COUNTY OF SAN DIEGO
MULTIPLE SPECIES CONSERVATION PROGRAM

IMPLEMENTING AGREEMENT

by and between

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

March 17, 1998

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ATTACHMENTS

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*This table of contents is provided for the convenience of use of the document but was not part of the original document approved by the Board of Supervisors or signed by the Parties to the Agreement.

IMPLEMENTING AGREEMENT
BY AND BETWEEN
UNITED STATES FISH AND WILDLIFE SERVICE
CALIFORNIA DEPARTMENT OF FISH AND GAME
COUNTY OF SAN DIEGO

This Implementing Agreement ("Agreement") is entered into as of the 17th day of March, 1998, by and among the UNITED STATES FISH AND WILDLIFE SERVICE ("USFWS"), an Agency of the United States Department of the Interior, the CALIFORNIA DEPARTMENT OF FISH AND GAME ("CDFG"), a Subdivision of the California Resources Agency, and the COUNTY OF SAN DIEGO, a political subdivision of the State of California ("County"), hereinafter collectively called the "Parties."

AGREEMENT

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

1.0 RECITALS

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

1.2 The MSCP Plan Area map is attached to this Agreement as exhibit A. The MSCP Plan Area map includes the territory of 12 general purpose agencies of government, listed in exhibit B. These agencies may elect to participate in the MSCP, and upon preparing a Subarea Plan and entering into an Implementing Agreement similar in form and content to this Agreement such agencies will become a "Participating Local Jurisdiction." Some regional public facility providers and special districts which operate within the MSCP Area may also elect to participate in the MSCP. Upon entering into an Implementing Agreement similar in form and content to this Agreement, such entities will become a "Participating Special Entity."

1.3 A goal of the MSCP is to conserve biodiversity in the MSCP Plan Area and to achieve certainty in the land development process for both private sector and public sector land development projects.

1.4 Pursuant to the federal Endangered Species Act ("ESA") and the California Endangered Species Act ("CESA"), the United States and the State of California, respectively, have identified certain plant and animal species which are or may be found in the

MSCP Plan Area and which, pursuant to the ESA or CESA or other laws or programs, have been listed as threatened or endangered, have been proposed for listing as threatened or endangered, are candidates for listing as threatened or endangered, or which are otherwise of concern. Of such species, those which will be adequately conserved by the MSCP when the MSCP is fully implemented through Subarea Plans are referred to in the MSCP and this Agreement as Covered Species. Those Covered Species which are adequately conserved by the Subarea Plan, and other Subarea Plans in effect within the MSCP Area, are subject to the Take Authorization being granted pursuant to this Agreement and are referred to as Covered Species Subject to Incidental Take.

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

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

1.7 The MSCP is a comprehensive, long-term habitat conservation plan for the Covered Species which addresses the needs of multiple species and the preservation of natural vegetation communities. The MSCP addresses the potential impacts of urban growth, natural habitat loss and species endangerment and creates a plan to mitigate for the potential loss of Covered Species and their habitat due to the direct and indirect impacts of future development of both private and public lands within the MSCP Area.

1.8 The MSCP, as implemented through the County's Subarea Plan and this Agreement, establishes the conditions under which

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

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

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

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

1.12 The MSCP has been submitted by the County to the USFWS and CDFG in support of, respectively, an application for a Section 10(a) Permit and a CESA/NCCP Authorization. The CDFG has approved the MSCP as an NCCP Plan, and the USFWS has issued written concurrence that the MSCP meets the statutory criteria for issuance of a Section 10(a) Permit. The MSCP will be implemented through individual Subarea Plans by having Participating Local Jurisdictions execute separate but coordinated agreements in a form substantially similar to this Agreement. Such agreements need not be executed at the same time. Instead, the USFWS and CDFG anticipate that implementation of the MSCP will be phased in over time, through both the

periodic addition of Participating Local Jurisdictions and Participating Special Entities, and the phased implementation of their respective MSCP-related obligations.

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

2.0 DEFINITIONS

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

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

2.2 "Agreement" means this document.

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

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

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

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

2.7 "CESA/NCCP Authorization" means any authorization issued in accordance with this agreement by CDFG under CESA (including but not limited to, Cal. Fish & G. Code, § 2081), or the NCCP Act (including but not limited to Cal. Fish & G. Code, § 2825, subd. (c) or 2835), or by the California Fish and Game Commission under the NCCP Act (including but not limited to Cal. Fish & G. Code, § 2830) to permit the Take of a species listed under CESA as threatened or endangered, or of a species which is

a candidate for such a listing, or of a species identified pursuant to section 2835. These legal authorities are wholly independent of each other.

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

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

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

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

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

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

2.14 "Habitat Conservation Plan" and "HCP" means the conservation program ("MSCP") and each Subarea Plan prepared pursuant to Section 10(a)(2)(A) of the ESA 1539(a)(2)(A)). The County's Subarea Plan is dated October 22, 1997.

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

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

2.17 "Multi-Habitat Planning Area" or "MHPA" means the area within the MSCP Plan Area as described in Section 3.1.1 of the MSCP Plan within which preserve planning is focused and within which permanent conservation of habitat lands will be accomplished through implementation of the Subarea Plan.

2.18 "MSCP" means the Multiple Species Conservation Program Plan, a comprehensive habitat conservation planning program adopted by the Board of Supervisors on October 22, 1997 which addresses multiple species habitat needs and the preservation of native vegetation for an approximate 900-square mile area in southwestern San Diego County, California.

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

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

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

2.22 "Participating Local Jurisdiction" means any of the local governments identified in exhibit B which prepares and receives USFWS and CDFG approval of a Subarea Plan, and which enters into an Implementing Agreement with the USFWS and CDFG. It is anticipated that such Implementing Agreement will be substantially similar in form to this Agreement.

2.23 "Participating Special Entity" means any regional public facility provider (such as a utility company) or special

district which operates and/or owns land within the MSCP Plan Area and which enters into an Implementing Agreement with the USFWS and CDFG pursuant to and consistent with the MSCP which is substantially similar in form to this Agreement.

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

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

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

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

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

2.29 "Subarea Plan" means the plan prepared by County and reviewed and approved by the USFWS and CDFG, to implement the MSCP within its jurisdictional boundaries, pursuant to this Agreement. A date will be added reflecting the date on which the Board of Supervisors adopts the MSCP.

2.30 "Sufficiently Conserved Vegetation Communities" means those vegetation communities listed in exhibit E and described in Section 4.2.4 of the MSCP Plan. For purposes of the MSCP and this agreement, the term "sufficiently conserved" is not meant to indicate the quantity or biological quality of the vegetation

community conserved but instead indicates that USFWS and CDFG will use all of their legal authorities to provide for those species dependent upon vegetation communities labeled "sufficiently conserved" as set forth in section 9.7 (C).

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

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

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

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

3.0 HABITAT CONSERVATION PLAN/NCCP PLAN

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

3.2 The MSCP and Subarea Plan and each of their provisions are intended to be, and by this reference are, incorporated herein. This Agreement is intended to specify the obligations of the Parties under the MSCP and Subarea Plan, recognizing that the MSCP and Subarea Plans set forth the components of a conservation plan and were not drafted as contract documents. In the event of any direct contradiction, conflict or inconsistency between the MSCP Plan and the Subarea Plan, the Subarea Plan shall control.

