FINAL EIR/EIS
ISSUANCE OF TAKE AUTHORIZATIONS FOR THREATENED AND ENDANGERED SPECIES DUE TO URBAN GROWTH WITHIN THE MULTIPLE SPECIES CONSERVATION PROGRAM (MSCP) PLANNING AREA

LDR No. 93-0287
SCH No. 93121073

VOLUME 1 OF 2

Applicant:
CITY OF SAN DIEGO
600 "B" Street, Suite 500
San Diego, CA 92101

Lead Agencies:
CITY OF SAN DIEGO, CALIFORNIA
DEVELOPMENT SERVICES DEPARTMENT
ENVIRONMENTAL ANALYSIS SECTION/ PUBLIC PROJECTS
1222 First Avenue, 5th Floor
San Diego, CA 92101

and the

UNITED STATES FISH AND WILDLIFE SERVICE
2730 Loker Avenue West
Carlsbad, CA 92008

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I. INTRODUCTION

A. Revisions to the MSCP Plan and Other Associated Documents

Subsequent to public review of the Draft EIR/EIS and prior to preparation of this Final EIR/EIS, and in response to comments received on the Draft EIR/EIS, revised language has been incorporated in the MSCP Plan and some of the associated documents. Language in certain sections of the following documents has been revised:

- MSCP Plan, Volume I
- Model Implementing Agreement
- City of San Diego Subarea Plan
- City of San Diego Implementing Agreement
- City of Santee Subarea Plan

None of the revised language developed in response to comments affects the analysis or conclusions presented in the Draft EIR/EIS and no new significant environmental effects would be associated with the actions addressed in the Draft EIR/EIS as a result of the revised language developed in response to comments. It should be noted that text modifications have also been made to certain portions of the Draft EIR/EIS in response to comments received . These minor text modifications are presented in Section II of this Final EIR/EIS.

Four documents containing the changes to the MSCP Plan and associated documents described above, and the Final EIR/EIS documentation, have been prepared. These documents include the following:

Document 1 contains the following:

- Revisions to the MSCP Plan, Volume I
- Revisions to the Model Implementing Agreement
- Revisions to the City of San Diego Subarea Plan
- Revisions to the City of Santee Subarea Plan

Document 2 contains the following:

- Volume 1 of 2 of the Final EIR/EIS

Document 3 contains the following:

- Volume 2 of 2 of the Final EIR/EIS

Document 4 contains the following:

- Revisions to City of San Diego Implementing Agreement and Attachments

B. FINAL EIR/EIS FORMAT

The Final EIR/EIS for the MSCP and associated actions is comprised of the Draft EIR /EIS, dated August 1996, and this Final EIR/EIS document, prepared in two volumes. Volume 1 includes the **Introduction, Changes to the Draft EIR/EIS, and Letters of Comment on the Draft EIR/EIS and Responses (Theme Responses and Letters 1–79). Volume 2 consists of Letters of Comment on the Draft EIR/EIS and Responses (Letters 80–121), and The Mitigation Monitoring and Reporting Program.** The Draft EIR/EIS was previously reproduced and was distributed for public review on August 29, 1996. It has not been reproduced as a part of the Final EIR/EIS documentation.

In addition, the City of San Diego has prepared Findings and a Statement of Overriding Considerations in accordance with CEQA (CEQA Sections 15091 and 15093). These documents are not bound with the Final EIR/EIS, but have been clipped to the back of Volume 2 of the Final EIR/EIS.

II. CHANGES TO THE DRAFT ENVIRONMENTAL IMPACT REPORT/ ENVIRONMENTAL IMPACT STATEMENT

As a result of comments received on the Draft EIR/EIS, revised language has been incorporated in the Final EIR/EIS and is presented on the following pages. Together with the Draft EIR/EIS, the revised language included on the following pages comprises the text of the Final EIR/EIS. Only the revised language is included in this Final EIR/EIS documentation. The Draft EIR/EIS has not been reproduced or changed as part of the Final EIR/EIS documentation. The revised language pages in this document are presented sequentially, to facilitate their review in concert with the Draft EIR/EIS. In addition to edits made in response to public review comments, this document includes miscellaneous corrections to the text and are separate from revisions made in response to public comments. It has been determined that the revisions included in this document do not involve changes to any significance conclusions made in the Draft EIR/EIS. No new significant environmental impacts are attributable to revisions made to the EIR/EIS text. Changes in the text consist of either text removals or text modifications and additions. Changes to existing text are signified by strikeout (~~strikeout~~) where text is removed, and by shaded text (shaded text) where text is added.

REVISIONS TO EXECUTIVE SUMMARY

In response to comment numbers 16(m) and 53(n), the following revised language has been incorporated in the *Executive Summary Table ES-4, pages ES-16 – ES-18.*

TABLE ES-4
SUMMARY OF BIOLOGICAL RESOURCES IMPACTS

Impact Level by Alternative	Proposed Project MHPA		Coastal Sage Scrub Scenario		Biologically Preferred Scenario		Public Lands Scenario	
Impact Category and Area	Before Mitigation	After Mitigation	Before Mitigation	After Mitigation	Before Mitigation	After Mitigation	Before Mitigation	After Mitigation
ISSUE 1: Would the implementation of the proposed project effectively protect species and habitats? (Direct Impacts to Vegetation Communities)								
Joint Exercise of Power Agreement of Otay Valley Regional Park Concept Plan	Significant	~~Significant & not mitigated~~ Less than significant	*Not Analyzed*					
ISSUE 1: Would the implementation of the proposed project effectively protect species and habitats? (Indirect Impacts to Covered Species)								
Joint Exercise of Power Agreement of Otay Valley Regional Park Concept Plan	Significant	~~Significant & not mitigated~~ Less than significant	*Not Analyzed*					
ISSUE 1: Would the implementation of the proposed project effectively protect species and habitats? (Indirect Impacts to Vegetation Communities)								
Joint Exercise of Power Agreement of Otay Valley Regional Park Concept Plan	Significant	~~Significant & not mitigated~~ Less than significant	*Not Analyzed*					

REVISIONS TO SECTION 1.0 – PURPOSE AND NEED

In response to Comment 53(g), the following revised language has been incorporated into Table 1-1.

TABLE 1-1
DECISIONS/ACTIONS ADDRESSED IN THE RECIRCULATED JOINT DRAFT EIR/EIS

	Approve Issue Incidental Take Permits	Approve NCCP	Approve MSCP Plan	Adopt Subarea Plan	Adopt General Plan Amendment	Approve Implementing Agreement	Adopt Implementing Ordinance	Adopt Community Plan Amendments	Approve Conservation Bank Agreement	Adopt Otay Valley Regional Park Plan
FEDERAL										
USFWS	X					X				
STATE										
CDFG		X				X				
LOCAL										
Chula Vista[1]			X	X*	X*	X*				X
Coronado			X	X*						
Del Mar			X	X*		X*				
San Diego**			X	X*	X	X*		X	X	X
Santee			X	X*		X*				
County of SD			X	X*	X*	X*	X			X
SPECIAL DISTRICTS										
Otay WD			X*	X*		X*				

* Discretionary actions not addressed in the previously distributed Draft Joint EIR/EIS.

** Amendments to the following City of San Diego Community Plans are addressed in this Recirculated Joint EIR/EIS:

- Carmel Valley
- Rancho Peñasquitos
- Tijuana River Valley
- Otay Mesa (including Dennery Ranch, Robinhood Ridge, and California Terraces)
- North City Future Urbanizing Framework Plan
- East Elliott
- Beeler Canyon

[1] The City of Chula Vista may adopt implementing ordinances and community plan amendments in the future. However, these discretionary actions are not covered by this EIR/EIS and would be subject to separate environmental review under CEQA.

REVISIONS TO SECTION 2 – ALTERNATIVES INCLUDING THE PROPOSED PROJECT

1. In response to comment number 27(g), the following revised language has been incorporated in *Section 2.24.2, Table 2-3:*

TABLE 2-3
SUMMARY OF CITYWIDE GENERALIZED LAND USE
AND HOUSING AMENDMENTS INDUCED BY CITY OF SAN DIEGO SUBAREA PLAN

LAND USE TYPE	ADOPTED PLAN** (Acres)	CITY OF SAN DIEGO SUBAREA PLAN (Acres)	CHANGE
Residential	~~11,830~~12,810	10,946	~~–884 Acres~~ –870
Commercial	1,170	840	– 330 Acres
Industrial	3,780	3,310	– 470 Acres
Parks	~~310~~320	280	~~–30~~ –40 Acres
Schools	~~420~~440	400	~~–20~~ –40 Acres
Open Space/MSCP Preserve	~~15,740~~13,020	~~20,884~~18,320	~~5,143 Acres~~5,300
Agriculture	1,790	470	– 1,320 Acres
Other Urban Development*	~~3,700~~3,340	3,670	~~–30~~ + 330 Acres
No Designation	~~2,060~~2,710	~~---~~1,190	~~–2,060~~ – 1,520 Acres
Total Acres***	~~40,880~~39,400	~~40,880~~39,400	---
Housing Units	~~52,660~~53,728 Units	46,139 Units	~~–6,529~~ –7,589 Units

* Includes institutional uses, religious facilities, roads, freeways, landfills, airport, public utilities, civic buildings, military uses.

** Figures are approximate and do not include the Otay Mesa-Nestor ~~or San Pasqual communities~~ which ~~are~~ is being amended to incorporate MSCP separately through the community plan update process.

*** Totals do not add up precisely due to rounding.

2. In response to Comment 17(c), the following language has been added to Section 2.1.4.4, page 2-19.

Streamlining Environmental Review: Environmental compliance with the California Environmental Quality Act and National Environmental Policy Act is accomplished through a joint EIR/EIS for the MSCP Plan and all concurrently submitted Subarea Plans. The EIR/EIS is a programmatic environmental document for the Subarea Plans and a project-level environmental document for land use plan amendments submitted by the jurisdictions with the Subarea Plans. Subarea Plans submitted subsequent to the EIR/EIS will require additional environmental review, although such documents may tier off the Joint EIR/EIS. The programmatic environmental document streamlines the environmental process for projects consistent with the MSCP Plan and Subarea Plans.

It should be noted that applicable provisions of Clean Water Act Section 404 and 40 CFR part 230 will remain in effect for those lands within the boundaries of a Subarea Plan, where development

~~can occur. Future developments within Subarea Plans must be consistent with the requirements of Section 404 and 40 CFR part 230 in terms of avoiding, minimizing and adequately mitigating adverse impacts associated with placement of fill materials in waters of the United States including wetlands and other special aquatic sites.~~

3. In response to Comment 107(aw), the following text has been deleted from Section 2.2.4.2, page 2-33, paragraph 4:

   Public Facilities Financing Plan (PFFP) revisions necessary to reflect MSCP inspired land use changes will be done during regularly scheduled annual updates of the PFFPs for Otay Mesa, Carmel Valley, and Rancho Peñasquitos. The following is a summary of the proposed land use and community plan text changes proposed. ~~The complete text for the amendments is contained in Appendix C to this document~~

REVISIONS TO SECTION 3 – AFFECTED ENVIRONMENT

1. In response to Comment 9(b), the following text has been added to Section 3.2.2.2, page 3-13:

The DMG Open File Report 96-04, Update of Mineral Land Classification: Aggregate Materials in the Western San Diego County Production – Consumption Region was completed in 1996. The following is a summary of the report conclusions:

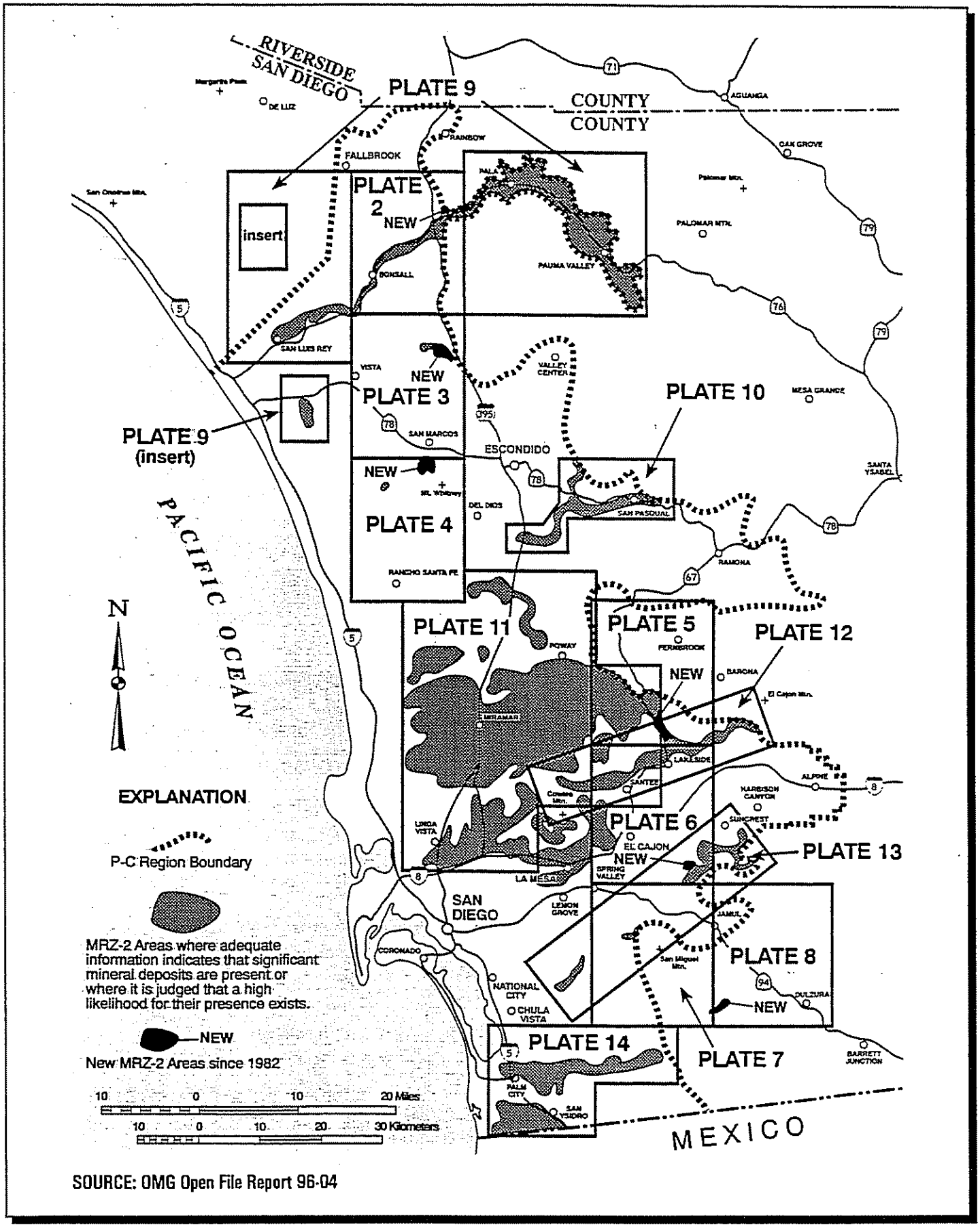
- Within western San Diego County, five areas have been reclassified and two areas have been newly classified as containing significant resources of Production Consumption (PCC)-grade aggregate.
- The average annual per capita consumption rate of aggregate materials in western San Diego County P-C region from 1960 to 1995 is 5.4 tons. This is a reduction from the 5.5-ton per capita consumption rate from 1960 to 1980.
- Based upon available production data and population projections, western San Diego County will need to be provided with 1,650 million tons of aggregate during the next 50 years. The present PCC-grade aggregate reserve total is 78 million tons less than was available in 1980. Over 80% of this decline in reserve is due to a decline in permitted instream sand deposits.
- Imports and exports of aggregate for the region were estimated to be about equal in 1994; although in past years of higher demand, imports were higher than exports.
- Eight percent of the designated aggregate resources, 413 million tons, were lost due to urbanization. However, several million tons of resources were added to the total available through development of new deposits outside of the designated lands. This has resulted in a net increase of over 100 million tons in the total of available PCC-grade aggregate resources in western San Diego County.

The attached graphic taken (Figure 3.2-5A) from the report indicates the areas where new MRZ-2 areas were designated as a result of research done for the Open File Report. As indicated in the graphic, the total acreage of areas newly classified as MRZ-2 is relatively minor. Calculations of MRZ areas prepared for Special Report 153 would not substantially change with incorporation of the newly designated areas listed in the Open File Report.

2. In response to Comment 22(g), the following revised language has been incorporated in Section 3.2.4.4, page 3-23, paragraph 2:

3.2.4.4 City of National City

Existing Land Uses: ~~National City is currently updating their General Plan, which is expected to be adopted in 1995. The most recent General Plan for National City was adopted in February of 1983. While existing land use types and acreages were not available,~~ The City of National City adopted an update of the City General Plan in 1996. The majority of the National City is currently built out with urban uses.



SOURCE: OMG Open File Report 96-04

Joint EIR/EIS - Multiple Species Conservation Program (MSCP)

New MRZ-2 Areas Since 1982

FIGURE 3.2-5A

3. In response to Comment number 22(g), the following revised language has been incorporated in Section 3.2.6.4, page 3-27, paragraph 7:

3.2.6.4 City of National City

~~National City is currently updating their General Plan. The most recent General Plan, adopted in 1983, includes the following planned residential land use designations:~~ The City of National City adopted an update of the City General Plan in 1996. Planned residential land uses for the City based on the 1996 update include: Single family estate, single family large lot, single family small lot, single family extendable, two-family, multi-family extendable, multi-family limited, senior citizen housing, and mobile home park. Commercial designations include general commercial, medium commercial, limited commercial, tourist commercial, automotive commercial, heavy commercial, and shopping center commercial. Industrial designations consist of light manufacturing, medium manufacturing, heavy manufacturing, and tidelands manufacturing. Institutional designations include civic institutional, private institutional, and open space reserve. ~~While planned land use acreages were not available, the City is currently built out.~~

As discussed in Section 3.2.4.4, the City has been predominantly built out with a mix of land uses. Approximate areas of planned (zoned) land use within the City include 1,480 acres of residential use, 585 acres of commercial use, 865 acres of industrial use, and 820 acres of institutional use. The 1996 General Plan Update envisions that additional marina and tourist commercial uses will be developed in the southwesterly portion of the City. Properties designated for single-family uses are located throughout the City. Larger vacant parcels planned for residential uses are located east of I-805. Parcels are also located along the City's major roadways that are planned for small commercial or mixed use projects that could combine residential and commercial use. The policies and programs of the General Plan are intended to cover a 20-year planning period.

4. In response to Comments 80(r) and 80(s), the following text has been added as Section 3.2.6.7 to page 3-29:

3.2.6.7 San Diego Unified Port District

The San Diego Unified Port District covers lands within the boundaries of the MSCP study area. The San Diego Unified Port District is a special purpose district created by the California legislature and as such has discreet authority over the state lands entrusted to it. The District's trust purposes are to further the development of commerce, navigation, fisheries, and recreation for the tidelands of San Diego Bay. In addition, the Port Master Plan states that the District "would protect, preserve, and enhance natural plant and animal life in the Bay as a desirable amenity, an ecological necessity, and a valuable resource." The District has dedicated 17% (447 acres) of all tidelands and 33% (1,818 acres) of submerged lands specifically for wetland conservation and habitat enhancement purposes. The District is in the process of developing a comprehensive habitat management plan for these tidelands in coordination with the Interagency Water Quality Panel and our own Port Master Plan update. As part of (the) planning process, the District would take into consideration the subregional plans developed for the Multiple Species Conservation Program.

5. In response to Comment 48(a), the following revised language has been incorporated in the text in Section 3.5.1, page 3-42, paragraphs 1 and 2:

3.5.1 WATER DISTRIBUTION

Water distribution facilities are identified for the purpose of this Joint EIR/EIS as pipelines, aqueducts, water treatment plants, pump stations, and storage reservoirs. The primary water distributor to the MSCP study area is the San Diego County Water Authority (SDCWA) through a system of two aqueducts and several transmission mains that run in a northerly/southerly direction within the study area. The SDCWA distribution facilities are accessed by member agencies to the SDCWA through connection points along the SDCWA system. Member agencies in turn redistribute the water to the jurisdictions within the study area. The members redistributing water to the MSCP study area consist of the City of Del Mar, Helix Water District, City of National City, Otay Water District, Padre Dam Municipal Water District, City of Poway, Rincon del Diablo Metropolitan Water District, City of San Diego, and South Bay Irrigation District. The boundaries of these member agencies do not generally coincide with either the MSCP study area boundary or the city boundaries. In 1993, 1994, and 1995, the SCDWA distributed over 340,000, 238,814 and 243,188 acre-feet respectively to the member agencies within the study area. There are six water treatment plants (Helix Water Treatment Plant, Padre Dam Municipal Water District, City of Poway, Sweetwater Authority, and the City of San Diego) in the study area. Additional SDCWA primary water distribution projects within the ~~SDCWA~~ MSCP study area include the Mission Trails Pipeline and Flow Regulatory Structure, La Mesa/Lemon Grove Pipeline and Cowles Mountain Tunnel, Lower Otay Pipeline, Rancho Peñasquitos Pipeline, ~~Escondido Raw Water Pump Station, and Pipeline No. 6~~, and Scripps Ranch Pipeline. Member Agencies within the study area in an effort to accommodate growth and manage against water shortfalls are continuously upgrading storage and pumping facilities as well as extending secondary water distribution pipelines to expanding population centers and development.

In addition, the San Diego County Water Authority's Capital Improvement Program (CIP) projects includes the Authority's Emergency Storage Project (ESP). ~~The ESP is studying four different alternatives for meeting the County's emergency water storage needs. All four of the alternatives will require use of surface reservoirs and he construction of pipelines and pump stations to connect the reservoirs with the existing Second Aqueduct. Some of these facilities will be located within the study area. The Authority is currently preparing a Draft Environmental Impact Report/Environmental Impact Statement (DEIR/EIS) which is scheduled to be available for public review in September 1995. The Final EIR/EIS is scheduled to be completed in early 1996. The preferred alternative will be identified in the FEIR/EIS (SDCWA, 1995).~~On August 15, 1996, the Authority Board of Directors certified the Final EIR for the Emergency Storage Project (ESP) and identified Olivenhain/Lake Hodges/San Vicente as the preferred alternative. Most of the facilities associated with this alternative are located in the MSCP study area. Action by the U.S. Army Corps of Engineers to approve the Final EIS is pending.

6. In response to Comment number 91(b), the following revisions have been made to Section 3.5.7, page 3-44:

3.5.7 ~~PARK~~RECREATIONAL FACILITIES

Park facilities are generally classified as either passive or active ~~parks~~recreational facilities. Active parks generally are developed parks associated with school facilities or residential development. These parks generally have playing fields or play areas and contain limited native species or features. Passive parks generally are located within identified jurisdictional preserve or resource conservation areas and are not generally associated with urban development. Regional park facilities within the study area include the San Dieguito River Regional Park, Black Mountain Regional Park, Los Peñasquitos Canyon Preserve, Mission Trails Regional Park, Sweetwater River Regional Park, and the Tijuana River Valley Regional Park and Estuary. A Focused Planning Area has been approved by a Joint Exercise of Powers Authority Agreement consisting of the City of San Diego, City of Chula Vista, and County of San Diego for a proposed Otay River Valley Regional Park.

Active recreational facilities located within the MSCP study area also include motorized offroad vehicle facilities (ORV) and trails, as well as camping and hunting facilities. Certain undeveloped areas within the southern portion of the study area are used for ORV activities through a system of trails. ORV facilities, other than trails utilized by vehicles, are generally restricted to restroom facilities, watering systems and a parking area. Facilities utilized to support camping and hunting within the study area include campgrounds ranging from more primitive facilities that contain sites for tents to facilitate that include restrooms, visitor centers, and paved areas for vehicles.

7. In response to Comment 43(aa), the following revisions have been made to Table 3.6-7:

TABLE 3.6-7
1990–2005 AVAILABLE VACANT LAND FOR RESIDENTIAL USE (ACRES)
STUDY AREA JURISDICTIONS

Jurisdiction	Vacant Lands Designated For Residential Use				1990–2005 Forecast Reduction in Vacant Land Availability	1990–2015 Forecast Reduction in Vacant Land Availability
	1990	2000	2005	2015		
Chula Vista	1,421	513	137	8	1,284	1,413
Coronado	0	0	0	0	0	0
Del Mar	17	16	0	0	17	17
El Cajon	111	50	39	6	720	105
Imperial Beach	4	3	2	0	20	4
La Mesa	145	71	40	1	1050	144
Lemon Grove	74	51	12	0	620	74
National City	84	65	45	2	390	82
Poway	2,747	2,290	2,059	43	6880	2,704
San Diego – City	15,046	11,792	8,269	161	6,777	14,885
Santee	1,482	1,289	821	18	661	1,464
San Diego – County[1]	117,986	111,144	102,873	73,652	15,113	44,334
Total	*139,117*	*127,284*	*114,297*	*73,891*	*24,820*	*65,226*

[1] Includes unincorporated lands within MSCP study area only.

REVISIONS TO SECTION 4.2 – LAND USE

1. In response to comment number 9(b), the following revised language has been incorporated in page 4.2-1, paragraph 4:

- Conversion of vacant land designated as a Mineral Resource Zone 2 by the Special Report 153 of the California Division of Mines and Geology, (as updated by Division of Mines and Geology Open File Report 96-04 Update of Mineral Land Classification: Aggregate Materials in the Western San Diego County Production Consumption Region), that contains existing mining operations or is planned for mining operations to permanent open space associated with the preserve.

2. In response to Comment number 102(m), the following revised language has been incorporated in Section B.1-1, paragraph 2, page 4.2-14:

   As discussed in *Section 4.4, Regional Transportation/Circulation,* four circulation element transportation facilities located within the proposed City of Chula Vista sphere of influence would extend through or adjacent to proposed core areas of the preserve: Paseo Ranchero, SR-125, Alta Road, La Media, Rock Mountain Road, Otay Valley Road, Otay Lakes Road, Miller Ranch Road, the widening of Proctor Valley Road, East Orange Avenue from SR-125 to Wueste Road, and the Light Rail Transit (LRT). Although roadways and transit lines are considered incompatible with core areas of the preserve, the Subarea Plan states that roadways are conditionally compatible within the preserve. As a result, significant impacts to the Circulation Element associated with deletions or realignments of these roadways are not anticipated.

3. In response to comment number 53(j), the following revised language has been incorporated in *Section B.1-1, para. 4, page 4.2-14*:

   "Revisions to approved projects associated with Modified GDP Alternative include preserving the northern parcel of San Miguel Ranch as natural open space, as well as revisions to the Otay Ranch GDP (see *Figure 2-5*). Approximately 78% of the San Miguel ranch property under Scenario One would be preserved as open space. In exchange for preservation of the northern portion of San Miguel Ranch, the owner of San Miguel Ranch would alter the land use designation of the southern portion of San Miguel Ranch to accommodate up to 1,445 units. It should be noted that this is a tentative agreement. The City of Chula Vista has not adopted the necessary general plan amendments and zone changes to implement this tentative plan. Proposed revisions to Otay Ranch involve elimination of entitlement resulting in preservation of an additional 426 acres of open space within the preserve in Otay Mountain, Proctor Valley, and Jamul Mountains. In exchange, areas within Poggi Canyon and Villages 1, 2, 3, 4, 9, 10, 11 would be redesignated from open space to allow for residential development. In addition, the university site would not be developed ."

4. In response to comment number 77(q), the following revised language has been incorporated in *Section B.1.4.2, para. 3, page 4.2-23*:

   ~~"As discussed in *Section 4.4, Regional Transportation/Circulation,* implementation of the MSCP Plan would result in the elimination of streets planned for the Neighborhood 8A Precise Plan. One of the streets proposed for deletion is a circulation element street planned for Neighborhood 8. The proposed elimination of a circulation element street is not considered to be an inconsistency~~

~~with the circulation element of the CP because the proposed reduction in residential land uses would result in less vehicle trips generated and consequently the circulation element road would no longer be required.~~"

As discussed in *Section 4.4, Regional Transportation/Circulation,* implementation of the MHPA would not impact planned circulation systems within Carmel Valley or the NCFUA. The circulation element streets would remain as identified in the adopted Carmel Valley and the NCFUA Framework Plan.

The City is evaluating the potential deletion of the portion of Carmel Creek Road planned to extend through Neighborhoods 8 and 8a. A conclusion regarding the potential effects of deleting Carmel Creek Road on the planned circulation system within Carmel Valley has not yet been reached by the City (pers. comm., Osler, City of San Diego, July 18, 1996).

5. In response to comment number 77(b), the following figure (Figure 4.2-2A) has been added to *Section B.1.4.2,* under the *Carmel Valley Community Plan* discussion. Incorporating the revised figure will not necessitate any changes to the text presented in this section.

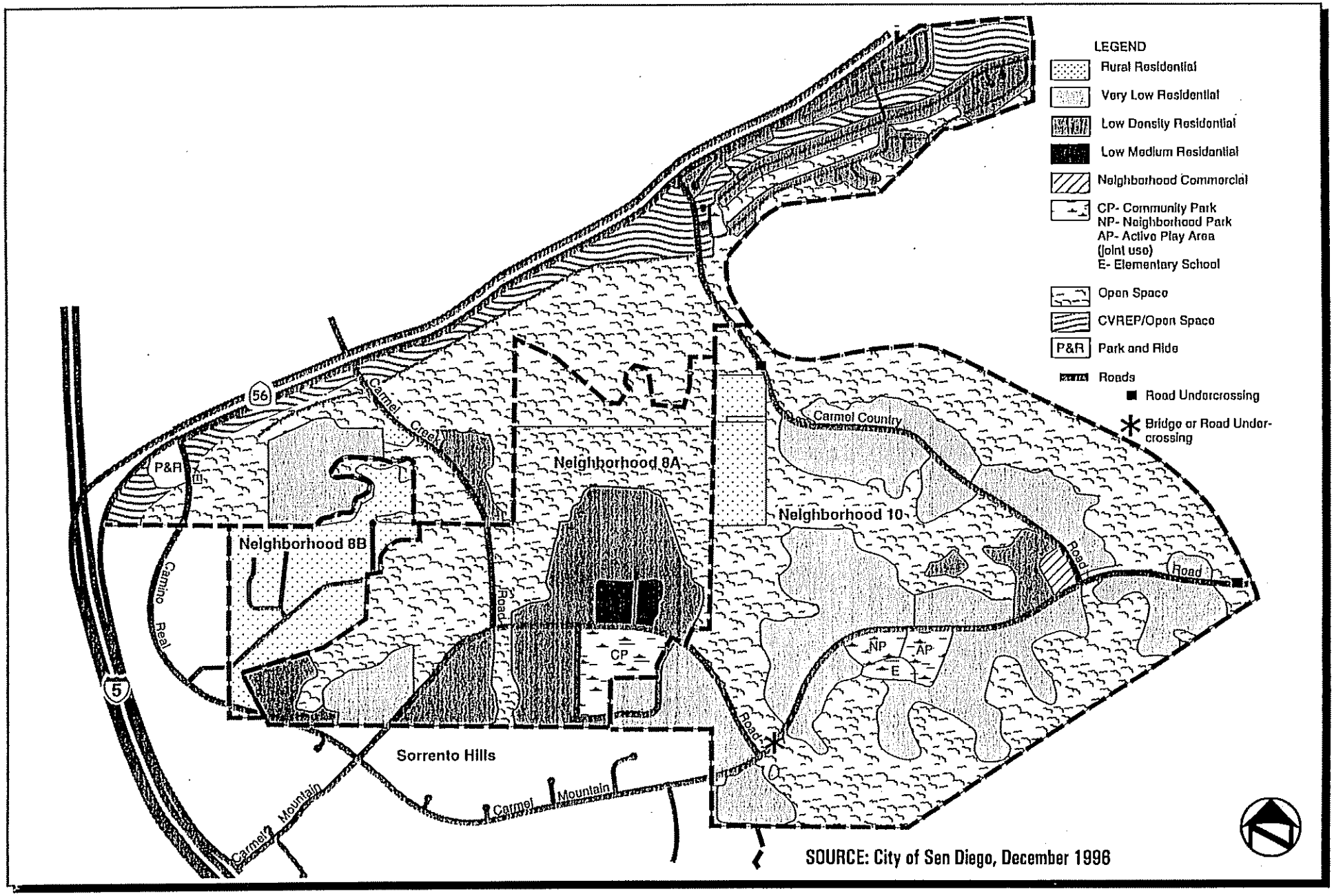
6. In response to comment number 77(s), the following revised language has been incorporated in *Section B.1.4.2, para. 4, page 4.2-25*:

"~~As discussed in *Section 4.4, Regional Transportation/Circulation,* implementation of the MSCP Plan would result in the elimination of a portion of Camino Santa Fe, which is a circulation element road, resulting in the need for reclassification of other roadways within the Future Urbanizing Area. With implementation of the measures discussed in *Section 4.4,* impacts to the circulation element plan would not be regarded as significant.~~"

As discussed in *Section 4.4, Regional Transportation/Circulation,* implementation of the MHPA would not impact planned circulation systems within Carmel Valley or the NCFUA. The circulation element streets would remain as identified in the adopted Carmel Valley and the NCFUA Framework Plan.

7. In response to comment numbers 77(e–f), *Section B.1.4.2, Figure 4.2-3,* has been replaced with the following graphic that reflects the Subarea Plan. Incorporating the revised figure will not necessitate any changes to the text presented in this section.

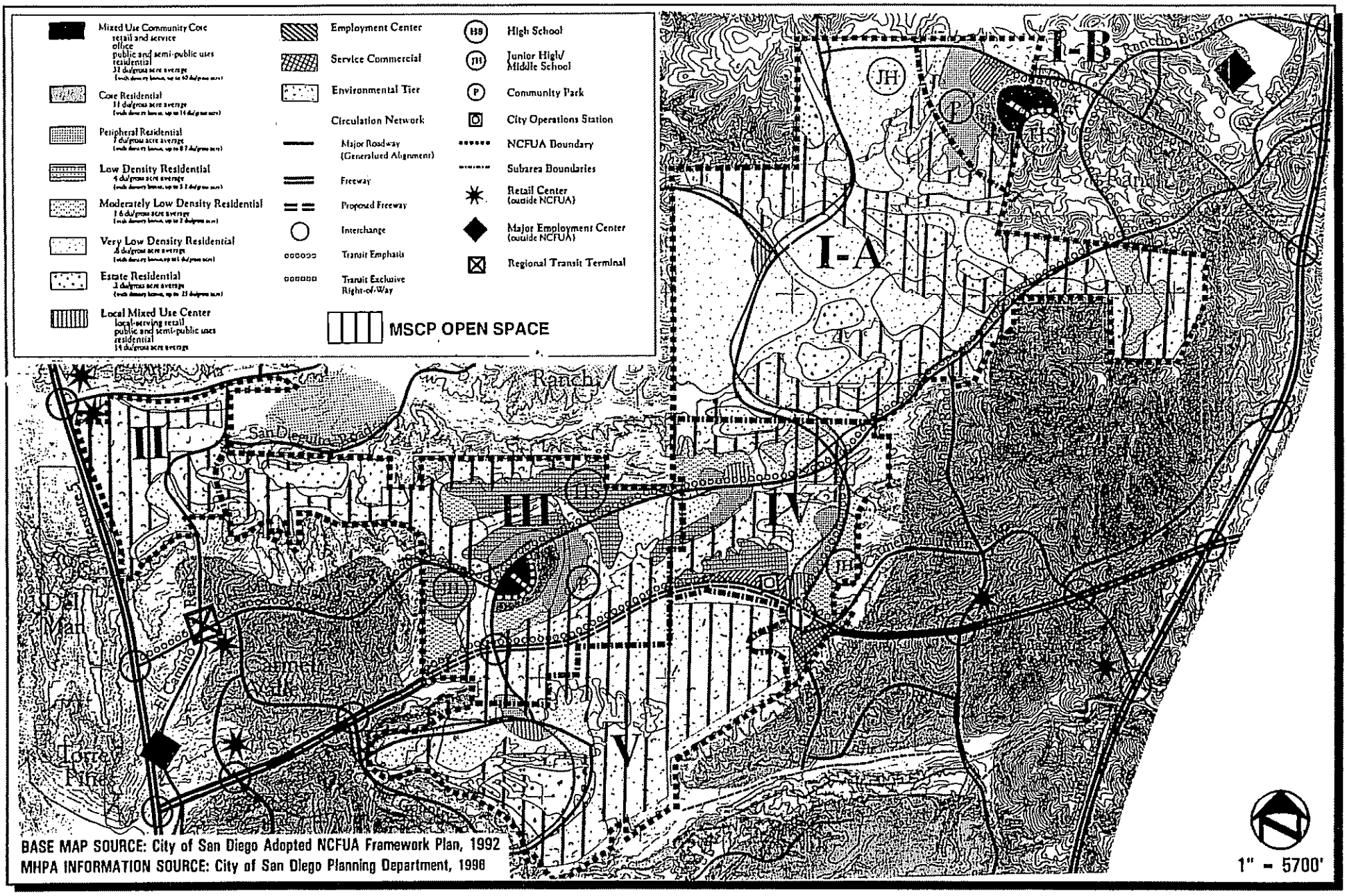
8. In response to comment number 27(g), the following revised language has been incorporated in *Section B.1.4.2, Tables 4.2–6, 4.2-10,* as well as *para. 2, page 2, sentence 2 on page 4.2-32*:



Joint EIR/EIS - Multiple Species Conservation Program (MSCP)

Carmel Valley Community Plan (Area South of SR-56) With MHPA Open Space

FIGURE 4.2-2A



BASE MAP SOURCE: City of San Diego Adopted NCFUA Framework Plan, 1992
MHPA INFORMATION SOURCE: City of San Diego Planning Department, 1996

Joint EIR/EIS - Multiple Species Conservation Program (MSCP)

(Revised) Adopted NCFUA Framework Plan with MHPA Open Space

FIGURE 4.2-3

TABLE 4.2-6
SUMMARY OF LAND USE CHANGES WITHIN CITY OF SAN DIEGO COMMUNITY PLAN AREAS WITH IMPLEMENTATION OF MSCP PLAN

Community Plan	Total Acres Converted from Urban Uses to Open Space	Change in Total Number of Planned Housing Units
Carmel Valley	+172	–1,150
North City Future Urbanizing Area	+68	0
Rancho Peñasquitos	+206	–800
East Elliott	~~271~~ (+920)	~~–1,200~~ –2,260
Otay Mesa	~~1823~~	–3,379
Tijuana River Valley	+2,141	0
Cornerstone Lands	0	0
Totals	***~~+3,761~~ 4,410***	***~~–6,529~~ 7,589***

Source: City of San Diego, 1996d.

