
SAFE HARBOR AGREEMENT

**FOR CALIFORNIA RED-LEGGED FROG (*Rana aurora draytonii*), LEAST BELL'S
VIREO (*Vireo bellii pusillus*), AND SOUTHWESTERN WILLOW FLYCATCHER
(*Empidonax traillii extimus*), ON LANDS OWNED BY THE OJAI VALLEY LAND
CONSERVANCY WITHIN THE VENTURA RIVER WATERSHED
VENTURA COUNTY, CALIFORNIA**

Prepared by

The Ojai Valley Land Conservancy

and

U.S. Fish and Wildlife Service,
Ventura Fish and Wildlife Office

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SAFE HARBOR AGREEMENT OJAI VALLEY LAND CONSERVANCY

1.0 INTRODUCTION

This Safe Harbor Agreement (Agreement) is made and entered into as of February 2010 between the Ojai Valley Land Conservancy (Conservancy), Scanstyle USA, Inc. (Scanstyle), and the U.S. Department of the Interior, Fish and Wildlife Service (Service); hereafter collectively called the "Parties." The purpose of this Agreement is to enhance and create habitat for the federally threatened California red-legged frog (*Rana aurora draytonii*), the endangered least Bell's vireo (*Vireo bellii pusillus*), and the endangered southwestern willow flycatcher (*Empidonax traillii extimus*) on lands owned and/or managed by the Conservancy and land owned by Scanstyle. This Agreement follows the Service's Safe Harbor Agreement policy (64 Federal Register [FR] 32717) and regulations (50 CFR 17.22(c) and 50 CFR 17.32(c)) and implements the intent of the Parties to follow the procedural and substantive requirements of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act).

The Safe Harbor program encourages proactive conservation efforts by non-Federal landowners and provides them certainty that future property-use restrictions will not be imposed if those efforts attract Covered Species to their properties or result in increased numbers or distributions of Covered Species already present. In return for voluntary conservation commitments, the Agreement will extend assurances to the Conservancy and Scanstyle that allow future alteration or modification of the enrolled lands back to pre-agreement conditions (Baseline). Without this cooperative effort, the enrolled lands may not otherwise be used by the species in the foreseeable future.

The Conservancy is a community-based, nonprofit group of private citizens and landowners working towards protecting and restoring open space in the Ojai Valley. To achieve this goal, they acquire, hold, and manage land in the public interest. They also preserve open space by working with landowners to acquire conservation easements, which convey the development rights of a parcel of land to the Conservancy, while the title and daily management remains with the landowner. The Conservancy also works in partnership with local governments, provides education programs, and implements habitat restoration and enhancement projects. The Conservancy holds a conservation easement with Scanstyle, a private landowner.

Scanstyle holds in fee title the 16-acre conservation easement area that comprises a portion of the Ventura River – Confluence Preserve. The extent of the parcel located outside of the conservation easement area is used as a residence, as rangeland, and as a staging area for agricultural operations on a different property.

When signed, this Agreement will serve as the basis for the Service to issue an enhancement of survival permit under section 10(a)(1)(A) of the Act (Permit), for the incidental take of the Covered Species associated with restoration, maintenance, and other routine activities and the

potential future return of any enrolled lands to Baseline condition. The Permit will authorize the Conservancy and Scanstyle to take individuals of the Covered Species, and their progeny, that are introduced to the enrolled lands or have increased in numbers and/or distribution on those lands above the established Baseline conditions, as a result of voluntary conservation activities and the return to Baseline conditions. The Parties expect that the maximum level of take authorized under this Agreement and Permit will never be realized. Permit issuance will not preclude the need for the Conservancy and Scanstyle to abide by all other applicable Federal, State, and local laws and regulations that may apply.

2.0 SPECIES COVERED BY THIS AGREEMENT

This Agreement covers the California red-legged frog, the least Bell's vireo, and the southwestern willow flycatcher, which hereafter are referred to as the "Covered Species."

Habitat for the California red-legged frog is described in the critical habitat rule published on April 13, 2006 (71 FR 19244) and includes essential aquatic habitat, associated uplands, and dispersal habitat connecting aquatic habitat.

Aquatic habitat is defined as any standing body of fresh water, including natural and manmade (e.g., stock) ponds, slow moving streams or pools within streams, and other ephemeral or permanent water bodies that typically become inundated during winter rains and hold water for a minimum of 20 weeks in all but the driest of years. Non-breeding aquatic habitat is defined as fresh water habitats that may or may not hold water long enough for the subspecies to hatch and complete its aquatic lifecycle but provides for shelter, foraging, predator avoidance, and aquatic dispersal habitat for juvenile and adult California red-legged frogs. This includes plunge pools within intermittent creeks, seeps, quiet water refugia during high water flows, and springs of sufficient moisture to withstand the summer dry period.

Upland habitat is defined as areas within 200 feet of the edge of the riparian vegetation or drip-line surrounding aquatic habitat that provides for shelter, foraging, and predator avoidance. The upland features also maintain hydrologic, geographic, topographic, ecologic and edaphic features that support the aquatic habitat.

Dispersal habitat is defined as accessible upland or riparian dispersal habitat within designated units and between occupied locations within 0.7 mile of each other that allows for movement between such sites. Dispersal habitat includes various natural habitats and altered habitats, such as agricultural fields, which do not contain barriers to dispersal.

Habitat for least Bell's vireo includes riverine and floodplain habitats (particularly willow-dominated riparian woodland with dense understory vegetation maintained, in part, in a non-climax stage by periodic floods or other agents) and adjacent coastal sage scrub, chaparral, or other upland plant communities. Nesting habitat typically consists of well-developed overstories and understories, and low densities of aquatic and herbaceous cover. The understory frequently contains dense subshrub or shrub thickets. These thickets are often dominated by sandbar

willow (*Salix hindsiana*), mulefat (*Baccharis salicifolia*), young individuals of other willow species such as arroyo willow (*S. lasiolepis*), red willow (*S. laevigata*), or black willow (*S. gooddingii*) and one or more herbaceous species. Important overstory species include mature arroyo willows, red willows, and black willows; occasional cottonwoods (*Populus fremontii*) and sycamores (*Platanus racemosa*) also occur in some habitats. Additionally, coast live oaks (*Quercus agrifolia*) can be a locally important overstory component, as can mesquite (*Prosopis* spp.).

Habitat for the southwestern willow flycatcher is described as riparian woodlands along streams and rivers with mature, dense stands of willows, cottonwoods, or smaller spring-fed areas with willows or alders (*Alnus* spp.). Riparian habitat provides both breeding and foraging habitat. The plant community at nest sites is typically even-aged, structurally homogeneous, and dense, and nests are usually located in the upright fork of a shrub, but occasionally on horizontal limbs within trees and shrubs. Historically, the southwestern willow flycatcher nested primarily in willows and mulefat with a scattered overstory of cottonwood. Following more recent changes in riparian plant communities, the species still nests in willows where available, but is also known to nest in thickets dominated by salt cedar (*Tamarix* spp.) and Russian olive (*Elaeagnus angustifolia*). Fragmented riparian zones with large distances between willow patches and individual willow plants are usually not selected for either nesting or singing. Migrating willow flycatchers use habitats similar to breeding southwestern willow flycatchers, but will also use desert washes, oases, and open canyon woodlands near watercourses.

3.0 DESCRIPTION OF ENROLLED PROPERTIES

The properties subject to this Agreement (Enrolled Properties) are owned and/or managed by the Conservancy. The Enrolled Properties include: 1) the Ventura River – Rancho El Nido Preserve; 2) the Ojai Meadows Preserve; 3) the Ventura River – Confluence Preserve, a portion of which is owned by Scanstyle; and 4) the San Antonio Creek Preserve. The Enrolled Properties are located in Ventura County, California (see Figure 1).

Portions of the Ventura River – Confluence Preserve and portions of the San Antonio Creek Preserve are within designated critical habitat for the California red-legged frog. The Ventura River – Rancho El Nido Preserve and the Ojai Meadows Preserve are not within designated critical habitat for the California red-legged frog. None of the Enrolled Properties are within designated critical habitat for the least Bell's vireo or designated critical habitat for the southwestern willow flycatcher.

For the purposes of this Agreement, a preserve visitor is any person present within the Ventura River – Rancho El Nido Preserve, the Ojai Meadows Preserve, the Ventura River – Confluence Preserve, and/or the San Antonio Creek Preserve for recreational or other purposes not directly affiliated with Conservancy activities.

3.1 Ventura River – Rancho El Nido Preserve

The Ventura River – Rancho El Nido Preserve (VRP) consists of 1,591 acres (see Figure 2). The VRP has been used for agricultural purposes since the mid-nineteenth century. Historic reports indicate that nearly 700 cattle roamed the property foraging on abundant vegetation. In the 1920's an orange grove was planted on 64 acres of the property, and Rice Creek, a tributary to the Ventura River, was diverted from its natural channel to a man-made canal to maximize space for planting. In 2002, when the Conservancy acquired the property, overgrazing had reduced much of the forest understory and surrounding grasslands. Now that cattle have been excluded from the preserve, native plant communities are recovering.

