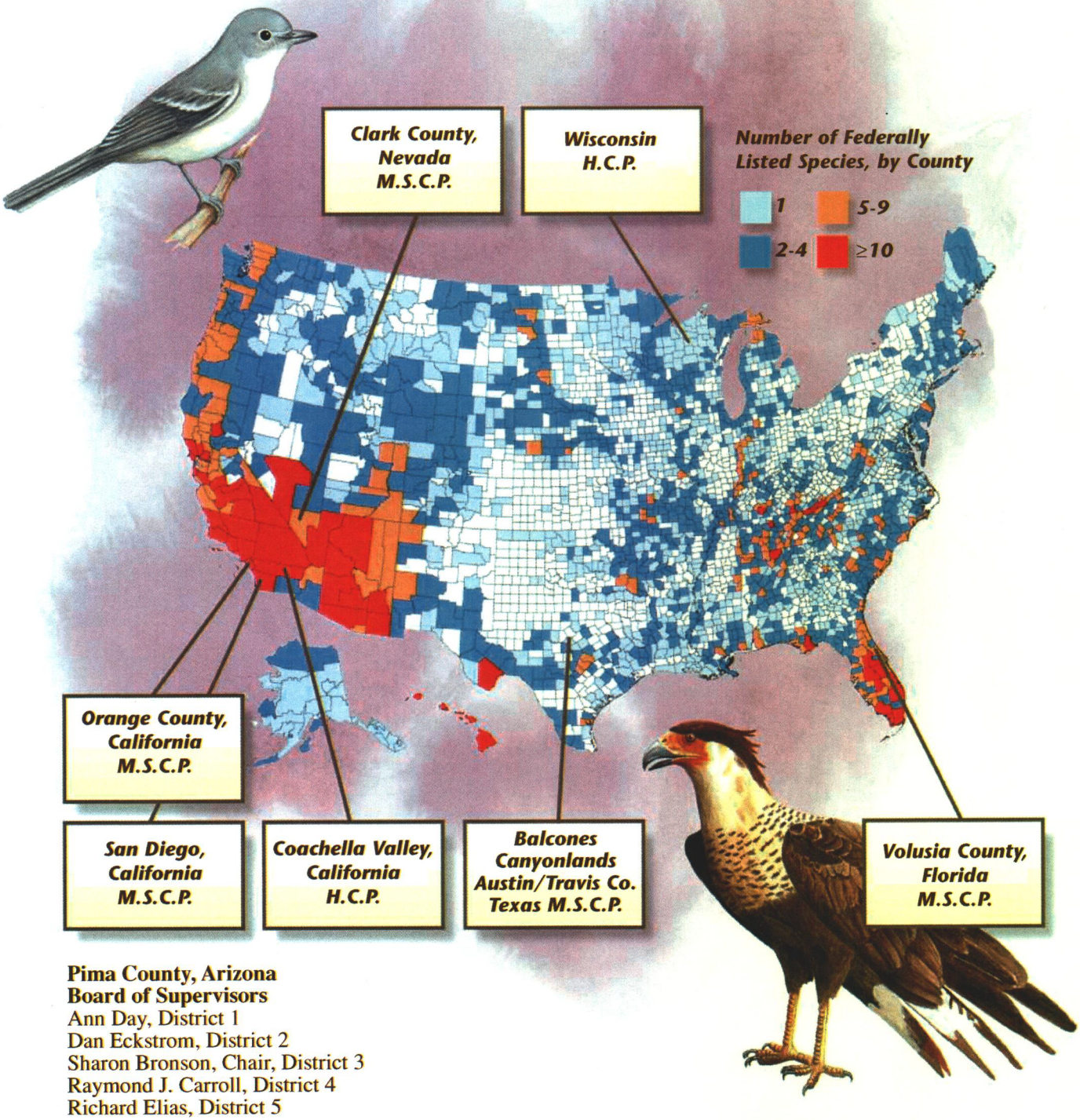
# Comparison of Multi-Species Conservation Plans and Implementing Agreements

DRAFT

## Sonoran Desert Conservation Plan 2002




**Pima County, Arizona**
**Board of Supervisors**
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**County Administrator**
Chuck Huckelberry

# MEMORANDUM

Date: March 15, 2002

To: The Honorable Chair and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator

Re: **Comparison of Multi-Species Conservation Plans and Implementing Agreements**

## I. Background

The Steering Committee for the Sonoran Desert Conservation Plan is beginning to discuss issues of funding and implementation of the Section 10 permit which will be issued to Pima County by the United States Fish and Wildlife Service. The attached documents from regional habitat conservation planning efforts will be provided to the Committee at their March 16, 2002 meeting, including the following:

- City of Austin and Travis County Habitat Conservation Plan and Final Environmental Impact Statement, sections on impacts, including economic impacts of alternatives
- Clark County Multiple Species Habitat Conservation Plan and Environmental Impact Statement, chapter on Financial Assurances for the Plan
- Wisconsin Statewide Karner Blue Butterfly Habitat Conservation Plan and Environmental Impact Statement, chapter on Habitat Conservation Plan Funding
- San Diego Multiple Species Conservation Program (regional umbrella document), chapter on Financing Habitat Acquisition and Management and San Diego Environmental Impact Statement, sections on population, housing and economic impacts of Plan
- Clark County Multiple Species Habitat Conservation Plan and Environmental Impact Statement, Federal Register Notice of Take Permit Application and Clark County Multiple Species Habitat Conservation Plan and Environmental Impact Statement, Implementing Agreement
- San Diego County Multiple Species Conservation Program Subarea Plan and San Diego County Multiple Species Conservation Program Implementation Agreement
- Orange County Multi Species Conservation Plan Executive Summary and Orange County Implementation Agreement

## II. Eleven Common Questions and Misunderstandings

The different plans and environmental impact statements demonstrate that a range of methods exist across jurisdictions for dealing with both the program document and the alternatives analysis. The City of Austin document covers economic analysis in three sentences whereas San Diego demonstrates more extensive analysis. The following questions have been asked frequently about the options available to Pima County as it pursues a Section 10 permit. Brief answers are provided below.

**1. Will the County get a Section 10 permit?** -- Pima County will obtain a Section 10 permit. Questions that remain open for discussion relate to the scope of the permit. The Steering Committee has been asked to recommend a preferred alternative during 2002. There is no doubt that Pima County can get a Section 10 permit. Under Section 10(a)(B), if the Secretary finds with respect to an application that certain conditions are met, the Secretary shall issue the permit. Conditions include:

- taking will be incidental
- applicant will minimize and mitigate
- adequate funding
- taking will not appreciably reduce likelihood of survival / recovery
- other measures / assurances are met

Similar to San Diego, where the City took the lead, we will have an overarching guidance document for the region, and a specific Multi-Species Conservation Plan (MSCP) for Pima County. The Sonoran Desert Conservation Plan is the regional guidance document for biological resource protection. The Pima County MSCP / Section 10 take permit will be the program tailored to Pima County's impacts within its jurisdiction, mitigation needs, and Sonoran Desert Conservation Plan program goals within the County's authority.

**2. Is Section 10 being used as a regional planning tool?** -- No. Section 10 is a subset of a regional planning process.

**3. Will the USF&W issue a "take" permit for pygmy-owl habitat?** -- Yes. The United States Fish and Wildlife Service has already issued a Section 10 permit to a developer (Lazy K Bar Ranch), and it negotiates Section 7 consultations that result in the incidental take of habitat. Mitigation of this take is required under the law.

**4. Will the Section 10 permit federalize private land?** -- No. The Multi-Species Conservation Plan permit will return land use authority to the local governments, and increase flexibility in meeting the federal purpose of endangered species protection. The Section 10 aspect of the Sonoran Desert Conservation Plan will have the opposite effect of "federalizing land use."

**5. Will the Section 10 permit "trample private property rights?"** -- No. Existing property rights are not changed by the proposed County plans. If anything, the presence of comprehensive plans will bring more certainty to investments and stability to the real estate and development markets.

**6. Will the County plans make land unavailable for development?** -- No. Currently there is enough zoned property in the unincorporated area of Pima County to accommodate another 920,000 people. This calculation does not include the land slated for development within the incorporated areas. Nor does it include the large blocks of State Land in these areas, which if released for urbanization would accommodate decades of population growth. We are likely to encounter constraints in water availability long before land availability is an issue in Eastern Pima County.

**7. Will ranchers have to stop ranching?** -- No. It has been a stated goal of the Sonoran Desert Conservation Plan to keep ranchers ranching. The multi-species permit issued under the larger local plan will promote the same goal. To create and prioritize strategies to conserve ranches, the Ranch Technical Advisory Team has hosted a series of workshops on topics including purchase of development rights, adaptive management, and tax and estate planning. A number of individual ranchers have expressed interest in selling development rights and participating in management and monitoring programs. It is time to prioritize and prepare for implementation of these and other strategies that will lead to ranch conservation and long-term collaborative relationships with the ranch community. There should be no mistake about the vital importance of continued ranching in eastern Pima County as part of a coherent conservation plan strategy. Active ranching with valid state or federal grazing leases covers a significant portion of the rural portion of eastern Pima County. Ranching in these areas with little infrastructure for urban land conversion should be encouraged and, if necessary, the cost of continuing traditional ranching operations subsidized by the County. Today there are no federal or state policies or funding sources that encourage long-term continuation of traditional ranching activities. About half of the land conservation system goals of the Sonoran Desert Conservation Plan will be achieved simply through entering into cooperative agreements with various federal land agencies situated in Pima County. Another 1,423 square miles of conservation can be achieved by retaining, in place, private land ownership of rural ranching activities. Such would require a number of actions by Pima County, including, but not limited to, possibly subsidizing state and federal leasing costs, purchase of development rights, and, if necessary, outright fee simple purchase of private lands with life estates and consecutive life estates being granted present ranchers. Preserving ranching as a traditional economic activity using scientific standards through state-of-the-art adaptive management practices is the best way to retain the heritage and culture of the west while at the same time promoting the development of a Conservation Lands System as proposed by the Sonoran Desert Conservation Plan.

**8. How long have other planning processes taken?** -- The length of the planning process and duration of the permit of other efforts is:

| | | |
|---|---|---|
| Austin | 8 years (1988 - 1996) | 30 year permit |
| San Diego | 7 years (1990 - 1997) | 30 year permit |
| Clark County | 10 years (1990-2000) | 30 year permit |

**9. What have other conservation plans cost and how are they funded?**

1. Austin -- $100 million for park that is comparable in size to Tucson Mountain Park; acquisition; voluntary fees; tax increment; grants

2. San Diego -- First estimated at $411 million + total cost for preserve; recent estimates exceed $1 billion. Costs include:

   $411 million + total cost for preserve
   $360 million for public sector land acquisition
   $6.6 million / year management, monitoring, admin cost
   63% public, requires 27,000 acre purchase
   37% private, development exaction funding

3. Clark County -- $550 / acre development fee on all non-Federal land; $4.1 million / year generated by fund for research and program management

4. Pima County -- To be determined in next months, and will depend on alternative selected. Alternatives might include:

   (1) no action;
   (2) permit for Pima County's impacts;
   (3) permit that also covers developer's impacts;
   (4) permit that also covers rancher's impacts;
   (5) permit that covers development, ranching and other impacts.

**10. What number of species have been covered by other plans?** -- Other jurisdictions have found economies in including more than the listed species.

- Austin — 9 listed; 26 non-listed
- San Diego — 26 listed; 59 non-listed
- Clark County — 2 listed; 77 non-listed
- Pima County — 55 total species, but 17 are invertebrates (take very little room)

**11. How will local and federal regulatory issues be improved under the permit?** -- In addition to having regulatory assurances, the local development community will have one stop shopping for permits and a streamlined and integrated regulatory approach among the permit issuing agencies. This will greatly reduce the time it takes to obtain a permit.

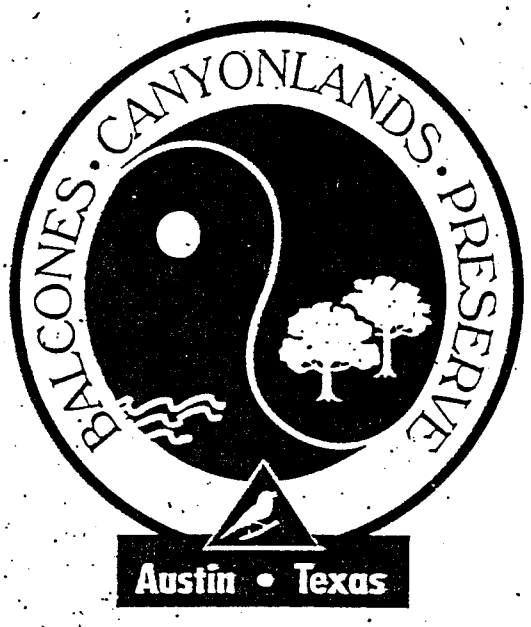
## III. Conclusion

A range of options are available to Pima County in crafting its Section 10 permit application. The work of the Steering Committee will be valuable in determining the best course of action as they formulate recommendations related to funding and the scope of the Section 10 permit itself.

Attachments

City of Austin and Travis County Habitat Conservation Plan and Final Environmental Impact Statement, sections on impacts, including economic impacts of alternatives

# HABITAT CONSERVATION PLAN AND FINAL ENVIRONMENTAL IMPACT STATEMENT




City of Austin & Travis County, Texas

March 1996

# 1. Biological Resources

Under the No Action Alternative, determination of incidental take is possible only through tracking the cumulative sum of species and habitat losses resulting from independently approved projects over the next 30 years. The criteria for USFWS evaluation of these projects exist under sections 7 and 10(a)(1)(B) of the ESA, which do not require coordination of mitigation resulting from approved projects or set a quantifiable limit on incidental take for an entire area prior to implementation of all future projects. Under Alternatives 2 and 3, incidental take can be quantified based on known or anticipated habitat losses outside the established preserve boundaries. Descriptions of the incidental take for the listed species and species of concern are provided in this chapter and in Table S-1. In every instance, under Alternatives 2 and 3, the impacts can be mitigated to a level below significance; however, under Alternative 1, impacts would be reduced to a level below significance only on a project-by-project basis.

# 2. Social

The No Action Alternative may result in adverse impacts for population growth, housing, and public infrastructure in Travis County because of ESA requirements. In contrast, both Alternatives 2 and 3 avoid such consequences by creating a sizable preserve system as mitigation for unrestricted development in their respective permit areas. Therefore, positive impacts on population growth, housing, and public infrastructure are projected under either of these alternatives.

# 3. Economic

Under the No Action Alternative, Travis County may face adverse impacts in employment and property valuation/tax revenues because of ESA requirements. In contrast, both Alternatives 2 and 3 would lead to increased employment and property valuation/tax revenues. Both Alternatives 2 and 3 avoid the adverse consequences of the No Action Alternative by creating a sizable preserve system, which serves as mitigation under a Permit that authorizes development without restrictions in the respective permit areas.

## 4. Land Use

Under all of the alternatives considered, no significant land use impacts would occur. For areas subject to development, even though such areas vary under the different alternatives, implementation of existing land use regulations and administrative procedures would ensure that such development occurred consistently with plans and policies. Acquisition of areas within the proposed preserves (Alternatives 2 and 3) has no significance because preserve units would be acquired from existing open space and would remain in that status during the 30-year term of the proposed Permit. Under "no action," substantially more infrastructure corridors would occur.

## 5. Recreation

The No Action Alternative poses some potential for losses of recreational opportunities because individual permit seekers may be unable to shoulder the greater financial burden caused by the lack of a regional Permit. Cultural resources on private property may be lost due to development, and the potential for habitat fragmentation resulting from development is increased. On the other hand, Alternatives 2 and 3 would avoid all of these adverse impacts.

## 6. Water Resources

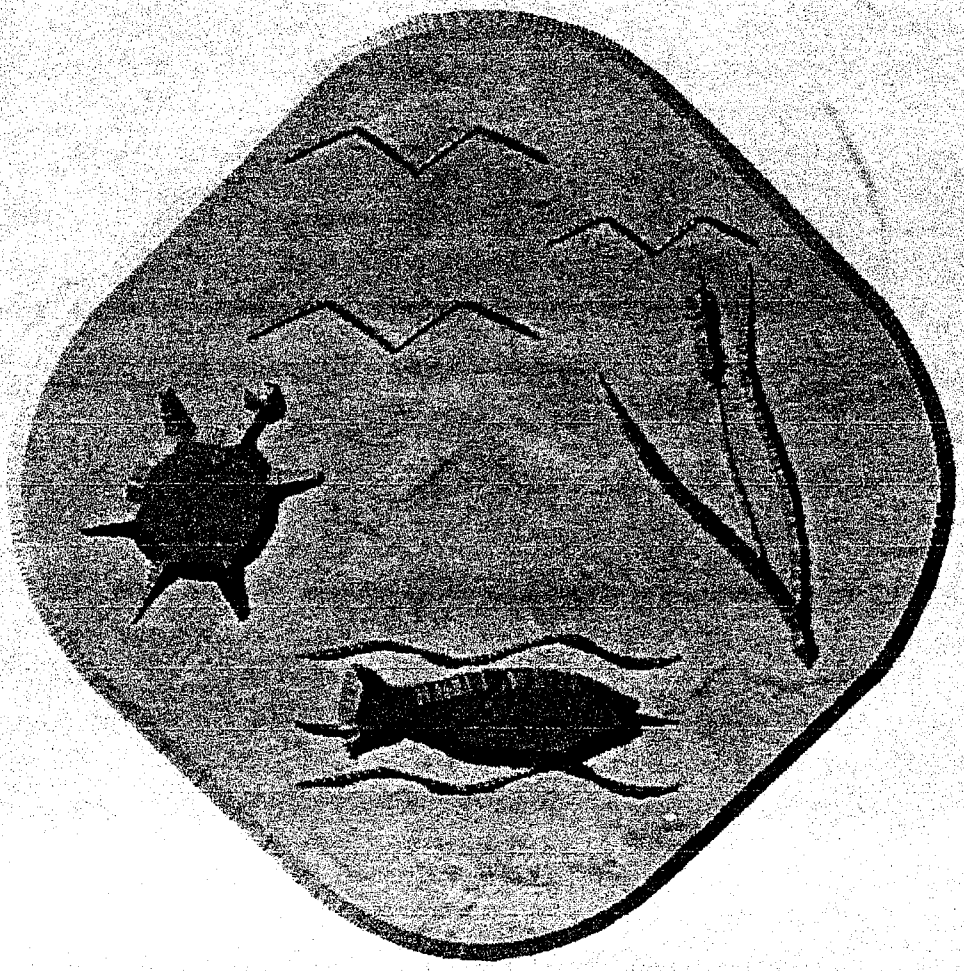
Under Alternatives 1, 2, and 3, no significant water resources impacts would occur. For areas subject to urbanization, implementation of existing watershed protection ordinances would ensure that such development occurred consistently with stormwater control and surface and groundwater quality regulations. Areas within the proposed preserves (Alternatives 2 and 3) would have little or no development during the 30-year term of the proposed Permit.

# I. Cumulative Effects

NEPA regulations define cumulative effects as ". . . the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or nonfederal) or person undertakes such other actions. Cumulative impacts can

Clark County Multiple Species Habitat Conservation Plan and Environmental Impact Statement, chapter on Financial Assurances for the Plan

# Clark County Multiple Species Habitat Conservation Plan and Environmental Impact Statement



# 2.9 Financial Assurances for the MSHCP

## 2.9.1 Existing Funding of the DCP

The following analysis of the funding program for the DCP was developed to provide an assessment of the potential range of alternative program implementation strategies for the MSHCP, in terms of the funding and budget constraints. The steps and assumptions of the analyses are outlined in detail below.

The DCP is currently funded by:

- the assessment of an impact fee of $550 per acre of land disturbance authorized by Clark County or incorporated areas within the county below 5,000 feet in elevation;
- the interest generated from an endowment fund accumulated from unexpended fees; and
- impact fees on NDOT rights-of-way south of the 38th parallel that are below 5,000 feet in elevation.

Other sources of funding will be pursued in the development of the MSHCP, but this analysis assumes the continuation of the funding program and commitments developed for the DCP.

The DCP requires the collection of the fee for the life of the program (30 years), and the average expenditure of $1,650,000 per year for the first 10 years of the program and $1,350,000 for the remaining 20 years, calculated in 1994 dollars, that is, with a cost of living adjustment (COLA) indexing system for future expenditures. The analysis of this program in the DCP (Table 8 in the DCP, Table 2-10 in this report), projected that the program would provide adequate funding through the 30-year term of the DCP and leave an endowment balance of $39,000,000 in the year 2024. This projection was based on population growth projections provided at the time by the County's Comprehensive Planning Department.

## 2.9.2 Funding the MSHCP through Continuation of Development Fees

The MSHCP proposes to minimize and mitigate the impacts of take of Covered Species on non-Federal lands in Clark County through expenditures of funds raised through imposition of its development fee of $550/acre on all lands in Clark County as they are developed that require a permit from the County and Cities (which imposition will be

**TABLE 2-10**
**PROJECTED ANNUAL REVENUES AND COSTS OF THE DCP**
**(1994 DOLLARS)**

| | Year | Projected Acres Disturbed per Year | Income/year @ $550 per Acre | Interest Income @ 2 percent Over Inflation | Program Costs | Net Annual Income | Cumulative Endowment Starting at $7,000,000 |
|---|---|---|---|---|---|---|---|
| 1 | 1994 | 5,810 | $3,195,500 | $140,000 | $1,650,000 | $1,685,500 | $8,685,500 |
| 2 | 1995 | 5,661 | $3,113,550 | $173,710 | $1,650,000 | $1,637,260 | $10,322,760 |
| 3 | 1996 | 5,513 | $3,032,150 | $206,455 | $1,650,000 | $1,588,605 | $11,911,365 |
| 4 | 1997 | 5,365 | $2,950,750 | $238,227 | $1,650,000 | $1,538,977 | $13,450,343 |
| 5 | 1998 | 5,217 | $2,869,350 | $269,007 | $1,650,000 | $1,488,357 | $14,938,699 |
| 6 | 1999 | 5,069 | $2,787,950 | $298,774 | $1,650,000 | $1,436,724 | $16,375,423 |
| 7 | 2000 | 4,921 | $2,706,550 | $327,508 | $1,650,000 | $1,384,058 | $17,759,482 |
| 8 | 2001 | 4,773 | $2,625,150 | $355,190 | $1,650,000 | $1,330,340 | $19,089,821 |
| 9 | 2002 | 4,626 | $2,544,300 | $381,796 | $1,650,000 | $1,276,096 | $20,365,918 |
| 10 | 2003 | 4,478 | $2,462,900 | $407,318 | $1,650,000 | $1,220,218 | $21,586,136 |
| 11 | 2004 | 4,331 | $2,382,050 | $431,723 | $1,350,000 | $1,463,773 | $23,049,909 |
| 12 | 2005 | 4,184 | $2,301,200 | $460,998 | $1,350,000 | $1,412,198 | $24,462,107 |
| 13 | 2006 | 4,037 | $2,220,350 | $489,242 | $1,350,000 | $1,359,592 | $25,821,699 |
| 14 | 2007 | 3,891 | $2,140,050 | $516,434 | $1,350,000 | $1,306,484 | $27,128,183 |
| 15 | 2008 | 3,744 | $2,059,200 | $542,564 | $1,350,000 | $1,251,764 | $28,379,947 |
| 16 | 2009 | 3,597 | $1,978,350 | $567,599 | $1,350,000 | $1,195,949 | $29,575,896 |
| 17 | 2010 | 3,451 | $1,898,050 | $591,518 | $1,350,000 | $1,139,568 | $30,715,464 |
| 18 | 2011 | 3,305 | $1,817,750 | $614,309 | $1,350,000 | $1,082,059 | $31,797,523 |
| 19 | 2012 | 3,159 | $1,737,450 | $635,950 | $1,350,000 | $1,023,400 | $32,820,924 |
| 20 | 2013 | 3,013 | $1,657,150 | $656,418 | $1,350,000 | $963,568 | $33,784,492 |
| 21 | 2014 | 2,867 | $1,576,850 | $675,690 | $1,350,000 | $902,540 | $34,687,032 |
| 22 | 2015 | 2,722 | $1,497,100 | $693,741 | $1,350,000 | $840,841 | $35,527,872 |
| 23 | 2016 | 2,576 | $1,416,800 | $710,557 | $1,350,000 | $777,357 | $36,305,230 |
| 24 | 2017 | 2,431 | $1,337,050 | $726,105 | $1,350,000 | $713,155 | $37,018,385 |
| 25 | 2018 | 2,286 | $1,257,300 | $740,368 | $1,350,000 | $647,668 | $37,666,052 |
| 26 | 2019 | 2,141 | $1,177,550 | $753,321 | $1,350,000 | $580,871 | $38,246,923 |
| 27 | 2020 | 1,996 | $1,097,800 | $764,938 | $1,350,000 | $512,738 | $38,759,662 |
| 28 | 2021 | 1,851 | $1,018,050 | $775,193 | $1,350,000 | $443,243 | $39,202,905 |
| 29 | 2022 | 1,707 | $938,850 | $784,058 | $1,350,000 | $372,908 | $39,575,813 |
| 30 | 2023 | 1,562 | $859,100 | $791,516 | $1,350,000 | $300,616 | $39,876,429 |

made by the adoption of County and City Ordinances in substantially the same form as set forth in Chapter 28.46 of the Clark County Code, but which will be modified to cover all lands within the County and the Cities) to assist in the implementation of conservation policies and activities carried out primarily within IMAs and LIMAs. In addition, the imposition of the development fee will apply to all NDOT rights-of-way in Clark County and NDOT rights-of-way in Lincoln, Nye, Mineral, and Esmeralda Counties that occur south of the 38th parallel and below 5,000 feet.

Pursuant to the provisions of the DCP, Clark County established an endowment fund to be used exclusively for the administration and implementation of that plan. The DCP anticipated that at the commencement of that plan, it would have accumulated approximately $7 million. In fact, at the commencement of the DCP and upon issuance of the Section 10(a) Permit on August 1, 1995, Clark County held approximately $14 million in the endowment fund. As of June of 1999, the endowment fund has grown to approximately $25,000,000.

Upon approval of this MSHCP and issuance of the Section 10(a) Permit, the endowment fund and its income will be used exclusively to administer and implement the terms of the MSHCP.

The MSHCP proposes to integrate the financial assurances and commitments of the DCP into the MSHCP which would provide an additional $400,000 per year (in constant dollars) to those already committed to implementation of the DCP. Thus, the MSHCP proposes to expend a total of $2,050,000 per year, or $4,100,000 per biennium, adjusted biennially to reflect cost of living increases, not to exceed 4 percent per year, to fund implementation of measures identified in this MSHCP for conservation of Covered Species, including the desert tortoise, and development of information and/or mitigation measures to enable addition of Evaluation Species to the Covered Species list. The primary source of funding will be derived from the continuation of fees collected for each acre of disturbance of non-Federal lands in the plan area and interest from the endowment fund.

Subsequent to Phase 1, as additional species are added as Covered Species to the permit, up to an additional $1,000,000 per year, with cost of living adjustments as set forth above, may be added to the funds available for implementation of MSHCP measures.

All funds collected pursuant to the MSHCP will be deposited with the County and made a part of the endowment fund to be used exclusively for the administration and implementation of the conservation measures. Funds remaining in the endowment fund at the conclusion of the term of the permit will be retained by the County in an interest-bearing account and expended in cooperation with the USFWS solely and exclusively for conservation measures consistent with the recommendations of the AMP.

### 2.9.2.1 Excess Expenditures

In the event the I & M Committee recommends and the USFWS and the Board of County Commissioners approves expenditures in excess of $4,100,000 during any biennium to take advantage of early implementation of conservation measures, market conditions, or any other factor they deem appropriate, additional expenditures may be authorized (Excess Expenditures), which will be deducted from expenditures required during future biennial periods.

At the commencement of each biennial IPB process, Clark County will provide the I & M Committee and the USFWS with a calculation of the amount of the required expenditure for the ensuing biennium, plus the cost of living adjustment, less the amount of any approved excess expenditures paid out during previous biennial periods divided by the number of biennial periods remaining in the Section 10(a) Permit and the MSHCP at the time of the excess expenditure. In other words, in the event excess expenditures are made, such excess expenditures shall be divided by the biennial periods remaining in the Section 10(a) Permit and the result will be deducted from the required expenditures in all future biennial periods. A separate calculation will be required for excess expenditures for each biennial period, because the years remaining in the permit will decrease as years go by.

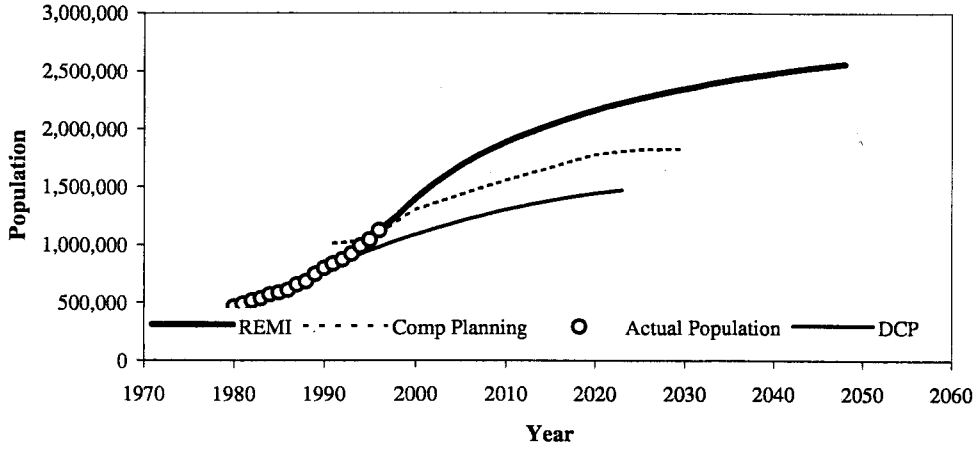
As part of the biennial IPB process, the I & M Committee and the USFWS will evaluate the balance between proposed excess expenditures and the potential risk of depleting the endowment. This evaluation will require an assessment of the performance of the endowment (in terms of fees collected and interest earned) and the long-term conservation value of the proposed excess expenditures and the relative benefits of providing for conservation measures in perpetuity.

After review and approval by the I & M Committee, and prior to submittal to the Board of County Commissioners, Clark County shall submit the proposal for excess expenditures to the USFWS as part of the IPB, as hereinafter described. The USFWS shall review and either approve or reject the proposal, designating those specific expenditures which they are disapproving, within 30 days after receipt of the proposal.

### 2.9.2.2 Revised Population Projections

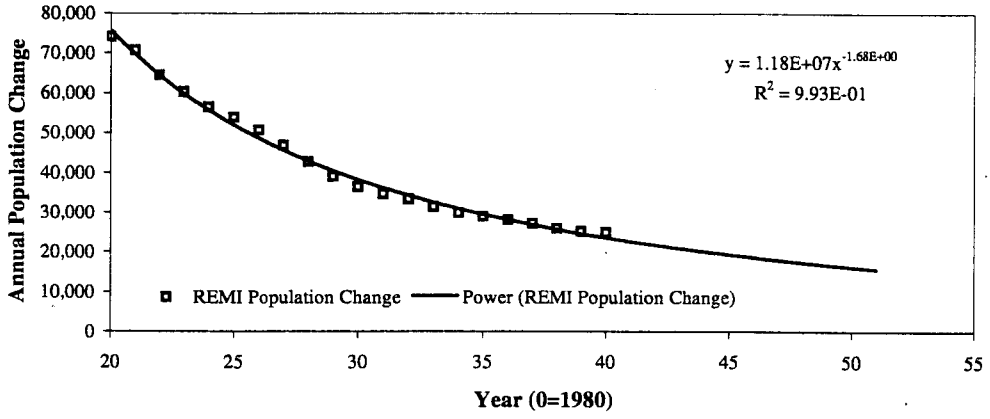
Clark County Comprehensive Planning provided the population projection used as the basis for development of the funding program in the MSHCP in 1997. An additional projection used a model developed by Regional Economic Models, Inc. (REMI). These two sources were utilized in preparing population projections for the MSHCP (Figure 2-17).

**Figure 2-17. Population Projections for Clark County**




The REMI model was calibrated to reflect recent population trends in southern Nevada and provides a population projection for Clark County through the year 2019, based in part on projected hotel room construction. Because the term of the MSHCP is proposed for 30 years, it was necessary to project the population trend beyond 2019. This population projection was made by extracting the trendline of annual population change from the last 20 years of the projection and extending it beyond the year 2019 (Figure 2-18).

**Figure 2-18. Projections Beyond REMI Model**




## 2.9.2.3 Revised Financial Projections

The financial model used to project future financial performance of the development fee system has been revised from that utilized in the DCP to incorporate the revised REMI population projections, more realistic calculations of interest accrual, and a ratio of land disturbance to population increase based on data from the implementation of the DCP. The model was also modified to make it easier to evaluate the effect that changes in

initial assumptions could have on the financial performance of the development fee–based system. These modifications to the model are described below.

## a. Assumptions

The assumptions used in the analysis are:

- The term of the MSHCP will be 30 years (beginning in 1998).
- The fee will continue at $550 per acre of authorized disturbance.
- The number of acres that will be disturbed during the permit period will coincide with the increased population projections.
- The dollar amount of the endowment in June 1999 is $25,000,000.

## b. Land Disturbance Projections

The financial and land disturbance reports covering the period from July 1995 to April 1997 (Clark County Department of Administrative Services, June 4, 1997) provide data on the acres of disturbance, fees collected, and interest earned by the County for the DCP from August 1995 through April 1997. During this 21-month period a total of 12,800 acres of land disturbance were reported, which corresponds to an average of 7,300 acres per year of land disturbance (Table 2-11).

**TABLE 2-11**
**RECORDED LAND DISTURBANCE UNDER THE DCP**

| | Total | 1995 | 1996 | 1997 |
|---|---|---|---|---|
| Acres | 12,800 | 2,300 | 7,900 | 2,600 |
| Months | 21 | 5 | 12 | 4 |
| Acres/month | 610 | 470 | 660 | 640 |
| Acres/year | 7,300 | 5,600 | 7,900 | 7,700 |

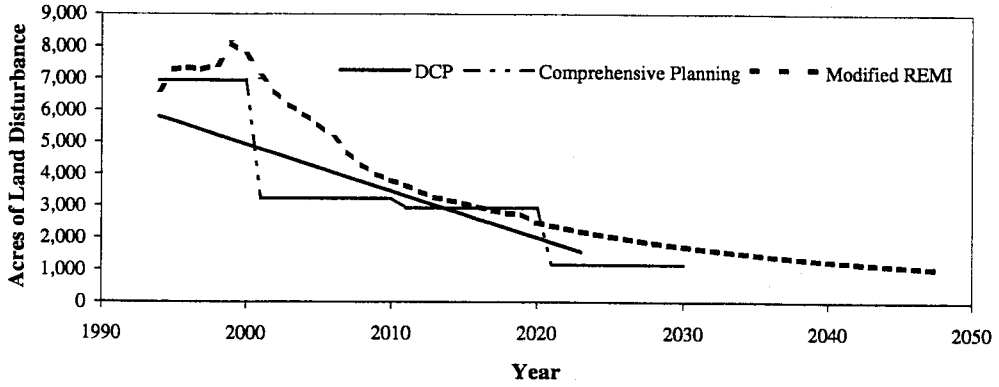
A total of $8,754,121 was accumulated by the DCP during the corresponding period. Of this total, $7,028,762 ($4,016,435/year) was from mitigation fee collection and $1,725,359 ($985,920/year) from interest. Fee collections reported closely matched $550/acre ($4,016,435 ÷ (7,300 acres = $550.2/acre).

The revised REMI population projections were used as the basis for the development of projected land disturbance. The acreage of land disturbance per increment of population growth in the county was derived from this period by dividing the average annual acres of land disturbance in 1995-1997 (7,300 acres per year) by the average annual population growth for the years 1995 and 1996 (66,939 inhabitants per year). The resulting ratio of

0.109 acre of land disturbance per new inhabitant per year is used to project annual rates of land disturbance from annual population change in the model.

This ratio, the number of acres of land disturbance for each new inhabitant, is a key assumption affecting the long-term performance of the program. The actual ratio using the population (919,388) and existing developed acreage (170,000) in 1993 (from the DCP) is 0.1849 acre of land development for each existing inhabitant. The ratio that Clark County Comprehensive Planning used in a preliminary analysis of the MSHCP funding program is 0.1304 acre of land disturbance per new inhabitant. The ratio used in the DCP was 0.1916. Projections of these rates of land disturbance are compared below as Figure 2-19.

**Figure 2-19. Projected Land Disturbance in Clark County**




The calculated ratio of 0.109 acre disturbed per new inhabitant per year appears to provide a conservative estimate of population-based land disturbance and therefore a conservative estimate of the potential generation of fees from future population increases. This ratio may, however, underestimate the actual amount of land disturbance that may occur with population growth if the realized ratio is close to that assumed in the DCP.

The DCP projected a total of 111,000 acres of land disturbance over the 30-year term of the permit (1994-2023). The revised projection based on the REMI model is 121,000 acres for this period (through 2023) and 130,000 acres for the term of the MSHCP (through 2028).

## 2.9.2.4 Model Characteristics

The financial performance model developed for the DCP was revised and updated using the modified REMI population projections and land disturbance projections, and to provide for more flexible examination of alternatives. The model is implemented on a Microsoft Excel spreadsheet. Data inputs that can be manipulated to evaluate their effects on performance of the program are:

- Interest – average rate of return on endowment
- Budget increase cap – proposed annual rate of budget change
- Inflation – average future rate of inflation
- MSHCP fee – held at $550 per acre
- MSHCP fee index – to evaluate effects of fee indexing
- Additional MSHCP budget – potential budget augmentation (above the expenditures mandated by the DCP) for implementation the MSHCP beginning in 1998

The data outputs of the model are:

- Endowment in year 2024 – the future dollar amount remaining in the endowment at the end of the DCP term
- Endowment in year 2028 – the future dollar amount remaining in the endowment at the end of the proposed MSHCP
- Cumulative expenditures year 2024 – cumulative amount spent during the term of the DCP in 1994 dollars
- Cumulative expenditures year 2028 – cumulative amount spent during the proposed term of the MSHCP in 1994 dollars
- DCP-required cumulative expenditures year 2024 – cumulative amount of expenditures through the term of the DCP, totaling $43,500,000

The model also provides a graphical output of the funds potentially available for the program, both in future budget dollars and budget adjusted for inflation to 1994 dollars through the proposed term of the MSHCP.

The model calculates these outputs on an annual basis from 1995 to 2028. The model also calculates MSHCP budget amounts as an addition to the base $1,650,000 program cost per year for the first 10 years of the DCP (1995-2004), and $1,350,000 per year for the last 20 years (2005-2024). In all of the cases discussed below, total expenditures for the MSHCP are greater than the $43,500,000 required to be spent by 2024 (in 1994 dollars) that was incorporated by inference into the agreements for the DCP.

The revised model was run with the original DCP criteria and population projections as well as with the more recent Comprehensive Planning projection and REMI projection. These were also compared with a projection made in a review of the DCP financial analysis by Kathy Ong of Hobbs, Ong, & Associates, Inc. (June 13, 1997). The financial projections and financial performance to date indicate that the actual rate of population

growth and the concomitant fees collected are consistent with the REMI model projections for the first three years of the DCP. All of the projections resulted in improved financial performance when compared to the projection in the DCP.

### 2.9.2.5 Alternative Financial Management Options for the MSHCP Funding Program

Future financial performance of the MSHCP funding program was investigated by manipulating the effects of fund management in two aspects: alternative levels of expenditures through the 30-year period and alternative levels of the endowment remaining at the end of the 30-year period. These results of several representative projections are provided below.

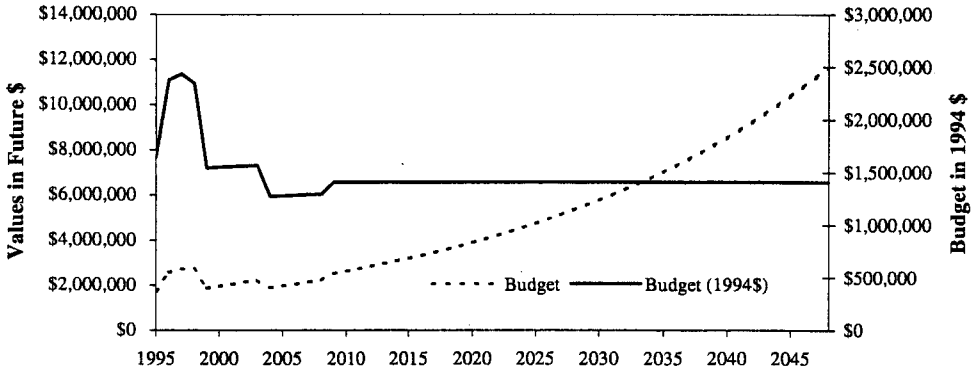
#### a. Extension of DCP

If the current DCP structure is extended to the MSHCP, with the following assumptions:

- 6 percent rate of return on fund investments
- 4 percent rate of inflation
- 4 percent cost-of-living increases in budget

the projected performance would allow allocation of an additional $65,000 per year to the DCP budget for MSHCP actions (Figure 2-20).

**Figure 2-20. Funds Available: Continuation of DCP**




The endowment would hold $122 million at the end of the DCP term (the year 2024) and $185 million at the end of 30 years (the year 2028).

#### b. Index Fees to Inflation

If land disturbance fees are indexed to match inflation and the assumptions remain the same, the projected performance would allow an allocation of an additional $105,000 per year to the DCP for MSHCP actions. The amount remaining in the endowment at the end

of the plan would be approximately the same, with $125 million in 2024 and $191 million in 2028.

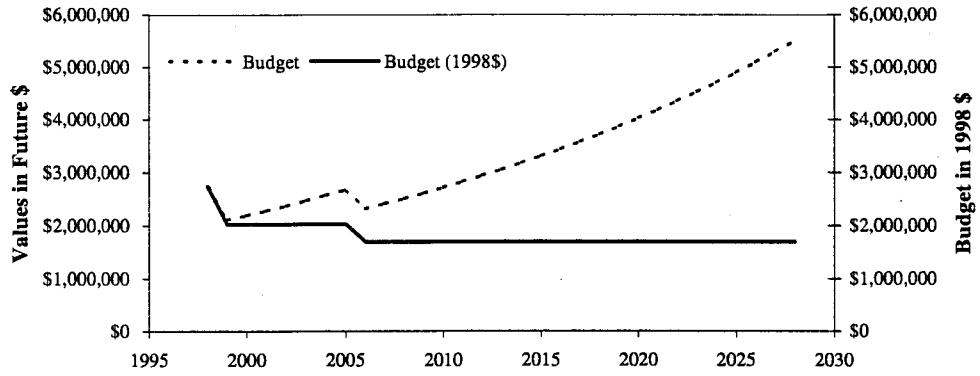
### c. Increased Rate of Return: Proposed MSHCP Phase 1 Funding

The rate of return on investment assumed in the DCP may be overly conservative. If the current DCP structure is extended to the MSHCP, with the same assumptions, except increasing the rate of return on investment by one point:

- 7 percent rate of return on fund investments
- 4 percent rate of inflation
- 4 percent cost-of-living adjustments in the budget

the projected performance of the endowment with these assumptions would allow allocation of an additional $400,000 per year to the DCP budget for MSHCP actions, beginning in 1999 and through the year 2028 (Table 2-12 and Figure 2-21).

**Figure 2-21. Funds Available: MSHCP Phase 1**




The effective budget would be approximately $2 million through 2005 and adjust to approximately $1.7 million per year in 1998 dollars through the year 2028 (the decrease after 2005 reflects the commitment to expend $1.65 million for the first 10 years of the DCP and $1.35 million thereafter). This represents the adjusted budget of the DCP plus an additional $400,000 per year to fund MSHCP Phase 1 activities. Approximately $173 million would remain in the endowment in 2028 ($53 million in 1998 dollars). Expenditures through 2028 would total $64 million (in 1998 dollars).

### d. Maximum Sustainable Budget with Increased Rate of Return: Proposed MSHCP Phase 2 Funding

The maximum sustainable annual rate of spending, assuming an increased rate of return on investment over the DCP assumption, would allow allocation of up to an additional $1,400,000 per year to the current DCP budget to fund MSHCP Phase 2 actions. This would cover the proposed MSHCP Phase 1 expenditures of $400,000 plus an additional

**TABLE 2-12**
**PROJECTED ANNUAL REVENUES: PROPOSED MSHCP PHASE 1**

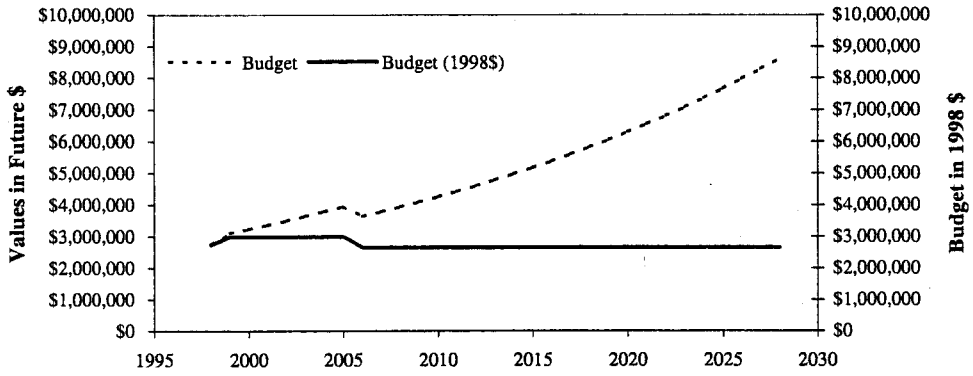
| | Year | Projected Acres Disturbed per Year | Income/Year @ $550 per Acre | Interest Income 7.00% | Program Costs + 4% Inflation | Net Annual Income | Cumulative Endowment | Total Acres Disturbed | Projected Program Costs 1998 Dollars |
|---|---|---|---|---|---|---|---|---|---|
| 0 | 1998 | 7,418 | $4,455,000 | $575,000 | $2,738,664 | $2,291,337 | $24,135,507 | 32,705 | $2,738,664 |
| 1 | 1999 | 8,092 | $4,450,631 | $1,845,258 | $2,116,000 | $4,179,888 | $28,315,395 | 38,419 | $2,034,615 |
| 2 | 2000 | 7,724 | $4,248,474 | $2,130,774 | $2,200,640 | $4,178,608 | $32,494,004 | 43,885 | $2,034,615 |
| 3 | 2001 | 7,046 | $3,875,543 | $2,410,224 | $2,288,666 | $3,997,102 | $36,491,105 | 49,113 | $2,034,615 |
| 4 | 2002 | 6,584 | $3,621,242 | $2,681,121 | $2,380,212 | $3,922,150 | $40,413,256 | 54,114 | $2,034,615 |
| 5 | 2003 | 6,164 | $3,390,343 | $2,947,590 | $2,475,421 | $3,862,512 | $44,275,767 | 58,899 | $2,034,615 |
| 6 | 2004 | 5,882 | $3,235,290 | $3,212,539 | $2,574,438 | $3,873,391 | $48,149,158 | 63,475 | $2,034,615 |
| 7 | 2005 | 5,547 | $3,050,594 | $3,477,212 | $2,677,415 | $3,850,391 | $51,999,549 | 67,853 | $2,034,615 |
| 8 | 2006 | 5,123 | $2,817,715 | $3,738,588 | $2,322,676 | $4,233,628 | $56,233,177 | 72,040 | $1,697,156 |
| 9 | 2007 | 4,676 | $2,571,754 | $4,026,334 | $2,415,583 | $4,182,505 | $60,415,682 | 76,046 | $1,697,156 |
| 10 | 2008 | 4,277 | $2,352,556 | $4,311,437 | $2,512,206 | $4,151,787 | $64,567,469 | 79,878 | $1,697,156 |
| 11 | 2009 | 3,986 | $2,192,283 | $4,596,453 | $2,612,694 | $4,176,041 | $68,743,510 | 83,543 | $1,697,156 |
| 12 | 2010 | 3,792 | $2,085,774 | $4,885,048 | $2,717,202 | $4,253,620 | $72,997,130 | 87,049 | $1,697,156 |
| 13 | 2011 | 3,647 | $2,005,727 | $5,180,000 | $2,825,890 | $4,359,837 | $77,356,966 | 90,403 | $1,697,156 |
| 14 | 2012 | 3,441 | $1,892,318 | $5,481,219 | $2,938,926 | $4,434,611 | $81,791,577 | 93,611 | $1,697,156 |
| 15 | 2013 | 3,264 | $1,795,290 | $5,788,246 | $3,056,483 | $4,527,052 | $86,318,629 | 96,680 | $1,697,156 |
| 16 | 2014 | 3,164 | $1,740,385 | $6,103,218 | $3,178,742 | $4,664,860 | $90,983,490 | 99,616 | $1,697,156 |
| 17 | 2015 | 3,075 | $1,691,061 | $6,428,031 | $3,305,892 | $4,813,201 | $95,796,690 | 102,424 | $1,697,156 |
| 18 | 2016 | 2,969 | $1,632,916 | $6,762,920 | $3,438,127 | $4,957,709 | $100,754,399 | 105,110 | $1,697,156 |
| 19 | 2017 | 2,841 | $1,562,770 | $7,107,505 | $3,575,653 | $5,094,623 | $105,849,022 | 107,679 | $1,697,156 |
| 20 | 2018 | 2,758 | $1,516,926 | $7,462,524 | $3,718,679 | $5,260,772 | $111,109,794 | 110,137 | $1,697,156 |
| 21 | 2019 | 2,727 | $1,499,705 | $7,830,175 | $3,867,426 | $5,462,454 | $116,572,248 | 112,489 | $1,697,156 |
| 22 | 2020 | 2,476 | $1,361,888 | $8,207,723 | $4,022,123 | $5,547,489 | $122,119,737 | 114,738 | $1,697,156 |
| 23 | 2021 | 2,378 | $1,307,729 | $8,594,152 | $4,183,008 | $5,718,873 | $127,838,610 | 116,889 | $1,697,156 |
| 24 | 2022 | 2,285 | $1,256,923 | $8,992,695 | $4,350,328 | $5,899,290 | $133,737,899 | 118,947 | $1,697,156 |
| 25 | 2023 | 2,199 | $1,209,192 | $9,403,975 | $4,524,341 | $6,088,825 | $139,826,724 | 120,916 | $1,697,156 |
| 26 | 2024 | 2,117 | $1,164,286 | $9,828,621 | $4,705,315 | $6,287,592 | $146,114,316 | 122,799 | $1,697,156 |
| 27 | 2025 | 2,040 | $1,121,980 | $10,267,271 | $4,893,527 | $6,495,724 | $152,610,040 | 124,600 | $1,697,156 |
| 28 | 2026 | 1,967 | $1,082,073 | $10,720,575 | $5,089,269 | $6,713,380 | $159,323,421 | 126,323 | $1,697,156 |
| 29 | 2027 | 1,899 | $1,044,382 | $11,189,193 | $5,292,839 | $6,940,735 | $166,264,156 | 127,971 | $1,697,156 |
| 30 | 2028 | 1,834 | $1,008,740 | $11,673,797 | $5,504,553 | $7,177,984 | $173,442,140 | 129,548 | $1,697,156 |

$1,000,000 per year. In 1998 dollars, the total budget would be up to $3 million until 2005 and decrease to $2.7 million through 2028 (the decrease reflecting the decreased DCP commitment from $1.65 million to $1.35 million after the first 10 years). The model assumptions are the same as for the previous alternative:

- 7 percent rate of return on fund investments
- 4 percent rate of inflation
- 4 percent cost-of-living adjustments in budget

The difference between this projection and projection c. above results from the difference in the endowment left at the end of the plan. With maximum sustainable budget, the endowment would have approximately $28 million in 2028 ($9 million in 1998 dollars), substantially less than the $173 million at the lower level of expenditures. Total cumulative expenditures through the year 2028, however, would total $92 million (in 1998 dollars), or $28 million more (Table 2-13 and Figure 2-22).

**Figure 2-22. Funds Available: MSHCP Phase 2**




# 2.9.3 Potential Sources of Extramural Funding for the MSHCP

Several additional sources of funding may be available for conservation measures proposed in the MSHCP. These are outlined below.

## 2.9.3.1 Las Vegas Wash Wetlands Park

The Las Vegas Wash Wetlands Park is being implemented in the Las Vegas Wash area of Clark County to deal with the impacts of past changes in the quantity and quality of water flows resulting, in part, from the urbanization of the Las Vegas Valley. This program includes significant opportunities for the incorporation of conservation measures that would complement the MSHCP. These measures could provide specific benefits to the desert riparian and wetlands ecosystems and species that depend upon them.

**TABLE 2-13**
**PROJECTED ANNUAL REVENUES: PROPOSED MSHCP PHASE 2**

| | Year | Projected Acres Disturbed per Year | Income/Year @ $550 per Acre | Interest Income 7.00% | Program Costs + 4% Inflation | Net Annual Income | Cumulative Endowment | Total Acres Disturbed | Projected Program Costs 1998 Dollars |
|---|---|---|---|---|---|---|---|---|---|
| 0 | 1998 | 7,418 | $4,455,000 | $575,000 | $2,738,664 | $2,291,337 | $24,135,507 | 32,705 | $2,738,664 |
| 1 | 1999 | 8,092 | $4,450,631 | $1,845,258 | $3,116,000 | $3,179,888 | $27,315,395 | 38,419 | $2,996,154 |
| 2 | 2000 | 7,724 | $4,248,474 | $2,060,774 | $3,240,640 | $3,068,608 | $30,384,004 | 43,885 | $2,996,154 |
| 3 | 2001 | 7,046 | $3,875,543 | $2,262,524 | $3,370,266 | $2,767,802 | $33,151,805 | 49,113 | $2,996,154 |
| 4 | 2002 | 6,584 | $3,621,242 | $2,447,370 | $3,505,076 | $2,563,535 | $35,715,341 | 54,114 | $2,996,154 |
| 5 | 2003 | 6,164 | $3,390,343 | $2,618,736 | $3,645,279 | $2,363,799 | $38,079,140 | 58,899 | $2,996,154 |
| 6 | 2004 | 5,882 | $3,235,290 | $2,778,775 | $3,791,090 | $2,222,974 | $40,302,114 | 63,475 | $2,996,154 |
| 7 | 2005 | 5,547 | $3,050,594 | $2,927,919 | $3,942,734 | $2,035,779 | $42,337,893 | 67,853 | $2,996,154 |
| 8 | 2006 | 5,123 | $2,817,715 | $3,062,273 | $3,638,608 | $2,241,380 | $44,579,272 | 72,040 | $2,658,695 |
| 9 | 2007 | 4,676 | $2,571,754 | $3,210,560 | $3,784,152 | $1,998,163 | $46,577,435 | 76,046 | $2,658,695 |
| 10 | 2008 | 4,277 | $2,352,556 | $3,342,760 | $3,935,518 | $1,759,798 | $48,337,234 | 79,878 | $2,658,695 |
| 11 | 2009 | 3,986 | $2,192,283 | $3,460,336 | $4,092,939 | $1,559,680 | $49,896,914 | 83,543 | $2,658,695 |
| 12 | 2010 | 3,792 | $2,085,774 | $3,565,786 | $4,256,656 | $1,394,904 | $51,291,818 | 87,049 | $2,658,695 |
| 13 | 2011 | 3,647 | $2,005,727 | $3,660,628 | $4,426,922 | $1,239,432 | $52,531,250 | 90,403 | $2,658,695 |
| 14 | 2012 | 3,441 | $1,892,318 | $3,743,419 | $4,603,999 | $1,031,737 | $53,562,987 | 93,611 | $2,658,695 |
| 15 | 2013 | 3,264 | $1,795,290 | $3,812,244 | $4,788,159 | $819,375 | $54,382,362 | 96,680 | $2,658,695 |
| 16 | 2014 | 3,164 | $1,740,385 | $3,867,679 | $4,979,686 | $628,378 | $55,010,740 | 99,616 | $2,658,695 |
| 17 | 2015 | 3,075 | $1,691,061 | $3,909,939 | $5,178,873 | $422,127 | $55,432,867 | 102,424 | $2,658,695 |
| 18 | 2016 | 2,969 | $1,632,916 | $3,937,453 | $5,386,028 | $184,341 | $55,617,207 | 105,110 | $2,658,695 |
| 19 | 2017 | 2,841 | $1,562,770 | $3,947,901 | $5,601,469 | ($90,797) | $55,526,410 | 107,679 | $2,658,695 |
| 20 | 2018 | 2,758 | $1,516,926 | $3,939,941 | $5,825,528 | ($368,660) | $55,157,750 | 110,137 | $2,658,695 |
| 21 | 2019 | 2,727 | $1,499,705 | $3,913,532 | $6,058,549 | ($645,312) | $54,512,438 | 112,489 | $2,658,695 |
| 22 | 2020 | 2,476 | $1,361,888 | $3,863,537 | $6,300,891 | ($1,075,466) | $53,436,972 | 114,738 | $2,658,695 |
| 23 | 2021 | 2,378 | $1,307,729 | $3,786,359 | $6,552,927 | ($1,458,839) | $51,978,132 | 116,889 | $2,658,695 |
| 24 | 2022 | 2,285 | $1,256,923 | $3,682,462 | $6,815,044 | ($1,875,659) | $50,102,473 | 118,947 | $2,658,695 |
| 25 | 2023 | 2,199 | $1,209,192 | $3,549,495 | $7,087,645 | ($2,328,959) | $47,773,514 | 120,916 | $2,658,695 |
| 26 | 2024 | 2,117 | $1,164,286 | $3,384,896 | $7,371,151 | ($2,821,969) | $44,951,545 | 122,799 | $2,658,695 |
| 27 | 2025 | 2,040 | $1,121,980 | $3,185,877 | $7,665,997 | ($3,358,139) | $41,593,405 | 124,600 | $2,658,695 |
| 28 | 2026 | 1,967 | $1,082,073 | $2,949,411 | $7,972,637 | ($3,941,153) | $37,652,252 | 126,323 | $2,658,695 |
| 29 | 2027 | 1,899 | $1,044,382 | $2,672,211 | $8,291,543 | ($4,574,950) | $33,077,302 | 127,971 | $2,658,695 |
| 30 | 2028 | 1,834 | $1,008,740 | $2,350,717 | $8,623,204 | ($5,263,747) | $27,813,555 | 129,548 | $2,658,695 |

Funding for the conservation measures in the park will further the general and specific goals of the MSHCP. The biological resources in the park will be managed as part of the AMP.

The Las Vegas Wash Wetlands Park will create a variety of opportunities for multiplying the resources dedicated to mitigation under the auspices of the MSHCP. First, during the first two years of the MSHCP, Clark County has agreed to contribute $115,000 to the Clark County Department of Parks and Recreation to be utilized exclusively for conservation measures in the wetlands park. This grant is specifically contingent upon the Department of Parks and Recreation matching the grant with a contribution from outside funding sources for conservation measures. Such conservation measures will include protection from future erosion, restrictions applicable to destructive types of human access, removal of tamarisk and common reed replacement with vegetation native to the area, removal of trash and garbage which has accumulated over the years, improvement of water quality, fire management and control policies, constraints on all visitor activity in nesting areas and during nesting seasons and continued long-term maintenance and management of the wash.

The park will also provide opportunities for attracting extramural funds for collaborative conservation and conservation education initiatives. Through the construction and development of the planned Las Vegas Wash Wetlands Park Environmental Education Center and Interpretative Campus under Clark County Parks and Recreation sponsorship, a variety of extramural conservation-related program proposals will be developed in collaboration with the MSHCP Public Information and Education Committee and the Clark County School District.

Finally, it is anticipated that the entire Las Vegas Wash Wetlands Park will cost approximately $150 million, of which at least $50 million will be expended on conservation measures directly implementing the goals and objectives of the MSHCP beginning in the fall of 2000 with the creation of the first detention facility and the first enhanced wetlands.

### 2.9.3.2 Federal Grants and Appropriations

#### a. Public Lands Management Act

In October of 1998, Congress passed and the President signed the Southern Nevada Public Lands Management Act (PLMA), which has provided an unprecedented opportunity to enhance both growth management and environmental planning in Clark County.

As estimated by the Congressional Budget Office, the sale of the approximately 27,000 acres of Federal lands scattered within the urban areas within the Las Vegas Valley, as

mandated in PLMA, is expected to generate gross sales of an estimated $420 million during the initial six years of implementation of its provisions, from 1998 to 2003. Ultimate gross sales could be substantially higher.

PLMA, with some exceptions, mandates that 85 percent of the proceeds of the sales be deposited into a special account to be expended on five specifically enumerated areas.

1. Acquisition of environmentally sensitive lands in the state of Nevada, with a priority given to lands within Clark County.

2. Development of the MSHCP.

3. Development of parks, trails, and natural areas within Clark County.

4. Capital improvements in specified and specially managed areas within Clark County, with a cap of 25 percent per fiscal year.

5. Reimbursement of BLM costs and expenses incurred in facilitating the sales.

Thus, the special account from which Clark County would draw funds would receive an estimated $357 million over the six-year period, or approximately $60 million per year (85 percent of total proceeds).

It is estimated that expenditure categories 4 and 5 above are likely to result in approximately 27 percent of the $60 million, or approximately $16 million per year being paid to the Federal agencies. The balance of the fund, or approximately $46 million per year, would be available for the remaining three expenditure categories (acquisition of environmentally sensitive lands, development of the MSHCP, and development of parks, trails, and natural areas in Clark County), all of which would benefit the MSHCP. In addition, the special account must be invested in interest-bearing accounts which will add to the amount available.

At the time of publication of this MSHCP, Federal, state, and MSHCP officials are reviewing the PLMA and negotiating regarding the implementation of its provisions. Obviously, the rate of sales, when they will commence (the PLMA provides "as soon as practical"), what prices the land will be sold for, and when the first distribution of funds will occur have not been accurately determined. However, regardless of the finalization of the details, even the most conservative interpretation of the PLMA makes it unquestionably clear that close to 50 percent of the total proceeds will be available both directly to the MSHCP and for uses which should significantly augment several of its purposes—the acquisition of sensitive habitat and the development of parks, trails, and natural areas.

At the present time, and subject to any requirements imposed by the Secretary of the Interior, it is the intent of the I & M Committee that funds granted to the Clark County MSHCP would be subject to the I & M budgetary process and would be expended only to fulfill the goals and intent of the MSHCP with the consent of the I & M Committee, the USFWS, and the Clark County Board of County Commissioners.

### b. Other Federal Programs

A number of other Federal programs are potentially available for the development or implementation of the Clark County MSHCP. The MSHCP has and will continue to pursue an active and aggressive program to seek outside sources for both planning and implementation activities. These include state, Federal, or private grants, such as:

- Land and Water Conservation Funds
- TEA-21 (Transportation Efficiency Act–21st Century) and future transportation-related funding measures
- Special Legislation for Conservation Planning
- ESA Section 6 funds available for land acquisitions associated with approved HCPs

## 2.9.3.3 Additional Funding Sources

Additional sources of extramural funding are expected to include matching funds grants currently under discussion with UNR in collaboration with BRRC as well as grants solicited from foundations such as John D. and Catherine T. MacArthur Foundation, the Pew Charitable Trust, and Richard Mellon Foundation, among others, whose interests in conservation principles and practices are particularly reflected in this plan's ecosystem-centered approach to conservation.

# 2.10 Changed Circumstances, Unforeseen Circumstances, No Surprises, and Other Federal Commitments

Section 10 regulations [50 CFR 17.22(b)(2)(iii)] require that an HCP specify the procedures to be used for dealing with changed and unforeseen circumstances that may arise during the implementation of the HCP. In addition, the Habitat Conservation Plan Assurances ("No Surprises") Rule [50 CFR 17.2, 17.22(b)(5) and (6); 63 FR 8859] defines "unforeseen circumstances" and "changed circumstances" and describes the obligation of the permittees and the USFWS.

## 2.10.1 In General

The Applicants and Participants have made every effort to anticipate the minimization, monitoring, and mitigation measures (conservation measures) necessary to conserve the Covered Species and the habitats that support those species and, to that end, have relied upon the best scientific and commercial information available and have consulted the biologists who have participated in the BAC, biologists working for the USFWS and NDOW, and other experts having relevant information and data concerning the Covered Species and their habitats. In addition, the AMP and the flexible provisions regarding the expenditure of mitigation funds provided by the Applicants are intended to meet and address future exigencies and emergency situations. Thus, the MSHCP is intended to reduce the potential for adverse changed or unforeseen circumstances on the Covered Species and their habitats to a level of insignificance. However, notwithstanding the provisions of the MSHCP, should adverse changed or unforeseen circumstances result in, or threaten, a substantial change in the population of any Covered Species or the overall quality of any habitat of that species, as determined pursuant to the procedure outlined hereinafter, the Applicants and the USFWS shall cooperate to resolve the adverse impacts in accordance with this section.

The terms "changed circumstances" and "unforeseen circumstances" as defined in this MSHCP are intended to have the same meaning as defined in the Habitat Conservation Plan Assurances ("No Surprises") Rule:

> ***Changed Circumstances:*** If additional conservation and mitigation measures are deemed necessary to respond to changes in circumstances that were provided for in the HCP, the permittee(s) will be expected to implement the measures specified in the HCP, but only those measures and no others; and

Wisconsin Statewide Karner Blue Butterfly Habitat Conservation Plan and Environmental Impact Statement, chapter on Habitat Conservation Plan Funding

Wisconsin Statewide

# Karner Blue Butterfly Habitat Conservation Plan and Environmental Impact Statement

## Volume 2: Final EIS under Wisconsin Environmental Policy Act

(s. 1.12, *Wis. Stats.*; NR 150, Wis. Adm. Code)

## Draft EIS under National Environmental Policy Act

(42 USC 4331 *et seq.*)


U.S. Fish and Wildlife Service
1015 Challenger Court
Green Bay, WI 54311

and

Wisconsin Department of Natural Resources
101 S. Webster Street, P.O. Box 7921
Madison, WI 53707-7921


March 1999


**Contacts:**

Field Supervisor
U.S. Fish and Wildlife Service
1015 Challenger Court
Green Bay, WI 54311
(920) 465-7440

HCP Coordinator
Wisconsin Dept. Natural Resources
101 S. Webster Street
Madison, WI 53707
(608) 261-6451 or
(877) 452-7637 (toll free)

# G. HCP Funding

## 1. Funding Overview

The strength of this unique statewide conservation plan is the commitment of conservation measures on large tracts of public and private land (partner lands) throughout the State of Wisconsin. The HCP partners and other cooperators have committed to work together in a grassroots cooperative plan designed to assure the future of the Karner blue butterfly through joint conservation efforts conducted while continuing their otherwise lawful management and land use activities.

In addition, the conservation of this species will rely on the joint efforts of the many other landowners in the state whose activities may affect this species. Many of these landowners and land users are unidentified at this time and will be identified as the participation plan is implemented. Although the magnitude of the initial outreach effort has been estimated and the initial cost is being committed to (see Table 2.22, page 154), the financial needs and contributions to administer this segment of the conservation effort are unknown and unknowable at the onset. The participation plan of the HCP seeks to bring together this tremendous resource of support. *This conservation effort, therefore, differs from other HCPs, as does the approach to funding.*

The strength behind the guarantee of funding is not to be found in the detail of dollars that might be located in an escrow account, but rather in the DNR's and the partners' commitments outlined in the Implementing Agreement and individual conservation agreements. As testimony to this commitment, the HCP Team (including non-partner participants) has invested more than four years in developing this plan at an estimated cost well over $1.5 million in time, expertise and resources. Within their legally binding conservation agreements the partners continue to commit their resources to assure this HCP will be successful.

Therefore, in this plan, there will be a continuing effort through funding mechanisms and sources identified below and through joint partnering efforts:

- With the guidance of the IOC, the DNR shall establish funding mechanisms needed to support the implementation of the HCP;

- The DNR will include in its annual budget requests for funds to fulfill its obligations under the HCP and the Implementing Agreement (see Part H of this chapter for staffing and support details). However, the DNR can not guarantee state funds for future activities to administer the ITP and implement the HCP which are not yet appropriated by the state legislature;

- The USFWS will seek adequate funding to fulfill its administration and assistance commitments and meet its statutory requirements (e.g., assist with permit monitoring and oversight issues and provide assistance on permit and HCP implementation issues). The USFWS further agrees to assist in identifying and pursuing funding for activities in the HCP that contribute to the recovery of the Karner blue butterfly.

- The partners will continue existing collaborative efforts and will develop further funding opportunities with the USFWS, US Geological Survey (and former NBS), National Fish & Wildlife Foundation, and the DNR's Extension of Services Private Lands Team and others sources that match HCP needs.

If at any point in the implementation and administration of the HCP funding appears to be unavailable to meet commitments, the DNR will consult with the USFWS to determine whether the HCP or ITP needs amendment or modification.

## 2. HCP Plan Organizational Structure

**Implementation Needs.** To anchor the HCP implementation infrastructure, DNR will provide a full-time, permanent employee as the HCP Coordinator. This position will be stationed in the Bureau of Forestry and will be supported by segregated forestry funds.

There are several unknowns at the onset of this HCP:
- the uncertainty of state and federal funding,
- the fact that the ultimate number of participants is greatly unknown, and
- the magnitude of different activities.

As a result, the diverse financial needs of implementing the HCP requires that:
- a variety of funding sources be available and
- the management of these funds be flexible.

The DNR, with the advice of the IOC's subcommittee on funding and accounting, will make the best use of funds to optimize implementation of the HCP. The USFWS may be consulted on priorities when needed.

Administrative costs to administer the ITP, to implement the HCP and to operate the adaptive management system will largely be born by the DNR's Land Division: jointly funded and supported by:
- Land Division general purpose revenue (GPR) funds;
- GPR funds allocated to the Bureau of Endangered Resources (BER), BER tax-check off funds and endangered resources motor vehicle license plate sales;

- in-kind support from various DNR staff through cross program cooperation negotiated through the Department's work planning process;
- in-kind support from partners' staff participating on the IOC and its working subcommittees; and
- non-refundable application fees for future applicants requiring certificates of inclusion or partner status.

**Partner Commitments.** Table 2.22 (page 154) lists the summary of dollar commitments by the partners associated with the activities discussed throughout this section and detailed in the corresponding sections of Chapter II.

The main body providing partner support to the general implementation of the HCP is the partners' implementation oversight committee (IOC). Operation of the IOC will be mostly self-funded with in-kind contributions of service and support of the IOC standing members. All partners are responsible for participating on the IOC during the course of the ITP.

Through individual conservation agreements, partners are committed to fund their management activities which give consideration to, or enhance and favor the Karner blue butterfly and/or its habitat. Partners are likewise committed to fund self-monitoring on lands they manage.

### 3. Implementation Process

**Monitoring Impacts.** Partners will commit funds for long-term biological monitoring needs, as outlined in Parts D and H of this chapter. Effectiveness monitoring (statewide status) costs will be primarily shared by DNR (as permit administrator) and the HCP Partners. Funding sources include:

- DNR (will seek federal funding assistance);
- in-kind monitoring, as most partners will choose to provide monitoring on their lands; and
- possibly a portion of inclusion fees and in-kind services from future applicants.

Each Partner will support pre-management surveying (pre-management and reconnaissance) and monitoring (self-monitoring for validation) of lands entered into the management strategies under the conservation agreement as related to normal management activities. The funding to support pre-management surveying and monitoring related to partners' normal management activities is the responsibility of each partner. Each partner is obligated to perform this monitoring by their commitment in their conservation agreement. Verification that this obligation has been met will be part of the compliance auditing process.

## Table 2.22. Partners' Estimated Annual Commitments During Permit Period

| Activity | Annual Commitment (dollars) |
|---|---|
| Surveying (pre-management) | $ 72,920 |
| Monitoring (post-treatment validation and statewide effectiveness) | $ 69,585 |
| Record Keeping and Data Mgmt. | $ 83,620 |
| Research | $ 59,150 |
| Public Outreach and Education | $ 94,004 |
| Public Awareness | $ 4,000 |
| Training | $ 43,482 |
| Administration | $ 84,000 |
| HCP-IOC Participation | $ 49, 370 |
| Conservation Efforts | $ 60,375 |
| Long-Term Management | $ 64,855 |
| Land Acquisition | $ 70,000 |
| **Total** | **$ 597, 361** |

**Compliance Auditing.** Compliance auditing satisfies the USFWS' "need to know" that the parties involved are honoring their agreements. This form of monitoring, while the responsibility of the DNR, relies heavily on federal funds to assure its completion.

**Funding Commitments for the Mitigation Program.** Self-mitigating activities that result in the positive and necessary disturbances required for Karner blue butterflies to persist are inherent in each partner's normal land use activities. This is the very thing that has allowed the Karner blue butterfly's continued persistence on the Wisconsin landscape. A detailed description of funding commitments to perform existing normal work is irrelevant since these are the normal activities which would otherwise occur on the landscape. It is necessary and desirable that partners resume these activities when an ITP is issued. For those situations where normal work will be modified, and the modifications result in additional costs, the partners are committing to funding additional in-kind effort as reflected in their conservation agreements. (See Table 2.22, page 154).

Mitigation used as recovery is planned by some partners. This extended mitigation which goes beyond what would normally be expected in the HCP is greatly dependent on the availability of federal funding. The cost of this mitigation is most of the sum in Table 2.22 (page 154) under the category "long term management".

**Collection and Management of Funds, Fees and Fines.** Due to pending state legislation regarding the DNR's ability to collect and manage funds from certain groups, and for this same reason, also holding back negotiating alternative mechanisms, the detail for these mechanisms may not be defined at the onset.

A mitigation fee structure, if any, and other compensatory measures for long term/permanent take identified by existing Partners or future applicants to this HCP will be developed by the DNR in cooperation with the IOC within 6 months of issuance of ITP.

**Data Management and Analysis.** The DNR will be responsible for coordinating and providing most data management and GIS activities. Funding will come from: DNR through work planning; commitments from some partners; outside sources; and may use a portion of inclusion fees from future applicants.

When data analysis needs are found to exceed the in-kind services of the DNR, partners' technical staff and the IOC biological subcommittee, or external sources are otherwise necessary or advisable, funding will be sought by the DNR and the IOC funding subcommittee.

**Research.** Research priorities initially identified are discussed in Part D of this chapter (pages 114-124). The HCP is fortunate to be the beneficiary of research already being pursued or planned by other parties. The HCP partners have also invested a considerable amount of money for research. A discussion of research related to herbicide use is included in Part D of this chapter (pages 114-118).

Observation and analysis of monitoring data will fuel the adaptive management process. Other research which may be beneficial will be pursued as its priority becomes more important and as funding becomes available. Large sums of funding for additional research are not being committed to initially. However, the partnership may make use of a portion of inclusion fees and in-kind services from future applicants.

Some research is fundamental to the federal recovery process and may also benefit the HCP. This research is primarily the responsibility of the USFWS, and therefore, the HCP Partnership will look to the USFWS to help support research in this category.

**Training.** Training may take a variety of forms, depending on the ultimate customer and demand. Funding for, or in-kind training services may be provided by one or more of the following:

- the DNR - Bureaus of Endangered Resources and Forestry and the HCP Coordinator;
- the DNR regional and area offices and customer service centers;
- the DNR Bureau of Communication and Education;
- the HCP Partners that have committed to internal and some external training in their conservation agreements;
- the existing cooperative relationships with organizations like the Wisconsin Woodland Owners Association, Audubon Society, Sierra Club; and
- the extended cooperative partnerships with organizations such as UW-Extension, county land conservation agencies, tree farm families and others which will be developed.

The partners may also make use of a portion of inclusion fees and in-kind services from future applicants for training.

In-kind services will mostly support these activities (see Table 2.22, page 154). Where products and services are identified beyond voluntary providers ability, the DNR and IOC subcommittee on funding may seek support from sources where projects qualify for funding. The National Fish & Wildlife Foundation is an example of one funding source which will be offered the opportunity to participate.

### 4) Additional Conservation Efforts

**Outreach and Education.** An important element of the HCP is the effort to spread broad awareness and understanding of the predicament of the Karner blue and the opportunities to participate in this HCP. Coordination and initial outreach will be funded by the DNR.

Education may take a variety of forms, depending on the ultimate audience and demand. This will be provided by one or more of the following:

- the DNR Bureaus of Endangered Resources and Forestry and the HCP Coordinator;
- the DNR Regional and Area offices and Customer Service Centers;
- the DNR Bureau of Communication and Education;
- HCP Partners that have committed to outreach and education measures in their conservation agreements;
- the existing cooperative relationships with organizations like Wisconsin Woodland Owners Association, Audubon Society and Sierra Club; and
- the extended cooperative partnerships which will be developed with organizations such as UW-Extension, county land conservation agencies, tree farm families and others.

As with training, the partners may make use of a portion of inclusion fees and in kind services from future applicants for education and outreach.

In-kind services will greatly support these activities (see Table 2.22, page 154). Where specific products and services are identified beyond voluntary providers' ability or commitment, the DNR and the IOC subcommittee on funding may seek support from sources where projects qualify for funding.

**Public Awareness.** It is anticipated that there will be a great deal of interest and inquiry around this HCP effort. Much of this could be academic or otherwise not directly related to recruiting additional conservation efforts. Funding for public awareness in the form of public relations will primarily be the responsibility of the DNR. The HCP Coordinator will collaborate with the Bureau of Communication and Education. Funding will primarily come from Bureau of Endangered Resources GPR funds and Land Division GPR. Where the DNR feels it is appropriate, the IOC will be consulted for advice or assistance.

San Diego Multiple Species Conservation Program (regional umbrella document), chapter on Financing Habitat Acquisition and Management

*Final*

# Multiple Species Conservation Program

# MSCP Plan

August 1998

# 7.0 FINANCING HABITAT ACQUISITION AND MANAGEMENT

This section describes estimated costs of land acquisition, preserve management, biological monitoring, and MSCP program administration. It also includes a financial analysis of a regional funding program using five potential sources of funds, with estimated fiscal impacts to households and businesses in the region (see Sections 7.2.1 and 7.4.1). An example financing plan is presented using one of the optional sources of local funds, with the understanding that the numbers will be refined when a final financing plan is prepared before a ballot measure is presented to the voters. Potential sources of federal and state funding also are described. For purposes of this section, the words "region" and "regional" refer to the MSCP study area. Although other habitat conservation programs are under development in San Diego County (see Section 2), acquisition needs and costs for those programs have not yet been estimated.

In this plan, costs and revenues are shown in constant 1996 dollars, and future values are discounted, or converted, to 1996 dollars by removing the effect of inflation, assumed to be 3.5% per year. Exceptions are estimated assessments and taxes on households and businesses, which are shown in current dollars without discounting or adjustment for inflation.

**Summary of MSCP Costs**

The estimated costs of the MSCP are summarized below and described in detail in Section 7.3. Based on a 30-year benefit assessment program, the total cost to the local jurisdictions, residents, and businesses to implement the MSCP is estimated to range from $339 million to $411 million in 1996 dollars. This is based on a range of land acquisition costs and also includes recurring costs of preserve management, biological monitoring, and program administration. This estimate also includes establishment of a permanent endowment for management, monitoring, and administration to cover these costs in perpetuity.

Land Acquisition. The cities of Chula Vista, Poway, San Diego, and Santee and the County of San Diego estimated land acquisition needs as part of their subarea plan preparation. These jurisdictions contain most of the remaining habitat lands in the MSCP study area. The estimated acquisition needs total approximately 27,000 acres at a cost of $262 million to $360 million. Based on these regional estimates obtained from the jurisdictions, the average acquisition cost ranges from $9,700 to $13,300 per acre. One half of the acquisition need will be met by the local jurisdictions and one-half by the federal and state governments, with acquisition anticipated to occur over 30 years.

Preserve Management. The participating local jurisdictions will be collectively responsible for managing habitat lands dedicated to the preserve that they currently own (45,240 acres), those lands they acquire with regional funds (13,500 acres), and those lands that are dedicated as part of the development process (47,380 acres). At buildout of the preserve, it is estimated that the local jurisdictions will manage 106,120 acres of habitat lands in the preserve at a cost of approximately $4.6 million per year. Local jurisdictions and special purpose agencies currently budget a total of $1.2 million per year for maintenance of open space areas proposed for inclusion in the MSCP preserve. It is assumed that this budget will continue in the future and will pay for part of the estimated $4.6 million annual management cost. Preserve management costs are estimated to range from $37 per acre per year for areas isolated from urban development to $47 per acre per year for areas near urban development.

The federal and state governments would manage 50,010 acres at preserve buildout, including 36,510 acres of existing federal and state lands and 13,500 acres of acquired lands, at an estimated cost of $2 million per year.

Biological Monitoring. Biological monitoring includes surveys, mapping, and data collection and analysis. Different monitoring activities occur each year, and annual costs vary based on the type and frequency of monitoring activities and condition of the biological resources. The biological monitoring plan estimates annual costs over a 10-year cycle, ranging from $109,800 to $405,300, with an average annual cost of $230,400. Biological monitoring will be the joint responsibility of the local jurisdictions and other local take authorization holders and the federal and state governments, with costs assumed to be funded in proportion to the amount of preserve lands managed at preserve buildout. Biological monitoring costs for the local jurisdictions are estimated to total $3.7 million through 2029 (in 1996 dollars).

Program Administration. Program administration includes land acquisition activities, coordination of subarea plan implementation, legal support, financial management, reporting and database management, and facilities and equipment. Annual administrative costs in 1996 dollars are projected to rise from $835,000 in 2000 to a maximum of $1.3 million in 2004, during the period of land acquisition, then decline to $255,000 at preserve buildout. In the years of maximum expenditures, costs are estimated to be $7 to $8 per acre per year.

Funding for Annual Recurring Costs. Three types of annual recurring costs to the local jurisdictions -- preserve management, biological monitoring, and program administration -- are anticipated to total $4.6 million at preserve buildout. As mentioned earlier, the continuation of existing open space maintenance budgets is anticipated to fund $1.2 million of this amount, leaving $3.4 million to be funded by the regional program. The example financing plan assumes that an endowment will be established by the regional funding program to fund these costs in perpetuity. The endowment required to fund these costs is $235 million in 2029, when the 30-year regional funding program ends, or $75 million in 1996 dollars. As an alternative, a new funding program could be established by the voters before the end of the initial 30-year program.

**Summary of the Regional Funding Program**

The local share of habitat acquisition, management, monitoring, and program administration costs will be funded from a revenue source or sources to be newly established in the MSCP study area and submitted to the voters for approval. Within 36 months of the wildlife agencies' approval of the first subarea plan (initial implementing agreement signed by City of San Diego, July 1997), the participating local jurisdictions will cooperatively develop a program to fund the local share of the MSCP and place a measure on the ballot for approval by the voters. It is assumed for analysis that a regional funding program will be in effect for 30 years.

The local jurisdictions, through the MSCP Policy Committee and based on the recommendation of the Working Group, selected five potential sources of funds for analysis (Section 7.4.1.) The financial characteristics and impacts of a funding program using these sources depend on a number of factors, including the timing of habitat acquisition, use of bonds and other debt financing, and the underlying financial assumptions.

An example financing plan based on benefit assessment, similar to that authorized by Assembly Bill (AB) 2007, is described in Section 7.2. Under the example plan, the local

share of the 30-year program is estimated to be $339 million and $411 million. respectively, for the low and high estimates of acquisition cost. With the low acquisition cost, the average annual cost of the regional funding program is estimated to range from $15 to $20 per household in the first year of the program and from $20 to $30 per household in the last year. With the high acquisition cost, average annual cost to households is estimated to range from $18 to $25 in the first year and from $25 to $38 in the last year. In the example financing plan, benefit assessments are assumed to remain constant during the length of the regional funding program. Other assessments or taxes are assumed to escalate over time. Estimated costs to households and businesses under alternative funding sources are described in Section 7.2.3.

The example financing plan and estimated impacts of alternative funding sources are intended to illustrate a range of financing options available to the local jurisdictions to implement the MSCP. The jurisdictions will select one or more funding sources and develop a financing plan to be submitted to the voters for approval. New legislative authorization may be necessary, depending on the funding source selected. A model timetable is presented in Section 7.4.2, which describes a process for the participating jurisdictions to develop a regional funding program and a ballot measure.

The local jurisdictions' 30-year total program costs estimated in this plan differ from costs estimated in the Public Review Draft MSCP Plan (March 1995). In this plan, the estimated cost to the local jurisdictions ranges from $339 million to $411 million. compared with $165 million to $357 million shown in the draft plan. The two plans differ primarily in the following ways.

1. This MSCP Plan targets 171,917 acres for conservation, which is 7,591 acres more than that targeted for conservation (164,326 acres) in the draft plan (see Section 3.2).

2. The total estimated need for public acquisition by federal, state, and local governments in this plan is 27,000 acres, compared to a range of 24,000 acres to 40,500 acres in the draft plan.

3. The total estimated cost of public acquisition by federal, state, and local governments in this plan ranges from $262 million to $360 million, compared to $271 million to $513 million in the draft plan.

4. The average acquisition cost indicated by the cost estimates in this plan varies from $9,700 per acre to $13,300 per acre. The average acquisition cost indicated by the cost estimates in the draft plan varied from $11,900 per acre to $13,400 per acre.

5. In this plan, the local jurisdictions would acquire 13,500 acres, or one-half of the total acquisition need, at an estimated cost ranging from $131 million to $180 million. In the draft plan, the local jurisdictions would acquire from 2,700 acres to 11,400 acres at estimated costs of $32 million to $153 million. The draft plan assumed that acquisitions by the local jurisdictions would be augmented by 10,000 acres of private offsite mitigation, estimated to cost $103 million, which is included as private conservation for purposes of this plan.

6. This plan assumes that the 30-year funding program would establish a permanent endowment of $75 million (1996 dollars) to fund recurring local costs after the end of the funding program, which was not included in the draft plan.

Establishing a permanent endowment is an option illustrated in this plan, which may be included by the local jurisdictions in preparing the final financing plan.

## 7.1 FINANCING POLICIES

The analysis of alternative funding programs described in this section is based on (1) policies cooperatively developed by the elected officials of local jurisdictions through the MSCP Policy Committee and the wildlife agencies, based on recommendations from the MSCP Working Group, property owners, environmental groups, the development industry, and other interested parties and agencies; and (2) the April 22, 1996, agreement between Mayor Golding of the City of San Diego, U.S. Secretary of the Interior Babbitt, and Undersecretary for Resources Mantell of the State of California. Sections 3, 4, and 5 describe the policies associated with MSCP funding, which are summarized below.

1. Acquisition. The federal and state governments, collectively, and the local jurisdictions and the general public, collectively, will each be responsible for meeting one-half of the acquisition need.

2. Preserve Management. The federal, state, and local agencies will manage their respective public lands committed for habitat conservation, lands they acquire for the preserve, and other lands that are conserved as mitigation for public projects or that are dedicated in fee or easement for habitat conservation. Mitigation lands that remain in private ownership will be managed by the owners.

3. Biological Monitoring. Biological monitoring will be the joint responsibility of the local jurisdictions or special districts and the wildlife agencies.

4. Method of Regional Funding. The regional funding source will be broad-based and submitted to the voters for approval.

5. Uncovered Species. The federal and state governments will be fully or partially responsible for additional conservation that may be needed as a result of future listings of uncovered species, if they are dependent on habitats considered to be sufficiently or significantly conserved by the MSCP.

6. Deficiency in Public Funds. If federal/state funding is not provided as committed, the MSCP will be reevaluated with possible adjustments to take authorization coverage and assurances. In the event that adequate local funding is not provided, the wildlife agencies and local jurisdictions will develop a strategy to address the shortfall.

In addition, the following policies address the commitment of local jurisdictions and federal and state governments to obtain funding for program implementation:

7. Funding from a Regional Source. Funding of the local share of program costs, to be borne by the local jurisdictions, residents, and businesses, will be carried out on a regional basis. This regional funding will be established cooperatively by the participating local jurisdictions and submitted to the voters for approval.

8. Timing of Voter Approval. A proposal for regional funding will be placed on a ballot within the following time period. The jurisdictions will begin a process to procure funding within 18 months of federal and state approval of the first subarea plan (initial implementing agreement signed by City of San Diego, July 1997) and

will place a measure on the ballot and have one or more funding sources in place within an additional 18 months. This schedule may be adjusted, however, if the participating jurisdictions demonstrate that their good faith efforts require additional time.

## 7.2 FINANCING PLAN FOR LOCAL JURISDICTIONS

This section contains an example financing plan for one funding source and the estimated costs to the region's households and businesses for this and other funding sources. The financing plan describes the uses and sources of funds and debt financing. A financing plan reflects many underlying factors, such as the rate of habitat acquisition and associated preserve management costs, type of regional funding source, type of debt financing, and assumptions regarding future changes in the tax base, inflation and interest rates, and length of the funding program. For analysis purposes, most of these factors are kept the same to compare the alternative funding sources.

The example financing plan is based on constant, or nonescalating, benefit assessments. That is, an assessment for a built residential parcel is assumed to remain constant throughout the term of the funding program. Other funding sources reflect, or they may be designed to reflect, some of the inflation in acquisition and management costs. The use of a constant benefit assessment results in the highest costs to households and businesses in the early years of the funding program, in order to anticipate future price inflation. Hence, the example financing plan provides a conservative (high) estimate of financial impacts to households and businesses.

### 7.2.1 Options for Regional Funding Source

Several options for a regional funding source were selected for analysis by elected officials of the local jurisdictions serving on the MSCP Policy Committee, based on the recommendation of the MSCP Working Group. These options include the following:

- Benefit assessment by a regional park and open space district (AB 2007; Public Resources Code, Section 5539.3), or a new legislative authority;
- Habitat maintenance assessment (Senate Bill (SB) 445; Government Code, Section 50060 et seq.);
- Mello-Roos community facilities district special tax (Government Code, Section 53311 et seq.);
- Increase in ad valorem property tax; and
- Increase in sales tax.

Of these, the first two are special assessments, the third is a special tax, and the last two may be special or general taxes, depending on whether the additional revenues are designated for a specific purpose. Special taxes and any increase in ad valorem tax require approval by two-thirds of the voters. Special assessments can be approved by a simple majority of the voters under special state legislation. As a policy of the MSCP, any regional funding program will be submitted to the voters for approval.

State law provides different allowable uses for the revenues raised. It may be necessary to combine benefit assessment under AB 2007 or general obligation bonds repaid through a property tax increase with an additional source or sources to fund both acquisition and

recurring annual costs, due to restrictions on the uses of revenues generated (see Section 7.4.1.) In some cases, additional financial and/or legal analysis may be needed to clarify the allowed uses. For example, the extent to which habitat maintenance assessments may be used for large-scale habitat acquisition is not clear. For purposes of this analysis, it is assumed that habitat maintenance assessment would be used to fund preserve management, monitoring, and program administration, and another source, such as a benefit assessment, would be used to fund habitat acquisition.

Use of benefit assessment, habitat maintenance assessment, or community facilities district special tax would require establishment of a special agency or district, either by the County of San Diego or jointly by the participating jurisdictions. A special district may also be necessary to raise sales tax revenues for a specific purpose. New state legislation may be necessary for these sources to meet the financing goals of the MSCP. For purposes of comparison, all funding sources are assumed to last for 30 years, although in practice some sources, such as a sales tax increase, would be adopted for a shorter length of time. (For further discussion of these funding sources, see Section 7.4.1.)

In November 1996, California's voters approved Proposition 218, known as the "Right to Vote on Taxes Act." The proposition requires that all taxes and most charges on property owners be subject to voter approval. The proposition seeks to limit the use of special assessments and property-related fees, which are imposed as an incident of property ownership, to funding services that provide special benefits to parcels, as opposed to general governmental services. The passage of Proposition 218 places greater limitations than previously on the use of special or benefit assessments, which are subject to majority vote approval, for habitat and open space conservation. The proposition places fewer limitations on the use of funding sources that are subject to two-thirds vote approval, such as special taxes.

### 7.2.2 Description of Example Financing Plan

An example financing plan for local jurisdictions, based on a 30-year program of benefit assessments similar to that authorized by AB 2007, is shown in Table 7-1. In the example financing plan, the total cost to the local jurisdictions, residents, and businesses to implement the MSCP is estimated to range from $339 million to $411 million in 1996 dollars. This includes land acquisition, annual recurring costs for preserve management, biological monitoring, and program administration, and establishment of a permanent endowment for management, monitoring, and administration.

Total local jurisdiction acquisition costs of $131 million to $180 million represent 38.7% and 43.8%, respectively, of the total program cost in 1996 dollars. Costs for ongoing activities, such as preserve management, biological monitoring, and program administration, would vary over time, depending on the amount of habitat lands to be managed. The recurring costs between 1997 and 2029 total approximately $120 million, which represents 35.3% (under the low acquisition cost) to 29.1% (under the high acquisition cost) of the total program cost in 1996 dollars.

The example plan assumes two optional elements, which could be retained or omitted by the participating jurisdictions in developing a final financing plan:

1. An initial acquisition of 4,000 acres prior to establishment of the long-term regional funding program, as recommended by the San Diego Dialogue and described in Section 7.2.4; and

**Table 7-1**

## AN EXAMPLE FINANCING PLAN FOR LOCAL JURISDICTIONS USING BENEFIT ASSESSMENT: 30-YEAR PROGRAM COSTS AND REVENUES[1]

| | Low Acquisition Cost | | High Acquisition Cost | |
|---|---|---|---|---|
| | 1996 $ Million | Percent | 1996 $ Million | Percent |
| **Program Costs** | | | | |
| Habitat Acquisition | $131.0 | 38.7% | $180.0 | 43.8% |
| Preserve Management[2] | 96.5 | 28.5% | 96.5 | 23.5% |
| Biological Monitoring[2] | 3.7 | 1.1% | 3.7 | 0.9% |
| Program Administration[2] | 19.3 | 5.7% | 19.3 | 4.7% |
| Deposits to Endowment[3] | 59.2 | 17.5% | 64.0 | 15.6% |
| Interest and Financing Costs[4] | 29.1 | 8.6% | 47.8 | 11.6% |
| Total | $338.8 | 100.0% | $411.3 | 100.0% |
| **Program Revenues** | | | | |
| Regional Funding Source[1] | $296.6 | 87.5% | $366.2 | 89.0% |
| Continuation of Pre-1996 Open Space Budget[5] | 34.4 | 10.2% | 34.4 | 8.4% |
| Local Funding of Interest Costs on Initial Acquisition[6] | 5.2 | 1.5% | 7.1 | 1.7% |
| Interest Revenue | 2.6 | 0.8% | 3.6 | 0.9% |
| Total | $338.8 | 100.0% | $411.3 | 100.0% |

Source: Onaka Planning & Economics; Douglas Ford and Associates.
All costs and revenues in millions of 1996 dollars; future values have been discounted.

1 Costs and revenues shown in this table reflect a 30-year regional funding program based on benefit assessments levied by a regional parks and open space district. Costs assume establishment of an endowment for perpetual maintenance. Costs and revenues differ for other funding sources.

2 Discounted sum of costs from 1997 to 2029.

3 Discounted sum of deposits into an assumed endowment fund. The undiscounted amount of endowment in 2029, including accumulated interest, is $235 million.

4 Interest and bond issuance costs.

5 Discounted sum of continued expenditures by local jurisdictions for the management of open space preserves established prior to 1996.

6 Discounted sum of interest payments made by local jurisdictions for an assumed interim financing to acquire land prior to the start of a regional funding program.

2. Establishment of a permanent endowment to fund annual recurring costs in perpetuity after the period for which a regional funding source is authorized.

This analysis assumes that annual recurring costs after 2029 will be funded from a permanent endowment created by deposits from the regional funding source and accumulated interest earnings. The discounted sum of deposits into the endowment fund is $59 million under the low acquisition cost and $64 million under the high acquisition cost. As noted above, however, this is an optional element of the financing plan. Alternatively, a new regional source to fund annual recurring costs may be submitted to the voters before the end of the initial 30-year funding program.

Anticipated program costs in the early years exceed projected revenues, in part, because much of the habitat acquisition is projected to occur in the early years of the program. It is assumed in this analysis that both short and long-term financing will be used (see Section 7.2.4). Interest and financing costs total $29 million using the low acquisition cost estimates and $48 million using the high acquisition cost estimates.

The example financing plan relies principally on a new regional funding source to be established cooperatively by the participating local jurisdictions. From $297 million to $366 million of revenues are projected from this source. Other funding sources are assumed from continuation of the existing open space maintenance budgets of local jurisdictions, a separate local funding of interest costs for an (optional) interim financing of initial land acquisition, and interest revenues on the unused balance of the regional funding program.

### 7.2.3 Financial Impacts on Households and Businesses

The fiscal impact of a regional funding program on households and businesses can vary substantially, depending on which funding source or sources are selected.

**Example Financing Plan (Benefit Assessment)**

The example financing plan based on a benefit assessment would result in average annual assessments, over 30 years, of $20 to $25 per household and $71 to $88 per acre of commercial and industrial property. The lower assessment corresponds to the low estimate of acquisition cost, and the higher assessment corresponds to the high estimate of acquisition cost. For this analysis, the average assessment per household would apply to a household residing in a single family detached unit. Assessment for a multifamily unit is assumed to be 80% of the assessment for a single family unit. (All estimated costs to households and businesses from taxes or assessments are shown in current dollars; they are not discounted to 1996 dollars.)

The numbers of households and acres of commercial and industrial properties in future years were obtained from the San Diego Association of Governments' growth forecasts for the San Diego region (Series 8, May 1995). Growth after 2015, the final year of the forecast, was assumed to continue at the same rate as in the last 10 years. In 2000, the MSCP study area is projected to contain 694,000 "equivalent" households, with 80% adjustment for households residing in multifamily units, and 34,800 acres of commercial and industrial properties. In 2029, the study area is projected to contain 1.05 million "equivalent" households and 52,500 acres of commercial and industrial properties.

The estimated costs to households and businesses assume that a permanent endowment would be established during the 30-year regional funding program. If a permanent endowment is not established, the estimated annual assessment would be reduced by

$2 per household and by $6 to $7 per acre of commercial and industrial property. That is, average annual assessment, without deposits to an endowment fund, would be $18 to $23 per household and $65 to $81 per acre of commercial and industrial property, corresponding to low and high estimates of acquisition cost.

Financing plans based on other regional funding sources would result in different costs to households and businesses (Tables 7-2 and 7-3). An important difference between the example financing plan and the others is the extent to which the assessment or tax per household or per acre of commercial or industrial property would vary over time. In the example financing plan, benefit assessment is assumed to remain constant during the 30-year program, though AB 2007 does not prohibit variable assessments. Other funding sources would reflect, or may be structured to reflect, some of the general price inflation. For example, habitat maintenance assessment would be levied according to need, up to a maximum of $25 per lot in 1994, as specified in SB 445, and, in subsequent years, to this amount increased according to the California Consumer Price Index. Revenues from an ad valorem property tax would vary according to changes in assessed value, although the tax rate remains constant.

**Benefit Assessment and Habitat Maintenance Assessment**

Under a combination of benefit assessment and habitat maintenance assessment, the average annual cost per household is estimated to be $18 in 2000 and $27 in 2029 under the low acquisition cost and $23 in 2000 and $33 in 2029 under the high acquisition cost. Of these amounts, about $3 in 2000 and $13 in 2029 would be levied per household as habitat maintenance assessment and the remainder as benefit assessment.

**Ad Valorem Property Tax**

A financing plan based on an ad valorem property tax would result in an additional tax rate of $0.14 per $1,000 of assessed valuation under the low acquisition cost and $0.17 per $1,000 of assessed valuation under the high acquisition cost. For an average household, these rates translate to an annual cost of $15 in 2000 and $25 in 2029 under the low acquisition cost and $19 in 2000 and $32 in 2029 under the high acquisition cost. It may be necessary, however, to combine property tax increase with another funding source, such as habitat maintenance assessment, to fund preserve management as well as land acquisition. In such a case, the combined annual cost per household would be slightly lower in the early years and higher in the later years.

**Sales Tax**

If sales tax is used as the funding source over a 30-year period, tax revenues representing 0.085% of taxable sales (low acquisition cost) or 0.105% of taxable sales (high acquisition cost) would be required. This amount would be approximately $0.01 for $10.00 of purchase. An average household would pay $14 in 2000 and $28 in 2029 in sales taxes under the low acquisition cost and $18 in 2000 and $34 in 2029 under the high acquisition cost. In practice, however, the increment of sales tax increase would be set at 0.25% or 0.5% and be in effect for a shorter period of time. The increment could be set to 0.125%, if authorized by special legislation. The terms of a sales tax program require additional review and refinement by the participating jurisdictions prior to formulating a ballot measure.

## Table 7-2

## ESTIMATED AVERAGE ANNUAL COST TO HOUSEHOLDS[1] IN THE FIRST AND LAST YEARS OF A REGIONAL FUNDING PROGRAM[2]

| Alternative Regional Funding Source | Average Cost per Household[3] | |
|---|---|---|
| | Low Acquisition Cost (first - last year) | High Acquisition Cost (first - last year) |
| Benefit Assessment[4] | $20.25 | $25.00 |
| Benefit Assessment and Habitat Maintenance Assessment | $17.90 — $27.25 | $23.20 — $32.60 |
| Community Facilities District (Mello-Roos) | $17.15 — $30.45 | $21.25 — $37.75 |
| Ad Valorem Property Tax/ General Obligation Bond[5] | $15.45 — $25.30 ($0.14 per $1,000 AV) | $19.35 — $31.60 ($0.17 per $1,000 AV) |
| Sales Tax[5,6] | $14.30 — $27.70 (0.085% of taxable sales) | $17.80 — $34.40 (0.105% of taxable sales) |

Source: Douglas Ford and Associates; Onaka Planning & Economics.
AV = Assessed value

1 Household in a single family detached unit (1.0 equivalent dwelling unit); assessment or tax for a multifamily unit is 80% of that for a single family detached unit.

2 Costs shown are in current dollars, not discounted. Costs assume establishment of an endowment for perpetual management. Inflation of 3.5% per year is assumed. Under this rate of inflation, the general price level in 2029 would be 281% of the price level in 2000. All assessments or taxes are assumed to be collected for 30 years.

3 Where two figures are shown, the first is cost per household in the first year (2000) of a regional funding program, and the second is cost per household in the last year (2029).

4 Benefit assessment is constant through the 30-year program term.

5 Tax rates would remain constant through the 30-year program term. However, the average tax bill for households would increase due to inflation.

6 In practice, the sales tax increase would likely be made higher and in effect for a shorter period of time.

**Table 7-3**

## ESTIMATED AVERAGE ANNUAL COST TO COMMERCIAL AND INDUSTRIAL USERS IN THE FIRST AND LAST YEARS OF A REGIONAL FUNDING PROGRAM[1]

| Alternative Regional Funding Source | Cost to Commercial and Industrial User[2] | |
|---|---|---|
| | Low Acquisition Cost (first - last year) | High Acquisition Cost (first - last year) |
| Benefit Assessment[3] | $71/acre | $88/acre |
| Benefit Assessment and Habitat Maintenance Assessment | $63/acre — $96/acre | $82/acre — $115/acre |
| Community Facilities District (Mello-Roos) | $60/acre — $107/acre | $75/acre — $133/acre |
| Ad Valorem Property Tax/ General Obligation Bond[3] | $0.14 per $1,000 AV | $0.17 per $1,000 AV |
| Sales Tax[3,4] | 0.085% of taxable sales | 0.105% of taxable sales |

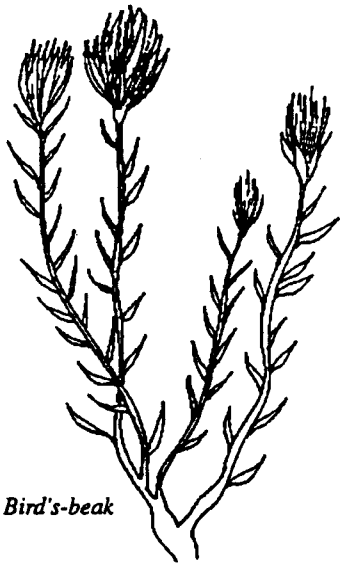
Source: Douglas Ford and Associates; Onaka Planning & Economics.
AV = Assessed value

1 Costs shown are in current dollars, not discounted. Costs assume establishment of an endowment for perpetual management. Inflation of 3.5% per year is assumed. Under this rate of inflation, the general price level in 2029 would be 281% of the price level in 2000. All assessments or taxes are assumed to be collected for 30 years.

2 Where two figures are shown, the first is cost in the first year (2000) of a regional funding program, and the second is cost in the last year (2029).

3 Constant rate through the 30-year program term.

4 In practice, the sales tax increase would likely be made higher and in effect for a shorter period of time.



*Saltmarsh Bird's-beak*

### 7.2.4 Phasing of Regional Funding and Assumptions for Debt Financing

The analysis of the regional financing plan assumes that the first 33 years of MSCP implementation may be divided into three periods:

1. An initial period after approval of the MSCP Plan and first subarea plans and prior to establishment of a long-term regional funding program (1997 - 1999);

2. A period of land acquisition and debt financing under the regional funding program (2000 - 2020); and

3. A final period in which outstanding bonds are repaid and an endowment, if applicable, is completed for the permanent funding of ongoing costs (2021 - 2029).

#### Short-term Financing of Initial Acquisition

As described in Section 7.4.2, the local jurisdictions will have a funding source in place within 36 months after the wildlife agencies' approval of the first subarea plan. Prior to a regional funding source being established, there may be a need or desire to acquire habitat lands that are at risk of development or that may be for sale at favorable terms. An interim funding source could be established for this purpose by one or several participating jurisdictions or nonprofit organizations.

To facilitate discussions on funding, a committee of the San Diego Dialogue was established in January 1996. With funding from the San Diego Community Foundation and the Bank of America, the San Diego Dialogue committee was formed of local business, banking, and building industry representatives. This committee's charge was to investigate the feasibility of funding the MSCP and to detail a financing strategy for the first 3 to 5 years of acquisition need, prior to a voter-approved regional funding source. The San Diego Dialogue has recommended that interim local funding be provided to acquire up to 4,000 acres of private habitat lands in the first 3 years, with the federal and state governments also acquiring 4,000 acres in this time period for a total of 8,000 acres. The Dialogue recommends use of a short-term loan, which is assumed in the example financing plan to be repaid from the proceeds of the initial bond issue under the long-term funding program.

This type of interim funding is an option that one or more local jurisdictions could consider to meet short-term acquisition needs. For financial planning purposes, the example financing plan assumes that short-term financing with 9% interest will be used to purchase and manage lands before the regional funding program is established and that the principal, but not the interest, would be paid out of the proceeds of bonds issued by the long-term regional funding program. Interest payments on a short-term loan for this purpose could be made through the use of current budgets for environmental mitigation of public infrastructure projects and other sources of funds. The estimated cost of purchasing 4,000 acres is $39 to $53 million (1996 dollars) using the low and high estimated costs of habitat lands. It is assumed that an additional $1 million would be borrowed to pay for the management of these lands. Interest payments on the short-term financing for 3 years are estimated to total $5 million to $7 million in 1996 dollars.

#### Long-term Financing

The acquisition of habitat lands to establish the MSCP preserve is anticipated to occur over a 30-year period, with proportionately more acquisitions in the early years. As

described in Section 7.4.2, the local jurisdictions will establish a regional funding source within 36 months of the wildlife agencies' approval of the first subarea plan (initial implementing agreement signed by City of San Diego, July 1997).

The example financing plan assumes that land acquisitions will be completed within 20 years after the establishment of a regional funding program in 2000. The plan also assumes that acquisition will be accelerated so that 50% of the total acquisition target will be completed within 4 years after the start of the regional funding program, 75% within 10 years, and 90% within 15 years. The final financing plan may incorporate different assumptions on the rate of acquisition.

The example financing plan and estimates of financial impacts under other funding sources assume that a series of bonds will be issued to balance revenues with expenditures. The bonds would have a minimum coverage by annual revenues of 120%, have 8% interest and 4% issuance costs, and provide for a reserve fund equal to 1 year's debt service. All bonds would be repaid within 30 years after establishment of the regional funding program.

Annual Fund Balance. The example financing plan and corresponding plans for the other funding sources are structured so that there is annually a program fund balance of at least $2 million; in many years fund balances substantially exceed this amount. Maintenance of an adequate program fund balance is necessary to meet unexpected financial needs and, where appropriate, to take advantage of opportunities for land acquisition.

Inflation. Inflation of 3.5% per year is assumed for all program costs, including land acquisition, management, biological monitoring, and program administration. There is a substantial compounding effect from annual inflation. Under the assumed inflation rate, the general price level in the last year (2029) of the regional funding program would be 281% of the price level in the first year (2000).

## 7.3 PROGRAM COSTS

Estimated acquisition costs and annual recurring costs at buildout of the MSCP preserve are shown in Tables 7-4 and 7-5. This section describes the basis for these cost estimates.

### 7.3.1 Land Acquisition

The acquisition of lands for the MSCP preserve will be based on purchases from willing sellers at fair market value or on terms mutually acceptable to the buyer and seller. The estimates of land acquisition costs are based on estimates of fair market value, although acquisition also may be accomplished through non-cash transactions such as land exchanges.

The five jurisdictions that estimated acquisition need (see Table 4-3) also estimated acquisition cost (Table 7-5). The jurisdictions based their preliminary estimates on their knowledge of local land values and on their experience in land acquisition for parks, street rights-of-way, and other public facilities. Costs of undeveloped land vary widely in San Diego County, depending on distance from the coast, employment centers and other regional destinations, availability of roads and other public services, and presence of physical constraints to development. The total cost of acquiring 27,000 acres is estimated to be from $262 million to $360 million. The average acquisition cost indicated by these estimates varies from $9,700 per acre to $13,300 per acre.

## Table 7-4

## SUMMARY OF ESTIMATED PROGRAM COSTS

| | Local Jurisdictions | Federal and State Governments | Total |
|---|---|---|---|
| Land Acquisition | $131 – $180 million | $131 – $180 million | $262 – $360 million |
| Annual Recurring Costs at Buildout[1] | | | |
| Preserve Management | $4,205,000 / yr.[2] | $1,900,000 / yr. | $6,105,000 / yr. |
| Biological Monitoring[3] | $156,600 / yr. | $73,800 / yr. | $230,400 / yr. |
| Program Administration | $255,000 / yr.[4] | —[5] | $255,000 / yr. |
| Total Annual Costs | $4,616,600 / yr. | $1,973,800 / yr. | $6,590,400 / yr. |

Source: Onaka Planning & Economics; Douglas Ford and Associates; Ogden.
Note: Land acquisition costs are in millions of 1996 dollars. Annual costs are in 1996 dollars.

1 Annual costs projected to be incurred in 2029, converted to 1996 dollars.
2 Includes $1,230,000 of continued annual expenditure by local jurisdictions for the maintenance of open space preserves established prior to 1996.
3 Average cost over a 10-year cycle; costs will vary by year according to the types of monitoring activity undertaken.
4 Program administration costs for local jurisdictions are assumed to increase after initiation of the MSCP, reach a maximum, and then decline to the amount shown.
5 Administrative costs for federal and state government lands are included in the operating budgets of the USFWS and CDFG offices in San Diego County.

**Table 7-5**

**ESTIMATED COST OF HABITAT ACQUISITION BY FEDERAL AND STATE GOVERNMENTS AND THE REGIONAL FUNDING PROGRAM[1]**

| | Estimated Acquisition Need (acres) | Estimated Cost to the Federal and State Governments and the Regional Funding Program ($ million) |
|---|---|---|
| Chula Vista | 360 | $3 – $7 million |
| Poway | 3,200 | $48 million |
| San Diego | 2,400 | $40 – $70 million |
| Santee | 350 | $3 million |
| County of San Diego (unincorporated) | 18,850 | $149 – $206 million |
| Total to Be Acquired by the Federal, State, and Local Governments[1] | 25,160 | $243 – $334 million |
| With Contingency | **27,000** | **$262 – $360 million** |

Source: Cities of Chula Vista, Poway, San Diego, and Santee and the County of San Diego. See also Table 4-3.

[1] The information contained in this table is intended only to estimate the total cost of lands potentially acquired for the MSCP preserve by the federal, state, and local governments, with local governments using a regional funding program. The amounts and costs for individual jurisdictions are shown for information only. The amounts do not indicate the financing responsibilities of individual jurisdictions, nor do they indicate how regional funds may be allocated to individual local jurisdictions.

Local jurisdictions will acquire one-half of the habitat lands identified for public acquisition, at an estimated cost of $131 million to $180 million. Federal and state governments will acquire one-half, at the same estimated cost. The range of costs provided reflects the wide variation in land prices in the MSCP study area and the fact that the program cannot anticipate which properties will be purchased or will be developed or conserved in accordance with local land use regulations. Thus, the cost of land acquisition cannot be determined with precision. The cost estimates provided by the jurisdictions are intended for planning purposes and should be refined during the initial phase of developing a regional funding measure for voter approval.

### Comparison of Estimated Costs to Sales Prices

The current estimates of acquisition cost have been compared to recent sales prices of undeveloped land in the MSCP study area. Sales records of 70 transactions between 1989 and 1996 were obtained from a recent study by the San Diego Gas & Electric Company and from local brokers. The sales prices range from $900 per acre to $87,900

per acre, with a median sales price of $4,400 per acre. Median price is the price above and below which one-half of the lands were sold. Approximately 89% of lands recently sold had prices below the average acquisition cost ($9,700 per acre) associated with the jurisdictions' low estimates, and 94% of lands had prices below the average acquisition cost ($13,300 per acre) associated with the jurisdictions' high estimates. Based on this comparison, it may be concluded that the local jurisdictions' estimates provide a conservative basis for the financing plan (i.e., existing sales are generally lower in price than the estimates used in this plan).

### 7.3.2 Preserve Management

#### Management Responsibilities

Under the MSCP, the participating local jurisdictions will be collectively responsible for managing preserve lands they currently own (45,240 acres) and preserve lands they acquire in the future (13,500 acres) (Table 7-6). In addition, it is anticipated that some of the lands conserved through the development process will be dedicated to local agencies or nonprofit organizations to be managed at public expense. For purposes of financial analysis, it is assumed that up to 75% of privately owned habitat conserved through the development process will be dedicated for public management; this would amount to 47,380 acres of the 63,170 acres of private lands estimated to be conserved. The amount of land dedicated to local jurisdictions may vary from this assumption, depending on policies adopted by the jurisdictions regarding such dedication. At buildout, it is anticipated that the local jurisdictions will be responsible for managing 106,120 acres of habitat lands in the preserve.