TABLE 4.2-10
COMPARISON BETWEEN ADOPTED FRAMEWORK PLAN AND MHPA PLANNED LAND USES – EAST ELLIOTT

LAND USE DESIGNATION	ADOPTED PLAN (*Acres*)	MHPA (Draft MSCP Plan) Alternative One (*Acres*)
Open Space	~~1,989~~ 1,339	2,259
Residential	~~400~~ 1,380	117
Commercial/Office	0	12
Landfill	474	474
Total	***2,862***	***2,862***
Housing Units	~~1,700~~ 2,760 units	500 units

Source: City of San Diego 1996d.

"As shown in *Figure 4.2-5* and indicated in *Table 4.2-10*, the land use shifts proposed for the MHPA under Alternatives One and Two consist primarily of conversion of low density residential uses to open space. The loss of ~~71~~81 to 100 percent of the housing units planned for the CP area would represent a significant change in the designated land use pattern of the CP area."

9. In response to Comment 53(k), the following text has been added to Section B.1.4.2, page 4.2-33, paragraph 6:

As shown in *Figure 4.2-6*, the CP amendment to implement the draft MSCP Plan would convert to open space areas designated for development in portions of the Hidden Trails, Dennery Ranch, California Terraces and Robinhood Ridge Precise Plans. The areas north of SR-905 to be converted to open space are generally designated for residential uses while the areas south of SR-905 to be included as preserve open space are generally designated for open space, commercial or industrial uses. The proposed open space use would be compatible with surrounding land uses

that are planned to consist almost exclusively of residential uses with a small portion of the MHPA being located adjacent to commercial and industrial uses near SR-905 (Otay Mesa Road). It should be noted that the Circulation Element road (Otay Valley Road) shown on *Figure 4.2-6* as extending south across Otay Valley and terminating at the boundary of the City of San Diego is not shown on the Circulation Element of the City of Chula Vista General Plan and is not analyzed in this EIR/EIS.

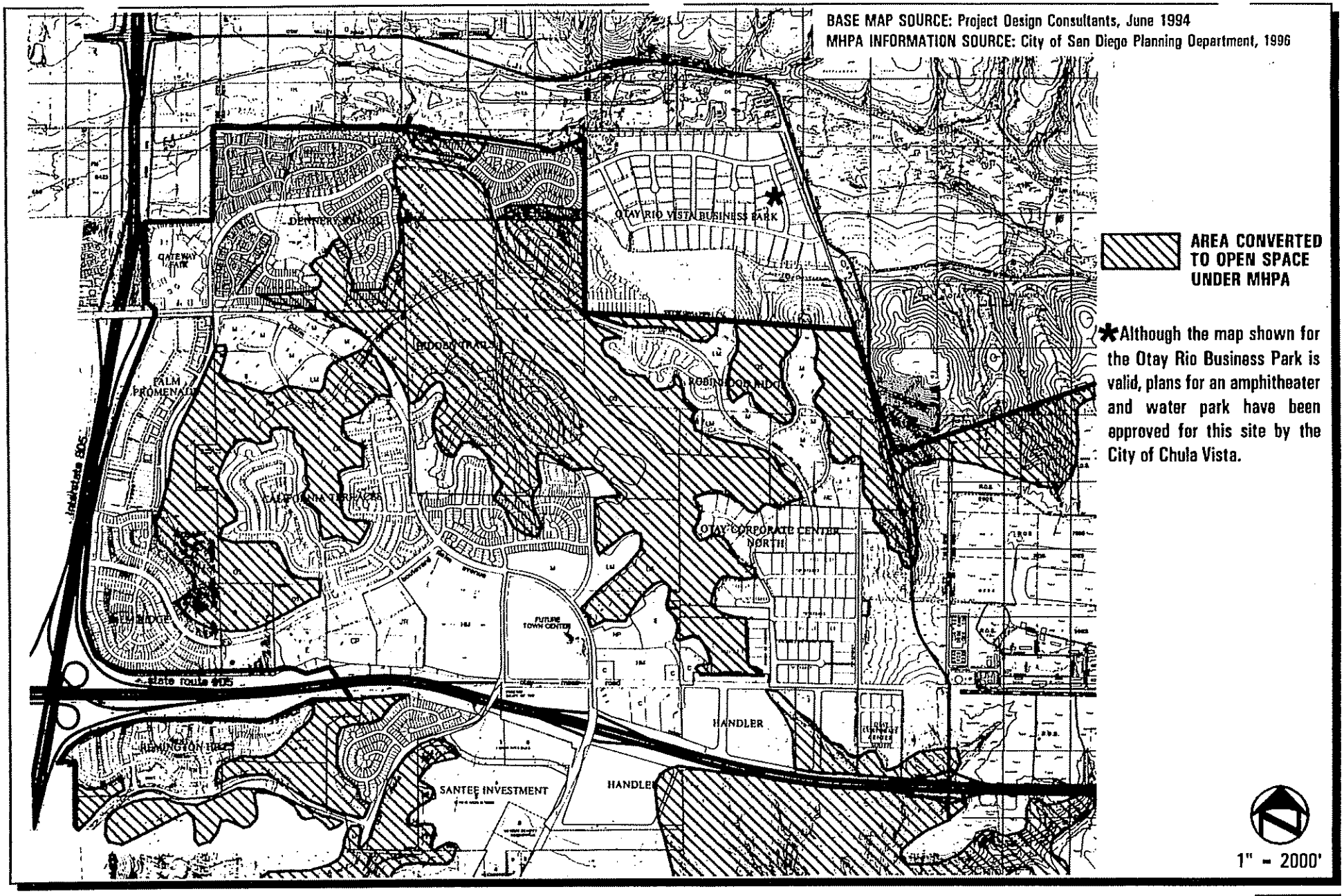
10. In response to comment number 53(l), *Section B.1.4.2, Figure 4.2-7* has been revised to include the following legend item: Although the map shown for the Otay Rio Business Park is valid, plans for an amphitheater and water park have been approved for this site by the City of Chula Vista.

11. In response to comment number 52(e), the following revised language has been incorporated in *Section B.1.5, page 4.2-42, para. 2*:

"• The total acres of land designated for residential uses (Hillside/Limited Residential, and Low Density Residential) would decrease by approximately 430 acres. ~~Based on the 90% preservation thresholds required by the Subarea Plan, 43 of the 430 acres could be developed. Based on application of the density allowance for Hillside Limited and Low Density (0.25 du/acre) combined with constraints applied to the area under the City Hillside Overlay Ordinance, which limits density based on slope, potential units lost within the 387 acres currently designated for residential uses could be approximately 96 units.~~ Due to the City's Hillside Overlay Ordinance, which limits maximum density based on average slope, approximately 635 to 1,271 residential units are anticipated within the City's Hillside Overlay and Low Density Zones."

12. In response to comment number 52(d), the following revised language has been incorporated in *Section B.1.5, page 4.2-42, para. 4*:

"• Approximately 1,372 acres designated within the Fanita Ranch Specific Plan area would be designated as open space. Although a specific plan has not been completed for Fanita Ranch, an amendment to the General Plan was approved in 1990 allowing for a mixed-use development to be implemented as a part of the Specific Plan. Allowable uses include office park, commercial, golf course, as well as single-family housing. ~~The approved General Plan Amendment for Fanita Ranch states that a maximum of 3,500 residential units could be located within the Specific Plan area.~~Based on a 1995 Amendment to the City of Santee General Plan, Fanita Ranch is no longer allowed a maximum of 3,500 units. The plan now dictates that specific categories of lot sizes will be achieved. All lots anticipated in the General Plan would range from 6,000 to 22,000 square foot lots. Without a Specific Plan, it is impossible to determine how the arrangement of land uses anticipated for the Specific Plan area by the 1990 General Plan Amendment, would be accommodated with designation of 1,372 acres of the Specific Plan area is not subject to standard zoning regulations. As a result, the potential exists that clustering of development and flexibility in land use planning within Fanita Ranch could occur. With more detailed planning, it is anticipated that many of the Specific Plan designated land uses may be accommodated upon implementation of the MSCP Plan."



Joint EIR/EIS - Multiple Species Conservation Program (MSCP)

(Revised) Western Otay Mesa Precise Plan Composite Map with MHPA Open Space

FIGURE 4.2-7

13. In response to comment number 52(e), the following revised language has been incorporated in *Section B.1.5, page 4.2-44, para. 2, sentence 2*:

"As indicated above, implementation of the MSCP Plan would eliminate 387 acres designated Hillside/Limited and low density residential development from the General Plan area, resulting in a potential reduction of 96 dwelling units. This represents approximately ~~1.6% of the 2,542~~8% to 15% of the 635 to 1,271 residential units anticipated for future development within the City of Santee under the Hillside Limited and Low Density designations."

14. In response to Comment 50(c), the following revisions were made to Table 4.2-15:

TABLE 4.2-15
DEVELOPMENT PROJECTS COVERED BY SCSP

PROJECT	COMMUNITY PLAN	ACRES OF PROJECT IN URBAN LAND USES	ACRES OF PROJECT IN OPEN SPACE	APPROVAL STATUS
Hidden Valley Estates	Jamul-Dulzura	73	1,387	Tentative map approved by County in 1991.
Las Montañas Estates	Jamul-Dulzura/Valle de Oro	507	422	Specific Plan covering 706 acres approved by County. Proposal to increase Specific Plan area from 706 to 929 currently being processed at County.
Loma del Sol (Steele Canyon)	Valle de Oro	28	101	Covered project includes Tentative Map and habitat loss permit proposed for 129 acres of undeveloped area within approved Specific Plan.
San Miguel Ranch	Sweetwater	593	1,997	Considered to be a major amendment area subject to conservation agreements between County and owner.
Otay Ranch	Otay	~~11,000~~9,208	~~12,000~~13,691	General Development Plan for entire 23,000-acre area approved in ~~1995~~1993. ~~Proposed Tentative Map and Special Planning Area permits for areas within Otay Ranch currently being processed.~~ A Sectional Planning Area Plan for the northern portion of the project was approved in 1996, and a Tentative Map is pending. Additionally, a Sphere of Influence Update was approved in July 1996, placing the western 10,000 acres of Otay Ranch in Chula Vista's Sphere of Influence.
Resolution Trust Corporation/Rancho San Diego Mitigation Bank	Jamul/Dulzura		1,853	Portion of open space managed by County as a conservation bank. Portion of open space managed by Caltrans as a National Wildlife Refuge.
The Pointe San Diego	Valle de Oro	317	587	Specific Plan approved in 1990. Approximately 315 acres are open space located within the Specific Plan area. A total of 272 acres are offsite mitigation property.

15. In response to Comment 102(m), the following language has been added to Section B.1.1, page 4.2-72, paragraph 3:

The eastern portion of the City has not yet been built out but is proposed for mixed use developments including the Otay Ranch project, Salt Creek Ranch, Eastlake and Sunbow developments. Specific facilities proposed in conjunction with these developments that could traverse the preserve include the proposed extensions of SR-125, Otay Lakes Road, La Media, Alta Road, ~~and~~ Paseo Ranchero, and East Orange Avenue from SR-125 to Wueste Road ~~roadways~~ as well as the LRT.

16. In response to Comment 25(a), the following revised language has been incorporated in *Section 4.2.3.1, paras. 3 and 4, page 4.2-83*:

Most Subarea Plans prepared concurrently with this plan have excluded private property with existing agricultural uses and zoning from the MSCP preserve system or rank these properties as a lower priority for acquisition from willing sellers. However, agricultural lands in critical locations may be sought from willing sellers for addition to the preserve system.

Existing policies should be applied to farming activities to accomplish the following:

1. Incidental Take Provision for Ongoing Agricultural Activities: ~~The MSCP Plan and applicable Subarea Plans support the issuance of take authorizations for incidental take of covered species that occurs as a result of ongoing agricultural operations on active farmlands where cumulative impacts to the species are insignificant. This policy would apply to participating jurisdictions and special districts or agencies with signed implementing agreements, where take authorizations have been issued. The implementing agreements and/or implementing regulations should address this incidental take provision, define which ongoing active farming operations will be eligible to receive take authorizations (grazing activities are not eligible for this take provision), provide a map of lands subject to this provision, and define the permitting mechanism.~~ At the option of participating jurisdictions, take authorizations may apply to agricultural activities on lands specifically identified in the MSCP data base and as shown on MSCP Plan Figure 2-1 as being actively used for agricultural purposes (agricultural activities include crops, animal, and forage production and grazing). Take authorizations for ongoing agricultural activities would become effective for such lands upon the participating jurisdiction's issuance of a "certificate of inclusion," or other similar documentation, to the landowner. This certificate would identify the parcel number, acreage affected, current landowner, and would include a map specifying the location of the parcel.

2. Safe Harbor Provision. ~~The MSCP Plan supports the formation of cooperative agreements between the wildlife agencies and agriculturists, without requiring the involvement of local jurisdictions, to identify incentives for agriculturists to establish or restore natural habitat on active agricultural (currently in agricultural crops, exclusive of livestock grazing areas) portions of their properties. These agreements may include financial, management, regulatory, or other incentives to integrate natural habitat into actively farmed agricultural lands. Agreements~~

~~would be negotiated on a case-by-case basis.~~ The MSCP Plan supports the formation of cooperative "Safe Harbor" agreements between the wildlife agencies and agriculturists, without requiring the involvement of local jurisdictions. The Safe Harbor policy provides assurances to private landowners, who undertake voluntary conservation actions on their lands, that their future land use activities will not be further restricted as a result of these conservation efforts. Thus, landowners who agree to manage their lands in a manner that attracts endangered or threatened species or expands their presence will be guaranteed that, as a result of their good stewardship, they will not be penalized with additional regulatory requirements for those lands. The policy is intended to create incentives for landowners to engage in land use and management practices that benefit rare and endangered species.

17. In response to Comment number 25(a), Section A-1, page 4.2-84, paragraph 2, has been deleted as follows:

~~As stated in the Plan, the incidental take provisions do not apply to grazing land within the MHPA. *Table 4.2-16* indicates that of the 104,700 acres of land suitable for grazing land within the study area 66 percent would be located within the boundaries of the MHPA. As shown in *Figure 3.2-4*, substantial areas within the MSCP study area are designated as suitable for grazing by the California Department of Conservation (CDC). Within the MSCP study area, much of the suitable grazing land is located within the County of San Diego with smaller areas in the City of San Diego (Otay Mesa, San Pasqual Valley, and North City), City of Chula Vista and City of Santee. Within these jurisdictions, much of the vacant land suitable for grazing is zoned for agriculture or other zoning that would permit agriculture. As a result, no discretionary actions would be required for grazing on the 69,600 acres within the MHPA deemed suitable for grazing by the CDC. Therefore, although the incidental take provisions of the MSCP Plan do not apply to grazing land, no impacts to grazing land are anticipated.~~

18. In response to Comment number 25(a), Section A.2, page 4.2-86, paragraph 3 and page 4.2-87, paragraph 1, have been deleted:

~~As stated in the plan the incidental take provisions of the MSCP Plan do not apply to grazing land. *Table 4.2-18* indicates that of the 104,700 acres of land designated for grazing land within the study area 55 percent would be located within the boundaries of the preserve. As described for the MHPA, much of the suitable grazing land is located within the County of San Diego with smaller areas in the City of San Diego (Otay Mesa, San Pasqual Valley, and North City), City of Chula Vista and City of Santee. Within these jurisdictions, much of the vacant land suitable for grazing is zoned for agriculture or other zoning that would permit agriculture. As a result, no discretionary actions would be required for grazing on the 57,700 acres within the CSS Scenario deemed suitable for grazing by the CDC. Therefore, although the incidental take provisions of the MSCP Plan do not apply to grazing land, no impacts to grazing land are anticipated.~~

19. In response to Comment number 25(a), Section A.3, page 4.2-89, paragraph 1 has been deleted:

~~As stated in the plan the incidental take provisions do not apply to grazing land. *Table 4.2-20* indicates that of the 104,700 acres of land designated for grazing land within the study area 79 percent would be located within the boundaries of the BP Scenario. As described for the MHPA, much of the suitable grazing land is located within the County of San Diego with smaller areas in the City of San Diego (Otay mesa, San Pasqual Valley, and North City), City of Chula Vista and City of Santee. Within these jurisdictions, much of the vacant land suitable for grazing is zoned for agriculture or other zoning that would permit agriculture. As a result, no discretionary actions would be required for grazing on the 82,700 acres within the BP Scenario deemed suitable for grazing by the CDC. Therefore, although the incidental take provisions of the MSCP Plan do not apply to grazing land, no impacts to grazing land are anticipated.~~

20. In response to Comment 9(ai), the following revised language has been incorporated in *Section 4.2.3.1, paras. 1–3, page 4.2-85*: The revisions made to this text do not necessitate changes be made to other text or conclusions made in the Draft Joint EIR/EIS.

The MSCP contains the following language regarding sand and gravel operations within the MHPA:

~~Existing mining facilities inside and outside the preserve will be allowed to continue according to their approved permits, as long as their operations have been considered by jurisdictions in determining preserve boundaries. Facility expansions (permit amendments) that occur within the operational area of an existing permit also will be allowed on a case-by-case basis, provided that direct and indirect biological impacts have been addressed. Any exceptions to this policy should be addressed by individual Subarea Plans.~~

~~New rock, sand, and gravel extraction facilities must be carefully designed and fully mitigated to achieve preserve goals. New mining operations within the MSCP preserve are considered to be compatible with the preserve if they meet the following conditions:~~

- ~~The facility location, operations, and restoration plans avoid adverse direct and indirect impacts to covered species, other sensitive biological resources, and preserve design; and~~

- ~~Restoration plans are developed to restore native habitat impacted by mining activities.~~

The MSCP Plan does not impose any new regulations on owners or operators of existing mining operations. These owner/operators may obtain management authorizations/permits directly from the wildlife agencies. Alternatively, participating jurisdictions may develop a process to amend previously approved local permits, subject to necessary mitigation and approval from the wildlife agencies, to allow owners/operators to avail themselves of take authorizations and third party beneficiary status, pursuant to the MSCP.

New or expanded mining operations on lands conserved pas part of the preserve are incompatible

with MSCP preserve goals for covered species and their habitats unless otherwise agreed to by the wildlife agencies at the time the parcel is conserved.

New or expanded rock, sand, and gravel extraction facilities outside of lands conserved as part of the preserve must be designed and mitigated for consistency with the subarea plan and/or implementing regulations. New or expanded mining operations are considered compatible within the MHPA if they meet the following conditions:

- The facility location, operation, and restoration plans (after taking into consideration the mitigation for the facility and its operation) meet the requirements of the local subarea plan and do not reduce the value and function of the preserve for covered and sensitive species either short-term or long-term; and
- Restoration plans are developed and implemented to assure restoration of habitat impacted by mining activities located inside the MHPA.

Direct and indirect impacts of new mining operations on the preserve and special preserve management provisions will be addressed through the California Environmental Quality Act process.

Land associated with abandoned mining operations should be assessed for reclamation potential. Lands suitable for reclamation should be restored using native species. If such lands are not suitable for restoration, a compatible second use should be identified, such as trail access points, park headquarters, parking areas, interpretive centers, and research stations.

REVISIONS TO SECTION 4.3 – BIOLOGICAL RESOURCES

1. In response to Comment 107(bj), the following text has been added to Section 4.3, page 4.3-1, paragraph 3:

PROCESS BACKGROUND

The MHPA reflects the culmination of a biological analysis of the MSCP study area with regard to the distribution and value of vegetation communities and sensitive species in the study area, as well as the configuration of private and public lands that potentially would be included in a preserve system. *Section 4.0* of the MSCP Resource Document (*City of San Diego 1995f*), provides a detailed discussion of the biological preserve design considerations that formed the basis for delineating and evaluating the MHPA and the preserve design alternatives. It includes the following sections: biological objectives and criteria for preserve design; rare plant and animal preserve design strategies; a summary of population viability analyses; and preservation priorities within the MSCP study area, including a summary of the GIS Habitat Evaluation Model and identification of core biological resource areas and critical habitat linkages. *Section 5* of the MSCP Resource Document presents the biological analyses of the CSS-, BP-, and PL-Scenarios. The current version of the proposed MHPA was developed after preparation of the MSCP Resource Document. ~~but the criteria used to evaluate the MHPA were similar to those applied to the alternatives~~. As a result, information was available at the time the MHPA was prepared in addition to that which was available at the time the alternative scenarios in the Resource Document were prepared. This information included more specific data on species populations and more specific information regarding preserve boundaries, habitat protection and other factors as expressed in the Subarea Plans of the individual jurisdictions. However, the criteria used to evaluate the Plan was the same for the MHPA and alternatives.

2. In response to Comment 107(da), the following revised language has been incorporated in *"Findings Definitions" for Table 4.3-1, page 4.3-27*:

Findings Definitions:

Adequately Conserved based on the Plan: The overall benefits of the multiple-species planning effort to the natural ecosystem will provide for the species that inhabit that ecosystem.

Insignificant effect: An effect that cannot meaningfully be detected or measured, relative to the species' status as a whole. MSCP is not a significant portion of species' range.

Discountable effect: ~~An effect that would not reasonably be expected to occur because species is not expected to occur in MSCP study area.~~ A discountable effect is one that would not be expected to occur because the species is not expected to occur in the MSCP study area. Species that are proposed for coverage under this definition generally meet at least one of the following criteria: (1) the species is not known to have occurred in the MSCP study area; (2) the species is presumed to be extirpated in the MSCP study area; (3) the species may exist only as introduced populations within the MSCP study area; (4) the MSCP conserves habitat that potentially could support or be used by the species; and (5) habitat within the preserve would be managed consistent with the needs of the species should it be found in the future.

Mitigation for covered species is to be commensurate with the amount of take anticipated. Because no take is anticipated for discountable effects on species within the MSCP, little to no mitigation is required. However, the MSCP would provide conservation of habitats that may support these species. Furthermore, those actions which are found to have a discountable effect (51 FR 19949) upon covered species are not likely to appreciably reduce the likelihood of survival and recovery of the species.

Not adequately conserved by the Plan: Not covered by take authorizations.

3. In response to comment number 53(d), the following revised language has been incorporated in *Section B.1-1, Table 4.3-9*:

TABLE 4.3-9

~~POTENTIAL LOSS OF LAND ASSOCIATED WITH THE CITY OF CHULA VISTA SUBAREA PLAN POLICY OPTION 1~~

POTENTIAL LOSS OF LAND ASSOCIATED WITH THE CITY OF CHULA VISTA SUBAREA PLAN POLICY OPTION 2

Vegetation Community	Acreage in City	MHPA Conserved	Acreage Outside of MHPA
Coastal Sage Scrub	1,899	1,092	807 (42%)
Maritime Succulent Scrub	17	16	1 (6%)
Grassland	1,335	272	1,063 (80%)
Southern Coastal Salt Marsh	295	225	70 (24%)
Freshwater Marsh	15	6	9 (60%)
Riparian Forest	11	10	1 (9%)
Riparian Scrub	177	149	28 (16%)
Eucalyptus Woodland	15	0	15 (100%)
Open Water	87	24	63 (72%)
Natural Flood Channel	37	19	18 (49%)
Shallow Bay	1,190	135	1,055 (89%)
Deep Bay	162	0	102 (100%)
Disturbed Wetlands	21	6	15 (71%)
Other Habitat	139	119	20 (14%)
Disturbed	1,049	0	1,049 (100%)
Agriculture	2,067	0	2,067 (100%)
Developed	14,408	0	14,409 (100%)
Totals	22,864	2,073	20,791

Notes:

1. [for "Acreage in City" column] Acreages in this column are based on existing conditions for individual Subarea Plans taken from Table 301 of the MSCP Plan (City of San Diego, 1996). These acreages reflect the Subarea Plan boundaries incorporated into the MSCP Plan and illustrated in Figure 103 of this EIR/EIS.

2. [for "MHPA Conserved" column]. Acreages in this column are taken from the MSCP Resource Document (City of San Diego, 1995f). These acreages are based on jurisdictional boundaries that formed the basis of the analysis at the time the alternative scenarios were developed. Due to the different data base used for the two columns in this table, acreages in this column may not directly relate to acreages in the existing conditions column. For purposes of this analysis, however, the data provide an adequate indication of the relative impacts of the various Subarea Plans and alternative scenarios.

4. In response to comment number 45(aj), the following revised language has been incorporated in *Section 4.3.1, para. 1, page 4.3-43*:

"It should be noted, however, that the covered species analysis determined that overall impacts resulting from the proposed action would be insignificant for four of these six species: American

badger, ferruginous hawk, golden eagle, and mountain plover (see *Table 4.3-1*). The term "insignificant" used in *Table 4.3-1* referred specifically to the terminology "insignificant effect" and was not meant to be a CEQA significance statement.

5. In response to Comment number 83(f), the following table and text have been incorporated in Section A-1, page 4.3-48, following the first paragraph:

   In addition to direct impacts to vegetation communities and habitats, implementation of the proposed take authorization under MHPA would directly affect soils supporting sensitive species. A soils conservation analysis for the MHPA is presented in Table 4.3-4A.

6. In response to Comment number 86(m), the following text has been added to Section B.1.4.2, page 4.3-100, paragraph 8:

   Subarea Plan features A10 and A11 recommend future actions for the restoration of sites currently supporting aggregate extraction and salt extraction activities. These actions ultimately would result in an increase in the amount of habitat for native plant and animal species. These features result in no adverse direct or indirect impacts to biological resources. In addition, the Western Salt Company extraction use located in south San Diego Bay would provide important habitat for many of the covered species and the continued operation of this use is, therefore, consistent with the objectives of the MSCP Plan and the City of San Diego Subarea Plan.

7. In response to Comment 76(al), *Figure 4.3-1* has been revised to add the location of note #C-27. The text associated with note #C-27 is provided below:

   C27. This area is not included within the Preserve and will not be subject to rezoning as OR-1-2. Development may occur as permitted in accordance with applicable zoning regulations or potential rezoning.

8. In response to comment number 18(m), the following table is incorporated by reference in Section B.1-6, pg. 4.3-111:

TABLE 4.3-16A.
COUNTY SUBAREA VEGETATION ACREAGES

Vegetation Community	Lake Hodges Acres	Lakeside – Jamul Acres	South County Acres	Total Acres[1]	% Total Area	% Total Habitat
Coastal Sage Scrub	3,455	40,070	27,801	71,326	28.29	38.71
Chaparral	1,992	56,143	21,628	79,764	31.64	43.29
Maritime Succulent Scrub	0	0	285	285	0.11	0.15
Southern Maritime Chaparral	7	52	0	59	0.02	0.03
Coastal Sage Scrub/Chaparral	41	2,926	153	3,119	1.24	1.69
Grassland	1,153	5,373	4,337	10,864	4.31	5.90
Freshwater Marsh	64	36	243	343	0.14	0.19
Oak Riparian Forest	8	4,170	168	4,346	1.72	2.36
Riparian Forest	21	205	300	526	0.21	0.29
Riparian Woodland	6	12	8	26	0.01	0.01
Riparian Scrub	51	537	530	1,118	0.44	0.61

Vegetation Community	Lake Hodges Acres	Lakeside – Jamul Acres	South County Acres	Total Acres[1]	% Total Area	% Total Habitat
Oak Woodland	28	4,682	289	4,999	1.98	2.71
Tecate Cypress Forest	0	71	5,639	5,710	2.26	3.10
Eucalyptus Woodland	467	367	34	868	0.34	0.47
Open Water	32	238	11	282	0.11	0.15
Disturbed Wetland	7	108	42	157	0.06	0.09
Flood Channel	15	235	141	391	0.15	0.21
Other Habitat[2]	44	17	5	66	0.03	0.04
Subtotal[1]	**7,393**	**115,241**	**61,613**	**184,248**	**73**	**100**
Urban/Agriculture/Developed	1,842	57,711	8,331	67,884	27	
Total	**9,236**	**172,952**	**69,944**	**252,132**	**100**	

Notes:

1 Component parts may not add to total because of rounding errors.

2 Disturbed, agricultural and developed areas with habitat value.

9. In response to Comment 45(ay), 45(az), and 45(ba), the following text and table have been added to Section B.1-6.2, page 4.3-114, following paragraph 4. Edits have also been made to paragraphs 3 and 4.

This effect would not differ, however, from effects associated with existing regulations such as the County ~~Grading~~Brushing and Clearing Ordinance which also contain some provisions to exempt these activities. For example, in the unincorporated area, the County ~~Grading~~Brushing and Clearing Ordinance (Ord. No. 7415), exempts agricultural clearing from the requirements for a discretionary permit unless the agricultural use is proposed in a floodplain and supports sensitive habitats. However, in order to qualify for an agricultural exemption, it is necessary for a property owner to sign a statement insuring that the agricultural use will be put into place within one year and be maintained for at least five years after its establishment. This measure is intended to insure that legitimate agricultural uses are not burdened with the need for specific clearing and grading permits, but also prevents clearing and grading from taking place on a wholescale basis.

The ~~Grading~~Brushing and Clearing Ordinance requires a discretionary permit for clearing of vegetation except for lands that are outside of the County Water Authority (CWA) boundaries and parcels less than ten acres in size inside the CWA boundaries. The majority of the MSCP lies inside the boundaries of the CWA. The portion that lies outside of the CWA is in the Jamul and Dulzura area.

In summary, exemptions included in the proposed BMO would not differ from those included in existing regulations and the BMO would not result in any new indirect effects.

An analysis of the amount of land which might be exempt from the County's Brushing and Clearing Ordinance was done based on the size of the parcel which might be exempt. The existing Brushing and Clearing Ordinance exempts parcels 10 acres and smaller in size. Under this exemption, approximately 21,300 acres or 11% of the County Subarea Plan (See table presented below) could be exempt. With a 5 acre exemption, approximately 11,400 or 6% of the County

TABLE 4.3-4A
SOILS SUPPORTING SENSITIVE SPECIES CONSERVATION ANALYSIS (IN ACRES) WITHIN THE PROPOSED MHPA

Soil Type	MSCP Total Area A	MSCP Total Undeveloped B	MHPA Total Area C	Mira-mar NAS	MHPA Conserved * D	D/A	D/B	D/(B-NAS) & (C+NAS)/B	C/B
Clays	51,323	27,379	8,384.6	156	7,745	15%	28%	28% 31%	31%
Clays south of SR-94	28,414	17,777	3,712	na	3,477	12%	20%	na	21%
Stockpen (so. of Otay R.)	4,305	3,321	869	0	796	18%	24%	na	26%
Loams with clay hardpan (<10% slopes)	34,720	15,509	3,008	5,400.4	2,736	8%	18%	27% 54%	19%
HrC & HrC2	10,372	4,399	984	0	854	8%	19%	na	22%
OhC	5,183	2,707	717	0	676	13%	25%	na	26%
RdC	19,165	8,403	1,307	5,390	1,206	6%	14%	40% 80%	16%
OhE (9-30% slopes)	12,043	7,963	3,770.3	10.4	3,306.1	27%	42%	ns	47%
Gabbros	8,354	7,181	3,367.2	0	3,075	37%	43%	na	47%
Meta-volcanic	42,438	39,806	35,691	103	34,029	80%	85%	ns	90%
Sandstone	31,492	13,107	7,121	2,014	6,280	20%	48%	57% 70%	54%
LvF3 (SMC)	2,155	966	459	4.3	412	19%	43%	ns	48%
TeF (SMC)	12,624	8,897	5,360	1,244	4,703	37%	53%	61% 74%	60%
CbB, CbC (SMC, Dubr)	2248	596	269	130	236	10%	40%	51% 67%**	45%
MlC & MlE (SMC, old beach ridges)	5,142	556	77	0	73	1%	13%	na	14%

*After accounting for the various % conservation overlays with the MHPA (and assuming 70% conservation in the unlined/pre-approved areas of the County

** CbB on NAS Miramar is being mowed/disced at end of runway and is currently non-native grassland

Possible interpretation (MSCP #'s include NAS Miramar while MHPA #s do not):

D/A: Conservation compared to original quantities of the soil type that were available prior to urban development.

D/B: Conservation of each soil type as a percentage of the remaining undeveloped soils.

D/(B-NAS): MHPA conservation without including NAS Miramar areas at all (i.e., **Out of what is remaining in their jurisdiction, how much are they conserving?**).

(C+NAS)/B : Maximum potential conservation assuming 100% conservation on NAS Miramar and in MHPA

C/B: Maximum potential conservation of the soil type if all development within the boundaries of the MHPA avoided all of this soil type.

KEY

Clays: At, Aw, Ay, Bs, Bt, Co, Da, Dc, Do, Sb, Sc, Su

Clay subsoils: Hr, Oh, Rd

Sandstone: Cb, Cc, Cf, Cg, Cs, Lv, Te, Ml

Gabbro: Bo, Br, Hm, Hn, Ho, Lp, Lr

Metavolcanic: Be, Bg, Ex, Sm, Sn, Sp, SpEz

[illegible] acre and smaller parcels occur in the Metro-Lakeside-Jamul segment of the County Subarea Plan, a maximum of 18.5 % of the remaining habitat would be exempt from the Brushing and Clearing Ordinance.

TABLE 4.3-17A
ANALYSIS OF LAND WHICH MIGHT BE EXEMPT FROM THE COUNTY OF SAN DIEGO BRUSHING AND CLEARING ORDINANCE

Habitat Value	Total Acres	2 acre exempt	5 acre exempt	10 acre exempt
Low	31,953	955(<3%)	3,110(<10%)	5,347(<17%)
Medium	40,010	918(<3%)	3,099(<8%)	5,473(<14%)
High	44,648	407(<1%)	1,629(<4%)	3,756(<9%)
Very High	80,294	1,342(<2%)	3,590(<5%)	6,780(<9%)
Total	196,905	3,322(<2%)	11,428(<6%)	21,356(<11%)

10. In response to Comment 5(e), the following revised language has been incorporated in *Table 4.3-20*:

TABLE 4.3-20
POTENTIAL OF HABITAT LOSS ASSOCIATED WITH THE COASTAL SAGE SCRUB SCENARIO WITHIN THE CITY OF DEL MAR SUBAREA[1]

Vegetation Community	Acreage in City	Acreage in CSS Scenario	Acreage Outside of CSS
Beach	72	0	72 (100%)
Southern Foredunes	1	0	1 (100%)
Southern Coastal Bluff Scrub	2	0	2 (100%)
Coastal Sage Scrub	9	0	9 (100%)
Southern Maritime Chaparral	17	0	17 (100%)
Southern Coastal Salt Marsh	62	0	62 (100%)
Freshwater Marsh	6	0	6 (100%)
Torrey Pine Forest	9	0	9 (100%)
Open Water	52	0	52 (100%)
Disturbed Wetlands	4	0	4 (100%)
Other Habitat	56	0	56 (100%)
Disturbed	41	0	41 (100%)
Total	***~~1,151~~331***	***0***	***1,151***

[1] Acreages in this column are based on existing conditions acreages for individual Subarea Plans taken from Table 3-1 of the MSCP Plan (City of San Diego 1996). These acreages reflect the Subarea Plan boundaries incorporated in the MSCP Plan and illustrated in *Figure 1-3* of this EIR/EIS.

11. In response to comment number 18(o), and 107(cp), the following revised language has been incorporated in *Section 4.3.1.3, Mitigation Measure 4.3-MHPA-23a, page 4.3-196*:

4.3-MHPA-23a **Indirect Impacts** - A variety of measures to avoid and/or minimize potential indirect impacts to sensitive habitats and sensitive species are included in the County of San Diego MSCP Subarea Plan, primarily in the proposed County BMO. ~~which is an appendix to the Plan. Mitigation related to the BMO will be implemented within the Preserve and Urban Village and Interior areas of the County Subarea Plan.~~ The following measures would reduce indirect impacts to a level below significant:

1. Implementation of the BMO ~~which~~ provides for the following mitigation measures:

   - Mitigation according to a "Tier" system whereby mitigation ratios are in accordance with the sensitivity and biological importance of the impacted habitat.

12. In response to Comment number 45(am), the following text is deleted from Section 4.3.1.4, page 4.3-212, paragraph 2:

In brief, and as described in more detail in the introduction to this section and *Section 5* of the MSCP Resource Document, the MHPA and BP-Scenario generally meet the NCCP Conservation Guidelines with regard to the preservation of NCCP target species (California gnatcatcher, coastal cactus wren, and orange-throated whiptail), large blocks of high value habitat, physiographic and biological diversity, and important habitat linkages (also see discussion of *Issue 2* below). The CSS-Scenario is less successful in meeting the Conservation Guidelines and the PL-Scenario generally is unsuccessful in meeting the guidelines. From a multi-habitat/multi-species perspective, the MHPA and BP-Scenario provide adequate coverage for 85 species on the Covered Species List, as well as significant coverage for sensitive habitats, including beach, southern foredunes, southern coastal bluff scrub, maritime succulent scrub, southern maritime chaparral, coastal sage scrub, oak riparian forest, riparian scrub, riparian woodland, riparian forest, Torrey pine forest, Tecate cypress forest, salt marsh, freshwater marsh, saltpan, disturbed wetlands, natural flood channel, and open water. The major habitat types not adequately covered by the MHPA and BP-Scenario are chaparral and grassland, although several sensitive species that occur in these habitats are on the Covered Species List. ~~Also, it should be noted that the MHPA does not mitigate for indirect impacts to non-wetland uncovered species, non-wetland sensitive vegetation communities, and non-sensitive vegetation communities. The BP-Scenario does not mitigate for indirect impacts to non-wetland uncovered sensitive species. The CSS-Scenario protects coastal sage scrub and CSS/chaparral mix, but other habitats are not protected under this scenario. The PL-Scenario protects rare habitats better than the CSS-Scenario, but not as well as the MHPA and BP-Scenario.~~

REVISIONS TO SECTION 4.4 – TRANSPORTATION/CIRCULATION

1. In response to Comment 31(a), the following revised text has been incorporated to Section 4.4.1.1, page 4.4-1, paragraph 4:

   As shown in *Figure 3.4-1*, regional transportation systems planned for the MSCP Plan study area include State Routes 905, 56, and 125. Each of the State Routes are planned to extend through, or adjacent to, portions of the proposed MHPA and alternative scenarios.

