

MULTIPLE SPECIES CONSERVATION PROGRAM  
APPROVAL OF THE PLAN, THE SUBAREA PLAN,  
IMPLEMENTING AGREEMENT, AND IMPLEMENTING ORDINANCES  
TABLE OF CONTENTS

	<u>PAGE</u>
BOARD REPORT.....	1
ATTACHMENT A - COUNTY OF SAN DIEGO CALIFORNIA ENVIRONMENTAL QUALITY ACT CANDIDATE FINDINGS.....	53
ATTACHMENT B - MITIGATION AND IMPLEMENTATION AGREEMENT MONITORING PROGRAM FOR BIOLOGICAL RESOURCES.....	74
ATTACHMENT C - IMPLEMENTING AGREEMENT.....	103
ATTACHMENT D - BIOLOGICAL MITIGATION ORDINANCE.....	171
ATTACHMENT E - HABITAT LOSS PERMIT ORDINANCE.....	253
ATTACHMENT F - GRADING AND CLEARING ORDINANCE.....	255
ATTACHMENT G - COMPARISON OF REQUIREMENTS WITH AND WITHOUT THE MULTIPLE SPECIES CONSERVATION PROGRAM.....	257
ATTACHMENT H - PLANNING COMMISSION MINUTES.....	262
ATTACHMENT I - LETTERS OF COMMENT FROM PLANNING AND SPONSOR GROUPS.....	294
ATTACHMENT J - ADDITIONAL LETTERS OF COMMENT.....	311
ATTACHMENT K - ADDENDUM FOR THE COUNTY MULTIPLE SPECIES CONSERVATION PROGRAM.....	456
ATTACHMENT L - DEAL POINTS ANALYSIS.....	470
COMMUNICATIONS RECEIVED	
CLERK OF THE BOARD MINUTE ORDER(S)	

**ATTACHMENTS DISTRIBUTED TO EACH BOARD  
MEMBER, CAO, COUNTY COUNSEL AND ON  
FILE IN THE OFFICE OF THE CLERK OF  
THE BOARD OF SUPERVISORS**

OCTOBER 22, 1997

ADDITIONAL DOCUMENTS:

MULTIPLE SPECIES CONSERVATION PROGRAM,  
COUNTY OF SAN DIEGO SUBAREA PLAN

MULTIPLE SPECIES CONSERVATION PROGRAM  
PLAN, VOLUME I AND REVISIONS

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 STATEMENT

FINAL EIR/EIS ISSUANCE OF TAKE  
AUTHORIZATIONS FOR THREATENED AND  
ENDANGERED SPECIES DUE TO URBAN GROWTH  
WITHIN THE MULTIPLE SPECIES  
CONSERVATION PROGRAM (MSCP)  
2 VOLUMES

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OCTOBER 22, 1997



# PLANNING REPORT

## COUNTY OF SAN DIEGO

**MEETING DATE:** October 22, 1997

**TO:** Board of Supervisors

**FROM:** Chief Administrative Officer

**SUBJECT:** Hearing on:  
Multiple Species Conservation Program: Approval of the Plan,  
Subarea Plan, Implementing Agreement, and Implementing  
Ordinances

**SUPV. DIST.:** All

**DESCRIPTION:**

The proposed project includes the Multiple Species Conservation Program Plan (the Plan), the Implementing Agreement, and the County of San Diego's Multiple Species Conservation Program Subarea Plan (the Subarea Plan). In addition, the following implementing Ordinances and supporting environmental documents are submitted for consideration: 1) Biological Mitigation Ordinance; 2) amendments to the Grading and Clearing Ordinance; 3) amendment to the Habitat Loss Permit Ordinance; and 4) Environmental Impact Report/Environmental Impact Statement and Addendum. The Addendum covers the proposed adoption of the Biological Mitigation Ordinance, Implementing Agreement, revisions to Brush and Clearing Regulations in the County and updates to the Subarea Plan.

**CHIEF ADMINISTRATIVE OFFICER RECOMMENDATION:**

1. Find that the Environmental Impact Report/Environmental Impact Statement prepared by the City of San Diego as Environmental Impact Report State Clearinghouse Log No. 93121073 has been completed and certified by the City of San Diego, and that the County of San Diego as responsible agency under the California Environmental Quality Act, has reviewed and considered the information contained therein prior to approving the project. Find also that an Addendum to the Environmental Impact Report/Environmental Impact Statement dated October 3, 1997, has been prepared by the County of San Diego.
2. Find, pursuant to Public Resources Code Section 21081(a) and as set forth in detail in Attachment A, that the decision-maker, having independently reviewed and considered the information contained in the

000001 OCT 2297

final Environmental Impact Report/Environmental Impact Statement, the Addendum dated October 3, 1997, the appendices and the record, finds that pursuant to the California Environmental Quality Act and the California Environmental Quality Act Guidelines, changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effects as identified in the final Environmental Impact Report/Environmental Impact Statement with respect to the areas of: a) land use; b) biological resources; and c) public service utilities.

3. Adopt the Mitigation Monitoring Program labeled as Attachment B.
4. Approve the Multiple Species Conservation Program Plan and the County's Subarea Plan.
5. Approve the terms of the Implementing Agreement (Attachment C) and direct its execution by the Chief Administrative Officer upon approval of the County's Take Authorizations.
6. Read title, waive further reading and introduce an Ordinance for further Board consideration on November 5, 1997:  
**THE BIOLOGICAL MITIGATION ORDINANCE ESTABLISHING STANDARDS FOR MITIGATION OF IMPACTS TO BIOLOGICAL RESOURCES.**
7. Read title, waive further reading and introduce an ordinance for further Board consideration on November 5, 1997:  
**AN ORDINANCE AMENDING THE COASTAL SAGE SCRUB HABITAT LOSS PERMIT ORDINANCE EXEMPTING THE AREA COVERED BY THE MULTIPLE SPECIES CONSERVATION PROGRAM PLAN FROM THE PROVISIONS OF THE ORDINANCE.**
8. Read title, waive further reading and introduce an ordinance for further Board consideration on November 5, 1997:  
**AN ORDINANCE AMENDING THE ORDINANCE IMPOSING INTERIM REGULATIONS ON GRADING AND CLEARING TO REQUIRE THAT ALL CLEARING WITHIN THE BOUNDARIES OF THE MULTIPLE SPECIES CONSERVATION PROGRAM PLAN BE SUBJECT TO THE BIOLOGICAL MITIGATION ORDINANCE.**
9. Direct the Chief Administrative Officer to work with the Wildlife Agencies, the Farm Bureau and the Cattleman's Association to identify and analyze additional lands being grazed not shown on Figure 2-1 of the Multiple Species Conservation Program Plan and initiate a future amendment to the Multiple Species Conservation Program Plan that would include such areas in the Plan and provide for continued agricultural use in a manner that conserves species including the same conditions as those lands currently identified in Figure 2-1 of the Subarea Plan, if appropriate.
10. Direct the Chief Administrative Officer to initiate the Conflict Resolution Procedure with the Natural Communities Conservation Program Management Team when necessary.

11. Direct the Chief Administrative Officer to work with the property owner of Wright's Field and the Wildlife Agencies to add this property to the Multiple Species Conservation Program Plan Preserve.
12. Direct the Chief Administrative Officer to work with County Counsel and the Wildlife Agencies to investigate the use of "mitigation agreements" which would establish mitigation requirements under the Multiple Species Conservation Program prior to approval of discretionary permits.
13. Direct the Chief Administrative Officer to work with the Wildlife Agencies and interested parties to achieve "Significantly Conserved Status" for Grassland habitats.
14. Refer to Budget all County departmental costs associated with enforcement of the Multiple Species Conservation Program.

FISCAL IMPACT STATEMENT

Summary:

Current year costs for preserve management, biological monitoring and implementation are budgeted in the FY 97-98 Budget. If approved this proposal will result in \$279,619 net current year cost.

Annual net costs for preserve management, biological monitoring and implementation in FY 98-99 are \$581,353.

Acquisition Costs:

County acquisition costs are estimated to be between \$1.8 million (50 year acquisition) and \$3.0 million (30 year acquisition) per year following a three year effort to find other funding sources. This estimate is based on an average acquisition cost of \$9,700 per acre. The total cost of preserve acquisition is estimated to be \$91.0 million.

Detail by Department:

Preserve Management and Biological Monitoring Costs:

Parks and Recreation

The budgeted current year, general fund cost to manage existing park land that is within the preserves is \$262,700. This cost will be incurred whether the Multiple Species Conservation Program exists or not since it is a requirement for ongoing park management. Preserve Management costs for FY 98-99 and FY 99-00 are estimated to be \$262,700.

Beginning in FY 00-01, as land is acquired for the Multiple Species Conservation Program, estimated preserve management costs will increase approximately \$17,000 per year based on an estimated annual land acquisition

of 450 acres at a cost of \$37.00 per acre. The funding source is the General Fund, however, alternative funding sources are being sought to offset a portion of the cost.

Implementation/Administration Costs:

**Planning and Land Use**

The budgeted current year cost to implement and administer this program is \$55,000 partially offset by \$44,000 in Federal grant monies for a general fund cost of \$11,000. This cost represents two General Fund Work Program activities; Multiple Species Conservation Program Implementation [\$49,500 staff costs; \$44,000 Grant Revenue; \$5,500 General Fund] and Mitigation Bank Committee [\$5,500 staff costs].

Subsequent year costs are estimated to be \$55,000 annually and will be included in the Department of Planning and Land Use General Fund Work Program. There is no funding source at this time, however, alternative funding sources are being sought to offset a portion of the cost.

**Parks and Recreation**

The budgeted current year cost to prepare a Framework Management Plan is \$12,500 100% offset by Federal grant monies for a general fund cost of \$0. The plan is scheduled to be completed in FY 97-98.

**Agriculture/Weights and Measures**

The current year general fund cost to implement and administer the Safe Harbor portion of this program is \$35,919, partially offset by \$30,000 in Federal grant monies for a general fund cost of \$5,919.

Subsequent year costs are estimated to be \$23,653 annually partially offset by \$10,000 in Federal grant monies for a general fund cost of \$13,653.

**Public Works**

There is no current year cost related to this program. Subsequent year cost general fund cost are estimated to be \$250,000 annually for new environmental reporting and mitigation requirements.

MAJOR ISSUES:

- Does the Multiple Species Conservation Program Plan provide sufficient protection to sensitive species to constitute a Habitat Conservation Plan?

- Does the Multiple Species Conservation Program Plan "streamline" the process for obtaining a discretionary land use permit and what would be the effect of no plan?
- What will be the source of funds to pay for the Multiple Species Conservation Program Plan?
- To what degree will the Wildlife Agencies be involved in projects that conform to the Multiple Species Conservation Program Plan and the County Subarea Plan?
- Will the existing Grading and Clearing Ordinances be affected?
- What are the management responsibilities for the Multiple Species Conservation Program preserve?
- How will the Multiple Species Conservation Program Plan affect agriculture?
- Will jurisdictions participating in the Multiple Species Conservation Program have a Section 404 Permit under this Program?
- Is the Multiple Species Conservation Program consistent with the Board of Supervisors' Negotiation Points?
- Does the State of California have legal authority to issue "Incidental Take Authorizations" for listed species?

REFERRAL

PREVIOUS ACTIONS:

On September 17, 1997 (2), the Board directed the Chief Administrative Officer to work with the City of San Diego to form a Blue Ribbon Committee to be comprised of members representing the local jurisdictions, the business community, fiscal experts, the environmental community and staff representatives of elected officials to develop regional funding strategies for implementation of the Multiple Species Conservation Program. The Blue Ribbon Committee is to advise the Board on the strategy with the most potential for success. The Board also adopted a resolution confirming the benefit of continuing to study the Multiple Species Conservation Program and the funding issues by establishing a Blue Ribbon Committee. They directed the Chief Administrative Officer to coordinate with State officials and other interested parties to evaluate support for a State funding mechanism based upon a cycle of bond act measures that could provide long-term state funding support to the Multiple Species Conservation Program effort. The Board also directed their Washington representative to support the concept of a Federally funded "revolving account" which could provide long-term funding to the

October 22, 1997

County of Sand Diego for the acquisition of sensitive lands. They directed the Chief Administrative Officer to coordinate with Federal officials and other interested parties to support a Federally-funded "revolving account" and to secure continued support for Multiple Species Conservation Program funding.

On July 22, 1997(5) the Board of Supervisors directed the Chief Administrative Officer to address the following issues raised by the Farm Bureau before the Multiple Species Conservation Program returns to the Board: 1) The Multiple Species Conservation Program does not identify grazing lands and if identification of grazing land will be addressed separately, include wording the Multiple Species Conservation program that certain lands will be available for incidental take and/or safe harbor provisions; 2) Concerns expressed requiring mitigation measures for clearing and grading beyond 3,000 acres.

On October 2, 1996 (2), the Board commented on the draft City of San Diego's Multiple Species Conservation Program Plan and Environmental Impact Report/Environmental Impact Statement. They directed the Chief Administrative Officer to work with Supervisors Jacob and Slater to embody those comments in a letter to the Wildlife Agencies and to Mayor Susan Golding. In addition, they directed the Chief Administrative Officer to prepare final versions of an Implementing Agreement, Biological Mitigation Ordinance, and Subarea Plan for the unincorporated area of the Multiple Species Conservation Program. They also directed the Chief Administrative Officer to prepare and submit a permit application for the Multiple Species Conservation Program contingent on Board approval of the Program Plan and Implementing Agreement, and to submit the Multiple Species Conservation Program Plan and Implementing Agreement to the State of California as a Natural Communities Conservation Program. Finally, the Board directed staff to work with other city jurisdictions and the Wildlife Agencies to apply for and obtain a general permit under Section 404 of the Clean Water Act to address the issue of regulation of wetlands in San Diego.

On July 23, 1996 (10), at the request of Supervisor Horn, the Board of Supervisors reviewed a status report on the funding of the regional open space programs involving the requirement for a local contribution to a regional funding program. The Board directed that the local contribution to the regional funding program will be approved only after being submitted for a vote of the public and that a ballot measure should be placed on the ballot when sufficient information is known about the costs and method of funding.

000006 OCT 22 1997

On July 17, 1996 (6), the Board approved proceeding with open space planning for the unincorporated areas in North County as a Subarea Plan and, after approval by the Board, its submission as an amendment to the Multiple Species Conservation Program.

On December 6, 1995 (1), the Board approved the Lake Hodges Subarea Plan, and on May 1, 1996 (3), the Board approved the South County Subarea Plan for transmittal to the City of San Diego. Since those actions to send the Subarea Plans to the City, the Wildlife Agencies have requested that the entire County portion of the Multiple Species Conservation Program be treated as one subarea and the Lake Hodges, South County, and remaining portions be designated as segments to the County Subarea Plan.

On October 11, 1995 (3), the Board gave final approval to Negotiation Points to be used in negotiating the County's Subarea Plan.

On September 27, 1995 (2), the Board of Supervisors accepted the Draft Lake Hodges and South County Subarea Plans for distribution to the appropriate community and subregional planning groups, as well as affected citizen groups and property owners. In addition, staff was directed to develop criteria for the creation of Subarea Plans for the areas not covered by the Lake Hodges and South County areas.

On May 10, 1994 (56), the Board approved the use of Federal grants for open space planning.

On July 31, 1991 (10), the Board of Supervisors adopted a Work Program for open space planning in the San Diego region.

**BACKGROUND/REASONS FOR HEARING:**

The County has been involved in the preparation of regional open space programs for the past several years, including the Multiple Species Conservation Program coordinated by the City of San Diego. The Multiple Species Conservation Program is a habitat conservation plan prepared according to the requirements of State and Federal law. The Plan's provisions call for protection of large contiguous areas of habitat to benefit endangered species qualifying the Plan as a Habitat Conservation Plan under Section 10(a) of the Endangered Species Act. The Plan provides the basis for an application for an Incidental Take Authorization for listed species, without the need for a separate Federal permit for the 85 species covered by the Plan. The State of California would also grant the County authorization to take listed species

000007 OCT 22 97

(under the California Endangered Species Act) through the Natural Communities Conservation Program Act. In addition, the Plan also qualifies as a Natural Communities Conservation Plan. The benefits of these permits can be passed to landowners that propose actions, which comply with the multiple Species Conservation Program Plan and implementing Ordinances. These projects will receive the benefits of the County's permits.

The County has been a significant participant with the City of San Diego and other agencies in the development of the Multiple Species Conservation Program Plan from the early stages of that effort. County staff has frequently sought direction and guidance from the Board of Supervisors throughout this undertaking. In October of 1995, the Board of Supervisors adopted a set of "Negotiating or Deal Points" to provide on-going direction to staff. In the fall of 1996, the City of San Diego released the final Multiple Species Conservation Program Plan and the accompanying Environmental Impact Report/Environmental Impact Statement for public review. On March 18, 1997, the San Diego City Council approved the Multiple Species Conservation Program as well as the City of San Diego's Subarea Plan and Implementing Agreement. During this period, the Department of Planning and Land Use, with the assistance of County Counsel and the Department of Parks and Recreation, has been continually meeting with the Wildlife Agencies and other affected parties to complete the County's portion of the Multiple Species Conservation Program. The Chief Administrative Officer believes that sufficient progress has been made in these discussions to bring the Plan and associated documents forward for consideration of approval.

#### SUMMARY OF COMPONENTS OF MULTIPLE SPECIES CONSERVATION PROGRAM

1a. The Multiple Species Conservation Program Plan Volume I

This document provides the overall framework for the Multiple Species Conservation Program. It includes the basic biological analysis and guidance for the protection of the 85 species covered by the Plan. It outlines the standards for the identification and assemblage of the 171,920-acre preserve necessary to protect the covered species. It establishes implementation principles including recommendations as to how responsibility for implementing the Plan should be shared between the Wildlife Agencies, local government, and property owners. Volume I includes an economic analysis prepared by the City of San Diego consultants.

1b. The County of San Diego Subarea Plan--Lake Hodges, South County, and Metro-Lakeside-Jamul Segments

Individual jurisdictions participate in the Multiple Species Conservation Program through the adoption of Subarea Plans that become a part of the Multiple Species Conservation Program Plan. In case of conflict, the individual Subarea plans supersede the Multiple Species Conservation Program Plan. The Subarea Plan defines the County's participation in the Multiple Species Conservation Program. The Subarea Plan encompasses the three segments noted above. It establishes conservation goals and criteria for land development in the Subarea.

2. The Environmental Impact Report/Environmental Impact Statement and County Addendum

The City of San Diego was determined to be the lead agency (pursuant to the requirements of the California Environmental Quality Act) for the Environmental Impact Report for the Multiple Species Conservation Program because of the City's lead role in the Multiple Species Conservation Program. The City of San Diego and U.S. Fish and Wildlife Service were co-leads on the preparation of the Environmental Impact Statement required by the National Environmental Policy Act. The County, in approving the Multiple Species Conservation Program, is in the position of a responsible agency under the California Environmental Quality Act. The County must consider the information included in the Environmental Impact Report prepared by the lead agency and make findings based upon its independent judgment. As a responsible agency, the County is not required to certify the document. In addition, the County has prepared an addendum to the Environmental Impact Report/Environmental Impact Statement to reflect minor amendments to the County Subarea Plan, Biological Mitigation Ordinance, and Grading and Clearing Ordinance. These proposals were not available for analysis in the original document and have been analyzed in the addendum to the Environmental Impact Report/Environmental Impact Statement. The County has determined that these changes are technical additions to the Multiple Species Conservation Program and will not raise important new issues about the significant effects on the environment.

3. The Implementing Agreement

The Implementing Agreement is a contract between the County, the U.S. Fish and Wildlife Service, and the California Department of Fish and

Game. It specifies the conservation responsibilities of the parties to the Agreement and outlines the "assurances" relative to the covered species in the Plan and the protection provided if additional species are listed by the Wildlife Agencies. In addition, it explains the process for benefits of the Plan to be passed through the County to property owners (termed "Third Party Beneficiaries") in the Agreement.

4. The Biological Mitigation Ordinance

This Ordinance is the primary mechanism for implementation of the Plan in the Metro-Lakeside-Jamul segment of the Plan, where agreements with landowners and the Wildlife Agencies have not been reached. This Ordinance provides mitigation standards for developers, which are implemented through the California Environmental Quality Act process.

5. Amendments to the Grading and Clearing Ordinance

The Grading and Clearing Ordinance remains effective for the County. This amendment will create special exemptions for the Multiple Species Conservation Area Program addressing agricultural and small parcel grading and clearing.

6. Amendment of the Habitat Loss Permit Ordinance

During the preparation of the Multiple Species Conservation Program, the Habitat Loss Permit Ordinance has been in effect. It allows for limited amounts of Coastal sage scrub, a vegetation community that is the primary habitat for the California gnatcatcher, to be disturbed upon application for a permit. The gnatcatcher has been declared a Threatened Species under the Federal Endangered Species Act. With the adoption of the Multiple Species Conservation Program, a Habitat Loss Permit will not be necessary for impacts to Coastal sage scrub land within the area covered by the Multiple Species Conservation Program because gnatcatcher habitat will be protected. The Habitat Loss Permit Ordinance will remain in effect for the remainder of the County.

DISCUSSION OF MAJOR COMPONENTS

Multiple Species Conservation Program Plan

The Multiple Species Conservation Program Plan, Volume I, includes general assumptions and goals and policies, which affect all of the participating

agencies. Volume II includes the participating jurisdiction's Subarea Plans which contains specific policies and maps for each individual jurisdiction.

### County of San Diego's Subarea Plan

At the request of the Wildlife Agencies, the unincorporated portion of the Multiple Species Conservation Program is being treated as one Subarea Plan and will become part of Volume II of the Multiple Species Conservation Program along with Subarea Plans from other jurisdictions as they are adopted. The Subarea Plan includes separate "Segments" for the Lake Hodges, Metro-Lakeside-Jamul, and South County areas. The Lake Hodges and South County segments of the Subarea Plan remain essentially unchanged from the documents that were brought forward to the Board on May 1, 1996. The Metro-Lakeside-Jamul segment has undergone some refinement and clarification by the Wildlife Agencies.

The first chapter of the Subarea Plan is an introduction with an outline of the overall Plan. It includes maps of the Subarea Segments and acreage goals for the vegetation communities to be preserved over time. It also includes a description of the basic components of the Plan, the process for creating an open space preserve, and the types of amendments required for bringing land into the Plan if requested by the owner. Two of the Plan Segments, the Lake Hodges Segment and the South County Segment, include "hard line" preserve systems. "Hard line" preserves are those areas specifically delineated on a map. These areas include land that is either publicly owned or land that has been the subject of negotiated agreements with the property owners. The "hard lines" depict areas that will be included in the Multiple Species Conservation Program preserve and they also show the areas where development is allowed without further biological mitigation.

The Lake Hodges and South County segments include land where property owner/Wildlife Agency agreements have been completed and the Metro-Lakeside-Jamul segment identifies a process (described below) based on the review of discretionary projects for lands where there is no such agreement.

There are two other categories of land not covered by the Plan. These categories have been defined as Minor Amendment Areas and Major Amendment Areas. These areas may be included in the Plan and benefit from the County permit at the request of the landowner through the following amendment processes:

000011 OCT 22 97

Land subject to the Minor Amendment process contains habitat, which could be partially or completely eliminated with accompanying mitigation (utilizing the standards of the Biological Mitigation Ordinance) without significantly affecting the overall goals of the County Subarea Plan. Minor Amendments require only the approval of the Wildlife Agencies' local office to be included in the Plan.

Major Amendment lands contain habitat whose loss could compromise the goals of the County Subarea Plan. For land subject to the Major Amendment process, the landowner must negotiate an agreement with the Wildlife Agencies as to how much will be placed in open space. The proposed Major Amendment process is a more complex process and must be published in the Federal Register.

#### Lake Hodges Segment

The segment is based on development plans that have been approved by the Board of Supervisors or are in process (4S Ranch). For the Lake Hodges segment, these include the Rancho Cielo, 4S Ranch, Santa Fe Valley, Helix Land Company, and Madura properties. Those property owners whose land is shown as "hard lines" are in agreement with that designation. The Lake Hodges segment also shows certain lands owned by the City of San Diego for information purposes. The Lake Hodges segment has a Major Amendment Area designated near the Rancho Cielo area and also designates an area know as Section 26 off Artesian Road as a Minor Amendment Area.

#### South County Segment

The South County segment plan includes the Otay Ranch, Hidden Valley Estates, Las Montañas (recently purchased by the Trust for Public lands), Loma del Sol, and the Pointe San Diego properties. This segment is based on plans that have been approved by the Board of Supervisors.

The Otay Ranch project has been the subject of additional negotiations between the Wildlife Agencies and Village Development (the entity that partially owns a portion of Otay Ranch and represents Baldwin Company). In these negotiations, Village Development proposed modifications of the adopted Otay Ranch plan for land that was under its ownership generally removing or revising areas for development in the eastern portion of the plan and increasing densities in the western portion. These modifications were agreed to by the Wildlife Agencies and have been included in the draft Subarea Plan and will become effective when the County and the City of Chula Vista approve amendments to the Otay Ranch reflecting these changes. Since the agreement

October 22, 1997

between Village Development and the Wildlife Agencies was reached, title to portions of the property (formerly owned by Baldwin Company) has been transferred to other owners. The Baldwin Company has filed a General Plan Amendment with the City of Chula Vista for that portion of the Plan within Chula Vista that is subject to the Wildlife Agency Agreement. They have informed the Department of Planning and Land Use that they intend to file a General Plan Amendment application for the unincorporated portion. Representatives of the Steven and Mary Birch Foundation (the present owner of lands formally owned/controlled by Village development) have also discussed a General Plan Amendment more or less consistent with the agreements with Wildlife Agencies.

During the hearing of May 1, 1996, the Board directed the Chief Administrative Officer to make modifications to the South County segment plan to address a number of issues that were raised. The South County segment plan has been modified in response to these concerns. In addition, the Environmental Impact Statement/ Environmental Impact Report for the Multiple Species Conservation Program Plan includes an alternative to address the Board's direction regarding a university site and the development that was approved south of Otay Lake, and in the "inverted L" north of Proctor Valley Road.

The South Subarea Plan also includes Major and Minor Amendment Areas. In addition, the Plan shows several areas as "Conserved Subject to Agreement With Wildlife Agencies." This designation is on several areas of Otay Ranch as well as property formally owned by the Helix Land Company and San Miguel Ranch. The latter two areas have been purchased or established as mitigation banks by the U.S. Fish and Wildlife Service so as to become part of the Multiple Species Conservation Program preserve. The remaining areas with this designation will not have the benefit of the Multiple Species Conservation Program until they reach agreement with the Wildlife Agencies.

#### Metro-Lakeside-Jamul Segment

The Metro-Lakeside-Jamul segment consists of the remaining land in the unincorporated portion of the Multiple Species Conservation Program Plan. With the exception of five separate parcels owned by the Helix Land Company, the preserve areas in this portion are not shown as specifically mapped "hard line" areas.

Instead, the Metro-Lakeside-Jamul segment includes goals and criteria on the number of acres of different habitat types, which must be ultimately included in a preserve in order for the covered species in the Plan to be adequately

000013 OCT 22 97

protected. The preserve will be assembled in this area through Federal, State, and local agency acquisition and through the directed mitigation of discretionary project impacts. The application of the California Environmental Quality Act and the proposed Biological Mitigation Ordinance (see below) will be vehicles for directing discretionary project mitigation to the assembly of the preserve.

There are several large properties in the Metro-Lakeside-Jamul Segment that will contribute to the assemblage of the preserve. The Boys and Girls Club, Crestridge, and Singing Hills Mitigation Banks have been or are in the process of being established. In addition, the Wildlife Agencies working in conjunction with Wells Fargo Bank have acquired 4,800 acres of the Daley Ranch for preserve purposes.

### Biological Mitigation Ordinance

As part of the consideration of revisions to the Resource Protection Ordinance and to assist in the creation of the Multiple Species Conservation Program, the Department of Planning and Land Use generated a draft Biological Mitigation Ordinance. This Ordinance will apply through the California Environmental Quality Act process to all discretionary land use approvals within the Multiple Species Conservation Program Subarea. This new Ordinance will replace the biological regulations of the Resource Protection Ordinance for the Subarea. The Biological Mitigation Ordinance is designed to ensure that mitigation measures take place in areas that support assemblage of a preserve system. The Ordinance will promote the preservation of biological resources by directing preservation toward land that can be combined into contiguous areas of habitat or linkages by providing an incentive using lower mitigation ratio requirements in areas that have high biological resource values. The mitigation ratios established by the Ordinance direct impacts to areas of lower quality habitat and mitigation to higher quality habitat. The Ordinance would encourage the use of mitigation banks such as the Crestridge Mitigation Bank and the Boys and Girls Club Mitigation Bank. The basic components of the draft Ordinances are as follows:

- o A list of project types that would be exempt from the Ordinance.
- o Project design criteria.
- o Mitigation criteria for habitat.
- o Mitigation criteria for sensitive plant and animal populations including:

- A section dealing with sensitive plant populations and an attached list of rare narrow endemic plants as required by the Subarea Plan.
- A section dealing with specific sensitive animal species (narrow endemics) which occur in limited areas and an attached list of animals that need to be evaluated under this section.

### Implementing Agreement

The Implementing Agreement is a contract between the County and Wildlife Agencies. The Implementing Agreement will be the basis for the granting of a Section 10(a) Permit by the U.S. Fish and Wildlife Service and a Take Authorization under the Natural Communities Conservation Program Act by the California Department of Fish and Game. The Implementing Agreement establishes the assurances and obligations of the parties in implementing the Multiple Species Conservation Program and the Federal and State permits. The Implementing Agreement has the following features:

- o The Implementing Agreement is a 50 Year Agreement. The Agreement and the related Section 10(a) and Natural Communities Conservation Program Authorizations shall be effective for a period of 50 years.
- o The Plan is severable. If the permit held by another jurisdiction participating in the Multiple Species Conservation Program is revoked or suspended, the County's permit shall remain in effect as long as the County complies with its obligations under the Implementing Agreement and the Plan. However, the County is dependent upon the implementation of the City of San Diego's Subarea Plan to obtain coverage of the full 85 species. If the City were to have its permit revoked or suspended, the County's list of covered species would be reduced to 82 species. (Orcutt's bird's beak, Del Mar Mesa sand aster, and California least tern would then not be covered under the County's Plan.)
- o The Agreement limits the land and money the County will be required to commit in order to conserve the covered species. If the Wildlife Agencies determine that additional land or money beyond that required in the Implementing Agreement or the Multiple Species Conservation Program Plan is needed for conservation of the covered species, the obligation for such additional measures shall not rest with the County or Third

Party Beneficiaries (landowners). Such additional mitigation will be the responsibility of the Wildlife Agencies.

- o The Implementing Agreement addresses the listing of new species. If 1 or more of the 85 species included on the Multiple Species Conservation Program covered species list is listed as threatened or endangered, the County's Section 10(a) Permit will cover take of that species with no new requirements. If the newly listed species is not included on the covered species list, the Wildlife Agencies will determine specific conservation measures necessary to protect the species and determine if those measures are already included in the Multiple Species Conservation Program. If additional measures are necessary, the County can choose not to include the new listed species in the Plan or it can choose to undertake the new measures and accept coverage. If additional measures are necessary, the Wildlife Agencies have promised to look first to enhanced management practices and land acquisition to protect a species listed in the future.

The U.S. Fish & Wildlife Service has recently listed the Quino checkerspot butterfly as a Threatened Species. The Quino checkerspot is not one of the 85 covered species in the Multiple Species Conservation Program Plan. The Quino checkerspot's habitat includes areas within the Subarea Plan and therefore is subject to this provision. It is unknown at this time what measures the Service will require.

- o The Implementing Agreement addresses the designation of critical habitat. If the habitat of any covered species is designated as critical habitat, the U.S. Fish and Wildlife Service agrees not to require through the Endangered Species Act Section 7 Regulations any additional mitigation if the Subarea Plan provisions that pertain to conservation are properly functioning. This provision is particularly relevant because of a recent Federal court decision requiring the U.S. Fish and Wildlife Service to designate critical habitat for the California gnatcatcher.
- o The Implementing Agreement requires the County, within six months of the effective date, to submit to the Wildlife Agencies a draft framework management plan for those preserve lands within the County Subarea Plan.
- o The Implementing Agreement defines the funding obligations of the County. The Implementing Agreement states that approximately 9,425 acres of private land will need to be acquired by local agencies in the unincorporated area of the Multiple Species Conservation Program Plan. The Agreement requires that the County work with the other participating

jurisdictions in seeking a long-term regional funding mechanism. The County and the other jurisdictions will have three years from the effective date to develop the long-term regional funding mechanism. Prior to establishing the regional funding source, the County is responsible for assuring management and biological monitoring of preserve lands in the unincorporated area. In the event the regional funding mechanism is not established after three years, the County will be responsible for funding its share of private land acquisition, management, and biological monitoring.

- o The Implementing Agreement defines how private property owners can establish Third Party Beneficiary status and share in the benefits of the permit issued to the County. It also outlines the assurance provided private property owners once they have achieved Third Party Beneficiary status. Third Party Beneficiary status is obtained by determining the mitigation requirements of the project through the County's permitting process. Third Party Beneficiary status is achieved at the time mitigation is imposed through a condition of development (potentially through a mitigation agreement) on the project. Phased projects can obtain Third Party Beneficiary status for the entire project as long as the mitigation for each phase can stand-alone. Once Third Party Beneficiary status is achieved, the agreement protects the landowner from further new biological land and related financial exaction's due to the Multiple Species Conservation Program.
- o The Implementing Agreement requires the County to prepare and submit an annual report on the amount of habitat lost and preserved under the Plan. Wildlife Agencies will evaluate the County's efforts at habitat preservation. This report will be the subject of an annual public workshop. If the Wildlife Agencies determine that habitat conservation is not in balance with habitat loss, they will require the County to take remedial actions. These remedial actions could include changing acquisition priorities or preserve management practices.

**DISCUSSION OF MAJOR ISSUES AND RESPONSES:**

- **DOES THE MULTIPLE SPECIES CONSERVATION PROGRAM PLAN PROVIDE SUFFICIENT PROTECTION TO SENSITIVE SPECIES TO CONSTITUTE A HABITAT CONSERVATION PLAN?**

Discussion: An article in Science Magazine recently recognized San Diego County as a "hot spot" for threatened species. The Counties of

San Diego and Santa Cruz in Northern California have greater potential for future listings of species as threatened or endangered than any other counties in the continental United States.

The goal of the Multiple Species Conservation Program Plan is to adequately protect the habitat of species to avoid the listing of species as threatened or endangered under the Endangered Species Act listing. The Plan is designed to encourage preservation of contiguous blocks of habitat for the benefit of the covered species. Eighty-five (85) species are included on the covered species list. Some of these are listed under the Federal and/or State Endangered Species Act. Others are not.

The Multiple Species Conservation Program Plan is designed to set aside large, contiguous blocks of habitat for preservation (scientific research suggests that preservation of large, contiguous blocks of habitat rather than small, isolated patches better contributes to the long-term preservation of sensitive species). As part of this process, other land whose habitat value is considered less critical to species protection is designated for development. The overall effect of the program is to encourage biological resource planning in the same way that traditional planning has, in the past, considered such things as placement of roads or designation of industrial or residential uses. Habitat planning efforts, like the Multiple Species Conservation Program Plan, contribute to an effective, overall land use planning process and preserve scarce biological resources.

Some environmental groups have criticized the Multiple Species Conservation Program for not including adequate scientific data and analysis to justify the 85 covered species and resultant Federal and State permits. Much of their criticism was based upon the lack of detailed species-specific data.

#### Response

Chief Administrative Officer: The Multiple Species Conservation Program Plan is intended to enhance habitat protection for endangered species. Much of the analysis was done at large scale using a habitat based planning approach. Existing data on species locations collected from the best scientific and commercial data available was heavily relied upon. Scientific evidence has shown preservation of large blocks of habitat rather than small isolated patches. Setting up many small

habitat conservation plans leads to preservation of small and isolated blocks of habitat and not the large, contiguous blocks needed for species survival. The Plan requires the use of specific "adaptive management techniques" directed at the conservation and recovery of individual species. "Adaptive management techniques" include such measures as assuring fires do not occur too frequently in areas where species are sensitive to fire occurrences. The Plan also provides for biological monitoring and annual reviews on the Plan's effectiveness. Based upon this review and biological monitoring effort, adjustments in the management and priorities for purchase of land can be made as necessary. In addition, in the County Subarea Plan proposed development will continue to undertake project specific biological studies, which will also contribute to biological effectiveness of conservation measures.

- **DOES THE MULTIPLE SPECIES CONSERVATION PROGRAM PLAN "STREAMLINE" THE PROCESS FOR OBTAINING A DISCRETIONARY LAND USE PERMIT?**

Discussion: The Multiple Species Conservation Program is a very complex Program. It will require implementation actions, such as more comprehensive tracking of habitat loss and mitigation, which go well beyond the current administrative practices. In addition, the new Ordinances and resultant review processes will concern some landowners because they perceive a change in current standards resulting in more rather than less regulation.

Response

Chief Administrative Officer: In order to fully appreciate the benefits of the Multiple Species Conservation Program, it is important to examine the Program within the entire context of land use regulations, including Federal and State endangered species regulations, as well as resource protection regulations of the County. Evaluated from this comprehensive perspective, one of the benefits of the Multiple Species Conservation Program Plan will be its potential to "streamline" the land use development process by minimizing future Federal and State involvement. Under existing requirements (without the benefit of the Multiple Species Conservation Program), when a project proponent receives a discretionary land use permit from the County, the proponent must still (if a listed species or critical habitat is present) obtain a Section 10(a) Permit under Federal law and/or a permit under State law authorizing incidental take of listed species on his property. The process is expensive and

time consuming, and would normally take place after the County process is completed. As part of the State and Federal process, a project proponent is required to set up his or her own Habitat Conservation Plan, a mini version of the Multiple Species Conservation Program Plan. These requirements can be expensive and burdensome and can affect many property owners who wish to develop their land, especially in an area like San Diego County where many endangered species are present. Under this scenario, it is possible that the applicant may have to come back to the County to amend their project approval if there are conflicts with the State and Federal approvals.

Under the Multiple Species Conservation Program Plan, a project proponent will receive the benefits of the County's Section 10(a) permit when a project is approved. Thus, there will be no separate requirement to obtain a permit directly from the Federal or State Wildlife Agencies. Moreover, high habitat value land dedicated as part of the project mitigation requirements will become part of the County's Habitat Conservation Plan, leading to preservation of the large open spaces with good connections to other large high value open spaces that support survival and preservation of threatened species.

In addition, because the Multiple Species Conservation Plan preserve is built only with willing participants (including those who choose to apply for land development permits), no land will be taken without an owner's consent and placed into a preserve. Only land owners who wish to sell their land or owners who wish to develop their land will contribute land to the formation of the Multiple Species Conservation Program Plan preserve. In addition, property owners, even those whose properties contain threatened or endangered species, are unaffected by the Multiple Species Conservation Program Plan unless they decide to seek a discretionary land use approval from the County.

