

## CHAPTER 1: INTRODUCTION

This Southern Natural Community Conservation Plan//Master Streambed Alteration Agreement/Habitat Conservation Plan (Southern NCCP/MSAA/HCP) is being prepared by the County of Orange in cooperation with the California Department of Fish and Game (CDFG) and the U.S. Fish and Wildlife Service (USFWS). This joint document is being prepared in accordance with the provisions of the state Natural Community Conservation Planning Act of 1991 (NCCP Act), Sections 1600 *et seq.* of the California Fish and Game Code and the federal Endangered Species Act (FESA). The Southern Subregion is part of the five-county NCCP Study Area established by the state as part of the Southern California Coastal Sage Scrub NCCP Program (*Figure I-M*). Cited figures are referenced by a single sequential figure numbering system that identifies hard copy figures contained in the *Part IV Map Book* with an “M” following the *Figure* number and designation and the remaining figures with an “R” designation to indicate that they are not provided as hard copy but are contained on an accompanying Reference Disk.

In addition, a Joint Programmatic Environmental Impact Report and Environmental Impact Statement (Joint EIR/EIS) that addresses the effects related to the Southern NCCP/MSAA/HCP was prepared in accordance with the California Environmental Quality Act (CEQA), and National Environmental Policy Act (NEPA). The County of Orange is the lead agency responsible for preparation of the NCCP/MSAA and the EIR. The USFWS is the lead agency responsible for preparation of the HCP and EIS.

The purpose of the Southern NCCP/MSAA/HCP is to provide for the conservation of identified listed and unlisted species (“Covered Species”) and associated vegetation communities, including upland, aquatic and riparian resources (Conserved Vegetation Communities) that are currently found within the 132,000-acre Southern NCCP/MSAA/HCP study area.

### SECTION 1.1 ORGANIZATION OF THE SOUTHERN NCCP/MSAA/HCP DOCUMENTS

The Southern NCCP/MSAA/HCP, Joint EIR/EIS, and Implementation Agreement (IA) are being published and circulated as a single set of documents to facilitate public understanding, evaluation and discussion of the project and to expedite approval of an effective NCCP/MSAA/HCP. Completion and implementation of the Southern NCCP/MSAA/HCP is designed to: (1) provide for regulatory coverage and maximize prospects for long-term protection and management for 32 listed and unlisted Covered Species under the federal Endangered Species Act (FESA) and the Natural Community Conservation Act of 1991 (NCCP Act); (2) provide for regulatory coverage and maximize protection and management of CDFG Jurisdictional Areas subject to protection under Sections 1600 *et seq.* of the California Fish and Game Code; and (3) accommodate reasonable economic activity and development consistent with the goals set forth in *Chapter 2* (Covered Activities). The NCCP/MSAA/HCP

Conservation Strategy is also designed to protect and managed 10 Conserved Vegetation Communities. “Conserved Vegetation Communities” are those vegetation communities that: **(1)** are designated to be adaptively managed in accordance with the Adaptive Management Program (AMP) and Ongoing Management Plan (OMP) components of the Habitat Reserve Management Program (HRMP) discussed in *Chapter 7*; **(2)** are permanently and sufficiently protected (*i.e.*, in terms of the number of acres of vegetation and share of the total vegetation community in the study area) as part of the Habitat Reserve to be considered conserved; and **(3)** provide the habitat that supports regulatory coverage for the Covered Species identified in this NCCP/MSAA/HCP.

*Section 1.1.1.c* defines the term “regulatory coverage” to include all of the regulatory elements addressed in this NCCP/MSAA/HCP. A short hand use of the term in this paragraph and elsewhere in the NCCP/MSAA/HCP encompasses regulatory coverage for Covered Species and CDFG Jurisdictional Areas.

The overall Southern NCCP/MSAA/HCP program documentation is presented in three parts. The NCCP/MSAA/HCP (*Part I*) sets forth the project need and purposes, describes the terrestrial and aquatic biologic setting for the Subregion, and outlines the NCCP/MSAA/HCP planning process. The NCCP/MSAA/HCP also provides a detailed discussion of the proposed subregional Conservation Strategies, including descriptions of:

- The multiple-vegetation community, multiple-species Habitat Reserve;
- Vegetation community and species management measures that are part of a Habitat Reserve Management Program (HRMP) set forth in *Chapter 7*, which would include: **(1)** an Ongoing Management Program (OMP) where regulatory coverage is requested for minimal non-quantified impacts by the County Harbor, Beaches and Parks Department; and **(2)** an “Adaptive Management Program” for portions of the Subregion where regulatory coverage is requested, including the RMV property and County parklands and Prima Deshecha Landfill, as appropriate;
- Land uses and activities within the proposed Habitat Reserve that are permitted in addition to habitat management activities specified by the HRMP;
- The extent to which the Covered Species (*i.e.*, those species designated to receive regulatory coverage under the NCCP/MSAA/HCP) and Conserved Vegetation Communities are protected or impacted;
- The extent to which aquatic and riparian resources subject to regulation under Sections 1600 *et seq.* of the Fish and Game Code (CDFG Jurisdictional Areas) are protected or impacted; and
- Ongoing implementation mechanisms (*e.g.*, those covering land dedication phasing) required to assure the long-term protection and management of Covered Species,

Conserved Vegetation Communities and CDFG Jurisdictional Areas consistent with the approved NCCP/MSAA/HCP.

After describing the planning process and alternative Habitat Reserve designs considered for inclusion in the proposed Conservation Strategy in *Chapter 6*, the Southern NCCP/MSAA/HCP assesses in *Chapters 8, 9 and 14* the consistency of the alternative Habitat Reserve designs and HRMP with: (1) the 1993 Statewide NCCP Planning Guidelines and Conservation Guidelines; (2) the Southern Orange County NCCP Science Advisor Principles; (3) the Draft Southern Planning Guidelines; (4) the Draft Southern Watershed and Sub-basin Planning Principles; and (5) sections 10 and 3(5)(A) of the FESA. The NCCP/MSAA/HCP addresses the relative impacts of alternative conservation approaches, including “no project,” “no take” alternatives required under state and federal laws and “programmatic” Habitat Reserve and Conservation Strategy alternatives designed to address the goals and objectives of the NCCP Act of 1991 (hereafter called the NCCP Act), application of Sections 1600 *et seq.* of the Fish and Game Code at the watershed and sub-basin levels, and FESA requirements.

*Part II* of the overall Southern NCCP/MSAA/HCP document is the Joint EIR/EIS. The Joint EIR/EIS has been prepared and formatted consistent with existing agency guidelines and the requirements of CEQA and NEPA. In addition to describing the proposed actions covered by the Joint EIR/EIS, including the project purposes and need, the EIR/EIS describes the affected environment, and evaluates impacts to Covered Species and associated habitats and aquatic/riparian resources that would result from alternatives considered and the proposed Conservation Strategy and associated Covered Activities. The Joint EIR/EIS addresses the full range of issues relating to project consistency with the requirements of CEQA, NEPA, the NCCP Act, Sections 1600 *et seq.* of the Fish and Game Code and FESA, including the Special 4(d) Rule for the gnatcatcher.

*Part III* of the Southern NCCP/MSAA/HCP documentation is the Implementation Agreement (IA). The IA specifies the enforceable measures/mechanisms, including funding, necessary to bring about the coordinated, orderly implementation of an effective NCCP/MSAA/HCP. To facilitate the use of maps by agencies and the public, a separate Map Book (*Part IV*) contains all of the figures cited in *Parts I through III* of the Southern NCCP/MSAA/HCP. The Appendices referenced in *Parts I, II and III* are contained in a separate *Part V* of the overall documentation.

### **1.1.1 Statutory and Conceptual Framework – Southern California NCCP and MSAA Programs**

#### ***a. Southern California NCCP Program***

The statutory framework for the Natural Community Conservation Planning (NCCP) Program was established by the California Legislature through its enactment of the NCCP Act (California Fish and Game Code Section 2800 *et seq.*). Major amendments to the NCCP Act have been subsequently enacted; however, ongoing NCCP programs undertaken pursuant to previously signed planning agreements are subject to the NCCP Act of 1991. The Southern Subregion NCCP is being prepared and reviewed consistent with the requirements of the NCCP Act as it read on December 31, 2001, pursuant to the “grandfather” provisions contained in Section 2830(b)(1) of the amended NCCP Act that became effective on January 1, 2002. By their terms, the substantive provisions of the 2001 amendments to the NCCP Act do not apply to the Southern NCCP and, as a result, the applicable substantive provisions of the NCCP Act are those that went into effect with the enactment of the NCCP Act of 1991. Consequently, all references to the requirements of the NCCP Act will be to the 1991 NCCP Act. As will be reviewed later, FESA and NCCP Act requirements were integrated through the special 4(d) rule for the coastal California gnatcatcher.

The NCCP Program was designed to be a voluntary, collaborative planning program involving landowners, local governments, state and federal agencies, environmental organizations and interested members of the public in the formulation and approval of the NCCPs. The purpose of the NCCP Program is to provide long-term, large scale protection of natural vegetation communities and wildlife diversity while allowing compatible land uses and appropriate development and growth as discussed in *Section 2.1.1* of this document (see Section 1 of the Legislative Findings for AB 2172). The NCCP process was initiated to provide an alternative to “single species” conservation efforts. The shift in focus from single species, project-by-project conservation efforts to large scale conservation planning at the natural community level was intended to facilitate regional and subregional protection of a range of species that inhabit a designated natural community or communities.

The evolution and focus of the NCCP Program was described by the State of California as follows

*Experience over the 20 year life of the Federal Endangered Species Act (FESA) has shown that the results of listing species individually as threatened or endangered under the ESA often does not achieve its objectives. Such listings – despite extensive regulatory powers available under the law – do not necessarily assure the long-term survival of the species and can have serious economic consequences in affected regions. This is because the listing of a single species in a multi-species habitat makes it difficult for land*

*management agencies and developers to determine how best to plan for all the species that may someday be in danger in that area. Bureaucratic indecision encouraged by this uncertainty can thwart not only needed private development, but also sound habitat management efforts crucial to species survival.*

*The NCCP Program is an innovative State effort to protect critical habitat . . . before it becomes so fragmented or degraded by development and other uses that a listing of individual species as threatened or endangered is required under the State or Federal Endangered Species Acts. The program is designed to save critical habitat and, at the same time, allow for reasonable economic activity and development on affected land, much of which is privately-owned (Resources Bulletin, “Natural Communities Conservation Planning: Questions and Answers,” 1995).*

### ***b. MSAA Program***

Sections 1600 *et seq.* of the state Fish and Game Code provides for California Department of Fish and Game (CDFG) review of any project that would impact (*e.g.*, divert, obstruct or change the natural flow or bed, channel or bank) fish of any lake, river or stream. Typically, this review would take place through the preparation of lake or streambed alteration agreements for individual projects affecting streams/lakes. However, for the Southern Subregion, a “master” streambed alteration agreement (MSAA) is being proposed to address impacts to CDFG jurisdictional areas within the Subregion, within both the San Juan Creek and San Mateo Creek watersheds. Previously, the CDFG has approved and implemented a long-term MSAA along the Santa Clara River in Los Angeles County at the request of the Valencia Company. An approach similar to that used for Valencia is now being proposed for the Southern Subregion.

Preparation and implementation of a long-term MSAA in conjunction with the preparation and approval of the NCCP and HCP in the Southern Subregion would provide the following benefits:

- While the NCCP provides for the reviews/approvals needed for regulatory coverage for impacts to Covered Species, it would not provide for the state regulatory approvals required for streambeds and riparian areas under Section 1600 *et seq.* of the Fish and Game Code;
- The NCCP aquatic habitat definition and the CDFG Jurisdictional Areas definitions for streambed/riparian areas are consistent with each other;
- Under the NCCP/MSAA/HCP, both upland and aquatic Conserved Vegetation Communities that provide habitat for Covered Species will be managed as a comprehensive Habitat Reserve under the terms of the overall HRMP; and

- Preparation and approval of the MSAA concurrent with and as part of the overall NCCP/MSAA/HCP program provides for closer coordination of decisions affecting conservation of listed and non-listed species with approval for development affecting CDFG Jurisdictional Areas.

