

**FINAL (ADMINISTRATIVE RECORD COPY)**

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**Central and Coastal Subregion  
Natural Community Conservation Plan/  
Habitat Conservation Plan**



*Parts I & II: NCCP/HCP*

**Prepared for:  
County of Orange  
Environmental Management Agency  
and United States Fish and Wildlife Service/  
California Department of Fish and Game**

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**JULY 17, 1996**

IMPLEMENTATION AGREEMENT

REGARDING THE NATURAL COMMUNITY CONSERVATION PLAN FOR THE  
CENTRAL/COASTAL ORANGE COUNTY SUBREGION OF THE COASTAL SAGE  
SCRUB NATURAL COMMUNITY CONSERVATION PROGRAM

BY AND AMONG

THE CALIFORNIA RESOURCES AGENCY, THE CALIFORNIA DEPARTMENT OF FISH  
AND GAME, THE CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE  
PROTECTION, THE CALIFORNIA DEPARTMENT OF PARKS AND RECREATION, THE  
UNITED STATES FISH AND WILDLIFE SERVICE, THE COUNTY OF ORANGE, CITIES  
WITHIN ORANGE COUNTY, THE SAN JOAQUIN HILLS TRANSPORTATION  
CORRIDOR AGENCY, THE FOOTHILL/EASTERN TRANSPORTATION CORRIDOR  
AGENCY, THE ORANGE COUNTY FIRE AUTHORITY, THE ORANGE COUNTY FLOOD  
CONTROL DISTRICT, THE REGENTS OF THE UNIVERSITY OF CALIFORNIA,  
SANTIAGO COUNTY WATER DISTRICT, THE IRVINE RANCH WATER DISTRICT, THE  
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, SOUTHERN  
CALIFORNIA EDISON, M.H. SHERMAN COMPANY,  
CHANDIS SECURITIES COMPANY, SHERMAN FOUNDATION,  
AND THE IRVINE COMPANY

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## LIST OF EXHIBITS

Documents referred to in this Agreement as "Figures" are located in the Figures Volume of the NCCP/HCP; "Appendices" are Appendices to the NCCP/HCP; "Tables" are Tables within the NCCP/HCP; and the Exhibits listed below are attached to this Agreement. The Figures, Appendices, Tables and Exhibits identified herein are incorporated by reference in this Agreement.

- Exhibit A Maps of Alton Parkway alignment and a portion of MCAS El Toro
- Exhibit B Form of Conservation Easement
- Exhibit C Form of Dedication
- Exhibit D Form of Donation
- Exhibit E Map of Bonita Creek Special Linkage Area
- Exhibit F The Irvine Company Lands Authorized Take

## IMPLEMENTATION AGREEMENT

THIS IMPLEMENTATION AGREEMENT ("Agreement") dated as of the Effective Date is made by and among the CALIFORNIA RESOURCES AGENCY ("Resources Agency"), an agency of the State of California, the CALIFORNIA DEPARTMENT OF FISH AND GAME ("CDFG"), a department of the Resources Agency, the CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION ("CDF"), a department of the Resources Agency, the CALIFORNIA DEPARTMENT OF PARKS AND RECREATION ("CDPR"), a department of the Resources Agency, the UNITED STATES FISH AND WILDLIFE SERVICE ("USFWS"), an agency of the Department of the Interior of the United States of America, the COUNTY OF ORANGE ("County"), a political subdivision of the State of California, the SAN JOAQUIN HILLS TRANSPORTATION CORRIDOR AGENCY and FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY (collectively, "TCA"), joint powers authorities, the ORANGE COUNTY FIRE AUTHORITY ("OCFA"), a joint powers authority, the ORANGE COUNTY FLOOD CONTROL DISTRICT ("OCFCD") a special district, the REGENTS OF THE UNIVERSITY OF CALIFORNIA ("Regents"), CITIES WITHIN THE CENTRAL/COASTAL SUBREGION THAT BECAME SIGNATORY (collectively, "Cities"), the SANTIAGO COUNTY WATER DISTRICT ("SCWD"), a County water district, the IRVINE RANCH WATER DISTRICT ("IRWD"), The METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA ("Metropolitan"), SOUTHERN CALIFORNIA EDISON ("SCE"), the M.H. SHERMAN COMPANY, the CHANDIS SECURITIES COMPANY, the SHERMAN FOUNDATION (collectively "Chandis-Sherman") and THE IRVINE COMPANY.

The County and the Cities may be referred to as "Local Governments." "County" includes OCFCD and all other special districts governed by the Orange County Board of Supervisors. IRWD, SCWD, Metropolitan, and SCE may be referred to as "Utilities." All of the above-described entities may be referred to collectively as "Parties" and each individually as a "Party".

The County has approved the NCCP/HCP, pursuant to Resolution No. 96-254A (April 16, 1996). The execution of this Agreement constitutes the formal approval of the NCCP/HCP by USFWS, CDFG, TCA and the Cities. The execution of this Agreement constitutes the legal commitment by all of the signatory Parties to implement the NCCP/HCP.

## **1.0 DEFINITIONS.**

### **1.1 Adaptive Management.**

"Adaptive Management" shall mean 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. Biological management techniques and specific objectives are regularly evaluated in light of monitoring results and other new information. These periodic evaluations are used over time to adapt both the management objectives and techniques to better achieve overall management goals.

Pursuant to the Conservation Guidelines, this approach involves managing CSS and adjacent habitats in a manner designed to support a broad range of species over the long term. Under Adaptive Management, a reserve system that consists of smaller, appropriately managed habitat areas could have a greater likelihood of maintaining CSS biodiversity than a system of larger habitat areas that are unmanaged or ineffectively managed.

**1.2 Adaptive Management Program.**

"Adaptive Management Program" shall mean the program set forth in the NCCP/HCP for Adaptive Management of the Reserve System.

**1.3 Assurances Policy.**

The "Assurances Policy" shall mean the policy statement titled "Assuring Certainty for Private Landowners in Endangered Species Act Habitat Conservation Planning." issued by the Secretary of the Interior and the Secretary of Commerce on August 11, 1994. (Appendix 4).

**1.4 Cactus Wren.**

"Cactus wren" shall mean the coastal cactus wren (*Campylorhynchus brunneicapillus*), including the eggs and all other life stages thereof.

**1.5 California Gnatcatcher.**

"California gnatcatcher" or "gnatcatcher" shall mean the coastal California gnatcatcher (*Polioptila californica californica*), including the eggs and all other life stages thereof.

**1.6 CDFG Management Authorization.**

"CDFG Management Authorization" shall mean the authorization to Take Identified Species in conjunction with Planned Activities established by this Agreement pursuant to Section 8.4.1.

**1.7 CESA.**

"CESA" shall mean the California Endangered Species Act, Fish and Game Code section 2050 et seq.

**1.8 CESA Candidate Species.**

“CESA Candidate Species” shall mean those species designated as candidates for listing as endangered species or threatened species pursuant to Fish and Game Code section 2074.2.

**1.9 CEQA.**

“CEQA” shall mean the California Environmental Quality Act, California Public Resources Code sections 21000 *et seq.*

**1.10 Central/Coastal Subregion.**

The "Central/Coastal Subregion" refers to the Central/Coastal Subregion of the CSS NCCP Program within Orange County as described in the NCCP/HCP, and shown on Figures 1 and 4.

**1.11 Chandis-Sherman Property.**

“Chandis-Sherman Property” refers to property in the City of Dana Point headlands area owned by Chandis-Sherman, as shown on Figure 71.

**1.12 Conservation Guidelines.**

“Conservation Guidelines” shall mean the Southern California Coastal Sage Scrub Conservation Guidelines issued by CDFG in November 1993 as Attachment A to the Natural Community Conservation Planning Process Guidelines.

**1.13 Corridors.**

“Corridors” shall mean the San Joaquin Hills Transportation Corridor, Eastern Transportation Corridor and Foothill/North Transportation Corridor.

**1.14 Corridor Biological Opinions.**

“Corridor Biological Opinions” shall mean the biological opinions issued by USFWS pursuant to consultation under section 7 of FESA with regard to the San Joaquin Hills Transportation Corridor, Foothill Transportation Corridor/North and Eastern Transportation Corridor, set forth in Appendix 8.

**1.15 Covered Habitats.**

“Covered Habitats” shall mean those habitat types protected by the NCCP/HCP in a manner comparable to the protection of CSS. The Covered Habitats are:

- Oak woodlands;
- Tecate cypress;
- cliff and rock; and
- within the coastal subarea only, chaparral.

**1.16 CSS.**

“CSS” shall mean coastal sage scrub habitat.

**1.17 CSS NCCP Program.**

“CSS NCCP Program” shall mean the statewide effort under the NCCP Act to address conservation planning for CSS. The Central/Coastal Subregion is one of several subregions within the overall CSS NCCP Program.

**1.18 CSS Species.**

“CSS Species” shall mean those Identified Species found predominantly in CSS habitat, as follows:

- coastal cactus wren (*Campylorhynchus brunneicapillus*)
- coastal California gnatcatcher (*Polioptila californica californica*)
- coastal western whiptail lizard (*Cnemidophorus tigris multiscutatus*)
- orange-throated whiptail lizard (*Cnemidophorus hyperythrus beldingi*)
- San Diego desert woodrat (*Neotoma lepida intermedia*)
- San Diego horned lizard (*Phrynosoma coronatum blainvillei*)

- red diamond rattlesnake (*Crotalis ruber ruber*)
- Southern California rufous-crowned sparrow (*Aimophila ruficeps canescens*)

**1.19 Effective Date.**

“Effective Date” shall mean the date on which the provisions of this Agreement take effect, as established by Section 11.1, and is the date on which the CDFG Management Authorization takes effect and Section 10(a) Permits are issued with respect to signatory Parties.

**1.20 EIR.**

“EIR” shall mean an Environmental Impact Report pursuant to CEQA.

**1.21 EIS.**

“EIS” shall mean an Environmental Impact Statement pursuant to NEPA.

**1.22 Existing Use Areas.**

“Existing Use Areas” shall mean those portions of the Central/Coastal Subregion, owned by Non-Participating Landowners and public agencies identified on Figure 22, and subject to the provisions of Chapter 4.4.1 of the NCCP/HCP. Existing Use Areas comprise areas with important populations of Identified Species but which are geographically removed from the Reserve System (i.e. these areas exist as “islands” of Identified Species populations) such that they do not provide primary connectivity functions. These areas include existing open space maintained by community and homeowner associations, other privately owned lands, and some public parklands. The provisions governing Existing Use Areas apply only to existing natural habitat areas within the designated Existing Use Areas.

**1.23 FESA.**

“FESA” shall mean the Federal Endangered Species Act of 1973, as amended, 16 U.S.C. § 1531 et seq.

**1.24 Habitat.**

"Habitat" shall mean the area occupied by or suitable for occupation by particular wildlife species, including areas capable of enhancement or restoration.

**1.25 Harass.**

"Harass" shall have the same meaning as provided in FESA.

**1.26 Harm.**

"Harm" shall have the same meaning as provided in FESA.

**1.27 HCP.**

"HCP" shall mean a Habitat Conservation Plan pursuant to section 10 of FESA.

**1.28 Headlands Plants.**

"Headlands plants" shall mean those plant species present on the Chandis-Sherman Property, including all life stages thereof, which shall be treated as and considered to be Identified Species for all purposes under this Agreement. The Headlands plants are:

- Blochmans dudleya (*Dudleya blochmaniae*)
- Western dichondra (*Dichondra occidentalis*)
- Cliff spurge (*Euphorbia misera*)
- Palmer's grappling hook (*harpagonella palmeri*)
- Prostrate spine-flower (*Chorizanthe procumbens*)

**1.29 Identified Species.**

"Identified Species" shall mean those species, including all life stages thereof, identified in Chapter 4.5.1 of the NCCP/HCP which the NCCP/HCP addresses as if they were listed as endangered species under FESA and CESA, and whose conservation and management is provided for in the NCCP/HCP. Except as provided in Section 8.8, Identified Species are:

- arboreal salamander (*Aneides lugubris*)
- black-bellied slender salamander (*Batrachoseps nigriventris*)
- Catalina mariposa lily (*Calochortus catalinae*)

- coastal cactus wren (*Campylorhynchus brunneicapillus*)
- coastal California gnatcatcher (*Polioptila californica californica*)
- coastal rosy boa (*Lichanura trivirgata rosafusca*)
- coastal western whiptail lizard (*Cnemidophorus tigris multiscutatus*)
- Coronado skink (*Eumeces skiltonianus interparietalis*)
- Coulter's matilija poppy (*Romneya coulteri*)
- coyote (*Canis latrans*)
- foothill mariposa lily (*Calochortus weedii*)
- golden eagle (*Aquila chrysaetos*)
- gray fox (*Urocyon cinereoargenteus*)
- heart-leaved pitcher sage (*Lepichinia cardiophylla*)
- Laguna Beach dudleya (*Dudleya stolonifera*)
- least Bell's vireo (*Verio belli pusilius*)
- northern harrier (*Circus cyaneus*)
- Nuttall's scrub oak (*Quercus dumosa*)
- orange-throated whiptail lizard (*Cnemidophorus hyperythrus beldingi*)
- Pacific pocket mouse (*Perognathus longimembris pacificus*)
- peregrine falcon (*Falco peregrinus*)
- Prairie falcon (*Falco mexicanus*)
- Quino (Wright's) checkerspot (*Euphidryos editha quino*)
- red diamond rattlesnake (*Crotalis ruber ruber*)
- red-shouldered hawk (*Buteo lineatus*)
- Riverside fairy shrimp (*Streptocephalus woottoni*)
- rough-legged hawk (*Buteo lagopus*)
- San Bernardino ringneck snake (*Diadophis punctatus modestus*)
- San Diego desert woodrat (*Neotoma lepida intermedia*)
- San Diego fairy shrimp (*Branchinecta sandeigonensis*)
- San Diego horned lizard (*Phrynosoma coronatum blainvillei*)
- Santa Monica Mts. Dudleya (*Dudleya cymosa spp ovatifolia*)
- sharp-shinned hawk (*Accipiter striatus*)
- small-flowered mountain mahogany (*Cercocarpus minutifolio*)
- Southern California rufous-crowned sparrow (*Aimophila ruficeps canescens*)
- southwestern arroyo toad (*Bufo microseaphus californicus*)
- southwestern willow flycatcher (*Empidonax trailli extimus*)
- Tecate cypress (*Cupressus forbesii*)
- western spadefoot toad (Coastal Subarea) (*Scaphiophis hammondi*)

### 1.30 **Incidental Take.**

"Incidental Take" shall mean any taking of an endangered species or threatened species that is incidental to, and not the purpose of, the carrying out of otherwise lawful activity.

**1.31 Infrastructure.**

"Infrastructure" shall mean all public and quasi-public service facilities and structures, including, but not limited to roads, landfills, flood control facilities, water transmission lines and facilities, electric utility lines and sewer facilities.

**1.32 Listing.**

"Listing" shall mean the listing of a species as an endangered species or threatened species pursuant to FESA, or as an endangered species or threatened species or CESA Candidate Species pursuant to CESA.

**1.33 Mitigation.**

"Mitigation" shall mean all measures to avoid, minimize, reduce, or offset impacts of any activities resulting in Incidental Take, or habitat disturbance, of Identified Species, including, but not limited to:

- avoiding the impact altogether by not taking a certain action or parts of an action;
- minimizing impact by limiting the timing, degree or magnitude of the action and its implementation;
- rectifying the impact by repairing, rehabilitating, or restoring the impacted environment;
- reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
- compensating for the impact by payment of fees or by providing permanent replacement resources or environments through the acquisition and preservation of land and the provision of funding for conservation, protection, or enhancement of Identified Species;
- dedication of lands or interests in lands including, but not limited to, the granting of conservation easements.

**1.34 Mitigation Fee.**

“Mitigation Fee” shall mean that fee established by the NCCP Non-Profit Corporation which may be paid by Non-Participating Landowners, as set forth in section 7 of this Agreement.

**1.35 NCCP.**

“NCCP” shall mean the Natural Community Conservation Plan, developed pursuant to the NCCP Act, for the Central/Coastal Subregion.

**1.36 NCCP Act.**

“NCCP Act” shall mean the Natural Community Conservation Planning Act of 1991, California Fish and Game Code section 2800 et seq.

**1.37 NCCP/HCP.**

“NCCP/HCP” shall mean the plan for conservation of the CSS natural community and associated habitat types in the Central/Coastal Subregion approved by the County, CDFG and USFWS, prepared pursuant to the Planning Agreement. The NCCP/HCP has been developed to meet the requirements of section 7 and section 10(a) under FESA, sections 2081 and 2084 under CESA and sections 2810, 2825(c), 2830 and 2835 under the NCCP Act.

**1.38 NCCP Non-Profit Corporation.**

“NCCP Non-Profit Corporation” shall mean the non-profit corporation established for the management of the Reserve System as set forth in Section 5.1.

**1.39 NEPA.**

“NEPA” shall mean the National Environmental Policy Act, 42 U.S.C. section 4321 et seq.

**1.40 Non-Participating Landowners.**

"Non-Participating Landowners" shall mean landowners in the Central/Coastal Subregion other than Participating Landowners.

**1.41 Orange-Throated Whiptail Lizard.**

"Orange-throated whiptail lizard" shall mean the orange-throated whiptail lizard (*Cnemidophorus hyperythrus beldingi*), including the eggs and all other life stages thereof.

**1.42 Participating Landowners.**

"Participating Landowners" shall mean those Parties that have committed to make land contributions to the Reserve System or monetary contributions to the NCCP Non-Profit Corporation pursuant to this Agreement, and are as follows:

- TCA
- The Irvine Company
- Chandis - Sherman
- Metropolitan
- SCE
- IRWD
- County
- Regents
- SCWD
- CDPR

**1.43 Planned Activities.**

"Planned Activities" shall mean (1) development on land or interests in land owned or controlled as of the Effective Date by one or more of the Participating Landowners in the Central/Coastal Subregion outside the Reserve System, including development of communities and Infrastructure, as shown on Figures 27, 28, 31 and 71, (2) uses and activities permitted within the Reserve System described in the NCCP/HCP and listed in Section 5.3.3 of this Agreement and Chapter 5.3 of the NCCP/HCP, (3) interim uses, described in the

NCCP/HCP, permitted on lands designated for inclusion in the Reserve System prior to transfer to public agencies or approved non-profit entities, and (4) modification of CSS owned by Non-Participating Landowners outside the Reserve System when such landowners have paid Mitigation Fees pursuant to Section 7 of this Agreement. Planned Activities are described in Chapter 5 of the NCCP/HCP and the physical extent of Planned Activities is generally shown on Figures 20, 27, 28, 42, 46, 47, 48, 49, 50, 58, 61, 65 and 71. USFWS has issued the Corridor Biological Opinions under section 7 of FESA with regard to the San Joaquin Hills, Eastern and Foothill/North Transportation Corridors. Since these biological opinions apply only to certain species and only with regard to USFWS authority, the Corridors are included as Planned Activities in this Agreement for all impacts to Identified Species other than such impacts addressed by the Corridor Biological Opinions. The terms and conditions of the Corridor Biological Opinions shall continue to apply as to those impacts to species evaluated in the Corridor Biological Opinions.

**1.44 Planning Agreement.**

"Planning Agreement" shall mean that certain Agreement by and among the California Resources Agency, the California Department of Fish and Game, the United States Fish and Wildlife Service, the County of Orange, cities within Orange County, the Transportation Corridor Agencies and The Irvine Company, effective June 25, 1993, setting forth the process for development of the NCCP/HCP.

**1.45 Policy Plan Area.**

"Policy Plan Area" shall mean that portion of the Central/Coastal Subregion identified on Figures 12 and 24.

**1.46 Proposed Listing.**

"Proposed listing" shall mean the proposed listing by USFWS of one or more of the Identified Species as either an "endangered species" or a "threatened species," pursuant to FESA or the proposal to list an Identified Species as an "endangered species" or "threatened species," or to designate a species as a CESA Candidate Species, by the California Fish and Game Commission pursuant to CESA.

**1.47 Reserve Owners/Managers.**

"Reserve Owners/Managers" shall mean the individual owners and/or managers of land within the Reserve System, including both non-profit entities owning or managing land in the Reserve System where approved by USFWS and CDFG, and public agency owners or managers.

**1.48 Reserve System.**

"Reserve System" shall mean the area identified in the NCCP/HCP as a permanent reserve of CSS and other associated habitat types, as generally identified on Figure 12, and more precisely identified on Appendix 25, and subject to the use restrictions identified in Chapter 4 (sections 4.1-4.3) and Chapter 5 (sections 5.1-5.3) of the NCCP/HCP. Any restrictions upon Reserve System land shall take effect upon inclusion in the Reserve System as set forth in Section 5.2. Interim use restrictions apply to private lands pending inclusion in the Reserve System. The Reserve System does not include lands described by the NCCP/HCP as Special Linkage Areas or Existing Use Areas.

**1.49 Section 4(d) Rule.**

"Section 4(d) Rule" or "4(d) Rule" shall mean the final rule issued by USFWS under section 4(d) of FESA, on December 10, 1993 (58 FR 65088), regarding the conditions under which Incidental Take of the gnatcatcher is authorized.

**1.50 Section 10(a) Permit.**

"Section 10(a) Permit" shall mean any permit issued by USFWS pursuant to section 10(a)(1)(B) of FESA (16 U.S.C. § 1539) to permit Incidental Take of Identified Species which may occur as a result of the Planned Activities.

**1.51 Section 10(a)(1)(A) Permit.**

"Section 10(a)(1)(A) Permit" shall mean any permit issued by USFWS pursuant to section 10(a)(1)(A) of FESA (16 U.S.C. §1539) to permit the take of the Pacific pocket mouse for scientific and propagation/population enhancement purposes.

**1.52 Special Linkage Areas.**

"Special Linkage Areas" shall mean those portions of the Central/Coastal Subregion owned by Participating Landowners identified on Figure 22, and subject to the restrictions identified in Chapter 4.1 of the NCCP/HCP. Special Linkage Areas comprise lands which contain CSS, Target Species or provide connectivity functions between habitat areas within the Reserve System, between the Central/Coastal Subregion and other subregions, or between the Reserve System and outlying Identified Species populations such as those around Upper Newport Bay. Special Linkage Areas are shown on Figures 22 and 23 and include existing and future golf course development. Special Linkage use provisions are discussed in Section 6.1 and are defined for certain Special Linkage Areas in the NCCP/HCP.

**1.53 Species.**

"Species" shall mean a plant or animal species and shall include subspecies and populations.

**1.54 Taking.**

"Taking" or "Take" shall have the same meaning as provided in FESA with regard to any activities subject to FESA, and shall have the same meaning as provided in state law with regard to activities subject to CESA. For purposes of FESA, and except as provided for in a Section 10(a)(1)(A) Permit, "Take" under this Agreement is limited to Incidental Take pursuant to FESA, and includes harm, harass, modification of habitat and any other activity prohibited or otherwise limited in a manner comparable to current Take provisions of FESA in then-applicable provisions of law.

**1.55 Target Species.**

"Target Species" shall mean those species identified in the Planning Agreement as the focus of NCCP planning. The Target Species are:

- California gnatcatcher (*Polioptila californica californica*):
- Cactus wren (*Campylorhynchus brunneicapillus*):
- Orange-throated whiptail lizard (*Cnemidophorus hyperythrus beldingi*).

**2.0 RECITALS.**

2.1 The Natural Community Conservation Planning effort is established by California law under the NCCP Act. CDFG is the trustee agency implementing the NCCP Act.

2.2 On December 10, 1993, USFWS issued a final rule under section 4(d) of FESA. The 4(d) Rule provides:

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 Process Guidelines, *provided that*:

(i) The [NCCP/HCP] has been prepared, approved, and implemented pursuant to California Fish and Game Code sections 2800-2840; and

(ii) The Fish and Wildlife Service (Service) has issued written concurrence that the [NCCP/HCP] meets the standards set forth in 50 C.F.R. 17.32(b)(2).

2.3 The purpose of the statewide natural community conservation effort is to provide for regional protection and perpetuation of natural wildlife diversity while allowing compatible and appropriate development and growth. The NCCP Act intends that these goals be achieved through the development and implementation of Natural Community Conservation Plans. These plans are designed to provide an alternative to current single species conservation efforts by formulating regional, natural community based habitat protection programs to protect the numerous species inhabiting the targeted natural communities. The Parties believe that the shift

in focus from single species to natural communities will enhance the effectiveness of ongoing species preservation efforts and facilitate economic development.

2.4 The CSS NCCP Program is the first effort to be undertaken pursuant to the NCCP Act. It is intended to be undertaken as a pilot project to develop a process for accelerated conservation planning at a regional scale, and it is contemplated that the planning process for CSS may serve as a model for other efforts elsewhere in the State. This planning process has been sponsored jointly by the Resources Agency and CDFG, and conducted in cooperation with USFWS, pursuant to a Memorandum of Understanding between CDFG and USFWS dated December 4, 1991 (Appendix 2), as well as the Planning Agreement (Appendix 5).

2.5 The CSS NCCP Program creates a regional effort that focuses on a sub-regional planning and management system designed to protect CSS and associated habitats and to reconcile conflicts between long-term protection of CSS and associated habitats and new development within Southern California. The CSS NCCP Program includes existing CSS in portions of five counties, including Orange County.

2.6 This Agreement is intended to implement the terms of the NCCP/HCP for the Central/Coastal Subregion of the CSS NCCP Program. Pursuant to the Planning Agreement, the Parties have determined that the Central/Coastal Subregion forms an effective planning area for NCCP purposes consistent with the Conservation Guidelines incorporated into the 4(d) Rule. This determination reflects the amount of existing habitat and species populations and diversity within the Coastal and Central subareas. The Coastal and Central subareas are addressed in a single NCCP/HCP because (1) one Participating Landowner owns the majority of undeveloped acreage in both the Coastal and Central areas, (2) most undeveloped land in both areas is within

the jurisdiction of the County, and (3) the Parties have determined that planning for both areas in a single NCCP/HCP will expedite the protection and long-term management of CSS.

2.7 Planning for the NCCP/HCP focused on protection of the CSS species identified by the Scientific Review Panel under the Conservation Guidelines, including the Target Species. Establishment of the Reserve System will protect Identified Species, including Target Species, which utilize CSS and related habitat types.

2.8 The Participating Landowners own certain real property situated in incorporated and unincorporated territory in the County, within the Central/Coastal Subregion. This property is currently used for a variety of purposes including, but not limited to, recreation, conservation, agricultural, residential, utility and commercial purposes.

2.9 The Participating Landowners and Local Governments have participated in long-term regional planning efforts to conserve contiguous open space, recreational and wildlife habitat areas. At present in the Central/Coastal Subregion, there are approximately 31,160 acres of large-scale habitat areas in dedicated regional parks and open space and land that is planned to be dedicated or reserved as regional parks and open space as a condition of approval of development projects or donated as provided in this Agreement. These regional planning efforts have been conducted to reduce and mitigate the impacts of development on natural resources, and have been coordinated with regional planning of development to meet housing and employment goals and the infrastructure needed to support those goals. USFWS and CDFG acknowledge that they have reviewed the location of planned roadways with regard to their effects on the habitats of Identified Species and on Covered Habitats. The Local Governments acknowledge that the coordinated regional planning efforts include the cooperative planning of

public parks/open space and transportation improvements set forth on the County Master Plan of Arterial Highways in a manner consistent with the cooperative planning provisions of section 4(f) of the Department of Transportation Act, and associated regulations. The NCCP/HCP is integrated with regional open space planning which has already taken place to identify and ensure appropriate mitigation for impacts on fish and wildlife and to promote the conservation of broad-based natural communities and species diversity. Major regional open space planning that has occurred includes the extensive open space identified by the City of Irvine General Plan and the large open space areas established in conjunction with the Newport Coast (formerly Irvine Coast) development as well as Limestone regional park and open space in the East Orange General Plan area, and the Weir Canyon and Windy Ridge phased dedication areas provided for pursuant to the Mountain Park Plan and development agreement.

2.10 The NCCP/HCP is intended to avoid, minimize and mitigate for CSS and Covered Habitats alterations constituting "harm," or "harass," and therefore Take under FESA incidental to Planned Activities, so that the Planned Activities will not appreciably reduce the likelihood of the survival and recovery of the Identified Species. The NCCP/HCP includes preservation and management mitigation measures, and restoration and enhancement opportunities to further the long-term survival of the Identified Species, and to allow land within the Central/Coastal Subregion to be developed consistent with the requirements of FESA, CESA and the NCCP Act.

2.11 The NCCP/HCP and associated joint programmatic EIR/EIS have been prepared under the supervision of USFWS and CDFG. The Parties acknowledge that regular discussions have been conducted with conservation representatives, in addition to the mandated public

involvement procedures required by CEQA and NEPA, to solicit their views on the NCCP/HCP and increase participation in the process.

2.12 The NCCP/HCP has concluded, and USFWS and CDFG concur, that the development of Planned Activities, which may constitute Take as identified in the NCCP/HCP, as mitigated by implementation of the NCCP/HCP in a manner consistent with the Conservation Guidelines, will not appreciably reduce the likelihood of survival and recovery of the Identified Species pursuant to CESA or section 10(a)(1)(B) of FESA.

2.13 USFWS policy on unlisted species and unforeseen circumstances has been set forth by the Office of the Solicitor, as follows:

"The issuance of 'incidental take' permits which allow the taking of species listed under the federal FESA incidental to, and not the purpose of, otherwise lawful activities, is expressly authorized under Section 10(a)(1)(B) of the Act. 16 U.S.C. 1539(a)(1)(B). While the language of Section 10(a)(1)(B) does not explicitly address unlisted species, the legislative history of the section clearly indicates that Congress contemplated that the Service would approve habitat conservation plans that protect unlisted species as if they were listed under the Act and provide Section 10(a)(1)(B) assurances for those unlisted species. The following excerpt from the House Report on the amendment of the Act creating the incidental take permit authority evidences that intent:

'The Secretary [of the Interior] . . . may approve commitments regarding the conservation of listed as well as unlisted species and long-term assurances to the proponent of the conservation plan that the terms of the plan will be adhered to and that further mitigation requirements will only be imposed in accordance with the terms of the plan. In the event that an unlisted species addressed in an approved plan is subsequently listed pursuant to the Act, no further mitigation requirements should be imposed if the conservation plan addressed the conservation of the species and its habitat as if the species were listed pursuant to the Act.' (H.R. Rep. 97-835, 97 Cong., 2nd Sess. 30-31 (1982).)

The Fish and Wildlife Service has routinely approved HCPs that cover both listed and unlisted species.

The Secretary's recent "Assurances Policy" (issued jointly with the Secretary of Commerce on August 11, 1994) [and set forth in Appendix 4] is a further expression of the Department's commitment to follow Congress' intent regarding both listed and unlisted species as reflected in the above passage from the House Report. Under the Assurances Policy, if Subregional Plans protect identified unlisted species as if they were listed, no additional mitigation that requires the expenditure of money or land set asides from the plan proponents will be sought.

The Assurances document also establishes Departmental policy for interpreting and applying the provisions of 50 C.F.R. 17.22(b)(2)(iii) which requires that the applicant for an incidental take permit provide in the plan procedures to deal with unforeseen circumstances. The Assurances Policy assures plan proponents that if the plan is implemented as proposed, no additional land or financial compensation will be sought from them if "unforeseen" or "extraordinary" circumstances should arise with respect to either listed or unlisted species.

The Solicitor's Office of the Department of the Interior has reviewed the Assurances Policy as described above . . . and has determined that the policy is authorized under the FESA, including the provisions and legislative history set out above."

(Memorandum dated December 8, 1994 from Lynn Cox, Office of the Solicitor, Pacific Southwest Region, U.S. Department of the Interior.)

2.14 USFWS has entered into this Agreement pursuant to FESA, the United States Fish and Wildlife Coordination Act (16 U.S.C. §§ 661-666c), the Fish and Wildlife Act of 1956 (16 U.S.C. 742(f) et seq.) and the Planning Agreement. In connection with the enactment of section 10(a)(1)(B) of FESA (16 U.S.C. § 1539(a)(1)(B)), the United States Congress expressed its legislative intent that USFWS cooperate in the development of conservation plans that protect both listed and unlisted species over the long term, while providing assurances regarding the limits of any mitigation required, stating that:

### Application to Unlisted Species

“Although the conservation plan is keyed to the permit provisions of the Act which only apply to listed species, the Committee intends that conservation plans may address both listed and unlisted species.”

### Public Private Partnerships

“To the maximum extent possible, the Secretary should utilize this authority under this provision to encourage creative partnerships between the public and private sector . . . .”

### Long-Term Assurance Provided by and for the Habitat

#### Conservation Plan Proponent

“The Secretary, in determining whether to issue a long-term permit to carry out the conservation plan should consider the extent to which the conservation plan is likely to enhance the habitat of the listed species or increase the long-term survivability of the species or its ecosystem.” . . . “Permits of 30 or more years duration may be appropriate in order to provide adequate assurances to the private sector to commit to long-term funding for conservation activities or long-term commitments to restrictions on the use of land.”

### Reciprocal Assurances to be Provided by the Service

“The Committee intends that the Secretary may utilize this provision to approve conservation plans which provide long-term commitments regarding the conservation of listed as well as unlisted species . . . .” (H.R. Rep. No. 97-835, 97th Cong., 2d Sess. 30 (1982).)

2.15 CDFG has entered into this Agreement pursuant to NCCP Act sections 2810, 2820, 2825, 2830 and 2835 and CESA sections 2081 and 2084. In 1991 the California Legislature enacted the NCCP Act. The Legislature found and declared as part of the NCCP Act that “there is a need for broad-based planning to provide for effective protection and conservation of the state’s wildlife heritage while continuing to allow appropriate development and growth.” Included in the legislative findings for the NCCP Act were the following declarations:

- (a) The continuing population growth in California will result in increasing demands for dwindling natural resources and result in the continuing decline of the state’s wildlife.
- (b) There is a need for broad-based planning to provide for effective protection and conservation of the state’s wildlife heritage while continuing to allow appropriate development and growth.
- (c) Natural community conservation planning is an effective tool in protecting California’s natural diversity while reducing conflicts between protection of the state’s wildlife heritage and reasonable use of natural resources for economic development.

(d) Natural community conservation planning is a mechanism that can provide an early planning framework for proposed development projects within the planning area in order to avoid, minimize, and compensate for project impacts to wildlife.

(e) The purpose of natural community conservation planning is to sustain and restore those species and their habitat identified by the Department of Fish and Game which are necessary to maintain the continued viability of those biological communities impacted by growth and development.

The above legislative findings of purpose are carried out by means of the NCCP Act.

Additionally, the 4(d) Rule indicates that: (1) the NCCP planning process can serve as a means of comprehensively addressing CSS conservation concerns; (2) an NCCP plan for the protection of coastal sage scrub habitat consistent with the State's Conservation Guidelines and the requirements of the NCCP Act will be the basis for addressing the requirements of the FESA section 10(a)(1)(B) regulations; and (3) the 1991 USFWS/CDFG MOU will serve as the guiding document for USFWS involvement in the review and approval of NCCP plans. Thus, the special rule under section 4(d) of FESA provides the regulatory bridge for integrating the state's CSS NCCP Program with the HCP/Incidental Take requirements of section 10(a)(1)(B) of FESA.

2.16 This Agreement and the NCCP/HCP have been structured and designed in cooperation with, and to the satisfaction of, USFWS and CDFG to avoid any conflicts with the reuse planning process for MCAS El Toro, as well as to accommodate any future reuse of MCAS El Toro, as described in Section 8.11.

### 3.0 FINDINGS.

USFWS and CDFG have found and determined that the NCCP/HCP, as implemented by this Agreement, meets the requirements for a habitat conservation plan for purposes of FESA, CESA, and the NCCP Act, and specifically for purposes of 16 U.S.C. § 1539, 50 C.F.R. § 1732(b)(2), and sections 2825(c), 2830 and 2835 of the NCCP Act, and in this regard, USFWS and CDFG have found and determined the following:

- (a) The Taking of Identified Species in accordance with the NCCP/HCP, in connection with the Planned Activities, will be incidental to an otherwise lawful activity.
- (b) The minimization and mitigation measures of the NCCP/HCP and this Agreement, to the maximum extent practicable, minimize and mitigate the impacts of the Taking of Identified Species.
- (c) This Agreement assures the funding required to implement the minimization and mitigation measures specified in Chapters 4 and 5 of the NCCP/HCP.
- (d) This Agreement and the NCCP/HCP provide adequate procedures for addressing unforeseen circumstances.
- (e) The Taking of Identified Species as contemplated by the NCCP/HCP and as provided for in this Agreement will not appreciably reduce the likelihood of the survival or recovery of Identified Species in the wild.
- (f) All measures required by USFWS and CDFG as necessary or appropriate for purposes of the NCCP/HCP have been provided for in the NCCP/HCP as implemented by this Agreement.