In the event of any direct contradiction, conflict or inconsistency between the MSCP Plan or the Subarea Plan on the one hand, and this Agreement on the other, the terms of this Agreement shall control. In all other cases, the terms of this Agreement and the terms of the MSCP and Subarea Plan shall be interpreted to be consistent with and complimentary to each other. The three-volume MSCP Resource Document, and all MSCP-related drafts, position papers, working documents and other documents, are specifically not incorporated into this Agreement.

4.0 PHASED IMPLEMENTATION

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

5.0 SEVERABILITY

The USFWS and CDFG recognize and agree that the Take Authorization received by County pursuant to this Agreement is independent and severable from the other Take Authorizations which have been or will be issued to other Participating Local Jurisdictions or Participating Special Entities. County's Take Authorizations will remain effective so long as County fulfills its obligations under this Agreement to implement the MSCP through the Subarea Plan, including its obligation under Section 9.18 to enforce the terms of this Agreement as to itself and to all Third Party Beneficiaries, who will receive Incidental Take

Authorization through County's Take Authorizations. County's Take Authorizations may not be suspended, revoked or terminated against its will due solely to the actions or inactions of any other person or entity, including the other local jurisdictions identified in exhibit B (whether or not they have become Participating Local Jurisdictions). However, if the inclusion of a species on the List of Covered Species Subject to Incidental Take either before or after the Effective Date (pursuant to Section 23.2 of this Agreement) is dependent, in whole or in part, upon the implementation of any other MSCP Subarea Plan(s), and the Participating Local Jurisdiction(s) associated with such Subarea Plan(s) terminates its participation in the MSCP or fails to implement its Subarea Plan, then the removal of such added species from the List of Covered Species Subject to Incidental Take may be required.

6.0 LEGAL AUTHORITY OF THE USFWS

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

> "The Committee intends that the Secretary [of the Interior] may utilize this provision [on habitat conservation plans] to approve conservation plans which provide long-term commitments regarding the conservation of listed as well as unlisted species and long-term assurances to the proponent of the conservation plan that the terms of the plan will be adhered to and that further mitigation requirements will only be imposed in accordance with the terms of the plan. In the event that an unlisted species addressed in an approved conservation plan is subsequently listed pursuant to the Act, no further mitigation requirements should be imposed if the conservation plan addressed the conservation of the species and its habitat as if the species were listed pursuant to the Act. It is also recognized that circumstances and information may change over time and that the original plan might need to be revised. To address this situation the Committee expects that any

plan approved for a long-term permit will contain a procedure by which the parties will deal with unforeseen circumstances."

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

7.0 LEGAL AUTHORITY OF THE CDFG

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

8.0 SATISFACTION OF LEGAL REQUIREMENTS

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

A. Any Take occurring within the Subarea will be incidental;

B. The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;

C. That adequate funding for the conservation plan and procedures to deal with unforeseen circumstances will be provided; and

D. That the Incidental Take will not appreciably reduce the likelihood of the survival and recovery of the Covered Species in the wild.

The USFWS has found that the MSCP and the Subarea Plan as implemented pursuant to this Agreement do provide such measures, and has issued such findings in support of the granting of the Section 10(a) Permit authorizing the Incidental Take of Covered Species Subject to Incidental Take.

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

9.0 MUTUAL ASSURANCES

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

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

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

9.4 Additional Land or Money Required. The USFWS and CDFG shall not require the County or Third Party Beneficiaries to commit additional land, additional restrictions, or additional financial compensation for the Covered Species Subject to Incidental Take beyond that provided pursuant to this Agreement, provided that the County is in compliance with its obligations under this Agreement. If the USFWS and/or the CDFG subsequently determine that additional land, additional land restrictions, or additional financial compensation beyond that required pursuant to the MSCP and this Agreement are necessary to provide for the conservation of a Covered Species Subject to Incidental Take, the obligation for such additional measures shall not rest with the County or the Third Party Beneficiaries.

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

9.6. Extraordinary Circumstances.

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

1. A significant, unanticipated adverse change in the population of any Covered Species or its habitat within the MSCP Plan Area; or

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

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

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

1. The size of the current range of the affected species;

2. The percentage of range adversely affected by the MSCP;

3. The percentage of range conserved by the MSCP;

4. The ecological significance of that portion of the range affected by the MSCP;

5. The level of knowledge about the affected species and the degree of specificity of the species' conservation program under the MSCP; and

6. Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

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

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

E. Limits on Additional Conservation Measures. If the USFWS or CDFG makes a finding of Extraordinary Circumstances in accordance with the procedures described above, and determines that Additional Conservation Measures are warranted, such Additional Conservation Measures shall conform to the maximum extent possible to the original terms of the MSCP and Subarea Plan. Additional Conservation Measures shall be limited to modifications of County's preserve management program or habitat acquisition program as set forth in the Subarea Plan and this Agreement, and shall not involve the commitment of additional land or additional land restrictions or additional financial

compensation on the part of the County or Third Party Beneficiaries without their consent.

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

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

9.7 Future Listings.

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

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

take all necessary steps within its legal authority to make the CESA/NCCP Authorization effective promptly as to Covered Species Subject to Incidental Take accepted by the Commission as a Candidate for listing.

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

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

2. Inadequate Conservation Measures in the MSCP.

a. Additional Conservation Measures Priorities. If the USFWS and CDFG determine that the conservation measures already contained in the MSCP, as implemented through this Subarea Plan, and this Agreement, and other approved Subarea Plans do not adequately fulfill the conservation measures identified pursuant to subsection C above, then the USFWS and CDFG will work with County and other Participating Local Jurisdictions to identify and jointly implement any Additional Conservation Measures identified as being necessary to add such species to the list of Covered Species and to the list of Covered Species Subject to Incidental

Take. In developing a set of Additional Conservation Measures, the parties will look to the following, in order of preference:

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

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

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

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

not be added to the list of Covered Species or the list of Covered Species Subject to Incidental Take.

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

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

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

The following evaluated species identified in Table 3-5 of the MSCP Plan are covered by the assurances in subsection c,

above (Significantly Conserved Vegetation Communities) and are not covered by the assurances in subsection d, above (Sufficiently Conserved Vegetation Communities):

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

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

9.8 Other Regulatory Permitting.

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

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

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

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

9.9 Federal and State Contributions. The USFWS and CDFG shall apply their best efforts to contribute public lands and funds to the acquisition and management, maintenance and

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

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

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

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

The County shall notify USFWS and CDFG in writing of any proposed change or amendment to the County's Biological Mitigation Ordinance and provide the agencies with an analysis of the effect, if any, the proposed change or amendment would have on the County's ability to achieve the conservation goals of the MSCP and Subarea Plan. The County acknowledges that any change or amendment to the Biological Mitigation Ordinance that would adversely affect the County's ability to achieve the conservation

goals of the MSCP and Subarea Plan would be grounds for reevaluation of the County's Section 10(a) permit or CESA/NCCP Authorization under Sections 16.2 and 16.3 of this Agreement.