Today the VRP contains large tracts of relatively intact native plant communities. The high cover of native plants and relative lack of invasive non-native species over much of the preserve indicates that most of the important ecosystem processes are still intact.

Several native plant communities are found within the VRP. Chaparral covers south-facing slopes in and around Wills and Rice Canyons while north-facing slopes feature coast live oak woodlands and forests. Deciduous riparian woodlands line much of Wills and Rice Creeks as well as the lower floodplain and banks of the Ventura River. Coast live oak riparian woodlands can be found along small unnamed drainages and on terraces along the Ventura River. Alluvial scrub and coastal sage scrub habitat can be found along the river terraces as well. Mulefat and willow scrub are found adjacent to the active channel of the river. Small patches of native grassland are found near the mouth of Rice Canyon and in upper Wills Canyon. Overall, 139 native plant species have been identified on the preserve in at least eight major vegetation communities; the non-native species have not been fully documented although at least 50 species have been identified (Ojai Valley Land Conservancy 2006, Magney 2002).

Invasive species removal and riparian restoration has occurred under a separate project on a portion of the VRP. This project included the removal of about 3.3 acres of invasive plants, including salt cedar and Spanish broom (*Cytisus multiflorum*) from riparian upland habitat within a 72-acre area on the preserve. All treated sites were replanted with locally derived native plants to help shade and prevent secondary infestations by other invasive plant species.

There are five hydrological features in the VRP: Ventura River, Rice Creek, Wills Creek, Sycamore Creek, and Olive Creek. The section of Ventura River that occurs within the VRP is characterized by subsurface summer flows, and intermittent surface flows in the winter including occasional catastrophic floods. The Ventura River, Rice Creek, and Wills Creek do not contain suitable California red-legged frog aquatic breeding habitat, or associated upland habitat, because they do not contain water for at least 20 weeks during most years. The Ventura River, Rice Creek, and Wills Creek typically only have surface flows during the winter and spring. Sycamore Creek and Olive Creek contain suitable California red-legged frog aquatic and upland breeding habitat because they contain seeps and springs that supply surface water to the creek for most of the year, and pools can be found in the mid-reaches during the late-summer through fall.

Within the VRP, there is no suitable habitat for the least Bell's vireo and no suitable habitat

for the southwestern willow flycatcher.

3.2 Ojai Meadows Preserve

The Ojai Meadows Preserve (OMP) is located in the town of Meiners Oaks and the city of Ojai (see Figure 3). The OMP is bordered on the north, west, and south by residential communities and to the east by Nordhoff High School and Highway 33. The Conservancy acquired the 57-acre parcel in 2000 with funds raised by the local community to preserve the land as open space. The OMP is a low-lying area that collects, retains, and filters urban runoff from approximately 221 acres of land within the Ventura River Watershed. Prior to major land use alteration throughout the twentieth century, the OMP likely consisted predominately of coast live oak woodland with an approximate 5-acre freshwater marsh in the center of the property. Construction of Highway 33, neighboring schools, and residential areas have greatly altered historic hydrology and diminished the size and quality of vegetation communities. The OMP is used by the community for hiking, dog walking, wildlife viewing, bicycling, and urban escape (Ojai Valley Land Conservancy 2004). In its current state, the OMP does not contain suitable habitat for any of the Covered Species.

Several natural and man-made drainages converge on the OMP. Alteration of historic flow patterns and poor channel geometry of the two major drainages on the property, Happy Valley and Maricopa Drains, contribute to degradation of wetland habitat and regular flooding of surrounding developed areas during wet months. The Happy Valley Drain carries runoff through the preserve to the Ventura River. The Happy Valley Drain is channelized both upstream and downstream of the OMP boundaries, but remains earthen through the OMP. The Maricopa Drain bisects the preserve northeast to southwest and currently drains into the Happy Valley Drain on the western side of the property. Two other drainage outfalls on the property, one from the neighborhood to the south and the other from the Nordhoff High School to the east, infiltrate the soil with some flow draining overland to the Maricopa Drain.

Decades of agricultural use (grazing and hay production), fire break clearance, channelization for drainage, invasive non-native vegetation establishment, sedimentation, and filling of wetland basins have left remnant native habitats highly degraded. Native vegetation communities within the preserve include riparian, freshwater marsh and seasonal wetlands, annual grasslands, valley oak savannah and coast live oak woodlands. More than 150 plant species are found on the preserve comprised of approximately 45 native and 95 non-native species. The most promising feature of the existing savannah wetland is the improvement of the freshwater marsh habitat in topographically low areas. These marshes (approximately 0.3 acre) provide important wildlife habitat and water quality functions. Invasive non-native plants including *Eucalyptus* spp., Bermuda grass (*Cynodon dactylon*), curly dock (*Rumex crispus*), and Italian ryegrass (*Lolium* spp.) dominate remaining areas of the seasonal wetland.

3.3 Ventura River – Confluence Preserve

The Ventura River – Confluence Preserve consists of 30 acres at the confluence of perennially flowing reaches of the Ventura River and San Antonio Creek (see Figure 4). The Conservancy owns 14 acres of the Ventura River – Confluence Preserve and holds a conservation easement for the remaining 16 acres, which are owned by Scanstyle. Land use to the west is primarily agricultural with limited residential development. Adjacent land is an operating avocado farm with land leased for cattle grazing. There are two large equestrian facilities located at Highway 33 and San Antonio Creek with residential development to the south in the town of Casitas Springs.

The eastern and northern portions of the preserve contain some of the only remaining old growth riparian forest along the Ventura River and San Antonio Creek, which is characterized by mature cottonwood, sycamore, California black walnut (*Juglans californica*), and coast live oak. Central and western portions of the preserve contain floodplains and alluvial terraces of the Ventura River, which consist of some alluvial scrub but primarily mulefat, willow scrub, and alders with an understory of dense willows.

Within the preserve boundaries, the riparian forest with an understory of dense willows provides the basic elements that comprise suitable habitat for the southwestern willow flycatcher; however, the area of this habitat within the preserve is too small to attract nesting individuals. Potential habitat for the southwestern willow flycatcher exists adjacent to the Ventura River – Confluence Preserve on properties to the north. The combination of these lands could provide a sufficient area of habitat to benefit southwestern willow flycatchers. Currently, there is no suitable nesting habitat for the southwestern willow flycatcher. The species could occur in the area while moving between other areas of suitable habitat and use the area for resting.

Suitable habitat for least Bell's vireo occurs within a portion of the Ventura River – Confluence Preserve along the Ventura River floodplain that contains some mature riparian woodlands and dense understory vegetation.

The area of the Ventura River – Confluence Preserve within the designated critical habitat for the California red-legged frog coincides with the confluence of San Antonio Creek and the Ventura River, extends south along the Ventura River, and includes the immediately adjacent area. This area provides suitable non-breeding aquatic habitat and suitable upland habitat for the California red-legged frog. Within the Ventura River – Confluence Preserve, there is no suitable breeding habitat for the California red-legged frog.

3.4 San Antonio Creek Preserve

The San Antonio Creek Preserve consists of 9 acres between Camp Comfort to the north and Rancho Dos Rios to the south with one small privately held parcel dipping into the riparian corridor on the western bank between the preserve and Rancho Dos Rios (see Figure 5). The San Antonio Creek Preserve serves as a wildlife corridor to other areas of the Ojai Valley. The surrounding land is primarily used as rangeland and agricultural land with some county park land and residential development. Rancho Dos Rios is an operating avocado farm with

leased land for cattle grazing. This preserve primarily consists of San Antonio Creek's riparian corridor containing very small sections of degraded coast live oak woodland. The creek is lined with mature willow (*Salix* spp.), sycamore, cottonwood, black walnut and coast live oak. Some patches of giant reed, tree tobacco (*Nicotiana glauca*) and castor bean (*Ricinus communis*) have established both within the riparian corridor and on upper terraces.

The area of the San Antonio Creek Preserve within the designated critical habitat for the California red-legged frog is the preserve area to the south and east of Creek Road. Suitable aquatic habitat for California red-legged frogs, which includes perennially flowing water and vegetative cover, occurs along San Antonio Creek within the preserve. Additionally, there is suitable upland habitat adjacent to the creek.

Though the San Antonio Creek Preserve contains mature riparian forest with large trees and dense willow thickets, there is no suitable habitat for either the least Bell's vireo or the southwestern willow flycatcher because the existing area of habitat within the preserve is very narrow and too small to support the nesting of least Bell's vireos or southwestern willow flycatchers.