(g) The funding contribution by TCA to the Reserve System and Adaptive Management Program, together with the specific mitigation measures required by the Corridor Biological Opinions, constitute complete mitigation for impacts to the gnatcatcher resulting from construction of the San Joaquin Hills Transportation Corridor, Eastern Transportation Corridor and Foothill/North Transportation Corridor for purposes of state law pursuant to the NCCP Act, and for the gnatcatcher and other Identified Species pursuant to the NCCP Act, CESA, FESA, CEQA and NEPA.

(h) USFWS and CDFG have received such other assurances as deemed necessary to ensure that the NCCP/HCP and this Agreement will be implemented.

(i) Although the affirmative management obligations with respect to the Reserve System lands are limited to the term of this Agreement, the Parties acknowledge that the loss of specific habitat areas authorized in accordance with the NCCP/HCP and this Agreement will be permanent.

(j) Based on the deed restrictions, grant restrictions, provisions of dedication offers, commitments pursuant to adopted CEQA mitigation measures and other encumbrances against those current and future public lands which are to be included in the Reserve System and Special Linkage Areas as established by the NCCP/HCP, USFWS and CDFG have determined that the habitat protection afforded under those encumbrances and by commitments of lands for Reserve System or Special Linkage Area purposes pursuant to this Agreement constitute commitments in perpetuity to uses consistent with the purposes of the NCCP/HCP as set forth herein.

(k) USFWS and CDFG also find that assurances provided pursuant to Section 5.2.2(b) address habitat protection in the event of certain contingencies provided in existing dedication programs and that assurances provided pursuant to Section 5.2.2(c) and (d) provide for habitat protection on lands to be committed to open space as a result of the NCCP/HCP and this Agreement. USFWS and CDFG also find that the lands owned by The Irvine Company described in Sections 5.2.2 (b), (c) and (d) will be included in the Reserve System and will be protected in perpetuity as habitat for the Identified Species.

(l) Based on the Participating Landowners' contributions to the preparation and implementation of the NCCP/HCP, no further CDFG or USFWS approvals and/or mitigation measures directed at impacts to Identified Species, CSS and Covered Habitats, except as provided in this Agreement, on lands in the Central/Coastal Subregion owned or controlled by Participating Landowners as of the Effective Date located inside or outside the Reserve System, including Special Linkage Areas, will be required pursuant to CESA, the NCCP Act, or CEQA or required for protection of species pursuant to FESA or NEPA.

(m) If additional mitigation is required in order to meet the standards for issuance of Section 10(a) Permits to Participating Landowners for species within CSS and Covered Habitats described in Section 8.3.4(d), USFWS has the authority under federal law, including Sections 5, 6 and 10 of FESA, to provide such mitigation such that no further land or funds beyond that required by the NCCP/HCP and this Agreement will be required on the part of Participating Landowners.

(n) USFWS and CDFG have considered the anticipated duration and geographic scope of the Planned Activities, as described in the NCCP/HCP, and the degree to

which such impacts affect the Identified Species, and have considered the assurances to be provided to the other parties under this Agreement and have determined (1) that the foregoing findings and determinations are in accordance with FESA, CESA and the NCCP Act. (2) that, consistent with the 4(d) Rule, the NCCP/HCP has been prepared and approved pursuant to Fish and Game Code sections 2800-2840 and is consistent with the Conservation Guidelines, and (3) that the NCCP/HCP meets the standards set forth in 50 C.F.R. §17.32(b)(2).

#### **4.0 ELEMENTS OF THE NCCP/HCP MITIGATION PROGRAM.**

This Section 4 summarizes the measures which mitigate the impacts of Take of Identified Species under the NCCP/HCP, and the roles and responsibilities of the Parties to this Agreement. To the extent that other sections of this Agreement include more specific provisions regarding mitigation measures or roles and responsibilities of the Parties which conflict with the following summary, the more specific provisions shall prevail.

##### **4.1 Summary of Primary Mitigation Measures.**

The mitigation measures which mitigate the impacts of Take allowed by this Agreement consist of the following primary elements:

- (1) creation of a habitat Reserve System that will include CSS and representative habitat of virtually all of the major habitat types currently existing within the Central/Coastal Subregion;
- (2) creation and funding of an NCCP Non-Profit Corporation to coordinate management of the Reserve System;
- (3) designation of Special Linkage Areas and Existing Use Areas to enhance biological connectivity within the Reserve System and Central/Coastal Subregion;

(4) implementation of the Adaptive Management Program, including specific management plans, defined by the NCCP/HCP, within the Reserve System, including provisions for restoration and enhancement funded both by Participating Landowners and Non-Participating Landowners as provided herein.

**4.2 Obligations of Participating Landowners.**

(a) Mitigation measures and other measures on the part of Participating Landowners, intended to address the impacts of Take authorized under this Agreement, are summarized as follows:

(1) funding for preparation of the NCCP/HCP, contributed by The Irvine Company, TCA, Metropolitan, SCE, IRWD, SCWD and the County, totaling more than \$1 million.

(2) prior agreements on the part of The Irvine Company to dedicate 17,887 acres of land located within the Reserve System;

(3) agreement on the part of The Irvine Company to transfer an additional 3,001 acres to the Reserve System, and commitments for protection of Special Linkage Areas as provided for in this Agreement;

(4) funding for supporting biological and planning studies by The Irvine Company and other Participating Landowners;

(5) commitment on the part of the TCA to fund cowbird trapping, construct wildlife corridors, undertake 314 acres of vegetation restoration on Corridor sideslopes and 318 acres of CSS restoration within the Reserve System, pursuant to the Corridor Biological Opinions;

(6) maintaining availability of SCE lands for acquisition for inclusion in the Reserve System and commitments regarding Special Linkage Areas as provided for in this Agreement;

(7) funding for the \$10,665,000 endowment for the Adaptive Management Program, including more than \$6.6 million from TCA pursuant to the Corridor Biological Opinions, \$1 million each from the County, Metropolitan and IRWD, \$400,000 from SCE, \$500,000 anticipated from Chandis-Sherman and \$15,000 from SCWD;

(8) establishment of an eight-year temporary preserve for the Pacific pocket mouse by Chandis-Sherman;

(9) funding of an additional \$350,000 by Chandis-Sherman for pocket mouse research and recovery;

(10) County is contributing to the creation and implementation of the Reserve System and to the Adaptive Management Program by:

- compiling and updating the county-wide Geographic Information System to assist in long-term monitoring and management of the Reserve System;
- commitment of lands owned/managed by the County to the Reserve System; and
- ongoing commitments of staff and funding to manage the Reserve System in a manner consistent with the policies and programs set forth in the NCCP/HCP.

(b) During the “interim” phase (i.e. prior to transfer of designated Reserve System lands to a Reserve Owner/Manager), Participating Landowners will:

(1) consistent with the allowable use provisions of the NCCP/HCP, refrain from developing, or allowing others to develop, such lands in a manner that would impair the suitability of the lands for inclusion in the Reserve System;

(2) permit access to lands designated for inclusion in the Reserve System, for the purposes of conducting annual species and habitat monitoring and inventories;

(3) permit fire management planning and implementation activities by OCFA;

(4) permit measures designed to control invasive plant species and predator animal species as provided for in approved Adaptive Management activities;

(5) at the discretion of the landowner, allow other management, restoration, or enhancement activities; and

(6) prepare and implement a grazing management plan.

#### **4.3 Non-Participating Landowners.**

(a) For development resulting in Take of CSS Species listed as endangered species or threatened species under FESA or CESA, Non-Participating Landowners have the option of addressing such impacts by means of either (1) providing acceptable mitigation through separate permits or authorizations under FESA or CESA, or (2) paying a Mitigation Fee to the NCCP Non-Profit Corporation, as allowed by this Agreement.

(b) A Non-Participating Landowner who selects the Mitigation Fee option to address impacts on CSS Species, will be covered under the terms of the NCCP/HCP Section

10(a) Permit and CDFG Management Authorization granted to the Local Government with jurisdiction over the proposed activity, with regard to all CSS Species, and no additional approvals pursuant to FESA, CESA and the NCCP Act will be required by USFWS and CDFG.

(c) The Mitigation Fee option will not be available for Take by Non-Participating Landowners on lands located within Existing Use Areas unless (1) located within signatory Local Government jurisdictions, and (2) specifically authorized by USFWS and CDFG.

#### 4.4 Summary of Roles and Responsibilities.

##### 4.4.1 Participating Landowners' Commitments and Authorization for Take.

(a) County.

- 390 acres of Take authorized within the Reserve System
- Take authorized outside the Reserve System, presently constituting 334 acres (including 46 acres within Special Linkage Areas)
- \$1 million funding for NCCP Non-Profit Corporation (if federal funding is provided)
- contribution to preparation of NCCP/HCP
- commitment of lands owned/managed by the County to the Reserve System
- ongoing commitments of staff and funding to manage the Reserve System

(b) ICA.

- Take authorization within right-of-way of Corridors
- \$6.6 million for NCCP Non-Profit Corporation endowment
- commitment to 318 acres of CSS restoration

- commitment to 314 acres of revegetation on Corridor sideslopes
  - commitment to cowbird trapping
  - contribution to preparation of NCCP/HCP
- (c) Metropolitan.
- 45.3 acres of Take authorized within the Reserve System
  - Take authorized outside the Reserve System, presently constituting 13 acres
  - \$1 million funding for NCCP Non-Profit Corporation endowment
  - contribution to preparation of NCCP/HCP
- (d) SCE.
- 2.4 acres of Take authorized within the Reserve System
  - contribution to preparation of NCCP/HCP
  - commitments regarding Special Linkage Area
  - provision of \$400,000 to fund NCCP Non-Profit Corporation endowment
  - maintaining availability for purchase of 99-acre SCE parcel
- (e) IRWD.
- 60 acres of Take authorized within the Reserve System
  - Take authorized outside the Reserve System, presently constituting 27 acres
  - \$1 million to fund the NCCP Non-Profit Corporation endowment
  - contribution to preparation of NCCP/HCP
  - commitments regarding Special Linkage Areas
- (f) The Irvine Company.

- 2 acres of Take authorized within the Reserve System
- Take authorized outside the Reserve System, presently constituting 4,420 acres (including 60 acres within Special Linkage Areas)
- prior agreements to dedicate 17,877 acres of land within the Reserve System
- agreement to transfer an additional 3,001 acres to the Reserve System
- commitments regarding Special Linkage Areas
- contribution to preparation of NCCP/HCP
- commitment to interim management measures

(g) Regents (UCI).

- 3 acres of Take authorized within the Reserve System
- commitment of 135 acres to the Reserve System

(h) SCWD.

- 9 acres of Take authorized within the Reserve System
- contribution to preparation of NCCP/HCP
- \$150,000 to fund NCCP Non-Profit Corporation endowment

(i) Chandis-Sherman.

- Take authorized outside the Reserve System, presently constituting 30 acres
- \$500,000 to fund the NCCP Non-Profit Corporation endowment, subject to grading permit conditions of Section 8.3.2
- \$350,000 to fund Pacific pocket mouse population propagation, enhancement, relocation and recovery efforts upon issuance of Section 10(a)(1)(A) permits for pacific pocket mouse
- contribution to preparation of NCCP/HCP

- commitment to transplant, at CDFG's request, any Blochman's dudleya populations at Chandis-Sherman expense which would be directly impacted by Chandis-Sherman Planned Activities
- commitment to set aside the eight-year, approximately 22-acre Pacific pocket mouse preserve
- commitment to offer up to four, one-year extensions as set forth in Section 8.3.2(a)(1)(F)
- commitment to negotiate an option agreement to provide opportunity for USFWS and CDFG to purchase approximately 22-acre Pacific pocket mouse reserve area at end of eight-year preserve period

(j) CDPR.

- Take authorized for implementation of Crystal Cove State Park General Plan
- commitment of Crystal Cove State Park to Reserve System

**4.4.2 Local Governments (Cities and County of Orange).**

The Central/Coastal Subregion includes 13 cities that will be affected by the NCCP/HCP. Each city which signs this Agreement will be responsible for conducting some or all of the following actions, depending on whether portions of their jurisdictions are included within the Reserve System or Take of Identified Species will occur within their jurisdiction or both. Signatory Cities will be expected to address the following responsibilities with regard to actions of the signatory Cities and landowners subject to the jurisdiction of such Cities:

(1) consideration of amendments to the general plan, zoning, or other implementing ordinances to comply with state planning and zoning requirements;

(2) adopting fuel modification ordinances/standards consistent with the NCCP/HCP fuel modification policies that will be applicable to areas bordering the Reserve System, and within Special Linkage Areas and Existing Use Areas;

(3) in cooperation with the individual reserve owner/manager, reviewing project proposals within the Reserve System on lands managed by the particular Local Government to assure consistency with the NCCP/HCP;

(4) assuring that Non-Participating Landowners provide evidence of payment of the Mitigation Fee to the NCCP Non-Profit Corporation where the landowner elects to use the Mitigation Fee option for Take of listed CSS Species;

(5) recording/compiling Identified Species, CSS and Covered Habitats impacts within its jurisdiction annually and reporting losses/mitigation to the County EMA to enable the County, as the lead agency, to compile subregional data for transmittal to CDFG and USFWS;

(6) ensuring that NCCP construction-related minimization measures set forth in the NCCP/HCP EIR/EIS are enforced;

(7) making best efforts to acquire conservation easements over privately owned Existing Use Areas owned by Non-Participating Landowners;

(8) for those Local Governments owning land within the Reserve System, formally committing such lands to the Reserve System, and managing such lands in accordance with the NCCP/HCP and this Agreement;

(9) accepting and using the NCCP/HCP EIR/EIS as the CEQA program EIR, defining the mitigation program and covering all Take allowed for CSS, Identified Species and Covered Habitat impacts of Planned Activities;

(10) recognizing the mitigating values of preservation of non-CSS resources in the Reserve System in acting on specific Planned Activities; and.

(11) committing to the CSS, Identified Species and Covered Habitat mitigation assurances.

**4.4.3 County of Orange EMA as the Lead Agency.**

County Environmental Management Agency will serve as the principal agency implementing the NCCP/HCP until the NCCP Non-Profit Corporation is formed and assumes its functions as set forth in this Agreement. In this capacity the County will be responsible for the items described below in section 4.4.4. The County will have ongoing functions, after the NCCP Non-Profit Corporation is operating, as follows:

- (1) updating the county-wide GIS program;
- (2) preparing annual reports regarding management activities within the County's portion of the Reserve System for submittal to the NCCP Non-Profit Corporation for inclusion in the annual report to CDFG and USFWS; and
- (3) coordinating fire management programs with CDF and, through OCFA, cooperating with CDF to implement fire management measures within the Reserve System consistent with the NCCP/HCP.

**4.4.4 NCCP Non-Profit Corporation.**

The NCCP Non-Profit Corporation is the body responsible for coordinating the assembly of the Reserve System and implementation of the Adaptive Management Program within the Reserve System as provided in Chapter 5 of the NCCP/HCP. The NCCP Non-Profit Corporation shall be directed by a Board of Directors consisting of representatives of major public and private landowners and participating local jurisdictions that own lands within the Reserve System, Chandis-Sherman and USFWS and CDFG. The duties of the NCCP Non-Profit

Corporation will include coordinating and monitoring management of the Reserve System.

During the conduct of its duties, the NCCP Non-Profit Corporation will not have enforcement powers or authority over local jurisdictions, or over the individual Reserve Owners/Managers.

The responsibilities of the NCCP Non-Profit Corporation will include:

- (1) providing staff support to the NCCP Non-Profit Corporation Board of Directors to coordinate the management of the Reserve System;
- (2) hiring staff and consultants to carry out Board directives;
- (3) coordinating activities of the individual Reserve Owners/Managers;
- (4) preparing annual reports for the overall Reserve System for submittal to CDFG, USFWS, participants, and interested parties;
- (5) collecting Mitigation Fees for development of CSS located outside the Reserve System where Non-Participating Landowners elect this option as provided in this Agreement;
- (6) receiving other funding for reserve management and, if necessary, accepting lands for inclusion in the Reserve System;
- (7) disbursing funds to individual Reserve Owners/Managers to carry out the Adaptive Management Program;
- (8) hiring and managing biologists to conduct annual species and habitat monitoring, inventory and enhancement efforts within the Reserve System;
- (9) compiling and analyzing biological data obtained during monitoring and inventories for inclusion in the annual report; and
- (10) preparing and updating land acquisition priority list.

#### **4.4.5 Individual Reserve Owners/Managers.**

Although the NCCP Non-Profit Corporation will coordinate and oversee creation of the Reserve System and implementation of the Adaptive Management Program, the actual management of lands in the Reserve System will be conducted by the individual Reserve Owners/Managers. The number of Reserve Owners/Managers may change; however, at this time the Reserve Owners/Managers of lands proposed to be included in the Reserve System are identified on Figure 21. Upon signing this Agreement, these Reserve Owners/Managers will be responsible for the following activities:

- (1) coordinating management activities with the NCCP Non-Profit Corporation and assuring that such activities on their respective ownerships are consistent with the annually-approved work program;
- (2) in consultation with the NCCP Non-Profit Corporation, preparing the work program component for its ownership for the following year activities;
- (3) providing an annual progress report on the current year work program to the NCCP Non-Profit Corporation for inclusion in the overall annual report submitted to CDFG and USFWS;
- (4) accepting ownership and management responsibility for Reserve System lands upon transfer by private owners to the Reserve System; and
- (5) conducting, or allowing the NCCP Non-Profit Corporation or other appropriate public agency or non-profit to conduct specific Adaptive Management measures within their respective ownerships required under the NCCP/HCP and the then current work program, including the following activities:

- restoration
- enhancement
- habitat management
- public access/recreational management
- Reserve System and public access facility maintenance
- grazing management
- cooperation in fire management including prescribed burns
- cooperation in invasive plant and animal species control
- Pacific pocket mouse research and recovery

#### 4.4.6 Resource Agencies.

Subject to the availability of appropriated funds, CDFG and USFWS will provide funding, staff support, and program oversight functions as defined in this Agreement and by law during the long-term implementation of the NCCP/HCP. Pursuant to this Agreement, these agencies have the authority to assure, as provided herein, that the NCCP/HCP is implemented consistent with the provisions of the 4(d) Rule, FESA, the NCCP Act, the Conservation Guidelines, and CESA. The functions of the resource agencies will include the following:

- (1) to the extent available, providing annual funding contributions consistent with the NCCP funding program;
  - (2) supporting the transfer of 1,033 acres of El Toro MCAS to the Reserve System;
  - (3) reviewing annual reports submitted by the NCCP Non-Profit Corporation and providing comments/recommendations as required by this Agreement;
  - (4) addressing Take, in accordance with applicable law, where Non-Participating Landowners do not elect the Mitigation Fee option provided for in this Agreement;
- and

(5) monitoring landowner and Local Government compliance with the provisions of the NCCP/HCP.

**5.0 RESERVE SYSTEM.**

**5.1 NCCP Non-Profit Corporation.**

**5.1.1 Formation.**

Within one year of the Effective Date of this Agreement, or as soon as practicable thereafter, the Parties shall establish a non-profit public benefit corporation pursuant to California Corporations Code section 5100, et seq., (referred to herein as the NCCP Non-Profit Corporation) to coordinate the ongoing administration of the Reserve System. Responsibilities assigned to the NCCP Non-Profit Corporation shall be carried out by the County pending formation of the NCCP Non-Profit Corporation and in the event that, for any reason and at any time, the NCCP Non-Profit Corporation is unable to carry out its obligations under this Agreement.

**5.1.2 Directors.**

(a) The Board of Directors of the NCCP Non-Profit Corporation shall be comprised of one representative designated by each of the following: (1) each Local Government owning land in the Reserve System and signatory to this Agreement, (2) SCWD, (3) IRWD, (4) SCE, (5) Metropolitan, (6) TCA, (7) CDPR, (8) CDFG, (9) USFWS, (10) Regents, (11) Chandis-Sherman, until such time as the temporary Pacific pocket mouse preserve is dissolved, (12) The Irvine Company, until such time as all of The Irvine Company land designated for inclusion in the Reserve System is transferred to a public agency or an approved non-profit entity and formally included in the Reserve System, (13) each non-profit

entity owning land within the Reserve System, (14) a non-voting ex-officio member, designated by and representing CDF, and (15) three public representatives appointed by the other members of the Board of Directors. Each member of the Board of Directors shall exercise one vote.

(b) Additionally, the Parties recognize that the Coastal Greenbelt Authority, formed by the Agreement between the County and the City of Laguna Beach dated June 25, 1991, provides advisory functions with respect to planning and management of certain open space areas which the NCCP/HCP designates as part of the Reserve System. The Parties agree that the goals of the NCCP Non-Profit Corporation and the Coastal Greenbelt Authority are generally consistent, and should be coordinated to the maximum extent feasible. In order to facilitate such coordination, an additional non-voting member of the Board of Directors of the NCCP Non-Profit Corporation may be designated by the Coastal Greenbelt Authority.

(c) The articles or bylaws of the NCCP Non-Profit Corporation shall provide for changes in the Board of Directors as changes occur in the ownership of land within the Reserve System. Notwithstanding paragraph (a), upon transfer of all of The Irvine Company lands designated for inclusion in the Reserve System to public agencies or approved non-profit entities the County shall exercise a second vote. Notwithstanding transfer of TCA lands designated for inclusion in the Reserve System to another public agency or approved non-profit, TCA has an ongoing concern with implementation of the Corridor Biological Opinions, and shall retain voting authority on the Board of Directors until TCA elects to resign. Notwithstanding paragraph (a), the County shall succeed to the voting authority of the TCA if TCA resigns from the Board of Directors.

(d) While a representative designated by Chandis-Sherman remains on the Board of Directors and the City of Dana Point remains a signatory to this Agreement, Chandis-Sherman shall consult with the City of Dana Point on a periodic basis with respect to USFWS and CDFG activities within the temporary preserve area established on the Chandis-Sherman Property and with respect to pending actions of the NCCP Non-Profit Corporation regarding the Pacific pocket mouse or activities identified by the City of Dana Point affecting the City of Dana Point.

(e) The Board of Directors shall appoint a technical advisory committee consisting of scientists knowledgeable in the field of ecology, conservation biology, reserve management, habitat restoration or other appropriate disciplines. Meetings of the Board of Directors shall be public meetings, subject to any relevant notice requirements of state law.

**5.1.3 Authority.**

The NCCP Non-Profit Corporation shall have the authority required by this Agreement, and established by its articles of incorporation or bylaws and shall carry out the management coordination functions identified in Chapter 4 of the NCCP/HCP, consistent with the management plans approved by USFWS and CDFG as set forth in Section 5.3.2. The bylaws or articles of incorporation shall provide for an annual independent financial audit.

**5.1.4 Annual Report.**

(a) The NCCP Non-Profit Corporation shall prepare an annual report which shall include, at a minimum, the following information: (1) recommended modifications to management policies and programs consistent with Adaptive Management and the specific management plans referenced in Section 5.3.2. (2) preparation of a specific management

program/budget for the following year, (3) updates of prior budgets and ongoing funding recommendations and priorities, (4) a summary of activities undertaken by all participants in management of the Reserve System, (5) the amount and location of Take of Identified Species and habitat loss that occurred in the Reserve System during the prior year, (6) restoration and enhancement actions, (7) an accounting of Mitigation Fees and related loss of habitat in the Central/Coastal Subregion by amount and location outside the Reserve System, and (8) an accounting of all other funds received and dispersed to participating agencies for management and acquisition activities related to the NCCP/HCP, and (9) an accounting of land added to the Reserve System.

(b) Annual reports shall be approved by the Board of Directors of the NCCP Non-Profit Corporation and submitted to CDFG and USFWS for review and comment no later than December 1 of each year, commencing December 1, 1996. CDFG and USFWS shall review and provide written comments on the annual report by February 1, or within sixty (60) days of submittal, whichever occurs last.

(c) If CDFG and USFWS reviews of the annual report reveal significant disagreements concerning the status or effectiveness of management efforts (e.g. disagreements concerning reported habitat quality, recreation impacts, progress on phased activities, or management activities proposed to be undertaken during the following year), then CDFG and USFWS shall meet and confer with the NCCP Non-Profit Corporation to discuss those portions of the annual report which raise issues, and attempt to determine whether mutually acceptable resolution of issues is feasible. In the event there is a disagreement between CDFG and USFWS concerning the findings and/or recommendations contained in the annual report, the two agencies

shall resolve their dispute in a manner that does not impact the ability of the NCCP Non-Profit Corporation to implement the NCCP/HCP.

## **5.2 Formation of the Reserve System.**

### **5.2.1 General.**

(a) The NCCP/HCP designates a Reserve System, shown on Figure 12.

Approximate acreage of Reserve System lands currently in public ownership are as follows:

- 8,377 acres already owned by the County of Orange and managed by the County's Harbors Beaches and parks Department (EMA HBP);
- 2,807-acre Crystal Cove State Park owned by the State of California and operated by CDPR;
- 135± acres owned or managed by the Regents, located at the University of California, Irvine, including the existing 63-acre habitat reserve that UCI now manages (when and if the University receives fee title to the land areas indicated in the Landscape License of the February 10, 1993 UCI/TCA Purchase Agreement located within the Reserve System, this land shall be included in the Reserve System);
- 1,033-acre portion of the existing El Toro Marine Corps Air Station owned by the U.S. government and presently operated by the Department of Defense (DOD);
- 678-acre Upper Newport Bay Reserve, 953-acre Coal Canyon Reserve and 82-acre Laguna Laurel Preserve owned by the State of California and managed by CDFG;

- 1,662 acres owned/managed by the City of Laguna Beach; and
- 318 acres owned by TCA.

(b) The execution of this Agreement by each public owner of designated Reserve System and Special Linkage Area lands, both currently owned and acquired in the future, shall represent the owner's formal commitment of the lands to the Reserve System and Special Linkage Areas and agreement to manage the lands for the protection of the wildlife, plant and habitat values of the lands in accordance with the NCCP/HCP and this Agreement.

Consistent with the findings in Section 3, notwithstanding the term of this Agreement, if at any time following the end of the term of this Agreement, a public owner proposes to modify the encumbrances on the Reserve System and Special Linkage Area lands under its ownership, the proposed modification must be consistent with the purposes of the NCCP/HCP such that there is no net loss of habitat value for Identified Species, CSS and Covered Habitats. The public owner shall notify USFWS and CDFG, or their respective successor agencies, and explain how the proposed modifications are consistent with the purposes of the NCCP/HCP such that there is no net loss of habitat value for Identified Species, CSS and Covered Habitats.

(c) For designated Reserve System and Special Linkage Area lands or interests in lands owned as of the Effective Date of this Agreement or subsequently acquired by a public owner, the public owner shall promptly record a notice or memorandum with the office of the County Recorder in the chain of title of each such Reserve System or Special Linkage Area land parcel. The notice will include the date that the Parties entered into this Agreement, a summary statement of the purpose of the NCCP/HCP, a statement that the NCCP/HCP and this Agreement have provisions which will affect and restrict the use of the subject parcel, and an

announcement that the full text of these documents are available for public inspection at a specific location.

(d) Notwithstanding (b), above, the 318 acres owned by the TCAs, will be included in the Reserve System at a later date pursuant to the terms of the Corridor Biological Opinions. The rights of way for the San Joaquin Hills Transportation Corridor, Eastern Transportation Corridor, and Foothill Transportation Corridor/North are not included within the Reserve System as shown on Figure 12.

(e) Notwithstanding any other provision of this Agreement, the alignment for Alton Parkway, as shown on Exhibit A, is expressly excluded from the Reserve System. The remainder of the "triangle" portion of MCAS El Toro, as shown on Exhibit A, although not a part of the aforementioned 1,033 acres, is also designated for inclusion in the Reserve System. Failure to include this portion of MCAS El Toro in the Reserve System, shall not be deemed a breach of this Agreement or the basis for suspension, revocation, or termination of any Section 10(a) Permits or CDFG Management Authorization.

(f) Lands in private ownership shall be included in the Reserve System upon transfer of the lands in accordance with Section 5.2.2 through 5.2.5.

**5.2.2 Phased Dedication of Land Owned by The Irvine Company.**

(a) 17,877 acres of lands designated for inclusion within the Reserve System are owned by The Irvine Company and are required to be dedicated to public ownership over time in accordance with existing development approvals granted by local governments. Those lands owned by The Irvine Company, and committed to dedication within the Reserve System in accordance with such approvals, are set forth in Figure 20. The specific dedication documents

for dedication agreements entered into prior to the Effective Date of this Agreement are on file with USFWS and are incorporated herein by reference. A summary of each of these previous dedication agreements, including the location and acreage of dedication areas, status of dedications and the basic requirements of the agreements, is set forth in Appendix 19. Prior to dedication, such lands shall be managed pursuant to the interim management provisions of Chapter 4 of the NCCP/HCP. At the time a particular dedication of any increment of the aforesaid lands to public ownership is required to occur in accordance with existing development approvals, as listed in Appendix 19, The Irvine Company, at its discretion, will either (1) dedicate such lands to a then signatory public agency, (2) dedicate to a non-profit entity, and on terms, approved by USFWS and CDFG, (3) execute and record a conservation easement in the form set forth in Exhibit B-1, in favor of CDFG, or (4) through other means approved by USFWS and CDFG assure that the lands will be protected and managed in accordance with the NCCP/HCP and this Agreement.

(b) In the event that a necessary pre-condition to phased dedication by The Irvine Company is not satisfied to the extent that a dedication increment or increments may not either be offered or accepted under the terms of the dedication document, The Irvine Company commits that such lands will continue to be managed as "interim management lands" subject to Chapter 4 of the NCCP/HCP and this Agreement until such time as a mutually acceptable resolution of future land ownership is resolved among The Irvine Company, the offeree, USFWS and CDFG in a manner that will allow for the continuation of Take authorization consistent with then-applicable law. If The Irvine Company has not transferred dedication and donation lands pursuant to Section 5.2.2 prior to one year before the end of the term of this Agreement, The

Irvine Company shall execute and record a conservation easement in the form set forth in Exhibit B-1 or B-2, in favor of CDFG, provided that USFWS and CDFG shall concurrently extend the term of this Agreement and Take authorization for a period specified by The Irvine Company in accordance with then existing law.

(c) The Irvine Company will provide for the dedication of an additional 1,942 acres of land for the Reserve System, not previously committed for such dedication, in the manner provided for in Exhibit C. These lands may be dedicated to either a signatory public agency, or to a non-profit entity approved by CDFG and USFWS, and shall take the form of transfers of fee title or conservation easements in the form set forth in Exhibit B-1, or both. These lands include additional dedication areas within the County and within the sphere of influence and the jurisdictional boundaries of the City of Irvine. Prior to the dedication, such lands shall be managed pursuant to the interim management provisions of Chapter 4 of the NCCP/HCP.

(d) The Irvine Company will provide for the donation of an additional 1,059 acres of land not previously committed to dedication or donation, in the manner provided for in Exhibit D. These lands may be donated either to a signatory public agency, or to a non-profit entity approved by CDFG and USFWS, and shall take the form of transfers of fee title or conservation easements in the form set forth in Exhibit B-2, or both. These lands include donation areas within the sphere of influence of the City of Orange. Prior to the donation, such lands shall be managed pursuant to the interim management provisions of Chapter 4 of the NCCP/HCP.

(e) Notwithstanding (c) and (d) above, in the event of any suspension, revocation or termination of The Irvine Company authorization for Take, The Irvine Company shall likewise, at its sole discretion, be entitled to suspend the transfer of lands or recordation of conservation easements provided for pursuant to (c) and (d) until such time as the ability to continue with Take as provided in this Agreement is restored.

**5.2.3 SCE Parcel.**

The approximately 99 acre parcel owned by SCE, and identified on Figure 19, shall be acquired and included in the Reserve System as soon as acquisition funds are available. SCE agrees to make the land available for such acquisition.

**5.2.4 Other Lands Identified For Potential Inclusion In the Reserve System.**

(a) Approximately 650 additional acres are identified for potential inclusion within the Reserve System. Lands identified for potential inclusion are shown on Figure 19 and listed below:

- a 524-acre parcel owned by the Orange Unified School District and Serrano Irrigation District; and
- the 120-acre Santiago Ranch property (excluding the existing 11 acre equestrian facility).

(b) Lands identified for potential inclusion will be acquired by means of voluntary purchase agreements as funds become available over time. The NCCP Non-Profit Corporation shall maintain a list of lands identified for potential inclusion within the Reserve System and identify priority for acquisition and may revise or amend the list from time to time.

The prioritized list shall be included in the annual report prepared by the NCCP Non-Profit Corporation pursuant to Section 5.1.4.

(c) Consistent with current state and federal land acquisition practices, lands identified for potential inclusion within the Reserve System shall be acquired only if the landowner is a willing participant in the transaction. If owners of such lands are unwilling to allow public or non-profit acquisition, any impacts to Identified Species on such lands shall not be authorized by permits issued pursuant to FESA, CESA, or the NCCP Act in conjunction with approval of the NCCP/HCP or this Agreement. Nothing in this Agreement precludes owners of such lands from applying for or receiving separate permits pursuant to FESA or CESA.

(d) Lands identified for potential inclusion within the Reserve System may be acquired by Local Governments, non-profit entities approved by USFWS and CDFG, or the NCCP Non-Profit Corporation.

(e) The inability or failure of the NCCP Non-Profit Corporation or other Parties to acquire, and include in the Reserve System, any of the lands identified for potential inclusion shall not be deemed a breach of this Agreement or the basis for suspension, revocation, or termination of any Section 10(a) Permits or CDFG Management Authorization.

#### **5.2.5 Other Future Additions to the Reserve System.**

Additional lands not currently designated for inclusion within the Reserve System or identified for potential inclusion may be added to the Reserve System through dedication, donation, or acquisition as funds become available. Additions of land to the Reserve System shall be approved by the NCCP Non-Profit Corporation and shall not require an amendment of the NCCP/HCP or this Agreement.

**5.3 Reserve Management Responsibilities.**

**5.3.1 General.**

(a) The lands described in Section 5.2 above shall be formally committed to the Reserve System pursuant to section 5.2.1 as they are dedicated to Local Governments in accordance with existing development approvals. Local Governments receiving these lands will be responsible for processing any necessary general plan or zoning changes, subject to the provisions of Section 8.1(a), pursuant to state planning and zoning requirements. Inclusion in the Reserve System does not remove existing public agency land managers' respective ownership and management responsibilities for all Reserve System lands under their control.

(b) Following the completion of phased dedications described in Section 5.2.2, the transfer of the additional 3,001 acres of property by The Irvine Company, the inclusion of the 1,033-acre MCAS El Toro property in the Reserve System, and acquisition of the SCE parcel, ownership and management of the Reserve System is anticipated to be as shown on Figure 21.

**5.3.2 Reserve Management Elements.**

(a) The Parties shall provide for the implementation measures described in Chapter 4 of the NCCP/HCP. The policies for management and monitoring of the Reserve System, research, habitat restoration and enhancement, fire management, public access, infrastructure, existing uses and interim management specified in Chapter 5 of the NCCP/HCP are incorporated by reference herein, and shall be treated as obligations by the Parties to this Agreement.

