

O-9 THE NATURE CONSERVANCY

- O-9-1** The comment provides background information on The Nature Conservancy (Conservancy). The comment does not raise an issue regarding the adequacy of the Draft EIR; therefore, no further response is required or provided.
- O-9-2** The comment provides background information regarding the location of the Proposed Project and the San Diego National Wildlife Refuge. The comment does not raise an issue regarding the adequacy of the Draft EIR; therefore, no further response is required or provided.
- O-9-3** The comment states that all of the public lands (discussed in Comment O-9-2) rely on minimizing the loss and fragmentation of the remaining private lands and effective management to preserve the conservation values of the area.

The County clarifies that, the Proposed Project is consistent with the applicable habitat conservation and management plans, including the Multiple Species Conservation Program (MSCP) Plan, the MSCP County Subarea Plan, and the Otay Ranch Resource Management Plan (RMP). Thus, the “loss” of private lands within the Project Area has already been anticipated by the MSCP. The County would further like to clarify the approval of the Otay Ranch General Development Plan/Otay Subregional Plan, Volume II (Otay Ranch GDP/SRP) occurred before formation of the San Diego National Wildlife Refuge.

The County notes that the Development Footprint of the Proposed Project is consistent with the County General Plan, Otay Ranch GDP/SRP, Otay Ranch RMP, and MSCP County Subarea Plan. The Proposed Project is part of the Otay Ranch, and as such is subject to the requirements of the Otay Ranch RMP. Accordingly, the Proposed Project anticipates forming a Communities Facilities District (CFD) and taxing project parcels to fund the Otay Ranch Preserve Owner/Manager’s ongoing management and maintenance of the Otay Ranch Preserve.

- O-9-4** The comment states that Proctor Valley support some of the last remaining coastal habitats of Southern California, each supporting many rare and endangered species. The comment further states that Proctor Valley provides large expanses of coastal sage scrub, grassland, and riparian habitats as well as vernal pools. The comment does not raise an issue regarding the adequacy of the Draft EIR; therefore, no further response is required or provided.
- O-9-5** The comment states the Proctor Valley habitat area specifically supports habitat for California gnatcatcher (*Poliptila californica*), Quino checkerspot butterfly

(*Euphydryas editha quino*), Otay tarplant (*Deinandra conjugens*), and San Diego ambrosia (*Ambrosia pumila*). The comment does not raise an issue regarding the adequacy of the Draft EIR; therefore, no further response is required or provided.

O-9-6 The comment states that vernal pools in Proctor Valley support the federally endangered San Diego fairy shrimp (*Branchinecta sandiegonensis*). The comment does not raise an issue regarding the adequacy of the Draft EIR; therefore, no further response is required or provided.

O-9-7 The comment states the Proctor Valley habitat area is vital to preserving the foraging and nesting habitats for the golden eagle (*Aquila chrysaetos*) and that one pair has nested on adjacent San Miguel Mountain.

The County notes that the golden eagle nest that was located on San Miguel Mountain was destroyed during the 2007 Harris Fire and has not been rebuilt or recolonized. Please refer to **Thematic Response – Golden Eagle**. The comment does not raise an issue regarding the adequacy of the Draft EIR; therefore, no further response is required or provided.

O-9-8 The comment states that the Conservancy continues to have concerns about the Village 14 development, and indicates that the Conservancy has reached out to the Proposed Project applicant to resolve issues related to impacts on species and wildlife connectivity. The comment notes that the applicant was willing to exchange ideas on how to redesign the project to decrease impacts, but that they were unable to resolve the Conservancy's issues with the Proposed Project in its current configuration.

The comment addresses impacts to species and wildlife connectivity that received extensive analysis in Section 2.4, Biological Resources, of the Draft EIR. Specifically, please refer to Section 2.4.3 of the Draft EIR, which analyzes the Proposed Project's impacts to biological resources and wildlife movement. The Draft EIR determined that the Proposed Project's impacts to biological resources would be reduced to less than significant through implementation of mitigation measures M-BI-1 through M-BI-21.