9.13 Conservation Banks. Mitigation banks may be established and implemented within the County in accordance with Board Policy I-117, dated October 4, 1995, Mitigation Banking Policy, (exh. G). The Parties agree that existing Conservation Bank agreements approved by the USFWS and CDFG prior to the Effective Date shall remain in full force and effect and be honored by the Parties after execution of this Agreement. This Section 9.13 shall apply to any public lands banked as mitigation for future development by County. Once lands are conserved in a bank in accordance with a conservation bank agreement, those lands will be credited towards the Subarea Plan's conservation goals.

9.14 Habitat Conservation Measures. Habitat conservation measures provided for in the Subarea Plan, including habitat management within the MHPA, shall be consistent with the MSCP and shall be implemented through the policies and local regulations established by County pursuant to Section 10.0 of this Agreement. Such policies and local regulations may differ between County and other Participating Local Jurisdictions, and between different MHPA habitat types within the Subarea.

9.15 Growth Inducing Impacts. Once mitigation has been imposed upon the County or a Third Party Beneficiary for a proposed land development project in conformance with Section 10 and 17.1.A of this Agreement, the County or a Third Party Beneficiary shall not be required to provide any additional mitigation for any growth inducing impacts such project may have on a Covered Species Subject to Incident Take and its habitat within that portion of the MSCP Area covered by approved Subarea Plans.

9.16 Projects With Discretionary Approvals or Habitat Loss Permits. Projects which have received their discretionary approvals and/or which have been issued Habitat Loss Permits (HLP's) from the County prior to the Effective Date, whose mitigation requirements are not or were not subject to the requirements of the Biological Mitigation Ordinance, may at the option of the project proponent, apply for Certificates of Participation. Certificates of Participation, if granted, will allow such projects to benefit from the County's Take Authorization and not require any additional approvals from the Parties for purposes of incidental take of the Covered Species Subject to Incidental Take. The County shall review such applications to determine if the project, as previously approved, conforms to the standards of the County Subarea Plan and Biological Mitigation Ordinance. If the County's review determines the project conforms to those standards, it will issue

draft Findings of Conformance for a 45-day (forty-five) day review period by the USFWS and CDFG. Following concurrence by the Wildlife Agencies, the County will issue the Certificate of Participation and the project proponent shall have the benefit of the County's Take Authorizations. If the County finds that the proposed project does not meet the Subarea Plan and Biological Mitigation Ordinance standards, the project proponent will be informed of the deficiencies and proper procedures for achieving and assuring conformance to the standards (tentative subdivision map amendment, major use permit modification, etc.) In the event that the Wildlife Agencies do not concur with the County's draft Findings of Conformance for a project during the 45-day review period, such project may not receive a Certificate of Participation and the project proponent shall be required to seek all applicable state and federal permits required to authorize incidental take from the Wildlife Agencies.

Proponents of previously approved projects and or projects for which HLP's have been issued by the County prior to the Effective Date also have the option to apply directly for individual Federal and State ESA permits without seeking the benefit of the County's Take Authorizations. If federal or state permits are not necessary, project proponents may proceed with implementation of development. The County shall, to the maximum extent feasible, monitor and report on any losses of habitat due to implementation of said projects.

9.17 Critical Habitat. The USFWS agrees that it will consider the MSCP and Subarea Plan in its preparation of any proposed designation of critical habitat concerning any Covered Species, and further agrees that consistent with 50 C.F.R. sec. 424.12, the MSCP as implemented through approved subarea plans incorporates special management considerations necessary to manage the Covered species in a manner that will provide for the conservation of the species involved within the MSCP Area. Except as otherwise provided in this Agreement, and consistent with assurances provided under Section 9 of this Agreement, the USFWS agrees that if critical habitat is designated for any Covered Species Subject to Incidental Take and if the Subarea Plan (and any other subarea plans the approval of which enabled the Take Authorizations to apply to such species) is properly functioning then the USFWS shall not require through the ESA Section 7 (16 U.S.C. § 1536) consultation process that the County or Third Party Beneficiaries commit additional land, additional land restrictions, or additional financial compensation beyond that provided pursuant to this Agreement.

9.18 Duty to Enforce. County agrees to take all action within its legal authority to enforce the terms of the Take Authorizations, the Subarea Plan, and this Agreement as to itself and to all persons or entities subject to the requirements established by this Agreement, specifically including the land

development permitting and approval requirements set forth in Section 10 of this Agreement. Upon execution of this agreement by the parties and the issuance of the take authorizations by USFWS and CDFG, the incidental take of covered species subject to incidental take is authorized for projects under the direct control of the County which are in conformance with the MSCP, the Subarea Plan and this Agreement. Furthermore, consistent with Section 9.3 of this Agreement the County shall exercise the full extent of its legal authority to ensure that its local share of lands identified for preservation under the Subarea Plan are conserved in perpetuity. Notwithstanding the term of this Agreement, if at any time following the end of the term of this Agreement the County proposes to exercise its discretionary authority to modify legal restrictions applicable to existing preserved lands in the Subarea Plan, including any zoning designations, the proposed modifications must be accomplished through a public process in which the public, the USFWS and CDFG receive advance notice and the opportunity to comment, and must be consistent with the MSCP Plan and the Subarea Plan such that there is no net loss of habitat value or acreage of the Covered Species. The County must promptly notify USFWS and CDFG or their respective successor agencies of such proposed modifications in advance, and explain how they achieve such consistency.

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

9.20 Agricultural Uses. The Take Authorizations shall apply to those lands within the Subarea Plan actively being used for agricultural purposes. For purposes of this paragraph, the phrase "agricultural purposes" includes crop production, animal production, forage production and grazing, and the phrase "actively being used for" means those lands shown on the MSCP

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 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, the MSCP and the Subarea plans to receive the benefits of the County's Take Authorizations.

10.0 IMPLEMENTATION RESPONSIBILITIES OF THE COUNTY OF SAN DIEGO

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

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

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

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

10.4 Preserve Completion. To complete the preserve, approximately 18,850 acres are expected to be acquired with federal, state, and local public funds. This total is comprised of approximately 9,425 acres to be acquired each by federal and state funds and 9,425 by local funds. In the event that federal and state funds are not available, the local funding source will be used to make up the difference to the level that it is available. In addition, application of the Biological Mitigation Ordinance and the criteria in the Subarea Plan are expected to result in 22,450 acres of preserved land. The numbers are approximate since the amount, timing and location of land conserved through regulations, mitigation and public acquisition

are not exactly known. The County agrees to permanently preserve the total amount of land specified in the Subarea Plan, however the number of acres committed to the ultimate preserve through any one of the mechanisms identified in Sections 10.3 and 10.4 may vary from the above estimates.

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

A. Resource Protection Regulations. The Biological Mitigation Ordinance was adopted on October 22, 1997. The County will conserve its share of Covered Species and their habitats as identified in Section 10.4 through implementation of the Subarea Plan and application of the Biological Mitigation Ordinance, through application of mitigation requirements for areas depicted in the Lake Hodges and South County Segments of the County Subarea plan, and through land acquisition. The Biological Mitigation Ordinance is designed to achieve the level of conservation for Covered Species and their habitats identified by the MSCP Plan and the Subarea Plan for the County. As part of the Biological Mitigation Ordinance, within six months of adoption of the MSCP Plan and Subarea Plan, the County will adopt revised brushing and clearing requirements implementing the policies and goals of the MSCP and Section 4.3.4 of the County's Subarea Plan. These brushing and clearing revisions shall be contained in the Biological Mitigation Ordinance. To the extent that the Article III, section 10 of the Biological Mitigation Ordinance contains exemptions for agriculturally related clearing, the County shall monitor annually and by individual exemption request the number of acres cleared. When the cumulative total of acres cleared within the subarea reaches 3,000 acres, the County shall amend the Biological Mitigation Ordinance to provide for no further exemptions from the ordinance for agriculturally related clearing. Nothing in this Agreement shall in any way affect limitations for agricultural clearing in any area not covered by this Plan, including any area (e.g., North County Subarea Plan area, Multiple Habitat Conservation and Open Space Plan area, etc.) for which the County may adopt an NCCP/HCP in the future.

