FINAL 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

VOLUME 2 OF 2

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

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TABLE OF CONTENTS

VOLUME 2 of 2

VOLUME 1

I. INTRODUCTION

A. Revisions to the MSCP Plan and Other Associated Documents

B. Final EIR/EIS Format

II. CHANGES TO THE DRAFT EIR/EIS

III. LETTERS OF COMMENT ON THE DRAFT EIR/EIS AND RESPONSES

A. Part A – Theme Responses

B. Part B – Individual Responses (Letters 1 – 79)

VOLUME 2

III. LETTERS OF COMMENT ON THE DRAFT EIR/EIS AND RESPONSES

B. Continuation of Part B – Individual Responses (Letters 80 – 121)

IV. MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

I. INTRODUCTION

A. Revisions to the MSCP Plan and Other Associated Documents

Subsequent to public review of the Draft EIR/EIS and prior to preparation of this Final EIR/EIS, and in response to comments received on the Draft EIR/EIS, revised language has been incorporated in the MSCP Plan and some of the associated documents. Language in certain sections of the following documents has been revised:

- ❒ MSCP Plan, Volume I
- ❒ Model Implementing Agreement
- ❒ City of San Diego Subarea Plan
- ❒ City of San Diego Implementing Agreement
- ❒ City of Santee Subarea Plan

None of the revised language developed in response to comments affects the analysis or conclusions presented in the Draft EIR/EIS and no new significant environmental effects would be associated with the actions addressed in the Draft EIR/EIS as a result of the revised language developed in response to comments. It should be noted that text modifications have also been made to certain portions of the Draft EIR/EIS in response to comments received . These minor text modifications are presented in Section II of this Final EIR/EIS.

Four documents containing the changes to the MSCP Plan and associated documents described above, and the Final EIR/EIS documentation, have been prepared. These documents include the following:

Document 1 contains the following:

- ❖ Revisions to the MSCP Plan, Volume I
- ❖ Revisions to the Model Implementing Agreement
- ❖ Revisions to the City of San Diego Subarea Plan
- ❖ Revisions to the City of Santee Subarea Plan

Document 2 contains the following:

- ❖ Volume 1 of 2 of the Final EIR/EIS

Document 3 contains the following:

- ❖ Volume 2 of 2 of the Final EIR/EIS

Document 4 contains the following:

- ❖ Revisions to City of San Diego Implementing Agreement and Attachments

B. FINAL EIR/EIS FORMAT

The Final EIR/EIS for the MSCP and associated actions is comprised of the Draft EIR /EIS, dated August 1996, and this Final EIR/EIS document, prepared in two volumes. Volume 1 includes the **Introduction, Changes to the Draft EIR/EIS, and Letters of Comment on the Draft EIR/EIS and Responses (Theme Responses and Letters 1–79). Volume 2 consists of Letters of Comment on the Draft EIR/EIS and Responses (Letters 80–121), and The Mitigation Monitoring and Reporting Program.** The Draft EIR/EIS was previously reproduced and was distributed for public review on August 29, 1996. It has not been reproduced as a part of the Final EIR/EIS documentation.

In addition, the City of San Diego has prepared Findings and a Statement of Overriding Considerations in accordance with CEQA (CEQA Sections 15091 and 15093). These documents are not bound with the Final EIR/EIS, but have been clipped to the back of Volume 2 of the Final EIR/EIS.

III. LETTERS OF COMMENT ON THE DRAFT EIR/EIS AND RESPONSES (Letters 80-121)

A total of 121 letters of comment were received in response to the Draft EIR/EIS for the MSCP Plan. The lead agencies prepared responses to each comment received during the public review period. Responses to these comments have been prepared in two parts — **Part A: Theme Responses, and Part B: Individual Responses.**

The Theme Responses address general topics of concern raised in the letters of comment. Generalized theme responses have been prepared to respond to these topics. Each theme response has been assigned a roman numeral and a title. A list of the theme responses is provided below.

Number	Topic
I	Species Analysis Approach
II	Population Viability Analysis
III	Economic Impacts And Impacts on Population And Housing
IV	MSCP Financing Plan: Regional Source of Funds
V	Taking of Private Property
VI	Alternatives
VII	Farmland Mapping
VIII	Public Involvement
IX	Allowable Uses Within MHPA
X	Habitat Conservation Accounting Model
XI	Scientific Review Adequacy
XII	Voluntary Participation
XIII	Ecosystem Based Mitigation ("Out-of-kind")
XIV	Biological Monitoring
XV	Document Organization
XVI	Risk Factors in Table 3-5
XVII	Salt Works
XVIII	Recovery of Species
XIX	Preserve Management
XX	Severability of Take Authorizations
XXI	Indirect Impact on Agricultural Land
XXII	Sufficiently/Significantly Conserved Vegetation Communities
XXIII	Critical Habitat Determination
XXIV	No Surprises
XXV	Wetlands Protection
XXVI	Permit Streamlining

The Individual Responses respond specifically to each individual comment in each comment letter. Each letter is assigned an Arabic numeral. A list of the letters showing a letter number reference and the author of the letter is provided below.

As indicated in the list provided below, the numbering system for the comments includes five letters for which no responses were prepared. These letters are not considered to be official letters of comment on the Draft EIR/EIS and are simply part of the administrative record. As a result, responses were not prepared for these letters.

LETTER NO.	ORGANIZATION
1	Sierra Club, San Diego Chapter
2	Watson Land Company
3	California Department of Forestry & Fire Protection
4	Citizens for Private Property Rights
5	Citizens for Private Property Rights
6	Carmel Valley Planning Board
7	Pacific Bay Homes
8	Marsh Committee, San Diego Wetlands Advisory Board
9	San Diego Rock Producers Association
9A	San Diego Rock Producers Association
10	Valle de Oro Planning Group
11	San Diego Audubon Society
12	International Boundary and Water Commission
13	Alpine Land Preservation Action Committee
14	Preserve Wild Santee
15	Otay Water District
16	R. Roberts, San Diego County
17	US-Environmental Protection Agency
18	Kelwood
19	Alliance for Habitat Conservation
20	California Native Plant Society
21	Law Offices of Susan M. Trager
22	National City Planning Department
23	A.E. DeBevoise, Ph.D.
24	League of Women Voters
25	San Diego County Cattlemen's Association

LETTER NO.	ORGANIZATION
26	Iron Mountain Conservancy
27	Graves Engineering Inc.
28	East Elliott Planning Advisory Committee
29	Black Mountain Road Partnerships
30	US Marine Corps
31	Caltrans – District 11
32	Anderprises, Inc.
33	SR-125 South Citizens Advisory Committee
34	SR-125 South Citizens Advisory Committee
35	Allen E. Shaw
36	California Office of Planning and Research
37	California Office of Planning and Research
38	NOT AN OFFICIAL LETTER OF COMMENT — ADMINISTRATIVE RECORD
39	San Diego Audubon Society
40	Eagle Survey Project
41	Fred T. Sproul
42	John & Esther Williamson
43	Stephenson Worley Garrat, Schwartz, Heidel & Prairie
44	Stephenson Worley Garrat, Schwartz, Heidel & Prairie
45	Endangered Habitats League
46	Law Offices of T.D. Mauriello
47	Egger & Ghio Co., Inc.
48	San Diego County Water Authority
49	Janet Nickerman
50	Village Development
51	San Diego Natural History Museum
52	City of Santee
53	City of Chula Vista
54	Tia Juana Valley County Water District
55	NOT AN OFFICIAL LETTER OF COMMENT – ADMINISTRATIVE RECORD
56	NOT AN OFFICIAL LETTER OF COMMENT — ADMINISTRATIVE RECORD
57	NOT AN OFFICIAL LETTER OF COMMENT — ADMINISTRATIVE RECORD
58	John M. DeBevoise

LETTER NO.	ORGANIZATION
59	Watson Land Company
60	Jamul-Dulzura Planning Group
61	San Diego Audubon Society
62	J. Luis Flores-Silva
63	William G. Stevens
64	Theresa Vasques
65	Descanso Sponsor Group
66	Viviane Marquez
67	C. Boyd & K. Winter
68	Craig A. Sherman, Attorney-at-Law
69	Sibylle Hartmann
70	Mischa Dobrotin
71	Department of the Navy
72	Rachel Thomas
73	M. Simovich, et.al., University of San Diego Department of Biology
74	Natural Heritage Institute
75	The Nature Conservancy
76	California Native Plant Society, San Diego Chapter
77	Hewitt & McGuire L.L.P., Attorneys-at-Law
78	Hewitt & McGuire L.L.P., Attorneys-at-Law
79	Sierra Club, San Diego Chapter
80	Sierra Club, San Diego Chapter
81	Sierra Club, San Diego Chapter
82	Dan C. Holland, Ph.D.
83	Ellen Bauder, Ph.D., SDSU Department of Biology
84	Save Our Forests and Ranchlands
85	Alliance for Habitat Conservation
86	Stephenson, Worley, Garrett, Schwartz, Heidel & Prairie
87	NOT AN OFFICIAL LETTER OF COMMENT — ADMINISTRATIVE RECORD
88	Otay Mesa Planning Group
89	San Diego Wild Animal Park
90	General Dynamics Property Management Group
91	San Diego Off-Road Coalition
92	San Diego Audubon Society
93	Luce, Forward, Hamilton & Scripps

LETTER NO.	ORGANIZATION
94	Latham & Watkins
95	The Green Store
96	San Diego County Taxpayers Association
97	Rodrick Dossey
98	Southwest Center for Biological Diversity
99	Janice Zamudio
100	J. Whalen Associates
101	San Diego Hang Gliding & Paragliding Association
102	The Eastlake Company
103	American General Land Development, Inc.
104	Farm Bureau, San Diego County
105	Endangered Habitats League
106	C.A. Coyle, Attorney-at-Law
107	Hewitt & McGuire L.L.P., Attorneys-at-Law
108	Edward Ervin, UCSD, Department of Biology
109	Kevin Crooks, UC Santa Cruz, Department of Biology
110	Law Offices of Charles Stevens Crandall
111	Christine Kerbstat
112	San Diego Association of Realtors
113	Carmel Mountain Conservancy
114	Mark W. Dodero
115	Friends of Los Peñasquitos Canyon Preserve
116	Carmel Valley Community Planning Board
117	Bernie Brandt
118	The Desert Protective Council
119	Edward Navarro, Superintendent, San Diego Coast District, California Department of Parks & Recreation
120	Craig A. Sherman, Attorney-at-Law
121	Cindy Burrascano

PART B (CONTINUED)
MSCP FINAL EIR/EIS
INDIVIDUAL RESPONSES

80 ADAMS, SIERRA CLUB, 10/30/96

R **80(a)** The Draft EIR/EIS has been prepared and circulated in accordance with both NEPA Regulations and CEQA Guidelines. Significant environmental effects of the actions analyzed in the Draft EIR/EIS are described in detail in Section 4.0 of the document and summarized in Tables ES-2 through ES-6 included in the Executive Summary. Tables ES-2 through ES-6 also provide a comparative analysis of the impacts of alternatives analyzed in the Draft EIR/EIS and disclose environmental impacts associated with the proposed project in relation to the alternatives. Mitigation measures are identified and numbered in the Draft EIR/EIS. For example, measures to mitigate impacts to species and habitats associated with the proposed MHPA are clearly identified as mitigation measures 4.3-MHPA-1 through 4.3-MHPA-5 on pages 4.3-180 through 4.3-183 of the Draft EIR/EIS. See **Theme Response XV, Document Organization.**

It is assumed that testimony before the Board of Supervisors has been incorporated in the County's letter of comment on the Draft EIR/EIS. Responses to these comments are incorporated in the responses to Comments 16(a) through 16(p).

80(b) See response to Comment 80(a). Biological data used to support the analyses contained in the Draft EIR/EIS are summarized on pages 4.3-2 and 4.3-3 and incorporated by reference in Section 4.1. It is not the purpose of the Draft EIR/EIS to provide or support conclusions regarding species "coverage." Rather, it is the purpose of the Draft EIR/EIS to disclose impacts associated with issuance of permits or authorizations to take species included on the Covered Species List. Rationales for including a particular species on the Covered Species List would be included in the findings for the authorizations issued by the wildlife agencies.

The review period for the Draft EIR/EIS was fully consistent with both NEPA and CEQA Guidelines. In response to expressed concerns, the review period was extended from October 15, 1996, to October 29, 1996, for a total review period of 56 days.

80(c) Discussion of the scoping and Notice of Preparation (NOP) process is presented on pages 1-14 through 1-18 of the Draft EIR/EIS. As noted on page 1-17, an NOP for the Recirculated Draft EIR/EIS was distributed on June 7, 1996. Responses to relevant environmental comments are incorporated in the text of the Draft EIR/EIS in the appropriate sections. Without specific reference to NOP comments that were not addressed, a more specific response cannot be provided to this comment.

80(d) Impacts to species and habitats, and their significance, are described and quantified in the Draft EIR/EIS. Specific impacts to species associated with the MHPA and alternatives are documented on Table 4.3-2 of the Draft EIR/EIS. As stated on page 4.3-45, impacts to all species on the Covered Species List are regarded as significant with the exception of those listed at the bottom of the page. Impacts to habitat associated with the overall MHPA are quantified on Table 4.3-3. Similar tables appear throughout Section 4.3 of the Draft EIR/EIS for the alternatives and the subarea plans. For the proposed

MHPA, significant impacts to species are specifically identified on pages 4.3-150 and 4.3-151 under Item 4.3-MHPA-1. Likewise, significant impacts to vegetation communities/habitats are specifically identified on page 4.3-151, Item 4.3-MHPA-2.

80(e) A "hard line" preserve system throughout the County is evaluated in the Coastal Sage Scrub (CSS) Scenario and the Biologically Preferred (BP) Scenario. These alternatives are evaluated for the County Subarea Plan throughout the Draft EIR/EIS. See also **Theme Response VI, Alternatives.**

80(f) The alternatives considered and not selected for detailed analysis, as well as those selected for detailed analysis, are described in detail on pages 2-51 through 2-67 of the Draft EIR/EIS. The alternatives discussed on these pages represent a reasonable range of alternatives to the proposed actions, consistent with the requirements of both NEPA and CEQA. Both the CSS Scenario and the BP Scenario analyzed for the City of San Diego Subarea Plan include alternative reserve configurations in the Carmel Mountain area. Without more specific information on the referenced alternative for the Carmel Mountain area, a more specific response cannot be provided. See also **Theme Response VI, Alternatives.**

80(g) It is assumed that the term "insignificance" in this comment is referring to the definition of a finding of "insignificant effect" for certain species as noted in Table 4.3-1. The term "insignificant effect" is defined in the Findings Definitions at the conclusion of Table 4.3-1 (page 4.3-27 of the Draft EIR/EIS). These findings definitions simply represent an analysis tool used by the wildlife agencies in evaluating species for coverage under the MSCP Plan and were not used in the determination of CEQA or NEPA significant effects in the Draft EIR/EIS. The criteria for determining CEQA or NEPA significance in the Draft EIR/EIS, for impacts to biological resources, are listed on page 4.3-6 of the document. See also **Theme Response XVI, Risk Factors.**

80(h) The discussion on page ES-6 does not state that the amount of "mitigation" under the project-by-project review process would be the same as under the proposed MSCP Plan. The text states that, for purposes of the region-wide analysis completed for the MSCP, the total acreage conserved (e.g. not developed) under the No Action/No Project alternative would be similar to that which would occur under the proposed MSCP Plan. The discussion goes on to state that the configuration of conserved lands would likely be substantially different under the No Action/No Project alternative than under the MSCP Plan.

Specific mitigation ratios are not proposed as part of the MSCP Plan. Mitigation mechanisms, including ratios in some cases, are being developed by individual jurisdictions in conjunctions with individual subarea plans. Please see also response to Comment 80(aa).

80(i) Growth inducing impacts associated with the MSCP Plan are described in Section 5.0 of the Draft EIR/EIS. As discussed in this section, implementation of the MSCP Plan would not affect the amount or rate of growth, but may affect the pattern and distribution of growth within the MSCP study area. In this respect, the MSCP Plan would not be growth inducing. The analysis also concludes that the

effect of the MSCP Plan on the pattern and distribution of growth would be dwarfed by the overall region-wide shortfall in developable land projected by SANDAG after 2005.

The MSCP Plan does not have stated objectives regarding the growth of the San Diego region. The objectives of the MSCP Plan are listed on pages 1-7 of the Draft EIR/EIS. As shown, objectives of the MSCP Plan related to economic growth and development call for establishment of a "workable balance between preservation of natural resources and regional growth and economic prosperity," and establishment of a partnership between agencies to "facilitate review and approval of public and private sector land development and construction projects." These objectives of the MSCP Plan would not induce growth but would provide for appropriate review and consideration of a wide variety of factors including preservation of resources and economic prosperity.

80(j) It is assumed that this comment is referring to the discussion of the MHPA on page ES-2 of the Executive Summary. It is not clear from the comment why the statements noted represent an inadequate project description and a specific response cannot be provided. In addition to the brief discussion on page ES-2, the project is described, quantified and illustrated in detail on pages 2-1 through 2-20 of the Draft EIR/EIS.

80(k) The discussions on pages 1-2 and 2-1 of the Draft EIR/EIS describe the process that was used to select the MHPA as the proposed project. It should be noted that the MHPA represents the project selected by the participating local jurisdictions as the project applicants. The MHPA has not yet been approved by the permitting and authorizing agencies and would not be approved until the environmental review process has been completed.

80(l) The discussion of the scoping process on pages 1-14 though 1-18 of the Draft EIR/EIS includes discussion of areas of known controversy.

80(m) Loss of species and habitats outside preserve areas is a primary focus of the analysis in the Draft EIR/EIS since one of the primary actions addressed in the document is issuance of permits and authorizations to take species on the Covered Species List outside of designated preserve areas. The analyses presented on pages 4.3-45 through 4.3-174 of the Draft EIR/EIS focus on this topic for both the MSCP Plan and alternatives and the Subarea Plans and alternatives. For example, impacts to species outside the preserve for the MHPA and alternatives are clearly quantified on Table 4.3-2 and further described on pages 4.3-150 and 4.3-151.

The second column of Table 4.3-2 specifies the impacts to each covered species associated with the MHPA with regard to the percentage of data points, the percentage of major populations, and percentage of polygons containing the species. Where there are no data points or polygons for covered species, the percentage of the species' habitat to be impacted is provided. For habitats, Table 2-1 on page 2-5 of the Draft EIR/EIS summarizes the total acreage of habitats within the MHPA, the conservation target acreage within the MHPA, the percentage of vegetation conserved within

the total MSCP study area. It can be assumed under this plan that any habitat not included in the MHPA, unless otherwise regulated (e.g., wetlands, floodplains, steep slopes) on military lands could be lost to development.

In response to previous requests by the military, the maps for the preferred alternative, the Multi-Habitat Planning Area, have been revised in the MSCP Plan to depict military lands separately from other uses and ownerships. The maps for the Coastal Sage Scrub, Biologically Preferred, and Public Lands alternatives have not been similarly modified. We note, however, that should one of these alternatives be selected, planning for conservation purposes on military lands would occur separately from the MSCP through consultations pursuant to Section 7 of the FESA and through Sikes Act agreements.

80(n) Impacts to wildlife movement for the proposed MHPA and alternatives, and the Subarea Plans and alternatives, are discussed on pages 4.3-217 through 4.3-236 of the Draft EIR/EIS. Under the MHPA, approximately 75 percent of habitat areas identified as linkages between the largest habitat areas and between the core areas are maintained (page 4.3-219). In addition, the MHPA has built in redundancy to ensure adequate connection of the habitat areas. Five linkages with undetermined development status, as described on page 4.3-219, would be subject to state and federal wetland regulations and thus some level of protection. Furthermore, on pages 4.3-233 and 4.3-234, the EIR/EIS explains that within the Metro-Lakeside-Jamul segment of the County Subarea Plan, planning guidelines contained in the Biological Mitigation Ordinance (BMO) establish clear parameters for maintaining and enhancing important habitat linkages and wildlife corridors, which are summarized on page 4.3-234.

80(o) Chapter 1.0 of the Draft EIR/EIS does not contain the analysis of the County's BMO. Analyses of the BMO are provided on pages 4.2-51, 4.2-79, 4.2-102, 4.3-113, 4.3-229, 4.4-12, 4.5-15, 4.6-15, and 4.6-36 of the Draft EIR/EIS. Therefore, the Draft EIR/EIS contains sufficient analysis of the draft Biological Mitigation Ordinance to support its adoption. The Draft EIR/EIS explains the operation of the ordinance, the biological basis for its structure, and its place in implementing the MSCP. At the time that the Resource Protection Ordinance (RPO) is redrafted and revised pursuant to the direction of the San Diego County Board of Supervisors on May 1, 1996, an EIR would be prepared to analyze the impacts of those changes. At present, RPO has not been changed and remains in effect.

80(p) Because of substantial changes to the project, this second Draft EIR/EIS was recirculated for public review. The comments received on the first Draft EIR/EIS are categorized and discussed in the second Draft EIR/EIS, Section 1.6.1.

80(q) Discussion of landform/aesthetic impacts associated with the proposed MSCP Plan is provided under the heading Aesthetics/Light, Glare and Shading on pages 1-20 and 1-21 of the Draft EIR/EIS. The proposal does not include any revision to regulation governing hillside development within the City of San Diego. Analysis of this suggested change is beyond the scope of this document.

80(r) The San Diego Unified Port District was informed several years ago that the MSCP planning process was underway. It has been the District's position that it would prepare a habitat conservation plan for lands within its jurisdiction. In a letter dated August 25, 1995, to the City of San Diego Planning Department, Melissa Mailander, Associate Environmental Management Analyst with the District, offered the following statement to be incorporated into the Final EIR/EIS for the Multiple Species Conservation Program.

> "The San Diego Unified Port District is a special purpose district created by the California Legislature and as such has discreet authority over the state lands entrusted to it. The District's trust purposes are to further the development of commerce, navigation, fisheries, and recreation for the tidelands of San Diego Bay. In addition, the Port Master Plan states that the District "would protect, preserve, and enhance natural plant and animal life in the Bay as a desirable amenity, an ecological necessity, and a valuable resource." The District has dedicated 17% (447 acres) of all tidelands and 33% (1,818 acres) of submerged lands specifically for wetland conservation and habitat enhancement purposes. The District is in the process of developing a comprehensive habitat management plan for these tidelands in coordination with the Interagency Water Quality Panel and our own Port Master Plan update. As part of (the) planning process, the District would take into consideration the subregional plans developed for the Multiple Species Conservation Program."

80(s) The U.S. Navy has conducted baseline studies in preparation of its "San Diego Bay Integrated Natural Resources Management Plan." These baseline studies contain data on natural resources from throughout San Diego Bay (i.e., from throughout the bay ecosystem). Any management actions taken by the Navy as a result of its Plan would be limited to lands under the Navy's jurisdiction. The data from the Navy's baseline studies are available for use by any of the other entities with jurisdictions over lands in San Diego Bay.

80(t) The designation of significantly and sufficiently conserved vegetation communities is not a biological designation, but rather a classification/grouping of vegetation communities assigning responsibilities for the conservation of uncovered species should an uncovered species be listed in the future. The factors taken into consideration in this designation scheme are listed in the MSCP Plan, Volume I, pages 3-25 and 3-26. Please refer to **Theme Response XXII, Sufficiently/Significantly Conserved Vegetation Communities.**

80(u) Both acres of acquisition need and costs of implementing the MSCP are conservatively estimated in the MSCP Plan. The cities of Chula Vista, Poway, San Diego, and Santee and the County of San Diego independently estimated acres of habitat acquisition needed to implement their subarea plans. Total of these estimates was 25,160 acres (MSCP Plan, Volume I, Table 4-3, p. 4-7). A

contingency of 1,840 acres was added to arrive at a MSCP study area-wide acquisition need of 27,000 acres. The jurisdictions' estimate of 25,160 acres also includes 4,550 acres that may be conserved as mitigation for public and private projects. For purposes of the financing plan, however, it was assumed that these areas would be publicly purchased, without reliance on project mitigation.

Acquisition cost is also conservatively estimated. As noted in the MSCP Plan, Volume I, p. 7-15, the low and high estimates used in the financial analysis imply average land costs of $9,700 and $13,300 per acre. A review of recent vacant land sales indicated that the median price was $4,400 per acre and that 89% and 94%, respectively, of lands sold were priced below $9,700 and $13,300.

Regarding the alternative of project-by-project permitting and mitigation, historical experience indicates that preparation, negotiation, and approval of habitat conservation plans (HCPs) under the federal Endangered Species Act can be costly and time consuming. Take authorization that would become available under the MSCP would substantially reduce these costs. A comparison of mitigation costs under the CSS scenario and No Project alternative was provided in the MSCP Resource Document.

80(v) The County's Subarea Plan included a goals and criteria segment which is a numerical and narrative description (acres of vegetation communities, species location capture rates, design criteria, etc.) of the preapproved mitigation areas identified on the wildlife agencies' map. Using goals and criteria is a preserve assembly process, not an alternative preserve assembly. Thus, under any of the design scenarios outlined in Section 2.2, the County could have assembled the preserve based on "hard lines" or goals and criteria.

Individual projects will continue to be subject to CEQA and reviewed by the wildlife agencies during the CEQA process. Comments, as appropriate, regarding the project's consistency with the County Subarea Plan and wildlife issues outside the scope of the MSCP Plan and Subarea Plan may be submitted by the wildlife agencies during the CEQA review process. The subarea plan will be modified to reflect the wildlife agencies' role in individual project review. The County will make the decisions on appropriate mitigation locations, but only mitigation within the preapproved mitigation areas will contribute towards meeting the Subarea's measurable goals for conservation. The anticipated results of the mitigation strategy for the Metro-Lakeside-Jamul segment of the County Subarea Plan are identified and incorporated in Table 4-8 of the Subarea Plan. The BMO is drafted as a County-wide ordinance and the reference to mitigation outside of a Subarea Plan is referring to lands outside of the current MSCP study area. Within the County Subarea, the mitigation land does not have to support the same vegetation community (i.e. the mitigation may be ecosystem based) so long as the vegetation community being impacted is in the same or in a higher tier than the vegetation community impacted. The tiers for the County Subarea Plan are displayed in Table 4-6 of the Subarea Plan. Outside of an approved Subarea Plan area, mitigation must be in-kind.

The County's implementing agreement will include language regarding the circumstances under which the wildlife agencies can withhold Third Party Beneficiary status for a specific

project and how annual reviews will be used to determine if the County is in compliance with the take authorizations and the process for take authorization suspension and termination. The County's Implementing agreement will be subject to a 30-day public review period (*Federal Register Notice*) when the County submits its 10(a)(1)(B) permit application to the USFWS.

80(w) The discussion of alternatives takes place at p.2-51 in Section 2.2, "Alternatives." This section discusses the design scenarios that were considered as a basis for preserve design. Section 2.2.6. discusses the preserve operation under the design alternative chosen, the Multi-Habitat Planning Area (MHPA) model. The central environmental issue discussed in the text, is the impact on the environment of the preserve design chosen. The issue of "hard lines" versus preserve design criteria is a method of implementing the design alternative chosen, not a design alternative in itself. Thus, under any of the design scenarios outlined in Section 2.2, the County could have assembled the preserve based on "hard lines" or criteria. The text states clearly that mitigation would be directed toward biological resource core areas and that other areas may qualify as biological resource core areas apart from those "pre-approved" by the wildlife agencies.

The question of which governmental agency reviews individual land use projects is not a proper subject for environmental impact analysis, but is a legal question. The Constitutional doctrine of separation of powers reserves local land use jurisdiction to the State of California which in turn has delegated this discretionary authority to the County. Under the subarea plan and the Implementing Agreement, the wildlife agencies would continue to fulfill their statutory roles under the state and federal endangered species acts and CEQA. Moreover, the public would continue to have opportunity to comment on individual projects under the CEQA process.

Biological Resource Core Area is defined according to clearly specified criteria in the Biological Mitigation Ordinance. The maps developed by the wildlife agencies may be used as tools to determine areas that the agencies, themselves, regard as significant areas in which mitigation should take place. The concept of the wildlife agencies developing maps to aid in determining mitigation requirements is not inconsistent with the County's initial no-line approach. The maps used by the wildlife agencies have not been adopted by the County and it is clear that the County does not represent that these maps show hard line preserve configurations.

80(x) The Lakeside coastal sage scrub archipelago linkage is a focus for preservation. This is likely the only remaining coastal sage scrub connection between sage scrub lands south of Interstate 8 and sage scrub lands to the north. While the connection is currently fragmented into a series of habitat islands, California gnatcatchers still occupy most of these habitat patches. The usefulness of this linkage is primarily for avian species including the gnatcatcher. The primary habitat linkage is the chaparral-riparian-oak woodland linkage further east in Harbison and Chocolate Canyons. There is a large drainage with natural vegetation that is spanned by a large bridge which allows passage under I-8 at this location.

The MSCP Plan was developed acknowledging the functional uncertainty of this coastal sage scrub connection, but this is the only existing coastal sage scrub linkage in this area and, as a result, there are no other options. The acreage of habitat within this linkage is small and its primary importance is dispersal recolonization if gnatcatchers are extirpated from some areas. Over 12,000 acres of acquisitions are targeted for the Metro-Lakeside-Jamul segment of the County Subarea Plan, including lands that will help to preserve the linkage. The County, public and the wildlife agencies will continue to review projects within the Metro-Lakeside-Jamul segment and the County's and wildlife agencies' focus will be on preserving the viability of this linkage. See also response to Comment 10(l).

80(y) As stated on page 2-51 of the Draft EIR/EIS, the Multiple Habitat Scenario was not selected for detailed analysis because of its similarity to the MHPA, which is addressed in detail in the Draft EIR/EIS. The Multiple Habitat Scenario served as a stepping-stone in providing one of the building blocks for the MHPA.

80(z) The proposed amendments to the General Plan have been drafted to include the open space policies reflective of the MSCP Plan. The General Plan would retain the open space policies related to other habitat areas within the City. Many of the open space areas envisioned for protection under the existing open space element have either been acquired for open space or protected through the subdivision process. It is not the intent of the amendments to the General Plan to redefine open space planning bur rather to reflect the change in open space planning indicative of the MSCP. The proposed General Plan amendments would not result in a reduction of hillside protection.

80(aa) As described in Section 3.3.2 of the EIR/EIS, mitigation guidelines proposed by the City and the County of San Diego are based on a "tier" system of classifying the rarity and sensitivity of various habitats found in the MSCP study area. These guidelines differ from the habitat-specific mitigation guidelines contained in existing resource protection ordinances (RPOs) of the two jurisdictions.

The MSCP Plan states as a policy goal that private development exactions should not be increased beyond existing requirements. Development contributions should be made in accordance with development regulations, where habitat impacts are avoided, and through compensatory mitigation of unavoidable impacts. (MSCP Plan, Volume I, page 4-1)

The estimated conservation of privately owned habitat, including both on-site avoidance and off-site mitigation, but excluding public acquisition, was prepared by participating local jurisdictions, based on the tier system of habitat classification and the policy goal stated above.

Estimates of total conservation and total potential impact to privately owned natural habitat are contained in Table B-4c of the MSCP Plan, Volume II. It is estimated that upon completion of the MSCP, 88,393 acres of privately owned habitat would be included in the preserve. Subtracting 27,000 acres of public acquisition, 61,393 acres would be conserved through avoidance and mitigation. It is also estimated that up to 14,983 acres of habitat inside the MHPA (the planning area for the preserve) and 41,990 acres outside the MHPA may be developed. Total private development impacting habitat is

estimated to be 56,973 acres. In this case, the ratio of habitat area conserved (in the preserve) to area impacted (inside and outside the MHPA) is 1.08 to 1 (= 61,393 / 56,973). If the constrained area outside the MHPA is added to the conserved area, then the ratio is 1.94 to 1 (= (61,393 + 49,197) / 56,973).

Some portion of the 49,197 acres of habitat on physically constrained land outside the MHPA may also be developed. If, for example, 50% of constrained lands outside the MHPA is developed and 50% is retained as natural open space, the corresponding ratios of conservation to impact would be 0.75 to 1 (not counting constrained lands outside the MHPA as conserved) or 1.05 to 1 (counting constrained lands as conserved).

Thus, conservation-to-impact ratio under the MSCP Plan, using these various definitions, range from 0.75 to 1 to 1.94 to 1, with likely values near 1 to 1. These ratios are comparable to the historical experience in the City of San Diego. A review of 21 land development projects approved under the City's RPO between 1987 and 1993 showed that the average conservation-to-impact ratio was 1.08 to 1, including the 2,500-acre Black Mountain project, and 0.86 to 1, excluding that project. It should be noted, however, that mitigation ratios for specific habitats, such as coastal sage scrub, were significantly higher--sometimes up to 3 to 1. The ratios described above refer to the total area of all natural habitats.

The commenter is correct that mitigation ratios for specific habitats under the MSCP or the subarea plans may be more or less than ratios indicated in the existing City and County of San Diego RPOs or their guidelines. However, on average, conservation obligations for private projects are similar to the historical experience.

80(ab) Construction of planned roadway facilities is not an action addressed in the Draft EIR/EIS and construction of any such facilities would be subject to separate environmental review. Environmental review for facilities within the MHPA would need to demonstrate conformance with the guidelines for such facilities included in the MSCP Plan and relevant subarea plans. Regional transportation plan roads are shown on Figure 3.4-1 of the Draft EIR/EIS. Some arterial roads are shown on the Subarea Plan maps of the individual jurisdictions. With the exception of the City of San Diego landfill siting study which includes portions of the East Elliott area described in the Draft EIR/EIS, no landfills are planned at this time in the MHPA. In fact, page 4.5-9 of the Draft EIR/EIS states that a future landfill in the East Elliott area would be located outside the boundaries of the MHPA. The MSCP Plan describes landfills as a permitted use in the MHPA, subject to certain restrictions, as described in Section 6.2.3 of the MSCP Plan, Volume I.

80(ac) The region-wide shortfall of available land for housing is not described anywhere in the Draft EIR/EIS as an "MSCP problem." Please refer to a more detailed discussion of this issue in Section 5.0, Growth Inducement. It is not the purpose of the Draft EIR/EIS to analyze a desire of the citizens of San Diego for a regional growth management strategy.

80(ad) The Biological Mitigation Ordinance, which is fully analyzed in the EIR/EIS, is the only proposed change in the County's existing RPO. The remaining portions of RPO remain in effect. An EIR will be completed when other revisions to RPO are made. The proposed Biological Mitigation Ordinance, like the RPO, requires an analysis of the biological resources on the property as a starting point. The proposed ordinance sets out specific requirements for mitigation based on types of habitat and specifically requires avoidance of certain sensitive animal and plant populations. The proposed ordinance directs mitigation toward areas that help assemble a preserve which meets the goals and criteria.

80(ae) It is the purpose of the Draft EIR/EIS to disclose both the positive and negative impacts associated with the various actions addressed in the document. The positive aspects of potential shifts in development are noted on pages 1-19, 1-20, and 1-22 of the Draft EIR/EIS and are alluded to in the discussion of the No Action/No Project alternative on page 2-66.

80(af) The proposed amendments to the General Plan have been drafted to include the open space policies reflective of the MSCP Plan. The General Plan would retain the open space policies related to other habitat areas within the City. Many of the open space areas envisioned for protection under the existing open space element have either been acquired for open space or protected through the subdivision process. It is not the intent of the amendments to the General Plan to redefine open space planning but rather to reflect the change in open space planning indicative of the MSCP. The proposed General Plan amendments would not result in a reduction of hillside protection.

80(ag) The impact of all reasonably foreseeable future facilities have been accounted for in the preserve design. Within the City of San Diego, all capital improvements must be consistent with the proposed City subarea plan, and would also undergo subsequent separate CEQA review when project specific details are prepared. Analysis of a possible, but unplanned, landfill is not only premature but beyond the scope of the proposed project. See also **Theme Response IX, Allowable Uses within MHPA.**

80(ah) The significance conclusions for land use impacts in the Metro-Lakeside-Jamul segment of the County Subarea Plan do not differ from the conclusions of the analysis for subarea plans prepared by other participating local jurisdictions or other segments of the County Subarea Plan. For the Metro-Lakeside-Jamul Segment, as for other plans, the Draft EIR/EIS concludes that implementation of the proposed MSCP Plan and subarea plans would result in conversion of lands designated for urban uses within the preserve, resulting in a land use shift. For the Metro-Lakeside-Jamul segment, this shift is not regarded as significant because sufficient flexibility has been incorporated in the MSCP Plan, the County of San Diego Subarea Plan, and the BMO, and sufficient opportunities exist for development outside the preserve area, to accommodate the anticipated shift. Table 4.2-13 indicates that approximately 527 acres of urban designated lands would be shifted in the Metro-Lakeside-Jamul segment. The analysis does not imply that no land use changes would occur in this segment.

80(ai) No projects have existing permits which can "supersede" the subarea plan in the Metro-Lakeside-Jamul segment.

80(aj) The County's proposed Biological Mitigation Ordinance would be implemented in concert with the Metro-Lakeside-Jamul segment of their subarea plan. The Subarea Plan provides preserve design criteria and conservation goals to implement the MHPA. These criteria and goals must be met during their project approval process.

80(ak) Comment noted. The level of involvement of environmental groups in the determination of the amount, type and location of biological mitigation varied significantly. On some projects the mitigation requirements were established through negotiations between wildlife agency staff and property owners only. For other projects, all parties participated on the negotiations. See also **Theme Response VIII, Public Involvement.**

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Sierra Club, San Diego Chapter
3820 Ray Street
San Diego, CA 92104
Phone: 299-1741; Fax 299-1742

October 30, 1996

John Kovac
Land Development Review Division
City of San Diego
1222 First Ave., 5th Floor
San Diego, CA 92101

Gail Kobetich, Field Supervisor
U.S. Fish and Wildlife Service
2730 Loker Ave., West
Carlsbad, Ca 92008

Ron Remple, NCCP Program Manager
California Department of Fish and Game
1416 Ninth Street
Sacramento, CA 95814

Subject: **Sierra Club Comments on The Recirculated Draft Joint EIR/EIS Issuance of Take Authorizations For Threatened and Endangered Species Due to Urban Grwoth Within The Multiple Species Conservation Program (MSCP) Planning Area. LDR No. 93-0287; SCH No. 93121073**

Dear Messrs. Kovac, Kobetich and Rempel:

Following are the comments of the San Diego Chapter of the Sierra Club concerning the Draft Joint EIR/EIS for the MSCP.

A. CONCLUSIONS

The *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* (hereafter referred to as "the *Draft Joint EIR/EIS*") **fails to meet either its federal NEPA purpose** "to provide a full and fair discussion of significant impacts and inform the decision-makers and the public of reasonable alternatives that would avoid or minimize adverse impacts" **or the state CEQA purposes** to: a) inform government decision-makers and the public about potential, significant environmental effects of proposed activities; b) identify ways environmental damage can be avoided or significantly reduced: and c) disclose to the public the reasons why a governmental agency approved a project if significant environmental effects are involved.

The public and decision-makers will not be aided by this draft document—unless it is significantly reformatted and improved. They have quickly learned to avoid the draft

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document's irrelevancies and confused, plodding organization. The MSCP process, which included substantial and high-quality biological analysis and extensive community involvement, deserves a clearer and more complete environmental analysis documentation that is reflected in the *Draft Joint EIR/EIS* 80(a)

Representatives of a broad range of interests, including farm groups, building industry and land owner representative, community groups and environmental spokespersons, plus County planning staff have already offered public testimony before the San Diego Board of Supervisors to a range of inadequacies in the *Joint EIR/EIS*.

B. ***Draft Joint EIR/EIS* CONCERNS SUMMARIZED**

The problems with the *Joint EIR/EIS*, about which there appear to be a broad consensus, can be summarized as follows: 80(b)

1. The document is poorly organized, confusing, and unnecessarily redundant
2. Inadequate information is provided to support basic conclusions—particularly concerning the "coverage" of species
3. There has been an inadequate review period

In addition, the *Joint EIR/EIS* has the following major problems:

1. Substantive Comments On the Notice of Preparation Were Ignored and Have Never Been Responded To 80(c)

   A number of the concerns identified below were presented by the Sierra Club and others (see Sierra Club letter of July 11, 1996 to John Kovac, City of San Diego). These comments, and those made by others, remain unaddressed.

2. Significant Impacts Are Ignored or Inadequatelv Documented

   Most critically, the major loss of habitat and species that will be the result of—or will be facilitated by--the proposed MSCP Plan action is nowhere adequately described or evaluated. 80(d)

3. Kev Alternatives Are Not Identified or Analvzed

   For example, the failure to address the option of a "hard-line" preserve system throughout the County area may be viewed as a necessary "political call", but it does not follow the EIR/EIS rules. 80(e)

4. The Project Impact Analvsis Includes Onlv Either Sweepingly Irrelevant or Verv Selective Alternatives Analvsis and Is Inadequate

   For example, even in the face of considerable and ongoing pubic controversy 80(f)

over the appropriate preserve configuration in the Carmel Mountain area, NO ALTERNATIVES are identified or analyzed for the City of San Diego Subarea Plan—except the "straw men" Coastal Sage Scrub and Biologically Preferred MSCP plan area-level options. Important and "reasonable alternatives" were ignored and not analyzed. 80(f)

5. The "High Risk" of Local Extirpation of Some of the "Covered Species" in the MSCP Plan Area Is A "Significant Impact" Under CEQA that Is Not Negated by New Policy Directions by the Secretary of Interior Concerning the "Insignificance" of MSCP Populations of These Species 80(g)

6. The Basic Policy Trade-off—Between Project-by-Project Review and the MSCP Plan is Not Adequately Addressed

The conclusion in the *Draft Joint EIR/EIS* that the amount of mitigation under the MSCP "would be similar" (ES-6) to that under the existing project-by-project review is not substantiated in the draft and only vaguely referenced DRAFT MSCP Plan. In some cases, MSCP mitigation ratios are proposed to be reduced from those in present use under CEQA and local resource protection ordinances, even compared to actual results under present "negotiated" practices. 80(h)

7. The "Growth Inducing Impacts" of the Project--Which Has Stated Objectives Regarding the Growth of the San Diego Region—Have Not Been Identified or Analyzed

The draft MSCP Plan (Pg. 1-1) states that "The MSCP will help achieve many objectives regarding the growth and economy of the San Diego region." The draft MSCP Plan identifies that, "the federal listing of the California gnatcatcher as threatened has restricted the region's ability to accommodate future growth and development in coastal habitats." (Pg. 1-5) One of the basic purposes of the MSCP—known to all—is to remove the present restrictions on development associated with this listing and to provide for increased development. The *Draft Joint EIR/EIS* itself states, "the MSCP would facilitate and improve certainty of development outside the preserve area." Stated baldly, the MSCP Plans says that "it intends to induce growth that has been restricted by the listing of the California gnatcatcher; then it denies any "growth inducing" impacts. 80(i)

C. SECTION-BY-SECTION COMMENTS

EXECUTIVE SUMMARY

1. Inadequate Project Description

There is a discussion of focusing "public acquisition" and "mitigation for major development projects" within the MHPA, but there is no reference to general project mitigation (except within county "no-line" areas). Also, it is 80(j)

debatable whether the "no-line" areas of the draft MSCP Plan ENSURE conservation—and therefore whether these "no-line" areas should be counted when calculating "core biological resource areas and linkages conserved." 80(j)

2. <u>There Is No Statement Of Why the Proposed Project Alternative Has Been Selected</u> – as required by 15126(d)(1), *CEQA Guidelines* 80(k)

3. Areas of Know Controversy Are Not Identified - as required in *CEQA Guidelines* 151123. Points of controversy are many and widely known, but nowhere identified. 80(l)

4. The Significant Loss of Species and Habitats Outside the Preserve Areas That Will Be ENCOURAGED by This Draft Plan Is Not Clearly Identified

   The Draft Plan provides for the direct protection of only slightly over 50% of the remaining habitat in the MSCP area. Whether these impacts are "adequately mitigated" is the major matter at issue. However, the impacts prior to consideration of the program of mitigation should be clearly identified. 80(m)

5. The Conclusion That The Impact On the "Movement Of Wildlife Species" Would Be "Less Than Significant" Before Mitigation Is Unsupportable

   The Draft MSCP provides for the protection of only about 50% of existing natural habitat, and the loss of significant habitat area including wildlife corridors, which will certainly impact wildlife movement. The Draft Plan argues these disruptions can be mitigated by the remaining, and sometimes enhanced corridors, but the impacts are clear. 80(n)

Chapter 1.0 Purpose and Need

1. The *Draft Joint EIR/EIS* Analysis Is Not Adequate To Support the County's Adoption of the Biological Mitigation Ordinance, As Indicated

   The potential impacts of the ordinance compared to the present County Resource Protection Ordinance have not been evaluated in the *Draft Joint EIR/EIS.* 80(o)

2. The Cursory and Non-Specific Treatment of Comments On the Earlier *Draft Joint EIR/EIS* Is Inappropriate

   This is reflected in the fact that many of the earlier identified deficiencies have been ignored and remain unaddressed. Similar treatment is afforded the comments on the Notice of Intent—with similar results. 80(p)

3. Potentially Significant Impacts to Landform and Visual Quality Have Not Been Properly Analyzed

   The "Geology/Soils" discussion, under "Issues Not Selected For Detailed Analysis," state that "existing hillside, grading and building code regulations of the local jurisdictions would continue to apply to proposed developments outside the preserve" and that there will be no effects beyond the No Action/No Project alternative. The City of San Diego's implementing ordinance proposed reductions in hillside protection—both outside the 80(q)

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preserve and inside the preserve. These changes must be acknowledged and analyzed. 80(q)

Chapter 2.0 Alternatives Including the Proposed Project

1. The Failure of the Port of San Diego To Participate In MSCP Planning and the Significance of This Deficiency Is Not Acknowledged

   The Draft MSCP Plan purports that it addresses, and provides adequate "coverage" to species that depend upon habitat areas under the control of the Port of San Diego. The Port has NO habitat management plan and its commitments to proceed with such plans have lagged. The reference in the *Draft Joint EIR/EIS* to the Navy's baseline studies "as preparation of a multi-resources management plan for the entire bay in 1996-97" is very confusing. Is it a Navy plan for the entire bay, or Navy data for a Port plan for San Diego Bay or a plan for the elements of the bay under Navy jurisdiction? "Wildlife management" for San Diego Bay resources remains uncertain.

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2. The Impacts of Absolving Private Land Owners From Any Responsibility to Help Protect Un-Covered Species that Become Listed In "Significantly Conserved Vegetation Communities" Is Not Addressed

   The establishment of these categories of "vegetation community coverage" is an acknowledged policy call that is not based on clear criteria (only a non-quantified list of factors). What if the federal, state and local governments don't, without the assistance of private contributions, have the funds to take the necessary actions to protect species, should they become listed, that are dependent upon these "covered habitats" ? This is a "No Surprises" Policy issue; to our knowledge, no NEPA analysis has been conducted with respect to the "No Surprises" Policy. The Draft MSCP provides the opportunity and illustrates the need for an evaluation of the impacts of the policy.

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3. The Analysis Takes a Consistently "Rosy Scenario" Approach To Analyzing the "Proposed Project"

   An example is the discussion of acquisition from "willing sellers" or by "friendly condemnation" as adequate to protect critical areas of the preserve. In general, there is a lack of sensitivity analysis with respect to the analysis of the Proposed Project. In contrast, application of present "project-by-project" mitigation procedures is dismissed in a cavalierly negative fashion as ineffective without evidence and as a matter of "common knowledge."

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4. With the Exception of Areas Where Differences Remain in Negotiations Between Land Owners (or Jurisdictions) and the Wildlife Agencies, REAL ALTERNATIVES Are Generally Not Identified or Analyzed-- Particularly At the Subarea Plan Level

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For example, in spite of a continuing debate over the future of the Carmel Mountain area, there is no alternatives evaluation of this area. There are other areas in this same "point of controversy" category, such as Fanita Ranch in Santee, and others which deserve consideration merely on their merits.

The criteria for Subarea alternative consideration seems to be based SOLELY on whether there is a continuing disagreement in negotiations between the landowners, or jurisdictions, and the Wildlife Agencies. The interests of other stakeholders are not weighed. This is an arbitrary determination made at the convenience of the responsible agencies. Reasonable, and important, alternatives are not evaluated. If alternatives have been evaluated pursuant to project level approvals, the analysis of alternative should be specifically referenced.

This situation reflects the unbalanced nature of the subarea planning process. The only alternatives which are formally analyzed are those forwarded by the Wildlife Agencies, land owners or jurisdictions. Reasonable alternatives forwarded by other parties are neither recognized nor addressed.

5. <u>The County's Policy Desire To Promote Its Deal/Negotiation Points Does Not Shield It From the Requirement For Evaluating Reasonable Alternatives</u>

The "no-lines" Metro-Jamul Segment seems to be presented on a "take-it-or leave-it, no alternatives" basis. CEQA and NEPA require alternatives. Pre-decision by a policy body is not a basis for establishing "unreasonableness."

The confused nature of the text regarding the Metro-Jamul Segment and discussions with County and Wildlife Agency representatives suggest strongly that there is confusion, and differing interpretations of how the MSCP plan for this area will function. The extent to which "individual development projects will continue to be reviewed on an individual basis" and by whom (the Wildlife Agencies?), the degree to which mitigation can be accomplished outside the so-called, "predefined mitigation areas", and the effectiveness of the incentives to encourage mitigation in certain areas have not been described adequately or analyzed either in the *Draft Joint EIR/EIS* or the Draft MSCP Plan. The discussion on Page 2-42 as to how "mitigation may, in some cases, be permitted outside the preserved lands on areas defined as linkages between high value habitats" reflects this confusion. Since the "predefined mitigation areas" include linkages and since with "no-lines" the "preserve lands" are only those where there are approved projects or mitigation, the meaning of this is entirely unclear.

The plan for the Lakeside-Jamul segment reads like a "house of cards" with the players building from more than one deck and according to different plans. Contrasts and questions abound: "the wildlife agencies have created

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their own maps" (Pg. 2-38) vs. "deal point" about "no-lines"; an incremental, as-yet-undetermined definition of "biological core areas" vs. "predetermined mitigation areas" with accounting for meeting conservation targets limited only to these predefined areas; project review with the claimed ability to pull the entire County permit for "significant material breach" of the plan vs. a proposed annual-only review. This element of the Proposed Project needs to be clarified BEFORE it can be analyzed.

6. The Level of Existing Fragmentation and Tenuous/Uncertain Nature of the Lakeside-Jamul Segment Element Suggest That the Plan Should Evaluate the Contingency That There May Be No Functional Linkage In This Area

Decision makers and the public deserve to know the potential implications of this non-speculative, reasonably probable scenario. The Lakeside-Jamul linkage has been identified as critical and already tenuous for some time now. The "no-line" plan makes it more so. The Population Viability Analysis forth California gnatcatcher should be rerun testing the likely possibility that the planned linkage may likely not be functionally viable. 80(x)

7. The Multiple Habitat Scenario Should Not Be Eliminated From Further Analysis Because It Provides the Best Basis Of Comparison Regarding Recent Changes To An Earlier Plan Draft With A Wide Basis Of Support 80(y)

The failure to present this baseline alternative make it impossible for the public to understand the changes have occurred since the process of preserve design was essentially delegated to the individual jurisdiction sinc the earlier public review draft.

Chapter 3: Affected Environment

In general, this section is straightforward and well organized

1. The Magnitude of the Proposed Changes To The City of San Diego's General Plan Need To Be More Clearly Presented (3.2.3.4)

The presentation that the "City will amend the General Plan Land Use Maps as well as open space and conservation elements to reflect the City's Subarea Plan" is misleading. The proposed changes to these elements of the General Plan would redefine the City's basic approach to open space planning and could have the effect of reducing the protections and lowering the priorities of certain types of open space, particularly in developed areas of the City. These changes need to be clearly identified and their impacts evaluated. 80(z)

2. The Consistent Representation That The Proposed MSCP Mitigation Ratios Are the Same As Existing Mitigation Ratios Is Not Accurate (3.3.2)

In general, the mitigation ratios that are proposed are significantly lower than the formal standards that have been the basis for decision making by both the wildlife agencies and local jurisdictions. There is uncertainty and disagreement about what the actual history of mitigation has been. The more accurate contention is that the mitigation ratios are not being reduced "from actual practice"—which leaves open the issue of why mitigation standards have not been followed. At the least, the basis for these types of claims need to be distinguished and clearly documented. 80(aa)

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3. The Potential Impacts Of Planned Roadway Systems On the Viability and Functioning of The MSCP Preserve System Have Not Been Analyzed

The Regional highway development plan is taken as a given in the EIR/EIS analysis. There is no clear indication whether the preserve system has been planned to minimize the impacts of these clear threats to wildlife and to corridor and core integrity nor is their an analysis of their potential impacts. While the text makes general references to the relationship of existing and planned transportation facilities to the MSCP preserve, there should be a clear map showing the location of existing and planned transportation facilities to the preserve design. These same comments apply to existing and planned landfills.

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4. The Complementary Relationship Of the MSCP Planning Effort and The Efforts At Regional Growth Management Are Inadequately Addressed (3.6.2.3)

Citizens of San Diego have clearly expressed their concern over the impacts of unplanned growth on their quality of life and have expressed their desire for "regional growth management planning." The "problem" of "region-wide shortfall of available land for housing" is not an "MSCP problem" as implied in the analysis. It relates to a broader concern with the pattern of sprawl development that has dominated—its impacts on congestion, costs of services and facilities and loss of resource values and reductions in quality of life. There is no indication in the analysis that San Diego citizens want a regional growth management strategy and that the MSCP program is a consistent element of this desire and plan.

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Chapter 4.0 Environmental Consequences

4.2 LAND USE

1. "Inconsistency With Key Land Use Regulations, Particularly Resource Protections Ordinances" Should Be Identified As A Criteria To Determine Significance Or As An Issue For Discussion (4.2) (B.1.4.2) (4.2.1.1)

Both the City and County Subarea Plans propose major, substantive changes in there Resource Protection Ordinances, probably the most basic local regulations designed to protect the environment. Proposed changes to these ordinances should be carefully evaluated for their potential environmental impacts; they have not been.

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2. Potential Positive Impacts, Of Shifting Development As A Result of MSCP Implementation, Are Not Identified

The analysis of Land Use fails to acknowledge the fact that the Regional Growth Management Strategy's Land Use Distribution Element encourages

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"focusing new growth within walking distance of major transit services, providing mixed-use districts as the centers of the region's communities, providing residential uses within major employment areas, and providing safe and convenient pedestrian and bicycle access." (Description from Chapter 5: Growth Inducement, Page 5-2)

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This means that, while the MSCP has potential inconsistencies with local jurisdictional plans, it may actually be promoting the regional-level plan. Granted, there are policy conflicts here, but they deserve to be identified and aired.

It also should be noted that regional-level analyses of local jurisdictional land use plans have consistently concluded that jurisdictions have over-planned and over-zoned for industrial uses at the expense of land for residential development.

3. <u>The Proposed Changes To the City of San Diego's General Plan Contain Major Policy Changes That Could Have Significant Impacts On the Environment Have Not Been Identified Or Analyzed</u> (B.1.4.2)

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These proposed changes include: a) redefinition of "open space" and "open space planning"; b) reduction in hillside protections,

4. <u>The Impacts Of Proposed Facility Improvements, Such As Planned Landfills and Highways, On The Functioning of the Proposed MSCP Preserve Have Not Been Identified Or Analyzed</u> (B.)

For example, there is no serious discussion of the compatibility of the existing and proposed landfills in the East Elliot Community Plan with the proposed preserve in that area. The conclusion that "The proposed open space uses would also be more compatible with the two landfills than would residential uses" begs the issue of the potential impacts a major landfill could have on preserve functioning, such as from introduced predators. (B.1.4.2)

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5. <u>The Discussion of the County, Lakeside-Jamul Area Contains A Logical Inconsistency—Arguing That the Need To Convert Land Planned For Development For the MSCP Preserve Will Not Result In Land Use Impacts</u> (4.1.6.1)

On the one hand, the discussion acknowledges that significant land, in addition to that presently planned for open space, will need to be devoted to the MSCP preserve. On the other hand, it argues that "...development intensities and types anticipated by the approved Regional Land Use element could be implemented..."

The statement, "Although, as indicated in Table 4.2-13, implementation of

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the preserve within the Metro-Lakeside-Jamul Segment would require the conversion of property designated for urban uses to open space, it is not anticipated that significant conflicts with approved land use plans would occur" isn't logical. For other jurisdictions, the Land Use analysis indicates that these types of "required conversions from planned development" are significant impacts. Unfortunately, the data provided does not provide a quantified indicator of the magnitude of this shift from "planned development" to "planned preserve" for the Lakeside-Jamul Segment. 80(a

The discussion about "required conversion" in B.1.6.2 is then contradicted in B.1.6.3 which argues that under the Biological Mitigation Ordinance, the primary machinery for implementing the MSCP in the Lakeside-Jamul Segment, "no features of the BMO would supersed(typo) the type of land uses currently designated for private land."

The discussion on this topic consistently sounds like doubletalk: "The MSCP plan for the Lakeside-Jamul Segment will change the rules, with the new Biological Mitigation Ordinance, to build the MSCP Preserve--BUT nothing will change." "Present plans will not result in an adequate preserve for the area, but the plan intends to build the preserve without changing the present plans." One is left with the impression that the only way the preserve will be accomplished in this area is through straight purchase—which is the apparent underlying intent of its proponents. Of course, if this were the case, it would violate the underlying principle of a PRIVATE-public partnership and would have significant implications for the financial feasibility of the entire MSCP Program.

6. <u>The Impacts of the Proposed Policy For Lakeside-Jamul That Places Existing Permits Ahead Of Preserve Needs On the Biological Viability Of the Preserve Has Not Been Identified Or Evaluated</u>

   The ability of projects with existing permits to "supersede" the Subarea Plan, as proposed in the Subarea Plan, could have a significant impact on the preserve and on its feasibility. No information is provided as to the extent of this circumstances or to it possible impacts relative to the critical configuration issues that have been identified in the Lakeside-Jamul Segment. 80(ai

7. <u>The Project-By-Project Philosophy Of The County Biological Mitigation Ordinance For the Lakeside-Jamul Segment Directly Contradicts The Underlying "Preserve Planning" Philosophy and Tenants of the MSCP</u> 80(aj)

MISCELLANEOUS COMMENT:

1. Page ES-2 of the Executive Summary. The *Draft Joint EIR/EIS* grossly MISREPRESENTS the level of involvement which "environmental groups" have had in "negotiations" regarding the mitigation for major projects. 80(ak

80(ak)

Such involvement was generally "minimal" and "after-the-fact" or arbitrarily selective.

Respectfully Submitted,

Craig Adams

Craig Adams
Chapter Coordinator
Sierra Club, San Diego Chapter

81 CRAIG ADAMS, SIERRA CLUB COMMENTS ON THE MSCP, 10/30/96

81(a) Comments noted.

81(b) See **Theme Response I, Species Analysis Approach.**

81(c) See **Theme Response XIV, Biological Monitoring.**

81(d) See **Theme Responses XVI, Risk Factors and XIX, Preserve Management.**

81(e) The County and wildlife agencies are not in conflict on this issue. The Biological Mitigation Ordinance (BMO) directs mitigation toward land that is defined as Biological Resource Core Areas. The ordinance sets lower mitigation ratios when mitigation takes place within Biological Resource Core Area. The wildlife agency maps of preapproved mitigation areas identify which areas have already been determined to meet the definition of core area for mitigation purposes (e.g. mitigation within these preapproved areas qualifies for reduced mitigation requirements). Thus project applicants, by referring to the wildlife agencies' map, can determine in advance where mitigation ratios will be lower. Lower mitigation ratios are designed to be an incentive for mitigation within these Biological Resource Core Areas, leading to preserve being assembled based on conservation within these areas.

81(f) See response to Comment 79(ap).

81(g) The MSCP Plan addresses the take and conservation of covered species within participating jurisdictions. All other types of environmental and community quality protections would continue to be addressed through project approvals subject to applicable zoning, development regulations, and environmental review.

81(h) See **Theme Response IX, Allowable Uses within MHPA.**

81(i) Under Section 10(a)(1)(B) of the federal ESA, the wildlife agencies may permit the take of individuals of a species or area of occupied habitat. For the MSCP Plan, take has been estimated using both methods, depending upon the level of information known about a particular species. Table 3-5 of the MSCP Plan displays the number and percent of points, polygons, and major populations conserved. Where appropriate, the latter category uses the percent of potential habitat conserved. Actions on military lands that may affect listed species would be subject to formal consultation pursuant to Section 7 of the federal ESA. See also revisions to Table 3-5 of the MSCP which provides the rationale for species coverage included in the Revisions to the MSCP Plan, Volume I, January 1997.

81(j) The estimated amount of take is provided in revised Table 3-5 included in the Revisions to the MSCP Plan documentation, January 1997. Preservation of approximately 75% of the remaining habitat represents a significant amount of conservation.

81(k) Physically constrained lands inside the MSCP study area, but outside the MHPA, should not be considered as preserved for the purposes of the MSCP, due to several factors. First, by their nature and location, habitat on constrained lands outside the MHPA are generally fragmented, with limited biological value. Second, of the 74,806 acres of constrained lands, 49,197 acres are privately owned. While portions of these lands have physical constraints to development (such as steep slopes) and require special planning review, development or agriculture is not uniformly prohibited in these areas. Some development could occur, and, except under special circumstances, such as wetlands protected by the Clean Water Act, the development may not be subject to biological review.

81(l) Table 3-5 of the Draft EIR/EIS has been revised to incorporate portions of various tables, charts, etc. from the MSCP Plan and describe the rationale for coverage, including the level of conservation of known populations and potentially occupiable habitat, which provides the basis for coverage (landscape, special management, etc.), and details of the coverage. Table 3-5 of the MSCP Plan has been revised to include the monitoring approach that would document conservation of populations and preserve function. Refer to revised Table 3-5 n the Revisions to the MSCP Plan documentation, January 1997.

81(m) See **Theme Response I, Species Analysis Approach.**

81(n) In determining whether the impacts of the plan to species are significant, both the context and severity of adverse and beneficial impacts are considered. Context includes the status of the species range wide and locally; the importance of the affected population to the recovery and survival of the species; existing and future threats to the species; and the degree to which the MSCP Plan contributes to the species' conservation. Severity includes the duration and intensity of the impact; the degree to which possible effects on the species are highly uncertain or involve unique or unknown risks; the degree to which the action may establish a precedent for future actions with significant effects on the species; and whether the action is related to other actions with individually insignificant but cumulatively significant impacts on the species. An effect that cannot meaningfully be detected, measured, or evaluated relative to the species' range, status or habitat as a whole was determined to be insignificant and require little to mitigate or minimize the potential take associated with the proposed action. Based on the wide-ranging nature of these species, and the minor role of the MSCP study area in their overall conservation, the wildlife agencies determined that the impacts of the proposed action on these species was insignificant.

81(o) See **Theme Responses XVI, Risk Factors and XIX, Preserve Management.**

81(p) See response to Comment 80(r).

81(q) The MSCP Plan is designed to mitigate the impacts of the proposed issuance of take authorizations permits under Section 10(a)(1)(B) of the federal Endangered Species Act and management authorizations under the California Endangered Species Act and the Natural Communities Conservation Planning Act. Section 10 of the federal ESA requires that the wildlife agencies make a series of findings, including that the taking would not appreciably reduce the likelihood of the survival and recovery of the species in the wild. The USFWS will make this finding through preparation of a biological opinion on the proposed permit issuance. The USFWS has not yet prepared final recovery plans for the majority of the federally listed species on the proposed covered species list. However, it is apparent that the current direction of existing habitat conservation in San Diego County would result in fragmentation of remaining habitat and thus certainly preclude recovery for these sensitive species. Implementing the MSCP Plan would change this direction and promote the recovery of the covered species through conservation of habitat in a preserve system that would provide management funding. See also **Theme Response XVIII, Recovery of Species.**

81(r) See response to Comment 1(a) and **Theme Response I, Species Analysis Approach.**

81(s) See **Theme Response XXII, Sufficiently/Significantly Conserved Vegetation Communities.**

81(t) Of the 171,917 acres to be included in the MSCP preserve, 81,750 acres (47.6%) are currently in public ownership; 63,170 acres (36.7%) would be conserved through avoidance and mitigation associated with private development; and 27,000 acres (15.7%) would be protected through public acquisition. Non-acquisition sources thus account for 84% of the proposed preserve.

Conservation of these lands would occur through site-specific planning, avoiding impacts to important habitat areas and directing development to less significant areas. With respect to wildlife corridors and habitat linkages, in most areas of the MHPA there is sufficient existing habitat to allow alternative configurations.

81(u) Contributions of land to the preserve in the Metro-Lakeside-Jamul segment of the County Subarea Plan will occur as the result of development occurring within this area. The County Subarea Plan and BMO require mitigation based on habitat tier at specified mitigation ratios. Three significant variables which affect the level of conservation in this segment were incorporated into the estimates of the amount of land that would be contributed to the preserve from development in this segment. They were (1) the percentage of projects that would mitigate their impacts outside of the preapproved areas; (2) the mitigation ratio that would be applicable, and (3) the estimated number of acres of development. The assumptions used are included in the County Subarea Plan, Table 4-8. The numbers used to construct Table 4-8 were conservative estimates regarding the number of acres of preservation within the wildlife agencies' preapproved mitigation areas. Only lands conserved within the wildlife agencies' preapproved mitigation areas contribute toward the County meeting its conservation goals for the Metro-Lakeside-Jamul segment of their subarea plan. With over 110,000 acres of vegetation

communities in the Metro-Lakeside-Jamul segment which, if developed, must be mitigated, the subarea plan only assumes that 10,650 acres of conservation within preapproved areas will occur. The remaining conservation (approximately 13,000 acres) needed to reach the total goal for the area will be met through local, state and federal acquisition efforts. The 13,000 acres is included in MSCP Plan, Volume I, Table 4-3 as the acquisition needed for the Metro-Lakeside-Jamul segment of the County Subarea Plan.

81(v) In the event that there is a shortfall in the local funding, the wildlife agencies will review the entire MSCP program to determine if take authorizations should be revoked, suspended or can remain in effect based on the level of conservation and habitat loss that has occurred. There may be alternative solutions (e.g., private land donations, state and federal land acquisition loans to the local jurisdictions, water district funding, state bond funds for local open space acquisition, etc.) for local funding shortfalls that will allow the take authorizations to remain in effect. The solution may also be to downsize the preserve and reduce the covered species list to fit with the new preserve size. Any downsizing of the preserve and/or reduction in the covered species list would necessitate a public process open to stakeholder input. See also **Theme Response XXIV, No Surprises.**

81(w) The MSCP is based on a single financing plan, as described in Section 7.0 of the MSCP Plan. It is not intended that each subarea plan should prepare a separate financing plan. Please see **Theme Response IV, MSCP Financing Plan: Regional Source of Funds.**

81(x) The MSCP Plan and subarea plans include specific habitat conservation requirements along with either a fixed preserve design or specific preserve design criteria. Table 3-5 of the MSCP Plan translates these goals and criteria into species-specific conservation levels (please refer to revisions to Table 3-5 included in the Revisions to the MSCP Plan documentation, January 1997). The conservation levels are carried over into each subarea plan and the goals must be met by the take authorization holders. Sections 10 and 11 of the Implementing Agreements will provide the assurances that the habitat conservation and species conservation goals will be met. Failure to meet these goals by the take authorization holder may result in suspension or revocation of the take authorizations.

81(y) The proposed approach in the Metro-Lakeside-Jamul segment is not the traditional project-by-project approach. It is a preserve assembly approach which will create the preserve and conserve species and vegetation communities in the pattern and amounts anticipated by the County Subarea Plan.

As discussed in response to Comment 81(g), there is no contradiction in the Biological Mitigation Ordinance and the wildlife agencies' approach. The agencies' map is simply one way of arriving at a determination of which land meets the qualifications of Biological Resource Core Area.

The County's Implementing Agreement will include language regarding the circumstances under which the wildlife agencies may withhold Third Party Beneficiary status for a specific project. Annual reviews will be used to review the County's overall compliance with the take

authorizations. Upon issuance of the take authorizations, the County will be obligated to only authorize projects consistent with the MSCP Plan, Subarea Plan and Implementing Agreement, including meeting the goals and criteria portions of the subarea plan. This, in combination with the acquisitions by the local, state and federal agencies, will result in assembling the preserve system which achieves the conservation goals on which the take authorizations are based.

81(z) The evaluation of boundary adjustments would be made by the local jurisdictions with concurrence by the wildlife agencies. Only those adjustments that result in the addition of the same or higher biological value to the preserve would be processed without a formal amendment to the subarea plan. The adjustment would still be disclosed with substantiating information provided in the environmental document which is circulated for public review and comment. Since only those adjustments that maintain or improve the preserve would be processed in this manner, significant impacts to the preserve should not result. Proposed adjustments that do not meet the equivalency test, as described in the MSCP Plan, would be subject to a formal amendment to the MSCP Plan and associated subarea plan.

The reference to inclusion of adjustments in the annual report is to provide an annual summary. As stated in the MSCP Plan and subarea plan, boundary adjustments can only occur with the concurrence of the wildlife agencies which would precede the actual adjustment.

81(aa) Pursuant to 50 CFR 13.45 of the Implementing Regulations for the federal ESA, the wildlife agencies require all participating local jurisdictions to submit an annual public report on all activities conducted under their take authorizations to ensure compliance with its terms and conditions. This report is part of the public record and would be made available upon request. Further public review of this report would be at the discretion of the individual jurisdictions. The wildlife agencies would meet annually with individual jurisdictions to discuss their compliance with the terms and conditions of their permits. The wildlife agencies would not require that this meeting be publicly noticed. In addition to the annual report, every 3 years, the participating jurisdictions would issue a MSCP status report and hold public hearings to receive public comment. This MSCP status report would be accompanied by a biological monitoring report prepared by the wildlife agencies and a preserve management report submitted by the managers of each preserve.

81(ab) The proposed approach in the Metro-Lakeside-Jamul segment is not the traditional project-by-project approach. It is a preserve assembly approach which will create the preserve and conserve the species and vegetation communities in the pattern and amounts anticipated by the subarea plan.

81(ac) The summary presentation refers to the differences in "hard line" preserve areas and goals and criteria preserve areas. The "hard line" areas are located in the Lake Hodges and South County Segments. In these areas, mitigation for the non-permit amendment areas has been negotiated and agreed to by the landowners and the wildlife agencies. Land which is not part of a "hard line" area, may become

part of the plan through the Major or Minor Amendment process. For amendment areas, all mitigation requirements would be negotiated with the wildlife agencies before the amendment is approved.

The statement, "Within the Metro-Lakeside-Jamul segment there are no lands considered 'covered' by the Plan without incorporating mitigation and avoidance requirements," means that lands within this segment have not been the subject of negotiations with the wildlife agencies. Take of covered species is only authorized on lands within the Metro-Lakeside-Jamul segment when a project which is consistent with the MSCP Plan, Subarea Plan, and Implementing Agreements and the project is approved by the County.

The draft BMO will be revised to correct drafting problems. The incentives in the BMO are adequate to meet the objectives. There are not inconsistencies between the wildlife agencies and County's description of the core biological resource areas and mitigation requirements. Projects would be subject to the requirements of the Biological Mitigation Ordinance and the ordinance directs mitigation to Biological Resource Core Area. The role of the pre-approved mitigation areas has been previously discussed in response to Comment 81(y).

81(ad) The term "Metro" was not selected to imply any level of future development within the area. The Metro-Lakeside-Jamul segment name is a compilation of the names of various planning areas for this segment. The Metro planning area is generally located south and east of Lake Hodges.

81(ae) See response to Comment 80(r).

81(af) See response to Comment 25(a).

81(ag) See **Theme Responses XVI, Risk Factors, and XIX, Preserve Management.**

81(ah) The jurisdictions and the wildlife agencies agreed that imposing a buffer around the preserve would result in additional land-use restrictions on private landowners. The MSCP, therefore, requires that the jurisdictions confine development impacts to development areas to reduce or eliminate impacts from these projects into the preserve (see page 6-1 of the MSCP Plan, Volume I). Fencing and control of non-native predators and invasive species is addressed for each species in Table 3-5 and would be incorporated into preserve management plans. The concept of adaptive management would provide for redirection of funding and other resources toward unanticipated problems affecting covered species and the preserve. See also revisions to the MSCP Plan, Volume I, (Appendix B, Preserve Management).

81(ai) The MSCP Plan is a regional habitat conservation plan that is intended to meet the requirements of FESA, CESA, and NCCP. The list of optional sources of funds was determined through extensive discussions by the MSCP Working Group, the MSCP Policy Committee, and hearings and workshops held by City Councils and Planning Commissions of participating local jurisdictions. These discussions led to the elimination of utility-based revenues from the list of funding options.

81(aj) A comparison of the acquisition estimate of the MSCP Plan to that of the March 1995 Public Review Draft MSCP Plan involves two issues. The first issue is the estimate of total public acquisition. The estimate in the MSCP Plan is 27,000 acres, where the estimate in the Public Review Draft ranged from 24,000 acres to 40,500 acres (Public Review Draft, Section 3.3, pp. 3-46 ff.). Thus, the estimate in the MSCP Plan is closer to the low estimate of public acquisition shown in the Public Review Draft than the high estimate.

The second issue is the allocation of acquisition responsibility between the federal and state governments, on the one hand, and local jurisdictions, on the other. The allocation proposed in the Public Review Draft would have included purchases of off-site mitigation by private development projects as part of the "local share" of acquisition. In preparing the MSCP Plan, however, the local jurisdictions and the wildlife agencies agreed not to consider offsite mitigation and to share the acquisition responsibility equally between the federal/state governments and the local jurisdictions, at 13,500 acres each.

81(ak) Periodically, elements of the MSCP Plan received scientific review. For example, the vegetation community mapping and habitat evaluation model elements were reviewed by the State Scientific Review Panel established by the Natural Communities Conservation Planning (NCCP) Act of 1991. In addition, the MSCP Plan has undergone two widely noticed public reviews, one beginning in March 1995, the other beginning in August 1996. At the outset of both of these public review periods, numerous copies of the MSCP Plan were distributed to individuals in academic and scientific positions. From the beginning, the MSCP planning process has been open to public involvement. There has been no resistance to public or scientific review.

The MSCP database was distributed for public review in spring 1992 and spring 1993 to correct inaccuracies in the vegetation communities and sensitive species mapping. After each review period, revisions were made to the maps, where appropriate, based on public comment. Among others, the environmental groups received maps for review during these two time periods. See also **Theme Response XI, Scientific Review Adequacy.**

81(al) Comment noted.

81(am) The San Diego City Council's direction on October 31, 1996 regarding Carmel Valley Neighborhood 8A was to address the acquisition of properties proposed as open space. Statements by individual Council members regarding their view of the proposed Manager's Compromise Plan were not part of the approved motion.

81(an) The development bubble in the Del Mar Mesa area is part of a negotiated agreement between the City, the NCFUA Subarea V community, and the wildlife agencies, and would remain shown for development unless the parcel is purchased. This parcel is partially disturbed, having been historically farmed, and is at the edge of the Del Mar Draft EIR/EIS core area, not in the middle. It

is recognized that the resource core would be more intact if development did not occur there, but the priority for public purchase is the large amount of land identified as the Del Mar Draft EIR/EIS core area.

81(ao) The August 1996 Draft City of San Diego Subarea Plan identifies Montaña Mirador as part of the proposed preserve with a note as suggested by the commenter (see MSCP Plan, Vol. II, City of San Diego Subarea Plan, Page 27, Note C24).

81(ap) Inclusion of this parcel within the preserve was considered during the San Pasqual Plan Update that occurred in 1995. Due to the lack of habitat on the site it was considered to be of lower priority for inclusion in the preserve but was identified as having long term restoration potential. Once restored, the site could add upland habitat adjacent to the riparian area that has been included in the preserve. The site is currently under lease negotiations for the production of organic agriculture. The revised lease would include measures to set aside a portion of the site for coastal sage scrub restoration. Additional areas may be included in the lease as agriculture activity is terminated in the long term.

81(aq) See **Theme Response XVI, Risk Factors.**

81(ar) The high level of fragmentation of the MSCP preserve design for south Otay Mesa is primarily the result of previously approved projects. The configuration of this portion of the preserve will be considered in the overall analysis of the proposed MHPA in determining issuance of take authorizations.

81(as) See response to Comment 45(bq).

81(at) Comment noted. The draft Biological Mitigation Ordinance, which is fully analyzed in the Draft EIR/EIS, is the only proposed change in the County's existing Resource Protection Ordinance (RPO). The remaining portions of RPO remain in effect. An EIR will be completed when revisions to RPO are made. The proposed Biological Mitigation Ordinance, like the RPO, requires an analysis of the biological resources on the property as a starting point. The proposed ordinance sets out specific requirements for mitigation based on types of habitat and specifically requires avoidance of certain sensitive animal and plant populations. In this respect, the proposed ordinance is more restrictive than existing RPO. In addition, the proposed ordinance is drafted to direct mitigation toward certain areas that would lead to creation of a preserve.

81(au) The City of San Diego's "Wetlands" definition was revised to be consistent with the federal definition. The City will continue to review projects under RPO and CEQA for effects on wetlands. See also **Theme Response XXV, Wetlands Protection.**

81(av) See **Theme Responses XVI, Risk Factors and XIX, Preserve Management.**

81(aw) The mitigation ratios that appear in Exhibit N provide a sufficient level of incentive to direct mitigation inside the MHPA. Coupled with the other implementing measures (e.g. public

acquisition, impact avoidance), the proposed mitigation ratios would successfully achieve the City's conservation targets identified in the City of San Diego Subarea Plan. Modeling conducted by Todd Olson (*Application of the Habitat Unit Mitigation to the Project Mitigation Component of the MSCP Plan First Supplement* dated August 9, 1995) supports the validity of the proposed incentive based ratios.

81(ax) See response to Comment 81(i).

81(ay) Comment noted. The Biologically Preferred Scenario included the conservation of Fanita Ranch and was analyzed in the EIR/EIS.

81(az) Comment noted. The list of covered species for Santee based on only their subarea plan is significantly less than other subarea plans and would not include several key species including the California gnatcatcher. Only with the other identified jurisdictions could Santee receive coverage for the identified species. Please refer to **Theme Response XX, Severability of Take Authorizations.**

81(ba) The species and vegetation community protection goals are intended to serve as measurable criteria. Species occurrences are used as part of the conservation goals and they reflect known information and are appropriate for inclusion as protection goals. Please refer also to **Theme Response X, Habitat Conservation Accounting Model.**

The public involvement in case-by-case determinations will be through the CEQA process for the specific project, which is no change from the current process.

81(bb) The wildlife agencies will be making their decisions on the adequacy of the MSCP Plan, subarea plan (including mitigation and monitoring requirements) and Implementing Agreement based on the information in the documents and public input during the NEPA and CEQA processes. Their issuance of the take authorization for specific species is their approval of the mitigation ratios for various vegetation communities and the implementing agreements are the enforceable contract between the wildlife agencies and the local jurisdiction that requires the ratios used to be as specified in the subarea plan. Issuance of a take authorization to a local jurisdiction allows the local jurisdiction to approve projects which result in incidental take of covered species The incidental take of a covered species is then covered by the local jurisdictions take authorization. For incidental take on a project to be covered by the jurisdiction's take authorizations, the project must be approved in conformance with the jurisdictions' subarea plan, Implementing Agreement and the MSCP Plan. The CEQA process will be used by the local jurisdictions to: disclose the impacts of the project; identify the mitigation being imposed to comply with their subarea plan, Implementing Agreement and the MSCP Plan; and provide for public input on the project. The wildlife agencies will continue to have the opportunity to comment on projects, but their enforcement of compliance with take authorizations will be independent of the CEQA process.

81(bc) The requirement for a minor amendment for a project does not eliminate nor supplant the normal CEQA process for the project, but rather requires the additional step described in the subarea plan. Public involvement will be through the CEQA process for the project.

81(bd) The County Subarea Plan was evaluated as a whole and not based on its component segments.

81(be) See response to Comment 45(bp).

81(bf) The comment is noted. The number in the table is the correct number and the number in the assumption will be changed in the County Subarea Plan.

81(bg) (a) ***Use of CEQA exemption too broad*** – The CEQA exemptions in the County's proposed BMO are nearly identical to the ones in the current County Resource Protection Ordinance (RPO).

(b) ***Criticism of "Interim Sensitive Lands Ordinance"*** - Comment noted.

(c) ***Criticism of Director DPLU Authority*** – Comment noted. Discretionary permits will be subject to eh same public review requirements that exist currently.

(d) ***Criticism of exemption for recreational facility*** – Comment noted. This exemption will be deleted from the draft ordinance.

(e) ***Who will determine viability of proposed mitigation lands*** – The County will make this determination assisted by the wildlife agencies pre-approved mitigation maps, and their comments during the CEQA process and pursuant to Draft EIR/EIS and NEPA.

(f) ***Who decides what is a biological resource core area*** – The County makes this decision using the criteria set out in the Biological Mitigation Ordinance and the habitat quality maps included in the County Subarea Plan and MSCP Plan. The tables and ratios in the Biological Mitigation Ordinance are designed to provide certainty as to mitigation requirements and to avoid on-going conflict. Under the terms of the ordinance, an initial biological resource study is performed using appropriate protocols to determine which resources exist on the property. By means of this study, vegetation communities on the project site are identified and quantified and the presence of a Rare, Narrow Endemic Animal Population, a Sensitive Plant Population, or a Critical Population of Sensitive Plants are determined. The information gathered is used to design the project and determine the mitigation requirements consistent with the BMO, Subarea Plan and the County's take authorizations. During the CEQA process for the project, the public and the wildlife agencies will have an opportunity to provide input on the determination of what is a biological core resource area.

(g) ***Who decides outside the Subarea Plan*** – The procedure is the same as described above except that the take of listed species would have to be authorized by the wildlife agencies.

(h) ***Relationship between wildlife agency "preapproved mitigation areas" and "biological resource core areas"*** – Unclear. The BMO defines biological resource core areas. The "preapproved mitigation areas" are not intended to represent biological resource core areas as defined by the BMO.

(i) ***Objection to term "core linkage"*** – Comment noted. This term describes linkages within large blocks of habitat that link important core areas together and is consistent with maintaining functional linkages (which support sensitive species) between core areas.

(j) ***Determination of mitigation requirements called uncertain*** – Article IV will be substantially redrafted to set out more clearly the process involved in implementing the BMO. See explanation under part (f) above. The ordinance sets up specific criteria for determining Biological Resource Core Areas and this approach is intended to create greater rather than less certainty.

(k) ***Objection to failure to include a definition of "Significant Population"*** – The revised draft BMO will include the following definition: "significant population" shall be those populations specified in a Subarea Plan as critical population and a group or groups of a sensitive species, wherever located, the loss of which would preclude the recovery of the species.

(l) ***Objection to extent of encroachment*** – The BMO sets avoidance as the first design priority in Biological Resource Core Areas. For sites containing sensitive plants, avoidance is also a first level priority. For sensitive plants on Groups A and B of the San Diego County Sensitive Plant list, loss may not exceed 0-20% of the population on site. Mitigation for other sensitive plants is based on habitat and determined according to the tier levels drafted into the BMO. Mitigation for Rare and Narrow Endemic Animal Species shall use avoidance is a first level priority.

(m) ***Continuation of Habitat loss permits*** – Upon the issuance of state and federal take authorization for the County's Subarea Plan, the 4d interim habitat loss permit process for the Subarea Plan area will be eliminated. The Section 4(d) Special Rule interim habitat loss permit process for the remainder of the County will remain unchanged.

(n) ***Criticism of Tier Mitigation System as uncertain.*** Comment noted. The draft BMO provides criteria designed to provide project certainty.

(o) ***Criticism of "shall be generally followed*** – Comment noted. The revised draft BMO will clarify this issue.

(p) ***Lack of Table 2*** – A full set of tables will be furnished with the revised draft of the BMO.

(q) ***Question about Groups C and D on Attachment D*** – The revised draft of the BMO clarifies the relationship of these groups.

(r) ***Incorrect reference to Article IV, C.*** – The revised draft of the BMO will address all referenced internal inconsistencies.

81(bh) The comment is noted. It is anticipated that the implementing mechanisms incorporated in the MSCP Plan and the County Subarea Plan will adequately result in establishment of a preserve system that meets the goals of both the MSCP Plan and the subarea plan.

81(bi) (a) Species protection goals are intended to serve as measurable criteria and will be the basis of the wildlife agencies annual compliance review. Page 4-21 of the County Subarea Plan states "Only lands conserved within wildlife agency preapproved areas will contribute toward meting the conservation goals." As such, the preapproved mitigation areas reflect the only verified solution to meeting the species and vegetation community goals and core and linkage design criteria to which the County is committing.

(b) Biological resource core areas have the same definition in the BMO as was used to define core biological resource areas in the MSCP Plan, Volume I, Figure 2-2. Since the same definition is used, it is reasonable to conclude that using the definition in the BMO will result in an outcome nearly identical to Figure 2-2.

(c) The preserve design criteria are essentially identical to the criteria used to create the MHPA map in the March 1995 Public Review Draft of the MSCP Plan. Their application then created an appropriate preserve design, and their application by the County must result in an appropriate preserve design or the County's take authorizations will be suspended or revoked by the wildlife agencies.

(d) The potential for leakage was taken into consideration in estimating the amount of lands conserved in the Metro-Lakeside-Jamul segment through mitigation. Contributions of land to the preserve in the Metro-Lakeside-Jamul segment of the County Subarea Plan will occur as the result of development occurring within this area. The County BMO requires mitigation based on habitat tier and specified mitigation ratios. Three significant variables which affect the level of conservation in this segment had to be incorporated into the estimate of the amount of land that would be contributed to the preserve from development in this segment. They were (1) the percentage of projects that would mitigate their impacts outside of the preapproved areas, (2) the mitigation ratio that would be applicable, and (3) the estimated number of acres of development. The assumptions that were used are included in the County Subarea Plan, Table 4-8. The numbers used to construct Table 4-8 were conservative estimates which should reflect a worst case scenario regarding the number of acres of preservation within the wildlife agencies' preapproved mitigation areas. Only lands conserved within the wildlife agencies' preapproved mitigation areas contribute toward the County meetings its conservation goals for the Metro-Lakeside-Jamul segment of their subarea plan. With over 110,000 acres of vegetation communities in the Metro-Lakeside-Jamul segment which, if developed, must be mitigated, the County Subarea Plan assumes that only 19,650

acres of conservation within preapproved areas will occur. The remaining conservation (approximately 13,000 acres) to reach the total goal for the area will be met through local, state and federal acquisition efforts. The 13,000 acres is included in MSCP Plan, Volume I, Table 4-3 as the acquisition need for the Metro-Lakeside-Jamul segment of the County Subarea Plan.

(e) See (d) above.

(f) The Implementing Agreement for the County Subarea Plan will clearly define the County's role and responsibilities for achieving the conservation targets that are the basis for issuance of their take authorizations.

81(bj) Comment noted.

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Sierra Club, San Diego Chapter
3820 Ray Street
San Diego, CA 92104
Phone: 299-1741; Fax 299-1742

October 30, 1996

Jack McGrory, City Manager
City of San Diego
Attention: John Kovac
Land Development Review Division
1222 First Ave., 5th Floor
San Diego, CA 92101

Gail Kobetich, Field Supervisor
U.S. Fish and Wildlife Service
2730 Loker Ave., West
Carlsbad, Ca 92008

Ron Remple, NCCP Program Manager
California Department of Fish and Game
1416 Ninth Street
Sacramento, CA 95814

Subject: Sierra Club Comments on The Multiple Species Conservation Program, MSCP Plan, Volumes I and II, August, 1966

Dear Messrs. McGrory, Kobetich and Rempel:

Following are the comments of the San Diego Chapter of the Sierra Club concerning the Multiple Species Conservation Program, MSCP Plan, Volumes I and II.

INTRODUCTION

The Sierra Club remains optimistic the San Diego area can fashion a Multiple Species Conservation Program that will efficiently, effectively and fairly protect our region's outstanding biodiversity, carefully balanced with the area's other quality-of-life values. However, our review of the draft MSCP Plan and supporting documents leads us to conclude the MSCP program remains very much a "work in process" requiring significant refinement and improvement before it can meet its objectives and gain our support.

We are concerned that a "rush-to-judgment" timetable is being imposed and that key issues are not fully understood, evaluated or publicly discussed. The approximately 60 days that has been provided for this review was not adequate.

The Multiple Species Conservation Program has potentially sweeping implications for San Diego. It deserves careful review, thorough analysis of issues and full public discussion. This draft of the MSCP plan and the subarea plans reflects very significant changes from previous drafts. The project-by-project and jurisdiction-by-jurisdiction plan formulation process that has

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81(a)

characterized the most recent iteration of the MSCP plan has limited effective public participation. Our comments here reflect only some of the concerns we intend to express as the public review process associated with jurisdictional consideration of the various elements of the MSCP Program continue

The comments here will be directed to the MSCP Plan August 1996 Volume I, MSCP Plan and to the Volume II, Subarea Plans. We have made comments on the Draft Joint EIR/EIR in another communication; these EIR/EIS comments are incorporated by reference. Our discussion here is organized to address: Underlying Criteria For Evaluation; Summary of Club MSCP Position; Summary of Key Issues; and Detailed Comments on the MSCP Plan and Subarea Plan.

Sierra Club Criteria for MSCP Adequacy

In contrast to the long lists of heavily value-driven negotiating points that has characterized much of the MSCP discussion, the Sierra Club's criteria for adequacy are rather straightforward and practical:

- Meet the requirements of law
- Provide clear evidence that the MSCP program objectives are being realized in the Plan
- Provide reasonable assurances that the MSCP program can be implemented, as planned; and
- Establish clear enforcement provisions, if the program is failing to meet its objectives and the requirements of law are not being satisfied

Simply put, we are merely asking that the MSCP Plan demonstrate that it can work to meet its objectives.

Our review of the August 1996 MSCP Plan indicates that problems remain to be addressed with respect to each of these baseline criteria.

Sierra Club MSCP Position

The San Diego Chapter of the Sierra Club continues in its long-standing support for the concept of the Multiple Species Conservation Program. With the exception of the "no-lines" approach to preserve development, which we judge to have fatal flaws, the basic building blocks presented in the MSCP Plan provide a sound basis for refining and completing MSCP Program development.

The specifics of the draft MSCP Plan, as our comments will indicate, do not yet meet elementary program design and performance criteria. The support the Sierra Club hopes it can provide the MSCP program, as decision makers consider it, will depend on reasonable responsiveness to the concerns we have raised previously and reiterated here. Importantly, these concerns coincide closely with those of a broad range of environmental and community groups that have been involved in the MSCP program. We stand prepared to continue work with the range of shareholders involved in the MSCP program to produce the

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additional refinements this review will indicate are necessary to develop a program that is effective and widely publicly supported. 81(a)

Key Issues and Concerns Summarized

1. The Species Coverage--The MSCP Plan Claims--Has Not Been Adequately Established. If Clear Evidence That The Plan Can Ensure Species Viability Is Lacking, "Coverage" Should Not Be Extended

   The August 1996 Plan fails to provide evidence establishing that the proposed preserve system meets a primary objective of the MSCP program--protection of threatened species and maintenance of San Diego's unique biodiversity. A consistent, understandable and compelling methodology for establishing "species coverage" is missing. An evaluation of preserve design is missing and the evidence presented is often contradictory of the conclusions reached. 81(b)

2. The MSCP Lacks Standards For Judging MSCP Plan Implementation Performance

   How the preserve is being implemented is secondary to how well the species, the preserve is designed to protect, are fairing. Without species-and ecosystem-based performance standards their will be no clear basis for management of the preserve, and adjustments to it, if necessary. 81(c)

3. Management Measures Have Not Been Established In The Plan To Address The Potential For Significant Edge Effects To The Planned Preserve That Result In A "High Risk" To Species Claimed To Be "Covered" 81(d)

4. The "No-Lines" Plan For the Lakeside-Jamul Segment Does Not Provide Reasonable Assurances That The Biological Objectives of the MSCP Plan Can Be Met

   The wildlife agencies and the County provide different interpretations of how the plan for this area will operate—the County arguing against any lines and the wildlife agencies insisting that their "predetermined mitigation areas" will drive the formation of the preserve. This apparent "false agreement" does not produce confidence the "no-lines" plan can be effectively implemented. 81(e)

5. "Pulling-The-Permit" As The ONLY Option For Enforcing Non-Performance Under the Plan Is Not Workable. Intermediate remedies must be designed. 81(f)

6. Protection of Threatened Species Should NOT Become A Trade-off For Reductions In Other Types of Environmental and Community Quality Protections As Proposed In Parts of the MSCP Plan 81(g)

7. The MSCP Plan Isn't Clear That Public Infrastructure, Just As In the Case of Private Development, Should Be Planned To Best Complement The MSCP Preserve and Should Provide Mitigation To Support Preserve Development 81(h)

MSCP PLAN - VOLUNE I - Section-By-Section Comments

CONSERVATON PLAN - Section 3

1. The Modest Nature Of The Habitat Protection Goals of the MSCP Plan and The Large Amount of Habitat Loss Anticipated Under The Plan Is Not Clearly Presented (3.2)

   The federal Endangered Species Act requires a clear specification of the estimated take of species under a proposed Habitat Conservation Plan and a showing that such take has been minimized. Because the MSCP Plan is intended to provide "coverage" of unlisted, as well as listed species, this "take" estimate must extend to the full list of "covered" species. The MSCP Plan does not provide clear information in this respect. 81(i)

   The best estimate of "take" is probably the "Estimated Conservation of Habitats and Potential Developable Lands" Table B-4d in Volume II. This table estimates an expected "loss" to development of about 73,468 of habitat lands, or about 25%. This is a significant loss for a highly developed area that has already experienced nearly a 50% development conversion of its area. 81(j)

   Significantly and unfortunately, the MSCP Plan fails to systematically take into account and to evaluate the fact that, under present local regulations, substantial portions of habitat lands outside the Multiple Habitat Planning Area (MHPA) will be preserved. For example, of the 130,675 acres of habitat lands outside the MHPA, about 74,806 acres, or nearly 60%, are identified as "constrained." These areas can continue to provide habitat values and contribute to species preservation.

   While the appropriate emphasis of the MSCP Plan is on the development of a preserve system that protects a network of "biological cores and linking corridors", it is unfortunate that the potential biological contributions of these outside-the-MHPA, "constrained" lands were not factored into the analysis.

   On the one hand, the analysis of the biological values of these "constrained" areas might be able to significantly contribute to the biological viability, especially the robustness, of the overall MSCP Plan. After all, the MSCP Plan depends in critical instances on an "island network" for at least one of its critical linkages (in the Lakeside-Jamul area). 81(k)

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On the other hand, the failure to clearly acknowledge the significance of these "constrained" lands contributes to the obvious and continuing pressure to modify local regulations and to remove these "constraints." A clear evaluation of the biological significance of these "constrained" areas could contribute to the biological "confidence level" of the MSCP Plan and to the recognition of the continued need for, and contribution of, these local protections, particularly those relating to hillside development limitations,

81(k)

2. The Species-By-Species Evaluation Of The Adequacy of Conservation To Establish "Coverage" Lacks Clear Methodology and Clear Standards (3.3)

81(l)

3. The "Covered" Conclusions Of The Species Evaluation In Many Instances Conflict With The Evidence

A number of the comment letters that will be submitted will detail the problems with the Covered Species analysis. From the start of the process, we have made clear that there must be a clear basis to support the "biological integrity" of the MSCP Plan.

The continuing and widespread concerns over this issue suggest that additional analysis and documentation is needed to establish an effective and legally defensible program. The confidence of the public, and their willingness to support and to help fund the MSCP Plan, depends upon the biological credibility of the MSCP Program.

In summary, the species coverage analysis suffers from the following series of problems:

- The data that is available is frequently so sketchy, or of such questionable quality, that any conclusions are difficult to reach
- Conclusions about the absence of a species in the MSCP area are not backed up by sufficient surveying
- Protection of numbers of species occurrence points does not adequately weigh specific breeding and foraging requirements
- The use of percent of habitat protection as a proxy for species viability is questionable, especially when species have rather unique demands and large proportions of key habitat areas are predicted to be lost under MSCP
- Conclusions frequently depend upon the performance of MSCP measures, such as the County Biological Mitigation Ordinance, that is uncertain or suspect

81(m)

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- Some of "covered" conclusions appear to be based on conditions for preserve improvement or special management that it is not clear have been met. Promises of "adaptive preserve management" are not adequate to justify coverage when such management is critical to species viability. Management necessary for species coverage must be detailed as part of the plan. 81(m)

- In some cases, there is literally no information, but "coverage" is declared

- Species that depend on habitats that are identified as "not adequately conserved" are judged to be "covered"—an apparent contradiction

- "Coverage" determinations do not seem to take into account species interdependencies and ecosystem interactions, such as in the case of the large predators.

4. We Doubt San Diegans Will Be Willing To Accept The Loss Of Species From the MSCP Area Because They Are Judged To Be "Insignificant" To The Species Survival Nationally 81(n)

5. Species Judged To Be At "Uncertain Risk" or "High Risk" Because Of Potentially Significant Edge Effects Should Not Be Considered "Covered" UNTIL There Are Management Practices In The MSCP Plan Or In-place 81(o)

6. The Marked Absence Of Any Formal Participation By the Port Of San Diego In The MSCP Process Calls Into Question The "Covered" Conclusions For Species Dependent On Bay-Related Waters and Coastal Areas 81(p)

7. There Is No Apparent Attempt To Demonstrate That The MSCP Plan Will Not Appreciably Reduce The Likelihood of Species RECOVERY In the Wild—One of the Clear Requirements For The MSCP Plan's Approval 81(q)

8. The Adequacy of the Configuration of The MSCP Preserve, Which Is Critical To Species Protection, Has Not Been Systematically Evaluated With Respect To the Natural Communities Conservation Program Conservation Guidelines Or With Available Analytical Techniques

   The Underlying Concept of the MSCP is that a well-designed preserve system will allow the San Diego area to efficiently protect its biodiversity while permitting development necessary for economic and other human needs. Under the concept, "preserve configuration is everything" in judging the success of the MSCP Plan. 81(r)

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And yet, the MSCP Plan documents provide no clear evaluation of the preserve design. Techniques are available, and have been applied during the MSCP process to earlier preserve designs, to evaluate "preserve configuration or geometry." Requests for this type of analysis have been made but there has been no response. 81(r)

9. The MSCP Plan's Concept of "Conserved Vegetation Communities" Lacks A Documented Basis and Invites Misinterpretation and Inappropriate Application (3.4.2)

The MSCP Plan proposes to include the concepts of "sufficiently conserved vegetation communities" and "significantly conserved vegetation communities." A listing of factors used in this determination is included but there is no documentation detailing these factors (such as, patch size and amount of ecotone conserved) and no criteria or documentation is provided to distinguish vegetation communities determined to be "sufficiently covered" from those only "significantly covered." These classifications are not based in either state or local law and are strictly judgmental.

Technically, the two categories of "covered vegetation communities" have a limited application. They describe the locus of responsibility for actions needed to protect species that are not covered by the MSCP Plan but become listed subsequent to plan approval. In general, they transform a partnership between public and private to protect species into a shift of total responsibility to governmental units and the public. 81(s)

There is little question, however, that the "sufficiently covered" and "significantly covered" vegetation communities categories will be misapplied and exploited outside the specific context of their intended meaning. These characterizations will be used, not only to limit the responsibility of landowners to contribute to the protection of species listed after plan approval, but also to argue against the need for protection of habitat resources of local significance, unrelated to state or nationally threatened species.

The attempt here is to establish an "enough protection standard" based only on an evaluation (and a "soft" one at that) of threatened species impacts and apply it, across the board, to all types of habitat development considerations.

ASSEMBLING THE MSCP PRESERVE - Section 4

1. Design of the Preserve Does Not Make Adjustments For The Practical Difficulties Associated With The Policy To "Only Acquire Private Lands From Willing Sellers At Fair Market Value" 81(t)

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It is unrealistic to expect that all private land within the preserve areas it would be preferable to acquire will be able to be acquired at reasonable prices from willing sellers. Therefore, the preserve design should anticipate there will be slippages in acquisition that need to be compensated for in preserve design. There is no indication that this was a preserve planning design consideration. Without adjusting for this likely contingency, it is likely that the designated preserves will have significant functional deficiencies. 81(t)

2. The High Uncertainty Of The "No-lines" Element of the MSCP Plan Raises Questions About the Acquisition Estimates Of the Plan (4.1.2)

In discussions regarding the "no-lines" approach for the already highly fragmented Lakeside-Jamul Segment, the wildlife agencies have stressed the likely need to publicly acquire major portions of the critical linkages in this area. It is not clear that the particular circumstances of uncertain private contributions in this area have been factored into the overall acquisition plan. 81(u)

3. The Implications Of A Local Funding Shortfall Under the MSCP Plan Remain Unclear (4.3.2)

A critical legal requirement for the program is that "adequate funding for long-term protection of the species will be provided" (Page 3-23 MSCP Plan). It is critical that voters and local officials understand clearly what the outcome will be if local funding "promised" under the MSCP is not forthcoming. 81(v)

The Plan indicates in the event of local funding shortfalls that "the wildlife agencies will assess the impact of the funding deficiency on the scope and validity of the take authorizations." What does this mean? That the take permit will be withdrawn or modified? And what procedures will apply? Those relating to Extraordinary Circumstances or some other process?

IMPLEMNTATION STRATEGY AND STRUCTURE - Section 5

1. Subarea Plans Should Be Required To Include A Plan Of Funding For MSCP-Related Acquisition, Not Merely A "Commitment to Participate In Developing a Local Funding Source" As Is Proposed (5.2.2)

The requirement that "funding for long-term protection" must be provided is hardly met by a "commitment to plan for funding", the content requirement for subarea plans. While it is understandable that MSCP funding can not be finalized until there is a plan in place, there is no reason why the subarea plans should not include a "funding plan", including contingency provisions. 81(w)

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2. Implementing Agreements Should Include An "Assurance" Provision For "Meeting Biological Objectives" (5.3 Implementing Agreements)

"Assurances" are provided in the Implementing Agreement model for every interest, except the intended primary focus of the MSCP Program—the species to be protected. A provision of Implementing Agreements should require that: objective biological standards be set; the consequences of non-compliance with the biological standards be clearly anticipated and described. 81(x)

3. The "Goals and Criteria, No-Lines" Program for the Lakeside-Jamul Segment of the County Subarea Plan Does Not Provide A Reasonable Level of Assurance That The MSCP Program's Biological Objectives Will Be Met

The proposed approach in the Lakeside-Jamul segment is a continuation of the project-by-project approval process that has been judged to be "not working" and that the MSCP "plan the preserve" approach was designed to replace.

The Lakeside-Janul plan has been described to us in very different terms by County and wildlife agency representatives and its discussion in the Subarea Plan and the draft EIR/EIS is loaded with contradictions. In the draft Biological Mitigation Ordinance, the County intends to decide what constitutes "core biological areas." At the same time, the wildlife agencies have established a set of core areas in the form of "predetermined mitigation areas" they intend will be used to determine compliance with the "goals and criteria." 81(y)

The opportunity for "two sets of rules" confusion and conflicts here are obvious. The County has the authority to approve what it alone determines is appropriate with the wildlife agencies only option being to shut down (or threaten to shut down) the entire MSCP Program in the County. In an area where there is a great deal of underlying uncertainty whether the preserve system, even if implemented as planned, will work, there are no assurances that the preserve will be implemented. In the end, the preserve system, and the resources they support, will suffer.

4. There Should Be a Process For Public Notification and For Public Involvement When Subarea Plan Amendments and Preserve Boundary Adjustments Are Proposed (Section 5.4.2)

It is common for "good plans" to be incrementally amended to the point where they are not recognizable. The draft MSCP Plan proposes a process of modifications without formal amendments if the adjustment will result in the same or higher biological value of the preserve." The problem is that the "biological value" issue has been controversial and 81(z)

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difficult to quantify. 81(z)

Even if the Wildlife Agencies must concur in preserve or MHPA boundary adjustments, there must be a clear opportunity for public comment on such proposed changes. The plan should include a public notice requirement and a provision that the jurisdictions AND the Wildlife Agencies will consider public comments prior to their action to consider modifications.

Reference is made to the use of the California Environmental Quality Act (CEQA) process for MSCP boundary adjustments. The CEQA process is not structured to consider the "equivalent biological values" test of such amendments. It is an appropriate companion to such determinations, but it is not a substitute for the structured consideration of these potentially significant changes.

The "expeditious review" of proposed subarea plan amendments or preserve boundary adjustments in Section 5.5 Wildlife Agency Actions To Implement the MSCP should include a specific reference to the opportunity for public notice and comment to the Wildlife Agencies.

The draft indicates that "amendments to subarea plans should be included in annual reports to wildlife agencies." This is very problematic if it implies that jurisdictions can process projects that involve MSCP boundary modifications and AFTERWORD seek the concurrence of the Wildlife Agencies. Modifications of boundaries should require Wildlife Agency approval, with clear public notice and an opportunity for public comment, prior to a local jurisdictional action that is based on such modifications.

5. The "Annual Implementation Meeting" Should Be Publicly Noticed and Should Include the Opportunity For Public Comment On A Pre-released Implementation Report (Section 5.4.4) 81(aa)

6. The "No-Lines, Goals and Criteria-Only" Element of the County Subarea Plan Provides Inadequate Assurances That Biological Objectives Will Be Met (Section 5.6.1, County of San Diego)

The proposed approach for the Lakeside-Jamul Segment appears to run contrary to the underlying intentions of the MSCP—to move away from the project-by-project approach and to establish more certainty about what is to be protected and developed. Its declared intent to "incrementally assemble the open space system" seems contrary to these directions. 81(ab)

The summary presentation is confusing. First, there is a statement that "Within the Metro-Lakeside-Jamul Segment there is no lands considered 'covered' by the plan without incorporating mitigation and avoidance requirements." This is followed by the conclusion that, 81(ac)

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"Under this process, the County plan will receive full coverage for all the covered species associated with the MSCP Plan. How can this County "segment" receive "coverage" when the lands that comprise it are not considered "covered."

81(ac)

At a later point, we will present some detailed concerns regarding the proposed County Biological Mitigation Ordinance. Here let us summarize some concerns: 1) the draft ordinance has many technical drafting problems (such as inappropriate references) which make it difficult to understand; 2) the "incentives" it attempts to provide are not strong enough to produce the intended objectives; and 3) there are inconsistencies or uncertainties regarding the procedures that have been described to us by the Wildlife Agencies and those in the ordinance—such as in the process for designation of "core biological areas" and the determination of mitigation requirements.

The "summary" presentation makes no clear reference to the "Preapproved Mitigation Areas" which are identified in the County Subarea Plan (Volume II, Attachment 1, Page 3 to the Metro-Lakeside-Jamul Segment). The Wildlife Agencies indicate that these designations are the KEY to ensuring that the goals and the criteria relating to "preserve design" will be met. However, the role of these Preapproved Mitigation Areas is not identified or discussed.

Finally, there is the issue of why the term "Metro-Lakeside-Jamul Segment" is being employed. Is it an attempt to imply that the MSCP Plan support the idea that this area should be "metropolitanized" in an urbanized fashion? As indicated elsewhere, the MSCP is not a "general planning" process and should not be represented as such. "Lakeside-Jamul Segment", as an option, seems descriptive an adequate.

81(ad)

7. <u>We Do Not Feel That the Representation That the Port of San Diego Has Been, or Is, Working To "Support" The MSCP Is Accurate</u> (Section 5.6.5, Port of San Diego)

The Port of San Diego has been singularly uninvolved in the MSCP process. This lack of involvement in, and explicit support of, the MSCP by the Port of San Diego is not a minor concern. Many of the biological resources the MSCP Plan proposes to "cover" depend very heavily on land and water areas over which the Port District claims exclusive jurisdiction. It is difficult to understand how "coverage" can be extended to these resources when the Port of San Diego has been uninvolved in, and has not made commitments with respect to, the draft MSCP Plan. This situation is

81(ae)

PRESERVE MANAGEMENT AND REPORTING - Section 6

1. <u>The Potentially Significant Impacts Of Agricultural Operations On the Functioning of the MSCP Preserve Are Essentially Ignored</u> (Section

81(af)

6.2.2)

Agriculture deserves specialized MSCP Program treatment—it provides broad open space values and can offer important habitat and buffering values. However, unrestricted agricultural activities can have significant negative impacts on the functioning of the preserve and should not be exempted from the MSCP which is the real effect of the plan as it has been proposed. 81(af)

For examples, the impacts of grazing (technically, of "over-grazing") on natural habitats, especially on riparian corridors, are widely recognized. Major portions of identified biological core areas and linkages are grazed or have the potential to be grazed. Therefore, there are potentially significant impacts on the MSCP preserve. One problem is that there has not been an evaluation of the impacts this activity could have on the preserve system.

The August 1996 MSCP Plan charges "subarea plans or preserve management plans" with the responsibility to "identify how to minimize potential impacts of agriculture on native vegetation, hydrology, soil quality, and native songbird populations, particularly parasitism by brown-headed cowbird which is associated with livestock feeding and holding areas." The charge to address agriculture and preserve management in the subarea plans section is there, but a review of subarea plans indicates that potential agricultural impacts on preserve functioning have not been evaluated and agriculture is essentially exempted from the MSC planning and implementation process.

Agriculture will be gaining benefits from the MSCP Plan. They have responsibilities to contribute and, given their commitments to "resource stewardship", they should be able to do so easily.

2. Inadequate Attention Is Given in the MSCP Plan To The Importance of the Early Development of "Habitat Management Plans" (Section 6.3.1)

The biological evaluation of the MSCP Plan (in Section 3) indicates there are a number of "covered" species that face a "high risk" future and whose protection depends on the development of habitat management plans to address risk concerns, particularly those associated with edge effects.

The draft MSCP indicates either that subarea plans will include a "habitat management plan" or that jurisdictions will "provide a management plan subsequently as a condition of the implementing agreement." Where such "management plans" are essential to establishing the "coverage" for species, it seems essential that these "preserve management plans" be developed up-front, not promised in 81(ag)

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81(ag)

the future.

3. Fencing and Predator and Exotic Species Control Is Treated In A Very Perfunctory Manner, When The Coverage Analysis Indicates That Edge Effects Place Many of the "Covered" Species At High Risk

The decision to eliminate the concept of "buffering" based on the "lines-a-line" political campaign and sloganeering has quite logically resulted in a situation where the "management" of edge effects is critical to the success of the preserve.

As a reminder, the earlier preserve design assumed that "buffering" provisions would apply adjacent to the preserve. "Buffering", of course, is a concept that is standard practice for land use planning and regulation, such as for the protection of public open spaces. When this "buffering" was removed, no adjustment was made to compensate for what amounted to a "significant reduction" in the effective size of the preserve. 81(ah)

So called "adaptive management" of the preserve is now recognized as essential to preserve success. However, the tools, necessary for such management, such as fencing and predator control are not adequately addressed.

FINANCIAL HABITAT ACQUISITION AND MANAGEMENT

1. The MSCP Plan Fails To Present Reasonable Funding Source Options For Public Discussion—Specifically, Utility-Based Revenue Sources

A major responsibility of the MSCP public review draft is to provide citizens with a complete range of reasonable options. One possible funding source for a regional preserve system are revenues associated with regional utility systems.

Utility services, such as for water and gas and electric extend on a broad regional basis and have a relationship to the extension of development that is creating the threat to the region's biodiversity which is the focus of the MSCP Plan. Utility-based revenues were discussed as a funding source at the Working Group level but have been eliminated in the latest draft. The elimination of utility-based revenues as and MSCP funding source is apparently a political response to the opposition by utility organizations to any consideration of these funding sources.

Local funding for implementation of the MSCP, which is essential to the program's long-term success, remains uncertain. Voters need confidence that a full range of alternatives has been evaluated. It is premature to eliminate potential funding sources simply because there 81(ai)

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is institutional opposition. 81(ai)

2. A Clear Explanation Is Missing As To Why The Extent of Local Acquisition Increased From the Draft Plan Low of 2,700 Acres To the Plan Level of 13,500 Acres (Section 7.0, Summary of Regional Funding Program)

   To the MSCP Plan documents credit, it attempts to provide a cross-walk, or comparison, between the funding analysis and plan in the March, 1995 MSCP Draft and the August, 1996 Plan. However, the explanation of why the level of local acquisition changed from as low as 2,700 acres to the estimated 13,500 acres is not clear. 81(aj)

   Since the voter-taxpayers will be asked to provide significant funding for the MSCP Program, it is important they be given a clear picture of the funding options that were examined and the basis for the choice that is recommended in the Plan.

ACKNOWLEDGMENTS - Section 8

1. The Report Convevs The False Impression That The MSCP Plan Received A Broad Scientific Review—It Did Not!

   The Acknowledgments includes a long list of "Biological Data Contributors And/Or Reviewers. This could be interpreted to mean there was extensive and independent review of the MSCP Plan. There was not and efforts to introduce this kind of review were resisted throughout the development process and during the review phase. 81(ak)

   Many, maybe most, of the independent biological experts listed in this table participated only in their capacity as "data contributors." Unfortunately, their participation in a review capacity was not solicited or provided for.

Technical Correction: Craig Adams, Sierra Club has been added as a member of the San Diego Dialogue Committee for MSCP Local Funding listed on Page 8-2. 81(al)

MSCP SUBAREA PLANS - Volume II, Selective Section-By -Section Comments

CITY OF SAN DIEGO

1. The inclusion of the so-called, Manager's Compromise as the MSCP Plan for Carmel Valley Neighborhood 8A Is Not Justified Biologically and Is In Violation Of the Clear Direction of the City Council (Figure 5, Page 23)

   The significance of the Carmel Mountain area to the Biological integrity of the preserve system has been documented in extensive testimony to 81(am

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the City Council in its deliberations on this matter. The Council directed the City Manager to improve the plan with respect to this area beyond his "Manager's Compromise." The MSCP Plan reflect no change from, and therefore no improvement over, the Manager's original proposal. 81(am)

The significance of this area to the success of the MSCP Plan has been testified to by a series of biological experts at a number of formal hearings on this matter.

2. <u>The "Island" of Development Proposed In The Middle Of The Del Mar Mesa Core Is Inappropriate</u>

This "unprotected" "development bubble" in the middle of a core area is in clear violation of the critical regional habitat role assigned the Del Mar Mesa. The potential edge effects of this area on the Mesa are potentially significant and not analyzed. The City Council has indicated the desirability that this area be purchased or otherwise protected. 81(an)

The MSCP Plan should identify this area as part of the MSCP Preserve.

3. <u>The Area Identified As "Montana Mirador" Should Be Included In The MSCP Preserve</u>

The area of this proposed development has been identified by the City Council as a desirable area for potential purchase and inclusion in the MSCP Preserve. To make the area eligible for consideration for possible MSCP-related funding, it should be included within the MSCP preserve. If necessary, such a designation could include the fact that the property has an existing approved Tentative Map which takes precedence over general MSCP preserve-related regulations. 81(ao)

4. <u>The MSCP Plan For the Hodges-San Pasqual Valley Needs To Be Enhanced</u>

There is substantial City-owned land in this area with high potential habitat value. There has not been a systematic evaluation of the complementary value improved habitat protection could have on the improvement of water quality in Lake Hodges and for the expanded potential utilization of the groundwater basin.

At the least, the City lands that have been identified for "interim agricultural use" with the goal of "eventual long-term restoration to native upland habitat" should NOT be excluded from the preserve, as proposed (on Page 32 of the Subarea Plan). Logically, if the objective is long-term restoration, the area should be included in the MSCP.

Note: The lead-in to the listing of "Preserve Exclusions and Guidelines" 81(ap)

under the 'Hodges Reservoir/San Pasqual Valley section does not seem accurate. The "exclusions" are characterized "in order to provide for current and future requirements of the City of San Diego Water Utilities Department (the property owner) and the County Water Authority (CWA)." However, several of the exclusions, such as the "bridge widening" and exclusion for "interim agricultural use" do not seem to fit this characterization. 81(ap)

5. The Preserve Management Plans in Section 1.5 Of the Subarea Plan Lack Sufficient Detail To Respond To The "High Risk" Characterizations For Many Of The Species Identified As "Covered" In the MSCP Analysis 81(aq)

6. Excessive Fragmentation of the Proposed MSCP Preserve in the Southern Area On Otay Mesa Remains Unacceptable (1.2.1) 81(ar)

   No analysis has been conducted for these area relative to the preserve design criteria contained in the NCCP Conservation Guidelines.

7. The Implementing Provisions Do Not Provide For Measures "To Ensure That Impacts To "Narrow Endemic Species" Are Avoided To the Maximum Extent Practicable—Whether They Are Inside Or Outside the Preserve—As Provided For in the MSCP Plan (in Section 3.3.2) and the Subarea Plan, Section 1.6.4. 81(as)

8. Proposed Roll-backs In Existing Protections Of Sensitive Resources, Such as With Respect to Hillsides, and the Proposed Reductions In The Role and Involvement of Community Planning Groups In Open Space Planning are Unacceptable

   The draft Comments by the Environmental Subcommittee of the Council of Planning Chairs on this topic, titled "Community Planning Committee's Response to the Multiple Species Conservation Program (MSCP), October, 22, 1996 are incorporated into these comments in their entirety by reference. 81(at)

   Given the sweeping nature of the proposed replacement of the City Resource Protection Ordinance by the Environmentally Sensitive Lands Ordinance and its inclusion in the even more sweeping Zoning Code Update package, the Sierra Club intends to provide additional comments on the draft Environmentally Sensitive Lands Ordinance (ESL). One problem in the review of the MSCP package is that an understanding of the ESL requires the "Definitions" which were not included in the document.

9. The Proposed Roll-Back Of City Protections For Wetlands, Such As The Proposed Redefinition of Wetlands, the Proposed Use of CEQA-Based Mitigation Guidelines Outside the Preserve and The Proposal To Remove City Review of The Wetlands Elements of Proposed 81(au)

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Developments Is Inappropriate AND Undermines the Biological Objectives of the MSCP. 81(au)

10. The "Land Use Adjacency Guidelines" Do Not Adequately Address The Serious Problems Of Edge Effect And the Resulting "High Risk" Identified In the "Coverage" Evaluation (1.4.3) 81(av)

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11. For Tier II Lands, The Incentive For Mitigation Within the Preserve Needs to Be Increased From the Proposed 50% Bonus To The 100% Bonus Proposed For Tiers I and III (Exhibit N To The Implementing Agreement) 81(aw)

12. The "Take Estimates" Should Be Supplement To Include Estimates For Take Of Especially Sensitive Species, Such As The California Gnatcatcher, and Including Impacts, Direct and Indirect, To Major Populations

    The City's Subarea Plan is to be commended for including a clear presentation on the estimated "taking" of sensitive vegetation communities. However, since it is practicable to do so, an estimate should be prepared for the anticipated loss of key species—as required under the Federal ESA incidental take procedure. 81(ax)

CITY OF SANTEE

1) The Subarea Plan Should Be Amended To Include the "Total Preserve Alternative" Recently Recognized By the City As A Mitigation Bank Within the MSCP Preserve System 81(ay)

2) Several Inadequacies of the Subarea Plan Need To Be Remedied

   - The biological core area identified on Fanita Ranch is highly fragmented by the proposed Subarea Plan

   - Santee has failed to make a fair share contribution to the regional preserve system with low-percentage contributions of coastal sage scrub, other key habitats and proportion of core biological area protected 81(az)

   - There is inadequate protection of grasslands which has been identified as less than adequately conserved by the MSCP Plan

   - The preserve design fails to meet the criteria in the NCCP Conservation Guidelines by not protecting the highest value habitat and through excessive fragmentation

COUNTY OF SAN DIEGO

1) It is unclear whether the "Species Protection Goals" in Table 1-3 Are Intended To Serve As "Measurable Criteria" and As The Basis For Biological Monitoring and Plan Compliance Checking Stated differently, their use and application is unclear.

   Also, with admittedly inadequate survey data, the use of "occurrences" as a basis for "protection goals" seems highly questionable—a 81(ba)

conclusion it is our understanding has been expressed consistently by biological reviewers. 81(ba)

The County Subarea Process seems to be loaded with case-by-case determinations, amendments and variances—is this the "certainty" that is the driving objective of the MSCP Plan? And what is the role of the public, and their access to, these negotiations?

2) The Concept in 1.4 of The County Subarea Plan Regarding Negotiating Mitigation Ratios On A Project-By-Project Basis and With The Public Involvement Limited To CEQA Comments Seems Very Suspect

More generically, in cases where the Wildlife Agencies, specifically the U.S. Fish and Wildlife Service, have the ultimate decision-making authority, such as in the case of these "negotiated" mitigation ratios, it is difficult to see how the CEQA process, which is a state legislatively based procedure, can be used in a federal decision-making process. 81(bb)

3) The Process For Public Notice and For Public Involvement In the Decision-Making Process of Concurrence By the Wildlife Agencies Under the Minor Amendment Process in 1.10.1 Is Unspecified 81(bc)

4) The "County Subarea Plan" consists of two distinctly different types of "plans" that need to be evaluated separately: a) the hard lines plans for the Lake Hodges and South County Segments, which are very much like other subarea plans which are based on "hard lines"; and b) the Lakeside-Jamul Segment which is significantly different from any other subarea plan. 81(bd)

5) The Logic Used To Establish the Conservation Targets For Lakeside-Jamul Segment Is Flawed.

The habitat protection goals were based upon an earlier assumption that there would be preserve boundaries for the so-call Lakeside-Jamul Segment (specifically, the "MHPA preserve alternative"), just as elsewhere in the MSCP area. Since the hard-line preserve approach has been defined to be a very highly efficient solution to habitat protection that cannot be realized with a less well-defined preserve configuration, it is not logical to use a hard-line preserve-based set of habitat preservation targets as a basis for a non-boundary preservation approach. If a "hard-line" preserve is not being defined, the habitat conservation goals need to be set at a higher level, since the system is likely to be less efficient in protecting species that with a hard-line preserve.

A comparison of the Lakeside-Jamul Habitat Protection Goals to the Overall County goals for habitat types show they are typically lower than for the other segments of the County. Since the other areas have "hard-line" preserves, this result is contrary to reasonable 81(be)

81(be)

expectations.

6) The Discussion of Land Conservation (4.4) contains difference assumptions than are used in the referenced table.

81(bf)

For example, the text says for Tier II that 60% will be mitigated I the preapproved areas while the accompanying table uses a 70% figure. The differences in these assumptions could significantly affect the public cost of the program.

7) The Biological Mitigation Ordinance Is Very Poorly Drafted and Needs To Be Corrected, Clarified and Recirculated For Comment. It contains what seem to be loophole after loophole. Technical problems with the draft Biological Mitigation Ordinance include:

- The use of the CEQA exemption is too broad and is essentially open-ended, since it might be further modified Article II. 1.
- The reference to the "Interim Sensitive Lands Ordinance" is pure propaganda. It has been shown that the County Board adopted the ordinance at issue as a regular, permanent protection for the resources of the County. Article II. 4.
- The provision allowing the Director of Planning and Land Use to unilaterally determine that there are no environmentally sensitive lands involved or that a prior permit provides equivalent standards to the Ordinance precludes Wildlife Agency overview and citizen review. Article II. 6.
- The proposed exemption for "recreational facility which includes public use", again with out any indication of Wildlife Agency participation could have a major impact on preservation Article II. 9.
- It is unclear who will determine the "viability" of proposed mitigation lands "outside the biological resource core areas." Article III. 1. Footnote #1.
- Who decides what is a "biological resource core area" based on meeting one or more of the criteria in Article III. 1. a.—County staff unilaterally or with Wildlife Agency concurrence and what about public involvement. Because mitigation requirements and credits are based on these determinations, this appears to be a prescription for ongoing uncertainty and conflict.
- The same questions of "who decides?" apply to "land outside an approved Subarea Plan—presumably the Lakeside-Jamul Segment. Here the determination is ever more open-ended because there is no Subarea Plan-defined "biological resource

81(bg)

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81(bg)

core area."

- The relationship between the Wildlife Agency "preapproved mitigation areas" and the "biological resource core areas" is unclear.
- The term "Core linkage" appear to run contrary to biological theory which indicates that "functional linkages between core areas" should be able, relative to certain types of species, to be able to "support" sensitive resources.

- Under Article IV. Determination of Mitigation Requirements what is inside of or not inside a biological resource core area is uncertain and a point of case-by-case negotiation. The idea of demonstrating "reasonable connectivity to extant open space patches and ability to sustain viable wildlife and plant populations" offers little certainty, an invitation for loopholes and the high probability of ongoing conflicts.

- There is no definition of "significant populations of species" nor a specification of who makes this determination under Article IV.

- Unlike the provision in some Subarea Plans which strictly limit the extent of encroachment into identified sensitive core areas, the Biological Mitigation Ordinance merely requires the siting of development to "minimize impact to habitat." The only specific limits are to "sensitive plant populations" under Article IV. B.

- The relationship between the administration of the proposed Biological Mitigation Ordinance and the suggested continuation of the interim process for Habitat Loss Permits is unclear. Does this mean there must be Wildlife Agency concurrence with a County determination or only an ability to comment under the CEQA process as implied elsewhere?

- The Tier Mitigation System depends on the determination of "biological resource core areas" which is a uncertain project-by-project proposition.

- Wording that provides that mitigation ratios "shall generally be followed for habitats", such as in Article IV. A. 3. a. is a concern.

- There is no Table 2 on Attachment A as referred to in Article IV. A. 3. b. Apparently the reference should be to "Column 2"

- Inclusion of an attachment ("Attachment C") which has Groups A, B, C and D when the ordinance applies only to Groups A and B is very confusing.

81(bg)

- The reference in Article IV. C. to "Article III, Item 6" is not correct (apparently the reference is to Article III, Item 10) In the same paragraph there is a reference to "Attachment D" which apparently relates to the not identified attachment following Attachment B.

The draft Biological Mitigation Ordinance is loaded with a series of technical problems and is a puzzle to decipher. It should be revised and recirculated for review.

8) The Schedule of Mitigation Ratios (Table 4-7) Provides Inadequate Incentives To Ensure An Appropriate Preserve Configuration and The Realization of The Plan's Biological Objectives **81(bh)**

For example, in the critical Tier II category, the bonus for mitigating inside a "biological core area" rather than outside a core area, when the impacts are within the core area, is only 25% (1.5:1 vs. 2:1)

9) For the Following Reasons, We Have No Confidence That The Lakeside-Jamul Segment Plan, As Outlined, Can Provide Any Reasonable Assurance That The Habitat Protection Goals Can Be Met

a) The role of the "preapproved mitigation area map" and the general relationship of the County to the Wildlife Agencies is unclear.

b) How the "biological resource core areas" will be determined, and how the Wildlife Agencies relate to the County in this process, is unclear.

c) Meeting the Habitat Protection Goals does NOT mean that the "functioning preserve" objectives can be realized; the "preserve configuration" criteria and process to ensure their application are too confused and uncertain. **81(bi)**

d) There is the potential for substantial "leakage" in mitigation to areas that do not contribute significantly to the preserve.

e) The option to reducing many of these uncertainties is to increase public purchase of critical lands; there are limited and uncertain funds to pursue this as a fall-back strategy.

f) There appear to be underlying inconsistencies in the way the Wildlife Agencies view the process and the perspectives of the County—a discrepancy that does not generate confidence in the "workability" of the approach.

9) The Only Circumstance Where the Type of No-lines, Case-by-Case, Flexible System, Contemplated by the Lakeside-Jamul Segment Proposal, Could Work To Produce the Species Protection Objectives, In Our Estimation, Would Be a Project-By-Project Sign-off By The Wildlife Agencies **81(bj)**

We look forward to working with you on the concerns we have expressed here and on those forwarded by other reviewers

Respectfully,

81

Craig Adams

Craig Adams
Chapter Coordinator
San Diego Sierra Club

82 DAN HOLLAND, 10/29/96

82(a) Comment noted. See responses to Comments 82(b) through 82(u).

82(b) Table 3-5 in the MSCP Plan and Table 4.3-1 in the EIR/EIS list all of the 93 species evaluated and indicate which ones are adequately conserved by the MSCP Plan and which ones are not.

82(c) It is obvious that having full knowledge of the life history, genetic structure, and demography of each species of concern would allow for development of the most effective conservation strategy. Unfortunately, limited funding, resources, and time does not allow for the full gamut of information to be gathered on individual species before ongoing habitat loss would result in certain extirpation in the wild. In the realm of conservation biology, we must often make assumptions about specific aspects of a species' biology to first ensure the conservation of its habitat. After first ensuring that these species are retained in the wild, we can pursue funding to examine other features of their biological needs.

82(d) The PVAs for the gnatcatcher and cactus wren were only one component of the biological analyses conducted in developing the alternative preserve designs. Generally, listed species, such as the gnatcatcher, were given somewhat higher priority for conservation than unlisted species.

82(e) The Habitat Evaluation Model was developed in response to the lack of spatially unbiased data regarding the distribution of target species. All components of the model are based on generally accepted concepts of conservation biology and empirical analyses where available. The model serves as a regional planning tool in delineating the core and linkage areas within the study area. The model is a regional landscape assessment conducted at a regional scale and is not intended to substitute for site-specific biological evaluations of proposed development. The model provides a regional context within which specific parcels can be evaluated with more detailed information regarding a site's biological resources. Site-specific assessment is required for all environmental evaluations under CEQA and NEPA. Unbiased systematic sampling of the study area was considered infeasible for a variety of reasons (e.g., lack of access to many private properties; insufficient sampling effort both spatially and temporally). Based on the funds available, focused surveys were made of areas believed to have key landscape characteristics (e.g., the Lakeside sage scrub linkage) or having a high diversity of habitats (e.g., Marron Valley). Over 33,000 acres of habitat were surveyed during the preparation of the MSCP Plan (10% of the available habitat). Since the final value category of the model was a maximum function, a site needed to be ranked Very High in only one of six model components to be assigned to the Very High category. This conservative categorization made the model insensitive to any one of the evaluation components. A detailed description of the model is provided in Appendix A-10 of the MSCP Resource Document.

82(f) The review of the literature and survey reports was conducted in 1991 and early 1992. Subsequent reports were incorporated when they become available and were provided to the MSCP

program. A focused update of selected species locality data was incorporated in the database in 1995. A survey of museum records indicated that the spatial accuracy of the collection site was too vague to be comparable to more recent mapping information gathered from survey reports. Often the collection site was determined to no longer support suitable habitat due to subsequent development of the site. The commenter is correct that data on minimum viable population sizes are generally not available.

82(g) The basic assumption of Gap Analysis is that the level of current protection of a species' preferred habitats would be indicative of the conservation status of the species. This is a standard assumption of most endangered species assessments made by the wildlife agencies. The approach has been defensible for proposals to list species as endangered, and therefore it is relevant to a regional planning program such as the MSCP. The Gap Analysis was conducted to determine which habitats might already be adequately protected prior to implementation of an approved preserve design.

82(h) The degree of protection and conservation of a given target species was made based on the proportion of suitable habitat being conserved and the inclusion of identified major populations within the preserve. The amount of conservation for each proposed covered species is provided in revised MSCP Plan Table 3-5 included in the Revisions to the MSCP Plan, Volume I, January 1997.

82(i) The information that the comment refers to is contained in the December 1993 working draft of the MSCP Plan. Subsequent to the preparation of that draft, the MSCP has undergone several changes, including the preparation of an additional alternative, the Multiple Habitat Planning Area (MHPA). This alternative is described in the current MSCP, Volumes I and II (August 1996). It describes how the conservation of 85 species that are proposed for coverage will be met and revised Table 3-5 provides a summary of the conservation and specific management requirements to meet the take authorization standards. As described in the Draft EIR/EIS (August 1996) and summarized in Table ES-3 (Summary of Impacts to Covered Species), the MHPA and Biologically Preferred (BP) alternatives mitigate their impacts. As shown in Table ES-4 (Summary of Biological Resource Impacts), the MHPA and BP alternatives adequately mitigate their impacts to vegetation communities and covered species or pose no significant impacts on the non-covered species. See also **Theme Response I, Species Analysis Approach.**

82(j) It is assumed the commenter is referring to Page 6-7, Section 6.3.4 of the MSCP Plan, Volume I, regarding Fire Management, since "p.8-48" is non existent in the MSCP Plan, Volumes I and II, and Section 8 of the EIR/EIS is on "Acknowledgments" rather than on "Fire Management."

The potential short- and long-term effects of fire were taken into consideration during the design of the MHPA and will also be taken into consideration in the management of the preserve. The preserve management plans will incorporate fire management considerations for habitat management and public safety. The commenter's suggestions will be considered in the formulation of these plans. Although modeling of fire scenarios for the preserve planning area may be an interesting exercise, fire is not the determining factor regarding where various vegetation communities exist. NCCP

design tenets developed by nationally recognized conservation biologists were used to help design the preserve and its design and size will buffer against any short-term impacts of fire. Prescribed burning may be one of the management tools used for preserve management along with fuel modification zones to reduce the potential for catastrophic fire. Future development projects adjacent to preserves will include provision for fuel management zones to protect against wildfires. The wildlife agencies, local jurisdictions and various fire protection agencies have a draft Memorandum of Understanding which address these urban-wildland interface issues.

82(k) Specific discussions regarding the effects of non-native species present within the MSCP study area are beyond the scope of the MSCP Plan. The presence of these non-native and invasive species is an existing condition of the preserve planning area. Preserve management plans will address non-native species issues as appropriate. For example, the City of San Diego Subarea Plan addresses Invasive Exotics Control and Removal on pages 58 and 59, MSCP Plan, Volume II, through a prioritization of measures to reduce or eliminate problems. Preserve monitoring will occur that will identify such problems, and appropriate management actions will be taken. See also response to Comment 61(m).

82(l) As stated on page ES-1 of the MSCP Resource Document, and page 1-1 of the MSCP Plan, Volume I, the MSCP was originally developed to be a comprehensive habitat conservation planning program that addressed multiple species habitat needs and the preservation of native vegetation communities for a 900-square-mile area in southwestern San Diego County. The conservation goal of the MSCP for wetlands and wetland-dependent species is based on the federal and state policies of "No-Net-Loss." All subarea plans are to incorporate this concept. Jurisdictional wetlands would continue to be regulated under the Federal Clean Water Act (Section 404) and the California Fish and Game Code (Section 1600 et seq.). It was always recognized by the MSCP Plan that wetlands are important habitat that would continue to be regulated under these laws whether it occurs within or outside of areas designated MHPA.

We concur that riparian areas provide habitat for sensitive species and, that by their linear nature, are subject to edge effects. The discussion on page 12-25 is intended to provide generalized goals and policies. It is acknowledged that impacts with appropriate off-setting mitigation would occur under the existing federal Section 404 permit and State of California Section 1600 et seq. agreement processes, and that cumulative impacts and edge effects are particularly difficult to address. These are fundamental reasons why a regional multi-habitat plan at a landscape level is needed to minimize the project-by-project approach to how biological resource impacts are addressed.

82(m) Comment noted. It is recognized that existing potable water supply reservoirs have a variety of impacts to the natural riverine system. Flushing flows from reservoirs within the MSCP study area are unlikely, except under conditions of peak mid-winter runoff resulting in spillage over the top of the dams at Lake Hodges, San Vicente Reservoir, Sweetwater Reservoir, and Otay Lakes. The wildlife agencies will work with the City of San Diego to minimize damaging instream flow releases for reservoirs that occur outside of the MSCP study area, including El Capitan and Barrett Reservoir. These agencies are presently working with four water districts in preparation of subarea plans for water district lands and

projects both within and outside of the MSCP study area. These subarea plans are not addressed within the MSCP Plan, however, they will be subject to a separate NEPA/CEQA public review processes. Issues relating to the rate and amount of water flow release would be discussed in these subarea plans and environmental review documents.

Given that existing reservoirs have, and would continue to, alter the natural flow regime of downstream riverine habitat, occupied breeding habitat for the arroyo toad within the MHPA would be monitored to ensure that sufficient amounts of suitable low-gradient sandy stream habitat is maintained. The intent of including substantial amounts of riverine habitat that is not presently known to be occupied by target species is based on the expectation that portions of these areas are likely presently occupied (but have not been surveyed), or could be occupied by the target species (including the arroyo toad and southwestern pond turtle) in the future. Riverine systems are dynamic and the location of suitable habitat will shift over time.

The general policies listed in the Executive Summary, pages 12-25 to 27, are not intended to result in management measures that would adversely affect suitable arroyo toad habitat. This information found in the MSCP Resources Document is superseded by the City of San Diego Subarea Plan.

The open water of the reservoir would be managed for potable water supply needs. It is expected it would continue to provide high habitat value to wildlife. The additional biological management measures provided by the MSCP Plan would maintain and enhance the existing habitat values of these reservoirs.

82(n) See Section 6.2.4, included in the Revisions to the MSCP Plan, January 1997. See also responses to Comments 45(f), 45(g) and 45(h).

82(o) The methodology followed for the MSCP surveys was general in nature due to the large number of target species being assessed. A given site was evaluated for the <u>potential</u> to support species that typically are less detectable, such as nocturnal toads and frogs. Focused survey effort for specific target species was not within the scope of the survey effort. The survey effort is more analogous to the Rapid Response Habitat Assessment protocol, which provides a relative assessment of an area's biological diversity. Night surveys were not conducted during the MSCP surveys. The goal of the surveys was not to have a complete, quantitative accounting of species distribution and abundance, but rather a relative assessment of habitat quality and biodiversity. The survey results were not extrapolated to taxonomic groups (e.g., reptile diversity), but the results provided a relative assessment of overall diversity of plants and animals between areas examined. Formulation of preserve design alternatives relied upon habitat diversity as a surrogate for species diversity and a consensus process involving the experience of numerous field biologists and recognized experts of specific species.

82(p) Comments noted. See responses to Comments 82(r) through 82(u).

82(q) Please see response to Comment 45(g).

It is acknowledged that biological surveys for the entire MSCP study area have not been conducted. The determination of "discountable" for this species does not result in the abandonment of the MSCP study area for the potential recovery of the red-legged frog. To the contrary, the assurances of preservation of 70% of the riparian habitat, including freshwater marsh, within a managed, interconnected preserve system would provide increased opportunities to carry out recovery actions within the MHPA. The risk to the species from implementation of the MSCP Plan is deemed low, based on information that the impact is likely to be discountable, and given the level of habitat preservation and management that is proposed.

Comment noted. The database will be amended to note that California red-legged frogs are known to move extensive distances (greater than one kilometer).

82(r) The MSCP Plan provides a habitat-based approach to species conservation. The basic premise is to preserve large, interconnected blocks of core habitat areas and their associated species, and to provide active management. Management plans for the MHPA would include monitoring and maintenance of occupied breeding habitat, including a one kilometer area of adjacent upland foraging habitat within the preserve. The management plan would also include a program to control non-native predators. The permits for each subarea plan would be conditioned to include these requirements.

The condition in revised Table 3-5 of the MSCP Plan, Volume I (see Revisions to the MSCP Plan, January 1997) states that "Management plans would address preservation of sheltering and foraging habitat within one kilometer of occupied breeding habitat within the preserve." This area was not intended to be taken as a diameter around a siting location for an arroyo toad. The intent of this condition was to ensure that sufficient foraging/sheltering habitat is managed and protected in addition to the necessary breeding habitat for known occupied habitat. It is recognized that intra- and interannual movement of toads would occur and, given the dynamic nature of riverine system, that suitable habitat would shift over time. As previously stated, the MSCP Plan is habitat-based, and would continue to preserve habitat within the MHPA regardless of the successional stage. The plan includes adaptive management which would allow for maintenance of critical areas, or shifting of management priorities to new areas. The MHPA would result in the conservation of 12,154 acres of riparian woodland, riparian forest, oak riparian forest, riparian scrub and freshwater marsh habitats in various successional stages. It is expected that target species that utilize these habitats would benefit from the assurance of conservation and habitat management.

The GIS-mapped data is only one tool used in the analysis of the MSCP Plan. Other information not on the GIS Known Species Location maps was used by the consultant, local jurisdictions, and the wildlife agencies. As was discussed with the commenter personally, known locations not indicated on the MSCP maps include the Sweetwater River, Otay River Valley, and San Pasqual Valley. These data were, however, included in the analysis. Based on the high level of habitat preservation and management within the MHPA, and the policies and guidelines that would maintain wetland values and

functions outside of the MHPA, it is expected that the arroyo toad would be adequately conserved by the Plan. Please also see response to Comment 45(f).

82(s) Please see responses to Comments 45(h) and 82(r).

82(t) It is acknowledged that complete information on the distribution and abundance of the San Diego horned lizard is not available. The San Diego horned lizard is a species that is considered to be relatively widespread within the MSCP study area, although sparsely distributed within common habitat types. NCCP-sponsored research by the University of California, San Diego (pers. comm., Drs. Ted Case and Robert Fisher) found that 13 out of 18 amphibian-reptile sample sites supported horned lizard populations.

The MHPA preserves 171,917 acres of habitat within rapidly urbanizing San Diego County including 71,274 of coastal sage scrub, 855 acres of maritime succulent scrub, 54,945 of chaparral, 1,111 acres of maritime chaparral, 11,657 acres of riparian habitats, 9,770 acres of grassland and other habitats. It is recognized that San Diego horned lizard locational data is incomplete and that the species is not distributed evenly throughout expected vegetation communities. Therefore, the locational point data were used to determine occupied habitat. The primary approach to conservation of this species is to provide large blocks of interconnected habitat that would allow for the natural ecological processes to occur. The maintenance of coyote populations is believed to be critical in controlling non-native predators such as feral cats by maintaining natural levels of native mesopredators.

Within urban preserves, it is expected that non-native species, particularly Argentine ants, would be of primary management concern. All subarea plans within which San Diego horned lizards occur must include management plans that would address control of Argentine ants. It is expected that control of non-native plant species and limiting additional sources of water in to the preserve would be important in controlling non-native ants.

82(u) It is acknowledged that the preferred approach to designing a viable preserve system is to have "long-term data from a number of sites in which environmental conditions of interest were not only known with certainty, but could potentially be manipulated over time, to track both species-specific and area-specific effects." This level of information, however, is not presently available for use in permit application decisions for most species. Moreover, prior to the MSCP planning effort, activities that result in habitat loss and degradation (e.g., development) have proceeded in a piecemeal fashion with little consideration of a comprehensive plan to retain habitat and their constituent wildlife and plant species over the long term. Despite the absence of long-term data, the wildlife agencies and the jurisdictions believe that a habitat-based planning effort, using the information that is presently available, would provide substantial habitat protection for the target species, including the orange-throated whiptail. Regional habitat-based plans incorporated into the General Plans and Community Plans of each participating jurisdiction are believed to be a superior approach to maintaining sensitive species and habitat values in a rapidly urbanizing area than the present hap-hazard project development. Available information

indicates that the preservation of multiple habitat types within a 171,917-acre interconnected, managed preserve would conserve viable self-sustaining populations of the orange-throated whiptail.

82

OCT 2 9 1996

Ms. Nancy Gilbert
United States Fish and Wildlife Service
2730 Loker Ave. West
Carlsbad, CA
92008

Mr. John Kovac, Senior Planner
Land Development Review Division
City of San Diego
1222 First Avenue, 5th Floor
San Diego, CA
92101

Mr. Bill Tippets
California Dept. of Fish and Game
4949 Viewridge Avenue
San Diego, CA
92123

29 October 1996

Dear Ms. Gilbert, Mr. Kovac and Mr. Tippets,

The following material will constitute my response to the request of the parties involved for comments on the Multiple Species Conservation Plan. I have divided my comments into four basic areas, specifically:

1) Questions, comments and concerns about material presented in the Executive Summary. While I realize that this is a summary document, the most efficient and constant way to deal with some points was by to refer directly to this section, rather than "jump" back and forth between multiple supporting documents.

2) Questions, comments and concerns about specific concepts or ideas discussed (or not discussed) within supporting documents. These deal with areas such as reservoirs, fire, the effects of exotic species, etc.

3) A critical analysis of the biological survey methodology presented in supporting documentation by the authors. Since much of the subsequent analysis and discussion is predicated upon this material, I felt that not only was this warranted but critical to the review as a whole.

4) Species-specific comments concerning inferences and determinations made within the MSCP. These are of necessity brief, but hopefully will be of value to the Service and other parties interested in this matter.

Although I have generally tried to be positive in my review and analysis where possible, I must state up front that I am severely disappointed with the MSCP product as a whole. Because in large part of the time constraints under which I working to produce this review, I was unable to conduct the breadth and depth of analysis that I would have wished. I did read and consider the material at length. However, this not withstanding, in my view these documents (and as a result the Plan itself) are critically if not fatally flawed.

82(a)

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One of the many problems, perhaps the most basic, is that this has been touted to the public and indeed the world as being the "cutting edge" of science and conservation biology. Although this may have been the intent, it has, in my opinion, certainly not appeared to have been planned or executed in that manner. Frankly, this process has all the appearances of "cargo cult" science, a description usually applied to nanotechnology.

82(a)

Because of the need to meet the submission deadline with this document, I was unable to complete the Literature Cited section. However, I will be glad to send you this if you feel it appropriate. Thank you in advance for your opportunity to comment on this process. Please do not hesitate to contact me if I can provide additional information.

Sincerely,

Dan C. Holland, Ph.D.

82

Executive Summary -Specific Comments and Questions

p.ES-7 regarding Target Species

The first paragraph states that of the 93 target species addressed by the MSCP, "... not all are proposed to be adequately protected by the plan." I suggest that it would be appropriate to reference a table at this point that lists exactly which species are proposed to be adequately protected and which are not. 82(w)

p. ES-9 regarding criteria and considerations for preserve design

The first full paragraph states that "To effectively protect and manage rare species populations, it is critical to understand the genetic structure and demography of the species of concern." I would make two points here: first, it is not only rare species that we need to understand these factors, it is in the not-as-yet-rare species as well, as their long-term persistence and response to disturbance in a reserve system will also be influenced by these factors. Second, although this sounds good in the executive summary, where is the discussion within the body of the MSCP documents of how it is to be applied in practice? This is too important a consideration to be given merely passing "lip service". a2(c)

p.ES-9 regarding Population Viability Analysis

I do not quarrel with the concept of value of PVA's, agreeing that "While PVA's should not be used as a definitive measure of preserve adequacy, they can be used as a tool in comparing various preserve configurations." I am greatly concerned that because of the general lack of rigorous scientific information in the MSCP documents as a whole, there has been an inordinate reliance on this information (as derived from gnatcatcher and cactus wren demographic data) in formulating and adjusting general and specific reserve design criteria. I think that few would argue that a reserve system design concept intended primarily for birds may well not be the best system for small mammals, snakes, amphibians or a number of other groups. a2(d)

p. ES-10 regarding the Habitat Evaluation Model

The statement is made herein that "In the absence of adequate and systematically-collected biological data for the entire study area, the model uses biological and physical data related to the potential presence of 93 target species and factors that contribute to high biodiversity". There are numerous problems with this statement and idea, not the least of which is that the fact that, as any modeler understands, the strength and validity of the model is directly related to and dependent upon the quality and quantity of the data available. All conclusions drawn from the model are based upon implicit assumptions about rigor and applicability ("real-world" relevance). Unfortunately, as the species-specific documentation freely and repeatedly admits, there is insufficient information to answer many of the most basic questions about their distribution and ecology. Furthermore, examination of the context and depth (or lack of same) in many parts of the text concerning general and specific applicability of information and ideas based upon models and other data reveals that an awareness of the "real-world" and the problems of uncertainty does not figure heavily in the discussion. A properly designed and implemented research effort would have (and still could) yielded the data necessary for an scientifically based, adequate and defensible reserve system. Furthermore, it is not necessary to have data for the "entire study area" as claimed - correctly designed and executed sampling efforts would be sufficient - that is why we have a science of statistics. a2(e)

This section continues "Site-specific verification of biological resources (or lack of biological resources) is needed before land use decisions for sites are finalized". This claim, while accurate, seems somewhat incomplete, both in practice and context. It would be more correct to say that this information is critical to the

general design process, and that the presence or absence of data influences the nature of the process itself, thus by default producing effectively finalized land-use decisions. Given some of my comments in this document concerning the nature of the data available, what plans or assurances are in place that the collection ("verification") and integration of additional data will occur before land use decisions are "finalized"? 82(e)

Furthermore, given some of the inherent uncertainties in the data - both in terms of collection methodology, reliability and applicability, would it not be appropriate to discuss how some of these factors might influence the rankings and distribution of habitat values (as noted on ES-11)?

p. ES-12 regarding Biological Goals, Standards and Guidelines

This section states "The guidelines are a synopsis of the scientific information available on the region's habitats and sensitive species". My dictionary defines a synopsis as "a statement giving a brief, general review or condensation". Perusal of the City of San Diego's Biology Guidelines and the Bibliography for the MSCP reveals an interesting situation. Fifteen of the 22 references in the Guidelines document are primary literature. Only 17 of 395 references in the Bibliography are primary. There is no evidence from this or associated documents that any museum records or many of the significant number of the primary literature records (a critical part of review of the scientific information on species) were used, nor what approximate percentage (10%? 50%? 90%?) of the primary literature is represented by the sources cited. The references in Vol. 1 (13.0) of the MSCP Resource Document are generally better; of 440 references the majority are primary literature. However, there are significant problems with this situation as well. First, the sources are inconsistently referenced (sometimes not at all) in the text. Second, some are irrelevant to the species of concern, and including them gives a false impression of adequate review. Third, many important references are missing. For the five species of sensitive amphibians and reptiles, I count four specific references for the western pond turtles, three for the California red-legged frog, two for the San Diego horned lizard, two for the orange-throated whiptail, and one for the arroyo toad. While there is not a vast literature on these species, this does not represent an adequate review. Furthermore, several key references were not included, the most obvious of which is work on the arroyo toad by Sweet (1992, 1993). Subjectively, given the nature and number of "references", it is curious that there was not more discussion on many important topics within the MSCP that are adequately and often extensively covered within the primary literature. Citation of relevant sources within the text would assist the reviewer not only to ascertain that coverage of the subject is complete and adequate, but also to allow for further investigation of particular topics or sources by interested parties. 82(f)

This section also states "in many cases, it is not known how much of a habitat or species will need to be preserved in order to ensure viable, self-sustaining populations". In fact, are these factors known with *any certainty* (based upon PVA's or any other form of scientific analysis in which the assumptions and parameters can be checked and tested) for *any* species in the MSCP (aside from gnatcatchers and cactus wrens)?

p. ES-13 regarding Gap Analysis

The statement is made that "The MSCP gap analysis is habitat based, rather than species based, due to a lack of sufficient distributional data on most target species in the MSCP study area. Inferences can be drawn regarding the current level of a species' protection based upon the percent of its habitat, the percent of Very High and High value habitats, and the percentage of the biological core resource areas and linkages preserved in biological open space". The basic problem with this premise is that there is no discussion of the fact that there are levels of uncertainty involved in each step of the process, and that each factor in the equation is dependent upon a set of assumptions about the nature and reliability of the data (as discussed previously). Furthermore, if these uncertainties (minimally) act in an additive fashion (if not synergistic), then they would render "inferences... drawn" from the information progressively less and less rigorous and potentially defensible. This 82(g)

point, and other assumptions inherent in and potential shortcomings of the method, needs open discussion within the body of this section. 219

p. ES-14 regarding Gap Analysis

The statement is made concerning the slightly > 30% conservation of chaparral, coastal sage scrub, and grassland currently protected or planned for preservation "... The adequacy of this acreage in meeting preserve design objectives depends upon the location and resource value of these areas. The distribution of these habitats within protected areas is currently fragmented and would require significant acreages of additional habitat in order for this level of protection to be adequate. The majority of core cactus wren and gnatcatcher populations in coastal sage scrub is not currently protected or planned for open space; therefore, these species are not adequately protected." Given that 1 the best available data seems to concern cactus wrens and gnatcatchers (via PVA's and other information 2) the last sentence in this paragraph represents the most likely situation in the opinion of the authors, and 3) that all other species have (as is repeatedly stated in the body of MSCP documents) even less data available for analysis, what are we to conclude about the degree or protection and adequacy of coverage for the remaining sensitive species? 220

p. ES-16 regarding summary of Conservation Analysis

The statement is made that "the MH and BP scenarios support a similar number of priority target species (31 and 33, respectively) and other target species (32 and 40 species, respectively, ...and high biodiversity (80 and 86%, respectively, of the Very High value habitats in the study area); however the BP scenario provides greater assurances of long-term viability and ecosystem functionality by virtue of its larger buffers,...". In other words, under the best of all possible scenarios and assuming that everything "works" as planned and a host of other factors do not change the nature of the MSCP "equation", a minimum of 20 of the 93 sensitive species (21%) and 7 of the 14 rare habitats (50%) have no rigorous assurance of continued persistence under this plan. At the presumed "middle" of the spectrum is the PL scenario, in which only 35 of the 93 sensitive species (37%) and 6 of the 14 rare habitats (43%) are minimally assured of continued persistence, subject to the same constraints noted above. The presumed bottom end of the spectrum is the CSS scenario, with protection of 28% of the sensitive/target species, and none of the rare habitats. Given 1) the problems with the nature and extent of the data 2) the uncertainties in the assumptions and analytical process as discussed (minimally) above and 3) the non-consideration of potential changes in the future that may affect the dynamics of the situation (such as increased frequency of fire, increased edge and exotic effects and a number of other factors), it seems obvious to me that none of these scenarios, even under the best of conditions provides any reasonable assurance that the current plan is appropriate or workable, or even necessarily internally consistent with the stated goals of the process. 221

Other general comments (not restricted to pages or sections noted)

There are several important points which I feel have received cursory or no treatment within the body of this document, and yet have a potentially significant individual and cumulative impact on the MSCP process and plan. These are briefly discussed below. 222

p. 8-48: Fire Management - I will not go into specific criticisms of this section, rather I have a general suggestion. Given the importance of fire as both an ecological and human safety factor in the MSCP, I would suggest that it would be appropriate to include in this or a similar section a detailed discussion of the general

history of fire within the MSCP area, especially as it relates to land use patterns, successional changes, community dynamics and habitat fragmentation. This could then be expanded upon to model scenarios for the effects of fire on the MSCP area and surrounding communities in the future, projecting likely scenarios under various conditions for 5, 10, 20 and 50 year time spans. This information is critical to allow reviewers to examine the potential short- and long-term effects of fire in relation to patch dynamics, successional patterns, management concerns and practices, reserve and area-specific species richness, population stability and viability of target species, and a number of other situations.. This information can and probably would affect the parameters for design, implementation and management of reserve areas and other lands within the MSCP area. 82(i)

p. 8-75: Predator control and Exotic species - The discussion of actual and potential problems with predator control and exotic species is at best cursory and incomplete. There is no specific discussion of the fact that many exotic species have documented negative effects on native species, other than a passing reference to cowbirds in the Preserve Management Guidelines. Where is the discussion concerning the effects of the host of exotic fish species present within the MSCP area, including but not limited to bass, sunfish, catfish, fathead minnow, exotic gobies, etc.? Where is the discussion of the exotic amphibian and reptile species, including African clawed frogs, bullfrogs, red-eared sliders, snapping turtles and soft-shell turtles? What about exotic bird species including cowbirds, starlings, etc.? Where is the discussion of exotic mammals such as red fox, opossum and house mouse? The issues and implications concerning these and other species are discussed in a single paragraph, despite the presence of a significant amount of primary literature detailing general and specific problems with exotics. This section is patently inadequate, and needs serious revision and discussion along the lines of the conditions previously specified with regard to reservoirs, riparian areas, etc. 82(k)

p. 12-25: Riparian Areas - Although the MSCP was originally designed primarily to preserve and maintain upland habitats, the value(s) of riparian systems, not only as "corridors" and linkage areas, has long been recognized. These areas are critical as baseline habitats for a number of sensitive species, including arroyo toads, western pond turtles, California red-legged frogs, as well as a number of other species (such as the two-striped garter snake), a significant portion of whose range is contained within the MSCP. By their very nature, riparian systems are long and thin, and therefore subject to increased edge effects, increased probability of fragmentation and effective isolation, and are among the most heavily altered of all ecosystems in California. My evaluation of the general and specific discussion on riparian systems is that it is cursory and inadequate. Assertions that 100% of the existing riparian habitat will be protected under the MSCP are contextual not adequately supported by documentation in the available material. Many of these areas are degraded to various degrees, subject to current and likely future impacts from a variety of sources, and there status is subject to change. Current wetland regulations (specifically 404) do not deal adequately with cumulative impacts, edge effects, isolation and fragmentation problems and a host of other concerns. The MSCP documents (minimally) require a thorough, referenced and rigorous discussion of 1) the inherent problems in protecting and managing riparian systems 2) their relationships (not merely as corridors and linkage areas) to other communities and 3) the probable impacts of both upstream and downstream development of various types (urbanization and associated infrastructure, reservoirs, agricultural practices, etc.) and degrees on the short- and long-term stability and viability of the reserve system. In my opinion this discussion is currently lacking, but is absolutely critical to allow the reviewer to analyze the potential that the stated general goals of the MSCP will indeed be met. 82(l)

p. 12-26: Reservoirs - There are several reservoirs within or adjacent to the MSCP area, all of which have and continue to affect both the biological and physical environment in their immediate vicinity as well as for considerable distances in the surrounding area. Their effects on the physical and biological environment both upstream and downstream is significant; for a brief review of the physical aspects I would suggest Mount (1995). Reservoirs affect the biotic environment in a number of ways, among them 1) direct loss of habitats inundated by the reservoir 2) creation of barriers to normal inter- or intradrainage dispersal 3) a decrease in the 82(m)

potential for gene flow 4) fragmentation and isolation of populations of aquatic species dependent upon fluvial habitats 4) providing an effectively infinite source population for exotic species (such as sunfish and bullfrogs) that allows them to invade and become established in areas where that would otherwise be difficult or improbable 5) alteration of local microclimatic conditions and 6) alteration of successional patterns and processes both downstream and upstream from the reservoir. this is not an exhaustive list, but will serve as a format for a very brief discussion of species-specific effects. The arroyo southwestern toad (*Bufo microscaphus californicus*) is a federally listed endangered species endemic to cismontane southern California and a few desert slope drainages. This species is one of the most highly specialized of all west coast anurans, depending upon maintenance of a particular set of habitat conditions produced by periodic flow conditions in larger (2nd-6th order) streams. Construction of reservoirs throughout southern California has resulted in the inundation and destruction of arroyo toad habitat in all systems in which this species occurs or formerly occurred. The presence of reservoirs has proved an effective barrier to normal upstream/downstream movement of individuals, and has fragmented and isolated remaining populations. Bullfrogs and sunfish (introduced species) are often dependent upon the local conditions created by reservoirs to persist or spread in many southern California drainages. Sunfish prey on the toad eggs and larvae, while bullfrogs prey on juveniles and adults. Of critical short and long-term importance and related to some of the factors noted above is the problem of atypical flow regimes. Flow regimes that do not match closely the historical pattern within a given drainage can and do cause major problems for arroyo toads. Breeding activity is keyed to late winter/spring rains, and eggs are deposited in shallow pools along stream margins. Except in abnormal situations, the natural flow regime is such that eggs will develop into larvae, which will in turn develop into juvenile toads, with a relatively low probability of being subject to "flushing" flows. Unfortunately, reservoirs produce annual abnormal water flow situations such as high late spring-early summer releases), which frequently flush eggs, larvae and adult toads downstream to less suitable or unsuitable habitat, resulting in direct or eventual mortality. In the long term, toads are dependent upon periodic scouring flows to maintain the structure and local distribution of breeding pools, as well as to restrict or reset successional patterns in the growth of riparian vegetation. Areas in which common dominant species such as willow (*Salix* spp.), mulefat (*Baccharis viminea*) and other species begin to stabilize and shade cobble/sand bar areas and adjacent pools become less suitable as toad habitat as time progresses. Periodic scouring returns these microhabitats to an earlier (often primary) successional stage and often increases their suitability as toad habitat. The lack of scouring flows from reservoirs, or the atypical timing of these flows, may have significant negative impacts on arroyo toad populations within the MSCP. Since most of the reservoirs either exist within the MSCP area (San Vicente, Lake Hodges, Sweetwater) or on the edges (El Capitan, Loveland) or drain though the MSCP area (Barrett, Sutherland, Wohlford), any discussion of the effective coverage and protection supposedly provided by the Plan must by default consider the impacts of reservoirs and reservoir operations. Existing information in the plan dealing with riparian areas and reservoirs (12-27 regarding recommended policies for riparian habitats) may in fact be in conflict with preservation and maintenance of toad populations, since 1) there is no discussion within the body of the text on this species and 2) the recommended policy states that a goal is to "Restore and enhance riparian habitat in floodplains in a manner that is compatible with both flood control and continued agricultural farming." Furthermore, "The restoration plan should be tailored to provide habitat for target species (e.g. Least Bell's vireo, willow flycatcher, yellow warbler and other breeding riparian birds)." The habitat requirements of arroyo toads for early successional stages of riparian habitat and adjacent upland habitats may directly conflict with these goals. Furthermore, the exclusion of the reservoirs and surrounding areas as "cornerstone lands" will also likely directly conflict with existing arroyo toad protection under the ESA, as well as significantly influence the finding that the species is "adequately covered" by the protection plan. I would suggest that a detailed discussion of these problems and impacts be included within the body of the Plan.