O-9-9 The comment expresses the commenter's opinion that the ecological health of the greater San Diego National Wildlife Refuge and integrity of the MSCP cannot be achieved with the Proposed Project as designed.

The County acknowledges the comment as an introduction to comments that follow and refers the commenter to **Responses to Comments O-9-11 through O-9-24**. Further, with respect to the Proposed Project's impacts on the MSCP Plan and County

Subarea Plan, the County refers the commenter to Section 2.4.3.5 of the Draft EIR. The Draft EIR determined that the Proposed Project would be consistent with the MSCP Plan and MSCP County Subarea Plan; therefore, the County does not agree with the comment that the integrity of the MSCP Plan and the MSCP County Subarea Plan cannot be achieved with the Proposed Project.

- O-9-10** The comment states the commenter has concerns with the location and configuration of the Proposed Project and its impacts on the MSCP. The comment provides an introduction to comments that follow.

Please refer to **Responses to Comments O-9-11 through O-9-24**. Further, with respect to the Proposed Project's impacts on the MSCP Plan and County Subarea Plan, the County refers the commenter to Section 2.4.3.5 of the Draft EIR. As described therein, and as further detailed in **Thematic Response – Baldwin Letter and PV1, PV2, and PV3**, the Proposed Project would be consistent with the MSCP Plan and the MSCP County Subarea Plan.

- O-9-11** The comment asserts the Proposed Project's intense level of development and network of access roads through protected lands would significantly increase the spatial extent and intensity of edge effects of nighttime lighting, runoff, increased wildfire ignitions, spread of invasive plants and animals, disturbance of intact soils and vegetation, and increased noise related to human activities. The comment further asserts that these impacts would extend well beyond the Project's Development Footprint onto adjoining conserved lands and that cannot be mitigated by existing land managers in Proctor Valley.

The County notes that the Proposed Project is consistent with the MSCP Plan and MSCP County Subarea Plan, both of which anticipated the kind of the edge effects listed in the comment. In fact, the MSCP Plan and County Subarea Plan establish a Preserve system, designed by the California Department of Fish and Wildlife (CDFW) and the U.S. Fish and Wildlife Service (USFWS) (collectively, Wildlife Agencies) and other Plan participants, that includes preserve edge guidelines (that are addressed in the Project's Preserve Edge Plan) and management activities to reduce edge effects. Management of long-term indirect impacts are addressed in the MSCP Plan in Section 6.3, Guidelines for Preserve Management, including Section 6.3.1, Preparation of Framework Management Plans; Section 6.3.2, Responsibility for Preserve Management and Biological Monitoring; Section 6.3.3, Preserve Management on Private Lands; Section 6.3.4, Fire Management; Section 6.3.5, Restoration; Section 6.3.7, Hydrology; Section 6.3.7, Fencing, Signage, and Lighting; Section 6.3.8, Predator and Exotic Species Control; Section 6.3.9, Species

Reintroduction; and Section 6.3.10, Enforcement. Specifically, the MSCP Plan states that “through the subarea plans and regulations, the participating jurisdictions and other take authorization holders will ensure that that direct and indirect impacts of new development on the preserve will be minimized using good land planning and design principles and preserve management provisions” (page 6-3). As such, by incorporating the vast majority of the Proposed Project as a hardline area that was previously analyzed and approved in the MSCP Plan, MSCP County Subarea Plan, and Otay Ranch RMP, which assumed this level of development and corresponding habitat loss, the Proposed Project can be implemented consistent with the habitat loss findings set forth in Table 3-5 of the MSCP Plan and incorporated by reference into the USFWS-issued Section 10 permit. The MSCP Preserve was deemed to be satisfactory per the Biological Opinion (USFWS 1998) to mitigate for development impacts within the MSCP County Subarea Plan.

