

County MSCP Deal/Negotiation Points
Approved by the San Diego County
Board of Supervisors
October 11, 1995

1. There must be a package deal – certainties and assurances that a “deal is a deal.” The local jurisdictions must be assured by the Federal government that the Multiple Species Conservation Program (MSCP) will only occur once. There must be assurances that if other species were listed as endangered or threatened under the Federal or State Endangered Species Acts, there would not be a need to capture additional lands/habitat to be included in the program.
2. Assurances by Federal and State Resource Agencies regarding protection and certainty for future projects must be formal and reliable.
3. The MSCP must be revised to require all subarea and/or project plans only meet the biological standards of the agreed upon MSCP Plan as well as the Natural Communities Conservation Planning (NCCP) and 10(a) standards of the reauthorized version of the Endangered Species Act (ESA).
4. The existing Resource Protection Ordinances must be modified and reworded so that property owners do not get “hit twice” with exactions upon the adoption of a preserve plan. One set of rules should apply to achieve quality development in the region, and at the same time avoid duplication, unnecessary costs and lengthy timelines.
5. Funding for the continued planning, including subarea plans and funding for the financing and implementation of the overall preserve system must be assured and made available from the State and Federal governments. The size and implementation of the preserve system must be contingent on their ability to fund it.
6. The County of San Diego shall not be obligated to any local funding beyond that to which the region as a whole, including participating jurisdictions, are obligated.
7. Management, maintenance and monitoring must be wholly funded by private conservancies or other private conservation organizations or by voter approved publicly generated funds.
8. Local governments must be provided indemnification by the State and Federal governments and other local jurisdictions. Include County Counsel in the evaluation of options for this issue.
9. Develop a Master Environmental Impact Report (EIR) to streamline environmental review for projects requiring biological documentation.
10. All public lands and Resolution Trust Corporation (RTC) lands shall be used to the greatest extent possible in the creation of the preserve system.
11. Private property shall not be included in the preserve system unless requested by the property owner in writing. Private property rights shall be respected and no government entity will condemn private property for purposes of developing and implementing the preserve unless the condemnation takes place on “friendly” terms.

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12. Voluntary participation by private land owners is key to the success of the preserve system. Incentives will be developed, such as tax breaks, mechanisms to transfer development rights and others to encourage participation.
13. Mitigation standards must be developed which are reasonable and which incorporate incentives and credit on-site preservation within the preserve boundaries.
14. 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.
15. Riding and Hiking trails must be allowed within the preserves to allow passive recreational opportunities for the public.
16. There shall be no additional land use controls such as building moratoriums on development while the County is preparing the subarea plans, and the 4(d) rule which allows interim take of the habitat shall continue for those areas of the MSCP plan which do not have subarea plans in place when the MSCP is adopted.
17. During the development process, no exactions will be applied to private lands beyond that which is currently required.
18. Private property with existing agricultural zoning and existing agricultural uses shall be excluded from the preserve system.
19. There must be assurances for private property owners who have negotiated in a fair manner with the resource agencies and the County and resolved the issue of open space requirements. If for any reason the program fails, the ESA is reauthorized and made less restrictive, or the Federal and State agencies take back the permit authority for the program, these property owners will be allowed to renegotiate their open space requirements.
20. No map shall go forward in any document to the State and Federal governments that the Board of Supervisors has not approved. The severability issue is critical because a major level of impact will occur in the unincorporated areas if the City of San Diego proceeds unilaterally. The City of San Diego shall not be allowed to proceed and gain Federal permit approvals without the resolution of County planning issues for this program.
21. 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 such as fires, floods, and earthquakes shall not be limited in their activities or required to obtain permits by any provisions of the open space programs which conform to the NCCP. This means that they should have full access to perform their duties within any preserve system including the placement of lights, roads and fences. In addition, clearing of vegetation around structures, controlled burns and fuel breaks shall not be limited by the creation of a preserve system.

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22. Regionally important facilities such as roads and landfills, will be allowed within preserve system boundaries when appropriate mitigation measures have been applied. Furthermore, preserve boundaries shall not apply to existing regional facilities or extractive sites.

23. Sand and gravel mining operations are compatible within the preserve system when appropriate mitigation measures are incorporated in the reclamation plan required by the Surface Mining and Reclamation Act of 1975 (SMARA).

24. Property owners shall not be penalized for having to protect artificially created habitat that is a by-product of agricultural or mineral recovery operations.

25. For the impacts of new agricultural uses, consider inclusion of a process to defer mitigation of new agricultural impacts until conversion to an urban use occurs.

26. Agricultural uses are compatible with adjacent preserves. Existing regulations adequately control the use of pesticides and fertilizers and shall be considered adequate to protect adjacent preserves and endangered species without changes.

27. Just compensation by the Federal government must be rendered to private property owners if privately-owned land is devalued, restricted or made unusable in implementing the MSCP, sub-area plan or any implementing agreement.

28. Mineral development operations are compatible with adjacent preserves. Existing noise, air quality, and water quality regulations adequately control impacts which may result from these operations and shall be considered adequate to protect adjacent preserves and endangered species without change.

29. Development areas outside the preserve should receive the same protection as habitat areas within the preserve. Efforts should be made to ensure that acquisition efforts do not encroach into designated development areas. Therefore, any encroachment to the areas outside the preserve must be mitigated on-site or off-site by decreasing land within the MHPA (if there is a preserve planning area map) by equal amount (e.g., redesignated acreage for development).

30. If the Federal government withdraws or takes actions which have the effect of withdrawing the Federal government from the MSCP program, the MSCP plan will be nullified.