Section 5.3.7.2.] [If credits are proposed to be released in phases, include:** MCA
11 sponsor has provided a credit release schedule for each credit type indicated in Section 7.1 of this
12 MCA (see Exhibit Q).] **[If all credits are proposed to be released upon meeting final performance**
13 **requirements, include:** This MCA proposes to release all credits once all performance criteria are
14 met. The MCA Sponsor has provided a list of performance requirements that are to be met prior to
15 the credit release (see Exhibit R).]²⁹

16 7.3 Transfer and Use of Credits

17 **[See Guidelines, Section 5.3.7.3.]** The standard terms of transfer and use that apply to all MCAs are
18 listed in Exhibit S. **[If the MCA service area does not overlap with any CDFW-approved bank service**
19 **areas and/or no other MCA-specific terms and conditions are needed, delete the following**
20 **language, as appropriate:** Additional terms of use are as follows:³⁰

21 **[If the MCA service area overlaps with any CDFW-approved bank service areas, identify the**
22 **mitigation banks and conservation banks that may service as a mitigation alternative and explain**
23 **how available mitigation credits at those banks will be purchased or used in combination with the**
24 **mitigation credits created under the mitigation credit agreement or, if those available mitigation**
25 **credits will not be purchased or used, explain why they will not be purchased or used.]³¹**

26 **[If applicable, explain any additional terms and conditions under which the proposed mitigation**
27 **credits may be sold or otherwise transferred.]**

28 7.4 Credit Reporting

29 **[See Guidelines, Section 5.3.7.4.]**

30 7.4.1 Bill of Sale

31 MCA sponsor has provided a template bill of sale (see Exhibit T).

32 7.4.2 Credit Ledger

33 **[Explain how the proposed mitigation credits will be accounted for, including the specific methods**
34 **proposed for reporting and maintaining a record of credit creation, release, and use or transfer.**
35 **Reference the template credit ledger in Exhibit U.]³²**

36 8 Management and Operations

37 8.1 Interim Management and Monitoring Plan

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1 [See Guidelines, Section 5.3.8.1.] MCA sponsor shall be responsible for conducting management,
2 monitoring, and maintenance activities according to the interim management plan (Exhibit V) until
3 the end of the interim management period.³³

4 8.2 Long-term Management and Monitoring Plan

5 [See Guidelines, Section 5.3.8.2.] At the end of the interim management period, the MCA site
6 property owner shall be obligated to manage, monitor, and maintain the MCA site in perpetuity to
7 preserve its habitat and conservation values in accordance with this MCA, the conservation
8 easement, and the long-term management and monitoring plan (Exhibit W). Such activities shall be
9 funded with funds disbursed from the endowment fund according to Section 6.2.2 of this MCA. The
10 MCA site property owner and CDFW shall meet and confer upon the request of any one of them, to
11 consider revisions to the long-term management and monitoring plan and endowment analysis and
12 schedule which may be necessary or appropriate to better conserve the habitat and conservation
13 values of the MCA Site. If either (a) the value of the endowment fund has decreased to levels that
14 may threaten its continued existence as a source of perpetual funding for long-term management
15 and monitoring, whether due to unexpected investment performance or otherwise; or (b) if long-
16 term management expenses exceed those estimated in the endowment fund analysis and schedule,
17 the MCA site property owner shall consult with CDFW. During the long-term management period,
18 the MCA site property owner shall be responsible for submitting annual reports to CDFW, in
19 accordance with Section 9.2 of this MCA.³⁴

20 8.3 Remedial Action Plan

21 [See Guidelines, Section 5.3.8.3.]

22 A. Prior to MCA closure, if any party discovers any failure to achieve the performance standards or
23 any injury or adverse impact to the MCA site property as preserved, restored, or enhanced, and
24 CDFW does not determine that such damage is a result of extraordinary circumstances, the
25 party making the discovery shall notify the other parties. CDFW may require the MCA sponsor to
26 develop and implement a remedial action plan to correct such condition, as described below.
27 The annual report required under Section 9.2 shall identify and describe any remedial action
28 proposed, approved, or performed and, if the remedial action has been completed, evaluate its
29 effectiveness.

30 B. Within 60 calendar days of the date of written notice from CDFW, the MCA sponsor shall
31 develop a remedial action plan and submit it to CDFW for written approval. The remedial action
32 plan must identify and describe proposed actions to achieve the performance standards or
33 remedy injury or adverse impact to the MCA site property and set forth a schedule within which
34 the MCA sponsor will implement those actions. The MCA sponsor shall, at MCA sponsor's cost,
35 implement the necessary and appropriate remedial action in accordance with the remedial
36 action plan approved by CDFW.

37 C. If (a) the MCA sponsor fails to develop a remedial action plan and submit it to CDFW or to
38 implement remedial action identified by CDFW, in accordance with this section, or (b) a
39 remedial action plan is agreed upon and implemented, but the conditions do not satisfy the
40 plan's objective and measurable performance standards by the dates specified in the plan, then

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- 1 CDFW may find the MCA sponsor in default pursuant to Section 11.1 and take action
2 accordingly.
- 3 D. If CDFW determines that the MCA is operating at a credit deficit (i.e., that credit transfers made
4 exceed the credits authorized for release, as adjusted in accordance with this MCA), CDFW shall
5 notify the MCA sponsor of its default pursuant to Section 11.1, and take action accordingly.
6 Upon receipt of notification, MCA sponsor shall cease credit transfers immediately and is not
7 authorized to resume credit transfers until notified in writing by CDFW.
- 8 E. If there is damage to the MCA site property as a result of extraordinary circumstances, the
9 provisions of Section 11.2 apply.

10 8.4 MCA Site Closure Plan

11 [**See Guidelines, Section 5.3.8.4.**] Procedures for closing an MCA site are as follows:³⁵

- 12 A. Upon MCA closure, no further credit transfers or use shall occur.
- 13 B. The MCA closure shall be deemed to take place upon written approval of CDFW following
14 occurrence of all of the following:
- 15 i. All performance standards have been met and all remedial action required under
16 Section 8.3 has been completed as evidenced by:
- 17 a. Submission of all required annual reports in accordance with Section 9.
- 18 b. The completion of all remedial action, if any, in accordance with the applicable
19 remedial action plan(s).
- 20 c. An on-site inspection by CDFW.
- 21 ii. And either (1) the last authorized credit has been transferred; or (2) the MCA sponsor
22 requests MCA closure by written notice to CDFW and CDFW provides written approval
23 of the closure.
- 24 iii. All financial responsibilities of the MCA sponsor have been met, including 100% funding
25 of the endowment amount for no less than three years, if applicable, and full funding of
26 the CDFW implementation fee.

27 9 Reporting

28 9.1 Annual Inflation Adjustments to Endowment Fund Report

29 [**See Guidelines, Section 5.3.9.1.**] By April 1st of each year following the first release of credits and
30 until the endowment amount is 100% funded, the MCA sponsor shall provide an endowment fund
31 report to CDFW and the endowment holder, in both Word and PDF electronic format that includes
32 the following:

- 33 A. The adjusted endowment amount determined in accordance with Exhibit N;
- 34 B. The resulting adjusted endowment deposit amounts.

35 9.2 Annual Report

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1 [See Guidelines, Section 5.3.9.2.] MCA sponsor or property owner, as specified below, shall submit
2 an annual report to CDFW, in hard copy and editable electronic format, on or before [date approved
3 by CDFW; for consistency consider August 15th] of each year following the first release of credits.
4 Each annual report shall cover the period from July 1 of the preceding year (or, if earlier, the date of
5 the first credit release for the first annual report) through June 30th of the current year (the
6 “Reporting Period”). Prior to MCA closure, the MCA sponsor shall be responsible for annual
7 reporting of the MCA development and interim management tasks described below. After MCA
8 closure, the property owner shall be responsible for annual reporting of the MCA long-term
9 management tasks described below.