Summaries of potential indirect impacts to various biological resources are provided in the Draft EIR in Section 2.4.3, Analysis of Project Effects and Determination as to Significance, including special-status plant species (2.4-89), special-status wildlife species (2.4-89 and 2.4-90), jurisdictional aquatic resources (page 2.4-98), sensitive habitats (pages 2.4-99 and 2.4-100), and habitat connectivity and wildlife corridors (pages 2.4-104 and 2.4-105). All of these indirect impacts were analyzed per the County’s Guidelines for Determining Significance and Report Format and Content Requirements: Biological Resources (County of San Diego 2010). County Guideline 1H specifically identifies potential indirect effects that must be analyzed in the Draft EIR (see pages 2.4-88 and 2.4-89 of the Draft EIR).

While the Draft EIR provides summaries of the indirect impacts, the Biological Resources Technical Report (Appendix 2.4-1 of the Draft EIR) provides more detailed descriptions of indirect impacts, including citations of relevant scientific literature to support the analyses, as appropriate, and which descriptions are the basis for the summarized indirect impacts analyses in the Draft EIR. Relevant sections of the Biological Resources Technical Report include Section 5.1.2, Indirect Impacts to Riparian Habitat or Sensitive Vegetation Communities, on page 421; Section 5.2.2, Indirect Impacts to Special-Status Plants, on page 422; Section 5.3.2, Indirect Impacts to Special-Status Wildlife Species, on page 455; Section 5.4.2, Indirect Impacts to Jurisdictional Aquatic Resources, on page 460; and Section 5.5.2, Indirect Impacts to Habitat Connectivity and Wildlife Corridors, on page 476. Based on the indirect impact information presented in these sections, the Biological Resources Technical Report provides indirect impact summaries in Section 6.2.8, Project Effects Relevant to Guideline 4.1.H (Indirect Impacts) (County Guideline 1H, cited above), on pages

507 through 509 (that are restated in the Draft EIR), Section 2.4.3, Analysis of Project Effects and Determination as to Significance, on pages 2.4-88 through 2.4-90.

Relevant mitigation for potentially significant edge effects includes mitigation measures M-BI-3 (habitat conveyance and preservation), M-BI-4 (biological open space easement), M-BI-5 (permanent fencing and signage), M-BI-14 (stormwater pollution prevention plan), M-BI-15 (erosion and runoff control), M-BI-16 (prevention of invasive plant species), M-BI-17 (prevention of chemical pollutants), M-BI-18 (noise), M-BI-19 (fire protection), and M-BI-20 (lighting). These mitigation measures are provided in full in Section 2.4.6, Mitigation, of the Draft EIR.

O-9-12 The comment states that access roads to Planning Areas 16/19 cross state-protected lands and create issues with runoff, erosion, natural hydrological flows, and entry points for invasive species.

The County acknowledges that proposed access roads cross state protected lands. The proposed roads crossing protected lands have been designed to reduce impacts to less than significant, including from runoff, erosion, or natural hydrologic flows. Appendix 3.1.2-2, Storm Water Quality Management Plan for Otay Ranch Village 14 and Planning Areas 16/19, Attachment 1A analyzes the treatment of road runoff for the portions of road within state protected lands and how these areas will be treated for water quality in compliance with the San Diego RWQCB and County of San Diego requirements in proposed Biofiltration Basins (B-1-8, BF-1-10, and BF-1-14).

Appendix 3.1.2-4 Hydromodification Management Plan documents show the same basins mitigate post-development flows to pre-development conditions per the requirements of the County of San Diego Hydromodification Management Plan.

Appendix 3.1.2-1 CEQA Drainage Study, Otay Ranch Village 14 and Planning Areas 16/19, Section 1.6, shows how riprap and energy dissipaters will be used at each outlet to mitigate erosive velocities. Flows from undeveloped areas have been transported in culverts along the existing flow paths.

Please refer to **Response to Comment O-5-53**.

O-9-13 The comment states that since the MSCP was adopted, additional conservation by public agencies has occurred in Proctor Valley, decreasing the amount of proposed future development. The comment does not raise an issue regarding the adequacy of the Draft EIR; therefore, no further response is required or provided.