(See Attachment G for a comparison of requirements with/without Multiple Species Conservation Program

• **WHAT WILL BE THE SOURCE OF FUNDS TO PAY FOR THE MULTIPLE SPECIES CONSERVATION PROGRAM PLAN?**

Discussion: Under the Multiple Species Conservation Program Plan, the preserve will be assembled through conservation of lands already in public ownership, public acquisition of private lands from willing sellers, and private development contributions through development

regulations and mitigation of impacts. Private development exactions will not be increased beyond existing requirements. Upon completion, the total Multiple Species Conservation Program preserve is anticipated to contain 171,920 acres. For the entire Multiple Species Conservation Program Plan (including County lands as well as lands in the other participating cities), it is anticipated that 63,170 acres will be conserved through the development process, including mitigation for impacts to biological resources outside of the preserve. As of August 1996, 81,750 acres of land is already preserved in public ownership. Using this figure as a base, approximately 27,000 acres of land would remain to be purchased by public agencies.

Federal and State agencies have committed to acquire approximately half of that or 13,500 acres. The estimated acquisition needs for local jurisdictions total approximately \$131 million to \$180 million based on acquisition costs of \$9,700 to \$14,300 per acre with lands anticipated to be acquired over a 30 year period. The Plan proposes that this land be acquired by local jurisdictions after approval by a public vote. The Plan envisions that a benefit assessment program may furnish the mechanism for providing the local funding support after approval by a vote of the people. The recent passage of Proposition 218, however, may make such an approach infeasible. The Board of Supervisors has appointed a Blue Ribbon Committee [9/17/97 (2)] to make recommendations to the Board on feasible local funding options.

Based on jurisdiction estimates, the average acquisition costs are estimated to range from \$9,700 to \$14,300 per acre. In the County, approximately 22,450 acres of land will be obtained through mitigation requirements for land development projects within the Subarea. The remaining 9,425 acres will likely have to be acquired by the County. The cost of this acquisition is estimated to be between \$91,420,500 to \$135.0 million. The total estimated acquisition costs for the County and other participants are shown in the table below. Annual preserve management costs are estimated to be \$37 per acre in the unincorporated portion of the County.

The responsibilities for assemblage of the Preserve are shown in the following table:

MSCP PRESERVE ASSEMBLY

Total MSCP preserve	171,920 Acres
Existing preserved public lands	81,750 Acres
Lands remaining to be acquired (estimated)	90,000 Acres
Lands acquired through project mitigation	63,000 Acres
Lands to be acquired through public purchase	27,000 Acres
Participating city's share	8,100 Acres
Unincorporated share	18,850 Acres
Federal / State share	9,425 Acres
County / State share	9,425 Acres

Financing Plan. The Multiple Species Conservation Program commits the jurisdictions to have one or more regional funding sources in place within three years of the Federal and State approval of the first Subarea Plan. The jurisdictions will need to select one or more funding sources and develop a final financing plan to be submitted to the voters for approval.

Options for Long-Term Funding. The Multiple Species Conservation Program requires that the following options be evaluated: a benefit assessment district; a habitat management assessment district; a Mello-Roos community facilities district special tax; an ad valorem property tax; and an increase in sales tax. The recent passage of Proposition 218 covers all "property related" fees and assessments, and may require a two-thirds vote instead of a simple majority for parcel taxes/benefit assessments (a Mello-Roos, property, or sales tax increase currently requires a two-thirds vote) among other problems. The Multiple Species Conservation Program suggests a funding approach using benefit assessment districts which would complete acquisition in 30 years. The Plan, however, is a 50 year plan and nothing in the County's Implementing Agreement would preclude acquiring the Preserve over a 50 year funding period.

Interim Funding.

The Multiple Species Conservation Program Plan requires assurance of permanent funding for Preserve Acquisition, Preserve Management, and Biological Monitoring. The Plan suggests a Regional Funding Source through which all of the participating cities and their citizens would contribute to funding these activities. The County intends to work through the Blue Ribbon Committee with other jurisdictions to establish the Regional Funding Source. The Implementing Agreements for the County and other participating jurisdictions provide for a three-year period to establish this Regional Funding Source (potentially needing vote of the people if the source is in the form of a tax). During the three-year period that the Regional Funding Source is being pursued, the Plan requires that the participating jurisdictions provide for interim funding of acquisition, management and biological monitoring.

Response

Chief Administrative Officer: Funds are expected to be available from the State and Federal government for land acquisition and implementation of the Multiple Species Conservation Program Plan. The financial commitment of the State and Federal governments has been expressed in their current budget allocations to this program.

The current State budget includes \$11,620,000 for habitat acquisition and related activities conducted in Southern California. This money included funding for acquisition of lands in Otay Valley and in the Tijuana River Valley Regional Park. A portion of the balance (\$6,610,000) may be available for acquisition of other Multiple Species Conservation Program lands in the region.

The Federal budget allocations have not been finalized. However, a minimum of \$12,000,000 appears to be available for habitat acquisition and planning activities in southern California. \$4,000,000 of this amount is specified for land acquisition in the National Wildlife Refuges. The remainder, as well as additional money from the land and Water Conservation Fund, may be available for acquisition of the Multiple Species or National Community Conservation lands in the region.

In the short run (after issuance of Take Permits to the County and prior to the identification of a Regional Funding source), some County money

may be required to fund acquisition/management and biological monitoring.

The County's recommended interim funding approach for these activities.

#### Acquisition

While there is no specific requirement in the Implementing Agreement to acquire land in the first three years, the County intends to pursue monies this fiscal year from the State Coastal Conservancy which the Conservancy has budgeted to acquire lands in the Tijuana Regional Park. This item has not been budgeted by the County and will be brought before the Board for approval.

If a long term Regional Funding Source is not identified, the County would be responsible for funding land acquisition from the General Fund or from other undetermined revenues. In the long term, the County's estimated annual acquisition cost would range from \$1.8 million for a 50 year preserve buildout to \$3.0 million for a 30 year preserve buildout.

#### Management and Biological Monitoring

The \$37 per acre cap on management costs was based upon the Department of Parks and Recreation's experience in managing lands designated for the Preserve.

The ultimate cost for management and biological monitoring would depend on the amount of preserve under the responsibility of the County and cannot be estimated for future years at this time.

During this interim period, prior to the establishment of the Regional Funding Source, the County will fund, through the existing budget, the management and biological monitoring of Multiple Species Conservation Program Preserve lands which it owns. Also during this interim period the County will need to fund some additional management of lands retained in private ownership which are approved after the effective date of the Multiple Species Conservation Program. This management and biological monitoring would be over and above the fencing and trespass protection provided by the private property owner. The Implementing Agreement provides a cap on management costs of \$37 per acre, \$5 of the \$37 is also intended to go towards biological monitoring.

On July 23, 1996, the Board of Supervisors directed that the local contribution to the regional funding program would only be authorized after the matter has been submitted to a public vote. They further directed that the measure should be placed on the ballot when sufficient information is known about the costs and method of funding. On September 17, 1997 (2) the Board acted to establish a blue ribbon committee to identify long term funding sources to be used to fulfill the County funding requirements.

• **TO WHAT DEGREE WILL THE WILDLIFE AGENCIES BE INVOLVED IN PROCESSING PROJECTS, WHICH CONFORM TO THE MULTIPLE SPECIES CONSERVATION PROGRAM PLAN AND THE COUNTY SUBAREA PLAN?**

Discussion: The Subarea Plan for the unincorporated area includes flow diagrams, which identify the involvement of the Wildlife Agencies in the County approval process. It is the intent of Wildlife Agencies and the County to minimize the role of the Wildlife Agencies in the project review process. The Wildlife Agencies intend to emphasize annual review to determine County compliance with the Subarea Plan. In the Subarea Plan, the Wildlife Agencies' involvement falls into three major categories:

- o First, for ministerial projects (such as a building permit), the Wildlife Agencies would have no involvement in the approval of development of the land or loss of habitat.
- o Second, for lands on which there have been negotiated agreements and which are included as covered projects in the Lake Hodges and South County segments of the Subarea Plan, the Wildlife Agencies would have no direct involvement once the Subarea Plan is approved. Following approval of the Subarea Plan, the Agencies would no longer evaluate land development proposals either under the existing Habitat Loss Permit Ordinance or under the requirements of the Endangered Species Act.
- o Third, for projects proposed within the Metro-Lakeside-Jamul Segment of the Subarea Plan, the County will review projects, including analyzing project impacts, determining mitigation requirements, and making findings of consistency with the County's Subarea Plan and the Biological Mitigation Ordinance and the Subarea Plan. The Wildlife Agencies may provide comments that are pursuant to their trustee responsibilities and to their statutory

authority under the State and Federal Endangered Species Acts during the California Environmental Quality Act review period. In addition, the County can request the Wildlife Agencies' assistance in reviewing projects prior to the California Environmental Quality Act review process.

Implementation by the County of the avoidance and mitigation requirements of the Biological Mitigation Ordinance is intended to be the primary means of ensuring that proposed development projects comply with the Multiple Species Conservation Program Plan and Subarea Plan. It is intended that the County shall interpret and apply the terms and conditions of the Biological Mitigation Ordinance in a manner consistent with the goals and criteria of the Subarea Plan. In unique circumstances (examples of the Wildlife Agencies' areas of concern are provided in Section 4.3.2.1 of the Subarea Plan), the Wildlife Agencies may disagree with the County concerning the application of the avoidance and mitigation requirements of the Biological Mitigation Ordinance. The Subarea Plan outlines a process for resolution of such disputes. The Wildlife Agencies shall notify the County as soon as possible and formally in writing during the California Environmental Quality Act review process of the Agencies' belief that approval of such project would result in non-compliance with the Multiple Species Program Plan and Subarea Plan. If the County disagrees with the written assessment provided by the Wildlife Agencies on the consistency of a proposed project with the Multiple Species Conservation Program, Subarea Plan, and/or Implementing Agreement, the County, through the Chief Administrative Officer or his Deputy, may seek reconsideration of the Wildlife Agencies' position by the joint Federal and State Natural Communities Conservation Program Management Team. In such cases, the Management team would promptly consider the matter in consultation with the Chief Administrative Officer.

If following consideration by the Management Team, modifications to the project are determined by the Wildlife Agencies to be necessary to make the project consistent with the Subarea Plan and /Implementing Agreement and the County proceeds to approve the project without such modifications, the Wildlife Agencies will notify the County of the Wildlife Agencies' intended course of action which may include:

1. Withholding of Third Party Beneficiary Assurances to the project proponent;

2. Initiation of suspension of applicable Federal and State authorizations in whole or in part; or
3. Initiation of revocation or termination of applicable Federal and State Take Authorizations.

In cases where the benefits of the County's Take Authorization are withheld by the Wildlife Agencies, the project applicant will work with the Wildlife Agencies and the County to determine appropriate project design and mitigation measures. As part of the Wildlife Agencies' annual review of the County's performance, the Wildlife Agencies may consider the effect of resolution of disputed projects on the County's compliance with the Multiple Species Conservation Program Plan, Subarea Plan, and Implementing Agreement. During this annual review, the Wildlife Agencies will assess the County's performance in meeting the overall goals of the Multiple Species Conservation Program Plan and Subarea Plan and compliance with the Implementing Agreement. The Wildlife Agencies' focus will be on the cumulative compliance by the County rather than simply on a project-by-project analysis.

Response

Chief Administrative Officer: The Wildlife Agencies' role in project processing will emphasize annual compliance with the requirements of the Multiple Species Conservation Program Plan, rather than project-by-project review. The Chief Administrative Officer recommends adoption of this portion of the Multiple Species Conservation Program Plan.

• **WILL THE EXISTING GRADING AND CLEARING ORDINANCES BE AFFECTED?**

Discussion: The Wildlife Agencies have asked the County to amend its Grading and Clearing Ordinance within the unincorporated area of the County covered by the Subarea Plan. Under the terms requested, before clearing or grading of habitat for agricultural purposes is permitted by the County on land shown as "Pre-approved for Mitigation Area" in the Subarea Plan or within a floodplain, compliance with the mitigation requirements of the Biological Mitigation Ordinance is required. Clearing and grading of habitat for agricultural purposes outside of floodplains and the "Pre-approved for Mitigation Area" may be authorized by the County provided that the property owner or lessee provides satisfactory evidence in writing of his or her intention to establish an agricultural operation on a particular parcel of land

within one year and to retain the land in agriculture for at least ten years. Alternately, the property owner may present facts that demonstrate the property owner has farmed the land during three of the last five years and intends to retain his or her land in agriculture for the next ten years. When the total number of acres of agricultural land cleared within the Subarea reaches 3,000 acres, any additional agricultural clearing will require mitigation according to the terms of the Biological Mitigation Ordinance.

In discussing these proposals with affected groups, the San Diego County Farm Bureau is very opposed to the changes in the agricultural exemptions. They are particularly concerned with the 3,000-acre limitation on the use of the exemptions. They also are opposed to the change in the period of time a landowner must agree to keep his land in agriculture from the existing five year to the proposed ten-year limitation. Several environmental groups have informed the Department of Planning and Land Use that they believe the 3,000-acre allowance is too large. They recommend a much smaller allowance be adopted.

The Wildlife Agencies have also asked the County to change the exemption for clearing on small parcels zoned for single-family residences from a ten-acre exemption to a two-acre exemption. The agencies have requested that the County allow grading and clearing on two acres of parcels existing as of January 1, 1997, that are no larger than ten acres and zoned for single family residential uses, provided that clearing and grading such two acre portions does not interfere with achieving the goals and criteria of the Subarea Plan. Grading and clearing on the remaining portion of the parcel would be required to meet the requirements of the Subarea Plan.

Staff has met on this issue several times with the Wildlife Agencies. They have modified their proposal to allow five acres of clearing on existing parcels of ten acres or smaller outside of the pre-approved mitigation area and to retain the two-acre limitation within the Pre-approved area.

#### Response

Chief Administrative Officer: The Chief Administrative Officer recommends adoption of these Brushing and Clearing changes because it is the minimum standard that is acceptable to the Wildlife Agencies. The alternative of not having the Multiple Species Conservation Program

Permit would require all brushing and clearing activities, regardless of parcel size or agricultural use, to obtain a Federal Section 10A permit if there is a potential to take a listed species (such as the California gnatcatcher).

• **WHAT ARE THE MANAGEMENT RESPONSIBILITIES FOR THE MULTIPLE SPECIES CONSERVATION PROGRAM PRESERVE?**

Discussion: The Implementing Agreement requires that the County have a coordinated plan for how management is to be carried out in the preserve system. A draft framework management plan will be created by the County within six months of the execution of the County's Implementing Agreement for the Multiple Species Conservation Program Plan with a final framework management plan being completed three months later. This work will be funded by a \$30,000 grant recently awarded to the County by the State of California. It will incorporate the requirements of Table 3-5 of the revised Volume I of the Multiple Species Conservation Program Plan. The framework management plan shall also incorporate a requirement for the subsequent preparation and implementation of "Area-Specific Management Directives". These directives are specific management actions, which are appropriate for the species found in a local area.

The Multiple Species Conservation Program Plan preserve system, including the County's portion of the system, will be managed by a diverse array of agencies, private foundations, and landowners. This diversity of preserve management will strengthen the adaptive management programs because of the variety of experience and viewpoints brought to preserve management. It also has drawbacks that could result in duplication of effort to develop new management techniques and retention of outmoded management practices. Communication between preserve managers will be the key to developing improved management techniques and discontinuing management practices that degrade the long-term viability of the preserve system.

Within 120 days of the effective date (when all parties have signed the Implementing agreement), a Regional Habitat Management Technical Committee or equivalent entity separately agreed upon by the parties will be formed by the County and all other participating local jurisdictions to serve as a coordination forum for technical issues associated with preserve management. The Wildlife Agencies will work with this Committee to furnish information and advice on habitat

management. The Committee will have the responsibilities identified in Section 5.8.3 of the Multiple Species Conservation Program Plan.

- o Coordinate development of a computer database for management issues.
- o Coordinate distribution of preserve management reports.
- o Provide biological monitoring information to preserve managers and help coordinate biological monitoring with preserve management.

The Implementing Agreement requires the County to ensure that there is adequate management of preserve lands. It requires that the "adaptive management" requirements of Table 3-5 are followed. These adaptive management requirements are species-specific and consist of conservation measures which go beyond fencing and fuel management and are directed at assisting a declining species to regain viability. As stated earlier, The County will be responsible for the County owned lands committed to the preserve. Preserved private lands that have been required, as mitigation (either dedicated to the County or managed by other entities) must have financial resources to assure long-term management. At the Planning Commission hearing property owners objected to having to provide financing for measures which go beyond fencing and protection from illegal trespass. The Commission, with the concurrence of the Wildlife Agencies and staff, arrived at a compromise: The "program" should be responsible for the higher "adaptive" management levels required by the Plan as well as also being also responsible for biological monitoring requirements of the plan. The funding of these activities should be the responsibilities of Federal, State and local agencies, excluding property owners. The Planning Commission also recommends that staff be directed to apply for grants support these activities.

Response

Chief Administrative Officer: Staff believes the Planning commission's approach is a reasonable approach to this issue.

- **HOW WILL THE MULTIPLE SPECIES CONSERVATION PROGRAM PLAN AFFECT AGRICULTURE?**

Discussion: If the Wildlife Agencies' proposed revisions to the Grading and Clearing Ordinance are adopted, the agriculturally related clearing within the Multiple Species Conservation Program Plan area will be restricted as discussed above. Such restrictions would not apply at this time to North County and to East County where separate Subarea Plans are contemplated. (Grading and other issues related to agriculture will be addressed independently for those areas, taking into account the characteristics of those areas.)

Existing agriculture within the Subarea shown on Figure 2-1 of the Multiple Species Conservation Program Plan will be eligible for the benefits of the County's Take Authorization. To obtain these benefits, a farmer may apply for a Certificate of Inclusion. The Certificate will depict the portion of land (by parcel number, acreage, and owner) to which the Take Authorizations apply. Lands used for "agricultural purposes" means land used for crop production, animal production, forage production, and grazing. The Chief Administrative Officer recommends that the Department of Planning and Land Use be directed to work with the Wildlife Agencies to identify grazing lands and other agricultural lands in production, not shown on Figure 2-1 of the Multiple Species Conservation Program Plan. It is further recommended that the Department of Planning and Land Use be directed to propose amendments to the Multiple Species Conservation Program, as appropriate, in order to qualify these additional lands for Certificates of Inclusion. The County Agricultural Commissioner's office will administer the Certificate of Inclusion Program for the unincorporated area. Staff will contact cities participating in the Multiple Species Conservation Program to determine if they wish the Agricultural Commissioner to administer their Certificate of Inclusion programs as well.

In addition to Certificates of Inclusion for existing agricultural lands, the Wildlife Agencies will work with the County Agricultural Commissioner's office to develop a Safe Harbor Program. Safe harbor policies provide assurances to private landowners that undertake voluntary conservation actions on their lands, that their future land use activities will not be further restricted as a result of these conservation efforts. Thus, landowners that agree to manage their lands in a manner that attracts endangered or threatened species or expands

their presence will be guaranteed that, as a result of their good stewardship, they will not be penalized with additional regulatory requirements for those lands. The policy is intended to create incentives for landowners to engage in land use and management practices that benefit rare and endangered species.

Response

Chief Administrative Officer: The Certificate of Inclusion will allow existing agricultural operations to continue without change. Safe harbor policies also benefit existing agricultural operations. Additional lands that are now actively being used for agriculture that are not designated for Certificates of Inclusion need to be identified. Adoption of the Multiple Species Conservation Program Plan is recommended with direction to the Chief Administrative Officer to work with the Wildlife Agencies to identify additional grazing lands, which were not mapped in the original habitat database for inclusion through an amendment to the Multiple Species Conservation Program.

- **WILL JURISDICTIONS PARTICIPATING IN THE MULTIPLE SPECIES CONSERVATION PROGRAM HAVE A SECTION 404 PERMIT UNDER THIS PROGRAM?**

Discussion: Section 404 of the Clean Water Act prohibits discharges in the navigable waters of the United States without a Federal permit. The Army Corps of Engineers rather than the Department of the Interior administers this permit program. The Multiple Species Conservation Program does not cover such 404 Permits. Participating jurisdictions, including the County, will not, therefore, have Section 404 Permits as a result of this Program. Any land development project that requires such a Permit will have to obtain one directly from the Army Corps of Engineers.

The Army Corps recently issued regulations making nationwide and regionwide permits more difficult to obtain. The County and other participating jurisdictions, along with the Wildlife Agencies, have committed to working with the Army Corps to obtain a regionwide Section 404 Permit upon approval by the County of the Multiple Species Conservation Program Plan and Subarea Plan. Obtaining this Permit may take as long as 18 months.

1. Adaptive Management and Biological Monitoring Obligations:

**Recommendation:** The Planning Commission recommends that property owners be responsible for maintaining the Preserve lands they control at an existing resource level. The Commission recommends the Program be responsible for the higher "adaptive" management levels required by the Plan as well as also being also responsible for biological monitoring requirements of the plan. The funding of these activities should be the responsibilities of Federal, State and local agencies, excluding property owners. The Planning Commission also recommends that staff be directed to apply for grants support these activities.

**Response:** The Wildlife Agencies verbally supported this recommendation. At the time of the preparation of this letter, the County has proposed to the Wildlife Agencies changes to the Implementing Agreement to implement this proposal.

2. Wright's Field:

**Recommendation:** The Planning Commission recommends that staff work with the owners of Wright's field and the Wildlife Agencies to determine the feasibility of including the property in the Multiple Species Conservation Program Plan. The Planning Commission also requests that the property owners be contacted regarding the potential to include them in the plan area.

**Response:** Wright's Field is an approximately 250 acre parcel in Alpine that several members of the public requested be "included" in the Multiple Species Conservation Program because of its biological value. The owner(s) of Wright's Field did not appear at the meeting. The Wright's Field property lies within the Metro-Lakeside-Jamul Segment of the County Subarea Plan. In that area, the County has not mapped a potential preserve. County staff has had discussions with the Wildlife Agencies regarding the possibility to include Wright's Field on their Pre-approved Mitigation Area map. Staff proposes that this modification be pursued with the Property owners, the Wildlife Agencies and the public, after the Board action on the Multiple Species Conservation Program Plan because it was not addressed in the environmental documentation associated with the Plan. A recommendation has been added to direct staff to further explore this proposal.

3. Additional Coverage for Agricultural Lands

**Recommendation:** The Planning Commission recommends that staff work with the Cattleman's Association, the Farm Bureau and the Wildlife Agencies to determine methods for providing coverage within the Multiple Species Conservation Program for agricultural lands that currently don't qualify.

**Response:** This recommendation is included as recommendation number 9 from the Chief Administrative Officer.

4. Deferred Mitigation:

**Recommendation:** The Planning Commission recommends that staff work with the Farm Bureau and County Counsel to develop a procedure to allow deferred mitigation as part of the agricultural exemption process in the Grading and Clearing Ordinance.

**Response:** The Deferred Mitigation concept being discussed with the Agricultural Community would allow clearing of habitat to occur without immediate mitigation. Instead, a lien or some other mechanism would remain with the land which would require the mitigation for the clearing to occur at such time as agriculture is converted to another use. This concept has a number of significant legal issues. County Counsel has been working with representatives of the Farm Bureau to determine the feasibility of a deferred mitigation process. The Wildlife Agencies have informed staff they cannot support this concept. The Chief Administrative Officer with advice of Counsel concurs with this position.

5. Mitigation Agreements:

**Recommendation:** The Planning Commission recommends that staff provide for mitigation agreements for land not yet ready for Specific Plans or subdivision, but whose owners are willing to commit to participating in the Multiple Species Conservation Program.

**Response:** As part of the implementation of the Multiple Species Conservation Program Plan, County staff and County Counsel will work to prepare a permit process whereby a property owner may enter into an agreement with the County which establishes the areas of mitigation on a particular piece of property. The Chief Administrative Officer has added this a Recommendation #12.

Response

Chief Administrative Officer: A region-wide Section 404 Permit is important to all participating jurisdictions. Such a Permit will aid in streamlining project approvals. The staff has been participating with the City of San Diego Wetlands Task Force. This task Force has representatives of the U.S. Army Corps of Engineers, Environmental Protection agency, U.S. Fish & Wild Life Service, California Department of Fish And Game, California Water Quality control Board and various environmental and development industry stake-holders. One of the tasks of the Committee is to develop a streamlined and coordinated approach to 404 Permits.

• **IS THE MULTIPLE SPECIES CONSERVATION PROGRAM CONSISTENT WITH THE BOARD OF SUPERVISORS' NEGOTIATION POINTS?**

Discussion: The Board of Supervisors has adopted a series "Negotiation Points" which staff has used as direction in the discussions with the Wildlife Agencies. For the most part, the deal points are met. There are four exceptions. Deal Point #8 which requests indemnification of the local government by the Federal government is still not met. The Federal government maintains that there is no legal authority and the State has never responded to this issue.

Deal Point #18 is met only in part, since only agricultural land shown on Figure 2-1 of the Multiple Species Conservation Program Plan is eligible to receive the benefits of the County's Take Authorization. Land shown on this figure, upon application of the property owner may receive a Certificate of Inclusion without any mitigation requirements. Other agricultural operations, however, may be required to mitigate for their impacts to habitat.

Deal Point #24 is also not fully met. Because non-native grassland will require mitigation under the program, it is possible that property owners may have to protect or mitigate for impacts to artificially created habitat. The County is working with the Wildlife Agencies on a Safe Harbor program that may offer some protections and benefits to agricultural operations with respect to artificially created habitat.

Deal point #25 is not met at this time. This Deal Point suggests the consideration of deferred mitigation for agriculture. Based upon facts

October 22, 1997

available at the time of writing this report, it is not legally possible to defer mitigation for new agricultural uses.

Response

Chief Administrative Officer: See detailed analysis in Attachment L.

- **DOES THE STATE OF CALIFORNIA HAVE LEGAL AUTHORITY TO ISSUE "INCIDENTAL TAKE AUTHORIZATIONS" FOR LISTED SPECIES?**

Discussion: The State of California has recently adopted changes to the State of California's Endangered Species Act to provide clear authority to issue "Incidental Take Authorizations" for State listed species. The Governor has signed this legislation. This resolves the issue of whether the State, using the California Endangered Species Act has the authority to issue the County "Incidental Take Authorizations" through the Multiple Species Conservation Program Plan. The County's "Incidental Take Authorization" will need to be coordinated with the effective date of this legislation.

Response

Chief Administrative Officer: This is resolved. No further action needed.

PLANNING COMMISSION RECOMMENDATIONS:

The Planning Commission discussed the Multiple Species Conservation Program Plan on June 6, 1997 and took testimony on all of the issues. They also took action on some issues as time allowed. On July 25, 1997, they made a series of recommendations on the remaining issues. The Commission approved these recommendations with a vote of 6-0-1 with one Commissioner (Edward's absent). At the end of the discussion of issues, individual Commissioners expressed their views regarding the overall concept of the Multiple Species Conservation Program. On September 19, 1997, the Planning Commission voted to acknowledge a clarification of Commissioner York's position on the Multiple Species Conservation Program Plan which resulted in a change in the July 25 vote to 5-1-0 (York opposed, Edwards absent). In addition, on September 19, 1997, Commissioner Edwards expressed his overall reservations about the plan. Please see the attached minutes for the details of the discussions.

The specific recommendations by the Commission are as follows:

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6. Creation of Incentives:

**Recommendation:** The Planning Commission recommends that tax incentives be created for land donations and that disincentives such as endowment requirements be removed.

**Response:** The Board of Supervisors has acted, as part of their legislative policy, to support tax incentives for the donation of lands to be used as part of the preserve.

7. Consistency or Exemptions and Exceptions with the Multiple Species Conservation Program Plan:

**Recommendation:** The Planning Commission recommends that language be included in the Biological Mitigation Ordinance requiring that all discretionary projects, including those that are exempt from the ordinance, must be found to be in conformance with the Subarea and Multiple Species Conservation Program Plan.

**Response:**

This language is included in the Subarea Plan and in appropriate places in the Biological Mitigation Ordinance.

8. Off-Road Vehicle Recreation:

**Recommendation:** The Planning Commission recommended that the Multiple Species Conservation Program Plan must be amended before an off-road vehicle trail will be allowed within a preserve area and that such trails that pose unmitigable impacts will not be allowed.

**Response:** The Wildlife Agencies direction is consistent with the Planning Commission recommendation. They have directed that the Subarea Plan not allow off-highway vehicle trails within designated preserve areas in the South County and Lake Hodges Segments. If an off-road vehicle trail is proposed for this area, the Subarea Plan must be amended to remove the trail right-of-way from the Preserve. The Wildlife Agencies must approve any such amendment as being consistent with the conservation goals of Multiple Species Conservation Program.

9. **Role of Wildlife Agencies in the Project Review Process:**

**Recommendation:** The Planning Commission requested that the staff continue to work with the Wildlife Agencies to resolve this issue.

**Response:** The draft Subarea Plan provides for a conflict resolution procedure that has been discussed by the staff and the Wildlife Agencies and is recommended for approval in relation to Recommendation #10.

10. **Compliance With and Enforcement of the Multiple Species Conservation Program:**

**Recommendation:** The Planning Commission recommends that factual findings of consistency with the applicable Multiple Species Conservation Program documents must be made for all discretionary projects. For projects that request exemptions and exceptions, reduction in mitigation obligations and takings issues, the process must include public notice, agency deadline for action and consistent timelines for review.

**Response:** See response to Number 7. All discretionary projects include a required component of public review. Timelines for agency action have been established in the proposed Implementing Agreement. Except where otherwise provided by CEQA, and the Federal and State Endangered Species Acts, the Wildlife Agencies shall respond within 45-days to all requests for approval and review required by the Plan.

11. **Annual Review and Public Workshop:**

**Recommendation:** The Planning Commission recommends that after the annual report by the County to the Wildlife Agencies to assess the progress toward creating a preserve system concurrent with allowed development, the County staff will hold a public workshop. This annual report and workshop should also address impacts to property owners with respect to nonconformity, management costs and liability exposure.

**Response:** The Implementing Agreement for the County Subarea Plan includes the requirement for an annual review by the Wildlife Agencies and a public workshop. At the time of the preparation of this staff report, there are no specific property owner provisions in the Implementing Agreement to address these topics. Staff will address

issues associated with the Land Development review process as part of the annual report and workshop.

12. Enforcement:

**Recommendation:** The Planning Commission recommends that the Board of Supervisors increase zoning and code enforcement staffing to levels appropriate to protect the Multiple Species Conservation Program preserve.

**Response:** Recommendation #14 has been added to address this issue.

13. Effect of New Species Listings:

**Recommendation:** The Planning Commission requested clarification of this issue as it is outlined in the Implementing Agreement, but made no motion.

**Response:** Please see discussion above under the Implementing Agreement for an explanation of the effect of new species listings.

14. Grasslands:

**Recommendation:** The Planning Commission recommends that all parties commit to a process to within 18 months of the signing of the Implementing Agreement that best efforts will be made to conserve grasslands to a level that they achieve significantly conserved status. This process will recognize the biological value of:

- a. The additional grasslands conserved at Rancho Jamul;
- b. Grasslands conceived through a North County Subarea Plan amendment to the Multiple Species Conservation Plan;
- c. Grasslands conserved or managed through incentives to agricultural owners;
- d. Additional grasslands conserved within the Multiple Species Conservation Program boundaries; and
- e. Commitment to manage County-owned lands.

If Significantly Conserved Habitat status is achieved, annual grasslands shall be listed as Tier III habitat and mitigated according to the Tier III incentive-based ratios except for narrow endemic species.

In the interim period, or if covered habitat status is not achieved, annual grasslands shall be mitigated at a ratio of 0.5:1 unless otherwise required for narrow endemics. In addition, it is understood that in the context of a North County amendment to the Multiple Species Conservation Program, future ratios within the habitat tiers may be subject to modification in accordance with the species coverage goals and preserve design requirements.

**Response:** The County and the Wildlife Agencies are committed to work with all interested parties to enable grasslands to receive a significantly conserved status considering the points raised above. While that process is proceeding, the mitigation ratio of 0.5:1 is consistent with the recommendation of the County in the draft Biological Mitigation Ordinance and is acceptable to the Wildlife Agencies.

15. **Definition of Biological Resource Core Area and "Leakage" Out of Pre-approved Mitigation area in Metro-Lakeside-Jamul/Preserve Design:**

**Recommendation:** Recommend that staff work with interested parties and the Wildlife Agencies to identify criteria demonstrating that the preserve design will be assured through quantitative and qualitative measures consistent with the justification for species and habitat coverage, and translate these criteria into the appropriate Subarea plan provisions.

**Response:** County staff has incorporated input from interested parties and the Wildlife Agencies into the Biological Mitigation Ordinance to address this issue.

16. **Credit for Avoidance of Narrow Endemics and Critical Populations:**

**Recommendation:** The Planning Commission recommends that properties that must avoid "narrow endemics" and "critical populations" outside of the areas that are considered "Pre-approved Mitigation Areas" receive credit for that avoidance.

**Response:** As is outlined above, for the Metro-Lakeside-Jamul Segment, the Wildlife Agencies have created a map of areas that they consider to be of higher protection value. They have indicated that mitigation on land outside of their "Pre-approved Mitigation Areas" will not be counted toward the County's annual goals of land that needs to be conserved under the Wildlife Agency "Habitat Conservation Accounting Model." The Planning Commission recommendation is that the County

should be able to count toward those goals land that is avoided for impact due to specific sensitive species. The Wildlife Agencies have agreed to this concept and language has been added to the Implementing Agreement to accomplish this.

**17. Tax Effects on County Assessment Districts:**

The Planning Commission requests that this topic be discussed during a future Director's report.

**Response:** The Department of Planning and Land Use plans to do this in the near future.

**18. Prospects for a Regional Wetlands Permit:**

**Recommendation:** The Planning Commission recommends support for on-going efforts to minimize or eliminate project-level 404 requirements without affecting the objectives of the Multiple Species Conservation Program Plan.

**Response:** The Board of Supervisors has directed that the County work toward a process to minimize or eliminate the requirements for separate clean water permits for projects that conform to the Multiple Species Conservation Program Plan. The County has been participating in meetings with the City of San Diego in order for a streamlined wetland permit process with the Army Corps of Engineers, Environmental Protection Agency, the California Regional Water Control Board and the Wildlife Agencies. The goal is to generate a plan or process for the San Diego area in 18 months.

**19. Clustering:**

**Recommendation:** The Planning Commission recommends that the Board of Supervisors be made aware of the Planning Commission's concerns about the limitations of existing zoning and clustering ordinances with respect to the objectives of the Multiple Species Conservation Program.

**Response:** Planning Department staff will provide a report on the scope of clustering and lot averaging and how to address concerns about clustering in a future Directors Report to the Planning Commission.

20. Update of Multiple Species Conservation Program Mitigation and Implementation Agreement Monitoring Program:

The Planning Commission directed staff to update any changes necessary in the Mitigation and Implementation Monitoring Program and recommend the Monitoring Plan for adoption.

**Response:** The staff recommendation for the Multiple Species Conservation Program Plan includes the adoption of this monitoring program.

21. Quino Checkerspot Butterfly:

**Recommendation:**

The Planning Commission recommends that staff work with Wildlife Agencies to assess program impacts and develop a Quino Checkerspot conservation strategy for inclusion in an amendment to the Take Authorization for this species.

**Response:**

County staff has been holding discussions with the Wildlife Agencies regarding conservation strategy necessary to gain coverage for the Quino checkerspot butterfly, which was recently listed as endangered by the U.S. Fish and Wildlife Service. No conclusions have been reached at the time of the preparation of this report.

22. Clarification of the Resource Protection Goals in the Subarea Plan Table 1-3:

**Recommendation:** The Planning Commission recommends that staff work with the Wildlife Agencies to clarify interpretation of the species protection goals contained in Table 1-3 of the County Subarea Plan.

**Recommendation:** The Planning Commission recommends that staff consider the following language, forward it to the Board of Supervisors and return to the Commission if changes are necessary:

“During the permit findings for exceptions, findings must illustrate that:

- There are no feasible alternatives available that are less environmentally impactive;

- The exception is the minimum necessary to afford relief and accommodate development; and
- These exceptions should reflect existing development rights under current zoning and land use regulations.

**Response:** The Chief Administrative Officer has included the language of #2 in the Subarea Plan and Biological Mitigation Ordinance. Findings #1 and #3 are not recommended because they add a higher standard of review that is not necessary.

**PLANNING GROUP/PUBLIC STATEMENTS:**

Copies of the proposed Multiple Species Conservation Program Plan were distributed to all of the Planning and Sponsor Groups in the Unincorporated Area. Their recommendations are as follows:

**Julian Community Planning Group --** The Julian Community Planning Group held a special meeting on June 23, 1997 and passed the following motion with a vote of 8 yes and 0 no:

"The Julian Community Planning Group recommends that the San Diego County Board of Supervisors adopt the Multiple Species Conservation Program Plan (MSCP), the sub-area plan, the biological mitigation ordinance, and the implementing agreement."

**Jamu1-Dulzura Community Planning Group --** During their June 24, 1997 Jamu1-Dulzura Community Planning Group meeting, they voted 9 for, 0 opposed to pass the following motion:

"The following conditions should be considered before implementation of the Multiple Species Conservation Program. The conditions are as follows: 1) A funding mechanism shall be in place before implementation of the MSCP. 2) Land to be dedicated for MSCP open space will be purchased at fair and reasonable market prices as mutually agreed between the landowner and the purchasing agency/organization; and 3) Land so dedicated for Multiple Species Conservation Program open space shall remain open space in perpetuity."

**Lakeside Community Planning Group --** During their June 18, 1997 meeting, the Lakeside Community Planning Group passed the following motion with a vote of 9 yes and 4 noes:

"The Lakeside Community Planning Group supports the concept of MSCP, but 1) affected property owners must be dealt with fairly, 2) current property values must be maintained and 3) community character must be maintained, particularly slope sensitive construction techniques."

The Lakeside Community Planning Group also passed the following motion with a vote of 12 yes, 0 no, and one abstention.

"No MSCP related plan changes, policy changes or ordinance changes should be implemented until adequate voter approved funding is obtained."

Descanso Sponsor Group -- During their meeting of June 19, 1997, the Descanso Sponsor Group approved the following motion:

"The Descanso Sponsor Group recommends denial of the MSCP, the Biological Mitigation Ordinance, the Implementing Agreement, the Brushing and Clearing Ordinance, the Environmental Impact Report/Environmental Impact Statement; until such a time as the major issues have been worked out."

Their discussion addressed the following issues:

"That there are far too many exceptions stated which dilute the documents; That the plan is not grounded in science; That the plan is not grounded in the General Plan due to the presence of urban zoning within the Plan area; The Plan appears to allow development to occur without environmental delays, not a plan to protect species or habitat."

Ramona Community Planning Group -- On June 18, 1997, the Ramona Community Planning Group approved a motion that passed with a vote of 7 yes, 0 noes and one abstention:

"The Ramona Community Planning Group is opposed to the Multiple Species Conservation Program if the following are not address and included:

1. Clear identification of funding sources.
2. No approval of the program without a vote of the people."

Valle de Oro Community Planning Group -- During their meeting of June 18, 1997, the Valle de Oro Community Planning Group approved a motion with a vote of 10 yes, 0 noes and no abstentions, to carry their six most serious concerns about the MSCP to the Planning Commission and Board of Supervisors. The concerns as presented to the Planning Commission are as follows:

Their overall concern is that this program gives assurances that these wildlife and plant species are protected when, with all the many exceptions, they really are not.