- 10 A. MCA Development – The MCA sponsor shall submit an annual report that includes data,
11 documentation, and discussion of the MCA’s progress toward meeting performance
12 standards described in this MCA and its exhibits. The annual report shall describe any
13 deficiencies in attaining and maintaining performance standards and any remedial action
14 proposed, approved, or performed. If remedial action has been completed, the annual
15 report shall also evaluate the effectiveness of that action.³⁶
- 16 B. Interim management and long-term management – The interim and long-term management
17 and monitoring plans contain reporting requirements that are separate from, and in
18 addition to, the requirements listed below for the annual report.³⁶

19 During the interim management period, the MCA sponsor shall submit an annual report that
20 contains an itemized account of the management tasks in accordance with the interim
21 management plan and any remedial actions conducted during the reporting period. During
22 the long-term management period, the property owner shall submit an annual report that
23 contains an itemized account of the management tasks in accordance with the long-term
24 management and monitoring plan and any remedial actions conducted during the reporting
25 period. Each annual report shall also include the following:

- 26 i. The time period covered, i.e. the dates “from” and “to.”
- 27 ii. A description of each management task conducted, the dollar amount expended,
28 and time required.
- 29 iii. The total dollar amount expended for management tasks conducted during the
30 reporting period.
- 31 iv. A description of the management and maintenance activities proposed for the next
32 reporting year.
- 33 v. A description of the overall condition of the MCA site, including photos
34 documenting the status of the MCA property during the reporting period and a map
35 documenting the location of the photo points.
- 36 C. Transfer and Use of Credits – The MCA sponsor shall submit an annual report that includes
37 the following:³⁷

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- 1 i. An updated credit transfer ledger (Exhibit U) showing all credits transferred and
2 used since the first credit release and an accounting of remaining credits.
- 3 ii. An accounting of the implementation fee payment status, if applicable.

4 9.3 Credit Transfer and Use Reporting

5 [**See Guidelines, Section 5.3.9.3.**] Upon every transaction of credits, the MCA sponsor shall submit to
6 CDFW, in in editable electronic format, the following:

- 7 A. A copy of the fully executed bill of sale and payment receipt.
- 8 B. An updated credit transfer and use ledger in the form provided in Exhibit U.

9 9.4 Reporting Compliance Measures

10 [**See Guidelines, Section 5.3.9.4.**] If MCA sponsor fails to submit complete reports on time, the MCA
11 sponsor is in default. Annual reports not received by CDFW will result in automatic credit transfer
12 suspension effective the 30th day that the report is past due. The suspension will be lifted within 10
13 calendar days after CDFW receives a complete annual report.

14 If the MCA sponsor has been notified by CDFW of an incomplete report, CDFW will then notify the
15 MCA sponsor of the date by which the report must be made complete.

16 10 Responsibilities

17 [**See Guidelines, Section 5.3.10.**]

18 10.1 Responsibilities of the MCA Sponsor and Property Owner

- 19 A. Without limiting any of its other obligations, including without limitation, under the
20 conservation easement, MCA sponsor and property owner each hereby agrees and covenants
21 that during the time the MCA is in operation, prior to MCA closure:
 - 22 i. [**Remove if Grant Deed:** If the entity proposed to hold the conservation easement is not
23 CDFW, MCA sponsor and property owner shall, prior to the execution of the conservation
24 easement at Exhibit I hereof, provide CDFW with satisfactory evidence that the entity
25 proposed to hold the conservation easement (grantee) is authorized to do so pursuant to
26 California Civil Code § 815.3 and Government Code § 65966-65967, has a primary purpose
27 of long-term land stewardship for conservation purposes consistent with the purpose of
28 the MCA, and has agreed to hold the conservation easement, and otherwise complies
29 with the requirements of CDFW.]
 - 30 ii. MCA sponsor shall be responsible for all activities and costs associated with the
31 establishment and operation of the MCA, including but not limited to construction,
32 planting, remedial action, documentation, maintenance, management, monitoring, and
33 reporting, until completion of the interim management period.
 - 34 iii. The MCA sponsor agrees to perform the actions described in this MCA and its exhibits to
35 support all credits that project proponents/action agencies secure. The MCA sponsor shall
36 provide CDFW with the bill of sale (Exhibit T) for all credits secured by project
37 proponents/action agencies that confirms that the MCA sponsor will continue to perform
38 the aforementioned actions.

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- 1 iv. It shall not discharge or release on, to or from the MCA property, or permit others to
2 discharge or release on, to or from the MCA property, any material, waste or substance
3 designated as hazardous or toxic or as a pollutant or contaminant under any Federal,
4 state, or local environmental law or regulation (each a hazardous substance).
- 5 v. Property owner shall not create or suffer any lien or encumbrance upon the MCA property
6 other than as set forth in the property assessment and warranty approved by CDFW.
7 Property owner shall not execute, renew, or extend any lien, lease, license, or similar
8 recorded or unrecorded right or interest in the MCA property without the prior written
9 consent of CDFW and the grantee, if a conservation easement has been granted.
- 10 vi. It shall not construct or install any structure or improvement on, or engage in any activity
11 or use of, the MCA property, including mineral exploration or development, excavation,
12 draining, dredging, or other alteration of the MCA property that is prohibited by, or not
13 consistent and in accordance with this MCA and its exhibits.
- 14 vii. MCA sponsor shall ensure that the MCA property is managed and maintained in
15 accordance with the interim management plan, this MCA and its exhibits.
- 16 viii. Property owner shall allow, or otherwise provide for, access to the MCA property by MCA
17 sponsor, grantee, CDFW and third parties, as described in the conservation easement.
- 18 ix. Property owner shall grant to MCA sponsor all rights and authority necessary to carry out,
19 and shall not limit the MCA sponsor in, performing its responsibilities and obligations, on
20 and affecting, the MCA property in accordance with this MCA and its exhibits.
- 21 x. Property owner shall ensure that the MCA property is managed and maintained in
22 accordance with the long-term management and monitoring plan, this MCA, and its
23 exhibits.
- 24 B. Reasonably foreseeable technical problems, or unanticipated or increased costs or expenses
25 associated with the implementation of actions called for by this MCA or changed financial or
26 business circumstances in and of themselves shall not serve as the basis for modifications of this
27 MCA or extensions for the performance of the requirements of this MCA.
- 28
- 29 C. An extension of one compliance date based upon or related to a single incident shall not extend
30 any subsequent compliance dates.

31 10.2 Responsibilities of CDFW

- 32 A. Subject to the Availability of Funds provision of this MCA, CDFW agrees to oversee the
33 performance of this MCA.
- 34 B. CDFW will make a good faith effort to review the annual reports and remedial action plans
35 within 60 calendar days from the date of receipt of complete submittal. If CDFW is unable to
36 complete its review within the time specified in this section, this fact will be reflected in any
37 schedule established for performance of remedial action and any evaluation of timely
38 performance of remedial action by MCA sponsor.
- 39 C. CDFW shall conduct compliance inspections for any purpose(s) it determines as necessary to
40 assess compliance with this MCA.

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1 11 Other Provisions

2 [See Guidelines, Section 5.3.11.]

3 11.1 Enforcement Provisions³⁸

4 A. If CDFW determines that the MCA sponsor has defaulted in the performance of an obligation
5 under the terms of this MCA, CDFW shall send a written notice to the MCA sponsor describing
6 the violation and requesting to meet and confer to determine the appropriate action(s) to take
7 to cure the default. CDFW and the MCA sponsor shall meet and confer within thirty (30) days of
8 the MCA sponsor's receipt of such notice.