O-9-14 The comment states that additional conservation by public agencies has increased Proctor Valley's value as core habitat for a number of species within the San Diego

National Wildlife Refuge and the greater MSCP Preserve. The comment does not raise an issue regarding the adequacy of the Draft EIR; therefore, no further response is required or provided.

O-9-15 The comment states that the persistence of many species in the already conserved areas, such as golden eagle, San Diego black-tailed jackrabbit (*Lepus californicus bennettii*), and Quino checkerspot butterfly, is dependent on landscape connectivity between occupied habitats. The comment does not raise an issue regarding the adequacy of the Draft EIR; therefore, no further response is required or provided.

O-9-16 The comments asserts that development in the middle of Proctor Valley will likely sever functional connectivity for many species, making it likely that Quino checkerspot butterfly, golden eagle, and other species will be lost from the Proctor Valley area and beyond over time. The comment further asserts that the connectivity analyses in the Draft EIR are based on “outdated assumptions” and should instead rely on more up-to-date modeling for target species.

The Draft EIR Section 2.4, Biological Resources, analyzes the Proposed Project’s impacts on wildlife corridors/connectivity, as well as Quino checkerspot butterfly and golden eagle. Please see **Thematic Response – Quino Checkerspot Butterfly** and **Thematic Response – Golden Eagle**.

Wildlife movement should be treated in much the same way as species coverage analyzed in the MSCP, which was agreed upon by the Wildlife Agencies, and upon which take authorization was issued. As such, requiring new field studies or modelling to demonstrate that the RMP Preserve design works for wildlife movement is the same as saying that coverage of all 85 species should be revisited. The commenter’s underlying assumption is that new studies may result in new findings that would change the Preserve design and Development Footprint. As explained in Appendix L to Appendix 2.4-1, Biological Resources Technical Report, there have been no wildlife movement studies in the Project vicinity since 1992 that would invalidate the results of the 1992 Ogden Wildlife Corridor Study (Ogden 1992). Unless there is a trigger (changed circumstances) (see Comment O-9-18), no new studies are required, and any change in Preserve design that might be imposed on the permittees without a change in circumstances would violate the IA. The Draft EIR summarizes the current habitat conditions in each of the corridors based on the more detailed descriptions in the 1992 Ogden study on pages 2.4-54 through 2.4-56 in Section 2.4.1.8, Wildlife Corridors and Habitat Linkages. The Draft EIR notes in this section that while landscapes in San Diego County have changed significantly over the last two decades since the study was conducted, the Proctor Valley corridors

identified in Ogden study are still fully intact and currently traverse between large areas of open lands, as shown in Figure 2.4-16, Wildlife Corridors and Habitat Linkages. Therefore, the Project Area has not experienced the changed circumstances referred to in Comment O-9-18. Further, this study has been used for all of the Otay projects to date, including the recent Village 13 project, without objections to using the Ogden study.

The Ogden Study was published in 1992 and was used in the preparation of the MSCP Plan. Thus, the study provides useful information for purposes of the Draft EIR's analysis. It is also important to keep in mind that the assumptions regarding development outlined in both the Ogden Study and the MSCP generally have not changed since the MSCP was approved. The exception being lands *added* to the MSCP Preserve through the preservation of large portions of Village 14 and Village 16 (the inverted L parcel and CDFW owned and managed lands) along with the preservation of all of Village 15. In addition, the physical conditions of the Project Area have not changed since the Ogden Study and the MSCP. Therefore, the assumptions and expectations on which the Ogden Study and the MSCP Plan were based remain valid. The following is brief description of the Ogden Study:

The Ogden Study employed several criteria for delineating key wildlife movement areas on Otay Ranch.

First, the Ogden study conducted on-the-ground field studies on Otay Ranch, as opposed to modeling potential movement patterns and habitat use using remotely-sensed landscape data such as vegetation, topography, land uses, natural history information, and limited species occurrence data to infer or predict habitat use and movement. The field studies empirically documented habitat areas actually used by target species including mountain lion, bobcat, and mule deer, as well as coastal California gnatcatcher and cactus wren; i.e., the study does identify areas where target species use is concentrated and thus likely to be key for maintaining local and regional movement (page 1-5).