Specific concerns:

1. They are concerned about exemptions from the draft Biological Mitigation Ordinance (golf courses, water parks, motor cross, ORV Parks)
2. Mitigation program does not require direct conservation in-kind of the wildlife species or habitat destroyed.
3. They are concerned that the agricultural exemptions in the Grading and Clearing Ordinance and the draft Biological Mitigation Ordinance are confusing and appear to allow extensive take.
4. "No Surprises" provisions are inappropriate in view of 6 plant and 6 animal species listed as "unknown conservation level" or inadequately preserved".
5. The draft Biological Mitigation Ordinance and the Grading and Clearing Ordinance proposals do not provide the same level of conservation for flood plains as the existing Resource Protection Ordinance.
6. There are inappropriate or deceptive definitions for "Mature Riparian Woodland", "Significant Population" and "edge Effects".

CHIEF ADMINISTRATIVE OFFICER REASONS FOR RECOMMENDATION:

1. The Multiple Species Conservation Program provides for protection of sensitive biological resources in a coordinated fashion in the southwest portion of the County while allowing for reasonable use of land.
2. Approval of the Multiple Species Conservation Program will allow the County to retain land use and environmental decision-making authority in the Multiple Species Conservation Program area and will allow development to proceed with a minimum involvement of State and Federal Wildlife Agencies.
3. The local funding portion of the Multiple Species Conservation Program must be developed in three years and submitted to a vote of the people.

000045 OCT 22 1997

If the voters turn down the regional funding source, the scope of the plan will need to be reviewed by the County and the Wildlife Agencies.

BOARD POLICY APPLICABLE: I-117      MITIGATION BANKING POLICY	CONCURRENCES:  AUDITOR AND CONTROLLER <i>[Signature]</i>  DEPARTMENT OF AGRICULTURAL WEIGHTS AND MEASURES <i>[Signature]</i>  DEPARTMENT OF PUBLIC WORKS <i>[Signature]</i>  DEPARTMENT OF PARKS AND RECREATION <i>[Signature]</i>
APPROVED BY COUNTY COUNSEL AS TO LEGALITY: <i>[Signature]</i>	CAO OR AUTHORIZED REPRESENTATIVE: <i>[Signature]</i>

DEPARTMENT AUTHORIZED REPRESENTATIVE  
GARY L. PRYOR, DIRECTOR

CONTACT PERSON

TOM OBERBAUER

(0650)

694-3913

- cc: Dr. Don Hunsaker, Environmental Land Trust, 7879 El Cajon Boulevard,  
 La Mesa, CA 91941  
 Janet Anderson, 3820 Ray Street, San Diego, CA 92104  
 Gary Lintvedt, 3737 Camino del Rio South, Suite 200, San Diego, CA  
 92108  
 Dan Silver, Endangered Habitats League, 1422 N. Sweetzer Avenue,  
 #401, Los Angeles, CA 90069-1528  
 Gail Kobetich, Field Supervisor, U.S. Fish and Wildlife Service,  
 2730 Loker Avenue West, Carlsbad, CA 92008  
 Duncan McFetridge, Box 475, Descanso, CA 91916  
 Patti Krebs, IEA, 701 "B" Street, Suite 1445, San Diego, CA 92101  
 Gregory Lambron, 8211 La Mesa Boulevard, La Mesa, CA 91941  
 Kim Kilkeny, Baldwin Company, 11975 El Camino Real, Suite 200, San  
 Diego, CA 92130

Continued on next page...

Bruce Warren, San Diego County Rock Producers, 28311 Camino del Rio South, San Diego, CA 92108  
Craig Beam, Luce, Forward, Hamilton & Scr., 600 W. Broadway, Suite 2600, San Diego, CA 92101  
Bruce McIntyre, Lettieri-McIntyre & Associates, 1551 4th Avenue, Suite 430, San Diego, CA 92101  
Jim Peugh, 2776 Nipoma Street, San Diego, CA 92106  
Ron Rempel, California Department of Fish and Game, 1416 9th Street, Sacramento, CA 95814  
Dale Greenhalgh, Pasco Engineering, 535 N. Highway 101, Suite A, Solana Beach, CA 92075  
J. Whalen Associates, 4517 Santa Monica Avenue, San Diego, CA 92107  
San Diego Association of Governments, 401 "B" Street, Suite 800, San Diego, CA 92101  
Tina Robinson, Santa Fe Hills Homeowners Association, 7943 Artesian Road, San Diego, CA 92127  
Bill Schwartz, 101 W. Broadway, #1300, San Diego, CA 92101-8214  
Dennis Moser, 4S Kelwood General Partnership, 10840 Thornmint, San Diego, CA 92127  
Barry Jones, 3312 Jamul Highlands Road, Jamul, CA 91925  
Eric Larsen, Executive Director, San Diego County Farm Bureau, 1670 E. Valley Parkway, Escondido, CA 92027-2498  
Jack Phillips, Post Office Box 3958, La Mesa, CA 91944  
Bob Laks, Post Office Box 169, Cardiff, CA 92007  
Dave Flesh, Meryl Balko, City of San Diego, 600 "B" Street, Suite 500, San Diego, CA 92101  
George Ham, Jr., 3131 Camino del Rio North, Suite 310, San Diego, CA 92108  
Allison Rolfe, Southwest Center for Biological Diversity, Post Office Box 7745, San Diego, CA 92107  
Suzanne Farley, Lemples & Wulfsberg, 300 Lakeside Drive, 24th Floor, Oakland, CA 94512-3524  
Sally Taylor, Eucalyptus Hills Landowners Association, Post Office Box 803, Lakeside, CA 92040  
Daniel T. Cooper, Post Office Box 1355, Yucca Valley, CA 92286  
Cynthia L. Eldred, Solomon Ward Seidenwurm & Smith, 401 "B" Street, Suite 1200, San Diego, CA 92101  
Karen Messer, 2399 Jefferson Street, #18, Carlsbad, CA 92008  
Mary G. Allison, Post Office Box 1284, Lakeside, CA 92040  
Edward and Edith Drcar, 498 Santa Dominga, Solana Beach, CA 92075  
Supervisor Dianne Jacob, Second District, M.S. A500  
Supervisor Pam Slater, Third District, M.S. A500

October 22, 1997

Ivan Holler, Supervisor Horn's Office, M.S. A500  
John Elliot, Post Office Box 768, Descanso, CA 91916  
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Irvine, CA 92612  
Fred Sproul, Post Office Box 868, Ramona, CA 92065  
Eric Gibson, Environmental Coordinator, Department of Planning and  
Land Use, M.S. 0650  
Sharon Colton, Case Tracking System, Department of Planning and Land  
Use, M.S. 0650

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000048 OCT 22 1997







# FISCAL IMPACT STATEMENT

Agri./Weights & Meas. Department      Agri./Weights & Meas. Program

Budget Page No. 23-1

Multiple Species Conservation Program  
Proposal

Level of Mandate for the Program/Service Level is:

- Mandated/Mandated       Discretionary/Mandate  
 Mandated/Discretionary       Discretionary/Discretionary

Level of Mandate for this Proposal/Service Level is:

- Mandated/Mandated       Discretionary/Mandate  
 Mandated/Discretionary       Discretionary/Discretionary

## BUDGET

	(a) Budgeted Amount for Proposal	(b) Proposed Change in Budgeted Amount	(c) Proposed Revised Current Year Budget (a+b)
Direct Cost	\$ <u>35,919</u>	\$ <u>0</u>	\$ <u>35,919</u>
Revenue	<u>30,000</u>	<u>0</u>	<u>30,000</u>
<b>NET GENERAL FUND COST</b>	\$ <u>5,919</u>	\$ <u>0</u>	\$ <u>5,919</u>
Staff Years	<u>          </u>	<u>0</u>	<u>          </u>

## FUTURE YEAR ESTIMATED

### OF PROPOSAL IF ADOPTED

	(d) 1st Subsequent Year	(e) 2nd Subsequent Year
	\$ <u>23,653</u>	\$ <u>23,653</u>
	<u>10,000</u>	<u>10,000</u>
	\$ <u>13,653</u>	\$ <u>13,653</u>
	<u>          </u>	<u>          </u>

Sources of Revenue for Proposed Change and Subsequent Years:

Federal Safe Harbor Grant      \$ 10,000  
 \_\_\_\_\_      \$ \_\_\_\_\_

\$ \_\_\_\_\_      \$ \_\_\_\_\_  
 \$ \_\_\_\_\_      \$ \_\_\_\_\_

Ice-Related Impacts: Will this proposal result in any additional space requirements?  Yes  
 If yes, how will these requirements be accommodated? (Attach additional sheets as required)

No

**COUNTY OF SAN DIEGO**  
**CALIFORNIA ENVIRONMENTAL QUALITY ACT CANDIDATE FINDINGS**  
For 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)

**INTRODUCTION**

These findings are made by the County of San Diego, pursuant to the California Environmental Quality Act (CEQA) (Cal. Pub. Res. Code §21081) and the State CEQA Guidelines (14 Cal. Code Regs. §§15901 and 15093). This program shall be a requirement of the discretionary actions required for the County of San Diego to implement the MSCP. These actions include adoption of the MSCP level plan that identifies the Multiple Habitat Planning Area (MHPA). Other discretionary actions associated with the County of San Diego include the County Subarea Plan and implementing actions including adoption of the Biological Mitigation Ordinance and amendments to the Brushing and Clearing and Habitat Loss Permit Ordinances. The findings will remain on file at the County of San Diego Department of Planning and Land Use. Other responsible agencies participating in the project shall be responsible for preparing separate findings for mitigation and impacts identified for that agency.

These findings are made relative to the Joint Environmental Impact Report/Environmental Impact State (final EIR/EIS) 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. The proposed actions addressed in this Joint EIR/EIS would occur on Federal, State, and local levels. The Federal actions consist of: 1) issuance of Section 10(a)(1)(B) Permits for incidental take of listed and unlisted covered species within the MSCP Plan area; 2) approval of the MSCP Plan as a Natural Communities Conservation Planning (NCCP) area plans; and 3) execution of Implementing Agreements (IAs) with the appropriate jurisdictions. The State action consists of approval of the MSCP Plan as an NCCP Program under Section 2835 of the NCCP Act in the State Fish and Game Code; requirements for take under Section 2835 are similar to those for a Federal Habitat Conservation Plan. Local actions consist of adoption of the MSCP Plan by participating local jurisdictions along with other implementing approvals including general plan, community plan, and environmental land use regulations.

**A. Section 21081(a) Findings**

Pursuant to Public Resources Code §21081(a), the decision-maker, having independently reviewed and considered the information contained in the final EIR/EIS, the appendices and the record, finds that, pursuant to the CEQA and the CEQA Guidelines, changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effects as identified in the final EIR/EIS with respect to the areas of: 1) land use; 2) biological resources; and 3) public services and utilities.

1. Land Use

The land use analysis in the draft EIR/EIS addressed potential impacts for the overall MSCP Plan, the Subarea Plans for individual jurisdictions including the cities of Chula Vista, Coronado, Del Mar, El Cajon, Imperial Beach, La Mesa, National City, Poway, San Diego, Santee, and County of San Diego as well as certain water districts. Significant impacts were identified for the City of San Diego Subarea Plan and the associated Rancho Peñasquitos, East Elliott, and Otay Mesa Community Plan amendments. No significant land use impacts were identified at the overall MSCP Plan level. The land use discussion below presents the findings that support a conclusion of no significant impact at the overall MSCP Plan level as well as describing the significant impacts that were identified at the County of San Diego Subarea Plan.

**THE MSCP PLAN**

**Impact:** The land use analysis included in the draft EIR/EIS focuses on the environmental impacts associated with intensification of land uses outside the preserve that may occur with implementation of the MSCP Plan. Such land use changes may involve conflicts with the environmental goals of existing plans related to protecting the natural environment and provision of orderly development or adverse effects on community character.

Jurisdictions participating in the MSCP have adopted general and community plans that contain environmental goals related to open space preservation, protecting the natural environment. In general, designation of additional open space and setting aside lands for biological preservation would not conflict with general plan and community plan goals to protect the natural environment and to maintain open space for the enjoyment of future residents. In these respects, designation of preserve land within areas currently designated for other land uses would be consistent with overall, generalized environmental goals of the region.

In addition to protecting the natural environment and maintaining open space overall general plan and community plan environmental goals call for the orderly development of roadways, schools, parks, and infrastructure facilities to serve the needs of residents as well as guiding planned community character through development of communities with an appropriate balance of housing, employment, commercial, and recreation opportunities to reduce the number and length of automobile trips and promote an increased quality of life. Existing planned land use designations, particularly urban designations, within

jurisdictions are designed to assist in achieving these environmental goals. Urban land use designations generally have the effect of concentrating development in more compact areas, facilitating delivery of more efficient public services and facilities, minimizing encroachment into undeveloped areas, and providing for an appropriate mix of land uses.

Implementation of the MSCP Plan may result in conflicts with applicable environmental goals regarding provision of orderly development due to land use shifts that would result from establishing preserve designations within the MSCP study area. As discussed in Sections 4.2 and 4.6 of the draft EIR/EIS, reductions in the acreage available for urban uses under the MHPA 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. Implementation of the MSCP Plan would require that approximately 10,075 acres of vacant unconstrained land currently designated for urban development would remain as preserve open space. This represents 25 percent of the total 40,733 acres of such lands designated for urban uses within the MSCP study area. This is a substantial portion of the total area designated for urban uses within the study area.

This reduction in the total area designated for urban development within the MSCP study area would not, however, result in significant conflicts with applicable environmental goals regarding provision of orderly development, or result in adverse effects to community character for two reasons. First, the anticipated land use shift would not result in increases in intensity or density of land uses substantially higher than currently exist, and second, flexibility has been incorporated in the MSCP Plan to permit certain levels of development within the preserve.

With respect to the effects of the land use shift on changes in the intensity and density of development in the MSCP study area, existing (1990) gross residential density within the study area was compared with that anticipated under land use shifts associated with implementation of the MSCP Plan. Existing (1990) residential density within the MSCP study area is 3.10 dwelling unit per acre (du/acre) based on San Diego Association of Governments (SANDAG) forecasts. Analyses completed for the draft EIR/EIS estimated the amount of land both within and outside the preserve that would be available for development with implementation of the MSCP Plan. Those analyses concluded that the projected overall density

within the MSCP study area would be approximately 3.10 du/acre density range that currently exists, even with implementation of the MSCP Plan and significant impacts with respect to density changes are not anticipated. (Please refer to Sections 4.2 and 4.6 of the draft EIR/EIS and the revised language incorporated in the final EIR/EIS for additional discussion of this issue and data to support this conclusion.)

With respect to flexibility incorporated in the MSCP Plan, the Plan identifies percent conservation thresholds on lands designated for inclusion in the preserve. The actual acreage to be conserved is based on percent conservation thresholds (e.g., 70, 80, 90, and 100 percent) that allow for development within a certain percentage of the total acreage within the MHPA. In addition, the MSCP Plan allows for development within the MHPA. As discussed in Chapter 6 of the MSCP Plan, limited uses allowed within the MHPA include public facilities, agriculture, mineral extraction, and low density residential uses. Based on the percent conservation thresholds and the uses allowed within the MHPA, the allowable acreage of development within the MHPA is approximately 20,128 acres.

In summary, the analysis of the draft EIR/EIS concludes that the potential conversions would not be significant because they would not result in adverse impacts with respect to consistency with environmental goals and policies related to protecting the natural environment, orderly development, and community character. Major open space systems would remain under the proposed MSCP Plan and land use relationships would generally not be changed. Likewise, 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.

**Finding:** No significant impacts were identified for the overall MSCP Plan.

#### **THE COUNTY OF SAN DIEGO SUBAREA PLAN**

**Impact:** The land use analysis in the EIR/EIS recognized that land would be acquired for the preserve system as part of private developments. Public lands and open space lands already designated as such as part of existing land use plans will be utilized as preserve land. In addition, land dedicated as mitigation for private development projects would also be a source of preserve land. The Biological Mitigation Ordinance is designed to encourage mitigation in areas whose biological resources make them

most suitable for preserve formation. Through operation of the Biological Mitigation Ordinance, preserve buildout in the Metro-Lakeside-Jamul segment is encouraged within areas identified through the Ordinance as biological resource core areas. Within the Lake Hodges and South County portions of the Subarea, preserve land has already been set aside as a result of negotiations in conjunction with private development projects.

**Finding:** No significant impact on land use conversion is anticipated as a result of the Subarea Plan. First, existing public land and open space lands are utilized in preserve formation. Second, within the Lake Hodges and South County segments, preserve boundaries have already been negotiated and set aside as part of the private land development process. Third, the flexibility incorporated in the Biological Mitigation Ordinance ensures that development potential is available at the same time that preserve buildout is occurring. Thus, no significant impacts were identified for the County of San Diego Subarea Plan and Biological Mitigation Ordinance.

## 2. Biological Resources

### THE MSCP PLAN

**Impact:** **Direct Impacts to Covered Species** - The proposed Federal and State actions for take of species on the covered species list would result in direct impacts to populations of these species located outside the MHPA or within areas suitable for development in accordance with conservation goals and criteria. For those listed species (i.e., threatened or endangered by the State or Federal wildlife agencies) on the MHPA covered species list, any direct impact is considered significant, with the exception of listed species determined to be "insignificantly" impacted (Swainson's hawk and American peregrine falcon). For those non-listed species (or species proposed for listing) on the MHPA covered species list for which greater than ten percent of the known observations or major populations within the MSCP study area would be lost, direct impacts are considered significant, with the exception of non-listed species determined to be "insignificantly" impacted (Mountain plover, Northern harrier, Ferruginous hawk, Golden eagle, Long-billed curlew, American badger, Mountain lion, and Southern mule deer). Therefore, direct impacts to the following covered plant species, as a result of implementation of the MSCP Plan, would be considered significant:

San Diego thornmint	Palmer's ericameria
Shaw's agave	San Diego button-celery
San Diego ambrosia	San Diego barrel cactus
Nuttall's lotus	Otay tarplant
Felt-leaved monardella	Heart-leaved pitcher-sage
Coastal dunes milk-vetch	Del Mar manzanita
Encinitas baccharis	Willow monardella
Prostrate navarretia	San Diego goldenstar
Orcutt's brodiaea	Dehesa bear-grass
Slender-pod jewelflower	Snake cholla
Lakeside ceanothus	California Orcutt grass
Salt marsh bird's-beak	Torrey pine
Orcutt's bird's-beak	Small-leaved rose
Del Mar mesa sand-aster	San Diego mesa mint
Short-leaved dudleya	San Miguel savory
Variegated dudleya	Narrow-leaved nightshade
Sticky dudleya	

Likewise, direct impacts to the following covered animal species would be considered significant:

Riverside fairy shrimp	Light-footed clapper rail
San Diego fairy shrimp	Western snowy plover
Arroyo southwestern toad	California least tern
Southwestern pond turtle	Burrowing owl
San Diego horned lizard	Southwestern willow flycatcher
Orange-throated whiptail	Coastal cactus wren
Tricolored blackbird	California gnatcatcher
California brown pelican	Western bluebird
Reddish egret	Least Bell's vireo
White-faced ibis	Calif. rufous-crowned sparrow
Canada goose	Belding's Savannah sparrow
Bald eagle	Large-billed Savannah sparrow
Cooper's hawk	

**Finding:** Direct Impacts to Covered Species - Significant impacts to the 35 plant and 25 animal species listed in Attachment 1 to this document are mitigated through the following measures:

- a. Preservation of a majority of core or major populations of the covered species within the MHPA preserve (Attachment 2 to this document); refer also to revised MSCP Table 3-5 included in the Revisions to the MSCP Plan, January 1997.
- b. Design and configuration of MHPA preserve (Figure 1).

- c. Conservation goals and criteria for species (Attachment 3 to this document); refer also to revised MSCP Table 3-5 included in the Revisions to the MSCP Plan, January 1997.
- d. Monitoring and reporting measures included in the Biological Monitoring Plan for Multiple Species Conservation Program incorporated in the MSCP Plan.

**Impact:** **Direct Impacts to Vegetation Communities/Habitats -** Because virtually all natural habitats and non-native grassland in the study area support one or more covered species, direct impacts to these habitats are regarded as significant. Significant direct impacts would occur to the following habitats:

Beach	Riparian forest
Saltpan	Oak riparian forest
Southern foredunes	Riparian woodland
Southern coastal bluff scrub	Riparian scrub
Coastal sage scrub	Oak woodland
Maritime succulent scrub	Torrey pine forest
Chaparral	Tecate cypress forest
Southern maritime chaparral	Eucalyptus woodland
Coastal sage scrub/chaparral mix	Open water
Grassland	Disturbed wetlands
Southern coastal salt marsh	Shallow bay
Freshwater marsh	Deep bay

**Finding:** **Direct Impacts to Vegetation Communities/Habitats -** Significant impacts to the habitats supporting covered species are mitigated through the following measures:

- a. Preservation of the majority of core habitats within the MHPA preserve (Figure 1).
- b. Preservation of vegetation communities by design and configuration of the MHPA preserve (Figure 1).
- c. Conservation targets for vegetation communities (Attachments 4 and 5 to this document).
- d. Monitoring and reporting measures included in the Biological Monitoring Plan for Multiple Species Conservation Program incorporated in the MSCP Plan.

**Impact:** **Indirect Impacts to Covered Species -** Indirect impacts to covered species would result from edge effects within and adjacent to the preserve and increased development pressure outside the preserve. Assuming a 200 foot wide strip of preserve boundary, it is estimated that

approximately 20 percent (34,000 acres) of the MHPA could be subject to edge effects depending on how well the local jurisdictions implement their preserve management guidelines and land use planning tools. Because these edge effects could adversely impact covered species, this indirect impact is regarded as significant.

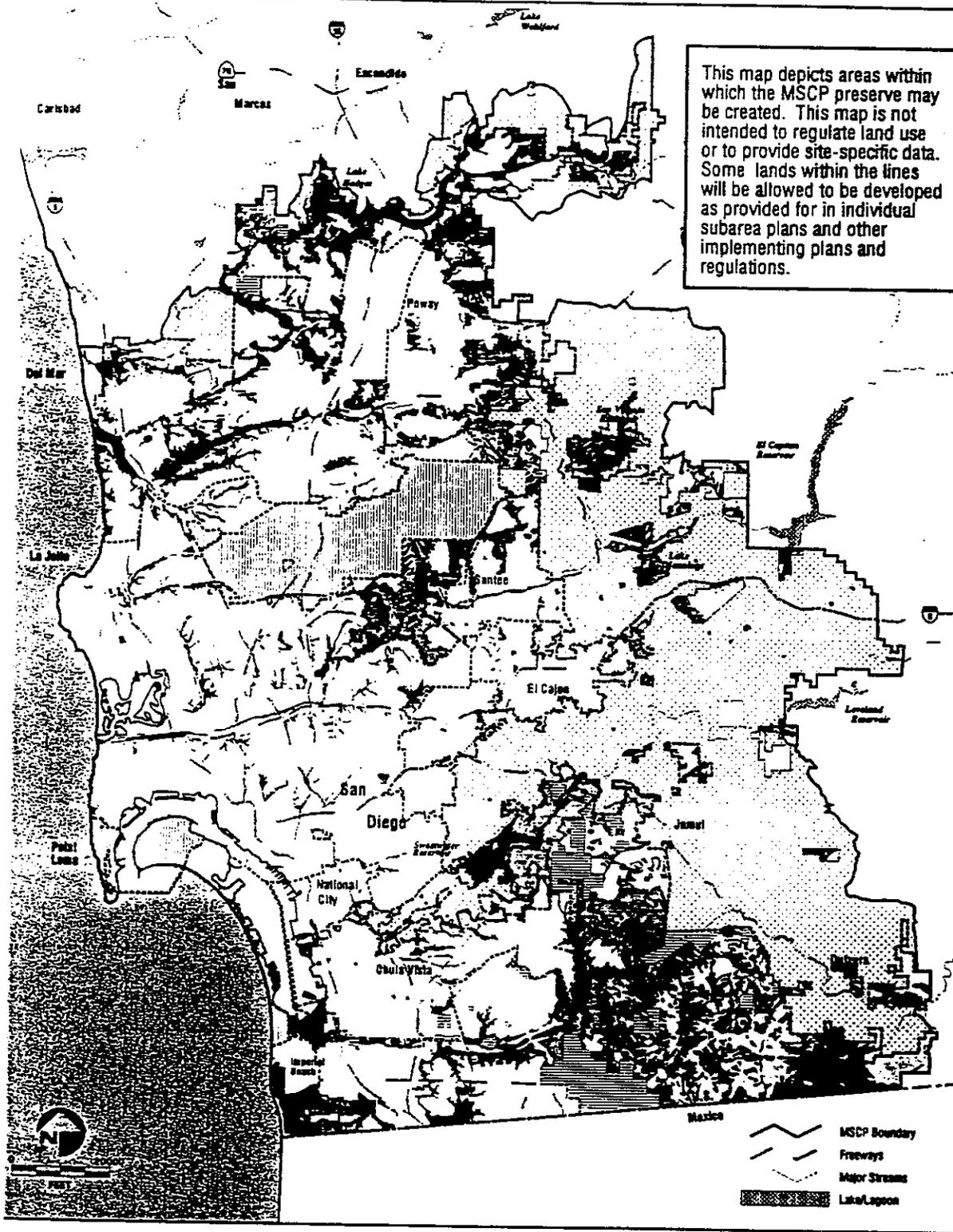
**Finding:** **Indirect Impacts to Covered Species** - Significant indirect impacts to covered species may occur through edge effects and other uses within and adjacent to the preserve. These indirect impacts are mitigated through implementation of guidelines provided in Subarea Plans for uses within 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.

**Impact:** **Indirect Impacts to Uncovered Non-Wetland Sensitive Species** - It is anticipated that the conservation measures implemented under the City Resource Protection Ordinance, County Biological Mitigation Ordinance, and the various Subarea Plans will provide some protection for non-wetland uncovered, sensitive species, indirect impacts cannot be meaningfully evaluated at the MSCP Plan level. However, indirect impacts to these species are regarded as significant.

**Finding:** **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.

**Impact:** **Indirect Impacts to Non-Wetland Sensitive Vegetation Communities/Habitats** - It is anticipated that the conservation measures implemented under the City Resource Protection Ordinance, County Biological Mitigation Ordinance, and the various Subarea Plans will provide some protection for non-wetland sensitive habitats. However, indirect impacts to these habitats are regarded as significant.

This map depicts areas within which the MSCP preserve may be created. This map is not intended to regulate land use or to provide site-specific data. Some lands within the lines will be allowed to be developed as provided for in individual subarea plans and other implementing plans and regulations.



- |                              |                     |  |                    |
|------------------------------|---------------------|--|--------------------|
| Coastal Sage Scrub           | Oak Woodland        | Shallow Bay                                | Military Lands     |
| Chaparral                    | Coniferous Forest   | Agriculture                                | Subarea Boundaries |
| Coastal Sage Scrub/Chaparral | Beach/Foredunes     | Developed                                  |                    |
| Grassland                    | Eucalyptus Woodland | Amendment Areas                            |                    |
| Riparian/Wetlands            | Disturbed Habitat   | Areas with Undetermined Development Status |                    |

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

Joint EIR/EIS - Multiple Species Conservation Program (MSCP) **FIGURE 1**  
**Vegetation Communities in MHPA**  
 000081 001 2297

**Finding:** 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.

#### THE COUNTY OF SAN DIEGO SUBAREA PLAN

**Impact:** Direct Impacts to Covered Species - The proposed Federal and State actions for take of species on the covered species list would result in significant direct impacts to populations of the following species located outside the MHPA.

Plant species on the covered species list that are represented (or expected to be represented) by populations within the County of San Diego MSCP Subarea include San Diego thorn-mint, San Diego ambrosia, Del Mar manzanita, Encinitas baccharis, Orcutt's brodiaea, Slender-pod jewelflower, Lakeside ceanothus, Wart-stemmed ceanothus, Orcutt's bird-beak, Del Mar mesa sand-aster, Variegated dudleya, Sticky dudleya, Palmer's ericameria, San Diego button-celery, San Diego barrel cactus, Otay tarplant, Heart-leaved pitcher sage, Nevin's barberry, Felt-leaved monardella, Willowy monardella, San Diego goldenstar, Prostrate navaretia, Dehesa bear-grass, Snake cholla, California Orcutt grass, San Diego mesa mint, Otay mesa mint, Small-leaved rose (expected), San Miguel savory, San Diego butterweed, and Narrow-leaved nightshade.

Animal species on the covered species list that are represented (or expected to be represented) by populations within the County of San Diego include Riverside fairy shrimp, San Diego fairy shrimp, Arroyo southwestern toad (expected), Southwestern pond turtle, Orange-throated whiptail, San Diego horned lizard, Cooper's hawk, Tricolored blackbird, California rufous-crowned sparrow, Coastal cactus wren, Mountain plover, Northern harrier, Southwestern willow flycatcher, Canada goose, Bald eagle, California gnatcatcher, Western bluebird, Burrowing owl, and Least Bell's vireo.

**Finding:** **Direct Impacts to Covered Species** - Under the proposed MHPA, significant impacts to the 29 plant and 17 animal species are mitigated through the following measures:

- a. Preservation of core or major populations of covered species occurring within the County (Attachment 6 to this document).
- b. Design and configuration of the portion of the MHPA preserve within the County (Attachment 2).
- c. Monitoring and report measures included in the Biological Monitoring Plan for Multiple Species Conservation Program incorporated in the MSCP Plan.

**Impact:** **Direct Impacts to Vegetation Communities/Habitats** - Because virtually all natural habitats and non-native grassland in the study area support one or more covered species, direct impacts to these habitats are considered significant. Significant impacts would occur to the following habitats within the County of San Diego Subarea: Coastal sage scrub; Maritime succulent scrub; chaparral; Southern maritime chaparral; Coastal sage scrub/chaparral mix; grassland; freshwater marsh; riparian forest; oak riparian forest; riparian woodland; riparian scrub; oak woodland; Tecate cypress forest; Eucalyptus woodland; open water; natural flood channel; and disturbed wetlands.

**Finding:** **Direct Impacts to Vegetation Communities/Habitats** - Significant impacts to vegetation communities/habitats are mitigated through the following measures:

- a. Preservation of core habitat areas occurring within the County (Attachment 7).
- b. Design and configuration of the portion of the MHPA preserve within the County (Attachment 2).
- c. Monitoring and reporting measures included in the Biological Monitoring Plan for Multiple Species Conservation Program incorporated in the MSCP Plan.

**Impact:** **Indirect Impacts to Biological Resources** - It is anticipated that conservation measures implemented under the County of San Diego Subarea Plan and the County's Biological Mitigation Ordinance would provide some protection for biological resources. However, indirect impacts to covered species, uncovered species, and sensitive vegetation communities/habitats would result

from permitted uses within the preserve, edge effects from uses adjacent to the preserve, and increased development pressure outside the preserve. These impacts are considered significant.

**Finding:** **Indirect Impacts to Biological Resources** - A variety of measures to avoid and/or minimize potential indirect impacts to sensitive habitats and sensitive species are included in the County of San Diego MSCP Subarea Plan, primarily in the proposed County Biological Mitigation Ordinance. The following measures would reduce indirect impacts to a level below significant:

- a. Implementation of the Biological Mitigation Ordinance which provides for the following mitigation measures:
  - (1) Mitigation according to a "tier system" whereby mitigation rations are in accordance with the sensitivity and biological importance of the impacted habitat.
  - (2) Avoidance, if feasible, of specific species sensitive species (e.g., listed, rare, or narrow endemic) as a first priority and a limit of disturbance where some impact is unavoidable.
  - (3) Impacts to less sensitive species will be mitigated on a habitat basis unless the impact results in substantial reduction of the viability of the affected population or species as a whole.
- b. Guidelines for land uses adjacent to the MHPA preserve as described in Section 1.10 of the County Subarea Plan, and which include the following:
  - (1) Landscaping of manufactured open space should consist of native species.
  - (2) Areas with heavy human use (e.g., ballfields) shall be located to the extent feasible away from the edge of the preserve.
  - (3) Lighting within 100 feet of the preserve shall be confined to areas necessary to ensure public safety.
  - (4) Fencing along the preserve boundary, though not mandatory, should be used to provide a barrier to fire, invasive species, and uncontrolled human access.

**Impact:** Impacts to Wildlife Movement - Direct impacts to wildlife movement are expected only in the Metro-Lakeside-Jamul segment of the County of San Diego Subarea Plan.

**Finding:** Impacts to Wildlife Movement - Because of the absence of information regarding the degree to which linkages in this segment area would be conserved, impacts to linkage habitat in the Metro-Lakeside-Jamul segment are regarded as significant. Linkages within the Metro-Lakeside-Jamul segment would be subject to the Biological Mitigation Ordinance which sets forth planning guidelines designed to preserve significant biological resources. With regard to habitat linkages, the County of Subarea Plan policy is to minimize habitat fragmentation, provide for transit of animals and plants, and maintain genetic and demographic exchange between populations, permit dispersal, and facilitate the rescue of small populations from local extinction. Implementation of this plan through the requirements of the MSCP Plan, the Subarea Plan, and the Biological Mitigation Ordinance will provide mitigation for impacts to wildlife corridors and reduce impacts to less than significant.

### 3. Public Services and Utilities

#### THE MSCP PLAN

**Impact:** Impacts to Planned Public Facilities That Would be Considered Incompatible Uses Within the Proposed Preserve - Detailed information is not available on a regional level regarding how public service facilities such as parks, schools, fire stations, and police station sites, considered incompatible with the core and linkage areas of the preserve, might be relocated, or if existing facilities could be expanded to accommodate potential loss of these facilities. As a result, the potential for loss of a public service or recreational facility due to incompatibility with the preserve is considered to be a significant impact of the project at the program level.

**Finding:** 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.

#### **THE COUNTY OF SAN DIEGO SUBAREA PLAN**

**Impact:** The potential for loss of a public service or recreational facility due to incompatibility with the preserve was considered to be a significant impact of the project at the program level.

**Finding:** In the absence of information on a regional level of how facilities might be redesigned or relocated, the potential for loss or the need to relocate a public service or recreational facility is considered to be a significant impact of the project.

**Impact:** At the Subarea Plan level, utilities and recreational facilities are regarded as conditionally compatible with preserve objectives.

**Finding:** Within the Lake Hodges and South County segments, location of utilities and recreational facilities has already been considered in developing preserve design. Thus, there are no impacts to public service or recreational facilities from the preserve, including no loss of facilities or services. Within the Metro-Lakeside-Jamul segment, the flexibility of the Biological Mitigation Ordinance along with the policies contained in the Subarea Plan and the MSCP Plan demonstrate that facilities could be located in areas of less value to the preserve planning effort. Based on these facts, no significant impacts are identified for the County of San Diego Subarea Plan with respect to public services and utilities.

#### **B. Section 21081(a)(2) Findings**

Pursuant to Public Resources Code Section 21081(a)(2), the County of San Diego, having independently reviewed and considered the information contained in the final EIR/EIS, the appendices and the record, finds that there are no changes and alterations to the County of San Diego's Subarea Plan and implementing Ordinances proposed by the County of San Diego that are within the responsibility and jurisdiction of another public agency that would avoid or substantially lessen the significant impacts associated with implementing these actions.

C. Section 21081(a)(3) Findings

The final EIR/EIS discusses mitigation measures and a range of reasonable project alternatives that would substantially reduce or avoid significant impacts of the project. The range of project alternatives includes the "No Action/No Project" Alternative scenario (Alternative 1), the "Coastal Sage Scrub Scenario" Alternative (Alternative 2), the "Biologically Preferred" Alternative (Alternative 3), and the "Public Lands" Alternative (Alternative 4).

The final EIR/EIS concludes that the following impact would remain significant after implementation of the mitigation measures described in Section A of these findings:

- Impacts of the MSCP Plan to public facilities.

The impact of the MSCP Plan would be reduced or avoided with implementation of some of the alternatives. Pursuant to Public Resources Code §21081(a)(3), the County Board of Supervisors, having independently reviewed and considered the information contained in the final EIR/EIS, the appendices and the record, finds that the final EIR/EIS describes all reasonable alternatives to the project and that specific economic, social, or other considerations make infeasible the project alternatives identified in the final EIR/EIS.

Alternative 1: No Action/No Project

Under Alternative 1, a subregional Section 10(a)(1)(B) permit would not be issued to local jurisdictions and activities involving take of listed species on non-Federal lands prohibited under Section 9 of the Endangered Species Act would require individual permits. The MSCP Plan as proposed would not be implemented. Proposed land use designation changes necessary to implement the MSCP Plan would not be required; however, changes in land use designation may still be necessary as the general plans and/or community plans of local jurisdictions in the MSCP study area are updated. Alternative 1 assumes that the impact on sensitive habitats/species would be evaluated and mitigated on a project-by-project basis, as is presently done. Alternative 1 also assumes that the existing land use and environmental regulation process would be required for all public and private projects proposed within the MSCP study area this process includes.

**Impact:** Under the No Action/No Project Alternative, significant and not mitigable impacts of the project to land use, public facilities and services, as well as population and housing would be avoided. Existing land use plans and policies of the County of San Diego would be implemented thereby avoiding the impacts of the MSCP Plan and Subarea Plan on planned public facilities and services as well as to anticipated population and housing levels.

No significant impacts to biological resources have been identified for the No Action/No Project Alternative. This Alternative would not, however, take advantage of the opportunity afforded by the MSCP Plan to establish a regional preserve for the conservation of biological resources in southwestern San Diego County.

**Finding:** This Alternative is considered to be infeasible for the following reasons: implementation of Alternative 1 would not realize the objectives of the project. The objective of the MSCP Plan is to create a preserve system that would preserve as much of the core biological resources and linkages as possible as well as maximize the use of public lands. The configuration of preserved lands under Alternative 1 would, however, follow the pattern of project-by-project planning and would be characterized, as they are presently, by fragmentation, poor design or no linkages, and island preserves resulting in increasing risk of species decline and endangerment. This project-by-project pattern of planning would likely occur on both public and private lands within the MSCP study area under the Alternative 1 alternative. Less fragmentation would occur on public lands, when compared with private lands, under Alternative 1, since a substantial portion of these lands are already designated for open space, parks, and preserves. Public lands owned by special districts and agencies whose primary purpose is not open space or resource protection could, however, be subject to the type of piecemeal project-by-project planning that has historically occurred.

#### Alternative 2: Coastal Sage Scrub Alternative

Alternative 2 was developed to meet the minimum criteria for satisfying the NCCP conservation guidelines for Coastal sage scrub and to establish a preserve of 100,000 acres or less in size. This scenario is intended to provide the minimum acreage that could support populations of three NCCP target species: the California gnatcatcher and Coastal cactus wren birds, and Orange-throated whiptail lizard. The planning area for Alternative 2 encompasses approximately 110,600 acres or 19 percent of the total MSCP study area. Of this total, approximately 94,900 acres are habitats and the rest are developed, disturbed, and agricultural areas. It is assumed that approximately 84,900 acres of habitats within Alternative 2 would be preserved for biological resources in conjunction with subsequent Subarea Plans. It is assumed that approximately 10,000 acres of habitat within Alternative 2 would be disturbed as part of future Subarea planning. The locations of potential disturbance would be determined as part of the Subarea planning process.

**Impact:** Under Alternative 2, the impacts of the MSCP Plan and Subarea Plan on public facilities as well as population and housing levels would be reduced. The area to be conserved under Alternative 2 would be 87,017 acres less than the acreage to be conserved under the proposed project. If the area to be

converted by the preserve is reduced, the potential for planned locations of public facilities to conflict with preserve objectives would be reduced.