(b) Programs for implementing the NCCP/HCP policies shall be further defined in the management plans referenced in the NCCP/HCP; implementation of NCCP/HCP policies through the management plans shall not require amendment of the NCCP/HCP or this Agreement. The management plans identified in the NCCP/HCP are as follows:

- (1) Fire Management
- (2) Grazing
- (3) Recreation
- (4) Restoration/Enhancement

(c) The NCCP/HCP short-term fire management plan provided for in the NCCP/HCP shall be prepared within eighteen (18) months following the Effective Date of this Agreement. The proposed short-term fire management plan shall be provided to CDFG and USFWS 150 days prior to the first proposed action under the short-term fire management plan. USFWS and CDFG shall, in full consultation with the NCCP Non-Profit Corporation, OCFA and CDF, determine whether the short-term fire management plan is substantially consistent with the short-term fire management policies set forth in the NCCP/HCP. If USFWS and CDFG fail to provide a written response to the draft fire management plan within 60 days, the plan shall be deemed approved. If there is a disagreement between the NCCP Non-Profit Corporation and either USFWS or CDFG, or both agencies, regarding the substantial consistency of the management plan with the applicable NCCP/HCP policies, the short-term fire management plan shall be forwarded to the USFWS Regional Director and the Director of CDFG, for additional review and consultation with the NCCP Non-Profit Corporation. Throughout the 150 day period and any period of judicial review as set forth below, no action shall be taken to implement the

short-term fire management plan except for those actions agreed to by USFWS and CDFG or determined by OCFA, after consultation with the NCCP Non-Profit Corporation, USFWS and CDFG, to be required for emergency public health and safety purposes. If for any reason the total time period for CDFG/USFWS review exceeds 90 days, the time period specified for completing the short-term fire management program shall be extended in a manner corresponding with the time period required by USFWS and CDFG to review the management plan. Notwithstanding the provisions of Sections 10.3 and 10.4, and in place of the remedies set forth in those sections, in the event USFWS and/or CDFG conclude that the short-term fire management plan is not substantially consistent with the NCCP/HCP short-term fire management policies, USFWS and/or CDFG shall be entitled to seek declaratory relief in federal or state court, as applicable, to determine whether the management plan is substantially consistent with the short-term fire management policies of the NCCP/HCP. The Parties stipulate that, in the event of such judicial review, the court shall apply an independent judgment test rather than placing the burden of proof on either USFWS/CDFG or the NCCP Non-Profit Corporation. If the court determines that the short-term fire management plan is not substantially consistent with the short-term fire management policies of the NCCP/HCP, and no appeal is filed with the appropriate court of appeal, the NCCP Non-Profit Corporation shall, in consultation with USFWS and CDFG, prepare a revised short-term fire management plan. The revised plan shall be submitted to the Regional Director and the Director of CDFG for review within 120 days following the court order on the original plan or within such time as the Parties may otherwise agree. If within 60 days of receipt the Regional Director and/or the Director of CDFG determines that the revised plan is not substantially consistent with the short-term fire

management policies of the NCCP/HCP, either agency may seek judicial relief as provided in this paragraph and implementation of the revised plan shall be governed by the provisions above relating to the original plan.

(d) Within 6 months of the appointment of the Executive Director of the NCCP Non-Profit Corporation under Chapter 6.1.2 of the NCCP/HCP, the NCCP Non-Profit Corporation shall establish the timelines for the preparation of the long-term fire management plan to be completed within 3 years of the Effective Date of this Agreement as set forth in the NCCP/HCP. Upon completion of the draft long-term fire management plan, the review and implementation of the plan shall be carried out in the same manner as provided in paragraph (c) above for the short-term fire management plan.

(e) Within one year of the Effective Date, a grazing plan consistent with the NCCP/HCP shall be submitted for review and approval by USFWS and CDFG. A material change to the grazing plan shall be submitted to USFWS and CDFG for review and approval.

(f) As described in Chapter 5 of the NCCP/HCP, prior to the establishment of permanent access, uses or facilities, the County shall prepare a Resource Management Plan for each future County park development on lands designated for inclusion within the Reserve System. The Resource Management Plan for each park shall be provided to the USFWS and CDFG at least 150 days prior to implementation of any action under the plan. The USFWS and CDFG shall review these plans for consistency with the conservation and/or specific recreational management policies set forth in the NCCP/HCP and with Section 9.2.1(b). If USFWS and CDFG fail to provide written response to the plan within 45 days of receipt, the plan shall be deemed consistent. During the 45 day review period, if requested by any Party, the Parties shall

meet to address any agency concerns about the plan. During the second 45 days of the 150 day period, the USFWS and CDFG shall engage in efforts to reconcile any concerns with County such that modifications of the plan which are to the mutual satisfaction of all Parties can be achieved. Failing to reach consensus, no action shall be taken to implement the plan for the remaining 60 days of the 150 day period, and USFWS and/or CDFG may initiate a suit in a court of competent jurisdiction in California for declaratory and/or injunctive relief on the grounds that the plan is substantially inconsistent with the conservation policies and/or specific recreational management policies of the NCCP/HCP and with Section 9.2.1(b).

(g) Within three years following the creation of the NCCP Non-Profit Corporation, a comprehensive enhancement and restoration plan shall be prepared and submitted to USFWS and CDFG for review and approval. This plan shall be updated and approved annually by the NCCP Non-Profit Corporation. Enhancement and restoration activities may proceed prior to preparation and approval of this plan subject to approval by CDFG, USFWS and the NCCP Non-Profit Corporation. Within one year of the appointment of the Executive Director of the NCCP Non-Profit Corporation under Chapter 6.1.2, the NCCP Non-Profit Corporation shall review available reports regarding the cactus wren, and will determine whether management measures should be taken with regard to the cactus wren within the Reserve System, subject to available funds and NCCP/HCP Adaptive Management priorities. A material change to the comprehensive enhancement and restoration plan shall be submitted to USFWS and CDFG for review and approval.

(h) A material change to any of the plans described in the Section 5.3.2 shall be reviewed and approved in the same manner as the original plan.

### 5.3.3 Permitted Uses.

The following is a summary of permitted uses in the Reserve System that shall constitute Planned Activities on the part of Participating Landowners and permitted uses on the part of the NCCP Non-Profit Corporation as more fully described and provided for in the NCCP/HCP:

- Adaptive Management Activities
  - monitoring target species and related habitat conditions
  - monitoring non-CSS and non-target species conditions
  - habitat enhancement, restoration, and re-creation
  - other management activities designed to implement NCCP policies, objectives (e.g. cowbird trapping, Pacific pocket mouse propagation and weed abatement)
  - inventorying for non-target species
- Habitat Mitigation Related to Take of Listed CSS Species Outside the Reserve System, Consistent With the Provisions of the NCCP/HCP
- Habitat Mitigation For Take of Non-CSS Species Outside the Reserve System, Consistent With the NCCP/HCP and State and Federal Mitigation Policies (e.g. wetlands, least Bell's vireo)
- Field Research and Field Studies Designed to Further Long-Term Protection of Habitats and Species Included Within the Reserve System (including university-approved research on the portion of the Reserve System owned by the Regents)
- Fire Management Activities Consistent With the NCCP/HCP and Fire Management Plan
- Ongoing Grazing Activities Consistent With the NCCP/HCP and Grazing Plan
- Public Access and Recreation Consistent With the Provisions Of the NCCP/HCP Recreation Management Program

- passive recreation, including hiking, nature interpretation, picnicking
  - equestrian activities on designated trails, and designated new staging areas and facilities
  - mountain biking on designated trails
  - camping in designated locations
  - construction, operation, maintenance and concession activities associated with recreation facilities designated as permitted uses within the NCCP/HCP
  - pre-existing park facilities and uses within disturbed areas, provided that existing active facility expansions, or conversion of passive use facilities to active use must be consistent with the NCCP/HCP
  - within the Coal Canyon Ecological Reserve, public access and hunting as determined appropriate by CDFG
  - park and reserve administration and interpretive facilities
- Activities Related To The Provision of Those Necessary Infrastructure Facilities Identified in Chapter 5 of the NCCP/HCP
    - consistent with the provisions of the NCCP/HCP, operation, maintenance, repair and reconstruction of existing Infrastructure as depicted on Figure 27 or if not addressed by the NCCP/HCP otherwise a matter of public record
    - construction of those new Infrastructure facilities identified in Figure 28 consistent with adopted County and city general plans and the provisions of the NCCP/HCP
    - ongoing operations and maintenance, repair and reconstruction activities related to the new Infrastructure facilities, consistent with the provisions of the NCCP/HCP
    - emergency activities related to existing or new Infrastructure facilities
  - Existing uses consistent with Chapter 5.11 (Existing Use Policies) of the NCCP/HCP.

**5.4 Reserve System Funding.**

**5.4.1 NCCP Non-Profit Corporation Endowment.**

(a) An endowment of approximately \$10,665,000 shall be established generally in accordance with Chapter 4 of the NCCP/HCP, to fund the NCCP Non-Profit Corporation. Funding of the endowment will be phased over approximately four (4) years beginning in 1996, as shown on Table 6-4 of the NCCP/HCP.

(b) The approximately \$6.6 million dollars designated for the endowment from TCA are those funds committed for minimization and mitigation purposes under the terms of the Corridor Biological Opinions ("Conservation Funds"). TCA shall continue to transfer the Conservation Funds to USFWS in installments, pursuant to the Corridor Biological Opinions. As of November 30, 1995, TCA had made payments of \$2,775,000 pursuant to the terms of the Corridor Biological Opinions. USFWS shall transfer all Conservation Funds already paid by TCA, and not allocated to other uses as of the Effective Date, to the NCCP Non-Profit Corporation, within thirty (30) days of incorporation of the NCCP Non-Profit Corporation. USFWS and TCA shall transfer future installments of the Conservation Funds to the NCCP Non-Profit Corporation pursuant to the terms of the "Memorandum of Understanding Relating to the San Joaquin Hills Transportation Corridor Condition #1 of Biological Opinion 1-6-93-F-89R and Eastern Transportation Corridor Condition #4 of Biological Opinion 1-6-94-F-17 and Condition #2 of Biological Opinion 1-14-94-F-16."

(c) Metropolitan and IRWD shall each transfer \$1 million to the NCCP Non-Profit Corporation in a series of installments as specified in Table 6-4 of the NCCP/HCP.

(d) The County shall transfer \$1 million to the NCCP Non-Profit Corporation in a series of installments as specified in Table 6-4. Commitment of these funds from the County is contingent upon receipt of federal funding for NCCP implementation. The County's obligation to contribute to the endowment is limited to the extent of federal funding for NCCP implementation received by the County.

(e) SCE shall arrange for transfer of \$400,000 to the NCCP Non-Profit Corporation, in conjunction with the sale of SCE property to the Tracy Building Corporation.

(f) Subject to the conditions specified in Table 6-4, Chandis-Sherman shall transfer \$500,000 to the NCCP Non-Profit Corporation in a series of installments.

(h) SCWD shall transfer \$150,000 to the NCCP Non-Profit Corporation in a series of installments as specified in Table 6-4 of the NCCP/HCP.

(i) After the term of this Agreement, as set forth in Section 11.1, the NCCP Non-Profit Corporation shall continue to use the income from the endowment for management of the Reserve System. If the NCCP Non-Profit Corporation dissolves prior to the end of the term, the endowment shall be managed by the County pursuant to Section 5.1.1. If, at or after the end of the term of the Agreement the NCCP Non-Profit Corporation dissolves or the County relinquishes its management role under Section 5.1.1, the endowment shall be disbursed consistent with the purposes of the NCCP/HCP, in a manner approved by CDFG and USFWS.

#### **5.4.2 Other Funding Sources.**

The Parties anticipate, but cannot guarantee, that substantial additional funding for the NCCP/HCP will be provided by state and federal contributions. USFWS and CDFG shall devote their best efforts to assist the NCCP Non-Profit Corporation in obtaining additional

funding from sources including, but not limited to, existing and future grant programs and existing and future bond issues.

**6.0 NON-RESERVE COMPONENTS OF THE NCCP/HCP.**

**6.1 Special Linkage and Existing Use Areas.**

(a) The NCCP/HCP designates 5,702 acres of public and private lands as Special Linkage Areas and Existing Use Areas. Conservation easements referred to in this Section 6.1 shall be substantially in the form of Exhibit B-3, unless otherwise indicated by context.

(b) Special Linkage Areas owned by The Irvine Company shall be governed by the provisions of this Section and by the specific Special Linkage Area provisions set forth in Chapter 4.4 of the NCCP/HCP. Due to the long-term habitat protection and management benefits conferred by the permanent Special Linkage Area commitments established pursuant to this Section, any Take within the Special Linkage Areas, but outside of designated open space protection areas, owned by The Irvine Company is authorized by this Agreement. The specific provisions applicable to Special Linkage Areas owned by The Irvine Company are as follows:

(1) Shady Canyon Linkage Area.

(A) The construction of the Shady Canyon golf course shall be subject to the Special Linkage Area provisions of the NCCP/HCP and this Agreement with respect to project design and open space commitments. Upon completion of the construction and landscaping of the golf course and the recordation of any required final subdivision map, a conservation easement over the golf course depicted on Figure 52 shall be recorded in

favor of the County or CDFG or any other offeree as designated. In the case of the Shady Canyon golf course, the easement provisions shall apply only to the "Natural Open Space" and "Preserved Drainage" within the golf course shown on Exhibit 3-16 of FEIR No. 16867-GA/16868-ZC, and the conservation easement shall also provide that the boundaries of the "Golf Course Open Space" may be modified over time upon mutual agreement of the City of Irvine and The Irvine Company to reflect adjustments in golf course use or design, provided that (1) a minimum of 90 acres of "Golf Course Open Space" and "Preserved Drainage" shall be maintained and a minimum of 61 acres of CSS within the "Golf Course Open Space" or in immediately contiguous areas within the project site shall be maintained, (2) the significant population of *Dudleya multicaulis* located on the periphery of the project will be protected by a minimum setback of 40 feet from non-native plantings, and (3) in areas which The Irvine Company determines are not required for the golf course, native vegetation will be incorporated.

(B) With respect to the "north hill" area located within the Shady Canyon project area, a conservation easement shall be recorded over approximately 45 acres of natural open space as depicted on Exhibit 3-18 of FEIR No. 16867-GA/16868-ZC following the completion of construction and the recording of final map(s) on all adjoining development areas. The conservation easement shall be recorded in favor

of the County or CDFG or any other offeree as provided in the standard form of conservation easement set forth in Exhibit B of this Agreement and shall include a specific provision acceptable to USFWS and CDFG to restrict human access within the easement areas to trails designated on the final tract map.

(C) With respect to approximately 12 acres in the Shady Canyon Special Linkage Areas not covered in (A) and (B) above and depicted on Figure 23, a conservation easement shall be recorded following the completion of construction and recording of final map(s) on all adjoining development areas.

(2) With respect to all development areas in the "Bonita Creek Corridor" Special Linkage Area as shown on Exhibit E, a conservation easement shall be recorded over the areas, approximately 4 acres, depicted in Exhibit E in the same manner as provided under paragraph (1) above for Shady Canyon residential development.

(3) With respect to all Special Linkage Areas shown within the Irvine Coast LCP areas depicted in Figure 22, conservation easements shall be recorded in the same manner as provided for in paragraph (1) above, and as specified in this paragraph. The Special Linkage Area provided in Irvine Coast Planning Area 11-B (Pelican Hill), will be defined and re-vegetated in the manner prescribed in the interim Take agreement under the 4(d) Rule between The Irvine Company and USFWS. The Special Linkage Area provided for on the frontal slopes of

Wishbone Hill shall be protected by means of the recordation of a conservation easement consistent with the interim Take approval under the 4(d) Rule, dated May 27, 1994, provided however that if the California Coastal Commission approves modification of the Wishbone Hill portion of the LCP in the manner described in Chapter 4.3.3 of the NCCP/HCP the conservation easement shall conform to the revised LCP and no amendment of this Agreement shall be necessary. The recordation of conservation easements for all other Irvine Coast LCP area Special Linkage Areas shown on Figure 22 shall be timed in relation to adjoining development in the manner provided for in paragraph (2) above and shall utilize the form of conservation easement set forth in Exhibit B. With respect to the two existing Irvine Coast LCP golf courses, conservation easements shall be recorded with the same provisions specified for the Shady Canyon golf course in paragraph (1) above.

(4) With respect to the Limestone Creek golf course, golf course development shall be governed by the requirements of the City of Orange final EIR 1278 and the golf course design and construction provisions of the September 14, 1989 Sea and Sage Audubon Society/Irvine Company Agreement ("Agreement Covering Sea and Sage Audubon Society Concerns for East Orange General Plan Amendment") and, if the Arroyo toad is present on the project site, shall be subject to additional design modifications and onsite measures, consistent with the purposes and feasibility of the golf course project, appropriate for the protection of the Arroyo toad, developed in coordination with USFWS and

CDFG. While attempts will be made to accommodate the Arroyo toad on-site, The Irvine Company will have the option of relocating all life stages of the toad to permanently protected areas. The conservation easement requirements shall be carried out in the same manner as provided for in paragraph (1) above with respect to the Shady Canyon golf course.

(c) Special Linkage Areas owned or operated by the County and/or IRWD (depicted on Figure 22) shall be governed by the provisions of this paragraph and by the Special Linkage Area provisions described in the NCCP/HCP. The County presently owns or will own two landfill areas (Coyote Canyon and Bowerman) subject to the Special Linkage Area provisions of the NCCP/HCP. Additionally, the County presently intends to jointly develop a golf course with IRWD in the area depicted in Figure 73. Due to the long-term habitat management protection and management benefits conferred by commitments associated with each of these Special Linkage Areas, any Take of Identified Species or modification of CSS within the Special Linkage Areas, but outside of designated open space protection areas, is authorized by this Agreement. The Special Linkage Area provisions applicable to areas owned or operated by the County and/or IRWD are as follows:

(1) Restored CSS areas provided for in the Coyote Canyon landfill area pursuant to the Corridor Biological Opinions shall be protected as provided for in the Corridor Biological Opinions.

(2) A golf course located in the area depicted in Figure 22 (Coyote Canyon Landfill) is an authorized use and shall be constructed in a manner

consistent with the provisions of Section 6.1(b)(1). The County shall confer with USFWS and CDFG to minimize impacts to Identified Species.

(3) The County and IRWD will develop a golf course in and around the Sand Canyon Reservoir as depicted in Figure 73. The project will include Take of 6 acres of CSS and the loss of 6 acres of other habitat occupied by gnatcatchers. Mitigation for these impacts shall include 8 acres of on-site restoration, 14 acres of off-site restoration and 14 acres of artichoke thistle abatement in the areas identified on Figure 73. The details of the restoration program will be contained in a Restoration Management Plan to be approved by USFWS prior to habitat modification.

(4) With regard to the Bowerman landfill area, upon closure of the landfill the County is authorized to construct a golf course on 173 acres of the landfill area. The County shall confer with USFWS and CDFG in the design and construction of the golf course to minimize impacts to adjacent Reserve System lands. Upon completion of construction and landscaping for the golf course, the remaining 500 acres shall become part of the Reserve System and be managed in accordance with the provisions of this Agreement and then applicable landfill closure requirements.

(5) All other Special Linkage lands owned by the County shall be managed in a manner consistent with the provisions of Chapter 4 of the NCCP/HCP.

(d) The SCE Special Linkage Area (shown on Figure 22) shall be governed by the provisions of this paragraph and by the specific Special Linkage Area provisions described in the NCCP/HCP. Provided, however, that any Special Linkage Areas held by SCE in less than fee title will be governed by the provisions of this paragraph and the specific Special Linkage Area provisions described in the NCCP/HCP only to the extent those provisions are consistent with SCE's rights to the Special Linkage Areas. Due to the long-term habitat protection and management benefits conferred by the permanent Special Linkage Area commitments established pursuant to this paragraph, Take by SCE for operation and maintenance activities of its facilities within the Special Linkage Area is authorized by this Agreement. SCE shall manage its Special Linkage Area in accordance with the specific Special Linkage Area provisions described in the NCCP/HCP and in a manner consistent with providing long-term habitat protection for CSS and Identified Species within the SCE Special Linkage Area.

(e) The NCCP/HCP does not establish permanent commitments for the Existing Use Areas, shown on Figure 22. However, because significant portions of these areas contain Identified Species, including the gnatcatcher, and these areas may also serve to provide habitat for source populations in the event of declines of Identified Species within the Reserve System due to natural or other factors, Take in these areas is not authorized under this Agreement. The Mitigation Fee option for Non-Participating Landowners established in this Agreement shall not be available for such lands unless (1) located within a signatory Local Government jurisdiction, and (2) specifically authorized by USFWS and CDFG. Any activity that would result in Take in such areas shall require the approval of applicable regulatory agencies pursuant to FESA and CESA. Local Governments shall make best efforts to obtain

conservation easements over privately owned lands within these areas. The failure or inability to obtain conservation easements over private lands located within these Existing Use Areas shall not be deemed a breach of this Agreement or in any way serve as the basis for suspension, revocation or termination of any Section 10(a) Permit or CDFG Management Authorization pursuant to this Agreement.

(f) Should a change in use be proposed in the future within Existing Use Areas. Local Governments shall use their best efforts to exercise local land use authority consistent with the policies of the NCCP/HCP.

(g) The Parties understand and agree that the NCCP/HCP does not designate any acreage within MCAS El Toro as a Special Linkage Area or Existing Use Area. The Parties further understand and agree that they do not anticipate that any Special Linkage Areas or Existing Use Areas will be designated at MCAS El Toro at any time in the future, including, but not limited to, during the reuse planning process.

## **6.2 North Ranch Policy Plan Area.**

(a) The policy commitments for the Policy Plan Area set forth in this Section 6.2 are intended to bridge the gap between the urgent need for early approval and implementation of an NCCP/HCP for the Central/Coastal Subregion and the current lack of detailed biological information within the Policy Plan Area that would support the delineation of specific habitat corridor linkages and habitat preservation areas. The policy commitments set forth herein are applicable only to lands owned by The Irvine Company. No Take is authorized under this Agreement for the Policy Plan Area.

(b) North Ranch Policy Plan Area Policies.

(1) Protection of the CSS mosaic is the primary focus of the NCCP/HCP. The focus of future planning within the Policy Plan Area will shift to broader issues involving biological connectivity and biodiversity goals. The expected result of implementing the Policy Plan Area policies contained herein will be to protect and further enhance the value of the Reserve System, and to protect the most unique and sensitive resources, thereby providing protection for multiple species within the Policy Plan Area.

(2) By addressing subregional biodiversity and connectivity goals, the intent of future planning within the Policy Plan Area will be to mitigate development within the Policy Plan Area in the same manner as the NCCP/HCP.

(3) The Irvine Company has made extensive commitments to mitigate CSS impacts as a part of the NCCP/HCP. Compared with the CSS contained in the Reserve System, much of the CSS within the Policy Plan Area is of lower value and lower priority for resource protection. Generally, unless the subject CSS habitat meets the "priority" criteria in paragraph (4) below, loss of CSS within the Policy Plan Area will be preferred over loss of other habitat areas that either:

- better serve to protect and enhance the function of the Reserve System (*e.g.*, by providing for connectivity between elements of the Reserve System and the Cleveland National Forest); or
- contain sensitive species that are more important to subregional biodiversity.

(4) Areas designated as having high biological value and the highest priority for preservation within the Policy Plan Area are characterized by one or more of the following attributes:

- high habitat linkage value, with primary emphasis on strengthening the Reserve System by providing biological connectivity between elements of the Reserve System and the Cleveland National Forest;
- high biodiversity value (*e.g.*, addressing the protection of species not adequately addressed in the Reserve System); and
- a capacity to consolidate habitat into contiguous blocks and improve reserve design.

(5) Conservation and development planning on lands owned by The Irvine Company within the Policy Plan Area will be guided by the following principles:

- it will protect and enhance the Reserve System by providing for biological linkages through the Policy Plan Area that connect elements of the Reserve System with each other and with the Cleveland National Forest;
- it will protect the biodiversity of the Policy Plan Area within the context of the larger Reserve System;

- it will recognize that the subregional CSS mosaic is one protected by the Reserve System and that much of the CSS in the Policy Plan Area is lower quality and not a priority for preservation;
- it will balance development and preservation objectives within the context of the NCCP Act and the Policy Plan Area. It will locate development in contiguous areas and provide for the creation of large, contiguous open space areas and avoid small, inter-connected fragments of open space and linkages.

(6) Based on the principles and priorities cited above, the highest priority for habitat preservation, linkages and connectivity within the Policy Plan Area will include the following areas (shown on Figure 24):

- Fremont Canyon, because of its unique habitat and its value as a connection between the Cleveland National Forest and Santiago Canyon;
- Black Star Canyon, because of its unique habitat and the connection it provides between the Cleveland National Forest and Santiago Creek; and
- South Windy Ridge/Upper Blind Canyon, in conjunction with SCE wildlife undercrossing of the Eastern Transportation Corridor, because the area provides a connection between Weir Canyon and the Cleveland National Forest.

(7) Based on the principles cited above the highest priority areas for development within the Policy Plan Area are the Lower Blind Canyon and Baker Canyon areas (Figure 24).

(8) Proposed development within the Policy Plan Area will be evaluated for compliance with the above principles and priorities.

(9) For NCCP/HCP purposes, to the extent that future development avoids high priority preservation areas in accordance with the above priorities, no further resource studies will be needed to confirm ecosystem viability. Proposed development within high priority preservation areas will, however, require additional studies commensurate with the extent to which such proposals potentially locate development within high priority areas.

(10) Plans for future development may be prepared for all or portions of the Policy Plan Area at any time, provided that plans shall be developed in coordination with the USFWS, CDFG and governing local jurisdictions.

(11) If plans are processed in the format of the normal development entitlement/CEQA review process, such plans shall be processed by the governing local jurisdiction according to state and local law.

(12) Plans deemed acceptable to USFWS, CDFG, The Irvine Company, and local government jurisdictions will provide the basis for amendments of the NCCP/HCP, the Implementation Agreement, and Section 10(a) Permit(s) for The Irvine Company.

(13) If local government plans are not acceptable to USFWS and CDFG, nothing in the NCCP/HCP or this Agreement limits the ability of these agencies to exercise their full powers under state and federal law.

(14) Future development within the Policy Plan Area will mitigate any significant adverse impacts on the Reserve System in a manner acceptable to USFWS and CDFG in accordance with then applicable law.

(15) Notwithstanding any of the foregoing provisions of this Section, and upon obtaining all applicable governmental approvals, the following uses are permitted within the Policy Plan Area:

- relocation of the Hicks Canyon Gun Club to a site in the Baker Canyon area;
- maintenance and operation of existing utilities and access roads;
- transfer of title, easements and construction of necessary public facilities, provided that all necessary local, state and federal permits have been obtained;
- cattle grazing and fence maintenance (subject to a grazing plan approved by USFWS and CDFG) and other activities historically undertaken by the landowner within the Policy Plan Area, such as fire management activities. (Fire management within the Policy Plan Area will be implemented consistent with the principles/procedures contained in the fire

management plan for the Reserve System). To the extent that these activities result in enhancement of existing, or creation of additional, CSS, or of non-CSS habitat deemed critical to any Identified Species, The Irvine Company shall be entitled to receive mitigation credits therefor.

(c) The failure to prepare and adopt a management plan for the Policy Plan Area shall not be considered a breach of this Agreement or serve in any way as a basis for the suspension, revocation or termination of any Section 10(a) Permit or CDFG Management Authorization pursuant to this Agreement.

**7.0 MITIGATION BANK FOR MITIGATION OF TAKE BY NON-PARTICIPATING LANDOWNERS.**

(a) Take on the part of Non-Participating Landowners is authorized only as provided in this Section 7.

(b) Non-Participating Landowners, owning land located outside the Reserve System, Special Linkage Areas and Existing Use Areas in the Central/Coastal Subregion, and containing CSS Species listed as endangered species or threatened species under CESA or FESA, may satisfy the requirements of FESA and CESA in any of the following ways:

- (1) Avoidance of Take;
- (2) Satisfaction of applicable FESA and CESA provisions under the consultation and permit provisions of those statutes; or

(3) Payment of a Mitigation Fee to the NCCP Non-Profit Corporation as provided herein (the "Mitigation Fee option") within signatory Local Government jurisdictions.

(c) In order to establish the basis for the use of the Mitigation Fee option by Non-Participating Landowners, each signatory Local Government shall be granted a Section 10(a) Permit by USFWS and shall be considered to be within the terms of the CDFG Management Authorization for purposes of carrying out the Mitigation Fee option provided for in this Agreement. Take of listed CSS Species by Non-Participating Landowners paying the Mitigation Fee shall be authorized by the Section 10(a) Permit(s) and CDFG Management Authorization granted to signatory Local Governments. Under the Section 10(a) Permit(s) and CDFG Management Authorization, the obligations of signatory Local Governments with respect to such Non-Participating Landowners are: (1) to assure that, prior to any Take of CSS Species listed as endangered species or threatened species under FESA or CESA, the NCCP Non-Profit Corporation has formally notified the Local Government that the Non-Participating Landowner has paid the Mitigation Fee to the NCCP Non-Profit Corporation in accordance with the provisions of this Section 7; and (2) to assure compliance of such Non-Participating Landowners with the construction-related minimization measures in the NCCP/HCP EIR/EIS. The Mitigation Fee option is not available for Non-Participating Landowners on lands within Existing Use Areas unless (1) located within a signatory Local Government jurisdiction, and (2) specifically authorized by USFWS and CDFG.

(d) Non-Participating Landowners who have paid the Mitigation Fee in order to address listed CSS Species receive authorization to Take all CSS Species, included in the

Section 10(a) Permit(s) and CDFG Management Authorization. As to each unlisted CSS Species, the authorization to Take shall be effective upon listing of the species.

(e) The NCCP Non-Profit Corporation shall establish a per acre Mitigation Fee pursuant to Chapter 6.2 of the NCCP/HCP, on a reasonable basis consistent with the standards of applicable law. The NCCP Non-Profit Corporation shall, in accordance with the process described in Chapter 6.2, establish a reasonable nexus between the Take associated with activities of Non-Participating Landowners outside the Reserve System and the amount of the Mitigation Fee. The Mitigation Fee will represent the real costs associated with implementation of the NCCP/HCP and will be adjusted over time to reflect current costs and conditions. Mitigation Fees shall be paid directly to the NCCP Non-Profit Corporation.

(f) Mitigation Fees received by the NCCP Non-Profit Corporation pursuant to this Section 7 shall be utilized solely for restoration and enhancement activities and acquisition of land for the Reserve System. The NCCP Non-Profit Corporation shall direct funds generated by the Mitigation Fee based on priorities described in Chapter 4 of the NCCP/HCP. Initial priorities set forth in the NCCP/HCP may be modified by the NCCP Non-Profit Corporation from time to time. A project-specific monitoring plan shall be developed for each restoration activity as described in Chapter 4 of the NCCP/HCP. Restoration and enhancement actions proposed for lands subject to recorded reserved rights shall be subject to any conditions established in recorded documents or other binding agreements providing for such rights; provided, however, that any reserved rights applicable to dedicated lands shall not be asserted by Participating Landowners to preclude the availability of up to 250 acres of lands restorable for CSS mitigation on the part of Non-Participating Landowners who select the Mitigation Fee

option. Additionally, any proposed restoration and enhancement actions on lands not yet included in the Reserve System, and subject to the interim management provisions of the NCCP/HCP may occur only with the written concurrence of the landowner.

(g) The NCCP Non-Profit Corporation is further authorized to accept fees from Non-Participating Landowners for habitat mitigation involving enhancement or restoration of habitat, other than that of Identified Species, within the Reserve System, consistent with the requirements of the applicable regulatory agencies. The methodology for establishing such additional fees shall be established by the applicable regulatory agencies, in consultation with the NCCP Non-Profit Corporation. The NCCP Non-Profit Corporation Board of Directors shall make a specific determination that such mitigation activities within the Reserve System are consistent with the goals, objectives and implementation programs of the NCCP/HCP.

(h) The Parties acknowledge that where Non-Participating Landowners are operating under paragraph (b)(2), above, participation in mitigation banks or acquisition of mitigation credits from public or private mitigation projects such as the TCA mitigation project at Coyote Canyon may be appropriate mitigation if authorized by USFWS or CDFG.

## **8.0 MUTUAL ASSURANCES.**

### **8.1 County and Cities.**

(a) Consistent with the police power, the signatory Local Governments agree to: (1) carry out NCCP/HCP implementation measures that are administrative in nature and within present discretion, consistent with existing land use regulations within existing jurisdictions, and (2) proceed to process land dedications, and modifications of existing land use regulations necessary or desirable to implement the NCCP/HCP and this Agreement for the

respective jurisdictions; provided, however, that the latter commitment does not constitute a commitment to exercise legislative discretion in any particular way. Because all significant private lands required to be added to the Reserve System pursuant to the NCCP/HCP are in the ownership of The Irvine Company and can be committed to the Reserve System by means of conservation easements, no General Plan amendments are required to assure compliance with this Agreement.

(b) Local land use regulation and land use entitlements are within the exclusive jurisdiction of the Local Governments. With respect to local government review of land use entitlements involving Take of Identified Species and impacts to CSS and Covered Habitats authorized pursuant to this Agreement, any signatory agency, other than USFWS pursuant to Section 8.9, shall not seek mitigation for impacts to Identified Species, CSS and Covered Habitats associated with Planned Activities beyond those described in the NCCP/HCP, this Agreement and the program NCCP/HCP EIR/EIS. Taking into account the extensive non-CSS habitat bio-diversity within the Reserve System, Local Governments will consider the non-CSS resources protected within the Reserve System when reviewing the direct, indirect and cumulative impacts of specific Planned Activities pursuant to CEQA.

(c) The Local Governments shall carry out the roles and responsibilities described in this Agreement and Chapter 4 of the NCCP/HCP. The construction-related minimization measures set forth in the NCCP/HCP EIR/EIS shall be included as conditions of approval in Local Government actions approving development which may result in Take. In their role as Reserve Owners/Managers, Cities shall not be required to fund restoration or

enhancement activities within the Reserve System. Funds for restoration or enhancement are provided by the NCCP Non-Profit Corporation or other funding sources.

(d) These Local Government assurances are provided in recognition of the benefits of planning certainty conveyed as a result of this Agreement (including certainty regarding the provision of necessary Infrastructure facilities within the Reserve System): the findings of Legislative purpose and regional conservation planning and economic development objectives set forth in the NCCP Act, the public health and safety benefits conferred by the Adaptive Management Program including short-term and long-term fire management, and the supremacy provisions of regulation of endangered species set forth in FESA. These assurances are determined to be reciprocal assurances to those provided by USFWS and CDFG in return for the aforementioned benefits. Consistent with these assurances, Local Governments will not approve activities resulting in Take other than as authorized pursuant to this Agreement unless approved by USFWS or CDFG.

(e) As CEQA responsible agencies, Local Governments provide these assurances on the basis of the environmental review set forth in the EIR/EIS for the NCCP/HCP.

## **8.2 Participating Landowners.**

The Participating Landowners shall contribute lands to the Reserve System, and/or funding to the NCCP Non-Profit Corporation as described in the NCCP/HCP and this Agreement. Further, during the interim phase prior to transfer of lands designated for inclusion in the Reserve System to a public agency or approved non-profit entity, Participating Landowners shall allow the conduct of the interim management activities described in Chapter 4

of the NCCP/HCP on their lands and shall limit uses on such lands to those consistent with the interim management policies set forth in the NCCP/HCP.

### **8.3 USFWS**

#### **8.3.1 Applicability of the NCCP/HCP to Take of Identified Species.**

(a) Pursuant to the 4(d) Rule, Take of the gnatcatcher, related to Planned Activities carried out in accordance with the NCCP/HCP and this Agreement, shall not be considered a violation of FESA and no further review or mitigation of Planned Activities is required under FESA.

(b) Concurrent with execution of this Agreement, USFWS has issued a Section 10(a) Permit to each Participating Landowner, authorizing the Take of the gnatcatcher incidental to the Planned Activities, subject to and in accordance with the NCCP/HCP and this Agreement.

(c) Concurrent with the execution of this Agreement, USFWS has issued a Section 10(a) Permit to each signatory Participating Landowner and Local Government, authorizing the future Take of each Identified Species incidental to the Planned Activities, subject to and in accordance with the NCCP/HCP and this Agreement. The Section 10(a) Permits shall become effective as to each such Identified Species concurrent with the listing of such species as a threatened species or endangered species under FESA. If, for any reason, the foregoing provision is determined to be illegal, or beyond the authority of USFWS, the NCCP/HCP and this Agreement shall be deemed adequate documentation to support an application for any necessary Section 10(a) Permits.

(d) For any Participating Landowner or Local Government which becomes signatory to this Agreement subsequent to the Effective Date, USFWS shall, following submission of a permit application and in accordance with USFWS regulations, issue a Section 10(a) Permit providing the same Take authorizations as for Parties signatory as of the Effective Date.

(e) USFWS agrees that the satisfactory implementation of the NCCP/HCP and of this Agreement will adequately provide for the conservation, protection, restoration, enhancement, and management of the Identified Species and their habitats in the Central/Coastal Subregion, and that no additional mitigation for Identified Species will be required of Participating Landowners.

(f) USFWS shall transfer to the NCCP Non-Profit Corporation those funds received from TCA pursuant to the Corridor Biological Opinions, as described in Section 5.4.1(b).