Similar concerns and other factors apply to western pond turtles and California red-legged frogs. Since these species (and the arroyo toad) are "covered" by the existing plan, a referenced, rigorous general and

82

species-specific discussion of direct and indirect reservoir impacts is critical to allow examination of the influence of these factors on the status of these species within the MSCP. 82(m)

p. 12-26: Sand and gravel operations - The statement is made (12-26) that "Sand and gravel extraction consistent with the San Pasqual Valley plan and other land use plans may be compatible with habitat preservation and should be permitted only with the following conditions and controls...". This statement is unsupported by any documentation and unlikely in many respects to be true. Sand and gravel operations produce many of the same problems for arroyo toads, western pond turtles, California red-legged frogs and several other aquatic species of reptiles and amphibians noted above for reservoirs. The basic nature of a sand and gravel extraction operation creates an area and set of environmental conditions that did not historically exist within the evolutionary history of California's riparian systems. As there are several existing and planned operations of this type within the MSCP, there needs to be a referenced and rigorous discussion concerning short- and long-term impacts on both a local and regional scale, and their potential effects on the MSCP and particularly on the sensitive and target species. 82(n)

Survey results - The "Field Protocol for MSCP Wildlife Surveys" (A-5-1 to A-5-13) and appendix A-6).

This portion of the report is very interesting, since it forms a substantial part of what little empirical information is presented in the MSCP documents, and presumably was the basis for at lest some, if not many of the conclusions and inferences used to formulate and modify the overall planning effort and reserve design. There are several substantial problems with this section. First, the information content of the report concerning the survey methodology is very low, the coverage of survey techniques is cursory at best, and there is no discussion of appropriate time frames or environmental conditions for survey efforts. This section of the report should allow a reviewer, at the minimum, to ascertain that 1) the authors and/or surveyors are aware of and practice appropriate survey methods for all species 2) that these surveys were conducted under appropriate environmental conditions likely to yield observations of the species of concern and 3) that there were repeated surveys to allow for the effects of a) local variation in environmental conditions and b) interobserver variation, sufficient to insure that if species was present it had a high probability of being detected, or conversely if absent rigorously determined to be so. Given the existing information in this section, this report fails to demonstrate that it meets any of these criteria. For example in relation to survey methodology - even through the report purports to survey for spadefoot toads, arroyo southwestern toads, California red-legged frogs, western pond turtles and two striped garter snakes (all highly aquatic species), the sum total of the survey methodology (under "Special Survey Techniques) is "Aquatic habitats should be checked for fish and tadpoles and amphibian egg masses. Several tadpoles or eggs can be sampled and keyed out at the office without significant impacts to the local population. Also note depth of pools, water quality, and/or flow, and note protruding objects suitable for turtle basking." As most herpetologists and many biologists with even limited experience surveying for these species are aware, this description of survey methods would be grossly inadequate to determine presence/absence under all but the most optimal conditions. For example, is there any discussion of the fact that activity in pond turtles varies significantly across the course of a day as well as seasonally? That turtles do not necessarily require emergent basking sites? That most spadefoot toad activity is nocturnal and occurs prior to the survey period described in A-6-1? That arroyo toads are almost invariably nocturnal? That red-legged frogs are essentially the same, but can be occasionally be found by careful searching during daylight hours under certain conditions? That two-striped garter snakes also tend to become nocturnal during the early summer, and are generally scarce in later summer? Were any of the surveys conducted nocturnal? If so, for how long and under what conditions? All of these factors (and many more) affect the accuracy of surveys, and yet there is no mention - even a general mention - that they were considered in the surveys. This lack of awareness is in part 82(o)

reflected in the results as shown in Table A-6.7. In 18 areas, there are only four instances of observations or spadefoot toads (a fairly widespread species), none of arroyo toads, and none of western pond turtles. Additionally, there is only a single observation of a western (=Coronado) skink out of 18 sites, which is somewhat curious given that this species occurs in most habitat types and in significant numbers throughout much of southwestern San Diego County. I suspect that the survey methodology used was in large part what is often referred to as the "bird and butterfly" method of walking through a given area of habitat and noting what is observed, which is supported by the statement (A-5-1) that "The surveys will be conducted as a walk-through approach rather than a transect or grid system". I and other scientists have empirical data that indicates that this is a totally inadequate survey methodology for most species of reptiles and amphibians, particularly those species listed as "targets" or "sensitive". Furthermore, many coastal sage scrub and chaparral communities known to harbor diverse and abundant reptile and amphibian faunas are essentially unsurveyable by this method.

In relation to environmental conditions - we are told in A-6-1 that "surveys were conducted from April through July 1992". There is no discussion of the area or effort-specific environmental conditions during these efforts, nor any discussion of how variation in these factors might affect results. As a just one example, what were the weather conditions at the time of each survey and in the period preceding the survey? For orange-throated whiptails, coastal rosy boas and red diamond rattlesnakes (target and sensitive species) this can be a critical factor in the potential for observation of these species. Yet, based upon the available information, we have no way of determining this.

In relation to the concern regarding repeated surveys - We are told (A-6-1) that approximately 22 areas totaling 33,500 acres were surveyed during the study period. In fact, this at best is confusing if not somewhat misleading as Tables A-6.1 and A-6.2 indicate that both sites #1 (Boden Canyon) and # 17 (Otay Mesa) are listed as 0 acres ("No access"), with no sensitive plants nor any sensitive wildlife species noted, that two Lake Hodges sites were combined, and that while plant species were somehow recorded at Rockwood Canyon (listed as "No Access") no animal species were observed. Therefore, the correct figure should be either 18 or 19 areas surveyed. Further examination of the text and tables indicates that aside from the statement (A-5-1) that "There will be a one time survey conducted at each site... sites will be evaluated and prioritized regarding need for repeat surveys", there is no discussion or tabulation of the number of surveys conducted, the number of people involved, whether or not there *were* repeated surveys, whether or not the surveyors switched between areas in at least a minimal attempt to avoid observer bias, the actual time spent surveying at each site, or a host of other factors that would affect the accuracy and precision of the survey. Without this information it is effectively impossible to determine if sufficient survey effort was expended to insure adequate coverage to deal with at least some of the issues noted above.

Given these concerns, what does the actual data presented say and are there concerns about the nature of the information? Cismontane San Diego County holds or recently held approximately 9 native and 2 introduced amphibian species, and 37 native and at least 2 introduced reptile species. Given that there is expected to be at least some variation from survey site to survey site based upon factors such as habitat variation, (all sites may not hold all species) what do the survey results indicate about breadth of the surveys (ignoring for the moment the consideration of depth, discussed in part above)? Table A-6.3 lists the total number of **all** amphibian and reptile species encountered at each site. The total number ranges from a low of 0 (at Poway) to 2 (at Del Dios Hwy SW, Del Dios Hwy SE) to a maximum of 20 (at Marron Valley). The mean number of species detected at all sites (n = 18) was 9.33. Assuming that minimally, 1) certain species with wide distributions and habitat tolerances are likely to be present at all sites (such as the San Diego gopher snake, common kingsnake, night snake, San Diego ringneck snake, Southern Pacific rattlesnake, striped racer, western fence lizard, San Diego alligator lizard, western skink, Pacific treefrog, Pacific slender salamander) and 2) that by chance alone, only half (n=23) of all potential (n=46) species are present, how well do these survey results reflect what is or might actually be present? As determined by these surveys, only the "richest" area (Marron Valley) holds close (20) to

the **minimal** expected number of species (23). Twelve (66%) of the sites held less than half of the minimal number of expected species.

Based solely upon these survey results, it could be argued that amphibian and reptile species diversity for these areas is remarkably low. In fact, this is probably not the case. Based upon existing information (not incorporated into the above-noted results) about the regional distribution and ecology of many species of amphibians and reptiles, it is likely that there are many more species present than were noted during the surveys. However, because of the inadequate nature of the methodology used and the documentation, the reviewer is unable to distinguish between these two alternatives. Regardless, because this information was and is presumably used in the formulation, design and implementation of the reserve areas, it is critically important that it be as accurate and precise as possible. Any survey that, on the average, notes only on average 40% (mean of 9.33 of 23 species) of the *minimum* number of species likely to occur in an area is grossly and unacceptably inaccurate, the general disclaimer that "A number of the target species will probably not be directly observed during the surveys." (A-5-2) not withstanding.

In summary on this section, a strong case can be made that there is insufficient information presented to 1) determine if appropriate and adequate survey effort was expended to accurately assess the presence/absence of sensitive and target species 2) allow determination of whether or not there indeed even sufficient *total* information presented to be useful in the considerations for the design, implementation and management of reserves. In my opinion, this situation represents a critical deficiency that affects the entire MSCP effort, and needs to be immediately and rigorously addressed by the agencies involved in the process.

82(o)

Species-specific comments - The MSCP lists five species of amphibians and reptiles that are "covered" under the Plan. These species and the determinations made (Table 4.3-1) are:

Species	Finding	# and % major populations conserved	# and % of points conserved
Orange-throated whiptail	Adequately conserved by the plan	56% of CSS, chaparral and riparian scrub	not mapped
San Diego horned lizard	Adequately conserved by the plan	56% of CSS, chaparral and riparian scrub	184.6/291 (63%)
Southwestern pond turtle	Adequately conserved by the plan and protection of state and federal wetlands regulations	70% of riparian habitats and fresh-water marsh	6.8/8 (86%)
California red-legged frog	Discountable	70% of riparian habitats and fresh-water marsh	not mapped
Arroyo southwestern toad	Adequately conserved by the Plan and protection by state and federal wetlands regulations. Management	70% of riparian habitats and fresh-water marsh	14.5/15 (97%)

82(p)

		plans will address preservation of sheltering and foraging habitat within 1 km of occupied breeding habitat within the preserve, and to the extent possible control/removal of non-native predators	

There are several major problems with this data and inherent assumptions, and I strongly disagree that any of these species are "adequately covered" by the plan , for at least two reasons. First and foremost, there is in my opinion and the opinion of most other herpetologists knowledgeable about these species, insufficient data to allow for a rigorous and objective determination of their status and potential for survival under the MSCP. Second, the available data and nature of the plan does not justify a finding of "adequately covered" by anything other than a largely subjective determination. Species-specific comments, questions and concerns follow.

California red-legged frog	Discountable	70% of riparian habitats and fresh-water marsh	not mapped

California red-legged frog (CRLF): This frog was formerly widely distributed within southern California and occurred within the MSCP area (Jennings and Hayes 1995). There is no rigorous documentation of the occurrence (or extirpation) within the MSCP area contained within the body of the text or references. Assertions of total extirpation regional are based in part upon limited anecdotal evidence, and a very limited number of surveys. In my opinion and that of other herpetologists familiar with the species are the region, there is some probability (admittedly not large) that small, isolated populations may exist in the area. However, to assume, on the basis of very limited evidence that the impacts to the species are "discountable" ignores two important considerations. First, that adequate survey effort has not been to date expended to insure with any reasonable degree of certainty that the species is indeed extirpated within this region. Therefore, this would be a necessary but not sufficient condition to warrant this determination. Second, even if this were shown to be the case, what impact would the effective abandonment of a significant portion of the frogs (historical) range have on the potential for recovery (and de-listing or down-listing) of the species, especially given the nature of long-term and "no surprises" considerations in proposed agreements? At the minimum, adequate answers to both these questions need to be provided before an effective evaluation of the potential effects of the MSCP on this species can be made.

Furthermore, there are some minor but significant errors within the tabular material and supporting species accounts. The habitat-based estimate of the habitat conserved is identical to that of the southwestern pond turtle, and presumably derived from it. Although the two species do or did co-occur in many areas, there are significant differences in their some of their habitat tolerances, and thus this figure for the CRLF may not be totally accurate. Second, CRLF are known to move extensive distances (> 1 km) overland, not just the 98' cited on p. 206.

Given 1) the discussion above 2) the perilous status of the one known remaining population in southern California (Riverside Co.) and 3) the general range-wide decline of the species (est. 75% - Jennings and Hayes 1995), there seems to be no documented reason, based upon either empirical evidence or substantial discussion, of how a finding that the risk to the species is "low" (p. 206) or that the effects of the MSCP on the species are "discountable". As such, I would strongly suggest that the finding of "adequately conserved by the plan" is not warranted and should be rescinded.

Arroyo southwestern toad	Adequately conserved by the Plan	70% of riparian	14.5/15

and protection by state and federal wetlands regulations. Management plans will address preservation of sheltering and foraging habitat within 1 km of occupied breeding habitat within the preserve, and to the extent possible control/removal of non-native predators	habitats and fresh-water marsh	(97%)

82(q)

Arroyo southwestern toad (AST): This species is largely a cismontane southern California endemic, and has been extirpated from 76% of its historic range (Jennings and Hayes 1995). Remaining populations are at risk from a wide variety of impacts, including operation and management practices of reservoirs, predation by exotic species, alteration of riparian and upland habitats, direct mortality from vehicles, and other factors. There are several problems with the data presented above. First, as noted in the species accounts (p. 203-204), recent evidence indicates that AST make extensive use of upland habitats up to *at least* 1 km from the watercourse. This information was made available to the USFWS in early 1995, but was not incorporated into the species accounts until September 1996. There is no discussion within the body of the MSCP document as to how this information might affect the potential location, size, operation and management of reserve and other areas for this and other species.

Second, the finding states that "... the plan will address preservation of sheltering and foraging habitat within 1 km of occupied breeding habitat...". There are at least two major problems with this a) on a minimum area (circular) plot, a 500 m radius encompasses only 25% of the area of a 1 km radius, which is the actual distance used by toads. Comparable figures for linear or square distances differ slightly. Thus, the 1 km distance should be treated as a radius, and not a diameter b) The finding clearly states that this figure only applies to "occupied" breeding habitat. Due to both intra- and interannual movement of toads and the dynamic nature of the local habitat, breeding sites may vary significantly in location from year to year. Thus, under this plan it would be possible to engage in activities in a given time and within an area that could significantly affect the size, stability and viability of toad populations as long *as they were not located within 1 km occupied breeding habitat, regardless of whether or not that habitat is likely to be occupied in the future.* This is a clearly unacceptable situation if the continued existence of toads within the reserve system is a matter of concern. Third, several other problems exist. The data on the presence or documented absence of the of the toad within the MSCP is seriously inadequate, and is probable cause for questioning the validity of conclusions drawn from it. Existing data (Campbell et al 1996) available to the USFWS indicates that there are several localities for AST within the MSCP that were not considered in the general or site-specific analyses. This is in part reflective of an overall problem with the nature and lack of rigor in the data collection effort, and also indicative of the patently inadequate survey efforts expended on this and other species (see specific comments elsewhere in this document). The document states that 14 of 15 localities within the MSCP are conserved. My examination of the localities on the locality map for this species at the USFWS office in Carlsbad on October 29 indicates only 14 sites. Furthermore, all of these are located within a single approximately 10-20 km stretch of one drainage. It is uncertain whether (at best) this represents a single population of toads or repeated observations of isolated individuals over time. This is not determinable with the information presented. Contextually, the determination of "adequate coverage" based even in part upon this information seems disingenuous at best and patently deceptive at worst. The area of occurrence is downstream from a reservoir, and subject to most of the problems discussed elsewhere (see comments on reservoirs) and a few others. The ecology of this species requires consideration of a large number potential impacts from a variety of sources over times frames ranging from weekly to decades-long intervals. In my opinion, the nature of the text and available information does not indicate that there has been any significant consideration of these factors in evaluating the status of this species within the MSCP area. Given this, and 1) the very limited nature of the existing information 2) the highly

82(r)

contextual claim of 97% coverage of point localities 3) the failure to incorporate and consider other locality information and 4) the failure to incorporate minimally adequate safeguards for upland habitats for the species, it seems obvious that the claim that the species is "adequately covered" by the MSCP either does not rest on objectively derived analysis of the situation, or is based upon a serious misinterpretation of the species ecology. As such, I would strongly suggest that the finding of "adequate conserved by the plan" is not warranted and should be rescinded.

Southwestern pond turtle	Adequately conserved by the plan and protection of state and federal wetlands regulations	70% of riparian habitats and fresh-water marsh	6.8/8 (86%)

Southwestern Pond Turtle (SWPT): As with the two species above, there are major problems with the MSCP as it applies to this species. First, the assessment of distribution of the turtle is based upon inadequate data. Examination of species maps at the USFWS on 29 October indicates that only 8 localities are documented within the MSCP area. Data available to the Service since 1992 and other sources indicates that this is not an accurate figure. Second, the table claims that 6.8 of these "sites" are conserved. My examination of the data indicates that the following situation exists.

	MSCP				City of San Diego system	
% site conserved	100	90	80	70	100	75
number of records	1	3	0	2	1	0

Thus, at best only 6.1 of 8 sites are "conserved", which represents 76%, not the 86% claimed in the table. Third, individual sightings of western pond turtles do not constitute evidence of a population (the same holds true for other species). In fact, for a variety of reasons (see Holland 1991,1994, Holland and Bury in press) individuals may persist for decades in areas long after the population has effectively ceased to exist as a functional ecological unit. Thus, at the minimum this information may only represent 8 pond turtles, not necessarily 8 populations.

Fourth, information presented in the species account (p. 208) acknowledges that "Adequate buffers may not be present in the current preserve design to conserve nesting areas of this species, as areas between 3 and 402 m are utilized for laying eggs". Furthermore, WPTs utilize upland habitats during most of the year for overwintering, overland travel and other factors. Holland (1994) notes that overland movements of at least 5 km between drainages are known.

Fifth, there is no discussion nor consideration of the effects of reservoirs (see previous discussion) on this species, despite the fact that all records are for impounded drainages. Sixth, the statement is made that the species "Would receive some protection per federal and state wetland regulations." This is a valid statement, but highly contextual. Given that the species must lay its eggs outside wetland areas, and that it is generally dependent upon upland habitats for a variety of other reasons, depending upon wetland regulations for protection - even if 100% effective - is obviously inadequate. Therefore, as with the arroyo toad and red-legged frog, the determination that this species is "adequately covered" by the MSCP does not appear to be based upon either sufficient data, an accurate assessment of the existing data, or an adequate understanding of the species' ecology. As such, I would strongly suggest that the finding of "adequately conserved by the plan" is not warranted and should be rescinded.

San Diego horned lizard	Adequately conserved by the plan	56% of CSS, chaparral and riparian	184.6/291 (63%)

scrub

San Diego horned lizard (SDHL): As with all other species discussed so far, there are major problems with the data and analysis on this species. First, examination of the species distribution map for SDHL at the USFWS office produces different figures than those noted in the table above. Because of severe time constraints, some points in my analysis may have been missed; however I estimate that this should not change the collective results by more than 2-3% maximum.

	MSCP				City of San Diego system	
% site conserved	100	90	80	70	100	75
number of records	41	20	11	1	20	9

I counted a total of 258 locality records within the MSCP, and 283 localities plotted (in total) on the map. This differs significantly from the tabular figure of 291. Furthermore, on a percentage and category basis, my analysis indicates that only a total of 102 localities are within conserved areas, yielding an effective total of 95.25 points (36.9%) of the points conserved under the best of scenarios, not the 56% claimed in the table. Even assuming the error in my analysis is as high as 10%, there are significant differences between these two figures. Second, as previously noted with the pond turtle, we have no way of determining the actual number (to say nothing of size or other important factors) of populations.

Third, existing evidence (Holland unpubl. data) indicates that SDHL are far more patchily distributed than previously thought, and that not only do population densities vary significantly within a "common" habitat type (e.g. CSS or chaparral), there is also considerable interannual variation in apparent population size. Thus, for a SDHL, not all CSS or chaparral is of equivalent value as habitat. Consideration of these (and numerous other factors) is critical to any objective determination of the potential for adequate coverage within the MSCP area, but there is no evidence or data presented in the text that indicates that this is the case. Fourth, existing and recently acquired data (Holland unpubl. data, R. Fisher pers. comm.) makes consideration of several other factors (given superficial treatment in the text) critical to evaluate the status of the SDHL within the MSCP. The documented negative effects of Argentine ants on the primary prey of SDHL - native ants - (Argentines often effectively replacing them in disturbed areas) needs serious consideration given that the implementation of the MSCP will allow massive levels of habitats alteration and provide major opportunities for the invasion and establishment of Argentine ants in areas where they do not now occur. The frequency, timing and intensity of fire may also affect this species, most likely through the potential for conversion of CSS and chaparral to mixed systems or grasslands. Additionally, SDHL may be far more susceptible to certain edge effects (such as predation by domestic or feral cats and dogs) than many other species. Given that 1) the existing data indicates that under the best of conditions only 56% of "points" (not necessarily populations) will be conserved (or 36.9% by my analysis) 2) that there are untested and likely erroneous assumptions implicit in the habitat-based analysis that may significantly affect probable persistence of populations and 3) that additional information on edge effects, impacts of exotic species and other factors need to be considered in evaluating the status of the species the current finding does not appear to be based upon any objective analysis of the data. As such, I would strongly suggest that the finding of "adequately conserved by the plan" is not warranted and should be rescinded.

82(t)

Orange-throated whiptail	Adequately conserved by the plan	56% of CSS, chaparral and riparian scrub	not mapped

Orange-throated whiptail (OTW): Although this species occurs over a wider area and has a greater number of documented occurrences within the MSCP than the other reptile species, similar concerns apply. My analysis of the distribution maps at USFWS indicates that there are a total of 303 localities indicated. The following analysis is subject to the same potential errors noted the SDHL, due in large part to the nature of the maps and overlays.

	MSCP				City of San Diego system	
% site conserved	100	90	80	70	100	75
number of records	61	49	8	125	48	12

As only a habitat-based analysis is presented for this species, direct comparisons with tabular figures are not possible. My analysis indicates that a total of 256 of 303 points (84.5%) are conserved, whereas the habitat-based analysis indicates that only 56% is conserved. However, as has been indicated elsewhere, this does not indicate the actual number of populations potentially conserved. OTWs can be locally abundant, however densities vary by several hundred percent within "common" habitat types (such as CSS). As indicated with SDHL, population numbers apparently fluctuate significantly on an interannual basis. The major problem with the MSCP as regards this species is the underlying problem with all the species discussed, and indeed is a major flaw in the overall concept of the plan. ***Specifically, adequate data to address questions relevant to the protection and maintenance of this and many other species within the proposed reserve system, in my opinion simply does not exist.*** The authors of these documents must surely be aware that this is a major concern about the process, and yet have failed to deal with the question either in the body of the discussion or by presenting adequate data. To adequately address this situation with OTW's, we would need long-term data from a number of sites in which environmental conditions of interest (exotics present vs. absent, % of edge present, variable fire history, etc.) were not only known with certainty, but could potentially be manipulated over time to track both species-specific and area-specific effects. Baseline data on population dynamics in control vs. experimental sites could be integrated into the considerations for reserve design and management. While the work of Dr. Fisher and Dr. Case will provide some answers to a few of these questions, the study is basically short-term and limited in scope. The guiding principle here should be that this data is in place **prior to** any attempt to begin to implement reserve design considerations. *Post hoc* justification and examination, not matter how well intentioned, is a poor excuse for failure to properly plan in the first place, and the constraints it places on rigorous scientific inference are significant.

With the OTW, as with the other species, there is not sufficient data to allow for adequate analysis of the potential effects of the reserve design or operation on the probability of the persistence of this species under the MSCP. For general reasons discussed above and previously stated in regard to AST, CRLF, SWPT and SDHL, it does not appear that any objective analysis of the data supports the contention that the species is "adequately conserved". As such, I would strongly suggest that the finding of "adequately conserved by the plan" is not warranted and should be rescinded.

83 BAUDER/SDSU, 10/29/96

83(a) In response to concerns, the public review period for the Draft EIR/EIS was extended from October 15, 1996 to October 29, 1996 for a total of 56 days. The public review process was in accordance with CEQA and NEPA Guidelines. In addition, significant public participation has been incorporated throughout the MSCP planning process including 50 Working Group meetings open to the public, workshops and public notices distributed to over 35,000 property owners. Additional public participation will be sought during the hearing process for the MSCP Plan. Please refer also to **Theme Response VIII, Public Involvement.**

83(b) It is acknowledged that the Draft EIR/EIS is a complex document reflecting the region-complexity of the MSCP Plan itself, and the multiple actions and alternatives analyzed in the Draft EIR/EIS. It is also recognized that the MSCP Plan has been in the planning stages for over 5 years with input provided by numerous sources throughout the planning process. This plan evolution process has, however, resulted in a unified and coherent MSCP Plan, the objectives of which are clearly stated on page 1-7 of the Draft EIR/EIS.

The focus of the Draft EIR/EIS is on evaluation of the environmental impacts of the discretionary actions addressed in the document. Those actions are described on pages 1-11 through 1-14 of the Draft EIR/EIS and are summarized in Table 4.1-1. Features are incorporated in the Draft EIR/EIS to facilitate review of the document in the context of the multiple actions and alternatives addressed. These features include the Executive Summary, a description of the document organization on pages 1-23 and 1-24, a description of the approach to analysis of environmental consequences in Section 4.1-1, internal references to significance and mitigation statements following impact analyses, and numerical references for significant impacts and mitigation measures. The Mitigation Monitoring and Reporting Program (MMRP) incorporated in the Final EIR/EIS further highlights the specific impacts and mitigation measures associated with the proposed MHPA. Please refer also to **Theme Response XV, Document Organization.**

83(c) The comment is noted. The referenced article is herein incorporated by reference in the Final EIR/EIS.

83(d) Section 10(a)(1)(B) of the FESA requires that applications for take authorizations of listed species meet 5 issuance criteria, which are 1) the taking would be incidental; 2) the applicant would, to the maximum extent practicable, minimize and mitigate the impacts of such taking; 3) the applicant would ensure that adequate funding for the MSCP Plan would be provided; 4) the taking would not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and 5) the measures, if any, required by the U.S. Secretary of the Interior as being necessary or appropriate for the purposes of the MSCP Plan would be met. The USFWS' biological opinion on the issuance of the Section 10(a)(1)(B) permit would determine whether or not the proposed permit issuance would appreciably reduce

the likelihood of survival and recovery of the covered species in the wild. The standards for proposed rules for listing of species under the FESA do not apply to applications for incidental take permits.

83(e) See **Theme Response XVI, Risk Factors.**

83(f) The MSCP Plan provides for the mitigation of impacts within the discretionary authority of the participating local jurisdictions. The Plan recognizes that the majority of *Pogogyne abramsii* populations occur on MCAS Miramar, which is not a part of the MSCP. These populations would be conserved through formal consultation pursuant to Section 7 of the FESA and through development of Sike's Act agreements with the Marine Corp.

The Fish and Wildlife Service has completed a Biological Opinion on the effects of the Base Realignment and Closure Act on vernal pool species on MCAS Miramar (File Number 1-6-95-F-33). As a term and condition of this Biological Opinion, the Marines are required to include specific vernal pool management zones in the MCAS Miramar Multispecies Habitat Management Plan (MHMP), which would integrate MCAS Miramar's military mission requirements with the conservation of natural resources based on ecosystem management principles. The Marines would involve the Service, the Army Corps of Engineers, and the California Department of Fish and Game in the development of the rehabilitation actions for the remainder of vernal pools on MCAS Miramar. Such actions would include programmatic instructions which assure that maintenance, training, and other land uses would not compromise the integrity of the vernal pool resources. The Marines would implement these programmatic instructions by Air Station orders, or other appropriate regulatory means. The MHMP will be submitted for approval by the Army Corps of Engineers and wildlife agencies by October 1998.

The population of *Pogogyne abramsii* which occurs on Montgomery Field (and which was inadvertently omitted from the MSCP mapping) was included in the 1996 analysis and increases the level of conservation of the species. This area will be managed as Urban Habitat Lands in the City of San Diego Subarea Plan. All vernal pools within the MHPA will be conserved at 100 percent, regardless of the underlying percent preservation category. Conservation measures in the City of San Diego Subarea Plan states that wetlands, including vernal pools, will be preserved at 100 percent inside the MHPA and impacts outside of the MHPA will be avoided to the maximum extent feasible. Unavoidable impacts must be mitigated consistent with the Subarea Plan. Additionally, as a federally endangered wetland species, *Pogogyne abramsii* will receive additional protection through the local, state, and federal wetlands protection regulations and guidelines. As such, the level of protection afforded *Pogogyne abramsii* under the MSCP Plan is expected to adequately conserve this species. The proposed Vernal Pools Unit of the San Diego National Wildlife Refuge would provide management oversight for *Pogogyne abramsii* and contribute towards recovery goals through the preservation of existing and historic habitat.

All of the extant populations of *Pogogyne nudiuscula* are included in the MHPA, and all vernal pools within this boundary will be conserved at 100 percent, regardless of the underlying percent preservation category. Conservation measures in the City of San Diego Subarea plan state that

impacts to wetlands, including vernal pools, will be avoided both inside and outside of the MHPA. Approximately 26 percent of the Stockpen soil series which occurs in the MSCP study area is conserved in the MHPA. Additionally, as a federally endangered wetland species, *Pogogyne nudiuscula* will receive additional protection through the local, state, and federal wetlands protection regulations and guidelines. Considering the above measures, the level of protection afforded *Pogogyne nudiuscula* under the MSCP Plan is expected to adequately conserve this species. Additionally, the proposed Vernal Pools Unit of the San Diego National Wildlife Refuge would provide management oversight for *Pogogyne nudiuscula* and contribute towards recovery goals through the preservation of existing and historic habitat on Stockpen soils and maintenance of habitat integrity. Please refer also to soils conservation analysis summary table included in the revised language in the Final EIR/EIS at page 4.3-48.

83(g) The MSCP is not only conserving species through the dedication of lands in fee title of conservation easements, but it would also provide management and monitoring of species to ensure continual protection. It is anticipated that this water tank proposal on McGinty Mountain will be dropped, although the final decision by the Otay Water District Board is not due until later this year. Therefore, the *Acanthomintha illicifolia* populations on McGinty Mountain are not expected to be impacted and the loss of *Acanthomintha illicifolia* on McGinty Mountain would not be authorized by the take authorizations for the MSCP. The *Acanthomintha ilicifolia* populations in Peñasquitos Canyon are being protected through fencing and signage via the Resource Management Plan for that area, and will be closely monitored over time to ensure that the populations remain healthy and undisturbed. Surveys conducted by biologists from TetraTech in the spring of 1996 did not identify *Acanthomintha ilicifolia* within any of the proposed pipeline alternative alignments for the City of San Diego's Water Repurification Pipeline project.

83(h) The distribution of *Orcuttia californica* within the MSCP study area is limited to populations on Otay Mesa, all but one of which is conserved within the boundaries of the MHPA. All vernal pools within these boundaries will be conserved at 100 percent, regardless of the underlying percent preservation category. Conservation measures in the City of San Diego Subarea Plan state that impacts to wetlands, including vernal pools, will be avoided both inside and outside of the MHPA. Additionally, *Orcuttia californica* will receive additional protection through the Clean Water and Endangered Species Acts. The U.S. Fish and Wildlife Service will continue to work with the U.S. Marine Corps to ensure that populations under the jurisdiction of MCAS, Miramar, are adequately protected. The proposed Vernal Pools Unit of the San Diego National Wildlife Refuge would provide management oversight for *Orcuttia californica* and contribute towards recovery goals through the preservation of existing and historic habitat. Large populations of *Orcuttia californica* also occur outside of the MSCP study area. Considering the above measures, the level of protection afforded *Orcuttia californica* under the MSCP Plan is expected to adequately conserve this species. See also **Theme Response XVI, Risk Factors.**

83(i) In addition to the protections afforded to wetlands through the U.S. Army Corps of Engineer's permit process under Section 404 of the Clean Water Act and the CDFG's permit process under Fish and Game Code 1600 et seq., the County and the City of San Diego have both included mitigation requirements in their subarea plans to avoid, minimize and mitigate impacts to wetland habitats.

The Cities of Chula Vista and Santee will revise their subarea plans prior to issuance of take authorizations to also include these provisions. These mitigation requirements supplement the federal and state regulations, because they address wetland vegetation communities that may not fall under within the jurisdiction of the state and federal statutes. Both the City and the County, in cooperation with the wildlife agencies, intend to pursue a regional permit with the ACOE that would address the specific wetland requirements in San Diego County.

The request to analyze all projects potentially affecting vernal pools that have been proposed within the past five years is outside the scope of this EIR/EIS.

83(j) See response to Comment 83(f).

83(k) See response to Comment 83(f).

83(l) The transplantation of vernal pool plant propagules by itself is not considered to be an adequate mitigation measure for the loss of vernal pool habitat. Transplantation is only used in conjunction with accepted vernal pool mitigation practices requiring avoidance, minimization, and mitigation of impacts. Unavoidable impacts are generally mitigated by require onsite or offsite vernal pool preservation, and restoration/enhancement of existing disturbed vernal pools. Impacts to wetlands, including vernal pools, would b required to be consistent with the Clean Water Act Section 404(b)(1) Guidelines; the federal policy of "No-Net-Loss" of wetland function and value; and local, state, and federal regulations and guidelines. Seed collection and transplantation of vernal pool species would only be used where it is determined that the species of concern would benefit by salvage of individual plants, seeds, or genetic material, and that the receiving pools and their associated species would not be damaged. Transplantation would only occur within appropriate vernal pool complexes and pools.

The wildlife agencies agree that restoration of disturbed vernal pools and historical pool habitat is a good tool to augment and enhance habitat. Preservation and expansion of populations of some vernal pool species will require the protection of restorable, suitable soils within the appropriate matrix of vegetation and necessary topographic conditions. The MSCP would conserve 88 percent of vernal pool habitat (outside of military lands) within a matrix of preserved natural habitat. The Service has proposed the Vernal Pool Unit of the San Diego National Wildlife Refuge to conserve and restore vernal pools and their associated endangered and sensitive species.

83(m) The sale of mitigation credits to mitigate development impacts on private land is desirable to ensure that during the life of the MSCP, the habitat values of Water Utilities owned land is permanently conserved. The draft agreement allows private purchase of mitigation credits only after the City has acquired private lands as mitigation for public project impacts (see Section 4[b[[1] of the Cornerstone Lands Conservation Bank Agreement). See also response to Comment 91(a).

The City Charter provision that requires compensation to the Water Utilities Enterprise Fund for sale, encumbrances or use of Water Utilities land is valid and operable independent of state and federal endangered species and wetland laws. City and specifically Water Utilities Department projects are subject to all applicable state and federal environmental laws.

83(n) Pages 6-1 through 6-4 of the Draft EIR/EIS address the cumulative impacts of other conservation planning efforts in San Diego County, and Riverside and Orange counties. The conservation of any given species within the different subregions must be considered in the context of the species' range and distribution. For some species, complete loss of the population in the MSCP study area would not jeopardize the species as a whole (e.g., barn owl/mountain lion) because their primary range and greatest populations are outside of the MSCP study area. For other species, such as light-footed clapper rail, the loss of the southern San Diego population could have a substantial effect on the population as a whole. The balance of conservation that reflects each species' importance in each planning area would be accomplished through the coordination of these programs in scientific, public policy and finance/ acquisition strategy aspects through the MSCP Implementation Strategy Subcommittee.

In determining the impacts of take within the boundaries of the participating local jurisdictions on the survival and recovery of the covered species, the wildlife agencies consider the existing baseline and future cumulative effects for each proposed covered species, including those of other NCCPs and HCPs.

83(o) The MSCP is an ongoing multi-species plan under the NCCP that addresses coastal sage scrub and other vegetation communities of southwestern San Diego County. As a result of the ecosystem focus for the MSCP, the MSCP had to provide for the conservation of twenty-five vegetation communities within the study area. Additional NCCP plans are being developed or have been proposed for development which would address the remaining portions of San Diego County (MHCP and MHCOSP). There were over 90 species representing all vegetation communities in the plan which were evaluated in the process of developing the MSCP. Trade-offs between gnatcatchers, cactus wrens, orange-throated whiptail and other species were not made in developing the MSCP as the breadth of the cover species list demonstrates.

83(p) The discussions of hydrology/water quality and geology/soils on pages 1-18 and 1-19 of the Draft EIR/EIS acknowledge that, although implementation of the MSCP Plan would have no direct effects on hydrology/water quality and geology/soils, Plan implementation would contribute indirectly to potential changes in the form and character of development. Such changes are not anticipated to result in adverse hydrology/water quality and geology/soils impacts, however, for two primary reasons: 1) likely changes in development patterns would result in more compact development which would result in reduced areal extent of disturbance of natural geologic formations and native soils, and reduced extent of impervious surfaces associated with development; and 2) less development would occur within the designated preserve area than would be anticipated in the absence of the MSCP Plan which would also result in less disturbance of natural landforms and extent of impervious surfaces.

83(q) The discussion on pages 2-13 through 2-15 of the Draft EIR/EIS is not intended to analyze impacts to watersheds associated with implementation of the MSCP Plan. This discussion is incorporated in the project description in Section 2.0 of the Draft EIR/EIS and is simply intended to inform the reader regarding the watersheds within the MSCP study area that would be included within the proposed MHPA. As noted above, no direct impacts to watersheds and hydrology/water quality would be associated with implementation of the MSCP Plan, and the Plan's contribution to indirect effects associated with changes in the form and character of development in the MSCP study area would not be regarded as significant.

83(r) Both the proposed conservation of vegetation communities in the MSCP study area and the proposed take authorizations are based on what currently exists within the boundaries of the participating jurisdictions. The MSCP Plan is not intended to mitigate for all past losses, but rather to address potential future losses and mitigate accordingly. It is fully acknowledged that the remaining natural vegetation communities within the MSCP study area are significantly reduced from pre-European settlement. It is neither the intent of the MSCP nor the requirement of FESA or CESA to regain the historical amount and configuration of habitat in San Diego County. Instead, the MSCP intends to establish and manage a preserve configuration that provides for the conservation of the remaining viable populations of covered species and their habitat.

83(s) The analysis of the No Action/No Project alternative included in the Draft EIR/EIS assumes that future development would occur in a pattern similar to that which has occurred in the past. The historical pattern of land development in San Diego County has resulted in a fragmented pattern of open space and ongoing decline of sensitive species. It is assumed in the Draft EIR/EIS that this pattern would continue under the No Action/No Project alternative.

83(t) The comment is noted. It does not reflect on the adequacy or sufficiency of the Draft EIR/EIS or the data included in the MSCP Plan and no response is necessary.

83

SDSU

DEPARTMENT OF BIOLOGY
COLLEGE OF SCIENCES
SAN DIEGO STATE UNIVERSITY
SAN DIEGO CA 92182-4614

(619) 594-6767

October 29, 1996

I appreciate very much the opportunity to comment on the DJEIR/EIS for the Multiple Species Conservation Plan. This is one of the most significant land use decisions for San Diego County since the national forest lands were set aside. It will irrevocably change the density, form and character of land development in an area of 900 square miles. I am deeply dismayed at the inadequate length of the comment period given the complexity and gravity of the issues. It is not possible, nor reasonable, for the interested public to set aside their job and family responsibilities in order to respond to a time table that appears to be set without concern for the community at large. The CEQA process recognizes that expertise and insight not available to decision makers resides within the community. The review period should be long enough to allow this expertise and insight to be brought to bear on the documents. The inadequacy of the review period is compounded by the fact that so many materials are included in the DJEIR/EIS by reference only and hence are not available without special arrangements. 83(a)

I understand the immense difficulties associated with producing this document and the efforts expended. Unfortunately, the final product is still very difficult to analyze. The Plan, as presented in the DJEIR/EIS, is confusing, vague, contradictory, lacking in detail and without a clear focus, reflecting its multiple origins and goals: mitigation for the clean water program, pilot program for preservation of one habitat (coastal sage scrub) under the NCCP, facilitation of real estate development, consolidation of mitigation for all development, avoidance of listing of the gnatcatcher, preclusion of additional state or federal listings of plants or animals as threatened or endangered and an ESA implementation model for the nation. 83(b)

As a scientist who specializes in vernal pool habitats and species and other narrow endemic plants, I have, over the past 15 years, freely provided data, commentary, maps, constructive suggestions, plans and analysis to various agencies, jurisdictions and consultants. My critical comments here reflect the fact that I am unable to find evidence that these positive offerings have been incorporated. I am hopeful that my commentary will lead to a better plan that will provide viable, sustainable habitat for San Diego's biological diversity and maintain functioning wildlands for wildlife, watershed and other services provided by natural ecosystems. I am attaching to my comments a copy of "The Report of the Ecological Society of America Committee on the Scientific Basis of Ecosystem Management" that was recently published in the journal Ecological Applications (6: 665-691). Please consider this a part of my official comments. I know that the NCCP had guidelines for preserve design, but I would like to ask that this most recent and succinct document by the world's most respected scientific ecological society be applied to the MSCP Plan. Please note the report's emphasis on "uncertainty, surprise, and limits to knowledge" (p. 666) as well as the importance attached to sustainability. 83(c

Species and habitats

The information presented on individual species does not approach the standard for proposed rules and is inadequate to support the conclusions. It furthermore, does not provide reassurance that species' exitence is not being jeopardized.

Please explain the biological meaning behind the columns of Table 4.3-1 labeled "# and % of points" and "# and % of polygons". Aren't these just mapping constructs? How is a "major population" defined? What weight has been given to year-to-year variability in numbers and distribution? When a number of major populations is considered conserved, does this mean that complete populations are conserved plus some fraction of another (example 4.1 of 7 for *Hemizonia conjugens*), or fractions of all extant populations that add up to the conserved 83(d)

number (portions of 7 that add up to 4.1)? What is the spatial relationship of the conserved populations? What portion of the historic range do they represent? Based on current information of the biology of a particular species, what is the probability of among population genetic differentiation? 83(d)

How were risks assigned to individual species? The rationale for assigning risks is not clear and the data supporting the assignment is not included. Please construct a table for each species identifying the various types of risks applicable to each species and the degree for each type. (For an example of what I have in mind, please review Table 3 presented in the Vernal Pool Management Plan I prepared for NAS Miramar). Cite studies and documents that can substantiate the conclusions. I believe this information is in most cases available. The most recent information on risks/changed conditions has not been included in the DJEIR/EIS. Glaring omissions concern the proposed widening of Otay Mesa Road (DEIR circulated in July) and the proposed SR 125 (DEIR circulated simultaneously with this document), changed border policy and the realignment of NAS Miramar. The two road projects will have profound impacts on habitat fragmentation, severing of wildlife corridors and dispersal linkages, loss of rare soil types to development, alterations to hydrology and direct loss of rare plants and animals. They are barely mentioned. 83(e)

How can a species such as *Pogogyne abramsii* be considered conserved or covered when the preponderance of its populations occur on US Navy lands? The Navy lands are not covered by this plan. The risk of loss on these lands is substantial and is not identified or discussed in the documents. How can *Pogogyne nudiuscula* be considered conserved or covered when there are only 5 populations in close proximity to one another? When losses of the one soil type on which it is found are substantial and continuing? On what basis is "moderate" risk assigned to this species? Please indicate how recovery for this species has not/will not be precluded. by loss of Stockpen soils, habitat fragmentation, competition from exotics, altered hydrology, increased point source air/water pollution and increased disturbance and other factors. How can *Acanthomintha ilicifolia* be considered conserved or 83(f) 83(g)

covered when a water repurification project pipeline is proposed across its best site (Sycamore Canyon)? And water tanks were proposed for the McGinty Mountain site? And the population at Los Penasquitos Canyon faces severe on-going disturbance? All of these sites are supposedly "protected" and yet it is clear that the risk of loss and disturbance is high even on "protected" lands and that additional protective measures are needed. 83(g)

On what basis is *Orcuttia californica* considered at only "moderate" risk? This is contrary to an analysis I provided to the Fish and Wildlife Service last year. 83(h)

Has an analysis been completed of the protection afforded vernal pools by federal wetland laws? This protection is invoked in the risks/comments column of Table 4.3-1, but the history of such protection (its degree and efficacy) is not documented. What other protections, in addition to wetland laws, will there be for the vernal pool habitat and pool-dependent species if this plan is approved? What changes in protective mechanisms will there be as a result of the plan? Please analyze all projects potentially affecting vernal pools that have been proposed within the past five years and identify the fate of each pool and which laws, regulations, policies or practices provided protection and the specific type of protection afforded. Identify all cases of habitat loss and the type, amount and location of mitigation. Such an analysis will not only provide documentation of the degree of protection afforded these species and the vernal pool habitat, but also the level of commitment of local decision making bodies to vernal pool protection. 83(i)

How does the amount, spatial distribution and degree of disturbance of the vernal pool habitat present in 1996 compare to what is presented in the report I prepared for the California Department of Fish and Game in 1986? It is imperative to document the type and amount of loss during this period so as to predict the impacts of or analyze proposed changes to vernal pool protections that accompany this plan. 83(j)

The vernal pool habitat is scarcely mentioned in the DJEIR/EIS, except in passing reference to the proposed refuge, the presence of vernal pool species on military lands, as an overlay on the GIS maps, several items in the community plans, etc. The scale of the vernal 83(k)

pool habitat made it imperative to map it differently from other habitat/vegetation types, and I strongly support this approach. However, the document does not contain sufficient information to determine the likely impacts the plan will have on vernal pools and therefore the appropriateness and adequacy of steps that will be taken to monitor, minimize and mitigate these impacts. In some cases, the specific guidelines have already been violated (design of the culvert under Otay Mesa Road that provides a linkage between pool habitat north and south of the road). Additionally, procedures to deal with both expected and unexpected circumstances cannot be analyzed because the risk analysis is lacking or inadequate for both the species and the habitat. 83(k)

Why is transplantation considered an adequate or appropriate mitigation tool for loss of habitat that has already been diminished by over 95%? Can transplantation be considered to meet the standard of maintenance of populations "in the wild" when species are no longer in their natural association with each other, the soils and upland habitats? Restoration is a reasonable tool to augment and enhance habitat, but at the present rate, many sub-types of pool (sub-types identified primarily by soils, species assemblages and climate) will exist primarily as restored or artificial habitat. Stabilization and expansion of populations of some species will be difficult or impossible with any additional loss of restorable substrate and the reduction of the soil and vegetation matrix in which pools are embedded. 83(l)

Other issues

Why are publicly-held lands (Cornerstone Lands) being used for mitigation of development on private lands? In regard to encumbrances, can the City Charter override state and federal endangered species and wetlands laws? 83(m)

If this plan is part of a "coordinated and seamless coverage for the 4,200-square mile County" and interconnects with other proposed plans for Southern California, what are the 83(n)

83

cumulative impacts of adjacent and interconnected NCCP's/HCP's? How does this affect the analysis of species whose primary distribution is not within the San Diego MSCP? 83(n)

Will other natural community plans be developed for San Diego County in addition to the coastal sage scrub NCCP? Is this plan considered to preclude development of plans for other natural communities such as the twelve mentioned on page 1-7? What safeguards have been developed to prevent bias in this plan for coastal sage scrub and its three target organisms (cactus wren, gnatcatcher and orange-throated whiptail) at the expense of other species that only partially co-occur with these three species? 83(o)

The justification for not providing detailed analyses of hydrology/water quality and geologically sensitive lands is inadequate. The document states that the MSCP plan will irrevocably change the density, form and character of land development in an area of 900 square miles. How can this not affect hydrology and water quality? If, hypothetically speaking, development is more concentrated in the lower Sweetwater drainage but less so in the upper Otay drainage compared to the no-plan alternative, why won't this adversely affect flooding, groundwater recharge and water quality in the Sweetwater drainage? It is precisely the density, form and character of development that <u>does</u> affect hydrology and water quality. On what rests the assertion that "Pressure to develop such geologically constrained areas within the preserve would ... **be eliminated** with implementation of the proposed MHPA and alternative scenarios."? (bold my addition) 83(p)

The analysis of watersheds is inadequate (pages 2-13 through 2-15). Again, changes in the density, form and character of land development are critical to understanding impacts on watersheds, hydrology and water quality. The interrelationship of these factors and watersheds is not addressed. 83(q)

When considering the percent of particular vegetation communities or habitats that will be conserved this must be judged against the percent of the estimated extent of the pre-development habitat that remains, and its original natural configuration must be compared to that predicted with the ultimate assembly of reserves under the guidance of the plan. 83(r)

83

Furthermore, percents mask important considerations such as spatial relationships and connectivity, as well as thresholds of size and distribution below which habitat sustainability cannot be expected. 83(r)

The no-project alternative needs greater depth of analysis. For example, if development of 25% of "conserved" lands is allowed under the plan, what percent of lands remain undeveloped under existing regulations? I would assume that the plan reduces edge-to-area ratios. Can this be documented? 83(s)

Again, may I state my professional commitment to ecosystem and natural habitat preservation. I have serious reservations regarding the proposed plan because it does not provide me with the information and analysis necessary to make a judgment on its possible success in better "conserving" biodiversity and functional, sustainable ecosystems compared to the other alternatives presented, including the no-project alternative. 83(t)

Sincerely,

Ellen T. Bauder

Ellen T. Bauder, Ph D

Plant Ecologist

Attachment to 83
E Bauder letter

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THE REPORT OF THE ECOLOGICAL SOCIETY OF AMERICA COMMITTEE ON THE SCIENTIFIC BASIS FOR ECOSYSTEM MANAGEMENT[1]

NORMAN L. CHRISTENSEN (Chair)
Nicholas School of the Environment, Duke University, Durham, North Carolina 27708 USA

ANN M. BARTUSKA
U.S. Department of Agriculture, Washington, D.C. 20090 USA

JAMES H. BROWN
Department of Biology, University of New Mexico, Albuquerque, New Mexico 87131 USA

STEPHEN CARPENTER
Center for Limnology, University of Wisconsin, Madison, Wisconsin 53706 USA

CARLA D'ANTONIO
Department of Integrative Biology, University of California, Berkeley, California 94720 USA

ROBERT FRANCIS
Fisheries Research Institute, University of Washington, Seattle, Washington 98195 USA

JERRY F. FRANKLIN
College of Forest Resources, University of Washington, Seattle, Washington 98195 USA

JAMES A. MACMAHON
Department of Biology, Utah State University, Logan, Utah 84322 USA

REED F. NOSS
Department of Fisheries and Wildlife, Oregon State University, Corvallis, Oregon 97330 USA

DAVID J. PARSONS
USDA Forest Service, Leopold Institute, Missoula, Montana 59807 USA

CHARLES H. PETERSON
Institute of Marine Sciences, University of North Carolina, Chapel Hill, North Carolina 27599 USA

MONICA G. TURNER
Zoology Department, University of Wisconsin, Madison, Wisconsin 53706 USA

ROBERT G. WOODMANSEE
Rangeland Ecosystem Science, Colorado State University, Ft. Collins, Colorado 80523 USA

Abstract. Ecosystem management is management driven by explicit goals, executed by policies, protocols, and practices, and made adaptable by monitoring and research based on our best understanding of the ecological interactions and processes necessary to sustain ecosystem composition, structure, and function.

In recent years, sustainability has become an explicitly stated, even legislatively mandated, goal of natural resource management agencies. In practice, however, management approaches have often focused on maximizing short-term yield and economic gain rather than long-term sustainability. Several obstacles contribute to this disparity, including: (1) inadequate information on the biological diversity of environments; (2) widespread ignorance of the function and dynamics of ecosystems; (3) the openness and interconnectedness of ecosystems on scales that transcend management boundaries; (4) a prevailing public perception that the immediate economic and social value of supposedly renewable resources outweighs the risk of future ecosystem damage or the benefits of alternative management approaches. The goal of ecosystem management is to overcome these obstacles.

Ecosystem management includes the following elements: (1) Sustainability. Ecosystem management does not focus primarily on "deliverables" but rather regards intergenerational sustainability as a precondition. (2) Goals. Ecosystem management establishes measurable

[1] For a copy of this 27-page report, available for $4.00, or for further information, contact The Ecological Society of America, 2010 Massachusetts Avenue, NW, Suite 400, Washington, DC, 20036. Ph: (202) 833-8773; Fax: (202) 833-8775.

goals that specify future processes and outcomes necessary for sustainability. (3) Sound ecological models and understanding. Ecosystem management relies on research performed at all levels of ecological organization. (4) Complexity and connectedness. Ecosystem management recognizes that biological diversity and structural complexity strengthen ecosystems against disturbance and supply the genetic resources necessary to adapt to long-term change. (5) The dynamic character of ecosystems. Recognizing that change and evolution are inherent in ecosystem sustainability, ecosystem management avoids attempts to "freeze" ecosystems in a particular state or configuration. (6) Context and scale. Ecosystem processes operate over a wide range of spatial and temporal scales, and their behavior at any given location is greatly affected by surrounding systems. Thus, there is no single appropriate scale or time frame for management. (7) Humans as ecosystem components. Ecosystem management values the active role of humans in achieving sustainable management goals. (8) Adaptability and accountability. Ecosystem management acknowledges that current knowledge and paradigms of ecosystem function are provisional, incomplete, and subject to change. Management approaches must be viewed as hypotheses to be tested by research and monitoring programs.

The following are fundamental scientific precepts for ecosystem management. (1) Spatial and temporal scale are critical. Ecosystem function includes inputs, outputs, cycling of materials and energy, and the interactions of organisms. Boundaries defined for the study or management of one process are often inappropriate for the study of others; thus, ecosystem management requires a broad view. (2) Ecosystem function depends on its structure, diversity, and integrity. Ecosystem management seeks to maintain biological diversity as a critical component in strengthening ecosystems against disturbance. Thus, management of biological diversity requires a broad perspective and recognition that the complexity and function of any particular location is influenced heavily by the surrounding system. (3) Ecosystems are dynamic in space and time. Ecosystem management is challenging in part because ecosystems are constantly changing. Over time scales of decades or centuries, many landscapes are altered by natural disturbances that lead to mosaics of successional patches of different ages. Such patch dynamics are critical to ecosystem structure and function. (4) Uncertainty, surprise, and limits to knowledge. Ecosystem management acknowledges that, given sufficient time and space, unlikely events are certain to occur. Adaptive management addresses this uncertainty by combining democratic principles, scientific analysis, education, and institutional learning to increase our understanding of ecosystem processes and the consequences of management interventions, and to improve the quality of data upon which decisions must be made.

Ecosystem management requires application of ecological science to natural resource actions. Moving from concepts to practice is a daunting challenge and will require the following steps and actions. (1) Defining sustainable goals and objectives. Sustainable strategies for the provision of ecosystem goods and services cannot take as their starting points statements of need or want such as mandated timber supply, water demand, or arbitrarily set harvests of shrimp or fish. Rather, sustainability must be the primary objective, and levels of commodity and amenity provision must be adjusted to meet that goal. (2) Reconciling spatial scales. Implementation of ecosystem management would be greatly simplified if management jurisdictions were spatially congruent with the behavior of ecosystem processes. Given the variation in spatial domain among processes, one perfect fit for all processes is virtually impossible; rather, ecosystem management must seek consensus among the various stakeholders within each ecosystem. (3) Reconciling temporal scales. Whereas management agencies are often forced to make decisions on a fiscal-year basis, ecosystem management must deal with time scales that transcend human lifetimes. Ecosystem management requires long-term planning and commitment. (4) Making the system adaptable and accountable. Successful ecosystem management requires institutions that are adaptable to changes in ecosystem characteristics and in our knowledge base.

Adaptive management by definition requires the scientist's ongoing interaction with managers and the public. Communication must flow in both directions, and scientists must be willing to prioritize their research with regard to critical management needs. Scientists have much to offer in the development of monitoring programs, particularly in creating sampling approaches, statistical analyses, and scientific models. As our knowledge base evolves, scientists must develop new mechanisms to communicate research and management results. More professionals with an understanding of scientific, management, and social issues, and the ability to communicate with scientists, managers, and the public are needed.

Ecosystem management is not a rejection of an anthropocentric for a totally biocentric worldview. Rather it is management that acknowledges the importance of human needs while at the same time confronting the reality that the capacity of our world to meet those needs in perpetuity has limits and depends on the functioning of ecosystems.

83

Introduction

We should manage so as not to deny future generations the opportunities and resources we enjoy today.

A century ago, only a few prescient individuals were concerned about the sustainability of the variety of ecosystems that provide the commodities and services upon which humans depend. Large expanses of "the frontier" remained, the sea was considered unexplored and underexploited, and the natural world was seen solely as a cornucopia whose raison d'être was to provision human needs, as well as an infinite sink for human wastes and pollutants.

During this century, human populations, along with their demands for space, commodities, and amenities from ecosystems, have increased by over fivefold (e.g., Karlin 1995). At the same time, evidence has mounted that there are limits to the stress such systems can withstand and still remain viable. We have witnessed the collapse of agricultural ecosystems in the southeastern United States and midwestern "Dust Bowl," and watched the spread of desert into rangeland in the Southwest. That the frontier is gone is nowhere more vividly symbolized than in the western forests where our wish to sustain harvests from dwindling supplies of old-growth timber has run headlong into our legislated commitment to preserve the diverse biota comprising those ancient woods. Marine fisheries, once thought to be inexhaustible, are now impoverished, and access to these resources has become a matter of serious international dispute. The impact of forest management activities on breeding habitat for migratory fishes has highlighted the reality that the sustainability of many ecosystems depends on connections to other systems that extend well beyond individual ownerships, traditional borders of management jurisdiction, and even international boundaries.

We should manage so as not to deny future generations the opportunities and resources we enjoy today. At its core, ecosystem management assumes that intergenerational sustainability must be a precondition rather than an afterthought, not only for the continued production of "goods" or commodities, but also for the maintenance of critical "services" that ecosystems provide (Box 1). Goods represent those items that we commonly buy and sell and have monetary value in the market place. Society also depends on the services that ecosystems provide such as clean air and water, which we value but are not typically given monetary value. All of these goods and services derive from a diverse array of functions performed by ecosystem.

We rely on highly managed ecosystems such as croplands, estuarine aquacultural systems, or forest plantations for producing ecosystem goods; however, the sustainability of such intensively managed ecosystems is strongly dependent on the matrix of less managed ecosystems in which they are embedded (e.g., Lubchenco et al. 1993).

Box 1. Ecosystem goods and services. Healthy ecosystems perform a diverse array of functions that provide both goods and services to humanity. Here, goods refer to items given monetary value in the market place, whereas the services from ecosystems are valued, but rarely bought or sold.

Ecosystem processes include:

- Hydrologic flux and storage
- Biological productivity
- Biogeochemical cycling and storage
- Decomposition
- Maintenance of biological diversity

Ecosystem "goods" include:

- Food
- Construction materials
- Medicinal plants
- Wild genes for domestic plants and animals
- Tourism and recreation

Ecosystem "services" include:

- Maintaining hydrological cycles
- Regulating climate
- Cleansing water and air
- Maintaining the gaseous composition of the atmosphere
- Pollinating crops and other important plants
- Generating and maintaining soils
- Storing and cycling essential nutrients
- Absorbing and detoxifying pollutants
- Providing beauty, inspiration, and research

(Modified from Ehrlich and Ehrlich 1991, Lubchenco et al. 1993, and Richardson 1994)

In recent years, sustainability has become an explicitly stated, even legislatively mandated, goal of management agencies charged with the stewardship of natural resources. In practice, however, management strategies and tactics have often focused on maximizing short-term yield and economic gain, rather than long-term sustainability. Several factors contribute to this disparity between goals and practices, including: (1) gross undersampling of nearly all environments and consequent poverty of information on their biological diversity; (2) widespread ignorance of the functioning and dynamics of ecosystems; (3) the openness and interconnectedness of ecosystems on spatial and temporal scales that exceed greatly the bounds of any management authority; and (4) a prevailing public perception that exploitation of supposedly renewable resources

Box 2. Selected definitions of ecosystem management.

. . . regulating internal ecosystem structure and function, plus inputs and outputs, to achieve socially desirable conditions.
(Agee and Johnson 1988)

. . . the careful and skillful use of ecological, economic, social, and managerial principles in managing ecosystems to produce, restore, or sustain ecosystem integrity and desired conditions, uses, products, values, and services over the long term.
(Overbay 1992)

. . . the strategy by which, in aggregate, the full array of forest values and functions is maintained at the landscape level. Coordinated management at the landscape level, including across ownerships, is an essential component.
(Society of American Foresters 1993)

. . . a strategy or plan to manage ecosystems for all associated organisms, as opposed to a strategy or plan for managing individual species.
(Forest Ecosystem Management Team 1993)

. . . the optimum integration of societal values and expectations, ecological potentials, and economic plus technological considerations.
(Eastside Forest Health Assessment Team 1993)

. . . a resource management system designed to maintain or enhance ecosystem health and productivity while producing essential commodities and other values to meet human needs and desires within the limits of socially, biologically, and economically acceptable risk.
(American Forest and Paper Association 1993)

. . . integrating scientific knowledge of ecological relationships within a complex sociopolitical and values framework toward the general goal of protecting native ecosystem integrity over the long term.
(Grumbine 1994)

. . . integration of ecological, economic, and social principles to manage biological and physical systems in a manner that safeguards the ecological sustainability, natural diversity, and productivity of the landscape.
(Wood 1994)

has immediate economic and social value sufficient to outweigh the risks of damage to future ecosystem services or any alternative management goals.

More than a century of ecological research and natural resource management experience has taught us that ecosystems are far more complex and difficult to manage than was thought at the time that resource management agencies such as the Forest Service, National Park Service, and National Marine Fisheries Service were established. With limited understanding of the importance of diversity and complexity in ecological systems, utilitarian management has generally proceeded on the notion that we can simplify the structure and composition of ecosystems to achieve efficient production of specific goods such as timber, fish, or agricultural crops at no risk to sustainability. Our grossly inadequate understanding of the important role of natural disturbance processes to sustained ecosystem function certainly supported so-called "object-oriented" management protocols for our wilderness parks that denied their ever-changing character (Agee and Johnson 1988).

As with all of the sciences, ecological understanding and models of ecosystem functioning are provisional and subject to change. However, mechanisms for adjustment of management goals and strategies as ecosystems change and as our knowledge base improves are often limited or absent. Recent reports of the National Academy of Sciences (National Research Council 1990, 1992*a*) have emphasized the negative consequences of this limited ability to adapt to changing conditions and new information.

Defining Ecosystem Management

No fewer than 18 Federal agencies have committed to the principles of ecosystem management (Congressional Research Service 1994). Similar commitments have been made by a variety of state and local land managers, nongovernmental organizations, and corporations involved in natural resource management. Furthermore, elements of ecosystem management are mandated for federal lands in a number of important pieces of legislation (Appendix 1). Nevertheless, there is little agreement on the exact meaning of this phrase (Box 2). This diversity of definitions brings to mind the fable of the six blind men and the elephant, with each definition reflecting the specific perspective, agenda, or interest of the author. However, a cynic might claim that, rather than touching different parts of the ecosystem management elephant, each "blind man" is grabbing a different item and claiming to have grabbed an elephant.

So, what is the elephant? Franklin (1996) suggested that ecosystem management is ". . . managing ecosystems so as to assure their sustainability." Sustainability is indeed *the* central goal or value of ecosystem management. Notions of sustainability are at least implicit in other management protocols or schemes; however, the focus is typically on sustaining the delivery of desired goods and services. *Ecosystem management is management driven by explicit goals, executed by policies, protocols, and practices, and made adaptable by monitoring and research based on our best understand-*

ing of the ecological interactions and processes necessary to sustain ecosystem structure and function. Ecosystem management does not focus primarily on the "deliverables" but rather on sustainability of ecosystem structures and processes necessary to deliver goods and services.

Some might claim that, because we have been involved in management activities in ecosystems, "we have been doing ecosystem management all along." However, the mere fact that one is involved in the management or manipulation of an ecosystem such as a lake or a watershed does not by itself qualify as ecosystem management because essential components of ecosystem management may be lacking.

Ecosystem management must include the following: (1) *long-term sustainability as fundamental value,* (2) *clear, operational goals,* (3) *sound ecological models and understanding,* (4) *understanding complexity and interconnectedness,* (5) *recognition of the dynamic character of ecosystems,* (6) *attention to context and scale,* (7) *acknowledgment of humans as ecosystem components, and* (8) *commitment to adaptability and accountability.*

1) Sustainability. Ecosystem management assumes intergenerational sustainability (Lubchenco et al. 1991) as a precondition for management rather than an afterthought. Thus, the manager accepts the responsibility up front of managing in such a way as to ensure provision of the opportunities and resources we enjoy today to future generations.

2) Goals. Ecosystem management is as applicable to intensive utilitarian objectives as it is to the conservation of pristine wilderness; however, goals should not focus exclusively on "deliverables" such as board feet of timber, total catch, or visitor days. Goals must be explicitly stated in terms of specific "desired future trajectories" and "desired future behaviors" for the ecosystem components and processes necessary for sustainability. Furthermore, these goals should be stated in terms that can be measured and monitored.

3) Sound ecological models and understanding. Ecosystem management is based on sound ecological principles and emphasizes the role of processes and interconnections. Ecosystem management should be rooted in the best current models of ecosystem function. The name "ecosystem management" is confusing and has been taken by some to suggest that only science done at the ecosystem level is relevant. Ecosystem management depends on research performed at all levels of organization, from investigations of the morphology, physiology, and behavior of individual organisms, through studies of the structure and dynamics of populations and communities, to analysis of patterns and processes at the level of ecosystems and landscapes.

4) Complexity and connectedness. The importance of ecosystem complexity and the vast array of interconnections that underlie ecosystem function is certainly one of the most important lessons of 10 decades of ecological research and natural resource management experience (Peterson 1993). Biological diversity and structural complexity of ecosystems are critical to such ecosystem processes as primary production and nutrient cycling. Complexity and diversity also impart resistance to and resilience from disturbance, and provide the genetic resources necessary to adapt to long-term change. Extractive or utilitarian management systems such as agriculture, aquaculture, or plantation forestry that explicitly reduce complexity and diversity in order to increase productivity of particular ecosystem components may be deficient in key ecosystem processes and, therefore, less stable and less sustainable than intact and diverse natural ecosystems.

With complexity comes uncertainty. Some of our uncertainty regarding or lack of precision in predicting ecosystem behavior derives from the fact that we do indeed have more to learn. However, we must recognize that there will always be limits to the precision of our predictions set by the complex nature of ecosystem interactions and strive to understand the nature of those limits. Ecosystem management cannot eliminate surprises or uncertainty; rather, it acknowledges that, given sufficient time and space, unlikely events are certain to happen.

5) Recognition of the dynamic character of ecosystems. Sustainability does not imply maintenance of the status quo. Indeed, change and evolution are inherent characteristics of ecosystems, and attempts to "freeze" ecosystems in a particular state or configuration are generally futile in the short term and certainly doomed to failure in the long term. Crises associated with the management of our forests, fisheries, and wildlife have driven home the points that individual resources cannot be managed outside of the context of the full array of ecosystem components and processes and that the spatial and temporal domains of critical ecological processes are rarely congruent with the spatial boundaries and temporal schedules of management.

6) Context and scale. Ecosystem processes operate over a wide range of spatial and temporal scales, and their behavior at any given location is very much affected by the status and behavior of the systems or landscape that surrounds them (e.g., Levin 1992). There is no single appropriate scale or time frame for management. Our ignorance of the importance of processes operating over ranges of spatial and temporal scale permitted society to define the boundaries of management jurisdictions with little or no reference to such processes. The importance of context in determining the behavior of ecosystems at a particular location has been the impetus for the advocacy of a "landscape approach" in terrestrial ecosystems (e.g., Noss 1983, Noss and Harris 1986) and the development of the "large marine ecosystem concept" (Sherman et al. 1990).

7) Humans as ecosystem components. Ecosystem

management acknowledges the role of humans, not only as the cause of the most significant challenges to sustainability, but as integral ecosystem components who must be engaged to achieve sustainable management goals (McDonnell and Pickett 1993, Peterson 1993). Human effects on ecosystems are ubiquitous. Although we should strive to reduce deleterious impacts, current trends in population growth and demand for natural resources will undoubtedly require more intensive and wiser management, particularly to support human needs in a sustainable way. Thus, identifying and engaging stakeholders in the development of management plans is a key ecosystem management strategy. Humans who are part of the ecosystems will, of necessity, define the future of those ecosystems.

Ecosystem management is a necessary but insufficient condition for achieving long-term sustainability. We must also address such daunting issues as human population growth, poverty, and human perceptions regarding the use of energy and natural resources.

8) Adaptability and accountability. As in all areas of science, current models and paradigms of ecosystem function are provisional and subject to change. Ecosystem managers must acknowledge that our knowledge base is incomplete and subject to change. Management goals and strategies must be viewed as hypotheses to be tested by research and monitoring programs that compare specific expectations against objective measures of results (Holling 1978, Walters 1986, Likens 1992).

Adaptability and accountability are central elements of ecosystem management. Managers must be able to adapt to the unique features or needs of a particular area and to inevitable temporal changes as well. Management must also be able to adapt to new information and understanding. To be adaptable and accountable, management objectives and expectations must be explicitly stated in operational terms, informed by the best models of ecosystem functioning, and tested by carefully designed monitoring programs that provide accessible and timely feedback to managers. Public understanding and acceptance of the experimental nature of all natural resource management are critical to the implementation of ecosystem management protocols.

Our own impacts on this planet's ecosystems make such adaptive management all the more compelling. The earth's ecosystems are being modified in new ways and at faster rates than at any other time in their nearly four billion year history. These new and rapid changes present significant challenges to our ability to predict the inherently uncertain responses and behaviors of ecosystems.

Ecological Science as the Basis for Ecosystem Management

What is an ecosystem?

An ecosystem is defined as "a spatially explicit unit of the Earth that includes all of the organisms, along with all components of the abiotic environment within its boundaries" (Likens 1992). Although the word "ecosystem" is appropriately attributed to Sir Arthur Tansley (1935), underlying concepts such as hierarchical organization of individuals, populations, and communities and the functional connections between the biota and the abiotic environment are implicit in the writings of Möbius (1877), Forbes (1887), Cowles (1899), and Clements (1916), among others. E. P. Odum and H. T. Odum, through their many papers and books, moved the ecosystem concept into the mainstream of ecological science (see Hagen 1992 and Golley 1993 for recent reviews of the history of ecosystem ecology).

Managed ecosystems can be arrayed along a gradient of impacts and inputs or subsidies (Box 3). To sustain heavily managed ecosystems such as cities, heavy subsidies of energy and materials must be imported from other ecosystems. The need for such subsidies diminishes as the intensity of use diminishes.

Nature has not provided us with a natural system of ecosystem classification or rigid guidelines for boundary demarcation. Ecological systems vary continuously along complex gradients in space and are constantly changing through time. Furthermore, no ecosystem, including the entire biosphere, is closed with respect to exchanges of organisms, matter, and energy. Nevertheless, ecologists do not define ecosystem boundaries in an arbitrary fashion.

Recognizing that ecosystem functioning includes inputs, outputs, and cycling of materials and energy, as well as the interactions of organisms, ecosystem scientists define ecosystem boundaries operationally so as to most easily monitor, study, or manipulate these processes. Thus, depending on the process of central interest, a dung pile or whale carcass are ecosystems as much as a watershed or a lake.

Boundaries defined for the study or management of one issue, process, or element are often inappropriate for the study of others. For example, watersheds represent a useful unit for the study of water and nutrient fluxes driven by hydrology, but may not be ideal for studies of trophic dynamics in areas where animals move over large distances. Likewise, they represent a useful unit for management of stream water quality but are less useful for the management of large vertebrate herbivores or carnivores.

It is desirable, but not always possible to define the boundaries of natural resource jurisdictions so as to manage most easily the processes necessary to achieve our management goals. However, it is the arbitrariness of jurisdictional boundaries relative to key ecological processes that mandates a broad view of ecosystem management.

Scales of organization

Ecosystem-level science such as studies of entire watersheds, estuaries, or ocean gyres has provided many important basic concepts to ecosystem management;

83

Box 3. A conceptual framework for ecosystem management goals, inputs, and outputs.

Category	Ecosystem type and human use	Intensity and goals of management	Inputs	Outputs
Intensive	Urban Intensive agriculture, aquaculture, and suburban Plantation forestry Managed pasture	Intensive management to provide food and shelter for human use	Heavy subsidies of energy (fossil fuels), materials (fertilizers, metal, and wood), and human labor	Manufactured products Pollutants and toxins Food and water
Seminatural	Managed forestry, grazing, wildlife, and fisheries Forest Grassland Woodland Shrublands Lakes Streams/rivers Wetlands Estuaries Oceans Extraction preserves	Moderate management for sustained production of natural resources and for maintenance of ecosystem processes	Moderate inputs of energy, materials, and human labor	Harvested natural resources; timber, livestock, fish, wildlife, water, minerals, fossil and fuels Ecosystem services
Natural	All kinds Reserves and wild areas	Minimal management to maintain biological and habitat diversity, integrity of natural ecosystem processes, and esthetic values	Minimal management to maintain near-natural conditions	Recreational uses Ecosystem services

however, an understanding of populations, communities, and landscapes is no less relevant to sustainable management (Box 4). Challenges, such as the management of wildlife populations or development of a recovery plan for an endangered species, may present themselves at one scale of organization, but a complete understanding or resolution of issues usually requires integration across several scales and levels of organization. To determine mechanisms, we must often investigate processes operating at lower levels of organization (say physiology or reproductive biology in the endangered species populations) as well as appreciate the context or higher levels of organization within which the processes operate (O'Neill et al. 1986).

Our ignorance of the importance of processes operating over wide ranges of spatial and temporal scales permitted us to define the boundaries of management jurisdictions with little or no reference to such processes. Rivers may provide convenient boundaries between countries, counties, and other political jurisdictions but, because they bisect watersheds, they are very poor boundaries for managing most ecosystem processes. The 200-mile (323 km) territorial fishing limits were established with little reference to the behavior of the resource to be managed or the processes affecting those resources. Finally, budgeting strategies that are focused on fiscal years or the timing of political elections often drive short-term decisions regarding natural resource use that are not congruent with processes that operate over decades and centuries.

Ecosystem function depends on its structure, diversity, and integrity

While human interests may focus on a relatively small subset of the organisms or processes operating in an ecosystem, the overall complexity of such systems is critical to their sustainability. Thus, maintenance of biological diversity is an integral component of ecosystem management plans. Biological diversity is the variety of life and its processes, including the variety of living organisms and the genetic differences among them, as well as the variety of habitats, communities, ecosystems, and landscapes in which they occur (Keystone Center 1991). Included in this definition of biological diversity is a recognition of the importance of biotically derived physical structures such as logs and corals.

Biological diversity is central to the productivity and sustainability of the earth's ecosystems. Organisms, biological structures, and processes are the means by which the physical elements of the ecosystem are transformed into the goods and services upon which humankind depends. Specific examples of the role of biodiversity in ecosystem functioning include providing for (1) essential processes, (2) ecosystem resistance to and recovery from disturbances, and (3) adaptability to long-term changes in environmental conditions. There is an extensive literature on the recognized or potential importance of individual species as wildlife or natural resources (e.g., Wilson 1992) so we emphasize the contribution of biodiversity to ecosystem processes.

Box 4. Connections between population dynamics and ecosystem processes: trophic cascades in lakes. To address ecosystem-level processes, we must understand the dynamics of lower levels of ecological organization such as communities and populations.

Trophic cascades are striking illustrations of the links between population dynamics and ecosystem processes (Paine 1980). Big changes in fish populations at the top of the food web can alter planktivory, herbivory, primary productivity, and nutrient cycling rates in lakes (Carpenter and Kitchell 1993). The changes in fish populations that trigger cascades can be caused by harvesting, fish management, species introductions, fish kills, or recruitment events. Although nutrient inputs are the principal driver of lake ecosystem productivity, variability in the food web accounts for a large fraction of the variance in production that cannot be explained by nutrients (Carpenter and Kitchell 1993).

Biomanipulation is the deliberate creation and maintenance of trophic cascades to improve water quality in lakes (Shapiro et al. 1975, Gulati et al. 1990, Kitchell 1992). Biomanipulation can also improve sport fishing (Kitchell 1992). However, outcomes of biomanipulation field trials have been varied and may depend on magnitude of nutrient load, depth, availability of refuges for herbivores, and the extent to which zooplanktivorous fish can be harvested or controlled by piscivores (Gulati et al. 1990). Increased harvest of piscivores by sport anglers may foil biomanipulation in North American lakes (Johnson and Carpenter 1994). Thus biomanipulation of lakes sometimes succeeds in improving water quality, and other times fails. Understanding the failures represents an important challenge for improvement of lake management.

Links between populations and ecosystem processes influence most of earth's environments (Jones and Lawton 1994). Analogs of biomanipulation may be possible in some terrestrial and marine ecosystems, but these are largely unexplored and we should be cautious at this time.

Many of the numerous and important roles of the variety of species in carrying out ecosystem processes are obvious. Photosynthesis, the capture of physical energy and its conversion to organic structures is the primary basis for primary productivity on earth. Another critical role of organisms is in decomposition—the breakdown of organic structures into their physical elements, including mineral nutrients and energy. Organisms create structures and communities that interact with and alter the physical world and provide habitat for other organisms that carry out additional processes. This biotic complexity has important influences on the hydrologic cycle, through condensation, interception, and evapotranspiration, and on geomorphic processes, such as erosion.

A simplistic emphasis on the roles species play in ecosystems may lead some to ask, "how many species are needed to maintain key ecosystem processes," the implication being that we could sustainably manage for some specific number or set of species. This question presumes that: (1) we know all of the individual processes or roles that comprise overall ecosystem functioning; (2) species within an ecosystem are analogous to job categories within a factory and there is a one-to-one overlay of species and specific processes; (3) ecosystems do not change in ways that influence which species are best able to carry out key roles. These assumptions are clearly not met in any ecosystems. We must acknowledge the importance of complexity of species interactions that underlie ecosystem functioning and the role that diversity plays in maintaining processes across complex environmental gradients through space and time.

Biological diversity provides for both stability (resistance) to and recovery (resilience) from disturbances that disrupt important ecosystem processes. Resistance often results from complex linkages among organisms, such as food webs that provide alternate pathways for flows of energy and nutrients. The presence of numerous organisms with similar capabilities, sometimes inappropriately viewed as redundancies, also provides for ecosystem stability as well as optimal functioning. For example, the presence of numerous fungal species capable of forming mycorrhizae in a terrestrial ecosystem buffers it against the loss of individual species and makes total loss of mycorrhizal functioning unlikely; the presence of numerous species also makes it more likely that important processes (such as moisture and nutrient uptake) will be optimized in the face of seasonal, annual, and longer term climatic variations.

Diversity-related resistance is particularly relevant to the management of agricultural and forest ecosystems because it can retard the spread of species-specific pathogens and "pest" insects. Although monocultures may result in high levels of production of specific products or resources, they present much higher risks from such infestations than more complex systems. The importance of species diversity to the ability of ecosystems to recover ecosystem processes such as productivity following a disturbance or perturbation has been convincingly demonstrated in long-term studies of productivity responses to drought in grasslands (Tilman and Downing 1994).

Long-term adaptations of ecosystems to changes in climate and other environmental variables are strongly dependent upon available biological diversity. Obviously, greater numbers of species and greater genetic

variability within species provide for a larger number of biological building blocks for ecosystem response and species evolution. Given ever-changing environments, the capacity to adapt is central to the long-term sustainability of ecosystem function. Long-term pollen profiles suggest that relatively unimportant species restricted to particular microsites during one climatic regime may become important and more widespread as the climate shifts (e.g., Delcourt and Delcourt 1991). The reservoir of genetic diversity within individual species and populations is clearly central to their ability to adapt to environmental change (e.g., Antonovics 1968). In view of this, focus on so-called "improved" genotypes of crop plants and forest trees has raised concern regarding the loss of genetic diversity that might be important if the same species are to be maintained under future conditions.

Uncertainties regarding the distribution and functional importance of many species and ecosystem elements, as well as our limited understanding of the complex relationships of organisms to ecosystem structure and function, argue for a highly conservative approach to biodiversity retention. The first issue goes far beyond our inadequate catalog of species to the fact that we are still in the process of recognizing whole ecosystems and subsystems and their constituent organisms and functions. Examples include the recent recognition of the biological diversity and ecosystems associated with deep marine thermal vents, the hyporheic zones of streams and rivers, terrestrial belowground (soil) environments, and high forest canopies. Much new information is emerging on the second issue, but our understanding of interrelationships is still highly incomplete. Consider, for example, that the importance of the dead tree and its derivative structures has only recently been recognized by foresters and forest ecologists (see Box 5).

The redistribution of species across the globe is one of the most significant human impacts on ecosystems. The negative consequences of exotic species in both natural and managed ecosystems (e.g., Vitousek 1990) stand as stark testimony to the fact that the contribution of biological diversity to ecosystem functioning is not merely a matter of the number and kinds of species present (Box 6).

In the short term, ecosystem management that is focused on the maintenance of biological diversity and ecosystem complexity may be seen to have "economic opportunity costs" in relation to resources not immediately exploited or compromises to commodity production. History has demonstrated that overexploitation of resources resulting in diminished diversity often has both ecological and economic long-term opportunity costs that far exceed the short-term benefits. Attention to these latter costs is at the core of ecosystem management's focus on sustainability. The fact that long-term costs are usually more difficult to quantify than short-term benefits in no way diminishes their importance.

Management that acknowledges the significance of biological diversity is difficult because such diversity is itself a dynamic property of ecosystems affected by variations in spatial and temporal scale. On a relatively local scale, such as a hectare of forest or a small portion of an estuary, species populations may rise, fall, or even go locally extinct as environments change. On a regional scale species populations are less variable because of the connections among habitats and the ability of species to migrate and reestablish.

Fragmentation of landscapes effectively reduces the size of habitat units as well as diminishing habitat continuity. The results are that populations are at greater risk of local extinction because of reduced population sizes and that such extinctions have a greater likelihood of being permanent because of impediments to migration. Thus, management of species' populations and biological diversity requires a landscape-scale perspective and recognition that the complexity and functioning of any particular location is influenced heavily by the nature of the landscape (or seascape) that surrounds it.

Ecosystems are dynamic in space and time

Ecosystem management is challenging in part because we seek to understand and manage areas that change. The species assemblages observed today in many terrestrial and freshwater ecosystems are relatively recent (e.g., Delcourt and Delcourt 1991). Many have formed only in the last 10 000 yr and reflect individual species' responses to changes in the global environment. We are just beginning to understand the complexity and scales of change that occur in marine ecosystems ranging from seasonal variations in currents and sea temperature, to periodic events like the El Niño/Southern Oscillation cycle, to long-term changes and large-scale changes, such as those driven by variations in salinity and ocean temperature.

Most observable and detectable ecosystem dynamics occur against a backdrop of continuous long-term change. Over shorter time scales (e.g., decades to centuries), the patterns apparent on many landscapes are influenced by natural disturbances (e.g., Watt 1947, Connell and Slatyer 1977, Bormann and Likens 1979, Sousa 1979, White 1979, Mooney and Godron 1983, Pickett and White 1985, Turner 1987, Baker 1989*b*). Disturbances reset succession within all or a portion of an ecosystem, leading to mosaics of successional patches of different ages within and across landscapes. The importance of such patch dynamics to ecosystem structure and functioning has been demonstrated in a variety of situations including marine intertidal ecosystems (Sousa 1979, Paine and Levin 1981), old-growth forests of New England (Foster 1988), and subtropical pine and hardwood forests of central Florida (Myers 1985).

BOX 5. Structural diversity and ecosystem function. The structural complexity and diversity of ecosystems directly influence the pattern and rate of many ecosystem processes as well as providing habitat for organisms that maintain important processes. Structural complexity in natural forests includes trees of varying size, condition, and species, standing dead trees, and logs and woody debris on the forest floor, as well as multiple canopy levels and canopy gaps. This structural complexity is critical in providing unique habitats for a large array of organisms, many of which have highly specialized habitat requirements. Some of these organisms carry out key ecosystem functions. For example, lichens dwelling in the forest canopy convert atmospheric nitrogen into biologically useful forms. Structural complexity of forests is also itself important in maintaining and regulating processes, such as aspects of the hydrologic cycle.

Ecosystem management concepts applied to forests recognize the importance of compositional and structural diversity to sustainability as well as short-term production of goods and services. Maintenance and restoration of structurally diverse forests are major objectives. Techniques include use of a wider variety of tree species, provision for standing dead trees and down logs, and silvicultural treatments to create structural diversity. Partial cutting—retention of live and dead tree structures at time of harvest—is, in many areas, replacing traditional clear-cutting practices which effectively eliminated structural legacies that provide continuity from one disturbance to the next.

Change is the normal course of events for most ecological systems (Connell and Sousa 1983). The science of ecology increasingly is recognizing the dynamic nature of ecological systems and is embracing a broader view of natural dynamics (see Lubchenco et al. 1991). However, some discussion of the concept of equilibrium is warranted because past resource management decisions have often been based on the assumption that there is some constant or desirable ecological state. The notion of equilibrium in ecological systems has inspired a long history of interest and controversy (e.g., Egerton 1973, Bormann and Likens 1979, Connell and Sousa 1983).

The properties that have been used to evaluate equilibrium fall into two general categories (Turner et al., *in press*): persistence (i.e., nonextinction) and constancy (i.e., no change or minimal fluctuation in numbers, densities, or relative proportions). Persistence might refer to species, as emphasized in many population-oriented models (e.g., DeAngelis and Waterhouse 1987), or the presence of all successional stages in a landscape (e.g., Romme 1982). Constancy may refer to the number of species (e.g., MacArthur and Wilson 1967), the density of individual species (e.g., May 1973), the standing crop of biomass (e.g., Bormann and Likens 1979), or the relative proportions of seral stages on a landscape (e.g., Romme 1982, Baker 1989*a*, *b*). Botkin and Sobel (1975) suggested that a system that changes but remains within bounds is a stochastic analog of equilibrium that is much more suitable for ecological systems. Empirical studies have increasingly demonstrated either a lack of equilibrium (e.g., Romme 1982, Baker 1989*a*, *b*) or equilibrium conditions that are observed only at particular scales of time and space (e.g., Allen and Starr 1982, O'Neill et al. 1986).

The concept of "homeorhesis" (see O'Neill et al. 1986), the tendency of a perturbed system to return to its preperturbation *trajectory* or rate of change rather than "homeostasis," the tendency to return to some predisturbance state, seems appropriate for ecological systems. Homeorhetic stability implies return to normal *dynamics* rather than return to an artificial "undisturbed" *state*. Ecosystem stability can also be thought of in terms of the rate of return after perturbation (resilience or "adjustment stability," Margalef 1968) and the ability of an ecosystem to resist the forces of change acting on it (resistance, or "resistance stability," Sutherland 1974).

Ecological systems do not exhibit an undisturbed "state" that can be maintained indefinitely. Rather, they exhibit a suite of behaviors over all spatial and temporal scales, and the processes that generate these dynamics should be maintained. Thus, Holling (1996) has suggested that ecosystem resilience should be viewed as the magnitude of disturbance that can be absorbed before the variables and processes that control behavior change.

The argument often arises that certain intensive management practices such as fishing or logging simulate the effects of and are reasonable surrogates for natural processes such as predation or fire. At a superficial level, there are indeed some similarities. For example, logging can (though not always) have the effect of reducing flammable fuels (e.g., Lippke and Oliver 1993). If fire's only functional role on landscapes was organic matter oxidation and fuel reduction, then logging might be viewed as a replacement for wildfire. However, the various impacts of fire on such processes as nutrient transfer, and postfire energy balance, as well as the variety of so-called "legacies" such as woody debris and snags (Franklin 1993) that persist from one disturbance cycle to the next, differ greatly from those of logging. Thus, the substitutability of human management for natural disturbance must be understood in the context of management goals and impacts on the full array of ecosystem processes.

Extreme fluctuation is abnormal in most ecosystems and, when caused by human activity, is what often threatens ecosystem functioning. As pointed out by Pickett et al. (1992):

> *The new paradigm in ecology can, like so much scientific knowledge, be misused. If nature is a shifting mosaic or in essentially continuous flux, then some people may wrongly conclude that whatever people or societies choose to do in or to the natural world is fine. The question can be stated as, "If the state of nature is flux, then is any human-generated change okay?". . . The answer to this question is a resounding "No!" . . . . Human-generated changes must be constrained because nature has functional, historical, and evolutionary limits. Nature has a range of ways to be, but there is a limit to those ways, and therefore, human changes must be within those limits.*

Box 6. Exotic species in Lake Michigan. The food web of Lake Michigan has been completely reconfigured by exotic species invasions, fishing, and stocking of sport fishes. Overharvest and the parasitic sea lamprey contributed to the collapse of lake charr and native coregonine populations shortly after World War II (Christie 1974). Exotic zooplanktivores, especially alewife, irrupted while the lake's populations of large piscivorous fishes were low. Chemical control of the sea lamprey was followed by highly successful stocking of exotic salmonids, leading to establishment of a sport fishery valued in excess of a billion dollars per year. Now the lake's keystone species are exotic fish whose dynamics are determined by stock and harvest. Unlike naturally reproducing fish populations, their reproduction is uncoupled from their forage base. Substantial variability in the forage base and lower trophic levels is attributed to predation by stocked fish (Kitchell and Crowder 1986). The ecosystem appears to be highly unstable and vulnerable to further invasion (National Research Council 1992*b*).

Residual native species may prove crucial for stabilizing fish production in the Great Lakes. In Lake Michigan, heavy stocking of salmonids has been followed by severe declines of alewife but compensatory increases in populations of native planktivorous fish. The resurgence of native planktivores has stabilized the forage base and the fishery. In Lake Ontario, trajectories of salmonids and alewife appear to be following those of Lake Michigan, but native bloaters are a minor component of the food web and may be incapable of preventing the collapse of the salmonid fishery if the alewife forage base disappears.

Biodiversity provides options for reconfiguring lake ecosystems when the environment changes (Carpenter et al. 1995). In the Great Lakes, a diverse forage base makes the ecosystem and the salmonid fishery less vulnerable to unexpected disturbances.

Over the four billion year history of the earth's biota, the earth's environment has changed dramatically. However, it is likely the earth's ecosystems rarely experienced change at the rate at which it is occurring today (save perhaps for such global catastrophes as characterized the Cretaceous–Tertiary boundary). Furthermore, many changes such as extremes of land fragmentation and certain kinds of pollution have no precedent in the earth's evolutionary history. The rapidity

of change as well as the novel character of many human impacts present special challenges to our ability to manage ecosystem sustainability.

Uncertainty, surprise, and limits to knowledge

We still have much to learn about the behavior of ecosystems, and there are significant challenges to learning it. Three types of uncertainty arise in ecosystem management (Hilborn 1987). The first category of uncertainty includes the unknowable responses and true surprises that arise from the complex and ever-changing character of ecosystems and their responses to perturbations that are unprecedented (at least to current ecosystems). Such uncertainties cannot be eliminated or reduced, but their magnitude and relative importance can be estimated. Examples of such uncertainties include ecosystem responses to unprecedented rates of climate change, carbon dioxide enrichment, or increased ultraviolet radiation. They also include such rare events as meteor impacts, earthquakes, and volcanic eruptions. Finally, uncertainties of this type may derive from cumulative effects of multiple environmental changes, such as the accumulation of insults to aquatic and marine ecosystems that have influenced populations of migratory fishes.

The second class of uncertainties arises from a lack of ecological understanding and principles upon which dependable ecological models can be constructed. Reduction of these uncertainties is occurring and more progress is possible. However, controls and replication are often impractical in such research, and the extension of results across scales of time and space is difficult at best (cf. Levin 1993).

The category of uncertainty that can be reduced most readily is that resulting from poor data quality, sampling bias, and analytical errors. Decision-makers must work with scientists and data managers to determine an acceptable level of decision error, i.e., the probability of making an incorrect decision based on data that inaccurately estimate the true state of nature.

Scientists are obliged to tell decision-makers what is known, is not known, could be known, and should be known (Carpenter 1980). This dialogue leads to the identification and prioritization of uncertainties. Sometimes uncertainties can be reduced directly through investments in targeted research and technology. These are the simple cases; in other situations, barriers to learning are deeper. Some limits to knowledge are set by the complex, nonlinear nature of ecological systems (O'Neill et al. 1986). Other limits are set by ethical constraints to experimentation that risk human life or the existence of singular, irreplaceable ecosystems. Still other limits are set by economics. Principles of sustainability mandate that living resource harvest quotas involve a "safety factor" to account for uncertainty. If uncertainty is reduced, harvest can be increased but in some cases the value of the additional harvest is less than the cost of the research and monitoring necessary to reduce uncertainty (Walters 1986). Finally, institutional barriers to learning can limit our capacity to reduce uncertainty (Lee 1993). For example, management agencies often lack systematic plans for learning, which should include prioritized listings of identified uncertainties, methods for reducing important and tractable uncertainties, procedures for evaluating existing actions, and mechanisms for retaining new knowledge in the memory of the institution (Hilborn 1992).

Adaptive management is a process that combines democratic principles, scientific analysis, education, and institutional learning to manage resources sustainably in an environment of uncertainty (Holling 1978, Lee 1993). Clearly, ecosystem management must be adaptive. In adaptive management, science makes crucial contributions through normal scientific research and education, models, and design and analysis of unique experiments at the scale of management (Holling 1978, Walters 1986, Matson and Carpenter 1990, Kitchell 1992, Lee 1993, Peterson 1993).

Humans as Ecosystem Components

Not only is the science incomplete, the system itself is a moving target, evolving because of the impacts of management and the progressive expansion of the scale of human influences on the planet . . .

C. S. Holling, 1993

Ecosystem management is at least as much about managing human activities as it is about managing lands and waters. A major promise of ecosystem management is its potential to integrate human activities and conservation of nature. Can ecosystem management deliver what it promises? Can human activities and natural processes be integrated to the benefit of both? All conceptualizations of ecosystem management include humans as part of ecosystems, yet the proper role of humans in ecosystems is a topic of much debate (McDonnell and Pickett 1993).

Conventional views of humans as lords and masters, stewards, protectors, or destroyers of nature all have their limitations. At one end of the spectrum in the current debate are wilderness purists who appear to believe that all management is bad, and that the best we can do for natural ecosystems is to leave them alone. This view ignores the fact that most ecosystems have already been substantially altered by human actions and are isolated and removed from their normal ecological context. At the other extreme are those who believe that human actions generally improve nature, and that no areas should be closed to intensive human activities such as commodity extraction and motorized recreation. A scientifically defensible and comprehensive view of ecosystem management has yet to be articulated, but is certainly somewhere between these two poles.

That human demand for the goods and services will increase is certain and makes sustainable ecosystem

83

Box 7. Fire in the Sierra Nevada conifer forest. Nearly a century of fire suppression has presented a serious challenge to efforts to assure the long-term sustainability of the conifer forests of the Sierra Nevada. Disruption of a prehistoric fire regime characterized by frequent low intensity (both lightning and native American ignited) fires has resulted in increasingly hazardous fuel loadings, altered forest structure, and changes in mosaics of age class and species composition (Kilgore 1973). State and Federal agencies are increasingly turning to prescribed burning as a tool to reduce fuels and restore fire as a natural process. In so doing they must address philosophical and policy questions, as well as face a myriad of restrictions and constraints.

Specific challenges to the restoration of fire to the Sierra mixed conifer forest include understanding natural forest dynamics and the effects of fire suppression on those dynamics, dealing with multiple political and management constraints, and in the case of natural areas, resolving the question of whether aboriginal burning should be considered part of the "natural" scene. These questions influence the establishment of objectives for managing a specific area, while the latter constraints affect the level to which those objectives can be accomplished. Constraints of special concern include the presence of unnatural fuel accumulations (resulting in uncharacteristically large and intense fires), fragmented landscapes, the increasingly important wildland–urban interface, changing ignition patterns (e.g., arson), air quality limitations (burning is frequently limited by local air quality restrictions), agency funding, and threats of public liability. Progress made to date leaves significant doubts over the prospects of ever successfully restoring fire to its natural role in even the national parks of the Sierra Nevada (Parsons 1995).

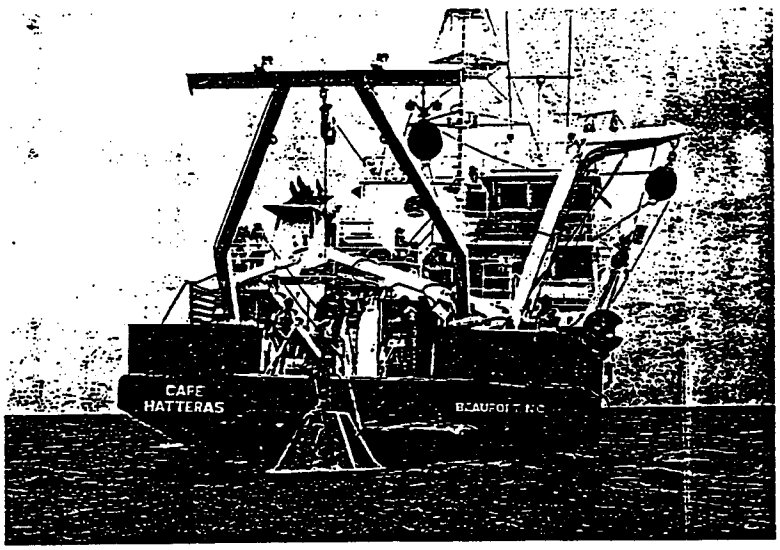
The fact that we now understand that presettlement fire regimes of the Sierra Nevada were actually characterized by long-term fluctuations driven largely by climatic variation (Swetnam 1993) further complicates efforts to restore natural fire. Improved understanding of the relationships between fire, vegetation and climate will be required to accommodate predicted future global climatic change (Overpeck et al. 1990). Should surrogates for fire (e.g., mechanical clearing or chemical treatment) need to be employed to reduce hazardous fuels over significant areas, an entirely new set of challenges will confront managers attempting to use ecosystem management principles in the Sierra Nevada.

management all the more compelling and important. Over the past five decades, our numbers have grown from 2.5 to nearly 5.7 billion. Depending on assumptions upon which such predictions are based, human populations will likely reach 7–9 billion by the year 2020. The resources upon which our populations depend are delivered from ecosystems in finite quantity and the capacity for delivery of such resources is not distributed uniformly across the globe or in patterns that necessarily correlate with the areas of greatest human demand.

It is also equally certain that demands for the different kinds of goods and services provided by ecosystems will change. The "frontier," as our forebears viewed it, is gone. Two centuries ago, it was possible for our nation to disturb and deforest virtually its entire eastern half, leaving almost no trace and only a fragmentary understanding of its presettlement forests. We now understand that the management of the 19th century has left us with impoverished landscapes, and we have come to value all the more the few areas of near-pristine habitat that remain intact.

Many of our most celebrated "environmental trainwrecks" are not disputes between the "rights of nature" vs. the human demands for resources, rather they are conflicts among competing human demands. In the Pacific Northwest, so long as demand was light, forestry was not seen as competing with the commercial anadromous fishing industry. Today, those competing demands are a core issue in the development of sus-

Ecological Applications
Vol. 6, No. 3



BOX 8. Limits to knowledge in marine environments. The vastness and three-dimensionality of the marine environment combined with an historical lack of necessary research incentives present unique limitations on our ability to acquire knowledge in these ecosystems. For example, recent discoveries of new habitats such as deep-sea vents (Grassle 1986), cold seeps (Williams 1988), and whale carcasses (Smith et al. 1989), with attendant unique biological communities illustrate the depth of our ignorance of the range of marine habitats. Similarly, sampling of just the larger seafloor invertebrates on the continental shelfbreak only ≈50–80 km off the mid-Atlantic coast revealed 1202 species, 520 of which were new to science (Blake et al. 1987). The presence of abundant small species of phytoplankters in the oceans, the picoplankton, has only been known since 1979 (Waterbury et al. 1979). Genetic analysis has only recently revealed that certain species of importance to human society (notably the pollution indicator, *Capitella capitata*: Grassle and Grassle 1976; the universal biomonitor of water-column pollution, *Mytilus edulis*: McDonald et al. 1992; and certain corals and other reef invertebrates: Knowlton et al. 1992) are actually complexes of multiple species. Within-species genetic diversity is virtually undescribed for marine organisms (see Alberte et al. 1993).

tainable management strategies for Pacific Northwest forests.

The mismatch between the spatial and temporal scales at which humans make resource management decisions and the scales at which ecosystem processes operate present the most significant challenge to ecosystem management. Boundaries between ownerships and jurisdictions rarely match the domain of ecosystem processes. Such mismatches are often at the basis of human conflict. For example, rivers more than any other natural feature form the borders between counties, states, and countries, and thus invite conflict over the management of resources dependent on water-driven ecosystem processes.

Such resource disputes demonstrate the limitations of human institutions to achieve consensus regarding the setting and achieving of resource management goals and objectives across increasingly large scales of time and space. Few would deny concerns over such regional resources as the forests of the Pacific Northwest or the North Atlantic fishery. However, we have identified few mechanisms to translate the actions occurring within individual forest ownerships or local fishing communities into strategies to reconcile competing demands for resources or promote a regional vision for sustainability.

To say that ecosystem management is about managing human activities is not necessarily to call for increased regulation or "command and control." A rich array of policy options exists to pursue these goals. Concerns such as the rights of private property owners and local loss of jobs are not likely to diminish and ecosystem management must include strategies that deal positively with those concerns.

Humans and naturalness

"Natural" is one of the most ambiguous terms in our language, yet persists in usage because it signifies something of great esthetic and spiritual importance to many people. Although naturalness is often assumed

to be unmeasurable, Anderson (1991) offered three criteria for assessing the relative naturalness of any area: (1) the amount of cultural energy required to maintain the system in its present state; (2) the extent to which the system would change if humans were removed from the scene; and (3) the proportion of the fauna and flora composed of native vs. non-native species. For example, a natural forest ecosystem that is self-maintaining changes little (barring stand-replacing disturbance) if left alone, and is composed of native species, is more natural than a tree farm.

A strict dichotomy of natural vs. unnatural breaks down when humans are considered part of an ecosystem. The Darwinian revolution united humans and nature in the most fundamental way—by origin. However, human cultural evolution has led to behaviors and artifacts that are qualitatively distinct from the rest of nature. The "everything is natural" view is just as dangerous in natural resources management as it is in human social behavior. Behaviors that are quite natural and that contribute to individual fitness may nevertheless be destructive in society or in natural ecosystems.

Natural is a relative rather than absolute concept. Small "natural areas" in a sea of development are heavily affected by their surroundings (Burgess and Sharpe 1981, Noss 1983) with edge effects known to penetrate great distances from their boundaries (Wilcove et al. 1986). Even the largest and most remote wilderness areas are not immune to effects of industrial civilization such as global warming, stratospheric ozone depletion, and long-distance transport of pollutants. Thus, no purely natural areas exist anywhere. Yet few would disagree that a remnant of virgin forest or tallgrass prairie is more natural than a clearcut or a shopping mall.

Natural areas, even if less than pristine, have a critical role to play in society and in ecosystem management. One of the greatest potential values of natural areas is as benchmarks or control areas for management experiments. This value was recognized by Aldo Leopold (1941, 1949), who pointed out that wilderness provides a "base-datum of normality" for a "science of land health." Scientists shudder to think of experiments without controls, but this is the case for much of current natural resource management (Noss 1991). Existing natural areas are imperfect baselines for many reasons, but they are the best we have. Ecosystem management, because it is essentially experimental and adaptive, requires natural areas as controls. The importance of ecosystem representation as a conservation goal, as well as the concept of endangered ecosystems, is discussed in Appendix 2.

Thus, the naturalness idea remains useful but is in need of significant revision if it is to contribute to enlightened ecosystem management. In many situations the term "historic" can be substituted for "natural" to describe the condition of a landscape before substantial alteration by human activity. Many agencies have goals

Box 9. Human impacts are ubiquitous and complex: the Bering Sea ecosystem. The Bering Sea is one of the world's most biologically productive marine regions. Most noteworthy are its many species of large marine mammals, its variety of seabirds, and its diversity of fish and shellfish. The Bering Sea ecosystem includes 450 species of fish, crustaceans, and mollusks, of which 50 species are commercially important. These fish and shellfish are a food source for millions of seabirds and at least 25 species of marine mammals

These biological resources are the foundation of the subsistence economy and culture of the indigenous peoples inhabiting the margins of the Bering Sea, and their cultural integrity is dependent upon the continued availability of these resources. Commercial interests from the United States, as well as from Russia, Japan, Poland, Korea, Taiwan, and China have also exploited these resources during the past 200 yr, taking a variety of species including fur seals, whales, sea otter, salmon, crab, shrimp, halibut, cod, herring, sole, flounder, rockfish, sablefish, and walleye pollock. Marine mammals are no longer harvested commercially, but production of fish and shellfish from the Bering Sea contributes at least 5% of the world's fishery production. Except for salmon, which have supported a commercial fishery since the turn of the century, the commercial utilization of the fish and shellfish resources of the Bering Sea began about 1950. In the early years of fishery development, stocks were aggressively harvested with little regard for sustainable use. By the mid-1970s, rockfish (most significantly Pacific Ocean Perch) and halibut stocks had been severely reduced. King crab populations and fisheries collapsed in the late 1970s. The 1980s saw a complete shift in the exploitation of the valuable groundfish resources of the U.S. Exclusive Economic Zone from predominantly foreign to exclusively domestic.

Recent declines in the populations of some Bering Sea marine mammals and seabirds have raised questions concerning the impact of present fisheries management on these fish-eating species. For instance, Stellar sea lions have declined by 50–80% in the last two decades and are now classified as "threatened" under the Endangered Species Act. The population of harbor seals may be only 15% of its 1970s level. Bering Sea populations of pelagic seabirds such as murres and kittiwakes are also exhibiting significant declines. Some contend that these declines are due to a lack of food caused by overfishing of walleye pollock upon which these marine mammals and seabirds depend. Others believe that these changes are due to other factors, including natural cycles in productivity mediated by climate, entanglement in abandoned nets and other debris, shooting by fishermen, pollution, and disease.

Ecological Applications
Vol. 6, No. 3

to reconstruct landscapes to some historical condition (say, as described by an early naturalist such as William Bartram) or alternately to simulate a natural or historic condition or process with current management. Restoration projects rely on historical models of some type. However, for ecosystem management it is important to recognize that any point in time is a single frame in a very long movie. Returning to a specified historic condition may not be possible; rather, a more sensible goal may be to restore natural disturbance regimes, hydrology, and other ecological processes (Noss 1985) that maintain biological elements of interest. Reconstructions of presettlement vegetation or studies of remaining natural areas in the region are essential for restoration projects based either on pattern- or process-oriented goals.

Given the dependency of heavily managed ecosystems on subsidies from less intensively managed systems, protection of natural areas in reserves is an essential component of an overall ecosystem management plan. A broad range of experimental treatments and corresponding control areas will be needed to answer many of the most important scientific questions related to ecosystem management.

The goal of preserving an area in its "natural" state presents significant challenges to the process of ecosystem management. The long and ubiquitous influence of human activities has both muddled our ability to define what is natural and greatly complicated the task of restoring and maintaining natural ecosystems. The combination of human-caused impacts (e.g., air pollution, fire suppression, introduction of alien species, or habitat fragmentation) and natural environmental change has altered ecological systems to the point that the composition, structure, and processes characterizing the "naturalness" of the area must often be first restored (White and Bratton 1980, Jordan et al. 1987). In many cases the best we can hope for is an approximation of naturalness that minimizes the influences of human activities.

Science as a Model for Ecosystem Management

The greatest triumph of a scientist is the crucial experiment that shatters certainties of the past and opens up new pastures of ignorance . . .
William D. Ruckelshaus

What do you mean you don't know how many acid lakes there are? William D. Ruckelshaus

The acknowledgment of uncertainty is the basis for adaptive management (Holling 1978, Walters 1986, Lee 1993). Given that we still have much to learn about the behavior of ecosystems, science is, in fact, the most appropriate model for the adaptive management of ecosystems.

At root, science is little more than honest question-asking that considers all knowledge provisional and open to discussion. Hypotheses based on specific expectations derived from models of how the world works are tested by observations or experiments that acknowledge the limitations of bias and precision. In some cases our models of how the world works are refined or reinforced; in others they are proven to be inadequate and are replaced.

Managers, as well as those they serve, must accept that knowledge and modes of understanding related to ecosystem function and best management practice are provisional and subject to change with new information. In this context, management goals, protocols, and directives should be viewed as hypotheses of ways to achieve clearly stated operational goals. Monitoring programs then represent specialized kinds of research programs designed to test the hypothesis that current management will achieve the desired goals (Peterson 1993).

Goals and expectations

Often, the overarching goal in management is the sustained provision of many goods and services. For example, goals for a large forested ecosystem might include fiber production, water provision or control, hunting and fishing, recreation, and preservation of biological diversity. As a prerequisite for adaptive management, such broadly stated goals must be translated into specific operational objectives and expectations. The phrase "desired future condition" has been widely used in literature as a euphemism for such operational objectives, although, given the dynamic character of ecosystems, "desired future behavior" might better capture the objectives. Thus, to determine whether management activities are leading toward desired goals in our hypothetical forest ecosystem, expectations might be expressed in terms of forest productivity or age-class distribution, water flows, wildlife population sizes, human visitation, and status of rare and endangered species, respectively. It is essential that such expectations be stated in terms that relate to specific measurements that can be incorporated into monitoring programs.

Objectives and expectations should not be stated solely in terms of the management activities themselves. For example, where a natural disturbance must be simulated such as with prescribed fire, the management program should not have as its sole goal the reintroduction or maintenance of disturbance in the ecosystem. Rather, the implementation of a prescribed fire program should lead to specific expectations with respect to key ecosystem properties and processes such as biological diversity, nutrient availability, species recruitment, etc. (Christensen et al. 1989).

Models

Knowing exactly what to expect from complex systems is a nontrivial challenge, and models are essential to meeting this challenge. Models may take the form

of simple compartment diagrams that provide a means of organizing information or expressing connections and relationships, or they may be developed as complex computer simulations that allow us to depict processes operating through time and across landscapes.

It is not possible to design monitoring programs to measure the dynamics of every species and ecosystem process. Models can be useful in identifying particularly sensitive ecosystem components or in setting brackets around expectations for the behavior of particular processes. They can be especially useful in identifying indices and indicators that provide a measure of the behavior of a broad suite of ecosystem properties. Finally, models often provide useful tools for exploring alternative courses of action (Lee 1993).

Modeling is often criticized because of its blatant attempt to simplify the complexity inherent in ecosystems, but that is indeed its virtue. Lee (1993) characterized models as "indispensable and always wrong." He goes on to say,

> *predictions of [ecosystem] behavior are . . . incomplete and often incorrect. These facts do not decrease the value of models, but they do make it clear that ecosystem models are not at all like engineering models of bridges or oil refineries. Models of natural systems are rarely that precise or reliable. Their usefulness comes from their ability to pursue the assumptions made by humans—assumptions with qualitative implications that human perception cannot always detect.*

Monitoring

Monitoring refers here to data gathering and analysis focused on management expectations and designed to test the success and efficacy of management actions. Within the framework of ecosystem management, monitoring programs should be designed to determine whether management actions are moving the ecosystem toward desired future conditions and trajectories, i.e., toward goals and expectations.

Monitoring programs should be based on accepted rigorous statistical sampling designs and pay particular attention to issues of precision and bias in data gathering. Nevertheless, true replication of measurements is often impossible and in some cases sample sizes are necessarily small. Bias in data gathering is often unavoidable owing to patterns of ownership, accessibility of areas, or limited sampling techniques. These limitations are not an excuse not to establish monitoring programs, but they should be reflected in any conclusions regarding the effectiveness of management actions (Holling 1978, Walters 1986).

The design, development, and maintenance of monitoring programs requires commitment and long-term vision. In the short term, such programs represent an additional cost and are particularly hard to maintain where personnel are not necessarily permanent. In some cases, necessary measurements can be quite costly. However, it is also true that monitoring can provide a basis for understanding the costs of particular management interventions. The scientific community has much to contribute to the development of programs that will maximize information return relevant to specific management goals while minimizing costs.

We do not currently have adequate monitoring programs to assess regional ecological conditions. The Environmental Protection Agency's (EPA) Environmental Monitoring and Assessment Program (EMAP), United States Geological Survey's (USGS) National Stream Quality Accounting Network (NASQAN), and the National Oceanic and Atmospheric Administration's (NOAA) Coast Watch are aimed in the right direction. However, the overall lack of consistent support for long-term monitoring will continue to hinder progressive ecosystem management.

A decision to continue, modify, or abandon a management strategy is conditioned by perceptions of the magnitude of consequences if we are wrong, as well as value systems associated with those consequences. Within the framework of ecosystem management, we must focus on decisions that present the greatest risk to long-term sustainability.

Data management and timely feedback

Enormous amounts of ecosystem data are gathered by a wide variety of private and public resource managers, but complaints of inaccessibility and incompatibility are common. Standards for data gathering are better developed in some areas (e.g., hydrology and climate) and nonexistent in others (e.g., biological diversity). Furthermore, it is too often the case that budget limitations, institutional structures, or personnel changes result in the loss of valuable information.

Advances in computer networking and information storage now provide the means to organize, access, and distribute large quantities of data. Institutional structures should guarantee that such information is fed back to managers in a timely fashion and in a form that is directly relevant and accessible to their management activities.

Research

There is much that we do not know or understand about the structure and functioning of ecosystems. Feedback from adaptive management will certainly reduce our level of ignorance, but research focused on a more detailed understanding of ecosystem processes is critical. Research programs driven solely by the immediate needs of management risk overlooking new insights and opportunities. However, programs that are innocent of an understanding of public concerns and priorities risk being irrelevant.

Scientists should not labor under the illusion that management is limited simply by the supply of data or that communication is a unilateral problem of infor-

mation flow to managers. There is a large array of potentially interesting problems that the research community might wish to tackle, but only a considerably smaller subset of that array is relevant to compelling management questions. Open lines of communication between managers and researchers are critical to the setting of priorities for specific research needs.

Education

There is clearly a need for additional education if successful adaptive management systems are to be developed. Managers have much to learn with regard to the setting of goals and expectations, monitoring, and data handling, and scientists require greater understanding of the priorities of and challenges to ecosystem managers. However, public education is critical. The limited public understanding of how science is done, much less the nuances of specific scientific issues, present special challenges to adaptive management. Public expectations of both managers and scientists are often unrealistically high, a situation that is sometimes fostered by actions and statements of managers and scientists. It will be unlikely that society will accept "science as a model for ecosystem management" in the absence of a clearer understanding of the importance of uncertainty to both science and management.

Implementing Ecosystem Management

Clearly, ecosystem management requires application of ecological science to natural resource actions. Moving from concepts to practice is a daunting challenge and will certainly require the following steps and actions.

Defining sustainable goals and objectives

Critics argue that ecosystem management is little more than a collection of strategies aimed at reducing extractive use of natural resources and preserving natural ecosystems. Although maintaining biological diversity and establishment of wilderness preserves may be important strategies in an ecosystem management plan, and in some areas maintenance of natural systems may be a central goal, ecosystem management should be seen as the collection of protocols and actions that allow us to deliver the essential goods and services of ecosystems in perpetuity. Ecosystem management does not deny the need or wish to harvest fiber from our forests, fish from our coastal waters or lakes, or energy from rivers and streams. It simply confronts the reality that in order to meet these needs or wants sustainably, we must value our ecosystems for more than just economically important goods and services. Given the reality of human population growth and increasing demands for ecosystem goods and services, the issue of sustainable management is especially compelling.

Only a small minority would consciously advocate policies or activities that would diminish the capacity of ecosystems to provide, at levels that we enjoy today, goods and services to future generations. Indeed, sustained capacity and potential are legally mandated requirements for most public agencies charged with the stewardship of natural resources. What we have learned is that, however good our intentions, management that focuses on commodity resources alone, that does not acknowledge the importance of diversity and complexity, that is not aware of influences of and impacts on surrounding areas, and that concerns itself with short time frames, is not likely to be sustainable in the long term.

Sustainable strategies for the provision of ecosystem goods and services cannot take as their starting points statements of need or want such as mandated timber supply, water demand, or arbitrarily set harvests of shrimp or fish. Rather, sustainability must be the primary objective, and levels of commodity and amenity provision adjusted to meet that goal.

Reconciling spatial scales

Implementation of ecosystem management would be greatly simplified if the spatial scales and borders of management jurisdictions were congruent with the behavior of processes central to sustained ecosystem functioning. This is rarely the case for ecological processes, and, given the variation in spatial domain among processes, a perfect fit for all processes simultaneously is virtually impossible. Thus, reconciliation of objectives and actions of the various stakeholders within the domain of an ecosystem must be a central element in implementation of sustainable management strategies. "Because ecosystems exist at several geographic scales, so, too, should efforts to coordinate activities that affect them" (Government Accounting Office 1994).

In some cases, stakeholders may be identified by simply matching maps of ownership with the appropriate ecosystem boundaries, such as the domain of a watershed. More often, stakeholders also include parties who have no title or legal jurisdiction, but are dependent on or have an interest in the goods and services provided by an ecosystem. For example, communities dependent on clean water delivered from a watershed are obvious stakeholders in the management of that watershed. In other situations, such as the management of old-growth forests in the Pacific Northwest or populations of marine mammals in coastal waters, the network of stakeholders is very complex. People who may never visit a Douglas-fir–hemlock forest or see a humpback whale nevertheless have strong commitments to their conservation as evidenced by a willingness to support nongovernmental organizations focused on these issues. They too are undeniably stakeholders.

This committee was not charged with exploring the intricacies of strategies for identifying stakeholders and reconciling conflicts among their interests and objec-

tives. Nevertheless, we do recognize this as one of the greatest challenges to implementation of ecosystem management, and that the success of any ecosystem management plan depends on the identification and involvement of stakeholders "up front" in the planning process. There is a growing literature on the theory and practice of conflict resolution (see, for example, Lee 1993) and a growing number of case studies where ecosystem management strategies have been implemented despite complex patterns of jurisdiction and a multiplicity of competing interests (Box 10).

Reconciling temporal scales

Ecosystem management must deal with time scales that transcend human lifetimes and almost certainly exceed the timelines for other political, social and economic agendas. Public and private management agencies are often forced to make fiscal year decisions about resources whose behavior is better measured in centuries. Given sufficient time and space, unexpected events are certain to happen: however, managers are rarely prepared for such surprises.

To implement ecosystem management, we must develop strategies that incorporate long-term planning and commitment, while recognizing the need to make short-term decisions. Ecosystem management is not an antidote for surprise; rather, it is an approach to management that acknowledges that unlikely events do happen (Holling 1993).

Making the system adaptable and accountable

Successful ecosystem management depends on institutions that are adaptable to variations and changes in ecosystem characteristics, as well as to changes in our knowledge base. Ecosystem managers must acknowledge ignorance and uncertainty, and adaptive management must be an integral component of ecosystem management implementation. As indicated above, managers must recognize that knowledge and understanding are provisional and see their activities as experimental.

To argue that management should be viewed as experimental is not to advocate capricious implementation of untried or avante garde actions. It is rather to acknowledge the limits of our understanding of the consequences of even conventional management procedures to the complex array of ecosystem components and processes necessary for sustained function. Lee (1993) outlines a number of institutional conditions that affect the implementation of experimental approaches to management. Decision-makers must be committed to improving outcomes over biological time scales, be aware of the experimental nature of management, and be willing to accept the risk of perceived failures. To do this, managers and decision-makers must have the understanding of stakeholders and a mandate for action in the face of uncertainty. Managers who profess certain knowledge engender like expec-

Box 10. Ecosystem management of the Great Barrier Reef, Australia. Coral reef ecosystems have long been treasured by both ecologists and the general public for their biodiversity, complexity, and beauty (Darwin 1842, Connell 1978). The primary economic value of these ecosystems has traditionally been the opportunities they afford for observation and recreation. However, in recent years, increased consumptive uses of coral reef ecosystems and various polluting activities on land have created the potential for destroying their integrity and diminishing the services they provide. The Great Barrier Reef Marine Park Authority has developed a model ecosystem management plan to protect one of the world's most diverse coral reefs (Kelleher and Kenchington 1992).

The Great Barrier Reef Marine Park is not a National Park, but rather a protected area managed for multiple uses, with integrated oversight by the Great Barrier Reef Marine Park Authority (GBRMPA). Zoning is the tool used to allow, yet separate, conflicting usages. A few activities such as oil and gas exploration, minerals mining, littering, spearfishing by scuba, and taking of some larger fishes, are prohibited throughout the Park. Three main zones are identified: (1) preservation zones, where only strictly controlled scientific research is allowed; (2) marine national park zones, where permitted uses are scientific, educational, and recreational; and (3) general-use zones, where various uses are permitted including recreational and commercial fishing using practices compatible with the maintenance of ecosystem integrity. In addition, smaller, special-use zones are designated to protect critical breeding or nesting sites, or to provide important protection for natural areas or research. To cope with increases in ecotourism on the reef a special tourist strategy has been adopted to allow viewing of the natural reef free of the impacts of fishing, but restricting floating structures to specific areas.

Ecologically sustainable utilization is the core principle of the GBRMPA. Public involvement and education are critical to this ecosystem management plan which emphasizes public accountability, efficiency of operation, minimization of regulation, adaptability to changing circumstances, and scientific credibility. Preservation zones provide the "touchstone" for evaluation of patterns of change in overall ecosystem behavior.

tations from the public and justified condemnation when policies fail or actions result in surprises.

Changes in organizational cultures and commitments will be critical to the implementation of adaptive management (Lee 1993). Resources must be sufficient to implement appropriate monitoring systems, some of which may require measurements at very large scales. Furthermore, there must be sufficient institutional stability and sustained commitment to measure long-term outcomes. Monitoring and research programs are likely to add significant costs to management in many cases and their added value may not be realized in the short term.

Institutional cultures must encourage learning from experience and research. Enhanced communication among scientists, managers, and decision makers is essential. There is a clear need for partnerships between the scientific and management communities (Likens 1992).

The role of scientists in ecosystem management

"Science as a model for ecosystem management" is unlikely to become reality unless scientists are involved with managers and the public in adaptive management processes. Clearly ecological science is critical to the development and refinement of models necessary for effective management. But, this is not simply a matter of unilateral information flow—scientists telling managers what is important. Although management is starved for information, its needs are often quite particular. Communication must flow in both directions and become an iterative dialogue, and the scientific community must understand what pieces of information are critical and be willing to prioritize its research accordingly.

Scientists have much to offer in the development of monitoring programs. They can assist in the development of sampling approaches and statistical analyses that will increase precision and minimize bias. Models can help in the identification of key indices of ecosystem functioning that can reduce monitoring costs. Scientists have much to gain from assisting in this area. Although monitoring efforts may not be designed to address basic research questions, it is the case that such data sets have provided a wellspring of long-term information to research.

Delivering a refereed journal publication to a manager's desk is not sufficient if we wish our best science to move quickly into management application. We must develop improved means to communicate effectively and clearly the results of management experiments, as well as basic research. This will call for more professionals with an understanding of the scientific, management, and social issues, and the ability to communicate with scientists, managers, and the public. The need for adaptive management is certainly a persuasive argument for a continuous training philosophy aimed at achieving effective dialogue between managers and researchers as our needs and knowledge base change.

Epilogue

Lore to the contrary, it might be argued that natural resource management was in fact the first of human professions. The successes and failures of human societies on this planet have been and will continue to be inextricably linked to cycles of resource use and ecological change.

If the creator were a corporate manager, he or she might well pose the question, "has human management added value to the earth?" From a purely human perspective, the reply would likely be an emphatic yes. After all, there are now 5.5 billion of us.

But, any corporate manager knows that, when inventories are depleted and the physical plant is allowed to deteriorate, it is possible to make money in the short term while watching your net worth waste away. Such is the road to bankruptcy. Businesses routinely make decisions with short-term costs, but obvious benefits to their long-term sustainability.

This metaphor captures the sense of intergenerational equity and the stewardship responsibilities that are central to an ecosystem management philosophy. Ecosystem management is the ecological analog to the economic stewardship of a trust or endowment dedicated to benefit all generations.

Ecosystem management is not a rejection of the anthropocentric for a totally biocentric world view. Rather, it is management that acknowledges the importance of humans needs while at the same time confronting the reality that the capacity of our world to meet those needs in perpetuity has limits and depends on the functioning of ecosystems.

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APPENDIX 1

Legislation as a Driver for Ecosystem Management on Federal Lands

In the United States, much of the impetus for ecosystem management has come from legislation implemented over the past few decades to regulate and mitigate environmental impacts. While many laws specifically addressed activities on Federal lands, a significant number dealt with all lands and resources.

The Wilderness Act (1964) and Wild and Scenic Rivers Act (1968) addressed the need by the public for "an area where the earth and community of life are untrammeled by man—where man himself is a visitor who does not remain." Areas created by these special designations and set-asides, similar to National Parks, are an attempt to isolate unique resources from development or intrusion, with the assumption such isolation will preserve and protect.

In addition to laws focusing on specific resources, other laws were enacted which cut across multiple ownerships and which addressed overall quality of the environment. **The Clean Water and Clean Air Acts**, although initially authorized in the late 1940s and early 1950s, underwent substantial revision in the 1970s, 1980s and 1990s, in order to address emerging issues. In these acts, the public exerted its right to "protect its (the public's) interest in values which are not a part of property title . . . but which can be harmed by the actions of the landowner" (Society of American Foresters 1993).

The most significant piece of legislation during this period of time may be the **National Environmental Policy Act** (NEPA, 1969), which fully acknowledges the tension between growing demands for natural resources and the ability to sustain those resources in its entreaty to ". . . encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate

83

damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the nation; and to establish a Council on Environmental Quality." NEPA only applies to federal lands and actions significantly affecting the environment, in contrast to the Endangered Species Act (ESA, 1973), which refers to all lands and management activities. The ESA brings forward the idea of ecosystem conservation in order to protect species and "encourages the States and other interested parties . . . to develop and maintain conservation programs."

While the ESA does acknowledge the importance of ecosystems, in reality, efforts have focused on individual species, rather then developing strategies for the ecosystems within which these species survive. This is not an indictment of the process, but a recognition that ecosystem complexity was too great to address under normal regulatory processes. By the 1990s, the large number of plants and animals listed as threatened or endangered is forcing us to develop conservation strategies within an ecosystem context. For example, strategies to address Pacific salmon stocks are incorporating watershed management. Recent events in the Pacific Northwest reflect the next step in the evolution of integrated resource management in which entire ecosystems are managed as integrated units that include individual species.

APPENDIX 2

Ecosystem Representation as a Conservation Goal

Ecosystem management, as an experimental and adaptive process, requires that examples of various kinds of ecosystems be protected as benchmarks or control areas for comparison to manipulated sites. Only then can effects of management practices be separated from natural processes. Thus, the familiar conservation goal of representing all ecosystem types in protected areas takes on a new urgency.

Representation is one of the most widely accepted goals of conservation. Early efforts to identify and preserve a broad spectrum of natural communities in North America were led by the Committee on the Preservation of Natural Conditions of the Ecological Society of America. In 1926, the Committee published the *Naturalist's Guide to the Americas* (Shelford 1926), a description of biomes and their remaining natural areas. This committee evolved into a separate organization, the Ecologists' Union, which became The Nature Conservancy in 1950. Another committee of the Ecological Society of America, the Committee for the Study of Plant and Animal Communities, assessed the adequacy of protection of ecosystems in three classes of nature sanctuaries, with the highest class being fully protected areas, with virgin vegetation and large enough to contain all the animal species in self-maintaining populations historically known to have occurred in the area (Shelford 1933, Kendeigh et al. 1950–1951).

Most strategies for representing ecosystems have had to be content with smaller natural areas that harbor less than complete biological communities (e.g., no large predators). Much of this effort has been led by The Nature Conservancy, by state natural areas programs, and by a professional society, The Natural Areas Association. The Nature Conservancy has called its community-level conservation strategy a "coarse filter" (Noss 1987) and has estimated that 85–90% of species can be protected by conserving examples of natural communities, without having to inventory and manage each species individually. This interesting idea seems reasonable but has not been tested empirically. A potentially serious limitation of the coarse filter or any representation strategy based on vegetation is that natural communities are not stable; they change as species respond more or less independently to environmental gradients in space and time. For instance, when climate changes, species track shifting habitat conditions at different rates determined by their dispersal capacities and other aspects of autecology (Davis 1981, Graham 1986).

Given the instability of natural communities, one sensible way to represent biodiversity at the ecosystem level is to maintain the full array of physical habitats and environmental gradients in an interconnected network of reserves (Noss 1987, 1992, Hunter et al. 1988). The Canadian Council on Ecological Areas is conducting an "Ecoregion Gap Analysis" (unpublished reports) to assess representation of "enduring features" defined by slope position, topography, soil type, bedrock geology, and other abiotic variables within each classified ecoregion. Gaps in representation of habitats defined in this way would become priorities for protection. The U.S. Fish and Wildlife Service Gap Analysis, in contrast, is based mainly on maps of existing vegetation as determined by remote sensing. Vegetation usually provides a good surrogate for the rest of biodiversity in the short term (Scott et al. 1993). A comparison of gap analysis results based alternately on vegetation and abiotic variables would be instructive.

Practical advantages of a coarse filter include efficiency and cost-effectiveness (it is easier to deal with dozens or even hundreds of ecosystem types than thousands or millions of species) and the assumed ability to protect species we know nothing about and could not begin to inventory individually. Furthermore, a coarse filter can be applied at any level of classification hierarchy. Unfortunately, no accepted classification of communities or ecosystems exists for the United States. Ecosystems are more difficult to classify than species. At which level of classification hierarchy should natural communities be recognized, inventoried, and protected? In California, for example, should we recognize 52 wildlife habitat types (Mayer and Laudenslayer 1988), 375 natural communities (Holland 1987), or something in between? Because ecosystems at any level of classification can become endangered (Noss et al., *in press*), a hierarchical classification with cross-walks to other classifications is needed. The classification used in a particular case will depend on which level of hierarchy works best for the spatial scale or level of detail desired. The Nature Conservancy is developing a hierarchical classification of vegetation consistent with a global UNESCO framework and has completed a preliminary series-level (i.e., dominant plant species) classification for the western U.S. (Bourgeron and Engelking 1992).

Endangered ecosystems

The biodiversity crisis involves more than the endangerment and extinction of individual species. It also involves the loss and degradation of habitats, species assemblages, and natural processes. Such losses represent biotic impoverishment at an ecosystem level of organization. Loss of biodiversity at the ecosystem level has been most severe in the temperate zone because this region has been so intensively settled and exploited by people. As natural ecosystems decline in area or are degraded in structure, function, or composition, the species associated with them also decline—hence, an ever-expanding list of endangered species. Protecting and restoring endangered ecosystems may be a more efficient way to protect rare species than managing them one by one. The associated strategy of representation takes this idea one step further by securing viable examples of all ecosystem types in a network of protected areas.

A recent U.S. Fish and Wildlife Service report (Noss et al. 1995), reviewed and synthesized data on endangered eco-

TABLE A1. Critically endangered, endangered, and threatened ecosystems of the United States. Decline, refers to outright destruction, conversion to other land uses, or significant degradation of ecological structure, function, or composition since European settlement. Estimates based on quantitative studies and qualitative assessments (see Noss et al. 1995 for references and discussion).

Critically endangered (>98% decline)

- Old-growth and other virgin stands in the eastern deciduous forest biome
- Spruce–fir forest in the southern Appalachians
- Red and white pine forests (mature and old-growth) in Michigan
- Longleaf pine forests and savannas in the Southeastern Coastal Plain
- Pine rockland habitat in South Florida
- Loblolly/shortleaf pine–hardwood forests in the West Gulf Coastal Plain
- *Arundinaria gigantea* canebrakes in Southeast
- Tallgrass prairie east of Missouri River and on mesic sites across range
- Bluegrass savanna–woodland and prairies in Kentucky
- Black Belt prairies in Alabama and Mississippi and Jackson Prairie in Mississippi
- Oak savanna in Midwest
- Wet and mesic coastal prairies in Louisiana
- Lakeplain wet prairie in Michigan
- Sedge meadows in Wisconsin
- Hempstead Plains grasslands on Long Island, New York
- Serpentine barrens, maritime heathland, and pitch pine–heath barrens in New York
- Coastal rocky headlands in New Hampshire
- Prairies (all types) and oak savannas in Willamette Valley and foothills of Coast Range, Oregon
- Palouse prairie (Washington, Oregon, and Idaho, plus similar communities in Montana)
- Native grasslands (all types) in California
- Alkali sink scrub in southern California
- Coastal strand in southern California
- Ungrazed sagebrush steppe in Intermountain West
- Basin big sagebrush in Snake River Plain of Idaho
- Atlantic white cedar stands in the Great Dismal Swamp of Virginia and North Carolina, and possibly across entire range
- Streams in Mississippi Alluvial Plain

Endangered (85–98% decline)

- Old-growth and other virgin forests in regions and states other than those listed above, except Alaska
- Mesic limestone forest and barrier island beaches in Maryland
- Coastal plain Atlantic white cedar swamp, maritime oak–holly forest, maritime red cedar forest, marl fen, marl pond shore, and oak openings in New York
- Coastal heathland in southern New England and Long Island
- Pine–oak–heath sandplain woods and lake sand beach in Vermont
- Floodplain forests in New Hampshire
- Red spruce forests in central Appalachians (West Virginia)
- Upland hardwoods in the Coastal Plain of Tennessee
- Lowland forest in southeastern Missouri
- High-quality oak–hickory forest on the Cumberland Plateau and Highland Rim of Tennessee
- Limestone cedar glades in Tennessee
- Wet longleaf pine savanna and eastern upland longleaf pine forest in Louisiana
- Calcareous prairie, Fleming glade, shortleaf pine/oak–hickory forest, mixed-hardwood–loblolly pine forest, eastern xeric sandhill woodland, and stream terrace sandy woodland/savanna in Louisiana

TABLE A1. Continued.

- Slash pine forests in southwestern Florida
- Red and white pine forests in Minnesota
- Coastal redwood forests (California)
- Riparian forests in California, Arizona, New Mexico
- Coastal sage scrub (especially maritime) and coastal mixed chaparral in Southern California
- Dry forest on main islands of Hawaii
- Native habitats of all kinds in lower delta of Rio Grande River, Texas
- Tallgrass prairie (all types combined)
- Native shrub and grassland steppe in Oregon and Washington
- Low elevation grasslands in Montana
- Gulf Coast pitcher plant bogs
- Pocosins (evergreen shrub bogs) and ultramafic soligenous wetlands in Virginia
- Mountain bogs (Southern Appalachian bogs and Swamp forest–bog complex) in Tennessee and North Carolina
- Upland wetlands on the Highland Rim of Tennessee
- Saline wetlands in eastern Nebraska
- Wetlands (all types combined) in south-central Nebraska, Missouri, Iowa, Illinois, Indiana, Ohio, California
- Marshes in Carson–Truckee area of western Nevada
- Low elevation wetlands in Idaho
- Woody hardwood draws, glacial pothole ponds, and peatlands in Montana
- Vernal pools in Central Valley and Southern California
- Marshes in Coos Bay area of Oregon
- Freshwater marsh and coastal salt marsh in Southern California
- Seasonal wetlands of San Francisco Bay, California
- Large streams and rivers in all major regions
- Aquatic mussel beds in Tennessee
- Submersed aquatic vegetation in Chesapeake Bay, Maryland and Virginia
- Mangrove swamps and salt marsh along the Indian River Lagoon, Florida
- Seagrass meadows in Galveston Bay, Texas

Threatened (70–84% decline)

- Riparian forests nationwide (other than in regions listed above), including southern bottomland hardwood forests
- Xeric habitats (scrub, scrubby flatwoods, sandhills) on Lake Wales Ridge, Florida
- Tropical hardwood hammocks on central Florida keys
- Alvar grassland, calcareous pavement barrens, dwarf pine ridges, mountain spruce–fir forest, inland Atlantic white cedarswamp, freshwater tidal swamp, inland salt marsh, patterned peatland, perched bog, pitch pine–blueberry peat swamp, coastal plain poor fens, rich graminoid fen, rich sloping fen, and riverside ice meadow in New York
- Saline prairie, western upland longleaf pine forest, live oak–pine–magnolia forest, western xeric sandhill woodland, slash pine–pond cypress/hardwood forest, wet and mesic spruce pine–hardwood flatwoods, wet mixed hardwood–loblolly pine flatwoods, and flatwoods ponds in Louisiana
- Northern hardwood forest, aspen parkland, and jack pine forests in Minnesota
- Old-growth ponderosa pine forests in northern Rocky Mountains, Intermountain West, and eastern Cascades Mountains
- Maritime-like forests in Clearwater Basin of Idaho
- Woodland and chaparral on Santa Catalina Island
- Southern tamarack swamp in Michigan
- Wetlands (all kinds) in Connecticut, Maryland, Arkansas, Kentucky
- Marshes in Puget Sound region, Washington
- Cienegas (marshes) in Arizona
- Coastal wetlands in California

systems in the United States. Ecosystems were defined generally and included vegetation types, plant associations, natural communities, and habitats defined by floristics, structure, age, geography, condition, and other ecologically relevant factors. Data were variable in quality, but for each ecosystem type, the most reliable and recent estimates of loss or degradation were cited. All estimates of ecosystem losses >50% are reported, as well as some other documented losses (for example, of wetlands) of <50% for comparison.

Noss et al. (1995) identified those ecosystems at greatest risk. Grasslands and savannas stand out in the top category of "critically endangered," but in the larger list wetlands and forests appear just as imperiled. Aquatic and nearshore marine systems, though underrepresented in terms of number of "types" imperiled, have been seriously degraded throughout the nation. For example, 81% of fish communities nationwide are adversely affected by human activities and 98% of streams are degraded enough to be unworthy of federal designation as wild or scenic rivers (see references in Noss et al. 1995). Losses of all kinds of ecosystems have been most severe in the South, Northeast, Midwest, and California, but no region of the U.S. has escaped damage.

Endangered and threatened ecosystems have declined to their present condition because no comprehensive program to conserve ecosystems has been in place in the United States. Ecosystem management can contribute to ecosystem conservation if it places high priority on identifying and mapping ecosystem types that have declined greatly in extent or quality, then puts in place programs to protect and restore these types. Many scientists have suggested that some kind of "endangered ecosystems act" or similar legislation may be needed to achieve ecosystem conservation in the U.S. (Ehrlich and Ehrlich 1986, Noss and Harris 1986, Hunt 1989, Orians 1993).

84 MCFETRIDGE, SAVE OUR FORESTS AND RANCHLANDS, 10/29/96

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84(a) Comment noted.

84(b) The General Plan is atop the hierarchy of local government law regulating land use. The California Supreme Court has described the General Plan as a "charter for future development," Lesher Communications Inc. v. City of Walnut Creek (1990) 52 C3d 531. The MSCP is subject to both federal NEPA requirements and State CEQA review processes. The MSCP Plan is being developed to obtain state and federal take authorizations for covered species, thereby allowing the County to integrate compliance with the state and federal Endangered Species Acts into the local land use approval processes. The Covered Species List was formulated based on the types and amounts of habitat being conserved within the preserve. See also **Theme Responses I, Species Analysis Approach, and XXIV, No Surprises.**

84(c) Comment noted.

84(d) Comment noted.

84(e) The EIR/EIS for the MSCP Plan evaluates the MSCP Plan's impacts, both direct and indirect, including those on scenic, watershed, dark sky, agriculture, etc. It is not the County's intention to amend the General Plan to incorporate the MSCP within that document nor is it legally required to be incorporated in the General Plan. The MSCP Plan is not a land use action that is derivative of, or required to be consistent, with the General Plan, nor is it necessary to amend the County's General Plan to implement the MSCP Plan or County Subarea Plan.

84(f) The comment has accurately quoted sections of the Government Code and referenced cases.

84(g) The MSCP Plan is being developed to obtain state and federal take authorizations for covered species, thereby allowing the County to integrate compliance with the state and federal Endangered Species Acts into the local land use approval processes. The County of San Diego's General Plan is legally adequate. The 20 Agricultural Preserve Land Use designation of the Land Use Element and the Conservation and Open Space Elements are presently being revised to remedy the defects identified in the case challenging General Plan Amendment 94-01 and this issue is beyond the scope of the MSCP EIR/EIS. Also see response to Comment 84(e).

84(h) Comment noted.

84(i) Comment noted.

84(j) Comment noted.

84(k) See response to Comment 84(g).

84(l) See response to Comment 84(g).

84(m) See response to Comment 84(g).

84(n) See responses to Comments 84(e) and 84(g).

84(o) Consistency with the County's General Plan is not required in order for the County to adopt and implement the MSCP Plan and County Subarea Plan. Challenges to a General Plan based on consistency must be based on a statutory requirement for consistency.

84(p) See responses to Comments 84(e), 84(g), and 84(o).

84(q) See responses to Comments 84(e), 84(g), and 84(o).

84(r) See responses to Comments 84(e), 84(g), and 84(o).

84(s) Comment noted.

84(t) The Draft EIR/EIS provides a full review and analysis of the proposed MSCP Plan and alternatives. The document fully discloses to the public the environmental impacts of the proposed actions addressed in the document. Please refer also to responses to Comments 84(v), 84(w), 84(ah), 84(ai), 84(aj), 84(ak), and 84(al).

84(u) Section 3.3.1 of the MSCP Plan, Volume I, page 3-23, discusses the additions to the Covered Species List from the 1995 Public Review Draft to the current Plan. The factors discussed in this section that resulted in additions to the list are: 1) federal and state policy clarifications, 2) changes in preserve design, 3) evaluation of additional species, and 4) new information, including species location, additional mitigation measures, taxonomic issues, etc. See **Theme Response I, Species Analysis Approach and XI, Scientific Review Adequacy.**

84(v) The environmental setting of the project is described in detail on pages 3-1 through 3-56, Section 3.0, Affected Environment. Existing agricultural resources are described and illustrated on pages 3-7 through 3-12. Watersheds within the MSCP study area are described and illustrated on pages 2-13 through 2-15.

Relevant planning documents affecting the MSCP planning process are described on pages 3-13 through 3-29 of the Draft EIR/EIS. The first issue in the land use analysis (Section 4.2 of the Draft EIR/EIS) poses the question: "Would the proposed project result in a use which is inconsistent with

the General Plan or Community Plans within the study area and existing environmental plans of member cities and County, participating agencies, or other policy mandates, including propositions?" The analysis of this issue statement, presented on pages 4.2-1 through 4.2- 4, and 4.2-12 through 4.2-54 for the proposed MHPA and Subarea Plans, fully identifies any inconsistencies between the proposed project and existing general plans, regional plans and relevant planning documents.

84(w) The Draft EIR/EIS fully discloses the impacts associated with the proposed actions and alternatives analyzed in the document. It does not rely on future area plans or vague monitoring programs to identify certain impacts and mitigation measures. For example, Table 4.2-1 (page 4.3- 3) of the Draft EIR/EIS, clearly quantifies that land use shifts that may occur throughout the MSCP study area with implementation of the proposed MHPA. Likewise, page 4.3-2 (page 4.3-28) of the Draft EIR/EIS, quantifies impacts to biological resources associated with the proposed MHPA and alternatives. Significant biological impacts associated with the proposed MHPA are clearly identified as impacts 4.3-MHPA-1 through 4.3-MHPA-5 on pages 4.3-150 and 4.3-151 of the Draft EIR/EIS. Measures to mitigate those impacts are clearly identified on pages 4.3-180 through 4.3-183.

84(x) The MSCP Plan does not determine if development should occur, but rather determines how a project would comply with the state and federal Endangered Species Acts should a local land use jurisdiction authorize a development project. There are no plans to amend the County General Plan to incorporate the MSCP Plan, nor is there any requirement that the General Plan be amended. Although MSCP Plan is not statutorily required to be consistent with the General Plan, there are no inconsistencies between MSCP Plan and the County General Plan. See also responses to Comments 43(b), 43(f), 43(q), and 45(w).

84(y) Existing development does necessarily pose constraints on the configuration of the preserve system; the MSCP study area is not a clean slate for preserve design. Furthermore, the first objective of the MSCP Plan stated on page 1-7 of the Draft EIR/EIS is to establish and maintain a workable balance between the preservation of natural resources and regional growth and economic prosperity. To this point, preserve design principles must be applied in a manner that is consistent with this objective, recognizing that existing development precludes certain conservation opportunities (e.g., some habitat linkages).

Impacts to the preserve from future infrastructure projects, developments, etc., were taken into consideration in the preserve design and species analysis.

84(z) The comment is noted.

84(aa) None of the goals for the MSCP Plan, Volume I, page 1-4, included the establishment of preserve that meet the stated definition "wilderness." The MSCP preserve will have some of the characteristics (as defined by the commenter) of wilderness including supporting viable, self-

reproducing genetically diverse populations of some plants and animals and its 171,000+ acres supports extensive areas of native vegetation.

The MSCP Plan, Volume I, and EIR/EIS clearly acknowledge the proposed MHPA as an urban wilderness, that is, natural habitat patches connected to each other surrounded by urban development.

84(ab) Target species were not chosen because of their legal status rather than using large-bodied species, specialized species, keystone species and highly mobile low-density species. A review of Table 4.3-1 (pages 4.3-9 - 4.3-27 of the Draft EIR/EIS) indicates that several species without legal status (other than regulated for or protected from hunting) are on the list of covered species; Canada goose, western bluebird, grasshopper sparrow, mountain lion, and southern mule deer. These species are important considerations for general biodiversity and help fill gaps where a focus on state or federally designated sensitive could result in a lack of protection for some habitats. Furthermore, many, if not most, of the species on the covered species list are habitat specialists (e.g., arroyo southwestern toad, light-footed clapper rail). Several of the plants are narrow endemics (e.g., San Diego thorn-mint, San Diego ambrosia). The covered species list does not include any keystone species (i.e., species that have a disproportionately large effect on other species in a community or ecosystem) because the current scientific data are inadequate to identify keystone species for the MSCP study area.

84(ac) It is recognized that specific edge effects have not be well studied; however, general adverse impacts, as listed by the commenter, are acknowledged and management of the preserve system would include the study and control of these effects. The MSCP Plan, Volume I, Section 6.0, Preserve Management and Reporting, addresses in detail guidelines for land uses within the preserve and preserve management activities, including issues relating to edge effects such as use of pesticides and fertilizers adjacent to preserves, fencing and lighting, and predator and exotic species control. Required habitat management plans must address these issues. See also **Theme Response XIX, Preserve Management Plans.**

84(ad) The MSCP Plan in Section 2.2 describes the habitat evaluation map, which incorporates vegetation communities, species locations, elevation, slope, soils, drainages, and other physical parameters, was used to identify important habitat linkages and corridors from a regional perspective. It was not intended to substitute for site-specific field survey data and species evaluations. The MHPA includes 75 percent of habitat areas identified as linkages between the largest habitat areas and between core areas (Draft EIR/EIS, page 4.3-21). Five linkages with undetermined development status, as described on page 4.3-219, would be subject to state and federal wetland regulations and thus some level of protection. Furthermore, on pages 4.3-233-234, the EIR/EIS explains that within the Metro-Lakeside-Jamul segment, planning guidelines contained in the Biological Mitigation Ordinance establish clear parameters for maintaining and enhancing important habitat linkages and wildlife corridors, which are summarized on page 4.3-234. The two important north-south corridors, H and I of Figure 2-2 of the MSCP Plan, Volume I, reflect the existing habitat fragmentation in this part of the study area. Section 6.3.5 of the

MSCP Plan, Volume I, page 6-8, discusses the role of restoration in preserve management and states that "Partial or complete restoration may be necessary to enhance linkages and disturbed habitats..."

84(ae) See **Theme Response II, Population Viability Analysis.**

84(af) The three keys to achieving the biological goal of the MSCP Plan are preserve and assembly, management (including adaptive management) and monitoring. The MSCP Plan, Subarea Plans and Implementing Agreements specify who each of these will be accomplished, thereby achieving the biological goal of the MSCP. See also responses to Comment 45(ai) regarding linkages. Landfills and sand and gravel extraction may occur within the MHPA but not within the preserved lands. The commenter is incorrect in the assumption that the preserve design was based on species with legal status. Several preserve designs were developed including designs based on standard conservation biology preserve design tenets and then the alternative preserve designs evaluated to determine the extent to which they provided for the conservation of various species, both listed and unlisted. The MSCP Plan is a habitat-based conservation plan, not a species-based conservation plan. Please refer also to **Theme Responses XIV, Biological Monitoring and XIX, Preserve Management.**

84(ag) It is beyond the scope of the EIR/EIS to analyze the transcripts of the court case mentioned.

84(ah) The Draft EIR/EIS does not rely on existing County ordinances to mitigate impacts associated with land use shifts associated with implementation of the MSCP Plan. As discussed in Sections 4.2 and 4.6 of the Draft EIR/EIS, implementation of the MSCP Plan would not affect the amount or rate of growth within the MSCP study area, but may result in increased densities in some areas due to shifting of land uses outside the preserve. The Draft EIR/EIS acknowledges (see pages 4.2-2 through 4.2-4, and 4.6-27 through 4.6-28, that such land use shifts could result in adverse impacts to community character and conflicts with environmental goals of relevant plans regarding provision of an orderly pattern of development. A similar analysis is presented for the County of San Diego Subarea Plan on pages 4.2-45 through 4.2-51. For the County of San Diego, the identified land use shifts are not regarded as significant and therefore no mitigation measures, including reliance on existing County ordinances, are recommended. As noted in the analysis, of the 101,268 to be potentially located within the MSCP preserve, 56% of the goal would be met primarily through voluntary contributions and pubic open space within the Lake Hodges and South County segments of the County Subarea Plan. By establishing the preserve through the approved specific plan process and public lands, land use patterns established by the County Regional Land Use Element would not be significantly affected. See also **Theme Response I, Species Analysis Approach.**

84(ai) The cumulative analysis included in Section 6.0 of the Draft EIR/EIS is adequate. A list of past, present and reasonably foreseeable projects is provided in Section 6.2 (pages 6-1 and 6-2 of the Draft EIR/EIS. Analysis of the cumulative effects of these projects is provided in Section 6.3 (pages 6-3 through 6-4).

The cumulative analysis does not rely on national forest lands as being adequately protected. The referenced comment on page 6-4 simply notes that large areas of chaparral are found on public lands in eastern San Diego County (Cleveland National Forest and BLM lands) where federal protections are in place. In no way does the cumulative analysis rely on protection of chaparral on national forest lands to support a conclusion that cumulative impacts to chaparral would either not be significant, or would be mitigated. Indeed, page 6-3 notes that cumulative impacts to chaparral habitat outside the preserve would not be significant because they would be limited to indirect effects to the portion of the habitat not occupied by sensitive species.

Page 6-4 of the Draft EIR/EIS acknowledges that intensification of land use may occur outside preserves with implementation of regional conservation programs on the cumulative projects list. This impact is not regarded as significant, however, in the context of SANDAG's projected shortfall of available land for development with or without the regional conservation programs. This conclusion does not contradict other statements in the document that impacts outside the preserve would be mitigated by existing ordinances since the Draft EIR/EIS does not rely on existing ordinances to mitigate impacts outside the preserve.

Section 6.0 focuses on cumulative effects associated with potentially significant effects analyzed in the Draft EIR/EIS, namely biological resources, land use, population/housing, and infrastructure and public services. These topics include the issues of community character and traffic circulation, which are also discussed in detail in Sections 4.2 and 4.4, respectively, of the Draft EIR/EIS. Groundwater quality was not selected for detailed analysis in the Draft EIR/EIS and this topic is discussed on pages 1-18 and 1-19 of the document.

84(aj) Growth inducement associated with the proposed project is addressed in Section 5.0 of the Draft EIR/EIS. The discussion in this section is adequate. The project does not propose any residential development, nor would it induce residential development. As stated in the Draft EIR/EIS, the project would not affect the amount or rate of growth within the MSCP study area. Intensification of land uses outside the preserve may be an indirect effect of implementation of the MSCP Plan. However, this effect is not regarded as a significant contribution to growth inducement for the reasons stated in Section 5.0 of the Draft EIR/EIS.

84(ak) The Draft EIR/EIS analyzes a full range or reasonable alternatives for both the overall MSCP Plan and the Subarea Plans, consistent with both NEPA and CEQA Guidelines. See also **Theme Response VI, Alternatives.**

It is assumed that the reference to an alternative analyzing "what would happen to open space viability if the County lived up to its own goals and policies in the General Plan," is a reference to the type of open space system that would be provided under an existing General Plan alternative. The No Action/No Project alternative analyzes such an existing conditions scenario. The analysis concludes that the amount of land conserved under such a scenario would likely be similar to that which would occur under the proposed MHPA. The configuration of open space lands would likely be

different, however, and more fragmented under such a project by project approach, rather than the regional planning approach proposed as part of the MSCP Plan.