**Finding:** This Alternative is considered to be infeasible for the following reasons: implementation of Alternative 2 would not reduce the impacts of the proposed MSCP Plan and Subarea Plan to below a level of significance. Implementation of Alternative 2 would result in significant and not mitigable impacts to public facilities at the MSCP Plan level. Some types of public facilities would be incompatible with the Alternative 2 preserve. In the absence of detailed information on the location of planned facilities throughout San Diego, it is anticipated that conversion of areas planned for urban and open space uses could conflict with the planned location of some public facilities within the City of San Diego. The final EIR/EIS also concluded that the extent of urban land uses converted to open space under Alternative 2 could have a significant impact on the affordable housing requirements of the City.

This Alternative is considered to be infeasible because it would also conflict with the overall goals of the project regarding preservation of biological resources. The size of the preserve under Alternative 2 would be 87,017 acres less than the acreage to be conserved under the proposed project. Due to the reduced size of the preserve, as concluded in the final EIR/EIS), Alternative 2 would have significant not mitigable impacts to plant and animal species that would be adequately preserved under the proposed project. The proposed Federal and State actions for take of species on the covered species list under Alternative 2 would result in direct impacts to populations of these species located outside the preserve. The Alternative 2 preserve does not include the core or major populations of 56 species necessary to fully mitigate the impacts of development outside of the preserve on these species. Core or major populations of these 56 species are included in the proposed preserve.

### Alternative 3: Biologically Preferred

As part of the biological analysis, core resource areas were identified. The core biological areas were linked, in some instances by non-native habitat, to create the core and linkage area. For the most part, Alternative 3 represents the core and linkage area. The only portions of the core and linkage area excluded from Alternative 3 are a few connections that link potentially important biological areas to the east of the MSCP study area. These areas were excluded based on a target total acreage for Alternative 3 that was under consideration at the time the Alternative was developed. The planning area for this Alternative encompasses approximately 224,090 acres. Of this total, approximately 185,738 acres are habitats and the rest are developed, disturbed, and

agricultural areas. It is assumed that approximately 167,000 acres of habitat within the Biologically Preferred scenario would be preserved for biological resources in conjunction with subsequent Subarea Plans.

**Impact:** Based on the analysis completed for the final EIR/EIS, it is not anticipated that implementation of Alternative 3 would reduce impacts identified for the proposed MSCP Plan and Subarea Plan to below a level of significance. The area to be conserved within the Alternative 3 preserve would be similar to that of the proposed project (4,917 acres less). The final EIR/EIS concluded that implementation of the Alternative 3 preserve would have significant and not mitigated impacts to planned public facilities and services.

**Finding:** This Alternative is considered to be infeasible for the following reasons: as described above under impacts, implementation of Alternative 3 would not substantially reduce identified impacts of the project.

COUNTY OF SAN DIEGO  
STATEMENT OF OVERRIDING CONSIDERATIONS  
CEQA GUIDELINES SECTION 15093

The CEQA and the State CEQA Guidelines provide:

1. The CEQA requires the decision-maker to balance the benefits of a proposed project against its unavoidable environmental risks in determining whether to approve the project. If the benefits of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered acceptable.
2. Where the decision of the public agency allows the occurrence of significant effects which are identified in the final EIR/EIS but are not at least substantially mitigated, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. This statement may be necessary if the agency also makes a finding under Section 15091(a)(2) or (a)(3).
3. If an agency makes a Statement of Overriding Considerations, the Statement should be included in the record of the project approval and should be mentioned in the Notice of Determination (CEQA Guidelines Section 15093).

The Board of Supervisors of San Diego County, pursuant to the CEQA Guidelines, after balancing the effects of the proposed project (MSCP Plan, the County of San Diego Subarea Plan, and implementing Ordinances) against unavoidable impacts related to planned public facilities that remain significant notwithstanding the mitigation measures and alternatives described above, determines that the remaining environmental effects are acceptable due to the following specific considerations:

1. The MSCP preserve has been designed to protect interconnected blocks of different vegetation communities or habitat types and maximum protection of the region's most sensitive species. The preserve would consist of 171,917 acres of vacant land (167,667 of which is natural habitat) that would be conserved as permanent open space under the preserve design. Based on the MHPA preserve configuration, vegetation community conservation targets for all Subareas, and implementation of habitat management plans, 85 plant and animal species would be conserved and "covered" by the MSCP Plan. Of the 85 covered species of plants and animals, 36 are Federal candidates (C1 and former C2), 4 are Federally proposed for listing as endangered species, 15 are currently listed as endangered under the State Endangered Species Act, and 17 are currently listed by the Federal government as endangered species.
2. The County of San Diego IA and Subarea Plan, in combination with the MSCP Plan implements, serve as a multiple species habitat conservation plan for the NCCP program established by the California legislature.

3. Efforts have been incorporated into the design of the City of San Diego Subarea Plan to maximize the use of public lands. A majority of the lands to be included within the preserve within the City of San Diego are public. A total of 38,880 acres of the 56,831 acres of vacant land to be conserved as open space within the City of San Diego preserve are currently in Federal, State, and local public ownerships.
4. The County of San Diego Subarea Plan contains an MSCP implementation funding structure to ensure that the habitat acquisition, maintenance, and monitoring necessary to implement the preserve are accomplished. The implementation of funding addresses the responsibilities of the County regarding short-term funding needs. The County will also contribute to the regional funding obligation established by the Plan. The County of San Diego, participating with other jurisdictions in the MSCP, will be jointly responsible for acquiring half the lands required for public acquisition and for funding management, monitoring, and administrative costs of the lands acquired by the jurisdiction respectively.
5. An economic analysis of the impacts of the MSCP Plan on the economy indicated that implementation of the Plan would have net economic benefits. Once approved, the MSCP Plan would facilitate approvals of businesses expansion plans, reduce delays in the environmental review process, and reduce compliance and carrying costs. Federal and State permits for public and private projects deemed consistent with the MSCP Plan would be easier to obtain. An earlier resolution of conflicts between land development and natural habitat would reduce the likelihood of Federal and/or State intervention which could disrupt local economic development. Plan adoption would contribute to a more secure and less costly business environment, thus improving the region's ability to retain companies and attract investment. Also, the proposed financing plan anticipates that the Federal and State governments would be responsible for meeting one-half of the land acquisition need, as well as a portion of the estimated costs of preserve management and biological monitoring. The influx of such Federal and State funds to the San Diego economy would stimulate local economic activity.

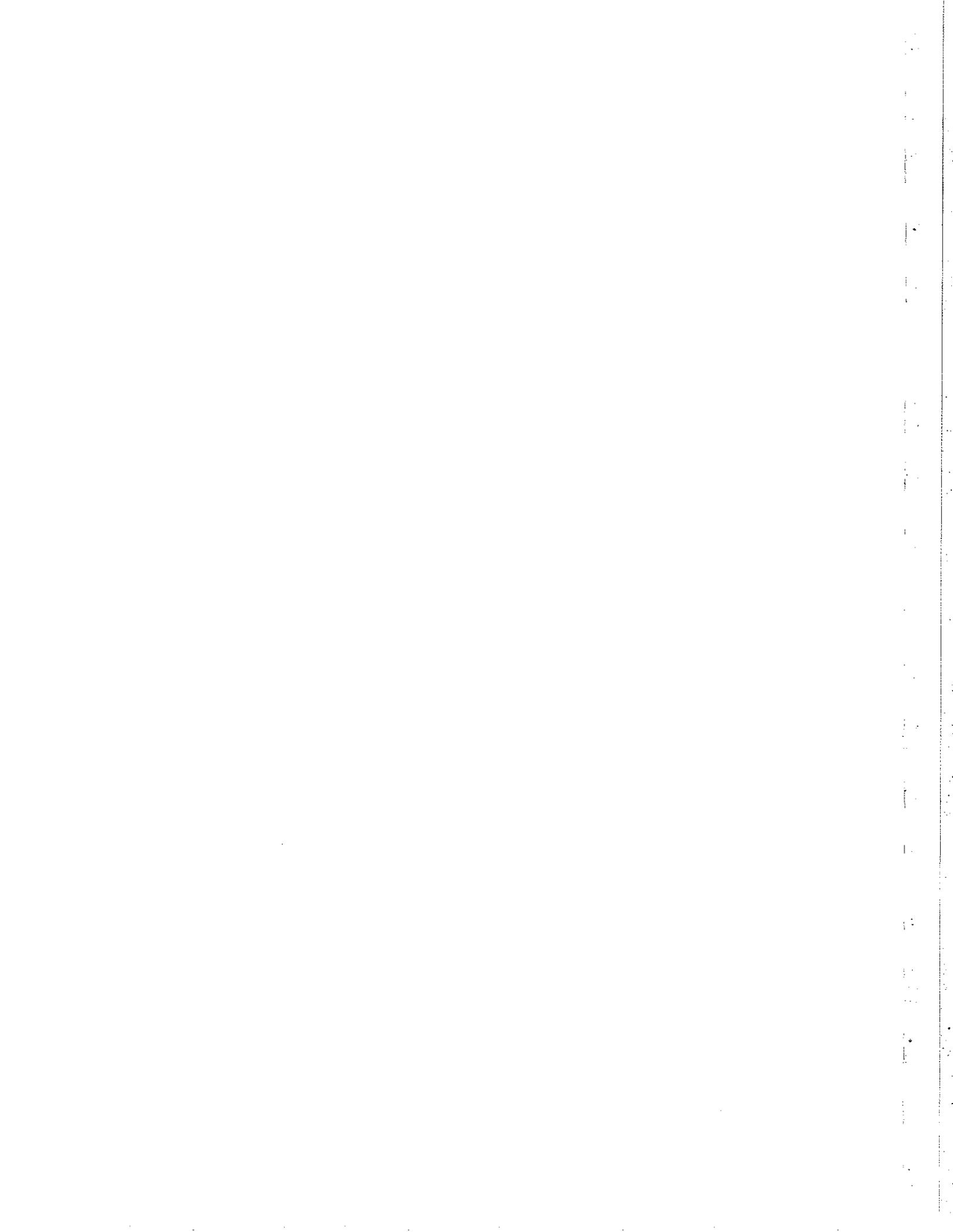
The proposed MSCP Plan would require the County to contribute approximately 59,969 acres of lands in the Subarea. The proposal maximizes the use of lands already in public ownership as a major portion of the County's contribution. The County's share in this regional effort requires a commitment to add 9,425 acres with local funds. Federal and State agencies are required to add an additional 9,425 acres with Federal and State funds.

A benefit of this proposal is that the burden of preserve land would not rest solely on new development proposals but would be shared by the County and the State and Federal agencies through acquisition of land from willing private landowners. An additional benefit of this commitment would be that 85 sensitive plant and animal species would be conserved within the MSCP preserve and the County, along with each of the other participating jurisdictions, would be given take authorizations for 85 sensitive bird and animal species by the wildlife agencies. The

conservation of these sensitive species is expected to prevent a decline in numbers of these species to such an extent that they become listed as threatened or endangered. The granting of the take authorization to the County would increase certainty and predictability and streamline permitting/approval process for new development proposals on raw land.

6. For new development proposals deemed consistent with plan/zone and the MSCP guidelines, the CEQA requirement for cumulative biological resource impacts within the MSCP study area would have been satisfied by the approval of the MSCP Plan and the certification of the associated MSCP environmental document, and in addition, the need for alternative analysis would also be reduced. The requirement of cumulative impact analysis and discussion of alternatives are two of the main factors which may trigger the need for a full EIR to be prepared for a subsequent discretionary development proposal. A benefit of this proposal is that these requirements would be lessened and permit processing time may be shortened. As a minimum, the MSCP EIR/EIS can be incorporated by reference in subsequent environmental documents for cumulative biological resource impacts.

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**MSCP MITIGATION AND IMPLEMENTATION AGREEMENT  
MONITORING PROGRAM FOR BIOLOGICAL RESOURCES**

**County of San Diego**

**MSCP MITIGATION AND IMPLEMENTATION AGREEMENT  
MONITORING PROGRAM FOR BIOLOGICAL RESOURCES**

**COUNTY OF SAN DIEGO**

Mitigation Measures	Source of Requirement	Method of Verification	Timing of Verification	Responsible Entity
<b>1.0 PROGRAM LEVEL IMPLEMENTATION</b>				
<b>1.1 Implementing Ordinances, Guidelines, Conditions for Coverage</b>				
Implementation of the MSCP and Subarea Plan requires adoption of the new Biological Mitigation Ordinance, adoption of the MSCP Plan which includes specific mitigation measures including conditions for coverage of covered species, and adoption of the County Subarea Plan which includes development guidelines, mitigation requirements, etc.	MSCP Plan 5.4.1, Subarea Plan, IA	County resolution adopting MSCP, Subarea Plan, and approval to execute IA	Prior to submittal of IA to CDFG and USFWS for signature	County of San Diego
<b>1.1.1 Biological Mitigation Ordinance</b>				
The Biological Mitigation Ordinance will be the primary implementation mechanism for the Metro-Lakeside-Jamul Segment of the County Subarea Plan and was included as one of the actions (projects) addressed in the MSCP Plan EIR/EIS.	IA 10.0, Subarea Plan	Board of Supervisors Resolution	Concurrent with or prior to execution of the IA	County of San Diego

Mitigation Measures

Source of Requirement	Method of Verification	Timing of Verification	Responsible Entity
<p><b>1.1.2 Modification of Clearing and Grading Ordinance</b></p> <p>The grading and clearing ordinance currently includes exemptions that might preclude achieving the conservation goals of the program. The grading and clearing ordinance will be modified as necessary to ensure that exemptions do not preclude achieving the conservation goals of the Subarea Plan and MSCP Plan.</p>	<p>Board of Supervisors Resolution</p>	<p>Prior to or within 90 days of execution of IA</p>	<p>County of San Diego</p>
<p><b>1.1.3 Development Guidelines</b></p> <p>The County's Subarea Plan includes development guidelines for each of the segments which will be implemented on a project-by-project basis.</p> <ul style="list-style-type: none"> <li>o Lake Hodges Segment</li> <li>o South County Segment</li> <li>o Metro-Lakeside-Jamul Segment</li> </ul>	<p>County approval of Subarea Plan</p> <p>County approval of MSCP and Subarea Plan</p> <p>County approval of MSCP and Subarea Plan</p> <p>County approval of MSCP and Subarea Plan</p>	<p>Concurrent with or prior to execution of the IA</p> <p>Concurrent with or prior to execution of the IA</p> <p>Concurrent with or prior to execution of the IA</p> <p>Concurrent with or prior to execution of the IA</p>	<p>County of San Diego</p> <p>County of San Diego</p> <p>County of San Diego</p> <p>County of San Diego</p>

Mitigation Measures	Source of Requirement	Method of Verification	Timing of Verification	Responsible Entity
<p><b>1.1.4 Species Coverage Conditions</b></p> <p>The County will ensure that the covered species within the MHPA, as shown on the MSCP quad maps (1"=2000'), are avoided, protected and managed in accordance with conditions specified by the take authorizations. (See also Sections 2.2.6 and 7.5 below.)</p>	MSCP Plan Table 3-5, 6.3.1; EIR/EIS; IA 10.0	County approval of MSCP Plan and Subarea Plan, individual project CEQA document, area-specific management directives, biological monitoring report, annual report and preserve manager's report	Concurrent with or prior to execution of the IA; at certification of individual project CEQA document, as parcels are dedicated to the preserve; annually, and every 3 years	County of San Diego
<p><b>1.1.5 Survey Protocols for Covered Species</b></p> <p>USFWS and CDFG will develop survey protocols for covered species.</p> <p>The County will ensure that USFWS/CDFG protocols for surveying for covered species will be utilized for CEQA analyses.</p>	MSCP Plan Table 3-5, USFWS and CDFG commitment MSCP Plan Table 3-5, Biological Mitigation Ordinance (BM0)	Survey protocols Individual project CEQA document	Within 12 months of issuance of take authorizations At certification of individual project CEQA document	USFWS and CDFG County of San Diego
<p><b>2.0 PROJECT LEVEL REVIEW</b></p> <p><b>2.1 CEQA</b></p> <p>The existing CEQA review process and associated requirements will continue to apply to projects within the MSCP study area, both inside and outside the MHPA.</p>	MSCP Plan 3.5, 3.6, 5.4.1; IA 10.0	Individual project CEQA review process, annual report and implementation meeting	At certification of individual project CEQA document (including project-specific mitigation monitoring plan); and annual	County of San Diego

Mitigation Measures	Source of Requirement	Method of Verification	Timing of Verification	Responsible Entity
2.2 Subarea Plan Segments and Implementing Ordinances				
2.2.1 Subarea Plan Goals	Subarea Plan 1.2, IA 10.0	Individual project CEQA review process; annual report and implementation meeting	At certification of individual project CEQA document (including project-specific mitigation monitoring plan); and annual	County of San Diego
o Lake Hodges Segment	Subarea Plan 2.0, IA 10.0	Individual project CEQA review process; annual report and implementation meeting	At certification of individual project CEQA document (including project-specific mitigation monitoring plan); and annual	County of San Diego
o South County Segment	Subarea Plan 3.2, IA 10.0	Individual project CEQA review process; annual report and implementation meeting	At certification of individual project CEQA document (including project-specific mitigation monitoring plan); and annual	County of San Diego
o Metro-Lakeside-Jamul Segment	Subarea Plan 4.0, IA 10.0	Individual project CEQA review process; annual report and implementation meeting	At certification of individual project CEQA document (including project-specific mitigation monitoring plan); and annual	County of San Diego

Goals include species protection goals, vegetation, community conservation goals, and preserve design criteria

Mitigation Measures	Source of Requirement	Method of Verification	Timing of Verification	Responsible Entity
<p>2.2.2 Project Evaluation Guidelines</p> <p>For the Metro-Lakeside-Jamul Segment, projects will be evaluated for compliance with the Subarea Plan (e.g., impacts will be avoided, minimized, etc.) based on the criteria in Subarea Plan Section 4.2.4 and MSCP Plan.</p>	MSCP Plan Table 3-5; Subarea Plan Section 4.2.4; IA 9.0, 10.0	Individual project CEQA review process; <del>annual report</del> and implementation meeting	At certification of individual project CEQA document (including project-specific mitigation monitoring plan); and annual	County of San Diego
<p>2.2.3 Mitigation Requirements</p> <p>Mitigation requirements are based on a project's impacts to biological resources. Mitigation requirements for most projects in the Lake Hodges and South County Segments are identified in the Subarea Plan and project-specific CEQA documents for the project. To provide a basis for determining mitigation for projects, impact avoidance, minimization, and mitigation measures for projects in the Metro-Lakeside-Jamul Segment and major and minor amendment areas, species surveys will be conducted using CDFG and USFWS approved survey protocols.</p>	MSCP Plan Table 3-5; BMO; IA 10.0	Individual project CEQA review process; <del>annual report</del> and implementation meeting	At certification of individual project CEQA document (including project-specific mitigation monitoring plan); and annual	County of San Diego
<p>2.2.3.1 Lake Hodges Segment</p> <p>Except for major amendment areas, projects in the Lake Hodges Segment have negotiated preserve boundaries. The mitigation requirements are included in the Subarea Plan and project-specific CEQA document.</p>	Subarea Plan 2.; IA 10.0	Individual project CEQA review process; <del>annual report</del> and implementation meeting	At certification of individual project CEQA document (including project-specific mitigation monitoring plan); annual	County of San Diego

Mitigation Measures	Source of Requirement	Method of Verification	Timing of Verification	Responsible Entity
<ul style="list-style-type: none"> <li>o Rancho Cielo, Madura, and 4S Ranch</li> </ul>	Subarea Plan 2.0; IA 10.0; Rancho Cielo 4d permit	Individual project CEQA review process; annual report and implementation meeting	At certification of individual project CEQA document (including project specific mitigation monitoring plan); annual	County of San Diego
<ul style="list-style-type: none"> <li>o Major Amendment Area</li> </ul> <p>Mitigation for projects within the major amendment area will be determined during the amendment process which will include CEQA and NEPA review processes.</p>	Subarea Plan 1.2, 1.10.2.; IA 10.0,	Subarea Plan Amendment, individual project CEQA and NEPA review process; annual report and implementation meeting	As specified in Subarea Plan Amendment; at certification of individual project CEQA document (including project-specific mitigation monitoring plan); annual	County of San Diego, CDFG and USFWS
<p>2.2.3.2 <u>South County Segment</u></p> <p>Except for major and minor amendment areas, projects in the South County Segment have negotiated preserve boundaries. The mitigation requirements are included in the Subarea Plan and project-specific CEQA document.</p> <ul style="list-style-type: none"> <li>o Hidden Valley Estates, Los Montañas, Loma Del Sol, The Pointe, East Mesa Detention Center, Otay Ranch</li> </ul>	Subarea Plan 2.; IA 10.0	Individual project CEQA review process; annual report and implementation meeting	At certification of individual project CEQA document (including project-specific mitigation monitoring plan); annual	County of San Diego
<ul style="list-style-type: none"> <li>o Minor Amendment Areas</li> </ul> <p>Mitigation for projects within the minor amendment areas will be determined during the</p>	Subarea Plan 3.0; IA 10.0; Pointe 4d permit; Otay Ranch GDP and RMP	Individual project CEQA review process; annual report and implementation meeting	At certification of individual project CEQA document (including project-specific mitigation monitoring plan); SPA CEQA review (including project-specific mitigation monitoring plan); annual	County of San Diego
<ul style="list-style-type: none"> <li>o Minor Amendment Areas</li> </ul> <p>Mitigation for projects within the minor amendment areas will be determined during the</p>	Subarea Plan 1.2, 1.10.1.; IA 10.0,	Individual project CEQA document and minor amendment; annual report and implementation	At certification of individual project CEQA document (including project-specific mitigation	County of San Diego, CDFG and USFWS

**Mitigation Measures**

**Source of Requirement**

**Method of Verification**

**Timing of Verification**

**Responsible Entity**

amendment process which will include project CEQA review. Mitigation and project design must be consistent with the Subarea Plan including goals and criteria.

meeting  
monitoring plan) and minor amendment; annual

o Major Amendment Areas  
Mitigation for projects within the major amendment areas will be determined during the amendment process which will include CEQA and NEPA review processes.

Subarea Plan 1.10.2.; IA 10.0,  
Subarea Plan Amendment; individual project CEQA and NEPA review process; annual reports and implementation meeting  
As specified in Subarea Plan Amendment; at certification of individual project CEQA document (including project-specific mitigation monitoring plan)  
County of San Diego, CDFG and USFWS

**2.2.3.3 Essential Public Facilities**

The BMO provides for essential public facilities to be exempt from the BMO based on the following: (a) consistency with subregional plan; (b) all possible mitigation measures are incorporated and there are no feasible less environmentally damaging mitigation measures or alternatives; (c) if wetlands or floodplains are impacted the project will result in a net gain of wetland and/or riparian habitat; (d) native vegetation use for revegetation stabilization; (e) no mature riparian woodland is destroyed or reduced in size.

Individual project CEQA review process; annual report and implementation meeting  
County of San Diego

**2.2.4 Specific Provisions**

**2.2.4.1 Planned Infrastructure**

Existing and planned regional public facilities identified in existing general plans, such as

Individual project CEQA review process; annual  
At certification of individual project CEQA  
County of San Diego

Mitigation Measures

roads, landfills, and other infrastructure, are expected to be incorporated into subarea plans in a manner that will allow planned preserve areas to function. Future and currently unplanned regional facilities will avoid preserve areas, except as needed for public health and safety. Any projects thus constructed cannot compromise overall levels of conservation in the MHPA or adversely affect preserve and species goals and must mitigate in accordance with the applicable subarea plan. Mitigation must be directed into the MHPA.

2.2.4.2 Mining

Existing mining operations are not covered by the take authorizations unless the CUP is amended to include mitigation.

New or expanded mining operations are exempt from BMO requirements for sand, gravel, and mineral extraction if the following are conditions of the project's major use permit: (a) all appropriate mitigation is incorporated as part of the CEQA process and SMARA plan; (b) wetland buffers are restored to protect environmental values of adjacent wetlands; (c) if in a floodplain, there is a net gain in functional wetlands and riparian habitat on or adjacent to the extraction area; (d) native plants

Source of Requirement

IA 9.0

MSCP 6.2.4; BMO; IA 9.0

Method of Verification

Report and implementation meeting

CUP amendment; annual report

Major Use Permit and/or amendment; annual report

Timing of Verification

document (including project-specific mitigation monitoring plan); annual

Approval of CUP amendment; at certification of individual project CEQA document (including project-specific mitigation monitoring plan); annual

At certification of individual project CEQA document (including project-specific mitigation monitoring plan); major use permit approval; annual

Responsible Entity

County of San Diego, USFWS and CDFG

County of San Diego, USFWS and CDFG

Mitigation Measures

Source of Requirement

Method of Verification

Timing of Verification

Responsible Entity

are required for revegetation areas and fill slopes, and it substantially restores the original habitat values and a natural land form is restored; and (e) mature riparian woodland is not destroyed or reduced in size. Use of the extraction area after reclamation is subject to the BMO.

2.2.5 Adjacent Land Use Guidelines and Site Design Objectives

The MSCP includes specific measures to avoid, reduce, and mitigate impacts to covered species and the preserve from future development adjacent to the preserve which must be incorporated into projects authorized pursuant to the MSCP Plan and Subarea Plan.

2.2.6 Species Coverage Conditions

Specific mitigation measures for covered species must be incorporated into projects.

Individual project CEQA review process; annual report and implementation meeting; biological monitoring	Individual project CEQA review process; annual report and implementation meeting; biological monitoring	At certification of individual project CEQA document (including project-specific mitigation monitoring plan); annual	County of San Diego
Individual project CEQA review process; annual report and implementation meeting	Individual project CEQA review process; annual report and implementation meeting	At certification of individual project CEQA document (including project-specific mitigation monitoring plan); annual	County of San Diego

Mitigation Measures

Source of Requirement

Method of Verification

Timing of Verification

Responsible Entity

2.3 Interim Protection

The BMO and grading and clearing ordinance are the tools the County will use to preclude impacts to species and their habitats prior to a project grading or clearing being authorized.

BMO; Grading and Clearing Ordinance

Individual project CEQA review process; annual report and implementation meeting; biological monitoring

At certification of individual project CEQA document (including project-specific mitigation monitoring plan); annual

County of San Diego

2.4 Narrow Endemics

The County, through the BMO and CEQA process, will require that impacts to narrow endemic species including vernal pools be minimized to the maximum extent possible.

Subarea Plan 4.2.4; IA 9.0; BMO

Individual project CEQA review; annual report and implementation meeting; biological monitoring

At certification of individual project CEQA document (including project-specific mitigation monitoring plan); annual

County of San Diego

2.5 Critical Populations

The Take Authorizations require that impacts to identified critical plant populations be avoided (i.e., no loss of long-term viability).

Subarea Plan 4.2.4; BMO; IA 9.0

Individual project CEQA review process; annual report and implementation meeting; biological monitoring

At certification of individual project CEQA document (including project-specific mitigation monitoring plan); annual

County of San Diego

Mitigation Measures

**3.0 INCIDENTAL TAKE FOR AGRICULTURE**

Take authorizations may apply to agricultural activities on lands specifically identified in the MSCP database and as shown on MSCP Plan Figure 2-1 as being actively used for agricultural purposes (agricultural activities include crop, animal, and forage production and grazing).

MSCP Plan 6.2.2, IA 9.21

Certificate of inclusion identifying the parcel number, acreage affected, and current landowner and including a map of the parcel location; annual report and implementation meeting

County of San Diego

Annual

Timing of Verification

Method of Verification

Responsible Entity

**4.0 PRESERVE ASSEMBLY**

**4.1 Preserve Guidelines**

The County will follow preserve guidelines outlined in its Subarea Plan and referenced documents.

Subarea Plan 2.10, 3.10, and 4.5, Otay Ranch RMP; IA 10.0

Framework Management Plan; Individual project CEQA review process; annual report and implementation meeting; biological monitoring

Annual

County of San Diego

**4.2 County Contributions to the Preserve**

**4.2.1 Conserved Habitat Acreage Targets**

Lands within CDFG and USFWS pre-approved mitigation areas will be used to meet conservation goals.

Subarea Plan 4.2, 4.3, 4.4, Tables 1-2, 1-3; IA 10.0

Annual report, annual meeting, 3-year status reports and Habitat Conservation Accounting Model

Annual and every three years

County of San Diego

Mitigation Measures	Source of Requirement	Method of Verification	Timing of Verification	Responsible Entity
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**4.2.2 Species Targets**

The County will ensure that the covered species populations identified on the MSCP vegetation quad maps (1"=2000') within the MHPA will be protected, managed, and monitored consistent with the MSCP and Subarea Plans.

MSCP Plan Table 3-5, IA 14.0

Individual project CEQA document, biological monitoring, and preserve manager's report

At certification of individual project CEQA document; annual; and every 3 years

County of San Diego

**4.3 Dedication of Existing County Public Lands**

County lands specified in the Subarea Plan and the IA will be dedicated to the preserve and managed consistent with the preserve management goal for the MSCP.

Subarea Plan; IA 10.0

Framework Management Plan

Within 9 months of issuance of Take Authorizations

County of San Diego

**4.4 Mitigation**

The mitigation ratios in the Subarea Plan and BMO will be applied by the County for projects within the County's jurisdiction, except as specified in the IA (e.g., hard-line projects within the Lake Hodges and South County Segments).

Subarea Plan, 4.3; BMO, IA 10.0

Individual project CEQA review; development agreement, issuance of irrevocable offer of dedication, mitigation land transfer, etc.; annual report and implementation meeting

At certification of individual project CEQA document (including project-specific mitigation monitoring plan); annual

County of San Diego

Mitigation Measures	Source of Requirement	Method of Verification	Timing of Verification	Responsible Entity
<p>4.5 Local Acquisition</p> <p>The County of San Diego along with the other local jurisdictions will be collectively responsible for acquiring one-half of the lands to be acquired by public means (13,500 acres ± 10%).</p>	MSCP Plan 4.3.2; IA 10.0	Habitat Conservation Accounting Model, annual report and implementation meeting, public hearing	Annual and every 3 years	County of San Diego and take authorization holders
<b>SO ACCOUNTING AND REPORTING</b>				
<p>5.1 Continual Habitat Acreage Accounting</p> <p>5.1.1 Habitat Conservation Accounting Model</p> <p>The County will continually account by project and cumulatively for the amount and location of habitat acreage (by habitat type) lost and preserved within the subarea, including acres conserved within the MHPA and acres committed to land development both within and outside the MHPA. The results of such accounting will be applied to the Habitat Conservation Accounting Model to assure adequate progress toward implementation.</p>	MSCP Plan 5.9.1, IA 14.0	Annual reports and implementation meeting; project-level EIR mitigation monitoring program	Annual	County of San Diego and Implementation Coordinating Committee
<p>5.1.2 Map-measured Progress</p> <p>The County will account on a map(s) for habitat acres/locations preserved by</p> <ul style="list-style-type: none"> <li>o acres by core areas</li> <li>o acres by linkages</li> <li>o covered species populations</li> </ul>	MSCP Plan Tables 3-1, 3-2, 3-5; IA 14.0	Annual report and implementation meeting with USFWS and CDFG	Annual	County of San Diego and Implementation Coordinating Committee

Mitigation Measures

5.2 Annual Reporting

The County shall prepare and submit to the USFWS and CDFG a public report containing an annual accounting, by project and cumulatively, of habitat acreage lost and conserved within the subarea during the previous calendar year. This accounting shall specify acres conserved within the MHPA by habitat type and location as well as acres committed to land development both within and outside the MHPA, and compare these figures with results obtained utilizing the Habitat Conservation Accounting Model. The report will be used by the USFWS and CDFG to evaluate: (1) whether adequate progress toward implementation is being achieved, and (2) if the County is complying (including achieving conservation goals by vegetation community species, preserve design and configuration goals, avoidance of narrow endemics including vernal pools and critical populations, etc.) with the MSCP Plan, Subarea Plan and IA.

Source of Requirement

MSCP Plan 5.9.1, 5.9.2, IA 14.0

Method of Verification

Annual report and implementation meeting with USFWS and CDFG

Timing of Verification

Annual - by February 15 of each year

Responsible Entity

County of San Diego and Implementing Coordinating Committee

Mitigation Measures	Source of Requirement	Method of Verification	Timing of Verification	Responsible Entity
<p><b>5.3 Annual Implementation Meeting</b></p> <p>The County shall meet with the USFWS and CDFG to review and coordinate implementation of the subarea plan. The parties will review the annual report to evaluate implementation of the MSCP during the preceding year and the adequacy of the overall progress being made towards reaching the conservation goals of the MSCP and subarea plan, utilizing the Habitat Conservation Accounting Model as one tool to measure compliance with the MSCP plan, Subarea Plan and IA. Items to be considered include, but are not limited to, all contributions towards preservation of habitat lands (and the location of such lands), such as public lands, private mitigation lands, land donations, land acquisitions, and management activities undertaken/proposed on habitat lands.</p>	<p>MSCP Plan 5.4.4, 5.9.1, IA 14.0</p>	<p>Implementation meeting</p>	<p>Annual</p>	<p>County of San Diego, USFWS, and CDFG</p>

Mitigation Measures

Source of Requirement

Method of Verification

Timing of Verification

Responsible Entity

**5.4 Public Report/Hearing and Agency Workshops**

**5.4.1 Public Report/Hearing**

The County and other take authorization holders shall prepare a public report and hold a public hearing in conjunction with issuance of the report. The report shall incorporate information on the amount of land preserved within the MHPA, the amount of land added to the MHPA or otherwise preserved within the previous 3 years, and the total expenditures made toward habitat acquisition to date and over the preceding 3 years. This report shall also include a subarea by subarea accounting of all funds received and expended during the previous calendar year to implement the MSCP, including the amounts received and expended on habitat acquisition, management, and monitoring.

MSCP Plan 5.9.2, IA 14.0

Public hearing and public report

Every 3 years

County of San Diego and take authorization holders

**5.4.2 Agency Workshops**

USFWS and CDFG will hold public workshops on MSCP implementation in conjunction with the distribution of annual reports.

USFWS and CDFG commitment

Public workshop

Years 1 and 2 of implementation

USFWS and CDFG

**5.5 Preserve Managers' Reports**

The managers of each preserve area will submit a report to the USFWS and CDFG every 3 years that summarizes management activities, describes management priorities for the next 3-

MSCP Plan 5.9.2; IA

Preserve managers' reports

Every 3 years

County of San Diego and preserve managers

Mitigation Measures	Source of Requirement	Method of Verification	Timing of Verification	Responsible Entity
<p>year period, reports on restoration activities, and evaluates funding and the ability to meet resource management goals.</p>				
<p><b>5.6 Biological Monitoring Reports</b></p>	<p>MSCP Plan 6.4.1, Biological Monitoring Plan</p>	<p>Biological monitoring report</p>	<p>Every 3 years</p>	<p>County of San Diego and USFWS and CDFG</p>
<p>A comprehensive monitoring report will be prepared every 3 years and will: summarize monitoring results, identify and prioritize management needs and provide specific management recommendations for the coming 3-year period, evaluate monitoring priorities for the coming 3-year period, and evaluate funding needs for the coming 3-year period.</p>				
<p><b>5.7 Plan Auditing</b></p>	<p>IA 14.6</p>	<p>Framework Management Plan, area-specific management directives, species-specific management directives</p>	<p>Every 3 or more years</p>	<p>USFWS and CDFG</p>
<p>The USFWS and CDFG will conduct an audit of: (1) all development approvals and mitigation imposed through land use regulations or otherwise with approved subareas, (2) all lands acquired by each local jurisdiction toward meeting its habitat acquisition obligation under the MSCP, and (3) all moneys received, invested, and expended on acquisition, management, and monitoring activities within approved subareas.</p>				

Mitigation Measures	Source of Requirement	Method of Verification	Timing of Verification	Responsible Entity
<p><b>6.0 THIRD-PARTY BENEFICIARY STATUS</b></p> <p>The creation of third-party beneficiary status shall occur during the local jurisdiction's permitting process when (1) review of the project's impact on biological resources and a determination of necessary mitigation has occurred in compliance with the implementing agreement, (2) the determined mitigation includes an immediately effective requirement to maintain the biological values of the land committed for mitigation, and (3) the mitigation has been imposed through a condition of development (such as a development agreement or a tentative map condition) that is recorded and runs with the land.</p>	IA 17.1A	Individual project CEQA document or other recorded documents specifying development agreement or tentative map and mitigation requirements (i.e., future commitments)	At certification of individual project CEQA document	County of San Diego
<p><b>7.0 PRESERVE MANAGEMENT</b></p> <p><b>7.1 Coordination</b></p> <p>The County and other take authorization holders will create the Regional Habitat Management Technical Committee, comprised of representatives of preserve management entities and take authorization holders, to coordinate preserve management on a subregional basis. The USFWS and CDFG will work with the committee to furnish information and advice on habitat management.</p>	MSCP Plan 5.8.3, IA, preserve management agreements	Participation on Regional Habitat Management Technical Committee	Within 120 days of issuance of Take Authorization	County of San Diego, preserve managers, and USFWS and CDFG

Mitigation Measures	Source of Requirement	Method of Verification	Timing of Verification	Responsible Entity
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Responsibilities of the Habitat Management Technical Committee are:

- o coordinate ongoing preserve management responsibilities and public access control
- o maintain a current library of management plans
- o provide information on new management techniques
- o coordinate computer databases for management issues
- o coordinate distribution of preserve management reports

**7.2 Framework Management Plan**

**7.2.1 Preparation**

The County will develop a framework management plan which will provide general direction for management actions applicable to the subarea. The framework management plan will also incorporate the species-specific management actions set forth in MSCP Plan Table 3-5 as appropriate, as well as preserve-wide management actions. The framework management plan will address the following management actions, as appropriate:

- Preserve-level Actions
- o fire management
  - o public access control
  - o fencing and gates

MSCP Plan 6.3.1; IA 10.0  
Public review of draft framework plans

Within 6 months of issuance of take authorizations; final plan approved by USFWS and CDFG within 9 months of take authorizations

County of San Diego with review and approval by USFWS and CDFG



Mitigation Measures

Mitigation Measures	Source of Requirement	Method of Verification	Timing of Verification	Responsible Entity
<p>7.2.2 Implementation</p> <p>The County must implement the framework management plan either directly or through agreement with a management entity. The County will coordinate with other subareas in implementing management plans to ensure that the overall needs of species and habitats are met on a regional basis. Preserve managers will review and update management plans as necessary, implement an adaptive management program based on preserve management, monitoring results, and research, and prepare a status report every 3 years.</p>	<p>MSCP Plan 6.3.1, Subarea Plan, IA 10.0</p>	<p>Preserve manager's report, biological monitoring</p>	<p>Every 3 years</p>	<p>County of San Diego and preserve managers</p>
<p>7.3 Area-Specific Management Directives</p> <p>7.3.1 Preparation</p> <p>Area-specific management directives will address the following management actions, as appropriate:</p> <ul style="list-style-type: none"> <li><u>Preserve-level Actions</u></li> <li>o fire management</li> <li>o public access control</li> <li>o fencing and gates</li> <li>o ranger patrol</li> <li>o trail maintenance</li> <li>o visitor/interpretive services</li> <li>o volunteer services</li> <li>o hydrological management</li> <li>o signage and lighting</li> <li>o trash and litter removal</li> </ul>	<p>MSCP Plan 6.3.1, Table 3-5; IA 10.0</p>	<p>Individual project CEQA document; submittal of area-specific management directives to CDFG and USFWS; annual implementation meeting</p>	<p>Once parcels are conserved as part of the preserve</p>	<p>County of San Diego</p>

Mitigation Measures

Source of Requirement

Method of Verification

Timing of Verification

Responsible Entity

- o access road maintenance
- o enforcement of property and/or homeowner requirements

In addition, area-specific management directives will address the following species-level actions:

Species-level Actions

- o species specific coverage conditions
- o removal of invasive species
- o nonnative predator control
- o species monitoring (to provide data needed to manage species and their habitat on the area subject to the area-specific management directive, etc.)
- o habitat restoration
- o management for diverse age classes
- o use of herbicides and rodenticides
- o biological surveys
- o species management conditions (see MSCP Plan Table 3-5)

Area-specific management directives will be prepared (within 6 months) for current public lands dedicated to the preserve and as specified in the framework management plan for lands added to the preserve in the future.