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

1. Habitat Conservation and Mitigation Ratios. The Parties agree to the grouping of the vegetation communities by tier and the established mitigation ratio, as shown in the Biological Mitigation Ordinance and Table 4-8 of the Subarea Plan for the County. Modifications to these tier groups and mitigation

ratios may be made in accordance with Section 9.12, upon approval by the San Diego County Board of Supervisors, and following all legally required public hearings and environmental review, without the need to amend this Agreement, the Subarea Plan or the Take Authorizations, provided that such modifications include the same or higher levels of conservation and are otherwise consistent with the MSCP Plan and the Subarea Plan for the County. The County acknowledges that if the Wildlife Agencies conclude that the modifications to the Biological Mitigation Ordinance will not provide the same or higher levels of conservation, or are not otherwise consistent with the MSCP and the County's Subarea Plan, this Agreement, and potentially the County's Subarea Plan and Take Authorizations, may have to be amended or reevaluated in accordance with Sections 16.2 and 16.3. Mitigation within the Subarea Plan for the County shall conform to the Biological Mitigation Ordinance. The County shall apply the mitigation ratios in the Biological Mitigation Ordinance to all lands within the County's Subarea consistent with the Ordinance.

2. Application of Mitigation to Development. The County shall require the following mitigation in order to complete the segments of the Subarea Plan:

Lake Hodges Segment:

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

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

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

Metro-Lakeside-Jamul Segment:

The County shall achieve the habitat protection goals as stated in Table 4-2 of the County Subarea Plan. The County shall require all projects to meet the preserve design criteria in section 4.2.1 of the Metro-Lakeside-Jamul Segment. The County shall maximize conservation efforts in areas that meet the criteria as biological resource core areas under the Biological Mitigation Ordinance as described in section 4.2.1 of the County Subarea Plan, achieve the linkage elements as listed in Section 4.2.3 of the Subarea Plan, and the species protection goals of Table 4-3. In addition, the County shall require projects to avoid critical populations and narrow endemics as listed in tables 4-3, 4-4, 4-5 and 4-6 of the County Subarea Plan. Only lands conserved within Wildlife Agency preapproved areas or mutually agreed to by the County and the Wildlife Agencies as furthering the conservation goals specified in the Subarea Plan will be credited toward meeting the conservation goals identified in Section 10.2. However, lands outside of the Wildlife Agencies' preapproved areas which have been preserved in order to avoid narrow endemics and critical populations shall be credited toward meeting the conservation goals.

South County Segment:

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

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

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

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

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

Protection of the areas identified as preserved in the boundaries of the Otay Ranch project including

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

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

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

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

A. Management Directives. The County shall implement the conditions identified in the Conditions portion of Table 3-5 of the MSCP Plan and Section 1.3 of the Subarea Plan that are applicable to any Covered Species.

B. Essential Public Facilities Exemption. For the exemption of any essential public facility or project as defined by the Biological Mitigation Ordinance from the requirements of that Ordinance, the County shall make all of the findings set out in a. - f. of that Ordinance, provided however, that authorization for take within the preserve areas within the MHPA may require an amendment to the County's Subarea Plan and Take Authorizations as provided in Section 1.9.3 of the Subarea Plan.

C. Vernal pools. Vernal pools in naturally occurring complexes and wetlands impacts will be avoided to the maximum extent practicable. Unavoidable impacts will be mitigated in accordance with Section 9.8.A of this agreement.

D. Non-Native Grassland mitigation. Non-native Grassland mitigation in the County is a requirement. Non-native grassland shall be mitigated at the ratio of 0.5 acres of mitigation land for every 1.0 acres of land impacted until such time as non-native grassland shall attain the status of a significantly conserved vegetation community as determined by the Wildlife Agencies based on the factors identified in Section 4.2.4 of the MSCP. At that time, non-native grassland shall be mitigated as a Tier III vegetation community.

E. Narrow Endemic Species Identified in Tables 4-5 and 4-6. For certain species identified as "narrow endemic species" impacts will be avoided to the maximum extent practicable.

Impacts that cannot be avoided shall be minimized and mitigated in accordance with the MSCP, the Subarea Plan, and the Biological Mitigation Ordinance consistent with this Agreement. Narrow endemic species are those identified in Tables 4-5 and 4-6 of the Subarea Plan attached hereto as exhibit H.

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

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

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

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

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

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

10.10 Preserve Management Program. Within six months of the Effective Date, the County shall submit to the USFWS and CDFG for review a draft framework management plan for that portion of the MHPA which is within the Subarea, in accordance with Section

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

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

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

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

11.0 FUNDING RESPONSIBILITIES OF THE COUNTY OF SAN DIEGO

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

11.2 Regional Funding.

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

B. Short-term Regional Funding. In the short-term, prior to approval of a long-term regional financing mechanism as discussed in Section 11.2C below, County will participate with the other Participating Local Jurisdictions to seek financing for the acquisition of private lands within the MHPA during the first three years following the Effective Date. Prior to the establishment of a regional financing mechanism, the County agrees to fund or ensure the costs of managing and monitoring those lands identified in Section 10.9 of this Agreement as set forth in that section.

C. Long-term Regional Funding.

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

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

3. Timetable. The MSCP Plan specifies a proposed timetable for securing long-term regional funding. Within eighteen months of the Effective Date, County working cooperatively with the other Participating Local Jurisdictions, will initiate the process described in the MSCP Plan to procure

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

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

D. Failure to Provide Adequate Funding.

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

12.0 ISSUANCE OF THE TAKE AUTHORIZATIONS

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

12.2 Findings - USFWS - Covered Species. The USFWS has found, following opportunity for public comment, that (a) the taking of Covered Species within the MSCP Area in accordance with the MSCP Plan as implemented by the subarea plans will be

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

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

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

12.5 Findings - CDFG. The CDFG has found, following opportunity for public comment, that the MSCP, the Subarea Plan and this Agreement (1) adequately provide for the conservation and management of the Covered Species Subject to Incidental Take and their habitat within the MSCP Area and the Subarea, (2) satisfy all legal requirements under the NCCP Act necessary for the CDFG to issue a CESA/NCCP Authorization for the Covered Species Subject to Incidental Take, and (3) are consistent with the NCCP Process and Conservation Guidelines. The CDFG has found that the Subarea Plan, in combination with the MSCP Plan, meets the requirements of the NCCP Act for an NCCP Plan, and has approved the Subarea Plan as an NCCP Plan. The CDFG has found

further that the MSCP, the Subarea Plan and this Agreement provide adequately for the mitigation of potential "significant effects on the environment" (as defined in Cal. Pub. Resources Code, § 21068) which may result to Covered Species Subject to Incidental Take and their habitat (pursuant to Cal. Gov. Code, § 66474) that may result from the land development activities in the Subarea.