(g) USFWS shall use its best efforts to achieve the transfer to an appropriate entity of the 1,033 acre portion of the MCAS El Toro designated for inclusion in the Reserve System. USFWS recognizes the essential role of the MCAS El Toro Identified Species populations in the Reserve System and, in any future consultation under section 7 of FESA, will, to the maximum extent allowed by law, assure the protection of Identified Species and the commitment of the 1,033-acre MCAS El Toro lands to Adaptive Management consistent with the NCCP/HCP. Failure to include the MCAS El Toro parcel in the Reserve System shall not be deemed a breach of this Agreement or the basis for suspension, revocation or termination of any Section 10(a) Permits or the CDFG Management Authorization.

### 8.3.2 Special Conditions Regarding Certain Species.

(a) Several Identified Species are addressed with specific conditions, as

follows:

(1) Pacific Pocket mouse

(A) A temporary preserve for the Pacific pocket mouse will be established on the Chandis-Sherman Property, on the seaward side of a fence, which is approximately the fence that presently stands on the property and which includes the area currently occupied by the Pacific pocket mouse. The location and boundaries of the preserve area are depicted on Figure 72. The total size of the temporary preserve is approximately 22 acres (of which approximately 8 acres are oceanward of the bluff edge).

(B) Chandis-Sherman will allow staff of USFWS, CDFG and County EMA (or authorized biological consultants of such entities approved by USFWS) access to the preserve area for eight years, commencing upon the date of issuance of the Section 10(a) Permit and CDFG Management Authorization for the Chandis-Sherman Property. Chandis-Sherman and their designees will retain the right to access the preserve area, provided that such access is conducted so as not to unreasonably interfere with Pacific pocket mouse research and recovery efforts. Chandis-Sherman and their designees reserve the right to conduct minor activities (such as placing minor, temporary objects in the preserve area, such as height poles, and conducting surveys, planning, engineering or environmental

studies, etc.) provided that such activities do not unreasonably interfere with Pacific pocket mouse research and recovery efforts.

(C) CDFG and USFWS agree to provide letters to the City of Dana Point and the California Coastal Commission, at the request of Chandis-Sherman, with respect to the development of the Chandis-Sherman Property and the mitigation of Planned Activities consistent with the provisions of Section 8.6(a). In any application for land use entitlements from the City of Dana Point or the California Coastal Commission, Chandis-Sherman shall propose and promote the adoption of the following measures to be applicable if the temporary preserve area is not acquired by USFWS pursuant to this Agreement and Pacific pocket mice remain within any designated natural open space areas within the former temporary preserve area:

- (1) posting information signs at entry points to such designated natural open space areas regarding the status of the Pacific pocket mouse and its conservation needs;
- (2) posting signs at entry points to such designated natural open space areas prohibiting the public from bringing dogs, cats and other pets into the areas; and
- (3) limiting public use of such designated natural open space areas to designated walkways.

(D) Following issuance of the Section 10(a) Permit and CDFG Management Authorization for the Chandis-Sherman Property and the Section 10(a)(1)(A) Permit, Chandis-Sherman will provide to either CDFG, USFWS, the County EMA, or an appropriate conservation organization as directed by USFWS and CDFG, a total of \$350,000 for use in Pacific pocket mouse propagation, enhancement, recovery and relocation efforts to suitable areas within the Reserve System. The first payment of \$50,000 shall be paid on the later of (1) issuance of the Section 10(a) Permit and CDFG Management Authorization for the Chandis-Sherman Property and issuance of the Section 10(a)(1)(A) Permit or (2) January 1, 1997, and \$50,000 payments shall follow every January 1 thereafter for the next six years.

(E) Following issuance of the Section 10(a) Permit and CDFG Management Authorization for the Chandis-Sherman Property, Chandis-Sherman will pay to the NCCP/HCP endowment fund a total of \$500,000. The payments shall be made as annual payments of \$100,000 each, for five years, with the first payment to be made within seven (7) days of the issuance of a grading permit to Chandis-Sherman for any portion of the Chandis-Sherman Property, and the following four payments to be made on the anniversary date of the first payment.

(F) Within one hundred-eighty (180) days after the issuance of the Section 10(a) Permit and CDFG Management Authorization for the Chandis-Sherman Property, or a longer period agreed to by USFWS, CDFG and Chandis-

Sherman, USFWS and CDFG will negotiate with Chandis-Sherman an option to purchase the preserve area. The option shall provide for a purchase price equal to the preserve area's fair market value, and a process and appraisal standards, assumptions and instructions by which that price shall be determined. All Parties agree that the presence of Identified Species on the site will not be a factor in determining the fair market value. The option agreement will be negotiated earnestly and in good faith by USFWS, CDFG and Chandis-Sherman. The option agreement shall provide that the option may be exercised eight years and four months following the date of the issuance of the Section 10(a) Permit and CDFG Management Authorization for the Chandis-Sherman Property, or such earlier time agreed to by USFWS, CDFG and Chandis-Sherman. If USFWS determines at or prior to expiration of the eight-year period described in (B) that translocation or captive breeding of the Chandis-Sherman Property population of the Pacific pocket mouse is not feasible and continuance of the preserve is necessary to ensure the survival and recovery of the species, USFWS shall, notwithstanding any other provision of this Agreement except Section 11.12, take all steps within its legal authority to acquire the preserve area at or prior to expiration of the temporary preserve period including, without limitation, the following:

- (1) exercise its right under the option agreement described herein;

- (2) in the absence of an option agreement, pursue other means of acquisition;
- (3) if (1) and (2) above cannot be accomplished, USFWS shall seek to offer to exchange land of equal value to the temporary preserve area acceptable to Chandis-Sherman;
- (4) if neither (1), (2) or (3) can be achieved prior to expiration of the eight-year temporary preserve period described in (B) above or expiration of the eight-year, four month option agreement period described herein, as applicable, Chandis-Sherman will offer to USFWS a series of one-year extensions of the temporary preserve period, not to exceed four (4) years, subject to the following conditions:
  - (A) USFWS shall continue to take all steps within its legal authority to acquire the preserve area, including, without limitation, (1), (2) and (3) above, during each one-year extension;
  - (B) USFWS shall make a one-year extension payment of \$90,000 within ten (10) business days of expiration of the eight-year temporary preserve period described in Section 8.3.2(a)(1)(B) or

expiration of the eight-year, four-month option agreement period described herein, as applicable; and

(C) a one-year extension payment of \$90,000 shall be made on or before the anniversary date of the first extension payment each year the temporary preserve period is to be extended.

(G) Upon the issuance of the Section 10(a) Permit and CDFG Management Authorization for the Chandis-Sherman Property, Take of all Identified Species shall be permitted anywhere on the Chandis-Sherman Property, other than the preserve area, in accordance with the NCCP/HCP and this Agreement and notwithstanding any designation of "critical habitat" for the Pacific pocket mouse prior or subsequent to the Effective Date of this Agreement. Upon expiration of the temporary preserve period, as it may be extended, if applicable, as described in (F) above, unless USFWS has acquired the preserve area, the Take of all Identified Species shall be permitted anywhere within the former preserve area in accordance with the Planned Activities as described in the NCCP/HCP and this Agreement and notwithstanding any designation of "critical habitat" for the Pacific pocket mouse prior or subsequent to the Effective Date of this Agreement; provided, however, the following conditions shall apply:

- Trapping of Pacific pocket mice in areas to be directly impacted by grading within the former temporary preserve area will be conducted by an authorized biologist for three days prior to any earthmoving activities. If a longer period of trapping is necessary, USFWS will assume the additional trapping costs. Should the temporary preserve period expire during the winter or early spring months when the animals are not active above ground, and therefore cannot be trapped, earthmoving activities within the former temporary preserve area shall be restricted during that period.
- Any captured Pacific pocket mice will be relocated to suitable areas designated by USFWS at the time of capture with funding from the \$700,000 research and recovery budget or other USFWS sources.

During the temporary preserve period, the following construction management practices shall be required:

- Chandis-Sherman will conduct monitoring of Pacific pocket mice during construction activities within 300 feet of occupied habitat within the temporary preserve area.
- If the monitoring indicates that construction activities are causing significant adverse impacts to mice within the temporary preserve

area, members of the monitoring team will meet with construction equipment operators and Chandis-Sherman to explore practicable operational modifications to the construction activities.

- All areas of occupied habitat within the temporary preserve area adjacent to construction activities outside the temporary preserve area will be marked, equipment operators will be informed as to the significance of the marked areas and, to the maximum extent practicable, operational techniques will be adopted to prevent unintended activities outside construction areas that might impact Pacific pocket mice within the temporary preserve area.
- If research and recovery studies indicate a necessary time period during the calendar year to restrict grading, Chandis-Sherman will avoid grading immediately adjacent to occupied habitat during that time period (not to exceed a time period of four months). If the grading time restrictions for the Pacific pocket mouse fall outside of the parameters of CSS construction-related measures described in the NCCP/HCP EIR/EIS, the Pacific pocket mouse grading restriction will supersede any other grading restriction for any other species.

(H) In the event the authorization issued for Take of the Pacific pocket mouse described in Section 8.3.2(a)(1)(G) is invalidated in a final court order and a subsequent application for new Take authorization for the species is filed for the area outside the temporary preserve, as depicted in Figure 72, or such authorization is considered in a section 7 consultation under FESA, no mitigation shall be imposed by CDFG or USFWS for activities or impacts in the area outside the preserve on the basis of impacts, either inside or outside the preserve, to Pacific pocket mouse habitat or individuals of the species, and Take shall be authorized in the area outside the temporary preserve, provided that USFWS is given the opportunity to relocate any individuals of the species that may be present in the area outside the preserve. Under the circumstances of the preceding sentence, if a subsequent application for Take authorization from CDFG for the species within the temporary preserve is filed, CDFG shall not impose any mitigation for impacts to the habitat or individuals of the species above the baseline condition, which for purposes of this Agreement shall mean the 3.75 acres of occupied habitat as mapped and described in the Dana Point Headlands Specific Plan Supplemental EIR, dated September 1, 1993, and the CDFG Management Authorization shall extend to Take of the species above the baseline condition. Nothing in this subsection 8.3.2(a)(1)(H) is intended to or shall be read to require the issuance of future Take authorization by USFWS in the event that such authorization would be likely to jeopardize the continued existence of the species and the jeopardy cannot be avoided.

(I) The following conditions shall apply to the County EMA, USFWS, CDFG and landowners other than Chandis-Sherman within the Coastal subarea:

- The County EMA shall identify habitat areas located within the Coastal subarea that contain potential Pacific pocket mouse habitat. Figure 39 identifies potential pocket mouse habitat within the subarea pursuant to this condition and areas within the proposed habitat reserve system that contain potential pocket mouse habitat.
- The NCCP Non-Profit Corporation will agree to allow pocket mice to be relocated onto portions of the Reserve System determined to be suitable for the pocket mouse, and will provide for related enhancement, restoration, propagation and monitoring activities as part of the Adaptive Management Program.
- USFWS agrees to provide \$350,000 in matching funds subject to funding availability for use in efforts to recover and relocate the pocket mouse over the term of the study effort. Failure to provide these funds shall not be deemed a breach of this Agreement or the basis for suspension, revocation or termination of any Section 10(a) Permits or the CDFG Management Authorization.

- Extensive trapping efforts for the Pacific pocket mouse were conducted between 1990 and the present by Participating Landowners. Based on these trapping efforts, Participating Landowners shall not be required to conduct additional trapping or surveys on their properties. In the event that Pacific pocket mouse population is encountered on participating land ownerships other than the Chandis-Sherman Property, USFWS shall assume the responsibility for identifying and implementing appropriate mitigation at no cost to the Participating Landowners and with no delays to proposed development programs.
- Non-Participating Landowners that propose development on lands identified as potential pocket mouse habitat will be required to conduct trapping surveys based on protocols developed by USFWS. If the pocket mouse is encountered on these properties, the Non-Participating Landowner shall be required, at the discretion of USFWS, to either:
  - ◆ avoid onsite impacts through project redesign;
  - ◆ prepare and process either a habitat conservation plan under section 10 of FESA or undergo a section 7 consultation under FESA; or

- ◆ fund the cost of relocating the pocket mouse population to a site within the Coastal subarea acceptable to USFWS and provide appropriate and reasonable funding for the cost of any necessary habitat enhancement or population propagation activities in the relocation area.

(2) Southwestern Arroyo toad. The southwestern arroyo toad (*Bufo microscaphus californicus*) was listed as an endangered species under FESA on December 16, 1994 (Fed.Reg., Vol. 59, No. 241, pp. 64859-64866). This species does not occur in the Coastal subarea. The arroyo toad habitat covered supports smaller populations (except for the Limestone Creek population), reintroduced populations, or populations which have expanded due to NCCP reserve management. Except as provided in Section 6.1(b)(4), habitat that supports a major arroyo toad population that plays an essential role in the distribution of the arroyo toad in the subregion is not covered. USFWS may define specific locations in the Central subarea for arroyo toad surveys. Participating Landowners shall conduct surveys at the locations specified by USFWS. It is acknowledged by the Parties that TCA has completed surveys for this species in the Santiago Creek area and such surveys have not identified the presence of this species. Except as provided in Section 6.1(b)(4), mitigation necessary to address Take of this species on lands owned by Participating Landowners shall be carried out by means of relocation of species populations to areas within the Reserve System in the

manner and locations specified by USFWS, after consultation with CDFG and the NCCP Non-Profit Corporation.

(3) Least Bell's vireo. The habitat covered supports migrants and nesting birds in locations with lesser long-term conservation values. Habitat that supports migrants or nesting birds and has potentially significant long-term conservation value in the subregion is not covered. USFWS may define specific locations in the Central/Coastal Subregion for surveys for this species. Participating Landowners shall conduct surveys at the locations specified by USFWS. Planned Activities that would affect habitat of this species shall be consistent with a mitigation plan that: 1) addresses design modifications and other on-site measures that are consistent with the project's purposes, minimizes impacts, and provides appropriate feasible protections. 2) provides for compensatory habitat restoration/enhancement activities at an appropriate location (which may include land in the Reserve System or other open space) and which may include planting of riparian trees and shrubs and/or cowbird trapping, and 3) provides for monitoring and Adaptive Management of habitat, within the Reserve System including cowbird trapping, consistent with Chapter 5 of the NCCP/HCP. The mitigation plan will be developed in coordination with USFWS, CDFG, and the NCCP Non-Profit Corporation, and approved by USFWS.

(4) Southwestern willow flycatcher. The habitat covered supports migrants and nesting birds in locations with lesser long-term conservation values. Habitat that supports migrants or nesting birds and has potentially significant long-term conservation value in the subregion is not covered. USFWS may define specific

locations in the Central/Coastal Subregion for surveys for this species. Participating Landowners shall conduct surveys at the locations specified by USFWS. Planned Activities that would affect habitat of this species shall be consistent with a mitigation plan that: 1) addresses design modifications and other on-site measures that are consistent with the project's purposes, minimizes impacts, and provides appropriate feasible protections, 2) provides for compensatory habitat restoration/enhancement activities at an appropriate location (which may include land in the Reserve System or other open space) and which may include planting of riparian trees and shrubs and/or cowbird trapping, and 3) provides for monitoring and Adaptive Management of habitat, within the Reserve System including cowbird trapping, consistent with Chapter 5 of the NCCP/HCP. The mitigation plan will be developed in coordination with USFWS, CDFG, and the NCCP Non-Profit Corporation, and approved by USFWS.

(5) Quino (wright's) checkerspot. The Quino checkerspot habitat that is covered supports populations that are small and/or satellite in nature, reintroduced populations, or populations which have expanded due to NCCP reserve management. Habitat which supports a major checkerspot population that plays an essential role in the distribution of the checkerspot in this subregion and adjoining areas is not covered. Planned Activities that would affect Quino checkerspot habitat shall be consistent with a mitigation plan that: 1) addresses design modifications and other on-site measures that are consistent with the project's purposes, minimizes impacts, and provides appropriate feasible protections for the Quino checkerspot, 2) provides for compensatory habitat restoration/enhancement activities at an appropriate location (which may include land in

the Reserve System or other open space) and which may include seeding with host plants, prescribed burning or grazing, and similar activities, and 3) provides for monitoring and Adaptive Management of Quino checkerspots and their habitat within the Reserve System consistent with Chapter 5 of the NCCP/HCP. The mitigation plan will be developed in coordination with USFWS, CDFG, and the NCCP Non-Profit Corporation, and approved by USFWS.

(6) Riverside fairy shrimp. The vernal pool habitat that is covered is highly degraded and/or artificial (e.g., created as a result of past farming practices, vehicle operation, or grading). Non-degraded, natural vernal pool habitat is not covered. Planned Activities that would affect vernal pool habitat shall be consistent with a mitigation plan that: 1) addresses design modifications and other on-site measures that are consistent with the project's purposes, minimizes impacts, and provides appropriate protections for vernal pool habitat, 2) provides for compensatory vernal pool habitat restoration/creation at an appropriate location (which may include land in the Reserve System or other open space) and includes relocation of potential cyst-bearing soils, and 3) provides for monitoring and Adaptive Management of vernal pools consistent with Chapter 5 of the NCCP/HCP. The mitigation plan will be developed in coordination with USFWS, CDFG, and the NCCP Non-Profit Corporation, and approved by USFWS.

(7) San Diego fairy shrimp. The vernal pool habitat that is covered is highly degraded and/or artificial (e.g., created as a result of past farming practices, vehicle operation, or grading). Non-degraded, natural vernal pool habitat is not covered. Planned Activities that would affect vernal pool habitat shall be consistent with a

mitigation plan that: 1) addresses design modifications and other on-site measures that are consistent with the project's purposes, minimizes impacts, and provides appropriate protections for vernal pool habitat, 2) provides for compensatory vernal pool habitat restoration/creation at an appropriate location (which may include land in the Reserve System or other open space) and includes relocation of potential cyst-bearing soils, and 3) provides for monitoring and Adaptive Management of vernal pools consistent with Chapter 5 of the NCCP/HCP. The mitigation plan will be developed in coordination with USFWS, CDFG, and the NCCP Non-Profit Corporation, and approved by USFWS.

(8) Golden Eagle. Planned Activities that would affect golden eagle habitat are authorized if the habitat is more than one-half mile from an active or historically active nesting site. If the habitat is within one-half mile of an active or historically active nesting site, Planned Activities shall be sited in such a way that the activity has minimal potential to cause abandonment of the nesting site. If the activity is sited in such a way as to have more than minimal potential to cause abandonment, the activity shall be consistent with a mitigation plan that: (1) addresses design modifications or other on-site measures that are consistent with the project's purposes, minimizes impacts to nest sites, and provides appropriate protections for nest sites, (2) provides for compensatory restoration/creation (normally ledge enhancement) of nesting habitat at an appropriate location (which may include land in the Reserve System or other open space), and (3) provides for monitoring and adaptive management of cliff-nesting raptors consistent with Chapter 5 of the NCCP/HCP. The mitigation plan will be

developed in coordination with USFWS, CDFG, and the NCCP Non-Profit Corporation, and approved by USFWS.

(9) Prairie Falcon. Planned Activities that would affect prairie falcon habitat are authorized if the habitat is more than one-half mile from an active or historically active nesting site. If the habitat is within one-half mile of an active or historically active nesting site, Planned Activities shall be sited in such a way that the activity has minimal potential to cause abandonment of the nesting site. If the activity is sited in such a way as to have more than minimal potential to cause abandonment, the activity shall be consistent with a mitigation plan that: (1) addresses design modifications or other on-site measures that are consistent with the project's purposes, minimizes impacts to nest sites, and provides appropriate protections for nest sites, (2) provides for compensatory restoration/creation (normally ledge enhancement) of nesting habitat at an appropriate location (which may include land in the Reserve System or other open space), and (3) provides for monitoring and adaptive management of cliff-nesting raptors consistent with Chapter 5 of the NCCP/HCP. The mitigation plan will be developed in coordination with USFWS, CDFG, and the NCCP Non-Profit Corporation, and approved by USFWS.

(10) Foothill Mariposa Lily. Planned Activities affecting populations smaller than 20 individuals are fully authorized. Planned Activities that affect populations of between 20 and 100 individuals (this number may be adjusted by USFWS and CDFG if reserve monitoring shows the size of potentially important populations to be different), shall be consistent with a mitigation plan that: (1) addresses design

modifications or other on-site measures that are consistent with the project's purposes, minimizes impacts to foothill mariposa lily habitat, and provides appropriate protections for any adjoining conserved foothill mariposa lily habitat, (2) provides for an evaluation of salvage, restoration/enhancement/management of other conserved mariposa lily, or other mitigation techniques to determine the most appropriate mitigation technique to offset impacts, and implements mitigation consistent with the foregoing evaluation, and (3) provides for monitoring and adaptive management of foothill mariposa lily consistent with Chapter 5 of the NCCP/HCP. The mitigation plan will be developed in coordination with USFWS, CDFG, and the NCCP Non-Profit Corporation, and approved by USFWS.

(b) With respect to the Blochman's dudleya population on the Chandis-Sherman Property only, Chandis-Sherman shall offer to relocate any population of Blochman's dudleya which will be directly impacted by grading. Chandis-Sherman shall bear all reasonable costs (not to exceed \$23,000) associated with the relocation of such populations, as such costs are incurred, excluding any and all costs associated with the acquisition of any real property interests in or rights of access to the relocation site. Any other populations may remain on site without further mitigation by Chandis-Sherman. At the election of Chandis-Sherman, Chandis-Sherman may opt to undertake a seed collection and planting program in lieu of translocation of existing individuals onsite if such plan meets the approval of CDFG and USFWS. Under either method, CDFG is obligated to identify the relocation site and secure all permissions required to conduct the relocation, if any, at its expense, within one (1) year of the receipt of a request from Chandis-Sherman to identify the relocation site and may relocate the population, without such request, at any time two years after issuance of the

Section 10(a) Permit and CDFG Management Authorization for the Chandis-Sherman Property. Failure of CDFG to identify and make available a reasonable site within the one year time period upon the Chandis-Sherman notice shall entitle Chandis-Sherman to remove any population to be directly impacted without relocation. Chandis-Sherman shall use their best efforts to notify CDFG of any grading activities at the earliest practicable time and not later than 90 days preceding commencement of such activities, although notice provided pursuant to this subsection (b) need not be tied to grading or disturbance on the site.

**8.3.3 Future Listing of Identified Species and Other Species in the NCCP/HCP Area.**

USFWS agrees to specifically consider the provisions of the NCCP/HCP in any determination regarding the listing as an endangered species or threatened species of any Identified Species or any other species whose habitat is found in the Reserve System.

**8.3.4 Listing Procedure and Findings For Species Other Than Identified Species and Procedures Regarding Covered Habitats.**

(a) Except as otherwise authorized for those species listed in Table 4-10 and addressed in Section 8.8, USFWS shall utilize the procedures set forth in this Section 8.3.4 in responding to any listing petition or proposal, and in processing any Proposed Listing, for species other than Identified Species found within the Central/Coastal Subregion.

(b) Upon becoming aware that a species other than an Identified Species may be proposed for listing as a threatened species or endangered species pursuant to FESA, USFWS shall fully consult with the NCCP Non-Profit Corporation and the Participating Landowners and shall specifically take into account the degree of habitat protection afforded to the particular species by the Reserve System and the Special Linkage Areas, and the efforts made by the

Adaptive Management Program relating to the applicable habitat(s). Prior to making a determination that a petition contains a sufficient level of information to justify a "may be warranted" finding under 50 C.F.R. 424.14, USFWS shall review all applicable data relevant to the particular species available from subregional areas in the CSS NCCP Program in order to evaluate whether the species proposed for listing can be protected through presently existing plans and planning programs. If the USFWS determines that there is sufficient scientific basis to propose the species for listing, USFWS shall identify any mitigation measures, including potential Adaptive Management measures, which would allow for Take of the particular species pursuant to Section 10 of FESA.

(c) In order to further the purpose of FESA "to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved" and to reverse the trend towards species extinction found by the courts to be the intent of Congress in enacting FESA, the 4(d) Rule for the gnatcatcher incorporates the biodiversity goals of the NCCP Conservation Guidelines' tenets of reserve design, as well as the specific CSS reserve design elements of the Conservation Guidelines. In keeping with the Conservation Guidelines' prescription that "blocks of habitat [within the NCCP reserves] should contain a diverse representation of physical and environmental conditions," the Central/Coastal NCCP/HCP contains sufficient habitat of certain types that USFWS, on the basis of the review provided in the NCCP/HCP and EIR/EIS, finds the Covered Habitats to be protected in a manner comparable to the protection of CSS afforded by the NCCP/HCP. USFWS finds that programmatic elements of the NCCP/HCP further the protection of important ecosystems and in so doing likely reduce the need for listing species dependent upon or associated with the

foregoing habitats; these elements of the NCCP/HCP include the NCCP/HCP reserve design and land commitments, the certainty of Adaptive Management funding, the early commitment of private lands to Adaptive Management prior to dedication and the commitments to habitat protection extending beyond the term of the Section 10(a) Permit.

(d)(1) Based on the factors described in (c), above, USFWS shall, upon a timely application from one or more Participating Landowners, issue Section 10(a) Permits to the Participating Landowners for those species other than Identified Species dependent upon or associated with CSS or the Covered Habitats for Planned Activities occurring within CSS or Covered Habitats as described in the NCCP/HCP and this Agreement, concurrent with listing of such species as endangered species or threatened species.

(2) USFWS may condition a Section 10(a) Permit issued pursuant to this paragraph (d) to require commitment of additional land or funds on the part of Participating Landowners only if USFWS reasonably determines all of the following:

(A) USFWS has taken all appropriate steps within its legal authority to insure that all statutory and regulatory requirements necessary to issue Section 10(a) Permit(s) to the Participating Landowners are met, such that no further land or funds beyond that required by the NCCP/HCP and this Agreement will be required on the part of Participating Landowners. For the purposes of this paragraph, steps within the legal authority of USFWS include, but are not limited to, USFWS-funded habitat acquisition, USFWS-funded species relocation, and land exchanges to secure necessary habitat.

(B) Notwithstanding steps taken by USFWS under (A), commitment of additional land or funds on the part of Participating Landowners is necessary to avoid jeopardy to the species.

(C) The proposed additional mitigation measures requiring land or funds would be the least burdensome of the available means on the Participating Landowner(s).

(3) If, following the application of the provisions of this paragraph (d), USFWS is unable to make the jeopardy findings required for issuance of the Section 10(a) Permit(s), USFWS shall not issue any Section 10(a) Permits that would result in jeopardy to a species covered by this paragraph. Further, if following the application of the provisions of this paragraph (d), USFWS is unable to make the jeopardy findings required for issuance of the Section 10(a) Permit(s), USFWS and the Participating Landowners shall, at the request of any Participating Landowner, continue to work together with the Participating Landowner consistent with this paragraph (d) to allow issuance of the Section 10(a) Permit(s).

(e) For purposes of this Agreement, the terms "dependent upon" and "associated with" will have the meaning described in this paragraph.

(1) A species will be considered "dependent upon" a particular habitat when that habitat provides the primary space for the individuals of the species to feed, grow, reproduce, and undertake essential behavior patterns. A species is likely dependent upon a habitat if that habitat provides its primary sources of food, nutrition, substrate, cover or shelter, including sites for breeding, reproduction, pollination, and rearing of

offspring, on a continual or seasonal basis. If a species is considered dependent upon CSS or a Covered Habitat, then that habitat would provide the primary biological and physical elements essential for the conservation of the species.

(2) The term "associated with" refers to habitats that may be occasionally occupied by a species that spends the majority of its time in other habitats, although the loss of the CSS or Covered Habitat may cause injury to the species.

### **8.3.5 Critical Habitat Designation for Presently Listed Species or for Future Listed Species.**

(a) By incorporating the CSS NCCP Program into the 4(d) Rule for the gnatcatcher and as reviewed in the accompanying NEPA Environmental Assessment, USFWS determined that the overall CSS NCCP Program provides a comprehensive, habitat-based approach to the protection of the habitat of the CSS Species consistent with the overall FESA statutory purpose "to provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved."

(b) Section 424.12 of the FESA regulations specify the criteria to be used by USFWS in designating critical habitat. These criteria include "those physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protection" (50 C.F.R. 424.12(b)). The basic premise of the Conservation Guidelines' tenets of reserve design, as reviewed in the NCCP/HCP and EIR/EIS, is to identify CSS essential to the conservation of the CSS Species and, thus, the Conservation Guidelines specifically address one of the fundamental requirements of a critical habitat designation. In turn, the NCCP/HCP, in conforming with those guidelines, establishes a Reserve

System and Adaptive Management Program which maintain net habitat value for the CSS Species within the Central/Coastal Subregion on a long-term basis, and, in so doing: (1) provide for, through the Reserve System, the protection of "those physical and biological features essential to the conservation of" the CSS Species and (2) provide for, through the Adaptive Management Program, "special management considerations" and "protection" specified in the foregoing critical habitat determination regulation.

(c) The NCCP/HCP also identifies the "principal biological or physical constituent elements within the defined area that are essential to the conservation of the [CSS] species" in a manner consistent with the critical habitat determination requirements of 50 C.F.R. 424.12(b). The principal biological and physical constituents within the Central/Coastal Subregion essential to the conservation of the CSS Species are set forth in Chapters 2, 3 and 4 of the NCCP/HCP and were applied directly in the formulation of the Reserve System as reviewed in the NCCP/HCP and EIR/EIS. Consistent with 50 C.F.R. 424.12(c), the specificity of the reserve design complies with the requirement that "each critical habitat will be defined by specific limits using reference points and lines as found on standard topographic maps of the area."

(d) The Conservation Guidelines, as incorporated into the 4(d) Rule, indicate that NCCP regional planning is to be conducted, approved and implemented on the basis of subregional planning areas that may proceed independently of one another. Thus, habitat essential to the conservation of the CSS Species is to be addressed at the subregional, as well as regional, level. Given the scale of the Central/Coastal Subregion, the scale of the Reserve System and the comprehensive nature of the special management considerations incorporated

into the Adaptive Management Program. USFWS concludes that the Reserve System and Adaptive Management Program identify, and include within the Reserve System, the habitat owned by Participating Landowners "essential to the conservation" of the CSS Species and the "special management" measures necessary to manage CSS on lands of Participating Landowners within the Central/Coastal Subregion in a manner that will "provide for the conservation of the species involved."

(e) Based on the preceding paragraphs, USFWS agrees that, consistent with the Assurances Policy set forth in Section 8.9, in the event that a critical habitat determination is made for any CSS Species and upon a determination that the NCCP is functioning properly, no additional mitigation in the form of land or financial compensation shall be required of any Participating Landowner in connection with Planned Activities through the section 7 consultation process under FESA or otherwise.

**8.3.6 Future Recovery Plans For Presently Listed Species Or For Future Listed Species.**

USFWS shall coordinate with the NCCP Non-Profit Corporation, Reserve Owners/Managers and the Participating Landowners in preparing and finalizing any recovery plan for a CSS Species. Based on the geographic scope of the Reserve System and Adaptive Management Program and on the CEQA/NEPA review of the contributions of the Reserve System and Adaptive Management Program to the long-term protection and recovery of CSS Species, USFWS and CDFG conclude that the NCCP/HCP contributes significantly to the long-term protection and recovery of the CSS Species. Accordingly, assuming the NCCP/HCP is functioning properly, USFWS agrees, consistent with the Assurances Policy as set forth in

Section 8.9, any recovery plan applicable to CSS Species found on lands within the Central/Coastal Subregion shall: (1) not require any additional financial compensation or land on the part of Participating Landowners; (2) be prepared in full consultation with the NCCP Non-Profit Corporation and Participating Landowners and, as applies to the Central/Coastal Subregion, address its final recommendations to the NCCP/HCP implementation program as identified in this Agreement; and (3) not in any way affect any Section 10(a) Permit issued pursuant to the NCCP/HCP or the provisions of this Agreement.

**8.3.7 Migratory Bird Treaty Act.**

(a) Any Section 10(a) Permit issued pursuant to this Agreement for the Take of a listed species, an unlisted Identified Species, or a species associated with or dependent upon CSS or Covered Habitats shall, when such permit is effective under FESA, also constitute a Special Purpose Permit under 50 C.F.R. § 21.27 for the take of species covered by such permit in the amount and/or number and subject to the same terms and conditions as specified in such permit. Any such take will not be in violation of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. §§ 703-12). Such Special Purpose Permit shall be valid for a period of three years from its effective date, provided the associated Section 10(a) Permit remains in effect for such period, subject to renewal as provided in paragraph (b).

(b) Any Special Purpose Permit under 50 C.F.R. § 21.27 as described in this section shall be renewed, provided that the permit holder remains in compliance with the terms of this Agreement. Each such renewal shall be valid for a period of three years, provided the associated Section 10(a) Permit remains in effect for such period.

8.4 **CDFG.**

8.4.1 **Applicability of the NCCP/HCP to Take of Identified Species.**

(a) CDFG agrees that the satisfactory implementation of the NCCP/HCP and this Agreement will adequately provide for the conservation, protection, restoration, enhancement, and management of the Identified Species and their habitats in the Central/Coastal Subregion. Compliance with the terms of this Agreement constitutes compliance with the provisions of the NCCP Act, the California Native Plant Protection Act (Fish & Game Code § 1900 et seq.) and CESA.

(b) The NCCP Act authorizes the Take of Identified Species whose long-term protection and management is provided for in an approved NCCP. The NCCP Act and CESA provide for the Take of species listed under CESA as endangered or threatened, and of CESA Candidate Species pursuant to sections 2825(c), 2830, and 2835 (including, but not limited to, 2081 and 2090-2095). As further specified in Sections 2 and 3 of this Agreement, CDFG has found and determined that the NCCP/HCP meets the requirements for a NCCP for purposes of the NCCP Act and that the long-term protection and management requirements of the NCCP/HCP are proportional to the projected impacts of Planned Activities to Identified Species as reviewed in the NCCP/HCP EIR/EIS. Pursuant to the above-referenced provisions of the Fish and Game Code, CDFG authorizes the Take of Identified Species subject to the terms and conditions of this Agreement. Accordingly, this Agreement constitutes the conditions of a present management authorization to Take Identified Species in conjunction with Planned Activities pursuant to the NCCP Act and CESA ("CDFG Management Authorization"). In the event that one or more of the Identified Species is listed under CESA as an endangered species,

threatened species or CESA Candidate Species after the Effective Date of this Agreement, Take of such Identified Species is then authorized pursuant to this CDFG Management Authorization. No additional permit or authorization shall be required by CDFG to allow Take of Identified Species as provided by the NCCP/HCP and this Agreement. The Parties acknowledge and accept that the Take authorization provided by CDFG in this Agreement does not constitute or imply compliance with or authority to proceed with any Planned Activities under laws other than the NCCP Act, the Native Plant Protection Act (Fish and Game Code §§ 1900, et seq.), and CESA.

(c) CDFG concurs in the USFWS commitments regarding recovery planning set forth in Section 8.3.6, and determines that the NCCP/HCP satisfies any requirements under CESA or the NCCP Act to protect and conserve species in a manner comparable to the FESA recovery plan provisions.

**8.4.2 Applicability of NCCP/HCP in Future CDFG Decisions and Recommendations.**

CDFG agrees to specifically consider the provisions of the NCCP/HCP in any determination, including but not limited to any recommendations to the California Fish and Game Commission, regarding any Proposed Listing of any Identified Species or any other species whose habitat is found in the Central/Coastal Subregion.

**8.4.3 Listing Procedures.**

In evaluating a petition to add any species found within the Central/Coastal Subregion to either the list of endangered species or the list of threatened species under Fish and Game Code section 2073.5, or in making recommendations to add a species to such lists under

Fish and Game Code section 2072.7. CDFG shall (1) immediately inform the NCCP Non-Profit Corporation that a petition has been received, and (2) prior to making its recommendation, consider specific information provided by the NCCP Non-Profit Corporation describing the existing management efforts undertaken pursuant to this Agreement, the NCCP Non-Profit Corporation's plans for future Adaptive Management, and whether the approved NCCP/HCP and the Adaptive Management Program will reasonably assure that the species proposed for listing will be protected.