4.0 BASELINE DETERMINATION

This Agreement provides a way for landowners to enhance and manage native riparian and wetland habitats for the benefit of the Covered Species without incurring additional regulatory restrictions on the use of their property. The Agreement, however, does not release landowners from the responsibility to avoid take of any endangered or threatened species already occupying portions of their property. To receive the assurances regarding take of Covered Species specified in this Agreement, the Conservancy and Scanstyle must maintain the Baseline conditions on the Enrolled Property.

4.1 California Red-legged Frog

If California red-legged frogs are present or are likely to occur on an Enrolled Property, the Parties have agreed to set the Baseline conditions at the current amount of potential aquatic breeding habitat that is present along with the associated upland habitat that is within 200 feet from the edge of the potential breeding habitat. For those Enrolled Properties where there are no known California red-legged frog occurrences or no suitable habitat exists on or near the property, and/or there is evidence that suggests that California red-legged frogs do not occur on the property, the Parties have agreed to set the Baseline at zero. The Baseline for California red-legged frog on each of the Enrolled Properties is as follows:

4.1.1 Ventura River – Rancho El Nido Preserve

California red-legged frogs are known to occur to the north and south of the VRP, indicating that they could occur on the Enrolled Property. California red-legged frogs have been detected in San Antonio Creek near the confluence with the Ventura River,

approximately 4 miles south of the southern boundary of the VRP (CNDDDB 2008). California red-legged frogs have also been detected approximately 3 miles north of the VRP in Matilija Creek above Matilija Dam (CNDDDB 2008). The Matilija Creek critical habitat unit VEN-1 also occurs above Matilija Dam (71 FR 19244). Matilija Dam has been slated for removal, and because Matilija Creek is a tributary to the Ventura River, the dam removal would reestablish a connection between Matilija Creek and the Ventura River. If California red-legged frogs do not already occur at the VRP, this connection could result in the eventual establishment of California red-legged frogs in the Ventura River at the VRP, particularly if riparian habitat is restored within the VRP.

There are five hydrological features in the VRP: Ventura River, Rice Creek, Wills Creek, Sycamore Creek, and Olive Creek. The section of Ventura River that occurs within the VRP is characterized by subsurface summer flows, and intermittent surface flows in the winter including occasional catastrophic floods.

The Ventura River, Rice Creek, and Wills Creek do not contain suitable aquatic breeding habitat, or associated upland habitat, because they do not contain water for at least 20 weeks during most years. The Ventura River, Rice Creek, and Wills Creek typically only have surface flows during the winter and spring. Therefore, we do not anticipate that California red-legged frogs would breed at these locations.

Sycamore Creek and Olive Creek contain suitable California red-legged frog aquatic and upland breeding habitat because they contain seeps and springs that supply surface water to the creek for most of the year, and pools can be found in the mid-reaches during the late-summer through fall. In September 2007, potential aquatic California red-legged frog habitat at one location in Sycamore Creek and at one location in Olive Creek was surveyed according to Service protocol for presence of California red-legged frogs, and none were detected. However, the Parties have determined that California red-legged frog could occur in these two locations. Therefore, the Parties have agreed that the Baseline for California red-legged frogs at the VRP will be 2.8 acres of aquatic and upland habitat at Sycamore Creek, and 2.8 acres of aquatic and upland habitat at Olive Creek (Figure 2).

4.1.2 Ojai Meadows Preserve

California red-legged frogs are not likely to occur in the OMP. There is no suitable habitat for the California red-legged frog at the OMP. There are no records of California red-legged frogs within the OMP, nor in any of the drainages that converge at the property. The nearest California red-legged frog records are approximately 1.2 miles south of the property in San Antonio Creek (CNDDDB 2008), and approximately 5.3 miles northwest of the property in the Ventura River above Matilija Dam; neither of these rivers is connected to the OMP. Therefore, the Parties have agreed that the Baseline for California red-legged frogs at the OMP will be set at zero.

4.1.3 Ventura River – Confluence Preserve

California red-legged frogs have been detected directly adjacent to the Ventura River – Confluence Preserve in San Antonio Creek near the junction with the Ventura River (CNDDDB 2008). However, there is currently no area within the Ventura River – Confluence Preserve that is suitable aquatic habitat because the Ventura River channel is too active and does not contain slow-moving or ponded surface water for most or all of the year. Therefore, the Parties have agreed that the Baseline for California red-legged frog at the Ventura River – Confluence Preserve will be set at zero.

4.1.4 San Antonio Creek Preserve

California red-legged frogs have been observed in San Antonio Creek approximately 0.25 mile east of the San Antonio Creek Preserve within Camp Comfort County Park, and also approximately 328 feet directly west of the San Antonio Creek Preserve (CNDDDB 2008). Suitable aquatic habitat for California red-legged frogs, which includes perennially flowing water and vegetative cover, occurs along the San Antonio Creek within the Preserve. Additionally, there is suitable upland habitat adjacent to the creek. Therefore, the Parties have agreed that the Baseline for California red-legged frogs at the San Antonio Creek Preserve will be the entire creek within the preserve, and 200 feet of upland habitat adjacent to the creek that occurs on the east side of Creek Road within the preserve, for a total of 1.8 acres of aquatic and upland habitat (Figure 5).

4.2 Least Bell's Vireo

4.2.1 Ventura River – Rancho El Nido Preserve

The least Bell's vireo was observed in 2007 in the Ventura River approximately 1.5 miles south of the VRP; however, least Bell's vireos have not been observed at the VRP and there is currently no suitable habitat for least Bell's vireo within the VRP. Therefore, the Parties have agreed that the Baseline for least Bell's vireo at the VRP will be set at zero.

4.2.2 Ojai Meadows Preserve

There are no records of the least Bell's vireo on or near the OMP. The nearest least Bell's vireo record is approximately 3.5 miles south of the OMP on the Ventura River. In addition, there is no suitable habitat for least Bell's vireo on the property. Therefore, the Parties have agreed that the Baseline for least Bell's vireo at the OMP will be set at zero.

4.2.3 Ventura River – Confluence Preserve

Least Bell's vireos were observed in 2007 in the Ventura River approximately 1.5 miles north of the Ventura River – Confluence Preserve. Suitable habitat for the least Bell's vireo occurs within a portion of the preserve along the Ventura River floodplain that contains some mature riparian woodlands and dense understory vegetation. Therefore,

the Parties have agreed that the Baseline for the least Bell's vireo at the Ventura River – Confluence Preserve will be the 6.5-acre area of riparian habitat that contains suitable habitat for the least Bell's vireo (Figure 4).

4.2.4 San Antonio Creek Preserve

There are no records of the least Bell's vireo on or near the San Antonio Creek Preserve, and there is no suitable nesting habitat for the least Bell's vireo on the property because the area of existing habitat is too small. The nearest record of a least Bell's vireo is approximately 2.1 miles south of the San Antonio Creek Preserve on the Ventura River. Therefore, the Parties have agreed that the Baseline for least Bell's vireo on the San Antonio Creek Preserve will be set at zero.

4.3 Southwestern Willow Flycatcher

4.3.1 Ventura River – Rancho El Nido Preserve

There are no records of southwestern willow flycatchers on or near the VRP. The nearest southwestern willow flycatcher records are approximately 19 miles northwest of the VRP in the Los Padres National Forest. There are no willow thickets, cottonwoods, or alders at the VRP. Thus, suitable habitat for the southwestern willow flycatcher is not present at the VRP. Therefore, the Parties have agreed that the Baseline for the southwestern willow flycatcher at the VRP will be set at zero.

4.3.2 Ojai Meadows Preserve

There are no records of southwestern willow flycatchers on or near the OMP. There are no willow thickets, cottonwoods, or alders at the OMP. Thus, suitable habitat for the southwestern willow flycatcher is not present at the OMP. Therefore, the Parties have agreed that the Baseline for the southwestern willow flycatcher at the OMP will be set at zero.

4.3.3 Ventura River – Confluence Preserve

There are no records of southwestern willow flycatchers on or near the Ventura River – Confluence Preserve. Within the preserve boundaries, riparian forest comprised of mature cottonwoods, sycamores, alders, and oaks with an understory of dense willows provides the basic elements that comprise suitable habitat for the southwestern willow flycatcher; however, the area of this habitat within the preserve is currently too small to attract nesting individuals. Because there are no records of southwestern willow flycatchers and sufficient area of suitable habitat is not currently present within the preserve, the Parties have agreed that the Baseline for the southwestern willow flycatcher at the Ventura River – Confluence Preserve will be set at zero.

4.3.4 San Antonio Creek Preserve

There are no records of southwestern willow flycatchers on or near the San Antonio Creek Preserve. There is a narrow willow thicket with a cottonwood and sycamore overstory along the streambed within the San Antonio Creek Preserve, but the area of existing habitat is not large enough to support southwestern willow flycatchers. Thus, suitable nesting habitat for the southwestern willow flycatcher is not present at the San Antonio Creek Preserve. Therefore, the Parties have agreed that the Baseline for the southwestern willow flycatcher at the San Antonio Creek Preserve will be set at zero.

