

MEMORANDUM OF UNDERSTANDING
AND
IMPLEMENTATION AGREEMENT
FOR THE
CAJON CREEK
HABITAT CONSERVATION MANAGEMENT AREA

July 26, 1996

I. Introduction

This MEMORANDUM OF UNDERSTANDING AND IMPLEMENTATION AGREEMENT ("Agreement") for the CAJON CREEK HABITAT CONSERVATION MANAGEMENT AREA is entered into effective as of the ____ day of _____, 1996, by and among the CALMAT CO., a Delaware corporation ("CalMat"), the UNITED STATES ARMY CORPS OF ENGINEERS, a federal agency within the Department of Defense ("Corps"), the UNITED STATES FISH AND WILDLIFE SERVICE, a federal agency within the Department of Interior ("Service"), and the CALIFORNIA DEPARTMENT OF FISH AND GAME, a state agency within the Resources Agency ("Department").

II. Recitals

A. CalMat is the fee owner of approximately 712 acres at the confluence of Lytle Creek and Cajon Creek at its San Bernardino Mining Facility, San Bernardino County, California. Immediately adjacent to this site, CalMat leases 197 acres from BBC Properties until the Year 2009. CalMat's and BBC Properties' lands are generally depicted on Exhibit 1 and CalMat's lands are legally described in Exhibit 2.

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A. CalMat is the fee owner of approximately 712 acres at the confluence of Lytle Creek and Cajon Creek at its San Bernardino Mining Facility, San Bernardino County, California. Immediately adjacent to this site, CalMat leases 197 acres from BBC Properties until the Year 2009. CalMat's and BBC Properties' lands are generally depicted on Exhibit 1 and CalMat's lands are legally described in Exhibit 2.

B. CalMat has received approval of the Mining and Reclamation Plan (No. 90M-011) from the County of San Bernardino and a Streambed Alteration Agreement (No. 5-259-91) pursuant to Section 1603 of the Fish and Game Code from the Department to mine and reclaim lands at its San Bernardino Mining Facility.

C. In 1991, CalMat filed an application for a permit pursuant to Section 404 of the Clean Water Act with the Corps. The permit application sought to implement the Mining and Reclamation Plan by requesting approval to mine and to reclaim mining lands using native vegetation at the San Bernardino Mining Facility. The Corps' Public Notice for this permit application was issued as No. 91-248-KC-ATF.

D. CalMat is the fee owner of approximately 1,241 acres at the CalMat Cajon Creek Project site, City of San Bernardino, California. This land is also generally depicted on Exhibit 1 and legally described in Exhibit 3.

E. The City of San Bernardino has approved Specific Plan No. 90-01 allowing CalMat to develop 575 acres of the Cajon Creek Property outside of the 100-year floodplain for light and heavy industry, sand and gravel extraction, aggregate processing and reclamation and to use 666 acres within the 100-year floodplain for sand and gravel extraction, reclamation and open space habitat conservation.

F. The habitat within the 100-year floodplain, as shown in Exhibit 1, on that portion of CalMat's property at its San Bernardino Mining Facility and Cajon Creek Project areas are generally described as Riversidian alluvial fan sage scrub habitat. Riversidian alluvial fan sage scrub habitat is considered by the Corps, Service and Department to be a rare habitat type.

G. Twenty-four Sensitive Species are associated with the Riversidian alluvial fan sage scrub habitat and may be within the boundaries of the San Bernardino Mining Facility and Cajon Creek Project areas. These

species include Listed threatened and endangered species and candidate species for listing as threatened or endangered. The twenty-four species include three Listed species: the Santa Ana River woolly star (*Eriastrum densifolium* ssp. *sanctorum*), slender-horned spineflower (*Dodecahema leptoceras*), and Coastal California gnatcatcher (*Polioptila californica californica*); and twenty-one candidate species: Parry's spineflower (*Chorizanthe parryi* var. *parryi*), California red-legged frog (*Rana aurora draytonii*), coastal western whiptail (*Cnemidophorus tigris multiscutatus*), orange-throated whiptail (*Cnemidophorus hyperythrus beldingi*), San Diego coast horned lizard (*Phrynosoma coronatum blainvillei*), coast patch-nosed snake (*Salvadora hexalepis virgultea*), coastal rosy boa (*Lichanura trivirgata roseofusca*), San Bernardino ringneck snake (*Diadophis punctatus modestus*), coastal cactus wren (*Campylorhynchus brunneicapillus couesi*), yellow warbler (*Dendroica petechia brewsteri*), loggerhead shrike (*Lanius ludovicianus*), California horned lark (*Eremophila alpestris actia*), Bell's sage sparrow (*Amphispiza belli belli*), ferruginous hawk (*Buteo regalis*), San Bernardino Merriam's kangaroo rat (*Dipodomys merriami parvus*), Los Angeles pocket mouse (*Perognathus longimembris brevinasus*), northwestern San Diego pocket mouse (*Chaetodipus fallax fallax*), southern grasshopper mouse (*Onychomys torridus ramona*), San Diego desert woodrat (*Neotoma lepida intermedia*), San Diego black-tailed jackrabbit (*Lepus californicus bennettii*) and spotted bat (*Eurdeuma maculatum*).

H. In connection with activities at the San Bernardino Mining Facility and development of the Cajon Creek Project, CalMat may modify the habitat of and/or take individuals of these twenty-four Sensitive Species, as defined by the Endangered Species Act and the California Endangered Species Act and/or Native Plant Protection Act.

I. Two listed species (i.e., the state and federally listed endangered slender-horned spineflower and federally listed threatened coastal California gnatcatcher) are not present on the San Bernardino and/or Cajon Creek Properties. A controversy exists as to whether or not a third species, the state and federally listed endangered Santa Ana River woolly star (*Eriastrum densifolium* ssp. *sanctorum*), is present. CalMat was informed by its consultants

that the woolly star plant on the San Bernardino and/or Cajon Creek Properties is the common chaparral woolly star (*E.d. elongatum*), a hybrid, or possibly a new taxa. The Corps, Department and Service assert that the plants are within the range of ecological, morphological and genetic variation of the listed endangered woolly star and the plant is the endangered Santa Ana River woolly star. For the purposes of planning for these Projects and for this Agreement, the Parties acknowledge the controversy exists, but nevertheless agree that the woolly star plants found on the San Bernardino and/or Cajon Creek Properties are to be treated as the endangered Santa Ana River woolly star.

J. Consequently, the Corps entered into a Section 7 consultation with the Service, pursuant to the ESA, to address the impacts of the mining and reclamation activities at the San Bernardino Project and industrial development, mining and reclamation activities at the Cajon Creek Property on the Riversidian alluvial fan sage scrub as described in the Biological Assessment. At the same time, CalMat entered into discussions with the Department in developing a Memorandum of Understanding pursuant to the California Endangered Species Act. During the consultation process, the Corps, Service, and the Department were involved in developing a series of special conditions described in the Biological Opinion, implemented by this Agreement and the CESA MOU, that protects both the twenty-four listed and unlisted species that may be present and allows for some mining and reclamation activities as well as development to take place. The consultation was based on the agreement between the Parties that the unidentified woolly star would be treated as the endangered Santa Ana River woolly star.

K. The plan described in the Biological Opinion and the Memorandum of Understanding pursuant to the California Endangered Species Act provides for long-term protection of the Riversidian alluvial fan sage scrub habitat by providing protection for all of the twenty-four species potentially present on the San Bernardino Mining Facility and the Cajon Creek Property, even though only fifteen Sensitive Species were observed during a series of extensive biological surveys of these areas, while providing assurance to CalMat regarding the extent of mitigation required for impacts to the Sensitive Species.