With these considerations in mind, the County and CDFG determined that it would be appropriate and desirable to prepare and implement the MSAA as part of an overall NCCP/MSAA/HCP Conservation Strategy to optimize protection and management of the full set of upland and aquatic resources within the Subregion.

### ***c. Regulatory Coverage***

The term “regulatory coverage” as related to implementation of the Conservation Strategy is intended to encompass the full range of regulatory approvals, No Surprises assurances and other provisions involved in providing authorization for the impacts of Covered Activities on Covered Species and CDFG Jurisdictional Areas. References to regulatory coverage generally are described in a shorthand manner in this NCCP/MSAA/HCP to relate to Covered Species and CDFG Jurisdictional Areas. However, as discussed in the NCCP/MSAA/HCP, the shorthand reference should be read to encompass, as appropriate, the following elements of statutory requirements and Implementation Agreement assurances and provisions:

#### **1. NCCP – State Law**

Under Section 2835 of the NCCP Act of 1991, coverage would be provided for “the taking . . . of any identified species whose conservation and management is provided for in a department approved natural communities conservation plan.” Take of identified species (termed Covered Species under the draft NCCP/MSAA/HCP) includes both listed and unlisted species. The Section 2835 findings regarding the conservation and management of identified species will be based on the protection and management of Conserved Vegetation Communities that provide habitat for these species. Conserved Vegetation Communities are identified and designated pursuant to the requirements of Section 2805 (“The plan identifies and provides for the regional or areawide protection and perpetuation of natural wildlife diversity”) and pursuant to findings of consistency with the NCCP Conservation Guidelines tenets of reserve design. Coverage would also include Section 2825(c) under the NCCP Act (relating to CESA Section 2081).

#### **2. MSAA – State Law**

Long-term streambed alteration agreements providing coverage for impacts to CDFG Jurisdictional Areas would be finalized under California Fish and Game Section 1600 *et seq.* Agreements would be entered into with the County of Orange, RMV and SMWD. Recent proposed CDFG regulations describe a “Master agreement” as an agreement with a term of

greater than five years that describes a procedure the entity must follow for construction maintenance, or other projects the agreement covers. According to the proposed regulations “a master agreement will typically . . . encompass one or more watersheds and/or relate to a habitat conservation plan or natural community conservation plan.”

### 3. FESA – Federal Law

Pursuant to General Policies 1-3 of *Chapter 4* of this NCCP/MSAA/HCP, all proposed listed Covered Species will be addressed under survival and recovery standards. Likewise, unlisted Covered Species will be addressed under a conservation standard per General Policies 1-3 of *Chapter 4*.

#### (a) FESA Section 9/Section 10(a)(1)(B)/Section 7 – Fish and Wildlife Species

Section 9 prohibitions on the take of threatened and endangered fish and wildlife species also involve prohibitions under Section 7 (“jeopardy” and “adverse modification”). The Section 9 prohibitions are proposed to be addressed through: (a) the internal Section 7 consultation for the HCP (addressing “take” coverage, future Section 7 assurances and potential impacts on proposed or final critical habitat designations); (b) the Section 10(a)(1)(B) permit; (c) No Surprises assurances; (d) Section 7 provisions through the IA; and (e) the Section 7 programmatic consultation for the proposed SAMP permitting procedures.

#### (b) FESA Section 7 – “Jeopardy” and “Adverse Modification”

As reviewed above, the Section 7 “jeopardy” and “adverse modification” requirements extend to all listed species. As noted above, the Section 7 requirements are proposed to be addressed through provisions based on the internal Section 7 for the HCP. These provisions would involve consistency review under not only the Section 7/Section 10 standard of “not significantly reduce the likelihood of survival and recovery of the species” but also “adverse modification” determinations standards for impacts on designated critical habitat of any listed species.

#### (c) FESA Section 3 and Section 4 – Future Critical Habitat Designations

The NCCP/MSAA/HCP review of both listed and unlisted species habitat protections and special management considerations addresses both occupied and unoccupied habitat and thus is intended to encompass all of the Section 3 substantive criteria for the designation of critical habitat. It is proposed that the approval of the NCCP/MSAA/HCP will include provisions regarding: (a) any future modifications to existing critical habitat designations; and (b) future critical habitat designation for any presently unlisted species treated “as if listed” as a Covered Species under the final NCCP/MSAA/HCP. Such provisions would be included for all unlisted Covered

Species on the basis of the conservation analyses presented in *Chapter 13*, including the protection and management of Conserved Vegetation Communities provided through the creation of the Habitat Reserve and implementation of the HRMP. Conserved Vegetation Communities are identified consistent with the purpose of FESA “to provide a means whereby the ecosystems upon which endangered species and threatened species may be conserved” and are intended to include the Covered Species habitats meeting the Section 3 substantive criteria.

(d) Programmatic Section 7 Consultation for the SAMP Permitting Procedures under Clean Water Act Section 404

The SAMP addresses the portions of the San Juan Creek and San Mateo Creek watersheds located within the NCCP/MSAA/HCP study area as part of the “coordinated planning process.” The SAMP presently contemplates establishing permitting procedures for RMV lands and SMWD. With regard to SMWD and RMV, the USACE permitting procedures would establish maximum levels of future impacts on a geographic-specific and programmatic basis at the time of the approval of the proposed RMV/SMWD individual long-term permit and associated permitting procedures. Thus, in contrast with federal permitting assurances provided in other NCCP/HCPs for USACE 404 permit impacts to be analyzed at a future point in time, the proposed Section 7 consultation for the SAMP permitting procedures would involve presently defined impact levels and would result in assurances in effect for the term of the SAMP permitting procedures.

***d. Coordination and Timing of Approvals Under the Coordinated Planning Process***

As part of the coordinated planning process the proposed NCCP/MSAA/HCP Conservation Strategy has been prepared as an integrated habitat protection and management program addressing aquatic and uplands species and associated vegetation communities and resources while addressing the specific requirements of the NCCP Act of 1991, California Fish and Game Code Section 1600 *et seq.* and FESA. It is expected that all three elements of the NCCP/MSAA/HCP will receive final approval from the Wildlife Agencies at the same time. However, it is important to note that, in the event that Wildlife Agency approval for one or more of the three elements (*i.e.*, either the NCCP, MSAA or HCP) cannot be obtained concurrent with other approvals, any one of the elements could be approved as a stand alone program because the Conservation Strategy is formulated to comply with the applicable requirements of each of the relevant statutes/regulations of the NCCP Act, Fish and Game Code and FESA. *Chapter 13 (Section 13.1)* and *Chapter 14* provide statutory/regulatory consistency analyses that provide the basis for separate approvals and consistency determinations for each of the three components of the overall NCCP/MSAA/HCP should the need arise.



### **1.1.2 County Planning: Events Leading to Preparation of the Southern NCCP/MSAA/HCP**

#### ***a. County of Orange Subregional Planning Agreement***

The County of Orange was one of the early participants in the southern California NCCP process. Two NCCP subregions were proposed by the County: the Central and Coastal Subregion and the Southern Subregion. Both of the County's subregional planning units have been reviewed and approved by the CDFG and the USFWS as subregions that were sufficiently large and diverse to address cumulative impacts on habitat resources and planning for species protection at a scale contributing to the conservation of targeted species. Together, the two NCCP subregions contain about two-thirds of the total County land area and more than 90 percent of the existing coastal sage scrub habitat. The County formally enrolled its unincorporated area in the NCCP program on a jurisdictional basis early in 1992 and it took the lead in preparing the first Memorandum of Agreement (Planning Agreement) covering a NCCP subregional planning area. The subregional Planning Agreement was signed on May 7, 1993, by the County, the USFWS, CDFG, and participating landowners in the Southern Subregion (*Appendix A*). It also was signed by two of the cities within the Southern Subregion: the City of Mission Viejo and the City of San Clemente. The City of San Juan Capistrano adopted a resolution approving participation in the NCCP/HCP process, but did not sign the Planning Agreement. The Planning Agreement established the County as the lead agency for purposes of preparing the NCCP and the associated EIR.

#### ***b. Central and Coastal Subregion NCCP/HCP***

Also pursuant to a 1993 Planning Agreement, an NCCP/HCP was prepared for the 208,000-acre Central and Coastal Subregion. The Coastal and Central Subregion NCCP/HCP was approved by the Wildlife Agencies July 17, 1996. At the time of approval, it involved the participation of the County, seven cities within the subregion and eleven different private, public and quasi-public landowners. When initiated in 1993, the County's NCCP/HCPs were designed to focus on the protection of coastal sage scrub habitat and three so-called "target" species: the coastal California gnatcatcher, coastal cactus wren and orange-throated whiptail lizard.

Because coastal sage scrub occurs in scattered patches of varying sizes within the overall vegetation mosaic in southern California, NCCP planning was initiated in large part on the assumption that by focusing protection of coastal sage scrub a much broader mosaic of natural communities would be protected. This proved to be the case because, when it was approved by the Wildlife Agencies in 1996, the Central and Coastal Subregion NCCP/HCP provided for regulatory coverage for 39 individual species (including 7 state or federally-listed species and 32 other non-listed species) found within the subregion through creation of a 37,378-acre Habitat Reserve and implementation of a long-term Adaptive Management Program. In addition,

participating landowners received state/federal agency “assurances” relating to future impacts to other species within coastal sage scrub, chaparral, oak woodlands, Tecate cypress forest and cliff and rock habitats.

The Central and Coastal NCCP/HCP focused on the conservation of upland species and habitat. It did not provide for “full” regulatory coverage for species dependent primarily aquatic resources and it did not provide for management of aquatic resources (*i.e.*, wetlands and other aquatic resources covered under Section 404 of the federal Clean Water Act or under Sections 1600 *et seq.* of the California Fish and Game Code) as part of the Habitat Reserve Adaptive Management Program. Five of the “Covered Species” under the Central and Coastal NCCP/HCP were aquatic species that were identified as “Conditionally-Covered Species.” Under the terms of the approved Coastal and Central NCCP/HCP, species receiving “conditional coverage” meant that landowners could be required to undertake one or more additional measures to receive final Take authorizations, such as conducting additional species surveys and/or preparing species-specific mitigation plans for approval by USFWS/CDFG.

Funding for implementation of the Coastal and Central NCCP/HCP was provided through creation of a \$10,665,000 endowment that was funded by the NCCP/HCP Participating Landowners.

### ***c. Matrix Area***

Much of that portion of the County not included within the approved NCCP subregions (referred to as the Matrix Area) already is urbanized (*Figure 2-M*). Most of the coastal sage scrub located outside the two NCCP subregions is concentrated in and around the Chino Hills, adjacent to the Los Angeles and San Bernardino county boundaries. The USFWS has approved two Section 10 HCPs and has completed several Section 7 consultations addressing major landholdings in the Matrix area including the following:

- East Coyote Hills HCP – major coastal sage scrub restoration supporting 22 pairs of gnatcatchers;
- Shell/MWD HCP – two habitat preserves, sale of 1,000 acres of habitat lands to State Parks on on-site and off-site restoration areas supporting 16 pairs of gnatcatchers and additional pairs observed within restoration areas;
- Yorba Linda Estates Section 7 – provided funding essential to Coal Canyon acquisition linking Central/Coastal NCCP/HCP with the Matrix Area through the 15,000 acre Chino Hills State Park;

- Tonner Hills Section 7 – substantial restoration of coastal sage scrub required with potential to support 9-10 gnatcatcher pairs in addition to 8 pairs within preserved coastal sage scrub; and
- West Coyote Hills Section 7 – 37 of 48 pairs of gnatcatchers protected through habitat preservation, with requirements to restore and enhance more coastal sage scrub than impacted coastal sage scrub.