5.0 MANAGEMENT ACTIVITIES

The Conservancy and Scanstyle agree to carry out the following management activities at each of the Enrolled Properties:

5.1. Ventura River – Rancho El Nido Preserve

The Conservancy completed a restoration plan for the VRP in 2006, that includes several components for habitat restoration and enhancement such as non-native plant removal, oak woodland and alluvial scrub restoration, creek realignment, and riparian corridor restoration (Ojai Valley Land Conservancy 2006). The goal of this plan is to improve native habitats for the benefit of the Covered Species. Elements of this restoration plan have been completed or are being implemented and not covered under this Agreement, including the removal of giant reed from Rice Creek. Elements of this restoration plan that would be covered under this Agreement, include removing the orange grove, realigning Rice Creek, and replanting with native vegetation.

Invasive non-native plant species will be controlled and eradicated not only to conserve intact native habitats, but also to allow for the establishment of native plant species in highly disturbed areas such as the orange grove along Rice Creek. Non-native plant eradication is already being implemented and would occur until native plants establish. Giant reed was targeted along the diverted channel of Rice Creek during the fall of 2006 and was removed from nearly the entire channel with the exception of a small portion on the floodplain of the Ventura River. New growth is monitored closely and will be controlled with regular herbicide application.

Removal of the orange grove from 64 acres of the VRP will occur starting in 2009. This will allow for more aggressive pursuit of invasive non-native plant eradication followed by intensive revegetation with native plant species. Once existing surface irrigation has been removed, orange trees will be pushed and piled, then mulched using a tub grinder. The terrain will be smoothed and ripped then disked several times to control invasive non-native plants.

Upon completion of giant reed and orange tree removal, engineering surveys will be

conducted to develop an engineering plan for the re-alignment of Rice Creek. The Natural Resources Conservation Service has approved funding for this project, which is a separate project from activities under this Agreement, through its Environmental Quality Incentives Program (EQIP) and will conduct these surveys and provide engineered plans at no charge.

The re-alignment of Rice Creek to its historic or natural course will begin in the fall of 2010. This will recreate 1,500 feet of riparian corridor and will restore natural flows to an additional 1,500 feet of remnant riparian corridor between the orange grove and the Ventura River. The natural channel running through the orange grove will be re-graded using heavy equipment to connect flows coming from the upper watershed to the remnant strip of natural channel below the orange grove. Grade control structures will be installed to prevent erosion problems.

Once orange trees have been removed, non-native plant species have been controlled, and Rice Creek has been re-aligned to its historic natural channel, revegetation of the orange grove area and historic riparian corridor will begin. Plant species for revegetation will include arroyo and red willows, sycamore, cottonwood, and coast live oak, which as noted above, are types of plants that comprise habitat these species prefer. Cuttings and small nursery stock will be densely planted to compensate for loss due to herbivory. Plantings will be replaced as necessary to establish appropriate plant communities.

The Plan also includes management activities to accommodate continued public use of the preserve which involves retiring, maintaining, improving, and creating trails. Approximately 12 miles of existing earthen paths will be maintained or improved, with a few trail additions. Approximately 1,500 feet of additional earthen paths will be created along the newly restored riparian corridor of Rice Creek. Sensitive habitat fencing will be erected to reduce impacts to newly restored areas from preserve visitors. Some fire clearance is required on this preserve.

Full implementation of the Restoration Plan is expected to take 5 years with an additional 5 years of maintenance and monitoring. The Conservancy is committed to the restoration of the VRP and will manage and maintain the project for as long as necessary to establish native plant communities.

5.2 Ojai Meadows Preserve

In 2004, the Conservancy's Habitat Restoration and Flood Control Plan for the OMP was completed (Ojai Valley Land Conservancy 2004). The goal of the plan is to create a more highly functioning, integrated, self-sustaining wetland/riparian ecosystem, increasing the flood retention capacity of the property. The Habitat Restoration and Flood Control Plan for the OMP consists of habitat restoration, wetland restoration, and passive recreational opportunities on the approximately 57-acre preserve to improve habitat for native species and alleviate flooding on the Maricopa Highway (Ojai Valley Land Conservancy 2004).

The project includes removal of several man-made features, including an earthen berm, an existing sanitary sewer line owned and operated by the Ojai Valley Sanitary District, and an

old building pad and driveway. The project will restore approximately 6 acres of freshwater marsh to the OMP, modify the Maricopa Drain to convey storm flow to a retention basin/freshwater marsh, improve several onsite drainages, create a minimum of two vernal pools, and replicate habitats that were present on the site prior to 1929. The modifications will require 23,000 cubic yards of cut, which would be balanced on site as fill. The restoration includes removal of 90 eucalyptus trees and other non-native plant species to be followed by planting 50,000 native trees, grasses, shrubs, and herbs throughout the site. This revegetation effort will recreate wetlands, native grasslands, riparian woodland, valley oak savanna, coast live oak woodland and savanna, and coastal sage scrub, which as described in Section 2 of this Agreement, constitutes several habitat preferences of species at issue.

The project will retire, replace, and improve existing trails within the site. Approximately 9,000 linear feet of earthen paths will be maintained or created, generally located along existing trails with a few trail additions. Boardwalks will be built in areas bordering newly created wetlands with a wetland overlook at the outflow of the retention basin. Sensitive habitat fencing will be erected to reduce impacts to newly restored areas from preserve visitors. A final component of the project is inclusion of a long-term monitoring program with oversight from a qualified restoration manager. Fire clearance is required along the perimeter of this preserve.

Full implementation of the Restoration Plan is expected to take up to 10 years with an additional 5 years of maintenance and monitoring. The Conservancy is committed to the restoration of the OMP and will manage and maintain the project for as long as necessary to establish native plant communities.

5.3 Ventura River – Confluence Preserve

A restoration and management plan is currently being prepared for the Ventura River – Confluence Preserve which will incorporate present and future restoration efforts into a long-term management plan for the preserve. The California Department of Transportation, Ventura County's Watershed Protection District and Parks Department (Ojai Valley Trail), Casitas Municipal Water District, and Ojai Valley Sanitation District hold easements through the property, consequently restoration and management of the preserve must address potential plans by any of these agencies. Once the restoration plan is completed, implementation of the plan is expected to take 5 years with an additional 5 years of maintenance and monitoring. While some restoration has already begun in the form of non-native plant removal, we anticipate that future restoration work will be completed within 10 years.

Non-native invasive plant removal has been the focus of restoration efforts on the preserve thus far. Giant reed has been removed and maintained since the fall of 2005. When giant reed has been controlled, removal areas will be revegetated with native plants. Removal of vinca (*Vinca major*) and cape ivy (*Senecio mikanioides*) from 13 acres of the preserve began in February of 2007. Herbicide treatment will continue as needed until both species are eradicated then removal areas will be revegetated with native understory plants. For both

removal efforts, great care has been taken to avoid impacts to native species. Other restoration projects will be identified in the complete restoration and management plan.

The Conservancy holds a conservation easement for the 16-acre area within the Ventura River – Confluence Preserve that is owned by Scanstyle. Under this conservation easement, the activities that can be conducted by Scanstyle are limited to the following: the maintenance and replacement of an existing well with approval from the Conservancy; the stabilization of streambanks with approval from the Conservancy; the restoration of habitat in conjunction with the Conservancy; and the undertaking of passive recreational activities.

There is one trail for restricted vehicle access that runs the length of the property along the eastern boundary and Highway 33. This trail requires regular maintenance. Additional trails may be created that tie into the Ojai Valley Bike Path and make better use of the preserve's biological features. The existing trail must be maintained for fire clearance.

5.4 San Antonio Creek Preserve

California red-legged frogs have been documented adjacent to the San Antonio Creek Preserve, both upstream and downstream, and suitable habitat for the California red-legged frog occurs within the San Antonio Creek Preserve boundaries; therefore, California red-legged frog could occur on or expand their range into the San Antonio Creek Preserve. The Conservancy owns this property and will maintain this suitable habitat. Ownership of this land by the Conservancy ensures that this suitable habitat will remain undisturbed and that connectivity through this reach of San Antonio Creek will be preserved. The potential for California red-legged frogs to occur within the San Antonio Creek Preserve and the potential for California red-legged frogs to move through this area enables the species to expand its range to additional suitable habitat located both upstream and downstream and to increase population numbers and breeding locations.

Restoration on the San Antonio Creek Preserve will be limited because habitat conditions are already favorable. However, future work would involve habitat enhancement by removing non-native invasive plants and stabilizing streambanks. Invasive non-native plant species would be targeted for removal to enhance native vegetation communities. Efforts to stabilize eroding streambanks would include the planting of native species with the possible installation of bioengineered structures. Once the restoration is completed, implementation is expected to take 5 years with an additional 5 years of maintenance and monitoring.