84(al) Comment noted. The Draft EIR/EIS discussion of economic impacts focused on those issues that could potentially result in adverse environmental consequences, such as future development of housing and property tax revenues which would be used to support public services. The EIR/EIS also discusses potential impacts to agricultural lands (Section 4.2.3).

The EIR/EIS did not discuss impacts to tourism, since the project is more likely to impact tourism positively than negatively and indirect environmental consequences cannot adequately be determined. The EIR/EIS also did not address impacts to the military in San Diego, since conservation plans are separately prepared for habitat lands found on military installations. See also **Theme Response III, Economic Impacts and Impacts on Population and Housing.**

84(am) The goal of the MSCP is not to increase suburban development, but to efficiently conserve habitat. If successfully implemented, the program is also anticipated to improve the region's quality of life and reduce the costs of compliance with federal and state Endangered Species Acts. These in turn may increase development outside the MHPA, as discussed in EIR/EIS Section 4.6.3 (p. 4.6-46), but this would reduce urban sprawl and divert development away from the rural areas.

84(an) Comment noted. Please see also response to Comment 84(am).

84(ao) Comment noted.

84(ap) While the MSCP Plan was developed to meet the legal requirements of the federal Endangered Species Act, the Plan is intended to preserve the biological diversity of the MSCP Plan study area in a manner which is consistent with the NCCP Act and the Conservation Guidelines which were developed for the Coastal Sage Scrub Ecosystem. The goals of the MSCP Plan are listed on page 1-4 of the MSCP Plan, Volume I.

84(aq) Comment noted.

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SAVE OUR FOREST AND RANCHLANDS
P.O. Box 475
Descanso CA 91916
October 29, 1996

Nancy Gilbert, Senior Staff Biologist
U.S. Fish & Wildlife Service
2730 Lokar Avenue
Carlsbad CA 92008

Re: Multi-Species Conservation Program; Multi-Species Conservation Program Plan; and Environmental Impact Report/Environmental Impact Statement

Dear Ms. Gilbert:

Save Our Forest and Ranchlands ("SOFAR"), a group dedicated to the protection of watershed, wilderness, and agricultural resources in San Diego County, submits the following overview and comments on the EIR/EIS for the MSCP.

Overview. In recognition of the profound political, legal, and administrative changes involved in conceiving and implementing biodiversity or habitat protection plans that cover entire regions, which regions encompass not only diverse biotic communities, but also different land use authorities, it is necessary to begin with an overview of the political and economic interests behind the so-called Multi-Species Habitat Planning effort, a 900-square mile planning effort purporting to cover 85 endangered or sensitive species and involving some of the most expensive and desirable real estate in the nation.

It is appropriate here to recall the warning sounded by the framers of our Constitution to the threat posed by the accumulation of political power into a single agency and by the perennial attempt of special interests to undermine the public good. Given the historical domination of special interests in the area of land use planning in Southern California and the unusual concentration of authority in the MSCP planning effort, it is a legitimate question to ask whether or not the claims of the MSCP plan to represent biodiversity and public interest are really valid.

Perhaps one of the most alarming and potentially dangerous changes in the MSCP planning effort is the shift from what may be generally called a "separation of powers" in traditional land use planning towards the concentration of power in a

84(a)

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single authority. As our Forefathers warned us, the potential of abuse is proportional to the concentration of power. The MSCP plan has become especially vulnerable to abuse of political power because the drafters, implementers, and overseers of the Plan are concentrated in the same agency, i.e., Fish & Wildlife Service and the State Department of Fish & Game, and are subject to the direct influence of those with the greatest interest in the outcome of the Plan, i.e., developers.

84(a)

It is important to note that the State of California defines the General Plan as a "constitution" for all land use decisions. Within that "constitutional" framework, what may be called a "separation of powers" traditionally exists between planners, biologists, the public, and local, state, and federal environmental authority. This traditional method of planning has guaranteed the right of full public disclosure and judicial remedy. The blatant attempts by special interests to undermine state CEQA review, to institute federal "no surprise" policies, and to supplant the local land use authority gives rise to the question of whether the entire MSCP is developer-driven or a scientifically-based biodiversity plan. Questions abound concerning the scientific validity of the Plan and the fact that political rather than scientific considerations have gone into formulating the Covered Species List.

84(b)

On page 1.1, the MSCP is introduced as a comprehensive planning program linking a system of preserves together, which will provide permanent, viable habitat for at least 85 endangered, potentially endangered, or sensitive (covered species), falling under the joint jurisdiction of the U.S. Fish and Wildlife (USWF) and the California Department of Fish and Game (CDFG), two of the lead agencies of the project. One of the aims of this project is to eliminate the need of agencies empowered to protect endangered species from having to halt development projects on a piecemeal basis from destroying the habitat of a single species, i.e., the gnatcatcher. The DEIR/EIS states that project-by-project planning and species-by-species protection have been a general failure and have resulted in continued threats not only to orderly economic development, but to the general habitat of a multitude of potentially endangered species. The MSCP Plan is thus an attempt to balance economic demands of development with the demands of wildlife agencies empowered to protect endangered species.

84(c)

The current plan is, in effect, a result of a negotiating process between two antagonists: development interests that dominate local politics, and wildlife agencies that have federal and state authority to intervene in local affairs. Thus, debate over the MSCP Plan has largely been premised on the demands and limits of authority as represented by two titans: a powerful federal bureaucracy, on the one hand, and a collection of powerful developer interests on the other. The hyperbole of this contest has reached epic proportions. The hopes and fears, claims and

84(d)

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counterclaims seem to have no bounds. Supporters of the Plan, along with the press, regularly call it a "model to the nation," a final solution to all environmental problems. Opponents have called it a threat to basic rights and an unnecessary intrusion of an over-reaching of federal bureaucracy. Property interests threaten to withdraw from the program by excluding private land or conditioning their participation on assurances for adequate funding for acquisition. In some cases opponents are actively working to change federal law and undermine the power of the Endangered Species Act to mandate local standards.

What appears to be lost in this struggle between titans is the common interest of the community as ruled by its general plan, which plan is also empowered to protect all its natural resources, not just endangered species, for the common good of the entire community now and for future generations.

While recognizing that it is the specific purpose of this DEIR to solicit comments regarding the adequacy of the MSCP Preserve Plan and its alternatives, SOFAR believes it especially important to locate the MSCP Plan within the framework of the County General Plan, the ultimate authority by and in which the MSCP Plan must acquire actual legal status with respect to rights, obligations, and agreements of all concerned parties. In short, the MSCP must be evaluated not only for its adequacy to protect local endangered species, but also for its impact on the General Plan and other aspects of the environment not covered under the "umbrella" of the Endangered Species Preserve areas, i.e., scenic watershed, dark sky, agriculture, and common wildlife.

General Plan Issues

Under California law, every city and county must adopt a general plan as the "constitution" for that jurisdiction's physical development. Cal. Gov. Code §65300. A general plan must include, at a minimum, seven mandatory elements: (1) land use; (2) circulation; (3) housing; (4) conservation; (5) open space; (6) noise; and (7) safety. All other land use regulations, actions or approvals must be consistent with the jurisdiction's general plan. See e.g., *Lesher Communications, Inc. v. City of Walnut Creek*, 52 Cal.3d 531, 541 (1990) (zoning ordinance); *Friends of "B" Street v. City of Hayward*, 106 Cal.App.3d 988, 989 (1980) (public works); Cal. Gov. Code §65860 (zoning); id. §§66473.5, 66474 (subdivision approval). Because the general plan is the "constitution for all future developments" within a county, "[t]he propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements." See

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Citizens of Goleta Valley v. Board of Supervisors, 52 Cal.3d 553 (1990) ("[T]he keystone of regional planning is consistency - between the general plan, its internal elements, subordinate ordinances, and all derivative land use decisions"). 52 Cal.3d at 572-73 (citations omitted); *de Botarri v. Noreo City Council,* 171 Cal.App.3d 1204, 1212 (1985); Gov. Code § 65300.5. 84(f)

An adequate general plan is critical to the adoption of the MSCP because it is the standard against which all development in a community is assessed, and there can be no valid planning and development decisions without a valid general plan. (*Save El Toro Association* (1977) 74 Cal.App.3d 64, 73). For example, major use permits, which derive from the zoning ordinance, must be consistent with the general plan. (*Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176). As set forth below, the San Diego County General Plan does not comply with state law. Therefore, the MSCP Plan within County lands cannot be approved. 84(g)

The following is a description of General Plan elements that relate to natural resource protection as required by State law.

Conservation Element[1]

Government Code Section 65302(d): [The general plan shall include] a conservation element for the conservation, development, and utilization of natural resources including water and its hydraulic force, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals, and other ***natural resources***. That portion of the conservation element including waters shall be developed in coordination with any countywide water agency and with all district and city agencies which have developed, served, controlled or conserved water for any purpose for the county or city for which the plan is prepared. The conservation element may also cover...(3) [r]egulation of the use of land in stream channels and other areas required for the accomplishment of the conservation plan... and (5) [p]rotection of watersheds (p. 116, emphasis added).

Cities and counties have been required to have conservation elements in their general plans since December 31, 1973. Conservation element issue are perhaps even more timely today than in the early 1970's. ***Finite resources*** continue to dwindle as do those which are renewable (in the absence of proper management). At the same time California's population continues to increase and, consequently, 84(h)

[1]State of California General Plan Guidelines, Office of Planning and Research.

so does resource demand. It is therefore vital and ***mandatory*** that local governments address resource concerns in their conservation elements (p. 118, emphasis added). 84(h

In *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692 (as modified 222 Cal.App.3d 516a) the California Court of Appeal affirmed that a general plan may consist of several documents. Nevertheless, the information in associated documents, when not referenced by the general plan, may not compensate for deficiencies in the conservation element (p. 118). 84(i

The conservation element overlaps provisions found in the open space, land use, safety and circulation elements. It differs, however, from other portions of the general plan in that it is almost exclusively oriented toward ***natural resources*** (p. 118, emphasis added).

Open Space Element[2]

Government Code Section 65561: The Legislature finds and declares as follows:

(a) That the preservation of open space land, as defined in this article, is necessary not only for the maintenance of the ***economy*** of the state, but also for the assurance of the continued availability of land for the production of food and fiber, for the enjoyment of ***scenic beauty,*** for recreation and for the use of ***natural resources.***

(b) That discouraging premature and unnecessary conversion of open space land to urban uses is a matter of ***public interest*** and will be of benefit to urban dwellers because it will discourage noncontiguous development patterns which unnecessarily increase the costs of community services to community residents.

(c) That the anticipated increase in the population of the state demands that cities, counties, and the state at the earliest possible date make definite plans for the preservation of ***valuable open space land*** and take positive action to carry out such plans by the ***adoption and strict administration*** of laws, ordinances, rules and regulations as authorized by this chapter or by other appropriate methods...

(e) That for these reasons this article is necessary for the promotion of the general welfare and for the protection of the public interest in open space lands.

[2]State of California General Plan Guidelines, Office of Planning and Research. 84(j)

The issues addressed by an open space element shall include any of the following (Government Code Section 65560 and Public Resources Code Section 5076).

Open space for the preservation of natural resources including, but not limited to:

- Areas required for the preservation of plant and animal life including ***habitat for fish and wildlife;***
- Areas required for ecologic and other scientific study; rivers, streams, bays and estuaries; coastal beaches, lake shares, banks of rivers and streams, and watersheds.

Open space used for the managed production of resources including, but not limited to:

- ***Forest lands, rangeland, agricultural lands and areas of economic importance for the production of food or fiber.***

Open space for the Preservation of Natural Resources

- Inventory of natural vegetation, fish and wildlife and their habitats, including rare and endangered species (Map) (CO, LU)
  - Inventory of plants, natural communities and special animals using the California Department of Fish and Game's "Natural Diversity Data Base." The data base covers all areas of the state and produces overlay printouts for use with the U.S.G.S. quadrangle maps Contact the Non-Game Heritage Program of the California Department of Fish and Game.
  - Listing of the types of animals that might be found in a particular habitat, the time of year they might be found there, and their activities using information from the "Wildlife Habitat Relationships Program." Contact the Wildlife Management Division of the California Department of Fish and Game.

Open Space for Resource Management

- Inventory of forest resources (LU, CO)
  - Description of the type, location, amount, and ownership of forests with a value for commercial timber production, wildlife protection, recreation, watershed protection, aesthetics, and other purposes (map).
- The management and protection of forestry resources (LU, OS)
- The conservation of forests for wildlife protection, recreation, aesthetic purposes, etc. (LU, OS)
- The protection and preservation of oak woodlands (OS)
- The management and use of agricultural soils (LU, OS)
- The protection of plant species and their habitats (OS)
- ***The protection of rare and endangered plants and animals and their habitats*** 84(j)

(OS) (emphasis added).

84(j)

Pursuant to California Government Code Section 65564, "Every local open space plan shall contain an action program consisting of specific programs which the legislative body intends to pursue in implementing its open space plan" (open space zoning pursuant to Government Code Section 65910, e.g., exclusive agriculture zones, large-lot zones, overlay zones for hazard areas, etc.).

San Diego County has the inherent authority and is mandated by State law to enact broad regulations to protect its natural resources for the health and general welfare of its own community, yet has singularly failed to meet minimum standards for natural resource protection, relegating what are supposed to be co-equal elements of the General Plan to a subordinate and derivative status. Furthermore, as documented below, one General Plan element is missing and others are legally inadequate.

84(k)

General Plan Legally Inadequate Because of the Failure to Adopt an Agriculture Element

Section 65300.5 of the Government Code provides that the elements of a County's general plan must comprise an internally consistent statement of policies:

> In construing the provisions of this article, the Legislature intends that the general plan and elements and parts thereof comprise an integrated, internally consistent and compatible statement of policies for the adopting agency.

See *Garat v. City of Riverside,* 2 Cal.App.4th at 286; *Sierra Club v. Board of Supervisors,* 126 Cal.App. at 704. Grasetti Decl. ¶¶2 and 3. Where a required element is missing, the general plan is invalid.

Three required elements of the County's General Plan (including the Land Use, Conservation, and Open Space Elements) expressly rely upon an Agricultural Element being adopted to inventory and protect agricultural lands.

On December 10, 1975 when the County adopted the Conservation Element of the County's General Plan, it deferred discussion of the required Soils Section until adoption of the Agricultural Element (" Element") which it therein authorized and mandated. Work began on the now-mandated Ag Element in 1977. Just two years later, in 1979, the Board of Supervisors adopted the Land Use Element ("LUE") of

84(l)

the General Plan – a regional blueprint which lays the foundation integrating public facilities and transportation with industrial, commercial, residential, and agricultural land uses for the entire County. With the exception of the agricultural designator (known as Ag Designator 20), all 26 land use designations found in the LUE were given specific density determinations. However, minimum lot size criteria for agriculture were again deferred to the Ag Element. Tragically, the Ag Element was never adopted. Instead, one-sixth of the land mass of San Diego County, comprising its most valuable agricultural resources, has been left with contradictory General Plan guidance. 84(l)

Under the California Williamson Act, the County has a policy granting tax relief to private landowners who agree to keep their lands in agricultural use within designated Agricultural Preserves. In the County there are approximately 107,000 acres that remain "under contract" through the Williamson Act and thousands acres more that are in Agricultural Preserves and not under contract but are nevertheless required to have uses compatible with agriculture. Instead of adopting the required Ag Element and protecting the Williamson Act lands, the County passed General Plan Amendment 94-01 which gave the Ag 20 Designator a blanket 8-acre minimum lot size.

County's General Plan is Inadequate Because its Open Space, Conservation, and Land Use Elements are Inadequate Under California Law

The County of San Diego is bound by the findings of the San Diego Superior Court that the Conservation and Open Space Elements of the County's General Plan are inadequate.

On January 11, 1996, a Superior Court in the Count of San Diego issued a judgment on an appeal involving the exact same issues raised by this project. Judge McConnell, in Case No. 676630, made findings that certain elements of the County's General Plan were inadequate and so could not be relied upon in making an informed decision on a project. Specifically, the Court found that the Conservation Element of the County's General Plan is inadequate because it defers consideration of some issues to an Agricultural Element which does not exist. Additionally, the Court found the Open Space Element of the County's General Plan to be inadequate because it also defers consideration of protective measures to a non-existent Agricultural Element. Finally, the Court mandated that no decision on similar projects be made until the defective General Plan elements were made adequate. 84(m)

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SOFAR raises the same objections to the County's Conservation and Open Space Elements in this matter as were raised and defined in San Diego Superior Court, Case No. 676630. Both cases primarily involve the inadequacies of the County's Conservation and Open Space Elements. More importantly, the litigating parties in both cases were the same, specifically SOFAR vs. County of San Diego and Board of Supervisors. 84(n)

As a general point of law, "A second action between the same parties on a different cause of action is not precluded by a former judgment. But the first judgment operates as an estoppel or conclusive adjudication as to such issues in the second action as were actually litigated and determined in the first action. 7 Witkin, Cal. Pro., Judgment Section 253, pg. 691. "The parties are deemed the same when those between whom the evidence is offered were on opposite sides on the former case, and a judgment or other determination could in that case have been made between them alone, though other parties were joined with both or either." Id at Section 283, pg. 721. 84(o)

Here, SOFAR and the County/Board of Supervisors were both parties to the previous case. Therefore, under California law, the County and Board of Supervisors is collaterally estopped from taking the position that the Conservation and Open Space Elements of the General Plan are adequate. Case law is in accord. "...Where the challenge is to a general plan or a local sphere of influence plan...the determination will apply equally to all developments the area." *Bereford Neighborhood Assn. v. City of San Mateo,* 207 Cal.App.3d 1180, 1189 (1989). See also, *Buena Vista Gardens Apartments Assn. v. City of San Diego Planning Dept.,* 175 Cal.App.3d 289 (1985); *Camp v. Board of Supervisors,* 123 Cal.App.3d 334 (1981).

County Lacks Authority To Approve County Portion Of MSCP Plan Because County's General Plan Land Use Element Is Inadequate Pursuant To Government Code Section 65302(a)

The County of San Diego does not have authority to approve its portion of the MSCP Plan because the Land Use Element of its General Plan does not comply with State law. Government Code Section 65302(a) requires that "[t]he land use element *shall* include a statement of the standards of population density and building intensity recommended for the various districts and other territory covered by the plan." (emphasis added).[3]

[3]Gov. Code §65302(a) provides: The general Plan shall consist of a statement of development policies and shall include a diagram of diagrams and text setting forth objectives, principles, standards, and plan proposals. The plan shall include the following elements: 84(p)

In this case, the Land Use Element of the County of San Diego's General Plan fails to contain standards of population density. Under Policy 2, Land Use Designations and Use Regulations, p. II-13, the Land Use Element states, "These land use designations shall include maximum density (and in certain cases, a minimum density) allowed on that designation...." The land use designators, however, do not contain statements of population density. Rather, they set standards for building intensity by specifying minimum parcel size and number of dwelling units per parcel (see Land Use Element, II-17–II-29).

The Court of Appeals for the Fifth District has observed, "population density" and "building intensity" are not synonymous. *Twain Harte Homeowners Association, Inc. v. City of Tuolumne County,* 138 Cal.App.3d 664, 669, 188 Cal.Rptr. 233 (Fifth District, 1982). A statement of "population density" must "[refer] to numbers of people in a given area and not to dwelling units per acre, unless the basis for correlation between the measure of dwelling units per acre and number of people is set forth explicitly in the plan." Id. at 699. The San Diego County Land Use Element does not correlate the number of dwelling units per acre with population. Like the general plan in *Twain Harte Homeowners,* the San Diego County General Plan's Land Use Element fails to include "an appropriate statement of standards for population density based upon numbers of people." Id. Thus, the Land Use Element of San Diego County's General Plan is not in substantial compliance with Gov. Code §65302(a).

The Court of Appeals for the First District reached a similar conclusion in *Camp v. Mendocino County Board of Supervisors,* 123 Cal.App.3d 224, 176 Cal.Rptr. 620 (1981). In that case, the court held that the Mendocino County General Plan failed to comply with Gov. Code §65302(a) because "[i]t is ...impossible to relate a tabulated 'density standard' of population to any location in the County." Id. at 349-350.

(a) A land use element which designated the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, including agriculture, natural resources, recreation and enjoyment of scenic beauty, education, public buildings and grounds, sold and liquid waste disposal facilities, and other categories of public and private uses of land. *The land use element shall include a statement of the standards of population density and building intensity recommended for the various districts and other territory covered by the plan.* (emphasis added)

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County Lacks Authority to Approve County Portion of MSCP Plan Because the County's General Plan Conservation Element is Inadequate Pursuant to Government Code §65302(d)

Under Government Code Section 65302, every county's general plan shall contain:

> (d) A conservation element for the conservation, development and utilization of natural resources including water..., forests, soils, rivers..., harbors, fisheries, wildlife, minerals and other natural resources.

In this instance, the County of San Diego has deferred implementation of the Conservation Element required under Section 65302 to its Agricultural Element of the General Plan. However, the County has never officially adopted a valid Agricultural Element to the General Plan. Since the County does not have an Agricultural Element, it does not have a Conservation Element. A Conservation Element is mandatory under Section 65302. Courts have held, "The lack of a mandatory element invalidates the general plan if the missing element is directly involved in the project under review. The issuance of a use permit is beyond the authority of the issuing agency if the general plan is deficient in its treatment of mandatory elements which are involved in the uses sought by the permit." *Kings County Farm Bureau v. City of Hanford*, 221 Cal.App.3d 692, 742 (1990).

The Conservation Element is directly involved in the project under review because the project will affect forests, soils, wildlife, minerals, and other natural resources. Thus, under the holding of Kings County Farm Bureau, approval of the County portion of the MSCP Plan is beyond the authority of the County because the County's General Plan is deficient in its treatment of a mandatory element.

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The land which is the subject of this action is designated for conservation and agricultural uses under the General Plan and in fact is, and has been, used primarily for conservation and agricultural purposes. The absence of the mandatory soils section and Agriculture Element makes it impossible for the County of San Diego to comply with the Planning and Zoning Law in that the General Plan is lacking critical data necessary to develop a comprehensive, long-range plan to guide the development and/or conservation of lands in San Diego County. Without the required soils section and Agriculture Element, the County of San Diego has no reference to guide its land use decisions and all such decisions are arbitrary as a matter of law.

County Lacks Authority to Approve County Portion of MSCP Plan Because the County's General Plan Open Space Element is Inadequate Pursuant to Government Code §65563

Under Gov. Code §65563, every city and county is required to "prepare, adopt, and submit to the Secretary of the Resources Agency a local open-space plan for the comprehensive and long-range preservation and conservation of open-space land within its jurisdiction." A local open-space plan is required to "contain an action program consisting of specific programs which the legislative body intends to pursue in implement its open-space plan." Gov. Code §65564. In order to give effect to "an action program consisting of specific programs..." there must be "an inventory of available open space resources...." *Save El Toro Association v. Days*, 74 Cal.App.3d 64, 141 Cal.Rptr. 282 (First District, 1977).[4]

The San Diego County General Plan's Open Space Element fails to contain an adequate inventory of open-space lands within the county as required to give effect to the intent of Gov. Code §65564. In its description of the category "Open Space Design of Private lands," the Open Space Element states: "This category of open space is not illustrated on the Open Space Element map except where the Board of Supervisors has approved a private development plan that includes designed open space (P. I-24). Thus, there is no inventory of privately owned lands which could possibly be designated as open space according to the "action program consisting of specific programs: required by God. Code §65564. A similar failure to create an inventory of open-space land rendered a general plan invalid in *Save El Toro Association*. In that case, the court reasoned that "without an inventory of available open space resources there cannot be a plan [implementing open-space preservation] as contemplated by the Open Space Lands Act[,] only isolated uncoordinated projects the type of development the act was specifically intended to prevent." Id. at 73. The goals of the Open Space Lands Act, Gov. Code §§665560-665570, set out in the legislative history demonstrate that the legislature intended that an open-space land inventory contain both land actually designated as open space and land undesignated but available for designation. These goals recognize that:

> (b)...discouraging premature and unnecessary conversion of open-space land to urban uses is a matter of public interest and will be of benefit to

[4]Gov. Code §65563(b) required the interim open-space plan in effect until December 31, 1977 to contain "a description of the methods by which open-space resources will be inventoried and conservation methods determined." Thus, at a minimum, an inventory of open-space lands is necessary in order to determine appropriate conservation methods.

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> urban dwellers because it will discourage non contiguous development patterns which unnecessarily increases the costs of community services to community residents....[T]he anticipated increase in the population of the state demands that cities, counties, and the state at the earliest possible date make definite plans for the preservation of valuable open-space land and take positive action to carry out such plans by the adoption and strict administration of laws, ordinances, rules and regulations as authorized by this chapter or by other appropriate methods. *Save El Toro Association v. Days*, 74 Cal.App.3d at 71.

The land which is the subject of this action is designed for open space and agricultural uses under the General Plan and in fact is, and has been, used primarily for open space and agricultural purposes. The inadequacies of the Open Space Element and the absence of an Agriculture Element make it impossible for the County of San Diego to comply with the Planning and Zoning Law in that the General Plan is lacking critical data necessary to develop a comprehensive, long-range plan to guide the development and/or conservation of lands in San Diego County. Without an adequate Open Space Element or Agriculture Element, the County of San Diego has no reference to guide its land use decisions and all such decisions are arbitrary as a matter of law.

Historical Causes Of Inadequate General Plan

Over twenty years ago, on December 12, 1973, on the threshold of adopting the Open Space Element, then Supervisor Jack Walsh drafted a truly prescient letter on the future of open space in San Diego County, stating:

> Today we will discuss a topic of great controversy in San Diego County. The resolution of the open space issue will have enormous effects on the ***nature and quality of life in this county for decades to come.*** Again, suggestions are legion, but instead of turning to professionals, or at least a representative group of citizens, we find ourselves on the threshold of accepting a plan which, in effect, reflects the wishes of a group most devoted to limiting open space. The ad hoc committee on open space, which designed the open space element, had no less ***than 2/3 of its*** membership holding a vested interest in limiting open space - either due to ***extensive land holdings, or careers in development, construction, or real estate sales.*** This is a group clearly unrepresentative of the community was a whole. But, just as clearly, it is the entire citizenry that

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> will be asked to live with this plan, for limitations on open space affect all citizens and will affect them for many years to come (emphasis added).

Since the writing of that letter SOFAR has documented a twenty-year history of failed planning attempts all borne at tremendous cost to taxpayers (7.5 million). Special interests have controlled the San Diego County General Plan and consequently natural resource protection has been compromised to the point where San Diego County and Southern California in general have become the epicenter of species extinction in the world.

The dominance of special interests, as mentioned by Jack Walsh, that set open space planning on its tragic course twenty years ago is playing no less of a role in the debate over the MSCP Plan. What has not yet been revealed in the debate is that the foundation itself, the General Plan, is massively flawed. San Diego County planning, through its General Plan elements, has been a charade covering up the fact that urban-type densities have been placed over all the County's natural resource lands, i.e., scenic, watershed, wilderness, agriculture, and dark sky. No amount of mitigation or acquisition, whether it be done on a project or regional basis, can overcome this fundamental weakness in the San Diego County General Plan.

It is misleading to say, as the proponents of the MSCP Plan constantly do, that project-by-project planning is the cause of environmental degradation and species extinction in San Diego County when the truth points to something deeper. That something deeper was unveiled in 1991 when San Diego County officials attempted to keep urban-type General Plan densities on vital inholdings inside the Cleveland National Forest. The adequacy of those land use designator densities was challenged in court, and during the trial a critical County memo surfaced revealing the key to the whole environmental problem:

> Point out that EIRs, gr. water regs., RPO, etc., all of which apply at the project level, are not adequate, nor are the right mechanism to get at the larger problem of lot compaction in prime habitats...it just causes false expectations and project by project delays if the ***density/lot size issue*** is not adequately set in the General Plan and regulatory ordinances. Parcel by parcel analysis is not adequate to address overall density and buildout impact (Healy Memo, emphasis added).

Following a successful legal challenge to the County's action, the San Diego County citizenry, through the initiative process, changed General Plan densities on 80,000 **84(s)**

acres of vital watershed, wilderness, and scenic inholdings in the Cleveland Forest from a 4-acre to a 40-acre minimum lot size. The people acted to make the Forest whole again. Had the usual tools of acquisition or mitigation been used without changing the General Plan, developer interests would have been paid off to the tune of 1 billion dollars by the American taxpayers. Instead of allowing such a scandal, the people clearly placed the blame on a developer-driven General Plan and by a two-thirds victory margin voted to change the Plan and solve the problem.

On the other hand, in the debate over the MSCP Plan, the blame has unfairly fallen on endangered species themselves and on the agencies charged with their protection. The U.S. Fish & Wildlife Service faces an impossible task. With acquisition and mitigation as their only tools, the lead agencies are trying to stitch together a so-called "seamless" 171,900 acre preserve system which includes 63,000 acres of private land in a multitude of jurisdictions, each with different and at times contradictory planning categories.

The U.S. Fish & Wildlife Service finds itself besieged by both property interests and environmentalists. Property interests say the Feds are "taking" too much. Environmentalists say they are being given too little. In the irony of ironies environmentalists actually find themselves hoping that a species becomes endangered and gets a "listed" status in order that U.S. Fish & Wildlife can step in and do the natural resource planning that all along we could and should have done ourselves. But U.S. Fish & Wildlife has no authority to make actual land use decisions (i.e., establish uses and densities). Rather, it can only issue or deny a permit to take (develop) the habitat of an endangered species. What has been lost in the debate over the MSCP Plan is the real cause of our environmental problems: the absence in the General Plan of a co-equal status for natural resources as required by State law.

With its only power being the threat to deny taking [development] permits, U.S. Fish & Wildlife finds itself the subject to immense political pressure to negotiate and compromise. Meanwhile, the MSCP Plan is being implemented by the very tools that brought us the crisis in the first place: mitigation and acquisition.

Perhaps the greatest casualty in this endangered species debate is the truth about bio-diversity and our essential relation to it. Lost in the political hype and marketing of images and maps, plans and preserves are such questions as whether or not we can ultimately "buy" bio-diversity or whether or not nature is ultimately an end or a means. This question has been asked and answered in different forms again and

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again over the ages. Perhaps the most eloquent answer was given by Chief Seattle when then President Pierce offered to buy tribal land in the Washington area. Seattle responded: *How can you buy the sparkle in the water or the freshness of the air?* It is a profound question that we are struggling to answer here in San Diego County. We are trying to buy a plan to save 85 covered species that could well become the Schindler's List of Bio-Diversity. Left out of this Schindler's List are the flowers, the meadowlands, the trees and the streams that are valuable not because they are endangered, but because they are an integral part of our natural community.

In a nutshell the problem that faces adequate implementation of the MSCP is this: with urban General Plan densities existing on all County resource lands outside the forest, how can the MSCP Plan, through a process of mitigation and acquisition, establish its "seamless" system of preserves without causing further plan inconsistencies, environmental degradation, and enormous and unnecessary cost to the American taxpayer?

To answer this question we must keep in mind the example of the inholdings of the Cleveland National Forest which, before being changed by the initiative, had the same land use designators that are currently outside the Forest on similar natural resource lands. Had those same forest inholdings been protected by the method of MSCP through mitigation or acquisition, it would have cost approximately one billion dollars to the American taxpayer. Therefore, we have an obligation to ask whether or not the MSCP Plan, as it is currently being implemented, is the true answer to the problem of bio-diversity loss in San Diego County.

On the surface, the MSCP Plan looks like a good idea. Its intent is to "plan for habitat preservation to protect [the] region's biodiversity, create an interconnected open space system of native habitats and allow for economic development." While these are worthy goals, they are goals that a well-written and responsibly-executed general plan would pursue from the outset. However, because San Diego's General Plan has, since the real estate boom of the 1970's and '80's, consistently failed to protect biodiversity and such other necessities, a crisis situation has emerged that apparently requires the intervention of a complex, expensive habitat conservation program. MSCP, which would be carried out by the U.S. Fish & Wildlife Service, California Department of Fish & Game, the County of San Diego, the City of San Diego, and ten other local jurisdictions, would cost somewhere between $433 million and $751 million over 30 years. In the larger scheme of things, these are not enormous sums, However, they are unnecessary. If the General Plan adequately

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addressed biological concerns, there would be no need for this stop-gap measure.[5] 84(s)

MSCP Plan Fails To Meet CEQA Guidelines

- It mischaracterizes the project's expected impacts on biology, dark sky, agriculture, scenic, and common wildlife;

- It fails to accurately characterize the project's impacts on Park and Forest resources, and fails to provide adequate mitigation measures for these impacts;

- It fails to adequately analyze the project's effects considered together with other projects planned in the area, and fails to propose adequate mitigation measures for these effects;

- It fails to accurately characterize the project's likely growth-inducing effects;

- It does not contain an adequate mitigation monitoring program;

- It does not adequately discuss alternatives to the proposed project;

- It mischaracterizes economic impacts;

- It fails to address impacts to key corridor/linkage areas, and mitigate those impacts; and

- It fails to address the impacts of the County's Biological Mitigation Ordinance.

The DEIR/EIS must therefore be revised substantially to comply with the requirements of CEQA. A supplemental draft EIR should be circulated to allow the public an opportunity for full review and comment on the required additional information. A supplemental EIR should rely on a thorough critique of the County's General Plan, its inconsistencies, and inadequate resource protection ordinances.

Furthermore, SOFAR is concerned that approval of this project would set a deleterious precedent by dramatically altering the established policies concerning development in the rural areas of San Diego County. The approval of this project would allow a level and intensity of development far beyond that contemplated by

[5]Bio-Rational Planning: An Ecological Approach to Land Use Planning in San Diego County, p. 88. 84(t)

the existing General Plan and zoning provisions. As discussed below, the proposed project would involve housing densities incompatible with rural, agricultural, and watershed areas. The approval of this project could enable more intensive development of areas designated with 18 Multiple Rural Use Land Designator, 19 Intensive Agriculture Designator, 20 Agricultural Preserve Designator, and the RCA Regional Category throughout the County, with significant adverse environmental results in the unincorporated areas. In addition, the MSCP Plan is inconsistent with numerous other provisions of the San Diego County General Plan, and therefore may not legally be approved. 84(t)

EIR Fails To Satisfy Requirements Of CEQA

Use of this draft EIR as the basis for a final EIR would violate both the letter and spirit of CEQA. CEQA requires a draft EIR to be an informational document which will inform public agency decision-makers and the public generally of the significant effects of a project, identify possible ways to minimize those effects, and describe reasonable alternatives to the project. The EIR for the proposed project fails to fulfill any of these fundamental goals.

The deficiencies discussed below should be addressed in a supplemental draft EIR. The supplemental EIR should be recirculated for additional public comment. CEQA Guidelines §15163.

Draft EIR Is Inadequate Because It Fails To Properly Describe The Proposed Project

The EIR provides a legally inadequate analysis of the potential impacts of the project because it is based on an incomplete project description. "An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." *County of Inyo v. City of Los Angeles*, 71 Cal.App.3d 185, 192-93 (1977).

The DEIR/EIS begins with a very questionable premise that basically the same preserve size in the 1995 DEIR/EIS supported a coverage of 57 species, and now in 1996 with no change in size or quality suddenly supports the coverage of 85 plant and animal species. There is insufficient documentation to justify the increased species coverage. Also, the boundaries of the preserves themselves are contingent on: (1) adequate funding; (2) buffer zones and related edge effects; (3) the status of private lands; (4) uses and densities already designated in preserve areas; and (5) and on coordinated simultaneous adoption by many jurisdiction of the so-called 84(u)

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"seamless" preserve system. These contingencies have not been adequately described or analyzed. Furthermore, the County portion of the MSCP is without any preserve boundaries whatsoever. Since the County portion of the Plan contains the most important biological part of the preserve system, the lack of analysable preserve boundaries renders the EIR/EIS completely inadequate. This inadequacy cannot be mitigated by simple adoption of the Biological Mitigation Ordinance, which itself is environmentally flawed. 84(u)

In addition, the Board of Supervisors, on October 11, 1995, approved thirty deal/negotiation points that were to be settled between Federal Government, landowners, the County, and the City. This extraordinary action undermines any stable basis for the MSCP Plan. The very concept itself of "negotiating" a General Plan amendment is contrary to law and the authority by which these deal points are being negotiated is also non-existent under State law. A general plan is the legislative act of a community, not a "deal" concocted by power brokers.

Another glaring example of the inadequacy of the project description is the omission the Second Dwelling Unit Ordinance adopted by the County in May, 1994. Each lot in the Jamul, Ramona, Alpine, and Lakeside area could easily be permitted a second unit. In other words, the number of dwelling units may be as high as <u>double</u> the number described in the EIR. Nevertheless, the EIR completely ignores the potential impacts of the doubling in the number of dwelling units and the consequent increases in population on traffic, water supply, construction, grading, biology, and virtually every other impact discussed in the DEIR/EIS.

<u>DEIR/EIS Is Inadequate Because It Fails To Properly Describe The Project's Environmental Setting</u>

A draft EIR "must include a description of the environment in the vicinity of the project, as it exists before the commencement of the project, from both a local and regional perspective." CEQA Guidelines §15125; see also *Environmental Planning and Info. Council v. County of El Dorado*, 131 Cal.App.3d 350, 354 (1982). The environmental setting discussion is deficient because it fails to adequately analyze existing environmental conditions, especially with respect to watershed and agricultural resources. Thousands of acres in the eastern section of the MSCP Plan are undeveloped and consist of valuable watershed, agricultural, and grassland areas. The environmental and planning importance of these lands has not been properly addressed.

The environmental setting discussion must also include analysis of any 84(v)

inconsistencies between the proposed project and existing general plans, regional plans, and any other relevant planning such as RCA guidelines. Guidelines §15125(b). The EIR must discuss the significant impacts resulting from any project inconsistencies with the planning documents. Discussed below in the sections describing project impacts, the MSCP DEIR/EIS fails to adequately discuss and analyze the impacts of inconsistencies of the project with relevant planning documents. 84(v)

DEIR/EIS Does Not Adequately Disclose Or Analyze Significant Environmental Impacts, Nor Does It Discuss Sufficient Mitigation Measures To Offset Significant Impacts

In addition to the limitations imposed by the inadequate project description and environmental setting discussion, the DEIR/EIS does not adequately discuss the basis for many of its conclusions, fails to address a number of potentially significant effects, and impermissibly relies on future area plans and vague monitoring programs to identify certain impacts and mitigation measures. The DEIR/EIS remains so deficient in many areas as to mislead the public and decision makers about the extent of impacts and the adequacy of proposed mitigation measures. CEQA requires that an EIR must not only identify the impacts, but must also provide "information about how adverse the impacts will be." *Santiago County Water Dist. v. County of Orange,* 118 Cal.App.3d 818, 831 (1981). Below we describe the specific inadequacies of the DEIR/EIS's environmental impacts analysis. 84(w)

Open Space Impacts

The project will have substantial impacts on open space, both by placing development in an area which is now open space, and by bringing more residents to the area which will increase demands on remaining open space.

The project is flatly inconsistent with several relevant County General Plan open space policies, including concentration of residential development, preservation of open space, preservation of agriculture, encouragement of larger lot sizes, providing areas for public recreational use, and dedication of public access to open space. The DEIR/EIS provides no adequate analysis of the environmental impacts that will result from this inconsistency.

The parts in the preserve where 70- 80% of the area is to be preserved in open space is in essence no different from a typical development project. Why would open space have to be purchased or densities increased when normal mitigation 84(x)

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measures would preserve the same amount of land? 84(x)

Biological Impacts

For several decades in San Diego County, city and county officials have been aware of the severe damage that our natural areas have been suffering as a consequence of rampant development. However, few serious efforts were made to prevent significant losses of biodiversity by our political leaders.

One token program to preserve vernal pools that began in the late 1970's had disastrous results. The destruction of more than 800 vernal pools was mitigated by the purchase of one vernal pool, the land connecting several pools groups (Bauder 1995) (please see Exhibit 1 for cited literature). By 1990, 96% of our county's vernal pools had been destroyed forever (Oberbauer 1990). In fact, most of our coastal ecosystems, including coastal salt marshes and maritime sage scrub, have suffered greater than 85% losses (Oberbauer 1990). Other systems, such as riparian woodlands, freshwater marshes, and mixed chaparral, have also suffered as a result of unrestrained development and a lack of conservation planning.

Because we have waited so long to do real conservation planning, much of the MSCP study area (about 38%) is already urban development. The configuration of the MSCP preserve is largely dictated by existing development rather than by basic principles of preserve design. Furthermore, if conservation planning had been done sooner, we could have protected potential corridors that are now constrained or cut off by development. 84(y)

With the introduction of the statewide NCCP program, many conservationists became hopeful that our state's conservation crisis would be seriously addressed. Many ecologists and conservation biologists agree that, from a biological point of view, the original concept and the NCCP is good. However, many of these scientists also believe that local planners have diverged from the original intent of the NCCP, and that the planning process is dominated by politics and developer interests, rather than by sound conservation planning and independent scientific review. These latter comments have been directly specifically at the MSCP.

In the 1992 Peninsular Range Ecosystem Conference, Dr. Michael Soulé stated that there are three types of conservation: 1) for sustainable use of resources; (b) for biodiversity; and (3) for wilderness. The MSCP will now be briefly be evaluated to determine if it qualifies as one of the three types of conservation.

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MSCP and Conservation for Sustainable Use of Resources. Within the MSCP planning area, there is some agriculture, mining, livestock grazing, and other use of natural resources; however, these activities do not dominate land use in the MSCP study area. The primary consumptive activity in the MSCP study are is urban development, and this activity is not sustainable. Conservation for sustainable use of resources is not an objective of the MSCP, and does not (and could not) qualify as conservation for sustainable use or resources. 84(z)

MSCP and Conservation of Wilderness. Many proponents of the MSCP have been promoting it in the media as "wilderness." The mission statement for the Wildlands Project describes some of the characteristics that "wilderness" has, including: (a) extensive areas of native vegetation; (b) viable, self-reproducing, genetically diverse populations of plants and animals, including large predators; and (c) lack of roads and other human cultural artifacts (Wild Earth 1995).

Even the largest core areas within the MSCP preserve are by no means extensive (see Exhibit 2). The largest core area (according to the core area and linkage description, which is larger than the proposed Multi-Habitat (MH) scenario) measures approximately 49 square miles (imagine a square seven miles on each side.) This is not extensive by wilderness standards. For the sake of comparison, the Olympic National Park assemblage in the State of Washington is nearly one million acres (Dietrich 1992), and this area may still fail to meet the above criteria.

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Dr. Paul Beier studied mountain lions in the Santa Ana Mountains (the northern-most portion of the Cleveland National Forest). He states that mountain lions are an indicator or "umbrella" species for the viability of a whole system (Beier 1993). He found that his study area of 1114 square kilometers (275,158 acres) was too small to support a viable population of mountain lions, and that movement corridors linking the Santa Ana cougar population to outside habitat is essential to their survival. Yet, the entire MSCP preserve combined is small than Beier's study area. The proposed MSCP preserve cannot support a viable population of mountain lions on its own; therefore, it lacks the second characteristic of wilderness.

All of the landscape linkage and core areas in the MSCP preserve are crossed by trails, roads, and freeways. Nearly any point in any core is within one half of a mile (0.8 km) of a man-made trail, road, or freeway.

Thus, the MSCP preserve fails to meet all three characteristics of wilderness that are described in the Mission Statement of the Wildlands Project.

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MSCP and Conservation of Biodiversity. If our goal in the MSCP is to preserve genetic, species, and community-level biodiversity, then one approach to the problem is to choose a list of species of interest that, if protected, would likely result in the protection of the region's biodiversity. The most likely candidates to be included on this list are large-bodied species, specialized species, keystone species, and highly mobile low-density species (Shaffer 1981; Beier 1993; Primack 1993). We should be reasonably sure that if we protect our species of interest (by protecting enough of their habitat in the right configuration), then we will be protecting most of the other species as well. In the MSCP, however, target species are chosen because of their legal status.

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Many academic ecologists and conservation biologists state that there is not enough research behind MSCP conservation planning. One researcher qualified this by adding that there is never enough research, but went on to say that there is a minimum amount of basic research needed in order to properly plan and manage a preserve. The bulk of the research for MSCP conservation planning comes from thematic mapping, habitat evaluation, and GAP analysis. Little field research has been done, and most of it has centered on the gnatcatcher.

To illustrate the lack of scientific support for the MSCP plan, four aspects (out of many) of the plan will be discussed below. The aspects that will be discussed are edge effects, biological linkages, population viability analysis, and fragmentation.

A. Edge Effects: There are detrimental effects that can occur along man-made edges of preserves. These include:

- exposure of native flora along edges to heat and wind;
- invasion by non-native species;
- invasion by ornamental species that are grown in yards, along roads and freeways, and in other landscaped areas;
- pollution runoff from yards, streets, and agricultural areas, and changes in moisture that results from runoff;
- an increase in native generalist species that benefit from human presence;
- predation of native animals by domesticated or feral cats and dogs;
- noise, lights, and other disturbances; and
- the creation of trails and other disturbances by residents and transients.

Each of these effects will impact each species of interest (or in the MSCP, target

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species) differently. The net result may be a loss of habitat area for each species of interest, and this must be factored into any population viability analysis (PVA); however, this is not possible since many of these effects have not been studied. 84(ac)

B. Linkages in the MSCP: Beier and Lowe provides guidelines for planning wildlife corridors. They state: *"The critical features of a wildlife corridor are not physical traits, such as its length or width or vegetation, but rather how well a particular piece of land fulfills several functions."* These functions include: wide-ranging animals can travel, migrate and meet mates; plants can propagate; genetic interchange can occur; populations can move in response to environmental changes and natural disasters; and individuals can recolonize habitats from which populations have been locally extirpated (Beier and Lowe 1992).

The MSCP document identifies the core areas that each linkage is designed to connect, identifies "focal target species," and provides maps showing the linkages. As stated above, the target species are chosen for legal reasons, rather than for biological ones. Likewise, the viability of the corridors should be evaluated according to their ability to support corridor dwellers, and to allow the migration of suitably chosen passage species. The MSCP document simply makes brief statements about the types of habitat through which the California gnatcatcher has been known to disperse, and does not describe the suitability of each linkage for the dispersal of each "focal target species." This evaluation, along with specific measurements for proposed linkages, is essential in evaluation connectivity between core areas.

All of the proposed landscape linkages are crossed by trails, freeways, or roads (see Exhibit 2). Many are constrained or fragmented by existing development. Furthermore, all of the land in most of the proposed corridors is privately owned, and participation in the program is voluntary. The final configuration of each corridor is not yet known, and this makes them difficult to evaluate.

The mountain lion, which is included on the target species list because it is considered a "specially protected species" as a result of the voter approved Wildlife Protection Act of 1990, may be helpful in determining if a corridor is passable. In the list of target species, the mountain lion is probably the best "umbrella "species." Dr. Beier (1993) states:

> *I do not advocate using cougars as a proxy for all species of concern. However, the management decisions will not await the conclusion of* 84(ad)

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long-term studies on sedentary species. In western North America, use of data from telemetered cougars may be the most expedient way to interject biological facts into the analysis of environmental impact and mitigation related to corridors.

However, this sort of research has not been done prior to the final phases of MSCP planning. One glaring example of a completely inadequate corridor analysis concerns the two most important corridors in the MSCP, known as Interstate 8 at Lakeside (H), and Dehesa to El Capitan Reservoir (I). These two corridors are the main links between the entire southern and northern parts of the MSCP. At the present time both these corridors are virtually impassible to large mammals. Since Corridor H at Lakeside is heavily urbanized, it may permit no passage at all to any animals. There is no evidence on the record to support the viability of these linkages.

The usefulness of biological linkage and stepping stones will be essential to the survival of many species in the MSCP preserve. Because the viability of corridors affects the ability of a species to recolonize an area in which it has become locally extinct, this must be factored into the PVA for each species.

C. Predictability of the Success of the MSCP: As mentioned above, the MSCP Target Species List is based on legal rather on than biological criteria. Even so, a PVA should be done for each species that is on our chosen list. This requires extensive study of each population. In the MSCP, only two PVA's have been done (out of a list of 87 target species), and the PVA for the cactus wren, along with the qualitative risk assessments for the other species, have been described by one prominent ecological researcher as "wholly inadequate." The gnatcatcher PVA is by far the most comprehensive, but even so, some data was lacking and estimates had to be used. Furthermore, the probability of extinction for the gnatcatcher is very sensitive to changes in the maximum population growth rate.

PVA's are important in getting some idea of how large a preserve should be configured. Without such estimates, we do not have any idea how well a preserve will protect species diversity. Although no confident determination of minimum viable population size has been made for any species (Shafer 1990), PVA's are useful quantitative tools for predicting the probability of extinction of a species. These predictions are insufficient for the MSCP, which adds to the uncertainly of the ability of the plan to achieve its biological objectives.

D. Fragmentation in the MSCP Preserve: Even after the plans have been finalized and implemented, the MSCP preserve will continue to suffer from what Soulé and others describe as the "secondary fragmentation" that occurs in native habitats near

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developed areas (Soulé et al 1992). They state:

> *The primary fragmenting event is the construction of a road, with or without associated housing developments. Later, the habitat remnants may be subdivided by additional development. But these isolated events are just the beginning. Trails soon appear...and neighborhood children remove the plant cover during the creation of camping sites for "forts." The edges of the remnant are nibbled away by expanding gardens and backyards. These incursions are essentially irreversible to scrub and chaparral-type associations because the vegetation is brittle and very slow to re-establish after removal. The portion of chaparral habitat in a fragment decreases over time, and before long no point in the remnant is more than a meter or two from some kind of artificial opening.*

With this in mind, consider the following:

- Many of the core areas and corridors are crossed by roads and freeways. These can present significant barriers to dispersal for many species.

- Virtually every area in the MCFPA is covered by a network of trails, contributing to secondary fragmentation. There is almost no point in any core area or linkage that is more than 0.5 miles (0.8 km) from a trail, road, or freeway.

- Negotiation points proposed by developers include: the building of roads in habitat areas; the construction of roads, fences, and lighting systems that may be required by law enforcement, fire control agencies, the National Guard...within the preserve (and clearance of vegetation around related structures); the construction of landfills within the preserve system boundaries; and sand and gravel mining within the preserve. Within the preserve these activities will be subject to regulation, but will still contribute to fragmentation of the preserve.

All of these activities within the preserve are significant sources of habitat loss and fragmentation, and influence negatively the ability of the preserve to protect biodiversity. This underlines the importance of properly managing the preserve to minimize further human-caused degradation. Management of the preserve will be very costly, and will be conducted by landowners, developers, several local jurisdictions, and by State and Federal resources agencies. Regardless of how good the plan is, failure to properly implement the plan and manage the preserve could, by itself, lead to significant losses of biodiversity in the MSCP study area.

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Summary on Biodiversity. The basic idea of preserving large, connected habitat areas and intact ecosystems is a very good one. However, from the perspective of conservation for the preservation of biodiversity, there are three main problems with the MSCP. The first is that the MSCP focuses on species with legal status, rather than those whose protection would likely lead to the protection of all biodiversity in the study area. Second, there is simply not enough basic research to support the plan. Third, only one serious attempt at conducting a PVA was done, and this was for the gnatcatcher. From a biological point of view, the MSCP could most accurately be described as a plan to protect the California gnatcatcher and the coastal sage scrub it requires. The MSCP is a plan to deal with restraints placed on urban development by the ESA when the gnatcatcher gained threatened status. It is not a plan to conserve biodiversity in southwestern San Diego County.

Following the above outlined guidelines of Dr. Soulé, the MSCP does not meet the requirements for conservation of natural resources, biodiversity, or wilderness. Regardless of the original intent of the NCCP, it is our fear that the failure of the MSCP to seriously address conservation on any level will provide a precedent for similar failures in other areas that are developing and adopting NCCP plans.

* * *

Originally, the County's participation in habitat conservation was supposed to be based almost wholly on the strategy outlined in the book *In Our Own Hands: A Strategy for Conserving Biological Diversity in California.* The Wildlife Habitat and Open Space Update Project was adopted in 1991 and followed all of the recommendations outlined in *In Our Own Hands.* It was to be a comprehensive open space update based on General Plan guidelines and not on the Endangered Species Act. It is somewhat strange, therefore, to find no mention in the DEIR/EIS of the distinction between ESA-based and General Plan-based open space planning as described in the opening remarks of this comment letter. The change to endangered species planning represents a fundamental change in planning philosophy.

In Our Own Hands provides some rather exhaustive references to grassland, watershed, wetlands, grazing, and forest and park preserves that point to the principle that civilization and all our manufactured wealth ultimately depend on the preservation of California's biodiversity in all its forms. The kind of biodiversity that can be squeezed into a preserve system with urbanization surrounding it on all sides is not what *In Our Own Hands* is talking about. Its opening paragraph states:

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> California's bountiful natural resources are the wellspring of the State's economic wealth and its worldwide fame as a desirable place to live. To the public, these resources are often thought of as logs to cut, soil to plow, clean water to drink, fish to catch and redwoods to stand in awe of. But, in fact, these are only a few of the benefits we receive from California's biological diversity. This diversity is sometimes splendidly apparent, as when the deserts flower in the spring or when, in the winter sunset, a phenomenal variety and abundance of bird species descend on the coastal lagoons or inland wetlands. More often, however, these riches go unperceived, for California's patchwork diversity of habitats can best be grasped by a trained eye aloft and its diversity of genetic information must be viewed with microscopic vision *(In Our Own Hands)*.

In Our Own Hands states that forest and park preserves are critical to the preservation of biodiversity in all its forms yet in the MSCP Plan intensification of urbanization along the western boundary of the Cleveland Forest could overwhelm forest resources.

The strategy outlined in *In Our Own Hands* includes a very important section about the strengthening of existing laws:

> 5. Ensure Implementation and Enforcement of Existing Laws (p. XIX).
> Both unenforceable laws and inadequate funding and staffing diminish the effectiveness of existing laws for biodiversity conservation. The legislature must strengthen existing laws to enhance enforcement capabilities. To assure the laws are carried out requires augmenting the capacity of resource and environmental agencies to collect data and enforce laws by increasing staff allotted to those purposes.

Especially relevant here is testimony from the Central Mountain Plan trial concerning Forest viability. Habitat planning information was supposed to be used as a guide to set minimum densities for the general protection of lands in Designators 20, 23, and 18, and not simply to draw a preserve boundary overlay (see trial transcript). The trial transcript constitutes a bible of information about the relationship of natural resources, biodiversity, planning, the MSCP Plan, the County's interpretation of the MSCP Plan, and finally General Plan open space protection. Never was there a hint that the County's Open Space Plan was to be implemented by acquisition and mitigation while leaving old plan densities in place.

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The DEIR/EIS admits the likelihood of increased urbanization in areas outside th preserves but continually relies upon existing County ordinances to mitigate fo those impacts. On the other hand, it states that mitigation outside of the preserve i supposed to be directed to secure habitat inside the preserve. Furthermore, as outlined in this letter, county zoning and resource protection ordinances have failed to offer any natural resource protection whatsoever.

For these reasons, the DEIR/EIS violates CEQA's fundamental requirements for providing the public with information necessary to assess the environmental impacts of the project. A supplemental draft EIR should enumerate the cumulative biological impacts and how in fact they will be mitigated by open space easements and the monitoring program.

With respect to county lands involved in the MSCP Plan, it is essential that a new DEIR/EIS rely on the standards adopted by the County when it approved the program for its Open Space Element Update.

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Cumulative Impacts

An EIR must discuss significant "cumulative impacts." CEQA Guidelines, Section 15130(a). "Cumulative impacts" are defined as "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." CEQA Guidelines, Section 15355(a). "[I]ndividual effects may be changes resulting from a single project or a number of separate projects." CEQA Guidelines, Section 15355(a).

A legally adequate "cumulative impacts analysis" views a particular project over time and in conjunction with other related past, present, and reasonably foreseeable probable future projects whose impacts might compound or interrelate with those of the project at hand. "Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time." CEQA Guidelines, Section 15355(b). The cumulative impacts concept recognizes that "[t]he full environmental impact of a proposed...action cannot be gauged in a vacuum." *Whitman v. Board of Supervisors*, 88 Cal.App.3d 387, 408 (1979).

To be adequate, the discussion must include the following elements: (1) either (a) a list of past, present, and reasonably anticipated future projects, including those outside the agency's control, that have produced, or are likely to produce, related or cumulative impacts, of (b) a summary of projections contained in an adopted

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general plan or related planning document that is designed to evaluate regional or areawide conditions, provided that such documents are referenced and made available for public inspection at a specified location; (2) a summary of such individual projects' expected environmental effects, with specific reference to additional information stating where such information is available; and (3) a reasonable analysis of all the relevant projects' cumulative impacts, with an examination of reasonable options for mitigating or avoiding such effects. (CEQA Guidelines, Section 15130(b)...) 84(ai)

The DEIR/EIS fails to adequately consider the cumulative effects of the proposed project together with other reasonably foreseeable future projects in the area. The Cumulative Analysis (p. 6.4) improperly relies on the National Forest lands as being adequately protected. The County itself, in implementing the Forest Conservation Initiative (GPA 95-01), is contemplating at its expiration date the total elimination of the regulations contained in the Initiative and a return to former planning categories. Also, new development outside the preserve, and even in forest lands, could justify increases in density by relying on the MSCP Plan. For example, this recently happened in the Descanso Range of the Cleveland National Forest where a project increased its density 85 times over the allowed Forest Initiative density and justified this density increase by relying on the County's MSCP Plan (see Oaks at Descanso EIR Addendum). A host of projects could intensify development and use the same rationale to justify increases in density.

While the DEIR/EIS admits to increased urbanization or intensification of land use outside the preserve, it dismisses these impacts as insignificant because they would "arise regardless of any Multi-Species Conservation Plan program." This contradicts other statements in the DEIR/EIS that impacts outside the preserve would be mitigated by existing ordinances.

The EIR's scant discussions of the various cumulative impacts of the combined projects on biology, community character, groundwater quality, and traffic circulation are wholly inadequate. Other cumulative impacts are completely ignored. A supplemental draft EIR must address all of the cumulative impacts posed by this and other planned projects for consideration by the public.

Growth-Inducing Impacts

The EIR fails to adequately discuss the growth-inducing impacts of this project. This project proposed a level and intensity of residential development not contemplated by the County when it adopted the applicable planning documents. The project 84(aj)

would clearly alter the fundamental County planning policy to "[e]ncourage continuance and expansion of agricultural uses in appropriate portions of the unincorporated area" (Goal 2.5, Land Use Element); and to "[e]nsure preservation of contiguous regionally significant open space corridors (Goal 2.6, Land Use Element). The project would replace untouched open space outside the preserve area with excessive residential development. 84(aj)

If this project is approved, it will at the very least encourage the conversion of other lands within the County classified as "rural" to this intensive residential use. The DEIR/EIS summarily dismisses this possibility with its statement that: "None of the features of the proposed MHPA or alternative scenarios would directly induce growth." The DEIR/EIS indicates that development pressure would be shifted from preserve areas to non preserve areas and be subject to increased urbanization or intensification of land use. The approval of this project would set a clear growth-inducing precedent for all lands outside the preserves.

Furthermore, the adoption of the County portion of the MSCP Plan could set a deleterious precedent for the County's own Open Space Update, which, as already mentioned, is supposed to be guided by different standards.

The DEIR/EIS Does Not Adequately Discuss Alternatives To The Proposed Project

CEQA requires that an EIR "[d]escribe a range of reasonable alternatives...which could feasibly attain the basic objectives of the project and evaluate the comparative merits of the alternatives." CEQA Guidelines, §15126(d); *Village Laguna of Laguna Beach v. Board of Supervisors*, 134 Cal.App.3d 1022, 1028 (1982); *Citizens of Goleta Valley v. Board of Supervisors (Goleta I)*, 197 Cal.App.3d 1167, 1180-81 (1988). CEQA requires that an EIR "produce information sufficient to permit a reasonable choice of alternatives so far as environmental aspects are concerned." *San Bernardino Valley Audubon Soc'y v. County of San Bernardino*, 155 Cal.App.3d 738, 750-51 (1984). The "key issue" is whether the alternatives analysis "fosters informed decision-making and informed public participation." CEQA Guidelines §15126(d). The discussion must focus on alternatives capable of either eliminating any significant adverse environmental effects or reducing them to a level of insignificance, even if such alternatives would be more costly or to some degree would impede the project's objectives. CEQA Guidelines §15126(d)(3).

The DEIR/EIS discusses a number of project alternatives: (1) the coastal sage scrub; 84(ak

(2) the biologically preferred; (3) the public lands; and (40 the no project alternative. What is missing in this reasonable range of alternatives is an analysis of what would happen to open space viability if the County lived up to its own goals and policies in the General Plan. For the County portion of the MSCP Plan, a General Plan conformance should be analysed. CEQA requires that the EIR explain why environmentally superior alternatives are rejected. CEQA Guidelines §15126(d). As the California Supreme Court held in *Laurel Heights Improvement Assoc. v. Regents of the University of California*, 47 Cal.3d 376, 405 (1989), "[i]f the [lead agency] considered various alternatives and found them to be infeasible...those alternatives and the reasons they were rejected...must be discussed in the EIR in sufficient detail to enable meaningful participation and criticism by the public." The DEIR/EIS does not identify or explain why the environmentally superior alternative was rejected. **84(ak)**

Economic Impacts

The economic impact section of the MSCP Plan is completely deficient, turning logic entirely upside-down. The DEIR/EIS analyses the MSCP Plan exclusively in terms of the economic impacts to development. Nowhere do we find any mention of the four basic pillars of San Diego region's economy as documented by the Chamber of Commerce Report: tourism; military; light manufacturing; and agriculture. The preservation of biodiversity should have been discussed in light of its contributions to the industries just mentioned. Instead, the analysis assumes that development is the primary source of wealth in our region. **84(al)**

Just the opposite was concluded in a recent Bank of America Report entitled "Beyond Sprawl," which details the overwhelming negative economic impacts that poorly planned suburban development can have on the region's economy. The increased development that is anticipated by adoption of the MSCP Plan will have deleterious impacts to tourism and agriculture, the first and fourth largest industries, respectively. There is no analysis whatsoever of these impacts. **84(am)**

There is massive evidence to support the fact that economic wealth is dependent on environmental health. It has been well documented that productive open space lands, such as watershed and agriculture, produce surplus revenue. In fact, statistics demonstrate that in the long run residential and commercial development are not self-supporting in terms of tax revenues meeting service costs. We have only to look at Orange County to prove this point. In addition, the City of San Diego and the City of El Cajon find themselves in a deficit condition. **84(an)**

It is not the preservation of development that should be the focus of the MSCP Plan, but rather the preservation of biodiversity for its own sake. It is this thought, we repeat, that is the fundamental assumption of *In Our Own Hands:* "California's bountiful natural resources are the wellspring of the State's economic wealth and its worldwide fame as a desirable place to live." 84(ao)

Conclusion

It is now clear from the above comment that an ESA-based preserve system is by its very nature a supplement, not a substitute, for the larger landscape issues of watershed, common wilderness, and agriculture. What is needed is what Supervisor Walsh called for 20 years ago and what was recently attempted in 1994 during GPA 94-01 (see Rural Task Force letter): a regional General Plan amendment based on sound natural resource viability. It is the *sine qua non* of a viable MSCP Plan. 84(ap)

The Endangered Species Act is a national policy meant to be the last bastion of defense when all else has failed. It was never meant to be the first principle of planning as it has now become in San Diego County.

We have demonstrated in precise detail that the County has both the authority and power to enact such legislation on its own. Using endangered species as a planning tool may backfire because natural resources outside the preserves will not be regarded as inherently valuable, and when the preserves fail to provide adequate protection for biodiversity, as they are likely to do, it will then be too late. Biodiversity that is not valued for its own sake but for the sake of development may not long prevail. 84(aq)

Thank you for the opportunity to comment.

Sincerely,

DUNCAN McFETRIDGE
President

Encsl.
In Our Own Hands: A Strategy for Conserving
Biodiversity in California (cont.)

84

Future Rural Task Force Letter
Central Mountain Trial Transcript
Draft Agriculture Element
Bio-Rational Planning: An Ecological Approach
to Land Use Planning in San Diego County
Addendum, Oaks at Descanso EIR

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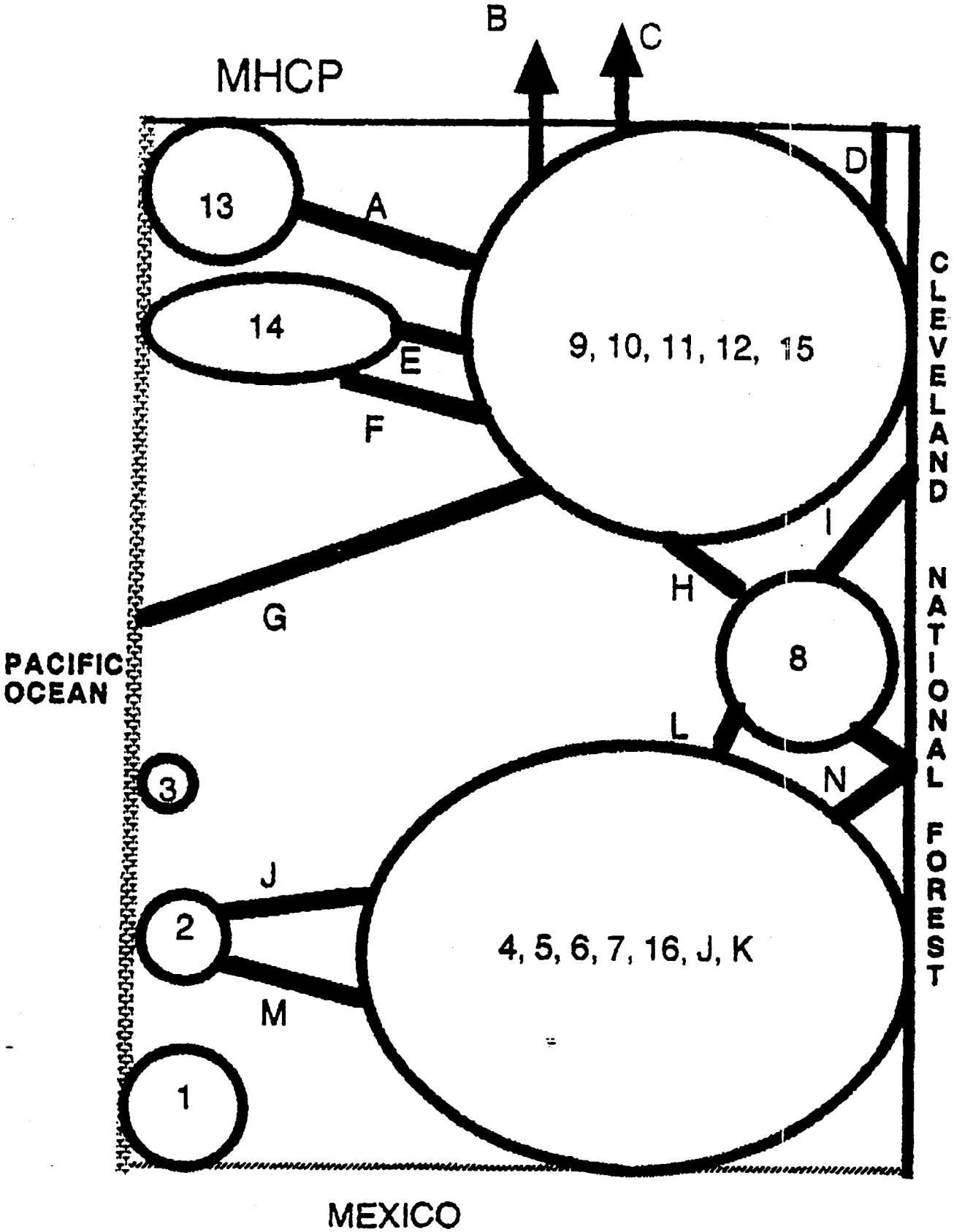
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Exhibit 2

Enclosure 1: Table of Core Areas:

Volume I of the MSCP document provides area figures for the core areas in the MSCP study area. These core areas are larger than those found in the proposed MHPA scenerio, but since they are the only figures given I will have to use them for comparisson.

Core Area 1.....3810 acres (1542 ha)
Core Area 2.....3477 acres (1408 ha) (>MHPA)
Core Area 3.....1002 acres (406 ha) (>MHPA)
Core Area 4.....22513 acres (9114 ha) (vry frag'ed in MHPA)
Core Area 5.....28633 acres (11592 ha)
Core Area 6.....8520 acres (3449 ha)
Core Area 7.....14106 acres (5710 ha)
Core Area 8.....17957 acres (7270 ha) (>MHPA)
Core Area 9.....11749 acres (4756 ha)
Core Area 10.....19071 acres (7721 ha) (>MHPA)
Core Area 11.....31762 acres (12859 ha)
Core Area 12.....31111 acres (12596 ha)
Core Area 13.....11591 acres (4693 ha) (>MHPA & frag'ed)
Core Area 14.....11264 acres (4560 ha) (>MHPA & frag'ed)
Core Area 15.....1863 acres (745 ha) (>MHPA & frag'ed)
Core Area 16.....20283 acres (8212 ha) (>MHPA)

Enclosure 2: Corridors:

Bio Linkage	Cross# of Freeways	Comments: MSCP Doc*	Observ fm MHPA Map+
A	1	high degrad/devel	severly fragmented
B	N/A	narrw band of CSS	N/A (outside MSCP)
C	N/A	to Camp Pendleton	N/A (" ")
D	0	constrained by lack of cons. on sides	none
E	1		none
F	1		none
G	4		riparian along I-8
H	1	fraged due to development	severly fraged/develop
I	1		none
J	2		riparian
K	0		fragmented
L	0	constrained by existing develop	must X frwy in core
M	2		fragmented
N	1	nat'l but constrained	none

*MSCP Document, vol I. pages 210-211
+Fig 2-2 of joint EIR/EIS

85 IAN GILL, ALLIANCE FOR HABITAT CONSERVATION, OCTOBER 29, 1996

85(a) Comment noted.

85(b) The Model Implementing Agreement and the City of San Diego's Implementing Agreement have been modified to (1) reflect long-term nature of the state and federal commitment to assist in preserve assembly (13,500 acres of habitat acquisition) and (2) include wording that review and potential revision of take authorization coverages would not be based on short-term analyses of state and federal acquisitions. See also **Theme Response IV, MSCP Financing Plan: Regional Source of Funds.**

85(c) Comment noted

85(d) The Model Implementing Agreement and the City of San Diego's Implementing Agreement already includes language regarding how take authorizations amendments will be done and any modification will require a public process and will include written findings for changes in permit coverages. Any changes in the take authorizations will require the use of the best available scientific and commercial information and the findings would include any biological reasons for a change in take authorization coverages.

85(e) The MSCP Plan, Volume I, Table 7-7 includes a process and schedule for developing a local funding source. Each jurisdiction's implementing agreement will include a commitment by the jurisdiction to support the establishment of a local funding source. The local funding program requirement is flexible and provides for combining of funding sources to meet the local jurisdictions obligations.

85(f) MSCP Plan, Volume I, Section 7.1 Financing Policies, Method of Regional Funding will be revised to read "If a broad-based regional funding sources identified in the MSCP Plan, Volume I, Table 7-2 is selected, it will be submitted to the voters for approval". The MSCP Plan and EIR/EIS include a reasonable range of financing alternatives and the selected financing mechanism(s) does not necessarily have to be one of the mechanisms identified in the MSCP Plan.

85(g) Commercial and/or industrial assessments were included in the MSCP Plan for illustrative purposes only. Any broad based funding mechanism which is selected will be fair and equitable.

85(h) Some local jurisdictions are developing interim financing strategies to simplify the implementation of their subarea plans, but the development of an interim financing strategy is not a requirement of their implementing agreement.

85(i) Comment noted. Please see responses to Comments 78(a) through 78(bf).

85(j) The Draft EIR/EIS is a program-level EIR/EIS for the overall MSCP Plan and tiering from the Draft EIR/EIS may be used for future project applications. Descriptions of the actions addressed in the Draft EIR/EIS are provided in Section 1.5, Decisions To Be Made (pages 1-11 through 1-14). Table 4.1-1 (pages 4.1-4 and 4.1-5) of the Draft EIR/EIS also lists the actions and alternatives addressed in the document. As shown in Table 4.1-1, a program level of analysis is provided for the overall MSCP Plan, while project level analyses are provided for the individual subarea plans.

The project may be able to use the EIR/EIS as the project level CEQA document, depending on the features of the particular project under consideration. Individual projects within the MSCP study area will likely require additional project-level analysis for a wide variety of issues other than those addressed in the Draft EIR/EIS. The data presented in the Draft EIR/EIS would provide an important framework for any biological analyses required for individual projects. The degree to which additional environmental review would be required, beyond a mere consistency determination, will be made on a case by case basis. Many of the subarea plans require avoidance of specified biological resources, including specific preserve design criteria and determination of mitigation requirements based on project-specific impacts to biological resources. See **Theme Response XXVI, Permit Streamlining**

85(k) See **Theme Response XXV, Wetlands Protection.**

85(l) The concept of a line is a line was proposed by the City of San Diego's Natural Resources, Conservation and the Arts (NRCA) Committee of the City Council in response to the Alliance's request to not include buffers into the adjacent development areas as was originally proposed in the March 1995 Public Review Draft of the MSCP Plan (pages 4-1 to 4-3). The buffers proposed in the March 1995 Draft MSCP Plan recognized that uncontrolled impacts from adjacent development could extend into the preserve areas 200+ feet, thereby severely reducing the biological value of the preserve areas. To address the Alliance's concerns regarding buffers and to avoid the need to increase the size of the preserve, especially linkages, the concept of a-line-is-a-line (i.e. the preserve is on one side of the line and the development, including its impacts are on the other side of the line) was adopted. One of the principles in adopting the line-is-a-line concept was that local land use decision makers would use good land use planning, primarily site design measures, to help contain development impacts within the development area. This approach provides maximum flexibility to the local land use authority. Effects associated with new development have the potential to impact the preserve if appropriate site design measures are not incorporated into projects. The City of San Diego's fuel management zone 3 can be located within the preserve on future projects and would be considered impact/mitigation neutral. The requirements to included measures in management plans to deal with edge effects to specific species occurs throughout revised Table 3-5 in the Revisions to the MSCP Plan, Volume I, and the need for these mitigation measures are documented in the EIR/EIS.

Neither the San Diego City Council nor the County Board of Supervisors provided direction to put buffers inside of the preserves, their direction was to eliminate buffers (inside or outside)

and the MSCP Plan and EIR/EIS reflect this direction. Integration of good land use planning principles and site design measures into future projects is the responsibility of the local land use jurisdiction.

85(m) The Third Party Beneficiary status is designed to achieve this certainty. For Third Party Beneficiaries, the take authorization runs with the land as do the mitigation requirements. The specific mechanisms to provide this certainty would be incorporated into the implementing agreements for each subarea plan. No specific examples of where the commenter believes this principle was violated are provided and therefore specific responses cannot be provided.

85(n) Please refer to response to Comment 79(n).

85(o) In developing the MSCP, the local jurisdictions, BIA and the Alliance insisted on severability of take authorizations among jurisdictions. As a result, each jurisdiction had to develop a plan implementation strategy which conserved vegetation communities in "rough step" with development (i.e. loss of habitat). In order to achieve this "rough step" performance standard, some jurisdictions opted to limit where mitigation could occur. Requiring mitigation within jurisdictions also reduces the potential that disproportionate amounts of coastal resources would be developed without proportionate conservation of coastal resources.

85(p) Thirty-four percent of the grasslands would be conserved by the MSCP Plan, and coverage for 18 grasslands species is provided by the Plan. Even with this low habitat conservation rate, 21% of the total species covered by the Plan utilize grasslands even though grassland represent only 8% of the habitat within the MSCP. This high level of species coverage is provided even though grassland impacts would be mitigated at the lowest level of any vegetation community. The state and federal Endangered Species Act and CEQA require mitigation for significant impacts, and the deletion of mitigation requirements for impacts to grasslands would clearly be inconsistent with the state and federal ESAs. The San Diego City Council and the San Diego County Board of Supervisors directed that the MSCP Plan and subarea plans use the ESAs' standards.

85(q) The comments are noted.

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OCT 29 1996

DEVELOPMENT SERVICES

COMMENTS TO THE PROPOSED MSCP PLAN, EIR/EIS, IMPLEMENTING AGREEMENT AND RELATED DOCUMENTS

Submitted to the
City of San Diego
and the
United States Fish & Wildlife Service

October 29, 1996

Prepared by:

Alliance for Habitat Conservation
416 University Avenue, Suite 200
San Diego, CA 92103

Building Industry Association of San Diego County
6336 Greenwich Drive, Suite A
San Diego, CA 92122

Greater San Diego Chamber of Commerce
402 West Broadway
San Diego, CA 92101

85

October 29, 1996

Mr. John Kovac
City of San Diego Development Services Department
Development and Environmental Planning Division
1222 First Street, M/S 501
San Diego, California 92101

Mr. Gail Kobetich, Field Supervisor
U.S. Fish and Wildlife Service
2730 Loker Avenue West
Carlsbad, California 92008

MSCP Plan Comments
600 "B" Street, Suite 500
San Diego, California 92101

RE: Draft Multiple Species Conservation Program (MSCP) and the Draft Joint EIR/EIS For Issuance of a Permit to Allow Incidental Take of 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 (EIR/EIS).

Ladies and Gentlemen:

The enclosed documents constitute joint comments from the Alliance for Habitat Conservation, the Building Industry Association of San Diego County, and the Greater San Diego Chamber of Commerce. Our organizations have each reviewed the draft MSCP Plan, Subarea Plans and EIR/EIS in view of the promise of the MSCP program: to *balance* the region's environmental, economic development and housing needs.

All our organizations believe we have come a long way in the development of the initial concept of a large-scale multi-habitat preserve which would revolutionize biological protection as we know it. The development of a plan for this innovative approach has been challenging to all participants due to the unique nature of the process and the lack of practical examples which would act as guideposts. The distance we have come by working together with the agencies should continue to act as a catalyst to all parties to satisfactorily complete the plan.

To this end, we have embarked on the MSCP planning process with a keen focus on the following primary goals: 1) To provide protection to listed and sensitive species sufficient to meet federal and state permit standards, and by so doing avoid potential economic

85(a)

disruption that would be caused by additional future state and federal species listings. 2) To provide a program that will streamline the environmental review process for future projects which may have impacts to listed and sensitive species. 3) To benefit all residents by equitably distributing program costs. 85(a)

It is the assurance of protection against future listings, the promise of streamlined permitting and the commitment to equitably fund the preserve program which bring together the organizations represented by this letter. Only if these assurances are clearly incorporated into the program Plan, EIR/EIS, Implementing Agreements and all other regulatory documents related to this program can we support the proposed MSCP preserve effort.

With this in mind, we provide the following comments.

1. Funding

The MSCP preserve is proposed to be funded through three primary sources: exactions from new development, state and federal contributions, and a broad-based local funding program. Seventy percent of the acquisition of privately-owned lands for the preserve is projected to be exacted from new development. The responsibility for acquisition of the remaining 30% is split between the federal and state government, who have committed to purchase up to 13,500 acres, and the participating local agencies who must also purchase 13,500 acres. 85(b)

- Federal and State Contributions

Over the last few budget cycles, the federal and state legislative and executive bodies have shown true leadership in the request and appropriation of precious monetary resources for the purpose of acquiring land to build out the MSCP preserve. Our organizations, along with local jurisdictions and environmental groups, have played a large role in helping to encourage these appropriations. We recognize our ongoing responsibility in the years ahead to make certain the adequate level of funding is realized to meet the state and federal obligations. 85(c)

The Model Implementing Agreement should recognize both the long-term nature of this program to avoid the need to review and revise permit coverage if any budget shortfalls occur, as well as the other contributions available to the federal and state wildlife agencies to help construct the preserve. Further, written findings should be made which indicate the *BIOLOGICAL* reasons for any decision to change permit coverage. 85(d)

- Local Contributions

The local funding program is critical to the success of the MSCP. Without a solid, certain and broad-based local funding program, federal and state incidental take permits may be at risk. The MSCP Plan, as written, lacks a real commitment to the development of a local funding program. The Plan should detail a process and schedule, including specific milestones, that will be followed in order to meet the local funding responsibility. The local funding program should provide maximum flexibility to combine funding sources as needed to meet program obligations. **85(e)**

Statements from elected officials across the county regarding the need to place *any* funding measure on the ballot, whether required by law or not, may limit the opportunity to choose from a variety of options and thus jeopardize potential long-term, broad-based local funding. Discussion of *all* viable funding sources available to local jurisdictions which do not rely on increased exactions, fees or taxes levied on new development or businesses should also be included in the plan. **85(f)**

The local funding component should reflect the fact that all residents in our region will benefit from the MSCP and should therefore carry their fair share of the financial burden. Commercial and/or industrial assessments, as currently discussed in the draft Plan, represent a "double-hit" to the business and development community, and violate this concept of fair and equitable distribution of MSCP costs. **85(g)**

We recognize that some time will be needed to educate the public as to the importance of the MSCP and the critical nature of broad-based funding. In the interim, however, a short-term financing program must be identified to address the gap created during the development leading up to the adoption of a permanent funding plan.

Recently, our groups participated in the effort by the San Diego Dialogue to develop a local "gap" financing program. The resulting report, unfortunately, does not adequately define the nature and commitment of funding by the local jurisdictions and therefore leaves questions in our minds about how or when these moneys will materialize. This short-term program must identify one or more explicit funding mechanisms and a financing commitment must be in place *prior to adoption of any MSCP implementation ordinances.* **85(h)**

2. ***Assurances***

The assurances against future federal and state endangered species listings need clarification and strengthening. Assurances from the wildlife agencies are primarily encompassed in the commitments made through the MSCP Implementing Agreements. **85(i)**

85(i)

Our organizations have spent a great deal of time detailing necessary changes to the Implementing Agreements that we believe would provide a level of assurance against future uncertainty that will be acceptable to the business community.

Recently, the U.S. Fish and Wildlife Service opted to *not* list a plant species due to its protection under this program. We recognize and appreciate the good faith nature of this decision. Further clarifications in the I.A. are needed, however, to incorporate a higher level of certainty for landowners.

These proposals are provided in this package as formal comments in the form of a letter from the legal firm of Hewitt and McGuire. It is our recommendation that these changes be incorporated into both the model Implementing Agreement and the City of San Diego's Implementing Agreement which will accompany their 10(a) permit application, as well as other jurisdictions' I.A.'s as they are developed and signed.

3. ***Streamlining the Permit Process***

Two issues germane to the promise held out by the MSCP of a streamlined regulatory process are the represented ability to use the MSCP EIR/EIS as a program document for subsequent, future development projects and the commitment that the MSCP would create a "one-stop-shop" for federal and state regulatory permitting.

- Program EIR

In order to address the first element of this streamlining commitment, the EIR/EIS must be comprehensive in its analysis of impacts to the species and vegetation communities covered by the Plan to provide a legally defensible basis for subsequent "tiering" by consistent future project applications. Our concerns have been carefully identified in the attached comments on both the EIR/EIS and the Model Implementing Agreement.

85(j)

It should be noted, however, that the millions of dollars and the unprecedented amount of biological review which went into the MSCP, to our collective knowledge, has created the most substantial scientific database of its kind anywhere in the United States. Therefore, to the maximum extent possible, the EIR/EIS should stand as a legally acceptable program document and be recognized as such in all of the documents and ordinances related to the MSCP. This means that projects consistent with the MSCP preserve boundaries and policies should be able to use the EIR/EIS as the project-level CEQA document.

- "One-Stop-Shop" / Wetlands Permitting (Other Agencies Review)

The second issue, creating a "one-stop-shop" for permitting was one of the primary motivations for the landowning community to participate in this program. We have been hopeful that *all* natural resource-based permits could be garnered under one program, which would thus save time and money and create the environment of certainty which is so critical to the land development process.

The program as proposed does appear to delegate state and federal wildlife agency permitting to the participating jurisdictions. Other agencies, however, like the U.S. Environmental Protection Agency and the Army Corps of Engineers (ACOE) have not been included in the development of the MSCP and therefore represent another layer of regulation which could then lead to mitigation "double hits" and continue to extend the lengthy and costly process of seeking regulatory approval from a multitude of federal, state and local agencies. This is an unacceptable continuation of the "business as usual" approach that the MSCP was intended to replace. 85(k)

In our estimation of the program, the acreage set aside and the regulatory controls for exactions and mitigation appear more than adequate to justify a higher level of protection for the species and habitats involved than is currently being discussed. For example, impacts to the wetland areas in the MHPA will require mitigation similar to levels already exacted under local regulatory controls (and therefore will meet and may even exceed the current federal standard). Despite these stringent requirements, the ACOE's Section 404 permit is not included among the MSCP's benefits. These permits *must* be included under this program for the MSCP to meet one of its key objectives.

The EPA and ACOE should immediately be brought into the MSCP, if not as direct signatories, through memoranda of agreement. To facilitate this, a commitment should be sought from the highest levels in all the agencies to broker a deal which would create in reality what we have all discussed in theory: a *truly* streamlined process for land development which also adequately protects the environment.

4. ***Edge Effects / "The Line is the Line"***

- "The Line is the Line"

According to the plan documents and the attendant assumptions, a "buffer" area of *at least* 200 feet was considered in the MSCP preserve design. Ultimately, the preserve build-out will total more than 170,000 acres. The preserve size, configuration and delineated 85(l)

assumptions clearly demonstrate that any edge effects and/or buffer issues have been adequately considered and mitigated by the preserve area. 85(l)

Unfortunately, certain aspects of the plan, the EIR/EIS, the implementing agreements, biological regulations (on a jurisdictional level) and suggestions from resource agency personnel more than suggest that buffer considerations will *still* play a large part in the project approval process.

Both the San Diego City Council and the County Board of Supervisors have taken clear policy action to limit the consideration of buffers to *within* the preserve line. We stand firm in our resolve that no additional land or design restrictions will be required for projects located adjacent to the preserve other than those areas where "hardlines" have not yet been drawn.

- Agreements on Hardline Areas

One of the fundamental principles of the MSCP is certainty for landowners. This certainty is embodied in a number of different ways. The most basic of certainties is that when an agreement is reached with a landowner on hardlines delineating preserve and development areas, the line cannot be altered without the consent of all parties, *including* the landowner.

Examples already exist where an agreement was made on these "hardlines" which were incorporated into the public draft MSCP only to be unilaterally changed without notification or the consent of the landowner. This action, and its ramifications, violates this key principle and understanding of the MSCP causing great concern among all potential participants and thus shaking the underpinning for the supposed benefits of this program. The I.A. must be changed to preclude these kinds of decisions from occurring in an inappropriate manner. 85(m)

5. ***Ambiguous Program Requirements***

A number of specific projects or recommendations have been identified in the individual sub-area plans which provide for enhancement, restoration or other such activities to benefit the operational viability of the preserve design. These may or may not be essential components of the management and maintenance program.

It is unclear, however, which projects, recommendations or "guidelines" are critical to the preserve's operation and which simply further enhance the preserve function. This distinction must be delineated. Additionally, this delineation should break-down the costs 85(n)

in tiers which identify the highest priorities for immediate public funding and the lower priorities which *might* be funded sometime in the future. 85(n)

6. ***Mitigation and Coverage***

- Mitigation Obligations

An important concept of the MSCP, as developed by the MSCP Working Group, was a table of ratios which would allow for the tabulation of mitigation for impacts as proposed during the development process. This table could then allow for "out-of-kind" mitigation for habitat impacts. This flexibility was an acknowledgement that all habitats needed to build-out the preserve were important, thus it is crucial that impacts to one type of habitat outside of the preserve can be mitigated with the same or different habitat-type within the preserve, if using the agreed upon ratios. 85(o)

In no way should this capability be diminished during the adoption process. Further, the MSCP covers a number of jurisdictions. The ability to cross jurisdictional boundaries and mitigate *anywhere* in the preserve, so long as the preserve land commitment of the individual jurisdictions are ultimately achieved, is an important component of the MSCP and the mitigation agreement reached some time ago. Any limitations in the implementing documents should be removed.

- Grasslands

One of the habitats where development is most likely to occur in this region are non-native grasslands. A number of species which use non-native grassland habitats are included in the plan, but grasslands are not afforded the same protection as other conserved habitats *even though mitigation for impacts to this habitat is now being proposed.*

The MSCP purports to be based upon a great many assumptions: one of which is that this program will not create greater restrictions than already exist under current law. Mitigation for grasslands represents regulation over and above what is currently required. This might be considered a benefit if and only if grasslands are afforded the same recognition of other conserved habitat-types. Therefore, the list of conserved habitats should be modified to include grasslands, or the mitigation for grasslands should be removed from the jurisdiction's implementing ordinances. 85(p)

CONCLUSION

The previous comments regarding the plan should by no means be considered to constitute an exhaustive delineation of our concerns. The enclosed documents are intended to deal more specifically with those issues which represent the utmost concern to the landowning and business community who have participated in the development of the MSCP.

It should be noted that a number of other documents which will help implement the preserve, including local jurisdictional ordinances, have either not been released for public review or have been released but responses to public comment have not been provided. We reserve the right to comment on these documents as new drafts become available.

Our organizations have cautiously watched and worked together with other participants in the development of the MSCP, anticipating that we can move past the current process of lengthy and costly project approvals while concurrently protecting the resources which so uniquely characterize this region. We appreciate the opportunity to provide these comments for your consideration. 85(q)

A great deal of progress has been made to this point but much more has yet to be accomplished before the program can be adopted. We stand ready to assist in whatever way possible to resolve our concerns and thus finalize a program which warrants our support.

Very Truly Yours,

Ian M. Gill, President
Building Industry Association of San Diego County

Dennis M. Moser, Co-Chair
Alliance for Habitat Conservation

James E. Whalen, Co-Chair
Alliance for Habitat Conservation

Stephen P. Cushman, Chairman
Greater San Diego Chamber of Commerce

cc: Mayor Susan Golding and Members of the San Diego City Council
Chairman Ron Roberts and Members of the San Diego County Board of Supervisors
Mayor Jack Dale and Members of the Santee City Council
Mayor Shirley Horton and Members of the Chula Vista City Council

86 LYNNE HEIDEL, WESTERN SALT COMPANY, H. G. FENTON MATERIAL COMPANY AND FENTON-WESTERN PROPERTIES, INC., 10-29-96

86(a) Salt ponds are generally wetlands and often provide important habitat for a variety of water birds including many of the MSCP's covered species. The MSCP does not propose a no-take policy for wetlands, but rather recognizes the state and federal policy of "No-Net-Loss" of wetlands, including values and function. The take authorizations issued to the local jurisdictions participating in the MSCP program will cover the take of covered species which occurs incidental to projects which are authorized pursuant to the take authorizations. This authorization for take through the local jurisdictions does substitute for obtaining the appropriate agreements/permits needed to carry out work outside of ACOE jurisdictional wetlands. The wildlife agencies have committed in the Model Implementing Agreement to work with the ACOE and other agencies to develop a Section 404 permit for the MSCP study area.

Both the MSCP Plan and draft update of the Otay-Mesa-Nestor Community Plan anticipate the continued operation of the salt works for extraction of salt. The City of San Diego Subarea Plan and EIR/EIS will be revised to the identify the activity at the salt works as evaporation for salt recovery rather than salt extraction. The intent of the statement regarding management for species was intended to acknowledge that the current management of the salt works for salt recovery provides habitat for a wide variety of species and that the salt works is compatible with the goals of the MSCP. The MSCP Plan does not require, implicitly or explicitly, any increased regulation of the salt works. The map which depicts the salt ponds in the preserve has been changed to delete the 10 acre salt works facility as well as the property north and east of Bay Boulevard. Please also see **Theme Responses XVII, Salt Works, and XXV, Wetlands Permitting.**

86(b) The reference to breaching of the levees has been deleted from the City of San Diego's Subarea Plan.

86(c) See response to Comment 86(a) above.

86(d) Maintenance of the status quo with regard to the salt works is compatible and anticipated by the MSCP Plan and EIR/EIS. Since the MSCP Plan does not propose a change in the salt works, there are no environmental impacts associated with including the salt works in the Plan and therefore the EIR/EIS does not need to be modified to address this issue. See also **Theme Response XVII, Salt Works.**

86(e) The reference to breaching the leased tidelands has been deleted from the City of San Diego's Subarea Plan

86(f) Please see responses to Comments 86(a) through 86(e).

86(g) The Cornerstone Lands Agreement pertains only to City of San Diego owned lands. The reference to distance and elevation was a general description of the reserved areas and only applies to City-owned lands. No private lands are subject to the Conservation Banking Agreement.

86(h) See response to Comment 86(g).

86(i) Section 6.2.4 has been revised to acknowledge that sand and gravel extraction may occur within the MHPA based on meeting specific criteria. Please see Revisions to the MSCP Plan, Volume I, January 1997, Section 6.2.4.

86(j) Guideline A.10 refers to all aggregate extraction areas within the preserve and is not restricted only to floodplain areas. Currently there is still aggregate mining in the Otay Valley open space corridor, mostly on slopes being mined by the Nelson Sloane Co. Guideline A.10 applies to this and any other extraction activities in the MHPA.

86(k) The preserve in the cited reference refers to lands dedicated to the preserve (for their biological values) either through mitigation or acquisition. The term preserve does not include all lands within the MHPA in the City of San Diego and its equivalent in the County. Expansion of existing and new sand and gravel extraction facilitates would be subject to the County's BMO, the conditions described in the City of San Diego's Subarea Plan, Appendix B, or to other jurisdictions regulations as appropriate. As indicated in response to Comment 86(j), MSCP Plan Section 6.2.4 has been revised.

86(l) The discussion on page 4.2-85 of the EIR/EIS describes the broad guidelines under which mining activities may be compatible with achieving the biological goals of the MSCP. The definition of "full mitigation" will vary from project to project and would be determined by the local land use authority, consistent with their take authorization, on a case-by-case basis. Please also see the revised MSCP Plan Section 6.2.4 included in the Revisions to the MSCP Plan, January 1997.

86(m) The EIR/EIS has been revised to reflect that the continued operation of the salt works is consistent with the MSCP Plan and that the salt works provide important habitat for many of the covered species. The City of San Diego's Subarea Plan has been revised to indicate that the habitat on the salt works is important to the South Bay ecosystem and that it is not the intent of the Subarea Plan to reduce, eliminate, or modify the salt production process associated with the salt works. The letter from Dudek & Associates, Inc. regarding the operation and biological value of the salt works was helpful and the biological value of the salt works has been taken into consideration in the covered species evaluations.

86(n) See responses to Comments 86(a) – 86(m).

86

STEPHENSON WORLEY GARRATT SCHWARTZ HEIDEL & PRAIRIE
A LIMITED LIABILITY PARTNERSHIP
LAWYERS
101 WEST BROADWAY, SUITE 1300
SAN DIEGO, CALIFORNIA 92101-8214

LORI A. CHAMBERLAIN
TIMOTHY K. GARFIELD
GREGORY C.M. GARRATT
LYNNE L. HEIDEL
MICHAEL W. PRAIRIE
AMY ROSEN
WILLIAM J. SCHWARTZ, JR.
GARY J. STEPHENSON
JENNIFER TREESE WILSON
DONALD R. WORLEY

OF COUNSEL
ELAINE L. CHAN
KENT H. FOSTER

TELEPHONE
(619) 696-3500

FACSIMILE
(619) 696-3555

E-MAIL
SDLAW@SWGSHP.COM

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VIA HAND DELIVERY

Mr. John Kovac, Senior Planner
CITY OF SAN DIEGO
1222 First Avenue, 5th Floor
San Diego, CA 92101

Re: Comments on the Draft MSCP and
Comments on the MSCP Plan Draft EIR/EIS
DEP No. 93-0287/SCH No. 93121073

Dear Mr. Kovac:

We represent Western Salt Company, H. G. Fenton Material Company and Fenton-Western Properties, Inc., which may be collectively referred to herein as "Fenton," with respect to a number of properties located throughout the County of San Diego. Fenton operates a salt works along the southern edge of San Diego Bay and operates sand and gravel extraction facilities as well as related businesses in various parts of the San Diego region. Approximately fifteen hundred (1500) acres of Fenton's property would be located in areas of the Preserve proposed to be created by the Multiple Species Conservation Program ("MSCP").

This letter supplements our letter of October 15, 1996 a copy of which is attached as Enclosure 1. The October 15, 1996 letter commented on the Draft EIR/EIS with respect to the salt ponds and salt works. This letter includes comments not only on the Draft EIR/EIS but also on the MSCP and the City of San Diego Subarea Plan ("Subarea Plan") and the Implementing Agreement by and between City of San Diego, United States Fish and Wildlife Service and the California Department of Fish and Game ("Implementing Agreement"). It also expands the focus of the comments beyond the salt ponds and salt works to provisions of the referenced documents related to Cornerstone Lands and mining, extraction and processing facilities.

86

I. SALT WORKS

1. Comments on MSCP and Subarea Plan

Generally, salt ponds are wetlands, but the MSCP in its discussion of wetlands does not specifically address the unique nature of salt ponds or their relationship to Western Salt Company's salt works. As discussed in our previous letter, however, the salt ponds are mentioned in the Subarea Plan. The MSCP basically states that the existing protections afforded jurisdictional as well as non-jurisdictional wetlands are confirmed. There are no "take" allowances proposed for wetlands either in the MSCP, the Subarea Plan or the Implementing Agreement. If there is no change to wetlands regulation by virtue of the MSCP, the inclusion of wetlands in the MSCP is of questionable value to either the owners of wetlands or the public at large. From Western Salt Company's point of view, MSCP represents a threat to an on-going business because it includes not only the salt ponds in the Preserve, but also the salt plant itself and all nearby properties whether wetlands or not.

The MSCP and the Subarea Plan discourage the on-going operation of the legitimate and beneficial business of salt production. The Subarea Plan identifies the salt pond area as A-11 on Figure 2. As mentioned above, the term "Salt Ponds" is sweepingly applied to not only the salt ponds which are jurisdictional wetlands, but to developed portions of the salt works and other property with Western Salt Company's ownership which are not part of the salt works.

Furthermore, a misunderstanding of the salt production process is reflected in the Subarea Plan as well as the Draft EIR/EIS. First, on page 9 of the Subarea Plan, Fenton's use of the property is described as "salt extraction." The process actually used is an evaporative process, not an extractive process. The evaporative process is not mining. Second, the fact that animal and plant species are currently found on the property is due to the operation of the salt works and not to a management program as implied in the Subarea Plan. Therefore, to say that "sensitive animal and plant species should continue to be managed" is inaccurate. Finally as stated in our previous letter, the draft Otay Mesa-Nestor Community Plan ("Community Plan") encourages the continued operation of the salt works because such use serves to preserve valuable habitat. The draft Community Plan specifically states the continuation of the salt works is "consistent with the City's natural resource conservation and open space preservations goals."

The Subarea Plan is inconsistent with the recommendations of the draft Community Plan. If the salt works are to be included in the Preserve, Western Salt Company requests that language be incorporated in the MSCP, the Subarea Plan and Implementing Agreement similar to that in the draft Community Plan. The added language should state that the MSCP shall not be used to inhibit the operation of the salt works, its updating, growth or change. This will not

86(a)

only give assurance to Western Salt Company that the MSCP does not threaten its business, but also that the salt ponds will be preserved. 86(a)

On page 66 of the Subarea Plan, a Specific Management Recommendation is made for the Otay River Mouth area. The recommendation is to restore the tidelands leased for salt mining by breaching the levees in several locations. This discussion is not included within the discussion of area A-11 or in the section of the Subarea Plan related to the salt works, but the tidelands leased from the State are a vital part of the salt works. The leased tidelands provide the area in which the primary system of the evaporative process is located. If the levees were breached, the area of the salt works where the initial evaporative process occurs would be lost, resulting unavoidably and immediately in the demise of the salt works. Attached hereto as Enclosure 2 is a letter prepared by Dudek & Associates which discusses the importance of the salt works and the nature of the salt ponds as a valuable habitat area. The recommendation that the levees be breached should be deleted from the Subarea Plan. 86(b)

2. Comments on Draft EIR/EIS

The relevant discussion of the salt works in the Draft EIR/EIS is found on page 4.3-100. As mentioned above, the Draft EIR/EIS erroneously refers to the salt production process as "extraction" and seems to assume that the impacts of salt "extraction" are similar to "aggregate extraction." The Draft EIR/EIS also implies that the salt production process is destructive of the habitat in which it is located. As discussed above, the salt works utilizes an evaporative process not a mining or extractive process and it actually creates and enhances habitat. 86(c)

The Draft EIR/EIS fails to address the land use and biological impacts of including the salt works in the Preserve in the event such inclusion inhibits the on-going operation of the salt works. As stated in the letter from Dudek & Associates, there is a strong case for the maintenance of the status quo with respect to the salt works. This lack of analysis is in direct conflict with the Draft EIR/EIS criteria for determining significance as set forth on page 4.2-1. It is stated repeatedly throughout Chapter 4.2 of the Draft EIR/EIS that percent conservation thresholds are incorporated in the Preserve design and that inclusion in the Preserve will result in wetlands preservation, but there is no discussion of the potential impact of cessation of the salt works on wetlands and on endangered species that could be the direct result of inclusion in the Preserve. 86(d)

There is also no discussion in the Draft EIR/EIS of the recommendation in the Subarea Plan that the leased tidelands be breached. The effect of such breaching would not only destroy the salt works as a business but would cause a degradation of the habitat area for plant and animal species. It should be clear that there is no incentive in the MSCP for Western Salt Company to preserve the habitat area should it be unable to operate its business. 86(e)

In summary, there is a lack of information in the Draft EIR/EIS about the salt ponds as a wetland area and the relationship between the salt works and the wetland habitat area. There is no discussion of the impact of the MSCP on the on-going operation of the salt works, but there is an indication that the goal of the MSCP is to terminate the salt works. Furthermore, there is no detailed discussion of the land use implications of the MSCP on the Otay Mesa-Nestor Community Plan area or of the inconsistencies between the documents. Discussion and correction of discussions of these issues should be included within the Draft EIR/EIS. 86(f)

II. CORNERSTONE LANDS

1. MSCP Comments

Section 4 of the MSCP describes the policies and methods of assembling the Preserve. Section 4.3.1 describes the contributions of existing local public lands and specifically describes "City of San Diego Cornerstone Lands." The Cornerstone Lands Conservation Bank Agreement ("Conservation Bank Agreement") is identified as Exhibit K of the Implementing Agreement. Although the City of San Diego is named in the Conservation Bank Agreement as the owner of the cornerstone lands, the description of the cornerstone lands appears to extend beyond the ownership of the City. For example, Western Salt Company owns properties in Janal Ranch in the City of Chula Vista which are located adjacent to Upper and Lower Otay Lakes. Pursuant to Exhibit K of the Conservation Bank Agreement, the City reserves certain rights over land within 300 feet horizontal from the proposed high water level of Lower Otay Lake and 300 feet horizontal from the 550 foot contour defining Upper Otay Lake. Some of the property within the described 300 feet is owned by Western Salt Company. Attached as Enclosure 3 are two maps which illustrate this fact.

The intent of the MSCP, the Subarea Plan and the Conservation Bank Agreement is not clear as to whether this property is actually intended to be included in the cornerstone lands. Furthermore, the lack of clarity is exacerbated by the fact that some of the cornerstone lands are excluded from the Preserve in the Subarea Plan. Preserve Exclusions relative to Otay Lakes cornerstone properties are listed on pages 35-36 of the Subarea Plan. Pursuant to Exclusion 4 it appears that the City lands within 300 feet horizontally from the high water level of Lower Otay Lake and dam are excluded from the Preserve, but that private lands are not. If this is an accurate interpretation, it appears that cornerstone lands must also include privately owned property. This, of course would be a contradiction of the Conservation Bank Agreement. Pursuant to Exclusion 5 the area of Upper Otay Lake and dam and the shoreline area within 300 feet horizontally from the 550 foot contour is excluded. In Exclusion 5 no distinction is made relative to City versus privately owned land. 86(g)

It should be noted that in some cases the 300 foot area described in the MSCP and Conservation Bank Agreement is located on uplands in the City of Chula Vista. Furthermore, in some cases this area is across a road and on grazing lands. For these reasons the description and treatment of the cornerstone lands must be reviewed. **86(g)**

2. Draft EIR/EIS Comments

There is no discussion of the Exclusions in the Draft EIR/EIS, but the discussion of cornerstone lands in this document appears to assume that the cornerstone lands are those owned by the Water Utilities Department. Furthermore, there is no recognition that some of the cornerstone lands are located outside the City of San Diego on uplands and are separated from the Otay Lakes by roadways. This should be clarified in the Draft EIR/EIS in order to be consistent with the Subarea Plan. **86(h)**

III. MINING, EXTRACTION AND PROCESSING FACILITIES

1. MSCP Comments

Section 6.2.4 of the MSCP discusses Mineral Extraction. Although the MSCP states that existing mining facilities will be allowed to continue, such operations will be severely hampered by their inability to expand. Furthermore, new facilities would be infeasible because of the requirements to avoid adverse direct and indirect impacts and to restore native habitat impacted by mining. Mining by its very nature will have adverse impacts as those are described in the MSCP, and restoration of native habitat over the areas mined would be infeasible if not impossible. Consideration of the social and economic benefits of the extraction process must be taken into consideration as they would be pursuant to the CEQA review. Construction and maintenance of the infrastructure of the region is dependent on local sources of sand and gravel. If this industry is precluded from operating in the region, the economic growth and vitality of the region will be seriously impaired. **86(i)**

On page 9 of the Subarea Plan, it is indicated that upon completion of extraction activities within the Otay River Valley, revegetation with native vegetation should occur. It should be noted that the floodplain of the Otay River Valley has been completely mined; mining within the floodplain ceased in 1972; all of the Valley is in the Preserve, and all of the former mining areas have been revegetated. Therefore, the "guideline" on page 9 with respect to area A-10 on Figure 2 is irrelevant and inaccurate. **86(j)**

On page 49 of the City of San Diego Subarea Plan, the goals of the MSCP become clear with respect to mining. "In the long-term, it is envisioned that no sand or other mining activities will occur in the Preserve." The only sources of sand in San Diego County are located either within the Preserve or its equivalent within the MHCP. Sand is needed for concrete, stucco **86(k)**

and asphalt which are vital building materials. If there is to be no sand mining within the Preserve, there will be no sand production in the San Diego region. On page 49 the impossible or impractical goals discussed in Section 6.2.4 of the MSCP are reiterated. **86(k)**

2. Draft EIR/EIS Comments

Section 4.2.3.1 of the Draft EIR/EIS perpetuates the flaws of the MSCP and the Subarea Plan. The document states that existing operations would remain and have the potential to expand if impacts can be fully mitigated. There is no description of what constitutes full mitigation, but clearly an extraction operation by its very nature does not mitigate its impacts while the operation is on-going. Because there is no clear indication of what will constitute full mitigation it is inaccurate for the Draft EIR/EIS to conclude that no adverse direct or indirect impacts will occur as a result of the MSCP policies regarding mining. **86(l)**

Section 6.2.3 of the MSCP begins with a statement that "[T]he MSCP has been prepared under the fundamental policy that private property rights shall be respected." With respect to operating salt works and to mining operations, this principal seems to have been forgotten. There is no assurance that the salt works may continue to operate even though it preserves and enhances valuable wetlands. Existing mining facilities are threatened because such facilities may be prevented from growth and expansion. Although the MSCP touts an improved regulatory process, in actuality no such improvement is proposed for wetlands and in fact, an additional regulatory burden has been added to wetlands properties. Astonishingly, there is no discussion either in the MSCP, the Subarea Plans, the Implementing Agreements or the Draft EIR/EIS of the beneficial and necessary continuation of salt works and mining operations. Only negative impacts of such operations are assumed and mentioned. The destruction of this industry in San Diego County could have far reaching economic impacts on continued growth because the products of these operations are essential to growth, development and maintenance of infrastructure. The lack of discussion, acknowledgment and resolution of these issues leaves the MSCP as well as the Draft EIR/EIS flawed and incomplete. **86(m)**

Very truly yours,

Lynne L. Heidel

Lynne L. Heidel

cc: Mayor Susan Golding and
Members of the City Council

86

STEPHENSON WORLEY GARRATT SCHWARTZ HEIDEL & PRAIRIE
A LIMITED LIABILITY PARTNERSHIP
LAWYERS
101 WEST BROADWAY, SUITE 1300
SAN DIEGO, CALIFORNIA 92101-8214

LORI A. CHAMBERLAIN
TIMOTHY K. GARFIELD
GREGORY C.M. GARRATT
LYNNE L. HEIDEL
MICHAEL W. PRAIRIE
AMY ROSEN
WILLIAM J. SCHWARTZ, JR.
GARY J. STEPHENSON
JENNIFER TREESE WILSON
DONALD R. WORLEY

OF COUNSEL
ELAINE L. CHAN
KENT H. FOSTER

TELEPHONE
(619) 696-3500

FACSIMILE
(619) 696-3555

E-MAIL
SDLAW@SWGSHP.COM

October 15, 1996

VIA HAND DELIVERY

Mr. John Kovac, Senior Planner
CITY OF SAN DIEGO
1222 First Avenue, 5th Floor
San Diego, CA 92101

RECEIVED
1996

Re: MSCP Plan Draft EIR/EIS
DEP No. 93-0287/SCH No. 93121073

Dear Mr. Kovac:

We represent Western Salt Company with respect to its salt works which is located within the Otay Mesa-Nestor Community Plan area of the City of San Diego. The salt works is identified on Figure 2 (Conserved Vegetation Communities in Southern Area) of the MSCP Subarea Plan for the City of San Diego as area A-11 and is discussed on page 9 of the Subarea Plan. Thank you for the opportunity to comment on the Draft Environmental Impact Report/ Environmental Impact Statement ("Draft EIR/EIS") prepared in conjunction with the MSCP. We understand that the public comment period has been extended to October 29, 1996 and we intend to elaborate on the issues introduced in this letter prior to this date.

As stated above, the salt works is mentioned in the MSCP Subarea Plan for the City of San Diego. The Draft EIR/EIS discussion of the impacts of the MSCP on the salt works is found on page 4.3-100 of the document. This brief statement implies that the salt extraction process is destructive of the habitat in which it is located. Furthermore, the analysis seems to assume that the impacts of salt "extraction" are similar to "aggregate extraction." This discussion is clearly in error in that the salt works actually creates and preserves the wetland habitat. The Draft EIR/EIS has failed to address the land use and biological impacts of placing the salt works in the preserve in the event the preserve inhibits the on-going operation of the salt works. Furthermore, there is no discussion of the fact that the draft Otay Mesa - Nestor Community Plan ("Draft Community Plan") encourages the continuation of the salt works and states that such continuation is "consistent with the City's natural resource conservation and open space preservation goals." (See page 1.5 of the Draft Community Plan.) It is acknowledged in the Draft Community Plan that the on-going operation of the salt works serves to preserve the wetland habitat. There is therefore an inconsistency in the land use and biology assumptions of the Draft

86(n)

Community Plan and the MSCP and the Draft EIR/EIS and a lack of discussion of these issues in the Draft EIR/EIS. 86(n)

The salt ponds are part of a man made industrial operation. The on-going use of the property is industrial, an industrial use which creates and preserves wetlands. There is no discussion in the Draft EIR/EIS about the impacts and implications of the cessation of the use. Furthermore, there is no acknowledgment that the on-going operation of the salt works should be encouraged or that the goals of the MSCP do not threaten the on-going industrial use.

If the salt works are to be included in the MSCP Preserve, Western Salt Company will request that language be incorporated in the MSCP which states that the MSCP shall not be used to inhibit the operation of the salt works, its updating, growth and change. This will not only give assurance to Western Salt Company that the MSCP does not threaten its business, but also that the salt ponds will be preserved. The addition of such language would be consistent with the Draft Community Plan.

It should be noted that portions of the salt works are identified as developed on Figure 2 referenced above, but neither the MSCP nor the Draft EIR/EIS address the importance of maintaining the industrial activities on these portions of the salt works. We do not believe that these areas, which are not jurisdictional wetlands, should be included in the preserve at all. The Draft Community Plan will identify the portions of the salt works other than the ponds themselves as "Salt Works" so that they may be altered without creating a conflict with the Draft Community Plan. Western Salt Company will request that similar language be incorporated in the MSCP. There should be discussion of the impacts of the inclusion of the developed areas in the Draft EIR/EIS in that such inclusion could threaten the continued operation of the salt works. Furthermore, there are other portions of the salt works, including Pond 20 and the magnesium chloride ponds, which are not jurisdictional according to Western Salt Company's biology consultant and should not be included in the preserve at all.

In summary, there is a lack of information in the Draft EIR/EIS about the salt ponds as a wetland area and the relationship between the salt works and the wetland habitat area. There is no discussion about the impact of the MSCP on the on-going operation of the salt works. There is no detailed discussion of the land use implications of the MSCP on the Otay Mesa-Nestor Community Plan area. Discussion and correction of discussions of these issues should be included within the Draft EIR/EIS.

As a general comment, it should be noted that there are no development benefits to be derived from the inclusion of wetlands in the MSCP. The MSCP merely subjects wetlands to new constraints in addition to those already imposed by existing Federal, State and Local regulation. Therefore, the inclusion of wetlands within the MSCP is inconsistent with the intent of the MSCP.

We thank you again for the opportunity to comment on the Draft EIR/EIS for the MSCP.

Very truly yours,

Lynne L. Heidel

Lynne L. Heidel

cc: Mayor Susan Golding and
Members of the City Council

DUDEK & ASSOCIATES
A California Corporation

Engineering, Environmental Sciences and Management Services

Corporate Office:
605 Third Street
Encinitas, California 92024

619.942.5147
Fax 619.632.0164

28 October 1996

Allen M. Jones, AICP
Planning and Land Manager
Fenton-Western Properties
7220 Trade Street, Suite 300
San Diego, CA 92121

Subject: *Western Salt Works*

Dear Mr. Jones:

At your request, I have prepared this letter addressing the biological importance of the Western Salt Works, with special reference to perpetuation of the current operation. I understand that this letter may be submitted as an attachment to other evidence and arguments in response to the Draft Environmental Impact Report/Environmental Impact Statement (Draft EIR/EIS) for the Multiple Species Conservation Plan (MSCP).

The biological significance of South San Diego Bay and the Salt Works has been recognized by many (e.g., Unitt, 1984; MacDonald et al. 1990; U. S. Fish and Wildlife Service, 1994). The U. S. Fish and Wildlife Service stated that 70% of California's coastal wetlands have been lost, and cited the substantial role that San Diego Bay plays in providing foraging and resting areas for wetland dependent species (FWS 1994). As a subset of coastal wetlands, tidal mudflats are one of the most depleted wildlife habitats in San Diego County. Unitt (1984) stated that tidal mudflats were found in San Diego County only around San Diego and Mission Bays, and at the mouths of San Diego and Tijuana Rivers. Recent lagoon restoration efforts may result in the exposure of additional tidal mudflats (e.g., San Elijo Lagoon), however, this remains a scarce habitat. What remain of the coastal wetlands, wildlife generally share with humans, with a consequent adverse impact on wildlife. Unitt (1984) stated that all of the county's coastal wetlands are degraded to some extent by human activity, "with an adverse effect on much of the county's avifauna."

The sensitivity of ground-nesting birds to human interference and exogenous predation is well known and well documented (Brown and Morris, 1995; Burger et al., 1995; Loegering et al., 1995; Wang et al., 1995). These affects are not confined to nesting birds but also have an impact on foraging or resting birds during the non-breeding season. Migratory shorebirds, waterfowl and other waterbirds are under strict energetic pressure and disturbances at feeding or loafing sites can have disastrous effects on individual and population health.

Salt Works Operations

The salt works operation has primary, secondary, pickling, and crystallizer systems which include over 40 ponds. Initially, saltwater is introduced into the system via tidal influence. This water enters the primary ponds and is transported under Otay River by a 30-inch siphon pipe. It continues through the remaining primary ponds (6 ponds total). The increasingly saline water

is then mechanically introduced into the secondary ponds where it flows through 8 ponds via flumes and gates. The brine, which has reached sodium chloride saturation, is then mechanically pumped from the secondary system into 3 pickling ponds where the salinity is increased. The brine is then pumped into the crystallization ponds to evaporate. Finally, when harvested, the remaining water is sluiced off and the remaining salt is removed for drying and storing.

Brine shrimp are commercially produced in various ponds within the secondary system between May through December.

Jurisdictional Wetlands

According to detailed land surveys we conducted earlier this month, at least portions of the secondary system, as well as pond 20, appear *not* to be subject to Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act. In other words, these areas appear not to be "bay waters," "navigable waters" or "wetlands."

Biological Resources

Birdwatchers and ornithologists have historically had occasional access to parts of the Salt Works property, such as for specific studies and Christmas Bird Counts. In addition, birds using some of the area are visible from public thoroughfares. However, the most comprehensive compilation of bird use of the Salt Works was provided by the FWS for the period 1993-1994 (FWS 1994).

A total of 94 water-associated bird species were recorded using the Western Salt Works in 1993-94 (FWS 1994). Most of the species are wetland-dependent, and a substantial number (23) are considered endangered, threatened or sensitive. A total of five species (numbering in the thousands of individuals) were recorded as breeders on the Western Salt Works dikes; regionally, breeding colonies of black skimmer, California least tern, western snowy plover, black-necked stilt, and American avocet are considered extremely important. In addition to diversity, the salt works provided habitat for an large amount of avian biomass. During the 1993-1994 study, an average of over 10,000 water-associated birds used the Western Salt Works per day (3.7 millon birds/year) (FWS 1994).

Examination of the bird census results and other information (FWS 1994) indicates that all of the primary system ponds and a large number of the secondary system ponds contain brine shrimp, other invertebrates and fish that are prey to a large number of migratory waterfowl and shorebirds.

The primary benefits that the current operation provides wildlife are several: maintenance of high productivity; maintenance of habitat diversity that is attractive to many different species of

wildlife; site security; and ability to effect management (e.g., predator control).

The salt works provide a managed, productive wetland system that is attractive to and secure for a large number of shorebirds and waterfowl. The managed system provides diverse food resources, and diverse, remote, and secure resting and nesting opportunities. If the salt works operation ceased, a number of adverse consequences may occur. Primary among these would be a lapse in site security, allowing increased human access to sensitive resting or nesting areas, and probable direct mortality of eggs and nestlings (as a result of humans and their pets). It is highly likely that nesting colonies of the threatened western snowy plover (*Charadrius alexandrinus nivosus*), endangered California least tern (*Sterna antillarum browni*) and others such as black skimmer (*Rhynchops niger*), royal tern (*Sterna maxima*), American avocet (*Recurvirostra americana*), black-necked stilt (*Himantopus mexicanus*), and killdeer (*Charadrius vociferus*) would be disturbed. Many other species, some of them sensitive, maintain large winter populations within the secluded ponds; these also may be disturbed by increased or uncontrolled human use. The second potentially significant adverse consequence of a cessation of the current use would be a loss of productivity of the ponds. The ponds support algae, brine shrimp, other invertebrates, and fish, which constitute a food resource for the large shorebird and waterfowl population.

Although it may be possible to construct and manage a system that is more beneficial to sensitive wildlife than the current operation, any changes to the current system would be experimental and the results would be speculative. It would be difficult to justify changes that would even temporarily dislocate or reduce the viability of least tern, snowy plover, black skimmer or royal tern colonies or reduce resources for the large wintering populations. A majority of the biota associated with the salt works relys on a long-term, historical, complexly managed system in which water levels, sality levels, water sequencing inputs and outflows, and other factors affect prey abundance, nesting sites, loafing sites, and resting sites. Any changes to the number or characteristics of dikes, water flow, salinity level, water level, water sequencing, or other factors may have extreme and unpredictable adverse affects to the overall biota and biological productivity of the salt works. Additionally, the overall viability of some species' populations in San Diego and as a whole may be in question if modification of the current operation is implemented without proper research.

In their concluding remarks in *Avifauna of South San Diego Bay*, the FWS (1994) made a strong case for maintenance of the status quo with respect to the Salt Works: "The Bay's value to wildlife can only be maintained if the integrity of existing habitats remains intact. This can be accomplished by providing protection through proper land stewardship, planning future enhancement goals to increase wildlife values of the Bay, and by cooperation among Federal, State and local agencies as well as other stakeholders to resolve land use conflicts."

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Very truly yours,

DUDEK AND ASSOCIATES, INC.

Harold G. Wier

Harold A. Wier
Botanist/Biological Sciences Manager

87 BLUM, R., CITY OF SAN DIEGO ENVIRONMENTAL SERVICES, 10/29/96

Internal City comment. Administrative record only.

88 M. A. VOGT, OTAY MESA PLANNING GROUP, 10/29/96

88(a) A review of the housing goals in the adopted 1981 Otay Mesa Community Plan does not reveal any conflicts between the proposed MSCP Plan and the Community Plan goals. An amendment to the Otay Mesa Community Plan (not a comprehensive update) is proposed to occur concurrently with MSCP Plan adoption. While the development areas would be revised from those in the adopted Community Plan, none of the goals in the housing element are proposed to be changed.

88(b) The substantial conformance procedure for development projects is a processing method that is not appropriately addressed in the MSCP Plan or environmental document. The method used to process projects is a procedural matter determined primarily by state law that would not have any environmental impacts.

88(c) If property is turned over to the City in fee title, the City is responsible for maintenance. If a property owner retains title to a property and a conservation easement is placed over the property, the owner is responsible for maintenance. If the conservation easement provides for a government entity or approved conservation organization to manage the property for its biological values, management and maintenance would be funded by the local funding source.

88(d) The transition areas are intended to be a transition between natural open space and urban uses, not a buffer to the preserve. This is not in conflict with the concept that "a-line-is-a-line" and good land use practices (primarily site design features) would be incorporated into new projects next to the preserve which contain the projects' impacts within the project area.

88

OTAY MESA PLANNING GROUP

Established by the City of San Diego February 21, 1990 *Resolution #90-018*

October 29, 1996

Mr. John Kovac
City of San Diego
Development Services Department
Development and Environmental Planning Division
1222 First Street, MS 501
San Diego, CA 92101

Mr. Dave Flesh
City of San Diego
Metropolitan Wastewater Department
MSCP Plan Comments
600 B Street, 5th Floor
San Diego, CA 92101

Mr. Gail Kobetich
U.S. Fish and Wildlife Service
2730 Loker Avenue West
Carlsbad, CA 92008

RE: Comments on Draft MSCP Plan and Draft EIR/EIS

Gentlemen:

On behalf of the Otay Mesa Planning Group, I am writing to provide comments on the Draft EIR/EIS for the Multiple Species Conservation Program (MSCP) and the Draft MSCP Plan.

The Otay Mesa community is more impacted by the proposed MSCP than any other community in the City of San Diego. Since the community plan was adopted for Otay Mesa in 1981, the total housing units projected for development to support the expanding industrial and commercial base has been reduced to approximately half the original number.

The MSCP Plan does not reflect the goals set forth in the housing element of the Otay Mesa Community Plan, and the community plan will require a comprehensive update once the MSCP is adopted. Because of the extraordinary number of housing units that will be lost in Otay Mesa due to implementation of the MSCP Plan, it is important that previously approved housing projects in Otay Mesa be given expedited review. 88(a)

The MSCP Plan and Draft EIR/EIS fail to mention that on July 1, 1996, the San Diego City Council adopted a substantial conformance policy for expedited approval of previously approved projects that have been modified due to the MSCP. The Otay Mesa Planning Group feels strongly that these projects should not be delayed or incur additional processing fees, since the changes that they are required to make are a direct result of the MSCP. The Draft 88(b)

Planning Group meetings are held on the 3rd Wednesday of every month at 2320 Paseo de las Americas, #216 Otay Mesa, CA 92173

For more information please call Kristen McDade (619) 296-4394

88

EIR/EIS should reflect the decision of the San Diego City Council to allow for substantial conformance review of these previously approved projects. 88(b)

In addition, the proposed community plan amendment submitted by the City as part of their federal Incidental Take permit application incorporates language that gives us cause for concern. New language is proposed to be added to the community Open Space Element, including nine "open space proposals." The community planning group requests clarification on proposals #6 and #9.

Proposal #6: **Open space area which cover portions of an ownership and where reasonable development rights still exist on portions of the ownership, should be dedicated by the owner/developer, through an open space/conservation easement. Long-term maintenance should be provided on an individual basis or by an open space management entity that may be formed to implement the MSCP.** 88(c)
Although it is our understanding that open space areas will be dedicated in fee title or through an open space/conservation easement, it is our understanding that long-term maintenance of all MSCP preserve land will be the responsibility of the City. Please clarify.

Proposal #9: **Transition areas should be established between urban uses and the open space system, along traffic corridors and canyon overlooks where feasible and appropriate. Such transition areas may be developed by providing additional maintenance and planting grass, shrubs and trees that provide a sensitive transition between uses.** 88(d)
We understand that in formulating the MSCP, the City Council adopted several policies related to
the program. One important policy stipulates that all open space buffers will occur ***within*** the preserve. Please clarify this proposal to require "transition areas."

The Otay Mesa Planning Group appreciates the opportunity to comment on this important project. Thank you for your consideration.

Sincerely,

Michael A. Vogt
Chair

cc: Mayor Susan Golding
Councilman Juan Vargas, District 8

89 ROBERT McCLURE, WILD ANIMAL PARK, OCTOBER 28, 1996

89(a) Note 5 on page 35 of the City of San Diego Subarea Plan (MSCP Plan, Volume II) is virtually identical to the language of the San Pasqual Valley Plan (Proposal 7, page 29) and is included in the subarea plan at the direction of the City of San Diego Council.

89(b) Comment noted. The opportunity for public review and comment on the Draft EIR/EIS and MSCP Plan and subarea plan is now closed. The Wild Animal Park will be noticed, along with the other commenters, when the Final EIR/EIS is available, and what the ultimate decisions are of the wildlife agencies and Lead Agencies. The Wild Animal Park will have the opportunity, along with other interested individuals and organizations, to continue to provide comments on the implementation of the MSCP Plan and subarea plans through review of the triannual monitoring reports (see Revisions to the MSCP Plan, Volume I, Section 5, January 1997).

FROM :SD WILD ANIMAL PARK 619 745 7081 1996,10-29 10:51 #716 P.02

89

cc-John Kovac

October 28, 1996

SAN DIEGO
WILD
ANIMAL
PARK

15500
SAN PASQUAL
VALLEY ROAD
ESCONDIDO
CALIFORNIA
92027-7017
619-742-8702
FAX:619-746-7081

ZOOLOGICAL
SOCIETY OF
SAN DIEGO

Mr. Tom Story
City of San Diego Development Services Dept.
1222 First Avenue, 5th Floor
San Diego, CA 92101

Subject: Draft EIR on the MSCP Program and City of San Diego Subarea Plan

Dear Tom:

We have reviewed the Draft EIR on the MSCP program and the City of San Diego's Subarea Plan. We submit the following recommended changes to the Subarea Plan text.

City of San Diego Subarea Plan, page 35, recommended deletions are indicated by the strikeout:

> 5. Wild Animal Park expansion area. Development should proceed according to the Park's Long-Range Facilities Plan. Expansion in the undisturbed area will require an amendment to the Conditional Use Permit and ~~should be based~~ upon updated biological mapping conducted by the Wild Animal Park. ~~Expansion should be limited to the sensitive portion of the leasehold (D13 on Figure 7).~~

89(a)

These changes are consistent with the San Pasqual Community Plan, which anticipates an expansion into the undisturbed area in the vicinity of the monorail. Consideration of this expansion will be in the context of the Park's Master Plan, which will be prepared this coming year.

We would like to discuss with you the specific and practical implications of the Wild Animal Park's compliance with these draft MSCP documents. Based on these discussions, we may have other recommendations on the specific language in the City's Subarea Plan, Implementing Agreement, or Environmental Sensitive Lands Ordinance before these documents are approved by the City Council.

89(b)

Thank you for considering our comments.

Sincerely,

Robert M. McClure
General Manager

RMM/ms

90 KUDLAC, GENERAL DYNAMICS PROPERTY MANAGEMENT GROUP, 10/29/96

90(a) Comment noted.

GENERAL DYNAMICS
Property Management Division

RECEIVED
OCT 29 1996
DEVELOPMENT SERVICES

90

29 October 1996

Jeffrey Kudlac, Staff Vice President
Property Management & Development
(619) 694-3775 (909) 484-4800

Mr. John Kovac
City of San Diego
Development Services Department
Development Environmental Planning Division
1222 First Street, MS 501
San Diego, CA 92101

Dear Mr. Kovac:

Thank you for the opportunity to provide comments to the MSCP Sub Area Plan on behalf of General Dynamics Corporation.

We have reviewed the provisions in the Sub Area Plan which relate specifically to General Dynamics Beeler Canyon property and believe that the guidelines proposed for areas C25, C26 and C27 accurately summarize the boundaries of the proposed Preserve and the relationship between the Beeler Canyon property and the implementation of the MSCP as discussed with City staff.

90(a)

Very truly yours,

Jeff Kudlac

91 ELLIOT, J, SAN DIEGO OFFROAD COALITION, 10/29/96

91(a) Per City Council direction, City staff continues to work with the public and state agencies on possible ORV park locations. Locating this use within 30 minutes of major population centers provides several benefits which the Council recognized. Section 6.2.1 of Volume 1, MSCP Plan identifies off-highway vehicle use as incompatible with preserves and linkages except as specified in a subarea plan. An ORV park is not part of the MSCP Plan and public lands dedicated to the preserve cannot be used to mitigate the impacts of an ORV park. Sale of public mitigation credits for private project impact is allowed pursuant to Section 4(b)(1) of the Cornerstone Lands Conservation Bank Agreement, which is Exhibit K to the City of San Diego Implementing Agreement. Mitigation for an ORV park will be identified during the process of selecting and evaluating the biological impacts of an ORV park.

91(b) Inconsistencies between the descriptions of active recreational use on pages 3-43 and 4.5-2 of the Draft EIR/EIS are acknowledged. These inconsistencies have been clarified in the revised language incorporated in the Final EIR/EIS. The language on these pages is not, however, intended to provide an explicit definition of active recreational use but rather to provide a general description of the types of recreational uses that are considered active. The MSCP Plan states that active recreational uses would generally be incompatible with the biological goals of core areas and linkages, but may be compatible at the edges of core preserves. Based on the MSCP Plan definition, off-road vehicle use would be considered an active recreational use. Offroad vehicle use is considered to be incompatible with preserves and linkages, except on designated roads. Vegetation communities are grouped by Tier. This does not imply that all areas of each vegetation community are currently supporting optimal habitat for various species. Dennery Canyon habitat, especially the Maritime succulent scrub vegetation community, has been severely impacted by unauthorized and uncontrolled ORV use and as a result, significant impacts to California gnatcatchers and cactus wrens have occurred. The heavily impacted areas on western Otay Mesa are excellent sites for restoration using ORV funds, since ORVs did the damage.

91(c) The preserve management guidelines provided in the MSCP Plan recognize the effects to vegetation communities and sensitive species resulting from motorized recreation within a preserve system. This clarification will be made in the South County segment of the County Subarea Plan. Off road vehicle park sites are also incompatible with a preserve system. The California Department of Fish and Game, however, is working with County of San Diego to identify an appropriate ORV park that would not conflict with the MSCP preserve.

91(d) Comment noted. See response to Comment 91(c).

San Diego
OFF-ROAD
Coalition
P.O. Box 712214 Santee, CA 92072-2214
(619) 448-8848

RECEIVED 91
OCT 29 1996
DEVELOPMENT SERVICES

October 28, 1996

Mayor Susan Golding
City of San Diego
202 C Street
San Diego, Ca. 92101

Re: Comments on the MSCP Environmental Impact Report

Dear Mayor Golding,

Thank you for the opportunity for providing input on this plan.

Plan Does Not Reflect Current Council Directions

During public hearings on the City of San Diego Subarea, concerns were raised over the possible loss of the motorized recreational area in the Dennery Canyon area of Otay River Valley. Dennery Canyon has been a popular Off-Road Vehicle recreation area for over 40 years. Due to approved development plans on the mesas overlooking the canyon and the subsequent conversion of the canyon into a narrow wildlife corridor, the council voted that ORV use would be inappropriate for this area. However, the Mayor and council also expressed a great need for an ORV park in San Diego, voting to instruct staff to work with ORV groups in establishing an ORV park. This MSCP plan should reflect that an ORV park is to be part of the MSCP proposal. Mitigation lands for this park would come from the public lands being included within the MSCP. **91(a)**

EIR/EIS Gives Conflicting and Inaccurate Definitions

Under chapter 3: Affected Environment, #3.57 Park Facilities defines active parks as parks associated with school facilities or residential development. But within chapter 4.5: Public Services & Utilities, active recreation is defined as those recreational uses which create significant impacts at any level of use. It then goes on classifying these types of uses which included motorized off-road vehicle (ORV) use.

ORV use is not associated with school facilities or residential development, so under this definition ORV parks would not be classified as active recreational uses. ORV parks are not highly developed facilities. They utilize natural terrain and native plant species. Improvements are generally restricted to restroom facilities, watering system, and parking area. Within modern developed parks, impacts from vegetation loss and soils displacement are minimal. Dennery Canyon has had over 40 years of **91(b)**

completely uncontrolled ORV use without any maintenance whatsoever yet staff has classified this area as Tier I habitat. It contains one of the highest concentration of gnatcatchers within the MSCP. EIR/EIS classification of ORV impacts as significant at any level of use is incorrect. A clear distinction should be drawn when discussing ORV recreation to differentiate ORV park use and ORV trail use. ORV trails serve a different type of recreational activity, one that is dispersed and less intensive. The vehicles are different, quieter, less aggressive tire designs, smoother power delivery, they are measurably less obtrusive. ORV trail impacts are very similar to those imposed by mountain bikes and equestrians. One does not measure equestrian trail impacts by observing opening day at Del Mar or the Lakeside Rodeo; one does not measure ORV trail impacts by observing Thanksgiving Day at the Imperial Sand Dunes. 91(b)

General Guidelines for Preserve Management Conflicts With Sub-Area Plans, County General Plan, Bureau of Land Management Plans, MSCP EIR/EIS

Section 6.2 of the plan states that should any inconsistencies exist between the general guidelines and the subarea plans, that the subarea plan shall take precedence. The majority of the open space acreage being committed to this plan does not prohibit motorized recreation. These include the County of San Diego General Plan, BLM South Coast Plan and the MSCP South County Sub Area. The basic management guidelines should allow motorized recreation; if individual subareas feel that it cannot be accommodated, let the subarea exclude it. The original draft MSCP plan contained a "Recreational Use Compatibility Chart". In reponse to public input, this chart had been removed from the plan. Unfortunately, it has been replaced by text within the EIR/EIS. The preserve management guidelines should be rewritten to allow ORV trail use within areas similar to those allowed by equestrians and bicyclists (see wording on South County Subarea) without any further mitigation. The plan should also allow ORV park sites with appropriate mitigation. This would bring the management guidelines into conformance with the subarea plans, which are supposed to take precedence over management guidelines. This would eliminate some of this project's impacts on public facilities (4.5.1 Issue 1). This would also remove some of the inconsistencies between this plan, the county general plan, existing environmental and management plans for both the county and other participating agencies (4.2.1 Issue 1) 91(c)

Large Scale Development Plans Should Not Result In Restrictions On Public Lands

While acknowledging that private property owners have the right to develop their properties, the mitigation for that development should not be born on the backs of the recreational off-roading public. 91(d)

Respectfully submitted,

John Elliott
Vice-Chairman, SDORC

92 PEUGH, SD AUDUBON SOCIETY, 10/28/96

R

92(a) Comment noted.

92(b) See **Theme Response XVIII, Recovery of Species.**

92(c) See **Theme Responses XVI, Risk Factors, and XIX, Preserve Management.**

92(d) See response to Comment 61(c).

92(e) See response to Comment 8(c).

92(f) See response to Comment 73(a).

92(g) See response to Comment 61(f).

92(h) See response to comment 80(r).

92(i) See response to Comment 61(h).

92(j) See response to Comment 61(i).

92(k) See response to Comment 61(j).

92(l) See response to Comment 61(k).

92(m) See response to Comment 61(l) and **Theme Response XIX, Preserve Management.**

92(n) See response to Comment 45(x).

92(o) The intent of the wording regarding the use of approved chemicals is to prevent the use of inappropriate chemicals (e.g., chemicals in the preserve which would affect the long-term productive capacity of the preserve, chemicals which would significantly affect individuals or populations of covered species, etc.) Appropriate chemicals to control invasive exotic plants and animals would still be used in the preserve. Volunteers will continue to be involved to the extent that they are available to control invasives and the wording in the MSCP Plan should not be interpreted to reduce or limit their opportunities to help manage the preserves.

92(p) See response to Comment 61(n).

92(q) Comment noted.

92(r) See response to Comment 61(o).

92(s) See response to Comment 8(l).

92(t) See response to Comment 8(m).

92(u) See responses to Comments 8(n) and 8(o).

92(v) The City of San Diego's general principles apply to projects and lands subject to the City's Subarea Plan only.

92(w) See response to Comment 8(t).

92(x) See response to Comment 8(u).

92(y) See response to Comment 8(x).

92(z) See response to Comment 8(y).

92(aa) Including specific standards for wetland restoration is beyond the scope of the MSCP Plan since it must be done on a site specific basis. Page 55 of the City of San Diego's Subarea Plan (MSCP Plan, Volume II) includes the elements that will be required in restoration or revegetation plans. These are anticipated to be similar to those requirements under current state and federal wetlands regulations. See also response to Comment 8(e).

92(ab) Comment noted. Listing of short-leaved dudleya is not within the scope of the MSCP EIR/EIS. The justification for withdrawal of the proposed rule for this species is provided in the cited *Federal Register* notice.

92(ac) The state and federal ESAs specify the listing processes and listing criteria for species and they will not be changed by the MSCP. One of the benefits resulting from the MSCP Plan will be an ecosystem based preserve which will reduce the potential for species to decline to the level that they need to be listed. See also **Theme Response XXIV, No Surprises.**

92(ad) Comment noted.

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SAN DIEGO AUDUBON SOCIETY
2321 Morena Boulevard, Suite D • San Diego CA 92110 • 619/275-0557

October 28, 1996

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DEVELOPMENT SERVICES

Lawrence C. Monserrate
Development Services Department
Land Development Review Division
City of San Diego
202 C Street
San Diego, California 92101

Subject: COMMENTS ON THE MULTIPLE SPECIES CONSERVATION PLAN PACKAGE

The San Diego Audubon Society will be submitting several comment letters on this document as explained in the letter submitted by Norma Sullivan, the Conservation Chairperson. We strongly commend the concept of protecting at risk species by protecting their habitat in segments that are large enough to be viable and by providing adequate wildlife corridors between the segments. 92(a)

We wish to submit the following specific comments on the various documents. The comments will be grouped by document title below.

MULTIPLE SPECIES CONSERVATION PLAN, VOLUME 1 (August 1996)

CONSISTENCY WITH SPECIES RECOVERY PLANNING
The objective of the Endangered Species Act is to provide for the recovery and eventual de-listing of endangered species. It is not clear that the MSCP is designed to support this worthwhile objective. We urge that the MSCP documents be augmented to demonstrate that, or assess whether, the conserved areas will be adequate to support populations large enough to satisfy species recovery plans and to facilitate the de-listing of each of the covered species. Table 3-5, SPECIES EVALUATION FOR COVERAGE UNDER THE MSCP, identifies the level of risk to each of the species. This table also should include a statement of the likelihood of eventual recovery and delisting of each of the covered species under MSCP as a measure of whether the species is adequately protected. 92(b)

COVERED SPECIES
There are a number of inconsistencies in the rationale for the selection of the species covered by this Program. We urge that this rationale, and the list itself be carefully evaluated in light of the comments received from the various conservation groups. The final criteria should be whether inclusion will improve the likelihood of recovery for each of the species.

We do not believe that any species that is categorized as being at "high risk" should be included as a covered species under this program. If the risk is high, then the survival of the species is obviously not assured, and it should not be covered. Perhaps there should be another category of "species that may be covered if we do a good enough job." Incidental take for these species would not be allowed until the risk is brought down to a moderate level by habitat management, creation, or restoration. 92(c)

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FORAGING AREA FOR LEAST TERNS, ELEGANT TERNS, AND BROWN PELICANS

The MSCP lists California Least terns and Elegant terns as covered species. Many of the region's Least Tern nesting areas in Mission Bay and San Diego Bay are marked as being 100% protected. The salt works, where the Elegant terns nest, are shown to be 70 to 75% conserved. Table 3-5 states that 100% of the populations are conserved. However on the map showing Conserved Habitat, Figure 3-2, no foraging area in San Diego Bay or Mission Bay is colored as being protected. The populations of these species will not be preserved by just the conservation of nesting areas. foraging areas supporting the nesting areas must also be protected and managed, to some extent, to assure the conservation of these Terns. Similarly, California brown pelicans are listed as a covered species, but their major foraging areas, San Diego Bay and the ocean, are not covered under MSCP. How will these foraging habitats be managed or conserved under the MSCP? 92(d)

The MSCP will allow expedited development outside of the preserve area. Adequate foraging area must be defined and conserved to support the populations anticipated by the recovery plans for all three species. It should be noted that Table 3-3 indicates that 0% of deep bay habitat and only 4% of shallow bay habitat is conserved. These habitats are essential for production of the fish that these covered species depend on as well as for foraging range for the covered birds. A very large portion of the bay foraging area of these three covered species is managed by the Port of San Diego, which is not a participant in the MSCP. As such, it is doubtful that these species should be included in the covered species list without the participation of the Port District in the MSCP.

INTERNAL SUFFICIENCY OF THE MSCP

In several instances (including paragraph 3.2.1 Wetlands) it is assumed that Federal and State wetland protection regulations are adequate to protect habitats required by several of the listed species. Similarly, CEQA is used to define the review, public disclosure, and other functions for the MSCP. These regulations can change. If these regulations are significantly weakened, the species depending on them will be at increased risk. To maintain the level of species conservation stated in the MSCP it is necessary that the current versions of these wetland protections be specifically adopted and enforced by the MSCP jurisdictions if State and Federal regulations are weakened. This protection should be part of the Implementation Agreements. 92(e)

VERNAL POOLS

Several vernal pools species are included in the covered species list, but the data for vernal pools are not included in tables 3-1 or 3-3 that describe the acres of all of the other covered habitat types. We urge that these tables be modified to specifically include habitat conservation data on vernal pools. Vernal pool habitat has experienced one of the highest levels of loss in our region. There is a general opinion that adequate amounts of vernal pools have not been conserved in the MSCP to protect the viability of the species that they support. 92(f)

SALTPAN HABITAT

Saltpan is listed as a sufficiently covered habitat in Section 3.4, but no data for saltpan is included in tables 3-1 or 3-3. There is very little of the region's historical saltpan remaining in the planning area due to previous development. It is very hard to imagine that the viability of all species that depend on saltpan habitat can considered to be sufficiently preserved with such a small portion remaining. 92(g)

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Table 3-3 lists saltpan habitat as being 90% conserved. From figure 3-2 it appears that a significant portion of the conserved saltpan is in the Western Salt ponds in South San Diego Bay. If that this the saltpan mentioned there are several concerns. It is understood that the salt works have immense wildlife support value for many insect invertebrate and bird species. However the habitat contained in the salt works is not primarily traditional saltpan habitat. They differ from natural saltpan habitat in many ways including the type of use made by nesting birds, the type of foraging that they support, and the way that they should be managed. Managed salt ponds should be identified as a separate and unique habitat type in the presentation of covered habitat, the need for predator management, maintenance and rehabilitation of dikes, and in management agreements in general. Figure 3-3 identifies the salt works as being 75% conserved. Does that mean that the 90% is conserved at a 75% rate. If so, that would suggest that 68% is actually conserved. 92(g)

CHULA VISTA

The Chula Vista Wildlife Preserve and other Coastal and subtidal portions of Chula Vista are shown on figure 3-2 as being 100% conserved. The Chula Vista Wildlife Preserve saltmarsh area is eroding away and remedial action is needed. But, we are not aware of any plans to remediate this loss of habitat. This property is under the jurisdiction of the Port of San Diego, which is not a participant in the MSCP. The conservation of this area can not be assured by the MSCP as there will be no Implementation Agreement with the Port. 92(h)

IMPERIAL BEACH

Figure 3-2 shows the western and part of the northern portion of the Tijuana Estuary as being 100% conserved. Some of this area is multifamily residential along Seacoast Drive. Figure 3-2 shows that this area is within the jurisdiction of the City of Imperial Beach. Imperial Beach is not a participant in the MSCP. Much of the area in question is under the ownership of the US Fish and Wildlife Service and the California Department of Fish and Game., but planning and land use jurisdiction rest with Imperial Beach which has no agreement with the MSCP. Adjacent development will not be required to satisfy the guidelines specified by the MSCP plan such as prohibitions of urban runoff being released into the preserve, limitations on lighting, etc. Seventy three percent of the watershed of the Tijuana River valley and Estuary is in Mexico. Sediments and water quality can not be managed. The International Wastewater Treatment Plant is considering protracted live stream discharge of partially treated effluent into the valley. How can 100 percent habitat conservation can be assured under these circumstances. 92(i)

OTAY VALLEY

The Otay River Valley is an important habitat corridor and riparian habitat. It is shown as 70 to 75% conservation in Figure 3-2. The development plans for the Otay River Valley Regional Park include large numbers of playing fields in area that would have been riparian habitat. If current park development plans are maintained, the corridor and habitat functions of this area will be considerably less than stated. This seems to conflict with the guidelines in Section 6.2.1, Public Use, (page 6-2) of Volume 1, that state that active recreation facilities are generally incompatible in the preserve area. 92(j)

OPEN WATER

Paragraph 3.4.2 lists open water as being a community that is significantly covered. By what means is open water habitat to be managed. From figure 3-1 it does not appear that any of the participating jurisdictions in MSCP contain any open water habitat. Is this a 92(k)

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subarea that will be managed by the Federal Government? If so is there a subarea plan and implementation agreement that will protect open water habitat and the species that depend on it? What open water habitat will be conserved? What percent conservation is required to achieve the programs objectives or is expected? 92(k)

MINERAL EXTRACTION

Section 6.2.4 Mineral Extraction begins stating the permanent impacts that sand. rock and gravel extraction have on wildlife habitat. The next paragraph states that existing operations inside and outside of the preserve may continue. It then proceeds to discuss facility expansion and new extraction facilities. For the impacts stated, and from observations of extraction operations in the region, it is clear that sand, rock, and gravel extraction are not appropriate within the preserve. They directly destroy critical habitat and cause erosion and siltation damage downstream. The road use and infrastructure needed to support them is very destructive to wildlife and to habitat. Within the preserve, leases or permits should not be extended, facilities should not be allowed to enlarge, no new leases should be granted, and opportunities should be sought to buy out existing leases. 92(l)

Outside of the preserve, permits for any extensions, expansions, or new facilities should fulfill the MSCP's principle of the preservation of the function and value of all wetland habitats, inside or outside the preserve.

PRESERVE MANAGEMENT ON PRIVATE LANDS

In paragraph 6.3.3 it is stated that the 75% of private land that is set aside for habitat by land use regulation within the preserve will not be actively managed for the MSCP. This land is a significant portion of the preserve. Active management is required for all habitat land within the preserve, especially control of feral animals, invasive vegetation, off road vehicle use, other unauthorized recreational use, etc. Without systematic management it is misleading to identify this land as being conserved to a high level. Inappropriately managed private property will not only not provide adequate habitat value, it will also tend to cause degradation, through habitat fragmentation and edge effects, to adjacent managed preserve areas. A better management solution must be developed for these lands. 92(m)

PREDATOR AND EXOTIC SPECIES CONTROL

Paragraph 6.3.8 (page 6-9) states some of the impacts of feral animals on sensitive species. These impacts are very likely to have a major influence on whether many of the various habitat communities in the preserve system will actually support the covered species. Feral cats, pet cats, and pet dogs will be an important problem, but they are not discussed in the list of management measures to be taken. The management of the preserve must include a substantial systematic, not just "limited", trapping and effective deterrent regulations to keep pet owners and advocates of "feral cat management" from misusing the preserve at the expense of the wildlife. 92(n)

The same section contains the sentence "Only chemicals approved by the USFWS and CDFG and applied by licensed pest control advisors should be used for pest control." This sentence immediately follows a sentence on the removal and management of invasive exotic plant species. Are the two sentences independent? We would concur that the poisoning of animals in the preserve should be very tightly controlled. However, if the quoted sentence relates to herbicides used for invasive plants that could be a problem. A number of environmental organizations work on the removal of invasive plants at urban preserve areas 92(o)

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within the MSCP preserve. For some invasives, judicious use of herbicides is required. It is not clear that public agencies have either the labor, funds, or the day-to-day contact with these areas to adequately replace these volunteers. It is likely that these preserve areas would suffer a lack of control of these invasives without the volunteers efforts. We urge that volunteers receive training and be allowed to continue with their efforts that require approved herbicides. 92(o)

SAN DIEGO IMPLEMENTING AGREEMENT

LOCAL AUTHORITY FOR SECTION 404 PERMITS

According to Section 9.8, Other Regulatory Permitting, A. Other Permits, the City of San Diego will "identify the least burdensome measures required or recommended, if any, to ensure consistency with the federal policy of no net loss of wetland functions and values..." The language of this statement suggests that the emphasis will be on minimally satisfying regulations over actually protecting wetlands. This minimal level of wetlands protection would not support the protection of the covered wetland species. We urge that language be added such as: "...to ensure the adequate protection of wetland habitat and to ensure consistency with the federal policy of..."

Later, the same paragraph states that the agencies will coordinate "to further streamline the process for issuance of permits pursuant to Section 404 of the Clean Water Act for those projects that are in conformance with the MSCP, the Subarea Plan, and this Agreement." This statement raises concern for the protection of our wetlands. Wetlands are important for more reasons than just the protection of endangered species.

The wetlands of our region serve many functions besides providing habitat for recognized at-risk and endangered species. A few are: protection of people and property from storm and flood damage, improving both surface and ground water quality, improving ground water recharge, erosion control, habitat for game and common wildlife, nurseries for fish; and for recreation and scenic value. Our region has lost more that 90% of its wetlands. We are seriously impacted by the loss of each of these benefits. These other benefits of wetlands are not covered by "the MSCP, the subarea plan, and this agreement". It is not appropriate that the MSCP should reduce the effectiveness of the protection of our region's wetlands. Also, it is not clear that the local government agencies have the technical personnel, resources, and institutional experience to replace the functions of the regulatory agencies. If any "streamlining" of 404 is implemented, a high level of oversight, interaction, and responsibility from state and federal regulatory agencies should be maintained. 92(p)

The 404 process works to assure that a project avoids degrading wetlands, seeks to minimize unavoidable impacts as much as is practicable, and requires adequate mitigation for unavoidable impacts. This is an essential process. Any streamlining should completely satisfy that conceptual sequence. There should be a clear procedure for the Federal Government to intervene, suspend, or to rescind, the local issuance of wetlands permits if local actions do not adequately protect local wetlands.

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DRAFT CITY OF SAN DIEGO BIOLOGICAL GUIDELINES

DEFINITION OF WETLANDS

Paragraph I. A. 2. on pages 2 and 3 provide a definition of wetlands. We appreciate the specific inclusion of "vernal pools and naturally formed streams with intermittent flow". These two habitat types are especially important for our region which is characterized by extreme rainfall variation from season to season and year to year. We are pleased to see that they will be preserved both inside and outside the preserve area. 92(q)

MITIGATION FOR WETLAND IMPACTS

In paragraph III. B. 1. a. we commend the intent to require full mitigation of wetland functions and values for projects where impacts can not be avoided. However the mitigation ratios listed in Table 1 are inadequate to satisfy that intent. The creation of wetland habitat as a means of mitigation typically does not provide the full species diversity of a natural wetland. As such, the created wetland is less likely to survive environmental fluctuations and is very unlikely to replace the functions and values of a natural wetland, even a degraded one. As a result mitigation ratios involving created wetlands must be higher and monitoring and maintenance responsibility must be continued for many years. The ratios listed are only appropriate for types of habitats in which mitigation success rates have proven to be high. Wetlands are not among these. 92(r)

MANAGEMENT OF AREAS IMPACTING WETLANDS

In paragraph I. B. 3. (pg. 17), Management Element there is no discussion of managing land in the watershed of wetlands to prevent loss of wetland function and value. If this issue is not addressed, there is little likelihood that conserved wetlands will be able to provide the wildlife support value needed for the MSCP to achieve its biological goals. Of special importance are preventing year-round drainage into riparian areas and wetlands that would normally not experience it. Additionally, highly erosive rain-flows from developed areas must be reduced to more natural flow velocities before they enter natural creeks, canyons, or wetlands. Also, runoff that is contaminated or carrying unnatural sediment loads must be cleaned before being directed into preserve areas or wetlands outside of the preserve area. Management of the preserve system must extend to the watershed that impacts the preserve and other wetlands for biological goals to be met. We were please to see the discussion of these items in the San Diego City Subarea Plan, Section 1.4.3, Page 51. 92(s)

DEVIATIONS

In section IV. (pg. 19) standards for Deviations are established. It is important that all applications for Deviations be reviewed by the relevant regulatory agencies before the application goes to the City Council for approval. The information resulting from the agency review should then be provided to the Council before they consider the issue. 92(t)

DRAFT AMENDMENTS TO GENERAL PLAN AND COMMUNITY PLANS

FLOODPLAIN PROTECTION

The discussion of Floodplain and Hillside regulations on page 306a lists the purposes and intents for regulating floodplain land use as protecting "the public health, safety, and general welfare". It continues that these regulations 'also tend to conserve the environmentally sensitive qualities of floodplains." We urge that this be modified to include "protection of water quality and erosion management" in the list of purposes and intents. The 92(u)

benefits of protecting the natural infrastructure value of floodplains to the public must be considered a goal, not an incidental byproduct. 92(u)

In discussing floodplain zoning on page 306a the following statement is made: "Such plans should distinguish between urban (e.g. Mission Valley) and non urban systems (e.g. San Dieguito Valley)." For all of the purposes quoted in the previous paragraph this distinction should not be attempted. Mission Valley should be an important urban habitat area. It also should be a viable corridor between the wildlife rich upper San Diego River (Mission Trails Park, etc.) and the wildlife rich mouth of the San Diego River (including the Mission Bay Park's Southern Wildlife Refuge) as it was just a few decades ago. Future planning should work to eliminate the few habitat corridor discontinuities in Mission Valley.

MSCP VOLUME II: MSCP SUBAREA PLANS (AUGUST 1996)

Please note that the comments on general principles in the City of San Diego Subarea should be applied where appropriate throughout the MSCP area.

PRESERVE GUIDELINES FOR OTAY MESA 92(v)

Item A7 (page 7), the proposal to mitigate impacts to vernal pools by transplanting species, either plant or animal, into pre-existing pools with existing populations of the same or different species should be carefully considered. In general it seems ill advised on the basis of genetic considerations to do so, and should be reviewed by persons qualified by virtue of having carried out and published scientific research in the field.

PRESERVE GUIDELINES FOR CARMEL VALLEY (Page 25)

The co-occurrence of three freeways, the railroad, a new pump station, and an area of approved intensive development within or immediately adjacent to the Los Penasquitos Lagoon have obviously had severe impacts on the functioning of the lagoon. To offset the gauntlet of obstructions to wildlife movement and wetland functions and to reduce further impacts to the lagoon, it is recommended that serious consideration be given to abandoning Sorrento Valley Road as a vehicular thoroughfare, and converting it into a pedestrian/bicycle route. This approach would significantly reduce short-term impacts due to construction needed to upgrade Sorrento Valley Road, and would help to reduce the long-term cumulative and edge effects on the lagoon. 92(w)

PRESERVE GUIDELINES FOR LAKE HODGES/SAN PASQUAL VALLEY (Page 30)

Many concerns regarding the San Pasqual Valley may have been addressed in the San Pasqual Valley Plan. However, from the map included with this document (Fig. 7) it is clear that some stretches of the Santa Ysabel Creek are afforded little to no protection, in spite of its importance as a riparian habitat and wildlife corridor. Since this is a planning document it would seem wise to designate intended uses on City land, such as expanded riparian and transition zone buffer habitats, as part of the Preserve now. This has been done in many other places where disturbed habitat targeted for restoration is included in the Preserve.