**Table 7-6**

**ACRES OF LAND TO BE MANAGED BY PUBLIC AGENCIES**

| Source of Conservation | Local Jurisdictions | Federal and State Governments | Total |
|---|---|---|---|
| Existing Public Lands | 45,240 | 36,510 | 81,750 |
| Public Acquisition | 13,500 | 13,500 | 27,000 |
| Dedication of Private Lands | 47,380[1] | — | 47,380 |
| **Total** | **106,120** | **50,010** | **156,130** |

[1] Of the 63,170 acres of habitat lands to be conserved by private owners through the development process, it is assumed that 47,380 acres will be dedicated to the local jurisdictions or nonprofit organizations for management funded by the regional funding program.

Some private landowners may choose to retain ownership of habitat lands conserved through the development process. For purposes of estimating local financing costs, it is assumed that private owners will retain ownership of 25%, or 15,790 acres, of habitat lands conserved in this way. These lands may be managed as habitat and open space by individual owners as conditions of development permits, by homeowners associations, or by local landscape maintenance districts. Private owners of land inside the MHPA who

do not develop, and are therefore not third-party beneficiaries of the jurisdictions' take authorizations, will have no additional obligations for management of their land.

Federal and state governments will be responsible for managing preserve lands they currently own (36,510 acres) and preserve lands they acquire in the future (13,500 acres), for a total of 50,010 acres. Additionally, proper management of the preserve system will require ongoing and detailed analysis of data collected through biological monitoring activities, as discussed in Section 7.3.3.

**Costs of Preserve Management**

Preserve management activities are described in Section 6.3. Costs associated with habitat conservation exceed those associated with general open space maintenance, due to additional activities required to protect sensitive species and prevent habitat degradation. Specific management activities are addressed in the preserve management plans of take authorization holders.

Estimated costs of preserve management activities range from $47 per acre per year in the City of San Diego, where habitat lands are often bordered by urban development, to $37 per acre per year in the unincorporated county, where habitat lands generally are located away from urban development. These estimates were derived from a review of current open space and habitat maintenance expenditures in the MSCP study area, with adjustments made for additional biological management. These costs may be compared with the average cost of $38 per acre per year for the management of comparable open space preserves in California. Costs of preserve management may be reduced through the participation and efforts of volunteers, as is common in the management of open space preserves.

At preserve buildout, the estimated cost of managing 106,120 acres of preserve land under the local jurisdictions' responsibility is $4.2 million per year (1996 dollars). Annual costs of preserve management in the years prior to buildout would vary according to the amounts of land acquired or dedicated to date.

City of San Diego. Habitat lands in proximity to urban development require a substantially higher level of management activities than those in isolated areas due to the impact of urban uses on native species. In fiscal year 1995, the City of San Diego managed approximately 18,000 acres of open space, at an average cost of $36 per acre, exclusive of brush management. In addition, the City relies on extensive volunteer work for trail maintenance, visitor services, vegetation and species management, and incidental restoration activities. When the value of these services is added to the current budget, the average management cost is $47 per acre per year.

County of San Diego. For the portion of the MSCP preserve located in the unincorporated area, the County of San Diego has estimated an average cost of $37 per acre per year. This is based on a review of five open space preserves totaling 8,360 acres currently maintained by the County. The habitat areas in these preserves are relatively undisturbed. All areas allow limited public access and passive recreational use, including trails. Based on existing budget data and inferred costs of administrative, support, and volunteer services, the County Department of Parks and Recreation calculated the cost of preserve management to range from $16 to $105 per acre per year, depending on the level of habitat degradation and difficulty of access, with an average cost of $37 per acre per year.

Other Cities and Special Districts. For habitat lands in the other jurisdictions and lands owned by special districts, including water districts and the City of San Diego Water Utilities Department, the estimated cost of preserve management is $38 per acre per year. This is based on an analysis of a sample of open space preserves and wildlife refuges in California comparable to the MSCP preserve, totaling 107,000 acres. The estimated cost is the average of per acre management costs in the sample, adjusted for additional biological management.

Current (1995) Budgets for Open Space Preserves. Local jurisdictions and special purpose agencies currently budget a total of approximately $1.23 million per year for the maintenance of open space areas proposed for inclusion in the MSCP preserve. (Where open space areas extend outside the MHPA, only a pro rata portion of the budget corresponding to areas inside the MHPA has been included.) It is assumed in the financial analysis that the existing budgets for open space maintenance will continue in the future, with adjustments for inflation.

Brush Management. It is assumed in this plan that new developments adjacent to the MSCP preserve will be responsible for and will fund the costs of brush management, consistent with policies of the City and County of San Diego and other jurisdictions. Therefore, in estimating preserve management costs for the MSCP, brush management costs were excluded. Some jurisdictions currently undertake brush management on their publicly owned lands adjacent to existing residential areas where fire hazards have been identified. It is assumed for this analysis that these brush management functions will continue to be funded from sources other than the MSCP.

### 7.3.3 Biological Monitoring

Biological monitoring consists of diverse activities at multiple sites, including surveys, mapping, and data collection and analysis (see Section 6.4 and the MSCP Biological Monitoring Plan). The annual cost of monitoring differs by the type and frequency of monitoring activities and by the current condition of biological resources. The Biological Monitoring Plan estimates start-up costs of $54,800 in the first year and annual costs over a 10-year cycle, ranging from $109,800 to $405,300. The average annual cost over the 10-year cycle, excluding start-up costs, is $230,400. It is anticipated that the cycle of monitoring activities will be repeated every 10 years.

Biological monitoring will be the joint responsibility of the local jurisdictions and other take authorization holders and federal and state governments. For purposes of this analysis, it is assumed that only habitat areas in the preserve that are managed by public agencies will be biologically monitored. It is further assumed that the local jurisdictions and other take authorization holders and federal and state governments will share the cost of biological monitoring in proportion to the acres of habitat they manage.

To ensure uniformity in the gathering and treatment of biological data, the wildlife agencies will assume the primary responsibility for coordinating the biological monitoring program, analyzing data, and providing information and technical assistance to the jurisdictions. These coordination costs are not included in the estimates of preserve management or monitoring costs for the local jurisdictions.

### 7.3.4 MSCP Program Administration

In addition to preserve management and biological monitoring, funds will be required to manage and administer the MSCP. The following are examples of administrative functions that may be required:

- Land Acquisition Process. Land acquisition, including identification of potential acquisition sites, appraisal, negotiation, and management of the acquisition process.

- Financial Planning and Management. Financial planning and management of revenues and expenditures for habitat acquisition, preserve management, and monitoring, including administration of the regional funding program and coordination of requests for federal and state funding of program activities.

- Legal Support. Legal support for land acquisition and preserve management, administration of fee titles, easements, and other land contracts.

- Report Preparation. Reporting of plan implementation, including annual accounting of land acquisition, land dedication, and habitat loss.

- Database Maintenance. Maintenance and updates of the regional geographic information system database on vegetation communities and species.

- Coordination. Program implementation and coordination, including coordination among local jurisdictions and other take authorization holders for subarea plan implementation and coordination with the wildlife agencies and other public agencies.

- Support Personnel and Facilities. General administrative support for the above activities, including support personnel, accounting, facilities, and equipment.

Based on a review of operating experiences of other large-scale conservation programs and by developing generic service budgets, costs for program administration are estimated to range from $7 to $8 per acre per year, during years of maximum administrative costs, to $1.50 per acre per year, after the acquisition program is completed. Annual administrative costs in 1996 dollars are projected to rise from $835,000 in 2000 to a maximum of $1,317,000 in 2004, during the period of land acquisition, then decline to $255,000 at buildout (1996 dollars).

The extent to which the above functions may be performed by individual jurisdictions or as a collective responsibility of participating jurisdictions depends on the organizational structure ultimately selected for MSCP implementation (Section 5.8). The cost estimates do not assume any economies of scale that may be associated with particular organizational structures. Whether the functions described above are performed in whole or in part by local jurisdictions, program administration would require similar overall costs and resources.

### 7.3.5 Funding for Annual Recurring Costs

The example financing plan addresses the first 33 years of program implementation, including a 30-year term of the regional funding program. At the end of these years, continuation of preserve management, biological monitoring, and program administration may be funded either through a permanent endowment that is established during the initial funding program or through a new regional funding program that is submitted to the voters for approval at the end of the initial funding program.

In the example financing plan and in the analysis of alternative funding sources, it is assumed that a permanent endowment will be established by the end of the regional

funding program. Assuming a net interest revenue of 4% to 4.5% per year after inflation, the permanent endowment requires a balance of $235 million in 2029, or $75 million in 1996 dollars.

In formulating the final financing plan, the participating local jurisdictions will select a method of funding annual recurring costs after the end of the regional funding program.

## 7.4 ALTERNATIVE REGIONAL FUNDING SOURCES AND TIMETABLE FOR VOTER APPROVAL

### 7.4.1 Alternative Regional Sources of Funds

The elected officials of several local jurisdictions serving on the MSCP Policy Committee, with input from the MSCP Working Group, recommended that five potential sources of funds be analyzed for application to the regional funding program. A source or sources of funds will be selected during the preparation of a funding measure for approval by the voters. Although the local jurisdictions will cooperatively seek voter approval for a regional funding source, no jurisdiction will be precluded from pursuing alternative funding sources.

The following section provides a summary of the funding sources selected for analysis. Each source has specific authorizations and potential applications or restrictions on the uses of revenues. Additional legal and financial analysis will be necessary prior to the selection of a specific source or sources.

Proposition 218, passed in November 1996, limits the use of special assessment districts to funding services that provide special benefits to parcels over and above general benefits on real property in the district or to the public at large. At this time, it is not known how this proposition affects the use of a benefit assessment district (AB 2007) or habitat maintenance assessment district (SB 445) for habitat conservation purposes.

**Benefit Assessment (AB 2007)**

AB 2007 enacted in 1993 (Public Resources Code, Section 5506.3 et seq.) provides that San Diego County can initiate proceedings for the formation of a regional open space district coterminous with the boundaries of the county. The law allows the regional open space district to levy assessments under the Landscaping and Lighting Act of 1972, except that the requirement to mail a notice of public hearing to all property owners in the district is replaced with the requirement for publication of a notice. Both the formation of the district and the levy of special assessments must be approved by a majority of the voters in the district. This approach is modeled after that used by Los Angeles County, where the voters approved "Proposition A" in November 1992 to fund $540 million of park and recreation improvements and open space acquisition. Benefit assessments established separate from AB 2007 may be adopted by a local legislative body, after notifying all affected property owners and holding public hearings.

There are certain restrictions associated with the use of AB 2007. Since this is a funding program for a countywide open space district, the financing needs of the MSCP must be coordinated with those of the other regional habitat conservation programs in the county; however, the financing needs of the latter programs have not yet been identified. The law also stipulates that, for 20 years after assessments are first levied, at least 80% of all assessment proceeds must be used for capital outlay projects, including land acquisition. Under the MSCP, however, expenditures for management, monitoring, and program

administration in some years could exceed 20% of total annual expenditures. The benefit assessment could be combined with another source, such as a regional habitat maintenance assessment, to fund these recurring costs. It is also unclear whether the law provides authorization to set aside funds for a permanent endowment.

The law provides that the assessment must be related to benefit, and benefits of open space preservation accrue predominantly to residents. The example financing plan assumes that 85% of total assessments are levied on residential properties and that 15% are levied on commercial and industrial properties, based on a similar split used in the assessment formulas of Los Angeles County.

**Habitat Maintenance Assessment District**

SB 445 (Government Code, Section 50060 et seq.) provides for the establishment of an assessment district to fund the maintenance of natural habitat for up to 30 years. Any city or county may initiate proceedings for the formation of the assessment district. Although a habitat maintenance assessment district may be of any size, for purposes of the regional funding program, the district is assumed to contain the entire MSCP study area.

State legislation (SB 445) requires that all property owners in the district be given notice of a public hearing. If written protests are received from 35% or more of property owners, then the proposed district must be abandoned for at least 1 year. If protests are received from 15% to 35% of property owners, then the proposed assessment must be approved by a majority of voters in an election. If protests are received from less than 15% of property owners, then the legislative body of the city or county may proceed with the formation of the district and the levy of assessments. (As a policy of the MSCP, however, any regional funding program, including a regional habitat maintenance district, will be submitted to the voters for approval.)

The legislation on habitat maintenance assessment districts (SB 445) establishes the principle that a lot or parcel is presumed to benefit from natural habitat, if past or proposed development or use of the lot or parcel has adversely affected or will adversely affect the habitat. Historical impact is thus an accepted basis for determining current benefit from habitat maintenance.

Authorized expenditures by the habitat maintenance assessment district include habitat creation, restoration, enhancement, and maintenance; land acquisition; biological monitoring and evaluation; and related administrative costs. The act also authorizes issuance of bonds to finance the estimated cost of habitat acquisition, creation, restoration, or other improvements. However, the term of the bond is limited to 10 years. The maximum assessment that may be levied by the district on any lot or parcel is limited in 1994 to $25, as specified in SB 445, and in subsequent years to this amount increased by the California Consumer Price Index.

Although a habitat maintenance assessment district is authorized to acquire habitat lands, it is not known if this authority is sufficient to meet the acquisition needs of the MSCP. Special legislation may be required to clarify this authorization. In any event, special legislation will be required to allow issuance of bonds with maturities greater than 10 years and to substitute the requirement of notification by mail with a requirement of notification by publication and majority approval by voters in the district.

A habitat maintenance assessment district may be used in combination with another funding source, which has the authorization to issue long-term bonds for habitat acquisition. This is illustrated in one of the funding scenarios described in Section 7.2.

### Mello-Roos Community Facilities District

The Mello-Roos Community Facilities Act (Government Code, Section 53311 et seq.) authorizes a city, county, or special district to initiate proceedings to form a Mello-Roos community facilities district. The formation of the district, the levy of special taxes, and issuance of bonds must be approved by two-thirds of the voters. The special taxes and/or bond proceeds may be used to fund a wide range of public facilities and services, including open space acquisition and management. A community facilities district may be of any size. However, for purposes of the regional funding program, the district is assumed to include the entire MSCP study area. Proceedings to create the district may be initiated by the County of San Diego or jointly by the participating local jurisdictions.

Special taxes levied by a community facilities district may be structured in a way similar to that of benefit assessment. However, the special tax is more flexible than benefit assessment in the potential uses of funds and in the formulation of tax rates for various categories of land use. If used for the MSCP, the distribution of special taxes between residential and commercial/industrial properties is assumed to follow that of benefit assessment described above. A community facilities district also permits annual escalation in tax rates, allowing at least partial adjustment for inflation. Accordingly, tax rates may be set initially lower than would be the case for a fixed annual assessment over the life of the program. The analysis of cost impacts to households and businesses (Section 7.2.3) assumes an escalation of 2% per year in the community facilities district special tax.

The facilities and services financed with community facilities district special taxes may not replace facilities and services that were available in the district prior to its formation. Thus, the special taxes may not be available to manage open space preserves established prior to the formation of the district. In addition, special authorization may be required to use special taxes to fund a permanent endowment.

### Ad Valorem Property Tax/General Obligation Bond Program

Subject to approval by two-thirds of the voters, local jurisdictions may issue general obligation bonds and increase the ad valorem property tax above the statutory limit of 1% to pay principal and interest. Bond proceeds may be used to acquire habitat lands and undertake habitat restoration or other improvements.

Unlike a benefit assessment or a community facilities district special tax, the ad valorem tax rate must be applied uniformly to all assessed properties. Thus, there is no flexibility to vary taxes according to land use. In 1995, commercial and industrial properties in San Diego County represented approximately 30% of the total taxable value. Thus, an ad valorem tax would allocate a higher proportion of program costs to nonresidential uses than the benefit assessment or the community facilities district special tax.

Proceeds of general obligation bonds based on ad valorem tax cannot be used to purchase equipment or to pay for management. However, general obligation bonds could be combined with another source, such as habitat maintenance assessment, to fund the MSCP program costs.

### Sales Tax

Counties are authorized to establish a taxing authority to impose a sales tax at a rate of 0.25% or 0.5%. Special legislation is required to raise the sales tax by 0.125%. The establishment of a sales tax for a special purpose is a "special tax" and must be approved

by two-thirds of the voters. Subject to this approval, the sales tax increase may be used to fund habitat acquisition, preserve management, monitoring, and establishment of an endowment.

The sales tax is paid by residents, businesses, and visitors. Relative to other payers, residents would pay less under a sales tax program than under other forms of local financing.

### 7.4.2 Timetable for Implementation of Regional Funding

The local jurisdictions will begin a process to procure funding within 18 months of the wildlife agencies' approval of the first subarea plan (initial implementing agreement signed by City of San Diego, July 1997) and will have a funding source in place within an additional 18 months. Within this time frame, the local jurisdictions will identify a new or existing structure through which regionally generated funds will be allocated to the jurisdictions on a fair-share basis. The wildlife agencies may adjust this schedule if the jurisdictions demonstrate that their good faith efforts require additional time.

Achieving the goal of a regional funding program may be compromised if some jurisdictions choose not to participate in the MSCP. If such a circumstance arises before a regional funding source is secured, the wildlife agencies and the remaining participating jurisdictions will jointly reassess the feasibility of a regional funding program. If the jurisdictions and wildlife agencies conclude that such a program is no longer feasible, the jurisdictions will design and implement an alternative strategy or strategies for funding the local share of MSCP costs.

#### Timetable for a Ballot Measure

The timetable shown in Table 7-7 is an example chronology of actions necessary to place and promote a ballot measure to finance the regional share of the MSCP and potentially other habitat conservation plans in San Diego County as they enter implementation phases. It is based on the successful process that led to passage of the San Diego Transportation Program (Proposition A) in November 1987.

A regional ballot measure to finance the local share of the MSCP will require a broad focus to be successful and should address urban parks and open space, recreation, and other priorities in addition to the regional preserve system.

Structure of Responsible Groups. This chronology assumes that three groups with coordinated responsibilities are identified to carry out this process.

- An existing policy-making entity, or a combination of entities, composed of local jurisdictions (Policy Group) should be identified to provide direction to the funding effort. This entity must have access to public agency staff support.

- A broadly based group of stakeholders (Advisory Group) should be constituted, similar to the MSCP Working Group, but with a regional membership. The group would provide input and direction to the process, participate in development of the ballot measure and policy documents, and recommend actions to the local jurisdictions.

- A privately based and funded group should be formed to serve as advocates for the measure and to undertake a public information program (Advocate Group).

**Table 7-7**

## MODEL TIMETABLE FOR A BALLOT MEASURE

| Months Prior to Election | Responsible Group | Activity |
|---|---|---|
| 30 — 24 | Local Jurisdictions, Other Participants, Foundations, Nonprofit Groups | • Establish process for public education on economic and environmental values of habitat conservation and biodiversity. |
| 20 | Local Jurisdictions | • Select Policy Group.<br>• Establish private Advocate Group. |
| 17 | Advocate Group | • Conduct pre-polling to test public opinions and attitudes regarding an open space bond or tax measure. |
| 16 | Policy Group | • Establish Advisory Group.<br>• Formulate procedure for identifying components of ultimate ballot measure including MSCP, MHCP, and MHCOSP.[1]<br>• Review and comment on program direction. |
| 14 — 10 | Advisory Group | • Identify ballot target date.<br>• Identify ballot form options.<br>• Describe potential categories of need.<br>• Refine cost estimates based on needs and priorities.<br>• Develop financing plan.<br>• Develop draft measure recommendations.<br>- amount of assessment or tax<br>- duration of assessment or tax<br>- costs of acquisition, management, monitoring, and administration<br>- uses of revenues<br>- distribution of revenues<br>- process/responsibility for the distribution of revenues<br>• Coordinate with Advocate Group. |
| | Advocate Group | • Design ballot measure support campaign.<br>• Identify funding sources for support campaign.<br>• Formulate ballot measure polling strategy and timing.<br>• Coordinate with Advisory Group. |
| 9 | Advisory Group | • Develop final recommendations regarding structure and content of ballot measure; submit to Policy Group. |
| 8 | Policy Group | • Review Advisory Group recommendations.<br>• Refer recommendations to local jurisdictions for review.<br>• Select final institutional structure for collection and administration of proceeds from measure. |

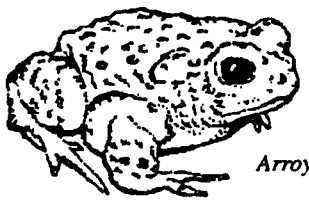
**Table 7-7 (Continued)**

**MODEL TIMETABLE FOR A BALLOT MEASURE**

| Months Prior to Election | Responsible Group | Activity |
|---|---|---|
| 7 — 6 | Policy Group | • Review ballot measure recommendations.<br>• Conduct public hearings on measure.<br>• Adopt measure.<br>• Approve placing of measure on ballot (call for special election if needed).<br>• Approve expenditure plan. |
| 5 | Policy Group | • Approve final measure language; submit to County Board of Supervisors.<br>• Request that County Board of Supervisors call for special election to be consolidated with targeted general election.<br>• Determine exact form of proposition language. |
| 3 — 2 | Policy Group | • Request that the Board of Supervisors adopt resolution by predetermined required date.<br>• Registrar of Voters publishes notice for submission of arguments on proposition.<br>• Arguments submitted. |
| 2 | Policy Group | • Acknowledge last day to file rebuttals. |
| 0 | GENERAL ELECTION | |

[1] MHCP = Multiple Habitat Conservation Program in northern San Diego.
MHCOSP = Multiple Habitat Conservation and Open Space Program in eastern San Diego County.

State Legislation. State enabling legislation may be required, for example, to allow creation of a public funding program based on a simple majority vote. AB 2007 added sections to the Public Resources Code in 1993 enabling the adoption of a benefit assessment to be levied by a regional parks and open space district in San Diego County, that may be approved by a simple majority vote. This law could be applied to the MSCP and other regional habitat conservation programs. If a new legislation is required or if AB 2007 needs to be modified, the legislation must be passed by the State Legislature and signed by the governor at least 1 full year before the date of the general election.



*Arroyo Southwestern Toad*

## 7.5 FEDERAL AND STATE FUNDING PROGRAMS

Federal and state governments will acquire 13,500 acres over 30 years using funds from existing and future programs. The following are some of the important habitat acquisition programs in effect in 1996.

### 7.5.1 Federal Programs for Habitat Acquisition and Maintenance

Between 1989 and 1994, federal programs have funded an average of $30 million per year for habitat conservation in California. About 60% of funds have been spent in southern California and the remainder in northern California.

#### Land and Water Conservation Fund

The revenues for this fund are generated by the sale of federal property, motorboat fuel taxes, and the leasing of oil and gas sites in coastal waters. Approximately $900 million per year are generated. Between 1980 and 1994, an average of $270 million per year has been appropriated to four federal agencies: National Park Service, U.S. Forest Service, Bureau of Land Management, and USFWS. The four agencies spent a total of approximately $27 million per year in California. For fiscal year 1997, the USFWS has been appropriated $2,700,000 for land acquisition within the San Diego National Wildlife Refuge.

#### National Fish and Wildlife Challenge Grants

Grants under this program are administered by the nonprofit National Fish and Wildlife Foundation. Grants are funded by federal appropriations and must be matched with nonfederal contributions. The National Fish and Wildlife Foundation has raised contributions from individuals, corporations, and foundations at an average rate of $2 for every $1 appropriated. Since establishment in 1984, grants of more than $85 million have been conferred under various programs. They include the Wetlands Conservation Program and the Wildlife and Habitat Program, intended for the preservation of biodiversity and the recovery of endangered and threatened species. Between 1989 and 1994, California has received an average of $1.9 million per year, including both grants and matching contributions.

#### Cooperative Endangered Species Conservation Fund

This new budget initiative, called Habitat Conservation Plan Land Acquisition Grants, is intended for the USFWS to provide grants to states for land acquisition that support habitat conservation plans. This is a separate and distinct grant process from traditional grants to state programs under Section 6 of the Endangered Species Act. Since the plans often require local conservation and land acquisition, the grant funds are intended to assist in paying for these conservation efforts. The budgetary request for fiscal year 1997 specifically cited Natural Community Conservation Planning in southern California as an example for the use of this grant. Congress approved the President's 1997 budget request for $6,000,000 for this program. States receiving these grants will be required to provide matching funds.

#### U.S. Fish and Wildlife Service

The USFWS receives annual appropriations for staffing and management of the National Wildlife Refuge System. The base budget of the Carlsbad Fish and Wildlife Office, which provides assistance to Natural Community Conservation Planning efforts in

southern California, was $3.62 million in fiscal year 1995, $3.1 million in 1996, and projected $3.98 million under the President's budget for 1997. In addition, funding for the operations of Sweetwater Marsh, Seal Beach, and Tijuana Slough National Wildlife Refuges totaled $434,000 in 1995, $518,000 in 1996, and projected $1.08 million for 1997. The additional $564,000 budget for 1997 includes $400,000 for operation of the newly acquired San Diego National Wildlife Refuge.

**Other Federal Programs**

Other federal programs for land acquisition include the following:

- National Coastal Wetlands Conservation Grant Program
- North American Wetlands Conservation Act Grant Program
- Intermodal Surface Transportation Efficiency Act (ISTEA)
- Bay Estuary Program
- Partners for Wildlife Program

These programs, many of which emphasize protection of wetlands, require applications from state and local governments or other organizations engaged in conservation activities.

### 7.5.2 State Acquisition Programs

**Wildlife Conservation Board**

The Wildlife Conservation Board is responsible for allocating land acquisition funds from the following statewide sources:

- Wildlife Restoration Fund
- Environmental License Plate Fund
- Park and Recreational Facilities Fund (Proposition 18)
- Fish and Wildlife Habitat Enhancement Fund (Proposition 19)
- California Wildlife, Coastal and Park Land Conservation Fund of 1988 (Proposition 70)
- Public Resources Account, Cigarette and Tobacco Products Surtax Fund (Proposition 99)
- Habitat Conservation Fund (California Wildlife Protection Act of 1990)
- Inland Wetlands Conservation Program (Proposition 117)
- Riparian Habitat Conservation Program

Of these, funds from Propositions 19 and 70 have been depleted. Historically, however, new programs have been enacted to provide funding for land acquisition. Between 1989 and 1994, the Wildlife Conservation Board approved $181 million of land acquisition, or an average of $30 million per year. Approximately 60% of funds have been spent in southern California.

**California Resources Agency**

The California Resources Agency distributes funds from the Environmental Enhancement and Mitigation Program, Highway Gas Tax Fund, and a portion of the Environmental License Plate Fund that is not distributed by the Wildlife Conservation Board. Between 1991 and 1994, $40 million was spent statewide; an additional $60 million is budgeted through 2001.

San Diego Environmental Impact Statement, sections on population, housing and economic impacts of Plan

# RECIRCULATED DRAFT JOINT EIR/EIS
# ISSUANCE OF TAKE AUTHORIZATIONS
# FOR THREATENED AND ENDANGERED SPECIES
# DUE TO URBAN GROWTH WITHIN THE
# MULTIPLE SPECIES CONSERVATION PROGRAM (MSCP)
# PLANNING AREA
# LDR No. 93-0287
# SCH No. 93121073

*Applicant*:

CITY OF SAN DIEGO
600 "B" Street, Suite 500
San Diego, CA 92101

*Lead Agencies*:

CITY OF SAN DIEGO, CALIFORNIA
DEVELOPMENT SERVICES DEPARTMENT
ENVIRONMENTAL ANALYSIS SECTION/ PUBLIC PROJECTS
1222 First Avenue, 5th Floor
San Diego, CA 92101

*and the*

UNITED STATES FISH AND WILDLIFE SERVICE
2730 Loker Avenue West
Carlsbad, CA 92008

**August 1996**

**Project:**
**Issuance of a Take Authorization for Threatened and Endangered Species Within the Multiple Species Conservation Program (MSCP) Planning Area in San Diego County, California**
**DEP No. 93-0287**
**SCH No. 93121073**

## ABSTRACT

The proposed actions addressed in this Joint EIR/EIS would occur on federal, state and local levels. The federal actions consist of: a) issuance of Section 10(a)(1)(B) permits for incidental take of listed and unlisted covered species within the Multiple Species Conservation Program (MSCP) Plan area; b) approval of the MSCP Plan as a Natural Communities Conservation Planning (NCCP) area plans; and c) execution of Implementing Agreements (IAs) with the appropriate jurisdictions. The state action consists of approval of the MSCP Plan as an NCCP Program under Section 2835 of the Natural Communities Conservation Planning (NCCP) Act in the State Fish and Game Code; requirements for take under Section 2835 are similar to those for a federal Habitat Conservation Plan. Local actions consist of adoption of the MSCP Plan by participating local jurisdictions along with other implementing approvals including general plan, community plan, and environmental land use regulations.

The proposed project is the Multiple Habitat Planning Area (MHPA) which was developed under the Multiple Species Conservation Program (MSCP). The MHPA was formulated cooperatively by the participating jurisdictions within the MSCP study area, in consultation with the United States Fish and Wildlife Service (USFWS)/California Department of Fish and Game (CDFG) staff, major property owners, and environmental groups, based on biological, economic, ownership, and land use criteria. The biological goal for the preserve design is the preservation of as much of the core biological resource areas and linkages within the MSCP study area as possible. The economic goals are for the ultimate preserve to be affordable and for the costs to be shared equitably by the federal and state governments, local jurisdictions, and private landowners and for public and private developments to proceed expeditiously in accordance with the MSCP Plan and the applicable Subarea Plans. Another goal in preserve design includes maximizing the use of public lands. The design includes lands conserved through entitlement processes, major habitat patches designated as open space in general plans and community plans, and lands that will be acquired from willing sellers.

The analyses contained in the Joint EIR/EIS are conducted for both the MSCP Plan and for Subarea Plans and other actions necessary to implement the MSCP Plan. Four alternatives to the MHPA are addressed in this document– **Coastal Sage Scrub Scenario, Biologically Preferred Scenario, Public Lands Scenario, and No Action/No Project.** Subarea Plans are also addressed for the following jurisdictions/special district: **City of Chula Vista, City of Coronado, City of Del Mar, City of San Diego, City of Santee, County of San Diego and Otay Water District.** Environmental issues examined in detail in this document include Land Use, Biological Resources, Regional Transportation/Circulation, Public Services and Utilities, and Population/Housing.

This Joint EIR/EIS is a recirculation of a previous Draft Joint EIR/EIS for the MSCP Plan distributed in May 1995. The May 1995 Draft Joint EIR/EIS will not become final due to project changes and new information that warrant issuance of an entirely new document with new analyses. New information incorporated in this Recirculated Joint EIR/EIS includes: a) changes to the boundaries of the MHPA; b) addition of species to be covered by the MSCP Plan; and c) the addition of discretionary actions not addressed in the previous Draft Joint EIR/EIS including Subarea Plans and implementing actions for several jurisdictions.

*Prepared for the*

City of San Diego
600 B Street, Suite 500
San Diego, California 92101
Contact:
City of San Diego
Development and Environmental Planning Division
Environmental Analysis Section/Public Projects
1222 First Avenue, 5th Floor
San Diego, California 92101
619-236-6460
John Kovac, Senior Planner

*and the*

U.S. Fish and Wildlife Service
2730 Loker Avenue West
Carlsbad, California 92008
619-431-9440
Nancy Gilbert, Senior Staff Biologist

**4.6.3 ISSUE 3: Would the proposed MSCP Plan affect business investment, job creation, general economic activity, financing of public improvements, household and business finances, property values, property tax base, development rates, or housing and development costs within the study area and generally within the region?**

### 4.6.3.1 IMPACT ANALYSIS (ISSUE 3)

An economic impact analysis is a comparison of an economy under different sets of assumptions. The proposed project and conservation alternatives are compared against a baseline, the No Project Alternative. The No Project Alternative in this analysis is represented by SANDAG's Series 8 Regional Growth Forecast. These forecasts show what the region's economy is likely to look like in 25 years if current trends, plans, and policies that effect local economic conditions remain unchanged. The impacts of the proposed project and conservation alternatives are derived by simulating changes in the baseline forecast. The projections from the baseline and from the proposed project and conservation alternatives are compared to determine the differences or impacts on the local economy.

### A. THE MSCP PLAN (IMPACT ANALYSIS – ISSUE 3)

### A.1 MHPA – PROPOSED PROJECT (IMPACT ANALYSIS – ISSUE 3)

The MSCP Plan provides a comprehensive method for satisfying the requirements of the Endangered Species Act. At the same time, it balances financing requirements and impacts on the local economy. The proposed project contained in the MSCP Plan is the configuration of a preserve system called the "Multi-Habitat Planning Area (MHPA)." The MHPA is planned to conserve 171,917 acres of vacant land, including 167,687 acres of habitat. The proposed project would be assembled through three methods: conservation of land already in public ownership, public acquisition of private lands, and private land contributions through development regulations and mitigation of impacts.

Pursuant to an agreement, local jurisdictions and federal and state agencies would cooperate in assembling the preserve, with each level of government contributing both publicly owned lands and funding for additional land acquisition.

#### Business Investment, Job Creation, and General Economic Activity (MHPA Project–Issue 3)

Once approved, the MSCP Plan containing the proposed project would facilitate approvals of business expansion plans, reduce delays in the environmental review process, and reduce compliance and carrying costs. Federal and state permits for public and private projects would be easier to obtain. An early

resolution of conflicts between land development and natural habitat would reduce the likelihood of federal and/or state intervention which could disrupt local economic development. Plan adoption would contribute to a more secure and less costly business environment, thus improving the region's ability to retain companies and attract investment. Also, the proposed financing plan anticipates that the federal and state governments would be responsible for meeting one-half of the land acquisition need, as well as a portion of the estimated costs of preserve management and biological monitoring. The influx of such federal and state funds to the San Diego region would stimulate local economic activity.

### Financing of Public Improvements (MHPA Project – Issue 3)

By establishing a preserve system to cover 85 species, the MHPA should make it easier and less costly to build public improvements. MHPA provisions would reduce the time and cost otherwise required for such projects to secure approval of proposed mitigation and authorization for incidental take. Fewer and shorter delays on public improvement projects also would improve service delivery and save taxpayers money. However, to the extent implementation of the MSCP Plan relies on taxes and/or assessments to fund habitat conservation, the public's ability and willingness to support additional local taxes for other public improvements may be reduced.

### Financial Impacts on Households and Businesses (MHPA Project – Issue 3)

The total cost to local jurisdictions, residents, and businesses to implement the proposed project is estimated to range between $339 million and $411 million, of which $180 million would be applied to land acquisition. This includes land acquisition costs for preserve management, biological monitoring, and program administration, and establishment of a permanent endowment for management, monitoring, and administration. The proposed financing plan for the MHPA alternative may result in average annual assessments, over 30 years, as high as $25 per household and $88 per acre of commercial and industrial property.

### Property Values (MHPA Project – Issue 3)

Overall, property within the MSCP study area and throughout the region should maintain at higher values under the proposed project than under the No Project Alternative. Some property within the MHPA is already publicly owned, its value would not change. Property acquired by the public from the private sector would have its tax value drop to zero. Some of the land included in the MHPA could be developed to its general plan capacity, which for most land is rural, whereas some land is physically constrained from supporting urban development. This property would remain on the tax roll. It is reasonable to assume that property outside the MHPA would increase in value for two main reasons: Development that might have otherwise taken place in the preserve would be diverted to other areas, increasing the demand for and price of land and buildings. Also, the preservation of large open spaces would improve the region's environmental setting. Environmental quality and property values are positively related.

### Property Tax Base (MHPA Project – Issue 3)

As noted above, both property values and development should increase outside the MHPA preserve boundaries. No net decrease in the rate or amount of development is expected regionwide as the result of the MSCP Plan implementation. Urban sprawl would be reduced. Moreover, the MSCP Plan would divert development away from rural/low density areas where property values *per acre* are low relative to those in higher density urban areas. The result should cause the region's property tax base to rise faster under the MHPA than under the No Project alternative.

### Development Rates (MHPA Project – Issue 3)

The proposed project is not expected to reduce the amount and rate of projected development. For the most part, land inside the preserve is very rural and physically constrained from urban development. Also, a majority of the amount of land to be preserved under the MHPA could be protected through the existing general plan designations. Local jurisdictions also may decide to accommodate the projected growth in areas outside the preserve through changes in land use plans. This could be achieved through general densification and by rezoning surplus industrial/commercial land to residential use.

### Housing & Development Costs (MHPA Project – Issue 3)

By increasing the demand for developable land in areas outside the preserve, the proposed project may create a situation that contributes to the increase in the price of land. (Although, the rate of growth in the demand for new construction and the ability of the region to accommodate this rate of growth are more directly responsible for any change in the price of land.). Higher land costs probably would be reflected in higher home prices/rents, increased property values, and higher commercial/industrial lease rates. Offsetting these cost increases for new development would be reduced environmental mitigation costs, lower carrying costs, and speedier approval of development projects.

## A.2 COASTAL SAGE SCRUB SCENARIO (IMPACT ANALYSIS – ISSUE 3)

The CSS alternative was developed to meet the minimum criteria for satisfying the Natural Community Conservation Plan (NCCP) Conservation Guidelines for coastal sage scrub target species. The CSS alternative identified 84,900 acres of habitat and specifically targeted the California gnatcatcher and coastal cactus wren birds, and the orange-throated whiptail lizard. However, according to the wildlife agencies, the CSS alternative would not replace the federal Section 4(d) interim rule, which restricts the take of the California gnatcatcher.

While the CSS alternative may adequately protect a few coastal sage scrub species, the longer-term maintenance of ecosystem-level processes by this alternative is questionable, according to biologists. Because of edge effects, smaller population sizes, and the increased severity of catastrophic environmental events in smaller systems, more intensive management and monitoring activities would be required for the

Dated: July 17, 1996

CITY OF IRVINE

By

Title Mayor

### Property Tax Base (CSS Scenario – Issue 3)

Some environmentally sensitive land may be purchased by the MSCP and taken off the tax role. However, as noted above, both property values and development should increase outside the CSS preserve boundaries. No net decrease in the rate or amount of development is expected regionwide as the result of the CSS alternative. Urban sprawl could be reduced. The CSS alternative could divert development away from rural/low density areas where property values *per acre* are low relative to those in higher density urban areas. The result could cause the region's property tax base to rise faster under the CSS alternative than under the No Project Alternative.

### Development Rates (CSS Scenario – Issue 3)

The CSS alternative is not expected to reduce the amount and rate of projected development. For the most part, land inside the boundaries of the CSS preserve configuration is very rural and physically constrained from urban development. Also, a majority of the amount of land to be preserved under this alternative (84,900 acres) could be protected through the existing general plan designations. Local jurisdictions may also decide to accommodate the projected growth in areas outside the preserve through changes in land use plans. This could be achieved through general densification and by rezoning surplus industrial/commercial land to residential use.

### Housing & Development Costs (CSS Scenario – Issue 3)

By increasing the demand for developable land in areas outside the preserve, the CSS alternative may increase the price of land. (Although, the rate of growth in the demand for new construction and the ability of the region to accommodate this rate of growth are more directly responsible for any change in the price of land.) Higher land costs probably would be reflected in higher home prices/rents, increased property values, and higher commercial/industrial lease rates. Offsetting these cost increases for new development would be reduced environmental mitigation costs, lower carrying costs, and speedier approval of development projects, as described above under Business Investment and Job Creation.

## A.3 BIOLOGICALLY PREFERRED SCENARIO (IMPACT ANALYSIS – ISSUE 3)

Of the MSCP Plan alternatives, the Biologically Preferred (BP) alternative provides the largest preserve and the most comprehensive method for satisfying the requirements of the Endangered Species Act. There would be an estimated 167,000 acres of habitat preserved as a biological resource under this alternative. This area contains the highest percentage of rare and sensitive habitats of any alternative. By virtue of its larger core areas and better biological connections to areas outside the BP boundary, the BP alternative provides greater assurance of the long-term viability of covered and non-covered species. The cost of land acquisition for the BP alternative is estimated at $634 million. Additional costs for preserve maintenance, monitoring and administration have not been determined for this alternative. One-half of the funds are assumed to come from the federal government, 23% from local government and 27% from the private

sector. It should be noted, however, that state and federal agencies have not made a commitment to support one-half of the land acquisition costs of this alternative. Also, no quantitative economic analysis has been conducted for this alternative.

Although the federal and state agencies would cooperate with local jurisdictions in assembling this preserve, the BP preserve would be more costly for local jurisdictions to acquire and maintain than the other MSCP Plan alternatives.

### Business Investment, Job Creation, and General Economic Activity (BP Scenario – Issue 3)

Compared to the no project alternative, the BP alternative would facilitate approvals of business expansion plans, reduce delays in the environmental review process, and reduce compliance and carrying costs. Federal and state permits for public projects and private employment projects would be easier to obtain. An early resolution of conflicts between land development and natural habitat would reduce the likelihood of federal and/or state intervention which could disrupt local economic development. However, the level of business assessments and/or taxes required to pay for the implementation of the BP alternative could adversely impact the growth of the regional economy. The extra cost burden might discourage some companies from expanding or locating in the San Diego region.

Under the BP alternative, the federal and state governments may commit to one-half of the total land acquisition need, and a comparable share of the estimated costs of preserve management and biological monitoring. The influx of federal and state funds to the San Diego region would act as a stimulus for local economic activity.

### Financing of Public Improvements (BP Scenario – Issue 3)

By establishing a preserve system to cover a large number of native species, the BP alternative should make it easier and less costly to build public improvements. Provisions of this alternative would likely reduce the time and cost required for such projects to secure authorization for incidental take and approval of proposed mitigation. Fewer and shorter delays on public improvement projects also would improve service delivery and save taxpayers money. However, public financing of the BP alternative itself might entail higher taxes and/or assessments. The cost of financing could offset the taxpayer benefits stemming from the BP alternative. In addition, the public' ability and willingness to support additional local taxes for other public purposes (non-habitat) would likely be reduced.

### Financial Impacts on Households and Businesses (BP Scenario – Issue 3)

The BP alternative was the most expensive alternative evaluated. The higher cost is due to the size of the preserve and the number of acres that would need to be purchased. Public financing of this alternative could result in higher assessments/taxes on local households and businesses than the other alternatives.

### Property Values (BP Scenario – Issue 3)

Overall, property in the MSCP study area and throughout the region should maintain higher values under the BP alternative than under the NP alternative. Some properties within the boundaries of the BP preserve configuration are already publicly owned; their values would not change. Property acquired by the public from the private sector would have its tax value drop to zero. Some of the land included in the BP preserve configuration could be developed to its general plan capacity, which for most land is rural, whereas some land is physically constrained from supporting urban development. It is reasonable to assume that property outside the BP preserve would increase in value for two main reasons: A significant amount of development that might have otherwise taken place in the preserve would be diverted to other areas, increasing the demand for and price of land and buildings. Also, the preservation of large open spaces would improve the region's environmental setting, a positive contributor to property values.

### Property Tax Base (BP Scenario – Issue 3)

As noted above, both property values and development should increase outside the BP preserve boundaries. However, such gains in property value could be offset to a large extent by the removal of private land from the tax rolls. Land acquisition under the BP alternative would reduce the amount of land available for development by an estimated 27,700 acres.

### Development Rates (BP Scenario – Issue 3)

By reducing the amount of land available for development by 27,700 acres, the BP alternative could reduce the amount and rate of development within the MSCP study area. That likely would be the outcome unless local jurisdictions, in response to market conditions, changed land use plans to accommodate higher densities, especially for residential development.

### Housing & Development Costs (BP Scenario – Issue 3)

By increasing the demand for developable land in areas outside the preserve, the BP alternative may create a situation that contributes to the increase in the price of land. (Although, the rate of growth in the demand for new construction and the ability of the region to accommodate this rate of growth are more directly responsible for any change in the price of land.) Higher land costs probably would be reflected in higher home prices/rents, increased property values, and higher commercial/industrial lease rates. Offsetting these cost increases for new development would be reduced environmental mitigation costs, lower carrying costs, and speedier approval of development projects.

## A.4 PUBIC LANDS SCENARIO (IMPACT ANALYSIS – ISSUE 3)

The PL alternative was developed to meet a different set of objectives than all other alternatives. The PL alternative is not focused on the quality of the habitat as its primary criterion for preserve assembly. Instead this alternative focuses on land ownership. There would be an estimated 147,000 acres of habitat

## B. Public Comments, Responses to Comments and Revisions Reflecting Responses

As part of the public review process pursuant to CEQA, NEPA, the NCCP Act and FESA, extensive public comments were received. The written public comments have been reproduced in the accompanying document title "County of Orange Central & Coastal Subregion Part III; Join Programmatic EIR/EIS - Comment Letters." Public testimony was also presented in oral form at public hearings before the County of Orange Planning Commission and the County of Orange Board of Supervisors.

Extensive written comments were prepared and are set forth in the accompanying document titled "County of Orange Central and Coastal Subregion Part III: Joint Programmatic EIR/EIS - Response to Comments." In broad terms, the responses are grouped under two categories: (1) "General Responses" presenting issues raised in a number of comments and/or which appeared to be of general interest and (2) "Specific Responses" which comprise responses to specific issues raised by only one party or a few parties.

In addition to providing substantive responses to specific comments, the Response to Comments document also indicates whether changes were to be made to the NCCP/HCP, the Implementation Agreement and/or the EIR/EIS in response to the comment and further lead agency assessment by the County of Orange, CDFG and USFWS. In addition to clarifications and corrections of specific matters in the documents, the responses included revisions that may be categorized as follows:

- *Species-Related Considerations*

  - Three species (the golden eagle, the prairie falcon and the foothill mariposa lilly) were shifted to the category of "conditionally covered species" due to the particular needs of those species.

  - Three species which are particularly associated with grasslands (the white-tailed kite, the loggerhead shrike and the California horned lark) were deleted from the list of Identified Species until such time as the NCCP Non-Profit is able to proceed with grasslands management programs, NCCP surveys and other information gathering.

mitigation. Fewer and shorter delays on public improvement projects also would improve service delivery and save taxpayers money. However, because the PL alternative is pieced together with land based on its ownership, it may not meet NCCP biological requirements for a multiple species conservation plan. Also, to the extent that the PL alternative relies on taxes and/or assessments to fund habitat conservation, the public' ability and willingness to support additional local taxes for other public improvements may be reduced. The need for additional local resources to support the PL alternative would be significant if it does not qualify for federal and state grant funding.

### Financial Impacts on Households and Businesses (PL Scenario – Issue 3)

The cost to local jurisdictions, residents, businesses, and other sources to implement the PL alternative is estimated to be $24 million. This includes the cost of land acquisition only. Other requirements for preserve management and administration have not been estimated. Public financing of the PL alternative probably would entail additional assessments and/or taxes, although the level of potential levies has not been determined for this alternative.

### Property Values (PL Scenario – Issue 3)

A majority of the property within the boundaries of PL preserve configuration is already publicly owned, and its value would not change. The value of the land to be acquired through the development process could be higher under the PL alternative, if under the No Project Alternative it was constrained or restricted from development. Some of the land included in the PL preserve configuration could be developed to its general plan capacity, which for most land is rural; whereas some of the land is physically constrained from supporting urban development. Establishing the MSCP preserve likely would not affect the value of the land as much as physical constraints. It is reasonable to assume that property outside the boundaries of the PL preserve configuration would increase in value for two main reasons: Development that might have otherwise taken place in the preserve would be diverted to other areas, increasing the demand for and price of land and buildings; although, this should be minimal because of the use of public lands. Also, the preservation of large open spaces would improve the region's environmental setting. Environmental quality and property values are positively related.

### Property Tax Base (PL Scenario – Issue 3)

Some environmentally sensitive land may be purchased under the PL alternative and taken off the tax role. However, as noted above, this would be minimal because of the use of public land and both property values and development potential would increase outside the preserve boundaries. No net decrease in the rate or amount of development is expected regionwide as the result of the PL alternative implementation. Urban sprawl may be reduced. Moreover, the PL alternative could divert development away from rural/low density areas where property values *per acre* are low relative to those in higher density urban areas. As a result of the PL alternative, the region's property tax base could rise faster than it would under the No Project alternative.

### Development Rates (PL Scenario – Issue 3)

The PL alternative is not expected to reduce the amount and rate of projected development, compared to the No Project Alternative. For the most part, land inside the boundaries of the PL preserve configuration is rural and much of it is physically constrained from urban development. Also, a majority of the land is in public ownership and not available to accommodate growth. Local jurisdictions may also decide to accommodate the projected growth in areas outside the preserve through changes in land use plans. This could be achieved through general densification and by rezoning surplus industrial/commercial land to residential use.

### Housing & Development Costs (PL Scenario – Issue 3)

By increasing the demand for developable land in areas outside the preserve, the PL alternative may create a situation that contributes to the increase in the price of land. (Although, the rate of growth in the demand for new construction and the ability of the region to accommodate this rate of growth are more directly responsible for any change in the price of land.) Higher land costs probably would be reflected in higher home prices/rents, increased property values, and higher commercial/industrial lease rates. Offsetting these cost increases for new development would be reduced environmental mitigation costs, lower carrying costs, and speedier approval of development projects.

## A.5 NO ACTION/NO PROJECT ALTERNATIVE (IMPACT ANALYSIS – ISSUE 3)

The No Project Alternative assumes a continuation of existing conditions without a permanent resolution of the conflicts between land development and endangered habitat. Under this alternative, no comprehensive agreement for habitat conservation would exist between local jurisdictions and federal and state agencies. Nor would the state and federal government contribute land or money towards preserve assembly. Public improvement projects and private development projects would be subject to environmental review by federal and state agencies on a project-by-project basis. Public and private projects would be individually responsible for satisfying the requirements of the Endangered Species Act through habitat conservation planning and land dedication or fee payment.

### Business Investment, Job Creation and General Economic Activity (No Action/No Project – Issue 3)

Under the No Project alternative, local businesses, U.S. companies, and international corporations would probably view the San Diego region as a risky destination for investment dollars — a place where environmental conflicts remain unresolved and government regulators stand ready to block or restrict development each time a conflict arises. The uncertainty about future business conditions would detract from local private investment. The impact on local business retention, business attraction, and job creation would be negative. Furthermore, the San Diego region would forego the economic stimulus of federal and state funding that is anticipated under the MSCP Plan.

## Financing of Public Improvements (No Action/No Project – Issue 3)

With the NO Project Alternative, local agencies would face limitations on their ability to construct public improvements because conflicts between capital improvement projects and habitat would remain unresolved. In the absence of an integrated agreement with emphasis on habitat conservation, local public agencies would find it more difficult to obtain state and federal permits for transportation projects, water and sewer system improvements, recreation facilities, and many other types of facilities.

## Financial Impacts on Households and Businesses (No Action/No Project – Issue 3)

Under the No Project alternative, jurisdictions, households, and businesses would avoid paying the annual assessments/taxes required to finance the proposed MHPA project and conservation alternatives. The cost savings to businesses and households could be substantial given the high potential costs. However, without a habitat conservation plan in place, the occupants and tenants of new development (e.g. homes, industrial/commercial space) could experience higher real estate prices and rents due to higher environmental mitigation costs, increased carrying costs, and slower approval of development projects.

## Property Values (No Action/No Project – Issue 3)

The No Project Alternative would continue the case-by-case approach in effect today. The current process encourages costly litigation and environmental studies, without a comprehensive plan to provide some assurance that the process will actually preserve sufficient habitat in an efficient and effective manner. Thus, the No Project Alternative offers no long term solution to the growing conflicts between development and sensitive lands. Under the no project alternative, land environmentally constrained from development may lose value, or be more expensive to develop, until the constraint is removed. The No Project Alternative provides no new process to address and solve major environmental constraints, leaving the future use of some property in question and reducing its economic value. Also, without the preservation of open space and habitat, the region could become a less desirable place in which to live and work, which would not enhance and may lower property values.

## Property Tax Base (No Action/No Project – Issue 3)

Under the no project alternative, property values probably would continue to rise over the long-run, but at a slower rate than under the MHPA project and conservation alternatives. Property would not be removed from the tax role, however, property that supports one or more of the covered species may be precluded from development, which would lower property values for such parcels. Development constraints such as these, may increase the relative value of parcels without constraints, raising their price, and the overall cost of construction. Also, there would be a greater likelihood that proposed development projects would either be denied due to adverse impacts on habitat or because the cost of the required mitigation would render the projects financially unfeasible.

### Development Rates (No Action/No Project – Issue 3)

Under the No Project Alternative, in the long run, there would be a greater likelihood that proposed development projects would either be denied due to adverse impacts on habitat or because the cost of the required mitigation would render the projects financially unfeasible. However, there is sufficient land available to accommodate projected growth under the No Project Alternative. The allocation of the growth under the conservation alternatives, however, may be different. The No Project Alternative would likely encourage more urban sprawl than the MHPA, CSS, BP alternatives. In the long run, the environmental constraints are likely to be greater under the No Project Alternative than under the PL Alternative.

### Housing and Development Costs (No Action/No Project – Issue 3)

Under the No Project alternative, development costs would be higher than those under the MHPA project and conservation alternatives because more expensive environmental mitigation would be required on a project-by-project basis. Individual projects would be subject to longer delays in the environmental review process and, therefore, carrying costs would be higher. These higher costs would likely push home prices, and rental and lease rates up at a faster rate than would occur under the MHPA project and conservation alternatives.

## B. THE SUBAREA/OTHER PLANS (IMPACT ANALYSIS – ISSUE 3)

The economic analysis was completed on a program level for the overall MSCP Plan. Individual analyses for the Subarea Plans were not completed.

### 4.6.3.2 ANALYSIS OF SIGNIFICANCE (ISSUE 3)

No significant impact were identified.

### 4.6.3.3 MITIGATION, MONITORING AND REPORTING (ISSUE 3)

No mitigation measures are recommended.

### 4.6.3.4 SIGNIFICANCE LEVEL AFTER MITIGATION (ISSUE 3)

No significant impacts were identified.

Clark County Multiple Species Habitat Conservation Plan and Environmental Impact Statement, Federal Register Notice of Take Permit Application

[Federal Register: June 9, 2000 (Volume 65, Number 112)]
[Notices]
[Page 36709-36711]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr09jn00-113]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

# Receipt of an Application for an Incidental Take Permit and Availability of the Draft Multiple Species Habitat Conservation Plan/ Draft Environment Impact Statement for Clark County, NV

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Clark County, Nevada; the Cities of Las Vegas, North Las Vegas, Henderson, Boulder City, and Mesquite; and the Nevada Department of Transportation (Applicants) have applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The proposed 30-year permit would authorize the incidental take of 2 federally threatened and endangered species, and 77 non-listed species of concern in the event that these species become listed under the Act during the term of the permit, in connection with economic growth and development of up to 145,000 acres of non-Federal lands in Clark County.

The Service has assisted in the preparation of the Draft Clark County Multiple Species Habitat Conservation Plan (Multispecies Plan) and Implementation Agreement, and has directed the preparation of a Draft Environmental Impact Statement addressing the potential effects on the human environment that may result from the granting of an incidental take permit and other Federal actions associated with implementation of the Multispecies Plan.

The Draft Multispecies Plan/Draft Environmental Impact Statement, and associated Implementation Agreement, are available for public review and comment. All comments received, including names and addresses, will become part of the administrative record and may be made available to the public.

DATES: We must receive your written comments on or before July 24, 2000.

ADDRESSES: Send comments to Mr. Bob Williams, Field Supervisor, Fish and Wildlife Service, Nevada Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, Nevada, 89502; or by facsimile to (775) 861-6301.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Williams, Field Supervisor, Fish and Wildlife Service, Reno, Nevada, at (775) 861-6331; or Ms. Janet Bair, Assistant Field Supervisor, Fish and Wildlife Service, Las Vegas, Nevada, at (702) 647-5230.

SUPPLEMENTARY INFORMATION: You may request a copy of the document on CD-ROM by calling Ms. Sandy Helvey, Administrative Secretary, Clark

# NCCP/HCP ALTERNATIVES MATRIX

| | PROPOSED PROJECT | NO TAKE | NO PROJECT | PROGRAMMATIC |
|---|---|---|---|---|
| **HABITAT PROTECTION** | | | | |
| Large Scale Reserves | Yes | No | Smaller than NCCP | Depends on Funding |
| Certainty of Reserves | Yes | No | Uncertain | Uncertain |
| Occupied CSS | 75% | 100% | 75% | Unknown |
| Timing of Reserve System Delineation | Certain | None | Uncertain | Uncertain |
| Non-gnatcatcher CSS | Substantial | No | Less than NCCP | Potentially Substantial |
| Other Habitat Types | Substantial | No | Less than NCCP | Unknown |
| **CONNECTIVITY** | | | | |
| Within CSS | Substantial | CSS Patches Only | Substantial | Unknown |
| Between CSS Areas | Substantial | Limited | Moderate | Potentially High |
| Non-CSS Open Space | Substantial | None | Moderate | Unknown |
| **RESERVE MANAGEMENT** | | | | |
| Comprehensive | Yes | No | Unknown | Unknown |
| Interim Management | Yes | No | No | No |
| Invasive Species | Yes | No | Probable | Probable |
| Fire | Extensive | No | Limited by Reserve Timing | Limited by Reserve Timing |
| Recreation | Yes | No | Limited | Limited |
| Monitoring | Extensive | No | Limited by Reserve Timing | Limited by Reserve Timing |
| Adaptive Management | Yes | No | Limited by Reserve Timing | Limited by Reserve Timing |
| Funding | Yes | No | Unknown | Unknown |
| Pacific Pocket Mouse Population Expansion | Possible | Unlikely | Unlikely | Unknown |
| least vireo | Probable | Unlikely | Unlikely | Potentially Substantial |
| Southwestern willow flycatcher | Probable | Unlikely | Unlikely | Potentially Substantial |
| Southwestern arroyo toad | Probable | Unlikely | Unlikely | Potentially Substantial |
| Quino checkerspot butterfly | Unknown | Unknown | Unknown | Unknown |
| Riverside fairy shrimp | Unknown | Unknown | Unknown | Unknown |
| San Diego fairy shrimp | Unknown | Unknown | Unknown | Unknown |

County Department of Comprehensive Planning, at (702) 455-4181. To view the document, you will need access to an IBM or Macintosh computer with the capacity to read CD-ROMs.

Alternatively, you may view the document at the following Internet website: www.clark.co.nv.us. Click on ``Health and the Environment,'' then click on ``Environmental Planning'', and finally click on ``Habitat Conservation.''

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In addition, you may review paper copies of the document at the following government offices and library:

Government Offices--Fish and Wildlife Service, Southern Nevada Field Office, 1510 North Decatur Boulevard, Las Vegas, Nevada 89108, tel: (702) 647-5230; Fish and Wildlife Service, Nevada Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, Nevada 89502, (775) 861-6300; Bureau of Land Management, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108, (702) 647-5000; U.S. Forest Service, 2881 South Valley View Boulevard, Las Vegas, Nevada 89102, (702) 873-8800; National Park Service, Lake Mead National Recreation Area, 601 Nevada Highway, Boulder City, Nevada 89005, (702) 293-8946; Nevada Department of Transportation, Environmental Services Division, 1263 South Stewart Street, Room 104A, Carson City, Nevada 89712, (775) 888-7889; Clark County Deparatment of Comprehensive Planning, 500 South Grand Central Parkway, Third Floor, Las Vegas, Nevada 89155, (702) 455-3859; Clark County Northeast Office, Moapa Community Center, 320 North Moapa Valley Boulevard, Overton, Nevada 89040, (702) 397-6475; City of Las Vegas, Department of Public Works, 731 South Fourth Street, Las Vegas, Nevada 89101, (702) 229-6541; City of North Las Vegas Public Works, 2266 Civic Center Drive, North Las Vegas, Nevada 89030, (702) 633-1225; City of Henderson, 240 Water Street, Henderson, Nevada 89015, (702) 565-2474; City of Boulder City, City Hall, 401 California Avenue, Boulder city, Nevada 89005, (702) 293-9200; and the City of Mesquite 10 East Mesquite Boulevard, Mesquite, Nevada 89027, (702) 346-2835.

Library--Clark County Public Library, Main Branch, 833 Las Vegas Boulevard North, Las Vegas, Nevada 89101, (702) 382-3493.

Background

Section 9 of the Act and Federal regulation prohibit the ``take'' of animal species listed as endangered or threatened. That is, no one may harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 USC 1538). ``Harm'' is defined by regulation to include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). Under certain circumstances, the Service may issue permits to authorize ``incidental'' take of listed animal species (defined by the Act as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity). The taking prohibitions of the Act do not apply to listed plants on private land unless their destruction on private land is in violation of State law. The Applicants have considered plants in the Multispecies Plan and request permits for them to the extent that State law applies. Regulations governing permits for threatened and endangered species, respectively, are at 50 CFR 17.32 and 50 CFR 17.22.

On July 11, 1995, the Service issued an incidental take permit, effective August 1, 1995, to Clark County; the Cities of Las Vegas, North Las Vegas, Henderson, Mesquite, and Boulder City; and the Nevada Department of Transportation for the Clark County Desert Conservation Plan (Desert Conservation Plan). This plan provides conservation measures for the threatened desert tortoise (Gopherus agassizii). In

Clark County. The associated permit authorizes incidental take of the desert tortoise in Clark County consistent with the long-term viability of the species in this portion of its range.

The Desert Conservation Plan includes provisions for a proactive approch to conservation planning for multiple species in Clark County. The intent was to reduce the likelihood of future listings of plants and wildlife as threatened or endangered under the Act. the Multispecies Plan is the direct outgrowth of the provisions of the Desert Conservation Plan. If approved by the Service, The Multispecies Plan will supercede the Desert Conservation Plan and will provide stand-alone conservation measures for species included in the plan. We anticipate that implementation of the conservation measures in the Multispecies Plan will be a cooperative effort among the Applicants, the Service, Bureau of Land Management, U.S. Forest Service, National Park Service, Nevada Division of Wildlife, and other Federal and State land managers and regulators.

Clark County and the Cities of Las Vegas, North Las Vegas, Henderson, Mesquite, and Boulder City are seeking a 30-year permit for the incidental take of federally threatened and endangered species, and other non-listed species of concern in the event that these species become listed under the Act during the term of the permit, in connection with the development of non-Federal lands within Clark County, Nevada. In addition, the Nevada Department of Transportation has joined as an Applicant for the permit to allow the incidental take of desert tortoise within desert tortoise habitat below 5,000 feet in elevation and south of the 38th parallel in Nye, Lincoln, Mineral, and Esmeralda Counties, Nevada, and the incidental take of other non-listed species of concern within Clark County in connection with the construction and maintenance of roads, highways, and material sites.

The permit to the Applicants would authorize incidental take of 79 species on no more than 145,000 acres of land potentially available for development in Clark County. This acreage includes non-Federal lands that currently exist and non-Federal lands which result from sales or transfers from the Federal government after issuance of the permit. This acreage excludes existing development, the Boulder City Conservation Easement established under the current Desert Conservation Plan for the desert tortoise, and State lands managed for resource values. The 79 species proposed for incidental take coverage under the Multispecies Plan (covered species) include 2 listed species (the desert tortoise and the southwestern willow flycatcher, Empidonax traillii extimus), 1 candidate for listing (Blue diamond cholla, Opuntia whipplei var. multigeniculata), and 76 unlisted species comprised of 4 mammals, 7 birds, 14 reptiles, 1 amphibian, 10 invertebrates, and 40 plants.

To minimize and mitigate the impacts of take, the Applicants propose to impose a $550 per-acre development fee and maintain an endowment fund that will provide up to $4.1 million per biennial period to fund conservation measures for covered species and to administer the Multispecies Plan. The plan includes measures to implement a public information and education program; purchase grazing allotments and interest in real property and water; maintain and manage allotments, land, and water rights which have been acquired; construct barriers to wildlife movement along linear features such as roads; translocate displaced desert tortoises; participate in and fund local habitat rehabilitation and enhancement programs; and develop and implement an adaptive management process that allows for responses to new information.

The underlying purpose of the Multispecies Plan is to achieve a balance between (1) long-term conservation of natural habitat and native plant and animal diversity that are an important part of the natural heritage of Clark County, and (2) the orderly and beneficial use of land in order to promote the economy, health,

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well-being, and custom and culture of the growing population of Clark County, Nevada.

On March 3, 1997, th eService published a notice in the Federal Register (62 FR 9443) announcing that we would take the lead in preparing an Environmental Impact Statement addressing the Federal actions associated with the Multispecies Plan. This notice invited comments on the scope of the Environmental Impact Statement. Our consideration of comments received is reflected in the Draft Multispecies Plan/Draft Environmental Impact Statement made available for comment through this notice.

The Draft Multispecies Plan/Draft Environmental Impact Statement analyzes the potential environmental impacts that may result from the Federal action requested in support of the proposed development of up to 145,000 acres of non-Federal land in Clark County. The document identifies various alternatives, including the No Action Alternative, the Proposed Multispecies Plan, a Low-Elevation Ecosystems Multispecies Plan, a Permit Only for Threatened or Endangered and Candidate Species, and Alternative Permit Durations for the Multispecies Plan. Alternatives considered but not advanced for further analysis include a Permit to Include the Entire Mojave Desert Ecosystem, a Permit to Mitigate Impacts Only on Non-Federal Lands, and a High-Elevation Ecosystems Multispecies Plan.

The analysis provided in the Draft Multispecies Plan/Draft Environmental Impact Statement is intended to accomplish the following: inform the public of the proposed action and alternatives; address public comment received during the scoping period; disclose the direct, indirect, and cumulative environmental effects of the proposed action and each of the alternatives; and indicate any irreversible commitment of resources that would result from implementation of the proposed action.

The Service invites the public to comment on the Draft Multispecies Plan/Draft Environmental Impact Statement during a 45-day comment period. All comments received will become part of the public record and may be released. This notice is provided pursuant to section 10(a) of the Endangered Species Act and regulations for implementing the National Environmental Policy Act of 1969 (40 CFR 1506.6).

Dated: May 31, 2000.
Elizabeth H. Stevens,
Deputy Manager, Region 1, California/Nevada Operations Office, Sacramento, California.
[FR Doc. **00-14099 Filed** 6-8-**00**; 8:45 am]
BILLING CODE 4310-55-M

Clark County Multiple Species Habitat Conservation Plan and Environmental Impact Statement, Implementing Agreement

# *IMPLEMENTING AGREEMENT*

# *CLARK COUNTY*

# *MULTIPLE SPECIES HABITAT CONSERVATION PLAN*

*November, 2000*

MSHCPIA11/00PTS

# *CLARK COUNTY MULTIPLE SPECIES HABITAT CONSERVATION IMPLEMENTING AGREEMENT*

This Clark County Multiple Species Habitat Conservation Plan Implementation Agreement (Agreement) is made and entered into this ___ day of November, 2000 by and among the United States Fish and Wildlife Service (Service), the United States Bureau of Land Management (BLM), the United States Forest Service (USFS), the United States National Park Service (NPS), the Nevada Division of Wildlife (NDOW), the Nevada Division of Forestry (NDF), the Nevada Division of State Parks (NDSP), the Nevada Department of Transportation (NDOT), Clark County, Nevada (County), and the cities of Las Vegas, North Las Vegas, Boulder City, Henderson and Mesquite (collectively, Cities). The County, the Cities and NDOT may hereinafter be referred to collectively as Applicants or Permittees.

## 1. RECITALS

1.01 HISTORICAL BACKGROUND:

A. In March of 1990, the desert tortoise was listed as a threatened species pursuant to the provisions of the Endangered Species Act (ESA). Pursuant to the provisions of Section 10(a)(1)(B) of the ESA, the County and the Cities, through a community based Steering Committee, later designated the Implementation and Monitoring Committee (IMC), prepared a Short Term Habitat Conservation Plan ("STHCP") and, on January 15, 1991, submitted it to the Service with a request that the Service issue a permit to allow tortoises to be incidentally taken within certain locations within the County.

B. On July 24, 1991, the Service issued its permit ("PRT-756260") which allowed the

incidental take of tortoises pursuant to the terms of the STHCP. PRT-756260 terminated on or about August 1, 1995.

C. Immediately upon receipt of PRT-756260, the County and the Cities, through the IMC, began work to prepare a long term habitat conservation plan which would be the basis for a long term incidental take Permit for the desert tortoise. The plan was designated the Clark County Desert Conservation Plan (DCP).

D. On or about August 1, 1995, the DCP was approved and a new Section 10(a) permit was issued by the Service (PRT 801045) to allow the incidental take of desert tortoises for a term of 30 years.

E. On or about May 1, 1996, the IMC began discussing the possibility of preparing another Habitat Conservation Plan which would provide adequate conservation to support a Section 10(a) Permit for the desert tortoise as well as a broad range of species and all habitats located within Clark County. In August of 1996, after additional study, the County and the Cities authorized the preparation of the Clark County Multiple Species Habitat Conservation Plan, (MSHCP).

1.02 THE PROCESS. The IMC, the Applicants and each of the other Parties hereto have reviewed and approved the terms of the MSHCP. The MSHCP proposes a cooperative federal, state and local program of conservation for all ecosystems located within Clark County to benefit a broad range of species as set forth in the MSHCP. The MSHCP is the product of lengthy study, debate and negotiations among private development interests, mining, ranching and recreation interests, environmental and conservation groups as well as Federal, State and local governmental entities.

1.03 COMPREHENSIVE PLAN. The MSHCP is a comprehensive, long-term habitat conservation plan for the Covered Species which addresses multiple species needs and the preservation of the natural communities upon which the Covered Species rely. The MSHCP addresses the potential impacts of urban growth, natural habitat loss and endangerment to species

and creates a plan to minimize and mitigate for the loss of Covered Species and their habitats due to the direct and indirect impacts of future development of both federal and nonfederal lands within the Plan Area to the maximum extent practicable.

1.04 IMPORTANCE OF ADAPTIVE MANAGEMENT: The Adaptive Management Program (AMP) designed and proposed to be implemented, as set forth in Section 11.02 A hereof, is one of the most important elements of the MSHCP. The initial conservation measures proposed to be funded by the MSHCP, together with existing management policies and activities of public land managers, are sufficient to conserve the Covered Species and their habitats within Clark County and to meet the requirements of Section 10(a) of the Endangered Species Act. However, given the number of Covered Species, the paucity of data and information regarding some species for which coverage may be sought in the future, the variety of habitats found within Clark County, the rapid growth of Clark County which will, in the future, increase pressures upon the natural resources of the County, and budget limitations of both land managers and the MSHCP, the science based AMP which will provide guidance and suggestions to the Service, land managers and the Clark County Implementation and Monitoring Committee (IMC) regarding monitoring, research, management practices and budget priorities is a keystone element of the MSHCP. In addition to any other obligation undertaken hereunder, execution of this Agreement by each of the Parties constitutes its commitment to fully cooperate with, to participate in and to seriously consider implementation of measures suggested by the AMP, as more particularly set forth in Section 2.8.2 of the MSHCP.

1.05 CONDITIONS FOR PERMITS. The MSHCP establishes the conditions under which the Permittees, for the benefit of themselves and of public and private landowners within their jurisdictional boundaries, will receive from the Service certain long term permits, authorizations and assurances to allow the incidental taking of the Covered Species incidental to otherwise lawful activities and land uses.

1.06 UNLISTED SPECIES. In addition to dealing with Covered Species which are listed as Threatened or Endangered or Proposed for such listing, the Permits and authorizations sought by

the Applicants will address those Covered Species which are not presently listed or proposed for listing, even though the take of unlisted species is not prohibited. The purposes of treating such unlisted Covered Species the same as listed Covered Species include protecting such unlisted species and their habitat to prevent such species from ever being in danger of becoming extinct and providing certainty regarding how the subsequent listing of such species may affect future permitting and mitigation requirements. In addition, the preservation of natural habitats and wildlife will significantly enhance the quality of life in southern Nevada and preserve and set aside lands for the future use and enjoyment of its residents and visitors.

1.07 SUBMITTAL OF APPLICATION. On or about November 1, 1999, the County, the Cities and NDOT submitted their application for an incidental take permit pursuant to the provisions of Section 10(a)(1)(B) of the ESA ("MSHCP Permit) to permit the incidental take of over 79 species as more particularly identified in the MSHCP (Covered Species). The MSHCP was included as a part of the application.

1.08 LEGAL REQUIREMENTS. In order to fulfill the requirements which will allow the Service to issue the MSHCP Permit, the MSHCP sets forth measures that are intended to assure that any take occurring will be incidental; that the impacts of the take will, to the maximum extent practicable be minimized and mitigated; that adequate funding for the provisions of the MSHCP will be provided; and that the take will not appreciably reduce the likelihood of the survival and recovery of the Covered Species in the wild. It also includes measures which have been suggested by the Service as being necessary or appropriate for purposes of the MSHCP.

1.09 FEDERAL LEGAL AUTHORITY. The Service enters into this Agreement pursuant to the ESA, the Fish and Wildlife Coordination Act (16 U.S.C. 661-666c), and the Fish and Wildlife Act of 1956 (16 U.S.C.742(f), et.seq.). Section 10(a)(1)(B) of the ESA (16 U.S.C.1539(a)(1)(B)), expressly authorizes the Service to issue a Section 10(a) Permit to allow the Incidental Take of species listed as threatened or endangered under the terms of the ESA. The legislative history of Section 10(a)(1)(B) clearly indicates that Congress also contemplated that the Service may, should

and would approve Habitat Conservation Plans that protect unlisted species as if they were listed under the ESA, and that in doing so the Service would provide Incidental Take assurances for such unlisted species. Relevant excerpts from such legislative history includes the following:

"The Committee intends that the Secretary may utilize this provision [regarding habitat conservation plans] to approve conservation plans which provide long-term commitments regarding the conservation of listed as well as unlisted species and long-term assurances to the proponent of the conservation plan that the terms of the plan will be adhered to and that further mitigation requirements will only be imposed in accordance with the terms of the plan. In the event that an unlisted species addressed in an approved conservation plan is subsequently listed pursuant to the Act, no further mitigation requirements should be imposed if the conservation plan addressed the conservation of the species and its habitat as if the species were listed pursuant to the Act.

It is also recognized that circumstances and information may change over time and that the original plan might need to be revised. To address this situation, the Committee expects that any plan approved for a long-term permit will contain a procedure by which the parties will deal with unforeseen circumstances." H.R. Rep. No. 97-835, 97th Cong., 2d Session 30-31 (1982) (Conference Report on 1982 Amendments to the ESA).

The Service routinely approves habitat conservation plans that address and provide coverage for both listed and unlisted species.

Regulations adopted by the Service to implement Section 10 (50 CFR 17.22 et.seq.) and the recently adopted "Assurances Rule" (50 CFR 17.2 and 17.22 et.seq; 63 FR 8859) are further expressions of the intent of the Service to implement the intent of Congress regarding both listed and unlisted species. Under the Assurances Rule, if HCP's protect identified unlisted species as if they were listed, the Service will not seek additional mitigation that requires the expenditure of money or land set asides from the plan proponents. The Assurances Rule also assures plan proponents that if an approved HCP is properly implemented, the Service will not seek additional land or financial

compensation if "unforeseen" circumstances should later arise with respect to either listed or unlisted species.

The Solicitor's Office of the US Department of Interior has reviewed the Assurances Rule as described above and integrated into this Agreement and has determined that the Rule and its application to this Agreement and the MSHCP is authorized under the ESA, including the provisions and legislative history set forth hereinabove.

1.10 INTEGRATION OF DCP AND MSHCP.

A. Relevant terms of the DCP have been incorporated into the terms of the MSHCP, and except as hereinafter provided, the MSHCP is intended to supersede and replace the terms of the DCP. The MSHCP and each of its terms are intended to be, and by this reference are, incorporated herein. In the event of any direct contradiction between the terms of the DCP and the MSHCP, the MSHCP shall control.

B. At the time the Permittees, the IMC and the Service first determined that they would develop the MSHCP, it was necessary to decide whether the DCP and the MSHCP would remain separate conservation plans with separate permits or whether the DCP and the MSHCP would be integrated and, based on the principles of Adaptive Management, be administered as one plan to benefit all of the ecosystems and species proposed to be conserved and covered by both plans. Because integration of the two plans and the consistent application of the principles of adaptive management would provide greater flexibility with respect to conservation measures and dealing with threats and stressors to species and habitats over time, the parties decided that it would be better to integrate the two plans and rely upon one permit issued by the Service. The Parties recognized and acknowledged that implementation of the Adaptive Management provisions of the MSHCP may result, in any given biennium, in more or less money being expended for the conservation of the desert tortoise than that contemplated and mandated by the DCP and its Permit. Because of the importance to the economy of Clark County to insure that the ability to

incidentally take desert tortoises will not be jeopardized, at all times during the term of the MSHCP and the Permit issued pursuant thereto, the terms, conditions, provisions and authorization to incidentally take desert tortoises shall be severable from the balance of the MSHCP and the Permit issued pursuant thereto, and in the event, for any reason, except for failure to comply with biennial budget and implementation plan as it affects desert tortoises, the MSHCP or its Permit is terminated or suspended, the portion of the MSHCP affecting desert tortoises shall not be affected thereby; and further, approval by the Service of the biennial budget and implementation plan, as hereinafter set forth, shall, *ipso facto*, constitute a determination by the Service that the biennial budget and implementation plan mitigates and minimizes the effects upon the desert tortoise to the maximum extent practicable and that the effects of such incidental take will not appreciably reduce the likelihood of the survival and recovery of that species in the wild. In the event that the Service finds that the conservation measures proposed for the desert tortoise during any biennium make it impossible for it to approve the biennial budget and implementation plan, it shall inform the IMC and shall recommend specific modifications to the biennial budget and implementation plan which would allow the Service to approve it. Furthermore, in the event that the MSHCP or its Permit is terminated or suspended so that conservation of and incidental take authorization for the other species covered hereunder ceases, conservation of and authorization for the incidental take of desert tortoises shall not be affected thereby, and the minimization, mitigation and monitoring measures set forth in the DCP and its Permit shall thereafter be the minimization, mitigation and monitoring measures required for continuing coverage of the desert tortoise pursuant hereto. Thereafter, failure to comply with the provisions of the DCP and PRT 801045 shall be grounds for suspension or termination of the MSHCP Permit with respect to desert tortoises.

C. In the event of any direct contradiction between the terms of the MSHCP and this Agreement, the terms of this Agreement shall control. In all other cases, the terms of this Agreement and the terms of the MSHCP shall be interpreted to be supplementary to each other. References to specific sections of the MSHCP herein indicate the sections of the MSHCP wherein a specific topic is discussed. However, the references are not intended to be exclusive, and a

specific topic may be discussed in other sections of the MSHCP which have not been specifically referenced. All sections and provisions of the MSHCP shall be utilized to interpret the terms of this Agreement, whether or not specifically referenced herein.

1.11 COOPERATIVE EFFORT. In order that each of the legal requirements of the ESA are fulfilled, each of the Parties to this Agreement must perform certain specific tasks as more particularly set forth in the MSHCP. The MSHCP thus describes a cooperative Federal, State and local program of conservation for the habitats and species located within Clark County.

**NOW THEREFORE,** for and in consideration of the mutual covenants and conditions contained herein, the parties do hereby agree as follows:

## 2. PURPOSES

The general purpose of this Agreement and the MSHCP is to provide for the long-term reconciliation of development within the MSHCP Plan Area, as hereinafter set forth, with the conservation and protection of the Covered Species. In order to provide this reconciliation the specific purposes of this Agreement are:

2.01 ASSURE IMPLEMENTATION: To assure the implementation of each of the terms of the MSHCP by means of a contractual commitment by each of the Parties to completely fulfill and faithfully perform the obligations, responsibilities and tasks assigned to it pursuant to the terms of the MSHCP, including without limitation, the financial commitments and undertakings committed to by the Applicants; subject however, to the provisions of Section 18.07 hereof; and,

2.02 DESCRIBE REMEDIES AND RECOURSE: To describe remedies and recourse should any party fail to perform its obligations, responsibilities and tasks as set forth in this Agreement; and,

2.03 PROVIDE ASSURANCES TO THE APPLICANTS: To provide assurances to the Applicants and non-federal landowners participating in the MSHCP that:

A. Compliance with the terms of this Agreement and the MSHCP constitutes compliance with the provisions of the ESA and applicable and relevant laws of the State of Nevada; and,

B. Implementation of this Agreement and the MSHCP will adequately provide for the conservation and protection of the Covered Species and their habitat in the Plan Area; and,

C. As long as the terms of the MSHCP and the MSHCP Permit issued pursuant to it are properly implemented, no additional land restrictions or financial compensation for the Covered Species will be required, without the written consent of non-federal landowners, in the event of unforeseen circumstances, as more particularly set forth hereinafter.

## 3. TERMS, DEFINITIONS AND ACRONYMS USED

3.01 SAME AS MSHCP AND ESA. Terms, definitions and acronyms utilized in the MSHCP and/or the ESA shall have the same meaning when utilized in this Agreement, except as specifically noted.

3.02. COVERED ACTIVITIES. Activities proposed to be covered by any Section 10(a) permit issued in reliance hereon shall include all otherwise lawful activities which occur upon nonfederal property, including but not limited to those activities set forth in Section 2.3.2.2 of the MSHCP; provided, however, that activities which are otherwise lawful and which occur upon nonfederal property, but which result in the take of Covered Species upon federal property are not Covered Activities.

## 4. TERM

4.01. STATED TERM. As further described in Section 2.4.1 of the MSHCP, this Agreement shall become effective on the date that the Service issues the MSHCP Permit requested in the MSHCP

and shall remain in full force and effect for a period of thirty (30) years.

4.02. PERMANENCE OF CONSERVED HABITAT. Notwithstanding the stated term of this Agreement, the Parties agree and recognize that once species have been taken and habitats disturbed pursuant to the MSHCP, the take of species and habitat modification will be permanent. It is therefore the intention of the Parties that the provisions of the MSHCP and of this Agreement regarding the establishment and maintenance of habitat by the BLM, USFS, NPS, NDF, , NDOW, NDSP and the Service shall likewise, to the extent permitted by law, be permanent and extend beyond the term of this Agreement. Likewise, as more particularly set forth in Section 2.9.2 of the MSHCP, any funds remaining in the MSHCP Endowment Fund at the end of the Stated Term of the MSHCP shall continue to be expended solely and exclusively for the conservation of species and habitats.

## 5. MSHCP PLAN AREA

5.01. CLARK COUNTY: As further described in Section 2.3 and Section 2.4 of the MSHCP, the Plan Area includes all of Clark County and its cities, and the MSHCP Permit will allow the incidental take of Covered Species resulting from all Covered Activities upon all nonfederally owned property located within that County and its cities.

5.02 NDOT: As further described in Section 2.3 and Section 2.4 of the MSHCP, the Plan Area also includes NDOT rights of way (including material sites) below 5,000 feet in elevation, south of the 38th parallel in Nye, Lincoln, Mineral and Esmeralda Counties, all of which are located within the State of Nevada. The MSHCP Permit allows NDOT to incidentally take desert tortoises upon its rights of way within the Plan Area located outside of Clark County, but no other Covered Species except within Clark County.

## 6. INTEGRATION OF THE DCP AND PERMIT 801045

6.01. INTEGRATION AND SEVERABILITY: Section 2.2.4.3 of the MSHCP provides that immediately upon the approval of the MSHCP and the issuance of the MSHCP permit, the terms of the DCP and Permit 801045 would be suspended; provided, however, that if for any reason the MSHCP permit were suspended, revoked or terminated, the terms of the DCP and Permit 801045 would immediately be reinstated and the parties would thereafter again be bound by the terms of both the DCP and Permit 801045. However, subsequent to the preparation and approval of the MSHCP, it was determined that the suspension and reinstatement provisions as set forth in the MSHCP might not be authorized by existing regulations. Therefore, as more particularly set forth in Section 1.10.B. hereof, in order to gain the benefits of integrating the DCP and the MSHCP, while at the same time assuring that the integration of the two plans will not jeopardize the incidental take coverage provided by the DCP and its permit by virtue of implementing conservation measures suggested by the adaptive management provisions of the MSHCP, but not contained within the DCP, the terms, conditions, provisions and authorization to incidentally take desert tortoises shall at all times during the term of the MSHCP be and remain severable from the balance of the MSHCP and the Permit issued pursuant thereto

## 7. SPECIES

7.01 SPECIES REVIEWED AND ANALYZED: As further described in Section 2.4.2.4, Section 2.5, Section 2.6, Tables 2-5, 2-6 and 2-7, and Volumes II and III of the MSHCP, species reviewed and analyzed in the MSHCP are categorized as:

A. Covered Species, as set forth in Table 2-5 of the MSHCP, for which the MSHCP Permit will allow incidental take resulting from all Covered Activities conducted within Clark County. Covered Species include species which are currently listed as well as species which are not currently listed. Covered Species which are not currently listed have been treated by the MSHCP as if they have been listed.

B. Evaluation Species, as set forth in Table 2-6 of the MSHCP, for which additional information is required or for which sufficient management prescriptions have not been defined to support an application for a MSHCP Permit pursuant to Section 10(a) of the ESA at the present time. The MSHCP provides a process to move species designated as Evaluation Species to the Covered Species list by acquiring additional data and information regarding those species and the identification of conservation measures which will allow coverage pursuant to Section 10(a).

C. Watch List Species, as set forth in Table 2-7 of the MSHCP, which are those species for which adequate information is not available to assess their current status or that are not considered to be at risk during the planning horizon the MSHCP. The MSHCP contemplates that as more information is gathered, Watch List species may be moved to the Evaluation Species List or the Covered Species List.

7.02. COVERED BUT CURRENTLY UNLISTED SPECIES: As further described in Section 2.11.2 of the MSHCP, in the event a Covered but currently unlisted species is listed in the future, such species shall, without any further action on the part of the Applicants, be covered pursuant to the terms of the Section 10(a) Permit.

7.03 ADDITIONS TO COVERED SPECIES LIST: As further described in Section 2.11.3 of the MSHCP, in the event the Applicants wish to move a species from the Evaluation Species List to the Covered Species List and include it in the MSHCP Permit, it shall amend the MSHCP and request an amendment to the MSHCP Permit from the Service, which such amendment shall be supported by sufficient data and evidence to meet the requirements of a Section 10(a) Permit.

## 8. THREATS, STRESSORS AND CONSERVATION MEASURES

8.01 THREATS AND STRESSORS: As further described in Section 2.4.2.6, Section 2.5 and Volumes II and III of the MSHCP, the Parties agree that the MSHCP has adequately described known, reasonably foreseen or alleged threats and stressors which affect both species and their

habitats within Clark County.

8.02 CONSERVATION MEASURES: As further described in Section 2.4.2.6, Section 2.8, and Volumes II and III of the MSHCP, the Parties agree that the MSHCP has adequately described known conservation measures which currently appear to adequately address the known, reasonably foreseen or alleged threats and stressors.

8.03 MODIFICATIONS AND CHANGED CIRCUMSTANCES: As further described in Section 2.8.2 and 2.10, the MSHCP contemplates that the list of threats and stressors as well as conservation measures adequate to deal with those threats and stressors may be modified from time to time as a result of the Adaptive Management Plan (AMP) process and the process for dealing with Changed and Unforeseen Circumstances.

8.04 IMPLEMENTATION PLAN AND BUDGET PROCESS. As further described in Section 2.11.2, in the event, as a result of the AMP or additional information gathered by the IMC, it desires to modify the list of threats and stressors or modify the list of conservation measures, such proposed modifications shall be submitted to the Service and be processed as part of the Implementation Plan and Budget (IPB) process.

8.05 AGREEMENT. The parties agree that the threats and stressors (known or reasonably foreseeable) set forth in the MSHCP are those factors which negatively impact or likely could negatively impact the Covered Species and that the conservation measures set forth in Section 2.8 hereof fully meets and fulfills the requirements of the ESA and relevant laws of the state of Nevada with respect to the Covered Species and their respective habitats.

## 9. MANAGEMENT AREAS

9.01. CATEGORIES: As further described in Section 2.4.2.7, Section 2.5 and Volumes II and III of the MSHCP, all lands within Clark County have been categorized as one of the following:

A. Intensively Managed Areas (IMAs) which are areas within the County in which management is oriented primarily toward actions that reduce or eliminate potential threats and stressors to species and habitats.

B. Less Intensively Managed Areas (LIMAs) which are areas within the County upon which management generally limits the range of uses allowed to primarily recreational uses, and which augment the habitats located within IMAs, provide buffers between IMAs and areas of more intensive use, and provide corridors between IMAs.

C. Multiple Use Managed Areas (MUMAs) which are areas within the County upon which human utilization may be intense, but which nevertheless continue to support significant areas of undisturbed habitat. MUMAs provide connectivity between populations of species in IMAs and LIMAs, provide additional habitat for species, provide buffer areas between IMAs and LIMAs and areas of more intensive use and provide connectivity between IMAs and LIMAs.

D. Unmanaged Areas (UMAs) which are areas on which human activities predominate and which incidentally may support populations of some species. All privately owned lands have been designated as UMAs.

9.02. AGREEMENT: The Parties agree that current management, as augmented by the minimization, mitigation and monitoring provisions of Section 2.8 of the MSHCP and this Agreement, within IMAs, LIMAs and MUMAs are sufficient to assure that the incidental take of the Covered Species will not appreciably reduce the likelihood of the survival and recovery of the Covered Species in the wild.

9.03 SIGNIFICANT MODIFICATIONS: Notwithstanding the provisions of Section 9.02 hereof, the Parties agree that in the event of any change in size or location of IMAs, LIMAs or MUMAs or a modification of management actions or activities permitted within those areas which are significantly different from those set forth in the MSHCP, substantial adverse impacts upon habitats

and Covered Species could occur which might significantly reduce the likelihood of the survival and recovery of one or more Covered Species in the wild. Any such change which has a significant adverse impact upon the likelihood of the survival and recovery of the species in the wild may be grounds for the suspension, termination or revocation of all or a portion of the MSHCP Permit pursuant to the provisions of Section 16.07 of this Agreement.

9.04 ACTIONS PRIOR TO MODIFICATION: State and Federal land managers agree that, prior to any significant change of size or location of IMAs, LIMAs or MUMAs or a significant modification of management actions or activities permitted within those areas, different from those set forth in the MSHCP and existing management plans adopted by the land managers, they shall consider the likely effects on the habitats and Covered Species and the MSHCP Permit, shall report to the IMC and the Service the exact nature and extent of such proposed modification and receive and consider input from the IMC and the Service.

9.05 SECTIONS 7 CONSIDERATIONS: The Service agrees that it shall consider the effects of any proposed modification to the size or location of IMAs, LIMA's or MUMAs upon the terms of the MSHCP Permit in any Section 7 consultation which may be instituted to consider such modification.

## 10. EFFECTS OF INCIDENTAL TAKE ON COVERED SPECIES

10.01 EFFECTS: As more particularly set forth in Volume I of the MSHCP, Sections 2.4.1, 2.6, 2.7, Table 2-5, Chapter 4 and Volumes II and III, issuance of a Section 10(a) Permit and relevant permits from NDF and NDOW will allow the incidental take of Covered Species primarily as the result of the disturbance of up to 145,000 acres of nonfederal land within the Permit Area. However, measures to minimize mitigate and monitor as set forth in Section 2.8 will contribute to the recovery of listed species, reduce the likelihood of the necessity to list Covered Species which are currently unlisted and provide protection and conservation benefits to Evaluation and Watch List Species

which share habitat with Covered Species.

10.02 AGREEMENT: The Parties agree that the incidental take of Covered Species associated with the disturbance of no more than 145,000 acres of nonfederally owned land within the Permit Area during the Stated Term of the MSHCP Permit will not appreciably reduce the likelihood of the survival and recovery of the Covered Species in the wild.

## 11. RESPONSIBILITIES OF THE PARTIES

11.01 GENERAL STATEMENT: In order to minimize, mitigate and monitor the impacts of incidental take, the Parties each agree that they shall undertake the tasks, responsibilities and obligations set forth hereinafter. The parties agree that while the specific obligations set forth hereinafter may remain in effect throughout the Stated Term of the MSHCP, funding for each specific measure may increase or decrease during each biennial period with the approval of the IMC, the Service and the BCC pursuant to the IPB process as more particularly set forth in Section 2.12 of the MSHCP and that additional and different obligations and conservation measures may be undertaken by the Parties and funded by Clark County as a result of the Adaptive Management Program (AMP) and IPB process to more effectively provide for the conservation of Covered Species.

11.02 THE COUNTY AND THE CITIES: The County and the Cities shall:

A. As more particularly provided in Section 2.8.2 and 2.8.3.10 of the MSHCP, establish a science based Adaptive Management Program (AMP).

B. As further described in Section 2.8.3.1 of the MSHCP, adopt and keep in effect ordinances which: i) impose a $550 per acre development fee on all nonfederal lands within Clark County which are disturbed and which disturbance requires a permit issued by the County or the Cities, and ii) grant subpermits to take Covered Species to those who comply with the ordinances,

the MSHCP and the Permit. Such ordinances shall be in substantially the same form as adopted by Clark County in Chapter 28.46 of the Clark County Code.

C. As further described in Section 2.8.3.2 and Section 2.9 of the MSHCP, expend $2.05 million dollars annually ($4.1 million dollars biennially) on conservation measures for the Desert tortoise and other Covered Species and Evaluation Species approved by the IMC, the Service and the Clark County Board of County Commissioners (BCC) through and including June 30, 2005 and $1.750 million dollars annually ($3.5 million dollars biennially) during the remainder of the Stated Term, adjusted biennially to reflect cost of living adjustments, not to exceed 4% per annum, and credits for expenditures in excess of those required during earlier biennial periods. The index to be used in calculating the cost of living adjustments shall be U.S. City Average published by the United States Bureau of Labor Statistics, and the base month shall be June, 1999.

D. As further described in Section 2.8.3.3 of the MSHCP, administer the MSHCP utilizing the IMC, a Program Administrator and staff at levels approved by the IMC, the Service and BCC.

E. As further described in Section 2.8.3.4 of the MSHCP, establish an active Public Information and Education program through its Public Information and Education Committee (PIE).

F. As further described in Section 2.8.3.5 of the MSHCP, make funds available to purchase and exchange grazing allotments and other interests in real property and water with the advice and consent of the IMC, the Service and the BCC.

G. As further described in Section 2.8.3.6 of the MSHCP, make funds available to maintain and manage grazing allotments, land and water rights which it has acquired.

H. As further described in Section 2.8.3.7 of the MSHCP, continue their program of installing linear barriers along selected and prioritized highways and roads within Clark County to

protect desert tortoises and other species from the effects of roads and highways.

I. As further described in Section 2.8.3.8 of the MSHCP, continue their program of translocating desert tortoises.

J. Continue their program of participating in the Las Vegas Bearpoppy Memorandum of Agreement, and in particular, assist in setting aside Bearpoppy habitat located at the North Las Vegas Airport, the North Well Field owned by the Southern Nevada Water Authority and Nellis Air Force Base.

K. As further described in Section 2.8.3.9 of the MSHCP, participate in and provide funding assistance to local habitat restoration and enhancement projects, with the advice and consent of the IMC, the Service and the BCC.

L. As further described in Section 2.8.3.2 of the MSHCP, augment but not replace federal and state land manager budgets to allow those managers to more fully or quickly implement conservation measures set forth in Sections 2.8.4 through 2.8.9 of the MSHCP.

11.03 UNITED STATES FOREST SERVICE: The USFS shall:

A. As further described in Section 2.8.4.1 of the MSHCP, institute and/or continue a Public Information and Education program in cooperation with the PIE.

B. As further described in Section 2.8.4.2 of the MSHCP, cooperate with and participate in research programs dealing with the habitats and species of Clark County.

C. As further described in Section 2.8.4.3 of the MSHCP, institute and/or continue a program to inventory habitats and species within its jurisdiction within Clark County.

D. As further described in Section 2.8.4.4 of the MSHCP, institute and/or continue a program to monitor habitats and species within its jurisdiction within Clark County.

E. As further described in Section 2.8.4.5 of the MSHCP, institute and/or continue a program to protect habitats and species within its jurisdiction within Clark County.

F. As further described in Section 2.8.4.6 of the MSHCP, institute and/or continue a program to restore and enhance habitats within its jurisdiction within Clark County.

G. As further described in Section 2.8.4.7 of the MSHCP, institute and/or continue land use policies and actions to protect habitats and species within its jurisdiction within Clark County.

11.04 UNITED STATES FISH AND WILDLIFE SERVICE: The Service shall:

A. As further described in Section 2.8.5.1 of the MSHCP, institute and/or continue a Public Information and Education program in cooperation with the PIE.

B. As further described in Section 2.8.5.2 of the MSHCP, institute and/ or continue a research program dealing with the habitats and species of Clark County.

C. As further described in Section 2.8.5.3 of the MSHCP, institute and/or continue a program to inventory habitats and species within its jurisdiction within Clark County.

D. As further described in Section 2.8.5.4 of the MSHCP, institute and/or continue a program to monitor habitats and species within its jurisdiction within Clark County.

E. As further described in Section 2.8.5.5 of the MSHCP, institute and/or continue a program to protect habitats and species within its jurisdiction within Clark County.

F. As further described in Section 2.8.5.6 of the MSHCP, institute and/or continue a program to restore and enhance habitats within its jurisdiction within Clark County.

G. As further described in Section 2.8.5.7 of the MSHCP, institute and/or continue land use policies and actions which protect habitats and species within its jurisdiction within Clark County.

H. As further described in Section 2.10.9.2 of the MSHCP, utilize and take into consideration the terms of the MSHCP, the AMP and IPB in any biological opinion or incidental take statement issued by it as required by Section 7 of the ESA.

I. As further described in Section 2.10.9.3, inform the IMC, in writing, of any proposal to list any Covered (but currently unlisted), Evaluation or Watch List Species which it considers may be in need of specific conservation measures in order to prevent listing in the future. In addition, to the extent permitted by law, the Service will consider the MSHCP, the AMP and the IPB process and conservation actions undertaken pursuant thereto prior to listing or proposing to list any species within the County. In the event of the listing of any Evaluation or Watch List Species, it shall meet and confer with the County to determine why conservation measures undertaken within the County have been insufficient to avoid the listing, and what specific measures must be undertaken before such species may be included as a Covered Species.

J. At anytime it considers the designation of Critical Habitat or the preparation of a Recovery Plan for any species located within Clark County, it shall notify the IMC of its intention, and shall enter into a dialogue with the County and the IMC regarding the proposed designation or preparation. To the extent permitted by law and appropriate under the circumstances, it shall include a representative or representatives of the IMC on any Recovery Team appointed to prepare a Recovery Plan.

11.05. THE UNITED STATES BUREAU OF LAND MANAGEMENT: The BLM shall:

A. As further described in Section 2.8.6.1 of the MSHCP, institute and/or continue a Public Information and Education program in cooperation with the PIE.

B. As further described in Section 2.8.6.2 of the MSHCP, institute and/ or continue a research program dealing with the habitats and species of Clark County.

C. As further described in Section 2.8.6.3 of the MSHCP, institute and/or continue a program to inventory habitats and species within its jurisdiction within Clark County.

D. As further described in Section 2.8.6.4 of the MSHCP, institute and/or continue a program to monitor habitats and species within its jurisdiction within Clark County.

E. As further described in Section 2.8.6.5 of the MSHCP, institute and/or continue a program to protect habitats and species within its jurisdiction within Clark County.

F. As further described in Section 2.8.6.6 of the MSHCP, institute and/or continue a program to restore and enhance habitats within its jurisdiction within Clark County.

G. As further described in Section 2.8.6.7 of the MSHCP, institute and/or continue land use policies and actions to protect habitats and species within its jurisdiction within Clark County.

H. As further described in Section 2.8.6.7 (BLM 212), consider the adoption of a rural roads and OHV policy consistent with the proposal set forth in that section.

11.06 THE UNITED STATES NATIONAL PARK SERVICE: The NPS shall:

A. As further described in Section 2.8.7.1 of the MSHCP, institute and/or continue a

Incidental take of the coastal California gnatcatcher will not be considered a violation of section 9 of the Endangered Species Act of 1973, as amended (Act), if it results from activities conducted pursuant to the State of California's Natural Community Conservation Planning Act of 1991 (NCCP), and in accordance with a NCCP plan for the protection of coastal sage scrub habitat, prepared consistent with the State's NCCP Conservation and Process Guidelines, *provided that:*

(i) The [NCCP/HCP] has been prepared, approved, and implemented pursuant to California Fish and Game Code sections 2800-2840; and

(ii) The Fish and Wildlife Service (Service) has issued written concurrence that the [NCCP/HCP] meets the standards set forth in 50 C.F.R. 17.32(b)(2).

2.3 The purpose of the statewide natural community conservation effort is to provide for regional protection and perpetuation of natural wildlife diversity while allowing compatible and appropriate development and growth. The NCCP Act intends that these goals be achieved through the development and implementation of Natural Community Conservation Plans. These plans are designed to provide an alternative to current single species conservation efforts by formulating regional, natural community based habitat protection programs to protect the numerous species inhabiting the targeted natural communities. The Parties believe that the shift

C. As further described in Section 2.8.9.1(d) of the MSHCP, institute and/or continue a program to inventory habitats and species within its jurisdiction within Clark County.

D. As further described in Section 2.8.9.1(c) of the MSHCP, institute and/or continue a program to monitor habitats and species within its jurisdiction within Clark County.

E. As further described in Section 2.8.9.1(e) of the MSHCP, institute and/or continue a program to protect habitats and species within its jurisdiction within Clark County.

F. As further described in Section 2.8.9.1(f) of the MSHCP, institute and/or continue a program to restore and enhance habitats within its jurisdiction within Clark County.

G. As further described in Section 2.8.9.1(g) of the MSHCP, institute and/or continue land use policies and actions to protect habitats and species within its jurisdiction within Clark County.

11.08. THE STATE OF NEVADA: THE NEVADA DIVISION OF TRANSPORTATION: NDOT shall:

A. As further described in Section 2.8.9.2(a) of the MSHCP, institute and/or continue a Public Information and Education program in cooperation with the PIE.

B. As further described in Section 2.8.9.2(b) of the MSHCP, institute and/ or continue a research program dealing with the habitats and species of Clark County.

C. As further described in Section 2.8.9.2(c) of the MSHCP, institute and/or continue a program to inventory habitats and species within its jurisdiction within Clark County.

D. As further described in Section 2.8.9.2(d) of the MSHCP, institute and/or continue a program to monitor habitats and species within its jurisdiction within Clark County.

E. As further described in Section 2.8.9.2(e) of the MSHCP, institute and/or continue a program to protect habitats and species within its jurisdiction within Clark County.

F. As further described in Section 2.8.9.2(f) of the MSHCP, institute and/or continue a program to restore and enhance habitats within its jurisdiction within Clark County.

G. As further described in Section 2.8.9.2(g) of the MSHCP, institute and/or continue land use policies and actions to protect habitats and species within its jurisdiction within Clark County.

H. As further described in Section 2.8.3.1, pay a fee in the amount of $550 per acre of land it disturbs outside of IMAs and LIMAs.

11.09. THE STATE OF NEVADA: THE NEVADA DIVISION OF STATE PARKS: NDSP shall:

A. As further described in Section 2.8.9.3(a) of the MSHCP, institute and/or continue a Public Information and Education program in cooperation with the PIE.

B. As further described in Section 2.8.9.3(b) of the MSHCP, institute and/or continue a program to protect habitats and species within its jurisdiction within Clark County.

C. As further described in Section 2.8.9.1(c) of the MSHCP, institute and/or continue a program to restore and enhance habitats within its jurisdiction within Clark County.

D. As further described in Section 2.8.9.1(d) of the MSHCP, institute and/or continue

land use policies and actions to protect habitats and species within its jurisdiction within Clark County.

11.10 THE STATE OF NEVADA: THE NEVADA DIVISION OF FORESTRY: NDF shall:

A. As further described in Section 2.8.9.4(a) of the MSHCP, institute and/or continue a program to protect habitats and species within its jurisdiction within Clark County.

B. Issue its Master Permit to Clark County to allow individual owners of private property the right to incidentally take the plant commonly known as the Las Vegas Bear Poppy upon compliance with the terms of the MSHCP.

11.11 ADDITIONAL STATE AND FEDERAL AGENCY COMMITMENTS: As further described in Section 2.10.9.1 of the MSHCP, each State and Federal Agency which is a party to this Agreement shall:

A. Include in its annual budget request adequate funding to allow the agency to operate, manage, maintain and monitor its lands pursuant to the terms of this Agreement and the MSHCP, and to allow it to fulfill its obligations to protect ecosystems, habitats and species consistent with statutory obligations imposed by Congress and the Legislature and to actively cooperate with and provide technical assistance to the IMC.

B. Not allow or use funds received from the MSHCP to be substituted for funds which it would otherwise receive from the State or Federal budget process and shall use MSHCP funds solely to augment, and not replace, its appropriated funds.

C. Not take into account any MSHCP funds paid or expected to be paid in allocating available funds among its various offices and departments, nor move or redirect its own funds from budget categories established to implement conservation measures, plans or policies to other budget

categories.

D. Provide annual reports to the IMC and the Service of its allocation of appropriated funds to conservation measures and personnel within Clark County and the State of Nevada, in order that it may be determined whether each such Agency is in compliance with the provisions of subparagraphs A through C hereof.

E. Fully cooperate with and participate in the AMP process undertaken by Clark County pursuant to the provisions of the MSHCP. Cooperation and participation shall include, without limitation, meeting with AMP contractors, providing access to lands managed by the agency, including the issuance of such permits or authorizations which may be required (consistent with its management plans and regulations), providing data and information which it has accumulated, providing future data in a format mutually agreed upon by Clark County and the agency to allow a database to be established through the AMP process which will be available to the agency, all parties to this Agreement and the public and seriously considering evidence and suggestions for modifications to management policies and actions made by the AMP.

11.12 AGREEMENT. The Parties agree that the measures set forth in Sections 11.1 through 11.11 hereof minimize and mitigate the effects of incidental take of Covered Species to the maximum extent practicable.

## 12. FINANCIAL ASSURANCES

12.01 THE COUNTY AND THE CITIES.

A. Mitigation Fee Ordinance. As further described in Sections 2.8.3.1 and 2.9.2, shall keep in full force and effect, during the term of this Agreement, a Multiple Species Mitigation Fee Ordinance in substantially the same form as set forth in the Clark County Code, Title 28, Chapter 46, ("Mitigation Fee Ordinance") which shall impose a fee of five hundred fifty ($550) dollars per

acre for each acre of land proposed to be disturbed within its jurisdiction, and for which it otherwise issues permits. Funds derived from the imposition of this mitigation fee shall be utilized to fund each of the provisions of the MSHCP.

B. Delivery to County. As further described in Section 2.8.3.1 of the MSHCP, shall cause all mitigation fees collected by each City and the County to be delivered to the County on a monthly basis pursuant to the terms of an Interlocal Agreement, which fees and interest thereon shall be expended by the County to fulfill the terms of the MSHCP.

C. Application to All Land Disturbances. As further described in Section 2.9.2 of the MSHCP and the Mitigation Fee Ordinance, shall cause the Mitigation Fee Ordinance to apply to all instances of land disturbance occurring upon land located within Clark County and for which the Cities and the County otherwise issue permits. However, land disturbance by any local government, agency or department, the State of Nevada or its departments, which are not signatory to this Agreement and which do not require local grading or building permits or who for any other reason are not subject to regulation by the County or the Cities shall not be covered by the MSHCP, the MSHCP Permit, or this Agreement unless the entity or agency proposing to thus disturb the land has entered into an interlocal agreement or cooperative agreement permitted by Nevada law with the County, wherein such local government, agency or department agrees to be bound by the provisions of this Agreement, the MSHCP and the MSHCP Permit.

D. Credit For Section 7 Payments. Shall cause its Mitigation Fee Ordinance to provide that in the event a landowner has previously paid a fee to a Federal Land Manager or to any other entity in Clark County as designated by the Service for effects upon Covered Species pursuant to Section 7, such landowner shall receive a credit in the amount of the fees actually paid, but in no event shall the credit exceed the amount of the mitigation fee imposed by the Mitigation Fee Ordinance. No credit shall be given for non-monetary measures which may be required pursuant any Biological Opinion issued by the Service.

E. Additional Funding: As further described in Section 2.9.3 of the MSHCP, shall seek additional funding from private, local, state and federal sources, including but not limited to funds generated from the Southern Nevada Public Lands Management Act (PLMA). The County shall, in its IPB report and budget request, report to the Service and the IMC, the amount all funds generated from additional funding sources, including but not limited to PLMA funds received and the utilization of those funds during the previous two year period.

F. Endowment Fund. Shall continue to maintain the Clark County Multiple Species Habitat Conservation Plan Endowment Fund ("Endowment Fund") which Clark County shall administer and invest in accordance with the laws of the State of Nevada and make disbursements consistent with approved Biennial Implementation Plan and Budget (IPB), as more particularly set forth in Section 2.12.1 of the MSHCP. The following funds shall be retained or deposited into the Endowment Fund:

1. All mitigation fees collected pursuant to the DCP, less the amount of expenditures paid to date.

2. All mitigation fees collected pursuant to the terms of the MSHCP, including payments from NDOT.

3. All interest and earnings which accrue as a result of the investment of the Endowment Fund.

4. All additional funds received from local, state or federal sources.

12.02 ALL STATE AGENCIES:

A. Section 6 Funds. Those state agencies which are entitled to seek funding pursuant to Section 6 of the ESA shall actively apply for and seek funds from the United States of America available pursuant to the provisions of Section 6 of the ESA, to be utilized to foster, promote and facilitate implementation of the terms and goals of the MSHCP.

B. Budget Requests. Shall include in their annual budget request adequate dedicated and earmarked funding to allow each of them to fully operate, manage, maintain and monitor the lands administered by them within Clark County pursuant to the terms of the MSHCP, to fulfill their obligations to protect habitats and species consistent with statutory obligations imposed by law and to actively participate on the IMC. The Parties specifically agree that funds collected by Clark County pursuant to the terms of the MSHCP and paid to a state agency are not intended to be substituted for monies which would otherwise be allocated to the state agencies to fulfill statutory obligations to protect the Covered Species, but are intended to supplement those funds.

12.03 ALL FEDERAL AGENCIES:

A. Budget Requests: Shall include in their annual federal budget request adequate funding to allow each of them to operate, manage, maintain and monitor the lands administered by them within Clark county pursuant to the terms of the MSHCP, to fulfill their obligations to protect habitats and species consistent with statutory obligations imposed by law and to actively participate on the IMC. The Parties specifically agree that funds collected by Clark County pursuant to the terms of the MSHCP and paid to a federal agency are not intended to be substituted for monies which would otherwise be allocated to the federal agencies to fulfill statutory obligations to protect the Covered Species, but are intended to supplement those funds.

B. Southern Nevada Public Lands Management Act (PLMA) Funds: Shall work cooperatively with Clark County pursuant to the terms of that certain Memorandum of Understanding entered into among the BLM, USFS, NPS, Service, FWS–Refuges, the Biological Resources Research Center at the University of Nevada, Reno and the County, dated as of May 1, 2000 with respect to the relationship of the PLMA and the continued development of the MSHCP.

12.04 THE SERVICE:

A. Section 7 Expenditures. Shall coordinate and cooperate with the IMC with respect to the expenditure of fees paid as a result of authorization of incidental take of Covered Species pursuant

to Section 7 of the ESA in order to avoid duplication of effort and to ensure the efficient utilization of those funds to achieve the goals and objectives of the MSHCP.

12.05 AGREEMENT: The Parties agree that the provisions set forth in Sections 12.01 through Section 12.04 ensure that adequate funding for the MSHCP will be provided.

## 13. CHANGED CIRCUMSTANCES AND UNFORESEEN CIRCUMSTANCES

13.01 DEFINITIONS:

A. The terms "Changed Circumstances" and "Unforeseen Circumstances" means Changed or Unforeseen Circumstances as defined in the Habitat Conservation Plan Assurances ("No Surprises") Rule promulgated by the Service. (Federal Register 63 (35), February 23, 1998). Any modification of circumstances not reviewed and analyzed in the MSHCP as a Changed Circumstance (including reasonably foreseen Threats and Stressors as set forth in Volumes II and III of the MSHCP) shall be considered to be an Unforeseen Circumstance.

B. As more particularly set forth in Section 2.8.2 of the MSHCP, the term "Adaptive Management Plan" (AMP) shall mean the scientifically based flexible and iterative approach to long-term management of biotic resources that is directed over time by the results of ongoing monitoring activities and other information. Biological management techniques and specific objects will be regularly evaluated in light of monitoring results and other new information. These periodic evaluations will be used over time to adapt both the management objectives and techniques to better achieve overall management goals resulting in the conservation of both habitats and species.

13.02. CHANGED CIRCUMSTANCES: As further described in Section 2.10.5 of the MSHCP, upon the occurrence of any Changed Circumstance, including the occurrence of any reasonably foreseeable Threat or Stressor set forth in Volumes II and III of the MSHCP, Clark County and the appropriate state and federal agencies will conduct an expedited analysis of the potential effects of

the Changed Circumstances for the purpose of development of appropriate management responses for the species, habitats or key areas impacted by any such Changed Circumstances. If additional conservation and mitigation measures are deemed necessary to respond to Changed Circumstances, the appropriate local, state or federal party to this Agreement shall implement the measures specified in the MSHCP, but only those measures and no others, and in any event, within the financial constraints and financial assurances set forth in the MSHCP.

13.03 UNFORESEEN CIRCUMSTANCES:

A. As further described in Section 2.10.3 of the MSHCP, upon any preliminary determination by the Service that an Unforeseen Circumstance has occurred, it shall immediately provide written notice to the Applicants and the IMC of its preliminary determination; shall give each Applicant and the IMC the opportunity to submit information to the Service and the IMC regarding the determination; shall participate in any public hearing or hearings established and conducted by the IMC regarding the alleged Unforeseen Circumstance; shall have the burden of establishing that an Unforeseen Circumstance has occurred; and, shall make written findings which are clearly documented and based upon reliable technical information regarding the status and habitat requirements of the species involved in the Unforeseen Circumstance, which findings shall be in writing and transmitted to the IMC within a reasonable period of time.

B. As further described in Section 2.10.7 of the MSHCP, if, at the conclusion of the process described in subparagraph A hereof, the Service determines that an Unforeseen Circumstance has occurred, and that additional conservation measures are required to address such circumstances which are not contemplated or capable of implementation by the AMP and other provisions of the MSHCP, and provided that the Applicants are properly implementing the terms of the MSHCP, any proposed additional conservation measures shall fit, to the maximum extent possible, within the terms of the MSHCP and its AMP. Additional conservation measures shall not involve the payment of additional compensation by the Applicants or private landowners or apply to parcels of land where incidental take is permitted pursuant to the provisions of the MSHCP

and this Agreement.