7.3.2 Implementation

The County must implement the area-specific management objectives either directly or through agreement with a management entity.

MSCP Plan 6.3.1, Subarea Plan, IA 10.0

Preserve manager's report, biological monitoring

Every 3 years

County of San Diego and preserve managers

4/2/97

COUNTY OF SAN DIEGO



Mitigation Measures	Source of Requirement	Method of Verification	Timing of Verification	Responsible Entity
<p><b>7.5 Third-party Beneficiaries who have not dedicated land</b></p> <p>Private landowners who are third-party beneficiaries will be responsible for habitat management of preserve lands they choose to retain in private ownership to the extent required by the County's Subarea Plan and implementing regulations and as specified as conditions of development permits.</p>	<p>MSCP Plan 6.3.3, IA 17.1B</p>	<p>Individual project CEQA document management requirements</p>	<p>At certification of individual project CEQA document</p>	<p>County of San Diego and property owner</p>
<p><b>7.6 Adaptive Management Practices</b></p> <p>The Framework Management Plan and area-specific management directives will include adaptive management strategies. Preserve managers will implement specific management practices to reverse declining trends in habitat or species' populations, identified through the preserve management, research, and biological monitoring programs. These adaptive management strategies will be implemented through revision of area-specific management directives as prescribed in management priorities in the preserve manager's report prepared every 3 years.</p>	<p>MSCP Plan Table 3-5, Framework Management Plan, area-specific management directives, Biological Monitoring Plan</p>	<p>Preserve manager's report</p>	<p>As necessary</p>	<p>County of San Diego and preserve managers</p>

Mitigation Measures	Source of Requirement	Method of Verification	Timing of Verification	Responsible Entity
<p><b>8.0 BIOLOGICAL MONITORING</b></p> <p>The biological monitoring will be coordinated by the USFWS and CDFG and funded by the USFWS/CDFG and the participating jurisdictions through the local funding source. The biological monitoring program is designed to evaluate if MSCP's biological goal is being achieved and provide data for triggering adaptive management strategies. See the Subregional Mitigation Monitoring Program for specific requirements.</p>	<p>MSCP Plan 6.4.1, IA 14.5, Biological Monitoring Plan</p>	<ul style="list-style-type: none"> <li>o Comprehensive monitoring report and preserve manager's report</li> <li>o Resource-specific status reports</li> </ul>	<ul style="list-style-type: none"> <li>o Every 3 years</li> <li>o Annual or as necessary</li> </ul>	<ul style="list-style-type: none"> <li>o USFWS and CDFG, take authorization holders, and preserve managers</li> <li>o USFWS and CDFG, take authorization holders, and preserve managers</li> </ul>
<p><b>9.0 FUNDING RESPONSIBILITIES OF LOCAL JURISDICTIONS</b></p> <p>The County will participate in a regional funding program. See Subregional Mitigation Monitoring Program for requirements.</p>	<p>MSCP Plan 5.8.1, 5.8.2, Table 7-7; IA 11.0</p>	<p>Establishment of policy body, structure to allocate funds, and ballot measure report</p>	<p>Within 3 years of signing initial implementing agreement</p>	<p>County of San Diego and other take authorization holders</p>
<p><b>10.0 CONVERTING COVERED SPECIES TO COVERED SPECIES SUBJECT TO INCIDENTAL TAKE</b></p> <p>The list of Covered Species Subject to Incidental Take will be augmented to include additional covered species as additional participating local jurisdictions and participating special entities enter into separate but coordinated agreements and/or if additional information becomes available concerning the population and distribution of such additional</p>	<p>MSCP Plan Table 3-4b; IA 4.0, 23.2</p>	<p>Written notification from USFWS and CDFG</p>	<p>Approval of additional subarea plans</p>	<p>USFWS and CDFG</p>

Mitigation Measures	Source of Requirement	Method of Verification	Timing of Verification	Responsible Entity
covered species and the protection afforded such species by the MSCP.				
<b>11.0 AMENDMENTS AND PRESERVE BOUNDARY ADJUSTMENTS</b>				
Amendments to the MSCP Plan and Subarea Plan require amendments to the take authorizations and are subject to NEPA and CEQA review.	MSCP Plan 5.4.2; IA 9.19, 23.1	CEQA and NEPA and amendment public notices	Approval of amendment, NOD, and ROD/FONSI	USFWS, CDFG, and County of San Diego
Adjustments to the MHPA and/or preserve boundaries can be made without the need to amend the MSCP Plan or subarea plan if the adjustment will result in the same or higher biological value of the preserve. Any modification should be reported to the entity responsible for the regional preserve system accounting and to adjacent jurisdictions. The take authorization holder is responsible for determining if any environmental documentation will be required as a result of the boundary adjustment.				
<b>12.0 ANNEXATIONS</b>				
The County shall enforce the terms of the take authorization, subarea plan, and implementing agreement as to all persons or entities subject to its jurisdiction in the event of the de-annexation of a parcel of land located within another jurisdiction. In all other cases, the take	MSCP Plan 5.4.3; IA	Amendment to Subarea Plan and/or CEQA/NEPA document	Upon annexation or de-annexation of lands	USFWS, CDFG, and County of San Diego

Mitigation Measures	Source of Requirement	Method of Verification	Timing of Verification	Responsible Entity
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authorization shall not apply to any de-annexed lands unless and until the take authorization, the subarea plan, and, if appropriate, the implementing agreement are amended to include the de-annexed lands. In the event land within the County's jurisdiction is annexed to another jurisdiction, an agreement shall be reached between the County, the annexing jurisdiction, USFWS, and CDFG regarding the responsibility for ongoing maintenance and enforcement of the MSCP as it relates to the annexed land.

**13.0 CONSERVATION BANKS**

Proposed conservation banks should follow the official policy established by the California Resources Agency and the California Environmental Protection Agency and the supplemental policy issued by the USFWS and CDFG for banks in the NCCP area.

MSCP Plan 4.5;  
IA 9.13, 9.14

Conservation bank agreement

Signing of conservation bank agreement

USFWS and CDFG

**14.0 OTHER PERMITTING PROCESSES**

**14.1 Section 7 Consultations**

Any biological measures included under the terms and conditions of the Section 7 biological opinion shall, to the maximum extent appropriate, be consistent with the mitigation required by the local jurisdiction for the particular project or activity under the MSCP

MSCP Plan 3.2.1; IA 9.8A,  
13.1

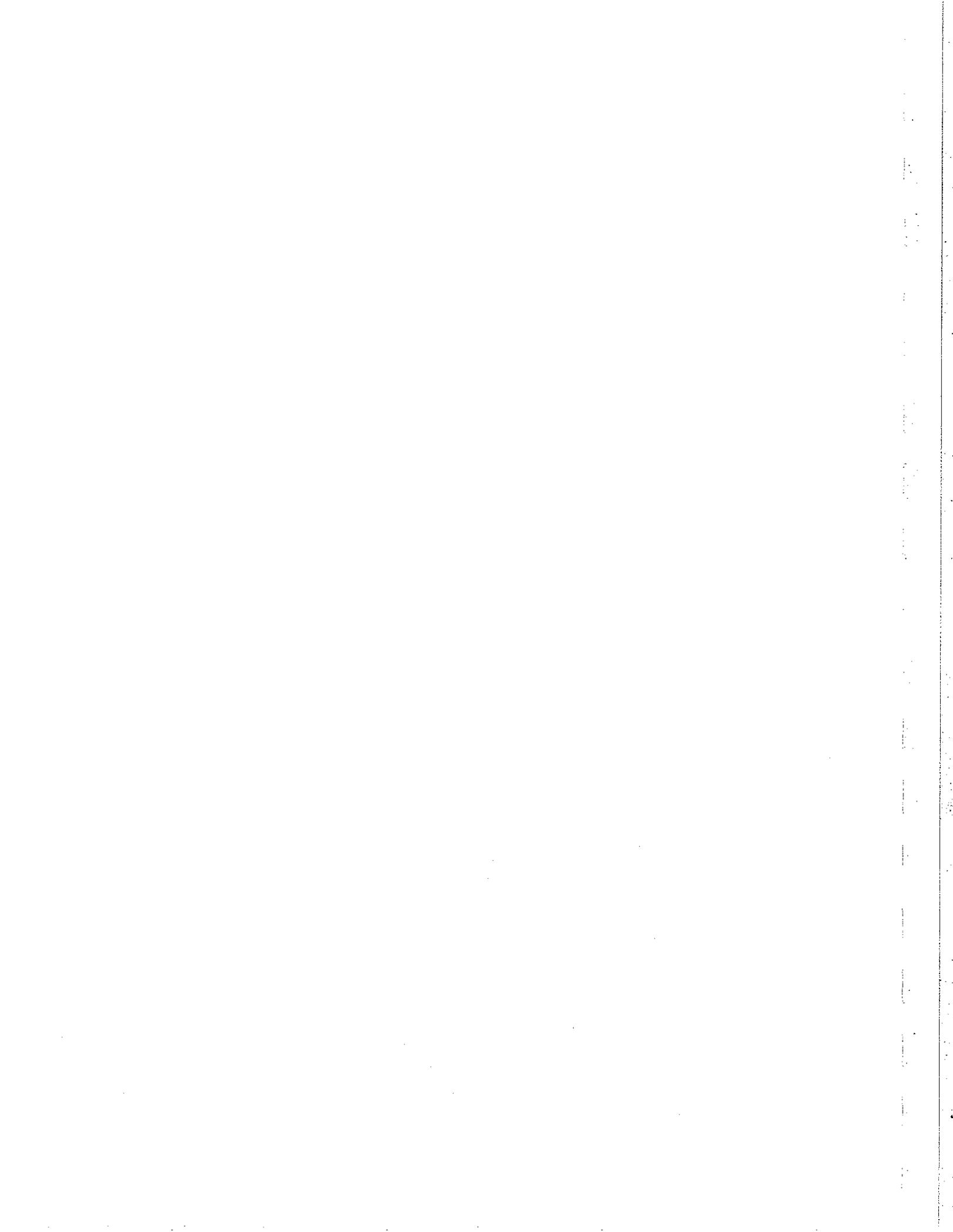
Biological Opinion (ESA Section 7)

Completion of consultation pursuant to ESA Section 7

Project applicant,  
USFWS, and CDFG

Mitigation Measures	Source of Requirement	Method of Verification	Timing of Verification	Responsible Entity
and subarea plan.				
<b>14.2 Wetlands Permits/SAMP Process</b>				
Compliance with the IA, MSCP Plan, Subarea Plan and the federal policy of "no net loss" of wetland functions and values and the EPA Section 404(b)(1) guidelines shall constitute the full extent of mitigation measures directed specifically at the Covered Species Subject to Incidental Take required or recommended by the wildlife agencies.	MSCP Plan 3.2.1; IA 9.0, 13.0	Permit application	Permit application	Project applicant, USFWS, and CDFG
<b>14.3 Projects Not Subject to MSCP</b>				
Regional public facility providers and local special districts may apply for take authorizations from the USFWS and CDFG separate and apart from the MSCP.	IA 9.0	Take Authorization application	Take Authorization application	Project applicant, USFWS, and CDFG

000102 OCT 22 1997



OCTOBER 9, 1997

**IMPLEMENTING AGREEMENT**

by and between

UNITED STATES FISH AND WILDLIFE SERVICE  
CALIFORNIA DEPARTMENT OF FISH AND GAME  
COUNTY OF SAN DIEGO

This Implementing Agreement ("Agreement") is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 1996 by and among the UNITED STATES FISH AND WILDLIFE SERVICE ("USFWS"), an Agency of the United States Department of the Interior, the CALIFORNIA DEPARTMENT OF FISH AND GAME ("CDFG"), a Subdivision of the California Resources Agency, and the COUNTY OF SAN DIEGO, a political subdivision of the State of California ("County"), hereinafter collectively called the "Parties."

**AGREEMENT**

Based upon the recitals, definitions, mutual covenants and obligations, the provisions set forth below, and other valuable consideration, the Parties agree as follows:

**1.0 RECITALS**

1.1 The San Diego-area Multiple Species Conservation Program ("MSCP") describes a cooperative federal, state and local program of conservation for a number of "Covered Species" of plants and animals. The MSCP is a product of lengthy study and negotiation by the Parties and other interested persons and entities, and represents coordination of private development and conservation interests with federal, state and local governments.

1.2 The MSCP Plan Area map is attached to this Agreement as Exhibit A. The MSCP Plan Area map includes the territory of twelve general purpose agencies of government, listed in Exhibit B. These agencies may elect to participate in the MSCP, and upon preparing a Subarea Plan and entering into an Implementing Agreement similar in form and content to this Agreement such agencies will become a "Participating Local Jurisdiction." Some regional public facility providers and special districts which operate within the MSCP Area may also elect to participate in the MSCP. Upon entering into an Implementing Agreement similar in form and content to this Agreement, such entities will become a "Participating Special Entity."

1.3 A goal of the MSCP is to conserve biodiversity in the MSCP Plan Area and to achieve certainty in the land

development process for both private sector and public sector land development projects.

1.4 Pursuant to the federal Endangered Species Act ("ESA") and the California Endangered Species Act ("CESA"), the United States and the State of California, respectively, have identified certain plant and animal species which are or may be found in the MSCP Plan Area and which, pursuant to the ESA or CESA or other laws or programs, have been listed as threatened or endangered, have been proposed for listing as threatened or endangered, are candidates for listing as threatened or endangered, or which are otherwise of concern. Of such species, those which will be adequately conserved by the MSCP when the MSCP is fully implemented through Subarea Plans are referred to in the MSCP and this Agreement as Covered Species. Those Covered Species which are adequately conserved by the Subarea Plan, and other Subarea Plans in effect within the MSCP Area, are subject to the Take Authorization being granted pursuant to this Agreement and are referred to as Covered Species Subject to Incidental Take.

1.5 Future growth and land development within the MSCP Plan Area, consisting of both public and private projects, may result in a reduction of Covered Species habitat and/or the taking of Covered Species incidental to the carrying out of otherwise lawful activities.

1.6 The County is participating in the development and implementation of the MSCP to meet the requirements of the ESA, the CESA, the Natural Communities Conservation Planning Act of 1991 ("NCCP Act"), the National Environmental Policy Act ("NEPA") and the California Environmental Quality Act ("CEQA") related to the potential obstacles to public and private development in the greater San Diego area posed by the current system of project-by-project review under the ESA and CESA. Consistent with the NCCP Act, the MSCP is a broad-based planning effort intended to provide for protection and conservation of the region's wildlife and plant heritage while continuing to allow effective enforcement of public health and safety programs and appropriate development and growth. Such planning is an effective tool in protecting the region's biodiversity while reducing conflicts between protection of wildlife and plants and the reasonable use of natural resources for economic development. The MSCP has been developed through a cooperative effort involving the USFWS, CDFG, local government agencies, property owners, development interests, environmental groups, and the public within the MSCP Area.

1.7 The MSCP is a comprehensive, long-term habitat conservation plan for the Covered Species which addresses the needs of multiple species and the preservation of natural vegetation communities. The MSCP addresses the potential impacts

of urban growth, natural habitat loss and species endangerment and creates a plan to mitigate for the potential loss of Covered Species and their habitat due to the direct and indirect impacts of future development of both private and public lands within the MSCP Area.

1.8 The MSCP, as implemented through the County's Subarea Plan and this Agreement, establishes the conditions under which the County, for the benefit of itself and of public and private landowners and other land development project proponents within its Subarea boundaries, will receive from the USFWS and the CDFG certain long-term Take Authorizations (and an acknowledgment that the MSCP satisfies the conditions established in the Section 4(d) Special Rule for the coastal California gnatcatcher) which will allow the taking of certain Covered Species incidental to land development and other lawful land uses which are authorized by the County.

1.9 The Take Authorizations will authorize the Incidental Take of all Covered Species Subject to Incidental Take, including those Covered Species Subject to Incidental Take which are not presently listed as threatened, endangered or candidate species under the ESA or CESA. Conserving the unlisted Covered Species (the "taking" of which is not unlawful under the ESA or CESA) the same as listed Covered Species (the taking of which is unlawful in the absence of a Take Authorization) equally in the MSCP, the Subarea Plan and this Agreement may prevent such species from ever being in danger of becoming extinct and will provide certainty regarding how the subsequent listing of such species under the ESA and CESA will affect permitting and mitigation requirements for future land development within the MSCP Plan Area.

1.10 Implementation of the MSCP will allow the Participating Local Jurisdictions and Participating Special Entities to maintain development flexibility by proactively planning a regional preserve system which can meet future development project mitigation needs, while recognizing the independent land use planning and permitting authority of those entities.

1.11 Preservation of natural vegetation communities and wildlife will significantly enhance the quality of life in the San Diego region and will enable land to be set aside for the future use and enjoyment of the citizens within the MSCP Plan Area, the state and the nation.

1.12 The MSCP has been submitted by the County to the USFWS and CDFG in support of, respectively, an application for a Section 10(a) Permit and a CESA/NCCP Authorization. The CDFG has approved the MSCP as an NCCP Plan, and the USFWS has issued written concurrence that the MSCP meets the statutory criteria

for issuance of a Section 10(a) Permit. The MSCP will be implemented through individual Subarea Plans by having Participating Local Jurisdictions execute separate but coordinated agreements in a form substantially similar to this Agreement. Such agreements need not be executed at the same time. Instead, the USFWS and CDFG anticipate that implementation of the MSCP will be phased in over time, through both the periodic addition of Participating Local Jurisdictions and Participating Special Entities, and the phased implementation of their respective MSCP-related obligations.

1.13 The purpose of this Agreement is to ensure the implementation of the MSCP and the Subarea Plan by contractually binding each of the Parties to fulfill and faithfully perform the obligations, responsibilities, and tasks assigned to it pursuant to the terms of the MSCP, the Subarea Plan and this Agreement. This Agreement also provides remedies and recourse should any of the Parties fail to perform its obligations, responsibilities, and tasks as set forth in the MSCP, the Subarea Plan and this Agreement.

## **2.0 DEFINITIONS**

The following terms used in this Agreement shall have the meanings set forth below:

2.1 "Additional Conservation Measures" means the conservation measures beyond those provided by the MSCP and the Subarea Plan which the USFWS and CDFG may seek from County under the circumstances described in Sections 9.6 and 9.7 of this Agreement.

2.2 "Agreement" means this document.

2.3 "Biological Mitigation Ordinance" means the Ordinance adopted by the County of San Diego which establishes mitigation standards for biological resources and implements, in part, the Subarea Plan.

2.4 "CDFG" means the California Department of Fish and Game, a subdivision of the California Resources Agency.

2.5 "CEQA" means the California Environmental Quality Act (Cal. Public Resources Code §§ 21000 et seq.), including all regulations promulgated pursuant to that Act.

2.6 "CESA" means the California Endangered Species Act (California Fish and Game Code §§ 2050 et seq.), including all regulations promulgated pursuant to that Act.

2.7 "CESA/NCCP Authorization" means any authorization issued in accordance with this agreement by CDFG under CESA

(including but not limited to, California Fish and Game code sections 2081), or the NCCP Act (including but not limited to California Fish and Game Code section 2825 (c) or 2835), or by the California Fish and Game Commission under the NCCP Act (including but not limited to California Fish and Game Code 2830) to permit the Take of a species listed under CESA as threatened or endangered, or of a species which is a candidate for such a listing, or of a species identified pursuant to section 2835. These legal authorities are wholly independent of each other.

2.8 "Covered Species" means those species within the MSCP Area which will be adequately conserved by the MSCP when the MSCP is implemented through the Subarea Plans or which will be adequately conserved through the permitting process pursuant to Section 404 of the Clean Water Act, 33 U.S.C. § 1344. These species are listed in Exhibit C.

2.9 "Covered Species Subject to Incidental Take" means those Covered Species which are adequately conserved by the Subarea Plan and other approved Subarea Plans as of the effective date, and which are therefore subject to Incidental Take under the Take Authorizations issued in conjunction with this Agreement. These species are listed in Exhibit D. As indicated in Section 23.2, additional covered species (from Exhibit C) may be added to the list of Covered Species Subject to Incidental Take (Exhibit D) after the Effective Date. Adequate conservation for certain Covered Species Subject to Incidental Take shall include the measures contained in the "findings" for those species in Table 3-5 of the MSCP Plan.

2.10 "Dependent upon" a particular vegetation community means that vegetation community provides the primary space for individuals of the species to feed, grow, reproduce, and/or undertake essential behavior patterns. A species is likely dependent upon a vegetation community if that vegetation community provides its primary source of food, nutrition, substrate, cover and/or shelter, including sites for breeding, reproduction, pollination, and rearing of offspring on a continual or seasonal basis. If a species is considered dependent upon a sufficiently or significantly conserved vegetation community, as defined herein, then that vegetation community would provide the primary biological physical elements essential for the conservation of the species.

2.11 "Effective Date" means the date when all of the parties to this Agreement have signed this Agreement.

2.12 "ESA" means the federal Endangered Species Act (16 U.S.C. §§ 1531 et seq.), including all regulations promulgated pursuant to that Act.

2.13 "Extraordinary Circumstances" is defined in Section 9.6 of this Agreement.

2.14 "Habitat Conservation Plan" and "HCP" means the conservation program ("MSCP") and each Subarea Plan prepared pursuant to Section 10 (a) (2) (A) of the ESA 1539 (a) (2) (A)). The County's Subarea Plan is dated \_\_\_\_\_, 1997.

2.15 "Incidental Take" means both the Take of a Covered Species incidental to and not the purpose of the carrying out of an otherwise lawful activity, as defined in the ESA, and its implementing regulations and the Take of a Covered Species pursuant to a CESA/NCCP Authorization.

2.16 "MBTA" means the federal Migratory Bird Treaty Act (16 U.S.C. §§ 701 et seq.), including all regulations promulgated pursuant to that Act.

2.17 "Multi-Habitat Planning Area" or "MHPA" means the area within the MSCP Plan Area within which preserve planning is focused and within which permanent conservation of habitat lands will be accomplished through implementation of the Subarea Plan.

2.18 "MSCP" means the Multiple Species Conservation Program Plan, a comprehensive habitat conservation planning program which addresses multiple species habitat needs and the preservation of native vegetation for an approximate 900-square mile area in southwestern San Diego County, California.

2.19 "MSCP Plan Area" consists of approximately 900 square miles in southwestern San Diego County, referred to in the MSCP as the "MSCP Study Area." The MSCP Plan Area is depicted on Exhibit A.

2.20 "NCCP Act" means the California Natural Communities Conservation Planning Act of 1991, enacted by Chapter 765 of the California statutes of 1991 (A.B. 2172) (codified in part at California Fish and Game Code §§ 2800, et seq.), including all regulations promulgated pursuant to that Act.

2.21 "NCCP Plan" means a plan developed in accordance with the NCCP Act which provides comprehensive management and conservation of multiple wildlife species as defined in California Fish & Game Code sec. 711 (2) (a), and which identifies and provides for the regional or area-wide protection and perpetuation of natural wildlife diversity while allowing compatible and appropriate development and growth.

2.22 "Participating Local Jurisdiction" means any of the local governments identified in Exhibit B which prepares and receives USFWS and CDFG approval of a Subarea Plan, and which

enters into an Implementing Agreement with the USFWS and CDFG. It is anticipated that such Implementing Agreement will be substantially similar in form to this Agreement.

2.23 "Participating Special Entity" means any regional public facility provider (such as a utility company) or special district which operates and/or owns land within the MSCP Plan Area and which enters into an Implementing Agreement with the USFWS and CDFG pursuant to and consistent with the MSCP which is substantially similar in form to this Agreement.

2.24 "Party" and "Parties" mean the signatories to this Agreement, namely the United States Fish and Wildlife Service, the California Department of Fish and Game, and the County.

2.25 "Section 4(d) Special Rule" means the regulation concerning the coastal California gnatcatcher, published by the USFWS on December 10, 1993 (58 Federal Register 65088) and codified at 50 C.F.R. § 17.41(b), which defines the conditions under which the Incidental Take of the coastal California gnatcatcher in the course of certain land use activities is lawful.

2.26 "Section 10(a) Permit" means the permit issued in accordance with this Agreement by the USFWS to County under section 10(a)(1)(B) of the ESA (16 U.S.C. § 1539(a)(1)(B)) to allow the Incidental Take of Covered Species Subject to Incidental Take.

2.27 "Significantly Conserved Vegetation Communities" means those vegetation communities listed in Exhibit E and referred to in Section 4.2.4 of the MSCP Plan. For purposes of the MSCP and this agreement, the term "significantly conserved" is not meant to indicate the quantity or biological quality of the vegetation community conserved but instead indicates that provision of additional measures needed to add a species to the list of Covered Species will be proportionately shared by the Parties as defined in the MSCP Plan Section 3.4.2 for those species dependent upon a vegetation community labeled "significantly conserved."

2.28 "Subarea" means the area encompassed by the Subarea Plan, as depicted in Exhibit F in which the Incidental Take of Covered Species Subject to Incidental Take is allowed by virtue of the Section 10 (a) Permit and/or CESA/NCCP Authorization issued in accordance with this Agreement.

2.29 "Subarea Plan" means the plan prepared by County and reviewed and approved by the USFWS and CDFG, to implement the MSCP within its jurisdictional boundaries, pursuant to this

Agreement. A date will be added reflecting the date on which the Board of Supervisors adopts the MSCP.

2.30 "Sufficiently Conserved Vegetation Communities" means those vegetation communities listed in Exhibit E and described in Section 4.2.4 of the MSCP Plan. For purposes of the MSCP and this agreement, the term "sufficiently conserved" is not meant to indicate the quantity or biological quality of the vegetation community conserved but instead indicates that USF&W and CDFG will use all of their legal authorities to provide for those species dependent upon vegetation communities labelled "sufficiently conserved" as set forth in section 9.7 (C).

2.31 "Take" and "Taking" shall have the meanings provided by the ESA, CESA and the NCCP Act.

2.32 "Take Authorization" means the Section 10(a) Permit and/or the CESA/NCCP Authorization.

2.33 "Third Party Beneficiary" means any landowner or other public or private entity that obtains and maintains Third Party Beneficiary status in compliance with Sections 10 and 17 of this Agreement.

2.34 "USFWS" means the United States Fish and Wildlife Service, an agency of the United States Department of the Interior.

### **3.0 HABITAT CONSERVATION PLAN/NCCP PLAN**

3.1 As required by Section 10 (a) (2) (A) of the ESA (1539 (a) (2) (A)), a Habitat Conservation Plan known as the "Multiple Species Conservation Program" or "MSCP" has been prepared. The MSCP in conjunction with the County's Subarea Plan also qualifies as an NCCP Plan under the NCCP Act. The MSCP proposes a program of conservation for the Covered Species and protection of their habitat in perpetuity through land use regulation, acquisition and management. The County has submitted the MSCP and the Subarea Plan to the USFWS and the CDFG and County has requested that the USFWS issue a Section 10(a) Permit and that the CDFG issue a CESA/NCCP Authorization, each of which actions will allow the Incidental Take within the Subarea of those Covered Species determined by USFWS and CDFG to be adequately conserved by the MSCP and the Subarea Plan in accordance with this Agreement (such species are designated as Covered Species Subject to Incidental Take, and are listed in Exhibit D). County has also requested that the USFWS acknowledge that the MSCP and the Subarea Plan satisfy the conditions under the Section 4(d) Special Rule to allow the Incidental Take of the coastal California gnatcatcher within the Subarea.

3.2 The MSCP and Subarea Plan and each of their provisions are intended to be, and by this reference are, incorporated herein. This Agreement is intended to specify the obligations of the Parties under the MSCP and Subarea Plan, recognizing that the MSCP and Subarea Plans set forth the components of a conservation plan and were not drafted as contract documents. In the event of any direct contradiction, conflict or inconsistency between the MSCP Plan and the Subarea Plan, the Subarea Plan shall control. In the event of any direct contradiction, conflict or inconsistency between the MSCP Plan or the Subarea Plan on the one hand, and this Agreement on the other, the terms of this Agreement shall control. In all other cases, the terms of this Agreement and the terms of the MSCP and Subarea Plan shall be interpreted to be consistent with and complimentary to each other. The three-volume MSCP Resource Document, and all MSCP-related drafts, position papers, working documents and other documents, are specifically not incorporated into this Agreement.

#### **4.0 PHASED IMPLEMENTATION**

The MSCP Plan Area includes land within the jurisdictional boundaries of twelve local jurisdictions listed in Exhibit B. The USFWS and CDFG recognize and agree that the entire MSCP will not be implemented simultaneously. Some local jurisdictions may be prepared to implement the MSCP before others. Implementation of the MSCP as a whole can and may be phased, with some local jurisdictions joining as Participating Local Jurisdictions (and some regional public facility providers and special districts joining as Participating Special Entities) earlier than others. Nevertheless, upon application and approval of their plans, those local jurisdictions which become Participating Local Jurisdictions will receive Take Authorizations, and will obtain the benefits of and incur the obligations imposed by the Implementing Agreement which they sign, irrespective of whether other local jurisdictions have also joined as and/or currently serve as a Participating Local Jurisdiction. The Take Authorization will cover only those Covered Species determined by USFWS and CDFG to be adequately covered by the Subarea Plan and other approved Subarea Plans, and such species will be referred to as Covered Species Subject to Incidental Take and will be specifically identified in each Implementing Agreement. In addition, the USFWS and CDFG recognize and agree that the implementation of each Participating Local Jurisdiction's Subarea Plan will also be phased in over time in accordance with the schedule provided in each Implementing Agreement.

#### **5.0 SEVERABILITY**

The USFWS and CDFG recognize and agree that the Take Authorization received by County pursuant to this Agreement is

independent and severable from the other Take Authorizations which have been or will be issued to other Participating Local Jurisdictions or Participating Special Entities. County's Take Authorizations will remain effective so long as County fulfills its obligations under this Agreement to implement the MSCP through the Subarea Plan, including its obligation under Section 9.18 to enforce the terms of this Agreement as to itself and to all Third Party Beneficiaries, who will receive Incidental Take Authorization through County's Take Authorizations. County's Take Authorizations may not be suspended, revoked or terminated against its will due solely to the actions or inactions of any other person or entity, including the other local jurisdictions identified in Exhibit B (whether or not they have become Participating Local Jurisdictions). However, if the inclusion of a species on the List of Covered Species Subject to Incidental Take either before or after the Effective Date (pursuant to Section 23.2 of this Agreement) is dependent, in whole or in part, upon the implementation of any other MSCP Subarea Plan(s), and the Participating Local Jurisdiction(s) associated with such Subarea Plan(s) terminates its participation in the MSCP or fails to implement its Subarea Plan, then the removal of such added species from the List of Covered Species Subject to Incidental Take may be required.

#### **6.0 LEGAL AUTHORITY OF THE USFWS**

The USFWS enters into this Agreement pursuant to the ESA, the Fish and Wildlife Coordination Act (16 U.S.C. §§ 661 - 666c), and the Fish and Wildlife Act of 1956 (16 U.S.C. §§ 742(f) et seq.). Section 10(a)(2)(B) of the ESA, 16 U.S.C. § 1539(a)(2)(B), expressly authorizes the USFWS to issue a Section 10(a) Permit to allow the Incidental Take of species listed as threatened or endangered under the ESA. The legislative history of Section 10(a)(1)(B) clearly indicates that Congress also contemplated that the USFWS would approve Habitat Conservation Plans that protect unlisted species as if they were listed under the ESA, and that in doing so the USFWS would provide assurances for such unlisted species. The relevant excerpt from such legislative history states as follows:

The Committee intends that the Secretary [of the Interior] may utilize this provision [on habitat conservation plans] to approve conservation plans which provide long-term commitments regarding the conservation of listed as well as unlisted species and long-term assurances to the proponent of the conservation plan that the terms of the plan will be adhered to and that further mitigation requirements will only be imposed in accordance with the terms of the plan. In the event that an unlisted species addressed

in an approved conservation plan is subsequently listed pursuant to the Act, no further mitigation requirements should be imposed if the conservation plan addressed the conservation of the species and its habitat as if the species were listed pursuant to the Act.

It is also recognized that circumstances and information may change over time and that the original plan might need to be revised. To address this situation the Committee expects that any plan approved for a long-term permit will contain a procedure by which the parties will deal with unforeseen circumstances.

H.R. Rep. No. 97-835, 97th Cong., 2d Sess. 30-31 (1982) (Conference Report on 1982 Amendments to the ESA). The USFWS routinely approves Habitat Conservation Plans that address both listed and unlisted species.

#### **7.0 LEGAL AUTHORITY OF THE CDFG**

The CDFG enters into this Agreement pursuant to its separate and independent authorities under both the CESA and NCCP Act. CDFG may authorize the Take of Covered Species pursuant to either Fish and Game Code or section 2835, and the California Fish and Game Commission may authorize the Take of Covered Species under Fish and Game Code sections 2084 and 2830.

#### **8.0 SATISFACTION OF LEGAL REQUIREMENTS**

In order to fulfill the legal requirements that will allow the USFWS to issue the Section 10(a) Permit, an HCP must provide measures that will ensure the following:

- A. Any Take occurring within the Subarea will be incidental;
- B. The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;
- C. That adequate funding for the conservation plan and procedures to deal with unforeseen circumstances will be provided; and
- D. That the Incidental Take will not appreciably reduce the likelihood of the survival and recovery of the Covered Species in the wild.

The USFWS has found that the MSCP and the Subarea Plan as implemented pursuant to this Agreement do provide such measures, and has issued such findings in support of the granting

of the Section 10(a) Permit authorizing the Incidental Take of Covered Species.

The CDFG has found that the Subarea Plan as implemented pursuant to this Agreement satisfies the legal requirements necessary for the CDFG to issue a CESA/NCCP Authorization authorizing the Incidental Take of Covered Species Subject to Incidental Take, and to provide certainty in the form of specific assurances contained in this Agreement.

#### **9.0 MUTUAL ASSURANCES**

9.1 Purpose. The primary purpose of this Agreement is to set forth the agreements and understandings of the Parties as to their respective obligations in carrying out the MSCP and Subarea Plan. Based on and in consideration of this Agreement, the MSCP, and the Subarea Plan, the USFWS and CDFG hereby provide assurances to County, and Third Party Beneficiaries with regard to the following provisions contained in this Section 9.0. In return, County hereby provides assurances to the USFWS and CDFG with regard to the following provisions contained in this Section 9.0.

9.2. Compliance with Applicable Laws. Compliance with the terms of this Agreement, the MSCP and the Subarea Plan, and compliance with the land use regulation, mitigation, compensation and habitat management obligations contained in this Agreement and/or imposed by County on proponents of land development projects within the Subarea in accordance with the MSCP, the Subarea Plan and this Agreement, constitute compliance with the Incidental Take and related provisions of the ESA, the CESA, the NCCP Act, and the California Native Plant Protection Act (California Fish and Game Code § 1900, et seq.).

9.3. Conservation of Covered Species. Implementation of the MSCP through the Subarea Plan in accordance with this Agreement will adequately provide for the conservation and protection of the Covered Species Subject to Incidental Take and their habitat in the Subarea in perpetuity. This conclusion is based on the biological analyses performed by the USFWS and the CDFG of the species evaluated by the MSCP Plan, and their resulting determination of which of those species are adequately protected so as to qualify as Covered Species and Covered Species Subject to Incidental Take.

9.4 Additional Land or Money Required. The USFWS and CDFG shall not require the County or Third Party Beneficiaries to commit additional land, additional restrictions, or additional financial compensation for the Covered Species Subject to Incidental Take beyond that provided pursuant to this Agreement, provided that the County is in compliance with its obligations under this Agreement. If the USFWS and/or the CDFG subsequently

determine that additional land, additional land restrictions, or additional financial compensation beyond that required pursuant to the MSCP and this Agreement are necessary to provide for the conservation of a Covered Species Subject to Incidental Take, the obligation for such additional measures shall not rest with the County or the Third Party Beneficiaries.

9.5. Additional Conservation Measures. The USFWS and the CDFG shall not seek "Additional Conservation Measures," from the County or the Third Party Beneficiaries for Covered Species Subject to Incidental Take except in the event of Extraordinary Circumstances as defined in Section 9.6 of this Agreement, and in compliance with the Extraordinary Circumstances procedures contained in Section 9.6.

9.6. Extraordinary Circumstances.

A. Definition. For the purposes of this Agreement, the term "Extraordinary Circumstances" shall mean either:

1. A significant, unanticipated adverse change in the population of any Covered Species or its habitat within the MSCP Plan Area; or
2. Any significant new or additional information relevant to the MSCP that was not anticipated by the Parties at the time the MSCP was approved and that would likely result in a significant adverse change in the population of any Covered Species or its habitat within the MSCP Plan Area.

The term "Extraordinary Circumstances" as used in this Agreement shall have the same meaning as "Unforeseen Circumstances" under 50 C.F.R. §§ 17.22 and 17.32. The occurrence of one or more of the events identified under Section 5 of this Agreement shall not be considered an Extraordinary Circumstance.

B. Relevant Factors. In deciding whether Extraordinary Circumstances exist which might warrant requiring Additional Conservation Measures, the USFWS and CDFG shall consider, but not be limited to, the following factors:

1. The size of the current range of the affected species;
2. The percentage of range adversely affected by the MSCP;
3. The percentage of range conserved by the MSCP;
4. The ecological significance of that portion of the range affected by the MSCP;

5. The level of knowledge about the affected species and the degree of specificity of the species' conservation program under the MSCP; and
6. Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

C. Burden and Documentation. The USFWS and CDFG shall have the burden of demonstrating that Extraordinary Circumstances exist, using the best scientific and commercial data available that is clear and convincing. Any findings of Extraordinary Circumstances must be clearly documented and based upon reliable technical information regarding the biological status and habitat requirements of the affected species. Any finding of Extraordinary Circumstances must be made by the Director or Regional Director of the USFWS, or the Director of the CDFG, after consideration of all information submitted by the County in accordance with paragraph D below.

D. Advance Notice. Except where there is a substantial threat of imminent, significant adverse impact to a Covered Species, the USFWS and CDFG shall provide the County at least sixty (60) days advance written notice of a proposed finding of Extraordinary Circumstances, the specific facts that may constitute Extraordinary Circumstances, and the evaluation of the factors described in Section 9.6.B of this Agreement, during which time the USFWS and CDFG shall meet with the County to discuss the proposed finding and to provide the County with an opportunity to submit information to rebut the proposed finding. Only where the USFWS or CDFG concludes, following consultation with the County, that existing measures available under the MSCP and Subarea Plan cannot adequately address the situation and that Additional Conservation Measures are necessary shall the USFWS or CDFG proceed to finalize a finding of Extraordinary Circumstances. Where advance notice need not be given in accordance with this paragraph, the USFWS or CDFG shall consider any additional information submitted by the County after a finding of Extraordinary Circumstances and shall be required to issue a written response to the information within 120 days of its receipt.