Thus, prior actions within and adjacent to the Matrix area have assured connectivity between the Central/Coastal NCCP/HCP area to the Matrix area, have added major open space areas, have provided ongoing restoration and management funding and have protected the largest gnatcatcher populations. Remaining large-scale open space areas are in active planning (AERA Master Plan Community proposal) or under public ownership (City of Industry Tonner Canyon acquisition subject to future planning). Other remaining undeveloped lands are in small properties with limited habitat resources (except a few small parcels near Tonner Creek/Brea Canyon Creek).

## **SECTION 1.2 DESCRIPTION OF THE SOUTHERN SUBREGION PLANNING PROGRAM**

### **1.2.1 Study Area and Planning Area Location and Characteristics**

#### ***a. Subregional NCCP/MSAA/HCP Study Area***

As shown in *Figure 3-M*, the Southern NCCP/MSAA/HCP study area includes the southern portion of Orange County from the coast inland to the boundary with the counties of Riverside and San Diego. Along the coast, the study area extends from the mouth of the San Juan Creek in the City of Dana Point to the San Diego County boundary, in the City of San Clemente. The study area is bounded on the west and southwest by the Central and Coastal NCCP Subregion, where a separate NCCP/HCP was prepared by the County and approved by USFWS and CDFG in 1996.

Starting at its southwest corner, the boundary of the Southern Subregion study area (*Figure 3-M*):

- extends from the mouth of San Juan Creek along the Creek inland to Interstate 5;
- northwest along Interstate 5 to El Toro Road;
- north along El Toro Road to the intersection of Live Oak Canyon Road;
- northeasterly on a straight line from the El Toro/Live Oak Canyon intersection to the northern apex of the boundary with Riverside County; and
- along the San Diego and Riverside county boundaries, southerly to the Pacific Ocean.

The study area covers approximately 132,000 acres of developed, agricultural and undeveloped natural lands (*Figure 4-M*). The Subregion comprises about 26 percent of the County of Orange. Thirty (30) percent of the entire study area (about 40,000 acres, see *Figure 4-M*) is located within the Cleveland National Forest (CNF) while about 92,000 acres are located outside the CNF. Elevations within the study area range from sea level to more than 5,500 feet. The 40,000-acre CNF portion of the study area is not being addressed as part of the NCCP/MSAA/HCP because the U.S. Forest Service (USFS) has an independent planning process. Although significant portions of some habitats discussed in the NCCP/MSAA/HCP are included within the CNF (*e.g.*, chaparral, woodlands, etc.), discussions of the percentages of total species locations and/or habitat acreages included within the proposed Habitat Reserve do not include those portions of any specific habitat types that are located within the 40,000 acres of CNF. As would be expected, the higher elevation areas are located within the CNF portion of the study area.

### ***b. Planning Area***

All undeveloped natural areas, including agricultural and disturbed areas, located within the subregional study area outside the CNF were evaluated during preparation and approval of the NCCP/MSAA/HCP. Within the 92,000-acre portion of the Subregion located outside the CNF, referred to as the “planning area,” 36 percent (about 33,000 acres) already has been urbanized. Another 6 percent (about 5,800 acres) has been used for agricultural purposes for decades or has been significantly disturbed by other uses (see *Figure 4-M*). Natural habitats remain in the remaining 58 percent (about 52,400 acres) of the non-CNF area. The natural communities that are subject to potential development pressure include, but are not limited to, coastal sage and other sage scrub communities, chaparral, woodland and forest, riparian, wetlands, and native and annual grasslands.

#### **1.2.2 Subregion Local Governments and Public Agencies**

The existing species listings under FESA and CESA, presence of CDFG Jurisdictional Areas under Sections 1600 *et seq.* and preparation of the Southern NCCP/MSAA/HCP potentially affect a number of local government jurisdictions and public agencies, in addition to the unincorporated area under the jurisdiction of the County of Orange. The planning area includes all or significant portions of four cities (*Figure 5-M*): Mission Viejo, Rancho Santa Margarita, San Clemente and San Juan Capistrano. Public and operating agencies affected by the Southern NCCP/MSAA/HCP include, but are not limited to, the Santa Margarita Water District (SMWD), Southern California Edison Company (SCE), and Transportation Corridor Agencies (TCAs).

Outside the boundary of the CNF, the planning area includes almost 20,000 acres of diverse natural lands owned and managed by public agencies, non-profit organizations, and holders of major conservation easements (*Figure 6-M*). These natural lands include the following regional and wilderness park lands totaling about 11,950 acres: O’Neill Regional Park, Thomas F. Riley

Wilderness Park and Caspers Wilderness Park. Large natural lands owned by non-profit organizations within the Subregion include the National Audubon Society Starr Ranch Sanctuary (3,892 acres) owned by the National Audubon Society (NAS). Additional natural open space totaling more than 4,284 acres is protected in three large conservation easements: the conservation easement surrounding the Ladera Ranch Planned Community (Ladera Land Conservancy), the upper Chiquita conservation easement owned by RMV located north of Oso Parkway in Chiquita Canyon (upper Chiquita Canyon Conservation Area), and the Donna O'Neill Land Conservancy at Rancho Mission Viejo.

### 1.2.3 Participating Landowners

Landowners within the Subregion, including both private and public agency owners, would be affected by the NCCP/MSAA/HCP. In recognition of the potential impact of the NCCP/MSAA/HCP process on their properties, the following Participating Landowners contributed funding and services to support completion of the NCCP/MSAA/HCP, Joint EIR/EIS, and IA:

- the Santa Margarita Water District (SMWD)
- Rancho Mission Viejo (RMV); and
- the County of Orange.

The largest undeveloped private ownership in the Southern Subregion is the RMV property. The undeveloped and non-entitled portion of RMV includes about 22,815 acres, more than 75 percent of the remaining undeveloped private land in the Subregion (*Figure 7-M*).

With respect to the Transportation Corridor Agencies (TCA), the NCCP/MSAA/HCP EIR/EIS will analyze identified South Orange County Transportation Improvement Implementation Plan (SOCTIIP) alignment alternatives to identify impacts to both Habitat Reserve design alternatives and management of habitat supporting selected “planning species” (see *Chapter 4*) and Covered Species reviewed in *Chapter 13* and the *Part II Joint EIR/EIS*. Any authorization of Take of listed species will be addressed through the Section 7 consultation for SOCTIIP rather than through the NCCP/MSAA/HCP. Future TCA regulatory coverage for unlisted species is not provided by this NCCP/MSAA/HCP but would occur to the extent that: **(1)** any final selected and approved alignment for the selected SOCTIIP alternative is determined to be consistent with the Southern NCCP/MSAA/HCP Conservation Strategy, including creation and implementation of the Habitat Reserve and HRMP; **(2)** the TCA provides for mitigation measures required by the Wildlife Agencies for unlisted species coverage; and **(3)** any required amendments to the NCCP/MSAA/HCP and/or IA are processed and approved.

### 1.2.4 Overview of Southern Subregion Planning History

Following CDFG and USFWS approval of the subregional planning study area boundaries in 1992 and signing of the Planning Agreement for the Southern Subregion, the County prepared and published a Notice of Preparation (NOP) for both the Southern Subregion and Central and Coastal Subregion NCCP EIRs on June 30, 1993. The USFWS published a Notice of Intent (NOI) for the EIS component of the Joint EIR/EISs (Federal Register, June 24, 1993). On July 7, 1993, the County and USFWS conducted a Joint Scoping Meeting covering both the Southern Subregion and Central and Coastal Subregion NCCPs. Following the Scoping Meeting, a series of “working group” meetings were conducted involving the NCCP consultant team, landowners, CDFG and USFWS staff, and environmental interest representatives. Participants in these meetings provided ongoing comment throughout a process leading to the preparation of several “open space/reserve concepts” intended to be used to select a habitat reserve design forming the basis for a NCCP/MSAA/HCP. Ultimately, for a variety of economic (*e.g.*, a lengthy recession) and RMV estate planning reasons, the NCCP /HCP planning process was put on hold in 1996.

In 1997, The Nature Conservancy convened a team of “Science Advisors” to assist in restarting the NCCP /HCP process. The purpose of the Science Advisors’ effort was to provide program participants with recommended guidance on matters relating to the design of a subregional Habitat Reserve, principles for preparing and implementing an adaptive management program, and recommendations concerning future regulatory decisions by the USFWS and CDFG regarding Take authorizations for threatened and endangered species and other species of interest. A final report was published by the Science Advisors in 1998 and this report has been incorporated into planning for the Southern Subregion (*Appendix B*). In fact, the Reserve Design Principles prepared by the Science Advisors were adopted as the Subregion Reserve Design Guidelines by the resource agencies and other program participants during the identification and evaluation of alternative open space/reserve designs for the Southern NCCP/MSAA/HCP and set forth in *Chapter 6*.

On May 14, 1998, a second public Scoping Meeting was held for the Southern Subregion NCCP planning process. After conducting the 1998 Scoping meeting the local participants (County and landowners) reviewed the submitted public comments and the recent regulatory experience of participating landowners in the Central and Coastal Subregion NCCP/HCP program to assess whether it was advisable to conduct the NCCP/HCP planning process without also initiating a watershed-level planning and permitting program capable of addressing impacts to aquatic resources subject to the requirements of the Federal Clean Water Act (CWA) (Section 404) and the state Fish and Game Code (Sections 1600-1603). It was determined that a future NCCP/HCP for the Southern Subregion should be prepared either concurrently or in close coordination with the preparation of a Special Area Management Plan and a Master Streambed Alteration

Agreement (SAMP/MSAA) that would address the need to avoid, minimize and/or mitigate potential impacts to aquatic resources on a watershed level.

After meeting with the state and federal agencies (CDFG, USFWS and U.S. Army Corps of Engineers [USACE]) that would be involved in preparing and coordinating the preparation and approval of the NCCP/HCP and SAMP/MSAA documents, the County and participating landowners began coordinating NCCP/HCP planning with preparation of a SAMP/MSAA that would cover those portions of both the San Juan Creek Watershed and San Mateo Creek Watershed located within the County of Orange. Coordinated planning was facilitated by the initiation of a General Plan Amendment and Zone Change process for the 22,815-acre Rancho Mission Viejo property, the only large unplanned private ownership remaining within the Subregion.

To formally initiate the coordinated planning effort for the NCCP/HCP, SAMP/MSAA and GPA/ZC processes, the County published a Notice of Preparation (NOP) on September 13, 2001, and the USFWS issued a Notice of Intent (NOI) on November 8, 2001. In preparation for the NOP and NOI, a June 14, 2001, Scoping Meeting was conducted jointly by the County of Orange, USFWS, CDFG, and USACE for the Southern NCCP/HCP and the San Juan Creek Watershed and San Mateo Creek Watershed SAMP/MSAA. During this joint Scoping Meeting, the agencies discussed the intent to implement a coordinated planning process that would include the NCCP/HCP and SAMP/MSAA planning components.