While the use of a low-flow pilot channel is not necessarily counter to biological needs of the Preserve in this area, it is certainly a project which must be executed carefully, and with a clearly limited purpose. Any pilot channel must be ecologically compatible with the Preserve; we suggest that any maintenance be conducted at times of year to avoid breeding birds and other sensitive resources, and that if maintenance is necessary, vegetation in the channel be selectively managed to provide habitat year-round (for example, Least Bell's Vireo's may 92(x)

respond favorably to habitat manipulated to provide the maximum number of relatively young willows). Seasonal flooding is part of the cycle of a river valley, and maintains the soil's fertility; therefore, flooding needs to be accommodated as part of the natural and agricultural systems. By allowing fields to flood occasionally, and the stream channel to meander, erosive forces can be kept to a minimum, and the groundwater can be recharged at a maximal rate.(The section on Flood Control, p. 50, is obviously pertinent.) However, natural and desirable flooding of the valley may be harmful to the ecosystem if agricultural lands harbor pollutants. Measures should be taken immediately to eliminate toxic chemical and extreme nutrient inputs to San Pasqual Valley agricultural areas to minimize negative effects upon surface and groundwater quality in the Preserve. **92(x)**

LAND USE CONSIDERATIONS/GENERAL PLANNING /MINING (Pages 49 & 50)

(Item 1) As mentioned in the comments on Volume 1, sand mining is incompatible with Preserve function and no expansions or extensions should permitted. Opportunities should be sought to reduce or terminate and restore the sites of existing operations where possible. **92(y)**

(Item 4) Man made ponds resulting from mining activities can be detrimental to the riparian ecosystem by allowing breeding of exotic species and excluding native species from potential breeding, foraging, and sheltering habitat. Episodic toxicity problems can result from these often stagnant ponds. These negative impacts on native wildlife should be carefully considered before allowing these ponds to be left as part of a site restoration.

LAND USE ADJACENCY GUIDELINES/DRAINAGE (Page 51)

(Item 1) The list of materials that should not be released into the Preserve is comprehensive, but does not explicitly mention freshwater or sediment. Freshwater input at inappropriate times and in increased volumes may be highly detrimental to various ecosystems which do not naturally experience it, such as small or intermittent flowing riparian systems and salt or brackish marshes, and should therefore be prevented. Increased rates of sedimentation and scouring result when watersheds become less permeable due to development, and have rapid and detrimental impacts on many types of downstream systems, including mature oak riparian forests and tidal saltmarshes. Detention basins not only adjacent to, but also within the watershed of, the Preserve, should therefore: (1) contain all dry weather flows and allow them to evaporate or to percolate into the watertable, and (2) retain storm water runoff that exceeds the volume and velocity that would naturally flow off fully permeable land before development. **92(z)**

GENERAL MANAGEMENT RECOMMENDATIONS/RESTORATION (page 55)

"Wetland restoration/revegetation proposals are subject to permit authorization by federal and state agencies." While these may be sufficient at the moment to achieve the species' protection and recovery goals of the MSCP, what recourse is there if these agencies' standards are altered such that restored habitat functional quality and/or quantity are diminished? We recommend that the specific standards for wetland restoration and revegetation be incorporated into the MSCP itself. **92(aa)**

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OTHER

WITHDRAWAL OF SHORT-LEAVED DUDLEYA AS A CANDIDATE SPECIES

We were very disappointed to find, in the Federal Register of October 7, page 52402-52403, that the Short-leaved Dudleya has been withdrawn as a candidate for listing as an Endangered Species because of the likely implementation of the MSCP. The decision to list a species should be based solely on the risk of extinction, a biological issue. We understand that later decisions on protection and recovery must be based on a broad range of issues including land use, availability of funds, etc. The MSCP Preserve System does not yet exist, and management and monitoring procedures are not yet defined or field tested. We feel strongly that not listing this plant will eliminate adequate accountability for its survival and recovery. There will be many unpredicted conflicts, delays, and uncertainties in the MSCP process in the next months. It is premature to base listings on an early presumption of the outcome. **92(ab)**

This withdrawal also tends to weaken the perceived credibility of the MSCP. We urge that the FWS reverse the withdrawal unless it can clearly project this plant's survival and recovery based on conservative assumptions. We strongly urge that the existence of the MSCP not be used in the near future as an excuse not to list at-risk species. Only after the program matures, the preserve is largely acquired, and monitoring and management is well established and evaluated the existance of the MSCP might serve such a role.

NO SURPRISES

The "No Surprises" policy is a great concern to the chapter as mentioned in the letter by Norma Sullivan. The assurances of the MSCP should be derived from the adequacy of the preserve design, acquisition, and management. If these are inadequate to protect a new, uncovered plant or animal in the covered habitat types, it should not be covered by the program. Shifting the responsibility for protecting additional species to state and federal seems dysfunctional. It leads to a concern that the "No Surprises" policy could be facilitated by agencies choosing to not list at-risk species to avoid having to expand the preserve; especially if these agencies do not have adequate funds to protect the additional species. **92(ac)**

CONCLUSION

Again, we strongly support the concept of the MSCP, but are concerned that the protections offered are not adequate to protect the biodiversity of our region. We value the immense effort that has been expended to get the program this far. We especially appreciate the interactions with the enforcement agencies to enable us to better understand the program. We urge that the problems pointed out by San Diego Audubon's comment letters, and those of other conservation organizations be seriously considered in the final stages of the development of the Program. There are substantial problems with the program that must be fixed before it will be adequate. It is vital that the best scientific information and problem solving resources be used in this final stage to allow this program to satisfy its wildlife, economic, and quality of life objectives. **92(ad)**

Sincerely,

James A. Peugh

James A. Peugh
Past President

93 CRAIG K. BEAM, LUCE, FORWARD HAMILTON AND SCRIPPS, 10/29/1996

R

93(a) Comment noted

93(b) In evaluating a possible redirection of residential growth to existing agricultural lands, the following factors should be considered. SANDAG's Series 8 Regional Growth Forecast indicates that there is in the county sufficient vacant land with appropriate urban, residential zoning to accommodate housing growth to the year 2005. To accommodate growth from 2005 to 2015, it will likely become necessary to redesignate some of the low density residential land (less than one unit per acre) to densities greater than one unit per acre. With such redesignation, Series 8 Forecasts show that housing growth could be accommodated on lands already designated for residential use, without the conversion of agricultural lands. Please see **Theme Response XXI, Indirect Impact on Agricultural Land.**

The MSCP addresses activities proposed to be newly undertaken within the MHPA or the preserve. Legal and existing, or ongoing, activities, such as existing agricultural operations, are not affected by the MSCP.

93(c) As noted above, implementation of the MSCP Plan would not necessarily lead to a widespread urbanization of agricultural lands. The MSCP Plan also would not limit existing or ongoing agricultural operations.

93(d) The discussion contained in the EIR/EIS, Section 3 and 4.2, represents a plan-to-ground analysis routinely used by jurisdictions in CEQA documents to determine potential impacts of public and private projects on agricultural productivity. See **Theme Responses VII, Farmland Mapping, and XXI, Indirect Impact on Agricultural Land.**

93(e) See response to Comment 25(a).

93(f) See **Theme Response XXI, Indirect Impact on Agricultural Land.**

93(g) See response to Comment 25(a).

93(h) Neither the MSCP Plan or subarea plans include measures to regulate the extent or type of agriculture which can occur. The MSCP Plan is not a land use regulatory plan, but rather a program to simplify compliance with the FESA and CESA. There is no deferral of the analysis of the environmental impacts associated with farming since the MSCP Plan does not regulate farming.

93(i) See **Theme Response I, Species Analysis Approach.**

93(j) Not all corridors will function for all covered species, and some of these species are not expected to use corridors at all. A corridor's viability was judged based upon the species that would likely use it. Emphasis on assessing the larger regional habitat linkages was to maintain continuous habitat that was sufficient to provide live-in habitat for a wide array to covered species, especially the California gnatcatcher. It was assumed that if the habitat was continuous and supported the gnatcatcher, that the habitat would also support many of the other scrub-dependent covered species. Recent NCCP-related research by U.C. Riverside (CDFG 1996 unpublished report) indicates that the California gnatcatcher does serve as a useful "umbrella species" for many other bird and small mammal species. For narrower corridors in more urbanized areas of the MHPA, the goal was to maintain connectivity for mammalian predators such as the coyote and the bobcat, as these predators are necessary to maintain ecosystem health and predator-prey balance.

In all areas of the MHPA where public infrastructure or other development may impinge or potentially compromise a corridor, each subarea plan has development criteria requiring the avoidance or minimization of impacts to designated corridors. In instances where impacts to corridors are unavoidable, bridges, culverts, fencing, and other measures are required to assure the continued function of that corridor.

Finally, the MHPA incorporates redundancy into the connectivity within the habitat preserve system. Multiple corridors between large blocks of core habitat were delineated wherever possible. A good example is found in the Lakeside area, where the "Lakeside archipelago" connection of coastal sage scrub habitat just north of Interstate 8 primarily serves avian species. However, terrestrial species still have a regional linkage across Interstate 8 just to the east through the Crestridge Conservation Bank-Harbison Canyon-Chocolate Canyon to City of San Diego lands around El Capitan Reservoir. A large bridge across Chocolate Canyon allows ready access under Interstate 8 for most species.

The wildlife agencies and local jurisdictions are responsible for the biological monitoring of the preserve. Biological data will be monitored in conformance with the MSCP Biological Monitoring Plan that has been provided by the wildlife agencies. This biological monitoring plan establishes an array of sampling stations for landscape-level monitoring of vegetation community trends; species-specific vegetation monitoring; monitoring of wildlife corridors; coastal sage scrub-dependent bird and mammal monitoring; grassland raptor monitoring; and general and focused herpetofauna monitoring. Monitoring sites were chosen to focus on reported occurrence areas or higher quality habitat areas that may support covered species. Biological data will be analyzed and used to support actions to be undertaken as part of the adaptive management process.

93(k) See **Theme Response I, Species Analysis Approach** and revised MSCP Table 3-5 included int he Revisions to the MSCP Plan, Volume I, January 1997.

93(l) See **Theme Response I, Species Analysis Approach** and revised MSCP Table 3-5 included in the Revisions to the MSCP Plan, Volume I, January 1997.

93(m) Adequate information exists to make the conclusions in the EIR regarding impacts of the project to individual species including take of covered species. This information is incorporated by reference and is discussed in Section 4.1 of the EIR/EIS. As a result, no additional noticing or recirculation of the document is necessary to comply with CEQA.

93(n) See **Theme Response IV, MSCP Financing Plan: Regional Source of Funds** and response to Comment 104(n). The draft Implementing Agreement includes state and federal commitments to acquire land for the preserve, and the Implementing Agreements cannot be executed until after the Notice of Determination and Record of Decision are issued. The mitigation measures in the subarea plans are reasonable and feasible and were developed based on a consensus process involving stakeholders. The rate of preserve assembly associated with mitigation for individual projects is related to the development rate, which will fluctuate over time. Since impacts won't occur until development occurs, the low development rates will result in the avoidance of impacts rather than unmitigated impacts as implied. The mitigation measures associated with new development were taken into consideration in the analysis of species coverages. Because of (1) the up-front dedication of public lands, (2) the project specific mitigation required in subarea plans, and (3) the preserve acres recently acquired by the state and federal governments, there has been adequate conservation to off-set take during the first 36 months of the program, the time frame in which a local funding source will be identified and implemented.

With respect to the role of public funding in program implementation, it should be noted that under the MSCP Plan all public and private projects which impact sensitive species and their habitats, both inside and outside the MHPA, would continue to be subject to mitigation requirements, such as minimizing impacts, on-site conservation of species and habitats, or off-site mitigation. That is, adoption of the MSCP Plan and the associated subarea plans must be followed by project review and approval by the take authorization holder (e.g., a local jurisdiction), before the actual take of species is authorized. The USFWS and CDFG will also annually review and coordinate the implementation of the MSCP Plan and the associated subarea plans, including an annual accounting of habitats impacted and conserved, and, if required, take appropriate actions to remedy the situation (MSCP Plan, Volume I, Section 5.4.4). Please see also the discussion of the adequacy of the financing plan referenced above.

Alternative funding sources discussed in Section 7.0 of the MSCP Plan are feasible, as defined by CEQA, since they are "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors" (CEQA Guidelines, Section 15364). Economic feasibility is described in Section 7.0 of the MSCP Plan, Volume I, and environmental feasibility is addressed by the conservation plan described in Section 3.0.

Legal authorizations for the alternative funding sources are also discussed in Section 7.0. The passage of Proposition 218 in November 1996 may necessitate additional authorization or clarification by the California Legislature for the use of AB 2007 or SB 445 (two of the optional funding sources discussed in the MSCP Plan), but the MSCP Plan addresses the possible need for such legislative

action in the proposed timetable for implementation of the regional funding program (MSCP Plan, Section 7.4.2).

Social feasibility, as it relates to potential population and housing impacts, is addressed in Section 4.6.1 of the EIR/EIS. Finally, there are no known technological impediments to establishing public financing programs, which have an extensive history of successful application.

The requirement for mitigation of impacts to sensitive species and their habitats, including avoidance and off-site mitigation, is an existing practice of federal and state wildlife and resource agencies and local jurisdictions and is, therefore, a feasible method of conserving species and habitat.

It should be noted that the MSCP preserve would be assembled over time, as development takes place either inside or outside the MHPA. If there are few projects which impact habitat and generate off-site mitigation, then existing habitat and open space would continue to support sensitive species. The balance of habitat impact and conservation will be subject to annual review and, if necessary, remedial action, as noted above.

93(o) An analysis of the effects of the proposed subarea plans including the County of San Diego and the Cities of Chula Vista, San Diego and Santee on planned land uses including agriculture is provided in issue numbers 1 and 3 of Section 4.2 of the EIR/EIS. As indicated in Table 4.2, a majority of the vacant lands planned for agriculture use potentially converted to open space as a part of the project are contained in the County and the City of San Diego. The total acreage of planned agricultural lands to be converted to open space is zero or a relatively minor percentage of the total agricultural lands within the MHPA for the other participating local jurisdictions including Chula Vista, Coronado, Del Mar, El Cajon, Imperial Beach, La Mesa, National City and Santee (See Table 4.2-1).

An analysis of the individual Community Plan amendments proposed by the City of San Diego is also contained in Issue 1 and 3 of Section 4.2. As shown in Table 4.2-1 a majority of the vacant lands planned for agriculture within the City are located in the Lake Hodges and south San Diego areas. As discussed on page 4.2-97-98, measures have been incorporated in to the City Subarea Plan to allow for existing agricultural operations in the Tijuana River Valley to continue with a long term goal of either restoration to native habitats or other uses consistent with the County Subarea Plan. The Lake Hodges /San Pasqual area refers primarily to the San Pasqual Valley Community Plan. An update of the San Pasqual Valley Plan, which incorporated the proposed preserve, was adopted by the City of San Diego as a separate project in June 1995. An analysis of the impacts of the proposed preserve on planned agriculture in San Pasqual is contained in the environmental analysis of the Community Plan update.

See also **Theme Response XXI, Indirect Impact on Agricultural Land.**

93(p) The development of a San Joaquin Valley H.E.L.P. was initiated by the California Farm Bureau Federation as a response to a very similar program that was being developed by state and

federal agencies and agriculturists. The H.E.L.P. has not been finalized and is it still undergoing significant modification in order to meet state and federal ESA requirements. It is being specifically tailored to meet the needs of agriculturists in the San Joaquin Valley. Because the San Joaquin Valley H.E.L.P. has not been released to the public, it has not been subject to CEQA/NEPA review. It also has not been approved by any state or federal agency. Based its current status, it would be inappropriate to include it or its concepts into the MSCP. Additionally, the state agricultural organizations (Farm Bureau, Cattlemen's Association, etc.), during the initial discussions of a San Joaquin Valley H.E.L.P., made it clear that these types of programs must be developed through the leadership of the agricultural community and not by local, state and federal agencies.

93(q) Comment noted. All future proceedings regarding the MSCP Plan will be noticed consistent with local jurisdictions' policies and ordinances and consistent with state and federal noticing requirements.

93

LUCE, FORWARD, HAMILTON & SCRIPPS LLP

ATTORNEYS AT LAW • FOUNDED 1873

CRAIG K. BEAM, PARTNER
DIRECT DIAL NUMBER (619) 699-2482

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DEVELOPMENT SERVICES

October 29, 1996

VIA HAND DELIVERY

Mr. John Kovac
Ms. Mary Ladiana
City of San Diego
Land Development Review Division
1222 First Avenue, Fifth Floor
San Diego, California 92101

Re: Comments of the San Diego County Farm Bureau with Respect to the Multiple Species Conservation Program ("MSCP") Plan Environmental Impact Report ("EIR")/ Environmental Impact Statement ("EIS")
DEP No. 93-0287/SCH#93121073

Dear Mr. Kovac and Ms. Ladiana:

This letter transmits the comments of the San Diego County Farm Bureau with respect to the EIR/EIS for the MSCP Plan.

The Farm Bureau has been cooperating with the City of San Diego, County of San Diego, and federal and state agencies responsible for the protection of natural resources, including the U.S. Fish & Wildlife Service and California Department of Fish & Game, during the preparation and consideration of the MSCP.

The Farm Bureau's cooperation and support is dependent, however, upon an MSCP Plan which correctly assesses the importance of agriculture to San Diego County and contains provisions to avoid impacting ongoing agricultural operations.

The current draft of the MSCP Plan and its accompanying EIR do not accurately assess the magnitude nor importance of agriculture in San Diego County, nor does the Plan contain provisions minimizing its impacts upon agriculture. 93(a)

93(a)

THE IMPORTANCE OF AGRICULTURE TO THE SAN DIEGO REGION

The importance of agriculture in San Diego County is highlighted by a few key statistics. Even though, when judged from the standpoint of soil conditions, San Diego County should not be conducive to successful agriculture, the hard work of the County's 6,200 farms presents a different picture.

San Diego County produces agricultural crops and livestock with an annual value of more than one billion dollars. Our County ranks twentieth in the United States in agricultural production and ninth in the State of California.

San Diego County ranks first in the nation with respect to the value of its floracultural, nursery, greenhouse and sod products. It also ranks first in the nation in the production of avocados.

Due to the high cost of water (in excess of $600 per acre foot) and land, farming in San Diego County is expensive. Growers are encouraged, therefore, to raise agricultural products with a high dollar per acre on small parcels of land.

Over 65% of the farms in San Diego County are on nine or fewer acres.

On a more human scale, it is important to remind ourselves that farms in San Diego County are predominantly small businesses. Many times, they are family owned and often have existed through several generations within a family.

Agriculture and grazing form the social fabric of the rural areas of San Diego County. Contrary to popular assumption, agriculture is not a "interim use" in most areas of the County, except where it is threatened with regulatory extinction caused by the combined weight of state, federal and local regulations.

As stewards of the land, the members of the San Diego County Farm Bureau hope that the MSCP Plan is one they may coexist with, as opposed to realize as one more form of regulation which threatens agriculture as an honorable business and way of life.

COMMENTS ON THE ADEQUACY OF THE MSCP EIR

The Farm Bureau's concern is that the MSCP may have two types of significant environmental affects to agriculture which are largely unaddressed by the draft EIR. These include the redirection of residential growth caused by the MSCP, resulting in pressures to prematurely convert economically productive farm land to residential uses and limitations or prohibitions against upon ongoing farming activities based upon the assumption that farming activities are incompatible with the MSCP; especially in areas within any potential preserve. 93(b)

Both the premature conversion of agricultural lands to non-agricultural purposes and limitations upon the use of existing agricultural lands may result in significant adverse direct and indirect environmental effects. Loss of productive agricultural activities will also result in a significant adverse economic effects, which will impact the region. 93(c)

The following issues are the San Diego Farm Bureau's comments to the City of San Diego, the Lead Agency for the MSCP program on the MSCP Plan with respect to EIR SCH No. 93121073:

1. Chapter 3 of the EIR "The Affected Environment" is an inadequate description of the extent or land area constituting significant agricultural resources. As such, the EIR fails to adequately describe the environmental setting as required by CEQA Guideline 15125. See San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislas (1994) 27 Cal.App.4th 713 [EIR found inadequate for improperly disclosing extent of riparian habitat]. Chapter 3 fails to identify agricultural lands which are significant by using erroneous criteria, namely whether or not they constitute "prime" farmland pursuant to the standards contained in state law, not whether the agriculture is economically productive regardless of soils type.

The EIR uses the criteria adopted by the California Department of Conservation ("CDC") to identify "significant agricultural lands" (Section 3.2.2.1). This program divides agricultural lands into six classifications. Figure 3.2-4 only characterizes approximately 3,800 acres as prime farmland and 3,500 acress of the 37,600 acres within the MSCP Study Area as farmlands of "Statewide" and "Local" importance respectively, using a soils classification map as the sole basis for the conclusion that only these lands are important to San Diego County. 93(d)

It also classifies approximately 5,900 acres of the Study Area as "unique" farmlands.

This methodology, which is used to determine the importance of farmland under the EIR including the references contained on Figure 3.2-4 "Farmlands within MSCP Study Area," is flawed.

The EIR ignores applicable provisions of the Williamson Act that include in its definition of Prime Farmland farmland that has produced crops of a sales value in excess of $200 per year. (See, Govt. Code Section 51201(c)4. Under this definition of "Prime Agricultural Land" considerably more lands should be included in the agricultural resource base which is considered impacted by the MSCP Program, if it is approved. Table 3.2-3 "Important Farmlands" also ignores alternate definitions of Prime Farmland which are appropriate for San Diego County, which are not dependent upon soils classification nor criteria involving developed irrigation water supply.

If the definition within the Williamson Act were applied to Table 4.2-16 contained on page 4.2-82 of the EIR, land in excess of 40,000 acres of agriculture within the MPA Study area meets the "Prime Agricultural Land" definition of the Williamson Act.

As a result of this failure to properly determine the extent of affected farmlands, the impact analysis fails to properly consider whether or not the proposed project would adversely affect Prime Farmlands. See San Joaquin Raptor, supra. Studies undertaken by the County of San Diego by its Agricultural Commissioner has established the viability and growth of agriculture in San Diego County, dominated by high value crops located on relatively small farmland parcels.

Another deficiency of the EIR is that it appears to be a "plan to plan" analysis violative of Environmental Planning & Info Council v. County of El Dorado (1982) 131 Cal.App.3d 350.

In El Dorado, the court held that an EIR must analyze the impacts of the proposed plan on the existing environment, not just on the differences from the existing plan. The court ruled that although the proposed plan called for substantially less growth than the existing plan, the EIR was held inadequate because it did not describe the changes that the proposed plan would make to the existing environment. The EIR for the MSCP Plan suffers from this inadequacy.

93(d)

For example, in the Section 4.0 "Environmental Consequences" (Impact Analysis) of the EIR, Table 4.2-1 "Generalized Land Use Designations of Vacant Lands" assumes agriculture only on the basis of land designations on various municipal general and community plans, not whether farming operations are in existence.

As a result, there are many agricultural operations in various areas of the County which are permitted uses but not the ultimate anticipated or depicted land use for the area. This is true for virtually all areas of the County classified as "Rural Residential" which permit agriculture as a matter of right but contemplate some type of residential land use in the future. The EIR's analysis therefore suggests that even though agriculture exists in many areas, unless it is listed on an appropriate general or community plan as the ultimate use, it is not considered to be impacted by the MSCP Plan regardless of whether or not it would otherwise be rendering or impacted impermissible by the Plan.

This is a failure to recognize the physical existence of agriculture, in favor of planning designations results in a further investigation of the amount of significant agricultural land in San Diego County.

Even the EIR's understated analysis of the MSCP Plan's impact on agriculture, Table 4.2-1 provides that 6,087 acres within the MSCP plan Study Area only 1,901 acres would remain available upon implementation of a proposed MHPA Alternative. Of this amount, only 938 acres would be authorized within the unincorporated areas of the County.

Agricultural production is the fourth largest source of revenues within the County. The impact on agricultural land use by the EIR is woefully understated and based upon both faulty data and faulty analysis. Similar erroneous analyses are anticipated under the "Coastal Sage Scrub" scenario and the "Biologically Preferred" scenario.

It must be noted the EIR states there are no significant land use effects anticipated to be caused by the anticipated loss of agricultural lands. Given the importance and position of agriculture in San Diego County, this conclusion, made with an inadequate method of determining what constitutes Prime Agriculture and based upon a review of Planned land uses, appears to be wholly without merit. See Environmental Planning & Info Council v. County of El Dorado, supra [held: comparing existing general plan with a new general plan, the EIR must address the existing level

93(d)

of actual physical development in the county as the base line for the comparison, not the existing plan]. Under CEQA Guideline 15125(c), a proposed plan must examine existing physical conditions as well as future conditions envisioned by the plan. In other words, the proper base line for an EIR's analysis of environmental impacts is existing physical conditions.

Volume I, Chapter 6, of the MSCP Plan proposes constraints to existing agricultural operations, in its provision addressing Incidental Take Authorization for Ongoing Agricultural Activities (Volume 1, page 6-3). This provision does not propose authorization for incidental take protection for ongoing agricultural activities but merely notes that it may be "supported."

The EIR contends on page 4.2-83 that the MSCP Plan "would minimize impacts of the program on existing agricultural operations." It goes on to note "Due to the flexibility incorporated in the MSCP Plan it is not anticipated that implementation of the preserve would adversely affect existing agricultural operations."

Unfortunately, this statement is inconsistent with and unsupported by the draft MSCP's policies regarding agricultural uses within and adjacent to the preserve. Contrary to the "conclusion" of the EIR the actual language of Chapter 6 notes with respect to "Incidental Take Provisions for Ongoing Agricultural Activities," [t]he implementing agreements and/or implementing regulations should address this incidental take provision, define which ongoing active farming operations will be eligible to receive take authorizations (grazing activities are not eligible for this take provision). provide a map of lands subject to this provision and define the permitting mechanism." (Emphasis added.)

In other words, the MSCP proposal is that all ongoing agricultural activities must be the subject of a written contract, i.e., an implementing agreement defining what farming operations will be eligible to receive take authorization (i.e., review the more than 200 types of agricultural operations in San Diego County) and provisions defining where existing agricultural operations must seek and obtain a permit.

These provisions cannot be implemented without environmental analyses of both the farming practices and biological survey of areas seeking incidental take authorization. The administrative burden created by the regulations cannot be fairly characterized as "minimizing the impacts of the

93(d)

93(d)

program on existing agricultural operations." The MSCP literally proposes the individual permitting of all existing agricultural operations.

93(e)

Similarly speaking, the proposed "Safe Harbor Provision," contained in Chapter 6 of the draft MSCP does not and should not be viewed as giving comfort to existing agriculture. It merely notes that a safe harbor provision could be the topic of an agreement to be negotiated on a "case-by-case" basis.

2. The EIR assumes that there will be an effective secondary impact or "displacement" of land uses within the MSCP planning area. As development within areas slated for preservation of natural resources occurs, pressure will be placed upon agricultural lands under any of the project alternatives discussed to convert to residential or commercial uses. This pressure will be exacerbated by the fact that some types of farmlands may be drained of natural resources. This secondary impact of the approval of the MSCP plan is neither discussed nor considered, although the anticipated affect of the MSCP, namely a shifting of land uses from one area to the other in reaction to a shortage of land for development, is anticipated. There is no analysis of the magnitude of land use changes in the plan area. Any analysis therefore of the magnitude environmental effects of the shift in land uses is rendered nearly impossible. An EIR must address indirect, as well as direct, environmental impacts that are likely to result from a project in both the short term and the long term. CEQA Guideline 15126(a); El Dorado Union High School District v. City of Placerville (1983) 144 Cal.App.3d 123. The pressure for increased development outside of areas slated for preservation is a reasonably foreseeable consequence of the MSCP, and therefore must be analyzed. See Laurel Heights Improvement Assn. v. Regents of University of California (1988) 47 Cal.3d 376, 379.

The EIR's discussion of an anticipated shortfall of land necessary to serve a projected residential housing needs does not discuss what other land uses will suffer pressure to convert to residential and commercial use, i.e. will be affected by this secondary or indirect impact.

93(f)

The EIR highlights the pressure to convert agricultural land into residential uses by noting on page 5-2 that:

> "The current SANDAG Series 8 population forecast shows the region growing by 51% by the year 2015. The Series 8 forecast distributes the projected population growth across the region based on the land use and growth policies of each jurisdiction. In the Series 8 model, the existing local jurisdiction land use plans were not able to accommodate the region-wide forecast. The model used to generate the forecast ran out of land planned for urban residential development by the year 2005. In the year 2005, only 14,000 vacant urban residential acres would remain in the region . . . since land is a finite resource, removing development potential from the MSCP Study Area would shrink the supply, possibly accelerating the time when developable land is exhausted." [Emphasis added]

93(f)

This statement makes the case that there will be pressure upon agricultural land to convert to other land uses, especially since agricultural land is generally already cleared of natural resources, with attendant other impacts occasioned by the shifting and land use designations.

3. The MSCP plan and EIR assume without any factual substantiation whatsoever that certain types of agricultural activities, including without limitation, grazing, are potentially incompatible uses with an MSCP preserve system.

The EIR has also, without a factual analysis to support its conclusions, stated that the issues giving rise to potential incompatibility of agricultural uses and a preserve will be addressed in subarea plans or preserve management plans, and at the same time concluded that there are no significant impacts on agricultural land uses.

The impact analysis of the EIR ignores the Plan's impact on 69,000 acres of grazing lands within the MHPA.

The EIR on page 4.2-84 argues that the MSCP Plan will have no impacts to these grazing lands, on the theory that no discretionary action is required to permit grazing.

93(g)

93(g)

This ignores the MSCP's proposed denial of incidental take provision for grazing activities set forth in Chapter 6 of the draft MSCP.

The EIR's conclusion, therefore, that the MSCP, because it does not apply to grazing land will have no impact, ignores the fact that grazing operations will continue to be at risk and subject to potential liability resulting from any inadvertent taking of a covered species.

As noted by the letter from Ms. Marilyn J. Schupp dated October 11, 1996, conveying the EIR comments of the San Diego-Imperial County Cattlemen's Association, grazing activities have existing in San Diego County for in excess of 100 years. Cattle herds in San Diego County are valued at over $14 million, which generate many dollars to the local economy.

The EIR cannot fairly state, therefore, that the MSCP Plan does not have a significant effect on grazing in San Diego County, where it does not continue to authorize this ongoing business as a matter of right.

The MSCP Plan assumes in its prohibition of the granting incidental take protection for grazing activities, that grazing is incompatible with a preserve.

No research or analysis of any type is offered to support this contention, although this regulatory point of view places 69,000 acres of grazing land within the MHPA Area at risk.

Scientific studies, including the analyses that have been prepared by governmental agencies such as the United States Forest Service suggest that grazing can be an appropriate management tool in various types of ecosystems.

The attached paper, from "WildFlower — Journal of the National Wildflower Research Center," provides a good review of the issue.

The EIR's assumption that grazing is incompatible with preserve goals, is unsupported by evidence or analysis, and as such should not stand as an analysis supporting policies which will limit the viability of grazing within the confines of the MSCP Plan.

How can it be determined whether the MSCP will adversely impact agriculture, until it is known what type of agriculture will be allowed and its extent, which is to be deferred to approval of Subarea Plans?

This constitutes a deferral of an important part of the EIR's impact analysis to subarea plans. It also is a failure to identify what type of MSCP Plan requirements or mitigation measures may be deemed necessary, within Subarea Plans to make them consistent with the MSCP Plan. The absence of such analysis or the reliance upon unknown future mitigation measures violates CEQA. See Kings County Farm Bureau v. City of Hanford (1990) 221 Cal.App.3d 692, 727-728. In Sundstrom v. County of Mendocino (1988) 202 Cal.App.3d 296, the court held that the county violated CEQA by approving a project without first resolving uncertainties regarding the project's potential environmental impacts, instead deferring such analysis to a future date. See also, Oro Fino Gold Mining Corp. v. County of El Dorado (1990) 225 Cal.App.3d 872, 884-885. **93(h)**

4. The EIR's impact analysis is flawed. It is only supported by conclusions without supporting analyses, with respect to the biological viability of the various preserve options studied. Conclusions are inadequate to support the EIR's findings, with respect to covered species.

The EIR was circulated without the "MSCP 1995 and 1996 Species Evaluations" prepared by the U.S. Fish and Wildlife Service and California Department of Fish and Game, dated September 1996, which apparently contains further data addressing its conclusions regarding the MSCP's anticipated success in preserving covered species. **93(i)**

The provisions of the "Species Evaluations" are not incorporated by reference into the text of the EIR in a matter prescribed for by CEQA. Thus, throughout Chapter 3.5 of the EIR, a number of conclusions are offered regarding the Plan's protection of animals and plants but no biological data is cited to support the identification of MSCP's impacts, statements regarding the significance of impacts or statements regarding the adequacy of mitigation.

In particular, Table 4.3-1 is the sole basis for concluding that the MSCP Plan adequately conserves the species listed in the Table, but is totally without supporting data including references to supporting data.

Similarly, the EIR's discussion with respect to wildlife corridor linkages also fails to demonstrate or even reference biological information sufficient to support the contention that the linkages are of sufficient size and adequate design to serve the needs of various covered species proposed for inclusion on the covered species list. 93(j)

The public at large, as well as Responsible Agencies, such as the County of San Diego, are unable to determine the adequacy of the MSCP Plan for reasons of its incorporation by reference or inclusion of the biological standards and other data necessary for various jurisdictions to consider in deciding whether or not to adopt the MSCP Plan and Subarea Plans. 93(k)

The lack of biological data also renders it difficult, if not impossible, to establish standards for monitoring of the adequacy of the plan in future years, a key requirements of CEQA pursuant to its mitigation monitoring requirements.

Perhaps most notably absent in the EIR, however, is any discussion and/or supporting data, (including references to supporting data) to support the EIR's analysis that the MSCP will adequately mitigate the impact on various covered species through the assemblage of a preserve and protection of the habitat types contained therein for covered species which would otherwise be impacted outside of the boundaries of such a preserve. 93(l)

Thus, the EIR's conclusions that mitigation resulting from the development of a preserve would offset any individual species impacts, including the taking of covered species, whether or not they are listed pursuant to either the California Endangered Species Act or the Federal Endangered Species Act, is wholly lacking support in the document.

The inadequacy of the data set forth to support these contentions of the EIR is in violation of various provisions of CEQA. In Citizens of Goleta Valley v. Santa Barbara (1988) 197 Cal.App.3d 167, the court held that mere reference to other material in an EIR does not give the public sufficient information and does not suffice for consideration of the lead agency of the material. In order to rely on material outside the EIR, the lead agency must notify the public of its intent to rely on said material and the specific information in the other material used to support the decision. CEQA Guideline 15150 sets forth the procedural requirements to incorporate by reference materials not included within the text of the EIR. As stated above, the MSCP EIR fails to incorporate by reference or provide any information whatsoever regarding the conclusion that 93(m)

the MSCP will adequately mitigate the impact on various covered species. Under these circumstances, the lead agency must issue a new notice and recirculate the EIR for comments after it has included the significant information previously omitted. Public Resources Code § 21092.1; CEQA Guideline 15088.5; Laurel Heights Improvement Assn. v. Regents of the University of California (1993) 6 Cal.4th 1112. 93(m)

5. The EIR's conclusions with respect to the adequacy and availability of Program funding, including those which require the acquisition of land and/or its management and maintenance for preserve purposes are speculative, at best due to a lack of defined and committed funding sources. Without an assured funding source, a Section 10(a) permit may not be issued pursuant to federal law. Section 10(a)(1)(B)(ii) includes the requirement that, "the applicant [City of San Diego] will ensure that adequate funding for the Plan will be provided."

CEQA requires that feasible mitigation measures be adopted to mitigate significant environmental effects. Feasible means "capable of being accomplished in a successful manner within a reasonable period of time taking into consideration economic, environmental, legal, social and technological factors" (See, Guideline 15364). In this case, the acquisition of land and/or the acquisition of land for purposes of formation of a preserve and/or acquisition of land to mitigate the impact of takings of covered species outside the preserve does not appear to be "feasible" as required by CEQA.

The EIR stresses the need to fund land acquisition which may range from $338,000,000 to $411,000,000. Conversely, it has identified three types of acquisition funding sources, namely funds advanced by the federal or state government, local funding through one or more debt mechanisms such as open space districts, community facility districts, or special assessment districts and finally the use of mitigation measures or development exactions, as a funding and acquisition approach.

None of the mechanisms set forth above in the EIR are "feasible" as defined and required by CEQA. Nor is the maintenance of the preserve assured as required by federal law for the issuance of a Section 10(a) permit. 93(n)

There have been no contractually binding commitments by either the state or federal government to fund their pro rata share of the land acquisition costs. None are identified in the EIR nor legally committed to by any document referenced in the EIR.

The local funding options are speculative at best. As the EIR notes, any local funding option must, as a matter of policy, be approved by the voters. Voter approval has neither been sought nor obtained. In addition, most if not all of the proposed assessment district or open space maintenance district local funding mechanisms will be adversely affected if not rendered effectively unavailable should Proposition 218 scheduled for consideration on the November 5 General Election, known as "Voter Approval for Local Governmental Taxes Limitations on Fees, Assessments and Charges" be approved. This initiative will constitutionally preclude a spread of assessments where only generalized benefits are realized by the assessed parcels.

Even assuming the local funding land acquisition mechanisms addressed in the EIR would be legally available under Proposition 218, it is clear that Proposition 218 would require an annual affirmative approval to assure continued preserve maintenance funding, which can only be accomplished following extensive annual property owner elections.

The "exaction" method of financing also is infeasible. The EIR discusses the anticipated rate of population growth or consumption of land during the next 20-year period. It is to be noted that even the land that is assumed to be developed was 100% covered with natural resources that had to be mitigated in accordance with mitigation ratios, the absorption in acreage of such land would still be less than that required, during any reasonable time frame to trigger a requirement (development exaction) to acquire land for purposes of preserve formation.

The amount of natural resources which can be anticipated to be consumed by new development projects, over any reasonable period of time considered by the EIR is not enough, to trigger mitigation measures requiring the acquisition of habitat within the preserve, which is anticipated to be acquired through regulatory exactions.

Taken as a whole, the funding mechanisms therefore do not meet the CERA requirements of feasible funding mechanisms calling into question the viability of the MSCP Plan. CERA prescribes. An EIR must demonstrate with substantial evidence the effectiveness of proposed mitigation measures. Public Resources Code §§ 21002, 21100. Absent such evidence to support

93(n)

the conclusion that mitigation measures will be effective, courts will find the EIR inadequate. Sacramento Old City Assn. v. City Council (1991) 229 Cal.App.3d 1011, 1027. In San Franciscans for Reasonable Growth v. City & County of San Francisco (1984) 151 Cal.App.3d 61,79, the court held that the failure to specifically identify a funding mechanism for transit improvements violated CERA. The MSCP EIR's failure to adequately identify feasible funding measures similarly causing to question the validity of the EIR. 93(n)

6. The EIR fails to identify, address and resolve conflicts with the Planning policies of other agencies such as the County of San Diego with respect to the preservation of agricultural land, and policies supporting the continued viability of agriculture.

The EIR merely references a need to potentially change land use designations in various jurisdictions, should the MSCP Plan be approved, on a subarea-by-subarea plan.

It provides no specific analysis of the conflicts or inconsistencies of the various adopted plans, such as general plans, applicable to subareas which foster the continued viability of agricultural land uses. 93(o)

There is neither an analysis of the direct impacts of the inconsistent requirements of the MSCP Plan with respect to such existing land use plans and policies, nor the indirect results of modifying the existing plan provisions.

7. The County of San Diego, in its letter of comments on this EIR/EIS, addressed to the Mayor of the City of San Diego, has also listed a number of concerns, which are attached hereto and incorporated herein by reference, as if set forth fully by the San Diego County Farm Bureau.

As a general recommendation, the Farm Bureau suggests that the City of San Diego and state and federal regulatory agencies, should consider in lieu of the current proposed regulations and treatment of agricultural activities pursuant to the MSCP, the parameters and requirements of the attached H.E.L.P. (Habitat Enhancement Landowner Program). This Program, which is being discussed on a statewide basis, provides some regulatory options which are worthy of consideration in the context of the MSCP as it relates to grazing and agricultural lands. 93(p)

LUCE, FORWARD, HAMILTON & SCRIPPS LLP

ATTORNEYS AT LAW • FOUNDED 1873

Thank you for the opportunity to comment on this EIR/EIS. The San Diego Farm Bureau requests a written notification of any and all other proceedings being undertaken with respect to this MSCP EIR/EIS and Plan and Program to the San Diego County Farm Bureau, care of Mr. Eric Anderson, 1670 East Valley Parkway, Escondido, California 92027, and Mr. Craig K. Beam, Luce, Forward, Hamilton & Scripps, LLP, 600 Broadway, Suite 2600, San Diego, California 92101. **93(q)**

Very truly yours,

Craig K. Beam

Craig K. Beam
for
Luce, Forward, Hamilton & Scripps LLP

/s/

Eric Anderson
President
San Diego County Farm Bureau

CKB:tlg
Enclosures
cc: Ms. Judy Fowler (with enclosures)

94 A. D. HAYNIE, LATHAM AND WATKINS, 10/29/96

94(a) We agree with the commenter that once the landowner/developer is obliged to provide specific mitigation for a proposed development project, the landowner/developer should be assured that the mitigation will not be subsequently modified. Section 17.1.A has therefore been revised to provide that Third Party Beneficiary status shall attach to a landowner/developer once the local jurisdiction has determined the mitigation required for the impacts of a particular project on biological resources; and the mitigation has been imposed through a condition of development, (e.g., development agreement, tentative map, etc.) which is recorded and runs with the land and is enforceable and binding upon the landowner/developer or any successor in interest.

Section 17.1.A has also been revised to require, as a condition of attaining Third Party Beneficiary status, that the landowner/developer maintain the biological values of the lands committed for mitigation during the period between the time Third Party Beneficiary status is attained and the mitigation is satisfied in accordance with Section 17.1.D.

In order to insure that development and development-related activities such as grading do not begin before the mitigation is satisfied or has been guaranteed, Section 17 has been revised to clarify that the mitigation obligation must be satisfied through conveyance of a conservation easement, fee title, etc., or guaranteed through an irrevocable offer of dedication, letter of credit, pledged savings account, mitigation bond or other equivalent guarantee securing in full the mitigation obligation, at the time a grading or grubbing permit is issued for the approved development project. Where a guarantee is provided, the local jurisdiction shall establish a deadline for satisfaction of the mitigation obligation. That deadline may not exceed one year from the date a permit for grading or grubbing is issued.

We further agree that it is appropriate to provide a landowner/developer with the flexibility to attain Third Party Beneficiary status for all phases of a multi-phase project by committing to satisfy the mitigation required for an entire project (provided sufficient information about its impacts to covered species are known), or, incrementally, as development approvals are granted for specific phases of the multi-phase project. In order for Third Party Beneficiary status to attach incrementally to a discrete phase of a multi-phase project, the mitigation must not be functionally dependent, in the context of the MSCP Plan and subarea plan, on the mitigation to be provided for subsequent phases of the project. Section 17.1.A. has been revised to clarify this option.

Finally, a new Subsection B has been added to clarify that once a project has been approved, subsequent modifications to the project which increase or substantially alter impacts to biological resources will result in a loss of Third Party Beneficiary status as will a failure on the part of the Third Party Beneficiary to maintain the biological values of the land committed for mitigation.

Section 17 of the City of San Diego and Model IAs have been revised as follows:

** 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, [**LOCAL JURISDICTION**] may allow within the Subarea the Incidental Take of Covered Species Subject to Incidental Take by Third Party Beneficiaries under the direct control of [**LOCAL JURISDICTION**], specifically including landowners and public and private entities undertaking land development activities in conformance with an approval granted by [**LOCAL JURISDICTION**] in compliance with this section and Section 10 of this Agreement.

A. Creation of Third Party Beneficiary Status. The creation of Third Party Beneficiary status shall occur during [**LOCAL JURISDICTION'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 (i.e., certification of the CEQA environmental document), 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 development agreement or a tentative map condition), 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 Plan and Subarea Plan upon the mitigation proposed for subsequent phases.

B. Maintenance of Third Party Beneficiary Status. Third Party Beneficiary status will remain in effect unless, prior to the issuance of a take authorization in accordance with paragraph D, below, the Third Party Beneficiary alters the project in a manner that increases or substantially alters impacts to biological resources evaluated pursuant to Paragraph A, above or fails to maintain the biological values of the land committed for mitigation pursuant to Paragraph 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 paragraph A.

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 [**LOCAL JURISDICTION**] 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 [**LOCAL JURISDICTION'S**] in conformance with this Section and Section 10 of this Agreement.

D. Authorization for Take Conferred By Local Jurisdiction To Third Party Beneficiary. The authorization for Incidental Take approved by [**LOCAL JURISDICTION**] to the Third

Party Beneficiary shall be for the length of time and run concurrent with the specific land development approval granted by [**LOCAL JURISDICTION**]. However, no grading or grubbing activities may be commenced by the Third Party Beneficiary pursuant to [**LOCAL JURISDICTION'S**] development approval, until the mitigation established pursuant to paragraph 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 timeframe approved by [**LOCAL JURISDICTION**], which timeframe shall not under any circumstance exceed one year from the date the permit for grading or grubbing is issued.

Consistent with the above revisions to Section 17, the definition of Third Party Beneficiary in Section 2.33 will be revised to provide as follows:

** 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.

94(b) Note #C21 has been revised to include a reference to an "<u>average</u> 400 - 500 " which is consistent with the approved plans. The other suggested deletions have been made and are included as revisions to the City of San Diego Subarea Plan.

94(c) In many cases it is difficult to distinguish between non-native grassland and agricultural land as part of aerial photo interpretation mapping efforts. We agree that some agricultural lands may have been mapped as grassland and vice-versa. However, it is important to note that both grasslands and agricultural lands may serve similar habitat functions, either as foraging areas or as linkages, and therefore may be important to preserve design. The BMR Project has the legal right to develop under an approved development agreement, Vesting Tentative Map and associated permits. The mapping discrepancies will not affect the rights and development potential of the project.

94

LATHAM & WATKINS
ATTORNEYS AT LAW
701 "B" STREET, SUITE 2100
SAN DIEGO, CALIFORNIA 92101-8197
TELEPHONE (619) 236-1234
FAX (619) 696-7419

PAUL R. WATKINS (1868-1973)
DANA LATHAM (1898-1974)

CHICAGO OFFICE
SEARS TOWER, SUITE 5800
CHICAGO, ILLINOIS 60606
TELEPHONE (312) 876-7700
FAX (312) 993-9767

LONDON OFFICE
ONE ANGEL COURT
LONDON EC2R 7HJ ENGLAND
TELEPHONE + 44-171 374 4444
FAX + 44-171-374 4460

LOS ANGELES OFFICE
633 WEST FIFTH STREET, SUITE 4000
LOS ANGELES, CALIFORNIA 90071-2007
TELEPHONE (213) 485-1234
FAX (213) 891-8763

MOSCOW OFFICE
113/1 LENINSKY PROSPECT, SUITE C700
MOSCOW, RUSSIA 117198
TELEPHONE + 7-503 956-5555
FAX + 7-503 956-5556

NEW JERSEY OFFICE
ONE NEWARK CENTER
NEWARK, NEW JERSEY 07101-3174
TELEPHONE (201) 639-1234
FAX (201) 639-7298

NEW YORK OFFICE
885 THIRD AVENUE, SUITE 1000
NEW YORK, NEW YORK 10022-4802
TELEPHONE (212) 906-1200
FAX (212) 751-4864

ORANGE COUNTY OFFICE
650 TOWN CENTER DRIVE, SUITE 2000
COSTA MESA, CALIFORNIA 92626-1925
TELEPHONE (714) 540-1235
FAX (714) 755-8290

SAN FRANCISCO OFFICE
505 MONTGOMERY STREET, SUITE 1900
SAN FRANCISCO, CALIFORNIA 94111-2562
TELEPHONE (415) 391-0600
FAX (415) 395-8095

WASHINGTON, D.C. OFFICE
1001 PENNSYLVANIA AVE., N.W., SUITE 1300
WASHINGTON, D.C. 20004-2505
TELEPHONE (202) 637-2200
FAX (202) 637-2201

October 29, 1996

Mr. Lawrence C. Monserrate
City of San Diego
Development Services Department
Land Development Review Division
1222 First Avenue, Mail Station 501
San Diego, California 92101

Re: Comments to MSCP Plan and Draft EIR/EIS

Dear Larry:

We represent the Black Mountain Ranch Project ("BMR Project"), a large master planned community located in the Future Urbanizing Area of the City of San Diego. We have a few specific comments that we would appreciate your considering prior to finalizing the Multiple Species Conservation Program ("MSCP") Plan and the corresponding Draft Environmental Impact Report/Environmental Impact Statement ("Draft EIR/EIS").

1. Draft Implementing Agreement

Section 17.1.C. of the Draft Implementing Agreement should be revised to, at a minimum, allow development agreements to bestow third party beneficiary status on a developer/property owner. The following modification is recommended:

> 7.1.C Following approval by the CITY OF SAN DIEGO of any project or activity by a Third Party Beneficiary in accordance with Section 10 of this Agreement and following receipt by the CITY OF SAN DIEGO from the Third Party Beneficiary of assurance (e.g. a mitigation bond, development agreement, or other

94(a)

acceptable documentation) that the Third Party Beneficiary will provide all mitigation related to [continue without changes]. 94(a)

(2) City of San Diego Subarea Plan and Draft EIR/EIS

Item C21 on page 26 of the City of San Diego's Subarea Plan and on page 4.3-93 in the Draft EIR/EIS should be changed as follows:

> C21. The La Jolla Valley area (Lusardi Creek) will be enhanced and restored into a fully functional native riparian corridor and maintained at an average 400 ~~500 feet~~ foot width. The Black Mountain Ranch Project shall preserve the average 400 foot wide corridor and restore approximately 12 acres as required in the approved development plans. ~~along its entire length as part of the Black Mountain Ranch Project. In the event that this project does not proceed, if any other land use is allowed, then the wildlife corridor must be widened to 1000 feet and restoration plans included in any future development project.~~

This revision would clarify that the requirement is for a 400 foot wide corridor of which the BMR Project is responsible for the restoration of approximately 12 acres. The remaining acreage in the corridor will be available to others parties that may want to restore it as part of their individual off-site mitigation needs. This change would be consistent with the BMR Project's approved development plans and project-related environmental documentation, both of which concluded that a 400 foot width achieves the necessary biological resources preservation and mitigation consistent with the MSCP Plan and limits the BMR Project's responsibility to restore only 12 acres of riparian habitat within the corridor. 94(b)

This revision would further clarify that there is no need for increasing the corridor from 400 feet to 1,000 feet along Lusardi Creek in the event that the BMR Project does not move forward. A 1,000 foot corridor requirement is not supported by the Draft EIR/EIS or the prior environmental documentation approved by the City and state and federal resource agencies for the BMR Project. Moreover, it is our understanding that the state and federal resource agencies have approved a 400 foot wide corridor along Lusardi Creek for the adjacent 4S Ranch development project.

(3.) Draft EIR/EIS - Non-Native Grassland Mapping of BMR Project

The vegetation mapping in the Draft EIR/EIS includes categories of non-native grassland, agricultural, disturbed, and others. The vegetation within the BMR Project is mapped predominantly as non-native grassland. See Figure 3.3-1 of the Draft EIR/EIS. It should be understood that these alleged non-native grasslands have been in active agricultural use since the 94(c)

94(c)

1880's and were row cropped for tomatoes until the late 1980's. In fact, the land use map in the Draft EIR/EIS indicates that the BMR Project is in predominantly agricultural use. See Figure 3.2-1 of the Draft EIR/EIS.

We presume that the BMR Project has been mapped as non-native grassland because it has been used for cattle grazing since the late 1980's. The reality is that the approved development plans for the BMR Project will result in development of approximately 1,776 acres for mixed uses and conservation of over 2,000 acres as public and private open space. Agricultural use (dry farming) of portions of the property not included in the approved development plans for the BMR Project (approximately 900 acres) will continue into the future. Therefore, the areas not included as conserved open space areas in the approved development plans should not be considered non-native grassland habitat for purposes of habitat planning. We would request, therefore, that Figure 3.3-1 be amended to label the non-conserved areas of the BMR Project as agricultural and/or disturbed lands.

Making the requested change to Figure 3.3-1 and considering the non-conserved portions of the BMR Project as agricultural and/or disturbed lands rather than non-native grasslands is a fair result. The BMR Project will dedicate approximately 1,638 acres of grazing land as permanent open space, which would provide long term, sustainable grassland habitat. This open space exceeds the BMR Project's current development impact area of 1,438 acres and would result in a conservation ratio of 1.1:1 conserved habitat relative to current development area of the BMR Project. Development of areas within the BMR Project designated for future development would still result in a conservation ratio of 0.8:1 for conserved habitat relative to development area. The BMR Project, therefore, has more than mitigated for any potential impacts to non-native grasslands that may result from both current and future development plans.

We appreciate your consideration of these comments. If you have any questions concerning any of the above, please do not hesitate to contact us.

Very truly yours,

Allen D. Haynie

Allen D. Haynie
of LATHAM & WATKINS

cc: Wayne Hill
Gail MacLeod

SD_DOCS\43374.1

95 COLLEEN DIETZEL, THE GREEN STORE, 10/13/96

95(a) MSCP Plan, Volume I, Section 1.0, Introduction, paragraph two (page 1-1) explains that the historic loss of native vegetation, and the continued threat of extirpation or extinction of many species has prompted local, state and federal agencies along with leaders of business, community and conservation organizations to seek a solution that simultaneously protects biological resources and the economic opportunities of the region. San Diego is often cited as a national model because it is one of the first multi-jurisdictional ecosystem-based planning efforts in the U.S. and it was developed with broad public input.

95(b) The MSCP Plan proposes that funding for habitat acquisition and management be obtained in part from the federal and state governments and in part from a new regional funding program in the MSCP study area. Federal and state funds would be obtained from existing programs for the protection of species and habitats, some of which are described in Section 7.5 of the MSCP Plan, and from other programs which may be established in the future. Alternative sources for a regional funding program are also described in the MSCP Plan, Volume I, Section 7.0. Public acquisition would comprise approximately 16% of the proposed MSCP preserve. This acquisition is intended to improve upon the preserve configuration which would be achieved by utilizing only existing public lands, regulation and future project mitigation.

95(c) When this project began in 1991, the data collected were the most current at that time. This database was updated in 1992, 1993, and again in 1995 for selected species. In 1992, surveys were conducted for selected species in areas covering approximately 33,000 acres. Field inventories of species occurring in more than 300,000 acres of habitat were not feasible given time and monetary constraints. Additional data have been provided during the public comment period. These data are incorporated in the Final EIR/EIS and do not change the analyses or conclusions in the Draft EIR/EIS.

95(d) The MSCP Plan proposes coverage for 85 sensitive species within a regional preserve system. This preserve system would also benefit other rare and common species that reside in southwestern San Diego County through protection of a diversity of vegetation communities in an ecologically sound preserve configuration.

95(e) See **Theme Response VIII, Public Involvement.**

95(f) Comment noted. Please note that the "common good" for this project is not narrowly defined as an "intrinsic good" of natural habitat preservation, but one which equally considers regional economic well-being and preservation of private property rights as well as the assured, continued viability of natural communities.

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DEVELOPMENT SERVICES

THE GREEN STORE
4827 A VOLTAIRE ST.
SAN DIEGO, CA 92107
225-1083

October 13. 1996

John Kovac, Senior Planner
Development and Environmental Planning Division
City of San Diego
1222 First Avenue, 5th Floor
San Diego, California 92101

Dear Mr. Kovac:

This letter is in regards to my comments on the EIR/EIS for the Multiple Species Conservation Program. While I support the concept of the MSCP Plan the current model does not address some serious issues. The following is a list of my concerns and comments that I would like addressed:

1. Why is San Diego County being used as a national model for a comprehensive habitat conservation plan when historically this city has been politically influenced by developers interests which is evident by its poor landuse planning and piecemeal development? **95(a)**

2. Where is the money for acquisition and habitat protection? And why are taxpayers having to pay for acquisition of land that enforced zoning laws wouldn't have allowed development on currently? **95(b)**

3. Given the magnitude of the project why wasn't more current data used? Why was fragmented data and historical records used instead of taking inventories of all species? **95(c)**

4. Protection of only 82 species and those only protected within the preserve is not adequate given the uncertainties of the effects of fire, disease, ozone depletion, global warming, air and water pollution, etc. on plant and animal species. **95(d)**

5. The public process for the MSCP Plan was not adequate. The public comment period is too short. The plan is too complicated and not enough was done to involve and educate the public on the seriousness of its implications. For example, the public does not even know that taking of a species means the killing of a species. **95(e)**

In conclusion, those who have been involved in this plan all know the cost of suburban sprawl both to plant and animal species and to humans so I won't go in to it. As an environmental educator I will do my best to inform the public of its implications to them and their children. Its time we put our own self interests aside and do what is best for the common good and for the future generations of this planet. 95(f)

Respectfully,

Colleen Dietzel

Colleen Dietzel

96 SCOTT BARNETT, S.D. CO. TAXPAYERS ASSN., 10/29/96

R **96(a)** Estimated costs of habitat acquisition were prepared by each of the local jurisdictions in which such acquisitions are planned. In addition, prices from recent sales of vacant and unimproved lands throughout the MSCP study area were reviewed for comparison with the jurisdictions' estimates. On average, the estimated prices are conservative and substantially higher than the recorded prices (see MSCP Plan, Volume I, page 7-15).

96(b) In the MSCP Plan, the responsibility for habitat acquisition is shared equally between the federal and state governments on the one hand and the participating local governments on the other, or 13,500 acres each. The federal Anti-Deficiency Act and similar state laws define the extent to which state and federal agencies can commit funding. Taking into consideration these laws and the state and federal ESA's, the assurances expressed in the MSCP Plan, Volume I, Sections 4.2.2 and 7.1, are the appropriate assurances on the part of the state and federal governments. While this is the legal limit of the state and federal assurances, the state and federal governments have already expressed their commitment to carrying out their land preservation commitments. They have already acquired over 2,000 acres of their 13,500 acre commitment. Based on already appropriated funding, they would acquire another 1000 acres by the close of federal fiscal year 1997. This represents over 20 % of their acquisition commitments in less than 3% (1 year of a 30 year commitment) of the time anticipated in the MSCP Plan. Since the enactment of the California Environmental Quality Act (CEQA), lead agencies have had the responsibility to assess the impacts to the environment and require mitigation for significant adverse impacts for projects they approve. The MSCP Plan and subarea plans are designed to fit into the existing process and not only fulfill the requirements of CEQA, but also the requirements of the state and federal Endangered Species Act. This results in significant permit streamlining and would reduce the costs of future development.

The MSCP Plan also states that, if federal/state funding is not provided as committed, the MSCP Plan will be re-evaluated with possible adjustments to take authorization coverage and assurances. It should be noted that federal and state acquisitions would take place over a 30-year period. Initial acquisitions were from local landowners who will be developing other lands they own within the MSCP study area.

It is anticipated that the influx of federal and state funds to San Diego for habitat acquisition would stimulate local economic activity, as described in the EIR/EIS, page 4.6-45.

96(c) Under the MSCP Plan, federal and state governments would manage habitat lands which they currently own and lands which they acquire with federal and state funds (MSCP Plan, Volume I, page 7-16. Local governments would manage habitat lands which they own and lands which they acquire with funds generated in the region. Under the MSCP Plan, the local jurisdictions which currently manage habitat and open space, at a cost of approximately $1.23 million in 1995, would continue to fund

this level of management in the future. The local jurisdictions will also utilize the regional funding program described in the MSCP Plan to fund management of newly acquired habitat lands.

96(d) As described in the EIR/EIS Section 4.6.3, there is a sufficient supply of vacant, developable land designated for residential use to accommodate forecast growth, even after the conservation targets of the MSCP Plan are met. That is, implementation of the MSCP Plan does not necessarily increase infill development in currently urbanized areas. Where such development does occur in response to market considerations, it is anticipated that such development would mitigate impacts to public services, in accordance with measures established as part of CEQA review and analysis of individual projects.

96(e) Due to a sufficient supply of vacant, developable residential land, the implementation of the MSCP Plan would not necessitate conversion of commercial- and industrial-zoned lands to residential. Although such conversions may occur in response to property owners' requests and market considerations, they would not constrain commercial and industrial development. SANDAG's Series 8 Regional Growth Forecasts indicate that there is over 9,000 acres of vacant and developable commercial- and industrial-zoned land in excess of that needed to support future commercial and industrial development in the MSCP study area through the year 2015.

96(f) The economic impact of costs per household and costs per acre of commercial or industrial property should be considered in conjunction with the potential economic impact of the MSCP Plan as a whole. The latter impact is discussed in the EIR/EIS Section 4.6.3. In general, it is anticipated that implementation of the MSCP Plan would facilitate approvals of business expansion plans, reduce delays in the environmental review process, and reduce compliance and carrying costs, contributing to a more secure and less costly business environment and improving the region's ability to retain companies and attract investment. The influx of federal and state funds to the San Diego region would also stimulate local economic activity. The positive economic impacts of plan implementation would be reflected in higher property values and aggregate regional income.

96(g) Implementation of the MSCP Plan may contribute to an increase in the price of land located outside the MHPA. However, the increase may be offset by other effects of the program, such as reduced environmental mitigation costs, lower carrying costs, and speedier approval of development projects. In addition, the MSCP Plan's effect on land values will be much less than the effects of other factors, such as the rate of growth in the region and local land use regulation. Please see also the earlier responses to Comments 96(d) and 96(f) on economic impact .

96(h) For property acquired by the public from a private owner, tax value would be reduced to zero. However, this acquisition would occur as part of the overall implementation of the MSCP Plan, which would facilitate development outside the MHPA. Since the increase in tax base resulting from

facilitated development would exceed the price of habitat land, the net effect would be to increase the region's aggregate property tax base and revenue.

96(i) Planning for the two other regional habitat conservation programs in San Diego County (Multiple Habitat Conservation Program in north San Diego County and Multiple Habitat Conservation and Open Space Program in east San Diego County) is currently underway, but they have not estimated funding needs for acquisition or management. In the absence of this information, it is not possible to evaluate the combined funding needs of the MSCP and the other regional programs. With respect to local funding, however, the MSCP financing plan is based solely on projected revenues from sources within the County.

96(j) The MSCP Plan does not require farm lands to be removed from production and provides incidental take for on-going agricultural activities to encourage their retention. The conversion of agricultural lands to development is primarily influenced by market forces which are not associated with the MSCP Plan. Approximately 1,800 acres of agricultural land (located in the City of San Diego subarea) are targeted for future conservation, in part to meet the configuration needs of the preserve. It is assumed that existing agricultural uses will continue on these lands.

As in the case of public habitat acquisition, the tax values of habitat lands would likely be reduced to zero when they are conserved, but this reduction in tax base would be more than offset by the increase in tax base from future development that is facilitated by implementation of the MSCP Plan.

96(k) No modification of existing roadways is required by subarea plans and new roads will be constructed consistent with the MSCP Plan and subarea plans. Construction of roads consistent with the MSCP Plan and subarea plans is not expected to increase construction costs since most new roads are already being designed and constructed consistent with the requirements which were incorporated in the MSCP Plan and subarea plans. The MSCP Plan does not change existing local road/traffic standards for new projects. The MSCP preserve design does not preclude the construction of needed roads, although the elimination of some development areas will result in some roads not being constructed thereby reducing infrastructure maintenance costs. No increase in public infrastructure cost has been identified as a result of MSCP Plan implementation. The issuance of take authorizations based on the MSCP Plan and subarea plans is intended to preclude construction delays (including job reductions which could be associated with construction delays) that may be associated with the current project-by-project compliance with the state and federal ESAs. The process for construction of needed public projects will be streamlined by the MSCP Plan, thereby reducing costs to the taxpayers while conserving jobs.

96(l) The Public Lands alternative was previously evaluated and it did not provide for conservation of key species, including the California gnatcatcher. As a result, the Public Lands alternative

does not achieve the goals of the MSCP program since it would not lead to the issuance of take authorizations for key species.

96(m) Please see **Theme Response IV, MSCP Financing Plan: Regional Source of Funds.**

96(n) Lack of public funding for the MSCP would not affect project proponents with development permits in the study area. The MSCP Plan and the Implementing Agreement contain provisions for the review of subarea plan implementation and remedies that may become necessary in case public funding is not available in a timely manner. Lack of funding by itself is not a cause for the revocation or suspension of the Implementing Agreement. Even in the event of such revocation or suspension, the agreement contains assurances to proponents of projects which have received permits under the MSCP and which are in compliance with the terms of the permit and mitigation requirements.

Developers/landowners who become Third Party Beneficiaries to the local jurisdiction's take authorization would continue to receive the benefits of the take authorization even if subsequently the local jurisdiction's take authorizations were suspended or revoked. The consequences of a shortfall in the local funding source are addressed in MSCP Plan Section 7.1 and are further defined in the model implementing agreement. The consequences of a state and federal funding shortfall are addressed in Section 15.3 of the model implementing agreement.

San Diego County Taxpayers Association 96

1010 Second Avenue, Suite 100-B • San Diego, CA 92101 • (619) 234-6423 FAX (619) 234-7403

October 29, 1996

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DEVELOPMENT SERVICES

Mr. John Kovac
Ms. Mary Ladiana
City of San Diego
Land Development Review Division
1222 First Ave, Fifth Floor
San Diego, CA 92101

RE: Questions on the MSCP Environmental Impact Report & Environmental Impact Statement.

Dear Mr. Kovac and Ms. Ladiana:

The San Diego County Taxpayers Association has the following questions regarding the proposed MSCP:

-Land Valuation:

We continue to have concerns regarding the accuracy of land valuation figures. Would it not be best to identify representative distribution of land types and locations to be included in the MSCP and value that distribution specifically? **96(a)**

-Federal/State Funding:

The original MSCP plan estimated that the Federal and State governments would purchase 19,100 acres of land for the high acquisition scenario, which is now revised to 13,500. This reduction implies that the Federal and State governments will purchase 50% of the land. Given current and funding availability, and competition for habitat funds across the country, is it realistic to assume that half of the acquisition will be financed with non local funding sources? **96(b)**

What funding will be utilized if the Federal and State funds do not materialize?

What will be the impact of the influx of State and Federal dollars into the region? Will such funds stay in the County as originally suggested, or more likely, will they transfer into other investments which do not stimulate the economy because of their passive nature?

-Maintenance & Management:

What sources of funding have been identified to cover the maintenance and management costs (approximately $45/acre ?) of the proposed preserve? If a voter approved local funding source is to be used then at what point in the process will voter approval be asked for and what funding source will be used for maintenance and management prior to this? **96(c)**

FISCAL WATCHDOG Founded in 1945

-Economic Impacts

Displaced Development: What will be the impacts of "infilling" residential development on municipal services? How will existing communities accommodate additional needs for schools, police, and fire services? What will be the impact on already overburdened infrastructure (streets, water and sewer) and how will the funds be generated to pay for necessary improvements? **96(d)**

If currently zoned commercial and industrial-designated lands are to be converted to residential how will that impact the potential loss of future jobs and tax revenues? **96(e)**

What will be the economic impact of the $20-25 per household (estimated by the plan) tax increase to pay for the MSCP ? **96(f)**

What will be the economic impact of the estimated $71-78 per acre commercial tax increase ?

What will be the effect upon cost of land and development and allocation of land uses, especially housing? Will not land values increase where development becomes more feasible, thus driving up development costs? **96(g)**

Property Tax loss. The Rea and Parker report commissioned by the Taxpayers Association indicates a loss of future property tax revenues of $8.4 million per year. The current MSCP does not address this issue. How will local government make up this loss of revenue and still have funds available to purchase habitat land? **96(h)**

If the other proposed habitat conservation plans in the county proceed, how will that effect the availability of funding sources (both local and outside) and what will the economic impacts be? **96(i)**

How will the region's economy be impacted by eliminating farm lands from production? **96(j)**

-Impacts on proposed roadways

What impact will the proposed subarea plans have on planned road widening and new construction projects? Will mitigation requirements for certain roadways increase the cost of public construction projects? By how much? Will elimination of certain projects result in increased traffic impacts in local communities causing a greater burden and cost to local communities? How will elimination of public projects impact future job loss and related economic activity? **96(k)**

-Public Lands Alternative

Could not the goals and objectives of the MSCP be met by primarily utilizing lands already in public ownership and lesson the cost to the taxpayer? **96(l)**

-Funding Plan

Does not Federal law require that a local funding plan be in place before approval and implementation of the MSCP? **96(m)**

How will the preserve be financed if, the voters turn down a tax increase ?

-Impact on Property Owners

How would property owners subject to the MSCP be impacted if funding (local, state and federal) does not meet expectations? Would property owners have their permits revoked? **96(n)**

Thank you for considering the questions we have raised.

Sincerely,

Scott Barnett
Executive Director

97 RODRICK DOSSEY, 10/29/96

97(a) Comment noted.

97(b) The proposed take authorizations would remain in effect for a period of 50 years, or until termination of the permit or agreement. However, all parties to the agreements recognize that take of a covered species and/or modification of their habitat would be permanent. Therefore, the preservation and maintenance of the habitat provided for under the MSCP Plan would likewise be permanent and extend beyond the 50-year term of the agreement (see section 21.3 of the Model Implementing Agreement). Please see also **Theme Response IV, MSCP Financing Plan: Regional Source of Funds.**

97(c) The data base used to develop the MSCP Plan contains numerous records of species observations based on surveys conducted for the MSCP, for CEQA project reviews, and other purposes. The compilation of these data are shown on Table 3-5 of the MSCP Plan as point observations, polygons, and major populations within the preserve. For several species, the number of individuals is not as important as the protection of adequate amounts of its potential habitat in an ecologically sound preserve configuration. These conclusions are further described in revised MSCP Plan, Volume I, Table 3-5. See also **Theme Response I, Species Analysis Approach.**

97(d) Comment noted.

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Rodrick Dossey
7723 Linda Vista Rd.
San Diego, CA 92111

City of San Diego
Development Services Department
Land Development Review Division
1222 First ave, mail station 501
San Diego, CA 92101

Dear Reviewer,

The MSCP concept of creating a single large permanent reserve for the protection of sensitive species in San Diego and allowing the remainder of San Diego to be developed is the correct approach for endangered species management. I would support such a plan wholeheartedly. Unfortunately the plan proposed in the draft EIR fails to live up to my expectations and I imagine the expectations of much of the public. **97(a)**

The portion of the MSCP concept allowing much of San Diego to be developed is the only part of the MSCP concept still intact with the plan. The other two parts of the MSCP concept, creating a large permanent reserve and protecting the sensitive species, have both been compromised to the point I cannot support the plan.

A large permanent reserve seems incompatible with the plans duration of fifty years, while lengthy it isn't permanent. It doesn't seem compatible with some subarea plans allowing development of up to %25 of the parcels within the reserve. Furthermore there is no guarantee that there are sufficient funds to acquire the necessary parcels to complete the preserve as envisioned. There are promises that key corridors and parcels which are intended for development will be targeted first. These will also be the most expensive parcels to obtain, when there is no permanent funding mechanism yet established. This compromises the ability of the plan to establish a large enough preserve system to deliver the protection promised by the plan. **97(b)**

The second part of the concept, protection of sensitive species, also is affected by the size of the reserve. Further there wasn't any censusing of the sensitive species to determine the populations size or even if the populations were still there and intact. Without knowing something as basic as how many individuals exist how can the document say they are adequately protected? Additionally the methodology for determining if a sensitive species was covered or not seems very unscientific. For example the gnatcatcher was at high risk under the analysis, yet it has been listed as a covered species. That is only one example of many inconsistencies within the document in how it determined if a species was protected or not. This falls short of.the type of long term planning needed to protect those sensitive species if large parts of their populations would be destroyed. **97(c)**

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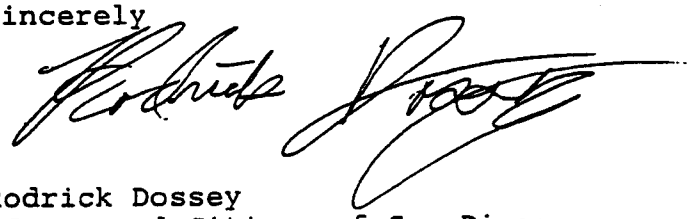
The MSCP concept has been proposed as a model for our nation, yet the plan as it stands currently fails to assure two out of the three expectations fundamental to the MSCP. It would be unfortunate if it is approved as written. These issues I believe can all be corrected. If they aren't we will have done a disservice to the people of San Diego. Rather than creating a model for endangered species management for the nation of which San Diegans can be proud, we'll have created simply a park. 97(d)

Sincerely



Rodrick Dossey
Concerned Citizen of San Diego

98 ALLISON ROLFE, SW CTR. FOR BIO. DIVERSITY, [RECEIVED] 10/29/96

R **98(a)** Implementation of the MSCP Plan goes far beyond traditional Habitat Conservation Plans which focus on mitigation for adverse impacts to listed species. The MSCP Plan was developed to conserve a functioning ecosystem through the conservation of all vegetation communities in an appropriate configuration and quantity. As a result, the assembly of the MSCP preserve requires the equitable sharing of responsibilities for its creation. The preserve will be assembled through mitigation and land dedication for new development, dedication and acquisition by the local jurisdictions, and dedication and acquisition by the state and federal governments. This sharing of the burden to create ecosystem based preserve (rather than a project mitigation based preserve) has been fundamental in the process.

98(b) The MSCP Plan was developed as a habitat based plan which provides for the conservation of the ecosystem and its function in the areas subject to the plan. The MHPA for the MSCP has been analyzed on a species-by-species basis and the conservation levels for each species are calculated and presented in the revised Table 3-5 included in the Revisions to the MSCP Plan, Volume I, January 1997. Information from the MSCP Plan, Volume I, Sections 2, 3 and the data and information referenced in the MSCP Plan and Draft EIR/EIS regarding species conservation and conditions is presented in the revised Table 3-5. The adoption of the MSCP Plan, subarea plans and issuance of take authorizations does not exempt jurisdictions and developers from compliance with the ESAs, but rather provides the mechanism for compliance with the ESAs for covered species.

98(c) It is acknowledged that the MSCP Plan and associated Draft EIR/EIS are complex projects that require time and attention to review and understand. The City of San Diego Subarea Plan and Model Implementing Agreement were included in the MSCP Plan documentation distributed for public review. The referenced species evaluation forms that were available after the Draft EIR/EIS were distributed for public review do not represent new information. These forms, compiled in a document dated September 23, 1996, simply represent a compilation of documentation listed on pages 4.3-2 and 4.3-3 of the Draft EIR/EIS, all of which were available for review at public libraries throughout the San Diego area and at the local offices of the wildlife agencies at the time the Draft EIR/EIS was distributed for public review. In response to a variety of comments, the public review period for the Draft EIR/EIS was extended form October 15, 1995 to October 29, 1996. Please refer also to **Theme Responses VIII , Public Involvement, and XV, Document Organization.**

98(d) See **Theme Response I, Species Analysis Approach** and revised Table 3-5 incorporated in the Revisions to the MSCP Plan, January 1997.

98(e) The take authorizations authorized in the internal biological opinion was relevant only to the interim provisions of the Section 4(d) Special Rule for the gnatcatcher, which provided for a maximum 5% loss of coastal sage scrub habitat while long-term NCCP plans were developed. The take

authorized under the MSCP Plan, therefore, is not constrained by that cap, except to the extent that previously authorized take would be considered in the baseline information in the forthcoming internal biological opinion on the proposed issuance of take authorizations permits under the MSCP Plan.

98(f) Each subarea plan includes specific conservation requirements by vegetation community (e.g., Table 3-1 of the MSCP Plan, Volume I). The Implementing Agreements require each take authorization holder to maintain records and report annually on the amount and location of habitat authorized for development and conserved by vegetation community. The wildlife agencies will review the local jurisdictions reports and verify compliance with the requirement that conservation be in rough step with development. See also **Theme Responses X, Habitat Conservation Accounting Model and XIV, Biological Monitoring.**

The wildlife agencies will coordinate the biological monitoring of the preserve. Biological data will be collected in conformance with the MSCP Biological Monitoring Plan that has been provided by the wildlife agencies. This biological monitoring plan establishes an array of sampling stations for landscape-level monitoring of vegetation community trends; species-specific vegetation monitoring; monitoring of wildlife corridors; coastal sage scrub-dependent bird and mammal monitoring; grassland raptor monitoring; and general and focused herptofauna monitoring. Monitoring sites were chosen to focus on reported occurrence areas or higher quality habitat areas that may support covered species. Biological data will be analyzed and used to support actions to be undertaken as part of the adaptive management process.

The Implementing Agreement (IA) signed by each take authorization holder would require them to meet the MSCP Plan and subarea plan resource conservation objectives. Section 14 of the IA identifies the information collection and reporting requirements and Sections 16 of the IA identifies the process for addressing problems and for enforcing the conditions necessary to correct those problems.

98(g) Prior to issuance of take authorizations permits, the wildlife agencies must prepare an internal biological opinion that assesses the impacts of the proposed action. This document must assess both cumulative future impacts and the current baseline status of each species. The authorized take of wide-ranging species under the MSCP Plan would, therefore, be considered in future permitting programs.

98(h) The biological opinion that would be prepared on the proposed issuance of take authorizations permits for subarea plans under the MSCP Plan must address whether or not the proposed action would destroy or adversely modify designated critical habitat. A biological opinion is currently being prepared for the MSCP Plan and for the City of San Diego Subarea Plan and will address one of the issuance criteria for take authorization. One of the criteria is that the issuance of a take authorization would not appreciably reduce the likelihood of the survival and recovery of the species in the wild. In its biological/conference opinion, the wildlife agencies would use the best available scientific information to evaluate impacts to species covered by the MSCP Plan and to designated critical habitat within the MSCP planning area. In compliance with 16 U.S.C. 1536(a)(2), the wildlife agencies must ensure that issuance

of a take authorization would not likely jeopardize the continued existence of any of the species covered by the MSCP Plan or result in the destruction or adverse modification of designated critical habitat. After the wildlife agencies make its final decision on take authorization issuance, the biological/conference opinion would be available for public review, upon request.

98(i) Section 10(a)(1)(B) of the federal ESA requires that applications for take authorizations of listed species meet five issuance criteria, which are 1) the taking would be incidental; 2) the applicant would, to the maximum extent practicable, minimize and mitigate the impacts of such taking; 3) the applicant would ensure that adequate funding for the plan would be provided; 4) the taking would not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and 5) the measures, if any, required by the U.S. Secretary of the Interior as being necessary or appropriate for the purposes of the plan would be met. The wildlife agencies' biological opinion on the issuance of the Section 10(a)(1)(B) permit would determine whether or not the proposed permit issuance would appreciably reduce the likelihood of survival and recovery of the covered species in the wild.

98(j) Assurances for participating local jurisdictions and Third Party Beneficiaries are based on their contributions to the conservation of species and vegetation communities as specified in the MSCP Plan, Subarea Plan, and Implementing Agreements.

The MSCP program is an ecosystem based conservation program which focuses both on the conservation of the coastal sage scrub ecosystem in the MSCP study area and on the conservation of specific species at a level which meets the standard of FESA, CESA and the NCCP Act. The MSCP Plan conserves habitat for all of the proposed covered species. The term conservation encompasses the concepts of restoration, protection and enhancement, all of which are components of the MSCP Plan. The implementation of the MSCP will benefit covered species in that it will permanently conserve (and provide for management) over 171,000 acres of diverse vegetation communities (in an linked preserve system). There is a "net benefit" to the species over the existing conditions.

The MSCP Plan will support the issuance of "take" or management authorizations under the NCCP Act (California Fish and Game Code Section 2800 et seq.). The NCCP finding for authorizing taking of species is that "any identified species whose conservation and management is provided for in a department approved natural community conservation plan." The MSCP provides documentation to establish that the necessary conservation, management, monitoring, and funding are provided to support decisions regarding covered species.

In comparison to the traditional project-by-project mitigation approach, species, vegetation communities and ecosystem health and function will be greatly enhanced under the MSCP. As appropriate, species specific management requirements located in various documents have been aggregated into the revised Table 3-5 in the Revisions to the MSCP Plan, Volume I, January 1997. The implementation of these management measures along with managing the preserves for intended biological benefits is a requirement that is incorporated into the implementing agreements. The biological health and

function of the preserve system will be monitored using the monitoring program developed by the wildlife agencies. The term "insignificant" is defined in response to Comment 39(d). A net benefit finding is not required to issue a management authorization.

98(k) Please see responses to Comments 45(a) and 74(b) through 74(f).

98(l) See **Theme Response XXV, Wetlands Protection.**

98(m) Analysis of best-case and worst-case scenario justifications for covered species and habitats is not a requirement of either CEQA or NEPA. Rather, the analysis of alternative scenarios is properly focused on a range of reasonable alternatives. Please also see **Theme Response I, Species Analysis Approach.**

It should be noted that it is not the purpose of the Draft EIR/EIS to justify the list of species and habitats evaluated for coverage. This evaluation will be made by the wildlife agencies prior to issuance of take authorizations. The Draft EIR/EIS focuses instead on the direct and indirect impacts to species and habitats associated with issuance of take authorizations for the proposed project and alternative scenarios.

98(n) Throughout Section 4.0 of the Draft EIR/EIS, the alternatives are analyzed at the same level of detail as the proposed project. Please refer to Section 4.1 of the EIR/EIS for a description of the analysis approach and **Theme Responses I, Species Analysis Approach and XV, Document Organization.**

98(o) The GIS database was digitized at a scale of 1:24,000 with an expected accuracy of ± 100 feet. Systematic error was not a concern since this error source averages out across the entire MSCP study area. The habitat mapping accuracy was assessed at between 70 to 90% depending on habitat type and patch size. Where directional bias in the database was a potential, conservative approaches in favor of assuming lower levels of conservation for selected areas in question generally prevailed. Overall, worst-case conservation assessments were made in developing the MSCP Plan.

98(p) The jurisdictions and wildlife agencies together determined which parcels in the Biological Core Areas were placed in the MHPA based on a combination of biological sensitivity and land use and economic constraints.

98(q) The goal of the MSCP Plan is to provide a regional preserve system based on contributions from the involved jurisdictions. On their own, many jurisdictions, including the City of Santee would not receive permit coverage for all species that would be covered in the regional plan. The differential among jurisdictions is based on the amount of remaining habitat and its location within the proposed preserve. The City of Santee Subarea Plan provides two alternatives, both of which provide open

space on Fanita Ranch that would contribute towards the viability of the MSCP preserve. Santee has also requested the inclusion of a new alternative that provides for complete protection of Fanita Ranch. Full protection of Fanita Ranch was analyzed under the Biologically Preferred alternative in the EIR/EIS. The wildlife agencies would evaluate these alternatives and determine the number of species that can receive take authorizations based on their subarea plan on its own and the number that would be covered by the MSCP as a regional plan.

98(r) Acreages of maritime succulent scrub, southern maritime chaparral, and oak woodland located outside the proposed MHPA are shown on Table 4.3-4 (page 4.3-49 of the Draft EIR/EIS). Impacts to these habitats were considered to be adequately mitigated by features incorporated in the MSCP Plan and subarea plans and therefore, no overriding findings are needed. Implementation of the MSCP Plan would result in the conservation of 60 percent maritime succulent scrub, 67 percent southern maritime chaparral, and 47 percent of oak woodlands. Impacts to each of these vegetation communities will be mitigated on a project-by-project basis. Most of the impacts to maritime succulent scrub will be from the loss of small patches on Otay Ranch, while the larger blocks of this habitat will be conserved. The City of San Diego will conserve these habitats at the 90% level within its portion of the MHPA.

98(s) In determining whether the impacts to species are significant, both the context and severity of adverse and beneficial impacts are considered. Context includes the status of the species range wide and locally; the importance of the affected population to the recovery and survival of the species; existing and future threats to the species; and the degree to which the MSCP Plan contributes to the species' conservation. Severity includes the duration and intensity of the impact; the degree to which possible effects on the species are highly uncertain or involve unique or unknown risks; the degree to which the action may establish a precedent for future actions with significant effects on the species; and whether the action is related to other actions with individually insignificant but cumulatively significant impacts on the species. An effect that cannot meaningfully be detected, measured, or evaluated relative to the species' status or habitat as a whole was determined to be insignificant and require little to mitigate or minimize the potential take associated with the proposed action. Based on the wide-ranging nature of these species, and the minor role of the MSCP study area in their overall conservation, the wildlife agencies determined that the impacts of the proposed action on these species was insignificant. The extirpation of burrowing owl, golden eagle, northern harrier from the planning region is not anticipated to occur as a result of the MSCP Plan.

98(t) The narrow endemics species list was developed by the wildlife agencies to focus additional conservation measures on plant species which were being evaluated in the MSCP Plan. The criteria they used included: endemism, threat, adequacy of the preserve to ensure their conservation, population levels, autecological factors, and distribution information.

98(u) Please see **Theme Response XXII, Sufficiently/Significant Conserved Vegetation Communities.**

98(v) Please see **Theme Response XXIV, No Surprises.**

98(w) Please see **Theme Response XIII, Ecosystem Based Mitigation ("Out-of-Kind").**

98(x) A participating local jurisdiction's take authorization would remain effective so long as it fulfills its obligations under its implementing agreement. The wildlife agencies have assessed the amount of mitigation versus impacts of take proposed for each species in each jurisdiction. Based on this assessment, each participating local jurisdiction's implementing agreement would have two attachments entitled "Covered Species" and "Covered Species Subject to Take authorizations." The Covered Species list would include those species within the MSCP study area which would be adequately conserved by the MSCP Plan. Covered Species Subject to Take authorizations are those species which are adequately conserved by an individual local jurisdiction's subarea plan (see page 5 of the Model Implementing Agreement). Take authorizations would cover only those covered species determined by the wildlife agencies to be adequately covered by the subarea plan and other approved subarea plans (see page 9 of the Model Implementing Agreement under Phased Implementation). Additions to the latter list from the former would be dependent upon approval of subsequent subarea plans, as described in each subarea plan. Similarly, if one or more local jurisdictions terminates its participation in the MSCP Plan or fails to implement its subarea plan, then this list may be reduced accordingly (see page 9 of the Model Implementing Agreement).

98(y) Page 5-1 of the MSCP Plan cites the April 22, 1996 Guiding Principles developed by Mayor Golding, Secretary Babbitt, and Undersecretary Mantell. These guiding principles provided management direction for preparing the MSCP Plan, subarea plans, and implementing agreements. They in no way preclude the ability to make changes in the MSCP Plan based on public comment. Copies of the guiding principles can be obtained from the City of San Diego, U.S. Fish and Wildlife Service, or the California Department of Fish and Game offices.

98(z) For consistency of analysis it was necessary to provide a "hard line" throughout the City of San Diego Subarea Plan. The City Manager's compromise plan, while not adopted, represents agreement with many Neighborhood 8A property owners, the City and wildlife agencies. The City Manager's compromise plan for Neighborhood 8A was analyzed in the EIR/EIS. Several other biological core areas in the City of San Diego such as Otay Mesa, Black Mountain, and Del Mar Mesa are not proposed for 100% conservation. Prior adopted land use plans were a factor in delineating the proposed preserve boundary. Neighborhood 8A was not treated differently from other properties.

98(aa) The MSCP Plan discusses the establishment of conservation banks as an optional method of habitat conservation (MSCP Plan, Volume I, page 4-17). Regarding the establishment of a conservation bank on public land, the only bank proposed as part of the MSCP Plan is the City of San Diego Cornerstone Lands. Under a proposed conservation bank agreement for the Cornerstone Lands, conservation (mitigation) credits would be sold primarily to public agencies for public project mitigation. Conservation credits may also be sold to private project proponents, but only to the extent that other

privately owned habitats are acquired by the City. Sale of conservation credits to public agencies would not affect the MSCP Plan's estimated need for public acquisition, since the latter excludes habitat purchase for public project mitigation. Sale of conservation credits to private project proponents under the proposed terms of the conservation bank agreement would also not affect the estimated need for public acquisition.

Potential impacts from the sale of conservation credits of future public conservation banks to private project proponents would need to be evaluated on a case-by-case basis and addressed in the applicable conservation bank agreement.

Conservation banks operated by each jurisdiction were taken into consideration in estimating preserve assembly costs. Analysis of the financial implication of specific conservation banks based on operation is beyond the scope of the EIR/EIS.

98(ab) The MSCP Plan conservatively estimates the amount and cost of public acquisition needed to assemble the preserve. For example, the estimated acquisition need of 27,000 acres includes 4,550 acres of habitat lands that may be acquired for project mitigation (MSCP Plan, Volume I, p. 4-6). The estimated acquisition cost is substantially higher than sales prices of recent transactions in unimproved, vacant land (MSCP Plan, Volume I, p. 7-15). Thus, minor variations in mitigation credits are not anticipated to affect the conclusions of the financing analysis.

98(ac) As described on page 1-13 and shown on Table 4.1-1 of the Draft EIR/EIS, the following subarea plans are analyzed in the document: City of Chula Vista, Coronado, City of San Diego, City of Santee, County of San Diego and City of Del Mar. These subarea plans will not receive additional public review. Individual projects within the jurisdictions that prepared subarea plans will, however, be subject to the standard review process of the individual local jurisdiction within which the project is located.

98(ad) The language in Section 13 of the Model Implementing Agreement has been modified to state that for projects that future consultations pursuant to Section 7 of the ESA would be written to be consistent with the requirements of the MSCP Plan and local subarea plans. Please refer to the Revisions to the Model Implementing Agreement, January 1997.

98(ae) Many of the corridors and the preserve design in the western portion of the MSCP study area are below the recommended 1,000 foot width because of previous development approvals. The same is true of the edge issues mentioned. Nearly all of the projects that result in reduced corridor width and created the edges on the maps were approved outside of the MSCP planning process. The MSCP Plan and subarea plans include standards for preserve design and the preservation of linkages which would be enforceable measures both through the implementing agreements and local ordinances. Each project approved subsequent to the approval of the MSCP Plan must be in conformance with the MSCP Plan and appropriate subarea plan and provide the mitigation as specified. The implementing agreement for each jurisdiction would include a list of projects which were previously approved by local jurisdictions

and which would have to obtain take authorizations on their own from the wildlife agencies. Projects in this category would be required to meet the standards for issuance of state and federal take authorizations regardless of any findings of overriding considerations that the local jurisdiction may have made in approving the project. An example of this type of project is the Cal Terraces project on western Otay Mesa.

98(af) Subdivisions in the Metro-Lakeside-Jamul segment of the County Subarea Plan will be evaluated based on the County's Biological Mitigation Ordinance (BMO). The BMO includes requirements for evaluating the biological resources on the property and criteria for determining the significance of a piece of property in regards to assembling a regional preserve system. The BMO also incorporates the mitigation ratios and habitat tiers from the subarea plan which will be used to determine the preservation/mitigation requirements for developing a piece of property.

98(ag) Floodplain mapping is generally done on a localized basis and detailed floodplain mapping is not available for a regional-scale plan such as the proposed MSCP Plan. Lack of inclusion of floodplains within the proposed MHPA would not result in their channelization. Any channelization proposals would be subject to review by the individual jurisdiction within which the project is located, as occurs under existing conditions.

Watersheds within the MSCP study area are mapped and the extent to which watersheds have been included within the MHPA has been quantified. This topic is discussed and illustrated on pages 2-13 through 2-15 of the Draft EIR/EIS.

98(ah) Comment noted. An analysis of the level of conservation of soils which support edaphically restricted plant species has been prepared as a revision to the MSCP Plan, Volume I. Please also refer to the revised language incorporated in the Final EIR/EIS on page 4.3-48.

98(ai) The City of San Diego and Model Implementing Agreements were circulated for public review concurrent with the Draft EIR/EIS since they are integral parts of the MSCP Plan and the City's Subarea Plan. The revised implementing agreements will be in redline-strikeout format.

98(aj) Comments on the City of San Diego's IA can be made through the public hearing process. The revised City of San Diego IA is available for review at public libraries throughout the San Diego area as well as the City of San Diego Metropolitan Wastewater Department, 600 "B" Street, Records Management Room, Sixth Floor, San Diego, CA 92101.

The HCP handbook was prepared by the USFWS' Washington Office as guidance for preparation of HCPs and the associated documents, including implementing agreements. The handbook is still in draft form and is not regulatory, and there is no requirement that there be a finding of consistency between the MSCP Plan implementing agreements and the template provided in the

handbook. The implementing agreements for the MSCP Plan are being developed with the Department of the Interior Solicitors and would be legally binding contracts.

98(ak) The revised City of San Diego IA includes measurable criteria and the findings that the wildlife agencies would make in regards to species coverages, performance standards and the process for suspension or revocation. The wildlife agencies would issue the take authorization for a period of 50 years. It would be inconsistent to issue findings every three years. If participating local jurisdictions are not meeting their obligations at any point in time, the wildlife agencies would take the appropriate corrective action(s).

98(al) The implementing agreements do not differentiate between covered species based on the concepts of insignificant and discountable. Species for which the effects are discountable or insignificant must also meet the issuance standards of the ESA, CESA and the NCCP Act, recognizing that the amount of mitigation required would be commensurate with the level of impact.

98(am) The first sentence of Section 3.2 in the City and Model IAs has been revised as follows to clarify that all of plans provisions are incorporated by reference:

** 3.2 The MSCP Plan and subarea plan and each of their provisions are intended to be and by this reference are incorporated into the implementing agreement. Guidelines which were part of the subarea plan would be incorporated into the implementing agreement.

98(an) The commenter is correct that Section 9.5 accurately states the assurances of the wildlife agencies in the event of unforeseen circumstances. Those assurances include a commitment not to require any additional land, land restrictions or financial compensation from the Participating Local Jurisdiction or Third Party Beneficiaries (Section 9.6.E). The last two paragraphs of Section 6 which discuss the "No Surprises" Policy are unnecessary in light of the specific commitments contained in Section 9 of the IA, and therefore have been deleted from the City of San Diego and Model IAs.

98(ao) A significant change is one that is important and the wildlife agencies will determine if a significant unanticipated change has occurred. See also response to Comment 78(l).

98(ap) Comment noted. See **Theme Response XXIV, No Surprises.**

98(aq) An opportunity for public review and comment will be provided if the take authorizations are amended to add a new species to the list of covered species. Any take authorization amendment would require environmental review under NEPA and CEQA which are subject to legal requirements for public review and comment provided under statute. Additionally, NEPA requires a 30-day notice for federal Section 10(a) permits.

98(ar) Covered species is the appropriate term.

98(as) The list of species in Section 9.7.C.2.f of the City of San Diego IA is a list of species which have been determined to not be dependent one of the sufficiently or significantly conserved vegetation communities and therefore the assurances do not apply to the identified species.

98(at) The IAs, MSCP Plan, and the subarea plans assume that the wildlife agencies will consult with the local jurisdictions regarding individual projects and will make appropriate recommendations. Section 9.8 of the City of San Diego IA simply reflects the wildlife agencies' commitment to make recommendations within the framework of the MSCP Plan and the local jurisdictions' subarea plans. Except where specifically noted otherwise in the plans and IAs, only mitigation measures contemplated in the MSCP Plan or the subarea plans will be required or recommended for projects covered by approved subarea plans. As discussed in response to Comment 78(s), Section 9.8 of the City of San Diego IA has been revised to simplify and clarify its intent. Please refer to that response for the new language included in that section.

98(au) Yes. As outlined in response to Comment 79(s), regarding Section 9.12 of the IA, a substantive modification to the Mitigation Guidelines will trigger a public process. See also **Theme Response X, Habitat Conservation Accounting Model** for a discussion of the method that will be used to assure habitat conservation is occurring in rough step with development.

98(av) See response to Comment 79(x).

98(aw) Comment noted. The approximate acreage figures included in Section 10.2 of the City of San Diego's IA adequately describe the City's preserve implementation obligations under the subarea plan.

98(ax) As stated in Section 10.3 of the City of San Diego's IA, the City agrees to implement the General Preserve Guidelines and Specific Preserve Guidelines. The subarea plan appropriately recognizes that application of certain preserve guidelines may not be feasible in every circumstance.

98(ay) It is beyond the scope of the EIR/EIS to analyze the environmental effects of the City of San Diego's proposed implementing regulations. A separate EIR is being completed for the City's proposed MSCP implementing regulations (Environmentally Sensitive Lands Ordinance [OR-1-2]). The EIR would address changes between the City's existing Resource Protection Ordinance and the proposed ESL and OR-1-2. As currently proposed, the 75% conservation area is not considered mitigation for impacts related to the 25% development area, but is considered a requirement of the OR-1-2 zone and ESL ordinance. Development would be precluded on the 75% non-development area as a condition of the land development permit and/or subdivision map. Narrow endemics and vernal pools would be specifically addressed in the ESL.

The protection of narrow endemic species outside the preserve is addressed in Section 143.0141(h) of the City of San Diego's Environmentally Sensitive Lands Regulations which provides that: "Mitigation for any impacts to narrow endemic species must include translocation of these species into biologically protected open space when biologically feasible in addition to any mitigation identified Section 143.0141(g)." Section 143.0141(g) provides that mitigation may include preservation or dedication of on-site sensitive biological resources which would include those narrow endemic species identified in the MSCP Plan.

The second sentence of Section 10.8.G.3 of the City's IA has been revised as follows by adding a reference to the MSCP Plan and the City's proposed Environmentally Sensitive Land Ordinance:

** 10.8.G.

3. ... For certain species identified as "narrow endemic species," impacts will be avoided to the maximum extent practicable inside the MHPA and additional measures for their protection outside the MHPA shall be required as provided in the Environmentally Sensitive Lands Ordinance and the MSCP Plan.

The MSCP EIR/EIS evaluates the regional MSCP Plan, the City of San Diego's Subarea Plan and the Implementing Agreement. The City's proposed implementing ordinances (ESL) and OR-1-2 zone) are part of the Land Development Code Update project. A separate draft EIR has been prepared for the Code Update project (LDR No. 96-0333/SCH. No. 96081056) which addresses the proposed implementing ordinances. The Code Update Draft EIR is out for public review until February 6, 1997 and may be obtained at the office of Land Development Review Division, 1222 First Avenue, Fifth Floor, San Diego, CA 92101.

Where a project has utilized all of its development area potential, as allowed under the proposed implementing ordinances, then as a condition of permit approval by the City Council, a covenant of easement would be recorded against the title of the property for the remainder area. The covenant would preclude any future development within the remainder area and would run with land. The covenant is required as a condition of permit approval and is not necessarily related to CEQA mitigation.

Section 10.8.G.3 describes preservation requirements for narrow endemics and wetlands, including vernal pools. Further details are also provided in the draft implementing ordinances.

98(az) Comment noted. The U.S. Fish and Wildlife Service disagrees with the commenter's view that USFWS should be able to impose mitigation measures in a Section 7 biological opinion that exceed the mitigation required to be provided under the approved subarea plan involving the same project. Projects that will be subject to mitigation requirements under a subarea plan should not face the prospect of additional mitigation at the recommendation of USFWS simply because a consultation under Section 7 of the ESA will be required as a result of other federal agency involvement in the project.

With the exception of consultations involving Section 404 permits which are separately addressed under Section 9.8.A of the Implementing Agreements, the mitigation recommended by the USFWS pursuant to a Section 7 biological opinion should to the maximum extent appropriate, be consistent with the mitigation that the local jurisdiction will require for the project pursuant to the approved subarea plan, and in no event should the mitigation be greater than what will be required.

However this section of the City and Model IAs will be revised to better clarify the relationship between the biological opinion prepared by USFWS in connection with the issuance of Section 10(a) permits for the MSCP and subarea plans and future biological opinions required under Section 7 of the ESA for actions that are also covered by an approved Subarea Plan:

** 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 [**LOCAL JURISDICTION**] 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 Plan and Subarea Plan. Any biological measures included ...CONTINUE WITH PROVISION TO END.

98(ba) See responses to Comments 74(af) through 74(aj).

98(bb) Comment noted. As indicated in response to Comment 78(r), federal and state contributions to the MSCP will be made through various mechanisms and at varying levels throughout the life of the program, with the exception of the federal and state contribution toward habitat acquisition, which will occur during the first thirty years of the program. The implementing mechanisms built into the program are designed to ensure that the preserve system will be established before essential resources disappear. Indeed, among the primary considerations for the wildlife agencies is the value of a parcel to the preserve system and its vulnerability to development.

98(bc) The statement that "additional environmental review" will be required for future subarea plans means that any subarea plan that was not submitted as part of the MSCP Plan and evaluated in the EIR/EIS prepared in connection with the MSCP must undergo separate analysis under the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA).

Under NEPA, such additional environmental review may take the form of an environmental assessment tiered to the EIR/EIS prepared for the MSCP Plan or a separate EIS if the issuance of an incidental take permit would result in significant adverse environmental impacts that were not addressed in the original EIR/EIS on the MSCP Plan. A full opportunity for public review and comment on the NEPA document and the subarea plan would be provided prior to issuance of an incidental take permit under Section 10 of the ESA.

98(bd) After the local jurisdictions have been issued Take Authorizations, the wildlife agencies will not be involved in the review and approval of projects on a project-by-project basis. However, USFWS and CDFG will maintain oversight and monitoring responsibility over implementation of the MSCP Plan and subarea plans and may comment upon individual projects through the normal CEQA process or pursuant to their oversight and monitoring roles. As indicated in response to Comment 79(ap), regarding Section 16.2 of the IAs, the USFWS possesses the regulatory flexibility to fashion appropriate responses to particular permit violations short of suspension of the entire permit.

98(be) Comment noted. The note to Table I in Exhibit I of the City of San Diego IA has been revised to accurately state that "mitigation for wetland impacts must be in kind and achieve no net loss of wetland function and value. The IA has been modified to include Section 404(B) guidelines.

98(bf) The reference to the Resource Protection Ordinance is correct as it is used to describe current regulations that provide for resource protection. A reference to the Environmentally Sensitive Lands Ordinance, which is proposed to replace RPO, has been added to the Draft General Plan Open Space Element amendments.

98(bg) The San Diego City Charter requires compensation to the Water Enterprise Fund for the use, sale or encumbrance of water utilities owned assets for non-water production and watershed management purposes.

98(bh) Should any of the subarea plans be changed significantly from what was analyzed in the EIR/EIS, further environmental review would be necessary. In addition, prior to issuance of a permit, all participating local jurisdictions must submit a permit application and implementing agreement to the wildlife agencies. In accordance with the ESA, the permit application, HCP, and implementing agreement must be made available for a 30-day public review. Thus far, only the City of San Diego has submitted an application, which was published for public review along with the EIR/EIS.

98(bi) Acreage figures in the City of Chula Vista Subarea Plan and the EIR/EIS analysis do not reflect the inclusion of East Orange Avenue or other major infrastructure; however, it is anticipated that these facilities would be constructed as necessary to implement the City's General Plan goals.

98(bj) The intent of the agreement with the Baldwin Company was to improve preserve design on Otay Ranch for the overall benefit of covered species. It is acknowledged that this agreement would result in additional losses of sensitive species and habitats in the area of the barley field, however, these are in areas that are, or are proposed to be, fragmented and surrounded by development. Impacts to the vernal pools south of the proposed Otay resort would require analysis and mitigation pursuant to the Clean Water Act and CEQA.

98(bk) The Otay Ranch project was approved by the County and City of Chula Vista and findings of overriding consideration were made in relation to coastal sage scrub mitigation. The biological preserve design problems associated with this project were commented on extensively by the wildlife agencies during the CEQA process and only a portion of the recommended changes were made. Because of the preserve design issues, the landowners have agreed to modify the project design to be consistent with the goals of the MSCP Plan. These modifications were made to allow the Otay Ranch Project to be covered by the MSCP and subarea plan take authorizations. The modifications to the Otay Ranch Project is a good example of how the MSCP Plan is improving the conservation of species over the existing project-by-project process.

The implementing agreement for each local jurisdiction will include a list of projects which were previously approved by the local jurisdiction and which will have to obtain take authorizations on their own from the wildlife agencies. Projects in this category will be required to meet the standards for issuance of state and federal take authorizations regardless of any findings of overriding considerations that the local jurisdiction may have made in approving the project. An example of this type of project is the Cal Terraces project on western Otay Mesa.

With the issuance of the take authorizations for the MSCP, the local jurisdictions will have the responsibility for the mitigation requirements for all future projects. Their obligation is to only approve projects which are consistent with their subarea plan and which meet the mitigation/ encroachment requirements as specified in their subarea plan and implementing agreement. For MSCP covered species (i.e. species for which the MSCP provide for conservation which meet the state and federal take authorization issuance standards), the mitigation/encroachment requirements in the subarea plan will, on an ecosystem basis, reduce the projects' impacts to less than significant levels.

98(bl) The City of Chula Vista has identified alternative scenarios in its Draft Subarea Plan. These alternatives address a Subarea Plan with a 400-acre and a 288-acre university within the Salt Creek area as well as an alternative with no university in Salt Creek. The Otay Ranch policy language describing the proposed university land use describes a site which locates a university on Villages 9 & 10 (west of Salt Creek), with the potential to locate facilities to the east of, but not within, Salt Creek Canyon (ref. adopted GDP/SRP, 1993). Approval of a final Subarea Plan for the City of Chula Vista would need to adhere to the findings of the EIR/EIS. The City of Chula Vista would be addressing these issues in the context of approving its final Subarea Plan, developing its Implementation Agreement and its approval of the MSCP Plan. See also revised Table 3-5 in the revised MSCP Plan, Volume I, regarding conditions of coverage of gnatcatchers and cactus wren.

98(bm) The EIR/EIS and MSCP Plan include acknowledgment of potential edge effects and the requirements to reduce edge effects to less than significant levels based primarily on project design features.

98(bn) The City of Chula Vista has not adopted policies as of yet which assure that an estimated 75% of minor amendment areas would be conserved. Policies aimed at achieving this level of conservation would be focused within "Minor Amendment Areas with Strong Preserve Potential" (See Subarea Plan Map). Other Minor Amendment Areas include properties which have development potential as well as some preserve potential. These areas are not expected to achieve a level of 75% conservation. The City expects to provide a process by which Minor Amendment Areas can be evaluated on a case-by-case basis consistent with its Implementation Agreement.

98(bo) The City of Chula Vista draft Subarea Plan identifies long-term mineral extraction and mining operations as an incompatible land use; however, existing such operations and/or the expansion of same when temporary, are considered conditionally compatible within the preserve and subject to potential mitigation requirements for impacts.

98(bp) City of Chula Vista development policies discourage development within a 100-year floodplain, with the exception of potential park facilities. The Chula Vista draft Subarea Plan does not reflect any development, other than potential park facilities within the floodplains. No development is proposed within the preserve boundaries of the MSCP Plan.

98(bq) The City of Del Mar's conservation goals are provided in Table 3-1 of Volume I of the MSCP Plan. All of the areas shown as conserved habitat in the subarea plan (Figure 1) are 100% conservation areas. However, the City retains the right to implement lagoon restoration within Area 4 in conformance with the San Dieguito Lagoon Enhancement Program. The subarea sections "Project Design Standards" and "Protection of Resources" apply to habitat lands outside the conservation areas. As projects are proposed, they will have to conform to these standards, which include setbacks from wetlands and minimizing edge impacts to the conserved areas. These complete City standards are included by reference into the subarea plan.

98(br) The location of the preserve lands, including slope, was taken into consideration in the species analyses.

98(bs) The analysis beginning on page 4.3-217 of the Draft EIR/EIS addresses effects of the proposed project on the movement of wildlife species. The broad assumptions used in the analysis are presented on pages 4.3-217 through 4.3-219. As discussed, the analysis focused on the degree to which particular corridors or linkages were incorporated in the proposed MHPA and alternatives.

In addition, some of the Subarea Plans, particularly the City of San Diego Subarea Plan, include recommendations for bridges or culverts in certain locations. Since these features are recommendations and not specific proposals at this time, and since specific design information is not available for these features, the analysis in the Draft EIR/EIS did not depend upon construction of these features. The analysis concludes, however, that such features would generally have beneficial effects when compared with historical types of crossings involving barriers and fills.

98(bt) See revised conditions for coverage of *Ambrosia pumila* in revised Table 3-5 included in the Revisions to the MSCP Plan, Volume I, January 1997.

98(bu) Please see response to Comment 76(al).

98(bv) The acreages for the exclusions have not been deducted from the overall preserve acreage since the acreages for all of the use exclusions are not known (See Note on Table 1) . The exclusions were noted for descriptive purposes only. Future specific projects would be subject to their own environmental documentation including an assessment of biological impacts. Siting of the pipeline would be subject to the siting criteria established for any development within or adjacent to the preserve which requires avoidance of habitat and development in the least sensitive portion of the site (See Section 1.4.2 - Roads and Utilities - Construction and Maintenance Policies). It should be noted that the City of San Diego's Subarea Plan has an overall conservation goal of 90% within the preserve (MHPA). This allows for limited development to occur within the preserve including limited water facilities. The conservation target for public lands within the MHPA is approximately 94%.

98(bw) City brush management requirements apply to all new development within the city regardless of proximity to the proposed preserve. New subdivisions of land are required to accommodate brush management outside of publicly owned open spaces. As proposed brush management Zone 2/3 will be merged and may occur within the proposed preserve. Brush management Zone 1 is considered an impact. Zone 2/3 would not be considered an impact, but would generally be 25–30 feet narrower than the current width of separate Zones 2 and 3.

98(bx) The purpose of the public review period for the proposed issuance of take authorizations is to allow review by all parties interested in the proposed action. We received numerous letters from scientists with knowledge of the biological resources in the San Diego area providing their analysis of the proposed conservation for the covered species.

98(by) The Subarea Plan has been revised to be consistent with the Implementing Agreement and draft ESL regulations regarding impacts to narrow endemics. Outside the preserve, additional measures for their protection such as translocation into the preserve as described in the draft Biology Guidelines (page 17) may be required. The associated mitigation program would require monitoring to ensure the successful translocation of the species.

Please refer to page 7, third paragraph, of the draft Biology Guidelines for a full description of essential public projects. Generally, essential public projects include facilities identified in adopted Community Plans such as major circulation roads, water and sewer lines, schools, and parks etc.

At a minimum, it is expected that "Reasonable Use" is achieved or exceeded through the City's proposed implementing regulations (ESL, OR-1-2) which establishes a base development area of 25% for a parcel. A definition of reasonable use as such does not exist. A legal determination for

Conceptually, there are at least two ways to "build a preserve." The first would be, that for every significant impact outside of the preserve area, that impact should be mitigated (in rough proportion to existing regulations) within the designated preserve boundaries instead of in piece-meal locations (often the case with project-by-project planning). The second option would be to transfer density rights out of a preserve area in order to provide for denser development potential in areas away from open space. In both cases the result would be deliberate delineation of open space areas versus development areas. Complete and dense use of areas designated for development allows for other areas to remain totally in open space and therefore avoids the problem of urban sprawl. These two options are indicative of methods that could be employed to plan comprehensively and wisely for an area with increasing population density. They could, on their own, act as significant building blocks for a preserve, absorbing the majority of "costs" for creating a preserve. Put simply, the plan as described in the EIR/EIS costs more than it should monetarily, or in other words, the burdens are not being distributed equitably.

Other jurisdictions and areas attempting HCPs should know that the two fundamental conceptual tools (as described above) for building a preserve were precluded in this region by the existing political context. Specifically, on a project basis mitigation requirements in San Diego are often far less than should be expected because current decisions are made by those who perceive "economic benefits" to be greater than the need to mitigate. This perception is false, however, because these benefits are usually short-term and often cancelled out by the costs incurred in order to provide public services and facilities.

"It is easy enough to make money in the short term while watching the net worth waste away. Such is the road to bankruptcy."

The second conceptual approach to building a preserve (transferring density rights) is also precluded by the dominant political point of view. It is often the case that when a project is approved, zoning code amendments are made as a part of the discretionary decision to approve a project. This type of amendment is just one of many made for a given project and tends to be treated as a ministerial, rubber-stamp decision which it is not. Given that "up-zones" are granted without much thought, developers have come to perceive these actions as entitlements. Contributing nothing in exchange for the privilege to develop at a higher density than would have been permitted under the existing zoning, these types of decisions amount to a windfall for developers. Given this scenario, density has no value and therefore, transfer of rights to it is an ineffective tool for building a preserve.

It is true that these circumstances are not always the case, however, they do seem to be a dominant trend in land use decision-making for the City of San Diego (the jurisdiction to serve as the model for other cities and

jurisdictions). In light of these trends, it becomes clearer that little leverage exists that can force developers to carry their fair share of the costs incurred by the plan. In the absence of sufficient developer contributions, the preserve will primarily be constructed via purchase (i.e. acquisition costs assumed by the local, state and federal governments) and contribution of land by smaller property owners. 98(a)

"*. . . the conservation lobby will continue to be fobbed off with areas of low commercial value little threatened by development. . .*"

This context, although a minute glimpse into the politics of the region, is important for understanding the fundamental conceptual flaws irrespective of the details of the plan which will ultimately determine biological viability.

Furthermore, conceptually we tend to consider this plan pro-active, which it is, however, pro-active does not mean that we are starting from a position of ideal conditions and avoiding future problems from that point. The plan is pro-active only to the extent that the imminent decline of many species was anticipated and needed to be avoided. For other previously listed species, the plan serves as a minimum effort to prevent their further decline. In a rapidly urbanizing region such as San Diego, concomitant loss of habitat results in the need for a "safety net" approach to species protection. Land-use planning has failed to account for species and their habitats, and in some cases this plan constitutes a last ditch effort. The MSCP should therefore not be used to give blanket assurances that exempt participants from the Endangered Species Act if the plans prove to be inadequate. As George Miller, Committee on Resources, U.S. House of Representatives states:

> "With proper monitoring, such a voluntary conservation program can relieve the burdens of the Endangered Species Act enforcement while providing a broader, ecosystem-based approach to species conservation. Of course, the agreements would have to include specific targets for species abundance. If species continue dangerous declines under the conservation agreement, or other conservation targets are not met, the usual Endangered Species Act mandates would come into play."

Assurances offered to the jurisdictions and third-party beneficiaries should be roughly proportional to the likelihood that they can accomplish what they claim in terms of providing for species conservation. The final EIR/EIS should address the legality of offering assurances to jurisdictions and developers that exempt them from compliance with the ESA in the future based on a plan that has so many unknowns. What are the targets for species abundance with this plan? 98(b)

This letter will begin by commenting on general concerns related to the compliance of the plan with legal mandates, followed by broader questions relating to the plan itself. I will then raise questions and discuss concerns related to the Implementing Agreement. Subarea Plan specifics will follow. Many issues, concerns and questions should be cross-referenced and lumped together, however in the interest of time, concerns will be raised in the order in which they appear in the relevant document. 98(b)

I would also like to explain that during my involvement in the process many of these questions have been asked and answered. In fact some have been asked many times. If it seems that I am asking simple questions or repeating questions that have been asked in the past, it is only because the answers to these questions are still unclear, and I see this as the opportunity to get a single definitive answer? The number of questions posed in this letter is indicative of the vague nature and complexity of the program and process. It is impossible for the Southwest Center for Biological Diversity, as a conservation organization, to support the plan even though we support the concept, when so many questions remain unanswered.

Conformance with Legal Mandates

✔ Case law regarding NEPA requires that an EIS be able to stand on its own. The number of documents subject to concurrent review for this plan is inexcusably cumbersome. Cross-referencing is a problem because of the number of referenced materials. Some were not readily available (I wasted two afternoons and got a parking ticket trying to get the I.A. and permit application for the City of San Diego) and others were available late (species evaluation forms were available after the Draft EIR/EIS was issued). Given the cumbersome nature of documents and the variable availability and date of issuance, the length of the public comment period was insufficient. 98(c)

✔ Information was provided by the wildlife agencies that defined coverage and evaluated individual target species. It is impossible to determine what criteria was used for determining which target species would be designated as "covered." There is no detectable logic, pattern or consistency. For example some species evaluated as being subject to "high risk" are covered, while others are not. What criteria was used for determining species coverage? The information provided by the species evaluation sheets is interesting and some of the recommendations are excellent, yet it is impossible to determine how that relates to the policy decisions which determined "covered" species. Ultimate determinations regarding coverage are policy decisions made by the regional office. Are these policy decisions consistent with FWS standards, policies and 98(d)

precedents? Are these policy decisions as "arbitrary and capricious" as they appear to be? 98(d)

✔ The basis on which the NCCP rule was finalized for the issuance of 4(d) permits is questionable. The internal consultation for the FWS indicated that the number of California gnatcatchers taken had exceeded what was determined to be permissible. Is this considered in the plan? 98(e)

✔ For high-effect planning efforts, such as the MSCP, a monitoring plan must be included that establishes criteria of program success and procedures for remediation if criteria are not met. Where is this discussed in the plan? 98(f)

✔ For species that overlap more than one FWS Region, there should be coordination with the lead region responsible for the species prior to issuance of the permit to ensure FWS-wide consistency. This means that everyone takes responsibility for ensuring the conservation of the species, or no one does. It may be the case that the MSCP plan may have a neutral effect on a species in this region if it is only a portion of its range. However, at some point, in some region there must be a net positive effect on the species in order to assure its conservation. In conformance with section 10(a) conservation measures for species specific management do (or should) result in net benefit to the species as a whole. Who will take responsibility for the species if the model (the MSCP plan) and the plans that follow from it claim a "neutral" effect. Will the last area to submit a plan have to compensate for the other regions? 98(g)

✔ Because issuance of a section 10(a) permit is a Federal action subject to section 7 compliance, an HCP such as the MSCP must address direct and indirect effects, cumulative effects, critical habitat, jeopardy to affected fish, wildlife, and plants located within a proposed HCP area. In which portion of the document is consideration of critical habitat discussed? (This statement will be revisited in comments to follow). 98(h)

✔ When jeopardy is being considered, recovery of listed species should also be considered. In what portion of the plan is species specific recovery and management discussed? 98(i)

✔ Assurances for jurisdictions and Third Party Beneficiaries must be based on measurable criteria that result in an overall net benefit for that species, otherwise additional mitigation may be sought in order to maintain a properly functioning HCP agreement. What are the species specific criteria, such as management plans, that can be evaluated and measured? Where is assurance of net benefit to covered species discussed? Isn't the term "insignificant" contradictory to the notion of "net benefit"? 98(j)

✔ For species determined to be "adequately conserved" on the covered 98(k)

species list, general attempts at avoidance, minimization, mitigation and acquisition do not substitute for species specific management plans. Without provisions to ensure the conservation of individual species there is no measurable criteria. The MSCP may not derogate the mandates of other environmental statues such as the ESA which requires species specific provisions. For example, without species specific conservation requirements, the MSCP cannot ensure that jeopardy of of Dudleya brevifolia will not occur (plants must be considered to the section 7 jeopardy standard), however this species was not listed as endangered based on the prospect of a functioning MSCP. If the NCCP, or MSCP thereof, is used as a justification for failing to list a species under state and federal endangered species laws, or if it is implemented in a manner inconsistent with the regulatory standards of state and federal endangered species act laws, it clearly has the potential to undermine or subvert the legislative purposes that lead to enactment of both ESA and CESA. Given this, how can the decision not to list Dudleya brevifolia based on the MSCP plan be justified? **98(k)**

✔ According to NEPA regulations, in order to ensure that environmental effects of a proposed action are fairly assessed, the probability of the mitigation measures being implemented must also be discussed. For example, covered species should be adequately conserved by the MSCP, not rely on potential conservation through Section 404 permitting. The Clean Water Act could be changed in the future (as indicated in Section 9.8 of the I.A. for the City of San Diego). Furthermore, if there is a history of nonenforcement or opposition to such measures, the EIS should acknowledge such opposition to such measures. Where in the document have these factors been discussed? **98(l)**

* many of the standards described above for conforming with the intent of the ESA and the section 10 program are taken from the FWS Handbook for Habitat Conservation Planning and Incidental Take Permit Processing

General Comments on the Plan

✔ In my comment letter regarding the NOP/NOI, I discussed, in detail the need for best-case and worst-case scenario justifications for covered species and habitats. Are best-case and worst-case scenario assumptions evaluated and discussed in the EIR/EIS? **98(m)**

✔ While the proposed MHPA plan is addressed in some detail, it is difficult to conclude that the alternatives to the proposed plan were analyzed to the same level and depth. The reader is left wondering what might happen if the alternatives were adopted. **98(n)**

✔ What is the level of accuracy of the GIS database and how was the error rate accounted for in the plan's quantitative analyses and acreage **98(o)**

goals? 98(o)

✔ What rationale was used in determining which parcels in the Biological Core Areas in Figure 2-2 where placed in the MHPA preserve while others were omitted? 98(p)

✔ Santee's conservation of 40% of its coastal sage scrub would not mitigate its direct impacts to listed and sensitive species to below significance. At what stage would overriding findings be adopted? 98(q)

✔ For habitat types that are locally rare (e.g., maritime succulent scrub, southern maritime chaparral, and oak woodland) conservation of less than 75% would appear to be below standards to avoid and to mitigate unavoidable impacts to below significance. Will overriding findings be adopted? 98(r)

✔ Species proposed for coverage based on "insignificant effect" may be extirpated from the area (e.g., golden eagle, northern harrier, burrowing owl). This must be a significant effect under CEQA. Will overriding findings be adopted? 98(s)

✔ The list of narrow endemic species (p. 3-24) is selective and does not include many species one would expect to find in such a category. What criteria were used to determine this list? 98(t)

✔ Section 3.4.2 lists criteria used to determine which vegetation communities were categorized as significantly and sufficiently conserved. Habitat types with less than 2,000 acres remaining in the MSCP area are included with less than 75% conservation (e.g., maritime succulent sage scrub and southern maritime chaparral). Is a score sheet based on the listed criteria available for each habitat type that could be included in the final EIR/EIS? 98(u)

✔ What happens if the sufficiently and significantly conserved habitat types require additional conservation down the line and the state and/or federal governments won't budget any money to buy the lands? Are local jurisdictions and private developers covered for new projects in these habitats or is this an unforeseen circumstance? Is this worst-case scenario evaluated in the EIR/EIS? 98(v)

✔ If in-kind mitigation is eliminated or significantly reduced, how will the more costly coastal resources be conserved? 98(w)

✔ Page2-17. How will the acceptance of the "generic credits" concept ensure the timely and adequate mitigation of vegetation communities of critical concern?

✔ Page 2-19. Rather than making the statement that "each take 98(x)

authorization holder contributes its fair share to assemble the MSCP preserve as specified in its Subarea Plan" without justification, please provide comparisons with existing regulations. 98(x)

✔ Page 4-1. It is not clear from this section what was included in the "agreement" between Susan Golding, Bruce Babbit and Michael Mantell. The details of this agreement should have been included in the public review documents and referenced in this section. How does this agreement affect the opportunity to make changes to the MSCP plan based on public comment? 98(y)

✔ Page 4.2-22. Neighborhood 8A is discussed in terms of a potential development plan. The City Manager's Compromise Plan for Neighborhood 8A should not be considered as part of the plan. Discussions for this area are being conducted separately from the MHPA. Why is Neighborhood 8A, as a core resource area in the MSCP preserve, being treated differently than other properties? Why the exception? 98(z)

✔ Does the EIR/EIS analyze the financial implications of having existing public lands "bank" mitigation credit? 98(aa)

✔ Does the EIR/EIS analyze the financial implications of having an unknown number of mitigation banks receive more than a 1 credit per acre value? 98(ab)

✔ Page 5-2 states that the EIR/EIS is a programmatic document for the subarea plans and a project-level environmental document for land use plan amendments submitted by the jurisdictions with subarea plans. Yet only the City of San Diego appears to provide close to enough information for a project-level analysis. Which subarea plans have been submitted as project-level? What additional public review will these plan receive? 98(ac)

✔ In Section 13 of the draft model implementing agreement, it states that in any consultation under Section 7 of the ESA with regard to covered species, the FWS shall adopt the biological opinion issued in connection with the Subarea Plan and MSCP. Will a biological opinion be issued that includes specific terms and conditions required of the Third Party Beneficiary in sufficient detail to consider project-level impacts and mitigation needs? Does this only apply to covered species? 98(ad)

✔ From looking at the maps provided, it appears that many of the regional and local corridors and linkages shown for development plans that will receive permits through the MSCP process are well below the recommended 1000 foot minimum. The amount of edge is also extremely high with fingers of development spreading everywhere. What assurances will be provided that negotiations on future projects will not result in designs that stray so far from MSCP and NCCP guidelines? Will any changes be made to the proposed projects to move them toward better compliance with MSCP and NCCP guidelines? Any project that has 98(ae)

not yet received federal and state permits and would be covered by this plan should fully meet the standards and guidelines of the MSCP and be fully mitigated under CEQA. The final EIR/EIS should delineate all known projects that would receive permits through this plan that were not fully mitigated for biological impacts and received overriding findings. 98(ae)

✔ How was the potential for subdivision of parcels dealt with, particularly in the evaluation of predicted conservation levels in soft-line areas? 98(af)

✔ The EIR/EIS should quantify impacts to lands mapped within the 100-year floodplain. If these areas are not included in the preserve, their future development will lead to channelization and additional impacts to the environment. 98(ag)

✔ The MSCP analysis should quantify the level of preservation of rare soil types such as clay, gabbro and metavolcanic derived soils. For species such as Hemizonia conjugens that are known to inhabit restricted soils, the species evaluation should include the level of protection of the soils within the range of the species. 98(ah)

Draft Implementing Agreement for the City of San Diego

✔ The Implementing Agreement, by its nature the over-arching legal agreement, should be circulated for public comment and review after the comments on the Draft EIR/EIS have been accepted and changes have been made and reflected in the Final EIR/EIS. A final I.A. should be made available for review with strike out/delete for all changes from the public review draft. 98(ai)

✔ How well does the I.A. for the City of San Diego conform with the Template Implementing Agreement (Appendix 6) used by FWS in the Draft Handbook for HCP and Incidental Take Permit Processing? 98(aj)

✔ All I.A.'s with Participating Local Jurisdictions should include the following:

* Because the MSCP is built on future actions with varying degrees of flexibility, there must be measurable criteria in order to evaluate whether the MSCP is meeting ESA requirements.

* Agencies must make findings at a minimum of 3 year intervals so that assurances can be measured and enforced. This should include a public hearing with testimony.

* "Certainty" must be ensured per Section 8.0 of the I.A.

1. there must be discernible points in time when "findings" are 98(ak)

made by the wildlife agencies. 98(ak)

2. agency comments pursuant to any CEQA review process must be afforded the value and weight of MSCP implementation "findings."

3. "Findings" should be mandatory and should include specific quantifiable criteria, or should be discretionary when the criteria are interpretive.

✔ Section 1.4. This section, and future sections seems to assume that species are covered because they are "adequately conserved by the MSCP." How are insignificant and discountable categories included in the I.A.? 98(al)

✔ Section 3.2. This section incorporates "terms" of subarea plans and the MSCP plan. What about all of the guidelines? 98(am)

✔ Section 6.0. paragraph 5. The statement about unforeseen circumstances is different here than in section 9.5. What is the potential that additional land or financial compensation could be required due to unforeseen circumstances? Isn't section 9.5 the correct interpretation? 98(an)

✔ Section 9.6. (A) What is a "significant" change and who will set the standard or be the judge? 98(ao)

✔ Section 9.6 (E). If, due to extraordinary Circumstances, additional lands are found to be needed to adequately conserve a covered species, can the permit be pulled if the City and/or third party beneficiaries choose not to adopt the commitment? 98(ap)

✔ Section 9.7(C1). If Parties agree to amend the permit to add previously non-covered species to the covered species list, what type of public review will be provided? Full public review should occur. 98(aq)

✔ Section 9.7 (C2i) The term "Covered Species" should be broadened to a term like "sensitive species." 98(ar)

✔ Section 9.7 (C2f) What criteria were used to determine the list of species? Some of them are dependent on coastal sage scrub at least in part? The three species proposed to be covered by assurances in subsection c are species that Table 3-5 lists as having insufficient data on life history. Why do the assurances apply to them? 98(as)

✔ Section 9.8 (8 lines from bottom of page). Why couldn't the agencies recommend further measures? They wouldn't be required? 98(at)

✔ Section 9.12. Will public review be required for modifications to 98(au)

mitigation guidelines? What criteria are to be used to judge that conservation of habitats are occurring in "anticipated proportion?" Where is the anticipated proportion described? **98(au)**

✔ Section 9.16. Is this section intended to refer only to those infrastructure projects analyzed in the MSCP EIR/EIS? **98(av)**

✔ Section 10.2. Will the "approximate" acreage be specified later or will a range be included? **98(aw)**

✔ Section 10.3. What does it mean to say that the City will implement Guidelines when these guidelines need only be implemented "if feasible" or "if practical"? **98(ax)**

✔ Section 10.8 Please have the final EIR/EIS compare and contrast the proposed City regulations with the old regulations. (2) When 25% of the land is developed, how will the City ensure that the remaining 75% of the land will be conserved? Isn't the conservation of the remaining 75% basically mitigation for the 25%? (3) Narrow endemics and vernal pools must have better preservation clearly detailed in this section. **98(ay)**

✔ Section 10.8 With respect to the language regulating narrow endemics, the language in the I.A. should be changed to reflect prior agreements such that "impacts will be avoided to the maximum extent practicable inside and outside the MHPA."

✔ Section 13.0. (second line from bottom) The last part of the sentence starting with, "provided that the FWS shall not impose" should be deleted from the sentence. **98(az)**

✔ Section 12.5. The I.A should also satisfy CEQA obligations as they relate to provision of adequate mitigation of potential "significant effects on the environment." **98(ba)**

✔ Section 15.3. Is there a time limit for federal and state contribution. Will the reassessment be done before the resources are gone? **98(bb)**

✔ Section 18.1. What exactly does the statement, "additional environmental review will be required for future subarea plans" refer to? What will the additional review constitute? **98(bc)**

✔ For variances, FWS concurrence should be required. The agencies should have the ability to withhold Third Party Beneficiary status should they not concur. **98(bd)**

✔ The note beneath Table 1 in Exhibit I should be changed to to say, "Any impacts to wetlands must be mitigated "in-kind," function, and value, and achieve a "no-net loss." **98(be)**

✔ In the Draft Open Space Element of the General Plan, on page 324, shouldn't the underlined portion refer to the Environmentally Sensitive Lands Ordinance instead of the Resource Protection Ordinance? 98(bf)

✔ Exhibit K, page 3. Why are the City's Cornerstone Lands allowed to be sold as Conservation Credits? 98(bg)

MSCP Subarea Plans

✔ Chula Vista. Page 3. Since Chula Vista anticipates "revisions to this plan" before final adoption, does that mean that they will have to repeat this NEPA/CEQA procedure? This should be the case since materials referenced in the draft plan were not available for review, such as the Appendix containing vegetation acreage to be conserved by project. 98(bh)

✔ Chula Vista. Page 9. How does the plan deal with areas shown on the maps as preserved, but in the future will include roads such as the Orange Avenue extension. Have these areas been deleted from preserve numbers even though they appear as preserved on the maps? 98(bi)

✔ Chula Vista. Page 24. Section (f) states that the Sensitive Resource Study area within Village 13 of Otay Ranch will be removed from the GDP/SRP. The Baldwin Agreement appears to trade away some of the most rare habitats in southern California, namely vernal pools and maritime succulent sage scrub, for less sensitive coastal sage scrub located more inland. Have the Wildlife Agencies adopted this proposal? The adopted Otay Ranch project failed to mitigate loss of coastal sage scrub to below significance and overriding findings were required. This appears to be one example of attempting to use the regional planning process to push through individual projects that are not adequately mitigated. The EIR/EIS should clearly list the projects that have received local approvals despite inadequate mitigation for biological resources and would receive state and federal take permits through this process. Will the state and federal governments require mitigation to below significance for these projects and all future projects? 98(bj) 98(bk)

✔ Chula Vista. Page 26 and Page 35 The City of Chula Vista can change its mind and propose a university site to the east of the Salt Creek drainage, but it should not try to claim that it is consistent with the approved GDP/SRP policies. It should go through an approved amendment process and clearly analyze the additional impacts that would occur with this new proposal. 98(bl)

✔ Chula Vista. Page 42. Since this subarea plan, as well as the other subarea plans, will only apply guidelines for uses inside and adjacent to the preserve "where possible" and "to the extent feasible," the reader can only assume that few of these guidelines will be followed. Has the 98(bm)

EIR/EIS analyzed the worst-case scenario regarding the level of additional impacts and edge effects to the preserve and to the individual species? 98(bm)

✔ Chula Vista. Page 44. What policies, adopted by Chula Vista, would lead to conservation of 75% of the minor amendment areas? How will Chula Vista reach its goals if these minor amendment areas conserve habitat at a lower level? 98(bn)

✔ Chula Vista. Page 48. Mining should be required to follow all MSCP requirements and mitigations just as any other business. Why are they treated differently? This comment applies to the other subarea plans as well. 98(bo)

✔ Chula Vista. Page 48. The concept of basing the need for flood control on a "cost benefit analysis" is misleading political rhetoric. There is no method to adequately assess the benefits of biodiversity and the natural environment (see Gowdy and McDaniel 1995). If the MSCP is to be truly pro-active, jurisdictions should commit to locating development outside of the floodplain. How has the EIR/EIS dealt with the uncertainty of any commitment to refrain from modifying the floodplain in its species analysis? This comment applies to the other subareas as well (e.g., City of San Diego page 50). 98(bp)

✔ City of Del Mar Subarea Plan. While there is very little habitat remaining in this subarea, the plan should be more clear on quantitative goals and plan requirements. For example, on page 4, what types of development activities might take place in lagoon and upland areas? On page 8, are the habitats shown in Figure 1 proposed for !00% conservation, or something less? 98(bq)

✔ City of San Diego. Page 4 states that on Otay Mesa, "virtually no mesas are included in the Preserve." The EIR/EIS evaluations should include a discussion on preservation of less than 25% slopes (other than wetland-related habitat) and how this might affect species that prefer flatter areas. 98(br)

✔ City of San Diego. Page 7. What assumptions did the EIR/EIS use to evaluate the potential application of such important preserve design features as bridges and large culverts needed to maintain genetic flow? Such features are not mandatory and have not been used much in the recent past by local jurisdictions. This comment also applies to the sections on Land Use Considerations, where avoidance and minimization methods are discussed, and Preserve Management. 98(bs)

✔ City of San Diego. Page 16. B4. The proposed transplantation of ambrosia in Mission Trails Regional Park does not mitigate this impact to below significance. Since this is the only major population of the species in MSCP, overriding findings should not be adopted for this project. A feasible alternative has been proposed and evaluated in the project's EIR 98(bt)

and should be a required condition of approval for the City's subarea plan. Interestingly, page 78 states that the ambrosia on private property east of the park should be protected. The City should set a better example. 98(bt)

✔ City of San Diego. Page 27. C27. Where is this project located on the Map? 98(bu)

✔ City of San Diego. Page 31-39. Has the acreage affected by the listed preserve exclusions been deducted from the preserve figures? Exclusion 2 on page 37 indicates that a pipeline is allowed within sensitive habitat on the south side of Dulzura Creek. What are the biological impacts from this project? What alternatives have been studied? Has a less damaging alternative been proposed, such as placing the pipeline in the existing roadway? The City's subarea plan should not be adopted with this exclusion remaining. 98(bv)

✔ City of San Diego. Page 52, Brush Management. Does this section apply only to projects in the 75% conservation areas that dedicate on-site open space, or to all areas? Does this mean that new development adjacent to existing open space can extend brush management into the existing preserve? Will the brush management zone be considered an impact? Has it been considered an impact in the EIR/EIS analysis? 98(bw)

✔ City of San Diego. Page 111. "For the majority of covered species, it is accepted that conserving habitat within the MHPA at the above conservation goals will not appreciably reduce the likelihood of survival and recovery of these species in the wild." Not everyone is so quick to make this conclusion based on the level of information available for many species and the number of unknowns remaining in the plan. This conclusion should be based on an independent analysis by practicing conservation biologists and should be re-evaluated as new information is gathered 98(bx)

✔ City of San Diego. Page 111. Narrow endemics "will be avoided both inside and outside the MHPA." Is this requirement included in the ESL regulations? How will the long-term viability of narrow endemics found outside the preserve be ensured? What are the definitions of "reasonable use " and "essential public facilities"? 98(by)

✔ City of San Diego. Page 112. If public funding sources do not become available and the City cannot preserve the required amount of habitat analyzed in this plan, will the permit be revoked due to non-compliance? 98(bz)

✔ Santee. Page 3. How will a requirement for a fire management buffer greater than the 50 feet be addressed? 98(ca)

✔ Santee. Page 4. This section states that the existing floodplain of the San Diego River will be constricted to the approximate boundaries of the 98(cb)

floodway through fill and subsequent development consistent with the Town Center Specific Plan. Is the Town Center Specific Plan an adopted plan? Does the City already have 404 and 1600 permits for this project? What alternatives to this plan were considered? 98(cb)

✔ City of Santee. Page 5. The entire subarea plan is rather vague. For example, requirement number 2 states that resources should be "appropriately preserved and protected, " but there are no details on how this goal will be implemented. Many of the "requirements" include qualifiers such as "it is preferred" or "if feasible." How could the EIR/EIS possibly address this plan at the project level? 98(cc)

✔ City of Santee. Page 8. Santee's plan does not address narrow endemics. No avoidance language is included. In addition, it appears that narrow endemics have not received adequate mitigation within Fanita Ranch. Due to the probability that Santee's proposed plan will result in significant unmitigated impacts to sensitive species, including narrow endemics, additional mitigation should be a requirement of permit issuance. 98(cd)

✔ County of San Diego. Figure 1-2 (the first one). Where is the "D" designator defined? Why are there two different maps (also Figure 1-3)? Which map did the County use to determine conservation of habitat (same question for figures 1-2 and the 1-3s)? Where are the minimum 1000 foot corridors and linkages provided through Santa Fe Valley, Ranch Cielo and 4S Ranch? In Figure 1-2, where are the corridors through the large "major amendment" area northwest of Proctor Valley Road? Projects should not receive permits through the MSCP unless they do a better job of meeting MSCP goals and NCCP guidelines. 98(ce)

✔ County. Page 1-11. How was it decided that conserving only 55% of a rare habitat type such as maritime succulent sage scrub was sufficient? Conserving 8% of the southern maritime chaparral is enough? Why is it not feasible to conserve additional acreage of these rare habitats? 98(cf)

✔ County. Page 1-19. How can the reader determine the importance of the plan's proposed coverage for the 1996 park development plans if they are not provided or summarized? Were the potential impacts analyzed in the EIR/EIS? 98(cg)

✔ County Page 2-7. An open space easement for a 10-year period? How was this addressed in the EIR/EIS and species analysis? On subsequent pages it is not clear if all permanent open space will be biological open space with clear restrictions. What will happen if a jurisdiction tries to vacate an easement? 98(ch)

✔ County. Page 2-21. What acreage was used in the EIR/EIS for unknown impacts from future infrastructure not included on maps? This section refers to Figures from the Santa Fe Valley Plan but they are not 98(ci)

attached. Does the County have protocols to avoid and minimize impacts from maintenance operations? 98(ci)

✔ County. Page 2-24. The language regarding wetlands is inconsistent with the MSCP. Does the wording in the MSCP assume that a jurisdiction adopts set criteria and mitigation for wetlands? 98(cj)

✔ County. Page 2.-24. For Santa Fe Valley, open space II is not defined as natural open space. Doesn't it include golf courses? Section 2.8.2 (A) is not a complete sentence and its meaning is unclear. 98(ck)

✔ County. Page 2-25. The Lusardi Creek corridor does not appear to meet the MSCP guidelines. How wide is this corridor? The subarea plan seems to admit that it is not wide enough to be truly functional (subheading B, first bullet. see also page 2-27). Why wasn't this corridor expanded during negotiations? 98(cl)

✔ County. Page 2-25. Section 2.9. This section does not address existing exemptions to the regulations and ordinances that leave habitat at risk. Many of these exemptions are proposed for the subarea plan. How did the EIR/EIS analyze the potential impacts from these exemptions, both for interim protection and for putting together the preserve. Shouldn't a best and worst case scenario be calculated? 98(cm)

✔ County. Page 2-26. The wording on revegetation monitoring and maintenance is vague. Will all projects in all jurisdictions that mitigate through revegetation be required to meet minimum success criteria? Who will determine these criteria and assure that they are biologically meaningful? 98(cn)

✔ County. Page 3-10 This section states that the Loma Del Sol project impacts six of the eight pairs of gnatcatchers with no clear mitigation for these losses. Since humans prefer to develop areas that often provide the best habitat for gnatcatchers, what assurances can be made that this high ratio of take of gnatcatchers to preservation of gnatcatchers will not continue in the unlined areas of the county? The section on the Pointe states that overriding findings were needed to approve this project. Will this project be covered under this plan without additional mitigation? All projects covered by this plan should be required to mitigate to below significance. 98(co)

✔ County. Page 3-19. What is the definition of "compatible agricultural uses" and will there be limitations on disturbance to existing habitat? 98(cp)

✔ County. Page 3-33. Motorized recreational uses within the preserve were not listed as a compatible land use in the MSCP. What restrictions will be placed on the location of any such uses in the preserve? In section 3.7.3, what is meant by "economic reasons" regarding public infrastructure? 98(cq)

✔ County. Page 3-36. B. Maps for Otay Ranch show the Limited Development Areas in the Preserve. Aren't these areas in the managed preserve in the Otay Ranch GDP/RMP? Have all the exclusions listed in section 3.7.6 been excluded from the preserve for the EIR/EIS analysis? **98(cr)**

✔ County. Page 4-20. Bullet 1. Won't the County evaluate potential impacts to all sensitive species in all habitat types? **98(cs)**

✔ County. Page 4-21. Bullet 2. Habitat types should not be grouped by tiers and should be analyzed separately. **98(ct)**

✔ County. Page 4-25. This section does not mention the County Park at the base of Sweetwater Dam. In the MSCP plan it appears that this park is excluded from the preserve, but in Figure 1-2 it is shown as a minor amendment area. Which is correct. This park provides habitat for a variety of sensitive resources and key areas should be included in the preserve. **98(cu)**

✔ County. Wildlife Agencies figures 1 and 2 (they seem to be in reverse order). What criteria were used to differentiate between the core areas and the pre-approved mitigation areas? **98(cv)**

✔ County. BMO. Pages 2-4. How many projects fall under the exemptions under article II and the definition in No. 7? An exemption for recreational facilities could mean almost anything. Were these exemptions taken into account in the analyses for the EIR/EIS? **98(cw)**

✔ County. BMO. Pages 4-5. The definition of a core area is different from the map provided by the wildlife agencies. How will this be resolved? **98(cx)**

✔ Otay Water District. It appears as if defined mitigation is not included Will the requirements be similar those for the City of San Diego? **98(cy)**

Misc. and Species Evaluation Issues

✔ Please explain why the term "population size" is used on some species evaluation forms, while the term "effective population size" is used on others. Is enough genetic information available to determine an "effective population size" for a species? **98(cz)**

✔ We request notification of any final action taken on this program. **98(da)**

Thank you very much for you time and consideration. We look forward to continued involvement in the plan because we believe that "the main threat to biodiversity lies in denial of individual responsibility." The time allocated to respond to comments in truly appreciated.

Sincerely,

Allison Rolfe

References

Gowdy, J.M. and C. N. McDaniel. 1995. One world, one experiment: addressing the biodiversity-economic conflict. Ecological Economics 15:181-192.

Miller, G. Ecosystems Management: Improving the Endangered Species Act. Ecological Applications 6 (3) 717-720.

99 JANICE ZAMUDIO, 10/29/96

99(a) Comment noted.

99(b) Comment noted.

99(c) Comment noted. It is envisioned that the preserve implementing zone would permit continuing agricultural use and allow new agricultural uses with restrictions (by the proposed ESL). The OR 1-2 zone anticipates a 25% development area on each parcel. Existing brush management requirements will continue to be implemented.

99(d) See response to Comment 25(a) and **Theme Response XXI, Indirect Impact on Agricultural Lands.**

99(e) See **Theme Response III, Economic Impacts and Impacts on Population and Housing.**

99(f) No new or additional fees for new development are proposed to implement the MSCP. The regional funding mechanism is proposed to be put to a vote of the people.

99(g) The City of San Diego Subarea Plan does not include any "no build zones," nor does it include requirements to build on steep hillsides thereby requiring expensive grading. The OR 1-2 zone would allow for development of 25% of each parcel, maintenance of existing density yield and allow for the 25% encroachment to occur on the least sensitive portion of the property.

99(h) Comment noted. The City of San Diego Subarea Plan was created by starting with lands currently publicly owned and then adding private property only where needed to ensure biological viability to enable coverage of as many species as possible.

99

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OCT 29 1996

DEVELOPMENT SERVICES

Janice Zamudio

7797 La Jolla Vista Dr.
La Jolla, CA. 92037

Phone (619) 452-0878
Fax (619) 552-8187

October 29, 1996

John Kovac, Senior Planner
Development and Environmental Planning Division
City of San Diego
1222 First Avenue, 5th Floor
San Diego, California 92101

RE: Comments on the EIR/EIS of the MULTIPLE SPECIES CONSERVATION PROGRAM

This (MSCP) program was originally set up to meet the Metropolitan Wastewater Department's needs to mitigate the biological impacts of the mandated improvements to the region's sewage treatment facilities and potential secondary impacts associated with these improvements. It was a program that was also intended to speed up the permit process - a joint effort by KEY PROPERTY OWNERS city planners and local jurisdictions to eliminate the lengthy mitigation process on a per parcel basis. What started out as innocent and worthy enough has snowballed to a monstrous project in itself with multiple issues riding piggyback. 99(a)

I might add that the KEY PROPERTY OWNERS that participated in the planning process (in the NCFUA) were only the two large owners out of approximately 160 owners (NCFUA) Needless to say the Golden rule prevailed. Many small property owners were simply designated as open space as we were. Much of the land would certainly be developed, but much of the future competition was simply wiped out. 99(q)

Our family owns 32 acres of A1-10 land that is over 70% Mesa top in an area known as Del Mar Mesa that the MSCP proposes to preserve. It is an area of Rural Residential which permited agriculture as a matter of right. According to proposed MSCP guidelines we can only use 25 to 30% - 8 or 9 acres. A loss of over half of our usable land, which incidentally by remaining wild - will increase risk of fire. 99(c)

The plan will cause less farmland to be available in San Diego now and in the future. It proposes constraints to existing agricultural operations and does not propose authorization for incidental take protection for ongoing activities but merely notes that it may be "supported". It is attempting to regulate all ongoing agricultural activities and discourages farming on previously unfarmed land because it refused to allow deferred mitigation for agriculture. It assumes that all new agriculture will someday be converted to urban use which may not be the case. 99(p)

The plan will cause property values to go up in the allowed areas of development but will cause land in the proposed preserve to go down, much inequity among land owners. 99(e)

99

JANICE ZAMUDIO

Comments on the EIR/EIS of the MSCP
page 2

The cost of buying a new home in this area will go up. The City Council refuses to put the funding issue on the ballot (Theyknow what the voters would tell them) so the money to purchase the open space is projected to come from extra fees charged at the time permits are taken out. Putting these on top of the already large fees will add to the price considerably. Whatever fees are added to the cost of the house - they will triple over the life of a loan before they are paid off. 99(f)

This plan will cause land to be developed that should not be - I have seen examples of really excessive grading to use the hillsides that should have been left alone or developed at a much lower density. With so much land in the no build zone it will put more pressure on the land that CAN be developed. 99(g)

One of the problems with the MSCP is that it doesn't judge the developability of a parcel on its own merit topographically, but rather on: who owns it where it is located and what happens to be growing on it at the present time? 99(h)

We feel the way it is written at the present time, MSCP should only be applied to lands now publicly owned.

Very sincerely,

Janice Zamudio

Janice ZAmudio, for the Zamudio family.

100 WHALEN, J. WHALEN ASSOCIATES, OCTOBER 29, 1996,

100(a) Implementing agreements developed by each participating local jurisdictions would specify the mechanism(s) which would confer Third Party Beneficiary status to a parcel of land. The mechanism(s) specified would provide for both Third Party Beneficiary status and mitigation obligations to run with the land.

100(b) The Helix Companies properties would derive the benefits of participating in the MSCP Plan at the point when their properties/projects achieve Third Party Beneficiary status as defined by the County of San Diego's implementing agreement. The County's implementing agreement would be subject to a 30-day public review and comment period when the County submits their Section 10(a) permit application and implementing agreement to the wildlife agencies.

100(c) The Board of Supervisors directed County staff to incorporate into the final subarea plan the maps submitted to County staff in mid-October. The preserve design (configuration) for the Helix Company properties within the County's jurisdiction have been incorporated into the County's Subarea Plan. The yet to be determined projects that the Helix Company may propose on those properties would be processed by the County. During the County processing of the projects, appropriate CEQA review would be done, and consistency with the County's Subarea Plan would be determined. Avoidance of narrow endemic species would be required and would be based on the botanical surveys carried out as part of the CEQA process. The characteristics of the development (road location, number of lots, slope constraints, etc.) would be subject to future County action and CEQA review.

100(d) Comment noted. Evaluations are based on the MSCP Plan as a whole, not individual plans. Based on the identified factors the wildlife agencies used in MSCP Plan Section 3.4.2, grasslands were not determined to be sufficiently or significantly conserved.

100(e) Storm water detention basins and water tanks would be considered essential public facilities. Essential public facilities are compatible uses within the preserve.

100(f) Comment noted. The area in question is located in a gradational area between CSS and mixed chaparral. There was a discrepancy in the vegetation classification by two qualified biologist conducting separate surveys in overlapping areas of two City projects. Any new survey on the site should be conducted by a qualified biologist and submitted to the City when a development permit approval is sought by the owner.

100(g) Comment noted. Please refer to previous response to Comment 100(f). Long-term isolation of small habitat patches does generally reduce their value; some small patches continue to support MSCP covered species. It is incorrect to assume that small patches of habitat have negligible biological value.

100(h) The proposed project does not propose to rezone any property. Subsequent rezoning for implementation of the preserve would be the subject of a subsequent CEQA document. Specific parcels have not been identified for rezoning however due to existing land use protections and development. It is not anticipated that rezones would occur on urban lands within the City's MHPA. The property at Montezuma and Fairmont Avenue is not proposed for rezoning.

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DEVELOPMENT SERVICES

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J. Whalen Associates

Balancing the needs of the environment with those of business

October 29, 1996

Mr. John Kovac
City of San Diego
1222 First Avenue, M.S. 501
San Diego, CA 92101

RE: COMMENTS ON MSCP Plan and Subarea Plans

Dear Mr. Kovac:

4517 Santa Monica Avenue

San Diego, California

92107

619 . 222-5856

619 . 222-6450 FAX

This firm represents the Helix Companies in their involvement in Multiple Species Conservation Program (MSCP) matters. Thank you for this opportunity to provide our comments on the Multiple Species Conservation Program final draft plan documents. In this letter, our comments are specifically directed at the MSCP Plan and the City and County of San Diego Subarea Plans. Comments are also provided on the draft EIR/EIS for the MSCP.

GENERAL COMMENTS

1. Assurances and Implementation

The Helix Companies are members of the ALLIANCE FOR HABITAT CONSERVATION, a landowner advocacy group. The Alliance's general comments on the MSCP draft plan, Implementing Agreement and EIR/EIS are hereby incorporated by reference. While Helix has a number of important concerns on the MSCP planning process, in particular, we are concerned that weaknesses within the Model Implementing Agreement and Covered Species list must be corrected to provide the long-term certainty needed for master-planned communities with multi-year build-outs (such as our County projects) to make full use of what the MSCP promises.

100(a)

Particularly in regards to our County projects, we are concerned about when we will be able to derive the benefits of participating in MSCP as Third- Party Beneficiaries and how useful the extensive documentation embodied in the EIR/EIS will be in streamlining the CEQA process. Helix may not prepare tentative maps at this stage of the planning process,

100(b)

yet it is making permanent open space commitments of significant value to the MSCP. Clearly, Helix should be a Third-Party Beneficiary, yet the draft Implementing Agreement is unclear about when this status is conferred. Please discuss when Helix obtains Third-party status. 100(b)

2. *MHPA Mapping*

The development and open space areas maps were submitted to the County staff in mid-October for incorporation into the final County Subarea Plan. The maps represented agreement between the U.S. Fish & Wildlife Service and the California Department of Fish & Game on satisfactory development and open space areas for all of the Helix properties which were subject to the negotiations which took place at the end of July, 1996.

While an agreement to further memorialize these negotiations has not been completed, it was acknowledged that with the exception of the avoidance of narrow endemic species (in particular Lakeside Ceanothus and Encinitas Baccharis), there would be no changes to the preserve and development lines which were provided to the County staff, nor a need for additional approvals from the wildlife agencies. 100(c)

It is also our understanding that a permit consistent with the County (and City, if applicable) Take Authorizations will be provided consistent with the subject negotiations, and that for the County properties, elements of the Jamul-Lakeside segment of the Subarea Plan which conflict with the attached maps will not be applicable to the Helix properties. Please confirm this understanding.

COUNTY SUBAREA PLAN COMMENTS

1. *Covered Species List*

The County should seek to regain those species removed from the Final Draft MSCP Plan's Covered Species list which depend on grasslands. If landowners agree to mitigation for impacts to grasslands, then they should also get coverage for the full suite of grassland species, if not the habitat. Table 1-3 in the Subarea Plan appears to support this position: 97% of the known point locations of the grasshopper sparrow are protected, as is 59% of the total grasslands found in the unincorporated areas. Why does the County not get coverage for the grasshopper sparrow? 100(d)

2. *Land Use Considerations Adjacent to the MHPA*

Assurance of the conditional compatibility of certain uses within or adjacent to the MHPA is needed in order for some resource-sensitive projects to be feasible.

Storm water detention basins are frequently sited within the MHPA. As a rule, these basins will be planted with riparian and wetland vegetation and are intended to provide valuable year-round sources of fresh water and vegetative cover for local wildlife. (The basins will need to be cleaned out periodically of the silt which fills them during the rainy season, but the edges can be left alone.) Water tanks are also frequently found within open space because they need to be at higher elevations on a site, many times in areas where the preserve is located. These uses need to be determined to be conditionally compatible uses within the preserve and not subject to further mitigation. 100(e)

CITY OF SAN DIEGO SUBAREA PLAN COMMENTS

1. Mapping

In past communications, we have noted that the City shows more coastal sage scrub on our property than actually exists on the site. Detailed mapping for the Helix comprehensive conservation plan indicates <.5 acre of the property are sage scrub and that none of it will be impacted by our development. (Some of this may already be gone to a City road-widening project.) 100(f)

2. Habitat Value

The discussion on the habitat value of the urban preserve areas overstates the resource value. Work done by Soule' suggests that the contrary view is more true, which is that due to the long term isolation and small size of the area, the habitat value is negligible. We believe our biological resource studies confirm this, and therefore will operate under this assumption unless the City can establish otherwise. 100(g)

3. Zoning

Please confirm that the proposed OR 1-2 zone will not be applied to our property at Montezuma and Fairmount Avenues, where our recorded lots exist. This could unnecessarily impede our ability to develop the property. 100(h)

100

EIR/EIS COMMENTS

The ALLIANCE comments on the draft EIR/EIS that pertain to this section are hereby incorporated by reference.

We appreciate the opportunity to provide these comments. We look forward to seeing their incorporation into the final plan which is approved by the Board of Supervisors and the City Council.

Very truly yours,

James E. Whalen
President

CC: Bob Asher, County of San Diego
Karen Scarborough, City of San Diego

Attachment

101 BETTS, SD HANG GLIDING AND PARAGLIDING ASSOCIATION, 10/28/96

101(a) Comment noted.

101(b) Implementation of the MSCP Plan will not alter the existing conditions relative to hang gliding or paragliding within the MSCP study area. Section 6 of the MSCP Plan does not specifically list hang gliding or paragliding as compatible or incompatible with preserve management. On private land, public access is controlled by the landowner. Each subarea plan will determine compatible uses during its preparation using criteria found on page 6-1 of the MSCP Plan, Volume I. Three of the five major gliding sites identified are under the jurisdiction of either the U.S. Forest Service or BLM; these agencies have agreed to manage their lands consistent with the MSCP. The remaining two, Torrey Pines and "little" Black Mountain are within the City of San Diego, Northern Area. The City of San Diego's Subarea Plan (MSCP Plan, Volume II, pages 82 - 87) states that the existing Torrey Pines Community Plan policies are not proposed to be changed. The priorities for the Black Mountain Park area are to 1) prevent off-trail access and use, and 2) Park and Recreation Department will assess overuse of open space areas and take corrective actions. The SDHGPA should continue to be involved as partners with the landowners and land managers of the currently used gliding sites to ensure appropriate gliding uses are maintained.

101

RECEIVED
OCT 29 1996
DEVELOPMENT SERVICES

San Diego Hang Gliding and Paragliding Association, Inc.