9 B. If CDFW and the MCA sponsor fail to resolve the issue through the meet-and-confer process,
10 CDFW shall send a written notice of default to the MCA sponsor describing the violation and
11 instructing the MCA sponsor to cure the violation within thirty (30) days. If the cure reasonably
12 requires more than thirty (30) days, the MCA sponsor shall so inform CDFW in writing and shall
13 indicate how many days it will take to cure the violation. CDFW may, in its reasonable discretion
14 determine in writing whether to extend the cure period beyond the initial thirty (30) days.

15 C. If the MCA sponsor fails to cure the violation within thirty (30) days after receipt of the notice of
16 default, or if CDFW grants a longer cure period the MCA sponsor fails to begin the cure within
17 thirty (30) days of receipt of the notice of default and to continue diligently to pursue and
18 complete the cure in good faith, CDFW may, in its discretion, suspend or terminate this MCA.
19 Any suspension or revocation of this MCA pursuant to this section shall be made in writing and
20 shall be signed by the Director or Chief Deputy Director of CDFW.

21 D. In the event of suspension or termination of this MCA pursuant to this section the MCA sponsor
22 shall remain liable for the implementation, maintenance, and management of any conserved
23 lands or habitat enhancements for which mitigation credits have been released.

24 E. All released mitigation credits that have been used, sold, or transferred shall remain valid. (FGC
25 1856(f)(16))

26 11.2 Extraordinary Circumstances

27 A. The MCA sponsor, property owner and CDFW in its review of the MCA, have made a concerted
28 effort to identify the preservation, restoration and management measures for the MCA site
29 property, including adaptive management, necessary to qualify as compensatory mitigation for
30 focal species, non-focal species and other conservation elements and to manage and maintain
31 these resources in perpetuity. However, the parties recognize that there may be a rare event (an
32 extraordinary circumstance) in which the MCA can no longer serve its intended purpose as
33 compensatory mitigation, in whole or in part, for the specific resources for which it was
34 established. An extraordinary circumstance of this type may lead to MCA sponsor and/or
35 property owner being relieved of some or all of its obligations under this MCA. The parties agree
36 that CDFW will consider whether it is appropriate to relieve any obligations under the process
37 outlined below:

38 B. If the MCA sponsor or MCA site property owner believes that an extraordinary circumstances
39 event has taken place that party shall send written notification to CDFW as promptly as possible,
40 but no later than 14 calendar days following the date of discovery of the event. The party

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- 1 sending the notification (invoking) will fully describe the nature of the extraordinary
2 circumstances event, request to meet and confer with CDFW to determine its effect on the
3 party's performance of the obligations under this MCA, the habitat values affected by the event,
4 and any expected timeframe of non-performance attributable to the extraordinary
5 circumstances event. As promptly as reasonably possible after providing notification but not
6 later than thirty (30) days, the party invoking extraordinary circumstances shall meet with CDFW
7 to discuss whether the event qualifies as an extraordinary circumstance. The party invoking
8 extraordinary circumstances shall bear the burden of demonstrating that extraordinary
9 circumstances have occurred. Until such time CDFW determines whether the event qualifies as
10 an extraordinary circumstance and whether it is appropriate to suspend performance pursuant
11 to paragraph E of this section, the MCA site property owner or MCA sponsor shall continue to
12 manage and maintain the MCA site property to the fullest extent practicable consistent with this
13 MCA and other applicable documents.
- 14 C. If CDFW concurs that an extraordinary circumstances event has taken place, CDFW will provide
15 written notification to the MCA sponsor or MCA site property owner. Within 14 calendar days of
16 notification of concurrence from CDFW that extraordinary circumstances have occurred, or on a
17 date mutually agreed upon by all parties, the parties will meet to discuss the course of potential
18 action to be taken in response to such occurrence, including potential remedial action as
19 defined in Section 8.3 and potential suspension of performance standards as described in
20 paragraph D of this section. Remedial action in such circumstances may include, but is not
21 limited to, restoration of the MCA site property, out-of-kind improvements on the MCA site
22 property, a smaller restoration on the MCA site property (taking into account the diminution of
23 habitat values across the service area), improvements to another property, or the purchase of
24 credits from another MCA. Once approved by CDFW, the party invoking extraordinary
25 circumstances shall carry out the remedial action within a mutually agreed upon timeframe.
- 26 D. If the MCA sponsor or MCA site property owner is prevented from or delayed in performing an
27 obligation under this MCA by extraordinary circumstances that commences after the first credit
28 release, CDFW may suspend the MCA sponsor and/or property owner's obligation to perform,
29 as well as the ability of the MCA to provide any remaining credits released, but not yet
30 transferred, as compensatory mitigation.
- 31 E. Following the meeting, discussed in paragraph C of this section, to consider potential actions to
32 be taken in response to the event, CDFW will, in writing, (1) inform the MCA site property owner
33 or MCA sponsor as to what, if any, performance is suspended, and (2) direct the MCA site
34 property owner or MCA sponsor as to what specific remedial action is required. The MCA
35 sponsor or MCA site property owner will continue to perform all other obligations that are not
36 suspended.
- 37 F. Within 60 calendar days of notification described in paragraph E of this section, or by a date
38 mutually agreed upon by all parties, the party invoking extraordinary circumstances will submit
39 to CDFW, in writing, the implementation plan to meet the required remedial action. At a
40 minimum, the remedial action will be sufficient to ensure that the habitat values which underlie
41 all previously transferred credits will be supported.

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- 1 G. If the remedial action agreed upon and implemented do not meet an agreed upon objective or
2 standard within the agreed upon timeframe, the MCA sponsor or MCA site property owner and
3 CDFW will meet and evaluate if alternative remedial action would be appropriate.
- 4 H. Failure to act in good faith to participate in the process outlined above in paragraph A of this
5 section or to implement any CDFW-approved remedial actions shall be a default under this
6 MCA.
- 7 I. In accordance with paragraph D of Section 8.3 of this MCA, CDFW may, at its discretion, direct
8 MCA sponsor to suspend the transfer of credits, prohibit the release of additional credits,
9 and/or reduce the number of credits allocated to the MCA in proportion to such damaged area
10 unless and until the MCA sponsor has remedied the defect pursuant to the remedial action as
11 described in paragraph E of this section.
- 12 J. Disputes over whether an event is a result of extraordinary circumstances, or any remedial
13 action taken in response pursuant to this section, shall be resolved in accordance with Section
14 11.3.
- 15 K. MCA sponsor and MCA site property owner are not entitled to termination of this MCA under
16 Sections 11.6 and 11.7 as a result of extraordinary circumstances.

17 **11.3 Dispute Resolution**

18 The parties agree to work together in good faith to resolve disputes concerning this MCA. Unless a
19 party has initiated legal action in connection with the particular dispute, any party may elect
20 (electing party) to employ an informal dispute resolution process whereby:

- 21 A. The electing party shall notify all other parties to this MCA of the dispute through a dispute
22 notice. The dispute notice shall identify the parties against which the electing party is
23 commencing the informal dispute resolution process (implicated party/ies), the position of the
24 electing party (including, if applicable, the basis for contending that a violation has occurred),
25 and the resolution the electing party proposes. The dispute notice shall include a request for the
26 implicated party/ies to meet with the electing party.
- 27 B. Each implicated party shall have 45 calendar days after receipt of the dispute notice (or such
28 other time as the parties may mutually agree) to respond to the electing party. During this time,
29 any party to this MCA that received the dispute notice may request to meet and confer or seek
30 clarification of the dispute notice.
- 31 C. Within 45 calendar days after each Implicated party's response was provided or due, whichever
32 is later, the electing party and the implicated parties shall meet and confer and negotiate in
33 good faith toward a mutually satisfactory resolution or shall establish a specific process and
34 timetable to seek such resolution.
- 35 D. The dispute resolution process may be terminated by the electing party or any implicated party
36 upon written notice to all other parties to this MCA.