   In addition to those facilities shown in *Figure 3.4-1*, the following Caltrans facilities may extend through the proposed MHPA:

   - widening of State Route 94 from Avocado Road to State Route 188;
   - proposed north-south crossing of Lake Hodges in the vicinity of I-15. Proposal is currently being evaluated by Caltrans.

2. In response to Comment 31(a) and 50(b), the following revised text has been incorporated in Section 4.4.1.1, page 4.4-2, paragraph 5:

   Although major roadways are considered to be incompatible with preserve goals, the MSCP Plan acknowledges that existing and planned regionally important facilities such as roads, landfills and other key infrastructure are expected to be included in subarea plans in a manner which will allow a functional preserve. In particular, regional roads are expected to be incorporated into preserve designs with necessary mitigation measures to ensure that a functional opens pace system can be achieved. In addition, ~~the planned extension of SR-125 is exempt from the Subarea planning process. Potential environmental impacts associated with SR-125 shall be determined as a part of a separate review process.~~ SR-125 is currently the subject of separate environmental review and separate impact analyses and mitigation requirements would be developed for that project. An evaluation of the relationship of the proposed SR-125 project to the MSCP Plan would be required as part of the analysis of the SR-125 project. It is concluded therefore that the planned extensions of SR-905, SR-56, and SR-125 as well as the proposed widening of SR-94 and crossing of Lake Hodges in the vicinity of I-15 would not be prohibited with implementation of the proposed project and significant impacts to the regional transportation system associated with potential realignment or deletions of portions of these roadways would not occur.

3. In response to Comment 102(m), the following revised language has been incorporated in Section B.1.1, page 4.4-4, paragraphs 3 and 4:

   - **Planned extension of Light Rail Transit System:** The planned alignment of the Light Rail Transit System (LRT), which is to extend throughout San Diego County, would cross two areas proposed to be included in the City of Chula Vista portion of the MHPA. The LRT alignment would be located adjacent to the alignment of SR-125 at the location where SR-125 is planned to cross the Otay River Valley. The alignment would also extend through core preserve areas proposed south of Telegraph Canyon Road and west of the planned alignment of La Media.

- **Planned extension of East Orange Avenue from SR-125 to Wueste Road:** East Orange Avenue is planned as a 4-lane major street by the City of Chula Vista General Plan. The planned alignment would traverse Poggi Canyon and portions of the Otay River Valley.

  Although major transportation corridors are generally considered incompatible with core and preserve areas, the Chula Vista Subarea Plan acknowledges that certain public infrastructure necessary for public health and safety is permitted within the preserve system. According to the Subarea Plan, it is expressly intended that flexibility be allowed in locating planned infrastructure in the preserve. Roads in preserve areas are limited to those identified in the Circulation Element, and collector streets essential for area circulation and existing maintenance roads. Rock Mountain Road, Otay Valley Road, Otay Lakes Road, Miller Ranch Road, and the widening of Proctor Valley Road are considered to be specific preserve exclusions by the Subarea Plan. It is therefore concluded that the planned classifications and alignments of SR-125, Alta Road, La Media, Paseo Ranchero, Rock Mountain, Otay Valley, Otay Lakes, Miller Ranch roadways, the widening of Proctor Valley Road, East Orange Avenue, and the LRT would not be prohibited or changed with implementation of the Subarea Plan and significant impacts to the City's planned roadway system would not occur.

4. In response to Comment 50(b), the following revised text has been incorporated in Section B.1.6.1, page 4.4-11, paragraph 5:

   South County Segment Plan: Covered projects within the South County Segment Plan include Hidden Valley Estates, Las Montañas, Loma Del Sol, The Pointe, and the County of San Diego East Mesa Detention Facility and Otay Ranch. The Segment Plan states that infrastructure necessary and incidental to development allowed within approved projects are permitted within the Subregional preserve System. Mitigation for impacts associated with the covered projects is included in Chapter 8 of the Segment Plan. No features of the mitigation required in Chapter 8 would preclude implementation of planned roadways within these projects. ~~It should also be noted that SR-125 is exempt from the requirements of the Subarea Plan because an analysis of the roadway impacts will be conducted separately. The planned SR-125 within the South County Segment of the County Subarea Plan would be subject to separate environmental review and separate impact and mitigation requirements would be developed with a project-specific~~ evaluation of the relationship of the proposed SR-125 project to the MSCP Plan would be required as part of the analysis of the SR-125 project. It is concluded, therefore, that implementation of the Segment Plan under either the proposed preserve or Alternative One would not impact the planned circulation systems for covered projects.

REVISIONS TO SECTION 4.5 – PUBLIC SERVICES AND UTILITIES

In response to Comment number 91(b), the following revised text has been incorporated in Section 4.5.1.1, page 4.5-2, paragraph 2:

Both passive and active recreational activities are planned within the MSCP Plan preserve system. For purposes of this discussion, passive activities include hiking, photography, bird watching, scientific research, horseback riding, and mountain biking. Riding and hiking trails will be allowed within appropriate portions of the preserve to allow passive recreational opportunities for the public. Other passive activities such as photography, bird watching, scientific research, and public education programs should also be encouraged. Sailing, swimming, and fishing can also be compatible. Active recreational activities are those that have significant impacts on biological resources at any level of use and usually lead to habitat degradation or destruction. Typical activities of this sort include motorized off-road vehicle (ORV) use, hang-gliding, camping, hunting, athletic fields and playgrounds, equestrian facilities (stables), and golf courses. Active recreational activities are generally incompatible with biological goals of core areas and linkages, but may be compatible at the edges of core preserves provided that light, noise and trash impacts can be contained. Off-highway vehicle use ~~is~~ including use of trails and development of permanent facilities in ORV parks such as restrooms and parking areas are incompatible within preserves and linkages, except on designated roads. The MSCP also requires that the location of permitted recreational uses and their location be addressed by the individual subarea plans. Existing recreational facilities also would be allowed within the preserve but should be managed to promote the improvement of habitat nearby.

REVISIONS TO SECTION 4.6 – POPULATION AND HOUSING

1. In response to Comment 107(dn), the following revised language has been incorporated in Section 4.6, page 4.6-1, paragraph 1:

   For this section, the following criteria were used to determine impact significance from adoption or implementation of the proposed MHPA or alternative scenarios on regional population and housing conditions and to jurisdictions with subarea plans within the MSCP study area. ~~Where two or more impact criteria were exceeded, the project was considered to have a significant impact.~~

2. In response to Comment 107(dn), the following revised language has been incorporated in Section 4.6, page 4.6-5, paragraph 2:

   The Series 8 forecast also projected that 25,669 acres of residential land would be needed by 2005 to accommodate the 133,990 housing units to be built between 1990-2005. ~~The resultant housing density on the 1990-2005 developed lands would 5.22 DU/ac.~~

3. In response to Comment 5(j) and 50(i), *Table 4.6-3* has been revised as follows:

TABLE 4.6-3
FORECAST DEVELOPABLE LAND
PROPOSED PROJECT AND ALTERNATIVE PRESERVE PLANNING SCENARIOS[1]

Preserve Planning Scenario	Potential Land Available for Development[2] (acres)			
	Inside Preserve Planning Area	Outside Preserve Planning Area	Total MSCP Study Area	Estimated Residential Portion[3]
Proposed MHPA	17,021	65,269	~~82~~ 82,290	48,798
CSS	12,103	94,730	106,833	63,352
Bio. Preferred	22,398	73,723	96,121	57,000
Public Lands	19,111	104,741	123,852	73,444
No Action/No Project	--	--	165,517	98,152

[1] Refer to *Table 4.6-2* for acreages within preserve planning scenarios.
[2] From City of San Diego, 1995f. Appendices B-4c, C-9.13c, C-9.41c, C-55c. Acreage includes lands available for all types of development (residential and other); but excludes lands with low development potential. Not all the acreage shown may be available for residential uses.
[3] Estimated at 59.3 percent of total developable land based on residential land data in *Table 4.6-1*.
[4] Since a preserve boundary is not anticipated under the No Action/No Project alternative, assumptions regarding the availability of private land for development are based on the entire MSCP study area. Available private land includes areas designated by SANDAG for these uses: III.B (Agriculture), III.C (Low Density), III.D (Urban Uses) and 50% of III.A (Constrained Lands); also excludes lands designated impact sensitive on the County General Plan. Availability of lands supporting listed species would be reduced by federal and State ESA regulations. If another scenario (e.g., Public Lands) showed greater developable land, then No Project Scenario acreage was revised to that amount to present the maximum development scenario.

4. In response to Comment 107(h), 107(dn), 107(dq), and 50(j), the following language has been incorporated in Section 4.6, page 4.6-5, paragraph 4:

   From *Table 4.6-3*, a total of ~~22,915~~ 17,021 acres of private land would be available within the MHPA for development of housing units and other types of development. An additional ~~85,707~~

65,269 acres of private land would be available for development outside the MHPA but within the MSCP study area for a total of ~~108,622~~82,290 acres of private land available for development. Assuming that approximately 59.3 percent of the total private land available for development within the MSCP study area (both within and outside the MHPA) would be available for residential development, approximately ~~64,413~~48,798 acres would be available to accommodate the projected 133,990 housing units. This would accommodate forecast growth to 2005 based on the 1990 average gross residential density of 3.10 DU/Ac and leave ~~38,744~~39,067 acres of vacant land (23,167 acres of residential land) which could support an additional ~~202,240~~121,100 housing units to be developed after 2005. Total housing units which could be built in the MSCP study area is 255,090 (= 133,990 + 121,100), compared to SANDAG's forecast of 254,495 to be built between 1990 and 2015. It is anticipated that this development would occur both within and outside the MHPA. The project density and the resultant overall density would be within the 3.10 DU/acre gross residential density currently (1990) within the study area.

5. In response to Comment number 117(b), the following revisions have been incorporated into Table 4.6-8:

TABLE 4.6-8
PROJECTED 2005 HOUSING DENSITY COASTAL SAGE SCRUB SCENARIO

Jurisdictions with Subarea Plans	Forecast 2005 Housing Units[1]	Projected Total Land in Residential Use (acres)		2005 Housing Density (DU/ac)		
		W/o Preserve[1]	With Preserve[2]	W/o Preserve[1]	With Preserve[2]	Percent Change
Chula Vista	58,381	9,480	9,480	6.16	6.16	–
Coronado	9,853	1,237	1,237	7.97	7.97	–
Del Mar	2,581	558	558	4.63	4.63	–
San Diego – City	513,371	66,208	64,357	7.75	7.75	–
Santee	21,252	3,970	3,652	5.35	5.35	–
San Diego – County	194,788	~~1,372,727~~ 53,798	46,744	~~0.143~~ 3.62	~~0.143~~ 3.62	–

[1] Series 8 Growth Forecast; see Section 3.6: Affected Environment: Population and Housing, Table 3.6-7
[2] Available residential land w/ preserve = [Avail. residential land] – [Land targeted for conservation x 59.3%] from Table 4.6-7
[3] Density = [Forecast Housing Units] ÷ [Available Residential Land w/o Preserve]
[4] Where a jurisdiction has enough land to meet 1990-2005 demand, density is assumed to remain the same; where a residential land shortfall is projected, the revised density = [Forecast Housing Units] ÷ [Available residential Land with preserve]

6. In response to Comment number 117(b), the following revisions have been incorporated into Table 4.6-10:

TABLE 4.6-10.
PROJECTED 2005 HOUSING DENSITY BIOLOGICALLY PREFERRED SCENARIO

Jurisdictions with Subarea Plans	Forecast 2005 Housing Units[1]	Projected Total Land in Residential Use (acres)		2005 Housing Density (DU/ac)		
		W/o Preserve[1]	With Preserve[2]	W/o Preserve[1]	With Preserve[2]	Percent Change
Chula Vista	58,361	9,480	9,290	6.16	6.28	2.0%
Coronado	9,853	1,237	1,232	7.97	7.97	–
Del Mar	2,581	558	551	4.63	4.63	–
San Diego – City	513,371	66,208	62,492	7.75	8.22	0.06
Santee	21,252	3,970	3,428	5.35	5.35	–
San Diego – County	194,788	53,798	42,122	~~0.143~~ 3.62	~~0.143~~ 3.62	–

[1] From Section 3.6: Affected Environment: Population and Housing, Table 3.6-~~76~~
[2] Available residential land w/ preserve = [Avail. residential land] – [Land targeted for conservation x 59.3%] from Table 4.6-9
[3] Density = [Forecast Housing Units] ÷ [Available Residential Land w/o Preserve]
[4] Where a jurisdiction has enough land to meet 1990-2005 demand, density is assumed to remain the same; where a residential land shortfall is projected, the revised density = [Forecast Housing Units] ÷ [Available residential Land with preserve]

7. In response to Comment number 117(a), the following revised language has been incorporated in Section B.3.6, page 4.6-22, paragraph 5:

B.3.6 COUNTY OF SAN DIEGO SUBAREA PLAN (BP SCENARIO IMPACT ANALYSIS – ISSUE 1)

By 2005, 195,100 new residents are projected in the unincorporated County lands within the MSCP study area and the housing stock will grow by 57,199 units. Between 1990-2005, new residential construction is projected to require 15,101 acres, as shown in *Table 4.6-9.* With preserve implementation, approximately 24 percent of the developable lands would be shifted to outside the preserve. However, the net available development lands for residential use are projected at 36,807 acres which will be sufficient to meet the 1990-2005 growth forecast. Therefore, no housing density changes (*Table 4.6-10)* are anticipated from the planned growth patterns in the subarea.

In summary, no significant population/housing impacts have been identified for the County of ~~Chula Vista~~San Diego Subarea Plan – BP Scenario at the Subarea Plan Level (project level analysis) for this issue. Therefore, no further discussion is provided in *Section 4.6.1.2.*

8. In response to Comment number 117(b), the following revised language has been incorporated in Section B.3.6, page 4.6-41, paragraph 5:

From *Table 4.6-9,* the projected conservation of 19,690 acres of land projected to be available for development in the County represents a residential and non-residential development shift of ~~34.1~~

24 percent to lands outside the preserve. However, this would not affect the County's ability to meet their 1990-2005 residential land forecast. Since the shift would comprise ~~11.9~~19.4 percent of the ~~165,517~~101,272 acres of projected vacant developable land in the MSCP study area (*Table 4.6-9*) and over ~~50,000~~62,000 acres remain in the County of vacant developable land, it is anticipated that impacts to population characteristics would be less-than-significant.

REVISIONS TO CHAPTER 5.0 – GROWTH INDUCEMENT

In response to Comment Number 107(dq), the following revised language has been incorporated in page 5-2, paragraph 1:

Over the long-term, the ~~reduction of~~effects of reducing available developable land within the study area due to a preserve established as part of the MSCP Plan may be more pronounced. The current SANDAG Series 8 population forecast shows the ~~region~~study area growing by ~~51~~41 percent by the year 2015 (see Table 3.6-2). The Series 8 forecast distributes the projected population growth across the ~~region~~study area based on the land use and growth policies of each jurisdiction. In the Series 8 model, the existing local jurisdiction land use plans were not able to accommodate the ~~region-wide~~ forecast growth solely in areas zoned for urban residential use (density greater than one unit per acre). The model used to generate the forecast ran out of such land ~~planned for urban residential development~~ by the year 2005. In the year 2005, only ~~14,000~~12,680 vacant urban residential acres would remain in the ~~region~~study area. Attempting to distribute forecast~~ed~~ growth beyond the year 2005 would cause unrealistically high levels of development in areas currently zoned for rural residential use (density less than one unit per acre). ~~the outlying areas of the region and would not preserve enough vacant urban residential land needed for habitat conservation.~~ Since land is a finite resource, removing development potential from the MSCP study area would shrink the supply, possibly accelerating the time when developable land is exhausted.

REVISIONS TO SECTION 7 – ANY SIGNIFICANT IRREVERSIBLE ENVIRONMENTAL CHANGES WHICH WOULD BE INVOLVED IN THE PROPOSED ACTION SHOULD IT BE IMPLEMENTED

In response to Comment 5(n), the following revised language has been incorporated on page 7-1, paragraph 2:

> Incidental take of species on the covered species list would represent an irreversible environmental change associated with implementation of the proposed federal action. The numbers of covered plant and animal species that could be taken outside the preserve under the proposed MHPA and alternative scenarios are ~~summarized below and~~ described in detail in *Section 4.3, Biological Resources* of this document.

REVISIONS TO TERMS THAT APPLY THROUGHOUT THE DOCUMENT

In response to comment number 15(c), it is noted that the term "Otay Water District Water Reclamation Plan" used throughout the EIR should read "Otay Water District Water Resources Master Plan."

SECTION ADDED TO EIR/EIS

In response to comment number 53(o), the following section has been added to the EIR/EIS:

RELATIONSHIP BETWEEN SHORT-TERM USES OF THE ENVIRONMENT AND MAINTENANCE AND ENHANCEMENT OF LONG-TERM PRODUCTIVITY

This issue focuses on the cumulative and long-term effects of a proposed project that adversely affect the [illegible] integrated open space system that would provide greater assurance for the long-term survival and health of species and habitats.

As also described in the Draft EIR/EIS, implementation of the MSCP Plan would generally commit lands within the designated MHPA to open space use (some development would be allowed within the MHPA as described in the MSCP Plan). Such an open space designation would result in shifts of projected urban [illegible] detail in Sections 4.2, 4.4, 4.5 and 4.6 of the Draft EIR/EIS. No features of the MSCP Plan would result in long-term risks to public health and safety.

The reasons for proposing the MSCP Plan at this time are described in the Draft EIR/EIS and the MSCP Plan. As noted in these documents, the MSCP Plan has been developed in recognition of the overall species decline that has occurred in the MSCP study area due to historical land use practices. As stated in the objectives to the MSCP Plan on page 1-7 of the Draft EIR/EIS, an objective of the MSCP Plan is to develop and implement a program for the conservation and management of habitats of federal and state endangered, threatened or rare species, thereby reducing the human-related causes of species extirpation within the MSCP study area. Postponing preparation of the MSCP Plan until a later date would adversely affect the ability of the overall Plan to achieve that key objective.

MISCELLANEOUS REVISIONS TO DRAFT EIR/EIS TEXT

In response to a memorandum from the City of San Diego Parks & Recreation Department, it is noted that the term "Joint Exercise of Powers Agreement of Otay Valley Regional Park" used throughout the EIR should read "Joint Exercise of Power Authority Agreement of Otay Valley Regional Park."

Abstract:

Draft Joint Environmental Impact Report/Environmental Impact Statement

Project:
Issuance of a Take Authorization for Threatened and Endangered Species
Within the Multiple Species Conservation Program (MSCP) Planning Area
in San Diego County, California
~~DEP~~LDR No. 93-0287
SCH No. 93121073

Page 3-16, paragraph 2:

In response to a memorandum from the City of San Diego Parks and Recreation Department, the following revised language has been incorporated in *Section 3.2.3.4, page 3-16, para. 2:*

> "Public lands within the City of San Diego include Los Peñasquitos Canyon, portions of Mission Trails Regional Park, land on the north shore of Lake Hodges, San Clemente Natural Park, Marion Bear ~~Natural~~Memorial Park, and land within the Tijuana River National Estuarine Sanctuary."

Page 3-44, paragraph 2:

In response to a memorandum from the City of San Diego Parks and Recreation Department, the following revised language has been incorporated in *Section 3.5.7, page 3-44, para. 2:*

3.5.7 PARK FACILITIES

Park facilities are generally classified as either passive or active parks. Active parks generally are developed parks associated with school facilities or residential development. These parks generally have playing fields or play areas and contain limited native species or features. Passive parks generally are located within identified jurisdictional preserves or resource conservation areas and are not generally associated with urban development. Regional park facilities within the study

area include the San Dieguito River Regional Park, Black Mountain Regional Park, Los Peñasquitos Canyon Preserve, Mission Trails Regional Park, Sweetwater River Regional Park, and the Tijuana River Valley Regional Park and Estuary. A Focused Planning Area has been approved by a Joint Exercise of Powers Authority Agreement consisting of the City of San Diego, City of Chula Vista, and County of San Diego for a proposed Otay River Valley Regional Park.

Page 4.2-12, paragraph 3:

Modified GDP Alternative

Table 4.2-1 indicates that implementation of the MHPA would require conversion of up to 223 acres of land designated for urban uses and ~~279~~ acres of land designated for low density uses to open space. The 223 acres of urban lands represents approximately 7 percent of the 3,140 acres of land designated for urban uses within the Subarea. The ~~279~~ acres of low density represents approximately ~~238~~ percent of the 119 acres of low density uses planned within the Subarea.

Page 4.3-45, paragraph 3:

Under the proposed MHPA, significant direct effects would occur for all of the species on the Covered Species List with the exception of those for which no loss of known observations or major populations is identified (as shown in *Table 4.3-2*). Under the MHPA, species to which no significant direct effects would occur under the above criteria are as follows: Otay manzanita, Dunn's mariposa lily, Tecate cypress, coast wallflower, Nevin's barberry, Gander's pitcher-sage, dense reed grass, Gander's butterweed, Parry's tetracoccus, salt marsh skipper, Thorne's hairstreak, and elegant tern. Direct impacts to these species would not be regarded as significant. In addition, impacts to species that the USFWS determined were discountable or insignificant, and not listed above, include: aphanisma, thread-leaved brodiaea, California red-legged frog, golden eagle, Swainson's hawk, northern harrier, ferruginous hawk, American peregrine falcon, mountain plover, long-billed curlew, American badger, mountain lion, and southern mule deer. Direct impacts to all other species on the Covered Species List would be regarded as significant under the proposed MHPA.

Page 4.3-85, paragraph 5:

Animal species on the Covered Species List that are represented (or expected to be represented) by populations within the City of San Diego include salt marsh skipper, Riverside fairy shrimp, San Diego fairy shrimp, arroyo southwestern toad (expected), orange-throated whiptail, San Diego horned lizard, Cooper's hawk, tricolored blackbird, Canada goose, California rufous-crowned sparrow, golden eagle, ferruginous hawk, Swainson's hawk, coastal cactus wren, western snowy plover, mountain plover (expected), northern harrier, reddish egret (expected), southwestern willow flycatcher, American peregrine falcon, bald eagle,

TABLE 4.2-1
GENERALIZED LAND USE DESIGNATIONS OF VACANT LANDS
by Jurisdiction for Proposed Multi-Habitat Planning Area (MHPA)
(*In Acres*)

General or Community Plan Land Use	Total W/in MSCP Plan Study[1]	Total W/in Proposed MHPA[2]	Chula Vista	Coronado	Del Mar	El Cajon	Imperial Beach	La Mesa	National City	Poway	San Diego	Santee	Unincorporated[3]	Water Districts
Preserves	6,673	4,700	268	172	44	0	0	0	131	3	2,370	0	1,711	0
Designated Open Space	104,044	81,331	1,795	~~177~~12	124	199	554	49	95	3,424	33,072	1,255	40,003	750
Constrained Lands	152,530	79,585	169	~~12~~10	13	31	524	1	1	6,600	12,540	414	57,610	1,569
Designated for Agriculture	6,087	1,901	0	~~113~~0	0	0	0	0	0	7	954	0	938	2
Designated for Low Density Uses	57,664	16,726	~~279~~	08	0	0	6	0	0	1,837	3,299	52	10,891	624
Designated for Urban Uses	40,733	10,075	223	~~8~~100	6	11	42	0	0	102	4,597	415	4,547	31
Total Existing Vacant Land	*367,731*	*194,318[2]*	*2,463*	*~~100~~405*	*187*	*241*	*1,127*	*51*	*227*	*11,974*	*56,831*	*2,136*	*115,701*	*2,976*
Allowable Acres of Unconstrained Land for Development within MHPA	--	*20,128*	*268*	*66*	*0*	*33*	*3*	*0*	*0*	*2,122*	*4,819*	*46*	*12,469*	*330*

1 The remaining acreage within the study area and MHPA consists of lands that are currently developed.

2 The acreages contained in this table are utilized in Section 4.2 in order to provide a maximum case analysis. The acreages in this table indicate how much vacant land within the MHPA and individual Subareas is anticipated to be developed with urban, low density or agricultural uses or to be preserved as open space in the form of preserves, designated open space or constrained lands. It is assumed, for purposes of the analysis in this document that a portion or all of the vacant lands designated for agriculture, urban and low density land uses would be converted to permanent open space as a part of the preserve. The acreages presented in this table represent the maximum acreage that could be converted through the preserve planning process. As discussed in Section 2.0, of this document, percent conservation thresholds are incorporated in to the preserve design which allow for development within preserve areas. The Allowable Acres for Development row at the end of this table indicates the allowable development within the MHPA and Subareas based on the percent conservation thresholds.

3 As discussed in Section 2.0, a portion of the MHPA within the County is considered to be of an "Undetermined" status. As a result, the acreages listed in this table for the County are approximate.

SOURCE: Ogden and Source Point, 1996.

TABLE 4.3-30
COVERED SPECIES FOR WHICH SIGNIFICANT IMPACTS* OUTSIDE THE MHPA ARE MITIGATED

Covered Species	MHPA	Chula Vista Options		Coronado	Del Mar	San Diego	Santee	Unincorporated	
		Policy 1	Policy 2					MHPA	Alt 1
White-faced ibis	x	x	x		x	x			
Canada goose	x					x		x	x
Bald eagle	x	x	x			x	x	x	x
Cooper's hawk	x	x	x		x	x	x	x	x
Light-footed clapper rail	x	x	x		x	x			
Western snowy plover	x	x	x	x	x	x			
California least tern	x	x	x	x	x	x			
Burrowing owl	x	x	x	x	x	x	x	x	x
Southwestern willow flycatcher	x	x	x		x	x	x	x	x
Coastal cactus wren	x		x		x	x	x		x
California gnatcatcher	x		x		x	x	x		x
Western bluebird	x	x	x		x	x	x	x	x
Least Bell's vireo	x	x	x		x	x	x	x	x
California rufous-crowned sparrow	x	x	x		x	x	x		x
Belding's Savannah sparrow	x	x	x	x	x	x			
Large-billed Savannah sparrow	x	x	x	x	x	x			
Tricolored blackbird	x	x	x		x	x	x	x	x

* Significant direct impacts as determined under the MHPA scenario based on the criteria described under *Process Background*. Species that would not be significantly impacted under the MHPA are not included in this table.

Page 4.3-159, paragraph 3:

Animal species on the Covered Species list that are represented (or expected to be represented) by populations within the City of San Diego include Riverside fairy shrimp, San Diego fairy shrimp, arroyo southwestern toad (expected), orange-throated whiptail, San Diego horned lizard, Cooper's hawk, tricolored blackbird, California rufous-crowned sparrow, coastal cactus wren, western snowy plover, ~~northern harrier,~~ reddish egret (expected), southwestern willow flycatcher, Canada goose, bald eagle, Belding's Savannah sparrow, large-billed Savannah sparrow, California brown pelican, white-faced ibis, coastal California gnatcatcher, light-footed clapper rail, western bluebird, burrowing owl, California least tern, and least Bell's vireo.

III. LETTERS OF COMMENT ON THE DRAFT EIR/EIS AND RESPONSES

III. LETTERS OF COMMENT ON THE DRAFT EIR/EIS AND RESPONSES (Theme Responses and Letters 1-79)

A total of 121 letters of comment were received in response to the Draft EIR/EIS for the MSCP Plan. The lead agencies prepared responses to each comment received during the public review period. Responses to these comments have been prepared in two parts — **Part A: Theme Responses, and Part B: Individual Responses.**

The Theme Responses address general topics of concern raised in the letters of comment. Generalized theme responses have been prepared to respond to these topics. Each theme response has been assigned a roman numeral and a title. A list of the theme responses is provided below.

Number	Topic
I	Species Analysis Approach
II	Population Viability Analysis
III	Economic Impacts And Impacts on Population And Housing
IV	MSCP Financing Plan: Regional Source of Funds
V	Taking of Private Property
VI	Alternatives
VII	Farmland Mapping
VIII	Public Involvement
IX	Allowable Uses Within MHPA
X	Habitat Conservation Accounting Model
XI	Scientific Review Adequacy
XII	Voluntary Participation
XIII	Ecosystem Based Mitigation ("Out-of-kind")
XIV	Biological Monitoring
XV	Document Organization
XVI	Risk Factors in Table 3-5
XVII	Salt Works
XVIII	Recovery of Species
XIX	Preserve Management
XX	Severability of Take Authorizations
XXI	Indirect Impact on Agricultural Land
XXII	Sufficiently/Significantly Conserved Vegetation Communities
XXIII	Critical Habitat Determination
XXIV	No Surprises
XXV	Wetlands Protection
XXVI	Permit Streamlining

The Individual Responses respond specifically to each individual comment in each comment letter. Each letter is assigned an Arabic numeral. A list of the letters showing a letter number reference and the author of the letter is provided below.

As indicated in the list provided below, the numbering system for the comments includes five letters for which no responses were prepared. These letters are not considered to be official letters of comment on the Draft EIR/EIS and are simply part of the administrative record. As a result, responses were not prepared for these letters.

LETTER NO.	ORGANIZATION
1	Sierra Club, San Diego Chapter
2	Watson Land Company
3	California Department of Forestry & Fire Protection
4	Citizens for Private Property Rights
5	Citizens for Private Property Rights
6	Carmel Valley Planning Board
7	Pacific Bay Homes
8	Marsh Committee, San Diego Wetlands Advisory Board
9	San Diego Rock Producers Association
9A	San Diego Rock Producers Association
10	Valle de Oro Planning Group
11	San Diego Audubon Society
12	International Boundary and Water Commission
13	Alpine Land Preservation Action Committee
14	Preserve Wild Santee
15	Otay Water District
16	R. Roberts, San Diego County
17	US-Environmental Protection Agency
18	Kelwood
19	Alliance for Habitat Conservation
20	California Native Plant Society
21	Law Offices of Susan M. Trager
22	National City Planning Department
23	A.E. DeBevoise, Ph.D.
24	League of Women Voters
25	San Diego County Cattlemen's Association

LETTER NO.	ORGANIZATION
26	Iron Mountain Conservancy
27	Graves Engineering Inc.
28	East Elliott Planning Advisory Committee
29	Black Mountain Road Partnerships
30	US Marine Corps
31	Caltrans – District 11
32	Anderprises, Inc.
33	SR-125 South Citizens Advisory Committee
34	SR-125 South Citizens Advisory Committee
35	Allen E. Shaw
36	California Office of Planning and Research
37	California Office of Planning and Research
38	NOT AN OFFICIAL LETTER OF COMMENT — ADMINISTRATIVE RECORD
39	San Diego Audubon Society
40	Eagle Survey Project
41	Fred T. Sproul
42	John & Esther Williamson
43	Stephenson Worley Garrat, Schwartz, Heidel & Prairie
44	Stephenson Worley Garrat, Schwartz, Heidel & Prairie
45	Endangered Habitats League
46	Law Offices of T.D. Mauriello
47	Egger & Ghio Co., Inc.
48	San Diego County Water Authority
49	Janet Nickerman
50	Village Development
51	San Diego Natural History Museum
52	City of Santee
53	City of Chula Vista
54	Tia Juana Valley County Water District
55	NOT AN OFFICIAL LETTER OF COMMENT – ADMINISTRATIVE RECORD
56	NOT AN OFFICIAL LETTER OF COMMENT — ADMINISTRATIVE RECORD
57	NOT AN OFFICIAL LETTER OF COMMENT — ADMINISTRATIVE RECORD
58	John M. DeBevoise

LETTER NO.	ORGANIZATION
59	Watson Land Company
60	Jamul-Dulzura Planning Group
61	San Diego Audubon Society
62	J. Luis Flores-Silva
63	William G. Stevens
64	Theresa Vasques
65	Descanso Sponsor Group
66	Viviane Marquez
67	C. Boyd & K. Winter
68	Craig A. Sherman, Attorney-at-Law
69	Sibylle Hartmann
70	Mischa Dobrotin
71	Department of the Navy
72	Rachel Thomas
73	M. Simovich, et.al., University of San Diego Department of Biology
74	Natural Heritage Institute
75	The Nature Conservancy
76	California Native Plant Society, San Diego Chapter
77	Hewitt & McGuire L.L.P., Attorneys-at-Law
78	Hewitt & McGuire L.L.P., Attorneys-at-Law
79	Sierra Club, San Diego Chapter
80	Sierra Club, San Diego Chapter
81	Sierra Club, San Diego Chapter
82	Dan C. Holland, Ph.D.
83	Ellen Bauder, Ph.D., SDSU Department of Biology
84	Save Our Forests and Ranchlands
85	Alliance for Habitat Conservation
86	Stephenson, Worley, Garrett, Schwartz, Heidel & Prairie
87	NOT AN OFFICIAL LETTER OF COMMENT — ADMINISTRATIVE RECORD
88	Otay Mesa Planning Group
89	San Diego Wild Animal Park
90	General Dynamics Property Management Group
91	San Diego Off-Road Coalition
92	San Diego Audubon Society
93	Luce, Forward, Hamilton & Scripps

LETTER NO.	ORGANIZATION
94	Latham & Watkins
95	The Green Store
96	San Diego County Taxpayers Association
97	Rodrick Dossey
98	Southwest Center for Biological Diversity
99	Janice Zamudio
100	J. Whalen Associates
101	San Diego Hang Gliding & Paragliding Association
102	The Eastlake Company
103	American General Land Development, Inc.
104	Farm Bureau, San Diego County
105	Endangered Habitats League
106	C.A. Coyle, Attorney-at-Law
107	Hewitt & McGuire L.L.P., Attorneys-at-Law
108	Edward Ervin, UCSD, Department of Biology
109	Kevin Crooks, UC Santa Cruz, Department of Biology
110	Law Offices of Charles Stevens Crandall
111	Christine Kerbstat
112	San Diego Association of Realtors
113	Carmel Mountain Conservancy
114	Mark W. Dodero
115	Friends of Los Peñasquitos Canyon Preserve
116	Carmel Valley Community Planning Board
117	Bernie Brandt
118	The Desert Protective Council
119	Edward Navarro, Superintendent, San Diego Coast District, California Department of Parks & Recreation
120	Craig A. Sherman, Attorney-at-Law
121	Cindy Burrascano

PART A
MSCP FINAL EIR/EIS
THEME RESPONSES

INTRODUCTION

One hundred twenty-one letters of comment were received in response to the Draft EIR/EIS for the MSCP Plan. Many of the comments referenced general themes of concern to reviewers. Generalized theme responses have been prepared to respond to these comments and are included in this section. A list of the theme responses by number and topic is provided below.

I SPECIES ANALYSIS APPROACH 1

II POPULATION VIABILITY ANALYSIS 2

III ECONOMIC IMPACTS AND IMPACTS ON POPULATION AND HOUSING 3

IV MSCP FINANCING PLAN: REGIONAL SOURCE OF FUNDS 5

V TAKING OF PRIVATE PROPERTY 7

VI ALTERNATIVES 7

VII FARMLAND MAPPING 8

VIII PUBLIC INVOLVEMENT 9

IX ALLOWABLE USES WITHIN MHPA 10

X HABITAT CONSERVATION ACCOUNTING MODEL 12

XI SCIENTIFIC REVIEW ADEQUACY 13

XII VOLUNTARY PARTICIPATION 16

XIII ECOSYSTEM BASED MITIGATION ("OUT-OF-KIND") 17

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XXI INDIRECT IMPACT ON AGRICULTURAL LAND 25

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XXIV NO SURPRISES 28

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XXVI PERMIT STREAMLINING 30

I SPECIES ANALYSIS APPROACH

The biological underpinning for the plan is fully outlined in the Multiple Species Conservation Program Resources Document Volumes I, II, and III, and the MSCP Plan Volumes I and II. These documents contain the biological information including the following: relation of MSCP to other planning efforts and the State of California's NCCP program; data sources; survey methodology; vegetation mapping, classification; and accuracy assessment; target species mapping; surveying; species accounts; general physiography; vegetation communities; soils; sensitive habitat description and acres; biological preserve design considerations; rare plant and animal preserve design strategy; summary of population viability analyses; preservation priorities; core biological resource areas; linkage constraints within the MSCP study area; summary of biological goals; standards, and guidelines; multi-habitat and multi-species approach; research and management priorities; gap analysis; bibliography of data sources; habitat management plan outlines; and GIS habitat evaluation model. The MSCP Plan Volume I, Chapter 2 describes the MSCP study area list of evaluated species, and biological core and linkage areas. Chapter 3 discusses the development of the preserve planning area, the levels of habitat conserved, and species covered. Habitat conservation is described in terms of total vegetation community preservation for the MSCP Plan, by jurisdiction and by core and linkage areas. The MSCP Subarea Plans within Volume II describe the specific Subarea Plans and the levels and mechanisms for conservation.

The wildlife agencies reviewed the MSCP Plan, Volume I, and the MSCP Subarea Plans Volume II, and made a preliminary assessment of the ability of the Plan to adequately conserve evaluated species. New biological information obtained during the public comment period of the MSCP Plan will be considered in the evaluation of coverage of species. Prior to issuance of take authorizations, the wildlife agencies must find that the MSCP Plan meets Section 10(a)(1)(B) criteria of the federal Endangered Species Act, including the finding that take would not appreciably reduce the likelihood of survival and recovery of the species in the wild and criteria for management authorizations under CESA and NCCP.