#### **8.4.4 Covered Habitats.**

In order to further the legislative findings of the NCCP Act to promote "the conservation of broad based natural communities and species diversity," the Conservation Guidelines' tenets of reserve design specify that "blocks of habitat [within NCCP reserve systems] should contain a diverse representation of physical and environmental conditions. On the basis of its review of the NCCP/HCP and EIR/EIS, CDFG finds that the Covered Habitats will be protected in a manner comparable to the protection of CSS afforded by the NCCP/HCP. CDFG further finds that programmatic elements of the NCCP/HCP foster the protection of important ecosystems and will likely reduce the need for listing of species dependent upon or associated with the Covered Habitats; these elements of the NCCP/HCP include the certainty of NCCP/HCP reserve design and land commitments, the certainty of Adaptive Management funding, the early commitment of private lands to Adaptive Management prior to dedication and the commitments to habitat protection extending beyond the term of this Agreement. Based on these factors and on the mitigation assurances provided by USFWS pursuant to this Agreement, CDFG determines that, for species other than Identified Species listed pursuant to both FESA

and CESA and dependent upon or associated with CSS and the Covered Habitats, CDFG will issue Section 2081 authorizations for such species pursuant to Fish & Game Code Section 2825 concurrent with listing, to Participating Landowners for Planned Activities carried out in accordance with the NCCP/HCP and this Agreement. For species listed pursuant to CESA only, CDFG will likewise, in furtherance of the legislative findings of the NCCP Act, issue Section 2081 permits for such species pursuant to Fish & Game Code Section 2825(c).

**8.5 CDF.**

CDF agrees that the fire management planning process, provided for pursuant to Chapter 4 of the NCCP/HCP, fully addresses CDF regulations with regard to prescribed burns of land within the Central/Coastal Subregion. Upon completion of the NCCP/HCP fire management planning process CDF shall not require any additional discretionary permits or authorizations for implementation of prescribed burns pursuant to the NCCP/HCP.

**8.6 Other Regulatory Permitting.**

(a) The Parties to this Agreement acknowledge that the Participating Landowners may also be subject to permit requirements of agencies not parties to this Agreement, such as permits under section 404 of the Federal Clean Water Act, and to the permit requirements of Fish and Game Code sections 1601 and 1603. Except as provided in Section 8.9(i), participation in the NCCP/HCP shall constitute the full extent of mitigation measures directed specifically at the Take of Identified Species related to Planned Activities of Participating Landowners required or recommended by USFWS pursuant to FESA and NEPA, and CDFG pursuant to CESA and CEQA, in conjunction with other state and federal permits within the Central/Coastal Subregion. Except as otherwise provided in this Agreement, CDFG

and USFWS agree that they will not impose, or seek to impose, any additional mitigation requirements directed specifically at the protection and conservation of Identified Species, CSS and Covered Habitats related to Planned Activities of Participating Landowners within the Central/Coastal Subregion through any agency approval process whether or not such agency is a party to this Agreement, beyond those mitigation measures which are provided for in this Agreement.

(b) In any section 7 consultation or Section 10(a) Permit application that may be required or processed pursuant to FESA subsequent to the Effective Date, with regard to the Planned Activities involving "Take" other than Take identified in the NCCP/HCP, USFWS shall, to the greatest extent appropriate, utilize the data and methodology of the biological opinion issued with regard to the approval of the NCCP/HCP.

**8.7 Future Environmental Documentation.**

(a) In issuing any permits or other approvals with regard to Participating Landowners' Planned Activities, for any Identified Species, CSS, Covered Habitats or species covered by Section 8.3.4(d), and with regard to Non-Participating Landowners' activities for CSS Species, absent a finding of Extraordinary Circumstances as defined in Section 8.9, and subject to any requirements of NEPA (including 40 C.F.R. § 1502.9(c)), USFWS shall rely on and shall utilize the EIR/EIS prepared in conjunction with the NCCP/HCP as the NEPA environmental document for such permits and approvals and for any other approval process subject to its jurisdiction or involvement with regard to potential impacts on Identified Species, CSS, Covered Habitats or species covered by Section 8.3.4(d). CDFG shall rely on the EIR/EIS

prepared in conjunction with the NCCP/HCP as appropriate CEQA documentation for any future approvals regarding potential impacts to Identified Species related to Planned Activities.

(b) The Parties understand and intend that the EIR/EIS prepared in conjunction with the NCCP/HCP will operate as a "program" EIR and EIS pursuant to applicable provisions of the Council on Environmental Quality NEPA regulations (40 C.F.R. § 1500 et seq.), the CEQA Guidelines (14 C.C.R. § 15000 et seq.) and the NCCP Act. Accordingly, the Local Governments shall, consistent with the provisions of CEQA and Section 8.1, rely on and utilize the EIR prepared in conjunction with the NCCP/HCP in evaluating future planning decisions, and in issuing any permits or other approvals within the Central/Coastal Subregion with regard to the Planned Activities. Subsequent activities will be examined in light of the program EIR/EIS and Section 8.1 to determine if additional environmental documentation is required. In this respect, CDFG and each non-Federal signatory agency have determined that compliance with the NCCP/HCP and this Agreement mitigates or avoids impacts to Identified Species and, absent a finding of Extraordinary Circumstances as defined and provided in Section 8.9, any Take authorized by this Agreement will not constitute a significant impact on the Identified Species and their respective habitats.

(c) The Parties understand that a reuse planning process has been initiated for MCAS El Toro. The Parties further understand that any environmental documentation prepared in connection with this reuse planning process, including the consideration of future civilian aviation use at MCAS El Toro, will include a description of the environment in the vicinity of the project, as it exists before the commencement of the proposed project or any of its proposed alternatives, from both a local and a regional perspective. The Parties further understand and

intend that solely for purposes of the analysis of the potential biological impacts of the proposed project or any of its proposed alternatives relating to the effect of noise on sensitive wildlife and their behavior patterns, the environmental setting (i.e., the "existing aircraft noise exposure") in the environs of MCAS El Toro shall be quantified using the noise contours provided in the 1981 *Air Installation Compatible Use Zones Study ("AICUZ")* and material and information included in and a part of, the NCCP/HCP EIR/EIS. The Parties further understand that except to the extent provided in this paragraph and Section 8.11, reliance upon or use of the AICUZ contours for the NCCP purposes above does not predetermine its appropriateness for the purposes of determining the reuse of MCAS El Toro nor to predict or influence the selection of any land use as part of the reuse planning process.

#### **8.8 Future Designation of New Identified Species.**

(a) In the event that one or more species is proposed by any Party to be added as a new Identified Species, such species shall be added to the list of Identified Species if USFWS and CDFG determine that the conservation and management measures set forth in the NCCP/HCP satisfy the requirements of Section 10(a)(1)(B) of FESA and Fish and Game Code sections 2081, 2084, 2825(c), 2830 or 2835, as applicable, with respect to the proposed Identified Species. It is anticipated that the species described in Table 4-10 may be added as Identified Species pursuant to this Section. However, under FESA, no Take of new Identified Species is authorized until the Section 10(a) Permit(s) are amended to authorize such Take. Any Section 10(a) permittee may request amendment of a Section 10(a) Permit at any time to add a new Identified Species, and USFWS shall promptly review and process such amendment request.

(b) The NCCP/HCP shall be adequate documentation to support an amendment of the Section 10(a) Permits and CDFG Management Authorization to incorporate additional Identified Species if:

(1) Surveys for such species have been completed in accordance with USFWS/CDFG protocols, or if none exist, in accordance with accepted biological practice;

(2) The NCCP/HCP is amended, if necessary, to provide for any additional management measures or other mitigation determined necessary, after consultation with the NCCP Non-Profit Corporation, by USFWS and CDFG to assure protection for such species consistent with the requirements of FESA Section 10(a)(1)(B) and Fish & Game Code Sections 2081, 2084, 2825(c), 2830 and 2835 as applicable; and

(3) The NCCP/HCP amendment provides for adequate assurances, to the satisfaction of USFWS and CDFG, including a commitment of any necessary funding, that the management measures identified pursuant to (2) above will be carried out.

(c) Upon a determination that standards for issuance of an Incidental Take permit have been met and satisfaction of any applicable public review requirements, USFWS and CDFG will formally certify that they have approved the applicable CDFG Management Authorization amendments and Section 10(a) Permit amendments, and corresponding amendments to this Agreement. As soon as the amendment to this Agreement and the applicable Section 10(a) Permits become effective, pursuant to Section 10.1, the additional species shall be treated as Identified Species for all purposes and in the manner specified in this Agreement.

**8.9 Identification of Unforeseen or Extraordinary Circumstances.**

(a) The Assurances Policy provides that USFWS "shall not require the commitment of additional land or financial compensation beyond the level of mitigation which was otherwise adequately provided for a species under the terms of a properly functioning HCP. Moreover, [USFWS] shall not seek any other form of additional mitigation from an HCP permittee except under extraordinary circumstances."

(b) For the purposes of this Agreement, "unforeseen circumstances" under 50 C.F.R. section 17.22 and 17.32 include Extraordinary Circumstances.

(c) The provisions of the Assurances Policy shall remain in effect to the extent that there remains any potential for additional mitigation requirements to provide for an Identified Species and any species covered by Section 8.3.4(d) on the part of a Participating Landowner.

(d) In the event that USFWS determines that mitigation beyond, or inconsistent with, that provided by the NCCP/HCP and this Agreement (but excluding modification to management of the Reserve System consistent with the Adaptive Management Program) is needed for an Identified Species, and where an Extraordinary Circumstances finding has not been made pursuant to Section 8.9 and the Parties are otherwise in compliance with the NCCP/HCP, USFWS shall not seek to impose or impose any additional mitigation, on any other Party.

(e) For the purposes of this Agreement the term "Extraordinary Circumstances" means a significant and substantial adverse change in the population of an Identified Species within the Central/Coastal Subregion, which was not contemplated by the

NCCP/HCP. Extraordinary Circumstances shall include a decline in the populations of Identified Species within the meaning of 50 CFR 13.28(a)(5). Any such decline in populations shall be addressed in accordance with the provisions of this Section 8.9.

(f) In deciding whether any Extraordinary Circumstances exist, USFWS shall consider, but not be limited to, the following factors:

- The size of the current range of the affected species.
- The percentage of the range of the species that has been adversely affected by the activities contemplated by the NCCP/HCP.
- The percentage of the range of the species that has been conserved by the NCCP/HCP.
- The ecological significance of that portion of the range of the species affected by the NCCP/HCP.
- The level of knowledge about the affected species and the degree of specificity of the species' conservation program under the NCCP/HCP.
- Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

(g) The Parties acknowledge, pursuant to the biological findings for the listing of the gnatcatcher as a threatened species under Section 4(d) of the FESA, the Assurances Policy and the provisions of the NCCP Act as implemented through the Conservation Guidelines, that the geographic scale of the NCCP/HCP subregional Reserve System and the scope of the NCCP/HCP Adaptive Management measures are such that any determination regarding

Extraordinary Circumstances provided for in this Agreement must be made in the context of and in response to the NCCP/HCP. In the event that USFWS believes that Extraordinary Circumstances may have occurred it shall notify the NCCP Non-Profit Corporation, in writing, of the specific facts that may constitute Extraordinary Circumstances and the evaluation of the factors described above. In the notification USFWS shall clearly document the basis(es) for the proposed finding regarding the existence of Extraordinary Circumstances. Within sixty (60) days of receiving such notice the NCCP Non-Profit Corporation, USFWS and CDFG shall meet to consider the facts cited in the notice and to determine if Adaptive Management measures can address the concerns raised in the notice. Only where USFWS concludes, following consultation with the NCCP Non-Profit Corporation and CDFG, that Adaptive Management measures cannot address the situation shall USFWS proceed to finalize a finding of Extraordinary Circumstances.

(h) USFWS shall make an Extraordinary Circumstances determination only upon the basis of: (1) a finding by the Director or Regional Director of USFWS, based on the best scientific evidence available that is clear and convincing and after considering any responses submitted by any other Parties, that there are Extraordinary Circumstances; and (2) a finding by the Director or Regional Director of USFWS, that the Extraordinary Circumstances cannot be addressed by Adaptive Management measures under the NCCP/HCP and this Agreement. In making such determination, USFWS shall have the burden of demonstrating the existence of Extraordinary Circumstances.

(i) In the event that USFWS makes a finding of Extraordinary Circumstances and such Extraordinary Circumstances warrant the requirement of additional mitigation, such additional mitigation shall be fully consistent with the provisions of the Assurances Policy as set

forth in this Agreement. Such additional mitigation shall be restricted to modification of the management of the Reserve System, and USFWS shall take the necessary action to ensure that the ability of the Participating Landowners to maintain the Take authorization and other benefits of this Agreement regarding Identified Species is not adversely affected.

**8.10 Changed Biological Conditions.**

(a) CDFG agrees that, for the purposes of this Agreement, the provisions set forth in Section 8.9 regarding unforeseen/extraordinary circumstances, shall govern any CDFG obligation, under CESA, the NCCP Act or any other provision of law, to address changed biological conditions.

(b) In the event that CDFG determines that mitigation beyond that provided by the NCCP/HCP and this Agreement is needed for an Identified Species, and where an Extraordinary Circumstances finding has not been made by CDFG, and the Parties are otherwise in compliance with the NCCP, CDFG shall not seek to impose or impose any additional mitigation on any other Party.

(c) In determining whether Extraordinary Circumstances exist, CDFG shall utilize the same definitions and factors set forth in Section 8.9, above. In the event that CDFG believes that Extraordinary Circumstances may have occurred, they shall follow the same procedures set forth in Section 8.9, and shall make an Extraordinary Circumstances determination based on findings by the Director of CDFG in the same manner as set forth in Section 8.9(h).

(d) In the event that CDFG makes a finding of Extraordinary Circumstances, and such Extraordinary Circumstances warrant the requirement of additional mitigation, such

additional mitigation shall be restricted to modification of the management of the Reserve System, shall not involve any additional commitment of lands or funds by Participating Landowners and shall not in any way adversely affect the ability of the Participating Landowners to maintain the CDFG Management Authorization and other benefits of this Agreement regarding Identified Species.

**8.11 El Toro Marine Corps Air Station Reuse Planning Process.**

(a) The County has been designated by the United States Department of Defense as the official Local Redevelopment Authority for MCAS El Toro in connection with the base reuse planning process.

(b) The Parties understand and intend that this Agreement and the NCCP/HCP have been structured and designed in cooperation with and to the satisfaction of USFWS and CDFG to avoid conflicts between the provisions, goals and objectives of this Agreement and the reuse planning process for MCAS El Toro, and to accommodate future reuse of MCAS El Toro, in accordance with the principles and provisions set forth in paragraphs (c) and (d), below.

(c) If future aviation uses are approved as part of the reuse plan, these uses may occur in the airspace above or adjacent to a portion of the 1,033 acre proposed NCCP Reserve System at MCAS El Toro. USFWS and CDFG find that historic Marine Corps aviation uses, including a range of aviation related activities within the scope, boundaries and noise contours of the 1981 AICUZ study for MCAS El Toro, have created significant noise levels and impacts but that such noise levels and impacts have not adversely affected Target Species within the 1,033 acre area, or nearby areas on the frontal slopes of Lomas Ridge, proposed for inclusion in the Reserve System. Therefore, USFWS and CDFG assure and agree that any future aviation

use of MCAS El Toro outside the 1,033 acres or in the airspace above, which does not generate CNEL noise levels in the 1,033 acre portion of the Reserve System greater than those identified in the 1981 AICUZ study for MCAS El Toro are consistent with the NCCP/HCP and that no conditions or opposition to such aviation use(s) will be required, proposed or advanced by USFWS or CDFG.

(d) Neither USFWS nor CDFG shall seek to impose any mitigation requirements for impacts to the Identified Species or their habitats beyond those provided by the NCCP/HCP and this Agreement in connection with the reuse planning process for MCAS El Toro. The mitigation measures and assurances provided in this Agreement shall be considered by USFWS and CDFG to serve as the basis for authorization of Take of any Identified Species on those portions of MCAS El Toro outside the 1,033 acres designated for inclusion in the Reserve System.

#### **8.12 Crystal Cove State Park Facilities.**

The Parties agree that the Crystal Cove General Plan of 1982 is compatible with the policies of the NCCP/HCP and this Agreement. New facilities or improvement, repair, maintenance and operation of existing facilities in accordance with the adopted 1982 General Plan are authorized within the Reserve System. Eighteen acres of mitigation credit for impacts to CSS is assigned to Crystal Cove State Park to off-set future impacts, based on two ongoing CSS restoration programs covering 18 acres within the park. Any impacts to habitat within the Reserve System that occur in accordance with the adopted General Plan of the Crystal Cove State Park will be evaluated by CDFG, USFWS, and the NCCP Non-Profit Corporation, and appropriate mitigation will be determined. Should the mitigation for such impacts exceed the

allowed 18 acres of credit, additional mitigation may be required, and such mitigation requirements will be cooperatively defined by CDFG, USFWS, the NCCP Non-Profit Corporation and CDPR.

## 9.0 TAKE.

### 9.1 General.

(a) Take authorized by the NCCP/HCP and this Agreement may occur as the result of any of the Planned Activities, including: (1) construction activities undertaken pursuant to local government authorization or authorization by the Regents, (2) construction of Infrastructure facilities, (3) ongoing maintenance of existing and future Infrastructure facilities, (4) recreational activities within the Reserve System, and (5) habitat management activities, including activities under the management plans identified in Section 5.3.2(b), carried out pursuant to the Adaptive Management Program of the NCCP/HCP. Take related to these Planned Activities is authorized by the Section 10(a) Permit(s), the Section 10(a)(1)(A) Permit and CDFG Management Authorization.

(b) The Parties acknowledge that the number of gnatcatcher individuals occurring within the Central/Coastal Subregion will fluctuate over time. The gnatcatcher sites identified in the NCCP/HCP, located outside the Reserve System, and authorized for Take by the NCCP/HCP, may not represent all of the gnatcatchers occurring on the subject development sites at the time of actual development. Because of the potential for dispersal and population changes over time, it is possible that additional gnatcatchers may be Taken in areas subject to development under the NCCP/HCP and this Agreement, at some time in the future. If additional gnatcatchers do disperse on to such lands outside the Reserve System, owned or controlled by

Participating Landowners as of the Effective Date, development of these lands shall be considered fully mitigated for purposes of impacts to the gnatcatcher, and no additional mitigation shall be required.

(c) Due to dispersal patterns and periodic fluctuations in Identified Species population locations and numbers, authorized Take, as described in the NCCP/HCP and this Agreement, and as authorized by the Section 10(a) Permits and CDFG Management Authorization, is stated in terms of acres modified regardless of the number of Identified Species individuals occupying the area affected at the time habitat modification actually occurs.

**9.2 Authorized Take.**

**9.2.1 Take Within the Reserve System by Participating Landowners.**

(a) Take of Identified Species (acres of CSS) is authorized within the Reserve System, related to Planned Activities, as described in Chapters 4 and 5 of the NCCP/HCP and set forth below:

- (1) County - 390 acres
- (2) Metropolitan - 45.3 acres
- (3) SCE - 2.4 acres
- (4) IRWD - 60 acres
- (5) Regents - 3 acres
- (6) SCWD - 9 acres
- (7) The Irvine Company - 2 acres

(8) CDPR - associated with implementation of Crystal Cove State Park General Plan (up to 18 acres mitigated by restoration as described in Section 8.12)

(b) As described in Chapter 7 of the NCCP/HCP and in this Section, the County is authorized to take 150 acres of CSS in conjunction with development and operation of County parks on land designated for inclusion in the Reserve System. As part of the County's standard procedure in planning park facilities, the County prepares a Resource Management Plan as an essential preliminary step in the development of Interim Operations and General Development Plans for each park. The purpose of the Resource Management Plan is to identify habitat areas within the park lands. The Resource Management Plan shall assure that to the maximum extent feasible, park facilities are sited so as to minimize impacts to Identified Species, CSS and Covered Habitats. Planned County park facilities within the Reserve System may be located outside the areas identified as available for park facilities in Chapters 4 and 5 of the NCCP/HCP, based on the Resource Management Plan for each park. The Interim Operations Plan and General Development Plan for each park within the Reserve System shall minimize impacts to CSS and Covered Habitats and Identified Species, consistent with the Resource Management Plan.

(c) The Parties acknowledge that it is infeasible to presently identify the location of future Infrastructure facilities with greater precision than indicated in Chapters 4 and 5 of the NCCP/HCP. Each Utility, and the County, is authorized to Take up to the number of acres of CSS within the Reserve System set forth in (a) above. The Party proposing the development of future Infrastructure facilities consistent with those described as Planned

Activities in the NCCP/HCP shall confer with USFWS and CDFG regarding the effects of final facility location in order to minimize impacts to Identified Species and Covered Habitats (except as specifically provided for parks in paragraph (b), above). The Parties shall comply with the utility location and operation policies set forth in Chapter 5.9 of the NCCP/HCP.

(d) Any Participating Landowner may transfer some or all of its authorization for Take within the Reserve System as described in Chapter 7 of the NCCP/HCP to any other Participating Landowner for Take within the Reserve System, upon approval of USFWS and CDFG. Prior to initiating such a transfer, the Participating Landowners involved shall confer with USFWS and CDFG to minimize any potential effects on the Reserve System from the transfer to the extent feasible. Upon approval by USFWS and CDFG, the Participating Landowner transferring its authorization for Take shall notify the NCCP Non-Profit Corporation of the transfer. Transfers of authorization for Take, as described in this paragraph, shall not require an amendment of the NCCP/HCP or this Agreement; however, the reallocation of Take shall not be effective until the Section 10(a) Permits of both Participating Landowners are amended to reflect the reallocation of Take authorization.

**9.2.2 Take Outside the Reserve System by Participating Landowners.**

(a) Take of Identified Species related to the Planned Activities within the Central/Coastal Subregion, but outside the Reserve System, on lands owned or controlled by Participating Landowners as of the Effective Date is authorized as described in this Agreement and in Chapter 7 of the NCCP/HCP. The NCCP/HCP provides estimates of the number of acres of CSS that will be modified by Participating Landowners outside the Reserve System, as follows:

- (1) County - 334 acres (including 46 acres within Special Linkage Areas)
- (2) Metropolitan - 13 acres
- (3) IRWD - 27 acres
- (4) The Irvine Company - 4,420 acres (including 60 acres within Special Linkage Areas)
- (5) TCA - set forth in Corridor Biological Opinions
- (6) SCE - associated with the Special Linkage Area, as set forth in Section 6.1(d)
- (7) Chandis-Sherman - 30 acres.

The Parties acknowledge, however, that the number of acres of CSS and Covered Habitats on lands outside the Reserve System may fluctuate over time. Take of Identified Species is authorized on all lands owned or controlled by Participating Landowners outside the Reserve System as of the Effective Date. Take of species dependent upon or associated with CSS and Covered Habitats is authorized upon issuance of the Section 10(a) Permits pursuant to Section 8.3.4(d). Lands owned by The Irvine Company within the Central/Coastal Subregion (exclusive of the Reserve System and Policy Plan Area) total approximately 29,000 acres, as shown in Exhibit F.

(b) Notwithstanding the foregoing, Take is not authorized in Existing Use Areas, and is authorized in Special Linkage Areas only as provided in Section 6.1.

**9.2.3 Potential Take By Non-Participating Landowners Outside the Reserve System.**

Take of CSS Species listed as endangered species or threatened species under FESA or CESA, is authorized outside the Reserve System as described in Chapter 7 of the

NCCP/HCP for Non-Participating Landowners whose lands are located within the jurisdiction of a signatory Local Government and who elect the Mitigation Fee option described in Section 7 of this Agreement. Notwithstanding the foregoing, Take is not authorized in Existing Use Areas, except as provided in Section 6.1(e). Nothing in this section is intended to prohibit Non-Participating Landowners from independently pursuing Take authorization under sections 7 or 10 of FESA and/or Sections 2081 or 2084 of CESA or as otherwise provided by law.

## **10.0 AMENDMENT AND REMEDIES.**

### **10.1 Amendments.**

(a) Amendments to the NCCP/HCP may be proposed by any Party to this Agreement. The Party proposing the amendment shall provide to the NCCP Non-Profit Corporation and USFWS and CDFG a statement of the reason for the amendment and an analysis of the effect of the amendment on the Identified Species, CSS and Covered Habitats and the implementation of the NCCP/HCP. It is contemplated that this Agreement may be amended pursuant to paragraph (e), in circumstances not requiring amendment of the NCCP/HCP. Amendments to the NCCP/HCP affecting only one Participating Landowner, and not significantly affecting that Participating Landowner's commitments to the NCCP/HCP, may be approved by USFWS, CDFG and that Participating Landowner.

(b) Minor amendments to the NCCP/HCP shall not require amendment of this Agreement or any Section 10(a) Permit. Minor amendments shall require the approval of the NCCP Non-Profit Corporation and the affected owner of Reserve System land or land designated for inclusion in the Reserve System, which shall approve or deny the proposed amendment within ninety (90) days of receipt of the proposal. Minor amendments include, but are not

limited to, combinations of adding and removing land from the Reserve System which result in no net loss of Reserve System acreage and no long-term net loss of subregional habitat value. Notwithstanding the foregoing, USFWS and CDFG shall be provided an opportunity to review all proposed minor amendments presented to the NCCP Non-Profit Corporation. If USFWS or CDFG determines within sixty (60) days of receipt of a proposed amendment that a proposed amendment to the NCCP/HCP is a major amendment, the Parties to the Agreement shall process the proposed amendment as described in paragraph (c), below.

(c) Major amendments to the NCCP/HCP shall require an amendment of this Agreement and the applicable Section 10(a) Permits. The Party proposing the major amendment, or the NCCP Non-Profit Corporation if the amendment was initially proposed as a minor amendment, shall circulate to the other Parties a statement of the reason for the amendment and an analysis of the effect of the amendment on the Identified Species, CSS and Covered Habitats and the implementation of the NCCP/HCP. USFWS shall publish notice of the proposed amendment of the Section 10(a) Permits as required under FESA. USFWS shall make every effort to process the proposed amendment of the Section 10(a) Permits within one hundred twenty (120) days of publication in the Federal Register except where longer time lines are imposed by requirements of law. Except as otherwise determined by USFWS or CDFG pursuant to (b), major amendments shall be limited to changes in the following: (1) the boundaries of the Reserve System resulting in a net loss of Reserve System acreage, or (2) removal of a species from the list of Identified Species or addition of a new Identified Species pursuant to Section 8.8.

(d) Amendment of the NCCP/HCP automatically amends the CDFG Management Authorization.

(e) This Agreement may be amended only in a writing signed by all of the Parties. Only those proposed amendments to the Agreement that would materially modify the legal rights and obligations of the Parties under the Agreement or implement major amendments to the NCCP/HCP as defined in (c) shall require amendment of the Section 10(a) Permit.

**10.2 Enforceability.**

It is acknowledged and agreed by the Parties hereto that any covenants, assurances or commitments provided with respect to the extent and limitation of mitigation measures which will be required in connection with the construction and operation of the Planned Activities and mutual assurances provided by the Parties are: (1) intended to be relied upon by the Parties; (2) made with full knowledge of the extent and effect thereof; (3) made in exchange for valuable and adequate consideration provided by the Local Governments and Participating Landowners in the form of funds and covenants and commitments to undertake the mitigation measures hereunder and by USFWS and CDFG in the form of funds, assurances and assistance in NCCP/HCP implementation and management; and (4) made with the understanding that such assurances and commitments will not be amended, changed or increased except in accordance with this Agreement.

**10.3 Remedies in General.**

(a) It is expressly understood by the Parties that monetary damages will not provide an adequate remedy for material breach of this Agreement. Therefore, the Parties shall not be liable in monetary damages to any Party or other person for any breach of this Agreement, in the performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement, or any other cause of action arising from this Agreement. In the event of a material

breach of the Agreement, the non-violating Parties shall be entitled to specific performance and injunctive relief. In the event that USFWS identifies a potential breach by a Participating Landowner, USFWS: (1) shall notify all Participating Landowners regarding those actions, or failures to act, which constitute the alleged breach, and (2) shall provide the alleged breaching party a reasonable opportunity to cure the alleged breach. Except for an alleged breaching action that, in the reasonable opinion of USFWS, would involve imminent danger to a significant extent for Identified Species, the alleged breaching permittee shall have sixty (60) days following receipt of notice of the specific nature of the alleged breaching action and any suggested corrective actions to be taken, or such other time period as mutually agreed upon with USFWS to cure the alleged breach. With regard to Non-Participating Landowners, USFWS shall notify any signatory Local Government regarding the alleged failure to carry out the Local Government's responsibilities in implementing the Mitigation Fee option program for Non-Participating Landowners. Said Local Government obligations are: (1) verification that the Mitigation Fee has been paid to the NCCP Non-Profit Corporation, and (2) requirement, as a condition of development approval, and enforcement, of the construction-related minimization measures set forth in the NCCP/HCP EIR/EIS. The same notice and right to cure provisions set forth above shall be applicable to the Local Government alleged to be in violation of the particular Section 10(a) Permit.

(b) Subject to the provisions of Sections 10.3(a) and 10.4, the Parties shall have all of the remedies available in equity including specific performance and injunctive relief, and at law to enforce the terms of this Agreement and the Section 10(a) Permits and CDFG Management Authorization, and to seek remedies for any breach thereof, consistent with and

subject to the terms of this Agreement. Notwithstanding the foregoing, all Parties shall retain whatever liability they would possess for their present and future acts or failure to act without the existence of this Agreement, and all Parties shall retain whatever liability they possess as holders of interests in land.

**10.4 USFWS Right to Revoke, Suspend or Terminate.**

(a) USFWS shall have the right to revoke, suspend or terminate a Section 10(a) Permit held by one or more signatories to this Agreement in the event of a material breach or violation of the Section 10(a) Permit(s), this Agreement or FESA in accordance with 50 C.F.R. 13.27-13.29.

(b) USFWS shall not initiate an action to revoke any Section 10(a) Permit on grounds which would constitute grounds for suspension without first pursuing action to suspend the permit in accordance with 50 C.F.R. § 13.27. Any action to suspend any activities or privileges under a Section 10(a) Permit or to revoke a Section 10(a) Permit shall, to the maximum extent consistent with the purposes of the suspension or revocation, be limited so as to address the discreet action or inaction underlying the suspension or revocation, in order to minimize any impacts on the permittee and other permittees.

**10.5 Severability.**

(a) Subject to paragraph (b)(3) of this Section 10.5, any violation of a Section 10(a) Permit or CDFG Management Authorization by any Party shall not adversely affect or be attributed to, nor shall it result in the loss or diminution of any right, privilege or benefit under this Agreement for any non-responsible Party.

(b) In the event of a final revocation or termination action pursuant to section 10.4 or in the event of a final court order not subject to further appeal, any Participating Landowner whose rights and obligations under this Agreement are substantially affected by such action or court order shall have the right to terminate its rights and obligations under this Agreement under the following conditions:

(1) Termination must be exercised by written notice to all Parties at any time after such action or court order becomes final, but not later than the later to occur of commencement of construction activities resulting in Take or one (1) year of such action or court order becoming final; provided, however, the County and The Irvine Company shall provide such notice, if at all, within one (1) year of such action or court order becoming final.

(2) The Participating Landowner shall mitigate any impacts to species covered under Sections 1.29 and 8.3.4(d) which may have occurred as a result of the actions of the Participating Landowner pursuant to this Agreement prior to the date of the termination by the Participating Landowner, provided that if a termination by a Participating Landowner under this Section occurs within five years of permit issuance as a result of a final court order, mitigation shall only be required for impacts to species listed as threatened species or endangered species under FESA at the time the impacts occurred. In determining appropriate mitigation under this Agreement, USFWS and CDFG shall take into account (A) contributions of the Participating Landowner to the NCCP/HCP in relation to benefits received and impacts on species listed as endangered or threatened, (B)

the fairness to the Participating Landowner given the circumstances surrounding the revocation/termination or court order, and (C) in the case of unlisted species covered by this Agreement, whether a determination not to list the species specifies that it was based in whole or in part on the protections afforded the species under the NCCP/HCP as evidenced by the procedures set forth in section 8.3.4(b).

(c) Termination of rights and obligations under this Agreement by a Participating Landowner listed in Section 11.1 may require a reevaluation of the viability of the Reserve System and of the continuance of the NCCP/HCP and Take authorizations under applicable state and federal law.

(d) Notwithstanding Section 10.1, the termination of rights and obligations under this Agreement by a Participating Landowner shall not require the consent of all Parties.

#### **10.6 Force Majeure.**

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

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

(2) Within two weeks after the occurrence of the force majeure the Local Government or Participating Landowner gives USFWS and CDFG written notice describing the particulars of the occurrence;

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

(4) When the Local Government or Participating Landowner is able to resume performance of its obligations hereunder, the Local Government or Participating Landowner shall give USFWS and CDFG written notice to that effect.

#### **10.7 Withdrawal**

(a) Upon 90 days written notice to all Parties, Cities may withdraw from this Agreement without being in breach of the Agreement if they have not engaged in Take, or approved projects of Non-Participating Landowners resulting in any Take pursuant to the Agreement, their Section 10(a) Permit or CDFG Management Authorization.

(b) Upon 90 days written notice to all Parties, Cities may also withdraw from the Agreement without breach after Non-Participating Landowners have engaged in Take as part of a project approved by the City, under the following conditions:

- (1) the City and Non-Participating Landowner have complied with the mitigation obligations required under this Agreement with respect to the specific project(s) approved by the City, and
- (2) the City has provided written notice of withdrawal to all other Parties, including evidence of compliance with mitigation obligations prior to withdrawal.

(c) The City's Section 10(a) Permit and CDFG Management Authorization shall terminate automatically upon withdrawal.

(d) Withdrawal under this Section shall not affect the obligations of a City owning land in the Reserve System as set forth in section 5.2.1(b). Any Take in projects approved by the City in accordance with this Agreement prior to withdrawal under this Section shall continue to be authorized under the terms of the Section 10(a) Permit, and the City shall continue to carry out its obligations under this Agreement with respect to that Take as specified in section 8.1(c). Further, the withdrawing City shall not take any action that would adversely affect the ability of Participating Landowners to carry out their obligations pursuant to this Agreement.

## **11.0 MISCELLANEOUS PROVISIONS.**

### **11.1 Term of the Agreement.**

This Agreement shall be effective as to all executing Parties upon execution by CDFG, USFWS, the County and The Irvine Company and shall remain in full force and effect for 75 years, subject to the provisions of Section 10.5.

### **11.2 Reservation of Rights.**

Nothing in this Agreement shall be construed as a waiver of any rights or objections that any of the Parties may have with respect to the Proposed Listing of any Identified Species, or of any objections to the regulation of activities by CDFG which do not result in Take of any species listed pursuant to CESA as a Candidate Species, threatened species or endangered species as the term "take" is defined in California Fish and Game Code section 86. Participating Landowners and Local Governments reserve their right to oppose any formal listing or Proposed Listing of any Identified Species pursuant to FESA or CESA. USFWS and CDFG reserve the right to proceed with the listing of any species as an endangered species or threatened species and to carry out all of their responsibilities and duties under FESA and CESA. This Agreement is fully consistent with FESA, and nothing in this Agreement is intended or shall be construed to limit the authority of the United States to invoke the penalties under FESA.

### **11.3 Notices.**

Any notices required or permitted to be given under this Agreement shall be delivered personally to the entities set forth below and any later signatories, or shall be deemed given five (5) days after deposit in the United States Mail, postage prepaid, addressed as follows or to such other official and such other address that any Party may from time to time notify all Parties in writing:

Undersecretary of Resources (Mr. Michael A. Mantell)  
The Resources Agency  
1416 Ninth Street, Suite 1311  
Sacramento, California 95814

NCCP Program Manager (Mr. Larry Eng)  
California Department of Fish and Game  
1416 Ninth Street  
Sacramento, California 95814

California Department of Forestry and Fire Protection  
P.O. Box 944246  
Sacramento, California 94244-2450

California Department of Parks and Recreation  
P.O. Box 942896  
Sacramento, California 94296-9824

Field Supervisor (Mr. Gail C. Kobetich)  
U.S. Fish and Wildlife Service  
Carlsbad Field Office  
2730 Loker Avenue West  
Carlsbad, CA 92008

Director of Planning (Mr. Tom Matthews)  
County of Orange  
Environmental Management Agency  
12 Civic Center Plaza, Room 236  
Santa Ana, California 92702

Director of Environmental Services (Mr. Steve Letterly)  
Transportation Corridor Agencies  
P.O. Box 28870  
Santa Ana, California 92799-8870

Orange County Fire Authority  
180 S. Water Street  
Orange, CA 92666

The Regents of the University of California Irvine  
University of California Irvine  
501 Administration Building  
Irvine, CA 92717

General Manager (Mr. Charles Cron)  
Santiago County Water District  
7431 Santiago Canyon Road  
Silverado, CA 92676

General Manager (Mr. Ronald E. Young)  
Irvine Ranch Water District  
P.O. Box 6025  
Irvine, CA 92702

General Manager  
The Metropolitan Water District of Southern California  
P.O. Box 54153 Terminal Annex  
Los Angeles, CA 90054-0153

Southern California Edison  
P.O. Box 800  
Rosemead, CA 92770

M. H. Sherman Company  
2077 West Coast Highway  
Newport Beach, CA 92663  
Attention: Dan T. Daniels

Chandis Securities Company  
350 West Colorado Blvd., Suite 430  
Pasadena, CA 91105  
Attention: Warren B. Williamson

Sherman Foundation  
2077 West Coast Highway  
Newport Beach, CA 92663  
Attn: Donald Haskell

Senior Vice President for Corporate Affairs (Ms. Monica Florian)  
The Irvine Company  
550 Newport Center Drive  
Newport Beach, California 92660

#### 11.4 Headings.

The subject headings of the sections of this Agreement are provided for convenience only and shall not affect the construction or interpretation of any of the provisions of the Agreement.