In late 2004, the titles of the draft Southern Subregion NCCP/HCP Planning Guidelines and the SAMP/MSAA Watershed and Sub-basin Planning Principles documents were modified to delete the references to the NCCP/HCP and SAMP/MSAA, respectively, in their titles. The revised document titles now are “Draft Southern Subregion Planning Guidelines” (hereafter called the Draft Southern Planning Guidelines) and the Draft Southern Subregion Watershed and Sub-basin Planning Principles” (hereafter called the Draft Watershed Planning Principles). These document title changes were implemented in conjunction with the decision by participating landowners to move the MSAA from the SAMP program to become part of the NCCP/MSAA/HCP program in order to eliminate any potential confusion concerning the evolution, purpose and content of the “guidelines” and “principles” documents. From the outset of the overall coordinated planning process for the Southern Subregion, the draft “Southern Planning Guidelines” and “Draft Watershed Planning Principles” were designed to be prepared concurrently and be used to guide and evaluate Habitat Reserve alternatives and the planning, restoration and management policies contained in the NCCP/HCP and SAMP/MSAA. The transfer of the MSAA to become a part of the NCCP/MSAA/HCP does not affect the application, purposes or content of either the draft Southern Planning Guidelines or Watershed Planning Principles documents and they continue to be used for their originally-intended purposes.

The decision to make the MSAA a part of the NCCP/MSAA/HCP document means that the County of Orange becomes the Lead agency under CEQA for both the NCCP and the MSAA. The USACE would continue to be the Lead agency under NEPA for the SAMP document. Study area boundaries would be unaffected by this change in organization, except for the fact that the MSAA would now cover the San Clemente Hydrologic Unit (see *Figure 7-M*) as part of the NCCP/MSAA/HCP. Under the former SAMP/MSAA, the San Clemente hydrologic unit was not covered because it was not part of either the San Juan Creek or San Mateo Creek watersheds.

The “coordinated planning process” (see *Section 1.3* below) leading to the preparation of the NCCP/MSAA/HCP, including the identification and evaluation of alternative Habitat Reserve designs, formulation of subregional Conservation Strategies and selection of a proposed Habitat Reserve, and the role of County and Wildlife Agencies as lead and responsible agencies under CEQA and NEPA and NCCP/MSAA/HCP planning milestones is discussed in *sections 6.3* through *6.7* of *Chapter 6*. The proposed Conservation Strategy and its four major components are described in *Chapter 10*.

### **1.2.5 The Wildlife Geographic Information System and Public Participation Program**

The County’s subregional NCCP/MSAA/HCP process was formulated in a manner designed to improve future land use decisions within the subregional planning area and to enhance the efficacy of the overall process. The County moved to achieve these goals by developing a computerized geographic information system (GIS) database and a pro-active public participation program.

#### ***a. County Wildlife Geographic Information System***

Prior to initiating the NCCP/MSAA/HCP, the County had already begun developing a GIS database. The GIS database was designed to cover the entire County and to provide a habitat-based resource management system to assist the County in addressing questions related to potential development impacts on wildlife and natural habitats. The GIS maps cover a broad range of environmental characteristics influencing wildlife protection and management, including: natural vegetation communities; sensitive species; soils; topography; geomorphic and hydrologic features; and general plan land use designations. During the course of the preparation of the NCCP/MSAA/HCP, the GIS database has been expanded to include data and analyses prepared by the USACE (planning level delineation of wetlands and a functional assessment of hydrologic integrity within the SAMP study area), the Transportation Corridor Agencies (species and habitat surveys), and other species/habitat survey information prepared by participating landowners. This information, in the form of composite maps and tabular presentations, is



discussed in *Chapter 3 (Existing Setting)* and has been fully considered during preparation of the NCCP/MSAA/HCP.

The GIS is a key component of the County's NCCP program. During preparation of the Southern NCCP/MSAA/HCP, the GIS was used to: (1) accurately map coastal sage scrub habitat existing within the subregional planning area and the County of Orange as a whole; (2) for "interim take" purposes, in some instances identify the relative quality of coastal sage scrub habitat based on a "high, intermediate, and low" value hierarchy established by the NCCP Conservation Guidelines and the Special Rule; and (3) provide a tool to formulate and evaluate alternative Habitat Reserve designs. The GIS enabled NCCP participants to systematically and graphically analyze the variety of habitat communities and species characteristics within the subregional study area. It allowed the County and other NCCP participants to evaluate conservation planning alternatives and to formulate the "proposed" project alternative set forth in the NCCP/MSAA/HCP and evaluated in the Joint Programmatic EIR/EIS (*Part II*).

#### ***b. Public Participation Process***

Another key feature of the Southern NCCP/MSAA/HCP process involved the public consultation that occurred during the formulation and review of the NCCP/MSAA/HCP. The public participation process for the Southern Subregion centered on public workshops conducted by the four lead agencies. This process also was supported by the convening of an "Ad Hoc" group by The Nature Conservancy and by creation of a citizen outreach program by the County Supervisor with responsibility over the District that includes the 22,815-acre RMV property. This public participation process was initiated following the June 14, 2001 Scoping Meeting.

The four lead agencies initiated a series of joint "Public Workshops." The Public Workshops preceded and contributed information important to the completion of the "Draft" NCCP/MSAA/HCP, EIS/EIR and IA. Beginning in December, 2001, a total of six public workshops were held. Public attendance at these meetings ranged from 250 to about 500 persons. These workshops were intended to provide a collaborative and consultative public forum to discuss NCCP/MSAA/HCP and SAMP planning issues. The Public Workshops were conducted to:

- Explain the coordinated approach for processing the NCCP/MSAA/HCP and SAMP;
- Identify key planning issues that needed to be addressed and assure that the full range of public policy and planning issues were addressed;
- Discuss NCCP/MSAA/HCP and SAMP reserve design tenets and principles;
- Identify and consider alternative habitat reserve designs;
- Discuss adaptive management and species conservation issues and methodologies; and
- Obtain public comments and suggestions prior to preparation of draft documents.

In support of the Public Workshops, in 1997 The Nature Conservancy convened an “Ad Hoc” group designed to involve representatives of the involved agencies, environmental groups and local landowners in constructive dialogue within a smaller setting that could focus on NCCP/MSAA/HCP and SAMP issues. The Ad Hoc group met as needed to discuss significant NCCP/MSAA/HCP and SAMP planning issues and to provide comments to the agencies as they prepared agendas and discussion topics for the Public Workshops. These meetings were designed to increase the quantity and quality of information exchange among the lead agencies, participating landowners and public by informing the Ad Hoc group participants, thereby enabling them to convey issues and information to their respective organizations/constituents and discuss issues in advance of the public workshops. These meetings also were designed to make the Public Workshops more effective by providing a forum for discussions of significant issues with informed public interests prior to the public workshops.

Finally, County Supervisor Tom Wilson, whose Fifth District includes the RMV property, initiated another element to support the coordinated participation process by involving interested citizens in planning related to the GPA/ZC for the RMV property: the South County Outreach Review and Evaluation (SCORE) program. The overall goal of the SCORE program was to establish positive and constructive communications among all potentially interested parties including members of the RMV staff, Orange County staff and appointed officials, representatives of all the neighboring jurisdictions, representatives of specific community interest groups, and members of the public at large.

Supervisor Wilson convened two task forces to review RMV development issues, one to address land use and one to address urban runoff. Each task force was given a scope for review (the charge) and a set of ground rules for operation. The Task Forces produced a joint report containing commentary based on their review of certain preliminary reserve design concepts, and a list of potential solutions to address urban runoff issues. This report was presented to the Orange County Planning Commission on October 23, 2002.

## **SECTION 1.3 COORDINATED PLANNING PROCESS**

### **1.3.1 Overview of the Elements of the Coordinated Planning Process**

As briefly described in *Section 1.2.4*, the Southern NCCP/MSAA/HCP is being prepared as part of a coordinated public planning process that includes the preparation of two other major planning and regulatory components within the boundaries of the 132,000-acre Southern NCCP study area. In addition to the NCCP/MSAA/HCP, this coordinated public planning process includes: (1) a SAMP covering those portions of the San Juan Creek and San Mateo Creek watersheds located within the County of Orange; and (2) a General Plan Amendment and Zone Change for the 22,815-acre RMV property approved in November, 2004 (hereafter referred to as the GPA/ZC).

As in the case of the NCCP/MSAA/HCP, the SAMP is a voluntary process. However, after the NCCP/MSAA/HCP and SAMP are approved and permits are issued, compliance with the terms and conditions of the permits is mandatory for signatories and will be enforced by the appropriate local, state and federal agencies. The purpose of the SAMP being prepared by the USACE as lead agency is to provide for the protection and long-term management of federally-regulated sensitive aquatic resources (biological and hydrological) on a landscape level. To the extent feasible, federal waters, including wetlands, will be avoided and unavoidable impacts will be minimized and fully mitigated under the SAMP. The SAMP also is designed to enable economic uses to be permitted within the study area portions of the San Juan Creek and San Mateo Creek watersheds consistent with the requirements of federal law (CWA Section 404).

For the reasons outlined below, the County of Orange, participating landowners, and the state and federal agencies with primary planning and regulatory responsibility within the study area (USFWS, CDFG, and USACE), determined that a coordinated planning process should be pursued that would be most protective over the long term for the sensitive biological and hydrologic resources located within the study area. The need for the coordinated planning process and the relationship between the program components is briefly summarized below. The planning boundaries for the three related public approval processes are identified in *Figure 7-M*.

### **1.3.2 The Need for a Coordinated Planning and Regulatory Process**

The desire of the participating NCCP/MSAA/HCP landowners to coordinate the preparation of a SAMP with the NCCP/MSAA/HCP reflected the experiences of the participants over the past several years of NCCP/MSAA/HCP planning.

- First, the proposed coordinated approach reflects a desire on the part of the involved public agencies to maximize protection and management of aquatic and upland resources and geomorphic and hydrologic processes by coordinating the preparation, approval and implementation of the two joint state/federal regulatory programs. Such coordination would provide the ability to integrate the long-term implementation of the NCCP/MSAA/HCP Habitat Reserve Management Program (HRMP) and its Adaptive Management Program (AMP) component with the implementation of the goals and policies of the SAMP Aquatic Reserve Adaptive Management Program (ARAMP) in a manner that would enable coordinated and effective long-term management of both upland and aquatic species and vegetation communities. This approach also would allow the County of Orange to assure consistency between NCCP/MSAA/HCP and SAMP planning and the GPA/ZC for RMV.
- Second, the proposed coordination of these planning/regulatory programs reflects the experience of the private landowner participants involved in earlier NCCP/HCP programs approved in San Diego (MSCP) and Orange counties (Central/Coastal Subregion

NCCP/HCP). These private landowner participants discovered that their ability to implement projects covered under state and federal Incidental Take authorizations provided under a NCCP/HCP was limited if the “Covered Activities” permitted pursuant to the NCCP/HCP were not reviewed in coordination with state and federal agencies responsible for issuing permits for aquatic resource impacts (*i.e.*, state 1600 streambed agreements and USACE 404 permits). Participating landowners found that NCCP/HCP Take authorizations reflecting subregional level analysis did not adequately address 404/1600 impacts to aquatic resources taking place at the “project” level. “Covered Activities” approved under the previous Central and Coastal Subregion NCCP/HCP could not be implemented without obtaining necessary 404/1600 approvals. Delays in receiving the necessary approvals precedent to assembling the NCCP/HCP Habitat Reserve and implementing adaptive management measures resulted.

- Third, the Science Advisors convened by The Nature Conservancy to provide science guidance for the Southern NCCP/MSAA/HCP, recognized the significant benefits to subregional planning for species and habitats that would accrue if that planning maintained the underlying ecosystems processes and structures. The Science Advisors noted that maintaining ecosystem processes/structures would contribute to “. . . a much higher likelihood of sustaining biotic diversity over time . . .”(see Tenet 7, p. 10 of *Appendix B*). Whereas the species and habitat databases focus on information that provided “snapshots” of conditions at various time intervals, the underlying ecosystem process information (including hydrologic and geomorphic processes) provides for a better understanding of observed biological functions and the factors that should be considered as part of a program designed to provide for effective long-term management of those biological resources.

In recognition of these factors, the participating landowners and public agencies decided to coordinate the preparation and public approval processes for the NCCP/MSAA/HCP and the SAMP.