E. Limits on Additional Conservation Measures. If the USFWS or CDFG makes a finding of Extraordinary Circumstances in accordance with the procedures described above, and determines that Additional Conservation Measures are warranted, such Additional Conservation Measures shall conform to the maximum extent possible to the original terms of the MSCP and Subarea Plan. Additional Conservation Measures shall be limited to modifications of County's preserve management program or

habitat acquisition program as set forth in the Subarea Plan and this Agreement, and shall not involve the commitment of additional land or additional land restrictions or additional financial compensation on the part of the County or Third Party Beneficiaries without their consent.

F. Effects on Take Authorization. A finding of Extraordinary Circumstances shall not be grounds to terminate, suspend, or otherwise revoke the Take Authorizations issued pursuant to this Agreement provided that the County cooperates with the USFWS and CDFG in identifying and implementing fair, reasonable and necessary modifications to the preserve management and habitat acquisition program, as specified in subsection E, above. The USFWS retains the right, as authorized under Section 5 of the ESA, 16 U.S.C. § 1534, and the CDFG retains the right as authorized by the CESA and/or NCCP Act, to purchase habitat within the MSCP Area to conserve Covered Species or any other species of concern.

G. The USFWS and CDFG may take any of the actions described in this Section 9.6 either jointly, or separately and independently of each other.

#### 9.7 Future Listings.

A. Consideration of the MSCP and Similar Plans. To the extent required and permitted by the ESA, the CESA and the NCCP Act, the USFWS and CDFG shall take into account the species and habitat conservation provided under the MSCP, the Subarea Plan, this Agreement, and the species and habitat conservation provided through all other existing conservation efforts (including, but not limited to, other plans approved under the ESA, CESA, or NCCP Act, and any relevant Conservation Agreements), as well as all information and data developed in the course of these efforts which is made available to them, in any future determinations, and in any future recommendations from the CDFG to the California Fish and Game Commission, concerning the potential listing as threatened or endangered of any Covered Species or any other species which is not so listed as of the Effective Date.

B. Covered Species. If a Covered Species Subject to Incidental Take is not listed as threatened or endangered under the ESA as of the Effective Date, and becomes so listed during the term of this Agreement, then the Section 10(a) Permit shall become effective with respect to such species concurrent with its listing as threatened or endangered. If a Covered Species Subject to Incidental Take is not listed as threatened or endangered under the CESA as of the Effective Date, and becomes so listed during the term of this Agreement or becomes accepted by the California Fish and Game Commission as a candidate for such listing, then the NCCP Authorization shall

become effective with respect to such species concurrent with its listing as threatened or endangered or its acceptance by the California Fish and Game Commission as a candidate for such listing. CDFG shall take all necessary steps within its legal authority to make the CESA/NCCP Authorization effective promptly as to Covered Species Subject to Incidental Take accepted by the Commission as a Candidate for listing.

C. Non-Covered Species. If a species which is not a Covered Species is subsequently proposed for listing as threatened or endangered under the ESA or CESA or is accepted by the California Fish and Game Commission as a candidate for listing after the Effective Date, and it is determined by the USFWS or CDFG based on reliable scientific evidence that such species occupies the MSCP Plan Area, the USFWS and CDFG (1) will use their best efforts to identify the conservation measures within six months, if any, which are necessary to adequately protect the species, and (2) determine whether such conservation measures are beyond those prescribed by the MSCP. Although such conservation measures may be identified after such species is proposed for listing, the County may choose not to approve and implement such measures until the species is actually listed. Upon application by a Participating Local Jurisdiction which meets the requirements of the ESA, CESA, the NCCP Act, and following compliance with applicable procedures, Incidental Take of a non-covered, listed species shall be authorized.

1. Adequate Conservation Measures Already in MSCP. If the USFWS and CDFG determine that the conservation measures already contained in the MSCP, as implemented through this Subarea Plan and other approved Subarea Plans, are adequate to fulfill the conservation measures identified pursuant to subsection C above, then upon application by the County for Take Authorization for such species and following satisfaction of applicable review procedures as required by the ESA, CESA and the NCCP Act, the Parties will amend this Agreement to add such species to the list of Covered Species and the list of Covered Species Subject to Incidental Take, and the USFWS and CDFG shall issue Take Authorizations for such species, effective for the remaining term of this Agreement.

2. Inadequate Conservation Measures in the MSCP.

a. Additional Conservation Measures Priorities. If the USFWS and CDFG determine that the conservation measures already contained in the MSCP, as implemented through this Subarea Plan, and this Agreement, and other approved Subarea Plans do not adequately fulfill the conservation measures identified pursuant to subsection C above, then the USFWS and CDFG will work with County and other Participating Local Jurisdictions to identify and jointly

implement any Additional Conservation Measures identified as being necessary to add such species to the list of Covered Species and to the list of Covered Species Subject to Incidental Take. In developing a set of Additional Conservation Measures, the parties will look to the following, in order of preference:

(i) Habitat management practices and enhancement opportunities within the MHPA, using existing management resources, provided the redirection of such resources does not adversely affect any Covered Species.

(ii) Habitat acquisition through the reallocation of federal, state and/or regional funds identified for MSCP implementation, provided such reallocation does not adversely affect any Covered Species.

b. Developing Additional Conservation Measures. If the foregoing options are not adequate to fulfill the conservation measures identified pursuant to subsection C above, then the USFWS and CDFG will determine, consistent with the ESA, CESA and/or the NCCP Act, the Additional Conservation Measures necessary to add such species to the list of Covered Species and the list of Covered Species Subject to Incidental Take, including measures beyond those required by the MSCP. Preference will be given by the USFWS and CDFG to Additional Conservation Measures that do not require additional mitigation or dedications of land. Although the Additional Conservation Measures necessary to add such species to the list of Covered Species may be identified at or after the species is proposed for listing, County will not be required to approve or implement these Additional Conservation Measures until such time as the species is actually listed.

c. Significantly Conserved Vegetation Communities. If any species described in subsection C.2.a, above, is dependent upon a Significantly Conserved Vegetation Community, and if the subarea plans for the City of San Diego and the County of San Diego have been approved by USFWS & CDFG and are being implemented, then the USFWS and CDFG will, subject to the availability of appropriated funds, contribute in partnership to the same extent committed within the MSCP for Covered Species, with the County toward the land acquisition, management, and monitoring required to achieve the level of conservation necessary, within the Significantly Conserved Vegetation Communities, for such species to be added to the list of Covered Species and the list of Covered Species Subject to Incidental Take once such species becomes listed under the ESA and/or CESA. The commitment of the USFWS and CDFG to contribute their proportionate share(s) to the conservation of the species shall be contingent on the County's commitment of its proportionate share. In addition, if the USFWS or CDFG fail to provide their proportionate contributory share(s), neither the County nor Third Party Beneficiaries will be obligated to provide

the USFWS and/or CDFG share(s), in which case the species would not be added to the list of Covered Species or the list of Covered Species Subject to Incidental Take.

d. Sufficiently Conserved Vegetation Communities. If any species described in subsection C.2.a, above, is dependent upon Sufficiently Conserved Vegetation Community, and if subarea plans for the City of San Diego, City of Chula Vista, City of Poway and the County of San Diego have been approved by USFWS and CDFG and are being implemented, then the USFWS and CDFG will use all of their legal authorities to provide for the conservation and management, maintenance and monitoring of the habitat of such species, within the Sufficiently Conserved Vegetation Communities, sufficient to enable the addition of such species to the list of Covered Species and the list of Covered Species Subject to Incidental Take, and to enable the issuance of Take Authorizations for such species in the event they become listed under the ESA or CESA. For purposes of this paragraph, steps within the legal authority of USFWS include, but are not limited to, USFWS-funded habitat acquisition, USFWS-funded species relocation, and land exchanges to secure necessary habitat. For purposes of this paragraph, steps within the legal authority of CDFG include, but are not limited to, CDFG-funded acquisition, CDFG-funded species management and CDFG-funded species relocation. Consequently, the County shall not be required, without its consent, to provide any conservation or management, maintenance and monitoring for such species beyond that provided in the MSCP and the Subarea Plan.

e. Applicability of Significantly and Sufficiently Conserved Vegetation Communities Assurances. The assurances provided under subsections c and d, above are not applicable to the Pacific pocket mouse as a currently listed species, and shall not apply to evaluated species identified in Table 3-5 of the MSCP Plan which are not Covered Species and which are not dependent on Significantly or Sufficiently Conserved Vegetation Communities Those species are:

Dean's milk vetch	<u>Astragalus deanei</u>
Orcutt's spineflower	<u>Chorizanthe orcuttiana</u>
Mexican flannelbush	<u>Fremontodendron mexicanum</u>
Mission Canyon bluecup	<u>Githopsis diffusa ssp.</u>
<u>Filicaulis</u>	
Tecate tarplant	<u>Hemizonia floribunda</u>
Little mousetail	<u>Myosurus minimus ssp.</u>
<u>Apus</u>	
Quino checkerspot butterfly	<u>Euphydryas editha quino</u>
Hermes copper butterfly	<u>Lycaena thornei</u>
Grasshopper sparrow	<u>Ammondramus savannarum</u>

The following evaluated species identified in Table 3-5 of the MSCP Plan are covered by the assurances in subsection c, above (Significantly Conserved Vegetation Communities) and are not covered by the assurances in subsection d, above (Sufficiently Conserved Vegetation Communities):

<u>harbisoni</u>	Harbison's dun skipper	<u>Euphyes vestris</u>
	Townsend's western big-eared bat	<u>Plecotus townsendii</u>
<u>californicus</u>	California mastiff bat	<u>Eumops perotis</u>

3. Application for Take Authorization. The County makes no representation or commitment to pursue a Section 10(a) Permit from the USFWS or a CESA/NCCP Authorization from the CDFG for any non-covered species, and in the absence of any such Take Authorization, the Take of such species will be governed by applicable state and federal law. The USFWS and CDFG shall process any applications which may be submitted for Take Authorization for a species in accordance with the requirements of the ESA, CESA and/or NCCP Act.

#### 9.8 Other Regulatory Permitting.

A. Other Permits. The Parties acknowledge that proponents of land development projects in the Subarea may be subject to permit requirements of agencies not parties to this Agreement, and to separate permit requirements which may be imposed by the USFWS and CDFG, such as under Fish and Game Code sections 1601 and 1603. Except as provided in Section 9.6 ("Extraordinary Circumstances"), Section 15.3 ("Failure to Provide State or Federal Contribution"), and this paragraph, compliance with the terms of this Agreement, the MSCP and the Subarea Plan, the federal policy of "no net loss" of wetland functions and values, and the U.S. Environmental Protection Agency's Section 404 (b) (1) guidelines (40 C.F.R. Part 230) shall constitute the full extent of mitigation measures directed specifically at the Incidental Take of Covered Species Subject to Incidental Take required or recommended by the USFWS pursuant to the ESA and NEPA, and by the CDFG pursuant to CESA, the NCCP Act, and CEQA, in conjunction with other federal and state permits within the Subarea. Furthermore, the USFWS and CDFG will coordinate with the County, the U.S. Army Corps of Engineers, and the U.S. Environmental Protection Agency to further streamline the process for issuance of permits pursuant to Section 404 of the Clean Water Act (33 U.S.C. sec. 1344) for those projects that are in conformance with the MSCP, the Subarea Plan and this Agreement. The Parties intend to begin work on creating this streamlined process within six months of the Effective Date, with the goal of being able to implement this streamlined process

within two years of the Effective Date. The public and affected stakeholders will be invited to participate in this effort.

B. Migratory Bird Treaty Act. The Section 10(a) Permit issued pursuant to this Agreement also constitutes a Special Purpose Permit under 50 C.F.R. § 21.27 for the Take of those Covered Species Subject to Incidental Take which are listed as threatened or endangered under the ESA and which are also protected by the Migratory Bird Treaty Act, except for the Bald Eagle. The Take of such species in conjunction with any public or private land development project authorized and approved by County in accordance with this Agreement will not constitute a violation of the MBTA. Such Special Purpose Permit shall be valid for a period of three years from the Effective Date, provided the Section 10(a) Permit remains in effect for such period. Such Special Purpose Permit shall be renewed, provided that County continues to fulfill its obligations under this Agreement. Each such renewal shall be valid for the maximum period of time allowed by 50 C.F.R. § 21.27 or its successor at the time of renewal.

C. Future Environmental Documentation. In issuing any permits or other approvals pertaining to land development activities within the County for any Covered Species Subject to Incidental Take, and absent a finding of Extraordinary Circumstances under Section 9.6 of this Agreement, and subject to any requirements of NEPA, the USFWS shall rely on and shall utilize the EIR/EIS prepared in conjunction with the MSCP and Subarea Plan as the NEPA environmental document for such permits and approvals and for any other approval process subject to its jurisdiction or involvement with regard to potential impacts on Covered Species Subject to Incidental Take, CDFG shall rely on and shall utilize the EIR/EIS prepared in conjunction with the MSCP and Subarea Plan as appropriate CEQA documentation for any future approvals regarding potential impacts to Covered Species Subject to Incidental Take related to land development activities within the Subarea.

D. Use of EIR/EIS as "Program EIR/EIS." The Parties understand and intend that the EIR/EIS prepared in conjunction with the MSCP and Subarea Plan will operate as a "program" EIR and EIS pursuant to applicable provisions of the Council on Environmental Quality's NEPA regulations (40 C.F.R. sec. 1500, et. seq.) the CEQA Guidelines (14 C.C.R. sec. 15000 et seq.) and the NCCP Act. Accordingly, the County shall, consistent with the provisions of CEQA, rely on and utilize the EIR prepared in conjunction with the MSCP and Subarea Plan in evaluating future land use decisions, and in issuing any permits or other approvals within the Subarea. Subsequent activities will be examined in light of the program EIR/EIS to determine if additional environmental documentation is required.

9.9 Federal and State Contributions. The USFWS and CDFG shall apply their best efforts to contribute public lands and funds to the acquisition and management, maintenance and monitoring of habitat lands within the MHPA. Habitat land acquired within the MHPA through such means shall not be counted as mitigation for any public or private project but will be counted toward the conservation goals of the County's Subarea Plan. To the maximum extent appropriate after considering the location of the impacts, the USFWS and CDFG shall direct that the acquisition of land acquired for offsite mitigation of federal and state projects within the MSCP Plan Area, and lands banked for such projects, be located within the MHPA.

9.10 Public Facility Provider and Special Districts. The Parties shall cooperate to encourage regional public facility providers, and local special districts such as water districts and sewer districts, to become Participating Special Entities. However, the Parties acknowledge that regional public facility providers and special districts may apply for Take Authorizations from the USFWS and CDFG separate and apart from the MSCP.

9.11 Special Rules Under Section 4(d). In the event that the USFWS promulgates a new special rule for a Covered Species pursuant to Section 4(d) of the ESA (16 U.S.C. § 1533(d), as implemented by 50 C.F.R. § 17.31(c)), the USFWS shall consider the MSCP in developing the special rule, and shall ensure that the special rule will not affect the validity or alter the terms of any Take Authorization for Covered Species issued in accordance with an approved Subarea Plan.

9.12 Biological Mitigation Ordinance. County has adopted and will implement the Biological Mitigation Ordinance. This Biological Mitigation Ordinance groups vegetation communities into qualitative tiers based upon rarity of the vegetation community in the MSCP Area. Provided that the annual accounting and reporting requirements set forth in Section 14.0 demonstrate that conservation of a particular vegetation community is occurring in the anticipated proportion to the loss of those vegetation communities, the USFWS and CDFG agree that County may allow the loss within one tiered vegetation community to be compensated for with mitigation from a different tiered vegetation community in accordance with the Biological Mitigation Ordinance, the Subarea Plan and procedures set forth in Section 10 of this Agreement. Any changes in or amendments to the Biological Mitigation Ordinance shall be made only in a noticed public hearing.

9.13 Conservation Banks. Mitigation banks may be established and implemented within the County in accordance with Board Policy I-117, dated October 4, 1995, Mitigation Banking Policy, (Exhibit G). The Parties agree that existing Conservation Bank agreements approved by the USFWS and CDFG prior

designations, the proposed modifications must be accomplished through a public process in which the public, the USFWS and CDFG receive advance notice and the opportunity to comment, and must be consistent with the MSCP Plan and the Subarea Plan such that there is no net loss of habitat value or acreage of the Covered Species. The County must promptly notify USFWS and CDFG or their respective successor agencies of such proposed modifications in advance, and explain how they achieve such consistency.

9.19 Annexation of Lands. To the extent permitted by law, the County shall enforce the terms of the Take Authorization, Subarea Plan and this Agreement as to all persons or entities subject to its jurisdiction in the event of the de-annexation of a parcel of land located within another Jurisdiction. In all other cases, the Take Authorization shall not apply to any de-annexed lands unless and until the Take Authorization, the Subarea Plan and, if appropriate, this Agreement are amended to include the de-annexed lands. In the event land within the County's jurisdiction is annexed to another jurisdiction, an agreement shall be reached between the County, the annexing jurisdiction, USFWS, and CDFG, as part of the annexation process, to ensure that any development of the annexed lands proceeds in accordance with the conservation goals of the MSCP (and, if the annexing jurisdiction is a Participating Local Jurisdiction, the goals of the Jurisdiction's Subarea Plan) and sets forth the resulting responsibilities pursuant to the MSCP for ongoing maintenance and enforcement of the terms of this agreement and the MSCP as it relates to the annexed land. Amendment of the Annexing jurisdiction's Take Authorization may be required in certain instances.

9.20 Agricultural Uses. The Take Authorizations shall apply to those lands within the Subarea Plan actively being used for agricultural purposes. For purposes of this paragraph, the phrase "agricultural purposes" includes crop production, animal production, forage production and grazing, and the phrase "actively being used for" means those lands shown on the MSCP vegetation database depicted on Figure 2-1 of the MSCP Plan for so long as they are maintained in active agricultural use. The Take Authorization will become effective as to such lands upon an application by the owner of such lands to the County for a Certificate of Inclusion, and the issuance by the County of a Certificate of Inclusion to such owner. The Certificate shall depict on an attached map the lands (by parcel number, acreage and owner) to which the Take Authorizations apply and shall specify the parcel number(s) and the acreage that the Certificate of Inclusion covers. The County commits to enforce the applicable provisions of the MSCP, Subarea Plan, Take Authorizations, and this Agreement as to each recipient of a Certificate of Inclusion.

9.21 Existing Mining Operations. The MSCP and Subarea plans do not impose any new obligations on owners or operators of mining operations which are active as of the Effective Date nor does the County's Take Authorizations apply to existing mining operations. However, if the owner or operator of such an operation should desire to obtain the benefits of the Take Authorizations, that owner or operator may apply to the County for a certificate of participation pursuant to section 9.16 of this agreement. If the County's review, following coordination with the Wildlife Agencies determines the project is consistent with the BMO and MSCP and Subarea plans the County will issue a certificate of participation granting the project proponent benefits of the County's take authorizations. If the County's review determines that the project is not consistent with the BMO and MSCP and Subarea Plan, the project proponent will be informed of the inconsistencies and process of conforming with the standards. The process shall take into consideration the following:

1. To the extent the existing Major Use Permit incorporated mitigation consistent with the BMO, the MSCP, and Subarea plans, that mitigation shall be considered to contribute to the requirements needed to achieve consistency with the BMO and MSCP and Subarea Plans.
2. Any additional mitigation required would not apply to areas that have already been mined unless take of covered species in those areas is likely to occur.
3. Any mitigation for impacts to covered species required by the existing Major Use Permit may be used to offset on an acre-for-acre basis the new mitigation requirements provided that the restored habitat is of like kind; and it provides the same values and functions as the required mitigation lands; and the habitat is dedicated in perpetuity to the preserve through a conservation easement or fee title.

9.22 New or Expanded Mining Operations. New or expanded mining operations approved by the County after the Effective date must be consistent with the BMO and MSCP and the Subarea plans, and to receive the benefits of the County's Take Authorizations.

10.0 IMPLEMENTATION RESPONSIBILITIES OF THE COUNTY OF SAN DIEGO

10.1 Introduction. The MSCP establishes a plan to conserve the Covered Species by ultimately providing permanent protection for Covered Species habitat through implementation of individual subarea plans. The USFWS and CDFG agree to phased implementation of the MSCP based on the agreement of the County to take the following actions to implement the MSCP with respect to lands within its jurisdictional boundaries or which it otherwise controls within the Subarea.

10.2 Compliance and Implementation. In order to obtain and maintain its Take Authorizations, the County agrees to comply with and implement the MSCP Plan, Subarea Plan, and this Agreement. To carry out the MSCP Plan, and the County Subarea Plan, the County commits to preserve permanently, using the methods set forth in Section 10.5 of this Agreement, approximately 101,268 acres of lands in the Subarea a configuration which will meet the goals of the MSCP and the Subarea Plan.

10.3 Currently preserved lands. Of the total lands planned to be permanently preserved in the Subarea Plan, approximately 59,969 acres are currently preserved or planned for dedication as follows:

<u>Segment</u>	<u>State/Federal</u>	<u>County</u>	<u>Private</u>
Lake Hodges			4,880
Metro/Lakeside Jamul	1,535	5,115	4,918
South County	28,705	346	14,470

10.4 Preserve Completion. To complete the preserve, approximately 18,850 acres are expected to be acquired with federal, state, and local public funds. This total is comprised of approximately 9,425 acres to be acquired each by federal and state funds and 9,425 by local funds. In the event that federal and state funds are not available, the local funding source will be used to make up the difference to the level that it is available. In addition, application of the Biological Mitigation Ordinance and the criteria in the Subarea Plan are expected to result in 22,450 acres of preserved land. The numbers are approximate since the amount, timing and location of land conserved through regulations, mitigation and public acquisition are not exactly known. The County agrees to permanently preserve the total amount of land specified in the Subarea Plan, however the number of acres committed to the ultimate preserve through any one of the mechanisms identified in Sections 10.3 and 10.4 may vary from the above estimates.

10.5 Assembly and Protection of the MSCP Plan Open Space Preserve.

A. Resource Protection Regulations. The Biological Mitigation Ordinance was adopted on \_\_\_\_\_, 1997. The County will conserve its share of Covered Species and their habitats as identified in Section 10.4 through implementation of the Subarea Plan and application of the Biological Mitigation Ordinance, through application of mitigation requirements for areas depicted in the Lake Hodges and South County Subarea plans, and through land acquisition. The Biological Mitigation Ordinance is designed to achieve the level of conservation for Covered Species and their habitats identified by the MSCP Plan and the Subarea Plan for the County. As part of the Biological Mitigation Ordinance, within six months of adoption of the MSCP Plan and Subarea Plan, the County will adopt revised brushing and clearing requirements implementing the policies and goals of the MSCP. These brushing and clearing revisions shall be contained in the Biological Mitigation Ordinance. To the extent that the Article III, section 10 of the Biological Mitigation Ordinance contains exemptions for agriculturally related clearing, the County shall monitor annually and by individual exemption request the number of acres cleared. When the cumulative total of acres cleared within the subarea reaches 3,000 acres, the County shall amend the Biological Mitigation Ordinance to provide for no further exemptions from the ordinance for agriculturally related clearing.

The County will also utilize, in part, the California Environmental Quality Act (CEQA) in connection with the implementation of the Biological Mitigation Ordinance and the goals and criteria in the Subarea Plan for the County in order to achieve the conservation goals listed in table 1-2 of the Subarea Plan for the County.

1. Habitat Conservation and Mitigation Ratios. The Parties agree to the grouping of the vegetation communities by tier and the established mitigation ratio, as shown in the Biological Mitigation Ordinance and Table 4-7 of the Subarea Plan for the County. Modifications to these tier groups and mitigation ratios may be made upon approval by the San Diego County Board of Supervisors, and following all legally required public hearings and environmental review, without the need to amend this Agreement, provided that such modifications are otherwise consistent with the MSCP Plan and the Subarea Plan for the County. Mitigation within the Subarea Plan for the County shall conform to the Biological Mitigation Ordinance. The County shall apply the mitigation ratios in the Biological Mitigation Ordinance to all lands within the County's Subarea consistent with the Ordinance.

2. Application of Mitigation to Development.

The County shall require the following mitigation in order to complete the segments of the Subarea Plan:

Lake Hodges Segment:

Mitigation for Rancho Cielo and the Madura Subdivisions defined as follows: Madura - approximately 142 acres of 181 acre project site will be located in permanent open space in addition to approximately 30 acres of off-site CSS purchased as mitigation; Rancho Cielo - 883 acres of open space to be provided, revegetation of 27.12 acres to allow recovery of 16.24 acres and provision of a conservation easement to create 1,000 foot wide wildlife corridor.

Dedication of 1,411 acres of land as permanent natural open space under Open Space I and Open Space II as shown on the preserve area map for the Santa Fe Valley Specific Plan. In addition, dedication of appropriate areas in the portion of the Santa Fe Valley Specific Plan Area near Lusardi Creek and the eastern portion where special area designator require avoidance of sensitive habitats.

Dedication of 1,612 acres of 4S Ranch as permanent open space as shown on the preserve area map for the Lake Hodges Segment including provisions for a 569 acre mitigation bank as part of the area of natural open space.

Metro-Lakeside-Jamul Segment:

The County shall achieve the habitat protection goals as stated in Table 4-2 of the County Subarea Plan. The County shall require all projects to meet the preserve design criteria in section 4.2.1 of the Metro-Lakeside-Jamul Segment. The County shall maximize conservation efforts in areas that meet the criteria as biological resource core areas under the Biological Mitigation Ordinance as described in section 4.2.1 of the County Subarea Plan, achieve the linkage elements as listed in Section 4.2.3 of the Subarea Plan, and the species protection goals of Table 4-3. In addition, the County shall require projects avoid critical populations and narrow endemics as listed in tables 4-3, 4-4 and 4-5 of the County Subarea Plan. Only lands conserved within Wildlife Agency preapproved areas or mutually agreed to by the County and the Wildlife Agencies as furthering the conservation goals specified in the Subarea Plan will be credited toward meeting the conservation goals. However, lands outside of the Wildlife Agencies'

preapproved areas which have been preserved in order to avoid narrow endemics and critical populations shall be credited toward meeting the conservation goals.

South County Segment:

Mitigation of the Hidden Valley Estates project as required in the Subarea Plan which includes on site dedication of 923 acres of Hidden Valley Estates and approximately 400 acres of habitat located offsite on the slopes of San Miguel Mountain.

Dedication of 535 acres of on site habitat for the Las Montanas in addition to 23 acres of adjacent, off-site habitat.

Dedication of 73.35 acres of Loma Del Sol as open space.

Dedication of approximately 312 acres of on site habitat for the Pointe project and a minimum of 150 acres of offsite habitat on the slopes of San Miguel Mountain.

Retention of the undeveloped areas as identified in the South County Segment Plan, for the County of San Diego East Mesa Detention facility.

Protection of the areas identified as preserved in the boundaries of the Otay Ranch project including approximately 11,375 acres and an additional approximate 1,166 acres of limited development area. Additional lands associated with agreements, as outlined in the letter attached to the South County Segment from the Baldwin Company Dated November 10, 1995, will be included if the agreements are reached.

10.6 Compliance with Preserve Guidelines. The County agrees to implement the provisions set forth in Sections 1.2.1, 1.2.2, 1.3, 1.4, 1.14, 1.14.1, 1.14.2, and 1.15 of the Subarea Plan.

10.7 Compliance with Planning Policies and Design Guidelines. The County agrees to implement those General Planning Policies and Design Guidelines set forth in Section 1.8.1, 1.8.2 of the Subarea Plan.

10.8 Specific Conditions for Coverage. The following shall be specific conditions for coverage:

A. Management Directives. The County shall implement the conditions identified in the Conditions portion of

Table 3-5 of the MSCP Plan and Section 1.3 of the Subarea Plan that are applicable to any Covered Species.

B. Essential Public Facilities Exemption. For the exemption of any essential public facility or project as defined by the Biological Mitigation Ordinance from the requirements of that Ordinance, the County shall make all of the findings set out in a. - f. of that Ordinance.

C. Vernal pools. For vernal pools in naturally occurring complexes and wetlands impacts will be avoided to the maximum extent practicable.

D. Non-Native Grassland mitigation. Non-native Grassland mitigation in the County is a requirement. Non-native grassland shall be mitigated at the ratio of 0.5 acres of mitigation land for every 1.0 acres of land impacted until such time as non-native grassland shall attain the status of a significantly conserved vegetation community. At that time, non-native grassland shall be mitigated as a Tier III vegetation community.

E. Narrow Endemic Species Identified in Table 4-5. For certain species identified as "narrow endemic species" impacts will be avoided to the maximum extent practicable. Impacts that cannot be avoided shall be minimized and mitigated in accordance with the MSCP, the Subarea Plan, and the Biological Mitigation Ordinance consistent with this Agreement. Narrow endemic species are those identified in Table 4-5 of the Subarea Plan attached hereto as Exhibit H.

F. Critical Populations. Impacts to Critical Populations listed on Table 4-4 of the Subarea Plan and Attachment B of the Biological Mitigation Ordinance will be avoided as a first priority. Where complete avoidance cannot be attained, County staff will work with the project proponent to design the project to minimize impacts to the Critical Population to the maximum extent practicable.

10.9 Preserve Management. The County agrees to be responsible for managing or ensuring the management of the following lands within the MSCP Plan open space preserve in perpetuity:

A. Lands which it owns and which have been identified as areas to be preserved located within the MSCP Plan open space preserve as specified in the County Subarea Plan;

B. Any lands within that portion of the MSCP Plan open space preserve in the unincorporated area of the County that the County acquires for permanent preservation with MSCP regional funds or local funding sources;

C. Other lands within that portion of the MSCP Plan open space preserve in the unincorporated area of the County that are obtained as mitigation pursuant to the County Subarea Plan where those lands have been dedicated to the County in fee title or a conservation easement has been granted to the County, or a covenant of easement has been granted to the County which allows access for management purposes. The County shall ensure the management of lands described in this paragraph 10.9 C. in conformance with the requirements of Table 3-5 pending sufficient funding from the regional funding source but in no event shall the amount required for management be in excess of that set forth in Section 7.3.2 of the MSCP Plan as adjusted annually for inflation.

Upon mutual agreement of the Parties, land in categories A, B, and C above may be exchanged for other land if the substitute land provides habitat of equal or better quality and its conservation values and functions would be consistent with the conservation goals of MSCP.

10.10 Preserve Management Program. Within six months of the Effective Date, the County shall submit to the USFWS and CDFG for review a draft framework management plan for that portion of the MHPA which is within the Subarea, in accordance with Section 6.3.1 of the MSCP Plan. Within nine months of the Effective Date the County shall submit a final framework management plan to the USFWS and CDFG for approval. The framework management plan shall incorporate the species-specific management actions set forth in Table 3-5 of the MSCP Plan as appropriate, as well as preserve-wide management actions which shall not exceed the cost for management set forth in Section 7.3.2 of the MSCP Plan. The framework management plan shall also incorporate a requirement for the subsequent preparation and implementation of area-specific management directives, which shall be prepared in a phased manner for logical and discrete areas of land within the Subarea as those lands are committed to permanent preservation. Until such time that area-specific management directives are formulated and applied to logical and discrete areas within the Subarea Plan, the County agrees to maintain for habitat values those lands identified in section 10.9 of this Agreement.

10.11 Boundary Line Adjustment. Adjustments to the County Subarea MHPA boundaries may be made in limited circumstances. Such adjustments require concurrence of the USFWS and CDFG as set forth in Section 5.4.2 of the MSCP Plan and Section 1.4 and Figures 1-2 and 1-3 of the Subarea Plan and require public notice and an opportunity to comment in those instances where the County will exercise its discretionary authority in making an adjustment. This Agreement need not be amended to reflect such adjustment.

10.12 County Compliance with Subarea Plan Provisions. The Chief Administrative Officer of the County will take all actions within his/her authority to ensure that all County departments comply with the policies, regulations and management obligations established as a result of the MSCP Plan and Subarea Plan for the County and this Implementing Agreement on all County projects and day-to-day operations.

10.13 Exceptions to Subarea Plan Provisions. During CEQA review of a project, site specific physical conditions including but not limited to geology, slope, or location of infrastructure may be identified which make it infeasible for the project to meet all goals, criteria or other requirements in the Subarea Plan, but the project could be constructed without compromising conservation of species and habitats pursuant to the Subarea Plan. In the event of these circumstances, the County may approve an exception to the Subarea Plan for the project with the concurrence of the Wildlife Agencies. The exception shall be the minimum necessary to afford relief and accommodate development.

## **11.0 FUNDING RESPONSIBILITIES OF THE COUNTY OF SAN DIEGO**

11.1 Introduction. The MSCP Plan contains estimates for the costs of habitat acquisition, management and monitoring, both on a regional basis, and for each Subarea. To fully implement the MSCP Plan and the Subarea Plan, private property must be acquired to be added to the preserve in addition to lands that will be committed through the Lake Hodges and South County Subareas. Approximately 22,450 acres of land will be obtained through mitigation of land development projects within the Subarea, in accordance with the Subarea Plan and Section 10 of this Agreement. The remaining approximately 9,425 acres will likely have to be acquired by the County using funds raised as described below.

### **11.2 Regional Funding.**

A. Regional Funding of Local Costs. As described in the MSCP, the County and other Participating Local Jurisdictions will each be responsible for acquiring private lands within the MHPA, and for funding MHPA management, monitoring and administrative costs. The MSCP Plan intends that funds to cover these local costs will be raised on a regional, County-wide or MSCP Area-wide basis.

B. Short-term Regional Funding. In the short-term, prior to approval of a long-term regional financing mechanism as discussed in Section 11.2C below, County will participate with the other Participating Local Jurisdictions to seek financing for the acquisition of private lands within the MHPA during the first three years following the Effective Date.

Prior to the establishment of a regional financing mechanism, the County agrees to fund or ensure the costs of managing and monitoring those lands identified in Section 10.9 of this Agreement as set forth in that section.

C. Long-term Regional Funding.

1. Methods. The MSCP Plan analyzes several different methods of providing regional funding, including but not limited to a parcel tax/benefit assessment, community facilities district, general obligation bonds, Ad Valorem tax, and a sales tax.

2. Voter Approval. The Parties anticipate that any regional funding method will require voter approval.

3. Timetable. The MSCP Plan specifies a proposed timetable for securing long-term regional funding. Within eighteen months of the Effective Date, County working cooperatively with the other Participating Local Jurisdictions, will initiate the process described in the MSCP Plan to procure long-term regional funding. Within an additional eighteen months, the County intends to have a long-term regional funding source established. The USFWS and CDFG are willing to adjust this schedule if County demonstrates that its good faith efforts to secure long-term regional funding require additional time. During this total period of time, County, working cooperatively with the other Participating Local Jurisdictions, will identify a new or an existing structure through which regionally generated funds will be allocated to all Participating Local Jurisdictions.

4. Reassessment of Regional Funding. The Parties recognize that achieving the goal of long-term regional funding may be compromised if any of the jurisdictions identified in Exhibit "B" withdraw from the MSCP or fail to complete and obtain approval of a Subarea Plan. If such circumstances arise before long-term regional funding is secured, the Parties agree to reassess, along with the other Participating Local Jurisdictions the feasibility of a long-term regional funding approach. If at the conclusion of the time allowed under subsection C.3, above, a regional funding source has not been established, then the County shall establish and implement a funding source adequate to meet its share of MSCP and Subarea Plan implementation costs, while it continues to pursue with other Participating Local Jurisdictions, establishment of a regional funding source.

D. Failure to Provide Adequate Funding.

1. Effect on Take Authorizations. In the event that adequate funding to implement the MSCP Plan and the Subarea Plan is not provided by County, the USFWS and CDFG will assess the impact of the funding deficiency on the scope and validity of the Take Authorizations. The Parties agree that they will then meet and confer to cooperatively develop a strategy to address the funding shortfall, and to undertake all practicable efforts to maintain the level of conservation and Incidental Take authorization afforded by the Take Authorizations until the funding situation can be remedied.

**12.0 ISSUANCE OF THE TAKE AUTHORIZATIONS**

12.1 General. In order to provide predictability and certainty to public facility and private project developments, the Take Authorizations shall cover significant periods of time. It is acknowledged that the issuance of the Take Authorizations by USFWS and CDFG is contingent upon the County's adoption of the Biological Mitigation Ordinance.

12.2 Findings - USFWS - Covered Species. The USFWS has found, following opportunity for public comment, that (a) the taking of Covered Species within the MSCP Area in accordance with the MSCP Plan as implemented by the subarea plans will be incidental to the carrying out of otherwise lawful activities; (b) the MSCP as implemented by the subarea plans will, to the maximum extent practicable, minimize and mitigate the impacts of such incidental taking; (c) the funding sources identified and provided for herein will ensure that adequate funding for the MSCP and the subarea plans will be provided; (d) the requested taking of Covered Species will not appreciably reduce the likelihood of survival and recovery of such species in the wild; and (e) the MSCP as implemented through the subarea plans will satisfy and fulfill all measures (including procedures determined by the USFWS to be necessary to address Unforeseen Circumstances).

12.3 Findings - USFWS - Covered Species Subject to Incidental Take. In addition to the findings in Section 12.2 above, the USFWS has found that the Covered Species Subject to Incidental Take will be adequately conserved in the Subarea as the result of the Subarea Plan and this Agreement. Accordingly, concurrent with the Effective Date the USFWS will issue the Section 10(a) Permit to the County authorizing the Incidental Take of the Covered Species Subject to Incidental Take. The Section 10(a) Permit will be effective for 50 years, and will be renewable utilizing the ESA procedures in effect at the time of renewal.

12.4 Section 10 (a) Permit and Future Listings. As to any Covered species Subject to Incidental Take that is not listed as threatened or endangered under the ESA as of the Effective Date, the Section 10 (a) Permit shall become effective with respect to such species concurrent with its listing as threatened or endangered under the ESA. As to any other Covered Species, the Section 10 (a) Permit shall become effective with respect to that species (and it will be added to the list of Covered Species Subject to Incidental Take) when (1) the USFWS approves the subarea plans that the USFWS determines adequately conserve such species, (2) such species becomes listed as threatened or endangered under the ESA, and (3) the USFWS notifies the County in writing that the Section 10 (a) Permit is effective with respect to such species.

12.5 Findings - CDFG. The CDFG has found, following opportunity for public comment, that the MSCP, the Subarea Plan and this Agreement (1) adequately provide for the conservation and management of the Covered Species Subject to Incidental Take and their habitat within the MSCP Area and the Subarea, (2) satisfy all legal requirements under the NCCP Act necessary for the CDFG to issue a CESA/NCCP Authorization for the Covered Species Subject to Incidental Take, and (3) are consistent with the NCCP Process and Conservation Guidelines. The CDFG has found that the Subarea Plan, in combination with the MSCP Plan, meets the requirements of the NCCP Act for an NCCP Plan, and has approved the Subarea Plan as an NCCP Plan. The CDFG has found further that the MSCP, the Subarea Plan and this Agreement provide adequately for the mitigation of potential "significant effects on the environment" (as defined in California Public Resources Code § 21068) which may result to Covered Species Subject to Incidental Take and their habitat (pursuant to California Government Code § 66474) that may result from the land development activities in the Subarea.