Response
to the
Multiple Species Conservation Program

October 1996

John Kovak, Senior Planner
Development and Environmental Planning Division
City of San Diego
1222 1st Avenue
San Diego, CA 92101

October 28, 1996

RECEIVED
OCT 29 1996
DEVELOPMENT SERVICES

Dear Mr. Kovak,

Hello, the San Diego Hang Gliding and Paragliding Association, Inc. (SDHGPA), would like to comment on the Multiple Species Conservation Program. Our organization's Site Director, Floyd Fronius, gave me your name and address after he stopped by to see you week before last. He suggested we respond to the MSCP. I first went to a public library and spent some time reviewing both volumes of the publication and found it quite interesting. I've personally worked part-time for the Cleveland National Forest as a botanist doing field surveys for plants such as those listed in the MSCP. The Cleveland National Forest has also had me help on the plant surveys done at hang glider sites within the Forest Boundary.

Modern foot-launched soaring by humans (hang gliding and paragliding) has evolved significantly from the image that the public has of the early developmental years. Today's advanced hang glider pilot can reach altitudes in excess of 17,000 feet and fly cross country distances well over 100 miles (the current world record is 308 miles, set in the USA). Along with all the necessary equipment, hang glider pilots also need very specific regions of land in order to engage in their recreation. Certain mountain spots, depending on terrain and prevailing weather conditions, are needed for launch sites. Unobstructed and reasonably level fields are the preferred landing sites. Southern California, with its topography and climate, offers the hang glider pilot extremely good opportunities for recreational soaring all year. The only major obstacle faced by the approximately 2,000 regional hang glider enthusiasts is finding launch and landing sites that are both legal and accessible. With the high cost of California real estate, public land owned by The City of San Diego, San Diego County, the Bureau of Land Management or the National Forest Service is our main source of prospective suitable flying sites. Pete Wilson, while he was Mayor of San Diego, pointed out to us that "hang gliding" was not specifically listed as a recreation in Civil Code Section 846. In 1988 we worked with State Assemblyman Bill Bradley to amend Civil Code Section 846 in order to immunize private landowners from tort liability while granting permission to hang glide on their property. This section of the California Civil Code was adopted by the State Legislature to encourage private landowners to allow the public to use their land for recreation.

San Diego County has a long history of gliding, soaring, hang gliding and more recently, paragliding (paragliders are considered by the FAA to be Class 3 hang gliders). Early experiments in gliding started in San Diego with John J. Montgomery in 1883. Later experimenters included such personages as Waldo Waterman, Fraser Curtis and W. H. Bowlus in the 'teens and 20's. Those early flights took place on various shallow coastal slopes and later progressed to the cliffs of Point Loma. In 1928 Anne and Charles Lindbergh launched their gliders from Mt. Soledad and Anne became the first woman in the USA to achieve a glider pilot's license. In 1937 the Associated Glider Clubs of Southern California leased the bluff at Torrey Pines from the City of San Diego and they still soar there today. In 1972, Taras Kiceniuk launched the first hang glider at Torrey Pines. In 1982-83 I was president of the Torrey Pines Soaring Council when paragliders were beginning to be developed at Torrey Pines.

The SDHGPA was originally formed as the Ultralight Flyer's Organization (UFO) at it's first meeting on February 3, 1973, at the home of Bob Fronius, the father of Floyd Fronius. Since that time the monthly meetings have been held at various buildings in Balboa Park, with the War Memorial Building as the current location. In 1976 the UFO became incorporated in the State of California as a non-profit corporation. The name was changed in 1987 to the San Diego Hang Gliding Association, Inc.

Many of our pilots fly both hang gliders and paragliders and both types of foot-launched gliders need and use the same locations so in 1993 we added "and Paragliding" to our name.

The SDHGPA has worked with many government agencies in order to promote recreational hang gliding in southern California. We contribute funds to maintain Sheephead Road in the Descanso District of the Cleveland National Forest. Our organization has an "Adopt a Trail" and a special permit to launch in the Anza-Borrego Desert State Park. Through the United States Hang Gliding Association (SDHGPA is an affiliated chapter) we provide landowners with $1,000,000 liability coverage. California Civil Code Section 846 and Government Code Section 831.7 immunize landowners from tort liability when they grant permission to hang glider enthusiasts to use their land for recreational activities. For the first few years of hang gliding at Torrey Pines the UFO obtained the Special Use Permit that is required under City Ordinance No. 12538. In 1978 a special organization, the Torrey Pines Hang Gliding Association (TPHGA), was formed to take over the administration of that particular site. The TPHGA was incorporated as a non-profit corporation in the State of California in 1989. The Special Permit for Torrey Pines is currently held by the private concessionaire that has a contract and lease with the City of San Diego.

There are five major hang gliding/paragliding sites in San Diego County that are located in areas affected by the MSCP: Torrey Pines, Black Mountain near Peñasquitos, Black Mountain near Pamo Valley north of Ramona, El Cajon/El Capitan Mountain near Lakeside, and Otay Mountain. There have historically been many more active sites in San Diego, but they have either been developed to the point that the gliders were crowded out or access was restricted by the landowners, such as San Miguel Mountain. The terrestrial needs of foot-launched gliders are quite minimal, a shallow to steep slope on a promontory that faces the prevailing wind for launch and a reasonably unobstructed level field in which to land. Launching and landing is by foot so the impact is similar to running. Vehicular access to near launch sites is preferred although all pilots know they sometimes must carry their equipment and gliders some distance. At larger mountain sites pilots sometimes fly many miles cross-country and know that they might not have vehicular access to near where they land so they are prepared to do a bit of hiking. The airlines consider hang gliders as "Personal portable sporting gear".

Hang gliding and paragliding at the Torrey Pines Gliderport is very well established and regulated. Launch and landing occur in specially designated areas within the Torrey Pines City Park. If a pilot finds there is not enough updraft created by the on-shore wind hitting the cliff to lift the glider high enough for a cliff top landing, they must land on the beach. Following a beach landing the pilot must dis-assemble and pack the glider up one of the established foot trails used by the many beach visitors.

Black Mountain near Peñasquitos has been home to hang gliders almost as long as Torrey Pines, beginning in the very early 1970's. There are four equally important launch sites at Black Mountain (known as "Little Black" by glider enthusiasts). The turn-out at the peak is favored by intermediate to advanced pilots. The middle peak to the north is especially popular with the paraglider pilots because of its shallow slope. The lower 300 foot knob is most San Diego pilots first "altitude" flight. Below this knob is the landing area that has a shallow slope coming down from the knob that is a major training hill for San Diego area beginners.

Black Mountain near Pamo Valley north of Ramona has been a major hang glider site since 1975. Pilots refer to it as "Big Black" and it is the site of the SDHGPA's annual Big Black Fly-In. The launch site is on a shoulder just south of the peak, at approximately 4000 feet above sea level. Landings occur in a large field in the valley or on a small plateau on the side of the mountain. The mountain is in the Palomar Ranger District of the Cleveland National Forest and the SDHGPA works with the Forest Service to make sure all gliding activities meet Forest regulations. Joan Wynn, spokesperson for the USFS, has stated that Pamo Valley is on the Forest's "wish list".

The El Cajon/El Capitan Mountain site is accessed by launching from across the valley at a location called Blossom Valley. Pilots then gain altitude to soar over the mountain peak. Part of the

mountain is within the Cleveland National Forest and part of it is owned and administered by the Bureau of Land Management. The launch site is currently on undeveloped private land. The SDHGPA is trying to negotiate purchase of part of this property. Our organization has also contacted the Forest Service and BLM about developing a launch site on the mountain. The SDHGPA responded to the BLM South Coast Resource Management Plan about this site. 101(a)

Otay Mountain is a very popular gliding site especially in the spring when pre-frontal weather conditions bring southerly winds. There are two south facing launch sites and one west facing launch higher up the mountain. Landing occurs in undeveloped fields south of the mountain near the international border with Mexico. The SDHGPA also responded to the BLM South Coast Resource Management Plan about this site. A copy of that response is included with this response and comment. The BLM answered our response stating that with the creation of the "Wildlife Management Area" our hang gliding activities would not be hampered and that we would be allowed access to the sites we were currently utilizing. A copy of a BLM letter stating that hang gliding is considered "incidental use of the land" is also included here.

There are two major hang gliding/paragliding sites in San Diego County that are not covered by the MSCP. They are the entire Buckman Springs area southeast of Pine Valley and Mount Laguna just off Highway S-1, the Sunrise Highway. The Buckman Springs site is called "Horse Canyon" by glider pilots and is entirely within the Cleveland National Forest. The SDHGPA is a "Forest Partner" with the USFS and contributes money to maintain access roads and landing areas. The Mount Laguna site has three launch areas, one each on USFS, BLM and State Park land. The launch site within the boundary of the Anza-Borrego Desert State Park requires a special annual permit. One condition of this permit is a signed letter of permission from a land owner in Mason Valley below the launch sites. The SDHGPA satisfied this requirement by purchasing our own five acre parcel of land.

Once airborne hang gliders and paragliders are subject to all the same Federal Aviation Administration rules and regulations as any other aircraft. The SDHGPA has worked with the FAA to mark hang glider sites on the aviation Sectional Charts with the "hang glider" icon. Torrey Pines, Mount Laguna and Horse Canyon are all marked with the icon. An article written for a local FAA safety newsletter is included here, it is titled "Hang Gliding Sites Around the San Diego Area". The SDHGPA also works with the California Department of Forestry airborne fire bombers to avoid conflicts, a large map marking all San Diego hang gliding sites is on the wall in their pilots' lounge at Ramona Airport.

In section 6 of the MSCP, Guidelines for Land Uses Within the Preserve, it states "Riding and hiking trails will be allowed within appropriate portions of the preserve to provide passive recreational opportunities for the public." In each subarea report is the language "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." The scale of the maps in the MSCP volumes make it difficult to determine the exact proximity of our launch sites to the preserve. Foot-launched gliding sites have specific physical requirements and there are very few remaining gliding sites left in San Diego. Moving a few feet to one side is often not practical or possible. We ask that access to all currently used hang gliding and paragliding sites be permitted in the future and that continued consideration for our recreation be given in future planning. 101(b)

We thank you very much for thinking of us in the MSCP planning volumes, sometimes we think no one notices us unless someone gets hurt. Maybe going unnoticed can be a good thing.

Sincerely, Donald B. Betts

Donald B. (Breck) Betts for the SDHGPA
P.O. Box 420238
San Diego, CA 92142-0238

SAN DIEGO HANG GLIDING & PARAGLIDING
ASSOCIATION

HANG GLIDING SITES AROUND THE SAN DIEGO AREA

Hang Gliding activities in the San Diego area, especially in the mountains of the eastern part of the county, are greater than depicted on the San Diego Terminal Control Area Chart. The Hang Glider operations at the Torrey Pines Gliderport are well known and marked on the chart with the hang glider icon. The other sites are not marked and pilots are generally unaware of the current capabilities of modern hang gliders.

The past decade has seen a dramatic advance in the technology of these foot launched soaring craft and the skill level of the pilots who fly them. Their average glide ratio is 10:1 with a sink rate of about 200 fpm. All hang gliders carry emergency parachutes, the latest designs are rocket deployed. Pilots fly with two-way radios (most are licensed HAM operators), electronic altimeters, variometers (climb indicators) and compasses. More advanced pilots are equiped with supplemental oxygen and GPS navigation devises.

1. Buckman Springs: Hang Glider pilots refer to this site as Horse Canyon. The launch site is on the ridge east of the rest area on the Interstate 8 dog leg just south of Pine Valley. Pilots will know this area as check point PILLO on Victor 66. This is a popular soaring site all year round, epsecially on weekends, which has recently attracted many paraglider enthusiasts as well. They may be found up to 10,000 feet and will travel north or east over fifty miles. Because of inbound traffic on Victor 66 descending to Lindbergh Field, the hang gliders are instructed to leave the area when above 9,000 feet.

2. Mount Laguna: The launch site is at Kwaaymii Point, a cul-de-sac off of the Sunrise Highway, ten miles southeast of Julian on the scarp overlooking the desert. This is a very active site in the warmer months with flights up to 10,000 feet. Hang gliders usually fly cross country from here, eventually landing many miles away to the north or east with the current open distance record of 145 miles (past Barstow). Most of the hang glider activity is over the mountain ridges between Mt. Laguna and Warner Hot Springs. On weekends in the summer months, pilots can expect hang gliders within a twenty mile radius of Julian.

3. Big Black Mountain: This is Black Mountain north of Ramona overlooking Pamo Valley. Hang glider pilots call this site Big Black. The launch is near the peak at 4000 feet. This site is not as popular as it used to be, with soaring flights rarely reaching altitudes of 8,000 feet. Expect moderate hang glider activity within 2000 feet of the terrain around Pamo Valley. The gliders seldom go cross country from here.

4. Little Black Mountain: This site is called Little Black and is the 1500 ft mountain between Penasquitos and Rancho Bernardo that has multiple communication towers at the summit. This is a very popular practice site for both hang gliders and paragliders. Most flights never include altitudes of more than 1000 feet over the terrain but pilots should be aware of the increased activity, especially on weekends.

5. Torrey Pines: The gliderport here is considered a "Mecca" of the international foot-launched soaring community. Any day of the week and any time of the year pilots can find as many as 50 hang gliders and paragliders soaring over these coastal cliffs. Sailplanes, the original gliders that pioneered these bluffs over sixty years ago, still enjoy soaring here during March and April. Because of the San Diego TCA, all gliding activity at Torrey Pines has a strict ceiling of 1500 feet MSL between Scripps pier and the lagoon south of Del Mar.

6. Otay Mountain: This site is moderately popular with both hang gliders and paragliders and is usually flown in winter and late spring during pre-frontal conditions. Altitudes of 2000 feet above the terrain are sometimes reached. The gliders are mostly found over the southern slopes or the peak of the mountain and stay well away from the traffic of Brown Field.

7. El Cajon Mountain: Hang glider and paraglider pilots call this area "Blossom" after the Blossom Valley launch site. On some maps the mountain, 10 miles northeast of Gillespie Field, is labeled either El Capitan or Rock Mountain. The gliders can be encountered up to 2000 feet over the ridges on either side of the big valley west of the El Capitan Resevoir dam. Again, weekends are the most popular time for soaring.

GEORGE DEUKMEJIAN
GOVERNOR

State of California
GOVERNOR'S OFFICE
SACRAMENTO 95814

TELEPHONE
(916) 445-2841

101

June 23, 1988

Mr. Donald B. Betts
P.O. Box 461
Pine Valley, CA 92062

Dear Mr. Betts:

Thank you for your correspondence concerning Assembly Bill 3177.

I am pleased to tell you that I have signed this legislation into law. Your comments were helpful to me in reaching my decision.

Thank you again for taking time to share your views with me.

Most cordially,

George Deukmejian

George Deukmejian

COMMENTS

1) In Simpson v. United States (1981) 652 F.2d 831, the court explained the legislative intent and rationale for Civil Code Section 846:

> "The intent of the California legislature in adopting California Civil Code Section 846 was to encourage landowners to open their property to the public for recreation. Such encouragement was necessitated by the threat of tort liability which in recent years has led landowners to bar people from trespassing on their land. When viewed against its intent and purpose, the statute has a rational relationship to a legitimate state purpose and is able therefore, to withstand an equal protection challenge."

In Delta Farms Reclamation District v. Superior Court (1983) 33 Cal.3d 699, the court reiterated this position:

> "The purpose of section 846 is to encourage property owners 'to allow the general public to recreate free of charge on privately owned property.' (citations omitted)"

This purpose is accomplished by "immunizing landholders from the liability they would otherwise have incurred for ordinary negligence toward nonpaying recreational users of their land." (New v. Consolidated Rock Products Co. (1985) 171 Cal.App3d 681.)

The sponsor of this measure is an individual, Mr. Donald B. Betts, who is associated with the Torrey Pines Hand Gliding Association (TPHGA) and United States Hang Gliding Association (USHGA). Apparently, in recent years, both Associations have experienced difficulty in obtaining liability insurance. As a result, the activities of both Associations have been curtailed. The sponsor believes that the immunity contained in AB 3177 will induce private property owners to permit access to their property for the purpose of hang gliding.

ASSEMBLY SUBCOMMITTEE ON THE ADMINISTRATION OF JUSTICE
LLOYD G. CONNELLY, Chairperson

AB 3177 (Bradley) - As Introduced: February 10, 1988

SUBJECT: This bill states that a landowner owes no duty of care, except as otherwise specified, to people who "hang glide" on his or her property.

DIGEST

Current law, Civil Code Section 846, provides that an owner of real property "owes no duty of care to keep the premises safe for entry or use by others for any recreational purpose or to give any warning of hazardous conditions ... (emphasis added)"

Section 846 defines "recreational purpose" to include fishing, hunting, spelunking, parachuting, snowmobiling, and other recreational pursuits.

This bill adds "hang gliding" to the list of recreational purposes to which the limited immunity in Section 846 applies.

ASSEMBLY BILL No. 3177

Introduced by Assembly Member Bradley

February 10, 1988

An act to amend Section 846 of the Civil Code, relating to real property.

LEGISLATIVE COUNSEL'S DIGEST

AB 3177, as introduced, Bradley. Real property: obligations of owners.

Under existing law, an owner of real property owes no duty of care to persons using his or her property for recreational purposes, as defined, under specified conditions.

This bill would revise the definition of recreational purposes in this provision to include hang gliding.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 846 of the Civil Code is amended to read:

846. An owner of any estate or any other interest in real property, whether possessory or nonpossessory, owes no duty of care to keep the premises safe for entry or use by others for any recreational purpose or to give any warning of hazardous conditions, uses of, structures, or activities on such premises to persons entering for such purpose, except as provided in this section.

A "recreational purpose," as used in this section, includes such activities as fishing, hunting, camping, water sports, hiking, spelunking, sport parachuting, riding, including animal riding, snowmobiling, and all

other types of vehicular riding, rock collecting, sightseeing, picnicking, nature study, nature contacting, recreational gardening, gleaning, *hang gliding,* winter sports, and viewing or enjoying historical, archaeological, scenic, natural, or scientific sites.

An owner of any estate or any other interest in real property, whether possessory or nonpossessory, who gives permission to another for entry or use for the above purpose upon the premises does not thereby (a) extend any assurance that the premises are safe for such purpose, or (b) constitute the person to whom permission has been granted the legal status of an invitee or licensee to whom a duty of care is owed, or (c) assume responsibility for or incur liability for any injury to person or property caused by any act of such person to whom permission has been granted except as provided in this section.

This section does not limit the liability which otherwise exists (a) for willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity; or (b) for injury suffered in any case where permission to enter for the above purpose was granted for a consideration other than the consideration, if any, paid to said landowner by the state, or where consideration has been received from others for the same purpose; or (c) to any persons who are expressly invited rather than merely permitted to come upon the premises by the landowner.

Nothing in this section creates a duty of care or ground of liability for injury to person or property.

O

101

§ 846. Duty of care or warning to persons entering property for recreation; Effect of permission to enter

An owner of any estate or any other interest in real property, whether possessory or nonpossessory, owes no duty of care to keep the premises safe for entry or use by others for any recreational purpose or to give any warning of hazardous conditions, uses of, structures, or activities on such premises to persons entering for such purpose, except as provided in this section.

A "recreational purpose," as used in this section, includes such activities as fishing, hunting, camping, water sports, hiking, spelunking, sport parachuting, riding, including animal riding, snowmobiling, and all other types of vehicular riding, rock collecting, sightseeing, picnicking, nature study, nature contacting, recreational gardening, gleaning, hang gliding, winter sports, and viewing or enjoying historical, archaeological, scenic, natural, or scientific sites.

An owner of any estate or any other interest in real property, whether possessory or nonpossessory, who gives permission to another for entry or use for the above purpose upon the premises does not thereby (a) extend any assurance that the premises are safe for such purpose, or (b) constitute the person to whom permission has been granted the legal status of an invitee or licensee to whom a duty of care is owed, or (c) assume responsibility for or incur liability for any injury to person or property caused by any act of such person to whom permission has been granted except as provided in this section.

This section does not limit the liability which otherwise exists (a) for willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity; or (b) for injury suffered in any case where permission to enter for the above purpose was granted for a consideration other than the consideration, if any, paid to said landowner by the state, or where consideration has been received from others for the same purpose; or (c) to any persons who are

expressly invited rather than merely permitted to come upon the premises by the landowner.

Nothing in this section creates a duty of care or ground of liability for injury to person or property.

Added Stats 1963 ch 1759 § 1. Amended Stats 1970 ch 807 § 1; Stats 1971 ch 1028 § 1; Stats 1972 ch 1200 § 1; Stats 1976 ch 1303 § 1; Stats 1978 ch 86 § 1; Stats 1979 ch 150 § 1; Stats 1980 ch 408 § 1; Stats 1988 ch 129 sec 1.

Amendments:

1970 Amendment: (1) Substituted "fishing, hunting" for "taking of fish and game" in the first paragraph; (2) added "riding," in the first paragraph; (3) substituted "for entry or use for the above purposes" for "to take fish and game, camp, hike or sightsee" in the second paragraph; (4) substituted "purposes" for "purpose" after "for such" in the second paragraph; and (5) substituted "to enter for the above purposes" for "take fish and game, camp, hike or sightsee" in the third paragraph.

1971 Amendment: Added "rock collecting," after "riding," in the first paragraph.

1972 Amendment: Added "including animal and all types of vehicular riding," in the first paragraph.

1976 Amendment: Added "spelunking," after "hiking," in the first paragraph.

1978 Amendment: (1) Substituted "any recreational purpose" for "fishing, hunting, camping, water sports, hiking, spelunking, riding, including animal and all types of vehicular riding, rock collecting, or sightseeing" in the first paragraph; (2) substituted "purpose" for "purposes" after "for such" in the first paragraph, after "for the above" and "safe for such" in the third paragraph, and after "for the above" in the fourth paragraph; (3) added the second paragraph; and (4) added ", or where consideration has been received from others for the same purpose" in the fourth paragraph.

1979 Amendment: Added "sport parachuting," in the second paragraph.

1980 Amendment: Substituted "or any other interest in real property, whether possessory or nonpossessory," for "in real property" wherever it appears near the beginning of the first and third paragraphs.

1988 Amendment: Added "hang gliding," after "gardening, gleaning," in the second paragraph.

Collateral References:

Witkin Summary (9th ed) Torts §§ 163, 761, 912 et seq.

Cal Jur 3d (Rev) Government Tort Liability § 51.

Cal Jur 3d Premises Liability § 2.

Miller & Starr, Cal Real Estate 2d §§ 15:35, 15:67, 21:30, 25:17, 29:29.

Jury instructions—Court applies objective standard to landowners' liability instruction under Civil Code Section 846. CEB Civ Litig Rep (1985) Vol 7 No. 8 p 251.

Objective standard applied to determine whether landowner's failure to warn trespassers of danger on property was "willful or malicious" under Civil Code Section 846. CEB Real Prop L Rep (1985) Vol 8 No. 8 p 191.

Forms:

See form set out below, following Notes of Decisions.

Proof of Facts:

Dangerous or defective amusement ride. 25 Am Jur Proof of Facts 2d 613.

Premises liability: Willful or wanton conduct causing injury to entrant. 48 Am Jur Proof of Facts 2d 275.

Law Review Articles:

Review of Selected 1988 Legislation. 20 Pacific LJ 733.

Should California landowners have tort immunity from recreational users? (1988) 16 Western St LR 201.

Annotations:

Effect of statute limiting landowner's liability for personal injury to recreational user. 47 ALR4th 262.

101

Response and Comments

to the

South Coast Resource Management Plan

by the

San Diego Hang Gliding Association

November, 1991

101

Area Manager
Bureau of Land Management
P.O. Box 2000
North Palm Springs, CA 92258-2000

November 12, 1991

Dear BLM Area Manager,

Hello, the San Diego Hang Gliding Association, Inc., would like to comment on the "South Coast Resource Management Plan and Environmental Impact Statement" of 1991. The plan contains some great ideas, especially the Preferred Alternative, and we will offer some suggestions that are particular to our activities.

Modern foot-launched soaring by humans (hang gliding) has evolved significantly from the image that the public has of the early developmental years. Today's advanced hang glider pilot can reach altitudes in excess of 17,000 feet and fly cross country distances well over 100 miles (the current world record is 302 miles, set in the USA). Along with all the necessary equipment, hang glider pilots also need very specific regions of land in order to engage in their recreation. Certain mountain spots, depending on terrain and prevailing weather conditions, are needed for launch sites. Unobstructed and reasonably level fields are the preferred landing sites. Southern California, with its topography and climate, offers the hang glider pilot extremely good opportunities for recreational soaring all year. The only major obstacle faced by the approximately 2,000 regional hang glider enthusiasts is finding launch and landing sites that are both legal and accessable. With the high cost of California real estate, public land owned by the Bureau of Land Management or the National Forest Service is our main source of prospective suitable flying sites.

In the area covered by this Management Plan are four regions of land under BLM administration either currently used as hang glider launch sites or that offer great potential. There are no regular landing sites currently being used on the BLM land but there exists very good potential for future use. In the San Diego County Management Area the launch sites include Otay Mountain, Tecate Peak, and El Cajon Mountain. In the Riverside-San Bernardino County Management Area the Poppet Flat region is a good hang glider launch. In the Beauty Mountain Management Area the region around Oak Grove and Chihuahua Valley offer some landing site potential.

Otay Mountain is one of Southern California's best hang glider soaring sites for both spring and fall weather systems. Figure 1 shows three different takeoff spots currently in use. Site (A) is along the west side road to the summit and is on a south facing slope. This takeoff point is primarily used during prefrontal weather conditions when the southerly wind comes straight up the slope. Turnouts along the dirt road with space to park 8 to 10 vehicles would alleviate any foreseeable traffic problems. Glider set-up is accomplished to the south off the road. There is a short dirt spur road at (B) that leads to the west facing launch site. This launch site is preferred when the winds are more westerly as the fronts pass thru the area. At the top of the mountain, near Doghouse Junction, is the northwest facing takeoff point (C) that is best for the postfrontal winds. The higher elevation also enhances the desirability of this spot for hang glider takeoffs. When flying from launch point (C) the pilot will usually land in a field next to Otay Lakes Road. The field is private property owned by the Daley Corporation. Mr. Don Daley Jr. has offered to give us permission to land on these fields when we provide him with liability waivers and insurance. Mr. Daley has said that he plans to develop these fields in the future and at that time will give us access thru his property to BLM administered land on the northern plateaus of Otay Mountain. These plateaus , marked (D), offer good landing field potential for future use.

In the Preferred Alternative there is mention of developing recreation in the Otay Mtn. area, along with preserving the sensitive ecology of the region. We believe the impact of recreational hang gliding can be minimal and that proper management can be effectively maintained. The three launch sites mentioned above are not in the major groves of Tecate Cypress, we have not physically surveyed the areas marked (D) in figure 1. The mountain is very unique and should be preserved in its natural state as much as possible and we are concerned that some federally designated "Wilderness" areas specifically forbid hang gliders. We ask that hang glider activity be incorporated into the future plans for the administration of Otay Mountain by the Bureau of Land Management.

101

Tecate Peak has been a favorite hang glider soaring site for many years and is unique in its profile to Santa Ana wind conditions. Figure 1, point (E), shows the location of the takeoff area which is off the roads near the tower installations. The San Diego Hang Gliding Association (formerly incorporated as the Ultralite Flyers Organization or UFO) has had official permission to conduct hang gliding activities at this site (please see Appendix I). In most recent time there has been some confusion on our part about which office administers Tecate Peak and about public access to the road that crosses private land on the way to the summit. We would like to see the Management Plan include some light recreational hang glider use of the area, we are sensitive to the religious significance of Kuchamaa to the Native Americans and respect their desire for privacy on the mountain. Please consider our renewed use of the mountain for hang gliding.

El Cajon Mountain is a hang glider soaring site that has been historically accessed from the air. That is to say, the pilots launch from one spot, and then hopefully gain enough altitude to glide over the San Diego River to the mountain in search of better updrafts. Figure 2, spot (A) shows the old takeoff on private land that has recently been closed down. The sites marked (B), (C) and (D) are potential launch sites on public land administered by BLM that could reopen this spectacular site. Our organization has been working on this avenue for many years (please see Appendix II). We ask that the Resource Management Plan include acquiring access across private land to these sites so that hang gliding can once again be enjoyed over El Cajon Mountain.

In the Riverside-San Bernadino County Management Area there is an excellent soaring site the hang glider pilots call "Soboba" because it is near the Soboba Indian Reservation. Figure 3, point (A) marks the current takeoff point which is on private land. The access to this spot is first thru the Soboba Indian Reservation, then on thru the Poppet Flat BLM land to the private land. The landowner has contacted the president of the United States Hang Gliding Association about enhancing his property to meet the needs of the hang glider pilots. Apparently he desires to develop his land including an aerial tramway to the ridge. We ask that research be done to develop a suitable hang glider launch point on the BLM land to ensure future recreational access, possible locations are marked (B), (C) and (D). We also ask that efforts be made to obtain public right-of-way access across private land to the Poppet Flat area. The Soboba Indian Reservation has been very accomodating in allowing hang glider enthusiasts permission to cross their land, although the policy seems to vary into exclusion at times. Public access to the BLM land would guarantee continued use.

Figure 4 has a parcel of BLM administered land marked (A) in the Beauty Mountain Management Area. Oak Grove Valley, Chihuahua Valley and the Anza plains are on one of the local hang glider pilots' favorite cross-country soaring routes that have taken them as far as Barstow in the Mojave Desert. This parcel is a very good example of the potential for designated landing sites on public land. Please pardon the pun, but landing a hang glider is usually a low impact event. Public access is the problem faced by hang glider pilots that land on public land administered by either the BLM or the National Forest Service.

The San Diego Hang Gliding Association has worked with many government agencies in order to promote recreational hang gliding in southern California. We contribute funds to maintain Sheephead Road in the Descanso District of the Cleveland National Forest. Our organization has an "Adopt a Trail" and a special permit to launch in the Anza-Borrego State Park. Thru the United States Hang Gliding Association (SDHGA is an affiliated chapter) we provide landowners with $1,000,000 liability coverage. California Civil Code Section 846 and Government Code Section 831.7 immunize landowners from tort liability when they grant permission to hang glider enthusiasts to use their land for recreational activities.

We ask that you please include consideration of our land use needs in the South Coast Resource Management Plan. We will be available for any detailed planning that requires our input and we truly look forward to working with the Bureau of Land Management.

Sincerely,

Donald B. (Breck) Betts, of the
San Diego Hang Gliding Association
P.O.Box 408
(28717 Lebanon Rd.)
Pine Valley, CA 91962-0408
res: (619) 473-9743, wk: (619) 534-2473
FAX: (619) 534-5332

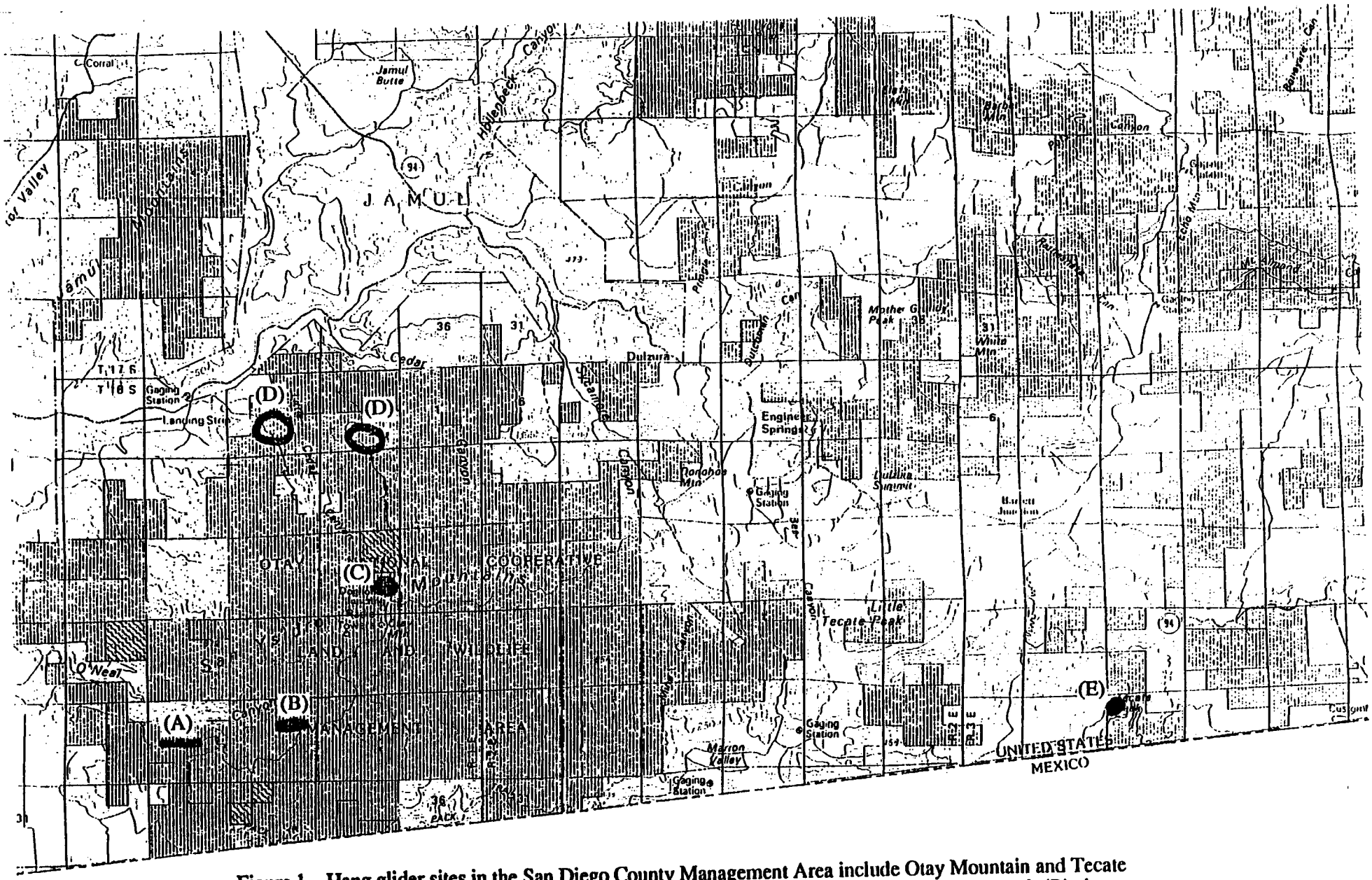


Figure 1. Hang glider sites in the San Diego County Management Area include Otay Mountain and Tecate Peak. On Otay Mountain (A) points out the south facing takeoff point along the west side road, (B) shows the west facing takeoff, (C) designates the location of the northwest facing takeoff, and the two areas with (D) marked are potential future landing sites on northwestern plateaus. The top of Tecate Peak (E) offers good takeoffs to the west, north and especially to the east during Santa Ana wind conditions.

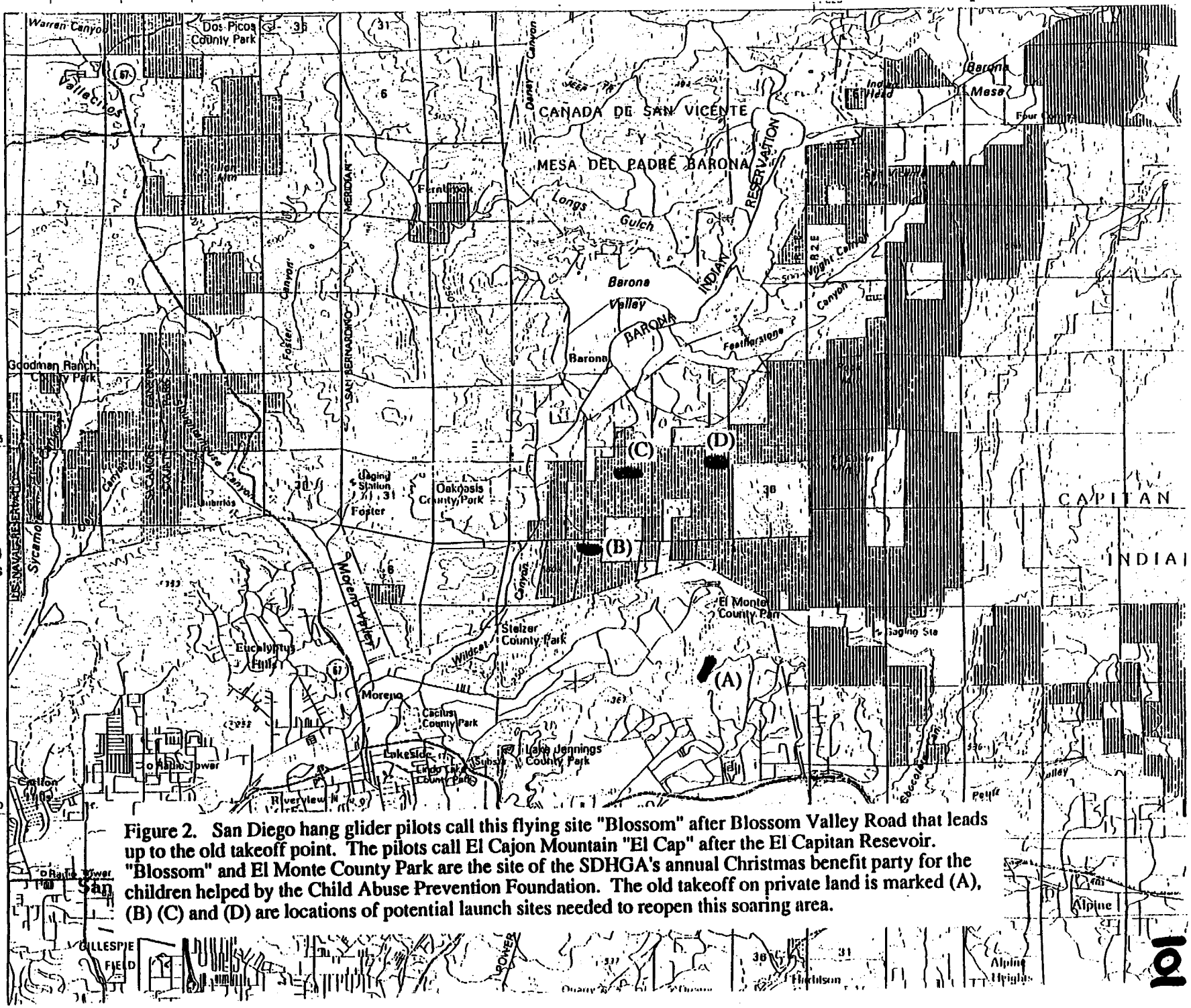


Figure 2. San Diego hang glider pilots call this flying site "Blossom" after Blossom Valley Road that leads up to the old takeoff point. The pilots call El Cajon Mountain "El Cap" after the El Capitan Resevoir. "Blossom" and El Monte County Park are the site of the SDHGA's annual Christmas benefit party for the children helped by the Child Abuse Prevention Foundation. The old takeoff on private land is marked (A), (B) (C) and (D) are locations of potential launch sites needed to reopen this soaring area.

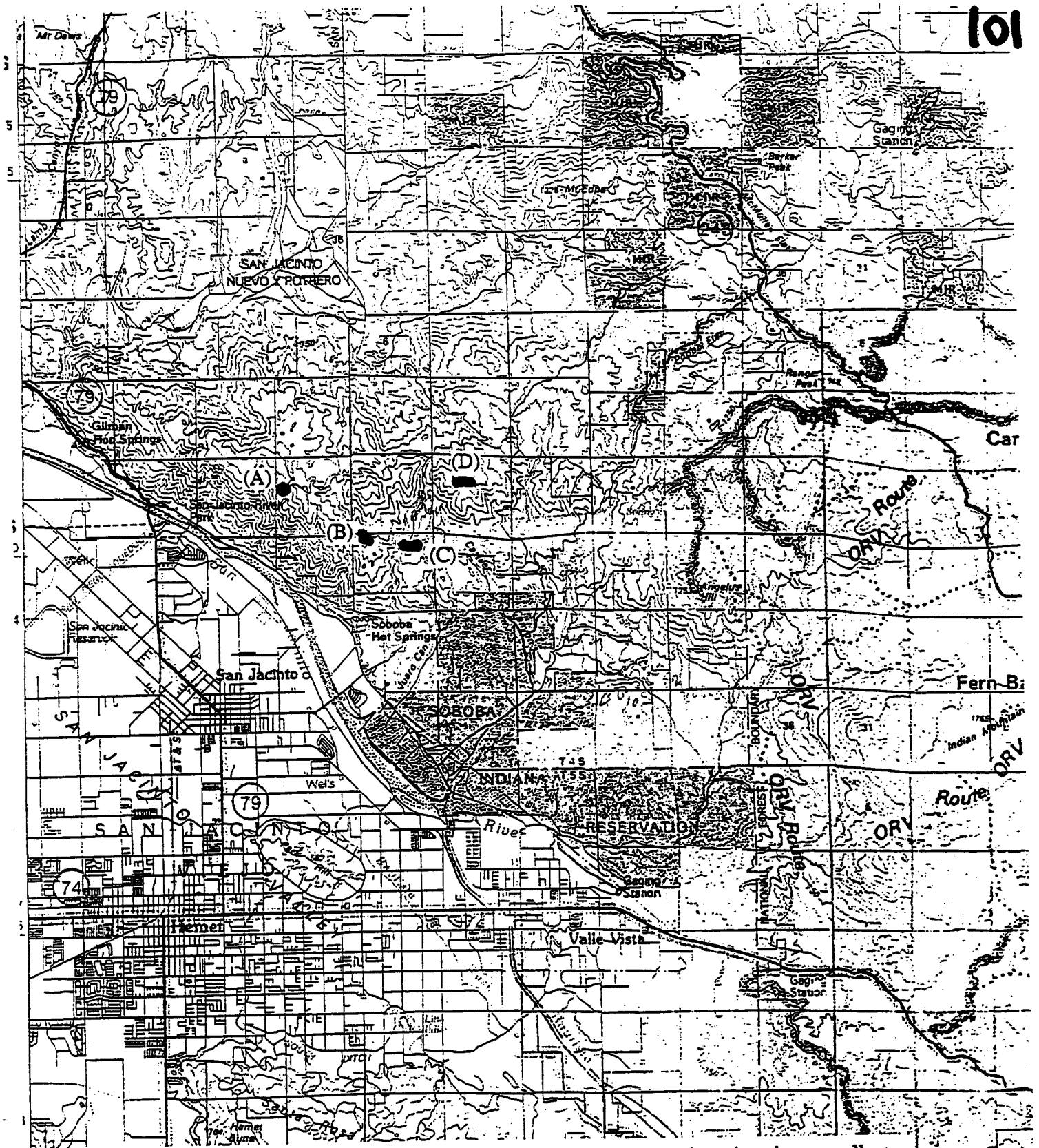


Figure 3. In the Riverside-San Bernadino County Management Area there is an excellent soaring site the hang glider pilots call "Soboba" after the Soboba Indian Reservation. (A) marks the current takeoff point which is on private land. Potential new takeoff points on public land administered by BLM are shown as (B), (C) and (D). This area is shown as Poppet Flat in the South Coast Resource Management Plan.

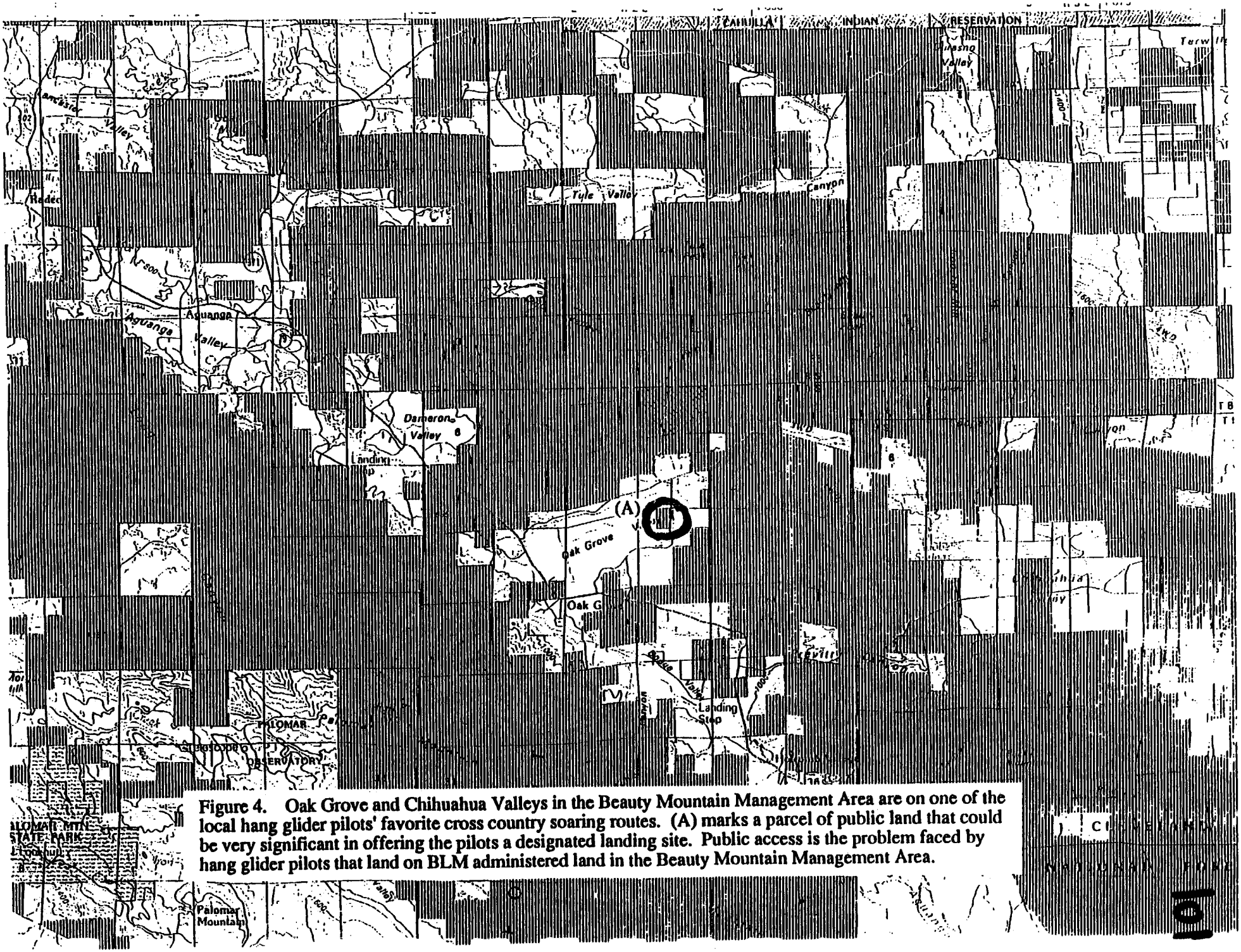


Figure 4. Oak Grove and Chihuahua Valleys in the Beauty Mountain Management Area are on one of the local hang glider pilots' favorite cross country soaring routes. (A) marks a parcel of public land that could be very significant in offering the pilots a designated landing site. Public access is the problem faced by hang glider pilots that land on BLM administered land in the Beauty Mountain Management Area.

IN REPLY REFER TO

United States Department of the Interior

8343 (C-067.4

BUREAU OF LAND MANAGEMENT
El Centro Resource Area
333 South Waterman
El Centro, California 92243

APR 30 1982

Mr. John Ryan
The Hang Gliding Center
4206 Sorrento Valley Blvd., Suite K
San Diego, California 92121

Dear Mr. Ryan:

By this letter, I wish to inform you that we have notified the California Division of Forestry that we have conditionally agreed to have your private lock placed on the Tecate Peak access road.

Please understand that Tecate Peak has considerable religious significance to the Native Americans of the Southern California area. We, as a multiple use agency, wish to provide for various activities such as yours, however, we also have the responsibility to protect the rights of Native Americans. Therefore, we ask that you coordinate with the Native American Elders Society, Steve Esquibel, so to avoid any conflicts with their religious activities. This coordination would consist of notifying them in writing or by means mutually agreeable, of the dates and times you wish to utilize the access road. You will not use the area if the Native Americans will be on the mountain.

We understand that you propose to use the area one or two times a month, on weekends, and your group would consist of from two to five people each time. You will be using the established road only and will "take off" with your hang gliders from the road, just below the communication site. Your landing area will be on private land near the Boy Scout camp near the base of Tecate Mountain.

You will not conduct these activities in conflict with any Native American ceremonies in progress, respecting their right to conduct religious or ceremonial activities undisturbed.

Should any conflicts or degradation to the resources become evident, the Bureau of Land Management may remove your padlock and thus control your access to the mountain via Tecate Mountain road.

I apologize for the delay in processing your request and hope now that you will be able to conduct your recreation activities as requested. Please don't hesitate to contact us if we can be of further service.

Please contact the following persons for coordination of your activities:

Mr. Ignacio Scerato, Chairman
Southern California Tribal Chairman's Assoc.
P. O. Box 1470
Valley Center, California 92082
(714) 745-3315

Mr. Steve Esquibel, Secretary
Native American Elder's Society
1641 Felicita
Escondito, California 92025
(714) 745-7491

Copies of this letter have been forwarded to each of the above gentlemen.

Sincerely,

Roger D. Zortman
Area Manager

cc: Mr. Ignacio Scerato, Valley Center, CA
Mr. Steve Esquibel, Escondito, CA

IN REPLY REFER TO

6250 (C-067.4(

101

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
El Centro Resource Area
333 South Waterman
El Centro, CA 92243

APR 30 1982

Mr. Barrett Neal
California Department of Forestry
2249 Hamija Road
El Cajon, CA 92020

Dear Mr. Neal:

Mr. John Ryan has contacted us regarding the placement of their personal padlock on the Tecate Mountain Road gate. They wish to have access by a limited amount of people (2 to 5) in order to conduct hang gliding operations. Mr. Ryan stated further that he had your approval and that you simply needed assurance from the Bureau of Land Management that we had no objections.

We have obtained the names of the four individuals involved and have instructed them not to include access for additional individuals without letting us know their names and addresses.

We do not have any objection to these individuals placing a padlock on the Tecate Peak gate.

Sincerely,

Roger D. Zortman
Area Manager

cc: John Ryan
The Hang Gliding Club
4206 Sorrento Valley Blvd., Suite K
San Diego, CA 92121

Michael G. Windle
P.O. Box 82470
San Diego Ca. 92122

23 April 1980

Bureau of Land Management
2800 Cottage Way, Rm. E2841
Sacramento Ca. 95825

Dear Sir or Ms.,

As chairperson of the El Capitain site acquisition committee I'm authorized by our corporation to gather, negotiate, and arrange for the use of El Capitain mountain (Also known as El Cajon Mnt.) as a recreational flying site. Our non-profit corporation, Ultralite flyers Organization Inc., operates out of San Diego California. The purpose of our corporation is to promote safe training, equipment, & flying sites for the members of our organization.

El Capitain is one of the few mountains in the area which possesses the charactics needed for safe, consistent, & legal hang gliding flying. The mountain is reasonably close in(only about twenty miles traveling distance form central San Diego), it has a 3,000 ft vertical takeoff over landing, it faces into the prevelant winds (southwest), and the area is a designated recreational flying area.

The vast majority of El Capitain mountain is either public domain or national forest. Most all of our favorite flying sites are located on or in conjunction with U.S. Govt. lands. For this reason our organization is fairly familiar with dealing directly with Govt. officials in the opening up, & maintenace of these sites. At this time we are dealing with the El Centro branch of the BLM regarding the El Capitain site. Your represenatives there are in favor of our propcsed use of this site for recreational flying and have in fact sent us applications for a recreational use permit.
We are writing your office at this time in order to further clarify the status of the land use atop El Capitain mountain as there has been a great deal of controversy betwix several local groups as to the use, preservation, & property rights of those interested in the site for ecological, mining, & recreational purposes.

The El Centro office has mostly been quite supportive in our efforts to gather the kind of information we need to begin the process of opening up the public land for recreational use and enjoyment. They have given us information on the past history of the site as regards their opinion of the legality of traveling over an existing dirt road that crosses the public lands. The two groups that have in the past conflicted over the use of the mountain (The El Capitain Mining District - a collection of mining calimants on the mountain who portend to exclusively control nine square miles of the mountain ie. the entire mountain, and the San Diego autoban society - a group with ecological ideals in preserving the area for ecological & zoological purposes) have dealt extensively with the El Centro office. In fact just recently the Autoban Society has been granted a lease on a sizable acreage of land in the area which the miners fought real hard to prevent.

The El Centro office has informed us that the right to pass over the public-land road is perfectly within our rights so long as we don't have to cross over private property in doing so. That private property owners don't have the obligation to allow us acess to the public land even if they have the only acess route onto the public land. The office informed us that the miners claim to exclusive use of the public land was unfounded & that we could secure a recreational use permit if enough signatures were submitted through individual letters & if we met the provisions of Land Resource Management(2000); Recreation and Public Purposes Act. The office felt that once a recreational use permit was issued we would have a better chance of secureing a permanent easement through certain private property for access to the top of the mountain.

Contrary to this opinion is the position of the miners. They portend to have exclusive control of the mountaintop. They have place signs surrounding the entire mountain indicating their exclusive interest in the land stating on these signs that there is no public domain in the area. They have placed no tresspassing signs & various gates about the mountain, they have made claims of extensive mining being performed when in reality the only noticeable evidence of mining is the scattered about & broken down equipement one finds at the foot of the hill. People living at the foot of the only accessible road to the top

have stated that they have not witnessed anything resembling mining for at least the past five years. Many of the statements made by the miners conflict with each other from month to month. They have filed the required proof of labor reports each year at the county recorders office but in checking out these reports the only work one finds filed is extremely small capital outlays & even then the work is mostly for road maintenace. The miners claim to have a quasi municipality within their mining district and claim that they will soon be hiring a deputy marshal who will have the authority to arrest people & turn them over to the authorities. They state that since they have Placer mining claims they then, since some of the claims are patented, have the same rights as private property owners with respect to the acreage covered in their claims. They have stated that the El Centro office has their head in the sand and that all the filings are through the Sacramento office. In short, we have found the miners, their corporations, & their corporate directors to be experts at dealing in missatement of fact, misstatement of in some cases of their actual activities, & experts at throwing out a big line of confusion to anybody interested in getting atop of the mountain.

It appears that the real purpose of these corporations is eventual acquisition of the acreage atop the mountain through the guise of patented mining claims.

What can the Sacramento office do for us? Well we would like to get an opinion from your office as regards their exclusive use of the nine square miles of land atop the mountain that is covered by their mining claims. We would like to know everything that can be dug up relating to the claims they have & the physical dimensions thereof. We would like an opinion from you as regards mining claim regulations since we have no way of knowning regulations in this highly specialized area of public land use. We would like to know if it is legal for them to sell keys to the access gate at $25 a piece(this gate is on their private land & landlocks the public dirt road which ends through the back of their property. (this road has been in existence since since the late 1800's). If in fact they are misleading the general public as regards the public land, are they in violation of any public statutes (ie. section 1063 of title 43 of the U.S. annotated code)? Could we cause to be instituted an investigation into their practices given they have been operating on a fraudulent basis?

The sections I'm interested in are as follows:
(1) Township 14S, Range 1 East sections 34, 35, & 36 of the San Bernardino base & meridian lines.
(2) Township 14S, Range 2 East section 31 of the San Bernardino base & Meridian lines.

Various names under which these people operate are as follows:
(1) Primountain Mining & milling co., a mining partnership
(2) Bettlors corp.
(3) Shenna Corp.
(4) Alfred Lehman
(5) Boots Placer claims Rec. Nov. 12 197[illegible] F/E 313566 & F/E 31356
(6) King Stalalite
(7) El Capitain Mining District
(8) Star of Shenna mining association
(9) Arthur clay mines

Also enclosed are a few copies of their proof of labor filings.

Thank you for your assistance in this matter.

Earnestly,

Michael G. Windle
Chair person, El capitain site acqusition committee
Ultralite Flyers Organization, Inc.

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

El Centro Resource Area
333 South Waterman
El Centro, California 92243

TAKE PRIDE IN AMERICA

10

IN REPLY REFER TO

1120
(C-067.21)

March 12, 1990

Donald Betts
San Diego Hang Gliding Association
P. O. Box 408
Pine Valley, California 92062

Dear Mr. Betts:

Your letter of February 1, 1990, regarding landing hang gliders on public lands was forwarded to this office for response.

Landing hang gliders on public lands would be considered "casual use", and would not require a permit from BLM. "Casual use" means any short term non-commercial activity which does not cause appreciable damage or disturbance to the public lands, their resources or improvements, and which is not prohibited by closure of the lands to such activities. All vehicle use would be restricted to existing roads.

However, there is no public access to the BLM lands identified in your letter. An easement or permission to cross the adjoining private lands would have to be obtained from the landowners. The County Tax Assessor's office will be able to assist you with the names and addresses if you provide a legal description, i.e., township, range and section, or county parcel number.

If you have any further questions, please feel free to contact our Realty Specialist, Lynda Kastoll, at the above address, or telephone (619) 352-5842.

Sincerely,

G. Ben Koski
Area Manager

§ 831.7. Liability to participant in or spectator to hazardous recreational activity

(a) Neither a public entity nor a public employee is liable to any person who participates in a hazardous recreational activity, including any person who assists the participant, or to any spectator who knew or reasonably should have known that the hazardous recreational activity created a substantial risk of injury to himself or herself and was voluntarily in the place of risk, or having the ability to do so failed to leave, for any damage or injury to property of persons arising out of that hazardous recreational activity.

(b) As used in this section, "hazardous recreational activity" means a recreational activity conducted on property of a public entity which creates a substantial (as distinguished from a minor, trivial, or insignificant) risk of injury to a participant or a spectator.

"Hazardous recreational activity" also means:

(1) Water contact activities, except diving, in places where or at a time when lifeguards are not provided and reasonable warning thereof has been given or the injured party should reasonably have known that there was no lifeguard provided at the time.

(2) Any form of diving into water from other than a diving board or diving platform, or at any place or from any structure where diving is prohibited and reasonable warning thereof has been given.

(3) Animal riding, including equestrian competition, archery, bicycle racing or jumping, boating, cross-country and downhill skiing, hang gliding, kayaking, motorized vehicle racing, off-road motorcycling or four-wheel driving of any kind, orienteering, pistol and rifle shooting, rock climbing, rocketeering, rodeo, spelunking, sky diving, sport parachuting, body contact sports (i.e., sports in which it is reasonably foreseeable that there will be rough bodily contact with one or more participants), surfing, trampolining, tree climbing, tree rope swinging, water skiing, white water rafting, and wind surfing.

(c) Notwithstanding the provisions of subdivision (a), this section does not limit liability which would otherwise exist for any of the following:

(1) Failure of the public entity or employee to guard or warn of a known dangerous condition or of another hazardous recreational activity known to the public entity or employee that is not reasonably assumed by the participant as inherently a part of the hazardous recreational activity out of which the damage or injury arose.

(2) Damage or injury suffered in any case where permission to participate in the hazardous recreational activity was granted for a specific fee. For the purpose of this paragraph, a "specific fee" does not include a fee or consideration charged for a general purpose such as a general park admission charge, a vehicle entry or parking fee, or an administrative or group use application or permit fee, as distinguished from a specific fee charged for participation in the specific hazardous recreational activity out of which the damage or injury arose.

(3) Injury suffered to the extent proximately caused by the negligent failure of the public entity or public employee to properly construct or maintain in good repair any structure, recreational equipment or machinery, or substantial work of improvement utilized in the hazardous recreational activity out of which the damage or injury arose.

(4) Damage or injury suffered in any case where the public entity or employee recklessly or with gross negligence promoted the participation in or observance of a hazardous recreational activity. For purposes of this paragraph, promotional literature or a public announcement or advertisement which merely describes the available facilities and services on the property does not in itself constitute a reckless or grossly negligent promotion.

(5) An act of gross negligence by a public entity or a public employee which is the proximate cause of the injury.

Nothing in this subdivision creates a duty of care or basis of liability for personal injury or for damage to personal property.

(d) Nothing in this section shall limit the liability of an independent concessionaire, or any person or organization other than the public entity, whether or not the person or organization has a contractual relationship with the public entity to use the public property, for injuries or damages suffered in any case as a result of the operation of a hazardous recreational activity on public property by the concessionaire, person, or organization.

Added Stats 1983 ch 863 § 1.
Review of 1983 legislation. 115 Pac LJ 686.

CIVIL CODE OF THE STATE OF CALIFORNIA

§ 846. Duty of care or warning to persons entering property for recreation; Effect of permission to enter

An owner of any estate or any other interest in real property, whether possessory or nonpossessory, owes no duty of care to keep the premises safe for entry or use by others for any recreational purpose or to give any warning of hazardous conditions, uses of, structures, or activities on such premises to persons entering for such purpose, except as provided in this section.

A "recreational purpose," as used in this section, includes such activities as fishing, hunting, camping, water sports, hiking, spelunking, sport parachuting, riding, including animal riding, snowmobiling, and all other types of vehicular riding, rock collecting, sightseeing, picnicking, nature study, nature contacting, recreational gardening, gleaning, hang gliding, winter sports, and viewing or enjoying historical, archaeological, scenic, natural, or scientific sites.

An owner of any estate or any other interest in real property, whether possessory or nonpossessory, who gives permission to another for entry or use for the above purpose upon the premises does not thereby (a) extend any assurance that the premises are safe for such purpose, or (b) constitute the person to whom permission has been granted the legal status of an invitee or licensee to whom a duty of care is owed, or (c) assume responsibility for or incur liability for any injury to person or property caused by any act of such person to whom permission has been granted except as provided in this section.

This section does not limit the liability which otherwise exists (a) for willful or malicious failure to guard or warn against dangerous condition, use, structure or activity; or (b) for injury suffered in any case where permission to enter for the above purpose was granted for a consideration other than the consideration, if any, paid to said landowner by the state, or where consideration has been received from others for the same purpose; or (c) to any persons who are expressly invited rather than merely permitted to come upon the premises by the landowner.

Nothing in this section creates a duty of care or ground of liability for injury to person or property.

Added Stats 1963 ch 1759 § 1. Amended Stats 1970 ch 807 § 1; Stats 1971 ch 1028 § 1; Stats 1972 ch 1200 § 1; Stats 1976 ch 1303 § 1; Stats 1978 ch 86 § 1; Stats 1979 ch 150 § 1; Stats 1980 ch 408 § 1; Stats 1988 ch 129 sec 1.

In Simpson v. United States (1981) 652 F.2d 831, the court explained the legislative intent and rationale for Civil Code Section 846:

"The intent of the California legislature in adopting California Civil Code Section 846 was to encourage landowners to open their property to the public for recreation. Such encouragement was necessitated by the threat of tort liability which in recent years has led landowners to bar people from trespassing on their land. When viewed against its intent and purpose, the statute has a rational relationship to a legitimate state purpose and is able therefore, to withstand an equal protection challenge."

ORDINANCE NO. 12538

(New Series)

AN ORDINANCE AMENDING CHAPTER VI, ARTICLE 3, OF THE SAN DIEGO MUNICIPAL CODE BY ADDING SECTION 63.02.32 RELATING TO ISSUANCE OF PERMIT TO CONDUCT OR PARTICIPATE IN ANY SOARING OR GLIDING ACTIVITY.

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Chapter VI, Article 3, of the San Diego Municipal Code be and the same is hereby amended by adding Section 63.02.32 to read as follows:

SEC. 63.02.32 SOARING OR GLIDING ACTIVITY – PERMIT

(a) The following words and phrases, wherever used in this section, shall be construed as defined herein unless from the context a different meaning is intended or unless a different meaning is specifically defined and more particularly directed to the use of such words or phrases.

(1) "Hang gliding" shall mean flight by an motorless, heavier than air, contrivance now known or hereafter invented, used or designed for navigation of or flight in the air in which the pilot, crew and passengers are carried externally to the frame of such contrivance.

(2) "Full-scale glider soaring" shall mean flight by any motorless, heavier than air, aircraft now known or hereafter invented, used or designed for navigation of or flight in the air, in which the pilot, crew and passengers are carried internally within the frame of such aircraft.

(3) "Radio-controlled model glider operations" shall mean flight by any unmanned, motorless, heavier than air contrivance, now known or hereafter invented, used or designed for flight or navigation, which is controlled from the ground by radio signals.

(b) Any person who, on any park, beach or other property owned or maintained by The City of San Diego, conducts or participates in any soaring or gliding activity, including, but not limited to, hang gliding, full-scale glider soaring, and operation of radio-controlled model gliders, without first having obtained a permit from the City shall be guilty of a misdemeanor.

(c) No permit shall be issued unless all of the following conditions are met:

(1) The applicant shall submit and maintain a certificate of personal injury and liability insurance in the amount of Five Hundred Thousand Dollars ($500,000) combined single limit, naming the City as an additional named insured, and providing that in event of cancellation of the policy, the City will be provided at least 30 days' written notice.

(2) The applicant shall present and have approved by the City Manager a complete set of flight regulations, rules and procedures related to safety standards and operations.

(3) The applicant shall agree to abide by all rules and regulations approved by the City Manager for the protection of persons and property during flight operations.

(4) The applicant shall agree to indemnify and save City harmless from any and all liability for damage to property or injury to or death of persons resulting from applicant's activities on the ground or in the air.

(5) The City Manager determines that the requested location of the gliding or soaring activity does not endanger the safety of persons or property.

(d) A permit shall be issued for a term of twelve (12) months and be renewable during the eleventh month of the term. Each permit shall contain the following information: name and address of holder, date of issuance, expiration date, the location of the approved activity.

(3) Upon notification that a person holding a permit under this section is in violation of subsections (c) (1) or (3) of this section, the City Manager shall order a hearing before a hearing officer, appointed by the City Manager, to be conducted within 30 days of such notification. The City Manager upon ordering such hearing shall mail by certified or registered United States mail written notice of such hearing to the person holding the permit at the address shown on the permit currently filed with the City Manager. Failure to respond to such notice shall be considered to be a surrender of such permit.

(f) Upon denial of a permit under this section, the person requesting such permit shall have the right to appeal such decision before the hearing officer within 30 days of such denial.

(g) Hearings heard by a hearing officer shall be conducted with recognition of constitutional rights of due process at law including proper notice, the right to appear at the hearing personally or with representation, the right to present evidence, the right to confront and examine witnesses and the right to have written findings and conclusions. The hearing officer may consider hearsay evidence as part of his determination except that no finding or recommendation may be based solely on such hearsay evidence unless the hearsay evidence is supportive or supplementary to other legally competent evidence.

(h) The hearing officer's written report of findings of fact and recommendation shall be completed and submitted to the City Manager for approval within 10 days of the hearing.

(i) The effect of the decision by the City Manager to revoke or suspend a permit issued under this section shall be stayed while an appeal to the Public Facilities and Recreation Committee is pending or until the time for filing such appeal has expired.

(j) Within ten (10) days of the decision of the City Manager, the appellant may appeal to the Public Facilities and Recreation Committee of the City Council by filing a request therefor with the City Clerk. A decision of the City Manager shall be final if an appeal is not filed in accordance herewith.

(k) If no appeal is filed within ten (10) days, permits which have been suspended or revoked by the City Manager shall immediately be surrendered to the City Manager and the person surrendering such permit shall cease all soaring or gliding activity permitted under this section.

(l) The appellant shall present his case to the Council Committee. The department representing the City Manager shall then present its case after which the appellant shall be afforded an opportunity for rebuttal.

(m) The Public Facilities and Recreation Committee members may at any state of the proceedings direct questions to the appellant or the department. It may also summon witnesses or call for other evidence, and continue the hearing to a later date.

(n) After the presentation by the appellant and the department, the Public Facilities and Recreation Committee shall, upon motion, close the hearing and make its decision on the appeal. Three affirmative votes of a County Committee are required to reverse, modify, or uphold the decision of a hearing officer. If the decision of the City Manager to suspend or revoke the permit is upheld, the permit shall be immediately surrendered to the City Manager.

(o) Subject to the permanent rules of the Council, the decision of the Council Committee shall be the final administrative remedy.

(p) Any person who conducts or participates in any soaring or gliding activity under this section with a suspended or revoked permit shall be guilty of a misdemeanor.

(q) Any person who operates any hang glider, full scale glider, radio-controlled model glider on any park, beach, or other property owned or maintained by the City of San Diego, in willful or wanton disregard for the safety of persons or property shall be guilty of a misdemeanor.

Section 2. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

Introduced on December 18, 1978.

Passed and adopted by the Council of The City of San Diego on January 2, 1979.

AUTHENTICATED BY:

PETE WILSON,

Mayor of The City of San Diego, California.

CHARLES G. ABDELNOUR,

City Clerk of The City of San Diego, California.

By EARNEST H. COOK, Deputy.

(SEAL)

Published January 16, 1979 80-1235

102 KATY WRIGHT, THE EASTLAKE CO., OCTOBER 29, 1996

102(a) A review of the referenced figures does not indicate that any Eastlake properties were depicted as "undetermined development status." All lands depicted as having "undetermined development status" are within the County of San Diego's Metro-Lakeside-Jamul segment of the County Subarea Plan.

102(b) The refuge planning areas depicted on figure 4-4 are planning areas, not refuge boundaries. The USFWS will release a draft Environmental Assessment for the San Diego National Wildlife Refuge in the near future for public review and comments on the planning area boundaries should be submitted to the USFWS at that time. Determining the planning area boundaries for the National Wildlife Refuge is beyond the scope of the EIR/EIS.

102(c) See **Theme Response IV, MSCP Financing Plan: Regional Source of Funds.** The 171,920-acre MSCP preserve would be assembled from existing public lands (81,750 acres or 47%), private lands conserved through the development process (63,170 acres or 37%), federal and state acquisition (13,500 acres or 8%), and local acquisition (13,500 acres or 8%) (MSCP Plan, p. 4-2). Thus 82% of the proposed preserve would not require regional funding for acquisition, and much of the implementation strategy described in the MSCP Plan and subarea plans addresses management of existing public lands and private conservation through avoidance and off-site mitigation. The wildlife agencies and take authorization holders, including participating local jurisdictions, would annually review the implementation of the MSCP Plan and subarea plans. As noted in the Plan, if adequate local funding is not provided, the wildlife agencies and local jurisdictions will develop a strategy to address the shortfall.

102(d) The City of Chula Vista's take authorization would cover incidental take of covered species on lands mapped as active agriculture in the SANDAG data base. See MSCP Plan, Volume I, Figure 2-3 for lands mapped as agriculture. These lands would also be eligible for "safe harbor" agreements.

102(e) See response to Comment 86(g).

102(f) See response to Comment 102(a) and 102(d).

102(g) See **Theme Response XXVI, Permit Streamlining.**

102(h) The MSCP Plan does not contain specific guidelines regarding land uses adjacent to the preserve, noting that the such guidelines would be contained in individual subarea plans. Pages 41 and 42 of the City of Chula Vista Subarea Plan describe compatible land uses adjacent to the preserve. The general criteria note that a wide variety of land uses are anticipated to occur adjacent to the preserve

and state that there will be no requirements for buffers outside the preserve system. The general criteria call for appropriate site design with landscaping, fencing, lighting and signage sensitively designed adjacent to the preserve to minimize adverse impacts. No specific restrictions are included in the City of Chula Vista Subarea Plan regarding Eastlake property adjacent to the Otay Lakes.

102(i) The Final EIR/EIS and MSCP Plan, Volume I, Section 6.2.2, have been revised to clarify incidental take provisions. Please refer to the revised language in the Final EIR/EIS documentation and the Revisions to the MSCP Plan, January 1997.

102(j) Figure 3.2-1 is a regional-scale map based on SANDAG's county-wide existing land use coverage and is not intended to reflect, or be used for evaluation of, agricultural land uses on specific properties. Identification and treatment of agricultural uses on specific properties in the City of Chula Vista would be subject to the requirements of the City of Chula Vista Subarea Plan.

102(k) Figures 3.2-1 and Figures 3.2-4 are regional-scale maps based on different data bases (SANDAG's county-wide existing land use coverage, and CDC's important farmlands coverage respectively) and are not intended to match. There are not inconsistencies between the maps since one represents existing land uses and the other represents designated important farmlands. Neither map is intended to reflect, or be used for evaluation of, existing or designated agricultural uses on specific properties. Likewise, the quantitative farmland analysis included in Section 4.2 of the Draft EIR/EIS was completed at regional and subarea plan levels and is not intended to quantify potential impacts to farmlands at a project level.

102(l) Figures 3.3-1, 3.2-1 and 3.2-4 are regional-scale maps and are not intended for use for evaluation of individual properties. There are not inconsistencies between the maps since they represent different things: Figure 3.3-1 represents vegetation communities, Figure 3.2-1 represents existing land uses, and Figure 3.2-4 represents important farmlands as mapped by the CDC. The regional-scale mapping reflected in the MSCP Plan is not intended to be used to identify project-specific habitat tiers. Identification of habitat tiers would occur with individual mapping for individual projects and, in the case of Eastlake, the requirements of the City of Chula Vista Subarea Plan would apply regarding this issue.

102(m) Reference to East Orange Avenue is included in the revised language included in the Final EIR/EIS. The comment is correct in noting that neither the Salt Creek area south of Otay Lakes Road nor the 45-acre site south of the Olympic Training Center are included within the preserve boundary shown on the City of Chula Vista Subarea Plan. It is not the purpose of the Draft EIR/EIS to identify specific locations having local land use approval and not subject to the conditions of take authorizations granted with the MSCP Plan to participating local jurisdictions.

102(n) The referenced figure depicts the preserve boundaries considered under the Coastal Sage Scrub Scenario, one of the alternatives addressed in the Draft EIR/EIS. The alternative scenarios were

developed for analysis purposes and are not intended to specifically reflect local land use approvals or development agreements for individual projects. It is noted that features of the Coastal Sage Scrub Scenario would not be consistent with land use approvals for the Eastlake project.

102(o) The referenced figure depicts the preserve boundaries considered under the Biologically Preferred Scenario, one of the alternatives addressed in the Draft EIR/EIS. The alternative scenarios were developed for analysis purposes and are not intended to specifically reflect local land use approvals or development agreements for individual projects. It is noted that features of the Biologically Preferred Scenario would not be consistent with land use approvals for the Eastlake project.

102(p) The referenced figure depicts the preserve boundaries considered under the Public Lands Scenario, one of the alternatives addressed in the Draft EIR/EIS. The alternative scenarios were developed for analysis purposes and are not intended to specifically reflect local land use approvals or development agreements for individual projects. It is noted that features of the Public Lands Scenario would not be consistent with land use approvals for the Eastlake project. The vegetation mapping shown on the referenced figure was completed at a regional-scale and is not intended to reflect project-specific information for the Eastlake property.

102(q) Figure 3.2-2 is a regional-scale map using SANDAG's public ownership coverage. It is not intended to reflect specific ownership conditions on individual properties. Designated open space lands are not shown on the graphic.

102

Post-it Fax Note 7671	Date 10/29/96	# of pages ▶ 6
To: Dave Flesh	From Katy Wright	
Co./Dept.	Co. EC	
Phone # 533-5262	Phone # 421-0127	
Fax # 533-5267	Fax # 421-1830	

October 29, 1996

THE EASTLAKE COMPANY

Mr. Dave Flesh
Metropolitan Wastewater Department
City of San Diego
600 "B" Street, Mail station 905
San Diego, CA 92101

SUBJ: MSCP COMMENTS

MSCP PLAN

1. Figures 3-1 through 3-4 show an area within EastLake as "undetermined development status". While the area known to EastLake as the "land swap" has yet to annex to Chula Vista, the property has Chula Vista General Plan land use designations assigned and it is intended that this area be annexed to Chula Vista in 1997. It therefore, should be included in the Chula Vista Subarea boundary. **102(a)**

2. Page 4-11 indicates that the USFWS, in planning the San Diego National Wildlife Refuge, is studying several areas for inclusion in the Refuge. USFWS insists that the Service will only purchase from willing sellers. The EastLake Company and the Western Salt Company are in no way interested in selling any portion of EastLake to the Service. This position has been communicated to the Service on several occasions. It appears that the continued insistence on showing EastLake property in the Refuge is inconsistent with the stated goals of the Service. This landowner wishes all portions of EastLake be removed from consideration for the Refuge. **102(b)**

3. Page 5-20, section 5.8.2. The EIR/EIS does not adequately address the impacts on the development community and the regional housing supply which could occur should a bond issue or regional funding strategy not be implemented. **102(c)**

4. Page 6-3. The discussion under agriculture in 6.2.2.1 specifically indicates active ongoing farming as an acceptable use eligible to receive take authorizations. The EastLake property has been dry-farmed for decades. The EIR should contemplate this as an acceptable use under the definitions provided in section 6.2.2.1. Further, the property should be subject to "safe harbor" provisions for agricultural lands that have been farmed. **102(d)**

IMPLEMENTING AGREEMENT/CORNERSTONE LANDS CONSERVATION

Exhibit K of the Cornerstone Lands Agreement, page 1, indicates that the Agreement will reserve an easement area that is within 300 feet horizontal from the 490.7 foot high water line of Lower Otay Lake and within 300 horizontal feet of the 550 foot contour defining Upper Otay Lake. **102(e)**

As shown on the enclosed exhibit, this definition includes approximately 30 acres of private property in EastLake (as well as the Olympic Training Center), which is located within the City of Chula Vista. The current language appears to be tantamount to an agreement between the City of San Diego and the Resource Agencies to seek restrictions on property not owned by the City of San Diego in order to create a buffer zone. 102(e)

The Cornerstone Lands Agreement should be amended to include only City of San Diego property located east of Wueste Road for lands adjacent to Lower Otay and it should exclude private property in Chula Vista that is within 300 feet of the 550 foot contour of Upper Otay Lake.

EIR/EIS

1. The document is inconsistent and incorrect in its land use designation of the undeveloped portions of EastLake, thus making the analysis of the impact on EastLake and the overall impact on farmlands impossible to determine. 102(f)

2. The adoption of the MSCP will complicate the entitlement process for The EastLake Company. The property is within the MHPA boundary and although not within the preserve area, we will be forced to seek additional land use authorization from USFWS and CDFG regarding land development activity whereas local jurisdictional authority alone would only have been sufficient prior to the MSCP. The analysis of this additional entitlement cost is not adequately addressed in the EIR/EIS. Given that the EastLake property is devoid of any sensitive resources and it is outside of the preserve boundary, there are not tangible benefits to EastLake as a result of the MSCP. 102(g)

3. The document does not adequately address how implementation of the MSCP will affect land development efforts on property adjacent to the proposed MHPA preserve and how the MSCP EIR/EIS will be utilized in connection with such efforts. We are specifically concerned with our land adjacent to Upper and Lower Otay Lakes. 102(h)

4. The EIR's conclusion that the MSCP does not apply to grazing land, ignores the fact that grazing operations will continue to be at risk and subject to potential liability resulting from any inadvertent taking of a covered species. 102(i)

5. Figure 3.2-1, page 3-6. Although difficult to read at this scale, the figure indicates that the EastLake neighborhoods of the Trails, Vistas, Woods and Land Swap are existing agricultural lands. The map appears to specifically exclude Salt Creek, which, in fact is also an existing agricultural land. 102(j)

6. Figure 3.2-4, page 3-10. Although difficult to read at this scale this figure is again inconsistent in its designation of the EastLake property. The figure indicates that EastLake neighborhoods of "local importance" for farmlands include the Trails, Woods, Vistas and the Land Swap. However, the Salt Creek area of the property and the Olympic Training Center are shown as grazing land. The entire undeveloped portion of EastLake, including Salt Creek, should be designated agriculture in the same manner and there should be some internal consistency between this figure and figure 3.2-1. The 150 acre OTC site is not grazing land and should not be indicated as grazing on this exhibit. The correction of the errors mentioned could total several hundred acres and the impact on the analysis of farmlands is therefore, not known. **102(k)**

7. Figure 3.3-1, page 3-30. The figure indicates that the undeveloped EastLake property is agricultural on the MSCP vegetation communities map. Again this is inconsistent (yet accurate) with figures 3.2-1 and 3.2-4 as noted above. As such, the EastLake property is a Tier IV land under the definition provided on page 3-34. **102(l)**

8. Page 4.2-72 contains an analysis of circulation issues associated with the MHPA in the City of Chula Vista. The document does not include East Orange Avenue from SR-125 to Wueste Road as a roadway that could traverse the preserve. This highway is in the Chula Vista General Plan and it should be included in the analysis. Second, the Chula Vista General Plan and the EastLake III General Development Plan designate Salt Creek south of Otay Lakes Road as a "park" with active recreational uses anticipated. The two documents noted also designate a 45 acre site, south of the Olympic Training Center, as "park". Although these two sites are not in the preserve they are within the MHPA boundary and should be contemplated by this EIR/EIS as having existing local land use approval and therefore not subject to MSCP conditions. **102(m)**

9. Figure 2-18, page 2-54. The figure indicates that private land within EastLake's Salt Creek is "public land" under the Coastal Sage Scenario. However, in the EastLake III General Development Plan, Salt Creek has zoning for both open space and parks. Additionally, a 45 acre area south of the Olympic Training Center is zoned park. The figure is inconsistent with the adopted Chula Vista General Plan, EastLake III General Development Plan and adopted EastLake Development Agreement. **102(n)**

10. Figure 2-19, page 2-58. Same as comments provided in number 9 above. **102(o)**

11. Figure 2-21, page 2-63. Same as comments provided in number 9 above. In no way does the Salt Creek area of the property contain oak woodlands. The designations on this exhibit, relative to Salt Creek, are completely incorrect as well as inconsistent with other vegetation maps in the document. **102(p)**

102

12. Figure 3.2-2, page 3-8. The figure indicates public ownership of land owned by EastLake in Salt Creek. Other designated open space lands within EastLake and Chula Vista are not included. Therefore, this designation is inconsistent with the treatment of other open space areas in Chula Vista. 102(q)

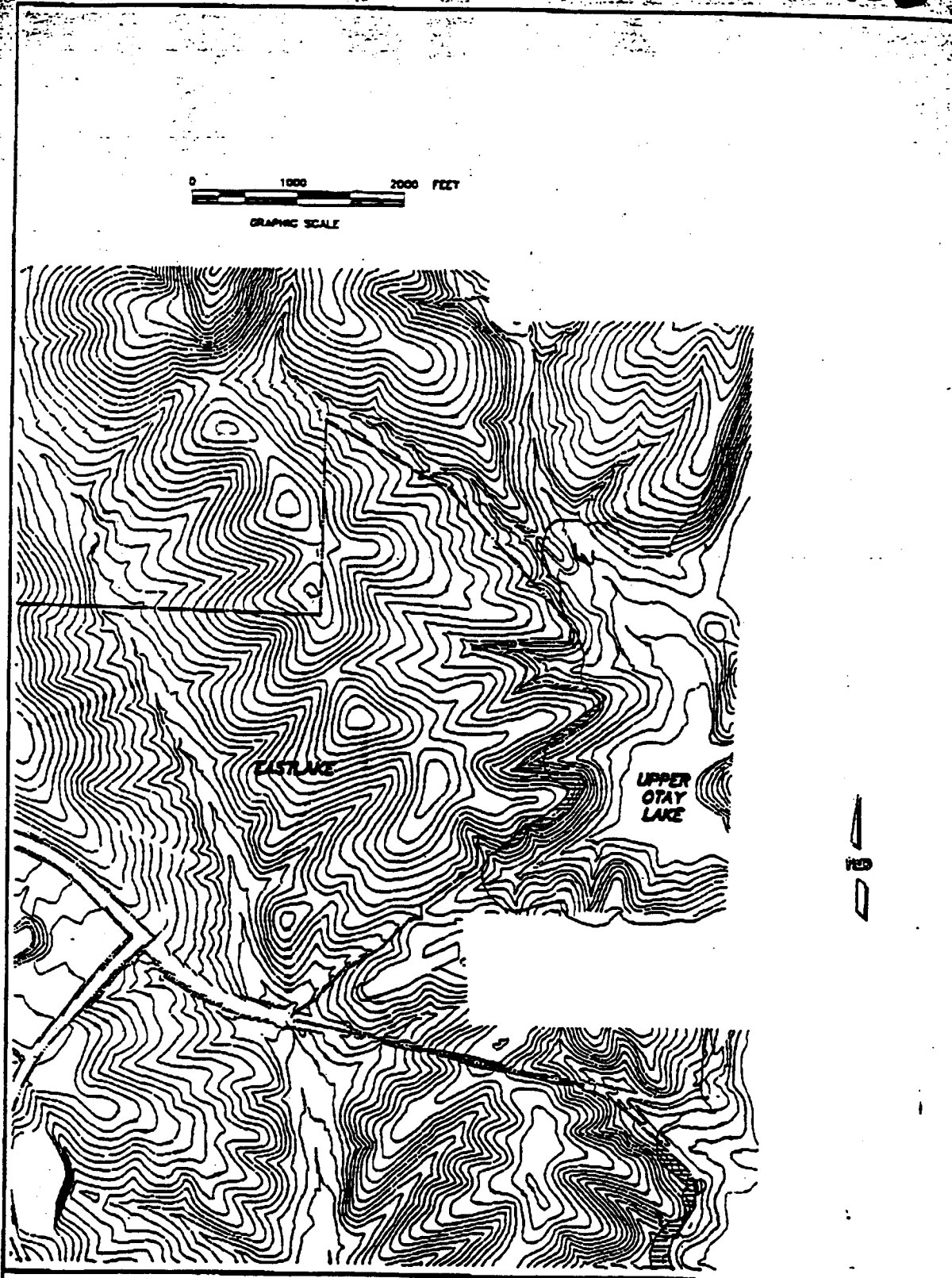
Thank you for the opportunity to comment.

Sincerely,
THE EASTLAKE COMPANY

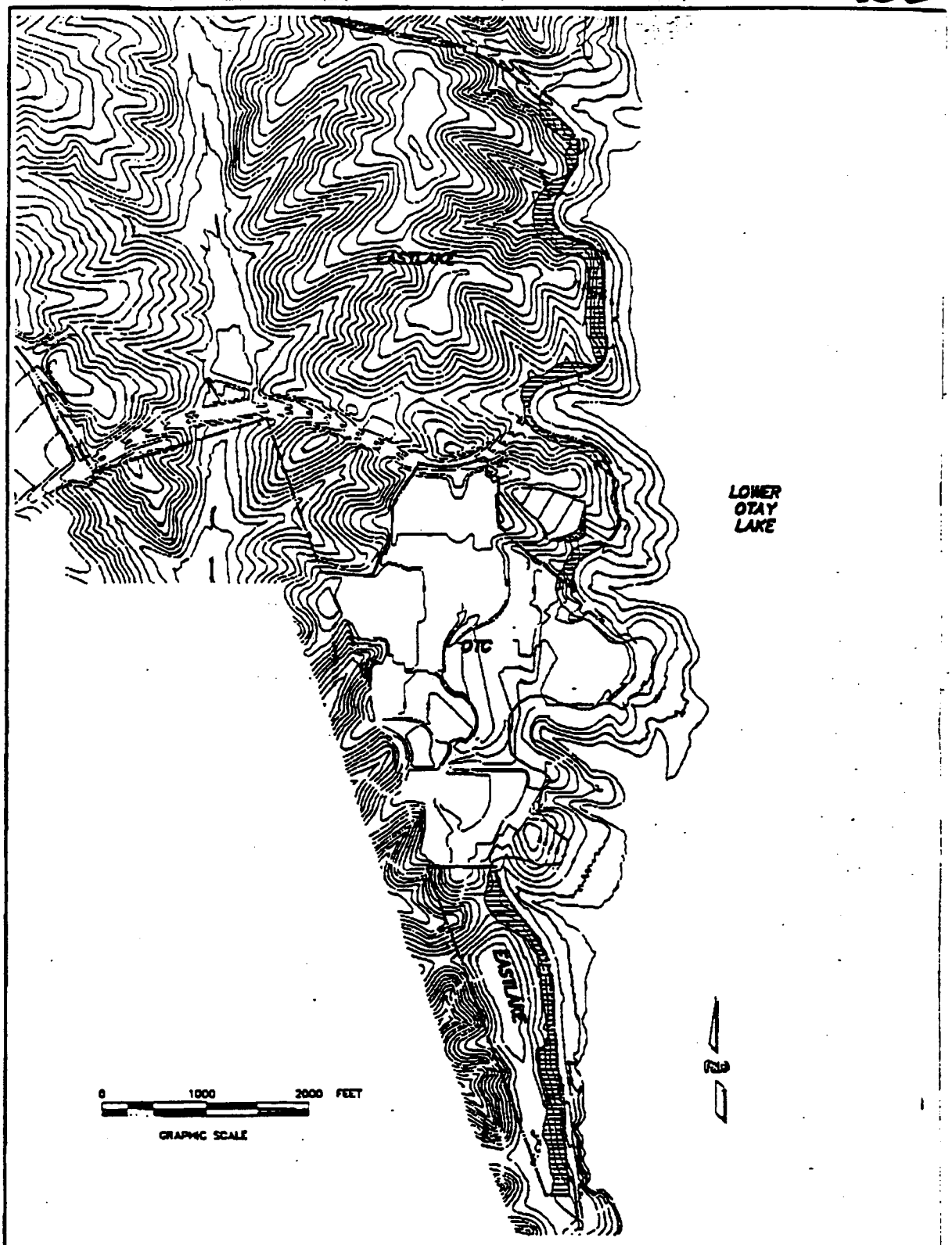
Katy Wright

Katy Wright
Project Manager

cc. Allen Jones, Fenton-Western Properties
Duane Bazzel, City of Chula Vista


0 1000 2000 FEET
GRAPHIC SCALE
EASTLAKE
UPPER OTAY LAKE
EASTLAKE
UPPER OTAY LAKE
LEGEND
EASTLAKE PROPERTY LINE
490.7' HIGH WATER LINE (MHL)
600.6' HIGH WATER LINE (MHL)
300' FROM MHL
300' AREA WITHIN EASTLAKE PROPERTY
PBS CONSULTANTS

102



EASTLAKE
LOWER OTAY LAKE

LEGEND

- EASTLAKE PROPERTY LINE
- 490.7' HIGH WATER LINE (HWL)
- 560.0' HIGH WATER LINE (HWL)
- 300' FROM HWL
- 300' AREA WITHIN EASTLAKE PROPERTY

PSO CONSULTANTS

103 JOHN POTTS, AMERICAN GENERAL, OCTOBER 29, 1996

103(a) Comments noted. Please refer to responses to Letter of Comment 107 for responses to concerns expressed by the Alliance for Habitat Conservation. See also **Theme Response XXVI, Permit Streamlining.**

103(b) It is assumed that the commenter meant to refer to Figure 3-2 on page 3-3 of the MSCP Plan, Volume I. The EIR/EIS and biological determinations for the MSCP Plan are based on the conservation of 69 percent of the site consistent with the approved project. The designation of 70-75% conservation reflects an approximation of the conservation goals for the area. Figure 3-2 has no regulatory status that affects or modifies the conditions of the tentative map.

103(c) The difference between the 2,300 acre figure (City of Santee Subarea Plan) and the 2,136 acre figure (MSCP acreage in MHPA) represents the habitat expected to be developed within the 90 percent preserve portion of the Subarea Plan. The 2,067 acres is the minimum acreage to be conserved in the City of Santee portion of the MHPA. If more than 90 percent of the habitat within this portion of the MHPA is preserved, then the acreage would increase. A clarification of this issue will be included in the City of Santee's Subarea Plan prior to application for take authorizations.

103(d) Coverage for a species based on the MSCP Plan is based on an analysis of the conservation provided by the MSCP Plan as a whole, not on which projects provide mitigation for a specific vegetation community. The take authorizations will be issued to the participating local jurisdictions. Santee's conservation level is below the average for all jurisdictions, 27% compared to an MSCP-wide conservation rate of 38%. The MSCP preserve only conserved 34% of the known locations of grasshopper sparrows. Information gathered in the future may provide data to indicate the preserve includes adequate habitat for this species to be added to the covered species list through the take authorization amendment process.

103(e) Each Subarea Plan includes measures to contain project impacts within the project area. This is a fundamental tenet of the line-is-a-line concept put forth by the Alliance for Habitat Conservation. In regards to the Fanita Ranch project, the MHPA line depicted in the City of Santee's Subarea Plan was intended to be a hard line preserve boundary which provided an acceptable balance between impacts and conservation. The referenced water tanks and their access roads were acknowledged to occur within the preserve area. No golf course holes or facilities were to occur within the preserve. If the golf course intrudes into the preserve, additional mitigation lands and/or a revised preserve design will have to be developed in concurrence with the wildlife agencies. The Fanita Ranch project is still subject to California Fish and Game Code Section 1600 et. seq and Section 404 of the Clean Water Act.

103(f) Conditional compatibility for utilities and water facilities such as water tanks, access roads, and water detention basins are already provided for within the City of Santee Subarea Plan (Table A) and Section 1.3.

103(g) The identification of potential mitigation measures in Section 1.2 was intended to provide guidance during the project specific review process regarding site design measures needed to contain project impacts within the development area. Fencing and landscaping are just two of the techniques to control human intrusion into the preserve. The specific measure(s) to accomplish this would be determined at the specific project design level. The fuel management zone would also be determined at the project design stage.

103(h) Comment noted.

103(i) The roads referred to are permitted. The map in the City of Santee's Subarea Plan submitted for issuance of take authorizations will be changed to reflect this.

103(j) The City of Santee Subarea Plan does not state or is not intended to imply that the ongoing preserve management of the Fanita Ranch would be the responsibility of the project developer. The Subarea Plan requires that a Preserve Management Plan for the Fanita Ranch be incorporated within the Fanita Ranch Specific Plan. The preparation of the Preserve Management Plan would be the responsibility of the City, with possible assistance from the project proponent.

103(k) Any activities/projects proposed within the MHPA would have to be evaluated as to its impacts to the preserve, covered species, and vegetation communities. Any significant impacts would have to be mitigated. It should not be assumed that a passive recreation area and staging area would automatically be compatible with the conservation goals of the MSCP Plan.

Grading and fuel management in specific locations within the mitigation lands portion of the Fanita Ranch project may be acceptable, but this issue will have to be agreed upon between the City of Santee, wildlife agencies, and American General.

The stated understanding of the fuel management zone is incorrect. The San Diego Fire Chief's Association/wildlife agencies' understanding on fuel modification is for existing development. The fuel modification zone for new developments will be determined on a project-by-project basis consistent with achieving the conservation goals of the MSCP Plan and the City of Santee's Subarea Plan. Only the City of San Diego has proposed a 2-zone fuel modification area. The wildlife agencies agreed to considering the City of San Diego's 2-zone concept as being impact neutral based on their subarea plan as a whole (e.g., 25% development areas, 90% conservation of Tier 1 habitats, etc.). The impacts of fuel management zones in other jurisdictions would be determined on a project-by-project basis.

103(l) The Fanita Ranch project preserve design was negotiated with the City of Santee and the wildlife agencies, and was not based on specific mitigation ratios. There is no excess mitigation associated with the Fanita Ranch and hence, no mitigation banking opportunities exist. Wetland impacts will still require obtaining federal Section 404 permit(s) and state Section 1600 agreement(s).

103(m) The long-term management of the preserve is the responsibility of the take authorization holders. The Technical Advisory Committee is a forum for information exchange, coordination, and development of adaptive management measures.

103(n) Comment noted.

103(o) See **Theme Response XVI, Risk Factors.** The City of San Diego's Subarea Plan Section 1.4.3, Land Use Adjacency Guidelines (page 51) identifies measures that should be addressed during the planning or management phases of preserve assembly. These measures include issues ranging from drainage to brush management, all of which would normally be considered as part of the environmental review associated with the development review process. The majority of the guidelines address site design considerations only and will not result in the requirement of additional land.

The guidelines specifically describe the policy for brush management zone locations as approved by the City Council. That is, Zone 1 would be located on the development area (outside the preserve) and Zone 2/3 could be located within the preserve under certain (most) circumstances. The expectation is that Zone I brush management would for the most part occur immediately adjacent to the preserve. This zone does not allow habitable structures.

103(p) Section 1.4.3 does not include a discussion of water tanks and utility access roads. Detention basins are discussed in the context of providing an appropriate mechanism for filtering toxic and noxious materials adjacent to the preserve. The previous section (1.4.1) identifies compatible land uses which do include utility roads and limited water facilities. These water facilities are not anticipated to include water tanks or detention basins except possibly in certain situations which involve limited scale and sensitive design measures.

103(q) The grasshopper sparrow will be deleted from the list on page 81 of the City of San Diego's Subarea Plan. Based on the existing information, the MSCP preserve design does not appear to be adequate to support the issuance of take authorizations for the grasshopper sparrow.

103

American General
Land Development, Inc.

9404 Genesee Avenue Suite 340 • La Jolla CA 92037 • 619-455-1234 • Fax 619-453-2010

A Subsidiary of
American General Corporation

October 29, 1996

Mr. R. David Flesh
City of San Diego
202 C Street
San Diego, CA 92101

RE: COMMENTS ON MSCP Plan and Subarea Plans

Dear Mr. Flesh:

Thank you for this opportunity to provide our comments on the Multiple Species Conservation Program final draft plan documents. In this letter, our comments are specifically directed at the MSCP Plan and the Cities of San Diego and Santee Subarea Plans. Comments are also provided on the EIR/EIS for the MSCP.

1. General Comments

American General is a member of ALLIANCE FOR HABITAT CONSERVATION. The Alliance's general comments on the MSCP draft plan, Implementing Agreement and EIR/EIS are hereby incorporated by reference. In particular, weaknesses within the Model Implementing Agreement and Covered Species list must be corrected to provide the long-term certainty needed for a master-planned community with a multi-year build-out such as our Fanita Ranch project. Regarding this project, we are very concerned about when we will be able to derive the benefits of participating in MSCP and how useful the extensive documentation embodied in the EIR/EIS will be in streamlining the CEQA process.

103(a)

2. Montana Mirador

In Figure 3-3, the City of San Diego shows our Montana Mirador project as 70-75% conserved. While the City may choose to analyze its preserve biology based on this level of conservation, there is currently no written agreement that the property will not be developed as the approved Vesting Tentative Map indicates. That map also shows 69% of the property in open space, not 70-75%. If the property cannot be acquired within the time period which has been discussed, the City's MHPA will need to be adjusted to reflect this circumstance.

103(b)

SANTEE SUBAREA PLAN

1. Description of Subarea 1.0

The City notes in paragraph 2 that the MHPA subarea stretches over 2,300 acres. This figure is not correct. As noted in Table B of the Subarea plan, and in Table 3-1 on pages 3-13 and 3-14 of the MSCP plan, the actual Subarea Plan is 2,136 acres. The inconsistency needs to be corrected. **103(c)**

2. Subarea Plan Section 1.1 Covered Species List

The City should seek to regain those species removed from the Final Draft MSCP Plan's Covered Species list which depend on grasslands. If landowners agree to mitigation for impacts to grasslands, then they should also get coverage. This is particularly applicable to the Fanita Ranch project in Santee, which has made particular efforts to conserve grasslands in its agreement with the wildlife agencies. In fact, 80% of the on-site population of one grassland species, the Grasshopper Sparrow, is conserved in the MHPA configuration of Fanita Ranch. This species is still not considered conserved; AG and the agencies are currently engaged in discussions to resolve this issue. **103(d)**

3. Subarea Plan Section 1.2 Land Use Considerations Adjacent to the MHPA

Assurance of the conditional compatibility of certain uses within or adjacent to the MHPA is needed in order for some resource-sensitive projects to be feasible. The document needs to reflect this assurance. For example, a golf course is planned for the Fanita Ranch in Santee. Portions of the course are planned to comprise the buffer between conserved riparian areas on the western boundary of the property and the developed areas to the east, and as such will be partially within, as well as adjacent to the MHPA. Additionally, locations for approximately three water tanks and access easements are planned for an area within the MHPA in Fanita Ranch. **103(e)**

Storm water detention basins are also within the MHPA. These basins will be planted with riparian and wetland vegetation and are intended to provide valuable year-round sources of fresh water and vegetative cover for local wildlife. (The basins will need to be cleaned out periodically of the silt which fills them during the rainy season, but the edges can be left alone.) The water tanks and detention basins are shown on the attachment labeled "Fanita Ranch Open Space". **103(f)**

In the section on mitigation measures to limit development impacts on the MHPA, we have the following concerns:

- The statement seems to suggest that all of the mitigation measures will be employed to minimize impacts. While most of the six measures are workable as drafted, two of them, fencing and fuel modification, are not.
- It is infeasible to fence the entire preserve in the Fanita Ranch project. The staggering cost to install it and then to maintain the fence in perpetuity outweigh the benefits, when other measures such as landscaping can do the same thing with much less cost.

103(g)

- Fuel modification is addressed in the comments on Preserve Management.

103(h)

4. Subarea Plan Section 1.3 Roads Proposed through the MHPA.

It is assumed that the roads through the MHPA serving Fanita Ranch are permitted, especially Fanita Parkway along the Santee Lakes and reclamation plant, Cuyamaca Street from the east, and the two roads that connect Planning Area D (northeast corner of property) to Area C (center of the property). The text section says to see the Subarea Plan map, but none of these roads are shown on it.

103(i)

(We wish to note that due to the relatively narrow width and light vehicular travel planned for the two roads serving Planning Area D, no culverts have been required by the wildlife agencies to allow for passage of wildlife.)

5. Subarea Plan Section 1.4 Preserve Management

This section appears to suggest that the preserve management for the Fanita Ranch project will be the responsibility of the project. This is entirely inconsistent with the broad thrust of the MSCP plan or its written policy statements. That thrust says that except for brush management, the maintenance, management and monitoring of preserve lands will be the joint responsibility of the wildlife agencies and the local jurisdictions. The only situation where preserve management would not be the responsibility of the public is in the cases where the property owner wishes to retain fee ownership of the preserve areas. Under no other circumstances is American General (or its successors in interest) equipped or prepared to manage a wildlife preserve which is for the benefit of all of the citizens of Santee and the region.

103(j)

While it is not objectionable for American General to prepare a Preserve Management Plan for the property, it seems more appropriate that the City do it themselves, since they or other entities they appoint will be responsible to maintain the preserve just like any other element of community infrastructure. We will work with the city of Santee to clarify this matter.

Fanita Ranch may propose an area for passive recreation and a staging area within the MHPA at the far northern end of the property next to the Sycamore Canyon riparian areas. Its uses will be consistent with the overall MSCP preserve management goals and objectives.

103(k)

Approximately 10 acres of "natural slope contouring" to comply with the City of Santee's grading ordinances will occur as appropriate, some of which will occur within the preserve. All slopes will be revegetated with the adjacent vegetative type seed mix. Fire management is another area where the larger MSCP plan policies affect planning. In most cases, the brush management areas will be outside of the MHPA line, but in several areas of constrained development areas, the brush management area will straddle the preserve boundary, again, consistent with the broader MSCP plan policies. 103(k)

Our understanding of the current fire management policy is that the wildlife agencies have completed, or nearly completed, an agreement with the San Diego region's fire marshals which provides for a 30-foot irrigated non-combustible area next to the structure and a 70-foot area of 50% thinning, adjacent to the preserve, for a total of 100 feet. The MHPA boundary would be the line between the two zones.

The Subarea Plan's Fuel Modification and Preserve Management policies, at least for the Fanita Ranch project, are not consistent with the regional solutions; regional solutions arduously reached through negotiations between property owners, environmental groups and the wildlife agencies to create a "package deal." While imperfect in some regard for all parties, the aggregate "package deal" represents a reasonable compromise which will protect both resources and private property rights. Any significant departure from this compromise threatens the viability of the entire MSCP plan.

6. Subarea Plan Section 1.6 Interim and Long-Term Protection of the MHPA

Mitigation

The preserve boundaries and mitigation for upland habitat impacts for the Fanita Ranch project were negotiated with the wildlife agencies and the City of Santee over the last several years. American General concurs that the project is self-mitigating; in fact, once the MSCP's standard mitigation ratios are applied, we believe that there is an argument to be made that there is "extra" land (of about 400 acres) that AG is exploring placing into a conservation bank. Wetlands mitigation negotiations have not been completed, but AG expects to replace what is eliminated through development with replacement habitat consistent with state and federal wetlands regulations. 103(l)

Preserve Ownership and Maintenance

The previously stated position on preserve management applies. The City will likely participate in the Technical Advisory Committee being set up to oversee, with the wildlife agencies, the long term operation of the preserve. 103(m)

7. Analysis of Subarea's Consistency with Biological Preserve Design Criteria in the MSCP

103(n)

The ALLIANCE comments on the draft EIR/EIS that pertain to this section are hereby incorporated by reference.

SAN DIEGO SUBAREA PLAN

1. Edge Effects

Upon a reading of the draft MSCP EIR/EIS, Subarea Plan and Environmentally Sensitive Lands ordinance, there is an inference that, through the development planning process, the apparent preserve shortcoming, caused by so-called "edge effects," is to be corrected. This may be an inconsistency that has not been cleaned up in the ongoing revision of the documents, since it is our understanding that additional land will not be required as a result of the long term management program, nor would setbacks and design restrictions be added later.

103(o)

2. Compatible Uses within the Preserve

In section 1.4.3 of the Subarea Plan, the discussion of detention basins, water tanks, and utility access roads should indicate that there can be conditionally compatible uses within the preserve.

103(p)

3. Grasshopper Sparrow

On section 1.5.8 (page 81) of the Subarea Plan, the covered species list includes the grasshopper sparrow. This is deleted from other lists. Is it considered covered in the northern area of the City?

103(q)

The ALLIANCE comments on the draft EIR/EIS that pertain to this section are hereby incorporated by reference.

The MSCP has the potential to truly streamline the development process if its promise is realized. We appreciate the opportunity to provide these comments. We look forward to seeing their incorporation into the final plan which is approved by the City Council.

Very truly yours,

John T. Potts

John Potts
Managing Director

c: Niall Fritz, City of Santee, w/o
Karen Scarborough, City of San Diego, w/o

attachment

104 ERIC ANDERSON, FARM BUREAU, 10/29/96

104(a) The intent of the public review period for the EIR/EIS is to provide an opportunity for public input on the changes to the Subarea Plans and MSCP Plan that are covered in the Draft EIR/EIS. The information covered by the EIR/EIS represents the most current drafts of the Subarea Plans and MSCP Plan that would be considered for approval by participating jurisdictions. As a result, the EIR/EIS does not need to be recirculated.

Additional opportunities for public input and public hearings will be available in accordance with CEQA and the MSCP planning process. Public hearings would be scheduled when the Final EIR/EIS, MSCP Plan and the City of San Diego are heard by the participating local jurisdictions. In accordance with the MSCP planning process, additional public hearings would be required for participating local jurisdictions to adopt individual subarea plans for their jurisdictions.

104(b) See responses to Comments 93(b) and 93(c).

104(c) The MSCP Plan contemplates land purchases from willing sellers. There are no commitments at this time to change the existing ordinance and any changes would have to be submitted to the County Board of Supervisors for adoption. At that time, any effects on property owners resulting from changes would be considered. See **Theme Response III, Economic Impacts and Impacts on Population and Housing.**

104(d) Comment noted.

104(e) See response to Comment 104(b). The MSCP Plan or Subarea Plans do not place restrictions on existing or ongoing agricultural operation. However, the MSCP Plan recommends that existing policies should be used (1) to allow incidental take of listed species that occurs as a result of ongoing agricultural operation; and (2) to form cooperative agreements between wildlife agencies and farmers which encourage the establishment or restoration of natural habitat on agricultural land, through financial, management, regulatory, or other incentives. These policies may have a positive economic impact to agricultural operation.

104(f) The MSCP Plan addresses impacts to and conservation of all major habitats or vegetation communities. Conversion of natural habitat, such as grasslands, to agricultural use would not be subject to a more restrictive review or mitigation than conversion of habitat to urban use.

See revisions to MSCP Plan, Volume I, Section 6.2.2 on agriculture included in the Revisions to the MSCP Plan, January 1997.

104(g) The subarea plans for the Cities of Santee, Chula Vista, San Diego, Del Mar, Coronado, the County of San Diego, and the Otay Water District were included in MSCP Plan, Volume II, and were available for public comment and review. The statement that the subarea plan takes precedence of the MSCP Plan is incorporated into the MSCP Plan to clearly identify which document controls should a discrepancy be identified.

104(h) Chapter 3.0 acknowledges that changes in subarea plans may occur, including annexations. Changes not anticipated in the MSCP will require plan amendments, including opportunities for public input. The state and federal take authorization would be issued for 50 years to provide certainty for landowners and local jurisdictions. See **Theme Response XXIV, No Surprises.**

104(i) The sentence from the MSCP Plan, Volume I, states: "Each subarea plan contributing to this total describes a process for allowing development outside the preserve to be mitigated by conservation inside the preserve, and a method for the interim protection of habitats in the MHPA until a preserve plan is finalized and lands are acquired or conserved through the development process."

104(j) Neither the MSCP Plan nor the Subarea Plans prohibits the use of private property by the landowner. The just compensation clause of the 5th amendment to the U.S. Constitution establishes the standards under which federal, state, and local governments must compensate a landowner for the taking of private property. The MSCP Plan and associated subarea plans have been developed in compliance with these standards, as interpreted by the U.S. Supreme Court over the past 200 years. Land uses would continue to be regulated by the local jurisdictions based on the local jurisdiction's zoning ordinances, general plans, etc. Please see **Theme Response V, Taking of Private Property.**

104(k) The MSCP Plan is designed to address all covered species as if they were listed by the federal and/or state governments. If in the future, a covered but unlisted species becomes listed as threatened or endangered, the take authorization would become effective concurrent with its listing. Assurances provided in the MSCP Plan and Model Implementing Agreements state that the take authorization holders would not be required to commit additional land, land restrictions, or financial compensation, beyond that described in the subarea plan, for the protection of any covered species (see Section 3.3 of MSCP Plan, Volume I). For uncovered species that may be listed in the future, the wildlife agencies would first determine whether additional conservation measures, beyond those prescribed by the MSCP Plan, are necessary to adequately protect the species. If no such measures are necessary, the species would be added to the covered species list using the federal and state take authorization amendment process. If the MSCP conservation measures are not adequate, the wildlife agencies would work with the participants to identify and jointly implement the steps necessary for coverage. In addition, the wildlife agencies and the jurisdictions have grouped vegetation communities (significantly and sufficiently conserved vegetation communities (Section 3.4 of the MSCP Plan, Volume I) for the purpose of identifying responsibilities for conservation actions needed to add uncovered and unlisted species to the Covered Species List if they are federally or state listed in the future. Based on the above, the benefits to landowners

are the streamlining of the permit process and the greater degree of certainty provided for future developments with regard to mitigation for covered species and their habitats.

104(l) The preserve design checklist described in Section 3.6 of the MSCP Plan, Volume I, pages 3-29 and 3-30, applies to the subarea plan and framework management plan to be prepared by the take authorization holder or local jurisdiction. In particular, preserve management and biological monitoring criteria described on page 3-30 apply to habitat lands under the management responsibility of the take authorization holder and not to all habitats conserved through avoidance during the development process. When privately owned habitat land is protected by a conservation or open space easement, however, then the easement would prohibit uses incompatible with the area's biological function. The MSCP Plan will not prevent landowners from allowable uses of their land in accordance with existing federal, state, and local laws and regulations.

104(m) Some agricultural lands have been included within the City of San Diego's MHPA since they may provide linkages between habitat areas, and raptor foraging habitat. Private lands currently in agricultural use could continue. Private lands which are not currently in agricultural use but are designated and zoned for agriculture use would be allowed, if consistent with the jurisdictions' regulations.

104(n) See revised Section 7 in the Revisions to the MSCP Plan, Volume I. The Federal Anti-deficiency Act and similar state laws define the extent to which state and federal agencies can commit funding. Taking into consideration these laws and the state and federal ESA's, the assurances expressed in the MSCP Plan, Volume I, Sections 4.2.2 and 7.1, are the appropriate assurances on the part of the state and federal governments. While this is the legal limit of the state and federal assurances, the state and federal governments have already expressed their commitment to carrying out their land preservation commitments. They have already acquired over 2,000 acres of their 13,500 acre commitment. Based on already appropriated funding, they would acquire another 1000 acres by the close of federal fiscal year 1997. This represents over 20 % of their acquisition commitments in less than 3% (1 year of a 30 year commitment) of the time anticipated in the MSCP Plan. Since the enactment of the California Environmental Quality Act, the Lead Agencies have had the responsibility to assess the impacts to the environment and require mitigation for significant adverse impacts for projects they approve. The MSCP Plan and subarea plans are designed to fit into the existing process and not only fulfill the requirements of CEQA, but also the requirements of the state and federal Endangered Species Act. This results in significant permit streamlining and would reduce the costs of future development.

104(o) The portion of the City of San Diego's cornerstone lands which will generate conservation banking credits are those portions which could be developed. The City has chosen to not develop them, but rather to include them in a conservation bank. They will receive income from the lands based on the sale of conservation credits. The owners of the Carlsbad Highlands, Crestridge and San Vicente conservation banks have also availed themselves of this opportunity.

104(p) Comment noted. The plan language quoted describes ordinances that will generally be used until new ordinances, regulations, etc. are in place to implement subarea plans. For the County to obtain take authorizations from the wildlife agencies will likely require modification of the existing brushing and clearing ordinance. No changes in this ordinance have been submitted to the County Board of Supervisors. If and when changes are proposed, the effects on property owners will be considered.

104(q) The MSCP generally eliminates project-by-project review by the wildlife agencies in regards to compliance with the state and federal ESAs, except as provided in some portions of the County Subarea Plan.

104(r) Section 6.1, page 6-1, of the MSCP Plan, Volume I, recommends that impacts of land uses adjacent to the preserve on covered species or their habitats should be reduced or eliminated through good land use planning principles. The Plan does not require buffers outside the preserve system.

104(s) The intent of the provision in Section 6.2.2 of the MSCP Plan, Volume I, is to describe how incidental take for agricultural operations on lands, as shown on Figure 2-1 of the MSCP Plan, can be provided by a local jurisdiction. There is no provision in the ESA or its implementing regulations for a "blanket permit" for a particular activity. Therefore, each jurisdiction must identify within its subarea plan the mechanism by which farming operations will be eligible to receive take authorizations, such as a "certificate of inclusion." The certificate must identify the location of the lands by map, and indicate the parcel number, acreage and current landowner to which the take authorizations apply. The local jurisdiction must commit to enforce the applicable provisions of the subarea plan, take authorizations, and implementing agreement as they apply to each recipient of a certificate of inclusion (see section 9.21 of the Model Implementing Agreement). The particular crop grown on individual properties has no bearing on this provision of the MSCP Plan. These clarifications have been made in the Revisions to MSCP Plan, Volume I, Section 6.2.2. See also **Theme Response XXI, Indirect Impact on Agricultural Land.**

104(t) The MSCP has been modified to acknowledge that agriculture is a compatible use adjacent to preserves. Please refer to Section 6.2.2 of the MSCP Plan, Volume I, on agriculture included in the Revisions to the MSCP Plan, January 1997.

104(u) The reference to agricultural lands being de facto buffers has been deleted from revised Section 6.2.2 of the MSCP Plan. Please refer to the Revisions to the MSCP Plan, January 1997.

104(v) See response to Comment 25(a).

104(w) Comment noted. The MSCP Plan anticipates a voter-approved funding mechanism.

104(x) Brush management/fuels management for the protection of new developments will be the responsibility of the new development and will funded by the new development. The local fire departments, districts and CDF will have the responsibility for determining the size and location of fuels management zones. In addition, the MSCP Plan also requires preparation of detailed fire/fuel management plans conjunction with the wildlife agencies. The preserve fire management plans will be designed to reduce the potential for catastrophic fire events which affect both the preserve and adjacent urban areas. The Wildland Urban Interface MOU for fire/fuels management strategy for San Diego County, when adopted, will provide construction and brush management standards around existing and future developments. When adopted into the Uniform Fire Code, these standards will be used by all fire agencies in San Diego County to ensure consistent treatment of the urban/wildland interface. Subarea plans also provide brush management guidelines or incorporate existing local guidelines which will be used until the countywide standards are completed.

104

Farm Bureau San Diego County

1670 East Valley Parkway, Escondido, CA 92027 • (619) 745-3023 • Fax: (619) 489-6348

October 29, 1996

The Honorable Mayor Susan Golding
City of San Diego
202 "C" Street
San Diego, CA 92101

Dear Mayor Golding:

The San Diego County Farm Bureau would like to thank you for the opportunity to comment on the Multiple Species Conservation Program (MSCP) Plan and the Draft Environmental Impact Report/ Environmental Impact Statement (EIR/EIS). As a county wide association of farmers and ranchers, Farm Bureau represents the interests of the agricultural industry as well as rural communities. Agriculture is San Diego County's fourth largest industry and brings in over $1 billion in direct sales to the economy.

First, Farm Bureau must point out that there have been substantial changes in the documents concerning agricultural issues, from what was noticed for public hearings, and adopted and committed to by the City of San Diego. These changes require that the comment period be reopened, the EIR/EIS be recirculated, and further public hearings be held. 104(a)

Farm Bureau views the MSCP plan as a severe threat to both the rights of individual farmers and ranchers as private property owners, and to the continued persistence and economic viability of agriculture in San Diego County. The program, as written, offers no benefit to agricultural landowners, since it does not clearly allow for incidental take of listed species through agricultural activities, and it will certainly accelerate and concentrate urban growth on the most productive, highest value agricultural lands. The contemplated practices of regulating land uses, including contemplation of modifications to grubbing and clearing ordinances to make them more burdensome, will result in damages to private property owners (including farmers) from the loss of value of their lands. These losses will be the result of the regulations imposed on landowners, and the loss of marketability and value of land that is targeted for preservation. 104(b) 104(c)

In view of these factors, Farm Bureau strongly urges that this plan not be adopted. 104(d)

Since farmers have no ability to pass on increased production costs, because markets for most agricultural products are global in nature, (that is, prices are often determined by market forces affected by worldwide supplies and worldwide demand) increased costs mean local farmers lose their competitiveness. Costs to farmers associated with the implementation of this plan are likely to include mitigation requirements for conversion of natural lands to agriculture, (in certain areas of the MHPA) and conversion of lands in one form of 104(e)

agriculture, (i.e. grazing) to another. The typical costs of mitigation simply are not economically bearable for agricultural land use activities. 104(e)

The requirement that urban development more heavily mitigate for its impacts on the native landscape, the higher the number of species impacted and the quality of habitat disturbed, will result in developments being placed on the best and most productive farmland in the county at an increasing rate.

Since farmlands with the most intensive agricultural uses are also likely to harbor the least number of sensitive species and habitat, the cost of mitigation for developing those lands to urban uses will be lower. That means the farmlands outside of preserve areas will be more attractive economically to develop than natural lands. Neither the plan, nor its environmental documents address this issue. Farm Bureau urges that this issue be analyzed and recognized as the serious threat that it poses to the continuance of agriculture in San Diego County. 104(f)

The problem of loss of productive agricultural lands will also be accelerated through the land use regulations imposed by the plan on farmland inside preserves, and the high costs (or outright prohibition) of conversion of private land, held for future agricultural use, from a natural state to agriculture. In short, as farmland is more quickly gobbled up by development near urban centers, farmland in preserve areas or high habitat value areas, will not be able to make up for that loss by converting land into new production, or lower productive land to a more productive use.

Issues of concern in the MSCP plan to San Diego County Farm Bureau

1) The Subarea plans have precedence over the MSCP plan, therefore the public has no real idea what the whole plan is going to be. 104(g)

Chapter 3.0 of the plan indicates that, "Subarea plans may change over time as preserve boundaries are refined and as annexations occur between the incorporated cities and the County. Subarea plans may include policies different than those in this plan. In the event of any inconsistencies between the general guidelines in the MSCP Plan and specific requirements in a subarea plan, the subarea plan shall take precedence." 104(h)

This effectively means that the public has been told that they can expect to have to comply with a plan that is in constant flux, and may bear no resemblance to the plan that has actually been released for public review here.

2) The Plan commits to undefined regulatory programs for "interim protection" of unacquired private lands in preserve areas.

Section 3.2 of the plan indicates that each subarea will have a process for allowing development outside the preserve, and, "a method for the interim protection of habitats in the MHPA until a preserve plan is finalized and lands are acquired or conserved through the development process." 104(i)

This means the land use authorities will be prohibiting the legal uses of private property, that are otherwise allowed by zoning, resulting in serious violations of private property rights. This is unacceptable. 104(i)

3) Prohibiting the normal, legal uses of private property unnecessarily exposes the City of San Diego, and other land use authorities to liability for fifth amendment takings of private property.

By unnecessarily inserting themselves between the state and federal wildlife agencies, in order to act as the implementers of the endangered species acts, and by extending regulations far beyond those acts, the local land use agencies are exposing themselves to gigantic fiscal liability for uncompensated regulatory takings. 104(j)

4) The plan does not sufficiently solve the problem of future listings of species in the area The plan does not provide "assurances."

Section 3.4 outlines the process for covering new species with the incidental take permit. However, some habitats that are not covered by the plan, (i.e. grasslands, chaparral, oak woodlands) are likely to present severe problems when species inhabiting them get listed in the future. 104(k)

5) Section 3.6 of the plan indicates a far too stringent restriction on unacquired private property.

Page 3-30. Section 3.6 of the MSCP Plan discusses preserve management and biological monitoring. It states that only certain uses will be allowed, specifically, "Appropriate uses within the preserve that are compatible with and complement the biological function of the area." 104(l)

Uses on unacquired land must be allowed according to their zoning, entitlements and other processes. To bar the use of private land for agricultural purposes, because it does not "complement the biological function of the area," will certainly be considered an unconstitutional taking by the City, or other land use authority.

6) The Plan includes agricultural lands as corridors and wildlife linkages. 104(m)

Private lands in agricultural uses should be excluded from these designations.

7) The state and federal governments are allowed to penalize the local participants for their lack of contribution to the program.

Section 4.2.2 outlines how, if the state or federal governments do not come forward with their portion of their commitment to this program, the permit can be altered to cover fewer species and habitats. Considering that it is very likely that the both the state and the federal governments will not be able to muster the financial resources to meet their end of the deal, the plan will surely not provide even the limited "assurances" sought by the species covered at this point. Similar language is also included in Section 7.1. This is unacceptable. 104(n)

8) The City requires fair market value compensation for "encumbrances" to its land, while encumbering thousands of private property owners with severe regulations without compensation.

Explained in Section 4.3.1, regarding City of San Diego Cornerstone lands, the plan states that the City requires compensation for encumbrances to its lands. Yet, the City is apparently ready to severely encumber thousands of acres of private property, with thousands of individual owners, while offering no compensation for the encumbrances it imposes. The City should recognize this is a terrible inequity. 104(o)

9) Contemplated changes to existing grubbing and clearing ordinances are unacceptable.

Section 5.1 begins with language indicating that grubbing and clearing ordinances will be used to ensure that habitat is not lost prior to local approval. Section 5.4 also indicates, "The actions for MSCP implementation may be phased, provided that existing regulations on grading and grubbing protect habitats consistent with the MSCP in the interim between signing of an implementation agreement and permanent preservation actions." 104(p)

Farm Bureau views any action to change the existing grubbing and clearing ordinance to prohibit agricultural clearing as unacceptable to agriculture.

10) The Plan does not eliminate the "project by project review" by the Service and Fish and Game.

As an intended goal from the outset, elimination of project by project review has not been achieved, and it should be recognized that this plan has failed to produce that result. 104(q)

11) The preserves will have uncompensated regulatory impacts to unacquired private lands around them.

The language in Section 6.1 indicates that the preserves will incorporate buffer zones around them that will impact the use of private property, again exposing the City and other jurisdictions to legal liability. 104(r)

12) Language in the plan about agricultural uses and incidental take is unacceptable and has been altered from that approved previously in the public process. 104(s)

Section 6.2.2 has several areas Farm Bureau disagrees with. First, it should be recognized that agriculture *is* a compatible use adjacent to preserves (not, as the plan says, *can* be compatible.) 104(t)

Agricultural lands should not be labeled as "buffers" whether de facto or not. This invites planners to freeze agricultural lands in their present use, which is inappropriate. 104(u)

The allocation of incidental take to agricultural activities should specifically be allowed. Th current language stating that it is "supported" is not acceptable. It is also contrary to what 104(v)

104

the public was told previous to the release of this document. The public actions of the lead agencies in preparation of this document indicated that agricultural activities, including grazing, would automatically be covered by the incidental take permit. This is a clear violation of the public process, and language restoring these intents should be reinstituted.

13) The options for a regional funding source lean toward increases in property taxes.

104(w)

Three of four proposed funding options involve raising assessments of taxes on private property holders. The fourth, increasing the sales tax, is the only contemplated option that actually would have all those that benefit form the preserves paying for them. Farm Bureau views increases on the tax burden of land owners to pay for a program that benefits the entire public as inequitable. Contrary to language in Section 7.4.1, Farm Bureau urges that all funding options must be voter approved.

14) Provisions for brush management should be carefully scrutinized.

The existing language for management of brush in and around the preserves in Section 7.3.2 is inadequate. In light of the recent fire in Carlsbad, this issue should be carefully reviewed again, and public safety issues brought to the forefront in consideration. The recent conflagration was a terrible loss of property. This plan should never be the cause of future losses of property, or worse, loss of human life, because public safety concerns were not adequately addressed.

104(x)

It is hoped that you will seriously reconsider moving forward with this plan, and that you will consider the tremendous impacts this plan will likely have on the future viability and very existence of agriculture in the county. Once again, we thank you for the opportunity to comment on these documents at this time, and would again urge that they be recirculated for public comment and hearings as indicated above. Thank you.

Sincerely,

Eric Anderson
President

105 SILVER, DAN, ENDANGERED HABITAT'S LEAGUE, OCTOBER 28,1996

105(a) See **Theme Response I, Species Analysis Approach.**

105(b) Please refer to revised MSCP Plan, Volume I, Table 3-5 included in the Revisions to the MSCP Plan, January 1997. Revised Table 3-5 incorporates portions of various tables, charts, etc. from the MSCP Plan and describes the rationale for coverage, including the level of conservation of known populations and potentially occupiable habitat, the basis for coverage (landscape, special management, etc.), and details of the coverage. Table 3-5 of the MSCP Plan has been revised to include the monitoring approach that will document conservation of populations and preserve function. Please also refer to **Theme Response I, Species Analysis Approach.**

105(c) Please refer to response to Comment 45(b).

105(d) Please refer to response to Comment 45(c).

105(e) Please refer to response to Comment 45(d).

105(f) Please refer to response to Comment 45(e).

105(g) Please refer to response to Comment 45(f).

105(h) Please refer to response to Comment 45(g).

105(i) Please refer to response to Comment 45(h).

105(j) Please refer to response to Comment 45(i).

105(k) Please refer to response to Comment 45(j).

105(l) Please refer to response to Comment 45(k).

105(m) Please refer to response to Comment 45(l)

105(n) Please refer to response to Comment 45(m).

105(o) Please refer to response to Comment 45(n).

105(p) Please refer to response to Comment 45(o).

105(q) Please refer to response to Comment 45(p).

105(r) Please refer to response to Comment 45(q).

105(s) Please refer to response to Comment 45(r).

105(t) The San Diego horned lizard is a species that is widespread within the MSCP study area and in areas to the north and east which have also been designated as NCCP Subregional planning areas. NCCP-sponsored research by the University of California, San Diego found that 13 out of 18 of their amphibian-reptile sample sites supported horned lizard populations, again indicating their widespread presence (pers. comm. Drs. Ted Case and Robert Fisher). These sites were dominated by coastal sage scrub habitat. Research is continuing on the habitat parameters most important to sustaining the horned lizard. Preliminary results point to cryptogramic soils and possible distribution of harvester ant colonies.

The MSCP Plan would preserve 56 percent of potential habitat, including 62 percent of coastal sage scrub, 49 percent of chaparral, and 38 percent of coastal sage scrub/chaparral and 63 percent of known point occurrences of this species (see revised MSCP Plan, Table 3-5, in the Revisions to the MSCP Plan, Volume I). Habitat linkages to the east and north would also be maintained, assuring connectivity to significant populations of this species in areas adjacent to the MSCP preserve.

Conservation of large blocks of protected habitat has been emphasized in the MSCP preserve to provide appropriate habitat for horned lizard and to impede invasion of Argentine ants into horned lizard habitat. While certain smaller habitat fragments in the more urban portion of the preserve system may require management of this exotic, sufficient larger blocks of habitat exist to minimize the likely influence this pest species.

While the distribution of this species in the MSCP study area is not uniform, scientific evidence indicates that it is fairly widespread. By maintaining habitat connectivity with adjacent planning areas, and appropriately managing habitat lands to control harmful non-native species and human disturbances, this species would persist in the MSCP study area.

105(u) The comment is noted. Vernal pools would continue to be regulated as a special aquatic habitat under Section 404 of the federal Clean Water Act and mitigation would be required in accordance with existing regulations.

105(v) Please refer to response to Comment 45(s).

105(w) Please refer to response to Comment 45(t).

105(x) Please refer to response to Comment 45(u).

105(y) Please refer to response to Comment 45(v).

105(z) Please refer to response to Comment 45(w).

105(aa) Please refer to response to Comment 45(x).

105(ab) Please refer to response to Comment 45(y).

105(ac) Please refer to response to Comment 45(z).

105(ad) Please refer to response to Comment 45(a...

105(ae) A separate Subarea Plan is currently being prepared by several water districts. Other districts have the option to prepare a Subarea Plan at any time they choose.

105(af) Please refer to response to Comment 45(ab).

105(ag) Please refer to response to Comment 45(ac).

105(ah) Please refer to response to Comment 45(ad).

105(ai) Please refer to response to Comment 45(ae).

105(aj) Please refer to response to Comment 45(af).

105(ak) Please refer to response to Comment 45(ag).

105(al) Please refer to response to Comment 45(ah).

105(am) Please refer to response to Comment 45(ai).

105(an) Please refer to response to Comment 45(aj).

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105(bf) Please refer to response to Comment 45(bb).

105(bg) Please refer to response to Comment 45(bc).

105(bh) Please refer to response to Comment 45(bd).

105(bi) Please refer to response to Comment 45(be).

105(bj) Roads are not proposed on Otay Mountain.

105(bk) See response to Comment 74(al) regarding Sections 16.2 and 16.3 of the City of San Diego and Model IAs. The term "significant" has been deleted from Sections 16.2 and 16.3 and Section 16.2 has been revised to provide for partial as well as total permit suspensions. While, as the commenter points out, any permit violation is, technically speaking, grounds for enforcement action, the implementing agreement accurately states the position of the wildlife agencies that suspension or revocation of a local jurisdiction's permit should be triggered by material violations. Please also refer to response to Comment 45(bf).

105(bl) Once the Implementing Agreement terminates, biological impacts will be determined and mitigation imposed in accordance with then applicable law, including the California Environmental Quality Act. Please also refer to response to Comment 45(bg).

105(bm) Please refer to response to Comment 45(bh).

105(bn) The wildlife agencies agree with the commenter's suggestion that suspension of a participating local jurisdiction's entire Take Authorization may not be a practical or an appropriate remedy for a particular permit violation. See response to Comment 79(ap) regarding Section 16.2 for a more detailed discussion of this issue. Section 16.2 of the City and Model IAs has been revised to provide for suspension in whole or in part, of a local jurisdiction's Section 10(a) permit. Please also refer to response to Comment 45(bi).

105(bo) The wildlife agencies agree with the commenter that only lands preserved in excess of the land development requirements imposed by a participating local jurisdiction under an approved subarea plan should be available for sale as mitigation for other projects. The first sentences of Sections 9.13 and 9.14 of the IAs are meant to cover this situation. However, a sentence has been added to the end of Section 9.13 of the IAs to clarify that lands required to be avoided under a participating local jurisdiction's land development requirements are generally ineligible for inclusion in a conservation bank:

** 9.13. Contribution and Banking of Excess Mitigation

. . . Lands required to be avoided or which are outside of allowable development areas pursuant to [**LOCAL JURISDICTION'S**] zoning requirements are not excess mitigation lands and are generally ineligible for inclusion in a conservation bank.

Please also refer to response to Comment 45(bj).

105(bp) The wildlife agencies disagree with the comment. Growth inducing impacts are analyzed in Sections 5 and 6 of the EIR/EIS. Section 9.16 has been revised to clarify its scope. See

response to Comment 79(x) for the revised language for this section. Please also refer to response to Comment 45(bk).

105(bq) The wildlife agencies agree that lands annexed into a participating local jurisdiction must be protected under the annexing jurisdiction's subarea plan. The annexing jurisdiction will be responsible to insure that any development of the annexed lands is consistent with the conservation goals of the MSCP Plan and subarea plan. Section 9.20 has been revised to clarify the annexing jurisdiction's responsibilities toward the annexed lands:

** 9.20 Annexation of Lands. Upon an annexation of lands, [**LOCAL JURISDICTION**] shall amend its subarea plan to insure that any development of the annexed lands proceeds in accordance with the conservation goals of the MSCP Plan and subarea plan. Amendment of [**LOCAL JURISDICTION'S**] take authorization may also be required in certain instances involving an annexation of lands.

Please also refer to response to Comment 45(bl).

105(br) Please refer to response to Comment 45(bm).

105(bs) Please refer to response to Comment 45(bn).

105(bt) The wildlife agencies agree with the commenter that the MSCP Plan should incorporate objective criteria to monitor implementation of the Plan through comparisons of habitat preserved to habitat lost and also comparisons of the types of habitat preserved with the types of habitat lost. See **Theme Response X, Habitat Conservation Accounting Model** and response to Comment 45(bo).

105(bu) Please refer to response to Comment 45(bp).

105(bv) Please refer to response to Comment 45(bq).

105(bw) Please refer to response to Comment 45(br).

105(bx) Please refer to response to Comment 45(bs).

105(by) Please refer to response to Comment 45(bt).

105(bz) Please refer to response to Comment 45(bu).

105(ca) Please refer to response to Comment 45(bv).

105(cb) Please refer to response to Comment 45(bw).

105(cc) Please refer to response to Comment 45(bx).

105(cd) Please refer to response to Comment 45(by).

105(ce) Please refer to response to Comment 45(bz).

105(cf) Please refer to response to Comment 45(ca).

105(cg) Please refer to response to Comment 45(cb).

105(ch) Please refer to response to Comment 45(cc).

105(ci) Please refer to revised Table 3-5 in the Revisions to the MSCP Plan documentation, Volume I, January 1997.

105(cj) Please refer to response to Comment 45(cd).

105(ck) Please refer to response to Comment 45(ce).

105(cl) Please refer to response to Comment 45(cf).

105(cm) Please refer to response to Comment 45(cg).

105(cn) Please refer to response to Comment 45(ch).

105(co) Please refer to response to Comment 45(ci).

105(cp) Please refer to response to Comment 45(cj).

105(cq) Please refer to response to Comment 45(ck).

105(cr) Please refer to response to Comment 45(cl).

105(cs) Please refer to response to Comment 45(cm).

105(ct) Please refer to response to Comment 45(cn).

105(cu) Please refer to response to Comment 45(co).

105(cv) Please refer to response to Comment 45(cp).

105(cw) Please refer to response to Comment 45(cq).

105(cx) Pages 2-13 through 2-15 of the Draft EIR/EIS describe the watersheds included within the MSCP study area and the degree of inclusions of those watersheds within the MHPA. Inclusion of 53% of the total habitat acres of the identified watersheds within the MHPA would encourage maintenance of existing hydrologic regimes. This issue would also be addressed in conjunction with wetland permitting efforts for individual projects.

105(cy) Please refer to response to Comment 45(cr).

105(cz) Please refer to response to Comment 45(cs).

105(da) Please refer to response to Comment 45(ct).

105(db) Please refer to response to Comment 45(cu).

105(dc) Please refer to response to Comment 45(cv).

105(dd) Please refer to response to Comment 45(cw).

105(de) Please refer to response to Comment 45(cx).

105(df) Please refer to response to Comment 45(cy).

105(dg) Please refer to response to Comment 45(cz).

105(dh) Please refer to response to Comment 45(da).

105(di) The ratios in the BMO are intended to be applied except where inappropriate, for practical reasons.

105(dj) Please refer to response to Comment 45(dc).

105(dk) Please refer to responses to Comments 45(dd) and 45(de).

105(dl) Please refer to response to Comment 45(df).

105(dm) Please refer to response to Comment 45(dg).

105(dn) Please refer to response to Comment 45(dh).

105(do) Please refer to response to Comment 45(di).

105(dp) Please refer to response to Comment 45(dj).

105

ENDANGERED HABITATS LEAGUE
Dedicated to the Protection of Coastal Sage Scrub and Other Threatened Ecosystems

Dan Silver • Coordinator
8424A Santa Monica Blvd. #592
Los Angeles, CA 90069-4210
TEL/FAX 213•654•1456

Oct. 28, 1996

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DEVELOPMENT SERVICES

John Kovac, Senior Planner
Land Development Review Division
City of San Diego
1222 First Ave., 5th Floor
San Diego, CA 92101

Gail Kobetich, Field Supervisor
U.S. Fish and Wildlife Service
2730 Loker Ave. West
Carlsbad, CA 92008

Ron Rempel, NCCP Program Manager
Calif. Dept. of Fish and Game
1416 Ninth St.
Sacramento, CA 95814

RE: Multiple Species Conservation Program: MSCP Plan; MSCP Subarea Plans; Draft Environmental Impact Report/Draft Environmental Impact Statement; and Model Implementing Agreement

Dear Messrs. Kovac, Kobetich, and Rempel:

The Endangered Habitats League wishes to submit the following comments on the above-referenced documents.

I INTRODUCTION

The Endangered Habitats League is an organization of Southern California conservation groups and individuals dedicated to ecosystem protection, improved land use planning, and collaborative conflict resolution. As a stakeholder in the MSCP Working Group, we have worked assiduously towards a successful program. During these last several years, we have been firm supporters of the MSCP *process;* soon it will be time to judge the final *result*.

We cannot stress enough the need for a meaningful public comment period—one which responds constructively to points raised. This is because the plan as presented has serious flaws which need correction if it is to become acceptable. The undoing of the major policy decisions made heretofore is not being requested; to the contrary, we believe that, given the will, the plan's deficiencies can be remedied using the existing framework. Our fundamental concerns are threefold: that the plan be honest—that, in terms of species coverage, it accomplishes what it purports; that its implementation, particularly in the "softline" areas, be fully assured; and that it serve as an adequate program EIR for future projects. We are willing to work with the applicants and the regulatory agencies to achieve these goals.

These comments will first discuss general issues which cut across the subareas, under the heading, MSCP Plan. There will follow comments on the EIR/EIS, the model Implementing Agreement, and the individual subarea plans. In order to facilitate resolution of issues, comments will usually consist of a brief discussion of the problem followed by an outline of suggested remedies.

II MSCP PLAN COMMENTS

A. The biological information presented is inadequate for informed decision-making. (3.3)

Discussion: The document transmits little of the solid biological work which we observed during plan development. The reader gains little understanding of *why* the reserve may function, nor of the justification for species coverage. For a plan which is sure to receive nation-wide scrutiny, its deficiencies in terms of information presented are shocking. The choice not to interpret data for the reader's benefit also create a perception of disdain.

The basic criteria for species coverage appears to be that of sustaining "viable populations" within the plan area. Coherent explanations to support such determinations are not provided, however. The species table supplies only minimal raw data and conclusions, and the Species Evaluations are actually "worksheets," comprised of dense data whose meaning is often indiscernible. At times, the information presented in the Evaluations directly contradicts the coverage determination eventually proposed.

An aspect of the coverage proposals which detracts from their rigor and intelligibility is a lack of methodology. There is no organizing framework in which to place the bulk of the determinations, such as biological status, habitat type, or informational needs. The only guidance offered is generic, as found in the Species Evaluations: 1) sufficient data were available to determine that MSCP populations were important to the species' overall survival; 2) sufficient data were available to determine that the plan would conserve a significant and necessary amount of the species' range/habitat; and 3) management would occur consistent with the needs of the species. Unfortunately, though, even these do not find clear or defensible explanation. 105(a)

Suggested remedy: The biological underpinnings of the MSCP should be presented in far more detail. The role of the MSCP Biological Standards and Guidelines should be discussed, and also included should be the descriptions of the biological care areas and linkages contained in the 1995 Public Review Draft. For each biological core area and linkage, there should be an exposition of how the proposed plan conserves sufficient biological values (coastal sage scrub source populations, raptor foraging habitat, linkage function, etc.).

Finally, the justification for each covered species should be presented in a coherent and organized narrative. A variation on the Species Evaluation framework is suggested:

- If possible, analyze species in groups, for example, vernal pool or coastal sage scrub-associated species. If possible, identify species which may serve as "umbrellas" for others.

- Discuss the data base, which will vary between species. For well or predictably-distributed species, information at the reserve design level—landscape and habitat data—may suffice. For others, only more detailed information, such as survey-based abundance and distribution data, can establish the levels of take and conservation required for permit issuance. An example of the latter is nest sites and foraging territories for raptors. For each species, an assessment should be made as to whether the information available is adequate for decision-making, and the reasons given. 105(b)

- The amount and configuration of habitat proposed for preservation should be measured against the species' breeding, foraging, and other needs, such that a determination of coverage is justified. Hydrological conditions should be part of the assessment for riparian and wetland species. The specific geographic areas which support the species should be described, and the reasoning behind a conclusion of sufficient habitat elucidated. Clear figures for take and conservation should be provided. 105(b)

- Each species' management needs should be identified. These should be made conditions of the permit, and then carried through to each subarea's management plan.

- The meeting of statutory requirements—section 10(a), NCCP Conservation Guidelines, etc.—should be assessed.

B. Consistency with the Natural Communities Conservation Planning (NCCP) Guidelines has not been determined.

Discussion: The Dept. of Fish and Game promulgated these Guidelines for use in conserving the coastal sage scrub ecosystem, and the U.S. Fish and Wildlife Service, in the final rule for the California gnatcatcher, adopted them as best available scientific information. Nevertheless, references to the Guidelines are cursory, and key components are completely neglected, including the criteria of "no net loss of habitat value from the present" as defined by the viability of populations. It is important that all the standards employed be defined early in the document and carried through each subarea plan. 105(c)

Suggested remedy: Fully analyze Guidelines consistency for coastal sage scrub and its dependent species, on both plan and subarea levels. Given its importance, this analysis should be recirculated for public comment.

C. The relationship of the MSCP to recovery planning is unclear.

Discussion: In carrying out the ESA's goal of species recovery, the Service apparently intends to rely on the 10(a) standard alone (not appreciably preclude the likelihood of recovery). However, over much of the plan area, future, additional recovery options will be effectively precluded. Does this not make the MSCP a *de facto* recovery plan? 105(d)

Suggested remedy: Given the above circumstances, the MSCP Plan should document that the standards used—viable populations, no-net-loss of habitat value from the present for coastal sage scrub species, etc.—contribute to recovery rather than merely not appreciably reduce its likelihood.

D. The coverage of species remaining at "high risk" is not acceptable. (3.3)

Discussion: In evaluating species coverage, the document stratifies species into low, medium, and high risk. "High risk" is defined as "not adequately protected and/or potentially subject to edge effects." By definition, a species *still vulnerable* despite proposed conservation measures—a species at "high risk" of eventual extirpation due to inadequate habitat protection or adverse edge effects—cannot be said to meet federal or state Endangered Species Act or NCCP Conservation Guidelines standards. It is worth noting that during plan development, these same risk stratifications were used to evaluate various preserve scenarios, with a "high risk" determination indicating that additional conservation measures were needed before coverage could be granted.

The species table is also inconsistent in its treatment of the risk factors. For instance, only sometimes are management measures identified which might ameliorate them. 105(e)

105

Suggested remedy: The decision to label species with a *residual* risk factor—whether low, moderate, or high—is fundamentally ill-conceived, for it confuses criteria useful in the process of plan development with those ultimately necessary for judging coverage. The issue is not residual risk but rather whether the risk factors *have been reduced by the plan* to levels which assure continued viable populations. If the preserve and management measures do not reach this goal, then coverage should not be granted. 105(e)

E. The category of coverage due to "insignificance" is ill-conceived and poorly applied. (3.3.1, Species Evaluations p. 2)

Discussion: "Insignificance" is defined in the Species Evaluations as "an effect which cannot be measured, relative to the species' status as a whole." The application of this policy to the MSCP is potentially severely flawed, as it may conflict with the program's goal of conserving ecosystems. Thus, a species for which the MSCP plan area is "not a significant portion of its range" may nevertheless be an integral component of the MSCP ecosystem, and deserve fully equivalent conservation measures. Aldo Leopold's dictum, "The first rule of intelligent tinkering is not to throw away the pieces," bears repetition. Serial use of an "insignificant" finding will also lead to the progressive contraction of a species' range over time. Where does it end?

This category of coverage has also been applied inconsistently, and without supporting biological rationale. Some species which might be considered "insignificant" due to a wide range outside the plan area are so labeled, and some are not. There is rarely (the burrowing owl being an exception) a discussion which gives substantive reasons for a decision one way or the other. At best, application appears arbitrary, and at worst, on the basis on convenience.

The critical factor from our point of view is whether coverage under the "insignificant" rubric implies that *local extirpation* within the plan area is an anticipated outcome. This concern arises because the standard for coverage due to "insignificance" found in the Species Guidelines—"The MSCP conserves a substantial amount of habitat that potentially could support or be used by the species"—pointedly leaves out the "necessary habitat" language applied to the "adequately conserved" species. Furthermore, the species table dismisses factors which leave these species at "high risk," as though local extirpation were acceptable. 105(f)

It must be stressed that extirpation of species *currently extant* within the plan area, even if technically "legal" under the federal Endangered Species Act, has never been part of the MSCP program nor is it an acceptable outcome for the *public* partners in this venture. The golden eagle, for example, is not "insignificant" to San Diegans. The inherent contradiction of placing a species likely to be extirpated on a "covered species list" also has regulatory implications: If an applicant purposely chooses *not* to conserve an adequate portion of a wide-ranging species' range, what have they done to deserve the legal and financial benefits of permit issuance?

Suggested remedy: For many reasons, the ecologically unsound and inherently confusing "insignificance" methodology should be entirely dropped from the MSCP Plan. Furthermore, it should be clearly stated that, as a matter of policy, "coverage" under the MSCP requires a high likelihood of species *persistence* within the plan area, regardless of the species' overall range. As a worst-case scenario, if the MSCP plan area is so irretrievably damaged that it can no longer, by itself, sustain populations of a species, then habitat which substantially and adequately *contributes* to maintaining viable populations range-wide should be conserved (such as mountain lion territories).

F. Coverage for many species is not justified by the information presented. (3.3)

A review of the Species Evaluations discloses many serious problems, yet a defensible covered species list is a *precondition* for our support. In some cases, as will be noted below, the ultimate decision reached as to coverage is in direct contradiction to requirements formulated in the Species Evaluations 105(g)

105

themselves. This has led to a regrettable loss of program credibility which, unless rectified, could end in an abuse of discretion. Selected species are discussed below; other comment letters will provide additional evaluations. 105(

1. *Arroyo toad.*

Discussion: The data base in terms of distribution and abundance is inadequate. How does the exceedingly small tally of only 15 point locations support a determination of viable populations across the plan area? Due to several factors—the extreme degradation of riparian systems in the plan area, the arroyo toad's rarity, and its specialized habitat and hydrological requirements—the *gross* amount of stream-side habitat preserved predicts neither species occurrence nor survival. Only survey-based data allows a calculation of take and conservation adequate for permit issuance.

No information is provided as to how essential breeding requirements (water velocities, gravel terraces of appropriate particle size) are to be maintained in the face of upstream dams and urbanization, with resultant stream and sediment flow alterations. *Also very importantly, there is no analysis to support a finding that adequate non-breeding (foraging and dispersal) habitat (uplands within 1 km of streams) is afforded to arroyo toad populations by the preserve.* No indication is given as to how genetic interchange will be maintained, and finally, the relationship of the MSCP to a recovery strategy for this endangered species has been ignored.

The document itself states, "Because this species' distribution and habitat requirements in San Diego County remain poorly understood, the risk to the species is unknown." Thus, on the basis of the information provided, the inclusion of this species on the covered species list appears arbitrary and capricious.

Suggested remedy: Better population and distribution data is needed, and a determination of those streams and watersheds important to species survival and recovery. The presence of adequate, *safe* foraging habitat (including safety from road kill) should be either documented or provided. Protection of existing and potential habitat from sand and gravel mining and other impacts should be assured. The permit conditions should set watershed and hydrological standards which create and maintain desired habitat and breeding conditions. These conditions should be met through the subarea management plans, and include reservoir discharge regimes. Other management measures, such as exotic predator (e.g., bullfrog and sunfish) control, should be included. The role of the MSCP in regional species recovery should be discussed.

2. *Red-legged frog.*

Discussion: The document states that this threatened species "may" be extirpated, but that few surveys have been done. There is thus insufficient information upon which to base a finding of "discountable." Furthermore, no provisions for reintroduction are made. Under this circumstance, how is this species better off than if left *uncovered* by the MSCP and still subject to a subsequent recovery plan? 105(h)

Suggested remedy: The role of the MSCP plan area in species survival and recovery should be assessed. Appropriate conservation measures, such as reintroduction, should be considered and implemented through the subarea management plans.

3. *Southwestern pond turtle.*

Discussion: Only 8 point locations are know; how can such miniscule data on distribution and abundance support a determination of viable populations in the plan area? Only 52% of potential habitat is protected. Due to the widespread degradation of the plan area's riparian systems, this gross number does not translate into needed information on ponds, upland buffers, hydrological conditions, or 105(i)

105

populations. In fact, the document ignores hydrological issues, and also states that, "Most areas within MHPA appear to have insufficient upland buffers." (500 metes is recommended.) Levels of take and conservation *cannot* be adequately inferred. 105(i)

The Species Evaluation repeatedly classified data as insufficient: Coverage is "Unknown, would receive some protection from federal and state wetland regulations." Risk to the species is "Unknown." "Because of insufficient site specific data, regarding this species' distribution, it is unclear how changes to the MHPA will affect this species." Thus, on the basis of the information presented, the inclusion of this species on the covered species list appears arbitrary and capricious.

Suggested remedy: Better population and distribution data is needed. Maintenance of essential habitat and breeding conditions, through appropriate watershed and hydrologic management, should be conditions of a permit. Avoidance of impacts, including safety from sand and gravel mining, is required. The presence of adequate buffering of ponds by upland habitat should be documented or provided.

4. *Northern harrier.*

Discussion: A biological rationale for the "insignificance" finding is not provided. Critical survey data on nest sites and breeding pair is missing. Instead, in the Species Evaluation, there is a dense data set regarding potential habitat and the eventual finding of moderate to high risk based on the "high loss of foraging and breeding habitat; the occurrence of this species maybe further reduced within the MSCP planning area." It is acknowledged that "significant potions of this habitat remain at risk, depending upon application of San Diego County's Biological Mitigation Ordinance," yet there is no analysis of the effects that Ordinance would actually have.

Habitat adequate for coverage is repeatedly stated to depend upon preservation of "key" grassland areas: "1) the area west of Black Mountain; 2) the area designated as Neighborhood 10 and 8A; and 3) the Sweetwater/Otay Ranch/East Otay Mesa area." "Each of these areas is becoming increasingly and substantially fragmented under the proposed plan with a high amount of take. The Service recommends more habitat with less edge effect be preserved in the areas mentioned above. Ideally, at least one of the major grassland areas mentioned above should be preserved in a large intact block as it exists currently." There is no information presented as to what extent, if any, these recommendations for additional grasslands were consummated. As a result, the coverage proposed appears arbitrary and capricious. In addition, the criteria of a 300 foot nest buffer should be applied to low impact activities such as a trail *within* the preserve, rather than to the edge of suburban development. 105(j)

Suggested remedy: Survey data on breeding pair should be obtained, adequate buffering of nest sites should be ensured, and the protection of necessary foraging habitat should be either documented or secured. As noted above, the document itself supplies a range of solutions, e.g., west of Black Mountain. Other potential areas are San Pasqual Valley, Spring Canyon, and Dulzura–Jamul near Route 94.

5. *Cooper's hawk:*

Discussion: No analysis is given to support the conclusion that preservation of approximately 52% of habitat, "with significant portions of potential habitat . . . [remaining] at risk" would continue to support viable populations of this species. Survey data on the location of nest sites is needed; potential foraging habitat is of itself insufficient information upon which to base a finding of coverage. Also, the subarea plans do not consistently require avoidance of impacts. The document itself recommends that "Oak Woodland and Oak Riparian Forest in the areas north of San Vicente Reservoir and the Jamul/Dulzura area be preserved and that disturbance be minimized in the oak woodlands in the MHPA." 105(k)

Suggested remedy: The conclusion that viable populations are conserved needs more support, including nest site data. Preserve alterations may be necessary. Consistent avoidance measures should be added to the subarea plans. In the County, the specific measures recommended in the Species Evaluation should be assured. 105(k)

6. *Swainson's hawk.*

Discussion: Recommendations for additional grasslands protection were made, and the "Service would consider this species 'covered' if most of the potential foraging habitat was preserved, primarily the Black Mountain grassland area and the Otay Ranch/Mesa area." There is no indication if this occurred or to what extent. 105(l)

Suggested remedy: The protection of necessary grassland foraging habitat should be either documented or secured.

7. *Golden eagle.*

Discussion: The determination of "insignificance" has not been justified biologically. The Species Evaluation concludes that high risk results due to "loss of foraging and breeding habitat," and that this "may preclude long-term successful breeding." It is unknown whether recommendations to conserve additional grassland habitat were carried out. It was acknowledged that "Much uncertainty remains concerning the location of potential development and current nesting localities within the proposed preserve." Nest sites were felt to be highly vulnerable to edge effects. There is no final assessment as to how many eagle pair would remain, and where. 105(m)

Suggested remedy: The protection of necessary foraging habitat in conjunction with adequately buffered nest sites should be either documented or secured if this species is to be "covered." Potential additions include north and west of Black Mountain, Otay Mesa, San Pasqual Valley, and Jamul-Dulzura near Route 94.

8. *Burrowing owl.*

Discussion: Due to its precipitous decline in San Diego County and across the state, the burrowing owl is a species at high risk for future listing. According to the Species Evaluations, it has been identified by the California Secretary of Resources as a prime candidate for the "proactive" approach of multiple species planning. The MSCP has abjectly failed in this regard.

The data set used to judge population viability is *severely* inadequate. Only 24 point locations are plotted. The document itself acknowledges that the populations levels associated with these 24 point locations—and whether these locations represent wintering birds or breeding pair—are unknown. How, then, have the "Recommended Management Conditions" (Species Evaluations, p. 262) been met? These conditions include: "a) Identification of any colonies consisting of five or more breeding pair. If no such colonies remain, identification of historical colonies that are appropriate for enhancement; b) Preservation of colonies consisting of five or more pair, or of targeted enhancement areas."

Also, due to the patchy and poorly predictable distribution of this rare species, *gross* acres of grassland cannot alone establish levels of take and conservation, or reliably predict suitability for relocation attempts.

The first Species Evaluation concluded that the 37% of grasslands being protected would, *at a minimum*, result in loss of about half of the known point locations. It then stated that, "additional habitat would need to be preserved beyond that preserved under the MHPA if this species is to be adequately addressed under the plan.". Coverage for the City of San Diego, for example, depended upon additional "grasslands and agricultural lands that are compatible with burrowing owls in San 105(n)

105

Pasqual Valley and Spring Canyon areas." *Unfortunately, subsequent MHPA modifications protected 640 fewer acres.* The document also states, "The level of protection has decreased in the County. The protection goals should be higher in the County . . ." It was concluded that, "Protection for this species has diminished. The conditions placed on our original findings have not been met." 105(n)

Thus, the proposed "coverage" for the burrowing owl is in direct contradiction to the findings in the Species Evaluation. The level of data is also clearly inadequate to meet the criteria contained in the "Recommended Management Conditions." Rather than support a finding that necessary habitat or populations has been protected, the information presented instead renders such a determination arbitrary and capricious.

Regarding the "associated actions" included in the species table's finding, it is proposed to permit the potential take of impacted owls in conjunction with "passive relocation protocols." Such relocation is of mixed and often limited success (personal communication, Pete Bloom) and therefore is *not* a substitute for the protection of existing breeding colonies and ground squirrel populations. Has the Burrowing Owl Consortium been consulted as to the adequacy of the overall MSCP plan?

Suggested remedy: Survey data adequate to judge distribution, abundance, and population viability should be assembled. Targets for additional, suitable habitat preservation—either of existing owl populations or of grasslands with secure ground squirrel colonies—should be met. Finally, appropriate management measures—consistent with Recommended Management Conditions c) and d)—should be assured, along with the caveats noted above in relation to translocation.

The burrowing owl is ripe for listing as endangered; it is imperative from all perspectives—conservation, jurisdictional, development—that more and appropriate habitat be brought into the preserve system. Areas which may provide large, suitable grassland patches are north and west of Black Mountain in the City of San Diego Future Urbanizing Area, Otay Mesa, San Pasqual Valley, Spring Canyon, and Dulzura–Jamul near Route 94.