C. Prior to undertaking or attempting to impose any action or conservation measure, it shall consider all practical alternatives to the proposed conservation measures, including but not limited to land purchase and exchange programs, additional public education, translocation programs, propagation programs and acquisition of conservation easements and adopt only that action or conservation measure which would have the least effect upon the economy and lifestyle of the residents of Clark County while at the same time addressing the Unforeseen Circumstance and the survival and recovery of the affected species and its habitat. The purpose of this provision is to recognize that Congress intended, even in the event of unforeseen and extraordinary circumstances that additional mitigation requirement, even if undertaken by federal agencies should not adversely impact a Section 10 Permittee or private landowner which has fully implemented the requirements undertaken by it pursuant to an approved plan, such as the MSHCP.

D. Clark County agrees that in the event of Unforeseen Circumstances, it shall cooperate with and assist the federal government, within the budget and scope of the MSHCP, to deal with such circumstances.

E. The Service represents and agrees that if additional mitigation is required in order to meet ESA standards in the event of Unforeseen Circumstances, the Service has the authority pursuant to federal law and regulations, including Sections 5,6 and 10 of the ESA, but subject to appropriated funds, to provide such mitigation so that no further land or funds beyond that required by the MSHCP and this Agreement will be required on the part of the Permittees or private landowners.

13.04 AGREEMENT: The Parties agree that the provisions of this Section 13, adequately define and provide for Changed and Unforeseen Circumstances.

## 14. CLARIFICATIONS, MINOR ADMINISTRATIVE AMENDMENTS AND AMENDMENTS

14.01 CLARIFICATIONS. As more particularly set forth in Section 2.11.1 of the MSHCP, Clarifications are written understandings between the Service and Clark County regarding administration of the MSHCP process and to add specificity to the meaning and intent of language contained in the MSHCP, this Agreement and the MSHCP Permit (together, Plan Documents). Clarifications may not change the provisions of any of those documents, nor modify the obligation of any party without the written consent of that party, but merely clarify and make more precise the mutual understanding of the Service and Clark County regarding those provisions.

14.02 MINOR ADMINISTRATIVE AMENDMENTS. As more particularly set forth in Section 2.11.1 of the MSHCP, Minor Administrative Amendments (MAA) to the MSHCP and this Agreement are amendments which make no substantive changes to any of the provisions of the Plan Documents, and do not require an amendment to the MSHCP Permit, but which may be necessary or convenient, over time, to more fully represent the overall intent of Clark County and the Service and facilitate the implementation of the MSHCP.

14.03 PROCEDURE FOR CLARIFICATIONS AND MINOR ADMINISTRATIVE AMENDMENTS. A request for a Clarification shall be in writing and may be instituted by either the Service or the IMC. Upon receipt, a response shall be provided within 30 days by the recipient. Upon agreement, the Clarification shall become effective immediately. MAA's to the MSHCP may only be initiated by the IMC and an application therefor shall be in writing and describe the proposed amendment, an explanation of why the amendment is necessary or desirable and an explanation of why the IMC believes the effects of the proposal are not significantly different from those described in the original MSHCP. The Service shall respond to the request within 30 days after receipt and if they concur shall authorize the MAA. Upon approval by the Service, the MAA shall become effective immediately. The County shall notify all Parties of any Clarification or MAA within thirty (30) days.

14.04 AMENDMENTS. As more particularly set forth in Section 2.11.3 of the MSHCP, and except as provided in Sections 14.01 through 14.04 of this Agreement, none of the Plan Documents may be amended or modified in any way without the written approval of all signatories to this Agreement, including without limitation, the Service and the BCC. All amendments shall be processed in accordance with the provisions of the ESA and regulations at 50 CFR Parts 13 & 17 and shall be subject to appropriate environmental review pursuant to the provisions of NEPA.

## 15. IMPLEMENTATION OF THE MSHCP

15.01 MINIMIZATION, MITIGATION AND MONITORING. Each of the Parties to this Agreement has committed to undertake and shall be responsible for the specific minimization, mitigation, monitoring and funding responsibilities pursuant to the provisions hereof and Sections 2.8 and 2.9 of the MSHCP.

15.02 OVERALL ADMINISTRATION, PLANNING, BUDGETS AND REPORTING. Clark County shall be responsible of the overall administration, planning budgeting and reporting process, with the cooperation of the Parties to this Agreement as more particularly set forth in Section 2.12 of the MSHCP.

## 16. REMEDIES AND ENFORCEMENT

16.01 REMEDIES IN GENERAL. Except as set forth hereinafter, each of the Parties hereto shall have all of the remedies otherwise available in equity (including specific performance and injunctive relief) and at law to enforce the terms of this Agreement and the MSHCP Permit and to seek remedies and compensation for any breach hereof, consistent with and subject to the provisions of the following sections.

16.02 NO MONETARY DAMAGES: No party shall be liable in monetary damages to any party or other person for any breach of this Agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement or any other cause of action arising from this Agreement. Notwithstanding the foregoing:

A. Retain Liability. All parties shall retain whatever liability they would possess for their present and future acts or failure to act without the existence of this Agreement.

B. Land Owner Liability. All parties shall retain whatever liability they possess as owners of interests in land.

16.03 RESPONSIBILITY OF THE UNITED STATES: Nothing herein contained is intended to limit the authority or responsibility of the United States government to invoke the penalties or otherwise fulfill its responsibilities under the ESA.

16.04 INJUNCTIVE AND TEMPORARY RELIEF. The Parties acknowledge that the Covered Species are unique and that the loss thereof would result in irreparable damage to the environment and that therefore injunctive and temporary relief may be appropriate in certain instances involving a breach of this Agreement.

16.05 AUTHORITY OF COUNTY AND CITIES: The Cities and the County shall, by ordinance, require compliance with the MSHCP, this Agreement and the MSHCP Permit by all persons, firms or entities located within the County that engage in Covered Activities. The Cities and the County shall enforce the terms of the MSHCP, this Agreement, the MSHCP Permit and any related ordinances. The Cities and the County shall revoke, terminate or suspend the right of any person, firm or entity to enjoy or have the benefit, right or privileges under the MSHCP Permit by terminating or suspending subpermits or building, grading or surface mining permits or development approvals which allow the disturbance of land in the event the mitigation fee has not been paid or in the event any other term or condition of this Agreement, the MSHCP, the

MSHCP Permit or the ordinances have not been complied with. In the event any City or County shall terminate or suspend any such subpermit or authorization, it shall promptly notify the Service, NDOW and NDF, in writing of such termination or suspension and shall set forth in writing the basis for such termination or suspension.

16.06 SEVERABILITY. The violation of the MSHCP Permit by a landowner or by any Permittee with respect to any one or more particular parcels of land or portions thereof within the jurisdiction of any such Permittee shall not adversely affect or be attributed to nor shall it result in a loss or diminution of any right, privilege or benefit hereunder of any other Permittee or landowner.

16.07 SUSPENSION OR REVOCATION OF THE PERMIT: The Section 10 (a) Permit shall not be suspended or revoked except in conformance with the provisions of 50 CFR 13.27 through 13.29. As more particularly set forth in Section 2.12.1.7, in addition to all other matters which may be grounds to terminate or suspend the Section 10(a) Permit, disapproval of the budget or any portion thereof deemed essential by the Service may be grounds to suspend or terminate the Permit.

16.08 LIMITATIONS AND EXTENT OF ENFORCEABILITY:

A. It is acknowledged that the purpose of this Agreement is to set forth the obligations and rights of the Parties hereto with respect to the MSHCP and to provide for the conservation of the Covered Species and the minimization, mitigation and compensatory measures required in connection with incidental taking of the Covered Species in the course of Covered Activities within the Plan Area. Accordingly, except as otherwise required by law, no further minimization, mitigation or compensation for the conservation of the Covered Species will be required by any party hereto or the owner of any non-Federally owned land within Clark County.

B. In the event of unforeseen circumstances with regard to any Covered Species, no additional land restrictions or financial compensation shall be required from the County, the Cities, or any non-Federal land owner covered by the MSHCP Permit, without their written consent.

16.09 LAND USE REGULATIONS: Except as otherwise specifically provided herein, nothing herein contained shall be deemed to limit the power of the Cities and the County to regulate the use of lands within their respective jurisdictions subject to such other limitations as may apply to such power under the Constitution and laws of the United States and the State of Nevada.

16.10 SECTION 7: Nothing in this Agreement is intended to apply to any activity that is governed by the provisions of Section 7 of the ESA. Notwithstanding the foregoing, the Service shall cause measures that result from authorization of incidental take pursuant to Section 7 of the ESA ("Section 7") to be consistent with the minimization and mitigation measures required herein; provided, however that nothing herein contained is intended to prohibit or proscribe the Service from requiring minimization and mitigation in excess of that provided for herein should the circumstances so warrant. For example only, in the event NDOT proposes new or expanded roads within IMAs or LIMAs, it is anticipated that Section 7 requirements may substantially differ from the minimization and mitigation requirements set forth herein.

## 17. FINDINGS AND ISSUANCE OF PERMITS

17.01 FINDINGS. Upon finding, after opportunity for public comment with respect to the MSHCP Permit application and the MSHCP, that:

A. The taking of Covered Species as a result of the activities described in the MSHCP will be incidental to an otherwise lawful activity; and,

B. The minimization and mitigation measures of the MSHCP, to the maximum extent practicable, minimize and mitigate the impacts of the taking of the Covered Species; and,

C. This Agreement assures the funding required to implement the minimization and mitigation measures specified in Section 2.8 of the MSHCP; and,

D. This Agreement and the MSHCP provide adequate procedures for addressing Changed and Unforeseen Circumstances; and,

E. The incidental take of Covered Species, as contemplated in the MSHCP and as provided in this Agreement will not appreciably reduce the likelihood of the survival and recovery of those species in the wild; and,

F. All measures required by the Service as necessary or appropriate for purposes of the MSHCP and the Section 10(a) Permit have been provided for in the MSHCP as implemented by this Agreement; and,

G. No assurances other than those set forth in the MSHCP and this Agreement are necessary to ensure that the MSHCP and this Agreement will be implemented;
the Service shall issue the MSHCP Permit(s) allowing incidental take of the Covered Species to Applicants.

17.02 ISSUANCE OF PERMIT. Based upon the findings set forth in Section 17.01 hereof, the Secretary, through the Service, is fully authorized to and, concurrent with the execution of this Agreement, shall issue a Section 10(a) Permit as requested by the application and the MSHCP filed by the Applicants to allow the incidental take of Covered Species as a result of Covered Activities occurring within the Plan Area during the term of this Agreement and the Permit.

17.03 MIGRATORY BIRD TREATY ACT.

A. The Section 10(a) Permit issued pursuant to the MSHCP and this Agreement which allows the incidental take of any listed species or any unlisted Covered Species shall, when such permit is effective as to such species also constitute a Special Purpose Permit pursuant to 50 CFR 21.27 to allow the take of species covered by such permit. Any such take shall not be in violation of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703-12). Such Special Purpose

Permit shall be valid for a period of three years from its effective date, provided the Section 10(a) Permit remains in effect for such period and for such species, subject to renewal as provided in paragraph (B).

B. Any Special Purpose Permit as described in this section shall be automatically renewed, provided that the Permittees remain in compliance with the terms of this Agreement. Each such renewal shall be valid for a period of three years, provided the Section 10(a) Permit remains in effect for such period and for such species.

## 18. MISCELLANEOUS PROVISIONS

18.01 NO PARTNERSHIP. Except as otherwise expressly set forth herein, neither this Agreement nor the MSHCP shall make or be deemed to make any party to this Agreement the agent for or the partner of any other party.

18.02 SUCCESSORS AND ASSIGNS; ANNEXATIONS, ACQUISITIONS AND INCORPORATION

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

B In the event the County, the City or any person, firm or entity acquires property from the Federal government, the land so acquired, with the exception of lands acquired within any LIMA or IMA, shall thereafter be subject to and the beneficiary of the terms of the Permit. Lands acquired within any LIMA or IMA may be subject to and the beneficiary of the terms of the Permit, but only on such terms and conditions as may be determined by the Service as necessary to offset the adverse impacts, if any, of such acquisition and development.

C. In the event any city incorporates subsequent to the date hereof, such city shall

succeed to the rights and obligations of the County pursuant to the MSHCP Permit, the MSHCP and this Agreement with respect to the land thus incorporated, provided that such city has adopted a Mitigation Fee Ordinance, executed an Interlocal Agreement in substantially the same form that has been adopted by the County and the Cities, and has executed a written Contract, approved by the Service, wherein it agrees to be bound by the terms and conditions of this Agreement.

18.03 NOTICE. Any notice permitted or required by this Agreement shall be delivered personally to the persons set forth below or shall be deemed given 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 which any Party may from time notify each of the other Parties, in writing:

Clark County
Attn: County Manager
500 S. Grand Central Parkway
Las Vegas, NV 89155-8270

City of Las Vegas
Attn: City Manager
400 East Stewart
Las Vegas, NV 89101

City of North Las Vegas
Attn: City Manager
2200 Civic Center Drive
North Las Vegas, NV 89030

City of Henderson
Attn: City Manager
240 Water Street
Henderson, NV 89015

City of Boulder City
Attn: City Manager
900 Arizona Street
Boulder City, NV 89005

City of Mesquite
Attn: City Manager
P.O. Box 69
Mesquite, NV 89024

U. S. Fish and Wildlife Service
Attn: Deputy Manager
CA/NV Operations Office
2810 Cottage Way, Rm W-2606
Sacramento, CA 95825

U. S. Fish and Wildlife Service
Attn: Field Supervisor
1340 Financial Blvd., Suite 234
Reno, NV 89502

National Park Service
Attn: Superintendent
601 Nevada Highway
Boulder City, NV 89005

United States Bureau of Land Management
Attn: District Manager
4765 Vegas Drive
Las Vegas, NV 89108

United States Bureau of Land Management
Attn: State Director
P.O. Box 12000
Reno, NV 89520-0006

Nevada Division of Wildlife
Attn: Area Manager
4747 West Vegas Drive
State Mailroom Complex
Las Vegas, NV 89158

Nevada Division of Wildlife
Attn: Director
P. O. Box 10678
Reno, NV 89510

Nevada Department of Transportation
Chief, Environmental Services Division
1263 South Stewart Street
Carson City, NV 89712

United States Forest Service
Attn: Office Supervisor
1500 N. Decatur Avenue # 01
Las Vegas, NV 89108

Nevada Division of State Parks
4747 W. Vegas Drive
Las Vegas, NV 89108-2315

Nevada Division of Forestry
4747 W. Vegas Drive
Las Vegas, NV 89158

18.04 ENTIRE AGREEMENT. This Agreement supersedes any and all other Agreements, either oral or in writing between the Parties hereto with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters, and each Party acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by any other party or anyone acting on behalf of any party which are not embodied herein.

18.05 ATTORNEYS' FEES. If any action at law or equity, including any action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, all parties to the litigation shall bear their own attorney's fees and costs. Notwithstanding the foregoing, attorneys' fees and costs recoverable against the United States, however, shall be governed by applicable Federal law.

18.06 ELECTED OFFICIALS NOT TO BENEFIT. No member of or delegate to Congress or Federal Resident Commissioner, shall be entitled to any share or part of this Agreement, or to any benefit that may arise from it.

18.07 AVAILABILITY OF FUNDS. Implementation of this Agreement by any of the Parties is subject to the availability of appropriated funds; The financial obligations of the County and the Cities are not general obligations of those entities and shall be paid solely from the Endowment Fund and other funding sources as identified in the MSHCP. This instrument is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds between the parties to this instrument will be handled in accordance with applicable laws, regulations and procedures including those for government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This document does not provide such authority. Specifically, this instrument does not establish authority for noncompetitive award to the cooperator of any contract or other agreement. Any contract or agreement for training or other services must fully comply with all applicable requirements for competition.

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

18.09 NEVADA LAW. The laws of the state of Nevada shall govern the construction and interpretation of this agreement.

**THIS AGREEMENT HAS BEEN EXECUTED ON THE DAY SET BY EACH SIGNATURE ATTACHED HERETO AND SHALL BECOME EFFECTIVE ON THE DAY AND YEAR FIRST ABOVE WRITTEN.**

DATE: _____ **CLARK COUNTY**

BY:_____

DATE: _____ **CITY OF LAS VEGAS**

BY:_____

DATE: _____ **CITY OF NORTH LAS VEGAS**

BY:_____

DATE: _____ **CITY OF HENDERSON**

BY:_____

DATE: _____ **CITY OF BOULDER CITY**

BY:_____

DATE: _____ **CITY OF MESQUITE**

BY:_____

DATE: _____ **U.S. FISH & WILDLIFE SERVICE**

BY:_____

DATE: _____ **NATIONAL PARK SERVICE**

BY:_____

DATE: _____ **U.S. BUREAU OF LAND MANAGEMENT**

BY:_____

DATE:_____ **U.S. DEPARTMENT OF INTERIOR**

BY:_____

DATE: _____ **U.S. FOREST SERVICE**

BY:_____ _____

DATE: _____ **NEVADA DIVISION OF WILDLIFE**

BY:_____

DATE: _____ **NEVADA DEPARTMENT OF TRANSPORTATION**

BY:_____

DATE:_____ **NEVADA DIVISION OF FORESTRY**

BY: _____

DATE: _____ **NEVADA DIVISION OF STATE PARKS**

BY: _____

Approved as to Legality and Form

_____
Chief Deputy Attorney General
State of Nevada

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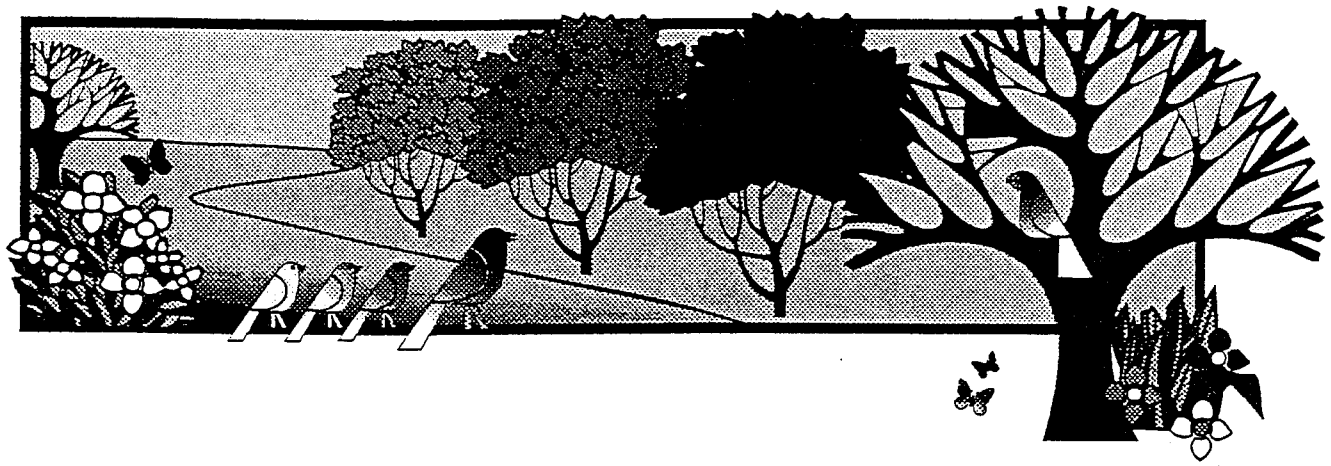
San Diego County Multiple Species
Conservation Program Subarea Plan



# Multiple Species Conservation Program

## County of San Diego Subarea Plan

ADOPTED
OCTOBER 22, 1997

# Multiple Species Conservation Program
# County of San Diego
# Subarea Plan

Prepared by the County of San Diego
in conjunction with
the U.S. Fish and Wildlife Service,
California Department of Fish and Game

COUNTY OF SAN DIEGO
BOARD OF SUPERVISORS

Greg Cox
First District

Dianne Jacob
Second District

Pam Slater
Third District

Ron Roberts
Fourth District

Bill Horn
Fifth District

Chief Administrative Officer
Lawrence B. Prior III

Adopted by the Board of Supervisors
on October 22, 1997

County of San Diego

# Multiple Species Conservation Program

Subarea Plan

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prepared in conjunction with the NCCP/HCP as appropriate CEQA documentation for any future approvals regarding potential impacts to Identified Species related to Planned Activities.

(b) The Parties understand and intend that the EIR/EIS prepared in conjunction with the NCCP/HCP will operate as a "program" EIR and EIS pursuant to applicable provisions of the Council on Environmental Quality NEPA regulations (40 C.F.R. § 1500 et seq.), the CEQA Guidelines (14 C.C.R. § 15000 et seq.) and the NCCP Act. Accordingly, the Local Governments shall, consistent with the provisions of CEQA and Section 8.1, rely on and utilize the EIR prepared in conjunction with the NCCP/HCP in evaluating future planning decisions, and in issuing any permits or other approvals within the Central/Coastal Subregion with regard to the Planned Activities. Subsequent activities will be examined in light of the program EIR/EIS and Section 8.1 to determine if additional environmental documentation is required. In this respect, CDFG and each non-Federal signatory agency have determined that compliance with the NCCP/HCP and this Agreement mitigates or avoids impacts to Identified Species and, absent a finding of Extraordinary Circumstances as defined and provided in Section 8.9, any Take authorized by this Agreement will not constitute a significant impact on the Identified Species and their respective habitats.

(c) The Parties understand that a reuse planning process has been initiated for MCAS El Toro. The Parties further understand that any environmental documentation prepared in connection with this reuse planning process, including the consideration of future civilian aviation use at MCAS El Toro, will include a description of the environment in the vicinity of the project, as it exists before the commencement of the proposed project or any of its proposed alternatives, from both a local and a regional perspective. The Parties further understand and

# Introduction

The Multiple Species Conservation Program (MSCP) is a comprehensive, long-term habitat conservation plan which addresses the needs of multiple species and the preservation of natural vegetation communities in San Diego County. The MSCP addresses the potential impacts of urban growth, natural habitat loss and species endangerment and creates a plan to mitigate for the potential loss of Covered Species and their habitat due to the direct impacts of future development of both public and private lands within the MSCP area. The total study area encompasses 12 jurisdictions and consists of 582,243 acres, of which 43% (252,132 acres) is in unincorporated areas under the jurisdiction of San Diego County.

The MSCP is a subregional plan under the Natural Communities Conservation Program, which will be implemented through local subarea plans. The County's Subarea Plan and its associated Implementing Agreement establish the conditions under which the County, for the benefit of itself and of public and private landowners and other land development project proponents within its Subarea boundaries, will receive from the U.S. Fish and Wildlife Service and California Department of Fish and Game certain long-term Take Authorizations (and an acknowledgment that the MSCP satisfies conditions established in the Section 4(d) Special Rule for the coastal California gnatcatcher) which will allow the taking of certain Covered Species incidental to land development and other lawful land uses which are authorized by the County.

The main text of the MSCP provides an overview and describes the goals of the whole program. This document describes the County Subarea Plan, which implements the MSCP within the unincorporated areas under the jurisdiction of the County of San Diego. The County's Subarea Plan is divided into three Segments: Lake Hodges, Metropolitan-Lakeside-Jamul, and South County. Figure 1-1 shows the County Subarea Plan area. Figure 1-2 shows the areas authorized for take, and Figure 1-3 shows the conservation areas including portions of the South County Segment which are conserved subject to agreements with the Wildlife Agencies.

The County Subarea Plan coverage for 85 species is based on the conservation areas depicted on Figure 1-3. Chapter 2 of this document describes the Lake Hodges Segment in detail. Chapter 3 covers the South County Segment, and Chapter 4 covers the Metro-Lakeside-Jamul Segment. The remainder of this chapter provides information about the County Subarea as a whole.

The County Subarea Plan was developed using the Board of Supervisors' deal/negotiation points as negotiated with the Wildlife Agencies. The following principles, based on the State and Federal Endangered Species Acts, the Natural Community Conservation Planning Act, State and Federal policy, and the deal/negotiation points prepared by the Board of Supervisors, were used as the guiding principles for the County Subarea Plan. The guiding principles were to develop a subarea plan that:

- Does not preclude public safety, fire protection and Border Patrol activities;
- Uses the existing California Environmental Quality Act and other processes, to the maximum extent possible, to implement the subarea plan and avoid creating redundant processes;

- Is consistent with the MSCP and its species coverages (85 species);
- Ensures that projects, which are consistent with the subarea plan and wetlands laws (Clean Water Act and Fish and Game Code Section 1600 et seq.), have obtained approvals from the County, and for which mitigation has been assured, will not be subject to additional Wildlife Agency review;
- Minimizes and mitigates impacts to covered species using the standards in the State and Federal Endangered Species Acts and the Natural Community Conservation Planning (NCCP) Act;
- Protects private property rights consistent with the U.S. Constitution;
- Avoids duplicate mitigation requirements based on County ordinances and the subarea plan;
- Incorporates regional, state, and federal funding for preserve management and land acquisition;
- Incorporates landowners into the process of determining which lands will be permanently set aside as preserves;
- Uses public lands to the maximum extent practicable to achieve anticipated conservation levels;
- Uses the Environmental Impact Report for the MSCP as a Master Environmental Impact Report to the maximum extent possible for future projects developed consistent with the subarea plan, with regard to biological impacts and mitigation;
- Is consistent with the NCCP Conservation Guidelines;
- Provides for public use (hiking, horse trails, etc.) in appropriate locations within preserves;
- Provides for adaptive development of the final preserve design;
- Meets the biological goals and provides preserve access for emergency services, border patrol, and other public safety needs;
- Provides for the development of future infrastructure across and adjacent to preserved lands;
- Allows for the permitted extraction of sand and gravel resources with appropriate mitigation; and
- Encourages mitigation within identified areas, thereby keeping lands outside of the preserves for future development.

## Maps of the San Diego County Subarea Plan

The Subarea Plan contains three figures for the plan area. In these figures, the green color depicts areas titled "Public Lands and Dedicated Private Open Space." These lands are hereafter referred to as "preserve areas." Specifically, they include lands that are publicly owned, lands that have been through the development approval process and which have been identified as open space, and lands which are currently in the development approval process but have not yet received their County development approvals. In these areas, "take" of habitat is not allowed.

Figures 1-1 and 1-3 are identical, except that the two pages of figure 1-3 are enlargements of the Lake Hodges and South County Segments of the County subarea plan. Their Segment boundaries are depicted on the two pages for Figure 1-2.

The Metro-Lakeside-Jamul Segment covers all of the remaining land shown on Figure 1-1. The majority of this Segment is depicted as a slate blue color. However, five sites within the Metro-Lakeside-Jamul Segment are shown as green and beige; near the southern end of El Capitan Reservoir, east of Santee, two sites south of San Vicente Reservoir and one west of Lake Hodges reservoir. For these sites, the open space and development area has also been negotiated subject to execution of a mitigation agreement.

In the Lake Hodges Segment of the plan, there are two additional mapped designations. The red color indicates where there has been a special area designator applied to address biological issues on the development that is allowed. The blue stippled pattern indicates locations for golf course related development.

In the South County portion of the plan, there are a number of mapped designations. Areas in blue are to be conserved if agreements are reached with the property owners. Within the Otay Ranch plan, areas in yellow indicate lands that are shown as open space but which could be developed if agreements with the property owners take place. The areas in dark green indicate the areas that are shown as development on the Otay Ranch plan but which will be placed in open space to conform with the Multiple Species Conservation Program plan. The Otay Ranch plan also includes active use planning areas in the Otay River Valley, depicted in red shading. The water district lands shown in light purple are not part of the County Subarea plan.

The two maps which make up Figure 1-2 identify the status of potential development. In areas which are shown as brown or "take authorized areas," no additional biological mitigation is required for development to occur. Areas shown as off-white can be included in the plan if they proceed through a minor amendment process as outlined in the text under section 1.14.1. The portion of eastern Otay Mesa which has a stipled blue pattern indicates areas subject to minor amendments with special requirements as spelled out in the County Otay Mesa specific plan. Areas on the map which are tan in color are areas which require a Major amendment as defined in section 1.14.2 of the plan. These figures also identify the areas with special designators on the Lake Hodges plan, the active development area in the Otay River Valley, as well as the green "preserve" areas.

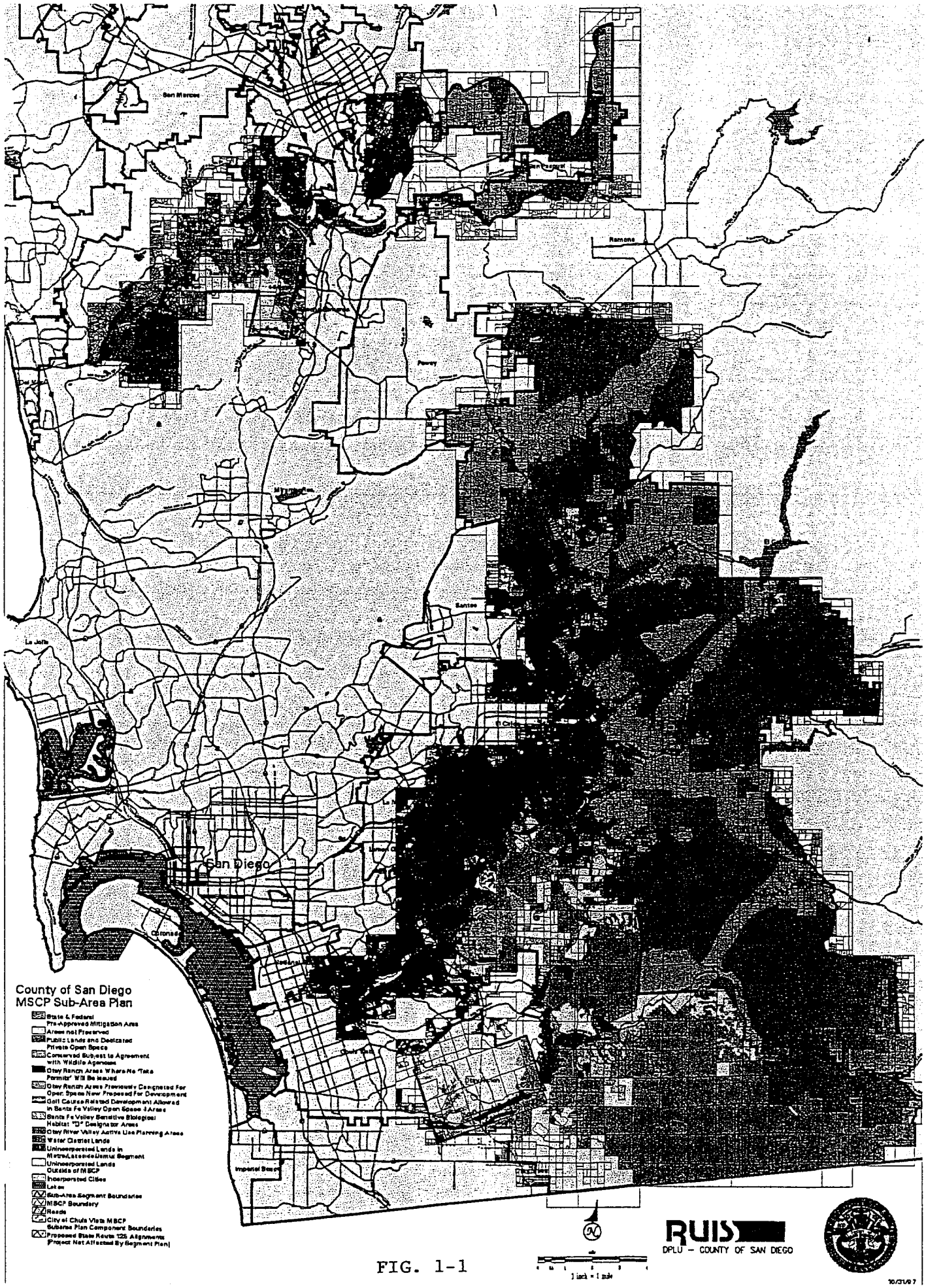

San Marcos
Escondido
Ramona
Mission Trails
Santee
La Jolla
San Diego
Coronado
Imperial Beach
County of San Diego
MSCP Sub-Area Plan
State & Federal Pre-Approved Mitigation Area
Areas not Preserved
Public Lands and Dedicated Private Open Space
Conserved Subject to Agreement with Wildlife Agencies
Otay Ranch Areas Where No "Take Permits" Will Be Issued
Otay Ranch Areas Previously Designated For Open Space Now Proposed For Development
Golf Course Related Development Allowed in Santa Fe Valley Open Space Areas
Santa Fe Valley Sensitive Biological Habitat "D" Designator Areas
Otay River Valley Active Use Planning Areas
Water District Lands
Unincorporated Lands in Metro/Lakeside/Jamul Segment
Unincorporated Lands Outside of MSCP
Incorporated Cities
Lakes
Sub-Area Segment Boundaries
MSCP Boundary
Roads
City of Chula Vista MSCP Subarea Plan Component Boundaries
Proposed State Route 125 Alignments (Project Not Affected By Segment Plan)
1 inch = 1 mile
RUIS
DPLU – COUNTY OF SAN DIEGO
10/31/97

FIG. 1-1

County of San Diego Sub-Area

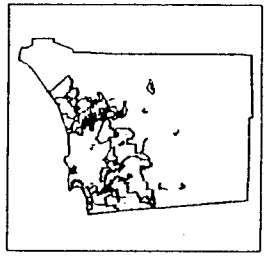
# Lake Hodges Segment

- Take Authorized Area

Process for Amending Uncovered Projects on to MSCP Permit

- Major Amendment Area
- Minor Amendment Area

- No Take Authorized
- Golf Course Related Development Allowed in Open Space II Areas
- Sensitive Biological Habitat "D" Designator Areas
- Take Authorized Consistent with Metro/Lakeside/Jamul Segment Criteria
- Unincorporated Lands in MHCP
- Incorporated Cities
- Lakes
- Roads
- Parcel Lines
- Sub-Area Segment Boundary
- MSCP Boundary



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1 inch = 1800 feet

10/03/97

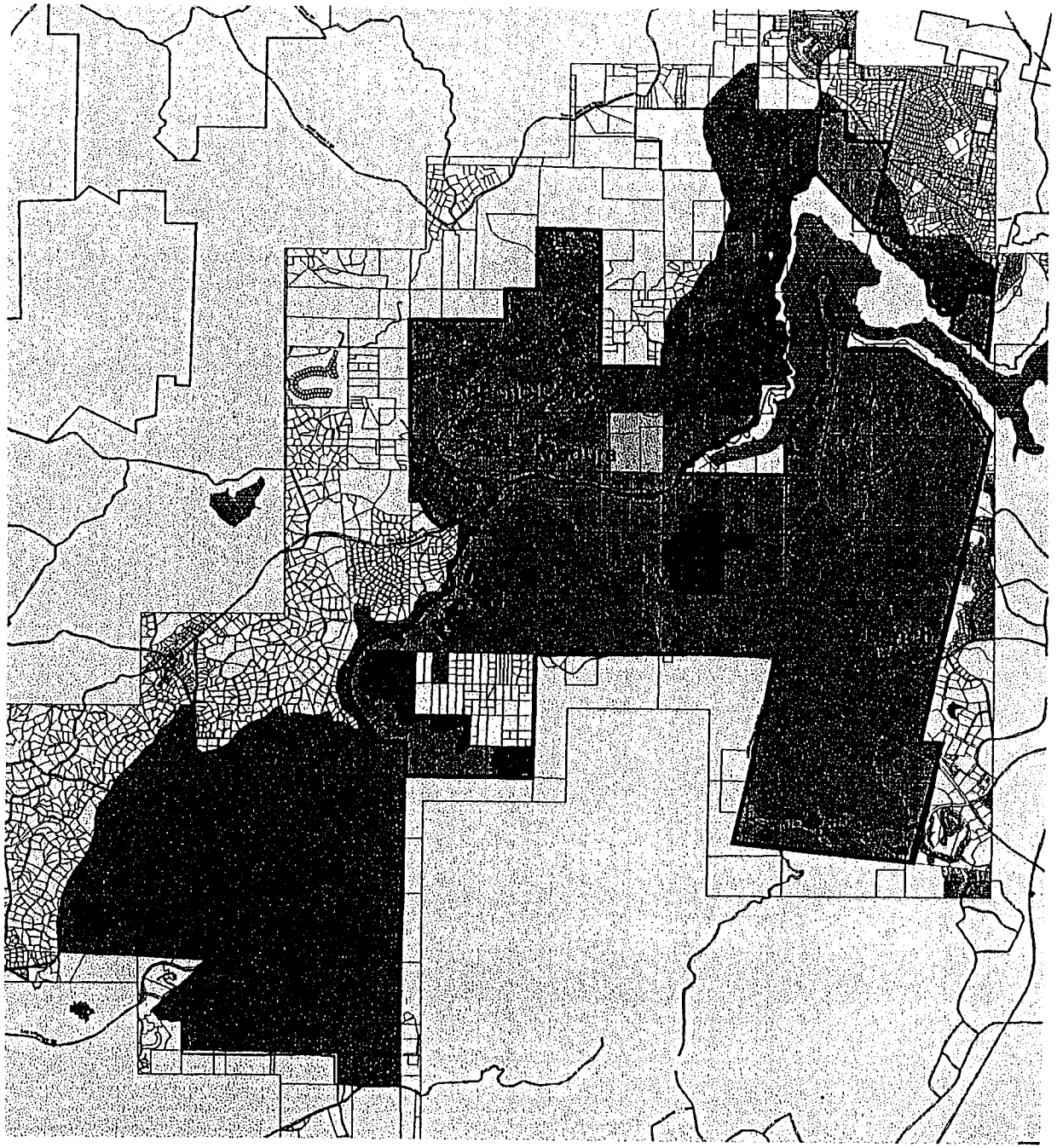


FIG. 1-2

County of San Diego Sub-Area

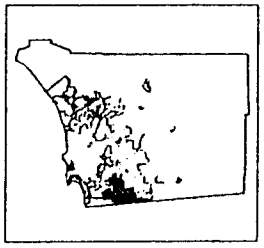
# South County Segment

- Take Authorized Area

Process for Amending Uncovered Projects on to MSCP Permit

- Major Amendment Area
- Minor Amendment Area
- Minor Amendment Area with Special Requirements (See Text)

- State Jail Facility
- Water District Lands
- No Take Authorized
- Take Authorized Consistent with Metro/Lakeside/Jamul Segment Criteria
- Unincorporated Lands Outside of MSCP
- Incorporated Cities
- Lakes
- Roads
- Parcel Lines
- Sub-Area Segment Boundary
- MSCP Boundary
- Active Use Planning Areas
- City of Chula Vista MSCP Subarea Plan Component Boundaries
- Proposed State Route 125 Alignments (Project Not Affected By Segment Plan)



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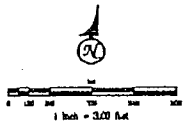

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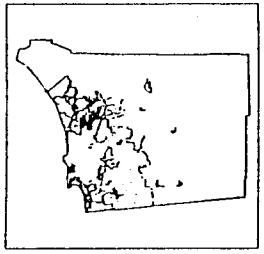
FIG. 1-2

County of San Diego Sub-Area

# Lake Hodges Segment

- Public Lands and Dedicated Private Open Space
- Areas not Preserved
- Golf Course Related Development Allowed in Open Space II Areas
- Sensitive Biological Habitat "D" Designator Areas
- Unincorporated Lands in Metro/Lakeside/Jamul Segment
- Unincorporated Lands in MHCP
- Incorporated Cities
- Lakes
- Roads
- Parcel Lines
- Sub-Area Segment Boundary
- MSCP Boundary



RUIS
DPLU – COUNTY OF SAN DIEGO

1 inch = 1500 feet

10/02/97

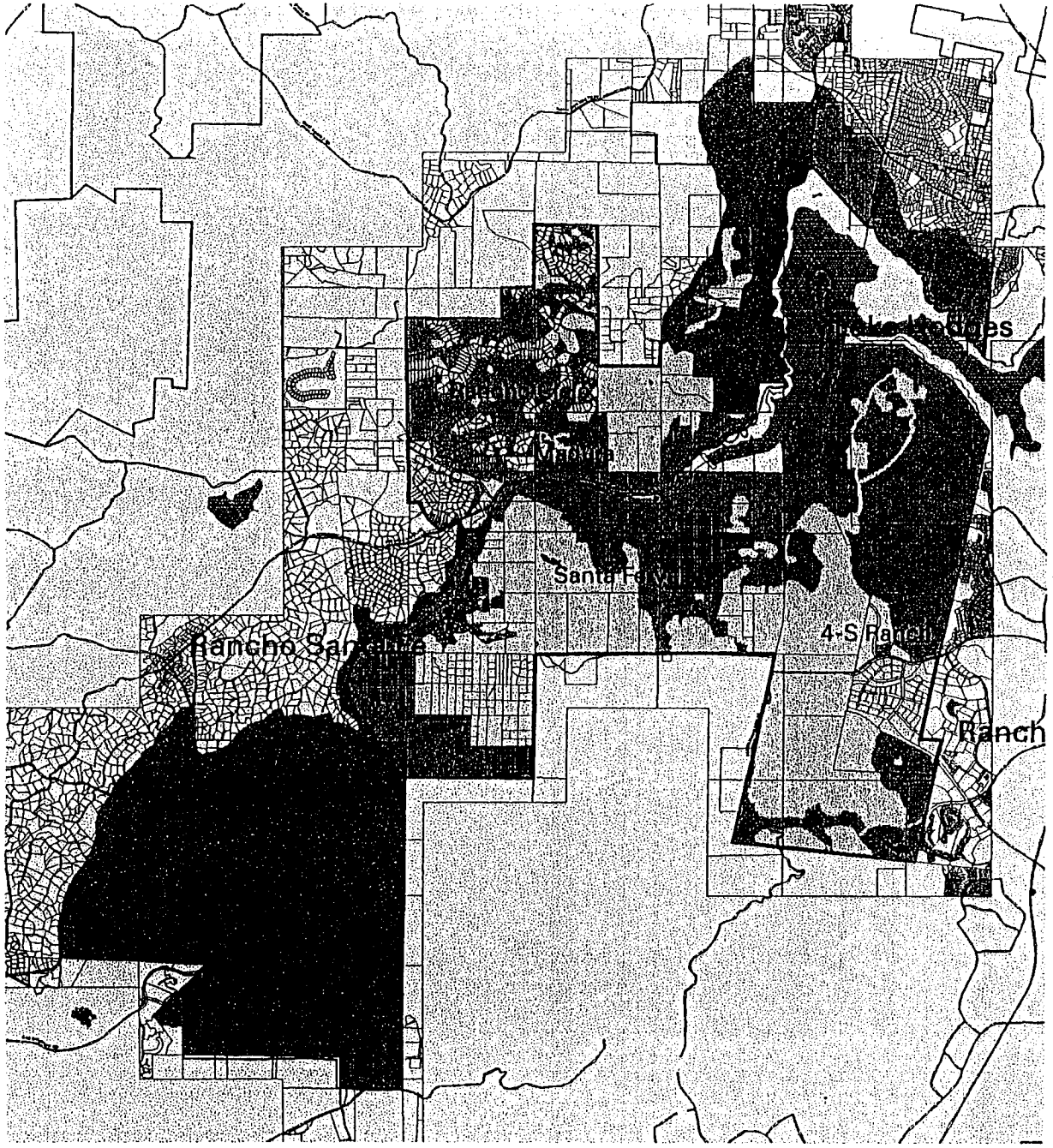



FIG. 1-3

County of San Diego Sub-Area

# South County Segment

- Public Lands and Dedicated Private Open Space
- Conserved Subject to Agreements *
- Otay Ranch Areas Where No 'Take Permits' Will Be Issued
- Take Authorized Subject to Agreements *
- Areas not Preserved
- Water District Lands
- Unincorporated Lands in Metro/Lakeside/Jamul Segment
- Unincorporated Lands Outside of MSCP
- Incorporated Cities
- Lakes
- Major Roads
- Parcel Lines
- Project Area Boundaries
- Sub-Area Segment Boundary
- MSCP Boundary
- Active Use Planning Areas
- City of Chula Vista MSCP Subarea Plan Component Boundaries
- Proposed State Route 125 Alignments (Project Not Affected By Segment Plan)

* - See Sub-Area Plan for Explanation of Agreements

RUIS
DPLU – COUNTY OF SAN DIEGO

1 inch = 3.00 feet

10/03/97

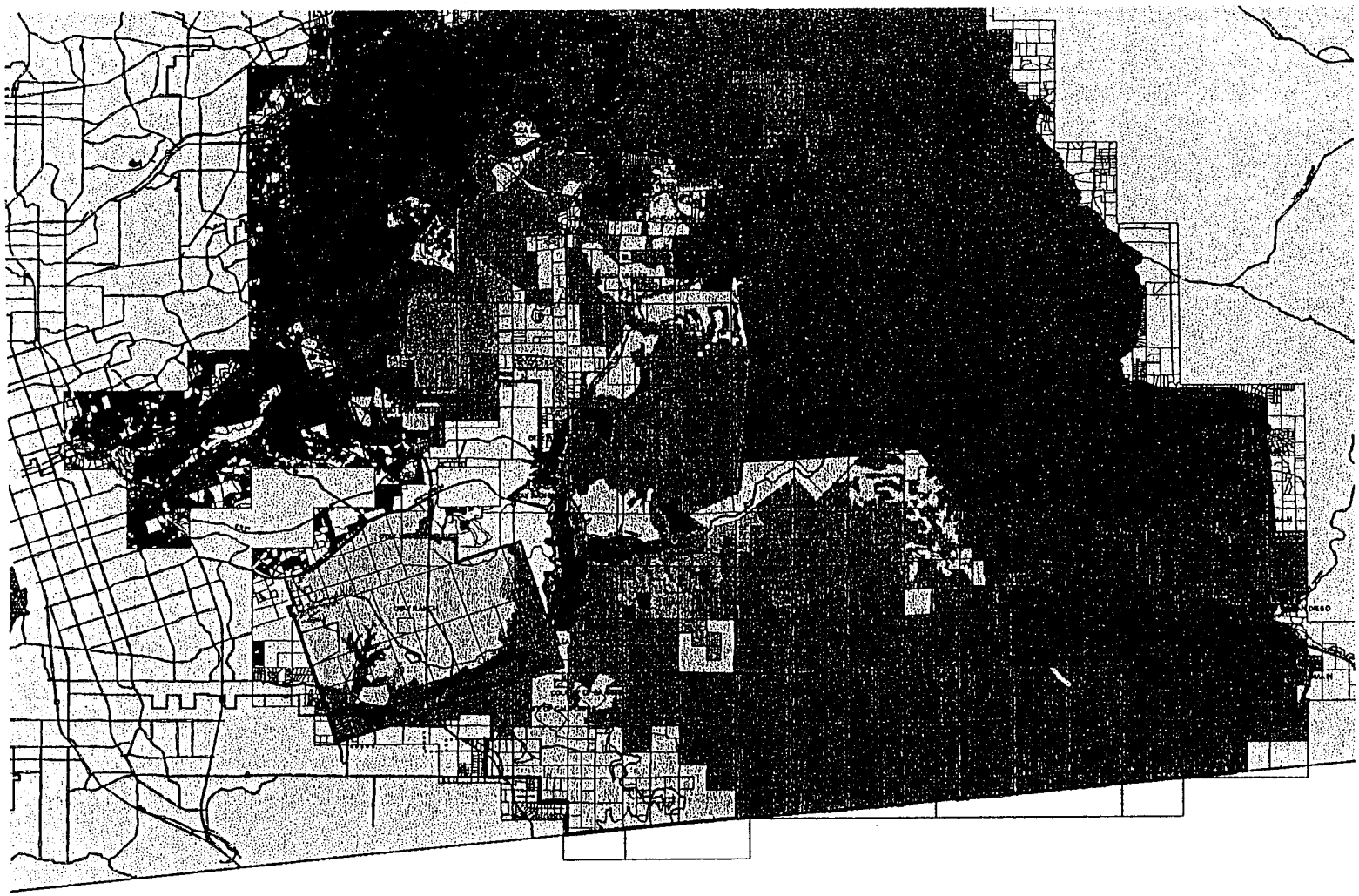


FIG. 1-3

## 1.1. Setting of the County Subarea

The County Subarea is located mostly in the eastern part of the MSCP study area. About 73% (approximately 184,000 acres) of the County Subarea provides habitat for native plants and wildlife. The remaining 27% (approximately 68,000) is disturbed, developed, or agricultural land that is considered to have little to no habitat value. Table 1-1 lists the habitat types and their acreages within the County Subarea.

The species analysis conducted for the entire MSCP study area identifies known occurrences for 46 plants, 4 invertebrates, 2 amphibians, 3 reptiles, 27 birds, and 3 mammals. Of these 85 species, 57 are known to occur in the County Subarea and 14 occur only in the County Subarea.

**Table 1-1:** County Subarea Vegetation Acreages

| Vegetation Community | Lk Hodges Acres | Lks-Jamul Acres | South Cnty Acres | Total Acres [1] | % Total Area | % Total Habitat |
|---|---|---|---|---|---|---|
| Coastal Sage Scrub | 3,455 | 40,070 | 27,801 | 71,326 | 28.29 | 38.71 |
| Chaparral | 1,992 | 56,143 | 21,628 | 79,764 | 31.64 | 43.29 |
| Maritime Succulent Scrub | 0 | 0 | 285 | 285 | 0.11 | 0.15 |
| Southern Maritime Chaparral | 7 | 52 | 0 | 59 | 0.02 | 0.03 |
| Coastal Sage Scrub/Chaparral | 41 | 2,926 | 153 | 3,119 | 1.24 | 1.69 |
| Grassland | 1,153 | 5,373 | 4,337 | 10,864 | 4.31 | 5.90 |
| Freshwater Marsh [3] | 64 | 36 | 243 | 343 | 0.14 | 0.19 |
| Oak Riparian Forest [3] | 8 | 4,170 | 168 | 4,346 | 1.72 | 2.36 |
| Riparian Forest [3] | 21 | 205 | 300 | 526 | 0.21 | 0.29 |
| Riparian Woodland [3] | 6 | 12 | 8 | 26 | 0.01 | 0.01 |
| Riparian Scrub [3] | 51 | 537 | 530 | 1,118 | 0.44 | 0.61 |
| Oak Woodland | 28 | 4,682 | 289 | 4,999 | 1.98 | 2.71 |
| Tecate Cypress Forest | 0 | 71 | 5,639 | 5,710 | 2.26 | 3.10 |
| Eucalyptus Woodland | 467 | 367 | 34 | 868 | 0.34 | 0.47 |
| Open Water | 32 | 238 | 11 | 282 | 0.11 | 0.15 |
| Disturbed Wetland | 7 | 108 | 42 | 157 | 0.06 | 0.09 |
| Flood Channel | 15 | 235 | 141 | 391 | 0.15 | 0.21 |
| Other Habitat [2] | 44 | 17 | 5 | 66 | 0.03 | 0.04 |
| **Subtotal [1]** | **7,393** | **115,241** | **61,613** | **184,248** | **73** | **100** |
| Urban/Agriculture/Developed | 1,842 | 57,711 | 8,331 | 67,884 | 27 | |
| **Total** | **9,236** | **172,952** | **69,944** | **252,132** | **100** | |

*Notes:*

[1] Component parts may not add to total because of rounding errors.

[2] Disturbed, agricultural and developed areas with habitat value.

[3] No net loss of wetlands is allowed as per Federal Wetland Regulations/State Policies & Regulations

## 1.2. Goals

The NCCP Conservation Guidelines, the MSCP, and the biological information from the MSCP's Multiple Habitat Planning Area (MHPA) preserve alternative were used to establish conservation goals and criteria for habitat and individual species for each Segment of the San Diego County Subarea Plan. These goals and criteria are based on the needs of the 85 covered species and an analysis of their habitats in the MSCP study area. Goals and criteria for conservation of core areas and linkages within the individual Segments are discussed in Chapters 2, 3, and 4 of this document. The quantitative anticipated levels of conservation of vegetation types and individual species are included in Section 1.2.1 and Section 1.2.2, respectively.

Any project approved by the County within the County Subarea Plan of the MSCP must be in conformance with the MSCP Plan and the Subarea Plan. The provisions in the County Subarea Plan supersede those of the overall MSCP Plan in the event of conflicts.

The County Subarea Plan Objectives are to:

- Acknowledge the no-net-loss-of-wetlands standard to satisfy state and federal wetland goals, policies, and standards;
- Include measures to maximize the habitat structural diversity of conserved habitat areas, including conservation of unique habitats and habitat features (e.g., soil types, rock outcrops, drainages, host plants);
- Provide for the conservation of spatially representative (e.g., coastal versus interior) examples of extensive patches of coastal sage scrub and other habitat types that were ranked as having high and very high biological value by the MSCP habitat evaluation model;
- Create significant blocks of habitat to reduce edge effects and maximize the ratio of surface area to the perimeter of conserved habitats;
- Provide incentives for development in the least sensitive habitat areas;
- Provide for the conservation of key regional populations of the covered species, and representation of sensitive habitats and their geographic subassociations in biologically functioning units; and
- Conserve large interconnected blocks of habitat that contribute to the preservation of wide-ranging species such as mule deer, golden eagle, and predators as appropriate. Special emphasis will be placed on conserving adequate foraging habitat near golden eagle nesting sites.

### 1.2.1. Anticipated Conservation levels for Vegetation Types in the County Subarea

Much of the land within the Subarea has been field surveyed as part of the process of project approval. To determine the biological values of the Subarea, this field survey data was incorporated into the MSCP GIS data base. While some discrepancies may exist between the field data and the GIS data base, overall, the estimates of acreages of vegetation communities are as accurate as possible based on available data. Table 1-2 shows the anticipated protection levels for the vegetation types in the County Subarea. The habitat type with the largest amount of land remaining to be protected is Coastal sage scrub, followed by chaparral. Other habitats are targeted in lesser amounts. Two habitat types, southern maritime chaparral and maritime succulent scrub, already meet the anticipated conservation levels. Throughout the subarea, almost 63,000 acres, approximately 62% of the total anticipated conservation level of approximately 101,268 acres, are already conserved within the County Subarea (see Chapters 2, 3, and 4 for descriptions of the protected areas in each of the Segments).

### 1.2.2. Anticipated Conservation Levels for Species in the County Subarea

The MSCP and supporting documents contain an analysis of species distribution in the study area and from that information, a conservation level for each species has been established for the County Subarea. The conservation levels are expressed as the number of known occurrences to be conserved in each of the subareas. Each occurrence is a sighting of an individual, a pair, or a population of a single species in a particular location at a specific time. The conservation levels for species in the County Subarea are listed in Table 1-3.

Table 1-2: Habitat Protection Goals for the San Diego County Subarea

| Vegetation Community | Segment Goals | | | | Total Goal [1] | Currently Conserved (acres) [2] | To Be Protected (acres) [3] |
|---|---|---|---|---|---|---|---|
| | Total (acres) | Lake Hodges (acres) | South County (acres) | Lks-Jamul (acres) | | | |
| Coastal Sage Scrub | 71,326 | 2,591 | 23,037 | 18,626 | 44,254 | 25,798 | 18,455 |
| Maritime Succulent Scrub | 285 | 0 | 158 | 0 | 158 | 157 | 1 |
| Chaparral | 79,764 | 1,391 | 19,874 | 18,619 | 39,884 | 26,901 | 12,983 |
| Southern Maritime Chaparral | 59 | 5 | 0 | 0 | 5 | 5 | 0 |
| Coastal Sage Scrub/Chaparral | 3,119 | 20 | 153 | 1,152 | 1,325 | 664 | 662 |
| Grassland | 10,864 | 305 | 1,658 | 1,603 | 3,566 | 1,712 | 1,854 |
| Freshwater Marsh [5] | 343 | 50 | 173 | 15 | 238 | 187 | 51 |
| Oak Riparian Forest [5] | 4,346 | 7 | 141 | 2,045 | 2,194 | 338 | 1,856 |
| Riparian Forest [5] | 526 | 21 | 243 | 84 | 348 | 199 | 149 |
| Riparian Woodland [5] | 26 | 6 | 8 | 6 | 20 | 18 | 2 |
| Riparian Scrub [5] | 1,118 | 38 | 424 | 298 | 760 | 436 | 324 |
| Oak Woodland | 4,999 | 21 | 284 | 1,901 | 2,206 | 781 | 1,425 |
| Tecate Cypress Forest | 5,710 | 0 | 5,589 | 0 | 5,589 | 5,438 | 151 |
| Eucalyptus Woodland | 868 | 61 | 17 | 41 | 120 | 79 | 41 |
| Open Water | 282 | 19 | 6 | 124 | 149 | 42 | 107 |
| Disturbed Wetland | 157 | 4 | 34 | 52 | 90 | 22 | 68 |
| Flood Channel | 391 | 15 | 132 | 197 | 344 | 147 | 197 |
| Other Habitat [4] | 66 | 16 | 2 | 0 | 18 | 16 | 2 |
| **Total** | **184,248** | **4,570** | **51,934** | **44,764** | **101,268** | **62,940** | **38,328** |

*Notes:*

[1] Component parts may not add to total because of rounding errors.

[2] If the number of acres already conserved in any segment exceeds the conservation goal for that segment, then the conservation goal is used in this column.

[3] The number of acres to be protected is calculated by subtracting the currently conserved acreage from the total goal; because of the adjustment described in Note 2, this amount cannot be less than zero.

[4] Disturbed, agricultural and developed areas with habitat value.

[5] No net loss of wetland habitat is allowed as per Federal Wetland Regulations/State Policies & Regulations

No additional land will be required for preserve purposes to meet the above listed goals, from those projects with agreed upon preserve lines as identified and described in chapters 2, 3 and 4 of this Subarea Plan.

Table 1-3: Anticipated Conservation Levels for Species in the County Subarea

| Scientific Name<br>Common Name | Within County Subarea<br>Number of Occurrences | Protection Level | % to be Protected | Total MSCP Area<br>% of Total Protected in County Subarea |
|---|---|---|---|---|
| Plants | | | | |
| *Acanthomintha ilicifolia*<br>San Diego thorn-mint | 16 | 15.1 | 94 | 56 |
| *Ambrosia pumila*<br>San Diego ambrosia | 2 | 2.0 | 100 | 19 |
| *Arctostaphylos glanulosa* var. *crassifolia*<br>Del Mar manzanita | 6 | 6 | 100 | 6 |
| *Arctostaphylus otayensis*<br>Otay manzanita | 25 | 24.7 | 99 | 100 |
| *Astragalus deanei*<br>Dean's milk vetch | 6 | 4.5 | 75 | 100 |
| *Baccharis vanessae*<br>Encinitas baccharis | 25 | 24.4 | 98 | 82 |
| *Brodiaea orcuttii*<br>Orcutt's brodiaea | 32 | 29.9 | 93 | 73 |
| *Calamagrostis densa*<br>Dense reed grass | 5 | 4.7 | 94 | 82 |
| *Calochortus dunnii*<br>Dunn's Mariposa lily | 40 | 40 | 100 | 94 |
| *Caulanthus stenocarpus*<br>Slender-pod jewelflower | 21 | 20.7 | 99 | 55 |
| *Ceanothus cyaneus*<br>Lakeside ceanothus | 7 | 5.2 | 74 | 100 |
| *Ceanothus verrucosus*<br>Wart-stemmed ceanothus | 21 | 20.4 | 97 | 44 |
| *Cordylanthus orcuttianus*<br>Orcutt's bird's-beak | 2 | 2 | 100 | 36 |
| *Cupressus forbesii*<br>Tecate cypress | 23 | 22.1 | 96 | 89 |
| *Dudleya variegata*<br>Varigated dudleya | 125 | 123.8 | 99 | 63 |
| *Dudleya viscida*<br>Sticky dudleya | 2 | 2 | 100 | 100 |
| *Ericameria palmeri* ssp. *palmeri*<br>Palmer's ericameria | 17 | 14.9 | 88 | 59 |
| *Eryngium aristulatum* var. *parishii*<br>San Diego button-celery | 48 | 48 | 100 | 29 |
| *Ferocactus viridescens*<br>San Diego barrel cactus | 532 | 498.1 | 94 | 55 |
| *Fremontodendron mexicanum*<br>Mexican flannelbush | 7 | 7 | 100 | 100 |
| *Hemizonia conjugens*<br>Otay tarplant | 78 | 77.5 | 99 | 93 |
| *Horkelia truncata*<br>Ramona horkelia | 1 | 0.7 | 70 | 100 |
| *Lepechima ganderi*<br>Gander's pitcher sage | 25 | 25 | 100 | 100 |

(continued)

Table 1-3: Anticipated Conservation Levels for Species in the County Subarea (continued)

| Scientific Name<br>Common Name | Within County Subarea<br>Number of Occurrences | <br>Protection Level | <br>% to be Protected | Total MSCP Area<br>% of Total Protected in County Subarea |
|---|---|---|---|---|
| **Plants (continued)** | | | | |
| *Monardella hypoleuca ssp. lanata*<br>Felt-leaved monardella | 5 | 5 | 100 | 100 |
| *Monardella linoides* ssp. *viminea*<br>Willowy monardella | 14 | 14 | 100 | 32 |
| *Muilla clevelandii*<br>San Diego goldenstar | 98 | 88.1 | 90 | 87 |
| *Myosursus minimus ssp. apus*<br>Little mousetail | 3 | 2.4 | 80 | 38 |
| *Navarretia fossalis*<br>Prostrate navarretia | 1 | 1 | 100 | 22 |
| *Nolina interrata*<br>Dehesa bear-grass | 33 | 33 | 100 | 100 |
| *Opuntia parryi* var. *serpentina*<br>Snake cholla | 9 | 9 | 100 | 42 |
| *Pogogyne nudiuscula*<br>Otay Mesa mint | 74 | 74 | 100 | 86 |
| *Satureja chandleri*<br>San Miguel savory | 2 | 1.7 | 85 | 100 |
| *Senecio ganderi*<br>Gander's butterweed | 4 | 4 | 100 | 100 |
| *Solanum tenuilobatum*<br>Narrow-leaved nightshade | 100 | 99.7 | 99.7 | 91 |
| *Tetracoccus dioicus*<br>Parry's tetracoccus | 30 | 30 | 100 | 100 |
| **Invertebrates** | | | | |
| *Lycaena hermes*<br>Hermes copper butterfly | 3 | 3 | 100 | unknown |
| **Amphibians** | | | | |
| *Bufo microscamphus californicus*<br>Arroyo southwestern toad | 1 | 1 | 100 | 7 |
| *Rana aurora draytoni*<br>California red-legged frog | 1 | 1 | 100 | 100 |
| **Reptiles** | | | | |
| *Clemmys marmorata pallida*<br>Southwestern pond turtle | 3 | 2 | 67 | 29 |
| *Phrynosoma coronatum blainvillei*<br>San Diego horned lizard | 134 | 114.2 | 85 | 62 |
| *Cnemidophorus hyperythrus beldingi*<br>Orange-throated whiptail | 195 | 165.6 | 85 | 52 |
| **Birds** | | | | |
| *Accipiter cooperii*<br>Cooper's hawk | 32 | 29.5 | 92 | 63 |

(continued)

Table 1-3: Anticipated Conservation Levels for Species in the County Subarea (continued)

| Scientific Name<br>Common Name | Within County Subarea<br>Number of Occurrences | Protection Level | % to be Protected | Total MSCP Area<br>% of Total Protected in County Subarea |
|---|---|---|---|---|
| Birds (continued) | | | | |
| *Agelaius tricolor*<br>Tricolored blackbird | 2 | 2 | 100 | 22 |
| *Aimophila ruficeps canescens*<br>California rufous-crowned sparrow | 185 | 175.6 | 95 | 59 |
| *Ammodramus savannarum*<br>Grasshopper sparrow | 19 | 18.4 | 97 | 59 |
| *Aquila chrysaetos*<br>Golden eagle | 27 | 21 | 78 | 74 |
| *Buteo regalis*<br>Ferruginous hawk | 1 | 0.7 | 70 | 43 |
| *Buteo swainsoni*<br>Swainson's hawk | 1 | 1 | 100 | 100 |
| *Campylorhynchus brunneicapillus cousei*<br>Coastal cactus wren | 143 | 139.1 | 97 | 51 |
| *Circus cyaneus*<br>Northern harrier | 14 | 12.8 | 91 | 45 |
| *Falcon peregrinus anatum*<br>American peregrine falcon | 2 | 2 | 100 | 36 |
| *Haliaeetus leucocephalus*<br>Bald eagle | 3 | 2.1 | 70 | 71 |
| *Passerculus sandwichensis beldingi*<br>Belding's savannah sparrow | 1 | 1 | 100 | 4 |
| *Polioptila californica californica*<br>California gnatcatcher | 937 | 894.2 | 95 | 49 |
| *Sialia mexicana*<br>Western bluebird | 2 | 1.7 | 85 | 50 |
| *Speotyto cunicularia hypugaea*<br>Burrowing owl | 10 | 7 | 70 | 66 |
| *Vireo bellii pusillus*<br>Least Bell's vireo | 74 | 73.7 | 99.6 | 27 |
| Mammals | | | | |
| *Felis concolor*<br>Mountain lion | 17 | 9.1 | 54 | 40 |
| *Odocoileus hemionus fuliginata*<br>Southern mule deer | 63 | 54 | 86 | 43 |

Note:
No additional land will be required for preserve purposes from areas where there are agreed upon hardlines should the number of occurrences change. Mitigation for impacts to newly discovered occurrences of covered species within soft line areas shall be as specified in the Subarea Plan and implementing regulations.

## 1.3. County's Role in MSCP

Almost half of the MSCP study area is under the jurisdiction of San Diego County, but because the cities and towns are so much more developed than the unincorporated areas in the County, undeveloped areas are disproportionately found in the County Subarea. This can be illustrated by a look at the distribution of the core biological resource areas and linkages throughout the MSCP area, where 63% of those core areas are under County jurisdiction. Even more strikingly, 81% of the linkages are under County jurisdiction. Furthermore, the County Subarea connects the remaining habitat in the western part of the MSCP area to the large federal land holdings outside of the MSCP area to the east. Conservation within the County Subarea is crucial to the success of the MSCP. Conservation is achieved by protecting habitat and linkages, both within the MSCP area and to habitat outside the MSCP area.

The distribution of individual species is rarely uniform and some of the covered and sensitive species have known occurrences only in the County Subarea – twelve plant species, the California red-legged frog, and the Swainson's hawk are in that category. These species are all identified by a 100% in the last column in Table 1-3, which lists the percentage of the total MSCP anticipated conservation level that will be satisfied within the County Subarea. Clearly, protection of these species depends completely on the conservation efforts in this subarea.

For an additional eight species, more than 75% of the protection will occur in the County Subarea and 16 species will have 50% to 75% of their protection there. Only 20 of the species known to occur in the County Subarea have less than 50% of their protection there.

## 1.4. Conservation Areas

The maps associated with the Lake Hodges and South County Segments delineate where habitat will be conserved and where development will occur. The Wildlife Agencies have agreed to the conservation and development areas; accordingly, projects approved by the County consistent with these two Segments of the Subarea Plan will not require additional approvals from the Wildlife Agencies. Wetlands impacts throughout the County Subarea will continue to be subject to Federal Water Pollution Act and Fish and Game Code Section 1600 processes, as appropriate.

Although anticipated conservation levels by species and habitat type have been developed for the Metro-Lakeside-Jamul Segment, no preserve boundaries have been designated, except for the Helix Company properties. In an effort to encourage mitigation that meets the anticipated conservation levels, the County has developed mitigation ratios with reduced requirements for projects that contribute to meeting the levels. Figure 1 of Attachment 1 is the Wildlife Agencies' map which depicts areas the Wildlife Agencies have preapproved as meeting the County's Subarea Plan conservation goals. Biological mitigation within the preapproved areas qualifies for the reduced mitigation ratios without further analysis. The Wildlife Agencies have also agreed that mitigation land outside the preapproved area could qualify for reduced mitigation ratios based on the County or the project sponsor demonstrating that the lands help achieve the conservation goals for the Metro-Lakeside-Jamul Segment. This demonstration would be included in the

project's CEQA document. Concurrent with the release of the CEQA document for projects that propose to use this type of demonstration to reduce their mitigation requirements, the County will notify the Wildlife Agencies of their intent to do so and provide the Wildlife Agencies with a copy of the justification for the reduced mitigation ratios. The Wildlife Agencies will have 30 days from the issuance of the notice to respond to the County's approval of a reduced mitigation ratio. This notice will be part of the notice issued pursuant to the CEQA process.

## 1.5. *Implementation*

The Board of Supervisors will enter into an Implementing Agreement with the Wildlife Agencies for the County Subarea Plan. The Implementing Agreement will be the contract between the County and the Wildlife Agencies regarding their individual and collective roles in implementing the County Subarea Plan. The Implementing Agreement will ensure that the County Subarea Plan will be implemented over the next fifty years and that State and Federal Take Authorizations will be in effect for the same time period.

## 1.6. *Monitoring the Implementation of the Subarea Plan*

The County will maintain records, by project and cumulatively, which show the location, habitat types, and acres of habitat that:

- The County has authorized for development pursuant to the Subarea Plan; and
- Have been conserved through mitigation based on the Subarea Plan.

The County shall be required to show annually that the acreage of habitat loss and acquisition for the preserve have occurred in "rough step" with a maximum deviation as provided in the Habitat Accounting Model contained in Attachment F of the Implementing Agreement. Properties with agreed upon preserve lines as identified and described in chapters 2, 3 and 4 of the Subarea Plan, will not be affected by the 'rough step' criteria. The County will provide the above information to the Wildlife Agencies in an annual report. The information will be compiled by calendar year and submitted to the Wildlife Agencies by February 15 of the following year. Within 60 days of the issuance of Take Authorizations to the County, the County and the Wildlife Agencies will prepare a schedule of implementing actions.

## 1.7. *Preserve Management*

A draft Framework Management Plan(s) will be created by the County within 6 months of the execution of the County's Implementation Agreement for the MSCP plan with a final Framework Management Plan being completed 3 months later. It will incorporate the requirements of Table 3-5 of the revised Volume I of the MSCP Plan. The management plan will also include measures for fire management. The Framework Management Plan shall also incorporate a requirement for

the subsequent preparation and implementation of area-specific management directives, which shall be prepared in a phased manner for logical discrete areas of land within the Subarea as those lands are committed to permanent preservation. Conditions to perform adaptive management will not be placed on private projects.

The MSCP preserve system, including the County's portion of the system, will be managed by a diverse array of agencies, private foundations, and landowners. This diversity of preserve management will strengthen the adaptive management programs because of the variety of experience and viewpoints brought to preserve management. It also has drawbacks that could result in duplication of effort to develop new management techniques and retention of outmoded management practices. Communication between preserve managers will be the key to developing improved management techniques and discontinuing management practices that degrade the long-term viability of the preserve system.

Within 120 days of the Effective Date, the County shall initiate participation in the Regional Habitat Management Technical Committee. The parties will be formed by the County and all other Participating Local Jurisdictions. The Habitat Management Technical Committee will serve as a coordination forum for technical issues associated with preserve management. The Wildlife Agencies will work with this committee to furnish information and advice on habitat management. The committee will have the responsibilities identified in Section 5.8.3 of the MSCP Plan.

- Coordinate development of a computer database for management issues;
- Coordinate distribution of preserve management reports; and
- Provide biological monitoring information to preserve managers and help coordinate biological monitoring with preserve management.

## *1.8. Take of Covered Species*

The County Subarea Plan is intended to provide for the take of covered species and their habitats associated with development. Take of covered species associated with the on-going management of San Diego County Park Lands and construction of facilities consistent with existing (1996) park development plans is authorized consistent with the Subarea Plan. Take of covered species on County Park Lands not addressed above will be authorized using the minor amendment process. Conformance with the Plan will be accomplished in part through the Biological Mitigation Ordinance. It will apply to the lands in the Metro-Lakeside-Jamul Segment of the Subarea Plan as well as the major and minor amendment areas for the Lake Hodges and South County Segments.

### 1.8.1. Lake Hodges and South County Segments

Figure 1-1 identifies the lands within the Lake Hodges and South County Segments of the County's Subarea Plan where take of covered species and their habitat is authorized. Within major or minor amendment areas take of covered species may be authorized only after such an

area has become part of the Segment Plan through the appropriate amendment process. Areas subject to the major and minor amendment process are identified in Figure 1-1. County infrastructure must conform to the requirements of the Biological Mitigation Ordinance and be consistent with the Subarea Plan.

### 1.8.2. Metro-Lakeside-Jamul Segment

Within the Metro-Lakeside-Jamul Segment of the County's Subarea Plan (Figure 1-1), the take of covered species and their habitats will be authorized for projects based on a project's satisfaction of the requirements of the Biological Mitigation Ordinance and conformance with the terms of the Subarea Plan. The take of covered species and their habitats will be authorized for County infrastructure projects based on conformance to the requirements of the Biological Mitigation Ordinance and provided that the project is consistent with the Subarea Plan.

## *1.9. Land Uses Allowed Within the Preserve*

Land uses within the preserve are generally very limited, specifically those which are considered compatible with the need to permanently protect the natural resources. In most cases, the preserve lands will be the subject of open space easements dedicated to the County or some other governmental agency as explained below. In some cases, the land will be transferred in fee title to a governmental agency or conservation agency as identified in each subsequent chapter. In other cases, the land may not be conveyed or dedicated until a permit such as a Tentative Map or discretionary land use permit has been approved. Activities allowed within the preserve must be consistent with the Habitat Management Plan and Framework Management Plan.

The following activities are typically precluded on land which is dedicated as an open space easement to the County: grading, excavation, placement of soil, sand, rock, gravel or other material, clearing of vegetation, construction, erection or placement of any building or structure, vehicular activities, trash dumping or use for any purpose other than as open space, or planting of vegetation materials.

The exceptions to these prohibitions generally include the following:

A. Selective clearing of vegetation by hand to the extent required by written order of the fire authorities for the express purpose of reducing an identified fire hazard.

B. Activities required to be conducted pursuant to a revegetation, habitat management or landscaping plan approved by the Director of Planning and Land Use.

C. Vegetation removal or application of chemicals for vector control purposes where expressly required by written order of the Department of Health Services of the County of San Diego, in a location and manner approved in writing by the Director of Planning and Land Use of the County of San Diego.

D. Existing uses and Recreational Activities identified in the plans which generate the preserve areas (See specific segment requirements in subsequent chapters).

E. Policing by local, State and Federal law enforcement agencies and fire protection agencies as necessary.

F. Scientific and biological uses (See specific segment requirements in subsequent chapters).

G. Necessary infrastructure (see specific segment requirements in subsequent chapters).

H. Trails including equestrian, hiking and bicycles in accordance with the management plan.

### 1.9.1. Existing Uses

A. As described above, the preserve areas created through open space easements will generally prohibit any uses other than those specified. Until all of the areas of open space have been dedicated through processing of maps, there may be a continuation of existing uses within areas shown as preserve.

B. Existing uses shall be allowed to continue, including any annual clearing, maintenance and replacement of existing facilities, roads and structures. However, there may be no expansion of such uses, or the clearing of additional areas unless appropriate local, State and Federal permits have first been obtained.

### 1.9.2. Public Access and Recreation

Appropriate recreational activities shall be accommodated in concurrence with the goals of the MSCP and County Subarea Plans.

A. Public access and passive recreation are permitted uses within specified areas of the preserve. Access points, new trails and facilities, and a public control plan will be included in the framework habitat management plans and the area-specific management directives.

B. Litter and trash removal will be addressed in the Open Space Preserve Management Plans.

C. Riding and hiking trails will be allowed within the preserves to allow passive recreational opportunities for the public. Passive recreation includes hiking, scientific research, bird watching, and under specified conditions and locations identified in approved projects and or management plans, mountain biking, horseback riding, sailing, sun bathing, fishing, and swimming. Equestrian, hiking, and bicycles may be allowed when in accordance with approved management plans and are consistent with the County of San Diego Subarea Plan. Other forms of public access and recreation may be determined to be consistent with the protection of the resources currently

existing within the preserve. Access for hang gliding and hot air ballooning shall be limited to existing dirt roads now used for such purposes unless the roads are to be rehabilitated. Departure/take off areas for such activities are and shall remain located outside of the preserve.

D. Because the final disposition of the preserve lands have not been fully determined, it is not possible to estimate how much of the preserve will remain in private ownership. However, there will be some areas of the preserve that remain in private ownership. The owners of these areas may choose to fence these areas of the preserve to deter trespassing. Allowed uses and specific responsibilities of property owners regarding land designated as open space are covered in the Habitat Loss Permits, Tentative Map, Use Permits or Specific Plan for the project which created the open space.

#### *1.9.2.1. Off-Highway Vehicles*

a. Public off-highway recreational vehicle activity (trails, roads, parks, etc.) within MSCP preserve areas is incompatible with the goals of the MSCP. Lands preserved through the MSCP are mitigation for effects to covered species resulting from development outside the preserve areas.

b. Legal access across preserve lands to private inholdings will not change as a result of implementation of the subarea plan.

c. OHV trails in the South County and Lake Hodges Segments of the County Subarea Plan will be located outside of proposed and dedicated preserve areas.

d. OHV trails within Metro-Lakeside-Jamul, but outside of proposed or dedicated preserve areas, will be considered a project and will be subject to the provisions of the MSCP, County Subarea plan, and Biological Mitigation Ordinance.

e. OHV activity on Bureau of Land Management lands will be managed in accordance with the BLM Resource Management Plan.

Use of off-highway vehicles that is necessary in order to engage in other allowed uses as specified in the County Subarea Plan or an approved Habitat Management Plan shall not be prohibited.

### 1.9.3. Infrastructure

Take for infrastructure projects, other than the categories of projects identified below, within preserve areas and the MHPA will be authorized through the major or minor amendment process to the take authorizations as appropriate.

owner is proposing another Tentative Map which is in progress. These maps together will result in the preservation of a major large amount of open space in the Subarea Plan.

Other lands in the Segment include land on which The Environmental Trust has an agreement for a mitigation bank. That land is located on the eastern edge of the Subarea, just north of Lake Hodges. While this mitigation bank extends into the incorporated area, approximately 59 acres are located in the unincorporated area. Another piece of land within the Segment, approximately 19 acres just north of Lake Hodges, is under the ownership of the California Department of Transportation (CalTrans) as a mitigation for a CalTrans project elsewhere. The City of San Diego also owns land included within the Subarea totaling approximately 361 acres. This land is not identified within the Subarea Plan in the City of San Diego for Lake Hodges.

## 2.7. *Land Uses Allowed Within the Preserve*

Permitted uses within the preserve are detailed in section 1.9.

### 2.7.1. Existing Uses

As described in 1.9 and above, the preserve areas created through open space easements will generally prohibit any uses other than those specified. In the 4S Ranch property, specific uses that will continue in the preserve include: horseback riding, mountain biking, fishing, low impact recreational uses, water wells, pumps and associated facilities, dams, roads and trails, grazing, public utilities and hunting consistent with the approved Habitat Management Plan. However, until all of the areas of open space have been dedicated through processing of maps, there may be a continuation of existing uses within areas shown as preserve.

### 2.7.2. Public Access and Recreation

In addition to the access and recreation activities indicated in 1.9.2, public access and passive recreation are permitted uses within specified areas of the preserve on the Santa Fe Valley and 4S Ranch portions of the preserve. The location of access points, new trails and facilities, and a public control plan will be included in the framework habitat management plans and the area-specific management directives.

The Santa Fe Valley Specific Plan area shows a trail extending through the San Dieguito River and to the east as well as a trail diagonally across the central portion of the plan area connecting to the east loop road and Four Gee Road. The access points will be adjacent to the Del Dios Highway north of the bridge crossing of the San Dieguito River and adjacent to the proposed Transit Center. The 4S Ranch project will include a public trail through the Lusardi Creek portion of the site, on the southern end of the project.

identified on the County's circulation element road map dated September 17, 1997 (GPA 97-CE) is based on the County making the following findings for the project:

a. The project is consistent with adopted community or subregional plans, and the MSCP and Subarea Plans.

b. All feasible mitigation measures have been incorporated into the project and there are no feasible, less environmentally damaging locations, alignments or non-structural alternatives that would meet project objectives;

c. Where the project encroaches into a wetland or floodplain, mitigation measures have been incorporated into the project that result in a net gain in wetland and/or riparian habitat;

d. Where the project encroaches into steep slopes, native vegetation will be used to revegetate and landscape cut and fill areas;

e. No mature riparian woodland will be destroyed or reduced in size due to otherwise allowed encroachments; and

f. All Critical Populations of Sensitive Plant Species within the County's Subarea (Attachment C of BMO), Rare Narrow Endemic Animal Species within the County's Subarea (Attachment D of BMO), Narrow Endemic Plant Species within the County's Subarea (Attachment E of BMO), and San Diego County Sensitive Plant Species (as defined in the BMO), will be avoided as required and consistent with the Subarea Plan and BMO.

#### *1.9.3.3. Other Infrastructure Within the Lake Hodges and South County Segments*

a. Infrastructure necessary and incidental to development projects and identified in the projects within the South County and Lake Hodges Segments of the Subarea Plan that contribute open space to the MSCP preserve are permitted within the MHPA. Mitigation for disturbance inside the MHPA due to infrastructure necessary to support the project shall be as required in the subsequent Subarea Plan chapters.

b. Maintenance and operation of new facilities shall be allowed in accordance with standard practices existing at the time of completion, including access road maintenance.

### 1.9.4. Scientific and Biologic Activities

A. All scientific, research, monitoring and habitat restoration and enhancement activities are permitted within the preserve, subject to approval by the preserve

manager/landowner and obtaining any necessary permits. All such activities shall be consistent with the area-specific management directives.

B. All or any of the above activities shall be carried out under a regional program implemented by the resource agencies, County of San Diego or preserve manager.

C. Prior to beginning any of the above research activities, prior approval of the property owner/preserve manager must be obtained.

### 1.9.5. Emergency, Safety and Police Services

The interface between current and future urban development and the preserve areas requires increased coordination between the preserve managers and agencies responsible for public safety and enforcement of immigration laws. The MSCP preserve system, including the County's portion of the system must accommodate access for emergency response, fire control and management, and enforcement of immigration laws.

Law enforcement and fire control agencies, the National Guard, the Immigration and Naturalization Service (INS), the Border Patrol and organizations and agencies which respond to natural disasters shall be permitted to perform their activities within any preserve system subject to all applicable requirements of state and federal law. MSCP shall create no additional permit requirements beyond those of existing state and federal law for the activities of these agencies.

The take of covered species incidental to emergency response activities is provided for based upon the following sections.

#### *1.9.5.1. Fire Prevention, Control and Management*

The San Diego County Fire Chief's Urban/Wildland Interface Task Force has prepared Countywide brush management guidelines in concert with the Wildlife Agencies. A Memorandum of Understanding (MOU) among the Wildlife Agencies, California Department of Forestry and Fire Protection, and Fire Chiefs and Fire Districts was executed in February 1997 following completion of the Federal Endangered Species Act Section 7 consultation by the U.S. Fish and Wildlife Service. The Wildlife Agencies, California Department of Forestry and Fire Protection, and Bureau of Land Management are developing a Memorandum of Agreement (MOA) regarding incident response, fuel and fire management, and use of fire for preserve management. The MOU and MOA will provide the basis for ensuring fire control activities, fire prevention and fire for habitat management are integrated into preserve management plans and that the establishment of preserves does not create additional restrictions for fire control.

Fire management activities are permitted within the preserve when conducted according to a fire management plan approved by the wildlife agencies, County and appropriate

fire district as part of area-specific management directives. Preparation of a stand-alone fire management plan is optional, at the desire of the MSCP preserve manager, jurisdiction, landowner or fire district.

Fire suppression districts, personnel and equipment shall use whatever tactics necessary to control and extinguish wildfires. Such activities are permitted within and adjacent to the preserve. No mitigation shall be required for any "take" of covered species that occurs during any fire fighting operation.

#### *1.9.5.2. Enforcement of Immigration Laws*

Each of the preserve management plans will include provisions for enforcement of immigration laws. The goals for dealing with immigration issues within preserves is to maintain or increase the ability of immigration enforcement officials to carry out their duties. All law enforcement agencies shall be allowed access to the preserve as necessary to enforce the law.

#### *1.9.5.3. Emergency Response*

Each of the preserve management plans will include provisions for response to emergencies, including floods, law enforcement and public health and safety. The goal for dealing with emergency response issues within preserves is to maintain or increase the ability of emergency response personnel to deal with emergencies. All medical, rescue and other emergency agencies are allowed access to the preserve to carry out operations necessary to the health, safety and welfare of the public.

#### *1.9.5.4. Emergency Repairs to Infrastructure*

In preserve areas managed by the County or the County's authorized representative, the County shall allow the agency to enter the preserve and complete necessary repairs consistent with normal practices and with state and federal take authorization in conformance with existing federal and state laws.

## 1.10. Land Uses Adjacent to the Preserve

Residential uses will be the most common use located adjacent to the preserve, although roads, manufactured open space, recreational facilities, and industrial and commercial uses will occur in some areas. The following section establishes guidelines for those uses that are compatible with the preserve. The subsequent section (1.11), along with area specific management directives outlined in the subsequent chapters, establishes a brush management zone that will separate the preserve from developed uses. This transitional area will assure compatibility for residential, commercial, and industrial uses.

The following uses are also allowed on land adjacent to the preserve with no limitations other than subject to the guidelines listed in paragraphs A-E below:

Manufactured open space (e.g. parks, playing fields, vegetated slopes, green belts, etc.) roads, recreational facilities, water reservoirs, other public facilities and utilities, agricultural and grazing operations are deemed to be compatible when located immediately adjacent to the preserve. No additional buffers or transitional areas are required.

In addition, hiking, bird watching, horseback riding, camping, power boating, water skiing, fishing, pet exercising, hang gliding, hot air ballooning, scientific research, mountain biking, equestrian facilities, athletic fields, sailing, sun bathing, swimming, golf courses, hunting, brush management are also compatible uses.

The following guidelines will be used when planning and implementing uses and activities when located immediately adjacent to the preserve. These guidelines are meant to ensure compatibility with the preserve.

A. Where feasible, plant materials used to landscape manufactured open space, road cuts/fills and recreational facilities should consist of native species similar/compatible with the adjacent habitat in the preserve. If possible, those species should be based on plants with genetic materials of the area.

B. Areas and structures subject to heavy human use (e.g. ball fields, parking lots, hardscapes/playing courts, equestrian centers, staging areas, etc.) shall, to the extent feasible, be located away from the edge of the preserve.

C. Lighting within 100 feet of the preserve edge shall be confined to areas necessary to ensure public safety, and shall be limited to low pressure sodium fixtures, shielded and directed away from the preserve where possible.

D. Fencing along the preserve boundary is desirable but not mandatory and may provide a barrier to fire, invasive species, and uncontrolled human access. Should a landowner or preserve manager decide to install fencing, the type, style and height must conform to existing regulations or those included in the applicable Specific Plan.

E. There shall be no requirements for buffers outside the preserve system. All open space requirements for the preserve system shall be incorporated into the preserve system.

### *1.11. Fuel Modification Zones*

Residential, industrial, institutional and commercial uses will be generally separated from the preserve by a fuel modification zone, which varies in width depending on each project's circumstances. Details of site specific requirements are described in subsequent chapters. For

properties controlled by public land trusts, they are responsible for maintaining a fuel modification zone where required. The intent of the fuel modification zone is to protect uses adjacent to the preserve from wildfires. It may further protect the resources within the preserve by absorbing some of the "edge effects" that might otherwise occur within the preserve. With implementation of the fuel modification zone, no other restrictions for fuel management on residential, industrial, institutional, commercial or other uses are required.

The following guidelines are intended to establish how the fuel modification zone will be managed.

A. Plant materials existing within the fuel modification zone may be thinned, mowed, pruned and/or removed as necessary.

B. Supplemental planting may be elected by the owner. Plant materials used shall be acceptable to the appropriate fire agency and non-invasive. This guideline also applies to any road cuts and/or graded disturbed areas within the fuel modification zone.

C. Ownership of the fuel modification zone may vary. In most cases, it may be by the adjacent lot owner or homeowners' association. Where appropriate, the zone may be incorporated into project open space and landscaping plans.

D. Responsibility for brush management will vary according to the specific requirements of the approved project. In most cases, it shall reside with the landowner or homeowners association, and may be enforced by the appropriate fire department or homeowners' association. For residential areas, the Codes, Covenants and Restrictions (CC&Rs) shall clearly define the responsibilities of the owner with respect to fuel modification including when and how such activities shall be carried out.

E. Fencing, lighting and signage are permitted in the fuel modification zone, at the discretion of the landowner.

   1. Lighting shall be confined to areas necessary to ensure public safety, and shall be limited to low pressure sodium fixtures, shielded and directed away from the preserve.

   2. Fencing is desirable but not mandatory and provides a barrier to fire, invasive species, and uncontrolled human access. Should a landowner decide to install fencing anywhere within the brush management zone, the type, style and height must conform to existing regulations.

### 1.12. *Funding Preserve Maintenance*

Funds for preserve maintenance shall be provided in accordance with Section 7.3.2 of the MSCP and the County's Implementing Agreement.

The federal and state agency lands dedicated to the preserve will be monitored and managed by the Wildlife Agencies along with lands acquired by the state and federal agencies for the MSCP preserve.

### 1.13. *Preserve Ownership and Conveyance*

Ownership of land and the dedication and conveyance sequence within the preserve will vary. Land may be held by the County in fee or conservation easements may be granted jointly to the County and the Wildlife Agencies. In some cases, land may remain in private ownership with a covenant of easement granted to the County which allows access for management purposes. The MSCP preserve system incorporates public lands to the greatest extent possible to minimize the need to acquire private lands and to avoid increasing exactions on private land development beyond the existing requirements of local, state, and federal regulations. Private property rights will be fully respected and upheld. Where public funds are used to acquire lands for the MSCP preserve, the lands will be acquired only from willing sellers at fair market value.

### 1.14. *Amendments to the Subarea Plan*

Within the Lake Hodges and South County Segments, location of the preservation and development areas was not resolved for all of the land in the Segments. For lands designated major and minor amendment areas, the County's Take Authorizations do not apply until the major or minor amendment process has been completed. These major and minor amendment lands include key core habitat areas within the County's jurisdiction which are vital to the continued existence of many of the covered species. The amendment process for these various properties was determined based upon on-site biological values, location and juxtaposition within and adjacent to biological resource core areas and linkages, presence of narrow endemic species, and presence of critical populations of covered species. All major and minor amendments must conform to the MSCP and Subarea Plans.

For all dedicated or designated preserve areas, major amendments will be necessary. Figure 1-4 delineates the amendment process applicable to amendment areas within the Lake Hodges and South County Segments. The amendment process would only be initiated at the request of the property owner, e.g. at the time of proposal for development, etc.

### 1.14.1. Minor Amendments to the Subarea Plan

Minor amendment properties contain habitat that could be partially or completely eliminated (with appropriate mitigation) without significantly affecting the overall goals of the County's Subarea Plan. Minor amendment properties must meet the criteria and achieve the goals for linkages and corridors as described in sections 4.2.1 and 4.2.2 of the Metro-Lakeside-Jamul Segment of the Subarea Plan and provide mitigation consistent with the Biological Mitigation Ordinance. Minor amendments under County jurisdiction within the Lake Hodges and South County Segments require the approval of the Service's Field Office Supervisor and the CDFG's NCCP Program Manager.

### 1.14.2. Major Amendments to the Subarea Plan

Requests for major amendment areas must be processed by the Wildlife Agencies in conformity with all applicable laws and regulations (including the National Environmental Policy Act, California Environmental Quality Act, and the Endangered Species Acts) in effect at the time the request for an amendment is received.

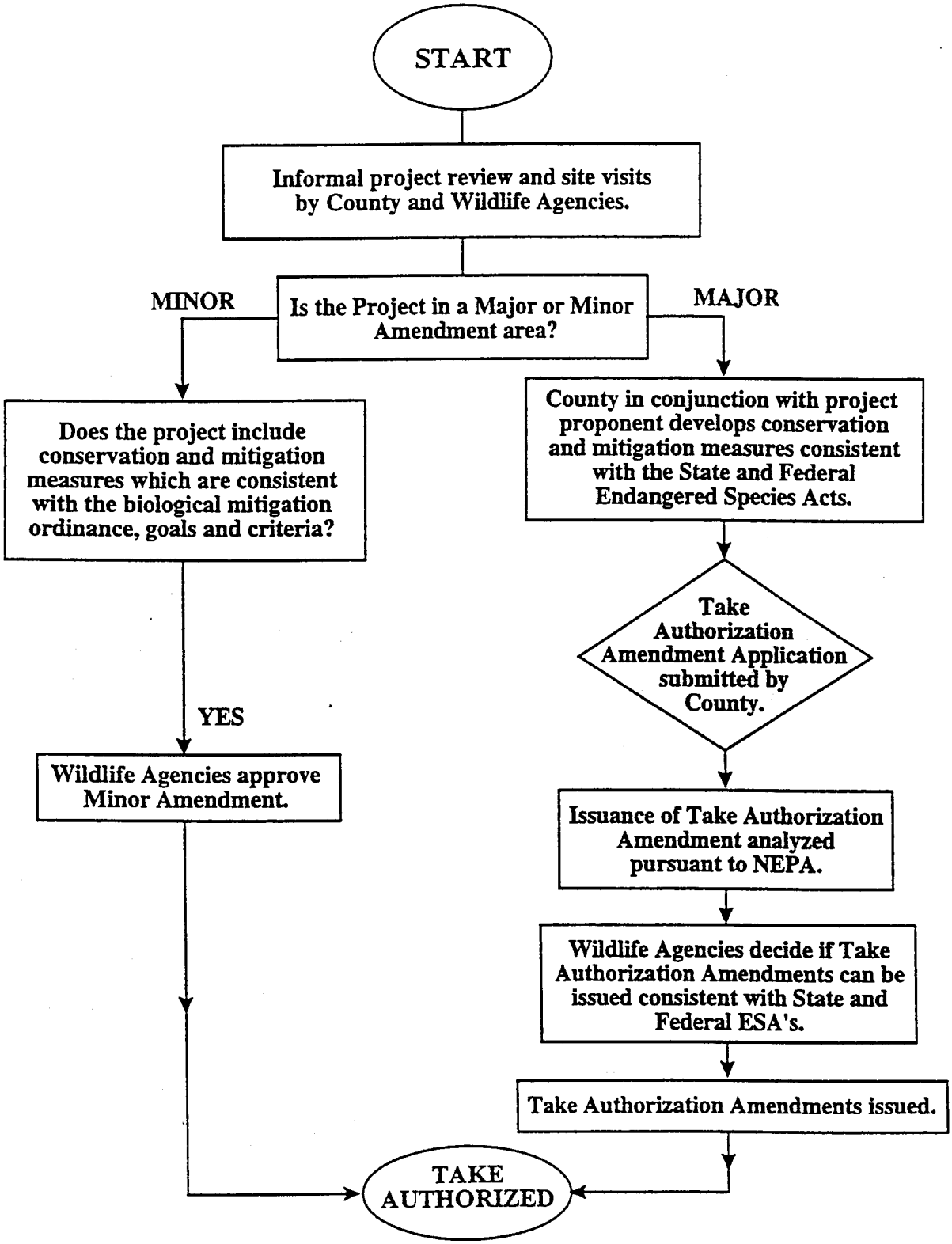
## *1.15. Exceptions*

During the CEQA review and/or design of a project, site specific conditions (geology, slope, location of infrastructure, etc.) may be identified which make it infeasible for the project to meet all goals, criteria or other requirements in the Subarea Plan, but the project could be constructed without compromising the conservation of species and habitats anticipated by the Subarea Plan. Should this situation occur, the County, as provided in Section 10.12 of the Implementing Agreement, may grant an exception to the Subarea Plan for the project with the concurrence of the Wildlife Agencies. During the public review period for the CEQA process, the exceptions will be identified and the Wildlife Agencies will respond with their approval and/or recommendations.

## *1.16. Mitigation Banks*

The formation and utilization of mitigation banks within the Subarea Plan has been identified as an important tool in achieving the Subarea Plan conservation goals. To this end, the County and Wildlife Agencies will allow offsite mitigation, where required of projects within the County, within mitigation banks established pursuant to Board of Supervisors Policy I-117, that are located within the Subarea Plan.

**Figure 1-4:** Amendment Process for Lake Hodges and South County Segments



ATTACHMENT 1

# MULTIPLE SPECIES CONSERVATION PROGRAM COVERED SPECIES LIST

**Plants**

San Diego thorn-mint
Shaw's agave
San Diego ambrosia
Aphanisma
Del Mar manzanita
Otay manzanita
Coastal dunes milk-vetch
Encinitas baccharis
Thread-leaf brodiaea
Orcutt's brodiaea
Dunn's mariposa lily
Slender-pod jewelflower
Lakeside ceanothus
Wart-stemmed ceanothus
Salt marsh birds-beak
Orcutt's birds-beak
Del Mar Mesa sand aster
Tecate cypress
Short-leaved dudleya
Variegated dudleya
Sticky dudleya
Palmer's ericameria
San Diego button-celery
Coast wallflower
San Diego barrel cactus
Otay tarplant
Heart-leaved pitcher sage
Gander's pitcher sage
Nuttall's lotus
Willowy monardella
San Diego goldenstar
Prostrate navarretia
Dehesa beargrass
Snake cholla
California orcutt grass
Torrey pine
San Diego mesa mint
Otay mesa mint
Small leaved rose
Gander's butterweed
Narrow-leaved nightshade
Parry's tetracoccus
Dense reed grass
Felt-leaved monardella
San Miguel savory
Nevin's barberry

**Animals**

Salt marsh skipper
Thorne's hairstreak butterfly
Riverside fairy shrimp
San Diego fairy shrimp
Arroyo southwestern toad
California red-legged frog
Southwestern pond turtle
San Diego horned lizard
Orange-throated whiptail
California brown pelican
Reddish egret
White-faced ibis
Canada goose
Bald eagle
Northern harrier
Cooper's hawk
Swainson's hawk
Ferruginous hawk
Golden eagle
American peregrine falcon
Light-footed clapper rail
Western snowy plover
Mountain plover
Long-billed curlew
Elegant tern
California least tern
Western burrowing owl
Southwestern willow flycatcher
Coastal cactus wren
California gnatcatcher
Western bluebird
Least Bell's vireo
California rufous-crowned sparrow
Belding's Savannah sparrow
Large-billed Savannah sparrow
Tri-colored blackbird
American badger
Mountain lion
Southern mule deer

## 2. Lake Hodges Segment

The Lake Hodges Segment is located in west-central San Diego County, west of Interstate 15, north of the City of San Diego, and east of Rancho Santa Fe (Figure 1-1). The take areas currently covered by the Lake Hodges Segment (LHS) apply only to areas in which property owners have completed negotiations with the Wildlife Agencies and the County (Figure 1-2).

The LHS covers roughly 8,874 acres. The majority of the land is currently vacant, with approximately 512 acres of agricultural uses and a few scattered homes. Four major projects are located in this Subarea: Rancho Cielo, 4S Ranch, Santa Fe Valley and the Madura Subdivision. These projects are a mix of new communities with urban level uses, and low density residential developments with a variety of private and public support facilities. Additional land owned by the City of San Diego, which exists as a peninsula within Lake Hodges and north of the Lake, is included in the LHS, but is not counted as part of the County's total number of preserved acres, nor is it subject to the County's Subarea Plan. A parcel of mitigation land purchased by the California Department of Transportation (CalTrans) north of Lake Hodges and an area created as a mitigation bank by The Environmental Trust for Bernardo Mountain are also included in the LHS.

The area is traversed by the Del Dios Highway, and crisscrossed by dirt roads. Various utility lines, including electrical and water, currently cross portions of the LHS. The San Dieguito River runs through the central portion of the LHS, generally paralleling the Del Dios Highway. Lake Hodges extends partially into the northeast boundary of the LHS.

The information used in the formulation of this Subarea Plan and maps was derived from a number of sources. Acreage totals are as accurate as possible based on the data available from various sources including preliminary planning documents as well as documents for projects in the final engineering stages. It should be anticipated that the acreage of the various habitat types, and the species dependent upon them, will vary over time due to natural succession, recovery from fire, or other natural causes. The natural variation is accommodated in the design of the preserve.

The LHS preserve is a combination of: (1) projects that have been approved; (2) properties on which negotiations for open space have been completed; and (3) publicly owned lands. Figure 1-3 of the County Subarea plan depicts the preserve and development area for the Lake Hodges Segment. The preserve consists of the open space areas set aside in connection with the following projects: (1) Rancho Cielo, (2) 4S Ranch, (3) Santa Fe Valley and (4) Madura projects. The major amendment areas are not shown on Figure 1-3. Agreements between the landowners, County staff, U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Game (CDFG) were concluded on all four private projects, either to establish "hard lines," for the LHS preserver or as part of the 4(d) Habitat Loss Permit process. Rancho Cielo, Santa Fe Valley, and the Madura Subdivisions have completed the land use and zoning approval process. Land use approvals are not complete for 4S Ranch.

## 2.1. *Segment Biology*

Table 2-1 presents the existing amounts of vegetation communities in the LHS, as well as the amounts of vegetation communities within the proposed preserve.

**Table 2-1**: Biology of the Lake Hodges Segment

| HABITAT | ACRES | ACRES PRESERVED | PERCENT PRESERVED |
|---|---|---|---|
| Coastal sage scrub | 3,379.83 | 2,600.85+ | 77% + |
| Coastal sage scrub/Eucalyptus | 67.40 | 37.3 | 55% |
| Southern mixed chaparral | 1,877.62 | 1,422.55 | 76% |
| Southern maritime chaparral | 17.50 | 14.50 | 83% |
| Native grassland | 81.70 | 60.40 | 74% |
| Oak woodland | 22.69 | 19.10 | 84% |
| Oak riparian woodland | 25.75 | 25.75 | 100% |
| Sycamore alluvial woodland | 6.90 | 5.20[1] | 75% |
| Mule fat scrub | 11.53 | 9.53 | 83% |
| Willow scrub | 32.33 | 23.89 | 74% |
| Freshwater marsh | 67.20 | 57.30 | 85% |
| Water | 31.80 | 18.90[2] | 59% |
| Vernal pools | 0.20 | 0.16 | 80% |
| Willow forest | 21.70 | 21.70 | 100% |
| Tamarisk scrub or disturbed wetland | 4.90 | 4.90 | 100% |
| Alkali meadow | 1.10 | 0.9 | 82% |
| Wetland swale/ecotone | 6.70 | 1.70[3] | 25% |
| Unvegetated channel | 17.80 | 16.50 | 93% |
| Non-native grassland | 941.6 | 156.6 | 17% |
| Eucalyptus woodland | 444.00 | 50.10 | 11% |
| Agricultural lands | 512.20 | 38.00 | 7.4% |
| TOTAL | 7,568.45[4] | 4,588.73 | 61% |

Notes:

1. Reduction in area of wetland habitats will be mitigated on the projects which are processed to maintain the "no net loss" standard for wetland habitats. However, on the regional scale, the loss is shown in the subarea plan because the mitigation to maintain the no net loss standard has not been identified for all projects. The Santa Fe Valley and 4S Ranch projects will require revegetation to mitigate for the loss of wetlands.

2. All open water exists as agricultural ponds. Some do not fill every year and will be modified or eliminated on individual projects.

3. In most cases, wetland swale/ecotone has been disturbed by previous agricultural activities.

4. This total and the total acres preserved do not include ruderal and disturbed habitat. That is why the total acreage of habitats does not match the total acres of land within the Lake Hodges Subarea Plan and the total acres preserved listed here as 4,588.73 does not match the total preserve area in table 2-6.

The dominant vegetation types shown on the MSCP vegetation maps for the LHS are grassland, coastal sage scrub (CSS) and chaparral. The MSCP vegetation mapping does not distinguish between native and non-native grasslands. Subsequent field mapping has shown that non-native grassland makes up the majority of the grasslands in this vegetation category.

## 2.2. *Covered Species List*

The LHS will also provide conservation benefits for uncovered species. Additional species not covered, together with those of the 85 species covered by the MSCP plan, totals 114 species. Not all species designated on the MSCP list occur within this Segment. (Attachment 1 contains a list of Sensitive Species Observed within the LHS.)

## 2.3. *Existing and Planned Land Uses Within the Lake Hodges Segment*

### 2.3.1. Existing Land Uses, General Plan Designations and Zoning

The Lake Hodges Segment (LHS) is generally vacant, with some agriculture (mostly grazing, nurseries, and some tree crops) and a few scattered homes. Some utilities, notably electric and water lines, cross the area. Table 2-2 illustrates existing land uses.

**Table 2-2**: Existing Land Uses in the Lake Hodges Subarea Plan

| LAND USE | ACRES | PERCENTAGE |
|---|---|---|
| Natural | 7,138.97 | 79% |
| Agriculture/grazing | 512.20 | 6% |
| Developed/disturbed | 1,378.83 | 15% |
| TOTAL: | 9,030.00 | |

The LHS is located in the San Dieguito Community Planning Area. The four main private projects are generally designated as Specific Plan Area, with various densities. The land owned by the City of San Diego is designated as (22) Public Semi-Public and (24) Impact Sensitive. Zoning varies through all of the properties. The majority is zoned S88 Specific Planning Area Use Regulations with varying densities. Rancho Cielo has areas of S80 Open Space zoning as well as RR1 Residential zones and a small amount of commercial. Upon completion, the Community Plan envisions a variety of low density and higher density residential areas complete with necessary public services, large areas of natural open space and a variety of recreational facilities.

### 2.3.2. Planned Land Uses and Mitigation for Covered Projects

The LHS consists of four land development projects, including Rancho Cielo, 4S Ranch, Santa Fe Valley and the Madura subdivision, two areas owned by the City of San Diego, a small CalTrans mitigation site and a mitigation bank owned and operated by The Environmental Trust.

#### *2.3.2.1. Rancho Cielo*

The Rancho Cielo ownership consists of 1,487 acres of land with recorded maps, and an additional 245 acres for which maps have not been processed. Thus, the total ownership within the LHS is 1732 acres. The project is located in the northern portion of the LHS. Approximately 442 homes, 2 commercial areas, 2 water storage tanks, a village center and an equestrian center may be constructed on roughly 603 acres within the areas of recorded maps.

Take of gnatcatchers was authorized through an Interim Habitat Loss Permit (HLP 94-003). The HLP allowed up to 64.97 acres of CSS to be impacted. In addition to the 847 acres of open space being provided, the landowner will revegetate 27.12 acres, allow the recovery of 16.24 acres and provide conservation easements that will create a 1,000 foot wide wildlife corridor. This corridor is a portion of a major linkage identified by the

MSCP consultants as the "Hodges Reservoir to La Costa Linkage." After all mitigation measures are complete and open space set aside, 883 acres of natural open space, including the special mitigation measures associated with the Habitat Loss Permit, are planned for the project. This open space is proposed to be part of the preserve. Within the open space there are seven lots permanently dedicated in an open space easement as of December 1996. Table 2-3 illustrates existing approved land uses.

The open space, corridor and other mitigation measures included in the HLP are incorporated into the Subarea Plan.

Mitigation for Rancho Cielo is in the form of dedication of a permanent open space easement.

**Table 2-3**: Rancho Cielo Land Uses

| LAND USE | ACRES |
|---|---|
| Open Space | 883.49 |
| Residential Development, Roads and Utilities | 554.47 |
| Equestrian Center | 19.38 |
| Commercial Lots | 29.40 |
| Area M proposed for village development | 245.60 |
| Total: | 1,732.00 |

### *2.3.2.2. 4S Ranch*

4S Ranch is located on approximately 3,525 acres in the eastern portion of the LHS. Approximately 634 acres were the subject of a previous project that resulted in the construction of a business park and apartment/condominiums as well as 176 acres of open space lands and 156 acres for future planning. This 634 acres is included in the Subarea Plan since an agreement has been made on the future planning area. The remaining 2,891 acres are currently designated as Future Urban Development Area (FUDA) and (21) Specific Plan Area (Future Development). The landowner has been processing a General Plan Amendment and Specific Plan to allow development on this portion of the property over the past several years.

The proposed Specific Plan defines a planned community of various types of residential, commercial, institutional, recreational, open space and other public uses consistent with

the previously developed industrial park and apartments/condominiums. Proposed land uses are shown below in Table 2-4.

In response to the MSCP planning effort, the landowner voluntarily entered into negotiations with the USFWS, CDFG and the County in mid-1994. The result of these negotiations was a defined boundary or "hard line" for the 2,891 acre portion of the Specific Plan Area that allowed a development area of 1,279 acres, with the remaining 1,612 acres being designated as permanent open space. Of the 634 acre piece that was the subject of a previous Specific Plan including the future planning area, 248.7 acres will also be included as permanent open space for a total of 1,877 acres. This area has been incorporated into this Subarea Plan.

**Table 2-4**: 4S Ranch Proposed Land Uses

| LAND USE | ACRES |
|---|---|
| Residential | 1,051 |
| Office professional /commercial | 32 |
| Light industrial | 159 |
| Mixed uses | 52 |
| Roads | 120 |
| Managed open space | 142 |
| Schools | 20 |
| Utilities | 18 |
| Park | 61 |
| Natural open space | 1,870 |
| Total: | 3,525 |

Mitigation for 4S Ranch shall consist of:

- Dedication of 1,612 acres as permanent natural open space as shown on the preserve area map, with 569 acres of the 1, 612 acres constituting excess mitigation that can be sold or used to mitigate impacts of other projects in the County of San Diego. A mitigation bank or other mechanism may be created in order to facilitate sale of the 569 acres of excess mitigation credit.

### *2.3.2.3. Santa Fe Valley*

The Santa Fe Valley project is located in the western portion of the LHS on approximately 3,163 acres. This land is held by eighty-five different owners. The Specific Plan for the Santa Fe Valley project was adopted by the Board of Supervisors on December 15, 1995. The project is a recreational residential development that will consist of approximately 1,200 homes of varying densities on 1,289 acres.

In response to the MSCP Planning effort, the major land owners whose land is subject to the Santa Fe Valley Specific Plan, entered into voluntary negotiations with the County, USFWS, and CDFG in 1994. These negotiations resulted in establishment of hard lines showing areas of development and areas of preservation. As a result of these negotiations, 1,411 acres will remain as permanent open space and has been incorporated into this Subarea Plan. The EIR for the project recognized the dedication of these 1,411 acres of land as permanent natural open space. The EIR also recognized dedication of appropriate areas in the portion of the Specific Plan Area near Lusardi Creek and the eastern portion where special area designators require avoidance of sensitive habitats. If further mitigation is required for impacts for Santa Fe Valley, acquisition of land within the LHS from willing sellers in the Lusardi/Creek/San Dieguito River corridor is planned.

Two types of open space have been identified in the Specific Plan for Santa Fe Valley, Open Space I and Open Space II. The majority of the land that will be placed in permanent natural open space is identified as Open Space I as part of the Specific Plan. Areas of Open Space I will be dedicated as easements when Tentative Maps are approved for land with Open Space I designation. Open Space II identifies lands that will support both active and passive recreational uses. Additional lands, within areas identified as Open Space II, will be left in natural open space as part of major use permits for golf courses and other active recreational uses. As a result of lands set aside as either Open Space I or Open Space II, nearly half of the property (1,411 acres) will be left as natural open space.

In addition to the area specifically identified as open space in the Santa Fe Valley Specific Plan, other lands will be left in open space as a result of the processing of maps and use permits within the project area. There will also be a special area designator placed on portions of the southwestern corner and the area of smaller lots in the eastern portion of the Specific Plan Area. The designator is designed to address protection of sensitive coastal sage scrub and vernal pool habitat and will also result in open space easement dedication. In addition to the 1,411 acres of land set aside as permanent open space under the designation Open Space I and II, the EIR for Santa Fe Valley requires as mitigation dedication of appropriate areas in the portion of the Specific Plan Area near Lusardi Creek and the eastern portion where special area designators required avoidance of sensitive habitats. If further mitigation is required for impacts from the Santa Fe Valley project, land will be acquired from willing sellers in the Lusardi Creek/San Dieguito River corridor for the purpose of enlarging and enhancing the function of the corridor. Proposed land uses for the Santa Fe Valley Specific Plan are shown on Table 2-5.

Table 2-5: Santa Fe Valley Proposed Land Uses

| LAND USE | ACRES |
|---|---|
| Open Space I (permanent open space) | 1,404 |
| Open Space II (golf course, other uses and open space) | 374 |
| Residential | 1,287 |
| Commercial | 40 |
| Community facilities | 58 |
| Total: | 3,163 |

### *2.3.2.4. Madura Subdivision*

The Madura Subdivision consists of 14 lots and a Planned Residential area. The approved project is located in the central portion of the LHS within the Rancho Cielo SPA. Approximately 142 acres of the 181 acre project site are located in permanent open space. Only two land uses will occur on the site when it is developed; 39.7 acres of residential development and 142 acres of open space.

In addition, approximately 30 acres of CSS located off-site will be provided as mitigation. The off-site parcel will be adjacent to the County's 1,000 Sycamore Canyon Regional Open Space Park or other location as approved and in conformance with the County's Biological Mitigation Ordinance.

The development/open space line allowed on HLP 94-002 is incorporated into this Subarea Plan.

Mitigation for the Madura project consists of dedication of two open space easements and a 30 acre off-site mitigation parcel, located in San Diego County, just west of Sycamore Canyon Road within the City of Poway's sphere of influence. The off-site mitigation parcel is located north of and adjacent to the County's 1,000 acre Sycamore Canyon Regional Open Space Park.

## 2.3.3. Remaining Land within the Lake Hodges Segment

Land under the ownership of the City of San Diego exists surrounding Lake Hodges as part of the ownership of the Lake. This lake land is not addressed in the LHS because it is included in the City of San Diego Subarea Plans.

Additional land, approximately 19 acres, has also been acquired by the California Department of Transportation (CalTrans) north of the reservoir and just east of the City lands. The majority of the vegetation at this site is Coastal sage scrub. Furthermore, additional lands which partially surrounds and includes Bernardo Mountain are under the control of The Environmental Trust. This land, consisting of approximately 279 acres, is intended to be utilized as a mitigation bank. Approximately 59 acres of it is located in the unincorporated area. It contains Coastal sage scrub, some Southern mixed chaparral and smaller amounts of Oak woodland and Riparian oak woodland.