L. Based on a complete review of impacts to Sensitive Species associated with the projects (San Bernardino Project and Cajon Creek Project) including the Section 7 consultation, the Corps issued Corps Permit No. 91-00248-AJS for the mining and reclamation project for the San Bernardino Project and for the Cajon Creek Project.

M. The Biological Opinion, Corps Permit and Memorandum of Understanding pursuant to the California Endangered Species Act (CESA MOU) provide that a conservation easement will be used to establish the 1,378-acre Habitat Conservation Management Area. CalMat will convey a permanent conservation easement, in favor of the Department of Fish and Game, on over 337 acres of the San Bernardino Property to compensate for the impacts of the San Bernardino Project and will convey a permanent conservation easement, in favor of the Department of Fish and Game, to over 431 acres of the Cajon Creek Property to compensate for the impacts of the Cajon Creek Project on biological resources, especially Sensitive Species. The remaining 610 acres of land, or 610 Conservation Credits, in the Habitat Conservation Management Area will be placed in a Conservation Bank that will be available for use in the future as mitigation by CalMat or by others pursuant to this Agreement (See Section III.H.). The lands in the Conservation Bank will be covered by a temporary conservation easement, in favor of the Department of Fish and Game, until used and transferred to the Management Entity. CalMat may by quitclaim deed transfer these properties at any time to an appropriate public or private land Management Entity.

N. In addition, the Biological Opinion and Corps Permit require that a Habitat Enhancement and Management Plan be developed to enhance and manage the habitat for Sensitive Species within the boundaries of the Habitat Conservation Management Area. CalMat has prepared such a Habitat Enhancement and Management Plan to be consistent with the Biological Opinion, the Corps Permit, and the requirements of Section 2081 of the California Endangered Species Act.

O. By entering into this Agreement, the Wildlife Agencies have found that CalMat has adequately mitigated, pursuant to the California Environmental Quality Act, the California Endangered Species Act, and the Native Plant Protection Act, all biological impacts of the Cajon Creek Project on the twenty-four Sensitive Species as specified in the City of San Bernardino's certified Environmental Impact Report (SCH No: 90020908). Approval of that Project required that additional biological surveys for three selected Sensitive Species, the slender-horned spineflower, California gnatcatcher, and the Los Angeles pocket mouse, be carried out prior to the initiation of mining. If individuals of any of these three species are found, such a finding is to be considered new information pursuant to the California Environmental Quality Act. Adequate mitigation for impacts to a newly observed species from the Cajon Creek Project would be for CalMat to enter into a Section 7 consultation with the Service pursuant to the Endangered Species Act and/or a CESA MOU with the Department pursuant to California Endangered Species Act and the Native Plant Protection Act. Because the Biological Opinion and this Agreement addresses the impacts of the Cajon Creek Project on the three species for which the City of San Bernardino has requested additional surveys, as well as 21 other Sensitive Species, and assumes that individuals of all twenty-four species will be impacted by the Cajon Creek Project, the Wildlife Agencies have found that CalMat already has fulfilled adequately its obligation to mitigate for all biological impacts of the Cajon Creek Project on the Sensitive Species of concern to the City of San Bernardino.

P. The Corps of Engineers is entering this Agreement with the limited purpose of ensuring compliance with the special conditions to Corps Permit No. 91-00248-AJS. More specifically, this Conservation Bank is not being established as a wetlands mitigation bank pursuant to the "Federal Guidance for Establishment, Use and Operation of Mitigation Banks" recently issued by the U.S. Army Corps of Engineers, the Environmental Protection Agency, the U.S. Natural Resources Conservation Service, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (Federal Register, Vol. 60, No. 228 at page 58605, published on November 28, 1995).

Q. The County of San Bernardino is currently undertaking a major planning effort to address County-wide impacts to Sensitive Species. This planning effort is part of the Natural Communities Conservation Planning program being undertaken in cooperation with both the Department and the Service to protect Sensitive Species. As part of this planning effort, lands appropriate to mitigate any future impacts to these Sensitive Species will need to be identified. CalMat may request, with the support of the Service and Department, that the County incorporate this Agreement, which identifies 610 acres of land as suitable mitigation lands for future impacts to Sensitive Species, into suitable documents and agreements drafted to implement the NCCP planning process.

R. Furthermore, CalMat, the Corps, the Service and the Department recognize that the portion of Cajon Creek being placed in the Habitat Conservation Management Area is an active stream with the capacity to pass flood flows and as such the San Bernardino County Flood Control may request to conduct activities within the 100-year floodplain to maintain the creek's capacity to carry floodflows and that other entities and organizations have easements in or adjacent to the Habitat Conservation Management Area to conduct lawful activities.

S. CalMat, the Corps, the Service and the Department wish to enter into this Agreement for the purpose of establishing a framework by which the goals of CalMat, the Corps and the Wildlife Agencies with respect to the establishment and use of the Habitat Conservation Management Area can be accomplished and impacts to any Sensitive Species currently or hereafter listed that may be present on the San Bernardino Mining Facility or Cajon Creek Property can be fully mitigated.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and undertakings set forth herein and of other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

III. Agreement

A. Definitions

The following terms used in this Agreement are defined as follows:

1. "Agreement" means this document entitled "MEMORANDUM OF UNDERSTANDING AND IMPLEMENTATION AGREEMENT FOR THE CAJON CREEK HABITAT CONSERVATION MANAGEMENT AREA" and all Exhibits attached hereto.

2. "Biological Assessment" has the meaning set forth in 50 CFR §402.12 and, specifically for this Agreement, the Biological Assessment for the San Bernardino and Cajon Creek Projects entitled "Biological Assessment for CalMat Company's San Bernardino Properties - the San Bernardino Facility the Cajon Creek Properties San Bernardino, California" prepared by Sharon H. Lockhart and the Chambers Group dated November 1994. The Biological Assessment is attached as Exhibit 4 and incorporated herein by reference.

3. "Biological Opinion" has the meaning set forth in 50 CFR §402.02 and, specifically for this Agreement, Biological Opinion No. 1-6-94-F-51 issued by the Service on August 21, 1995 to address the impacts of CalMat's San Bernardino and Cajon Creek Projects on twenty-four Sensitive Species. The Biological Opinion is attached as Exhibit 5 and incorporated herein by reference.

4. "Cajon Creek Project" means the combined light and heavy industrial, aggregate extraction, aggregate processing and reclamation project to be developed on 575 acres outside of the 100-year floodplain at the Cajon Creek Property.

5. "Cajon Creek Property" means the 1,241 acres of CalMat's fee owned lands immediately north and south of Institution Road. This property is within the City of San Bernardino. The site includes the 575-acre area outside of the 100-year floodplain to be developed into an industrial and mining complex

and the 666-acre area within the 100-year floodplain to be placed in the Habitat Conservation Management Area. It is legally described in Exhibit 3.

6. "California Endangered Species Act" or "CESA" means the California Endangered Species Act (California Fish and Game Code §§ 2051 et seq.) and any and all regulations promulgated in connection with that Act (including, without limitation 14 California Code of Regulations §§ 40, 41, 243, 670.1 and 670.5).

7. "CESA MOU" or "Section 2081 MOU" means either (i) a memorandum of understanding entered entered into by the Department under Section 2081 and which is consistent with the CESA authorizing Take of a Sensitive Species listed under such Act pursuant to Management Measures or (ii) permission or authorization under any other state law or regulation, including, without limitation, Section 2835 of the Fish and Game Code, that permits the Take of a Sensitive Species listed under the CESA or provided with protection under new or revised State laws substantially similar in effect to the protection provided under such Act.