**11.5 Entire Agreement.**

This Agreement constitutes the full and complete agreement of the Parties and supersedes any and all prior or contemporaneous written or oral negotiations, correspondence, understandings and agreements between the Parties respecting the subject matter hereof. In the event of conflict between this Agreement and the Planning Agreement, this Agreement is controlling. Any supplement, modification or amendment to this Agreement shall be executed in writing by all Parties. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provisions. No waiver shall be binding unless executed in writing by the Party making the waiver.

**11.6 Governing Law.**

This Agreement shall be governed by and construed in accordance with the internal laws of the State of California, FESA and other applicable federal law. This Agreement shall not be construed as if it had been prepared by any one Party, but rather as if all Parties had prepared the Agreement.

**11.7 Third Party Beneficiaries.**

Without limiting the applicability of the rights granted to the public pursuant to the provisions of 16 U.S.C. 1540(g), the Parties intend that only the Parties to this Agreement and their approved assignees shall benefit from the Agreement. This Agreement shall not create in the public, any member of the public, any other person or entity, except a transferee or assignee of the Parties as provided herein, any rights as a third-party beneficiary to this Agreement, nor shall it authorize anyone not a Party to this Agreement to maintain a suit for injuries or damages under the provisions of this Agreement. So long as the Section 10(a) Permit

holder(s) are in compliance with the provisions of this Agreement, any contractor, or other third party under the direct control of the permit holder(s) shall be deemed to be a third-party beneficiary of this Agreement and shall be entitled to proceed with Take as authorized by this Agreement.

**11.8 Conflict With NCCP/HCP.**

The NCCP/HCP and each of its terms are intended to be and by this reference are incorporated herein. This Agreement is intended to specify, in contract language, the obligations of the Parties under the NCCP/HCP recognizing that the NCCP/HCP is intended to set forth in a planning document the components of a conservation plan and was not drafted as a contract document. As a result, in the event of any direct contradiction, conflict or inconsistency between the terms of this Agreement and the NCCP/HCP, the terms of this Agreement shall control. In all other cases, the terms of this Agreement and the terms of the NCCP/HCP shall be interpreted to be supplementary to each other.

**11.9 Assignment.**

**11.9.1 Assignment Incident to Conveyance of Portion(s) of Reserve System.**

This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and assigns, provided that no conveyance of land included in the Reserve System shall be made without the prior written concurrence of USFWS and CDFG. Upon any assignment or delegation of the rights and duties of this Agreement incidental to a conveyance of a portion of the Reserve System, and subject to the prior written approval of USFWS and CDFG of the proposed assignee or delegee, the assignor shall be released from and shall no longer have any obligation, responsibility, liability, covenant, right or duty under this Agreement relating to

such portions of the Reserve System so conveyed. Upon written request by the Party, USFWS and/or CDFG shall expeditiously provide written acknowledgment of such release. In the event that USFWS or CDFG does not grant in writing a request for release within thirty (30) days following the request, such release will be deemed automatically given. Notwithstanding the foregoing, such assignor or delegator shall remain liable for any breach of this Agreement occurring before such assignment or delegation with regard to the area so conveyed.

**11.9.2 Transfer of Lands on Which Incidental Take is Authorized.**

(a) Transfer of fee title by any Party to any portion of the Central/Coastal Subregion on which Take is authorized under this Agreement and any Section 10(a) Permit shall not operate to release that Party from any obligations, responsibilities, liabilities, covenants, rights or duties under this Agreement relating to such portions of the Central/Coastal Subregion so conveyed unless and until, subject to then existing statutory and regulatory requirements, the following requirements are fulfilled: (1) such release is authorized in writing by USFWS and (2) USFWS issues a new Section 10(a) Permit to the transferee. Upon proper application by the transferee, a new Section 10(a) Permit shall be issued by USFWS following satisfaction of then applicable procedural requirements relating to permit issuance (currently contained in 50 C.F.R. Parts 13 and 17) and the following conditions:

(1) The transferee/applicant's written assumption of all of the current permit holder's obligations under the NCCP/HCP and this Agreement applicable to that portion of the Central/Coastal Subregion so conveyed; and

(2) Findings by USFWS that:

(A) The transferee/applicant is qualified under then existing regulations to hold a Section 10(a) Permit;

(B) The transferee/applicant possesses the financial and management capacity to implement applicable portion of the NCCP/HCP and this Agreement; and

(C) The current permit holder is in full compliance with the permit.

USFWS shall not require any additional mitigation from the transferee/applicant as a condition of approving the permit and shall use its best efforts to process the permit within 60 days of receipt of a complete application therefor.

Upon issuance of a new permit to the transferee, the prior holder shall be released from and shall no longer have any obligation, responsibility, liability, covenant, right or duty under this Agreement relating to those portions of the Central/Coastal Subregion so conveyed. Notwithstanding the foregoing, the prior permit holder shall remain liable for any breach of this Agreement or the permit occurring prior to issuance of a new permit to the transferee. Upon written request by the transferring Party, USFWS shall expeditiously provide written acknowledgment of such release. In the event that, following issuance of a new permit to the transferee, USFWS does not grant in writing a request for release or specify in writing the reasons for refusing such request within thirty (30) days following the request, such request shall be deemed automatically given.

(b) As an alternative to the procedure provided for under (a), a Permittee may transfer fee title and the Take authorization to any portion of the Central/Coastal Subregion on

which Take is authorized pursuant to this Agreement and the particular Section 10(a) Permit, provided that the Section 10(a) Permittee remains liable for any obligations, responsibilities, liabilities, covenants, rights or duties specified in this Agreement as mitigation measures, except for construction-related minimization measures set forth in the NCCP/HCP EIR/EIS, and that, with regard to the latter, a signatory Local Government has jurisdiction over the land area so conveyed.

(c) Notwithstanding the foregoing, the Parties acknowledge that TCA may transfer ownership of the Foothill/North, Eastern and San Joaquin Hills Transportation Corridors to the California Department of Transportation ("Caltrans") pursuant to the Agreement between TCA and Caltrans ("Caltrans Agreement"). Under the terms of the Caltrans Agreement, TCA retains certain rights and obligations with regard to the Corridors, including rights to conduct future Corridor improvements. Take authorization remains with TCA, and transfer of ownership of the Corridors shall not transfer to Caltrans any Take authorization pursuant to this Agreement.

#### **11.10 Counterparts.**

This Agreement may be executed in multiple counterparts and each such executed counterpart shall be deemed an original, all of which together shall constitute a single executed Agreement.

#### **11.11 Future Actions.**

From time to time hereafter, the Parties shall execute such instruments and other documents, and take such other actions, upon the request of other Parties, as may be necessary or desirable to carry out the intent of this Agreement.

**11.12 Federal Funds.**

The commitment of the USFWS to carry out its obligations and assurances under this Agreement which require the expenditure of funds is subject to the availability of appropriated funds; however, the USFWS shall take all steps within its legal authority to fulfill those obligations and assurances.

IN WITNESS WHEREOF, the Parties have executed this Agreement.

Dated: 7-17, 1996

CALIFORNIA RESOURCES AGENCY, an agency of the State of California

By   
Title Secretary

Dated: 7/17, 1996

CALIFORNIA DEPARTMENT OF FISH AND GAME, a department of The Resources Agency of the State of California

By   
Title DIRECTOR

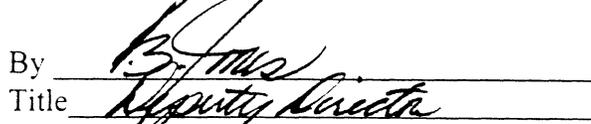
Dated: 7/17, 1996

CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION, a department of The Resources Agency of the State of California

By   
Title Chief Deputy Director

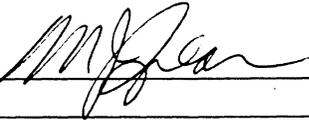
Dated: 7/17, 1996

CALIFORNIA DEPARTMENT OF PARKS AND RECREATION, a department of The Resources Agency of the State of California

By   
Title Deputy Director

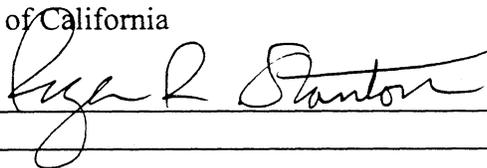
Dated: \_\_\_\_\_, 1996

UNITED STATES FISH AND WILDLIFE SERVICE, an agency of the Department of Interior of the United States of America

By   
Title \_\_\_\_\_

Dated: \_\_\_\_\_, 1996

COUNTY OF ORANGE, a political subdivision of the State of California

By   
Title \_\_\_\_\_

Dated: \_\_\_\_\_, 1996

FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY, a joint powers authority

By \_\_\_\_\_  
Title \_\_\_\_\_

Approved as to form:

By \_\_\_\_\_  
Nossaman, Guthner, Knox & Elliott, LLP  
Title: TCA Counsel

Dated: \_\_\_\_\_, 1996

SAN JOAQUIN HILLS TRANSPORTATION CORRIDOR AGENCY, a joint powers authority

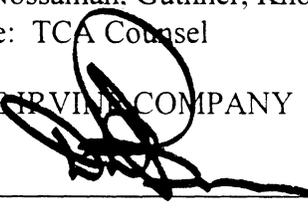
By \_\_\_\_\_  
Title \_\_\_\_\_

Approved as to form:

By \_\_\_\_\_  
Nossaman, Guthner, Knox & Elliott, LLP  
Title: TCA Counsel

Dated: \_\_\_\_\_, 1996

THE IRVING COMPANY

By   
Title \_\_\_\_\_

Dated: \_\_\_\_\_, 1996

UNITED STATES FISH AND WILDLIFE SERVICE, an agency of the Department of Interior of the United States of America

By \_\_\_\_\_  
Title \_\_\_\_\_

Dated: \_\_\_\_\_, 1996

COUNTY OF ORANGE, a political subdivision of the State of California

By \_\_\_\_\_  
Title \_\_\_\_\_

Dated: \_\_\_\_\_, 1996

FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY, a joint powers authority

By [Signature]  
Title \_\_\_\_\_

Approved as to form:

By [Signature]  
Nossaman, Guthner, Knox & Elliott, LLP  
Title: TCA Counsel

Dated: \_\_\_\_\_, 1996

SAN JOAQUIN HILLS TRANSPORTATION CORRIDOR AGENCY, a joint powers authority

By [Signature]  
Title \_\_\_\_\_

Approved as to form:

By [Signature]  
Nossaman, Guthner, Knox & Elliott, LLP  
Title: TCA Counsel

Dated: \_\_\_\_\_, 1996

THE IRVINE COMPANY

By \_\_\_\_\_  
Title \_\_\_\_\_

Dated: \_\_\_\_\_, 1996

IRVINE RANCH WATER DISTRICT

By \_\_\_\_\_  
Title \_\_\_\_\_

Dated: \_\_\_\_\_, 1996

THE METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA

By \_\_\_\_\_  
Title \_\_\_\_\_

Approved as to form:

By \_\_\_\_\_  
Title \_\_\_\_\_

Dated: \_\_\_\_\_, 1996

SOUTHERN CALIFORNIA EDISON

By \_\_\_\_\_  
Title \_\_\_\_\_

Dated: August 22, 1996

THE ORANGE COUNTY FIRE AUTHORITY

By *James A. Jones*  
Title Director of Fire Services

Dated: \_\_\_\_\_, 1996

SANTIAGO COUNTY WATER DISTRICT

By \_\_\_\_\_  
Title \_\_\_\_\_

Dated: \_\_\_\_\_, 1996

THE REGENTS OF THE UNIVERSITY OF  
CALIFORNIA

By \_\_\_\_\_  
Title \_\_\_\_\_

Dated: \_\_\_\_\_, 1996

CHANDIS SECURITIES COMPANY, a California  
corporation

By \_\_\_\_\_  
Warren B. Williamson  
Title: President

Dated: \_\_\_\_\_, 1996

IRVINE RANCH WATER DISTRICT

By *Warren B. Williamson*  
Title *Vice President*

Dated: \_\_\_\_\_, 1996

THE METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA

By \_\_\_\_\_  
Title \_\_\_\_\_

Approved as to form:

By \_\_\_\_\_  
Title \_\_\_\_\_

Dated: \_\_\_\_\_, 1996

SOUTHERN CALIFORNIA EDISON

By \_\_\_\_\_  
Title \_\_\_\_\_

Dated: \_\_\_\_\_, 1996

THE ORANGE COUNTY FIRE AUTHORITY

By \_\_\_\_\_  
Title \_\_\_\_\_

Dated: \_\_\_\_\_, 1996

SANTIAGO COUNTY WATER DISTRICT

By \_\_\_\_\_  
Title \_\_\_\_\_

Dated: \_\_\_\_\_, 1996

THE REGENTS OF THE UNIVERSITY OF  
CALIFORNIA

By \_\_\_\_\_  
Title \_\_\_\_\_

Dated: \_\_\_\_\_, 1996

CHANDIS SECURITIES COMPANY, a California  
corporation

By \_\_\_\_\_  
Warren B. Williamson  
Title: President

Dated: \_\_\_\_\_, 1996

IRVINE RANCH WATER DISTRICT

By \_\_\_\_\_  
Title \_\_\_\_\_

Dated: \_\_\_\_\_, 1996

THE METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA

By *[Signature]*  
Title General Manager

*[Handwritten initials]*

Approved as to form:

By *[Signature]*  
Title General Counsel

Dated: \_\_\_\_\_, 1996

SOUTHERN CALIFORNIA EDISON

By \_\_\_\_\_  
Title \_\_\_\_\_

Dated: \_\_\_\_\_, 1996

THE ORANGE COUNTY FIRE AUTHORITY

By \_\_\_\_\_  
Title \_\_\_\_\_

Dated: \_\_\_\_\_, 1996

SANTIAGO COUNTY WATER DISTRICT

By \_\_\_\_\_  
Title \_\_\_\_\_

Dated: \_\_\_\_\_, 1996

THE REGENTS OF THE UNIVERSITY OF  
CALIFORNIA

By \_\_\_\_\_  
Title \_\_\_\_\_

Dated: \_\_\_\_\_, 1996

CHANDIS SECURITIES COMPANY, a California  
corporation

By \_\_\_\_\_  
Warren B. Williamson  
Title: President

Dated: \_\_\_\_\_, 1996

IRVINE RANCH WATER DISTRICT

By \_\_\_\_\_  
Title \_\_\_\_\_

Dated: \_\_\_\_\_, 1996

THE METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA

By \_\_\_\_\_  
Title \_\_\_\_\_

Approved as to form:

By \_\_\_\_\_  
Title \_\_\_\_\_

Dated: 8/21, 1996

SOUTHERN CALIFORNIA EDISON

By Thomas [Signature]  
Title Vice President of Corporate Communications

Dated: \_\_\_\_\_, 1996

THE ORANGE COUNTY FIRE AUTHORITY

By \_\_\_\_\_  
Title \_\_\_\_\_

Dated: \_\_\_\_\_, 1996

SANTIAGO COUNTY WATER DISTRICT

By \_\_\_\_\_  
Title \_\_\_\_\_

Dated: \_\_\_\_\_, 1996

THE REGENTS OF THE UNIVERSITY OF  
CALIFORNIA

By \_\_\_\_\_  
Title \_\_\_\_\_

Dated: \_\_\_\_\_, 1996

CHANDIS SECURITIES COMPANY, a California  
corporation

By \_\_\_\_\_  
Warren B. Williamson  
Title: President

Dated: \_\_\_\_\_, 1996

IRVINE RANCH WATER DISTRICT

By \_\_\_\_\_  
Title \_\_\_\_\_

Dated: \_\_\_\_\_, 1996

THE METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA

By \_\_\_\_\_  
Title \_\_\_\_\_

Approved as to form:

By \_\_\_\_\_  
Title \_\_\_\_\_

Dated: \_\_\_\_\_, 1996

SOUTHERN CALIFORNIA EDISON

By \_\_\_\_\_  
Title \_\_\_\_\_

Dated: \_\_\_\_\_, 1996

THE ORANGE COUNTY FIRE AUTHORITY

By \_\_\_\_\_  
Title \_\_\_\_\_

Dated: July 24, 1996

SANTIAGO COUNTY WATER DISTRICT

By Charles L. Crow  
Title GENERAL MANAGER

Dated: \_\_\_\_\_, 1996

THE REGENTS OF THE UNIVERSITY OF  
CALIFORNIA

By \_\_\_\_\_  
Title \_\_\_\_\_

Dated: \_\_\_\_\_, 1996

CHANDIS SECURITIES COMPANY, a California  
corporation

By \_\_\_\_\_  
· Warren B. Williamson  
Title: President

Dated: \_\_\_\_\_, 1996

IRVINE RANCH WATER DISTRICT

By \_\_\_\_\_  
Title \_\_\_\_\_

Dated: \_\_\_\_\_, 1996

THE METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA

By \_\_\_\_\_  
Title \_\_\_\_\_

Approved as to form:

By \_\_\_\_\_  
Title \_\_\_\_\_

Dated: \_\_\_\_\_, 1996

SOUTHERN CALIFORNIA EDISON

By \_\_\_\_\_  
Title \_\_\_\_\_

Dated: \_\_\_\_\_, 1996

THE ORANGE COUNTY FIRE AUTHORITY

By \_\_\_\_\_  
Title \_\_\_\_\_

Dated: \_\_\_\_\_, 1996

SANTIAGO COUNTY WATER DISTRICT

By \_\_\_\_\_  
Title \_\_\_\_\_

Dated: \_\_\_\_\_, 1996

THE REGENTS OF THE UNIVERSITY OF  
CALIFORNIA

By \_\_\_\_\_  
Title \_\_\_\_\_

Dated: July 31, 1996

CHANDIS SECURITIES COMPANY, a California  
corporation

By 

Warren B. Williamson

Title: President

Dated: \_\_\_\_\_, 1996

IRVINE RANCH WATER DISTRICT

By \_\_\_\_\_  
Title \_\_\_\_\_

Dated: \_\_\_\_\_, 1996

THE METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA

By \_\_\_\_\_  
Title \_\_\_\_\_

Approved as to form:

By \_\_\_\_\_  
Title \_\_\_\_\_

Dated: \_\_\_\_\_, 1996

SOUTHERN CALIFORNIA EDISON

By \_\_\_\_\_  
Title \_\_\_\_\_

Dated: \_\_\_\_\_, 1996

THE ORANGE COUNTY FIRE AUTHORITY

By \_\_\_\_\_  
Title \_\_\_\_\_

Dated: \_\_\_\_\_, 1996

SANTIAGO COUNTY WATER DISTRICT

By \_\_\_\_\_  
Title \_\_\_\_\_

Dated: Dec 16, 1996

THE REGENTS OF THE UNIVERSITY OF  
CALIFORNIA

By Paul L. Wilkins  
Title Chancellor

Dated: \_\_\_\_\_, 1996

CHANDIS SECURITIES COMPANY, a California  
corporation

By \_\_\_\_\_  
Warren B. Williamson  
Title: President

Dated: 7-24, 1996

SHERMAN FOUNDATION, a Delaware non-profit corporation

By   
Donald Haskell

Title: President

Dated: 7/23, 1996

M.H. SHERMAN COMPANY, a California corporation

By   
D.T. Daniels

Title: President

Dated: \_\_\_\_\_, 1996

ORANGE COUNTY FLOOD CONTROL DISTRICT

By \_\_\_\_\_  
Title \_\_\_\_\_

Dated: \_\_\_\_\_, 1996

SHERMAN FOUNDATION, a Delaware non-profit corporation

By \_\_\_\_\_

Donald Haskell

Title: President

Dated: \_\_\_\_\_, 1996

M.H. SHERMAN COMPANY, a California corporation

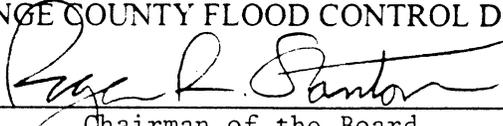
By \_\_\_\_\_

D.T. Daniels

Title: President

Dated: July 31,, 1996

ORANGE COUNTY FLOOD CONTROL DISTRICT

By  \_\_\_\_\_

Title Chairman of the Board

Dated: July 17, 1996

CITY OF IRVINE

By

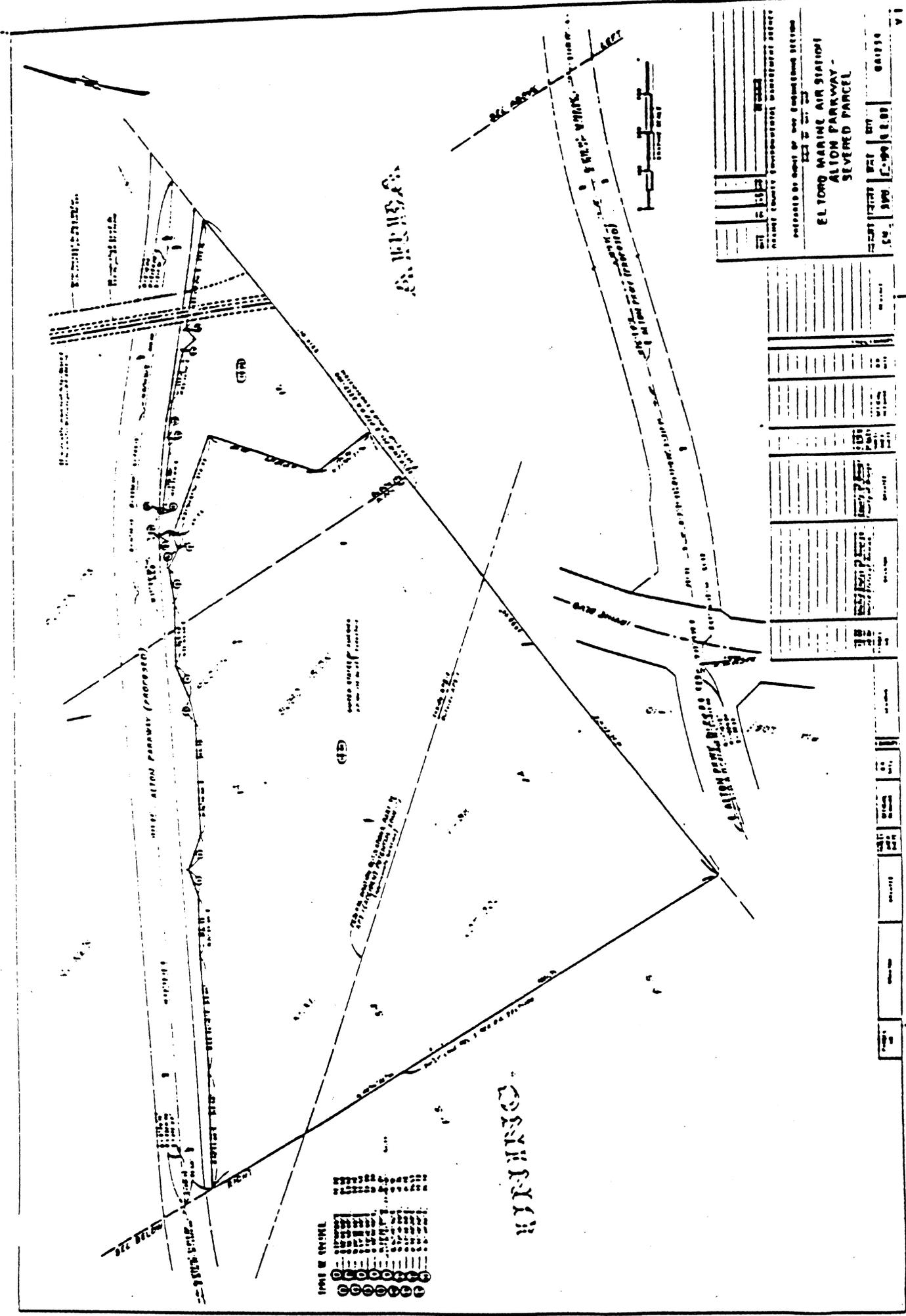
Title

*Michael H. ...*  
*Mayor*

Dated: Feb. 19, 1997

CITY OF TUSTIN

By *William Hunter*  
Title City Manager



PREPARED BY: [ ]  
 DRAWN BY: [ ]  
 CHECKED BY: [ ]  
 PROJECT: EL TORO MARINE AIR STATION - ALTON PARKWAY - SEVERED PARCEL  
 SHEET NO.: 100  
 DATE: 1948

EXHIBIT A

REVISED PLAN MAP



**RECORDING REQUESTED BY:**

**WHEN RECORDED MAIL TO:**

- **Dedication Conservation Easement Form**

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(Space Above for Recorder's Use)

FREE RECORDING  
GOVERNMENT CODE SECTION 6103

**CONSERVATION EASEMENT DEED**

THIS CONSERVATION EASEMENT DEED is made this \_\_\_ day of \_\_\_\_\_, by The Irvine Company, a Michigan corporation ("Grantor") in favor of THE CALIFORNIA DEPARTMENT OF FISH AND GAME ("Grantee") a department of the Resources Agency of the State of California.

**WITNESSETH**

WHEREAS, Grantor is the sole owner in fee simple of certain real property located in the County of Orange, State of California, more particularly described on Exhibit "A" attached hereto, containing \_\_\_ acres known as the Habitat Conservation Area and referred to herein as the "Conserved Lands"; and

WHEREAS, Grantee is a public agency empowered to acquire, administer, operate and maintain land and facilities for protecting habitat required to maintain ecosystems essential for the preservation of species of plants and animals, is authorized to hold conservation easements for these purposes and is a qualified organization at the time of conveyance under Section 170(h) of the Internal Revenue Code of 1986, as amended, or any successor provision then applicable; and

WHEREAS, the Conserved Lands possess significant ecological and native habitat values (collectively, "Conservation Values") of great importance to Grantor and Grantee and the preservation of the Conserved Lands is for the scenic enjoyment of the general public and will be

carried out pursuant to clearly delineated federal, state and local government conservation policy, as set forth in the Central/Coastal Subregion Natural Communities Conservation Plan/Habitat Conservation Plan ("NCCP/HCP") dated \_\_\_\_\_, 1996, thereby yielding significant public benefits; and

WHEREAS, the Conserved Lands have been identified as containing ecologically significant habitat communities, which Grantor and Grantee desire to conserve as provided for in the NCCP/HCP and the NCCP/HCP Implementation Agreement dated \_\_\_\_\_, 1996 (all further references to the NCCP/HCP in this document shall mean the NCCP/HCP and the NCCP/HCP Implementation Agreement); and

WHEREAS, Grantor intends to convey to the Grantee this Conservation Easement for the purpose of preserving the Conservation Values of the Conserved Lands as identified in the NCCP/HCP; and

WHEREAS, Grantee agrees by accepting this grant to honor the intentions of Grantor stated herein and to conserve in perpetuity the Conservation Values of the Conserved Lands in accordance with the terms of this Conservation Easement;

NOW, THEREFORE, in consideration of the above and in the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the laws of the California and Civil Code Section 815, et seq., Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Conserved Lands of the nature and character and to the extent hereinafter set forth ("Conservation Easement").

1. PURPOSE.

It is the purpose of this Conservation Easement to assure that the Conserved Lands will be retained forever in an open space condition consistent with and in furtherance of the Reserve System and Adaptive Management provisions of the NCCP/HCP, and to prevent any use of the Conserved Lands, other than as specifically allowed herein, that will significantly impair or interfere with the Conservation Values of the Conserved Lands. Grantor intends that this Conservation Easement: (I) will assure that the Conserved Lands will be used for such activities as are consistent with the purpose of this Conservation Easement, and (ii) will assure that the uses of Conserved Lands will be consistent with and in furtherance of the Reserve System and Adaptive Management provisions of the NCCP/HCP (including NCCP/HCP provisions regarding the duration of Adaptive Management obligations). The Conserved Lands are depicted on Exhibit \_\_\_\_\_. In the event Grantee elects not to accept this Grant of Conservation Easement, the provisions of Section 8 shall govern the selection of an alternative Grantee.

2. RIGHTS AND OBLIGATIONS OF GRANTEE

To accomplish the purpose of this Conservation Easement, the following rights and obligations are conveyed to Grantee by this Conservation Easement:

- (a) To conserve the Conserved Lands in a manner consistent with this

Conservation Easement and with the NCCP/HCP, the terms of which are hereby incorporated by reference and on file with the Clerk of the Board of Supervisors of the County of Orange,

(b) For Grantee and such designee of Grantee on behalf of the NCCP/HCP Non-Profit Corporation, to enter upon and traverse all portions of the Conserved Lands to carry out the NCCP/HCP Adaptive Management Program for the term of the NCCP/HCP Implementation Agreement, and to monitor the compliance of Grantor or its successors with and otherwise enforce the terms of this Conservation Easement in accordance with this document and the NCCP/HCP; provided that (i) such entry shall not unreasonably impair or interfere with Grantor's use and quiet enjoyment of the Conserved Lands; (ii) such entry shall not unreasonably interfere with Grantor's use and enjoyment of Grantor's adjoining lands; (iii) such entry shall not unreasonably disturb natural resources on the Conserved Lands; and (iv) except in emergency situations, Grantee shall give Grantor forty-eight (48) hours' notice prior to any such entry; and

(c) To prevent any activity on or use of the Conserved Lands that is inconsistent with the purpose of this Conservation Easement and to require that any person damaging the Conserved Lands restore such damage.

### 3. PROHIBITED AND ALLOWED USES

Subject to the provisions of this Paragraph and of Paragraph 4 herein, the use of the Conserved Lands shall be limited in perpetuity to natural open space for habitat protection, passive recreational use and educational activities consistent with the habitat protection requirements of the NCCP/HCP, and resource conservation uses. Any activity or use of the Conserved Lands inconsistent with the purposes of this Conservation Easement is prohibited, including, but not limited to, the following:

- (a) use of herbicides or biocides except for topical herbicides and biocides approved by the Grantee solely for habitat enhancement and restoration purposes pursuant to the NCCP/HCP;
- (b) surface mining;
- (c) use of the surface for oil exploration or production activities;
- (d) introduction of exotic plant species;
- (e) watering in excess of the management recommendations of the management entity for the NCCP/HCP or its successors;
- (f) livestock grazing inconsistent with the grazing management program(s) or restoration and enhancement program approved pursuant to the NCCP/HCP;
- (g) removal of native vegetation except pursuant to the management recommendations of the management entity for the NCCP/HCP or its successors;
- (h) grading;

(I) paving; and

(j) installation of structures such as signs (other than public recreational use trail signs and educational exhibits consistent with the habitat protection requirements of the NCCP/HCP), buildings, etc.

Notwithstanding the above, the following activities shall be expressly allowed on the Conserved Lands subject to applicable governmental regulatory requirements and the applicable provisions of the NCCP/HCP:

- (a) the removal of hazardous substances or conditions or diseased plants or trees;
- (b) the removal of existing vegetation as part of a program to restore native vegetation in accordance with the NCCP/HCP;
- (c) the removal of any invasive or non-native vegetation in accordance with the approved NCCP/HCP habitat restoration and enhancement plan;
- (d) the removal of any vegetation which constitutes or contributes to a fire hazard to neighboring properties if such removal is ordered or advised by governmental authorities;
- (e) prescribed burns and other short-term and long-term fire management actions carried out pursuant to the NCCP/HCP;
- (f) the repair, maintenance and removal of existing underground natural gas pipelines, utility or water lines, water supply and waste treatment facilities and similar uses in the manner specified in the NCCP/HCP and by successors to the rights and obligations of the NCCP/HCP;
- (g) the construction of new gas pipelines, utility or water lines protective of the habitat values of the Conserved Lands in a manner consistent with and as specified in the NCCP/HCP;
- (h) livestock grazing pursuant to a grazing management program as provided for in the NCCP/HCP; and
- (I) ongoing orchard agricultural uses in existence on the effective date of the NCCP/HCP Implementation Agreement consistent with the NCCP/HCP.
- (j) such other land and species management actions determined by the NCCP Non-Profit to be required to carry out the NCCP/HCP Adaptive Management Program in accordance with the provisions of the NCCP/HCP Implementation Agreement.

To the extent practicable and consistent with public health and safety, Grantor shall consult with Grantee and with the United States Fish and Wildlife Service ("USFWS") prior to undertaking activities pursuant to (a), (d), (e), (f) and (g) above.

4. RESERVED RIGHTS

Grantor reserves to itself, and to its successors, assigns, agents and lessees, all rights accruing from its ownership of the Conserved Lands, including the right to grant or transfer all or a portion of its remaining interests in the fee lands subject to the provisions of this Conservation Easement and the NCCP/HCP, including the right to engage in or permit or invite others to engage in all uses of the Conserved Lands that are not expressly prohibited herein and are not inconsistent with the purpose of this Conservation Easement. Without in any way limiting the foregoing, Grantor hereby reserves the right to do all of the following:

(a) To close or otherwise restrict public access at any time to the Conserved Lands whenever Grantor determines it is necessary to do so in the interest of the preservation of the Conservation Values or for site security or public safety reasons.

(b) To enter on, pass over, and egress from the Conserved Lands as necessary to protect any right and to carry out Grantor's obligations or operations, including the continuation of ongoing orchard agricultural operations and livestock grazing consistent with the NCCP/HCP.

(c) To remove or demolish any unauthorized structure or other improvement located on the Conserved Lands that may conflict with the Grantor's obligations or operations.

(d) To build and operate development activities, including golf courses, fuel modification zones residential, commercial and industrial uses adjacent to the Conserved Lands even if the operation of such uses results in incidental indirect impacts to the Conserved Lands. The ordinary incidental indirect impacts of residential housing and other development activities in proximity to the Conserved Lands shall expressly be allowed, subject to standard local government requirements for such uses.

5. NO FINANCIAL BURDEN ON GRANTEE

Grantee shall not be obligated by the terms of this Conservation Easement to maintain, improve or otherwise expend any funds in connection with the Conserved Lands, except for such costs, if any that are incurred by Grantee in monitoring compliance with the terms of this Conservation Easement. Grantee shall cooperate with Grantor by acknowledging receipt of Conservation Easement on any Internal Revenue Service and/or State of California tax forms and any other tax-related forms or documents reasonably required by Grantor.

6. REMEDIES

6.1 Notice and Right to Cure. If a party hereto determines that another party is in violation of the terms of this Conservation Easement or that a violation is threatened, such party shall give written notice to the other party and USFWS of such violation and demand corrective action sufficient to cure the violation. The party receiving such notice shall have sixty (60) days from receipt of such notice in which to cure such violation or in which to diligently begin to cure such violation. In furtherance of the mutual commitments made in the NCCP/HCP Implementation Agreement, the USFWS shall have the right to enforce the terms of this Conservation Easement as

provided herein.

6.2 Judicial Relief. If a party fails to cure a violation within sixty (60) days after receipt of notice thereof from the other party, or, under circumstances where the violation cannot reasonably be cured within a sixty (60) day period a party fails to continue diligently to cure such violation until finally cured, the aggrieved party and/or USFWS may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, ex parte if necessary, by temporary or permanent injunction to enjoin any damage or injury to any Conservation Values protected by this Conservation Easement, and to require the restoration of the Conserved Lands to the condition that existed prior to any such injury. If a party, in its good faith and reasonable discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Conserved Lands, such party may pursue its remedies under this paragraph without waiting for the expiration of the sixty (60) day cure period with whatever prior notice to the other party that is reasonable under the circumstances. Each party's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Conservation Easement. Each party further agrees that the other party's remedies at law for any violation of the terms of this Conservation Easement are inadequate and that such party shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which such party may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Each party's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. Furthermore, the provisions of Civil Code Section 815, et seq., are incorporated herein by this reference and this grant is made subject to all of the rights and remedies set forth therein.