9. *Southwestern willow flycatcher.*

Discussion: The Species Evaluation states that major edge effects—affecting over 40% of habitat—would have to be ameliorated prior to coverage. There is, however, no evidence that this has been accomplished or that the management measures are anything but speculative. 105(o)

Suggested remedy: Document or provide adequate upland buffering from edge effects. Specify necessary management measures, and carry these through to the subarea plans. Demonstrate an appropriate contribution to the recovery of the species.

10. *Coastal cactus wren.*

Discussion: The Species Evaluation initially states the importance of "protecting and buffering all habitat, whether occupied or not." The need to improve buffering and strengthen linkages was *specified* for several areas, yet information as to the subsequent achievement of these goals is not given. The second evaluation disclosed deteriorating conservation at Otay Ranch (loss of occupied habitat at Poggi Canyon) and increased edge effects. Another series of conditions for coverage was formulated, yet it is *unknown*—and doubtful—whether these were achieved (that is, conservation of "ecologically viable" maritime succulent scrub at Otay Mesa, Del Mar, Point, Loma, La Jolla, National City, Jamul Mts., and Imperial Beach). The ultimate determination of coverage appears based on insufficient information and therefore arbitrary and capricious.

Suggested remedy: Clear parameters for cactus wren conservation need to be established and the plan *documented* to have meet them, referencing the locations. The protection of additional 105(p)

105

maritime succulent scrub appears to be needed and/or a *far more substantial and assured* program of habitat enhancement and restoration. 105(p)

11. *California gnatcatcher.*

Discussion: The Species Evaluations are packed with information of limited practical use to the reader, such as permutations of "% points." No meaningful analysis is given as to why these levels are or are not sufficient, such as the resultant numbers of inter–breeding pairs. The evaluation first states that incursions into core population areas are too serious and that the "proposed MHPA configuration and preservation designations . . . are too uncertain to allow a high degree of confidence." It identifies poor linkages, such as across I–8 as potentially fatal flaws, and states that coverage could only be given if there were a "demonstration" of improved linkage as well as as improved "integrity of population cores."

The next evaluation provides no clear assessment of whether these goals were met. To the contrary, there is significantly reduced conservation in multiple areas, affecting major subpopulations. Risk is considered to be "high," with a key linkage "tenuous at best," and conservation in Lake Hodges and Santee/E. Elliot "relatively low with high edge effects." (Santee impacts 71% of "mapped points.") It is recommended that the Lakeside linkage in western Jamul, be more secure and that greater conservation in Santee be seriously considered. *It is unknown the extent to which the necessary improvements (enhanced integrity of core populations and linkages) were made.* At best, we can conclude that insufficient justification is provided for coverage of the gnatcatcher; continued high risk is acknowledged. 105(q)

Suggested remedy: A detailed analysis is needed of the extent of core populations protected, as well as of the source–sink population dynamics of the plan area. Due to the extreme importance of connectivity, functional criteria for each linkage should be defined and maintenance of these conditions explicitly assured.

12. *American badger.*

Discussion: The badger is an example of condoning and indeed "covering" a species whose local extirpation appears likely under the MSCP. The document repeatedly makes the recommendation to "conserve additional grassland habitat," though this was not carried out. The significance of the badger to the ecosystem whose protection is the object of the MSCP has not been considered. 105(r)

Suggested remedy: Protection of additional, intact grassland blocks would benefit this species. Unless the plan can provide adequate habitat and avert local extirpation, it should be contrary to MSCP policy to place it on the covered species list (see Comment E above).

13. *Mountain lion.*

Discussion: Given the importance of top predators to the ecosystem, the mountain lion is another example of the poorly conceived and applied "insignificance" policy. 105(s)

Suggested remedy: If the plan area cannot support lions independently, there should be a substantial contribution to viable lion territories in adjoining areas. Otherwise, "coverage" is contradictory.

14. *San Diego horned lizard.*

Discussion: Inadequate attention has been given to the patchy and unpredictable distribution of this animal. Without more selective criteria for suitable habitat and/or focused surveys, it cannot be 105(t)

assured that major and sufficient populations are being incorporated into the preserve. Sufficiently unfragmented blocks of habitat are also needed; only these can withstand Argentine ant invasion. 105(t)

Suggested remedy: The proposed preserve needs assessment using the criteria noted above. Permit conditions should specify management standards for known, critical horned lizard habitat, such as Otay Mountain. It should be noted here and elsewhere that Otay Mountain, referenced in several documents as a 100% preservation area, is now proposed for fragmentation with roads and other facilities.

15. *Vernal pool species*

Creation of new pools should be prohibited as a mitigation measure, due to widespread failure of this technique. Please see other letters for additional comment on this subject. 105(u)

G. Narrow endemic species are insufficiently protected. (Also, see City of San Diego Comment A, below.)

Discussion: Three general problems exist with the approach to narrow endemic species. First, the different subareas do not consistently require such avoidance. The County clearly does so, the City of San Diego does so confusingly, and Chula Vista and Santee do not appear to do so at all. Secondly, even when avoidance is required, there are no or insufficient criteria to judge the biological adequacy of the avoidance undertaken or the circumstances under which avoidance might be found to be *infeasible*. Thirdly, many management prescriptions, found throughout the Species Evaluations, are not reflected within the subarea plans or management proposals. 105(v)

Remedy: First, ensure consistent avoidance for narrow endemics in all the subareas. Then, in all subareas, supply criteria for the biological adequacy of avoidance and supply criteria to use if findings of infeasibility are to be made. Use of measures such as translocation should be tied to meeting such criteria. Also, include all necessary management measures as conditions of the permits.

H. Species dependent upon open water are not adequately protected.

Discussion: The document incorrectly assumes that open water foraging habitat will be protected. Much of this open water, however, is thoroughly unprotected and under the control of the Port District. Activities such as jet ski parks may effectively destroy foraging habitat. 105(w)

Suggested remedy: The Port District should prepare a subarea plan, or delete from the covered list species whose open water foraging habitat is under threat of incompatible use.

I. There is insufficient incorporation of future project approvals into the California Environmental Quality Act (CEQA) process. (5.2)

Discussion: To gain third party benefits of the permits, future projects will have to demonstrate consistency with a subarea plan. This will require varying levels of additional environmental review, such as surveys of habitat types and species presence, hydrologic or other studies, identification of narrow endemics, avoidance measures, on and off-site alternatives analysis, etc. It is vital that this additional review be conducted through the CEQA process and use CEQA documents (Negative Declarations, EIRs) as vehicles, as only thereby can the public be assured of opportunity for comment, public hearings, a standard of evidence, and judicial recourse. Thus far, only the County subarea plan specifies appropriate use of CEQA in project consistency determinations. 105(x)

Suggested remedy: Each subarea plan should provide a narrative and a flowchart for subsequent project review which incorporates the CEQA process.

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J. There is inconsistent and unclear treatment of new public facilities within the preserve.

Discussion: The permits being issued are predicated upon an anticipated level of habitat protection and fragmentation. If the reserve is diminished or fragmentation increased due to *new, unanticipated* infrastructure or other public facilities, the basic permit conditions have been altered. Because the impacts of infrastructure are often major and adverse, it is vital that the plan be unambiguous on this subject and and consistent across the subareas. At this point, there is neither clarity nor consistency (although the City of San Diego subarea appears appropriately restrictive).

Suggested remedy:

1. *"Hardline" areas.*

For projects with clearly transient and insignificant impacts (such as a buried pipeline in a relatively non-sensitive area) the minor amendment process may suffice. Any project other project must go through the *major amendment* process. Given the propensity of new infrastructure to alter reserve function, the following criteria are suggested as conditions of major amendment approval: 105(y)

a) The facility must be essential to either public health or safety, strictly defined.

b) There must be no feasible alternative outside the preserve, despite increased cost.

c) The least impactive project design must be adopted.

d) All impacts must be fully mitigated such that there is no loss of preserve function, no-net-loss of habitat value to all covered species, and no loss of total reserve acreage.

2. *"Softline" areas.*

All new public and private facilities and infrastructure should be fully consistent with the subarea plan and in compliance with that jurisdiction's implementing ordinances.

The response to the above comment should pertain to each subarea.

K. Reliance on U.S. Army Corps of Engineers/Clean Water Act 404 permits and on Dept. of Fish and Game 2081 Streambed Alteration Agreements is insufficient as currently proposed in some subareas.

Discussion: Due to the major role of wetland and riparian habitats on the covered species list, consistency in the treatment of these habitats is essential throughout the plan area. In some subareas, though (Chula Vista and Santee), wetland and riparian species are afforded coverage based upon anticipated no-net-loss mitigation requirements being imposed through 404 permits and/or by adequate mitigation through 2081 agreements. There is insufficient assurance of species protection on several levels, however. For 404 permits, the Corps does *not* necessarily require in-kind mitigation so as to maintain no-net-loss of covered species habitat, as is assumed by the plan; the use of Nationwide Permits may cause smaller yet highly significant impacts to go completely unmitigated; and the role of the Service is only advisory except in the case of listed species. For 2081 agreements, the ability of the Dept. to *require* project redesign or mitigation is hardly absolute, as the Dept. operates under the assumption that "agreement" among the parties must be reached.

Suggested remedy: The affected subareas should address wetland and riparian species through their subarea plans rather than rely on other regulations which may not meet subarea goals. As a example of regulations for riparian and wetland-dependent species which satisfy MSCP, federal, and 105(z)

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state requirements, the City of San Diego's policies and implementing ordinances can be used (although not the City's *definition* of wetlands, which is neither well-suited to local conditions nor streamlined). 105(z)

L. Non-native predator control procedures are inadequate. (6.3.8)

Discussion: Feral animals, particularly cats, have been documented in numerous studies to have major adverse, often devastating, impacts on birds and other species. *The mere presence of feral animals or the presence of free-ranging pets is, on the basis of these studies, a fully adequate basis for the institution of humane trapping measures.*

Suggested remedy: In all the subarea plans, control of non-native predators (feral and free-ranging pet animals) must occur without the need to "document" adverse impacts, as these impacts are *known* to occur on the basis of mere presence of the animals, and "documentation" by way of dead body counts is infeasible. 105(aa)

M. The consequences of Chula Vista not adopting Modified GDP Policy Option 2, and the County not adopting its Proposed MHPA rather than Alternative 1, are inadequately recognized. (Also see City of Chula Vista Comment A.)

Discussion: The document (in the EIR/EIS particularly) notes the severe adverse consequences to unmitigable and essential core biological areas and connections (southeast of Otay Lakes, Salt Creek, Proctor Valley area) if Chula Vista and the County do not adopt their environmentally preferred alternatives. While acknowledging the impacts to coastal sage scrub dependent species such as the California gnatcatcher and coastal cactus wren *for these two subareas*, the plan does not acknowledge the ramifications for the MSCP plan as a whole and for all other subareas requesting incidental take of these species. Due to the regional nature of the MSCP, and the central importance of the areas in question as *source populations* for regional population viability, permits for incidental take of the gnatcatcher, cactus wren, and perhaps other species should not be issued to any jurisdiction on the basis of the MSCP plan unless the Chula Vista Modified GDP Policy Option 2 and the County's Proposed MHPA are adopted. 105(ab)

Suggested remedy: Modify the MSCP list of covered species subject to incidental take to include the gnatcatcher and cactus wren only upon appropriate actions by the County and Chula Vista.

N. Plan reviews must have full public participation and input. (6.4)

Discussion of problem/Suggested remedy: The annual and triannual reviews require far more than a public meeting. There should be a formal public review and comment period, with responses to comments. 105(ac)

O. Improvements in meeting program objectives in terms of ecosystem protection, species coverage, and assurances should be considered.

Discussion: A purpose of the MSCP is to conserve the ecosystem of the southwestern county on a habitat basis. Another purpose is to provide broad assurances, such as on a habitat basis, for the coverage of species at risk of listing in the future. These goals have not been well-achieved for at least two ecosystem cornerstones: grasslands and oak woodlands. While it is acknowledged that the preserve will, of necessity, have some deficiencies, and that biologically preferred alternatives were rejected for feasibility and other reasons, there are nevertheless practical effects which merit consideration at this time.

Currently, neither grasslands nor oak woodlands (nor chaparral) are deemed sufficiently or significantly conserved, creating the presumption of additional avoidance and mitigation requirements for private and public landowners in the event of future listings. There are grave concerns over the 105(ad)

proposed coverage of some key species, such as the burrowing owl, and acknowledgement that other key species, such as the grasshopper sparrow, are not covered at all. The failure to adequately conserve grasslands and oak woodlands also limits the scope to which the MSCP might be used in the future as a program-level EIR (discussed below in EIR/EIS Comment F). From both the conservation and development perspectives, it would be preferable if additional conservation measures were taken now, while the most biologically effective, least costly, and least disruptive options are still available. 105(ad)

Suggested remedy: Improved conservation measures and enhanced coverage and assurances for grassland and oak woodland species are a "common ground" issue. We thus request that the wildlife agencies prepare an assessment of the following questions:

- What additional lands would secure improved coverage and/or assurances for species in these habitats?
- What additional mitigation measures or funding, in which subareas, would be needed to accomplish the above?
- What is the feasibility of these actions?

P. <u>The MSCP Plan neglects water district lands and operations.</u>

Discussion: Water district lands contain important natural resources and serve watershed functions. Their operations, e.g., dams, critically influence the hydological regimes for numerous covered species. There is little or no consideration of these factors in the plan. 105(ae)

Suggested remedy: Each water district (in addition to the Otay Water District) should enter into a subarea plan which appropriately contributes to preserve function.

III EIR/EIS COMMENTS

A. <u>Particularly in regard to biological resources, the EIR/EIS does not form an adequate basis for informed decision-making.</u>

Discussion: To follow any alternative's or subarea plan's impacts and mitigation analysis, the reader must attempt to piece together widely scattered, discontiguous fragments of text. Also, for each level of analysis (impacts, mitigation, determination of significance) there is little supporting biological rationale, and such analysis cannot be referenced elsewhere else in the document. 105(af)

Suggested remedy: Improve organization and supply adequate supporting information and analysis.

B. <u>The draft EIR/EIS does not facilitate use as a program EIR.</u>

Discussion: It was anticipated that the MSCP Plan would be able to function to a large extent a program EIR under CEQA. The goal would be, that, when future projects analyzed and mitigated their impacts, it would be possible to "tier-off" the MSCP program EIR , incorporating its analysis by reference, and thereby avoiding duplicative review and efficiently assembling the reserve system. However, it does not appear that the EIR presented for review was drafted with this purpose in mind, as it narrowly focuses on the impacts of *permit issuance.*

Suggested remedy: For both the MSCP plan and the subareas, clarify to what extent this document is anticipated to function as a program EIR for the analysis and mitigation of the individual and cumulative biological impacts of future projects. In particular, please specify the extent to which additional environmental review will be required *beyond a mere consistency determination,* 105(ag)

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particularly for potentially significant impacts to non-covered *yet CEQA-sensitive* species (see Comment F below). 105(ag)

C. There is insufficient methodology to assess the continued efficacy of the proposed mitigation measures. (Also, see Implementing Agreement Comments C and J below.)

Discussion: For future projects to make use of the MSCP's mitigation measures for complying with CESA and FESA, these mitigation measures must obviously continue to be valid over time. Similarly, for future project review under CEQA, unless impacts continue to be mitigated to insignificant levels using the MSCP-approved measures, either additional mitigation or findings of infeasibility and over-riding consideration would have to be adopted. Thus, it is essential that the Mitigation Monitoring Program continually demonstrate that the reserve is properly functioning, that preserve assembly is proceeding as anticipated, and that adaptive management measures are working; in short, that the MSCP has not "gone stale." However, neither the Mitigation Monitoring Program, nor any subarea plan, now contains *measurable criteria* through which the continued efficacy of the mitigation measures might be objectively assessed. For this reason, the document is gravely deficient. 105(ah)

Suggested remedy: Each subarea plan should contain measurable performance standards for both biological goals and preserve assembly. The biological monitoring criteria should specify, for each covered species: numbers of individuals or populations, as appropriate; geographic locations; and acceptable fluctuations. These standards should be closely related to the criteria under which coverage was granted in the first place. For preserve assembly, standards for acreage and configuration are needed, as well as the establishment of an appropriate ratio between ongoing habitat loss and preservation. Through these means, the policies identified in the Implementing Agreement (9.3) would be implemented.

D. There is confusion over which impacts are addressed by the plan, particularly in regard to non-covered, sensitive species.

Discussion: The document first states (4.3-46) that direct impacts to non-covered sensitive species are not significant with the rationale that the proposed action—permit issuance for covered species—does not directly affect them. (This rationale is repeated in the subarea sections.) On the very next page (4.3-47), though, after acknowledging that take of covered species will result in significant direct impacts to vegetation communities, the obvious fact is acknowledged that significant direct impacts may indeed occur to the non-covered, sensitive species dependent upon these very same habitats. Analysis of these impacts is apparently meant to be deferred to *later* CEQA and NEPA review. 105(ai)

Suggested remedy: Clarify whether direct impacts to non-covered sensitive species are a) considered to be insignificant on the dubious basis that the action doesn't affect them; b) are considered potentially significantly impacted through the loss of vegetation communities yet insufficiently analyzed on a program level; or c) something else. This determination is vital to knowing how the EIR/EIS may be used as a program level document for a tiering analysis for potentially significant impacts under CEQA to non-covered species. The role of proposed avoidance and mitigation under the subarea plans, including use of the habitat mitigation tables, also needs explication in this regard (see Comment F below).

E. There is no basis for determining that impacts to "high risk" covered species have been reduced to insignificant levels under CEQA.

Discussion: On page 4.3-212, the document states that the basis for determining insignificance after mitigation is the ability of the preserve design to "result in protection of the resource." However, "high risk" species are defined as remaining vulnerable *despite* the proposed conservation measures, due to being "not adequately protected and/or potentially subject to edge effects." Thus, a plain 105(aj)

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105(aj)

understanding of the English language indicates that impacts to these species cannot be said to be "reduced to insignificance" by the MSCP Plan.

Suggested remedy: Acknowledge that impacts to species which remain at "high risk" have not been reduced to insignificant levels through the mitigation measures proposed. All actions needed to ameliorate risk factors, whether additional habitat protection or management practices, should be identified in the plan and carried out.

F. For "vegetation communities," there is insufficient analysis, resulting in confusion and inconsistencies.

Discussion: As intimated in Comment D above, this category of impact analysis is severely flawed. The only parameter for which any supporting data is provided is gross vegetation community acreage; other key factors of biological functioning (configuration, disturbance regimes) are treated either in a conclusory manner or not at all (e.g., 4.3-183). Simply referencing the wildlife agency's determinations of "sufficiently covered" or "significantly covered" does not automatically, and without substantial analysis, translate into a justification that impacts to entire habitat types are adequately mitigated to insignificant levels under CEQA.

The document is also internally inconsistent in issuing a blanket determination that impacts to *all* the vegetation communities are mitigated to insignificant levels when it elsewhere repeatedly acknowledges that for grassland and oak woodland, overall preservation is deficient. Grassland, oak woodland, and chaparral are not even considered "sufficiently covered" or "significantly covered" by the wildlife agencies. To conclude that impacts to these *lesser-conserved* habitats are mitigated to the same level of significance by the preserve as are the *greater-conserved* habitats is thoroughly inconsistent and unsupported by substantial analysis.

These same problems extend into the individual subarea plans and to other vegetation communities. For the County, it is acknowledged that the County Biological Mitigation Ordinance provides significantly less protection and mitigation for non-native yet ecologically vital grasslands. In the City of San Diego, the conclusion that impacts to southern maritime chaparral and maritime succulent scrub are mitigated to insignificant levels fails to analyze noncompliance with the Biological Standards and Guidelines and the severe fragmentation anticipated on Carmel Mountain and Otay Mesa, respectively.

A very serious point of confusion arising from the cavalier treatment of vegetation communities is the failure to distinguish between the habitat types and their dependent species. In stating that impacts to these vegetation communities are "reduced to insignificance," what implication—if any—does this have for *non-covered* species in these habitats, on which future projects may have potentially significant impacts under CEQA? For vegetation communities deemed sufficiently or significantly covered, does compliance with the habitat mitigation tiers afford *any* programmatic basis for assessing significance of impacts after mitigation? For those habitats whose conservation is *acknowledged to be inadequate*—grasslands, oak woodlands, chaparral, etc.—there is clearly *no* basis for relying on the MSCP's proposed avoidance and mitigation system.

The key result of all this is a presumption: that *particularly* for species dependent upon the lesser-conserved habitats, potentially significant impacts under CEQA to non-covered yet otherwise sensitive species would *not* be mitigated to insignificance by the preserve. For example, if a future project caused potentially significant impacts to the CEQA-sensitive loggerhead shrike or white-tailed kite, new environmental review would be required. The document appears to agree—it states that analysis of non-covered, sensitive species is deferred.

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In summary, the issues related to vegetation communities and dependent species go to the heart of what many thought the MSCP would accomplish in terms of analyzing future projects under CEQA. The biologically rational, yet streamlined system which was a point of common ground is still elusive. 105(ak)

Suggested remedy: The category of vegetation communities needs to be re-thought and much clarification provided as to future use of the document on a programmatic level. This clarification should extend to the potential application of the MSCP habitat mitigation tiers to non-covered, CEQA-sensitive species in significantly, sufficiently, and inadequately conserved habitats. We request that the information garnered in response to MSCP Plan Comment O above (additional lands to increase conservation in the now-inadequately conserved habitats) also be discussed in relation to these questions.

G. There is inadequate basis for determining that impacts to many of the covered species have been reduced to insignificant levels under CEQA.

Discussion: MSCP Plan Comment A above points out that the information provided for each covered species does not constitute an intelligible and substantive analysis upon which informed decisions can be based. MSCP Plan Comment F(1-13) above notes some animal species for which the reserve does not appear to provide adequate conservation; other comment letters may disclose problems for additional species. Comment G points out significant deficiencies in the protection of narrow endemic species. Also, for many species, determinations of the significance of mitigation depends upon compliance with the NCCP Conservation Guidelines; as noted in MSCP Plan Comment B, this analysis has not occurred. Until, in all these areas, the quality of the information and analysis improves and/or necessary additional lands, mitigation, or management measures are identified and required, there is an insufficient basis to find that impacts to the species proposed for coverage are mitigated to insignificant levels through the MSCP. 105(al)

Suggested remedy: The steps outlined above should be taken on the plan and subarea levels.

H. There has been insufficient analysis to show that impacts to wildlife movement are reduced to insignificance. (4.3.2.1, 4.3.2.3)

Discussion: The document's analysis of wildlife movement is virtually non-existent. It lists the linkages and then concludes, on the basis of a gross figure of 75% maintenance, and without *any* site-specific analysis, that, except for the Metro-Lakeside-Jamul segment, impacts to wildlife movement are insignificant. A rate of 75% preservation might be meaningless, of course, for all but avian species if a highway interrupted the linkage.

For the Metro-Lakeside-Jamul segment, the document lists design parameters which are not yet implemented. It does not examine any specific sites (for example, the "archipelago" in Lakeside) for their ability to function as corridors for the various covered species, nor does it analyze the applicability and feasibility of the parameters to any actual site. There is no substantial rational for concluding that impacts to wildlife movement are reduced to insignificant levels. 105(am)

Suggested remedy: Impacts to wildlife movement require site-specific analysis, using a representative range of affected species, e.g., avian, large and small mammal, herpetological, etc. In the Metro-Lakeside-Jamul segment, the ability of the County's implementing ordinance to effectively maintain connectivity values also needs site-specific analysis.

I. Miscellaneous issues.

1. On page 4.3-43 the document disregards its own cautions and mixes insignificance determinations under NEPA (i.e., coverage due to wildlife agency policies of "insignificance") with those needed for CEQA. 105(an)

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2. Document error: The City of San Diego *does* propose mitigation for chaparral and non–native grassland. 105(ao,

3. Maps are in conflict on Hidden Trails boundaries in the Otay Mesa area. 105(ap

4. Text on page 4.3-212 regarding the significance level of mitigation for various indirect impacts is not consistent with the table. 105(aq)

5. It is unclear how the significant impacts of the Otay Valley Regional Park, including impacts to connectivity, will be mitigated to insignificance. 105(ar)

6. Impacts to the covered wetland and riparian species from water pollution and altered stream flows from progressive watershed urbanization have not been analyzed or mitigated. Similarly, the impacts to these species from the management practices of water districts, and from the operation of their current and planned facilities, have not been analyzed. 105(as)

7. Impacts from any future, *unanticipated* infrastructure and public facilities within the preserve need analysis and procedures for mitigation to insignificance, unless all such projects are required to go through the major amendment process. Please clarify and analyze for each subarea. 105(at)

8. The impacts from proposed route 905 are likely to be major and adverse. These impacts have neither been analyzed nor mitigated. 105(au)

9. The impacts of annexation without assumption of preserve responsibilities has not been analyzed in the EIR/EIS. 105(av)

10. The cumulative impacts of take anticipated due to ongoing agricultural activities have not been sufficiently analyzed nor shown to amount to be reduced to insignificant levels. 105(aw)

11. The growth inducing impacts of new infrastructure—both that anticipated and unanticipated by the preserve—have not been analyzed, yet these are claimed to be fully mitigated in the Implementing Agreement. 105(ax)

12. The full range of compatible and conditionally compatible uses allowed within the preserve by the City of San Diego has not been analyzed. (See City of San Diego Comment F below.) 105(ay)

13. The impacts of inadequate non–native predator trapping have not been analyzed. (See MSCP Plan Comment L above.) 105(az)

14. The impacts to the County subarea of non–agricultural exemptions to the Grading and Clearing Ordinance have been inadequately analyzed, if at all. (See County of San Diego Comment A below.) 105(ba)

15. The impacts to the County subarea of exemptions to the Grading and Clearing Ordinance for agricultural clearing have been inadequately analyzed, if at all. (See County of San Diego Comment B below.) 105(bb)

16. The impacts to the County subarea of exemptions to the Biological Mitigation Ordinance for all CEQA–exempt activities, such as ministerial building permits, have been inadequately analyzed, if at all. (See County of San Diego Comment C below.) 105(bc)

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17. The impacts to the County subarea of exemptions to the Biological Mitigation Ordinance for all public and many private facilities have been inadequately analyzed, if at all. (See County of San Diego Comments D below.) 105(bd)

18. The impacts to the County subarea of exemptions to the Biological Mitigation Ordinance for sand, gravel, or mineral extraction have been inadequately analyzed, if at all. (See County of San Diego Comment E below.) 105(be)

19. The impacts to the County subarea from exempted law enforcement and emergency services activities and projects have been inadequately analyzed, if at all. (See County of San Diego Comment H below.) 105(bf)

20. The Plan assumes protection and management of natural resources on military lands consistent with MSCP objectives, though this is speculative. Neither the impacts to the covered species nor the ramifications to the proposed subarea permits of less–than–anticipated military contributions have been analyzed. 105(bg)

21. The impacts to narrow endemics due to inconsistent and inadequate conservation measures has not been analyzed. (See MSCP Plan Comment G above.) 105(bh)

22. The impacts due to inadequate protection of open water have not been analyzed. (See MSCP Plan Comment H above.) 105(bi)

23. On Otay Mountain, the impacts of habitat fragmentation due to proposed roads and other facilities have not been analyzed. (See MSCP Plan Comment F(14) above.) 105(bj)

IV IMPLEMENTING AGREEMENT COMMENTS

A. The meaning of the term "significant material breech" is unknown.

Discussion: It is illogical that some material breeches would be "significant" and some would not. What is the difference? Any deviation from the plan *must* be considered a potential indication for permit enforcement action. Otherwise, there is an incentive for permit holders to tolerate relatively minor breeches. 105(bk)

Suggested remedy: Delete the work "significant," and clarify that any breech is potential grounds for enforcement actions.

B. The "Other permits" section as it pertains to the Dept. of Fish and Game is deficient. (9.8)

Discussion: The document states that the Dept. will not require additional mitigation for the take of covered species pursuant to CEQA, yet CEQA requirements for such mitigation may persist *after* the term of this agreement, irrespective of mitigation performed on the basis of the California Endangered Species Act. 105(bl)

Suggested remedy: Clarify that the assurance of no additional mitigation is for the term of the agreement only.

C. Provisions are inadequate for Reporting and Biological Monitoring and regarding Mutual Assurances for Conservation of Covered Species. (14.0, 9.3) (Also see EIR/EIS Comment C above.) 105(bm)

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Discussion: The statement in 14.5, that it is "necessary to determine whether Covered Species and their habitats are being maintained by the MSCP *as expected*" (italics added), makes plain the need to define the term "as expected" with measurable criteria. At this time, there is no objective or sufficient manner of fulfilling the monitoring requirements of this section. 105(bm)

A similar need exists in the case of Mutual Assurances for Conservation of Covered Species (9.3), for these assurances must also be founded upon measurable criteria. Once established in this section, these standards will form the basis for assessing subarea plan compliance and for guiding ongoing adaptive management.

Suggested remedy: A consistent set of measurable criteria for both biology and preserve assembly are the foundation for many aspects of this plan. They should be tailored according to the contribution of each subarea, placed in those documents, and then either reproduced in the Implementing Agreements or appropriately referenced.

D. Procedures for enforcement of the permit conditions are inadequate. (16.0)

Discussion: It was the choice of some subareas to implement their plans with other than hardline reserves. In the County, there is a large "softline" segment in which preserve boundaries remain unestablished. In the City of San Diego, the "percent" areas depend upon criteria-based impact avoidance. Therefore, successful plan implementation and achievement of permit conditions depend upon consistent and appropriate application of, respectfully, the County's Biological Mitigation Ordinance and the City's Environmentally Sensitive Lands Ordinance. To ensure full and effective permit enforcement, the tools at the wildlife agencies disposal must be specially adapted to these phased or softline subareas.

There are two preconditions for effective permit enforcement in the softline areas: first, the assurance of subarea plan consistency on an individual project basis, and secondly, the availability of enforcement options short of the so-called "nuclear option" of total permit suspension or revocation. An example of the need for individual project consistency is the tenuous linkage through Lakeside, which could be cut off by a single nonconforming project; annual or other *periodic* view could not assure preserve assembly. (It should be noted that the existing CEQA process allows for appropriately timed review.) 105(bn)

The second factor—a more *flexible* range of enforcement actions than unlikely-to-be-exercised total permit suspension or revocation—should target the offending project rather than penalize the entire subarea. The appropriate solution is to grant third party beneficiary status only to projects judged by the wildlife agencies to be consistent with the subarea plan. Legally, it would be hard to justify according plan benefits to such nonconforming projects. This suggested approach also creates the proper incentives for plan conformance and allows permit suspension or revocation to be reserved for appropriate indications.

An analogous concern exists for any approved project which does not meet its obligations over time. Plan benefits should also be able to be *withdrawn* on a selective, project-specific basis.

Suggested remedy: For all subareas or subarea segments employing softline or percentage techniques, MSCP compliance should be assured on an individual project basis, rather than through periodic review. Also, permit enforcement should draw upon a flexible and effective range of options, such as through the granting of third party beneficiary status solely to MSCP-consistent projects. In all subareas, these benefits should be able to be withdrawn from projects which do not meet their obligations.

E. Mitigation banking procedures are unenforceable. (9.14) 105(bo)

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Discussion: It would, of course, be completely inappropriate for lands *avoided* through 10(a) or CEQA requirements to be "double-dipped" by a property owner and sold as mitigation for other projects. While this eventuality is *now* mostly foreclosed by a policy letter issued by the U.S. Fish and Wildlife Service and the Dept. of Fish and Game, that policy letter is subject to change at any time without any amendment to the MSCP plan. 105(bo)

Suggested remedy: Land avoided through the project approval process should be defined as ineligible for mitigation banking *in the Implementing Agreement.*

F. The assurance that no additional mitigation will be required for the growth-inducing impacts of new infrastructure is unjustified. (9.16)

Discussion: This section of the Implementing Agreement has no supporting basis in the EIR/EIS or any other part of the MSCP. It is simply conclusory. 105(bp)

Suggested remedy: A full analysis is required of all potential growth-inducing impacts, including mitigation and level of significant after mitigation. In the absence of such analysis, this section should be deleted.

G. Procedures in the event of annexation are inadequate. (9.20)

Discussion: As it stands now, it is *optional* for the annexing jurisdiction to assume the permit responsibilities of the previously unincorporated subarea. Failure to do so, however, may so alter the viability of populations so as to jeopardize the take permits of one or more of the other subareas as well as the third party beneficiaries. The impacts of annexation without assumption of preserve responsibilities have not been analyzed in the EIR/EIS. 105(bq)

Suggested remedy: Procedures regarding annexation need refinement so as to eliminate the possibility of permit responsibilities going unassumed. Signatory jurisdictions should agree to implement the same or equivalent protections in the event of annexation.

H. Agricultural issues are unresolved. (9.21)

Discussion: If incidental take due to ongoing agricultural activities is to be covered under the plan, then a determination must be made that such take will result in insignificant cumulative impacts to the covered species. 105(br)

Suggested remedy: A full analysis of cumulative impacts due to ongoing agricultural activities should be incorporated into the EIR/EIS. An essential prerequisite of such a determination of cumulative insignificant is likely to be the cooperative formulation and adoption by the agricultural community of best management practices which maximize habitat values in the course of their operations. These are now entirely missing.

I. Deficiencies in plan implementation due to variances require compensation.

Discussion: In subarea plans implemented through softline or percentage areas, there is recourse for findings of infeasibility at the project level. There is no procedure for compensation to the reserve system, however, if such findings are made and anticipated mitigation therefore does not occur. 105(bs)

Suggested remedy: If a jurisdiction grants a variance or makes a finding of infeasibility, that jurisdiction should be responsible for making up the difference within a specified period of time.

J. Extraordinary circumstances determination factors are insufficient. (9.6. B.) 105(bt)

105

Discussion: Similar to the above concerns voided in Comment C above, Extraordinary circumstances depend upon the demonstration of an "unanticipated adverse change in the population of any Covered Species." "Unanticipated" from *what?* As noted in EIS/EIS Comment C above, there is a pressing need for measurable criteria for both biological monitoring and preserve assembly. Without these criteria there can be to objective assessment of whether extraordinary circumstances have occurred. 105(bt)

Suggested remedy: Add measurable criteria for both biological monitoring and preserve assembly to the list of Relevant Factors.

K. In softline segments, objectively assessable standards must be created to trigger enforcement actions.

Discussion: Standards are needed to assess whether preserve assembly is proceeding "on schedule." Otherwise, appropriate implementation of the permit conditions cannot be assured at any point over the life of the permit. One set of criteria should link habitat lost to habitat preserved; this should be assessed periodically. Another set of criteria should set acreage parameters for preservation of each habitat type over time. For example, if too much of a single habitat is lost quickly, reserve completion may be jeopardized due to loss of flexibility in assembly options as well as to loss of the resource *per se.* 105(bu)

Suggested remedy: Habitat-specific acreage targets should be set over time, with deviation beyond a fixed limit grounds for permit enforcement actions. Acceptable ratios for habitat lost compared to preserved should also be set. These preserve assembly standards should appear in the legally-binding subarea Implementing Agreements.

V CITY OF SAN DIEGO SUBAREA COMMENTS

A. Protections for narrow endemic species are internally inconsistent. (ESL p. 6, 8) (Also see MSCP Plan Comment G above.)

Discussion: The draft implementing ordinance is not consistent with the subarea plan with respect to the protection of narrow endemics. The subarea plan at 1.6.4 (p. 111) accurately describes our understanding of the policy which the implementing ordinance should carry out. The implementing ordinance also gives no clear indication as to how individual projects will comply with the subarea plan policy. In addition to criteria for the biological adequacy of avoidance, any determination of *unavoidable* impacts should be supported by findings based on specific criteria. Only after those findings are made should a measure such as translocation (as described in 143.0141(h) of the draft ESL) be utilized as mitigation. To attain further consistency, the "additional measures" (presumably translocation) for narrow endemics outside the MHPA, as referenced in the City Implementing Agreement (section 10.0), should also be clarified to occur only after findings of infeasibility are made. 105(bv)

Suggested remedy: Rewrite the implementing ordinance so it is consistent with the subarea plan, formulate criteria for biologically adequate avoidance, and specify findings which must be made prior to mitigating unavoidable impacts off-site. These measures, including the findings, should be carried through consistently in all relevant documents.

B. Use of CEQA process for future project review and consistency determinations. 105(bw)

See MSCP Plan Comment I above.

C. Grading and clearing procedures for agriculture are not clear. (1.6.1) 105(bx)

105

Discussion: Clearing for development under the guise of agriculture has been employed by unscrupulous landowners who wish to avoid mitigation requirements. Mechanisms to prevent this are not present or have not been located by this reader, nor are mitigation requirements discussed for legitimate agricultural clearing. 105(bx)

Suggested remedy: Formulate grading and clearing safeguards in regard to agriculture, and state mitigation requirements for impacts.

D. Fragmentation on Otay Mesa in the Southern Area is not justified. (1.2.1)

Discussion: The preserve segment in the Otay Mesa area is highly convoluted and fragmented (e.g., California Terraces, Dennery Ranch). There is no explanation of how this meets reserve design criteria, how it adequately protects the covered species and maritime succulent scrub, nor why project redesigns were deemed infeasible. 105(by)

Suggested remedy: Demonstrate that the design of the Southern Area meets biological standards for preserve configuration and for Tier 1 habitat preservation, particularly in reference to the MSCP Biological Standards and Guidelines. Otherwise, corrective measures should be undertaken.

E. Wild Animal Park expansion is open-ended. (1.2.5 San Pasqual Valley)

Discussion: Potential expansion of the Wild Animal Park is mentioned yet no specifics are given of its extent, impacts, mitigation, or consistency with the preserve. 105(bz)

Suggested remedy: Given the biological importance of the San Pasqual area, pleas provide full information on this project.

F. Compatible uses within the preserve are overly-broad

Discussion: The MSCP plan includes low density single family homes as conditionally compatible with the preserve, as well as low impact activities such as trails. However, in its Draft Environmentally Sensitive Lands Regulations and Draft Open Space Residential Zone (OR-1-2) (Exhibit L), the list of compatible activities goes far beyond anything previously contemplated: child care facilities, golf, camping, commercial stables, etc. The EIR/EIS analyzed none of these uses, which are far more impactive than the *previous* compatible or conditionally compatible uses in terms of traffic, edge effects, human incursions, etc. It is noted that while these uses are presumably within the 25% development area, there is no guarantee that they will be sited to form a preserve *boundary* rather than become *internal* to the preserve. 105(ca)

Suggested remedy: In the absence of compelling reasons to allow these uses, they should be prohibited as incompatible. If compelling reasons exist, they should be required to be sited at the boundary of the preserve and special mitigation measures adopted to control edge effects.

G. Non-native predators are not adequately controlled. (1.5.2)

See MSCP Plan Comment J above. The City's language is *totally unsatisfactory* as it requires that "a significant problem has been identified." As noted above, such identification is infeasible. Also, what criteria are proposed? There is also no justification for limiting trapping to temporary measures. The impact to the preserve from the City's inadequate non-native predator control has not been analyzed in the EIR/EIS. 105(cb)

H. Impacts to wetland/riparian species from watershed deterioration are not considered. 105(cc)

105

Discussion: Impacts to the covered wetland and riparian species from water pollution and altered stream flows from increasingly urbanized watersheds have not been analyzed in the EIR/EIS nor mitigated. 105(cc)

Suggested remedy: The City should formulate and adopt best management practices for existing development and institute state-of-the art measures to prevent adverse water quality impacts and altered stream flows from new development.

I. Ratios in the Environmentally Sensitive Lands Ordinance provide insufficient disincentive to mitigate outside the preserve.

Discussion: Particularly for Tier II and III impacts, the differential between mitigation outside and inside the preserve is minimal, and will not provide sufficient incentive. 105(cd)

Suggested remedy: Increase the ratios to provide greater incentive for mitigating inside preserve.

J. Biological justification is not present for poor and fragmented concepts on Carmel Mountain (Neighborhood 8A). How do these meet Biological Standards and Guidelines for southern maritime chaparral? (1.2.4) 105(ce)

K. Other issues in the Environmentally Sensitive Lands Ordinance:

1. In the Deviation section, please clarify whether all three findings have to be made (p. 20). If only one is required, then the proposal is unacceptable. 105(cf)

2. In the Deviation section, the phrase "socio" should be deleted from "socioeconomic," as there is no clear understanding what "socio" means. Only objectively measured considerations related to economic use should be considered. 105(cg)

3. Please clarify how the Council's directive that 90% of Tier I habitat within the MHPA be protected has been implemented. 105(ch)

L. The City's Management Plans are incomplete in regard to many species.

Discussion: The findings in the species table, as well as the Species Evaluations themselves, contain numerous recommended management measures for plant and animal species, particularly for narrow endemics. Because many of these never find their way into the City's proposed Management Plans, these plans are presently inadequate. 105(ci)

Suggested remedy: The Management Plans should incorporate all the management measures identified in the Species Evaluations and in other relevant sections of the MSCP document.

VI CITY OF CHULA VISTA COMMENTS

A. It is imperative to adopt the Modified GDP Policy Option 2 alternative. (3.0)

Discussion: As explained in the EIR/EIS, failure to adopt the Modified GDP Policy Option 2 alternative (an alternative University site with full preservation of Salt Creek Canyon) will make the issuance of 10(a) permits for the California gnatcatcher and other coastal sage scrub species impossible. We would like to add the following information which further substantiates the conclusions in the EIR/EIS relating to Salt Creek Canyon: 105(cj)

105

Salt Creek Canyon has long been recognized as an indispensable cornerstone of a regional species protection plan. According to the Otay Ranch Draft Environmental Impact Report, "This area is the richest on the ranch with regard to California Gnatcatcher and cactus wren. Salt Creek Canyon supports 26% (38/144) of California gnatcatcher points of occurrence and 62% (37/60) of coastal cactus wren locations. Salt Creek is also an important raptor resource area and supports sensitive species such as orange-throated whiptail, northern harrier, ferruginous hawk , golden eagle, prairie falcon, Bell's sage sparrow, and blue grosbeak." The DEIR concluded that Salt Creek Canyon contained "Non-mitigable coastal sage scrub/maritime succulent scrub that should be preserved as natural open space." 105(cj)

During project review (letter of Nov. 13, 1991) the U.S. Fish and Wildlife Service stated, "The Service concurs that the proposal to place the university within Salt Creek Canyon is a significant and unmitigable impact. Substantial populations of the proposed endangered California gnatcatcher occur within this location. This site represents a major core population of this species. A preliminary assessment is that such a proposal would fail to meet the requirements of a 10(a) permit pursuant to the Endangered Species Act."

From the above, it is abundantly clear that all 400 acres of Salt Creek Canyon must be preserved as part of the City's MSCP subarea plan in order to gain permits for take of the California gnatcatcher and for numerous other prelisting assurances. To reduce it in size, as proposed in Policy Option 1, would cause unmitigable impacts to a core resource area and would jeopardize the California gnatcatcher. In regard to potential reductions, it should be noted that in their recent (April 14, 1995) assessment of the Otay Ranch project relative to the MSCP, the Service called for *additional* protection of Salt Creek Canyon *beyond* that shown in the General Development Plan. Thus, in order to "adequately preserve California gnatcatcher and coastal cactus wren," it was recommended to "Pull development back from Salt Creek to provide buffers and avoid impacts to habitat in side drainages."

Also, as noted in MSCP Plan Comment M, above, if Chula Vista does not adopt the Modified GDP Policy Option 2 alternative, there will be cascading impacts to the covered species lists for other subareas.

Suggested remedy: We commend the City of Chula Vista and the wildlife agencies for working cooperatively to craft solutions which may make the adoption of Modified GDP Policy Option 2 acceptable and feasible for all parties.

B. Otay Valley Regional Park design and mitigation is unresolved. (4.3.2.3) 105(ck)

Please see EIR/EIS Comment I(2) above.

C. Low density development. (6.2)

Discussion: The document lists low density development as "compatible" with the preserve, yet the location of such uses within the preserve are not clear. 105(cl)

Suggested remedy: Please identify anticipated locations and provide impact analysis and mitigation measures.

D. New public facilities and infrastructure within the preserve is inadequately controlled, sited, and mitigated. (6.4.1)

See MSCP Plan Comment J above. The current proposals of Chula Vista are particularly deficient, as they would allow essentially uncontrolled impacts from new infrastructure. Proposed is an open-ended, *pre-approval* of all projects, along with mitigation rations which do not reflect actual impacts to preserve fragmentation and connectivity. 105(cm)

105

F. Please clarify the meaning of "review" of channelization by the wildlife agencies. Does this requires their formal approval? (6.4.7.2) 105(cn)

G. Narrow endemic species are not protected. 105(co)

See MSCP Plan Comment G above.

H. Wetland and riparian species are not protected to MSCP standards. 105(cp)

See MSCP Plan Comment K above.

VII CITY OF SANTEE COMMENTS

A. Santee has not made a fair share contribution to the preserve nor demonstrated biological sufficiency.

Discussion: A review of percentages of existing habitat protected within each subarea disclose a consistently substandard performance by the City of Santee. A salient example is its contribution of only 40% of its existing coastal sage scrub while other subareas are over 60%. Similar deficiencies exist for percent of core biological areas protected, etc. Justification as to why Santee's proposed contribution meets biological standards has not been provided. 105(cq)

Suggested remedy: Other jurisdictions should not carry Santee's fair share of species protection. Santee should therefore commit to a purchase of the entire Fanita Ranch, or to the acquisition of a very great part of it, as part of the regional funding and acquisition plan.

B. Alternatives A and B are not adequately explained. 105(cr)

C. Narrow endemic species are not protected. 105(cs)

See MSCP Plan Comment G above.

D. Wetland and riparian species are not protected to MSCP standards. 105(ct)

See MSCP Plan Comment K above.

VIII OTAY WATER DISTRICT COMMENTS

A. The statement that the 125 square mile service area is "anticipated to develop" is not supported by fact and may not occur if better land use planning preserves these economically valuable open space resources. (1.4) 105(cu)

B. "Secondary growth impacts" are not automatically mitigated. (1.8)

Discussion: As noted in EIR/EIR Comment I(11) and Implementing Agreement Comment F above, no supporting analysis has been offered to justify this conclusion. 105(cv)

Suggested remedy: Provide a full analysis of the potential impacts of induced growth and demonstrate full mitigation or delete this provision.

C. The requirement should be added to "Site projects outside of core areas except where infeasible." (1.9.1) 105(cw)

105

D. There is inadequate attention given to creating and maintaining appropriate hydrological regimes for the wetland and riparian–dependent covered species. 105(cx)

IX COUNTY OF SAN DIEGO COMMENTS

A. Non–agricultural exemptions in the Grading and Clearing Ordinance may prohibit the issuance of MSCP–based take permits to the County.

Discussion: The presence of effective controls on unauthorized grading and clearing of native vegetation is essential to the ability to successfully implement a "softline" plan, where preserve boundaries are not yet identified; anything less is a "fatal flaw." Without such controls, loss of areas critical to preserve function could easily be irretrievably destroyed. In the Metro–Lakeside–Jamul segment, the high existing degree of fragmentation and the very constrained nature of preserve options (especially for connectivity) make the rigorous control of unauthorized clearing—even of small patches—a priority for effective regulation.

Unless grading results in more than 3,000 cubic yards of displacement, it is exempt from discretionary review. For grubbing and clearing, any activity which occurs outside the County Water Authority (CWA) boundary or, within that boundary, on a single family parcel of less than 10 acres in size, is exempt from discretionary review. These are exemptions of major import, yet their potential impacts on reserve function and assembly—individually and cumulatively—have not received analysis in the EIR/EIS. This is a serious deficiency. That significant impacts may occur is demonstrated by the coincidence of small parcels with the biological care areas and linkages visualized on the MSCP parcel–size map.

From a legal standpoint, unless lands necessary for preserve assembly are protected from unauthorized loss, implementation of the preserve is no longer assured. Also, the permits are explicitly based upon quantified levels of take and preservation for each species as well as maintenance of connectivity. Unauthorized grading and clearing may render these projections moot, and thereby eliminate the grounds for permit issuance. The lack of mitigation for non–discretionary grading and clearing will also have cumulative impacts on the ability to build–out the preserve from the financial perspective. 105(cy)

It should be noted that the County usually determines mitigation requirements during the subdivision process. However, the owner of a 10 acre parcel could legally clear the land of all sensitive vegetation, and *then* subdivide, escaping all mitigation requirements. Also, if the major interest of the County lies in reducing regulation on single family home sites, then changing the exemption threshold from 10 acre to 2 acre parcels would *still* exempt essentially all home–builders in Metro–Lakeside–Jamul.

Suggested remedy: The impacts of the grading and clearing exemptions need careful analysis in the EIR/EIS. *If individually or cumulatively significant, the exemption thresholds will have to be lowered and/or a site plan review process will have to be adopted which ensures that all grading and clearing is consistent with the subarea plan.* The lower the exemption threshold, though, the less need arises for individual site plan review. The most practical solution will probably be to substantially reduce the clearing exemption threshold, while still minimizing the regulation of single–family home sites.

B. The exemption for agricultural clearing under the Grading and Clearing Ordinance may prohibit the issuance of MSCP–based take permits to the County.

Discussion: In addition to the exemptions described above, the Grading and Clearing Ordinance exempts any lands for which the owner signs a written statement that the land will be planted within one year and maintained in agricultural use for five years. Besides eliminating avoidance and 105(cz)

mitigation requirements for the legitimate agricultural clearing of new habitat lands, this procedure allows unscrupulous parties to clear native vegetation in an unregulated manner under the *guise* of agriculture, and then to develop it without mitigation. 105(cz)

Given the fragmented and tenuous nature of the Metro–Lakeside–Jamul segment, the impacts from agricultural clearing—both legitimate and illegitimate—may be significant. The EIR/EIS has not analyzed these important factors, however, another serious deficiency. The impacts of unmitigated agricultural clearing to preserve assembly as well as to biology should be considered. If corrective measures are not taken, these impacts may preclude the issuance of take permits, as reserve implementation and anticipated levels of conservation and take would no longer be assured.

Suggested remedy: Unless the analysis of agricultural clearing discloses no potentially significant individual or cumulative impacts to preserve assembly or biological functions and values, mechanisms should be put in place which ensure subarea plan consistency and which lead to appropriate mitigation. Several options, alone or in combination, may be effective. Individual site reviews may be needed to identify, and avoid, clearing which jeopardizes the preserve. To comply with state and federal law, surveys for occupancy by listed species may be needed, and mitigation determined. A more proactive alternative—which we support—is that of cooperative "safe harbor" agreements (or variations thereof), in which net habitat values are maintained (for example, through management practices), even though one portion of the parcel might be cleared. For non–listed species, "deferred mitigation" is a worthwhile consideration, whereby mitigation is deferred to such time as conversion to a non–agricultural use may occur.

Resolution of the agricultural issues will also require the tightening of the procedures intended to prevent illegitimate clearing. A length of planting of 15 years should be instituted, strict monitoring should be put in place, and criminal penalties should exist for signing a false statement. The requirement for planting must also run with the land, in the event of an ownership change.

C. <u>The exemption of all CEQA–exempt activities from the Biological Mitigation Ordinance may prohibit the issuance of MSCP–based take permits to the County.</u>

Discussion: This exemption involves all ministerial permits, such as building permits and some lot splits. Exempt would be single family home construction; the extent to which associated or supplemental grading and clearing outside the building pad itself would be exempt is unclear. Due to the fragmented and tenuous conditions in the Metro–Lakeside–Jamul segment, and ubiquitous presence of small parcels, the individual and cumulative impacts from the exemptions for CEQA–exempt activities from appropriate avoidance and mitigation may have significant effects upon reserve function (including connectivity) and assembly. These potential impacts have not been analyzed in the EIR/EIS. The impacts may preclude the issuance of take permits, as reserve implementation and anticipated levels of conservation and take are no longer assured. 105(da)

It is noteworthy that in the Lake Hodges subarea's Santa Fe Valley Specific Plan, the County recognized the critical nature of single family homes, and designated portions of the Santa Fe Valley Specific Plan with a "Design designator" where site–specific planning was needed, such as pad placement on the lot.

Suggested remedy: If analysis discloses potential individual or cumulative adverse effects from currently ministerial actions, such as building permits, a process should be developed to ensure consistency with the subarea plan. Various technical solutions are currently part of County land use processing, such as site plan reviews.

D. <u>Exemption of public and many private facilities from the Biological Mitigation Ordinance prohibits the issuance of MSCP–based take permits to the County.</u> 105(db)

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105(db)

Discussion: The exemption is for "any essential public facility or project, or recreational facility which includes public use." The term "essential" is inadequately defined, and makes no reference to legitimate public health or safety concerns. The exemptions includes almost every conceivable recreational activity, such as golf courses, ORV parks, stadiums, etc., as even if private,these projects have "public use." This exemption therefore introduces a *huge* range of unregulated projects into the planning process, which may proceed without appropriate siting and mitigation.

The language which accompanies the exemption is unclear as to the alternatives analysis, avoidance, and mitigation which would actually occur. While the document states that, as a condition of exemption, "All possible mitigation measures have been incorporated into the facility or project, and there are no feasible, less environmentally damaging, location, alignment or non-structural alternatives that would meet project objectives," it is unclear whether these determinations proceed *through or independent of* the CEQA process. If determined through CEQA, then "feasibility" can be self-defined by the lead agency and over-riding findings of social or economic benefit can also be issued, resulting in significant unmitigated impacts to the preserve. Also, in the same section, the meaning of the "any net gain" language, which appears in relation to wetland encroachment, is unclear.

The individual and cumulative impacts of this gaping exemption from the Biological Mitigation Ordinance are potentially devastating to the fragmented and tenuous Metro-Lakeside-Jamul segment. These extensive potential impacts to the reserve have not been analyzed in the EIR/EIS, a serious deficiency. The public and semi-public facilities exemptions, with their distinct potential for CEQA over-rides, surely preclude the assurance of preserve implementation and render projections for loss and conservation levels of covered species moot. Therefore, permits could not be issued.

Suggested remedy: From the perspective of preserve assembly and permitting, the preferred remedy is to delete the exemption entirely. However, for good reasons, local governments seek the assurance that essential public services will continue to be provided. A reconciliation of these concerns could occur through a two-step revision of the proposed exemption. First, it would have to be narrowed to public facilities essential to the public health and safety, *strictly defined.* There is no justification whatsoever to exempt any recreational facility, public or private, or private facilities which happen to admit the public.

The second step would be to clarify and/or amend the conditions under which essential facilities *gain* exemption from the Ordinance, so that the preserve maintains equal or greater functional and resource values. The result of this proviso would be flexibility rather than strict adherence to the particulars of the Ordinance. A process to facilitate the resolution of future public facilities issues may be helpful, as well, and should be put in place.

E. The exemption from the Biological Mitigation Ordinance for sand, gravel, or mineral extraction may prohibit the issuance of MSCP-based take permits to the County.

Discussion: These operations may cause major impacts to sensitive riparian and wetland areas and to associated uplands. Proposed covered species which would be impacted include the arroyo toad, southwestern pond turtle, least Bell's vireo, and southwestern willow flycatcher. The exemption proposes reliance—in some fashion—on CEQA: "All appropriate mitigation measures have been incorporated in conformance with the California Environmental Quality Act. . ." Does this mean mitigation in conformance with the CEQA *standard* of mitigation to insignificant levels, or does it mean mitigation through the CEQA *process*, which allows residual *unmitigated* impacts through over-riding considerations? Are the impacts eligible for mitigation only those "significant" under CEQA?

Also, the conditions listed do not require the *avoidance* of sensitive wetland and riparian resources. Instead, a vague and unsatisfactory mitigation standard is proposed: "In a floodplain, any

105(dc)

net gain in functional wetlands and riparian habitats shall result in or adjacent to the area of extraction." There are thus no "in-kind" mitigation requirements or enforceable performance standards which might, for example, ensure that suitable arroyo toad habitat is maintained. *As unmitigable impacts to covered species would not have to be avoided, a "fatal flaw" arises for permit issuance.* 105(dc)

Finally, there is no requirement whatsoever for the avoidance and mitigation of impacts to uplands. No evidence is provided that the State Surface Mining and Reclamation Act—even if enforced—would mandate an appropriate level of resource protection, or that the promised revegetation will meet performance standards for success.

The EIR/EIS fails to analyze the effects of these exemptions. The resultant impacts are likely to preclude the issuance of take permits, as reserve implementation and anticipated levels of conservation and take are no longer assured.

Suggested remedy: There is no reason to treat sand, gravel, or mineral extraction differently from any other business; other industries, equally engaged in providing important goods and services, are not proposed for special treatment. This exemption should be deleted and subarea plan consistency thereby assured.

F. There are no criteria for determining "infeasibility" and therefore the granting of variances from plan compliance is uncontrolled. (1.11, 4.2.3)

Discussion: Unless the criteria for infeasibility are explicitly defined in the plan and/or the Biological Mitigation Ordinance, the County may rely on CEQA definitions of infeasibility, which are open-ended, self-selected determinations based upon "project purposes" and over-riding social and economic factors. This would undermine the basic methodology of implementing the subarea plan via a reliable and consistently applied ordinance. We note that the City of San Diego defined variance criteria much more completely. 105(dd)

Suggested remedy: For private projects, infeasibility criteria should be consistent with U.S. Constitutional law, that is, deprivation of reasonable economic use. For public projects, variances should be granted *if* public health and safety—strictly defined—would otherwise be jeopardized.

G. Criteria for infrastructure within hardline segments are insufficient. (2.7.2)

Discussion: The document fails to differentiate between "new infrastructure" already anticipated by the plan as a result of approved public and private facilities, and those projects which might be proposed later and are *unknown at this time.* The latter category is best described as "new, unanticipated infrastructure within the preserve." 105(de)

Please see MSCP Plan Comment J above for further discussion and suggested remedy.

H. The scope of discretion given to law enforcement and emergency personnel needs re-evaluation. (2.7.5)

Discussion: The need to allow emergency and law enforcement activities within the preserve is recognized, but the document goes far beyond legitimate needs. Instead, it gives blanket authorization to any activity which an agency might wish to undertake, *whether that action is an emergency or not.* It allows the construction of *any project* without review or selection of less damaging alternatives. For example, the INS or National Guard could site a huge national headquarters and employee training center in the middle of the preserve at its sole discretion. There is also no justification for the exemption of *non-emergency* activities, such as construction, from the mitigation requirements of any other public facility. 105(df)

105

The broad and highly significant impacts to the preserve from exempted law enforcement and emergency services have not been analyzed in the EIR/EIS. 105(df)

Suggested remedy: The only acceptable basis for emergency and law enforcement activities occurring within the preserve is the formulation and adoption of best management practices for emergency services and, for all non-emergency activities, the cooperative adoption of best management practices, the adoption of least damaging alternatives, and full mitigation for impacts. Training in best management practices for providers of emergency services should be included in the reserve management plan (see San Diego Gas and Electric Co. NCCP Plan for a model).

I. The option of Lusardi Creek/San Dieguito River corridor acquisitions should be included as a potential mitigation under 2.8.2 A., as it is under 2.8.2 B. 105(dg)

J. Agreeing not to "preclude" reserve goals is an unacceptable standard. (4.3)

Discussion: The document states that, "Projects authorized by the County will not preclude the County from meeting the biological and preserve design criteria for this segment, considered both on an individual project basis and a cumulative basis." The standard of "not preclude" is an unacceptable standard, as it is, on a practical basis, very difficult to determine if any particular project makes preserve completion "impossible," which is what "preclude" means. Enforcement of the permit conditions by the wildlife agencies on the legal standard of "not preclude" would therefore be infeasible.

Also, the "not preclude" standard has adverse impacts to property owners. For example, while one project might not "preclude" meeting preserve criteria for a linkage, it might, through poor design, well make completing the linkage more difficult for neighboring property owners, who will have to compensate for the deficiencies. An equitable, "level playing field" is thereby denied. For these reasons, it is in the best interests of *all* parties to adopt a standard of subarea plan *consistency* for authorized projects. 105(dh)

Suggested remedy: Both the Implementing Agreement and subarea plan should reflect a commitment on the part of the County to authorize projects "consistent" with the plan and permit conditions.

K. Clarification is needed for the application of the mitigation ratios. (BMO p. 9)

Discussion: Referring to the proposed habitat-based mitigation ratios, the Ordinance states, "These rations shall generally be followed for habitats." The meaning of word "generally" is unclear. Does it mean that the rations will be applied haphazardly or only when convenient? Or instead, does it mean that, for practical reasons relating to parcel sizes, *de minimis* deviations from exact acreages might be allowed?

From the perspective of state and federal permitting, *only* a strictly applied ordinance, not susceptible to inconstant or arbitrary use, can conceivably meet legal standards of assured implementation. From the public perspective, it is *only* the certainty of application which makes these relatively low mitigation ratios acceptable. The concerns voiced in Comment F above, on the need for pre-defined criteria for variances, are integral to this comment, as well. 105(di)

Suggested remedy: The word "general" in the above sentence should be deleted. The application of the mitigation ratios should be rigorous, with variance procedures strictly defined. Only *de minimis* deviations should be allowed from the exact amount of land calculated as required for mitigation.

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L. The Biological Mitigation Ordinance should make explicit the need to undertake all necessary surveys for narrow endemics, sensitive plants and animals, or other species whose mitigation *may* be required under the Ordinance or under CEQA. 105(dj)

M. The Biological Mitigation Ordinance does not mitigate impacts to covered species to the maximum extent practicable under section 10(a) or to the extent feasible under CEQA.

Discussion: Under current County policies (Resource Protection Ordinance and "Greenbook" guidelines), mitigation occurs at higher rates than is now proposed. For example, current policy does not generally allow the use of undevelopable floodplain or steep slopes land as project mitigation; this practice is, however, institutionalized in the proposed Ordinance. Also, mitigation ratios for habitats previously considered rare or sensitive have been significantly reduced (e.g., oak woodland from 1-3:1 to generally 1:1; coastal sage from 1-3:1 to generally 1:1). For non-native grasslands, current policy is to fully mitigate (at least 1:1) if any of a comprehensive list of County and State "sensitive" plant and animal species is present. The proposed Ordinance would reduce that requirement to a *drastically abbreviated* list (that is, the MSCP covered species) and would *in addition* reduce the mitigation ratio for non-native grassland occupied by a sensitive species in half, to 1/2:1. Very importantly, this "double-reduction" is inconsistent with the reason why a 1/2:1 ratio was proposed in the first place, namely, that sensitive species were *presumed to occur in approximately half the grasslands.*

These major, across-the-board reductions are *prima facie* evidence that mitigation is not occurring to the maximum extent practical under federal law or to the extent feasible under state law. The truth of this is immediately evident upon comparison with requirements in the City of San Diego. There, using the same overall ratio scheme, developers are required to mitigate at a 1/2:1 ratio for *all* non-native grasslands. There is no reason to believe that what is feasible in the City is infeasible in the County—where mitigation lands are, in fact, far *less costly* to acquire than in the more expensive coastal zone.

Furthermore, under the proposed system, many non-native grasslands, which are of relatively small patch size, would escape mitigation altogether, as *only* those potentially used by the covered species list raptors—large species like the golden eagle and northern harrier—could be mitigated. To the contrary, under the current County system, use by smaller raptors may trigger mitigation, as species such as the white-tailed kite and loggerhead shrike are considered sensitive. The creation of this loophole exacerbates the extent to which mitigation obligations will be reduced below current levels. Taken together, the various reductions cumulatively violate a cardinal and long-standing principle of the MSCP, that is, mitigation will occur at the *same aggregate level* as today.

The uncertainty over what patch size of grassland deserves mitigation deprives the grassland-dependent species of assured levels of take and conservation, and therefore removes the basis for permit issuance. This uncertainty will also inevitably result in project-by-project disputes between developers, the wildlife agencies, the jurisdictions, and private citizens. For example, were the raptor surveys adequate to avoid mitigation? Contention and litigation hardly meet the County's goal of a streamlined, habitat-based mitigation system.

The ecological role played by non-native grassland is fundamentally the same as the played by native grasslands; the role of non-native grasslands in supporting raptors is incontrovertible. The County must fully and consistently recognize the biological value of this habitat type in the mitigation ratios if its system is to be credible. We again stress that the reduction of mitigation to a 1/2:1 ratio *already factors in* the issue of sensitive species presence.

Suggested remedy: Only in the anticipation of even-handed and consistent application, have we have supported the streamlined approach to mitigation reflected in the County's proposed habitat-based ratios. It is therefore unacceptable for a glaring exception to these principles to be put in place for 105(dk)

105

an important biological community. As a remedy for species dependent upon non-native grasslands, a compromise using the *low* ratio of 1/2:1 yet *coupled with* fully consistent application—as found in the City of San Diego's proposal—could be acceptable. 105(dk)

N. In article IV of the Biological Mitigation Ordinance, the qualifier "reasonable" in the phrase "reasonable connectivity" (pertaining to mitigation lands outside core areas) should be deleted. 105(dl)

Discussion: "Reasonable" has no biological meaning, and can be variously interpreted.

Suggested remedy: Substitute "fully adequate".

O. Biological core areas outside of a subarea plan are insufficiently defined. (III (1)b(i))

Discussion: To limit the definition of such areas to high or very high value habitat would exclude the preservation of biologically important habitat, which, while in isolation might be considered "lower" value, is actually essential to the overall viability of a habitat patch. 105(dm)

Suggested remedy: Include in the definition the phrase, "or moderate value within a matrix of high or very high value."

P. Ratios in the Biological Mitigation Ordinance provide insufficient disincentive to mitigate outside the preserve.

Discussion: Particularly for Tier II and III impacts, the differential between mitigation outside and inside the preserve is minimal, and will not provide sufficient incentive. 105(dn)

Suggested remedy: Increase the ratios to provide greater incentive for mitigating inside the preserve.

Q. The practice of placing fuel modification zones within development boundaries should be continued.

Discussion: It is the responsibility of a development project to protect itself from fire hazard with fuel modification zones. It is not the role of the pubic to subsidize private development projects by degrading public lands in order to provide this function. (It is noteworthy that the property values of private parcels are significantly increased by their proximity natural to open space.) Furthermore, fuel modification zones are extensively denuded of native vegetation, and these impacts require standard mitigation. The inclusion of fuel modification zones within development boundaries is an existing land use implementing policy for the County of San Diego, and constitutes an analytical premise which underlies the County subarea plan and the covered species list; no other scenario has been analyzed in the EIR/EIS. 105(do)

Suggested remedy: Continue current County policy of incorporating necessary fuel modification zones into development project boundaries, and continue to require mitigation for impacts to the native vegetation and associated species as a result of vegetation modifications.

R. Protection for narrow endemics should be improved.

See MSCP Plan Comment G above. 105(dp)

We thank the agencies, jurisdictions, and other stakeholders for considering our views.

Sincerely,

Dan Silver,
Coordinator

106 COURTNEY A. COYLE, 10/29/96

106(a) See **Theme Response V, Taking of Private Property.**

106(b) Comment noted. Discretionary permit processing and associated CEQA review would remain unchanged. Adoption and implementation of MSCP Plan does not affect the Coastal Development Permit (CDP) processes. As stated as a purpose and intent of the project, the adoption and implementation would streamline the discretionary development permit process for projects that impact covered species. It also addresses the cumulative impacts to covered species. All projects would continue to be subject to CEQA.

106(c) The MSCP Plan is not intended to become the sole planning tool for local jurisdictions, nor would it replace CEQA review or requirements for Coastal Act compliance. These statutes would remain in force and their requirements would need to be met for local land use approvals. Techniques for MSCP Plan, Volume I implementation and reporting are described in Sections 5.0 and 6.0 of the MSCP Plan. As described in the MSCP Plan, local implementation of approved subarea plans would be the responsibility of individual jurisdictions. Each take authorization holder would provide an annual accounting of habitat acreage disturbed and conserved. Consolidated reporting and public hearings would occur every three years. This process is intended to maintain local control and minimize reporting requirements while at the same time assuring adequate accounting and public input. Please refer to Section 6.4 of the MSCP Plan, Volume I, for additional information on this process.

106(d) Implementation of the MSCP Plan would occur through one or more of the following: amendments to general plans and community plans, zoning and land use regulations, and ordinances. Existing protections of hillsides, and open spaces are being retained. See Exhibits I, J, L and N of the City of San Diego Implementing Agreement.

Within the City of San Diego, the implementation of the MSCP Plan and subarea plan would result in over 50% of the undeveloped lands being conserved for their habitat values. Slope-constrained lands, new park development and other neighborhood amenities would also result in the preservation of open space within the City of San Diego. Implementation of the MSCP Plan would result in greater conservation of open space in a more functional pattern than would occur without the MSCP Plan. See also **Theme Response X, Habitat Conservation Accounting Model.**

106(e) Both biological monitoring and take authorization compliance auditing will occur. The wildlife agencies will be coordinating the biological monitoring program and its implementation. Take authorization compliance auditing will also be conducted by the wildlife agencies as a separate and distinct task. The funding for the biological monitoring will be a combination of wildlife agency and local funding (see Implementing Agreements, Sections 14 and 15).

106(f) The ordinances, regulations, etc. used to implement the MSCP Plan do not expire if the take authorizations are suspended or revoked. Any action to change them would require public hearings and appropriate CEQA compliance.

106(g) The MSCP Plan proposes to conserve 85 sensitive species within a regional preserve system. This preserve system would also benefit other rare and common species that reside in southwestern San Diego County through protection of a diversity of vegetation communities in an ecologically sound preserve configuration.

The data base used to develop the MSCP preserve system contains numerous records of species observations based on surveys conducted for the MSCP Plan, for CEQA project reviews, and other purposes. These data are incorporated into the species analysis in the revised MSCP Plan Table 3-5. For several species, the number of individuals is not as important as the protection of adequate amounts of potential habitat in an ecologically sound preserve configuration.

It is the responsibility of each permitted jurisdiction to ensure that existing field data for individual projects adequately address information needs for CEQA review. Additional surveys using appropriate protocols would be necessary to determine project specific impacts where preserve configuration has not yet been determined. These surveys would be used to avoid impacts to sensitive resources and determine mitigation, in accordance with subarea plans and local ordinances.

106(h) The MSCP Plan emphasizes conservation of existing habitat, with a minor emphasis on habitat restoration. Restoration of vegetation communities, especially upland communities, is an expensive and uncertain proposition which has met with mixed results. Research into restoration of such habitats as coastal sage scrub is underway, and success rates may improve in the future. There are still many areas within the MSCP study area that support high quality habitat for a wide array of species and preserve design emphasized its conservation. Conservation of existing functional habitats supporting a high natural biodiversity is biologically and economically preferable to restoring or creating habitat artificially. Restoration will generally be limited to enhancement of existing disturbed habitat areas, critical habitat linkage areas, restoration of cut and fill slopes within the MHPA, and restoration for species specific needs (e.g. cactus wren and clapper rails).

The MSCP Plan acknowledges that military reservations contain the only remaining areas for the long-term conservation of certain species. Because military reservations are outside the authority of the local jurisdictions, conservation planning for these species will be accomplished through separate avenues such as formal consultations pursuant to Section 7 of the federal ESA and through Sike's Act agreements. It will be the responsibility of the wildlife agencies to ensure that these conservation planning activities are consistent with the goals of the MSCP Plan in conserving covered species and their habitats in ecologically sound preserve configurations that are compatible with the MHPA. Provisions will be included into these agreements that stipulate that conveyance of lands to private interests will conform to the measures required through transference of responsibilities in a deed restriction.

106(i) Definitions of terms pertinent to ensuring compliance with the terms of the permit and implementing agreement are provided in Section 2 of the Model Implementing Agreement.

106(j) The comment is noted. See **Theme Response IV, MSCP Financing Plan: Regional Source of Funds.** MSCP funding mechanisms are described in detail in Section 7.0 of the MSCP Plan, Volume I.

106(k) One of the tenets of the MSCP Plan is that it would not impose a building moratorium and that it would respect private property rights; lands would only be purchased from willing sellers. With the exception of the Metro-Lakeside-Jamul segment of the County's Subarea Plan, the MHPA has been drawn with hard-line boundaries. The City of San Diego proposes to rezone the lands within the MHPA to allow only 25 percent encroachment. The County must ensure that proposed development projects within the Metro-Lakeside-Jamul segment of the County Subarea Plan meet its requirements with regard to preserve design and species conservation.

106(l) Analyses of pollution, runoff and watershed impacts associated with implementation of the MSCP Plan are not deferred in the Draft EIR/EIS. Please refer to pages 1-18 through 1-22 of the Draft EIR/EIS for discussion of these issues.

The conservation provided by the proposed preserve for covered species takes into consideration the proposed development of Fanita Ranch and SR-125. With regard to the expansion of the MCAS Miramar, projects on military lands are not subject to the provisions of the MSCP Plan, but rather to Section 7 of the FESA, NEPA regulations, and other relevant federal regulations.

106(m) The purpose of the MSCP Plan is to provide mitigation for the proposed take authorizations of covered species, as required in Section 10(a)(1)(B) of the federal ESA. The participating local jurisdictions are pursuing this Plan as a means to streamline the federal and state take authorization processes through development of an ecosystem-level preserve that provides for the conservation of multiple species and their habitats. The three original species to which the commenter refers are the NCCP target species (cactus wren, orange-throated whiptail, and California gnatcatcher), which are to be addressed in all NCCP coastal sage scrub plans. See also **Theme Response IV, MSCP Financing Plan: Regional Source of Funds.**

106(n) See **Theme Response X, Habitat Conservation Accounting Model.**

106(o) See **Theme Response VIII, Public Involvement.**

106(p) The analysis for covered species and the EIR/EIS has incorporated the effect of vested or "pipelined" projects.

106

COURTNEY ANN COYLE
ATTORNEY AT LAW

232 PLAYA DEL SUR
LA JOLLA, CA 92037

TELEPHONE: 619-454-8687 E-MAIL: COURTCOYLE@AOL.COM FACSIMILE: 619-454-8493

Ms. Nancy Gilbert
U.S. Fish and Wildlife Service
2730 Loker Avenue West
Carlsbad, CA 92008 fax: 431-9624

Mr. John Kovac
City of San Diego Development & Environmental Planning Division
1222 First Avenue, 5th Floor
San Diego, CA 92101 fax: 236-6620

Mr. Tom Overbauer
5201 Ruffin Road, Suite B
San Diego, CA 92123 fax: 694-3373

October 29, 1996

Re: Comments on the County and City of San Diego's EIR/MSCP Plan for San Diego

While recognizing that many good people have worked tirelessly for several years on this project, the following are some concerns, for the record, which may be desirable to be addressed before final approval of the plans and before this program is exported to other regions. Thank you for the opportunity to comment during this extended comment period.

1. **Takings and Precedent concerns.** Because of the current climate regarding "property rights" each jurisdiction should encourage the concurrent enactment of policy goals in their broad policy documents including general plans. In light of the Ehrlich decision, jurisdictions may be best able to protect themselves from such claims if they can show that the regulation was legislatively determined via across-the-board balancing rather than determined solely on an ad hoc basis.

Another concern is that the plans may be a de facto codification of Candidate Dole's proposed takings legislation. Over the last two hundred odd years, the courts have repeatedly declined to establish a bright line percentage of diminution in value triggering a taking. However, these plans, by establishing a 25% trigger, may be venturing where courts have repeatedly, and with good reason, declined to go. The public should not have to pay for what developers are already obliged to mitigate. Moreover, a recent law review article by John F. Hart titled "Colonial Land Use Law and Its Significance for Modern Takings Doctrine" disavows much of the asserted underpinnings of the modern "property rights" movement. For your reference, it appears in the Harvard Law Review at Vol. 109:1252, 1996. 106(a)

Because of the national attention this program has received, and will continue to receive, it is imperative that we remain mindful of its precedent setting nature. This is an experiment borne of crisis; not a model.

2. **Planning and Implementation concerns.** Significantly, over the last several years, both the County 106(b)

106

and City of San Diego have undergone a wholesale withering of its Planning Departments. Through staff and budget cutbacks these departments are shadows of what they once were. Accordingly, there has been a sea change in the workload of these departments. Through Orwellian changes, the city planning department is now labeled the "Development Services Department." Developers are the clients; the underlying resources often lack champions. We have been informed that the recent vacancy of the chief of the planning department will not be filled, and instead, the City Manager will occupy the field. The Zoning Code Update draft EIR is forthcoming; the stated purpose of this Code is to create one-size-fits-all zoning for the entire city and to increase ministerial permitting. Moreover, the City has stated its belief that its zoning does not need to be consistent with its general plan because of its "charter city" status. It is unclear how such inconsistency with bedrock hierarchical planning principles will effect the implementation of the MSCP and its policy objectives. This is a brave new world of habitat planning; perhaps charter city status has outlived any purported beneficial use. 106(b)

The point is that the MSCP must not be examined in a vacuum; it must be examined within the context of other land use planning mechanisms in our area. One needs only experience the permitting and cross-jurisdictional problems associated with Coastal Development Permits to recognize the serious permitting and enforcement voids in these sensitive areas. One wonders if the already over-taxed localities will be able to keep track of take statistics. MSCP proponents must be able to say to themselves that the city and county have done such a great job protecting resources and implementing the law that we want to hand over the remainder of the authority to them. The MSCP plan must not become the sole planning tool for the localities, nor should it be allowed to replace CEQA review or Coastal Act compliance; they are not interchangeable. This cannot be stated clearly or often enough. 106(c)

Implementation must encourage active and open public review and disclosure, flesh out the across-the-counter permitting procedures, authority, and education, and mandate meaningful findings and accountability. Without such measurable, objective criteria it may be impossible for the legal requirements of certainty to be met, making the implementing agreements void or voidable. The plans must make the leap and describe with specificity how these plans and data will be carried out within the jurisdictions. Checks and balances must be clearly developed and written into the draft plans. Cities will always have an inherent conflict of interest between encouraging development which, in theory, increases the tax base versus adequately conserving land-based resources. Such conflict was what created the Endangered Species Act in the first place. The city of San Diego cannot suffer all density and no amenities. Many areas of the city are already underparked, as acknowledged in their community plans, and should not loose their open space resources, including canyons and bluffs, to encroachment. 106(d)

It may be wise and efficient to create special staff positions at the local and state agencies and jurisdictions to monitor the permits, takes, and educate all the way to the counter and public levels. Further, a distinction must be maintained between biological monitoring staff and permit monitoring staff. 106(e)

And, above all else, if the plans fail, a reversionary clause or reopener clause should be crafted so that the previous protective ordinances, repealed in favor and in anticipation of MSCP, would be reactivated so that there is no net loss of protective mechanisms. 106(f)

3. Science, Data, and Standards concerns. The preserve areas are created through the examination of several species but not all species. To my knowledge over 1,000 known species were not studied. Moreover, much of the data is now five years old and less than one half of the data was field verified. Thus, we cannot really know what we are losing and its value. It appears that some key data may be missing because, by definition, it simply takes a long time to acquire adequate population viability data. We are told that the developers cannot wait for the science; I question whether this fulfills a "best 106(g)

106

science" approach. Science cannot, and should not, be politicized. Independent science and peer review ought to be proactively encouraged. Regular data review and species trends must be compiled for public review and comment. 106(g)

Regarding habitat, many species have likely been forced to occupy marginal habitat because that is all that remains; a focus should be on restoration of high quality habitat, not just preservation of current habitat. Similarly, a comprehensive policy must be developed regarding military lands which contain some of the last and best stretches of urban open space. During a time of base closure and realignment, comprehensive plans must be in place to quickly capture such lands. (See Harvard's recent Biodiversity Project examining Camp Pendleton). 106(h)

The MSCP programs contain new phrases and standards. The language contained therein is new, untried, and untested; we do not yet know what "minimal viability," "adequately conserved," "extraordinary circumstances" really means. Reasonable minds might differ. Other language, such as "recovery" is wholly absent. The risk of these unknowns must be weighed before site specific land use controls are abdicated. 106(i)

4. **Funding and Political Will issues.** The MSCP has been worked on for a number of years. However, it is curious that no substantial pot of funding has been created to nest egg these plans. Any person starting a business would likely not open its doors, no matter how solid its business plan may be, without having a nest egg ready to go. It is also curious that no major conservancy or land trust has helped to guide public agencies and private groups through successful, major MSCP-specific acquisitions or viable mitigation banking constructs. Further, intellectual consistency dictates that if no vote of the people is required for 360 million dollars of stadium renovations and convention center expansions, that other projects undertaken to enhance the public good, land values, and tourism dollar, such as the MSCP, should also be exempted from such a vote. If the elected officials really believe in the MSCP program and its necessary funding realities, the money could - and should - be found up front. 106(j)

In 1972, the county commissioned a report titled "An Open Space System for the San Diego Region." This report studied and made recommendations regarding comprehensive planning of open space in San Diego County. If these recommendations had been followed then, we may not have been placed in our current situation; certainly if the plan had been implemented then, the associated costs for land acquisition would have been greatly reduced. I am uncertain as to what makes the current MSCP plan more compelling and workable, particularly in the absence of funding.

5. **Reserve Design, Orderly Construction and Preservation.** A major concern is the large window of time, twenty to thirty years, within which the reserve lands will be captured. Precedent for carrying out rational design is unfortunately scarce in San Diego. The fate of the Future Urbanizing Area in the north County of San Diego is instructive. Here the voters determined that this large area should not be developed unless there was a need for it (other areas virtually buildout) and that a comprehensive plan for its intelligent and orderly development had been conceived. What has in fact occurred is a piecemeal encroachment through general plan amendments and variances and their associated development into the area. One need look no further than the adverse impacts of patchwork quilt in-holdings in the Cleveland National Forest to recognize the adverse biological consequences of piecemealing habitat acquisition. Because of the amount of time slated for acquisition, the current lack of funding, and the established developer-friendly political culture, the public should have every reason to expect that a similar fate may befall MSCP appropriate lands. Moreover, what holds true of direct impacts of development will also hold true of the indirect impacts of alleged support uses including golf, camping, and other commercial uses. The documents should specifically state that, "uses of reserve lands will not preclude reserve success." 106(k)

106

Currently several proposed projects, such as the SR 125 Tollroad and the Fanita Ranch development would irretrievably fragment core areas. (See letter from Felicia Marcus, US EPA, dated September 16, 1996) Moreover, additional expansion of the Miramar airport would severely impact the extensive vernal pools on site. (See April 11, 1996 letter from Gail Kobetich to Mr. Michael Stroud in the supplemental EIR for Miramar). Based on the above, it is unclear whether the MSCP will be successful without effective, concurrent land use control mechanisms such as meaningful long-range planning, an urban limit line and a comprehensive infill and redevelopment program for our already urbanized areas. Moreover, under Sundstrom, a complete analysis of pollution, run-off, and watershed impacts of expects buildout cannot be deferred. Currently, EIRs for our region appear to already improperly defer project specific mitigation to the as yet prospective MSCP. 106(l)

6. Penalty for Noncompliance, Failure to Monitor Mitigation, and Assurances. It is my understanding that the MSCP was created to encourage biodiversity. It was to be a conservation plan, not a mitigation plan. However, as the project stands currently, it appears to be more of a development facilitating plan. This revision is fine as long as this intent language is clearly acknowledged. Further, the impact of such revisions are reflected in the poor job most states, including California, have done regarding biodiversity preservation. (See the July 1996 Defenders of Wildlife report: "Saving Biodiversity, A Status Report on State Laws, Policies and Programs;" and Bruce Babbitt's October 3, 1996 press release regarding the Species Survival Commission of the World Conservation Union report).

As negotiations progressed on this program, the number of assurances for developers and landowners grew while the assurances for scientifically viable resource populations remained nearly static. If already existing public lands and land that is currently nondevelopable become the primary sources for the MSCP, it is difficult to understand what concessions have been made by landowners in this consensus process. It is my understanding that the covered species list originally consisted of 3 species; it now stands at 85. Further, the "no surprises policy" has no nexus with sound conservation biology and will inevitably cause the taxpaying public at large to assume the burdens of risk allocation for private developers. Adequate funding must be created to allocate the risk of funding future modifications to the reserve boundaries as our science evolves and improves over time. Mutual assurances must be crafted. 106(m)

The best of what remains must be adequately conserved. Conservation depending on self-regulating and self-reporting has often proven ineffective. The monitoring program must have teeth in it to avoid running afoul of Public Resources Code Section 21081.6(b) requiring fully enforceable mitigation measures. Moreover, citizen enforcement mechanisms must be clearly set out. 106(n)

7. Public input and Negotiation concerns. Despite the fact that the process was billed as a collaborative one, using a consensus approach, the majority of the negotiations and certainly the majority of its early development was not centered on broad-based participation. To this day, there appears a lack of neighborhood involvement in which citizens are aware of how the MSCP will impact their particular areas. This constituency must be educated about the plan. This has not yet occurred. 106(o)

Finally, an analysis of arguably vested or "pipelined" projects should be done to accurately gauge what core areas may be already in a compromised position. Data should be adjusted accordingly. 106(p)

Again, thank you for the opportunity to comment on this issue of great concern to the city, county, citizens and resources of San Diego. It is my hope that meaningful regional planning around ecosystems and habitats, while encouraging sustainable development, will come to successful fruition in our resource-rich area.

Very truly yours,
Courtney Ann Coyle

107 HEWITT AND MCGUIRE (ALLIANCE FOR HABITAT CONSERVATION AND BIA), 10/29/96

107(a) See **Theme Response III, Economic Impacts and Impacts on Population and Housing**. The MSCP Plan is designed to streamline compliance with CESA, CEQA and FESA, thereby reducing the costs to develop housing and other projects as compared to existing conditions.

107(b) The nature and scope of the MSCP Plan are fully described and depicted in the Draft EIR/EIS. The specific objectives of the MSCP Plan are listed in full on page 1-7 of the Draft EIR/EIS and the MSCP Plan is described in detail on pages 2-1 through 2-20 of the Draft EIR/EIS. The subarea plans and associated implementing mechanisms are described on pages 2-20 through 2-51 of the Draft EIR/EIS. Federal, state and local actions required to implement the MSCP Plan are described on pages 1-11 through 1-14 of the Draft EIR/EIS. Without more specific comment on how the "EIR/EIS needs to articulate more clearly the nature and scope of the MSCP," a more specific response cannot be provided.

107(c) Please see revised MSCP Plan Table 3-5 included in the Revisions to the MSCP Plan, Volume I, January 1997, for the analysis of covered species. See also **Theme Response XXVI, Permit Streamlining.**

107(d) See **Theme Response I, Species Analysis Approach** and revised MSCP Plan Table 3-5 included in the Revisions to the MSCP Plan, Volume I, January 1997.

107(e) The understandings expressed in the comment regarding use of the Draft EIR/EIS to streamline environmental analysis of future projects with respect to covered species are correct. As shown in Table 4.1-1 of the Draft EIR/EIS (pages 4.1-4 and 4.1-5), a program level of analysis is provided in the document for the overall MSCP Plan while project level analyses are provided for the individual subarea plans. Individual projects within the MSCP study area would require additional project-level analysis, although the data presented in the Draft EIR/EIS would provide an important framework for any biological analyses required for individual projects. The degree to which additional environmental review would be required beyond a mere consistency determination would be made on a case-by-case basis for each individual project by the individual jurisdiction within which the project is located.

The Mitigation Monitoring and Reporting Program (MMRP) included in the Final EIR/EIS is an important vehicle for "tiering-off" the Final EIR/EIS in supplemental environmental review for individual projects. The MMRP presents the measures identified specifically for the MHPA. For example, for the overall MSCP Plan, required mitigation measures for impacts to biological resources include:

-- preservation of population of covered species (per Table 4.3-1 of Draft EIR/EIS);

- -- configuration of the MSCP preserve in a manner consistent with Figure 2-1 of Draft EIR/EIS;
- -- conformance with conservation goals and criteria for individual species (per Table 4.3-1 of Draft EIR/EIS); and
- -- implementation of measures included in the MSCP biological monitoring plan.

It is anticipated that the contributions of individual projects to implementation of the measures outlined above, and similar measure identified for specific subarea plans, will be evaluated on a case-by-case basis. In this way, the Final EIR/EIS will serve as first tier analysis for individual projects.

With respect to the comment regarding mitigation ratios, such ratios are not specifically identified in the MSCP Plan, and are identified to varying degrees in the subarea plans addressed in the Draft EIR/EIS. The application of ratios to determine the amount of mitigation required would be determined on a case-by-case basis by the particular jurisdiction within which a specific project is located. Likewise, with respect to edge effects, Section 6.0 of the MSCP Plan simply provides general guidelines regarding land uses within and adjacent to the preserve. The subarea plans contain more specific information regarding land uses within and adjacent to the preserve. The degree to which analysis of edge effects would be required would be determined on a case-by-case basis by the individual jurisdiction within which a particular project is located.

107(f) The Draft EIR/EIS analysis of forecast housing in the MSCP study area is limited to the time period of 1990-2005, since SANDAG's Series 8 Regional Growth Forecast does not fully resolve the issue of accommodating growth beyond the year 2005. Please refer also to **Theme Response III, Economic Impacts and Impacts on Population and Housing.**

107(g) SANDAG's Series 8 forecast indicates that there is a lack of vacant land designated for residential use with densities greater than one unit per acre. The MSCP study area contains a substantial quantity of vacant land designated for residential use with densities less than one unit per acre. Thus, SANDAG's forecast showed that it would be necessary to convert some lands which are currently zoned for residential use with densities less than one unit per acre to densities greater than one unit per acre.

107(h) The paragraph at the bottom of p. 4.6-5 of the Draft EIR/EIS is in error and has been corrected in the revised language included in the Final EIR/EIS. After meeting the conservation targets of the MSCP Plan, there would be 82,290 acres of developable and vacant private land in the MSCP study area. In 1990, the average gross density of the urbanized areas of the MSCP study area was 3.1 dwelling units (DU) per acre (Draft EIR/EIS, page 4.0-3). If future development were to occur at the same density, 255,000 dwelling units may be constructed, or slightly greater than 246,400 units forecast for the study area in the year 2015. In practice, there is likely to be redevelopment of selected urbanized areas, which would place additional units in those areas. However, such redevelopment is not necessitated by the implementation of the MSCP Plan.

107(i) Two measures of residential density are used in the EIR/EIS. The first is the total number of dwelling units in 1990, divided by the total area of developed land in 1990, or 3.1 DU/acre (= 691,666 DUs / 223,288 developed acres). The second is the total number of dwelling units in the year 1990, divided by the total area of land developed for residential use, which occupies approximately 59.3 percent of the total developed land; this density is 5.22 DU/acre (= 691,666 DUs / 132,444 residential acres). The two measures are equivalent and reflect the existing condition in the year 1990.

107(j) Please refer to **Theme Response III, Economic Impacts and Impacts on Population and Housing** regarding the adequacy of the financing plan under the federal ESA.

107(k) Comment noted. As stated in the Draft EIR/EIS, "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" (page 4.6-46). On the other hand, implementation of the MSCP Plan would tend to decrease environmental mitigation and land carry costs and to expedite approval of development projects. It is difficult to assess the combined effect of these factors on the region's future housing costs. Please refer also to **Theme Response III, Economic Impacts and Impacts on Population and Housing.**

The habitat based approach to environmental mitigation will provide greater certainty to landowners/developers because they will know at the beginning of the permitting process what will be expected of them. Because the percentage of habitat to be protected in the MHPA is also known prior to commencement of project planning and because site specific project analysis will allow sensitive habitat areas to be avoided, these will be significant benefits to covered species.

The MSCP Plan does not enlarge the jurisdiction of the wildlife agencies. The MSCP Plan and subarea plans and the mitigation those plans propose for impacts to species and sensitive habitat types were developed and will be implemented by the local jurisdictions. The MSCP Plan is an attempt by the local jurisdictions to address species conservation on a regional scale in order to provide better protection for sensitive species and habitat types within the MSCP Plan study area, while at the same time affording more certainty and a streamlined environmental review process to landowner/ developers. If the wildlife agencies determine that the MSCP Plan and subarea plans meet the federal ESA and state standards for issuance of take authorizations, the wildlife agencies' role will be to monitor and enforce the terms of the authorizations in accordance with applicable federal and state laws. The participating local jurisdictions retain full jurisdiction over the development and implementation of local land use policies.

107(l) The MSCP Plan contains a timeline for the implementation of a regional funding program. In addition, the proposed preserve would be assembled from various sources, not all of which would require acquisition with public funds. See **Theme Responses X, Habitat Conservation Accounting Model and IV, MSCP Financing Plan: Regional Source of Funds.** The take authorization holders and the wildlife agencies will also meet annually to review and coordinate subarea plan implementation and, if required, take corrective actions as specified in the subarea plan and implementation agreement.

107(m) Comment noted. The MSCP Plan and the implementing agreement contain provisions for the review of subarea plan implementation and remedies that may become necessary in case public funding is not available in a timely manner. In the event that regional funding fails, the wildlife agencies are committed to working closely with the local jurisdictions to minimize any reduction in permit coverage, while alternative funding is pursued. Even in the event of such revocation or suspension, the agreement contains assurances to proponents of projects who have received permits under the MSCP Plan and who are in compliance with the terms of the permit and mitigation requirements.

If the take authorizations were suspended, project proponents requiring incidental take coverage could obtain such coverage by applying individually for a take authorization from one or both of the wildlife agencies as appropriate.

107(n) The specific objectives of the MSCP Plan are presented on pages 1-5 and 1-6 of the Draft EIR/EIS.

107(o) The referenced acreages on page ES-2 of the Draft EIR/EIS state the conservation goal acreage of the proposed MHPA. The anticipated, generalized configuration of the MHPA is depicted on Figure 2-1 of the Draft EIR/EIS. Figure 2-2 depicts average anticipated habitat conservation within the MHPA for all areas with the exception of the County of San Diego's Metro-Lakeside-Jamul segment. The habitat conservation percentages presented in Figure 2-2 and pre-approved mitigation area maps in the Metro-Lakeside-Jamul segment were used to generate the referenced acreages on page ES-2.

107(p) As described on pages 2-30 and 2-31 of the Draft EIR/EIS, the Environmentally Sensitive Lands Ordinance is a mechanism proposed to be used by the City of San Diego to implement the City's Subarea Plan. The City of San Diego's Implementing Agreement proposes to adopt such an ordinance within 180 days of the effective date of the City's Subarea Plan. As stated on page 2-31, the Environmentally Sensitive Lands Ordinance would be subject to separate environmental review.

107(q) As shown in Table 4.1-1 of the Draft EIR/EIS (pages 4.1-4 and 4.1-5), a program level of analysis is provided in the document for the overall MSCP Plan while project level analyses are provided for the individual subarea plans. Individual projects within the MSCP Plan study area would require additional project-level analysis although the data presented in the Draft EIR/EIS would provide an important framework for any biological analyses required for individual projects. The degree to which additional environmental review must be required beyond a mere consistency determination would be made on a case-by-case basis for each individual project by the individual jurisdiction within which the project is located.

107(r) Jurisdictions whose subarea plans are addressed in the Draft EIR/EIS participated in preparation of the document in a variety of ways from straightforward provision of necessary information to review of screencheck draft documents. Broad-scale subarea plan alternatives (Coastal Sage Scrub Scenario and Biologically Preferred Scenario) were developed by the overall MSCP team and not by the

City of San Diego. In addition, localized subarea plan alternatives were identified by the County of San Diego and the City of Chula Vista. An additional localized alternative was identified by the City of Santee during the public review period.

107(s) Significant environmental effects of the MSCP Plan, subarea plans and alternatives are briefly summarized on the tables included in the Executive Summary to the Draft EIR/EIS. In addition, the Mitigation Monitoring and Reporting Program (MMRP) included in the Final EIR/EIS includes a summary of the significant environmental effects associated with the proposed MHPA.

107(t) Since the No Project alternative would have no significant effects, it was not deemed to be necessary to add it to Table ES-2 or the other summary tables included in the Executive Summary.

107(u) As discussed on page 4.2-67 of the Draft EIR/EIS, an update of the City of San Diego's General Plan Housing Element is recommended to address the identified impacts. The impact remains significant and not mitigated simply because specific measures to be incorporated in a Housing Element update have not been identified at this time.

107(v) Since the No Project alternative would have no significant effects, it was not deemed to be necessary to add it to Tables ES-3, ES-4, ES-5 or ES-6.

107(w) As stated on page ES-22, Issue 3 is not represented on Table ES-6. This is due to the fact that the analyses for Issue 3 did not include analysis of the subarea plans and other actions as described in the text of the Draft EIR/EIS.

107(x) A discussion of the relationship between local short term uses and long term productivity is included in the revised language incorporated in the Final EIR/EIS.

107(y) The City Council of San Diego would initially certify the Draft EIR/EIS for the adoption of the MSCP Plan in concept and approve the City's Subarea Plans. Subsequently, each of the responsible agencies would determine the adequacy of this previously certified document for the adoption of the MSCP Plan and the approval of their respective subarea plans.

107(z) The take authorizations described on page 1-11 would be issued to individual jurisdictions and other take authorization holders in conjunction with approval of individual subarea plans and implementing agreements. The areas covered by the take authorizations would be consistent with the areas described in the subarea plans and implementing agreements, and take would therefore occur both inside and outside of the MHPA.

107(aa) The California Department of Fish and Game will be filing a Notice of Determination (NOD) in certifying the Final EIR/EIS as the CDFG's CEQA document for the CDFG's approval of the MSCP Plan as an NCCP. The CDFG is listed as a responsible agency in the MSCP Plan EIR/EIS. In addition to the filing of the NOD, the CDFG will also be making findings of consistency with the NCCP act, issuing CEQA/NCCP authorizations and executing implementing agreements with participating jurisdictions. The environmental consequences of the CDFG issuance of CEQA/NCCP authorizations to the participating jurisdictions were analyzed in the MSCP Plan EIR/EIS. The state take authorizations will authorize the take of covered species consistent with the MSCP Plan and subarea plans for the MSCP study area. The authorized take may occur either inside or outside of the MHPA.

107(ab) The City of Poway has not adopted the MSCP Plan. Rather, the City of Poway adopted its own HCP/NCCP subarea plan, after preparing an Environmental Assessment/Negative Declaration. The City of Poway does not intend to adopt the MSCP Plan per se. However, the subarea plan was prepared using MSCP data and guidelines. This is no different than the process for any MSCP subarea plan except that Poway's time schedule mandated that they could not wait for the MSCP Plan and CEQA/NEPA documentation to be finalized.

107(ac) It is beyond the scope of the Draft EIR/EIS to analyze the legal issues associated with such things as economically viable uses of property. Please refer also to **Theme Response V, Taking of Private Property.**

107(ad) The discussion on page 1-20 of the Draft EIR/EIS notes that air pollution problems in the MSCP study area are primarily related to mobile emissions and acknowledges that implementation of the MSCP Plan may affect the location and character of development. The discussion concludes, however, that implementation of the MSCP Plan would not affect the rate or amount of development within the MSCP study area, and therefore mobile emissions associated with implementation of the MSCP Plan would be similar to that which would occur under the No Action/No Project alternative. As discussed in Section 4.4 of the Draft EIR/EIS, additional congestion on roadway segments that could contribute to increased mobile emissions, is not anticipated with implementation of the MSCP Plan due to flexibility incorporated in the MSCP Plan that would permit properly designed roadway segments within designated preserve areas. No circulation element changes are proposed as part of the MSCP Plan or subarea plans at this time that would affect traffic circulation or congestion.

A wide variety of factors can affect the rate or amount of development in any given area including the economic conditions, employment opportunities, quality of life features such as educational opportunities and public safety, and numerous other considerations. These factors are many and diverse and implementation of the MSCP Plan would have little or no effect on these factors. For this reason, it was assumed that the MSCP Plan would not affect the rate or amount of development. Assumptions were not made regarding the effects the MSCP Plan might have on the cost of development since public funds would be used to assemble much of the MSCP preserve and voluntary participation is encouraged as part of the MSCP Plan.

The Draft EIR/EIS acknowledges that some of the development shifted as a result of implementation of the MSCP Plan could be shifted outside of the MSCP study area. Given the large size of the MSCP study area, however, the significant opportunities for additional development within the study area, and the well-developed employment base within the study area which strongly influences the location of growth, it was assumed that most of the projected development would remain within the MSCP study area. Any indirect contribution by the MSCP Plan to increases in regional vehicle miles traveled were not regarded as significant.

107(ae) Private property would only be actively managed by the City of San Diego, or other conservation entity, if acquired with public funds or if the site is conveyed to the City in fee title or by a conservation easement through the development review process. If the property owner is not a willing seller and no development entitlements are requested (i.e. not a third party beneficiary), the land would not be subject to management.

107(af) The term "covered" is used to refer to species that would receive take authorizations pursuant to the federal ESA, CESA, and NCCP when the MSCP Plan is implemented.

107(ag) The MSCP Plan study area includes 27,940 acres of military land, including 18,364 acres of habitat, 3,710 acres of disturbed, and 5,866 acres of developed. None of this military land is included in the MHPA. If acres of habitat on military lands are subtracted from the total study area habitat acres (315,940-18,364=297,576), approximately 56% of the habitat in the smaller study area (excluding military) is targeted for conservation by the plan (167,667/297,576=56%).

107(ah) The mapping effort relied largely on interpretation of 1:24,000 aerial photography, supplemented by ground-truthing. The small patches of native grassland remaining in the study area could not be detected accurately at this scale. Therefore, native and non-native grassland were both mapped simply as "grassland." Mapping completed for the MSCP Plan did not distinguish between native and non-native grasslands so provision of the requested breakdown on Table 2-1 is not possible.

107(ai) Comment noted. The commenter correctly notes that a shortfall in the federal and/or state contribution committed to the MSCP Plan may require that the MSCP Plan be reevaluated with possible adjustments to permit coverage and assurances in light of the extent of the federal/state contribution. In the highly unlikely event that insufficient federal or state funding compels the wildlife agencies to suspend or revoke permit coverage for one or more species, the assurances provided to participating local jurisdictions consistent with the "No Surprises" Policy (see **Theme Response XXIV**) would no longer be available for the affected species, except as to Third Party Beneficiaries.

107(aj) Please refer to **Theme Response XXII, Sufficiently/Significantly Conserved Vegetation Communities.**

107(ak) Watershed management is important for maintaining the function of rivers, streams, and drainages. Human modification of watersheds can result in alterations of native riparian and wetland vegetation, both increased and reduced flows of water, and alterations in sedimentation and scouring processes. These modifications, in turn, result in changes to water quality, nutrient levels, and the ecology of riparian and aquatic species (e.g., the diversity of communities). Furthermore, riparian drainages and adjacent upland habitats are important habitat linkages and movement corridors for terrestrial species.

107(al) The MSCP Plan analysis was based upon core habitat areas, habitat values, linkages, and distribution of "covered species" populations. Watershed data were included within the Draft EIR/EIS as additional information demonstrating the scope of the proposed planning effort. The amount of preservation of natural habitat lands within a watershed is important in understanding the impacts of current and potential future development on wetland systems within the watershed. Watershed with high amounts of development may require a greater emphasis on preservation of remaining habitats within the watershed to assure a healthy wetlands ecosystem. It may also be an indicator that more management activities would be required within that watershed to sustain wetlands functions. However, watershed statistics were not directly used to develop the MHPA or the list of "covered species." No additional watershed analyses would be done for the MSCP planning documents.

107(am) Please refer to **Theme Response V, Taking of Private Property.**

107(an) The referenced statement on page 2-16 of the Draft EIR/EIS is taken directly from the last paragraph on page 4-1 of the MSCP Plan. The sentence in the MSCP Plan reads, *"Private development exactions should not be increased beyond existing requirements."* Please refer also to **Theme Response V, Taking of Private Property.**

Implementation of the MSCP Plan would not extend the jurisdiction of the wildlife agencies. Take authorizations issued by the wildlife agencies would be fully consistent with the existing regulations of the wildlife agencies. Mitigation ratios are not incorporated in the MSCP Plan, however, some jurisdictions are using mitigation ratios as an implementing mechanism in their subarea plans. Ratios would be applied on a case-by-case basis by the individual jurisdiction within which a particular project is located. Please refer also to response to Comment 107(k).

107(ao) All lands within a hard-line preserve area have the potential to be used as mitigation banks provided they meet the criteria within Section 5.14 of the Model Implementing Agreement. A landowner must be willing to enter into an agreement that includes an agreement to commit the parcel to mitigation banking at the time the first mitigation credit is sold. In addition, the landowner must ensure that the banked land has a habitat management plan and a funding mechanism to guarantee its management in perpetuity. In some instances, restoration of habitat lands on-site may be necessary for the land to be "bankable". Each mitigation bank is different, and banking agreements are tailored to fit the conditions of each bank. However, mitigation banking is an incentive-based approach to private lands preservation that continues to hold great promise, and is encouraged within the MHPA.

107(ap) It is not necessary to append the referenced documents to the Draft EIR/EIS since they are not required to support the technical analysis in the Draft EIR/EIS. Likewise, it is not necessary for the Draft EIR/EIS to analyze the consistency of the proposed MSCP Plan with the goals and objectives outlined in the referenced documents. The purpose of the Draft EIR/EIS is to analyze the environmental impacts associated with implementation of the proposed actions, not to make findings of consistency of the MSCP Plan to a variety of plans and policy documents.

107(aq) As shown in Table 4.1-1 of the Draft EIR/EIS (pages 4.1-4 and 4.1-5), a program level of analysis is provided in the document for the overall MSCP Plan while project level analyses are provided for the individual subarea plans. Individual projects within the MSCP Plan study area would require additional project-level analysis although the data presented in the Draft EIR/EIS would provide an important framework for any biological analyses required for individual projects. The degree to which additional environmental review would be required beyond a mere consistency determination would be made on a case-by-case basis for each individual project by the individual jurisdiction within which the project is located.

The Mitigation Monitoring and Reporting Program (MMRP) included in the Final EIR/EIS is an important vehicle for "tiering off" the Draft EIR/EIS in supplemental environmental review for individual projects. The MMRP presents the measures identified specifically for the MHPA. For example, for the overall MSCP Plan, required mitigation measures for impacts to biological resources include:

- -- preservation of population of covered species (per Table 4.3-1);
- -- configuration of the MSCP Plan preserve in a manner consistent with Figure 2-1;
- -- conformance with conservation goals and criteria for individual species (per Table 4.3-1); and
- -- implementation of measures included in the MSCP Plan Biological Monitoring Plan.

It is anticipated that the contributions of individual projects to implementation of the measures outlined above, and similar measure identified for specific subarea plans, will be evaluated on a case by case basis. In this way , the EIR/EIS will serve as first tier analysis for individual projects.

107(ar) There are approximately 56,830 acres within the MHPA in the City of San Diego Subarea Plan; this includes the City's cornerstone lands. Of this acreage, 38,880 are publicly owned and 17,950 are privately owned.

107(as) The referenced sentence is intended to indicate that avoidance of habitat impacts may constitute development contributions to the MSCP Plan. Where avoidance of habitat impacts is not feasible, compensatory mitigation may be provided.

107(at) Comment noted. Among the approximately 171,920 acres proposed for the MSCP preserve, private land conservation through the development process would account for approximately 37% (MSCP Plan, Volume I, page 4-3).

107(au) Please refer to response to Comment 85(l).

107(av) Please refer to response to Comment 85(l).

107(aw) The comment is noted. The erroneous reference to Appendix C on page 2-33 has been eliminated in the revised language included in the Final EIR/EIS.

107(ax) Exclusion of military lands from the MHPA reflects the desires of the military to conduct their own conservation planning on military lands as described in the MSCP Plan and the Draft EIR/EIS. This assumption regarding military lands was not incorporated in the alternatives analyzed prior to preparation of the MHPA. The differing assumptions regarding military lands for the MHPA and alternatives do not adversely affect the analysis included in the Draft EIR/EIS since, under both assumptions, resources on military lands are assumed to receive protection consistent with federal regulations.

107(ay) References to Tables 3.6-6 and 3.6-7 are correct in the Draft EIR/EIS.

107(az) The 10,000+ acres referenced in the comment are based on urban designations included in SANDAG's regional land use data base and do not reflect site-specific urban land use designations on the general or community plans of MSCP Plan participating local jurisdictions. Use of this data base was considered to be appropriate for the overall land use analysis included in the Draft EIR/EIS. It is not, however, appropriate to use this data base to identify specific locations or urban designations that would potentially be changed. Such land use designation changes, if they are required, would occur as part of specific projects within individual local jurisdictions. It should also be noted, as shown in Table 4.2-1, that the MSCP Plan provides for up to 20,128 acres inside the MHPA to be developed, reducing the impact of the potential conversion of land designated for urban uses to open space.

The Draft EIR/EIS acknowledges that reductions in the acreage available for urban uses under the MHPA would be substantial and would result in a change in the pattern of growth, likely intensifying uses in areas currently designated for low density residential development, and potentially affecting community character. This effect is not expected to result in significant environmental impacts, however, due to flexibility incorporated in the MSCP Plan and subarea plans , which incorporate percent conservation thresholds within the preserve, allowing limited development to occur within the MHPA designated preserve, and due to the fact that substantial acreage exists both within the MSCP Plan study area, and within the MHPA, to accommodate the land use shift. As discussed in the Draft EIR/EIS, Section 4.6, Population/Housing (pages 4.6-2 through 4.6-6), the land use shift is not anticipated to significantly increase average residential density within the MSCP Plan study area, therefore, significant land use impacts related to community character or land use compatibility are not anticipated.

107(ba) As shown in Table 4.2-1 of the Draft EIR/EIS, based on SANDAG's regional land use data base, approximately 16,726 acres of land designated for low density residential uses would be located within the MHPA and would potentially be converted to open space with implementation of the MSCP Plan. Table 4.2-1 also shows that approximately 10,075 acres of land designated for urban uses would be located within the MHPA and would potentially be converted to open space with implementation of the MSCP Plan. It should be noted that these acreages are based on SANDAG's regional land use data base and do not reflect actual zoning categories of the individual local jurisdictions.

107(bb) The referenced statements on pages 4.2-4 and 3-55 of the Draft EIR/EIS are not inconsistent. The referenced discussion on page 4.2-4 acknowledges that land use intensifications would likely occur within the MSCP study area to accommodate the land use shifts anticipated with implementation of the MSCP Plan, then goes on to state that such intensifications could be accommodated on the available land, much of which is currently designated for low or very low density land uses. The discussion on page 3-55 of the Draft EIR/EIS focuses on SANDAG's regional land use analysis which concludes, based on existing land use designations, that there would be a regional shortfall in available residential land. The SANDAG analysis does not assume the intensification of land uses that is acknowledged in the analysis of the MSCP Plan. As discussed in the Draft EIR/EIS, SANDAG has adopted a Land Use Distribution Element (LUDE) which anticipates some land use intensification to accommodate the projected regional shortfall in residential lands based on existing land use designations.

107(bc) The City of Chula Vista Subarea Plan identifies all general plan-level circulation roads that cross the proposed preserve. Each of these major facilities will be permitted consistent with the City of Chula Vista Subarea Plan, including appropriate mitigation.

107(bd) The land use analysis included in the Draft EIR/EIS focuses on the environmental impacts associated with intensification of land uses that may occur with implementation of the MSCP Plan. As discussed in the Draft EIR/EIS, such environmental impacts may involve conflicts with existing environmental goals and policies, land use compatibility impacts or adverse effects on community character. The analysis in the Draft EIR/EIS concludes that the potential 26% and 50% conversions referenced on page 4.2-18 would not be significant because they would not result in adverse impacts with respect to consistency with environmental goals and policies, land use compatibility or community character. Major open space systems would remain under the proposed MSCP Plan and land use relationships would generally not be changed. Likewise, as discussed in both Sections 4.2 and 4.6 of the Draft EIR/EIS, the projected land use intensifications would not result in overall residential densities substantially higher than those that currently exist, therefore avoiding adverse community character impacts.

107(be) The comments are noted. Please refer to **Theme Response III, Economic Impacts and Impacts on Population and Housing** regarding the speculative nature of conducting a population/ housing analysis after the year 2005.

107(bf) Comment noted. The suggested measure may be a viable mitigation measure; however, the concurrent consideration of all elements of the community plan are not proposed and therefore, not analyzed in this document. Because a more comprehensive consideration of the community plan will be deferred to the future, an assured mitigation measure could not be identified or secured. As a result, the impacts to facilities were determined to be significant and not mitigated at this time.

107(bg) Please refer to response to Comment 107(bd).

107(bh) The referenced analysis does not focus on the effects of existing land uses on preserve resources but rather focuses on the ways in which the MSCP Plan may adversely affect land uses within or adjacent to the preserve. As stated on the bottom of page 4.2-70 of the Draft EIR/EIS, "the fact that a variety of urban uses would be inconsistent with the conservation of preserve resources may also limit the ability to develop planned uses such as needed public services and facilities as well as roadways within or adjacent to the preserve since these uses may be considered incompatible according to the MSCP Plan. In this respect, the proposed preserve scenarios may conflict with planned land uses and approved developments." The analysis goes on to state that flexibility has been incorporated in the MSCP Plan to avoid significant impacts with respect to these conflicts.

The referenced discussion on page 4.2-75 of the Draft EIR/EIS is included in the analysis of the effects of the proposed City of San Diego Progress Guide and General Plan Amendments on adjacent existing and planned land uses. The analysis concludes that the proposed General Plan Amendments would have no significant effects on adjacent existing and planned land uses. The referenced sentence on lines 3-5 of page 4.2-75 is not relevant to the analysis of the General Plan Amendments and it has been deleted in the revised language included in the Final EIR/EIS.

107(bi) The discussion on pages 4.2-70 and 4.2-71 of the Draft EIR/EIS does not focus on "edge effects" associated with implementation of the MSCP Plan. The discussion simply reiterates the language included in the MSCP Plan regarding conflicts associated with locating urban uses within or adjacent to preserves. This information from the MSCP Plan is included on the referenced pages simply to analyze the degree to which the MSCP Plan may adversely affect existing and planned land uses adjacent to the preserve. The analysis concludes that significant effects would not result due to flexibility incorporated in the MSCP Plan and subarea plans.

Since the discussion on the referenced pages is not analyzing "edge effects" it is not appropriate to provide a list of measures which could be required to account for "edge effects" in this section of the Draft EIR/EIS. Guidelines for land uses both within and adjacent to the preserve are included in both the MSCP Plan and the subarea plans and these documents should be referenced for the requested "comprehensive list of measures." In addition, as noted on page 4.2-71 of the Draft EIR/EIS, preserve management plans will be prepared for each subarea plan which may include additional guidelines.

107(bj) The referenced statement on page 4.3-1 of the Draft EIR/EIS was intended to indicate that information was available at the time the MHPA was prepared in addition to that which was available at the time the alternative scenarios analyzed in the MSCP Resource Document were prepared. This information included more specific data on species populations and more specific information regarding preserve boundaries, habitat protection and other factors as expressed in the subarea plans of the individual participating local jurisdictions. The criteria used to evaluate the Plan was the same for the MHPA and alternatives. The discussion on page 4.3-1 of the Draft EIR/EIS has been modified in the revised language incorporated in the Final EIR/EIS to provide this clarification.

107(bk) Please refer to response to Comment 85(l).

107(bl) Please refer to response to Comment 103(o). Also, the adjacency guidelines would only be addressed as appropriate to the proposed use. For example, drainage issues would only be considered for projects with large impervious surfaces or toxic uses adjacent to the preserve. This evaluation would occur during the development review process and associated CEQA review. The guidelines were developed as an alternative to restricting land uses adjacent to the preserve with the intent of minimizing impacts to the adjacent preserve.

107(bm) The referenced 100% wetland preservation assumption is based on the federal "No-Net-Loss" policy approach as currently implemented by the wildlife agencies. The MSCP Plan assumes that existing wetland regulations will continue to remain in effect, resulting in "No-Net-Loss" of wetland habitats and functions.

107(bn) This assumption is based upon the expectation that avoidance would be achievable in the 90% conservation areas (only 10% of the area can be developed). Either existing biological data or new survey data for the proposed development site would be available to the take authorization holder to use in project design so that the project avoids species populations that were assumed to be conserved.

107(bo) The MSCP Plan has been accepted into the NCCP program as an "Ongoing Multi-Species Plan" (Section 3.6 of the NCCP Process Guidelines) and to the extent possible, the non-regulatory NCCP Planning and Conservation Guidelines were used in the development of the MSCP Plan and will be used in the CDFG's approval of the MSCP Plan as an NCCP.

The MSCP Plan appropriately applied the conservation tenets that are identified in the NCCP Conservation Guidelines. The MSCP Plan and supporting documents address how the NCCP tenets were used to establish conservation goals (Volume 1, Chapter 4 of the Resource Documents), These supporting documents provide specific species requirements and known distributions (Volume 1, Chapter 2 of the MSCP Resource Document). The documents were used to develop draft standards and guidelines for species conservation (Appendix A-9 of Volume II of the MSCP Resource Document), and determine the level of conservation for vegetation community types and each proposed covered species for each

alternative preserve design. Using these planning "tools" the MSCP Plan developed a preserve design that is consistent with the NCCP Conservation Guidelines.

107(bp) The significance criteria presented on page 4.3-6 of the Draft EIR/EIS are based on the guidelines included in CEQA (Public Resources Code Section 21068, CEQA Guidelines Section 15382, CEQA Appendix G) and the significance thresholds used by the City of San Diego, as the CEQA lead agency, for the Draft EIR/EIS. Both CEQA and the CEQA Guidelines use the term "substantial" to define a significant effect on the environment. Public Resources Code Section 21068 defines a significant effect on the environment as a "substantial, or potentially substantial, adverse change in the environment." The CEQA Guidelines (Section 15382) further define a significant effect as a "substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance." With respect to biological resources, CEQA Appendix G further defines significant effects as those which: "substantially affect a rare or endangered species of animal or plant or the habitat of the species;" or "interfere substantially with the movement of any resident migratory fish or wildlife species." The criteria used in the Draft EIR/EIS are fully consistent with the definitions and criteria incorporated in CEQA. The 10% criterion was selected as a benchmark threshold to determine effects on non-listed plant and animal species which may be regarded as substantial or significant. It is recognized that a 10% reduction in the populations of some of these species may be able to be absorbed but the impact would nevertheless be regarded as significant. The level of mitigation that may be required to reduce an identified impact to below significance may vary depending upon the sensitivity or abundance of a particular species.

107(bq) Potential land available for development under each alternative is listed in Table 4.6-3 of the Draft EIR/EIS. As noted in the footnotes to Table 4.6-3, 50% of the constrained lands were assumed to be developable. In this respect, non-biological considerations were included in the assessment of potential land available for development.

107(br) The term "adequately conserved" was used in the MSCP Plan to denote those species considered in a preliminary analysis to meet the take authorization issuance criteria, as provided for take authorizations permits in Section 10(a)(1)(B) of the federal ESA and for management authorizations pursuant to CESA and NCCP requirements. These criteria require that 1) the taking would be incidental; 2) the applicant would, to the maximum extent practicable, minimize and mitigate the impacts of such taking; 3) the applicant would ensure that adequate funding for the plan would be provided; 4) the taking would not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and 5) the measures, if any, required by the U.S. Secretary of the Interior, would be met. MSCP Plan Table 3-5 has been revised to reflect whether or not species are expected to meet these criteria.

107(bs) Please refer to **Theme Response I, Species Analysis Approach** and revised Table 3-5 included in the Revisions to the MSCP Plan, January 1997.

107(bt) The Draft EIR/EIS describes the criteria for significance on pages 4.3-5 through 4.3-7. First, the Draft EIR/EIS draws the distinction for a determination of significance under CEQA and NEPA. The approach of the analysis was to apply the significance criteria to meet the more stringent CEQA. Any impact on highly sensitive resources, such as species listed as threatened or endangered under the CESA or FESA, or proposed for listing under the FESA, was considered significant. This is appropriate because a listing or proposal for listing indicates that a species is already in danger of extinction or likely to become endangered in the foreseeable future. For non-listed species, direct impacts greater than 10 percent of the major populations, or potential habitat were considered significant. A uniform threshold was selected for these species because establishing a species-specific impact criterion would have been prohibitively cumbersome and subject to vigorous debate. Essentially, a qualitative or quantitative population viability analysis would have to be conducted for each species (see general response pertaining to population viability analyses). Conducting these analyses was not feasible for at least two reasons. First, the population and distribution data base for most of the species is incomplete. Second, the basic biological data needed to establish significance criteria (e.g., life history information, etc.) are lacking. It is possible that general factors such as reproductive rates for a particular taxa, or specific habitat associations could have been used as surrogates to develop more precise, species-specific significance criteria (e.g., species with rapid turnover may be able to withstand greater impacts), but using different factors would likely lead to different conclusions, and therefore be subject to scientific debate. It was concluded that using a conservative, uniform set of significance criteria would be less subjective and more amenable to public review and evaluation.

The phrase "substantial reduction of habitat," as used for the biological analyses in the Draft EIR/EIS, implies that the amount of a species' habitat lost could potentially jeopardize the survival of the species within the study area through the loss of individuals or an adequate amount, quality, and distribution of habitat necessary to support critical activities such as reproduction and foraging. The phrase "substantial interference of movement" refers to disruption of movement through the preserve by species as a result of habitat loss or disturbance, or other disturbance factors (e.g., human intrusions) that inhibit movement. As described on page 4.3-217 of the Draft EIR/EIS, such interference may reduce the viability of species by disruption of dispersal or migration (and consequent recruitment, and colonization) or inhibition of movement by an individual within its home range.

107(bu) The commenter does not identify which species they believe could be subject to additional mitigation requirements, but it is assumed that the reference was to wetland associated species. The issue with wetland species has been resolved by modification of the requirements regarding wetlands. See **Theme Response XXV, Wetlands Protection.**

107(bv) The U.S. Fish and Wildlife Service has completed a formal consultation, pursuant to Section 7 of the ESA, with the Marines replacing the Navy at MCAS Miramar for the proposed base realignment and closure activities. The Biological Opinion (File Number 1-6-95-F-33) resulting from this consultation concluded that the proposed activities would not jeopardize the continued existence of federally listed species. As a term and condition of the Biological Opinion, the Marines would develop

and implement a Multi-Species Habitat Management Plan (MHMP) in a manner that is consistent with the guidelines that have been established for subarea plans within the MSCP Plan. The MHMP must demonstrate that it has included or addressed the following checklist in designing the conservation areas: a) retain highest biodiversity feasible by including spatially representative examples of extensive patches of sensitive habitats; b) retain large blocks of unfragmented habitat, following natural topography (ridges and watersheds), where possible; c) retain large, interconnected blocks of habitat that contribute to the long-term management of wide-ranging species; d) define a configuration that minimizes edge effects and edge-to-area ratio; e) retain full viability of each core gnatcatcher population and the key linkage areas between them as identified in either the MHMP or subsequent field work, and retain connectivity to other private or public lands in open space; f) include appropriate management and land use planning criteria to minimize edge effects from adjacent land uses inside the conservation areas; and g) include monitoring criteria for species and habitats that reflect priorities as determined in the above measures.

Although the maps show that military lands are not included in the MSCP Plan, the acreage and species locations on these lands are included in the tables. As shown on Table 3-1 of the MSCP Plan, approximately 28,000 acres of lands within the MSCP Plan boundary are military lands and were not subject to the planning process. Therefore, the amount of conservation within the entire MSCP study area would be greater than that within the MHPA, as some amount of conservation is expected on the military reservations.

107(bw) The data presented on Table 4.3-1 of the Draft EIR/EIS do not include military sightings/populations.

107(bx) Risk assessments were used in analyzing the conservation of species by the MSCP Plan and in determining additional management actions necessary to ensure the long-term viability. Because these management action are a requirement of the take authorizations, there is no residual risk associated with implementation of the MSCP Plan and subarea plans for covered species. Revised Table 3-5 included in the Revisions to the MSCP Plan, January 1997, deletes the risk column to reduce confusion. Please refer also to **Theme Response XVI, Risk Factors.**

107(by) Within 180 days upon the signing of the Implementing Agreement, the City of San Diego would be required to adopt regulations to implement the MSCP Plan. The City's regulations consist of a city-wide regulation (Environmentally Sensitive Lands (ESL) Ordinance) and a new open space zone (Open Space Residential Zone (OR-1-2)). The ESL Ordinance would replace the City's existing Resource Protection Ordinance. Public review of these draft regulations and the associated Environmental Impact Report began at the end of November 1996.

The Biological Mitigation Ordinance which is fully analyzed in the Draft EIR/EIS is the only proposed change in the County's existing Resource Protection Ordinance (RPO). The remaining portions of RPO remain in effect. An EIR/EIS would be completed when revisions to RPO are made. The proposed Biological Mitigation Ordinance, like the RPO, requires an analysis of the biological resources

on the property as a starting point. The proposed ordinance sets out specific requirements for mitigation based on types of habitat and specifically requires avoidance of certain sensitive animal and plant populations. In this respect, the proposed ordinance is more restrictive than existing RPO. In addition, the proposed ordinance is drafted to direct mitigation toward certain areas that would lead to creation of a preserve.

107(bz) Those recommendations are now incorporated as part of the Covered Species List--see revised Table 3-5 included in the Revisions to the MSCP Plan, January 1997.

107(ca) The discussion of the relative risk of species in this section was in the context of the MSCP Plan and the No Action/No Project alternative. The mitigation ratios for chaparral and non-native grassland are lower than that for other habitats under the City of San Diego Resource Protection Ordinance and County Biological Mitigation Ordinance. Consequently, species that occur in these habitats would be at somewhat greater risk than species in other habitats. Whether more grassland and chaparral would be conserved under the MSCP Plan than existing regulations is unknown. However, as stated on page 2-66 of the Draft EIR/EIS, "the amount of land that would be conserved within the MSCP study area under the No Action/No Project alternative would be similar to that which is conserved under the proposed MHPA (171,917 acres)." Nonetheless, project-by-project planning under the No Action/No Project alternative would result in a piecemeal, fragmented preserve and an increased risk of species decline and endangerment. For this reason, the risk to chaparral and grassland species would be less under the MHPA even with similar amounts of the conservation.

107(cb) It is acknowledged that mitigation requirements for impacts to grasslands and chaparral are incorporated in the implementing mechanisms of some of the subarea plans. The degree to which conformance with the requirements of the individual subarea plans and implementing mechanisms would fully mitigate CEQA-identified impacts for individual projects would be determined on a case-by-case basis by the individual local jurisdiction within which a project is located.

107(cc) As discussed in Sections 4.2 and 4.6 of the Draft EIR/EIS, by shifting land uses from inside the preserve to locations outside the preserve, implementation of the MSCP Plan could potentially increase development pressure outside the preserve. Although the amount and rate of development would not be different from that which would occur under the No Project alternative, the location and intensity of development may change.

It is acknowledged that examples of biological resources located outside the preserve would also be preserved within the proposed MHPA. Preservation of resources within the MHPA would mitigate for, but not avoid impacts to, similar resources outside the preserve which would be lost under the take authorizations analyzed in the Draft EIR/EIS. The Draft EIR/EIS correctly concludes that issuance of the proposed take authorizations would result in significant impacts to biological resources outside the preserve. Revisions to the Draft EIR/EIS are not required.

107(cd) Tables 4.3-1 and 4.3-2 of the Draft EIR/EIS adequately distinguish between those species that are currently listed and those that are not. Furthermore, Section 2.1.2 of the Draft EIR/EIS includes the state and federal status of covered species. The Draft EIR/EIS does not need revision on this point.

As described in the Draft EIR/EIS, it is anticipated that loss of covered species and habitats that would occur under existing regulations (i.e., No Action/No Project alternative), would be similar to that which has occurred historically. In other words, impacts would occur to species and habitats and open space would generally be preserved in a piecemeal configuration, not as an interconnected preserve. Assumptions regarding what would occur under existing regulations were not a factor in determining impacts and level of significance in the evaluation of the proposed project and alternatives.

107(ce) The referenced statement simply refers to the analysis undertaken by the wildlife agencies in determining whether or not a particular habitat should be placed on the sufficiently conserved habitats list or on the significantly conserved habitats list. The wildlife agencies determined that species dependent on habitats on the sufficiently conserved habitats list would generally be better protected than those dependent on the significantly conserved habitats list. The financial responsibility for protecting species dependent upon the habitats on the two lists did not influence the determination as to which list would provide better protection for species dependent upon the particular habitats under consideration.

107(cf) The referenced statement on page 4.3-86 of the Draft EIR/EIS is not intended to imply that mitigation in addition to the MSCP Plan would be required for direct impacts to vegetation communities/habitats. The statement is simply meant to indicate that evaluation of direct impacts to vegetation communities/habitats would still occur under CEQA. Mitigation requirements would be determined on a case-by-case basis by the jurisdiction within which a particular project is located. In many cases, as presented in the subarea plans and implementing mechanisms of the individual jurisdictions, compliance with the MSCP Plan would constitute adequate mitigation for impacts to MSCP covered species and habitats.

107(cg) The City of San Diego's Subarea Plan, Section 1.5 - Preserve Management (page 54), describes the preserve's management priorities. Restoration activities are identified as Priority 3 which are typically long term management activities that would be implemented if funding becomes available. However, restoration may occur at an earlier date if proposed and accepted as part of an individual project's mitigation program for impacts occurring to habitats outside the MHPA or as part of research efforts by the scientific and academic community.

107(ch) Features that would be implemented "if feasible" or "if funding becomes available" would enhance the biological value of the preserve, in turn, increasing the probability of long-term viability of the biota. However, in the absence of these measures, the covered species list would not be affected.

107(ci) The City of San Diego Subarea Plan includes specific management and design recommendations in certain areas as described and illustrated in the analysis presented on pages 4.3- 88 through 4.3-101 of the Draft EIR/EIS. Similar specific design recommendations are not included in the other subarea plans and so are not analyzed in the Draft EIR/EIS.

107(cj) The County of San Diego BMO would be applicable to the Metro-Lakeside-Jamul segment; it would not be applicable to the Lake Hodges and South County segments. These latter two segments are "hardline" areas since preserve design, resource preservation standards, and mitigation requirements have already been determined. The Lake Hodges and South County subareas have the configuration of future developments already defined, except for amendment areas. The impact analysis conducted for the entire County Subarea Plan assumed the "hard line" preserve in the Lake Hodges and South County segments as shown on Figures 2-11 and 2-12 of the Draft EIR/EIS. In the Metro-Lakeside-Jamul segment, the impact analysis assumed preservation of key biological resource areas as defined by pre-approved mitigation area maps developed by the County of San Diego and the wildlife agencies. Since the impact analysis was completed for the County Subarea Plan as a whole, analysis of significance determinations and assessment of mitigation requirements did not differ between the segments.

107(ck) The draft Biological Mitigation Ordinance is designed to direct mitigation toward large blocks of Biological Resource Core Area. In the past, mitigation was not directed towards Biological Resource Core Areas and often occurred in fragmented patches without connectivity to large blocks of habitat.

107(cl) The preserve is designed to contain the land required for species conservation absent the occurrence of extraordinary circumstances as defined and set out in the implementing agreement. Even in the event of extraordinary circumstances, acquisition of additional land is considered to be a last priority measure and in any case would not be the obligation of local jurisdictions or Third Party Beneficiaries.

107(cm) A major tenet of the MSCP Plan is the establishment of a preserve system that would be managed for the benefit of covered species and their habitats. Management plans must be prepared as a condition of each implementing agreement. Impacts that would be offset with proper management are discussed in Section 6 of the MSCP Plan. (Needs some work to include adaptive management program). As the preserve system is systematically monitored, the managing entities will be able to determine from the monitoring data the changes that will need to be made in the ongoing management. Changes in management as a result of data analysis will allow the management to "adapt" to the needs of the biota being conserved. It is expected that benefits will accrue to most species through this adaptive process except when catastrophic events occur. If such events occur, then the existing database and the ongoing adaptive management program would be expected to help bring catastrophic events under control much quicker than if this adaptive management program had not existed.

107(cn) The referenced statement on page 4.3-177 of the Draft EIR/EIS does not imply that the proposed project does not "provide enough assurances of long-term viability." The statement simply notes that the BP-Scenario meets the tenets of the NCCP Conservation Guidelines better than does the MHPA.

It is not the purpose of the Draft EIR/EIS to evaluate the proposed project to determine if it provides "enough assurances regarding long-term viability." The Draft EIR/EIS simply discloses impacts associated with the proposed take authorizations and evaluates the effectiveness of measures proposed to mitigate those impacts.

107(co) The referenced sentence on page 4.3-179 of the Draft EIR/EIS is not intended to indicate that the overall boundaries of the preserve would need to be reconfigured as part of any adaptive management strategies. It is recognized, however, that MHPA and subarea plan maps are prepared at a broad subregional scale and that "project-specific" preserve boundaries will be defined as the preserve is assembled. Section 6.4 of the MSCP Plan describes proposed reporting procedures to ensure that the preserve is assembled in a manner consistent with the MSCP Plan. The 171,000+ acre target identified as part of the MHPA would not be altered in conjunction with "project-specific" assembly of the preserve.

107(cp) This clarification has been incorporated in the revised language included in the Final EIR/EIS.

107(cq) Once targets are met, avoidance of sensitive species is required to mitigate significant impacts and ensure conservation of additional populations that contribute to survival and recovery of the species. Although conservation targets are met, populations that contribute to improving the robustness of the preserve which will buffer against unforeseen impacts and thereby reduce the potential that unforeseen circumstances clause in the implementing agreements will be triggered.

The draft Biological Mitigation Ordinance requires the following steps:

(a) Using appropriate protocols, determine all biological resources on the site to be impacted. The following must be determined: (i) Does the site qualify as Biological Resource Core Area under the criteria listed in the Ordinance? (ii) Are there Critical Populations of Sensitive Plants (as listed in a Subarea Plan or in Attachment B to the revised draft of the Ordinance)? (iii) Are there populations of Rare, Narrow Endemic Animals (as listed on Attachment F to the revised draft of the Ordinance)? (iv) Are there San Diego County Sensitive Plants (as listed on Attachment G to the revised draft of the Ordinance)?

(b) Determine the vegetation community(ies) and their acreages on the project site.

(c) Determine the vegetation community(ies) on the mitigation site. Determine if the mitigation site qualifies as a Biological Resource Core Area using the criteria in the Ordinance.

(d) If there are no sensitive populations of plants or animals, apply the mitigation ratios in Attachment H to the revised draft of the Ordinance. (Reduced ratios are specified for mitigation within biological resource core areas).

(e) If sensitive populations are present, determine which design criteria apply and the number of acres that will be impacted by the project. For Groups A and B of the Sensitive Plant Population List, Attachment G, and for Critical Populations of Sensitive Plant Species, avoidance is the first priority. Onsite loss of Group A and B species may not exceed 20% of the population onsite. The Ordinance states that the exact encroachment will depend on the sensitivity of the individual species and the population size. If impacts to these species are unavoidable, in-kind mitigation is required.

(f) If sensitive plants listed in Groups C and D on Attachment G are on the site, mitigation shall be based on the vegetation community in which the species occurs. For plants in Tier I habitat, mitigation shall take place at a Tier I habitat site at the ratio specified in Table H. The only exception to habitat based mitigation is when mitigation by habitat would substantially reduce the viability of the affected population or the species. In that case, mitigation shall be in-kind.

(g) If Rare, Narrow, Endemic Animal Populations are present onsite, avoidance is the first priority. For other sensitive animal populations onsite, habitat based mitigation is required according to the ratios set out in Table H. If habitat-based mitigation will result in a substantial reduction in the population of a sensitive animal(s), in-kind mitigation is required.

107(cr) Onsite species-specific mitigation is not an offset to the mitigation in the mitigation ratio tables. Rather, the number of acres of land impacted by a project may be reduced because avoidance requires an open space easement over a specific portion of the property. In that case, the acres of impact would be reduced and the mitigation ratios in the tables would apply to the impacted acres.

107(cs) The MSCP Plan would require that local, state, and federal participants implement a comprehensive preserve management program to ensure that the conservation goals of the program are met. Section 6.3.1 of the MSCP Plan establishes the obligations of the permit holders to prepare preserve management plans and sets out criteria to guide the development of those plans. Further modification to this section, however, is necessary to clarify the plan development process and to assure that appropriate and consistent approaches to management are employed throughout the preserve system. Until the preserve management plans have been drafted, it is not possible to quantify the amount of restoration that will be needed nor what impact this will have on the take authorizations, if any.

107(ct) Please refer to **Theme Response I, Species Analysis Approach** and revised Table 3-5 included in the Revisions to the MSCP Plan, January 1997.

107(cu) The Draft EIR/EIS adequately summarizes and references the MSCP Plan Resource Document and the NCCP Conservation Guidelines. These documents are summarized on pages 4.3-1

through 4.3-5 of the Draft EIR/EIS and the MSCP Plan Resource Document is incorporated by reference on 4.1-1 and 4.1-2 of the Draft EIR/EIS. In addition, the relationship of the proposed MHPA and alternatives to the NCCP Conservation Guidelines is summarized on pages 4.3-174 through 4.3-178 of the Draft EIR/EIS. This level of detail is considered to be adequate to analyze the impacts to biological resources associated with the take authorizations addressed in the Draft EIR/EIS as well as the degree to which features incorporated in the MSCP Plan and subarea plans would mitigate identified impacts. Sufficient information is provided in the Draft EIR/EIS to disclose to the public the impacts to biological resources associated with the proposed take authorizations.

The biological data referenced in the comment will also be used by the wildlife agencies in conducting the analyses for the proposed take authorizations. However, it is not the purpose of the Draft EIR/EIS to conduct those analyses.

107(cv) Please refer to **Theme Response I, Species Analysis Approach** and revised Table 3-5 included in the Revisions to the MSCP Plan, January 1997. The information in the MSCP Plan and associated documents is adequate for the wildlife agencies to determine if the conservation of covered species is adequate to meet state and federal take authorization issuance standards.

107(cw) The Draft EIR/EIS addresses the impacts of each MSCP alternative plan on habitats and species (Issue 1) as well as on wildlife movement (Issue 2). The NCCP preserve design tenets were addressed through the specific resource analyses, and significance was determined using criteria provided on page 4.3-6 of the Draft EIR/EIS. Evaluations of the impacts for each alternative allow for comparisons, by alternative, of the design benefits relating to preserve size, contiguity, biodiversity, and conservation of the three NCCP target species and additional covered species. The MSCP preserve: (1) conserves covered species throughout the planning area; (2) conserves large blocks of habitat containing large populations covered species (core areas); conserves to the extent possible blocks of habitat that are contiguous; (3) conserves linkages between core areas; (4) conserves a core areas which contain a diverse representation of physical and environmental conditions; and (5) conserves core areas which will be managed to minimize human disturbance thereby reducing impacts to covered species (see Draft EIR/EIS, Section 4.3).

107(cx) Current descriptions of core and linkage areas are included in the MSCP Plan Resource Document. The MSCP Plan Resource Document and species maps referenced in the comment are available for review at the libraries listed on Table 4.1-1. It is not necessary to include these maps in the Draft EIR/EIS.

107(cy) The commenter is correct that the federal ESA generally does not prohibit the loss or conversion of potential, unoccupied habitat for listed species. Regardless of whether or not the MSCP Plan is implemented, unoccupied habitat would not be protected by federal ESA. Implementation of the MSCP Plan would result in some protection of unoccupied habitat within the MSCP preserve. Therefore,

the species would be better off with the MSCP Plan than without. Determinations of significance under NEPA are not equivalent to the jeopardy standard under the federal ESA.

The wildlife agencies must ensure that issuance of an take authorizations permit would not be likely to jeopardize the continued existence of any listed species. The wildlife agencies would evaluate specific effects of permit issuance on the Pacific pocket mouse and Orcutt's spineflower. This analysis would determine the indirect effects of the action on the species' range wide distribution and their distribution within the MSCP area. The jeopardy determination, however, is based on effects to the species range wide, not just within the MSCP area. After the wildlife agencies make their final decision on permit issuance, the federal biological/conference opinion would be available for public review, upon request.

107(cz) For "non-covered" species there would be no change in the manner in which they are addressed following approval of the Draft EIR/EIS; they would receive the same protection/ consideration that they receive now. If they currently are listed as threatened or endangered by the wildlife agencies (or become listed in the future), permits and mitigation would still be required for their take. If they are recognized as "sensitive" now, they would continue to receive consideration under CEQA. If through implementation of the MSCP Plan certain non-listed, no-covered species become rare, threatened, or endangered and they are dependent on significantly or sufficiently conserved vegetation communities, their conservation would be achieved as specified in the implementing agreements

107(da) A discountable effect is one that would not be expected to occur because the species is not expected to occur in the MSCP Plan study area. Species that are proposed for coverage under this definition generally meet at least one of the following criteria: (1) the species is not known to have occurred in the MSCP Plan study area; (2) the species is presumed to be extirpated in the MSCP Plan study area; (3) the species may exist only as introduced populations within the MSCP Plan study area: (4) the MSCP Plan conserves habitat that potentially could support or be used by the species; and (5) habitat within the preserve would be managed consistent with the needs of the species should it be found in the future. This definition of a discountable effect has been incorporated in the footnotes to Table 4.3-1 in the revised language incorporated in the Final EIR/EIS.

Mitigation for covered species is to be commensurate with the amount of take anticipated. Because no take is anticipated for discountable effects on species within the MSCP Plan, little to no mitigation is required. However, the MSCP Plan would provide conservation of habitats that may support these species. Furthermore, those actions which are found to have a discountable effect (51 *Federal Register* 19949) upon covered species are not likely to appreciably reduce the likelihood of survival and recovery of the species.

107(db) Please refer to **Theme Response IV, MSCP Financing Plan: Regional Source of Funds.**

Local jurisdictions and special purpose agencies currently expend approximately $1.23 million per year on the management of open space preserves which are proposed for inclusion in the MSCP preserve. The MSCP Plan and the subarea plans assume continuation of this expenditure in the future, with adjustments for inflation (MSCP Plan, page 7-17).

107(dc) A timetable for implementation of a regional funding program is described in the MSCP Plan, Section 7.4.2.

107(dd) The referenced statement on page 4.3-212 of the Draft EIR/EIS does not assume that mitigation measures that reduce an identified impact to a less than significant level are sufficient to meet the federal ESA Section 10(a) standard. The referenced statement on page 4.3-212 of the Draft EIR/EIS simply notes that measures that reduce an impact to a less than significant level "have adequately mitigated for impacts and result in protection of the resource." It is not the purpose of the Draft EIR/EIS to make the federal ESA Section 10(a) findings for the project and it is not necessary for the Draft EIR/EIS to "make the case" regarding why the plan should satisfy the federal ESA requirements.

107(de) The MSCP Plan and Draft EIR/EIS are consistent with the joint wildlife agency letter of March 14, 1995. The Draft EIR/EIS did not identify any unmitigated significant impacts to covered species and the coastal sage scrub vegetation community, therefore, individual projects which are carried out consistent with the MSCP Plan, subarea plan and implementing agreement should not result in significant unmitigated impacts to covered species or the coastal sage scrub vegetation community. Participating local lead agencies could use the Draft EIR/EIS to support this finding. The CDFG would make the appropriate findings in the memo as part of its NOD for the approval of the MSCP Plan as an NCCP. The designation of a sufficiently conserved vegetation community is not a biological designation, but rather a classification/grouping of vegetation communities based on allocation of future responsibilities for conservation of uncovered species should an uncovered species be listed. Since classification of a vegetation community as sufficiently conserved is not a biological determination, but rather species based allocation of conservation responsibilities, it would be inappropriate to reach any conclusion regarding significant impacts/mitigation based on the vegetation community being included on the list of sufficiently conserved vegetation communities in the MSCP Plan.

107(df) The MSCP Plan has been revised to clarify the issue regarding edge effects and associated mitigation. See the Revisions to the MSCP Plan, January 1997, Section 6.

107(dg) Table 2-1 of the MSCP Plan lists the species evaluated under the MSCP and describes their habitat, and Table 3-5 of the MSCP Plan notes the species that likely fall under the jurisdiction of the U.S. Army Corps of Engineers. Because the distribution of these species is dynamic, a map of their precise locations is not possible. Project-level surveys would be necessary to address impacts and to provide for avoidance, minimization, and mitigation measures.

In addition to the protections afforded to wetlands through the U.S. Army Corps of Engineer's permit process under Section 404 of the Clean Water Act and the CDFG's permit process under Fish and Game Code Section 1600 et seq., the County and the City of San Diego have both included mitigation requirements in their subarea plans to avoid, minimize and mitigate impacts to wetland habitats. The Cities of Chula Vista and Santee would revise their subarea plans prior to permit issuance to also include these provisions. These mitigation requirements address wetland vegetation communities that may not fall under within the jurisdiction of the state and federal statutes. These mitigation requirements would be incorporated into Section 10 of the federal ESA of the implementing agreements and considered in findings that the take authorization standards have been met for wetland species.

107(dh) It is not the purpose of the Draft EIR/EIS to provide the data and analysis or findings for the CDFG take authorization for the project. It is the purpose of the Draft EIR/EIS to disclose impacts associated with such take authorizations. Separate findings will be made by CDFG in conjunction with issuance of take authorizations.

107(di) The narrow endemic species, listed in section 3.3.2 of the MSCP Plan are primarily plants with restricted geographic distributions, soil affinities, and/or habitats. The MSCP Plan requires that jurisdictions specify measures in their subarea plans to ensure that impacts to these resources are avoided to the maximum extent practicable. This provision allows for reasonable economic use of a parcel. Because of their limited distribution and the lack of adequate surveys, these species must continue to be avoided within the MHPA throughout the implementation of the MSCP Plan. Because there are no MHPA lines within the Metro-Lakeside-Jamul segment of the County's Subarea Plan, narrow endemic species must be avoided in all locations where they are found. Systematic surveys of lands dedicated to the preserve will occur over time. Since it is likely to take 20-30 years to assemble the preserve, the systematic surveys will occur over a long period of time.

107(dj) Habitat within projects for which landowners have achieved third party beneficiary status must be considered as "taken", as the project may proceed without further mitigation requirements and the landowners would have received full assurances under the MSCP Plan.

107(dk) Please refer to **Theme Response XXIII, Critical Habitat Determination.**

107(dl) Please refer to response to Comment 107(l).

107(dm) See MSCP Plan Sections 6.3.3 and 6.3.4. See **Theme Response XIX, Preserve Management.**

107(dn) The referenced statement to "two or more criteria" on page 4.6-1 of the Draft EIR/EIS is in error and has been deleted in the revised language included in the Final EIR/EIS.

The 5.22 du/acre density reference on page 4.6-5 of the Draft EIR/EIS is based on SANDAG's projected shortfall in residential land, based on the Series 8 population forecasts, with or without implementation of the MSCP Plan. The 3.10 du/acre residential density used as a baseline in the population/housing analysis reflects existing conditions and is used as a threshold on which to analyze the effects of land use shifts associated with implementation of the MSCP Plan. It is recognized, however, that the 5.22 du/acre density reference is speculative and may be misleading and this reference has been eliminated in the revised language incorporated in the Final EIR/EIS since it is not relevant to the EIR/EIS analysis.

The two measures of residential density, 3.10 du/acre (gross) and 5.22 du/acre (net), are equivalent and refer to existing (year 1990) housing density in the urbanized area of the MSCP Plan study area. The analysis contained in the Draft EIR/EIS assumes that future development would occur at the same density as in 1990. See also response to Comment 107(l).

107(do) Please refer to **Theme Response III, Economic Impacts and Impacts on Population and Housing.**

107(dp) The comment is noted; 82,290 is the correct number.

107(dq) The comments are noted and the corrections have been made in the revised language incorporated in the Final EIR/EIS.

Portions of page 5-2 of the Draft EIR/EIS were in error. According to Series 8 Regional Growth Forecast, 12,680 acres of vacant land zoned for residential use at urban densities (i.e., greater than one unit per acre) are anticipated to remain vacant in the year 2005. Please see revised text in the Final EIR/EIS.

The above statement is consistent with the finding on page 4.6-5 of the Draft EIR/EIS that 38,844 acres of land zoned for residential use would remain vacant under the MSCP. The latter number includes land zoned for residential use at both urban densities (greater than one unit per acre) and at rural densities (less than one unit per acre).

Series 8 Regional growth Forecast by SANDAG indicates that the total housing units within the MSCP study area would increase by 133,990 units between the years 1990 and 2005. This increase in housing units would be accompanied by an increase of 25,669 acres in total developed residential land in the study area. SANDAG's forecast is based on a combination of (1) an econometric model of the economy and population of the San Diego region; and (2) a land use allocation model, which reflects, among others, local land use plans, presence of physical constraints, and the availability of transportation and other services. SANDAG's forecast is <u>not</u> based on an assumed constant residential density over the forecast period. It is a coincidence that the existing (1990) average residential density of the MSCP Plan study area (5.22 DU/ac) is equal to the forecast residential density in the year 2005 (also

5.22 DU/ac). For a specific area, such as the MHPA, forecast density can differ substantially from the regionwide average (see table below).

COMPARISON OF AVERAGE RESIDENTIAL DENSITIES IN MSCP STUDY AREA AND MHPA, 1990 AND 2005

Area	1990 (Existing)			2005 (Forecast)		
	Housing Units	Developed Residential Area	Average Density (DU/ac)	Housing Units	Developed Residential Area	Average Density (DU/ac)
MSCP Study Area	691,666	132,444	5.22	825,656	158,113	5.22
MHPA	23,194	8,476	2.74	38,520	16,273	2.37

Source: SANDAG, Series 8 Regional Growth Forecast; computer analysis of MSCP study area and MSCP inside MHPA (6/27/96).
MHPA Multi-Habitat Planning Area, within which the MSCP preserve would be located.

This table also provides additional information regarding the potential for "displacement" of residential development from areas inside the MHPA to outside the MHPA. The Draft EIR/EIS stated that up to 15,326 units may be displaced by implementation of the MSCP preserve. These units represent the additional housing units to be built between 1990 and 2005, as forecast by SANDAG for the entire MHPA (15,326 = 38,520 – 23,194). This impact would occur only if there is no new residential development inside the MHPA. The MSCP Plan, however, allows for development of up to 17,021 acres of private land inside the MHPA. If 59.3% of this land is developed for residential use, then 10,093 acres of residential development could occur, exceeding the 7,797 acres (= 16,273 – 8,476) of residential development forecast by SANDAG to occur inside the MHPA between the years 1990 and 2005. Thus, the estimated displacement of 15,326 units is a worst-case estimate. Actual impact is likely to be substantially less than this estimate.

107(dr) Under the benefit assessment program described in the MSCP Plan, residential properties are assumed to generate 85% of total annual assessments and commercial/industrial properties, 15%. If no commercial or industrial properties are assessed, residential assessments would need to increase by 17.6% (= 15/85) to generate the same total annual assessments.

107(ds) SANDAG's projected regional shortfall in available residential land is not discussed in detail in Section 4.6 of the Draft EIR/EIS because it is not relevant to an analysis of the direct effects to population and housing of implementation of the MSCP Plan. The shortfall would occur with or without implementation of the MSCP Plan and, as noted in the Draft EIR/EIS, the land use shifts associated with implementation of the MSCP Plan would not be significant in the context of the anticipated regional shortfall. Incorporation of the information from the SANDAG analysis in the Draft EIR/EIS Section 4.6

analysis would serve to minimize the analysis of the effects of implementation of the MSCP Plan on population and housing since those effects would be dwarfed by the overall anticipated regional shortfall.

The potential displacement of 15,326 housing units resulting from implementation of the MSCP Plan is discussed in Chapter 4.6 of the Draft EIR/EIS (p. 4.6-5). Please see also response to Comment 107(dr) above.

The referenced paragraph at the top of p. 5-2 of the Draft EIR/EIS has been revised for clarity. The intent of this paragraph is to discuss the relationship between the potential reduction in developable land resulting from implementation of the MSCP Plan and the forecast shortage in the MSCP study area, and, more generally, in the San Diego region, of vacant land that is zoned for residential use at urban densities (greater than one unit per acre). Series 8 Regional Growth Forecast indicates that this issue may be resolved by rezoning or redesignating vacant land currently zoned for residential use at rural densities (less than one unit per acre) to urban densities. The need for such action would exist irrespective of the MSCP Plan. However, this need may be enhanced, or the timing of such need may be accelerated, as a result of the MSCP Plan. It is in this sense that the effects of reducing developable land through habitat conservation may be more pronounced over the long-term than over the short-term.

At the same time, these observations do not contradict the principal conclusion of the Draft EIR/EIS that, if future residential development were to occur at densities that existed in the year 1990, then there would not be a shortfall in vacant residential land, even with the implementation of the MSCP Plan.

107(dt) The draft ESL Ordinance and associated Biology Guidelines were distributed in the application package for the Implementing Agreement submitted to the wildlife agencies, but are not formally included in the public review of the MSCP Plan and Subarea Plan Draft EIR/EIS. The application of the OR-1-2 zone and Environmentally Sensitive Lands Ordinance would occur at a subsequent date following adoption of the MSCP Plan. At this time, it has not been determined exactly which parcels would be subject to rezoning to implement the MSCP Plan. The rezoning effort would be subject to a separate public review.

The comments submitted on the ESL and Biology Guidelines would be forwarded to Land Development Code (LDC) staff for review and consideration. The proposed LDC and associated EIR were distributed for public review at the end of November 1996.

107(du) The proposed General Plan language uses the term natural open space rather than MSCP open space lands or MSCP lands to describe the lands that are proposed for protection in the MSCP Plan. The terms used in the General Plan are selected to be descriptive and as understandable as possible to users of the document. The document is also designed to be useable for the long term. Abbreviated descriptions such as MSCP are often understood only by a limited audience and for a limited time period. The MSCP program is briefly described on page 304a and 304b of the proposed General Plan language.

107(dv) In the Draft MSCP General Plan Amendment, the term "natural open space" was used to denote the City's proposed MSCP open space system as well as large ecologically valuable areas within the City that the military intends to retain as open space. Due to comments received on the initial draft expressing confusion regarding the term "natural open space" and lack of specific reference to MSCP, it is anticipated that the term "natural open space" will be changed to "Multiple Species Conservation Open Space System or Preserve" in a revised version of the MSCP General Plan Amendment.

The proposed amendment lists strategies for acquiring the open space necessary to implement the MSCP system including purchase. However, the City Council has stated that any MSCP acquisition involving City funds must be preceded by voter approval. Since the voters might decide not to approve such funding, it would be a conflict with Council direction to add specific statements to the General Plan at this time stating that the City should participate in such finding. The purpose of the General Plan is to provide general policy direction on issues related to development of the City but not to get into specifics on funding mechanisms and obligations.

107(dw) The number of species specified on page 334a has been revised to delete the reference to a specific number of species.

107(dx) The purpose and intent of the General Plan is to describe goals and objectives for land use planning in the City. The concept of transition areas between open space and development is one such objective. Other documents translate goals and objectives into specific development guidelines and requirements. The General Plan is not the appropriate place for discussions of the specifics regarding where lines should be drawn to define developable area. Refer to response to Comment 85(l).

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DEVELOPMENT SERVICES

HEWITT & McGUIRE, LLP
ATTORNEYS AT LAW

19900 MacArthur Boulevard, Suite 1050
Irvine, California 92612
(714) 798-0500 • (714) 798-0511 (fax)

DEAN DUNN-RANKIN
CHARLES S. EXON
ANDREW K. HARTZELL
HUGH HEWITT
MARK R. McGUIRE

DENNIS D. O'NEIL
JAY F. PALCHIKOFF
PAUL A. ROWE
WILLIAM L. TWOMEY
JOHN P. YEAGER

October 29, 1996

Mr. John Kovac
City of San Diego
Development Services Department
Development and Environmental Planning Division
1222 First Street, M/S 501
San Diego, CA 92101

Mr. Gail Kobetich
U.S. Fish and Wildlife Service
2730 Loker Avenue West
Carlsbad, CA 92101

MSCP Plan Comments
600 B Street, Suite 500
San Diego, CA 92101

Re: **Draft Multiple Species Conservation Program Plan ("MSCP") and the Draft Joint EIR/EIS For Issuance of a Permit to Allow Incidental Take of 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 ("EIR/EIS") and Related Implementing Actions**

Messrs. Kovac and Kobetich:

I. INTRODUCTION

The Building Industry Association of San Diego ("BIA") and the Alliance for Habitat Conservation (the "Alliance") have retained this firm to comment on the proposed MSCP and the draft EIR/EIS. The BIA's members are responsible for approximately 80% of the residential, commercial and industrial development in San Diego County. The Alliance is comprised of numerous private landowners within the region covered by the MSCP; together, the Alliance's members own approximately 70,000 acres of undeveloped or partially developed land within jurisdictions considering adoption of the MSCP. In light of the fact that the BIA and

107

Alliance's members are being asked to support a plan where they are expected to provide 70% of the additional land and a substantial portion of the funding to complete the preserve areas and implement the MSCP, the BIA and the Alliance believe their concerns deserve full consideration.