37 **11.4 Controlling Law**

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1 This MCA shall be governed by the provisions of California Fish and Game Code sections 1850-1861,
2 as amended, and CDFW's Regional Conservation Investment Strategies Program Guidelines
3 (Guidelines), as amended. In the event of any conflict, the terms of Sections 1850-1861 govern the
4 interpretation of the Guidelines and the MCA, and the terms of the Guidelines govern the
5 interpretation of the MCA.

6 **11.5 No Limitation of Authority**

7 This MCA is not intended to limit CDFW's authority to fulfill its statutory or regulatory
8 responsibilities or to otherwise limit the powers afforded to either party by applicable law.

9 **11.6 Modification and Amendment**

10 This MCA, including its exhibits, may be amended or modified only with the written approval of
11 CDFW and MCA sponsor.

12 **11.7 Termination of Agreement**

13 The MCA sponsor may terminate this MCA upon ninety (90) days written notice to CDFW; provided,
14 however, that the obligation to ensure the perpetual protection and management of conservation
15 actions and the long-term durability of habitat enhancement actions resulting in the creation of
16 mitigation credits shall survive termination of this MCA. CDFW may terminate this MCA pursuant to
17 Section 11.1.

18 **11.8 Entire Agreement**

19 This MCA, including its exhibits, constitutes the complete, final, and exclusive terms and conditions
20 governing the establishment of the MCA and the creation, use, and transfer of mitigation credits
21 and supersedes all prior and contemporaneous discussions, negotiations, understandings, or
22 agreements of the parties.

23 **11.9 Successors and Assigns**

24 This MCA, and each of its covenants and conditions, will be binding on and will inure to the benefit
25 of the parties and their respective successors and assigns, subject to the limitations on transfer set
26 forth in this MCA. The MCA sponsor may assign or otherwise transfer the MCA only with the prior
27 written approval of CDFW, which approval shall not be unreasonably withheld, provided the MCA
28 sponsor is in full compliance with this MCA. Any assignment or transfer made without the prior
29 written approval of CDFW may, at the sole discretion of CDFW, result in the termination of this
30 MCA.

31 **11.10 Partial Invalidity**

32 If a court of competent jurisdiction holds any term or provision of this MCA to be invalid or
33 unenforceable, in whole or in part, for any reason, the validity and enforceability of the remaining
34 terms and provisions, or portions of them, will not be affected unless an essential purpose of this
35 MCA would be defeated by loss of the invalid or unenforceable provision.

36 **11.11 Notices**

37 Any notice, demand, approval, request, or other communication permitted or required by this MCA
38 will be in writing and deemed given when delivered personally, one (1) day after deposit with a
39 recognized overnight delivery service, or five (5) days after deposit in the U.S. mail, postage prepaid.
40 Addresses for purposes of giving notice are set forth below. Either party may change its notice

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1 address by giving notice of change of address to the other party in the manner specified in this
2 section at least thirty (30) days prior.

3 To CDFW:

4 Landscape Conservation Planning Program Manager
5 Habitat Conservation Planning Branch
6 California Department of Fish and Wildlife
7 P.O. Box 944209
8 Sacramento, CA 94244-2090
9 rcis@wildlife.ca.gov

10 To MCA Sponsor:

11 ***[Insert name, mailing address, and email address for MCA Sponsor]***

12 To Property Owner:

13 ***[Insert name, mailing address, and email address for MCA Site property owner]***

14 11.12 Counterparts

15 This MCA may be executed in multiple counterparts, each of which will be deemed an original and
16 all of which together will constitute a single executed agreement.

17 11.13 No Third-party Beneficiaries

18 Except as expressly stated herein, this MCA will not create any third-party beneficiary. The duties,
19 obligations, and responsibilities of the parties to this MCA with respect to third parties will remain as
20 otherwise provided by law.

21 11.14 Availability of Funds

22 Approval and implementation of this MCA by CDFW is subject to the submittal of MCA fees.

23 11.15 Conservation or Mitigation Banks

24 This MCA is not intended to limit or impose additional conditions on the creation or transfer of
25 mitigation credits by a conservation bank or mitigation bank approved by CDFW pursuant to Fish
26 and Game Code, Chapter 7.9.³⁹

27

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1 This Mitigation Credit Agreement becomes effective on the date of the last signature below
2 (Approval Date).

3

4 **STATE OF CALIFORNIA**
5 **DEPARTMENT OF FISH AND WILDLIFE**

6

7

8 _____

9 [Name]

10

11

12 _____

12 [Position]

13

14

15 _____

15 [Date]

16

17

18

19 **[MCA SPONSOR TITLE]**

20

21

22 _____

23 [Name]

24

25

26 _____

26 [Position]

27

28

29 _____

29 [Date]

30

31

32 **[MCA PROPERTY OWNER TITLE]**

33

34

35 _____

36 [Name]

37

38

39 _____

39 [Position]

40

41

42 _____

42 [Date]

43

-
- ¹ Fish & G. Code, § 1798, subdivision (b)(2)(A)
- ² Fish & G. Code, § 1856, subdivision (a)
- ³ Fish & G. Code, § 1856, subdivision (c)
- ⁴ 33 U.S.C. § 1251, *et seq.*; 33 C.F.R. Parts 320-332
- ⁵ 33 U.S.C. § 403
- ⁶ Water Code § 13000, *et seq.*
- ⁷ Fish and Wildlife Protection and Conservation, Fish & G. Code § 1600, *et seq.*
- ⁸ 16 U.S.C. § 1531, *et seq.*
- ⁹ 16 U.S.C. § 1801, *et seq.*
- ¹⁰ Fish & G. Code § 2050, *et seq.*
- ¹¹ Public Resources Code § 21000, *et seq.*
- ¹² Fish & G. Code, §§ 1856, subdivision (f)(11) and 1798, subdivision (b)(2)(F)
- ¹³ Fish & G. Code, §§ 1856, subdivision (f)(1) and 1798, subdivision (b)(2)(B)
- ¹⁴ Fish & G. Code, §§ 1856, subdivision (f)(1) and 1798, subdivision (b)(2)(G)
- ¹⁵ Fish & G. Code, §§ 1856, subdivisions (f)(3), (f)(4), (f)(8) and 1798, subdivisions (b)(2)(C), (b)(2)(D), (b)(2)(E), (b)(2)(J)
- ¹⁶ Fish & G. Code, §§ 1798, subdivision (b)(2)(I) and 1798.5, subdivision (a)(2)(D)
- ¹⁷ Fish & G. Code, § 1798, subdivision (b)(2)(M)
- ¹⁸ Fish & G. Code, § 1798, subdivision (b)(2)(N)
- ¹⁹ Fish & G. Code, §§ 1856, subdivision (f)(7) and 1798, subdivision (b)(2)(H)
- ²⁰ Department of Fish and Wildlife Bulletin: Tribal Communication and Consultation Policy. Available: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=122905&inline>
- ²¹ Department of Fish and Wildlife Bulletin: Tribal Communication and Consultation Policy. Available: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=122905&inline>
- ²² Fish & G. Code, § 1798.5, subdivision (a)(2)(H)
- ²³ Fish & G. Code, § 1798, subdivision (b)(2)(L)
- ²⁴ Fish & G. Code, §§ 1856, subdivision (f)(12) and 1798.5, subdivision (a)(2)(C)
- ²⁵ Fish & G. Code, §§ 1856, subdivision (f)(5) and 1798, subdivision (a)(2)(B)
- ²⁶ Fish & G. Code, § 1798.5, subdivision (a)(2)(G)
- ²⁷ Fish & G. Code, §§ 1856, subdivision (f)(13) and 1798.5, subdivision (a)(2)(F)
- ²⁸ Fish & G. Code, § 1856, subdivisions (e) and (f)(9)
- ²⁹ Fish & G. Code, §§ 1856, subdivision (f)(18) and 1798.5, subdivision (a)(2)(E)
- ³⁰ Fish & G. Code, § 1856, subdivision (f)(15)
- ³¹ Fish & G. Code, § 1856, subdivision (f)(6)
- ³² Fish & G. Code, §§ 1856, subdivision (f)(18) and 1798.5, subdivision (a)(2)(E)
- ³³ Fish & G. Code, § 1798.5, subdivision (a)(2)(B)
- ³⁴ Fish & G. Code, §§ 1856, subdivision (f)(14) and 1798.5, subdivision (a)(2)(B)
- ³⁵ Fish & G. Code, § 1798.5, subdivision (a)(2)(B)
- ³⁶ Fish & G. Code, § 1856, subdivisions (f)(10)
- ³⁷ Fish & G. Code, § 1856, subdivisions (f)(15)
- ³⁸ Fish & G. Code, § 1856, subdivision (f)(16)
- ³⁹ Fish & G. Code, § 1856(i)