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

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

13.0 CONSULTATIONS WITH OTHER PUBLIC AGENCIES

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

required by the County pursuant to the MSCP, the Subarea Plan and this Agreement. For Section 7 consultations conducted in connection with the issuance of permits under Section 404 of the Clean Water Act, 33 U.S.C. § 1344, Section 9.8.A of this Agreement shall apply in lieu of this paragraph.

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

14.0 MONITORING, REPORTING AND PRESERVE MANAGEMENT

14.1 Continual Habitat Acreage Accounting. So long as this Agreement and the Take Authorizations remain in effect, the County will continually account, by project and cumulatively, for the amount and location of habitat acreage (by habitat type) lost and preserved within the Subarea, including acres conserved within the MHPA and acres committed to land development both within and outside of the MHPA. The results of such accounting will be applied to the Habitat Conservation Accounting Model attached as exhibit I to this Agreement to assure that adequate progress toward implementation of the MSCP Plan and the Subarea Plan is being achieved and that habitat preservation is proceeding in rough step with development.

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

USFWS, the CDFG and the County to disseminate and discuss the annual report.

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

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

14.5 Biological Monitoring. The Parties agree that biological monitoring, which involves the collection and analysis of data on specific species and habitats, is necessary to determine whether Covered Species and their habitats are being maintained by the MSCP as expected. Biological monitoring will be jointly funded by the federal and state governments and the Participating Local Jurisdictions and Participating Special Entities through the federal, state and regional funding programs. As described in the Subarea Plan, County will be responsible for the biological monitoring of its own, specified public lands, as well as mitigation lands obtained by it in fee title or easement, and lands acquired by it for the MSCP using the regional funding program or other local sources. The federal and state agencies will monitor their present identified lands and those acquired for the MSCP with federal and state funds, as described in the MSCP Plan. Proper management of the MHPA will require ongoing and detailed analysis of the data collected through biological monitoring activities. To ensure uniformity in data gathering and analysis, the USFWS and CDFG will assume primary responsibility for coordinating the monitoring program, analyzing data, and providing information and technical assistance to the Participating Local Jurisdictions and Participating Special Entities. Biological monitoring will focus on selected Covered Species and representative habitats. The USFWS and CDFG will prioritize specific monitoring activities based on available budget and specific needs of individual species and habitats, and will produce a summary report on monitoring activities every three years at the same time as the report described in Section 14.4, above.

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

14.7 Coordination of Preserve Management.

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

furnish information and advice on habitat management. The committee will have the responsibilities identified in Section 5.8.3 of the MSCP Plan.

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

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

15.0 USFWS AND CDFG OBLIGATIONS

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

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

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

identified for MSCP implementation, provided such reallocation does not adversely affect any Covered Species.

16.0 REMEDIES AND ENFORCEMENT

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

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

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

16.2 The Section 10(a) Permit.

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

B. Reinstatement of Suspended Permit. In the event the USFWS suspends the Section 10(a) Permit, in whole or in part, as soon as possible but no later than ten (10) days after such suspension, the USFWS shall confer with the County concerning how the violation or breach that led to the suspension can be remedied. At the conclusion of any such conference, the USFWS shall identify reasonable specific actions necessary to effectively redress the violation or breach. In making this

determination the USFWS shall consider the requirements of the ESA, regulations issued thereunder, the conservation needs of the Covered Species, the terms of the Section 10(a) Permit and of this Agreement and any comments or recommendations received during the meet and confer process. As soon as possible, but not later than thirty (30) days after the conference, the USFWS shall send the County written notice of the reasonable actions necessary to effectively redress the violation or breach. Upon performance of such necessary actions, the Service shall immediately reinstate the Section 10(a) Permit or the suspended portion thereof. It is the intent of the Parties that in the event of any suspension of the Section 10(a) Permit all Parties shall act expeditiously and cooperatively to reinstate the Section 10(a) Permit.

C. Permit Revocation or Termination.

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

2. The USFWS agrees that it will not revoke or terminate the Section 10(a) Permit without first (a) requesting the County take appropriate remedial action, and (b) providing the County with notice in writing of the facts or conduct which warrant the revocation or termination and a reasonable opportunity (but not less than sixty (60) days) to demonstrate or achieve compliance with the ESA, the Section 10(a) Permit and this Agreement.

3. Notwithstanding revocation of the County's Section 10(a) Permit under this Section, the County and all Third Party Beneficiaries shall remain obligated to carry out those obligations specified under Section 22.A.2 and B.

16.3 The CESA/NCCP Authorization.

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

reasonable opportunity for the County to demonstrate why suspension is not warranted or to take steps necessary to cure the violation or breach.

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

C. Authorization Revocation or Termination.

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

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

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

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

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

17.0 THIRD PARTY BENEFICIARIES

17.1 Authorization. Upon execution of this Agreement by the Parties and the issuance of Take Authorizations by USFWS and CDFG, the County may allow within the Subarea the Incidental Take of Covered Species Subject to Incidental Take by Third Party Beneficiaries under the direct control of the County, specifically including landowners and public and private entities undertaking land development activities in conformance with an approval granted by the County in compliance with this Section and Sections 9 and 10 of this Agreement.

A. Creation of Third Party Beneficiary Status.

(1) Except for those projects covered by paragraph (2) of this subsection 17.1.A, the creation of Third Party Beneficiary status shall occur during the County's permitting process at the point in time when (1) review of the project's impacts on biological resources and a determination of necessary mitigation has occurred in compliance with Section 10 of this Agreement, (2) the determined mitigation includes an immediately effective requirement to maintain the biological values of the land committed for mitigation, and (3) the mitigation has been imposed through a condition of development (such as a mitigation agreement) that is recorded and runs with the land and is enforceable against and binding upon the Third Party Beneficiary and any successor in interest to the Third Party Beneficiary. Third Party Beneficiary status may be attained for a project as a whole, or for a discrete phase(s) of a project so long as the mitigation for the discrete phase(s) is

not functionally dependent in the context of the MSCP and Subarea Plan upon the mitigation proposed for subsequent phases.

(2) Third Party Beneficiary status shall be conferred upon any project which is determined to be exempt from the County's Biological Mitigation Ordinance (Ordinance No. 8845 (New Series) pursuant to Article III A., Subsection 1, 8, 11, 12 and any Take Authorization Areas approved by the Board of Supervisors and the Wildlife Agencies as part of the County Subarea Plan identified in Subsection 4, upon application and approval of the exemption by the County in compliance with the Biological Mitigation Ordinance and this Section. Such approval shall serve as a Certificate of Inclusion. The Certificate of Inclusion shall also serve as the authorization for incidental take. For purposes of this Section, projects exempt under the Biological Mitigation Ordinance Article IIIA. Subsection 1 are limited to ministerial permits on existing legal lots.