The MSCP began, nearly six years ago, as an environmental mitigation measure for the purported direct and indirect habitat impacts of a planned sewer system expansion project that has since been aborted. Planning of the MSCP has nevertheless continued because the local agencies within the proposed MSCP boundaries are hopeful that the MSCP can attain the objectives set forth in Section 1.2 of the draft EIR/EIS, including the cornerstone objectives of: (1) establishing and ensuring a workable balance between preservation of natural resources and accommodation of regional growth; and (2) spreading implementation costs equitably and in a manner affordable to the region. Representatives of the BIA and the Alliance have spent countless hours discussing with representatives of the federal, state and local agencies involved in the MSCP those items the MSCP must contain to justify its considerable cost to private landowners.

While much work has already been invested in the preparation of the MSCP, the decision whether or not to adopt the MSCP should not and legally cannot be made until the elected decisionmakers and the public have had an opportunity to consider fully the ramifications of adopting such a massive and complex program. Moreover, the California Environmental Quality Act ("CEQA") requires local agencies within the region to give major consideration to the State's policy that every Californian deserves a decent home and satisfying living environment. CEQA also precludes local agencies from reducing the number of homes in a project as a mitigation measure or project alternative if another measure or alternative could provide a comparable level of mitigation. Thus, adoption of the MSCP should only occur if and when it is clear the MSCP will accomplish the objectives set forth in the draft EIR/EIS -- at a price the region can afford. 107(a)

In addition to the general concerns about the MSCP as currently proposed and the EIR/EIS set forth in the remainder of this letter, we have attached a list of specific comments on the MSCP, the EIR/EIS and related implementing documents.

II. GENERAL COMMENTS OR CONCERNS

A. Discussion of the Nature and Scope of the MSCP.

The BIA and the Alliance respectfully submit that the EIR/EIS needs to articulate more clearly the nature and scope of the MSCP. "Only through an accurate view of the project 107(b)

107

may affected outsiders and public decision makers balance the proposal's benefits against its environmental costs, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the "no project" alternative) and weigh other alternatives in the balance." County of Invo, 71 Cal. App. 3d 185, 192-193 (1977). 107(b)

The MSCP has been touted as being, among other things, a program that will "streamline" the environmental review process for impacts to listed and sensitive species and their habitat and that will avoid the need for disruptive state and federal species listings in the future. Accordingly, the agencies must ensure that the MSCP, if adopted, will in fact provide these benefits. The EIR\EIS should therefore contain a thorough analysis of the MSCP's impacts and benefits to "Covered Species" and their habitats as well as a full accounting of how the MSCP, if adopted, will affect development efforts within, adjacent to and well outside of the boundaries of the MHPA. 107(c)

1. The EIR\EIS Should Expand the Biological Analysis of the MSCP's Benefits to Covered Species and Their Habitats.

The BIA and Alliance are concerned that the EIR/EIS may not currently provide an adequate level of biological analysis on the central aspect of the project, namely, how the preserve areas and configuration established by the MSCP would provide "sufficient" protection to those listed and sensitive species intended to be "covered" by the MSCP such that incidental "take" of these species will be permitted within the MSCP Area pursuant to FESA, CESA and the NCCP Act, and such that mitigation provided pursuant to the MSCP and approved Subarea plans will be found sufficient to reduce impacts from development projects within the MSCP Area to a level of insignificance under CEQA and NEPA. Without adequate coverage and an adequate analysis of such coverage in this EIR/EIS, the MSCP has no chance of providing landowners adequate assurances, nor will local agencies and private applicants within the MSCP be able to utilize the certification of this EIR/EIS as a basis for limiting future NEPA/CEQA analyses of individual project-specific impacts to Covered Species and their habitats.

Rather than setting forth as thorough an analysis as could be provided using available data, the document seems to rely primarily on tabulations of percentages of known populations impacted and preserved under the program. Although some attempt is made to incorporate additional biological information and analysis by reference, this approach may be inappropriate given that such biological analysis lies at the heart of the MSCP. NEPA regulations require that "data and analysis in an [EIS] shall be commensurate with the importance of the impact." Summaries, consolidation of information/analysis and incorporation by reference are to be left to the less important issues. 40 C.F.R. Section 1502.15. The EIR/EIS, standing alone, should enable the public to assess the environmental impact of the proposed program on Covered Species and Significantly Conserved and Sufficiently Conserved 107(d)

107

Vegetation Communities. See 40 C.F.R. Section 1502.2. As the United States Supreme Court has stated, an EIR/EIS should be "an essentially self-contained instrument, capable of being understood by the reader without the need for undue cross-reference." Baltimore Gas & Electric Company v. Natural Resources Defense Council, 462 U.S. 87, 99-101 fns. 12, 13 (1983). 107(d)

The BIA and Alliance are aware of the fact that a very thorough analysis of these biological issues will necessarily be contained in the USFWS's biological opinion relating to the MSCP, and that there is always concern that any analyses conducted prior to the issuance of the biological opinion could be viewed as "predecisional" of the conclusions to be reached therein. However, the fact that the USFWS will ultimately produce a biological opinion is not grounds for excluding informative data and analysis in the documentation provided to the public during the NEPA/CEQA process. Likewise, it is both necessary and appropriate for the City of San Diego, as the local lead agency, to set forth the data and analysis which it, together with its biological consultants, etc., has collected and conducted and explain to the public why the City has concluded that the biological program *should* satisfy the Section 10(a) permit requirements for the Covered Species and why the Sufficiently Conserved Vegetation Communities should be deemed adequately conserved.

To reiterate, The BIA and Alliance believe further evidence justifying a request for incidental take of Covered Species and their habitats beyond that already presented in the draft EIR\EIS is readily available such that the existing analysis can be strengthened. Additional detailed comments on this point are included in our attached comments.

2. The EIR\EIS Must Explain in More Detail How Implementation of the MSCP will Affect Land Development Efforts Within, Adjacent to, and Well Outside the Boundaries of the Proposed MHPA, and How the MSCP EIR\EIS will be Utilized in Connection with such Efforts.

It is the BIA and Alliance's understanding that the MSCP and the EIR\EIS are intended to be sufficiently comprehensive and specific on the issues of impacts to and mitigation for Covered Species and their habitats, such that individual projects anywhere within the MSCP that are consistent with the adopted plan and applicable Subarea plan will be able to rely on the MSCP EIR\EIS as a means to reduce significantly the amount of environmental analysis required. However, the EIR/EIS does not discuss exactly how this streamlining will occur.

More particularly, the BIA and Alliance understanding is that when evaluating impacts to Covered Species and their habitats after adoption of the MSCP, project applicants with land outside of the MHPA but within the MSCP should only be required to calculate the types of habitat present and in what quantities such habitat will be removed. This information should then be used to determine the amount of mitigation required pursuant to established 107(e)

107

mitigiation ratios. The discussion of impacts to Covered Species and their habitats in project-specific CEQA or NEPA documentation should be able to be limited to referencing the MSCP EIR\EIS and explaining how the project and the mitigation required of it is consistent with the MSCP and applicable Subarea plan. Project applicants within the MHPA should only be required to conduct the type of biological surveys called for by the applicable Subarea plan and to analyze how the project is designed to be consistent with established criteria for development within that Subarea. 107(e)

In addition, after certification of the EIR/EIS and adoption of the MSCP and Subarea plans, no discussion of cumulative impacts to Covered Species and their habitats (other than simply referencing the MSCP EIR\EIS) in project-specific CEQA\NEPA documentation should be necessary, and participation in and consistency with the MSCP and applicable Subarea plan should be deemed adequate project-specific mitigation. Moreover, projects outside the MHPA and projects meeting established criteria for development within the MHPA should not need to analyze "edge effects" or other potential impacts to the contemplated preserve within the MHPA since edge effects are to be adequately addressed by incorporating any necessary "buffers" within the permanent preserve area.

In the discussion regarding the purposes the EIR\EIS is intended to serve, the draft EIR\EIS states that it will "[p]rovide a data base that will allow future environmental documents to focus on those key issues identified in this Joint EIR\EIS . . ." This does not make it clear that individual projects will be entitled to "tier down" or substantially reduce the level of environmental analysis for project-specific impacts to Covered Species and their habitats. The BIA and Alliance believe the MSCP EIR\EIS can and should be capable of being used in this manner and that this is part of the "streamlining" of environmental review the MSCP is supposed to achieve. If so, the EIR\EIS should state expressly that it is intended to be utilized in this fashion. If the EIR/EIS is not intended to be used in the above-described manner in connection with individual projects being processed after adoption of the MSCP and Subarea plans, then please explain how the above description is incorrect.

B. Impacts on the Region's Ability to Meet the Future Demand for Housing and Essential Infrastructure.

The EIR/EIS must expand its analysis to better explain how the MSCP's strategy of acquisition of preserve land via development exactions on projects outside the preserve boundaries, when combined with the MSCP's significant limitations on development within the ultimate preserve areas, will affect development patterns in the MSCP Area. The BIA and Alliance are concerned that the EIR/EIS understates the MSCP's potential impacts on the region's ability to provide housing, parks, schools, shops, roads, infrastructure, offices, 107(f)

industrial facilities and other development that, together with natural open space, constitute balanced communities. 107(f)

For example, the EIR/EIS concludes that "no significant population/housing impacts have been identified . . . at the MSCP Plan level." However, in reaching this conclusion, the EIR/EIS unduly limits the time-frame of its analysis regarding housing impacts to the next *eight* years, whereas the incidental take permits sought would be for *fifty* years and the land to be preserved as permanent habitat would remain undevelopable *forever*. It is particularly problematic to limit the analysis of housing impacts to the period 1990-2005 when SANDAG has published a study that concludes that the local jurisdictions within the MSCP area *will be unable to accommodate the forecasted regional demand for housing by the year 2005 even without the MSCP*. See Kings County Farm Bureau v. City of Hanford, 221 Cal. App. 3d 692, 728-729 (1990). (It is improper to limit the scope of analysis when omitting information that is reasonable and practical to exclude leads to understating the project's impacts.) 107(g)

It is impossible to square the fact that the region is projected to be facing a serious housing shortage beginning in the year 2005 with the statement in the EIR/EIS that "implementation of the MSCP would not significantly affect the region's ability to accommodate projected housing needs within the MSCP study area during the period 1990-2005 and beyond." Nor is it possible to square the numbers and assumptions the EIR/EIS utilized in analyzing the issue of housing. In particular, the text on page 4.6-5 states that a total of 108,622 acres of private land within the MSCP area will be available for development if the MSCP is implemented, but the total according to the sum of the columns in Table 4.6-3 is only 82,290 acres. Then, at page 5-2, the EIR/EIS states that the total potentially developable land within the MSCP (before removing 22,915 acres for preservation of habitat) is 142,000 acres. These figures do not add up. 107(h)

Further, the assumptions utilized in the analysis of housing impacts are not supported. The housing analysis appears to assume a development density of 5.22 DU/ac when calculating how much land will be needed to meet the years 1990-2005 demand for 133,900 housing units, and assumes that 59.3 percent of the developable land will likely be available for residential development. The assumption that the density of residential development from 1990 to 2005 will average 5.22 DU/ac when looking back it averaged 3.1 DU/ac would appear suspect. The type of housing that will be supplied is dictated entirely by consumer demand, and demand for single family detached housing predominates the San Diego market and is expected to do so far into the future. By using overly optimistic and unlikely density assumptions, the EIR/EIS appears to overlook a very real and substantial impact of the MSCP. 107(i)

Finally, the assumption that almost 60% of the remaining developable acreage will be available for residential development is one that can and ought to be confirmed or revised by 107(j)

107

analyzing readily available information. If the assumptions made in the EIR/EIS housing analysis are overly optimistic, then the jurisdictions participating in the MSCP may have difficulty accommodating regional growth even during the truncated period analyzed in the EIR/EIS. 107(j)

The EIR/EIS also fails to analyze properly the MSCP's potential impact on the future *affordability* of housing. Instead, the EIR/EIS simply asserts, without any evidence, that "development costs would be higher [if the MSCP is not adopted] . . . because more expensive environmental mitigation would be required on a project-by-project basis." CEQA and NEPA require much more analysis than this, even if the conclusion is supportable. In this instance, the conclusion is itself based on another unsubstantiated assertion, namely, that the MSCP will in fact streamline the environmental process for development projects (by both fixing the requirements for mitigating impacts to existing federal and state listed species and by reducing the likelihood of future disruptive endangered species listings) *without increasing development exactions beyond current levels*.

In fact, landowners believe that they have been subject to a substantial increase in environmental mitigation, exactions and infrastructure costs as a result of the MSCP for several years now despite the fact that the MSCP has not yet been officially adopted. The MSCP treats 52 species as if they are listed under the California Endangered Species Act ("CESA") or federal Endangered Species Act ("FESA") despite the fact that they are not, and even without the MSCP might never be, listed. The MSCP has led to the preparation of environmental ordinances that require new and heightened mitigation ratios, including mitigation for impacts previously treated as insignificant (such as impacts to non-native grasslands). Significantly, the MSCP also *regulates habitat* regardless of whether or not any actual listed species are present -- *an approach far exceeding the requirements of the federal and state endangered species acts* -- and provides substantial protection for numerous plant species which receive only limited protection even when listed under CESA and FESA.

Thus, in effect, the decision to create an extensive multi-species conservation plan covering both listed *and unlisted* species and their potential *habitat* will result in a monumental change to current land use authority and decision-making and will give the United States Fish & Wildlife Service (USFWS) and the California Department of Fish & Game (CDFG) jurisdiction over a substantial amount of land development activity where currently they would have little or no say. If the MSCP is adopted, landowners in the San Diego region will be giving up significant private property rights, local jurisdictions will be obtaining new state and federal sources of regulatory power, and the state and federal resource agencies will be exercising significantly greater control over local governmental matters. 107(k)

107

The BIA and Alliance should not be misunderstood. The type of proactive, multi-species planning and reserve system design championed by the MSCP, if done correctly, may constitute an effective and efficient means of providing for the long-term conservation of various sensitive species and ecosystems, which in turn may reduce the possibility of species extinctions and future economic shocks to the region that species listings can bring. But the members of the BIA and Alliance and the citizens of San Diego are being asked to give up significant property rights, accept much more government regulation and embrace a far more expensive regulatory regime and cost of doing business than required by current federal, state and local environmental laws -- and to do this *now* -- in exchange for the *possibility* that in the *future* this approach will prove itself to be better for landowners and the region. 107(k)

At the very least, the EIR\EIS should acknowledge that the MSCP will increase the cost, and therefore the affordability, of housing in the region (before it speculates as to whether such costs might be higher over time in the absence of the MSCP). Indeed, it is precisely because the cost of participating in the MSCP is so high for private landowners that the BIA and others have demanded assurances that project applicants will be able to rely on the conservation benefits of the MSCP (which the development community will be funding in large measure). The necessary levels of assurances must be present in the MSCP before it is adopted.

C. The MSCP Must Address Short-Term and Long-Term Funding Issues.

Section 10(a) of FESA requires an applicant to provide an HCP which specifies "the funding that will be available to implement [the habitat conservation program]." 16 U.S.C. § 1539(a)(2)(A)(ii). In turn, the Secretary must find that the applicant "will ensure that adequate funding for the [HCP] will be provided." 16 U.S.C. § 1539(a)(2)(B)(iii). So far, the MSCP merely provides that the participating local jurisdiction applicants *will attempt* to raise the vast majority of their funding component via future action by the electorate. Of course, local jurisdictions have no control over the electorate. Thus there is no guarantee at this time that there will be adequate long-term or short-term funding for the MSCP. 107(l)

The BIA participated in a discussion led by the San Diego Dialogue to resolve these funding problems. Unfortunately, the Dialogue discussions ultimately resulted in a report without any concrete strategy for obtaining even short-term funding. The BIA and Alliance fear a situation wherein the local agencies' failure to obtain funding leads to either development moratoriums, revocation of the incidental take permits based on the MSCP, *or both*. Nor is this fear unfounded. The IA provides the CDFG and USFWS with the power to gut the assurances contained in the program if the local regional funding component is not put in place. Indeed, the plug could be pulled on protections to landowners, but the expanded local land use exactions and regulations would still be in force. Clearly, stronger levels of assurances regarding a viable regional funding program must be provided if the MSCP is to have any hope of success. 107(m)

107

Elected officials must be fully committed to support and campaign for any funding mechanism that would require voter approval, and the agencies must be prepared with alternative funding if such a ballot measure fails. 107(m)

III. CONCLUSION

The BIA and Alliance viewed the MSCP with trepidation when it was initially conceived. Representatives of the BIA and Alliance, as well as others from the development community, nevertheless have attempted to work earnestly and cooperatively with the City of San Diego, the other local agencies considering adoption of the MSCP and the resource agencies in an effort to arrive at a plan they believed could succeed and that they could support. Much progress has been made from 1991 until now, but more must be accomplished before the MSCP is considered for adoption.

Additional comments are attached. Thank you for the opportunity to comment.

Very truly yours,

Andrew K. Hartzell

AKH:sml
cc: Mayor Susan Golding
Michael Mantell
Michael Spear, Regional Director USFWS
The Honorable John Garamendi

COMMENTS ON THE MSCP, THE EIR/EIS AND RELATED IMPLEMENTING DOCUMENTS (ORDERED CHRONOLOGICALLY)

EIR/EIS

Executive Summary

Page ES-2:	It would be very helpful to have a list of the project's objectives and goals in one place. The Purpose and Need section should more clearly define the goals and objectives of the project.	107(n)
Page ES-2 (bottom):	It is unclear how the EIR/EIS can describe the precise number of acres that will be in the ultimate preserve when the MHPA does not contain "hard-lines" throughout. Please explain.	107(o)
Page ES-3:	Is adoption of an "Environmentally Sensitive Lands Ordinance" part of the City of San Diego's implementing actions for which this EIR/EIS will be used? If so, it should have been appended or otherwise incorporated into the Plan and/or Subarea Plan document(s) to allow for public review and comment. Please explain.	107(p)
	Please explain how the EIR/EIS will be used by <u>other</u> local agencies in connection with "project" level (as opposed to "program" level) approvals.	107(q)
Page ES-4:	What agency staff/consultants prepared the Subarea Plan alternatives for jurisdictions other than the City of San Diego? Were the staffs of these other agencies involved in the preparation and review of this EIR/EIS?	107(r)
Page ES-7:	It would be very helpful to have all significant environmental effects of the MSCP summarized in one place in EIR/EIS.	107(s)
Page ES-8:	The No Project Alternative should be added to Table ES-2 to allow comparison of all alternatives.	107(t)
Page ES-9:	Why are no measures proposed "at this time" for impacts of the MSCP on the ability of the City of San Diego to meet its affordable housing goals? Are there no feasible mitigation measures?	107(u)

107

Page ES-10: The No Project should also be added to Tables ES-3, 4, 5 & 6 to allow for complete comparison. 107(v)

ES-22: Why is the economic analysis of the MSCP Plan (Issue 3) not represented in Table ES-6? 107(w)

Neither the Executive Summary nor the EIR/EIS discusses the relationship between local short term uses and long term productivity. While CEQA no longer mandates such a discussion, NEPA still does. 40 C.F.R. § 1502.16. 107(x)

Purpose and Need

Page 1-9: Please explain the ramifications, under CEQA, of local jurisdictions other than City of San Diego having "responsible" agency status for an EIR/EIS that analyzes projects for which they will be the lead agency (*i.e.*, their Subarea Plans). Who certifies the EIR/EIS as to the analysis of such actions? 107(y)

Page 1-11: Is it anticipated that federal incidental take permits will be issued for listed, Covered Species throughout the entire MSCP area which is "outside" the MHPA? 107(z)

Page 1-13: Section 1.5.1 provides us with a description of the federal process for the issuance of a federal 10(a) permit. Is the State of California considering the issuance of Section 2081 and/or 2835 permits as a result of the adoption of the MSCP? If so, please describe the decision process for the State permit. As with the federal incidental take permit, will the anticipated state permits allow for take of state listed species, and Covered Species if they become listed, for all the area within the MSCP Area which is "outside" the MHPA? 107(aa)

Page 1-14: Did the City of Poway adopt the MSCP Plan? Did it analyze it in its CEQA documentation? Does Poway intend to adopt the MSCP? The fact that Poway has already received approval of its HCP/Subarea Plan illustrates that there is at least one more method between the MSCP and individual "project-by-project" permitting. Why was such an alternative not analyzed? 107(ab)

Page 1-16: The statement that "all private lands designated for preserve planning would retain limited development rights" raises a number of issues. The MSCP does not call for condemnation of private land; however, inverse condemnation is worse than condemnation. Has the EIR/EIS analyzed whether the "limited development 107(ac)

rights" retained will leave all private property owners within the preserve with economically viable use of their land consistent with reasonable investment-backed expectations? 107(ac)

Page 1-20:

The assumption is made throughout the EIR/EIS, including in the context of the Air Quality discussion, that the "MSCP may affect the location and character of development but would not affect the rate or amount of development." On what basis can the EIR/EIS conclude that the rate or amount of development within the MSCP over the course of the MSCP Plan's time horizon (*i.e.*, at least 50 years) will not be affected?

The EIR/EIS assumes the lost development potential of MHPA acreage will simply be "absorbed" by remaining acreage in MSCP Area via increases in density. Was any assumption made regarding how cost might affect development? Explain why it is not at least equally plausible to assume that some development will be "pushed" to areas outside the MSCP altogether, with the result that vehicle miles travelled will increase rather than decrease under the MSCP? 107(ad)

Page 2-1:

If a private landowner is unwilling to sell property needed for the preserve, how will the MSCP ensure adequate management of it for conservation planning purposes? 107(ae)

Page 2-2 (bottom):

What does "covered" mean? Please define this term. Does it mean that for these species the FESA 10(a) standards have been met? Please clarify. 107(af)

Page 2-5

Table 2-1: By including military land in the total study area acres, but not incorporating military data into the projections for preservation, the percentages of vegetation communities shown as preserved are skewed downward. Please delete military acreages from the table for a more accurate depiction of preservation activity related to the MSCP. 107(ag)

Pleaes provide a breakdown of native versus non-native grasslands in Table 2-1. 107(ah)

Page 2-11:

The MSCP Model Implementing Agreement provides that if federal or state contributions over time do not meet the expectations described in the MSCP Plan, the Plan and all subarea plans will be re-evaluated (Section 15.3). Please explain how, if this were to happen, the Plan nonetheless insures that "the permit holders would not be required to commit additional land, land 107(ai)

restrictions, or financial compensation, beyond that described in the subarea plan, for the protection of any covered species." 107(ai)

Page 2-13:

The EIR/EIS concludes that "protection of the vegetation communities..." is ..."in agreement with the statutory purposes and policies of FESA." In the past, assertions have been made by certain groups that habitat-based assurances violate FESA. Please explain in more detail the basis for allowing vegetation-based assurances under FESA. 107(aj)

The EIR/EIS states that "Distribution of conserved habitats relative to land uses within the overall watershed is important to long-term viability of the preserve." Why? Please explain. 107(ak)

The EIR/EIS has previously explained that the MSCP analysis was based on "core area, habitat values and linkages" - not on watersheds. Please explain why the watershed statistics are important. Can the MSCP Plan serve as the basis for a watershed plan? If the percentages of habitat within watersheds tell an important story, then the location of each watershed should be described, and information on the total habitat acreage within each watershed must be provided, in addition to information regarding the primary habitat types found in each watershed, in order for the story to be complete. Please add this information. 107(al)

Page 2-16:

The statement that "property rights will be fully respected and upheld" and the MSCP's decision not to obtain habitat via compulsory condemnation raises questions about the ability to manage private landholdings. Also, landowners within reserves may have development rights that are so minimal that they amount to "no use," but ostensible rights to develop will make claims for compensation more difficult to pursue. 107(am)

The statement (bottom of page) that "private development exactions would not be increased beyond existing requirements" is not supported. New mitigation ratios require mitigation for habitats not previously required to be mitigated, including, for example, non-native grasslands. Implementation of the MSCP would extend the jurisdiction of the resources agencies beyond that provided by the current application of CESA and FESA by covering both occupied and unoccupied habitat and treating 52 non-listed species as if they are listed and requiring sufficient mitigation to "cover" these species. Moreover, the level of development exactions has already been increased significantly due to the MSCP, despite its "unofficial" status. Explain how the 107(an)

EIR/EIS arrived at the above-quoted conclusion. Is it a conclusion or a goal? 107(an)

Page 2-17:

Mitigation banks: Once "hard" preserve lines are set, all lands within the MHPA should automatically be considered mitigation bank lands. The intent of the plan is to designate the most biologically important lands for preservation, and to encourage mitigation anywhere within that preserve to assure its assemblage. If lands have high enough biological value to be placed within the preserve, then they have high enough value to be considered part of mitigation bank. 107(ao)

Page 2-17/18:

The documents referenced on the bottom of page 17/top of page 18 (April 22 Agreement and County Deal/Negotiation points) should be appended and should be summarized in this section. How does the MSCP Plan in its current form meet the goals and dealpoints specified by these two documents? Are the goals and dealpoints of the Agreement and Dealpoints documents cited here the principle Goals of the MSCP? Are the goals of the Agreement and the County Dealpoints of the October 11, 1995 document achieved by this MSCP project? 107(ap)

Page 2-19:

The last line on this page states that "the programmatic environmental document streamlines the environmental process for projects consistent with the MSCP Plan and Subarea Plan." Please describe in detail how this EIR/EIS will be used to streamline future projects. If a future project is consistent with the MSCP Plan and Subarea Plan, how exactly will that project be able to rely on this EIR/EIS for biological impacts to Covered Species and Sufficiently and Significantly Conserved Vegetation Communities under CEQA and/or NEPA? For example, to what extent and under what circumstances would any species-specific surveys be required for: (a) projects within the MHPA; and (b) projects outside the MHPA but within the MSCP? Also, please explain how a development project outside the MHPA will be treated for purposes of determining adequate MSCP mitigation if the project would impact a non-Covered species that utilizes a Sufficiently or Significantly Conserved Vegetation Community (e.g., the patched nose snake). Is compliance with the habitat mitigation ratios (using the Tier system) supposed to mitigate fully for impacts to such species and habitat type under CEQA? 107(aq)

How much of the City of San Diego's MHPA acreage is publically owned? How many of these acres are privately owned? 107(ar)

Of the 52,000 acres to be conserved within the City of San Diego Subarea Plan, how much will come from private land, and how much from lands already publically owned? 107(ar)

The second sentence in last paragraph is unclear. Please clarify. 107(as)

2.1.4.4 Equitable Allocation of Costs: "each take authorization holder contributes its fair share . . . " This represents equitability among jurisdictions, NOT among other stakeholders. The MSCP's preserve is being assembled principally through exactions on landowners and mitigation requirements placed on future development. Of the 90,170 additional acres that need to be acquired, 70% is projected to come from exactions, 15% to be purchased with federal or state money, and only 15% to be purchased through local public funding sources. 107(at)

Page 2-30:

The City of San Diego's adopted MSCP Policies require that all edge effects will be mitigated through management practices within the preserve, and that no additional buffers or other development (Planning) requirements will be placed on new developments outside the MHPA. Please explain how the City will address edge effects in the ESL permit, consistent with this policy? 107(au)

Similarly, Section 10.8(a)(4) of the City of San Diego Implementing Agreement states that for development within the MHPA, "no mitigation will be required for the 25% encroachment." Yet this same provision states that the ESL will address "indirect impacts of development " on sensitive biological resources outside the development area. Having to alleviate edge effects constitutes mitigation. Please explain how the commitment to the proposition that no mitigation (beyond the dedication of 75% of one's property) will be required can be squared with the prior statements. 107(av)

Page 2-33:

The reference to Appendix C is erroneous. It does not contain the proposed CP Amendments. 107(aw)

Page 2-52:

Why are military lands <u>excluded</u> from the MHPA but <u>included</u> in the other alternatives? Please explain why the agencies believe that the alternatives analysis is still valid despite this discrepancy. 107(ax)

Page 3-55:

Tables 3.6-6 and 3.6-7 do not appear to correspond to the discussion in the text regarding their contents. Please revise if necessary. 107(ay)

107

Page 4.2-2:

The EIR/EIS acknowledges that converting 24% of land designated for urban uses to open space uses is "substantial," but concludes that the impact is not significant "at the program level" because there is adequate acreage within the MSCP that could be shifted to urban uses. However, there is no analysis explaining or supporting this conclusion. What designations do the 10,000+ acres have currently that would be converted to urban use? Where are they and is such conversion feasible? Past history has shown such conversions to be very rare, difficult and expensive. **107(az)**

Please provide information as to how many acres and what percentage of the total of all low density residentially zoned land in the study area will be re-designated for open-space use (and therefore lost to residential use). Please provide this same information (i.e, the number of acres and percentage of study area total) for land that will be changed from urban development designation to open space. **107(ba)**

Page 4.2-4:

Please explain how the statement found in the first paragraph of this page ("since substantial acreage exists both within the MSCP study area and within the MHPA to accommodate planned land uses...inconsistencies with GP and CP goals... are not regarded as significant") can be consistent with the statement on page 3-55 that "even without the MSCP there is not enough land to meet residential needs." **107(bb)**

Page 4.2-14:
(second paragraph)

The EIR/EIS discussion of Chula Vista's Subarea Plan says four (4) circulation element roads would need to traverse through or adjacent to the proposed core preserve areas, raising the possibility that the roads will not be allowed. The EIR/EIS then concludes that because roads are "conditionally compatible" within the preserve, significant impacts to the Circulation Element associated with deletions or realignments of the four roadways are not anticipated. Is this saying the roads will definitely be permitted within the preserves but with conditions? Please clarify. **107(bc)**

Page 4.2-18:

Conversion of 26% of the land designated for urban uses and 50% of the land designated for low density uses within the City of San Diego would seem to have repercussions that could be quite significant in the long run. **107(bd)**

Page 4.2-21:

BIA concurs with the determination of the EIR/EIS that the conversion of urban designated land to open space could have a significant effect on the City's ability to provide affordable **107(be)**

housing, but would also submit that an analysis of the MSCP's impacts over a proper time horizon (*i.e.*, the length of the proposed action which is 50 years) would demonstrate that the MSCP will exacerbate the City's anticipated inability to meet the demand for a full-range of housing types. **107(be)**

Page 4.2-29:

BIA concurs with the determination that implementation of the MSCP could have potentially significant impacts on the provision of adequate infrastructure in the Rancho Peñasquitos Community Plan area. However, why were no mitigation measures proposed such as City payment of that portion of the anticipated PFFP funds lost? **107(bf)**

Page 4.2-65-68:

The EIR/EIS sets forth a number of significant adverse land-use impacts of the MSCP with respect to the City of San Diego Subarea Plans, but found no impacts at the MSCP "program level." What threshold of significance did the City use in this analysis? The EIR/EIS did not analyze compatibility with regional programs, such as those adopted by SANDAG. Please explain why. Why were no mitigation measures proposed for the impacts called out as significant other than very general exhortations to "explore whether there are ways to address the issue"? It is not legally adequate to assert that "no measures have been incorporated...or are required by the MSCP Plan," as the EIR/EIS does at page 4.2-67. CEQA requires the EIR preparer to propose what are believed to be feasible mitigation measures to reduce significant project impacts and the decision-maker must adopt all such measures unless they are infeasible. EIR/EIS should clarify that updates and revisions to the various Community Plans required as a result of the MSCP will be done at the City of San Diego's expense. **107(bg)**

Page 4.2-70-71:

The analysis seems to place CEQA on its head in that it focuses on impacts of existing land use on the proposed MSCP preserve resources. This would be a harmless mistake except that the EIR/EIS discusses measures (*i.e.*, restrictions) on development adjacent to the preserve which have been incorporated into the MSCP and that these are to be expanded upon at the implementation level (see page 4.2-75, lines 3-5, for example). **107(bh)**

Any discussion of "edge effects" should be discussed in the biological section of the EIR/EIS. Even more importantly, "edge effects" were taken into account in formulating the preserve design such that projects near the preserve should not be required to **107(bi)**

undertake any but the most inexpensive and easily accomplished measures to promote the preserve (*i.e.*, measures such as the redirection of lights). Is this understanding correct? Please provide a comprehensive list of measures which could be required, by Subarea plan, to account for edge effects. **107(bi)**

Page 4.3-1:

It is stated that the MHPA was evaluated using criteria that were similar to those used for the other alternatives. What were the criteria? How were they different/the same as those used for the other alternatives? **107(bj)**

Page 4.3-2:

In Table 4.3-1 and elsewhere in the document (at 4.3-151, for example), it is stated that a minimum edge effect of 200 feet was assumed along the boundary inside the preserve. It is therefore assumed that edge effects were considered, and such considerations were built into, the preserve design process. Thus, the resulting preserve should be adequate to preserve the Covered Species and their habitats in spite of indirect impacts due to edge effects. Please revise the EIR to clearly state whether this assumption is correct. If not, please clearly explain how the preserve is inadequate to deal with edge effects and the impacts this has on the covered species. In order to use the document as a programmatic document, please explain for each subarea the specific constraints are that will be placed on projects both within and adjacent to the MHPA during the planning process and how these will mitigate the indirect impacts. **107(bk)**

For example, the City of San Diego Plan Section 1.4.3 identifies 7 requirements for projects located adjacent to the preserve. If a project design complies with all 7 requirements, it is our understanding that no additional measures, design changes or additional open space for "edge effects" are necessary. It is further our understanding that the City will be responsible for the determination that the 7 requirements were met, and that the resource agencies will not be making such determination on a project-by-project basis. Please confirm or clearly state how a project may be required to be revised. **107(bl)**

Identified assumptions for analyzing the adequacy of the MHPA coverage afforded to species include an assumption that wetlands and associated species within the MHPA boundary are 100% preserved. Does this assumption allow for a "no net loss approach"? If not, does the amounts allow for any such impacts in the MHPA? If not, how does the EIR/EIS analyze there **107(bm)**

potential catastrophic result to development which likely would result from such absolute inflexibility? 107(bm)

Please explain the support for the assumption that "species that occur within preservation areas of less than 90% were assumed to be preserved at the designated level of preservation." 107(bn)

Page 4.3-3 to 5:

Please explain how the "biological tools," NCCP Conservation Guidelines, and project goals, objectives and policies were used to design a preserve. What was the planning process? Were the NCCP Planning and Conservation Guidelines met? 107(bo)

Page 4.3-6:

In the absence of any explanation of the basis for selecting the significance criteria, they could be seen as arbitrary. Please explain how and why each was selected. For example, why was 10% used? It would seem that some species could easily absorb a larger impact. What is the definition of "substantial reduction" of habitat and "substantial interference of movement"? 107(bp)

Page 4.3-8:

Please state how much land was assumed to be developed under each of the alternatives, and whether non-biologic restrictions were considered in identifying the development acreage. 107(bq)

The term "adequate protection" is not defined. Does it mean that 10(a) standards were met? 107(br)

Table 4.3-1:

What is the line of reasoning that supports each conclusion reached for determining whether the proposed preserve will protect each of the Covered Species in accordance with the requirements of FESA, CESA and the NCCP Act? 107(bs)

It is recognized that the analysis in the EIR\EIS cannot be "pre-decisional" to the yet to be rendered Biological Opinion for the MSCP; however, a sufficient amount of data and analysis for the conclusions are necessary for public understanding and to provide guidance to those who will rely on this EIR\EIS as a programmatic document over time. Were the significance criteria used in making any assessments regarding the adequacy of coverage? If yes, then please explain how coverage was granted if the decision was made that the criteria were not met. 107(bt)

A review of the table shows that additional land can be required for 35 of the 85 Covered Species. The MSCP proposed to grant certainty to landowners. How can this claim be made when 107(bu)

additional exactions can be made by the resource agencies for over 30% of the Covered Species? **107(bu)**

Table 4.3-1:

It is our understanding that the proposed preserve adequately conserves the 85 covered species irrespective of any plan done for military lands. How are the agencies ensuring that planning done on military lands will not compromise the "biologic function" of the MSCP or cause coverage to be reduced? **107(bv)**

It is also our understanding that the military lands were not included in the MHPA. Please confirm that the numbers in the table also exclude military sightings/populations. If not, please revise the table. **107(bw)**

It is our understanding from reading the document that the risk factors discussed as footnote 4 of the table are the risk to the species before the MSCP is imposed, and that such risk is reduced through imposition of the MSCP to a level such that the continued existence of the species is no longer at risk. Please confirm. If our understanding is incorrect, please explain for each Covered Species why a finding of "adequately covered by the plan" could be made. **107(bx)**

Page 4.3-41:

Reference is made to habitats additionally protected by the state, the City RPO and County BMO. It is our understanding that the City RPO will be replaced by the proposed Environmentally Sensitive Lands (ESL) ordinance once the MSCP is adopted. Please identify and discuss the effect of the proposed change in regulation on the MSCP. **107(by)**

Table 4.3-2

The reference to Appendix A-9 of the MSCP Resource Document in footnote 2 should be deleted. If recommendations from that document are relevant to the operation of the preserve system, please set forth those recommendations in the EIR\EIS. **107(bz)**

Page 4.3-42:

The statement is made that "Species that occur in chaparral and grassland will be at greater risk. . . " In reading the EIR/EIS, it is our understanding that significant amounts of chaparral and grassland are being conserved. Certainly, more of these habitats are being saved under the MSCP than would occur under existing regulations. Please confirm if this is true. If so, please revise the EIR/EIS to reflect this correct understanding. **107(ca)**

In addition, it is our understanding that the mitigation tables proposed by the jurisdictions in their subarea plans include **107(cb)**

required mitigation for grasslands and chaparral. If a project provides mitigation as required by these tables, no additional acreages of these habitats (or any other habitat conserved via the mitigation tables) will be required as mitigation through CEQA. Please confirm. **107(cb)**

Page 4.3-43:

The EIR/EIS maintains that the MSCP will have little impact on the overall rate of development. It will shift the location of development but have no impact on the rate of development. Given this assessment, how can it be stated in this section that the MSCP will increase development pressure? It should also be pointed out that examples of the biological resources located outside the MHPA are preserved inside the reserve. The loss of resources outside the preserve is allowed and actually encouraged through the shifting of development, and is not significant because of the amounts of resources located inside the preserve. Please confirm and revise the EIR/EIS. **107(cc)**

Page 4.3-45:

The EIR/EIS states that impacts to Covered Species will occur as a result of the MSCP. Within this section, it should be made perfectly clear that the majority of the Covered Species are not listed, and are not protected by CESA or FESA. Local ordinances provide some protection, but not within a large preserve as is being done by the MSCP. Please revise the EIR/EIS to reflect this reality. Please compare the loss of covered species and habitats that would occur under the MSCP with that which would occur using existing regulations. Please elaborate further how this fact was used in determining impacts and level of significance in the evaluation of the proposed project and alternatives. **107(cd)**

Page 4.3-46:

The EIR/EIS states that "Implementation of the MHPA would result in better protection of uncovered species that are dependent on sufficiently conserved vegetation communities than for species dependent on significantly conserved habitats." Please explain the biological basis of this statement. Please explain how this would occur, especially since previous explanations of the difference between the two categories of protected habitat state that the only difference is who bears the financial burden. **107(ce)**

Page 4.3-86:

Under Direct Impacts, this section states that sensitive habitats outside the preserve would continue to require mitigation under CEQA. This seems to leave open the possibility of being required to mitigate *in addition to the MSCP*. Please explain what exactly is envisioned. **107(cf)**

Page 4.3-88:

Restoration is called for in several places in the various sections of the City of San Diego Subarea Plan. It is assumed that the preserve is adequate as proposed, and that restoration would be an enhancement rather than a requirement of the take authorization for the City of San Diego. Please state whether this is correct. If not, please state the acreage and locations that must be restored and identify the cost and responsible party. **107(cg)**

Several requirements throughout the Community Plan section include the caveat, "if funding becomes available" or "if feasible". It is assumed that these requirements are not necessary for the City of San Diego take authorizations to remain in force. Please state whether this is correct. If not, please state when these requirements must be carried out, identify the responsible party and estimate the cost of the required facility. **107(ch)**

Page 4.3-93:

The analysis of impacts for the City of San Diego Subarea Plan describes the guidelines outlined for each geographic area of the City and recognizes the net positive effect on the biologic resources that will result from MSCP implementation. Isn't this kind of analysis provided for the other subarea plans, and if not, why? **107(ci)**

Page 4.3-111:

The BMO will not be used in fixed line areas, i.e., the Lake Hodges and South County subareas. These areas are creating a preserve which is the mitigation for allowed development. Please explain how the existing impacts analysis, which only refers to use of the BMO, addresses the impacts in the fixed line areas. Please explain how the mitigation proposed in the fixed line areas addressed the impacts and how the significance of impacts were determined both before and after mitigation. **107(cj)**

Page 4.3-150:

Please explain how the application of the BMO will prevent the "historic pattern of development" from the continuing in the Metro, Lakeside, Jamul segment of the County Subarea Plan. **107(ck)**

Page 4.3-175:

It is our understanding that, with the exception of wetland regulations and other non-biologic restrictions, development will be allowed to occur outside the MHPA with no additional land exactions beyond those required by the mitigation tables in the various implementing ordinances. Is this correct, especially considering the language that states that the determination of adequate coverage assumes that environmental laws and resource protection ordinances will continue to be applicable both inside and outside the preserve? If not, please clearly identify and **107(cl)**

explain circumstances under which more land could be exacted for biologic resources. **107(cl)**

It is stated that the determination of adequate coverage assumes that ". . . preserve management procedures and actions will be implemented as part of the MSCP Plan." Please explain how preserve management will positively impact the preserve. What impacts will proper management offset? **107(cm)**

Page 4.3-177: The EIR/EIS states that ". . . the Biologically Preferred Alternative provides greater assurance of long-term viability. . . " This implies that the proposed project does not provide enough assurances of long-term viability. Please explain how the proposed project was evaluated to assure that it is providing "enough" assurances regarding long-term viability. **107(cn)**

Page 4.3-179: The EIR/EIS states that "Adaptive management may include reconfiguration of preserve boundaries. . . " It is our understanding that the preserve is adequate as designed. Please explain how and under what circumstances a 171,000+ acre preserve would not be adequate and that the boundaries would need to be reconfigured. How would landowners affected by such a shift be compensated? Where would additional land be found that could be designated for the uses lost through the reconfiguration? Would the preserve boundaries be adjusted such that the overall size would remain the same? **107(co)**

Page 4.3-196: Two of the three segments of the County Subarea Plan are largely made up of fixed lines. The BMO will only be used on a very limited basis. Please clarify Section 4.3-MHPA-23a to cover these sections of the County Subarea Plan. **107(cp)**

Page 4.3-197: The County Subarea Plan includes conservation targets for conservation of narrow endemic and other sensitive species. Once these targets are met, why is avoidance still required? **107(cq)**

The BMO requires mitigation on a habitat basis in accordance with specific mitigation ratios. Please clearly explain those circumstances and list those species for which the BMO habitat mitigation ratios will not be entirely adequate, if any, such that further mitigation will be required on a species-specific basis. Please clearly state how the mitigation required by the ratio tables will be offset by the species-specific mitigation. **107(cr)**

107

Page 4.3-217: The EIR/EIS states that restoration activities are most likely to be initially focused in linkages. Please explain how much restoration is required for each subarea plan in order for the take authorizations to remain in effect. 107(cs)

Additional Comments on Biology Section of EIR/EIS

- The EIR/EIS presently does not provide an adequate level of biological analysis justifying the issuance of incidental take permits for the Covered Species. Rather than setting forth sufficient data and analysis, the document relies primarily on tabulations of percentages of known populations impacted and preserved under the program. Although some attempt is made to incorporate additional biological information and analysis by reference, this approach has been inappropriately relied upon given that such biological analysis lies at the heart of the MSCP. 107(ct)

  The EIR\EIS would be improved if it provided a much more detailed explanation of the underlying biological principles and tenets of the NCCP program, ecosystem preserve design, and conservation biology. To this end, much of the information and analysis contained in the document entitled "Subregionalization for Natural Communities Conservation Planning" by Peter Brussard and Dennis Murphy (of the Coastal Sage Scrub Scientific Review Panel) should be incorporated and discussed in the EIR/EIS. In addition, important biological information and analysis on the conservation status, biology and habitat needs of the Covered Species which already exists in other documents or sources should be included. Significant information and analysis on the biological and conservation value of the lands within the MHPA reserve system and the significance of Gap analysis used in determining a preserve design sufficient to adequately conserve the Covered Species should also be included. The role and significance of the adaptive management program provided should also be explained and analyzed. With this information and analysis, the public will be better able to evaluate the project under CEQA and NEPA to determine whether the biological resources have been adequately addressed. 107(cu)

  The EIR/EIS itself should discuss the estimates of the existing population numbers for each of the Covered Species within and outside of the MSCP Area and within and outside of the prospective MHPA. The document should clearly identify the studies/surveys upon which such estimates are based and the relative reliability of these efforts. Where gaps in knowledge exist, if any, these should be candidly identified. These population levels should then be analyzed in the context of the lands incorporated into the MHPA permanent reserve (both size of core reserve areas and habitat linkage configurations) to evaluate the sufficiency of the protection afforded to each of the Covered Species. The document should explain why, for each of the Covered Species, the preservation of populations within the MHPA can be expected not to appreciably reduce the likelihood of the survival and recovery of the species in the wild. 107(cv)

We suspect that for all of the Covered Species, incidental take coverage can be issued, in large part and most simply put, because of the proactive establishment of such a large, interconnected reserve system and the existence of an adaptive management component to the program. Most of the species on the Covered Species list have not been reduced in size to the point where FESA or CESA listing is warranted. Thus we suspect that existing population levels, when analyzed in the context of the specific reserve design (its positive biological attributes of large blocks of suitable habitat, biologically functional linkages, etc.), are such that the MSCP program will be able to ensure that incidental take pursuant to the MSCP program will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. The USFWS should provide such analysis in the draft EIR/EIS for each of the Covered Species. 107(cv)

The EIR/EIS should explain in a more detailed manner how the proposed MHPA preserve design conforms to the set of functioning ecosystem reserve principles set forth in the NCCP Conservation Guidelines and the MSCP Resource Document (Chapter 4). 107(cw)

Additionally: (a) the species population and distribution maps referenced at page 4.1-1 of the EIR/EIS should be provided in the document, and (b) the most up-to-date descriptions of the Core Biological Resource Areas and Linkage Areas preserved by the MHPA should be included. 107(cx)

- The FESA precludes the USFWS from taking any action which is likely to jeopardize the continued existence of a threatened or endangered species. 16 U.S.C. § 1536(a)(2). Page 4.3-41 of the draft EIR/EIS notes that there are two species (Pacific pocket mouse and Orcutt's spineflower) federally listed as endangered which may occur within the MSCP Area but which are considered "non-Covered Species" under the MSCP/HCP. The draft EIR/EIS notes that there will be indirect impacts to these two non-Covered Species, but concludes that such impacts will not be significant. According to the document, the justification for this conclusion is that such species will receive federal protection under FESA. However, FESA generally does not prohibit the loss or conversion of potential, but unoccupied, habitat for listed species. Accordingly, the USFWS must explain how it has concluded that the Pacific pocket mouse's and Orcutt's spineflower's continued survival will not depend on the species' future use of potential but unoccupied habitat of these two species. The current population levels of these two species are very low, and their continued existence may require an expansion of current populations with other currently unoccupied habitat. (For example, such habitat might be necessary for human-induced translocations or for natural migrations or population expansions.) Absent such analysis and a supportable finding that either none of this potential habitat is required or that these two species will be better off under the MSCP, necessary federal permits cannot be issued. 107(cy)

107

Please explain the basis for the belief that sufficient amounts of currently occupied habitat exists for both the Pacific pocket mouse and Orcutt's spineflower within the MSCP Area such that these species may experience the loss of potentially suitable, but unoccupied, habitat within the MSCP Area without the likelihood that their continued existence will be jeopardized. 107(cy)

- The EIR/EIS must be expanded to discuss the potential significance of the possible loss of potentially suitable (but unoccupied) habitat for sensitive non-listed species which are also Non-Covered Species under the plan. The document should identify each of these species which could potentially occur in the MSCP Area and explain why loss of potential but unoccupied habitat for these species is not considered a significant impact. 107(cz)

- The draft EIR/EIS notes that four species which are deemed Covered Species (Aphanisma, Nevin's barberry, thread-leaved brodiaea, California red-legged frog) are permitted for incidental take because there will be a "Discountable Effect" under the MSCP program on these species. Table 4.3-1 defines a Discountable Effect as "an effect that would not reasonably be expected to occur because the species is not expected to occur in the MSCP study area." This rationalization, by itself, is inadequate under the provisions of the FESA to provide coverage to these species by virtue of Section 10(a). 16 U.S.C. § 1539(a)(1)(B). The DEIR/EIS does not explain why the incidental take of the "Discountable Effect" species within the MSCP Area would not be significant if, in fact, individuals of the species were to be found within the MSCP Area. Without a further explanation of the analysis conducted, it would appear possible that if individuals of such species were found within the MSCP Area, such occurrence would be of biological significance from the standpoint of range and/or distribution.

  The more detailed discussion of the "Discountable Effect" species in the September 1996 "MSCP 1995 and 1996 Species Evaluations," prepared by the USFWS and CDFG, should be included in the DEIS/EIR. A discussion of the applicability of the Region 1 August 1, 1995 Guidelines for Determining Covered Species Lists should also be provided. Authority for incidental take of a Discountable Effect species would appear justified under FESA only if such a species was sufficiently secure elsewhere in its range outside of the MSCP Area such that any loss of such individuals within the MSCP Area would not be likely to jeopardize the continued existence of the species. Information in the EIR/EIS, however, does not address this. The draft EIR/EIS should also describe why such loss of an unexpected population of individuals within the MSCP Area would not be significant.

  In addition, in order to provide the Section 10(a) permittee with incidental take authority for such species, the USFWS should make one of three findings: (1) some potentially suitable habitat is preserved within the MHPA in which the species could be relocated should members be found within the MSCP Area, 107(da)

107

(2) Section 10(a) coverage is appropriate under the No Surprises Policy, such that the federal government will agree to bear the burden for providing any necessary mitigation for the loss of such individuals of the species should they be found within the MSCP Area, or (3) any impacts to or loss of members of these species within the MSCP Area by virtue of land use activities would not be likely to jeopardize the continued existence of the species and, accordingly, the incidental take statement accompanying the Section 10(a) permit to the local jurisdiction should provide authority for the take of any individuals of the species within the MSCP Area. That is, the USFWS may find that while the HCP does not satisfy Section 10(a) criteria for these particular species, the effect of any incidental take of such species within the MSCP Area, should they be found, would not be likely to jeopardize the continued existence of the species as a whole, and therefore would be authorized under the program. 107(da)

- Section 10(a) of FESA requires an applicant to provide an HCP which specifies "the funding that will be available to implement [the HCP]." 16 U.S.C. § 1539(a)(2)(A)(ii). In turn, the Secretary must find that the applicant "will ensure that adequate funding for the plan will be provided." 16 U.S.C. § 1539(a)(2)(B)(iii). The draft EIR/EIS and the accompanying MSCP and subarea plan (which together constitute the HCP) and Implementing Agreement for the City of San Diego must provide a more satisfactory and detailed explanation as to why the funding mechanism set forth for the City of San Diego and for the other local jurisdictions requesting Section 10(a) authorization, meet the FESA standards for issuance of a Section 10(a) permit in this regard.

  The MSCP/HCP provides that the participating local jurisdiction applicants will attempt to raise the vast majority of their funding component via future action by the electorate. Thus the local jurisdiction applicants cannot guarantee at this time that this method will produce a long-term funding component. The local jurisdictions have no control over the electorate, upon which they must entirely rely to produce the long-term local funding component. In fact, the applicants cannot even identify the long-term funding mechanism that will be used or provide specifics regarding this hypothetical. The only short-term funding component appears to be a commitment by local jurisdictions to maintain, manage and monitor existing habitat designated for the long-term preserve and controlled by the local jurisdiction for purposes of the preserve -- and it is not even clear where funding will be obtained for these limited activities. Individuals developing land within the MSCP area also will be obligated to provide necessary mitigation for impacts of their particular development projects. The DEIR/EIS should provide an explanation as to why this uncertain funding component is believed to be sufficient to meet FESA standard. The EIR/EIS should also explain why incidental take which will be authorized prior to the participating jurisdiction's being able to establish a long-term funding mechanism will not be likely to jeopardize the continued existence of any species within the MSCP Area and why 107(db)

such jeopardy is unlikely to occur even if the long-term funding mechanism is never established. 107(db)

Why isn't a detailed process for establishing a funding program included in the MSCP? Such a process should include a schedule and milestones. What will be done at the end of 3 years if a public funding process is not established? What are the program costs that will be incurred during the first 3 years of the program, including acquisition and management/maintenance/monitoring costs? What sources of money will be used by each subarea to meet these obligations? 107(dc)

- The DEIR/S should provide the analytical justification for why the lead agencies believe they may "assume" that the mitigation measures "(*i.e.*, conservation and management of habitat and species)" that reduce the impact under the MHPA alternative too a level less than significant are also sufficient to meet FESA's Section 10(a) standard that such impacts are minimized and mitigated to the maximum extent practicable, as required under 16 U.S.C. Section 1539(a)(2)(B)(ii). (See DEIR/S statement at pg. 4.3-212). The EIR/EIS should make the case regarding why the plan should satisfy the FESA's requirement that the program minimizes and mitigates impacts to the maximum extent practicable. 107(dd)

- The EIR must provide a discussion of the March 17, 1995 Joint USFWS and CDFG Guidance on CEQA Determinations of Significant Impacts under the NCCP Program and that document's impact on conclusions regarding the significance of impacts to Covered Species, coastal sage scrub habitat and other Sufficiently Conserved Vegetation Communities. According to this joint policy, once a subregional NCCP has been approved, project-related impacts to CSS and all species receiving regulatory coverage under the NCCP "shall be considered to be mitigated to insignificant levels." 107(de)

- The DEIR/S appears inconsistent in its description of the result of this proposed project for land development projects in terms of the interplay between the CEQA analysis to be conducted by each of the local jurisdiction Section 10(a) permittees and both the concept of edge effects and the potential mitigation requirements for sensitive species which are not on the Covered Species list (except for the Narrow Endemic Species). A fundamental principle behind the MSCP project is to establish a biologically connected permanent preserve system within the MSCP Area to ensure functioning ecosystems among the habitat types addressed by the MSCP program (*i.e.*, the Sufficiently and Significantly Conserved Vegetation Communities), thereby providing at the same time for a sufficient level of conservation for species which utilize these various habitat types. In fact, the proposed MSCP program results in land development activities providing greater biological mitigation than required under either ESA, CESA or CEQA, in that mitigation will be required for many species which have no protection under either FESA or CESA and the mitigation will be required to be provided in such 107(df)

a way so as to contribute to a region-wide biological preserve. A second fundamental principle of the MSCP program is to provide certainty in the land development process with respect to required biological mitigation for impacts. Accordingly, a proponent of a development project within the MSCP Area should not have to provide any additional biological mitigation for its project beyond the land contributed to the permanent preserve system, except for those additional mitigations which may be required for a Narrow Endemic Species or to satisfy the requirements of Section 404 of the Clean Water Act. 107(df)

The DEIS/R and accompanying documents are too vague on this issue. The MSCP program still seems to allow local jurisdictions to require mitigation for sensitive species which are either non-Covered Species or are not Covered Species Subject to Incidental Take. For example, Section 10.8(G)(4) of the City of San Diego IA currently provides that "The indirect impacts of development will be addressed in the Environmentally Sensitive Lands permit to ensure protection of the sensitive biological resources remaining on the premises outside of the development area." This statement is confusing and should be deleted as our understanding is that "edge effects" and "buffer" issues have been addressed by incorporating such "areas" or "zones" within the permanent preserve boundaries. Likewise, at pg. 4.3-212 of the DEIR/S, the document states, "It should be noted that the MHPA does not mitigate for indirect impacts to non-wetland uncovered species, non-wetland sensitive vegetation communities, and non-sensitive vegetation communities." However, the permanent preserve system in fact should be expected to benefit non-Covered species and sensitive vegetation communities and the like. For instance, the coast patched-nosed snake and coastal rosy boa would both be expected to benefit from the proposed permanent preserve. The statement also contradicts the summary table on pg. 4.3-212-216. This issue must be clarified.

- The EIR/S should identify the specific vernal pool and wetland species which are currently federally listed and which are known to occur within the MSCP Area. A map depicting the known distribution of these species should also be provided. The EIR/EIS should provide a discussion of how the distribution of these species supports its conclusions that the Clean Water Act 404 regulatory program provides the USFWS with sufficient authority to protect these species under the FESA Section 1536(a) requirements given the structure of Section 404 and the Nationwide Permit program (which requires Section 7 consultations for impacts to federally listed species). 107(dg)

- Consistent with the coverage being extended to Covered Species by the CDFG pursuant to the City of San Diego's Implementing Agreement, the EIR/EIS needs to set forth the data and analysis whereby the CDFG can grant NCCP Act incidental take authorization for all of the Covered Species to the City of San Diego. This important information is absent from the document. 107(dh)

- The absence of any flexibility with respect to impacts to Narrow Endemic Species (*i.e.*, the requirement for total avoidance) may create significant detrimental impacts to land use needs other than open space. This component of the MSCP program needs to be analyzed. The MSCP should provide that once the conservation targets for narrow endemics are met, no more preservation anywhere within the MSCP will be required. Toward this end, the preserve management programs should provide for the surveying of a different portion every year until the entire preserve has been surveyed. **107(di)**

- The process of annual accounting for lost habitat (described at pg. 4.3-178 of the EIR/EIS) must be modified to account for both (and distinguish between) acres approved for loss and acres actually developed . Some land development projects may get approved but may never be developed before the land approvals expire; in such cases the non-disturbed (but "approved for loss") acreage should be reclassified as undeveloped. **107(dj)**

- The EIR/EIS must discuss the extent to which any critical habitat (as defined by FESA) is currently located within the MSCP Area and the extent to which such areas may be negatively impacted by the project. Any destruction or adverse modification to areas of critical habitat must be identified, and the USFWS must explain how such impact does not constitute a violation of 16 U.S.C. § 1536(a)(2). **107(dk)**

- The EIR/EIS needs to analyze a worst-case biological analysis wherein take occurs for 3-5 years without securing a long-term funding component at the local level (which time gap could occur since the USFWS and CDFG have the ability to extend the local jurisdiction's time deadline), without securing the federal and state contributions, and then the program is abandoned because of a lack of local, state or federal funding, or some combination of these three events. **107(dl)**

<u>Maintenance, Management, Monitoring Obligations of Landowners Within the MSCP Area</u>.

- The EIR/EIS, the MSCP Plan, the Subarea Plans, and the IA all fail to clearly and adequately identify and describe the situations in which landowners (both those developing lands and those simply holding lands) within the MSCP Area will be required to fund or otherwise bear the expense of maintaining land, managing land or monitoring land included as part of the reserve system. Any situations in which such obligations could be placed on landowners should be identified and described in a separate section of the EIR/EIS and also in the MSCP Plan. Please verify that any costs of maintaining, managing or monitoring land which is to function as part of the MSCP preserve system will in all instances be borne by federal, state or local jurisdiction funding. Please verify that the only exception to this would be an instance in which a Third Party Beneficiary under the IA had refused to provide either the local jurisdiction, the **107(dm)**

107

CDFG or USFWS with access to the property for purposes of conducting such activities. 107(dm)

Population and Housing

Page 4.6-1 Explain why "two or more" criteria had to be exceeded. The BIA and the AHC respectfully submit that exceeding either MSCP Program threshold, by itself, should be considered a significant impact.

This EIR/EIS states that increases in the overall residential densities to above 3.10 DU/AC would be deemed to be significant. At 4.6-5, the EIR/EIS appears to utilize a 5.22 DU/AC assumption for future growth between 1990-2005. Nevertheless, the EIR/EIS still concludes that the average residential densities will remain at 3.10. What offsets the projected new development at 5.22 Du/AC such that the average remains constant? 107(dn)

In addition, BIA submits that the assumption that development at an average density of 5.22 DU/AC is unrealistic. Actual densities are likely to be much lower.

Page 4.6-1: The first criteria used to evaluate housing impacts on subarea plans is a measurement of "decreases in projected developable land supply to the point that a jurisdiction will be unable to meet their projected 1990-2005 residential land needs." The use of a timeframe which began six years ago, and ends in nine short years is not adequate to determine the real impacts of a program that is anticipated to take up to 30 years to complete, and is expected to have a minimum lifetime of 50 years (the life of the federal take authorization). Please provide an analysis that more directly relates to the life of this project and provides a more realistic look at housing impacts. 107(do)

Page 4.6-4: Table 4.6-3 Presumably the number "82" in column three, line one is a typographical error. 17,021 plus 65,269 equals 82,290: is this the correct number? 107(dp)

Page 4.6-5: The analysis prepared using acreages from Table 4.6-3 has numbers which do not correspond to the Table. This paragraph should read. . . "from Table 4.6-3, a total of ~~22,915~~ 17,021 acres of private land would be available within the MHPA for development of housing units. . . . An additional ~~85,707~~ 65,269 acres of private land would be available for development outside the MHPA but within the MSCP study area, for a total of ~~108,623~~ 82,290 acres of private land available for development."

Using the assumptions cited, the total land available to accommodate the anticipated 133,990 housing units would be 48,798. 107(dq)

The assumptions used to project potential lost residential units and then to project the potential to fulfill the projected housing needs for the MSCP area are contradictory and conflict with assumptions presented elsewhere in the MSCP Plan and EIR. Please respond to the following observations: 107(dq)

1. Page 5-2 of the EIR/EIS states that "In the year 2005, only 14,000 vacant urban residential acres would remain in the region." This statement directly conflicts with the finding on page 4.6-5 that 38,744 acres of vacant residential land will remain to support "an additional 202,240 housing units" after 2005.

2. The SANDAG assumption used to project the potential yield from residential acres incorporates a density projection of 5.22 units/acre: thereby finding that only "25,669 acres of residential land would be needed by 2005 to accommodate the 133,990 housing units to be built between 1990-2005." Yet the units that are projected by SANDAG to be built in the area covered by the preserve and therefore lost due to the project - 15,326 - use an assumed density of only 1.13 (22,915 developable acres x 59.3% = 13,586 residential acres removed from residential uses).

   If the SANDAG assumption that figure densities will equal 5.22 is applied to the residential acreage lost to MSCP, a potential 70,918 future units must be displaced: representing 53% of total projected growth.

   If the current average density for the region, stated here to be 3.1, is applied 42,117 units are lost: representing 31% of total projected growth.

   Please explain how the lower density assumption can be used to analyze units lost, while another extremely higher density assumption is used to determine how the remaining MSCP acreage will develop after MSCP is adopted.

Page 4.6-45: Regarding potential residential assessments, what would dollar amount per year over 30 years have to be if no commercial or industrial property is assessed? 107(dr)

Page 5-2 Please explain why the EIR/EIS discusses the MSCP's contraction of available developable acreage, and thus the potential to exacerbate an anticipated housing shortage, in the MSCP area in the Growth Inducement Section of the EIR/EIS rather than in the Population and Housing Section. This is troubling for two reasons. First, the statement that "over the long-term, the reduction of available developable land within the study area due to a preserve may be . . . pronounced" undermines this analysis done and conclusions reached in the 107(ds)

107

Housing analysis. Second, the Growth Inducement Section only requires an analysis of impacts, and does not require a determination of the significance of the impacts. 107(ds)

Comments on the Environmentally Sensitive Lands (ESL) Regulations

Section 131.0204: The BIA and AHC object to the application of the OR-1-2 zone to all parcels that are only partially within the boundaries of the MSCP preserve. This requires applicants to seek a rezone simply to implement the community plan, which would appear to be an unnecessary and excessive regulation. This action will result in the downzoning of massive amounts of land in the City of San Diego and make it more difficult for those portions of community plans located outside the MSCP preserve to be implemented. It is requested that language be added to either the ESL or to each community plan stating that it is not the intent of any City regulation to increase the complexity, processing time or processing requirements in order to implement the MSCP, and to direct staff to continually seek ways to streamline and simplify the land development process, especially in areas where the MSCP is to be implemented.

Table 131-02B: Permitted Use in the OR-1-2 zone, specifically for MSCP, include passive recreation, natural resource preservation, aquaculture, raising and harvesting of crops, keeping of animals, commercial stables, community gardens, open air markets for sale of agricultural products, single family dwelling units, boarder and lodger accommodations, employee housing, residential care and transitional housing, utilities, bed and breakfast establishments, camping parks and signs (including revolving signs). All of these are required to be within the allowed development area.

Among other things, the zone does not allow active recreation, horticulture and greenhouses, multi-family units, and botanical gardens and arboretums. This does not make sense. Multi-family units, if feasible, would save more land for the preserve than would the same number of single family units. Camping parks are no less disturbing to natural areas than other active recreation facilities.

The permitted use table should be reviewed and explanations provided for why some uses are allowed while similar uses are not.

Section 131.0240: For the OR-1-2 zone, the minimum lot area is 10 acres. Maximum lot coverage is 1 acre. The lot size may be reduced with a Planned 107(dt)

Development. Since the intent of the MSCP is to save the maximum amount of land possible, why is the City forcing a landowner to go through a more difficult, complex process just to cluster and save more land? This seems counter productive. The regulations should be rewritten to establish gross density, and encourage the use of the smallest lot size feasible, including multi-family units, to save the maximum amount of land for preserve purposes. If a landowner has 100 acres adjacent to an area of 6,000 square foot lots, why shouldn't they be encouraged to cluster then 6,000 square foot lots immediately adjacent to the existing ones and save the remaining area. This solution would result in the disturbance of less than 2 acres of land and the set aside of 98 acres for the preserve. Under the existing language, over 10 acres would be disturbed scattered over the entire 100 acre, with driveways extending across the area to each lot. Fewer than 90 acres would be saved for the preserve.

Section 131.025(b); Diagram 131-02D:

This section should be revised to apply to those parcels where a minimum of 25% of the total area is located outside the MSCP preserve. A new diagram and section should be added for those circumstances where less than 25% of a parcel is located outside the MSCP preserve, allowing some encroachment as necessary to a maximum of 25% of the total parcel area.

What limitations are placed on existing uses that area zoned OR-1-2? Can they expand a home or other building? Are there any limitations on the use of existing cleared and/or otherwise disturbed areas?

Will the OR-1-2 zone be applied to those areas where agreement has already been reached on the preserve boundary? If no, will any rezoning be done in such areas? If yes, why? Such action would be tantamount to punishing a landowner for establishing a hard line preserve early.

Section 143.0115(a)(5):

In reviewing the MSCP documents, it is our understanding that take of biologic resources outside the MSCP preserve is not restricted as long as the mitigation requirements of the MSCP are met. If this is correct, please add language to this section clarifying that such resources outside of the MSCP preserve need not be avoided and can be included in the development suitability analysis as developable.

Section 143.0115(a)(6):

This section states that mitigation for biologic resources should be directed to the MSCP preserve within the City and preferable within the same plan area. This conflicts with our understanding that all

107(dt)

lands within the preserve are equally valuable, and that as long as the mitigation ratios are complied with, mitigation may be provided anywhere in the preserve. This limitations proposed in the language discourage participation in the formation of the preserve and should be eliminated.

Section 143.0115(b): Please add language to this section clarifying that it is not necessary to avoid biologic resources outside the MSCP preserve when planning a project, or explain why such language is not being added.

Section 143.0141(a): The requirement for consultation prior to any public hearing could be interpreted to mean that the informal and formal consultation process for obtaining state and federal wetlands permits must be completed prior to any public hearing. This is infeasible. If this is not the intent of the language, please clarify. If it is the intent of the language, please clearly so state.

This section does not clearly state who is responsible for requiring mitigation for wetlands, or how such mitigation is related to that requirement for wetland species under the MSCP. Is City staff the bear this responsibility? Is it left to the resource agencies? Will mitigation be required over and above that required for the MSCP? If yes, how much more will be required and by whom?

Section 143.0141: On the one hand, this section allows unlimited encroachment into biologic resources outside the MSCP preserve. On the other hand, this section requires a site specific impact analysis for biologic resources irrespective of location and the identification of mitigation. Is it the intent of the City to require mitigation other than that required for the MSCP? Is it the intent of the City to require mitigation for non-covered biologic resources other than wetlands and listed, non-Covered Species?

Comments on the Biology Guidelines

Page 2: It is our understanding that the MSCP required mitigation covers the Covered Species list as well as all Sufficiently and Significantly Conserved Vegetation Communities and the species associated with them. If this is correct, please clarify the definitions by adding such language. If this in incorrect, please clearly state exactly what is covered by the MSCP required mitigation and what is not. Please also include any mitigation standards that will be applied over and above that imposed through the MSCP, and clearly described the mechanism by which such additional mitigation will be imposed. 107(dt)

Page 2:

The definition is too broad, encompassing the MSCP covered resources, wetlands, non-MSCP listed species, and the habitat of other sensitive species. This overly broad definition will allow mitigation to be assessed against a project that is over and above that established by the MSCP by invoking CEQA. This eliminates the certainty that has long been one of the premises of the MSCP and unfairly increases the mitigation burden on private property owners. Said landowners are already being required to provide two-thirds of the private property that must be acquired for the preserve and area already being required to mitigate for resources that were previously not considered to be sensitive, such as non-native grasslands.

The definition must be limited to MSCP covered resources, wetlands, and non-Covered listed species. Any other species considered sensitive should automatically be analyzed for purposes of being added to the MSCP Covered Species list as provided for in the model Implementing Agreement. In addition, the definitions used for the ESL and Biology Guidelines should be clarified to clearly state that MSCP covered resources includes Sufficiently and Significantly Conserved Vegetation Communities and the species associated with them. The MSCP requires mitigation for such resources and this should be recognized.

Page 2:

Section 1 states that applicants will be required to consult with the appropriate state and federal agencies prior to the public hearing for the development proposal and incorporate any such requirements into their project design. It is our understanding that such consultation is not formal, nor is it required that it be completed before a public hearing and project approval occurs. Should an applicant decide to have a project approved prior to completion of informal consultation, that is his right, and he bears all responsibility should the project approval require revision to incorporate state and/or federal wetland requirements. In addition, it is not necessary for an applicant to conduct a formal wetlands delineation for this consultation to occur. Finally, it is our understanding that it is the applicant's decision as to whether to have the City coordinate such consultation or to approach the agencies independently.

Please add clarifying language to this section to reflect this understanding.

Page 5:

Section states that development is limited to that area allowed by the OR-1-2 zone. This may be somewhat misleading as the OR-1-2 zone may not be the final zone. Staff has stated several times that the properties so zoned may be rezoned to those uses allowed by the

107(dt)

community plan, provided the applicant implements the MSCP as adopted. Please confirm this understanding if correct. If not, please explain.

Page 8: Biological Survey Report: The required survey includes mapping of territories, estimates of the amount of habitat used by listed species, specific protocols (where defined) etc. Yet, the mitigation required for covered species is the set aside of habitat per the mitigation ratio table. Why is a landowner being required to do such an extensive survey when the required mitigation is not species specific? The required survey should be the minimum necessary to accurately map habitat, and, if necessary, narrow endemics and listed non-covered species. As part of the streamlining promised by the MSCP, maximum use should be made of the existing MSCP mapping. Accordingly, survey work should be minimized. Please add language to accomplish the above or explain why such a significant amount of additional work is necessary.

Page 9: Impact Analysis: This section states that indirect and cumulative impacts to covered species have been addressed under the MSCP Plan and may be referenced if adequate. What does this mean? Are there circumstances where the MSCP analysis is not adequate? Please clearly state when the MSCP EIR/EIS is not adequate and describe the necessary additional work that would be required to indirect and cumulative impacts.

In addition, please explain how impacts to Significantly and Sufficiently Conserved Vegetation Communities are to be covered in the impact analysis. It is our understanding that the MSCP required mitigation ratios are adequate for such habitats. If this is correct, please add language clarifying this fact. If incorrect, please explain how the impact analysis is to address habitats.

Page 9.B: As noted previously, it is unclear what species and habitats will have mitigation required over and above that being required for the MSCP. It is our understanding that, with the exception of non-biological impacts to wetlands and non-Covered listed species, the conformance with the MSCP will constitute all necessary biologic mitigation. If this understanding is correct, then this section should be revised to clearly state this, and to note that the City Council will not be allowed to vary or reduce required mitigation through the project approval process without jeopardizing the take authorizations.

In addition, it should be made very clear that conformance with the MSCP is recognized as adequate under CEQA, that is, conformance

107(dt)

with the MSCP is defined as meeting requirements for a determination that impacts are significant but mitigated to below a level of significance, and that (assuming non-covered resources are not present) no further mitigation is necessary. This determination can be made using the MSCP EIR/EIS. Please confirm that this is the intent of the jurisdictions and resource agencies as to the operation of the MSCP. 107(dt)

If our understanding is incorrect, then this section must be revised to clearly identify the process for mitigating for MSCP covered resources (species and habitats) and to clearly state the process for mitigating impacts to those resources not covered by the MSCP. For the latter, mitigation standards that will be applied over and above that imposed through the MSCP must be clearly established. It should be clearly stated that City Council can amend, reduce or override any identified mitigation for non-MSCP resources as is currently allowed under CEQA.

Page 11: Even where the preserve covers less than 75% of a parcel, and development will occur outside the preserve, some encroachment into the preserve may be necessary for a road, drainage structure or other public facility. Such encroachment should be allowed. Mitigation should be in accordance with Table 2.

Pg 12: Mitigation Methods: It is our understanding that landowners will not be required to carry out restoration and other types of mitigation if they satisfy their obligation through provision of land within the MSCP preserve. If this is correct, then the relationship between the various types of mitigation and the overall mitigation obligation should be established. It should be clearly stated that the satisfaction of the mitigation obligation can be through any combination of methods, proposed by the applicant and approved by staff, and that, as appropriate, any method may be substituted for another on an acre for acre basis. If incorrect, please explain how the various types of mitigations will be additive so a landowner can understand exactly how much mitigation will be required in addition to preserve dedication.

Amendments to the City of San Diego General Plan

Page 305a: Consideration for Open Space Preservation: This section never mentions MSCP, or the fact that MSCP accomplishes the protection of large biological important areas. The relationship between the MSCP and this section should be explained and the section revised. 107(du)

107

Page 306:

Acquisition: There is no mention made of the MSCP in this section, nor of the acquisition obligation that the City has accepted in developing the MSCP. Please explain and/or revise this section. **107(dv)**

Page 334a:

Vegetation and Wildlife, Major Habitats: This section states that approximately 200 plant and animal species are federally and/or state endangered, threatened, rare or proposed or candidates for listing. Please revise the number to reflect the elimination of the Category 2 and 3 lists at the federal level. **107(dw)**

Throughout the document, language has been added that calls for the establishment of transition areas between urban uses and the open space system. By any other name, this is a buffer and conflicts with "a line is a line" philosophy that been part of the assurances offered landowners in developing the MSCP. Please eliminate the language or clearly state that it is not the intent of this language to further reduce developable area. **107(dx)**

108 ERVIN, EDWARD, UCSD #108, 10/14/96

R **108(a)** Information regarding the need to monitor arroyo toad population trends is recognized. The monitoring plan for the arroyo toad is outlined in the document titled "Biological Monitoring Plan for the Multiple Species Conservation Program," dated January 25, 1996. Seven riparian plots would be surveyed once every three years for arroyo toads. Three site visits would be made between late March and late May by qualified and permitted biologists familiar with the male arroyo toad's breeding call and identification of toad eggs, tadpoles, and adults. Surveys every three years would provide sufficient information to determine population trends. Quantitative data regarding each sighting of a toad, egg mass, or group of tadpoles, and qualitative data would be gathered and sighting locations would be mapped. Monitoring data would include standard field data observations regarding date, time, temperature, weather conditions, habitat, microhabitat, activity, age class, sex, and behavior or other noted comments. Lack of reproduction would also be noted. Please also refer to responses to Comments 45(f) and 28(m).

UNIVERSITY OF CALIFORNIA, SAN DIEGO UCSD

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DEPARTMENT OF BIOLOGY, 0116
FAX (619) 534-7108

9500 GILMAN DRIVE
LA JOLLA, CALIFORNIA 92093-0116

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10-14-96
United States Fish and Wildlife Service
Field Supervisor
2730 Locker Ave. West
(619) 431-9440

Attn.: Gail Kobetich

Re: MSCP DRAFT EIR/EIS

Dear Gail,

This letter is in response to the request for comments on the draft Multi Species Conservation Plan. I reviewed the following documents.

Biological Monitoring Plan for the Multi Species Conservation Program, prepared by Ogden Environmental and Energy Services Co., Inc. (revised April 23, 1996)

MSCP 1995 and 1996 Species Evaluations U.S. Fish and Wildlife Service and California Department of Fish and Game. September 1996

My concerns are specifically related to the arroyo southwestern toad, *Bufo microscaphus californicus*, a federally endangered species (16 Dec 1994, 59FR64589). Two factors are crucial for the conservation and recovery of the endangered arroyo southwestern toad (AST); the preservation and protection of required habitat and a scientific defensible monitoring plan.

When not aggregated for the purpose of breeding, ASTs remain distributed spatially along the damp zone of the riparian corridor and in upland habitat. It is now known that the AST is a highly vagile species. Upland stream terraces and adjacent hillsides are utilized in late fall and winter. Sam Sweet documented (USFS,1993) along stream dispersal distances greater than 0.5 miles (2640 ft.) were common, a few cases exceeded 1 mile (5280 ft.). Dan Holland (pers. comm.) captured the AST in upland habitat 1km (3326 ft.) from the nearest drainage. It is important to recognize that these findings may only represent average dispersal distances.

> Specific habitats designed to protect AST populations must address the significance of these findings.

Amphibians demonstrate little independence from their environment, AST is no exception, activity is restricted to periods when sufficient moisture is available. The life history of AST is typical for aridland amphibians, by nature these species are secretive with highly variable activity patterns. It is also important to recognize that

108(a)

interpopulation variability of breeding behavior occurs, even within San Diego Co. The fact that toads at some locations may not even attempt to breed even under what appears to be favorable conditions best illustrates the complex relationship between microclimate and breeding behavior. These animals rely on a consort of environmental factors to trigger necessary physiological changes (gametogenesis, etc.). This relationship is still not fully understood.

108(a)

Under these circumstances, arroyo southwestern toad surveys must be preformed yearly to aquire sufficient data for a meaningful analysis of population trends.

The most efficient use of limited resources would be to concentrate toad surveys during the time when individuals are most detectable. The period when females are drawn to males calling at breeding pools. Known as periods of aggregation. This "window of opportunity" is also the most productive when the stated goal is monitoring population trends (counting number of individuals, etc.). During breeding seasons with less favorable conditions, a time when individuals may not aggregate and are less detectable, qualitative environmental data should be collected (quality of breeding pools & surrounding habitat, air & water temp, etc.). Collection of this data would require a smaller investment of personnel and time.

Quantitative & qualitative data must be collected when populations are demonstraiting breeding behaviors . When AST populations skip attempts to breed for the season, the collection of qualatative data is necessary for the understanding of the relationship between biotic and physical factors. This information will be valuable for the development of a recovery plan for this species.

Suitable arroyo toad habitat consists of stream segments of fairly low gradient containing open streamside sand or gravel flats, low sandy terraces, and a sand or gravel substrate. These characteristics are produced and maintained by a complex interaction of hydrologic and geologic processes. Depending upon the amount of rain and the time period it was received these physical alterations to the habitat may take place from year to year, within the life of an individual, or on a much larger time scale. Because its habitat requirements are very specific the AST is considered an extreme habitat specialist.

A plan must be in place to protect the fragile and dynamic nature of AST habitat from incompatible uses and impacts. This includes activities upstream as well.

In conclusion, I recommend that the endangered arroyo southwestern toad, *Bufo microscaphus californicus*, be removed from the covered species list untill these fundamental issues vital to the conservation and recovery of this species are adequately addressed by the MSCP.

Sincerely,

Edward Ervin

Edward Ervin

Research Biologist

109 CROOKS, UC SANTA CRUZ, 10/26/96

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109(a) Comment noted.

109(b) Comment noted.

109(c) Comment noted.

109(d) Comment noted. Many of the smaller canyons within the City of San Diego have been subdivided, are privately owned, and contain parcels developed with a residence. These privately-owned, smaller canyons were not included in the proposed preserve. Placement of preserve boundaries on these parcels would split developed parcels and could lead to subsequent split zoning and boundary delineation difficulties. Only City-owned, relatively smaller canyons and those with open space/non-building easements were included.

109(e) Comment noted.

109(f) Comment noted.

109(g) Comment noted. Please refer to response to Comment 109(d).

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DEVELOPMENT SERVICES

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John Kovac
Land Development Review Division
City of San Diego
1222 First Ave. 5th Floor
San Diego, CA 92101

Gail Kobetich
U.S. Fish and Wildlife Service
2730 Loker Ave. West
Carlsbad, CA 92008

October 26, 1996

RE: Multiple Species Conservation Program: MSCP Plan; MSCP Subarea Plans

Dear Mr. Kovach and Mr. Kobetich

I wish to submit the following comments to the above-referenced documents, specifically section 1.2.3 regarding urban habitat areas that are (and are not) included within the MSCP. I am a Ph.D. candidate in Biology working with Dr. Michael Soulé at the University of California Santa Cruz. My research investigates the effect of urban development and subsequent habitat fragmentation on wildlife populations in Southern California. Given that mammalian carnivores are likely most sensitive to fragmentation effects, my research focuses on the suite of mammalian predators still existing in Southern California. My study areas includes both large, unfragmented habitat as well as smaller habitat fragments ("canyons") within the urban areas of San Diego County. 109(a)

As a large urban center, San Diego is unusual because patches of native habitat still exist inside the city limits, and that these canyons still support a diverse array of native plants and animals. Continued protection of the ecological integrity of these canyons is crucial, not only because of the biological importance of the canyons and native biodiversity within, but also important to the citizens of San Diego and their self-expressed quality of life. 109(b)

The canyons of San Diego have become one of the most well-studied series of habitat fragments worldwide. For over a decade, a variety of scientific studies, conducted by researchers from across the United States, have demonstrated the canyons support viable and diverse arrays of native plants, birds, reptiles, amphibians, insects, small mammals, and in my study, mammalian carnivores. These studies have indicated that canyons support species that are of conservation concern in Southern California, such as the California gnatcatcher, as well as other species that are either threatened or extremely rare. Further, many of the studies have indicated that the percent native 109(c)

vegetation is the most important factor determining native biodiversity. 109(c)

Moreover, the canyons are not only important for wildlife populations which reside within them, but are also essential as stepping stones for individuals to move from one core habitat area, across the urban matrix, to another core area. Thus, it is crucial that the spatial organization of canyons in the urban landscape be preserved. As such, series of both large and small canyons must be protected. In the current MSCP plan, many of the canyons that have been under scientific investigation for the past decade are not included within the Preserve. Some of these unprotected canyons represent large tracts of native habitat supporting diverse arrays of native species, and some canyons, even though relatively small, are important links to larger Preserve areas. If these canyons are not to be protected under the MSCP, then continued protection under other authorities is essential. 109(d)

Further, the canyons and their protection are important to the citizens of San Diego. Over the past year I have distributed over 1000 questionnaires to residents living on or near canyons throughout San Diego County. These questionnaires ask about the residents' knowledge of the wildlife populations in the canyons, as well as their perceptions and attitudes towards both canyons and native plants and animals within. One method by which to gauge the importance of an issue to the general public is through their response rates to such surveys. In practice, a 10% return is considered a successful return in such surveys. To date, the response rate to my canyon surveys has been nearly 50%, indicating that the issue of the canyons concerns a large proportion of the general public. 109(e)

Moreover, the people who live near the canyons know an impressive amount about the wildlife that occur there. I have conducted wildlife surveys (primarily for mammalian carnivores) in the canyons for over a year and therefore have considerable scientific data on the distribution and abundance of species. For the most part, the majority of the citizens are an valuable source of information about the canyons, displaying an impressive knowledge of the canyons and the wildlife within. Further, the citizens are concerned with the protection of the canyons. To date, over 80% of respondents have stated that they either agree or strongly agree that it is important to them to conserve the wildlife in their canyons. 109(f)

Although some of the canyons within San Diego are protected under the proposed MSCP, many others, especially smaller canyons, do not receive such protection. If these canyons will not be included in the MSCP, then their continued protection must be ensured. Scientific surveys of both the native plants and animals of the canyons, as well as of the citizens nearby, 109(g)

109

109(g)

clearly indicate that protection of the ecological integrity of the canyons is essential. Protection is important from a biological perspective, in terms of the native biodiversity in the canyons, important from a scientific perspective, in terms of the productive scientific research ongoing in these areas, and important from a cultural and social perspective, in terms of the quality of life of the citizens of San Diego.

Thank you for your consideration,

Kevin Crooks

Department of Biology
University of California
Santa Cruz, CA 95064
(619) 646-0008

110 CHARLES CRANDALL, 10/29/96

110(a) Fires like the one that occurred recently on Otay Mountain are common occurrences within the coastal sage ecosystem and their occurrence was taken into consideration in the design of the MSCP preserve and species analysis. The Draft EIR/EIS analyses the effects of issuance of the take authorizations based on the MSCP Plan. No supplemental EIR/EIS is needed because of the Otay Mountain fire.

110

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DEVELOPMENT SERVICES

LAW OFFICES OF
CHARLES STEVENS CRANDALL

110 WEST C STREET, SUITE 711
SAN DIEGO, CALIFORNIA 92101

CHARLES STEVENS CRANDALL*
MICHAEL RAY HARRIS

*ALSO ADMITTED IN NEW JERSEY

TELEPHONE (619) 233-4787
FACSIMILE (619) 233-1081

October 29, 1996

Mr. John Kovac
Development and Environmental Planning Division
City of San Diego
1222 First Ave., 5th Floor
San Diego, CA 92101

Mr. Gail Kobetich
U.S. Fish and Wildlife Service
2730 Loker Ave. West
Carlsbad, CA 92008

RE: Supplemental Comment on August 1996 Multiple Species Conservation Program Plan, Draft Environmental Impact Report/Draft Environmental Impact Statement, and City of San Diego Implementing Agreement

Dear Mr. Kovac and Mr. Kobetich:

It seems apparent, based on the recent loss of significant coastal sage scrub habitat through the Otay Mountain fire last week, that a supplemental EIR/EIS needs to be prepared.

The devastating Otay Mountain fire, destroying almost 15,000 acres (including much prime habitat near the heart of the south County MSCP) is obviously a significant new environmental impact that has never been analyzed. The document should be revised and recirculated based upon this significant new information.

110

Very truly yours,

Charles S. Crandall

CHARLES S. CRANDALL

CSC/tm

cc: Tara Mueller

111 CHRISTINE KERBSTAT (ENDANGERED HABITATS LEAGUE), 10/28/96

111(a) See **Theme Response XV, Document Organization.**

111(b) See **Theme Response 1, Species Analysis Approach**, and revised MSCP Table 3-5 included in the Revisions to the MSCP Plan, January 1997.

111(c) The California Department of Fish and Game must approve the MSCP Plan as an NCCP Plan as required by the Fish and Game Code Section 2800 et seq. The approval of the an NCCP Plan is a project as defined by CEQA and the Department of Fish and Game (as an identified responsible agency) will use the Final EIR/EIS as the CEQA document for approval of the Plan. To approve the Plan as an NCCP Plan, significant impacts to covered species must be mitigated to less than significant levels.

111(d) See **Theme Responses XIX, Preserve Management, and XVI, Risk Factors.**

111(e) The MSCP Plan acknowledges that military reservations contain the only remaining areas for the long-term conservation of certain species. Because military reservations are outside the authority of the local jurisdictions, conservation planning for these species would be accomplished through separate mechanisms such as formal consultations pursuant to Section 7 of the ESA and Sike's Act agreements. It would be the responsibility of the wildlife agencies to ensure that these conservation planning activities are consistent with the goals of the MSCP Plan in conserving covered species and their habitats in ecologically sound preserve configurations that are compatible with the MHPA. Provisions would be included into these agreements that stipulate that conveyance of lands to private interests shall conform to the measures required through transference of responsibilities in a deed restriction. In regards to *Ambrosia pumila,* please see condition in revised MSCP Table 3-5 included in the Revisions to the MSCP Plan, January 1997.

111(f) Within the MHPA 9,770 acres of grassland would be conserved. This represents 34% of the total amount of grassland (28,373 acres) within the MSCP study area. The findings on Table 3-5 in the MSCP Plan (Table 4.3-1 in EIR/EIS) include a finding of insignificant for four species (American badger, ferruginous hawk, golden eagle and mountain plover). The finding of insignificant was intended to mean "an effect that cannot meaningfully be detected or measured, relative to the species' status as a whole. MSCP study area is not a significant portion of these species' range". It was not intended that the use of the term insignificant have any meaning relative to a significant or insignificant finding under CEQA and NEPA. Due to the confusion related to these terms, the U.S. Fish and Wildlife Service is revising this terminology and findings as shown on revised Table 3-5.

The western bluebird is determined to be adequately conserved, and the burrowing owl with specific conditions is considered to be adequately conserved. In analyzing information received during the comment period, the wildlife agencies determined that with nest site management and

protection, the golden eagle would likely retain 12 out of 14 active golden eagle territories within or partially within the MHPA with management to protect nest sites, and thus is considered adequately conserved (Please see response 45(l)). The mountain plover is an extremely localized winter visitor known to occur regularly only in the Tijuana River Valley. It also has been found on Otay Mesa and the mouth of the Otay River. The MHPA conserves 96 percent of the Tijuana Estuary/River Valley, 75-90 percent of the mouth of the Otay River, and 73 percent of the Otay Lakes/Otay Mesa/Otay River Valley Biological Core and Linkage Area. Based on this information this species would likely be retained within the MHPA as a localized wintering visitor. The primary impact to mountain plover is the loss of foraging area due to the conversion of Otay Mesa from agriculture to commercial development. The effect of the MSCP Plan on this species would be positive, because it would ensure the conservation of the few localized wintering areas. Therefore, this species is considered to be adequately conserved.

111(g) See **Theme Response XXII, Sufficiently/Significantly Conserved Vegetation Communities.**

111(h) Comment noted. Text change has been made.

111(i) See response to comment 45(ck).

111(j) See **Theme Response XIX, Preserve Management.**

111(k) See **Theme Response I, Species Analysis Approach** and revised MSCP Table 3-5 included in the Revisions to the MSCP Plan, January 1997.

111(l) The MSCP Plan does not provide for habitat coverage. See **Theme Response XXII, Sufficiently/Significantly Conserved Vegetation Communities.** To add oak woodland, chaparral and grasslands to the significantly or sufficiently conserve habitat list, additional acres of conservation of these habitat would have to occur. The addition of any of these vegetation communities to the sufficiently or significantly conserved list would be based on the wildlife agencies evaluations, using the factors listed in MSCP Plan, Volume I, Section 3.4.2.

111(m) The subarea plans were prepared through a collaborative process consistent with the overall preserve design developed for the MSCP Plan, which was prepared in conformance with the non-regulatory NCCP Conservation Guidelines. The wildlife agencies worked with the local jurisdictions in an advisory capacity to help ensure consistency with the MSCP preserve design and the Conservation Guidelines. The MSCP Plan includes specific conservation requirements for vegetation communities and species, and the Draft EIR/EIS analyzes the impacts on vegetation communities, species and wildlife movement for each alternative and for each subarea plan. As indicated in the Draft EIR/EIS, the subregional and subarea proposed project (MHPA) mitigates identified impacts. The project mitigates the

identified impacts by proposing a preserve with features (size, contiguity, biodiversity and species-specific conservation) consistent with preserve design guidelines.

111(n) The Bureau of Land Management (BLM) has signed a Memorandum of Agreement (1994) for Cooperation in Habitat Conservation Planning and Management with the wildlife agencies, County of San Diego, City of San Diego, and the San Diego Association of Governments committing to manage BLM lands within the MHPA in accordance with MSCP program goals. This Memorandum of Agreement will be updated to reflect all current federal commitments. A similar agreement will be developed for all state lands contributed to the MSCP preserve system. In addition, the State Parks Department has signed an enrollment memorandum stating that they would commit appropriate state lands to the MSCP preserve.

The MSCP premise that 100 percent of Otay Mountain on BLM lands will be preserved is still valid. The wildlife agencies have been working with the BLM and the Border Patrol to address issues concerning the impact of illegal immigration on covered species and their habitats.

111(o) See **Theme Response XIX, Preserve Management.** The implementing agreements will require that take authorization holder prepare a framework management plan and area specific management directives. See Section 6.3.1 of the revised MSCP Plan, Volume I language included in the Revisions to the MSCP Plan, January 1997. Although there is no certification process established for preserve managers, proper preserve management is a condition of the take authorizations and, therefore, must be appropriately carried out. See also Section 16 of the Model Implementing Agreement.

111(p) The wildlife agencies will assume primary responsibility for coordinating the monitoring program, analyzing the data, and providing information and technical assistance to the participating local jurisdictions and participating special entities, and maintaining the master data base.

111(q) See **Theme Responses XIX, Preserve Management, X, Habitat Conservation Accounting Model, and XIV, Biological Monitoring.**

111(r) See **Theme Response XXV, Wetlands Protection.** The Preserve Guideline # 4 does include a reference to the federal and state policy of no net loss. Impacts to wetlands within the preserve would be subject to the Environmentally Sensitive Lands Ordinance as well as the requirements of associated federal and state regulations and the mitigation standard of no net loss of value and function (B1 Guidelines) in the revised model implementing agreement.

111(s) The U.S. Fish and Wildlife Service has completed a formal consultation, pursuant to Section 7 of the ESA, with the U.S. Marine Corps at MCAS Miramar for the proposed Base Realignment and Closure activities. The Biological Opinion (File Number 1-6-95-F-33) resulting from this consultation concluded that the proposed activities would not jeopardize the continued existence of federally listed

species. As a term and condition of the Biological Opinion, the Marine Corps will develop and implement a Multispecies Habitat Management Plan (MHMP) in a manner that his consistent with the guidelines that have been established for subarea plans within the MSCP. The MHMP must demonstrate that it has included or addressed the following checklist in designing the conservation areas: a) retain highest biodiv -sity feasible by including spatially representative examples of extensive patches of sensitive habitats; b) retain large blocks of unfragmented habitat, following natural topography (ridges and watersheds), where possible; c) retain large, interconnected blocks of habitat that contribute to the long-term management of wide-ranging species; d) define a configuration that minimizes edge effects and edge-to-area ratio; e) retain full viability of each core gnatcatcher population and the key linkage areas between them as identified in either the MHMP or subsequent field work, and retain connectivity to other private or public lands in open space; f) include appropriate management and land use planning criteria to minimize edge effects from adjacent land uses inside the conservation areas; and g) include monitoring criteria for species and habitats that reflect priorities as determined in the above measures.

111(t) Restoration plans would be developed and tailored to meet the requirements of a particular site. Site specific restoration plans may include removal of non-native invasive plants if this is determined to be an appropriate and beneficial restoration measure.

111(u) Impacts to sensitive resources and wetlands will be mitigated consistent with the subarea plans and implementing ordinances and regulations. Exclusion from the Cornerstone Lands does not exempt projects from CEQA review, mitigation requirements or compliance with the Subarea Plan. Excluded areas would still be subject to the avoidance standards of the ESL.

111(v) See revised MSCP Table 3-5 included in the Revisions to the MSCP Plan, January 1997, and response to Comment 45(m) regarding burrowing owl coverage.

111(w) The sentence should read, "Zone 2 would be increased..." The width of the new Zone 2 would typically be less than the current required width of Zones 2 and 3 combined.

111(x) Please see **Theme Response XIX, Preserve Management.**

111(y) Comment noted. Section 10.6 B of the City of San Diego's IA is being revised to clarify that the City will be required to finalize within nine months from the date it receives the Take Authorizations, a framework management plan, approved by the wildlife agencies, which outlines the management prescriptions that will apply to habitat conservation areas covered by the MSCP Plan. The City is also required to develop and implement area-specific management directives as lands become part of the preserve. Further, as provided in Section 14.5 of the IAs, ongoing biological monitoring of habitat conservation areas will be required. The wildlife agencies will provide technical assistance to the local jurisdictions in the development and implementation of the monitoring program and review and analyze monitoring data.

Pursuant to Section 14.4 of the City and Model IAs, the participating local jurisdiction, in conjunction with other local jurisdictions, will prepare and issue a public report every three years which summarizes the status of the MSCP, including the land preserved within the MHPA and total expenditures made toward habitat acquisition, and management and monitoring activities. The local jurisdiction are required to hold a public hearing : conjunction with the suance of the triennial report. The first and second sentences of Section 14.4 have been revised as follows to clarify that the triennial report is intended to be a joint report prepared cooperatively by all of the participating local jurisdictions:

** 14.4 Public Report/Hearing. Every three years [**LOCAL JURISDICTION**] , 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 ....

111(z) Comment noted. See **Theme Response XXIV, No Surprises.**

111(aa) **Theme Response XXIII, Sufficiently/Significantly Conserved Vegetation Communities.**

111(ab) See **Theme Response XXIV, No Surprises.**

111(ac) See **Theme Response I, Species Analysis Approach**, and revised MSCP Table 3-5 included in the Revisions to the MSCP Plan, January 1997.

111(ad) Comment noted.

111(ae) See **Theme Responses XIX, Preserve Management, and X, Habitat Conservation Accounting Model.**

111(af) The commenter states that the Plan does not contain measurable criteria to evaluate it's biological success. The MSCP Plan does incorporate a general biological goal. However, the commenter is correct in stating that the City of San Diego and Model IAs do not include "net benefit HCP" as a factor to be considered by the wildlife agencies in determining whether an Extraordinary Circumstance which might warrant a requirement of additional mitigation has occurred. Section 9.6.B of the Draft IAs recites six of the seven factors identified under the "No Surprises" policy that the U.S. Fish and Wildlife Service will consider in determining whether "extraordinary circumstances" exist. The one factor omitted from this provision of the IAs is whether the conservation plan was designed to provide a "net benefit" to the covered species.

A "net benefit" HCP under the "No Surprises" policy is a plan which is designed to provide a "net benefit" to the covered species and that contains measurable criteria by which to evaluate the plan's biological success which are being attained. The U.S. Fish and Wildlife Service will not require

any additional mitigation or modifications to the mitigation program provided under the HCP without the consent of the permittee for a "net benefit" HCP. The "net benefit" factor has been excluded from the list of factors identified in Section 9.6.B of the IAs because the MSCP is not a "net benefit" HCP for purposes of the "No Surprises" policy.

While USFWS believes that the conservation provided under the MSCP and Subarea Plans for the covered species is adequate to meet the issuance criteria under Section 10 of the ESA, the participating local jurisdictions (applicants) did not conduct the analyses necessary to demonstrate that the MSCP provides a "net benefit" to each Covered Species for purposes of the "No Surprises" policy. Therefore an assurance of no additional mitigation of any kind which would be extended to "net benefit" plans does not apply to the MSCP.

The discussion of "No Surprises" policy in this section of the City of San Diego and Model IAs is unnecessary and has been deleted because specific assurances regarding future mitigation requirements have been specifically evaluated by the wildlife agencies for the MSCP Plan and are provided to the participating local jurisdictions and Third Party Beneficiaries under the operative provisions of Section 9 of the IAs.

111(ag) Comment noted.

111(ah) See **Theme Responses XIX, Preserve Management, and X, Habitat Conservation Accounting Model.**

111(ai) See **Theme Response X, Habitat Conservation Accounting Model.**

Christine Kerbstat
Post Office Box 1324
Julian, California 92036

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A Woman's Place is in the House... ...and in the Senate

October 28, 1996

To: John Kovac
Land Development Review Division
City of San Diego
1222 First Ave., 5th Floor
San Diego, CA 92101

Gail Kobetich
U.S. Fish and Wildlife Service
2370 Loker Ave. West
Carlsbad, CA 92008

RE: Multiple Species Conservation Program (MSCP): MSCP Plan Vol.I, MSCP Subarea Plans Vol. II, Draft Environmental Impact Report/Draft Environmental Impact Statement (EIR/EIS), Model Implementing Agreement (IA)

Dear Mr. Kobetich and Mr. Kovac:

As an active member of the Endangered Habitats League, I have been following the MSCP with interest for some time and am hopeful that this program can reach the important goals of ecosystem protection and streamlined land use planning for this region. I have been struggling with the above referenced documents to discern if this is the case.

Following an introduction, my comments and questions will be presented in the following document order: EIR/EIS; MSCP Plan I; Subarea Plans II, including City of San Diego implementing ordinances; and Model IA.

Introduction

The information included in the combined documentation would be rather overwhelming under the best of circumstances. As presented, it requires constant cross referencing to try to make sense about many aspects of the program. It would be helpful to have a flow chart or matrix explaining the level of detail appropriate for each document (including the jurisdictional implementing ordinances), and how those support or relate to one another. **111(a)**

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Furthermore, the documents are exceedingly difficult to interpret with respect to the stated goals of the program and the policies, criteria and standards that are being proposed to achieve those goals. I simply cannot find the standards that are being used to define thresholds for species coverage or that will be used to monitor the success of the program in the future. Please identify those standards and explain how this program will meet them. It would seem that standards and criteria being proposed to reach those standards should be defined up front in the MSCP Plan, EIR/EIS, and Subarea Plans. 111(b)

Draft EIR/EIS

Section 4.3 Biological Resources

Under "Criteria for Determining Significance", (pgs. 5-6)
Please clarify: "...CEQA impact analysis for this project discuss the level of significance of remaining impacts in relation to the requirements of the NCCP pursuant to Section 2835 of the Department of Fish and Game Code". 111(c)

Table 4.3.1
The Fish and Wildlife Service identified certain findings related requirements that must be met in order for the plan to claim coverage for certain species. These are in both the "high risk" and "moderate risk" categories. Many of these requirements appear to be tied to species specific management and monitoring related to edge effect. Please identify the management and monitoring programs for those species which have such requirements. It must be intended that the jurisdictional Management Plans will be the reference documents for such programs and yet the City of San Diego Management Plan is dramatically deficient in this regard. Please identify the means whereby the findings requirements for covered species will be translated into the Management Plans. Is it intended that if edge effects were properly mitigated that the species would be less "at risk"? Will there be performance standards established to make such determinations? 111(d)

Several species such as *Aphanisma blitoides* are dependent upon preservation on military lands. The footnote (#7, Table 4.3.1) indicates that the federal agencies will "ensure" adequate protection on these lands. What does "ensure" mean? Is this guaranteed? Appropriate preservation on military lands is also critical to reserve configuration and habitat based assurances. Please explain how the military lands will figure into this program and how they relate to species and habitat coverage and assurances.

Ambrosia pumila is a high risk species found only in two places in the county. As I understand it, the population in Santee is proposed for preservation. Would you explain the proposal for the population at Mission 111(e)

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Trails in the City of San Diego? It appears that it is being proposed to be translocated, and yet will not be considered covered unless the translocation is "successful". This implies that the translocation could be *unsuccessful*, which would obviously be disastrous for this species. Why is the program proposing this risky translocation when surely there are alternative sites for the campground parking or staging area. Has there been any analysis for an alternative parking area? If not, why not? I seem to recall that *Ambrosia* is not on the City translocation list. Is this accurate? 111(e)

4.3-42,43
The discussion about sensitive species that occur in non-native grasslands is confusing. On one hand the document states that of the six species listed, four would not be significantly impacted by the MSCP. The remaining two presumably *would* be significantly impacted and yet both (western bluebird and burrowing owl) are on the covered species list. The bluebird is a low risk species but the owl is a high risk species and the program proposes very poor conservation of its habitat. Please explain the status, preservation standards, and justification for the coverage for this species. 111(f)

Non Sensitive Vegetation Communities/Habitats (4.3-53)
Related to the above issue is the non-native grassland discussion in this section. It appears to be a conclusion that the indirect impacts of the MSCP (i.e. development outside the preserve) will not be significant for this habitat type, and yet non-native grassland is not Significantly or Sufficiently (in the assurances sense) protected. If impacts are not significant and if species dependent upon grasslands are going to be "covered", why isn't the habitat considered Significantly or Sufficiently conserved? What would it take to reach that threshold? 111(g)

B.1.4.2 City of San Diego Implementing Actions- Community Plan Amendments.
Conditions C5 and C6 state *if* funding becomes available that these conditions will be carried out. It is commendable that the City has committed to the expense of bridging certain key linkages to allow for wildlife movement, but even with these mitigations, wildlife corridors are minimal at best in this highly constrained area. There are probably several potential sources for funding these improvements including the MSCP management program. If the commitment is there, funding can be secured for these improvements. These conditions should be changed to read "when" not "if". 111(h)

B.1.5 City of Santee Subarea Plan
Preservation within the City of Santee appears extremely low in comparison to the commitments from other jurisdictions. Proposed losses include 60% of coastal sage scrub, 82% of riparian forest and 73% of grasslands.
Why is this low standard acceptable? Are not the other jurisdictions carrying the water for Santee? 111(i)

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4.3-MHPA-3 Indirect Impacts to Covered Species
With fully 20% (34,000 acres) of the reserve subject to significant edge effects it would seem extremely important for the program to ensure proper management practices to mitigate these impacts. How is the program going to quantify and qualify this impact in the absence of management plans? Will the commitment to properly manage edge effect be part of the MSCP approval process? Will the Implementing Agreement provide this assurance? Will the Biological Opinion assess management plans for all jurisdictions? 111(j)

Conclusion
To reiterate a fundamental concern about the EIR/EIS document and the program in general: While I consider the MSCP a very strong conservation plan with respect to resource protection, it appears weak in justifying the coverage for the species on the covered species list. It seems that justification for coverage of species is based simply upon the conclusion that there will be a plan, not on why the plan, as proposed, will protect a particular species. *This weakness undermines the very positive aspects of the conservation value of the effort.* Please clarify this issue by explaining the methodology or thought process and standards being applied in reaching these conclusions. 111(k)

MSCP Plan, Volume I

Section 3, Conservation Plan

Other Vegetation Communities
Please explain the process whereby grasslands, oak woodlands and/or chaparral could be added to the covered habitats list. Please include the standards utilized and an explanation of how the amendment process would apply. 111(l)

1. General Preserve Design Criteria
Have these criteria been met by the proposed subarea plans? If not, please indicate deficiencies. Is this a self certification process, or do the wildlife agencies make the determination? Are these criteria consistent with the Conservation Guidelines? 111(m)

Section 4 Assembling the MSCP Preserve

4.2.1 Contributions of Existing Federal and State Lands
This section discusses the Memorandum of Understanding that local participating jurisdictions have with the Bureau of Land Management with regard to management of (BLM) public lands in San Diego County. This 111(n)

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agreement should be included as an appendix for reference somewhere in the documentation. As a related issue, please clarify the status of the MSCP planning premise that assumes 100% preservation of resources on Otay Mountain. Is this still a valid premise, and are coverages still dependent upon this assumption? How will this preservation be guaranteed over time? 111(n)

Section 6 Preserve Management and Reporting

6.3.3 Preserve Management on Private Land s
The document states that reserve lands conserved through avoidance will be transferred in fee title to government or non-profit agency if the property owner is willing. Will there be a certification process established to insure that fee title holders are competent reserve managers? What will be the process utilized to reconcile improper reserve management? 111(o)

6.4.2 Biological Monitoring
This section should include an explanation of who will keep the "master" data bank accumulated during MSCP implementation. 111(p)

6.4.3 Consolidated Reporting and Public Hearings
The three year monitoring report may not allow for adaptive management practices to be implemented in a timely manner for certain species. This section should state that determinations regarding species viability trends will be made when necessary, as indicated through ongoing monitoring practices. 111(q)

Subarea Plans, Volume II

Section 1.0 City of San Diego MSCP Subarea Preserve Plan

Preserve Guidelines #4.
This section deals with the wetlands of the Otay Mesa and Otay River Valley areas of the plan. The wetlands supporting covered species in this area are critical to reserve success. This section should be consistent with the City of San Diego Environmentally Sensitive Lands Ordinance (ESL) and include the notion of no net loss of function and value for these wetlands. 111(r)

Section 1.2.2 Eastern Area

NAS Miramar
This section discusses the importance of the Mirmar military lands to the reserve and the transfer of these lands from the Navy to the Marine Corps. 111(s)

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Please clarify if the Navy HMP will be consistent with the MSCP and if not, what are the gaps? Will the Marines be bound to the Navy HMP? The document states that the final draft of the Miramar plan is expected in spring 1996. Is this accurate? If so and this plan is available, it should be an appendix tc the Subarea Plan II document. Please clarify the overall planning status for these lands including timelines and goals. 111(s)

Hodges Reservoir/San Pasquel Valley
Will the restoration plans for this area include the removal of non-native invasive plants? 111(t)

Preserve Exclusions and Guidelines
Key habitat areas in Hodges, San Pasquel, Otay and San Vicente Reservoir are proposed to be excluded from the Preserve. Will impacts to sensitive resources be mitigated for according to the mitigation tables in the Biological Guidelines, or does the exclusion include exemption from mitigation? Will exclusion areas in wetland habitats be subject to the avoidance standards of the ESL? 111(u)

Section 1.3 Covered Species List

#13 Burrowing owl
Coverage for this species is questionable. Please elaborate on the "enhancement" condition in this section. In what manner can habitat for this species be enhanced? Is there a standard that the program is attempting to reach with respect to species viability for the owl within the City's subarea plan? 111(v)

Section 1.4.3 Land Use Adjacency Guidelines

Brush Management.
After stating that there will be a new zone 2/3 the document goes on to say that zone 3 (?) will be increased by 30 feet, except in areas with low fire danger. Please reconcile this statement with my understanding that increased encroachment based on fire danger would be limited to 10 feet in zone 2/3. 111(w)

Section 1.5 Preserve Management
Species specific management plans will be necessary for many of the covered species as provided by coverage findings (Table 4.3.1). Much of this information is available in the Species Evaluation document recently provided by the wildlife agencies. This information should be included in the management plans. The City of San Diego's management plan in its present form is deficient in this regard. This issue should be rectified before 111(x)

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this document is utilized as a model for other jurisdictional management plans 111(x)

Model Implemen ·ng Agreement

The MSCP is intended to give development and regulatory assurances in exchange for adequate preservation of species and habitats. This relationship among program stakeholders is being codified in the Implementing Agreement (IA) under Section 9.0 Mutual Assurances. 111(y)

As presently written, this section of the IA assures Third Party Beneficiaries mitigation thresholds as well as exemption from additional conservation measures resulting from unforeseen circumstances. 111(z)

This section assures participating local jurisdictions and Third Party Beneficiaries that no additional money or land will be required for species on the covered species list. The Sufficiently Covered habitats category assures local jurisdictions that they will have no additional financial obligations for newly listed species dependent upon these habitat types. 111(aa)

It is intended that biological needs of the reserve will not be jeopardized in the event of unforeseen circumstances and that the biological needs of newly listed species will be addressed through the "No Surprises" policy if applicable. 111(ab)

What is not provided is the justification for the covered species and habitats or a method to measure species and reserve viability over time. The assurance for species viability or adequate reserve function cannot be provided without a measurable reference standard. Furthermore, it is only through such a standard that extraordinary circumstances is distinguishable. 111(ac)

Section 9.6A defines "Extraordinary Circumstances" as meaning either (1) a significant, unanticipated adverse change in the population of any covered species subject to Incidental Take or their habitats within the MSCP Area; or (II) any significant new or additional information relevant to the MSCP that was not anticipated by the Parties at the time the MSCP was approved. 111(ad)

Significant new or additional information, and/or adverse changes to populations implies that there is a status baseline of information to measure *against*. 111(ae)

Section 9.6B of the IA describes the relevant factors that will be considered when determining whether or not extraordinary circumstances exist. Subsection (6) describes one of the criterion that will be used in this determination: "whether the MSCP as originally designed to provide an 111(af)

111

overall net benefit to the affected species and contained measurable criteria for assessing the biological success of the MSCP..." 111(af)

If this criterion will be used in subsequent determinations, it must be consistent with the criteria used to make the original determination that species and habitats are adequately conserved by the program. 111(ag)

Additionally, there are program monitoring and management responsibilities codified in the IA (Section 14.0) that can only be fulfilled through analysis of ongoing monitoring data collection. From this information to be relevant and meaningful. it must be measured against species and habitat baseline data so that adaptive management practices can be instigated if necessary. The data base implied in this section is not identified. 111(ah)

Section 9.3 of the Implementing Agreement should address this issues by explicitly stating that measurable criteria and standards will be utilized to assess species viability and reserve function and to provide guidance for subarea management plans and reserve monitoring program. 111(ai)

Thank you for considering these issues.

Sincerely,

Christine Kerbstat

Christine Kerbstat

112 GIACALONE, SD REALTORS, 10/29/96

112(a) Comment noted.

112(b) CESA and FESA cannot be changed based on contractual agreements. Please also refer to **Theme Response XXVI, Permit Streamlining.**

112(c) Please refer to **Theme Responses XXV, Wetlands Protection, and XXVI, Permit Streamlining.**

112(d) Comment noted. See **Theme Response III, Economic Impacts and Impacts on Population and Housing.**

112(e) Comment noted. See **Theme Response III, Economic Impacts and Impacts on Population and Housing.**

112(f) The Draft EIR/EIS discusses issues associated with provision of affordable housing in accordance with state law on pages 4.2-19, 4.2-65 and 4.2-67. As discussed on these pages, the City of San Diego's Housing Element is currently being updated. It is anticipated that the Housing Element update will address impacts to housing affordability associated with implementation of the MSCP Plan. Since information regarding the Housing Element update was not available at the time the Draft EIR/EIS was distributed for public review, impacts to affordable housing associated with the City of San Diego Subarea Plan were regarded as significant and not mitigated.

112(g) See response to Comment 112(f).

112(h) Comment noted. See also response to Comment 112(f).

112(i) Comment noted. Please refer to response to Comment 112(f).

112(j) See **Theme Responses III, Economic Impacts and Impacts on Population and Housing, and XXVI, Permit Streamlining.**

112(k) Sections 4 and 7 of the MSCP Plan provide the requested information regarding preserve assembly and plan funding. See also **Theme Response IV, MSCP Financing Plan: Regional Source of Funds.**

112(l) See response to Comment 112(k).

112(m) No decision has been made regarding the regional funding sources.

112(n) Comment noted.

112(o) See **Theme Response IV, MSCP Financing Plan: Regional Source of Funds.**

112(p) The MSCP provides for an 18 month period to identify a regional funding source.

112(q) Comment noted. A complete project description is provided in the Draft EIR/EIS.

112(r) The intent of the MSCP Plan is to allow local jurisdictions to permit projects that are consistent with their take authorizations. The result of the program would be a reduction of federal and state involvement in land development activity within the MSCP study area. Unlisted species are included and conserved to the level required for listed species so that take authorizations are granted concurrently with their listing. Take authority from the federal and state governments is through issuance of a Section 10(a)(1)(B) permit under the federal Endangered Species Act and through issuance of management authorizations under the California Endangered Species Act and the NCCP. In addition to receiving these take authorizations, each participating local jurisdiction will sign an implementing agreement with the wildlife agencies that clarifies its responsibilities for implementing the program. The benefit to landowners would come from the streamlining of the permitting process for state and federally listed species and from increased certainty in what mitigation measures would be required for future developments.

112(s) See **Theme Response XXVI, Permit Streamlining.**

112(t) Comment noted.

112(u) See responses to Comments 112(a) through 112(t).

112

SAN DIEGO ASSOCIATION OF REALTORS®

REALTOR®

2231 Camino del Rio South
PO Box 85586
San Diego, CA 92186-5586
Phone: (619) 291-3714
Fax: (619) 295-1365
MLS: (619) 291-5060

16383 Bernardo Center Drive
San Diego, CA 92128
Phone: (619) 592-7171
Fax: (619) 592-7179

Fax-On-Demand:
(619) 491-2977

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October 29, 1996

RECEIVED
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DEVELOPMENT SERVICES

John Kovac
City of San Diego
Land Development Review Division
1222 First Avenue, Fifth Floor
San Diego, CA 92101

RE: Recirculated Draft of 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. 93-121073

Dear Mr. Kovac:

The San Diego Association of REALTORS® (SDAR) has followed the Multiple Species Conservation Program (MSCP) planning process since its inception. Because SDAR has not spoken against the Plan, the public's perception may be that SDAR supports the MSCP—that perception is incorrect. SDAR has not taken a position on the MSCP because of numerous questions and issues that have not been addressed. Further, SDAR *will not* take a formal position on the MSCP without the responses to three issues.

Assurances

The first issue deals with assurances regarding the binding effect of the MSCP. SDAR strongly believes that the citizens of San Diego, who are expected to fund at least a portion of this immense effort, and the landowners, who have been, and will be, directly impacted in the public interest of species and habitat conservation, need to be assured that the MSCP cannot be eroded by adding additional species. 112(a)

The MSCP must be able to withstand all future challenges, ranging from the desires of a few who seek and find an "unprotected" species to an act of Congress to actually protect a species. Any approvals of the MSCP by the City and County must be contingent upon the assurance that additional species will not be added. Without this assurance, the MSCP will be as good as, or as bad as, the EIR/EIS No Action/No Project Alternative. 112(b)

112

Housing Impacts

The second issue is the Plan's impact on development, particularly housing. In speeches made on this issue, San Diegans are being led to believe that once this habitat preserve is established, the development constraints imposed by government over the last 20 years will be greatly reduced, thereby allowing development to move forward as the market will allow. 112(b)

The truth, however, is that the MSCP is intended to address the issue of biology only and does not include wetlands. This leaves in place all the other environmental constraints such as land use, housing, geology, water, air quality, transportation, energy, noise, public services, utilities, aesthetics, and cultural resources. Will there be an assurance that development streamlining will occur on all governmental levels? 112(c)

In addition to the very narrow relief provided to development outside the MSCP preserve, the MSCP Plan, according to the Draft EIR/EIS, will significantly impact planned and existing housing in the region in an adverse manner. Specifically, the draft EIR/EIS states that under the Biologically Preferred (BP) Scenario the:

> ". . .preserve implementation could displace up to 47,785 housing units that are projected to be built in areas covered by the proposed Preserve Planning Area between 1990-2005. This substantial housing shift could lead to significant local impact such as shortages in housing supply and decreased housing affordability, as well as changes in region-wide housing growth patterns." 112(d)

It goes on further to state:

> "The conservation of 6,267 acres within the BP Preserve would reduce the remaining available developable land to 5,699 acres. This would not be sufficient to meet the 1990-2005 Series Growth Forecast of 15,101 acres of residential land for San Diego. This shortfall may affect local development patterns, residential locations and densities and the timely provision of public services and facilities within the sub-area. This is regarded as a significant impact." [MSCP Draft Plan EIR/EIS at p. 416-24] 112(e)

How will the city mitigate the loss of housng units and resulting impacts in housing affordabilty? (i.e., significant increases to market-rate housing costs). 112(f)

Land Use Impacts

The EIR/EIS makes conclusions similar to the housing impacts regarding the Plan's impacts on land use. Again, these impacts *can* and 112(g)

should be mitigated. SDAR strongly agrees with these conclusions of significance. 112(g)

The California Environmental Quality Act (CEQA) requires agencies to adopt feasible mitigation measures in order to substantially lessen or avoid otherwise significant adverse environmental impacts. (Public Resource Code Sections 21002, 21081(a); CEQA Guidelines, §§ 15002(a)(3), 15021(a)(2), 15091(a)(1).) We are, however, outraged that the Draft EIR/EIS proposes no mitigation measures to alleviate these impacts. It is within the local jurisdictions' police power to mitigate these impacts because the mitigation would be reasonably related to the public welfare (Associated Homebuilders, Inc. v. City of Livermore (1976) 18 Cal.3d 582, 604). 112(h)

SDAR cannot support the MSCP Plan unless we receive a response from the city to address how these impacts will be guaranteed. 112(i)

The EIR/EIS fails to analyze properly the MSCP's potential impact on the future affordability of housing. Instead, it simply states, without any evidence, that "development costs would be higher (if the MSCP is not adopted). . . because more expensive environmental mitigation would be required on a project-by-project basis." It would appear that this conclusion is based on the unsubstantiated assertion that the MSCP will streamline the environmental process for development projects. As stated above, SDAR is not convinced of this conclusion and would like to see hard data of how this can be acheived. 112(j)

Funding

The third issue of concern to SDAR, which is not a subject of the Draft EIR/EIS, but is the question being asked (or should be asked) by every citizen in the region—**who is going to pay for this program?** 112(k)

SDAR has long taken the position that if, in fact, species and habitat preservation is critical and important to the region, then the region as a whole, should be financially responsible. The cost of that public good should not be borne by a one class of citizens (i.e., homeowners) merely because the selected financing mechanism is the easiest to implement. What we are speaking to is the much-discussed parcel tax for the local funding portion of the MSCP Plan. 112(l)

A parcel tax impacts only property owners—not all the region's citizens who will benefit from the preserve. It directly impacts the cost of property whether it is commercial or industrial land used to produce income and taxes or whether it is residential land used to shelter people who have worked hard to achieve the ever-illusive American dream. 112(m)

112

The San Diego Association of REALTORS® will not, and we repeat, will not, support a parcel tax. Even if the MSCP Plan provides valuable benefits to the region, its assurances are guaranteed, and its impacts on housing are mitigated; SDAR cannot support a funding source that is so unfairly limited in scope and chosen only because it is the most expeditious method of securing local funding. 112(n)

The funding must be broad-based such as a sales tax, Department of Motor Vehicles registration fee, or utility tax. Until a broad-based funding source is identified and secured, SDAR will not support the MSCP. The securing of this funding source is not only advocated by this Association, but required by the Federal Endangered Species Act, which mandates that adequate funding for a habitat conservation plan, which the MSCP is intended to be, must be secured. 112(o)

Will the city address the preferred funding alternatives and identify those funding sources before signing their agreement with the state and federal government? 112(p)

Project Description

One of the major reasons why SDAR has not taken a formal position on the MSCP is because SDAR is well-aware of the current federal and state regulations which make the use of one's land very, very difficult. The Association understands the MSCP may replace the current regulations with a program which meets one of the MSCP's stated objectives of establishing and maintaining "a workable balance between preservation of natural resources and to convince SDAR that this objective will be achieved. The project description must provide "an accurate review of the project (so that) affected outsiders and public decision-makers (may) balance the proposal's benefit against its environmental costs, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the "no project" alternative) and weigh other alternatives in the balance (County of Inyo v. City of Los Angeles (1977) 71 Cal.App.3d 185, 192-193). 112(q)

Expansion of Authority

Because the MSCP "covers" unlisted species, the MSCP is a vehicle which would give the United States Fish and Wildlife Service and the California Department of Fish and Game jurisdiction over substantial amounts of land development activity where they currently have little or no say. In addition, the MSCP would provide local agencies with new regulatory power over habitat and species. As a result, the state and federal governments will participate in local matters and the local government will assert state and federal powers. 112(r)

This represents a massive expansion of the regulatory powers by all jurisdictions involved. Again, it is another reason why SDAR is not convinced that the MSCP's objective of preservation and economic prosperity can be achieved. Government regulations have proven time-and-time again that they add expense. There is nothing in the MSCP that convinces SDAR that the time and expense which will come with the MSCP will be worth the unexplained benefits touted by its proponents. 112(r)

Will the city work with other government agencies to formulate a streamlined process where only the local agency coordinate and approve development permits? 112(s)

Many, many SDAR members have listened to the proponents of the MSCP with concern. However, the Association was willing to delay formulating a final position while it learned more about the MSCP's impacts, benefits, and costs. The Association is still not satisfied with the responses to those issues and therefore, frankly, many members are urging the Association to take a stand against the MSCP. 112(t)

The San Diego Assocation of REALTORS® requests a written response to the questions posed in this letter before the City Council proceeds to approve the final EIR/EIS Plan for the Multiple Species Conservation Program. 112(u)

Our Association appreciates the opportunity to provide input during the MSCP EIR/EIS public comment period and would appreciate remaining on your circulation list to receive future mailings.

Very truly yours,

Matt Giacalone

Matt Giacalone
President, San Diego Association of REALTORS

Enclosure

cc: Mayor and City Council
Board of Supervisors

113 ISABELLE KAY, CARMEL MOUNTAIN CONSERVANCY, OCTOBER 29, 1996

113(a) The reference on page 2, City of San Diego Subarea Plan (MSCP Plan, Volume II) would be changed as follows to correspond to Section 9.17 of the City of San Diego Implementing Agreement: Most of the listed projects are approved with EIR certified. Refer also to response to Comment 20(v).

113(b) Vernal pools are not categorized as a separate habitat type in the MSCP data base. Please refer to responses to Comments 83(e) through 83(l) for discussion of protection of vernal pools as part of the MSCP Plan.

113(c) The fragmented habitat patches remaining within the urban areas of the City of San Diego's MSCP Subarea Plan do contain remnant populations of covered species. The inclusion of species such as mule deer, wart-stemmed ceanothus and least Bell's vireo on the covered species list did not depend solely on the persistence of these populations in the fragmented habitat patches. For more narrowly distributed species, such as San Diego button celery, snake cholla, California least tern, light-footed clapper rail, etc., some of these urban fragments provide important habitat. For those species to be covered, protection and management of key habitat areas, including fragmented habitat patches, (e.g., least tern nest sites in Mission Bay) were taken into consideration in developing the Covered Species List.

113(d) The MSCP analysis of covered species is based on the preserve design as a whole, not on whether or not a species persists in each patch of habitat. The preserve would include all public lands that the City of San Diego is committing to the preserve system. Populations of some animal species supported by these fragmented habitat will likely persist over time based on their connectivity and/or proximity to other conserved habitats.

113(e) The Carmel Valley Neighborhood 10 Plan was approved containing two wildlife corridors that converge in Shaw Valley, just southwest of Shaw Ridge and then lead northward out to CVREP. These corridors were approved with bridges and culverts to allow wildlife continuous and passage to and through the corridors. The north-facing slopes of Carmel Mountain are an integral part of this system. The north-facing slopes of Shaw Ridge directly to the east of Carmel Mountain, across Carmel Country Road are not considered to be as important as the corridors connecting CVREP to Los Peñasquitos Canyon preserve because they are excessively steep and located between existing and planned development. The major wildlife movement in this area is expected to occur via CVREP and the Carmel Creek floodplain area.

113(f) Comment noted.

113(g) Map labels were constrained by the scale of the maps in the draft document. As many labels as the maps could practically support were on the maps. The City of San Diego Development Services Department maintains versions of the maps at 1 inch = 800 feet scale to better view the details, and any member of the public is invited to make appointments to see these. The maps outline the proposed MHPA and shows where development (vs. preserve) is intended to occur. Specific proposals for development are not included on the maps as these often change during the submittal process, or may be withdrawn, however these should all occur within the designated development envelope.

113(h) The culvert dimension is correctly referenced as a maximum 2:1 length-to-width ratio.

113(i) Comment noted

113(j) Item C-12 is a note that refers to the need to bridge the major wildlife corridors in the northern area, and is placed at several locations where major roads would cross corridors, and bridges are expected to be provided. The canyon just east of the current (old) Carmel Valley Road as it climbs the hill toward Del Mar Heights Road would provide the connection from Carmel Valley to Gonzales Canyon and into the San Dieguito River Valley. It would need revegetation to provide cover for wildlife as the majority of it is currently being farmed. See response to Comment 76(al).

113(k) The term "adequately conserved" was used in the MSCP Plan to denote those species considered in a preliminary analysis to meet the take authorization issuance criteria, as provided for take authorizations permits in Section 10(a)(1)(B) of the ESA and for management authorizations pursuant to CESA and NCCP. These criteria require that 1) the taking would be incidental; 2) the applicant would, to the maximum extent practicable, minimize and mitigate the impacts of such taking; 3) the applicant would ensure that adequate funding for the plan would be provided; 4) the taking would not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and 5) the measures, if any, required by the U.S. Secretary of the Interior, would be met. Table 3-5 has been revised to reflect whether or not species are expected to meet these criteria. Please refer to revised MSCP Table 3-5 included in the Revisions to the MSCP Plan, January 1997.

113(l–s) See response to Comment 20(ap).

113(t) The amount of habitat conserved in viable patches will constitute the majority the preserve habitat. The conservation rate of core habitat areas, except those which are dominated by military lands (Point Loma and Kearny Mesa), range from 60 percent to 96 percent (MSCP Figure 3-5). These core areas support the majority of sensitive resources that are to be conserved by the MSCP Plan. By conserving habitat in larger blocks, and connecting smaller areas with habitat linkages, the preserve's function is maximized for the covered species.

113(u) The proposed project would not replace RPO, and the comparison of the preserve and lands subject to RPO is not relevant to the impact analysis. The subsequent rezoning of the areas within the preserve combined with the implementation of a revised RPO, the Environmentally Sensitive Lands (ESL) Ordinance is expected to protect biological resources. Subsequent rezoning and implementation of the ESL would be subject to separate CEQA review. It should be noted that in the interim between the time the preserve is approved and ESL is implemented, RPO would be in effect; in addition, other regulations such as Coastal Development permits would also continue to regulate development.

113(v) The I-5 undercrossing is a separate project, planned and designed prior to the MSCP Plan. Caltrans is responsible for the project and its environmental review, which occurred in 1989-1991.

113(w) Comment noted. Wildlife movement in the vicinity is constrained by the relatively low overcrossings of I-5 and Sorrento Valley Road over Carmel Creek as it drains into Los Peñasquitos Lagoon.

113(x) MSCP staff analyzed this connection during the review and approval process for the Sorrento Valley Community Plan and Carmel Mountain Road projects, and concluded that the amount of traffic (with associated noise and roadkill impacts) on Carmel Mountain Road, combined with the width of the existing overpass/bridge structure, is not expected to accommodate significant wildlife movement in the long-term. There is no remaining vegetative cover in the area, development of the Sorrento Hills Community Plan area east of the freeway is already approved, and all remaining connections with Los Peñasquitos Canyon preserve have been lost as a result. See response to Comment 115(e).

113(y) See response to Comment 45(bz).

113(z) The analysis to determine the Covered Species List and the EIR/EIS analysis were based on the Manager's Compromise Plan for Carmel Valley Neighborhood 8A. These analyses utilized the studies and draft EIR for the Neighborhood 8A Precise Plan.

113(aa) See response to Comment 20(ap).

113

Carmel Mountain Conservancy
P.O. Box 910424
San Diego, CA 92191
(619) 682-7026

29 October 1996
Via Facsimile, followed by hard copy

John Kovac
Development Services Department
Land Development Review Division
1222 First Avenue, Mail Station 501
San Diego, CA 92101
FAX: 236-6620

Dear Mr. Kovac,

The following comments are submitted on behalf of the Carmel Mountain Conservancy. The Conservancy has been active for almost two years in efforts to preserve the remainder of Carmel Mountain (i.e. all of Neighborhood 8A) as public biological open space in perpetuity. We view the Multiple Species Conservation Plan as a program with great potential, perhaps the last chance for integrated land use planning and significant conservation. We hope that these comments will help to refine the implementation of the plan.

The MSCP was analyzed by examining three separate documents, and the comments below are segregated by document.

MSCP PLAN, VOLUME II (AUGUST 1996)

SUBAREA PLAN - CITY OF SAN DIEGO

p. 2: How can the projects listed here have been approved when many had not (and some still do not have) completed EIRs? The meaning of a project's presence on the negotiated project list is not made clear, and each of these should have been clearly detailed in the MSCP EIR. **113(a)**

Table 1: Why are vernal pools not listed? Even if the acreage is small – and it certainly shouldn't be "undetectable" if the critical watersheds are included – this rarest of habitats must still be counted. **113(b)**

Urban Areas

p. 17: Should fragmented habitat in the urban area really be considered to preserve species such as mule deer, wart-stemmed ceanothus (which requires fire in the long-term), and Least Bell's Vireo, (which requires flooded areas within larger riparian systems?) **113(c)**

The urban areas to be included in the Preserve should be clearly listed, not broadly included in a partial listing (p.17); otherwise it is impossible to judge which species might actually justifiably be "covered" in this area. 113(d)

Northern Area

The descriptions of the southwestern portion of this area claims that Neighborhood 10 contains "two major wildlife corridors that converge at CVREP." This is wishful thinking; the construction of Carmel Country Road is almost certain to have a devastating impact on the movement of wildlife through the area, blocking access to CVREP, and cutting off the high quality SMC habitat on the north slopes of Carmel Mountain from other north-facing slopes of Carmel Valley to the east. Where are the data to support the above quoted statement, especially in light of recent grading and landform changes? 113(e)

Neighborhood 8 largely includes Palacio del Mar, a dense housing development in the Carmel Creek floodplain; this is not just "existing homes, ranches and rural-oriented business" as described. 113(f)

Preserve guidelines

The discussion of the numbered sites – largely intended wildlife corridors – is quite inadequate because the scale of the map and the lack of infrastructure labels makes it difficult to determine where many of the locations are. Furthermore, intended housing developments should have been called out in these areas so that the public could determine which parcels of land and which developments contribute positively or negatively to the Preserve Design.) 113(g)

- Carmel Valley

The culvert description probably means a minimum 1:2 width-to-length ratio, or a maximum 2:1 length-to-width ratio. 113(h)

Item C7: consider making a ford (level crossing) and close Sorrento Valley Road permanently to automobile traffic- except emergency vehicles. This road is inadequate as it stands for the purpose of accessing Sorrento Valley businesses, but its widening should be out of the question because of further direct and indirect impacts to Los Peñasquitos Lagoon. This would greatly reduce edge effects on the Lagoon, and it needs every bit of help it can get. 113(i)

- FUA

What is item C-12? Which canyon is a linkage between Carmel Valley and San Dieguito River Valley supposed to go through?

Why is there no discussion of the impacts of the extension of State Route 56? 113(j)

- Rancho Peñasquitos and Beeler Canyon

What is item C-27? It is not shown on the map, and why is it exempt from OR-1-2 re-zoning?

MSCP PLAN, VOLUME 1 (AUGUST 1996)
SECTION 3: CONSERVATION PLAN

In general, species should not be considered "adequately conserved" if there will be no remaining habitat, whether the species is a plant or an animal. 113(k)

A discussion of several species about which the Carmel Mountain Conservancy is particularly concerned follows:

Arctostaphylos glandulosa var. *crassifolia*: The last remaining populations of Del Mar Manzanita within a matrix of undisturbed habitat are found over the entire area of Carmel Mountain, in vegetation dominated by both coastal sage scrub and southern maritime chaparral. It is clear that the current plan (the "Manager's Compromise Plan" for N8A) to develop Carmel Mountain is completely incompatible with this plant being listed as adequately conserved, as it is highly likely that construction impacts, landform changes, intensified recreational use, and fire management on behalf of proposed housing would preclude long-term survival of these populations. This plant requires preservation of all populations within the habitat matrix that will allow it to reproduce successfully. Sandstone terraces and bluffs on which it is found and where it might spread need to be protected from alteration by human effects. **This plant cannot be claimed to be adequately conserved** under the current MSCP plan because it does not preclude that the "Manager's Compromise Plan" will be implemented. 113(l)

Brodiaea orcuttii is found in large densities in vernal pools on Carmel Mountain. These are in the area proposed to be developed under the city of San Diego "Manager's Compromise" Plan for N8A. These pools on Carmel Mountain may represent one extreme of the range over which the species occurs, so it is critical that these populations be preserved to protect the full range of genetic variability of the species. **This species cannot be considered to be adequately conserved** under the current MSCP plan because of the possibility that the "Manager's Compromise Plan" will be implemented. In addition, very little vernal pool habitat is protected by the Preserve, and there is no clear protection for vernal pools outside the MHPA. 113(m)

Ceanothus verrucosus : Carmel Mountain contains one of only two concentrations of this species, and the only remaining coastal populations. Wart-stemmed ceanothus occurs over the entire area of Carmel Mountain, in areas denoted as both Southern Maritime Chaparral (northern area) and Coastal Sage Scrub (southern area.) Because of the "Manager's Compromise Plan" for N8A, in the Carmel Mountain area none of the major populations are slated for conservation, and 9 of the 13 minor populations are to be destroyed. Due to this plant's fire-adapted life cycle, it is highly unlikely that it can be adequately managed in any areas close to development. Currently the city is only protecting 33% of the 113(n)

113

known populations in the MHPA, and therefore this species **should not be considered adequately conserved.** 113(n)

Corethrogyne filaginifolia var. linifolia: This narrow endemic occurs only between San Dieguito River valley and Los Peñasquitos canyon, with by far the largest population occurring on Carmel Mountain. This plant is found particularly in the areas of Carmel Mountain not slated for preservation under the Manager's Compromise Plan for N8A, and should therefore **not be considered adequately conserved** under the current MSCP plan. The City of San Diego is responsible for almost 90% of the species, so its conservation measures with regard to this species will affect coverage for the remaining jurisdictions within the MSCP. 113(o)

Dudleya blochmaniae ssp. brevifolia: This species was recently not listed by the Federal government because of the conclusion that it is adequately protected by the MSCP. This is a fallacious argument in light of the current MSCP plan, notably the current Preserve design on Carmel Mountain, which is dictated by the "Manager's Compromise Plan for N8A." These populations need to be protected within the habitat matrix, and with adequate protection for the upslope watershed. If the preserved area is small, Dudleya conservation will conflict with other projected uses of the Preserve in this area, including running, walking, horse-back riding, and mountain biking. A much larger area of Carmel Mountain needs to be set aside than what is proposed in the Manager's Compromise in order to encompass mixed use of the area as well as occupied and potential Dudleya sites. Under the current MSCP Plan, this species **should not be considered adequately conserved.** 113(p)

Ferocactus viridescens: One of the densest populations of Coast Barrel Cactus in the world was found on Carmel Mountain. Recently, over one third of the area in which they occurred has been destroyed due to recent land grading for Neighborhood 10. This represents a dramatic decline, and more is to be destroyed under the Manager's Compromise Plan for N8A.. Although 81% of major populations may be "conserved" within the MHPA, it is highly likely that the continued development to be allowed within the Preserve (25%) will impact many more, due to the vulnerable areas in which they occur. It is also not known how variable the genotype is, so that a failure to preserve the plant throughout its range may not adequately preserve the species. 113(q)

Muilla clevelandii: Current plans for the development of Carmel Mountain will eliminate most if not all known and potential habitat for this plant as there is no preservation of the vernal pool habitat proposed. This would eliminate the most coastal location for this species, thus perhaps decreasing its genetic variability significantly. 113(r)

Phrynosoma coronatum: Carmel Mountain is one of the few sites in coastal San Diego where the Argentine ant is not an immediate threat to the long-term survival of the Coast Horned Lizard. The relative isolation of the mesa top 113(s)

(except where the Sorrento Hills development impinges to the south) is one of the features which makes Carmel Mountain unique, and makes it a haven for native harvester ants and horned lizards. There is excellent habitat and harvester ants are common. However, the current development plans for N8A will inevitably introduce large numbers of Argentine ants and encourage their spread into any remaining habitat proposed for preservation. 113(s)

MULTIPLE SPECIES CONSERVATION PLAN: DRAFT EIR (DEP NO. 93-0287) - (AUGUST 1996)

BIOLOGICAL RESOURCES - MHPA IMPACT ANALYSIS

In general, there is no clear distinction of the acreage of habitats that are in disjunct, fragmented patches from the acreage in large, contiguous preserve areas. While the habitat patches are certainly of value to many species, it should be made very clear the actual accessible and usable acreage of various habitats that are proposed to be conserved for the long-term survival of each covered species. 113(t)

B.1.4.2 San Diego City Implementing Actions

In this section there is no analysis of the differences in acreage between the proposed Preserve and the lands that would have been protected under RPO. While it is stated that biological resources would benefit because land will be converted from urban to open space uses, this is obviously only on paper. Much of the land now slated for urban land uses in the Carmel Valley Community Plan and NCFUA Framework Plan is still undeveloped, and should be subject to RPO of equivalent standards. If the MSCP Plan does not produce conservation to at least these levels it may not be of benefit. 113(u)

- Carmel Valley Community Plan

There is no discussion of the violation of the basic guidelines for wildlife passages by the Caltrans I-5 undercrossing (C7), i.e. the dimensions of this essential corridor make it unlikely that wildlife will actually use it because of its great length and low height. It certainly will not function as corridors should. 113(v)

A discussion is needed of abandoning Sorrento Road as a way to mitigate for the cumulative impacts of the transportation corridor on the movement of wildlife in this area. 113(w)

The C6 linkage between Los Peñasquitos Canyon and LP Lagoon is the only functional one at the moment, and should without doubt be expanded.

The most direct connection for wildlife between the future Preserve area on Carmel Mountain and the Los Peñasquitos Lagoon (and hence Torrey Pines Preserve) is the recently destroyed one under I-5, now occupied by Carmel Mountain Road. This connection could be made viable again if the undercrossing were made wider to accommodate natural vegetation, and if a parking lot on the west side were restored. This is well within the capacity of Caltrans and should be considered and analyzed. 113(x)

113

The fact that Preserve boundaries in Neighborhood 8A (Carmel Mountain) may be modified by City Council action underscores the influence of special developer interests. Why are the hard-line boundaries not drawn here to include and preserve the previously identified high quality habitats on Carmel Mountain? The current configuration completely eliminates protection for high quality Coastal Sage Scrub and Vernal Pools on the site, and threatens the long-term survival of the Southern Maritime Chaparral. The entire mesa top has been designated highest quality habitat for over a decade, and a core biological area in the MSCP plan. Furthermore, elements of SMC and CSS are intermixed throughout the site, and the whole area constitutes a functional ecosystem, albeit barely large enough to survive at 400 acres, that cannot survive without the preservation of the whole mesa top. The hypocrisy of the entire planning process is herein revealed: small fragments of habitat continue to be created by this plan, yet it is touted as saving large, contiguous areas. **113(y)**

The Preserve boundaries should be drawn to include all of Carmel Mountain, and the developers therein should be given the same opportunities and constraints as others: i.e. they should be required to protect 90% of the Tier 1 habitats, and should not be allowed total encroachment in excess of the RPO or equivalent MSCP standards in any proposed plans.

Furthermore, species that are now federally listed as endangered, including Del Mar Manzanita, occur in areas of 8A outside the current Preserve boundaries. The preserve lines should not remain as drawn in the Manager's Compromise Plan for 8A without a thorough investigation of the effects of the plan on the listed species' survival. **113(z)**

Dudleya brevifolia was recently not listed as endangered or threatened because of its supposed protection by RPO and the MSCP subsequently. However, it is unclear how this plant will survive in the long-term with housing developments on Carmel Mountain, as proposed, very close by, and with its habitat open to recreational uses. **113(aa)**

Table 4.3.13 lists losses of open space by habitat type in the City of San Diego. The area of Southern Maritime Chaparral listed as preserved in the MHPA is 1102 acres; where is this acreage? How will the MSCP need to change if SMC is listed as an endangered habitat?

Thank you for the opportunity to comment. Please do not hesitate to contact us if you have any questions.

Sincerely,

Isabelle Kay

114 MARK DODERO, 10/14/96

R

114(a) Comment noted.

114(b) See **Theme Response XVI, Risk Factors and XIX, Preserve Management.**

Although all of the remaining vernal pool habitat is not included within the boundaries of the Multiple Habitats Planning Area (MHPA), its protection is not considered to be piecemeal.

Approximately 3,254 acres of vernal pool habitat occurs within the MSCP study area, most of which (2,071 acres, or 64 percent) is under military jurisdiction at MCAS Miramar. These lands are outside of the protection and management purview of the MSCP Plan. Of the remaining 1,183 acres which are in the MSCP study area, 847 acres (or 72 percent) occur within the boundaries of the Multi-Habitat Planning Area (MHPA). Approximately 40 acres of additional vernal pool habitat is being preserved as part of the California Terraces-Otay Corporate Center North and South projects on Otay Mesa, resulting in the conservation of a total of 887 acres (or 75 percent).

For unavoidable impacts to vernal pools which occur outside of the MHPA, mitigation ratios that range from 2:1 to 4:1 would be required. This equates to conservation (through acquisition and/or restoration) which ranges from 67 percent to 80 percent. For purposes of the MSCP analysis, a 70 percent level of additional conservation through such mitigation is assumed. This results in the conservation of an additional 151 acres of vernal pool resources, bringing the total to 1,038 acres, or 88 percent.

All vernal pools within the MHPA would be conserved at 100 percent, regardless of the underlying percent preservation category. This adds a level of protection for pools which are identified in the future, as well as existing pools. Conservation measures in the City of San Diego's Subarea Plan state that wetlands, including vernal pools, would be preserved at 100 percent inside the MHPA and impacts outside of the MHPA would be avoided to the maximum extent feasible. The proposed Vernal Pools Unit of the San Diego National Wildlife Refuge would provide management oversight for vernal pools and their constituent species, contributing towards recovery goals for listed taxa through the preservation of existing and historic habitat. In some areas, refuge boundaries exceed those of the MHPA. Vernal pools are also afforded protection through the Clean Water and Endangered Species Acts.

114(c) See **Theme Responses XVI, Risk Factors and XIX, Preserve Management.**

114(d) See **Theme Response XXVI, Wetlands Protection.**

114

City of San Diego
Development Services Department
1222 1st Ave. Mail Stop 501
San Diego. CA 92101

October 14, 1996

RECEIVED
OCT 1 5 1996
DEVELOPMENT SERVICES

RE: Comments on MSCP

To whom it may concern:

My name is Mark Dodero and I am a native San Diegan and a professional biologist. There are several outstanding issues regarding the proposed Multiple Species Conservation Plan which I wish to address. Although I am fully supportive of this type of regional planning effort I am concerned that the long-term viability and sustainability of some MSCP target species populations will not be reasonably assured by this plan.

In the southwestern United States and northwestern Mexico, changes in the distribution of habitat types and their associated species are well document over the last few thousand years. Changes in climate over time are inevitable, whether or not they are induced or enhanced by human activities. The only way species can survive these climatic changes is if they have the ability to move or migrate either along a latitudinal or elevational gradient. Providing an opportunity for species to move north or south and up and down slope is essential for their long-term survival. Many of the proposed MSCP linkage corridors are very narrow and will be constrained by development. These narrow habitat linkages will suffer deleterious edge effects. Adjacent development and the associated disturbance will increase the risk that invasive exotic plant species will invade the habitat and degrade it. In at least one case, a proposed MSCP linkage corridor allows for active recreational use to take place. In my opinion, active recreational use is incompatible with the goal of the linkage serving as a wildlife corridor. Passive recreational activities can be allowed in linkage areas as long as native plant communities provide sufficient buffers to allow wildlife to use the corridor. Populations in any preserve areas which are surrounded by development and have no linkage to other habitat are doomed to local extinction over time. 114(a)

Another important issue is the lack of adequate protection for the rare and endangered vernal pool habitat. The piecemeal protection of individual vernal pool species outlined in the MSCP is unacceptable. Because the County of San Diego has already lost over 97 percent of its vernal pools, the protection, restoration and enhancement of entire vernal pool complexes should be given a high priority. Protection of upland mound areas surrounding the pools is also critical to the long-term viability of these pool complexes. Important vernal plant pollinator species are often associated with the upland sage scrub habitat adjacent to the pools. In addition, the alteration of the natural vernal pool hydrology in a given area can have significant negative effects on plants by changing the duration of water ponding. Disturbances as simple as driving a vehicle across a vernal pool when it is wet will create tracks which can drain the pool, thereby destroying the natural hydrology. 114(b)

It is also my understanding that the mapped populations and there relation to the boundaries or edges of the core biological areas have not been field verified. Field verification is critical to ensure that populations of each species have been correctly identified and that population sizes can be accurately estimated. A number of the target species are found near the edges of core areas which put them at 114(c)

114

great extinction risk over the long-term. It is well known that preserve areas adjacent to the outer edge or boundary will suffer habitat degradation because of disturbance and associated exotic weed invasion. A number of species including but not limited to *Ambrosia pumila*, *Hemizonia conjugens*, *Lotus nuttallianus*, *Navarretia fossalis*, *Orcuttia californica*, and *Pogogyne nudiuscula* will be at risk because they are inadequately protected by the plan. We already know that longterm survival of species is not ensured just by placing that species in a "protected" preserve area. Many preserve areas will require intense management to protect target species and this will be expensive. **114(c)**

The heavy losses of wetlands proposed by the plan are unacceptable. Greater protection should be given to wetlands and the goal of no net loss should be realized. I think the MSCP must provide greater assurance of protecting target species by evaluating and verifying the size and location of all target species populations before the plan is finalized. In addition narrow linkage areas should be widened and protection levels should be 100 % in these corridors. **114(d)**

Thank you very much for your attention.

Sincerely,

Mark W. Dodero

Mark W. Dodero
4243 Copeland Ave #3
San Diego, CA. 92105

115 MIKE KELLY, FRIENDS OF LOS PEÑASQUITOS CANYON PRESERVE, 10/27/96

115(a) Comment noted.

115(b) Please see revised MSCP Table 3-5 included in the Revisions to the MSCP Plan, January 1997, for conditions regarding coverage for *Ambrosia pumila*.

115(c) Issues relating to decisions on the proposed Vernal Pools Unit of the National Wildlife Refuge are beyond the scope of the MSCP Plan. A NEPA Environmental Assessment of this federal action was issued for public review in November 1996.

115(d) See **Theme Response X, Habitat Conservation Accounting Model.**

115(e) See responses to Comments 26(t) and 83(l). The creation of wetland habitat to ensure a "no net loss" of wetlands has been a major component of meeting this federal policy. Wetland habitats, including willow woodlands, freshwater marsh, and coastal salt marsh, have been successfully created from disturbed uplands. Creation of vernal pool habitat, however, has not met with similar success. As a result, the wildlife agencies do not accept creation as mitigation for vernal pool impacts. Restoration of historic vernal pool sites and enhancement of degraded vernal pools and their watershed, in conjunction with in-kind habitat preservation, are typically the mitigation measures that most effectively offset unavoidable impacts to vernal pool habitat.

115(f) The wildlife agencies are aware of the problems associated with translocation of native plant populations and recommend it only when knowledge exists regarding the positive outcome of previous efforts and a translocation site is available that has the right soil conditions and that has no existing native plant populations that will be negatively impacted. Regarding *Ambrosia pumila* specifically, the wildlife agencies have agreed upon a plan with the City of San Diego to avoid at least 90% of the population of *Ambrosia pumila* at the Mission Trails Regional Park Campground development site. The wildlife agencies are not requiring that 10% or less of the population to be impacted be translocated but would offer the opportunity to anyone else who would wish to work with these few plants.

115(g) Exotic predator control is seen as a significant issue and will be addressed appropriately. Please refer also to Comment 45(x).

115(h) The language in the Immigration Bill provides the U.S. Attorney General with discretion to waive the requirements of the ESA and NEPA for expeditious construction of the barriers and roads along the border areas. In October 1996, the wildlife agencies met with staff from Immigration and Naturalization Service (INS), Department of Justice, the Border Patrol, and Council on Environmental Quality in Washington D.C. to discuss this issue. As a result of this meeting, the INS stated that the U.S.

Attorney General had no intention of implementing this waiver and would enter into a memorandum of agreement with the wildlife agencies to ensure continued cooperation along the border.

115(i) Please refer to response to Comment 107(dt).

115(j) A primary benefit of the MHPA would be to retain vernal pools within a larger habitat reserve system, rather than as isolated patches of habitat surrounded by development. This would serve to ensure that the associated species that function to carry propagules, such as rabbits, waterfowl, and mule deer, would be present. The referenced plant species would be added to the City of San Diego's list of narrow endemic species in its subarea plan. Please see response to Comment 26(t).

115(k) Please see response to Comment 20(k).

115(l) Please see response to Comments 115(j), 115(b), and 83(l).

115(m) See response to Comments 115(b) and 45(f).

115(n) As biological surveys have not been conducted for the entire MSCP area, it is possible that a remnant population of red-legged frog could occur within the MSCP planning area where suitable habitat conditions persist. However, based on the available information, the wildlife agencies believe that this species is unlikely to occur in the study area. If it were to be found within the MSCP boundaries, the wetland habitat protection measures would allow for conservation of any newly discovered populations of this endangered species. The federal endangered status of the red-legged frog would not change with the approval of the MSCP. Federal actions that may affect this species, such as the issuance of a U.S. Army Corps of Engineers Section 404 permit, would still require consultation with the U.S. Fish and Wildlife Service under Section 7 of the federal Endangered Species Act. The MSCP Plan does not lower this species' status, it provides habitat protection and management measures that could benefit any extant populations. Please see response to Comment 45(g).

115(o) Seventy percent of freshwater marsh, riparian forest, oak riparian forest, riparian woodland, and riparian scrub would be conserved within the MHPA. Within the MHPA, management plans would address preservation of habitat within 500 meters of either side of occupied pond turtle habitat. The Sloan Canyon population is included within the MHPA boundary. Management measures could include signage, access control, etc. Predator control actions would be determined though the management plans. Please see response to Comment 45(h).

115(p) Several of the proposed management actions proposed are in the City of San Diego's management plan for its subarea plan (see MSCP Plan Volume II, City of San Diego Subarea Plan, page 94), including exotic plant removal and conversion of concrete and riprap channels within Sorrento Valley to natural bank and bottom channels, which should enhance wildlife movements under the "Merge".

115(q) The culvert improvements proposed for the Old Pomerado Road-Scripps Poway Parkway are not within the City of San Diego's jurisdiction, but are within the City of Poway's. These culverts were installed prior to biological work was initiated for the City of Poway Habitat Conservation Plan. According to Jim Nessel, Senior Planner with the City of Poway, bobcats and other small mammals are using the culverts. Undoubtedly, if funding were available and prioritized, improvements could be made at this intersection to benefit wildlife movement. The City of Poway acknowledges the importance of Beeler Canyon-Peñasquitos Creek as a wildlife corridor within its previously approved Habitat Conservation Plan, and has prioritized a portion for future acquisition as open space.

115(r) The portion of the San Dieguito River linkage that passes under Interstate 15 is within the City of San Diego's Subarea Plan boundary, not within the Lake Hodges segment of the Subarea Plan. This is why this linkage point was not discussed in the County Subarea Plan. The following will be incorporated into the City of San Diego's site specific management plan for the area:

- Evaluation of the northern shoreline approaches to the bridge for improving use by wildlife, including: redesign/elimination of barriers and fences and selective revegetation to facilitate wildlife movement;
- Patrolling of the I-15 bridge to control transient activity adverse to wildlife;
- Control of public access to the corridor through the fencing and other appropriate measures.

The San Dieguito River Park JPA will also be active in this linkage area in protecting and managing habitat lands and controlling human activities.

115(s) The MSCP Plan retains the existing riparian corridor. The City's management plan proposed a number of measures to protect, enhance or restore habitat lands within the linkage. Please refer to the MSCP Plan, Volume II, City of San Diego Subarea Plan, pages 101-104, for a detailed discussion of the City's management direction for this area. The linkage to the mountains to the east will be completed through the County's eastern NCCP Plan (the Multiple Habitat Conservation and Open Space Plan) and by the acquisitions and management activities of the San Dieguito River Park JPA.

115(t) The County Subarea Plan requires the preservation of this linkage in a functional manner. The exact number of acres and precise configuration will be determined based on the subarea plan's goals and criteria and implemented through the Biological Mitigation Ordinance and CEQA review process for individual projects. Each proposed project will be evaluated using the Goals and Criteria for Linkages and Corridors listed on pages 4-9 through 4-11 in Section 4 of the County Subarea Plan, Volume II of the MSCP study area. Adherence to these criteria and guidelines will ensure habitat connectivity within this part of the MSCP Plan. The wildlife agencies have also designated pre-approved mitigation areas (see County Subarea Plan Attachment 1, page 3) within the Metro-Lakeside-Jamul segment, which correspond closely to the major linkage areas that were designated as 70% preserved areas within the previous Draft MSCP Plan (July 1995). These areas were considered the important regional linkages that

required conservation if the MSCP preserve was to function properly in this part of the County. In the current MSCP Plan (August 1996), these same areas are to be the focus of on- and off-site mitigation, as well as acquisition through other funding mechanisms, thus preserving the significant linkages.

No wildlife movement study is proposed in this area at this time. Individual projects may require a study of this issue during project development. In addition, the MSCP Biological Monitoring Plan will monitor the habitat status and wildlife use of a number of key linkages within the Metro-Lakeside-Jamul segment of the County of San Diego Subarea Plan.

115(u) The development incorporating wildlife crossing C18 is the approved Fairbanks Highlands project. The at-grade crossing at the head of La Zanja Canyon is associated with a 2-lane residential road.