8. "Candidate" means a species of plant, fish and/or wildlife formally noticed as being under review for listing as threatened or endangered by either the Service or Department.

9. "Conservation Bank" means the 610 acres of lands located within the boundaries of the Habitat Conservation Management Area that may be used by CalMat or by others for future mitigation requirements. Of these 610 acres, approximately 337 acres are within the boundaries of the San Bernardino Property and approximately 235 acres are within the boundaries of the Cajon Creek Property.

10. "Conservation Easement" means easements placed on the Habitat Conservation Management Area by CalMat for the benefit of the people of the State of California to protect the habitat values within the boundaries of such Area. These easements may be either permanent or temporary. Copies of

the draft permanent and temporary Conservation Easements are provided as Exhibit 6 and incorporated herein by reference.

11. "Conservation Lands" means the 768 acres of land located within the boundaries of the 1,378-acre Habitat Conservation Management Areas which CalMat will dedicate by quitclaim deed at the termination of this Agreement to a Management Entity to offset the impacts of its San Bernardino Project and Cajon Creek Project on Sensitive Species. Of these 768 acres, approximately 337 acres are within the boundaries of the San Bernardino Property and approximately 431 acres are within the boundaries of the Cajon Creek Property.

12. "Corps Permit" means a permit issued by the Corps pursuant to Section 404 of the Clean Water Act (33 U.S.C. §1344) and any and all regulations promulgated in connection with that Section of the Act (33 CFR 320 - 330) and, specifically for this Agreement, also means Corps Permit No. 91-00248-AJS issued by the Corps-Los Angeles District on September 22, 1995 to CalMat for the San Bernardino and Cajon Creek Projects. Corps Permit No. 91-00248-AJS is attached hereto as Exhibit 7 and incorporated herein by reference.

13. "Effective Date" means the date that this Agreement is executed by all of the Parties.

14. "Endangered Species Act" or "ESA" means the federal Endangered Species Act (16 U.S.C. §§ 1531 et seq.) and the regulations promulgated in connection with that Act including, without limitation, 50 C.F.R. Parts 13, 17, 402 and 424.

15. "Habitat Conservation Credit" means a single (1) unit of habitat mitigation which shall be equal to one acre of land within the boundaries of the Conservation Bank.

16. "Habitat Conservation Management Area" means the 1,378 acres of land within the 100-year floodplain at the San Bernardino Property and

Cajon Creek Property that will be placed in a Conservation Easement. This area consists of the Conservation Lands and Conservation Bank.

17. "Habitat Enhancement and Management Plan", "HEMP", or "Plan" describes the native plant revegetation, habitat enhancement and habitat Management Measures to take place within the Habitat Conservation Management Area prepared pursuant to the Mining and Reclamation Plan, the Biological Opinion, the Corps Permit, the Section 1603 Agreement, and Section 2081 of the Fish and Game Code. The Habitat Enhancement and Management Plan is attached as Exhibit 8 and incorporated herein by reference.

18. "Listed" means, with respect to the Endangered Species Act, listed as either threatened or endangered and, with respect to the California Endangered Species Act, listed thereunder as threatened or endangered or as a candidate for such listing.

19. "Management Entity" means a public or private entity or entities that will manage the Habitat Conservation Management Area subsequent to CalMat.

20. "Management Measure(s)" means any action deemed necessary by the Wildlife Agencies to sustain a Sensitive Species within a natural ecological system. Such measures include legal, biological and administrative measures.

21. "Map" means the map of the Cajon Creek Project and San Bernardino Project areas provided as Exhibit 1.

22. "Mining and Reclamation Plan" means the Mining and Reclamation Plan No. 90M-011 approved by the County of San Bernardino on July 10, 1990. The Mining and Reclamation Plan is attached as Exhibit 9 and incorporated herein by reference.

23. "Mitigation" has the same meaning as set forth in the California Environmental Quality Act (14 California Code of Regulations §15370) and in the National Environmental Policy Act (40 C.F.R. §1508.20), and includes, among other things, the designation or reservation of land as open space or funding to provide for the conservation of Sensitive Species.

24. "Native Plant Protection Act" or "NPPA" means the California Native Plant Protection Act (California Fish and Game Code §§ 1900 et seq.) and any and all regulations promulgated in connection with the Act.

25. "Natural Community Conservation Planning" or "NCCP" means a natural community conservation program or plan undertaken or prepared pursuant to the Natural Community Conservation Planning Act (Section 2800 et seq. of the Fish and Game Code).

26. "Other Lands" means other lands having important habitat values and/or habitat linkages that CalMat may place, or caused to be placed, into the Conservation Bank.

27. "Parties" or "Party" mean CalMat, the Corps, the Service and the Department, or one of the entities that have executed this Agreement.

28. "Public Agencies" or "Public Agency" means the Service, the Department and the Corps or any one of these agencies, respectively.

29. "San Bernardino Mining Facility" or "San Bernardino Project" means CalMat's aggregate mining (i.e., sand and gravel extraction), reclamation (i.e., native plant revegetation) and aggregate processing project at the San Bernardino Property.

30. "San Bernardino Property" means the 1,028 acres owned and leased by CalMat immediately adjacent to Highland Avenue. CalMat owns approximately 712 acres and leases a total of 316 acres from BBC Properties. Approximately 909 acres of this site are located within the boundaries of the

100-year flood plain. Of these, 712 acres are owned by CalMat and 197 acres are leased lands. This is the site of the San Bernardino Mining Facility.

31. "Section 7" means Section 7 of the Endangered Species Act .

32. "Section 1603 Agreement" or Streambed Alteration Agreement" means a Streambed Alteration Agreement issued by the Department pursuant to Section 1603 of the Fish and Game Code and more specifically the Section 1603 Agreement No. 5-259-91 issued by the Department to CalMat. The Section 1603 Agreement is attached as Exhibit 10 and incorporated herein by reference.

33. "Section 2081" means Section 2081 of the California Fish and Game Code and any rules, regulations or guidelines promulgated in connection with such Section.

34. "Sensitive Species" means the twenty-four Sensitive Species identified in Exhibit 11 that could be present on the San Bernardino and/or Cajon Creek Properties and such other species characteristic of Riversidian alluvial fan sage scrub habitat that inhabit the San Bernardino and Cajon Creek Properties that may be added to the list of Sensitive Species by the Wildlife Agencies.

35. "Take" and "Taking" has the meaning set forth in Section 2080 of the CESA, Section 1908 of the NPPA, and 16 U.S.C. §1562(19) of the ESA and any rule, regulation, or guideline promulgated in connection with these statutory provisions.

36. "Term", when used to refer to a period of time, means that period during which, regardless of the "Stated Term" set forth in Article III.B.1. hereof, this Agreement is in effect.

37. "Terraces 1, 2F, 3, and 3A" are designations of subareas within the boundaries of the San Bernardino Property as described in the report entitled "Sensitive Biological Resources Assessment on the CalMat San

Bernardino and Cajon Creek Properties", prepared by the Chambers Groups and dated July 1994. The boundaries of Terraces 1, 2F, 3, and 3A are delimited on Exhibit 1.

38. "Unforeseen Circumstances" are changes in existing or anticipated biological conditions that (i) adversely effect the status of a Sensitive Species in the Habitat Conservation Management Area and (ii) were reasonably unforeseen by the Public Agencies as of the Effective Date of this Agreement.

39. "Wildlife" means a species or subspecies of insects, fish, amphibians, reptiles, birds, mammals, and/or plants.