In the species assessments, the wildlife agencies reviewed the available information on each species. Available information varied greatly depending on the species. The evaluation considered the impact of the MSCP Plan (positive and negative) on the target species taking into consideration the following: 1) available biological information; 2) overall distribution of the species; 3) MSCP distribution of the species; 4) population decline; 5) habitat use; 6) recommended MSCP Standards and Guidelines; 5) level of preservation within the MHPA and any assumptions made regarding level of preservation; 7) threats to the species; 8) information from local experts; 9) status of the species; 10) recognized errors in the MSCP data base; 11) number and percent of known locations on the MSCP data base inside and outside of the MHPA; 12) locations or populations known to occur but not represented in the MSCP data base; 13) number and percent of known major populations inside and outside of the MHPA; and 14) recommended management conditions. This information is contained within the MSCP 1995 and 1996 Species Evaluations dated September 1996. This information is summarized within the MSCP Plan Table

3-5 and the EIR/EIS Table 4.3-1 in the EIR/EIS. To assist the reader in summarizing the available information, Table 3-5 has been revised and is included in the Revisions to the MSCP Plan, January 1997.

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II POPULATION VIABILITY ANALYSIS

Population Viability Analysis (PVA) is a useful tool in conservation biology, especially in regard to comparing the efficacy of different preserve configurations. In order to conduct PVAs, it is necessary to combine information on a species' natural history and population dynamics (e.g., survival, reproduction, dispersal, etc.), effects of environmental uncertainty (e.g., weather, food supply, predators, parasites, etc.), natural catastrophes (e.g., fire, drought), and genetic uncertainty (founder effect, genetic drift, and inbreeding). This information is used in simulation modeling to generate predictions of the probability that a population will go extinct within a given numbers of years.

The results of PVAs are inherently uncertain and can be unreliable, particularly in the absence of the information needed to formulate parameters for the models with regard to risk factor. Taylor (1995. The reliability of using population viability analysis for risk classification of species. *Conservation Biology*, 9:551-558) concludes that "PVAs based on best estimates of parameters inadequately measure our true knowledge of the risk species face because uncertainty in parameter estimation is not incorporated into this measure of risk."

PVAs for the covered species would require the efforts of numerous scientists with specific experience with the taxa included on the covered species list. As stated by Meffe and Carroll (1994, *Principles of Conservation Biology*, Sinauer Associates, pp. 201-202), "While some spatially explicit models are sufficiently well developed and parameterized to be used in conservation and management, for most species the relevant population parameters are not known, and several years of concentrated fieldwork would be required to collect the large amount of data needed to parameterize the models." Work by Ginzburg *et al.* (1982. Quasiextinction probabilities as a measure of impact on population growth. *Risk Analysis*. 2:171-181) demonstrates that reliably estimating density-related effects on survival or reproduction of wild populations may take 20 or more years of data. The amount of additional fieldwork necessary to conduct these PVAs would be infeasible within the scope of this project. Furthermore, even after the necessary data are collected to run a model on a single species, it is likely that at least another one to two years would be required to complete the modeling, draft the results, circulate the results for peer review, refine and revise the analysis, and finalize the PVA to a point where it could be used in the preserve or species coverage evaluation process. Even at this point, there likely would be vigorous scientific debate concerning the validity of the results and their appropriate use under the CESA and FESA, especially if a PVA determined that a smaller preserve or fewer or smaller populations were adequate to conserve a species.

The PVA conducted by Ogden for the California gnatcatcher was for comparative purposes because of the uncertainty of the model's input parameter values. It was assumed in this model that all of the coastal sage scrub in the MSCP study area potentially supported gnatcatchers. The Ogden study concluded that additional population studies of several gnatcatcher populations would be needed to refine the PVA. These studies would focus on variation in population size/density, reproductive success, annual survival, juvenile recruitment, and dispersal capability. Several years of systematic study of these variables across the landscape would be needed to sufficiently refine the model, and is beyond the scope of this project.

Based on the above information, the wildlife agencies believe that PVAs are not necessary in determining whether or not the MSCP Plan meets take authorization issuance criteria for covered species.

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III ECONOMIC IMPACTS AND IMPACTS ON POPULATION AND HOUSING

The basic purpose of CEQA is to inform governmental decision makers and the public about the potential significant environmental effects of proposed projects and to identify ways that environmental damage can be avoided or significantly reduced (State CEQA Guidelines, Sec. 15002(a)). Therefore, as a general rule, an EIR is required to evaluate only the physical environmental impacts of a project (Public Resources Code, Sec. 21100). In determining whether a physical change creates a significant adverse environmental impact, economic or social changes or the economic and social effects of the physical change may be considered (State CEQA Guidelines, Sec. 15064(f)). However, purely economic impacts are not required to be analyzed independently from the physical changes to the environment caused by the project, and mitigation under CEQA is limited to measures which address the physical environmental impacts of the project (State CEQA Guidelines, Sec. 15064(f)).

NEPA requires an EIS to focus on the natural and physical environment and the relationship of people with that environment (40 CFR Sec. 1508.14). An analysis is only required of reasonably foreseeable indirect effects, which may include economic impacts (40 CFR Sec. 1508.8(b)). For purposes of NEPA, "reasonably foreseeable" includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.

NEPA also states that when an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an EIS and when there is incomplete or unavailable

information, the agency shall always make clear that such information is lacking (40 CFR Sec. 1502.22). Additionally,

(a) If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining are not exorbitant, the agency shall include the information in the EIS;

(b) If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known, the agency shall include within the EIS: 1) a statement that such information is incomplete or unavailable; 2) a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment; 3) a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment; and 4) the agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community;

(c) These regulations regarding the preparation of an EIS are applicable to all environmental impact statements for which a Notice of Intent (40 CFR Sec. 1508.22) is published in the *Federal Register* after May 27, 1986 (51 FR 15625, April 25, 1986).

Measures of economic activity (e.g., property values, development rates, development costs, tax base, financing of public improvements, housing and housing prices, economic activity, and employment) are affected by a great number of variables (e.g., interest rates, state and federal budgets, public policy, aggregate demand, and technological change) that are unrelated to the environmental impacts associated with implementing the MSCP. Consequently, it is not possible or foreseeable to quantify how the environmental consequences of implementing the alternatives described in the EIR/EIS would affect individual measures of economic activity. For these reasons, the EIR/EIS discusses the potential economic impacts of implementing the MSCP in general terms (e.g., greater or lesser effects, higher or lower costs), rather than in terms of quantitative estimates. The discussion is directed toward aggregate or average impacts in the San Diego region, rather than impacts on an individual, firm, or property. Additional analysis of economic impacts is neither required nor warranted under CEQA and NEPA.

One issue area analyzed by the EIR/EIS using quantitative estimates is population and housing. The EIR/EIS examines the most recent regional forecasts of population and housing prepared by the San Diego Association of Governments (SANDAG, Series 8 forecasts, May 1995) to determine what effect, if any, the implementation of the MSCP may have on the region's ability to accommodate future growth in population.

As discussed in the MSCP Plan (p. 2-15), SANDAG projected the San Diego region's population to grow from 2.5 million in 1990 to 3.8 million by 2015. In allocating future population and housing growth to the cities and communities of the region, SANDAG found that the existing general and community plans contain vacant lands designated for residential use at "urban" densities (greater than one unit per acre) sufficient to accommodate approximately 3.3 million people, which is forecast to be reached in 2005. After 2005, population and housing growth would need to occur almost exclusively on lands designated for residential use at "rural" densities (less than one unit per acre), since residential land with urban densities will have been developed.

Since it is not reasonable to place almost the entire population and housing growth after 2005 on residential land with rural densities, the local jurisdictions have been working with SANDAG to formulate a Regional Growth Management Strategy both to accommodate residential growth beyond 2005 and to meet quality of life objectives of greater transportation access, reduced congestion, and improved air quality. However, as of November 1996, the land use element of the Regional Growth Management Strategy has not been adopted by the local jurisdictions, leaving the question of accommodating growth beyond 2005 essentially unresolved. SANDAG and local jurisdictions have deferred resolution of this issue to the next cycle of regional growth forecast (Series 9), which has not been completed at this time (November 1996).

The analysis of population and housing impact contained in the EIR/EIS used the best available information on regional growth forecast (Series 8 forecasts through 2005). No reliable information exists regarding the allocation of aggregate regional growth after 2005 to the cities and communities of San Diego County. Work required to generate reliable estimates of this allocation after 2005 would essentially duplicate the work currently under way to prepare the Series 9 forecast. This cannot be completed in a reasonable period of time for use in the EIR/EIS. Finally, forecast of growth in the region depends crucially on the individual jurisdictions' decisions regarding future land use policy, in the absence of which, analysis of population and housing impacts beyond 2005 would be highly speculative. That is, measures that may be required to accommodate growth beyond 2005 with the MSCP in place cannot be clearly distinguished from those required in the absence of the MSCP. Therefore, for purposes of environmental review under CEQA and NEPA, analyses of population and housing impacts were limited to impacts occurring until the year 2005. See also **Theme Response XXI on Indirect Impacts on Agricultural Lands.**

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IV MSCP FINANCING PLAN: REGIONAL SOURCE OF FUNDS

The ESA authorizes the Secretary of the Interior to issue permits that allow for the taking of listed species incidental to carrying out otherwise lawful activities, provided that an applicant for an incidental take permit, among other requirements, prepare a conservation plan and ensure that adequate

funding for the plan will be provided. The Secretary may also require other assurances that the plan will be implemented. The MSCP Plan provides the necessary assurances that these conditions will be met.

The MSCP Plan requires that a portion of habitat acquisition (approximately 13,500 acres or about eight percent of the 171,917 acre proposed preserve) and management be funded by the participating local jurisdictions, and identifies a range of funding sources potentially available to the jurisdictions to satisfy their obligations. The implementing agreements will require that the participating local jurisdictions jointly establish a regional funding program within three years of the approval of the first subarea plan.

Prior to the implementation of a regional funding program, the MSCP will meet the funding requirements of the ESA through several mechanisms:

- commitment of existing local public lands to the preserve (approximately 31,000 acres of habitat owned by the participating local jurisdictions);

- management of existing state and federal lands as part of the preserve (approximately 35,000 acres of habitat);

- acquisitions of land by state and federal governments;

- requirements for mitigation of impacts from new projects

The assembledge of the preserve will be reviewed and evaluated annually to ensure that conservation targets, set out in the subarea plans, are being met. As stated in the MSCP Plan:

Progress toward achieving the conservation targets will be reviewed and habitat management issues discussed. If the wildlife agencies determine that the subarea plan is not being implemented as required, the wildlife agencies and take authorization holder will take the actions specified in the subarea plan and implementing agreement to remedy the situation. (MSCP Plan, p. 5-11)

Specifically, if the regional funding source proposed by the local jurisdictions is not put in place within the first three years following the issuance of take authorizations, the wildlife agencies will review the scope and validity of the permits in light of the funding deficiency. If efforts to establish the regional funding source are unsuccessful within that timeframe, however, each jurisdiction may develop and implement a funding source adequate to meet its share of the MSCP and subarea plan implementation requirements as it continues to pursue a regional funding source.

Funding for project implementation is generally not a subject to be analyzed pursuant to NEPA or CEQA. NEPA and CEQA require that the EIS/EIR assess the impact of a project on the natural and physical environment and on the relationship of people with that environment (see Public Resources Code, sec. 21100; see also 40 CFR sec. 1508.14).

V TAKING OF PRIVATE PROPERTY

The MSCP Plan proposes to assemble a regional preserve system through the protection of habitats on public lands, acquisition of privately owned habitats from willing sellers, and the continued application of land use and environmental regulations which are similar to existing regulatory practices. The MSCP states as a goal that "Private development exactions should not be increased beyond existing requirements" (MSCP Plan, p. 4-1). In general, changes to land use or environmental regulations proposed by individual subarea plans meet this goal.

The just compensation clause of the Fifth Amendment to the Constitution establishes the standards under which Federal, State and local governments must compensate a landowner for the taking of private property. The MSCP and associated subarea plans have been developed in compliance with these standards, as interpreted by the U.S. Supreme Court over the past 200 years. Implementation of the MSCP is in furtherance of those federal and state laws which mandate protection of threatened and endangered species. The proposed regulations have been drafted to ensure that private property owners, both within and outside the MHPA, will not be denied reasonable use of their land. Landowners in the preserve will have the option of: 1) developing the property in compliance with local zoning and land development regulations; 2) negotiating a sale of the property to someone who needs to purchase land in the preserve to mitigate for development occurring outside the preserve; 3) selling the land to local, state or federal governments at fair market value within the preserve to assist with implementation of the MSCP; or 4) continuing existing legal uses in compliance with applicable regulations.

The identification of the boundaries of a preserve or establishment of conservation goals in the MSCP Plan does not constitute a "taking" of private property without compensation.

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VI ALTERNATIVES

The EIR/EIS analyzes a full range of reasonable alternatives for both the overall MSCP Plan and the Subarea Plans consistent with both NEPA and CEQA Guidelines. The alternatives are described in detail on pages 2-51 through 2-67 of the EIR/EIS including a discussion of Alternatives Considered and Eliminated From Further Analysis (pages 2-51 and 2-52) and summary comparison of alternatives (Table 2-8 on page 2-67). The alternatives evaluated in detail range from the No Project alternative, which would not involve establishment of a preserve, to the Biologically Preferred Scenario, which incorporated the majority of core biological areas and linkages identified as part of the MSCP planning process. Other

alternatives focus on a specific habitat, such as the Coastal Sage Scrub Scenario, or on a specific ownership pattern, such as the Public Lands Scenario. In this way, a full range of alternative preserve configurations is analyzed.

Substantial quantitative analyses of the overall MSCP Plan alternatives and the Subarea Plan alternatives are provided throughout Section 4.0 of the EIR/EIS. For example, quantitative acreages for land use shifts, agricultural lands and impacts to vegetation communities/habitats are given for each of the Subarea Plans and Subarea Plan alternatives in Sections 4.2 and 4.3 of the Draft Joint EIR/EIS. Similar data are presented for Population/Housing impacts for the Subarea Plans and alternatives in Section 4.6 of the EIR/EIS. Detailed analyses of alternatives selected for discussion are provided in the EIR/EIS.

The EIR/EIS clearly defines the significant impacts and mitigation measures associated with each alternative and notes the degree to which significant impacts would be mitigated to below a level of significance under each alternative. These conclusions are summarized in Tables ES-2 through ES-6, included in the Executive Summary to the Draft EIR/EIS. Specific mitigation measures are presented for each alternative with the headings MHPA, CSS, BP and PL, which represent, respectively, the Multi-Habitat Planning Area, Coastal Sage Scrub, Biologically Preferred and Public Lands alternatives. Throughout the document, the MHPA is identified as the applicants' preferred alternative. The Final EIR/EIS indicates that the MHPA is also the USFWS' preferred alternative.

It is not the purpose of the EIR/EIS to determine whether or not a particular alternative scenario sufficiently protects specific habitats or species. The purpose of the EIR/EIS is simply to identify the environmental impacts associated with the proposed project and various alternative scenarios. The EIR/EIS does, however, provide a comparison of alternatives in several locations to facilitate review by the reader, most notably in Tables ES-2 through ES-6 in the Executive Summary, in Table 2-8, and in Table 4.3-2.

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VII FARMLAND MAPPING

Analysis of impacts to agriculture in Section 4.2 of the Draft Joint EIR/EIS is based on the classifications of the California Department of Conservation (CDC). The CDC Important Farmland Mapping and Monitoring Program addresses soil types as well as existing land uses. The urban category utilized on the CDC Important Farmland Maps (see Figure 3.2-4) indicates areas containing existing urban uses. In general, areas identified as important farmlands by the CDC are currently vacant or support ongoing agricultural operations. The effects of preserve implementation on farmlands of Local Importance, which reflect existing conditions, are also evaluated in the EIR/EIS (See Figure 3.2-4). According to the

CDC, farmlands identified as being of Local Importance are considered to be of significant importance to the County due to soil types as well as a history of good production for locally adapted crops.

In addition to the CDC Important Farmland maps described above, the lead agencies consulted County Agriculture officials and the Existing Conditions Report of the draft County of San Diego Agricultural Element of the General Plan (the Agricultural Element has not been adopted as a formal element of the General Plan) for the unincorporated portion of the study area. These sources include information on existing crop production in the County. However, a comprehensive mapping effort of existing agricultural operations in the County and the study area has not been prepared, and these previously noted data sources do not contain information in addition to that used in the Draft EIR/EIS that either identify new important farmlands not previously analyzed or change the conclusions of the analysis in the Draft EIR/EIS.

The County of San Diego Agricultural Preserve Map (agricultural preserves are those defined by the Williamson Act) as well as the Williamson Act text were also consulted. Use of the Williamson Act criteria for determining the significance of impacts to agricultural productivity is not appropriate for the EIR/EIS analysis, because contracts and preserves are established under the Williamson Act primarily for tax purposes. Many of the large Williamson Act preserves existing within the County of San Diego do not currently support agricultural operations.

As discussed in Section 4.2 of the EIR/EIS, the MSCP Plan and the Subarea Plans contain language permitting existing agricultural operations. The MSCP Plan and the Subarea Plans for the County of San Diego, and the Cities of Chula Vista, San Diego and Santee contain language that allows existing agricultural operations located within areas proposed to be included in the preserve to continue and, in some cases, expand. Due to the flexibility of the plans incorporated in the MSCP Plan and Subarea Plans, impacts to existing and future agriculture are not regarded as significant and further analysis is not warranted.

The analysis of impacts to agriculture in the Joint EIR/EIS is a plan-to-ground analysis. The analysis follows that described in the July 7, 1996 Notice of Preparation for the EIR/EIS, and employs a methodology in standard use in CEQA documentation throughout San Diego County.

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VIII PUBLIC INVOLVEMENT

Full public participation at every stage of the MSCP has been a goal of the City and wildlife agencies. In 191, a 30-member advisory working group of diversified stakeholders was formed including

representatives of development, industry, and environmental groups (see title page and Section 1.4 of the MSCP Plan, Volume 1). There were over 50 MSCP Working Group meetings, which were open to the public, approximately 24 noticed public meetings have been held on the MSCP Plan, a number of them during the evening hours for southern area residents, San Diego residents, and eastern area residents. A list of the public meetings is attached. As shown on the list, notices of availability of the MSCP Plan and of regional workshops were provided to 32,850 property owners in the City of San Diego, additional property owners in other jurisdictions, about 900 interested parties, and about 500-600 additional parties on the Working Group list. Since March 1, 1995, all meetings have also been listed on the MSCP 24-hour Information Line (telephone no. 619-570-1099) and on the City of San Diego home page on the internet. This outreach program has provided wide distribution of information to both large and small property owners and interested parties. In addition, with release of the Draft MSCP Plan in March 1995, notices about upcoming public workshops and hearings on the Multiple Species Conservation Program and about the availability of the MSCP Plan and Draft EIR/EIS have been sent to tens of thousands of property owners.

Notices of the availability of the MSCP Plan and Draft EIR/EIS and of public workshops and hearings were sent to over 25,000 property owners in March and again in May and June 1995 and to over 32,000 property owners in February and again in March and June 1996. Noticing of important MSCP events to individual property owners will continue until actions on the MSCP have been completed by local governments. To help the public understand the MSCP, copies of the MSCP Plan and the Draft EIR/EIS were distributed to 51 public libraries in the MSCP study area and were sent to the County Board of Supervisors, council members, city managers, and planning directors in each of the 11 cities in the MSCP study area as well as to planning commissions, community planning groups, and others. The MSCP planning process has been reported periodically over the past few years in the *San Diego Union-Tribune*, the *San Diego Daily Transcript*, and other local newspapers. After discussions with the wildlife agencies, the City of San Diego, the CEQA lead agency, extended the deadline for comments on the Recirculated Draft Joint EIR/EIS from October 15 to October 29, 1996, a period of two additional weeks from the original deadline. The USFWS, the NEPA lead agency, issued a notice in the *Federal Register* on Friday, October 18, 1996, stating that the public review period was reopened until Tuesday, October 29, 1996.

Following adoption of the MSCP Plan, the Plan calls for establishment of an Implementation Coordinating Committee whose meetings will be noticed and open to the public. In addition, the Plan states that an MSCP status report will be issued and public hearings held every 3 years by participating jurisdictions to publicly report on the status of MSCP implementation.

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IX ALLOWABLE USES WITHIN MHPA

Section 6.2 (as revised) of the MSCP Plan, Volume 1, establishes guidelines for land uses within the MHPA (see Revisions to the MSCP Plan, January 1997). Subarea Plans define allowable land

CITY OF SAN DIEGO
PUBLIC MEETINGS AND NOTIFICATION FOR
THE MULTIPLE SPECIES CONSERVATION PROGRAM*

DATE	ACTIVITY	NOTIFIED PARTIES
March 1, 1995	Distributed Draft MSCP Plan for Public Review	MSCP Working Group, Libraries, Elected Officials
March 6, 1995	Mailed Notice of Availability for Draft MSCP Plan and Regional Workshops	Property Owners (8,000 - 9,000) in City, plus more in other jurisdictions Interested Parties (approx. 900) Community Planning Group Chairs, MSCP Working Group, "Always" list, "General" list (500 - 600)
March 14, 1995	Published Scoping Meeting and Regional Workshops Notice in *Union-Tribune*	San Diego Residents
March 15, 1995	Held Scoping Meeting	Per 3/14/95 ad
March 30, 1995	Published Ad for Northern Area Regional Workshop in *Mira Mesa Sentinel*	Northern Area Residents
April 1, 1995	Held Northern Area Regional Workshop	Per 3/36/95 mailer and 3/30/95 ad
April 5, 1995	Published Ad for Southern Area Regional Workshop in *Star News*	Southern Area Residents
April 7, 1995	Published Ad for Southern and Eastern Regional Workshops in *Union-Tribune*	San Diego Residents
April 8, 1995	Held Southern Area Regional Workshop	Per 3/6/95 mailer and 4/7/95 ad
April 19, 1995	Published Ad for Eastern Area Regional Workshop in *The Daily Californian*	Eastern Area Residents
April 22, 1995	Held Eastern Area Regional Workshop	Per 3/6/95 mailer and 4/7/95 and 4/19/95 ads

May 8, 1995	Mailed Notice of Availability for EIR/EIS	Property Owners (8,000 - 9,000) Interested Parties (approx. 900) Community Planning Group Chairs, MSCP Working Group, "Always" list, "General" list (500 - 600)
June 7, 1995	Mailed Notice of 6/14/95 NRC&A meeting, 6/14/95 EIR/EIS Public Hearing and Comment Deadlines	Property Owners (8,000 - 9,000) Interested Parties (approx. 900) Community Planning Group Chairs, MSCP Working Group, "Always" list, "General" list (500 - 600)
June 14, 1995	NRC&A meeting and EIR/EIS Public Hearing	Per 6/7/95 mailed notice
July 12, August 2, August 9, September 27, October 18 November 8, 1995	NRC&A and LU&H meetings continued from 6/14/95 NRC&A meeting	Listed on MSCP Information Line
February 5, 1996	Mailed Planning Commission Notice for 2/22/96 workshop	Property Owners (approx. 32,850) Interested Parties (approx. 900) Community Planning Group Chairs, MSCP Working Group, "Always" list, "General" list (500 - 600)
February 7, 1996	Published Planning Commission Notice in *Daily Transcript*	San Diego Area Residents
February 22, 1996	Planning Commission Meeting	Per 2/5/96 mailed notice and 2/7/96 ad
March 27, 1996	Notice of City Council Public Hearing for 4/23/96	Property Owners (approx. 32,850) Interested Parties (approx. 900) Community Planning Group Chairs, MSCP Working Group, "Always" list, "General" list (500 - 600)
April 11, 1996	Published Notice of City Council Public Hearing in *Daily Transcript*	San Diego Area Residents
April 23, 1996	City Council Public Hearing	Per 3/27/96 mailed notice and 4/11/96 ad
June 18, 1996	Mailed Notice of City Council Public Hearing for 7/2/96	Property Owners (approx. 32,850) Interested Parties (approx. 900) Community Planning Group Chairs, MSCP Working Group, "Always" list, "General" list (500 - 600)

June 18, 1996	Published Notice of City Council Public Hearing in *Daily Transcript*	San Diego Area Residents
July 2, 1996	City Council Public Hearing	As per 6/18/96 mailed notice and 6/18/96 ad

* From March 1, 1995, release of draft plan, all meetings also listed on the MSCP Information Line. Does not include presentations to organizations and groups or to MSCP Working Group public meetings.

uses, their location and design within the MHPA, and methods for review and permitting of development within and adjacent to the MHPA. Through the Subarea Plans and other implementing plans and regulations, jurisdictions and other take authorization holders would ensure that development is consistent with the MSCP Plan (see Revisions to the MSCP Plan documentation, January 1997, regarding Section 6.2.3 of the Plan). This section of the MSCP Plan specifically addresses planned regional public facilities.

A key objective of the MSCP is to provide public recreation and educational opportunities within the preserve, consistent with providing adequate protection for biological resources and ensuring that private property rights are respected. Riding and hiking trails would be allowed within appropriate portions of the preserve to provide passive recreational opportunities for the public. Other passive activities such as photography, bird watching, and public education programs also will be encouraged. Each take authorization holder will develop a preserve management plan that addresses allowable recreational uses and their location to ensure protection of biological resources. Please also refer to **Theme Response XIV, Biological Monitoring.**

Each take authorization holder is responsible for ensuring that the lands conserved within the MHPA will be permanently protected through policies and guidelines in their respective Subarea Plan, and/or General Plan designations, and development review processing. To achieve the level of protection for the covered species and their habitats provided under the MSCP Plan and the Subarea Plan, the City of San Diego shall be required to amend the San Diego Municipal Code to adopt the *Environmentally Sensitive Land Regulations* and the *Open Space Residential Zone*, as described in the MSCP Plan and the EIR/EIS. In the County, mitigation guidelines for projects are specified in the proposed Biological Mitigation Ordinance. As stated in the EIR/EIS, the mitigation ratios set out in the proposed BMO are designed to encourage mitigation using lands that meet the criteria of a biological resource core area (i.e., an area of high priority for preservation in the MHPA) including land that the wildlife agencies have pre-approved because of their biological value, by setting lower mitigation ratios when mitigation is directed at these lands.

Guidelines for future uses, disturbance, and/or development of the lands in the MHPA are provided in each Subarea Plan. For the City of San Diego, land use guidelines are addressed in Section 1.4 and preserve management policies are set forth in Section 1.5 of the City's Subarea Plan. For project development within the City of San Diego's MHPA, a development area of 25% on the least sensitive portion of parcels would be allowed without mitigation. The City of San Diego's Implementing Agreement (Section 10(G)(4)) would allow the City to permit, on a case-by case basis, additional encroachment to accommodate public facilities identified in each community plan, provided that the overall level of preservation of habitat within the MHPA does not fall below 90% and that the biological objectives of the MHPA are not compromised. Also, the additional encroachment would require mitigation, pursuant to the mitigation ratios/tiering scheme presented in Exhibit N of the City's Implementing Agreement.

It is anticipated that the other Subareas Plans would adopt similar restrictions for future habitat loss/disturbance associated with public infrastructure and other permitted uses, consistent with the guidelines established by the MSCP.

X HABITAT CONSERVATION ACCOUNTING MODEL

The MSCP Subarea Plans have been developed using several different approaches to achieve the conservation goals and objectives of the program. The various approaches reflect the challenge faced by the participating jurisdictions of tailoring plans to fit a range of circumstances. For instance, in some of its areas, the County of San Diego has defined its preserve boundaries through negotiations; in other areas, it will employ a set of standards and criteria to guide development and achieve conservation goals. The City of San Diego, on the other hand, has chosen to designate preserve planning areas and define conservation goals and requirements for those areas. Other jurisdictions will utilize a combination of approaches to implement their Subarea Plans.

Successful implementation of these approaches requires that a process be in place to enable the participating jurisdictions, wildlife agencies, and the public to assess the effectiveness of these approaches in achieving their stated goals. Each of the subarea plans include a conservation target for each of the MSCP vegetation communities, and these targets will serve as the measurable standards upon which successful implementation of the subarea plans can be evaluated (conservation targets will be referenced in Section 10 of each Implementing Agreement). To ensure that the jurisdictions are making progress toward meeting these targets, the IA will require local jurisdictions to utilize a habitat conservation accounting model to monitor implementation and determine whether habitat conservation is proceeding at a rate proportional to development.

The "Habitat Conservation Accounting Model" is a tool which is to be used so that the jurisdictions, wildlife agencies and the public can track, on an annual basis, whether conservation targets are being achieved. The model will be attached as an exhibit to each IA. (see also, Theme Response on Project and Cumulative Habitat Impacts/Conservation Accounting and Tracking). Using this model, the wildlife agencies have developed graphs depicting the acceptable levels of habitat conservation and loss for each vegetation community at any given time. These graphs are based on a linear relationship between the number of newly preserved acres of a specific vegetation community necessary to meet the conservation targets and the acreage of that community that may be developed without compromising the conservation goals of the program. The slope of the line of the graphs is defined as:

$$R=Y/X$$

Y = the number of acres of new conservation of the vegetation community that must be achieved to meet the conservation target

X= total acres of the vegetation community that are not conserved at the date the take authorization is issued minus Y (X also equals the total acreage of a vegetation community that could be lost and still meet the vegetation community conservation target)

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

Because the commitments of each of the participating jurisdictions are slightly different (e.g. 90% conservation of Tier 1 vegetation communities within the City of San Diego's MHPA), the rough step ratios and deviations will vary from jurisdiction to jurisdiction. Each jurisdiction's formula for defining the "rough step" performance line will be included in its IA, and the wildlife agencies will assess compliance with the "rough step" performance model upon review of each jurisdiction's annual report. In the event that a participating jurisdiction exceeds the allowable deviation for a particular vegetation community, any additional loss of that vegetation community without corrective action could result in suspension of take authorizations in whole or in part.

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XI SCIENTIFIC REVIEW ADEQUACY

The Multiple Species Conservation Program is recognized as an Ongoing Multi-Species Conservation Plan by the Natural Community Conservation Planning (NCCP) program. NCCPs are developed and evaluated using Conservation Guidelines recommended by the State's Scientific Review Panel (SRP), which included six nationally recognized conservation biologists empaneled by the California Department of Fish and Game to establish a scientific framework for the NCCP Program. This conservation framework is embodied in two publications: The NCCP Process Guidelines (CDFG 1993) and the NCCP Conservation Guidelines (CDFG 1993). The MSCP is based on the principles of conservation biology articulated in the NCCP Conservation Guidelines, and was formulated using the best available scientific information.

The SRP consisted of the following five scientists with expertise in various aspects in the field of conservation biology:

- Dr. Dennis D. Murphy, Center for Conservation biology, Department of Biological Sciences, Stanford University. Chairman of the Scientific Review Committee and

experienced in conflict resolution in conservation planning for many species. Extensive experience in planning for conservation.

- Dr. John F. O'Leary, Department of Geography, San Diego State University. Specializes in vegetation geography and Geographic Information Systems.
- Dr. Peter F. Brussard, Department of Biology Chair, University of Nevada. Extensive experience in habitat-based conservation programs.
- Dr. Michael S. Gilpin, Department of Biology, University of California, San Diego. Computer modeling and development of population viability analysis programs.
- Dr. Reed Noss, Department of Biology, Oregon State University. Experience with a number of habitat and species conservation programs. Present editor of the *Journal of the Society for Conservation Biology.*

The fundamental assumptions and the technical documentation supporting the Conservation Guidelines are found in *Southern California Coastal Sage Scrub Natural Communities Conservation Plan, Scientific Review Panel Conservation Guidelines and Documentation,* April 1993, published by the wildlife agencies and the California Resources Agency. This publication, also known as "the Grey Book" is a compilation of the technical papers, interim publications, distribution maps, and bibliographies used by the Scientific Review Panel to develop the NCCP Conservation Guidelines. The cited literature, maps, and documentation include references of nearly 400 sources specific to the coastal sage scrub and species in Southern California.

As shown above, the NCCP Conservation Guidelines are based upon the best available scientific information. It should be noted that the Conservation Guidelines point out that there is a lack of scientific information on important aspects of coastal sage scrub biology. Therefore, the Conservation Guidelines indicated that the subregional planning process should begin as soon as possible and identify and fill information needs specific to the subregion. The Guidelines also state that preserves should be managed in ways responsive to new information as it accrues. Six major, interrelated research items were described in the Conservation Guidelines. These research items are broad categories that are intended to fill in the gaps in scientific knowledge needed to support the NCCP Program as a whole. Various aspects of these research items are being undertaken by the Federal and State governments, and local universities; there are currently 66 NCCP Program-associated research activities (CDFG 1996). The study results are intended to be utilized by each Subregional NCCP as appropriate. Additionally, ongoing research, including work at several universities and the U.S. Forest Service on the role of fire in the function of the coastal sage scrub ecosystem, is expected to benefit NCCP planning efforts (Stine, NBS, pers. comm.).

The SRP has fulfilled its primary role, that of providing the framework for the NCCP Program. The wildlife agencies have formulated specific questions on various aspects of the subregional NCCPs for review by selected members of the SRP, or other scientists, as appropriate. This process will continue as needed. It is not the intent of the wildlife agencies to utilize the SRP in the review of individual NCCPs, such as the MSCP. Review and approval of NCCPs is the statutory responsibility of the wildlife agencies.

To help ensure that ongoing research meets on-the-ground management needs, the state and federal wildlife agencies formed a Science Subcommittee. A group of scientists and representatives from the wildlife agencies, the National Biological Service and The Nature Conservancy brought together land managers and the scientific community to develop a revised research agenda and to focus on research. A two-day workshop, hosted by the San Diego Zoological Society in September 1996, reviewed the current status of ongoing coastal sage scrub-related research and assessed the research needs of land managers.

To develop biological planning criteria specific to the needs of the MSCP study area, the Working Group of the MSCP appointed a group of local biologists to develop biological criteria for multiple species preserve design to be applied regionally, yet that were specific enough to be interpreted and implemented consistently by individual local jurisdictions in their Subarea Plans. The Biological Task Force consisted of various consulting biologists, the biologists employed by the County of San Diego, the State's Scientific Review Panel, and the wildlife agencies. The Biological Task Force produced the Biological Standards and Guidelines for Multiple Species Preserve Design in 1992, and revised them in May 1993. The Standards and Guidelines were developed using the best available scientific information and, where data were lacking, the best professional judgment of local biologists knowledgeable of the resources of San Diego County. These guidelines, although never adopted, are consistent with the NCCP Conservation Guidelines. These standards and guidelines, together with the NCCP Conservation Guidelines, provided the framework that allowed the MSCP Working Group to develop and design the proposed MSCP Multi-Habitat Planning Area, as well as the other preserve design alternatives considered in the EIR/EIS.

As stated in the MSCP Plan, hundreds of people contributed in some way to the development of the MSCP Plan over the five-year planning period. As can be seen in reviewing Section 8 of the MSCP Plan, many scientists and biological consultants contributed biological data and/or participated in the review of the MSCP and its supporting documents.

The MSCP was designed using a variety of data sources, including published documents and input from local experts, and aerial photographs, as described in the Resource Document for the MSCP. Additional field surveys were undertaken for sensitive species, biodiversity, wildlife movement, and habitat quality on about 33,500 acres within the study area where good data were not available, and the accuracy of the vegetation mapping was verified using helicopter overflights, field spot checks, and by peer review by the San Diego State University (MSCP Resource Document, 1995). The vegetation and sensitive species maps were also distributed for public review in spring 1992 and spring 1993 to update the data base and to correct any inaccuracies. Revisions were made as appropriate.

As discussed in Chapter 2 of the MSCP Plan, a geographic information system (GIS) model was developed by a committee of local biologists to delineate core biological resource areas within the study area. The model used the biological and physical data sources compiled for the MSCP to indicate the potential presence of target species and factors that contribute to biodiversity. The final Habitat

Evaluation Model rated all lands as Very High, High, Moderate, or Low in terms of biological value and was the basis for the design and analysis of the various alternatives.

This type of sophisticated planning analysis, utilizing a wealth of information and data reviewed by scientists and local experts demonstrates that the MSCP applied a high level of science, and allowed for a robust analysis of regional conservation planning to be performed than would otherwise occur on the more typical project by project basis.

The public review process for the MSCP Plan and Recirculated EIR/EIS allows wide dissemination of the documents. The public review process offers an additional opportunity for scientific and expert review of the proposed plans.

Based on existing information, including that obtained during the public comment period, the wildlife agencies will determine if it is appropriate to issue the requested take authorizations. If the decision is made to issue the take authorizations, then the MSCP Plan and Subarea Plans would be implemented. The MSCP requires each jurisdiction implementing a Subarea Plan to conduct biological monitoring on selected covered species and representative habitats, utilizing the regional funding program or other local sources. The wildlife agencies are responsible for coordinating the monitoring program, conducting monitoring on state and federal lands contributed to the MSCP, analyzing data, and providing information and technical assistance to participating local jurisdictions. The wildlife agencies will prioritize specific monitoring activities based on available budget and specific needs of individual species and habitats, and will produce a summary public report on monitoring activities every three years, at the same time that the overall Public Report on the status of the implementation of the MSCP is issued. A public hearing will be held in conjunction with the Public Report. This public process will provide an ongoing opportunity for scientific and expert input into the biological monitoring process.

Once every three or more years, as needed, the wildlife agencies may conduct an audit of all development approvals and mitigation imposed through land use regulations or otherwise within approved Subareas; all lands acquired by each participating local jurisdiction toward meeting its habitat acquisition obligation under the MSCP; and, all monies received, invested and expended on acquisition, management and monitoring activities within approved subareas. Should the wildlife agencies determine remedial action is necessary to meet the terms of the permit, this would be provided to the appropriate local jurisdiction. Each IA describes the process whereby the permit could be suspended if the wildlife agencies determine a violation of the permit or material breech of the IA.

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XII VOLUNTARY PARTICIPATION

The wildlife agencies cannot require participation in any habitat conservation plan. The wildlife agencies do not have the authority to mandate individuals or local government to apply for take

authorizations. The wildlife agencies can only respond to an applicant's request for take authorizations. The MSCP Plan establishes a program for the conservation and management of covered species and their habitats. By doing so, jurisdictions and developers gain long-term certainty of mitigation requirements for impacts to covered species and their habitats. The MSCP Plan was developed cooperatively and voluntarily by participating local jurisdictions within the MSCP study area, with assistance from the wildlife agencies, and in consultation with environmental groups, property owners, and other interested parties. The MSCP Plan was developed in a public forum, and comments from any interested parties were incorporated into the MSCP, as appropriate.