12.6 Issuance of CESA/NCCP Authorization. Concurrent with the Effective Date, the CDFG will issue its approval of the Subarea Plan and a CESA/NCCP Authorization which authorizes the Incidental Take of Covered Species Subject to Incidental Take in the Subarea, subject to the terms of the MSCP, the Subarea Plan, this Agreement, and the CESA/NCCP Authorization. As to any Covered Species Subject to Incidental Take that is not listed as threatened or endangered under the CESA as of the Effective Date, the CESA/NCCP Authorization shall automatically become effective with respect to such species concurrently with its listing as threatened or endangered under the CESA or its acceptance by the California Fish and Game Commission as a candidate for such listing. The CESA/NCCP Authorization will be effective for 50 years. The CESA/NCCP Authorization will be renewable utilizing the applicable procedures in effect at the time of renewal.

12.7 Findings - Section 4(d) Special Rule. The USFWS finds that the MSCP meets the standards set forth in 50 C.F.R. § 17.32(b)(2). Accordingly, the USFWS finds that the MSCP and the Subarea Plan are consistent with and satisfy the conditions under the Section 4(d) Special Rule, and therefore the Incidental Take of the coastal California gnatcatcher within that portion of the MSCP Area covered by approved Subarea Plans (including the County's Subarea Plan), is lawful.

### **13.0 CONSULTATIONS WITH OTHER PUBLIC AGENCIES**

13.1 Section 7 Consultations. To the maximum extent appropriate, in any consultation under Section 7 of the ESA (16 U.S.C. § 1536) involving the County and/or an existing or prospective Third Party Beneficiary with regard to Covered Species Subject to Incidental Take, the USFWS shall ensure that the biological opinion issued in connection with the proposed project which is the subject of the consultation is consistent with the biological opinion issued in connection with the MSCP and Subarea Plan, provided that the proposed project is consistent with the MSCP and Subarea Plan. Any biological measures included under the terms and conditions of the Section 7 biological opinion shall, to the maximum extent appropriate, be consistent with the mitigation required by the County for the particular project or activity under the MSCP and Subarea Plan as implemented by this Agreement, provided that the USFWS shall not impose measures in excess of those that have been or will be required by the County pursuant to the MSCP, the Subarea Plan and this Agreement. For Section 7 consultations conducted in connection with the issuance of permits under Section 404 of the Clean Water Act, 33 U.S.C. § 1344, Section 9.8.A of this Agreement shall apply in lieu of this paragraph.

13.2 Consultations by CDFG. Except as otherwise required by law, and barring a finding by CDFG of Extraordinary Circumstances, for projects and/or project impacts subject to the Subarea Plan CDFG shall not recommend or otherwise seek to impose through consultation with other public agencies any mitigation, compensation or habitat enhancement requirements regarding the Take of Covered Species within the Subarea other than the requirements prescribed in and pursuant to the MSCP, the Subarea Plan and this Agreement.

### **14.0 MONITORING, REPORTING AND PRESERVE MANAGEMENT**

14.1 Continual Habitat Acreage Accounting. So long as this Agreement and the Take Authorizations remain in effect, the County will continually account, by project and cumulatively, for the amount and location of habitat acreage (by habitat type) lost and preserved within the Subarea, including acres conserved within the MHPA and acres committed to land development both within and outside of the MHPA. The results of such accounting

will be applied to the Habitat Conservation Accounting Model attached as Exhibit I to this Agreement to assure that adequate progress toward implementation of the MSCP Plan and the Subarea Plan is being achieved and that habitat preservation is proceeding in rough step with development.

14.2 Annual Reporting and Public Workshop. In accordance with Section 6.4.1 of the MSCP Plan, the County shall prepare and submit to the USFWS and the CDFG by February 15 of each year a public report containing an annual accounting, by project and cumulatively, of habitat acreage lost and conserved within the Subarea during the previous calendar year. This accounting shall specify acres conserved within the MHPA by habitat type, as well as acres committed to land development both within and outside of the MHPA, and compare these figures with results obtained utilizing the Habitat Conservation Accounting Model attached as Exhibit I to this Agreement. This report shall also describe how habitat preservation is proceeding in rough step with development and how preserve assembly is consistent with the Biological Goals and Preserve Design Criteria in Section 4.2.1, 4.2.2, 4.2.3, and 4.2.4. The report will be used by the USFWS and CDFG to evaluate whether adequate progress toward implementation of the MSCP and the Subarea Plan is being achieved. A public workshop or meeting will be jointly conducted on an annual basis by staff from the USFWS, the CDFG and the County to disseminate and discuss the annual report.

14.3 Annual Implementation Meeting. Once each year, County shall meet with the USFWS and the CDFG to review and coordinate implementation of the Subarea Plan. The parties will review the Annual Report described in Section 14.2 above, for the purposes of evaluating the implementation of the MSCP during the preceding year and the adequacy of the overall progress being made towards reaching the conservation goals of the MSCP and the Subarea Plan utilizing as a tool the Habitat Conservation Accounting Model attached as Exhibit I to this Agreement. Items to be considered in the evaluation include, but are not limited to, all contributions towards the preservation of habitat lands, such as public lands, private mitigation lands, land donations, land acquisitions, and management activities undertaken or proposed on habitat lands. Habitat management issues will also be discussed. No Participating Local Jurisdiction or Participating Special Entity will be subject to any annual, quantitative habitat preservation requirement, given the uncertainties created by natural economic and land development fluctuations. If the USFWS and the CDFG determine that adequate progress towards implementation of the Subarea Plan is not being achieved, the USFWS, the CDFG, and the County will take the actions specified in the Subarea Plan and this Agreement to remedy that situation. If the USFWS and CDFG determine that adequate progress towards implementation of the Subarea Plan is being achieved, but is nevertheless not providing sufficient

protection to Covered Species, then the Parties shall work cooperatively and take appropriate actions consistent with the MSCP and Subarea Plan (such as altering management activities or redirecting mitigation and acquisition) in order to address the situation. Such actions may include additional management activities, or redirection of land acquisition funds, so long as they are consistent with the Subarea Plan and this Agreement.

14.4 Public Report/Hearing. Every three years the County, in conjunction with the other Participating Local Jurisdictions, shall prepare a public report on the status of the MSCP, and shall hold a public hearing in conjunction with the issuance of the report. The report shall incorporate information on the amount of land preserved within the MHPA and otherwise to date, the amount of land added to the MHPA or otherwise preserved within the previous three years, and the total expenditures made toward habitat acquisition to date and over the preceding three years. This report shall also include a subarea by subarea accounting of all funds received and expended during the previous three years to implement the Subarea Plan, including the amounts received and expended on habitat acquisition, management, and monitoring.

14.5 Biological Monitoring. The Parties agree that biological monitoring, which involves the collection and analysis of data on specific species and habitats, is necessary to determine whether Covered Species and their habitats are being maintained by the MSCP as expected. Biological monitoring will be jointly funded by the federal and state governments and the Participating Local Jurisdictions and Participating Special Entities through the federal, state and regional funding programs. As described in the Subarea Plan, County will be responsible for the biological monitoring of its own, specified public lands, as well as mitigation lands obtained by it in fee title or easement, and lands acquired by it for the MSCP using the regional funding program or other local sources. The federal and state agencies will monitor their present identified lands and those acquired for the MSCP with federal and state funds, as described in the MSCP Plan. Proper management of the MHPA will require ongoing and detailed analysis of the data collected through biological monitoring activities. To ensure uniformity in data gathering and analysis, the USFWS and CDFG will assume primary responsibility for coordinating the monitoring program, analyzing data, and providing information and technical assistance to the Participating Local Jurisdictions and Participating Special Entities. Biological monitoring will focus on selected Covered Species and representative habitats. The USFWS and CDFG will prioritize specific monitoring activities based on available budget and specific needs of individual species and habitats, and will produce a summary report on monitoring activities every three years at the same time as the report described in Section 14.5, above.

14.6 Audit. Once every three or more years, as needed, the USFWS and CDFG may conduct an audit of (1) all development approvals and mitigation imposed through land use regulations or otherwise within approved Subareas; (2) all lands acquired by each Participating Local Jurisdiction toward meeting its habitat acquisition obligation under the MSCP; and (3) all monies received, invested and expended on acquisition, management and monitoring activities within approved Subareas during the previous three years or other applicable time period. County shall cooperate fully with USFWS and CDFG to insure a complete and accurate audit.

14.7 Coordination of Preserve Management.

A. Regional Habitat Management Technical Committee. Within 120 days of the Effective Date, a regional habitat management technical committee or equivalent entity separately agreed upon by the Parties will be formed by the County and all other Participating Local Jurisdictions to serve as a coordination forum for technical issues associated with MHPA management. The USFWS and CDFG will work with this committee to furnish information and advice on habitat management. The committee will have the responsibilities identified in Section 5.8.3 of the MSCP Plan.

B. Federal and State Obligations. Federal and state agencies will manage, maintain and monitor all lands they contribute to the MSCP (whether owned or administered by them as of the Effective Date or later acquired) consistent with the MSCP.

C. Private Owners of Land Within the MHPA. This Agreement, the MSCP and the Subarea Plan do not impose upon private owners of land within the MHPA, who are not Third Party Beneficiaries, any additional obligations for the management or maintenance of their land.

15.0 USFWS AND CDFG OBLIGATIONS

15.1 USFWS. The USFWS shall include in its annual budget requests sufficient funds to fulfill its obligations under the MSCP, this Agreement, and all Section 10(a) Permits it issues pursuant to the MSCP.

15.2 CDFG. The CDFG shall include in its annual budget requests sufficient funds to fulfill its obligations under the MSCP, this Agreement, and all CESA/NCCP Authorizations it issues pursuant to the MSCP.

15.3 Failure to Provide State or Federal Contribution. The USFWS and CDFG acknowledge that the MSCP is long-term in

nature, and that the MHPA will be established over a fifty year period. Contributions of the USFWS and CDFG will be made at varying levels throughout the life of the program, with contributions to habitat acquisition to occur within the first 30 years of the program. State and federal contributions may include, but are not limited to, state and federally funded habitat acquisitions, land exchanges, personnel, and habitat restoration and enhancement. If, following the exercise of all available authority and utilization of all available resources the state and/or federal contribution committed to MSCP cannot be provided, the MSCP will be reevaluated, with possible adjustments to permit coverage and assurances, in light of the extent of the state and federal contribution. Prior to such reevaluation of the MSCP, the USFWS and CDFG shall first attempt to address the shortfall in the state and/or federal contribution through (1) habitat management practices and enhancement opportunities within the MHPA using existing management resources, provided the redirection of such resources does not adversely affect any Covered Species and (2) habitat acquisition through the reallocation of existing state, federal and/or regional funds identified for MSCP implementation, provided such reallocation does not adversely affect any Covered Species.

#### **16.0 REMEDIES AND ENFORCEMENT**

16.1 Remedies in General. Except as set forth below, each Party shall have all of the remedies available in equity (including specific performance and injunctive relief) and at law to enforce the terms of this Agreement and the Section 10(a) Permit and CESA/NCCP Authorization, and to seek remedies and compensation for any breach or violation thereof, consistent with and subject to the following:

A. None of the Parties shall be liable in damages to the other Parties or to any other person or entity for any breach of this Agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement, or any other cause of action arising from this Agreement. Notwithstanding the foregoing, each Party shall retain whatever liability it would possess for its present and future acts or failure to act without existence of this Agreement.

B. The Parties acknowledge that the Covered Species are unique and that their loss as species would be irreparable and that therefore injunctive and temporary relief may be appropriate in certain instances involving a breach of this Agreement.

#### **16.2 The Section 10(a) Permit.**

A. Permit Suspension. Consistent with 50 C.F.R. §§13.27-13.29, in the event of any material violation of the Section 10(a) Permit or material breach of this Agreement by the County, the USFWS may suspend the Section 10(a) Permit in whole or in part; provided, however, that it may not suspend the Section 10(a) Permit without first (1) requesting the County take appropriate remedial actions, and (2) providing the County with written notice of the facts or conduct which may warrant the suspension and an adequate and reasonable opportunity for the County to demonstrate why suspension is not warranted or to take steps necessary to cure the violation or breach.

B. Reinstatement of Suspended Permit. In the event the USFWS suspends the Section 10(a) Permit, in whole or in part, as soon as possible but no later than ten (10) days after such suspension, the USFWS shall confer with the County concerning how the violation or breach that led to the suspension can be remedied. At the conclusion of any such conference, the USFWS shall identify reasonable specific actions necessary to effectively redress the violation or breach. In making this determination the USFWS shall consider the requirements of the ESA, regulations issued thereunder, the conservation needs of the Covered Species, the terms of the Section 10(a) Permit and of this Agreement and any comments or recommendations received during the meet and confer process. As soon as possible, but not later than thirty (30) days after the conference, the USFWS shall send the County written notice of the reasonable actions necessary to effectively redress the violation or breach. Upon performance of such necessary actions, the Service shall immediately reinstate the Section 10(a) Permit or the suspended portion thereof. It is the intent of the Parties that in the event of any suspension of the Section 10(a) Permit all Parties shall act expeditiously and cooperatively to reinstate the Section 10(a) Permit.

C. Permit Revocation or Termination.

1. Consistent with 50 C.F.R. §§ 13.27-13.29, the USFWS agrees that it will only revoke or terminate the Section 10(a) Permit for a material violation of the Section 10(a) Permit or material breach of this Agreement by the County, and only if (a) the County refuses to cure the violation or breach after receiving actual notice of it from the USFWS and a reasonable opportunity to cure it, or (b) the USFWS determines in writing that such violation or breach cannot be effectively redressed by other remedies or enforcement action.

2. The USFWS agrees that it will not revoke or terminate the Section 10(a) Permit without first (a) requesting the County take appropriate remedial action, and (b) providing the County with notice in writing of the facts or conduct which warrant the revocation or termination and a

reasonable opportunity (but not less than sixty (60) days) to demonstrate or achieve compliance with the ESA, the Section 10(a) Permit and this Agreement.

### 16.3 The CESA/NCCP Authorization.

A. Authorization Suspension. In the event of any material violation of the CESA/NCCP Authorization or material breach of this Agreement by the County the CDFG may suspend the CESA/NCCP Authorization in whole or in part; provided, however, that it may not suspend the CESA/NCCP Authorization without first (1) requesting the County take appropriate remedial actions, and (2) providing the County with written notice of the facts or conduct which may warrant the suspension and an adequate and reasonable opportunity for the County to demonstrate why suspension is not warranted or to take steps necessary to cure the violation or breach.

B. Reinstatement of Suspended Authorization. In the event the CDFG suspends the CESA/NCCP Authorization in whole or in part, as soon as possible but no later than ten (10) days after such suspension, the CDFG shall confer with the County concerning how the violation or breach that led to the suspension can be remedied. At the conclusion of any such conference, the CDFG shall identify reasonable specific actions necessary to effectively redress the violation or breach. In making this determination the CDFG shall consider the requirements of the CESA and/or NCCP Act, regulations issued thereunder, the conservation needs of the Covered Species, the terms of the CESA/NCCP Authorization and of this Agreement and any comments or recommendations received during the meet and confer process. As soon as possible, but not later than thirty (30) days after the conference, the CDFG shall send the County written notice of the reasonable actions necessary to effectively redress the violation or breach. Upon full or substantial performance of such necessary actions, the CDFG shall immediately reinstate the CESA/NCCP Authorization. It is the intent of the Parties that in the event of any suspension of the CESA/NCCP Authorization all Parties shall act expeditiously and cooperatively to reinstate the NCCP Authorization.

### C. Authorization Revocation or Termination.

1. The CDFG may only revoke or terminate the CESA/ NCCP Authorization for a material violation of the CESA/NCCP Authorization or material breach of this Agreement by the County, and only if the CDFG determines in writing that (a) such violation or breach cannot be effectively redressed by other remedies or enforcement action, or (b) revocation or termination is required to avoid jeopardizing the continued existence of a Covered Species and to fulfill a legal obligation of the CDFG under the CESA and/or NCCP Act.

2. The CDFG agrees that it will not revoke or terminate the CESA/NCCP Authorization without first (a) requesting the County take appropriate remedial action, and (b) providing the County with notice in writing of the facts or conduct which warrant the revocation or termination and a reasonable opportunity (but not less than sixty (60) days) to demonstrate or achieve compliance with the CESA, the NCCP Act, the CESA/NCCP Authorization and this Agreement.

D. Effect on Third Party Beneficiaries. The effect on Third Party Beneficiaries of Take Authorization revocation or suspension is specified in Section 17.2.

16.4 Circumstances Likely to Constitute Jeopardy to Listed Species. In the event of a material violation of the Take Authorizations or material breach of this Agreement by County and the existence of circumstances which are likely to jeopardize the continued existence of a Covered Species listed as threatened or endangered under the ESA or CESA, the USFWS and/or CDFG may, as a last resort, and after meeting and conferring with County and describing those circumstances in writing, suspend or revoke the Take Authorizations without resorting to the procedures specified above.

16.5 County Obligations In The Event of Suspension or Revocation. In the event that the USFWS and/or CDFG suspend or revoke the Take Authorizations issued to County under this Agreement, County will remain obligated to fulfill its mitigation, enforcement and management obligations and its other MSCP and Subarea Plan obligations, in accordance with this Agreement for all land development activities undertaken or approved prior to the breach which led to the suspension or revocation.

## 17.0 THIRD PARTY BENEFICIARIES

17.1 Authorization. Upon execution of this Agreement by the Parties and the issuance of Take Authorizations by USFWS and CDFG, the County may allow within the Subarea the Incidental Take of Covered Species Subject to Incidental Take by Third Party Beneficiaries under the direct control of the County, specifically including landowners and public and private entities undertaking land development activities in conformance with an approval granted by the County in compliance with this Section and Section 10 of this Agreement.

A. Creation of Third Party Beneficiary Status. The creation of Third Party Beneficiary status shall occur during the County's permitting process at the point in time when (1) review of the project's impacts on biological resources and a determination of necessary mitigation has occurred in compliance with Section 10 of this Agreement, (2) the determined mitigation

includes an immediately-effective requirement to maintain the biological values of the land committed for mitigation, and (3) the mitigation has been imposed through a condition of development (such as a mitigation agreement) that is recorded and runs with the land and is enforceable against and binding upon the Third Party Beneficiary and any successor in interest to the Third Party Beneficiary. Third Party Beneficiary status may be attained for a project as a whole, or for a discrete phase(s) of a project so long as the mitigation for the discrete phase(s) is not functionally dependent in the context of the MSCP and Subarea Plan upon the mitigation proposed for subsequent phases.

B. Maintenance of Third Party Beneficiary Status. Third Party Beneficiary status will remain in effect unless, prior to the issuance of take authorization in accordance with 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 above. However, Third Party Beneficiary status shall not be extinguished as a result of impacts to biological values resulting from natural or other causes beyond the Third Party Beneficiary's control, as determined by the USFWS and CDFG, including fire, flood, storm, and earth movement, or from any prudent action taken by the Third Party Beneficiary to prevent, abate, or mitigate significant injury to the land evaluated pursuant to Paragraph A, above, resulting from such causes.

C. Assurances to Third Party Beneficiaries. For a project or portion thereof where Third Party Beneficiary status has been attained and is effective, the Parties shall not alter existing mitigation obligations imposed by the County on the Third Party Beneficiary, except as otherwise specifically allowed under Sections 9.6 and 9.7 of this Agreement, provided that the Third Party Beneficiary satisfies all mitigation obligations imposed by the County in conformance with this Section and Section 10 of this Agreement.

D. Authorization for Take to Third Party Beneficiary. The authorization for incidental take received by the Third Party Beneficiary shall be for the length of time and run concurrent with the specific land development approval granted by the County. However no grading or grubbing activities may be commenced by the Third Party Beneficiary pursuant to the County's development approval until the mitigation established pursuant to 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 the County, which timeframe shall not under any circumstance exceed one year from the date the permit for grading or grubbing is issued.

17.2 Effect of Take Authorization Revocation, Termination or Suspension. In the event that the USFWS and/or CDFG revoke, terminate or suspend the Take Authorizations issued to the County pursuant to this Agreement, the assurances provided to Third Party Beneficiaries under this Agreement and the right to Take Covered Species Subject to Incidental Take authorized under the County's development approvals pursuant to the Take Authorizations, will remain in effect as to every individual Third Party Beneficiary which fulfills the mitigation obligations imposed upon it by the County in compliance with this Section and Section 10 of this Agreement.

17.3 Enforcement. The Parties reserve the right to enforce all applicable federal, state or local laws against persons or entities which engage in unlawful land development activity without obtaining proper permits and approvals from the Parties. Also, the Parties reserve the right to enforce all applicable federal, state or local laws against Third Party Beneficiaries which conduct land development activities in the Subarea which are not in compliance with land development approvals granted by the County in conformance with Section 10 of this Agreement.

17.4 No Right to Sue Under this Agreement. Notwithstanding the use of the term "Third Party Beneficiary" or any other provision of this Agreement, this Agreement shall confer no right upon Third Party Beneficiaries or any other person to sue the USFWS or the CDFG.

## 18.0 ENVIRONMENTAL REVIEW

18.1 Federal Law - NEPA. Issuance of a Section 10(a) Permit to County by USFWS is an action subject to NEPA review. USFWS is a lead agency under NEPA. An Environmental Impact Statement has been prepared pursuant to NEPA. Additional environmental review will be required for future subarea plans.

18.2 State Law - CEQA. Implementation of the MSCP is an action subject to CEQA review. The City of San Diego is a lead agency for the project and has completed an Environmental Impact Report addressing the MSCP. In accordance with CEQA requirements, CDFG and the County are responsible agencies under CEQA for purposes of approving the MSCP and the Subarea Plan under the NCCP Act.

## 19.0 COOPERATIVE EFFORT

In order that each of the legal requirements summarized in Section 8.0 of this Agreement are fulfilled, each of the Parties to this Agreement must perform certain specific tasks. The MSCP thus describes a cooperative program by federal, state and local agencies to conserve the Covered Species.

## 20.0 TERMS USED

Terms defined and utilized in the MSCP, the ESA the CESA, and the NCCP Act shall have the same meaning when utilized in this Agreement, except as specifically noted.

## 21.0 TERM

21.1 50-year Agreement. This Agreement takes effect on the Effective Date, and shall remain in full force and effect for a period of 50 years, or until termination of the Section 10(a) Permit and CESA/NCCP Authorization pursuant to Section 16 or Section 22 of this Agreement, whichever occurs sooner.

21.2 50-year Take Authorizations. The Section 10(a) Permit and the CESA/NCCP Authorization issued to County shall be effective for a period of 50 years from the Effective Date.

21.3 Permanent Preservation. Notwithstanding the stated term as herein set forth, the Parties agree and recognize that once Take of a Covered Species has occurred and/or their habitat modified within the Subarea, such Take and habitat modification will be permanent. The Parties, therefore, agree that the preservation and maintenance of the habitat provided for under this Agreement shall likewise be permanent and extend beyond the term of this Agreement.

## 22.0 TERMINATION

A. Upon 90 days written notice to USFWS and CDFG and all other Participating Local Jurisdictions, the County may unilaterally withdraw from this Agreement provided:

1. The County and all Third Party Beneficiaries have complied with all mitigation obligations incurred under the Take Authorizations in full compliance with the Habitat Conservation Accounting Model attached as Exhibit I to this Agreement, the MSCP, Subarea Plan and this Agreement up to the date of withdrawal, and the County provides written evidence of such compliance to USFWS and CDFG; and

2. The County and Third Party Beneficiaries shall remain obligated to carry out all of their long term management and monitoring obligations assumed under the MSCP,

Subarea Plan and this Agreement with respect to habitat conservation lands included in, or required to be included in, the MHPA as a result of land development approved by the County prior to withdrawal from the Agreement.

B. The County's withdrawal from this Agreement shall not affect the obligations of the County with respect to mitigation lands or other lands owned or controlled by the County and included in the MHPA.

C. Any Incidental Take associated with land development projects approved by the County for which mitigation has been assured as provided in Section 17, shall continue to be authorized under the terms of the Take Authorizations provided the County continues to carry out its obligations under this Agreement with respect to such Take as provided in Sections 9.19, 10, 14 and 17 of this Agreement.

D. Withdrawal of the County from this Agreement shall be deemed to constitute a surrender of the County's Take Authorizations issued pursuant to this Agreement.

#### **23.0 AMENDMENTS**

23.1 Amendments to Agreement. Except as otherwise set forth herein, this Agreement may be amended only with the written consent of each of the Parties.

23.2 Amendments to List of Covered Species Subject to Incidental Take. The Parties anticipate and intend that the list of Covered Species Subject to Incidental Take (attached as Exhibit D) may be augmented to include additional Covered Species as additional Participating Local Jurisdictions and Participating Special Entities enter into separate but coordinated agreements in a form substantially similar to this Agreement, and/or if additional information becomes available concerning the population and distribution of such additional Covered Species and the protection afforded such species by the MSCP and/or this Agreement. The Parties agree to work cooperatively to expeditiously augment the list of Covered Species Subject to Incidental Take under such circumstances.

#### **24.0 FORCE MAJEURE**

In the event that the County is wholly or partially prevented from performing obligations under this Agreement because of unforeseeable causes beyond the reasonable control of and without the fault or negligence of the County ("force majeure"), including but not limited to acts of God, labor disputes, sudden actions of the elements, or actions of federal or state agencies or other local jurisdictions, the County shall be excused from whatever performance is affected by such

unforeseeable cause to the extent so affected, and such failure to perform shall not be considered a material violation or breach, provided that nothing in this Section shall be deemed to authorize any Party to violate ESA or CESA, and provided further that:

(1) The suspension of performance is of no greater scope and no longer duration than is required by the force majeure;

(2) Within two weeks after the occurrence of the force majeure the County gives the USFWS and CDFG written notice describing the particulars of the occurrence;

(3) The County uses its best efforts to remedy its inability to perform (however, this paragraph shall not require the settlement of any strike, walk-out, lock-out or other labor dispute on terms which in the sole judgment of the County are contrary to its interest); and

(4) When the County is able to resume performance of its obligations, the County shall give USFWS and CDFG written notice to that effect.

## 25.0 MISCELLANEOUS

25.1 Agency Response Times. Except as otherwise set forth in this Agreement or as statutorily required under CEQA, CESA, or the ESA, or other laws or regulations, the Wildlife Agencies shall respond to written requests with a 45-day time frame.

25.2 No Partnership. Except as otherwise expressly set forth herein, neither this Agreement nor the MSCP shall make or be deemed to make any Party to this Agreement the agent for or the partner of any other Party.

25.3 Successors and Assigns. This Agreement and each of its covenants and conditions shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns. The County may only assign its rights and obligations under this Agreement with the approval of the USFWS and CDFG, which approval shall not be unreasonably withheld. Assignment or other transfer of the Section 10(a) Permit shall be governed by then-current USFWS regulations; under the applicable regulations in place on the Effective Date, a Section 10(a) permit may not be assigned or otherwise transferred.

25.4 Notice. Any notice permitted or required by this Agreement shall be delivered personally to the persons set

forth below or shall be deemed given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested and addressed as follows or at such other address as any Party may from time to time specify to the other Parties in writing:

United States Fish and Wildlife Service  
Assistant Regional Director  
911 Northeast 11th Avenue  
Portland, Oregon 97232-4181

United States Fish and Wildlife Service  
Field Supervisor, Carlsbad Field Office  
2730 Loker Avenue West  
Carlsbad, California 92008

Director, California Department of Fish and Games  
1416 9th Street, 12th Floor  
Sacramento, California 95814

The County of San Diego  
Chief Administrative Officer  
1600 Pacific Highway, Room 209  
San Diego, California 92101

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

25.6 Attorneys' Fees. If any action at law or equity, including any action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, each Party to the litigation shall bear its own attorneys' fees and costs, provided that attorneys' fees and costs recoverable against the United States shall be governed by applicable Federal law.

25.7 Duplicate Originals. This Agreement may be executed in any number of duplicate originals. A complete original of this Agreement shall be maintained in the official records of each of the Parties.

25.8 Federal Appropriations. The duty of the USFWS to carry out its obligations under the MSCP, the Subarea Plan and this Agreement shall be subject to the availability of appropriated funds.

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

25.10 Consistency with Authorizing Statutes. This Agreement is consistent with the statutory authority of the USFWS under the ESA and other applicable federal laws, and of the CDFG under the CESA, the NCCP Act and other applicable state laws. Likewise, nothing in this Agreement is intended to nor shall be construed to limit or compromise the statutory authority of the USFWS or the CDFG under such laws.

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Implementation Agreement to be in effect as of the date last signed below.

By: \_\_\_\_\_ Date:

Regional Director  
United States Fish and Wildlife Service  
Portland, Oregon

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By: \_\_\_\_\_ Date:

Director  
California Department of Fish and Game  
Sacramento, California

By: \_\_\_\_\_ Date:

County of San Diego  
San Diego, California

AUTHOR\FWSFGAGR.597;tf

## EXHIBITS

- A. Map of MSCP Plan area
- B. List of 12 Governments included in MSCP area
- C. List of Covered Species
- D. List of species subject to Incidental Take
- E. Significantly and Sufficiently Conserved Vegetation Communities
- F. County of San Diego Subarea
- G. County Board of Supervisors Policy I-117 on Mitigation Banking
- H. Narrow Endemic Species
- I. Habitat Accounting Model

000154 OCT 2297



## Local Governments Included in MSCP Area

County of San Diego  
City of Chula Vista  
City of San Diego  
City of Coronado  
City of Del Mar  
City of El Cajon  
City of Imperial Beach  
City of La Mesa  
City of Lemon Grove  
City of National City  
City of Poway  
City of Santee

000156 OCT 22 97

## EXHIBIT C MSCP COVERED SPECIES LIST

### Plants

San Diego thorn-mint  
Shaw's agave  
San Diego ambrosia  
Aphanisma  
Del Mar manzanita  
Otay manzanita  
Coastal dunes milk vetch  
Encinitas baccharis  
Nevin's barberry  
Thread-leaved brodiaea  
Orcutt's brodiaea  
Dense reed grass  
Dunn's mariposa lily  
Slender-pod jewelflower  
Lakeside ceanothus  
Wart-stemmed ceanothus  
Salt marsh bird's-beak  
Orcutt's bird's-beak  
Del Mar Mesa sand aster  
Tecate cypress  
Short-leaved dudleya  
Variegated dudleya  
Sticky dudleya  
Palmer's ericameria  
San Diego button-celery  
Coast wallflower  
San Diego barrel cactus  
Otay tarplant  
Heart-leaved pitcher sage  
Gander's pitcher sage  
Nuttall's lotus  
Felt-leaved monardella  
Willow monardella  
San Diego goldenstar  
Prostrate navaretia  
Dehesa bear-grass  
Snake cholla  
California Orcutt grass  
Torrey pine  
San Diego mesa mint  
Otay Mesa mint  
Small leaved rose  
San Miguel savory  
Gander's butterweed  
Narrow-leaved nightshade  
Party's tetraococcus

### Animals

Salt marsh skipper butterfly  
Thorne's hairstreak butterfly  
Riverside fairy shrimp  
San Diego fairy shrimp  
Arroyo southwestern toad  
California red-legged frog  
Southwestern pond turtle  
San Diego horned lizard  
Orange-throated whiptail  
California brown pelican  
Reddish egret  
White-faced ibis  
Canada goose  
Bald eagle  
Northern harrier  
Cooper's hawk  
Swainson's hawk  
Ferruginous hawk  
Golden eagle  
American peregrine falcon  
Light-footed clapper rail  
Western snowy plover  
Mountain plover  
Long-billed curlew  
California least tern  
Elegant tern  
Western burrowing owl  
Southwestern willow flycatcher  
Coastal cactus wren  
Coastal California gnatcatcher  
Western bluebird  
Least Bell's vireo  
California rufous-crowned sparrow  
Belding's savannah sparrow  
Large-billed savannah sparrow  
Tricolored blackbird  
American badger  
Mountain lion  
Southern mule deer

000157 OCT 2297

EXHIBIT D  
MSCP COVERED SPECIES  
SUBJECT TO INCIDENTAL TAKE

Plants

San Diego thorn-mint  
Shaw's agave  
San Diego ambrosia  
Aphanisma  
Del Mar manzanita  
Otay manzanita  
Coastal dunes milk vetch  
Encinitas baccharis  
Nevin's barberry  
Thread-leaved brodiaea  
Dense reed grass  
Dunn's mariposa lily  
Slender-pod jewelflower  
Lakeside ceanothus  
Salt marsh bird's-beak  
Orcutt's bird's-beak  
Del Mar Mesa sand aster  
Tecate cypress  
Short-leaved dudleya  
Variegated dudleya  
Sticky dudleya  
Palmer's ericameria  
San Diego button-celery  
Coast wallflower  
San Diego barrel cactus  
Otay tarplant  
Heart-leaved pitcher sage  
Gander's pitcher sage  
Nuttall's lotus  
Felt-leaved monardella  
Willow monardella  
San Diego goldenstar  
Prostrate navaretia  
Dehesa bear-grass  
California Orcutt grass  
Torrey pine  
San Diego mesa mint  
Otay Mesa mint  
Small leaved rose  
San Miguel savory  
Gander's butterweed  
Narrow-leaved nightshade  
Parry's tetracoccus

Animals

Salt marsh skipper butterfly  
Thorne's hairstreak butterfly  
Riverside fairy shrimp  
San Diego fairy shrimp  
Arroyo southwestern toad  
California red-legged frog  
Southwestern pond turtle  
San Diego horned lizard  
Orange-throated whiptail  
California brown pelican  
Reddish egret  
White-faced ibis  
Canada goose  
Bald eagle  
Northern harrier  
Cooper's hawk  
Swainson's hawk  
Ferruginous hawk  
Golden eagle  
American peregrine falcon  
Light-footed clapper rail  
Western snowy plover  
Mountain plover  
Long-billed curlew  
California least tern  
Elegant tern  
Western burrowing owl  
Southwestern willow flycatcher  
Coastal cactus wren  
Coastal California gnatcatcher  
Western bluebird  
Least Bell's vireo  
California rufous-crowned sparrow  
Belding's savannah sparrow  
Large-billed savannah sparrow  
Tricolored blackbird  
American badger  
Mountain lion  
Southern mule deer

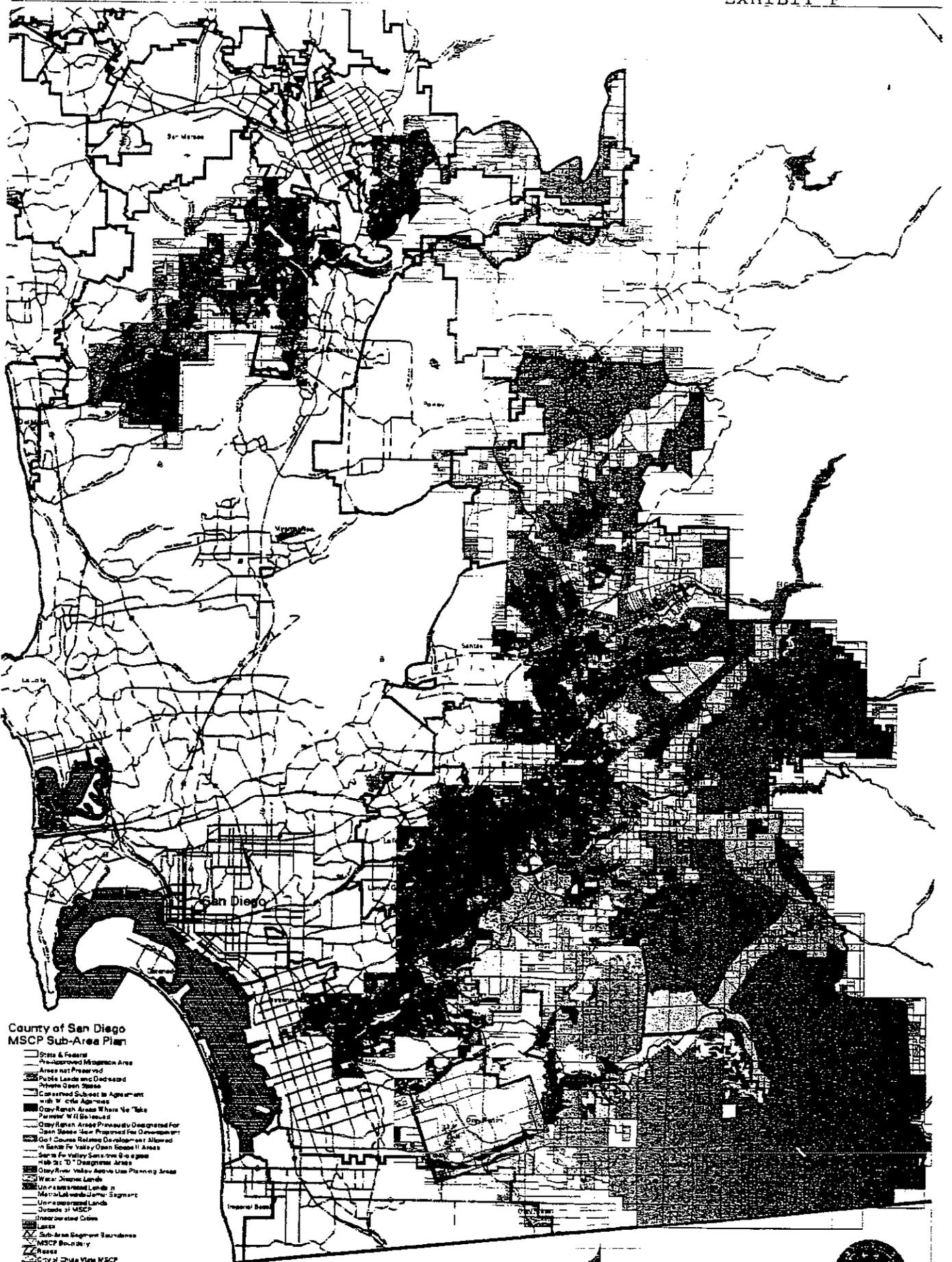
000158 OCT 22 97

## SUFFICIENTLY CONSERVED VEGETATION COMMUNITIES

southern coastal bluff scrub	southern foredunes
riparian scrub	riparian woodland
disturbed wetlands	Torrey pine forest
riparian forest	natural flood channel
southern coastal saltmarsh	Tecate cypress forest
saltpan	
coastal sage scrub (that portion of coastal sage scrub that comprises the range of the California gnatcatcher)	

## SIGNIFICANTLY CONSERVED VEGETATION COMMUNITIES

southern coastal bluff scrub	southern foredunes
riparian scrub	riparian woodland
disturbed wetlands	Torrey pine forest
riparian forest	natural flood channel
southern coastal saltmarsh	Tecate cypress forest
saltpan	
coastal sage scrub	
beach	maritime succulent scrub
oak riparian forest	southern maritime chaparral
freshwater marsh	open water



**County of San Diego  
MSCP Sub-Area Plan**

- State & Federal
- ▨ Re-Approved Mitigation Area
- ▩ Areas Not Preserved
- ▧ Public Lands and Designated
- ▦ Private Open Space
- ▥ Conserved Subject to Agreement with W. side Adjacent
- ▤ Open Ranch Areas Where No Take Permit Will Be Issued
- ▣ Open Space Areas Preserved Designated for Open Space Use Proposed for Development
- ▢ Go 7' Corridor Relating Development Allowed in Balance To Valley Open Space 1' Areas
- Semi For Valley Open Space 0 to 6' zone
- High 30' 10' Designated Areas
- ▧ Open Area Valley Service Use Planning Areas
- ▦ Water Storage Lands
- ▥ Un-Developed Lands in Metropolitan County Segment
- ▤ Un-Developed Lands
- ▣ Outside of MSCP
- ▢ Interstate Corridor
- Lakes
- Sub-Area Segment Boundaries
- ▧ MSCP Boundary
- ▦ Roads
- ▥ City of Chula Vista MSCP
- ▤ Subarea Plan Component Boundaries
- ▣ Proposed State Route 125 Alignment
- ▢ Project Not Affected By Segment Plan






COUNTY OF SAN DIEGO, CALIF  
BOARD OF SUPERVISORS POLICY

Subject

Policy  
Number

Page

MITIGATION BANKING POLICY

I-117

1 of 8

Purpose

This Mitigation Banking Policy is intended to set forth the procedures to be followed in establishing, using, and managing mitigation banks. This Policy is divided in two sections, as follows.