1 Exhibit A. Location Information
2 ***[Insert maps and photographs of the MCA site location as indicated in the Guidelines, Section***
3 ***5.3.4.4.]***
4

5 Exhibit B. Service Area
6 ***[Include a map and written description of the proposed MCA site service area as indicated in the***
7 ***Guidelines, Section 5.3.4.5.]***
8

9 Exhibit C. NCCP Approval
10 ***[Attach the NCCP written approval as indicated in the Guidelines, Section 5.3.5.1.]***
11

12 Exhibit D. Natural Resources Evaluation
13 ***[Attach the natural resources evaluation as indicated in the Guidelines, Section 5.3.5.4.]***
14

15 Exhibit E. Tribal Resources Evaluation
16 ***[If applicable, attach the tribal resources evaluation as indicated in the Guidelines, Section***
17 ***5.3.5.5.]***
18

19 Exhibit F. Phase I Environmental Site Assessment
20 ***[Attach the Phase I Environmental Site Assessment as indicated in the Guidelines, Section 5.3.5.6.]***
21

22 Exhibit G. Preliminary Title Report, Legal Description, and Parcel Maps
23 ***[Attach the preliminary title report, legal description, and parcel maps as indicated in the***
24 ***Guidelines, Section 5.3.5.7.]***
25

26 Exhibit H. Property Assessment and Warranty
27 ***[Attach the property assessment and warranty as indicated in the Guidelines, 5.3.5.7.]***
28
29
30

1 Exhibit I. Real Estate Instrument

2 ***[Attach the template conservation easement, or other instrument as indicated in the Guidelines,***
3 ***Section 5.3.5.7.]***

4

5 Exhibit J. Title Insurance

6 ***[If applicable, attach the title insurance as indicated in the Guidelines, Section 5.3.5.7.]***

7

8 Exhibit K. Permits

9 ***[Attach any applicable permits and other authorizations as indicated in the Guidelines, Section***
10 ***5.3.5.8.]***

11

12 Exhibit L. Development Plan

13 ***[If applicable, include a draft of the development plan for the site as indicated in the Guidelines,***
14 ***Section 5.3.5.9.]***

15

16 Exhibit M. Security

17 ***[Attach any applicable documentation that provides the basis for the estimated value of each***
18 ***security as indicated in the Guidelines, Section 5.3.6.1 and 5.2.4(e). For example, the amount of a***
19 ***construction security must be supported by a reasonable third-party estimate or contract to***
20 ***establish, restore, or enhance covered focal species, non-focal species and/or other conservation***
21 ***elements in accordance with the development plan]***

22

23 Exhibit N. Endowment Fund Analysis

24 ***[Attach the endowment fund analysis as indicated in the Guidelines, Section 5.3.6.2 and 5.2.4(e).]***

25

26

27

28

29

30

31

1 Exhibit O. Endowment Fund Schedule

2 ***[The MCA must include an endowment fund schedule as indicated in the Guidelines, Section***
3 ***5.3.6.2. Sections below should be deleted for credit types not pertaining to the MCA. The MCA***
4 ***sponsor may propose alternative schedules to accommodate other long-term funding options and***
5 ***other types of credits, to be approved by CDFW.]***

6 1. The endowment funding schedule for MCAs proposing preservation credits will be as follows:

7 a. The percentage of the endowment amount funded through endowment deposits shall
8 be equal to or greater than the percentage of credits released (see Exhibit R).

9 2. The endowment funding schedule for MCAs proposing establishment credits will be as follows:

10 a. No endowment funding is required prior to the first credit release;

11 b. Prior to the third credit release, the percentage of the endowment amount funded
12 through endowment deposits shall be equal to or greater than the percentage of
13 credits released.

14 c. 100% of the endowment amount shall be funded through endowment deposits prior
15 to the release of 85% (cumulative) of credits.

16
17 Exhibit P. Credit Evaluation

18 ***[Attach the credit evaluation as indicated in the Guidelines, Section 5.3.7.1.]***

19
20 Exhibit Q. Credit Table

21 ***[Attach the credit table as indicated in the Guidelines, Section 5.3.7.1.]***

22
23 Exhibit R. Credit Release Schedule

24 ***[The MCA must include a credit release schedule as indicated in the Guidelines, Section 5.3.7.2.***
25 ***Sections below should be deleted for credit types not pertaining to the MCA. Proposed schedules***
26 ***for other types of credits may be added.]***

27 1. ***[Choose one:*** Permanent/Temporary] Preservation Credits for Covered Focal Species, Non-focal
28 Species and/or Other Conservation Elements.

29 These credits, described in the credit table (Exhibit Q), may be released as described below and
30 summarized in Table 1 below. If the maximum percentage of released credits is not authorized at
31 the time of each numbered credit release below, subsequent credit releases may be authorized. This
32 schedule allows for two options under the first credit release, either 1a or 1b.

1 Table 1. Summary of Credit Release Schedule for Preservation Credits

Credit Release	Percent of Preservation Credits Released	Percent of Endowment Funding Required
Release 1a*	15	15
Release 1b*	25	25
Release 2	40	40
Release 3	55	55
Release 4	70	70
Release 5	100	100

2 *Option to choose either 1a or 1b.