### 1.3.3 Public Planning Objectives

Consultation among the County, landowners and state and federal agencies generated the following conclusions regarding the desired objectives for the coordinated planning approach:

- First, authorizations for regulatory coverage and orderly implementation of the NCCP/MSAA/HCP would require concurrent processing of a watershed-level program addressing the protection of aquatic resources functions, values and impacts at the “hydrologic reach” and “sub-basin” levels. This kind of watershed level approach (*i.e.*, one that works at the “reach” and “sub-basin” levels to provide for project level review and approvals) would enable participating public agencies and landowners to obtain

necessary permits and agreements for Covered Activities within the NCCP/MSAA/HCP that would affect aquatic resources protected under Sections 401 and 404 of the CWA.

- Second, it would be necessary to identify areas where regulatory coverage for impacts to Covered Species and CDFG Jurisdictional Areas under the NCCP/MSAA/HCP would be needed.
- Third, the ability to obtain Section 401 water quality approvals, Section 404 permits and regulatory coverage for CDFG Jurisdictional Areas in a timely manner would require that a GPA/ZC application be filed and processed as part of the coordinated program so that the location, type and intensity of land uses within proposed development areas would be established early enough for analysis as part of the SAMP. Without specific local entitlements, there would be insufficient information upon which to identify potential impacts to aquatic resources and conduct the necessary avoidance, minimization and mitigation/monitoring analyses required by state and federal laws for impacts to wetlands, streams and other waters of the U.S.
- Fourth, the County and USFWS would be the lead agencies responsible for preparing the NCCP/MSAA/HCP and the USACE would be the lead agency responsible for preparing the SAMP. This determination is consistent with state and federal requirements.
- Fifth, all agencies responsible for reviewing and approving projects that impact wetlands, streams and other waters of the U.S. within the planning area would be fully involved in the preparation, coordination and review of each component of the concurrent process.
- Sixth, timing is critical and preparation and public approval of the NCCP/MSAA/HCP, SAMP and GPA/ZC should be coordinated in order to identify and address in a timely and orderly manner the significant issues that also would affect other planning and regulatory programs.
- Finally, coordinated planning should allow individual regulatory components to be prepared and approved separately while still enabling applicants and lead agencies, other reviewing agencies and the public to identify and address resource protection, resource management, and cumulative impact issues related to proposed new development in a coordinated fashion.

#### **1.3.4 Sequence of Lead Agency Actions for the NCCP/MSAA/HCP, SAMP and GPA/ZC**

The County Board of Supervisors, acting as a lead agency, is responsible for reviewing and acting on the GPA/ZC, the NCCP and the MSAA. The County actions occur in two steps:

- First, prior to completion of the NCCP/MSAA/HCP and SAMP, the Board of Supervisors certified the EIR for the GPA/ZC component (EIR 589), and approved the

related actions including the EIR, General Plan Amendment, Zone Change, Development Agreement and related entitlements; and

- Second, after acting on the GPA/ZC and related EIR, the County Board of Supervisors would need to complete its review and decide whether to certify the EIR for the NCCP and MSAA and to approve the NCCP/MSAA/HCP and the related IA.

After the County completes its review and actions on the GPA EIR and GPA/ZC application, and before it approves the draft NCCP/MSAA/HCP, the USFWS and CDFG would complete their reviews of the draft NCCP/MSAA/HCP and provide comments and suggested changes to the County. USACE also would complete the SAMP after the County approves the GPA/ZC application.

After the final drafts are prepared, and circulated for public review, the state and federal agencies reviews of the NCCP/MSAA/HCP and SAMP would proceed as follows:

- The USFWS and CDFG would decide whether to approve the NCCP/MSAA/HCP. If approved,
  - the USFWS would issue the Biological Opinion, Record of Decision (ROD) and FESA Section 10 permits for Incidental Take of federally-listed Covered Species under the HCP component of the NCCP/MSAA/HCP;
  - CDFG would issue its permits for Incidental Take of state-listed Covered Species under the NCCP and its streambed alteration agreements under the MSAA for CDFG Jurisdictional Areas; and
  - Covered Species that are not currently “listed” at the state and federal levels also would be designated as part of the NCCP/MSAA/HCP.
- The USACE would complete its review and decide whether to issue final approval for the SAMP. USACE would finalize the SAMP EIS and issue the ROD and approve relevant Section 404 permits and permitting procedures, related mitigation programs and a preferred Aquatic Resources Conservation Program for activities covered by the SAMP. A Section 7 programmatic consultation would be completed with USFWS for the SAMP permitting procedures.

Preparation and action on the NCCP/MSAA/HCP and SAMP would occur in a generally concurrent and overlapping timeframe to the extent possible. It is possible that final actions on the SAMP by the USACE could require reconciliation of treatment of some impacts related to the NCCP/MSAA/HCP and GPA/ZC based on differences in the final terms of approval for each of the components. However, close coordination provided under the “coordinated planning process” would hopefully limit the potential scope of such a reconciliation process to a manageable level.

### 1.3.5 Key Product/Decision Milestones and Linkages

While all of the work products and actions under the proposed work program are being coordinated, the sequencing and timing of certain work products and decisions are particularly important to the successful completion of the overall coordinated process. These critical products and milestones, presented in the order of occurrence, include the following:

- **Concurrent Identification of a Consistent Set of GPA/ZC, NCCP/MSAA/HCP and SAMP/MSAA Alternatives.** Three separate environmental documents have been prepared for the NCCP/MSAA/HCP (a joint EIR/EIS), SAMP (an EIS) and GPA/ZC (already approved FEIR 589). Identification of project alternatives under each component of the program has been coordinated. No component of the coordinated process would limit the range of alternatives being considered for any of the other process components or the selection of any particular alternative. In other words, the range of alternatives selected for any one process did not limit the range of alternatives for the other two processes.
- **Selection of a Proposed Project and a Reasonable Range of Alternatives for Each Component.** Based on the analyses of the initial set of project alternatives, in relation to the Project Purposes and relevant regulations and guidelines for each component, a proposed project/plan has been (FEIR 589) and would be selected for each of the three components. In the case of the NCCP/MSAA/HCP and each of the other major planning program components, the proposed project (see *Chapter 10* of this NCCP/MSAA/HCP for a description of the Proposed Project) would be based on the review of the Draft Southern Planning Guidelines and Draft Watershed Planning Principles in relation to the purposes and need defined for each of the three elements of the coordinated planning process and could involve one or more of the twelve Habitat Reserve design alternatives identified and considered by the GPA/ZC, NCCP/MSAA/HCP and SAMP programs or other alternatives considered. These proposed alternatives are a focus of the environmental documents and it is essential that the selection of proposed alternatives for each component of the coordinated planning process recognize the relationship between that alternative and other “proposed” alternatives for the two other components. The intent is to identify alternatives that would be compatible with each other and would facilitate achieving programmatic goals and objectives for each of the three coordinated project components: the NCCP/MSAA/HCP, SAMP and GPA/ZC. In turn, each proposed project alternative would be reviewed in relation to the final set of alternatives selected to be carried forward for review in the respective environmental documents for each component.
- **Coordinated Preparation and Public Review of Draft Environmental Documents.** The public review draft of the Joint EIR/EIS for the NCCP/MSAA/HCP and SAMP EIS, would be prepared in a coordinated manner and reviewed by the public as part of

sequential, coordinated public review processes. In this way, the analysis of avoidance, minimization and mitigation, management and monitoring issues would be carefully coordinated. To assure the overall completeness and consistency of the three environmental documents, during preparation of the environmental documents, care would be taken to assure that the same overall databases are being shared by the respective lead agencies.

Each of these planning processes has its own set of goals and requirements, but coordinated planning is designed to assure that the twelve alternatives can be assessed in terms of the goals and objectives of each of the three programs. While the proposed project and range of reasonable alternatives must meet the requirements of the NCCP/MSAA/HCP, they also must be compatible with the SAMP and GPA/ZC processes. Some of the proposed alternatives were developed prior to the completion of the Draft Southern Planning Guidelines (see *Chapter 4*) and the Draft Watershed Planning Principles (see *Chapter 5*). These Draft Southern Planning Guidelines and Draft Watershed Planning Principles refine the several more general planning tenets. The Draft Southern Planning Guidelines in *Chapter 4* and the Draft Watershed Planning Principles in *Chapter 5* have been and will be used to evaluate each of the alternatives under the GPA/ZC, NCCP/MSAA/HCP and SAMP programs to determine their compatibility.

It also should be noted that the documents being circulated for public review would include a proposed IA for the NCCP/HCP (and the MSAA's attached to the IA) and an MOA for the SAMP.

#### **SECTION 1.4 COORDINATION OF NCCP ACT AND FISH AND GAME CODE REQUIREMENTS AND ASSOCIATED NCCP GUIDELINES WITH THE REQUIREMENTS OF THE FEDERAL ENDANGERED SPECIES ACT**

##### **1.4.1 Relationship of the Southern California Coastal Sage Scrub NCCP Program and Fish and Game Code to the Requirements of the Federal Endangered Species Act**

As noted above, the Southern California Coastal Sage Scrub NCCP Program is the pilot program under the state's NCCP Act. It is being undertaken jointly by the CDFG and the USFWS pursuant to a December 4, 1991 Memorandum of Understanding (MOU) (see *Appendix C*). Under the 1991 MOU, CDFG is responsible for developing the NCCP process and for preparing planning guidelines. The USFWS role has been to review and approve the process guidelines. The two agencies also agreed to work together to ensure that NCCP/HCPs are prepared by local governments and landowners in a manner that will facilitate compliance with Section 10(a)(1)(B) of FESA and with Section 2800-2840 of the NCCP Act of 1991.



Subsequent to the execution of the MOU summarized above, USFWS finalized, on March 30, 1993, a federal rule listing the coastal California gnatcatcher as “threatened” under the provisions of FESA. Concurrent with the publication of its listing decision for the gnatcatcher, USFWS published a proposed federal rule under the provisions of Section 4(d) of FESA (the Special Rule) which allows USFWS to fashion special provisions for addressing threatened species. Under the Special Rule, “the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of such species.” This Special Rule signaled USFWS’ intent to designate the State’s Coastal Sage Scrub NCCP Program as the regional conservation planning and implementation vehicle by which entities proposing incidental take of the gnatcatcher could address and satisfy the conservation requirements of the Special Rule and Section 10(a)(1)(B) of FESA.

On December 10, 1993, USFWS finalized the Special Rule for the coastal California gnatcatcher. The Special Rule stated:

*“ . . . incidental take of the coastal California gnatcatcher will not be considered a violation of Section 9 of the Endangered Species Act of 1973, as amended (Act), if it results from activities conducted pursuant to the State of California’s Natural Community Conservation Planning Act of 1991 (NCCP), and in accordance with a NCCP Plan for the protection of coastal sage scrub habitat, prepared consistent with the state’s NCCP Conservation and Processing Guidelines, provided that:*

- (i) The NCCP Plan has been prepared, approved and implemented pursuant to the California Fish and Game Code Sections 2800-2840; and*
- (ii) The USFWS has issued written concurrence that the NCCP plan meets the standards set forth in CFR 17.33(b)(2). The Service shall issue its concurrence pursuant to the provisions of the Memorandum of Understanding dated December 3, 1991, between the California Department of Fish and Game and the Service regarding coastal sage scrub natural community conservation planning in southern California. (Federal Register, Vol. 58, No. 236, December 10, 1993, emphasis added)*

The above excerpts from the Special Rule indicate that: **(1)** the NCCP planning process can serve as a means of comprehensively addressing coastal sage scrub habitat conservation concerns at a regional and subregional scale; **(2)** the standard of review of such plans by the USFWS will be consistency with the NCCP Conservation Guidelines and compliance with the requirements of Section 10(a)(1)(B) of FESA (the Habitat Conservation Plan provisions of FESA); and **(3)** the 1991 USFWS/CDFG MOU is to serve as the guiding document for USFWS involvement in the review and approval of NCCP plans. Thus, the Special Rule provides the regulatory bridge for

integrating the State's NCCP program into the HCP/incidental take requirements of Section 10(a)(1)(B) of FESA.