Third Party Beneficiary status shall be conferred upon any project which is determined to be exempt from the County's Biological Mitigation Ordinance (Ordinance No. 8845 (New Series) pursuant to Article IIIA., Subsections 5, 9, 10 and any approved Habitat Loss Permit issued pursuant to 16 U.S.C. sec. 1533(d) upon issuance of a Certificate of Participation, as defined in Section 9.16 of this Agreement, in compliance with this Section and Sections 9 and 10 of this Agreement. Authorization for incidental take for those projects exempt from the Biological Mitigation Ordinance pursuant to Article III A., Subsections 5, 9, 10 and Habitat Loss Permits issued pursuant to 16 U.S.C. sec. 1533(d) shall be granted in accordance with Section 17.1.D.

B. Maintenance of Third Party Beneficiary Status. Third Party Beneficiary status will remain in effect unless, prior to the issuance of take authorization in accordance with Section 17.1.D., below, the Third Party Beneficiary alters the project in a manner that increases or substantially alters impacts to biological resources evaluated pursuant to Section 17.1.A., above, or fails to maintain the biological values of the land committed for mitigation pursuant to Section 17.1.A., above. In such circumstance, the Third Party Beneficiary status is automatically extinguished, and the subsequent creation of Third Party Beneficiary status will require biological review and imposition of mitigation for the increased or altered impacts, pursuant to Section 17.1.A. above. However, Third Party Beneficiary status shall not be extinguished as a result of impacts to biological values resulting from natural or other causes beyond the Third Party Beneficiary's control, as determined by the USFWS and CDFG, including fire, flood, storm, and earth movement, or from any prudent action taken by the Third Party Beneficiary to prevent, abate, or mitigate significant injury to the land evaluated pursuant to Section 17.1.A., above, resulting from such causes.

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

D. Authorization for Take Conferred by Local Jurisdictions to Third Party Beneficiary. The authorization for incidental take conferred by the County to the Third Party Beneficiary shall be for the length of time and run concurrent with the specific land development approval granted by the County. However no grading or grubbing activities may be commenced by the Third Party Beneficiary pursuant to the County's development approval until the mitigation established pursuant to Section 17.1.A. above has been fully satisfied (via conservation easement, transfer of fee title, etc.) or is guaranteed (via irrevocable offer of dedication, mitigation bond, letter of credit, pledged savings account or other equivalent mechanism) to occur within a time frame approved by the County, which time frame shall not under any circumstance exceed one year from the date the permit for grading or grubbing is issued.

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

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

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

upon Third Party Beneficiaries or any other person to sue the USFWS or the CDFG.

18.0 ENVIRONMENTAL REVIEW

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

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

19.0 COOPERATIVE EFFORT

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

20.0 TERMS USED

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

21.0 TERM

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

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

21.3 Permanent Preservation. Notwithstanding the stated term as herein set forth, the Parties agree and recognize that

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

22.0 TERMINATION

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

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

2. The County and Third Party Beneficiaries shall remain obligated to carry out all of their long term management and monitoring obligations assumed under the MSCP, Subarea Plan and this Agreement with respect to habitat conservation lands included in, or required to be included in, the MHPA as a result of land development approved by the County prior to withdrawal from the Agreement.

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

C. Any Incidental Take associated with land development projects approved by the County for which mitigation has been assured as provided in Section 17, shall continue to be authorized under the terms of the Take Authorizations provided the County continues to carry out its obligations under this Agreement with respect to such Take as provided in Sections 9.18, 10, 14 and 17 of this Agreement.

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

23.0 AMENDMENTS

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

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

24.0 FORCE MAJEURE

In the event that the County is wholly or partially prevented from performing obligations under this Agreement because of unforeseeable causes beyond the reasonable control of and without the fault or negligence of the County ("force majeure"), including but not limited to acts of God, labor disputes, sudden actions of the elements, or actions of federal or state agencies or other local jurisdictions, the County shall be excused from whatever performance is affected by such unforeseeable cause to the extent so affected, and such failure to perform shall not be considered a material violation or breach, provided that nothing in this Section shall be deemed to authorize any Party to violate ESA or CESA, and provided further that:

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

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

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

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

25.0 MISCELLANEOUS

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

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

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

25.4 Notice. Any notice permitted or required by this Agreement shall be delivered personally to the persons set forth below or shall be deemed given five (5) days after deposit in the United Stated mail, certified and postage prepaid, return receipt requested and addressed as follows or at such other address as any Party may from time to time specify to the other Parties in writing:

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

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

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

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

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

25.6 Defense.

A. The USFWS will, upon request of the County and subject to the responsibilities of the United States Department of Justice in the conduct of litigation, provide appropriate support to the County in defending, consistent with the terms of the MSCP, lawsuits arising out of the County's adoption of the MSCP and Subarea Plan.

B. Upon request, CDFG will, to the extent authorized by California law, provide appropriate support to the County in defending, consistent with the terms of the MSCP, lawsuits arising out of the County's adoption of the MSCP and Subarea Plan.

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

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

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

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

25.11 Consistency with Authorizing Statutes. This Agreement is consistent with the statutory authority of the USFWS under the ESA and other applicable federal laws, and of the CDFG

under the CESA, the NCCP Act and other applicable state laws. Likewise, nothing in this Agreement is intended to nor shall be construed to limit or compromise the statutory authority of the USFWS or the CDFG under such laws.

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

By: Vicki M. Finn Date: 3/13/98

Acting Regional Director
United States Fish and Wildlife Service
Portland, Oregon

By: Jacqueline E. Schafer Date: March 17, 1998

Director
California Department of Fish and Game
Sacramento, California

By: _____ Date: 2/25/98

County of San Diego
San Diego, California

Robert R. Copper
Deputy Chief
Administrative Officer

Approved and/or authorized by the Board
of Supervisors of the County of San Diego
Date: 10-22-97 Minute Order No. 1
THOMAS J. PASTUSZKA
Clerk of the Board of Supervisors
By: _____
Deputy Clerk