## 2.4. *Land Use Summary/Preserve Description*

At build out, the Lakes Hodges Segment will generally include a mix of urban uses and rural areas consisting of pockets of homes at varying densities set amid large expanses of natural open space. Table 2-6 summarizes the planned land uses for the entire Lake Hodges Subarea.

**Table 2-6**: Lake Hodges Subarea Plan Proposed Land Uses

| LAND USE | ACRES | PERCENTAGE |
|---|---|---|
| Residential | 3,177.5 | 35.0% |
| Commercial | 101.7 | 1.1% |
| Industrial and mixed uses | 211.0 | 2.3% |
| Public Facilities* | 260.0 | 2.9% |
| Equestrian center, golf course and managed open space | 536.0 | 5.9% |
| Preserve | 4,743.3 | 53.0% |
| Total: | 9,029.2** | |

* Includes parks, schools, circulation element roads, recreation facilities, water and wastewater facilities, and fire stations.

** Excludes major and minor amendment areas.

The resultant preserve will consist of 4,743 acres in the configuration shown on the Lake Hodges Segment, Figure 1-3. The preserve includes more than 2,600 acres of Coastal sage scrub, 1,422 acres of Southern mixed chaparral, 14.5 acres of Southern maritime chaparral, 60 acres of native grassland, 105 acres of Oak and Riparian woodlands and scrub, and 79 acres of marsh and wet meadow. The preserve also protects a major portion of the Hodges Reservoir-San Pasqual Valley

Core Area identified in the Draft MSCP, as well as providing the vital regional linkage to the northwest to the Carlsbad/La Costa region. This is the primary connection between these two regions for the California gnatcatcher. After development of the projects in the LHS, habitat for at least 74 pairs of gnatcatchers will remain (70% of pairs within this Segment or 3.7% of the total population), plus there will be additional territories preserved by the Special Area Regulations Designators on the Santa Fe Valley Specific Plan. It is expected the number of territories will increase as the vegetation recovers from large fires in 1990.

The Lakes Hodges Segment is located within an important regional section of the MSCP. The areas of open space preserved in this plan contain a variety of unique and sensitive communities as outlined above. Its value is enhanced because of the location relative to the coastal regions. The land included within the preserve has a configuration of large blocks of self sustaining habitat especially in the northern portion of 4S Ranch and portions of Santa Fe Valley. In those areas, existing populations of the threatened California gnatcatcher and other sensitive species will remain. In addition, the preserved land in this plan includes linkages and connections to other areas to the northwest and east. These linkages will ensure a continual dispersal interaction with other populations of sensitive species in the region. Therefore, the size of the preserve and variety of vegetation communities contained within the open space on the plan will allow significant conserved habitats and resident species to remain viable over the long term.

Attachment 1 includes the species of plants and animals considered sensitive that occur within this area. These include reptiles associated with coastal sage scrub such as San Diego banded gecko, San Diego horned lizard, Coronado Island skink, orange throated whiptail, silvery legless lizard, coastal rosy boa, San Diego ringneck snake, and northern red diamond rattlesnake. The southwestern pond turtle and western spadefoot toad habitats along the San Dieguito River and nearby ponds will also be protected. Riparian species of birds and birds which inhabit coastal sage scrub such as the Southern California rufous-crowned sparrow, and Bell's sage sparrow in addition to the gnatcatcher will be protected under this Subarea Plan. The Golden eagle which inhabits this region will also be protected under the Lake Hodges Segment because it maintains large foraging areas and protects the primary nesting sites within the Del Dios gorge.

## *2.5. Land Uses Adjacent to the Preserve*

General guidelines and directives are given in section 1.10.

### 2.5.1. Fuel Modification Zones

Within the LHS the general guidelines of section 1.11 apply, but with the zone boundary modified by project circumstances as follows. In Santa Fe Valley and 4S Ranch, the fuel modification zone is not part of the preserve. In Rancho Cielo, the fuel modification zone may occur outside of the individual homeowner lots, however, it is not counted as part of the preserve. The fuel modification zone for Rancho Cielo is a maximum zone, and may be reduced.

## 2.6. *Preserve Ownership and Conveyance*

Ownership of land and the dedication and conveyance sequence for easements within the preserve will vary. For the Madura property, the land will remain in private ownership but will have an open space easement dedicated to the County. The easement dedicated to the County was required to be recorded prior to approval of the final map.

In the case of Rancho Cielo, the dedications of the open space easement for much of the original project have occurred.

For 4S Ranch, if approved by the Board of Supervisors, portions of the land along Lusardi Creek and the remainder of the land to be preserved will be placed in conservation easements in an agreed upon phased process with recordation of specific final map units. A mitigation bank or other mechanism may be proposed to facilitate the sale or use of the 569 acres of excess mitigation credit on the 4S ranch to mitigate impacts of to other projects in the County of San Diego. An open space easement will be dedicated to the County that will allow for such a sale or use of the 569 acres of excess mitigation credit at the time of recordation of the first final map unit located anywhere within the 2,891 acre specific plan area. The easement will be rededicated as a conservation easement as credits for mitigation are conveyed to other projects.

For Santa Fe Valley, the specific preserve ownership patterns have not been fully determined. However, a Habitat Management Plan is required by the Specific Plan to address ownership and management issues. The Specific Plan identifies two types of open space areas, Open Space I and Open Space II. Open Space I will be preserved in its entirety in separate parcels, as part of the Specific Plan. Open Space II allows a number of other uses with the final configuration of open space to be determined at the time that subdivision maps or use permits are processed on the property. At a minimum, the lands within the preserve will be the subject of open space easements dedicated to the County and the open space will be managed consistent with the Management Plan prepared for the Santa Fe Valley Specific Plan.

A land transfer has taken place to transfer in fee title 327 acres to the County Department of Parks and Recreation. It is anticipated that lands will continue to be conveyed to either a conservation trust, the San Dieguito River Park or the County Department of Parks and Recreation. Lands which may be included in such a transfer are Open Space I lands and possibly some Open Space II lands which have been identified to be maintained as natural open space.

Lands that were not transferred in fee title prior to Specific Plan approval, will be conveyed into the preserve as the projects are approved. In those cases, as a subdivision map is processed on a piece of property, the subdivider will be required to dedicate open space easements in conformance to the Specific Plan. Usually, the condition requires that the dedication occur prior to the approval of the Final Map. Therefore, the assemblage of the preserve in the Santa Fe Valley area will be staggered. However, three of the major property owners have Tentative Maps included in the draft Environmental Impact Report (EIR) for Santa Fe Valley and an additional

owner is proposing another Tentative Map which is in progress. These maps together will result in the preservation of a major large amount of open space in the Subarea Plan.

Other lands in the Segment include land on which The Environmental Trust has an agreement for a mitigation bank. That land is located on the eastern edge of the Subarea, just north of Lake Hodges. While this mitigation bank extends into the incorporated area, approximately 59 acres are located in the unincorporated area. Another piece of land within the Segment, approximately 19 acres just north of Lake Hodges, is under the ownership of the California Department of Transportation (CalTrans) as a mitigation for a CalTrans project elsewhere. The City of San Diego also owns land included within the Subarea totaling approximately 361 acres. This land is not identified within the Subarea Plan in the City of San Diego for Lake Hodges.

## 2.7. *Land Uses Allowed Within the Preserve*

Permitted uses within the preserve are detailed in section 1.9.

### 2.7.1. Existing Uses

As described in 1.9 and above, the preserve areas created through open space easements will generally prohibit any uses other than those specified. In the 4S Ranch property, specific uses that will continue in the preserve include: horseback riding, mountain biking, fishing, low impact recreational uses, water wells, pumps and associated facilities, dams, roads and trails, grazing, public utilities and hunting consistent with the approved Habitat Management Plan. However, until all of the areas of open space have been dedicated through processing of maps, there may be a continuation of existing uses within areas shown as preserve.

### 2.7.2. Public Access and Recreation

In addition to the access and recreation activities indicated in 1.9.2, public access and passive recreation are permitted uses within specified areas of the preserve on the Santa Fe Valley and 4S Ranch portions of the preserve. The location of access points, new trails and facilities, and a public control plan will be included in the framework habitat management plans and the area-specific management directives.

The Santa Fe Valley Specific Plan area shows a trail extending through the San Dieguito River and to the east as well as a trail diagonally across the central portion of the plan area connecting to the east loop road and Four Gee Road. The access points will be adjacent to the Del Dios Highway north of the bridge crossing of the San Dieguito River and adjacent to the proposed Transit Center. The 4S Ranch project will include a public trail through the Lusardi Creek portion of the site, on the southern end of the project.

### 2.7.3. Infrastructure

General guidelines are given in 1.9.3.

Figure 6-2 of the Santa Fe Valley Specific Plan illustrates the existing infrastructure and 6-3 shows the proposed infrastructure that will be necessary for the development of Santa Fe Valley. For the most part, the proposed infrastructure occurs outside of the Open Space I areas. Proposed infrastructure would extend sewer lines through the golf course on the west edge of the Specific Plan Area. Since portions of the golf course are to remain in open space, the proposed infrastructure would impact some of them. However, the existing infrastructure for the Santa Fe Valley already supports 12 inch water lines through the central portion of the Specific Plan Area and a regional aqueduct traversing through the western portion of the site, both in areas where the land is proposed to be preserved as open space.

Figure 10 of the Rancho Cielo Mitigation Plan dated April 14, 1995 shows the areas of sewer and water easements through the areas of natural open space. There are several small water and sewer easements through the open space areas and they were accounted for in the Habitat Loss Permit processed for the project.

4S Ranch proposes to have off-site water transmission lines to the project as well as off-site reclaimed water lines connecting to the treatment facility on 4S Ranch. While it is planned that only one of the off-site pipeline corridors will traverse the open space preserve, it may be necessary for others to do so as well as the project is refined.

Mitigation for disturbance inside the preserve due to infrastructure necessary to support the project shall be as required in Section 2.8.

### 2.7.4. Scientific and Biologic Activities

See section 1.9.4 for details and requirements.

### 2.7.5. Emergency, Safety and Police Services

While brush management will be conducted outside the preserve, it may be desirable to carry out programs and activities designed to reduce the possibility of catastrophic wildfires that could destroy much of the Lake Hodges Segment preserve. Such activities may include controlled burns and fuel load reduction carried out in accordance with section 1.9.5.1.

All Law enforcement, medical, rescue, and emergency agencies shall be allowed unrestricted access to the preserve as detailed in Section 1.9.5.

## 2.8. *Statement of Mitigation*

### 2.8.1. Mitigation for Covered Projects

Covered Projects shall consist of 4S Ranch, Rancho Cielo, Santa Fe Valley and the Madura Subdivision. The Take Authorizations cover all activities that were identified in the project descriptions including but not limited to all construction and land disturbance/alteration necessary, either on or off-site, within or outside of the preserve, to complete and operate the project. Mitigation shall generally consist of participation in the subarea planning process and the dedication or transfer ownership of an appropriate amount of natural habitat to the LHS preserve as identified in Section 2.3.2. of this Subarea Plan. This may involve transferring fee title of the affected land to an acceptable private and/or public entity, or retention in private ownership with the recordation of suitable conservation easements.

Biological mitigation for wetlands shall be in accordance with the federal policy of "no net loss" of wetland functions and values plus the U.S. Environmental Protection Agency's Section 404(b)(1) guidelines (40 C.F.R. Part 230).

## 2.9. *Interim Protection/Long-term Protection*

Existing County regulations and ordinances, as well as project Specific Plans, will provide both interim and permanent protection. No proposed project within the LHS will be approved by the Board of Supervisors without a determination of conformance with the LHS. No grading will be done within the LHS Preserve without a determination of conformance with the LHS by the Director of the Department of Planning and Land Use of the County of San Diego.

## 2.10. *Habitat Management Plan*

A Framework Management Plan will be created by the County as indicated in 1.7. This will act as the guide for all future Habitat Management Plans in the LHS as well as the other Segments of the Subarea Plan.

A Habitat Management Plan for the portion of the LHS preserve located in Rancho Cielo was included as part of the Mitigation Plan for the Habitat Loss Permit. Because the Madura project is of smaller size, it has no specific management plan other than to maintain the area as open space. The 4S Ranch and Santa Fe Valley Specific Plans contain conditions that the proponents shall prepare and submit separate habitat management plans to the CDFG, USFWS and County prior to the recordation of the first final map within each project. The Habitat Management Plan for 4S Ranch and Santa Fe Valley will act as their area-specific management directives.

Additional Habitat Management Plans shall only be required for those portions of the preserve that remain in private ownership. Land which is transferred to public ownership shall be managed

by the accepting entity which may prepare a new habitat management plan or incorporate management into existing appropriate plans.

The Habitat Management Plan will include provisions for control of access, signage to prevent trespassing, trash and litter pickup, and other required activities. Any specific species surveys, censuses, biological monitoring and all and all other scientific research activities will be carried out consistent with the MSCP Plan. Any State and/or Federal agency proposing to perform such research in the privately owned portions of the preserve shall obtain permission and indemnify the landowner prior to the beginning of any such activities.

## *2.11. Focal Area for Directed Acquisition*

Within this Segment, the corridor through Lusardi Creek is a focal area for directed acquisition as public funds become available.

ATTACHMENT 1

## SENSITIVE SPECIES OBSERVED WITHIN THE LAKE HODGES SEGMENT

PLANTS

*Acanthomintha ilicifolia* -- Open space easement within the 4S-Ranch inset area.

*Adolphia californica* -- protected within Coastal sage scrub and chaparral throughout the subarea.

*Arctostaphylos glandulosa* ssp. *crassifolia* -- protected within maritime chaparral.

*Artemisia palmeri* -- protected within drainage areas.

*Baccharis vanessae* -- protected within Rancho Cielo.

*Brodiaea orcuttii* -- protected within tributaries to the San Dieguito River.

*Ceanothus verrucosus* -- protected within the chaparral on the north facing slopes on the south side of the Del Dios gorge.

*Chamaebatia australis* -- a small population of this species occurs within an area that has been subdivided and on which the "D" designator has been applied.

*Comarostaphylis diversifolia* ssp. *diversifolia* -- protected along the Del Dios gorge area as well as along the San Dieguito River.

*Dudleya variegata* -- protected within the northeastern portion of the Santa Fe Valley Specific Plan Area.

*Dudleya viscida* -- protected within Del Dios gorge.

*Ferocactus viridescens* -- protected on the slopes in the northeastern portions of the Santa Fe Valley Specific Plan Area.

*Iva hayesiana* -- protected in the areas of open space in the drainages.

*Juncus acutus* var. *leopoldii* -- protected in areas of open space in the drainages.

*Quercus dumosa* -- protected in the open space areas along Lusardi Creek.

*Selaginella cinerascens* -- protected in open space within areas of chaparral and Coastal sage scrub.

BIRD SPECIES

American kestrel -- adequate habitat is maintained around Eucalyptus trees and the San Dieguito River.

Barn owl -- adequate habitat in cliffs and trees in open space.

Bell's sage sparrow -- adequate habitat is maintained within the subarea on all of the projects due to the inclusion of large areas of Coastal sage scrub as open space.

Black crowned night heron -- adequate foraging habitat is maintained in pond areas within the subarea.

Blue gray gnatcatcher -- adequate foraging habitat for this winter visitor is maintained in the riparian and chaparral portions of the subarea.

Blue grosbeak -- adequate habitat is maintained for this species in the riparian portions of the subarea.

California gnatcatcher -- The pre-development estimates of the number of gnatcatchers from the large development projects is 105 pairs. After the projects are developed, there will be habitat remaining of at least 74 pairs plus additional territories regulated by the Design designators on the Santa Fe Valley plan. The number of territories remaining will probably increase as the vegetation recovers from large fires in 1990 and is expected to provide habitat for an estimated 74 pairs of gnatcatchers.

California horned lark -- some habitat is maintained in the area of Lusardi Creek and the native grassland in 4S ranch, however, the majority of its habitat existing in the area is fallow agricultural fields.

Cooper's hawk -- adequate habitat is maintained within riparian and drainage courses.

Downy woodpecker -- adequate habitat for this species is maintained in the riparian woodlands throughout the subarea.

Golden eagle -- adequate habitat for the golden eagle is protected in the large areas of open space associated with the proposed subarea plan. Nest sites are protected within the Del Dios gorge.

Grasshopper sparrow -- adequate habitat for this species is maintained in the grassland area in the northern portion of 4S Ranch.

Great blue heron -- adequate habitat for this species is maintained in the wetland portions of the subarea.

Great egret -- adequate foraging habitat for this species is maintained along the San Dieguito River.

Green heron -- adequate foraging habitat for this species is maintained along the San Dieguito River around ponded areas and the San Dieguito River.

Loggerhead shrike -- adequate habitat for this species is maintained in the western portion of the subarea plan.

Merlin -- adequate foraging habitat is maintained in the western portions of the subarea and areas around Lake Hodges.

Northern harrier -- large areas of habitat suitable for this species is maintained within the grassy areas of northern 4S Ranch and adjacent lands in Santa Fe Valley.

Prairie falcon -- adequate foraging habitat is maintained in the western portions of the subarea and areas around Lake Hodges.

Rufous crowned sparrow -- adequate habitat is maintained within the subarea within the Santa Fe Valley area.

San Diego cactus wren -- areas inhabited with this species or a high potential for it occur in the open space areas along the northeastern side of Lake Hodges.

Turkey vulture -- adequate foraging habitat is maintained in the open areas of the subarea.

White tailed kite -- adequate open land and riparian habitat is maintained within the subarea for this species.

Yellow warbler -- adequate habitat is maintained along the San Dieguito River and Lusardi Creek.

REPTILES AND AMPHIBIANS

Coronado Island skink -- adequate habitat for this species is protected within the open space along Lusardi Creek and other areas of Coastal sage scrub.

Granite spiny lizard -- adequate habitat for this species is protected in the areas of chaparral and Coastal sage scrub that are preserved.

Northern red diamond rattlesnake -- adequate habitat for this species is protected in the areas of chaparral and Coastal sage scrub that are preserved.

Orange throated whiptail -- adequate habitat for this species is protected in the areas of Coastal sage scrub that are being set aside in the preserve.

San Diego horned lizard -- large areas of habitat for this species are being protected in the open space preserves within the Coastal sage scrub and chaparral habitats.

Western pond turtle -- adequate habitat for this species is protected along the San Dieguito River and Lusardi Creek.

Western spadefoot toad -- adequate habitat for this species is protected in the riparian and pond areas.

Western whiptail -- adequate habitat for this species is protected in the areas of chaparral and Coastal sage scrub.

MAMMALS

San Diego black-tailed jackrabbit -- adequate habitat for this species is protected in areas of chaparral and Coastal sage scrub that are preserved.

San Diego desert woodrat -- adequate habitat for this species is protected in areas of chaparral and Coastal sage scrub that are preserved.

INVERTEBRATES

San Diego fairy shrimp -- found within the vernal pools on the southwestern portion of the Santa Fe Valley site. This species is protected by special "D" design designators.

# 3. South County Segment

The South County Segment (SCS) includes about 82,767 acres within the County jurisdiction in the southwest section of the County (see Figures 1-2, and 1-3 for Covered Projects and Preserve Areas). The planning area generally includes lands south of Jamacha Boulevard and South Bay Parkway, including the lower drainage basins of the Sweetwater, Otay, and the Tijuana Rivers. On the southwest, the plan includes the westernmost parcel of Otay Ranch south of Telegraph Canyon Road and extends south to the International Border south and east of Otay Lakes. To the northeast, the plan includes State, County, and other parcels on McGinty Mountain. On the east, the plan covers substantial areas south of Campo Road (State Route 94), excluding the rural communities of Jamul and Dulzura. In the extreme southeast, the plan includes Bureau of Land Management (BLM) and California Department of Forestry lands in the San Ysidro Mountains (Otay Mountain), and the lower western slopes of Tecate Mountain; it also includes BLM parcels southeast of Dulzura and north of State Route 94.

The plan includes two outlying areas on McGinty Mountain to the north and BLM lands north of Highway 94 and east of Dulzura (Engineer Springs, White Mountain).

During the development of the SCS, efforts were made to accurately reflect approved projects. This document is not intended to supersede the regulatory approval requirement for any property or to supersede any condition in existing County permits or maps. To the extent that there is a conflict between the articles of this document and permit conditions, the permit conditions shall prevail. The Otay Ranch project is the one exception to this rule. The project proponent is involved in negotiations with the County, the City of Chula Vista, and the Wildlife Agencies which will require changes to the existing plan.

Within the 82,767 acres of the SCS, the open space includes about 48,240 acres (see Table 1). The SCS covers substantial areas around the urban fringe of southwest San Diego County, from the International Border to the Sweetwater River drainage, including major parts of the San Miguel, San Ysidro and Jamul Mountains. The proposed preserve area includes much of the river bottom lands within County jurisdiction of the Otay River and the Sweetwater River above the Sweetwater Reservoir to Highway 94. Substantial habitat areas include Otay Mountain (with almost contiguous connections east toward Tecate Peak), the lower Otay River and Otay Lakes, the bulk of the Jamul Mountains, with linkages to the large area including San Miguel Mountain and upper Sweetwater River south of Highway 94 and Willow Glen Drive. These latter lands link up with U.S. Forest Service lands, including the Hauser and Pine Creek Wilderness areas, and ultimately to other State and Federal managed lands covering much of the eastern one-half of San Diego County.

The SCS presently covers five private development plans: Otay Ranch, Hidden Valley Estates, Pointe San Diego, Las Montañas, and parts of Loma del Sol. All of these projects have been designed with natural open space areas and make up the bulk of the

private preserved areas in the SCS (both on-site and off-site from the project development areas). An additional proposed private development plan, San Miguel Partners (located south of Sweetwater Reservoir) is in the planning stages in the City of Chula Vista. Although this project is currently within the County of San Diego jurisdiction, it is being preplanned by the City of Chula Vista and will likely be annexed to the City.

The SCS also includes lands owned by non-governmental entities, such as The Nature Conservancy (TNC) lands on McGinty Mountain, and private mitigation banks including those managed by The Environmental Trust (TET) on McGinty Mountain, O'Neal Canyon and Marron Valley.

The SCS also includes public lands with natural open space areas pledged for conservation purposes by the Federal BLM and Fish and Wildlife Service, State of California Department of Forestry and Department of Fish and Game, the City of San Diego, and the County of San Diego, including Rancho San Diego purchased by the County, CalTrans, and San Diego Association of Governments (SANDAG) and is now part of the National Wildlife Refuge System.

Other public agencies, including the Sweetwater Authority, the Otay Municipal Water District have prepared plans. These habitat plans will substantially add to the presently proposed preserve area extent and biological function.

## 3.1. *Key Aspects of the SCS Plan Preserve*

From northeast to west and south, the covered projects preserve substantial high value habitat areas within the SCS. On McGinty Mountain, a combination of lands owned and managed by The Environmental Trust, State of California, San Diego County and The Nature Conservancy cover much of the top of McGinty Mountain. These lands are separated from other lands in the Segment Plan Preserve by Jamul Drive and parts of rural Jamacha and Jamul. South of Jamul Drive, the approved Loma Del Sol Habitat Loss Permit (HLP) area, Las Montañas and BLM parcels form a contiguous core and linkage to Hidden Valley Estates.

Northwest of Hidden Valley Estates, undeveloped portions of the National Wildlife Refuge property cover the bottomlands and slopes along both sides of the Sweetwater River. To the northeast, north of Sweetwater Reservoir, preserved lands within Pointe San Diego extend on both sides of Jamacha Boulevard to the lower slopes of Dictionary Hill. East and south of the Sweetwater Reservoir, off-site mitigation parcels acquired by Pointe San Diego and Hidden Valley Estates, as well as Sweetwater II (part of the Rancho San Diego/RTC purchase) are included in the proposed preserve.

South of Proctor Valley, the Otay Ranch Jamul Mountains parcel (and a large BLM ownership) protect much of the Coastal sage scrub and Chaparral habitats. Immediately around Upper and Lower Otay Reservoirs, the City of San Diego and the County Park

protect substantial lake and Coastal sage scrub (CSS) vegetation. The Otay Valley parcel of Otay Ranch and the Otay River Valley Regional Park protect most of the bottom lands and lower slopes along the Otay River, including Riparian scrub, grasslands, and Coastal sage scrub.

South of Lower Otay Reservoir, BLM, County Park and County Detention Facility open space protects Coastal sage scrub habitats. The Environmental Trust, BLM, and Otay Mountain parcel of Otay Ranch protects most of the San Ysidro Mountains south of the Otay River. Farther to the east, California Department of Forestry lands link BLM lands on Otay Mountain with additional BLM lands east of Dulzura and east toward Tecate Peak.

## 3.2. *South County Segment Biology*

The methodology for gathering data on biological resources is set out in Chapter 1, Section 1.2.1. Table 3-1 indicates regional vegetation type totals derived from the MSCP regional vegetation database and is based on individual project boundaries digitized into the Geographical Information System (GIS) database. These data are only an approximation of the areas and resources identified in original project analyses. In all cases, the original approved open space maps and resource assessments take precedence over the summary regional data presented here.

The preserve area presently includes about 48,240 acres. The native vegetation of the South County Segment is dominated by Coastal sage scrub (19,542 acres) Chaparral (18,106 acres) vegetation. Chaparral/coastal sage scrub mix comprises about 637 acres of preserve land. Additionally, the largest stands of Southern cypress woodland (5,320 acres) in the United States exist on the slopes of Otay and Tecate Peaks in the South County Segment. Grasslands comprise about 1,172 acres; greater than 200 acres of the following habitats fall within the preserve area: Coast live oak riparian forest, Riparian forest, Oak woodlands, and disturbed habitats. The remaining habitats in the preserve are less than 200 acres each (see Table 3-1).

## TABLE 3-1

## CONSERVATION BY PROJECT IN SOUTH COUNTY SEGMENT

| VEGETATION COMMUNITY | TOTAL SEGMENT | TOTAL PROJECTS | | HIDDEN VALLEY | | LAS MONTAÑAS | | LOMA DEL SOL | | OTAY RANCH | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | PRESERVED | TOTAL | PRESERVED | TOTAL | PRESERVED | TOTAL | PRESERVED | TOTAL | PRESERVED | TOTAL |
| Maritime succulent scrub | 292 | 179 | 290 | 0 | 0 | 0 | 0 | 0 | 0 | 179 | 290 |
| Coastal sage scrub (CSS) | 31,977 | 20,969 | 25,300 | 480 | 762 | 253 | 407 | 73 | 126 | 8,143 | 11,225 |
| Chaparral | 22,066 | 17,801 | 19,124 | 811 | 935 | 84 | 318 | 0 | 0 | 1,795 | 2,750 |
| Chaparral/CSS | 156 | 151 | 156 | 0 | 0 | 1 | 1 | 0 | 0 | 125 | 130 |
| Grassland | 5,645 | 1,223 | 3,105 | 19 | 109 | 0 | 0 | 0 | 0 | 906 | 2,176 |
| Fresh water marsh | 313 | 175 | 253 | 9 | 9 | 0 | 0 | 0 | 0 | 114 | 166 |
| Oak riparian forest | 279 | 212 | 231 | 0 | 0 | 20 | 35 | 0 | 0 | 39 | 43 |
| Riparian forest | 503 | 283 | 336 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Riparian woodland | 8 | 8 | 8 | 0 | 0 | 0 | 0 | 0 | 0 | 8 | 8 |
| Riparian scrub | 870 | 543 | 631 | 0 | 0 | 0 | 0 | 0 | 0 | 389 | 403 |
| Oak woodland | 341 | 297 | 297 | 41 | 41 | 1 | 1 | 0 | 0 | 208 | 208 |
| Tecate cypress forest | 5,650 | 5,349 | 5,356 | 0 | 0 | 0 | 0 | 0 | 0 | 186 | 193 |
| Eucalyptus | 53 | 16 | 35 | 0 | 0 | 0 | 0 | 0 | 0 | 16 | 31 |
| Open water | 1,545 | 932 | 939 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 3 |
| Disturbed wetlands | 91 | 29 | 34 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Natural flood channel | 191 | 154 | 159 | 0 | 0 | 0 | 0 | 0 | 0 | 122 | 124 |
| Disturbed | 1,277 | 275 | 448 | 2 | 19 | 2 | 19 | 0 | 0 | 16 | 18 |
| Agriculture/Developed | 11,491 | 278 | 5,306 | 4 | 21 | 8 | 116 | 0 | 0 | 153 | 4,568 |
| Unknown | 19 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| TOTAL | 82,767 | 48,874 | 62,008 | 1,366 | 1,896 | 369 | 897 | 73 | 126 | 12,401 | 22,336 |

## TABLE 3-1 (CONTINUED)

## CONSERVATION BY PROJECT IN SOUTH COUNTY SEGMENT

| VEGETATION COMMUNITY | THE POINTE | | BLM | | STATE OF CALIFORNIA | | CITY OF SAN DIEGO | | COUNTY OF SAN DIEGO | | RANCHO SAN DIEGO | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | PRESERVED | TOTAL | PRESERVED | TOTAL | PRESERVED | TOTAL | PRESERVED | TOTAL | PRESERVED | TOTAL | PRESERVED | TOTAL |
| Maritime succulent scrub | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Coastal sage scrub (CSS) | 426 | 644 | 4,544 | 4,555 | 280 | 577 | 3,803 | 3,891 | 312 | 457 | 1,448 | 1,449 |
| Chaparral | 44 | 49 | 11,849 | 11,849 | 1,502 | 1,502 | 837 | 840 | 15 | 17 | 16 | 16 |
| Chaparral/CSS | 0 | 0 | 22 | 22 | 0 | 0 | 3 | 3 | 0 | 0 | 0 | 0 |
| Grassland | 9 | 96 | 51 | 51 | 0 | 176 | 129 | 142 | 1 | 246 | 105 | 106 |
| Fresh water marsh | 0 | 1 | 0 | 0 | 0 | 5 | 50 | 50 | 2 | 22 | 0 | 0 |
| Oak riparian forest | 0 | 0 | 30 | 30 | 0 | 0 | 109 | 109 | 0 | 0 | 14 | 14 |
| Riparian forest | 0 | 0 | 0 | 0 | 0 | 0 | 116 | 116 | 0 | 48 | 167 | 172 |
| Riparian woodland | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Riparian scrub | 1 | 11 | 18 | 18 | 0 | 5 | 130 | 133 | 1 | 57 | 4 | 4 |
| Oak woodland | 0 | 0 | 6 | 6 | 0 | 0 | 31 | 31 | 0 | 0 | 0 | 0 |
| Tecate cypress forest | 0 | 0 | 5,093 | 5,093 | 32 | 32 | 2 | 2 | 0 | 0 | 0 | 0 |
| Eucalyptus | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 2 |
| Open water | 0 | 2 | 0 | 0 | 0 | 0 | 930 | 931 | 0 | 3 | 0 | 0 |
| Disturbed wetlands | 0 | 0 | 0 | 0 | 0 | 0 | 11 | 11 | 0 | 5 | 18 | 18 |
| Natural flood channel | 0 | 0 | 0 | 0 | 0 | 0 | 24 | 24 | 6 | 9 | 2 | 2 |
| Disturbed | 4 | 23 | 2 | 2 | 0 | 25 | 180 | 198 | 1 | 56 | 56 | 76 |
| Agriculture/Developed | 4 | 19 | 1 | 1 | 0 | 266 | 78 | 79 | 9 | 194 | 19 | 40 |
| Unknown | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| TOTAL | 488 | 845 | 21,616 | 21,627 | 1,814 | 2,588 | 6,433 | 6,560 | 347 | 1,116 | 1,849 | 1,899 |

## TABLE 3-1 (CONTINUED)

## CONSERVATION BY PROJECT IN SOUTH COUNTY SEGMENT

| VEGETATION COMMUNITY | TOTAL SEGMENT | TNC | | TET | | LAMBRON | | CUYAMACA COLLEGE | | RANCHO SAN MIGUEL | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | PRESERVED | TOTAL | PRESERVED | TOTAL | PRESERVED | TOTAL | PRESERVED | TOTAL | PRESERVED | TOTAL |
| Maritime succulent scrub | 292 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Coastal sage scrub (CSS) | 31,977 | 214 | 214 | 993 | 993 | 328 | 328 | 36 | 63 | 1,589 | 1,684 |
| Chaparral | 22,066 | 358 | 358 | 490 | 490 | 442 | 442 | 0 | 0 | 271 | 272 |
| Chaparral/CSS | 156 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Grassland | 5,645 | 0 | 0 | 3 | 3 | 3 | 3 | 0 | 9 | 224 | 619 |
| Fresh water marsh | 313 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 5 | 5 |
| Oak riparian forest | 279 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 2 | 0 | 0 |
| Riparian forest | 503 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Riparian woodland | 8 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Riparian scrub | 870 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Oak woodland | 341 | 2 | 2 | 8 | 8 | | | 0 | 0 | 0 | 0 |
| Tecate cypress forest | 5,650 | 0 | 0 | 36 | 36 | 85 | 85 | 0 | 0 | 0 | 0 |
| Eucalyptus | 53 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Open water | 1,545 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Disturbed wetlands | 91 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 0 |
| Natural flood channel | 191 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Disturbed | 1,277 | 0 | 0 | 12 | 12 | 11 | 11 | 8 | 12 | 15 | 15 |
| Agriculture/Developed | 11,491 | 1 | 1 | 1 | 1 | 0 | 0 | 3 | 80 | 1 | 1 |
| Unknown | 19 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| TOTAL | 82,767 | 575 | 575 | 1,543 | 1,543 | 873 | 873 | 49 | 168 | 2,112 | 2,604 |

**Table 3-2**: Biology of the South County Segment

| HABITAT | ACRES | ACRES PRESERVED | PERCENT PRESERVED |
|---|---|---|---|
| Maritime Succulent Scrub | 288 | 179 | 62% |
| Coastal Sage Scrub | 25,255 | 20,642 | 81% |
| Chaparral | 19,118 | 17,751 | 92% |
| Chaparral/Coastal Sage Scrub Mix | 156 | 156 | 100% |
| Grassland | 3,101 | 1,170 | 38% |
| Freshwater Marsh | 254 | 173 | 68% |
| South California Live Oak Riparian Forest | 228 | 209 | 92% |
| Riparian Forest | 336 | 263 | 78% |
| Riparian Woodland | 8 | 8 | 100% |
| Riparian Scrub | 628 | 543 | 86% |
| Oak Woodland | 298 | 298 | 100% |
| Tecate Cypress Forest | 5,357 | 5,349 | 99.8% |
| Eucalyptus | 36 | 18 | 50% |
| Open Water | 937 | 931 | 99% |
| Disturbed Wetland | 34 | 29 | 85% |
| Non-Vegetated Stream Channel | 158 | 152 | 96% |

## 3.3. *Existing and Planned Land Uses Within the Segment Plan*

### 3.3.1. Existing Land Uses within the South County Segment

Land uses within the proposed covered projects of the SCS are generally vacant and/or used for agriculture (generally groves and grazing). The SCS covers parts of the following County planning areas: Crest-Dehesa-Harbison Canyon-Granite Hills Community Plan, Jamul-Dulzura Community Plan, Sweetwater Community Plan, and Otay Subregional Planning Area.

Existing residential uses in the area include generally urban densities adjacent to the Cities of Chula Vista and San Diego to the west; in the communities of Spring Valley and Casa de Oro (urban to rural densities) to the north; the rural communities of Jamul and Dulzura lie along Highway 94 to the east. The developing commercial/industrial land uses on Otay Mesa lie to the west along the International Boundary.

Much of the SCS is in private ownership. The largest area of land managed for resource conservation is located on Otay Mountain and is managed by the Federal Bureau of Land Management (BLM). The City of San Diego owns land around the Upper and Lower Otay Reservoirs and Marron Valley. The majority of this land is managed as a regional park by the County Department of Parks and Recreation.

### 3.3.2. South County Segment Planned Land Uses

In general, projects covered by the MSCP Plan in this area designated land for residential uses and associated facilities. Four projects, propose one or more golf courses. In addition, Las Montañas and Pointe San Diego propose resort facilities. Pointe San Diego includes corporate offices and a professional park. Otay Ranch, when completed, will have a full range of residential and commercial development.

### 3.3.3. Planned Land Uses For Covered Projects

#### *3.3.3.1. Hidden Valley Estates*

Hidden Valley Estates (SPA 88-002, TM 4761) was approved by the Board of Supervisors on July 10, 1991 for the owner/applicant, Southwest Diversified. The project proposes 438 dwelling units on 1460 acres, with additional recreation, waste water treatment, and other facilities. It is located on the north side of San Miguel Mountain and is 14 miles east of the intersection of Interstate 5 and State Highway 94 and 1 mile west of the community of Jamul. Although the project has not constructed any dwelling units, some of the mass grading has been performed.

The Hidden Valley Specific Plan area includes nine vegetation types. The area is largely undeveloped with approximately 5 percent of the area being in agricultural or developed uses. See Table 3-1 for project vegetation summary based on geographical information system analysis. Additional information about vegetation is found in the project EIR which Reported that Southern mixed chaparral, totaling 795.0 acres, is the dominant Vegetation type within the Specific Plan boundaries. Table 3-3 shows the acreages of the different vegetation types within the Specific Plan.

**Table 3-3**: Vegetation types within the Hidden Valley Specific Plan

| VEGETATION TYPE | ACRES |
|---|---|
| Southern Mixed Chaparral | 795 |
| Inland sage scrub/<br>Disturbed inland sage scrub | 536.9 |
| Southern oak woodland | 23 |
| Engelmann oak woodland | 18 |
| Freshwater marsh/riparian scrub | 2.5 |
| Sycamore woodland | 0.7 |
| Wet meadow | 0.3 |
| Vernal pools | 0.134 |
| Agriculture | 31 |
| Disturbed habitat | 53 |

### *3.3.3.2. Las Montañas*

The Las Montañas project is located on both sides of State Route 94, east of eastern Jamul (and south of Steel Canyon Road), south of Jamul Drive and north of Hidden Valley Estates. The project functionally separates small rural lot development along the Steel Canyon Road and larger lot rural development to the east around State Route 94/Campo Road and the Lyons Valley Road/Indian Springs area. Rancho San Diego and Steele Canyon Estates are located to the north. The partially constructed Loma Del Sol development lies to the northwest. Property managed by the BLM abuts the southern boundary of the project and property owned by The Nature Conservancy (TNC) lies north of Jamul Drive and Lyons Valley Road (not abutting the project site). The approved open space for

Las Montañas allows undeveloped habitat linkages to open areas to the north and south, and to a lesser extent, to the southwest and northeast. Habitats to the northwest and northeast are primarily Coastal sage scrub. Oak woodland and Chaparral occur to the south and southwest.

The current proposal includes amendments to the Las Montañas Specific Plan originally approved by the Board of Supervisors in February 1984 and a modification to the Major Use Permit originally approved in August 1988. Approved land uses within the 706 acres existing Specific Plan include a 600 room resort hotel, an 18-hole golf course and club house, a nine court tennis facility, and a residential development area conceptually designated to accommodate 170 residential units. The current proposal would increase the Specific Plan area from 706 to 929 acres.

The Environmental Impact Report prepared for Las Montañas Specific Plan indicated that the Specific Plan area included 7 habitat types. The dominant vegetation type found within Las Montañas is Coastal sage scrub (totaling 382.05 acres). The remaining vegetation includes 322.80 acres of Southern mixed chaparral, 21.25 acres of Oak riparian forest, 10.55 acres of Coast live oak woodland, 0.14 acres of Mule fat scrub, 0.21 acres of Eucalyptus woodland, 0.43 acres of orchard, 2.38 acres of developed land, and 189.11 acres disturbed habitat. The area is largely undeveloped, with approximately 20 percent of the area being in agricultural or developed uses. The undeveloped portions of the area has a high habitat value, and provides habitat for 14 sensitive species of plants and animals. See Table 1 for project vegetation summary based on geographic information system analysis.

### *3.3.3.3. Loma Del Sol*

The Loma Del Sol Specific Plan Area is located north and south of Jamul Drive and southeast of the Sweetwater River in the Jamacha area, north of Jamul. This project, originally known as the Windmill Estates Specific Plan was approved in 1985. A subsequent Specific Plan provided for a residential development, a resort, and a 27 hole golf course. Some of the original land is currently being considered for a Specific Plan Amendment to delete the resort development and replace it with single-family homesites.

The current Loma Del Sol project discussed here applies only to the area covered by the approved Habitat Loss Permit (HLP 95-003). It is within Tentative Map 4577RPL[1], which covers approximately 129.0 acres of land. Of this, 125 acres consist of high quality Coastal sage scrub, the remaining 4 acres have been previously disturbed by clearing for the improvement of the access road that traverses the property. The project provides habitat for 11 sensitive plants and animals, including the California gnatcatcher. Eight breeding pairs of gnatcatchers

were identified on-site. The HLP application covers existing legal lots. See Table 1 for a project vegetation summary based on geographic information system analysis.

The proposed project would impact a total of 17.95 acres (about 14% of site) by grading for house lots. This grading includes direct impacts to 14.28 acres of undisturbed CSS. Biological open space is proposed for 92.23 acres (71% of the site). Impacts to the remaining 14.10 acres that are not within an open space easement from fire clearing and landscaping could raise the loss of CSS to a total of 28.48 acres (approximately 22% of the undisturbed CSS). The project as proposed would also directly impact six of the eight pairs of gnatcatchers. Habitat Loss Permit 95-003 mitigates project impacts by designating undeveloped portions of the area around the existing 27 hole golf course as open space and by requiring a purchase of 19.7 acres as off-site mitigation land.

#### *3.3.3.4. The Pointe San Diego*

The Pointe San Diego project is located southeast and south of the intersection of Sweetwater Springs Boulevard and Jamacha Boulevard, near the north shore of Sweetwater Reservoir. The Pointe project, approved in August, 1990 includes a destination resort, corporate offices, 619 single family homes, 236 apartments, a 350,000 square foot office professional park, and an 18-hole golf course.

The environmental documentation (EIR 90-GP3) prepared for The Pointe Specific Plan included a section on biology. The EIR indicated that the proposed project would result in a significant and not mitigable impact to biology. The Board of Supervisors made overriding findings when approving the project.

Based on the data in that report, the dominant vegetation type found within the specific plan boundaries is Diegan sage scrub (Coastal sage scrub, including disturbed areas) totaling 514.1 acres. The remaining vegetation included 94.2 acres of non-native grasslands, 6.9 acres of Coastal freshwater marsh, 3.2 acres of Chamise chaparral, 2.3 acres of Southern willow scrub, 2.0 acres of open water, 0.1 acres of Southern cottonwood-willow riparian forest, and 30.5 acres of disturbed habitat.

The proposed project would impact 190 acres (37%) of the Diegan sage scrub, 94.2 acres (91%) of non-native grasslands, 6.6 acres (96%) of Freshwater marsh, 2.1 acres (91%) Southern willow scrub, 0.1 acre (100%) of Southern cottonwood-willow riparian forest, 2.0 acres (100%) of open water, 21.7 acres (71%) of the disturbed areas and no acres of the Chamise chaparral.

Sensitive species located on-site include the following plants and animals: Plants - California adolphia, Western dichondria, Coast barrel cactus, Palmer's

grapplinghook, Otay tarplant, Munz's sage, Ashy spike-moss, San Diego County needle grass, and San Diego sunflower. Animals - Western pond turtle, Northern harrier, Red-shouldered hawk, Cooper's hawk, Sharp-shinned hawk, Golden eagle, Burrowing owl and California gnatcatcher.

Development of the project would result in impacts to all of these species, but most notable would be the impacts to the gnatcatchers located on-site. Of the 28 individuals comprising 18 pairs of birds, it is estimated that 8 pairs would be displaced. The project was approved with overriding findings of public benefits. It was determined that on-site and off-site open space and revegetation programs would provide adequate mitigation for the remaining species.

### *3.3.3.5. San Miguel Ranch Properties*

The San Miguel Ranch Properties consist of approximately 2,590 acres of land in the northern portion of the South County Segment. The property consists of two separate parcels both of which are included within the context of a tentative agreement between the owner, the California Department of Fish and game and the U.S. Fish and Wildlife Service. This agreement generally provides for 145 acres of open space and habitat preserve on the Southern Parcel, 166 acres of the Northern Parcel to be preserved, conservation and/or acquisition of the remainder of the Northern Parcel (approximately 1,686 acres), management of the preserved lands and retention of approved land use designations for those lands which are not successfully acquired.

### *3.3.3.6. East Otay Mesa Specific Plan*

The East Otay Mesa Specific Plan sets out a comprehensive development plan for the development of approximately 3,300 acres within the East Otay Mesa Specific Plan Area. Anticipated uses are business and industrial with some low density residential. Certain steep slope and biologically sensitive resources have been identified in areas that are zoned Rural Residential and Mixed Industrial and Commercial. These areas have been given a "G" Designator and are subject to the Sensitive Resource Area Regulations of the Zoning Ordinance. The County must approve a Resource Conservation Plan before areas subject to the "G" Designator may be developed. A Resource Conservation Plan must address impacts to habitat and endangered species on the site. Certain areas may be acquired or exacted as open space as a potential means of mitigating environmental impacts of industrial or commercial development.

### *3.3.3.7. Otay Ranch*

The Otay Ranch General Plan Amendment, proposed by Baldwin Vista Associates (now Otay Ranch L.P.), was approved by the County Board of Supervisors on October 28, 1994. The project proposes 24,000 dwelling units on 23,000 acres and includes approximately 13,000 acres of open space, a commercial village and a potential university site, with a potential final population of 68,000-70,000 persons. The approved project included a series of 15 villages, ranging from 4.5 to 18 dwelling units per acre within the core areas. These villages and other rural-density areas would allow as many as 13,144 single family units and 11,080 multi-family units. See Table 1 for a project vegetation summary based on geographic information system analysis.

While most of the Otay Ranch is within the unincorporated area, the City of Chula Vista is in the process of annexing the western portions of Otay Ranch. The Otay Ranch comprises the largest privately held ownership of Coastal sage scrub vegetation in the United States. The combination of CSS and other habitats, varying geography, and location at the boundaries of several plant floras (unique combinations of plants) make the Ranch a unique biological resource. The Otay Ranch area is divided into three major parcels: 1) Otay Valley Parcel (9,449 acres); 2) Proctor Valley Parcel (7,895 acres) and 3) San Ysidro Parcel (5,555 acres).

The dominant feature linking the three Otay Ranch parcels is the Otay River system, which includes a tributary system of canyons and drainage courses and the Otay Lakes. The size and undeveloped character of the property, its diverse terrain, its strategic location at the northern margin of Baja California habitat associations, and its links to large areas of public ownership contribute to the presence of an important and unusual assemblage of habitats and species. The following is a summary of plant communities, wildlife habitats, and sensitive species that exist on the Otay Ranch property based upon various inventories of existing resources on the site.

Otay Valley Parcel: The Otay Valley Parcel is the largest parcel of Otay Ranch, comprising 9,449 acres. This area of land is bounded by Telegraph Canyon Road on the north, Heritage Road and the Otay Landfill site on the west, Brown Field on the south, and Lower Otay Lake on the east. The Otay River Valley bisects the southern portion of this parcel east to west. Several natural landforms are situated within this parcel: Wolf Canyon, Salt Creek Canyon, Poggi Canyon, Johnson Canyon, O'Neal Canyon, and Rock Mountain. The six "out parcels" are not included in the Otay Ranch General Development Plan. They correspond to lands dedicated to reservoirs (or other facilities) in the Otay Water District and City of San Diego water system, a Federal Aviation Administration airway control facility, a rock mining quarry, and privately owned parcels.

The Otay Valley Parcel contains approximately 1,825 acres of Coastal sage scrub. Maritime succulent scrub habitat is concentrated in three general locations on the Otay Valley Parcel: in the western and eastern corners and in the central southern area, covering 285 acres in all. Other vegetation found on the Otay Valley Parcel includes 7 acres of Chamise chaparral, 1,310 acres of non-native grassland, and 12 acres of Southern willow scrub. Baccharis scrub, Baccharis floodplain scrub, and Tamarisk scrub are also present. The Otay Valley Parcel contains an area of Vernal pool habitat and associated mima mound topography. These are generally located south of the River. Recent sightings (1989 and later) of sensitive animals made on the Otay Valley Parcel include the American badger, Common barn owl, California gnatcatcher, Yellow-breasted chat, Cactus wren, Blue grosbeak, and Sage sparrow.

Proctor Valley/Jamul Mountains Parcel: The Proctor Valley Parcel comprises 7,895 acres. The Proctor Valley area is the northernmost portion of the Otay Ranch and is generally bounded by Otay Lakes Road and Lower Otay Lake to the south, the Upper Otay Lake and San Miguel Mountains to the west, the community of Jamul to the north, and vacant agricultural land to the east. The Proctor Valley Parcel also includes the Mary Birch-Patrick Estate and the "Inverted L" areas. The four out parcels encompassed by the Proctor Valley Parcel correspond to two sections of land owned by the Bureau of Land Management (BLM), a City of San Diego reservoir, and two private holdings. Major landforms include the Jamul and Callahan Mountains. It is notable that this parcel contains two separate BLM ownerships which are governed by the adopted South Coast BLM Plan and not by the Otay Ranch Plan.

The Proctor Valley Parcel contains approximately 4,843 acres of Coastal sage scrub habitat. Additional significant resources within the Proctor Valley Parcel include 569 acres of Southern mixed chaparral, approximately 49 acres of Valley needlegrass grassland, and 138 acres of Alkali meadow. Coast live oak woodland covers 176 acres in the Proctor Valley Parcel. Small areas containing Southern willow scrub and Eucalyptus can also be found. Vernal pools occur primarily on weathered alluvial soils of mesas and floodplain terraces in Proctor Valley. Recent sightings (1989 and later) of sensitive animals made on the Proctor Valley Parcel include the California gnatcatcher, Loggerhead shrike, Sage sparrow, Blue grosbeak, Two-striped garter snake, Rufous-crowned sparrow, and the Coastal rosy boa.

San Ysidro Mountains Parcel: The San Ysidro Mountains Parcel is comprised of 5,555 acres located in the southeastern portion of the project area, along the fringes of the northern foothills of the San Ysidro Mountains and Otay Mountain. The parcel is generally bounded by the eastern arm of Lower Otay Lake and vacant land along Otay Lakes Road to the north, the main body of Lower Otay Lake to the west, land owned by the BLM to the south, and vacant land just west

of the community of Dulzura to the east. Major landforms contained within this region include Little and Big Cedar Canyons and Hubbard Springs.

The San Ysidro Mountains Parcel contains important biological resources. Coastal sage scrub can be found on 3,698 acres of this parcel. Approximately 469 acres of uniform stands of Chamise occur on mesas and some gentle slopes in the Otay Lakes portion of the San Ysidro Mountains Parcel. In addition, approximately 474 acres of non-native grassland, 5 acres of Coast live oak woodland, 75 acres of Coast southern live oak riparian forest, 7 acres of Sycamore alluvial woodland, and 165 acres of Southern interior cypress forest occur on this parcel. A small number of Vernal pools occur on the level terraces south of the eastern arm of Lower Otay Reservoir. Most of these exist off-site on City of San Diego land. Some of the larger contiguous masses of habitat within the San Ysidro Mountains Parcel include numerous sensitive plants and animals. Recent sightings (1989 and later) of sensitive animals have been made on the San Ysidro Mountains Parcel, including the California gnatcatcher, Blue grosbeak, and San Diego horned lizard.

Resource Management Plan: Part of the approval of General Plan Amendment for Otay Ranch included approval of the Phase I Resource Management Plan (RMP). This is a comprehensive planning document that addresses the preservation, enhancement, and management of sensitive natural and cultural resources on the 22,899 acre Otay Ranch property.

The goal of the RMP is establishment of an open space system that will become a permanent Management Preserve dedicated to the protection and enhancement of the multiple resources present on Otay Ranch. The RMP is intended to be implemented as part of the overall integrated planning approach for Otay Ranch. A series of goals, objectives, policies and standards in the RMP address the resource protection issues.

Biogeography/Conservation Issues: The approved Plan Preserve for Otay Ranch is 11,375 acres. Together with the 1,166 acres of Limited Development Areas, a total of 12,541 acres are anticipated to be preserved in open space on Otay Ranch. The configuration of the Limited Development Areas may be revised in future, but in no case shall the acreage retained in open space be less than 396 acres.

The planned preserve area or Management Preserve plans to capture the highest value resource areas as preserved lands and concentrate development in disturbed habitat or agricultural areas. Generally, development areas are concentrated around major road systems such as Telegraph Canyon Road, East Orange Avenue, Paseo Ranchero, Otay Valley Road, Proctor Valley Road and Otay Lakes Road. Areas planned to be developed also extend to already developed areas, such as a series of villages south of Telegraph Canyon Road and residential development to the North in Chula Vista and planned development in north Proctor Valley south

of the community of Jamul. Pioneering development is planned on the north slopes of Otay Valley, the lower slopes of Proctor Valley, north and south of Otay Reservoir and along Otay Lakes Road, and on the upper east-facing slopes above Highway 94 in the eastern San Ysidro parcel.

Since the adoption of the General Development Plan, negotiations are continuing between Village Development and the Wildlife agencies which would result in additional lands in Proctor Valley, east of the approved resort, and additional lands south of Lower Otay Lake being placed in open space. In return, additional development would be approved in the Poggi Canyon area, the area on the eastern edge of Village 10 and west of Salt Creek, and a portion of Village 4, east of Rock Mountain. This project modification would require the County and the City of Chula Vista to amend the General Plan.

Since the adoption of the General Development Plan, the ownership of several properties within the Otay Ranch has passed from Village Development to other entities. These properties include lands south of Lower Otay Reservoir and the "Inverted L," which are presently shown as conserved in the Segment Plan. Should this property be developed, rather than conserved, the Wildlife Agencies would require a Major Amendment to the Segment Plan. At the County's request development bubbles for those areas within the approved Otay Ranch plan were analyzed as an alternative in the Environmental Impact Report for the unincorporated area.

The approved Otay Ranch Plan provides for up to 400 acres of active recreational land in the Otay River Valley. This land is predominantly located on the bench areas north of the Otay River floodway, on lands that have been used for agricultural purposes in the past. The actual amount of land that could be used for active recreation shall be determined in conformance with the criteria in the General Development Plan/Otay Subregional Plan through the Otay Valley Regional Park Joint Exercise of Power Agreement. Furthermore, there are requirements that provisions be made for biological connections through the active recreational areas between the Otay River and the slopes above.

Note: All conditions and exceptions listed in the Otay Ranch approval documents, including the Resource Management Plan (Volume I) are hereby incorporated by reference, with respect to easement requirements, revegetation requirements, allowed facilities within the Preserve area, etc.

### *3.3.3.8. Resolution Trust Corporation/Rancho San Diego Mitigation Bank*

The County and other agencies have acquired approximately 1,853 acres of land in the Valley de Oro Community Planning Area, previously owned by the Resolution

Trust Corporation. This property, the undeveloped part of the Rancho San Diego Specific Plan, is located south of the intersection of State Route 94/Campo Road and Jamacha Road.

The site supports 1,428 acres of CSS habitat and approximately 181 acres of riparian woodland and includes other vegetation communities: Southern mixed chaparral, Coast live oak woodland, Engelmann oak woodland, scrub, freshwater marsh, and native grassland. The site may serve, initially, as a mitigation area for a number of public projects. These lands are now part of the U.S. Fish and Wildlife Service's National Wildlife Refuge.

### *3.3.3.9. Otay Valley Regional Park Plan (County Jurisdiction Lands)*

The Otay Valley Regional Focused Park Concept Planning Area, including the Otay River Valley and all drainages into the valley west of the Otay Reservoirs, is located in the southern portion of San Diego County, and four miles north of the United States/Mexico International Border. The Otay Valley Regional Park (OVRP) is being planned through a Joint Exercise of Powers Agreement (JEPA) between the County of San Diego, the City of San Diego and the City of Chula Vista. According to the goal statement adopted for the OVRP, The Otay Valley Regional Park will represent one of the major open space areas within southern San Diego County linking South San Diego Bay and Lower Otay Lake. The park will fulfill the need to provide a mix of active and passive recreational activities while protecting environmentally sensitive areas, protecting cultural and scenic resources, and encouraging compatible agricultural uses in the park.

The Focused Planning Area (FPA) of the Otay Valley Regional Park was adopted by the San Diego City Council and the County Board of Supervisors in 1993.

The environmentally sensitive open space areas consists of wetland areas (including Otay River), biologically sensitive areas subject to preservation and resource enhancement, and habitat linkages. The boundaries of this area are consistent with the Multiple Habitat Planning Area (MHPA) boundary contained within the Multiple Species Conservation Program (MSCP) Plan. It may permit some active and passive recreation uses, such as trails, consistent with the guidelines of the MSCP Plan.

The proposed regional trail system is intended to link to the Bayshore Bikepath to the west and serve as a continuing link to regional trails further east. Trails within the Otay River Valley will utilize existing fire and utility roads wherever possible in order to minimize impacts.

The recreational development areas identified on the concept plan include both existing and proposed active and passive recreation sites. Many of these sites also

contain existing private development potential through zoning or development approvals and will require additional land use analysis prior to adoption of a regional park master plan.

A nature interpretive center is envisioned near the salt ponds located at the mouth of the Otay River. In addition, the Otay Ranch Resource Management Plan (RMP), Phase I calls for a nature interpretive center to be located within the open space preserve on the Otay Ranch.

The following are identified as "special study areas" on the draft concept plan. A determination of appropriate land uses for these areas will be subject to future analysis:

- Potential recreational development site located north of the Otay River, west of Beyer Way. This site will be subject to future study to determine its local/regional recreation or private development potential.

- The Otay landfill, located approximately one-half mile north of the Otay River. With ultimate closure of the landfill, potential active/passive recreation opportunities will be studied.

The part of the proposed park in County jurisdiction lies primarily east of Otay Valley Road and extends to the east side of the MSCP boundary, except for lands in the City of Chula Vista on the west side of Lower Otay Reservoir. The County jurisdiction includes the City of San Diego owned lands around the reservoir which is part of the City's Cornerstone Lands Conservation Bank. The lands in County jurisdiction are primarily in open space, riparian and disturbed riparian uses, but include a rock quarry and gun club (see below). Nearly all of the County jurisdiction land is planned for open space park uses (including habitat management), except for the following recreation uses/areas.

a. Existing rock quarry (about 135 acres) on Rock Mountain, just east of Otay Valley Road: the quarry operation is expected to continue for about the next 50 years, after which the site may be appropriate for active recreation.

b. The Gun Club/Bird Ranch: this area and the area immediately east (about 225 acres) has been a gun club and ranch and would not be used for habitat management purposes under the conceptual park plan.

c. Lower Otay County Park (about 70 acres): an existing but closed camp ground to be refurbished or to be used as a site for the University of California at San Diego Environmental Sciences Research Institute.

d. The existing County Air Park, located east of Otay Reservoir, south of Otay Lakes Road: used as a landing field and observation area for gliders and parachutists (about 60 acres).

e. The Conceptual Park plan also includes the George F. Bailey/East Mesa Detention facility and the 120 acre mitigation/open space area located to the north of the facility (see below).

### *3.3.3.10. County of San Diego East Mesa Detention Facility*

The East Mesa Detention Facility site is located south of Lower Otay Lake, north of O'Neal Canyon, and north east of the Donovan State Prison facility site, the lower south west slopes of the San Ysidro Mountains. The site encompasses approximately 524 acres with elevations ranging from just over 300 feet in the northwesterly corner of the site to over 1,200 feet in the eastern portion of the site. "In addition to the steep hillside terrain, the site contains an approximately 60-acre mesa and portions of two canyons" (County of San Diego, 1988). The County planned a detention facility for 6,000 inmates, 2,000 of which could be accommodated in Phase I of the project.

In 1987, the site contained substantial amounts of CSS, disturbed CSS, Chaparral, limited riparian, vernal pool, native grassland, eucalyptus grove and disturbed habitat. The site also contained 10 species of sensitive plants (all MSCP target species) and up to 15 pairs of California gnatcatchers, subsequently listed as a Federal Threatened Species. The first phase of the project was approved on June 30, 1988.

Approximately 120 acres have been set aside for open space. Additional lands will be retained as open space as mitigation for the future phases of development as depicted on the South County Segment plan maps.

### *3.3.3.11. County of San Diego BLM/Lower Otay Reservoir Site*

This 200 acre property (APN 647-130-12) is presently owned by BLM but the County of San Diego manages the site for conservation purposes and is obtaining a patent on the property. The property will be managed by the County Department of Parks and Recreation for passive recreation and natural resource conservation."

### *3.3.3.12. County of San Diego McGinty Mountain Park*

This 20.34 acre parcel is adjacent to The Nature Conservancy holdings south of McGinty Mountain. It contains Coastal sage scrub and Chaparral vegetation communities and was acquired for natural resources protection (100%).

### *3.3.3.13. County of San Diego Sweetwater Regional Park*

Sweetwater Regional Park is located in the Sweetwater River Valley between the Sweetwater Reservoir on the east and I-805 on the east in the Bonita/Sunnyside area (San Diego County Parks and Recreation Department, 1989). The eastern third occupies the high, hilly ground between the reservoir and the valley below. The western two-thirds lies within the 100-year floodplain of the Sweetwater River. The County jurisdiction part of the park includes about 515 acres.

Vegetative cover on the site includes the following: about 90 acres of Coastal sage scrub, 40 acres of Maritime succulent scrub, 115 acres of Southern willow scrub, 170 acres of non-native grasslands, and about 100 acres of urban uses, including mining and intensive agriculture.

Sensitive plants present within the park include *Hemizonia conjugens*, *Ferocactus viridescens*, *Iva hayesiana*, *Adolphia californica*, *Viguiera laciniata*, *Dudleya variegata*, and *Selaginella cinerascens*. Sensitive wildlife identified in 1979 and 1988 surveys (in San Diego County Parks and Recreation Department, 1989) included: Black-tailed hare, California gnatcatcher, Coastal cactus wren, Least Bell's vireo, Yellow-breasted chat and Yellow warbler.

Existing park uses include several houses, an equestrian center, limited retail commercial, a golf driving range, a pine tree nursery, abandoned dairy buildings, trails and a campground.

### *3.3.3.14. Environmental Land Solutions/The Environmental Trust Properties*

The Environmental Trust (TET) has two mitigation banks within the South County NCCP planning area: Marron Valley Mitigation Preserve and O'Neal Canyon and southerly foothills corridor.

1. Marron Valley Mitigation Preserve consists of 561 acres located just to the east of Otay Mountain and is surrounded the BLM Wildlife Study Area and the City of San Diego Marron cornerstone lands.

Regional vegetation coverage at the Marron Valley site include primarily (Interior) Sage scrub and Chaparral.

2. O'Neal Canyon and Southerly Foothills Corridor is currently about 600 acres abutting the BLM "Otay Wilderness Study Preserve" (north and south), and south of Lower Otay Lake and the County jail, and approximately north of the International Border, on the western flanks of the San Ysidro Mountains. Resources include: 217.8 acres of Diegan coastal sage scrub; 11 acres of maritime succulent scrub; 8.8 acres of Southern willow riparian scrub; 1.2 acres of California native grassland; 0.5 acres of Engelmann oak woodland; 378.5 acres of Tecate cypress woodland; 53.5 acres of Southern mixed chaparral; 36.6 acres of Chamise chaparral; 10.4 acres of Cismontane alkali wetlands; 1.4 acres freshwater marsh; and 2.7 acres of rock outcrops/cliffs.

## 3.3.4. Other Preserve Areas Within the South County Segment Planning Area

### *3.3.4.1. The Nature Conservancy Lands on McGinty Mountain*

These parcels are owned in fee title by The Nature Conservancy (TNC) and total 573 acres. The northerly parcels intertwine with California Department of Fish and Game and The Environmental Trust mitigation bank parcels on the top and south side of McGinty Mountain. The County of San Diego McGinty Mountain County Park and several privately owned parcels lie in between the bulk of the northerly TNC parcels and an isolated southern parcel, although an easement for a trail covers some of the intervening parcels.

The Nature Conservancy is seeking to cooperatively manage their ownerships along with the California Department of Fish and Game (CDFG). At the present all the TNC fee-owned parcels are considered 100 percent preserved, with no exclusions except hiking trails, and passive recreational uses.

### *3.3.4.2. California Department of Fish and Game McGinty Mountain Ecological Reserve*

The California Department of Fish and Game owns both fee title and easements on property on McGinty Mountain. The lands covered by a Conservation Easement to the CDFG consist of 5 tax parcels and total 150.37 acres (owned by The Environmental Trust) and the lands owned in fee title consist of 86.67 acres on a single tax parcel. These lands are managed by the CDFG as the McGinty Mountain Ecological Reserve. These lands will be managed by the CDFG

consistent with the biological goals of the MSCP and will be considered 100 percent preserved.

These lands have high resource value, and because of the proximity to other lands owned and managed for natural resource values by TNC, TET, and the County of San Diego, should serve as an anchor point for additional acquisition of core and linkage habitats.

### *3.3.4.3. California Department of Forestry West Tecate Peak Ownership*

The Department of Forestry owns and manages approximately 2,200 acres abutting the western boundary of BLM property on the west side of Tecate Peak . This property does not have a formal management plan but is presently used for prescribed burning, training for California Department of Forestry uses, and resource management. The site has both Chaparral and Southern Tecate cypress forest.

### *3.3.4.4. Bureau of Land Management Lands in Otay Mountain Area*

The BLM adopted the South Coast Resource Management Plan and Record of Decision on May 26, 1994. This plan addressed management of approximately 296,000 acres of BLM-administered public land in the southwestern Counties of California. The San Diego County Management Area includes 65,000 acres of BLM public land, and an additional 74,000 acres of BLM split estate lands in the western portion of the County. In Split Estate lands, the Federal government still controls mineral resources, but not the surface uses of the land (these lands are not shown on the SCS maps). Most of the BLM public lands, including the largest parcels, are in the mountainous terrain lying between Interstate Highway 8 and the United States/Mexican Border. The 1994 plan identified a number of Areas of Critical Environmental Concern (ACEC), Research Natural Areas (RNAs) and Outstanding Natural Areas (ONAs) for the protection of sensitive resources and Native American religious values (see BLM, 1994). The plan identifies a number of Resource Condition Objectives and specific Land Use Allocations (and planned acquisitions).

In June 1994, the BLM, U.S. Fish and Wildlife Service, California Department of Fish and Game, San Diego Association of Governments (including the County of San Diego and the City of San Diego) signed a Memorandum of Understanding (MOU) for cooperation in habitat conservation planning and management. This includes policies dealing with diversity, coordination of land management, resolution of conflicts between land management prescriptions and conservation objectives, and cooperation in acquiring other habitat areas and corridors.

BLM has summarized details of the plan for the land within the SCS as follows:

Resource Objectives. The South Coast RMP/ROD identified the following resource condition objectives for the San Diego County Management Area:

a. Emphasize protection and enhancement of sensitive species habitat and open space values.

b. Improve management effectiveness within the management area through disposal of isolated parcels and consolidation of BLM public land ownership.

c. Enhance habitats for all wildlife species, including deer and quail.

d. Provide opportunities for low-impact recreation through provision of facilities and services.

e. Protect Native American values associated with Caecum (Tecate Peak).

### *3.3.4.5. City of San Diego Land Around Otay Lakes*

City owned lands are included in this Segment of the SCS to maintain continuity. These lands around Otay Lakes and the biological resources they support are discussed in the City of San Diego's Subarea Plan. Some of these lands are subject to a mitigation banking agreement between the City and the Wildlife Agencies called the Cornerstone Lands Agreement. These lands will form a cornerstone for a natural open space corridor in the South Bay area. Otay Lakes Road may be realigned and Proctor Valley road improved on these cornerstone lands.

### *3.3.4.6. City of San Diego Marron Valley Property*

Marron Valley occupies approximately 2,300 acres in the southeastern portion of the MSCP study area.

"The large drainages through this area (e.g., the Tijuana river, Bee Canyon, and Cottonwood Creek) support significant stands of riparian habitat and function as major wildlife corridors. These riparian areas offer excellent opportunities for restoration and enhancement. Much of the area is currently leased for cattle grazing. Portions of the lands are overgrazed (Ogden field data), but likely could be restored with removal of grazing or decreased intensity and rotation of grazing. Management of this area for biological resources will pose special problems because of its remoteness and proximity to the Mexican border. Conservation of Marron Valley will provide wildlife habitat, offer opportunities for the creation and

enhancement of various habitat types (i.e., riparian, coastal sage scrub), and extend the sphere of protected lands surrounding the San Ysidro Mountains."

The City proposes no exclusions, although, in Section 8.6.5 of the MSCP, the draft plan discusses use of City Cornerstone Lands as mitigation banks for City of San Diego Public projects.

## 3.4. *Land Uses adjacent to the Preserve*

### 3.4.1. Compatible Uses Adjacent to the Preserve

See Chapter 1, Section 1.10. for a discussion of Land Uses Adjacent to the Preserve.

### 3.4.2. Specific Project Requirements

Otay Ranch: Allowable uses for areas adjacent to the preserve are discussed in Policies 7.1-7.3 of the Otay Ranch RMP. The edge of the preserve is defined as a strip of land 100 feet wide that surrounds the perimeter of the Management Preserve.

### 3.4.3. Fuel Modification

General principles for design and management of the fuel modification zone are contained in Chapter 1, Section 1.11. Within the SCS, Otay Ranch is required to produce Fuel Management Zone Plans on a SPA by SPA basis. To the extent that these plans may affect preserve resources, they must be consistent with MSCP standards.

## 3.5. *Preserve Ownership and Conveyance*

Ownership of land and the dedication and conveyance sequence for easements within the preserve will vary depending on the project approval requirements. In some cases, the preserve open space will be retained in fee title by the project applicants or homeowners; in other cases, the fee title will be granted to a third party, including County of San Diego or a Wildlife Agency. Refer to specific project requirements for particular projects. These procedures may change with review and approval of the subarea plan or the MSCP.

Specifically, for the Otay Ranch project, the area of open space is required to be transferred to a preserve owner manager entity, with associated funding to insure adequate maintenance. For the majority of the other projects; Hidden Valley Estates, Las Montañas, Loma del Sol, and The Pointe Development, open space will be dedicated as

easements which may later be taken over by a management entity. The Rancho San Diego property will be managed by the U.S. Fish and Wildlife Service and the lands owned by the Nature Conservancy as the environmental trust will be managed by this organization or a cooperative agreement.

## 3.6. *Land Uses Within the Preserve*

Land uses within the preserve are generally very limited, specifically those which are considered compatible with the need to permanently protect the natural resources. Land use within the preserve is discussed in Chapter 1, section 1.9

### 3.6.1. Public Access and Recreation

Public access to and recreation within the preserve is discussed in Chapter 1, Section 1.9.2.

### 3.6.2. Infrastructure

Location of infrastructure within the preserve is discussed in Chapter 1, Section 1.9.3.

### 3.6.3. Scientific and Biologic activities

Scientific and biologic activities within the preserve are discussed in Chapter 1, Section 1.9.4.

### 3.6.4. Emergency, Safety and Police Services

See Chapter 1, Section 1.9.5.

### 3.6.5. Specific Project Exclusions

#### *3.6.5.1. Otay Ranch*

Permitted Uses. Section 5.8 of the RMP indicates that: "the primary goal of the RMP is to provide opportunities for passive recreation within the Preserve that are consistent with resource protection. In addition, 400 acres within the Preserve are available for "active recreational uses."

With respect to agricultural uses, the RMP states in Section 5.9, "Establishment of the Preserve will provide opportunities for creation of demonstration agricultural uses within the Preserve. The area in the vicinity of Bird Ranch has been identified as an area suitable for demonstration agriculture. Demonstration agricultural activities must be compatible with RMP polices and standards for resource protection and enhancement."

Revegetation of Preserve Lands. The RMP includes requirements for revegetation of certain disturbed areas to be included in the Preserve; an Appendix in the RMP discusses conceptual revegetation plans.

Permitted uses within the preserve; an interpretive center or centers, native plant nursery and/or botanical garden, active recreation not greater than 400 acres (depending on Otay Valley Regional Park design see map for location), a system of trails, motorized vehicles necessary for preserve management and emergency services, limited infrastructure crossings (see Figures 14, 15, 16 17, and 18 of RMP); limited fire roads, and ecologically necessary controlled burning. Objective 8 of the RMP lists interim uses and activities that may continue within the proposed preserve until conveyance to the Preserve Owner/Manager.

The following specific preserve exclusions have been identified for Otay Ranch.

a. The proposed alignment for SR 125 from Otay Mesa through Otay Ranch along the preferred alignment is excluded from the Preserve area, as is the alignment for Alta Road and La Media along a near parallel alignment to the east. The specific alignments will depend on the final CalTrans and Wildlife Agency review and permit process.

b. The Otay Ranch RMP (Page P-3, #3) contains a partial list of facilities as follows: SR 125, County Water Authority (CWA) aqueduct easements, utility easements, the Otay Valley trunk sewer, the proposed Salt Creek trunk sewer, and others (at this time, it is not known which of these potential facilities would impact the preserve area). Refer to the draft (RMP II) for specific facilities. These projects would be subject to separate permitting processes.

### *3.6.5.2. Otay Valley Regional Park Plan (County Jurisdiction Lands)*

At present, a conceptual plan considered by the JEPA Policy Committee for the park preliminarily identifies a number of recreational facilities as indicated above in 3.6.5.1. At present, the exact location of these recreational facilities within the park is not known. In addition to the potential recreational facilities, other facilities, listed below may be located within the river park boundary (these exclusions are in addition to the normal preserve exclusions listed above).

a. City of San Diego Clean Water Program reclamation facility (located in the western end of the County jurisdiction lands, within the river valley (see Lettieri-McIntyre, 1994).

b. Proposed roads crossing the river: a) Paseo Ranchero; b) La Media Road; c) State Route 125; and d) Alta Road.

c. Other local roads and trails within the park for local access.

d. Existing rock quarry (about 135 acres) on Rock Mountain, just east of Otay Valley Road; the quarry operation is expected to continue for about the next 50 years, after which the site may be used for active recreation.

e. The Gun Club/Bird Ranch: This area and the area immediately east (about 225 acres) has been a gun club and ranch and would not be used for habitat management purposes under the conceptual park plan.

f. The site for the 400 acres of active recreation in Otay Ranch has been identified for the beach areas on both sides of the Otay River.

g. Lower Otay County Park (about 70 acres): an existing but closed camp ground; to be refurbished.

h. The existing County Air Park, located east of Otay Reservoir, south of Otay Lakes Road: used as a landing field and observation area for gliders and parachutists (about 60 acres).

i. The Conceptual Park plan also includes the George F. Bailey Detention facility and the 120 acre mitigation/open space area located to the north of the facility.

#### *3.6.5.3. Bureau of Land Management Lands in Otay Mountain Area*

The preserve exclusions are contained in the South Coast Management Plan (BLM, 1994).

#### *3.6.5.4. City of San Diego Land Around Otay Lakes*

The City has excluded certain utilities and public facilities from the Preserve Area. Both the County and the City of Chula Vista General Plan Circulation Elements show Proctor Valley Road with preserve areas on City of San Diego's owned land. Construction of these roads is not precluded based on the City's Cornerstone Lands Conservation Bank Agreement.

#### *3.6.5.5. City of San Diego Marron Valley Property*

The City has indicated that 10 percent of the site may have to be used for future water utility uses.

## 3.7. Preserve Lands Set Aside as the Result of Mitigation for Covered Projects

### 3.7.1. Mitigation for Covered Projects

The following section discusses the required mitigation measures for each covered project within the South County Segment Plan.

#### *3.7.1.1. Hidden Valley Estates*

Mitigation for the project required 923.0 acres of on-site open space, a minimum of 246 acres of off-site mitigation (the applicants have purchased a total of 400 acres off-site habitat). In addition, the following mitigations were required: 1) on-site revegetation and enhancement plans that require a 4:1 replacement for impacts to the riparian, wetland and vernal pool habitats were required; 2) detailed landscaping plans for all man-made slopes and fire buffer areas, these plans are to utilize native plant species where feasible; 3) detailed study plan to monitor the on-site population of California gnatcatchers for a period of time up to five years beyond 80 percent occupancy of the Tentative Map; 4) an Open Space and Habitat Management Plan (approved September 8, 1992); 5) a $20,000 deposit revolving account to fund the County of San Diego for the monitoring of the maintenance and schedules of the landscaping, sedimentation basins, native open space, and other conditions of the Specific Plan; 6) establishment of an Open Space and Habitat Management District for the long term funding of maintenance and operation of open space; 7) establishment of a separate open space and habitat management account or fund, for the deposit of fees assessments, and contributions for the ongoing annual operation of, maintenance and management costs of the designated open space areas and provide $100,000 deposit to offset start-up costs; and 8) evidence of legal transfer of ownership of all on-site/off-site open space areas to a public or non-profit entity.

The off-site mitigation parcels total 400 acres and are located on western and northern slopes of San Miguel mountain. These off-site areas contain 6 separate high quality habitat types including: 130 acres of Diegan sage scrub, 220.2 acres of Southern mixed chaparral, 42.0 acres of Mesic north slope chaparral, 6.0 acres of Coast live oak woodland, 1.5 acres of native grasslands and 4.4 acres of Willow riparian scrub (Sweetwater Environmental Biologists, 1992). The site survey

identified 21 sensitive species, including several that would be impacted by the development of Hidden Valley Estates. These parcels provide undeveloped connections between Hidden Valley Estates and the Sweetwater River.

The open space/preserve design was approved by the Director of Planning on September 8, 1992, and an Open Space Habitat Management Plan (OSHMP) was approved by Director of Planning, on July 8, 1992. Condition 5 of SP 88-002 required an OSHMP to describe administrative and management structure, ownership and management responsibility, funding mechanism, long term maintenance, open space enhancement, amend procedure, and habitat mapping. Condition 8 of SP 88-002 also required the applicant to contribute the sum of $100,000 to the long term open space maintenance fund, or to be used by the County to offset start-up costs related to the establishment of the funding mechanism and initial operation of the open space/habitat. Some of these funds were utilized by County staff in reviewing a proposed Sweetwater River Habitat Conservation Plan.

### *3.7.1.2. Las Montañas*

The project as proposed is recommending that a combination of on-site and off-site open space and revegetation programs for mitigation of impacts to sensitive vegetation types. These measures are expected to fully mitigate the project impacts to biology to a level of less than significant

The on-site open space easements would total 535 acres (58% of the project area). Coastal sage scrub revegetation/restoration is proposed for 10 acres of man-made slopes and 80-90 acres of disturbed habitat. Coast live oak woodland and Oak riparian forest revegetation will occur on approximately 2.81 acres of disturbed areas within the project area. The project also proposes to dedicate approximately 23 acres of off-site mitigation. This 23 acres is dominated by Coastal sage scrub, smaller areas of Southern mixed chaparral and disturbed habitat. Several sensitive species were identified on-site including San Diego sagewort, Summer-holly, Rushlike bristleweed, Engelmann oak, Ashy spike-moss, San Diego viguiera, Orange-throated whiptail, and a portion of a territory of one pair of California gnatcatchers.

Impact totals and mitigation amounts for this project are based on the "screencheck draft" Environmental Impact Report and biological resource reports dated June 2, 1994 and May 19, 1994 which were prepared by Dudek and Associates. The numbers are preliminary and will be updated if necessary based on future documents.

The SPA Resolution for the approved project, Condition A. 18.a. (2) required that the "Applicant shall adopt and adhere to the Development Criteria to Protect

Natural Resources as found in Table 3 of the EIR. These criteria apply to brush removal generally and also to any project development near sensitive riparian corridors and oak stands."

Condition A. 18.b. (2) states: "In revegetation and landscaping, applicant shall use native species with high wildlife values as much as possible and avoid the use of non-native species except in situations where they provide exemplary benefits (such as protection from wildfires) and are not invasive species such as Pampas grass and French Broom."

Condition A.18.c. (2) states: "Reduce all habitat losses and degradation of habitat to the maximum extent possible."

### *3.7.1.3. Loma Del Sol*

Proposed mitigation includes placing 73.35 acres into a biological open space easement. Previous Environmental Impact Reports (EIR): Loma Del Sol Residential and Golf Course Project SPA 85-05, R85-079, P85-101, TM 4577 Log Number 85-19-38; The Planning Associates, and Supplemental Environmental Impact Report: Loma del Sol Residential and Golf Course Project SPA 85-05, R85-079, P85-101, TM 4577 Log Number 85-19-38: The Planning Network) found that this mitigation would mitigate biological impacts to a level of less than significant. The applicant shall grant an open space easement over potions of TM 4577-1, Map 12676. The applicant shall obtain a Minor Deviation to revise the plot plan for Major use Permit P85-101 to show a biological open space easement over portions of the Steele Canyon Golf Course as shown on Figure 7, 8, 9, and 10 "Off-site Mitigation Areas," addendum to the EIR, dated September 21, 1995.

### *3.7.1.4. The Pointe*

Mitigation for the project required both on-site and off-site open space that included 312.3 acres (includes 11.1 acres of undisturbed golf course areas) of on-site open space, a minimum of 150 acres of off-site mitigation (this requirement was proposed to be met by a 260 acre parcel purchased by the Pointe Partners located adjacent to open space within the Rancho San Diego Specific Plan Area [SPA]), and on-site revegetation and enhancement plans including the 1:1 replacement of 10.8 acres of aquatic and riparian habitat. In addition the applicant was required to establish a $250,000 deposit or revolving account to fund monitoring of the open space easements.

The on-site open space easements will provide direct connections to off-site undeveloped areas of equal or better habitat value and provides an open space

connection between the Sweetwater Reservoir and the proposed Urban Wilderness Area of the former Rancho San Diego Specific Plan.

The off-site mitigation parcel purchased by the Pointe Partners is a 260 acre parcel located adjacent to the Sweetwater River and the Rancho San Diego Specific Plan Area. The proposed off-site open space parcel contains four native plant communities including: 150.7 acres of Diegan sage scrub, 96.3 acres of southern mixed chaparral, 4.2 acres of willow riparian scrub, 0.9 acres of Coast live-oak woodland, and 1.0 acre of native grasslands. The remainder of the parcel includes 1.6 acre area that has been graded and approximately 9.5 acres of metavolcanic rock outcrops/cliffs.

Other conditions required obtaining California Department of Fish and Game and Army Corps of Engineers permits for disturbance of Hanson's Creek, and a Cowbird trapping plan. Condition 4 of the SPA required the applicant to acquire riparian habitat at a ratio of 2.5:1 the area of Bancroft Creek Resource Protection Area, with maintenance funding or obtain approval of a Restoration Plan.

Condition A (1)(a.) of Major Use Permit 89-014 requires: "An open space easement over all areas specified as native habitat in the draft EIR."

The areas of mitigation and open space for The Pointe project are being further refined through the Habitat Loss Permit process on which agreement has been reached with the Wildlife Agencies, the applicant and the County.

### *3.7.1.5. County of San Diego East Mesa Detention Facility*

The following mitigation measures (in the EIR) were made conditions of approval in the Major Use Permit (P88-018):

"Retain undeveloped areas in natural open space with no grading, or placement of structures allowed in those areas.

Submit for review and approval of the Department of Planning and Land Use, a protection plan for identified vernal pool habitat. This plan shall include the area to be fenced and type of fencing to be used. The area to be fenced and the design of the fence shall be reviewed and approved by a qualified biologist who shall also monitor fence installation".

Parcels totaling 120 acres north and adjacent to the site were identified for open space purposes.

### 3.7.2. Mitigation for Other Permitted Uses

Permitted uses within the preserve area are defined above in Section 3.6. Permitted uses outside of the preserve are guided and defined by the appropriate community plan and the relevant Specific Plans. Mitigation will be required for such uses in accordance with the following guidelines:

A. All lands included within the SCS designated for preserve or development have been the subject of negotiation and agreement with the wildlife agencies and the owners. All biological impacts outside of the preserve but within the SCS are covered in the above discussions and need no further mitigation measures than those required for those plans except for impacts to wetlands.

   Mitigation for impacts to land outside of the SCS must meet the requirements of the Biological Mitigation Ordinance.

B. Temporary impacts within the preserve shall be mitigated through the revegetation of the disturbed lands. Revegetation ratios shall be determined by the County upon review of the improvement plans, and shall base such determination on the quality and type of the habitat being disturbed.

## *3.8. Interim Protection/Long-term Protection*

Existing County regulations and ordinances, as well as project Specific Plans, will provide both interim and permanent protection. No proposed project within the SCS will be approved by the Board of Supervisors without a determination of conformance with the SCS. No grading will be done within the SCS without a determination of conformance with the SCS by the Director of the Department of Planning and Land Use of the County of San Diego.

## *3.9. Habitat Management Plan*

The general requirements for Habitat Management Plans and area specific management directives are discussed in Chapter 1, Section 1.7. Projects which have an existing habitat management plan are discussed below.

### 3.9.1. Hidden Valley Estates

The approved Open Space Habitat Management Plan (OSHMP) summarizes a proposed future implementation agreement as follows: "The owner and the County will enter into an Implementation Agreement with an agreed upon Habitat Operator. The purpose of this agreement is to ensure that those project conditions of approval

relative to the OSHMP will be carried out and that management of this open space in the future will be assured. This agreement will describe the role of each party in the implementation of this plan. Within this agreement will be a provision to amend or annex the plan to allow for future project participation, or for incorporation of the Hidden Valley Estates OSHMP into the broader cooperative Sweetwater-Loveland OSHMP when it is established. It also will provide for action in the future which might be necessary, such as changing program participants or the Habitat Operator, assignments and assumptions, etc., and provide that the County will have final authority over any actions relative to operation of the Hidden Valley Estates OSHMP [Summary 4., Hidden Valley Estates OSHMP, 1992]."

Relating to fire management concerns, the OSHMP further states:

4. The Habitat Operator or habitat management organization will enter into an agreement with the Rural Fire Protection District establishing responsibilities and implementing actions necessary for an effective fire management plan, for open space identified in the HCW-OSHMP consistent with the Specific Plan conditions for Hidden Valley Estates.

### 3.9.2. Otay Ranch

See Resource Management Plan discussion (Section 3.3.3.7). The RMP also includes other resource standards: Wetlands--no net loss (Policy 2.10); Wetland Buffer Areas--"Edge Plans for SPAs" in areas adjacent to the Preserve and includes setback criteria for specific habitat types (Policy 7.1 and 9.8); Floodways--conformance to Federal and State wetlands regulations (Policies 1.5 and 2.13). The RMP (Page P-16) also lists a number of standards for protection of various sensitive habitat lands within Otay Ranch, including the following: Diegan coastal sage scrub, Maritime succulent scrub, Valley needlegrass grassland, Riparian woodlands, Southern interior forest, Oak woodlands and Vernal pools.

### 3.9.3. The Nature Conservancy Lands on McGinty Mountain

The BLM South Coast RMP indicates that 603 acres of these lands are controlled for public purposes through a Patent (No. 04-85-0167) and limited to hiking, botanical, sight-seeing and day use.

The Baldwin Company
*Craftsmanship in building since 1956*

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DEPARTMENT OF PLANNING
AND
LAND USE

November 10, 1995

Mr. Gail Kobetich
U.S. Fish and Wildlife Service
2730 Lower Avenue West
Carlsbad, CA 92007

Ms. Lari Sheehan
Assistant Chief Administrative Officer
County of San Diego
1600 Pacific Highway
San Diego, CA 92101

Mr. Ron Rempel
Department of Fish and Game
1416 9th Street
Sacramento, CA 95814

Mr. John Goss
City Manager
City of Chula Vista
276 Fourth Ave
Chula Vista, CA 91910

Dear Gentlepersons:

Enclosed is a summary of the elements of the Otay Ranch MSCP Subarea Plan agreement. I look forward to your questions or comments. The Baldwin Company does not object to public discussion of this agreement.

Sincerely,

Kim John Kilkenny
Vice President

Enclosure

KJK/cc

cc: Jerry Jamriska, Otay Ranch Project Team
Bob Leiter, City of Chula Vista
Bob Asher, County of San Diego
Ann Ewing, County of San Diego
Tom Oberbauer, County of San Diego

# SOUTH COUNTY SUBAREA PLAN

The following are the elements of a proposed agreement between the City of Chula Vista, the County of San Diego, the California Fish and Game Department, the US Fish and Wildlife Agency, and the Baldwin Company concerning the South County/Otay Ranch MSCP Subarea Plan relative to Otay Ranch properties controlled by The Baldwin Company or Baldwin Company affiliates.

## A. Elimination of Otay Ranch GDP/SRP Development Entitlements

The South County/Otay Ranch MSCP Subarea Plan will be prepared, and the Otay Ranch GDP/SRP Plan will be amended, to eliminate development entitlements for the following areas and to designate such areas as part of the MSCP Preserve.

1. Central Proctor Valley (Otay Ranch Village 14, See Exhibit 1)

   a. PV1: Approximately 10 acres located west of Proctor Valley Road designated "L2" by the Otay Ranch GDP/SRP containing approximately 20 dwelling units.

   b. PV2: Approximately 70 acres on the east side of Village 14, designated "L2" by the Otay Ranch GDP/SRP, containing approximately 35 dwelling units.

   c. PV3: Approximately 119.2 acres of land in the southern portion of Village 14 designated by the Otay Ranch GDP/SRP as "LMV 3" and "LMV 2", containing approximately 290 dwelling units.

2. Resort Village (Village 13, See Exhibit 2)

   a. R1: Approximately 40.5 acres of land in the eastern portion of Village 13 designated "L2" by the Otay Ranch GDP/SRP, containing approximately 81 dwelling units.

   b. R2: Approximately 88 acres of development in the eastern portion of Village 13 designated "LMV 3" by the Otay Ranch GDP/SRP, containing approximately 264 dwelling units.

   c. R3: Approximately 9 acres of development in the eastern portion of Village 13 designated "LMV 3" by the Otay Ranch GDP/SRP, containing approximately 27 dwelling units.

3. Southeast of the Lake (Village 15, See Exhibit 3)

   a. SE1: Approximately 42 acres of development in the southwest portion of Village 15 designated "VL0.7" by the Otay Ranch GDP/SRP, containing approximately 16 dwelling units.

b. SE2: Approximately 48 acres of development in the southwest portion of Village 15 designated "VL0.7 by the Otay Ranch GDP/SRP, containing approximately 17 dwelling units.

## B. Areas of Development Added to the Otay Ranch GDP/SRP.

The South County/Otay Ranch MSCP Subarea Plan will be prepared, and the Otay Ranch GDP/SRP will be amended, to designate the following areas as developable and remove such areas from the Otay Ranch Preserve.

1. Poggi Canyon, (See Exhibit 4)

Land in Otay Ranch Villages One and Two, west of Paseo Ranchero (P1) will be designated developable for residential uses or for the construction of public infrastructure, (primarily Orange Avenue, related utilities and a trolley line). The expanded residential development areas within Otay Ranch ownership will equal approximately 140 acres (Village One and Village Two combined) and contain a land use designation of "LM 3", permitting 420 units. Development would also be permitted in the small Wolf Canyon finger between Village 2 and Village 3, currently omitted from development as a potential avian corridor linked to Poggi Canyon (P2). All these areas (Villages 1, 2 and 3) will be removed from the Otay Ranch Resource Preserve and excluded from the MSCP Preserve. The Poggi Canyon area east of Paseo Ranchero, between Village One and Village Two, is not part of the Otay Ranch Preserve, or of the Draft MSCP Preserve because the area contains low quality, fragmented and isolated habitats, not sustainable in the long term. Entitlements may be approved and development may proceed in that area resulting in the development of occupied habitats.

Portions of the land west of Paseo Ranchero (P1) are not within Otay Ranch ownership. These properties would be governed by this agreement and would not be included in the Subarea Preserve. Development entitlement for these properties would be determined by the City of Chula Vista, effective upon annexation.

2. Village 10 and 11 (See Exhibit 5)

a. SC1 - Otay Valley Road. Realign Otay Valley Road/Hunte Parkway eastward to the road alignment depicted in Exhibit 5 (which roughly equates to the alignment contained in the Otay Ranch Phase 2 Progress Plan).

b. SC2 - Village 10 and 11. Expand the development area in Villages 10 and 11, eastward to abut the newly aligned Otay Valley Road/Hunte Parkway, adding approximately 93 acres of development with a land use designation of "LMV 4.5", permitting approximately 460 units. This will cause a minor adjustment in the configuration of the adjacent community park to ensure that the area contains 25 acres of viable park land. (SC3)

3. Village Four (See Exhibit 6)

   a. Rock Mountain. Expand the development area in Village Four to include approximately 70 acres roughly located on Rock Mountain and increase the permissible number of dwelling units within Village Four by 350 units (the location of new units will be determined by the land use jurisdiction through the GDP/SRP amendment process).

4. Village Nine (See Exhibit 7)

   a. South of Otay Valley Road. Add approximately 10 acres in three new development areas to Village Nine south of Otay Valley Road connecting the existing four development "blobs". The land use jurisdiction may reallocate Village Nine dwelling units to the area south of Otay Valley Road.

C **Other Considerations**

1. City of Chula Vista and the County of San Diego will decrease densities within the Otay Ranch transit village cores from an average of 18 dwelling units per acre to 14.5 dwelling units per acre, resulting in a decrease of 1,057 units (Villages 1, 5, 6 and 8).
2. Draft the MSCP Subarea Plan and amend the Otay Ranch GDP/SRP and related documents to eliminate coastal sage scrub and maritime succulent scrub mitigation requirements for restoration.
3. California Department of Fish and Game agrees to approve the establishment of a Habitat Maintenance District to fund the Otay Ranch Resource Preserve pursuant to the provisions of the Habitat Maintenance District Act.
4. The parties agree to support the establishment of a federal wildlife refuge for the designated Otay Ranch open space areas east of the Otay Reservoir. Upon the establishment of such a refuge, the Fish and Wildlife Agency will be designated the Otay Ranch Preserve Owner/Manager for those portions of the Otay Ranch Preserve that lie within the refuge. The City and the County will thereafter require that Otay Ranch preserve land be conveyed to the Wildlife Refuge, consistent with the provisions of the Otay Ranch GDP/SRP, RMP and Preserve Conveyance Plan. Land conveyed to the Wildlife Refuge shall be the maintenance responsibility of the Fish and Wildlife Agency or its designee, without financial assistance from assessment districts or other financing or exaction mechanisms imposed by the City of Chula Vista or the County of San Diego.
5. The parties agree that the initial Otay Ranch Preserve Financing Plan program will be established to generate sufficient revenues to maintain the entire Otay Ranch Preserve without the creation a Wildlife Refuge. However, if a

Wildlife Refuge assumes maintenance responsibility for preserve land, the first priority for revenues diverted from maintenance of refuge land shall be for Otay Ranch Preserve Owner/Manager tasks within the western portions of the Preserve, which were not initially funded through the Phase 2 RMP finance mechanism (specifically the establishment and maintenance of a Nature Interpretive Center and research and education programs associated with the Nature Interpretive Center and the Otay Valley Regional Park).

6. The Sensitive Resource Study (SRS) area contained within the Otay Ranch Resort Village (Village 13) shall be removed from the Otay Ranch GDP/SRP and State and Federal agencies shall not object to development of such areas pursuant to the Otay Ranch GDP/SRP/SRP.

7. The State and Federal Resource Agencies agree to issue necessary "take permits" for the development of Otay Ranch consistent with the land use entitlements contained in the Otay Ranch GDP/SRP as modified through the implementation of this agreement.

## D. Implementation Process

This agreement shall be implemented through the following process:

1. Subarea Plan. The City of Chula Vista and the County of San Diego shall proceed with the development of their respective MSCP Subarea Plans which incorporate the Otay Ranch Planning Area. The Subarea Plans area shall reflect the provisions of the Otay Ranch GDP/SRP as proposed for modification by this agreement. For those areas for which it is proposed that current Otay Ranch development entitlements be eliminated (Section A above), the Subarea Plan shall provide that take permits will not be authorized. For those areas for which it is proposed that additional areas of development be authorized (Section B above), the Subarea Plan shall provide that take permits will be authorized. The Subarea Plan text shall also incorporate the provisions of "Other Considerations" as discussed in Section C above.

2. MSCP Process. The Subarea Plans shall be submitted to the City of San Diego for inclusion in the revised MSCP, including necessary environmental review.

3. SPA One. The City of Chula Vista and the County of San Diego shall continue processing the Otay Ranch SPA One application and related documents (including but not limited to the SPA One tentative map, the Chula Vista Sphere of Influence, the initial Otay Ranch annexation, the Otay Ranch Overall Design Plan and Otay Ranch Phase 2 RMP).

4. General Plan Amendment. Soon after approval of the Otay Ranch SPA One Land Plan, tentative map and the annexation of SPA One into the City of

Chula Vista, the Baldwin Company shall initiate a General Plan Amendment applications through the City of Chula Vista and the County of San Diego seeking plan amendments to implement the components outlined in A, B, and C above. It is understood that as a private applicant, the applicant shall pay full cost recovery fees for the processing of the General Plan Amendments.

## E. Timing

1. All parties understand that time is of the essence, with respect to the preparation, review and action on MSCP documents and SPA One related documents (as outlined above). Implementation of the MSCP Subarea Plan agreement is a distinct and separate process from the processing of SPA One related documents. Implementation of this agreement does not require delay of the timely consideration of SPA One related applications. To the contrary, failure to proceed with SPA One related applications jeopardizes the ability of The Baldwin Company to implement the elements of this agreement.

2. Implementation of the elements of this agreement is not dependent upon resolution of outstanding MSCP issues involving Otay Ranch properties not controlled by The Baldwin Company or Baldwin Company affiliates.

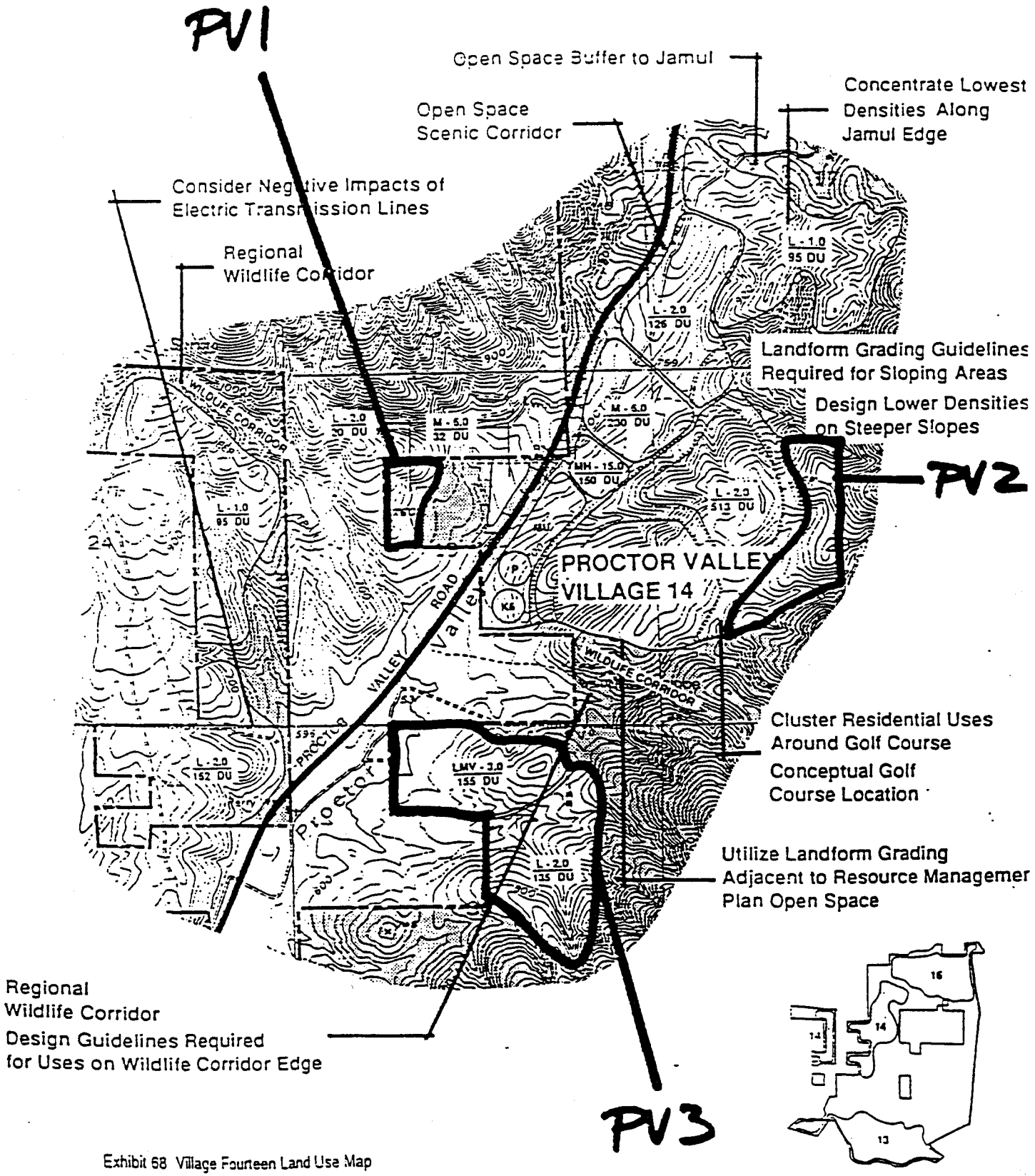


Exhibit 68 Village Fourteen Land Use Map

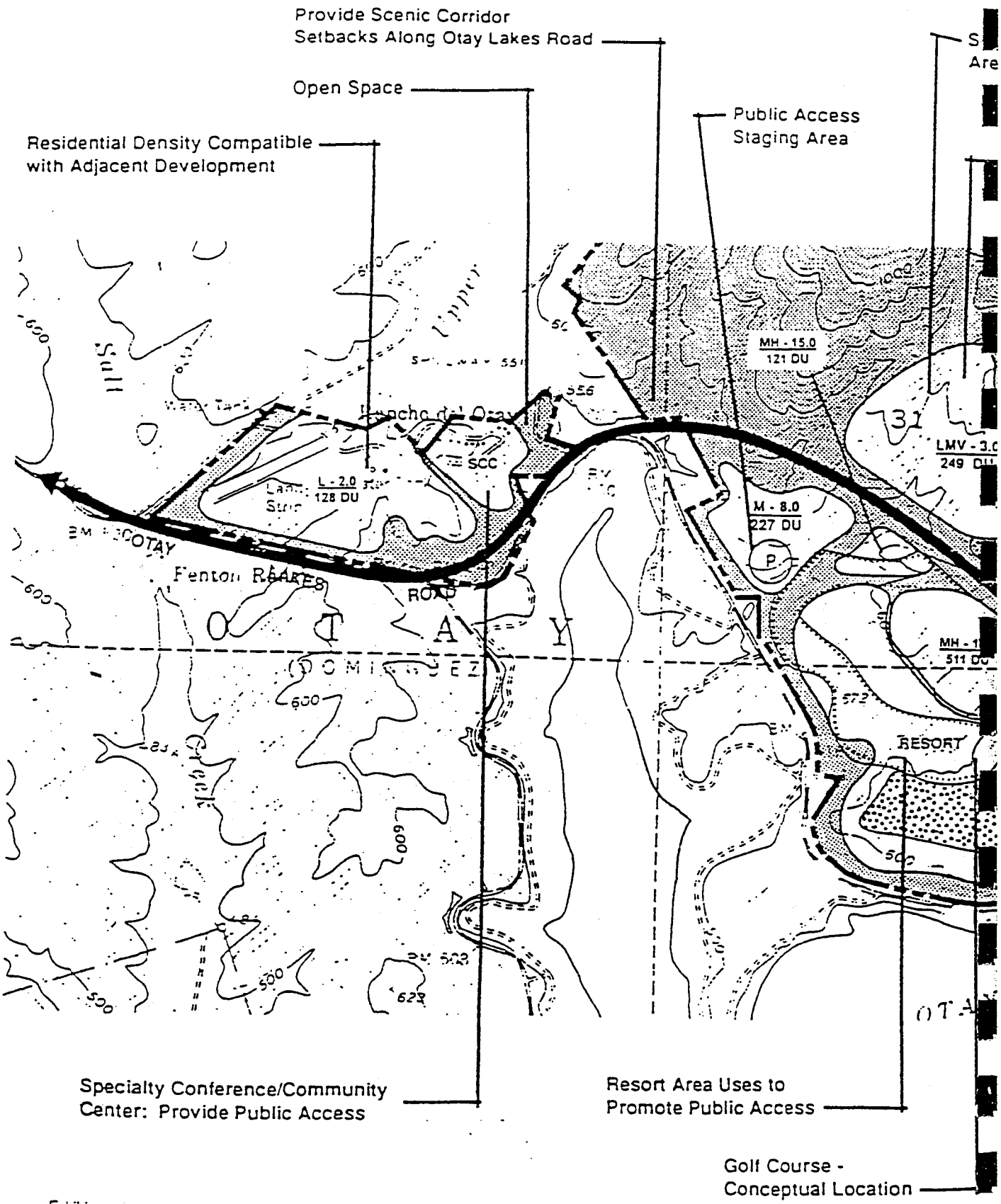


Exhibit 66 Resort Village Land Use Map

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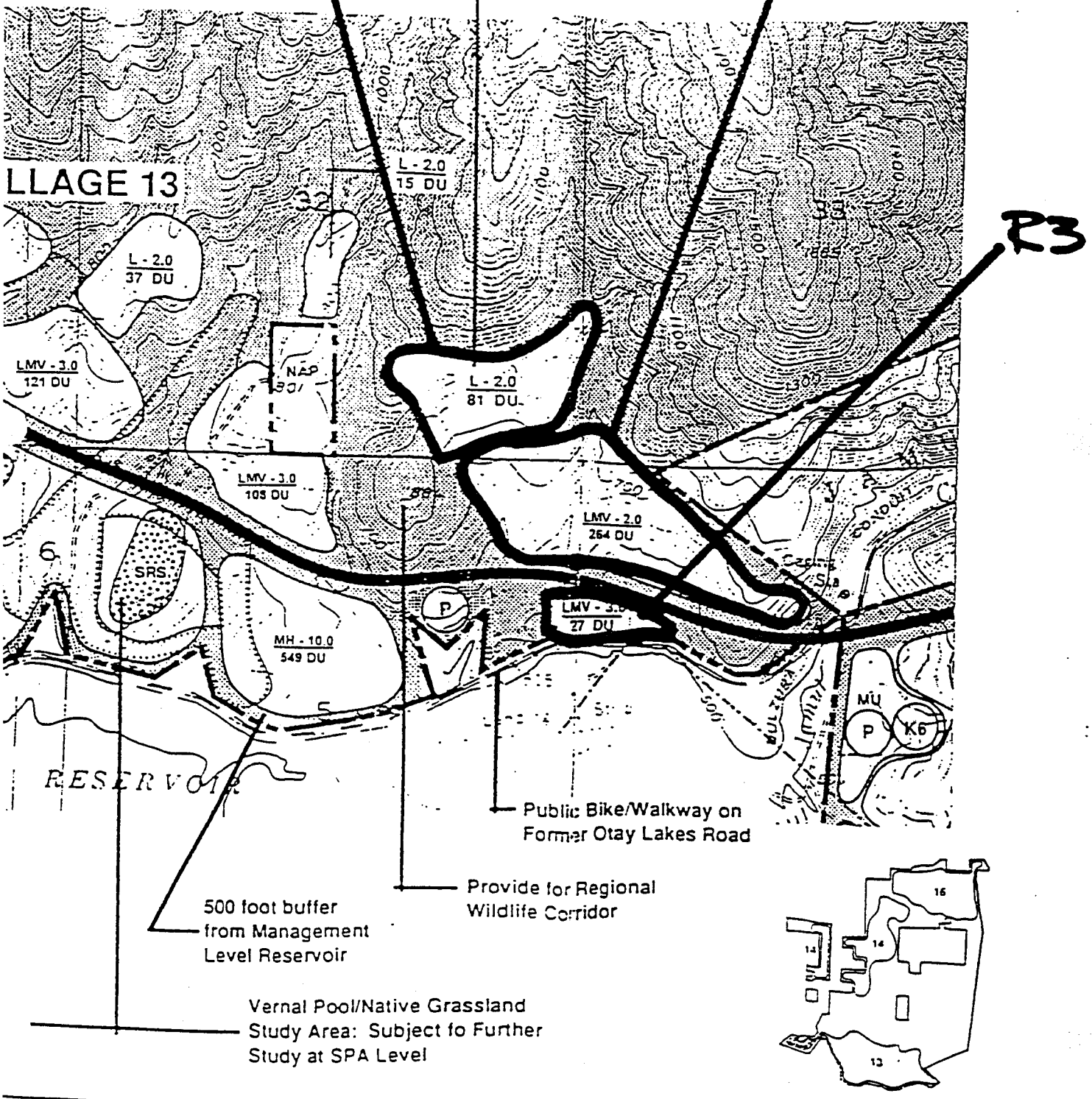


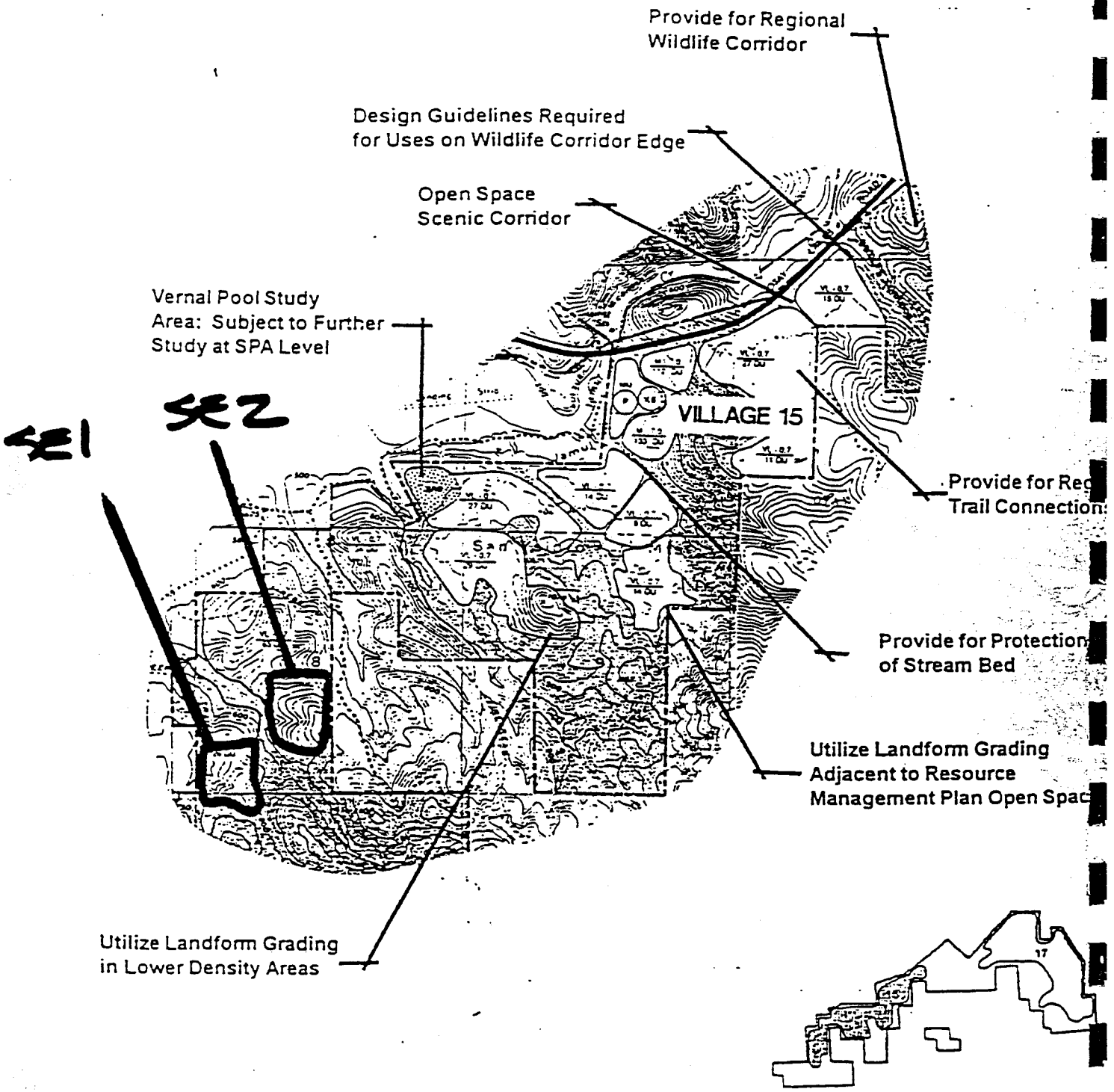
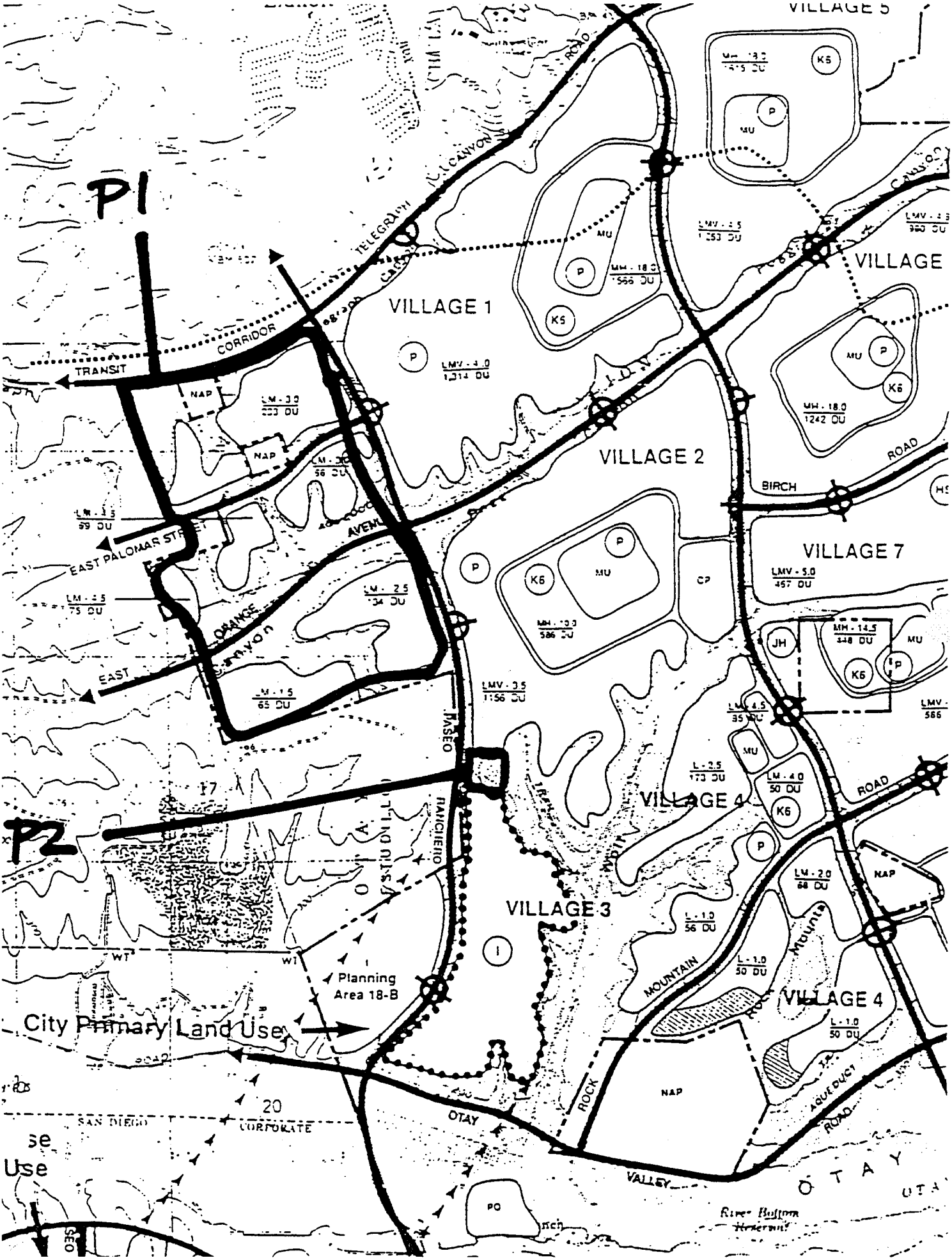



Exhibit 70 Village Fifteen Land Use Map



P1
P2
VILLAGE 1
VILLAGE 2
VILLAGE 3
VILLAGE 4
VILLAGE 4
VILLAGE 5
VILLAGE 7
TRANSIT
CORRIDOR
TELEGRAPH
CANYON
ROAD
EAST PALOMAR STREET
EAST
ORANGE
AVENUE
PASEO
RANCHERO
BIRCH
ROAD
MOUNTAIN
ROCK
OTAY
VALLEY
AQUEDUCT
ROAD
Planning Area 18-B
City Primary Land Use
SAN DIEGO
CORPORATE
River Bottom Reservoir
NAP
MU
P
K5
K6
JH
CP
PO

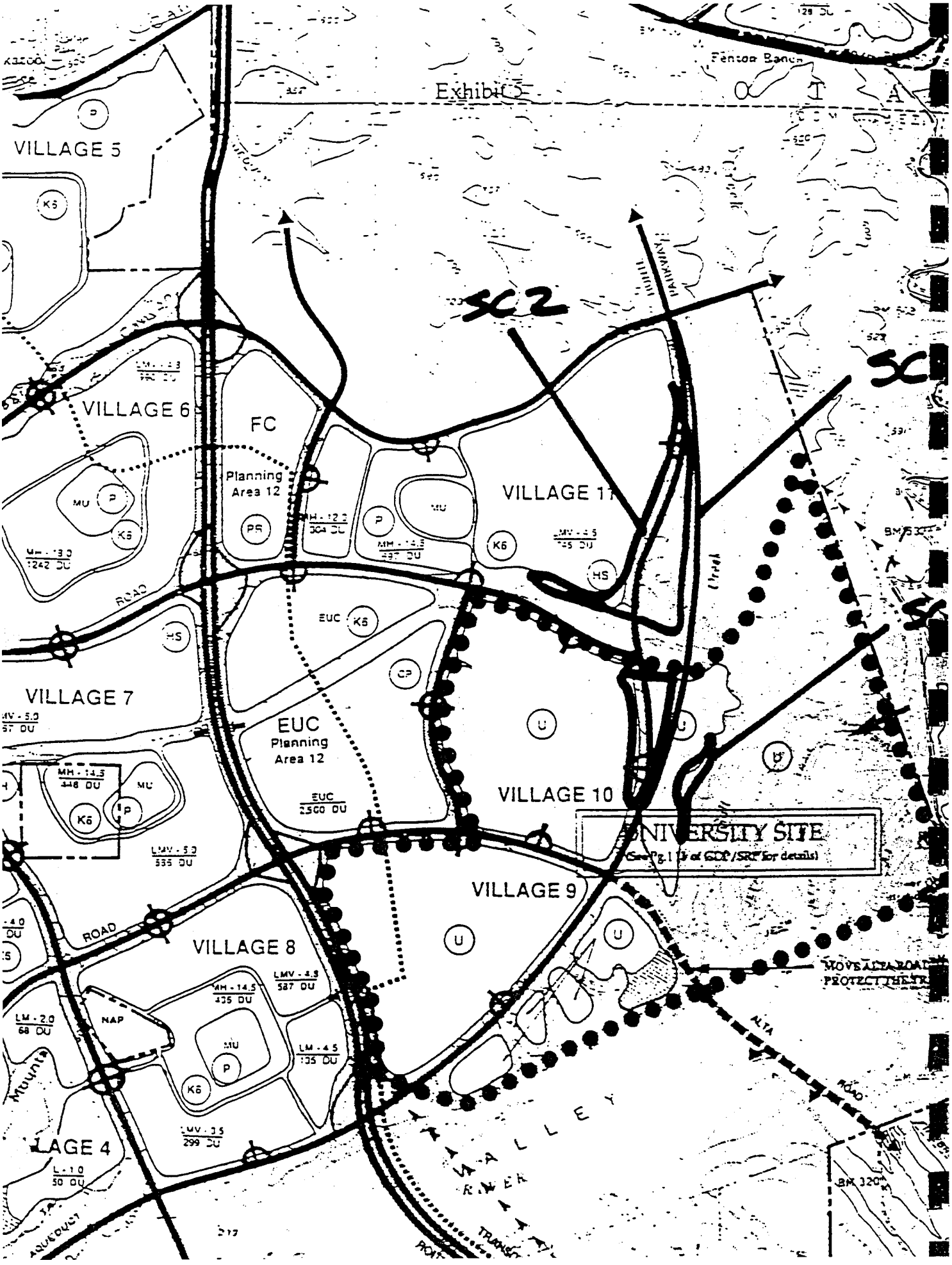


Exhibit 5
Fenton Ranch
VILLAGE 5
VILLAGE 6
FC
Planning Area 12
VILLAGE 11
VILLAGE 7
EUC
Planning Area 12
VILLAGE 10
UNIVERSITY SITE
VILLAGE 9
VILLAGE 8
LAGE 4
ROAD
NAP
MOVE ALTA ROAD
PROTECT THE TR
ALTA
ROAD
SC2
SC

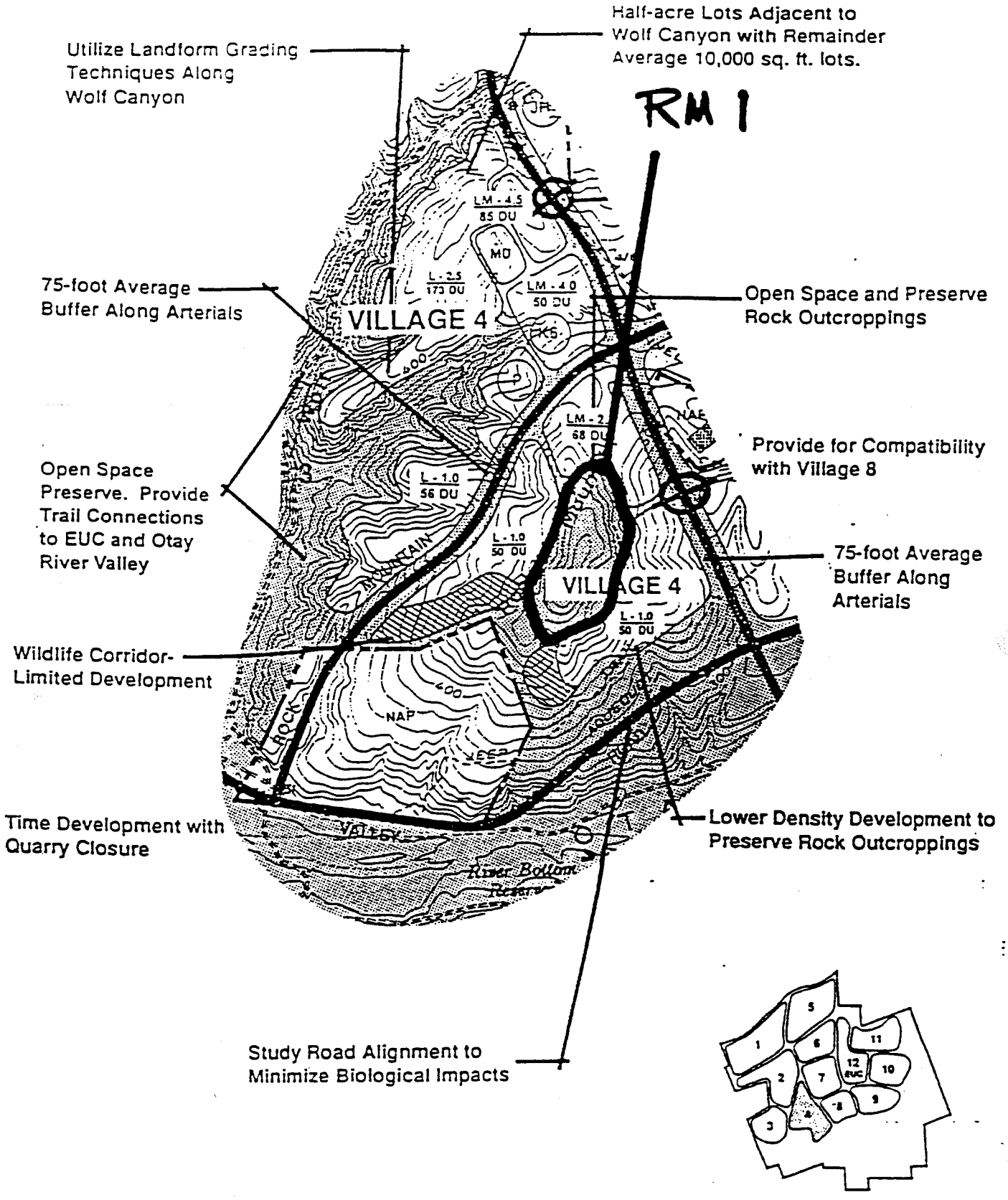
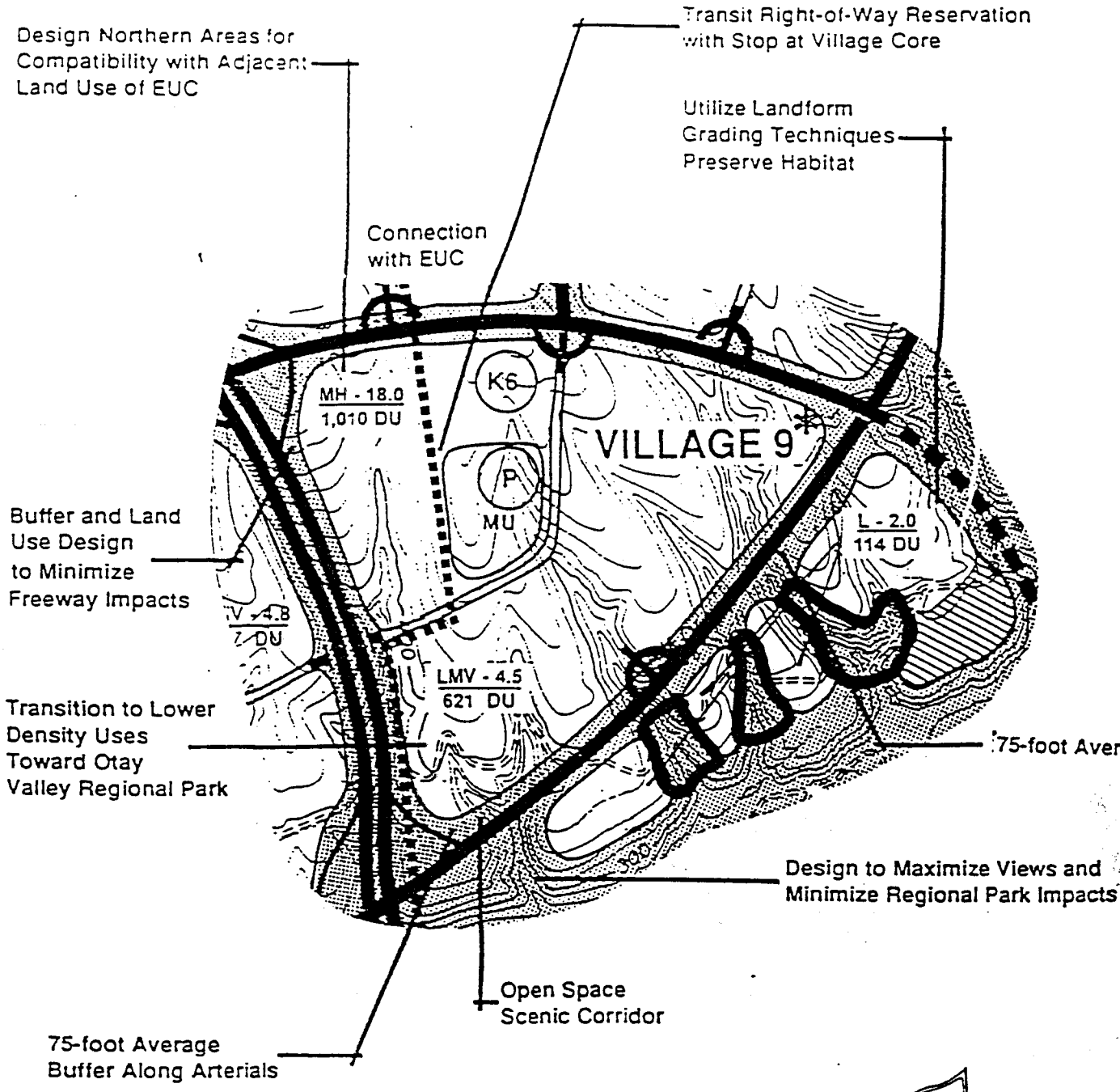
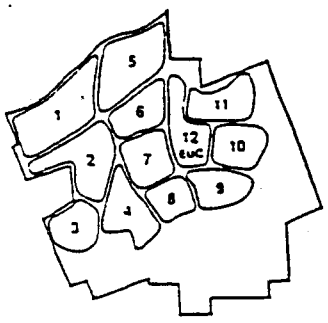



Exhibit 46 Village Four Land Use Map




* Primary use of Village 9 is University. Secondary use of Village 9 is depicted above. See Otay Ranch Land Use Designations Table, Part II, Chapter 1, Section C.