- 3 a. Preservation Credit Release 1a (Option 1). 15% of the total anticipated preservation
4 credits when all of the following have occurred:
- 5 i. The MCA has been fully approved by all of the parties.
 - 6 ii. The real estate instrument, described in Section 5.7.3, is in place.
 - 7 iii. The MCA sponsor has complied with its obligation to furnish security in
8 accordance with Section 6.1.
 - 9 iv. Any applicable subordination agreement(s) is executed and recorded.
 - 10 v. A minimum of 15% of the endowment amount is funded.
 - 11 vi. The MCA sponsor demonstrates, to the satisfaction of CDFW, that any
12 associated performance standards have been met, and that the habitat values
13 have been maintained, as required by the MCA and its exhibits.
- 14 b. Preservation Credit Release 1b (Option 2). 25% of the total anticipated preservation
15 credits when all of the following have occurred:
- 16 i. The MCA has been fully approved by all of the parties.
 - 17 ii. The real estate instrument, described in Section 5.7.3, is in place.
 - 18 iii. The MCA sponsor has complied with its obligation to furnish security in
19 accordance with Section 6.1.
 - 20 iv. Any applicable subordination agreement(s) is executed and recorded.
 - 21 v. A minimum of 25% of the endowment amount is funded.
 - 22 vi. The MCA sponsor demonstrates, to the satisfaction of CDFW, that any
23 associated performance standards have been met, and that the habitat values
24 have been maintained, as required by the MCA and its exhibits.
- 25 c. Preservation Credit Release 2. Depending on which option is chosen for credit release
26 1 (1a or 1b), up to an additional 15 to 25% (40% cumulative total) of the total

- 1 anticipated permanent preservation credits when all of the following have occurred:
- 2 i. The MCA sponsor has funded a minimum of 40% of the endowment amount.
- 3 ii. The MCA sponsor demonstrates, to the satisfaction of CDFW, that any
- 4 associated performance standards have been met, and that the habitat values
- 5 have been maintained, as required by the MCA and its exhibits.
- 6 iii. Credit release 1 has occurred.
- 7 d. Preservation Credit Release 3. Up to an additional 15% (55% cumulative total) of the
- 8 total anticipated preservation credits when all of the following have occurred:
- 9 i. The MCA sponsor has funded a minimum of 55% of the endowment amount.
- 10 ii. The MCA sponsor demonstrates, to the satisfaction of CDFW, that any
- 11 associated performance standards have been met, and that the habitat values
- 12 have been maintained, as required by the MCA and its exhibits.
- 13 iii. Credit release 2 has occurred.
- 14 e. Preservation Credit Release 4. Up to an additional 15% (70% cumulative total) of the
- 15 total anticipated preservation credits when all of the following have occurred:
- 16 i. The MCA sponsor has funded a minimum of 70% of the endowment amount.
- 17 ii. The MCA sponsor demonstrates, to the satisfaction of CDFW, that any
- 18 associated performance standards have been met, and that the habitat values
- 19 have been maintained, as required by the MCA and its exhibits.
- 20 iii. Credit release 3 has occurred.
- 21 f. Preservation Credit Release 5. Up to an additional 15% (85% cumulative total) of the
- 22 total anticipated preservation credits when all of the following have occurred:
- 23 i. The MCA sponsor has funded a minimum of 100% of the endowment amount.
- 24 ii. The MCA sponsor demonstrates, to the satisfaction of CDFW, that any
- 25 associated performance standards have been met, and that the habitat values
- 26 have been maintained, as required by the MCA and its exhibits.
- 27 iii. Credit release 4 has occurred.
- 28 g. Final Preservation Credit Release: Any remaining balance of preservation credits when
- 29 all of the following have occurred:
- 30 i. The MCA sponsor has funded 100% of the endowment amount.
- 31 ii. The MCA sponsor demonstrates, to the satisfaction of CDFW that any associated
- 32 performance standards have been met, and that the habitat values have been
- 33 maintained, as required by the MCA and its exhibits.
- 34 iii. Credit release 5 has occurred.

1 2. [**Choose one:** Permanent/Temporary] Establishment Credits for Covered Focal Species, Non-
2 focal Species and/or Other Conservation Elements.

3 These credits, described in the credit table (Exhibit Q), may be released as follows and as
4 summarized in Table 2 below. If the maximum percentage of released credits is not authorized at
5 the time of each numbered credit release below, subsequent credit releases may be authorized. This
6 schedule allows for two options under the first credit release, either 1a or 1b.

7 Table 2. Summary of Credit Release Schedule for Establishment Credits

Credit Release	Percent of Establishment Credits Released	Percent of Endowment Funding Required
Release 1a*	15	0
Release 1b*	25	10
Release 2	40	40
Release 3	55	55
Release 4	70	70
Release 5	85	100
Release 6	100	

8 *Option to choose either 1a or 1b.

- 9 a. Establishment Credit Release 1a (Option 1). 15% of the total anticipated establishment
10 credits when all of the following have occurred:
- 11 i. The MCA has been fully approved by all of the parties.
 - 12 ii. The real estate instrument, described in Section 5.7.3, is in place.
 - 13 iii. The MCA sponsor has complied with its obligation to furnish security in
14 accordance with Section 6.1.
 - 15 iv. Any applicable subordination agreement(s) is executed and recorded.
 - 16 v. No endowment funding is required prior to the first covered focal species, non-
17 focal species and/or other conservation elements credit release.
 - 18 vi. The MCA sponsor demonstrates, to the satisfaction of CDFW in whose
19 jurisdiction the credit resides, that any associated performance standards have
20 been met (or in special circumstances identified by CDFW during MCA
21 development, will be met), and that the habitat values have been maintained.
- 22 b. Establishment Credit Release 1b (Option 2). 25% of the total anticipated
23 establishment credits when all of the following have occurred:
- 24 i. The MCA has been fully approved by all of the parties.
 - 25 ii. The real estate instrument, described in Section 5.7.3, is in place.
 - 26 iii. The MCA sponsor has complied with its obligation to furnish security in

- 1 accordance with Section 6.1.
- 2 iv. Any applicable subordination agreement(s) is executed and recorded.
- 3 v. The MCA sponsor has funded a minimum of 10% of the endowment amount.
- 4 vi. The MCA sponsor demonstrates, to the satisfaction of CDFW in whose
5 jurisdiction the credit resides, that any associated performance standards have
6 been met (or in special circumstances identified by CDFW during MCA
7 development, will be met), and that the habitat values have been maintained.
- 8 c. Establishment Credit Release 2. Depending on which option is chosen for credit
9 release 1 (1a or 1b), up to an additional 15 to 25% of the total anticipated
10 establishment credits (up to 40% cumulative total) when all the following have
11 occurred.
- 12 i. The MCA sponsor has submitted as-built drawings to CDFW.
- 13 ii. CDFW has approved the as-built condition, in writing.
- 14 iii. The MCA sponsor has funded a minimum of 40% of the endowment amount.
- 15 iv. Credit release 1 has occurred.
- 16 d. Establishment Credit Release 3. Up to an additional 15% of the total anticipated
17 establishment credits (up to 55% cumulative total) when all the following have
18 occurred:
- 19 i. The MCA sponsor has submitted complete and accurate annual reports as
20 required by the MCA and its exhibits.
- 21 ii. Year 2 performance standards have been attained, as required by the
22 development plan.
- 23 iii. The MCA sponsor has funded a minimum of 55% of the endowment amount.
- 24 iv. Credit release 2 has occurred.
- 25 v. A minimum of two years of monitoring have been conducted since all
26 requirements for credit release 2 have been met.
- 27 e. Establishment Credit Release 4. Up to an additional 15% of the total anticipated
28 establishment credits (up to 70% cumulative total) when all the following have
29 occurred:
- 30 i. The MCA sponsor has submitted all annual and monitoring reports as required
31 by the MCA and its exhibits, and the reports are deemed satisfactory by CDFW.
- 32 ii. Year 3 performance standards have been attained, as required by the
33 development plan.
- 34 iii. The MCA sponsor has funded a minimum of 70% of the endowment amount.
- 35 iv. Credit release 3 has occurred.