Local jurisdictions participating in the MSCP will voluntarily apply to the wildlife agencies for take authorizations, pursuant to Section 10(a)(1)(B) of FESA, CESA and NCCP. In deciding whether or not to issue the take authorizations to local jurisdictions, the wildlife agencies will consider the conservation program as outlined in the MSCP Plan and the Subarea Plans from other jurisdictions to determine if the conservation program proposed meets the issuance criteria. One of the issuance criteria is that the wildlife agencies must receive assurances that the MSCP would be implemented, which is accomplished by all parties signing an Implementing Agreement (IA). The IA commits each party to carry out their obligations pursuant to the MSCP Plan and Subarea Plan. Failure to enforce the terms of its Subarea Plan and IA could result in suspension or revocation of a jurisdiction's take authorizations.

If a jurisdiction chooses not to participate in the MSCP, then that jurisdiction does not receive the benefits of take authorizations and other assurances provided to local jurisdictions that do choose to participate. Within such jurisdictions, landowners would obtain individual take authorizations from the wildlife agencies.

For land within the preserve planning area, called the Multi-Habitat Planning Area, the MSCP proposes acquisition of lands from willing sellers only, at fair market value or upon terms mutually satisfactory to the buyer and seller. As discussed in the EIR/EIS, private development within the MHPA would be allowed, although regulated by local zoning, development regulations, and any necessary CEQA review, which is similar to existing protective regulations.

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XIII ECOSYSTEM BASED MITIGATION ("OUT-OF-KIND")

Historically, mitigation requirements were often determined on a project-by-project basis because no legislation or regulations establish specific mitigation requirements for impacts to biological resources. Mitigation has typically been approached using, in descending order of priority, avoidance of impacts on-site, minimization of impacts onsite, and offsite mitigation (i.e., compensation for unavoidable impacts). As a result, mitigation for biological impacts often met short-term goals, but failed to create interconnected habitat areas that would sustain species over the long-term.

Principles of habitat conservation planning require a change from an isolated review of projects to a review of projects in the context of the MSCP's regional approach. Using such an approach, the evaluation of a project's impacts will be analyzed based on the on-site biological resources, potential on-site impacts, and how the projects impacts and mitigation would affect conservation of the regional ecosystem.

The MSCP Subarea Plans include mitigation approaches (grouping of vegetation communities, variable mitigation ratios based on location of impacts and mitigation, etc.) which recognize the nexus and rough proportionality between a project's impacts and the long-term sustainability of the southwestern San Diego County ecosystem. The mitigation strategies in the MSCP Subarea Plans are based on a comprehensive approach that conserves species and their habitat in a biologically justifiable configuration. The preserve, including its configuration and management, is critical to ensuring that ecosystem functions are maintained using a smaller land base.

Each project authorized pursuant to the mitigation strategy of a Subarea Plan will provide for ecosystem based conservation which is roughly proportional to the project's impacts to vegetation communities, and the southwestern San Diego County ecosystem. Because a Subarea Plan specifies the location and amount of preservation for each vegetation community within the Plan, the order in which the preserve is assembled becomes less important. At completion, the appropriate portions of the ecosystem within the MSCP Plan area will be conserved.

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XIV BIOLOGICAL MONITORING

A Biological Monitoring Plan has been developed by the wildlife agencies to monitor the biological performance of the MSCP preserve. Monitoring will be implemented and funded jointly as described in the MSCP Plan and IA.

The Biological Monitoring Plan addresses landscape-level trends in habitat quantity and quality through satellite/aerial image evaluations and 29 field site plots. The field plots were selected to represent the geographic variability of coastal sage scrub, southern maritime scrub, maritime succulent scrub and grassland habitats. While no specific levels of change (no threshold levels of change) are identified that would signal a "problem," significant or consistent declines within the preserve in habitat acres or habitat quality (plant species composition and/or diversity) will be investigated and remedies developed (if needed) for inclusion in the adaptive management program for the MSCP preserve.

Another 29 field monitoring sites will be established to monitor linkage/corridor use, focusing on California gnatcatcher, cactus wren, mammalian predators and deer. These sites represent key movement areas or potentially constrained movement areas under the fully built-out condition. Trends

in use (movement and occupation) will be evaluated, and significant or consistent changes will be investigated and remedies, if determined necessary, developed.

The Biological Monitoring Plan includes monitoring of 31 plant species (16 field monitoring and 15 at a habitat level) at 35 sites. Quantitative assessments of population size, density and age structure will be made and significant or consistent changes evaluated. Again, the causes of significant or consistent changes would be evaluated and remedies developed (if needed) for inclusion in the adaptive management program for the MSCP preserve.

The Biological Monitoring Plan also includes monitoring of coastal sage scrub-dependent species (31 field sites), upland reptile species (12 field sites), arroyo southwestern toad (seven field sites) and grassland-dependent raptors (10 field sites). As with other data sets, significant or consistent changes in measured parameters (e.g., presence and abundance of California gnatcatchers, site diversity of herptiles, location and use of burrowing owl nest sites) will be evaluated, the causes investigated and appropriate remedies developed (if needed) for inclusion in the adaptive management program for the MSCP preserve.

In addition to the biological monitoring associated with the Biological Monitoring Plan, each preserve manager will be responsible for collecting the biological information (e.g., location and use of golden eagle and burrowing owl nest sites, status of covered plant species) that is needed to appropriately manage his/her preserve area.

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XV DOCUMENT ORGANIZATION

The organization of the Draft EIR/EIS is described on pages 1-23 through 1-24 of the document, and the organization of the Environmental Consequences section is described on pages 4.1-1 through 4.1-7. The program level and project level analyses included in the Draft EIR/EIS are clearly identified on Table 4.1-1 (pages 4.1-4 and 4.1-5) of the document. It is appropriate to introduce the reader to this concept at this point in the document since this is the beginning of the environmental analysis or environmental consequences section. No analysis is presented prior to this point in the document. Reference is also made to the program and project level analyses included in the document in the Executive Summary to the Draft EIR/EIS (page ES-7).

Section 4.1 of the Draft EIR/EIS (pages 4.1-1 through 4.1-7) clearly describes the organization of the environmental consequences section, and internal references are provided throughout the section. To provide further clarity in the organization of the environmental consequences section, a table that specifically references the page numbers within the Draft EIR/EIS where impacts, significance and mitigation information is given for each of the actions, issue statements and alternatives addressed in the document is provided on the following pages. As noted in the table, significance statements and mitigation

	Impact Analysis	Analysis of Significance	Mit. Mon. and Reporting	Sigficance Level after Mitigation
Land Use - Issue 1: Consistency with General or Community Plans				
MHPA - MSCP Plan Proposed Project	4.2-1	4.2-65	4.2-67	
City of Chula Vista Subarea Plan	4.2-12			
City of Coronado Subarea Plan	4.2-17			
City of Del Mar Subarea Plan	4.2-17			
City of San Diego Subarea Plan	4.2-18	4.2-65	4.2-67	4.2-69
City of Santee Subarea Plan	4.2-42			
County of San Diego Subarea Plan	4.2-45			
Otay Water District Subarea Plan	4.2-52			
Otay Valley Regional Park Concept Plan	4.2-53			
Coastal Sage Scrub Scenario - MSCP Plan	4-2-4	4.2-65	4.2-67	
City of Chula Vista Subarea Plan	4.2-54			
City of Coronado Subarea Plan	4.2-55			
City of Del Mar Subarea Plan	4.2-55			
City of San Diego Subarea Plan	4.2-55	4.2-66	4.2-68	4.2-69
City of Santee Subarea Plan	4.2-56			
County of San Diego Subarea Plan	4.2-57			
Otay Water District Subarea Plan	na			
Otay Valley Regional Park Concept Plan	na			
Biologically Preferred Scenario - MSCP Plan	4.2-6	4.2-66	4.2-67	
City of Chula Vista Subarea Plan	4.2-58			
City of Coronado Subarea Plan	4.2-58			
City of Del Mar Subarea Plan	4.2-59			
City of San Diego Subarea Plan	4.2-59	4.2-66	4.2-68	4.2-69
City of Santee Subarea Plan	4.2-60			
County of San Diego Subarea Plan	4.2-61			
Otay Water District Subarea Plan	na			
Otay Valley Regional Park Concept Plan	na			
Public Lands Scenario - MSCP Plan	4.2-9	4.2-65	4.2-67	
No Action/No Project Alternative - MSCP Plan	4.2-11			
City of Chula Vista Subarea Plan	4.2-62			
City of Coronado Subarea Plan	4.2-62			
City of Del Mar Subarea Plan	4.2-63			
City of San Diego Subarea Plan	4.2-63			
City of Santee Subarea Plan	4.2-64			
County of San Diego Subarea Plan	4.2-64			
Otay Water District Subarea Plan	na			
Otay Valley Regional Park Concept Plan	na			
Land Use - Issue 2: Conflict with Adjacent Land Uses				
MHPA - MSCP Plan Proposed Project	4.2-71	4.2-81	4.2-81	4.2-81
City of Chula Vista Subarea Plan	4.2-72			
City of Coronado Subarea Plan	4.2-73			
City of Del Mar Subarea Plan	4.2-73			
City of San Diego Subarea Plan	4.2-74			
City of Santee Subarea Plan	4.2-78			
County of San Diego Subarea Plan	4.2-78			

Otay Water Oistrict Subarea Plan	4.2-79			
Otay Valley Regional Park Concept Plan	4.2-80			
Coastal Sage Scrub Scenario - MSCP Plan	4.2-71	4.2-81	4.2-81	4.2-81
City of Chula Vista Subarea Plan	4.2-80			
City of Coronado Subarea Plan	4.2-80			
City of Oel Mar Subarea Plan	4.2-80			
City of San Diego Subarea Plan	4.2-80			
City of Santee Subarea Plan	4.2-80			
County of San Diego Subarea Plan	4.2-80			
Otay Water District Subarea Plan	4.2-80			
Otay Valley Regional Park Concept Plan	4.2-80			
Biologically Preferred Scenario - MSCP Plan	4.2-71	4.2-81	4.2-81	4.2-81
City of Chula Vista Subarea Plan	4.2-80			
City of Coronado Subarea Plan	4.2-80			
City of Del Mar Subarea Plan	4.2-80			
City of San Diego Subarea Plan	4.2-80			
City of Santee Subarea Plan	4.2-80			
County of San Diego Subarea Plan	4.2-80			
Otay Water District Subarea Plan	4.2-80			
Otay Valley Regional Park Concept Plan	4.2-80			
Public Lands Scenario - MSCP Plan	4.2-71	4.2-81	4.2-81	4.2-81
No Action/No Project Alternative - MSCP Plan	4.2-72			
City of Chula Vista Subarea Plan	4.2-81			
City of Coronado Subarea Plan	4.2-81			
City of Del Mar Subarea Plan	4.2-81			
City of San Diego Subarea Plan	4.2-81			
City of Santee Subarea Plan	4.2-81			
County of San Diego Subarea Plan	4.2-81			
Otay Water District Subarea Plan	4.2-81			
Otay Valley Regional Park Concept Plan	4.2-81			
Land Use - Issue 3: Farm Lands and Mining				
MHPA - MSCP Plan Proposed Project	4.2-82	4.2-115	4.2-115	4.2-115
City of Chula Vista Subarea Plan	4.2-92			
City of Coronado Subarea Plan	4.2-95			
City of Del Mar Subarea Plan	4.2-95			
City of San Diego Subarea Plan	4.9-95			
City of Santee Subarea Plan	4.2-98			
County of San Diego Subarea Plan	4.2-99			
Otay Water District Subarea Plan	4.2-102			
Otay Valley Regional Park Concept Plan	4.2-102			
Coastal Sage Scrub Scenario - MSCP Plan	4.2-86	4.2-115	4.2-115	4.2-115
City of Chula Vista Subarea Plan	4.2-103			
City of Coronado Subarea Plan	4.2-104			
City of Del Mar Subarea Plan	4.2-104			
City of San Diego Subarea Plan	4.2-104			
City of Santee Subarea Plan	4.2-104			
County of San Diego Subarea Plan	4.2-104			
Otay Water District Subarea Plan	na			

Otay Valley Regional Park Concept Plan	na			
Biologically Preferred Scenario - MSCP Plan	4.2-88	4.2-115	4.2-115	4.2-115
City of Chula Vista Subarea Plan	4.2-108			
City of Coronado Subarea Plan	4.2-110			
City of Del Mar Subarea Plan	4.2-110			
City of San Diego Subarea Plan	4.2-110			
City of Santee Subarea Plan	4.2-111			
County of San Diego Subarea Plan	4.2-112			
Otay Water District Subarea Plan	na			
Otay Valley Regional Park Concept Plan	na			
Public Lands Scenario - MSCP Plan	4.2-90	4.2-115	4.2-115	4.2-115
No Action/No Project Alternative - MSCP Plan	4.2-92			
City of Chula Vista Subarea Plan	4.2-114			
City of Coronado Subarea Plan				
City of Del Mar Subarea Plan				
City of San Diego Subarea Plan	4.2-114			
City of Santee Subarea Plan				
County of San Diego Subarea Plan	4.2-114			
Otay Water District Subarea Plan				
Otay Valley Regional Park Concept Plan				
Biological Resources - Issue 1: Species and Habitats				
MHPA - MSCP Plan Proposed Project	4.3-44	4.3-150	4.3-180	4.3-212
City of Chula Vista Subarea Plan	4.3-77	4.3-155	4.3-189	4.3-213
City of Coronado Subarea Plan	4.3-81	4.3-157	4.3-191	4.3-213
City of Del Mar Subarea Plan	4.3-88	4.3-158	4.3-192	4.3-214
City of San Diego Subarea Plan	4.3-85	4.3-159	4.3-193	4.3-214
City of Santee Subarea Plan	4.3-106	4.3-160	4.3-194	4.3-214
County of San Diego Subarea Plan	4.3-109	4.3-161	4.3-195	4.3-214
Otay Water District Subarea Plan	4.3-114			
Otay Valley Regional Park Concept Plan	4.3-115	4.3-162	4.3-197	4.3-214
Coastal Sage Scrub Scenario - MSCP Plan	4.3-53	4.3-151	4.3-183	4.3-213
City of Chula Vista Subarea Plan	4.3-116	4.3-163	4.3-198	4.3-214
City of Coronado Subarea Plan	4.3-119	4.3-164	4.3-199	4.3-214
City of Del Mar Subarea Plan	4.3-120	4.3-164	4.3-200	4.3-215
City of San Diego Subarea Plan	4.3-121	4.3-166	4.3-201	4.3-215
City of Santee Subarea Plan	4.3-126	4.3-167	4.3-203	4.3-215
County of San Diego Subarea Plan	4.3-128	4.3-168	4.3-204	4.3-215
Otay Water District Subarea Plan	na			
Otay Valley Regional Park Concept Plan	na			
Biologically Preferred Scenario - MSCP Plan	4.3-60	4.3-153	4.3-185	4.3-213
City of Chula Vista Subarea Plan	4.3-130	4.3-169	4.3-206	4.3-215
City of Coronado Subarea Plan	4.3-134	4.3-170	4.3-207	4.3-215
City of Del Mar Subarea Plan	4.3-136	4.3-170	4.3-208	4.3-215
City of San Diego Subarea Plan	4.3-138	4.3-171	4.3-208	4.3-215
City of Santee Subarea Plan	4.3-141	4.3-172	4.3-209	4.3-216
County of San Diego Subarea Plan	4.3-143	4.3-173	4.3-210	4.3-216
Otay Water District Subarea Plan	na			
Otay Valley Regional Park Concept Plan	na			

Public Lands Scenario - MSCP Plan	4.3-67	4.3-154	4.3-187	4.3-213
No Action/No Project Alternative - MSCP Plan	4.3-74	4.3-155	4.3-189	
City of Chula Vista Subarea Plan	4.3-147			
City of Coronado Subarea Plan	4.3-147			
City of Del Mar Subarea Plan	4.3-148			
City of San Diego Subarea Plan	4.3-148			
City of Santee Subarea Plan	4.3-149			
County of San Diego Subarea Plan	4.3-149			
Otay Water District Subarea Plan	na			
Otay Valley Regional Park Concept Plan	na			
Biological Resources - Issue 2: Movement of Wildlife Species				4.3-235
MHPA - MSCP Plan Proposed Project	4.3-219	4.3-232	4.3-233	
City of Chula Vista Subarea Plan	4.3-223	4.3-233	4.3-235	
City of Coronado Subarea Plan	4.3-223	4.3-233	4.3-235	
City of Del Mar Subarea Plan	4.3-224	4.3-233	4.3-235	
City of San Diego Subarea Plan	4.3-224	4.3-233	4.3-235	
City of Santee Subarea Plan	4.3-227	4.3-233	4.3-235	
County of San Diego Subarea Plan	4.3-228	4.3-233	4.3-235	
Otay Water District Subarea Plan	4.3-230	4.3-233	4.3-235	
Otay Valley Regional Park Concept Plan	4.3-231	4.3-233	4.3-235	4.3-236
Coastal Sage Scrub Scenario - MSCP Plan	4.3-220	4.3-232	4.3-235	4.3-235
City of Chula Vista Subarea Plan	4.3-231	4.3-233	4.3-235	
City of Coronado Subarea Plan	4.3-231	4.3-233	4.3-235	
City of Del Mar Subarea Plan	4.3-231	4.3-233	4.3-235	
City of San Diego Subarea Plan	4.3-231	4.3-233	4.3-235	
City of Santee Subarea Plan	4.3-231	4.3-233	4.3-235	
County of San Diego Subarea Plan	4.3-231	4.3-233	4.3-235	
Otay Water District Subarea Plan	4.3-231	4.3-233	4.3-235	
Otay Valley Regional Park Concept Plan	4.3-231	4.3-233	4.3-235	4.3-236
Biologically Preferred Scenario - MSCP Plan	4.3-221	4.3-233		
City of Chula Vista Subarea Plan	4.3-231	4.3-233	4.3-235	
City of Coronado Subarea Plan	4.3-231	4.3-233	4.3-235	
City of Del Mar Subarea Plan	4.3-231	4.3-233	4.3-235	
City of San Diego Subarea Plan	4.3-231	4.3-233	4.3-235	
City of Santee Subarea Plan	4.3-231	4.3-233	4.3-235	
County of San Diego Subarea Plan	4.3-231	4.3-233	4.3-235	
Otay Water District Subarea Plan	4.3-231	4.3-233	4.3-235	
Otay Valley Regional Park Concept Plan	4.3-231	4.3-233	4.3-235	4.3-236
Public Lands Scenario - MSCP Plan	4.3-222	4.3-233	4.3-235	4.3-236
No Action/No Project Alternative - MSCP Plan	4.3-222	4.3-233		
City of Chula Vista Subarea Plan	4.3-231	4.3-233		
City of Coronado Subarea Plan	4.3-231	4.3-233		
City of Del Mar Subarea Plan	4.3-231	4.3-233		
City of San Diego Subarea Plan	4.3-231	4.3-233		
City of Santee Subarea Plan	4.3-231	4.3-233		
County of San Diego Subarea Plan	4.3-231	4.3-233		
Otay Water District Subarea Plan	4.3-231	4.3-233		
Otay Valley Regional Park Concept Plan	4.3-231	4.3-233		

Transportation/Circulation - Issue 1: Planned Transportation Systems				
MSCP Plan Proposed Project and CSS, BP, and PL Scenarios	4.4-1	4.4-14	4.4-15	
City of Chula Vista Subarea Plan	4.4-3	4.4-14	4.4-15	
City of Coronado Subarea Plan	4.4-4	4.4-14	4.4-15	
City of Del Mar Subarea Plan	4.4-5	4.4-14	4.4-15	
City of San Diego Subarea Plan	4.4-5	4.4-14	4.4-15	
City of Santee Subarea Plan	4.4-9	4.4-14	4.4-15	
County of San Diego Subarea Plan	4.4-10	4.4-14	4.4-15	
Otay Water District Subarea Plan	4.4-12	4.4-14	4.4-15	
Otay Valley Regional Park Concept Plan	4.4-13	4.4-14	4.4-15	4.4-15
No Action/No Project Alternative - MSCP Plan	4.4.3			
City of Chula Vista Subarea Plan	4.4-14			
City of Coronado Subarea Plan	4.4-14			
City of Del Mar Subarea Plan	4.4-14			
City of San Diego Subarea Plan	4.4-14			
City of Santee Subarea Plan	4.4-14			
County of San Diego Subarea Plan	4.4-14			
Otay Water District Subarea Plan	4.4-14			
Otay Valley Regional Park Concept Plan	4.4-14			
Public Services & Utilities - Issue 1: Need/Provison for Public Services/Utilties				
MSCP Plan Proposed Project and CSS, BP, and PL Scenarios	4.5-1	4.5-18	4.5-19	4.5-20
City of Chula Vista Subarea Plan	4.5-3			
City of Coronado Subarea Plan	4.5-5			
City of Del Mar Subarea Plan	4.5-5			
City of San Diego Subarea Plan	4.5-6	4.5-18	4.5-19	4.5-20
City of Santee Subarea Plan	4.5-11			
County of San Diego Subarea Plan	4.5-13			
Otay Water District Subarea Plan	4.5-15			
Otay Valley Regional Park Concept Plan	4.5-15	4.5-19	4.5-20	4.5-20
No Action/No Project Alternative - MSCP Plan	4.5-3			
City of Chula Vista Subarea Plan	4.5-17			
City of Coronado Subarea Plan	4.5-17			
City of Del Mar Subarea Plan	4.5-17			
City of San Diego Subarea Plan	4.5-17			
City of Santee Subarea Plan	4.5-17			
County of San Diego Subarea Plan	4.5-17			
Otay Water District Subarea Plan	na			
Otay Valley Regional Park Concept Plan	na			
Poulation & Housing - Issue 1: Planned/Existing Housing in Region				
MHPA - MSCP Plan Proposed Project	4.6-5	4.6-24		
City of Chula Vista Subarea Plan	4.6-9			
City of Coronado Subarea Plan	4.6-11			
City of Del Mar Subarea Plan	4.6-11			
City of San Diego Subarea Plan	4.6-11	4.6-24	4.6-25	4.6-26
City of Santee Subarea Plan	4.6-14			
County of San Diego Subarea Plan	4.6-14			

Otay Water District Subarea Plan	4.6-15			
Otay Valley Regional Park Concept Plan	4.6-15			
Coastal Sage Scrub Scenario - MSCP Plan	4.6-6	4.6-24		
City of Chula Vista Subarea Plan	4.6-17			
City of Coronado Subarea Plan	4.6-17			
City of Del Mar Subarea Plan	4.6-17			
City of San Diego Subarea Plan	4.6-18			
City of Santee Subarea Plan	4.6-18			
County of San Diego Subarea Plan	4.6-18			
Otay Water District Subarea Plan	na			
Otay Valley Regional Park Concept Plan	na			
Biologically Preferred Scenario - MSCP Plan	4.6-7	4.6-24	4.6-25	4.6-25
City of Chula Vista Subarea Plan	4.6-20			
City of Coronado Subarea Plan	4.6-21			
City of Del Mar Subarea Plan	4.6-21			
City of San Diego Subarea Plan	4.6-21			
City of Santee Subarea Plan	4.6-22			
County of San Diego Subarea Plan	4.6-22			
Otay Water District Subarea Plan	na			
Otay Valley Regional Park Concept Plan	na			
Public Lands Scenario - MSCP Plan	4.6-7	4.6-24		
No Action/No Project Alternative - MSCP Plan	4.6-8			
City of Chula Vista Subarea Plan	4.6-22			
City of Coronado Subarea Plan	4.6-22			
City of Del Mar Subarea Plan	4.6-22			
City of San Diego Subarea Plan	4.6-22			
City of Santee Subarea Plan	4.6-22			
County of San Diego Subarea Plan	4.6-22			
Otay Water District Subarea Plan	4.6-22			
Otay Valley Regional Park Concept Plan	4.6-22			
Population & Housing - Issue 2: Location, Distribution, Density & Growth				
MHPA - MSCP Plan Proposed Project	4.6-27			
City of Chula Vista Subarea Plan	4.6-32			
City of Coronado Subarea Plan	4.6-32			
City of Del Mar Subarea Plan	4.6-33			
City of San Diego Subarea Plan	4.6-33			
City of Santee Subarea Plan	4.6-35			
County of San Diego Subarea Plan	4.6-36			
Otay Water District Subarea Plan	4.6-37			
Otay Valley Regional Park Concept Plan	4.6-37			
Coastal Sage Scrub Scenario - MSCP Plan	4.6-28			
City of Chula Vista Subarea Plan	4.6-37			
City of Coronado Subarea Plan	4.6-38			
City of Del Mar Subarea Plan	4.6-38			
City of San Diego Subarea Plan	4.6-38			
City of Santee Subarea Plan	4.6-38			
County of San Diego Subarea Plan	4.6-39			
Otay Water District Subarea Plan	na			

Otay Valley Regional Park Concept Plan	na			
Biologically Preferred Scenario - MSCP Plan	4.6-29	4.6-42	4.6-43	4.6-43
City of Chula Vista Subarea Plan	4.6-39			
City of Coronado Subarea Plan	4.6-40			
City of Del Mar Subarea Plan	4.6-40			
City of San Diego Subarea Plan	4.6-40	4.6-43	4.6-43	4.6-43
City of Santee Subarea Plan	4.6-41			
County of San Diego Subarea Plan	4.6-41			
Otay Water District Subarea Plan	na			
Otay Valley Regional Park Concept Plan	na			
Public Lands Scenario - MSCP Plan	4.6-30			
No Action/No Project Alternative - MSCP Plan	4.6-31			
City of Chula Vista Subarea Plan	4.6-42			
City of Coronado Subarea Plan	4.6-42			
City of Del Mar Subarea Plan	4.6-42			
City of San Diego Subarea Plan	4.6-42			
City of Santee Subarea Plan	4.6-42			
County of San Diego Subarea Plan	4.6-42			
Otay Water District Subarea Plan	4.6-42			
Otay Valley Regional Park Concept Plan	4.6-42			
Population & Housing - Issue3: Economic Development Activity				
MHPA - MSCP Plan Proposed Project	4.6-44	4.6-55	4.6-55	4.6-55
City of Chula Vista Subarea Plan	na			
City of Coronado Subarea Plan	na			
City of Del Mar Subarea Plan	na			
City of San Diego Subarea Plan	na			
City of Santee Subarea Plan	na			
County of San Diego Subarea Plan	na			
Otay Water District Subarea Plan	na			
Otay Valley Regional Park Concept Plan	na			
Coastal Sage Scrub Scenario - MSCP Plan	4.6-46	4.6-55	4.6-55	4.6-55
City of Chula Vista Subarea Plan	na			
City of Coronado Subarea Plan	na			
City of Del Mar Subarea Plan	na			
City of San Diego Subarea Plan	na			
City of Santee Subarea Plan	na			
County of San Diego Subarea Plan	na			
Otay Water District Subarea Plan	na			
Otay Valley Regional Park Concept Plan	na			
Biologically Preferred Scenario - MSCP Plan	4.6-48	4.6-55	4.6-55	4.6-55
City of Chula Vista Subarea Plan	na			
City of Coronado Subarea Plan	na			
City of Del Mar Subarea Plan	na			
City of San Diego Subarea Plan	na			
City of Santee Subarea Plan	na			
County of San Diego Subarea Plan	na			
Otay Water District Subarea Plan	na			
Otay Valley Regional Park Concept Plan	na			

Public Lands Scenario - MSCP Plan	4-6-50	4.6-55	4.6-55	4.6-55
No Action/No Project Alternative - MSCP Plan	4.6-53	4.6-55	4.6-55	4.6-55
City of Chula Vista Subarea Plan	na			
City of Coronado Subarea Plan	na			
City of Del Mar Subarea Plan	na			
City of San Diego Subarea Plan	na			
City of Santee Subarea Plan	na			
County of San Diego Subarea Plan	na			
Otay Water District Subarea Plan	na			
Otay Valley Regional Park Concept Plan	na			

recommendations are only given for those actions or alternatives for which significant impacts have been identified (this concept is also explained on page 4.1-6 of the Draft EIR/EIS).

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XVI RISK FACTORS IN TABLE 3-5

The risk factors identified in Table 3-5 of the MSCP Plan, Volume 1, were directly related to whether a species would be adequately conserved by the MSCP. These factors were used in assessing the conservation of species by the MSCP Plan and in determining species-specific conditions for coverage, including site-specific management actions, necessary to ensure their long-term viability. However, because satisfaction of these conditions are a requirement of the take authorizations, fulfillment of these conditions would eliminate further risk for covered species associated with implementation of the MSCP Plan and subarea plans for covered species. Revised Table 3-5 provides the species-specific conditions for coverage that must be satisfied by each take authorization holder. Failure to implement these conditions may result in suspension or revocation of the take authorizations.

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XVII SALT WORKS

Avian biologists and local bird enthusiasts have long recognized the resource value associated with the "Salt Works" in South San Diego Bay. The economic value that salt production contributes to the local economy is also recognized. The MSCP Plan does not change the value of either, rather, it recognizes its local uniqueness. The MSCP places the salt ponds' resources within the context of their regional importance. The MSCP acknowledges that the conservation of the salt ponds contributes to the long-term viability of biological resources in the region. The salt ponds' and associated dikes' wildlife habitat values include nesting habitat for California least tern, elegant tern, snowy plover, black skimmer, Belding's Savannah sparrow and other species. The light-footed clapper rail and California brown pelican are known to occur in the vicinity.

The MSCP Plan neither denies nor authorizes any future change in use for the area. Any proposed land-use change would require environmental review through the California Environmental Quality Act, and conformance with the City of San Diego's Otay-Nestor Community Plan, Subarea Plan and the Environmentally Sensitive Lands (ESL) Ordinance. Issuance of state and federal take authorizations does not change the federal, state, or local laws and regulations pertaining to wetlands. The MSCP Plan does not impose any additional regulation of the salt works. The EIR/EIS, the MSCP, the City of San Diego's Subarea Plan and the draft update of the Otay-Nestor Community Plan anticipate the continued operation of the salt works, continuation of existing protection of sensitive species that use the salt works and

continued management of their habitat. The Subarea Plan has been revised to indicate that the habitat on the salt works is important to the South Bay ecosystem and that it is not the intent of the Subarea Plan to reduce, eliminate or modify the salt production process associated with the salt works. The reference to breaching the leased tidelands has been deleted from the City of San Diego's Subarea Plan. The EIR/EIS has been revised to reflect that continuation of the current operation of the salt works is consistent with the MSCP, and that the salt works provide important habitat for many of the covered species. The MSCP map which identifies the salt ponds in the preserve has been modified to delete the actual facility buildings and the property north and east of Bay Boulevard.

The outer salt works' ponds are largely owned by the State and leased to Western Salt Company by the State Lands Commission. A total of 603 acres of ponds, tidelands, and levees/roads are on State lands leased to the Western Salt Company and are subject to an agreement which requires the operations and activities associated with salt production to not adversely affect the wildlife usage of the leased lands. (Lease No. PRC 175.1). In recent years, the lands operated by Western Salt have supported substantial shorebird, seabird, and marsh bird species. The Department of Fish and Game intends to pursue a Memorandum of Understanding with the State Lands Commission regarding the leased lands because of their importance to the MSCP. The intent of the Memorandum of Understanding will be to preserve the ponds' wildlife values in conjunction with their use as a salt production facility. In addition, the Service is considering proposal of a South San Diego Bay unit of the San Diego National Wildlife Refuge which would also contribute to the conservation of the existing values associated with the salt works.

The MSCP Plan area will result in the conservation of 99% of the salt pan vegetation community (212 acres of 214 acres within the MSCP Plan area; 76 out of 76 acres in the City of Imperial Beach; and 136 out of 138 acres in the City of San Diego). MSCP Plan Table 3-3 shows 235 acres of this habitat occurring within the MSCP study area of which 21 acres occur on military lands that are not part of the MSCP Plan area. Although the City of Imperial Beach has not prepared a subarea plan, the MSCP has included all saltpan habitat within Imperial Beach since it is on public land. The conservation of 99% of the saltpan habitat by the Plan provides for adequate conservation of this vegetation community. Take of covered species associated with dike/levee maintenance during the nesting period for water birds would not be provided for in the take authorizations.

The U.S. Fish and Wildlife Service is responsible for working with each military base on conservation issues, including the conservation of saltpan habitat, to complement the planning efforts occurring through the MSCP.

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XVIII RECOVERY OF SPECIES

The Service is not required to find that the proposed mitigation will recover and allow for the eventual delisting of the species, but rather that the impacts of the proposed action will support and

not preclude recovery. The MSCP is designed to mitigate the impacts of the proposed issuance of incidental take permits in accordance with requirements of Section 10(a)(1)(B) of the Federal Endangered Species Act and management authorizations under the California Endangered Species Act and the Natural Communities Conservation Program Act. Section 10 of the ESA requires that the Service make a series of findings, including that the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. The Service will use the best scientific and commercial data available to determine whether or not this finding can be made through preparation of a biological opinion on the proposed permit issuance.

The MSCP attempts to balance the overall goals of ecosystem health and survival of species with the reality of continued economic growth in southern California. The MSCP was developed to be consistent with the NCCP program whose overall goal in the long-term is to maintain and enhance biological diversity in the region and conserve viable populations of listed and sensitive species and their habitats, thereby preventing local extirpation and ultimate extinction, and minimizing the need for future listings, while enabling economic growth in the region. Although the MSCP identifies many specific objectives, the overall goal of the MSCP is to strike a balance between human land needs and wildlife habitat needs by preserving and restoring large blocks of connected habitat and developing the smaller, more fragmented parcels that may be ecologically unviable. It is important to realize that development in San Diego County would proceed with or without the MSCP plan. The wildlife agencies believe the MSCP is an improvement on the project-by-project, species-by-species approaches of the past. Past approaches allow continued habitat fragmentation and often fail to provide for the long-term conservation of target species across the landscape.

While recovery of listed species is not a statutory requirement of the conservation planning process, it is an important consideration in any conservation planning effort – especially in regional plans that may encompass all or much of a species' range. The wildlife agencies encourage applicants to develop HCPs that are consistent with or contribute to recovery plan objectives. The wildlife agencies, however, cannot mandate that an HCP recover all covered species. Rather the wildlife agencies must ensure that HCPs would not preclude recovery. This standard is supported by the issuance criteria for take authorizations permits, which require, among other things, that proposed take authorizations would "not appreciably reduce the likelihood of survival and recovery of the species in the wild."

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XIX PRESERVE MANAGEMENT

Each Implementing Agreement associated with take authorizations under the MSCP will require that local, state, and federal participants implement a framework management plan and area-specific management directives to ensure that the conservation goals of the program are met. Revised Section 6.3.1 of the MSCP Plan establishes the obligations of the permit holders to framework management

plans and sets out criteria to guide the development of those plans. This section has been modified to clarify the preserve management plan development process and to assure that appropriate and consistent approaches to management are employed throughout the preserve system. The following changes have been made to Volume I of the MSCP Plan:

Section 6.3.1 has been modified to provide assurances that the framework management plans would each address a requisite set of issues, as listed at the end of the first paragraph. For certain species, coverage determinations will be based on specific management activities that must be undertaken through development of area-specific management directives to meet the specific needs of those species. Language has been added to Section 6.3.1 requiring that the framework management plans identify the species-specific management actions set out in Table 3-5.

The MSCP Plan now clarifies that the implementation of the framework management plans through development of area-specific management directives is an ongoing and adaptive process. As new lands are added to the preserve, area-specific management directives would be developed with site-specific prescriptions. Accordingly, take authorization holders would be required to prepare framework management plans that address general management issues for their subareas, and to supplement those plans with development of area-specific management directives concerning the management of particular areas.

Section 6.3.1 also sets out a schedule for the development of the framework management plans. Unless approved as part of the subarea plan, the participating jurisdictions will submit to the wildlife agencies and make available to the public draft framework management plans within 6 months of approval of their Subarea Plan, to be finalized by the jurisdiction and approved by the wildlife agencies within an additional 3 months. The framework management plan will establish a process to incorporate area-specific information into the plan.

Changes have been made to Section 10.6 of the City of San Diego Implementing Agreement to reflect the modifications to Section 6.3.1 of the MSCP Plan (see strikeout/underline version of the IA). The new language clearly establishes the obligation of the jurisdictions to prepare framework management plans for the subarea in accordance with Section 6.3.1 of the MSCP Plan. Reference has been made to the requirement that the management plans specify the activities that would be undertaken on a species-by-species basis, as well as on a preserve-wide basis. Language has been included in the Model Implementing Agreement indicating that failure to develop and implement adequate management plans shall be considered a material breach of the agreement and, therefore, grounds to suspend or revoke take authorizations.

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XX SEVERABILITY OF TAKE AUTHORIZATIONS

The wildlife agencies have assessed the amount of mitigation versus impacts of take proposed for each species in each jurisdiction. Based on this assessment, each jurisdiction's Implementing Agreement would have two attachments entitled "Covered Species" and "Covered Species Subject to Take Authorizations." The Covered Species List would include those species within the MSCP study area for which the state and federal take authorization requirements are met by the MSCP as a whole. Covered Species Subject to Take Authorizations are those species for which the state and federal take authorization requirements are met by jurisdictions' or combination of jurisdictions' Subarea Plan(s) (see Sections 2.7 and 2.8 of the Model Implementing Agreement). These lists could change based on which local jurisdictions have valid take authorizations. The following are the lists of species by jurisdiction which are affected by the severability provisions and which jurisdiction(s) are needed to have the species on the list of Covered Species Subject to Take Authorizations. The Implementing Agreements for each jurisdiction would specify which other jurisdiction(s) need to have received take authorizations for a species to move from the Covered Species list to the Covered Species Subject to Take Authorizations list.