Exhibit 57 Village Nine Land Use Map - Secondary Residential Village Land Use

# 4. Metro-Lakeside-Jamul Segment

The Metro-Lakeside-Jamul Segment of the County Subarea Plan includes lands that are under the jurisdiction of San Diego County and within the Multiple Species Conservation Program (MSCP) planning area, but outside the Lake Hodges and South County Segments described in Chapters 2 and 3. This third Segment has two parts, one in the north bounded by the City of San Diego, Poway, and the boundary of the MSCP area. The second part is bounded on the west by several incorporated areas, on the east and north by the MSCP boundary, and on the south by the South County Segment. For purposes of this plan, the Metro-Lakeside-Jamul Segment is analyzed in two sections, separated by I-8.

The Metro-Lakeside-Jamul Segment has a total area of 172,952 acres, of which 115,241 are in natural vegetation with habitat value. The area north of I-8 occupies 74,510 acres, of which 51,543 provide habitat. South of I-8, the Metro-Lakeside-Jamul Segment includes 98,442 acres with 63,698 acres of habitat. Urban uses, other development, and agriculture occupy the remaining 57,711 acres. Population centers within this Segment include the unincorporated communities of Jamul, Jamacha, Rancho San Diego, Lakeside, Moreno, Eucalyptus Hills, Lakeview, Johnstown, Flinn Springs, Spring Valley, Mt. Helix, Crest, and Winter Gardens. Lands in the Metro-Lakeside-Jamul Segment (see Figure 1-1 in Chapter 1 of this document) provide future opportunities for both development and conservation. Conservation of approximately 33,200 additional acres in an appropriate configuration are needed to achieve the biological goals for the Metro-Lakeside-Jamul Segment (see Section 4.2 for a description of the conservation goals). Of the total goal for additional conservation, approximately 17,000 acres are to be located north of I-8 and approximately 15,500 south of I-8.

## *4.1. Biological Resources in the Metro-Lakeside-Jamul Segment*

The Habitat Evaluation Map (Figure 4-1) and the Wildlife Agencies' Biological Resources Core Areas and Linkage Map (Figure 1-2 in Attachment 1) depict biological information for areas in the Metro-Lakeside-Jamul Segment that support significant biological resources. The areas depicted are important to meeting the biological goals for covered species and habitats addressed in the MSCP. Coastal sage scrub and chaparral make up approximately 83% of the natural vegetation in this Segment. Vegetation communities and their acreages in the Metro-Lakeside-Jamul Segment are listed in Table 4-1.

Sensitive and covered species known to occur in the Metro-Lakeside-Jamul Segment include the following:

| Plants | Animals |
|---|---|
| San Diego thorn-mint | arroyo southwestern toad |
| San Diego ambrosia | southwestern pond turtle |
| Encinitas baccharis | San Diego horned lizard |
| Orcutt's brodiaea | orange-throated whiptail |
| dense reed grass | bald eagle |
| slender-pod jewelflower | northern harrier |
| Lakeside ceanothus | Cooper's hawk |
| wart-stemmed ceanothus | ferruginous hawk |
| Palmer's ericameria | golden eagle |
| San Diego barrel cactus | coastal cactus wren |
| felt-leaved monardella | California gnatcatcher |
| willowy monardella | western bluebird |
| San Diego goldenstar | least Bell's vireo |
| Dehesa bear-grass | California rufous-crowned sparrow |
| San Miguel savory | mountain lion |
| Gander's butterweed | southern mule deer |
| narrow-leaved nightshade | |
| Parry's tetracoccus | |

## 4.2. *Biological Goals and Preserve Design Criteria*

The MSCP Plan has established conservation goals for habitat types. These goals were evaluated by the Wildlife Agencies using the MSCP species location database for each subarea in the MSCP planning area and for each Segment in the County Subarea. For both sections of the Metro-Lakeside-Jamul Segment, conservation goals for habitat types are listed in Table 4-2. Core areas are described in Section 4.2.1, linkages are discussed in Section 4.2.2, and goals for individual species, based on the Wildlife Agencies evaluation, are included in Section 4.2.3. The habitat type with the largest amount of land remaining to be protected in this Segment is Coastal sage scrub, followed by chaparral. Other habitats are targeted in lesser amounts. One-third of the total anticipated conservation level is already protected (see Section 4.6 for a description of protected areas). The definition of Biological Core Resource Areas is as defined in the County's Biological Mitigation Ordinance. The Wildlife Agencies Core and Linkage Map (Attachment 1, Figure 1-2) is one possible configuration of core and linkage areas that would be consistent with the County's Biological Mitigation Ordinance.

The goals shown in Table 4-2 are based on an analysis of the acres of habitat that must be conserved within the Metro-Lakeside-Jamul Segment to adequately conserve the habitat type and obtain coverage for the 85 species. The conservation of these lands in conjunction with the lands conserved by other jurisdictions will provide adequate conservation to obtain take coverage for the 85 species.

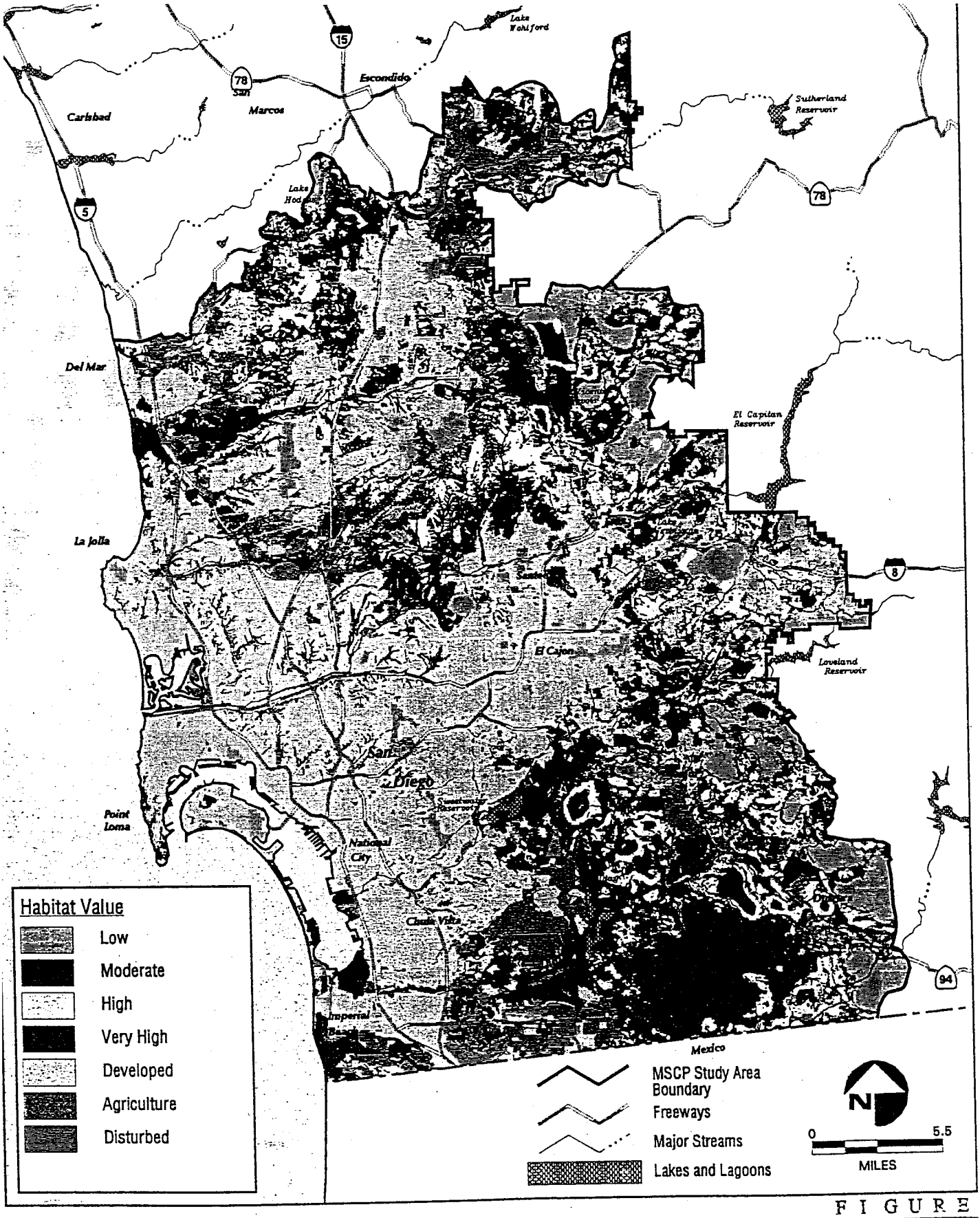



FIGURE 4-1

# Habitat Evaluation Map

04/26/96

/mscp/plots/figures/habeval8x11.aml

Table 4-1: Metro-Lakeside-Jamul Vegetation Acreages

| Vegetation Community | North of Interstate 8 | | | South of Interstate 8 | | | Entire Segment [1] | | |
|---|---|---|---|---|---|---|---|---|---|
| | Area (acres) | % Total Area | % Total Habitat | Area (acres) | % Total Area | % Total Habitat | Total (acres) | % Total Area | % Total Habitat |
| Coastal Sage Scrub (CSS) | 14,859 | 19.94 | 28.83 | 25,211 | 25.61 | 39.58 | 40,070 | 23.17 | 34.77 |
| Chaparral | 28,864 | 38.74 | 56.00 | 27,278 | 27.71 | 42.82 | 56,143 | 32.46 | 48.72 |
| Southern Maritime Chaparral | 52 | 0.07 | 0.10 | 0 | 0.00 | 0.00 | 52 | 0.03 | 0.05 |
| CSS/Chaparral | 634 | 0.85 | 1.23 | 2,292 | 2.33 | 3.60 | 2,926 | 1.69 | 2.54 |
| Grassland | 2,228 | 2.99 | 4.32 | 3,145 | 3.19 | 4.94 | 5,373 | 3.11 | 4.66 |
| Freshwater Marsh | 7 | 0.01 | 0.01 | 29 | 0.03 | 0.05 | 36 | 0.02 | 0.03 |
| Oak Riparian Forest | 1,737 | 2.33 | 3.37 | 2,433 | 2.47 | 3.82 | 4,170 | 2.41 | 3.62 |
| Riparian Forest | 92 | 0.12 | 0.18 | 113 | 0.12 | 0.18 | 205 | 0.12 | 0.18 |
| Riparian Woodland | 12 | 0.02 | 0.02 | 0 | 0.00 | 0.00 | 12 | 0.01 | 0.01 |
| Riparian Scrub | 369 | 0.49 | 0.72 | 168 | 0.17 | 0.26 | 537 | 0.31 | 0.47 |
| Oak Woodland | 2,139 | 2.87 | 4.15 | 2,543 | 2.58 | 3.99 | 4,682 | 2.71 | 4.06 |
| Tecate Cypress Forest | 0 | 0.00 | 0.00 | 71 | 0.07 | 0.11 | 71 | 0.04 | 0.06 |
| Eucalyptus Woodland | 298 | 0.40 | 0.58 | 69 | 0.07 | 0.11 | 367 | 0.21 | 0.32 |
| Open Water | 158 | 0.21 | 0.31 | 80 | 0.08 | 0.13 | 238 | 0.14 | 0.21 |
| Disturbed Wetland | 29 | 0.04 | 0.06 | 79 | 0.08 | 0.12 | 108 | 0.06 | 0.09 |
| Flood Channel | 48 | 0.07 | 0.09 | 186 | 0.19 | 0.29 | 235 | 0.14 | 0.20 |
| Other Habitat [2] | 17 | 0.02 | 0.03 | 0 | 0.00 | 0.00 | 17 | 0.01 | 0.01 |
| **Subtotal** | **51,543** | **69** | **100** | **63,698** | **65** | **100** | **115,241** | **67** | **100** |
| Urban/Agriculture/Developed | 22,967 | 31 | | 34,744 | 35 | | 57,711 | 33 | |
| **Total** | **74,510** | **100** | | **98,442** | **100** | | **172,952** | **100** | |

*Notes:*

[1] Component parts may not add to total because of rounding errors.

[2] Disturbed, agricultural and developed areas with habitat value.

### 4.2.1. Preserve Design Goals and Criteria for Cores and Linkages

Goals and criteria for conservation of core and linkage areas on both a project-by-project basis and for the Segment as a whole are to:

- Acknowledge the no-net-loss-of-wetlands standard that individual projects must meet to satisfy state and federal wetland goals, policies, and standards and implement applicable County ordinances with regards to wetland mitigation;
- Include measures to maximize the habitat structural diversity of conserved habitat areas, including conservation of unique habitats and habitat features (e.g., soil types, rock outcrops, drainages, host plants);
- Provide for the conservation of spatially representative (e.g., north of I-8 vs. south of I-8) examples of extensive patches of coastal sage scrub and other habitat types that were ranked as having high and very high biological value by the MSCP habitat evaluation model;
- Create significant blocks of habitat to reduce edge effects and maximize the ratio of surface area to the perimeter of conserved habitats. Subsequently, using the criteria set out in Chapter 6, Section 6.2.3 of the MSCP Plan, potential impacts from new development on biological resources within the preserve that should be considered in the design of any project include access, nonnative predators, nonnative species, illumination, drain water (point source), urban runoff (non-point source), and noise. County staff shall determine specific measures necessary to contain impacts from a new development project, and thereby avoid, reduce or mitigate edge effects on the preserve to less than significant levels.
- Provide incentives for development in the least sensitive habitat areas;
- Minimize impacts to narrow endemic species and avoid impacts to core populations of narrow endemic species;
- Preserve the biological integrity of linkages between Biological Resource Core Area; and
- Achieve the conservation goals for covered species and habitats.

Using these goals, the preserve design criteria, and within the framework of the identified core areas and linkages, the Wildlife Agencies have developed a map (Figure 1-1, Attachment 1) that shows areas that the Wildlife Agencies have preapproved for use as mitigation lands. Specific proposals for development and conservation will be evaluated by the County for their consistency with these conservation goals. The County shall employ these conservation goals and design criteria to the maximum extent practicable in project evaluation for this Segment and for the subarea as a whole in conformance with the requirements of state and federal law.

### 4.2.2. Critical Biological Resource Areas Within the Metro-Lakeside-Jamul Segment

During the MSCP Planning process, the most critical resource areas were identified and priories set for preservation. (See Section 2.2 of the MSCP Plan.) Part or all of seven

critical biological resource areas, identified in Table 2-2 of the MSCP Plan, are located in the Metro-Lakeside-Jamul Segment. They are:

- Jamul Mountains, which is north of and abuts areas to be conserved in the South County Segment;
- Portions of Sweetwater Reservoir/San Miguel Mountains/Sweetwater, east of areas conserved by the City of San Diego;
- McGinty Mountain/Sequan Peak – Dehesa, including areas already conserved by CDFG;
- Lake Jennings/Wildcat Canyon – El Cajon Mountain;
- Mission Trails/Kearny Mesa/East Elliott/Santee;
- San Vicente Reservoir northeast through San Vicente;
- Portions of Central Poway/San Vicente Reservoir/North Poway; and
- Portions of Hodges Reservoir/San Pasqual Valley, which surround areas conserved by the City of San Diego north and east of the Lake Hodges Segment and provide a linkage to the San Luis Rey River north of the MSCP study area.

Conservation will be employed to the maximum extent practicable within these sensitive resource areas. As part of the planning process for this Segment and to aid in conservation efforts, the Wildlife Agencies developed their Preapproved Mitigation Map (Attachment 1, Figure 1). This map includes the high and very high habitat value areas shown on the Habitat Evaluation Map (Figure 4-1). The Biological Mitigation Ordinance is designed to provide incentives for development in areas with lower habitat value and direct conservation and open space preservation to areas of high and very high habitat value.

### 4.2.3. Linkages

The high and very high habitat value lands (Figure 4-1) will be the primary linkages that connect Core Biological Resource areas within the MSCP area or provide connections to habitat outside the MSCP area.

**General Locations of Linkages:** Five linkages are located in the Metro-Lakeside-Jamul Segment. They are:

- Otay Ranch to Sequan, a linkage consisting of many small parcels of land. Although most of this linkage occurs in natural land, assembling an adequate linkage will require negotiations with many landowners;
- Sweetwater Reservoir to McGinty Mountain, a highly fragmented area. The southern part of this linkage is narrow and highly constrained by development.
- I-8 at Lakeside, another area with considerable development and multiple small parcels of land. The conserved area south of I-8 has been expanded to about 2,600 acres by the creation of the Crestridge Mitigation Bank;

Table 4-2: Habitat Protection Goals

| Vegetation Community | Total [1] (acres) | Total Goal [1] (acres) | Currently Conserved [2] (acres) | To Be Protected (acres) |
|---|---|---|---|---|
| *North of Interstate 8* | | | | |
| Coastal Sage Scrub | 14,859 | 9,525 | 1,845 | 7,680 |
| Chaparral | 28,864 | 12,134 | 4,859 | 7,276 |
| Southern Maritime Chaparral | 52 | 0 | 0 | 0 |
| Coastal Sage Scrub/Chaparral | 634 | 454 | 172 | 283 |
| Grassland | 2,228 | 633 | 185 | 448 |
| Freshwater Marsh | 7 | 2 | 0 | 2 |
| Oak Riparian Forest | 1,737 | 1,121 | 97 | 1,025 |
| Riparian Forest | 92 | 51 | 8 | 43 |
| Riparian Woodland | 12 | 6 | 4 | 2 |
| Riparian Scrub | 369 | 236 | 2 | 234 |
| Oak Woodland | 2,139 | 1,039 | 392 | 647 |
| Tecate Cypress Forest | 0 | 0 | 0 | 0 |
| Eucalyptus Woodland | 298 | 27 | 0 | 27 |
| Open Water | 158 | 90 | 21 | 69 |
| Disturbed Wetland | 29 | 0 | 0 | 0 |
| Flood Channel | 48 | 34 | 0 | 34 |
| Other Habitat [3] | 17 | 0 | 0 | 0 |
| **Total** | **51,543** | **25,353** | **7,585** | **17,768** |
| *South of Interstate 8* | | | | |
| Coastal Sage Scrub | 25,211 | 9,101 | 1,088 | 8,013 |
| Chaparral | 27,278 | 6,485 | 2,330 | 4,155 |
| Southern Maritime Chaparral | 0 | 0 | 0 | 0 |
| Coastal Sage Scrub/Chaparral | 2,292 | 698 | 319 | 379 |
| Grassland | 3,145 | 971 | 22 | 949 |
| Freshwater Marsh | 29 | 13 | 0 | 13 |
| Oak Riparian Forest | 2,433 | 923 | 124 | 799 |
| Riparian Forest | 113 | 33 | 0 | 33 |
| Riparian Woodland | 0 | 0 | 0 | 0 |
| Riparian Scrub | 168 | 63 | 0 | 63 |
| Oak Woodland | 2,543 | 862 | 101 | 762 |
| Tecate Cypress Forest | 71 | 0 | 0 | 0 |
| Eucalyptus Woodland | 69 | 14 | 0 | 14 |
| Open Water | 80 | 34 | 0 | 34 |
| Disturbed Wetland | 79 | 52 | 0 | 52 |
| Flood Channel | 186 | 163 | 0 | 163 |
| Other Habitat [3] | 0 | 0 | 0 | 0 |
| **Total** | **63,698** | **19,411** | **3,983** | **15,428** |

(continued)

Table 4-2: Habitat Protection Goals (cont.)

| Vegetation Community | Total (acres) | Total Goal (acres) | Currently Conserved (acres) | To Be Protected (acres) |
|---|---|---|---|---|
| *Entire Segment* | | | | |
| Coastal Sage Scrub | 40,070 | 18,626 | 2,933 | 15,693 |
| Chaparral | 56,143 | 18,619 | 7,188 | 11,431 |
| Southern Maritime Chaparral | 52 | 0 | 0 | 0 |
| Coastal Sage Scrub/Chaparral | 2,926 | 1,152 | 491 | 662 |
| Grassland | 5,373 | 1,603 | 207 | 1,397 |
| Freshwater Marsh [4] | 36 | 15 | 0 | 15 |
| Oak Riparian Forest [4] | 4,170 | 2,045 | 221 | 1,824 |
| Riparian Forest [4] | 205 | 84 | 8 | 76 |
| Riparian Woodland [4] | 12 | 6 | 4 | 2 |
| Riparian Scrub [4] | 537 | 298 | 2 | 296 |
| Oak Woodland | 4,682 | 1,901 | 492 | 1,409 |
| Tecate Cypress Forest | 71 | 0 | 0 | 0 |
| Eucalyptus Woodland | 367 | 41 | 0 | 41 |
| Open Water | 238 | 124 | 21 | 103 |
| Disturbed Wetland | 108 | 52 | 0 | 52 |
| Flood Channel | 235 | 197 | 0 | 197 |
| Other Habitat [3] | 17 | 0 | 0 | 0 |
| **Total** | **115,241** | **44,764** | **11,568** | **33,197** |

*Notes:*

[1] Component parts may not add to total

[2] If the number of acres already conserved for a particular vegetation type is greater than the goal, the goal is entered in the "Currently Conserved" column. This is done so that the total acreage "to be protected" is not inappropriately reduced.

[3] Disturbed, agricultural and developed areas

[4] Wildlife Agencies require no net loss of wetland habitat as per Federal Wetland. Regulations/State Policies & Regulations

- Dehesa to El Capitan Reservoir, a linkage to US Forest Service lands outside the MSCP area. This linkage is an important corridor for species that occupy habitats other than Coastal sage scrub; and

- Boden Canyon, a linkage in the extreme northeast of the MSCP area. It provides a connection to Rancho Guejito outside the MSCP area.

**Goals and Criteria for Linkages and Corridors:** Goals for linkages and corridors have been developed to aid in the evaluation of project impacts and of land being considered for conservation. For this discussion, a linkage is defined as an area of habitat that not only provides connectivity between core areas but also provides breeding and foraging habitat for resident species. Corridors are narrower connections that allow for movement and dispersal only.

The County Subarea Plan policy for habitat linkages is to minimize habitat fragmentation; provide habitat for plants and animals in transit; maintain genetic and demographic interchange between populations; facilitate daily, annual, and seasonal movements; permit dispersal to breeding and foraging areas; and facilitate 'rescue' of small peripheral populations from extinction.

Meeting this policy calls for evaluating the habitat needs and dispersal characteristics of the target species and how they relate to the landscape and development patterns in the area. The following are the design criteria for projects to protect the biological values of linkages and corridors:

- Habitat linkages as defined by the Biological Mitigation Ordinance, rather than just corridors, will be maintained.

- Existing movement corridors within linkages will be identified and maintained.

- Corridors with good vegetative and/or topographic cover will be protected.

- Regional linkages that accommodate travel for a wide range of wildlife species, especially those linkages that support resident populations of wildlife, will be selected.

- The width of a linkage will be based on the biological information for the target species, the quality of the habitat within and adjacent to the corridor, topography, and adjacent land uses. Where there is limited topographic relief, the corridor must be well vegetated and adequately buffered from adjacent development.

- If a corridor is relatively long, it must be wide enough for animals to hide in during the day. Generally, wide corridors are better than narrow ones. If narrow corridors are unavoidable, they should be relatively short. If the minimum width of a corridor is 400 feet, it should be no longer than 500 feet. A width of greater than 1,000 feet is recommended for large mammals and birds. Corridors for bobcats, deer, and other large animals should reach rim-to-rim along drainages, especially if the topography is steep.

- Visual continuity (i.e., long lines-of-sight) will be provided within movement corridors. This makes it more likely that the animals will keep moving through it. Developments along the rim of a canyon used as a corridor should be set back from the canyon rim and screened to minimize their visual impact.

- Corridors with low levels of human disturbance, especially at night, will be selected. This includes maintaining low noise levels and limiting artificial lighting.

- Barriers, such as roads, will be minimized. Roads that cross corridors should have 10-foot high fencing that channels wildlife to underpasses located away from interchanges. The length-to-width ratio for wildlife underpasses is less than 2, although this restriction can be relaxed for underpasses with a height of greater than 30 feet.

- Where possible at wildlife crossings, road bridges for the vehicular traffic rather than tunnels for wildlife use will be employed. Box culverts will only be used when they can achieve the wildlife crossing/movement goals for a specific location. Crossings will be designed as follows: sound insulation materials will be provided; the substrate will be left in a natural condition, and vegetated with native vegetation if possible; a line-of-sight to the other end will be provided; and, if necessary, low-level illumination will be installed in the tunnel.

- If continuous corridors do not exist, archipelago (or stepping-stone) corridors may be used for short distances. For example, the gnatcatcher may use disjunct patches of sage scrub for dispersal if the distance involved is under 1-2 miles.

During project CEQA review and/or design, site specific conditions (geology, slope, location of infrastructure, etc.) may be identified which make it infeasible for the project to meet all goals, criteria or other requirements in the subarea plan, but the project could be constructed without compromising the conservation of species and habitats anticipated by the Subarea Plan. Should this situation occur, the County may grant a variance to the Subarea Plan for the project with the concurrence of the Wildlife Agencies. On the basis of specific factual findings, the project will not appreciably reduce the likelihood of attainment of preserve assembly and species protection goals of the MSCP and Subarea Plans. The role of the Wildlife Agencies in project review is discussed in Section 4.3.2.

### 4.2.4. Anticipated Conservation Levels for Species

The biological resource studies conducted for the MSCP identified the known occurrences of target species within the study area. Table 4-3 lists the frequency of occurrences for each of the target species in the Metro-Lakeside-Jamul Segment and the anticipated conservation level established for that species in the Metro-Lakeside-Jamul Segment. The NCCP Conservation Guidelines, the MSCP, and the biological information from the MSCP's MHPA preserve alternative were used to establish anticipated species conservation levels and conservation goals for habitat types.

**Critical Populations of Sensitive and Covered Species:**
In addition to the anticipated conservation levels listed in Table 4-3 for covered and sensitive species, there are critical populations of some of the plant species that will be avoided. Table 4-4 provides a description of where the populations occur and the MSCP database provides specific information on their location.

**Endemic Plant Populations:**
The Wildlife Agencies have identified 17 narrow endemic plant species that occur in San Diego County and require focused evaluations during project review. These plants have limited ranges: all or nearly all of the historic and/or current populations occur within San Diego County and many occur only within the MSCP area. All of these narrow endemics are among the 85 covered species; however, only nine are known to occur in the Metro-Lakeside-Jamul Segment. Table 4-5 lists the narrow endemics and identifies those known to occur in the Metro-Lakeside-Jamul Segment. Protection goals for the narrow endemics known to occur in the Metro-Lakeside-Jamul Segment are listed in Table 4-3.

Because of their limited distribution, the Subarea Plan and the County's Biological Mitigation Ordinance requires that the protection goals be met and also that any significant populations of the plant species listed in Table 4-5 be avoided. For the narrow endemics that are not known from this Segment, there are no conservation goals; however, if any significant populations of these species are subsequently found within the Metro-Lakeside-Jamul Segment, they also must be avoided.

**Rare Narrow Endemic Animals:**
Impacts to rare, narrow endemic animal species, listed in Table 4-6 within the MSCP Subarea, shall be avoided to the maximum extent practicable. Species specific requirements set forth in Table 3-5 of the MSCP Plan including any applicable limitations on clearing of occupied habitat shall be complied with. Where complete avoidance is infeasible, projects shall be designed to avoid significant reduction in species viability.

Table 4-3: Anticipated Species Conservation Levels for Metro-Lakeside-Jamul Segment

| Species | Common Name | North of Interstate 8 | | South of Interstate 8 | | Entire Segment | | |
|---|---|---|---|---|---|---|---|---|
| | | Protection Goal using 1994 database | # of 1994 Occur. | Protection Goal using 1994 database | # of 1994 Occur. | Protection Goal using 1994 database | # of 1994 Occur. | Other protection provided by Ordinance/ Subarea Plan[1] |
| **Plants** | | | | | | | | |
| *Acanthomintha ilicifolia* | San Diego thorn-mint | 6.1 | 7 | 1 | 1 | 7.1 | 8 | SP |
| *Ambrosia pumila* | San Diego Ambrosia | 1 | 1 | 0 | 0 | 1 | 1 | SP |
| *Astragalus deanei* | Dean's milk vetch | 0 | 0 | 4.5 | 6 | 4.5 | 6 | SP, CP |
| *Baccharis vanessae* | Encinitas baccharis | 2.4 | 3 | 0 | 0 | 2.4 | 3 | SP |
| *Brodiaea orcuttii* | Orcutt's brodiaea | 4.2 | 6 | 0 | 0 | 4.2 | 6 | SP, CP |
| *Calamagrostis densa* | Dense reed grass | 0.7 | 1 | 2 | 2 | 2.7 | 3 | - |
| *Caulanthus stenocarpus* | Slender-pod jewelflower | 17.7 | 18 | 0 | 0 | 17.7 | 18 | CP |
| *Ceanothus cyaneus* | Lakeside ceanothus | 5.2 | 7 | 0 | 0 | 5.2 | 7 | SP |
| *Ceanothus verrucosus* | Wart-stemmed ceanothu | 1.4 | 2 | 0 | 0 | 1.4 | 2 | SP |
| *Ericameria palmeri* ssp. *palmeri* | Palmer's ericameria | 0 | 0 | 6.5 | 8 | 6.5 | 8 | SP |
| *Ferocactus viridescens* | San Diego barrel cactus | 1.7 | 2 | 7 | 7 | 8.7 | 9 | SP |
| *Monardella hypoleuca* ssp. *lanata* | Felt-leaved monardella | 0 | 0 | 4 | 4 | 4 | 4 | SP, CP |
| *Monardella linoides ssp. vimi* | Willowy monardella | 1 | 1 | 0 | 0 | 1 | 1 | SP |
| *Muilla clevelandii* | San Diego goldenstar | 2.1 | 3 | 1 | 1 | 3.1 | 4 | SP |
| *Nolina interrata* | Dehesa bear-grass | 0 | 0 | 19 | 19 | 19 | 19 | SP |
| *Satureja chandleri* | San Miguel savory | 0.7 | 1 | 0 | 0 | 0.7 | 1 | SP |
| *Senicio ganderi* | Gander's butterweed | 0 | 0 | 4 | 4 | 4 | 4 | SP, CP |
| *Solanum tenuilobatum* | Narrow-leaved nightshade | 0 | 0 | 1 | 1 | 1 | 1 | CP |
| *Tetracoccus dioicus* | Parry's tetracoccus | 0 | 0 | 24 | 24 | 24 | 24 | SP, CP |
| **Invertebrates** | | | | | | | | |
| *Lycaena hermes* | Hermes copper butterfly | 0 | 0 | 3 | 3 | 3 | 3 | |
| **Amphibians** | | | | | | | | |
| *Bufo microscamhus californi* | Arroyo southwestern toad | 1 | 1 | 0 | 0 | 1 | 1 | TB, HAB |

Table 4-3: Anticipated Species Conservation Levels for Metro-Lakeside-Jamul Segment (continued)

| Species | Common Name | North of Interstate 8 | | South of Interstate 8 | | Entire Segment | | |
|---|---|---|---|---|---|---|---|---|
| | | Protection Goal using 1994 database | # of 1994 Occur. | Protection Goal using 1994 database | # of 1994 Occur. | Protection Goal using 1994 database | # of 1994 Occur. | Other protection provided by Ordinance/ Subarea Plan[1] |
| **Reptiles** | | | | | | | | |
| *Clemmys marmorata pallida* | Southwestern pond turtle | 2 | 2 | 0 | 0 | 2 | 2 | TB, HAB |
| *Phrynosoma coronatum blainvillei* | San Diego horned lizard | 45.2 | 47 | 31.4 | 41 | 76.6 | 88 | HAB |
| *Cnemidophorus hyperythrus beldingi* | Orange-throated whiptail | 70.6 | 88 | 54.3 | 66 | 124.9 | 154 | HAB |
| **Birds** | | | | | | | | |
| *Haliaeetus leucocephalus* | Bald eagle | 2.1 | 3 | 0 | 0 | 2.1 | 3 | HAB |
| *Circus cyaneus* | Northern harrier | 2.1 | 3 | 0 | 0 | 2.1 | 3 | TB, HAB |
| *Accipiter cooperii* | Cooper's hawk | 11.8 | 14 | 2 | 2 | 13.8 | 16 | TB, HAB |
| *Buteo regalis* | Ferruginous hawk | 0.7 | 1 | 0 | 0 | 0.7 | 1 | HAB |
| *Aquila chrysaetos* | Golden eagle | 10.5 | 15 | 1.4 | 2 | 11.9 | 17 | TB, HAB |
| *Falco peregrinus anatum* | American peregrine falcon | 2 | 2 | 0 | 0 | 2 | 2 | HAB |
| *Campylorhynchus brunneicapillus cousei* | Coastal cactus wren | 27.1 | 38 | 1 | 1 | 28.1 | 39 | TB, HAB |
| *Polioptila californica californica* | California gnatcatcher | 113.9 | 130 | 131.1 | 147 | 245 | 277 | HAB |
| *Sialia mexicana* | Western bluebird | 1.7 | 2 | 0 | 0 | 1.7 | 2 | HAB |
| *Vireo bellii pusillus* | Least Bell's vireo | 8 | 8 | 1 | 1 | 9 | 9 | TB, HAB |
| *Aimophila ruficeps canescens* | California rufous-crowned sparrow | 18.7 | 23 | 13 | 16 | 31.7 | 39 | HAB |

Table 4-3: Anticipated Species Conservation Levels for Metro-Lakeside-Jamul Segment (continued)

| Species | Common Name | North of Interstate 8 | | South of Interstate 8 | | Entire Segment | | |
|---|---|---|---|---|---|---|---|---|
| | | Protection Goal using 1994 database | # of 1994 Occur. | Protection Goal using 1994 database | # of 1994 Occur. | Protection Goal using 1994 database | # of 1994- Occur. | Other protection provided by Ordinance/ Subarea Plan[1] |
| **Mammals** | | | | | | | | |
| *Felis concolor* | Mountain lion | 5.7 | 7 | 1.4 | 2 | 7.1 | 9 | HAB |
| *Odocoileus hemionus fuliginata* | Southern mule deer | 34.1 | 41 | 7.2 | 9 | 41.3 | 50 | HAB |

*Note: Occurrences are as documented in the 1994 MSCP database.*

[1] Protection that will be provided by the Subarea Plan to each species in addition to protection of 1994 database occurrences.

SP: Sensitive Plants: In accordance with the Biological Mitigation Ordinance, these species consisting of Group A, Group B, and narrow endemics, will be conserved using a process which: first, requires avoidance to the maximum extent feasible; second, allows for a maximum 20% encroachment into a population if total avoidance is not feasible; and third, requires mitigation at 1:1 to 3:1 ratio (in-kind) for impacts if avoidance and minimization of impacts would result in no reasonable use of the property.

CP: Critical Populations: Impact avoidance is required for specific critical populations identified in the Subarea Plan.

TB: Table 3-5: Additional protection is stipulated in Table 3-5 of the MSCP Plan.

HAB: Habitat Protection: Additional habitat-based protection will be provided as stipulated in Table 4-2 (Habitat Protection Goals).

**Table 4-4**: Critical Populations of Covered Species

| Species | Critical Population(s) |
|---|---|
| Dean's milk-vetch | Sweetwater River (north area), Singing Hills, and Sloane Canyon |
| Orcutt's brodiaea | North of San Vicente Reservoir |
| Slender-pod jewelflower | Wildcat Canyon, Poway/Sanrex, Fortuna Mountain, Dehesa (north of Sweetwater River) |
| Felt-leaved monardella | Sequan Peak, Iron Mountain |
| Gander's butterweed | El Cajon Mountain (between El Capitan and San Vicente Reservoir) |
| Narrow-leaved nightshade | Silverwood, Fernbrook (near Mussey Grade Road) |
| Parry's tetracoccus | Dehesa |

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**Table 4-5:** Narrow Endemics from the MSCP portion of San Diego County

| Scientific Name | Common Name | Known from Metro-Lakeside-Jamul |
|---|---|---|
| *Acanthomintha ilicifolia* | San Diego thorn-mint | yes |
| *Agave shawii* | Shaw's agave | |
| *Ambrosia pumila* | San Diego ambrosia | yes |
| *Baccharis vanessae* | Encinitas baccharis | yes |
| *Brodiaea filifolia* | thread-leaved brodiaea | |
| *Calochortus dunnii* | Dunn's mariposa lily | |
| *Ceonothus cyaneus* | Lakeside ceonothus | yes |
| *Dudleya brevifolia* | short-leaved dudleya | |
| *Dudleya variegata* | variegated dudleya | yes |
| *Ericameria palmeri* ssp. *palmeri* | Palmer's ericameria | yes |
| *Hemizonia conjugens* | Otay tarplant | |
| *Lepechinia cardiophylla* | heart-leaved pitcher sage | yes |
| *Lepechinia ganderi* | Gander's pitcher sage | |
| *Mahonia nevinii* | Nevin's barberry | not known |
| *Monardella linoides* ssp. *viminea* | willowy monardella | |
| *Nolina interrata* | Dehesa bear grass | yes |
| *Opuntia parryi* var. *serpentina* | snake cholla | |

Table 4-6: Rare, narrow endemic animal species known from San Diego County within the MSCP Subarea

| | Status |
|---|---|
| **Mammals:** | |
| *Perognathus longimembris pacificus*, Pacific pocket mouse, | FE, SSC |
| **Birds:** | |
| *Aquila chrysaetos*, golden eagle (nesting), | SSC |
| *Falco peregrinus anatum*, American peregrine falcon, | CE, FE |
| *Sterna antillarum browni*, California least tern, | CE, FE |
| *Passerculus Sandwichensis Beldingi*, Belding's savannah sparrow, | CE |
| *Rallus longirostris levipes*, light-footed clapper rail, | CE, FE |
| *Laterallus jamaicensis coturniculus*, California black rail, | CT |
| *Coccyzus americanus occidentalis*, western yellow-billed cuckoo, | CE |
| *Empidonax trailli extimus*, southwestern willow flycatcher, | CE, FE |
| *Campylorhynchus brunneicapillus couesi*, coastal cactus wren, | SSC |
| *Vireo belli pusillus*, Least Bell's Vireo, | FE, CE |
| *Speotyto cunicularia hypugaea*, Burrowing owl, | SSC |
| **Reptiles:** | |
| *Clemmys marmorata pallida*, Southwestern pond turtle, | SSC |
| **Amphibians:** | |
| *Bufo microscaphus californicus*, arroyo southwestern toad, | FE, SSC |
| *Rana aurora draytoni*, California red-legged frog, | FT, SSC |
| **Fishes:** | |
| *Eucyclogobious newberryi*, tidewater goby, | FE, SSC |
| **Invertebrates:** | |
| *Branchinecta sandiegoensis*, San Diego fairy shrimp, | FE |
| *Streptocephalus wootoni*, Riverside fairy shrimp, | FE |
| *Euphydryas editha quino*, Quino checkerspot butterfly, | FE |
| *Euphys vestris harbisoni*, Dun skipper | |
| *Mitoura thornei*, Thornes hairstreak butterfly | |

Status (Federal/State)
FE = Federally endangered
CE = State Endangered
CT = State Threatened
SSC = State Species of Special Concern

## 4.3. *Project Review within the Metro-Lakeside-Jamul Segment*

### 4.3.1. The Process for County Review and Mitigation Within the Metro-Lakeside-Jamul Segment

Within the Metro-Lakeside-Jamul Segment, specific mitigation requirements for individual projects will be consistent with the mitigation requirements set forth in the MSCP, the County's Subarea Plan and the County's Biological Mitigation Ordinance. The names of the habitat types used in the Subarea Plan are consistent with the habitat types used in the MSCP or are included within or specifically identified as one of the habitat types listed in the Biological Mitigation Ordinance. The mitigation ratios included in the Subarea Plan are identical to the mitigation ratios in the Biological Mitigation Ordinance.

To maintain the benefits of the Take Authorizations to be held by San Diego County under the County's MSCP Subarea Plan, County staff will review projects, including analyzing project impacts, determining mitigation requirements, and making findings of consistency with the County's Subarea Plan and the Biological Mitigation Ordinance. Mitigation measures shall conform to the requirements of the California Environmental Quality Act (CEQA), the MSCP, the Biological Mitigation Ordinance and the Subarea Plan. The term "mitigation" has the same meaning as mitigation under CEQA and includes avoidance and minimization of impacts, as well as compensating for impacts by replacing or providing substitute resources or environments (see CEQA guidelines Section 15370). The Wildlife Agencies shall fulfill their responsibilities to comment on projects as specified under CEQA and pursuant to their statutory authority under the Federal and State Endangered Species Acts and other applicable state and federal laws and regulations. The mitigation ratios in the County's Biological Mitigation Ordinance are based upon a variety of factors, including the type of habitats impacted and the locations of the project and mitigation sites. The mitigation ratios in County's Biological Mitigation Ordinance are consistent with the Subarea Plan. Projects that might affect regional preserve areas generally have greater impacts and therefore will generally require greater mitigation. The habitats that the County considers sensitive are listed in Table 4-7, with Tier I being the most sensitive and Tier IV (as mapped in the MSCP database) being the least sensitive. Projects on Tier IV habitats would not be required to mitigate for impacts to habitat pursuant to the County's Subarea Plan.

In determining the mitigation requirements for individual projects, the objective is to meet the goals, on a cumulative basis, described in Section 4.2. Mitigation for projects within this Segment will be directed to Biological Resource Core Areas as defined by the Biological Mitigation Ordinance. Mitigation land will be protected through fee title transfer, conservation easement, or other appropriate title encumbrances acceptable to the Wildlife Agencies and the County. The land protection mechanisms will include authority for the County and the Wildlife Agencies (including their agents) to enter the property to monitor species and manage the habitat consistent with the provisions of the MSCP. The Wildlife Agencies will annually review the cumulative conservation and habitat loss approved by the County pursuant to the Subarea Plan.

Table 4-7: County Subarea Habitats and Tiers within the MSCP*

TIER I

Closed Cone Coniferous Forest including Torrey Pine Woodland and Cypress Forest
Coastal Bluff Scrub
Southern Maritime Chaparral**
Mafic Southern Mixed Chaparral and Mafic Chamise Chaparral
Native Grassland
Oak Woodlands and Broad Leaved Upland Forest
Wetlands**, including Vernal Pools, Alkali Marsh, Freshwater Marsh, Riparian Forests, Riparian Woodlands, and Riparian Scrubs
Maritime Succulent Scrub**

TIER II

Coastal Sage Scrub
Coastal Sage-Chaparral Scrub
Flat-topped Buckwheat

TIER III

Chaparral except for Southern Maritime Chaparral and Mafic Chamise and Mafic Southern Mixed Chaparral
Non-native grassland ***

TIER IV (Lands which do not support natural vegetation and which are not regulated by this ordinance)

Disturbed Lands
Agricultural Lands
Eucalyptus Woodland

* Impacts to vegetation communities within the MSCP Subarea shall be mitigated within the MSCP Subarea shown on Attachment A of the Biological Mitigation Ordinance and Figure 1-1.

** These vegetation communities require in-kind mitigation.

*** Notwithstanding any mitigation ratios set out in Attachment F, Table of Mitigation Ratios as reproduced in Table 4-8, non-native grasslands shall be mitigated at the ratio of 0.5 acres of mitigation land for every 1.0 acres of land impacted. Occupied Burrowing owl habitat shall be mitigated according to the Biological Mitigation Ordinance.

#### *4.3.1.1. Grasslands*

Grasslands are important components of the San Diego County ecosystem; they provide habitat for many of the covered species, including rare plants and raptors. Remaining grasslands are generally dominated by perennial grasses (mostly native species) or annual grasses (mostly non-native species).

All perennial grasslands will be mitigated as Tier I vegetation communities, and all annual grasslands will be included as Tier III except they will be mitigated at a ratio of 0.5:1.

The current level of grassland conservation within the MSCP preserve system does not allow grasslands to be considered significantly or sufficiently conserved, as defined in the MSCP. The wildlife agencies will work with the County and other participating jurisdictions to increase the level of grassland conservation to allow provison of assurances associated with significantly conserved vegetation communities. The wildlife agencies and the participating jurisdictions will pursue the following actions to determine if this conservation level can be attained:

1. Accelerate acquisition of key parcels within the MHPA that contain grasslands or have the potential for grassland restoration (e.g., agricultural lands).

2. Restore disturbed public lands (including County lands) that historically supported native grasslands.

3. Upon completion of the North County segment of the MSCP plan, consider the overall conservation level of grassland for the MSCP.

4. Manage for grassland dependent species, such as the burrowing owl.

5. Translocate sensitive grassland species onto conserved public lands.

### 4.3.2. Project Compliance

The County and Wildlife Agencies will be working together, in partnership, to implement and accomplish the goals of the MSCP and Subarea plans on both a project and cumulative basis. To facilitate this partnership, either quarterly or as needed, the Chief or Deputy Chief Administrative Officer (CAO or DCAO) will meet with the joint State and Federal NCCP Management Team (Management Team) to discuss implementation issues.

#### *4.3.2.1. Wildlife Agencies' Role in Project Compliance*

It is the intent of the Wildlife Agencies and the County to minimize the role of the Wildlife Agencies in the project approval process. In general the Wildlife Agencies will not be involved in the informal project review process, although the County may request the Wildlife Agencies' assistance.

The Wildlife Agencies intend to provide comments on specific projects pursuant to their trustee responsibilities and ~~to~~ their statutory authority under the State and Federal laws during the CEQA process. In unusual circumstances, there may be disagreement between the County and the Wildlife Agencies concerning the project's consistency with the Implementing Agreement and the MSCP and Subarea plans. In such cases, the Wildlife Agencies will provide notification to the County primarily through the CEQA review process. In these circumstances, the Wildlife Agencies' written notification will identify the specific inconsistencies with the Implementing Agreement and the MSCP and Subarea plans. For example, a project would be considered inconsistent if it would result in any of the following:

1. A project would result in significant degradation of the biological value of a biological resource core area, "core linkage" or "constrained linkage" as defined in the Biological Mitigation Ordinance. The habitat value of a biological resource core area is significantly degraded if 25 percent of the biological core area (500 acres or more in size) is impacted. A significant degradation of the biological value of a core linkage or constrained linkage is defined as reducing the width to less than 1,000 feet. In unusual circumstances, a constrained linkage may be reduced in width to no less than 400 feet for short distances (generally less than 500 feet).

2. A project would cause impacts to a biological resource core area(s) which might preclude: (1) core area viability due to habitat fragmentation; (2) attainment of the habitat or species conservation goals set out in Table 1-2 (Habitat Protection Goals for the San Diego County Subarea); (3) attainment of the habitat or species conservation goals set out in Table 4-2 (Habitat Protection Goals for the Metro-Lakeside-Jamul Segment); or (4) attainment of the habitat or species conservation goals set out in Table 4-3 (Anticipated SpeciesConservation Levels for Metro-Lakeside-Jamul Segment).

3. A project would result in impact to a "Rare, Narrow Endemic Animal Species" listed in Table 4-6 in excess of those impacts allowed by the BMO. This criterion does not apply to populations which, using the best available scientific information, are too small to be maintained under normal conditions.

4. A project would result in impacts to a narrow endemic species listed in Table 4-5 in excess of those impacts allowed by the Biological Mitigation Ordinance. This criterion does not apply to populations which, using the best available scientific information, are too small to be maintained under normal conditions.

5. A project would result in impacts to a "Critical Population" of a species identified in Table 4-4 and on Attachment C of the Biological Mitigation Ordinance.

#### *4.3.2.2. Resolution of Conflicts Concerning Consistency of a Project with the MSCP and Subarea Plans and/or Implementing Agreement*

Although not anticipated, disagreement between the County and the Wildlife Agencies on conformance of a project with the MSCP and Subarea Plans and/or Implementing Agreement may occur. In these instances, the Wildlife Agencies will describe, in writing, the basis for finding of inconsistency and the measures necessary to make the project consistent. If the County disagrees with the written assessment provided by the Wildlife Agencies on the consistency of a proposed project with the MSCP Plan, Subarea Plan and/or Implementing Agreement on the measures necessary to make it consistent, the County, through the CAO may seek consideration of the Wildlife Agencies' position by the joint Federal and State NCCP Management Team. The County and the Wildlife Agencies intend for this review process to be invoked only in extraordinary circumstances and only after efforts to resolve the disagreement at the staff level have been exhausted. The CAO is responsible for initiating the process. In such cases, the NCCP Management Team would promptly consider the matter in consultation with the CAO.

If following consideration by the Management Team modifications to the project are determined by the Wildlife Agencies to be necessary to make the project consistent with the Subarea Plan and/or Implementing Agreement and the County proceeds to approve the project without such modifications, the Wildlife Agencies will notify the County of the Wildlife Agencies' intended course of action which may include:

1. withholding of the assurances granted to Third Party Beneficiaries for the project;

2. initiation of suspension of applicable Federal and State Take Authorizations in whole or in part; or

3. initiation of revocation or termination of applicable Federal and State Take Authorizations.

#### *4.3.2.3. Annual Review of Compliance with the MSCP and Subarea Plans*

The County's compliance with the MSCP and Subarea plans will be assessed during the Wildlife Agencies' review of the County's annual implementation report. During this annual review, the Wildlife Agencies will assess the County's performance in meeting the goals and criteria of the MSCP and Subarea plans and compliance with the Implementing Agreement. The Wildlife Agencies' review will also include evaluating how the County resolved project specific issues raised by the Wildlife Agencies pursuant to Section 4.3.2.1 and 4.3.2.2.

### 4.3.3. Projects With Discretionary Permits Approved Prior to the Adoption of the Plan

Projects within the Metro-Lakeside-Jamul which have received their discretionary approvals from the County prior to the effective date of the Biological Mitigation Ordinance, may at the option of the project proponent, apply for a Certificate of Participation. A Certificate of Participation will allow a project to benefit from the County's Take Authorizations and not require any additional approvals from the Parties for purposes of incidental take of the covered species. The County shall review such applications to determine if the project, as previously approved, conforms to the standards of the County Subarea Plan and Biological Mitigation Ordinance. If the County's review determines the project conforms to those standards, it will issue draft Finding of Conformance for a 45 day review period by the Wildlife Agencies. Following concurrence by the Wildlife Agencies, the County will issue the Certificate of Participation and the project proponent shall have the benefit of the County's Take Authorization. If the County finds that the proposed project does not meet the Subarea Plan and Biological Mitigation Ordinance standards, the project proponent will be informed of deficiencies and proper procedures for achieving and assuring conformance to the standards (tentative subdivision map amendment, Major Use Permit modification, etc.) Proponents of previously approved projects also have the option to apply directly for individual Federal and State ESA permits. If federal or state permits are not necessary because there are no listed species on the property, project proponents may proceed with development. The County shall, to the maximum extent feasible, monitor and report on any losses of habitat resulting from the implementation of these projects.

### 4.3.4. Clearing and Grading Permitted for Agriculture, and for Single-family Residences on Small Parcels

#### *4.3.4.1. Agriculture*

Before clearing or grading of habitat for agricultural purposes is permitted by the County on land shown as "Preapproved for Mitigation Area" on Figure 1 of Attachment 1 or within a floodplain, compliance with the mitigation requirements of the subarea plan is

required. Clearing and grading of habitat for agricultural purposes outside of floodplains and the "Preapproved for Mitigation Area" may be authorized by the County provided that the property owner or lessee provides satisfactory evidence in writing of his or her intention to establish an agricultural operation on a particular parcel of land within one year and to retain the land in agriculture for at least ten years or facts that demonstrate the property owner has farmed the land during three of the last five years and intends to retain his or her land in agriculture for the next five years. The total number of acres for all exemptions granted for agricultural clearing within this Segment shall not exceed three thousand acres. Applicants for agricultural clearing who meet the requirements for the exemption will be required to obtain an administrative permit.

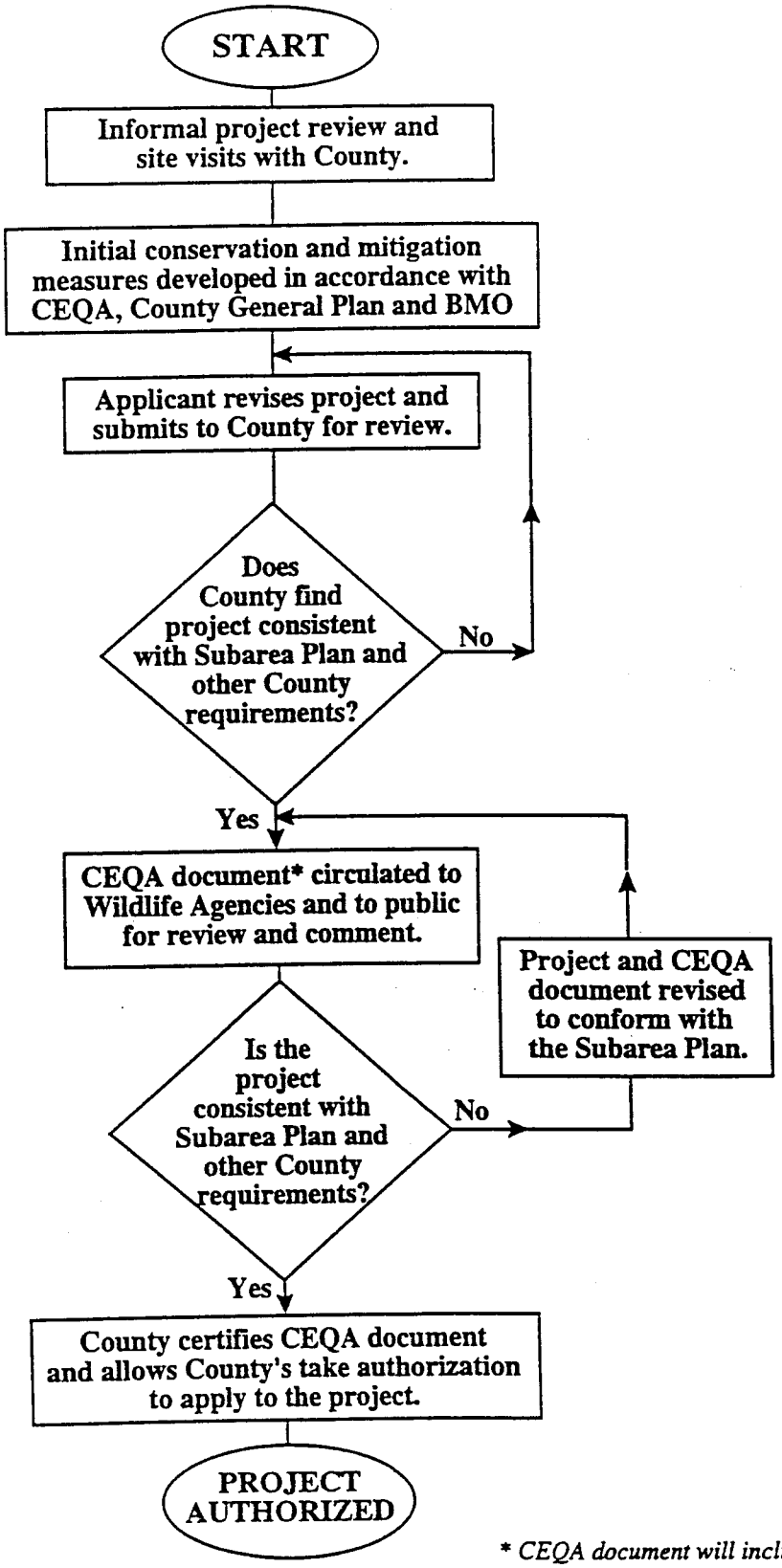
#### *4.3.4.2. Single-family Residences on Small Parcels*

Parcels which are no larger than 10 acres in size and occur within the MSCP Plan boundaries that are zoned for single family dwellings and that contain a dwelling unit as of October 22, 1997 are exempt from the clearing regulations. Within the area shown on the Wildlife Agency Preapproved Mitigation Area Map (Attachment 1, Figure 1) as Preapproved Mitigation Area, grading and clearing is permitted on two acres of parcels existing as of January 1, 1997 that do not contain a dwelling unit as of October 22, 1997, that are no larger than 10 acres and are zoned for single-family residential uses, provided that clearing and grading of such two acre portions does not interfere with achieving the goals and criteria of the Subarea Plan. Grading and clearing on the remaining portion of the parcel must meet the mitigation requirements of the Biological Mitigation Ordinance. Outside the Preapproved Mitigation Area, grading and clearing on parcels no larger than 10 acres, zoned for single family residential uses as of January 1, 1997 and which do not contain a dwelling unit as of October 22, 1997, shall be permitted on a total of 5 acres. Clearing the remainder of the parcel shall be subject to the requirements of the Subarea Plan and Biological Mitigation Ordinance. Clearing for fuel management, as required by the appropriate fire regulations or by a Fire Marshall, shall not be counted in computing the number of acres cleared.

#### *4.3.4.3. Maximum Habitat Clearing Permitted for Agriculture*

When, in the aggregate, clearing and grading of habitat based on the special considerations for agriculture reaches 3,000 acres, all clearing and grading will be subject to the mitigation requirements of the Subarea Plan and Biological Mitigation Ordinance.

Figure 4-2: Review Procedure for Metro-Lakeside-Jamul Segment




** CEQA document will include County's findings of consistency with Subarea Plan. If EIR is required Wildlife Agencies will be notified of the Notice of Preparation.*

Table 4-8: Schedule of Mitigation Ratios

| *TIER I* | *Impacted land* | |
|---|---|---|
| *Conserved land* | meets criteria for biological resource core area | does not meet criteria for biological resource core area |
| meets criteria for biological resource core area* | 2:1 | 1:1 |
| does not meet the criteria for biological resource core area | 3:1 | 2:1 |

| *TIER II* | *Impacted land* | |
|---|---|---|
| *Conserved land* | meets criteria for biological resource core area | does not meet the criteria for biological resource core area |
| meets criteria for biological resource core area* | 1.5:1 | 1:1 |
| does not meet the criteria for biological resource core area | 2:1 | 1.5:1 |

| *TIER III* | *Impacted land* | |
|---|---|---|
| *Conserved land* | meets criteria for biological resource core area | does not meet the criteria for biological resource core area |
| meets criteria for biological resource core area* | 1:1 | 0.5:1 |
| does not meet the criteria for biological resource core area | 1.5:1 | 1:1 |

* biological resource core areas are defined in the Biological Mitigation Ordinance and lands depicted on the Wildlife Agencies preapproved mitigation area map meet the criteria for biological resource core area in regards to reduced mitigation ratios

The mitigation ratios in this table are consistent with the County's Biological Mitigation Ordinance.

### 4.3.5. Processing Projects with Partial Approval for Open Space

The Upper San Diego River Improvement Project (USDRIP) in Lakeside and the land under ownership of the Helix Companies have already received partial approval for their open space configuration. The USDRIP plan is in the process of receiving a 404 Permit for the configuration of wetland habitat within its boundaries. The USDRIP plan area is therefore exempt from the MSCP Subarea Plan requirements.

Land under the ownership of the Helix Companies within the Metro-Lakeside-Jamul Segment is the subject of an agreement with the Wildlife Agencies. These lands consist of a 168 acre property located west of Del Dios, 500 acres of property in 2 pieces located south of San Vicente Reservoir, a 428 acre property east of Santee and west of Eucalyptus Hills, and a 247 acre property located south of El Capitan Reservoir in the vicinity of Peutz Valley.

In the agreement, the development and open space areas were delineated for these lands. These lands will be surveyed to determine the location of Critical Populations of Sensitive Plant Species shown on Attachment B of the Biological Mitigation Ordinance, Rare, Narrow Endemic Animal Species shown on Attachment C of the Biological Mitigation Ordinance, and San Diego County Sensitive Plants, shown on Attachment D of the Biological Mitigating Ordinance. Any future development of land within the development areas is also subject to the planning regulations of the County of San Diego and subsequent review under the California Environmental Quality Act. The third party beneficiary status will be conferred at the time when either the mitigation agreement is approved or mitigation is assured.

## *4.4. Overall Land Conservation*

The following discussion provides a framework for estimating the general characteristics of land conservation that will occur in the Metro-Lakeside-Jamul Segment. The habitat conservation goal for this Segment, shown in Table 4-2, is 44,764 acres, of which 11,568 acres are currently protected. The purpose of this discussion is to estimate the yield of mitigation land associated with projects to be developed within the Segment. Table 4-9 shows the estimated calculation. Two general assumptions are listed and then the columns of Table 4-9 are explained below:

- Mitigation will be based on the habitat tiers listed in Table 4-7.
- Habitat types with significant acreage were grouped by tier and not analyzed separately. (Habitats with minor acreage are not included in this analysis, so the totals in Table 4-9 do not match those in Table 4-2.)
- The first four columns ("Total", "Total Goal", "Currently Conserved", and "Remaining To Be Protected") are taken from Table 4-2, for the major habitats.
- The column "Other Land" is the difference between the total acreage and the total conservation goal. This is the land that is available for development.

- The "Fraction Developed" is an estimate, based on the assumption that not all the land available for development will actually be developed. The distribution of estimated development takes into account the location and terrain of the major habitat types. For example, Tier II lands in this area are mostly chaparral, a large portion of which occurs in very steep terrain. Therefore, the percentages of development estimated for Tier II is lower than the percentage estimated for Tier I.

- "Anticipated Development" is the product of "Fraction Developed" and "Other Land".

- The column "% Mitigation in Preapproved Areas" is estimated using the assumption that the incentives provided by the differences in mitigation ratios in Table 4-8 will result in approximately 75% of the impacts to Tier I habitats being mitigated in preapproved areas. For Tier II impacts, approximately 60% will be mitigated in preapproved areas, and for Tier III impacts, approximately 50% will be mitigated in preapproved areas. Only the following will contribute toward meeting the conservation goals: (1) lands conserved within the Wildlife Agency's preapproved mitigation areas; (2) lands that the County and the Wildlife Agencies agree will contribute to achieving the conservation goals of the Subarea Plan.

- The "Composite Ratio" is the average mitigation ratio (i.e., the weighted-by-acreage average of the mitigation ratio for the high and very high quality habitats and the ratio for areas with lesser habitat quality). It is assumed that this value will be 1.2:1 for Tier I habitats, 1:1 for Tier II habitats, and 0.8:1 for Tier III habitats. It reflects the range of mitigation ratios in Table 4-8.

- "Conservation Base" is the total yield of conservation land. Its estimate is the product of "Anticipated Development", "% Mitigation in Preapproved Areas", and "Composite Ratio."

The analysis presented in Table 4-9 suggests that project mitigation will provide approximately 19,650 acres of land conservation that contributes to the Metro-Lakeside-Jamul anticipated conservation levels. This conservation, in combination with the existing conserved land will meet approximately 70% of the Segment's anticipated conservation level. The remaining 30%, approximately 13,000 acres, will be achieved through acquisition using Federal, State, and local funding sources.

## 4.5. *Management of Conserved Lands*

Lands protected as mitigation for project impacts will be managed for the values for which they were conserved in accordance with the requirements discussed in Chapter 1, Section 1.7.

## 4.6. *Lands Already Conserved Within the Metro-Lakeside-Jamul Segment*

Lands within this Segment that are already conserved in some form of protected status include property owned and managed by CDFG, San Diego County, and private parties. These areas are described below and their characteristics are summarized in Table 4-10.

Table 4-9: Calculation of Estimated Land Conservation

| Habitat Tier | Total (acres) | Total Goal (acres) | Currently Conserved (acres) | Remaining To Be Protected (acres) | Other Land (acres) | Fraction Developed | Anticipated Development (acres) | % Mitigation in Preapproved Areas | Compo-site Ratio | Conserva-tion Base (acres) |
|---|---|---|---|---|---|---|---|---|---|---|
| I | 9,594 | 4,334 | 882 | 3,452 | 5,260 | 0.55 | 2,893 | 0.75 | 1.2 | 2,604 |
| II | 42,996 | 19,778 | 3,422 | 16,356 | 23,218 | 0.50 | 11,609 | 0.70 | 1.0 | 8,126 |
| III | 61,516 | 20,222 | 7,393 | 12,829 | 41,294 | 0.45 | 18,582 | 0.60 | 0.8 | 8,920 |
| **Total** | **114,106** | **44,334** | **11,697** | **32,637** | **69,772** | | **33,084** | | | **19,650** |
| | | | | | | | | **Federal, State, and Local Acquisitions** | | **12,987** |
| | | | | | | | | **Total** | | **32,637** |

### 4.6.1. State-owned Property

There are four areas owned by the State of California that are in protected status within this Segment. One parcel was acquired by CalTrans as mitigation for impacts of its projects. The other three are ecological reserves managed by CDFG.

**CalTrans/Sandy Trust Property:**

CalTrans acquired 122 acres located near the community of Crest. The land, mostly Coastal sage scrub with some chaparral, is managed by The Environmental Trust.

**Sequan Peak Ecological Reserve:**

This reserve is a 593-acre block of land located immediately south of Sloane Ranch. It is primarily chaparral habitat that supports numerous sensitive plant species and serves as a corridor for large mammals including deer and mountain lions.

**Sweetwater River Ecological Reserve (Sloane Ranch):**

This reserve, located west of Loveland Reservoir, includes both sides of the Sweetwater River below the dam. It is 495 acres in extent and dominated by oak/willow riparian woodland, Coastal sage scrub, and chaparral, with lesser amounts of several other habitats. The biodiversity is high. The area provides potential habitat for Least Bell's vireo and California gnatcatcher. It is adjacent to Sweetwater Authority Lands at Loveland Reservoir, and to U.S. Forest Service and BLM lands east of the MSCP area.

**Sycamore Valley Ecological Reserve:**

This 325-acre preserve, also known as Goodan Ranch, is located in south/central San Diego County between the cities of Poway and Santee, just west of Highway 67. CDFG owns 25% of the property, with the remaining 75% jointly owned by the cities of Poway and Santee.

This property provides high quality, diverse native vegetation for multiple species of wildlife. It supports some sensitive species, including California gnatcatcher, San Diego thorn-mint, and willowy monardella. Habitats include southern coast live oak riparian woodland, coast live oak woodland, southern arroyo willow riparian forest, freshwater seep, Diegan coastal sage scrub, southern mixed chaparral, scrub oak chaparral, chamise chaparral, native grassland, and non-native grassland/disturbed.

The location of the property provides a critical link in undeveloped open space in this area. It is between open space at Miramar Naval Air Station (Camp Elliott) and the

County's Sycamore Opens Space Preserve. All public ownerships in the Sycamore area combined result in a protected area of approximately 25,000 acres, a portion of which are in this Segment.

### 4.6.2. San Diego County Property

This land varies in its value for wildlife because of the recreational uses in some areas; however, all of these areas provide habitat for sensitive species within this Segment. Dos Picos, Lake Jennings, and Louis Stelzer Regional Parks, three highly developed areas, are not included in this list because of their limited use as habitat.

**Boden Canyon Mitigation Bank:**

This 40-acre property was acquired by the County as a mitigation bank to be used for County Public Works projects. It is located between the town of Ramona and San Pasqual Valley, about 10 miles east of the San Diego Wild Animal Park. It is part of a 2,068-acre property that is under consideration for purchase by the County and the City of San Diego for the San Dieguito River Park.

Boden Canyon is composed of eight habitat types, including Coastal sage scrub, oak riparian vegetation, coast live oak woodland, Engelmann oak woodland, perennial native grassland, mixed chaparral, chamise chaparral, and non-native grassland. This area is important because it, together with approximately 800 acres owned by the City of San Diego in Boden Canyon, provides a diverse, reasonably undisturbed block of contiguous habitat that connects to U.S. Forest Service lands east of the MSCP area.

**El Capitan Preserve:**

This 2,839-acre reserve consists of mixed chaparral, oak woodland, and Coastal sage scrub. It provides habitat for many species, including the California gnatcatcher and peregrine falcon. This preserve connects to U.S. Forest Service land east of the MSCP area.

**Oak Oasis Preserve:**

This area consists of 397 acres of mixed chaparral and oak woodland, located midway between Sycamore Canyon and El Capitan Preserve.

**Sycamore Canyon Open Space:**

This 1,819-acre area is located northwest of Lakeside in central San Diego County, west of Highway 67. It lies immediately east of CDFG's Sycamore Valley Ecological Reserve. The area provides a large contiguous block of open space with chaparral as

the dominant vegetation type. Sycamore Canyon Open Space is occupied by both the California gnatcatcher and San Diego thorn-mint.

### 4.6.3. Other Open Space and Conservation/Mitigation Banks

These areas have either already been acquired as mitigation for impacts of specific projects or have been established as mitigation banks that can be used to mitigate for the impacts of future development.

**Crestridge Conservation Bank and Crestridge Habitat Management Area:**

The Crestridge Conservation Bank is a 2,355-acre property located near the community of Lakeside. It supports significant stands of Coastal sage scrub, southern mixed chaparral, and oak woodland habitat. The bank, owned by Gatlin Development Company, represents a regionally important habitat linkage between the Crest/El Cajon areas south of I-8 and habitat lands in Lakeside, and around El Capitan Reservoir located north of I-8. The bank property parallels I-8 from west to east and provides a significant habitat linkage to Harbison Canyon east of the bank. Harbison Canyon is a key corridor, and the only location in the vicinity of the bank where wildlife can cross under I-8. The Harbison Canyon/Chocolate Canyon drainage is a natural open space connection to the City of San Diego Watershed lands surrounding El Capitan Reservoir to the north. Also in the north, this conservation bank connects to dedicated open space from the East County Square and Fisher Property (Bermuda Hills) developments. Lands dedicated by San Diego County Water Authority and CalTrans abut the property to the south.

The Crestridge Habitat Management Area, owned by the San Diego County Water Authority, consists of 261 acres of Coastal sage scrub and southern mixed chaparral that provide habitat for the following sensitive species: California gnatcatcher, golden eagle, orange-throated whiptail, San Diego horned lizard, and western spadefoot toad. The land, located immediately south of the Crestridge Conservation Bank, is managed by The Environmental Trust as a mitigation bank.

**San Vicente Conservation Bank:**

The San Vicente Conservation Bank consists of 320 acres located east of Route 67, south of the City of Poway's Iron Mountain preservation area. It is owned by the Boys and Girls Club of East County Foundation and was developed in cooperation with the Wildlife Agencies.

The property supports 197.4 acres of moderate to high quality Coastal sage scrub habitat, as well as 121.6 acres of southern mixed chaparral. In addition to these dominant plant communities, small areas of alkali marsh and native grassland habitats

are present. The habitats on the site are relatively undisturbed and support a broad diversity of plant and wildlife species, including the California gnatcatcher. The site provides an important habitat linkage between the preserved areas in the City of Poway to the north and west and the City of San Diego lands surrounding San Vicente Reservoir to the south.

The conservation bank will be managed by The Environmental Trust, a local non-profit land management organization. Fee title to the entire bank will eventually be transferred to The Environmental Trust, with the Boys and Girls Club of East County Foundation retaining the right to the mitigation credits.

### *4.7. Modification of the Wildlife Agencies' Preapproved Mitigation Map*

The County may request in writing that the Wildlife Agencies modify the boundaries of the preapproved mitigation map to add and/or delete lands from the map. The request will at a minimum include:

1. information, both spatially and in tabular form, on the modification including vegetation communities by acres, locations of covered species, etc.;

2. an analysis on how the modification will affect the MSCP and Subarea Plans' goals and criteria;

3. impacts to covered species, both positive and negative from the modification; and

4. an analysis of the feasibility of conserving proposed additions.

In determining if the modifications to the map are appropriate, the Wildlife Agencies will use this information to determine if the modification is consistent with the goals and objectives of the MSCP and Subarea Plans.

Table 4-10: Summary of Conserved Areas in Metro-Lakeside-Jamul Segment

| Conserved Area | Area (acres) | Major Habitats | Known Species Occurrences |
|---|---|---|---|
| **State-owned Property** | | | |
| Caltrans/Sandy Trust | 122 | Coastal sage scrub chaparral | |
| Sequan Peak ER | 593 | Chaparral | several sensitive plants, deer, mountain lion |
| Sloane Ranch ER | 495 | Oak/willow riparian woodland, coastal sage scrub, chaparral | least Bell's vireo, California gnatcatcher |
| Sycamore Valley ER | 325 | Riparian forest, riparian woodland, wetlands, coastal sage scrub, chaparral, native grassland | San Diego thorn-mint, willowy monardella, California gnatcatcher |
| **San Diego County Property** | | | |
| Boden Canyon Ranch | 40 | Coastal sage scrub, oak woodlands, riparian vegetation, native grasslands | |
| El Capitan Preserve | 2,839 | Chaparral, oak woodland, coastal sage scrub | California gnatcatcher, peregrine falcon |
| Oak Oasis Preserve | 397 | Chaparral, oak woodland | |
| Sycamore Canyon Open Space | 1,819 | Chaparral | San Diego thorn-mint, California gnatcatcher |
| **Other Open Space and Conservation Banks** | | | |
| Crestridge | 2,616 | Coastal sage scrub, coastal chaparral | California gnatcatcher, golden eagle, orange-throated whiptail, San Diego horned lizard, western spadefoot toad |
| Madura Open Space | 40 | | |
| San Vicente Conservation Bank Phase I | 320 | Coastal sage scrub, coastal chaparral alkali marsh, native grassland | California gnatcatcher |
| San Vicente Conservation Bank Phase II | 1,175 | | |
| **Total** | **9,606** | | |

U.S. Fish & Wildlife Service
2730 Loker Avenue West
Carlsbad, CA 92008
(619) 431-9440
FAX: (619) 431-9618

CA Dept. of Fish & Game
1416 Ninth Street
PO Box 944209
Sacramento CA 94244-2090
(916) 653-9767
FAX: (916) 653-2588

June 28, 1996

The California Department of Fish and Game and the U.S. Fish and Wildlife Service (collectively the Wildlife Agencies) have used the MSCP biological data base to develop attached Figures 1 and 2. Figure 1 depicts habitat areas that the Wildlife Agencies have preapproved as meeting the criteria for the reduced mitigation requirements as specified in the County's MSCP Subarea Plan. The Wildlife Agencies map of preapproved areas is based on:

- composite habitat value (MSCP Habitat Evaluation Model);
- critical core and linkages (Wildlife Agencies' attached Figure 2); and
- conservation goals for the MSCP as identified in the County Subarea Plan.

By providing Figures 1 and 2 to the County, it is the Wildlife Agencies intent to reduce the need for the County and/or project proponents to demonstrate that proposed mitigation lands help achieve the conservation goals for the Metro-Lakeside-Jamul Segment of the County Subarea Plan (as specified in Section 1.4). This will significantly reduce the Wildlife Agencies involvement in review of specific mitigation sites. Working scale copies of Figures 1 and 2 are maintained at the Wildlife Agencies' offices.

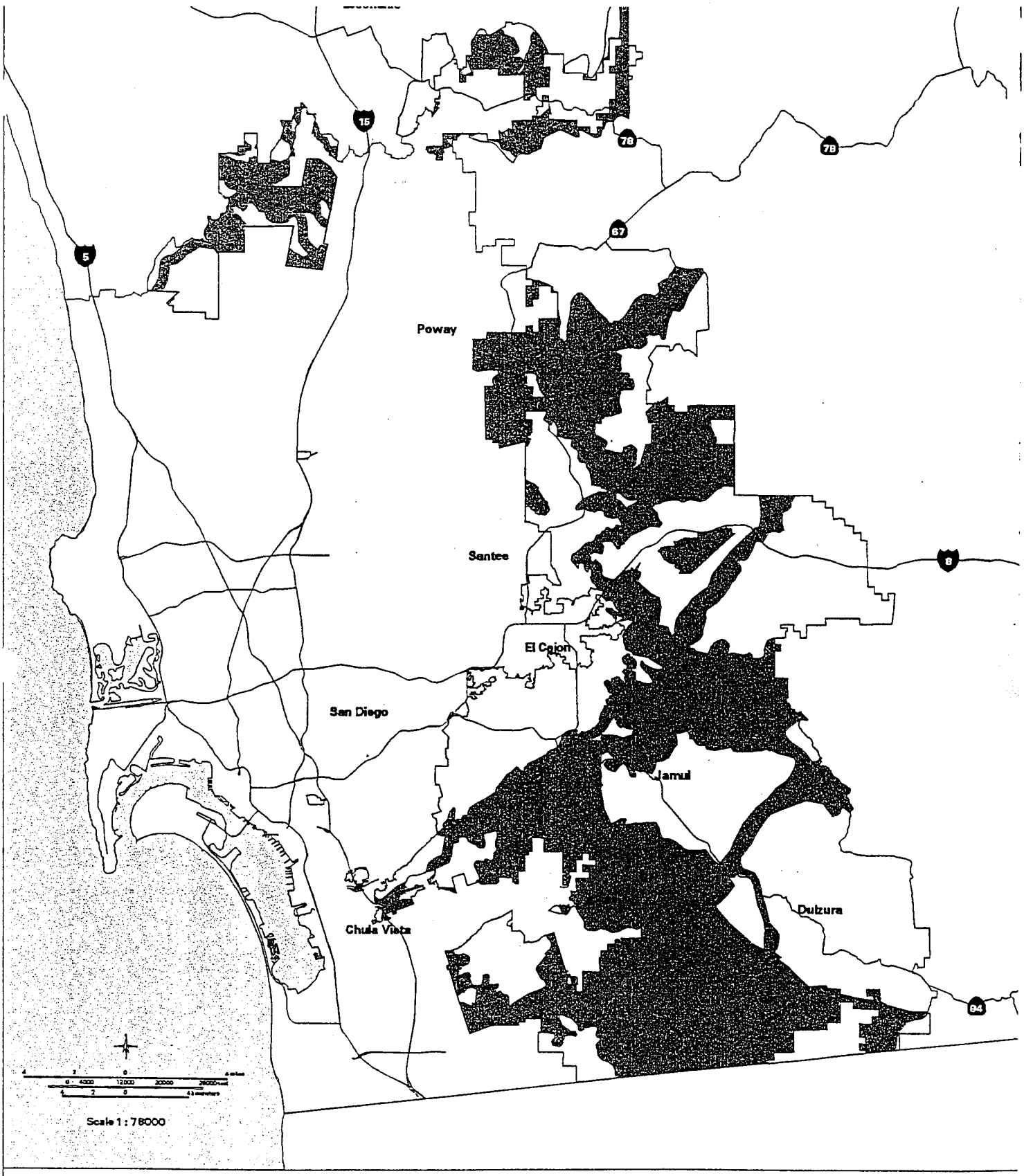
Sincerely,

Gail C. Kobetich

Gail Kobetich
Carlsbad Field Office Supervisor
U.S. Fish and Wildlife Service

Ron Rempel

Ron Rempel
NCCP Program Manager
California Department of Fish and Game




Biological Resource Core Areas | County Jurisdictional Area | MSCP Study Area Boundary | Freeways

Figure 2. Biological Resource Core Areas

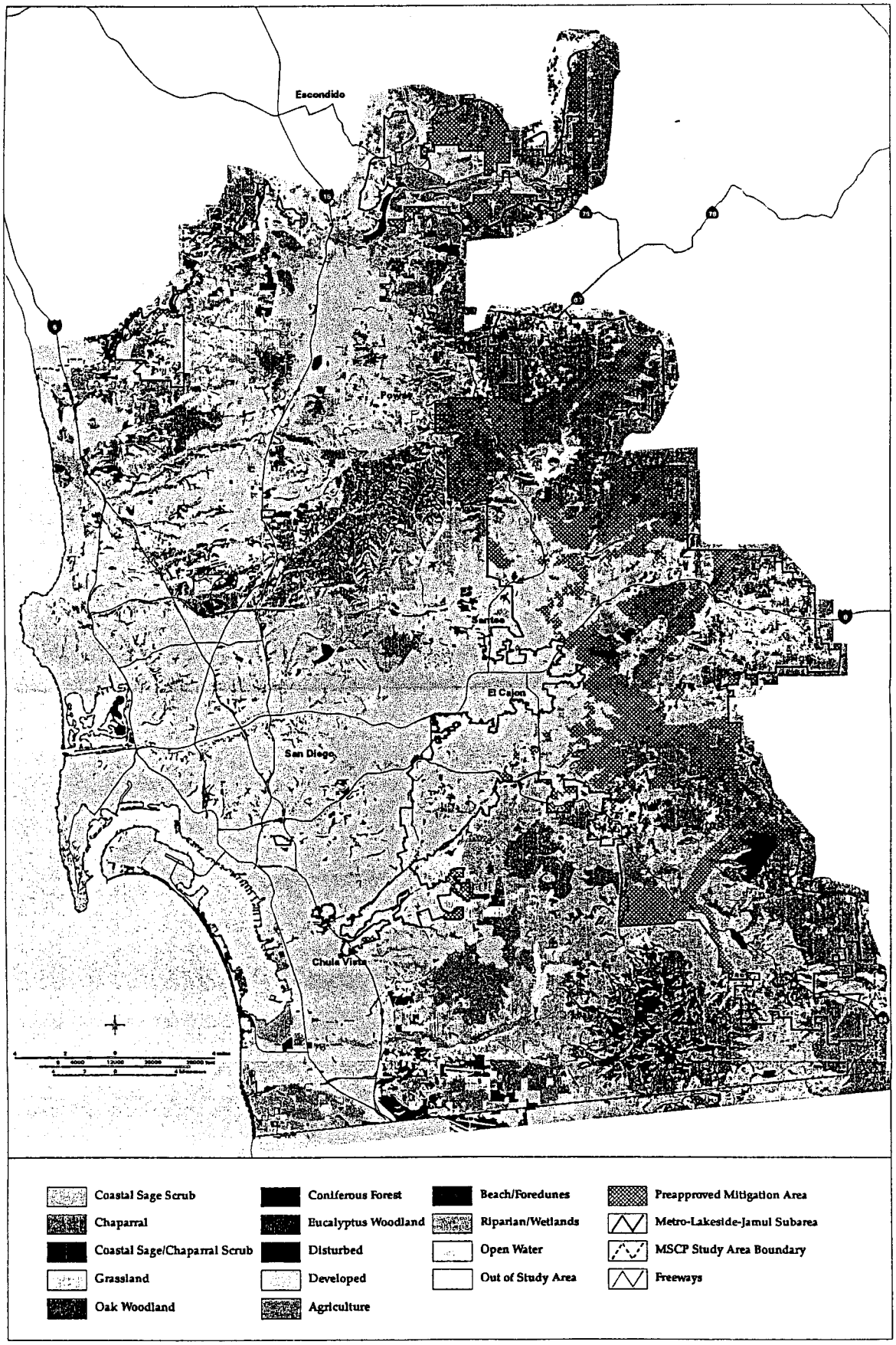



Figure 1. Wildlife Agency Preapproved Mitigation Area

San Diego County Multiple Species Conservation Program Implementation Agreement

Sherry 3/24
Nancy

IMPLEMENTING AGREEMENT
BY AND BETWEEN
UNITED STATES FISH AND WILDLIFE SERVICE
CALIFORNIA DEPARTMENT OF FISH AND GAME
COUNTY OF SAN DIEGO

This Implementing Agreement ("Agreement") is entered into as of the 17th day of March, 1998, by and among the UNITED STATES FISH AND WILDLIFE SERVICE ("USFWS"), an Agency of the United States Department of the Interior, the CALIFORNIA DEPARTMENT OF FISH AND GAME ("CDFG"), a Subdivision of the California Resources Agency, and the COUNTY OF SAN DIEGO, a political subdivision of the State of California ("County"), hereinafter collectively called the "Parties."

AGREEMENT

MAR - 23 1998

Based upon the recitals, definitions, mutual covenants and obligations, the provisions set forth below, and other valuable consideration, the Parties agree as follows:

1.0 RECITALS

1.1 The San Diego-area Multiple Species Conservation Program ("MSCP") describes a cooperative federal, state and local program of conservation for a number of "Covered Species" of plants and animals. The MSCP is a product of lengthy study and negotiation by the Parties and other interested persons and entities, and represents coordination of private development and conservation interests with federal, state and local governments.

1.2 The MSCP Plan Area map is attached to this Agreement as exhibit A. The MSCP Plan Area map includes the territory of 12 general purpose agencies of government, listed in exhibit B. These agencies may elect to participate in the MSCP, and upon preparing a Subarea Plan and entering into an Implementing Agreement similar in form and content to this Agreement such agencies will become a "Participating Local Jurisdiction." Some regional public facility providers and special districts which operate within the MSCP Area may also elect to participate in the MSCP. Upon entering into an Implementing Agreement similar in form and content to this Agreement, such entities will become a "Participating Special Entity."

1.3 A goal of the MSCP is to conserve biodiversity in the MSCP Plan Area and to achieve certainty in the land development process for both private sector and public sector land development projects.

1.4 Pursuant to the federal Endangered Species Act ("ESA") and the California Endangered Species Act ("CESA"), the United States and the State of California, respectively, have identified certain plant and animal species which are or may be found in the

MSCP Plan Area and which, pursuant to the ESA or CESA or other laws or programs, have been listed as threatened or endangered, have been proposed for listing as threatened or endangered, are candidates for listing as threatened or endangered, or which are otherwise of concern. Of such species, those which will be adequately conserved by the MSCP when the MSCP is fully implemented through Subarea Plans are referred to in the MSCP and this Agreement as Covered Species. Those Covered Species which are adequately conserved by the Subarea Plan, and other Subarea Plans in effect within the MSCP Area, are subject to the Take Authorization being granted pursuant to this Agreement and are referred to as Covered Species Subject to Incidental Take.

1.5 Future growth and land development within the MSCP Plan Area, consisting of both public and private projects, may result in a reduction of Covered Species habitat and/or the taking of Covered Species incidental to the carrying out of otherwise lawful activities.

1.6 The County is participating in the development and implementation of the MSCP to meet the requirements of the ESA, the CESA, the Natural Communities Conservation Planning Act of 1991 ("NCCP Act"), the National Environmental Policy Act ("NEPA") and the California Environmental Quality Act ("CEQA") related to the potential obstacles to public and private development in the greater San Diego area posed by the current system of project-by-project review under the ESA and CESA. Consistent with the NCCP Act, the MSCP is a broad-based planning effort intended to provide for protection and conservation of the region's wildlife and plant heritage while continuing to allow effective enforcement of public health and safety programs and appropriate development and growth. Such planning is an effective tool in protecting the region's biodiversity while reducing conflicts between protection of wildlife and plants and the reasonable use of natural resources for economic development. The MSCP has been developed through a cooperative effort involving the USFWS, CDFG, local government agencies, property owners, development interests, environmental groups, and the public within the MSCP Area.

1.7 The MSCP is a comprehensive, long-term habitat conservation plan for the Covered Species which addresses the needs of multiple species and the preservation of natural vegetation communities. The MSCP addresses the potential impacts of urban growth, natural habitat loss and species endangerment and creates a plan to mitigate for the potential loss of Covered Species and their habitat due to the direct and indirect impacts of future development of both private and public lands within the MSCP Area.

1.8 The MSCP, as implemented through the County's Subarea Plan and this Agreement, establishes the conditions under which

the County, for the benefit of itself and of public and private landowners and other land development project proponents within its Subarea boundaries, will receive from the USFWS and the CDFG certain long-term Take Authorizations (and an acknowledgment that the MSCP satisfies the conditions established in the Section 4(d) Special Rule for the coastal California gnatcatcher) which will allow the taking of certain Covered Species incidental to land development and other lawful land uses which are authorized by the County.

1.9 The Take Authorizations will authorize the Incidental Take of all Covered Species Subject to Incidental Take, including those Covered Species Subject to Incidental Take which are not presently listed as threatened, endangered or candidate species under the ESA or CESA. Conserving the unlisted Covered Species (the "taking" of which is not unlawful under the ESA or CESA) the same as listed Covered Species (the taking of which is unlawful in the absence of a Take Authorization) equally in the MSCP, the Subarea Plan and this Agreement may prevent such species from ever being in danger of becoming extinct and will provide certainty regarding how the subsequent listing of such species under the ESA and CESA will affect permitting and mitigation requirements for future land development within the MSCP Plan Area.

1.10 Implementation of the MSCP will allow the Participating Local Jurisdictions and Participating Special Entities to maintain development flexibility by proactively planning a regional preserve system which can meet future development project mitigation needs, while recognizing the independent land use planning and permitting authority of those entities.

1.11 Preservation of natural vegetation communities and wildlife will significantly enhance the quality of life in the San Diego region and will enable land to be set aside for the future use and enjoyment of the citizens within the MSCP Plan Area, the state and the nation.

1.12 The MSCP has been submitted by the County to the USFWS and CDFG in support of, respectively, an application for a Section 10(a) Permit and a CESA/NCCP Authorization. The CDFG has approved the MSCP as an NCCP Plan, and the USFWS has issued written concurrence that the MSCP meets the statutory criteria for issuance of a Section 10(a) Permit. The MSCP will be implemented through individual Subarea Plans by having Participating Local Jurisdictions execute separate but coordinated agreements in a form substantially similar to this Agreement. Such agreements need not be executed at the same time. Instead, the USFWS and CDFG anticipate that implementation of the MSCP will be phased in over time, through both the

periodic addition of Participating Local Jurisdictions and Participating Special Entities, and the phased implementation of their respective MSCP-related obligations.

1.13 The purpose of this Agreement is to ensure the implementation of the MSCP and the Subarea Plan by contractually binding each of the Parties to fulfill and faithfully perform the obligations, responsibilities, and tasks assigned to it pursuant to the terms of the MSCP, the Subarea Plan and this Agreement. This Agreement also provides remedies and recourse should any of the Parties fail to perform its obligations, responsibilities, and tasks as set forth in the MSCP, the Subarea Plan and this Agreement.

## 2.0 DEFINITIONS

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

2.1 "Additional Conservation Measures" means the conservation measures beyond those provided by the MSCP and the Subarea Plan which the USFWS and CDFG may seek from County under the circumstances described in Sections 9.6 and 9.7 of this Agreement.

2.2 "Agreement" means this document.

2.3 "Biological Mitigation Ordinance" means the Ordinance adopted by the County of San Diego which establishes mitigation standards for biological resources and implements, in part, the Subarea Plan.

2.4 "CDFG" means the California Department of Fish and Game, a subdivision of the California Resources Agency.

2.5 "CEQA" means the California Environmental Quality Act (Cal. Pub. Resources Code, §§ 21000 et seq.), including all regulations promulgated pursuant to that Act.

2.6 "CESA" means the California Endangered Species Act (Cal. Fish & G. Code, § 2050 et seq.), including all regulations promulgated pursuant to that Act.

2.7 "CESA/NCCP Authorization" means any authorization issued in accordance with this agreement by CDFG under CESA (including but not limited to, Cal. Fish & G. Code, § 2081), or the NCCP Act (including but not limited to Cal. Fish & G. Code, § 2825, subd. (c) or 2835), or by the California Fish and Game Commission under the NCCP Act (including but not limited to Cal. Fish & G. Code, § 2830) to permit the Take of a species listed under CESA as threatened or endangered, or of a species which is

a candidate for such a listing, or of a species identified pursuant to section 2835. These legal authorities are wholly independent of each other.

2.8 "Covered Species" means those species within the MSCP Area which will be adequately conserved by the MSCP when the MSCP is implemented through the Subarea Plans or which will be adequately conserved through the permitting process pursuant to Section 404 of the Clean Water Act, 33 United States Code, section 1344. These species are listed in exhibit C.

2.9 "Covered Species Subject to Incidental Take" means those Covered Species which are adequately conserved by the Subarea Plan and other approved Subarea Plans as of the effective date, and which are therefore subject to Incidental Take under the Take Authorizations issued in conjunction with this Agreement. These species are listed in exhibit D. As indicated in Section 23.2, additional covered species (from exh. C) may be added to the list of Covered Species Subject to Incidental Take (exh. D) after the Effective Date. Adequate conservation for certain Covered Species Subject to Incidental Take shall include the measures contained in the "findings" for those species in Table 3-5 of the MSCP Plan.

2.10 "Dependent upon" a particular vegetation community means that vegetation community provides the primary space for individuals of the species to feed, grow, reproduce, and/or undertake essential behavior patterns. A species is likely dependent upon a vegetation community if that vegetation community provides its primary source of food, nutrition, substrate, cover and/or shelter, including sites for breeding, reproduction, pollination, and rearing of offspring on a continual or seasonal basis. If a species is considered dependent upon a sufficiently or significantly conserved vegetation community, as defined herein, then that vegetation community would provide the primary biological physical elements essential for the conservation of the species.

2.11 "Effective Date" means the date when all of the parties to this Agreement have signed this Agreement.

2.12 "ESA" means the federal Endangered Species Act (16 U.S.C., § 1531 et seq.), including all regulations promulgated pursuant to that Act.

2.13 "Extraordinary Circumstances" is defined in Section 9.6 of this Agreement.

2.14 "Habitat Conservation Plan" and "HCP" means the conservation program ("MSCP") and each Subarea Plan prepared pursuant to Section 10(a)(2)(A) of the ESA 1539(a)(2)(A)). The County's Subarea Plan is dated October 22, 1997.

2.15 "Incidental Take" means both the Take of a Covered Species incidental to and not the purpose of the carrying out of an otherwise lawful activity, as defined in the ESA, and its implementing regulations and the Take of a Covered Species pursuant to a CESA/NCCP Authorization.

2.16 "MBTA" means the federal Migratory Bird Treaty Act (16 U.S.C., § 701 et seq.), including all regulations promulgated pursuant to that Act.

2.17 "Multi-Habitat Planning Area" or "MHPA" means the area within the MSCP Plan Area as described in Section 3.1.1 of the MSCP Plan within which preserve planning is focused and within which permanent conservation of habitat lands will be accomplished through implementation of the Subarea Plan.

2.18 "MSCP" means the Multiple Species Conservation Program Plan, a comprehensive habitat conservation planning program adopted by the Board of Supervisors on October 22, 1997 which addresses multiple species habitat needs and the preservation of native vegetation for an approximate 900-square mile area in southwestern San Diego County, California.

2.19 "MSCP Plan Area" consists of approximately 900 square miles in southwestern San Diego County, referred to in the MSCP as the "MSCP Study Area." The MSCP Plan Area is depicted on exhibit A.

2.20 "NCCP Act" means the California Natural Communities Conservation Planning Act of 1991, enacted by Chapter 765 of the California statutes of 1991 (A.B. 2172) (codified in part at Cal. Fish & G., § 2800 et seq.), including all regulations promulgated pursuant to that Act.

2.21 "NCCP Plan" means a plan developed in accordance with the NCCP Act which provides comprehensive management and conservation of multiple wildlife species as defined in California Fish & Game Code section 711(2)(a), and which identifies and provides for the regional or area-wide protection and perpetuation of natural wildlife diversity while allowing compatible and appropriate development and growth.

2.22 "Participating Local Jurisdiction" means any of the local governments identified in exhibit B which prepares and receives USFWS and CDFG approval of a Subarea Plan, and which enters into an Implementing Agreement with the USFWS and CDFG. It is anticipated that such Implementing Agreement will be substantially similar in form to this Agreement.

2.23 "Participating Special Entity" means any regional public facility provider (such as a utility company) or special

district which operates and/or owns land within the MSCP Plan Area and which enters into an Implementing Agreement with the USFWS and CDFG pursuant to and consistent with the MSCP which is substantially similar in form to this Agreement.

2.24 "Party" and "Parties" mean the signatories to this Agreement, namely the United States Fish and Wildlife Service, the California Department of Fish and Game, and the County.

2.25 "Section 4(d) Special Rule" means the regulation concerning the coastal California gnatcatcher, published by the USFWS on December 10, 1993 (58 Fed. Reg. 65088) and codified at 50 Code of Federal Regulations section 17.41(b), which defines the conditions under which the Incidental Take of the coastal California gnatcatcher in the course of certain land use activities is lawful.

2.26 "Section 10(a) Permit" means the permit issued in accordance with this Agreement by the USFWS to County under section 10(a)(1)(B) of the ESA (16 U.S.C., § 1539(a)(1)(B)) to allow the Incidental Take of Covered Species Subject to Incidental Take.

2.27 "Significantly Conserved Vegetation Communities" means those vegetation communities listed in exhibit E and referred to in Section 4.2.4 of the MSCP Plan. For purposes of the MSCP and this agreement, the term "significantly conserved" is not meant to indicate the quantity or biological quality of the vegetation community conserved but instead indicates that provision of additional measures needed to add a species to the list of Covered Species will be proportionately shared by the Parties as defined in the MSCP Plan Section 4.2.4 for those species dependent upon a vegetation community labeled "significantly conserved."

2.28 "Subarea" means the area encompassed by the Subarea Plan, as depicted in exhibit F in which the Incidental Take of Covered Species Subject to Incidental Take is allowed by virtue of the Section 10(a) Permit and/or CESA/NCCP Authorization issued in accordance with this Agreement.

2.29 "Subarea Plan" means the plan prepared by County and reviewed and approved by the USFWS and CDFG, to implement the MSCP within its jurisdictional boundaries, pursuant to this Agreement. A date will be added reflecting the date on which the Board of Supervisors adopts the MSCP.

2.30 "Sufficiently Conserved Vegetation Communities" means those vegetation communities listed in exhibit E and described in Section 4.2.4 of the MSCP Plan. For purposes of the MSCP and this agreement, the term "sufficiently conserved" is not meant to indicate the quantity or biological quality of the vegetation

community conserved but instead indicates that USFWS and CDFG will use all of their legal authorities to provide for those species dependent upon vegetation communities labeled "sufficiently conserved" as set forth in section 9.7 (C).

2.31 "Take" and "Taking" shall have the meanings provided by the ESA, CESA and the NCCP Act.

2.32 "Take Authorization" means the Section 10(a) Permit and/or the CESA/NCCP Authorization.

2.33 "Third Party Beneficiary" means any landowner or other public or private entity that obtains and maintains Third Party Beneficiary status in compliance with Sections 10 and 17 of this Agreement.

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

## 3.0 HABITAT CONSERVATION PLAN/NCCP PLAN

3.1 As required by Section 10(a)(2)(A) of the ESA (1539(a)(2)(A)), a Habitat Conservation Plan known as the "Multiple Species Conservation Program" or "MSCP" has been prepared. The MSCP in conjunction with the County's Subarea Plan also qualifies as an NCCP Plan under the NCCP Act. The MSCP proposes a program of conservation for the Covered Species and protection of their habitat in perpetuity through land use regulation, acquisition and management. The County has submitted the MSCP and the Subarea Plan to the USFWS and the CDFG and County has requested that the USFWS issue a Section 10(a) Permit and that the CDFG issue a CESA/NCCP Authorization, each of which actions will allow the Incidental Take within the Subarea of those Covered Species determined by USFWS and CDFG to be adequately conserved by the MSCP and the Subarea Plan in accordance with this Agreement (such species are designated as Covered Species Subject to Incidental Take, and are listed in exh. D). County has also requested that the USFWS acknowledge that the MSCP and the Subarea Plan satisfy the conditions under the Section 4(d) Special Rule to allow the Incidental Take of the coastal California gnatcatcher within the Subarea.

3.2 The MSCP and Subarea Plan and each of their provisions are intended to be, and by this reference are, incorporated herein. This Agreement is intended to specify the obligations of the Parties under the MSCP and Subarea Plan, recognizing that the MSCP and Subarea Plans set forth the components of a conservation plan and were not drafted as contract documents. In the event of any direct contradiction, conflict or inconsistency between the MSCP Plan and the Subarea Plan, the Subarea Plan shall control.