- 1 v. A minimum of one year of monitoring has been conducted since all
2 requirements for credit release 3 have been met.
- 3 f. Establishment Credit Release 5. Up to an additional 15% of the total anticipated
4 establishment credits (up to 85% cumulative total) when all the following have
5 occurred:
- 6 i. The MCA sponsor has submitted all annual and monitoring reports as required
7 by the MCA and its exhibits, and the reports are deemed satisfactory by CDFW.
- 8 ii. Year 4 performance standards have been attained, as required by the
9 development plan.
- 10 iii. The MCA sponsor has funded 100% of the endowment amount.
- 11 iv. Credit release 4 has occurred.
- 12 v. A minimum of one year of monitoring has been conducted since all
13 requirements for credit release 4 have been met.
- 14 g. Final Establishment Credit Release. Any remaining balance of the establishment
15 credits when all the following have occurred:
- 16 i. The MCA sponsor has submitted all annual and monitoring reports as required
17 by the MCA and its exhibits.
- 18 ii. Final performance standards have been attained.
- 19 iii. Any required remedial actions are complete.
- 20 iv. Any additional performance standards required as a result of required remedial
21 actions have been attained.
- 22 v. Credit release 5 has occurred.
- 23 vi. A minimum of one year of monitoring has been conducted since all
24 requirements for credit release 5 have been met.

25
26 Exhibit S. Transfer and Use of Credits

27 **[The MCA must include terms of transfer and use as indicated in the Guidelines, Section 5.3.7.3.]**

- 28 1. The transfer and use of credits may begin only after CDFW has approved the release of credits.
29 MCA sponsor shall have the exclusive right to determine the price for any and all MCA credits it
30 offers for sale.
- 31 2. In no case shall the number of credits of any particular type transferred or used exceed the total
32 number of credits of that type which have been released for transfer or use, as evidenced by
33 written approval by CDFW.
- 34 3. Use of credits from the MCA to compensate for impacts to covered focal species, non-focal
35 species and/or other conservation elements, under any permit issued by an agency, can only

1 occur after approval by the agency or agencies executing such a permit. Approval is determined
2 on a case-by-case basis to ensure the use is appropriate to compensate for the impacts of the
3 specific project to which the credits are proposed to be applied. Mitigation or compensation
4 requirements for individual project impacts may or may not be compatible with the use of
5 MCAs, generally, or any particular mitigation MCA, specifically.

- 6 4. MCA sponsor shall notify CDFW upon any credit transfer or use in accordance with Section 9.3
7 of this MCA.
- 8 5. If the MCA property is damaged after CDFW has approved the release of credits and such
9 damage materially impairs any or all habitat related to covered focal species, non-focal species
10 and/or other conservation elements on such damaged MCA property, the MCA sponsor and/or
11 property owner shall implement the provisions of Section 8.3. Failure to comply with either
12 section shall constitute default, and CDFW will take action accordingly.
- 13 6. Once a credit is transferred by the MCA sponsor, that credit may not be transferred to another
14 entity. Transferred credits may only be transferred back to the MCA Sponsor at the MCA
15 Sponsor's discretion. MCA sponsor and regulatory/approving agencies/authorities have
16 discretion regarding return of credits. If credits are not used (i.e., only a portion of the credits
17 were needed or project was not developed), credits may be returned to the MCA sponsor and
18 restored to the ledger under the following conditions:
 - 19 a. The MCA is open;
 - 20 b. The MCA is in good standing;
 - 21 c. Permittee/applicant obtains written documentation of MCA sponsor's conditional
22 approval to return credits;
 - 23 d. Permittee/applicant provides approval and written documentation to the MCA sponsor
24 that those credits are no longer needed to provide compensatory mitigation for the
25 specified project from all approving/regulatory agency(ies)/authorities (e.g. the modified
26 permit/agreement, amended Biological Opinion, amended Incidental Take Permit and/or
27 acknowledgement from the CEQA lead agency/local land use authority);
 - 28 e. Permittee/applicant provides a written request to CDFW with documentation of all
29 necessary approvals for return of credits;
 - 30 f. Permittee/applicant obtains written approval from CDFW.
 - 31 g. MCA sponsor enters the returned credits in the ledger.
 - 32 h. Upon return of the credits specified above, the MCA sponsor shall submit to the parties
33 listed in the notices section of the MCA, and approving/regulatory agency(ies)/authorities
34 associated with those credits copies of the following:
 - 35 i. Bill of sale.
 - 36 ii. Payment receipt.

- 1 iii. Justification for return. If applicable, provide documentation and written approval
2 by the agency(ies) that the work associated with the projects as described in the
3 permit has not occurred and the original credits purchased associated with the
4 project are no longer needed to provide compensatory mitigation for the
5 specified project (e.g., the modified permit/agreement, amended Biological
6 Opinion, amended Incidental Take Permit and/or acknowledgement from the
7 CEQA lead agency).
- 8 iv. An updated ledger.
- 9 7. When an approved MCA overlaps an existing NCCP, the creation and use of MCA credits is
10 limited in several ways:
- 11 a. The creation of MCA credits within the NCCP requires the advance written
12 approval of the NCCP implementing entity. The MCA applicant shall include as
13 Exhibit C to the MCA a copy of the NCCP implementing entity's written approval to
14 create credits within the NCCP plan area.
- 15 b. If an individual or entity seeks to use MCA credits for NCCP covered activities
16 within the NCCP plan area, those credits can be used only in accordance with the
17 provisions, if any, in the NCCP for use of conservation and mitigation bank credits.
- 18 c. If an individual or entity that qualifies as a participating special entity under an
19 approved NCCP seeks to use MCA credits for covered activities within the NCCP
20 plan area:
- 21 i. The individual or entity must first seek approval from the NCCP
22 implementing entity to be a participating special entity.¹
- 23 ii. If the NCCP implementing entity grants the request for participating special
24 entity status, the individual or entity must comply with the participating
25 special entity provisions of the NCCP with respect to mitigating project
26 impacts.
- 27 iii. If the NCCP implementing entity does not grant the request for
28 participating special entity status, the individual or entity may purchase
29 and use MCA credits within the NCCP plan area to satisfy other regulatory
30 requirements. However, the MCA credits will not count toward fulfillment
31 of the NCCP's conservation requirement.¹
- 32 d. If an individual or entity seeks to use MCA credits for projects that do not qualify
33 as covered activities under the NCCP, the individual or entity may purchase MCA
34 credits. However, the use of the MCA credits will not count toward fulfillment of
35 the NCCP's conservation requirement.

¹ Fish & G. Code, § 1856, subdivision (j)

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Exhibit T. Bill of Sale

[Attach the template bill of sale as indicated in the Guidelines, Section 5.3.7.4.]