Jurisdiction	Species	Jurisdictions needed to add or retain species
Santee		
	San Diego ambrosia	City and County of San Diego
	variegated dudleya	City and County of San Diego
	San Diego button celery	City and County of San Diego
	San Diego barrel cactus	City and County of San Diego and Chula Vista
	San Diego mesa mint	City of San Diego
	orange-throated whiptail	City and County of San Diego
	Cooper's hawk	City and County of San Diego
	coastal cactus wren	City and County of San Diego and Chula Vista
	California gnatcatcher	City and County of San Diego and Chula Vista
	least Bell's vireo	City and County of San Diego
	California rufous-crowned sparrow	City and County of San Diego
Chula Vista		
	Otay tarplant	County of San Diego
	light-footed clapper rail	City of San Diego
	western snowy plover	City of San Diego
	long-billed curlew	City of San Diego
	California least tern	City of San Diego
	burrowing owl	County of San Diego
	coastal cactus wren	City and County of San Diego
	least Bell's vireo	City and County of San Diego
	Belding's savannah sparrow	City of San Diego

Jurisdiction	Species	Jurisdictions needed to add or retain species
County of San Diego		
	Orcutt's birds beak	City of San Diego
	Del Mar Mesa sand aster	City of San Diego
	California least tern	City of San Diego
City of San Diego		
	Orcutt's brodiaea	County of San Diego
	Wart-stemmed ceanothus	County of San Diego
	Snake cholla	County of San Diego

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XXI INDIRECT IMPACT ON AGRICULTURAL LAND

In evaluating a possible redirection of residential growth to existing agricultural lands, the following factors should be considered: SANDAG's Series 8 Regional Growth Forecast indicates that there is in the county sufficient vacant land with appropriate urban, residential zoning to accommodate housing growth to the year 2005. To accommodate growth from the year 2005 to 2015, it will likely become necessary to redesignate some of the low density residential land (less than one unit per acre) to densities greater than one unit per acre. With such redesignation, Series 8 forecasts show that housing growth could be accommodated on lands already designated for residential use, without the conversion of agricultural lands (EIR/EIS, Section 4.6.1).

With respect to the MSCP Plan, there are 109,130 acres of privately owned lands in the MHPA, of which 90,170 acres would be conserved and 18,960 acres would potentially be developed (MSCP Plan, Vol. I, p. 4-5). Of the 109,130 acres, however, 32,140 acres are currently designated by the applicable General Plans and Community Plans as open space, an additional 51,600 acres are physically constrained, and 12,000 acres of unconstrained land are designated for low-density uses, such as residential uses of less than one unit per acre. Only 7,640 acres of unconstrained land are designated for urban uses, including residential uses greater than one unit per acre (MSCP Plan, Vol. II, Table B-3a). With potential development of 18,960 acres, there is sufficient land within the MHPA to accommodate future development.

Implementation of the MSCP Plan will reduce limitations on development outside the MHPA based on biological considerations, and, in general, retain mitigation requirements comparable to those currently in effect. Thus, the MSCP would not reduce the supply of developable land. On the contrary, the MSCP would ease some existing constraints, such as the 5% limitation on the loss of coastal

sage scrub in the study area. This would tend to increase the availability of (non-agricultural) vacant land for urban development.

Conversion of agricultural land to urban use generally requires an amendment to the applicable General Plan or Community Plan, as well as discretionary actions by the local jurisdiction, such as approval of a subdivision map, and significant investment in public infrastructure. Conversion of agricultural land to urban use would need to be addressed by an environmental review under CEQA and, in the Coastal Zone, by a permit under the California Coastal Act. Significant urbanization of agricultural land would require changes in public land use policies, as well as market conditions which favor such conversion.

Thus, although implementation of the MSCP Plan may lead to a pattern of future development different from that which may occur in the absence of the MSCP, it is not necessarily the case that there will be a widespread urbanization of agricultural lands. Such conversion, if it does occur, is subject to public policy decisions and market factors which are not directly associated with the MSCP. Please see also **Theme Response III, Economic Impacts and Impacts on Population and Housing.**

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XXII SUFFICIENTLY/SIGNIFICANTLY CONSERVED VEGETATION COMMUNITIES

The designation of significantly and sufficiently conserved vegetation communities is not a biological designation, but rather a classification/grouping of vegetation communities based on assignment of future responsibilities for the conservation of uncovered species should an uncovered species be listed. The factors taken into consideration in this designation scheme are listed in the MSCP Plan, Volume I, pages 3-25 and 3-26. The MSCP Plan provides for the establishment of a preserve designed to maintain ecosystem function by conserving vegetation communities in an appropriate amount and pattern.

Sufficiently conserved vegetation communities are those vegetation communities (identified on page 3-26 and 3-27 of the MSCP Plan, Volume I) for which the wildlife agencies would provide (using all of their legal authorities and subject to the availability of appropriated funds) for the conservation and management of habitat for an uncovered species at a level which would allow the species to be added to the Covered Species List should the uncovered species become listed. For a species to be addressed under this assurance, it must be dependent on the sufficiently conserved vegetation community. The addition of an uncovered species (including species dependent on a sufficiently conserved vegetation community) to the Covered Species List would require an amendment to the state and federal take authorizations and the amendment would be subject to all requirements of both ESAs, NEPA and CEQA, including public review and comment.

Significantly conserved vegetation communities are those vegetation communities (identified on page 3-26 and 3-27 of the MSCP Plan, Volume I) for which the wildlife agencies would contribute (subject to the availability of appropriated funds), in partnership with the local jurisdiction, to the conservation, management and monitoring of habitat for an uncovered species which is dependent on a significantly conserved vegetation community should the uncovered species be listed. The state and federal level of commitment for additional land conservation is the same level as the wildlife agencies committed to in the MSCP Plan. The partnership commitment (conservation, management and monitoring of habitat) is at a level which would allow the species to be added to the Covered Species List. The addition of an uncovered species (including species dependent on a significantly conserved vegetation community) to the Covered Species List would require an amendment to the state and federal take authorizations and the amendment would be subject to all requirements of both ESAs, NEPA and CEQA, including public review and comment.

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XXIII CRITICAL HABITAT DETERMINATION

"Critical habitat" is a term under the federal Endangered Species Act (ESA). It is defined under Section 3 of the Act as those specific areas either within or outside of the geographic area occupied by a species at the time it is listed, and on which are found those physical or biological features 1) essential to the conservation of the species; and 2) that may require special management or protections. The requirement to designate critical habitat applies solely to listed species and only to the extent that the U.S. Fish and Wildlife Service (FWS) determines that designation would be prudent and determinable. FWS regulations (50 *Code of Federal Regulations* 424.12[a][1]) state that designation of critical habitat is not prudent when one or both of the following situations exists: (1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species; or (2) such designation would not be beneficial to the species.

The federal ESA does not require that critical habitat be designated for a species before the FWS can issue an incidental take permit for the species. The regulatory processes of designating critical habitat and issuing incidental take permits are distinct and independent of one another. However, the FWS's determination of whether the MSCP and Subarea Plans meet the criteria specified in the federal ESA for issuance of incidental take permits and, in particular, whether issuance of the permits is likely to appreciably reduce the likelihood of the survival and recovery of the covered species in the wild, will take into account the effects of the take authorizations on the habitats of the covered species. An action may be found to jeopardize a species through destruction or adverse modification of its habitat, regardless of whether the habitat has been formally designated as "critical." Thus, the fact that critical habitat has not been designated for those listed species covered by the take authorizations will not prevent the USFWS from evaluating the effects of the MSCP and Subarea Plans on the habitats of each of the identified species. In order to issue incidental take permits for covered species, the FWS must find that the impacts of the

NCCP/HCP on the species' habitats will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.

The FWS will consider the MSCP and its management provisions in its preparation of any proposed designation of critical habitat concerning any covered species. Moreover, if critical habitat is designated for any covered species within the MSCP Plan area, the Service will not require any additional land, land restrictions, or financial compensation from participating jurisdictions or Third Party Beneficiaries.

On December 5, 1996, the Service published its final guidance for assigning relative priorities to listing actions in 1997 (61FR, number 235, page 64475–64481). In this guidance, processing of proposed or final designations of critical habitat and processing of proposed or final designations of critical habitat and processing of proposed or final delistings and reclassifications from endangered to threatened status will be accorded lowest priority.

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XXIV NO SURPRISES

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

In the event that "unforeseen" or "extraordinary" circumstances arise that require additional mitigation measures necessary to conserve species covered by a properly functioning subarea plan, the obligation for such measures would be borne primarily by the federal and state governments, private conservation organizations, or other jurisdictions or private landowners who have not yet developed an NCCP/HCP. The mitigation obligations of the permitees would, to the maximum extent possible, not extend beyond measures reflected in the original terms of the subarea plans, and would be limited to modifications of the preserve management program and/or to the habitat acquisition program. Again, these steps would not involve additional land protection, payment of funds, or restrictions on land available for development or other uses, unless the permittee consented to such measures. The MSCP subarea plans will be considered "properly functioning" if the terms and conditions of the plans and the implementing agreements are being fully met by the parties.

The No Surprises policy sets out criteria for determining whether unforseen/extraordinary circumstances have occurred. The wildlife agencies bear the burden of demonstrating the existence of

such circumstances, using the best scientific and commercial data available. Their findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. In deciding whether the unforeseen/extraordinary circumstances warrant the requirement of additional mitigation from the permittee, the wildlife agencies will consider, but will not be limited to, the following factors: (a) size of the current range of affected species, (b) percentage of range adversely affected by the MSCP, (c) percentage of range conserved by the MSCP, (d) ecological significance of that portion of the range affected by the MSCP, (e) level of knowledge about the affected species and the degree of specificity of the species' conservation program under the HCP, and (f) whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

Generally, the primary focus of inquiry would be the level of biological peril to species covered by the MSCP, and the degree to which the welfare of those species is tied to the MSCP. For example, if a species is rapidly declining, and the MSCP Plan study area encompasses an ecologically insignificant portion of the species' range, then unforeseen/extraordinary circumstances typically would not arise. Conversely, if the MSCP Plan study area comprises a significant portion of the species' range, then unforeseen/extraordinary circumstances would be more likely to occur.

The "No Surprises" policy, of course, does not limit or constrain the wildlife agencies or any other governmental agency from taking additional actions, at their own expense, to protect or conserve a species covered by the MSCP. This means the wildlife Agencies can intercede on behalf of a species at any time consistent with the assurances provided to permittees under the policy and the permits. The wildlife agencies have at their disposal a variety of tools to ensure that the needs of species affected by extraordinary circumstances are adequately addressed, including agency-funded habitat acquisitions, land exchanges, management techniques, species relocation, and habitat restoration and enhancement. Moreover, the "No Surprises" policy in no way precludes the wildlife agencies from asking a permittee to voluntarily undertake additional mitigation on behalf of affected species.

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XXV WETLANDS PROTECTION

In addition to the protections afforded to wetlands through the U.S. Army Corps of Engineers permit process under Section 404 of the Clean Water Act and the CDFG's agreement process under Fish and Game Code 1600 et seq., the County and the City of San Diego have both included mitigation requirements in their subarea plans to avoid, minimize and mitigate impacts to wetland habitats. The Cities of Chula Vista and Santee will revise their subarea plans prior to permit issuance to also include similar provisions. Both the City of San Diego and the County, in cooperation with the wildlife agencies, intend to pursue a regional permit with the Corps and Environmental Protection Agency incorporating specific wetland requirements in San Diego County (see also Revisions to the MSCP Plan documentation on Section 3.2.1 of the MSCP Plan).

XXVI PERMIT STREAMLINING

The MSCP is designed to implement a preserve system that provides for the long-term conservation of covered species in southwestern San Diego County and meet the requirements for issuance of take authorizations under Section 10(a)(1)(B) of the ESA, Section 2081 of the CESA, and Section 2835 of NCCP. Upon approval of the MSCP and a participating jurisdiction's subarea plan, take authorization for covered species outside of the preserve would be issued to the participating jurisdiction. Take authorizations may then be conferred by the local jurisdiction to project proponents who obtain permits issued in compliance with the MSCP and applicable subarea plan. In this manner, project proponents will be able to obtain necessary permits from the local participating jurisdiction without involving the wildlife agencies in project-by-project approval. In addition, the MSCP will provide greater certainty with respect to where biological impacts should occur and assurances with regard to mitigation obligations. This process eliminates the need for preparation of individual HCPs, NEPA documents, IAs and the associated public review through publication in the Federal Register. This process can eliminate 6 months to 3 years of processing time and associated costs.

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PART B
MSCP FINAL EIR/EIS
INDIVIDUAL RESPONSES

1 CRAIG ADAMS, SIERRA CLUB, SD CHAPTER 10/30/96

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1(a) The June 7, 1994 comments provided on the MSCP Draft Framework Plan by the wildlife agencies were intended to guide the development of alternatives addressed by the final MSCP Plan. Recommendations included in these comments included 1) using public lands within the MSCP study area as the initial foundation for a subregional reserve, 2) maximizing the amount of high and very high quality habitat, 3) minimizing the perimeter/area ratio and maximizing the thickness of the eventual reserve, and 4) phasing both the development and conservation of lands over time. The wildlife agencies further commented on specific areas and habitats within the MSCP study area that should be included in a final preserve. This information was considered by the applicants in preparing their final proposed alternative, the Multi-Habitat Planning Area. Therefore, a subsequent geometric analysis is not necessary. The wildlife agencies will determine if this alternative, submitted as the applicant's preferred alternative, meets the issuance requirements of Section 10(a)(1)(B) of the Federal Endangered Species Act and the California Endangered Species Act, and is consistent with the requirements of the Natural Communities Conservation Planning Act for the covered species.

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Sierra Club, San Diego Chapter
3820 Ray Street
San Diego, CA 92104
Phone: 299-1741; Fax 299-1742

September 30, 1996

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

Attention: Sherry Barrett

Subject: Request for Preserve Design Geometry Analysis of Multiple Species Conservation Program August, 1996 DRAFT Plan

Dear Mr. Kobetich:

The September, 1996 "MSCP 1995 and 1966 Species Evaluations" that has been provided, evaluating the "coverage" conclusions for individual species, is very helpful and responsive to the concerns environmental community representatives have expressed concerning the lack of clear documentation to support the "biological integrity" of the DRAFT MSCP Plan. In addition to the species-by-species review, we are particularly interested in the issues of preserve configuration and the consistency of the draft with the NCCP Conservation Guidelines.

In the process of reviewing an earlier version of the MSCP, the staff at the Carlsbad office of the U.S. Fish and Wildlife Service prepared an objective; quantitative analysis of "preserve design geometry." This set of analyses provided a comprehensive and specific analysis of the consistency of the earlier draft MSCP plan with the NCCP Conservation Guidelines. This analysis has NOT been re-run on the August, 1996 DRAFT MSCP Plan and the issue of consistency with NCCP Conservation Guidelines is essentially not addressed in the draft plan document or the EIR/EIS.

We are requesting the U.S. Fish and Wildlife Service to apply the analytical techniques for preserve design geometry using the Reserve Planing Priority methodology, which it developed and earlier applied, to evaluate the August, 1996 DRAFT MSCP Plan. The analysis we are requesting is specifically described in the June 7, 1994 letter from Gail Kobetich of the U.S. Fish and Wildlife Service and Larry Eng the California Department of Fish and Game to Mr. Dave Flesh concerning, "Comments on the Multiple Species Conservation Program (MSCP) Working Group's MSCP Draft Framework Plan.

In the June 7, 1994 Fish and Wildlife Service Comment and the attached Table 2, the analysis evaluated relevant reserve geometry factors including: statistics on polygon size; core area size, perimeter, thickness and perimeter to area ratio. The analysis also addressed the proportion of core areas which were within the preserve boundaries and of the distribution inside and outside the preserve configurations of habitat by the value category of the habitat. Similarly, statistics were included for the acres of inclusion within the preserve for the identified corridors.

As it was at the earlier stage, this information is ESSENTIAL to judging the consistency of the proposed preserve design with the NCCP Conservation Guidelines. Since the U.S. Fish and Wildlife Service conducted this earlier analysis, the system for conducting this analysis has already been developed and tested; it should merely be a matter of loading the new preserve boundary data to recalculate these critical measures.

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1(a)

Importantly, this is not the first time we have made this request. We have mentioned it in our continuing discussions with your office and we clearly stated this request in the Sierra Club's comments on the Notice of Preparation for the MSCP EIR/EIS. One technical issues which might arise is how to treat the Lakeside-Jamul Segment where the County is proposing its "no-lines" system. The Wildlife Agencies' "pre-designated mitigation areas" can be used for the analysis in this area.

The at-least 50-year, "no surprises" nature of the proposed MSCP program and the extent of the resources that are at risk makes it essential that the "biological integrity" of the program be thoroughly analyzed and clearly established. The information we are requesting is critical to this objective and we are concerned that it has not already been made available. The U.S. Fish and Wildlife Service has a clear responsibility to conduct this type of preserve geometry analysis and has previously demonstrated its capabilities in this respect. We are requesting that the preserve design geometry analysis, described here and in the June 7, 1994 Comment Letter be completed and made available prior to the close of the public review period for the August, 1996DRAFT MSCP plan.

Sincerely,

Craig Adams
Conservation Coordinator

2 TIMOTHY WILSON, WATSON LAND COMPANY, 10/1/96

R **2(a)** In coordination with wildlife agencies staff, the City of Chula Vista proposes to develop standards for both Minor Amendments and Major Amendments to its Subarea Plan. The Draft Subarea Plan states that these would be developed in conjunction with the City's Implementation Agreement. However, to respond to property owner's requests, the City will begin negotiations with the wildlife agencies immediately to develop draft standards for amending the Subarea Plan.

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Watson Land Company

RECEIVED
OCT 02 1996
DEVELOPMENT SERVICES

City of San Diego Land Development Review Division
1222 First Avenue
5th Floor
San Diego, CA 92101

October 1, 1996

Re: Public Comment on City of Chula Vista Draft MSCP EIR/EIS

Dear Sirs,

We own 160 acres under parcel number 585-150-02 presently located in the County of San Diego but within the City of Chula Vista sphere of influence. We are presently annexing our property into the City of Chula Vista and should be finished with that process by mid-November, before the Chula Vista Subarea Plan ("CVSP") for the MSCP is approved.

This letter contains my comments to the CVSP for the MSCP.

Our property has been designated a "Minor Amendment" area under the CVSP. According to Section 4.3.1.2 of the CVSP, this means we have:

> **"...land which could be annexed into the City; however, agreements with Wildlife Agencies and CDFG and the City on ultimate preserve boundaries have not been negotiated."**

But, according to the same section of the CVSP which addresses our property specifically:

> **"It is the intent of the City of Chula Vista to identify preserve boundaries on the Watson Land Company property before finalizing this Subarea Plan."**

Recently (09/23/96) we met with representatives from the USFWS, CDFG and City of Chula Vista to discuss whether it was possible to identify preserve boundaries on our property prior to approval of the CVSP. The general consensus was that it was not possible because we did not have detailed enough environmental information on our site. Yet the level of detail is enough such that certain properties can be designated "minor amendment" areas under the CVSP.

My concern is this: At this point in the MSCP process, a specific procedure with stated guidelines for dealing with "minor amendment" areas has not been identified as part of the MSCP plans. According to Section 9.1 of the CVSP:

> **"The procedure for handling such amendments will be included in the Implementation Agreement."**

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As I may be the first one to process a "minor amendment" under the CVSP (and possibly under the City or County of San Diego Subarea Plans) and would like to get started as soon as possible, I would like to see clear and specific language with regards to the "amendment" process and specifically as it relates to the CVSP. I need to know exactly what is expected of me prior to starting out on what may be a long and possibly expensive undertaking. (I have been told that the "minor amendment" process is administrative as it relates to the USFWS and CDFG but have seen nothing in writing that clarifies what that means).

It is my understanding in conversations with the City of Chula Vista that we will be able to provide public comment on the CVSP Implementation Agreement. I feel it would benefit everyone involved if prior to drafting of the Implementation Agreement the procedures for processing a "minor amendment" were worked out so that private landowners like me could begin to process their amendments concurrent with the finalization of the CVSP as well as the City and County of San Diego Subarea Plans for the MSCP. 2(a)

As you know, smaller landowners are usually not very well capitalized and any dealings with city, county, state and federal agencies can be quite expensive and time consuming, especially when involving the land development process and its relationship to environmental issues. So anything that clarifies in a timely fashion a new process and/or procedure is much appreciated.

Sincerely,

Dr. Timothy Wilson
13039 Brixton Place
San Diego, CA 92130
619-259-8922

3 STEPHEN DAVIS, DEPARTMENT OF FORESTRY AND FIRE PROTECTION, 9/17/96

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3(a) As noted on page 1-14 of the Draft EIR/EIS, the August 1996 draft document is a recirculation of the Draft EIR/EIS that was previously distributed in May 1995. As discussed, formal responses to previous letters of comment were not prepared due to changes in the project that occurred between the time that the original document was distributed for public review and distribution of the August 1996 document. Formal responses to comment have, however, been prepared for the comments received on the August 1996 draft document and are presented in this Final EIR/EIS package.

3(b) Section 6.3.4 of the MSCP Plan outlines fire management strategies for the proposed MSCP preserve. The MSCP Plan states that "detailed fire management plans should be prepared by preserve managers in consultation with local agency fire departments so that both biological and safety goals are met." Section 6.3.4 of the MSCP Plan specifically references the Wildland/Urban Interface Task Force, comprised of representatives from the San Diego County Fire Chiefs' Association, wildlife agencies, and others, to develop an MOU on fire safety and the use of fire in biological management. The MSCP Plan therefore requires consultation with major fire departments in establishment and management of the preserve.

3(c) Section 6.3.4 of the MSCP Plan specifically references the joint Wildland/Urban Interface Task Force and notes that the findings of the task force would be incorporated in preserve assembly and management as appropriate.

3(d) Consultation with major fire departments to ensure adherence to fire safe guidelines for development in proximity to forests, brush and/or grasslands is a requirement of the MSCP Plan as noted in Section 6.3.4 of the Plan. In doing so, the document *Fire Safety Guides for Residential Development in California* will be taken into consideration.

3(e) No features of the MSCP Plan would restrict conduct of inspections or clearance compliances. As noted in Section 6.3.4 of the MSCP Plan, fire management plans are to be prepared in consultation with local agency fire departments.

3(f) In addition to calling for preparation of detailed fire management plans, Section 6.3.4 of the MSCP Plan states that "Prescribed burning also should be used where it is practical, given safety and cost considerations." Any prescribed burning would be done in consultation with the California Department of Forestry and Fire Protection.

3(g) No features of the MSCP Plan would impose restrictions of fire suppression or containment.

DEPARTMENT OF FORESTRY AND FIRE PROTECTION
San Diego Ranger Unit
2249 Jamacha Rd.
EL CAJON, CA 92019

(619) 588-2382

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September 17, 1996

City of San Diego
Development Services Department
1222 First Street, M.S. 501
San Diego, CA. 92101

Attention: John Kovac

RE: MSCP/RECIRCULATED DRAFT JOINT EIR/EIS; SCH No. 93121073

Dear Sirs,

THE DEPARTMENT OF FORESTRY & FIRE PROTECTION ADDRESSED THIS SAME DRAFT MSCP DOCUMENT IN JUNE 1995. NO RESPONSE HAS EVER BEEN RECEIVED NOR HAS FURTHER CONTACT OCCURRED FROM THE DEVELOPMENT SERVICES DEPARTMENT. OUR CONCERNS ARE STILL VALID AND NOT ADDRESSED IN THIS RECIRCULATED DOCUMENT. **3(a)**

THE RESOURCE MANAGEMENT SECTION/FIRE PREVENTION SECTION FOR THE SAN DIEGO RANGER UNIT, CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION WOULD LIKE THE FOLLOWING POINTS ADDRESSED OR INCLUDED IN THE PROPOSED PLANNING AREA PROJECT, AS PORTIONS OF THIS PLANNING AREAS ARE PROTECTED FROM WILDFIRES BY THIS DEPARTMENT.

- CONSULTATION WITH MAJOR FIRE DEPARTMENTS WITHIN SAN DIEGO COUNTY. ESPECIALLY FIRE PREVENTION SECTIONS WITHIN THE FIRE DEPARTMENTS. **3(b)**

- THIS CONSULTATION SHOULD INCLUDE IMPACTS THAT THE CREATION OF A BIOLOGICAL PRESERVE(S) WILL HAVE ON 'FIRE SAFE' REQUIREMENTS IN AND AROUND THE URBAN/WILDLAND INTERFACE. THE CREATION OF PRESERVES OF HIGHLY FLAMMABLE VEGETATION WILL IMPACT CURRENT AND FUTURE DEVELOPMENTS. CHAPARRAL VEGETATION DOES BURN AT VERY HIGH INTENSITIES. WILDFIRES BURNING IN BIOLOGICAL PRESERVES WILL BE LIKE POINTING BURNING WICKS OF FIRE AT THESE DEVELOPMENTS. IN A TYPICAL WILDFIRE, BURNING IN THE URBAN/WILDLAND INTERFACE, FIRE DEPARTMENTS HAVE LIMITED RESOURCES TO PROTECT BOTH DEVELOPMENTS AND BIOLOGICAL PRESERVES AT THE SAME TIME. THIS PROJECT MAY FAIL TO ADEQUATELY ADDRESS THIS ISSUE. **3(c)**

- THE PROJECT MAY FAIL TO ADEQUATELY ADDRESS OR REFLECT FIRE SAFE GUIDELINES FOR DEVELOPMENTS THAT IS OCCURRING IN OR NEAR FOREST, BRUSH AND/OR GRASSLAND. SPECIFIC MEASURES SHOULD BE INCORPORATED INTO THE PROJECT PLAN AS SPECIFIED BY THE GOVERNMENT CODE, SECTIONS: 12038, 65302(a), 65302(l), 65303, 65451, 65560, 66418, 66411, 66424, 66474, 66455.5 (copy of FIRE SAFE GUIDES FOR RESIDENTIAL DEVELOPMENT IN CALIFORNIA is available through the above address). **3(d)**

- FOR THE PURPOSE ENFORCEMENT OF PUBLIC RESOURCE CODE 4291. CONDUCTING INSPECTIONS AND CLEARANCE COMPLIANCES. WILL ANY RESTRICTIONS OR LIMITS BE IMPOSED BY THIS BIOLOGICAL PLAN? THE DEPARTMENT OF FORESTRY AND OTHER **3(e)**

EFFECTED COUNTY FIRE DEPARTMENTS SHOULD BE CONSULTED IF THIS CONCERN IS VALID OR MAY BECOME VALID. 3(e)

3

- THE CREATION OF BIOLOGICAL PRESERVES UNDER PUBLIC OWNERSHIP WILL CREATE A DIRECT NEED FOR MAINTENANCE AND UPKEEP AT THE PUBLIC'S EXPENSE. WITHOUT MAINTENANCE THE QUALITY OF THE BIOLOGICAL PRESERVES, OVER TIME, WILL DETERIORATE. MAINTENANCE MAY INCLUDE, BUT NOT BE LIMITED TO, THE USE OF PRESCRIBED FIRES. THIS MAINTENANCE MAY INVOLVE FIRE DEPARTMENTS AND AFFECT THEIR OPERATIONS AND BUDGETS. THIS PROJECT MAY FAIL TO ADEQUATELY ADDRESS THESE CONCERNS. THIS MAY COME AS A SURPRISE, BUT THE DEPARTMENT OF FORESTRY IS THE LEAD AGENCY FOR THE USE OF PRESCRIBED FIRE IN COUNTY OF SAN DIEGO. THE CDF CAN NOT OPERATE ON LAND PROTECTED BY OTHER FIRE DEPARTMENTS. OTHER FIRE DEPARTMENTS DO NOT HAVE THE EXPERTISE TO CONDUCT LARGE SCALE PRESCRIBED FIRES. WHAT MAINTENANCE PLANS DOES THE MSCP REQUIRE? 3(f)

- WILL ANY RESTRICTIONS BE IMPOSED ON THE SUPPRESSION/CONTAINMENT OF UNWANTED WILDFIRES IN BIOLOGICAL PRESERVES (SUCH AS THE FEDERAL GOVERNMENT RESTRICTIONS IN DESIGNATED WILDERNESS AREAS)? SUCH FIRES WILL OCCUR, IT IS ONLY A MATTER OF TIME. THESE RESTRICTIONS MAY AFFECT THE USE OF HEAVY EQUIPMENT(DOZERS), HAND CREWS, CHAIN SAWS, AIRCRAFT OR MODIFIED SUPPRESSION TECHNICS. THE DEPARTMENT OF FORESTRY AND OTHER EFFECTED COUNTY FIRE DEPARTMENTS SHOULD BE CONSULTED IF THIS CONCERN IS VALID OR MAY BECOME VALID. 3(g)

IF YOU HAVE ANY QUESTIONS PLEASE CONTACT US.

KENNETH MILLER
UNIT CHIEF

by: STEPHEN DAVIS
DIVISION CHIEF

4 JACK GIBSON, CITIZENS FOR PRIVATE PROPERTY RIGHTS, 10/2/96

R

4(a) Please refer to **Theme Responses: V, Taking of Private Property And XII, Voluntary Participation.** Chapter 4.0 of the MSCP Plan describes the methods for assembling the preserve. As described in Chapter 4.0, these methods include conservation of existing public lands, public acquisition of private lands, and private and public development contributions. In no case, is taking of land from unwilling sellers proposed.

4(b) Please refer to **Theme Response XIII, Ecosystem Based Mitigation ("Out-of-Kind").**

4(c) A shift in agricultural activities is not anticipated as a result of implementation of the MSCP Plan. As noted on page 4.2-83 of the Draft EIR/EIS, language incorporated in the MSCP Plan states that existing agricultural operations would be allowed to continue. In addition, as described on pages 4.2-95 through 4.2-102, the various Subarea Plans also contain provisions regarding continuance of existing agricultural operations. With respect to impacts to threatened or endangered species associated with agricultural activities, as discussed on page 4.2-83 of the Draft EIR/EIS, the MSCP Plan proposes issuance of take authorizations permits for ongoing agricultural activities and includes Safe Harbor provisions that may provide financial incentives for farmers to manage active agriculture in accordance with preserve goals. In these ways, existing agricultural uses would be retained in a manner consistent with the overall biological goals of the MSCP.

4(d) Please refer to Tables 4.3-1 and 4.3-2 of the Draft EIR/EIS which quantify impacts to, and conservation of, species in conjunction with the MSCP Plan and alternatives. Please refer also to revised MSCP Table 3-5 included in the Revisions to the MSCP Plan, January 1997.

4(e) The Draft EIR/EIS concludes that implementation of the MSCP Plan could have indirect effects on species and habitats due to increased development pressure outside the preserve established as part of the MSCP. These impacts are describe din detail in Section 4.3 of the Draft EIR/EIS for the MSCP Plan and alternatives. Please refer to Section 6.0 of the Draft EIR/EIS for discussion of cumulative impacts.

4(f) Analysis of economic impacts is presented on pages 4.6-44 through 4.6-55 of the Draft EIR/EIS. Please also refer to **Theme Response III, Economic Impacts and Impacts on Population and Housing.**

4

Citizens for Private Property Rights, Inc.
P.O. Box 441
Santa Ysabel, CA 92070
(619) 789-5878

John Kovac, Senior Planner
Development and environmental Planning Division
City of San Diego
1222 First Avenue, 5th Floor
San Diego, CA 92101

Dear Mr. Kovac, 2 October 96.

Please accept the following as comments regarding the EIR/EIS for the MSCP and the MSCP (the program) itself released August 96.

0 MSCP: While the program may sound good it is at the expense of our U.S. Constitutional Rights (Fifth Amemndment) and is a direct assault upon the fundamental moral values that stand as the basis for this country i.e. "thou shalt not steal" and "thou shalt not covet". The program has dreadful socialistic overtones of which the adverse effects and consequences are enormous. The program itself is felt to be a "Violation of the Endangered Species Act"... in regards to "No Suprises" Policy "Assuring Certainty for Private Landowners In Endangered Species Act Habitat Conservation Planning". Furthermore the program and the proposed Biological Mitigation Ordanance are in conflict with the Supreme Court ruling of Dolan v. Tigard which directs that mitigation should be based upon a "Nexus" and "Rough Proportionality". The offsite and out of kind mitigation proposed is counter to the "Nexus" concept. Three to one mitigation ratios violates not only the "Rough Proportionality" concept in addition to our U.S. Constitutional Fifth Amendment rights. 4(a) 4(b)

I personally feel that anybody who is involved with this program and its creation and implementation should feel absolutely ashamed and mortified at the tryanny they are helping to inflict upon others.

0 EIR/EIS (EIR)

o The EIR is insufficient in its analysis of the the programs adverse environmental affects, cumulative or otherwise on threatened or endangered species which will result because of the shifting of agricultural activities that will result because of the programs implementation. 4(c)

o The EIR does not adequately discuss exactly how species will be saved in regards to the percentages of habitat types and land that will be preserved. 4(d)

o The EIR is insufficient in its analysis of adverse effects on threatened or endangered species, cumulative or otherwise due to developmental growth outside the preserves or on the preserve boundries. 4(e)

o The EIR does not address economic impacts. 4(f)

Sincerely,
Jack Gibson
Chairman

5 JACK GIBSON, CITIZENS PRIVATE PROPERTY RIGHTS, 10/10/96

R **5(a)** Preparation of an NCCP/HCP (California Fish and Game Code Section 2800 et.seq.) by a local jurisdiction is voluntary. General land use planning in the MSCP study area is the responsibility of the County and the 11 incorporated cities. In addition, numerous special purpose agencies/districts also exist in the MSCP study area. The County and five cities (which have jurisdiction over 99% of the private habitat lands in the plan area) and the Otay Water District chose to prepare subarea plans for incorporation in the MSCP Plan (Volume II). Any land purchases made by local, state or federal governments for inclusion in the preserve would be from willing sellers. In adopting a NCCP/HCP, participating jurisdictions are committing to carry out specific actions to satisfy the requirements of state and federal laws protecting wildlife. Local jurisdictions' implementation of their Subarea Plans would not result in the "taking" of private property. Please also refer to **Theme Response V, Taking of Private Property.**

Participating jurisdictions will either prepare Subarea Plans consistent with the MSCP Plan in the future or require projects to obtain required state and federal take authorizations on a project-by-project basis. Please also refer to **Theme Response XII, Voluntary Participation.**

5(b) See **Theme Responses V, Taking of Private Property, and VIII, Public Involvement.** The MSCP Plan does not target land for adverse governmental takings. As described in Chapter 4.0 of the MSCP Plan, methods for assembling the preserve include conservation of existing public lands, public acquisition of private lands, and private and public development contributions. In no case will land be purchased from unwilling sellers.

5(c) The referenced paragraph on page 3-35 of the Draft EIR/EIS refers only to mitigation ratios incorporated in the County of San Diego's proposed Biological Mitigation Ordinance (BMO). The term "significant" in the referenced statement is not meant to imply a "significance" threshold as defined by CEQA for habitat loss, but to recognize some habitat for listed and sensitive species would be lost with implementation of the BMO, and that such losses would require mitigation. As stated at the end of the referenced paragraph, the intent of the mitigation ratio structure is to provide incentives for development in lower quality habitat areas and mitigation in higher quality habitat areas. See also response to Comment 5(a) above.

5(d) Adverse effects on existing agricultural activities are not anticipated as a result of implementation of the MSCP Plan. As noted on page 4.2-83 of the Draft EIR/EIS, language incorporated in the MSCP Plan states that existing agricultural operations would be allowed to continue. In addition, as described on pages 4.2-95 through 4.2-102, the various subarea plans also contain provisions regarding continuation of agricultural operations. These provisions do not impose any new regulations for existing agriculture operations.

5(e) The error in addition on Table 4.3-20 is noted and has been corrected in the Final EIR/EIS documentation. The correct total acreage is 331, not 1,151 as shown on the table in the draft document. There is no reference to 22,864 as an "acreage in city" on Table 4.3-20.

5(f) The referenced page includes the beginning of a summary table that documents the "significance" conclusions required by CEQA following descriptions of mitigation measures for impacts to biological resources associated with the proposed MHPA and alternatives. For detailed information regarding the mitigation measures that would reduce the identified impacts to a level below significance for CEQA purposes, please refer to the detailed descriptions of the mitigation measures. For example, mitigation measures 4.3 MHPA-1 through 4.3 MHPA-5 noted on page 4.3-212, are described in detail on pages 4.3-180 through 4.3-183.

5(g) The City of San Diego's MSCP Subarea Plan provides design guidelines to be implemented as projects, within or adjacent to the preserve, are planned and developed. In the case of the Coast to Crest trail referred to in the comment, the design and approval of that trail preceded the MSCP Plan and, therefore, the MSCP incorporates the trail system as approved.

5(h) The Subarea Plan identifies a variety of recommended design guidelines to be considered in the development of future projects (including infrastructure) that would minimize impacts to the proposed preserve. The design guideline to minimize roadway widths is a recommended measure that should be incorporated into future project designs where possible, with due consideration of public safety.

5(i) The mitigation ratios proposed in the MSCP Plan correspond with those that are currently used for County road projects. County road projects already require mitigation that offsets impacts to sensitive habitats. Construction of circulation systems occurs as a result of traffic demand and roads are built to the standards required to serve that demand. The Biological Mitigation Ordinance explicitly exempts essential public facilities as long as adequate mitigation is provided. The mitigation for major road projects is typically a small portion of the total project cost.

5(j) The referenced number should be 82,290, not 82 as shown on the table. This figure is the sum of the two numbers shown in columns 1 and 2 for the proposed MHPA. The table has been corrected on the revised language included in the Final EIR/EIS.

5(k) The MSCP Plan states as a goal that "Private development exactions should not be increased beyond existing requirements" (MSCP Plan, p. 4-1). In general, changes to land use or environmental regulations proposed by individual subarea plans meet this goal.