40. "Wildlife Agency" or "Wildlife Agencies" means, respectively, either or both the Service and the Department, as the context requires.

41. "Winter Pit" means a partially excavated area outside of the 100-year floodplain and adjacent to the aggregate processing plant on the San Bernardino Property as shown on Exhibit 1.

42. "100-year floodplain" means that area of the floodplain depicted as such on Exhibit 1. Areas within the boundaries of the 100-year floodplain still have suitable physical and flooding conditions to maintain Riversidian alluvial fan sage scrub habitat.

B. Term of the Agreement

1. Stated Term

This Agreement shall become effective as of the Effective Date and shall remain in full force and effect during the period of time commencing on the Effective Date and terminating ten (10) years from the Effective Date (the "Stated Term"), subject to earlier termination pursuant to the provisions of this Agreement.

2. Extension of the Agreement

The Stated Term of this Agreement may be extended at the sole discretion of CalMat for an additional period or periods of time. In no case shall CalMat extend the term of this Agreement beyond the year 2025.

C. Description of Lands to be Placed in the Habitat Conservation Management Area

The Habitat Conservation Management Area shall consist of approximately 666 acres of CalMat's fee-owned property within the 100-year floodplain of the Cajon Creek Property and on approximately 712 acres of CalMat's fee-owned property within the 100-year floodplain of the San Bernardino Property. The Habitat Conservation Management Area shall be composed of the Conservation Lands and the Conservation Bank.

1. The Conservation Lands

The Conservation Lands are those lands that are required by the Public Agencies as mitigation for impacts to Sensitive Species associated with the Cajon Creek Project and the San Bernardino Project. The total acres of Conservation Lands is approximately 768 acres. The Conservation Lands include approximately 431 acres of land within the 100-year floodplain of the Cajon Creek Property and approximately 337 acres of land within the 100-year floodplain of the San Bernardino Property.

2. The Conservation Bank

The Conservation Bank are those lands within the Habitat Conservation Management Area that are not currently required as mitigation for any project. Rather, these lands may be used by CalMat or by others as mitigation for future projects as provided for in Section III.H. of this Agreement. The total acres of land in the Conservation Bank is approximately 610 acres. This includes approximately 235 acres of land within the 100-year floodplain of the Cajon Creek Property and approximately 375 acres of land within the 100-year floodplain of the San Bernardino Property.

3. Other Lands

CalMat, at its sole and absolute discretion, may place or caused to be placed, other lands found by the Wildlife Agencies to have important habitat values and/or habitat linkages into the Conservation Bank. These Other Lands, which may be owned either by CalMat or by others, must be located within the boundary of areas tributary to Cajon Creek. All Other Lands placed in the Conservation Bank shall be subject to the terms and conditions of this Agreement, including, but not limited to, the requirement that a temporary conservation easement be transferred to the Department. Before accepting Other Lands owned by other parties into the Conservation Bank, CalMat is entitled to charge such other parties all costs associated with the habitat management activities described in this Agreement and/or the Habitat Management and Enhancement Plan, including monies expended on long-term management, applicable to such Other Lands.

D. Creation of the Habitat Conservation Management Area, Conservation Lands, and Conservation Bank

1. Placement of Conservation Easements

Within 120 days of execution of this Agreement, CalMat shall convey Conservation Easements over the lands to be placed in the Habitat Conservation Management Area to the Department. A permanent Conservation Easement shall be placed on the Conservation Lands; a temporary Conservation Easement for the Term of the Agreement shall be placed on the Conservation Bank. The lands subject to the Conservation Easements are shown in Exhibit 1. The form of the Conservation Easements is provided for in Exhibit 6.

2. Transfer of Fee Title

Upon, or at any time prior to, termination of this Agreement and as a pre-condition to termination of this Agreement, CalMat shall transfer by quitclaim deed to a Wildlife Agency or other Management Entity fee title to the approximately 768 acres of Conservation Lands and to all other lands within the Conservation Bank used as mitigation by CalMat or third parties pursuant to

Section III.I. of this Agreement. The fee title to all lands in the Conservation Bank not required to be transferred to a Wildlife Agency or other Management Entity will be retained by CalMat or any other party that placed Other Lands within the Conservation Bank.

3. Liability of Land Owner

CalMat, or any other party that places Other Lands within the Conservation Bank, shall retain whatever liability it possesses as an owner of land until such time as the land is transferred to a Wildlife Agency or such other Management Entity. When CalMat or such other party transfers fee title to the land to a Wildlife Agency or such other Management Entity, CalMat or such other party shall be released from all liability or responsibility with respect thereto occurring on or after the date of transfer.

E. Description of Allowable Uses of Lands within the Habitat Conservation Management Area

1. Cajon Creek Property

a. CalMat or its assignee retains the right to construct an equestrian and pedestrian trail system, as required by the City of San Bernardino in the approval of the Cajon Creek Project, subject to Section III.G.1.f. of this Agreement, below. The trail system will be designed to minimize disturbances to existing habitat. It shall be located in the wash and, where practicable, along existing trails and roads. A map showing the location of the trail shall be provided to the Wildlife Agencies when the trail system is designed. The Public Agencies have unlimited use of the trail system once it is constructed.

b. CalMat retains the right to construct a temporary haul road between the Cajon Creek and San Bernardino Properties subject to Section III.G.1.g. of this Agreement, below. Such road shall be located, as feasible, within portions of the active wash or disturbed areas on the terraces. Location of the temporary haul road is shown on Exhibit 1, incorporated herein by reference, subject to a field check of the alignment. In addition, the site of the

haul road shall be reclaimed by CalMat when no longer needed for operation or mining. Reclamation of the haul road shall be consistent with the Habitat Management and Enhancement Plan provided for in Exhibit 8.

2. San Bernardino Property

a. CalMat retains the right to mine all of Terrace 2F (approximately 28 acres) and the remainder of Terrace 3A (approximately 30 acres) and the adjacent intervening and downstream mining area as shown on Exhibit 1 and provided for by the Mining and Reclamation Plan, the Section 1603 Agreement and the Corps Permit. Mining activities shall include any and all activities needed to complete the mining of Terrace 2F and 3A, including, but are not limited to, collection of aggregates, construction of haul roads and turning areas, creation of temporary storage areas, and stockpiling of materials.

b. CalMat retains the right to reclaim in phases approximately 432 acres of lands within the 100-year floodplain pursuant to the approved Mining and Reclamation Plan, the Section 1603 Agreement, and the Corps Permit as described in the Habitat Management and Enhancement Plan. The reclamation project includes lands both within and outside of the boundaries of the Habitat Conservation Management Area. Within the boundaries of such Area, the reclamation project includes Terraces 2F and 3A. Reclamation activities shall include all activities required to implement the Habitat Management and Enhancement Plan, including, but not limited to, the construction of roads, grading of slopes, replacement of topsoil, planting, watering, weeding, and monitoring.

c. CalMat or its assignee retains the right to construct an equestrian and pedestrian trail system, as required by the City of San Bernardino in the approval of the Cajon Creek Project, subject to Section III.G.1.f. of this Agreement, below. The trail system will be designed to minimize disturbances to existing habitat. It shall be located in the wash and, where practicable, along existing trails and roads. A map showing the location of the trail shall be provided to the Wildlife Agencies when the trail system is designed. The Public Agencies have unlimited use of the trail system once it is constructed.

d. CalMat retains the right to construct a temporary haul road between the Cajon Creek and San Bernardino Properties subject to Section III.G.1.g. of this Agreement, below. Such road shall be located, as feasible, within portions of the active wash or disturbed areas on the terrace. Location of the temporary haul is shown on Exhibit 1, incorporated herein by reference, subject to a field check of the alignment. In addition, the site of the haul road shall be reclaimed by CalMat when no longer needed for operation or mining. Reclamation of the haul road shall be consistent with the Habitat Management and Enhancement Plan provided for in Exhibit 8.

e. CalMat retains the right to carry out all other habitat management responsibilities described in the Habitat Enhancement and Management Plan.

f. CalMat or its assignee retains the right to mine and to reclaim, using native vegetation, the remainder of Terrace 3 should such activities be necessary to implement any Cable Creek drainage improvements proposed by the County of San Bernardino. Prior to initiation of mining and reclamation, all approvals, permits, agreements and/or licenses that may be required by the Public Agencies shall be sought and obtained.