Section 1: Addresses the issue of establishing and administering County owned and managed mitigation banks.

Section 2: Addresses the issue of recognizing and using private mitigation banks.

This Policy will streamline planning for public and private projects because off-site mitigation credits to meet State and Federal Endangered Species Acts ("ESA") and California Environmental Quality Act ("CEQA") requirements will be readily available. Additionally, this Policy will further the goals of the County Open Space Program by directing mitigation to areas in the County with the highest biological value, resulting in optimal use of the preserved land. Elements of this Policy include the following:

Section 1. County Mitigation Banks.

- A. Management framework for overseeing the County's Mitigation Bank Program;
- B. Criteria for selecting lands to be included in mitigation banks;
- C. Process for establishing credits in mitigation banks;
- D. Process for using credits in the bank;
- E. Ownership requirements;
- F. Land/resource management/assessment of costs;
- G. Funding requirements.

Section 2. Private Mitigation Banks.

- A. County recognition of private mitigation banks;
- B. Process for using credits in the bank.
- C. Administration of privately owned banks.

Background

000161 OCT 2297

The County of San Diego carries out a variety of projects to meet its goal of serving the public. These include, but are not limited to, road construction and improvement projects; operation and expansion of solid waste facilities, airports, sewage treatment facilities, courthouse administration, building and operation and expansion

COUNTY OF SAN DIEGO, CALIFORNIA  
BOARD OF SUPERVISORS POLICY

Subject

Policy  
Number

Page

MITIGATION BANKING POLICY

I-117

2 of 8

of detention centers; and construction and improvement of parks. In addition, private development projects for residential, commercial, industrial, recreational, and other purposes are regularly processed through the County. These public and private projects often cause the disturbance of habitat for sensitive species, resulting in the need to mitigate project impacts. A mitigation bank is a technique whereby the County or a private party acquires and manages open space lands for preservation ahead of any need for mitigating a County or private project. Establishment of a County mitigation bank, from which credits may be withdrawn as County projects proceed, will save the County money in mitigation acquisition costs, and will streamline the CEQA process and the granting of approvals under the State and Federal ESAs. Establishing procedures to be followed in using private mitigation banks will likewise streamline the CEQA process for private development projects.

Policy

It is the policy of the Board of Supervisors that:

The County will assemble land within mitigation banks to meet the resource needs of County public projects. The County will also encourage assemblage of land within private mitigation banks.

Section 1. County mitigation banks.

A. Management Framework.

The Chief Administrative Officer shall appoint a Mitigation Bank Technical Committee ("MBT Committee") for overseeing the County's Mitigation Bank Program. The MBT Committee shall include directors or their representatives of the Departments of Parks and Recreation, General Services, Planning and Land Use and Public Works. The purpose of this MBT Committee is to review proposals for mitigation banks to determine conformance to the provisions of this Policy and to make recommendations to the Board of Supervisors, and the Chief Administrative Officer, on the establishment and operation of County mitigation banks. The Committee shall select from its members a Chairperson.

B. Criteria.

The following criteria shall be used in selecting the land to be designated and/or acquired as a County mitigation bank:

1. The property should include sensitive and listed plant and animal species. Property that has the potential for revegetation of sensitive habitat may be considered.
2. The property should be large enough to sustain the biological viability of the resources present or should be adjacent to other permanently protected land so that in combination, the biological viability of the resources will be ensured.

COUNTY OF SAN DIEGO, CALIFORNIA  
BOARD OF SUPERVISORS POLICY

Subject

Policy  
Number

Page

MITIGATION BANKING POLICY

I-17

3 of 8

3. The property should contribute to implementation of the County Open Space Planning efforts where adopted or be identified as high value areas on resource evaluation maps.
4. For property which is to be acquired by the County for a County owned mitigation bank, the property owner must be willing to sell or donate the property to the County.

The following types of property shall not be considered for mitigation banking purposes:

1. Property previously designated for park use or open space purposes; property acquired in the past for mitigation purposes; property designated for a public purpose which is not consistent with habitat/resource protection, ie: Circulation Element right-of-way, or Solid Waste Facility.
2. Property in County ownership which was acquired with funds limiting the use of the property to certain purposes. Examples include property acquired with the road fund and park property acquired with State Bond Act funds, which restricts the use of the land.

C. Process for Establishing Credits in County Banks.

1. Property currently in County ownership or control will be evaluated by the MBT Committee based on the criteria set forth in Section 1. B. above, for potential inclusion in a mitigation bank. An environmental review of the resources present on the site should be performed, and a report generated which includes information on the baseline environmental data (type, quality, extent and location of resources) on the property. The amount of credit to be granted in a bank shall be determined based upon negotiations with the U.S. Fish and Wildlife Service and the California Department of Fish and Game ("the Wildlife Agencies"), using guidelines set forth in the Official Policy on Conservation Banks, adopted April 7, 1995 by the California Resources Agency and the California Environmental Protection Agency. Credits shall be based on the location of the property and resources present on the site. Once the property has been determined by the MBT Committee to be appropriate for inclusion in a bank, and an estimated number of credits determined, the Department of Planning and Land Use should develop a mitigation banking agreement ("Agreement"), in a form approved by County Counsel, and should negotiate the terms of such Agreement with the Wildlife Agencies. The Agreement shall set forth the number of credits available for the property proposed for inclusion in the mitigation bank and a management plan for the property. The Agreement shall be approved by the Board of Supervisors.
2. Each County department shall maintain a list of public projects planned for the upcoming five years. An estimate as to the type and amount of habitat likely to be disturbed by the project should also be prepared. A master compilation of this list shall be maintained by the Department of Planning and Land Use.

COUNTY OF SAN DIEGO, CALIFORNIA  
BOARD OF SUPERVISORS POLICY

Subject

MITIGATION BANKING POLICY

Policy  
Number

Page

I-117

4 of 8

and Land Use. If the County owned bank is exhausted, or the bank does not contain credits of the type needed for a future County project, property should be acquired for mitigation banking purposes, using criteria set forth in Section 1. B., above. Prior to seeking property for inclusion in the bank, the master list of future projects should be consulted to determine what type of habitat to purchase.

3. In acquiring property for County owned mitigation banks, the County will rely on acquiring properties from willing sellers and will not use the power of eminent domain. Once a suitable site for acquisition by the County is found, an environmental review of the resources present on the site should be performed, and a report generated which includes information on the baseline environmental data (type, quality, extent and location of resources) on the property. The amount of credit to be granted in a bank shall be determined based upon negotiations with the Wildlife Agencies, using guidelines set forth in the Official Policy on Conservation Banks, adopted April 7, 1995 by the California Resources Agency and the California Environmental Protection Agency. Credits shall be based on the location of the property and resources present on the site. Informal agreement as to the number of credits available should be reached with the Wildlife Agencies prior to requesting authorization from the Board of Supervisors to purchase the site. Purchase of the site should be contingent upon approval of an Agreement, in a form approved by County Counsel, by the Wildlife Agencies and the Board of Supervisors.

D. Process for Using Credits in the Bank.

The Department of Planning and Land Use shall be responsible for administering and accounting for the credits created by County Mitigation Banking Agreements.

County departments shall analyze their need for mitigation for a project early in the environmental review process. Once the need for mitigation for a particular project is known, the project planner/manager shall contact Planning and Land Use to determine whether credits are available in a County owned mitigation bank to satisfy the project mitigation requirements.

Use of mitigation credits from mitigation banks must be approved by the County discretionary body responsible for certifying/approving the necessary environmental documents for the project, with concurrence from the Resource Agencies. The Department of Planning and Land Use shall be notified when a project has been approved which utilizes credits from a County mitigation bank. The Department of Planning and Land Use shall be responsible for the record keeping task of debiting credits from County mitigation banks as projects are approved.

County Departments shall not be bound to purchase credits from a County mitigation bank when fulfilling the requirement for mitigation of the impacts of a project. If it is appropriate and in the best interests of the County, the County may purchase credits or land from a private bank.

COUNTY OF SAN DIEGO, CALIFORNIA  
BOARD OF SUPERVISORS POLICY

Subject

Policy  
Number

Page

MITIGATION BANKING POLICY

I-117

5 of 8

E. Ownership Requirements.

Mitigation banks must be maintained in perpetuity. Title may be held in fee by the County, the Wildlife Agencies or another entity authorized in the Mitigation Bank Agreement. For banks held in fee by the County, the Wildlife Agencies require that the County grant an open space easement over mitigation bank property either to a non-profit organization which has as its primary purpose the preservation, protection or enhancement of land in its natural, scenic, forested or open space condition or use, or to the State Department of Fish and Game, or any district or other state or local governmental entity if otherwise authorized to acquire and hold title to real property.

F. Land/Resource Management/Assessment of Costs.

Management of resources present in the mitigation banks is necessary in order to maintain the bank's habitat value. Before property is acquired for a County mitigation bank, a management plan for the property shall be prepared under the direction of the Department of Parks and Recreation and approved by the MBT Committee. The goal of the management plan shall be to maintain the property, and the resources present on the property, as a viable habitat, in perpetuity. The management plan shall include, but not be limited to the following:

- Baseline environmental data (type, quality, extent and location of resources on the property).
- A description of the number of credits available.
- A description of the access control measures to be taken.
- A description of the vegetation management techniques appropriate to the resources.
- A listing of any reporting requirements established by the Resource Agencies.
- An estimate of the start-up and annual costs for administration and management activities, including an estimate of the amount necessary to capitalize a trust account to support the bank in perpetuity.
- Any other management activity specifically required in order to maintain the resources in their present condition.

The management plan for County mitigation banks should be approved by the Resource Agencies, and included in the terms of the mitigation banking agreement identified in Section I. C., above. The management plan shall be administered under the direction of the Department of Parks and Recreation, unless another agency has been designated by the Board of Supervisors to administer the management plan for County mitigation banks. Based on the resources present, size and location of the bank in relation to other open space lands managed by

COUNTY OF SAN DIEGO, CALIFORNIA  
BOARD OF SUPERVISORS POLICY

Subject

MITIGATION BANKING POLICY

Policy  
Number

I-117

Page

6 of 8

the County, management activities may be carried out directly by County staff or under contract with a private resource manager. The cost of the preparation of the management plans should either be included in the planning costs of a County project requiring the establishment of a bank or as part of the annual Department of Parks and Recreation budget. This determination will be made by the Board of Supervisors during the annual budget process.

G. Funding Requirements/Cost of Credits.

For County projects, costs associated with the mitigation bank will be borne by the Departments which initiate the projects ultimately using credits in a Bank. Based on the information obtained from the management plan referenced above, a trust account will be established by Auditor and Controller to fund the management and administration of the bank. Interest from the account will be used to fund administration and management costs. If an enterprise fund was used to initially establish a mitigation bank, as credits are allocated to County projects, a prorated amount for the initial capitalization shall be paid to the account that originally established the trust fund. A separate Resource Replacement Fund be established for replacing the resource value of banks as they are credited to projects through either buying additional lands or credits in private banks. The purchase of each credit should include a contribution to this replacement fund in addition to contributing to the operation and maintenance fund. The MBT Committee shall determine the credit cost per unit.

Section 2. Private Mitigation Banks.

A. County Recognition of Private Mitigation Banks.

The County will rely upon the Wildlife Agencies and private individuals for the establishment of private mitigation banks. The Official Policy on Conservation Banks sets forth standards and criteria for establishment of private mitigation banks. This Policy requires an agreements between the bank developer and the appropriate regulatory agency(s). The Official Policy provides for assuring biological viability, resource protection, resource management, and establishment of credits. Prior to the approval of a bank in the unincorporated area by the State of California, the County will request that it be notified and allowed to review the proposed bank and comment on the conformance of proposed banks with this policy (Section 1.8.1-3). The MBT Committee shall review and comment on each proposal for a private mitigation bank within 30 days of the receipt of the request. The County shall rely on the Wildlife Agencies to require and approve management plans for private mitigation banks.

The County will also request the State to provide the County with a list of approved banks in the San Diego region which the County will make available by posting to agencies and private individuals needing mitigation credits.

000166 OCT 22 97

COUNTY OF SAN DIEGO, CALIFORNIA  
BOARD OF SUPERVISORS POLICY

Subject

MITIGATION BANKING POLICY

Policy  
Number

I-117

Page

7 of 8

B. Guidelines for the Use of Mitigation Credits from Private Mitigation Banks for Private Projects.

When a project proposes to use mitigation credits from a private mitigation bank, the Department of Planning and Land Use shall verify the bank has a valid mitigation bank agreement approved by the Wildlife Agencies. The privately owned bank owner/manager and project proponent shall also be required to provide to the Department of Planning and Land Use an accounting of the available mitigation bank credits.

The Department of Planning and Land Use shall review the proposal for use of mitigation credits and shall submit a recommendation on the use of such credits to the approving authority. Use of mitigation credits shall be reviewed and approved on a case by case basis.

C. Administration of Privately Owned Banks.

Responsibility for administration of privately owned mitigation banks shall be established and monitored by the Wildlife Agencies as a requirement of mitigation banking agreements.

Costs associated with the use of privately owned mitigation banks will be addressed in a manner consistent with the terms of the mitigation bank agreement approved by the Wildlife Agencies.

COUNTY OF SAN DIEGO, CALIFORNIA  
BOARD OF SUPERVISORS POLICY

Subject

MITIGATION BANKING POLICY

Policy  
Number

I-117

Pag

8 of 8

Board Action

10/4/95 (2)

Sunset Date

12/31/03

CAO Reference

1. Department of Planning and Land Use
2. Department of Parks and Recreation
3. Department of Public Works
4. General Services

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000168 OCT 2297

RARE, NARROW ENDEMIC ANIMAL SPECIES  
 KNOWN FROM SAN DIEGO COUNTY WITHIN THE MSCP SUBAREA

## Mammals:

Perognathus longimembris pacificus, Pacific pocket mouse, FE, SSC

## Birds:

Aquila chrysaetos, golden eagle (nesting), SSC  
Falco peregrinus anatum, American peregrine falcon, CE, FE  
Sterna antillarum browni, California least tern, CE, FE  
Passerculus sandwichensis beldingi, Belding's savannah sparrow, CE  
Rallus longirostris levipes, light-footed clapper rail, CE, FE  
Laterallus jamaicensis coturniculus, California black rail, CT  
Coccyzus americanus occidentalis, western yellow-billed cuckoo, CE  
Empidonax trailli extimus, southwestern willow flycatcher, CE, FE  
Campylorhynchus brunneicapillus couesi, coastal cactus wren, SSC  
Vireo belli pusillus, Least Bell's Vireo, FE, CE  
Speotyto cunicularia hypugaea, Burrowing owl, SSC

## Reptiles:

Clemmys marmorata pallida, Southwestern pond turtle, SSC

## Amphibians:

Bufo microscaphus californicus, arroyo southwestern toad, FE, SSC  
Rana aurora draytoni, California red-legged frog, FT, SSC

## Fishes:

Eucyclogobius newberryi, tidewater goby, FE, SSC

## Invertebrates:

Branchinecta sandiegoensis, San Diego fairy shrimp, FE  
Streptocephalus wootoni, Riverside fairy shrimp, FE  
Euphydryas editha quino, Quino checkerspot butterfly, FE  
Euphys vestris harbisoni, Dun skipper  
Mitoura thornei, Thornes hairstreak butterfly

Status (Federal/State)

FE = Federally endangered  
 CE = State Endangered  
 CT = State Threatened  
 SSC = State Species of Special Concern



EXHIBIT I

Habitat Accounting Model to be provided by the U.S. Fish and  
Wildlife Service and California Department of Fish and Game.





# County of San Diego

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## DEPARTMENT OF PLANNING AND LAND USE

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October 3, 1997

### ADDENDUM FOR COUNTY MULTIPLE SPECIES CONSERVATION PROGRAM

#### SUMMARY OF PREVIOUS FINAL ENVIRONMENTAL IMPACT REPORT

The County of San Diego portion of the Multiple Species Conservation Program (MSCP) Plan was addressed in the Recirculated Draft Joint Environmental Impact Report/Environmental Impact Statement (EIR/EIS) titled "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. That document addressed the overall MSCP Plan as well as individual subarea plans for a number of participating jurisdictions. That Joint EIR/EIS was certified by the City of San Diego, as the lead agency, on March 18, 1997.

In that Joint EIR/EIS, a series of impacts were analyzed with respect to the County plan and its implementing ordinance proposals. Specifically, impacts to Land Use were found to be not significant, impacts to Biological Resources including Direct Impacts to Covered Species, Direct Impacts to Vegetation Communities/Habitats, Indirect Impacts to Covered Species, Indirect Impacts to Uncovered Non-Wetland Sensitive Species, and Indirect Impacts to Non-Wetland Sensitive Vegetation Communities/Habitats were found to be significant but mitigable, and impacts to Public Services and Utilities were found to be significant and not mitigable. Overriding considerations were adopted by the City of San Diego as the lead agency.

The County portion of the MSCP program contains a subarea plan document that includes goals, criteria and a process for review of projects by the Wildlife Agencies, an implementing Biological Mitigation Ordinance, and an Implementing Agreement. The County Subarea Plan includes some areas, the Lake Hodges Segment and the South County Segment, in which the open space has been determined through negotiation with the Wildlife Agencies, the property owners and the County. However the Metro-Lakeside-Jamul Segment of the County Subarea, the Plan will regulate the development in a manner to assemble a

preserve system through the use of the criteria and the Biological Mitigation Ordinance.

## CHANGES TO THE PROJECT DESCRIPTION IN THE EIR

### Introduction and Background

The public review documents for the Multiple Species Conservation Program plan included a Subarea Plan for the unincorporated area, a draft Biological Mitigation Ordinance, and a Model Implementation Agreement. The EIR/EIS also referred to the existing Grading and Clearing Ordinance, a County ordinance which, in certain cases, exempts agricultural clearing from regulation and clearing for residential uses. During the public review period for the Draft Joint EIR/EIS, a number of comments were received discussing the exemptions from the draft Biological Mitigation Ordinance and Grading and Clearing Ordinance for agricultural uses and for residential lands. In response to those comments, the Final Joint EIR/EIS included revisions which included the addition of table 4.3-17A which identifies the acreages of land which could potentially be exempt from the Grading and Clearing Ordinance.

Since the Joint EIR/EIS was certified, the Wildlife Agencies have proposed modifications which would reduce the scope of the exemptions for both the agricultural uses and the residential uses contained in the Grading and Clearing Ordinance (also known as the "Brushing and Clearing Ordinance.") These modifications will be included in the Biological Mitigation Ordinance.

As described below, the form of the Biological Mitigation Ordinance and several details of the County Subarea Plan text have been revised from the versions that were distributed for public review. Furthermore, the Implementing Agreement that was ultimately created for the unincorporated area differs somewhat from the model that was included in the MSCP plan. However, the differences are minor and would not be considered as having a potential for causing any type of environmental impact.

### REVISIONS TO BE ADDRESSED IN THE ADDENDUM:

Revisions to the draft Biological Mitigation Ordinance which was included in the County Subarea Plan as part of Volume II of the Draft MSCP Plan;

Revisions to the draft County Subarea Plan text which was included as part of Volume II of the Draft MSCP Plan;

Revisions to the Model Implementing Agreement which was included in Volume I of the Draft MSCP Plan; and

Modifications to the existing Habitat Loss Permit Ordinance.

#### COMPONENTS OF THE PROJECTS COVERED BY THE ADDENDUM

##### Biological Mitigation Ordinance

As was described above, portions of the County plan would be implemented by the use of a new Biological Mitigation Ordinance which includes changes in the existing clearing regulations. The revisions to the Biological Mitigation Ordinance are not substantive. Principally the Ordinance has been reorganized for ease of comprehension.

The definition of Biological Resource Core Area has been clarified in the revised draft. The definition of Biological Resource Core area has been changed to indicate that land shown on the Wildlife Agencies' Preapproved Mitigation Map falls within the definition of Biological Resource Core area. In addition, certain land adjacent to or contiguous with the area covered by the Preapproved Mitigation Map now falls within the definition of Biological Resource Core Area. To qualify, the land must be located within a mosaic of habitat which contains biological resources that support or contribute to the long-term survival of sensitive species in addition to being adjacent to or contiguous with the land shown on the Preapproved Mitigation Map. Finally, land that is part of a regional linkage or corridor is included as Biological Resource Core Area. A series of four characteristics are set out within the ordinance to determine whether the land qualifies as a linkage. These are: (1) whether the land contains topography which serves to provide for movement of all sizes of wildlife; (2) whether the land is used by wildlife, including large animals on a regional scale; (3) whether the land contains adequate vegetation cover which allows for wildlife cover and visual continuity which encourages the use of the corridor by wildlife; and (4) or whether the land by virtue of its location is indicated an important corridor on the Wildlife Agencies' Preapproved Mitigation Map.

The definition of Biological Resource Core area also includes land shown on the Habitat Evaluation Map as Very High or High and links significant blocks of habitat. This definition excludes land which is isolated or links small, isolated patches of habitat and land that has been affected by existing development to create adverse edge effects.

Multiple Species  
Conservation Program

-4-

Land that consists of a portion of a large block of diverse and undisturbed habitat that contributes to the conservation of Sensitive Species qualifies as Biological Resource Core Area.

Finally, land that contains a high number of Sensitive Species as defined by the Ordinance and that is adjacent or contiguous to surrounding undisturbed habitats and that contains soil derived from the following geologic formations: (1) gabbroic rock; (2) metavolcanic rock; (3) clay; and (4) coastal sand stones is Biological Resource Core Area.

Certain requirements have been added to the Ordinance for species specific mitigation. In general project applicants must meet species specific requirements of Table 3-5 of the Multiple Species Conservation Program Plan. In particular, the ordinance now contains specific requirements for the following species: (1) burrowing owls; (2) arroyo toad; and (3) least Bell's vireo. Impacts to vernal pools and their watersheds in naturally occurring complexes and wetlands shall be avoided to the maximum extent practicable. The ordinance contains grading limitations for the following species: (1) coastal cactus wren; (2) California gnatcatcher; (3) least Bell's vireo; and (4) Southwestern willow flycatcher.

The Ordinance no longer contains a list of rare and endangered plants. Instead, plants are grouped according to the following criteria: (1) Group A - plants that are rare, threatened or endangered in California and elsewhere; (2) Group B - plants that are rare, threatened or endangered in California but more common elsewhere; (3) Group C - plants which may be quite rare, but need more information to determine their true rarity status; and (4) Group D - plants of limited distribution and are uncommon, but not presently rare or endangered.

Regarding the issue of grasslands, until annual grasslands achieve the status of a significantly conserved habitat, the ordinance requires that annual grasslands shall be mitigated at a ratio of 1/2:1.

The basic process of determining mitigation requirements remains unchanged from that version that was distributed for public input, including the mitigation ratios to be applied when habitats are impacted.

The section dealing with biological resources in floodplains and floodways was deleted as duplicative of existing Resource Protection Ordinance protections while they remain in effect. When the Resource Protection Ordinance is

000459 OCT 2297

modified or deleted, these protections will be carried into the ordinance which replaces it.

#### Subarea Plan

#### Text

The Subarea Plan text was reorganized to improve readability and remove redundant sections. Several sections that were restated in each of the Lake Hodges, Metro-Lakeside-Jamul and South County Segments were combined together in the first chapter including general descriptions of land uses allowed in the preserve, land uses adjacent to the preserve, fuel modification zones, funding preserve maintenance, and preserve ownership and conveyance.

In Chapter 2, the section on uncovered species has been deleted. Table 2-1 has been corrected to reflect the true acreage of alkali meadow preserved. The status of each project within the Lake Hodges Segment has been updated. Section 2.11 has been added to designate the Lusardi Creek corridor as a focal area for directed acquisition as public funds become available. Attachment 2 has been changed to reflect the coverage reduction under MSCP from 87 to 85 species.

In Chapter 3 updates to the status of each project have been made, specifically to the Otay Ranch and Las Montañas projects. Appendix A, the MSCP covered species list which is included as an attachment to Chapter 2, has also been removed.

In Chapter 4, under Preserve Design Criteria for Cores and Linkages, the fourth bullet has been expanded to acknowledge the criteria to minimize edge affects found in the MSCP Plan and to list the potential impacts that need to be analyzed under such circumstances. Under Goals and Criteria for Linkages and Corridors, the first bullet has been expanded to indicate that linkages are as defined in the Biological Mitigation Ordinance. The section on Project Review within the Metro-Lakeside-Jamul Segment has been modified with respect to County projects. In the revised version, the Wildlife Agencies will maintain their legally required reviews associated with the California Environmental Quality Act, but would provide the major review of conformance and progress under the plan on an annual basis. Under unusual circumstances, they could withhold take authorization of an individual project if it was approved though because it met certain specified conditions as being detrimental for the potential to create a regional preserve system.

## Figures

Figure 1-1 depicting the MSCP subareas has been replaced with one showing details of the County Subareas. Figure 1-2 has been updated to show further agreements on open space with developers in the Lake Hodges area and South County Segment. Figure 1-3 (Alternative 2) has been eliminated and Figure 1-3 has been updated to represent the current status of the respective segments. Figure 1-4 has been redrawn to clarify the Amendment Process for the Lake Hodges and South County Segments. Figure 4-2, the review procedure for projects in the Metro-Lakeside-Jamul Segment, has been redrawn and updated.

## Grading and Clearing Ordinance

While the Joint EIR/EIS found that impacts to biological resources were significant but mitigable, there have been proposals by the Wildlife Agencies to strengthen the restrictions on grading and clearing associated with new agriculture and with residential development. The effect of the proposals would be to reduce the number of acres that could be lost without mitigation, due to grading and clearing and new agricultural uses. The changes would be contained in the Biological Mitigation Ordinance and modify the agricultural exemptions and residential exemptions contained in the existing Brushing and Clearing Ordinance. The specifics of the proposed modifications are as follows:

### Agricultural Clearing

Currently, agricultural clearing is exempt from the grading and clearing ordinance if a property owner signs a statement that the land will be planted within one year and be maintained in agriculture for five years. The proposal to reduce the agricultural clearing is to refer to the Preapproved Mitigation Area land map that has been prepared by the Wildlife Agencies and attached to their letter dated June 28, 1996 (Appendix C of the Joint EIR/EIS and Attachment 1 of the County Subarea Plan.) If a property is located outside of the Preapproved Mitigation Area, then new agricultural clearing may occur if the landowner commits in writing to plant within one year and maintain it as agriculture for 10 years. As with the existing ordinance, floodplain areas would also need to be avoided. There would also be a 3,000 acre limit for the MSCP area for such clearing.

If a property is located inside of the Preapproved Mitigation Area, then it would be necessary to evaluate the impacts of new agricultural

clearing under the proposed Biological Mitigation Ordinance. This would require a discretionary review by the County and may require mitigation according to the ratios given in the Biological Mitigation Ordinance for impacts to lands supporting natural habitat.

#### Residential Clearing

Currently, the Grading and Clearing Ordinance exempts property from requiring a grading permit if it is less than ten acres in size within the County Water Authority Boundaries. In a manner similar to the Agricultural Clearing above, the residential component of the exemption from the Grading and Clearing Ordinance would be modified relative to the location of the property being evaluated on the Preapproved Mitigation Area Map prepared by the Wildlife Agencies. Under the new exemption limitations, on property 10 acres or less, exemptions for clearing would be limited to 2 acres for lands within the Preapproved Mitigation Area, and 5 acres for lands outside of the Preapproved Mitigation Area. If a property owner wanted to clear additional land, it would be necessary to comply with the Biological Mitigation Ordinance which mandates a discretionary review and may require mitigation according to the ratios set out in the Biological Mitigation Ordinance.

Further analysis of the data contained in Table 4.3-17A of the Final EIR was performed using the number of parcels in each acreage category to estimate average lot sizes. Then the effect of a clearing exemption of 2, 5 and 10 acres as a fraction of those parcel sizes was applied to gain a more accurate estimate of the worst case scenario for high and very high value habitat loss.

With the additional number of parcels information, the average parcel size in each category could be estimated and the fraction of the total acreage in the category susceptible to clearing with different exemptions could be determined. This was then expressed as a percentage of the high and very high habitat remaining in the Subarea Plan area.

The result was that acreages that could be potentially cleared were greater for the 2 and 5 acre exemptions, but unchanged for the 10 acre exemption. Reduction of the exemption to 2 acres within the Preapproved Mitigation Area and 5 acres outside of the Preapproved Mitigation Area reduces the worst case scenario amount of clearing. The final EIR lists on page 30 reasons why clearing via this exemption is expected to be considerably less than that calculated.

Table 1  
FURTHER ANALYSIS OF LAND WHICH MAY BE EXEMPT FROM  
THE COUNTY OF SAN DIEGO GRADING AND CLEARING ORDINANCE

Parcels				
	< 2 acres	2-5 acres	5-10 acres	total
number	54,306	5,162	1,723	61,191
average size	0.57	3.40	7.94	
Acreages				
habitat value	total			
high	407	1,222	2,127	44,648
very high	1,342	2,256	3,182	80,294
total high and very high	1,749	3,478	5,309	124,942
Effect of Exemptions on High and Very High Habitat				
	2 acres	5 acres	10 acres	
potential acreages lost (using average parcel sizes)	5,134	8,569	10,536	
% of total in those categories	4.1%	6.9%	8.4%	

An alternative proposal may be that the limitation on clearing only apply to land in the Preapproved Mitigation Areas identified on the map created by the Wildlife Agencies. Under that alternative, lands outside of the lands shown as Preapproved Mitigation Area on the wildlife agency map would not be limited to the two acre exemption area.

#### Implementing Agreement

The Model Implementing Agreement included in the Draft MSCP Plan was created to set forth the basic rights and duties of the jurisdictions within the MSCP Plan area. The City of San Diego based its implementing agreement on the model agreement contained in the MSCP Plan. The City approved its Implementing Agreement on March 18, 1997.

The County of San Diego's Implementing Agreement is also based on the model agreement and, in substance, is almost identical to the City's. Section 10.0 contains specific requirements that pertain to the county. That section sets out the County's specific preserve obligations for MSCP. The total number of acres that will be preserved to meet Subarea Plan goals is 101,268. Of these, 59,969 are currently preserved or planned for dedication at the time of the plan preparation (August 1996). Approximately 41,299 acres are required to

Multiple Species  
Conservation Program

-9-

complete the preserve. Of these acres, 9,425 acres will be acquired by federal and state funds and 9,425 acres will be acquired by state funds. Application of the Biological Mitigation Ordinance is expected to result in 22,450 acres of preserved land set aside.

The County has agreed to permanently preserve the total amount of land specified in the Subarea Plan. However, the total number of acres committed to the ultimate preserve through any one of the mechanisms identified in Section 10.8 may vary from the above estimates.

Under the Implementing Agreement, the County is required to comply with the preserve guidelines set out in Sections 1.2.1, 1.2.2, 1.2, 1.4, 1.10, 1.10.1, and 1.10.2, and 1.11 of the Subarea Plan. The County must make the findings set out in the Biological Mitigation Ordinance set out in a.- f. of the ordinance in order for an essential public facility to be exempt from the Ordinance.

Impacts to vernal pools in naturally occurring complexes and wetlands will be avoided to the maximum extent practicable.

Existing mining operations have the option of having their existing mitigation requirements reviewed by the County for compliance with the requirements of the Subarea Plan. If their existing mitigation requirements comply, such existing mining operations may receive certificates of inclusion and will receive the benefit of the County's Take Authorizations.

Where additional mitigation is required to achieve Third Party Beneficiary Status, mitigation already incorporated into the existing Major Use Permit that is consistent with the Biological Mitigation Ordinance and MSCP shall be considered to contribute to the requirements needed to achieve consistency with the BMO and MSCP and Subarea Plans. Any additional mitigation required would not apply to areas that have already been mined unless take of covered species in those areas is likely to occur. Any mitigation for impacts to covered species required by the existing Major Use Permit may be used to offset on an acre-for-acre basis the new mitigation requirements provided that the restored habitat is of like kind and it provides the same values and functions as the required mitigation lands and the habitat is dedicated in perpetuity to the preserve through a conservation easement or fee title.

In most other respects, the County's Implementing Agreement is similar to the City's with the exception that the Metro-Lakeside-Jamul Segment of the County's Subarea Plan contains no mapped preserve planning area. In this

000464 OCT 2297

area, criteria will direct the assembly of the ultimate preserve. With this exception and with the exception of the terms outlined above, the County's Implementing Agreement parallels the City's Implementing Agreement in form and substance.

#### Habitat Loss Permit

The ordinance which requires a Habitat Loss Permit for the loss of Coastal sage scrub is being modified to remove the requirement for such a permit inside the MSCP Plan area. The MSCP Plan includes requirements for the preservation of the California gnatcatcher and its coastal sage scrub habitat. The intent has always been that once an NCCP plan was approved, a Habitat Loss Permit would no longer be required because all land development proposals must then conform to the approved NCCP plan.

#### CONCLUSIONS OF PROPOSED PROJECT ANALYSIS

The environmental impacts of the existing regulations including exemptions for agricultural clearing and clearing associated with residential land were addressed in the Joint EIR/EIS prepared for the MSCP plan. This addendum addresses the proposed additional modifications to the Grading and Clearing Ordinance to reduce the potential for impacts that may occur from such clearing. These modifications to the ordinance would result in a reduction in the amount of habitat lands that could be cleared without discretionary review under the Biological Mitigation Ordinance.

The changes proposed for the Biological Mitigation Ordinance, the Subarea Plan and the Implementing Agreement would not result in any adverse impacts over and above those that were addressed in the Joint EIR/EIS.

#### EXPLANATION OF THE DECISION NOT TO PREPARE A SUBSEQUENT OR SUPPLEMENTAL EIR

The Department of Planning and Land Use has concluded the Final Environmental Impact Report dated August 1996 and certified by the City of San Diego on March 18, 1997, adequately addresses the environmental effects associated with the current project and the proposed modification of the Grading and Clearing Ordinance to limit impacts due to agricultural and residential clearing. Therefore, no Subsequent or Supplemental Environmental Impact Report will be necessary prior to the decision on the subject project.

The following discussion is provided in support of this conclusion:

CEQA Guidelines §15162 states that:

(a) When an EIR has been certified or a ND has been adopted for a project, no subsequent EIR/ND shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in light of the whole public record, one or more of the following:

1. Substantial changes are proposed in the project which will require major revisions of the previous EIR or ND due to the involvement of new significant environmental effects or a substantial increase in the severity of a previously identified significant effects.

Discussion:

The circulated Environmental Impact Report for the MSCP addressed "no change" for the Grading and Clearing Ordinance. Its review found no significant impacts associated with the exemptions from the existing grading and clearing ordinance. The proposed changes would reduce the amount of clearing that could be performed without requiring review under the County proposed Biological Mitigation Ordinance. These would be considered environmentally beneficial.

The changes to the Subarea Plan, the Biological Mitigation Ordinance and the Implementing Agreement generally clarify the requirements and procedures that were described in the draft Plan and Model Implementing Agreement. The replacement of the Habitat Loss Permit requirements with the requirements of the MSCP Plan is one of the main tenants of the program. The MSCP Plan mandates review of potential impacts to the California gnatcatcher and its coastal sage scrub habitat as well as other species. The Plan is much more specific in the requirements for mitigation than are the Habitat Loss Permit requirements.

2. Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or ND due to the involvement of new significant environmental effects or a substantial increase in the severity of a previously identified significant effects.

Discussion:

There have been no changes in circumstances regarding the proposed implementation of the MSCP Plan and the approval of the supporting environmental documentation. The proposed revisions themselves would not be considered changes in circumstances, because the proposed revisions to the Model Implementing Agreement, the Subarea Plan and the Biological Mitigation Ordinance are largely administrative and procedural. The only change, other than clarification of specific details for the County program associated with the project, has been the proposed modifications to the Grading and Clearing Ordinance. These modifications were not required to mitigate impacts associated with the Plan because the impacts of the Plan were not and are not considered to be severe enough to require mitigation. However, the proposed changes in the Grading and Clearing Ordinance would reduce the amount of clearing that would be possible without the application of environmental review and the Biological Mitigation Ordinance.

3. New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as or the ND was adopted, shows any of the following:

- A) The project will have one or more significant effect(s) not discussed in the previous EIR or ND; or

Discussion:

The impacts of the County MSCP Plan were adequately addressed in the original draft EIR/EIS. The Grading and Clearing Ordinance which requires a discretionary permit for clearing of native vegetation was analyzed in the Joint EIR/EIS. The evaluation included an analysis of the exemptions within this ordinance for certain uses that is contained within it. No additional environmental impacts have been identified. Table 4.3-17A of the Final Joint EIR/EIS indicated the level of clearing that could occur under a worst-case scenario with the County exemptions. Those levels of clearing were considered to be insignificant in the Joint EIR/EIS.

- B) Significant effects previously examined will be substantially more severe than shown in the previous EIR/ND; or

Discussion:

As identified in A above, the Final Joint EIR/EIS identified the level of impacts that would occur as a result of the County MSCP plan and implementation proposals. The impacts that were identified have not changed as a result of any modifications of the proposal and no new impacts have been identified which are likely to occur from the project. The proposed modifications to the Biological Mitigation Ordinance and the Implementing Agreement are strictly for clarification of the requirements of those documents and would not have a substantive effect to change the proposed plan.

- C) Mitigation Measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

Discussion:

The proposed application of restrictions to the amount of clearing to be exempted in the Grading and Clearing Ordinance was not evaluated in the Joint EIR/EIS. It would not cause additional potential environmental impacts. It is proposed as a change in the project rather than a mitigation measure.

- D) Mitigation measures or alternatives which are considerably different from those analyzed in the Previous EIR/ND would substantially reduce one or more significant effects on the environment, but the project proponent has declined to adopt the mitigation measure or alternative.

Discussion:

As described above, the impacts of the proposed MSCP and the existing Grading and Clearing Ordinance on biological resources were found to be significant but mitigable. Additional mitigation measures were considered not necessary. Proposed revisions to the Grading and Clearing Ordinance are a change in project proposed by the Wildlife Agencies.

CONCLUSION

Given that none of the above criteria triggered the preparation of a Subsequent or Supplemental Environmental Impact Report, in accordance with CEQA Guidelines §15162, no Subsequent or Supplemental EIR is required. Given that the changes associated with this project and that changes to the previously certified EIR are minor technical changes, this Addendum has been prepared in accordance with CEQA Guidelines §15164.

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