APPROVED AS TO FORM AND LEGALITY
COUNTY COUNSEL

BY Claudia Anzures
DEPUTY

LIST OF EXHIBITS

County of San Diego Implementing Agreement

A. Map of MSCP Plan area

B. List of 12 Governments included in MSCP area

C. List of Covered Species

D. List of Covered Species Subject to Incidental Take

E. Sufficiently and Significantly conserved vegetation communities

F. County of San Diego Subarea

G. County Board of Supervisors Policy I-117 on Mitigation Banking

H. Narrow endemic species

I. Habitat Accounting Model

EXHIBIT A

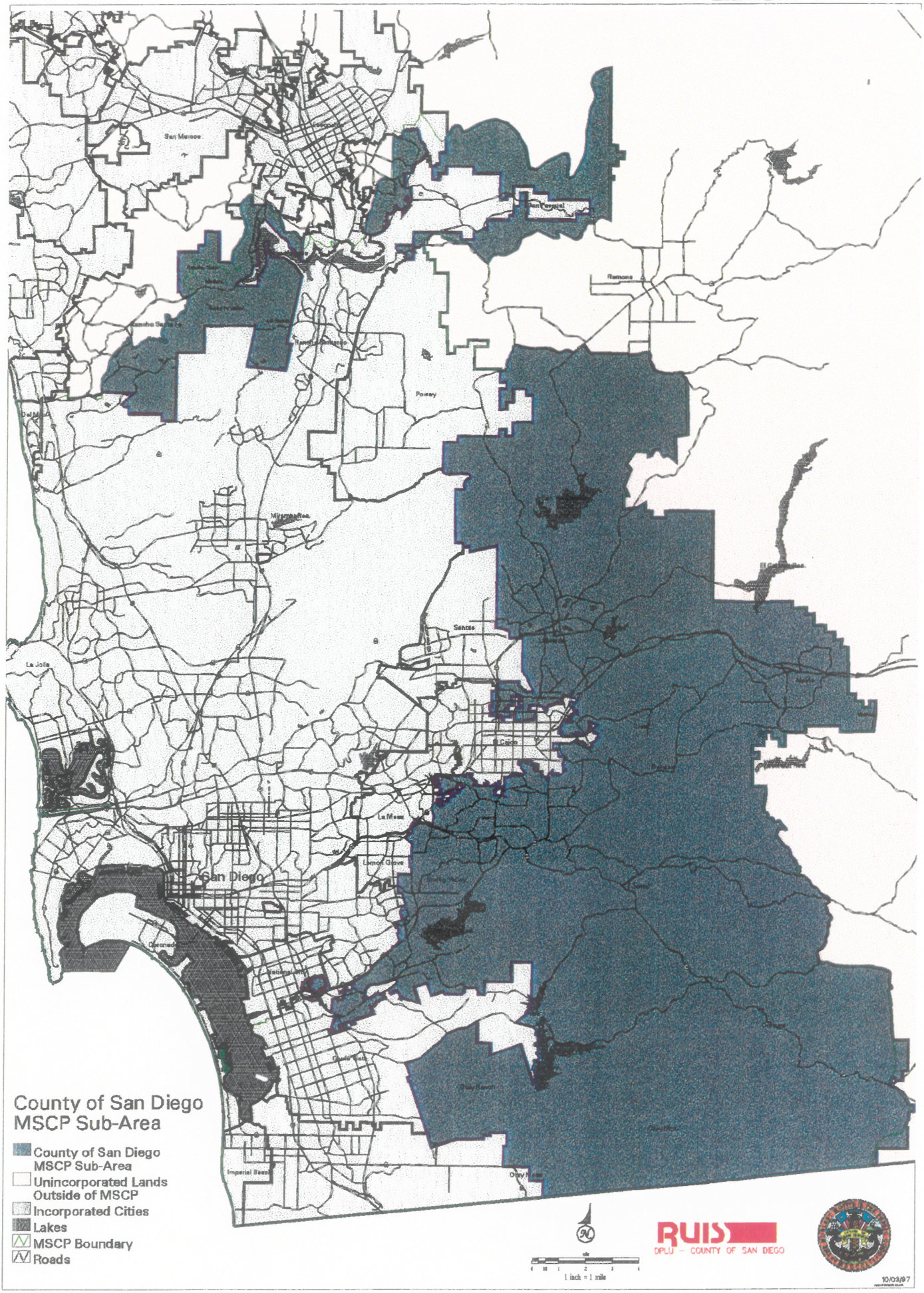

San Marcos
Escondido
San Pasqual
Ramona
Poway
Mira Mesa
Santee
La Jolla
La Mesa
Lemon Grove
San Diego
Coronado
Imperial Beach
Otay Mesa
County of San Diego
MSCP Sub-Area
County of San Diego MSCP Sub-Area
Unincorporated Lands Outside of MSCP
Incorporated Cities
Lakes
MSCP Boundary
Roads
1 inch = 1 mile
RUIS
DPLU - COUNTY OF SAN DIEGO
10/03/97

EXHIBIT B

Local Governments included in MSCP Area

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

EXHIBIT C

MSCP COVERED SPECIES LIST

Plants

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

Animals

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

EXHIBIT D

MSCP COVERED SPECIES SUBJECT TO INCIDENTAL TAKE

Plants

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

Animals

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

EXHIBIT E

SUFFICIENTLY CONSERVED VEGETATION COMMUNITIES

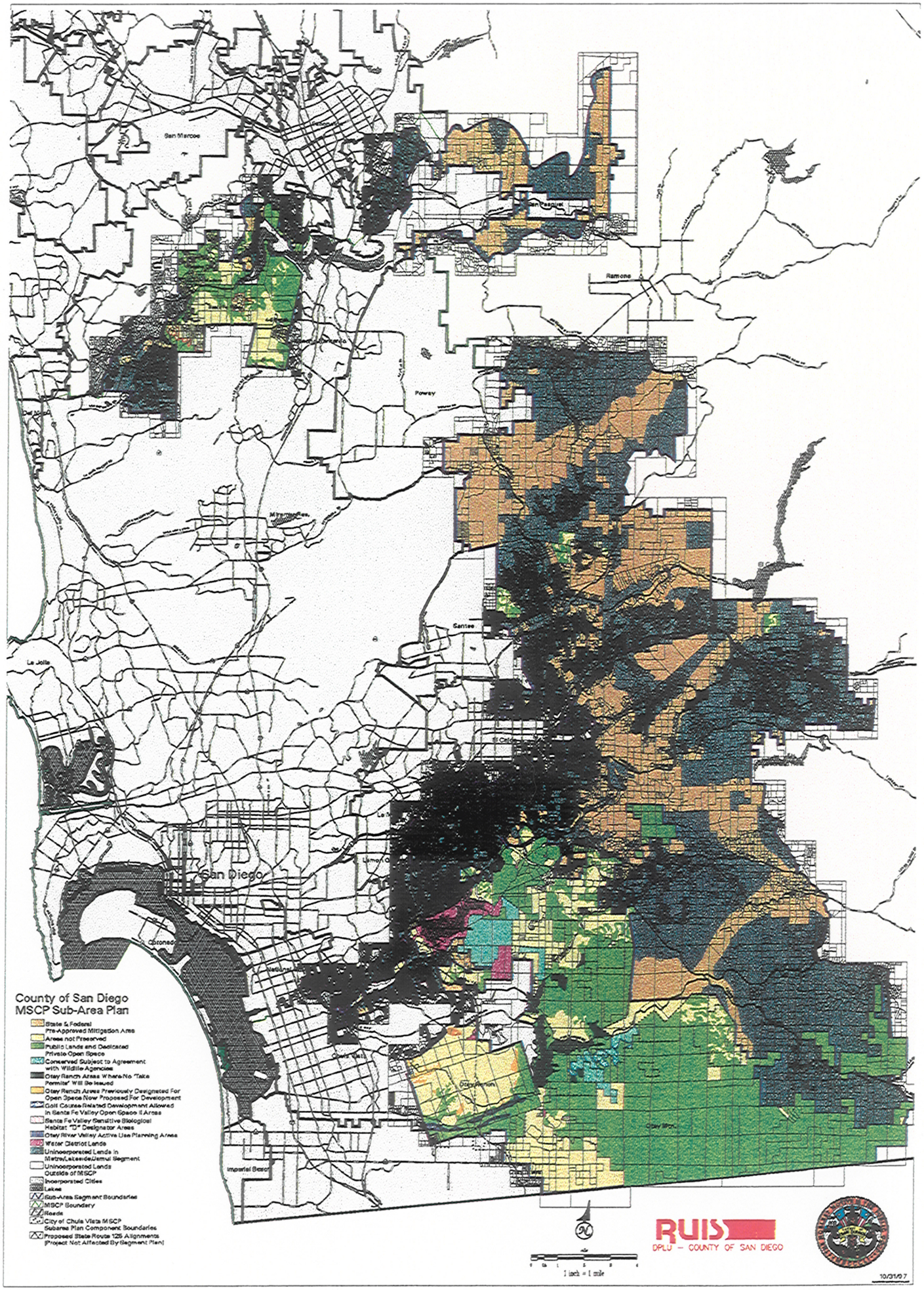
southern coastal bluff scrub
riparian scrub
disturbed wetlands
riparian forest
southern coastal saltmarsh
saltpan
coastal sage scrub (that portion of coastal sage scrub that comprises the range of the California gnatcatcher)
southern foredunes
riparian woodland
Torrey pine forest
natural flood channel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