Exhibit U. Credit Ledger

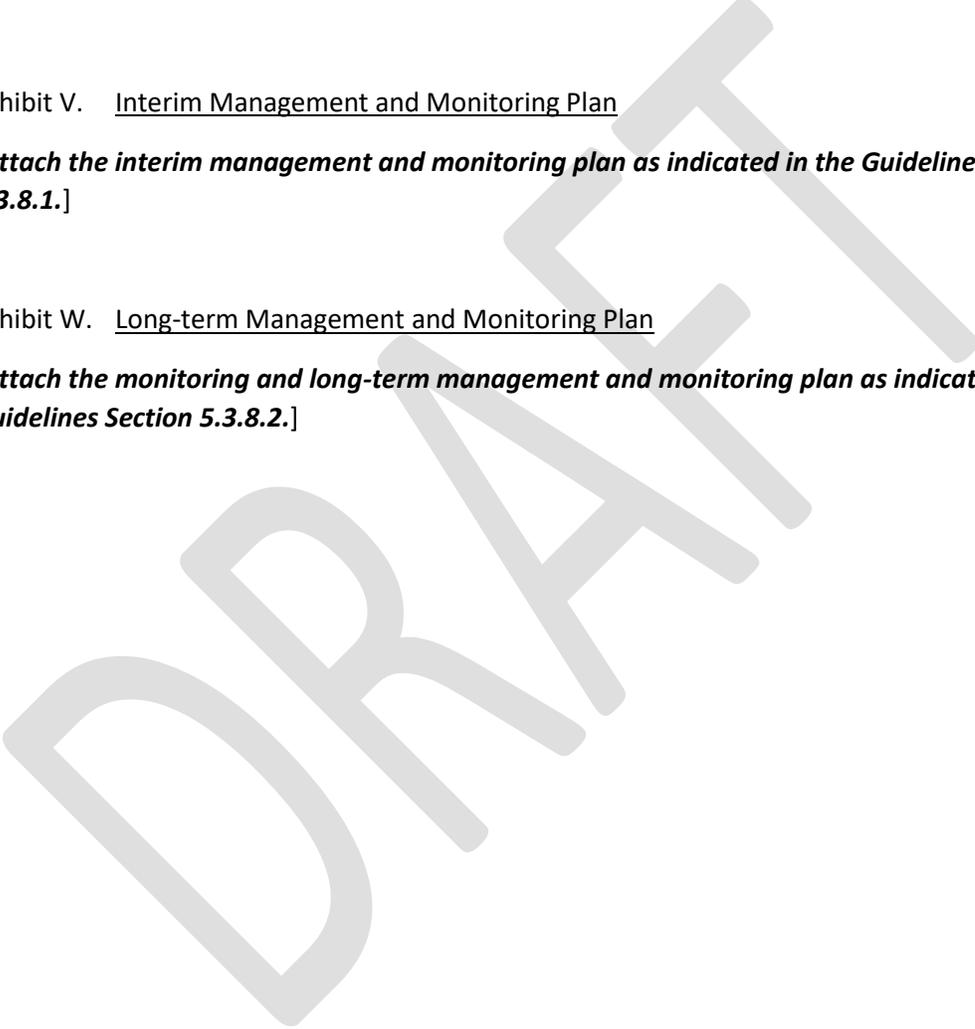
[Attach the template credit ledger as indicated in the Guidelines Section 5.3.7.4.]

Exhibit V. Interim Management and Monitoring Plan

[Attach the interim management and monitoring plan as indicated in the Guidelines Section 5.3.8.1.]

Exhibit W. Long-term Management and Monitoring Plan

[Attach the monitoring and long-term management and monitoring plan as indicated in the Guidelines Section 5.3.8.2.]



1 **Appendix B – MCA Concept Checklist**
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1 **Appendix B**

2 **Optional Checklist**

3 **Mitigation Credit Agreement (MCA) Concept**

4 *August 2019*

5 The MCA Sponsor may elect to submit an MCA Concept to CDFW for comment and
6 consultation. It is intended to identify potential issues early so that the MCA Sponsor may
7 attempt to address those issues prior to the formal Draft MCA review process. Please provide the
8 following information and a copy of this checklist with the submittal of a Concept MCA:

9 Concept MCA fees

10 Concept MCA Checklist

11 **Concept MCA Document** (as both Word and PDF electronic files) **which includes the**
12 **following:**

13 Proposed MCA Name – See Guidelines Section 5.3.1

14 Supporting Regional Conservation Investment Strategy – See Guidelines Section 5.3.2

15 Purpose of the MCA – Describe the purpose of the MCA and the types of impacts that
16 the credits are intended to compensate for, including the regulatory basis (e.g. California
17 Endangered Species Act). Also describe any other MCA objectives, including how the
18 proposed MCA site would contribute to connectivity and ecosystem function. See
19 Guidelines Section Section 5.3.3, and MCA Template Section 3.

20 Property Ownership Description - Describe the proposed property ownership of the MCA
21 site – see Guidelines Section 5.3.4.1

22 Contact Information – include the name and contact information for MCA sponsor, MCA
23 site property owner, MCA site manager, conservation easement grantee, endowment
24 holder, any contractors or consultants – see Guidelines Section 5.3.4.2

25 Location Information – Describe the MCA Site location and include maps and
26 photographs as indicated in the Guidelines, Section 5.3.4.4 (a-e)

27 Service Area – Include a description and map of the proposed MCA Site service area as
28 indicated in the Guidelines, Section 5.3.4.5

- 1 Land Use Consistency –
- 2 • Has the proposed MCA Site been used as mitigation for a previous project(s)?
- 3 • Has the proposed MCA Site already been designated or dedicated for passive park or
- 4 open space use?
- 5 • Has the proposed MCA Site been designated for purposes which are inconsistent with
- 6 habitat preservation?
- 7 • Is the proposed MCA Site located within an approved Natural Community
- 8 Conservation Plan and, if so, has the Implementing Entity indicated their willingness
- 9 to approve of the MCA in writing?

10

11 Public Funding – Include a description of any public funding received for acquisition or

12 restoration of, or other purposes related to, the MCA Site, as indicated in the Guidelines,

13 Section 5.3.5.2

14

15 Site Conditions - Include a BRIEF description of: site conditions; habitats and species

16 known or potentially present; photos of the proposed MCA Site; description and acreage

17 of existing wetlands and other waters of the U.S. present on the proposed MCA Site;

18 hydrology; methods for implementing the conservation or habitat enhancement actions

19 for the creation of credits; and site history, including past and present land uses,

20 surrounding land uses and zoning along with the anticipated future development in the

21 area;

22 Provide details including ownership information on interest of surface and sub-surface

23 mineral rights, if applicable.

24 Following CDFW review of this material, additional information may be requested for

25 evaluating the proposal.

1

2 **Appendix C – Draft MCA Checklist**

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1 **Appendix C**

2 **Checklist**

3 **Draft Mitigation Credit Agreement (MCA)**

4 *August 2019*

5 The following are the submission requirements for a Draft Mitigation Credit Agreement (MCA).
6 The Draft MCA should include the most recent version of all templates and necessary exhibits
7 listed below.

- 8 Draft MCA fees
- 9 Draft MCA Checklist
- 10 Geospatial Data (see Guidelines Section 5.5.2)
- 11 Letter from public agency landowner, if applicable (see Guidelines Section 5.2.4(e))
- 12 Letter from proposed endowment holder certifying to CDFW that they meet requirements
13 under Government Code Section 65968, subdivision (e)(1)-(5).
- 14 **Draft MCA Template** (as both Word and PDF electronic files), with any edits in track
15 changes

16 **Draft MCA Exhibits:**

- 17 Exhibit A – Location Information
- 18 Exhibit B – Service Area
- 19 Exhibit C – NCCP Approval (if applicable)
- 20 Exhibit D – Natural Resources Evaluation
- 21 Exhibit E – Cultural Resources Evaluation
- 22 Exhibit F – Phase I Environmental Site Assessment
- 23 Exhibit G – Preliminary Title Report
- 24 Exhibit H – Property Assessment and Warranty
- 25 Exhibit I – Real Estate Instrument
- 26 Exhibit J – Title Insurance

- 1 Exhibit K – Permits
- 2 Exhibit L – Development Plan
- 3 Exhibit M – Security
- 4 Exhibit N – Endowment Fund Analysis
- 5 Exhibit O – Endowment Fund Schedule
- 6 Exhibit P – Credit Evaluation
- 7 Exhibit Q – Credit Table
- 8 Exhibit R – Credit Release Schedule
- 9 Exhibit S – Transfer and Use of Credits
- 10 Exhibit T – Bill of Sale
- 11 Exhibit U – Credit Ledger
- 12 Exhibit V – Interim Management and Monitoring Plan
- 13 Exhibit W – Long-term Management and Monitoring Plan

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