Second, the study considered the target species habitat requirements and other natural history, and behavioral factors related to movement (e.g., tolerance of humans, primary mortality causes) and thus recommendations were species-specific. Field data included scat and tracks (i.e., sign), and rarer visual sightings for target species and all other terrestrial vertebrates. Areas with the most target species sign were considered corridors (page 2-1 of Ogden 1992). In addition, trail cameras were set up at selected locations.

Third, the study incorporated information about what adjacent off-site areas are likely to remain undeveloped because of factors such as public ownership and steep topography that constrains development; the study focused on maintaining connectivity between the San Ysidro, Jamul, and San Miguel Mountains (page 1-9 of Ogden 1992). Based on data collected in the field, Section 2 of the Ogden study describes the biological and physical conditions at each identified corridor, including vegetation, potential den sites (e.g., rocky areas), water sources, etc. that would be relevant for the function of the corridors for wildlife movement.

Fourth, the project biologists from Dudek have expertise on the issue of wildlife movement and routinely review the literature on this key subject, including the seven studies reviewed and summarized in Appendix L of Appendix 2.4-1, Biological Resources Technical report. Based on their experience, technical background, and many hours of fieldwork during the 2014 and 2017 EIR preparation, the biologists at Dudek have determined that the conclusions drawn in the Ogden study remain applicable today.

For these reasons, the County considers the Ogden study, which is the basis for the MSCP Subarea Plan and Otay Ranch RMP, to be relevant for the assessment of impacts to wildlife movement and habitat connectivity in the Project Area.

O-9-17 The comment states that while the Draft EIR compares widths of presumed linkages, the width of a habitat linkage alone is not an appropriate metric for evaluating functionality. According to the comment, habitat linkages should be species-specific and evaluated based on habitat quality, vegetation communities, and topography, and not just width.

The County disagrees that the Draft EIR solely relies on width in the evaluation of linkages. Refer to **Response to Comment O-9-16** regarding methods for site-specific evaluations in the Ogden 1992 study with respect to describing physical conditions in the identified corridors.

With respect to linkage width, the County agrees that width is not the only metric that is related to linkage function. The Draft EIR biologists note that width is an important metric for wildlife corridor use, especially with regard to potential edge effects that may penetrate several hundred feet along both edges of the corridor. For this reason, in the significance analysis for wildlife movement on page 2.4-105 and 2.4-106, of the EIR Guideline 4E states:

Would the project maintain an adequate width for an existing wildlife corridor or linkage and/or would further constrain an already narrow corridor through activities such as (but not limited to) reduction of corridor width, removal of available vegetative cover, placement of incompatible uses adjacent to it, and placement of barriers in the movement path. The adequacy of the width shall be based on the biological information for the target species, the quality of the habitat within and adjacent to the corridor, topography, and adjacent land uses. Where there is limited topographic relief, the corridor should be well-vegetated and adequately buffered from adjacent development. Corridors for bobcats, deer, and other large animals should reach rim-to-rim along drainages.

The analysis in the Draft EIR in Section 2.4.3.4 therefore considers other functionality factors by drawing on the site-specific field studies conducted by Ogden in 1992 and the study's recommendations for linkage dimensions in Proctor Valley. The corridors identified in the Ogden study were done so based on the habitat, topography and ability to provide for wildlife movement. The Proposed Project will not alter the corridors discussed in the Ogden Study. In conformance with the Otay Ranch GDP/SRP and the Otay Ranch RMP, a total of four wildlife crossings would be provided to allow for wildlife movement through natural topography, including creeks and ephemeral channels. These crossings were placed specifically to continue to facilitate wildlife movement through the corridors described in the Ogden study. The description of each wildlife crossing is provided on pages 2.4-102-33 of the Draft EIR. Further, as stated in **Response to Comment O-9-16**, the Proctor Valley landscape and identified corridors have remained largely intact in the 20+ years since the Ogden Study.