6.3 Costs of Enforcement. Any costs incurred by either party in enforcing the terms of this Conservation Easement against the other, including, without limitation, costs of suit and attorneys' fees, and any costs of restoration necessitated by a violation of the terms of this Conservation Easement, shall be borne by the breaching party. If a party prevails in any action to enforce the terms of this Conservation Easement, such party's costs of suit including, without limitation, attorneys' fees, shall be borne by the other party; provided, however, that costs and attorneys' fees recoverable against the United States shall be governed by applicable federal law.

6.4 Grantee's Discretion. Enforcement of the terms of this Conservation Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any of Grantee's rights under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach shall impair such right or remedy or be construed as a waiver.

6.5 Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to

or change in the Conserved Lands resulting from causes beyond Grantor's control, including, without limitation, acts of third parties beyond Grantor's reasonable control, fire, drought, flood, storm, disease, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Conserved Lands resulting from such causes.

## 7. LIABILITIES

This conveyance is made and accepted upon the express condition that the Grantee, its agencies, departments, officers, agents, and employees, is to be free from all liability and claim for damage by reason of any injury to any person or persons, including Grantor, or to property of any kind whatsoever and to whomsoever belonging, including Grantor, from any cause or causes whatsoever, except to the extent such liability or claim arises from the negligence or willful misconduct of the Grantee, while in, upon, or in any way connected with the Conserved Lands. Grantor hereby covenants and agrees to indemnify and hold harmless Grantee, its agencies, departments, officers, agents, and employees, from all liability, loss, cost, and obligations on account of or arising out of such injuries or losses as a result of Grantor's negligent acts, willful misconduct or omissions. Grantee shall have no right or control over, nor duties and responsibilities with respect to the Conserved Lands which would subject the Grantee to any liability occurring upon the Conserved Lands by virtue of the fact that the right of the Grantee to enter the Conserved Lands is strictly limited to preventing uses inconsistent with the interest granted and does not include the right to enter the Conserved Lands for the purposes of correcting any dangerous condition as defined by California Government Code Section 830. If the Grantee enters upon the Conserved Lands for any purpose other than the immediately preceding provisions regarding inconsistent uses to carry out NCCP/HCP adaptive management actions as allowed pursuant to Section 4, Grantee agrees to indemnify and hold harmless Grantor, its agencies, departments, officers, agents and employees from all liability, loss, cost and obligations on account of such entry on the Conserved Lands.

## 8. ASSIGNMENT

This Conservation Easement is transferable as provided in this Section 9. In the event of a transfer by Grantee, Grantee shall give Grantor and USFWS at least thirty (30) days prior written notice of the transfer and may assign its rights and obligations under this Conservation Easement only to an organization acceptable to USFWS that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under California Civil Code Section 815, et seq. (or any successor provision then applicable), including a perpetual right of entry, upon reasonable notice, on the part of USFWS identical to that granted to Grantee by the terms of this Conservation Easement. As a condition of such transfer, Grantee shall require that the transferee of the easement sign an assignment or other instrument agreeing to carry out the conservation provisions of this Conservation Easement. Prior to any such transfer, Grantee shall obtain the written approval of the USFWS of the proposed transferee. Grantee shall not release, modify, relinquish or abandon its rights and obligations under this Conservation Easement without the prior written consent of USFWS.

In the event of a transfer by Grantor, Grantor agrees to incorporate by reference the terms of this Conservation Easement in any deed or other legal instrument by which Grantor divests itself of any interest in all or a portion of the Conserved Lands, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee and USFWS of the transfer of any interest at least thirty (30) days prior to the date of such transfer. Other than for claims cause by Grantor prior to the effective date of such assignment, Grantor shall have no further liability or responsibility to Grantee or any other party after the effective date of such agreement. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and insure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns, and shall continue as servitude running in perpetuity with the Conserved Lands. The USFWS is a third-party beneficiary of this Grant of Conservation Easement, and shall have the same rights as the Parties, including all of the Grantee rights enumerated in Section 2, to enforce the terms of this Conservation Easement. Upon assignment pursuant to the provisions of this paragraph, the assigning party shall be relieved of all obligations under this Conservation Easement, including, but not limited to, the obligations of Paragraphs 7 and 8 hereof.

9. NOTICES

Any notice, demand, request, consent, approval, or communication that a party desires or is required to give to the other parties shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor: The Irvine Company  
550 Newport Center Drive  
Newport Beach, CA 92660  
Attn: General Counsel, Land Development Companies

To Grantee: The State of California  
Department of Fish and Game  
Attention: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To USFWS: Field Supervisor  
Carlsbad Field Office  
U.S. Fish and Wildlife Service  
2730 Loker Avenue West  
Carlsbad, California 92008

or to such other address or the attention of such other officer as one party from time to time shall designate by written notice to the others. Such notice shall be deemed effective as of the date of

receipt, if personally delivered, or three (3) business days after sending by first class mail, if mailed

10 RECORDATION

Grantee shall promptly record this instrument in the official records of Orange County, California, and may re-record it at any time as may be required to preserve its rights in this Conservation Easement.

11. GENERAL PROVISIONS

(a) Controlling Law. The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of California.

(b) Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be construed in favor of the grant to effect the purpose of this Conservation Easement and the policy and purpose of Civil Code Section 815, et seq. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability. If any provision of this Conservation Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Conservation Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(d) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement.

(e) No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

(f) Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

IN WITNESS WHEREOF, Grantor and Grantee have entered into this Easement the day and year first above written.

THE IRVINE COMPANY

THE STATE OF CALIFORNIA

By \_\_\_\_\_

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

Title: \_\_\_\_\_

STATE OF CALIFORNIA )  
 ) ss  
COUNTY OF ORANGE )

On \_\_\_\_\_, before me \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, Attorney-in-Fact for The Irvine Company, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within Conservation Easement Deed and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_ (Seal)

STATE OF CALIFORNIA )  
 ) ss  
COUNTY OF ORANGE )

On \_\_\_\_\_, before me \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, for the State of California, Department of Fish and Game, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within Conservation Easement Deed and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_ (Seal)

**RECORDING REQUESTED BY:**

**WHEN RECORDED MAIL TO:**

- **Donation Conservation Easement Form**

---

(Space Above for Recorder's Use)

FREE RECORDING  
GOVERNMENT CODE SECTION 6103

**CONSERVATION EASEMENT DEED**

THIS CONSERVATION EASEMENT DEED is made this \_\_\_ day of \_\_\_\_\_, by The Irvine Company, a Michigan corporation ("Grantor") in favor of THE CALIFORNIA DEPARTMENT OF FISH AND GAME ("Grantee") a department of the Resources Agency of the State of California.

**WITNESSETH**

WHEREAS, Grantor is the sole owner in fee simple of certain real property located in the County of Orange, State of California, more particularly described on Exhibit "A" attached hereto, containing \_\_\_ acres known as the Habitat Conservation Area and referred to herein as the "Conserved Lands"; and

WHEREAS, Grantee is a public agency empowered to acquire, administer, operate and maintain land and facilities for protecting habitat required to maintain ecosystems essential for the preservation of species of plants and animals, is authorized to hold conservation easements for these purposes and is a qualified organization at the time of conveyance under Section 170(h) of the Internal Revenue Code of 1986, as amended, or any successor provision then applicable; and

WHEREAS, the Conserved Lands possess significant ecological and native habitat values (collectively, "Conservation Values") of great importance to Grantor and Grantee and the preservation of the Conserved Lands is for the scenic enjoyment of the general public and will be

carried out pursuant to clearly delineated federal, state and local government conservation policy, as set forth in the Central/Coastal Subregion Natural Communities Conservation Plan/Habitat Conservation Plan ("NCCP/HCP") dated \_\_\_\_\_, 1996, thereby yielding significant public benefits; and

WHEREAS, the Conserved Lands have been identified as containing ecologically significant habitat communities, which Grantor and Grantee desire to conserve as provided for in the NCCP/HCP and the NCCP/HCP Implementation Agreement dated \_\_\_\_\_, 1996 (all further references to the NCCP/HCP in this document shall mean the NCCP/HCP and the NCCP/HCP Implementation Agreement); and

WHEREAS, Grantor intends to convey to the Grantee this Conservation Easement for the purpose of preserving the Conservation Values of the Conserved Lands as identified in the NCCP/HCP; and

WHEREAS, Grantor intends that conveyance of the Conservation Values of the Conserved Lands shall qualify as a conservation contribution under Section 170(h) of the Internal Revenue Code of 1986, as amended, or any successor provision then applicable; and

WHEREAS, Grantee agrees by accepting this grant to honor the intentions of Grantor stated herein and to conserve in perpetuity the Conservation Values of the Conserved Lands in accordance with the terms of this Conservation Easement;

NOW, THEREFORE, in consideration of the above and in the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the laws of the California and Civil Code Section 815, et seq., Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Conserved Lands of the nature and character and to the extent hereinafter set forth ("Conservation Easement").

1. PURPOSE.

It is the purpose of this Conservation Easement to assure that the Conserved Lands will be retained forever in an open space condition consistent with and in furtherance of the Reserve System and Adaptive Management provisions of the NCCP/HCP, and to prevent any use of the Conserved Lands, other than as specifically allowed herein, that will significantly impair or interfere with the Conservation Values of the Conserved Lands. Grantor intends that this Conservation Easement: (i) will assure that the Conserved Lands will be used for such activities as are consistent with the purpose of this Conservation Easement, and (ii) will assure that the uses of Conserved Lands will be consistent with and in furtherance of the Reserve System and Adaptive Management provisions of the NCCP/HCP (including NCCP/HCP provisions regarding the duration of Adaptive Management obligations). The Conserved Lands are depicted on Exhibit \_\_\_\_\_. In the event Grantee elects not to accept this Grant of Conservation Easement, the provisions of Section 8 shall govern the selection of an alternative Grantee.

## 2. RIGHTS AND OBLIGATIONS OF GRANTEE

To accomplish the purpose of this Conservation Easement, the following rights and obligations are conveyed to Grantee by this Conservation Easement:

- (a) To conserve the Conserved Lands in a manner consistent with this Conservation Easement and with the NCCP/HCP, the terms of which are hereby incorporated by reference and on file with the Clerk of the Board of Supervisors of the County of Orange;
- (b) For Grantee and such designee of Grantee on behalf of the NCCP/HCP Non-Profit Corporation, to enter upon and traverse all portions of the Conserved Lands to carry out the NCCP/HCP Adaptive Management Program for the term of the NCCP/HCP Implementation Agreement, and to monitor the compliance of Grantor or its successors with and otherwise enforce the terms of this Conservation Easement in accordance with this document and the NCCP/HCP, provided that (i) such entry shall not unreasonably impair or interfere with Grantor's use and quiet enjoyment of the Conserved Lands; (ii) such entry shall not unreasonably interfere with Grantor's use and enjoyment of Grantor's adjoining lands; (iii) such entry shall not unreasonably disturb natural resources on the Conserved Lands; and (iv) except in emergency situations, Grantee shall give Grantor forty-eight (48) hours' notice prior to any such entry; and
- (c) To prevent any activity on or use of the Conserved Lands that is inconsistent with the purpose of this Conservation Easement and to require that any person damaging the Conserved Lands restore such damage.

## 3. PROHIBITED AND ALLOWED USES

Subject to the provisions of this Paragraph and of Paragraph 4 herein, the use of the Conserved Lands shall be limited in perpetuity to natural open space for habitat protection, passive recreational use and educational activities consistent with the habitat protection requirements of the NCCP/HCP, and resource conservation uses. Any activity or use of the Conserved Lands inconsistent with the purposes of this Conservation Easement is prohibited, including, but not limited to, the following:

- (a) use of herbicides or biocides except for topical herbicides and biocides approved by the Grantee solely for habitat enhancement and restoration purposes pursuant to the NCCP/HCP;
- (b) surface mining;
- (c) use of the surface for oil exploration or production activities;
- (d) introduction of exotic plant species;
- (e) watering in excess of the management recommendations of the management entity for the NCCP/HCP or its successors;
- (f) livestock grazing inconsistent with the grazing management program(s) or

restoration and enhancement programs approved pursuant to the NCCP/HCP;

(g) removal of native vegetation except pursuant to the management recommendations of the management entity for the NCCP/HCP or its successors;

(h) grading;

(I) paving; and

(j) installation of structures such as signs (other than public recreational use trail signs and educational exhibits consistent with the habitat protection requirements of the NCCP/HCP), buildings, etc.

Notwithstanding the above, the following activities shall be expressly allowed on the Conserved Lands subject to applicable governmental regulatory requirements and the applicable provisions of the NCCP/HCP:

(a) the removal of hazardous substances or conditions or diseased plants or trees;

(b) the removal of existing vegetation as part of a program to restore native vegetation in accordance with the NCCP/HCP;

(c) the removal of any invasive or non-native vegetation in accordance with the approved NCCP/HCP habitat restoration and enhancement plan;

(d) the removal of any vegetation which constitutes or contributes to a fire hazard to neighboring properties if such removal is ordered or advised by governmental authorities;

(e) prescribed burns and other short-term and long-term fire management actions carried out pursuant to the NCCP/HCP;

(f) the repair, maintenance and removal of existing underground natural gas pipelines, utility or water lines, water supply and waste treatment facilities and similar uses in the manner specified in the NCCP/HCP and by successors to the rights and obligations of the NCCP/HCP;

(g) the construction of new gas pipelines, utility or water lines protective of the habitat values of the Conserved Lands in a manner consistent with and as specified in the NCCP/HCP;

(h) livestock grazing pursuant to a grazing management program as provided for in the NCCP/HCP; and

(I) ongoing orchard agricultural uses in existence on the effective date of the NCCP/HCP Implementation Agreement consistent with the NCCP/HCP.

(j) such other land and species management actions determined by the NCCP Non-Profit to be required to carry out the NCCP/HCP Adaptive Management Program in accordance with the provisions of the NCCP/HCP Implementation Agreement.

To the extent practicable and consistent with public health and safety, Grantor shall consult with Grantee and with the United States Fish and Wildlife Service ("USFWS") prior to undertaking activities pursuant to (a), (d), (e) (f) and (g) above.

#### 4. RESERVED RIGHTS

Grantor reserves to itself, and to its successors, assigns, agents and lessees, all rights accruing from its ownership of the Conserved Lands, including the right to grant or transfer all or a portion of its remaining interests in the fee lands subject to the provisions of this Conservation Easement and the NCCP/HCP, including the right to engage in or permit or invite others to engage in all uses of the Conserved Lands that are not expressly prohibited herein and are not inconsistent with the purpose of this Conservation Easement. Without in any way limiting the foregoing, Grantor hereby reserves the right to do all of the following:

(a) To close or otherwise restrict public access at any time to the Conserved Lands whenever Grantor determines it is necessary to do so in the interest of the preservation of the Conservation Values or for site security or public safety reasons.

(b) To enter on, pass over, and egress from the Conserved Lands as necessary to protect any right and to carry out Grantor's obligations or operations, including the continuation of ongoing orchard agricultural operations and livestock grazing consistent with the NCCP/HCP.

(c) To remove or demolish any unauthorized structure or other improvement located on the Conserved Lands that may conflict with the Grantor's obligations or operations.

(d) To build and operate development activities, including golf courses, fuel modification zones residential, commercial and industrial uses adjacent to the Conserved Lands even if the operation of such uses results in incidental indirect impacts to the Conserved Lands. The ordinary incidental indirect impacts of residential housing and other development activities in proximity to the Conserved Lands shall expressly be allowed, subject to standard local government requirements for such uses.

#### 5. NO FINANCIAL BURDEN ON GRANTEE

Grantee shall not be obligated by the terms of this Conservation Easement to maintain, improve or otherwise expend any funds in connection with the Conserved Lands, except for such costs, if any that are incurred by Grantee in monitoring compliance with the terms of this Conservation Easement. Grantee shall cooperate with Grantor by acknowledging receipt of Conservation Easement on any Internal Revenue Service and/or State of California tax forms and any other tax-related forms or documents reasonably required by Grantor.

#### 6. REMEDIES

6.1 Notice and Right to Cure. If a party hereto determines that another party is in violation of the terms of this Conservation Easement or that a violation is threatened, such party shall give written notice to the other party and USFWS of such violation and demand corrective action sufficient to cure the violation. The party receiving such notice shall have sixty (60) days from receipt of such notice in which to cure such violation or in which to diligently begin to cure such violation. In furtherance of the mutual commitments made in the NCCP/HCP Implementation Agreement, the USFWS shall have the right to enforce the terms of this Conservation Easement as provided herein.

6.2 Judicial Relief. If a party fails to cure a violation within sixty (60) days after receipt of notice thereof from the other party, or, under circumstances where the violation cannot reasonably be cured within a sixty (60) day period a party fails to continue diligently to cure such violation until finally cured, the aggrieved party and/or USFWS may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, ex parte if necessary, by temporary or permanent injunction to enjoin any damage or injury to any Conservation Values protected by this Conservation Easement, and to require the restoration of the Conserved Lands to the condition that existed prior to any such injury. If a party, in its good faith and reasonable discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Conserved Lands, such party may pursue its remedies under this paragraph without waiting for the expiration of the sixty (60) day cure period with whatever prior notice to the other party that is reasonable under the circumstances. Each party's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Conservation Easement. Each party further agrees that the other party's remedies at law for any violation of the terms of this Conservation Easement are inadequate and that such party shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which such party may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Each party's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. Furthermore, the provisions of Civil Code Section 815, et seq., are incorporated herein by this reference and this grant is made subject to all of the rights and remedies set forth therein.

6.3 Costs of Enforcement. Any costs incurred by either party in enforcing the terms of this Conservation Easement against the other, including, without limitation, costs of suit and attorneys' fees, and any costs of restoration necessitated by a violation of the terms of this Conservation Easement, shall be borne by the breaching party. If a party prevails in any action to enforce the terms of this Conservation Easement, such party's costs of suit including, without limitation, attorneys' fees, shall be borne by the other party, provided, however, that costs and attorneys' fees recoverable against the United States shall be governed by applicable federal law.

6.4 Grantee's Discretion. Enforcement of the terms of this Conservation Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement shall not be deemed or construed to be a waiver by Grantee of such term or of any

subsequent breach of the same or any other term of this Conservation Easement or of any of Grantee's rights under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach shall impair such right or remedy or be construed as a waiver.

6.5 Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Conserved Lands resulting from causes beyond Grantor's control, including, without limitation, acts of third parties beyond Grantor's reasonable control, fire, drought, flood, storm, disease, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Conserved Lands resulting from such causes.

## 7. LIABILITIES

This conveyance is made and accepted upon the express condition that the Grantee, its agencies, departments, officers, agents, and employees, is to be free from all liability and claim for damage by reason of any injury to any person or persons, including Grantor, or to property of any kind whatsoever and to whomsoever belonging, including Grantor, from any cause or causes whatsoever, except to the extent such liability or claim arises from the negligence or willful misconduct of the Grantee, while in, upon, or in any way connected with the Conserved Lands. Grantor hereby covenants and agrees to indemnify and hold harmless Grantee, its agencies, departments, officers, agents, and employees, from all liability, loss, cost, and obligations on account of or arising out of such injuries or losses as a result of Grantor's negligent acts, willful misconduct or omissions. Grantee shall have no right or control over, nor duties and responsibilities with respect to the Conserved Lands which would subject the Grantee to any liability occurring upon the Conserved Lands by virtue of the fact that the right of the Grantee to enter the Conserved Lands is strictly limited to preventing uses inconsistent with the interest granted and does not include the right to enter the Conserved Lands for the purposes of correcting any dangerous condition as defined by California Government Code Section 830. If the Grantee enters upon the Conserved Lands for any purpose other than the immediately preceding provisions regarding inconsistent uses to carry out NCCP/HCP adaptive management actions as allowed pursuant to Section 4, Grantee agrees to indemnify and hold harmless Grantor, its agencies, departments, officers, agents and employees from all liability, loss, cost and obligations on account of such entry on the Conserved Lands.

## 8. ASSIGNMENT

This Conservation Easement is transferable as provided in this Section 9. In the event of a transfer by Grantee, Grantee shall give Grantor and USFWS at least thirty (30) days prior written notice of the transfer and may assign its rights and obligations under this Conservation Easement only to an organization acceptable to USFWS that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under California Civil Code Section 815, et seq. (or any successor provision then applicable), including a perpetual right of entry, upon reasonable notice, on

the part of USFWS identical to that granted to Grantee by the terms of this Conservation Easement. As a condition of such transfer, Grantee shall require that the transferee of the easement sign an assignment or other instrument agreeing to carry out the conservation provisions of this Conservation Easement. Prior to any such transfer, Grantee shall obtain the written approval of the USFWS of the proposed Transferee. Grantee shall not release, modify, relinquish or abandon its rights and obligations under this Conservation Easement without the prior written consent of USFWS.

In the event of a transfer by Grantor, Grantor agrees to incorporate by reference the terms of this Conservation Easement in any deed or other legal instrument by which Grantor divests itself of any interest in all or a portion of the Conserved Lands, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee and USFWS of the transfer of any interest at least thirty (30) days prior to the date of such transfer. Other than for claims cause by Grantor prior to the effective date of such assignment, Grantor shall have no further liability or responsibility to Grantee or any other party after the effective date of such agreement. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and insure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns, and shall continue as servitude running in perpetuity with the Conserved Lands. The USFWS is a third-party beneficiary of this Grant of Conservation Easement, and shall have the same rights as the Parties, including all of the Grantee rights enumerated in Section 2, to enforce the terms of this Conservation Easement. Upon assignment pursuant to the provisions of this paragraph, the assigning party shall be relieved of all obligations under this Conservation Easement, including, but not limited to, the obligations of Paragraphs 7 and 8 hereof.

9. NOTICES

Any notice, demand, request, consent, approval, or communication that a party desires or is required to give to the other parties shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor: The Irvine Company  
550 Newport Center Drive  
Newport Beach, CA 92660  
Attn: General Counsel, Land Development Companies

To Grantee: The State of California  
Department of Fish and Game  
Attention: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To USFWS: Field Supervisor  
Carlsbad Field Office  
U.S. Fish and Wildlife Service  
2730 Loker Avenue West  
Carlsbad, California 92008

or to such other address or the attention of such other officer as one party from time to time shall designate by written notice to the others. Such notice shall be deemed effective as of the date of receipt, if personally delivered, or three (3) business days after sending by first class mail, if mailed.

10. RECORDATION

Grantee shall promptly record this instrument in the official records of Orange County, California, and may re-record it at any time as may be required to preserve its rights in this Conservation Easement.

11. GENERAL PROVISIONS

(a) Controlling Law. The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of California.

(b) Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be construed in favor of the grant to effect the purpose of this Conservation Easement and the policy and purpose of Civil Code Section 815, et seq. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability. If any provision of this Conservation Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Conservation Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(d) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement.

(e) No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

(f) Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.



STATE OF CALIFORNIA )  
 ) ss  
COUNTY OF ORANGE )

On \_\_\_\_\_, before me \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, for the State of California, Department of Fish and Game, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within Conservation Easement Deed and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_ (Seal)

**RECORDING REQUESTED BY:**

**WHEN RECORDED MAIL TO:**

- **Special Linkage Conservation Easement Form**

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(Space Above for Recorder's Use)

FREE RECORDING  
GOVERNMENT CODE SECTION 6103

**CONSERVATION EASEMENT DEED**

THIS CONSERVATION EASEMENT DEED is made this \_\_\_ day of \_\_\_\_\_, by The Irvine Company, a Michigan corporation ("Grantor") in favor of THE CALIFORNIA DEPARTMENT OF FISH AND GAME ("Grantee") a department of the Resources Agency of the State of California.

**WITNESSETH**

WHEREAS, Grantor is the sole owner in fee simple of certain real property located in the County of Orange, State of California, known as Special Linkage ("Special Linkage") and more particularly described on Exhibit "A", containing \_\_\_\_\_ acres of coastal sage scrub referred to herein as the "Conserved Lands"; and

WHEREAS, Grantee is a public agency empowered to acquire, administer, operate and maintain land and facilities for protecting habitat required to maintain ecosystems essential for the preservation of species of plants and animals, is authorized to hold conservation easements for these purposes and is a qualified organization at the time of conveyance under Section 170(h) of the Internal Revenue Code of 1986, as amended, or any successor provision then applicable; and

WHEREAS, the Conserved Lands have been identified as having significant connectivity values for facilitation of wildlife movement between and among habitat in the NCCP/HCP Reserve (collectively, "Conservation Values") as set forth in the NCCP/HCP and the NCCP/HCP Implementation Agreement dated \_\_\_\_\_, 1996, (all further references to the

NCCP/HCP in this document shall mean the NCCP/HCP and the NCCP/HCP Implementation Agreement); and

WHEREAS, Grantor intends to convey to the Grantee this Conservation Easement for the purpose of providing the Connectivity Values of the Conserved Lands as identified in the NCCP/HCP in manner consistent with the NCCP/HCP and consistent with the long-term operational needs of golf courses in the vicinity of the Conserved Lands;

WHEREAS, Grantee agrees by accepting this grant to honor the intentions of Grantor stated herein and to conserve in perpetuity the Conservation Values of the Conserved Lands in accordance with the terms of this Conservation Easement;

NOW, THEREFORE, in consideration of the above and in the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the laws of the California and Civil Code Section 815, et seq., Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Conserved Lands of the nature and character and to the extent hereinafter set forth ("Conservation Easement").

1. PURPOSE.

[The "Purpose" clause of each Special Linkage Conservation Easement will incorporate the substantive provisions of Section 6.1 (a) - (d) of The Implementation Agreement applicable to the particular Special Linkage Area.]

2. CONSERVED LANDS

[The specific land areas and applicable habitat protection provisions identified and provided for in Section 6.1 (a) - (d) of The Implementation Agreement.]

3. RIGHTS AND OBLIGATIONS OF GRANTEE

To accomplish the purpose of this Conservation Easement, the following rights and obligations are conveyed to Grantee by this Conservation Easement:

(a) To conserve the Conserved Lands in a manner consistent with this Conservation Easement and with the NCCP/HCP, the terms of which are hereby incorporated by reference and on file with the Clerk of the Board of Supervisors of the County of Orange;

(b) To enter upon and traverse all portions of the Conserved Lands and to monitor the compliance of Grantor or its successors with and otherwise enforce the terms of this Conservation Easement in accordance with this document and the NCCP/HCP; provided that (i) such entry shall not unreasonably impair or interfere with Grantor's use and quiet enjoyment of the Conserved Lands; (ii) such entry shall not unreasonably interfere with Grantor's use and enjoyment of Grantor's adjoining lands; (iii) such entry shall not unreasonably disturb natural resources on the Conserved Lands; and (iv) except in emergency situations, Grantee shall be given Grantor forty-eight (48) hours' notice prior to any such entry; and

(c) To prevent any activity on or use of the Conserved Lands that is inconsistent with the purpose of this Conservation Easement and to require that any person damaging the Conserved Lands restore such damage.

#### 4. PROHIBITED AND ALLOWED USES

Subject to the provisions of this Paragraph and of Paragraph 5 herein, the use of the Conserved Lands shall be limited in perpetuity to natural open space for habitat protection, passive recreational use and educational activities consistent with the habitat protection requirements of the NCCP/HCP, and resource conservation uses. Any activity or use of the Conserved Lands inconsistent with the purposes of this Conservation Easement is prohibited, including, but not limited to, the following:

(a) use of herbicides or biocides except for topical herbicides and biocides approved by the Grantee solely for habitat enhancement and restoration purposes pursuant to the NCCP/HCP;

(b) surface mining;

(c) use of the surface for oil exploration or production activities;

(d) introduction of exotic plant species;

(e) watering in excess of the management recommendations of the management entity for the NCCP/HCP or its successors;

(f) livestock grazing inconsistent with the grazing management program(s) or restoration and enhancement programs approved pursuant to the NCCP/HCP;

(g) removal of native vegetation except pursuant to the management recommendations of the management entity for the NCCP/HCP or its successors;

(h) grading;

(I) paving; and

(j) installation of structures such as signs (other than public recreational use trail signs and educational exhibits consistent with the habitat protection requirements of the NCCP/HCP), buildings, etc.

Notwithstanding the above, the following activities shall be expressly allowed on the Conserved Lands subject to applicable governmental regulatory requirements and the applicable provisions of the NCCP/HCP:

(a) the removal of hazardous substances or conditions or diseased plants or trees;

(b) the removal of existing vegetation as part of a program to restore native

vegetation in accordance with the NCCP/HCP;

(c) the removal of any invasive or non-native vegetation in accordance with the approved NCCP/HCP habitat restoration and enhancement management plan pursuant to the terms of The Implementation Agreement;

(d) the removal of any vegetation which constitutes or contributes to a fire hazard to neighboring properties if such removal is ordered or advised by governmental authorities or otherwise required pursuant to governmental programs or governmental recommended practices;

(e) prescribed burns and other short-term and long-term fire management actions carried out pursuant to the NCCP/HCP;

(f) the repair, maintenance and removal of existing underground natural gas pipelines, utility or water lines, water supply and waste treatment facilities and similar uses in the manner specified in the NCCP/HCP and by successors to the rights and obligations of the NCCP/HCP;

(g) the construction of new utility or water lines or other infrastructure to serve new or existing development, planned and constructed in a manner consistent with the NCCP/HCP provisions governing new infrastructure within the NCCP/HCP Reserve System where such new infrastructure would significantly impact Conserved CSS or NCCP/HCP connectivity values defined in this document;

(h) the ordinary incidental removal of golf balls ; and

(I) incidental impacts of golf course play, landscaping and operations.

To the extent practicable and consistent with public health and safety, Grantor shall consult with Grantee and with the United States Fish and Wildlife Service ("USFWS") prior to undertaking activities pursuant to (a), (d), (e), (f) and (g) above.

## 5. RESERVED RIGHTS

Grantor reserves to itself, and to its successors, assigns, agents and lessees, all rights accruing from its ownership of the Conserved Lands, including the right to grant or transfer all or a portion of its remaining interests in the fee lands subject to the provisions of this Conservation Easement and the NCCP/HCP, including the right to engage in or permit or invite others to engage in all uses of the Conserved Lands that are not expressly prohibited herein and are not inconsistent with the purpose of this Conservation Easement. Without in any way limiting the foregoing, Grantor hereby reserves the right to do all of the following:

(a) To close or otherwise restrict public access at any time to the Conserved Lands whenever Grantor determines it is necessary to do so in the interest of the preservation of the Conservation Values or for site security or public safety reasons.

(b) To build and operate development activities, including golf courses, residential, commercial and industrial uses adjacent to the Conserved Lands even if the operation of such uses results in incidental indirect impacts to the Conserved Lands. The ordinary incidental indirect impacts of residential housing and other development activities in proximity to the Conserved Lands shall expressly be allowed, subject to standard local government requirements for such uses. With regard to golf course uses identified pursuant to the NCCP/HCP, Grantor or its successors in interest may, alter golf course design and ancillary facilities including the location of golf course facilities and holes within the present or future location of the Conserved Lands subject to the applicable special linkage provisions of the NCCP/HCP provided that Grantor or its successors in interest shall confer with USFWS and CDFG to insure that the habitat linkage benefits identified in the NCCP/HCP are maintained and provided further if, at any time, the total acreage for coastal sage scrub habitat is reduced to below \_\_\_\_\_ acres other than Acts of God, then the acreage of coastal sage scrub habitat acreage will be restored to \_\_\_\_\_ acres as soon as practicable in the manner specified in the NCCP/HCP for the restoration of such habitat types.

(c) To modify the boundaries of the Conserved Lands over time upon mutual agreement of the County of Orange and landowner and following consultation with USFWS and CDFG to insure that the habitat linkage benefits identified in the NCCP/HCP are maintained, to reflect adjustments in golf course use or design, provided that a minimum of \_\_\_\_\_ acres of coastal sage scrub shall be maintained within the Special Linkage as Conserved Lands.

## 6. NO FINANCIAL BURDEN ON GRANTEE

Grantee shall not be obligated by the terms of this Conservation Easement to maintain, improve or otherwise expend any funds in connection with the Conserved Lands, except for such costs, if any that are incurred by Grantee in monitoring compliance with the terms of this Conservation Easement. Grantee shall cooperate with Grantor by acknowledging receipt of Conservation Easement on any Internal Revenue Service and/or State of California tax forms and any other tax-related forms or documents reasonably required by Grantor.

## 7. REMEDIES

7.1 Notice and Right to Cure. If a party hereto determines that another party is in violation of the terms of this Conservation Easement or that a violation is threatened, such party shall give written notice to the other party and USFWS of such violation and demand corrective action sufficient to cure the violation. The party receiving such notice shall have sixty (60) days from receipt of such notice in which to cure such violation or in which to diligently begin to cure such violation. In furtherance of the mutual commitments made in the NCCP/HCP Implementation Agreement, the USFWS shall have the right to enforce the terms of this Conservation Easement as provided herein.

7.2 Judicial Relief. If a party fails to cure a violation within sixty (60) days after receipt of notice thereof from the other party, or, under circumstances where the violation cannot reasonably be cured within a sixty (60) day period a party fails to continue diligently to cure such violation until finally cured, the aggrieved party and USFWS may bring an action at law or in equity

in a court of competent jurisdiction to enforce the terms of this Conservation Easement, ex parte if necessary, by temporary or permanent injunction to enjoin any damage or injury to any Conservation Values protected by this Conservation Easement, and to require the restoration of the Conserved Lands to the condition that existed prior to any such injury. If a party, in its good faith and reasonable discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Conserved Lands, such party may pursue its remedies under this paragraph without waiting for the expiration of the sixty (60) day cure period with whatever prior notice to the other party that is reasonable under the circumstances. Each party's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Conservation Easement. Each party further agrees that the other party's remedies at law for any violation of the terms of this Conservation Easement are inadequate and that such party shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which such party may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Each party's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. Furthermore, the provisions of Civil Code Section 815, et seq., are incorporated herein by this reference and this grant is made subject to all of the rights and remedies set forth therein.

7.3 Costs of Enforcement. Any costs incurred by either party in enforcing the terms of this Conservation Easement against the other, including, without limitation, costs of suit and attorneys' fees, and any costs of restoration necessitated by a violation of the terms of this Conservation Easement, shall be borne by the breaching party. If a party prevails in any action to enforce the terms of this Conservation Easement, such party's costs of suit including, without limitation, attorneys' fees, shall be borne by the other party; provided, however, that costs and attorneys' fees recoverable against the United States shall be governed by applicable federal law.

7.4 Grantee's Discretion. Enforcement of the terms of this Conservation Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any of Grantee's rights under this Conservation Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach shall impair such right or remedy or be construed as a waiver.

7.5 Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Conserved Lands resulting from causes beyond Grantor's control, including, without limitation, acts of third parties beyond Grantor's reasonable control, fire, drought, flood, storm, disease, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Conserved Lands resulting from such causes.

## 8. LIABILITIES

This conveyance is made and accepted upon the express condition that the Grantee, its agencies, departments, officers, agents, and employees, is to be free from all liability and claim for damage by reason of any injury to any person or persons, including Grantor, or to property of any kind whatsoever and to whomsoever belonging, including Grantor, from any cause or causes whatsoever, except to the extent such liability or claim arises from the negligence or willful misconduct of the Grantee, while in, upon, or in any way connected with the Conserved Lands. Grantor hereby covenants and agrees to indemnify and hold harmless Grantee, its agencies, departments, officers, agents, and employees, from all liability, loss, cost, and obligations on account of or arising out of such injuries or losses as a result of Grantor's negligent acts, willful misconduct or omissions. Grantee shall have no right or control over, nor duties and responsibilities with respect to the Conserved Lands which would subject the Grantee to any liability occurring upon the Conserved Lands by virtue of the fact that the right of the Grantee to enter the Conserved Lands is strictly limited to preventing uses inconsistent with the interest granted and does not include the right to enter the Conserved Lands for the purposes of correcting any dangerous condition as defined by California Government Code Section 830. If the Grantee enters upon the Conserved Lands for any purpose other than the immediately preceding provisions regarding inconsistent uses, to carry out NCCP/HCP adaptive management actions as allowed pursuant to Section 4, Grantee agrees to indemnify and hold harmless Grantor, its agencies, departments, officers, agents and employees from all liability, loss, cost and obligations on account of such entry on the Conserved Lands.