F. Description of Allowable Uses of Lands for Lands outside of the Habitat Conservation Management Area

1. Cajon Creek Property

CalMat shall be allowed to develop, as provided by the Cajon Creek Specific Plan approved by the City of San Bernardino, all lands outside of the 100-year floodplain. This area is approximately 575 acres and is shown on Exhibit 1.

2. San Bernardino Property

a. Lands outside of the 100-year floodplain may be used for aggregate processing and/or other development.

b. BBC Properties (i.e., lands CalMat leases until 2009).

1. The lands leased from BBC Properties may be used for mining and reclamation as provided for in the Mining and Reclamation Plan, the Section 1603 Agreement and the Corps Permit. In particular, CalMat shall be allowed to mine and reclaim Terrace 1 and other adjacent mining areas and the Winter Pit area as shown in Exhibit 1.

2. CalMat shall be allowed to reclaim in phases lands within the 100-year floodplain pursuant to the Mining and Reclamation Plan, the Section 1603 Agreement and the Corps Permit as described in the Habitat Management and Enhancement Plan. Reclamation activities shall include only those activities required to implement the Habitat Management and Enhancement Plan, such as, but not limited to, the construction of roads, grading of slopes, replacement of topsoil, planting, watering, weeding and monitoring.

3. If needed, CalMat shall be allowed to construct a temporary haul road between the Cajon Creek and San Bernardino Properties by routing it through the BBC Properties subject to Section III.G.1.g. of this Agreement, below. Such road shall be located, as feasible, within portions of the active wash or disturbed areas on the terraces. Location of the temporary haul road is shown on Exhibit 1. In addition, the site of the haul road shall be reclaimed by CalMat when no longer needed for operation or mining. Reclamation of the haul road shall be consistent with the Habitat Management and Enhancement Plan provided for in Exhibit 8.

G. Responsibilities of the Parties

1. Uses and Protective Measures

During the Term of this Agreement or until fee title is transferred by quitclaim deed pursuant to Section III.D.2. of this Agreement, CalMat shall be responsible for assuring that all of the habitat management activities described in the Habitat

Enhancement and Management Plan are carried out consistent with this Agreement.

a. Mining

CalMat shall be allowed to mine lands within the Habitat Conservation Management Area as provided for in the Mining and Reclamation Plan, the Section 1603 Agreement and the Corps Permit and as shown in Exhibit 1.

b. Revegetation

CalMat shall be required to revegetate, using native plant vegetation collected from on-site, all mined areas consistent with the Habitat Enhancement and Management Plan, the Mining and Reclamation Plan, the Corps Permit and the Section 1603 Agreement. The Mining and Reclamation Plan requires CalMat to provide a bond for the revegetation effort on the San Bernardino Property. Proof of such bonding is to be provided to the Public Agencies. Proof of such bonding is attached as Exhibit 12.

c. Weeding

CalMat shall be required to control selected weedy species as described in the Habitat Enhancement and Management Plan within the boundaries of the Habitat Conservation Management Area.

d. Trash Removal

CalMat shall be required to remove all trash and debris within the boundaries of the Habitat Conservation Management Area as identified and described in the Habitat Enhancement and Management Plan.

e. Restricting Access

CalMat shall restrict access into the Habitat Conservation Management Area at the boundaries of the Habitat Conservation Management Area as described in the Habitat Enhancement and Management Plan and in the following manner:

1). The southern border of the property along Highland Avenue shall be adequately posted, fenced, and gated.

2). All vehicular access roads which cross the railroad tracks on the east side of the Conservation Area shall be gated to restrict unauthorized vehicle access.

3). Access into the active portions of the floodplain from Institution Road shall be limited by posting both sides of the road and monitoring access.

4). The extreme northern boundary adjacent to the residences along Devore Road shall be fenced and posted.

f. Trail System

CalMat or its assignee may locate a combined pedestrian and equestrian trail, as required by the City of San Bernardino in the approval of the Cajon Creek Project, in the Habitat Conservation Management Area. Such a trail shall be located within the wash or disturbed habitat areas, as feasible. The Parties agree that while the necessary mitigation is provided for construction of such a trail system, the actual location, design and maintenance of the trail system shall be the subject of further consideration. If final construction drawings demonstrate that construction of the equestrian and pedestrian trail system requires the discharge of dredged or fill material into one (1) acre or more of waters of the United States, excluding any de minimis fill associated with blading, CalMat or its assignee will apply for an amendment to its Corps Permit.

g. Temporary Haul Road

CalMat may locate a temporary haul road in the Habitat Conservation Management Area. The temporary haul road will be located within the wash or disturbed habitat areas, as feasible, for the purpose of allowing CalMat to haul materials between the San Bernardino and Cajon Creek Properties. Location of the temporary haul road is illustrated on Exhibit 1. The Parties agree that work to create the haul road shall be limited to blading of the route; construction of "Arizona-type" crossings, if necessary and signage. Maintenance of the haul road is also permitted. If final construction drawings demonstrate that construction of the haul road requires the discharge of dredged or fill material

into one (1) acre or more of waters of the United States, excluding any de minimis fill associated with blading, CalMat will apply for an amendment to its Corps Permit. The site of the temporary haul road shall be reclaimed using native vegetation when the road is abandoned. Reclamation of the haul road shall be consistent with the Habitat Enhancement and Management Plan.

h. Other Activities that May be Necessary

CalMat may be required to undertake additional habitat management activities within the boundaries of the Habitat Conservation Management Area for habitat management purposes as described and approved in the Habitat Enhancement and Management Plan.

i. Monitoring Reports

By January 31 of the year following the establishment of the Habitat Conservation Management Area and each subsequent year for the Term of this Agreement, CalMat shall provide the Public Agencies an annual monitoring report which describes the habitat management activities, including revegetation activities, undertaken pursuant to the Habitat Management and Enhancement Plan, during the previous year within the boundaries of the Habitat Conservation Management Area and the cost and person-hours associated with each of the management activities.

2. Funding During the Interim Period

During the time period that CalMat is managing the Habitat Conservation Management Area, CalMat shall be financially responsible for all habitat management activities as described in this Agreement and the Habitat Enhancement and Management Plan. CalMat may, in its own discretion, seek reimbursement of such habitat management costs from any third party acquiring Habitat Conservation Credits within the Conservation Bank.

3. Rights and Duties of the Public Agencies

a. Inspection

Upon conveying the Conservation Easement pursuant to Section III.D.1. of this Agreement, the Public Agencies shall have the right to designate one or more

representatives (collectively the "Representatives") who shall represent such Public Agencies collectively and have the right to enter the Habitat Conservation Management Area for the purpose of conducting semi-annual inspections of not more than two (2) days each to ensure that the terms of this Agreement are being implemented.