O-9-18 The comment states that wildlife corridor studies should be conducted with the metrics listed in Comment O-9-17 instead of relying on a single study conducted in 1992. The comment also asserts that allowing the Project to move forward without consideration of changed circumstances since 1992 will sever functional connectivity.

As stated in **Response to Comment O-9-16**, wildlife movement should be treated in much the same way as species coverage analyzed in the MSCP, which was agreed upon by the Wildlife Agencies, and upon which take authorization was issued. As such, the County concluded that it was not necessary to conduct new wildlife corridor studies to demonstrate that the RMP Preserve design works for wildlife. To require further analysis would be counter to the purposes of the MSCP Plan, the MSCP County Subarea Plan, the MSCP Implementing Agreement, and the RMP. Also refer to **Response to Comment O-9-16** regarding the Ogden 1992 study and

other subsequent studies, changed circumstances, and the reasons why the Ogden study is adequate for the analysis in the Draft EIR.

- O-9-19** The comment acknowledges the MSCP permit for golden eagle assumed the San Miguel nesting territory would remain viable. The comment then asserts that additional studies of golden eagle by USGS suggest otherwise. The comment states that the USGS 2016 study identifies the Proctor Valley areas as a moderately to heavily used part of at least seven foraging areas.

The County notes that the Draft EIR acknowledges that Proctor Valley, including the Project Area, is used for foraging by golden eagle. Refer to **Response to Comment O-6.1-47**, as well as **Thematic Response – Golden Eagle**.

- O-9-20** The comments states despite the analysis in the Draft EIR stating that the nesting site would remain viable, the commenter remains concerned that the direct and indirect impacts associated with loss and fragmentation in Proctor Valley resulting from the development will make much of the remaining habitat unsuitable for foraging. The comment further asserts that this will result in the likely extirpation of the San Miguel eagle territory, thus having a direct negative impact on regional golden eagle populations.

Please refer to **Response to Comment O-6.1-47** and **Thematic Response – Golden Eagle**.

- O-9-21** According to the comment, the conditions described in **comments O-9-19** through **O-9-20** indicate that the San Miguel Mountain golden eagle territory has deteriorated since the MSCP plan was adopted in 1998. The comment then states that the Draft EIR should address these changed circumstances.

The Draft EIR does, in fact, discuss existing conditions within the San Miguel golden eagle territory and describes how those conditions have changed since the MSCP was adopted. Specifically, the Draft EIR – as well as the Final EIR’s thematic response on the golden eagle – explains that the San Miguel Mountain nest and its platform were destroyed in the 2007 Harris Fire and have not been rebuilt or recolonized by golden eagle. Note, however, that habitat-related changes, including loss of nesting areas, are not necessarily unexpected; nor are they likely to impede the goals of the plan. The MSCP Plan itself anticipated that conditions throughout the planning would change over the 50-year lifetime of the MSCP, stating:

It is anticipated that fluctuation of species populations, including recolonization, will continue to occur. The size (171,000+ acres),

configuration, diversity, connectivity, and adaptive management of the preserve will allow the anticipated fluctuations to occur while still meeting the biological goal of the MSCP. (Final MSCP, p. 1-5.)

To the extent the comment implies that the Proposed Project itself is a “changed circumstance” not anticipated in the MSCP, the County disagrees. The Proposed Project is consistent with the hardline preserve that formed the basis of the MSCP. And, as stated above, golden eagle is a covered species under the MSCP Plan. The plan anticipated that there would be impacts to golden eagle, but concluded the conservation facilitated by the plan would sufficiently protect the species. For example, Section 8.0 of the Implementing Agreement states, “The CDFG [now CDFW] has found that the Subarea Plan as implemented pursuant to [the Implementing Agreement] satisfies the legal requirements necessary for the CDFG to issue a CESA/NCCP [California Endangered Species Act/Natural Community Conservation Plan] Authorization authorizing the Incidental Take of Covered Species Subject to Incidental Take, and to provide certainty in the form of specific assurances contained in [the Implementing Agreement]” (USFWS et al. 1998). Section 9.3 of the Implementing Agreement states that, “Implementation of the MSCP through the Subarea Plan in accordance with this Agreement will adequately provide for conservation and protection of the Covered Species Subject to Incidental Take and their habitat in the Subarea in perpetuity” (USFWS et al. 1998).