The proposed regulations have been drafted to ensure that private property owners, both within and outside the preserve, would not be denied economically viable use of their land. Landowners in the preserve would have the option of: A) developing the property in accordance with applicable zoning and development regulations; B) selling land on the open market to someone who needs

to purchase land in the preserve to mitigate for development occurring outside the preserve; C) selling the land to local, state or federal governments for inclusion in the preserve; or D) continuing existing legal uses. See also **Theme Response III, Economic Impacts and Impacts on Population and Housing.**

5(l) As noted on p. 4.6-45 of the Draft EIR/EIS, tax values of properties acquired by the public would become zero. However, this would be more than offset by the tax base increase resulting from development which would be facilitated by the MSCP, both inside and outside the MHPA. See also **Theme Response III, Economic Impacts and Impacts on Population and Housing.**

5(m) Page 6-3 of the Draft EIR/EIS notes that cumulative impacts associated with the projects considered in the cumulative analysis would result in "direct impacts to species on the Covered Species Lists of the programs on the cumulative projects list." In addition, page 6-3 also notes that "indirect effects would primarily be associated with impacts to grassland and chaparral habitats, and the non-sensitive species that occupy those habitats, due to the fact that the portions of these habitats not occupied by sensitive species would receive little or no protection outside the preserves under existing and proposed ordinances and regulations." The text states that only indirect impacts to non-sensitive species occupying grassland and chaparral habitats would be regarded as not significant. This is due to the fact that sensitive species occupying these habitats would continue to be protected. Impacts to non-sensitive species were considered to be not significant for the two reasons stated on page 6-3).

5(n) The words "summarized below" should be deleted from the referenced paragraph on page 7-1; this correction has been made in the revised language included in the Final EIR/EIS. The sentence should read: "The numbers of covered plant and animal species that could be taken outside the preserve under the proposed MHPA and alternative scenarios are describe in detail in Section 4.3, Biological Resources of this document." This information is provided on Table 4.3-2 included in Section 4.3.

5(o) The wildlife agencies, participating jurisdictions, and applicants have used the best information available to them to assess the impact of implementing the MSCP Plan and have strived to report their findings as accurately as possible.

5(p) See **Theme Response VIII, Public Involvement.**

5

Citizens for Private Property Rights, Inc.
P.O. Box 441
Santa Ysabel, CA 92070
(619) 789-5878

John Kovac, Senior Planner
Development and Environmental Planning Division
City of San Diego
1222 First Avenue, 5th Floor
San Diego, CA 92101

Dear Mr. Kovac, 10 October 96

Please accept the following as further comments from myself regarding the EIR/EIS for the MSCP and the MSCP (the program) itself released August 96.

EIR Page 1-1: MISLEADING INFORMATION

The NCCP Program was designed to be a "voluntary". In reality there is no "voluntary" anything here as the Wildlife Agencies are in effect extorting communities to be involved in these MHCPs or MSCPs. How voluntary is it for the people who will encounter governmental takings by the government either devaluing their lands or regulating their land usages into oblivion. 5(a)

EIR PAGE 1-3: COVERT PLANNING

This program was planned without notifying or having multitudes of representatives of the thousands and thousands of landowners who actually own the land targeted for adverse governmental takings. 5(b)

EIR PAGE 3-35 MISLEADING INFORMATION

"The intent of the mitigation ratios is to accept that significant portions of habitat for listed and sensitive species will br lost...." This is very subjective and preposterous. What does significant mean here? How can so much be lost with onerous mitigation ratios of three to one? 5(c)

EIR PAGE 4.2-107 MISLEADING INFORMATION

"...it is not anticipated that the agricultural industry would be impacted by the Subarea plan.' This is a blantant falsehood as the very nature of the plan attacks agriculture and grazing from all aspects as they disturb the land and sensitive plant and animal species. Originally the MSCP documents indicated agriculture as being an "incompatible" usage in the Core Preserve areas. The anti-agriculture people who did that are still there waiting like hovering vultures to destroy the agriculture industry in San Diego County and then help use this as a role model to help destroy agriculture accross the nation. I guess they dont eat American grown food items, use leather or dairy products etc. 5(d)

EIR PAGE 4.3-122 TABLE 4.3-20 DOESN'T ADD UP

The listed "Acreage in City" does not add up to 1,152 Acres. *HOW MANY OTHER FALSE MATHEMATICAL MISREPRENTATIONS ARE IN THIS DOCUMENT. THIS TABLE JUST LIKE THE ENTIRE PLAN AND DOCUMENT JUST DOESN'T ADD UP!* 5(e)

EIR PAGE 4.3-122 TABLE 4.3-20 DOESN'T ADD UP

The listed total "Acreage in City" does not add up to 22,864 Acres. *HOW MANY OTHER FALSE MATHEMATICAL MISREPRENTATIONS ARE IN THIS DOCUMENT. THIS TABLE JUST LIKE THE ENTIRE PLAN AND DOCUMENT JUST DOESN'T ADD UP!*

EIR PAGE 4.3-212 INADEQUATE REASONING

The is insuficient analysis and justification to warrent the findings that there is 5(f)
Less than significant Significance Levels after mitigation.

EIR PAGE 4.3-225 CONFLICTING PLANS

This is for the City of San Diego Subarea Plan "...trails should not be paved." Yet City of San Diego Council Members Warden and Mathis are working with the San Dieguito River Park Staff on a 55 mile *PAVED TRAIL TARGETED TO GO THROUGH THE MIDDLE OF MSCP CORE PRESERVES AND LINKAGES!* WHAT IS THE TRUTH ABOUT PAVED TRAILS HERE? 5(g)

EIR PAGE 4.4-12 PROBLEMS NOT FULLY THOUGHT THROUGH-CUMULATIVE IMPACTS.

"Recommended measures include minmizing roadway width." This will have an adverse effect on public safety and could result in roadway deaths of humans. No cumulitive effects of this is analyzed. 5(h)

EIR PAGE 4.4-12 INNACURATE MISLEADING INFORMATION

"Implementation of the BMO would not adversely impact planned circulation systems within the County." This is patently false because of the onerous mitigation ratios in the BMO, consequently necessary circultion systems may be reduced in size/scope/delayed/made less safe etc. due to them being cost or environmentally prohibative. How about changing this section to reflect the truth! 5(i)

EIR PAGE 4.6-4 THE BIG LIE...BAD MATHEMATICS OR FREUDIAN SLIP!

Table 4.6-3 indicates only 82 Acres of "Land Available for Development" in the "Total MSCP Study Area". Is this just one more mathematical falsehood/misrepresentation or WHAT IS REALLY DESIRED BY THE WANNABEE LAND THEIVES BEHIND THIS PROGRAM i.e. the classical Freudian Slip! 5(j)

EIR PAGE 4.6-45 PROPERTY VALUES

This is totally inadequate in discussion/conclusions regarding property values. NO DISCUSSION IS GIVEN TO THE REDUCTION IN PROPERTY VALUE OF THOSE LANDS INSIDE THE PRESERVE OR THE IMPACTS OF SUCH ON THE OWNERS. 5(k)

EIR PAGE 4.6-46 PROPERTY TAX BASE

This is totally inadequate in discussion/conclusions regarding Tax Base. NO DISCUSSION IS GIVEN TO THE REDUCTION IN TAX BASE DUE TO LANDS BEING REMOVED FROM OUR TAX ROLES AND THE CUMULATIVE EFFECTS SUCH AS REDUCTIONS OF OUR SOCIAL SERVICES ETC. 5(l)

EIR PAGE 6.3 BIOLOGICAL RESOURCES WRONG CONCLUSION

"As discussed in Section 4.3, such indirect effects would primarily be associated with impacts to grassland and chapperal habitats, and the non-sensative species that occupy these habitats.' This is a lie as sensitive, threatened and endangered species do in fact occupy these habitats. Consequently the conclusion that "These indirect impacts are not regarded as significant.." is false and innacurate. 5(m)

EIR PAGE 7-1 THE FALSEHOODS CONTINUE!

The last paragraph refering to a list of covered p;ant and animal species.... "are summarized below.." *THERE IS NO SUCH SUMMARY HERE!!!* 5(n)

LETS GO BACK TO THE DRAWING BOARD WITH THIS DOCUMENT SUCH THAT IT IS MADE ACCURATE AND TO REFLECT THE TRUTH!!!!! 5(o)

How about distributing the document to all landowners affected instead of just informing them that "YOUR PROPERTY'S ZONING AND DEVELOPMENT RIGHTS MAY BE AFFECTED." 5(p)

Sincerely,
Jack Gibson
Chairman

6 JAN FUCHS, CARMEL VALLEY COMMUNITY PLANNING BOARD, 10/5/96

R

6(a) After discussions with the wildlife agencies, the City of San Diego, the CEQA lead agency, extended the deadline for comments on the Recirculated Draft EIR/EIS from October 15 to October 29, 1996, a period of two additional weeks from the original deadline. The USFWS, the NEPA lead agency, issued a notice in the *Federal Register* on Friday, October 18, 1996, stating that the public review period was reopened until Tuesday, October 29, 1996. Please refer to **Theme Response VIII, Public Involvement.**

6(b) One set of MSCP Plans, the Draft EIR/EIS, and the City's Draft Permit Application/ Implementing Agreement document was sent by the City of San Diego to each community planning board within the City's jurisdictions where implementation of the MSCP Plan could impact land use. The documents are comprehensive, containing many pages of text, tables, and multi-color maps to facilitate the public's understanding of the program and of the proposed preserve system. The cost of reproduction precluded issuance of multiple copies without charge. To ensure that the public has adequate access to these documents, they were placed in 51 public libraries serving communities throughout the MSCP study area.

6

CARMEL VALLEY COMMUNITY PLANNING BOARD
12760 High Bluff Drive, Suite 160
San Diego, CA 92130
PH: 794-2500/FAX: 259-6173

October 5, 1996

John Kovac, Senior Planner
Development and Environmental
Planning Division
City of San Diego
1222 First Ave., 5th Floor
San Diego, CA 92101
(619) 236-6460

SUBJECT: **RECIRCULATED DRAFT JOINT EIR/EIS:**
MULTIPLE SPECIES CONSERVATION PROGRAM (MSCP)
LDR No. 93-0287 SCH No. 93121073

Dear Mr. Kovac:

The Carmel Valley Community Planning Board requests an extension on the deadline for comments on the joint EIR/EIS for the following reasons:

(1) Although distribution began in August, we did not receive our set of documents;

(2) Told that all planning groups had been mailed their one set of documents, we still had not received ours by mid-September and we asked for planning department help in procuring them;

(3) The planners were informed our documents had been mailed;

(4) When, by September 20, we still had not received our documents, we finally were able to obtain them September 21 by driving out to a distant community where a City employee had a set;

(5) Our monthly subcommittee meeting had been set for September 23. This did not allow enough time for even a reasonable discussion of the basic issues at our meeting; therefore, we had to table any discussion;

(6) Our monthly board meeting is October 8. At this time we will be voting on whether or not the regional issues subcommittee can be authorized to draft comments on the environmental documents. This subcommittee will be meeting the end of October. Therefore, the earliest we will be able to take action on the joint EIR/EIS is the end of October.

6(a)

6

We, therefore, request that the comments period be extended to November 1, 1996. 6(a)

We also would like to comment on the difficulty for community planning boards caused by the limit of one set of documents. We are not unusual in that we have 14 members, who represent a broad range of interests in the community. The EIR/EIS for the MSCP is detailed, lengthy, and important to land use throughout San Diego. Even one extra set of documents would help facilitate access to this information so that planning boards could be a full part of this important process. 6(b)

Volunteer planning boards should not be expected to purchase for $135 an extra set of documents. We have no funding and our members volunteer countless hours to their community and the City.

We appreciate your consideration of our request. Please inform us of your decision by phone or fax to: Chair, Jan Fuchs (PH: 755-5070; FAX: 755-6050), or Vice-Chair, Joan Tukey (PH: 792-8337; FAX: 792-1131).

Jan Fuchs
Chair, Jan Fuchs

Joan D. Tukey
Vice-Chair, Joan Tukey

7 LIZ JACKSON, PACIFIC BAY HOMES, 10/10/96

R

7(a) It is correct that the intent of boundaries proposed in the Chula Vista Subarea Plan is to reflect the development boundaries approved for development within the City's planning area.

7(b) The data submitted as an attachment to your letter were compared to data contained in the City of San Diego's Geographic Information System. There is an inconsistency between the approved development plans for Salt Creek Ranch and the proposed preserve boundaries reflected in the Draft Subarea Plan. The City of Chula Vista Subarea Plan preserve boundaries will be modified to reflect the approved development plan boundaries prior to final adoption of the Subarea Plan by its City Council.

7(c) Please see responses to Comments 7(a) and 7(b), above.

7(d) Comment noted. Pacific Bay Homes will be notified when the City of Chula Vista's Subarea Plan has been modified, as discussed in responses to Comments 7(a) and 7(b), and submitted to the wildlife agencies for take authorization approval.

7

pacific bay
HOMES

October 10, 1996

City of San Diego
Development Services Department
1222 First Avenue, Fifth Floor
M.S. 501
San Diego, CA 92101

Attn: Mr. John Kovac, Senior Planner

Subj: MSCP Plan and Recirculated Joint Draft EIR/EIS (SCH No. 93121073)

Dear Mr. Kovac:

Please accept the following comments regarding the MSCP Plan and the Recirculated Draft Joint EIR/EIS. We offer these comments as owners and developers of the Salt Creek Ranch project, located within the City of Chula Vista Subarea Plan area.

We have had the opportunity to review both the MSCP Plan and the Chula Vista Subarea Plan and believe that there are some errors in the way the MSCP Preserve is depicted on our property in both the MSCP Plan and the Subarea Plan. It is our understanding that the MSCP Preserve as shown in the Chula Vista Subarea Plan is to be consistent with the development envelope and open space boundary of the Salt Creek Ranch General Development Plan (GDP) Sectional Planning Area and Tentative Map, all of which are approved entitlements. 7(a)

A comparison of the approved development envelope for Salt Creek Ranch with the MSCP Preserve, as shown in the Chula Vista Subarea Plan, is presented on the attached graphic. As shown, there are some differences between the MSCP Preserve as represented in the Subarea Plan and the approved Salt Creek Ranch plan. The MSCP Preserve area in the northwest corner of the Salt Creek Ranch project would essentially match the approved development plan. In the eastern portion of the project, however, some fairly substantial differences are apparent. As shown on the attached graphic, the MSCP Preserve shows a large block of habitat at the northeastern border of the Salt Creek Ranch property with north/south linkages extending southward to the southern border of the property. While this preserve configuration generally matches the overall open space configuration in the eastern portion of the Salt Creek Ranch project, there are areas where the MSCP Preserve extends into areas designated for development, and open space areas that are not identified as MSCP Preserve. In addition, it should be noted that east/west roadways traverse the north/south linkages in several areas including H Street 7(b)

2300 Boswell Road, Suite 209, Chula Vista, CA 91914
(619) 656-4300 · Fax (619) 656-4306

along the southern property boundary, and project residential connectors to the north. The attached graphic indicates the anticipated limits of grading for these east/west roadways. It is our understanding that roads will be permitted within the MSCP Preserve, subject to certain design controls, however, their locations should be shown in the Chula Vista Subarea Plan. **7(b)**

With this letter, we respectfully request that the MSCP Plan and the Chula Vista Subarea Plan be modified to reflect the accurate preserve boundary for the Salt Creek Ranch property. We believe that the open space configuration represented by the approved Salt Creek Ranch plan is more substantial than that represented in the MSCP Plan and the Chula Vista Subarea Plan. We would have no objection to incorporating all of the natural open space in the eastern portion of the approved Salt Creek Ranch project into the MSCP Preserve. **7(c)**

We would appreciate receiving notification of the resolution of this matter at your earliest convenience. With the requested changes to the MSCP Preserve boundary on the Salt Creek Ranch property, we would be in support of the MSCP Plan. **7(d)**

Thank you for the opportunity to comment on this matter.

Sincerely,
Pacific Bay Homes

Liz Jackson

Liz Jackson
Division Manager

cc: Duane Bazzel, City of Chula Vista

8 I. KAY & J. PEUGH, MARSH SUBCOMMITTEE, SAN DIEGO WETLAND ADVISORY BOARD, 10/14/96

R

8(a) The MSCP is designed to mitigate the impacts of the proposed issuance of take authorizations in accordance with requirements of Section 10(a)(1)(B) of the federal Endangered Species Act and management authorizations under the California Endangered Species Act and the Natural Communities Conservation Planning Act. Section 10 of the federal ESA requires that the U.S. Fish and Wildlife Service (Service) make a series of findings, including that the taking would not appreciably reduce the likelihood of the survival and recovery of those species in the wild. The Service will use the best scientific and commercial data available in making those findings during preparation of a biological opinion on the proposed permit issuance. The Service is not required to find that the proposed mitigation would provide for recovery and ultimate delisting of the species, but rather that the impacts of the proposed action would not preclude recovery. Refer also to **Theme Response XVIII, Recovery of Species.**

8(b) Least terns and elegant terns use offshore rocks, cliffs, islands, dikes, jetties, mudflats and shorelines to roost and forage primarily in coastal ocean and lagoon waters. Most of these areas are in public ownership or are tidelands and will not be further regulated because of the MSCP. Military lands and waters under Port Authority jurisdiction are not included as part of the MSCP.

8(c) Please refer to **Theme Response XXV, Wetlands Protection.**

8(d) Tables 3-1 and 3-3 of the MSCP Plan, Volume I, do not contain specific vernal pool habitat data because vernal pools exist within a matrix of other vegetation communities such as grassland, coastal sage scrub, and chamise chaparral. The MSCP study area was mapped using 1:24,000 scale aerial photos. Vernal pools, as a recognized vegetation community, were not discernable at the scale at which the entire MSCP study area was mapped and so were included as a separate overlay. The consultant mapped vernal pool habitat complexes based on the California Department of Fish and Game report "San Diego Vernal Pools Recent and Projected Loss: Their Condition; and Threats to Their Existence 1979-1990" (Bauder 1986). This information was supplemented with more recent vernal pool mapping efforts which occurred in selected areas on Marine Corps Air Station Miramar, Otay Ranch, and within proposed alignments for State Route 125 South. Based on this updated information 3,254 acres of vernal pool habitat are believed to exist within the MSCP study area. Of this, 2,071 acres (or 64 percent) occur on miliary lands. Habitat conservation data for vernal pools are shown in Table 3-5 (see footnote 3c on Table 3-3).

8(e) See **Theme Response XVII, Salt Works.**

8(f) See response to Comment 80(r).

8(g) Please refer to response to Comment 61(h).

8(h) The Concept Plan for the Otay Valley Regional Park proposes active recreation facilities within specific areas of the river valley. None of these areas contain existing riparian habitat, nor are these upland areas proposed to be revegetated with riparian habitat. Design guidelines would be developed for implementation of planned park facilities as part of future park master planning that would assure appropriate uses adjacent to preserve lands, consistent with Subarea Plans for the Cities of San Diego and Chula Vista, and the County of San Diego. These potential land uses have been considered as adjacent uses in each of the Subarea Plans covering the Otay River Valley.

8(i) The term "significantly conserved vegetation community" does not pertain to the coverage of species through the MSCP, but rather the future cost sharing by the participating agencies to assure coverage of species not presently covered by the MSCP in the event of future listing under federal or state Endangered Species Acts. See **Theme Response XXII, Sufficiently/Significantly Conserved Vegetation Communities.** Open water is defined in the MSCP Resources Document, Volume I, as reservoirs, lakes, ponds, large sloughs, and channels, rivers, or streambeds that contain water throughout the year. This definition does not include shallow bay habitat or the Pacific Ocean. Open water habitat in reservoirs would be managed consistent with present potable water supply management practices and with applicable area-specific management directives. Present management has maintained high habitat values for a variety of species using open water and the associated natural watershed lands surrounding reservoirs.

Approximately 5,726 acres of open water exist in the MHPA, 3,822 acres of which occur within the City of San Diego (Table 3-1). This represents the majority of open water habitat (67%) within the MSCP study area. Most of the other participating local jurisdictions include open water within their boundaries and to varying degrees within the MHPA. Total area of open water that would be conserved is 5,220 acres (91%) (quantified on Table 3-3) and is quantified by jurisdiction on Table 3-1. The conserved areas are depicted on the Subarea Plan maps (Volume II) with cross hatching for lake/lagoon over the riparian/wetlands general category.

Water district habitat and estimated levels of conservation are also shown in the MSCP Plan (Figure 3-3). The Otay Water District is the only water district to include their Subarea Plan within the Draft Joint MSCP EIR/EIS for analysis. The wildlife agencies are presently working with four other water districts (Sweetwater Authority, Padre Dam Municipal Water District, Santa Fe Irrigation District and Helix Water District) on their subarea plans. Projected levels of habitat conservation have been allowed to be shown and discussed on the MSCP Plan, Volume I. These subarea plans would be subject to additional NEPA/CEQA public review. They would fully discuss habitat management and its relation to watershed protection and reservoir/open water management.

Open water is not a habitat that would be managed by the Federal government. Conservation and management of open water habitat values for wildlife are included within the individual subarea plans and implementing agreements. There is no required/expected percent conservation. Each

subarea plan is analyzed on its own merits and according to the criteria set under Section 10 of the federal Endangered Species Act.

8(j) Section 9.8 of the City of San Diego draft Implementing Agreement has been re-drafted to simplify the expression of the concept addressed (see Revisions to the MSCP Plan and IA, January 1997). The specific language identified in this comment has been eliminated. The conceptual sequence of avoidance of impacts, minimization of unavoidable impacts and mitigation for unavoidable impacts remains intact in state and federal wetland regulations and is incorporated in the City of San Diego Subarea Plan.

8(k) Mitigation ratios proposed to implement the MSCP Plan relate to compensation for impacts to covered species and their habitat are not intended to address other wetland functions. Mitigation strategies to compensate for potential losses of other wetland functions is subject to other regulatory processes.

Under the City of San Diego's proposed implementing ordinance (Environmentally Sensitive Lands Ordinance [ESL]), avoidance of wetland impacts is required both outside and inside the MHPA. Unavoidable impacts due to essential public service projects or to provide reasonable use are considered to be the rare exception when impacts would occur. The proposed mitigation ratios for wetland impacts are based on existing City of San Diego ratios that appear in the Resource Protection Ordinance (RPO) Administrative Guidelines. No-net-loss of function and value is required for all wetland habitats. Monitoring to determine success, and contingency plans and financing in case of failure (eg., bonds) are required for all wetland mitigation projects. The proposed mitigation ratios, when combined with the no-net-loss provision, monitoring and contingency planning would adequately compensate for the loss of wetlands associated with unavoidable impacts.

8(l) Section I.B.3 (p.17) describes the general purpose of the Management Element of all Mitigation Plans. Specifics, such as the need to manage upstream resources, would need to be addressed at the project-level in the Management Element. The City of San Diego's MSCP Subarea Plan is a city-wide management of resources within the MHPA (see section 1.5 Preserve Management, page 53). City-wide management is expected to provide a Subarea Plan level of management to help promulgate the continuing viability of covered species and their habitat. See also **Theme Response XIV, Biological Monitoring.**

8(m) The environmental (CEQA) document for future proposed projects would provide information to the public, the wildlife agencies and the decision-makers on the compliance of a project with the MSCP Subarea Plan. Deviations from the Subarea Plan would be discussed and Findings and a Statement of Overriding Considerations would need to be developed for any significant, unmitigated impacts. These documents would allow the public and the wildlife agencies to provide comments to the City's decision-makers.

8(n) The General Plan language reflects the City of San Diego's goals regarding the protection of natural and functional values of floodplains. The goals are also indicated in the Council Policy on floodplains and in RPO, as well as the proposed ESL.

8(o) The language distinguishing between urban and non-urban floodplains has been part of the General Plan for almost a decade. This was a general goal voted on by the City Council in the mid-1980's, and though there has never been complete consensus on actually coming forward with plans or ordinances implementing the goal, except in Mission Valley, the language remains.

8(p) Any proposal to transplant vernal pool species into existing vernal pools with populations of the same or different species would be carefully considered. Use of this type of mitigation would be in conjunction with standard vernal pool habitat mitigation requiring preservation of vernal pools, and restoration/enhancement of existing disturbed vernal pools. Avoidance, minimization and mitigation would be required consistent with the federal no net loss wetland policy, the Clean Water Act 404(b)(1) guidelines, and local and state regulations and guidelines. Seed collection and transplantation of vernal pool species would only be utilized where it is determined that the species of concern would benefit by salvage of individuals or genetic material, and that the use of the receiving pools would not damage the vernal pools or other sensitive species within the pools.

8(q) City staff has no records of sightings of *Cordylanthus maritimus* ssp. *maritimus* within the City of San Diego. Records indicate that the sightings in the Tijuana River Valley and Estuary are within the City of Imperial Beach. The species would be added if there are records indicating it exists within the City of San Diego.

8(r) Wetland buffers are regulated by the City's resource regulations. Buffers are to be 100 feet, on a case-by-case basis citywide, per our current and proposed regulations (RPO and the ESL), unless biological information substantiates that a larger buffer is needed or a smaller buffer would adequately protect the wetlands.

8(s) The referenced Preserve Guideline #B15 is located on *Figure 4, Page 19*. The note is regarding restoration of areas along the San Diego River corridor which is graphically depicted on the Urban Area map.

8(t) Comment noted. With consideration of the existing I-5, new SR-56, roads, railroad, and surrounding urban development, the retention of the existing Sorrento Valley Road in-situ as a bicycle route would significantly ameliorate the "gauntlet of obstruction to wildlife movement and wetland functions" is doubtful. The proposed road improvement to upgrade Sorrento Valley Road is currently undergoing State Coastal Commission permit review.

8(u) The MSCP preserve areas within the San Pasqual Valley area were designated as open space with the update of the Plan in 1995. Areas along Santa Ysabel Creek, which were constrained

by the terms of existing leases, are recommended for modifications as leases come up for renewal. Please refer to preserve guideline #'s D11 and D14.

8(v) The Preserve Management Plan (page 97) states as Priority 1,#3 the need to implement flood control related measures (such as the low flow channel) consistent with the goals, policies and proposals of the community plan.

The existing low flow pilot channel is subject to maintenance in accordance with an existing 1603 Agreement. The specifications require that the work be performed during the non-breeding season, and protect endangered species. The San Pasqual Valley Plan further recommends that any additional flood control be environmentally and economically sound.

The Subarea Plan also includes guidelines to reduce or eliminate adverse water quality impacts associated with agricultural uses. Please refer to Section 1.4.3 Land Use Adjacency Guidelines- Toxics. These measures would be incorporated into leases as they come up for renewal.

8(w) The Water Utilities Department manages the watershed of the San Pasqual Valley, including the agriculture in the valley, for water quality. They are currently undertaking a water quality study that would determine the effects of land uses and develop management recommendations to maintain or improve water quality in the valley. In addition, the San Pasqual Valley Plan lists as a specific proposal that all leases be amended when renewed to include Best Management Practices.

8(x) In the long term, the City of San Diego Subarea Plan envisions mining activities occurring outside of land conserved as part of the preserve. However, areas that are currently permitted and occur within the MHPA (most likely in a river valley) are expected to continue. In addition, new activities could be permitted if they satisfy the conditions described in revised Section 6.2.4 of the MSCP Plan and those on page 49 of the City of San Diego Subarea Plan. Additional information regarding mineral extraction is included in the Revisions to the MSCP Plan, Volume I. Restoration of the mined areas upon cessation of the permitted use would provide habitat value. Please also refer to response to Comment 9(f).

The City of San Diego Subarea Plan recognizes that artificial ponds are not native, but, in some instances, can provide wildlife value where they provide habitat and do not interfere with other natural processes. In the event that an artificial pond included in the preserve was found to be negatively affecting wildlife, management measures could be taken to address the impact (see City of San Diego Subarea Plan Section 1.5.2, General Management Recommendations - Invasives Exotics Control and Removal).

8(y) The reference to "other elements that might degrade or harm the natural environment or ecosystem processes" would cover freshwater and sediments.

8(z) Please refer to **Theme Response XXV, Wetlands Protection.**

8(aa) Please refer to **Theme Response XXV, Wetlands Protection.**

8(ab) The Black Mountain project has already been approved, and contains provisions for Best Management Practices in the golf course design, and for native buffer and barrier plantings along the riparian area to discourage public access while providing buffering. The language in the City of San Diego's Preserve Management Plan largely reflects agreements that were reached during the development planning and approval period.

8(ac) The western spadefoot toad (*Scaphiopus hammondii*) was not included on the list of target species originally identified for consideration under the MSCP and hence was not analyzed for coverage under the MSCP Plan and the City of San Diego Subarea Plan. Section 3.4 of the MSCP Plan (page 3-25) describes the process for adding species to the Covered Species List, which includes a determination of additional conservation measures by the wildlife agencies that would be required to adequately cover the species. For the western spadefoot toad, this process likely would include a comprehensive review of the species' population distribution and status, an evaluation of existing protection within and outside the preserve, and identification of additional conservation measures necessary to result in coverage under the MSCP Plan.

8(ad) See response to Comment 45(f) regarding the conservation provided by the MSCP Plan for the southwestern arroyo toad. The wildlife agencies do not concur that all potential breeding, foraging, and other necessary habitat areas must be protected to consider this species adequately covered. However, given the inclusion of 70 percent of wetlands and riparian habitat within the MHPA and management within a 1 km area of uplands habitat adjacent to occupied breeding habitat, and the provisions of a no net loss of wetlands values and functions outside the MHPA, the wildlife agencies believe that the intent of the commenter's statement would be met.

8(ae) The relationship between hydrology/water quality and wetlands management is acknowledged in the Draft EIR/EIS. As noted on pages 2-13 through 2-15 of the Draft EIR/EIS, analyses were completed of the degree to which the proposed MHPA preserve would capture watersheds within the MSCP study area. The analysis concluded that approximately 53% of the total habitat acres of watersheds within the MSCP study area would be included within the proposed MHPA preserve.

The comment regarding the extent of impermeable surfaces associated with more intense development, as might occur under the MSCP Plan, is noted. It should also be noted, however, that compact development such as might be encouraged under the proposed MSCP Plan and the Land Use Distribution Element (LUDE) adopted by SANDAG (see page 5-2 of the Draft EIR/EIS), would result in a more compact form of development which would conceivably use less land and result in a reduced extent of impervious surfaces. Quantifying the degree to which either scenario might result in a greater or less extent of impervious surfaces is speculative based on future development patterns which cannot be definitively known at this time, and is beyond the scope of the EIR/EIS. In any case, hydrology/water quality impacts would continue to be evaluated on a project by project basis by the local jurisdictions and appropriate Best Management Practices would continue to be incorporated in individual project plans.

In regards to the desire to see a cost analysis of increased protective measures which may become necessary, the wildlife agencies believe such an analysis is not necessary or very useful for the following reasons. Effects to water courses and water quality are subject to compliance with the Clean Water Act and the mitigation requirements of other federal, state, and local agencies. In addition, since it is unknown what the development patterns would ultimately be, it would be highly speculative to predict what future projects would be proposed, to predict what mitigation requirements would be implemented, and to estimate what these cost would be for either the No Action alternative or any of the plan scenarios.

8(af) The wildlife agencies share the commenter's concern regarding the need to minimize the potential impact of genetic isolation of wetland species. It is acknowledged that habitat fragmentation has occurred to date, particularly of coastal wetlands. Concern for impacts resulting from habitat fragmentation and lack of a comprehensive plan for habitat conservation was a major reason why MSCP and NCCP planning was needed. One of the primary goals of the MSCP is to develop a comprehensive habitat conservation plan that addresses multiple species habitat needs and the preservation of native vegetation communities and the associated species. This is to be accomplished through the conservation of a connected system of biologically viable habitat lands. Thirteen linkages have been identified to ensure connectivity between identified core resource areas within the MSCP study area (See Table 2-2 in MSCP Plan, Volume I). Eleven linkages are identified that connect biological core areas to areas outside the MSCP boundary. The implementation of the MHPA could ensure that existing identified corridors/linkages would be maintained to allow for genetic movement of wetland and upland species. See response to Comment 45(f).

8(ag) No features of the proposed MSCP Plan would affect wildlife agencies' funding or personnel to evaluate new species listings within the MSCP study area. As described on page 4.3-46 of the Draft EIR/EIS and in Section 2.1.2, funding sources for conservation of species that may be listed in the future would differ depending upon the location of the particular species within a sufficiently or significantly conserved habitat type. Local jurisdictions would not play a role in expediting the listing of future species since this is the responsibility of the wildlife agencies. It is understood that species such as spadefoot toad require several contiguous landscape elements for their life cycle; similar considerations were involved in the recommendations regarding inclusion of arroyo southwestern toad on the covered species list with respect to preservation of upland habitat 1 km from this species wetland breeding habitat.

8(ah) The Biologically Preferred alternative (BP) of the MSCP was proposed and evaluated in the previous MSCP Draft EIR/EIS released for public review in May 1995. This alternative assumed that habitat lands owned by the military would be conserved because the military is a public entity. However, although the military is working on habitat conservation plans for its holdings, it has requested that the MSCP not include its lands within the MSCP preserve system or in the analyses for habitat and species conservation. Because of this, a comparison of the acreage figures in Table 4.3-4 (MHPA) with those in Table 4.3-6 (BP) must be done with caution recognizing this difference.

The MHPA preserve design has evolved over the past year from the alternatives proposed in the previous Draft EIR/EIS. As a consequence of negotiations with individual jurisdictions and private landowners during the development of subarea plans, additional acreage of certain habitat types have been incorporated into the MSCP preserve system, over and above anticipated preservation levels of the BP. This was especially true for a number of wetland habitats and oak woodlands. In addition, the development of new mitigation ordinances for the proposed subarea plans increased estimates of preservation for some of these habitat types within the non-hard line preserve areas. While for other habitat types the BP may still exceed the MHPA in level of preservation. However, if habitat conservation on military lands is added into the preserve acreage estimates for the MHPA, as it is for the BP, then the MHPA may exceed the BP level of preservation for many vegetation communities.

8(ai) San Diego horned lizards are found in a variety of habitat including coastal sage, annual grassland, chaparral, oak woodland, riparian woodland, and coniferous forest. The key elements of suitable habitat are believed to be loose, fine soils with a high sand fraction, open areas with limited overstory for basking, low, but relatively dense shrubs for refuge, and occurrence of native ants (Jennings 1994). Historically, the San Diego horned lizard was most abundant in riparian and coastal sage habitats on the old alluvial fans of the southern California coastal plain (*Grinnell and Grinnell 1907, Byant 1911, Van Denburgh 1922a, and Jennings 1994*) Thus, some types of riparian scrub, natural flood channels, and disturbed wetland provide suitable habitat for this species.

8(aj) Comment noted. The wildlife agencies and applicants share these aspirations and goals for the MSCP.

DRAFT DRAFT 8

October 2, 1996

City Manager
City of San Diego
202 "C" Street
San Diego, CA 92101

SUBJECT: COMMENTS ON THE MULTIPLE SPECIES CONSERVATION PLAN (MSCP)

The Marsh Committee of the City of San Diego Wetlands Advisory Board is pleased to comment on the MSCP and associated documents. We strongly commend the concept of protecting at risk species by protecting their habitat in segments that are large enough to be viable and by providing adequate wildlife corridors between the segments. We also commend the principle of protecting the function and value of all wetlands whether in or out of the preserve areas. We wish to submit the following specific comments on the various documents. The comments will be grouped by document title below.

Document: MULTIPLE SPECIES CONSERVATION PLAN, VOLUME 1 (August 1996)

Consistency with Species Recovery Plannings

The objective of the Endangered Species Act is to provide for the recovery and eventual de-listing of endangered species. It is not clear that the MSCP is designed to support this worthy objective. We urge that the MSCP documents be augmented to demonstrate that the conserved areas will be adequate to support populations large enough to satisfy species recovery plans and large enough to facilitate the de-listing of each of the covered species. Table 3-5, **Species Evaluation for Coverage Under the MSCP**, identifies the level of risk to each of the species. This table also should include a statement of the likelihood of eventual recovery and de-listing of each of the covered species under MSCP as a measure of whether the species is adequately protected. 8(a)

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Foraging Area for Least Terns, Elegant Terns, Skimmers, and Brown Pelicans

The MSCP lists California Least terns and Elegant terns as covered species. Many of the region's Least Tern nesting areas in Mission Bay and San Diego Bay are marked as being 100% protected. The salt works, where the Elegant terns nest are shown to be 70 to 75% conserved. Table 3-5 states that 100% of the populations are conserved. However on the map showing Conserved Habitat, Figure 3-2, no foraging area in San Diego Bay or Mission Bay is colored as being protected. The populations of these species will not be preserved by just the conservation of nesting areas. Foraging areas supporting the nesting areas must also be protected and managed, to some extent, to assure the conservation of these Terns. Similarly, California brown pelicans are listed as a covered species, but their major foraging areas, San Diego Bay and the ocean, are not covered under MSCP. How will these foraging habitats be protected under the MSCP? 8(b)

The MSCP will allow expedited development outside of the preserve area. Adequate foraging area must be defined and conserved to support the populations anticipated by the recovery plans for all three species. It should be noted that Table 3-3 indicates that 0% of deep bay habitat and only 4% of shallow bay habitat is conserved. These habitats are essential for production of the fish that these covered species depend on as well as for foraging range for the covered birds. A very large portion of the bay foraging area of these covered species is managed by the Port of San Diego, which is not a participant in the MSCP. As such, it is doubtful that these species should be included in the covered species list without the participation of the Port District in the MSCP.

Internal Sufficiency of the MSCP

In several instances (including paragraph 3.2.1 Wetlands) it is assumed that Federal and State wetland protection regulations are adequate to protect habitats required by several of the listed species. These regulations can change. If these regulations are significantly weakened, the species depending on them will be at increased risk. To maintain the level of species conservation stated in the MSCP, it is necessary that the current versions of these wetland protections be specifically adopted and enforced by the MSCP jurisdictions if State and Federal regulations are weakened. This protection should be part of the Implementation Agreements. 8(c)

Vernal Pools

Several vernal pools species are included in the covered species list, but the data for vernal pools are not included in Tables 3-1 or 3-3 that describe the acres of all of the other covered habitat types. We urge that these tables be modified to specifically include habitat conservation data on vernal pools. Vernal pool habitat has experienced 8(d)

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one of the highest levels of loss in our region. There is a general opinion that adequate amounts of vernal pools have not been conserved in the MSCP to protect the viability of the species that they support. 8(d)

Saltpan Habitat

Saltpan is listed as a sufficiently covered habitat in Section 3.4 but data for saltpan is not included in Tables 3-1 or 3-3. There is very little of the region's historical saltpan remaining in the planning area due to previous development. It is very hard to imagine that the viability of all species that depend on saltpan habitat can be considered to be sufficiently preserved with such a small portion remaining.