Access to the San Antonio Creek Preserve is restricted; it is not open to the public. Maintenance activities are limited to required fire clearance. This restricted access also substantially reduces the potential for disturbance to California red-legged frogs and their habitat.

The status of each Enrolled Property as a preserve, and thereby protected from development, provides a benefit to each of the Covered Species. The Conservancy will maintain these preserves in a natural state as locations where the wildlife habitats will be maintained and remain

mostly undisturbed over the long-term; serving as a refuge for the Covered Species where suitable habitat exists. Therefore, the Enrolled Properties benefit the Covered Species and contribute to their conservation and recovery by: providing areas where suitable habitat for the Covered Species will remain relatively undisturbed and be allowed to increase in area; providing locations for a Covered Species to increase in population numbers or distribution, providing locations for a Covered Species to expand its range of occupied habitat; and maintaining movement corridors and habitat connectivity.

The restoration and enhancement of Covered Species habitats within a preserve further promotes the conservation and recovery of these species by providing future area for each Covered Species to expand its current range once habitat has been restored or enhanced. The removal of non-native species, the maintenance of suitable habitat, and/or the restoration and enhancement of habitat are identified as recovery actions for each of the Covered Species, as identified in the recovery plans for the California red-legged frog (Service 2002a), least Bell's vireo (Service 1998), and southwestern willow flycatcher (Service 2002b). Therefore, management activities associated with this Agreement on the Enrolled Properties, benefit the Covered Species and contribute to their conservation and recovery by: providing areas where suitable habitat for the Covered Species will be maintained or increased in area; providing habitat for the Covered Species to increase in population numbers or distribution, providing habitat for the Covered Species to expand in range of occupied habitat; and maintaining or creating movement corridors and habitat connectivity.

6.0 INCIDENTAL TAKE OF COVERED SPECIES

As used in this Agreement, incidental take refers to the unintentional or unavoidable killing or injuring of individuals of the Covered Species in the course of carrying out otherwise lawful activities. Section 3(18) of the Act defines take to mean to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Service regulations (50 CFR 17.3) define harm to include significant habitat modification or degradation which actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harassment is defined by the Service as an intentional or negligent action that creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. Nothing in this Agreement authorizes the Conservancy or Scanstyle to capture, collect, or deliberately kill or injure any such species.

Safe Harbor Agreements are written in anticipation of take of the Covered Species and their progeny at some point in the future. Take cannot occur below the established Baseline on the enrolled lands. Incidental take may occur as a result of conservation activities, otherwise legal activities, and the potential return to Baseline at the termination of the Agreement and its associated Permit. The Conservancy and Scanstyle may continue current land-use practices, undertake new ones, or make any other lawful use of the property, even if such use results in the incidental take of individual California red-legged frogs, least Bell's vireos, or southwestern willow flycatchers covered under this Agreement and as authorized in the Incidental Take

Permit.

Incidental take of California red-legged frogs could occur as a result of restoration and maintenance activities on the Enrolled Properties in the form of direct mortality or injury of larvae or adults through exposure, cutting or trampling by the Conservancy, Scanstyle, or other authorized personnel involved in habitat restoration activities. Within the areas that were determined to contain potential California red-legged frog habitat (Figures 2 and 5), and in any additional areas where California red-legged frogs are detected during annual surveys, the Conservancy and Scanstyle have agreed to avoid or reduce adverse effects to California red-legged frogs by following these avoidance and minimization measures:

Prior to any restoration and maintenance activities in California red-legged frog aquatic habitat, a Service-approved biologist will survey the project area for California red-legged frogs. If California red-legged frogs are found and these individuals are likely to be killed or injured by work activities, the biologist will capture and relocate them the shortest distance possible to suitable aquatic habitat. The biologist will maintain detailed records of any individuals that are moved (e.g., size, coloration, any distinguishing features, photographs) to assist in determining whether translocated animals are returning to the point of capture.

1. Biologists who handle California red-legged frogs will ensure that their activities do not transmit diseases. To ensure that diseases are not conveyed between work sites by the Service-approved biologist, the fieldwork code of practice developed by the Declining Amphibian Task Force will be followed at all times.
2. Any bullfrogs (*Rana catesbeiana*) encountered during California red-legged frog surveys will be captured and removed. The biologist will maintain records of the number of individual bullfrogs removed.
3. During restoration activities, for any non-native plant removal that occurs within aquatic habitats, the least toxic herbicides for aquatic habitats (i.e., Rodeo with Agridex surfactant for aquatic areas) would be used.

Incidental take of least Bell's vireos and southwestern willow flycatchers could occur as a result of restoration and maintenance activities on the Enrolled Properties in the form of direct mortality or injury, direct loss of nests, temporary habitat loss, disturbance, and displacement through cutting or removal of nesting or foraging habitat. Incidental take of least Bell's vireos and southwestern willow flycatchers could also occur as a result of lawful recreational activities such as hiking, bicycling, or horseback riding on trails, in the form of noise to nests or territories. Within the area that was determined to contain potential least Bell's vireo habitat (Figure 4), and in any additional areas where least Bell's vireos or southwestern willow flycatchers are detected during any future surveys, the Conservancy and Scanstyle will avoid or reduce adverse effects to these species by establishing a 500-foot buffer around potential least Bell's vireo and southwestern willow flycatcher habitat during the breeding season (March 15 through September 15) where no restoration or maintenance activities would occur, unless prior surveys by a Service-approved biologist are conducted according to Service protocol for breeding least Bell's

vireos and southwestern willow flycatchers immediately prior to project activities. If any least Bell's vireo or southwestern willow flycatcher nests are found, project activities would be set back a minimum of 500 feet from nest sites or nests would be avoided until the young have fledged.

The Permit will authorize the Conservancy and Scanstyle to take individuals of the Covered Species and their progeny that have increased in numbers and/or distribution on the Enrolled Properties above the established Baseline conditions; such take could occur as a result of activities associated with the return to Baseline conditions. Because the Baseline for each Covered Species on each of the Enrolled Properties has been determined as either an area of suitable habitat or zero, activities that would result in a return to Baseline could be associated with those activities that would reduce or remove any additional suitable habitat that has developed above the Baseline over the term of the Agreement. Incidental take of California red-legged frogs could occur, as a result of the return to Baseline conditions on the Enrolled Properties, in the form of direct mortality or injury of larvae or adults through exposure, habitat loss, disturbance, displacement, or trampling by the Conservancy, Scanstyle, or other authorized personnel. Incidental take of least Bell's vireos and southwestern willow flycatchers could occur, as a result of the return to Baseline conditions on the Enrolled Properties, in the form of direct mortality or injury, direct loss of nests, habitat loss, disturbance, or displacement through cutting or removal of nesting or foraging habitat.

The Parties expect that the maximum level of take authorized under this Agreement and Permit will never be realized because, as identified in Part 8 of this Agreement, the Conservancy and Scanstyle are required to notify the Service of any planned activity that the Conservancy and Scanstyle reasonably anticipate will result in take of the Covered Species on the Enrolled Properties, including a return of the Enrolled Properties to the Baseline conditions, and provide the Service the opportunity to capture and relocate any individuals that could potentially be affected. Incidental take of California red-legged frogs, least Bell's vireos, and southwestern willow flycatchers could occur in the form of capture as a result of these activities.

Certain activities by the Conservancy or Scanstyle, which will not be considered a limitation on any other activity the Conservancy or Scanstyle desire to engage in, that may result in an incidental take of the species are the: 1) maintenance of fences, 2) maintenance of upland or aquatic vegetation, 3) maintenance of drainages and retention basins, 4) trail improvements and maintenance, 5) search and rescue/recovery of injured persons or wildlife, 6) creation and maintenance of fire breaks and fire clearance, and 7) remedial actions to protect property from erosion.

7.0 NET CONSERVATION BENEFIT

In accordance with the Service's Safe Harbor Policy (64 FR 32717), "net conservation benefit" means that the management activities that are a part of the Agreement are expected to provide an increase in the Covered Species' population and/or the enhancement, restoration, or maintenance of the Covered Species' habitat. The net conservation benefit will be sufficient to directly or

indirectly contribute to recovery of the Covered Species.

The management activities in the Agreement have been developed to support listed species recovery actions provided for in the recovery plans for the California red-legged frog (Service 2002a), least Bell's vireo (Service 1998), and southwestern willow flycatcher (Service 2002b) by protecting suitable habitat and by implementing management plans for habitat. The Service anticipates that implementation of these management activities will produce the following net conservation benefits to the Covered Species:

- Increased availability of suitable breeding and foraging habitat for the California red-legged frog, the least Bell's vireo, and the southwestern willow flycatcher as a result of restoration of aquatic and riparian habitats and control and removal of non-native plants;
- Reduced habitat fragmentation and increased habitat connectivity on the Enrolled Properties;
- Raised potential for the Covered Species to increase in population size and/or expand into new areas on the Enrolled Properties as a result of habitat improvements; and
- Habitat protection and insurance against the loss of these species on the Enrolled Properties.