The MSCP Plan, including Table 3-5, contemplated that a certain amount of golden eagle foraging habitat in Proctor Valley would be lost, and could be lost, without affecting the long-term viability of the species in the region. The Proposed Project would comply with conditions relating to golden eagle as set forth in the County’s Section 10 permit issued by USFWS in 1997. Further, as stated on Page 2.4-128 of the Final EIR:

Taking into consideration the MSCP Preserve gain as of October 2015, outside the MHPA of 19,941 acres of habitat, the MSCP Preserve with suitable golden eagle habitat is projected to total 175,675 total acres (66% of total suitable habitat). The MSCP Plan is, therefore, projected to exceed the 53% conservation target by approximately 15,600 acres of golden eagle habitat within the original MHPA, and approximately 35,550 acres of golden eagle habitat in total (both within and outside MHPA) (see Appendix C of the BTR).

Finally, even if conditions in the San Miguel Mountain golden eagle territory – or the golden eagle habitat throughout the MSCP planning area as a whole – were to

deteriorate beyond the tolerances anticipated in the MSCP Plan, the responsibility to address and correct that situation rests with the Wildlife Agencies, not the project applicant. Section 9.4 of the Implementing Agreement makes this clear:

The USFWS and CDFG shall not require the County or Third Party Beneficiaries [i.e., hardline project applicants] 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.”

This same concept is reflected in the “No Surprises” policy outlined in the MSCP Final EIR, which provides as follows:

The “No Surprises” policy was established to provide jurisdictions and private landowners with certainty that agreements entered into with the USFWS under approved habitat conservation plans (HCP) will be honored over the life of the plans. Under the policy, MSCP Participating Jurisdictions and Special Entities with properly functioning plans are assured that “a deal is a deal” and that demands will not subsequently be made by the wildlife agencies for additional lands, funds, or land restrictions beyond the mitigation levels contemplated by the plans – even if the needs of any species covered by the plans change over time.

In the event that “unforeseen” or “extraordinary” circumstances arise that require additional mitigation measures necessary to conserve species covered by a properly functioning subarea plan, the obligation for such measures would be borne primarily by the federal and state governments, private conservation organizations, or other jurisdictions or private landowners who have not yet developed an NCCP/HCP. The mitigation obligations of the permittees would, to the maximum extent possible, not extend beyond measures reflected in the original terms of the subarea plans, and would be limited to modifications of the preserve management program and /or to the habitat acquisition program. Again, these steps would not involve additional land protection, payment of funds, or restrictions on land available for

development or other uses, unless the permittee consented to such measures.
(MSCP Final EIR/EIS Comments and Responses, p. 28.)

For additional information on golden eagle, please refer to **Thematic Response – Golden Eagle**.

- O-9-22** The comment states that the MSCP County Subarea Plan designates PV1, PV2, and PV3 as Preserve.

The County does not concur with the comment and refers the commenter to **Thematic Response – Baldwin Letter and PV1, PV2, and PV3**. As explained therein, the Baldwin letter proposal to add these three areas to the MSCP Preserve was not an agreement and; thus, was never implemented. The Implementing Agreement for the County Subarea Plan indicates that these areas could be added to the Preserve in the future “if agreements are reached.” However, no such agreements were reached. As a result, PV1, PV2, and PV3 remained developable as designated by the Otay Ranch GDP/SRP and County General Plan.

- O-9-23** The comment asserts a proposed change to the hardline Preserve would require a major amendment to the MSCP. The comment further asserts that a major amendment would likely require additional mitigation for the mitigation-preservation shortfall, and that the major amendment should be accomplished prior to project approval and evaluated in the Draft EIR.