In the event of any direct contradiction, conflict or inconsistency between the MSCP Plan or the Subarea Plan on the one hand, and this Agreement on the other, the terms of this Agreement shall control. In all other cases, the terms of this Agreement and the terms of the MSCP and Subarea Plan shall be interpreted to be consistent with and complimentary to each other. The three-volume MSCP Resource Document, and all MSCP-related drafts, position papers, working documents and other documents, are specifically not incorporated into this Agreement.

## 4.0 PHASED IMPLEMENTATION

The MSCP Plan Area includes land within the jurisdictional boundaries of twelve local jurisdictions listed in exhibit B. The USFWS and CDFG recognize and agree that the entire MSCP will not be implemented simultaneously. Some local jurisdictions may be prepared to implement the MSCP before others. Implementation of the MSCP as a whole can and may be phased, with some local jurisdictions joining as Participating Local Jurisdictions (and some regional public facility providers and special districts joining as Participating Special Entities) earlier than others. Nevertheless, upon application and approval of their plans, those local jurisdictions which become Participating Local Jurisdictions will receive Take Authorizations, and will obtain the benefits of and incur the obligations imposed by the Implementing Agreement which they sign, irrespective of whether other local jurisdictions have also joined as and/or currently serve as a Participating Local Jurisdictions. The Take Authorization will cover only those Covered Species determined by USFWS and CDFG to be adequately covered by the Subarea Plan and other approved Subarea Plans, and such species will be referred to as Covered Species Subject to Incidental Take and will be specifically identified in each Implementing Agreement. In addition, the USFWS and CDFG recognize and agree that the implementation of each Participating Local Jurisdiction's Subarea Plan will also be phased in over time in accordance with the schedule provided in each Implementing Agreement.

## 5.0 SEVERABILITY

The USFWS and CDFG recognize and agree that the Take Authorization received by County pursuant to this Agreement is independent and severable from the other Take Authorizations which have been or will be issued to other Participating Local Jurisdictions or Participating Special Entities. County's Take Authorizations will remain effective so long as County fulfills its obligations under this Agreement to implement the MSCP through the Subarea Plan, including its obligation under Section 9.18 to enforce the terms of this Agreement as to itself and to

all Third Party Beneficiaries, who will receive Incidental Take Authorization through County's Take Authorizations. County's Take Authorizations may not be suspended, revoked or terminated against its will due solely to the actions or inactions of any other person or entity, including the other local jurisdictions identified in exhibit B (whether or not they have become Participating Local Jurisdictions). However, if the inclusion of a species on the List of Covered Species Subject to Incidental Take either before or after the Effective Date (pursuant to Section 23.2 of this Agreement) is dependent, in whole or in part, upon the implementation of any other MSCP Subarea Plan(s), and the Participating Local Jurisdiction(s) associated with such Subarea Plan(s) terminates its participation in the MSCP or fails to implement its Subarea Plan, then the removal of such added species from the List of Covered Species Subject to Incidental Take may be required.

## 6.0 LEGAL AUTHORITY OF THE USFWS

The USFWS enters into this Agreement pursuant to the ESA, the Fish and Wildlife Coordination Act (16 U.S.C., §§ 661-666(c)), and the Fish and Wildlife Act of 1956 (16 U.S.C., § 742(f) et seq.). Section 10(a)(2)(B) of the ESA, 16 United States Code, section 1539(a)(2)(B), expressly authorizes the USFWS to issue a Section 10(a) Permit to allow the Incidental Take of species listed as threatened or endangered under the ESA. The legislative history of Section 10(a)(1)(B) clearly indicates that Congress also contemplated that the USFWS would approve Habitat Conservation Plans that protect unlisted species as if they were listed under the ESA, and that in doing so the USFWS would provide assurances for such unlisted species. The relevant excerpt from such legislative history states as follows:

> "The Committee intends that the Secretary [of the Interior] may utilize this provision [on habitat conservation plans] to approve conservation plans which provide long-term commitments regarding the conservation of listed as well as unlisted species and long-term assurances to the proponent of the conservation plan that the terms of the plan will be adhered to and that further mitigation requirements will only be imposed in accordance with the terms of the plan. In the event that an unlisted species addressed in an approved conservation plan is subsequently listed pursuant to the Act, no further mitigation requirements should be imposed if the conservation plan addressed the conservation of the species and its habitat as if the species were listed pursuant to the Act. It is also recognized that circumstances and information may change over time and that the original plan might need to be revised. To

address this situation the Committee expects that any plan approved for a long-term permit will contain a procedure by which the parties will deal with unforeseen circumstances."

H.R. Rep. No. 97-835, 97th Cong., 2d Session 30-31 (1982) (Conference Report on 1982 Amendments to the ESA). The USFWS routinely approves Habitat Conservation Plans that address both listed and unlisted species.

## 7.0 LEGAL AUTHORITY OF THE CDFG

The CDFG enters into this Agreement pursuant to its separate and independent authorities under both the CESA and NCCP Act. CDFG may authorize the Take of Covered Species pursuant to either Fish and Game Code or section 2835, and the California Fish and Game Commission may authorize the Take of Covered Species under Fish and Game Code sections 2084 and 2830.

## 8.0 SATISFACTION OF LEGAL REQUIREMENTS

In order to fulfill the legal requirements that will allow the USFWS to issue the Section 10(a) Permit, an HCP must provide measures that will ensure the following:

A. Any Take occurring within the Subarea will be incidental;

B. The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;

C. That adequate funding for the conservation plan and procedures to deal with unforeseen circumstances will be provided; and

D. That the Incidental Take will not appreciably reduce the likelihood of the survival and recovery of the Covered Species in the wild.

The USFWS has found that the MSCP and the Subarea Plan as implemented pursuant to this Agreement do provide such measures, and has issued such findings in support of the granting of the Section 10(a) Permit authorizing the Incidental Take of Covered Species Subject to Incidental Take.

The CDFG has found that the Subarea Plan as implemented pursuant to this Agreement satisfies the legal requirements necessary for the CDFG to issue a CESA/NCCP Authorization authorizing the Incidental Take of Covered Species Subject to

Incidental Take, and to provide certainty in the form of specific assurances contained in this Agreement.

## 9.0 MUTUAL ASSURANCES

9.1 Purpose. The primary purpose of this Agreement is to set forth the agreements and understandings of the Parties as to their respective obligations in carrying out the MSCP and Subarea Plan. Based on and in consideration of this Agreement, the MSCP, and the Subarea Plan, the USFWS and CDFG hereby provide assurances to County, and Third Party Beneficiaries with regard to the following provisions contained in this Section 9.0. In return, County hereby provides assurances to the USFWS and CDFG with regard to the following provisions contained in this Section 9.0.

9.2 Compliance with Applicable Laws. Compliance with the terms of this Agreement, the MSCP and the Subarea Plan, and compliance with the land use regulation, mitigation, compensation and habitat management obligations contained in this Agreement and/or imposed by County on proponents of land development projects within the Subarea in accordance with the MSCP, the Subarea Plan and this Agreement, constitute compliance with the Incidental Take and related provisions of the ESA, the CESA, the NCCP Act, and the California Native Plant Protection Act (Cal. Fish & G. Code, § 1900 et seq.).

9.3 Conservation of Covered Species. Implementation of the MSCP through the Subarea Plan in accordance with this Agreement will adequately provide for the conservation and protection of the Covered Species Subject to Incidental Take and their habitat in the Subarea in perpetuity. This conclusion is based on the biological analyses performed by the USFWS and the CDFG of the species evaluated by the MSCP Plan, and their resulting determination of which of those species are adequately protected so as to qualify as Covered Species and Covered Species Subject to Incidental Take.

9.4 Additional Land or Money Required. The USFWS and CDFG shall not require the County or Third Party Beneficiaries to commit additional land, additional restrictions, or additional financial compensation for the Covered Species Subject to Incidental Take beyond that provided pursuant to this Agreement, provided that the County is in compliance with its obligations under this Agreement. If the USFWS and/or the CDFG subsequently determine that additional land, additional land restrictions, or additional financial compensation beyond that required pursuant to the MSCP and this Agreement are necessary to provide for the conservation of a Covered Species Subject to Incidental Take, the obligation for such additional measures shall not rest with the County or the Third Party Beneficiaries.

9.5 Additional Conservation Measures. The USFWS and the CDFG shall not seek "Additional Conservation Measures," from the County or the Third Party Beneficiaries for Covered Species Subject to Incidental Take except in the event of Extraordinary Circumstances as defined in Section 9.6 of this Agreement, and in compliance with the Extraordinary Circumstances procedures contained in Section 9.6.

9.6. Extraordinary Circumstances.

A. Definition. For the purposes of this Agreement, the term "Extraordinary Circumstances" shall mean either:

1. A significant, unanticipated adverse change in the population of any Covered Species or its habitat within the MSCP Plan Area; or

2. Any significant new or additional information relevant to the MSCP that was not anticipated by the Parties at the time the MSCP was approved and that would likely result in a significant adverse change in the population of any Covered Species or its habitat within the MSCP Plan Area.

The term "Extraordinary Circumstances" as used in this Agreement shall have the same meaning as "Unforeseen Circumstances" under 50 Code of Federal Regulations, sections 17.22 and 17.32. The occurrence of one or more of the events identified under Section 5 of this Agreement shall not be considered an Extraordinary Circumstance.

B. Relevant Factors. In deciding whether Extraordinary Circumstances exist which might warrant requiring Additional Conservation Measures, the USFWS and CDFG shall consider, but not be limited to, the following factors:

1. The size of the current range of the affected species;

2. The percentage of range adversely affected by the MSCP;

3. The percentage of range conserved by the MSCP;

4. The ecological significance of that portion of the range affected by the MSCP;

5. The level of knowledge about the affected species and the degree of specificity of the species' conservation program under the MSCP; and

6. Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

C. Burden and Documentation. The USFWS and CDFG shall have the burden of demonstrating that Extraordinary Circumstances exist, using the best scientific and commercial data available that is clear and convincing. Any findings of Extraordinary Circumstances must be clearly documented and based upon reliable technical information regarding the biological status and habitat requirements of the affected species. Any finding of Extraordinary Circumstances must be made by the Director or Regional Director of the USFWS, or the Director of the CDFG, after consideration of all information submitted by the County in accordance with paragraph D below.

D. Advance Notice. Except where there is a substantial threat of imminent, significant adverse impact to a Covered Species, the USFWS and CDFG shall provide the County at least sixty (60) days advance written notice of a proposed finding of Extraordinary Circumstances, the specific facts that may constitute Extraordinary Circumstances, and the evaluation of the factors described in Section 9.6.B of this Agreement, during which time the USFWS and CDFG shall meet with the County to discuss the proposed finding and to provide the County with an opportunity to submit information to rebut the proposed finding. Only where the USFWS or CDFG concludes, following consultation with the County, that existing measures available under the MSCP and Subarea Plan cannot adequately address the situation and that Additional Conservation Measures are necessary shall the USFWS or CDFG proceed to finalize a finding of Extraordinary Circumstances. Where advance notice need not be given in accordance with this paragraph, the USFWS or CDFG shall consider any additional information submitted by the County after a finding of Extraordinary Circumstances and shall be required to issue a written response to the information within 120 days of its receipt.

E. Limits on Additional Conservation Measures. If the USFWS or CDFG makes a finding of Extraordinary Circumstances in accordance with the procedures described above, and determines that Additional Conservation Measures are warranted, such Additional Conservation Measures shall conform to the maximum extent possible to the original terms of the MSCP and Subarea Plan. Additional Conservation Measures shall be limited to modifications of County's preserve management program or habitat acquisition program as set forth in the Subarea Plan and this Agreement, and shall not involve the commitment of additional land or additional land restrictions or additional financial

compensation on the part of the County or Third Party Beneficiaries without their consent.

F. Effects on Take Authorization. A finding of Extraordinary Circumstances shall not be grounds to terminate, suspend, or otherwise revoke the Take Authorizations issued pursuant to this Agreement provided that the County cooperates with the USFWS and CDFG in identifying and implementing fair, reasonable and necessary modifications to the preserve management and habitat acquisition program, as specified in subsection E, above. The USFWS retains the right, as authorized under Section 5 of the ESA, 16 United States Code section 1534, and the CDFG retains the right as authorized by the CESA and/or NCCP Act, to purchase habitat within the MSCP Area to conserve Covered Species or any other species of concern.

G. The USFWS and CDFG may take any of the actions described in this Section 9.6 either jointly, or separately and independently of each other.

9.7 Future Listings.

A. Consideration of the MSCP and Similar Plans. To the extent required and permitted by the ESA, the CESA and the NCCP Act, the USFWS and CDFG shall take into account the species and habitat conservation provided under the MSCP, the Subarea Plan, this Agreement, and the species and habitat conservation provided through all other existing conservation efforts (including, but not limited to, other plans approved under the ESA, CESA, or NCCP Act, and any relevant Conservation Agreements), as well as all information and data developed in the course of these efforts which is made available to them, in any future determinations, and in any future recommendations from the CDFG to the California Fish and Game Commission, concerning the potential listing as threatened or endangered of any Covered Species or any other species which is not so listed as of the Effective Date.

B. Covered Species. If a Covered Species Subject to Incidental Take is not listed as threatened or endangered under the ESA as of the Effective Date, and becomes so listed during the term of this Agreement, then the Section 10(a) Permit shall become effective with respect to such species concurrent with its listing as threatened or endangered. If a Covered Species Subject to Incidental Take is not listed as threatened or endangered under the CESA as of the Effective Date, and becomes so listed during the term of this Agreement or becomes accepted by the California Fish and Game Commission as a candidate for such listing, then the NCCP Authorization shall become effective with respect to such species concurrent with its listing as threatened or endangered or its acceptance by the California Fish and Game Commission as a candidate for such listing. CDFG shall

take all necessary steps within its legal authority to make the CESA/NCCP Authorization effective promptly as to Covered Species Subject to Incidental Take accepted by the Commission as a Candidate for listing.

C. Non-Covered Species. If a species which is not a Covered Species is subsequently proposed for listing as threatened or endangered under the ESA or CESA or is accepted by the California Fish and Game Commission as a candidate for listing after the Effective Date, and it is determined by the USFWS or CDFG based on reliable scientific evidence that such species occupies the MSCP Plan Area, the USFWS and CDFG (1) will use their best efforts to identify the conservation measures within six months, if any, which are necessary to adequately protect the species, and (2) determine whether such conservation measures are beyond those prescribed by the MSCP. Although such conservation measures may be identified after such species is proposed for listing, the County may choose not to approve and implement such measures until the species is actually listed. Upon application by a Participating Local Jurisdiction which meets the requirements of the ESA, CESA, the NCCP Act, and following compliance with applicable procedures, Incidental Take of a non-covered, listed species shall be authorized.

1. Adequate Conservation Measures Already in MSCP. If the USFWS and CDFG determine that the conservation measures already contained in the MSCP, as implemented through this Subarea Plan and other approved Subarea Plans, are adequate to fulfill the conservation measures identified pursuant to subsection C above, then upon application by the County for Take Authorization for such species and following satisfaction of applicable review procedures as required by the ESA, CESA and the NCCP Act, the Parties will amend this Agreement to add such species to the list of Covered Species and the list of Covered Species Subject to Incidental Take, and the USFWS and CDFG shall issue Take Authorizations for such species, effective for the remaining term of this Agreement.

2. Inadequate Conservation Measures in the MSCP.

a. Additional Conservation Measures Priorities. If the USFWS and CDFG determine that the conservation measures already contained in the MSCP, as implemented through this Subarea Plan, and this Agreement, and other approved Subarea Plans do not adequately fulfill the conservation measures identified pursuant to subsection C above, then the USFWS and CDFG will work with County and other Participating Local Jurisdictions to identify and jointly implement any Additional Conservation Measures identified as being necessary to add such species to the list of Covered Species and to the list of Covered Species Subject to Incidental

Take. In developing a set of Additional Conservation Measures, the parties will look to the following, in order of preference:

(i) Habitat management practices and enhancement opportunities within the MHPA, using existing management resources, provided the redirection of such resources does not adversely affect any Covered Species.

(ii) Habitat acquisition through the reallocation of federal, state and/or regional funds identified for MSCP implementation, provided such reallocation does not adversely affect any Covered Species.

b. Developing Additional Conservation Measures. If the foregoing options are not adequate to fulfill the conservation measures identified pursuant to subsection C above, then the USFWS and CDFG will determine, consistent with the ESA, CESA and/or the NCCP Act, the Additional Conservation Measures necessary to add such species to the list of Covered Species and the list of Covered Species Subject to Incidental Take, including measures beyond those required by the MSCP. Preference will be given by the USFWS and CDFG to Additional Conservation Measures that do not require additional mitigation or dedications of land. Although the Additional Conservation Measures necessary to add such species to the list of Covered Species may be identified at or after the species is proposed for listing, County will not be required to approve or implement these Additional Conservation Measures until such time as the species is actually listed.

c. Significantly Conserved Vegetation Communities. If any species described in subsection C.2.a, above, is dependent upon a Significantly Conserved Vegetation Community, and if the subarea plans for the City of San Diego and the County of San Diego have been approved by USFWS & CDFG and are being implemented, then the USFWS and CDFG will, subject to the availability of appropriated funds, contribute in partnership to the same extent committed within the MSCP for Covered Species, with the County toward the land acquisition, management, and monitoring required to achieve the level of conservation necessary, within the Significantly Conserved Vegetation Communities, for such species to be added to the list of Covered Species and the list of Covered Species Subject to Incidental Take once such species becomes listed under the ESA and/or CESA. The commitment of the USFWS and CDFG to contribute their proportionate share(s) to the conservation of the species shall be contingent on the County's commitment of its proportionate share. In addition, if the USFWS or CDFG fail to provide their proportionate contributory share(s), neither the County nor Third Party Beneficiaries will be obligated to provide the USFWS and/or CDFG share(s), in which case the species would

not be added to the list of Covered Species or the list of Covered Species Subject to Incidental Take.

d. Sufficiently Conserved Vegetation Communities. If any species described in subsection C.2.a, above, is dependent upon Sufficiently Conserved Vegetation Community, and if subarea plans for the City of San Diego, City of Chula Vista, City of Poway and the County of San Diego have been approved by USFWS and CDFG and are being implemented, then the USFWS and CDFG will use all of their legal authorities to provide for the conservation and management, maintenance and monitoring of the habitat of such species, within the Sufficiently Conserved Vegetation Communities, sufficient to enable the addition of such species to the list of Covered Species and the list of Covered Species Subject to Incidental Take, and to enable the issuance of Take Authorizations for such species in the event they become listed under the ESA or CESA. For purposes of this paragraph, steps within the legal authority of USFWS include, but are not limited to, USFWS-funded habitat acquisition, USFWS-funded species relocation, and land exchanges to secure necessary habitat. For purposes of this paragraph, steps within the legal authority of CDFG include, but are not limited to, CDFG-funded acquisition, CDFG-funded species management and CDFG-funded species relocation. Consequently, the County shall not be required, without its consent, to provide any conservation or management, maintenance and monitoring for such species beyond that provided in the MSCP and the Subarea Plan.

e. Applicability of Significantly and Sufficiently Conserved Vegetation Communities Assurances. The assurances provided under subsections c and d, above are not applicable to the Pacific pocket mouse as a currently listed species, and shall not apply to evaluated species identified in Table 3-5 of the MSCP Plan which are not Covered Species and which are not dependent on Significantly or Sufficiently Conserved Vegetation Communities Those species are:

| | |
|---|---|
| Dean's milk vetch | *Astragalus deanei* |
| Orcutt's spineflower | *Chorizanthe orcuttiana* |
| Mexican flannelbush | *Fremontodendron mexicanum* |
| Mission Canyon bluecup | *Githopsis diffusa ssp. Filicaulis* |
| Tecate tarplant | *Hemizonia floribunda* |
| Little mousetail | *Myosurus minimus ssp. Apus* |
| Quino checkerspot butterfly | *Euphydryas editha quino* |
| Hermes copper butterfly | *Lycaena thornei* |
| Grasshopper sparrow | *Ammondramus savannarum* |

The following evaluated species identified in Table 3-5 of the MSCP Plan are covered by the assurances in subsection c,

above (Significantly Conserved Vegetation Communities) and are not covered by the assurances in subsection d, above (Sufficiently Conserved Vegetation Communities):

| | |
|---|---|
| Harbison's dun skipper | *Euphyes vestris harbisoni* |
| Townsend's western big-eared bat | *Plecotus townsendii* |
| California mastiff bat | *Eumops perotis californicus* |

3. Application for Take Authorization. The County makes no representation or commitment to pursue a Section 10(a) Permit from the USFWS or a CESA/NCCP Authorization from the CDFG for any non-covered species, and in the absence of any such Take Authorization, the Take of such species will be governed by applicable state and federal law. The USFWS and CDFG shall process any applications which may be submitted for Take Authorization for a species in accordance with the requirements of the ESA, CESA and/or NCCP Act.

9.8 Other Regulatory Permitting.

A. Other Permits. The Parties acknowledge that proponents of land development projects in the Subarea may be subject to permit requirements of agencies not parties to this Agreement, and to separate permit requirements which may be imposed by the USFWS and CDFG, such as under Fish and Game Code sections 1601 and 1603. Except as provided in Section 9.6 ("Extraordinary Circumstances"), Section 15.3 ("Failure to Provide State or Federal Contribution"), and this paragraph, compliance with the terms of this Agreement, the MSCP and the Subarea Plan, the federal policy of "no net loss" of wetland functions and values, and the United States Environmental Protection Agency's Section 404(b)(1) guidelines (40 C.F.R., Part 230) shall constitute the full extent of mitigation measures directed specifically at the Incidental Take of Covered Species Subject to Incidental Take required or recommended by the USFWS pursuant to the ESA and NEPA, and by the CDFG pursuant to CESA, the NCCP Act, and CEQA, in conjunction with other federal and state permits within the Subarea. Furthermore, the USFWS and CDFG will coordinate with the County, the United States Army Corps of Engineers, and the United States Environmental Protection Agency to further streamline the process for issuance of permits pursuant to Section 404 of the Clean Water Act (33 U.S.C., § 1344) for those projects that are in conformance with the MSCP, the Subarea Plan and this Agreement. The Parties intend to begin work on creating this streamlined process within six months of the Effective Date, with the goal of being able to implement this streamlined process within two years of the Effective Date. The public and affected stakeholders will be invited to participate in this effort.

B. Migratory Bird Treaty Act. The Section 10(a) Permit issued pursuant to this Agreement also constitutes a Special Purpose Permit under 50 C.F.R. § 21.27 for the Take of those Covered Species Subject to Incidental Take which are listed as threatened or endangered under the ESA and which are also protected by the Migratory Bird Treaty Act, except for the Bald Eagle. The Take of such species in conjunction with any public or private land development project authorized and approved by County in accordance with this Agreement will not be in violation of the MBTA. Such Special Purpose Permit shall be valid for a period of three years from the Effective Date, provided the Section 10(a) Permit remains in effect for such period. Such Special Purpose Permit shall be renewed, provided that County continues to fulfill its obligations under this Agreement. Each such renewal shall be valid for the maximum period of time allowed by 50 Code of Federal Regulation section 21.27 or its successor at the time of renewal.

C. Future Environmental Documentation. In issuing any permits or other approvals pertaining to land development activities within the County for any Covered Species Subject to Incidental Take, and absent a finding of Extraordinary Circumstances under Section 9.6 of this Agreement, and subject to any requirements of NEPA, the USFWS shall rely on and shall utilize the EIR/EIS prepared in conjunction with the MSCP and Subarea Plan as the NEPA environmental document for such permits and approvals and for any other approval process subject to its jurisdiction or involvement with regard to potential impacts on Covered Species Subject to Incidental Take, CDFG shall rely on and shall utilize the EIR/EIS prepared in conjunction with the MSCP and Subarea Plan as appropriate CEQA documentation for any future approvals regarding potential impacts to Covered Species Subject to Incidental Take related to land development activities within the Subarea.

D. Use of EIR/EIS as "Program EIR/EIS." The Parties understand and intend that the EIR/EIS prepared in conjunction with the MSCP and Subarea Plan will operate as a "program" EIR and EIS pursuant to applicable provisions of the Council on Environmental Quality's NEPA regulations (40 C.F.R., § 1500, et. seq.) the CEQA Guidelines (14 C.C.R., § 15000 et seq.) and the NCCP Act. Accordingly, the County shall, consistent with the provisions of CEQA, rely on and utilize the EIR prepared in conjunction with the MSCP and Subarea Plan in evaluating future land use decisions, and in issuing any permits or other approvals within the Subarea. Subsequent activities will be examined in light of the program EIR/EIS to determine if additional environmental documentation is required.

9.9 Federal and State Contributions. The USFWS and CDFG shall apply their best efforts to contribute public lands and funds to the acquisition and management, maintenance and

monitoring of habitat lands within the MHPA. Habitat land acquired within the MHPA through such means shall not be counted as mitigation for any public or private project but will be counted toward the conservation goals of the County's Subarea Plan. To the maximum extent appropriate after considering the location of the impacts, the USFWS and CDFG shall direct that the acquisition of land acquired for offsite mitigation of federal and state projects within the MSCP Plan Area, and lands banked for such projects, be located within the MHPA.

9.10 Public Facility Provider and Special Districts. The Parties shall cooperate to encourage regional public facility providers, and local special districts such as water districts and sewer districts, to become Participating Special Entities. However, the Parties acknowledge that regional public facility providers and special districts may apply for Take Authorizations from the USFWS and CDFG separate and apart from the MSCP.

9.11 Special Rules Under Section 4(d). In the event that the USFWS promulgates a new special rule for a Covered Species pursuant to Section 4(d) of the ESA (16 U.S.C. § 1533(d), as implemented by 50 C.F.R. § 17.31(c)), the USFWS shall consider the MSCP in developing the special rule, and shall ensure that the special rule will not affect the validity or alter the terms of any Take Authorization for Covered Species issued in accordance with an approved Subarea Plan.

9.12 Biological Mitigation Ordinance. County has adopted and will implement the Biological Mitigation Ordinance. This Biological Mitigation Ordinance groups vegetation communities into qualitative tiers based upon rarity of the vegetation community in the MSCP Area. Provided that the annual accounting and reporting requirements set forth in Section 14.0 demonstrate that conservation of a particular vegetation community is occurring in the anticipated proportion to the loss of those vegetation communities, the USFWS and CDFG agree that County may allow the loss within one tiered vegetation community to be compensated for with mitigation from a different tiered vegetation community in accordance with the Biological Mitigation Ordinance, the Subarea Plan and procedures set forth in Section 10 of this Agreement. Any changes in or amendments to the Biological Mitigation Ordinance shall be made only in a noticed public hearing.

The County shall notify USFWS and CDFG in writing of any proposed change or amendment to the County's Biological Mitigation Ordinance and provide the agencies with an analysis of the effect, if any, the proposed change or amendment would have on the County's ability to achieve the conservation goals of the MSCP and Subarea Plan. The County acknowledges that any change or amendment to the Biological Mitigation Ordinance that would adversely affect the County's ability to achieve the conservation

goals of the MSCP and Subarea Plan would be grounds for reevaluation of the County's Section 10(a) permit or CESA/NCCP Authorization under Sections 16.2 and 16.3 of this Agreement.

9.13 Conservation Banks. Mitigation banks may be established and implemented within the County in accordance with Board Policy I-117, dated October 4, 1995, Mitigation Banking Policy, (exh. G). The Parties agree that existing Conservation Bank agreements approved by the USFWS and CDFG prior to the Effective Date shall remain in full force and effect and be honored by the Parties after execution of this Agreement. This Section 9.13 shall apply to any public lands banked as mitigation for future development by County. Once lands are conserved in a bank in accordance with a conservation bank agreement, those lands will be credited towards the Subarea Plan's conservation goals.

9.14 Habitat Conservation Measures. Habitat conservation measures provided for in the Subarea Plan, including habitat management within the MHPA, shall be consistent with the MSCP and shall be implemented through the policies and local regulations established by County pursuant to Section 10.0 of this Agreement. Such policies and local regulations may differ between County and other Participating Local Jurisdictions, and between different MHPA habitat types within the Subarea.

9.15 Growth Inducing Impacts. Once mitigation has been imposed upon the County or a Third Party Beneficiary for a proposed land development project in conformance with Section 10 and 17.1.A of this Agreement, the County or a Third Party Beneficiary shall not be required to provide any additional mitigation for any growth inducing impacts such project may have on a Covered Species Subject to Incident Take and its habitat within that portion of the MSCP Area covered by approved Subarea Plans.

9.16 Projects With Discretionary Approvals or Habitat Loss Permits. Projects which have received their discretionary approvals and/or which have been issued Habitat Loss Permits (HLP's) from the County prior to the Effective Date, whose mitigation requirements are not or were not subject to the requirements of the Biological Mitigation Ordinance, may at the option of the project proponent, apply for Certificates of Participation. Certificates of Participation, if granted, will allow such projects to benefit from the County's Take Authorization and not require any additional approvals from the Parties for purposes of incidental take of the Covered Species Subject to Incidental Take. The County shall review such applications to determine if the project, as previously approved, conforms to the standards of the County Subarea Plan and Biological Mitigation Ordinance. If the County's review determines the project conforms to those standards, it will issue

draft Findings of Conformance for a 45-day (forty-five) day review period by the USFWS and CDFG. Following concurrence by the Wildlife Agencies, the County will issue the Certificate of Participation and the project proponent shall have the benefit of the County's Take Authorizations. If the County finds that the proposed project does not meet the Subarea Plan and Biological Mitigation Ordinance standards, the project proponent will be informed of the deficiencies and proper procedures for achieving and assuring conformance to the standards (tentative subdivision map amendment, major use permit modification, etc.) In the event that the Wildlife Agencies do not concur with the County's draft Findings of Conformance for a project during the 45-day review period, such project may not receive a Certificate of Participation and the project proponent shall be required to seek all applicable state and federal permits required to authorize incidental take from the Wildlife Agencies.

Proponents of previously approved projects and or projects for which HLP's have been issued by the County prior to the Effective Date also have the option to apply directly for individual Federal and State ESA permits without seeking the benefit of the County's Take Authorizations. If federal or state permits are not necessary, project proponents may proceed with implementation of development. The County shall, to the maximum extent feasible, monitor and report on any losses of habitat due to implementation of said projects.

9.17 Critical Habitat. The USFWS agrees that it will consider the MSCP and Subarea Plan in its preparation of any proposed designation of critical habitat concerning any Covered Species, and further agrees that consistent with 50 C.F.R. sec. 424.12, the MSCP as implemented through approved subarea plans incorporates special management considerations necessary to manage the Covered species in a manner that will provide for the conservation of the species involved within the MSCP Area. Except as otherwise provided in this Agreement, and consistent with assurances provided under Section 9 of this Agreement, the USFWS agrees that if critical habitat is designated for any Covered Species Subject to Incidental Take and if the Subarea Plan (and any other subarea plans the approval of which enabled the Take Authorizations to apply to such species) is properly functioning then the USFWS shall not require through the ESA Section 7 (16 U.S.C. § 1536) consultation process that the County or Third Party Beneficiaries commit additional land, additional land restrictions, or additional financial compensation beyond that provided pursuant to this Agreement.

9.18 Duty to Enforce. County agrees to take all action within its legal authority to enforce the terms of the Take Authorizations, the Subarea Plan, and this Agreement as to itself and to all persons or entities subject to the requirements established by this Agreement, specifically including the land

development permitting and approval requirements set forth in Section 10 of this Agreement. Upon execution of this agreement by the parties and the issuance of the take authorizations by USFWS and CDFG, the incidental take of covered species subject to incidental take is authorized for projects under the direct control of the County which are in conformance with the MSCP, the Subarea Plan and this Agreement. Furthermore, consistent with Section 9.3 of this Agreement the County shall exercise the full extent of its legal authority to ensure that its local share of lands identified for preservation under the Subarea Plan are conserved in perpetuity. Notwithstanding the term of this Agreement, if at any time following the end of the term of this Agreement the County proposes to exercise its discretionary authority to modify legal restrictions applicable to existing preserved lands in the Subarea Plan, including any zoning designations, the proposed modifications must be accomplished through a public process in which the public, the USFWS and CDFG receive advance notice and the opportunity to comment, and must be consistent with the MSCP Plan and the Subarea Plan such that there is no net loss of habitat value or acreage of the Covered Species. The County must promptly notify USFWS and CDFG or their respective successor agencies of such proposed modifications in advance, and explain how they achieve such consistency.

9.19 Annexation of Lands. To the extent permitted by law, the County shall enforce the terms of the Take Authorization, Subarea Plan and this Agreement as to all persons or entities subject to its jurisdiction in the event of the de-annexation of a parcel of land located within another Jurisdiction. In all other cases, the Take Authorization shall not apply to any de-annexed lands unless and until the Take Authorization, the Subarea Plan and, if appropriate, this Agreement are amended to include the de-annexed lands. In the event land within the County's jurisdiction is annexed to another jurisdiction, an agreement shall be reached between the County, the annexing jurisdiction, USFWS, and CDFG, as part of the annexation process, to ensure that any development of the annexed lands proceeds in accordance with the conservation goals of the MSCP (and, if the annexing jurisdiction is a Participating Local Jurisdiction, the goals of the Jurisdiction's Subarea Plan) and sets forth the resulting responsibilities pursuant to the MSCP for ongoing maintenance and enforcement of the terms of this agreement and the MSCP as it relates to the annexed land. Amendment of the Annexing jurisdiction's Take Authorization may be required in certain instances.

9.20 Agricultural Uses. The Take Authorizations shall apply to those lands within the Subarea Plan actively being used for agricultural purposes. For purposes of this paragraph, the phrase "agricultural purposes" includes crop production, animal production, forage production and grazing, and the phrase "actively being used for" means those lands shown on the MSCP

(2) in the absence of an option agreement, pursue other means of acquisition;

(3) if (1) and (2) above cannot be accomplished, USFWS shall seek to offer to exchange land of equal value to the temporary preserve area acceptable to Chandis-Sherman;

(4) if neither (1), (2) or (3) can be achieved prior to expiration of the eight-year temporary preserve period described in (B) above or expiration of the eight-year, four month option agreement period described herein, as applicable, Chandis-Sherman will offer to USFWS a series of one-year extensions of the temporary preserve period, not to exceed four (4) years, subject to the following conditions:

(A) USFWS shall continue to take all steps within its legal authority to acquire the preserve area, including, without limitation, (1), (2) and (3) above, during each one-year extension;

(B) USFWS shall make a one-year extension payment of $90,000 within ten (10) business days of expiration of the eight-year temporary preserve period described in Section 8.3.2(a)(1)(B) or

must be consistent with the BMO, the MSCP and the Subarea plans to receive the benefits of the County's Take Authorizations.

## 10.0 IMPLEMENTATION RESPONSIBILITIES OF THE COUNTY OF SAN DIEGO

10.1 Introduction. The MSCP establishes a plan to conserve the Covered Species by ultimately providing permanent protection for Covered Species habitat through implementation of individual subarea plans. The USFWS and CDFG agree to phased implementation of the MSCP based on the agreement of the County to take the following actions to implement the MSCP with respect to lands within its jurisdictional boundaries or which it otherwise controls within the Subarea.

10.2 Compliance and Implementation. In order to obtain and maintain its Take Authorizations, the County agrees to comply with and implement the MSCP Plan, Subarea Plan, and this Agreement. To carry out the MSCP Plan, and the County Subarea Plan, the County commits to preserve permanently, using the methods set forth in Section 10.5 of this Agreement, approximately 101,268 acres of lands in the Subarea in a configuration which will meet the goals of the MSCP and the Subarea Plan.

10.3 Currently preserved lands. Of the total lands planned to be permanently preserved in the Subarea Plan, approximately 59,969 acres are currently preserved or planned for dedication as follows:

| Segment | State/Federal | County | Private |
|---|---|---|---|
| Lake Hodges | | | 4,880 |
| Metro/Lakeside Jamul | 1,535 | 5,115 | 4,918 |
| South County | 28,705 | 346 | 14,470 |

10.4 Preserve Completion. To complete the preserve, approximately 18,850 acres are expected to be acquired with federal, state, and local public funds. This total is comprised of approximately 9,425 acres to be acquired each by federal and state funds and 9,425 by local funds. In the event that federal and state funds are not available, the local funding source will be used to make up the difference to the level that it is available. In addition, application of the Biological Mitigation Ordinance and the criteria in the Subarea Plan are expected to result in 22,450 acres of preserved land. The numbers are approximate since the amount, timing and location of land conserved through regulations, mitigation and public acquisition

are not exactly known. The County agrees to permanently preserve the total amount of land specified in the Subarea Plan, however the number of acres committed to the ultimate preserve through any one of the mechanisms identified in Sections 10.3 and 10.4 may vary from the above estimates.

10.5 Assembly and Protection of the MSCP Plan Open Space Preserve.

A. Resource Protection Regulations. The Biological Mitigation Ordinance was adopted on October 22, 1997. The County will conserve its share of Covered Species and their habitats as identified in Section 10.4 through implementation of the Subarea Plan and application of the Biological Mitigation Ordinance, through application of mitigation requirements for areas depicted in the Lake Hodges and South County Segments of the County Subarea plan, and through land acquisition. The Biological Mitigation Ordinance is designed to achieve the level of conservation for Covered Species and their habitats identified by the MSCP Plan and the Subarea Plan for the County. As part of the Biological Mitigation Ordinance, within six months of adoption of the MSCP Plan and Subarea Plan, the County will adopt revised brushing and clearing requirements implementing the policies and goals of the MSCP and Section 4.3.4 of the County's Subarea Plan. These brushing and clearing revisions shall be contained in the Biological Mitigation Ordinance. To the extent that the Article III, section 10 of the Biological Mitigation Ordinance contains exemptions for agriculturally related clearing, the County shall monitor annually and by individual exemption request the number of acres cleared. When the cumulative total of acres cleared within the subarea reaches 3,000 acres, the County shall amend the Biological Mitigation Ordinance to provide for no further exemptions from the ordinance for agriculturally related clearing. Nothing in this Agreement shall in any way affect limitations for agricultural clearing in any area not covered by this Plan, including any area (e.g., North County Subarea Plan area, Multiple Habitat Conservation and Open Space Plan area, etc.) for which the County may adopt an NCCP/HCP in the future.

The County will also utilize, in part, the California Environmental Quality Act (CEQA) in connection with the implementation of the Biological Mitigation Ordinance and the goals and criteria in the Subarea Plan for the County in order to achieve the conservation goals listed in table 1-2 of the Subarea Plan for the County.

1. Habitat Conservation and Mitigation Ratios. The Parties agree to the grouping of the vegetation communities by tier and the established mitigation ratio, as shown in the Biological Mitigation Ordinance and Table 4-8 of the Subarea Plan for the County. Modifications to these tier groups and mitigation

ratios may be made in accordance with Section 9.12, upon approval by the San Diego County Board of Supervisors, and following all legally required public hearings and environmental review, without the need to amend this Agreement, the Subarea Plan or the Take Authorizations, provided that such modifications include the same or higher levels of conservation and are otherwise consistent with the MSCP Plan and the Subarea Plan for the County. The County acknowledges that if the Wildlife Agencies conclude that the modifications to the Biological Mitigation Ordinance will not provide the same or higher levels of conservation, or are not otherwise consistent with the MSCP and the County's Subarea Plan, this Agreement, and potentially the County's Subarea Plan and Take Authorizations, may have to be amended or reevaluated in accordance with Sections 16.2 and 16.3. Mitigation within the Subarea Plan for the County shall conform to the Biological Mitigation Ordinance. The County shall apply the mitigation ratios in the Biological Mitigation Ordinance to all lands within the County's Subarea consistent with the Ordinance.

2. Application of Mitigation to Development. The County shall require the following mitigation in order to complete the segments of the Subarea Plan:

Lake Hodges Segment:

Mitigation for Rancho Cielo and the Madura Subdivisions defined as follows: Madura - approximately 142 acres of 181 acre project site will be located in permanent open space in addition to approximately 30 acres of off-site CSS purchased as mitigation; Rancho Cielo - 883 acres of open space to be provided, revegetation of 27.12 acres to allow recovery of 16.24 acres and provision of a conservation easement to create 1,000 foot wide wildlife corridor.

Dedication of 1,411 acres of land as permanent natural open space under Open Space I and Open Space II as shown on the preserve area map for the Santa Fe Valley Specific Plan. In addition, dedication of appropriate areas in the portion of the Santa Fe Valley Specific Plan Area near Lusardi Creek and the eastern portion where a special area designator requires avoidance of sensitive habitats.

Dedication of 1,612 acres of 4S Ranch as permanent open space as shown on the preserve area map for the Lake Hodges Segment including provisions for a 569 acre mitigation bank as part of the area of natural open space.

Metro-Lakeside-Jamul Segment:

The County shall achieve the habitat protection goals as stated in Table 4-2 of the County Subarea Plan. The County shall require all projects to meet the preserve design criteria in section 4.2.1 of the Metro-Lakeside-Jamul Segment. The County shall maximize conservation efforts in areas that meet the criteria as biological resource core areas under the Biological Mitigation Ordinance as described in section 4.2.1 of the County Subarea Plan, achieve the linkage elements as listed in Section 4.2.3 of the Subarea Plan, and the species protection goals of Table 4-3. In addition, the County shall require projects to avoid critical populations and narrow endemics as listed in tables 4-3, 4-4, 4-5 and 4-6 of the County Subarea Plan. Only lands conserved within Wildlife Agency preapproved areas or mutually agreed to by the County and the Wildlife Agencies as furthering the conservation goals specified in the Subarea Plan will be credited toward meeting the conservation goals identified in Section 10.2. However, lands outside of the Wildlife Agencies' preapproved areas which have been preserved in order to avoid narrow endemics and critical populations shall be credited toward meeting the conservation goals.

South County Segment:

Mitigation of the Hidden Valley Estates project as required in the Subarea Plan which includes on site dedication of 923 acres of Hidden Valley Estates and approximately 400 acres of habitat located offsite on the slopes of San Miguel Mountain.

Dedication of 535 acres of on site habitat for the Las Montanas in addition to 23 acres of adjacent, off-site habitat.

Dedication of 73.35 acres of Loma Del Sol as open space.

Dedication of approximately 312 acres of on site habitat for the Pointe project and a minimum of 150 acres of offsite habitat on the slopes of San Miguel Mountain.

Retention of the undeveloped areas as identified in the South County Segment Plan, for the County of San Diego East Mesa Detention facility.

Protection of the areas identified as preserved in the boundaries of the Otay Ranch project including

approximately 11,375 acres and an additional approximate 1,166 acres of limited development area. Additional lands associated with agreements, as outlined in the letter attached to the South County Segment from the Baldwin Company Dated November 10, 1995, will be included if the agreements are reached.

10.6 Compliance with Preserve Guidelines. The County agrees to implement the provisions set forth in Sections 1.2.1, 1.2.2, 1.3, 1.4, 1.14, 1.14.1, 1.14.2, and 1.15 of the Subarea Plan.

10.7 Compliance with Planning Policies and Design Guidelines. The County agrees to implement those General Planning Policies and Design Guidelines set forth in Section 1.8.1, 1.8.2 of the Subarea Plan.

10.8 Specific Conditions for Coverage. The following shall be specific conditions for coverage:

A. Management Directives. The County shall implement the conditions identified in the Conditions portion of Table 3-5 of the MSCP Plan and Section 1.3 of the Subarea Plan that are applicable to any Covered Species.

B. Essential Public Facilities Exemption. For the exemption of any essential public facility or project as defined by the Biological Mitigation Ordinance from the requirements of that Ordinance, the County shall make all of the findings set out in a. - f. of that Ordinance, provided however, that authorization for take within the preserve areas within the MHPA may require an amendment to the County's Subarea Plan and Take Authorizations as provided in Section 1.9.3 of the Subarea Plan.

C. Vernal pools. Vernal pools in naturally occurring complexes and wetlands impacts will be avoided to the maximum extent practicable. Unavoidable impacts will be mitigated in accordance with Section 9.8.A of this agreement.

D. Non-Native Grassland mitigation. Non-native Grassland mitigation in the County is a requirement. Non-native grassland shall be mitigated at the ratio of 0.5 acres of mitigation land for every 1.0 acres of land impacted until such time as non-native grassland shall attain the status of a significantly conserved vegetation community as determined by the Wildlife Agencies based on the factors identified in Section 4.2.4 of the MSCP. At that time, non-native grassland shall be mitigated as a Tier III vegetation community.

E. Narrow Endemic Species Identified in Tables 4-5 and 4-6. For certain species identified as "narrow endemic species" impacts will be avoided to the maximum extent practicable.

Impacts that cannot be avoided shall be minimized and mitigated in accordance with the MSCP, the Subarea Plan, and the Biological Mitigation Ordinance consistent with this Agreement. Narrow endemic species are those identified in Tables 4-5 and 4-6 of the Subarea Plan attached hereto as exhibit H.

F. Critical Populations. Impacts to Critical Populations listed on Table 4-4 of the Subarea Plan and Attachment B of the Biological Mitigation Ordinance will be avoided as a first priority. Where complete avoidance cannot be attained, County staff will work with the project proponent to design the project to minimize impacts to the Critical Population to the maximum extent practicable.

10.9 Preserve Management. The County agrees to be responsible for managing or ensuring the management of the following lands within the MSCP Plan open space preserve in perpetuity:

A. Lands which it owns and which have been identified as areas to be preserved located within the MSCP Plan open space preserve as specified in the County Subarea Plan;

B. Any lands within that portion of the MSCP Plan open space preserve in the unincorporated area of the County that the County acquires for permanent preservation with MSCP regional funds or local funding sources;

C. Other lands within that portion of the MSCP Plan open space preserve in the unincorporated area of the County that are obtained as mitigation pursuant to the County Subarea Plan where those lands have been dedicated to the County in fee title or a conservation easement has been granted to the County, or a covenant of easement has been granted to the County which allows access for management purposes. The County shall ensure the management of lands described in this paragraph 10.9 C. in conformance with the requirements of Table 3-5 pending sufficient funding from the regional funding source but in no event shall the amount required for management be in excess of that set forth in Section 7.3.2 of the MSCP Plan as adjusted annually for inflation.

Upon mutual agreement of the Parties, land in categories A, B, and C above may be exchanged for other land if the substitute land provides habitat of equal or better quality and its conservation values and functions would be consistent with the conservation goals of MSCP.

10.10 Preserve Management Program. Within six months of the Effective Date, the County shall submit to the USFWS and CDFG for review a draft framework management plan for that portion of the MHPA which is within the Subarea, in accordance with Section

6.3.1 of the MSCP Plan. Within nine months of the Effective Date the County shall submit a final framework management plan to the USFWS and CDFG for approval. The framework management plan shall incorporate the species-specific management actions set forth in Table 3-5 of the MSCP Plan as appropriate, as well as preserve-wide management actions which shall not exceed the cost for management set forth in Section 7.3.2 of the MSCP Plan as adjusted annually for inflation. The framework management plan shall also incorporate a requirement for the subsequent preparation and implementation of area-specific management directives, which shall be prepared in a phased manner for logical and discrete areas of land within the Subarea as those lands are committed to permanent preservation. Until such time that area-specific management directives are formulated and applied to logical and discrete areas within the Subarea Plan, the County agrees to maintain for habitat values those lands identified in section 10.9 of this Agreement.

10.11 Boundary Line Adjustment. Adjustments to the County Subarea MHPA boundaries may be made in limited circumstances. Such adjustments require concurrence of the USFWS and CDFG as set forth in Section 5.4.2 of the MSCP Plan and Section 1.4 and Figures 1-2 and 1-3 of the Subarea Plan and require public notice and an opportunity to comment in those instances where the County will exercise its discretionary authority in making an adjustment. This Agreement need not be amended to reflect such adjustment.

10.12 County Compliance with Subarea Plan Provisions. The Chief Administrative Officer of the County will take all actions within his/her authority to ensure that all County departments comply with the policies, regulations and management obligations established as a result of the MSCP Plan and Subarea Plan for the County and this Implementing Agreement on all County projects and day-to-day operations.

10.13 Exceptions to Subarea Plan Provisions. During CEQA review of a project, site specific physical conditions including but not limited to geology, slope, or location of infrastructure may be identified which make it infeasible for the project to meet all goals, criteria or other requirements in the Subarea Plan, but the project could be constructed without compromising conservation of species and habitats pursuant to the Subarea Plan. In the event of these circumstances, the County may approve an exception to the Subarea Plan for the project with the concurrence of the Wildlife Agencies. The exception shall be the minimum necessary to afford relief and accommodate development.

## 11.0 FUNDING RESPONSIBILITIES OF THE COUNTY OF SAN DIEGO

11.1 Introduction. The MSCP Plan contains estimates for the costs of habitat acquisition, management and monitoring, both on a regional basis, and for each Subarea. To fully implement the MSCP Plan and the Subarea Plan, private property must be acquired to be added to the preserve in addition to lands that will be committed through the Lake Hodges and South County Segments. Approximately 22,450 acres of land will be obtained through mitigation of land development projects within the Subarea, in accordance with the Subarea Plan and Section 10 of this Agreement. The remaining approximately 9,425 acres will likely have to be acquired by the County using funds raised as described below.

11.2 Regional Funding.

A. Regional Funding of Local Costs. As described in the MSCP, the County and other Participating Local Jurisdictions will each be responsible for acquiring private lands within the MHPA, and for funding MHPA management, monitoring and administrative costs. The MSCP Plan intends that funds to cover these local costs will be raised on a regional, County-wide or MSCP Area-wide basis.

B. Short-term Regional Funding. In the short-term, prior to approval of a long-term regional financing mechanism as discussed in Section 11.2C below, County will participate with the other Participating Local Jurisdictions to seek financing for the acquisition of private lands within the MHPA during the first three years following the Effective Date. Prior to the establishment of a regional financing mechanism, the County agrees to fund or ensure the costs of managing and monitoring those lands identified in Section 10.9 of this Agreement as set forth in that section.

C. Long-term Regional Funding.

1. Methods. The MSCP Plan analyzes several different methods of providing regional funding, including but not limited to a parcel tax/benefit assessment, community facilities district, general obligation bonds, Ad Valorem tax, and a sales tax.

2. Voter Approval. The Parties anticipate that any regional funding method will require voter approval.

3. Timetable. The MSCP Plan specifies a proposed timetable for securing long-term regional funding. Within eighteen months of the Effective Date, County working cooperatively with the other Participating Local Jurisdictions, will initiate the process described in the MSCP Plan to procure

long-term regional funding. Within an additional eighteen months, the County intends to have a long-term regional funding source established. The USFWS and CDFG are willing to adjust this schedule if County demonstrates that its good faith efforts to secure long-term regional funding require additional time. During this total period of time, County, working cooperatively with the other Participating Local Jurisdictions, will identify a new or an existing structure through which regionally generated funds will be allocated to all Participating Local Jurisdictions.

4. Reassessment of Regional Funding. The Parties recognize that achieving the goal of long-term regional funding may be compromised if any of the jurisdictions identified in exhibit "B" withdraw from the MSCP or fail to complete and obtain approval of a Subarea Plan. If such circumstances arise before long-term regional funding is secured, the Parties agree to reassess, along with the other Participating Local Jurisdictions the feasibility of a long-term regional funding approach. If at the conclusion of the time allowed under subsection C.3, above, a regional funding source has not been established, then the County shall establish and implement a funding source adequate to meet its share of MSCP and Subarea Plan implementation costs, while it continues to pursue with other Participating Local Jurisdictions, establishment of a regional funding source.

D. Failure to Provide Adequate Funding.

1. Effect on Take Authorizations. In the event that adequate funding to implement the MSCP Plan and the Subarea Plan is not provided by County, the USFWS and CDFG will assess the impact of the funding deficiency on the scope and validity of the Take Authorizations. The Parties agree that they will then meet and confer to cooperatively develop a strategy to address the funding shortfall, and to undertake all practicable efforts to maintain the level of conservation and Incidental Take authorization afforded by the Take Authorizations until the funding situation can be remedied.

## 12.0 ISSUANCE OF THE TAKE AUTHORIZATIONS

12.1 General. In order to provide predictability and certainty to public facility and private project developments, the Take Authorizations shall cover significant periods of time. It is acknowledged that the issuance of the Take Authorizations by USFWS and CDFG is contingent upon the County's adoption of the Biological Mitigation Ordinance.

12.2 Findings - USFWS - Covered Species. The USFWS has found, following opportunity for public comment, that (a) the taking of Covered Species within the MSCP Area in accordance with the MSCP Plan as implemented by the subarea plans will be

incidental to the carrying out of otherwise lawful activities; (b) the MSCP as implemented by the subarea plans will, to the maximum extent practicable, minimize and mitigate the impacts of such incidental taking; (c) the funding sources identified and provided for herein will ensure that adequate funding for the MSCP and the subarea plans will be provided; (d) the requested taking of Covered Species will not appreciably reduce the likelihood of survival and recovery of such species in the wild; and (e) the MSCP as implemented through the subarea plans will satisfy and fulfill all measures (including procedures determined by the USFWS to be necessary to address Unforeseen Circumstances).

12.3 Findings - USFWS - Covered Species Subject to Incidental Take. In addition to the findings in Section 12.2 above, the USFWS has found that the Covered Species Subject to Incidental Take will be adequately conserved in the Subarea as the result of implementation of the Subarea Plan and this Agreement. Accordingly, concurrent with the Effective Date the USFWS will issue the Section 10(a) Permit to the County authorizing the Incidental Take of the Covered Species Subject to Incidental Take. The Section 10(a) Permit will be effective for 50 years, and will be renewable utilizing the ESA procedures in effect at the time of renewal.

12.4 Section 10(a) Permit and Future Listings. As to any Covered species Subject to Incidental Take that is not listed as threatened or endangered under the ESA as of the Effective Date, the Section 10(a) Permit shall become effective with respect to such species concurrent with its listing as threatened or endangered under the ESA. As to any other Covered Species, the Section 10(a) Permit shall become effective with respect to that species (and it will be added to the list of Covered Species Subject to Incidental Take) when (1) the USFWS approves the subarea plans that the USFWS determines adequately conserve such species, (2) such species becomes listed as threatened or endangered under the ESA, and (3) the USFWS notifies the County in writing that the Section 10(a) Permit is effective with respect to such species.

12.5 Findings - CDFG. The CDFG has found, following opportunity for public comment, that the MSCP, the Subarea Plan and this Agreement (1) adequately provide for the conservation and management of the Covered Species Subject to Incidental Take and their habitat within the MSCP Area and the Subarea, (2) satisfy all legal requirements under the NCCP Act necessary for the CDFG to issue a CESA/NCCP Authorization for the Covered Species Subject to Incidental Take, and (3) are consistent with the NCCP Process and Conservation Guidelines. The CDFG has found that the Subarea Plan, in combination with the MSCP Plan, meets the requirements of the NCCP Act for an NCCP Plan, and has approved the Subarea Plan as an NCCP Plan. The CDFG has found

further that the MSCP, the Subarea Plan and this Agreement provide adequately for the mitigation of potential "significant effects on the environment" (as defined in Cal. Pub. Resources Code, § 21068) which may result to Covered Species Subject to Incidental Take and their habitat (pursuant to Cal. Gov. Code, § 66474) that may result from the land development activities in the Subarea.

12.6 Issuance of CESA/NCCP Authorization. Concurrent with the Effective Date, the CDFG will issue its approval of the Subarea Plan and a CESA/NCCP Authorization which authorizes the Incidental Take of Covered Species Subject to Incidental Take in the Subarea, subject to the terms of the MSCP, the Subarea Plan, this Agreement, and the CESA/NCCP Authorization. As to any Covered Species Subject to Incidental Take that is not listed as threatened or endangered under the CESA as of the Effective Date, the CESA/NCCP Authorization shall automatically become effective with respect to such species concurrently with its listing as threatened or endangered under the CESA or its acceptance by the California Fish and Game Commission as a candidate for such listing. The CESA/NCCP Authorization will be effective for 50 years. The CESA/NCCP Authorization will be renewable utilizing the applicable procedures in effect at the time of renewal.

12.7 Findings - Section 4(d) Special Rule. The USFWS finds that the MSCP meets the standards set forth in 50 C.F.R. section 17.32(b)(2). Accordingly, the USFWS finds that the MSCP and the Subarea Plan are consistent with and satisfy the conditions under the Section 4(d) Special Rule, and therefore the Incidental Take of the coastal California gnatcatcher within that portion of the MSCP Area covered by approved Subarea Plans (including the County's Subarea Plan), is lawful.

## 13.0 CONSULTATIONS WITH OTHER PUBLIC AGENCIES

13.1 Section 7 Consultations. To the maximum extent appropriate, in any consultation under Section 7 of the ESA (16 U.S.C. § 1536) involving the County and/or an existing or prospective Third Party Beneficiary with regard to Covered Species Subject to Incidental Take, the USFWS shall ensure that the biological opinion issued in connection with the proposed project which is the subject of the consultation is consistent with the biological opinion issued in connection with the MSCP and Subarea Plan, provided that the proposed project is consistent with the MSCP and Subarea Plan. Any biological measures included under the terms and conditions of the Section 7 biological opinion shall, to the maximum extent appropriate, be consistent with the mitigation required by the County for the particular project or activity under the MSCP and Subarea Plan as implemented by this Agreement, provided that the USFWS shall not impose measures in excess of those that have been or will be

required by the County pursuant to the MSCP, the Subarea Plan and this Agreement. For Section 7 consultations conducted in connection with the issuance of permits under Section 404 of the Clean Water Act, 33 U.S.C. § 1344, Section 9.8.A of this Agreement shall apply in lieu of this paragraph.

13.2 Consultations by CDFG. Except as otherwise required by law, and barring a finding by CDFG of Extraordinary Circumstances, for projects and/or project impacts subject to the Subarea Plan CDFG shall not recommend or otherwise seek to impose through consultation with other public agencies any mitigation, compensation or habitat enhancement requirements regarding the Take of Covered Species within the Subarea other than the requirements prescribed in and pursuant to the MSCP, the Subarea Plan and this Agreement.

## 14.0 MONITORING, REPORTING AND PRESERVE MANAGEMENT

14.1 Continual Habitat Acreage Accounting. So long as this Agreement and the Take Authorizations remain in effect, the County will continually account, by project and cumulatively, for the amount and location of habitat acreage (by habitat type) lost and preserved within the Subarea, including acres conserved within the MHPA and acres committed to land development both within and outside of the MHPA. The results of such accounting will be applied to the Habitat Conservation Accounting Model attached as exhibit I to this Agreement to assure that adequate progress toward implementation of the MSCP Plan and the Subarea Plan is being achieved and that habitat preservation is proceeding in rough step with development.

14.2 Annual Reporting and Public Workshop. In accordance with Section 6.4.1 of the MSCP Plan, the County shall prepare and submit to the USFWS and the CDFG by February 15 of each year a public report containing an annual accounting, by project and cumulatively, of habitat acreage lost and conserved within the Subarea during the previous calendar year. This accounting shall specify acres conserved within the MHPA by habitat type, as well as acres committed to land development both within and outside of the MHPA, and compare these figures with results obtained utilizing the Habitat Conservation Accounting Model attached as exhibit I to this Agreement. This report shall also describe how habitat preservation is proceeding in rough step with development and how preserve assembly is consistent with the Biological Goals and Preserve Design Criteria in Section 4.2.1, 4.2.2, 4.2.3, and 4.2.4. The report will be used by the USFWS and CDFG to evaluate whether adequate progress toward implementation of the MSCP and the Subarea Plan is being achieved. A public workshop or meeting will be jointly conducted on an annual basis by staff from the

USFWS, the CDFG and the County to disseminate and discuss the annual report.

14.3 Annual Implementation Meeting. Once each year, County shall meet with the USFWS and the CDFG to review and coordinate implementation of the Subarea Plan. The parties will review the Annual Report described in Section 14.2 above, for the purposes of evaluating the implementation of the MSCP during the preceding year and the adequacy of the overall progress being made towards reaching the conservation goals of the MSCP and the Subarea Plan utilizing as a tool the Habitat Conservation Accounting Model attached as exhibit I to this Agreement. Items to be considered in the evaluation include, but are not limited to, all contributions towards the preservation of habitat lands, such as public lands, private mitigation lands, land donations, land acquisitions, and management activities undertaken or proposed on habitat lands. Habitat management issues will also be discussed. No Participating Local Jurisdiction or Participating Special Entity will be subject to any annual, quantitative habitat preservation requirement, given the uncertainties created by natural economic and land development fluctuations. If the USFWS and the CDFG determine that adequate progress towards implementation of the Subarea Plan is not being achieved, the USFWS, the CDFG, and the County will take the actions specified in the Subarea Plan and this Agreement to remedy that situation. If the USFWS and CDFG determine that adequate progress towards implementation of the Subarea Plan is being achieved, but is nevertheless not providing sufficient protection to Covered Species, then the Parties shall work cooperatively and take appropriate actions consistent with the MSCP and Subarea Plan (such as altering management activities or redirecting mitigation and acquisition) in order to address the situation. Such actions may include additional management activities, or redirection of land acquisition funds, so long as they are consistent with the Subarea Plan and this Agreement.

14.4 Public Report/Hearing. Every three years the County, in conjunction with the other Participating Local Jurisdictions, shall prepare a public report on the status of the MSCP, and shall hold a public hearing in conjunction with the issuance of the report. The report shall incorporate information on the amount of land preserved within the MHPA and otherwise to date, the amount of land added to the MHPA or otherwise preserved within the previous three years, and the total expenditures made toward habitat acquisition to date and over the preceding three years. This report shall also include a subarea by subarea accounting of all funds received and expended during the previous three years to implement the Subarea Plans, including the amounts received and expended on habitat acquisition, management, and monitoring.

14.5 Biological Monitoring. The Parties agree that biological monitoring, which involves the collection and analysis of data on specific species and habitats, is necessary to determine whether Covered Species and their habitats are being maintained by the MSCP as expected. Biological monitoring will be jointly funded by the federal and state governments and the Participating Local Jurisdictions and Participating Special Entities through the federal, state and regional funding programs. As described in the Subarea Plan, County will be responsible for the biological monitoring of its own, specified public lands, as well as mitigation lands obtained by it in fee title or easement, and lands acquired by it for the MSCP using the regional funding program or other local sources. The federal and state agencies will monitor their present identified lands and those acquired for the MSCP with federal and state funds, as described in the MSCP Plan. Proper management of the MHPA will require ongoing and detailed analysis of the data collected through biological monitoring activities. To ensure uniformity in data gathering and analysis, the USFWS and CDFG will assume primary responsibility for coordinating the monitoring program, analyzing data, and providing information and technical assistance to the Participating Local Jurisdictions and Participating Special Entities. Biological monitoring will focus on selected Covered Species and representative habitats. The USFWS and CDFG will prioritize specific monitoring activities based on available budget and specific needs of individual species and habitats, and will produce a summary report on monitoring activities every three years at the same time as the report described in Section 14.4, above.

14.6 Audit. Once every three or more years, as needed, the USFWS and CDFG may conduct an audit of (1) all development approvals and mitigation imposed through land use regulations or otherwise within approved Subareas; (2) all lands acquired by each Participating Local Jurisdiction toward meeting its habitat acquisition obligation under the MSCP; and (3) all monies received, invested and expended on acquisition, management and monitoring activities within approved Subareas during the previous three years or other applicable time period. County shall cooperate fully with USFWS and CDFG to insure a complete and accurate audit.

14.7 Coordination of Preserve Management.

A. Regional Habitat Management Technical Committee. Within 120 days of the Effective Date, a regional habitat management technical committee or equivalent entity separately agreed upon by the Parties will be formed by the County and all other Participating Local Jurisdictions to serve as a coordination forum for technical issues associated with MHPA management. The USFWS and CDFG will work with this committee to

furnish information and advice on habitat management. The committee will have the responsibilities identified in Section 5.8.3 of the MSCP Plan.

B. Federal and State Obligations. Federal and state agencies will manage, maintain and monitor all lands they contribute to the MSCP (whether owned or administered by them as of the Effective Date or later acquired) consistent with the MSCP.

C. Private Owners of Land Within the MHPA. This Agreement, the MSCP and the Subarea Plan do not impose upon private owners of land within the MHPA, who are not Third Party Beneficiaries, any additional obligations for the management or maintenance of their land.

## 15.0 USFWS AND CDFG OBLIGATIONS

15.1 USFWS. The USFWS shall include in its annual budget requests sufficient funds to fulfill its obligations under the MSCP, this Agreement, and all Section 10(a) Permits it issues pursuant to the MSCP.

15.2 CDFG. The CDFG shall include in its annual budget requests sufficient funds to fulfill its obligations under the MSCP, this Agreement, and all CESA/NCCP Authorizations it issues pursuant to the MSCP.

15.3 Failure to Provide State or Federal Contribution. The USFWS and CDFG acknowledge that the MSCP is long-term in nature, and that the MHPA will be established over a fifty year period. Contributions of the USFWS and CDFG will be made at varying levels throughout the life of the program, with contributions to habitat acquisition to occur within the first 30 years of the program. State and federal contributions may include, but are not limited to, state and federally funded habitat acquisitions, land exchanges, personnel, and habitat restoration and enhancement. If, following the exercise of all available authority and utilization of all available resources the state and/or federal contribution committed to MSCP cannot be provided, the MSCP will be reevaluated, with possible adjustments to permit coverage and assurances, in light of the extent of the state and federal contribution. Prior to such reevaluation of the MSCP, the USFWS and CDFG shall first attempt to address the shortfall in the state and/or federal contribution through (1) habitat management practices and enhancement opportunities within the MHPA using existing management resources, provided the redirection of such resources does not adversely affect any Covered Species and (2) habitat acquisition through the reallocation of existing state, federal and/or regional funds

identified for MSCP implementation, provided such reallocation does not adversely affect any Covered Species.

## 16.0 REMEDIES AND ENFORCEMENT

16.1 Remedies in General. Except as set forth below, each Party shall have all of the remedies available in equity (including specific performance and injunctive relief) and at law to enforce the terms of this Agreement and the Section 10(a) Permit and CESA/NCCP Authorization, and to seek remedies and compensation for any breach or violation thereof, consistent with and subject to the following:

A. None of the Parties shall be liable in damages to the other Parties or to any other person or entity for any breach of this Agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement, or any other cause of action arising from this Agreement. Notwithstanding the foregoing, each Party shall retain whatever liability it would possess for its present and future acts or failure to act without existence of this Agreement.

B. The Parties acknowledge that the Covered Species are unique and that their loss as species would be irreparable and that therefore injunctive and temporary relief may be appropriate in certain instances involving a breach of this Agreement.

16.2 The Section 10(a) Permit.

A. Permit Suspension. Consistent with 50 C.F.R. sections 13.27-13.29, in the event of any material violation of the Section 10(a) Permit or material breach of this Agreement by the County, the USFWS may suspend the Section 10(a) Permit in whole or in part; provided, however, that it may not suspend the Section 10(a) Permit without first (1) requesting the County take appropriate remedial actions, and (2) providing the County with written notice of the facts or conduct which may warrant the suspension and an adequate and reasonable opportunity for the County to demonstrate why suspension is not warranted or to take steps necessary to cure the violation or breach.

B. Reinstatement of Suspended Permit. In the event the USFWS suspends the Section 10(a) Permit, in whole or in part, as soon as possible but no later than ten (10) days after such suspension, the USFWS shall confer with the County concerning how the violation or breach that led to the suspension can be remedied. At the conclusion of any such conference, the USFWS shall identify reasonable specific actions necessary to effectively redress the violation or breach. In making this

determination the USFWS shall consider the requirements of the ESA, regulations issued thereunder, the conservation needs of the Covered Species, the terms of the Section 10(a) Permit and of this Agreement and any comments or recommendations received during the meet and confer process. As soon as possible, but not later than thirty (30) days after the conference, the USFWS shall send the County written notice of the reasonable actions necessary to effectively redress the violation or breach. Upon performance of such necessary actions, the Service shall immediately reinstate the Section 10(a) Permit or the suspended portion thereof. It is the intent of the Parties that in the event of any suspension of the Section 10(a) Permit all Parties shall act expeditiously and cooperatively to reinstate the Section 10(a) Permit.

C. Permit Revocation or Termination.

1. Consistent with 50 C.F.R. section 13.27-13.29, the USFWS agrees that it will only revoke or terminate the Section 10(a) Permit for a material violation of the Section 10(a) Permit or material breach of this Agreement by the County, and only if (a) the County refuses to cure the violation or breach after receiving actual notice of it from the USFWS and a reasonable opportunity to cure it, or (b) the USFWS determines in writing that such violation or breach cannot be effectively redressed by other remedies or enforcement action.

2. The USFWS agrees that it will not revoke or terminate the Section 10(a) Permit without first (a) requesting the County take appropriate remedial action, and (b) providing the County with notice in writing of the facts or conduct which warrant the revocation or termination and a reasonable opportunity (but not less than sixty (60) days) to demonstrate or achieve compliance with the ESA, the Section 10(a) Permit and this Agreement.

3. Notwithstanding revocation of the County's Section 10(a) Permit under this Section, the County and all Third Party Beneficiaries shall remain obligated to carry out those obligations specified under Section 22.A.2 and B.

16.3 The CESA/NCCP Authorization.

A. Authorization Suspension. In the event of any material violation of the CESA/NCCP Authorization or material breach of this Agreement by the County the CDFG may suspend the CESA/NCCP Authorization in whole or in part; provided, however, that it may not suspend the CESA/NCCP Authorization without first (1) requesting the County take appropriate remedial actions, and (2) providing the County with written notice of the facts or conduct which may warrant the suspension and an adequate and

reasonable opportunity for the County to demonstrate why suspension is not warranted or to take steps necessary to cure the violation or breach.

B. Reinstatement of Suspended Authorization. In the event the CDFG suspends the CESA/NCCP Authorization in whole or in part, as soon as possible but no later than ten (10) days after such suspension, the CDFG shall confer with the County concerning how the violation or breach that led to the suspension can be remedied. At the conclusion of any such conference, the CDFG shall identify reasonable specific actions necessary to effectively redress the violation or breach. In making this determination the CDFG shall consider the requirements of the CESA and/or NCCP Act, regulations issued thereunder, the conservation needs of the Covered Species, the terms of the CESA/NCCP Authorization and of this Agreement and any comments or recommendations received during the meet and confer process. As soon as possible, but not later than thirty (30) days after the conference, the CDFG shall send the County written notice of the reasonable actions necessary to effectively redress the violation or breach. Upon full or substantial performance of such necessary actions, the CDFG shall immediately reinstate the CESA/NCCP Authorization. It is the intent of the Parties that in the event of any suspension of the CESA/NCCP Authorization all Parties shall act expeditiously and cooperatively to reinstate the NCCP Authorization.

C. Authorization Revocation or Termination.

1. The CDFG may only revoke or terminate the CESA/ NCCP Authorization for a material violation of the CESA/NCCP Authorization or material breach of this Agreement by the County, and only if the CDFG determines in writing that (a) such violation or breach cannot be effectively redressed by other remedies or enforcement action, or (b) revocation or termination is required to avoid jeopardizing the continued existence of a Covered Species and to fulfill a legal obligation of the CDFG under the CESA and/or NCCP Act.

2. The CDFG agrees that it will not revoke or terminate the CESA/NCCP Authorization without first (a) requesting the County take appropriate remedial action, and (b) providing the County with notice in writing of the facts or conduct which warrant the revocation or termination and a reasonable opportunity (but not less than sixty (60) days) to demonstrate or achieve compliance with the CESA, the NCCP Act, the CESA/NCCP Authorization and this Agreement.

D. Effect on Third Party Beneficiaries. The effect on Third Party Beneficiaries of Take Authorization revocation or suspension is specified in Section 17.2.

16.4 Circumstances Likely to Constitute Jeopardy to Listed Species. In the event of a material violation of the Take Authorizations or material breach of this Agreement by County and the existence of circumstances which are likely to jeopardize the continued existence of a Covered Species listed as threatened or endangered under the ESA or CESA, the USFWS and/or CDFG may, as a last resort, and after meeting and conferring with County and describing those circumstances in writing, suspend or revoke the Take Authorizations without resorting to the procedures specified above.

16.5 County Obligations In The Event of Suspension or Revocation. In the event that the USFWS and/or CDFG suspend or revoke the Take Authorizations issued to County under this Agreement, County will remain obligated to fulfill its mitigation, enforcement and management obligations and its other MSCP and Subarea Plan obligations, in accordance with this Agreement for all land development activities undertaken or approved prior to the breach which led to the suspension or revocation.

## 17.0 THIRD PARTY BENEFICIARIES

17.1 Authorization. Upon execution of this Agreement by the Parties and the issuance of Take Authorizations by USFWS and CDFG, the County may allow within the Subarea the Incidental Take of Covered Species Subject to Incidental Take by Third Party Beneficiaries under the direct control of the County, specifically including landowners and public and private entities undertaking land development activities in conformance with an approval granted by the County in compliance with this Section and Sections 9 and 10 of this Agreement.

A. Creation of Third Party Beneficiary Status.

(1) Except for those projects covered by paragraph (2) of this subsection 17.1.A, the creation of Third Party Beneficiary status shall occur during the County's permitting process at the point in time when (1) review of the project's impacts on biological resources and a determination of necessary mitigation has occurred in compliance with Section 10 of this Agreement, (2) the determined mitigation includes an immediately effective requirement to maintain the biological values of the land committed for mitigation, and (3) the mitigation has been imposed through a condition of development (such as a mitigation agreement) that is recorded and runs with the land and is enforceable against and binding upon the Third Party Beneficiary and any successor in interest to the Third Party Beneficiary. Third Party Beneficiary status may be attained for a project as a whole, or for a discrete phase(s) of a project so long as the mitigation for the discrete phase(s) is

not functionally dependent in the context of the MSCP and Subarea Plan upon the mitigation proposed for subsequent phases.

(2) Third Party Beneficiary status shall be conferred upon any project which is determined to be exempt from the County's Biological Mitigation Ordinance (Ordinance No. 8845 (New Series) pursuant to Article III A., Subsection 1, 8, 11, 12 and any Take Authorization Areas approved by the Board of Supervisors and the Wildlife Agencies as part of the County Subarea Plan identified in Subsection 4, upon application and approval of the exemption by the County in compliance with the Biological Mitigation Ordinance and this Section. Such approval shall serve as a Certificate of Inclusion. The Certificate of Inclusion shall also serve as the authorization for incidental take. For purposes of this Section, projects exempt under the Biological Mitigation Ordinance Article IIIA. Subsection 1 are limited to ministerial permits on existing legal lots.

Third Party Beneficiary status shall be conferred upon any project which is determined to be exempt from the County's Biological Mitigation Ordinance (Ordinance No. 8845 (New Series) pursuant to Article IIIA., Subsections 5, 9, 10 and any approved Habitat Loss Permit issued pursuant to 16 U.S.C. sec. 1533(d) upon issuance of a Certificate of Participation, as defined in Section 9.16 of this Agreement, in compliance with this Section and Sections 9 and 10 of this Agreement. Authorization for incidental take for those projects exempt from the Biological Mitigation Ordinance pursuant to Article III A., Subsections 5, 9, 10 and Habitat Loss Permits issued pursuant to 16 U.S.C. sec. 1533(d) shall be granted in accordance with Section 17.1.D.

B. Maintenance of Third Party Beneficiary Status. Third Party Beneficiary status will remain in effect unless, prior to the issuance of take authorization in accordance with Section 17.1.D., below, the Third Party Beneficiary alters the project in a manner that increases or substantially alters impacts to biological resources evaluated pursuant to Section 17.1.A., above, or fails to maintain the biological values of the land committed for mitigation pursuant to Section 17.1.A., above. In such circumstance, the Third Party Beneficiary status is automatically extinguished, and the subsequent creation of Third Party Beneficiary status will require biological review and imposition of mitigation for the increased or altered impacts, pursuant to Section 17.1.A. above. However, Third Party Beneficiary status shall not be extinguished as a result of impacts to biological values resulting from natural or other causes beyond the Third Party Beneficiary's control, as determined by the USFWS and CDFG, including fire, flood, storm, and earth movement, or from any prudent action taken by the Third Party Beneficiary to prevent, abate, or mitigate significant injury to the land evaluated pursuant to Section 17.1.A., above, resulting from such causes.

C. Assurances to Third Party Beneficiaries. For a project or portion thereof where Third Party Beneficiary status has been attained and is effective, the Parties shall not alter existing mitigation obligations imposed by the County on the Third Party Beneficiary, except as otherwise specifically allowed under Sections 9.6 and 9.7 of this Agreement, provided that the Third Party Beneficiary satisfies all mitigation obligations imposed by the County in conformance with this Section and Section 10 of this Agreement.

D. Authorization for Take Conferred by Local Jurisdictions to Third Party Beneficiary. The authorization for incidental take conferred by the County to the Third Party Beneficiary shall be for the length of time and run concurrent with the specific land development approval granted by the County. However no grading or grubbing activities may be commenced by the Third Party Beneficiary pursuant to the County's development approval until the mitigation established pursuant to Section 17.1.A. above has been fully satisfied (via conservation easement, transfer of fee title, etc.) or is guaranteed (via irrevocable offer of dedication, mitigation bond, letter of credit, pledged savings account or other equivalent mechanism) to occur within a time frame approved by the County, which time frame shall not under any circumstance exceed one year from the date the permit for grading or grubbing is issued.

17.2 Effect of Take Authorization Revocation, Termination or Suspension. In the event that the USFWS and/or CDFG revoke, terminate or suspend the Take Authorizations issued to the County pursuant to this Agreement, the assurances provided to Third Party Beneficiaries under this Agreement and the right to Take Covered Species Subject to Incidental Take authorized under the County's development approvals pursuant to the Take Authorizations, will remain in effect as to every individual Third Party Beneficiary which fulfills the mitigation obligations imposed upon it by the County in compliance with this Section and Section 10 of this Agreement.

17.3 Enforcement. The Parties reserve the right to enforce all applicable federal, state or local laws against persons or entities which engage in unlawful land development activity without obtaining proper permits and approvals from the Parties. Also, the Parties reserve the right to enforce all applicable federal, state or local laws against Third Party Beneficiaries which conduct land development activities in the Subarea which are not in compliance with land development approvals granted by the County in conformance with Section 10 of this Agreement.

17.4 No Right to Sue Under this Agreement. Notwithstanding the use of the term "Third Party Beneficiary" or any other provision of this Agreement, this Agreement shall confer no right

upon Third Party Beneficiaries or any other person to sue the USFWS or the CDFG.

## 18.0 ENVIRONMENTAL REVIEW

18.1 Federal Law - NEPA. Issuance of a Section 10(a) Permit to County by USFWS is an action subject to NEPA review. USFWS is a lead agency under NEPA. An Environmental Impact Statement has been prepared pursuant to NEPA. Additional environmental review will be required for future subarea plans.

18.2 State Law - CEQA. Implementation of the MSCP is an action subject to CEQA review. The City of San Diego is a lead agency for the project and has completed an Environmental Impact Report addressing the MSCP. In accordance with CEQA requirements, CDFG and the County are responsible agencies under CEQA for purposes of approving the MSCP and the Subarea Plan under the NCCP Act.

## 19.0 COOPERATIVE EFFORT

In order that each of the legal requirements summarized in Section 8.0 of this Agreement are fulfilled, each of the Parties to this Agreement must perform certain specific tasks. The MSCP thus describes a cooperative program by federal, state and local agencies to conserve the Covered Species.

## 20.0 TERMS USED

Terms defined and utilized in the MSCP, the ESA the CESA, and the NCCP Act shall have the same meaning when utilized in this Agreement, except as specifically noted.

## 21.0 TERM

21.1 50-year Agreement. This Agreement takes effect on the Effective Date, and shall remain in full force and effect for a period of 50 years, or until termination of the Section 10(a) Permit and CESA/NCCP Authorization pursuant to Section 16 or Section 22 of this Agreement, whichever occurs sooner.

21.2 50-year Take Authorizations. The Section 10(a) Permit and the CESA/NCCP Authorization issued to County shall be effective for a period of 50 years from the Effective Date.

21.3 Permanent Preservation. Notwithstanding the stated term as herein set forth, the Parties agree and recognize that

once Take of a Covered Species has occurred and/or their habitat modified within the Subarea, such Take and habitat modification will be permanent. The Parties, therefore, agree that the preservation and maintenance of the habitat provided for under this Agreement shall likewise be permanent and extend beyond the term of this Agreement.

## 22.0 TERMINATION

A. Upon 90 days written notice to USFWS and CDFG and all other Participating Local Jurisdictions, the County may unilaterally withdraw from this Agreement provided:

1. The County and all Third Party Beneficiaries have complied with all mitigation obligations incurred under the Take Authorizations in full compliance with the Habitat Conservation Accounting Model attached as exhibit I to this Agreement, the MSCP, Subarea Plan and this Agreement up to the date of withdrawal, and the County provides written evidence of such compliance to USFWS and CDFG; and

2. The County and Third Party Beneficiaries shall remain obligated to carry out all of their long term management and monitoring obligations assumed under the MSCP, Subarea Plan and this Agreement with respect to habitat conservation lands included in, or required to be included in, the MHPA as a result of land development approved by the County prior to withdrawal from the Agreement.

B. The County's withdrawal from this Agreement shall not affect the obligations of the County with respect to mitigation lands or other lands owned or controlled by the County and included in the MHPA.

C. Any Incidental Take associated with land development projects approved by the County for which mitigation has been assured as provided in Section 17, shall continue to be authorized under the terms of the Take Authorizations provided the County continues to carry out its obligations under this Agreement with respect to such Take as provided in Sections 9.18, 10, 14 and 17 of this Agreement.

D. Withdrawal of the County from this Agreement shall be deemed to constitute a surrender of the County's Take Authorizations issued pursuant to this Agreement.

## 23.0 AMENDMENTS

23.1 Amendments to Agreement. Except as otherwise set forth herein, this Agreement may be amended only with the written consent of each of the Parties.

23.2 Amendments to List of Covered Species Subject to Incidental Take. The Parties anticipate and intend that the list of Covered Species Subject to Incidental Take (attached as exh. D) may be augmented to include additional Covered Species as additional Participating Local Jurisdictions and Participating Special Entities enter into separate but coordinated agreements in a form substantially similar to this Agreement, and/or if additional information becomes available concerning the population and distribution of such additional Covered Species and the protection afforded such species by the MSCP and/or this Agreement. The Parties agree to work cooperatively to expeditiously augment the list of Covered Species Subject to Incidental Take under such circumstances.

## 24.0 FORCE MAJEURE

In the event that the County is wholly or partially prevented from performing obligations under this Agreement because of unforeseeable causes beyond the reasonable control of and without the fault or negligence of the County ("force majeure"), including but not limited to acts of God, labor disputes, sudden actions of the elements, or actions of federal or state agencies or other local jurisdictions, the County shall be excused from whatever performance is affected by such unforeseeable cause to the extent so affected, and such failure to perform shall not be considered a material violation or breach, provided that nothing in this Section shall be deemed to authorize any Party to violate ESA or CESA, and provided further that:

(1) The suspension of performance is of no greater scope and no longer duration than is required by the force majeure;

(2) Within two weeks after the occurrence of the force majeure the County gives the USFWS and CDFG written notice describing the particulars of the occurrence;

(3) The County uses its best efforts to remedy its inability to perform (however, this paragraph shall not require the settlement of any strike, walk-out, lock-out or other labor dispute on terms which in the sole judgment of the County are contrary to its interest); and

(4) When the County is able to resume performance of its obligations, the County shall give USFWS and CDFG written notice to that effect.

## 25.0 MISCELLANEOUS

25.1 Agency Response Times. Except as otherwise set forth in this Agreement or as statutorily required under CEQA, CESA, or the ESA, or other laws or regulations, the Wildlife Agencies and the County shall respond to written requests with a 45-day time frame.

25.2 No Partnership. Except as otherwise expressly set forth herein, neither this Agreement nor the MSCP shall make or be deemed to make any Party to this Agreement the agent for or the partner of any other Party.

25.3 Successors and Assigns. This Agreement and each of its covenants and conditions shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns. The County may only assign its rights and obligations under this Agreement with the approval of the USFWS and CDFG, which approval shall not be unreasonably withheld. Assignment or other transfer of the Section 10(a) Permit shall be governed by then-current USFWS regulations; under the applicable regulations in place on the Effective Date, a Section 10(a) permit may not be assigned or otherwise transferred.

25.4 Notice. Any notice permitted or required by this Agreement shall be delivered personally to the persons set forth below or shall be deemed given five (5) days after deposit in the United Stated mail, certified and postage prepaid, return receipt requested and addressed as follows or at such other address as any Party may from time to time specify to the other Parties in writing:

United States Fish and Wildlife Service
Assistant Regional Director
911 Northeast 11th Avenue
Portland, Oregon 97232-4181

United States Fish and Wildlife Service
Field Supervisor, Carlsbad Field Office
2730 Loker Avenue West
Carlsbad, California 92008

Director, California Department of Fish and Games
1416 9th Street, 12th Floor
Sacramento, California 95814

The County of San Diego
Chief Administrative Officer
1600 Pacific Highway, Room 209
San Diego, California 92101

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

25.6 Defense.

A. The USFWS will, upon request of the County and subject to the responsibilities of the United States Department of Justice in the conduct of litigation, provide appropriate support to the County in defending, consistent with the terms of the MSCP, lawsuits arising out of the County's adoption of the MSCP and Subarea Plan.

B. Upon request, CDFG will, to the extent authorized by California law, provide appropriate support to the County in defending, consistent with the terms of the MSCP, lawsuits arising out of the County's adoption of the MSCP and Subarea Plan.

25.7 Attorneys' Fees. If any action at law or equity, including any action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, each Party to the litigation shall bear its own attorneys' fees and costs, provided that attorneys' fees and costs recoverable against the United States shall be governed by applicable Federal law.

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

25.9 Federal and State Appropriations. The duty of the USFWS and CDFG to carry out its obligations under the MSCP, the Subarea Plan and this Agreement shall be subject to the availability of appropriated funds.

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

25.11 Consistency with Authorizing Statutes. This Agreement is consistent with the statutory authority of the USFWS under the ESA and other applicable federal laws, and of the CDFG

under the CESA, the NCCP Act and other applicable state laws. Likewise, nothing in this Agreement is intended to nor shall be construed to limit or compromise the statutory authority of the USFWS or the CDFG under such laws.

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Implementation Agreement to be in effect as of the date last signed below.

By: Vicki M. Finn Date: 3/13/98

Acting Regional Director
United States Fish and Wildlife Service
Portland, Oregon

By: Jacqueline E. Schaefer Date: March 17, 1998

Director
California Department of Fish and Game
Sacramento, California

By: _____ Date: 2/25/98

County of San Diego
San Diego, California

Robert R. Copper
Deputy Chief
Administrative Officer

Approved and/or authorized by the Board of Supervisors of the County of San Diego
Date: 10-22-97 Minute Order No. 1
THOMAS J. PASTUSZKA
Clerk of the Board of Supervisors
By: _____
Deputy Clerk

COUNTY COUNSEL

BY Claudia Anzures
DEPUTY

# LIST OF EXHIBITS

## County of San Diego Implementing Agreement

A. Map of MSCP Plan area

B. List of 12 Governments included in MSCP area

C. List of Covered Species

D. List of Covered Species Subject to Incidental Take

E. Sufficiently and Significantly conserved vegetation communities

F. County of San Diego Subarea

G. County Board of Supervisors Policy I-117 on Mitigation Banking

H. Narrow endemic species

I. Habitat Accounting Model

EXHIBIT A

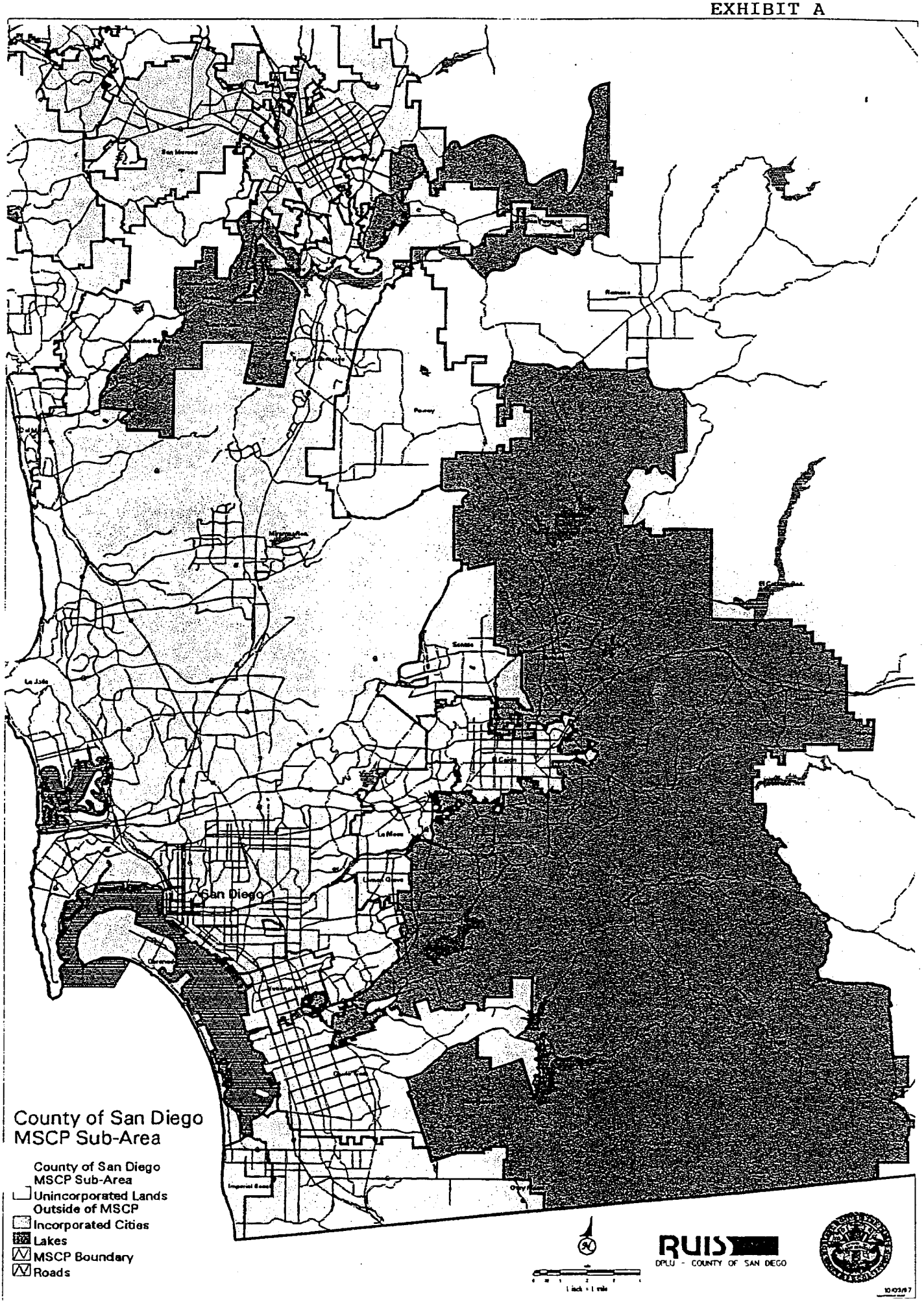

San Diego
County of San Diego
MSCP Sub-Area
County of San Diego
MSCP Sub-Area
Unincorporated Lands
Outside of MSCP
Incorporated Cities
Lakes
MSCP Boundary
Roads
RUIS
DPLU - COUNTY OF SAN DIEGO

EXHIBIT B

# Local Governments included in MSCP Area

**County of San Diego**
**City of Chula Vista**
**City of San Diego**
**City of Coronado**
**City of Del Mar**
**City of El Cajon**
**City of Imperial Beach**
**City of La Mesa**
**City of Lemon Grove**
**City of National City**
**City of Poway**
**City of Santee**

EXHIBIT C

# MSCP COVERED SPECIES LIST

**Plants**

San Diego thorn-mint
Shaw's agave
San Diego ambrosia
Aphanisma
Del Mar manzanita
Otay manzanita
Coastal dunes milk-vetch
Encinitas baccharis
Thread-leaf brodiaea
Orcutt's brodiaea
Dunn's mariposa lily
Slender-pod jewelflower
Lakeside ceanothus
Wart-stemmed ceanothus
Salt marsh birds-beak
Orcutt's birds-beak
Del Mar Mesa sand aster
Tecate cypress
Short-leaved dudleya
Variegated dudleya
Sticky dudleya
Palmer's ericameria
San Diego button-celery
Coast wallflower
San Diego barrel cactus
Otay tarplant
Heart-leaved pitcher sage
Gander's pitcher sage
Nuttall's lotus
Willowy monardella
San Diego goldenstar
Prostrate navarretia
Dehesa beargrass
Snake cholla
California orcutt grass
Torrey pine
San Diego mesa mint
Otay mesa mint
Small leaved rose
Gander's butterweed
Narrow-leaved nightshade
Parry's tetracoccus
Dense reed grass
Felt-leaved monardella
San Miguel savory
Nevin's barberry

**Animals**

Salt marsh skipper
Thorne's hairstreak butterfly
Riverside fairy shrimp
San Diego fairy shrimp
Arroyo southwestern toad
California red-legged frog
Southwestern pond turtle
San Diego horned lizard
Orange-throated whiptail
California brown pelican
Reddish egret
White-faced ibis
Canada goose
Bald eagle
Northern harrier
Cooper's hawk
Swainson's hawk
Ferruginous hawk
Golden eagle
American peregrine falcon
Light-footed clapper rail
Western snowy plover
Mountain plover
Long-billed curlew
Elegant tern
California least tern
Western burrowing owl
Southwestern willow flycatcher
Coastal cactus wren
California gnatcatcher
Western bluebird
Least Bell's vireo
California rufous-crowned sparrow
Belding's Savannah sparrow
Large-billed Savannah sparrow
Tri-colored blackbird
American badger
Mountain lion
Southern mule deer

EXHIBIT D

# MSCP COVERED SPECIES SUBJECT TO INCIDENTAL TAKE

**Plants**

San Diego thorn-mint
Shaw's agave
San Diego ambrosia
Aphanisma
Del Mar manzanita
Otay manzanita
Coastal dunes milk-vetch
Encinitas baccharis
Thread-leaf brodiaea
Orcutt's brodiaea
Dunn's mariposa lily
Slender-pod jewelflower
Lakeside ceanothus
Wart-stemmed ceanothus
Salt marsh birds-beak
Orcutt's birds-beak
Del Mar Mesa sand aster
Tecate cypress
Short-leaved dudleya
Variegated dudleya
Sticky dudleya
Palmer's ericameria
San Diego button-celery
Coast wallflower
San Diego barrel cactus
Otay tarplant
Heart-leaved pitcher sage
Gander's pitcher sage
Nuttall's lotus
Willowy monardella
San Diego goldenstar
Prostrate navarretia
Dehesa beargrass
Snake cholla
California orcutt grass
Torrey pine
San Diego mesa mint
Otay mesa mint
Small leaved rose
Gander's butterweed
Narrow-leaved nightshade
Parry's tetracoccus
Dense reed grass
Felt-leaved monardella
San Miguel savory
Nevin's barberry

**Animals**

Salt marsh skipper
Thorne's hairstreak butterfly
Riverside fairy shrimp
San Diego fairy shrimp
Arroyo southwestern toad
California red-legged frog
Southwestern pond turtle
San Diego horned lizard
Orange-throated whiptail
California brown pelican
Reddish egret
White-faced ibis
Canada goose
Bald eagle
Northern harrier
Cooper's hawk
Swainson's hawk
Ferruginous hawk
Golden eagle
American peregrine falcon
Light-footed clapper rail
Western snowy plover
Mountain plover
Long-billed curlew
Elegant tern
California least tern
Western burrowing owl
Southwestern willow flycatcher
Coastal cactus wren
California gnatcatcher
Western bluebird
Least Bell's vireo
California rufous-crowned sparrow
Belding's Savannah sparrow
Large-billed Savannah sparrow
Tri-colored blackbird
American badger
Mountain lion
Southern mule deer

**EXHIBIT E**

# SUFFICIENTLY CONSERVED VEGETATION COMMUNITIES

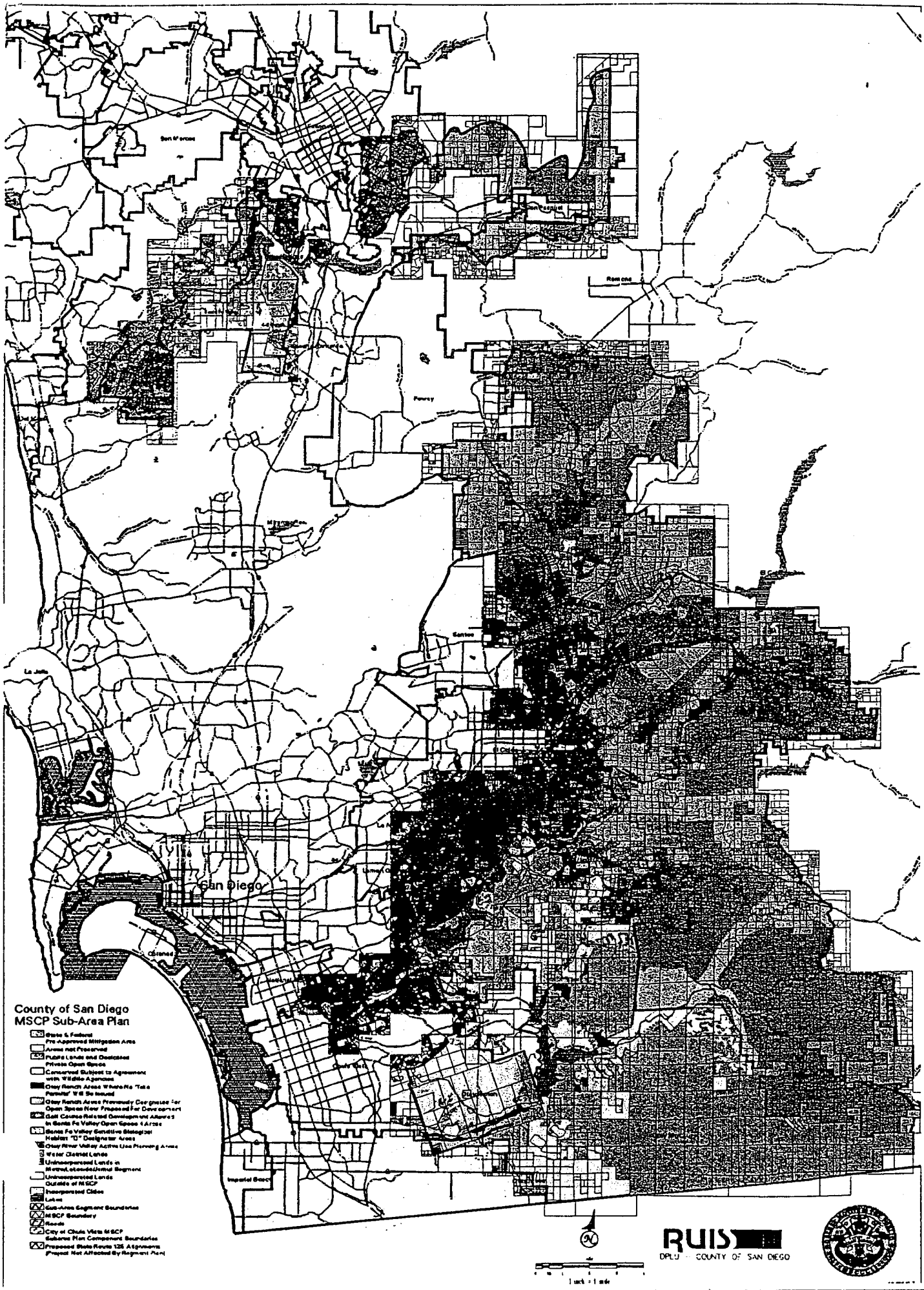
southern coastal bluff scrub
riparian scrub
disturbed wetlands
riparian forest
southern coastal saltmarsh
saltpan
coastal sage scrub (that portion of coastal sage scrub that comprises the range of the California gnatcatcher)
southern foredunes
riparian woodland
Torrey pine forest
natural flood channel
Tecate cypress forest

# SIGNIFICANTLY CONSERVED VEGETATION COMMUNITIES

southern coastal bluff scrub
riparian scrub
disturbed wetlands
riparian forest
southern coastal saltmarsh
saltpan
coastal sage scrub
southern foredunes
riparian woodland
Torrey pine forest
natural flood channel
Tecate cypress forest

beach
oak riparian forest
freshwater marsh
maritime succulent scrub
southern maritime chaparral
open water

EXHIBIT F



San Marcos
Ramona
Poway
Santee
La Jolla
San Diego
Coronado
Imperial Beach
County of San Diego
MSCP Sub-Area Plan
State & Federal
Pre-Approved Mitigation Area
Areas not Preserved
Public Lands and Dedicated
Private Open Space
Conserved Subject to Agreement
with Wildlife Agencies
Otay Ranch Areas Where No "Take
Permits" Will Be Issued
Otay Ranch Areas Previously Designated For
Open Space Now Proposed For Development
Golf Course Related Development Allowed
In Santa Fe Valley Open Space 4 Areas
Santa Fe Valley Sensitive Biological
Habitat "D" Designated Areas
Otay River Valley Active Use Planning Areas
Water District Lands
Unincorporated Lands in
Metro/Lakeside/Jamul Segment
Unincorporated Lands
Outside of MSCP
Incorporated Cities
Lakes
Sub-Area Segment Boundaries
MSCP Boundary
Roads
City of Chula Vista MSCP
Subarea Plan Component Boundaries
Proposed State Route 125 Alignments
(Project Not Affected By Segment Plan)
RUIS
DPLU - COUNTY OF SAN DIEGO
1 inch = 1 mile

Orange County Multi Species
Conservation Plan Executive Summary

# EXECUTIVE SUMMARY

## I. NEED FOR THE PROPOSED PROJECT

The County of Orange Environmental Management Agency (EMA) has prepared a Natural Community Conservation Plan and Habitat Conservation Plan (NCCP/HCP) for the Orange County Central and Coastal Subregion of the Southern California NCCP Coastal Sage Scrub (CSS) program. The County EMA and U.S. Fish and Wildlife Service (USFWS) are the lead agencies for this joint Environmental Impact Report/Environmental Impact Statement (EIR/EIS) prepared to facilitate environmental review of the proposed Central/Coastal NCCP/HCP.

The need for the proposed subregional CSS NCCP/HCP has been established over recent years by a combination of cumulative impacts on habitat resources and the legislative and regulatory responses to those impacts. The listing of the California gnatcatcher as "threatened," and the proposed listing of several other species that rely upon the coastal sage scrub habitat have signaled the need to shift the conservation planning focus from single species, project by project efforts to conservation planning at the natural community level. The Southern California NCCP CSS Program was developed to address this need, facilitating regional protection of a range of species inhabiting a designated natural community - in this case CSS and its associated mosaic of habitat types - while allowing compatible land uses and appropriate growth and economic development.

The "take" (*i.e.*, killing, harm, harassment, including significant habitat loss) of threatened and endangered species is prohibited under Section 9 of FESA and its implementation regulations. The USFWS, however, may issue permits to incidentally take listed species in connection with otherwise lawful activities. In a manner similar to Section 10(a)(1)(B) of FESA, the NCCP Act contains statutory provisions authorizing the take of species that w ıuld be prohibited or limited by CESA.

## II. PUBLIC REVIEW PROCESS AND PROGRAMMATIC REVISIONS IN RESPONSE TO PUBLIC COMMENTS AND FURTHER AGENCY REVIEW

### A. Documents Distributed/Available for Public Review

The NCCP/HCP, EIR/EIS and NCCP/HCP Implementation Agreement were prepared in cooperation with the California Department of Fish and Game (CDFG) and U.S. Fish and Wildlife Service (USFWS). These two resource agencies are responsible for implementing the California Endangered Species Act (CESA) and Federal Endangered Species Act (FESA). The Orange County EMA is the lead agency responsible for the preparation of the NCCP/HCP and the EIR while the USFWS is the lead agency responsible for managing preparation of the EIS.

The NCCP/HCP, Joint EIR/EIS and Implementation Agreement were distributed under a single cover by the County of Orange to facilitate public review of the project. The overall project documentation is presented in seven parts:

- an Introduction to the NCCP that provides planning and regulatory background information and the NCCP/HCP that contains the substance of the proposed subregional conservation strategy;

- the Joint EIR/EIS that evaluates environmental consequences and alternatives;

- the Implementation Agreement that outlines the specific enforceable measures and mechanisms that will be required to effectively implement the NCCP/HCP;

- maps and other figures (termed "figures") referred to by the NCCP/HCP, the EIR/EIS and the Implementation Agreement (collected in one volume for ease of reference and economy of color reproductions); and

- appendices containing materials cited in or used in the preparation of the NCCP/HCP, EIR/EIS and Implementation Agreement.

## B. Public Comments, Responses to Comments and Revisions Reflecting Responses

As part of the public review process pursuant to CEQA, NEPA, the NCCP Act and FESA, extensive public comments were received. The written public comments have been reproduced in the accompanying document title "County of Orange Central & Coastal Subregion Part III; Join Programmatic EIR/EIS - Comment Letters." Public testimony was also presented in oral form at public hearings before the County of Orange Planning Commission and the County of Orange Board of Supervisors.

Extensive written comments were prepared and are set forth in the accompanying document titled "County of Orange Central and Coastal Subregion Part III: Joint Programmatic EIR/EIS - Response to Comments." In broad terms, the responses are grouped under two categories: (1) "General Responses" presenting issues raised in a number of comments and/or which appeared to be of general interest and (2) "Specific Responses" which comprise responses to specific issues raised by only one party or a few parties.

In addition to providing substantive responses to specific comments, the Response to Comments document also indicates whether changes were to be made to the NCCP/HCP, the Implementation Agreement and/or the EIR/EIS in response to the comment and further lead agency assessment by the County of Orange, CDFG and USFWS. In addition to clarifications and corrections of specific matters in the documents, the responses included revisions that may be categorized as follows:

- *Species-Related Considerations*

  - Three species (the golden eagle, the prairie falcon and the foothill mariposa lilly) were shifted to the category of "conditionally covered species" due to the particular needs of those species.

  - Three species which are particularly associated with grasslands (the white-tailed kite, the loggerhead shrike and the California horned lark) were deleted from the list of Identified Species until such time as the NCCP Non-Profit is able to proceed with grasslands management programs, NCCP surveys and other information gathering.

- The Implementation Agreement provisions relating to species dependent upon or associated with CSS and covered habitats were modified to provide for species-specific assessments at the time of any future listing of such species and to deal with regulatory contingencies involving assurances to *participating landowners* and requirements for the future issuance of section 10(a)(1)(B) permits.

- Revisions were made to the provisions for the purchase of the Pacific pocket mouse site on Dana Point Headlands and construction-related minimization measures were incorporated into the EIR/EIS Mitigation measures and the Implementation Agreement.

- The Implementation Agreement has been modified to provide that an assessment will be made, within one year of the hiring of the NCCP Non-Profit Executive Director, as to whether special management measures should be undertaken for the cactus wren.

• *Future Public Involvement Considerations*

- Membership of the Board of the Directors of the NCCP Non-Profit was modified to specifically provide for three "public" members.

- A provision was made in the Implementation Agreement for the appointment of a Technical Advisory Committee to provide scientific input into policy matters considered by the NCCP Non-Profit.

- Although likely required by existing law, the Implementation Agreement was modified to specifically commit the NCCP Non-Profit to open public meetings.

• *Reserve System Configuration and Commitments*

- Some revisions were made to the Reserve System boundaries - most revisions generally involved shifting areas proposed for inclusion in the Reserve System into the "Existing Use" category of lands subject to ongoing USFWS listed species jurisdiction (including the prohibitions against take in Section 9 of FESA).

- The Implementation Agreement was modified to provide for commitments of signatory jurisdictions to manage Reserve System lands in a manner consistent with the purposes of the NCCP/HCP after the expiration of the 75-year term of the Implementation Agreement/permits. Special Linkage provisions for signatory public agencies were also made subject to this commitment (private lands in Special Linkage areas were already subject to conservation easement requirements).

Other revisions involved the addition of some other lands to the "Existing Use" category, revisions to the MCAS El Toro re-use provisions and revisions to Implementation Agreement provisions relating to future CDFG actions in conjunction with state CESA listings.

Where applicable, the text of this EIR/EIS has been modified to reflect revisions, clarifications and corrections made in the Response to Comments including corresponding revisions to the NCCP/HCP, the Implementation Agreement and the NCCP/HCP Map Book.

## III. PROJECT OVERVIEW

### A. Regulatory Framework

Approval of the EIR/EIS and implementation of the NCCP/HCP would allow the conservation of large, diverse areas of natural habitat, including coastal sage scrub (CSS), the habitat of the federally threatened coastal California gnatcatcher. These actions, in turn, would provide the mitigation basis for allowing impacts to some CSS habitat and certain other habitat types designated as "covered habitats" caused by the construction of various private and public projects that conform to the NCCP/HCP.

The regulatory framework within which the NCCP/HCP and EIR/EIS were prepared is described in detail in both documents, and includes:

- *The California Natural Community Conservation Planning Act of 1991: The purpose of this act is to provide long-term regional protection of natural vegetation and wildlife diversity while allowing compatible land uses and appropriate development and growth. The NCCP process is intended to shift the focus of conservation efforts from single species to a range of species that inhabit a designated natural community, such as CSS. Subsequent to the passage of the NCCP Act, Process and Conservation Guidelines were*

*prepared and adopted for the Southern California NCCP Coastal Sage Scrub program to assist in the preparation of NCCPs at the subregional level.*

- *The listing (March 30, 1993) of the coastal California gnatcatcher as a "threatened" species under the provisions of the Federal Endangered Species Act.*

- *The Special 4(d) Rule: This regulation was enacted by the Department of the Interior to encourage the preparation of NCCPs by establishing the NCCP Act as the substantive program for addressing the federal listing of the gnatcatcher.*

- *The "Region 1 Guidelines for Determining Covered Species Lists and Assurances Relative to Habitat Conservation Planning" (USFWS August 1, 1995)*

The County's Central and Coastal Subregion is one of eleven NCCP subregions within the five-county southern California area identified by the State of California's Southern California Coastal Sage Scrub NCCP program (Figure 2). This NCCP pilot program focuses on the protection of coastal sage scrub habitat (CSS), and adjacent habitats. By formulating conservation strategies for entire habitat systems, the state's NCCP program attempts to address long-term biological protection and management of multiple species and associated habitats at a subregional level.

Under the NCCP approach, the focus changes from protecting individual species to *conserving* natural communities and *accommodating* compatible land uses. The NCCP program is designed to provide incentives that will attract landowners, government agencies, and public interests to become stakeholders in a collaborative partnership. Conservation principles are applied at the natural community level, rather than focusing on new listings and regulating individual species. This shift in focus toward protection of multiple species within a mosaic of natural communities is intended to enhance the ability of local, state and federal agencies to provide long-term protection for a broad range of species that are dependent on the natural communities. Accordingly, the NCCP/HCP focuses on creating a multiple-species, multiple-habitat subregional Reserve System and implementing a long-term "adaptive management" program that will protect coastal sage scrub (CSS) and other habitats and species located within the CSS habitat mosaic, while providing for economic uses that will meet the social and economic needs of the residents and businesses of the subregion.

## B. Study Area

The Central and Coastal Subregion includes the central portion of Orange County from the coast inland to the Riverside Freeway (SR-91) (See Figure 1). Along the coast, the subregion extends from the mouth of the Santa Ana River in the City of Costa Mesa to the mouth of San Juan Creek, in the City of Dana Point. The Central and Coastal Subregion covers approximately 208,000 acres. Approximately 104,000 acres are natural habitat. A total of 34,500 acres of CSS exists in the study area, embedded within a mosaic of non-CSS vegetation communities. CSS is a naturally fragmented and dispersed vegetation type. As a result, conservation planning efforts for CSS generally include significant non-CSS areas, such as chaparral and grasslands and their resident species.

## C. Alternatives Reviewed

Four alternatives (see NCCP/HCP Alternatives Matrix at p. xx) have been selected for initial review and screening for further consideration in this EIR/EIS:

- the *Proposed Project* Alternative;
- the *No Project* Alternative (the "*No Action Alternative*" for NEPA purposes);
- the *No Take* Alternative; and
- a *Programmatic* Alternative.

The Section 10(a) FESA regulations require that permit applicants identify "what alternative actions to such taking the applicant considered and the reasons why such alternatives are not proposed to be utilized . . ." CEQA and NEPA similarly require a review of a reasonable range of alternatives to the Proposed Project.

Two of the alternatives considered in the EIR/EIS, the No Project and No Take Alternatives, are fundamentally different from the Proposed Project because they focus on a subregional strategy of project-by-project review and regulation instead of formulating and implementing a subregional conservation strategy that defines a reserve system and management program at one point in time. The No Project Alternative would rely on the application of FESA Section 7 consultation and Section 10 permit processes to protect the coastal California

gnatcatcher, while the No Take Alternative would rely on the prohibitions of take included in Section 9 of the FESA to protect the gnatcatcher. Neither the No Project nor the No Take Alternatives would necessarily restrict or limit impacts on the cactus wren, the orange-throated whiptail (two of the three "target species") or the other "identified" species recommended for regulatory coverage under the Proposed Project (although the No Project Alternative has potential for addressing unlisted species).

A fourth alternative, the Programmatic Alternative, would formulate a subregional Reserve System program, but involves a different approach to assembling the subregional Reserve System. Under the Programmatic Alternative, the subregional Reserve System would be assembled incrementally over time as specific projects requiring mitigation move forward and contribute mitigation fees or dedication lands to a management entity. This approach provides for more flexibility, but less certainty than the Proposed Project, in defining specific reserve boundaries and allows for a longer time period for accumulating scientific understanding regarding reserve design than is the case with the Proposed Project. The EIR/EIS addresses the primary substantive considerations of the Programmatic Alternative in the context of the review of alternative reserve design considerations in Chapter 5.

## IV. PROPOSED PROJECT

### A. Proposed Actions

The state and local government actions to be analyzed under CEQA are: (a) County approval of the NCCP/HCP as the CEQA lead agency, (b) CDFG approval as a CEQA responsible agency, including the approval of the NCCP/HCP and Implementation Agreement pursuant to NCCP Section 2810, 2820, 2825, 2830 and 2835 of the NCCP Act - the Implementation Agreement would serve as the management authorization for the immediate issuance of Section 2081 permits, and other appropriate take authorization pursuant to the NCCP Act, for all species treated as "identified species" in the NCCP and the Headlands plant species and future Section 2081 permits for species subject to the "covered habitat" provisions of the NCCP/HCP, and (c) Local government approval as signatories to the Implementation Agreement.