## 9. ASSIGNMENT

This Conservation Easement is transferable as provided in this Section 9. In the event of a transfer by Grantee, Grantee shall give Grantor and USFWS at least thirty (30) days prior written notice of the transfer and may assign its rights and obligations under this Conservation Easement only to an organization acceptable to USFWS that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under California Civil Code Section 815, et seq. (or any successor provision then applicable), including a perpetual right of entry, upon reasonable notice, on the part of USFWS identical to that granted to Grantee by the terms of this Conservation Easement. As a condition of such transfer, Grantee shall require that the transferee of the easement sign an assignment or other instrument agreeing to carry out the conservation provisions of this Conservation Easement. Prior to any such transfer, Grantee shall obtain the written approval of the USFWS of the proposed Transferee. Grantee shall not release, modify, relinquish or abandon its rights and obligations under this Conservation Easement without the prior written consent of USFWS.

In the event of a transfer by Grantor, Grantor agrees to incorporate by reference the terms of this Conservation Easement in any deed or other legal instrument by which Grantor divests itself of any interest in all or a portion of the Conserved Lands, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee and USFWS of the transfer of any interest at least thirty (30) days prior to the date of such transfer. Other than for

claims arising from actions or impacts caused by Grantor prior to the effective date of such assignment, Grantor shall have no further liability or responsibility to Grantee or any other party after the effective date of such agreement. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns, and shall continue as servitude running in perpetuity with the Conserved Lands. The USFWS is a third-party beneficiary of this Grant of Conservation Easement, and shall have the same rights as the Parties, including all of the Grantee rights enumerated in Section 3, to enforce the terms of this Conservation Easement. Upon assignment pursuant to the provisions of this paragraph, the assigning party shall be relieved of all obligations under this Conservation Easement, including, but not limited to, the obligations of Paragraphs 7 and 8 hereof.

10. NOTICES

Any notice, demand, request, consent, approval, or communication that a party desires or is required to give to the other parties shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor: The Irvine Company  
550 Newport Center Drive  
Newport Beach, CA 92660  
Attn: General Counsel, Land Development Companies

To Grantee: The State of California  
Department of Fish and Game  
Attention: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To USFWS: Field Supervisor  
Carlsbad Field Office  
U.S. Fish and Wildlife Service  
2730 Loker Avenue West  
Carlsbad, California 92008

or to such other address or the attention of such other officer as one party from time to time shall designate by written notice to the others. Such notice shall be deemed effective as of the date of

receipt, if personally delivered, or three (3) business days after sending by first class mail, if mailed.

11. RECORDATION

Grantee shall promptly record this instrument in the official records of Orange County, California, and may re-record it at any time as may be required to preserve its rights in this Conservation Easement.

12. GENERAL PROVISIONS

(a) Controlling Law. The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of California.

(b) Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be construed in favor of the grant to effect the purpose of this Conservation Easement and the policy and purpose of Civil Code Section 815, et seq. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability. If any provision of this Conservation Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Conservation Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(d) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement.

(e) No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

(f) Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.



STATE OF CALIFORNIA )  
 ) ss  
COUNTY OF ORANGE )

On \_\_\_\_\_, before me \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, for the State of California, Department of Fish and Game, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within Conservation Easement Deed and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_ (Seal)

PLEASE RECORD AND WHEN RECORDED RETURN TO:

City of Irvine  
Department of Community Development  
One Civic Center Plaza  
P.O. Box 19575  
Irvine, CA 92713  
Attn: City Manager

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(space above this line for recorders use only)

**OFFER OF DEDICATION**

**OPEN SPACE IMPLEMENTATION DISTRICT M  
PLANNING AREA 28**

THIS OFFER OF DEDICATION ("Offer") is made as of this \_\_\_\_ day of \_\_\_\_\_, 1996, by The Irvine Company, a Michigan corporation (hereinafter referred to as ("OFFEROR")) in favor of the City of Irvine, a California municipal corporation and chartered city (hereinafter referred to as "CITY"), with reference to the following facts:

**RECITALS**

A. OFFEROR is the owner of fee title to that certain real property (the "Property") described in Exhibit "A" and depicted on Exhibit "B" to this Agreement. The Property consists of approximately nine hundred sixty (960) acres of land.

B. By a vote of the people of the CITY held on June 7, 1988, the CITY adopted Initiative Resolution 88-1 directing the CITY, among other things, to adopt a phased dedication and compensating development opportunities program which links the dedication of specified conservation and open space areas to identified development areas of the CITY.

C. In response to the adoption of Initiative Resolution 88-1, on September 26, 1988, the City of Irvine and OFFEROR entered into a Memorandum of Understanding Implementing Initiative Resolution 88-1 (the "MOU"), providing for dedication of specified conservation and open space areas in phase with development of other specified areas of the CITY, as directed by Initiative Resolution 88-1.

D. The Property subject to this Offer of Dedication will be dedicated to the City and committed to open space and habitat protection pursuant to the provisions of the MOU in phase with development as set forth in the NCCP Facilitation Agreement, dated \_\_\_\_\_, 19\_\_, and is intended to fulfill requirements set forth in the Implementation Agreement Regarding the Natural Community Conservation Plan for the Central/Coastal Orange County Subregion of the Coastal Sage Scrub Natural Community Conservation Program, dated

July 17, 1996 (the "NCCP/HCP Implementation Agreement") and, in particular, the provisions of Sections 5.2.1(b) and 5.2.2(c) of the NCCP/HCP Implementation Agreement.

### **OFFER TO DEDICATE**

NOW, THEREFORE, FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, OFFEROR hereby irrevocably offers to dedicate the Property to CITY, in fee, to be accepted in the manner and at the times provided herein, subject to the following terms and conditions:

#### **1. PURPOSE OF OFFER**

OFFEROR is making this Offer to CITY for the dual purposes of (1) providing mitigation for impacts to biological resources that are and will be associated with development of the Project and other properties owned by OFFEROR and (2) providing for public ownership, maintenance and preservation of the Property as permanent open space in accordance with the terms of this Offer. A critical component of this Offer is OFFEROR's intent and expectation, as provided in the MOU, to be able to undertake or cause to be undertaken, as a right retained by OFFEROR, biological resource and habitat conservation, enhancement and creation work sufficient to mitigate impacts that are and will be associated with development of the Project and other land owned by OFFEROR, to levels that may be acceptable to local, state and federal agencies concerned with impacts to biological resources. CITY understands that habitat mitigation and public ownership, maintenance and preservation of the Property as permanent open space are the paramount purposes for this Offer. In the event there is a conflict between use of the Property for habitat mitigation and preservation and passive public recreation, habitat mitigation and preservation shall take precedence as the paramount purpose for the Offer.

#### **2. TERM OF OFFER**

Except as otherwise provided herein, this Offer shall have an initial term of five (5) years from the date of its recordation in the Official Records of Orange County, California. In the event that this Offer has not been accepted prior to the end of its initial term because one or more conditions precedent to such acceptance contained in Section 6.1 of this Offer remains unsatisfied on the date which is six (6) months prior to the expiration of the initial term of this Offer, then upon written request from the Irvine City Manager and delivered to OFFEROR more than thirty (30) days prior to the expiration of the terms of this Offer, OFFEROR shall record an amendment extending the term of this Offer for an additional two (2) years. This Offer may be so extended more than once. In no event, however, shall the term of this Offer be longer than two (2) years after all conditions precedent to its acceptance contained in Section 6.1 have been satisfied. In the event that, for any other reason, this Offer has not been accepted prior to the end of the term of this Offer, or any extended term, then OFFEROR shall regain full title to the Property free and clear of this Offer.

#### **3. CONDITION OF TITLE**

The Property shall be accepted by CITY subject to the following:

1. General and special real property taxes and supplemental assessments, if any, for the current fiscal year; provided, however, that Grantor shall pay for (a) any such taxes and assessments applicable to the Property prior to the date of recordation of this deed, and (b) any assessments, special taxes or other payments arising from bonds, contracts, or liens created by, through or as a result of the efforts or activities of Grantor;
2. All non-monetary encumbrances, covenants, conditions, restrictions, reservations, rights, rights of way, easements and other matters of record or apparent, identified in the attached Exhibit "C," which do not prevent use of the Property consistent with the uses specified in Section 4.2.1(a) below;
3. The requirement that Grantee accepts the property "AS IS," in the condition that the Property exists as of the date hereof, as set forth in Section 7.5 below. Grantee acknowledges that Grantor has not made any representations or warranties concerning the condition of the Property except as expressly contained in this Offer;
4. The exceptions, reservations and covenants provided in Section 4 below;
5. Usual and customary exceptions to title insurance consistent with ALTA policies with Regional Exceptions (Standard Coverage) issued by First American Title Insurance Company in Orange County, California; and
6. Any other title exceptions which CITY's Director, Community Development, or the Irvine City Council has agreed are not required to be cleared from title to the Property.

#### 4. EXCEPTIONS, RESERVATIONS OF RIGHTS AND EASEMENTS, AND COVENANTS

4.1 Exceptions and Reservations of Rights and Easements. The Property shall be accepted subject to the following exceptions and reservations in favor of OFFEROR, together with the right to grant and transfer all or a portion of the same:

4.1.1 Minerals. Any and all unprocessed oil, oil rights, minerals, mineral rights, natural gas rights and other hydrocarbons by whatsoever name known, geothermal steam and all products derived from any of the foregoing, that may be within or under the Property, together with the perpetual right of drilling, mining, exploring and operating therefor and storing in and removing the same from the Property or any other land, including the right to whipstock or directionally drill and mine from lands other than the Property, oil or gas wells, tunnels and shafts into, through or across the subsurface of the Property and to bottom such whipstocked or directionally drilled wells, tunnels and shafts under and beneath or beyond the exterior limits thereof, and to redrill, retunnel, equip, maintain, repair, deepen and operate any such wells or mines; but without, however, the right to drill, mine, store, explore or operate through the surface or the upper 500 feet of the subsurface of the Property; and provided further, that any activity or use undertaken of OFFEROR pursuant to the above reserved rights

shall not be unsightly and shall not be incompatible with and shall not degrade either the public use of the Property or the continued maintenance of habitat values and conservation use of the Property.

4.1.2 Water. Any and all water, water rights or interests therein appurtenant or relating to the Property owned or used by OFFEROR in connection with or with respect to the Property (no matter how acquired by OFFEROR), whether such water rights shall be riparian, overlying, appropriative, littoral, percolating, prescriptive, adjudicated, statutory or contractual, together with the right and power to explore, drill, redrill and remove the same from or in the Property, to store the same beneath the surface of the Property and to divert or otherwise utilize such water, rights or interests on any other property owned or leased by OFFEROR; but without, however, any right to enter upon or use the surface of the Property in the exercise of such rights.

4.1.3 Water and Sewer Capacity. All capacity rights and right of service and use in certain water supply and wastewater collection, transmission, treatment and disposal facilities of each water or sewer service agency serving the Property, including any capacity rights allotted to the Property by virtue of its inclusion in any assessment and/or special tax district in the CITY. OFFEROR has paid all assessments levied upon the Property related to any such district. Within thirty (30) days of CITY's receipt of written request from OFFEROR, the CITY Manager shall execute all documents and perform all acts (other than the payment of money) necessary to transfer the above-mentioned capacity rights and right of service and use to other lands or entities designated by OFFEROR. OFFEROR shall have the right to transfer any and all of these rights, subject to CITY's right to retain and provide limited service to restroom and other allowed facilities that may be provided by CITY on the Property.

4.1.4 General Utilities, Etc. Non-exclusive easements in gross on, over, under or across the Property for the installation, emplacement and maintenance of electric, telephone, cable television, water, gas, sanitary sewer lines, drainage facilities or any other utilities, as well for the installation, emplacement and maintenance of sediment detention basins, reservoirs, spillways, drainage lines and other erosion or flood control improvements necessary or appropriate for the development of adjoining or nearby lands and/or to accomplish planned facilities by public agencies and utilities, together with the right to enter upon the Property (without unreasonably interfering with CITY's reasonable use and enjoyment thereof) in order to service, maintain, repair, reconstruct, relocate or replace any of such facilities or improvements; provided, however, that actual use of the easement reserved in this subsection shall be subject to the prior approval of CITY, which approval shall not be unreasonably withheld and shall be promptly acted upon by CITY so long as OFFEROR has (a) consulted with CITY as to the design and location of such facilities or improvements and the revegetation of areas to be disturbed by such activities, and (b) prepared and submitted to CITY

reasonably detailed plans for the construction of such facilities or improvements and associated revegetation at OFFEROR's cost. To the extent technologically and economically feasible, any such utility easements shall be consolidated and located to minimize adverse impacts to the habitat and aesthetic values of the Property in a manner consistent with the infrastructure siting requirements of the Orange County Central and Coastal NCCP/HCP Implementation Agreement, dated \_\_\_\_\_, 1996.

4.1.5 Environmental Mitigation. A non-exclusive easement in gross for the purpose of habitat preservation, replacement, enhancement, creation and maintenance and other environmental mitigation purposes (hereafter referred to collectively as "habitat mitigation"), together with the right to enter on the Property (without unreasonably interfering with CITY's reasonable use and enjoyment thereof) to perform such habitat mitigation, consistent with the Purpose statement contained in Section 1 above, as may be legal and appropriate to mitigate for impacts incurred in connection with the development of other property owned by OFFEROR. OFFEROR shall consult with City prior to performing any such habitat mitigation, and shall obtain any applicable entry permits from CITY before using this easement. The right to perform habitat mitigation on the Property shall be an exclusive right in favor of OFFEROR, and CITY shall not permit any party other than OFFEROR to undertake any work of habitat mitigation, whether or not any mitigation purpose or credit is associated with such work, without OFFEROR's written consent.

4.1.6 Adjoining Agricultural Uses. Non-exclusive easements on, over, under or across that portion of the Property depicted on Exhibit "B" as an agricultural area currently in strawberry production (the "Agricultural Area"), and appurtenant to the property described in Exhibit "D" attached hereto (the "Adjoining Property"), for the operation of equipment and the performance of activities to facilitate agricultural use of the Adjoining Property, of whatever kind and description, including without limitation the right to discharge irrigation water and wastes on and across the Agricultural Area, to deliver irrigation water to the Adjoining Property from erosion and flooding, to cause fertilizers and chemicals used in agricultural operations to be deposited on the Agricultural Area in connection with their use on the Adjoining Property, to enter the Agricultural Area as may be appropriate to facilitate activities, together with the right to enter upon the Agricultural Area in order to service, maintain, repair, reconstruct, relocate or replace any and all existing facilities or improvements related to commercial agricultural use of the Adjoining Property. This easement is limited to the Agricultural Area, and does not extend to any other portion of the Property.

4.2 Covenants Running with the Land. The Property shall be accepted subject to the following covenants (collectively, the "Covenants"). The Covenants are hereby declared and agreed to be part of a general plan enhancing and protecting the value, desirability and attractiveness of all land owned by OFFEROR. In particular, the

Property is intended to fulfill the purpose of preserving open space for the public benefit, which in turn will permit the orderly and harmonious development of other land owned by OFFEROR depicted on Exhibit "E" and described on Exhibit "F" (the "Benefited Property"). The Covenants shall therefore run with the Property and be binding upon CITY and any other person or entity who acquires any right, title or interest in or to any portion of the Property and shall benefit the Benefited Property and be enforceable only by OFFEROR or a successor to OFFEROR ("Successor") as defined in Section 10.4 below. It is intended that the dominant tenement shall be all the Benefited Property, and that the servient tenement shall be all the Property. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every covenant contained herein, whether or not any reference to this instrument is contained in the instrument by which such person acquired an interest in such Property.

4.2.1 Covenants. The Covenants are:

(a) Covenant 1: Use of Property. CITY shall use and maintain the Property only for infrastructure, resource conservation, agriculture, habitat enhancement and passive recreation purposes (such as picnicking, hiking, and biking) consistent with the permitted uses in the CITY's "Preservation Areas" designated as set forth on Exhibit "G" hereto (the "Permitted Uses"), and shall not use any portion of the Property for any commercial, office, retail commercial, industrial, institutional, residential, or any other use not specifically included in the Permitted Uses. Additionally, the City shall use those portions of the Property that have been or may in the future be designated for resource conservation or habitat enhancement by OFFEROR with the United States Fish & Wildlife Service, California Department of Fish & Game, or any other federal, state, regional or local governmental agency involved in resource conservation or habitat enhancement, only for purposes consistent with resource conservation and habitat enhancement as specified in the Orange County Central and Coastal NCCP/HCP Implementation Agreement, dated \_\_\_\_\_, 1996. This Covenant 1 shall not apply to any of the exceptions, reservations and easements in favor of OFFEROR, nor to OFFEROR's use of any or all such exceptions, reservations and easements.

(b) Covenant 2: Review of Improvement Plans. CITY shall consult with OFFEROR with respect to any and all proposed improvements to be constructed on, across, under or above the Property (including any and all grading) prior to the award of any contract for, or the commencement, of any such work.

(c) Covenant 3: Transfer of Property. Except in connection with (i) a utility installation or public infrastructure improvement, or (ii) a lease or other similar contractual arrangement in connection with any operation

permitted under Section 4.2.1(a) above, CITY shall not sell, contract or sell, assign, exchange, lease or in any other way transfer or convey all or any portion of its interest in the Property to a third party (for these purposes a "third party" shall not include OFFEROR, the County of Orange, or any governmental agency or non-profit organization having responsibility for operation and maintenance of natural open space areas) without the prior written approval of OFFEROR, which may be withheld in OFFEROR's sole discretion.

#### 4.2.2 Matters Related to Covenants.

(a) Amendment. The Covenants may be amended, subject to the provisions of the NCCP/HCP Implementation Agreement, dated July 17, 1996 and, in particular the provisions of Section 5.2.1(b) of that Agreement, by mutual agreement of OFFEROR and CITY. Any amendment must be recorded in the Recorder's Office, County of Orange, California.

(b) Term. The Covenants shall run with and bind the Property and shall inure to the benefit of and be enforceable by OFFEROR, its successors and assigns, in perpetuity, unless OFFEROR records a declaration terminating the Covenants which declaration must be consistent with the provisions of the NCCP/HCP Implementation Agreement and, in particular the provisions of Section 5.2.1(b) of that Agreement.

(c) Default and Remedies. In the event of any breach, violation or failure to comply with any of the Covenants which has not been cured within thirty (30) days after written notice from OFFEROR to do so (or if any such breach, violation or failure cannot be fully cured within such thirty (30) day period, then upon failure of CITY to commence such cure within such period and thereafter to diligently complete such cure to OFFEROR's reasonable satisfaction), then OFFEROR in its sole and absolute discretion may enforce any other rights or remedies to which OFFEROR may be entitled by law or equity, other than the remedy of damages. It is recognized that a violation by CITY of one or more of the Covenants may cause OFFEROR to suffer material injury or damage not compensable in money and that OFFEROR shall be entitled to bring an action in equity or otherwise for specific performance to enforce compliance with the Covenants or an injunction to enjoin the continuance of any such breach or violation thereof.

(d) Waiver. No waiver by OFFEROR of a breach of any of the Covenants and no delay or failure to enforce any of the Covenants shall be construed or held to be a waiver of any succeeding or preceding breach of

the same or any other restrictions or conditions. No waiver of any breach or failure of any of the Covenants shall be implied from any omission by OFFEROR to take any action on account of such breach or failure if such breach or failure persists or is repeated, and no express waiver shall affect a breach or failure other than as specified in said waiver. The consent or approval by OFFEROR to or of any act by CITY requiring OFFEROR's consent or approval shall not be deemed to waive or render unnecessary OFFEROR's consent or approval to or of any subsequent similar acts by CITY.

(e) Cost of Enforcement. In the event any declaratory or other legal or equitable action or proceeding shall be instituted between OFFEROR and CITY to enforce any provision of these Covenants, the party prevailing in such action shall be entitled to recover from the losing party or parties its costs and expenses, including court costs and reasonable attorneys' fees.

## 5. PROPERTY BOUNDARY ADJUSTMENTS

In order to accommodate open space management objectives, the topographic characteristics of the Property, mitigation obligations, final road alignments, adjacent development and fuel modification requirements, reasonable mapping requirements, and other related matters, the description of the Property and the Property boundaries may be modified by agreement of the OFFEROR and CITY, so long as such modifications are consistent with the general purposes and intent of this Offer. Each of the parties shall cooperate with each other and perform such acts as are necessary to give effect to such adjustments.

## 6. PROCEDURES FOR CONVEYANCE OF TITLE

6.1 Conditions to Acceptance: Title to the Property shall be conveyed upon acceptance of the Offer consistent with Sections 6.2 and 7 below, no sooner than ninety (90) days nor later than two calendar years following (a) issuance of building permits for 2,100 residential dwelling units and 41,250 gross square feet of commercial/retail building area in the Project, which represents seventy-five percent (75%) of the total permissible development in the Project, or (b) upon completion of total development in the Project if at an intensity or density less than seventy-five percent (75%) of permissible development, whichever occurs first. Exhibit "H" is a summary of the total permissible development in the Project.

6.2 Acceptance Provisions. The following provisions shall control the manner in which the Offer may be accepted following satisfaction of all conditions to acceptance:

6.2.1 Notice of Satisfaction of Conditions Precedent. OFFEROR shall give CITY written notice that the conditions precedent to CITY's acceptance of the Property have been satisfied within thirty (30) days following such satisfaction.

6.2.2 Manner of Acceptance. Upon CITY's determining the adequacy of the notice provided in 6.2.1, the Offer shall be accepted by CITY by resolution or other

official action appropriate to the powers of and laws governing CITY, a notice of which action shall be recorded in the Official Records of Orange County, California. The recordation of such notice shall be deemed the date upon which fee title to the Property is transferred to CITY.

6.2.3 Notice Upon Acceptance. Promptly after acceptance of this Offer by CITY, it shall mail or deliver a copy of its resolution or other action of acceptance to the then owner(s) of the Property at the address shown on the latest secured assessment roll, and within sixty (60) days thereafter said owner(s) may elect to remove any or all structures and fixtures on the Property, and if such election is made shall remove the same in due course.

6.2.4 Time for Acceptance and Opportunity for City Acceptance. At such time as the notice required by Section 6.2.1 is given, the CITY will have two (2) years to accept the Offer. If the CITY has not accepted this Offer within that period of time, OFFEROR will regain full title to the Property subject to rededication as provided in Section 4.3 above.

## 7. **ADDITIONAL TERMS AND CONDITIONS**

7.1 Use of Dedicated Lands. The acceptance of dedication of any portion of all of the Property is conditioned on a requirement that it may be used only for purposes consistent with the Permitted Uses specified in Section 4.2.1(a) above, and may be conveyed subsequent to the initial acceptance only for such uses.

7.2 Dedication Area Access. CITY, its employees, licensees, representatives and independent contractors acting within the scope of their employment, may have access to the Property prior to any acceptance of this Offer for the purpose of surveying, mapping and planning activities related to future management of the dedication areas. Any such access shall be subject to OFFEROR's standard entry permit requirements in force at the time of the proposed access, and shall be reasonably provided so long as the party desiring access holds a valid entry permit from OFFEROR and gives OFFEROR not less than five (5) working days prior written notice of such entry.

7.3 Offer Irrevocable. Subject to the preceding terms and conditions, this Offer is irrevocable and shall be absolutely binding upon the undersigned OFFEROR, its respective heirs, successors, and assigns.

7.4 Use Prior to Acceptance. OFFEROR shall be responsible for maintaining the Property until the Offer is accepted by CITY or the Offer expires as provided above. Until and unless this Offer is accepted by CITY, OFFEROR may use the Property for any purposes which do not preclude the use of the Property for the uses set forth in Section 4.2.1(a) above and which are consistent with the MOU and applicable planning and zoning regulations.

7.5 Condition of Property.

7.5.1 OFFEROR states, and CITY acknowledges,

(a) that the Property may have been farmed or used for grazing purposes and that in connection therewith fertilizers, pesticides, weed killers and other agricultural chemicals may have been used on the Property; and

(b) that such chemicals may be present on the Property.

OFFEROR represents to CITY that, except for those matters described above or in the attached Exhibit "I," to the best of OFFEROR's knowledge, it is unaware of any other releases of hazardous materials that may have occurred on the Property -- including any releases that may have affected the soil or the ground water of the Property, except as may be indicated below. As used in this Subsection 8.5, the term "hazardous materials" means the materials defined in Section 25501(j) of the California Health and Safety Code. The term "hazardous materials" includes, without limitation, pesticides, fungicides, rodenticides, and petroleum hydrocarbons in quantities or concentrations that are injurious to the health and safety of persons or harmful to the environment. For purposes of this representation, the phrase "to the best of OFFEROR's knowledge" shall mean the actual knowledge of Peter Changala and Michael Le Blanc, as employees of OFFEROR, after reasonable investigation.

7.5.2 At the time OFFEROR gives CITY the written notice described in Section 6.2.1 above, OFFEROR shall make an additional disclosure with respect to any additional hazardous substances which in its knowledge may have been stored on or deposited in the Property between the date of this Offer and the date of such notice.

7.5.3 Except (i) for the allocation of liability for remediation of the Property due to the release of hazardous materials, which shall be governed by law, and (ii) as provided in Section 3 of this Agreement ("Condition of Title"), CITY will accept the Property, if at all, in "AS IS" condition without any representation or warranty by OFFEROR or its representatives, real or implied, as to the Property's condition or suitability for any use.

7.6 Condemnation. If for any reason CITY institutes an action in eminent domain to acquire property of OFFEROR which is designated for dedication pursuant to this Offer, then notwithstanding the dedication requirements hereunder or under the MOU, CITY shall be required to pay just compensation for such property based on its fair market value for highest and best use and in all other respects as provided under applicable eminent domain laws and without regard to its designation for dedication and/or mitigation purposes. In addition, OFFEROR shall have all rights available to it at law to contest such acquisition or the value thereof.

## 8. NOTICES

All written notices pursuant to this Offer shall be addressed as set forth below or as either party may hereafter designate by written notice to the other and shall be sent through the United States registered mail or made by personal delivery:

If to OFFEROR:       The Irvine Company  
550 Newport Center Drive  
Newport Beach, CA 92663  
Attn: General Counsel, Land  
Development Companies

If to CITY:           City of Irvine  
Department of Community Development  
One Civic Center Plaza  
P.O. Box 19575  
Irvine, CA 92713  
Attn: City Manager

All notices provided for herein shall be deemed to have been duly given if and when personally served or 72 hours after being sent by United States registered mail, return receipt requested, postage prepaid.

## 9. ATTACHMENTS

This Offer includes the following Exhibits A through I, which are attached hereto and made a part hereof:

- A. Legal Description of Property
- B. Map of Property
- C. Title Exceptions
- D. Description of Adjoining Property
- E. Depiction of Benefited Property
- F. Description of Benefited Property
- G. Definition of "Preservation Areas"
- H. Description of Densities and Intensities for the Project
- I. Hazardous Substances

## 10. MISCELLANEOUS

10.1 Effect of Acceptance. Approval as well as acceptance by CITY of this Offer, as it may be amended from time to time, shall constitute such entity's agreement to be bound by all of the terms, conditions, restrictions, exclusions and reservations included in this Offer and such amendments.

10.2 Captions. The captions used herein are for convenience only and are not a part of this instrument and do not in any way limit or amplify the scope of intent of the terms and provisions hereof.

10.3 Application to Offeror. Notwithstanding anything herein contained to the contrary, if OFFEROR (or any Successor as defined in Section 4.2.2(e) above) reacquires title to the Property or any portion thereof at any time after the expiration of this Offer, or termination under Section 4.3, the provisions of this instrument shall automatically cease and terminate as to such reacquired property and be of no further force or effect as to OFFEROR or such successor in interest or such subsidiary, subject to the rededication provisions specified in Section 4.3 above.

10.4 Successor. The term "OFFEROR" as used in this Offer shall also mean and include any "Successor" of OFFEROR, which term is used in this Offer to mean and refer to: (i) any person or entity which acquires ten percent (10%) or more of the assets of OFFEROR; (ii) any division, subsidiary, group, operating company or wholly-owned entity of OFFEROR; (iii) any purchaser of substantially all of OFFEROR's remaining assets; (iv) a private party purchaser of substantially all of the Benefited Property; (v) any entity resulting from a merger with or an acquisition by or of OFFEROR; and (vi) any person or entity owning the majority of stock or other ownership interest in either OFFEROR or an entity described in (i) through (v) of this subsection (e).

10.5 Compliance with Law and Satisfaction of Obligations. This Offer is made expressly upon the understanding that this Offer is in compliance with and fully satisfies all lawful enactments and conditions of the CITY requiring an offer of dedication for the Property in relation to the development of the Project. If it is determined by CITY or any court of law or equity at any time following execution of this Offer that it fails to meet that understanding, then OFFEROR shall have the absolute right to declare this Offer void, and this Offer shall thereafter have no further force and effect. In the event CITY shall deliver to OFFEROR upon request a recordable quitclaim of this Offer, which duty shall survive OFFEROR's written election voiding this Offer.

10.6 Binding Effect. Except as otherwise provided herein, all terms, conditions, restrictions, exclusions and reservations of this Offer, and the acquisition of all or any portion of the Property by acceptance thereof, shall be binding upon and inure to the benefit of CITY and OFFEROR, and their respective successors and assigns.

Donation Agreement for Certain Lands  
Located within the East Orange General Plan Area

A. PURPOSE OF DONATION AGREEMENT

The Irvine Company ("Donor") desires to donate for eleemosynary purposes certain real property interests, including (i) conservation easements, (ii) fee title, or (iii) a combination of conservation easements and fee title, such property as described in the East Orange General Plan and as depicted in Exhibit \_\_\_ to either (i) the County of Orange, (ii) the California Department of Fish & Game ("CDFG"), or (iii) any other organization or governmental agency which is a qualified organization under Internal Revenue Code section 170(h)(3), is qualified to be the donee under California law and is found acceptable to CDFG and to the United States Fish & Wildlife Service ("USFWS").

The real property interests are currently held by Donor for investment purposes. Donee desires to assure Donor that it will not hold the real property interests for speculative purposes which would contravene the eleemosynary motives of Donor. Donor and Donee agree that the donation of any easement is intended to qualify as a conservation contribution under Internal Revenue Code section 170(h) and that such contribution is being made exclusively under Internal Revenue Code section 170(h) and that such contribution is being made exclusively for conservation purposes, and includes: (i) the preservation of land areas for outdoor recreation or for the education of the general public, (ii) the protection of natural habitat of fish, wildlife, or plants, or similar ecosystem, (iii) the preservation of open space where such preservation is for the scenic enjoyment of the general public, or pursuant to a clearly delineated federal, state, or local governmental conservation policy, and will yield a significant public benefit. Donor and Donee agree, and the USFWS concurs, that the contribution of the Conserved Lands depicted on Exhibit \_\_\_ carry out the foregoing conservation purposes as provided for in the Central/Coastal NCCP/HCP, dated \_\_\_\_\_, 1996 which contains clearly delineated federal, state and local conservation policies and conservation benefits deriving from the ultimate inclusion of these lands in the NCCP/HCP reserve system.

B. DONATION PROVISIONS

Donor intends to donate the lands identified on Exhibit \_\_\_ in increments as Donor, or its successor in interest, carry out development on contiguous lands. Each incremental donation shall be carried out by means of the recording of a Conservation Easement in the form set forth in Exhibit \_\_\_, or in the event of a donation of fee title, such recording of fee title shall include the recording of a Conservation Easement as set forth in Exhibit \_\_\_. In the event adjoining lands are not developed within seventy-five (75) years from the date of this Agreement, Donor shall cause to have recorded in the name of Donee, or one of the alternative Donees specified in Section "A" above, a Conservation Easement in the form set forth in Exhibit \_\_\_.

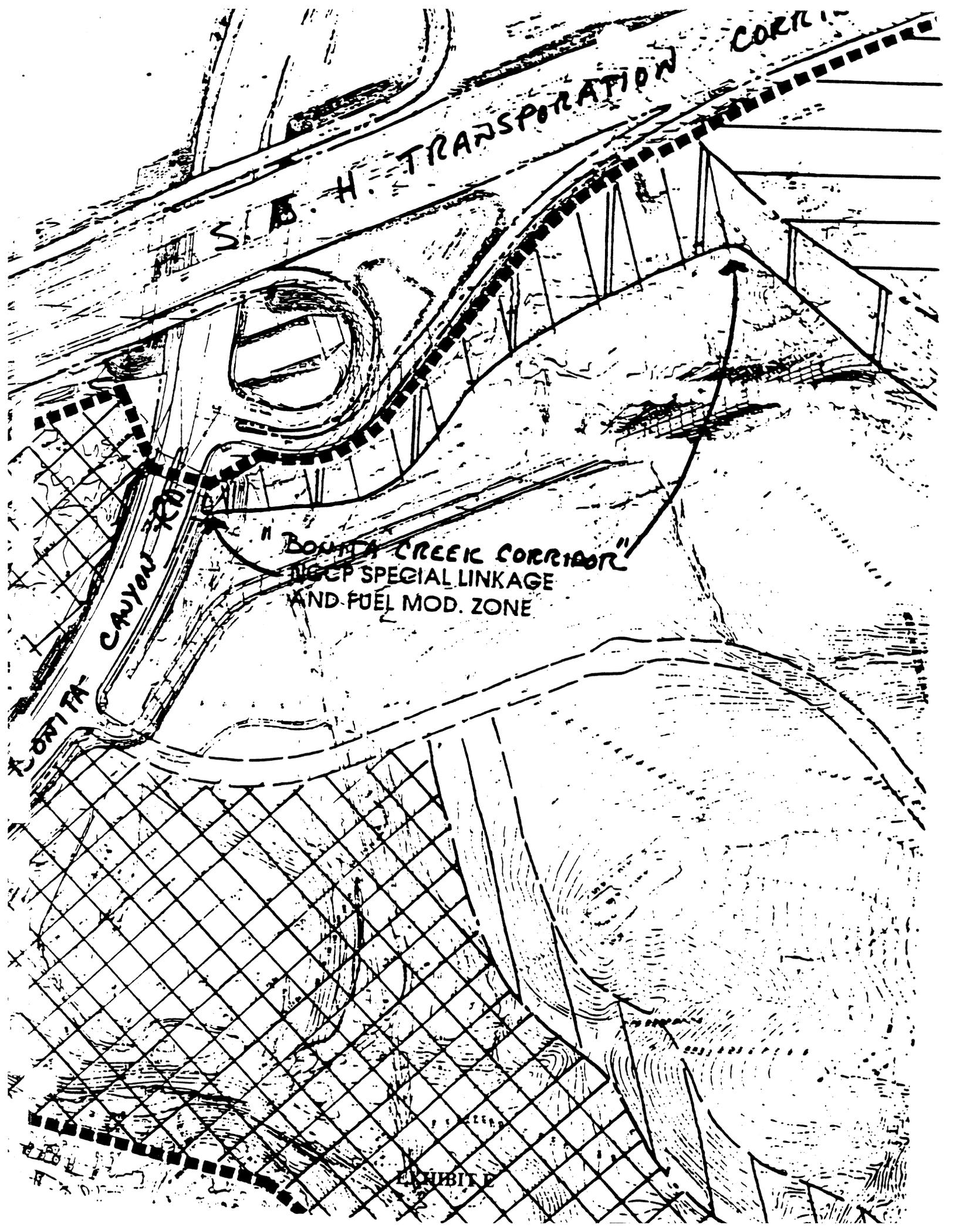
Due to the legal and physical complexities of the land development process, each incremental Donation will be made in two phases. The first phase Donation shall contain

substantially all of the area to be donated. Donation lands immediately adjoining the contiguous development areas will be reserved from donation until the development projects have been completed, at which time the second phase Donation will occur.

C. DONEE ACKNOWLEDGMENT

Donee agrees to acknowledge each incremental Donation as follows:

“Donee hereby acknowledges and accepts Donor’s gift of its interest in the real property and expresses its appreciation therefor. Donor hereby confirms that Donor’s transfer of the real property interests to Donee is a gift to Donee, without consideration, and that the gift is not a condition of any past, concurrent or future approval, entitlement or benefit sought by Donor from Donee. Donee agrees to cooperate with Donor by acknowledging receipt of this gift on Internal Revenue Form 8283 (Non Cash Charitable Contributions) and on any other tax related forms or documents as reasonably requested by Donor.”



CORR

S B H TRANSPORTATION

BOWTIE CANYON

"BOWTIE CREEK CORRIDOR"  
NCEP SPECIAL LINKAGE  
AND FUEL MOD. ZONE

EXHIBIT 1