115

Friends of Los Peñasquitos Canyon Preserve

P.O. Box 26523, San Diego, California 92196
619-484-3219 • 619-566-6489 • FAX: 619-271-1425

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OCT 30 1996

DEVELOPMENT SERVICES

Oct. 27, 1996

MSCP/MHPA EIR/EIS Comments
City Development Services Dept
1222 First St, MS 501
San Diego CA 92101

RE: Comments on MSCP Plan Draft EIR/EIS and incorporated referenced documents / DEP N0. 93-0287 / SCH 93121073

The Friends of Los Peñasquitos Canyon Preserve is a 501 (c) 3 non-profit organization with over 400 dues paying members formed in 1984 to protect Peñasquitos Canyon Preserve. Part of our mission has been to expand the preserve and to ensure that functional wildlife corridors and recreational trail connections to other open space areas are preserved. The MSCP is of obvious importance to our Preserve which is designated as one of the core preserves within the MSCP. The future biological health of our open-space park, of its plants and animals, depends in large part on the success of the MSCP. Peñasquitos Canyon Preserve, at 3,700 acres, is too small to maintain viable populations of many species of plants and animals without well-designed, fully functioning linkages or corridors to other core preserves. Whether due to a single catastrophic event (several of last week's fires were bigger than our entire Preserve) or the "death of a thousand cuts" inflicted by insidious "edge effects," a well planned MHPA is our safety net. It is the future reservoir of fresh genes, plants and animals that can rejuvenate or repopulate our area in the future. In a complimentary fashion, we too can serve as a source of flora and fauna for other core preserves — if they can get there. 115(a)

To avoid repetition and a waste of paper, we and other environmental groups commenting on the MSCP have worked out a rough division of labor in commenting on the documents. In this letter the Friends will focus on wildlife corridors and linkages — particularly in the north city area, some future MHPA management issues, and several amphibian species on the covered species list.

We strongly endorse the comments submitted by the following groups: The California Native Plant Society, the Endangered Habitats League, Save Wild Santee and the Buena Vista Audubon/Natural History Museum. We have not had the opportunity to review several other environmental groups' comments in time for this letter. One exception to not repeating comments is our desire to underscore the serious situation of *Ambrosia pumila*. We participated with CNPS in field surveys (Fall 1996) for this plant. The existing data on this plant proved to be largely erroneous, with this rare species being confused with *Ambrosia confertiflora*, a more common species, thus overstating the rarer plant's population points and sizes. Thus this plant is even more rare than previously thought. Coverage for this species can not be justified unless the existing major population on the future campground site in Mission Trails Regional Park is saved — not transplanted. Transplantation is too iffy a proposition to allow it to be used as justification for considering this species to be adequately conserved and covered under the MSCP. Avoidance of impacts is necessary to conserve *Ambrosia pumila*. 115(b)

Miscellaneous Issues

1. **San Diego National Wildlife Refuge (p. 3-1).** We note that the Winterwood and New Salem (Fieldstone) complexes of Vernal Pools are missing from the maps and discussion. We understand both complexes are to be saved. Both support large numbers of Federally Endangered Mesa mint and San Diego Button Celery, along with a host of other sensitive vernal pool related species. The Winterwood Complex is adjacent to a large finger canyon off López Canyon, part of the two-canyon Peñasquitos Canyon Preserve. Hence, it's prospects for future biological health are enhanced by these connections. Interpretive and management plans are currently being developed between a citizens group and the City of San Diego Parks and Recreation Dept. School-based environmental groups (elementary, junior high) have adopted these pools and provided volunteer help for a number of years. Will either or both of these complexes become part of the Refuge? 115(c)

2. **Monitoring of the MSCP Plan (4.3-178).** We agree with the proposal to use two independent processes to monitor the MSCP Plan. We understand the three year period proposed for the Biological Monitoring Plan. Annual data would be of minimal value given the year-to-year fluctuations common to many plant and animal populations. However, we disagree with the proposal that the annual accounting of the acreage, type, and location of habitat conserved and taken be reported publicly only every three years. Since the data will be compiled annually we strongly petition that it be publicly reported annually, in written form and reviewed in a public meeting with comments allowed. Since land use decision making is a highly political process, much can go wrong in a year — espe- 115(d)

115

115(d)

cially when projects with large acreages are involved. Such large-acreage projects can decisively decide whether certain habitat or species goals can be met or not. Findings: function and value avoid impacts

3. **Creation of wetlands.** In a number of places in the MHPA planning documents (Implementing Agreement. Exhibit I. ESL. p. 10) creation of wetlands is accepted as mitigation for future wetlands impacts. We strongly object to accepting this category of mitigation. While restoration or enhancement of vernal pools and other wetland types is proven to work by many years of research and practice. this is not true for creation of wetlands. especially vernal pools. Research and experience have demonstrated the opposite. The creation of fully functional wetlands that have an equivalent "value and function" to natural wetlands is still beyond our reach. The recent Vernal Pool Conference held in Sacramento. Calif. (1996). which brought together the leading experts in this type of wetlands. reported a general consensus that creation of vernal pools to date has been a failure. Our own local experience confirms this. We have observed "vernal pools" that were artificially carved out of the chaparral on the Del Mar Mesa as mitigation for natural pools destroyed by the building of Highway 52. After many years. the artificial pools do not come close to matching the "value and function" of nearby natural pools.

115(e)

4. **Transplantation of rare plant populations.** For a number of plant species, including *Ambrosia pumila*, transplantation of populations is proposed and used as justifying extending coverage to these species. We are not aware that transplantation or translocation of the *Ambrosia pumila* or other rare species with this condition on them has ever been successful. To justify extending coverage to the *Ambrosia* or other plant species we request the following conditions be met:

   1) it should first be documented that transplantation/translocation has been successfully done, or in the absence of such documentation

   2) research be commissioned and an analysis of the ecological conditions the plant requires be described. such as its soil and other abiotic requirements. any biotic associations such as obligate pollinators be identified. etc. and

   3) a small part of the population be transplanted to the proposed site(s) and carefully monitored for a period of no less than 5 years to prove the success of the transplantation.

   In the absence of proof that transplantation/translocation of a particular species is workable. coverage should be based on avoidance of the known populations necessary to ensure the plant's survival.

115(f)

5. **Exotic predator control.** Throughout the management plans for the various subareas the need for control of exotic predators such as bullfrogs. sunfish. feral cats. cowbirds and others is noted. However, the plans require demonstration of need before such control can be instituted. The burden of proof that a species is being harmed by a particular predator is placed on future preserve management. This is mistaken. Costly and time consuming studies are unrealistic and unnecessary. The scientific literature is replete with studies of the harmful predation of these exotic predators on many of the species proposed for coverage for the MSCP. Control of these exotic predators should be recommended without the need for redundant studies to be conducted.

115(g)

6. **Border Patrol/Illegal Immigration.** Recent decisions by the U.S. Congress to exempt the Border Patrol and related illegal immigration control activities from NEPA. ESA and other environmental review, coupled with liberal language in the MSCP itself raise serious questions about the viability of the MSCP in border areas. We request a review of the potential impact of these practices on the MSCP analysis, on the habitat and species in these areas. We believe both the illegal immigration and the efforts to control it are causing serious injury to future preserve areas, impacts that need to be quantified and analyzed for their effect on the over all MSCP, as well as specific species (see Arroyo toad below).

115(h)

7. **Limited Exemptions from Environmentally Sensitive Lands Regulations** (143.0116, Implementing Agreement, Exhibit L, Chapter 14, p. 7). We object to exempting the Calle Cristobal Assessment District area from the requirements of the ESL. No reasons are stated for this or other exemptions to the ESL.

115(i)

8. **Vernal Pool Species.** Officially listed endangered (Fairy shrimp, Mesa mint, San Diego Button Celery) and other sensitive species associated with vernal pools are covered under the plan viz-a-viz Federal and State wetlands regulations since vernal pools are not specifically included in the MSCP. We are concerned, however, that these regulations do not include sufficient buffers to adequately protect the hydrology of the pools. We are aware of isolated vernal pools surrounded by development where insufficient upland (mesa top) habitat was protected. This upland habitat is usually an important part of the hydrological functioning of the pools as well as home to species such as rabbits and mule deer that function to carry propagules from one vernal pool complex to the next — important for long-term viability and recovery. Conserving the "value and function" of wetlands requires protecting the watershed. We recommend that:

   1) the MSCP Plan call for protecting vernal pool habitat and associated species as a complete hydrological unit, i.e., with the necessary upland watershed;

   2) *Popogyne ambramsii, Popoyne nudiuscula* and Orcutt's grass be added to the Narrow Endemic Species List (City of San Diego Subarea Plan, p. 111) since they are indeed narrow endemics;

115(k)

115

3) One vernal pool mitigation measure proposed in the San Diego Subarea Plan (p. 8, item A7) is ill conceived. A7 proposes "collecting and reseeding vernal pool species" from pools to be impacted into "other preserved Otay Mesa pools." In general it is not a biologically sound idea to move organisms from one pool into another, healthily functioning pool. It might make sense if the pool to receive the organisms is one being restored that is deficient in the natural soils and organisms necessary to have fully functional pools. 115(l)

Covered Species

9. **Arroyo southwestern toad (*Bufo microscaphus californicus*).** In participating in summer 1996 surveys for the Arroyo toad with a local expert on this amphibian we were struck by the quite specific habitat requirements of this animal. Many of San Diego's rivers and creeks, including Peñasquitos Creek, don't offer the shallow, slow-moving water, the lack of a canopy over the water, the sandy stretches in the creek and the sandy terraces for burrows this toad requires. This stands in contrast to species such as the Pacific chorus frog, which is less stringent in its requirements and can be considered ubiquitous in local waters. Walking an Arroyo toad transect in optimal habitat on the San Luis Rey River we were struck by the distance we found gravid females crossing to reach trilling, breeding males in the river. As research cited in the species evaluation briefing papers indicates these toads need up to 1 km of habitat beyond the immediate stream or river, including upland habitats for breeding success. The MHPA preserve design and plan is deficient in several respects for the Arroyo toad, not the least of which is the lack of adequate data upon which to base a decision. We recommend that the following conditions be required to justify coverage of this species and that take of this species or its habitat not be permitted until they are met: 115(m)

   1) Site specific surveys must be done in all areas that contain potential toad habitat to identify existing populations, especially the larger breeding populations;

   2) That predator control programs on bullfrogs, sunfish and other known exotic predators of the toad in its habitat be specified "a priori," without the need to prove harmful impacts (see note 5 above);

   3) That a 1 km buffer on each side of the riparian corridor should be required in known toad habitat areas. Relying on wetlands regulations for such protection will not work since the toad also utilizes upland habitats, even into chaparral and coastal sage scrub;

   4) That water bodies used as "flumes" or for other periodic discharge by water authorities (Jamul, Dulzura Creek, etc.) be studied for the impacts of such discharges on toad populations. Such a study can identify management practices for the water authorities that will minimize or eliminate detrimental impact on downstream toad populations. Agreement to such management practices by the water authorities should be required before a population is considered covered;

   5) That sand mining operations in drainages with known or potential toad populations be studied for their impacts on the toad. Coverage should not extended until it is proven such mining operations do no harm to the toad or its habitat (possible) or sand mining management practices identified and agreed to that eliminate identified negative impacts; if sand mining is shown to be detrimental to the toad new sand mining should be prohibited to justify coverage — the Sloan Canyon area is such an area and has an indeterminate status under the plan and has an application for sand mining pending and the toad is present;

   6) That ways be found to eliminate the negative impact of illegal immigration activities along prime toad habitat on Cottonwood Creek (see Border Patrol, point 6 above);

   7) That the status of the "white hole" of land below Loveland Reservoir be clarified since the toad has been identified in the area.

10. **California red-legged frog (*Rana aurora draytoni*).** Coverage for this species is justified by the Plan because it is a "discountable" species, considered "possibly extirpated from San Diego County" that "would receive some protection per federal and state wetland regulations" (Table 4.3-1, p. 4.3-19). Part of the coverage argument is that habitat suitable for the frog is being protected in the MSCP. Hence, should the frog "pop up" it would be protected goes the argument. However, this same habitat has proven unsuitable and has led to its likely extirpation locally. What has changed to make this habitat now suitable should the frog pop up?

    As an officially listed USFWS endangered species we believe the Red-legged frog will receive more protection if it is left off the covered species list. Despite the lack of species specific surveys we and various herpetological experts we have consulted are inclined to agree that it is unlikely this frog is reproducing in any of the major drainages within the MSCP study area. It would likely have been recognized during other surveys. However, it is possible that it is hanging on in minor tributaries, drainages, or ephemeral wetlands not yet dominated by exotic predators such as the bullfrog or large-mouth bass. We believe that it could be surviving in areas that would "fall between the cracks" of the wetlands regulations the MSCP proposes to rely upon for future protection of wetland species and habitats. Hence, we object to extending coverage to this species which would allow its "take" outside the MSCP. Any population of this animal in our local area should be protected in the future whether in or out of the MSCP. Allowing it to stand with its Federal status is a better protection for it than granting MSCP coverage, which effectively lowers its level of protection. Such measures are necessary for a species in decline throughout its known range (Drost, C. and G. Fellers. "Collapse of a Regional Frog Fauna in the Yosemite Area of the California Sierra Nevada, USA." *Conservation Biology* Vol. 10. No. 2. April 1996). 115(n)

115

11. **Southwestern pond turtle** (***Clemmys marmorata pallida***). Question. Table 4.3-1 reports "70% of riparian habitats and freshwater marsh" as conserved, yet the MSCP Species Evaluation 1996 update in the "briefing book" reports just "52% of these [freshwater marsh and riparian] habitat types are identified as conserved by the plan." Which is the correct figure? The difference is substantial. We concur with the same species evaluation paper that "Adequate buffers may not be present in the current preserve design to conserve nesting areas of this species" and that "Most areas within MHPA appear to have insufficient upland buffers." We recommend the following conditions be adopted to justify coverage:

    1) that a buffer of 500 meters, including upland habitat, be conserved on either side of streams with turtle populations. Wetlands regulations would often fail to conserve sufficient land;

    2) that the population in Sloan Canyon be protected;

    3) that jurisdictions be required to post signage in appropriate locations against collecting of this species; and

    4) that an "a priori" finding is assumed that the mere presence of known exotic predators on this turtle is sufficient "proof" of the need for exotic predator control.

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Linkages

12. **The "Merge" Wildlife Corridor/Linkage.** This corridor is identified as "C6" on maps and in the text of MSCP Plan Draft EIR/EIS (City of San Diego Implementing Actions. B.1.4.2 (p. 4.3-88-90). C6). The Subarea Plan for the City of San Diego also discusses this linkage in the text (p.21). Both underestimate the wildlife usage of this corridor under the I-5 and I-805 freeways "(the Merge"), making recommendations under **C6 (p.4.3-90)** important. This underestimation probably flows from a report done by Ogden Environmental, the "Baldwin Otay Ranch Wildlife Corridor Studies," issued December 1992. This otherwise excellent report used corridors and linkages in the Peñasquitos Lagoon, Peñasquitos Canyon Preserve, Miramar Naval Air Station to establish baseline conditions for what worked and didn't work for certain target wildlife species (Mountain lion, bobcat and mule deer) in the way of tunnels, culverts, bridges and corridors. In descriptions of various corridors/linkages in the North City area with which we are familiar, however, we found an important error. The report identified the corridor labeled "C6" above as a "non-functional corridor" (labelled N1 in the Baldwin report). The current MSCP documents described it thusly: "The linkages to Torrey Pines State Reserve and Los Peñasquitos Lagoon from the east are tentative at best. In the south, a rip-rap channel winds west from Los Peñasquitos Canyon, underneath freeways, local roads, and railroad tracks to gain access to the Lagoon and State Park. This is most likely not being used by wildlife due to the restrictive conditions involved." Despite these gloomy assessments, both the MSCP Plan and the Ogden report considered this the best remaining linkage! Previously, the Carmel Mountain Road corridor had been the best functioning corridor in the north city area, carrying wildlife between Peñasquitos Lagoon and the state park to Peñasquitos Canyon Preserve, Carmel Mountain (8A) and the Del Mar Mesa. Hence, recommendations concerning the "Merge" corridor are important.

    It's easy to underestimate this linkage because it is narrow and dark with rip rap on either side, extensive mud flats along the bottom and runs beneath five freeways, roads and bridges. The noise from the traffic above makes it impossible to hear anything near or under it. Despite these drawbacks, wildlife use it, including coyote, fox, mule deer, bobcat and many smaller animals. It is a fully functioning wildlife corridor despite its obvious constraints, and will require careful management and enhancement to protect its function as a corridor. It is a vital link to Torrey Pines State Park and Peñasquitos Lagoon.

    Wildlife tracking surveys in this corridor have been conducted by the Friends of Los Peñasquitos Canyon Preserve for the Preserve and by Kevin Crooks, a Ph.D. candidate (Santa Cruz, M. Soulé) for Peñasquitos Lagoon. We have collaborated to share data and have focused specific attention on the "Merge." The Friends wildlife surveys have provided data to support this usage (data on file with our group and City of San Diego Open Space Division) by an abundance of wildlife, including bobcat and mule deer. One of the 20 wildlife transects surveyed by the Friends runs from Peñasquitos Canyon under the merge utilizing the channel. The channel (and the transect) continue into Sorrento Valley where it joins with Soledad (Carroll) Creek. The channel and transect continue under Sorrento Road and the Railroad tracks. The most recent quarterly surveys were conducted in July and October of 1996 and therefore represent up-to-date data. The 1992 Ogden survey may have missed one target species, mule deer, by concentrating on the mud flats and ignoring a levee running along the top of the rip rap on the north side of the Merge. This dirt levee is where our surveys have picked up mule deer tracks traveling under and through the "Merge." Perhaps because of their weight, mule deer utilize the hard packed dirt levee rather than the mud flats below. It's also possible their survey failed to pickup mule deer tracks since the Carmel Mountain Road corridor, an admittedly superior corridor, was still functioning in 1992. After the conversion of this corridor to a 6-lane freeway, the deer, along with other wildlife, may have been forced to use the inferior "Merge" corridor. Transect surveys seemed to indicate increased mule deer use of this corridor, possible due to the destruction of the most important wildlife corridor from the north city area west into Penasquitos Lagoon.

    Both the Friends and Crooks surveys demonstrate heavy, consistent use of this corridor between the Preserve and the Lagoon. We recommend the following measures to enhance this important corridor:

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1) The recommendation for noise abatement made in the Plan would be helpful.;

2) Improve the cover on top of the southern channel bank behind J&W Redwood. After the 1995 flooding this company altered the bank on top of the levee behind their fence line, including the removal of cover. Perhaps an agreement or easement can be negotiated with this property owner to ensure continued wildlife passage along this bank, that would involve a modest planting of additional cover;

3) Monitor the new "Street A" (Sorrento Hills Community Plan), an extension of Vista Sorrento Court, immediately east of the "Merge" for its impacts on wildlife movement. This will add a sixth obstacle for wildlife in this corridor. We are particularly concerned that adequate cover exist along the northern approaches;

4) More cover along the northern bank from the merge west, behind the industrial park currently there, would be helpful for wildlife movement. A similar easement with the property owners there might prove helpful for wildlife;

5) Further west in the channel, as it approaches the railroad tracks and the Lagoon beyond, Giant reed (*Arundo donax*) becomes a barrier in many places to wildlife movement. Is is increasing dramatically in density in the area. If not eradicated, it is capable of completely blocking movement through the area. We recommend that this area and upstream in Carrol Canyon be targeted for removal of this exotic. Giant reed is already under control upstream in Peñasquitos Canyon Preserve.

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13. **Beeler Canyon Future Urbanizing Area (p.4.3-93).** This section fails to discuss the wildlife corridor linkage from the Poway Segment of the MSCP into the west end of Beeler Canyon. This linkage is a continuation of the Penasquitos Canyon/Sabre Springs Open Space linkage that runs east from Sabre Springs up over the hills south of Poway Road to the intersection of the Scripps/Poway Freeway and the new Pomerado Road. Wildlife currently have a choice of using four 6 foot culverts that run 300+ feet diagonally across this busy, high speed intersection or crossing at grade. Several surveys by our group (1994, 1995, 1996) failed to find any evidence of any animal using the culverts to move from the old Pomerado road area into the Beeler Canyon area. (Ogden's 1992 Balwin /Wildlife Corridor Study anticipated this problem when the highways in this area were just under construction.)This is probably due to the deficient height to width to length ratio of the culverts and the dark, claustrophobic atmosphere — and the lack of fencing to prevent the traditional wildlife trails that lead up to and across the intersection from being used. These at-grade trails are being utilized to the detriment of the animals, evidence by road kill data on file with the City. The culverts are too low for mature deer to comfortably move through them. If funding should become available, reconfiguring these culverts into a well-designed tunnel corridor might be possible. Fencing should be installed throughout the intersection area to influence wildlife movement as part of such an improvement.

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14. **County of San Diego MHPA Project Impact Analysis - Issue 2 (Linkages). B.1.6.1. Lake Hodges Segment.** The discussion in this section (p 4.3-228) and in the Subarea Plan is deficient with respect to the San Dieguito River linkage under Interstate 15. While the management plans for many linkages are covered in much detail, little is said about this critical linkage.

Two surveys conducted by our group in Feb. 1996 found bobcat, fox, coyote, racoon and numerous smaller animals using this underpass. Notably absent, however, was evidence of mule deer use there or anywhere near the approaches. The I-15 underpass itself will serve as an adequate wildlife corridor and can be enhanced to suit the needs of wildlife. We make the following recommendations for this linkage:

1) A specific study is recommended for this linkage. A longer study should confirm or contradict our finding of mule deer absence under the I-15 bridge. If absence is confirmed it would be important to identify the nearest mule deer herds and the obstacles preventing their use of this underpass. This is the only east-west linkage we are aware of. The Green Valley corridor goes under I-15 just fine, but dead ends at Pomerado Road and housing developments to the east.

2) Improve the northern approaches to the I-15 bridge. On the northern shoreline, barriers such as the cemented trail, the wide berm on the north side devoid of vegetation and an old chain link fence make it difficult for wildlife to make a quick, direct passage under cover through the area. The approach on the east side of I-15 along the northern shore has generally good cover up to the rip rap. Exotics grow in the rip rap but provide poor cover on the water side. Replacing the rip rap and revegetating with good cover would facilitate wildlife movement on the water side. Deer are probably deterred by the very narrow, 1-2 level strip on top of the rip rap, close to the fence. The old fence, although it has a hole used by wildlife, should be removed. Confused animals, particularly easy-to-panic deer, could end up in trouble here.

3) There is evidence of transient occupancy at night under the bridge. There is no surer barrier to wildlife movement. Policing of this area and removal of transients will be an important management issue.

4) Improve the southern shoreline approaches. In general, these have a lot more promise than the northern, particularly under the bridge. It is narrower, but well wooded up to the bridge. Both approaches have usable trails. Key on the eastern approach on the south side is future development. The tree farm and nurseries probably don't impede wildlife movement in the evening. Other

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types of development, particularly if allowed to encroach further into the open space, could impede wildlife. The extensive human activity notable on the south side (fishing, dumping) must be monitored and controlled. The hole in the Caltrans fence on the east end needs to be repaired and continually monitored to limit illegal access. There is evidence of evening parties on the western side. Such activity will definitely impede wildlife movement and needs to be eliminated. 115(r)

15. We were confused in trying to understand the future functioning of linkages in the San Pasqual Valley east into the mountains. Perhaps due to the different subarea and cornerstone land plans involved, we found no coherent narrative that made it possible to make a judgement on these land parcels or the configuration of the future corridors and preserve here. It would be useful to review and develop a more understandable narrative for this whole area. 115(s)

16. **B.1.6.1. Metro-Lakeside-Jamul Segment** (p. 4.3-229). Given the uncertainty of planning in this area and its critical importance for wildlife movement between core preserves, we recommend two things: 115(t)

    1) That target goals for linkages be adopted similar to those target goals for individual species and habitats, and

    2) that a specific study be commissioned to identify wildlife movement through the area at the current time, to aid in future land-use decision making.

17. The wildlife crossing identified as C18 doesn't identify which road and development it crosses, so it is difficult to react to the proposal for a possible at-grade crossing. Which road is this and in which development does it fall? 115(u)

Sincerely,

Mike Kelly

Mike Kelly, president

116 JAN FUCHS, CARMEL VALLEY COMMUNITY PLANNING BOARD, 10/30/96

116(a) The circumstances of Carmel Valley Neighborhood 8A, including: over a decade of processing applications, the existing Community Plan designating Carmel Mountain for urban land uses, and the inapplicability of the Resource Protection Ordinance to the largest parcel (Pardee Parcel A) in Neighborhood 8A; all contributed to the development of the City Manager's Compromise Plan. It is beyond the scope of the Draft EIR/EIS to rationalize a jurisdiction's subarea plan proposals. See also response to Comment 98(z).

116(b) Carmel Mountain (Neighborhood 8A) and Neighborhood 10 are depicted as Core biological Areas in Volume I of the MSCP Plan, Figure 2-2. In the opinion of City of San Diego and wildlife agency biologists, the habitat area and configuration associated with the Manager's Compromise Plan will support wildlife movement between Carmel Valley and Los Peñasquitos Canyon Preserve.

116(c) Five major populations of *Ceanothus verrucosus* occur within the MSCP Study area. Two are considered adequately protected, two occur on military land (MCAS Miramar/Point Loma) and the last occurs on Carmel Mountain. Conservation of the two populations that occur on military lands are beyond the scope of the MSCP, but preservation may be addressed in the Marine Corps' Natural Resource Management Plans. Conservation of *C. verrucosus* under the City of San Diego's Subarea Plan would include the requirement to include this species in revegetation efforts and active management to increase remaining populations. Short-leaved dudleya would likewise be actively managed for the maintenance and enhancement of the existing populations. Management would need to address any potential impacts associated with a change in the siltation regime.

116(d) Comments noted. See response to Comment 116(b).

116(e) There are no proposals in the City of San Diego General Plan that would reduce or eliminate protections for open space outside the MSCP boundaries. Additional language has been inserted in the General Plan to highlight the importance of preserving and maintaining community open space.

116(f) The Environmentally Sensitive Lands (ESL) Ordinance is not proposed with this project and is beyond the scope of this environmental analysis. The ESL would be the subject of subsequent, separate CEQA environmental review.

116(g) The open space areas in the Carmel Valley Community Plan would remain physically unchanged and not adversely affected. See also response to comment 116(e).

116(h–i) While the MSCP EIR/EIS sufficiently analyzes the cumulative impacts of future development proposals which may impact covered species, this document does not negate the need for subsequent EIR's. Site-specific issues, including but not limited to landform alteration, cultural resources, traffic circulation and other environmental issues, may require the preparation of subsequent environmental documentation to comply with CEQA. See also **Theme Response XXVI, Permit Streamlining.**

116

CARMEL VALLEY COMMUNITY PLANNING BOARD
12760 High Bluff Drive, Suite 160
San Diego, CA 92130
PH: (619) 794-2500/FAX: 259-6173

October 29, 1996

John Kovac, Senior Planner
Development Services Department
Environmental analysis Section
City of San Diego
1222 First Avenue, 5th Floor
San Diego, CA 92101

SUBJECT: 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)

Dear Mr. Kovac:

We concentrate on the inadequacy of the document regarding Carmel Valley open spaces and biological resources. We also address the EIR/EIS treatment of MSCP-driven proposed changes to the City of San Diego General Plan and environmental planning.

I THE EIR/EIS INADEQUATELY ADDRESSES CARMEL VALLEY OPEN SPACES AND BIOLOGICAL RESOURCES

Carmel Valley's Neighborhood 8A Has Critical MSCP Habitat and Linkages

Carmel Valley's southern area bordering the Los Penasquitos Canyon Preserve is a "biological core area" in the City draft Subarea Plan, valuable both as core habitat and linkages to the key planned and existing regional preserves. For this reason, we have argued consistently that the MSCP include Neighborhoods 8A and 10 in the plan.

The biology and corridor value of Neighborhood 8A (N 8A) is well-documented in both State "NCCP Conservation Guidelines" and the City's draft MSCP Biology Guidelines. 116(a)

The southern maritime chaparral, coastal sage scrub, other chaparral, and wetlands in this location and in this unique configuration support many MSCP target species. Preserving the habitat and connectivity of N 8A to Torrey Pines State Preserve and Los Penasquitos Canyon Preserve and Lagoon is essential to the stated overall goal of "preservation of as much of the core biological resource areas and linkages as possible." [ES-2] 116(a)

The EIR/EIS Inappropriately Ignores The Effects On MSCP Goals By Omitting N 8A From the "Hard Line Preserve"

Yet, much of N 8A is outside of the "hard line preserve" depicted. The EIR/EIS states only that "Preserve boundaries may be modified by City Council action on the Carmel Valley Neighborhood 8A Precise Plan." [4.3-90] Further, "...the Neighborhood 8A Precise Plan is currently being processed by the City. As a result, it is impossible to provide a map showing the precise locations of an MHPA (Multiple Habitat Planning Area) open space system." [4.2-22] And, yet, the N 8A Precise Plan being shown for analysis is the "Pardee/City Manager's Compromise Plan"

We believe the EIR/EIS is seriously flawed in this treatment of N 8A. All of the EIR/EIS's seven "biological tools used to generate and evaluate the MHPA" which are "consistent with the biological tenets presented in the November 1993 Conservation Guidelines," set forth on pages 4.3-3 through 4.3-5, indicate that all of Carmel Mountain/N 8A should be included in the preserve.

The board requests that the MSCP Plan EIR/EIS provide a clear, biologically substantiated explanation as to why all of Carmel Mountain/N 8A has not been included in the proposed MSCP preserve.

To Be Viable, the MSCP "Preserve" Must Include the Unique Habitat of N 8A; the Preserve Should Be Determined By Biological Criteria, Not In Response To Proposed, Unapproved Footprints

Southern Maritime Chaparral is listed as one of twelve major habitats which the MSCP is designed to preserve. The objectives of the MSCP Working Group "are to design a plan that...is ecologically successful." [1-17] Carmel Mountain's vegetation consists chiefly of Southern Maritime Chaparral (281.18 acres) interwoven with Coastal Sage Scrub (84.1 acres); Grassland (7.8 acres); Southern Willow Srub and Vernal Pools. It is characterized in the DEIR for N 8A as a "unique mosaic" of vegetation and habitat types. Southern Maritime Chaparral is an MSCP "Tier One Habitat." The draft City "Biology Guidelines" consistently have called for 100% preservation of any stand of Southern Maritime Chaparral 50 acres or larger, and non-fragmented. 116(b)

N 8A is the only possible "destination" habitat area, as well as the major remaining corridor and link, between Los Penasquitos Canyon Preserve and Lagoon and Torrey Pines State Preserve. Without Carmel Mountain as a destination habitat, the "corridor" between these vital preserves, already severely constrained through approved development at many points, will be over three miles long.

Specific SMC plant communities argue for inclusion in the preserve, as Tier One habitat: "Ceanothus Verrucosus" is distributed throughout N 8A and the EIR/EIS calls it at "high risk" within the proposed preserve because there are only five major populations, and the majority of one of them—on Carmel Mountain—is not protected by the plan. [4.3-11] One of only three populations of the narrow endemic SMC species, short-leafed dudleya, is on Carmel Mountain. According to the EIR/EIS, "...the jurisdictions and other permit holders will specify measures in their subarea plans to ensure that impacts to these resources are avoided to the maximum extent practicable." [4.3-8]

The EIR/EIS assumption of N 8A, the "Manager/Pardee Compromise Plan", falls far short of accomplishing MSCP target preservation goals for these vegetative communities. Intense residential development a major road are within a couple hundred yards of the dudleya, requiring fencing. Since short-leafed dudleya, apparently, only lives in a particular siltation configuration, and, essentially, must migrate if that siltation pattern begins to change, both locating development close to the plant community and fencing dudleya would lead to demise.

The "Manager/Pardee Compromise Plan" also shows a large "finger" of development extending into the actual proposed preserve boundary, which would increase the edge effects on the remaining open space.

The value of N 8A habitat and its essential linkage to other MSCP core areas argue strongly for inclusion of most of N 8A in the "hard line preserve" focus of the MSCP. The City has been processing various precise plans for N 8A for more than thirteen years. We cannot understand why the EIR/EIS has been limited to a precise plan proposal which has been unanimously denied by the City Planning Commission and which has been the subject of two approved motions by the City Council indicating an intention to deny. In April 1996 the City Planning Commission recommended that "the biological resources should dictate the preserve boundary...based on the belief that the development proposal (Manager/Pardee plan) should not determine the preserve boundary within Neighborhood 8A." **116(c)**

We believe that omitting N 8A in this manner from the preserve causes serious flaws in the overall MSCP effort and that the EIR/EIS cannot "talk around" this issue through reference to possible future City Council action. Similarly, the text in the City's draft Subarea Plan should reflect the quality of habitat and preserve guidelines appropriate to N 8A.

Discussion of community plan amendments ("City of San Diego Implementing Actions, B.1.4.2) should be revised to show all of N 8A in the preserve. This discussion should include how Carmel Valley Community Plan environmental goals would be affected by either (1) inclusion of N 8A in the preserve or (2) omitting much of N 8A from the preserve, as the current proposal does. Community Plan goals to be included are: "In a basic sense the open space is the most important land use aspect of the (Carmel Valley) community since it determines community structure while conserving the most important features of the natural environment." (CVCP, P. 92)

II THE EIR/EIS SHOULD DIRECTLY EVALUATE THE FAR-REACHING CHANGES OF THE MSCP PLAN ON THE CITY'S GENERAL PLAN AND ENVIRONMENTAL PLANNING

Radical Changes In City Open Space Policy Affect Community Planning

Although it addresses the MSCP Plan in broad terms, the EIR/EIS only scantily evaluates the major changes in the City's General Plan "Open Space Element". This companion action to the MSCP Plan would directly re-focus the City's open space planning away from existing community plans to a primary emphasis on "the MSCP Preserve."

While we support the concept of naming a "preserve" to carry out federal and state mandates for protection of the California Gnatcatcher, we believe that other open space and biological goals should be retained. Namely, open space important to communities. Proposed new language to the General Plan "Open Space Element" considers that the primary purpose of the "Natural Open Space System (is to protect) many of the natural landforms that characterize San Diego...." as well as maintaining biodiversity.[draft Implementing Agreement, City of San Diego, August 13, 1996, Exhibit J] 116(d)

All Open Space Outside of the "Preserve" Is Reduced In Value by the MSCP Plan

Despite this stated goal, the proposed General Plan amendments re-prioritize all of San diego's open space system. An entirely new formula designates either "urban amenity open space" or "natural open space." "Natural open space" reads: "This category consists primarily of the biologically sensitive lands designated as an open space preserve in the City's Multiple Species Conservation Program...." [P. 304a] "Urban Amenity Open Space", on the other hand, is "more suitable for a wider variety of human and recreational uses than are lands in the Natural Open Space System...."

While community and regional open space plans now determine what lands can or can't be developed, the proposed new system , effectively, says 'The MSCP Preserve will determine what is or isn't sensitive.' As a result, there will be a reduction or elimination of protection of biologically-related resources and landforms within communities that currently serve to give our communities their form and character.

It appears that this entirely new view of open space is based on the MSCP philosophy that if land is not in the actual "hard line preserve", it will have no open space value to the City. In fact, the proposed changes to the General Plan "Open Space Element" start off with the deletion of existing language stating that "Open Space that is designated in adopted community plans forms the mainstay of this category." [P 304]

We believe that the existing focus on community plans for the City's open space planning is as important as MSCP-designated open space. Lands in community open space may or may not contain federal and state endangered species, but, they provide significant value to the City by forming a break from urban development. Hillsides, canyons, streambeds, etc. go far to preventing walls of development. The EIR/EIS 116(e)

should address the changes in focus and the impact of these proposed changes on open space planning for communities and the City as a whole. 116(e)

Proposed "Environmentally Sensitive Lands Regulations" Remove Existing Environmental Regulations Important To Communities

A second area of concern is that the EIR/EIS inadequately discusses the replacement of all existing environmental regulations with the proposed "Environmentally Sensitive Lands Regulations" (ESL) described in the draft "Land Development/Zoning Code Update." [draft Implementing Agreement, Exhibit L, Draft Environmentally Sensitive Lands Regulations and Draft Open Space Residential Zone (OR-1-2)] 116(f)

Currently, community plans are drawn and open spaces, biologically sensitive areas, and hillsides are protected through the City's Resource Protection Ordinance, Hillside Review Permit processing, etc. The language of the proposed new ESL clearly replaces these regulations, eliminating community-specific preservation.

Because the effect of these changes is to sublimate all community-based open space--whether valuable for biological or landform reasons—to the MSCP-designated open space lands, the EIR/EIS should clearly evaluate the effect of this on existing communities and the open spaces connecting them. 116(g)

It is Questionable If Future Development Proposals Will Be Reviewable By Communities On Their Own Merits

A third area of concern is the "streamlining" of environmental review through adoption of a final MSCP Plan [EIR/EIS 2.1.1.4] "Environmental compliance (CEQA/NEPA)...is accomplished through a joint EIR/EIS for the MSCP Plan and all concurrently submitted Subarea Plans...." In other words, adoption of a final EIR/EIS for the MSCP is seen to be sufficient for all following land use plans and their amendments. In fact, "Subarea Plans submitted subsequent to the EIR/EIS will require additional environmental review, although such documents may tier off the joint EIR/EIS." 116(h)

This proposal essentially says that the final EIR/EIS will apply for all CEQA review. Development proposals in communities will "tier off" the master EIR/EIS.

This proposal further lessens the importance of community plans in open space planning. Community groups largely rely on EIRs with which to analyze development proposals. These EIRs provide the detailed view important to communities in evaluating compliance with their community plans. 116(i)

Because of these broad policy changes regarding City open space planning and regulating, the EIR/EIS should sharply focus on the effects we envision.

Jan Fuchs

Jan Fuchs, Chair

Joan Tukey

Joan Tukey, Vice-Chair

117 BRANDT, BERNIE, OCTOBER 29, 1996

117(a) See **Theme Response III, Economic Impacts and Impacts on Population and Housing** as well as the revised language in the Final EIR/EIS.

117(b) See **Theme Response III, Economic Impacts and Impacts on Population and Housing** as well as the revised language in the Final EIR/EIS.

117(c) See **Theme Response III, Economic Impacts and Impacts on Population and Housing.** The environmental effects of land use shifts are analyzed in Sections 4.2 and 4.6 of the EIR/EIS. The Biological Mitigation Ordinance is analyzed as a separate discretionary action in the EIR/EIS.

117(d) The Public Lands Scenario was not included in the analysis of any of the subarea plans, including the County Subarea Plan, as described on page 2-53 of the Draft EIR/EIS.

117(e) See **Theme Response III, Economic Impacts and Impacts on Population and Housing.**

117(f) Comment noted.

117(g) See **Theme Response III, Economic Impacts and Impacts on Population and Housing.**

117(h) Comment noted.

117(i) See **Theme Response V, Taking of Private Property.**

117(j) The comment is noted. The significance of the issues discussed under the referenced Issue 3 is recognized. That is why the Issue 3 analysis was included in the Draft EIR/EIS.

117(k) See **Theme Response III, Economic Impacts and Impacts on Population and Housing.**

117(l) Protection of habitats on public lands is considered to be a part of public contribution to the MSCP preserve. Relative contributions of the public and private sectors, including habitat protection on public lands, are described in the MSCP Plan, Volume I, Section 4.1.1.

117(m) No rezoning is being proposed by the County. Changes in zoning in the City of San Diego are the subject of an EIR that was released November 1996 for public review and comment.

117(n) See **Theme Responses V, Taking of Private Property, and III, Economic Impacts and 'mpacts and Population and Housing.**

117(o) The legislative history of Section 10(a)(1)(B) of the federal Endangered Species Act (ESA) clearly indicates that Congress contemplated that the U.S. Fish and Wildlife Service would approve HCPs that protect unlisted species as if they were listed under the ESA and provide assurances for such unlisted species. See Section 6.0 of the Model Implementing Agreement.

117(p) Comment noted.

117

BERNIE BRANDT
2836 CORNELIUS PL.
LEMON GROVE, CA 91945

Tel. 619-464-0448

Fax 619-464-1778

October 28, 1996

John Kovac, Senior Planner FAX: 236-6620
Development and Environmental Planning Division
City of San Diego
1222 First Avenue, 5th Floor
San Diego, CA 92101

RE: Comments on the EIR/EIS for the MSCP dated Aug.1996

Dear Mr. Kovac:

Chapter 4:6, Population and Housing, Page 4:6-1, Criteria for Determining Impact Significance, states "A shift from inside of a Preserve Planning Area to outside a Preserve Planning Area of 25% or greater ----- is considered a significant impact. A shift of such magnitude entails a reduction in local housing supply that could result in adverse impacts to housing affordability and timely provision of public services and utilities." However, on page 4:6-22, under Issue 1, B.3.6 (B.P. Scenario), County Sub-Area Plan, it states that approximately 24% of developable lands in the County of San Diego Sub-Area Plan will have to be shifted to outside the preserve. And yet, it concludes that "no housing density changes are anticipated and no significant population/housing impacts have been identified for the County of Chula Vista." (I assume this was a typographical error and should have said San Diego.) Typographical error aside, I am appalled at the false summary using the criteria called for in determining the significance of impact. **117(a)**

Again, under Issue #2 on page 4.6-41, B.3.6. (B.P. Scenario), County of San Diego Sub-Area Plan, criteria for determining significant impacts are completely ignored and even though 19,690 acres, or 34.0% of the residential land will have to be shifted to lands outside the preserve, there is the audacity to conclude that "impacts to population characteristics would be less than significant," and "In summary, no significant population/housing impacts have been identified for the County of San Diego Sub-Area Plan." **117(b)**

This report also neglects to say where 34.1% of residential land lost will be shifted to. It also does not differentiate between the three County Sub-Area Plans, nor does it take into consideration the effect of the proposed Biological Mitigation Ordinance. **117(c)**

There is no Public Land Scenario for the County Sub Area Plans which constitutes 43% of all MSCP lands. **117(d)**

117

The Impact Analysis for Issue #3 in Ch.4.6, Population and Housing, pages 4.6-44 to 4.6-55 is woefully inadequate, innacurate and speaks in generalities resulting in false conclusions.

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? 117(e

The affects of the MSCP on Issue #3 are beyond a doubt the most vital issues determining the economic future of every person within the MSCP study area and the whole region around for a period of fifty years under the Implementing Agreement. 117(f)

No mention is made of the reported loss of 37,550 housing units and the loss of 32,320 jobs (Page 5-2 of the 1995 MSCP) and that was with only 57 protected species. 117(g

To be at all valid each jurisdiction (as each one must sign their own unique 50 year agreement) should have its own impact analysis on the effect of the MSCP. Each jurisdiction has unique characteristics and diversities and cannot be vaguely generalized into one pattern. The unincorporated county area comprises 43% of the proposed MSCP preserve plus a proposed Biological Mitigation Ordinance with an additional list of several hundred so-called sensitive plants. This is not even mentioned under the impact analysis. 117(h

To my knowledge, no Economic Impact Study has ever been done on the disastrous financial impact to thousands of private property owners whose lands have already been greatly devalued by the proposed MSCP, and who stand to lose most of their property without compensation or be forced into a biological maintenance program with no limit on requirements or costs. This not only causes devastating financial loss to private property owners who would like to build, but the cumulative financial impact would seriously undermine the financial haelth and economic prosperty of the whole region and everyone in it for years to come. 117(i)

The issues under Issue #3 cannot be ignored but should be individually and fully studied by professionals in each respective field in order to project accurate and realistic figures in an EIR-EIS. 117(j)

In Chapter 4.6, Population and Housing, pages 4.6-1 to 4.6-43, almost all of the tables and conclusions are based on projections up until the year 2005, nine short years from now, and claim there is sufficient land for development. However, the City of San Diego says it will run out of land by 2005, even without the acreage lost to MHPA. On page 4.6-40 there would be a significant shortage before 2005. What happens after 2005? The MSCP Contract goes on for fifty years and the land taken remains in perpetuity resulting in significant adverse impacts. The lack of planning for housing and population after the year 2005 is totally inadequate and inexcusable. 117(k)

117

The contribution of existing public lands to the preserve should be accounted for as part of the public cost, as these lands were obtained with tax money and belong to the public who, in turn, will be prohibited (restricted) from its use. 117(l)

The EIR/EIS should list all of the present existing zoning of the private properties affected by the MSCP and MHPA and also the type and locations of all newly required zoning changes to bring land into conformity with the dictates of the MSCP, MHPA proposals as required in the Implementing Agreement. Until this is done, any EIR/EIS is premature and leads to inaccurate conclusions at best. 117(m)

I believe there is insufficient lawful documentation that allows local jurisdictions to specifically rezone private property for the express purpose of bringing it into conformity with a fifty year contract with the federal and state wildlife agencies for a habitat preserve. This is especially in light of the fact that 63,000 acres are not scheduled for compensation for the loss of the land. I believe this is unconstitutional and violates the basic principles and freedoms that our local, state and federal governments were designed to protect. 117(n)

I believe there is insufficient official documentation that allows the U.S. Fish and Wildlife Service to give a take authorization under 10 (a)(1)(b) for any species that they do not list as endangered or threatened, including plant species listed as sensitive by a non-governmental agency. I believe the language used throughout the Joint EIR/ESA is ambiguous as to which plants and animals the federal government will give take authorizations for and when and at what time they will happen. 117(o)

As there is a distinct possibility of future litigation, I hereby reserve the right to re-address vital issues within the Recirculated Draft Joint EIR/EIS Issuance of Take Authorizations for Threatened Species Due to Urban Growth Within The Multiple Species Conservation Program (MSCP) Planning Area, LDR No. 93-0287, SCH No. 93121073. These vital issues, I believe, contain legal inadequacies and deficiencies, inaccuracies, inconsistencies, incompleteness, unscientific and erroneous summaries, which may or may not be called attention to in the above letter. 117(p)

Sincerely,

Bernard Brandt

Bernard Brandt

118 ANDERSON, DESERT PROTECTIVE COUNCIL, INC. OCTOBER 29, 1996

118(a) See **Theme Response XXIV, No Surprises.**

118(b) See response to Comment 25(a).

118(c) The wildlife agencies have indicated to the County that a modification of the exemption may be necessary to achieve the goals of the County Subarea Plan.

118(d) See **Theme Response XIV, Biological Monitoring.**

118(e) Comment noted.

118(f) Comment noted. Another option is the acquisition of land in critical areas from willing sellers.

118(g) Comment noted. The revised County Biological Mitigation Ordinance will include recreational facilities within the definition of essential public facilities. For an essential public facility to be exempt the following findings must be made:

(a) The facility or project is consistent with adopted General Plans or subregional plans and the MSCP Subarea Plan;

(b) All possible mitigation measures have been incorporated into the facility or project, and there are no feasible, less environmentally damaging, location, alignment or nonenvironmentally damaging, location, alignment or non-structural alternatives that would meet project objectives;

(c) Where the facility or project encroaches into a wetland or floodplain, mitigation measures are required that result in a net gain in wetland and/or riparian habitat;

(d) Where the facility or project encroaches into steep slopes, native vegetation would be used to revegetate and landscape cut and fill areas; and

(e) No mature riparian woodland is destroyed or reduced in size due to otherwise allowed encroachments.

(f) All Critical Populations of Sensitive Plants species listed on Attachment B of the BMO would be avoided.

118

THE DESERT PROTECTIVE COUNCIL INC.

A NON-PROFIT ORGANIZATION

To safeguard for wise and reverent use by this and succeeding generations those desert areas of unique scenic, scientific, historical, spiritual and recreational value and to educate by all appropriate means children and adults to a better understanding of the desert.

P.O. BOX 2312 • VALLEY CENTER • CALIFORNIA 92082

DESERT PROTECTIVE COUNCIL
ADVISORY PANEL

SYLVIA BROADBENT
Professor of Archaeology

DOROTHY COWPER
Archaeologist

PETE DANGERMOND
Park Consultant

MARY DEDECKER
Botanist

BETTY FORGEY
Desert Tortoise Activist

MICHAEL FROME
Author

AUGUST FRUGE
Conservationist

WILBUR MAYHEW
Professor of Zoology

ART MONTANA
Professor of Earth Sciences

KAREN SAUSMAN
BioPark Director

RICHARD SPOTTS
Wildlife Advocat

ROBERT STEBBINS
Herpetologist

FRANK VASEK
Professor of Botany

LEONARD VINCENT
Professor of Biology

STANLEY WELSH
Museum Curator

FRANK WHEAT
Attorney

HOWARD WILSHIRE
Geologist

DATE:

OCT. 29, 1996

LAWRENCE C. MONSERRATE, PRINCIPAL PLANNER
CITY OF SAN DIEGO, Development Services Department
LAND DEVELOPMENT REVIEW DIVISION
1222 First Avenue, Mail Stauon 501
San Diego, CA 92191

Dear Mr. Monserrate:

RE: Multiple Species Conservation Program (MSCP) Plan; Comments on the Draft Environmental Impact Report/Draft Environmental Impact Statement

The Desert Protective Council, organized to ensure the preservation of the unique desert environment of Southern California, is also concerned that the natural environment throughout Southern California is given adequate protection. In that regard, we appreciate the opportunity to respond to the Draft EIR/EIS of the Multiple Species Conservation Program. The objective of this program, to preserve indigenous species and habitat at sufficient levels to allow for continuing species viability while supporting land development needs, is commendable.

1) ADDITION AND LOSS OF COVERED SPECIES

The MSCP Plan (page 3-25) describes a process for adding species to the covered species list. However, there does not appear to be a mechanism for removing species from the covered list. This should be added in case the Plan is not adequate to preserve some initially covered species. If a species is not protected by the Plan, even with changes in preserve management designed to enhance its preservation, then its removal from the list could possibly trigger other regulations that would assist in preservation of that species outside of the study area. Even though guarantees have been made to jurisdictions that they will not be required to take further action to protect any of the initially covered species, other areas could be alerted to try to protect any extirpated species through such a delisting or other notification.

118(a)

118

October 29, 1996

2) INTERIM USE OF CURRENT REGULATIONS AND ORDINANCES

According to the Draft EIR/EIS (page 3-7), approximately 104,700 acres of grazing land is located in the study area of 582,243 acres. This means that over 40% of the 255,000 acres of vacant land has been designated as grazing land. There is very little further description of the usage of the lands so designated, or of any planned management of this usage so as to protect native species. As has been extensively documented, the presence of cattle, especially where overgrazing is allowed, has led to the loss of many indigenous plants, especially in the west where water availability is low and native plants are sensitive to overgrazing. There are no county regulations on grazing; the MSCP itself does not address grazing activities. From the maps provided, it appears that some of the grazing areas are located in predetermined mitigation areas. Since studies have shown that the quality of valuable habitat can be vastly improved with sensible management of grazing activities, when such activities occur on identified high value habitat, there should be some provision for encouraging practices that will preserve habitat. 118(b)

These provisions could be similar to the grubbing and clearing ordinances that the county will use to ensure that habitat is not destroyed prior to local approval of habitat loss. This would be consistent with the Phased Local Implementation as described in Section 2.1.4.2 of the Draft EIR/EIS which requires interim use of current regulations and ordinances.

Current regulations allow agricultural clearing with only the requirement that planting will occur over the next 5 years. This requirement should be expanded so that no clearing which would disturb covered species is allowed and there is monitoring of the clearing. 118(c)

3) BIOLOGICAL MONITORING

Monitoring of the Plan as described on page 4.3-178 of the EIR/EIS allows for annual accounting of acreage, type and location of habitat conserved and taken, and biological monitoring to determine if the preserve is meeting conservation goals for covered species. Report of data will be issued every three years.

The Biological Monitoring Plan for the MSCP, Jan. 25, 1996, Rev April 23, 1996, prepared by Ogden, describes in detail the methodology to be used. According to this plan, details of specific covered plant and animal populations will be included in the subarea plans, in the implementing agreements and shown on maps. Such inclusions should be guaranteed.

The baseline for habitat monitoring will be a vegetation map primarily based on color infra-red aerial photography performed in 1990 and updated in 1995. Limited field-verification was performed with detailed verification in selected portions of the 118(d)

study area. Monitoring is designed to identify adverse changes, but should be expanded to include evaluation of positive changes so that the reasons for these positive changes, e.g., weather, revegetation, good management practices, etc., can be identified. Habitat monitoring locations have been selected but there needs to be a plan for either increasing or decreasing or moving these locations if the studies do not provide sufficient data for analysis. On pg. 3-20, habitat monitoring is stated to be scheduled at five-year intervals. However, since reporting on the monitoring of linkages and species is scheduled to occur at three-year intervals, it might be more effective to have habitat monitoring reported at the same intervals. Also, the Biological Report is scheduled to be presented to the oversight committee at three year intervals. 118(d)

The monitoring program should alert the preserve management to areas that are not meeting the requirements of the preserve with some provision for penalties to be imposed to encourage good preserve management.

Active land use within and immediately adjacent to the preserve may result in significant indirect impacts. Provisions should be made for the monitoring, management and regulation of adjacent uses.

According to the MSCP Plan (page 4-3) the final preserve will consist of 171,920 acres with 63,170 or about 37% of those acres coming from privately owned lands. The Biological Monitoring Plan only covers the preserve itself. Private lands that are being used as mitigation banks will need to be monitored to assure that they adequately fulfill that role over time. Of the many areas that are not yet in the preserve, what assurances do we have that the habitat now on these lands will not degrade over the years? There may be a necessity for changing preserve management and acquisition systems to counteract changes in privately-held lands. Thus during the period of preserve build-up, there needs to be some mechanism for determining possible changes in areas currently identified with high habitat but not yet in the preserve itself.

4) AREAS WITH UNDETERMINED DEVELOPMENT STATUS

A critical portion of the County Subarea is the Metro-Lakeside-Jamul Segment, since plans for this area have not been negotiated with the agencies and there are no "hard line" areas. Instead there are goals and criteria on the number of acres of different habitat types, including corridors and linkage areas which must be included. However, in this area there are severe limitations on the availability of biologically valuable land, including areas of critical connectivity, due to the constraint of existing development. The draft BMO defines as "constrained linkage" areas that provide connectivity between large blocks of core biological resources, but are constrained by existing development. Maintaining these linkages is critical to the long-term viability of the core habitat areas. 118(e)

116

October 29, 1996

Since entry into the preserve of private property will be voluntary, the County needs to develop a mechanism for bringing highly valuable, unique, irreplaceable core habitat and linkage areas into the preserve. For example, allowing single unit development, exempt from regulation in areas with unique, highly sensitive habitat may have the unwanted effect of completely negating the possibility of providing a viable linkage or core area. Some type of review system for sensitive areas is needed to ensure their preservation. One approach would be to identify those lands which are in sensitive areas and provide restrictions to their uses which would facilitate habitat preservation. These restrictions would apply only to private land where development must be limited in order to implement open space policies. To help implement the habitat preservation goals of the MSCP certain development restrictions would be applied to lands identified as being in environmentally sensitive areas suitable for inclusion in the MSCP preserve area. Some of these provisions would address the portion of the land which could be developed, the densities of dwelling units allowed and the management and monitoring of the preserved portion of the land. 118(f)

The Plan now says that public and publicly used facilities are exempt from MSCP. This should be reduced to uses that strictly meet a need for public health and safety, not just general public recreational or meeting types of uses. Should be narrowed to public health and safety. This is found in the BMO, Appendix 1 of the County Subarea Plan, page 3, under 9a.

118(g)

This is a very large and comprehensive plan. The major objective, to preserve unique native species and habitat in the face of strong development pressures, is admirable. However, it is a necessary step and, hopefully, not too late to preserve a quality of life that, once lost, is irretrievable. As a conservation group, the Desert Protective Council is sensitive to the consequences of species and habitat forever lost and we encourage this effort to prevent those losses.

Sincerely,

Janet A. Anderson

Janet A. Anderson
Member, Board of Directors

119 NAVARRO, E., CALIFORNIA DEPARTMENT OF PARKS & RECREATION, 10/29/96

R **119(a)** The habitat linkages between Torrey Pines State Reserve and other habitat lands to the east are tenuous. This situation is ...e result of already exist...g or approved projects, which eliminated the opportunity for major improvements in habitat connectivity to the Torrey Pines State Preserve. The MSCP Plan states that the Sorrento Valley corridor moving west toward the Torrey Pines State Reserve from Los Peñasquitos Canyon "is most likely not being used by wildlife due to restrictive conditions involved." However, recent survey information provided by the Friends of Los Peñasquitos Canyon Preserve (see letter of comment #115 from Friends of Los Peñasquitos Canyon Reserve dated October 27, 1996 in this document) indicates that there is still considerable wildlife activity in this corridor, including coyote, fox, bobcat, and mule deer. Given the current wildlife activity, plus management activities proposed by the City of San Diego, there is some optimism that wildlife movement can be maintained, and perhaps enhanced in this corridor. The two corridors connecting Torrey Pines Ecological Reserve to lands to the east are proposed for long-term monitoring by the MSCP Biological Monitoring Plan, which will help focus management attention on these important corridors. Funding assistance from the State Department of Parks and Recreation could help improve these conditions and help achieve the State Department of Parks and Recreation's goals for Torrey Pines State Reserve.

119(b) The EIR/EIS describes the reductions in land development that would occur under the proposed project compared to current land use in the Community Plans. For those Community Plans that contribute to the Los Peñasquitos watershed, the reduction in developed acres are: Carmel Valley Community Plan (99 acres) and Rancho Peñasquitos Community Plan (190 acres). These reductions, combined with already required improvements to lower Carmel Valley (Carmel Valley Restoration and Enhancement Program) that address freshwater flows and sediments, should benefit the lagoon compared to the existing plans for the watershed.

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DEVELOPMENT SERVICES

San Diego Coast District
9609 Waples Street, Suite 200
San Diego, CA 92121

October 27, 1996

Mr. Lawrence Monserrate, Principle Planner
City of San Diego
Development Services Department
Land Development Review Division
1222 First Avenue, Mail Station 501
San Diego, CA 92101

RE: Dep No. 93-0287/SCH 93121073

Dear Mr. Monserrate,

This letter is in response to the Multiple Species Conservation Program (MSCP) plan and the corresponding Environmental Impact Report/Environmental Impact Statement. Upon review of these documents, the California Department of Parks and Recreation (DPR) has identified two main issues regarding the plan's relationship to, and potential impacts upon, the biological diversity and natural resources of DPR lands in the Torrey Pines area.

Torrey Pines State Reserve (TPSR), which includes Torrey Pines State Park and Los Penasquitos Marsh Natural Preserve, is unique in that it is one of the few large areas of natural coastal habitat remaining within the limits of the City of San Diego. The reserve is also an important contributor to regional biodiversity. Populations of several protected or sensitive species occur on the reserve, including least tern, least Bell's vireo, snowy plover, light-footed clapper rail, California coastal gnatcatcher, San Diego horned lizard, silvery legless lizard, and orange throated whiptail lizard. Large vertebrates such as mule deer, coyote, bobcat, and mountain lion have also been documented to use the reserve.

In light of the high value of the natural resources within the reserve, TPSR is considered a "core biological resource area" and is expected to play an important role in achieving the overall MSCP goal of maintaining local biodiversity in northwestern San Diego county. However, in order for the reserve to contribute significantly to this goal, the MSCP must provide for: 1) effective biological linkages in the form of natural habitat corridors between TPSR and other preserved areas, and 2) the maintenance of high resource values within the reserve by limiting external perturbations such as freshwater input from surrounding development to Los Penasquitos Lagoon. These issues, which are detailed below, are inadequately provided for in the current MSCP plan, and should be addressed more fully in the final EIR.

1. Wildlife corridors

A major goal of the MSCP is to provide habitat corridors that will function as biological linkages among otherwise isolated patches of native habitat. At the current

119(a)

the Carmel Mountain underpass provided a functioning wildlife corridor between TPSR and undeveloped lands to the east. However, development activities on Carmel Mountain recently severed this last linkage. It is critical, both for the maintenance of viable populations within the reserve and for the success of the MSCP in maintaining biological diversity in the north county area, that effective wildlife corridors be re-established for TPSR.

The MSCP plan includes two corridors which are intended to connect TPSR with other preserved areas to the east of the reserve. In the south, there is a rip-rap channel which "winds west from Los Penasquitos Canyon, underneath freeways, local roads, and railroad tracks to gain access to the Lagoon and State Park. This is most likely not being used by wildlife due to the restrictive conditions involved." (MSCP vol II, City of San Diego Subarea Plan, pg. 21). The MSCP plan proposes to "enhance the channel and provide noise barriers along I-805 to encourage wildlife movement." (pg. 25). However, these improvements would be made only "if funds become available in the future". In the north, the connection into Los Penasquitos Lagoon is via Carmel Creek (CVREP) which currently has only 6-8 feet of clearance under the I-5 freeway. Because of the extremely small size of this connection, this is also not currently a functioning corridor for most wildlife. The MSCP plan suggests that this corridor may become functional with the I-5 bridge that Caltrans is building over Carmel Creek and if the culvert under Sorrento Valley Boulevard is enlarged. Also, the Sorrento Valley Boulevard culvert may be replaced by a bridge "if funding becomes available".

Neither the south nor north linkages are acceptable as wildlife corridors in their current conditions, and the MSCP plan fails to require the necessary improvements to create high-quality corridors connecting TPSR to other lands. Without major restoration and revegetation, it is unlikely that the south corridor will ever be used by most sensitive or keystone (i.e., mammalian predators) species. It is unclear what is meant by the statement that the rip-rap channel may be "enhanced", but restoration to the level necessary to make this a functioning corridor is clearly neither detailed nor required in the plan. The proposed northern linkage to TPSR is also tenuous, because it relies on extremely narrow connections at Carmel Creek (the I-5 bridge) and Sorrento Valley Boulevard (a culvert). Because the exact diameter and length of the Sorrento Valley Boulevard culvert is not specified, it is not possible to evaluate the effectiveness of this linkage.

Furthermore, the fact that both of the corridors discussed above rely upon the very small probability of funding becoming available at some time in the future is a problem. Unspecified and uncertain funding is a problem for many proposed corridors in the north county area east of Torrey Pines (e.g., C2, C5, C6, C7 on pgs. 22-23). Yet even if such funds do eventually materialize, in the meantime small, isolated populations may decrease below the threshold of viable population size and may go locally extinct as a result of loss of genetic variability, decreased reproductive recruitment, stochastic environmental fluctuations, food web disruptions (e.g., unnatural predator-prey balance), or a number of other factors. It is misleading and inappropriate for the MSCP plan to show corridors on the map which are not currently biologically functioning linkages, and for which there are no assurances of funding specified in the plan.

119(a)

Based on the above considerations, DPR concludes that the MSCP in its current form does not adequately provide connections of high-quality habitat that will actually function as wildlife corridors for TPSR. As a result, the impact to the reserve will be continued ecological isolation. Consequences of this isolation will likely be decreased viability of populations and loss of diversity both within the reserve and outside the reserve in other preserved areas of northern San Diego county. 119(a)

2. Sedimentation and freshwater input to Los Penasquitos Marsh Natural Preserve

The Los Penasquitos Marsh Natural Preserve is an important wetland resource to San Diego County. Current threats to the native biodiversity of the lagoon are primarily in the form of unnatural levels of sedimentation in the lagoon, and upsets to the delicate balance between seawater, brackish water, and freshwater that exists in natural estuaries like Los Penasquitos. Land development and human activities in the Los Penasquitos watershed have resulted in unprecedented amounts of sediment deposition and freshwater draining into the preserve. Sediments cause degradation of the lagoon bed. As areas become elevated above the water table, wetland and marsh vegetation become displaced by upland and exotic species. Increased freshwater input has also facilitated the ongoing, progressive invasion of non-native vegetation into the lagoon, resulting in replacement of the native community with exotics and in decreased diversity. Estuarine flora and fauna are adapted to survive a relatively wide range of salinity, however they are susceptible to increased mortality when salinity reaches the freshwater extreme. 119(b)

Management efforts to combat these ongoing threats to the ecological health and biodiversity of the preserve are expensive and are not the best solution. Large-scale planning to reduce the amount of sediment and freshwater input into the lagoon is necessary, but is not included in the current MSCP plan. While the MSCP plan provides for the future development of substantial amounts of land within the Los Penasquitos watershed, the plan does not address the point source, non-point source, and cumulative impacts that such development would have on the lagoon in the form of increased sedimentation and freshwater inflow. In order for the Torrey Pines area to continue contributing to the maintenance of biodiversity in San Diego County, it is critical that the biological value of preserved habitats such as the Los Penasquitos Marsh Natural Preserve not be decreased by activities on non-preserved lands.

The California Department of Parks and Recreation requests that the issues presented above be considered in the final versions of the MSCP and EIR/EIS documents.

Sincerely,

Edward Navarro, Superintendent
San Diego Coast District

120 CRAIG A. SHERMAN, 10/24/96

120(a) See response to Comments 68(a) and 68(b).

120(b) As stated in response to Comment 68(c), the participating local jurisdictions will implement the terms of the MSCP, subarea plan, and land use regulations, mitigation, compensation, and habitat management obligations as committed to in their implementing agreements. It is the responsibility of the wildlife agencies to ensure that the jurisdictions adhere to these commitments.

120(c) See **Theme Response X, Habitat Conservation Accounting Model.**

120(d) Comment noted. See responses to Comments 120(a)–120(c).

120

CRAIG A. SHERMAN
ATTORNEY AT LAW

1901 FIRST AVENUE, SUITE 335
SAN DIEGO, CA 92101-2322

TELEPHONE
(619) 702-7892

FACSIMILE
(619) 702-9291

October 24, 1996

Via Facsimile 467-4235
Cal. Department of Fish and Game
Mr. Ron Rempel
Mr. Bill Tippets
Mr. Dave Lawhead

Re: Multiple Species Conservation Program (MSCP) for the City of San Diego

Dear Sirs:

I forward this recommendation in light of its importance as acknowledged by the agency officials at the October 22, 1996 Endangered Habitats League meeting attended by Mr. Michael Spear, Mr. Gail Kovetich, Mr. Mark Ebbin and Mr. Ron Rempel.

It is imperative that the following be included in all Implementing Agreements with the Participating Local Jurisdictions (PLJ). Because the MSCP is built on future actions with varying degrees of flexibility and discretion, there must be objective measures to evaluate whether the MSCP is meeting the requirements and limitations posed by the respective state and federal Endangered Species Acts.

The resource agencies (USFWS/DFG) must at a minimum every three years make determinative findings, whether PLJ implementation has met the terms of the Agreement. Otherwise, the legal requirement of "certainty," which is derived from the so-called implementation "assurances" cannot be objectively measured and renders the Agreement difficult to enforce as conjecture and may be considered void or voidable. Recognizing the import of all stakeholders participating in success of the MSCP, these "findings" should be made subject to public review with a hearing where public testimony is received. 120(a)

More specifically, to ensure that the "certainty" element of this Agreement can be met per Section 8.0 of the Implementing Agreement, the following considerations should be included:

1) There must be discernible points in time in the MSCP implementation process where the agencies render "findings," such as during the annual evaluation per Section 14.2 or at a minimum every three years per Sections 14.4 and 14.6 of the Implementing Agreement. Placing the authority to make MSCP findings with the PLJ's (as per Section 14.2) is tantamount to letting the fox guard the henhouse.

2) Resource agency comments pursuant to any CEQA review process must be afforded the value and weight of MSCP implementation "findings." This oversight is necessary for orderly construction and preservation within the preserve, while providing that "assurances" are being maintained as to not foreclose future preserve options. In this manner, each PLJ will necessarily have less discretion in overruling the interpretations and recommendations of the "resource specialists" (agencies). 1

3) These "findings" should be designated as adjudicative (mandatory) where criteria is specific or quantifiable and should be designated discretionary where the criteria is interpretive as established by the requirements and duties in the collective MSCP documents.

These considerations are significant because the list of "covered species" under the MSCP is dependent on many future actions and it will be difficult to track each and every PLJ action affecting such species. Additionally, the species specific management plans (by area) will not ensure species protection until ample area of the preserve is acquired. This will take at least 15-20 years for many areas and until then, resource agency "findings" must be binding.

Please note, that demands to each PLJ will be made to require them to make "findings" and hold public hearings on an annual basis.

Sincerely,

Craig A. Sherman

cc: Department of Interior, Mr. Mark Ebbin
U.S. Fish and Wildlife Service - Mr. Gail Kovetich, Ms. Sherry Barrett, Ms. Nancy Gilbert
City of San Diego - Rick Duvernay

121 CINDY BURRASCANO, 10/29/96

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121(a) Comments noted. See **Theme Response I, Species Analysis Approach** and revised MSCP Table 3-5 included in the Revisions to the MSCP Plan, January 1997.

121(b) The biological data base used in the Draft Joint EIR/EIS analysis is summarized on pages 4.3- 1 through 4.3-3 of the Draft Joint EIR/EIS. The MSCP Resource Document contains much of the referenced biological data base and is available for review at the specific libraries listed on Table 4.1-1 of the Draft Joint EIR/EIS.

121(c) Little mousetail is not proposed as a covered species under the MSCP. Because it is a vernal pool species, it will continue to receive some protection through Section 404 of the Clean Water Act, and it will be addressed through the CEQA review process.

121(d) San Diego Bay is under the jurisdiction of the Port Authority, which is not a participant in the MSCP. Tidal areas and their adjacent wetland will continue to be regulated under Section 404 of the Clean Water Act and Section 10 of the Bays and Harbors Act. Proposed marinas will be required to obtain all permits as presently required. Mission Bay will continue to be managed as a recreation area.

121(e) The proposed MHPA would conserve 66% of the major populations of *Ericameria palmeri* ssp. *palmeri*. This species is also on the list of narrow endemics.

121(f) The MSCP Plan conserves 92 percent of southern foredune habitat, which is the potential habitat for *Lotus nuttallianus*. The largest populations of this species occur on military lands, which are not part of the MSCP Plan. The wildlife agencies are currently working with the U.S. Navy to provide protection for this species where it occurs on military lands in South Bay (i.e., Silver Strand). Management plans will be required to include measures to protect against detrimental edge effects.

121(g) *Ornithnostaphylos oppositifolia, Atriplex pacifica,* and *Camissonia lewisii* were not evaluated for coverage under the MSCP. They will continue to be subject to existing regulations. The MSCP Plan provides mechanisms for amending the take authorizations to include additional, uncovered species in the future (MSCP Plan, Volume I, Section 3.4).

121(h) See **Theme Response XIX, Preserve Management.**

IV. MITIGATION MONITORING and REPORTING PROGRAM

For:

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

Co-Lead Agency:

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

JANUARY, 1997

121

The plan should have included information on additional highly restricted species, most of them having highly limited distribution in the coastal areas. *Ornithostaphylos oppositifolia* is known only from the boundary of the United States with Mexico by Tijuana. This species is being driven into extinction in the United States. How is this plan helping this highly restricted species? What management changes will be provided to the area that used to support this species? How will it be helped to recover from our impacts?

Atriplex pacifica is known from only 8-10 places in the plan area with each location only containing 10 plants at most. It is not clear to me that this species will receive any protection from this plan yet there is the expectation of unlimited development outside of the preserve. Given the rarity of this species, analysis of impacts of this plan to this species is expected under CEQA. Please provide specific discussion of the impacts, direct and cumulative, to this species. 121(g)

I expect *Camissonia lewisii* to receive at least limited help if future management plans are developed for Nuttall's lotus. Are there any management plans? How can impacts to species such as this be minimized or avoided if there are not management plans adopted at the same time take is being permitted to habitats? Please explain the impacts of this program to *Camissonia lewisii*.

How will management plans be developed? Is a state or federal employee actually going to go out to preserve lands and see if the mapped species are really there? Are threats in that particular area going to be assessed for each species? Will that analysis be left to local jurisdictions? Or as is currently the usual technique, will we build houses all along narrow steep sided canyons and scenic vistas and walk away from our impacts so that drainage changes, weeds, landscaping, and pets destroy that which the land was set aside to protect? 121(h)

Thank you for the opportunity to comment.

Sincerely,

Cindy Burrascano

Cindy Burrascano
771 Lori Lane
Chula Vista, CA 91910

INTRODUCTION

This Mitigation Monitoring and Reporting Program (MMRP) was prepared for the *Issuance of a Take Authorization for Threatened and Endangered Species within the Multiple Species Conservation Program (MSCP) Planning Area* in San Diego County, California (LDR No. 93-0287, SCH No. 93121073). A joint Environmental Impact Report/Environmental Impact Statement (EIR/EIS) was prepared that identified significant impacts associated with implementing the MSCP. This MMRP complies with the CEQA mitigation monitoring statute (Public Resources Code Section 210181.6) which requires public agencies to adopt such programs to ensure effective implementation of the mitigation measures.

This program shall be a requirement of the discretionary actions required for the City of San Diego to implement the MSCP. These actions include adoption of the MSCP program level plan that identifies the Multiple Habitat Planning (MHPA) area. Other discretionary actions associated with the City of San Diego include the City of San Diego Subarea Plan and associated implementing actions including general plan and community plan amendments. The MMRP will remain on file at the City of San Diego Development Services Department. Other responsible take authorization holders participating in the project shall be responsible for preparing a separate MMRP for mitigation and impacts identified for that take authorization holder.

The following text includes a list of mitigation measures identified in the EIR/EIS prepared for the project and the monitoring efforts necessary to ensure that the mitigation measures are properly implemented. The mitigation and monitoring requirements are presented in their respective order. The EIR/EIS for the MSCP contains an analysis of multiple alternatives and discretionary actions. Only the mitigation identified for the City of San Diego Subarea Plan and the mitigation identified for the Multiple Habitat Planning Area (MHPA) that is relevant to the City of San Diego are included in this document. The numbering assigned to the individual mitigation measures is taken from the EIR/EIS.

4.2-MHPA-3/4 **Conflict with residential goals of East Elliott CP regarding orderly development and school and park facilities** – A comprehensive update of the East Elliott Community Plan should be undertaken. Efforts should be made to coordinate the update associated with the Subarea Plan with the standard update schedule conducted for all PFFP's within the City. The amendment should address the following specific issues:

- Analysis required for the CP update should include an evaluation of required school capacity and park facilities needed to serve the remaining 117 acres of residential development within the CP area associated with Alternative One. As part of the CP amendment, provision of school and park facilities to serve the CP residential development in accordance with the adopted standards of the City and the appropriate school district should be assured.

4.2-MHPA-5/6 **Conflict with Otay Mesa PFFP regarding timely provision of public facilities and school and park facilities** - A comprehensive update of the Otay Mesa CP and PFFP should be undertaken. Efforts should be made to coordinate the update associated with the Subarea Plan with the standard update schedule conducted for all PFFP's within the City. The amendment should address the following specific issues:

- An evaluation of facility phasing and financing issues raised by the reduced number of units to be accommodated within the CP area should be undertaken. The update should assure that public facilities are provided in a timely fashion in accordance with City Community Planning and Engineering Capital Projects Department level of services standards.

- Analysis required for the CP update should include an evaluation of required school and park facilities needed to serve the residential development within the CP area. As a part of the CP update, provision of school and park facilities to serve the CP residential development in accordance with the adopted standards of the City and the appropriate school district should be assured.

MONITORING AND REPORTING

Prior to approval of future updates to the General Plan Housing Element, as well as future Community Plan and PFFP updates for the Rancho Peñasquitos, East Elliott and Otay Mesa Community Plans, the City of San Diego Development Services Department shall review the update to determine that efforts have been made to avoid or reduce the identified impacts related to affordable housing as well as the demand for public facilities.

1. LAND USE

MHPA-PROPOSED PROJECT – MITIGATION MEASURES

If implemented, the measures listed below for Land Use Impacts MHPA-1 through MHPA-6 could potentially reduce identified land use impacts.

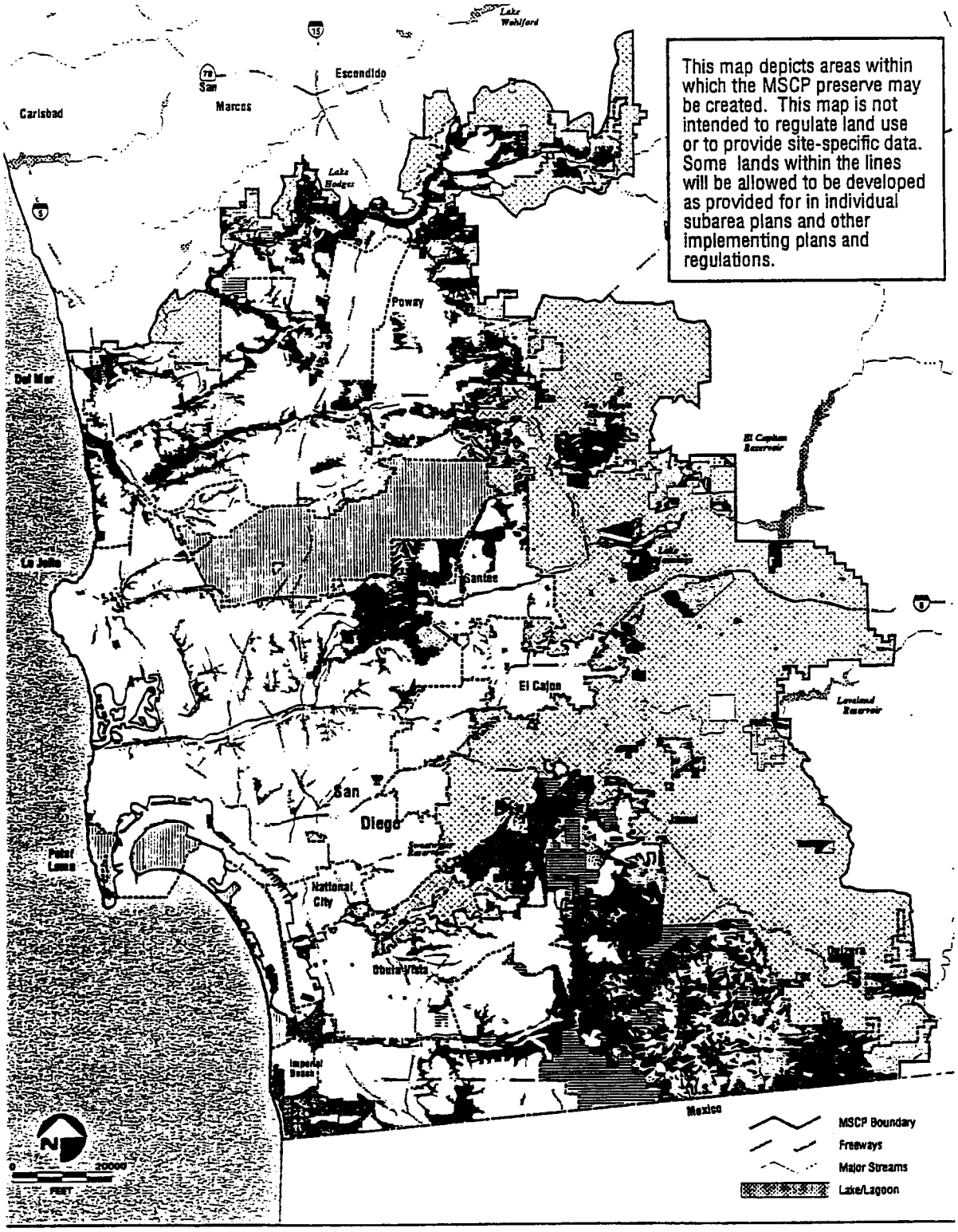
4.2-MHPA-1 **Conflict with goals of City of San Diego General Plan regarding provision of housing affordability** – No measures are incorporated in the proposed project to mitigate housing affordability impacts identified in this section. If implemented, the measure listed below for Impact MHPA-1 could potentially reduce the identified impact.

-- As part of the GP Housing Element update, identify and address impacts to housing affordability associated with implementation of the MSCP Plan. Ensure that housing affordability is provided under the MHPA in accordance with State law.

The measure listed above is not yet formulated and the degree to which it would mitigate the identified impact to housing affordability has not yet been determined because the measure is dependent upon a Housing Element update. No other measures have been incorporated into the proposed project or are required by the MSCP Plan. As a result, impacts to housing affordability are considered significant and not mitigated.

4.2-MHPA-2 **Conflict with Rancho Peñasquitos regarding timely provision of public facilities** – A comprehensive update of the Rancho Peñasquitos Community Plan and PFFP should be undertaken. Efforts should be made to coordinate the update associated with the Subarea Plan with the standard update schedule conducted for all PFFP's within the City. The comprehensive amendment should address the following specific issue:

- An evaluation of facility phasing and financing issues raised by the reduced number of units to be accommodated within the CP area shall be undertaken. The comprehensive update should assure that public facilities are provided in a timely fashion in accordance with City Community Planning and Engineering Capital Projects Department level of services standards.



Note: For the unincorporated area vegetation communities are shown only for existing conserved areas.

Note: Military lands are not included in the MHPA and separate habitat conservation plans are being prepared.

SOURCE: City of San Diego, MWWD 1996

FIGURE 1

Vegetation Communities in MHPA

2. BIOLOGICAL RESOURCES

MHPA – PROPOSED PROJECT – MITIGATION MEASURES

4.3-MHPA-1 **Direct Impacts to Covered Species** – Significant impacts to the 35 plant and 25 animal species identified in the Analysis of Significance section of the EIR/EIS and listed in *Attachment 1* to this MMRP are mitigated through the following measures:

1. Preservation of a majority of core or major populations of the covered species within the MHPA preserve (*Attachment 2* to this MMRP); refer also to revised MSCP Table 3-5 included in the Revisions to the MSCP Plan, January 1997.

2. Design and configuration of MHPA preserve (*Figure 1*).

3. Conservation goals and criteria for species (*Attachment 2* to this MMRP); refer also to revised MSCP Table 3-5 included in the Revisions to the MSCP Plan, January 1997.

4. Monitoring and reporting measures included in the *Biological Monitoring Plan for Multiple Species Conservation Program* incorporated in the MSCP Plan.

4.3-MHPA-2 **Direct Impacts to Vegetation Communities/Habitats** – Significant impacts to the habitats supporting covered species identified in the Analysis of Significance section are mitigated through the following measures:

1. Preservation of the majority of core habitats within MHPA preserve (*Figure 1).*

2. Preservation of vegetation communities by design and configuration of MHPA Preserve (*Figure 1*).

3. Conservation targets for vegetation communities (*Attachments 3 & 4* to this MMRP).

4. Monitoring and reporting measures included in the Biological Monitoring Plan for Multiple Species Conservation Program.

4.3-MHPA-3 **Indirect Impacts to Covered Species** – Significant indirect impacts to covered species identified in the Analysis of Significance section of the EIR/EIS may occur through edge effects and other uses within and adjacent to the preserve. These indirect impacts are mitigated through implementation of guidelines provided in subarea plans for uses within the preserve and guidelines for preserve management activities. These guidelines address the following: public uses; agriculture; development; mineral extraction; itinerant worker camps; border patrol; fire management; habitat restoration; hydrology;

fencing, signing, and lighting; predator and exotic species control; species reintroduction; and enforcement. In addition, biological monitoring and reporting procedures serve to mitigate indirect impacts.

4.3-MHPA-4 **Indirect Impacts to Uncovered Non-Wetland Sensitive Species** – Partial mitigation for these impacts would be accomplished through implementation of the Biological Monitoring Plan incorporated in the MSCP Plan. Preserve management guidelines and land use planning tools incorporated in the individual Subarea Plans provide complete mitigation for these impacts as documented in mitigation measures described below for the City of San Diego Subarea Plan.

4.3-MHPA-5 **Indirect Impacts to Non-Wetland Sensitive Vegetation Communities/Habitats** – Partial mitigation for these impacts would be accomplished through implementation of the Biological Monitoring Plan incorporated in the MSCP Plan (City of San Diego, 1996c). Preserve management guidelines and land use planning tools incorporated in the individual Subarea Plans provide complete mitigation for these impacts as documented in mitigation measures described below for the City of San Diego Subarea Plan.

CITY OF SAN DIEGO SUBAREA PLAN – MITIGATION MEASURES

4.3-MHPA-15 **Direct Impacts to Covered Species** - Significant impacts to the 28 plant and 23 animal species identified in the Analysis of Significance section are mitigated through the following measures:

1. Preservation of core or major populations of covered species occurring within the City of San Diego (*Attachment 1* to this MMRP).

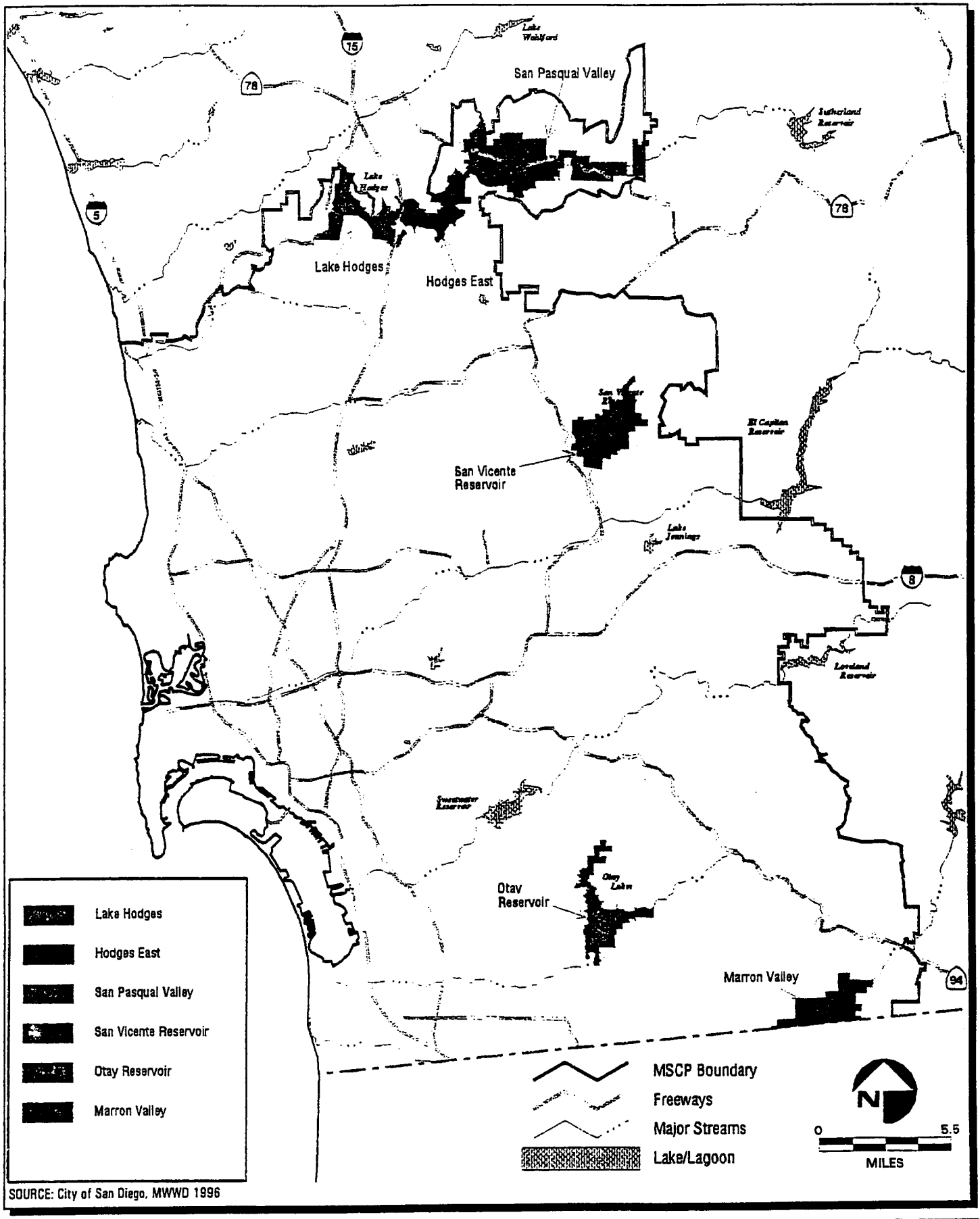
2. Design and configuration of the portion of the MHPA preserve within the City of San Diego (*Figure 2*).

3. Monitoring and reporting measures included in the *Biological Monitoring Plan for Multiple Species Conservation Program* included in the MSCP Plan.

4.3-MHPA-16 **Direct Impacts to Vegetation Communities/Habitats** - Significant impacts to vegetation communities/habitats are mitigated through the following measures:

1. Preservation of core habitats areas occurring within the City of San Diego (*Attachment 3* to this MMRP).

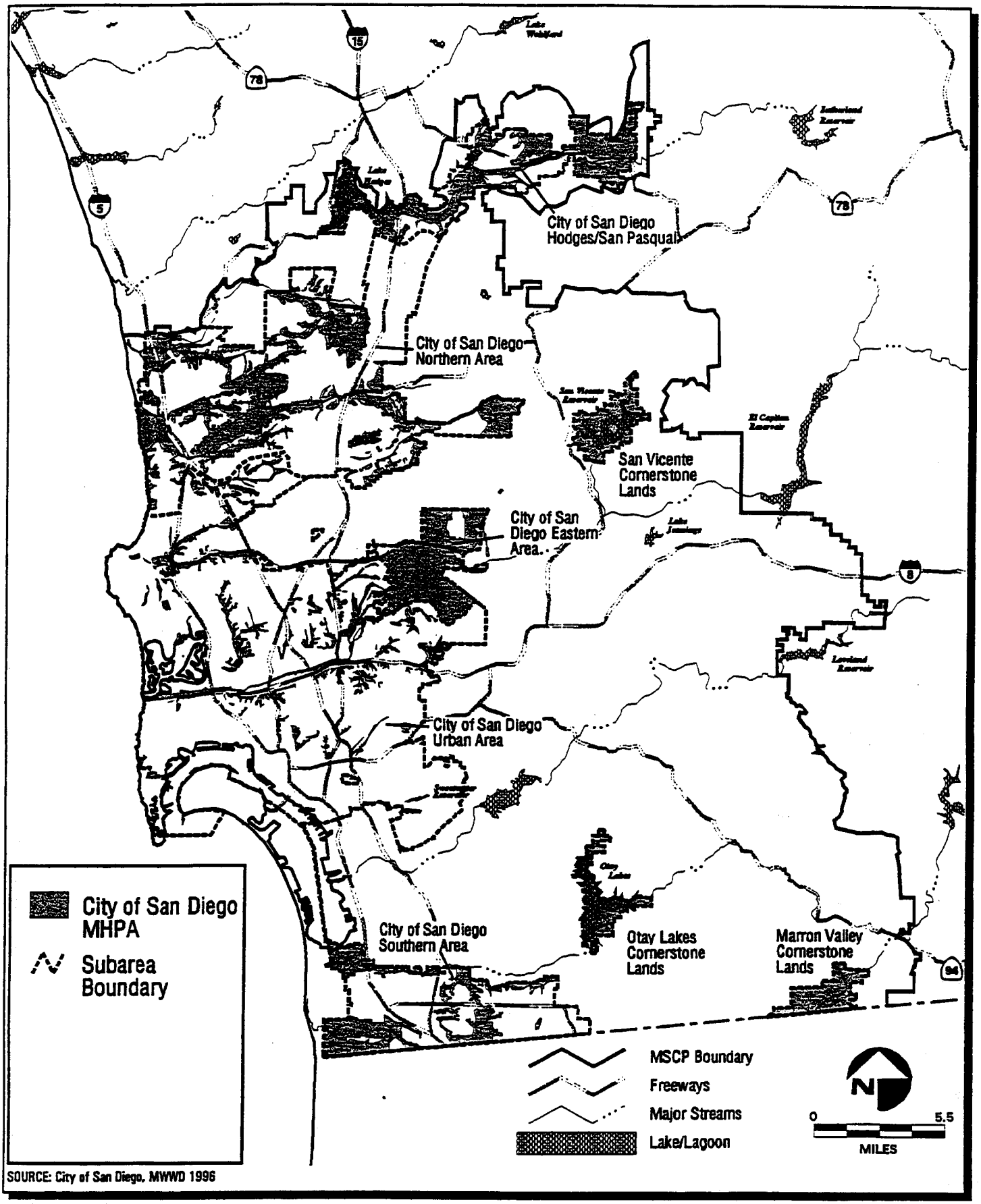
2. Design and configuration of the portion of the MHPA preserve within the City of San Diego (*Figures 2 and 3*).



SOURCE: City of San Diego, MWWD 1996

FIGURE 3

City of San Diego Cornerstone Lands and San Pasqual Valley



SOURCE: City of San Diego, MWWD 1996

FIGURE 2

City of San Diego Subarea Plan

3. Monitoring and reporting measures included in the *Biological Monitoring Plan for Multiple Species Conservation Program* incorporated in the MSCP Plan.

4.3-MHPA-17 Indirect Impacts - Significant indirect impacts to covered species, uncovered species, and vegetation communities/habitats may occur through edge effects and other land uses within and adjacent to the preserve. These impacts would be mitigated through implementation of the guidelines and ordinances identified in the City of San Diego Subarea Plan and the City's RPO to a level below significant.

The following mitigation measures would be implemented:

1. Application of the City RPO regarding sensitive species and habitats. Mitigation ratios for impacts to sensitive upland habitats follow a "Tier" system whereby high mitigation ratios are used for highly sensitive and valuable Tier I habitats (e.g., maritime succulent scrub) and corresponding lower mitigation ratios for less sensitive and valuable Tier III habitats (e.g., grassland occupied by sensitive species).

2. Application of land use considerations in Section 1.4.2 of the City of San Diego Subarea Plan regarding general planning policies and design guidelines within the preserve.

3. Application of land use considerations in Section 1.4.3 of the Subarea Plan regarding uses adjacent to the preserve, including avoiding or minimizing indirect impacts due to drainage, toxics, lighting, noise, barriers, invasive species, and brush management.

4. Application of preserve management guidelines in Section 1.5.2 of the Subarea Plan pertaining to the following: public access, trails, and recreation; litter, trash, and materials storage; adjacency management; invasive exotics control and removal; and flood control.

MONITORING AND REPORTING

Another important factor in mitigation is monitoring of the MSCP Plan involves two independent processes:

- Annual accounting of the acreage, type, and location of habitat conserved and taken by permitted land uses and other activities; and

- Biological monitoring to determine if the preserve system is meeting conservation goals for covered plant and animal species.

term viability of many habitats and species depends on the integrated efforts of the jurisdictions within the MSCP study area.

- Adequate conservation of biological resources will occur on federal lands (e.g., military). (It should be noted that military lands are within the MSCP study area but are not included in the MHPA. The Department of Navy is preparing a separate habitat conservation plan that will identify Habitat Management Zones at Miramar. NAS Miramar has prepared a Comprehensive Natural Resources Management Plan which provides the basis and criteria for the management decisions regarding natural and cultural resources.)

- Existing local, state, and federal environmental regulations will remain in effect (e.g., under state and federal wetland regulations, USFWS and CDFG will still serve in their capacity as lead agencies or advisors for Section 404 and Section 1600 permits).

- Other regional and subregional conservation planning programs will proceed as planned, including the North County Multiple Habitat Conservation Program (MHCP), the County of San Diego Multiple Habitat Conservation and Open Space Program, and other conservation efforts in San Diego, Riverside, and Orange counties.

- Conservation measures included in the findings for each species, including management and restoration activities, are implemented as described in revised MSCP Table 3-5 included in the Revisions to the MSCP Plan, January 1997.

The information compiled under these two processes will be described in an MSCP status report that will be issued every three years, in conjunction with public hearings held by participating jurisdictions. The two monitoring processes are described in detail below.

Annual accounting of habitat acreage will be provided by each take authorization holder, both by project and cumulatively, of habitat acreage taken and conserved within its subarea. The overall accounting process will specify acreage contributions to the preserve system by jurisdiction or take authorization holder and ownership and provide a map indicating locations of these areas. The accounting process will demonstrate that habitat conservation proceeds in rough proportion with habitat losses to development and that it is in compliance with the MSCP Plan and its implementing agreement. An Implementing Coordinating Committee will coordinate the annual accounting process.

The ***Biological Monitoring Plan*** developed as part of the MSCP Plan is a critical component of the mitigation measures associated with this project. This plan would be adopted by each of the jurisdictions as part of their Subarea Plan. This *Biological Monitoring Plan* includes a description of the responsibilities and coordination of efforts between the MSCP Plan participants and the wildlife agencies, biological monitoring objectives, and existing monitoring efforts. It goes into specific detail regarding methods for biological monitoring of plants, wildlife, and the function of wildlife corridors (e.g., equipment, sampling protocols, habitat value monitoring in representative habitats, data collection and analysis, and schedules). The plan provides a reporting program designed to provide monitoring results to relevant parties (e.g., USFWS, CDFG, a habitat management technical committee, scientists), to notify individual preserve managers of habitats and species within their jurisdictions that require specific management activities, to help prioritize management needs and provide specific recommendations preserve-wide and within each subarea, and to evaluate monitoring priorities for the coming three-year period. An essential component of the monitoring plan is to provide specific habitat and species adaptive management recommendations to reverse any identified declining trends in habitats or species' populations. Such management recommendations may include, but not be limited to, the following: fencing, signage, or re-direction of trails; removal of invasive exotic plant or non-native animal species; erosion control; habitat enhancement or restoration; plant population enhancement or reintroduction; and prescribed burning. Adaptive management may include reconfiguration of preserve boundaries to include more or different habitats or reprioritization of monitoring efforts if a species is found to be declining. Finally, the monitoring plan makes recommendations for research activities, including basic floral and faunal inventories, taxanomic studies, core and linkage studies, habitat and life-history studies, population biology and genetic studies, habitat restoration and/or population reintroduction studies, and management studies.

The mitigation analyses presented below are based on the following assumptions:

- Each participating jurisdiction will contribute its fair share to implementation of the MSCP Plan through their individual subarea plans. Even though individual permits will be issued to the jurisdictions, the overall conservation and long-

MITIGATION MONITORING
and
REPORTING PROGRAM

For

Issuance of a Take Authorization for Threatened and Endangered Species Within the Multiple Species Conservation Program (MSCP) Planning Area San Diego County, California

(LDR No. 93-0287)

(SCH No. 93121073)

ATTACHMENT 1

Covered Species for which Significant Impacts Outside the MHPA are Mitigated

January, 1997

3. PUBLIC SERVICES & UTILITIES

MHPA – PROPOSED PROJECT – MITIGATION MEASURES

4.5-MHPA **Impacts to planned public facilities that would be considered incompatible uses within the proposed preserve:** Individual jurisdictions participating in the MSCP Plan will be required to prepare Subarea Plans or Project Plans. Significant impacts to public facilities identified at the program level will be addressed in greater detail at the Subarea Plan level.

The measure listed above is not designed to mitigate the impacts to public facilities identified in this section because the measure is dependent on completion of Subarea Plans or Project Plans in the future. No measures have been incorporated into the proposed project. As a result, this impact is considered significant and unmitigated. The City of San Diego has complied with this mitigation measure by preparing a Subarea Plan that addresses issues related to public facilities. However, implementation of the Subarea Plan and associated Community Plan amendments would result in impacts to public facilities as described below.

CITY OF SAN DIEGO SUBAREA PLAN – MITIGATION MEASURES

4.5-MHPA-1 **Impacts within East Elliott due to elimination of school and park facilities:** See discussion in *Section 1, Land Use.* Specific recommended measures for the East Elliott CP are listed under *MHPA-3/4* of this MMRP. The measures listed in *Section 1* are not designed to mitigate the public facilities impacts identified in this section because the measures are dependent on a future community Plan amendment process or approval of precise plans. No other measures have been incorporated into the proposed project or are required by the Subarea Plan. As a result, impacts to public facilities are considered significant and unmitigated.

4.5-MHPA-2 **Impacts within Otay Mesa CP due to elimination of school and park facilities:** See mitigation for impacts to school and park sites provided in *Section 1, Land Use* of this MMRP. Specific mitigation measures for the Otay Mesa CP are listed under *MHPA-5/6.*

MONITORING AND REPORTING

Prior to approval of future CP and PFFP updates for the East Elliott and Otay Mesa, the City of San Diego Development Services Department shall review the update to determine that efforts have been made to avoid or substantially reduce the identified impacts related to the demand for school and park facilities.

ATTACHMENT 1
COVERED SPECIES FOR WHICH SIGNIFICANT IMPACTS*
OUTSIDE THE MHPA ARE MITIGATED

Covered Species	MHPA	Chula Vista Options		Coronado	Del Mar	San Diego	Santee	Unincorporated	
		Policy 1	Policy 2					MHPA	Alt 1
White-faced ibis	x	x	x		x	x			
Canada goose	x					x		x	x
Bald eagle	x	x	x			x	x	x	x
Cooper's hawk	x	x	x		x	x	x	x	x
Light-footed clapper rail	x	x	x		x	x			
Western snowy plover	x	x	x	x	x	x			
California least tern	x	x	x	x	x	x			
Burrowing owl	x	x	x	x	x	x	x	x	x
Southwestern willow flycatcher	x	x	x		x	x	x	x	x
Coastal cactus wren	x		x		x	x	x		x
California gnatcatcher	x		x		x	x	x		x
Western bluebird	x	x	x		x	x	x	x	x
Least Bell's vireo	x	x	x		x	x	x	x	x
California rufous-crowned sparrow	x	x	x		x	x	x		x
Belding's Savannah sparrow	x	x	x	x	x	x			
Large-billed Savannah sparrow	x	x	x	x	x	x			
Tricolored blackbird	x	x	x		x	x	x	x	x

* Significant direct impacts as determined under the MHPA scenario based on the criteria described under *Process Background (Section 4.3 of the Draft EIR/EIS).* Species that would not be significantly impacted under the MHPA are not included in this table.

ATTACHMENT 2
SPECIES EVALUATED FOR COVERAGE UNDER THE MSCP

SCIENTIFIC NAME COMMON NAME STATUS	# and % OF POINTS CONSERVED[1]	# and % OF POLYGONS CONSERVED[2]	# and % MAJOR POPULATIONS CONSERVED[3]	RISK[4]/COMMENTS
PLANTS				
Acanthomintha ilicifolia San Diego thorn-mint PE/CE	27.6/39 (70%)	6.1/12.6 (41%)	6.8/8 (86%)	Moderate/Dependent upon significant conservation within the County of San Diego's Metro Lakeside Jamul segment and on Otay Ranch.
FINDING: Adequately conserved by the Plan. This is a narrow endemic species addressed within individual subarea plans.				
Agave shawii Shaw's agave */	1.7/6 (28%)	No polygons	3.8/4 (94%)	Low/Potentially subject to edge effects, but appears stable in existing preserves. Essential populations occur on military land (i.e., 32 of 35 sites (91%) within Pt. Loma Ecological Reserve Area).[7]
FINDING: Adequately conserved by the Plan. This is a narrow endemic species addressed within individual subarea plans.				
Ambrosia pumila San Diego ambrosia */	11/16 (69%)	5.3/9.5 (56%)	1.2/2 (60%)	High/1 of 2 major populations inadequately conserved (Mission Trails/Santee–42%) and subject to edge effects. Efforts should be made by the participating jurisdictions and wildlife agencies to acquire and preserve the population of this species located in the City of San Diego on the north side of Mission Gorge Road and west of Mast Boulevard (near the Santee/City of San Diego Corporate Boundary).
FINDING: Adequately conserved based on designation as a narrow endemic species within individual subarea plans and successful transplantation of the Mission Trails campground population.				
Aphanisma blitoides Aphanisma */	Site-specific data not mapped	Site-specific data not mapped	No known extant locations in MSCP 65% of southern foredune habitat	High/ Dependent on military lands.[7]
FINDING: Discountable.				
Arctostaphylos glandulosa var. *crassifolia* Del Mar manzanita PE/	101/135 (75%)	48.8/61.1 (80%)	3.6/4 (91%)	Moderate/Subject to edge effects; project level evaluation showed 50% of individuals are within 500' of development.
FINDING: Adequately conserved by the Plan. City of San Diego Subarea Plan will address species specific management of edge effects and fuel modification on Del Mar Mesa.				
Arctostaphylos otayensis Otay manzanita */	24.7/26 (95%)	3.1/3.1 (100%)	2.9/3 (95%)	Moderate/Subject to edge effects, particularly on Callahan Mountain and its north-trending drainages.
FINDING: Adequately conserved by the Plan.				

ATTACHMENT 2 (*Continued*)
SPECIES EVALUATED FOR COVERAGE UNDER THE MSCP

SCIENTIFIC NAME COMMON NAME STATUS	# and % OF POINTS CONSERVED[1]	# and % OF POLYGONS CONSERVED[2]	# and % MAJOR POPULATIONS CONSERVED[3]	RISK/COMMENTS
Astragalus deanei Dean's milk-vetch */	4.5/6 (75%)	2.7/3.8 (70%)	0.8/1 (80%)	Unknown/Insufficient current data on distribution of species, cannot assure conservation of all the few remaining populations.
FINDING: Unknown conservation level and therefore not covered by the plan.				
Astragalus tener var. *tir* Coastal dunes milk vetch PE/CE	Site-specific data not mapped	Site specific data not mapped	123 out of 188 acres of So. Foredunes are in MHPA (65%)	High/Subject to edge effects. Presumed extirpated; potential locations would likely occur on military land. Potential habitat is adequately conserved through MHPA (65%) or occurs within military or state-owned lands.[7]
FINDING: Adequately conserved by the Plan. Management plan(s) shall include opportunities for reintroduction into appropriate habitat.				
Baccharis vanessae Encinitas baccharis PE/CE	31/41 (76%)	1.9/3.6 (53%)	2.9/3 (92%)	Moderate/Locations will be indirectly impacted by edge effects, including fuel modification.
FINDING: Adequately conserved by the Plan. This is a narrow endemic species addressed within individual subarea plans.				
Berberis nevinii Nevin's barberry PE/	2/2 (100%) not native populations	No polygons	No major populations	Low/Not known to occur within MSCP.
FINDING: Discountable. This is a narrow endemic species addressed within individual subarea plans.				
Brodiaea filifolia Thread-leaved brodiaea PT/CE	No points	No polygons	Not known to occur in MSCP. 24% of vernal pool and 34% grassland habitat conserved.[9]	Moderate/Species primarily occurs in MHCP. Conduct surveys at appropriate time of year.
FINDING: Discountable, conduct surveys in suitable habitat. This is a narrow endemic species addressed within individual subarea plans.				
Brodiaea orcuttii Orcutt's brodiaea */	41.4/126 (33%)	1.8/9.4 (19%)	3.7/6 (61%) 24% of vernal pool and 34% grassland habitat conserved.	Moderate/Would receive some protection per federal wetland regulations. Manage for edge effects. Military lands are essential to this species (33/126 points); large populations occur outside the MSCP.[7,8]
FINDING: Adequately conserved by the Plan and protection by state and federal wetlands protection regulations.				

ATTACHMENT 2 (*Continued*)
SPECIES EVALUATED FOR COVERAGE UNDER THE MSCP

SCIENTIFIC NAME COMMON NAME STATUS	# and % OF POINTS CONSERVED[1]	# and % OF POLYGONS CONSERVED[2]	# and % MAJOR POPULATIONS CONSERVED[3]	RISK/COMMENTS
Calamagrostis densa Dense reed grass none	5.7/6 (95%)	No polygons	5.5/6 (91%)	Low/Potential impact from trails. Potential taxonomic problems.
FINDING: Adequately conserved by the Plan and with trail maintenance/placement appropriately addressed in preserve management plan(s).				
Calochortus dunnii Dunn's mariposa lily */CR	42.8/43 (99%)	2.4/2.4 (100%)	3/3 (100%)	Low/ Assumes 100% preservation of 3 major populations, including amendment area.
FINDING: Adequately conserved by the Plan. This is a narrow endemic species addressed within individual subarea plans.				
Caulanthus stenocarpus Slender-pod jewelflower */CR	37.5/42 (89%)	7.6/10.2 (74%)	3/4 (75%)	Moderate/1 of 4 major populations not included in MHPA, but total distribution not completely known. Recent change in taxonomy has combined this species with *C. heterophyllus*.
FINDING: Adequately conserved by the Plan.				
Ceanothus cyaneus Lakeside ceanothus */	5.2/8 (65%)	5.3/49.4 (11%)	3.3/4 (83%)	Moderate/Subject to edge effects, likely more populations occur, surveys are needed. Endemic to MSCP area, narrowly distributed, needs monitoring.
FINDING: Adequately conserved by the Plan and with monitoring appropriately addressed in preserve management plan(s). This is a narrow endemic species addressed within individual subarea plans.				
Ceanothus verrucosus Wart-stemmed ceanothus */	48.4/194 (25%)	320.3/606.1 (53%)	2/5 (40 %)	High/Subject to edge effects. The majority of two major populations is protected by the plan; the majority of one (Carmel Mtn.) is not protected by the plan; and the other two major populations occur entirely on military lands.[7]
FINDING: Adequately conserved by the Plan and 1) preserve areas are managed to increase populations, and 2) this species is included within revegetation efforts in appropriate habitats.				
Chorizanthe orcuttiana Orcutt's spineflower FE/CE	No points	No polygons	Unknown.[8]	Unknown/One location is outside the plan area and may be subject to extirpation. Some potential habitat occurs in the Cities of San Diego and Del Mar; however, there are no recent known occurrences. All populations should be considered essential and protected.
FINDING: Unknown conservation level and therefore not covered by the plan.				
Cordylanthus maritimus ssp. *maritimus* Salt marsh bird's-beak FE/CE	3/4 (75%)	26.4/26.4 (100%)	3/3 (100%)	Low/Would receive some protection per federal and state wetland regulations.[9]
FINDING: Adequately conserved by the Plan and protection by state and federal wetlands regulations.				

ATTACHMENT 2 (*Continued*)
SPECIES EVALUATED FOR COVERAGE UNDER THE MSCP

SCIENTIFIC NAME COMMON NAME STATUS	# and % OF POINTS CONSERVED[1]	# and % OF POLYGONS CONSERVED[1]	# and % MAJOR POPULATIONS CONSERVED[2]	RISK/COMMENTS
Cordylanthus orcuttianus Orcutt's bird's-beak */	5.5/6 (92%)	72.6/103.3 (70%)	.75/1 (75%)	Moderate/Portions of the major population (Otay River Valley) are subject to edge effects and direct potential impacts.
FINDING: Adequately conserved by the Plan.				
Corethrogyne filaginifolia var. *linifolia* Del Mar Mesa sand aster PT/	31.8/70 (45%)	2.96/7.3 (40%)	.96/2 (48%) 62% of southern maritime chaparral conserved	High/Subject to edge effects. Carmel Mountain area populations will be adversely affected. Portions of both major populations will be impacted and subject to edge effects.
FINDING: Adequately conserved by the Plan.				
Cupressus forbesii Tecate cypress */	24.8/26 (95%)	8.9/8.9 (100%)	98% of Tecate cypress forest	Low/The majority of the population is within MHPA and the remainder may receive some protection per BLM policies. Vulnerable to increased fire frequency[7].
FINDING: Adequately conserved by the Plan and with fire management appropriately addressed in preserve management plan(s).				
Dudleya blochmaniae ssp. *brevifolia* Short leaved dudleya PE/CE	7.5/10 (75%)	3.4/3.6 (94%)	3.4/4 (88%)	Moderate to High/ 3 major populations subject to edge effects. Needs management of edge effects along existing/proposed interface with development.
FINDING: Adequately conserved by the Plan and with Management Plan for Del Mar Mesa/Carmel Mountain which will include specific measures for maintenance and enhancement of species. This is a narrow endemic species addressed within individual subarea plans.				
Dudleya variegata Variegated dudleya */	196.6/261 (75%)	43/100 (43%)	6.2/11 (56%)	High/2 of 11 major populations not included in MHPA, 1 additional population inadequately conserved, and 6 populations subject to edge effects.
FINDING: Adequately conserved by the Plan. This is a narrow endemic species addressed within individual subarea plans.				
Dudleya viscida Sticky dudleya */	2/3 (67%)	0.2/0.2 (100%)	0.8/1 (75%)	Moderate/One population documented in study area is subject to edge effects. Most of species range is in MHCP and Camp Pendleton.
FINDING: Adequately conserved by the Plan.				

ATTACHMENT 2 (*Continued*)
SPECIES EVALUATED FOR COVERAGE UNDER THE MSCP

SCIENTIFIC NAME COMMON NAME STATUS	# and % OF POINTS CONSERVED[1]	# and % OF POLYGONS CONSERVED[2]	# and % MAJOR POPULATIONS CONSERVED[3]	RISK[4]/COMMENTS
Ericameria palmeri ssp. *palmeri* Palmer's ericameria */	24.8/29 (86%)	.05/1.75 (3%)	4/6 (66%)	Moderate to High/Two major populations subject to potential impacts from proposed projects. Successful mitigation/transplantation for Jamacha Blvd road-widening is essential. Portions of 5 out of the 6 major populations are not conserved.
FINDING: Adequately conserved. This is a narrow endemic species addressed within individual subarea plans.				
Eryngium aristulatum var. *parishii* San Diego button-celery FE/CE	170.4/222 (77%)	6.2/8.8 (70%)	3.5/6 (59%[5])	Moderate/Would receive some protection per federal wetland regulations, but 2 of 6 major populations not included in MHPA and 3 additional populations subject to edge effects. 84% preservation not counting military lands. Military lands are essential to the survival of this species. [7] [8]
FINDING: Adequately conserved by the Plan and protection by state and federal wetlands regulations.				
Erysimum ammophilum Coast wallflower */	Site specific data not mapped	Site specific data not mapped	No major populations	Low/Known records within MSCP are now thought to be *E. capitatum*.
FINDING: Adequately conserved by the Plan.				
Ferocactus viridescens San Diego barrel cactus */	888.9/1368 (65%)	191.5/415.5 (46%)	6.5/8 (81%)	Low.
FINDING: Adequately conserved by the Plan.				
Fremontodendron mexicanum Mexican flannelbush PE/CR	7/7 (100%)	No polygons	1/1 100%	High/Factors which limit its distribution to extremely rare occurrences within potential habitats are not understood. Occurs in high wildfire incidence area with little fire management currently provided. Six of the seven points constitutes the one major population (Cedar Creek); less than 200 individuals are estimated in the U.S. Only one known population in Baja, Mexico.
FINDING: Inadequately conserved; insufficient distribution data.				
Githopsis diffusa ssp. *filicaulis* Mission Canyon bluecup */	Site specific data not mapped.	Site specific data not mapped.	Unknown[6]	Unknown/Factors that limit its distribution to extremely rare occurrences within potential habitats are not understood. This species is believed to be a fire follower; needs a fire management plan to ensure appropriate fire frequency.
FINDING: Unknown conservation level and therefore not covered by the Plan.				

ATTACHMENT 2 (*Continued*)
SPECIES EVALUATED FOR COVERAGE UNDER THE MSCP

SCIENTIFIC NAME COMMON NAME STATUS	# and % OF POINTS CONSERVED[1]	# and % OF POLYGONS CONSERVED[2]	# and % MAJOR POPULATIONS CONSERVED[3]	RISK[4]/COMMENTS
Hemizonia conjugens Otay tarplant PE/CE	82.6/141 (59%)	134.1/199.9 (67%)	4.1/7 (59%)	High/At least 2 major populations inadequately conserved in MHPA, and 5 major populations may be subject to edge effects.
FINDING: Adequately conserved with monitoring and management of populations within the preserve and, specifically, Chula Vista and the County of San Diego will avoid populations of this species through sensitive design and development of the active recreation areas in the Otay River Valley as described in the Otay Ranch RMP and GDP. This is a narrow endemic species addressed within individual subarea plans.				
Hemizonia floribunda Tecate tarplant */	1/1 (100%)	No polygons	Unknown[5]	Unknown/Insufficient data. Potentially impacted by grazing and off-road vehicles. Major populations occur east of MSCP study area.
FINDING: Unknown conservation level and therefore not covered by the Plan.				
Lepechinia cardiophylla Heart-leaved pitcher sage */	3.4/4 (85%)	No polygons	1/1 (100%)	High/Subject to edge effects. 3 of 4 locations are subject to the County's Biological Mitigation Ordinance, which assumes avoidance and a minimum 80% conservation.
FINDING: Adequately conserved by the Plan. This is a narrow endemic addressed within individual Subarea Plans.				
Lepechinia ganderi Gander's pitcher sage */	25/25 (100%)	3.3/3.3 (100%)	5/5 (100%)	Low/Subject to edge effects. One of the five major populations is subject to the County's Biological Mitigation Ordinance, which assumes avoidance and a minimum 80% conservation.
FINDING: Adequately conserved by the Plan. This is a narrow endemic species addressed within individual subarea plans.				
Lotus nuttallianus Nuttall's lotus */	Site-specific data not mapped	Site-specific data not mapped	4/5 (80%)	Moderate/Subject to edge effects, military lands important for this species. [7]
FINDING: Adequately conserved by the Plan.				
Monardella hypoleuca ssp. *lanata* Felt-leaved monardella none	5/6 (83%)	4.9/4.9 (100%)	3.6/4 (89%)	Low/Subject to some edge effect.
FINDING: Adequately conserved by the Plan. This is a narrow endemic addressed within individual Subarea Plans.				

ATTACHMENT 2 (*Continued*)
SPECIES EVALUATED FOR COVERAGE UNDER THE MSCP

SCIENTIFIC NAME COMMON NAME STATUS	# and % OF POINTS CONSERVED[1]	# and % OF POLYGONS CONSERVED[1]	# and % MAJOR POPULATIONS CONSERVED[1]	RISK/COMMENTS
Monardella linoides ssp. *viminea* Willowy monardella FE/CE	42.0/149 (28%)	12.6/22.1 (57%)	3/4 (75%)	High/ Largest of the 4 major populations on military lands and not included in MHPA. Military populations are critical. 100% preservation within participating jurisdiction lands.[7]
FINDING: Adequately conserved by the Plan.				
Muilla clevelandii San Diego goldenstar */	100.4/144 (70%)	115.0/187.2 (61%)	8/11 (73%)	Low-Moderate/3 of 11 major populations not included in MHPA, and 4 populations are subject to edge effects. The 4S Ranch population will be transplanted into an appropriate preserve area.
FINDING: Adequately conserved by the Plan (including avoidance of populations within City of San Diego's 25% encroachment area).				
Myosurus minimus ssp. *apus* Little mousetail */	6.1/18 (34%)	10.34/12.30 (84%)	.5/2 (25%)[6]	High/Would receive some protection per federal wetland regulations and per inclusion on the proposed County BMO Plant List A, but subject to edge effects. Potential significant impacts from S.R. 125. A significant population occurs on military land. Only one minor population confirmed conserved within MHPA (Upham mitigation site); less than 30% conservation of occurrences within major populations, at most 55% of minor populations conserved.[7,8]
FINDING: Not adequately conserved by the Plan.				
Navarretia fossalis Prostrate navarretia PT/	3/13 (23%)	0.1/0.1 (100%)	6/1 (83%)	High/Would receive some protection per federal wetland regulations, but subject to edge effects. Expected impacts from S.R. 125 would be significant. [9]
FINDING: Adequately conserved by the Plan and protection by state and federal wetlands regulations. State and federal transportation agencies will need to avoid or adequately mitigate the impacts to this species from the extension of State Route 125.				
Nolina interrata Dehesa boar-grass PT /CE	33/34 (97%)	262/268.9 (97%)	3/3 (100%)	Low/Subject to edge effects. Recommend acquisition of remaining portions of population at Sequan Peak.
FINDING: Adequately conserved by the Plan. This is a narrow endemic species addressed within individual subarea plans.				

ATTACHMENT 2 (*Continued*)
SPECIES EVALUATED FOR COVERAGE UNDER THE MSCP

SCIENTIFIC NAME COMMON NAME STATUS	# and % OF POINTS CONSERVED[1]	# and % OF POLYGONS CONSERVED[1]	# and % MAJOR POPULATIONS CONSERVED[2]	RISK/COMMENTS
Opuntia parryi var. *serpentina* Snake cholla */	21.6/57 (38%)	18/31.8 (57%)	3.3/5 (66%)	Moderate/Subject to edge effects, military lands contain critical populations. [7]
FINDING: Adequately conserved by the Plan based upon Chula Vista "Modified GDP B" Alternative within the City's Subarea Plan. Management Plans will include active restoration and management in appropriate preserve areas. Restoration Plans for preserve areas should include this species within suitable habitat to increase the population. This is a narrow endemic species addressed within individual subarea plans.				
Orcuttia californica California Orcutt grass FE/CE	4.76/8 (59%)	No polygons	0.9/2 (43%)[9]	Moderate/Receives some protection per federal wetland regulations; subject to edge effects and Border Patrol activities. [1]
FINDING: Adequately conserved by the Plan and protection by federal wetlands regulations.				
Pinus torreyana Torrey pine */	7.45/13 (57%)	No polygons	1/1 (100%)	Low/Subject to edge effects.
FINDING: Adequately conserved by the Plan.				
Pogogyne abramsii San Diego mesa mint FE/CE	9.0/62 (15%)	No polygons	0/3[1] 24% vernal pool habitat	High/Receives some protection per federal wetland regulations. Military lands are essential, containing 70-80% of this species [7,1].
FINDING: Adequately conserved by the Plan and protection by federal wetlands regulations.				
Pogogyne nudiuscula Otay Mesa mint FE/CE	86.8/89 (96%)	0.2/0.2 (100%)	0.9/1 (91%)[1] 24% vernal pool habitat	Moderate/Subject to edge effects, receives some protection per federal wetland regulations. All extant populations in U.S. occurs within MSCP; restricted to 3-5 vernal pool complexes on Otay Mesa. [1]
FINDING: Adequately conserved by the Plan and protection by federal wetlands regulations.				
Rosa minutifolia Small leaved rose -/CE	1/1 transplant	No polygons	1/1 transplant	High/Population will be preserved through transplantation, but preserved individual(s)will be subject to edge effect. Transplant needs adequate buffer, monitoring, and management.
FINDING: Adequately conserved based on CDFG 2081 management authorization for the California Terraces project.				

ATTACHMENT 2 (*Continued*)
SPECIES EVALUATED FOR COVERAGE UNDER THE MSCP

SCIENTIFIC NAME COMMON NAME STATUS	# and % OF POINTS CONSERVED[1]	# and % OF POLYGONS CONSERVED[2]	# and % MAJOR POPULATIONS CONSERVED[3]	RISK/COMMENTS
Satureja chandleri San Miguel Savory None	1.7/3 (57%)	No polygons	No major populations identified	Moderate
FINDING: Adequately conserved by the Plan with placement on the County of San Diego's Plant Species List A or B instead of List D.				
Senecio ganderi Gander's butterweed */CR	7.6/8 (95%)	17.7/17.7 (100%)	2/2 (100%)	Moderate/Subject to edge effects. El Capitan population to be avoided.
FINDING: Adequately conserved by the Plan. This is a narrow endemic species addressed within individual subarea plans.				
Solanum tenuilobatum Narrow-leaved nightshade */	108.8/136 (80%)	1.3/2.1 (61%)	1.8/2 (90%)	Moderate/Known populations and potential habitat adequately conserved in MHPA, but total distribution not completely known; subject to edge effects. There is taxonomic disagreement on this taxon.
FINDING: Adequately conserved by the Plan.				
Tetracoccus dioicus Parry's tetracoccus */	30/30 (100%)	195.4/199.2 (98%)	3/3 (100%)	Moderate/Subject to edge effects and fuel modification.
FINDING: Adequately conserved by the Plan.				
ANIMALS				
Euphydryas editha quino Quino checkerspot butterfly PE/	1.88/2 (94%)	No polygons	Unknown	High/One known extant location in San Diego County. Occurs near vernal pools with host plant *Plantago insularis*. Recent sitings indicate potential ability for recolonization into MSCP area.
FINDING: Unknown conservation level and lack of assurances that Plan will protect preferred habitat (mesa tops/grasslands) and connection to known source populations. Therefore, not covered by the Plan.				
Euphyes vestris harbisoni Harbison's dun skipper */	½ (50%)	No polygons	Unknown	Unknown/Insufficient data on life history/habitat requirements and local distribution.
FINDING: Unknown conservation level and therefore not covered by the Plan based on insufficient distribution and life history data.				

ATTACHMENT 2 (*Continued*)
SPECIES EVALUATED FOR COVERAGE UNDER THE MSCP

SCIENTIFIC NAME COMMON NAME STATUS	# and % OF POINTS CONSERVED[1]	# and % OF POLYGONS CONSERVED[2]	# and % MAJOR POPULATIONS CONSERVED[3]	RISK/COMMENTS
Lycaena thornei Hermes copper butterfly */	3.9/9 (44%)	No polygons	Insufficient data	Unknown/Insufficient life history data to determine value of MHPA.
FINDING: Unknown conservation level and therefore not covered by the Plan based on insufficient distribution and life history data.				
Mitoura thornei Thorne's hairstreak butterfly */	Site-specific data not mapped	100%	98% Tecate Cypress	Low/Needs fire management plan.
FINDING: Adequately conserved by the Plan and with fire management appropriately addressed in preserve management plan(s).				
Panoquina errans Salt marsh skipper */	Site-specific data not mapped	Site-specific data not mapped	92% of saltmarsh habitat	Moderate/Likely to occupy coastal salt marshes in San Diego County (most on public lands). Needs active management.
FINDING: Adequately conserved by Plan.				
Branchinecta sandiegoensis San Diego fairy shrimp PE/	Site-specific data not mapped	Site specific data not mapped	24% of vernal pool habitat	Moderate/Subject to edge effects; would receive some protection per federal wetlands regulations. Military lands are essential to the survival of this species.[7,8]
FINDING: Adequately conserved by the Plan and protection by federal wetland regulations.				
Streptocephalus woottoni Riverside fairy shrimp FE/	2/3 (67%)	No polygons	2/3 (67%) 24% of vernal pool habitat.	Preserved habitat subject to edge effects. Important populations on military land.[7,8]
FINDING: Adequately conserved by the Plan and protection by federal wetlands regulations.				
Bufo microscaphus californicus Arroyo southwestern toad FE/SSC	14.5/15 (97%)	Site-specific data not mapped	70% of riparian habitats and freshwater marsh.	High/Would receive some protection per federal and state wetland regulations; however this species uses upland habitat up to 1 km. from wetland area. Subject to adverse effects from non-native predators such as bullfrog and sunfish.[8]
FINDING: Adequately conserved by the Plan and protection by state and federal wetlands regulations. Management Plans will address preservation of sheltering and foraging habitat within 1 km. of occupied breeding habitat within the preserve and, to the extent possible control/removal of non-native predators.				

ATTACHMENT 2 (*Continued*)
SPECIES EVALUATED FOR COVERAGE UNDER THE MSCP

SCIENTIFIC NAME COMMON NAME STATUS	# and % OF POINTS CONSERVED:	# and % OF POLYGONS CONSERVED:	# and % MAJOR POPULATIONS CONSERVED[1]	RISK/COMMENTS
Rana aurora draytoni California red-legged frog FT/SSC	Site-specific data not mapped	Site-specific data not mapped	70% of riparian habitats and freshwater marsh.	Unknown/Possibly extirpated from San Diego County; would receive some protection per federal and state wetland regulations. [4]
FINDING: Discountable.				
Clemmys marmorata pallida Southwestern pond turtle */SSC	6.8/8 (86%)	No polygons	70% of riparian habitats and freshwater marsh.	Unknown/Would receive some protection per federal and state wetland regulations. [8]
FINDING: Adequately conserved by the Plan and protection of state and federal wetlands regulations.				
Cnemidophorus hyperythrus beldingi Orange-throated whiptail */SSC	317.6/514 (62%)	No polygons	56% of CSS and chaparral habitats and riparian scrub.	Low/Subject to monitoring and management plan.
FINDING: Adequately conserved by the Plan.				
Phrynosoma coronatum blainvillei San Diego horned lizard */SSC	184.6/291 (63%)	No polygons	56% of CSS and chaparral habitats and riparian scrub.	Low/Subject to edge effects; needs management to reduce impact of Argentinean ant.
FINDING: Adequately conserved by the Plan. Preserve management plans will address eradication of Argentinean ant to the extent feasible.				
Pelecanus occidentalis californicus California brown pelican FE/CE	2/2 (100%)	No site-specific data	40% of potential roosting habitat, 91% open water, 92% coastal salt marsh.	Moderate/Adequate protection depends on protection and management of roosting and foraging sites, including on military land. Wildlife agencies need to work with Military and Port District to protect roosting and foraging habitat.
FINDING: Adequately conserved by the Plan.				

ATTACHMENT 2 (*Continued*)
SPECIES EVALUATED FOR COVERAGE UNDER THE MSCP

SCIENTIFIC NAME COMMON NAME STATUS	# and % OF POINTS CONSERVED[1]	# and % OF POLYGONS CONSERVED[2]	# and % MAJOR POPULATIONS CONSERVED[3]	RISK[4]/COMMENTS
Egretta rufescens Reddish egret */	2/3 (67%)	No polygons	2/3 (67%) 92%-coastal saltmarsh, 87% flood channel.	Low/ Very few records in MSCP, subject to edge effect.
FINDING: Adequately conserved by the Plan.				
Plegadis chihi White-faced ibis */SSC	4/6 (67%)	No polygons	4/6 (67%) 81% of riparian woodland/forest.	Moderate/Subject to edge effect, but 4 of 6 localities conserved in MHPA; manage breeding habitat at Lake Hodges cornerstone.
FINDING: Adequately conserved by the Plan. Management plan for City of San Diego cornerstone lands will include preservation and management of nesting areas at Lake Hodges.				
Branta canadensis Canada goose none	1.9/6 (32%)	Site-specific data not mapped.	61% of freshwater marsh, 91% open water.	Low/Would receive some protection per federal and state wetland regulations; major foraging areas not included in MHPA. Impacts insignificant.
FINDING: Adequately conserved by the Plan.				
Haliaeetus leucocephalus Bald eagle FT/CE	3/4 (75%)	No polygons	91% open water	Low/This species is an occasional winter resident foraging in the vicinity of eastern water reservoirs.
FINDING: Adequately conserved by the Plan.				
Circus cyaneus Northern harrier --/SSC	28.9/50 (58%)	No polygons	49% of CSS, grassland, marsh habitats, agriculture, saltpans.	Moderate/High loss of foraging and breeding habitat; further reduced species w/in the MSCP; significant portions of habitat at risk; species would receive some protection per federal and state wetland regulations. Where possible, add grassland habitat to the preserve.
FINDING: Insignificant.				

ATTACHMENT 2 (*Continued*)
SPECIES EVALUATED FOR COVERAGE UNDER THE MSCP

SCIENTIFIC NAME COMMON NAME STATUS	# and % OF POINTS CONSERVED[1]	# and % OF POLYGONS CONSERVED[2]	# and % MAJOR POPULATIONS CONSERVED[3]	RISK[4]/COMMENTS
Accipiter cooperii Cooper's hawk -/SSC	47.5/83 (57%)	No polygons	52% of oak habitats.	Moderate/Only 52% of oak habitat will remain. Buffer nest sites (300') within preserve.
FINDING: Adequately conserved by the Plan. Management Plans will include 300 foot impact avoidance area around nesting sites within preserves.				
Buteo swainsoni Swainson's hawk -/CT	Site-specific data not mapped	Site-specific data not mapped	20% of grassland and agriculture.	Moderate/Additional loss of foraging habitat used during migration may cause extirpation of species as a migrant through San Diego; significant portions of potential foraging habitat at risk. Dependent on other regional programs. Where possible add grassland habitat to the preserve.
FINDING: Insignificant.				
Buteo regalis Ferruginous hawk */SSC	1.6/2 (82%)	Site-specific data not mapped	20% of grassland and agriculture.	Moderate/Due to high loss of foraging habitat, particularly Otay Ranch/Mesa; occurrence of this rare species may be further reduced within the MSCP. Risk is dependent upon the application of the County's BMO and other regional programs aimed at raptor conservation. Where possible, add grassland to the preserve. MSCP is not considered to be an important stop-over area during migration.
FINDING: Insignificant.				
Aquila chrysaetos Golden eagle BEPA/SSC	(nesting localities) 28.6/47 (61%)	302.4/474.3 (64%) acres of nesting localities.	28 % of known locations, 49% of potential foraging habitat preserved (grassland, agriculture, chaparral and CSS).	High/Fragmentation and loss of foraging and nesting habitat; may preclude long-term successful breeding of this species. Risk is dependent upon the application of the County's BMO and other regional programs aimed at raptor conservation. Where possible add grassland habitat to the preserve, and include adequate impact avoidance areas around nest sites.
FINDING: Insignificant.				
Falco peregrinus anatum American peregrine falcon FE/CE	6.4/9 (61%)	No polygons	Known nesting sites are not in MHPA.	High/Nest site management is primary issue for this species; risk to species foraging habitat is moderate-low. Only three known nest sites in San Diego.
FINDING: Insignificant.				

ATTACHMENT 2 (*Continued*)
SPECIES EVALUATED FOR COVERAGE UNDER THE MSCP

SCIENTIFIC NAME COMMON NAME STATUS	# and % OF POINTS CONSERVED[1]	# and % OF POLYGONS CONSERVED[1]	# and % MAJOR POPULATIONS CONSERVED[2]	RISK[3]/COMMENTS
Rallus longirostris levipes Light-footed clapper rail FE/CE	9/16 (56%)	1299.2/1435.1 (91%)	92% saltmarsh habitat.	Moderate/Actively manage wetland sites to minimize edge effects. [4]
FINDING: Adequately conserved by the Plan and protection by state and federal wetlands regulations.				
Charadrius alexandrinus nivosus Western snowy plover FT/SSC	8.7/15 (58%)	1059.6/1486.1 (71%)	90% saltpan	Low/Assumes nesting locations on military land is protected. Saltworks are an essential nesting location for this species. [7,8]
FINDING: Adequately conserved by the Plan and protection by state and federal wetlands regulations, and active management of edge effects. This coverage does not include any new impacts to levees or maintenance of levees during reproductive season of nesting snowy plovers.				
Charadrius montanus Mountain plover C/	Site-specific data not mapped	Site-specific data not mapped	20% grassland and agricultural lands	Low
FINDING: Insignificant.				
Numenius americanus Long-billed curlew */SSC	6/16 (38%)	No polygons	20% grassland and agricultural lands	Moderate/assume military land will afford some protection; would receive some protection per federal and state wetland regulations. [7,8]
FINDING: Insignificant.				
Sterna elegans Elegant tern */SSC	2/2 (100%)	No polygons	2/2 (100%) 90% saltpan	Low[8]
FINDING: Adequately conserved by the Plan and protection by state and federal wetlands regulation, and active management of edge effects. This coverage does not include any new impacts to levees or maintenance of levees during reproductive season of nesting elegant terns.				
Sterna antillarum browni California least tern FE/CE	2.9/4 (74%)	306.4/471.8 (65%)	100%	Low/Assumes nesting colonies on military land are protected. [7,8]
FINDING: Adequately conserved by the Plan and protection by state and federal wetlands regulation, and active management of edge effects. This coverage does not include new impacts to levees or maintenance of levees during reproductive season of nesting least terns.				

ATTACHMENT 2 (*Continued*)
SPECIES EVALUATED FOR COVERAGE UNDER THE MSCP

SCIENTIFIC NAME COMMON NAME STATUS	# and % OF POINTS CONSERVED[1]	# and % OF POLYGONS CONSERVED[2]	# and % MAJOR POPULATIONS CONSERVED[3]	RISK/COMMENTS
Speotyto cunicularia hypugaea Burrowing owl */SSC	10.4/24 (44%)	No polygons	20% of grassland and agriculture.	High/Dependent on other regional programs and military lands (Brown Field, NAS Miramar, North Island, Silver Strand). As funding permits, the wildlife agencies will work to achieve greater conservation of occupied burrowing owl habitat or suitable habitat areas where the species population can be expanded.
FINDING: Adequately conserved by the Plan and associated actions that will include: (1) preservation and enhancement of burrowing owls within the MHPA; (2) avoidance of impacts to colonies and pairs to the maximum extent practicable outside the MHPA (permit amendment areas); (3) implementation of passive relocation protocols (as specified in the CDFG Report on Burrowing Owls) on projects that affect burrowing owls; (4) within-tier mitigation for occupied habitat at locations that can be managed to restore, maintain, or enhance burrowing owl habitat values. Where possible, focus acquisitions to increase preservation of grasslands.				
Empidonax traillii extimus Southwestern willow flycatcher FE/CE	7.9/9 (88%)	Site-specific data not mapped	90% of riparian habitats.	Moderate-Low/Areas historically occupied included in MHPA; would receive some protection per federal and state wetland regulations.[4]
FINDING: Adequately conserved by the Plan and protection by state and federal wetlands regulations. Jurisdictions will require surveys during the CEQA process in suitable habitat proposed to be impacted. Development that attracts brown-headed cowbirds near the preserve will include project permit conditions to monitor and control cowbirds.				
Campylorhynchus brunneicapillus couesi Coastal cactus wren */SSC	268.2/397 (68%)	102.5/127.1 (81%)	3.2/4 (79%)	High/Dependent on habitat management, restoration, and other regional programs. 47% of maritime succulent sage scrub conserved. Also occurs within other habitat types containing large patches of *Opuntia*.
FINDING: Adequately conserved by the Plan based on Chula Vista "Modified GDP B" (i.e., no University site in Salt Creek) alternative and implementation of maritime succulent sage scrub habitat restoration on Otay Ranch at a minimum of 1:1 ratio with success being required prior to impact as required in the Otay Ranch RMP and GDP. Management Plans will include active management of major populations and restoration of maritime succulent sage scrub and cactus patches in the preserve.				
Polioptila californica californica California gnatcatcher FT/SSC	1,819/2,814 (65%)	22.4/23.1 (97%)	61% of CSS, MSS, and CSB/CHP habitats.	High/Dependent on retention of populations within military lands, key linkages, other regional programs and additional protection in key population cores.[5]
FINDING: Adequately conserved by the Plan based on Chula Vista "Modified GDP B" alternative (i.e., no University site in Salt Creek). Focus acquisition as identified in table 4-3 in occupied habitat in the Lake Hodges and Lakeside linkage area.				

ATTACHMENT 2 (*Continued*)
SPECIES EVALUATED FOR COVERAGE UNDER THE MSCP

SCIENTIFIC NAME COMMON NAME STATUS	# and % OF POINTS CONSERVED[1]	# and % OF POLYGONS CONSERVED[1]	# and % MAJOR POPULATIONS CONSERVED[1]	RISK/COMMENTS
Sialia mexicana Western bluebird none	3.4/15 (22%)	No polygons	52% of oak and 34% grassland habitats.	Low/Large populations occur on public lands east of study area; dependent on other regional programs.
FINDING: Adequately conserved by the Plan.				
Vireo bellii pusillus Least Bell's vireo FE/CE	282.2/299 (94%)	No polygons	80% of riparian habitats.	Low/Would receive some protection per federal and state wetland regulations. [9]
FINDING: Adequately conserved by the Plan and protection by state and federal wetlands regulations. Jurisdictions will require surveys during the CEQA process in suitable habitat proposed to be impacted. Development that attracts brown-headed cowbirds near the preserve will include project permit conditions to monitor and control cowbirds.				
Aimophila ruficeps canescens California rufous-crowned sparrow */SSC	296.8/418 (71%)	No polygons	61% of CSS, MSS, and CSS/CHP habitats.	Low/Significant portions of potential habitat remain at risk; however, species is tolerant of edge and small patch size and can apparently exist in patchy landscape, including steep slopes with low shrub volume.
FINDING: Adequately conserved by the Plan.				
Passerculus sandwichensis beldingi Belding's Savannah sparrow */CE	27/38 (71%)	No polygons	92% of saltmarsh habitat.	Low/Military habitat on Silver Strand not included in MHPA; manage for edge effects.[7,8]
FINDING: Adequately conserved by the Plan and protection by state and federal wetlands regulations.				
Passerculus sandwichensis rostratus Large-billed Savannah sparrow */SSC	2/4 (50%)	No polygons	92% of saltmarsh habitat.	Low/Military habitat on Silver Strand not included in MHPA; manage for edge effects.[7,8]
FINDING: Adequately conserved by the Plan and protection by state and federal wetlands regulations.				
Ammodramus savannarum Grasshopper sparrow none	31.2/91 (34%)	No polygons	34% of grassland.	High/Loss of 80% of nesting habitat and 66% of all known localities in database; viability is dependent on additional habitat, military, and other regional programs. Local extirpations of this widely ranging species could occur.
FINDING: Not adequately conserved due to high loss of grassland habitat occupied by grasshopper sparrow (66%). Local extirpations may occur. Coverage could be added later if additional data indicates greater levels of preservation for this species.				

ATTACHMENT 2 (*Continued*)
SPECIES EVALUATED FOR COVERAGE UNDER THE MSCP

SCIENTIFIC NAME COMMON NAME STATUS	# and % OF POINTS CONSERVED[1]	# and % OF POLYGONS CONSERVED[1]	# and % MAJOR POPULATIONS CONSERVED[2]	RISK[3]/COMMENTS
Agelaius tricolor Tricolored blackbird */SSC	8.9/15 (59%)	No polygons	77% of freshwater marsh and riparian scrub.	Low/Would receive some protection per federal and state wetland regulations. [8]
FINDING: Adequately conserved by Plan and protection by state and federal wetlands regulations. Jurisdictions will require surveys during the CEQA process in suitable habitat proposed to be impacted. Development that attracts brown-headed cowbirds near the preserve will include project permit conditions to monitor and control cowbirds. Project approvals must require avoidance of active nesting areas during breeding season.				
Plecotus townsendii Townsend's western big-eared bat */SSC	1.75/2 (88%)	No polygons	Unknown	Unknown/Insufficient data on distribution and life history.
FINDING: Unknown conservation level and therefore not covered by the Plan.				
Eumops perotis californicus California mastiff bat */SSC	No points	No polygons	Unknown	Unknown/Insufficient data on distribution and life history.
FINDING: Unknown conservation level and therefore not covered by the Plan.				
Perognathus longimembris pacificus Pacific little pocket mouse FE/SSC	Site-specific data not mapped	Site-specific data not mapped	Unknown	Unknown/only three to four known populations in Southern California. Insufficient data on distribution and life history.
FINDING: Unknown conservation level and therefore not covered by the Plan.				
Taxidea taxus American badger --/SSC	Site-specific data not mapped	Site-specific data not mapped	55% of grassland and CSS habitats.	Unknown/Dependent on other regional programs.
FINDING: Insignificant.				
Felis concolor Mountain lion --/protected	23.1/42 (55%)	No polygons	56% of oak, CSS, chaparral, and riparian habitats.	Moderate/Dependent on other regional programs and adequacy of linkages.
FINDING: Insignificant.				

ATTACHMENT 2 (*Continued*)
SPECIES EVALUATED FOR COVERAGE UNDER THE MSCP

SCIENTIFIC NAME COMMON NAME STATUS	# and % OF POINTS CONSERVED[1]	# and % OF POLYGONS CONSERVED[2]	# and % MAJOR POPULATIONS CONSERVED[3]	RISK[4]/COMMENTS
Odocoileus hemionus *fuliginata* Southern mule deer --/game species	129/291 (44%)	No polygons	56% of oak, CSS, chaparral, and riparian habitats.	Moderate/Dependent on other regional programs and adequacy of linkages.
FINDING: Insignificant.				

[1] # and % of points – number and percentage of point locations in the GIS data base that are targeted for conservation; compared to total number in study area; "no points" indicates no known localities in the study area for this species; "site-specific data not mapped" indicates locations exist, but specific locations are not in GIS data base.

[2] # and % of polygons – number and percentage of polygons in the GIS data base that are targeted for conservation; compared to total number in study area; "no polygons" indicates no known localities in the study area for this species; "site-specific data not mapped" indicates locations exist, but specific locations are not in GIS data base. Fractions will not precisely calculate due to rounding.

[3] # and % of major populations: number and percentage of major populations that are targeted for conservation; compared to total number in study area. Not all major populations are in the GIS data base, i.e., if specific locality data are lacking. In these cases, the percentage of major populations preserved is determined or estimated from the percentage of associated habitat in the MHPA (e.g., if 0% of southern foredunes are preserved, than it is assumed that 0% of coastal dunes milk vetch will be preserved). Fractions will not precisely calculate due to rounding.

[4] Risk – risk of impacts to populations within the MSCP study area; analysis assumes populations within MHPA are protected. (Note – viability of species may still be at risk.)
Low – little or no risk because species is adequately protected within MHPA or majority of population is on protected lands outside the MHPA.
Moderate – species may or may not be adequately protected in MHPA; species is potentially subject to edge effects; species may receive additional protection per federal and state wetland regulations and/or implementation of other regional conservation programs and habitat management.
High – species is not adequately protected and/or potentially subject to edge effects.
Unknown – data insufficient to determine risk.

[5] No occurrences documented in study area; number (if given) refers to percentage of appropriate habitat in MHPA.

[6] Includes vernal pool complexes, and species points and polygons outside complexes (if present).

[7] Important habitat for this species occurs on property owned by the Military or other federal agency. The U.S. Fish and Wildlife Service will address this issue with the appropriately involved federal agency to ensure adequate protection on federal property.

[8] Habitat under the jurisdiction of the U.S. Army Corps of Engineers is presumed to be maintained (no net loss). Projects within suitable habitat will be subject to all existing state and federal regulations including section 7 of the Endangered Species act, as appropriate.

Status (Federal/State)

FE – Federally endangered

PE – Proposed for federal listing as endangered

FT – Federally threatened

PT – Proposed for federal listing as threatened

C – Candidate for federal listing

ATTACHMENT 2 (*Continued*)
SPECIES EVALUATED FOR COVERAGE UNDER THE MSCP

* = Formerly Category 2 or Category 3 for federal listing; no current federal status
Protected = Moratorium on hunting
None = No federal or state status
BEPA = Bald Eagle Protection Act
CE = State endangered
CR = State rare
CT = State threatened
SSC = State Species of Special Concern

Note: Shading indicates priority species (federally and state listed species, species proposed for listing, Category 1 candidate species, and NCCP target species).

Note: Fractions for points, polygons, and major populations will not precisely calculate to percentage due to rounding.

Note: It is assumed that habitat management plans prepared for the preserve areas will include specific guidelines for managing and monitoring covered species. All species should be managed to minimize edge effects, and fire and watershed or tidal regime management plans should be developed, as appropriate. Edge effects may include trampling, dumping, vehicular traffic, competition with invasive species, parasitism by cowbirds, predation by domestic animals, noise, collecting, recreational activities, and other human intrusion.

Source: 1996 MSCP GIS database. Military lands excluded from analysis.

Findings Definitions:
Adequately Conserved based on the Plan: The overall benefits of the multiple-species planning effort to the natural ecosystem will provide for the species that inhabit that ecosystem.
Insignificant effect: An effect that cannot meaningfully be detected or measured, relative to the species' status as a whole. MSCP is not a significant portion of species' range.
Discountable effect: An effect that would not reasonably be expected to occur because species is not expected to occur in MSCP study area
Not adequately conserved by the Plan: Not covered by take authorizations.

* Disturbed habitat, agriculture, and developed areas with habitat value.

MITIGATION MONITORING
and
REPORTING PROGRAM

For

Issuance of a Take Authorization for Threatened and Endangered Species
Within the Multiple Species Conservation Program (MSCP) Planning Area
San Diego County, California

(LDR No. 93-0287)
(SCH No. 93121073)

ATTACHMENT 3

Vegetation Community Conservation Target Areas within the MHPA by Subarea

January, 1997

ATTACHMENT 3
VEGETATION COMMUNITY CONSERVATION TARGET ACRES WITHIN THE MHPA BY SUBAREA

Vegetation Communities	MHPA Conserved*	Chula Vista***	Coronado	Del Mar	El Cajon	Imperial Beach	La Mesa	National City	Poway	San Diego	Santee	Unincorp-orated***	Water Districts
Beach	443		140	49		139				115			
Saltpan	212					76				136			
Southern Foredunes	124		25	1		89				9			
Southern Coastal Bluff Scrub	137			2						135			
Coastal Sage Scrub	71,274	1,092		8	105	28	49		4,809	18,951	1,121	44,254	857
Maritime Succulent Scrub	855	16								681		158	
Chaparral	54,945				26				3,978	10,424	544	39,884	89
Southern Maritime Chaparral	1,133			4						1,102	20	5	2
CSS/Chaparral Mix	1,468								48	95		1,325	
Grassland	9,769	272			61	17			353	4,942	178	3,586	380
Southern Coastal Salt Marsh	1,726	226		58		452		47	<1	936			8
Freshwater Marsh	489	6		6		5		<1		232	2	238	
Riparian Forest	1,077	10							8	614	3	348	94
Oak Riparian Forest	3,204	149							351	469	38	2,194	3
Riparian Woodland	588									567		20	1
Riparian Scrub	4,138					172	2	26	42	2,749	80	760	307
Oak Woodland	2,649								110	329	2	2,206	2
Torrey Pine Forest	144									144			
Tecate Interior Cypress Forest	5,591									2		5,589	
Eucalyptus Woodland	328								25	170		120	11
Open Water	5,221	24	185	41		77		141	65	3,699	58	149	782
Disturbed Wetlands	738	6		4		34				583		90	21
Natural Flood Channel	747	19							23	295	21	344	45
Shallow Bay	369	135						9		225			
Deep Bay	0												
Other Habitats**	299	119	<1	2		1		<1	2	157		18	
Subtotal Habitat	**167,668**	**2,073**	**350**	**175**	**192**	**1,090**	**51**	**223**	**9,814**	**47,761**	**2,087**	**101,268**	**2,602**
Disturbed	2,447									2,447			
Agriculture	1,803									1,803			
Subtotal Vacant Land	**171,916**	**2,073**	**350**	**175**	**192**	**1,090**	**51**	**223**	**9,814**	**52,011**	**2,087**	**101,268**	**2,602**
Developed	0												
Total	**171,916**	**2,073**	**350**	**175**	**192**	**1,090**	**51**	**223**	**9,814**	**52,011**	**2,087**	**101,268**	**2,602**

* Targeted percent conservation factors (e.g., 70%, 80%, 90%, etc.) have been applied to acreage for all vegetation communities within the MHPA boundary with the following exceptions: all wetland communities are assumed 100% conserved within the MHPA boundary and all Disturbed, Agriculture, and Developed areas in all subareas except City of San Diego are assumed 0% conserved within the MHPA boundary.

** Disturbed, Agriculture, and Developed areas with habitat value.

*** Shows acreage for Chula Vista Policy Option 2 and County of San Diego under Proposed MHPA (i.e., not Alternative 1).

Source: 1996 MSCP GIS data base. Subareas do not necessarily correspond to jurisdictional boundaries.

MITIGATION MONITORING
and
REPORTING PROGRAM

For

Issuance of a Take Authorization for Threatened and Endangered Species
Within the Multiple Species Conservation Program (MSCP) Planning Area
San Diego County, California

(LDR No. 93-0287)
(SCH No. 93121073)

ATTACHMENT 4

Vegetation Community Acres Preserved Within MSCP Multi-Habitat Planning Area (MHPA)

January, 1997

ATTACHMENT 4
VEGETATION COMMUNITY ACRES PRESERVED WITHIN MSCP MULTI-HABITAT PLANNING AREA (MHPA)

Vegetation Communities	Total MSCP Study Area (Acres)	Total MHPA (Acres)	MHPA Conservation Target (Acres)	% of MSCP Veg. Comm. Conserved
Beach	1,202	491	443	37%
Saltpan	235	212	212	90%
Southern Foredunes	188	140	123	65%
Southern Coastal Bluff Scrub	198	146	137	69%
Coastal Sage Scrub	115,504	80,596	71,274	62%
Maritime Succulent Scrub	1,803	899	855	47%
Chaparral	111,335	60,933	59,945	49%
Southern Maritime Chaparral	1,782	1,240	1,111	62%
CSS/Chaparral Scrub	3,877	1,749	1,490	38%
Grassland	28,373	10,926	9,770	34%
Southern Coastal Saltmarsh	1,870	1,719	1,719	92%
Freshwater Marsh	815	497	497	61%
Riparian Forest	1,328	1,078	1,078	81%
Oak Riparian Forest	5,361	3,054	3,054	57%
Riparian Woodland	731	588	588	80%
Riparian Scrub	5,374	4,286	4,286	80%
Oak Woodland	5,600	3,150	2,651	47%
Torrey Pine Forest	169	153	144	85%
Tecate Cypress Forest	5,712	5,641	5,591	98%
Eucalyptus Woodland	1,633	364	326	20%
Open Water	5,726	5,220	5,220	91%
Disturbed Wetlands	928	738	738	80%
Natural Flood Channel	862	746	746	87%
Shallow Bays	9,581	369	369	4%
Pacific Ocean	4,891	3	0	0%
Other Habitat*	864	339	300	35%
Subtotal	***315,940***	***185,266***	***167,667***	***53%***
Disturbed	23,244	5,037	2,447	11%
Agriculture	28,547	4,015	1,803	6%
Developed	214,511	0	0	0%
Subtotal	***266,302***	***9,052***	***4,250***	***47%***
TOTAL	***582,243***	***194,318***	***171,917***	***30%***

* Disturbed habitat, agriculture, and developed areas with habitat value.

Note: Numbers may not sum to total as shown, due to rounding. Vernal pools were mapped as an overlay and thus their acreage is not included in totals. Military lands are included in total study area acreage but are not included in MHPA.

SOURCE: City of San Diego, 1996a.

ATTACHMENT 1
COVERED SPECIES FOR WHICH SIGNIFICANT IMPACTS* OUTSIDE THE MHPA ARE MITIGATED

Covered Species	MHPA	Chula Vista Options		Coronado	Del Mar	San Diego	Santee	Unincorporated	
		Policy 1	Policy 2					MHPA	Alt 1
White-faced ibis	x	x	x		x	x			
Canada goose	x					x		x	x
Bald eagle	x	x	x			x	x	x	x
Cooper's hawk	x	x	x		x	x	x	x	x
Light-footed clapper rail	x	x	x		x	x			
Western snowy plover	x	x	x	x	x	x			
California least tern	x	x	x	x	x	x			
Burrowing owl	x	x	x	x	x	x	x	x	x
Southwestern willow flycatcher	x	x	x		x	x	x	x	x
Coastal cactus wren	x		x		x	x	x		x
California gnatcatcher	x		x		x	x	x		x
Western bluebird	x	x	x		x	x	x	x	x
Least Bell's vireo	x	x	x		x	x	x	x	x
California rufous-crowned sparrow	x	x	x		x	x	x		x
Belding's Savannah sparrow	x	x	x	x	x	x			
Large-billed Savannah sparrow	x	x	x	x	x	x			
Tricolored blackbird	x	x	x		x	x	x	x	x

* Significant direct impacts as determined under the MHPA scenario based on the criteria described under *Process Background (Section 4.3 of the Draft EIR/EIS).* Species that would not be significantly impacted under the MHPA are not included in this table.

ATTACHMENT 1
COVERED SPECIES FOR WHICH SIGNIFICANT IMPACTS* OUTSIDE THE MHPA ARE MITIGATED

Covered Species	MHPA	Chula Vista Options		Coronado	Del Mar	San Diego	Santee	Unincorporated	
		Policy 1	Policy 2					MHPA	Alt 1
Plants									
San Diego thorn-mint	x	x	x			x		x	x
Shaw's agave	x					x			
San Diego ambrosia	x	x	x			x	x	x	x
Aphanisma	ns			ns	ns	ns			
Del Mar manzanita	x				x	x		x	x
Coastal dunes milk-vetch	x			x					
Encinitas baccharis	x					x		x	x
Orcutt's brodiaea	x	x	x			x		x	x
Slender-pod jewelflower	x					x	x	x	x
Lakeside ceanothus	x							x	x
Wart-stemmed ceanothus	x				x	x		x	x
Salt marsh bird's-beak	x	x	x	x		x			
Orcutt's bird's-beak	x					x		x	x
Del Mar Mesa sand aster	x				x	x		x	x
Short-leaved dudleya	x				x	x			
Variegated dudleya	x	x	x	x		x	x	x	x
Sticky dudleya	x							x	x
Palmer's ericameria	x					x		x	x
San Diego button-celery	x	x	x			x		x	x
San Diego barrel cactus	x	x	x		x	x	x		x
Otay tarplant	x	x	x			x		x	x
Heart-leaved pitcher sage	x							x	x
Nuttall's lotus	x			x	x	x			
Felt-leaved monardella	x							x	x
Willowy monardella	x					x	x	x	x
San Diego goldenstar	x	x	x			x	x		x
Prostrate navarretia	x	x	x			x		x	x
Dehesa bear-grass	x							x	x
Snake cholla	x		x			x			x
California Orcutt grass	x	x	x			x		x	x
Torrey pine	x				x	x			
San Diego mesa mint	x					x		x	x
Otay Mesa mint	x	x	x			x		x	x
Small-leaved rose	x					x		x	x
San Miguel savory	x							x	x
Narrow-leaved nightshade	x					x	x		x
Animals									
San Diego fairy shrimp	x	x	x		x	x		x	x
Riverside fairy shrimp	x	x	x			x	x	x	x
Arroyo southwestern toad	x	x	x		x	x	x	x	x
Southwestern pond turtle	x	x	x		x		x	x	x
San Diego horned lizard	x	x	x		x	x	x	x	x
Orange-throated whiptail	x	x	x		x	x	x	x	x
California brown pelican	x	x	x	x	x	x			
Reddish egret	x	x	x		x	x			