The addition of the state MSAA to the NCCP as a component of the combined NCCP/MSAA/HCP does not affect the above discussion. Because the MSAA and NCCP definition of riparian habitat are essentially the same, the identification and mitigation of impacts to streambeds and related habitat meeting the riparian definition support both the regulatory and long-term management goals, objectives and requirements under FESA. Arguably, the addition of the state MSAA regulatory provisions to the original NCCP/HCP strengthens the ability of the County, participating landowners and Wildlife Agencies to implement the NCCP/MSAA/HCP in a manner that addresses the long-term conservation requirements of all three statutory programs.

#### **1.4.2 Relation of the Southern NCCP/MSAA to the Coastal Sage Scrub NCCP Process Guidelines and Conservation Guidelines**

The CDFG and Resources Agency formulated guidelines that are designed to inform interested and involved parties (including landowners and local governments) of the preparation and approval process requirements and the substantive species/habitat conservation issues that must be addressed during the preparation of a natural community conservation plan. These guidelines were prepared by CDFG in cooperation with the USFWS and based on extensive public review and comment during 1992 and 1993.

The November 1993 Process Guidelines (*Appendix D*) were intended to provide guidance concerning the required content of NCCPs and the steps that should be followed during preparation of subregional NCCPs. The Process Guidelines explain the need to conduct NCCP preparation on a subregional scale within a coordinated framework of fundamental regional conservation planning principles. These guidelines also addressed the need to provide for "interim" permitting of Incidental Take of the coastal California gnatcatcher and associated coastal sage scrub habitat consistent with the Special Rule prepared by the USFWS, and the need for ongoing monitoring and evaluation of the NCCP process by the CDFG and USFWS.

To expedite effective preparation and approval of subregional NCCPs, the NCCP Process Guidelines encourage:

- maximum cooperation between landowners, local governments and conservation interests during NCCP preparation; and
- local government participation. . . adapting the NCCP process to their existing local administrative processes relating to plan preparation, public participation, public hearings and environmental review.

With these goals in mind, the Process Guidelines declare that the process leading to preparation and approval of this Southern NCCP should involve the following steps:

- Designation by local governments and landowners of NCCP subregions of sufficient size and diversity to comply with the NCCP Conservation Guidelines;
- Preparation of a Planning Agreement between local NCCP participants and CDFG and the USFWS to establish a coordinated NCCP preparation and decision making process;
- Formulation of a subregional NCCP by landowners and local governments in consultation with conservation interests, the CDFG and the USFWS; and
- Public and agency review, including public hearings and approval by the local lead jurisdiction or agency.

The MSAA is prepared consistent with Fish and Game Code Sections 1600 *et seq.* There are no statewide guidelines governing the preparation and review of a MSAA. However, as noted above, the goals, objectives and requirements for regulating streams and riparian areas under Sections 1600 *et seq.* are fully compatible with the NCCP and HCP regulatory and long-term management provisions as discussed below.

Concurrent with preparation of the Southern NCCP/MSAA/HCP and Joint EIR/EIS by the local lead agency and USFWS, a proposed IA has been prepared by participating landowners, local governments, and CDFG and the USFWS for each NCCP subregion. The IA is being circulated for public review in conjunction with this overall document (NCCP/MSAA/HCP, Joint EIR/EIS, and IA). The IA specifies all terms and conditions of activities permitted under the NCCP/MSAA/HCP plan, including the legal, administrative and funding mechanisms necessary to assure effective long-term implementation of the approved NCCP/MSAA/HCP. By signing this agreement, CDFG and the USFWS will formally acknowledge approval of the Southern NCCP/MSAA/HCP and determine that it: (1) meets the requirements of a state NCCP Management Agreement and a federal Habitat Conservation Plan; and (2) is adequate to allow issuance of appropriate state and federal permits for Covered Species and Covered Activities under the NCCP Act (CESA as appropriate) and/or FESA. A separate set of Master Streambed Alteration Agreements between CDFG and Participating Landowners/Permittees will be attached to the IA prior to the time the IA becomes effective.

Whereas the NCCP Process Guidelines explain the steps to be followed during preparation of NCCPs, the NCCP Conservation Guidelines outline the substantive biological principles and standards that are to be applied during preparation, review and approval of subregional NCCPs. These guidelines include the biological conservation planning principles and policies upon which the NCCP process is based, and the standards for implementing the “interim Incidental Take” permit strategy during preparation of the subregional NCCPs. The initial draft of the Conservation Guidelines was prepared by the State’s Scientific Review Panel (SRP) and revised

by CDFG, working with the USFWS. Following public review and comment, the Conservation Guidelines were finalized in November 1993. Subsequently, the Process and Conservation Guidelines were incorporated into the Special Rule prepared by the USFWS. As noted previously, the Special Rule requires that subregional NCCPs be prepared consistent with these guidelines.

The NCCP Conservation Guidelines (*Appendix D*) set forth three fundamental conservation planning principles that, in effect, provide the subregional and regional planning framework for the coastal sage scrub NCCP program. These principles involve the following.

- **Creation of a Coastal Sage Scrub Habitat Reserve.** In contrast with single species HCPs under Section 10 of FESA, the subregional NCCPs for Orange County will create large scale “habitat reserves” capable of maintaining and protecting populations of Covered Species over the long term.
- **Focus on Reserves Designed to Provide “Connectivity.”** In order to allow for necessary dispersal of Covered Species and the ability to maintain genetic flow within and between “reserve” areas, the subregional NCCPs will place major emphasis on assuring that “connectivity” needs for the Covered Species are addressed as a part of reserve design. To the extent feasible, the reserve design also will address dispersal needs of other species integral to coastal sage scrub ecosystem diversity.
- **Implement Adaptive Management Within Reserves.** The NCCP Conservation Guidelines declare that “. . . a status quo strategy of ‘benign neglect’ management likely will result in substantial further losses of CSS biodiversity. . .” The Guidelines concluded that habitat reserves “. . . should be actively managed in ways responsive to new information as it accrues.” Much of the NCCP planning effort has been devoted to identifying reserve management programs and to fashioning an ongoing institutional capability to assure that NCCPs continue to implement adaptive management techniques over time.

The emphasis on coastal sage scrub habitat embodied in the original Conservation Guidelines has been expanded under the proposed NCCP/MSAA/HCP to address a much broader range of species and associated vegetation communities capable of providing long-term habitat.

In 1998, CDFG adopted a set of NCCP General Process Guidelines. These Guidelines, based on the 1991 NCCP Act, address “Key Plan Elements,” including assurances and provide substantive guidance for Fish and Game Code Section 2835 and 2081 consistency determinations.

### **1.4.3 Relationship to the Recommendations of the NCCP Southern Science Advisors**

The original focus of the NCCP program was the coastal sage scrub ecosystem. However, both the County of Orange Central and Coastal Subregion NCCP/HCP and the City and County of San Diego MSCP addressed additional vegetation communities. As noted above, a group of Science Advisors for the County of Orange Southern NCCP was convened under the leadership of The Nature Conservancy to review conservation planning considerations for the Subregion. In May 1998, the Southern Orange County NCCP Science Advisors completed a document titled “Principles of Reserve Design and Species Conservation for the Southern Orange County NCCP.” One of the goals of the report was to apply and interpret the seven basic tenets of reserve design formulated by the NCCP SRP into geographically specific principles appropriate for the Subregion. One important recommendation made by the Science Advisors was to broaden the NCCP planning effort to include all major habitat types within the Subregion, rather than focusing on coastal sage scrub. Another important recommendation was the addition of a new tenet of reserve design which is to “Maintain Ecosystem Processes and Structures” with particular emphasis placed on fire management and the protection of hydrologic and geomorphic processes, including both normal function and extreme events. The latter tenet of reserve design, with its emphasis on hydrologic and geomorphic processes, is further supported by the addition of the MSAA, with its focus on addressing impacts to stream beds, channels and banks and related riparian habitat.

With the addition of the new tenet of reserve design, the SRP Guidelines tenets of reserve design have been applied to the NCCP Southern Subregion. The ecosystem approach embodied in the Special Rule has been maintained but has been expanded beyond the coastal sage scrub ecosystem to include all major habitat types within the Subregion. Ecosystem processes that shape and influence the habitat systems are to be a significant element of the Southern NCCP/MSAA/HCP conservation planning program.

### **1.4.4 Role of the Draft Southern Planning Guidelines and Draft Watershed Planning Principles**

As noted above, as planning has progressed for the Southern Subregion, the general principles set forth in the Statewide NCCP tenets of reserve design were augmented by the Southern Orange County NCCP Science Advisors Report (1998). Substantial habitat and species surveys and other special studies also were conducted since the inception of the NCCP program. In addition, with regard to watershed planning, both the USACE and RMV commissioned extensive studies that have provided significant new information regarding existing conditions and planning considerations for the SAMP study area. All of the above-referenced tenets, principles and baseline studies/planning considerations reports have been reviewed in Public Workshops

pursuant to Section 3.3.7 of the Southern Subregion NCCP Planning Agreement and provided the basis for development of more focused biological and hydro-geomorphic planning principles.

A NCCP/MSAA/HCP and SAMP working group (“NCCP/SAMP Working Group”) was formed pursuant to Sections 1.10, 3.1 and 3.41 of the Planning Agreement. The Working Group included representatives from the USACE, CDFG, USFWS, County and landowners. In order to provide focus for the coordinated planning efforts, the NCCP/SAMP Working Group distilled the enormous body of information assembled to date into a set of Draft Southern Planning Guidelines designed to address the protection and long-term management of designated “planning species” and associated habitats and Draft Watershed Planning Principles designed to protect aquatic resources, including wetlands, streams and riparian areas. The Draft Southern Planning Guidelines (see *Chapter 4*) and Watershed Planning Principles (see *Chapter 5*) build upon the broader tenets and recommendations of the SRP, the Science Advisors Report and the USACE/CDFG tenets and are intended to provide an objective and common set of planning considerations and recommendations for use by the resource and regulatory agencies and the program participants in selecting and evaluating reserve program, restoration and management alternatives.

The Draft Southern Planning Guidelines and Draft Watershed Planning Principles contain both broad planning principles and specific “Planning Considerations” and “Planning Recommendations” applicable to particular “sub-basin” planning units within the overall planning area. The sub-basin planning unit was selected because it reflects a hydrologic unit corresponding to each of the distinctive canyon systems within the planning area. However, it recognizes that species and habitat systems planning considerations will, in many cases, extend into adjoining sub-basins. It is also important to understand that the Draft Southern Planning Guidelines and Draft Watershed Planning Principles will not always treat the same biologic and hydrologic resources in the same manner. Use of common sub-basin planning units enables program participants and the public to identify and address those instances where the different implementation approaches and priorities relating to the NCCP/MSAA/HCP and SAMP programs create the need to reconcile different protection and management recommendations.

#### **1.4.5 Relationship of the Southern Subregion NCCP/MSAA Program to Critical Habitat Designations and Recovery Planning for Existing and Future Listed Species Under FESA and Conservation Requirements Under the NCCP Act**

Eight state and/or federally listed species are found or may occur in the Southern NCCP/MSAA/HCP study area. The listed species that are found or may occur in the study area are: coastal California gnatcatcher (*Polioptila californica californica*), least Bell’s vireo (*Vireo bellii pusillus*), southwestern willow flycatcher (*Empidonax traillii extimus*), arroyo toad (*Bufo californicus*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), southern steelhead (*Oncorhynchus mykiss*) and thread-leaved

brodiaea (*Brodiaea filifolia*). The inclusion of the southern steelhead reflects the possible re-occurrence of the species in lower San Juan Creek.