SIGNIFICANTLY CONSERVED VEGETATION COMMUNITIES

southern coastal bluff scrub
riparian scrub
disturbed wetlands
riparian forest
southern coastal saltmarsh
saltpan
coastal sage scrub
southern foredunes
riparian woodland
Torrey pine forest
natural flood channel
Tecate cypress forest

beach
oak riparian forest
freshwater marsh
maritime succulent scrub
southern maritime chaparral
open water

EXHIBIT F


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

COUNTY OF SAN DIEGO, CALIFORNIA
BOARD OF SUPERVISORS POLICY

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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

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

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.

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. 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.

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 1. 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

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.B.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.

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.

Board Action

10/4/95 (2)

Sunset Date

12/31/03

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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EXHIBIT H

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

Scientific name	Common name	Status
Mammals:		
Perognathus longimembris pacificus,	Pacific pocket mouse	FE, SSC
Birds:		
Aquila chrysaetos	golden eagle (nesting)	SSC
Falco peregrinus anatum	American peregrine falcon	CE, FE
Sterna antillarum browni	California least tern	CE, FE
Passerculus Sandwichensis Beldingi,	Belding's savannah sparrow	CE
Rallus longirostris levipes	light-footed clapper rail	CE, FE
Laterallus jamaicensis coturniculus	California black rail	CT
Coccyzus americanus occidentalis	western yellow-billed cuckoo	CE
Empidonax trailli extimus	southwestern willow flycatcher	CE, FE
Campylorhynchus brunneicapillus couesi	coastal cactus wren	SSC
Vireo belli pusillus	Least Bell's Vireo	FE, CE
Speotyto cunicularia hypugaea	Burrowing owl	SSC
Reptiles:		
Clemmys marmorata pallida	Southwestern pond turtle	SSC
Amphibians:		
Bufo microscaphus californicus	arroyo southwestern toad	FE, SSC
Rana aurora draytoni	California red-legged frog	FT, SSC
Fishes:		
Eucyclogobious newberryi	tidewater goby	FE, SSC
Invertebrates:		
Branchinecta sandiegoensis	San Diego fairy shrimp	FE
Streptocephalus wootoni	Riverside fairy shrimp	FE
Euphydryas editha quino	Quino checkerspot butterfly	FE
Euphys vestris harbisoni	Dun skipper	
Mitoura thorne	Thornes hairstreak butterfly	

Status (Federal/State)

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

LIST OF NARROW ENDEMIC PLANT SPECIES WITHIN THE MSCP SUBAREA*

Scientific Name	Common Name	Known from Metro-Lakeside-Jamul
Acanthomintha ilicifolia	San Diego thorn-mint	yes
Agave shawii	Shaw's agave	
Ambrosia pumila	San Diego ambrosia	yes
Baccharis vanessae	Encinitas baccharis	yes
Brodiaea filifolia	thread-leaved brodiaea	
Calochortus dunnii	Dunn's mariposa lily	
Ceonothus cyaneus	Lakeside ceonothus	yes
Dudleya brevifolia	short-leaved dudleya	
Dudleya variegata	variegated dudleya	yes
Ericameria palmeri ssp. *palmeri*	Palmer's ericameria	yes
Hemizonia conjugens	Otay tarplant	
Lepechinia cardiophylla	heart-leaved pitcher sage	yes
Lepechinia ganderi	Gander's pitcher sage	
Mahonia nevinii	Nevin's barberry	not known
Monardella linoides ssp. *viminea*	willowy monardella	
Nolina interrata	Dehesa bear grass	yes
Opuntia parryi var. *serpentina*	snake cholla	

*See Attachment A, MSCP Boundary Map

EXHIBIT I

HABITAT CONSERVATION ACCOUNTING MODEL

The "Habitat Conservation Accounting Model" is a tool which is to be used so that the County, wildlife agencies and the public can track, on an annual basis, whether conservation targets are being achieved within the County's Metro-Lakeside-Jamul segment of their Subarea Plan. Using this model, the wildlife agencies have developed graphs depicting the acceptable levels of habitat conservation and loss for each vegetation community at any given time. These graphs are based on a linear relationship between the number of newly preserved acres of a specific vegetation community necessary to meet the conservation targets and the acreage of that community that may be developed without compromising the conservation goals of the program. The slope of the line of the graphs is defined as:

$R = Y/X$

T = total acres of a vegetation community within the wildlife agencies' pre-approved mitigation area that is not conserved at the date the County's take authorizations are issued

Y = the number of acres of a conservation of a vegetation community that must be achieved to meet the conservation target within the pre-approved mitigation area

$T-Y = X$ = the total acreage of a vegetation community that could be lost and still meet the conservation target for the vegetation community

Since out-of-kind mitigation may occur under the MSCP (vegetation communities are grouped by tier and mitigation for those communities may occur within the same or higher tiers), some flexibility to deviate from the strict ratios of the habitat conservation accounting model (as defined by the above formula) in the early phases of the program is necessary and desirable. Consequently, the habitat conservation accounting model was devised to allow conservation to proceed in "rough step" with development such that deviations from the conservation/loss ratios of up to 10 percent could occur (by necessity, allowable deviations will decrease over time so that conservation targets will be attained), provided that corrections are later made for any deviations. The "rough step" approach is intended to give the County the necessary leeway in making planning decisions without jeopardizing the County's ability to ultimately satisfy their conservation commitment.

Because the conservation level varies between vegetation communities, the "rough step" ratios and deviations will vary by vegetation community. The "rough step" performance will be evaluated independently for the portions of the Metro-Lakeside-Jamul segment north and south of Interstate 8.

EXHIBIT I

The County's formula for defining the "rough step" performance line for a vegetation community is:

T = total acres of a vegetation community within the wildlife agencies' pre-approved mitigation area (Attachment 1 of the County Subarea Plan) as of the date of issuance of the County's take authorizations
Y = total conservation target in acres for a vegetation community within the wildlife agencies' pre-approved mitigation area
X = total acres of a vegetation community that could be developed within the wildlife agencies' pre-approved mitigation area and still meet conservation target, X=T-Y
r = ratio of conservation to development, r = Y/X
X_t = maximum number acres of a vegetation community that could be approved for development within the wildlife agencies' pre-approved mitigation area at time t
Y_t = acres of new conservation of a vegetation community within the wildlife agencies' pre-approved mitigation area at time t

rough step standard $X_t \leq (Y_t/r) + .1\,[X - (Y_t/r)]$

In the event that the County exceeds the allowable deviation for a particular vegetation community, any additional loss of that vegetation community without corrective action could result in suspension of take authorizations in whole or in part.