The federal actions analyzed under NEPA in this EIR/EIS are: (1) approval of the NCCP/HCP; (2) issuance of incidental take permits pursuant to Section 10(a)(1)(B) of FESA and amendment of the USFWS's FESA Section 10(a)(1)(A) permit for scientific study and

recovery of the Pacific pocket mouse; and (3) execution of an Implementation Agreement (to be signed by USFWS, CDFG, participating local governments and *participating landowners* in conjunction with final state and federal approval of the NCCP/HCP) which provides for specific measures and assurances required to carry out the NCCP/HCP.

### B. Results of the Proposed Actions

One result of the proposed actions would be the establishment of a subregional Reserve System that would include more than 37,000 acres of land consisting of two reserves - the "Coastal" reserve and the "Central" reserve (see Figure 12). Other areas, called Special Linkage Areas that enhance biological connectivity within the Reserve System and subregion and protect remnant populations of "identified species" and/or important habitat are also designated for specific habitat protection measures but not included in the NCCP Reserve System. Finally, certain areas are defined as "Existing Use Areas" where current endangered species regulation would remain the same as it presently exists (*i.e.*, anyone wishing to undertake an activity resulting in take of a state or federally listed species would have to obtain permits under CESA and FESA).

The proposed Reserve System is intended to provide the mitigation basis for allowing proposed CSS habitat conversion and impacts on "covered habitats" by meeting two fundamental requirements:

- assuring "the maintenance of net habitat value on a long-term basis" through the creation of a subregional Reserve System and Adaptive Management Program (addressing the provisions of the NCCP Act as applied through the NCCP Conservation Guidelines); and

- assuring that permitted activities will not "not appreciably reduce the likelihood of survival and recovery of the species in the wild" and will satisfy the other permit issuance requirements of Section 10(a)(1)(B) of the FESA.

The key elements of the NCCP/HCP conservation strategy are:

- *Reserve System* - creation of a publicly-owned habitat Reserve System that includes CSS and other habitat types representative of all but one of the major habitat types currently existing within the subregion(see Figure 4);

- *Special Linkages* - designation of "Special Linkages" to enhance biological connectivity within the subregion;

- *Existing Use Areas* - designation of areas containing significant populations of Target Species where existing uses are compatible with habitat protection and that would remain subject to currently existing CESA and FESA regulation;

- *Adaptive Management* - the creation of an institutional basis and funding program for undertaking management actions necessary to sustain populations over the long term, and in so doing, to adapt management actions to new information and changing habitat needs.

- *Interim Management* - provisions for extensive "interim" management of designated reserve lands prior to the time of the actual transfer of these lands to public ownership;

- *Funding* - establishment of a funding program to pay for the "Adaptive Management Program," additions to the Reserve System, and other mitigation measures; and

- *Mitigation Fee Option for "Non-Participating Landowners"* - provisions for an optional approach for mitigation of CSS impacts proposed to be authorized on lands located within the subregion but outside the Reserve System and owned by landowners who have not participated in the assemblage and management of the Reserve System through the contribution of reserve lands or planning/implementation funding.

Each of these elements is described in detail in the NCCP/HCP and reviewed in the EIR/EIS. Summary descriptions of each are included below:

1. NCCP/HCP Reserve System

The Reserve System encompasses more than 37,000 acres of land (see Figure 12). While NCCP/HCP reserve planning efforts focused on protecting significant coastal sage scrub habitat land, other habitat areas were also considered to be very important. Such areas were included in the reserve to assure that animal movement and genetic exchange continue to occur and to provide for bio-diversity within the Reserve System. The proposed Reserve System is comprised of two geographic "subareas" - The *Coastal Subarea Reserve* and the *Central Subarea Reserve.*

-- Description of the Coastal Subarea Reserve

The Coastal Subarea Reserve is proposed to contain 17,201 acres (more than 27 square miles) located primarily in and surrounding the San Joaquin Hills (Figure 16). The proposed reserve extends from the shoreline in Crystal Cove State Park inland almost 7.5 miles to a point close to the I-405 Freeway. Starting from the Upper Newport Bay reserve, the reserve extends southeast approximately 16 miles to the confluence of Oso Creek and Trabuco Creek, adjacent to the Southern NCCP subregion. Most of the proposed reserve is located within the unincorporated jurisdiction of the County; however, significant portions of the reserve are within the cities of Irvine, Laguna Beach, and San Juan Capistrano. Smaller portions of the reserve also are located within the cities of Costa Mesa and Newport Beach. The dominant physiographic features within the proposed subarea reserve include Upper Newport Bay, the various drainages and ridges contained within the coastal and inland slopes of the San Joaquin Hills, the Aliso-Woods canyons, and the Oso/Trabuco creek corridor (the latter in the City of San Juan Capistrano).

-- Description of the Central Subarea Reserve

The Central Subarea Reserve is proposed to comprise a 20,177-acre system (more than 31 square miles) located south and west of the Cleveland National Forest in the foothills and frontal slopes of the Santa Ana Mountains (Figure 15). More than 92 percent of the Reserve System is located in the existing unincorporated County jurisdiction, but small areas on the western edge of the reserve are included in two County regional parks located within the cities of Anaheim, Orange, and Tustin. On the west, the subarea Reserve System extends from Santiago Oaks Regional Park, in the City of Orange, about 14 miles southeast to El Toro Road, the boundary with the adjacent South NCCP subregion. From its northernmost point in the Coal Canyon Preserve adjacent to the Cleveland National Forest boundary, the reserve extends about 7.5 miles southwest to the southern edge of the frontal slopes of the Lomas de Santiago. Major physiographic features contained within the Central Subarea Reserve include Windy Ridge, Weir Canyon, Irvine Lake, the frontal slopes of the Lomas de Santiago, and Limestone Canyon.

In addition to the CSS/gnatcatcher impacts discussed above, the NCCP/HCP creates a temporary 22-acre preserve on the Dana Point Headlands site for the federally-endangered Pacific pocket mouse. This temporary preserve is not a part of the subregional habitat Reserve System. It is created and funding is provided ($700,000 over and above the NCCP Endowment

fund) to study the pocket mouse and determine the feasibility of alternative population conservation/enhancement techniques.

-- Ownership of Reserve Lands and Coordination of Management

When fully assembled, the entire reserve would be owned and managed by public agencies, with management coordination provided by a non-profit corporation that would be created and would consist of representatives of individual public agency reserve owners, the CDFG and USFWS. This non-profit corporation would coordinate activities within the Reserve System, receive and disburse funds to the reserve owners, hire staff and biologists and prepare annual reports for public review.

The following local governments own lands, are responsible for dedication programs or are designated as potential recipients of future dedication of lands proposed to be included in the NCCP Reserve System:

- City of Anaheim;
- City of Irvine;
- City of Laguna Beach;
- City of Newport Beach;
- City of Orange;
- City of San Juan Capistrano;
- Unincorporated County of Orange.

The NCCP/HCP proposes that local government jurisdictions, along with other local governments within the subregion that would rely on the NCCP/HCP for mitigation for development activities affecting occupied CSS habitat, will be asked to become signatories of the Central and Coastal Subregion NCCP/HCP Implementation Agreement and participate in the implementation of the NCCP/HCP. The NCCP/HCP and the Implementation Agreement explain what participation in the NCCP/HCP would mean for local government signatories to the Implementation Agreement (a summary outline of local government roles and commitments is set forth in Section 2.3 of this EIR/EIS).

-- Protected Plant and Animal Species - "Identified Species"

Under the NCCP Conservation Guidelines, the subregional reserve design process focuses on protecting the habitat of three designated "*target species*:" the coastal California gnatcatcher, the coastal cactus wren and the orange-throated whiptail lizard. As envisioned by the NCCP Conservation Guidelines, the Reserve System designed for the three "target species" is intended to provide significant levels of protection for a much broader range of habitats and species than just CSS and the three target species. Accordingly, the NCCP/HCP proposes that it would be appropriate to provide regulatory coverage for a total of 39 species, the three target species and 36 additional species, most of which are not presently "listed" under state or federal endangered species laws. The term "regulatory coverage" means that the species are treated "as if listed" under the NCCP Act and the state and Federal Endangered Species Acts, thereby allowing specified conversion of CSS habitat in return for mitigation measures assured through the NCCP/HCP Implementation Agreement. The species proposed to receive "coverage" under the NCCP/HCP are termed "Identified Species" and include:

**Target Species (3)**
- * Coastal California gnatcatcher
- coastal cactus wren
- orange-throated whiptail

**Mammals (3)**
- San Diego desert woodrat
- coyote
- gray fox

**Birds (6)**
- northern harrier
- sharp-shinned hawk
- * peregrine falcon
- red-shouldered hawk
- rough-legged hawk
- southern California rufous-sparrow

**Reptiles (6)**
- coastal western whiptail
- San Bernardino ringneck snake
- red diamondback rattlesnake
- San Diego horned lizard
- Coronado skink
- coastal rosy boa

**Amphibians (3)**
- arboreal salamander
- western spadefoot toad
- black-bellied slender salamander

**Plants (8)**
- Catalina mariposa lily
- ** Laguna beach Dudleya (PE)
- ** Santa Monica Mts Dudleya (PT)
- Nuttal's scrub oak
- small-flowered mountain mahogany
- heart-leaved pitcher sage
- Coulter's matilija poppy
- Tecate cypress

**Conditionally Covered Species (10)**
- * least Bell's vireo
- * southwestern willow flycatcher
- * southwestern arroyo toad
- ** Quino (Wright's) checkerspot (PE)
- * Riverside Fairy shrimp
- ** San Diego fairy shrimp (PT)
- * Pacific pocket mouse
- golden eagle
- prairie falcon
- foothill mariposa lily

* *Species that currently are on the federal list of "threatened or endangered" species.*

** *Species that are proposed for federal listing as threatened or endangered species*

For some of the above species, the NCCP/HCP proposes certain conditions that must be met in order for the species to be covered.

-- "Covered Habitats"

In addition to the regulatory coverage for incidental take of CSS habitat and the thirty-nine "Identified Species" cited above, the NCCP/HCP contains assurances to *participating landowners* relating to future impacts on other species located within specified habitats outside the proposed habitat Reserve System. The USFWS and CDFG have determined that the programmatic elements of the NCCP/HCP further the protection of certain habitats in a manner comparable to the protection provided for CSS habitat. These habitat types are referred to as "covered habitats" and include (Figure 69):

| | ACRES OF "COVERED HABITATS" OUTSIDE THE RESERVE SYSTEM | ACRES OF "COVERED HABITATS" INSIDE THE RESERVE SYSTEM |
|---|---|---|
| • oak woodlands; | 205 | 940 |
| • Tecate cypress forest; | 3 | 191 |
| • cliff and rock; and, | 28 | 74 |
| • within the Coastal Subarea only, chaparral. | 260 | 3,337 |
| TOTALS | 496 | 4,542 |

For these habitats, CDFG and USFWS will assume the responsibility for assuring, to the extent allowed by law and consistent with the provisions of Section 8.3.4(d) of the Implementation Agreement, that all statutory and regulatory requirements necessary to issue Section 10(a)(1)(B) and/or Section 2081 permits to *participating landowners* for listed species found in these habitats that are affected by planned activities. USFWS and CDFG will issue Section 10/2081 permits to *participating landowners* concurrent with the listing of any currently unlisted covered species.

-- Headlands Plant Species

The NCCP/HCP proposes regulatory coverage for five plant species on the site of the Headlands Property only.

2. Adaptive Management

*Adaptive management* is a central theme of the NCCP Conservation Guidelines and is defined as a flexible, iterative approach to long-term management of biotic resources that is directed

over time by the results of ongoing monitoring activities and other information. Under this approach, biological management techniques and specific objectives are regularly evaluated, and adjusted, in light of monitoring results and other new information. The purpose of adaptive management within the framework of the NCCP/HCP Reserve System is to help maintain long-term, net habitat value within the subregion. The NCCP Conservation Guidelines recognize the need for such management to counter the effects of "benign neglect" under pre-NCCP conditions and to offset impacts on habitat lands proposed for conversion.

The Adaptive Management Program is described in detail in the NCCP/HCP. Key elements of this program are:

- monitoring and associated adaptive management of the biological resources located within the Reserve System;

- restoration and enhancement actions such as eradication of invasive, non-native plant species, predator control and grazing management plans;

- consideration of species enhancement, propagation and re-introduction within the reserve.

- adaptive management carried out by means of short-term and long-term fire management programs within the Reserve System;

- adaptive management of public access and recreational uses within the Reserve System;

- adaptive management related to uses within the Reserve System that existed prior to approval of the Subregional NCCP/HCP;

- assurance that future permitted infrastructure uses and other public facilities within the Reserve System proceed in a manner provided for in the NCCP/HCP in order to minimize impacts of allowed uses;

- interim management of privately-owned lands for all of the above adaptive management elements prior to transfer of legal title to permanent public or non-profit ownership within the Reserve System (see discussion in Subsection "3" below);

- restoration and enhancement through the acquisition of existing CSS habitat or the creation of new CSS habitat to offset potential loss of net long-term habitat value due to development of CSS habitat outside the Reserve System on the part of *non-participating landowners* (*i.e.*, landowners who have not contributed significant lands or lands to the NCCP Reserve System - see discussion in Section "4" below); and

- restoration and enhancement of non-CSS "covered habitat" types.

### 3. Interim Management Program

Approximately 15,000 acres of the proposed Reserve System are currently publicly owned and would be available for inclusion in the reserve immediately following approval of the NCCP/HCP and signing of the Implementation Agreement by participants. However, because more than 21,000 acres of the proposed reserve are currently privately owned, and because most of the private ownership is subject to phased dedication commitments that preceded the NCCP/HCP, it would take many years to complete these open space dedication programs. To address the need for managing these lands prior to dedication, *"participating landowners"* would be required to allow the non-profit management entity to implement "interim" habitat management measures during the time following approval of the NCCP/HCP and the actual future transfer of lands from private to public ownership. The purpose of this interim management is to maintain and improve habitat values on lands designated for inclusion within the reserve.

### 4. Funding

The NCCP/HCP identifies three different sources of funding:

- An endowment to fund the Adaptive Management Program within the reserve lands over the life of the Reserve System, contributed by landowners within the subregion who were willing to fund the preparation of the NCCP/HCP plan and transfer land to the Reserve System at no cost. At this time, the NCCP/HCP projects the ultimate endowment fund to total more than $10.6 million.

- State/federal contributions to fund research, management, focused species inventories and future acquisitions of designated lands for the proposed Reserve System.

- A mitigation fee mechanism that gives landowners who are not contributing directly to creation/management of the reserve *(i.e., non-participating landowners)* a choice of how to meet current statutory requirements by mitigating proposed conversions of CSS habitat occupied by state or federally listed species located outside the Reserve System; mitigation funds provided by such landowners would be used to support restoration/enhancement activities within the Reserve System or to acquire lands to be added to the Reserves or Special Linkages. This mitigation option would involve payment of a fee in return for incidental take of CSS and gnatcatchers outside the Reserve System. Landowners who choose not to pay such a fee continue to have the option of separate Section 7 and 10(a) permits under applicable law (see discussion in Section "C.4" below).

## C. Potential Impacts and Proposed Mitigation under the NCCP/HCP

### 1. Habitat Proposed to be Protected

The NCCP/HCP would establish a Reserve System that would protect more than 35,000 acres of wildlands, including more than 18,500 acres of CSS (the Reserve also contains about 2,200 acres of disturbed, agricultural and developed lands). In addition, almost 3,900 acres of non-reserve public open space is located within the subregion, and more than 5,700 acres are included within the "supplemental" non-reserve habitat areas (*i.e.*, the Special Linkage Areas and Existing Use Areas). In all, almost 47,000 acres of natural habitat would be included within the proposed Reserve System, other permanent public open space and the "supplemental" non-reserve habitat areas. These areas contain 487 of the surveyed gnatcatcher sites (81 percent), and 774 of the surveyed cactus wren sites (78 percent) identified during the NCCP field surveys.

### 2. Potential Impacts on Lands Located Inside the Habitat Reserve System or Supplemental Non- Reserve Habitat Areas

The NCCP/HCP would also authorize the incidental take of 512 acres of CSS supporting nine surveyed gnatcatcher sites located within the proposed Reserve System and the Special Linkage Areas (four surveyed sites, 106 acres of CSS). All of this incidental take is related to future activities proposed (primarily recreational facilities, arterial roads, water reservoirs and other water supply facilities and other utility facilities) by "*participating landowners*" (see subsection "4" below).

### 3. Potential Impacts on Lands Located Outside the Habitat Reserve System

Impacts on occupied habitat of "target/identified" species would be permitted outside the Reserve System subject to the terms of the NCCP/HCP, Implementation Agreement and applicable local, state and federal laws (*e.g.*, general plans, zoning, the federal Clean Water Act). These non-reserve areas contain approximately 7,000 acres of CSS habitat, of which approximately 1,100 acres are occupied by 108 surveyed gnatcatcher sites and 206 surveyed cactus wren sites. The NCCP/HCP proposes to authorize incidental take (*i.e.,* conversion of CSS habitat) within these lands for the coastal California gnatcatcher, and for identified species listed in the future under the terms of the NCCP/HCP. Of the 108 gnatcatcher sites that would be impacted, 97 sites are located on *lands owned by "participating landowners," and 11 sites are on lands owned by "non-participating landowners"* (see discussion in the following section).

When all of the potential impacts are considered, the total authorized incidental take proposed by the NCCP/HCP would include an estimated 1,217 acres of CSS habitat occupied by the federally-listed gnatcatcher containing 121 current gnatcatcher sites. Total "conversion" of CSS proposed to be permitted under the NCCP/HCP, would be 7,444 acres. The 7,444 acres amounts to 24 percent of the total remaining CSS habitat within the subregion.

### 4. Mitigation Options for Landowners in the Subregion

Two categories of landowners are identified by the NCCP/HCP: *participating landowners* and *non-participating landowners*. Each of these landowner categories would be offered different endangered species habitat mitigation options (see discussion below and attached NCCP/HCP Mitigation Measures Summary).

-- *"Participating Landowners"*

*Participating landowners* are those contributing significant land and/or funding toward implementation of the Reserve System and Adaptive Management Program. The *participating landowners* include:

- Southern California Edison;
- Metropolitan Water District of Southern California;
- Irvine Ranch Water District;
- Santiago County Water District;
- Transportation Corridor Agencies;
- The Irvine Company;

# Table ES 1
# Central & Coastal Subregion NCCP
### Vegetation, Target Species, and Proposed Habitat Reserve

| Vegetation | Reserve | Special Linkage | Existing Use | Non Reserve Open Space | Policy Plan Area | National Forest OS | National Forest Private | Other Non Reserve | Total |
|---|---|---|---|---|---|---|---|---|---|
| | | | | Area in Acres | | | | | |
| Dunes | | | | | | 9 | 8 | 2 | 18 |
| Scrub | 18,527 | 449 | 1,103 | 283 | 3,006 | 1,733 | 1,835 | 7,456 | 34,392 |
| Chaparral | 6,950 | 23 | 735 | 79 | 5,251 | 13,114 | 6,510 | 2,556 | 35,218 |
| Grassland | 5,732 | 518 | 1,053 | 1,402 | 694 | 105 | 346 | 12,025 | 21,874 |
| Vernal Pools | 9 | 2 | | 0 | | | | 42 | 53 |
| Marsh | 343 | | 29 | 234 | | | | 52 | 657 |
| Riparian | 1,770 | 116 | 116 | 379 | 240 | 804 | 497 | 1,204 | 5,126 |
| Woodlands | 940 | 16 | 33 | 52 | 157 | 253 | 179 | 291 | 1,920 |
| Forest | 191 | | | | 2 | 563 | 43 | 5 | 804 |
| Cliff and Rock | 74 | 7 | 1 | 1 | 14 | 29 | 12 | 35 | 173 |
| Marine & Coastal | 362 | | 15 | 0 | | | | 1,553 | 1,930 |
| Lakes, Reservoirs, Basins | 99 | 10 | 1 | 790 | | | 0 | 456 | 1,357 |
| Water Courses | 182 | 1 | 22 | 8 | 0 | | 9 | 563 | 784 |
| Agriculture | 577 | 90 | 5 | 83 | | | 21 | 12,489 | 13,265 |
| Developed | 694 | 199 | 415 | 324 | 23 | 12 | 254 | 81,210 | 83,131 |
| Disturbed | 929 | 475 | 269 | 195 | 68 | 10 | 59 | 6,004 | 8,008 |
| Total | **37,378** | **1,906** | **3,796** | **3,831** | **9,456** | **16,632** | **9,772** | **125,942** | **208,713** |
| | | | | | | | | | |
| Gnatcatcher Total Sightings | 370 | 20 | 87 | 10 | 5 | | | 108 | 600 |
| Cactus Wren Total Sightings | 671 | 39 | 64 | | 14 | | | 206 | 994 |
| Total Sightings | **1041** | **59** | **151** | **10** | **19** | | | **314** | **1594** |
| | | | | | | | | | |
| CSS Total Acres | 18,527 | 449 | 1,103 | 283 | 3,006 | 1,733 | 1,835 | 7,456 | 34,392 |
| OW Total Acres | 16,651 | 693 | 2,004 | 2,946 | 6,358 | 14,877 | 7,603 | 18,784 | 69,915 |
| DDA Total Acres | 2,200 | 764 | 689 | 602 | 92 | 22 | 334 | 99,702 | 104,405 |

CSS - Coastal Sage Scrub Habitat
OW - Other Wildland Habitat
DDA - Developed, Disturbed and Agriculture

Notes:
1) *Target Species Sites in the National Forest are excluded from this analysis.
2) Target Species Sites impacted by Corridor Projects are excluded from this analysis.

Robert Bein, William Frost & Associates

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22-May-96

- University of California-Irvine;
- County of Orange; and
- Chandis-Sherman.

For these landowners, development activities and uses that are addressed by the NCCP/HCP would be considered fully mitigated under the NCCP Act and the state and federal ESAs for impacts to habitat occupied by listed and other "identified" species designated in the NCCP/HCP and for impacts to species dependent upon or associated with the "covered habitats." The "incidental take" proposed to be authorized by the NCCP/HCP is framed in terms of CSS acreage, not in terms of specific occupied habitat because the population levels and locations of occupied habitat vary considerably over time. Satisfactory implementation of the NCCP/HCP and terms of the Implementation Agreement would mean that no additional mitigation will be required of *participating landowners.*

-- *"Non-Participating Landowners"*

For purposes of the NCCP/HCP, other landowners within the subregion that are not contributing either significant land to the Reserve System or funding for the Adaptive Management Program are termed "*non-participating landowners.*" The NCCP/HCP provides for a different mitigation approach for these *"non-participating landowners"* to assure that impacts to occupied listed species habitat resulting from activities on their lands maintain "net habitat value" within the subregion consistent with the NCCP Act, CESA and FESA (see Chapters 7 and 8). *"Non-participating landowners"* may satisfy the requirements of FESA and CESA with respect to listed species in any of the following ways: (1) avoidance of conversion of habitat resulting in "Take" under CESA or FESA through project site design or other actions; (2) satisfaction of applicable FESA and CESA provisions under the consultation and permit provisions of these statutes independently of the NCCP/HCP; or (3) payment of a mitigation fee, for mitigation of impacts to CSS Identified Species, to the non-profit management corporation as provided for in the NCCP/HCP and Implementation Agreement. Thus, if a "*non-participating landowner*" could not avoid impacting CSS habitat occupied by a state or federal listed CSS species designated as an NCCP "Identified Species," the landowner could decide either to work with the regulatory agencies to mitigate impacts on-site or off-site (pursuant to the federal Endangered Species Act Section 7 or Section 10 processes and the state Endangered Species Act 2081 and 2084 processes) or to choose the option of payment of a mitigation fee to the NCCP program.

Finally, some *non-participating landowners* are located in "Existing Use Areas," lands containing populations of CSS Target species for which the NCCP/HCP proposes maintaining the regulatory status quo (*i.e.*, no take of CSS habitat occupied by CSS Identified Species is proposed to be authorized, thereby maintaining USFWS and/or CDFG direct authority over habitat protected by applicable law).

# NCCP/HCP IMPACTS/MITIGATION MEASURES PROGRAMMATIC SUMMARY

| Project Impacts | Mitigation Measures | Unavoidable Impacts |
|---|---|---|
| **Biology**<br>**Section 5.2.1.3** | | |
| Approximately 4,700 acres of CSS, 97 gnatcatcher sites will be impacted outside the Reserve System by *participating landowners.* | Prior to the occurrence of incidental take, each *participating landowner* shall dedicate land/provide funds for adaptive management as agreed to in the Implementation Agreement. | The loss of CSS habitat, and other biological resources is unavoidable. Impacts are mitigated to a level below significant. |
| Approximately 512 acres of CSS, 13 gnatcatcher sites will be impacted within the Reserve System and Special Linkages by *participating landowners.* | Mitigation for *participating landowners* consists of the measures already undertaken or agreed to in funding the planning and creation of the Reserve System, including land contributions as provided for in the Implementation Agreement. Further minimization are specified in the Adaptive Management Program. | The loss of target species and CSS habitat is unavoidable. Impacts are mitigated to a level below significant. |
| Approximately 2,100 acres of CSS, and 11 gnatcatcher sites will be impacted outside of the Reserve System, Special Linkages, Existing Use Areas, non-reserve open space and North Ranch area by *non-participating landowners.* | Mitigation for impacts to habitat occupied by CESA or FESA listed species will be provided either through standard CESA 2081 and/or FESA Section 7/10 processes or through payment of the optional NCCP/HCP habitat mitigation fee. | The loss of CSS habitat occupied by listed species is required by FESA and CESA to be mitigated to a level of less than cumulatively significant. "Net habitat value" is maintained under the optional NCCP mitigation fee and thus impacts are mitigated to a level below significant. |
| Incidental take beyond that authorized may be permitted at the discretion of USFWS. | Mitigation for such take would be through the Section 7 or 10 process of through payment of the optional mitigation fee. | USFWS has the authority to reduce impacts to a level below significant. |

| | | |
|---|---|---|
| **Land Use**<br>**Section 5.2.3** | | |
| No significant impacts to existing General Plan land use designations are anticipated. | None required. | |
| No significant impacts to housing resources are anticipated. | None required. | |
| **Transportation/Air Quality**<br>**Section 5.2.4** | | |
| Several roads have been deleted from County and city Circulation Elements, including Sand Canyon Avenue, Lake Forest Extension, Bonita Canyon Road Extension and San Joaquin Hills Road Extension. Deletion of these roads results in significantly reduced grading impacts and potential adverse traffic impacts to Newport Coast Drive | Reconfiguration of proposed land uses have assured that these roads are not necessary. Specific mitigation requirements for Newport Coast Drive were adopted by the County of Orange as part of the MPAH Amendment. | Potential air quality impacts of redistributed traffic are addressed through specific mitigation measures pursuant to local government CEQA review for the General Plan/MPAH Amendments for these arterial roads. These mitigation measures reduce potential transportation and air quality impacts to below a level of significance. |

# NCCP/HCP ALTERNATIVES MATRIX

| | PROPOSED PROJECT | NO TAKE | NO PROJECT | PROGRAMMATIC |
|---|---|---|---|---|
| **HABITAT PROTECTION** | | | | |
| Large Scale Reserves | Yes | No | Smaller than NCCP | Depends on Funding |
| Certainty of Reserves | Yes | No | Uncertain | Uncertain |
| Occupied CSS | 75% | 100% | 75% | Unknown |
| Timing of Reserve System Delineation | Certain | None | Uncertain | Uncertain |
| Non-gnatcatcher CSS | Substantial | No | Less than NCCP | Potentially Substantial |
| Other Habitat Types | Substantial | No | Less than NCCP | Unknown |
| **CONNECTIVITY** | | | | |
| Within CSS | Substantial | CSS Patches Only | Substantial | Unknown |
| Between CSS Areas | Substantial | Limited | Moderate | Potentially High |
| Non-CSS Open Space | Substantial | None | Moderate | Unknown |
| **RESERVE MANAGEMENT** | | | | |
| Comprehensive | Yes | No | Unknown | Unknown |
| Interim Management | Yes | No | No | No |
| Invasive Species | Yes | No | Probable | Probable |
| Fire | Extensive | No | Limited by Reserve Timing | Limited by Reserve Timing |
| Recreation | Yes | No | Limited | Limited |
| Monitoring | Extensive | No | Limited by Reserve Timing | Limited by Reserve Timing |
| Adaptive Management | Yes | No | Limited by Reserve Timing | Limited by Reserve Timing |
| Funding | Yes | No | Unknown | Unknown |
| Pacific Pocket Mouse Population Expansion | Possible | Unlikely | Unlikely | Unknown |
| least vireo | Probable | Unlikely | Unlikely | Potentially Substantial |
| Southwestern willow flycatcher | Probable | Unlikely | Unlikely | Potentially Substantial |
| Southwestern arroyo toad | Probable | Unlikely | Unlikely | Potentially Substantial |
| Quino checkerspot butterfly | Unknown | Unknown | Unknown | Unknown |
| Riverside fairy shrimp | Unknown | Unknown | Unknown | Unknown |
| San Diego fairy shrimp | Unknown | Unknown | Unknown | Unknown |

Orange County Implementation Agreement

# IMPLEMENTATION AGREEMENT

## REGARDING THE NATURAL COMMUNITY CONSERVATION PLAN FOR THE CENTRAL/COASTAL ORANGE COUNTY SUBREGION OF THE COASTAL SAGE SCRUB NATURAL COMMUNITY CONSERVATION PROGRAM

BY AND AMONG

THE CALIFORNIA RESOURCES AGENCY, THE CALIFORNIA DEPARTMENT OF FISH AND GAME, THE CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION, THE CALIFORNIA DEPARTMENT OF PARKS AND RECREATION, THE UNITED STATES FISH AND WILDLIFE SERVICE, THE COUNTY OF ORANGE, CITIES WITHIN ORANGE COUNTY, THE SAN JOAQUIN HILLS TRANSPORTATION CORRIDOR AGENCY, THE FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY, THE ORANGE COUNTY FIRE AUTHORITY, THE ORANGE COUNTY FLOOD CONTROL DISTRICT, THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, SANTIAGO COUNTY WATER DISTRICT, THE IRVINE RANCH WATER DISTRICT, THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, SOUTHERN CALIFORNIA EDISON, M.H. SHERMAN COMPANY, CHANDIS SECURITIES COMPANY, SHERMAN FOUNDATION, AND THE IRVINE COMPANY

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## LIST OF EXHIBITS

Documents referred to in this Agreement as "Figures" are located in the Figures Volume of the NCCP/HCP; "Appendices" are Appendices to the NCCP/HCP; "Tables" are Tables within the NCCP/HCP; and the Exhibits listed below are attached to this Agreement. The Figures, Appendices, Tables and Exhibits identified herein are incorporated by reference in this Agreement.

| | |
|---|---|
| Exhibit A | Maps of Alton Parkway alignment and a portion of MCAS El Toro |
| Exhibit B | Form of Conservation Easement |
| Exhibit C | Form of Dedication |
| Exhibit D | Form of Donation |
| Exhibit E | Map of Bonita Creek Special Linkage Area |
| Exhibit F | The Irvine Company Lands Authorized Take |

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IMPLEMENTATION AGREEMENT

THIS IMPLEMENTATION AGREEMENT ("Agreement") dated as of the Effective Date is made by and among the CALIFORNIA RESOURCES AGENCY ("Resources Agency"), an agency of the State of California, the CALIFORNIA DEPARTMENT OF FISH AND GAME ("CDFG"), a department of the Resources Agency, the CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION ("CDF"), a department of the Resources Agency, the CALIFORNIA DEPARTMENT OF PARKS AND RECREATION ("CDPR"), a department of the Resources Agency, the UNITED STATES FISH AND WILDLIFE SERVICE ("USFWS"), an agency of the Department of the Interior of the United States of America, the COUNTY OF ORANGE ("County"), a political subdivision of the State of California, the SAN JOAQUIN HILLS TRANSPORTATION CORRIDOR AGENCY and FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY (collectively, "TCA"), joint powers authorities, the ORANGE COUNTY FIRE AUTHORITY ("OCFA"), a joint powers authority, the ORANGE COUNTY FLOOD CONTROL DISTRICT ("OCFCD") a special district, the REGENTS OF THE UNIVERSITY OF CALIFORNIA ("Regents"), CITIES WITHIN THE CENTRAL/COASTAL SUBREGION THAT BECOME SIGNATORY (collectively, "Cities"), the SANTIAGO COUNTY WATER DISTRICT ("SCWD"), a County water district, the IRVINE RANCH WATER DISTRICT ("IRWD"), The METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA ("Metropolitan"), SOUTHERN CALIFORNIA EDISON ("SCE"), the M.H. SHERMAN COMPANY, the CHANDIS SECURITIES COMPANY, the SHERMAN FOUNDATION (collectively "Chandis-Sherman") and THE IRVINE COMPANY.

The County and the Cities may be referred to as "Local Governments." "County" includes OCFCD and all other special districts governed by the Orange County Board of Supervisors. IRWD, SCWD, Metropolitan, and SCE may be referred to as "Utilities." All of the above-described entities may be referred to collectively as "Parties" and each individually as a "Party".

The County has approved the NCCP/HCP, pursuant to Resolution No. 96-254A (April 16, 1996). The execution of this Agreement constitutes the formal approval of the NCCP/HCP by USFWS, CDFG, TCA and the Cities. The execution of this Agreement constitutes the legal commitment by all of the signatory Parties to implement the NCCP/HCP.

## 1.0 DEFINITIONS.

### 1.1 Adaptive Management.

"Adaptive Management" shall mean a flexible, iterative approach to long-term management of biotic resources that is directed over time by the results of ongoing monitoring activities and other information. Biological management techniques and specific objectives are regularly evaluated in light of monitoring results and other new information. These periodic evaluations are used over time to adapt both the management objectives and techniques to better achieve overall management goals.

Pursuant to the Conservation Guidelines, this approach involves managing CSS and adjacent habitats in a manner designed to support a broad range of species over the long term. Under Adaptive Management, a reserve system that consists of smaller, appropriately managed habitat areas could have a greater likelihood of maintaining CSS biodiversity than a system of larger habitat areas that are unmanaged or ineffectively managed.

1.2 **Adaptive Management Program.**

"Adaptive Management Program" shall mean the program set forth in the NCCP/HCP for Adaptive Management of the Reserve System.

1.3 **Assurances Policy.**

The "Assurances Policy" shall mean the policy statement titled "Assuring Certainty for Private Landowners in Endangered Species Act Habitat Conservation Planning," issued by the Secretary of the Interior and the Secretary of Commerce on August 11, 1994, (Appendix 4).

1.4 **Cactus Wren.**

"Cactus wren" shall mean the coastal cactus wren (*Campylorhynchus brunneicapillus*), including the eggs and all other life stages thereof.

1.5 **California Gnatcatcher.**

"California gnatcatcher" or "gnatcatcher" shall mean the coastal California gnatcatcher (*Polioptila californica californica*), including the eggs and all other life stages thereof.

1.6 **CDFG Management Authorization.**

"CDFG Management Authorization" shall mean the authorization to Take Identified Species in conjunction with Planned Activities established by this Agreement pursuant to Section 8.4.1.

1.7 **CESA.**

"CESA" shall mean the California Endangered Species Act, Fish and Game Code section 2050 et seq.

1.8 **CESA Candidate Species.**

"CESA Candidate Species" shall mean those species designated as candidates for listing as endangered species or threatened species pursuant to Fish and Game Code section 2074.2.

1.9 **CEQA.**

"CEQA" shall mean the California Environmental Quality Act, California Public Resources Code sections 21000 et seq.

1.10 **Central/Coastal Subregion.**

The "Central/Coastal Subregion" refers to the Central/Coastal Subregion of the CSS NCCP Program within Orange County as described in the NCCP/HCP, and shown on Figures 1 and 4.

1.11 **Chandis-Sherman Property.**

"Chandis-Sherman Property" refers to property in the City of Dana Point headlands area owned by Chandis-Sherman, as shown on Figure 71.

1.12 **Conservation Guidelines.**

"Conservation Guidelines" shall mean the Southern California Coastal Sage Scrub Conservation Guidelines issued by CDFG in November 1993 as Attachment A to the Natural Community Conservation Planning Process Guidelines.

1.13 **Corridors.**

"Corridors" shall mean the San Joaquin Hills Transportation Corridor, Eastern Transportation Corridor and Foothill/North Transportation Corridor.

1.14 **Corridor Biological Opinions.**

"Corridor Biological Opinions" shall mean the biological opinions issued by USFWS pursuant to consultation under section 7 of FESA with regard to the San Joaquin Hills Transportation Corridor, Foothill Transportation Corridor/North and Eastern Transportation Corridor, set forth in Appendix 8.

1.15 **Covered Habitats.**

"Covered Habitats" shall mean those habitat types protected by the NCCP/HCP in a manner comparable to the protection of CSS. The Covered Habitats are:

- Oak woodlands;
- Tecate cypress;
- cliff and rock; and
- within the coastal subarea only, chaparral.

1.16 **CSS.**

"CSS" shall mean coastal sage scrub habitat.

1.17 **CSS NCCP Program.**

"CSS NCCP Program" shall mean the statewide effort under the NCCP Act to address conservation planning for CSS. The Central/Coastal Subregion is one of several subregions within the overall CSS NCCP Program.

1.18 **CSS Species.**

"CSS Species" shall mean those Identified Species found predominantly in CSS habitat, as follows:

- coastal cactus wren (*Campylorhynchus brunneicapillus*)
- coastal California gnatcatcher (*Polioptila californica californica*)
- coastal western whiptail lizard (*Cnemidophorus tigris multiscutatus*)
- orange-throated whiptail lizard (*Cnemidophorus hyperythrus beldingi*)
- San Diego desert woodrat (*Neotoma lepida intermedia*)
- San Diego horned lizard (*Phrynosoma coronatum blainvillei*)

- red diamond rattlesnake (*Crotalis ruber ruber*)
- Southern California rufous-crowned sparrow (*Aimophila ruficeps canescens*)

1.19 Effective Date.

"Effective Date" shall mean the date on which the provisions of this Agreement take effect, as established by Section 11.1, and is the date on which the CDFG Management Authorization takes effect and Section 10(a) Permits are issued with respect to signatory Parties.

1.20 EIR.

"EIR" shall mean an Environmental Impact Report pursuant to CEQA.

1.21 EIS.

"EIS" shall mean an Environmental Impact Statement pursuant to NEPA.

1.22 Existing Use Areas.

"Existing Use Areas" shall mean those portions of the Central/Coastal Subregion, owned by Non-Participating Landowners and public agencies identified on Figure 22, and subject to the provisions of Chapter 4.4.1 of the NCCP/HCP. Existing Use Areas comprise areas with important populations of Identified Species but which are geographically removed from the Reserve System (i.e. these areas exist as "islands" of Identified Species populations) such that they do not provide primary connectivity functions. These areas include existing open space maintained by community and homeowner associations, other privately owned lands, and some public parklands. The provisions governing Existing Use Areas apply only to existing natural habitat areas within the designated Existing Use Areas.

1.23 FESA.

"FESA" shall mean the Federal Endangered Species Act of 1973, as amended, 16 U.S.C. § 1531 et seq.

1.24 **Habitat.**

"Habitat" shall mean the area occupied by or suitable for occupation by particular wildlife species, including areas capable of enhancement or restoration.

1.25 **Harass.**

"Harass" shall have the same meaning as provided in FESA.

1.26 **Harm.**

"Harm" shall have the same meaning as provided in FESA.

1.27 **HCP.**

"HCP" shall mean a Habitat Conservation Plan pursuant to section 10 of FESA.

1.28 **Headlands Plants.**

"Headlands plants" shall mean those plant species present on the Chandis-Sherman Property, including all life stages thereof, which shall be treated as and considered to be Identified Species for all purposes under this Agreement. The Headlands plants are:

- Blochmans dudleya (*Dudleya blochmaniae*)
- Western dichondra (*Dichondra occidentalis*)
- Cliff spurge (*Euphorbia misera*)
- Palmer's grappling hook (*harpagonella palmeri*)
- Prostrate spine-flower (*Chorizanthe procumbens*)

1.29 **Identified Species.**

"Identified Species" shall mean those species, including all life stages thereof, identified in Chapter 4.5.1 of the NCCP/HCP which the NCCP/HCP addresses as if they were listed as endangered species under FESA and CESA, and whose conservation and management is provided for in the NCCP/HCP. Except as provided in Section 8.8, Identified Species are:

- arboreal salamander (*Aneides lugubris*)
- black-bellied slender salamander (*Batrachoseps nigriventris*)
- Catalina mariposa lily (*Calochortus catalinae*)

- coastal cactus wren (*Campylorhynchus brunneicapillus*)
- coastal California gnatcatcher (*Polioptila californica californica*)
- coastal rosy boa (*Lichanura trivirgata rosafusca*)
- coastal western whiptail lizard (*Cnemidophorus tigris multiscutatus*)
- Coronado skink (*Eumeces skiltonianus interparietalis*)
- Coulter's matilija poppy (*Romneya coulteri*)
- coyote (*Canis latrans*)
- foothill mariposa lily (*Calochortus weedii*)
- golden eagle (*Aquila chrysaetos*)
- gray fox (*Urocyon cinereoargenteus*)
- heart-leaved pitcher sage (*Lepichinia cardiophylla*)
- Laguna Beach dudleya (*Dudleya stolonifera*)
- least Bell's vireo (*Verio belli pusilius*)
- northern harrier (*Circus cyaneus*)
- Nuttal's scrub oak (*Quercus dumosa*)
- orange-throated whiptail lizard (*Cnemidophorus hyperythrus beldingi*)
- Pacific pocket mouse (*Perognathus longimembris pacificus*)
- peregrine falcon (*Falco peregrinus*)
- Prairie falcon (*Falco mexicanus*)
- Quino (Wright's) checkerspot (*Euphidryos editha quino*)
- red diamond rattlesnake (*Crotalis ruber ruber*)
- red-shouldered hawk (*Buteo lineatus*)
- Riverside fairy shrimp (*Streptocephalus woottoni*)
- rough-legged hawk (*Buteo lagopus*)
- San Bernardino ringneck snake (*Diadophis punctatus modestus*)
- San Diego desert woodrat (*Neotoma lepida intermedia*)
- San Diego fairy shrimp (*Branchinecta sandeigonensis*)
- San Diego horned lizard (*Phrynosoma coronatum blainvillei*)
- Santa Monica Mts. Dudleya (*Dudleya cymosa spp ovatifolia*)
- sharp-shinned hawk (*Accipiter striatus*)
- small-flowered mountain mahogany (*Cercocarpus minutifolio*)
- Southern California rufous-crowned sparrow (*Aimophila ruficeps canescens*)
- southwestern arroyo toad (*Bufo microseaphus californicus*)
- southwestern willow flycatcher (*Empidonax trailli extimus*)
- Tecate cypress (*Cupressus forbesii*)
- western spadefoot toad (Coastal Subarea) (*Scaphiophis hammondi*)

1.30 **Incidental Take.**

"Incidental Take" shall mean any taking of an endangered species or threatened species that is incidental to, and not the purpose of, the carrying out of otherwise lawful activity.

1.31 Infrastructure.

"Infrastructure" shall mean all public and quasi-public service facilities and structures, including, but not limited to roads, landfills, flood control facilities, water transmission lines and facilities, electric utility lines and sewer facilities.

1.32 Listing.

"Listing" shall mean the listing of a species as an endangered species or threatened species pursuant to FESA, or as an endangered species or threatened species or CESA Candidate Species pursuant to CESA.

1.33 Mitigation.

"Mitigation" shall mean all measures to avoid, minimize, reduce, or offset impacts of any activities resulting in Incidental Take, or habitat disturbance, of Identified Species, including, but not limited to:

- avoiding the impact altogether by not taking a certain action or parts of an action;
- minimizing impact by limiting the timing, degree or magnitude of the action and its implementation;
- rectifying the impact by repairing, rehabilitating, or restoring the impacted environment;
- reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
- compensating for the impact by payment of fees or by providing permanent replacement resources or environments through the acquisition and preservation of land and the provision of funding for conservation, protection, or enhancement of Identified Species;
- dedication of lands or interests in lands including, but not limited to, the granting of conservation easements.

1.34 **Mitigation Fee.**

"Mitigation Fee" shall mean that fee established by the NCCP Non-Profit Corporation which may be paid by Non-Participating Landowners, as set forth in section 7 of this Agreement.

1.35 **NCCP.**

"NCCP" shall mean the Natural Community Conservation Plan, developed pursuant to the NCCP Act, for the Central/Coastal Subregion.

1.36 **NCCP Act.**

"NCCP Act" shall mean the Natural Community Conservation Planning Act of 1991, California Fish and Game Code section 2800 et seq.

1.37 **NCCP/HCP.**

"NCCP/HCP" shall mean the plan for conservation of the CSS natural community and associated habitat types in the Central/Coastal Subregion approved by the County, CDFG and USFWS, prepared pursuant to the Planning Agreement. The NCCP/HCP has been developed to meet the requirements of section 7 and section 10(a) under FESA, sections 2081 and 2084 under CESA and sections 2810, 2825(c), 2830 and 2835 under the NCCP Act.

1.38 **NCCP Non-Profit Corporation.**

"NCCP Non-Profit Corporation" shall mean the non-profit corporation established for the management of the Reserve System as set forth in Section 5.1.

1.39 **NEPA.**

"NEPA" shall mean the National Environmental Policy Act, 42 U.S.C. section 4321 et seq.

1.40 **Non-Participating Landowners.**

"Non-Participating Landowners" shall mean landowners in the Central/Coastal Subregion other than Participating Landowners.

1.41 **Orange-Throated Whiptail Lizard.**

"Orange-throated whiptail lizard" shall mean the orange-throated whiptail lizard (*Cnemidophorus hyperythrus beldingi*), including the eggs and all other life stages thereof.

1.42 **Participating Landowners.**

"Participating Landowners" shall mean those Parties that have committed to make land contributions to the Reserve System or monetary contributions to the NCCP Non-Profit Corporation pursuant to this Agreement, and are as follows:

- TCA
- The Irvine Company
- Chandis - Sherman
- Metropolitan
- SCE
- IRWD
- County
- Regents
- SCWD
- CDPR

1.43 **Planned Activities.**

"Planned Activities" shall mean (1) development on land or interests in land owned or controlled as of the Effective Date by one or more of the Participating Landowners in the Central/Coastal Subregion outside the Reserve System, including development of communities and Infrastructure, as shown on Figures 27, 28, 31 and 71, (2) uses and activities permitted within the Reserve System described in the NCCP/HCP and listed in Section 5.3.3 of this Agreement and Chapter 5.3 of the NCCP/HCP, (3) interim uses, described in the

NCCP/HCP, permitted on lands designated for inclusion in the Reserve System prior to transfer to public agencies or approved non-profit entities, and (4) modification of CSS owned by Non-Participating Landowners outside the Reserve System when such landowners have paid Mitigation Fees pursuant to Section 7 of this Agreement. Planned Activities are described in Chapter 5 of the NCCP/HCP and the physical extent of Planned Activities is generally shown on Figures 20, 27, 28, 42, 46, 47, 48, 49, 50, 58, 61, 65 and 71. USFWS has issued the Corridor Biological Opinions under section 7 of FESA with regard to the San Joaquin Hills, Eastern and Foothill/North Transportation Corridors. Since these biological opinions apply only to certain species and only with regard to USFWS authority, the Corridors are included as Planned Activities in this Agreement for all impacts to Identified Species other than such impacts addressed by the Corridor Biological Opinions. The terms and conditions of the Corridor Biological Opinions shall continue to apply as to those impacts to species evaluated in the Corridor Biological Opinions.

1.44 **Planning Agreement.**

"Planning Agreement" shall mean that certain Agreement by and among the California Resources Agency, the California Department of Fish and Game, the United States Fish and Wildlife Service, the County of Orange, cities within Orange County, the Transportation Corridor Agencies and The Irvine Company, effective June 25, 1993, setting forth the process for development of the NCCP/HCP.

1.45 **Policy Plan Area.**

"Policy Plan Area" shall mean that portion of the Central/Coastal Subregion identified on Figures 12 and 24.

1.46 Proposed Listing.

"Proposed listing" shall mean the proposed listing by USFWS of one or more of the Identified Species as either an "endangered species" or a "threatened species," pursuant to FESA or the proposal to list an Identified Species as an "endangered species" or "threatened species," or to designate a species as a CESA Candidate Species, by the California Fish and Game Commission pursuant to CESA.

1.47 Reserve Owners/Managers.

"Reserve Owners/Managers" shall mean the individual owners and/or managers of land within the Reserve System, including both non-profit entities owning or managing land in the Reserve System where approved by USFWS and CDFG, and public agency owners or managers.

1.48 Reserve System.

"Reserve System" shall mean the area identified in the NCCP/HCP as a permanent reserve of CSS and other associated habitat types, as generally identified on Figure 12. and more precisely identified on Appendix 25, and subject to the use restrictions identified in Chapter 4 (sections 4.1-4.3) and Chapter 5 (sections 5.1-5.3) of the NCCP/HCP. Any restrictions upon Reserve System land shall take effect upon inclusion in the Reserve System as set forth in Section 5.2. Interim use restrictions apply to private lands pending inclusion in the Reserve System. The Reserve System does not include lands described by the NCCP/HCP as Special Linkage Areas or Existing Use Areas.

1.49 . Section 4(d) Rule.

"Section 4(d) Rule" or "4(d) Rule" shall mean the final rule issued by USFWS under section 4(d) of FESA, on December 10, 1993 (58 FR 65088), regarding the conditions under which Incidental Take of the gnatcatcher is authorized.

1.50 Section 10(a) Permit.

"Section 10(a) Permit" shall mean any permit issued by USFWS pursuant to section 10(a)(1)(B) of FESA (16 U.S.C. § 1539) to permit Incidental Take of Identified Species which may occur as a result of the Planned Activities.

1.51 Section 10(a)(1)(A) Permit.

"Section 10(a)(1)(A) Permit" shall mean any permit issued by USFWS pursuant to section 10(a)(1)(A) of FESA (16 U.S.C. §1539) to permit the take of the Pacific pocket mouse for scientific and propagation/population enhancement purposes.

1.52 Special Linkage Areas.

"Special Linkage Areas" shall mean those portions of the Central/Coastal Subregion owned by Participating Landowners identified on Figure 22, and subject to the restrictions identified in Chapter 4.1 of the NCCP/HCP. Special Linkage Areas comprise lands which contain CSS, Target Species or provide connectivity functions between habitat areas within the Reserve System, between the Central/Coastal Subregion and other subregions, or between the Reserve System and outlying Identified Species populations such as those around Upper Newport Bay. Special Linkage Areas are shown on Figures 22 and 23 and include existing and future golf course development. Special Linkage use provisions are discussed in Section 6.1 and are defined for certain Special Linkage Areas in the NCCP/HCP.

1.53 Species.

"Species" shall mean a plant or animal species and shall include subspecies and populations.

1.54 Taking.

"Taking" or "Take" shall have the same meaning as provided in FESA with regard to any activities subject to FESA, and shall have the same meaning as provided in state law with regard to activities subject to CESA. For purposes of FESA, and except as provided for in a Section 10(a)(1)(A) Permit, "Take" under this Agreement is limited to Incidental Take pursuant to FESA, and includes harm, harass, modification of habitat and any other activity prohibited or otherwise limited in a manner comparable to current Take provisions of FESA in then-applicable provisions of law.

1.55 Target Species.

"Target Species" shall mean those species identified in the Planning Agreement as the focus of NCCP planning. The Target Species are:

- California gnatcatcher (*Polioptila californica californica*);
- Cactus wren (*Campylorhynchus brunneicapillus*);
- Orange-throated whiptail lizard (*Cnemidophorus hyperythrus beldingi*).

## 2.0 RECITALS.

2.1 The Natural Community Conservation Planning effort is established by California law under the NCCP Act. CDFG is the trustee agency implementing the NCCP Act.

2.2 On December 10, 1993, USFWS issued a final rule under section 4(d) of FESA. The 4(d) Rule provides:

Incidental take of the coastal California gnatcatcher will not be considered a violation of section 9 of the Endangered Species Act of 1973, as amended (Act), if it results from activities conducted pursuant to the State of California's Natural Community Conservation Planning Act of 1991 (NCCP), and in accordance with a NCCP plan for the protection of coastal sage scrub habitat, prepared consistent with the State's NCCP Conservation and Process Guidelines, *provided that:*

(i) The [NCCP/HCP] has been prepared, approved, and implemented pursuant to California Fish and Game Code sections 2800-2840; and

(ii) The Fish and Wildlife Service (Service) has issued written concurrence that the [NCCP/HCP] meets the standards set forth in 50 C.F.R. 17.32(b)(2).

2.3 The purpose of the statewide natural community conservation effort is to provide for regional protection and perpetuation of natural wildlife diversity while allowing compatible and appropriate development and growth. The NCCP Act intends that these goals be achieved through the development and implementation of Natural Community Conservation Plans. These plans are designed to provide an alternative to current single species conservation efforts by formulating regional, natural community based habitat protection programs to protect the numerous species inhabiting the targeted natural communities. The Parties believe that the shift

in focus from single species to natural communities will enhance the effectiveness of ongoing species preservation efforts and facilitate economic development.

2.4 The CSS NCCP Program is the first effort to be undertaken pursuant to the NCCP Act. It is intended to be undertaken as a pilot project to develop a process for accelerated conservation planning at a regional scale, and it is contemplated that the planning process for CSS may serve as a model for other efforts elsewhere in the State. This planning process has been sponsored jointly by the Resources Agency and CDFG, and conducted in cooperation with USFWS, pursuant to a Memorandum of Understanding between CDFG and USFWS dated December 4, 1991 (Appendix 2), as well as the Planning Agreement (Appendix 5).

2.5 The CSS NCCP Program creates a regional effort that focuses on a sub-regional planning and management system designed to protect CSS and associated habitats and to reconcile conflicts between long-term protection of CSS and associated habitats and new development within Southern California. The CSS NCCP Program includes existing CSS in portions of five counties, including Orange County.

2.6 This Agreement is intended to implement the terms of the NCCP/HCP for the Central/Coastal Subregion of the CSS NCCP Program. Pursuant to the Planning Agreement, the Parties have determined that the Central/Coastal Subregion forms an effective planning area for NCCP purposes consistent with the Conservation Guidelines incorporated into the 4(d) Rule. This determination reflects the amount of existing habitat and species populations and diversity within the Coastal and Central subareas. The Coastal and Central subareas are addressed in a single NCCP/HCP because (1) one Participating Landowner owns the majority of undeveloped acreage in both the Coastal and Central areas, (2) most undeveloped land in both areas is within

the jurisdiction of the County, and (3) the Parties have determined that planning for both areas in a single NCCP/HCP will expedite the protection and long-term management of CSS.

2.7 Planning for the NCCP/HCP focused on protection of the CSS species identified by the Scientific Review Panel under the Conservation Guidelines, including the Target Species. Establishment of the Reserve System will protect Identified Species, including Target Species, which utilize CSS and related habitat types.

2.8 The Participating Landowners own certain real property situated in incorporated and unincorporated territory in the County, within the Central/Coastal Subregion. This property is currently used for a variety of purposes including, but not limited to, recreation, conservation, agricultural, residential, utility and commercial purposes.

2.9 The Participating Landowners and Local Governments have participated in long-term regional planning efforts to conserve contiguous open space, recreational and wildlife habitat areas. At present in the Central/Coastal Subregion, there are approximately 31,160 acres of large-scale habitat areas in dedicated regional parks and open space and land that is planned to be dedicated or reserved as regional parks and open space as a condition of approval of development projects or donated as provided in this Agreement. These regional planning efforts have been conducted to reduce and mitigate the impacts of development on natural resources, and have been coordinated with regional planning of development to meet housing and employment goals and the infrastructure needed to support those goals. USFWS and CDFG acknowledge that they have reviewed the location of planned roadways with regard to their effects on the habitats of Identified Species and on Covered Habitats. The Local Governments acknowledge that the coordinated regional planning efforts include the cooperative planning of

public parks/open space and transportation improvements set forth on the County Master Plan of Arterial Highways in a manner consistent with the cooperative planning provisions of section 4(f) of the Department of Transportation Act, and associated regulations. The NCCP/HCP is integrated with regional open space planning which has already taken place to identify and ensure appropriate mitigation for impacts on fish and wildlife and to promote the conservation of broad-based natural communities and species diversity. Major regional open space planning that has occurred includes the extensive open space identified by the City of Irvine General Plan and the large open space areas established in conjunction with the Newport Coast (formerly Irvine Coast) development as well as Limestone regional park and open space in the East Orange General Plan area, and the Weir Canyon and Windy Ridge phased dedication areas provided for pursuant to the Mountain Park Plan and development agreement.

2.10 The NCCP/HCP is intended to avoid, minimize and mitigate for CSS and Covered Habitats alterations constituting "harm," or "harass," and therefore Take under FESA incidental to Planned Activities, so that the Planned Activities will not appreciably reduce the likelihood of the survival and recovery of the Identified Species. The NCCP/HCP includes preservation and management mitigation measures, and restoration and enhancement opportunities to further the long-term survival of the Identified Species, and to allow land within the Central/Coastal Subregion to be developed consistent with the requirements of FESA, CESA and the NCCP Act.

2.11 The NCCP/HCP and associated joint programmatic EIR/EIS have been prepared under the supervision of USFWS and CDFG. The Parties acknowledge that regular discussions have been conducted with conservation representatives, in addition to the mandated public

involvement procedures required by CEQA and NEPA, to solicit their views on the NCCP/HCP and increase participation in the process.

2.12 The NCCP/HCP has concluded, and USFWS and CDFG concur, that the development of Planned Activities, which may constitute Take as identified in the NCCP/HCP, as mitigated by implementation of the NCCP/HCP in a manner consistent with the Conservation Guidelines, will not appreciably reduce the likelihood of survival and recovery of the Identified Species pursuant to CESA or section 10(a)(1)(B) of FESA.

2.13 USFWS policy on unlisted species and unforeseen circumstances has been set forth by the Office of the Solicitor, as follows:

> "The issuance of 'incidental take' permits which allow the taking of species listed under the federal FESA incidental to, and not the purpose of, otherwise lawful activities, is expressly authorized under Section 10(a)(1)(B) of the Act. 16 U.S.C. 1539(a)(1)(B). While the language of Section 10(a)(1)(B) does not explicitly address unlisted species, the legislative history of the section clearly indicates that Congress contemplated that the Service would approve habitat conservation plans that protect unlisted species as if they were listed under the Act and provide Section 10(a)(1)(B) assurances for those unlisted species. The following excerpt from the House Report on the amendment of the Act creating the incidental take permit authority evidences that intent:

'The Secretary [of the Interior] . . . may approve commitments regarding the conservation of listed as well as unlisted species and long-term assurances to the proponent of the conservation plan that the terms of the plan will be adhered to and that further mitigation requirements will only be imposed in accordance with the terms of the plan. In the event that an unlisted species addressed in an approved plan is subsequently listed pursuant to the Act, no further mitigation requirements should be imposed if the conservation plan addressed the conservation of the species and its habitat as if the species were listed pursuant to the Act.' (H.R. Rep. 97-835, 97 Cong., 2nd Sess. 30-31 (1982).)

The Fish and Wildlife Service has routinely approved HCPs that cover both listed and unlisted species.

The Secretary's recent "Assurances Policy" (issued jointly with the Secretary of Commerce on August 11, 1994) [and set forth in Appendix 4] is a further expression of the Department's commitment to follow Congress' intent regarding both listed and unlisted species as reflected in the above passage from the House Report. Under the Assurances Policy, if Subregional Plans protect identified unlisted species as if they were listed, no additional mitigation that requires the expenditure of money or land set asides from the plan proponents will be sought.

The Assurances document also establishes Departmental policy for interpreting and applying the provisions of 50 C.F.R. 17.22(b)(2)(iii) which requires that the applicant for an incidental take permit provide in the plan procedures to deal with unforeseen circumstances. The Assurances Policy assures plan proponents that if the plan is implemented as proposed, no additional land or financial compensation will be sought from them if "unforeseen" or "extraordinary" circumstances should arise with respect to either listed or unlisted species.

The Solicitor's Office of the Department of the Interior has reviewed the Assurances Policy as described above . . . and has determined that the policy is authorized under the FESA, including the provisions and legislative history set out above."

(Memorandum dated December 8, 1994 from Lynn Cox. Office of the Solicitor, Pacific Southwest Region, U.S. Department of the Interior.)

2.14 USFWS has entered into this Agreement pursuant to FESA, the United States Fish and Wildlife Coordination Act (16 U.S.C. §§ 661-666c), the Fish and Wildlife Act of 1956 (16 U.S.C. 742(f) et seq.) and the Planning Agreement. In connection with the enactment of section 10(a)(1)(B) of FESA (16 U.S.C. § 1539(a)(1)(B)), the United States Congress expressed its legislative intent that USFWS cooperate in the development of conservation plans that protect both listed and unlisted species over the long term, while providing assurances regarding the limits of any mitigation required, stating that:

Application to Unlisted Species

"Although the conservation plan is keyed to the permit provisions of the Act which only apply to listed species, the Committee intends that conservation plans may address both listed and unlisted species."

Public Private Partnerships

"To the maximum extent possible, the Secretary should utilize this authority under this provision to encourage creative partnerships between the public and private sector . . . ."

Long-Term Assurance Provided by and for the Habitat Conservation Plan Proponent

"The Secretary, in determining whether to issue a long-term permit to carry out the conservation plan should consider the extent to which the conservation plan is likely to enhance the habitat of the listed species or increase the long-term survivability of the species or its ecosystem." . . . "Permits of 30 or more years duration may be appropriate in order to provide adequate assurances to the private sector to commit to long-term funding for conservation activities or long-term commitments to restrictions on the use of land."

Reciprocal Assurances to be Provided by the Service

"The Committee intends that the Secretary may utilize this provision to approve conservation plans which provide long-term commitments regarding the conservation of listed as well as unlisted species . . . ." (H.R. Rep. No. 97-835, 97th Cong., 2d Sess. 30 (1982).)

2.15 CDFG has entered into this Agreement pursuant to NCCP Act sections 2810, 2820, 2825, 2830 and 2835 and CESA sections 2081 and 2084. In 1991 the California Legislature enacted the NCCP Act. The Legislature found and declared as part of the NCCP Act that "there is a need for broad-based planning to provide for effective protection and conservation of the state's wildlife heritage while continuing to allow appropriate development and growth." Included in the legislative findings for the NCCP Act were the following declarations:

(a) The continuing population growth in California will result in increasing demands for dwindling natural resources and result in the continuing decline of the state's wildlife.

(b) There is a need for broad-based planning to provide for effective protection and conservation of the state's wildlife heritage while continuing to allow appropriate development and growth.

(c) Natural community conservation planning is an effective tool in protecting California's natural diversity while reducing conflicts between protection of the state's wildlife heritage and reasonable use of natural resources for economic development.

(d) Natural community conservation planning is a mechanism that can provide an early planning framework for proposed development projects within the planning area in order to avoid, minimize, and compensate for project impacts to wildlife.

(e) The purpose of natural community conservation planning is to sustain and restore those species and their habitat identified by the Department of Fish and Game which are necessary to maintain the continued viability of those biological communities impacted by growth and development.

The above legislative findings of purpose are carried out by means of the NCCP Act. Additionally, the 4(d) Rule indicates that: (1) the NCCP planning process can serve as a means of comprehensively addressing CSS conservation concerns; (2) an NCCP plan for the protection of coastal sage scrub habitat consistent with the State's Conservation Guidelines and the requirements of the NCCP Act will be the basis for addressing the requirements of the FESA section 10(a)(1)(B) regulations; and (3) the 1991 USFWS/CDFG MOU will serve as the guiding document for USFWS involvement in the review and approval of NCCP plans. Thus, the special rule under section 4(d) of FESA provides the regulatory bridge for integrating the state's CSS NCCP Program with the HCP/Incidental Take requirements of section 10(a)(1)(B) of FESA.

2.16 This Agreement and the NCCP/HCP have been structured and designed in cooperation with, and to the satisfaction of, USFWS and CDFG to avoid any conflicts with the reuse planning process for MCAS El Toro, as well as to accommodate any future reuse of MCAS El Toro, as described in Section 8.11.

3.0 FINDINGS.

USFWS and CDFG have found and determined that the NCCP/HCP, as implemented by this Agreement, meets the requirements for a habitat conservation plan for purposes of FESA, CESA, and the NCCP Act, and specifically for purposes of 16 U.S.C. § 1539, 50 C.F.R. § 1732(b)(2), and sections 2825(c), 2830 and 2835 of the NCCP Act, and in this regard, USFWS and CDFG have found and determined the following:

(a) The Taking of Identified Species in accordance with the NCCP/HCP, in connection with the Planned Activities, will be incidental to an otherwise lawful activity.

(b) The minimization and mitigation measures of the NCCP/HCP and this Agreement, to the maximum extent practicable, minimize and mitigate the impacts of the Taking of Identified Species.

(c) This Agreement assures the funding required to implement the minimization and mitigation measures specified in Chapters 4 and 5 of the NCCP/HCP.

(d) This Agreement and the NCCP/HCP provide adequate procedures for addressing unforeseen circumstances.

(e) The Taking of Identified Species as contemplated by the NCCP/HCP and as provided for in this Agreement will not appreciably reduce the likelihood of the survival or recovery of Identified Species in the wild.

(f) All measures required by USFWS and CDFG as necessary or appropriate for purposes of the NCCP/HCP have been provided for in the NCCP/HCP as implemented by this Agreement.

(g) The funding contribution by TCA to the Reserve System and Adaptive Management Program, together with the specific mitigation measures required by the Corridor Biological Opinions, constitute complete mitigation for impacts to the gnatcatcher resulting from construction of the San Joaquin Hills Transportation Corridor, Eastern Transportation Corridor and Foothill/North Transportation Corridor for purposes of state law pursuant to the NCCP Act and for the gnatcatcher and other Identified Species pursuant to the NCCP Act, CESA, FESA, CEQA and NEPA.

(h) USFWS and CDFG have received such other assurances as deemed necessary to ensure that the NCCP/HCP and this Agreement will be implemented.

(i) Although the affirmative management obligations with respect to the Reserve System lands are limited to the term of this Agreement, the Parties acknowledge that the loss of specific habitat areas authorized in accordance with the NCCP/HCP and this Agreement will be permanent.

(j) Based on the deed restrictions, grant restrictions, provisions of dedication offers, commitments pursuant to adopted CEQA mitigation measures and other encumbrances against those current and future public lands which are to be included in the Reserve System and Special Linkage Areas as established by the NCCP/HCP, USFWS and CDFG have determined that the habitat protection afforded under those encumbrances and by commitments of lands for Reserve System or Special Linkage Area purposes pursuant to this Agreement constitute commitments in perpetuity to uses consistent with the purposes of the NCCP/HCP as set forth herein.

(k) USFWS and CDFG also find that assurances provided pursuant to Section 5.2.2(b) address habitat protection in the event of certain contingencies provided in existing dedication programs and that assurances provided pursuant to Section 5.2.2(c) and (d) provide for habitat protection on lands to be committed to open space as a result of the NCCP/HCP and this Agreement. USFWS and CDFG also find that the lands owned by The Irvine Company described in Sections 5.2.2 (b), (c) and (d) will be included in the Reserve System and will be protected in perpetuity as habitat for the Identified Species.

(l) Based on the Participating Landowners' contributions to the preparation and implementation of the NCCP/HCP, no further CDFG or USFWS approvals and/or mitigation measures directed at impacts to Identified Species, CSS and Covered Habitats, except as provided in this Agreement, on lands in the Central/Coastal Subregion owned or controlled by Participating Landowners as of the Effective Date located inside or outside the Reserve System, including Special Linkage Areas, will be required pursuant to CESA, the NCCP Act, or CEQA or required for protection of species pursuant to FESA or NEPA.

(m) If additional mitigation is required in order to meet the standards for issuance of Section 10(a) Permits to Participating Landowners for species within CSS and Covered Habitats described in Section 8.3.4(d), USFWS has the authority under federal law, including Sections 5, 6 and 10 of FESA, to provide such mitigation such that no further land or funds beyond that required by the NCCP/HCP and this Agreement will be required on the part of Participating Landowners.

(n) USFWS and CDFG have considered the anticipated duration and geographic scope of the Planned Activities, as described in the NCCP/HCP, and the degree to

which such impacts affect the Identified Species, and have considered the assurances to be provided to the other parties under this Agreement and have determined (1) that the foregoing findings and determinations are in accordance with FESA, CESA and the NCCP Act. (2) that, consistent with the 4(d) Rule, the NCCP/HCP has been prepared and approved pursuant to Fish and Game Code sections 2800-2840 and is consistent with the Conservation Guidelines, and (3) that the NCCP/HCP meets the standards set forth in 50 C.F.R. §17.32(b)(2).

## 4.0 ELEMENTS OF THE NCCP/HCP MITIGATION PROGRAM.

This Section 4 summarizes the measures which mitigate the impacts of Take of Identified Species under the NCCP/HCP, and the roles and responsibilities of the Parties to this Agreement. To the extent that other sections of this Agreement include more specific provisions regarding mitigation measures or roles and responsibilities of the Parties which conflict with the following summary, the more specific provisions shall prevail.

### 4.1 Summary of Primary Mitigation Measures.

The mitigation measures which mitigate the impacts of Take allowed by this Agreement consist of the following primary elements:

(1) creation of a habitat Reserve System that will include CSS and representative habitat of virtually all of the major habitat types currently existing within the Central/Coastal Subregion;

(2) creation and funding of an NCCP Non-Profit Corporation to coordinate management of the Reserve System;

(3) designation of Special Linkage Areas and Existing Use Areas to enhance biological connectivity within the Reserve System and Central/Coastal Subregion;

(4) implementation of the Adaptive Management Program, including specific management plans, defined by the NCCP/HCP, within the Reserve System, including provisions for restoration and enhancement funded both by Participating Landowners and Non-Participating Landowners as provided herein.

4.2 Obligations of Participating Landowners.

(a) Mitigation measures and other measures on the part of Participating Landowners, intended to address the impacts of Take authorized under this Agreement, are summarized as follows:

(1) funding for preparation of the NCCP/HCP, contributed by The Irvine Company, TCA, Metropolitan, SCE, IRWD, SCWD and the County, totaling more than $1 million.

(2) prior agreements on the part of The Irvine Company to dedicate 17,887 acres of land located within the Reserve System;

(3) agreement on the part of The Irvine Company to transfer an additional 3,001 acres to the Reserve System, and commitments for protection of Special Linkage Areas as provided for in this Agreement;

(4) funding for supporting biological and planning studies by The Irvine Company and other Participating Landowners;

(5) commitment on the part of the TCA to fund cowbird trapping, construct wildlife corridors, undertake 314 acres of vegetation restoration on Corridor sideslopes and 318 acres of CSS restoration within the Reserve System, pursuant to the Corridor Biological Opinions;

(6) maintaining availability of SCE lands for acquisition for inclusion in the Reserve System and commitments regarding Special Linkage Areas as provided for in this Agreement;

(7) funding for the $10,665,000 endowment for the Adaptive Management Program, including more than $6.6 million from TCA pursuant to the Corridor Biological Opinions, $1 million each from the County, Metropolitan and IRWD, $400,000 from SCE, $500,000 anticipated from Chandis-Sherman and $15,000 from SCWD;

(8) establishment of an eight-year temporary preserve for the Pacific pocket mouse by Chandis-Sherman;

(9) funding of an additional $350,000 by Chandis-Sherman for pocket mouse research and recovery;

(10) County is contributing to the creation and implementation of the Reserve System and to the Adaptive Management Program by:

- compiling and updating the county-wide Geographic Information System to assist in long-term monitoring and management of the Reserve System;
- commitment of lands owned/managed by the County to the Reserve System; and
- ongoing commitments of staff and funding to manage the Reserve System in a manner consistent with the policies and programs set forth in the NCCP/HCP.

(b) During the "interim" phase (i.e. prior to transfer of designated Reserve System lands to a Reserve Owner/Manager), Participating Landowners will:

(1) consistent with the allowable use provisions of the NCCP/HCP, refrain from developing, or allowing others to develop, such lands in a manner that would impair the suitability of the lands for inclusion in the Reserve System;

(2) permit access to lands designated for inclusion in the Reserve System, for the purposes of conducting annual species and habitat monitoring and inventories;

(3) permit fire management planning and implementation activities by OCFA;

(4) permit measures designed to control invasive plant species and predator animal species as provided for in approved Adaptive Management activities;

(5) at the discretion of the landowner, allow other management, restoration, or enhancement activities; and

(6) prepare and implement a grazing management plan.

4.3 **Non-Participating Landowners.**

(a) For development resulting in Take of CSS Species listed as endangered species or threatened species under FESA or CESA, Non-Participating Landowners have the option of addressing such impacts by means of either (1) providing acceptable mitigation through separate permits or authorizations under FESA or CESA, or (2) paying a Mitigation Fee to the NCCP Non-Profit Corporation, as allowed by this Agreement.

(b) A Non-Participating Landowner who selects the Mitigation Fee option to address impacts on CSS Species, will be covered under the terms of the NCCP/HCP Section

10(a) Permit and CDFG Management Authorization granted to the Local Government with jurisdiction over the proposed activity, with regard to all CSS Species, and no additional approvals pursuant to FESA, CESA and the NCCP Act will be required by USFWS and CDFG.

(c) The Mitigation Fee option will not be available for Take by Non-Participating Landowners on lands located within Existing Use Areas unless (1) located within signatory Local Government jurisdictions, and (2) specifically authorized by USFWS and CDFG.

4.4 **Summary of Roles and Responsibilities.**

4.4.1 **Participating Landowners' Commitments and Authorization for Take.**

(a) County.

- 390 acres of Take authorized within the Reserve System
- Take authorized outside the Reserve System, presently constituting 334 acres (including 46 acres within Special Linkage Areas)
- $1 million funding for NCCP Non-Profit Corporation (if federal funding is provided)
- contribution to preparation of NCCP/HCP
- commitment of lands owned/managed by the County to the Reserve System
- ongoing commitments of staff and funding to manage the Reserve System

(b) TCA.

- Take authorization within right-of-way of Corridors
- $6.6 million for NCCP Non-Profit Corporation endowment
- commitment to 318 acres of CSS restoration

Section 8.9, any recovery plan applicable to CSS Species found on lands within the Central/Coastal Subregion shall: (1) not require any additional financial compensation or land on the part of Participating Landowners; (2) be prepared in full consultation with the NCCP Non-Profit Corporation and Participating Landowners and, as applies to the Central/Coastal Subregion, address its final recommendations to the NCCP/HCP implementation program as identified in this Agreement; and (3) not in any way affect any Section 10(a) Permit issued pursuant to the NCCP/HCP or the provisions of this Agreement.

8.3.7 Migratory Bird Treaty Act.

(a) Any Section 10(a) Permit issued pursuant to this Agreement for the Take of a listed species, an unlisted Identified Species, or a species associated with or dependent upon CSS or Covered Habitats shall, when such permit is effective under FESA, also constitute a Special Purpose Permit under 50 C.F.R. § 21.27 for the take of species covered by such permit in the amount and/or number and subject to the same terms and conditions as specified in such permit. Any such take will not be in violation of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. §§ 703-12). Such Special Purpose Permit shall be valid for a period of three years from its effective date, provided the associated Section 10(a) Permit remains in effect for such period, subject to renewal as provided in paragraph (b).

(b) Any Special Purpose Permit under 50 C.F.R. § 21.27 as described in this section shall be renewed, provided that the permit holder remains in compliance with the terms of this Agreement. Each such renewal shall be valid for a period of three years, provided the associated Section 10(a) Permit remains in effect for such period.

- 2 acres of Take authorized within the Reserve System
- Take authorized outside the Reserve System, presently constituting 4,420 acres (including 60 acres within Special Linkage Areas)
- prior agreements to dedicate 17,877 acres of land within the Reserve System
- agreement to transfer an additional 3.001 acres to the Reserve System
- commitments regarding Special Linkage Areas
- contribution to preparation of NCCP/HCP
- commitment to interim management measures

(g) Regents (UCI).

- 3 acres of Take authorized within the Reserve System
- commitment of 135 acres to the Reserve System

(h) SCWD.

- 9 acres of Take authorized within the Reserve System
- contribution to preparation of NCCP/HCP
- $150.000 to fund NCCP Non-Profit Corporation endowment

(i) Chandis-Sherman.

- Take authorized outside the Reserve System, presently constituting 30 acres
- $500,000 to fund the NCCP Non-Profit Corporation endowment, subject to grading permit conditions of Section 8.3.2
- $350,000 to fund Pacific pocket mouse population propagation, enhancement, relocation and recovery efforts upon issuance of Section 10(a)(1)(A) permits for pacific pocket mouse
- contribution to preparation of NCCP/HCP

- commitment to transplant, at CDFG's request, any Blochman's dudleya populations at Chandis-Sherman expense which would be directly impacted by Chandis-Sherman Planned Activities

- commitment to set aside the eight-year, approximately 22-acre Pacific pocket mouse preserve

- commitment to offer up to four, one-year extensions as set forth in Section 8.3.2(a)(1)(F)

- commitment to negotiate an option agreement to provide opportunity for USFWS and CDFG to purchase approximately 22-acre Pacific pocket mouse reserve area at end of eight-year preserve period

(j) CDPR.

- Take authorized for implementation of Crystal Cove State Park General Plan

- commitment of Crystal Cove State Park to Reserve System

4.4.2 **Local Governments (Cities and County of Orange).**

The Central/Coastal Subregion includes 13 cities that will be affected by the NCCP/HCP. Each city which signs this Agreement will be responsible for conducting some or all of the following actions, depending on whether portions of their jurisdictions are included within the Reserve System or Take of Identified Species will occur within their jurisdiction or both. Signatory Cities will be expected to address the following responsibilities with regard to actions of the signatory Cities and landowners subject to the jurisdiction of such Cities:

(1) consideration of amendments to the general plan, zoning, or other implementing ordinances to comply with state planning and zoning requirements;

(2) adopting fuel modification ordinances/standards consistent with the NCCP/HCP fuel modification policies that will be applicable to areas bordering the Reserve System, and within Special Linkage Areas and Existing Use Areas;

(3) in cooperation with the individual reserve owner/manager, reviewing project proposals within the Reserve System on lands managed by the particular Local Government to assure consistency with the NCCP/HCP;

(4) assuring that Non-Participating Landowners provide evidence of payment of the Mitigation Fee to the NCCP Non-Profit Corporation where the landowner elects to use the Mitigation Fee option for Take of listed CSS Species;

(5) recording/compiling Identified Species, CSS and Covered Habitats impacts within its jurisdiction annually and reporting losses/mitigation to the County EMA to enable the County, as the lead agency, to compile subregional data for transmittal to CDFG and USFWS;

(6) ensuring that NCCP construction-related minimization measures set forth in the NCCP/HCP EIR/EIS are enforced;

(7) making best efforts to acquire conservation easements over privately owned Existing Use Areas owned by Non-Participating Landowners;

(8) for those Local Governments owning land within the Reserve System, formally committing such lands to the Reserve System, and managing such lands in accordance with the NCCP/HCP and this Agreement;

(9) accepting and using the NCCP/HCP EIR/EIS as the CEQA program EIR, defining the mitigation program and covering all Take allowed for CSS, Identified Species and Covered Habitat impacts of Planned Activities;

(10) recognizing the mitigating values of preservation of non-CSS resources in the Reserve System in acting on specific Planned Activities; and

(11) committing to the CSS, Identified Species and Covered Habitat mitigation assurances.

4.4.3 County of Orange EMA as the Lead Agency.

County Environmental Management Agency will serve as the principal agency implementing the NCCP/HCP until the NCCP Non-Profit Corporation is formed and assumes its functions as set forth in this Agreement. In this capacity the County will be responsible for the items described below in section 4.4.4. The County will have ongoing functions, after the NCCP Non-Profit Corporation is operating, as follows:

(1) updating the county-wide GIS program;

(2) preparing annual reports regarding management activities within the County's portion of the Reserve System for submittal to the NCCP Non-Profit Corporation for inclusion in the annual report to CDFG and USFWS; and

(3) coordinating fire management programs with CDF and, through OCFA, cooperating with CDF to implement fire management measures within the Reserve System consistent with the NCCP/HCP.

4.4.4 NCCP Non-Profit Corporation.

The NCCP Non-Profit Corporation is the body responsible for coordinating the assembly of the Reserve System and implementation of the Adaptive Management Program within the Reserve System as provided in Chapter 5 of the NCCP/HCP. The NCCP Non-Profit Corporation shall be directed by a Board of Directors consisting of representatives of major public and private landowners and participating local jurisdictions that own lands within the Reserve System, Chandis-Sherman and USFWS and CDFG. The duties of the NCCP Non-Profit

Corporation will include coordinating and monitoring management of the Reserve System. During the conduct of its duties, the NCCP Non-Profit Corporation will not have enforcement powers or authority over local jurisdictions, or over the individual Reserve Owners/Managers. The responsibilities of the NCCP Non-Profit Corporation will include:

(1) providing staff support to the NCCP Non-Profit Corporation Board of Directors to coordinate the management of the Reserve System;

(2) hiring staff and consultants to carry out Board directives;

(3) coordinating activities of the individual Reserve Owners/Managers;

(4) preparing annual reports for the overall Reserve System for submittal to CDFG, USFWS, participants, and interested parties;

(5) collecting Mitigation Fees for development of CSS located outside the Reserve System where Non-Participating Landowners elect this option as provided in this Agreement;

(6) receiving other funding for reserve management and, if necessary, accepting lands for inclusion in the Reserve System;

(7) disbursing funds to individual Reserve Owners/Managers to carry out the Adaptive Management Program;

(8) hiring and managing biologists to conduct annual species and habitat monitoring, inventory and enhancement efforts within the Reserve System;

(9) compiling and analyzing biological data obtained during monitoring and inventories for inclusion in the annual report; and

(10) preparing and updating land acquisition priority list.

### 4.4.5 Individual Reserve Owners/Managers.

Although the NCCP Non-Profit Corporation will coordinate and oversee creation of the Reserve System and implementation of the Adaptive Management Program, the actual management of lands in the Reserve System will be conducted by the individual Reserve Owners/Managers. The number of Reserve Owners/Managers may change; however, at this time the Reserve Owners/Managers of lands proposed to be included in the Reserve System are identified on Figure 21. Upon signing this Agreement, these Reserve Owners/Managers will be responsible for the following activities:

(1) coordinating management activities with the NCCP Non-Profit Corporation and assuring that such activities on their respective ownerships are consistent with the annually-approved work program;

(2) in consultation with the NCCP Non-Profit Corporation, preparing the work program component for its ownership for the following year activities;

(3) providing an annual progress report on the current year work program to the NCCP Non-Profit Corporation for inclusion in the overall annual report submitted to CDFG and USFWS;

(4) accepting ownership and management responsibility for Reserve System lands upon transfer by private owners to the Reserve System; and

(5) conducting, or allowing the NCCP Non-Profit Corporation or other appropriate public agency or non-profit to conduct specific Adaptive Management measures within their respective ownerships required under the NCCP/HCP and the then current work program, including the following activities:

- restoration
- enhancement
- habitat management
- public access/recreational management
- Reserve System and public access facility maintenance
- grazing management
- cooperation in fire management including prescribed burns
- cooperation in invasive plant and animal species control
- Pacific pocket mouse research and recovery

4.4.6 Resource Agencies.

Subject to the availability of appropriated funds, CDFG and USFWS will provide funding, staff support and program oversight functions as defined in this Agreement and by law during the long-term implementation of the NCCP/HCP. Pursuant to this Agreement, these agencies have the authority to assure, as provided herein, that the NCCP/HCP is implemented consistent with the provisions of the 4(d) Rule, FESA, the NCCP Act, the Conservation Guidelines, and CESA. The functions of the resource agencies will include the following:

(1) to the extent available, providing annual funding contributions consistent with the NCCP funding program;

(2) supporting the transfer of 1,033 acres of El Toro MCAS to the Reserve System;

(3) reviewing annual reports submitted by the NCCP Non-Profit Corporation and providing comments/recommendations as required by this Agreement;

(4) addressing Take, in accordance with applicable law, where Non-Participating Landowners do not elect the Mitigation Fee option provided for in this Agreement; and

(5) monitoring landowner and Local Government compliance with the provisions of the NCCP/HCP.

## 5.0 RESERVE SYSTEM.

### 5.1 NCCP Non-Profit Corporation.

#### 5.1.1 Formation.

Within one year of the Effective Date of this Agreement, or as soon as practicable thereafter, the Parties shall establish a non-profit public benefit corporation pursuant to California Corporations Code section 5100, et seq., (referred to herein as the NCCP Non-Profit Corporation) to coordinate the ongoing administration of the Reserve System. Responsibilities assigned to the NCCP Non-Profit Corporation shall be carried out by the County pending formation of the NCCP Non-Profit Corporation and in the event that, for any reason and at any time, the NCCP Non-Profit Corporation is unable to carry out its obligations under this Agreement.

#### 5.1.2 Directors.

(a) The Board of Directors of the NCCP Non-Profit Corporation shall be comprised of one representative designated by each of the following: (1) each Local Government owning land in the Reserve System and signatory to this Agreement, (2) SCWD, (3) IRWD, (4) SCE, (5) Metropolitan, (6) TCA, (7) CDPR, (8) CDFG, (9) USFWS, (10) Regents, (11) Chandis-Sherman, until such time as the temporary Pacific pocket mouse preserve is dissolved, (12) The Irvine Company, until such time as all of The Irvine Company land designated for inclusion in the Reserve System is transferred to a public agency or an approved non-profit entity and formally included in the Reserve System, (13) each non-profit

entity owning land within the Reserve System, (14) a non-voting ex-officio member, designated by and representing CDF, and (15) three public representatives appointed by the other members of the Board of Directors. Each member of the Board of Directors shall exercise one vote.

(b) Additionally, the Parties recognize that the Coastal Greenbelt Authority, formed by the Agreement between the County and the City of Laguna Beach dated June 25, 1991, provides advisory functions with respect to planning and management of certain open space areas which the NCCP/HCP designates as part of the Reserve System. The Parties agree that the goals of the NCCP Non-Profit Corporation and the Coastal Greenbelt Authority are generally consistent, and should be coordinated to the maximum extent feasible. In order to facilitate such coordination, an additional non-voting member of the Board of Directors of the NCCP Non-Profit Corporation may be designated by the Coastal Greenbelt Authority.

(c) The articles or bylaws of the NCCP Non-Profit Corporation shall provide for changes in the Board of Directors as changes occur in the ownership of land within the Reserve System. Notwithstanding paragraph (a), upon transfer of all of The Irvine Company lands designated for inclusion in the Reserve System to public agencies or approved non-profit entities the County shall exercise a second vote. Notwithstanding transfer of TCA lands designated for inclusion in the Reserve System to another public agency or approved non-profit, TCA has an ongoing concern with implementation of the Corridor Biological Opinions, and shall retain voting authority on the Board of Directors until TCA elects to resign. Notwithstanding paragraph (a), the County shall succeed to the voting authority of the TCA if TCA resigns from the Board of Directors.

(d) While a representative designated by Chandis-Sherman remains on the Board of Directors and the City of Dana Point remains a signatory to this Agreement, Chandis-Sherman shall consult with the City of Dana Point on a periodic basis with respect to USFWS and CDFG activities within the temporary preserve area established on the Chandis-Sherman Property and with respect to pending actions of the NCCP Non-Profit Corporation regarding the Pacific pocket mouse or activities identified by the City of Dana Point affecting the City of Dana Point.

(e) The Board of Directors shall appoint a technical advisory committee consisting of scientists knowledgeable in the field of ecology, conservation biology, reserve management, habitat restoration or other appropriate disciplines. Meetings of the Board of Directors shall be public meetings, subject to any relevant notice requirements of state law.

5.1.3 **Authority.**

The NCCP Non-Profit Corporation shall have the authority required by this Agreement, and established by its articles of incorporation or bylaws and shall carry out the management coordination functions identified in Chapter 4 of the NCCP/HCP, consistent with the management plans approved by USFWS and CDFG as set forth in Section 5.3.2. The bylaws or articles of incorporation shall provide for an annual independent financial audit.

5.1.4 **Annual Report.**

(a) The NCCP Non-Profit Corporation shall prepare an annual report which shall include, at a minimum, the following information: (1) recommended modifications to management policies and programs consistent with Adaptive Management and the specific management plans referenced in Section 5.3.2, (2) preparation of a specific management

program/budget for the following year, (3) updates of prior budgets and ongoing funding recommendations and priorities, (4) a summary of activities undertaken by all participants in management of the Reserve System, (5) the amount and location of Take of Identified Species and habitat loss that occurred in the Reserve System during the prior year, (6) restoration and enhancement actions, (7) an accounting of Mitigation Fees and related loss of habitat in the Central/Coastal Subregion by amount and location outside the Reserve System, and (8) an accounting of all other funds received and dispersed to participating agencies for management and acquisition activities related to the NCCP/HCP, and (9) an accounting of land added to the Reserve System.

(b) Annual reports shall be approved by the Board of Directors of the NCCP Non-Profit Corporation and submitted to CDFG and USFWS for review and comment no later than December 1 of each year, commencing December 1, 1996. CDFG and USFWS shall review and provide written comments on the annual report by February 1, or within sixty (60) days of submittal, whichever occurs last.

(c) If CDFG and USFWS reviews of the annual report reveal significant disagreements concerning the status or effectiveness of management efforts (e.g. disagreements concerning reported habitat quality, recreation impacts, progress on phased activities, or management activities proposed to be undertaken during the following year), then CDFG and USFWS shall meet and confer with the NCCP Non-Profit Corporation to discuss those portions of the annual report which raise issues, and attempt to determine whether mutually acceptable resolution of issues is feasible. In the event there is a disagreement between CDFG and USFWS concerning the findings and/or recommendations contained in the annual report, the two agencies

shall resolve their dispute in a manner that does not impact the ability of the NCCP Non-Profit Corporation to implement the NCCP/HCP.

5.2 **Formation of the Reserve System.**

5.2.1 **General.**

(a) The NCCP/HCP designates a Reserve System, shown on Figure 12. Approximate acreage of Reserve System lands currently in public ownership are as follows:

- 8,377 acres already owned by the County of Orange and managed by the County's Harbors Beaches and parks Department (EMA HBP);
- 2.807-acre Crystal Cove State Park owned by the State of California and operated by CDPR;
- 135± acres owned or managed by the Regents, located at the University of California, Irvine, including the existing 63-acre habitat reserve that UCI now manages (when and if the University receives fee title to the land areas indicated in the Landscape License of the February 10, 1993 UCI/TCA Purchase Agreement located within the Reserve System. this land shall be included in the Reserve System);
- 1,033-acre portion of the existing El Toro Marine Corps Air Station owned by the U.S. government and presently operated by the Department of Defense (DOD);
- 678-acre Upper Newport Bay Reserve, 953-acre Coal Canyon Reserve and 82-acre Laguna Laurel Preserve owned by the State of California and managed by CDFG;

- 1,662 acres owned/managed by the City of Laguna Beach; and
- 318 acres owned by TCA.

(b) The execution of this Agreement by each public owner of designated Reserve System and Special Linkage Area lands, both currently owned and acquired in the future, shall represent the owner's formal commitment of the lands to the Reserve System and Special Linkage Areas and agreement to manage the lands for the protection of the wildlife, plant and habitat values of the lands in accordance with the NCCP/HCP and this Agreement. Consistent with the findings in Section 3, notwithstanding the term of this Agreement, if at any time following the end of the term of this Agreement, a public owner proposes to modify the encumbrances on the Reserve System and Special Linkage Area lands under its ownership, the proposed modification must be consistent with the purposes of the NCCP/HCP such that there is no net loss of habitat value for Identified Species, CSS and Covered Habitats. The public owner shall notify USFWS and CDFG, or their respective successor agencies, and explain how the proposed modifications are consistent with the purposes of the NCCP/HCP such that there is no net loss of habitat value for Identified Species, CSS and Covered Habitats.

(c) For designated Reserve System and Special Linkage Area lands or interests in lands owned as of the Effective Date of this Agreement or subsequently acquired by a public owner, the public owner shall promptly record a notice or memorandum with the office of the County Recorder in the chain of title of each such Reserve System or Special Linkage Area land parcel. The notice will include the date that the Parties entered into this Agreement, a summary statement of the purpose of the NCCP/HCP, a statement that the NCCP/HCP and this Agreement have provisions which will affect and restrict the use of the subject parcel, and an

announcement that the full text of these documents are available for public inspection at a specific location.

(d) Notwithstanding (b), above, the 318 acres owned by the TCAs, will be included in the Reserve System at a later date pursuant to the terms of the Corridor Biological Opinions. The rights of way for the San Joaquin Hills Transportation Corridor, Eastern Transportation Corridor, and Foothill Transportation Corridor/North are not included within the Reserve System as shown on Figure 12.

(e) Notwithstanding any other provision of this Agreement, the alignment for Alton Parkway, as shown on Exhibit A, is expressly excluded from the Reserve System. The remainder of the "triangle" portion of MCAS El Toro, as shown on Exhibit A, although not a part of the aforementioned 1,033 acres, is also designated for inclusion in the Reserve System. Failure to include this portion of MCAS El Toro in the Reserve System, shall not be deemed a breach of this Agreement or the basis for suspension, revocation, or termination of any Section 10(a) Permits or CDFG Management Authorization.

(f) Lands in private ownership shall be included in the Reserve System upon transfer of the lands in accordance with Section 5.2.2 through 5.2.5.

**5.2.2 Phased Dedication of Land Owned by The Irvine Company.**

(a) 17,877 acres of lands designated for inclusion within the Reserve System are owned by The Irvine Company and are required to be dedicated to public ownership over time in accordance with existing development approvals granted by local governments. Those lands owned by The Irvine Company, and committed to dedication within the Reserve System in accordance with such approvals, are set forth in Figure 20. The specific dedication documents

for dedication agreements entered into prior to the Effective Date of this Agreement are on file with USFWS and are incorporated herein by reference. A summary of each of these previous dedication agreements, including the location and acreage of dedication areas, status of dedications and the basic requirements of the agreements, is set forth in Appendix 19. Prior to dedication, such lands shall be managed pursuant to the interim management provisions of Chapter 4 of the NCCP/HCP. At the time a particular dedication of any increment of the aforesaid lands to public ownership is required to occur in accordance with existing development approvals, as listed in Appendix 19, The Irvine Company, at its discretion, will either (1) dedicate such lands to a then signatory public agency, (2) dedicate to a non-profit entity, and on terms, approved by USFWS and CDFG, (3) execute and record a conservation easement in the form set forth in Exhibit B-1, in favor of CDFG, or (4) through other means approved by USFWS and CDFG assure that the lands will be protected and managed in accordance with the NCCP/HCP and this Agreement.

(b) In the event that a necessary pre-condition to phased dedication by The Irvine Company is not satisfied to the extent that a dedication increment or increments may not either be offered or accepted under the terms of the dedication document, The Irvine Company commits that such lands will continue to be managed as "interim management lands" subject to Chapter 4 of the NCCP/HCP and this Agreement until such time as a mutually acceptable resolution of future land ownership is resolved among The Irvine Company, the offeree, USFWS and CDFG in a manner that will allow for the continuation of Take authorization consistent with then-applicable law. If The Irvine Company has not transferred dedication and donation lands pursuant to Section 5.2.2 prior to one year before the end of the term of this Agreement, The

Irvine Company shall execute and record a conservation easement in the form set forth in Exhibit B-1 or B-2, in favor of CDFG, provided that USFWS and CDFG shall concurrently extend the term of this Agreement and Take authorization for a period specified by The Irvine Company in accordance with then existing law.

(c) The Irvine Company will provide for the dedication of an additional 1,942 acres of land for the Reserve System, not previously committed for such dedication, in the manner provided for in Exhibit C. These lands may be dedicated to either a signatory public agency, or to a non-profit entity approved by CDFG and USFWS, and shall take the form of transfers of fee title or conservation easements in the form set forth in Exhibit B-1, or both. These lands include additional dedication areas within the County and within the sphere of influence and the jurisdictional boundaries of the City of Irvine. Prior to the dedication, such lands shall be managed pursuant to the interim management provisions of Chapter 4 of the NCCP/HCP.

(d) The Irvine Company will provide for the donation of an additional 1,059 acres of land not previously committed to dedication or donation, in the manner provided for in Exhibit D. These lands may be donated either to a signatory public agency, or to a non-profit entity approved by CDFG and USFWS, and shall take the form of transfers of fee title or conservation easements in the form set forth in Exhibit B-2, or both. These lands include donation areas within the sphere of influence of the City of Orange. Prior to the donation, such lands shall be managed pursuant to the interim management provisions of Chapter 4 of the NCCP/HCP.

(e) Notwithstanding (c) and (d) above, in the event of any suspension, revocation or termination of The Irvine Company authorization for Take, The Irvine Company shall likewise, at its sole discretion, be entitled to suspend the transfer of lands or recordation of conservation easements provided for pursuant to (c) and (d) until such time as the ability to continue with Take as provided in this Agreement is restored.

5.2.3 SCE Parcel.

The approximately 99 acre parcel owned by SCE, and identified on Figure 19, shall be acquired and included in the Reserve System as soon as acquisition funds are available. SCE agrees to make the land available for such acquisition.

5.2.4 Other Lands Identified For Potential Inclusion In the Reserve System.

(a) Approximately 650 additional acres are identified for potential inclusion within the Reserve System. Lands identified for potential inclusion are shown on Figure 19 and listed below:

- a 524-acre parcel owned by the Orange Unified School District and Serrano Irrigation District; and
- the 120-acre Santiago Ranch property (excluding the existing 11 acre equestrian facility).

(b) Lands identified for potential inclusion will be acquired by means of voluntary purchase agreements as funds become available over time. The NCCP Non-Profit Corporation shall maintain a list of lands identified for potential inclusion within the Reserve System and identify priority for acquisition and may revise or amend the list from time to time.

The prioritized list shall be included in the annual report prepared by the NCCP Non-Profit Corporation pursuant to Section 5.1.4.

(c) Consistent with current state and federal land acquisition practices, lands identified for potential inclusion within the Reserve System shall be acquired only if the landowner is a willing participant in the transaction. If owners of such lands are unwilling to allow public or non-profit acquisition, any impacts to Identified Species on such lands shall not be authorized by permits issued pursuant to FESA, CESA, or the NCCP Act in conjunction with approval of the NCCP/HCP or this Agreement. Nothing in this Agreement precludes owners of such lands from applying for or receiving separate permits pursuant to FESA or CESA.

(d) Lands identified for potential inclusion within the Reserve System may be acquired by Local Governments, non-profit entities approved by USFWS and CDFG, or the NCCP Non-Profit Corporation.

(e) The inability or failure of the NCCP Non-Profit Corporation or other Parties to acquire, and include in the Reserve System, any of the lands identified for potential inclusion shall not be deemed a breach of this Agreement or the basis for suspension, revocation, or termination of any Section 10(a) Permits or CDFG Management Authorization.

5.2.5 **Other Future Additions to the Reserve System.**

Additional lands not currently designated for inclusion within the Reserve System or identified for potential inclusion may be added to the Reserve System through dedication, donation, or acquisition as funds become available. Additions of land to the Reserve System shall be approved by the NCCP Non-Profit Corporation and shall not require an amendment of the NCCP/HCP or this Agreement.

5.3 Reserve Management Responsibilities.

5.3.1 General.

(a) The lands described in Section 5.2 above shall be formally committed to the Reserve System pursuant to section 5.2.1 as they are dedicated to Local Governments in accordance with existing development approvals. Local Governments receiving these lands will be responsible for processing any necessary general plan or zoning changes, subject to the provisions of Section 8.1(a), pursuant to state planning and zoning requirements. Inclusion in the Reserve System does not remove existing public agency land managers' respective ownership and management responsibilities for all Reserve System lands under their control.

(b) Following the completion of phased dedications described in Section 5.2.2, the transfer of the additional 3,001 acres of property by The Irvine Company, the inclusion of the 1,033-acre MCAS El Toro property in the Reserve System, and acquisition of the SCE parcel, ownership and management of the Reserve System is anticipated to be as shown on Figure 21.

5.3.2 Reserve Management Elements.

(a) The Parties shall provide for the implementation measures described in Chapter 4 of the NCCP/HCP. The policies for management and monitoring of the Reserve System, research, habitat restoration and enhancement, fire management, public access, infrastructure, existing uses and interim management specified in Chapter 5 of the NCCP/HCP are incorporated by reference herein, and shall be treated as obligations by the Parties to this Agreement.

(b) Programs for implementing the NCCP/HCP policies shall be further defined in the management plans referenced in the NCCP/HCP; implementation of NCCP/HCP policies through the management plans shall not require amendment of the NCCP/HCP or this Agreement. The management plans identified in the NCCP/HCP are as follows:

(1) Fire Management

(2) Grazing

(3) Recreation

(4) Restoration/Enhancement

(c) The NCCP/HCP short-term fire management plan provided for in the NCCP/HCP shall be prepared within eighteen (18) months following the Effective Date of this Agreement. The proposed short-term fire management plan shall be provided to CDFG and USFWS 150 days prior to the first proposed action under the short-term fire management plan. USFWS and CDFG shall, in full consultation with the NCCP Non-Profit Corporation, OCFA and CDF, determine whether the short-term fire management plan is substantially consistent with the short-term fire management policies set forth in the NCCP/HCP. If USFWS and CDFG fail to provide a written response to the draft fire management plan within 60 days, the plan shall be deemed approved. If there is a disagreement between the NCCP Non-Profit Corporation and either USFWS or CDFG, or both agencies, regarding the substantial consistency of the management plan with the applicable NCCP/HCP policies, the short-term fire management plan shall be forwarded to the USFWS Regional Director and the Director of CDFG, for additional review and consultation with the NCCP Non-Profit Corporation. Throughout the 150 day period and any period of judicial review as set forth below, no action shall be taken to implement the

short-term fire management plan except for those actions agreed to by USFWS and CDFG or determined by OCFA, after consultation with the NCCP Non-Profit Corporation. USFWS and CDFG, to be required for emergency public health and safety purposes. If for any reason the total time period for CDFG/USFWS review exceeds 90 days, the time period specified for completing the short-term fire management program shall be extended in a manner corresponding with the time period required by USFWS and CDFG to review the management plan. Notwithstanding the provisions of Sections 10.3 and 10.4, and in place of the remedies set forth in those sections, in the event USFWS and/or CDFG conclude that the short-term fire management plan is not substantially consistent with the NCCP/HCP short-term fire management policies, USFWS and/or CDFG shall be entitled to seek declaratory relief in federal or state court, as applicable, to determine whether the management plan is substantially consistent with the short-term fire management policies of the NCCP/HCP. The Parties stipulate that, in the event of such judicial review, the court shall apply an independent judgment test rather than placing the burden of proof on either USFWS/CDFG or the NCCP Non-Profit Corporation. If the court determines that the short-term fire management plan is not substantially consistent with the short-term fire management policies of the NCCP/HCP, and no appeal is filed with the appropriate court of appeal, the NCCP Non-Profit Corporation shall, in consultation with USFWS and CDFG, prepare a revised short-term fire management plan. The revised plan shall be submitted to the Regional Director and the Director of CDFG for review within 120 days following the court order on the original plan or within such time as the Parties may otherwise agree. If within 60 days of receipt the Regional Director and/or the Director of CDFG determines that the revised plan is not substantially consistent with the short-term fire

management policies of the NCCP/HCP, either agency may seek judicial relief as provided in this paragraph and implementation of the revised plan shall be governed by the provisions above relating to the original plan.

(d) Within 6 months of the appointment of the Executive Director of the NCCP Non-Profit Corporation under Chapter 6.1.2 of the NCCP/HCP, the NCCP Non-Profit Corporation shall establish the timelines for the preparation of the long-term fire management plan to be completed within 3 years of the Effective Date of this Agreement as set forth in the NCCP/HCP. Upon completion of the draft long-term fire management plan, the review and implementation of the plan shall be carried out in the same manner as provided in paragraph (c) above for the short-term fire management plan.

(e) Within one year of the Effective Date, a grazing plan consistent with the NCCP/HCP shall be submitted for review and approval by USFWS and CDFG. A material change to the grazing plan shall be submitted to USFWS and CDFG for review and approval.

(f) As described in Chapter 5 of the NCCP/HCP, prior to the establishment of permanent access, uses or facilities, the County shall prepare a Resource Management Plan for each future County park development on lands designated for inclusion within the Reserve System. The Resource Management Plan for each park shall be provided to the USFWS and CDFG at least 150 days prior to implementation of any action under the plan. The USFWS and CDFG shall review these plans for consistency with the conservation and/or specific recreational management policies set forth in the NCCP/HCP and with Section 9.2.1(b). If USFWS and CDFG fail to provide written response to the plan within 45 days of receipt, the plan shall be deemed consistent. During the 45 day review period, if requested by any Party, the Parties shall

meet to address any agency concerns about the plan. During the second 45 days of the 150 day period, the USFWS and CDFG shall engage in efforts to reconcile any concerns with County such that modifications of the plan which are to the mutual satisfaction of all Parties can be achieved. Failing to reach consensus, no action shall be taken to implement the plan for the remaining 60 days of the 150 day period, and USFWS and/or CDFG may initiate a suit in a court of competent jurisdiction in California for declaratory and/or injunctive relief on the grounds that the plan is substantially inconsistent with the conservation policies and/or specific recreational management policies of the NCCP/HCP and with Section 9.2.1(b).

(g) Within three years following the creation of the NCCP Non-Profit Corporation, a comprehensive enhancement and restoration plan shall be prepared and submitted to USFWS and CDFG for review and approval. This plan shall be updated and approved annually by the NCCP Non-Profit Corporation. Enhancement and restoration activities may proceed prior to preparation and approval of this plan subject to approval by CDFG, USFWS and the NCCP Non-Profit Corporation. Within one year of the appointment of the Executive Director of the NCCP Non-Profit Corporation under Chapter 6.1.2, the NCCP Non-Profit Corporation shall review available reports regarding the cactus wren, and will determine whether management measures should be taken with regard to the cactus wren within the Reserve System, subject to available funds and NCCP/HCP Adaptive Management priorities. A material change to the comprehensive enhancement and restoration plan shall be submitted to USFWS and CDFG for review and approval.

(h) A material change to any of the plans described in the Section 5.3.2 shall be reviewed and approved in the same manner as the original plan.

The following is a summary of permitted uses in the Reserve System that shall constitute Planned Activities on the part of Participating Landowners and permitted uses on the part of the NCCP Non-Profit Corporation as more fully described and provided for in the NCCP/HCP:

- Adaptive Management Activities
  - monitoring target species and related habitat conditions
  - monitoring non-CSS and non-target species conditions
  - habitat enhancement, restoration, and re-creation
  - other management activities designed to implement NCCP policies, objectives (e.g. cowbird trapping, Pacific pocket mouse propagation and weed abatement)
  - inventorying for non-target species
- Habitat Mitigation Related to Take of Listed CSS Species Outside the Reserve System, Consistent With the Provisions of the NCCP/HCP
- Habitat Mitigation For Take of Non-CSS Species Outside the Reserve System, Consistent With the NCCP/HCP and State and Federal Mitigation Policies (e.g. wetlands, least Bell's vireo)
- Field Research and Field Studies Designed to Further Long-Term Protection of Habitats and Species Included Within the Reserve System (including university-approved research on the portion of the Reserve System owned by the Regents)
- Fire Management Activities Consistent With the NCCP/HCP and Fire Management Plan
- Ongoing Grazing Activities Consistent With the NCCP/HCP and Grazing Plan
- Public Access and Recreation Consistent With the Provisions Of the NCCP/HCP Recreation Management Program

- passive recreation, including hiking, nature interpretation, picnicking

- equestrian activities on designated trails, and designated new staging areas and facilities

- mountain biking on designated trails

- camping in designated locations

- construction, operation, maintenance and concession activities associated with recreation facilities designated as permitted uses within the NCCP/HCP

- pre-existing park facilities and uses within disturbed areas, provided that existing active facility expansions, or conversion of passive use facilities to active use must be consistent with the NCCP/HCP

- within the Coal Canyon Ecological Reserve, public access and hunting as determined appropriate by CDFG

- park and reserve administration and interpretive facilities

- Activities Related To The Provision of Those Necessary Infrastructure Facilities Identified in Chapter 5 of the NCCP/HCP

  - consistent with the provisions of the NCCP/HCP, operation, maintenance, repair and reconstruction of existing Infrastructure as depicted on Figure 27 or if not addressed by the NCCP/HCP otherwise a matter of public record

  - construction of those new Infrastructure facilities identified in Figure 28 consistent with adopted County and city general plans and the provisions of the NCCP/HCP

  - ongoing operations and maintenance, repair and reconstruction activities related to the new Infrastructure facilities, consistent with the provisions of the NCCP/HCP

  - emergency activities related to existing or new Infrastructure facilities

- Existing uses consistent with Chapter 5.11 (Existing Use Policies) of the NCCP/HCP.

5.4 Reserve System Funding.

5.4.1 NCCP Non-Profit Corporation Endowment.

(a) An endowment of approximately $10,665,000 shall be established generally in accordance with Chapter 4 of the NCCP/HCP, to fund the NCCP Non-Profit Corporation. Funding of the endowment will be phased over approximately four (4) years beginning in 1996, as shown on Table 6-4 of the NCCP/HCP.

(b) The approximately $6.6 million dollars designated for the endowment from TCA are those funds committed for minimization and mitigation purposes under the terms of the Corridor Biological Opinions ("Conservation Funds"). TCA shall continue to transfer the Conservation Funds to USFWS in installments, pursuant to the Corridor Biological Opinions. As of November 30, 1995, TCA had made payments of $2,775,000 pursuant to the terms of the Corridor Biological Opinions. USFWS shall transfer all Conservation Funds already paid by TCA, and not allocated to other uses as of the Effective Date, to the NCCP Non-Profit Corporation, within thirty (30) days of incorporation of the NCCP Non-Profit Corporation. USFWS and TCA shall transfer future installments of the Conservation Funds to the NCCP Non-Profit Corporation pursuant to the terms of the "Memorandum of Understanding Relating to the San Joaquin Hills Transportation Corridor Condition #1 of Biological Opinion 1-6-93-F-89R and Eastern Transportation Corridor Condition #4 of Biological Opinion 1-6-94-F-17 and Condition #2 of Biological Opinion 1-14-94-F-16."

(c) Metropolitan and IRWD shall each transfer $1 million to the NCCP Non-Profit Corporation in a series of installments as specified in Table 6-4 of the NCCP/HCP.

(d) The County shall transfer $1 million to the NCCP Non-Profit Corporation in a series of installments as specified in Table 6-4. Commitment of these funds from the County is contingent upon receipt of federal funding for NCCP implementation. The County's obligation to contribute to the endowment is limited to the extent of federal funding for NCCP implementation received by the County.

(e) SCE shall arrange for transfer of $400,000 to the NCCP Non-Profit Corporation, in conjunction with the sale of SCE property to the Tracy Building Corporation.

(f) Subject to the conditions specified in Table 6-4, Chandis-Sherman shall transfer $500,000 to the NCCP Non-Profit Corporation in a series of installments.

(h) SCWD shall transfer $150,000 to the NCCP Non-Profit Corporation in a series of installments as specified in Table 6-4 of the NCCP/HCP.

(i) After the term of this Agreement, as set forth in Section 11.1, the NCCP Non-Profit Corporation shall continue to use the income from the endowment for management of the Reserve System. If the NCCP Non-Profit Corporation dissolves prior to the end of the term, the endowment shall be managed by the County pursuant to Section 5.1.1. If, at or after the end of the term of the Agreement the NCCP Non-Profit Corporation dissolves or the County relinquishes its management role under Section 5.1.1, the endowment shall be disbursed consistent with the purposes of the NCCP/HCP, in a manner approved by CDFG and USFWS.

**5.4.2 Other Funding Sources.**

The Parties anticipate, but cannot guarantee, that substantial additional funding for the NCCP/HCP will be provided by state and federal contributions. USFWS and CDFG shall devote their best efforts to assist the NCCP Non-Profit Corporation in obtaining additional

funding from sources including, but not limited to, existing and future grant programs and existing and future bond issues.

## 6.0 NON-RESERVE COMPONENTS OF THE NCCP/HCP.

### 6.1 Special Linkage and Existing Use Areas.

(a) The NCCP/HCP designates 5,702 acres of public and private lands as Special Linkage Areas and Existing Use Areas. Conservation easements referred to in this Section 6.1 shall be substantially in the form of Exhibit B-3, unless otherwise indicated by context.

(b) Special Linkage Areas owned by The Irvine Company shall be governed by the provisions of this Section and by the specific Special Linkage Area provisions set forth in Chapter 4.4 of the NCCP/HCP. Due to the long-term habitat protection and management benefits conferred by the permanent Special Linkage Area commitments established pursuant to this Section, any Take within the Special Linkage Areas, but outside of designated open space protection areas, owned by The Irvine Company is authorized by this Agreement. The specific provisions applicable to Special Linkage Areas owned by The Irvine Company are as follows:

(1) Shady Canyon Linkage Area.

(A) The construction of the Shady Canyon golf course shall be subject to the Special Linkage Area provisions of the NCCP/HCP and this Agreement with respect to project design and open space commitments. Upon completion of the construction and landscaping of the golf course and the recordation of any required final subdivision map, a conservation easement over the golf course depicted on Figure 52 shall be recorded in

favor of the County or CDFG or any other offeree as designated. In the case of the Shady Canyon golf course, the easement provisions shall apply only to the "Natural Open Space" and "Preserved Drainage" within the golf course shown on Exhibit 3-16 of FEIR No. 16867-GA/16868-ZC, and the conservation easement shall also provide that the boundaries of the "Golf Course Open Space" may be modified over time upon mutual agreement of the City of Irvine and The Irvine Company to reflect adjustments in golf course use or design, provided that (1) a minimum of 90 acres of "Golf Course Open Space" and "Preserved Drainage" shall be maintained and a minimum of 61 acres of CSS within the "Golf Course Open Space" or in immediately contiguous areas within the project site shall be maintained, (2) the significant population of *Dudleya multicaulis* located on the periphery of the project will be protected by a minimum setback of 40 feet from non-native plantings, and (3) in areas which The Irvine Company determines are not required for the golf course, native vegetation will be incorporated.