The management activities outlined in this Agreement have been developed to enhance, protect, and/or provide additional suitable habitat for the Covered Species that will remain in place for at least 30 years. The net conservation benefit and contribution to recovery is expected to be achieved by increasing the amount of available habitat for the Covered Species; thus, providing dispersal opportunities for the Covered Species to increase their range of occupied habitat.

8.0 RESPONSIBILITIES OF THE PARTIES

In addition to carrying out the management activities described in Part 5, the Conservancy and/or Scanstyle agree to:

1. Notify the Service at least 60 days in advance of any planned activity that the Conservancy or Scanstyle reasonably anticipate will result in take of the Covered Species on the Enrolled Properties, including a return of the Enrolled Properties to the habitat Baseline, and provide the Service the opportunity to capture and relocate any individuals that could potentially be affected.
2. Conduct surveys for California red-legged frogs within restoration work areas as follows. Due to Conservancy funding constraints, when possible, the Service will assist in these surveys; however, Service agreement to assist is limited by its authorities and appropriated funds, as stated in Section 12.D of this Agreement.

- An initial survey will be conducted prior to the implementation of restoration work.
 - Annual surveys will be conducted during the period of March 1 to June 15 when restoration work is being implemented, which will not exceed 7 years.
 - If suitable habitat for the California red-legged frog is established after restoration work has been completed, surveys will be conducted every 5 years thereafter, during the period of March 1 to June 15, for the remainder of the Agreement period.
 - The results of these surveys, including whether any California red-legged frogs were observed or heard, and the species of all frogs detected, will be reported to the Service.
3. Conduct nighttime California red-legged frog surveys in those areas identified as containing potential California red-legged frog habitat (Figures 2 and 5) as follows. Due to Conservancy funding constraints, when possible, the Service will assist in these surveys; however, Service agreement to assist is limited by its authorities and appropriated funds, as stated in Section 12.D of this Agreement.
- Annually for 5 years after the issuance of the Agreement. Then once every 5 years for the remainder of the Agreement period.
 - The results of these surveys, including whether any California red-legged frogs were observed or heard, and the species of all frogs detected, will be reported to the Service.
4. Conduct annual nesting surveys for least Bell's vireos and southwestern willow flycatchers during the period of March 15 to September 15 in areas identified as containing potential least Bell's vireo habitat (Figure 4), and in any areas where potential habitat for least Bell's vireos and potential habitat for southwestern willow flycatchers was voluntarily established or enhanced for a period of 5 years after the issuance of the Permit and then once every 5 years thereafter for the remainder of the Agreement period. The results of these surveys will be reported to the Service.
5. Allow reasonable access by the Service or another agreed-upon party onto the Enrolled Properties for purposes related to this Agreement, including verification of the identification of any frogs using the voluntarily established or enhanced aquatic habitats, capture and relocation of California red-legged frogs, and nesting surveys for least Bell's vireos and southwestern willow flycatchers.
6. Notify the Service 60 days prior to the transfer of ownership so that the Service can attempt to contact the new owner, explain the Baseline responsibilities applicable to the Enrolled Properties, and seek to interest the new owner in signing the existing Agreement

or a new one to benefit Covered Species on the Enrolled Properties.

7. Report to the Service any dead, injured, or ill specimens of the Covered Species observed on the Enrolled Properties. Upon locating a dead or injured Covered Species, you must notify the Ventura Fish and Wildlife Office (2493 Portola Road, Suite B, Ventura, California, 93003; 805/644-1766) by telephone and in writing within 3 working days of its finding. The report must include the date, time, location, a photograph, cause of injury or death if known, and any other pertinent information.
8. Provide the Service with an annual report (Attachment 1), due November 1 of each year for the prior calendar year, that describes any substantial change in condition of the voluntarily established or enhanced aquatic and riparian habitats, any bullfrog control measures undertaken during the preceding year, any sightings of the Covered Species by the Conservancy or Scanstyle during the previous year, and any incidental take of a Covered Species that has occurred.

In consideration of the foregoing, the Service agrees to:

1. Upon execution of the Agreement and satisfaction of all other applicable legal requirements, issue a Permit to the Conservancy and Scanstyle, authorizing incidental take of the Covered Species as a result of lawful activities on the Enrolled Properties in accordance with the terms of such Permit. The duration of the Agreement will be 30 years. The Permit may extend for an additional 2 years beyond the 30-year duration of the Agreement, so long as prior to or upon expiration of the Agreement, the Service determines that the conservation actions identified in the Agreement have been implemented and the Conservancy and Scanstyle need not perform additional conservation activities on the properties. If extended under the conditions above, the duration of the Permit will be 32 years.
2. As appropriate, provide the Conservancy and Scanstyle with a determination that they have satisfied the conservation measures within 1 year of the expiration of the Agreement.
3. Provide the Conservancy and Scanstyle with technical assistance when requested, and provide information on Federal funding programs for wildlife habitat improvement including those for threatened and endangered species.
4. Monitor use of the voluntarily established or enhanced habitats by the Covered Species, if the Service determines that such monitoring is needed.

9.0 AGREEMENT AND PERMIT DURATION

This Agreement becomes effective upon issuance of the Permit by the Service. The Agreement will be in effect for 30 years. If the Service determines that the conservation actions identified in

the Agreement have been implemented, then the Conservancy and/or Scanstyle need not perform additional conservation activities on the property and the Permit may continue in effect following termination of the Agreement for an additional 2 years. In such case, the Permit authorizing incidental take of the California red-legged frog, the least Bell's vireo, and the southwestern willow flycatcher will also be in effect for 30 years from the effective date of the Permit. The additional duration of the Permit following termination of the Agreement will continue Permit coverage for the Conservancy and Scanstyle for 2 years to allow a return of the Enrolled Property to its Baseline condition. Both the duration of the Agreement and the Permit may be extended upon mutual agreement among the Parties.

10.0 ASSURANCES TO THE CONSERVANCY AND SCANSTYLE REGARDING TAKE OF COVERED SPECIES

Provided that such take is consistent with maintaining the Baseline conditions identified in Part 4 hereof, the Permit shall authorize the Conservancy and Scanstyle to take the Covered Species incidental to otherwise lawful activities in the following circumstances, including:

1. The implementation of the management activities identified in Part 5;
2. The lawful use of the Enrolled Properties after the management activities identified in Part 5 have been fully implemented;
3. The use of herbicides and pesticides in accordance with best management practices to be developed in cooperation with the Service; and
4. The return of Enrolled Properties to Baseline conditions.

The Permit provides incidental take authorization only to persons conducting Conservancy and/or Scanstyle related activities identified in this Agreement. Any persons present within the Ventura River – Rancho El Nido Preserve, the Ojai Meadows Preserve, the Ventura River – Confluence Preserve, and/or the San Antonio Creek Preserve for recreational or other purposes not directly affiliated with Conservancy activities will not be covered under the Permit nor will such persons be provided incidental take coverage.

11.0 MODIFICATIONS

A. Modification of the Agreement. Either Party may propose amendments to this Agreement, as provided in 50 CFR 13.23, by providing written notice to, and obtaining the written concurrence of, the other Party. Such notice shall include a statement of the proposed modification, the reason for it, and its expected results. The Parties will use their best efforts to respond to proposed modifications within 60 days of receipt of such notice. Proposed modifications will become effective upon the other Parties' written concurrence.

B. Termination of the Agreement. As provided for in the Service's Safe Harbor Policy (64 FR

32717), the Conservancy and/or Scanstyle may terminate the Agreement for circumstances beyond the Conservancy's and/or Scanstyle's control. In such circumstances, the Conservancy and/or Scanstyle may return the Enrolled Properties to Baseline conditions even if the net conservation benefit activities have not been fully implemented, provided that the Conservancy and/or Scanstyle gives the Service the notification required by Part 8 of this Agreement prior to carrying out any activity likely to result in the taking of the Covered Species. Upon return to Baseline under these circumstances, the Permit will terminate. If the Conservancy and/or Scanstyle terminate the Agreement for any other reason, the Permit referenced in Part 8 of this Agreement shall immediately cease to be in effect.

C. Permit Suspension or Revocation. The Service may suspend or revoke the Permit referred to in Part 8 of this Agreement in accordance with the laws and regulations in force at the time of such suspension or revocation. The Service also, as a last resort, may revoke the Permit if continuation of permitted activities would likely result in jeopardy to any of the Covered Species (50 CFR 13.28(a)). In such circumstances, the Service will exercise all possible measures to avoid revoking the Permit.