Of the eight listed species, revised critical habitat designations are finalized or proposed within portions of the study area for the California gnatcatcher, San Diego fairy shrimp, southern Steelhead and Riverside fairy shrimp (see *Figure 8-M*). The remaining five listed species that are found or may be found within the study area (arroyo toad, Least Bell's vireo, southwestern willow flycatcher and thread-leaved brodiaea) have finalized critical habitat designations but do not include any portion of the Subregion. Recovery plans have been prepared for the arroyo toad, least Bell's vireo, Riverside fairy shrimp, and San Diego fairy shrimp. The fairy shrimp are covered by the Recovery Plan for Southern California Vernal Pools.

Because all of the listed species found in the study area have existing or proposed critical habitat designations, including designations that could be modified in the future, a special analysis has been prepared keying the *Chapter 13* analyses to the specific provisions of FESA Section 3 that define "critical habitat." Relying on the *Chapter 13* analyses, *Appendix W* contains summaries addressing each of the FESA Section 3 standards for the above listed species, as well as the southern steelhead. For each listed species, the following topics are addressed:

- Identify Occupied Habitat with Physical or Biological Attributes Essential to the Conservation of the Species;
- Special Management Considerations and Protections;
- Identify Specific unoccupied Areas Found Essential for the Conservation of the Species; and
- Conclusion Regarding the Protection and Management of Areas Essential to the Conservation of the Species.

Under the proposed NCCP/MSAA/HCP, the Implementation Agreement includes provisions addressing: (a) any future modifications to existing critical habitat designations and (b) future critical habitat designation for any presently unlisted species treated "as if listed" as a Covered Species under the final NCCP/MSAA/HCP Conservation Strategy; and (c) adverse modification determinations pursuant to FESA Section 7. These provisions also include all unlisted Covered Species and involve consideration of the Conserved Vegetation Communities on the basis of the conservation analyses presented in *Chapter 13* and *Appendix W*.

For species with designated critical habitats within the Subregion, the Southern NCCP/MSAA/HCP addresses the conservation of the species under state and federal law with the goal of providing a conservation program that will contribute significantly to the recovery of each of

these species. For other listed species, the goal of the NCCP is to contribute to the recovery of each of those species within the biological and other parameters of the Subregion.

## **SECTION 1.5 CONSERVATION PLANNING FOR DESIGNATED SPECIES, VEGETATION COMMUNITIES AND CDFG JURISDICTIONAL AREAS**

### **1.5.1 Southern NCCP/MSAA/HCP Planning Species**

The coastal sage scrub NCCP program originally identified specific actions necessary to protect habitat for three specified “target species” residing in coastal sage scrub: the coastal California gnatcatcher (*Polioptila californica californica*), coastal cactus wren (*Campylorhynchus brunneicapillus*), and orange-throated whiptail lizard (*Cnemidophorus hyperythrus beldingi*) (Murphy 1992). The “target species” were selected by a Scientific Review Panel (SRP) appointed by the state. The SRP designated the three vertebrate species to serve as “surrogate” species for a broader range of species that reside in and/or are dependent on coastal sage scrub habitat. Conservation planning for these three NCCP species was intended to provide the basis for maintaining the viability of the remaining coastal sage scrub ecosystem (Murphy 1992).

By providing long-term protection for the habitat required by the three target species, the SRP reasoned that sufficient coastal sage scrub and other habitat would be protected to benefit a much broader range of listed and unlisted coastal sage scrub-associated species through the NCCP approach to conservation planning. In addition, because coastal sage scrub habitat is distributed in a mosaic of other habitat types (*e.g.*, chaparral, grassland, riparian, woodland, etc.), the original approach assumed that a Conservation Strategy focused on coastal sage scrub would preserve significant portions of other habitats and result in conservation of additional non-coastal sage scrub species, including both listed and non-listed species.

In view of the fact that the NCCP/MSAA/HCP is intended to address a range of habitats and associated species, the “target species/coastal sage scrub” approach embodied in the original SRP Conservation Guidelines has been broadened to include, for reserve design purposes, the following “planning species”: (1) all state and federally listed species found in the Subregion; and (2) additional designated “planning species.” These planning species, which include both listed and unlisted species, serve as the conservation planning surrogates for purposes of identifying and evaluating alternative habitat reserve designs, by assisting participants in identifying habitat areas that should be considered for inclusion in the Habitat Reserve. They are identified and discussed in *Chapter 4*.



### 1.5.2 Regulatory Coverage Proposed for Species and CDFG Jurisdictional Areas Under the Southern NCCP/MSAA/HCP

The Southern NCCP/MSAA/HCP describes how the recommended habitat Conservation Strategies will benefit a broad range of species within the Subregion that are dependent on various habitat types and hydrologic/geomorphic processes. The NCCP/MSAA/HCP is designed to provide the basis for authorizing future regulatory coverage for seven species that are listed at either the state or federal levels by formulating an effective subregional strategy consistent with state and federal requirements (NCCP Act, FESA and the Special Rule), and providing for creation of a permanent habitat reserve. The seven species that are currently listed at either the state or federal levels are: the coastal California gnatcatcher, least Bell's vireo, southwestern willow flycatcher, San Diego fairy shrimp, Riverside fairy shrimp, arroyo toad, and thread-leaved brodiaea.

The NCCP/MSAA/HCP also is designed to provide regulatory coverage for species which are not currently listed at the state or federal level (see *Chapters 10 and 13*) by treating designated unlisted species as Covered Species because they would be treated "as if they already were listed." In the event that these species are subsequently listed either by the CDFG or USFWS, the NCCP/MSAA/HCP provides the basis for authorizing future regulatory coverage for the unlisted Covered Species consistent with the provisions of the approved conservation plan because they have been treated consistent with the requirements of the state NCCP Act and federal ESA.

The Habitat Reserve that is proposed by the Southern NCCP/MSAA/HCP in (see *Chapter 10*) provides a diverse mosaic of vegetation communities within its boundaries. All of the Conserved Vegetation Communities located within the Subregion are protected by the proposed Habitat Reserve.

Because of the range and high percentage of vegetation communities included within the Habitat Reserve, the NCCP/MSAA/HCP is proposing regulatory coverage for 25 unlisted Covered Species in addition to the seven listed Covered Species. Such broad regulatory protection for species, although an achievable goal for many NCCP/HCPs, is not found in most existing HCPs. A detailed discussion of the basis for regulatory coverage for Covered Species proposed under this NCCP/MSAA/HCP is discussed in *Chapter 13* (Conservation and Impact Analyses for Species and Vegetation Communities Proposed to Receive State and Federal Regulatory Coverage).

The Conservation Strategies for Southern NCCP/MSAA/HCP are based on several approaches and benefits associated with the Southern Subregion NCCP/MSAA/HCP, including:

- Setting aside large blocks of natural open space;
- Providing for a reserve design that connects these blocks of open space into a single manageable Habitat Reserve;
- Providing for more effective mitigation for future development-related impacts (Covered Activities);
- Formulation and implementation of a “stressor-based” approach to adaptive management and monitoring within those portions of the Habitat Reserve where regulatory coverage authorization has been requested (see discussion below); and
- Providing for IA assurances adequate to implement Habitat Reserve assembly and funding for implementation of the HRMP and its Adaptive Management and Monitoring component within the Habitat Reserve.

The term “adaptive management” (see *Chapter 7*) refers to a flexible, iterative approach to long-term management of biotic resources that is directed over time by the results of ongoing monitoring activities and other information. Under an adaptive management program, management techniques and specific objectives are regularly evaluated in light of monitoring results and other new information to adapt both the management objectives and techniques to better achieve overall management goals. In the proposed Adaptive Management Program set forth in *Chapter 7*, the underlying principle is that management and monitoring should be directed towards environmental factors known or thought to be directly or indirectly responsible for ecosystem changes (termed “stressors”) that would impact attainment of the following program goals:

- Ensuring the persistence of a native-dominated vegetation mosaic in the planning area;
- Restoring or enhancing the quality of degraded vegetation communities and other habitats; and
- Maintaining and restoring biotic and abiotic natural processes within the planning area.

By applying a “stressor-based adaptive management” approach and focusing on the Conserved Vegetation Communities within the Habitat Reserve (coastal sage scrub, chaparral, oak woodlands, riparian/wetlands and grasslands), it is feasible to seek regulatory coverage for a range of Covered Species beyond the currently-listed species discussed earlier (*i.e.*, coverage under Section 10 of FESA, and Sections 2800 *et seq.* of the NCCP Act of 1991). Therefore, the Southern NCCP/MSAA/HCP provides for regulatory coverage under the Special Rule for seven listed Covered Species and 25 unlisted Covered Species. In addition, a total of 10 Conserved Vegetation Communities provide the habitat that supports regulatory coverage for the Covered

Species identified in this NCCP/MSAA/HCP and, therefore, are proposed to be addressed under the proposed Conservation Strategy. The 32 Covered Species, and CDFG Jurisdictional Areas proposed to receive regulatory coverage are discussed in *Chapter 10* and analyzed in detail in *Chapter 13* and the *Part II Joint EIR/EIS*. In addition, Covered Activities impacts to Conserved Vegetation Communities associated with the Covered Species are analyzed and addressed in *Chapter 13* and the *Part II Joint EIR/EIS*.

## **SECTION 1.6 PHASED IMPLEMENTATION OF THE SOUTHERN NCCP/MSAA/HCP**

As explained in *Chapter 6*, the 92,000-acre Southern Subregion planning area (excluding the CNF) is divided into four large subareas (and, in the case of Subarea 4, several smaller city subunits) for planning and implementation purposes (see *Figure 9-R*). These subareas were identified to reflect the different characteristics of the overall Subregion in terms of natural conditions, the degree to which some areas are already developed, the need for regulatory coverage, and ownership.

Subarea 1 includes the RMV GPA/ZC ownership, previously set aside open space owned by RMV, the County-owned parklands and Prima Deshecha landfill, the National Audubon Society Starr Ranch and portions of the Santa Margarita Water District lands. Subarea 1 contains significant portions of the San Juan Creek Watershed and a portion of the San Clemente Hydrological Unit (Prima Deshecha landfill). Under the proposed NCCP/MSAA/HCP, regulatory coverage is being requested within Subarea 1, which contains the vast majority of potential Habitat Reserve lands, Subarea 3 (Coto de Caza) and a small portion of Subarea 4 for a County road extension related to the improvement of Avenida La Pata and temporary impacts associated with maintenance of existing SMWD facilities.

Regulatory coverage is not being requested under the proposed NCCP/MSAA/HCP for Subarea 2 (Foothill Trabuco Specific Plan) or Subarea 4 (the cities of Rancho Santa Margarita (4A), Mission Viejo (4B), San Juan Capistrano (4C) and San Clemente (4D) – excepting the limited impacts associated with the improvement of Avenida La Pata and existing SMWD facilities). *Chapters 10* and *13* and the Joint EIR/EIS explain and analyze how future regulatory coverage for impacts related to future development in these areas would be handled under the proposed NCCP/MSAA/HCP.