(B) With respect to the "north hill" area located within the Shady Canyon project area, a conservation easement shall be recorded over approximately 45 acres of natural open space as depicted on Exhibit 3-18 of FEIR No. 16867-GA/16868-ZC following the completion of construction and the recording of final map(s) on all adjoining development areas. The conservation easement shall be recorded in favor

of the County or CDFG or any other offeree as provided in the standard form of conservation easement set forth in Exhibit B of this Agreement and shall include a specific provision acceptable to USFWS and CDFG to restrict human access within the easement areas to trails designated on the final tract map.

(C) With respect to approximately 12 acres in the Shady Canyon Special Linkage Areas not covered in (A) and (B) above and depicted on Figure 23, a conservation easement shall be recorded following the completion of construction and recording of final map(s) on all adjoining development areas.

(2) With respect to all development areas in the "Bonita Creek Corridor" Special Linkage Area as shown on Exhibit E, a conservation easement shall be recorded over the areas, approximately 4 acres, depicted in Exhibit E in the same manner as provided under paragraph (1) above for Shady Canyon residential development.

(3) With respect to all Special Linkage Areas shown within the Irvine Coast LCP areas depicted in Figure 22, conservation easements shall be recorded in the same manner as provided for in paragraph (1) above, and as specified in this paragraph. The Special Linkage Area provided in Irvine Coast Planning Area 11-B (Pelican Hill), will be defined and re-vegetated in the manner prescribed in the interim Take agreement under the 4(d) Rule between The Irvine Company and USFWS. The Special Linkage Area provided for on the frontal slopes of

Wishbone Hill shall be protected by means of the recordation of a conservation easement consistent with the interim Take approval under the 4(d) Rule, dated May 27, 1994, provided however that if the California Coastal Commission approves modification of the Wishbone Hill portion of the LCP in the manner described in Chapter 4.3.3 of the NCCP/HCP the conservation easement shall conform to the revised LCP and no amendment of this Agreement shall be necessary. The recordation of conservation easements for all other Irvine Coast LCP area Special Linkage Areas shown on Figure 22 shall be timed in relation to adjoining development in the manner provided for in paragraph (2) above and shall utilize the form of conservation easement set forth in Exhibit B. With respect to the two existing Irvine Coast LCP golf courses, conservation easements shall be recorded with the same provisions specified for the Shady Canyon golf course in paragraph (1) above.

(4) With respect to the Limestone Creek golf course, golf course development shall be governed by the requirements of the City of Orange final EIR 1278 and the golf course design and construction provisions of the September 14, 1989 Sea and Sage Audubon Society/Irvine Company Agreement ("Agreement Covering Sea and Sage Audubon Society Concerns for East Orange General Plan Amendment") and, if the Arroyo toad is present on the project site, shall be subject to additional design modifications and onsite measures, consistent with the purposes and feasibility of the golf course project, appropriate for the protection of the Arroyo toad, developed in coordination with USFWS and

CDFG. While attempts will be made to accommodate the Arroyo toad on-site. The Irvine Company will have the option of relocating all life stages of the toad to permanently protected areas. The conservation easement requirements shall be carried out in the same manner as provided for in paragraph (1) above with respect to the Shady Canyon golf course.

(c) Special Linkage Areas owned or operated by the County and/or IRWD (depicted on Figure 22) shall be governed by the provisions of this paragraph and by the Special Linkage Area provisions described in the NCCP/HCP. The County presently owns or will own two landfill areas (Coyote Canyon and Bowerman) subject to the Special Linkage Area provisions of the NCCP/HCP. Additionally, the County presently intends to jointly develop a golf course with IRWD in the area depicted in Figure 73. Due to the long-term habitat management protection and management benefits conferred by commitments associated with each of these Special Linkage Areas, any Take of Identified Species or modification of CSS within the Special Linkage Areas, but outside of designated open space protection areas, is authorized by this Agreement. The Special Linkage Area provisions applicable to areas owned or operated by the County and/or IRWD are as follows:

(1) Restored CSS areas provided for in the Coyote Canyon landfill area pursuant to the Corridor Biological Opinions shall be protected as provided for in the Corridor Biological Opinions.

(2) A golf course located in the area depicted in Figure 22 (Coyote Canyon Landfill) is an authorized use and shall be constructed in a manner

consistent with the provisions of Section 6.1(b)(1). The County shall confer with USFWS and CDFG to minimize impacts to Identified Species.

(3) The County and IRWD will develop a golf course in and around the Sand Canyon Reservoir as depicted in Figure 73. The project will include Take of 6 acres of CSS and the loss of 6 acres of other habitat occupied by gnatcatchers. Mitigation for these impacts shall include 8 acres of on-site restoration, 14 acres of off-site restoration and 14 acres of artichoke thistle abatement in the areas identified on Figure 73. The details of the restoration program will be contained in a Restoration Management Plan to be approved by USFWS prior to habitat modification.

(4) With regard to the Bowerman landfill area, upon closure of the landfill the County is authorized to construct a golf course on 173 acres of the landfill area. The County shall confer with USFWS and CDFG in the design and construction of the golf course to minimize impacts to adjacent Reserve System lands. Upon completion of construction and landscaping for the golf course, the remaining 500 acres shall become part of the Reserve System and be managed in accordance with the provisions of this Agreement and then applicable landfill closure requirements.

(5) All other Special Linkage lands owned by the County shall be managed in a manner consistent with the provisions of Chapter 4 of the NCCP/HCP.

(d) The SCE Special Linkage Area (shown on Figure 22) shall be governed by the provisions of this paragraph and by the specific Special Linkage Area provisions described the NCCP/HCP. Provided, however, that any Special Linkage Areas held by SCE in less than fee title will be governed by the provisions of this paragraph and the specific Special Linkage Area provisions described in the NCCP/HCP only to the extent those provisions are consistent with SCE's rights to the Special Linkage Areas. Due to the long-term habitat protection and management benefits conferred by the permanent Special Linkage Area commitments established pursuant to this paragraph, Take by SCE for operation and maintenance activities of its facilities within the Special Linkage Area is authorized by this Agreement. SCE shall manage its Special Linkage Area in accordance with the specific Special Linkage Area provisions described in the NCCP/HCP and in a manner consistent with providing long-term habitat protection for CSS and Identified Species within the SCE Special Linkage Area.

(e) The NCCP/HCP does not establish permanent commitments for the Existing Use Areas, shown on Figure 22. However, because significant portions of these areas contain Identified Species, including the gnatcatcher, and these areas may also serve to provide habitat for source populations in the event of declines of Identified Species within the Reserve System due to natural or other factors, Take in these areas is not authorized under this Agreement. The Mitigation Fee option for Non-Participating Landowners established in this Agreement shall not be available for such lands unless (1) located with a signatory Local Government jurisdiction, and (2) specifically authorized by USFWS and CDFG. Any activity that would result in Take in such areas shall require the approval of applicable regulatory agencies pursuant to FESA and CESA. Local Governments shall make best efforts to obtain

conservation easements over privately owned lands within these areas. The failure or inability to obtain conservation easements over private lands located within these Existing Use Areas shall not be deemed a breach of this Agreement or in any way serve as the basis for suspension, revocation or termination of any Section 10(a) Permit or CDFG Management Authorization pursuant to this Agreement.

(f) Should a change in use be proposed in the future within Existing Use Areas, Local Governments shall use their best efforts to exercise local land use authority consistent with the policies of the NCCP/HCP.

(g) The Parties understand and agree that the NCCP/HCP does not designate any acreage within MCAS El Toro as a Special Linkage Area or Existing Use Area. The Parties further understand and agree that they do not anticipate that any Special Linkage Areas or Existing Use Areas will be designated at MCAS El Toro at any time in the future, including, but not limited to, during the reuse planning process.

6.2 **North Ranch Policy Plan Area.**

(a) The policy commitments for the Policy Plan Area set forth in this Section 6.2 are intended to bridge the gap between the urgent need for early approval and implementation of an NCCP/HCP for the Central/Coastal Subregion and the current lack of detailed biological information within the Policy Plan Area that would support the delineation of specific habitat corridor linkages and habitat preservation areas. The policy commitments set forth herein are applicable only to lands owned by The Irvine Company. No Take is authorized under this Agreement for the Policy Plan Area.

(b) North Ranch Policy Plan Area Policies.

(1) Protection of the CSS mosaic is the primary focus of the NCCP/HCP. The focus of future planning within the Policy Plan Area will shift to broader issues involving biological connectivity and biodiversity goals. The expected result of implementing the Policy Plan Area policies contained herein will be to protect and further enhance the value of the Reserve System, and to protect the most unique and sensitive resources, thereby providing protection for multiple species within the Policy Plan Area.

(2) By addressing subregional biodiversity and connectivity goals, the intent of future planning within the Policy Plan Area will be to mitigate development within the Policy Plan Area in the same manner as the NCCP/HCP.

(3) The Irvine Company has made extensive commitments to mitigate CSS impacts as a part of the NCCP/HCP. Compared with the CSS contained in the Reserve System, much of the CSS within the Policy Plan Area is of lower value and lower priority for resource protection. Generally, unless the subject CSS habitat meets the "priority" criteria in paragraph (4) below, loss of CSS within the Policy Plan Area will be preferred over loss of other habitat areas that either:

- better serve to protect and enhance the function of the Reserve System (*e.g.*, by providing for connectivity between elements of the Reserve System and the Cleveland National Forest); or
- contain sensitive species that are more important to subregional biodiversity.

(4) Areas designated as having high biological value and the highest priority for preservation within the Policy Plan Area are characterized by one or more of the following attributes:

- high habitat linkage value, with primary emphasis on strengthening the Reserve System by providing biological connectivity between elements of the Reserve System and the Cleveland National Forest;
- high biodiversity value (*e.g.*, addressing the protection of species not adequately addressed in the Reserve System); and
- a capacity to consolidate habitat into contiguous blocks and improve reserve design.

(5) Conservation and development planning on lands owned by The Irvine Company within the Policy Plan Area will be guided by the following principles:

- it will protect and enhance the Reserve System by providing for biological linkages through the Policy Plan Area that connect elements of the Reserve System with each other and with the Cleveland National Forest;
- it will protect the biodiversity of the Policy Plan Area within the context of the larger Reserve System;

- it will recognize that the subregional CSS mosaic is one protected by the Reserve System and that much of the CSS in the Policy Plan Area is lower quality and not a priority for preservation;
- it will balance development and preservation objectives within the context of the NCCP Act and the Policy Plan Area. It will locate development in contiguous areas and provide for the creation of large, contiguous open space areas and avoid small, inter-connected fragments of open space and linkages.

(6) Based on the principles and priorities cited above, the highest priority for habitat preservation, linkages and connectivity within the Policy Plan Area will include the following areas (shown on Figure 24):

- Fremont Canyon, because of its unique habitat and its value as a connection between the Cleveland National Forest and Santiago Canyon;
- Black Star Canyon, because of its unique habitat and the connection it provides between the Cleveland National Forest and Santiago Creek; and
- South Windy Ridge/Upper Blind Canyon, in conjunction with SCE wildlife undercrossing of the Eastern Transportation Corridor, because the area provides a connection between Weir Canyon and the Cleveland National Forest.

(7) Based on the principles cited above the highest priority areas for development within the Policy Plan Area are the Lower Blind Canyon and Baker Canyon areas (Figure 24).

(8) Proposed development within the Policy Plan Area will be evaluated for compliance with the above principles and priorities.

(9) For NCCP/HCP purposes, to the extent that future development avoids high priority preservation areas in accordance with the above priorities, no further resource studies will be needed to confirm ecosystem viability. Proposed development within high priority preservation areas will, however, require additional studies commensurate with the extent to which such proposals potentially locate development within high priority areas.

(10) Plans for future development may be prepared for all or portions of the Policy Plan Area at any time, provided that plans shall be developed in coordination with the USFWS, CDFG and governing local jurisdictions.

(11) If plans are processed in the format of the normal development entitlement/CEQA review process, such plans shall be processed by the governing local jurisdiction according to state and local law.

(12) Plans deemed acceptable to USFWS, CDFG, The Irvine Company, and local government jurisdictions will provide the basis for amendments of the NCCP/HCP, the Implementation Agreement, and Section 10(a) Permit(s) for The Irvine Company.

(13) If local government plans are not acceptable to USFWS and CDFG, nothing in the NCCP/HCP or this Agreement limits the ability of these agencies to exercise their full powers under state and federal law.

(14) Future development within the Policy Plan Area will mitigate any significant adverse impacts on the Reserve System in a manner acceptable to USFWS and CDFG in accordance with then applicable law.

(15) Notwithstanding any of the foregoing provisions of this Section, and upon obtaining all applicable governmental approvals, the following uses are permitted within the Policy Plan Area:

- relocation of the Hicks Canyon Gun Club to a site in the Baker Canyon area;
- maintenance and operation of existing utilities and access roads;
- transfer of title, easements and construction of necessary public facilities, provided that all necessary local, state and federal permits have been obtained;
- cattle grazing and fence maintenance (subject to a grazing plan approved by USFWS and CDFG) and other activities historically undertaken by the landowner within the Policy Plan Area, such as fire management activities. (Fire management within the Policy Plan Area will be implemented consistent with the principles/procedures contained in the fire

management plan for the Reserve System). To the extent that these activities result in enhancement of existing, or creation of additional, CSS, or of non-CSS habitat deemed critical to any Identified Species, The Irvine Company shall be entitled to receive mitigation credits therefor.

(c) The failure to prepare and adopt a management plan for the Policy Plan Area shall not be considered a breach of this Agreement or serve in any way as a basis for the suspension, revocation or termination of any Section 10(a) Permit or CDFG Management Authorization pursuant to this Agreement.

## 7.0 MITIGATION BANK FOR MITIGATION OF TAKE BY NON-PARTICIPATING LANDOWNERS.

(a) Take on the part of Non-Participating Landowners is authorized only as provided in this Section 7.

(b) Non-Participating Landowners, owning land located outside the Reserve System, Special Linkage Areas and Existing Use Areas in the Central/Coastal Subregion, and containing CSS Species listed as endangered species or threatened species under CESA or FESA, may satisfy the requirements of FESA and CESA in any of the following ways:

(1) Avoidance of Take;

(2) Satisfaction of applicable FESA and CESA provisions under the consultation and permit provisions of those statutes; or

(3) Payment of a Mitigation Fee to the NCCP Non-Profit Corporation as provided herein (the "Mitigation Fee option") within signatory Local Government jurisdictions.

(c) In order to establish the basis for the use of the Mitigation Fee option by Non-Participating Landowners, each signatory Local Government shall be granted a Section 10(a) Permit by USFWS and shall be considered to be within the terms of the CDFG Management Authorization for purposes of carrying out the Mitigation Fee option provided for in this Agreement. Take of listed CSS Species by Non-Participating Landowners paying the Mitigation Fee shall be authorized by the Section 10(a) Permit(s) and CDFG Management Authorization granted to signatory Local Governments. Under the Section 10(a) Permit(s) and CDFG Management Authorization, the obligations of signatory Local Governments with respect to such Non-Participating Landowners are: (1) to assure that, prior to any Take of CSS Species listed as endangered species or threatened species under FESA or CESA, the NCCP Non-Profit Corporation has formally notified the Local Government that the Non-Participating Landowner has paid the Mitigation Fee to the NCCP Non-Profit Corporation in accordance with the provisions of this Section 7; and (2) to assure compliance of such Non-Participating Landowners with the construction-related minimization measures in the NCCP/HCP EIR/EIS. The Mitigation Fee option is not available for Non-Participating Landowners on lands within Existing Use Areas unless (1) located within a signatory Local Government jurisdiction, and (2) specifically authorized by USFWS and CDFG.

(d) Non-Participating Landowners who have paid the Mitigation Fee in order to address listed CSS Species receive authorization to Take all CSS Species, included in the

Section 10(a) Permit(s) and CDFG Management Authorization. As to each unlisted CSS Species, the authorization to Take shall be effective upon listing of the species.

(e) The NCCP Non-Profit Corporation shall establish a per acre Mitigation Fee pursuant to Chapter 6.2 of the NCCP/HCP, on a reasonable basis consistent with the standards of applicable law. The NCCP Non-Profit Corporation shall, in accordance with the process described in Chapter 6.2, establish a reasonable nexus between the Take associated with activities of Non-Participating Landowners outside the Reserve System and the amount of the Mitigation Fee. The Mitigation Fee will represent the real costs associated with implementation of the NCCP/HCP and will be adjusted over time to reflect current costs and conditions. Mitigation Fees shall be paid directly to the NCCP Non-Profit Corporation.

(f) Mitigation Fees received by the NCCP Non-Profit Corporation pursuant to this Section 7 shall be utilized solely for restoration and enhancement activities and acquisition of land for the Reserve System. The NCCP Non-Profit Corporation shall direct funds generated by the Mitigation Fee based on priorities described in Chapter 4 of the NCCP/HCP. Initial priorities set forth in the NCCP/HCP may be modified by the NCCP Non-Profit Corporation from time to time. A project-specific monitoring plan shall be developed for each restoration activity as described in Chapter 4 of the NCCP/HCP. Restoration and enhancement actions proposed for lands subject to recorded reserved rights shall be subject to any conditions established in recorded documents or other binding agreements providing for such rights; provided, however, that any reserved rights applicable to dedicated lands shall not be asserted by Participating Landowners to preclude the availability of up to 250 acres of lands restorable for CSS mitigation on the part of Non-Participating Landowners who select the Mitigation Fee

option. Additionally, any proposed restoration and enhancement actions on lands not yet included in the Reserve System, and subject to the interim management provisions of the NCCP/HCP may occur only with the written concurrence of the landowner.

(g) The NCCP Non-Profit Corporation is further authorized to accept fees from Non-Participating Landowners for habitat mitigation involving enhancement or restoration of habitat, other than that of Identified Species, within the Reserve System, consistent with the requirements of the applicable regulatory agencies. The methodology for establishing such additional fees shall be established by the applicable regulatory agencies, in consultation with the NCCP Non-Profit Corporation. The NCCP Non-Profit Corporation Board of Directors shall make a specific determination that such mitigation activities within the Reserve System are consistent with the goals, objectives and implementation programs of the NCCP/HCP.

(h) The Parties acknowledge that where Non-Participating Landowners are operating under paragraph (b)(2), above, participation in mitigation banks or acquisition of mitigation credits from public or private mitigation projects such as the TCA mitigation project at Coyote Canyon may be appropriate mitigation if authorized by USFWS or CDFG.

## 8.0 MUTUAL ASSURANCES.

### 8.1 County and Cities.

(a) Consistent with the police power, the signatory Local Governments agree to: (1) carry out NCCP/HCP implementation measures that are administrative in nature and within present discretion, consistent with existing land use regulations within existing jurisdictions, and (2) proceed to process land dedications, and modifications of existing land use regulations necessary or desirable to implement the NCCP/HCP and this Agreement for the

respective jurisdictions; provided, however, that the latter commitment does not constitute a commitment to exercise legislative discretion in any particular way. Because all significant private lands required to be added to the Reserve System pursuant to the NCCP/HCP are in the ownership of The Irvine Company and can be committed to the Reserve System by means of conservation easements, no General Plan amendments are required to assure compliance with this Agreement.

(b) Local land use regulation and land use entitlements are within the exclusive jurisdiction of the Local Governments. With respect to local government review of land use entitlements involving Take of Identified Species and impacts to CSS and Covered Habitats authorized pursuant to this Agreement, any signatory agency, other than USFWS pursuant to Section 8.9, shall not seek mitigation for impacts to Identified Species, CSS and Covered Habitats associated with Planned Activities beyond those described in the NCCP/HCP, this Agreement and the program NCCP/HCP EIR/EIS. Taking into account the extensive non-CSS habitat bio-diversity within the Reserve System, Local Governments will consider the non-CSS resources protected within the Reserve System when reviewing the direct, indirect and cumulative impacts of specific Planned Activities pursuant to CEQA.

(c) The Local Governments shall carry out the roles and responsibilities described in this Agreement and Chapter 4 of the NCCP/HCP. The construction-related minimization measures set forth in the NCCP/HCP EIR/EIS shall be included as conditions of approval in Local Government actions approving development which may result in Take. In their role as Reserve Owners/Managers, Cities shall not be required to fund restoration or

enhancement activities within the Reserve System. Funds for restoration or enhancement are provided by the NCCP Non-Profit Corporation or other funding sources.

(d) These Local Government assurances are provided in recognition of the benefits of planning certainty conveyed as a result of this Agreement (including certainty regarding the provision of necessary Infrastructure facilities within the Reserve System); the findings of Legislative purpose and regional conservation planning and economic development objectives set forth in the NCCP Act, the public health and safety benefits conferred by the Adaptive Management Program including short-term and long-term fire management, and the supremacy provisions of regulation of endangered species set forth in FESA. These assurances are determined to be reciprocal assurances to those provided by USFWS and CDFG in return for the aforementioned benefits. Consistent with these assurances, Local Governments will not approve activities resulting in Take other than as authorized pursuant to this Agreement unless approved by USFWS or CDFG.

(e) As CEQA responsible agencies, Local Governments provide these assurances on the basis of the environmental review set forth in the EIR/EIS for the NCCP/HCP.

8.2 **Participating Landowners.**

The Participating Landowners shall contribute lands to the Reserve System, and/or funding to the NCCP Non-Profit Corporation as described in the NCCP/HCP and this Agreement. Further, during the interim phase prior to transfer of lands designated for inclusion in the Reserve System to a public agency or approved non-profit entity, Participating Landowners shall allow the conduct of the interim management activities described in Chapter 4

of the NCCP/HCP on their lands and shall limit uses on such lands to those consistent with the interim management policies set forth in the NCCP/HCP.

8.3 USFWS

8.3.1 Applicability of the NCCP/HCP to Take of Identified Species.

(a) Pursuant to the 4(d) Rule, Take of the gnatcatcher, related to Planned Activities carried out in accordance with the NCCP/HCP and this Agreement, shall not be considered a violation of FESA and no further review or mitigation of Planned Activities is required under FESA.

(b) Concurrent with execution of this Agreement, USFWS has issued a Section 10(a) Permit to each Participating Landowner, authorizing the Take of the gnatcatcher incidental to the Planned Activities, subject to and in accordance with the NCCP/HCP and this Agreement.

(c) Concurrent with the execution of this Agreement, USFWS has issued a Section 10(a) Permit to each signatory Participating Landowner and Local Government, authorizing the future Take of each Identified Species incidental to the Planned Activities, subject to and in accordance with the NCCP/HCP and this Agreement. The Section 10(a) Permits shall become effective as to each such Identified Species concurrent with the listing of such species as a threatened species or endangered species under FESA. If, for any reason, the foregoing provision is determined to be illegal, or beyond the authority of USFWS, the NCCP/HCP and this Agreement shall be deemed adequate documentation to support an application for any necessary Section 10(a) Permits.

(d) For any Participating Landowner or Local Government which becomes signatory to this Agreement subsequent to the Effective Date, USFWS shall, following submission of a permit application and in accordance with USFWS regulations, issue a Section 10(a) Permit providing the same Take authorizations as for Parties signatory as of the Effective Date.

(e) USFWS agrees that the satisfactory implementation of the NCCP/HCP and of this Agreement will adequately provide for the conservation, protection, restoration, enhancement, and management of the Identified Species and their habitats in the Central/Coastal Subregion, and that no additional mitigation for Identified Species will be required of Participating Landowners.

(f) USFWS shall transfer to the NCCP Non-Profit Corporation those funds received from TCA pursuant to the Corridor Biological Opinions, as described in Section 5.4.1(b).

(g) USFWS shall use its best efforts to achieve the transfer to an appropriate entity of the 1,033 acre portion of the MCAS El Toro designated for inclusion in the Reserve System. USFWS recognizes the essential role of the MCAS El Toro Identified Species populations in the Reserve System and, in any future consultation under section 7 of FESA, will, to the maximum extent allowed by law, assure the protection of Identified Species and the commitment of the 1,033-acre MCAS El Toro lands to Adaptive Management consistent with the NCCP/HCP. Failure to include the MCAS El Toro parcel in the Reserve System shall not be deemed a breach of this Agreement or the basis for suspension, revocation or termination of any Section 10(a) Permits or the CDFG Management Authorization.

8.3.2 Special Conditions Regarding Certain Species.

(a) Several Identified Species are addressed with specific conditions, as follows:

(1) Pacific Pocket mouse

(A) A temporary preserve for the Pacific pocket mouse will be established on the Chandis-Sherman Property, on the seaward side of a fence, which is approximately the fence that presently stands on the property and which includes the area currently occupied by the Pacific pocket mouse. The location and boundaries of the preserve area are depicted on Figure 72. The total size of the temporary preserve is approximately 22 acres (of which approximately 8 acres are oceanward of the bluff edge).

(B) Chandis-Sherman will allow staff of USFWS, CDFG and County EMA (or authorized biological consultants of such entities approved by USFWS) access to the preserve area for eight years, commencing upon the date of issuance of the Section 10(a) Permit and CDFG Management Authorization for the Chandis-Sherman Property. Chandis-Sherman and their designees will retain the right to access the preserve area, provided that such access is conducted so as not to unreasonably interfere with Pacific pocket mouse research and recovery efforts. Chandis-Sherman and their designees reserve the right to conduct minor activities (such as placing minor, temporary objects in the preserve area, such as height poles, and conducting surveys, planning, engineering or environmental

studies, etc.) provided that such activities do not unreasonably interfere with Pacific pocket mouse research and recovery efforts.

(C) CDFG and USFWS agree to provide letters to the City of Dana Point and the California Coastal Commission, at the request of Chandis-Sherman, with respect to the development of the Chandis-Sherman Property and the mitigation of Planned Activities consistent with the provisions of Section 8.6(a). In any application for land use entitlements from the City of Dana Point or the California Coastal Commission, Chandis-Sherman shall propose and promote the adoption of the following measures to be applicable if the temporary preserve area is not acquired by USFWS pursuant to this Agreement and Pacific pocket mice remain within any designated natural open space areas within the former temporary preserve area:

(1) posting information signs at entry points to such designated natural open space areas regarding the status of the Pacific pocket mouse and its conservation needs;

(2) posting signs at entry points to such designated natural open space areas prohibiting the public from bringing dogs, cats and other pets into the areas; and

(3) limiting public use of such designated natural open space areas to designated walkways.

(D) Following issuance of the Section 10(a) Permit and CDFG Management Authorization for the Chandis-Sherman Property and the Section 10(a)(1)(A) Permit, Chandis-Sherman will provide to either CDFG, USFWS, the County EMA, or an appropriate conservation organization as directed by USFWS and CDFG, a total of $350,000 for use in Pacific pocket mouse propagation, enhancement, recovery and relocation efforts to suitable areas within the Reserve System. The first payment of $50,000 shall be paid on the later of (1) issuance of the Section 10(a) Permit and CDFG Management Authorization for the Chandis-Sherman Property and issuance of the Section 10(a)(1)(A) Permit or (2) January 1, 1997, and $50,000 payments shall follow every January 1 thereafter for the next six years.

(E) Following issuance of the Section 10(a) Permit and CDFG Management Authorization for the Chandis-Sherman Property, Chandis-Sherman will pay to the NCCP/HCP endowment fund a total of $500,000. The payments shall be made as annual payments of $100,000 each, for five years, with the first payment to be made within seven (7) days of the issuance of a grading permit to Chandis-Sherman for any portion of the Chandis-Sherman Property, and the following four payments to be made on the anniversary date of the first payment.

(F) Within one hundred-eighty (180) days after the issuance of the Section 10(a) Permit and CDFG Management Authorization for the Chandis-Sherman Property, or a longer period agreed to by USFWS, CDFG and Chandis-

Sherman, USFWS and CDFG will negotiate with Chandis-Sherman an option to purchase the preserve area. The option shall provide for a purchase price equal to the preserve area's fair market value, and a process and appraisal standards, assumptions and instructions by which that price shall be determined. All Parties agree that the presence of Identified Species on the site will not be a factor in determining the fair market value. The option agreement will be negotiated earnestly and in good faith by USFWS, CDFG and Chandis-Sherman. The option agreement shall provide that the option may be exercised eight years and four months following the date of the issuance of the Section 10(a) Permit and CDFG Management Authorization for the Chandis-Sherman Property, or such earlier time agreed to by USFWS, CDFG and Chandis-Sherman. If USFWS determines at or prior to expiration of the eight-year period described in (B) that translocation or captive breeding of the Chandis-Sherman Property population of the Pacific pocket mouse is not feasible and continuance of the preserve is necessary to ensure the survival and recovery of the species, USFWS shall, notwithstanding any other provision of this Agreement except Section 11.12, take all steps within its legal authority to acquire the preserve area at or prior to expiration of the temporary preserve period including, without limitation, the following:

(1) exercise its right under the option agreement described herein;

(2) in the absence of an option agreement, pursue other means of acquisition;

(3) if (1) and (2) above cannot be accomplished, USFWS shall seek to offer to exchange land of equal value to the temporary preserve area acceptable to Chandis-Sherman;

(4) if neither (1), (2) or (3) can be achieved prior to expiration of the eight-year temporary preserve period described in (B) above or expiration of the eight-year, four month option agreement period described herein, as applicable, Chandis-Sherman will offer to USFWS a series of one-year extensions of the temporary preserve period, not to exceed four (4) years, subject to the following conditions:

(A) USFWS shall continue to take all steps within its legal authority to acquire the preserve area, including, without limitation, (1), (2) and (3) above, during each one-year extension;

(B) USFWS shall make a one-year extension payment of $90,000 within ten (10) business days of expiration of the eight-year temporary preserve period described in Section 8.3.2(a)(1)(B) or

expiration of the eight-year, four-month option agreement period described herein, as applicable; and

(C) a one-year extension payment of $90,000 shall be made on or before the anniversary date of the first extension payment each year the temporary preserve period is to be extended.

(G) Upon the issuance of the Section 10(a) Permit and CDFG Management Authorization for the Chandis-Sherman Property, Take of all Identified Species shall be permitted anywhere on the Chandis-Sherman Property, other than the preserve area, in accordance with the NCCP/HCP and this Agreement and notwithstanding any designation of "critical habitat" for the Pacific pocket mouse prior or subsequent to the Effective Date of this Agreement. Upon expiration of the temporary preserve period, as it may be extended, if applicable, as described in (F) above, unless USFWS has acquired the preserve area, the Take of all Identified Species shall be permitted anywhere within the former preserve area in accordance with the Planned Activities as described in the NCCP/HCP and this Agreement and notwithstanding any designation of "critical habitat" for the Pacific pocket mouse prior or subsequent to the Effective Date of this Agreement; provided, however, the following conditions shall apply:

- Trapping of Pacific pocket mice in areas to be directly impacted by grading within the former temporary preserve area will be conducted by an authorized biologist for three days prior to any earthmoving activities. If a longer period of trapping is necessary, USFWS will assume the additional trapping costs. Should the temporary preserve period expire during the winter or early spring months when the animals are not active above ground, and therefore cannot be trapped, earthmoving activities within the former temporary preserve area shall be restricted during that period.

- Any captured Pacific pocket mice will be relocated to suitable areas designated by USFWS at the time of capture with funding from the $700,000 research and recovery budget or other USFWS sources.

During the temporary preserve period, the following construction management practices shall be required:

- Chandis-Sherman will conduct monitoring of Pacific pocket mice during construction activities within 300 feet of occupied habitat within the temporary preserve area.

- If the monitoring indicates that construction activities are causing significant adverse impacts to mice within the temporary preserve

area, members of the monitoring team will meet with construction equipment operators and Chandis-Sherman to explore practicable operational modifications to the construction activities.

- All areas of occupied habitat within the temporary preserve area adjacent to construction activities outside the temporary preserve area will be marked, equipment operators will be informed as to the significance of the marked areas and, to the maximum extent practicable, operational techniques will be adopted to prevent unintended activities outside construction areas that might impact Pacific pocket mice within the temporary preserve area.

- If research and recovery studies indicate a necessary time period during the calendar year to restrict grading, Chandis-Sherman will avoid grading immediately adjacent to occupied habitat during that time period (not to exceed a time period of four months). If the grading time restrictions for the Pacific pocket mouse fall outside of the parameters of CSS construction-related measures described in the NCCP/HCP EIR/EIS, the Pacific pocket mouse grading restriction will supersede any other grading restriction for any other species.

(H) In the event the authorization issued for Take of the Pacific pocket mouse described in Section 8.3.2(a)(1)(G) is invalidated in a final court order and a subsequent application for new Take authorization for the species is filed for the area outside the temporary preserve, as depicted in Figure 72, or such authorization is considered in a section 7 consultation under FESA, no mitigation shall be imposed by CDFG or USFWS for activities or impacts in the area outside the preserve on the basis of impacts, either inside or outside the preserve, to Pacific pocket mouse habitat or individuals of the species, and Take shall be authorized in the area outside the temporary preserve, provided that USFWS is given the opportunity to relocate any individuals of the species that may be present in the area outside the preserve. Under the circumstances of the preceding sentence, if a subsequent application for Take authorization from CDFG for the species within the temporary preserve is filed, CDFG shall not impose any mitigation for impacts to the habitat or individuals of the species above the baseline condition, which for purposes of this Agreement shall mean the 3.75 acres of occupied habitat as mapped and described in the Dana Point Headlands Specific Plan Supplemental EIR, dated September 1, 1993, and the CDFG Management Authorization shall extend to Take of the species above the baseline condition. Nothing in this subsection 8.3.2(a)(1)(H) is intended to or shall be read to require the issuance of future Take authorization by USFWS in the event that such authorization would be likely to jeopardize the continued existence of the species and the jeopardy cannot be avoided.

(I) The following conditions shall apply to the County EMA, USFWS, CDFG and landowners other than Chandis-Sherman within the Coastal subarea:

- The County EMA shall identify habitat areas located within the Coastal subarea that contain potential Pacific pocket mouse habitat. Figure 39 identifies potential pocket mouse habitat within the subarea pursuant to this condition and areas within the proposed habitat reserve system that contain potential pocket mouse habitat.
- The NCCP Non-Profit Corporation will agree to allow pocket mice to be relocated onto portions of the Reserve System determined to be suitable for the pocket mouse, and will provide for related enhancement, restoration, propagation and monitoring activities as part of the Adaptive Management Program.
- USFWS agrees to provide $350,000 in matching funds subject to funding availability for use in efforts to recover and relocate the pocket mouse over the term of the study effort. Failure to provide these funds shall not be deemed a breach of this Agreement or the basis for suspension, revocation or termination of any Section 10(a) Permits or the CDFG Management Authorization.

- Extensive trapping efforts for the Pacific pocket mouse were conducted between 1990 and the present by Participating Landowners. Based on these trapping efforts, Participating Landowners shall not be required to conduct additional trapping or surveys on their properties. In the event that Pacific pocket mouse population is encountered on participating land ownerships other than the Chandis-Sherman Property, USFWS shall assume the responsibility for identifying and implementing appropriate mitigation at no cost to the Participating Landowners and with no delays to proposed development programs.

- Non-Participating Landowners that propose development on lands identified as potential pocket mouse habitat will be required to conduct trapping surveys based on protocols developed by USFWS. If the pocket mouse is encountered on these properties, the Non-Participating Landowner shall be required, at the discretion of USFWS, to either:

  - avoid onsite impacts through project redesign;
  - prepare and process either a habitat conservation plan under section 10 of FESA or undergo a section 7 consultation under FESA; or

- fund the cost of relocating the pocket mouse population to a site within the Coastal subarea acceptable to USFWS and provide appropriate and reasonable funding for the cost of any necessary habitat enhancement or population propagation activities in the relocation area.

(2) Southwestern Arroyo toad. The southwestern arroyo toad (*Bufo microscaphus californicus*) was listed as an endangered species under FESA on December 16, 1994 (Fed.Reg., Vol. 59, No. 241, pp. 64859-64866). This species does not occur in the Coastal subarea. The arroyo toad habitat covered supports smaller populations (except for the Limestone Creek population), reintroduced populations, or populations which have expanded due to NCCP reserve management. Except as provided in Section 6.1(b)(4), habitat that supports a major arroyo toad population that plays an essential role in the distribution of the arroyo toad in the subregion is not covered. USFWS may define specific locations in the Central subarea for arroyo toad surveys. Participating Landowners shall conduct surveys at the locations specified by USFWS. It is acknowledged by the Parties that TCA has completed surveys for this species in the Santiago Creek area and such surveys have not identified the presence of this species. Except as provided in Section 6.1(b)(4), mitigation necessary to address Take of this species on lands owned by Participating Landowners shall be carried out by means of relocation of species populations to areas within the Reserve System in the

manner and locations specified by USFWS. after consultation with CDFG and the NCCP Non-Profit Corporation.

(3) Least Bell's vireo. The habitat covered supports migrants and nesting birds in locations with lesser long-term conservation values. Habitat that supports migrants or nesting birds and has potentially significant long-term conservation value in the subregion is not covered. USFWS may define specific locations in the Central/Coastal Subregion for surveys for this species. Participating Landowners shall conduct surveys at the locations specified by USFWS. Planned Activities that would affect habitat of this species shall be consistent with a mitigation plan that: 1) addresses design modifications and other on-site measures that are consistent with the project's purposes, minimizes impacts, and provides appropriate feasible protections, 2) provides for compensatory habitat restoration/enhancement activities at an appropriate location (which may include land in the Reserve System or other open space) and which may include planting of riparian trees and shrubs and/or cowbird trapping, and 3) provides for monitoring and Adaptive Management of habitat within the Reserve System including cowbird trapping, consistent with Chapter 5 of the NCCP/HCP. The mitigation plan will be developed in coordination with USFWS, CDFG, and the NCCP Non-Profit Corporation, and approved by USFWS.

(4) Southwestern willow flycatcher. The habitat covered supports migrants and nesting birds in locations with lesser long-term conservation values. Habitat that supports migrants or nesting birds and has potentially significant long-term conservation value in the subregion is not covered. USFWS may define specific

locations in the Central/Coastal Subregion for surveys for this species. Participating Landowners shall conduct surveys at the locations specified by USFWS. Planned Activities that would affect habitat of this species shall be consistent with a mitigation plan that: 1) addresses design modifications and other on-site measures that are consistent with the project's purposes, minimizes impacts, and provides appropriate feasible protections, 2) provides for compensatory habitat restoration/enhancement activities at an appropriate location (which may include land in the Reserve System or other open space) and which may include planting of riparian trees and shrubs and/or cowbird trapping, and 3) provides for monitoring and Adaptive Management of habitat, within the Reserve System including cowbird trapping, consistent with Chapter 5 of the NCCP/HCP. The mitigation plan will be developed in coordination with USFWS, CDFG, and the NCCP Non-Profit Corporation, and approved by USFWS.

(5) Quino (wright's) checkerspot. The Quino checkerspot habitat that is covered supports populations that are small and/or satellite in nature, reintroduced populations, or populations which have expanded due to NCCP reserve management. Habitat which supports a major checkerspot population that plays an essential role in the distribution of the checkerspot in this subregion and adjoining areas is not covered. Planned Activities that would affect Quino checkerspot habitat shall be consistent with a mitigation plan that: 1) addresses design modifications and other on-site measures that are consistent with the project's purposes, minimizes impacts, and provides appropriate feasible protections for the Quino checkerspot, 2) provides for compensatory habitat restoration/enhancement activities at an appropriate location (which may include land in

the Reserve System or other open space) and which may include seeding with host plants, prescribed burning or grazing, and similar activities, and 3) provides for monitoring and Adaptive Management of Quino checkerspots and their habitat within the Reserve System consistent with Chapter 5 of the NCCP/HCP. The mitigation plan will be developed in coordination with USFWS, CDFG, and the NCCP Non-Profit Corporation, and approved by USFWS.

(6) Riverside fairy shrimp. The vernal pool habitat that is covered is highly degraded and/or artificial (e.g., created as a result of past farming practices, vehicle operation, or grading). Non-degraded, natural vernal pool habitat is not covered. Planned Activities that would affect vernal pool habitat shall be consistent with a mitigation plan that: 1) addresses design modifications and other on-site measures that are consistent with the project's purposes, minimizes impacts, and provides appropriate protections for vernal pool habitat, 2) provides for compensatory vernal pool habitat restoration/creation at an appropriate location (which may include land in the Reserve System or other open space) and includes relocation of potential cyst-bearing soils, and 3) provides for monitoring and Adaptive Management of vernal pools consistent with Chapter 5 of the NCCP/HCP. The mitigation plan will be developed in coordination with USFWS, CDFG, and the NCCP Non-Profit Corporation, and approved by USFWS.

(7) San Diego fairy shrimp. The vernal pool habitat that is covered is highly degraded and/or artificial (e.g., created as a result of past farming practices, vehicle operation, or grading). Non-degraded, natural vernal pool habitat is not covered. Planned Activities that would affect vernal pool habitat shall be consistent with a

mitigation plan that: 1) addresses design modifications and other on-site measures that are consistent with the project's purposes, minimizes impacts, and provides appropriate protections for vernal pool habitat. 2) provides for compensatory vernal pool habitat restoration/creation at an appropriate location (which may include land in the Reserve System or other open space) and includes relocation of potential cyst-bearing soils, and 3) provides for monitoring and Adaptive Management of vernal pools consistent with Chapter 5 of the NCCP/HCP. The mitigation plan will be developed in coordination with USFWS, CDFG, and the NCCP Non-Profit Corporation, and approved by USFWS.

(8) Golden Eagle. Planned Activities that would affect golden eagle habitat are authorized if the habitat is more than one-half mile from an active or historically active nesting site. If the habitat is within one-half mile of an active or historically active nesting site, Planned Activities shall be sited in such a way that the activity has minimal potential to cause abandonment of the nesting site. If the activity is sited in such a way as to have more than minimal potential to cause abandonment, the activity shall be consistent with a mitigation plan that: (1) addresses design modifications or other on-site measures that are consistent with the project's purposes, minimizes impacts to nest sites, and provides appropriate protections for nest sites, (2) provides for compensatory restoration/creation (normally ledge enhancement) of nesting habitat at an appropriate location (which may include land in the Reserve System or other open space), and (3) provides for monitoring and adaptive management of cliff-nesting raptors consistent with Chapter 5 of the NCCP/HCP. The mitigation plan will be

developed in coordination with USFWS, CDFG, and the NCCP Non-Profit Corporation, and approved by USFWS.

(9) Prairie Falcon. Planned Activities that would affect prairie falcon habitat are authorized if the habitat is more than one-half mile from an active or historically active nesting site. If the habitat is within one-half mile of an active or historically active nesting site, Planned Activities shall be sited in such a way that the activity has minimal potential to cause abandonment of the nesting site. If the activity is sited in such a way as to have more than minimal potential to cause abandonment, the activity shall be consistent with a mitigation plan that: (1) addresses design modifications or other on-site measures that are consistent with the project's purposes, minimizes impacts to nest sites, and provides appropriate protections for nest sites, (2) provides for compensatory restoration/creation (normally ledge enhancement) of nesting habitat at an appropriate location (which may include land in the Reserve System or other open space), and (3) provides for monitoring and adaptive management of cliff-nesting raptors consistent with Chapter 5 of the NCCP/HCP. The mitigation plan will be developed in coordination with USFWS, CDFG, and the NCCP Non-Profit Corporation, and approved by USFWS.

(10) Foothill Mariposa Lily. Planned Activities affecting populations smaller than 20 individuals are fully authorized. Planned Activities that affect populations of between 20 and 100 individuals (this number may be adjusted by USFWS and CDFG if reserve monitoring shows the size of potentially important populations to be different), shall be consistent with a mitigation plan that: (1) addresses design

modifications or other on-site measures that are consistent with the project's purposes, minimizes impacts to foothill mariposa lily habitat, and provides appropriate protections for any adjoining conserved foothill mariposa lily habitat, (2) provides for an evaluation of salvage, restoration/enhancement/management of other conserved mariposa lily, or other mitigation techniques to determine the most appropriate mitigation technique to offset impacts, and implements mitigation consistent with the foregoing evaluation, and (3) provides for monitoring and adaptive management of foothill mariposa lily consistent with Chapter 5 of the NCCP/HCP. The mitigation plan will be developed in coordination with USFWS, CDFG, and the NCCP Non-Profit Corporation, and approved by USFWS.

(b) With respect to the Blochman's dudleya population on the Chandis-Sherman Property only, Chandis-Sherman shall offer to relocate any population of Blochman's dudleya which will be directly impacted by grading. Chandis-Sherman shall bear all reasonable costs (not to exceed $23,000) associated with the relocation of such populations, as such costs are incurred, excluding any and all costs associated with the acquisition of any real property interests in or rights of access to the relocation site. Any other populations may remain on site without further mitigation by Chandis-Sherman. At the election of Chandis-Sherman, Chandis-Sherman may opt to undertake a seed collection and planting program in lieu of translocation of existing individuals onsite if such plan meets the approval of CDFG and USFWS. Under either method, CDFG is obligated to identify the relocation site and secure all permissions required to conduct the relocation, if any, at its expense, within one (1) year of the receipt of a request from Chandis-Sherman to identify the relocation site and may relocate the population, without such request, at any time two years after issuance of the

Section 10(a) Permit and CDFG Management Authorization for the Chandis-Sherman Property. Failure of CDFG to identify and make available a reasonable site within the one year time period upon the Chandis-Sherman notice shall entitle Chandis-Sherman to remove any population to be directly impacted without relocation. Chandis-Sherman shall use their best efforts to notify CDFG of any grading activities at the earliest practicable time and not later than 90 days preceding commencement of such activities, although notice provided pursuant to this subsection (b) need not be tied to grading or disturbance on the site.

8.3.3 **Future Listing of Identified Species and Other Species in the NCCP/HCP Area.**

USFWS agrees to specifically consider the provisions of the NCCP/HCP in any determination regarding the listing as an endangered species or threatened species of any Identified Species or any other species whose habitat is found in the Reserve System.

8.3.4 **Listing Procedure and Findings For Species Other Than Identified Species and Procedures Regarding Covered Habitats.**

(a) Except as otherwise authorized for those species listed in Table 4-10 and addressed in Section 8.8, USFWS shall utilize the procedures set forth in this Section 8.3.4 in responding to any listing petition or proposal, and in processing any Proposed Listing, for species other than Identified Species found within the Central/Coastal Subregion.

(b) Upon becoming aware that a species other than an Identified Species may be proposed for listing as a threatened species or endangered species pursuant to FESA, USFWS shall fully consult with the NCCP Non-Profit Corporation and the Participating Landowners and shall specifically take into account the degree of habitat protection afforded to the particular species by the Reserve System and the Special Linkage Areas, and the efforts made by the

Adaptive Management Program relating to the applicable habitat(s). Prior to making a determination that a petition contains a sufficient level of information to justify a "may be warranted" finding under 50 C.F.R. 424.14, USFWS shall review all applicable data relevant to the particular species available from subregional areas in the CSS NCCP Program in order to evaluate whether the species proposed for listing can be protected through presently existing plans and planning programs. If the USFWS determines that there is sufficient scientific basis to propose the species for listing, USFWS shall identify any mitigation measures, including potential Adaptive Management measures, which would allow for Take of the particular species pursuant to Section 10 of FESA.

(c) In order to further the purpose of FESA "to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved" and to reverse the trend towards species extinction found by the courts to be the intent of Congress in enacting FESA, the 4(d) Rule for the gnatcatcher incorporates the biodiversity goals of the NCCP Conservation Guidelines' tenets of reserve design, as well as the specific CSS reserve design elements of the Conservation Guidelines. In keeping with the Conservation Guidelines' prescription that "blocks of habitat [within the NCCP reserves] should contain a diverse representation of physical and environmental conditions," the Central/Coastal NCCP/HCP contains sufficient habitat of certain types that USFWS, on the basis of the review provided in the NCCP/HCP and EIR/EIS, finds the Covered Habitats to be protected in a manner comparable to the protection of CSS afforded by the NCCP/HCP. USFWS finds that programmatic elements of the NCCP/HCP further the protection of important ecosystems and in so doing likely reduce the need for listing species dependent upon or associated with the

foregoing habitats; these elements of the NCCP/HCP include the NCCP/HCP reserve design and land commitments, the certainty of Adaptive Management funding, the early commitment of private lands to Adaptive Management prior to dedication and the commitments to habitat protection extending beyond the term of the Section 10(a) Permit.

(d)(1) Based on the factors described in (c), above, USFWS shall, upon a timely application from one or more Participating Landowners, issue Section 10(a) Permits to the Participating Landowners for those species other than Identified Species dependent upon or associated with CSS or the Covered Habitats for Planned Activities occurring within CSS or Covered Habitats as described in the NCCP/HCP and this Agreement, concurrent with listing of such species as endangered species or threatened species.

(2) USFWS may condition a Section 10(a) Permit issued pursuant to this paragraph (d) to require commitment of additional land or funds on the part of Participating Landowners only if USFWS reasonably determines all of the following:

(A) USFWS has taken all appropriate steps within its legal authority to insure that all statutory and regulatory requirements necessary to issue Section 10(a) Permit(s) to the Participating Landowners are met, such that no further land or funds beyond that required by the NCCP/HCP and this Agreement will be required on the part of Participating Landowners. For the purposes of this paragraph, steps within the legal authority of USFWS include, but are not limited to, USFWS-funded habitat acquisition, USFWS-funded species relocation, and land exchanges to secure necessary habitat.

(B) Notwithstanding steps taken by USFWS under (A), commitment of additional land or funds on the part of Participating Landowners is necessary to avoid jeopardy to the species.

(C) The proposed additional mitigation measures requiring land or funds would be the least burdensome of the available means on the Participating Landowner(s).

(3) If, following the application of the provisions of this paragraph (d), USFWS is unable to make the jeopardy findings required for issuance of the Section 10(a) Permit(s), USFWS shall not issue any Section 10(a) Permits that would result in jeopardy to a species covered by this paragraph. Further, if following the application of the provisions of this paragraph (d), USFWS is unable to make the jeopardy findings required for issuance of the Section 10(a) Permit(s), USFWS and the Participating Landowners shall, at the request of any Participating Landowner, continue to work together with the Participating Landowner consistent with this paragraph (d) to allow issuance of the Section 10(a) Permit(s).

(e) For purposes of this Agreement, the terms "dependent upon" and "associated with" will have the meaning described in this paragraph.

(1) A species will be considered "dependent upon" a particular habitat when that habitat provides the primary space for the individuals of the species to feed, grow, reproduce, and undertake essential behavior patterns. A species is likely dependent upon a habitat if that habitat provides its primary sources of food, nutrition, substrate, cover or shelter, including sites for breeding, reproduction, pollination, and rearing of

offspring, on a continual or seasonal basis. If a species is considered dependent upon CSS or a Covered Habitat, then that habitat would provide the primary biological and physical elements essential for the conservation of the species.

(2) The term "associated with" refers to habitats that may be occasionally occupied by a species that spends the majority of its time in other habitats, although the loss of the CSS or Covered Habitat may cause injury to the species.

8.3.5 **Critical Habitat Designation for Presently Listed Species or for Future Listed Species.**

(a) By incorporating the CSS NCCP Program into the 4(d) Rule for the gnatcatcher and as reviewed in the accompanying NEPA Environmental Assessment, USFWS determined that the overall CSS NCCP Program provides a comprehensive, habitat-based approach to the protection of the habitat of the CSS Species consistent with the overall FESA statutory purpose "to provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved."

(b) Section 424.12 of the FESA regulations specify the criteria to be used by USFWS in designating critical habitat. These criteria include "those physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protection" (50 C.F.R. 424.12(b)). The basic premise of the Conservation Guidelines' tenets of reserve design, as reviewed in the NCCP/HCP and EIR/EIS, is to identify CSS essential to the conservation of the CSS Species and, thus, the Conservation Guidelines specifically address one of the fundamental requirements of a critical habitat designation. In turn, the NCCP/HCP, in conforming with those guidelines, establishes a Reserve

System and Adaptive Management Program which maintain net habitat value for the CSS Species within the Central/Coastal Subregion on a long-term basis, and, in so doing: (1) provide for, through the Reserve System, the protection of "those physical and biological features essential to the conservation of" the CSS Species and (2) provide for, through the Adaptive Management Program, "special management considerations" and "protection" specified in the foregoing critical habitat determination regulation.

(c) The NCCP/HCP also identifies the "principal biological or physical constituent elements within the defined area that are essential to the conservation of the [CSS] species" in a manner consistent with the critical habitat determination requirements of 50 C.F.R. 424.12(b). The principal biological and physical constituents within the Central/Coastal Subregion essential to the conservation of the CSS Species are set forth in Chapters 2, 3 and 4 of the NCCP/HCP and were applied directly in the formulation of the Reserve System as reviewed in the NCCP/HCP and EIR/EIS. Consistent with 50 C.F.R. 424.12(c), the specificity of the reserve design complies with the requirement that "each critical habitat will be defined by specific limits using reference points and lines as found on standard topographic maps of the area."

(d) The Conservation Guidelines, as incorporated into the 4(d) Rule, indicate that NCCP regional planning is to be conducted, approved and implemented on the basis of subregional planning areas that may proceed independently of one another. Thus, habitat essential to the conservation of the CSS Species is to be addressed at the subregional, as well as regional, level. Given the scale of the Central/Coastal Subregion, the scale of the Reserve System and the comprehensive nature of the special management considerations incorporated

into the Adaptive Management Program, USFWS concludes that the Reserve System and Adaptive Management Program identify, and include within the Reserve System, the habitat owned by Participating Landowners "essential to the conservation" of the CSS Species and the "special management" measures necessary to manage CSS on lands of Participating Landowners within the Central/Coastal Subregion in a manner that will "provide for the conservation of the species involved."

(e) Based on the preceding paragraphs, USFWS agrees that, consistent with the Assurances Policy set forth in Section 8.9, in the event that a critical habitat determination is made for any CSS Species and upon a determination that the NCCP is functioning properly, no additional mitigation in the form of land or financial compensation shall be required of any Participating Landowner in connection with Planned Activities through the section 7 consultation process under FESA or otherwise.

8.3.6 **Future Recovery Plans For Presently Listed Species Or For Future Listed Species.**

USFWS shall coordinate with the NCCP Non-Profit Corporation, Reserve Owners/Managers and the Participating Landowners in preparing and finalizing any recovery plan for a CSS Species. Based on the geographic scope of the Reserve System and Adaptive Management Program and on the CEQA/NEPA review of the contributions of the Reserve System and Adaptive Management Program to the long-term protection and recovery of CSS Species, USFWS and CDFG conclude that the NCCP/HCP contributes significantly to the long-term protection and recovery of the CSS Species. Accordingly, assuming the NCCP/HCP is functioning properly, USFWS agrees, consistent with the Assurances Policy as set forth in

Section 8.9, any recovery plan applicable to CSS Species found on lands within the Central/Coastal Subregion shall: (1) not require any additional financial compensation or land on the part of Participating Landowners; (2) be prepared in full consultation with the NCCP Non-Profit Corporation and Participating Landowners and, as applies to the Central/Coastal Subregion, address its final recommendations to the NCCP/HCP implementation program as identified in this Agreement; and (3) not in any way affect any Section 10(a) Permit issued pursuant to the NCCP/HCP or the provisions of this Agreement.

8.3.7 Migratory Bird Treaty Act.

(a) Any Section 10(a) Permit issued pursuant to this Agreement for the Take of a listed species, an unlisted Identified Species, or a species associated with or dependent upon CSS or Covered Habitats shall, when such permit is effective under FESA, also constitute a Special Purpose Permit under 50 C.F.R. § 21.27 for the take of species covered by such permit in the amount and/or number and subject to the same terms and conditions as specified in such permit. Any such take will not be in violation of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. §§ 703-12). Such Special Purpose Permit shall be valid for a period of three years from its effective date, provided the associated Section 10(a) Permit remains in effect for such period, subject to renewal as provided in paragraph (b).

(b) Any Special Purpose Permit under 50 C.F.R. § 21.27 as described in this section shall be renewed, provided that the permit holder remains in compliance with the terms of this Agreement. Each such renewal shall be valid for a period of three years, provided the associated Section 10(a) Permit remains in effect for such period.

8.4 CDFG.

8.4.1 Applicability of the NCCP/HCP to Take of Identified Species.

(a) CDFG agrees that the satisfactory implementation of the NCCP/HCP and this Agreement will adequately provide for the conservation, protection, restoration, enhancement, and management of the Identified Species and their habitats in the Central/Coastal Subregion. Compliance with the terms of this Agreement constitutes compliance with the provisions of the NCCP Act, the California Native Plant Protection Act (Fish & Game Code § 1900 et seq.) and CESA.

(b) The NCCP Act authorizes the Take of Identified Species whose long-term protection and management is provided for in an approved NCCP. The NCCP Act and CESA provide for the Take of species listed under CESA as endangered or threatened, and of CESA Candidate Species pursuant to sections 2825(c), 2830, and 2835 (including, but not limited to, 2081 and 2090-2095). As further specified in Sections 2 and 3 of this Agreement, CDFG has found and determined that the NCCP/HCP meets the requirements for a NCCP for purposes of the NCCP Act and that the long-term protection and management requirements of the NCCP/HCP are proportional to the projected impacts of Planned Activities to Identified Species as reviewed in the NCCP/HCP EIR/EIS. Pursuant to the above-referenced provisions of the Fish and Game Code, CDFG authorizes the Take of Identified Species subject to the terms and conditions of this Agreement. Accordingly, this Agreement constitutes the conditions of a present management authorization to Take Identified Species in conjunction with Planned Activities pursuant to the NCCP Act and CESA ("CDFG Management Authorization"). In the event that one or more of the Identified Species is listed under CESA as an endangered species,

threatened species or CESA Candidate Species after the Effective Date of this Agreement. Take of such Identified Species is then authorized pursuant to this CDFG Management Authorization. No additional permit or authorization shall be required by CDFG to allow Take of Identified Species as provided by the NCCP/HCP and this Agreement. The Parties acknowledge and accept that the Take authorization provided by CDFG in this Agreement does not constitute or imply compliance with or authority to proceed with any Planned Activities under laws other than the NCCP Act, the Native Plant Protection Act (Fish and Game Code §§ 1900, et seq.). and CESA.

(c) CDFG concurs in the USFWS commitments regarding recovery planning set forth in Section 8.3.6, and determines that the NCCP/HCP satisfies any requirements under CESA or the NCCP Act to protect and conserve species in a manner comparable to the FESA recovery plan provisions.

### 8.4.2 Applicability of NCCP/HCP in Future CDFG Decisions and Recommendations.

CDFG agrees to specifically consider the provisions of the NCCP/HCP in any determination, including but not limited to any recommendations to the California Fish and Game Commission, regarding any Proposed Listing of any Identified Species or any other species whose habitat is found in the Central/Coastal Subregion.

### 8.4.3 Listing Procedures.

In evaluating a petition to add any species found within the Central/Coastal Subregion to either the list of endangered species or the list of threatened species under Fish and Game Code section 2073.5, or in making recommendations to add a species to such lists under

Fish and Game Code section 2072.7, CDFG shall (1) immediately inform the NCCP Non-Profit Corporation that a petition has been received, and (2) prior to making its recommendation, consider specific information provided by the NCCP Non-Profit Corporation describing the existing management efforts undertaken pursuant to this Agreement, the NCCP Non-Profit Corporation's plans for future Adaptive Management, and whether the approved NCCP/HCP and the Adaptive Management Program will reasonably assure that the species proposed for listing will be protected.

8.4.4 Covered Habitats.

In order to further the legislative findings of the NCCP Act to promote "the conservation of broad based natural communities and species diversity," the Conservation Guidelines' tenets of reserve design specify that "blocks of habitat [within NCCP reserve systems] should contain a diverse representation of physical and environmental conditions. On the basis of its review of the NCCP/HCP and EIR/EIS, CDFG finds that the Covered Habitats will be protected in a manner comparable to the protection of CSS afforded by the NCCP/HCP. CDFG further finds that programmatic elements of the NCCP/HCP foster the protection of important ecosystems and will likely reduce the need for listing of species dependent upon or associated with the Covered Habitats; these elements of the NCCP/HCP include the certainty of NCCP/HCP reserve design and land commitments, the certainty of Adaptive Management funding, the early commitment of private lands to Adaptive Management prior to dedication and the commitments to habitat protection extending beyond the term of this Agreement. Based on these factors and on the mitigation assurances provided by USFWS pursuant to this Agreement, CDFG determines that, for species other than Identified Species listed pursuant to both FESA

and CESA and dependent upon or associated with CSS and the Covered Habitats. CDFG will issue Section 2081 authorizations for such species pursuant to Fish & Game Code Section 282: concurrent with listing, to Participating Landowners for Planned Activities carried out in accordance with the NCCP/HCP and this Agreement. For species listed pursuant to CESA only, CDFG will likewise, in furtherance of the legislative findings of the NCCP Act, issue Section 2081 permits for such species pursuant to Fish & Game Code Section 2825(c).

8.5 CDF.

CDF agrees that the fire management planning process, provided for pursuant to Chapter 4 of the NCCP/HCP, fully addresses CDF regulations with regard to prescribed burns of land within the Central/Coastal Subregion. Upon completion of the NCCP/HCP fire management planning process CDF shall not require any additional discretionary permits or authorizations for implementation of prescribed burns pursuant to the NCCP/HCP.

8.6 Other Regulatory Permitting.

(a) The Parties to this Agreement acknowledge that the Participating Landowners may also be subject to permit requirements of agencies not parties to this Agreement, such as permits under section 404 of the Federal Clean Water Act, and to the permit requirements of Fish and Game Code sections 1601 and 1603. Except as provided in Section 8.9(i), participation in the NCCP/HCP shall constitute the full extent of mitigation measures directed specifically at the Take of Identified Species related to Planned Activities of Participating Landowners required or recommended by USFWS pursuant to FESA and NEPA, and CDFG pursuant to CESA and CEQA, in conjunction with other state and federal permits within the Central/Coastal Subregion. Except as otherwise provided in this Agreement, CDFG

and USFWS agree that they will not impose, or seek to impose, any additional mitigation requirements directed specifically at the protection and conservation of Identified Species, CSS and Covered Habitats related to Planned Activities of Participating Landowners within the Central Coastal Subregion through any agency approval process whether or not such agency is a party to this Agreement, beyond those mitigation measures which are provided for in this Agreement.

(b) In any section 7 consultation or Section 10(a) Permit application that may be required or processed pursuant to FESA subsequent to the Effective Date, with regard to the Planned Activities involving "Take" other than Take identified in the NCCP/HCP, USFWS shall, to the greatest extent appropriate, utilize the data and methodology of the biological opinion issued with regard to the approval of the NCCP/HCP.

8.7 **Future Environmental Documentation.**

(a) In issuing any permits or other approvals with regard to Participating Landowners' Planned Activities, for any Identified Species, CSS, Covered Habitats or species covered by Section 8.3.4(d), and with regard to Non-Participating Landowners' activities for CSS Species, absent a finding of Extraordinary Circumstances as defined in Section 8.9, and subject to any requirements of NEPA (including 40 C.F.R. § 1502.9(c)), USFWS shall rely on and shall utilize the EIR/EIS prepared in conjunction with the NCCP/HCP as the NEPA environmental document for such permits and approvals and for any other approval process subject to its jurisdiction or involvement with regard to potential impacts on Identified Species, CSS, Covered Habitats or species covered by Section 8.3.4(d). CDFG shall rely on the EIR/EIS

prepared in conjunction with the NCCP/HCP as appropriate CEQA documentation for any future approvals regarding potential impacts to Identified Species related to Planned Activities.

(b) The Parties understand and intend that the EIR/EIS prepared in conjunction with the NCCP/HCP will operate as a "program" EIR and EIS pursuant to applicable provisions of the Council on Environmental Quality NEPA regulations (40 C.F.R. § 1500 et seq.), the CEQA Guidelines (14 C.C.R. § 15000 et seq.) and the NCCP Act. Accordingly, the Local Governments shall, consistent with the provisions of CEQA and Section 8.1, rely on and utilize the EIR prepared in conjunction with the NCCP/HCP in evaluating future planning decisions, and in issuing any permits or other approvals within the Central/Coastal Subregion with regard to the Planned Activities. Subsequent activities will be examined in light of the program EIR/EIS and Section 8.1 to determine if additional environmental documentation is required. In this respect, CDFG and each non-Federal signatory agency have determined that compliance with the NCCP/HCP and this Agreement mitigates or avoids impacts to Identified Species and, absent a finding of Extraordinary Circumstances as defined and provided in Section 8.9, any Take authorized by this Agreement will not constitute a significant impact on the Identified Species and their respective habitats.

(c) The Parties understand that a reuse planning process has been initiated for MCAS El Toro. The Parties further understand that any environmental documentation prepared in connection with this reuse planning process, including the consideration of future civilian aviation use at MCAS El Toro, will include a description of the environment in the vicinity of the project, as it exists before the commencement of the proposed project or any of its proposed alternatives, from both a local and a regional perspective. The Parties further understand and

intend that solely for purposes of the analysis of the potential biological impacts of the proposed project or any of its proposed alternatives relating to the effect of noise on sensitive wildlife and their behavior patterns, the environmental setting (i.e., the "existing aircraft noise exposure") in the environs of MCAS El Toro shall be quantified using the noise contours provided in the 1981 *Air Installation Compatible Use Zones Study ("AICUZ")* and material and information included in and a part of, the NCCP/HCP EIR/EIS. The Parties further understand that except to the extent provided in this paragraph and Section 8.11, reliance upon or use of the AICUZ contours for the NCCP purposes above does not predetermine its appropriateness for the purposes of determining the reuse of MCAS El Toro nor to predict or influence the selection of any land use as part of the reuse planning process.

8.8 **Future Designation of New Identified Species.**

(a) In the event that one or more species is proposed by any Party to be added as a new Identified Species, such species shall be added to the list of Identified Species if USFWS and CDFG determine that the conservation and management measures set forth in the NCCP/HCP satisfy the requirements of Section 10(a)(1)(B) of FESA and Fish and Game Code sections 2081, 2084, 2825(c), 2830 or 2835, as applicable, with respect to the proposed Identified Species. It is anticipated that the species described in Table 4-10 may be added as Identified Species pursuant to this Section. However, under FESA, no Take of new Identified Species is authorized until the Section 10(a) Permit(s) are amended to authorize such Take. Any Section 10(a) permitee may request amendment of a Section 10(a) Permit at any time to add a new Identified Species, and USFWS shall promptly review and process such amendment request.

(b) The NCCP/HCP shall be adequate documentation to support an amendment of the Section 10(a) Permits and CDFG Management Authorization to incorporate additional Identified Species if:

(1) Surveys for such species have been completed in accordance with USFWS/CDFG protocols, or if none exist, in accordance with accepted biological practice;

(2) The NCCP/HCP is amended, if necessary, to provide for any additional management measures or other mitigation determined necessary, after consultation with the NCCP Non-Profit Corporation, by USFWS and CDFG to assure protection for such species consistent with the requirements of FESA Section 10(a)(1)(B) and Fish & Game Code Sections 2081, 2084, 2825(c), 2830 and 2835 as applicable; and

(3) The NCCP/HCP amendment provides for adequate assurances, to the satisfaction of USFWS and CDFG, including a commitment of any necessary funding, that the management measures identified pursuant to (2) above will be carried out.

(c) Upon a determination that standards for issuance of an Incidental Take permit have been met and satisfaction of any applicable public review requirements, USFWS and CDFG will formally certify that they have approved the applicable CDFG Management Authorization amendments and Section 10(a) Permit amendments, and corresponding amendments to this Agreement. As soon as the amendment to this Agreement and the applicable Section 10(a) Permits become effective, pursuant to Section 10.1, the additional species shall be treated as Identified Species for all purposes and in the manner specified in this Agreement.

8.9 Identification of Unforeseen or Extraordinary Circumstances.

(a) The Assurances Policy provides that USFWS "shall not require the commitment of additional land or financial compensation beyond the level of mitigation which was otherwise adequately provided for a species under the terms of a properly functioning HCP. Moreover, [USFWS] shall not seek any other form of additional mitigation from an HCP permitee except under extraordinary circumstances."

(b) For the purposes of this Agreement, "unforeseen circumstances" under 50 C.F.R. section 17.22 and 17.32 include Extraordinary Circumstances.

(c) The provisions of the Assurances Policy shall remain in effect to the extent that there remains any potential for additional mitigation requirements to provide for an Identified Species and any species covered by Section 8.3.4(d) on the part of a Participating Landowner.

(d) In the event that USFWS determines that mitigation beyond, or inconsistent with, that provided by the NCCP/HCP and this Agreement (but excluding modification to management of the Reserve System consistent with the Adaptive Management Program) is needed for an Identified Species, and where an Extraordinary Circumstances finding has not been made pursuant to Section 8.9 and the Parties are otherwise in compliance with the NCCP/HCP, USFWS shall not seek to impose or impose any additional mitigation, on any other Party.

(e) For the purposes of this Agreement the term "Extraordinary Circumstances" means a significant and substantial adverse change in the population of an Identified Species within the Central/Coastal Subregion, which was not contemplated by the

NCCP/HCP. Extraordinary Circumstances shall include a decline in the populations of Identified Species within the meaning of 50 CFR 13.28(a)(5). Any such decline in populations shall be addressed in accordance with the provisions of this Section 8.9.

(f) In deciding whether any Extraordinary Circumstances exist, USFWS shall consider, but not be limited to, the following factors:

- The size of the current range of the affected species.
- The percentage of the range of the species that has been adversely affected by the activities contemplated by the NCCP/HCP.
- The percentage of the range of the species that has been conserved by the NCCP/HCP.
- The ecological significance of that portion of the range of the species affected by the NCCP/HCP.
- The level of knowledge about the affected species and the degree of specificity of the species' conservation program under the NCCP/HCP.
- Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

(g) The Parties acknowledge, pursuant to the biological findings for the listing of the gnatcatcher as a threatened species under Section 4(d) of the FESA, the Assurances Policy and the provisions of the NCCP Act as implemented through the Conservation Guidelines, that the geographic scale of the NCCP/HCP subregional Reserve System and the scope of the NCCP/HCP Adaptive Management measures are such that any determination regarding

Extraordinary Circumstances provided for in this Agreement must be made in the context of and in response to the NCCP/HCP. In the event that USFWS believes that Extraordinary Circumstances may have occurred it shall notify the NCCP Non-Profit Corporation, in writing, of the specific facts that may constitute Extraordinary Circumstances and the evaluation of the factors described above. In the notification USFWS shall clearly document the basis(es) for the proposed finding regarding the existence of Extraordinary Circumstances. Within sixty (60) days of receiving such notice the NCCP Non-Profit Corporation, USFWS and CDFG shall meet to consider the facts cited in the notice and to determine if Adaptive Management measures can address the concerns raised in the notice. Only where USFWS concludes, following consultation with the NCCP Non-Profit Corporation and CDFG, that Adaptive Management measures cannot address the situation shall USFWS proceed to finalize a finding of Extraordinary Circumstances.

(h) USFWS shall make an Extraordinary Circumstances determination only upon the basis of: (1) a finding by the Director or Regional Director of USFWS, based on the best scientific evidence available that is clear and convincing and after considering any responses submitted by any other Parties, that there are Extraordinary Circumstances; and (2) a finding by the Director or Regional Director of USFWS, that the Extraordinary Circumstances cannot be addressed by Adaptive Management measures under the NCCP/HCP and this Agreement. In making such determination, USFWS shall have the burden of demonstrating the existence of Extraordinary Circumstances.

(i) In the event that USFWS makes a finding of Extraordinary Circumstances and such Extraordinary Circumstances warrant the requirement of additional mitigation, such additional mitigation shall be fully consistent with the provisions of the Assurances Policy as set

forth in this Agreement. Such additional mitigation shall be restricted to modification of the management of the Reserve System, and USFWS shall take the necessary action to ensure that the ability of the Participating Landowners to maintain the Take authorization and other benefits of this Agreement regarding Identified Species is not adversely affected.

8.10 Changed Biological Conditions.

(a) CDFG agrees that, for the purposes of this Agreement, the provisions set forth in Section 8.9 regarding unforeseen/extraordinary circumstances, shall govern any CDFG obligation, under CESA, the NCCP Act or any other provision of law, to address changed biological conditions.

(b) In the event that CDFG determines that mitigation beyond that provided by the NCCP/HCP and this Agreement is needed for an Identified Species, and where an Extraordinary Circumstances finding has not been made by CDFG, and the Parties are otherwise in compliance with the NCCP, CDFG shall not seek to impose or impose any additional mitigation on any other Party.

(c) In determining whether Extraordinary Circumstances exist, CDFG shall utilize the same definitions and factors set forth in Section 8.9, above. In the event that CDFG believes that Extraordinary Circumstances may have occurred, they shall follow the same procedures set forth in Section 8.9, and shall make an Extraordinary Circumstances determination based on findings by the Director of CDFG in the same manner as set forth in Section 8.9(h).

(d) In the event that CDFG makes a finding of Extraordinary Circumstances, and such Extraordinary Circumstances warrant the requirement of additional mitigation, such

additional mitigation shall be restricted to modification of the management of the Reserve System, shall not involve any additional commitment of lands or funds by Participating Landowners and shall not in any way adversely affect the ability of the Participating Landowners to maintain the CDFG Management Authorization and other benefits of this Agreement regarding Identified Species.

8.11 El Toro Marine Corps Air Station Reuse Planning Process.

(a) The County has been designated by the United States Department of Defense as the official Local Redevelopment Authority for MCAS El Toro in connection with the base reuse planning process.

(b) The Parties understand and intend that this Agreement and the NCCP/HCP have been structured and designed in cooperation with and to the satisfaction of USFWS and CDFG to avoid conflicts between the provisions, goals and objectives of this Agreement and the reuse planning process for MCAS El Toro, and to accommodate future reuse of MCAS El Toro, in accordance with the principles and provisions set forth in paragraphs (c) and (d), below.

(c) If future aviation uses are approved as part of the reuse plan, these uses may occur in the airspace above or adjacent to a portion of the 1,033 acre proposed NCCP Reserve System at MCAS El Toro. USFWS and CDFG find that historic Marine Corps aviation uses, including a range of aviation related activities within the scope, boundaries and noise contours of the 1981 AICUZ study for MCAS El Toro, have created significant noise levels and impacts but that such noise levels and impacts have not adversely affected Target Species within the 1,033 acre area, or nearby areas on the frontal slopes of Lomas Ridge, proposed for inclusion in the Reserve System. Therefore, USFWS and CDFG assure and agree that any future aviation

use of MCAS El Toro outside the 1,033 acres or in the airspace above, which does not generate CNEL noise levels in the 1,033 acre portion of the Reserve System greater than those identified in the 1981 AICUZ study for MCAS El Toro are consistent with the NCCP/HCP and that no conditions or opposition to such aviation use(s) will be required, proposed or advanced by USFWS or CDFG.

(d) Neither USFWS nor CDFG shall seek to impose any mitigation requirements for impacts to the Identified Species or their habitats beyond those provided by the NCCP/HCP and this Agreement in connection with the reuse planning process for MCAS El Toro. The mitigation measures and assurances provided in this Agreement shall be considered by USFWS and CDFG to serve as the basis for authorization of Take of any Identified Species on those portions of MCAS El Toro outside the 1,033 acres designated for inclusion in the Reserve System.

8.12 **Crystal Cove State Park Facilities.**

The Parties agree that the Crystal Cove General Plan of 1982 is compatible with the policies of the NCCP/HCP and this Agreement. New facilities or improvement, repair, maintenance and operation of existing facilities in accordance with the adopted 1982 General Plan are authorized within the Reserve System. Eighteen acres of mitigation credit for impacts to CSS is assigned to Crystal Cove State Park to off-set future impacts, based on two ongoing CSS restoration programs covering 18 acres within the park. Any impacts to habitat within the Reserve System that occur in accordance with the adopted General Plan of the Crystal Cove State Park will be evaluated by CDFG, USFWS, and the NCCP Non-Profit Corporation, and appropriate mitigation will be determined. Should the mitigation for such impacts exceed the

allowed 18 acres of credit. additional mitigation may be required, and such mitigation requirements will be cooperatively defined by CDFG, USFWS, the NCCP Non-Profit Corporation and CDPR.

9.0 TAKE.

9.1 General.

(a) Take authorized by the NCCP/HCP and this Agreement may occur as the result of any of the Planned Activities, including: (1) construction activities undertaken pursuant to local government authorization or authorization by the Regents, (2) construction of Infrastructure facilities, (3) ongoing maintenance of existing and future Infrastructure facilities, (4) recreational activities within the Reserve System, and (5) habitat management activities, including activities under the management plans identified in Section 5.3.2(b), carried out pursuant to the Adaptive Management Program of the NCCP/HCP. Take related to these Planned Activities is authorized by the Section 10(a) Permit(s), the Section 10(a)(1)(A) Permit and CDFG Management Authorization.

(b) The Parties acknowledge that the number of gnatcatcher individuals occurring within the Central/Coastal Subregion will fluctuate over time. The gnatcatcher sites identified in the NCCP/HCP, located outside the Reserve System, and authorized for Take by the NCCP/HCP, may not represent all of the gnatcatchers occurring on the subject development sites at the time of actual development. Because of the potential for dispersal and population changes over time, it is possible that additional gnatcatchers may be Taken in areas subject to development under the NCCP/HCP and this Agreement, at some time in the future. If additional gnatcatchers do disperse on to such lands outside the Reserve System, owned or controlled by

Participating Landowners as of the Effective Date, development of these lands shall be considered fully mitigated for purposes of impacts to the gnatcatcher, and no additional mitigation shall be required.

(c) Due to dispersal patterns and periodic fluctuations in Identified Species population locations and numbers, authorized Take, as described in the NCCP/HCP and this Agreement, and as authorized by the Section 10(a) Permits and CDFG Management Authorization, is stated in terms of acres modified regardless of the number of Identified Species individuals occupying the area affected at the time habitat modification actually occurs.

9.2 **Authorized Take.**

9.2.1 **Take Within the Reserve System by Participating Landowners.**

(a) Take of Identified Species (acres of CSS) is authorized within the Reserve System, related to Planned Activities, as described in Chapters 4 and 5 of the NCCP/HCP and set forth below:

(1) County - 390 acres

(2) Metropolitan - 45.3 acres

(3) SCE - 2.4 acres

(4) IRWD - 60 acres

(5) Regents - 3 acres

(6) SCWD - 9 acres

(7) The Irvine Company - 2 acres

(8) CDPR - associated with implementation of Crystal Cove State Park General Plan (up to 18 acres mitigated by restoration as described in Section 8.12)

(b) As described in Chapter 7 of the NCCP/HCP and in this Section, the County is authorized to take 150 acres of CSS in conjunction with development and operation of County parks on land designated for inclusion in the Reserve System. As part of the County's standard procedure in planning park facilities, the County prepares a Resource Management Plan as an essential preliminary step in the development of Interim Operations and General Development Plans for each park. The purpose of the Resource Management Plan is to identify habitat areas within the park lands. The Resource Management Plan shall assure that to the maximum extent feasible, park facilities are sited so as to minimize impacts to Identified Species, CSS and Covered Habitats. Planned County park facilities within the Reserve System may be located outside the areas identified as available for park facilities in Chapters 4 and 5 of the NCCP/HCP, based on the Resource Management Plan for each park. The Interim Operations Plan and General Development Plan for each park within the Reserve System shall minimize impacts to CSS and Covered Habitats and Identified Species, consistent with the Resource Management Plan.

(c) The Parties acknowledge that it is infeasible to presently identify the location of future Infrastructure facilities with greater precision than indicated in Chapters 4 and 5 of the NCCP/HCP. Each Utility, and the County, is authorized to Take up to the number of acres of CSS within the Reserve System set forth in (a) above. The Party proposing the development of future Infrastructure facilities consistent with those described as Planned

Activities in the NCCP/HCP shall confer with USFWS and CDFG regarding the effects of final facility location in order to minimize impacts to Identified Species and Covered Habitats (except as specifically provided for parks in paragraph (b), above). The Parties shall comply with the utility location and operation policies set forth in Chapter 5.9 of the NCCP/HCP.

(d) Any Participating Landowner may transfer some or all of its authorization for Take within the Reserve System as described in Chapter 7 of the NCCP/HCP to any other Participating Landowner for Take within the Reserve System, upon approval of USFWS and CDFG. Prior to initiating such a transfer, the Participating Landowners involved shall confer with USFWS and CDFG to minimize any potential effects on the Reserve System from the transfer to the extent feasible. Upon approval by USFWS and CDFG, the Participating Landowner transferring its authorization for Take shall notify the NCCP Non-Profit Corporation of the transfer. Transfers of authorization for Take, as described in this paragraph, shall not require an amendment of the NCCP/HCP or this Agreement; however, the reallocation of Take shall not be effective until the Section 10(a) Permits of both Participating Landowners are amended to reflect the reallocation of Take authorization.

9.2.2 **Take Outside the Reserve System by Participating Landowners.**

(a) Take of Identified Species related to the Planned Activities within the Central/Coastal Subregion, but outside the Reserve System, on lands owned or controlled by Participating Landowners as of the Effective Date is authorized as described in this Agreement and in Chapter 7 of the NCCP/HCP. The NCCP/HCP provides estimates of the number of acres of CSS that will be modified by Participating Landowners outside the Reserve System, as follows:

(1) County - 334 acres (including 46 acres within Special Linkage Areas)

(2) Metropolitan - 13 acres

(3) IRWD - 27 acres

(4) The Irvine Company - 4,420 acres (including 60 acres within Special Linkage Areas)

(5) TCA - set forth in Corridor Biological Opinions

(6) SCE - associated with the Special Linkage Area, as set forth in Section 6.1(d)

(7) Chandis-Sherman - 30 acres.

The Parties acknowledge, however, that the number of acres of CSS and Covered Habitats on lands outside the Reserve System may fluctuate over time. Take of Identified Species is authorized on all lands owned or controlled by Participating Landowners outside the Reserve System as of the Effective Date. Take of species dependent upon or associated with CSS and Covered Habitats is authorized upon issuance of the Section 10(a) Permits pursuant to Section 8.3.4(d). Lands owned by The Irvine Company within the Central/Coastal Subregion (exclusive of the Reserve System and Policy Plan Area) total approximately 29,000 acres, as shown in Exhibit F.

(b) Notwithstanding the foregoing, Take is not authorized in Existing Use Areas, and is authorized in Special Linkage Areas only as provided in Section 6.1.

**9.2.3 Potential Take By Non-Participating Landowners Outside the Reserve System.**

Take of CSS Species listed as endangered species or threatened species under FESA or CESA, is authorized outside the Reserve System as described in Chapter 7 of the

NCCP/HCP for Non-Participating Landowners whose lands are located within the jurisdiction of a signatory Local Government and who elect the Mitigation Fee option described in Section 7 of this Agreement. Notwithstanding the foregoing, Take is not authorized in Existing Use Areas, except as provided in Section 6.1(e). Nothing in this section is intended to prohibit Non-Participating Landowners from independently pursuing Take authorization under sections 7 or 10 of FESA and/or Sections 2081 or 2084 of CESA or as otherwise provided by law.

## 10.0 AMENDMENT AND REMEDIES.

### 10.1 Amendments.

(a) Amendments to the NCCP/HCP may be proposed by any Party to this Agreement. The Party proposing the amendment shall provide to the NCCP Non-Profit Corporation and USFWS and CDFG a statement of the reason for the amendment and an analysis of the effect of the amendment on the Identified Species, CSS and Covered Habitats and the implementation of the NCCP/HCP. It is contemplated that this Agreement may be amended, pursuant to paragraph (e), in circumstances not requiring amendment of the NCCP/HCP. Amendments to the NCCP/HCP affecting only one Participating Landowner, and not significantly affecting that Participating Landowner's commitments to the NCCP/HCP, may be approved by USFWS, CDFG and that Participating Landowner.

(b) Minor amendments to the NCCP/HCP shall not require amendment of this Agreement or any Section 10(a) Permit. Minor amendments shall require the approval of the NCCP Non-Profit Corporation and the affected owner of Reserve System land or land designated for inclusion in the Reserve System, which shall approve or deny the proposed amendment within ninety (90) days of receipt of the proposal. Minor amendments include, but are not

limited to, combinations of adding and removing land from the Reserve System which result in no net loss of Reserve System acreage and no long-term net loss of subregional habitat value. Notwithstanding the foregoing, USFWS and CDFG shall be provided an opportunity to review all proposed minor amendments presented to the NCCP Non-Profit Corporation. If USFWS or CDFG determines within sixty (60) days of receipt of a proposed amendment that a proposed amendment to the NCCP/HCP is a major amendment, the Parties to the Agreement shall process the proposed amendment as described in paragraph (c), below.

(c) Major amendments to the NCCP/HCP shall require an amendment of this Agreement and the applicable Section 10(a) Permits. The Party proposing the major amendment, or the NCCP Non-Profit Corporation if the amendment was initially proposed as a minor amendment, shall circulate to the other Parties a statement of the reason for the amendment and an analysis of the effect of the amendment on the Identified Species, CSS and Covered Habitats and the implementation of the NCCP/HCP. USFWS shall publish notice of the proposed amendment of the Section 10(a) Permits as required under FESA. USFWS shall make every effort to process the proposed amendment of the Section 10(a) Permits within one hundred twenty (120) days of publication in the Federal Register except where longer time lines are imposed by requirements of law. Except as otherwise determined by USFWS or CDFG pursuant to (b), major amendments shall be limited to changes in the following: (1) the boundaries of the Reserve System resulting in a net loss of Reserve System acreage, or (2) removal of a species from the list of Identified Species or addition of a new Identified Species pursuant to Section 8.8.

(d) Amendment of the NCCP/HCP automatically amends the CDFG Management Authorization.

(e) This Agreement may be amended only in a writing signed by all of the Parties. Only those proposed amendments to the Agreement that would materially modify the legal rights and obligations of the Parties under the Agreement or implement major amendments to the NCCP/HCP as defined in (c) shall require amendment of the Section 10(a) Permit.

10.2 **Enforceability.**

It is acknowledged and agreed by the Parties hereto that any covenants, assurances or commitments provided with respect to the extent and limitation of mitigation measures which will be required in connection with the construction and operation of the Planned Activities and mutual assurances provided by the Parties are: (1) intended to be relied upon by the Parties; (2) made with full knowledge of the extent and effect thereof; (3) made in exchange for valuable and adequate consideration provided by the Local Governments and Participating Landowners in the form of funds and covenants and commitments to undertake the mitigation measures hereunder and by USFWS and CDFG in the form of funds, assurances and assistance in NCCP/HCP implementation and management; and (4) made with the understanding that such assurances and commitments will not be amended, changed or increased except in accordance with this Agreement.

10.3 **Remedies in General.**

(a) It is expressly understood by the Parties that monetary damages will not provide an adequate remedy for material breach of this Agreement. Therefore, the Parties shall not be liable in monetary damages to any Party or other person for any breach of this Agreement, in the performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement, or any other cause of action arising from this Agreement. In the event of a material

breach of the Agreement, the non-violating Parties shall be entitled to specific performance and injunctive relief. In the event that USFWS identifies a potential breach by a Participating Landowner, USFWS: (1) shall notify all Participating Landowners regarding those actions, or failures to act, which constitute the alleged breach, and (2) shall provide the alleged breaching party a reasonable opportunity to cure the alleged breach. Except for an alleged breaching action that, in the reasonable opinion of USFWS, would involve imminent danger to a significant extent for Identified Species, the alleged breaching permitee shall have sixty (60) days following receipt of notice of the specific nature of the alleged breaching action and any suggested corrective actions to be taken, or such other time period as mutually agreed upon with USFWS to cure the alleged breach. With regard to Non-Participating Landowners, USFWS shall notify any signatory Local Government regarding the alleged failure to carry out the Local Government's responsibilities in implementing the Mitigation Fee option program for Non-Participating Landowners. Said Local Government obligations are: (1) verification that the Mitigation Fee has been paid to the NCCP Non-Profit Corporation, and (2) requirement, as a condition of development approval, and enforcement, of the construction-related minimization measures set forth in the NCCP/HCP EIR/EIS. The same notice and right to cure provisions set forth above shall be applicable to the Local Government alleged to be in violation of the particular Section 10(a) Permit.

(b) Subject to the provisions of Sections 10.3(a) and 10.4, the Parties shall have all of the remedies available in equity including specific performance and injunctive relief, and at law to enforce the terms of this Agreement and the Section 10(a) Permits and CDFG Management Authorization, and to seek remedies for any breach thereof, consistent with and

subject to the terms of this Agreement. Notwithstanding the foregoing, all Parties shall retain whatever liability they would possess for their present and future acts or failure to act without the existence of this Agreement, and all Parties shall retain whatever liability they possess as holders of interests in land.

10.4 USFWS Right to Revoke, Suspend or Terminate.

(a) USFWS shall have the right to revoke, suspend or terminate a Section 10(a) Permit held by one or more signatories to this Agreement in the event of a material breach or violation of the Section 10(a) Permit(s), this Agreement or FESA in accordance with 50 C.F.R. 13.27-13.29.

(b) USFWS shall not initiate an action to revoke any Section 10(a) Permit on grounds which would constitute grounds for suspension without first pursuing action to suspend the permit in accordance with 50 C.F.R. § 13.27. Any action to suspend any activities or privileges under a Section 10(a) Permit or to revoke a Section 10(a) Permit shall, to the maximum extent consistent with the purposes of the suspension or revocation, be limited so as to address the discreet action or inaction underlying the suspension or revocation, in order to minimize any impacts on the permittee and other permittees.

10.5 Severability.

(a) Subject to paragraph (b)(3) of this Section 10.5, any violation of a Section 10(a) Permit or CDFG Management Authorization by any Party shall not adversely affect or be attributed to, nor shall it result in the loss or diminution of any right, privilege or benefit under this Agreement for any non-responsible Party.

(b) In the event of a final revocation or termination action pursuant to section 10.4 or in the event of a final court order not subject to further appeal, any Participating Landowner whose rights and obligations under this Agreement are substantially affected by such action or court order shall have the right to terminate its rights and obligations under this Agreement under the following conditions:

(1) Termination must be exercised by written notice to all Parties at any time after such action or court order becomes final, but not later than the later to occur of commencement of construction activities resulting in Take or one (1) year of such action or court order becoming final; provided, however, the County and The Irvine Company shall provide such notice, if at all, within one (1) year of such action or court order becoming final.

(2) The Participating Landowner shall mitigate any impacts to species covered under Sections 1.29 and 8.3.4(d) which may have occurred as a result of the actions of the Participating Landowner pursuant to this Agreement prior to the date of the termination by the Participating Landowner, provided that if a termination by a Participating Landowner under this Section occurs within five years of permit issuance as a result of a final court order, mitigation shall only be required for impacts to species listed as threatened species or endangered species under FESA at the time the impacts occurred. In determining appropriate mitigation under this Agreement, USFWS and CDFG shall take into account (A) contributions of the Participating Landowner to the NCCP/HCP in relation to benefits received and impacts on species listed as endangered or threatened, (B)

the fairness to the Participating Landowner given the circumstances surrounding the revocation/termination or court order, and (C) in the case of unlisted species covered by this Agreement, whether a determination not to list the species specifies that it was based in whole or in part on the protections afforded the species under the NCCP/HCP as evidenced by the procedures set forth in section 8.3.4(b).

(c) Termination of rights and obligations under this Agreement by a Participating Landowner listed in Section 11.1 may require a reevaluation of the viability of the Reserve System and of the continuance of the NCCP/HCP and Take authorizations under applicable state and federal law.

(d) Notwithstanding Section 10.1, the termination of rights and obligations under this Agreement by a Participating Landowner shall not require the consent of all Parties.

**10.6 Force Majeure.**

In the event that the Local Governments or Participating Landowners are wholly or partly prevented from performing obligations under this Agreement because of unforeseeable causes beyond the reasonable control of and without the fault or negligence of the Local Governments or Participating Landowners ("force majeure"), including but not limited to acts of God, labor disputes, sudden actions of the elements, or actions of federal or state agencies, or other Local Governments, the Local Government or Participating Landowner shall be excused from whatever performance is affected by such unforeseeable cause to the extent so affected, provided nothing in this Section shall be deemed to authorize any Party to violate FESA or CESA, and failure to perform shall not be considered a material breach, provided that:

(1) The suspension of performance is of no greater scope and no longer duration than is required by the force majeure;

(2) Within two weeks after the occurrence of the force majeure the Local Government or Participating Landowner gives USFWS and CDFG written notice describing the particulars of the occurrence;

(3) The Local Government or Participating Landowner uses its best efforts to remedy its inability to perform (this paragraph shall not require the settlement of any strike, walk-out, lock-out or other labor dispute on terms which, in the sole judgment of the Local Government or Participating Landowner , are contrary to its interest); and

(4) When the Local Government or Participating Landowner is able to resume performance of its obligations hereunder, the Local Government or Participating Landowner shall give USFWS and CDFG written notice to that effect.

10.7 Withdrawal

(a) Upon 90 days written notice to all Parties, Cities may withdraw from this Agreement without being in breach of the Agreement if they have not engaged in Take, or approved projects of Non-Participating Landowners resulting in any Take pursuant to the Agreement, their Section 10(a) Permit or CDFG Management Authorization.

(b) Upon 90 days written notice to all Parties, Cities may also withdraw from the Agreement without breach after Non-Participating Landowners have engaged in Take as part of a project approved by the City, under the following conditions:

(1) the City and Non-Participating Landowner have complied with the mitigation obligations required under this Agreement with respect to the specific project(s) approved by the City, and

(2) the City has provided written notice of withdrawal to all other Parties, including evidence of compliance with mitigation obligations prior to withdrawal.

(c) The City's Section 10(a) Permit and CDFG Management Authorization shall terminate automatically upon withdrawal.

(d) Withdrawal under this Section shall not affect the obligations of a City owning land in the Reserve System as set forth in section 5.2.1(b). Any Take in projects approved by the City in accordance with this Agreement prior to withdrawal under this Section shall continue to be authorized under the terms of the Section 10(a) Permit, and the City shall continue to carry out its obligations under this Agreement with respect to that Take as specified in section 8.1(c). Further, the withdrawing City shall not take any action that would adversely affect the ability of Participating Landowners to carry out their obligations pursuant to this Agreement.

## 11.0 MISCELLANEOUS PROVISIONS.

### 11.1 Term of the Agreement.

This Agreement shall be effective as to all executing Parties upon execution by CDFG, USFWS, the County and The Irvine Company and shall remain in full force and effect for 75 years, subject to the provisions of Section 10.5.

11.2 Reservation of Rights.

Nothing in this Agreement shall be construed as a waiver of any rights or objections that any of the Parties may have with respect to the Proposed Listing of any Identified Species, or of any objections to the regulation of activities by CDFG which do not result in Take of any species listed pursuant to CESA as a Candidate Species, threatened species or endangered species as the term "take" is defined in California Fish and Game Code section 86. Participating Landowners and Local Governments reserve their right to oppose any formal listing or Proposed Listing of any Identified Species pursuant to FESA or CESA. USFWS and CDFG reserve the right to proceed with the listing of any species as an endangered species or threatened species and to carry out all of their responsibilities and duties under FESA and CESA. This Agreement is fully consistent with FESA, and nothing in this Agreement is intended or shall be construed to limit the authority of the United States to invoke the penalties under FESA.

11.3 Notices.

Any notices required or permitted to be given under this Agreement shall be delivered personally to the entities set forth below and any later signatories, or shall be deemed given five (5) days after deposit in the United States Mail, postage prepaid, addressed as follows or to such other official and such other address that any Party may from time to time notify all Parties in writing:

Undersecretary of Resources (Mr. Michael A. Mantell)
The Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, California 95814

NCCP Program Manager (Mr. Larry Eng)
California Department of Fish and Game
1416 Ninth Street
Sacramento, California 95814

California Department of Forestry and Fire Protection
P.O. Box 944246
Sacramento, California 94244-2460

California Department of Parks and Recreation
P.O. Box 942896
Sacramento, California 94296-9824

Field Supervisor (Mr. Gail C. Kobetich)
U.S. Fish and Wildlife Service
Carlsbad Field Office
2730 Loker Avenue West
Carlsbad, CA 92008

Director of Planning (Mr. Tom Matthews)
County of Orange
Environmental Management Agency
12 Civic Center Plaza, Room 236
Santa Ana, California 92702

Director of Environmental Services (Mr. Steve Letterly)
Transportation Corridor Agencies
P.O. Box 28870
Santa Ana, California 92799-8870

Orange County Fire Authority
180 S. Water Street
Orange, CA 92666

The Regents of the University of California Irvine
University of California Irvine
501 Administration Building
Irvine, CA 92717

General Manager (Mr. Charles Cron)
Santiago County Water District
7431 Santiago Canyon Road
Silverado, CA 92676

General Manager (Mr. Ronald E. Young)
Irvine Ranch Water District
P.O. Box 6025
Irvine, CA 92702

General Manager
The Metropolitan Water District of Southern California
P.O. Box 54153 Terminal Annex
Los Angeles, CA 90054-0153

Southern California Edison
P.O. Box 800
Rosemead, CA 92770

M. H. Sherman Company
2077 West Coast Highway
Newport Beach, CA 92663
Attention: Dan T. Daniels

Chandis Securities Company
350 West Colorado Blvd., Suite 430
Pasadena, CA 91105
Attention: Warren B. Williamson

Sherman Foundation
2077 West Coast Highway
Newport Beach, CA 92663
Attn: Donald Haskell

Senior Vice President for Corporate Affairs (Ms. Monica Florian)
The Irvine Company
550 Newport Center Drive
Newport Beach, California 92660

11.4 **Headings.**

The subject headings of the sections of this Agreement are provided for convenience only and shall not affect the construction or interpretation of any of the provisions of the Agreement.

11.5 Entire Agreement.

This Agreement constitutes the full and complete agreement of the Parties and supersedes any and all prior or contemporaneous written or oral negotiations, correspondence, understandings and agreements between the Parties respecting the subject matter hereof. In the event of conflict between this Agreement and the Planning Agreement, this Agreement is controlling. Any supplement, modification or amendment to this Agreement shall be executed in writing by all Parties. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provisions. No waiver shall be binding unless executed in writing by the Party making the waiver.

11.6 Governing Law.

This Agreement shall be governed by and construed in accordance with the internal laws of the State of California, FESA and other applicable federal law. This Agreement shall not be construed as if it had been prepared by any one Party, but rather as if all Parties had prepared the Agreement.

11.7 Third Party Beneficiaries.

Without limiting the applicability of the rights granted to the public pursuant to the provisions of 16 U.S.C. 1540(g), the Parties intend that only the Parties to this Agreement and their approved assignees shall benefit from the Agreement. This Agreement shall not create in the public, any member of the public, any other person or entity, except a transferee or assignee of the Parties as provided herein, any rights as a third-party beneficiary to this Agreement, nor shall it authorize anyone not a Party to this Agreement to maintain a suit for injuries or damages under the provisions of this Agreement. So long as the Section 10(a) Permit

holder(s) are in compliance with the provisions of this Agreement, any contractor, or other third party under the direct control of the permit holder(s) shall be deemed to be a third-party beneficiary of this Agreement and shall be entitled to proceed with Take as authorized by this Agreement.

11.8 Conflict With NCCP/HCP.

The NCCP/HCP and each of its terms are intended to be and by this reference are incorporated herein. This Agreement is intended to specify, in contract language, the obligations of the Parties under the NCCP/HCP recognizing that the NCCP/HCP is intended to set forth in a planning document the components of a conservation plan and was not drafted as a contract document. As a result, in the event of any direct contradiction, conflict or inconsistency between the terms of this Agreement and the NCCP/HCP, the terms of this Agreement shall control. In all other cases, the terms of this Agreement and the terms of the NCCP/HCP shall be interpreted to be supplementary to each other.

11.9 Assignment.

11.9.1 Assignment Incident to Conveyance of Portion(s) of Reserve System.

This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and assigns, provided that no conveyance of land included in the Reserve System shall be made without the prior written concurrence of USFWS and CDFG. Upon any assignment or delegation of the rights and duties of this Agreement incidental to a conveyance of a portion of the Reserve System, and subject to the prior written approval of USFWS and CDFG of the proposed assignee or delegee, the assignor shall be released from and shall no longer have any obligation, responsibility, liability, covenant, right or duty under this Agreement relating to

such portions of the Reserve System so conveyed. Upon written request by the Party, USFWS and/or CDFG shall expeditiously provide written acknowledgment of such release. In the event that USFWS or CDFG does not grant in writing a request for release within thirty (30) days following the request, such release will be deemed automatically given. Notwithstanding the foregoing, such assignor or delegator shall remain liable for any breach of this Agreement occurring before such assignment or delegation with regard to the area so conveyed.

11.9.2 Transfer of Lands on Which Incidental Take is Authorized.

(a) Transfer of fee title by any Party to any portion of the Central/Coastal Subregion on which Take is authorized under this Agreement and any Section 10(a) Permit shall not operate to release that Party from any obligations, responsibilities, liabilities, covenants, rights or duties under this Agreement relating to such portions of the Central/Coastal Subregion so conveyed unless and until, subject to then existing statutory and regulatory requirements, the following requirements are fulfilled: (1) such release is authorized in writing by USFWS and (2) USFWS issues a new Section 10(a) Permit to the transferee. Upon proper application by the transferee, a new Section 10(a) Permit shall be issued by USFWS following satisfaction of then applicable procedural requirements relating to permit issuance (currently contained in 50 C.F.R. Parts 13 and 17) and the following conditions:

(1) The transferee/applicant's written assumption of all of the current permit holder's obligations under the NCCP/HCP and this Agreement applicable to that portion of the Central/Coastal Subregion so conveyed; and

(2) Findings by USFWS that:

(A) The transferee/applicant is qualified under then existing regulations to hold a Section 10(a) Permit;

(B) The transferee/applicant possesses the financial and management capacity to implement applicable portion of the NCCP/HCP and this Agreement; and

(C) The current permit holder is in full compliance with the permit.

USFWS shall not require any additional mitigation from the transferee/applicant as a condition of approving the permit and shall use its best efforts to process the permit within 60 days of receipt of a complete application therefor.

Upon issuance of a new permit to the transferee, the prior holder shall be released from and shall no longer have any obligation, responsibility, liability, covenant, right or duty under this Agreement relating to those portions of the Central/Coastal Subregion so conveyed. Notwithstanding the foregoing, the prior permit holder shall remain liable for any breach of this Agreement or the permit occurring prior to issuance of a new permit to the transferee. Upon written request by the transferring Party, USFWS shall expeditiously provide written acknowledgment of such release. In the event that, following issuance of a new permit to the transferee, USFWS does not grant in writing a request for release or specify in writing the reasons for refusing such request within thirty (30) days following the request, such request shall be deemed automatically given.

(b) As an alternative to the procedure provided for under (a), a Permitee may transfer fee title and the Take authorization to any portion of the Central/Coastal Subregion on

which Take is authorized pursuant to this Agreement and the particular Section 10(a) Permit, provided that the Section 10(a) Permitee remains liable for any obligations, responsibilities, liabilities, covenants, rights or duties specified in this Agreement as mitigation measures, except for construction-related minimization measures set forth in the NCCP/HCP EIR/EIS, and that, with regard to the latter, a signatory Local Government has jurisdiction over the land area so conveyed.

(c) Notwithstanding the foregoing, the Parties acknowledge that TCA may transfer ownership of the Foothill/North, Eastern and San Joaquin Hills Transportation Corridors to the California Department of Transportation ("Caltrans") pursuant to the Agreement between TCA and Caltrans ("Caltrans Agreement"). Under the terms of the Caltrans Agreement, TCA retains certain rights and obligations with regard to the Corridors, including rights to conduct future Corridor improvements. Take authorization remains with TCA, and transfer of ownership of the Corridors shall not transfer to Caltrans any Take authorization pursuant to this Agreement.

**11.10 Counterparts.**

This Agreement may be executed in multiple counterparts and each such executed counterpart shall be deemed an original, all of which together shall constitute a single executed Agreement.

**11.11 Future Actions.**

From time to time hereafter, the Parties shall execute such instruments and other documents, and take such other actions, upon the request of other Parties, as may be necessary or desirable to carry out the intent of this Agreement.

11.12 Federal Funds.

The commitment of the USFWS to carry out its obligations and assurances under this Agreement which require the expenditure of funds is subject to the availability of appropriated funds; however, the USFWS shall take all steps within its legal authority to fulfill those obligations and assurances.

IN WITNESS WHEREOF, the Parties have executed this Agreement.

Dated: 7-17, 1996

CALIFORNIA RESOURCES AGENCY, an agency of the State of California

By _____
Title Secretary

Dated: 7/17, 1996

CALIFORNIA DEPARTMENT OF FISH AND GAME, a department of The Resources Agency of the State of California

By _____
Title Director

Dated: 7/17, 1996

CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION, a department of The Resources Agency of the State of California

By _____
Title Chief Deputy Director

Dated: 7/17, 1996

CALIFORNIA DEPARTMENT OF PARKS AND RECREATION, a department of The Resources Agency of the State of California

By _____
Title Deputy Director

Dated: _____, 1996

IRVINE RANCH WATER DISTRICT

By _____
Title _____

Dated: _____, 1996

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

By _____
Title _____

Approved as to form:

By _____
Title _____

Dated: _____, 1996

SOUTHERN CALIFORNIA EDISON

By _____
Title _____

Dated: _____, 1996

THE ORANGE COUNTY FIRE AUTHORITY

By _____
Title _____

Dated: _____, 1996

SANTIAGO COUNTY WATER DISTRICT

By _____
Title _____

Dated: _____, 1996

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

By _____
Title _____

Dated: _____, 1996

CHANDIS SECURITIES COMPANY, a California corporation

By _____
Warren B. Williamson
Title: President

Dated: _____, 1996

UNITED STATES FISH AND WILDLIFE SERVICE, an agency of the Department of Interior of the United States of America

By _____
Title _____

Dated: _____, 1996

COUNTY OF ORANGE, a political subdivision of the State of California

By _____
Title _____

Dated: _____, 1996

FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY, a joint powers authority

By _____
Title _____

Approved as to form:

By _____
Nossaman, Guthner, Knox & Elliott, LLP
Title: TCA Counsel

Dated: _____, 1996

SAN JOAQUIN HILLS TRANSPORTATION CORRIDOR AGENCY, a joint powers authority

By _____
Title _____

Approved as to form:

By _____
Nossaman, Guthner, Knox & Elliott, LLP
Title: TCA Counsel

Dated: _____, 1996

THE IRVINE COMPANY

By _____
Title _____

Dated: _____, 1996

IRVINE RANCH WATER DISTRICT

By _____
Title _____

Dated: _____, 1996

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

By _____
Title _____

Approved as to form:

By _____
Title _____

Dated: 8/21, 1996

SOUTHERN CALIFORNIA EDISON

By Thomas Hyn
Title Vice President of Corporate Communications

Dated: _____, 1996

THE ORANGE COUNTY FIRE AUTHORITY

By _____
Title _____

Dated: _____, 1996

SANTIAGO COUNTY WATER DISTRICT

By _____
Title _____

Dated: _____, 1996

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

By _____
Title _____

Dated: _____, 1996

CHANDIS SECURITIES COMPANY, a California corporation

By _____
Warren B. Williamson
Title: President



EXECUTION COPY
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OC:961420002

Dated: _____, 1996

IRVINE RANCH WATER DISTRICT

By _____
Title _____

Dated: _____, 1996

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

By _____
Title _____

Approved as to form:

By _____
Title _____

Dated: _____, 1996

SOUTHERN CALIFORNIA EDISON

By _____
Title _____

Dated: _____, 1996

THE ORANGE COUNTY FIRE AUTHORITY

By _____
Title _____

Dated: _____, 1996

SANTIAGO COUNTY WATER DISTRICT

By _____
Title _____

Dated: _____, 1996

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

By _____
Title _____

Dated: _____, 1996

CHANDIS SECURITIES COMPANY, a California corporation

By _____
Warren B. Williamson
Title: President

Dated: _____, 1996

IRVINE RANCH WATER DISTRICT

By _____
Title _____

Dated: _____, 1996

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

By _____
Title _____

Approved as to form:

By _____
Title _____

Dated: _____, 1996

SOUTHERN CALIFORNIA EDISON

By _____
Title _____

Dated: _____, 1996

THE ORANGE COUNTY FIRE AUTHORITY

By _____
Title _____

Dated: _____, 1996

SANTIAGO COUNTY WATER DISTRICT

By _____
Title _____

Dated: _____, 1996

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

By _____
Title _____

Dated: July 30, 1996

CHANDIS SECURITIES COMPANY, a California corporation

By _____
Warren B. Williamson
Title: President

Dated: _____, 1996

IRVINE RANCH WATER DISTRICT

By _____
Title _____

Dated: _____, 1996

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

By _____
Title _____

Approved as to form:

By _____
Title _____

Dated: _____, 1996

SOUTHERN CALIFORNIA EDISON

By _____
Title _____

Dated: _____, 1996

THE ORANGE COUNTY FIRE AUTHORITY

By _____
Title _____

Dated July 24, 1996

SANTIAGO COUNTY WATER DISTRICT

By Charles L. Cross
Title GENERAL MANAGER

Dated: _____, 1996

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

By _____
Title _____

Dated: _____, 1996

CHANDIS SECURITIES COMPANY, a California corporation

By _____
Warren B. Williamson
Title: President

Dated: _____, 1996

SHERMAN FOUNDATION, a Delaware non-profit corporation

By _____
Donald Haskell
Title: President

Dated: _____, 1996

M.H. SHERMAN COMPANY, a California corporation

By _____
D.T. Daniels
Title: President

Dated: July 31, 1996

ORANGE COUNTY FLOOD CONTROL DISTRICT

By _____
Title Chairman of the Board

Dated: 7-24, 1996

SHERMAN FOUNDATION, a Delaware non-profit corporation

By _____
Donald Haskell
Title: President

Dated: 7/23, 1996

M.H. SHERMAN COMPANY, a California corporation

By _____
D.T. Daniels
Title: President

Dated: _____, 1996

ORANGE COUNTY FLOOD CONTROL DISTRICT

By _____
Title _____

Dated: _____, 1996

SHERMAN FOUNDATION, a Delaware non-profit corporation

By _____
Donald Haskell
Title: President

Dated: _____, 1996

M.H. SHERMAN COMPANY, a California corporation

By _____
D.T. Daniels
Title: President

Dated: July 31, 1996

ORANGE COUNTY FLOOD CONTROL DISTRICT

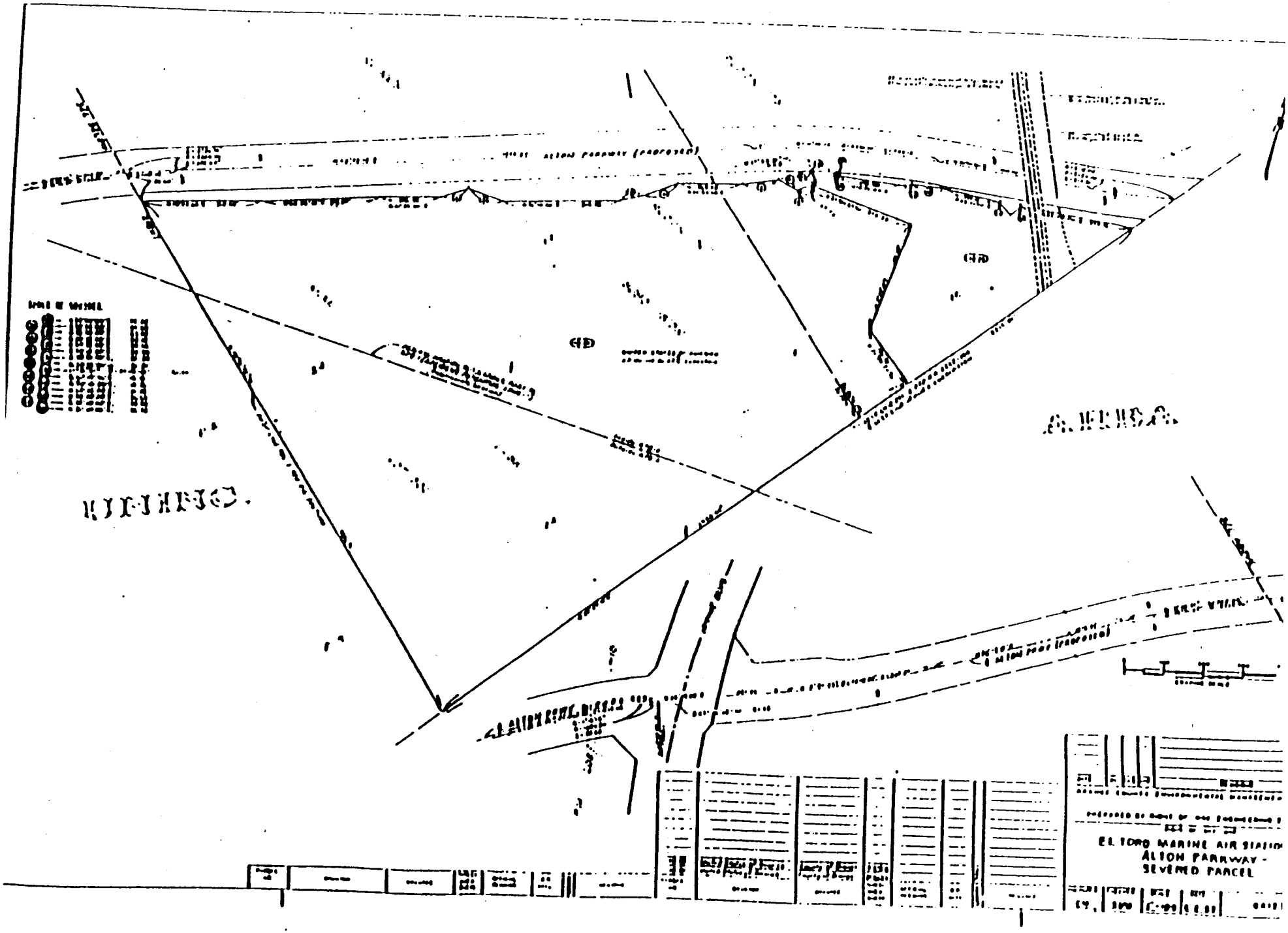
By _____
Title Chairman of the Board

Dated: July 17, 1996

CITY OF IRVINE

By

Title Mayor


EL TORO MARINE AIR STATION
ALTON PARKWAY -
SEVERED PARCEL