1). Notification of Inspection

The Representatives shall provide the representative designated by CalMat with at least seven (7) days advance notice of their intent to conduct an inspection, whereupon arrangements to enter the Habitat Conservation Management Area shall be made by CalMat.

2). Entry onto the Habitat Conservation Management Area by Public Agency Representatives

Due to the industrial nature of some of CalMat's activities within the boundaries of the Habitat Conservation Management Area and laws requiring supervision of visitors into such areas, prior to entering the Habitat Conservation Management Area, the Representatives shall sign in at the designated CalMat facility and be accompanied by a CalMat representative.

3). Expenses for Inspection

Expenses associated with the Representatives' inspection of the status of the habitat management activities undertaken in the Habitat Conservation Management Area and/or of the status of the Riversidian alluvial fan sage scrub in the Habitat Conservation Management Area during the semi-annual inspections, or at times as otherwise agreed to by the Parties, shall be the responsibility of the Public Agencies. The Public Agencies shall not seek any reimbursement for such inspection expenses from CalMat.

b. Notice of Change of Status of any Species or the Land

Wildlife Agencies shall notify CalMat in writing should either Wildlife Agency propose to change the status of any species pursuant to the Endangered Species Act or the California Endangered Species Act found in the Habitat Conservation

Management Area or to change the designation of lands pursuant to the Endangered Species Act within the Habitat Conservation Management Area as critical habitat for any listed species.

H. Establishment and Use of Habitat Conservation Credits

1. Recognition of Resource Values in the Conservation Bank

Pursuant to this Agreement and as described in the Biological Assessment, the habitat values of the Riversidian alluvial fan sage scrub existing within the 100-year floodplain of the Cajon Creek Property and San Bernardino Property are such that approximately 610 acres of land are suitable to be placed and will be placed in the Conservation Bank. For the San Bernardino Property, this statement is based on the assumption that the revegetation effort described in Habitat Protection and Enhancement Section of the Habitat Enhancement and Mitigation Plan will be implemented and such implementation will be successful, as measured by the standards established by the Plan. This assumption is considered valid because bonding is required to guarantee implementation of the entire revegetation effort and each phase of the revegetation effort, that has been implement, has reached performance standards or success within two years.

2. Allocation of Habitat Conservation Credits

Habitat Conservation Credits shall be available on a maximum of 610 acres of land within the Conservation Bank. A Habitat Conservation Credit is a single (1) unit of habitat mitigation which is equal to one acre of land within the boundaries of the Conservation Bank with no distinction made as to the successional stage of the habitat, type of habitat or stage of reclamation.

3. Calculation and Exchange of Habitat Conservation Credits

For any project considering the use or purchase of Habitat Conservation Credits, it shall be the sole discretion of the Public Agencies to determine the unavoidable impacts of that project on the biological resources (i.e., habitat and/or species) of the site on which the proposed project is located and the number of Habitat Conservation Credits necessary to offset such unavoidable impacts. The use of

Habitat Conservation Credits, within Public Agency discretion, is subject to the following considerations:

a. All lands within the Conservation Bank shall be considered equal in habitat value.

b. Habitat Conservation Credits may be used to offset impacts to projects that are off-site (i.e., outside of the tributary area of Cajon Creek).

c. Habitat Conservation Credits may be used to offset impacts to habitats other than Riversidian alluvial fan sage scrub.

4. Retention of Rights by CalMat Related to the Use of the Habitat Conservation Credits

CalMat may use the Habitat Conservation Credits itself or sell Habitat Conservation Credits to other project applicants whose project(s) require the acquisition of mitigation lands. The use of the Habitat Conservation Credits shall be subject to the following:

a. CalMat shall retain the right to determine the sales price of Habitat Conservation Credits.

b. CalMat is under no obligation to sell Habitat Conservation Credits.

c. CalMat shall bear all costs associated with Habitat Conservation Credit transactions, but may, at its sole discretion, seek payment from users of the Conservation Bank for all or part of these costs. Such costs include, but are not limited to, administration, enhancement efforts and management activities within the Conservation Bank.

d. Should CalMat choose to use or sell the Habitat Conservation Credits in the Conservation Bank, CalMat shall first use or sell Habitat Conservation Credits located within the approximately 235-acre

Conservation Bank at the Cajon Creek Property and then use or sell Habitat Conservation Credits located within the approximately 375-acre Conservation Bank at the San Bernardino Property.

e. CalMat shall develop an accounting plan or system to document the use or sale of Habitat Conservation Credits. The accounting system shall account for CalMat's use of Habitat Conservation Credits and involving other parties' use of Habitat Conservation Credits. The accounting system shall also track the location of the Habitat Conservation Credits used or sold within the Conservation Bank. CalMat shall provide the Public Agencies an annual accounting of the Habitat Conservation Credits use or sold during the year. This information shall be provided in the annual report required by Section III.G.1.i. of this Agreement.

5. Assurances of the Wildlife Agencies

a. The Wildlife Agencies shall make a strong commitment to ensure that the Habitat Conservation Credits are used by recommending the Counservation Bank to project proponents requiring mitigation for unavoidable impacts to Riversidian alluvial fan sage scrub habitat, Sensitive Species or any other habitat or species of lesser value.

b. The Wildlife Agencies shall consider acceptable the use of the Habitat Conservation Credits, on a case by case basis, for both on-site and off-site impacts, considered by them to have habitat values equal to or lesser than the habitat values associated with Riversidian alluvial fan sage scrub. Impacts to habitats having greater value than Riversidian alluvial fan sage scrub may also be off-set by the use of Habitat Conservation Credits at the discretion of the Wildlife Agencies.

I. Long-term Management and Maintenance

1. Creation of a Management Entity

Concurrent with the termination of this Agreement, CalMat shall convey by quitclaim deed the Conservation Lands, as well as all lands within the Conservation Bank used as mitigation for other CalMat projects or those of third parties, to a Management Entity. This entity may be one of the Wildlife Agencies, a non-profit trust or another type of public or non-profit private entity that is experienced in habitat management. If the designated Management Entity is other than the Department or the Service, CalMat shall convey a permanent Conservation Easement to the Department on lands in the Conservation Bank that have been used as mitigation for other CalMat projects or those of third parties and are to be permanently placed in the Habitat Conservation Management Area. In addition, if the designated Management Entity is other than the Department or the Service, the Management Entity shall be required to execute an agreement with the Wildlife Agencies which shall bind and obligate the Management Entity to manage and maintain in perpetuity such conveyed lands as required by this Agreement. Alternatively, the Management Entity may be made a party to this Agreement pursuant to an amendment to this Agreement which shall bind and obligate the Management Entity to manage and maintain in perpetuity the conveyed lands as required by this Agreement.

2. Long-Term Funding Source

CalMat shall assure that a funding source for management purposes for the conveyed lands be provided to the Management Entity in perpetuity. CalMat may provide the funding itself, seek contributions to the long-term management fund from users of the Conservation Bank or seek funding from other entities or sources, including, but not limited to, funding from public sources such as taxes, Wildlife Conservation funds, assessments, levies and grants, and from private sources. Such funding shall be in the form of a non-wasting, interest bearing account. That long-term management fund shall be funded based on the average actual per acre habitat management costs for management activities from the previous three year period as well as the periodic replacement of signage and infrastructure (such as the replacement of gates, fencing, etc.). Concurrent with

termination of this Agreement, the long-term management fund shall be transferred to the Management Entity at the time the Conservation Lands and Other Lands within the Conservation Bank, if any, are transferred.