D. Baseline Adjustment. The Baseline conditions set forth in Part 4 of this Agreement may, by mutual agreement of the Parties, be adjusted if, during the term of the Agreement and for reasons beyond the control of the Conservancy and/or Scanstyle, the utilization of the Enrolled Properties by the Covered Species or the quantity or quality of habitat suitable for or occupied by the Covered Species is reduced from what was at the time the Agreement was negotiated.

12.0 OTHER MEASURES

A. Remedies. Each party shall have all remedies otherwise available to enforce the terms of the Agreement and the Permit, except that no party shall be liable in damages for any breach of this Agreement, any performance or failure to perform an obligation under this Agreement or any other cause of action arising from this Agreement.

B. Dispute Resolution. The Parties agree to work together in good faith to resolve any disputes, using dispute resolution procedures agreed upon by all Parties.

C. Succession and Transfer. As provided in Part 11 of the Service's Safe Harbor Agreement Policy, if the Conservancy or Scanstyle transfers their interest in the Enrolled Properties to another non-Federal entity, the Service will regard the new owner or manager as having the same rights and responsibilities with respect to the Enrolled Property as the Conservancy or Scanstyle, if the new owner or manager agrees to become a party to the Agreement in place of the Conservancy or Scanstyle.

D. Availability of Funds. Implementation of this Agreement is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this Agreement will be construed by the Parties to require the obligation, appropriation, or expenditure of any funds from the U.S. Treasury. The Parties acknowledge that the Service will not be required

under this Agreement to expend any Federal agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

E. Applicable Laws. All activities undertaken pursuant to this Agreement and its associated Permit must be in compliance with all applicable state, Federal, tribal, and local laws and regulations.

F. Relationship to the Act and other Authorities. The terms and conditions of this Agreement shall be governed by and construed in accordance with the Act and applicable Federal law. In particular, nothing in this Agreement is intended to limit the authority of the Service to seek penalties or otherwise fulfill its responsibilities under the Act. Moreover, nothing in this Agreement is intended to limit or diminish the legal obligations and responsibilities of the Service as an agency of the Federal government.

G. No Monetary Damages. No Party shall be liable in damages to any other Party or other person for any breach of this Agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement, or any other cause of action arising from this Agreement.

H. No Third-Party Beneficiaries. This Agreement does not create any new right or interest in any member of the public as a third-party beneficiary, nor shall it authorize anyone not a party to this Agreement to maintain a suit for personal injuries or damages pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third parties shall remain as imposed under existing law.

I. Other Listed Species, Candidate Species, and Species of Concern. There is the possibility that other listed, proposed, or candidate species, or species of concern may occur in the future on the Enrolled Properties as a direct result of the management actions specified herein. In the event that a non-covered species that may be affected by covered activities becomes listed under the Act, the Conservancy, Scanstyle, and the Service will work together either to amend this Agreement and the Permit described in Section 8 hereof to cover such other species or otherwise to confer upon the Conservancy and Scanstyle similar assurances with respect to such other species as are described above for Covered Species.

J. Notices and Reports. Any notices and reports, including monitoring and annual reports, required by this Agreement shall be delivered to the person at the address listed below:

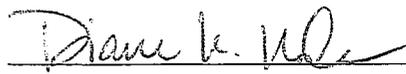
U.S. Fish and Wildlife Service
2493 Portola Road, Suite B
Ventura, California 93003
Attn: Field Supervisor

K. Pursuant to Section 22, Title 41, United States Code, it is further mutually agreed that no member of or delegate to Congress or resident commissioner, after their election or appointment,

and either before or after they have qualified and during their continuance in office, shall be admitted to any share or part of the Agreement, or to any benefit to arise thereupon; but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Safe Harbor Agreement to be in effect as of the date that the Service issues the Permit.

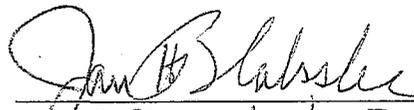
U.S. Fish and Wildlife Service

By: 

4/30/10
Date

Field Supervisor, Ventura Fish and Wildlife Office

Ojai Valley Land Conservancy

By: 
President, Board of Directors

3/29/10
Date

Scanstyle USA, Inc.

By: 

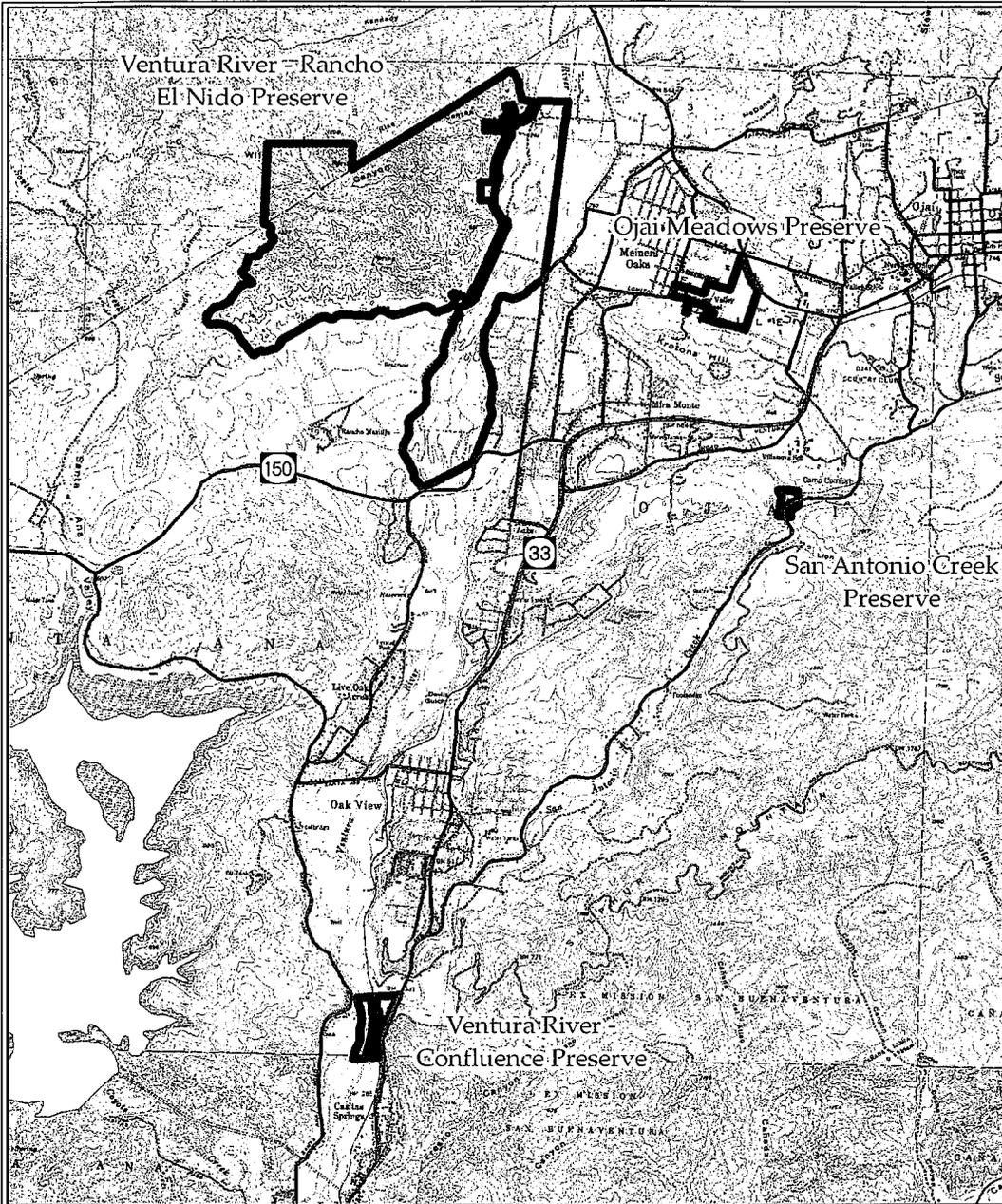
04/14/10
Date

Jerry Anderson : Property Mgr.
Jerry Anderson, Scanstyle Property Manager

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Figure 1. Ojai Valley Land Conservancy Preserves