The County does not concur that a major amendment to the MSCP is required by the Proposed Project because, as explained in **Thematic Response – Baldwin Letter and PV1, PV2, and PV3** and **Response to Comment O-9-22**, above, the proposal to designate PV1, PV2, and PV3 as MSCP Preserve was never finalized into an agreement and thus was never implemented. PV1, PV2, and PV3 are not within the MSCP County Subarea Plan’s identified major or minor amendment areas. The County has determined that Major Amendments as described in the County Subarea Plan Section 1.14 do not apply. Further an amendment to the County General Plan was never approved to change the land use designation of these three areas, which remain developable under the 2011 General Plan Update. Therefore, PV1, PV2, and PV3 are accurately analyzed as developable under the County General Plan and Otay Ranch GDP/SRP. More fundamentally, however, issues involving take authorization are beyond the scope of CEQA and this EIR. Take authorization for development of PV1, PV2, and PV3, if necessary, will be addressed through separate processes under the applicable state and federal statutes. See also **Response to Comment A-3-16**.

- O-9-24** The comment states the Draft EIR Chapter 4, Alternatives Analysis, includes the proposed exchange of lands owned by the California Department of Fish and Wildlife with privately held parcels in Villages 16 and 19. The commenter further states it is their understanding that the proposed land exchange was deemed infeasible and was declined by the State, thus it would not be a viable alternative. The commenter suggests considering removing the Land Exchange Alternative from the Draft EIR.

First, the County notes that 16 and 19 are identified as “Planning Areas,” not Villages, in the Draft EIR. The County does not concur with the comment because, as explained in Section 4.8.4 of the Draft EIR, “[p]rior to the preparation of this EIR, the applicant was coordinating with the State of California Fish and Wildlife and USFWS on a land exchange, and had preliminary indications that this type of land exchange was possible.” As further noted in Section 4.10, “The Land Exchange Alternative would require only that the Proposed Project applicant exchange identified lands with the California Department of Fish and Wildlife. Approval would only be needed from one party (i.e., California Department of Fish and Wildlife), with consent provided by USFWS. No other parties, properties, or negotiations would be involved.” Moreover, CDFW has not provided the County or the applicant with any official notification stating that the proposed land exchange is infeasible. Accordingly, the County considers the Land Exchange Alternative an appropriate alternative and it will remain in the Final EIR. The County would also point out that the Implementing Agreement for the MSCP Plan encourages land exchanges similar to the one proposed in the Land Exchange Alternative (see, e.g., Implementing Agreement Section 15.3, and MSCP Section 4.6.1).

- O-9-25** The comment expresses the commenter’s concerns regarding the Proposed Project’s impacts on “multiple habitat species and wildlife corridors.” The comment provides an introduction to Comments O-9-26 through O-9-29. No further response is required or necessary.

- O-9-26** The comment restates the commenter’s assertion that PV1, PV2, and PV3 should be removed from the development or a major amendment to the MSCP is required.

Please refer to **Responses to Comment O-9-22** and **O-9-23**, above. Also please refer to **Thematic Response – Baldwin Letter and PV1, PV2, and PV3**. No further response is required or provided.

- O-9-27** The comment restates the commenter’s opinion that a major amendment to the MSCP should be processed prior to Project approval so that the amendment and its required mitigation can be evaluated in the Draft EIR.

Please refer to **Response to Comment O-9-22** and **O-9-23**, above. No further comment is required or provided.

- O-9-28** The comment expresses an opinion that to reduce impacts to connectivity, the development in the center of Proctor Valley should be removed so that the wildlife corridor remains functional.

Please refer to **Response to Comment O-9-13** through **and O-9-18**, above. No further comment is required or provided.

- O-9-29** The comment restates the commenter's opinion that the proposed land exchange should be removed from the alternatives analysis since the State has already denied this proposal, and therefore it is no longer a viable option.

Please refer to **Response to Comment O-9-24**, above. No further response is required or provided.

- O-9-30** The comment provides concluding remarks. The comment does not raise an issue regarding the adequacy of the Draft EIR; therefore, no further response is required or provided.

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