## **SECTION 1.7 USE OF THE SOUTHERN NCCP/MSAA/HCP TO ADDRESS REGULATORY REQUIREMENTS**

As noted earlier, the proposed NCCP/MSAA/HCP potentially affects a number of local government jurisdictions, public agencies and landowners within the Subregion. The NCCP/MSAA/HCP (*Chapter 4*) identifies the roles and commitments of local governments,

public agencies, operating agencies (*e.g.*, water districts, utilities and public agencies) and other landowners that agree to participate in the NCCP/MSAA/HCP by signing the NCCP/MSAA/HCP IA. The NCCP/MSAA/HCP analyzes those Covered Activities where existing and future plans of public agencies, operating agencies and landowners would affect Covered Species and Conserved Vegetation Communities and CDFG Jurisdictional Areas. The Joint EIR/EIS analyzes the environmental effects of activities addressed by the NCCP/MSAA/HCP on the 32 Covered Species and CDFG Jurisdictional Areas proposed to be included in regulatory coverage under the proposed NCCP/MSAA/HCP. Potential environmental impacts to species located outside the proposed Habitat Reserve that are not addressed by the NCCP/MSAA/HCP will be addressed pursuant to CEQA and NEPA but not at a level of detail necessary to provide future regulatory coverage under the NCCP Act, Section 1600 *et seq.* of the Fish and Game Code or FESA.

The *Part III, IA* is included as a part of this overall program. Under the terms of the proposed IA, the NCCP/MSAA/HCP and the Joint EIR/EIS, the CDFG and USFWS will agree that: (1) satisfactory implementation of the NCCP/MSAA/HCP and the IA will adequately provide for the conservation, protection, restoration, enhancement and management of 32 Covered Species, ten Conserved Vegetation Communities and CDFG Jurisdictional Areas; and (2) subject to the terms of the IA and applicable regulations, no additional mitigation for Covered Species, Conserved Vegetation Communities and CDFG Jurisdictional Areas will be required from participating landowners and participating local jurisdictions.

The NCCP/MSAA/HCP is intended to provide the basis for authorizing regulatory coverage for species currently listed under the state and federal ESAs. Authorization for regulatory coverage is accomplished by formulating an effective subregional Conservation Strategy that is consistent with state and federal requirements (NCCP Act, Section 1600 *et seq.* of the Fish and Game Code, FESA and the Special Rule), providing for creation of a permanent Habitat Reserve, carrying out an IA that identifies the roles and responsibilities of NCCP/MSAA/HCP participants, and assures the availability of funding necessary to implement the approved NCCP/MSAA/HCP. If non-listed Covered Species are subsequently listed by the CDFG and/or USFWS, the NCCP/MSAA/HCP also would provide the basis for authorizing regulatory coverage for these species consistent with the provisions of the approved Conservation Strategy.

Pursuant to the provisions of this NCCP/MSAA/HCP and IA, satisfactory implementation of the NCCP/MSAA/HCP and the terms of the IA would adequately provide for the conservation of the seven (7) listed Covered Species and 25 other unlisted Covered Species and ten Conserved Vegetation Communities. Thus, state and federal habitat mitigation requirements for development impacting the habitat of the Covered Species would be fulfilled. Further, because a SAMP is being prepared concurrently to address the requirements of the federal 404 and state

1600-1603 programs, mitigation requirements also would be fulfilled under these state/federal programs upon completion and approval of the joint SAMP and related SAMP MOA.

Designated development and activities identified and covered by the NCCP/MSAA/HCP (Covered Activities) for purposes of authorizing regulatory coverage pursuant to the IA and state NCCP authorizations and federal ESA permits would include new private residential, commercial and industrial development within the RMV property, the Prima Deshecha Landfill and public infrastructure facilities, such as roads, utilities and recreation facilities, as identified in *chapters 10, 13 and 14* of the NCCP/MSAA/HCP and the IA. In order to be treated as a Covered Activity the proposed activity must be identified in the NCCP/MSAA/HCP and EIR/EIS in sufficient detail to enable the County and Wildlife Agencies to identify impacts to Covered Species and Conserved Vegetation Communities, including impacts to CDFG Jurisdictional Areas regulated under Sections 1601-1603 of the Fish and Game Code, and address such impacts in the EIR/EIS in accordance with CEQA and NEPA requirements. The NCCP/MSAA/HCP does not provide mitigation for new development or activities that are not identified in the NCCP/MSAA/HCP as a Covered Activity.

It is important to note that the TCAs' South Orange County Transportation Infrastructure Improvement Project (SOCTIIP) (formerly known as Foothill Transportation Corridor-South [FTC-S]) is not a Covered Activity under the NCCP/MSAA/HCP. The NCCP/MSAA/HCP does not provide regulatory coverage for SOCTIIP. The EIS/EIR for the NCCP/MSAA/HCP will address the potential impacts of identified alignment alternatives for the SOCTIIP on the proposed NCCP/MSAA/HCP Habitat Reserve and HRMP, including Habitat Reserve design alternatives reviewed in the NCCP/MSAA/HCP EIR/EIS.

### **1.7.1 Formulation of the Subregional Conservation Strategy as the Vehicle for Addressing State and Federal Mitigation and Conservation Requirements**

For purposes of addressing future mitigation requirements related to the proposed NCCP/MSAA/HCP project, the subregional Conservation Strategy for Covered Species, Conserved Vegetation Communities and CDFG Jurisdictional Areas focuses on the long-term values and function of the overall NCCP/MSAA/HCP consistent with the SRP Reserve Design Tenets set forth in the NCCP Conservation Guidelines and the Science Advisor Reserve Design Principles. Thus, instead of attempting to address mitigation on an "acre for acre" basis, NCCP/MSAA/HCP mitigation for impacts on listed and other Covered Species and Conserved Vegetation Communities is being provided by the entirety of the NCCP/MSAA/HCP components, including:

- An effectively functioning Habitat Reserve;
- Required management measures, including but not limited to, habitat enhancement and restoration, fire management, and so forth;
- Funding for habitat acquisition (if needed), research, monitoring, and day-to-day operation of the Habitat Reserve; and
- Other actions approved by CDFG and the USFWS that would contribute to the long-term protection and recovery of the designated species and their habitat.

Taken as a whole, these NCCP/MSAA/HCP components address the overarching standard of review for the recommended Conservation Strategy, including consistency with the FESA Special Rule and Section 10(a), and California Fish and Game Code Sections 1600 *et seq.*, Sections 2825(c), 2830, and 2800 *et seq.* (NCCP Act), requirements that:

- Impacts to CDFG Jurisdictional Areas will be avoided, minimized and mitigated consistent with Sections 1600 *et seq.* of the Fish and Game Code;
- Taking will be incidental to otherwise legally authorized activity;
- The NCCP/MSAA/HCP will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;
- At the federal level, the NCCP/MSAA/HCP includes the habitat essential to the conservation of species receiving regulatory coverage and will contribute significantly to recovery of listed species on a range-wide basis;
- At the state level, the NCCP/MSAA/HCP provides for the conservation and management each of the Covered Species, pursuant to the NCCP Act, including furthering “recovery” of the species at the subregional planning level;
- The NCCP/MSAA/HCP assures that Incidental Take will not appreciably reduce the likelihood of survival and recovery of Covered Species in the wild;
- The applicant will assure adequate funding for the plan; and
- The applicant will assure that other measures the Secretary may require as being necessary or appropriate will be provided.

Regulatory coverage for listed Covered Species and other Covered Species that might be listed in the future and require mitigation is addressed in a manner complying with the definition of “harm” under Section 9 of the FESA as applied to the Covered Species. Section 9 defines “harm” to include killing or injuring a species, or activities resulting in “. . . significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.”

Thus, for purposes of the NCCP/MSAA/HCP, “harm” covers those impacts that result in a loss of habitat that would significantly impair essential behavioral patterns of the Covered Species. The NCCP Act does not contain substantive standards similar to those in the FESA that could be used to demonstrate compliance by a subregional NCCP. The substantive standards for NCCP Act consistency review are set forth in the NCCP Process Guidelines and Conservation Guidelines. In addition, other substantive standards are applied to the review of alternative Conservation Strategy approaches pursuant to the Southern Planning Guidelines (*Chapter 4*) and Watershed Planning Principles (*Chapter 5*) that reflect the recommendations of the Science Advisors convened by The Nature Conservancy (see the CDFG authority to apply “non-regulatory guidelines” during the preparation and action on NCCPs). Accordingly, the Southern NCCP/MSAA/HCP was formulated in a manner designed to implement the NCCP Act, mitigate overall impacts and formulate a subregional conservation strategy consistent with the NCCP Process Guidelines and Conservation Guidelines as well as the other substantive standards cited above.

### **1.7.2 Preparation of a Programmatic Joint EIR/EIS**

The proposed project is required to undergo environmental reviews under both California (CEQA) and federal (NEPA) laws and regulations. To expedite these reviews a joint, programmatic EIR/EIS is being prepared to address the potential impacts to Covered Species and other species found within the NCCP/MSAA/HCP study area. The environmental documentation would address species that would not receive regulatory coverage under NCCP Act or FESA but need to be analyzed under CEQA.

To evaluate the environmental effects of alternative conservation strategies, the County has prepared a programmatic EIR/EIS in accordance with Section 15168 of the CEQA Guidelines. In furtherance of the broad-scale geographic and programmatic perspective of the NCCP subregional planning program, the use of a programmatic EIR/EIS offers an environmental document framework with several advantages. The CEQA Guidelines identify the following advantages:

- Providing for a more exhaustive consideration of effects and alternatives than would be possible in individual project EIRs;
- Ensuring consideration of cumulative impacts that might be slighted in a case-by-case analysis;
- Avoiding duplicative reconsideration of basic policy considerations; and
- Allowing the lead agency to consider broad policy alternatives and program-wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts.

Although the NCCP/MSAA/HCP does not involve approval of new development entitlements within the study area (this would be accomplished under separate environmental documentation), the programmatic EIR/EIS serves as the programmatic document for reviewing future development project impacts to Covered Species and other species and their associated habitats and for implementation measures designed to carry out the NCCP/MSAA/HCP.

Under the CEQA Guidelines, “activities” subsequent to the Program EIR will be examined pursuant to Section 15168(c). For those subsequent “projects” requiring additional CEQA documentation, the programmatic EIR will be used to assess project-level impacts, mitigation, alternatives and cumulative impacts in the manner indicated in Section 15168 (d). Regarding approval for Regulatory coverage of Covered Species permitted under the NCCP Act and FESA, the program EIR/EIS will be used and relied upon in conjunction with a subsequent project environmental review that addresses project level habitat impacts and planning. Under the terms of the IA and MSAAs, Covered Activities complying with the provisions of the NCCP/MSAA/HCP will not be subject to additional mitigation requirements or restrictions with regard to impacts on Covered Species and Conserved Vegetation Communities.

### **1.7.3 Alternatives Evaluated by the NCCP/MSAA/HCP and Joint EIR/EIS**

The alternative Conservation Strategies set forth in the NCCP/MSAA/HCP and analyzed in the Joint EIR/EIS have been formulated following a careful evaluation of:

- Biological, hydrologic, geomorphic, soils, topographic, land use and other data contained in the GIS database;
- Comments provided during the project “Scoping Process” by the public, reviewing agencies, the County, and participating cities, agencies and landowners;
- Additional agency, environmental group and public comments provided at working group meetings and public workshops; and
- Evaluation of existing local general plan land uses and other significant known project proposals.

Alternatives to the proposed Conservation Strategy included “no project,” “no take,” and “programmatic” alternatives. In addition to these “non-NCCP/MSAA/HCP” alternatives, other alternative conservation strategies and Habitat Reserve designs were considered that addressed the goals and objectives of the NCCP/MSAA/HCP and the SAMP programs. The final adopted Conservation Strategy for this NCCP/MSAA/HCP, including specific alternative Habitat Reserve design alternatives, were evaluated to determine the degree to which they met project purposes and goals, and their relative effects on Covered Species associated with each alternative.



#### **1.7.4 Relationship with Other Regional and State Planning Programs**

The Southern NCCP/MSAA/HCP was formulated in a manner that considered how it would relate to other regional planning efforts, including SCAG and other regional open space, air quality, housing and transportation plans. The joint EIR/EIS reviews these programs as applicable.