Topographic Base: USGS 1:24k series maps
 Ventura, Matilija, Ojai, and Saticoy



Ventura Fish & Wildlife Office
 July, 2008

Figure 2. Ventura River – Rancho El Nido Preserve



Figure 3. Ojai Meadows Preserve



Aerial Photography: National Agricultural Imagery Program, 2005



Ventura Fish & Wildlife Office
July, 2008

Figure 4. Ventura River - Confluence Preserve

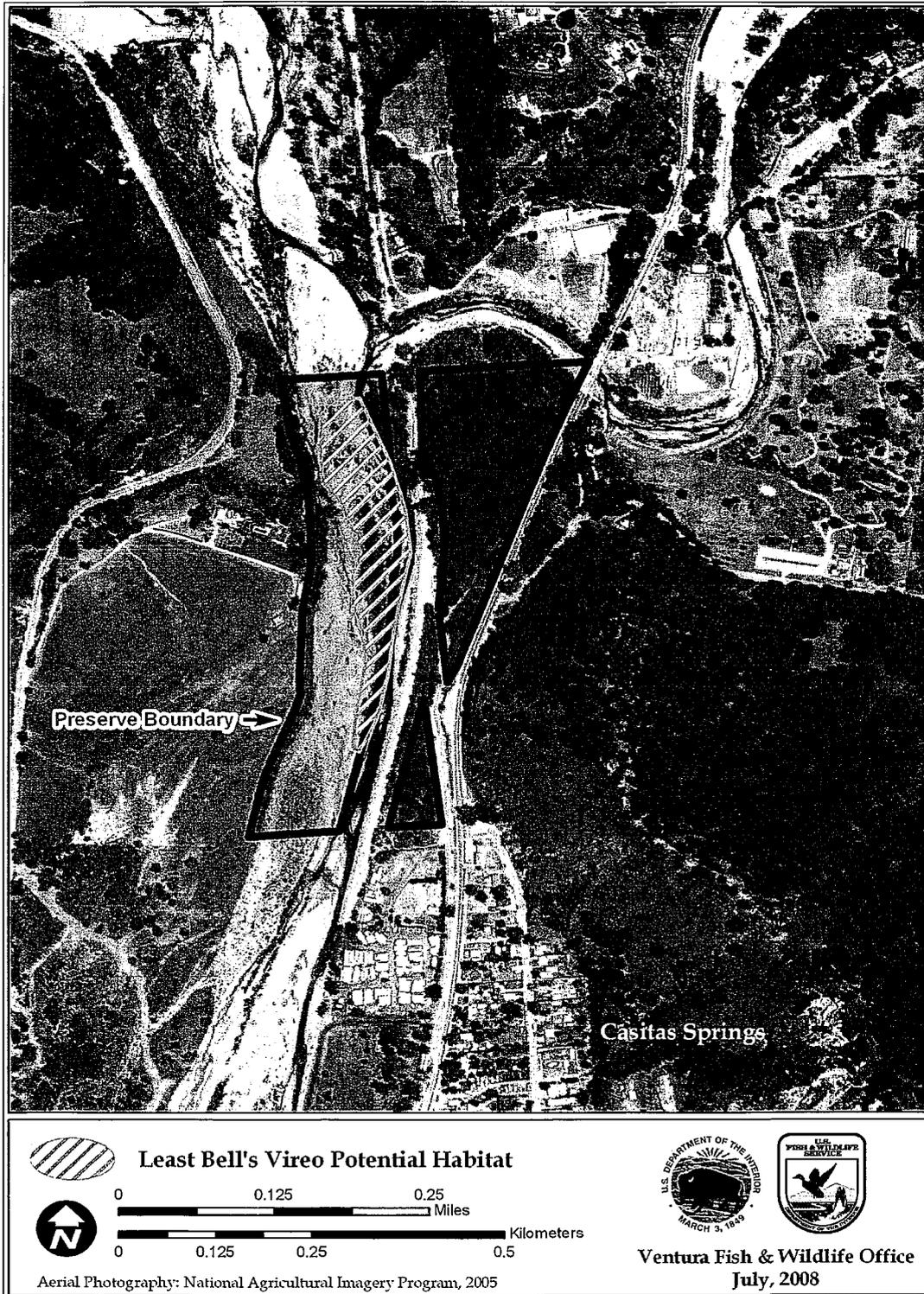
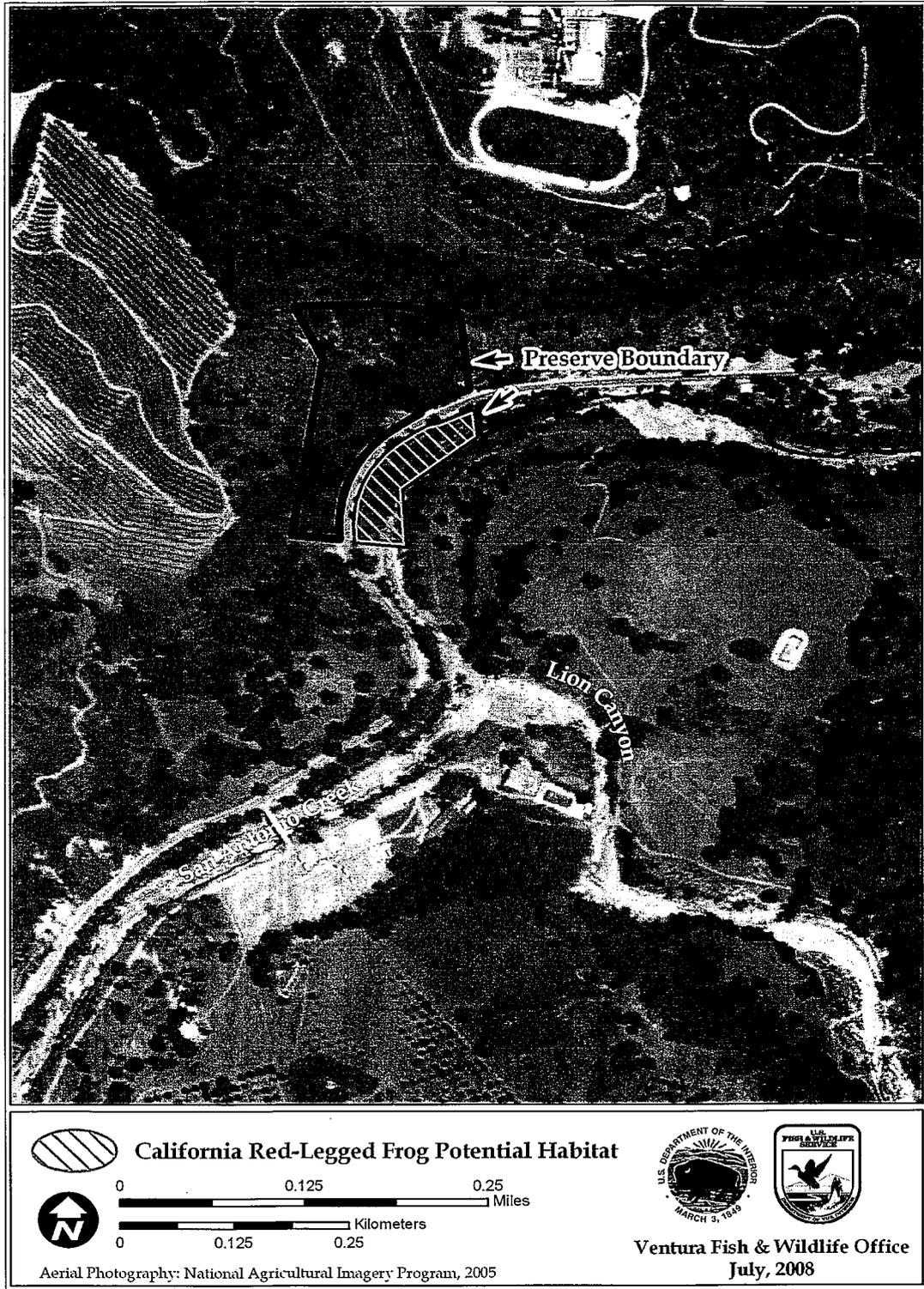


Figure 5. San Antonio Creek Preserve



Attachment 1.

**Annual Monitoring Report for Safe Harbor Agreement
between the U.S. Fish and Wildlife Service
and Ojai Valley Land Conservancy**

Permittee's Name: Ojai Valley Land Conservancy

Permit Tracking Number: TE-222640-0

Location: Ojai, Ventura County, California

Agreement Approved by: Ventura Fish and Wildlife Office

Covered Species: California red-legged frog, least Bell's vireo, southwestern willow flycatcher

Monitoring Program: Describe in general terms the monitoring program for the current year pursuant to Section 8.0 of the Safe Harbor Agreement. Annual reports are designed to provide information to the Service concerning the effects and effectiveness of the Agreement's conservation actions on the Covered Species, as well as to determine if the conservation actions the Permittee undertakes meet the Service's Safe Harbor Policy "standard." The monitoring report will document any changes in the condition of individuals of the Covered Species or the habitat associated with that species over time and will denote whether the data provided is from the Permittee, professional scientist, or other specific individual or entity. Photographs are helpful but may not be required.

Date Annual Report is Due: On or before November 1, for the prior calendar year

Date Annual Report was Received: _____

Date Annual Report was Reviewed: _____

Signature of Reviewer: _____

Printed Name and Phone # of Reviewer: _____

Management and Conservation Actions: Please write a summary of the actions taken to date and the results of the actions taken on each of the management and conservation actions (attach additional pages if necessary).