3. An Option to Purchase Lands Remaining in Conservation Bank

Upon the termination of this Agreement, CalMat shall give the Wildlife Agencies and/or the Management Entity an option to purchase any and all land in the Conservation Bank subject to the easements for the temporary haul road and equestrian and pedestrian trail system that has not been used by CalMat or by others for mitigation. The option shall be for a period of one (1) year. The purchase price will be based on the fair market value of the property based on an independent appraisal of such property at the time of termination.

J. Compliance with the Endangered Species Acts and Pre-listing Assurances

1. Prelisting Assurances

In the event (whether by legislative action, policy directive, or otherwise) that any of the Sensitive Species present on the San Bernardino Property or Cajon Creek Property is Listed or its critical habitat is designated and CalMat requests modification of the Biological Opinion and/or the CESA MOU to address this change in status, the Wildlife Agencies hereby find and agree that this Agreement provides for the necessary mitigation needed to address all impacts to all Sensitive Species present at the Cajon Creek Property and the San Bernardino Property due to both CalMat's San Bernardino Mining Facility and Cajon Creek Project. The Wildlife Agencies also hereby find and agree that the Habitat Enhancement and Management Plan addresses necessary management practices for all Sensitive Species that may become Listed and critical habitat that may become designated. Therefore, with respect to the Sensitive Species, the Wildlife Agencies shall not request, impose, recommend, or require any further mitigation or compensation, including, but not limited to, further financial obligations and requests for additional land, under the National Environmental Policy Act, the California Environmental Quality Act, the Fish and Wildlife

Coordination Act, the Endangered Species Acts or any other plant or wildlife regulations in connection with the San Bernardino Mining Facility or the Cajon Creek Project.

2. Future Permit/Section 7 Processing

Should any Sensitive Species become Listed or its critical habitat become designated, the Public Agencies agree to process any permits, licenses or other approvals, including but not limited to amendments to the Section 7 consultation(s) and/or CESA MOU needed for the San Bernardino or Cajon Creek Projects in a timely manner, but in any event, no later than on the day the species is Listed or its critical habitat is designated. The Section 1603 Agreement and/or Corps' Permit also shall be amended, if necessary, in a timely manner.

K. Cooperation of Parties to the Agreement

The Parties agree to cooperate in the implementation of all aspects of the Agreement. Processing of any other discretionary approvals, if necessary to implement this Agreement, shall be reviewed in a timely manner and consistent with this Agreement.

In addition, the Parties agree to support and assist each other in any litigation filed by a third party or parties contesting the validity of this Agreement. If in any such third party action this Agreement is held to be invalid by a court of competent jurisdiction in a final non-appealable order, the Wildlife Agencies shall not hold CalMat liable for impacts to Sensitive Species due to any mining or development activity carried out by CalMat during the life of and in reliance on this Agreement. However, invalidation of this Agreement shall not relieve CalMat of its obligations(s) to comply with Section 404 of the Clean Water Act, Section 1603 of the Fish and Game Code, the Endangered Species Act, the California Endangered Species Act, and/or the California Environmental Quality Act.

L. Dispute Resolution Among the Parties

1. General Outline for Dispute Resolution

The Parties recognize that disputes may arise between the Parties regarding the implementation of this Agreement and the conditions of the Biological Opinion, the Corps Permit, the CESA MOU and the Section 1603 Agreement upon which this Agreement is based. The dispute may be based on an act or failure to act that may be considered to be a violation of the Agreement and/or of a condition of the Biological Opinion, the Corps Permit, the CESA MOU and/or the Section 1603 Agreement or an act or failure to act considered necessary to cure any alleged violation of this Agreement and/or of a condition of the Biological Opinion, the Corps Permit, the CESA MOU and/or the Section 1603 Agreement. Topics subject to a dispute may be, but are not limited to, an allegation that habitat management or enhancement activities have not been performed based on (i) an inspection of the Habitat Conservation Management Area or on a review of the annual monitoring report or (ii) nonconcurrence of any other issue such as a recommended task to resolve an alleged violation of the Agreement, an alleged Unforeseen Circumstance or an alleged Force Majeure event. General dispute resolution procedures prior to suspension or revocation of this Agreement, the Biological Opinion, the Corps Permit, the CESA MOU or the Section 1603 Agreement shall be as follows:

a. Notification

The Party alleging a violation of the Agreement, the Biological Opinion, the Corps Permit, the CESA MOU and/or the Section 1603 Agreement or stating their nonconcurrence with an issue raised by another Party shall be responsible for notifying said other Party of the alleged violation or nonconcurrence on an issue. If the notice alleges a violation to the Agreement, the Biological Opinion, the Corps Permit, the CESA MOU and/or the Section 1603 Agreement, the notice letter shall clearly identify the alleged violation and offer solutions to clear or cure such violation. If the notice letter states non-concurrence on an issue, the notice shall identify the document at issue, the issue and the reasons for nonconcurrence. The notice letter shall also suggest a meeting date(s), time(s), and place(s) for all Parties to meet to attempt to resolve the issue. All notices shall be in writing and be provided to all Parties via mail or other delivery

service or fax transmittal. The notice letter shall be deemed received upon delivery to all of the Parties.

b. Response

The Parties receiving the notice of alleged violation or nonconcurrence with an issue shall acknowledge receipt of such notice in writing within 30 days. The response letter shall only acknowledge the receipt of the notice and confirm the meeting date, if possible. If the suggested meeting date, time, or place in the notice is unacceptable to a Party, for any reason, or a Party wishes to waive its attendance at the meeting, such Party must provide a reasonable alternative meeting date(s), time(s) or place(s) or waive its attendance in its response letter. Waiver of attendance to a meeting is an acknowledgement of the Party that it intends to waive all involvement on or with the issue raised by the notice. Each Party will provide their response letter to all Parties. The response letter shall be deemed received upon delivery of such notice to all of the other Parties.

c. Meeting(s)

Scheduling the meeting shall be the responsibility of the Party sending the notice letter. The Party scheduling the meeting shall send all Parties a confirmation in writing as to the date, time and place of the meeting and shall provide the other Parties notification of a waiver by any Party. The letter confirming the meeting shall be deemed received upon delivery of such letter to all of the other Parties.

The purpose of the meeting is to resolve the issues raised in the notice letter. The disputing Parties shall each state their position based on: (1) the terms and conditions of this Agreement, (2) the purpose of the activity being disputed, (3) best scientific and commercial data available showing the effectiveness and reasonableness of the activity being disputed, and (4) the technical and financial feasibility of the activity being disputed. All Parties will discuss solutions or remedies to the dispute based on these criteria. The Parties recognize that resolving a dispute may take several meetings, but shall made a good faith effort to resolve the issue(s) within 90 days, and resolution may include an amendment to this Agreement. Resolution must be unanimous by the Parties participating in the resolution meeting. The Public Agencies may seek full compliance with all

terms of the Agreement. However, the resolution of the dispute may place no additional habitat management and enhancement measures on CalMat not provided for in this Agreement.

Resolution of the dispute must be documented by a concurrence letter signed by all the Parties participating in the resolution meeting.

d. Biological Panel

Any party participating in the dispute resolution may at its discretion declare that the disparate resolutions have failed and initiate the convening of an independent panel to resolve issue(s) based on the biology of a Sensitive Species, including its status or habitat management practices for that Sensitive Species. Such an independent panel shall consist of three biologists having expertise on the biology and the management of said species. The composition of the panel will include two biologists, one each selected by the disputing Parties, and one biologist selected in by agreement of the disputing Parties. The panel of biologists will be convened in a timely manner following failure of the meetings to resolve a dispute. A timely manner will be considered a good faith effort to convene the panel of biologists within 60 days of failure of the dispute resolution meetings. The documentation of the dispute, including a copy of the Agreement, shall be provided to the biological panel. The disputing Parties may also provide the panel with the following information: (1) the purpose of the activity being disputed, (2) the best scientific and commercial data available showing the effectiveness and reasonableness of the activity being disputed, and/or (3) the technical and financial feasibility of the activity being disputed. The panel will discuss solutions to the dispute based on the Agreement and these criteria and make recommendations back to the Parties. The Parties will then attempt to resolve the issue based on the panel's recommendations. The panel shall document the reasons, based on the Agreement and the three criteria, for any recommendations that they make. Each Party to the dispute shall be responsible for paying for the costs for hiring the biologist it selected and for paying for one-half of the costs of the third biologist.

e. Parties Reconvene Meetings

Following the biological panel's meeting and receipt of the panel's recommendations, the Parties shall reconvene to resolve the issue. Should this such resolution still not be possible, the Parties shall be allowed to seek any and all other remedies provided to them in equity or law.

2. Special Rules for Specific Dispute Resolutions

a. Unforeseen Circumstances

Unforeseen Circumstances shall have no effect on this Agreement. CalMat shall not be held liable for Unforeseen Circumstances.

b. Impossibility of Performance ("Force Majeure")

In the event that a Party is wholly or partly prevented from performing its obligations under this Agreement because of unforeseeable causes beyond the reasonable control and/or without the fault or negligence of such Party, including, but not limited to, acts of God, labor disputes, sudden actions of the elements, or actions of Federal, State or local agencies, such Party shall be excused from whatever performance is affected by such Force Majeure to the extent so affected, provided that nothing in this Section shall be deemed to authorize any Party to violate the California Endangered Species Act or the Endangered Species Act, and provided further that:

1). Within fifteen (15) days after knowledge of the occurrence of the Force Majeure, the Party prevented from performance gives the other Parties written notice describing the particulars of the occurrence;

2). The suspension of performance is of no greater scope and no longer duration than is required by the Force Majeure;

3). The Party prevented from performance uses its best efforts to remedy its inability to perform, except that this subsection shall not require the settlement of any legal action, strike, walk-out, lock-out or other

labor dispute on terms that, in the sole judgement of the Party prevented from performing, are contrary to its interest; and

4). When the Party prevented from performing is able to resume performance of its obligations hereunder, such Party shall give the other Parties notice to that effect.

M. Disclaimer

Upon timely satisfaction of the conditions of this Agreement, the Parties will have adequately mitigated for impacts to Sensitive Species and achieved compliance with the State and federal Endangered Species Acts dealing with Sensitive Species issues related, but not limited to, Section 404 of the Clean Water Act, Section 1603 of the Fish and Game Code and the California Environmental Quality Act, with regard to the activities identified in this Agreement. Nonetheless, the Parties understand and recognize that this Agreement does not constitute or imply compliance with, or entitlement to proceed with, any planned activity or activities, under laws and regulation beyond their authority and jurisdiction. The Parties have independent responsibility for compliance with any and all such other applicable laws and regulations.

N. Miscellaneous Provisions

1. Amendments and Minor Adjustments to this Agreement

Except as otherwise set forth herein, this Agreement may be amended only with the written consent of each of the Parties hereto, except for action considered by all parties to be minor adjustments to the Agreement. The Public Agencies shall determine whether a proposed change to the Agreement constitutes an amendment or is a minor adjustment. Minor adjustments to the Agreement may be verbally approved by the Field Supervisor of the Service, on the behalf of the Service, and by the Regional Manager of the Department, on behalf of the

Director of the Department. Amendments take effect upon the written approval of all the Parties. The Parties shall use their best efforts to expeditiously consider and, if appropriate, approve any request for a minor adjustment or an Amendment within thirty (30) days of said request.

2. Opinions and Determinations

Each Party acknowledges that it has been represented by its own legal counsel in the making and executing of this Agreement and agrees that the Agreement shall be deemed to be drafted by each and all of the Parties. Therefore, any statute or rule providing that the interpretation of ambiguities is against the drafter shall not apply.

3. Form/Content of Document

a. Captions

The heading of the various articles and sections of this Agreement are for convenience only, and shall not affect the meaning of any provision of this Agreement.

b. Entire Agreement

This Agreement supersedes all other agreements, either oral or in writing, between the Parties with respect to the subject matter hereof, and this Agreement is fully integrated in that it contains all of the covenants, obligations, findings, determinations, and agreements among the Parties with respect to said matter. Each Party further acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by any Party or anyone acting on behalf of any Party that is not embodied in this Agreement.

c. Counterparts

This Agreement may be executed in counterparts.

d. Time is of the Essence

Time is of the essence in the performance of this Agreement.

4. Notices

Any notice permitted or required by this Agreement shall be delivered personally to the Parties set forth below, or shall be deemed delivered five (5)

days after deposit in the United States mail, certified and postage prepaid, return receipt requested, and addressed as follows or at such other address that any Party may from time to time notify the other Parties about in writing.

Mr. Douglas W. Sprague
Manager, Reclamation and Special Projects
CalMat Company
3200 San Fernando Road
Los Angeles, California 90065

District Engineer
Corps of Engineers, Los Angeles District
300 North Los Angeles Street
P.O. Box 2711
Los Angeles, California 90053-2325
(Attn: Antal Szijj, Regulatory Branch)

Field Office Supervisor
U.S. Fish and Wildlife Service
2730 Loker Avenue West
Carlsbad, California 92008
(Attn: Mr. Dick Zembal, Deputy Field Supervisor)

Regional Manager, Region 5
California Department of Fish and Game
330 Golden Shore, Suite 50
Long Beach, California 90802
(Attn: Mr. Glenn Black, Sr. Biologist Supervisor)

General Counsel
California Department of Fish and Game
1416 Ninth Street, 12th Floor
Sacramento, California 95814

5. Successors and Assigns Obligated

This Agreement and each of its covenants and conditions shall be binding on and shall inure to the benefit of the Parties hereto and their respective successors and assigns.

6. Elected Officials not to Benefit

No member of or delegate to Congress shall be entitled to any share or part of this Agreement, or to any benefit that may arise from it.

7. Third-Party Beneficiaries

This Agreement does not create in or for the public or any member thereof any benefit as a third-party beneficiary, nor shall it authorize anyone not a Party to this Agreement to maintain a suit for personal injuries, property damages, or any other claim pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities, if any, of the Parties to this Agreement with respect to third parties shall remain as imposed by general law.

8. Duplicate Originals

This Agreement shall be executed in at least four (4) duplicate originals. A complete original of this Agreement shall be maintained in the official records of each of the Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the Effective Date.

R. Ben R...
CalMat

10/1/96
Date

Corps

Date

Gail C. Kobetich
Service

9.30.96
Date

Department

Date

List of Exhibits

- Exhibit 1: Map
- Exhibit 2: Legal Description of San Bernardino Property
- Exhibit 3: Legal Description of Cajon Creek Property
- Exhibit 4: Copy of the Biological Assessment
- Exhibit 5: Copy of the Biological Opinion No. 1-6-94-F-51
- Exhibit 6: Draft of Conservation Easements
- Exhibit 7: Copy of Corps Permit No. 91-00248-AJS
- Exhibit 8: Habitat Enhancement and Management Plan
- Exhibit 9: Copy of County Mining/Reclamation Plan No. 90M-011
- Exhibit 10: Copy of Streambed Alternation Agreement No. 5-259-91
- Exhibit 11: List of the Twenty-four Sensitive Species
- Exhibit 12: Copy of the Bonding Agreement for the Reclamation Effort at San Bernardino