Table 3-3 lists saltpan habitat as being 90% conserved. From Figure 3-2 it appears that a significant portion of the conserved saltpan is in the Western Salt salt works in South San Diego Bay. If that is the saltpan mentioned, there are several concerns. It is understood that the salt works have immense wildlife support value for many insect invertebrate and bird species. However, the habitat contained in the salt works is not primarily traditional saltpan habitat. Particularly they differ from natural saltpan habitat in terms of the type of use made by nesting birds, the type of foraging that they support, and the way that they should be managed. Managed salt works should be identified as a separate and unique habitat type in the presentation of covered habitat, the need for predator management, maintenance and rehabilitation of dikes, and in management agreements in general. Figure 3-3 identifies the salt works as being 75% conserved. Does that mean that the 90% is conserved at a 75% rate? If so, that would suggest that 68% is actually conserved. 8(e)

Chula Vista

The Chula Vista Wildlife Preserve and other coastal and subtidal portions of Chula Vista are shown on Figure 3-2 as being 100% conserved. The Chula Vista Wildlife Preserve saltmarsh area is eroding away and remedial action is needed. But, we are not aware of any plans to remediate this loss of habitat. This property is under the jurisdiction of the Port of San Diego, which is not a participant in the MSCP. The conservation of this area can not be assured by the MSCP as there will be not Implementation Agreement with the Port. 8(f)

Imperial Beach

Figure 3-2 shows the western and part of the northern portion of the Tijuana Estuary as being 100% conserved. Some of this areas is multi-family residential along Seacoast Drive. Figure 3-2 shows that this area is within the jurisdiction of the City of Imperial Beach. Imperial Beach is not a participant in the MSCP. Much of the area in question is under the ownership of the U.S. Fish and Wildlife Service and the California Department of Fish and Game, but planning and land use jurisdiction rest with Imperial Beach, which has no agreement with the MSCP. Seventy three percent (73%) of the 8(g)

watershed of the Tijuana River Valley and Estuary is in Mexico. Sediments and water quality can not be managed. The International Wastewater Treatment Plant is considering protracted live stream discharge of partially treated effluent into the valley. It is very doubtful that 100 percent habitat conservation can be assured under these circumstances. 8(g)

Otay Valley

The Otay River Valley is an important habitat corridor and riparian habitat. It is shown as 70 to 75% conserved in Figure 3-2. The development plans for the Otay River Valley Regional Park include large numbers of playing fields in areas that would have been riparian habitat. If current park development plans are maintained, the corridor and habitat functions of this area will be considerably less than stated. 8(h)

Open Water

Paragraph 3.4.2 lists open water as being a community that is significantly covered. By what means is open water habitat to be managed? From Figure 3-1 it does not appear that any of the participating jurisdiction in MSCP contain any open water habitat. Is this a subarea that will be managed by the Federal Government? If so, is there a subarea plan and implementation agreement that will protect open water habitat and the species that depend on it? What open water habitat will be conserved? What percent conservation is required or expected? 8(i)

Document SAN DIEGO IMPLEMENTING AGREEMENT

Local Authority for Section 404 Permits

According to Section 9.8, **"Other Regulatory Permitting, A. Other Permits"**, the City of San Diego will "identify the least burdensome measures required or recommended, if any, to ensure consistency with the federal policy of no net loss of wetlands functions and values...." The language of this statement seems to suggest that the emphasis will be on minimally satisfying regulations over actually protecting wetlands. We urge that language be added something like: "....to ensure the adequate protection of wetland habitat and to ensure consistency with the federal policy of...." Later in the same paragraph is a statement that the agencies will coordinate "to further streamline the process for issuance of permits pursuant to Section 404 of the Clean Water Act for those projects that are in conformance with the MSCP, the Subarea Plan and this Agreement". This statement raises concern for the protection of our wetlands. The 404 process works to verify that a project avoids degrading wetlands, seeks to minimize unavoidable impacts as much as is practicable, and requires adequate mitigation for unavoidable impacts. This is an essential process. Any streamlining should completely satisfy that conceptual sequence.

The wetlands of our region serve many functions besides providing habitat for 8(j)

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recognized at-risk and endangered species. A few are: protection of people and property from storm and flood damage, improving both surface and ground water quality, improving ground water recharge, erosion control, habitat for game and common wildlife, nurseries for fish, and for recreation and scenic value. Our region has lost more than 90% of its wetlands. We are seriously impacted by the loss of each of these benefits. It is not appropriate that the MSCP should impact the effectiveness of the protection of our region's wetlands, since these other benefits of wetlands are not covered by the MSCP. It is not clear that the local government agencies have the technical personnel, resources, and institutional experience to replace the function of the regulatory agencies. If "streamlining" is implemented, a high level of oversight, interaction, and responsibility from regulatory agencies should be maintained. 8(j)

Document: DRAFT CITY OF SAN DIEGO BIOLOGICAL GUIDELINES

Mitigation for Wetland Impacts

In paragraph III.B.1.a., we commend the intent to require full mitigation of wetlands function and values for projects where impacts can not be avoided. However the mitigation ratios listed in Table 1 are inadequate to satisfy that intent. The creation of wetland habitat as a means of mitigation seldom replaces the full species diversity of a natural wetland. As such, the created wetland is less likely to survive environmental fluctuations and is very unlikely to replace the functions and values of natural wetland, even a degraded one. As a result, mitigation ratios involving created wetlands must be extremely high and monitoring and maintenance responsibility must be extended substantially. 8(k)

Management of Areas Impacting Wetlands

In paragraph I.B.3. (pg. 17), Management Element, there is no discussion of managing land upstream of wetlands to prevent loss of wetland function. If this issue is not addressed, there is little likelihood that conserved wetlands will be able to provide the wildlife support value needed for the MSCP to achieve its biological goals. Of special importance are preventing year-round drainage into riparian areas and wetlands that would normally not experience it. Additionally, highly erosive rain-flows from developed areas must be returned to more natural flow conditions. Also, runoff that is contaminated or carrying unnatural sediment loads must be cleaned before being directed into preserve areas. Management of the preserve system must extend to the watershed that impacts the preserve for biological goals to be met. 8(l)

Deviations

In Section IV (pg. 19), standards for Deviations are established. It is important that all applications for Deviations be reviewed by the relevant regulatory agencies before the application goes to the City Council for approval. The information resulting from the agency review should then be provided to the Council before they consider the issue. 8(m)

Document: DRAFT AMENDMENTS TO GENERAL PLAN AND COMMUNITY PLAN

Floodplain Protection

The discussion of Floodplain and Hillside regulations on page 306a lists the purposes and intents for regulating floodplain land use as protecting "the public health, safety, and general welfare". It continues that these regulations "also tend to conserve the environmentally sensitive qualities of floodplains". We urge that this be modified to include "protection of water quality and erosion management" in the list of purposes and intents. The benefits of protecting the natural infrastructure value of floodplains to the public must be considered a goal, not an incidental by-product. 8(n)

In discussing floodplain zoning on page 306a the following statement is made: "Such plans should distinguish between urban (e.g., Mission Valley) and non-urban systems (e.g., San Dieguito Valley)". For all of the purposes and intents quoted in the previous paragraph, this distinction should not be attempted. The health, safety, and general welfare of the public and the cost of expensive flood control facilities and public services, require that no additional urban development should occur in floodplains. The fact that some development has occurred in a particular floodplain does not appreciably reduce the liability to the public of floodplain development. In many ways, the existing development increases the liability. 8(o)

Document: MSCP VOLUME II: MSCP SUBAREA PLANS (AUGUST 1996)

Please note that the general principles expressed below in relation to specific areas in the City of San Diego Subarea should be applied where appropriate throughout the Subarea.

P. 7: Preserve Guidelines for Otay Mesa

Item A7 - The proposal to mitigate impacts to vernal pools by transplanting species, either plant or animal, into pre-existing pools with existing populations of the same or different species should be carefully considered. In general, it seems ill advised on the basis of genetic and synecological considerations to do so, and should be reviewed by persons qualified by virtue of having carried out and published scientific research in the field. 8(p)

P. 10: Preserve Guidelines for the Tijuana Valley

Cordylanthus maritimus should be on the list of sensitive species found in the Tijuana River Valley. 8(q) There are no details of the size and quality of buffers to protect wetlands in Tijuana Valley. 8(r)

P. 14: Preserve Guidelines for Eastern Area

Figure 3: B15 is not shown (area to be restored in the future.) 8(s)

P. 25: Preserve Guidelines for Carmel Valley

The co-occurrence of three freeways, the railroad, a new pump station, and an area of approved intensive development within or immediately adjacent to the Los Peñasquitos Lagoon have obviously had severe impacts on the functioning of the lagoon. To ameliorate the gauntlet of obstructions to wildlife movement and wetland functions and to reduce further impacts to the lagoon, it is recommended that serious consideration be given to abandoning Sorrento Valley Road as a vehicular thoroughfare, and converting it into a pedestrian/bicycle route. This approach would significantly reduce short-term impacts due to construction needed to upgrade Sorrento Valley Road, and would help reduce the long-term cumulative and edge effects on the lagoon. 8(t)

P. 30: Preserve Guidelines for Lake Hodges/San Pasqual Valley

Many concerns regarding the San Pasqual Valley may have been addressed in the San Pasqual Valley Plan. However, from the map included with this document (Figure 7), it is clear that some stretches of the Santa Ysabel Creek are afforded little to no protection for this most important riparian habitat and wildlife corridor. Since this is a planning document, it would seem wise to designate intended uses on City land, such as expanded riparian and transition zone buffer habitats, as part of the Preserve now. This has been done in many other places where disturbed habitat targeted for restoration is already included in the Preserve.

While the use of a low-flow pilot channel is not necessarily counter to biological needs of the Preserve in this area, it is certainly a project which must be executed carefully, and with a clearly limited purpose. Any pilot channel must be ecologically compatible with the Preserve; we suggest that any maintenance be conducted at times of year to avoid breeding birds and other sensitive resources, and that if maintenance is necessary, vegetation in the channel be selectively managed to provide habitat year-round (for example, Least Bells' Vireo's may respond favorably to habitat manipulated to provide the maximum number of relatively young willow saplings). Seasonal flooding is part of the cycle of a river valley, and maintains the soil's fertility; therefore, flooding needs to be accommodated as part of the natural and agricultural systems. By allowing fields to flood and the stream channel to meander, erosive forces can be kept to a minimum, and the groundwater can be recharged at a maximal rate. (The section on Flood Control, page 50, so obviously pertinent.) However, natural and desirable flooding of the valley may be harmful to the ecosystem if agricultural lands harbor pollutants which then drain into the riparian system. Measures should be taken immediately to eliminate toxic chemical and nutrient inputs to San Pasqual Valley agricultural areas, and to eliminate existing pollutant loads on the land, and to manage 8(u) 8(v) 8(w)

runoff, with the ultimate goal of eliminating all negative effects upon surface and groundwater quality in the Preserve. 8(w)

P. 49-50: Land Use Considerations/General Planning Policies/Mining

(Item 1) Sand mining would appear to be incompatible with Preserve function and form in all cases, and therefore acreage devoted to this use should not be counted as Preserve unless and until the use has ceased and restoration is feasible. 8(x)

(Item 4) Man made ponds resulting from mining activities can be detrimental to the riparian ecosystem by allowing breeding of exotic species and excluding native species from potential breeding, foraging, and sheltering habitat.

P. 51: Land Use Adjacency Guidelines/Drainage

(Item 1) The list of materials that should not be released into the Preserve is comprehensive, but does not explicitly mention freshwater or sediment. Freshwater input at inappropriate times and in increased volumes may be highly detrimental to various ecosystems which do not naturally experience it, such as small or intermittent flowing riparian systems and salt- or brackish marshes, and should therefore be prevented. Increased rates of sedimentation and scouring result when watersheds become less permeable due to development, and have rapid and detrimental impacts on many types of downstream systems, including mature oak riparian forests and tidal saltmarshes. 8(y)

Detention basins not only adjacent to, but also within the watershed of, the Preserve should therefore: 1) contain all dry weather flows and allow it to percolate into the watertable, and 2) retain storm water runoff that exceeds the volume that would naturally flow off fully permeable land before development. Without such regulation, upslope property owners will be able to pass responsibilities for their excess freshwater and other pollutants on to downslope property owners adjacent to the Preserve. 8(z)

P. 55: General Management Recommendations/Restoration

"Wetland restoration/revegetation proposals are subject to permit authorization by federal and state agencies." While these may be sufficient at the moment to achieve the species' protection and recovery goals of the MSCP, what recourse is there if these agencies' standards are altered such that restored habitat functional quality and/or quantity are diminished? We recommend that specific standards for wetland restoration and revegetation be incorporated into the MSCP. 8(aa)

P. 83: Specific Management Recommendations for the Northern Area/Black Mountain Ranch/NCFUA Subarea 1

If the La Jolla Valley along Lusardi Creek is to be a truly functional corridor and part of 8(ab)

the Preserve, there will need to be not only riparian vegetation of sufficient extent planted, but also transitional and buffer habitats which support and protect the riparian functions. This may not be achievable with only 400 feet of habitat, especially if there is an incentive for humans to enter the riparian area. In order to maximize the chance of establishing functional habitat, rather than just riparian vegetation, in this created riparian zone, the adjacent golf course should be required to prevent freshwater runoff, to use no chemicals in its greens management, and to use native plant materials in the majority of the course design. These measures should be applied wherever possible in similar situations. 8(ab)

P. 43: Covered Species List

The list does not include at least one wetland-associated species which is considered sensitive and threatened with declining populations by CDFG, and which should therefore be analyzed in the context of the MSCP: the Spadefoot Toad (*Scaphiopus hammondii*) requires ephemeral and shallow wetlands to breed, and subsequently aestivates in drier upland habitats. This species is found in vernal pools and their surrounding watersheds, many of which are targeted for destruction through planned development projects, including those on Carmel Mountain (Neighborhood 8A) and those on Otay Mesa (SR-125). Measures should be taken to analyze and protect sufficient critical habitat of this species to ensure that it is not threatened with eventual extinction due to the implementation of the MSCP. 8(ac)

The list includes species about which insufficient information is known about populations and required habitats to be able to state whether or not the species is adequately covered. This category includes the Southwestern Arroyo Toad (*Bufo microscaphus californicus*), the distribution and abundance of which is largely unknown to date. The only way that this species can be considered sufficiently covered is if all potential breeding, foraging, and other necessary habitat areas are protected from development and deterioration. 8(ad)

Document RECIRCULATED DRAFT JOINT EIR/EIS ISSUANCE OF TAKE AUTHORIZATIONS FOR THREATENED AND ENDANGERED SPECIES DUE TO URBAN GROWTH WITHIN THE MSCP PLANNING AREA (August 1996)

The EIR/EIS has not been reviewed in detail, but certain issues are noted below.

P. 1-18, Item 1.6.2 - Issues Not Selected for Detailed Analysis

It is unfortunate that hydrology and water quality were not selected for analysis, since they are the underpinning for wetland structure and function, and we suggest that this position be reconsidered. While we are certainly aware of some of the great benefits of the preservation of large contiguous pieces of land upslope from wetlands that the MSCP may impart, there are also likely going to be some significant impacts to 8(ae)

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watercourses and wetlands outside the Preserve. The assumption that because the same amount of development will occur overall in the MSCP study area that the net effect will be the same as without the program is unsupported and probably false, whereas concentrated development which has a high proportion of impermeable surface may lead to changes in hydrological functions in ways different from that of more scattered development. We would like to see such analysis so that the costs of any increased protective measures which may become necessary as development proceeds will be acknowledged up front. 8(ae)

P. 4.3-45 and P. 4.3-193 - Direct Impacts to Covered Species and Habitats

It appears from the analysis that significant direct impacts would occur for many species on the covered species list as a result of implementing the MHPA alternative, including at least 23 wetland-dependent species. It is not clear without specific population modeling and that the three measures listed on P. 4.3-193 will necessarily reduce the impacts on all these species to insignificant. Some measures which have been proposed will certainly help, including (1) the absolute protection of 100% of the remaining vernal pools and their watersheds within the MSCP study area; and (2) protection for intermittent streams both outside and inside the MHPA, including the prevention of dry season freshwater influx, and the maintenance of other hydrological features which support their unique ecology. 8(af)

Concerns remain, however, on a number of points, including: (1) the genetic isolation of covered wetland species whose populations will become further separated by implementing the MHPA, and (2) the lack of adequate protection of all the landscape elements required by some covered wetland-related species. An example of a species in the latter category is the Southwestern Arroyo Toad, for which all populations are not yet known, and which all populations are not yet known, and which are thought to require extensive upland habitat adjacent to riparian corridors.

P. 4.3-46 - Direct Impacts to Uncovered Sensitive Species

While uncovered sensitive species which experience a decline in the future will presumably be afforded the kind of protection which the ESA currently lends species whose existence becomes jeopardized, there is a possibility that resources and perhaps even regulations may not be in place at the federal (or state) levels in the future to process a listing. If the implementation of the MSCP will reduce funding and/or personnel available to analyze new candidate species in this area, then such species might be significantly impacted. The local jurisdictions may therefore need to put in place mechanisms to expedite the listing of future species and their addition to the covered species list, as appropriate. One such species might be the Spadefoot Toad, which requires several contiguous landscape elements (wetlands and uplands) for its life cycle. 8(ag)

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Tables 4.3-4 and -6 - Habitats Supporting Covered Species Within MSCP Covered Area Located Outside MHPA/BP Scenarios

It is not clear why any alternative deemed "Biologically Preferred" would protect fewer acres of habitat than the proposed MHPA, including the following wetland and wetland-related habitats: Riparian forest, oak riparian forest, riparian scrub, oak woodland, open water, and natural flood channel. Also, the San Diego horned lizard does not seem to be a representative species of disturbed wetlands, unless the disturbance is specifically fill. Natural flood channels support a number of proposed covered species, as foraging habitat, for example, but none are listed. 8(ah) 8(ai)

In conclusion, we wish to reiterate that we strongly support the efforts to date to develop the MSCP as an effective and comprehensive plan which will bring a unified approach to natural resource and sensitive species management in San Diego. We seek to ensure, along with many others, that this plan will advance the goals of preserving wetlands and other ecosystems in an ecologically functional landscape in perpetuity. Thank you for the opportunity to comment. 8(aj)

ISABELLE KAY
for the Marsh Subcommittee

JIM PEUGH
for the Marsh Subcommittee

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(Wab\mscpcmnt.ltr)

9 BRUCE WARREN, SAN DIEGO COUNTY ROCK PRODUCERS ASSOCIATION, 10/11/96 (EIR/EIS COMMENTS)

R **9(a)** According to the requirements of the Surface Mining and Reclamation Act (SMARA) and the State Mining and Geology Board, Mineral Resource Management Plans (MRMP) must be prepared by the following San Diego County area jurisdictions: County of San Diego and the Cities of Poway , San Diego, San Marcos, Santee, and Vista. Each of these jurisdictions contains classified or designated mineral resources. The County of San Diego, and the Cities of San Diego and Santee, which are proposed to implement the MSCP, have not yet prepared an MRMP.

The EIR/EIS criteria for assessing impacts of preserve implementation on mineral resources was based on the following: Conversion of vacant land designated as a Mineral Resource Zone 2 by the Special Report 153 of the California Division of Mines and Geology (DMG) that contains existing mining operations or is planned for mining operations to permanent open space associated with the preserve. This criterion for determining significance is listed at the beginning of Section 4.2, Land Use, of the Draft EIR/EIS. Further discussion of the mineral resource zones within the MSCP study area is contained in Section 3.2, Affected Environment. Information used as the basis for the analysis is based on Special Report 153 and issues raised by individual jurisdictions as a part of the draft subarea plans. Mineral Resource Zones established in Special Report 153 are based on the presence or absence of significant sand and gravel deposits and crushed rock source areas as defined by the State Mining and Geology Board. In addition, language contained within individual subarea plans is designed to address specific mining issues within that jurisdiction.

Lack of MRMPs for individual jurisdictions does not render the analysis in the EIR inadequate. Information from Special Report 153, as augmented by Open File Report 96-04 (see discussion of report in response to comment 9[b]) combined with information on planned and existing mining operations provided by the Subarea Plans, is regarded as the best available information for the EIR/EIS analysis. Lead Agencies within the county routinely use information from Special Report 153 for analysis of the effects of public and private projects on mineral resources. It is the position of the lead agencies that information provided as a part of Special Report 153 combined within information provided by jurisdictions on planned and exiting mining operations within respective 5ubarea Plans is adequate for the significance conclusions provided in the Draft EIR/EIS.

The City and Model IAs have been revised to add two new sections (Sections 9.22 and 9.23) which clarify the relationship of the MSCP to existing and future mining operations within the Plan area:

** 9.22 <u>Existing Mining Operations</u>. The MSCP Plan does not impose any new obligations on owners or operators of mining operations which are active as of the Effective Date. However, if the owner or operator of such an operation should desire to obtain the benefits of the Take Authorizations, that owner or operator may apply to [**LOCAL JURISDICTION**] for an amendment of

any conditional use permit which is in effect as of the Effective Date and, subject to imposition of any necessary mitigation and approval from the USFWS and CDFG, may obtain Third Party Beneficiary status and authorization for Take from [**LOCAL JURISDICTION**].

** 9.23 New or Expanded Mining Operations. Mining operations which are newly established or are expanded after the Effective Date shall be approved by [**LOCAL JURISDICTION**] consistent with Section 6.2.4 of the MSCP Plan and the Subarea Plan.

9(b) The updated information regarding DMG Open File Report 96-04 is included in the Final EIR/EIS.

9(c) The proposed County Biological Mitigation Ordinance (BMO) covers new Major Use Permits and amendments to existing Major Use Permits and does not apply to existing Major Use Permits. The County's Implementing Agreement will identify the process holders of existing Major Use Permit holders may avail themselves of if they desire to have the benefits of the County's take authorizations.

9(d) Please refer to responses to Comments 9(a) and 9(c).

9(e) The proposal does not preclude the extraction of mineral resources on private land. Mineral resource extraction is proposed to be exempt from the draft Biological Mitigation Ordinance and the County's Subarea Plan does not include private lands in the preserve unless consent of the owner was given. The process for siting mineral extraction facilities on private lands under the County's Subarea Plan would be very similar to that of the present time. In the future, additional lands will be added to the preserve but not without landowner agreement. Please see response to Comment 9(a) and revised Section 6.2.4 of the MSCP Plan, Volume I.

9(f) The commenter is correct. Some mining operations cannot avoid adverse direct and indirect impacts to covered and sensitive species. Section 6.2.4 of the MSCP Plan, Volume I, has been revised to provide for additional flexibility.

9(g) The criteria for determining significance for all of the issues addressed in Section 4.2, including Issue Three, are presented on page 4.2-1 of the Draft EIR/EIS. the criterion established for impacts to mineral resources is as follows: "Conversion of vacant land designated as a Mineral Resource Zone 2 by the Special Report 153 of the California Division of Mines and Geology that contains existing mining operations or is planned for mining operations to permanent open space associated with the preserve." Such a conversion is regarded as a significant impact. Since no such conversions were identified due to flexibility incorporated in the MSCP Plan regarding existing and ongoing mining operations, significant impacts were not identified.

9(h) Refer to response to Comment 9(a).

9(i) Chula Vista's Subarea Plan will be changed to be consistent with revised Section 6.2.4 of the MSCP Plan, Volume I.

9(j) Please see response to Comment 9(g) above.

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SAN DIEGO COUNTY ROCK PRODUCERS ASSOCIATION

SDCRPA

October 11, 1996

John Kovac, Senior Planner
Development and Environmental Planning Division
City of San Diego
1222 First Avenue, 5th Floor
San Diego, CA 92101

DEVELOPMENT ENVIRONMENTAL PLNG.

RE: Comments on the Draft Environmental Impact Report/Draft Environmental Impact Statement - MSCP

Dear Mr. Kovac:

On behalf of the San Diego County Rock Producers Association, I have reviewed the Draft EIR/EIS and my comments follow this paragraph below. Generally, this document is difficult to follow and in some instances conflicts with the Plan documents. This document lacks some of the supporting biological data and mineral resource information on which conclusions are based. Specific comments are:

1. Section 3.2.2.2 fails to state that SMARA requires all local lead agencies to prepare a Mineral Resource Management Plan as part of their General Plan. Accordingly, the preparers of this EIR/EIS have insufficient data on which to base their conclusions that the MSCP "has no significant impacts" on Mining Extraction and Processing Facilities, as mentioned throughout the document. 9(a)

2. Chapter 4.2, Land Use, Criteria for Determining Significance, refers to Special Report 153, DMG, which has now been replaced with DMG Open-File Report 96-04, Update of Mineral Land Classification: Aggregate Materials in the Western San Diego County Production-Consumption Region. The updated data should be used in the final EIR/EIS. 9(b)

3. Chapter 4.2, Section B.1.6.2, Biological Mitigation Ordinance (BMO), states "the BMO exempts any sand, gravel, or mining operation for which a major use permit has been approved in accordance with mitigation requirements contained in the 9(c)

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BMO". Since the BMO is a new ordinance, some of its mitigation requirements may not have been included in many existing MUPs. Then, how does it become applicable? 9(c)

4. Chapter 4.2, Section B.1.6.2, last paragraph, states "no significant impacts are identified for the County of San Diego BMO at the Subarea/Other Plans level under Issue One". Considering my paragraph 3 above, what is the basis for this conclusion? 9(d)

5. Chapter 4.2, Section 4.2.3, Issue 3: Would the project adversely impact future extraction of sand and gravel resources? This section contains no criteria for determining significance of impacts. 9(e)

6. Chapter 4.2, Section 4.2.3.1, Mining Extraction and Processing Facilities, page 4.2-85, states "the MSCP contains the following language regarding sand and gravel operations within the MHPA; new mining operations within the MSCP preserve are considered to be compatible with the preserve if they meet the following conditions: The facility location, operations, and restoration plans avoid adverse direct and indirect impacts to covered species...". Some mining operations could not avoid adverse "direct and indirect impacts"? Provisions are needed for mitigation of significant impacts. 9(f)

Page 4.2-85, last paragraph, states "no significant impacts are identified for the MHPA at the MSCP Plan level under Issue Three". In the absence of criteria, how was this conclusion reached? 9(g)

7. Pages 4.2-86 through 91 discuss the impact of alternative plans on significant mineral deposits. In each case the EIR/EIS concludes that no significant impacts are identified at the MSCP Plan level, but no basis for these conclusions is present. SMARA requires that each Lead Agency adopt a Mineral Resource Management Plan; none has. The current lands designated for MRZ-2 do not sufficiently identify mineral resources throughout the County. In the absence of the Mineral Resource Management Plans, the finding of "no significant impacts" cannot be made. 9(h)

8. Page 4.2-94, B.1.1 City of Chula Vista Subarea Plan, states "The language contained in the Plan allows existing operations to continue and expand..." Chula Vista's Plan does not list Mining Extraction and Processing Facilities as a compatible use and elsewhere states it is incompatible. How then can they be permitted to expand? Mineral Extraction should be added as conditionally compatible. 9(i)

9. Pages 4.2-96 through 115 continue to make reference to no significant impact on mineral resources under Issue Three. As stated in my paragraph 7 above, these findings cannot be made. 9(j)

Sincerely,

Bruce H. Warren
Executive Director

cc: SDCRPA Members
San Diego County Board of Supervisors
San Diego Mayor & City Council
Ron Rempel, State Fish & Game
Robert Asher, County of San Diego

9A BRUCE WARREN, SAN DIEGO COUNTY ROCK PRODUCERS ASSOCIATION, 10/11/96 – DRAFT MSCP PLAN COMMENTS

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9A(a) See response to Comment 9(a).

9A(b) Each Subarea Plan addresses the compatibility of land uses in more detail than the MSCP Plan and takes precedence over the MSCP Plan guidelines. The City of San Diego's Subarea Plan states that new mining facilities must fully mitigate for unavoidable impacts to covered species as a condition of approval and therefore be considered compatible with the MSCP. The County and other City Subarea Plans also address mining operations in more detail. Please also refer to response to Comment 9A(f).

9A(c) The City of Chula Vista Subarea Plan identifies mineral extraction and mining operations as not compatible within the preserve. Existing processing and other related activities related to existing mining operations are considered to be conditionally compatible.

9A(d) Existing mineral extraction and mining operations are intended to include related activities, such as processing. New or expanded activities are considered incompatible within lands conserved as part of the preserve. See revised Section 6.4.2 of the MSCP Plan, Volume I, regarding mineral extraction activities.

9A(e) In the City of San Diego, extractive uses are conditionally compatible within the MHPA in accordance with the subarea plan and implementing ordinance, based in part, on the provision that the sites are revegetated upon cessation of the extractive uses. Approval of subsequent land use plans for post-mining land uses would be subject to the planning and design guidelines of the City of San Diego MSCP Subarea Plan.

9A(f) New or expanded extractive uses would only be permitted in the MHPA upon approval of a Conditional Use Permit which includes consideration of the compatibility issues identified in the Subarea Plan. The draft resource regulations (proposed OR-1-2 zone) identify extractive uses as permitted by Conditional Use Permit (only) within the MHPA.

9A(g) Mineral extraction is not compatible within lands conserved as part of the preserve.

9A(h) This particular wording came from the existing Resource Protection Ordinance that was adopted by the Board of Supervisors in 1988. The intent was that for a project to be exempt from the requirements of the ordinance, natural contours would be restored. However, it is understood that some reclamation plans may result in the development of industrial pads. The County is considering a modification of the draft Biological Mitigation Ordinance that would reflect the fact that some extraction projects result in land uses that would not be consistent with natural contours.

Regarding the mature riparian woodland requirement, this is intended to protect specifically identifiable old growth riparian woodland. This type of woodland does not occur in many locations. Other types of riparian woodland could be impacted, but would need to be revegetated.

If a proposal could not meet these criteria, it does not mean that there is a conflict with any plans or preserve programs. It simply means that it must conform with the mitigation requirements of the ordinance in order to be approved.

9A(i) Mineral extraction is not compatible within lands conserved as part of the preserve (see also MSCP Plan revised Section 6.4.2 included in the Revisions to the MSCP Plan, January 1997).

9A

SAN DIEGO COUNTY ROCK PRODUCERS ASSOCIATION

SDCRPA

October 11, 1996

John Kovac, Senior Planner
Development and Environmental Planning Division
City of San Diego
1222 First Avenue, 5th Floor
San Diego, CA 92101

RE: Comments on the Draft MSCP Plan and Subarea Plans

Dear Mr. Kovac:

These are ambitious Plans that will be difficult to fully implement unless all affected are informed and existing uses protected. The basic problem with the MSCP is that it protects one resource, but partially ignores another. The State Mining and Reclamation Act (SMARA) requires each Lead Agency to adopt a Mineral Resource Management Plan, but none have done that. The San Diego County Rock Producers Association funded the preparation of such a Plan for the County of San Diego in 1992, but it was not adopted. In the absence of such a Plan, the extent of aggregate resources is not known, so the impact of the MSCP on the mining industry is only partially known. **9A(a)**

My comments on the draft Plans follow:

Volume I

Page 6-4, Section 6.2.4, Mineral Extraction, states "New mining operations within the MSCP preserve are considered to be compatible with the preserve if they "...avoid direct and indirect impacts to covered species, other sensitive biological resources...". This needs clarification to state that mitigation of significant impacts would be permitted, because such impacts could not, in many cases, be avoided. **9A(b)**

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Volume II

City of Chula Vista MSCP Subarea Plan

Page 39, Section 6.2, Compatible Land Uses Within The Preserve, does not list Mining; however, Section 6.2.1, Existing Uses, suggests that expansion would be permitted with appropriate permits. That language needs clarification. **9A(c)**

Page 48, Section 6.4.6.1 states "Processing and other related mining activities (e.g., asphaltic processing, etc.) are incompatible with the MSCP preserve." Section 6.2 states existing uses are allowed within the preserve. Would that be true of processing and other related mining activities? **9A(d)**

City of San Diego Subarea Plan

Page 9, A10, Revegetation of extraction areas may not be appropriate or feasible, depending on permitted land use and the reclamation plan. **9A(e)**

Page 47, Section 1.4.1, Compatible Land Uses. Mining is not listed; however, it is provided for in other sections of the Plan, such as in the paragraph , Mining, Extraction, and Processing Facilities on Page 49. Mineral extraction should shown under a new category, "Conditionally Compatible". **9A(f)**

County of San Diego Subarea Plan

Page 3-32, 3.7.1, Acceptable Uses Within the Preserve. Paragraph D allows existing operations to continue, and expansion, with appropriate local, state and federal permits. Is it possible to obtain a permit for a new mining operation, as was contemplated in the "Deal Points"? The Subarea Plan and EIR/EIS are unclear in this regard, or are inconsistent. **9A(g)**

Appendix 1 - Draft Biological Mitigation Ordinance (BMO)

Page 4, Paragraph 10, exempts any sand, gravel or mineral extraction project provided that d., native vegetation shall be used on steep slope lands to revegetate and landscape cut areas and fill areas in order to substantially restore the original habitat value, and slopes shall be graded to produce contours and soils which reflects a natural landform which is consistent with the surrounding area; and e., mature riparian woodland may not be destroyed or reduced in size due to sand, gravel and mineral extraction. **9A(h)**

The very nature of mining usually precludes much of what is required in d. and e. Except with sand mining, seldom is the terrain left in any manner resembling the origi-

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nal or natural landform. The reclamation plan, depending on land use, would render infeasible restoration of the original habitat value. Sand mining often is infeasible if mature riparian woodland may not be destroyed or reduced in size. Re-establishment of such growth would not be difficult in most sand mining areas.

9A(i)

The Plan and Subarea Plans need to be revised to clearly permit mineral extraction within the preserve. It is not sufficient to only permit existing operations to continue. Extraction of minerals must be conditionally permitted where the resources are, and that does not mean permitted with conditions that would not allow a permit to be approved.

Please consider these comments in finalizing the MSCP Plans.

Sincerely,

Bruce H. Warren
Executive Director

cc: SDCRPA Members
San Diego County Board of Supervisors
San Diego Mayor & City Council
Ron Remple, State Dept of Fish & Game
Robert Asher, County of San Diego
Tom Story, City of San Diego
Meryl Balko, City of San Diego
Doug Reid, City of Chula Vista

10 JACK L. PHILLIPS, VALLE DE ORO COMMUNITY PLANING GROUP, 10/14/96

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10(a) The wildlife agencies disagree that the take of habitat and sensitive species associated with plan implementation are weakly compensated. The wildlife agencies believe that the plan incorporates substantial mitigation by virtue of establishment of the preserve system and its management in perpetuity. The concept of a habitat preserve supporting multiple species is ingrained the tenets of biological conservation theory and reflected in the NCCP Conservation Guidelines.

The wildlife agencies acknowledge that the existing habitat landscape is fragmented. In an attempt to balance the human needs and wildlife needs over the same landscape, the MSCP represents the biologically sound approach to support species population viability and human development. The impacts associated with implementing this strategy are described in detail in the EIR/EIS. The wildlife agencies believe that species and habitat losses associated with authorized take authorizations would be compensated by establishment of the preserve system and its perpetual management.

10(b) Please refer to response to Comment 45(a).

10(c) Please refer to **Theme Response XII, Voluntary Participation.**

10(d) The long-term survival of species is dependent on the conservation of the species' ecosystem and ecosystem function. The mitigation program recognizes the need for conservation of the coastal sage scrub ecosystem and has emphasized ecosystem based mitigation to accomplish it. The MSCP Plan is a regional habitat preservation plan that, when implemented, would assure that the appropriate acreage and configuration of vegetation communities will be achieved thereby maintaining ecosystem function in the long-term. In this context, the order in which portions of the preserve system lands are acquired is not important.

A shift in perspective on mitigation is incorporated into the MSCP Plan. In the past, mitigation has focused heavily upon the specific biological values of a particular project site. This estimation of value was seldom done in a regional or ecosystem context, but rather on a site specific basis. As a consequence, mitigation sites that were evaluated in this context were in reality of poor quality due to isolation, lack of management, etc. Even though ecosystem based mitigation will be used, there is a check-and-balance system to ensure that any discrepancy between vegetation types lost and conserved will not get out of balance. The requirements for determining if conservation is in rough step with development will be defined by vegetation community and species. This check-and-balance system also serves as a protection mechanism should one or more parties terminate their Subarea Plan. Prior to the termination of the program by any jurisdictions, the loss and conservation of each vegetation community within the subarea plan boundaries would have to be brought up to the identified standard. See also **Theme Response XIII, Ecosystem Based Mitigation ("Out-of-Kind").**

10(e) See **Theme Responses XII, Voluntary Participation, and XIII, Ecosystem Based Mitigation ("Out-of-Kind").**

The financing plan of the MSCP Plan anticipates that land would appreciate in value over time. The estimated costs to households and businesses discussed in the MSCP Plan (pp. 7-8) account for future appreciation in land value.

10(f) Comment noted. The Biological Mitigation Ordinance is not a shift from conservation to mitigation. The proposed Ordinance is designed to promote conservation by conserving land which qualifies as Biological Resource Core Area. The exemptions in the Ordinance are almost identical to the ones contained in the existing Resource Protection Ordinance, and as such, the exemptions do not reflect a change from existing condition.

10(g) Comment noted.

10(h) The MSCP is a habitat-based program, and most of the mitigation mechanisms proposed are habitat, not species, based. Coverage for listed species is based upon regional conservation, not site-by-site conservation. Please refer to **Theme Response XIII, Ecosystem Based Mitigation ("Out-of-Kind").**

10(i) See response to Comment 45(bf).

10(j) The comment is noted. The degree to which consultants would be used by the County to assemble the preserve system and track conformance to the MSCP has not been determined. If consultants are used, they would be subject to review and approval by the County. The County's established policies require that consultants meet stringent qualifications to provide served to the County. The County's qualified consultant list is reviewed and updated on a regular basis.

10(k) The March 1985 draft of the MSCP Plan included focused planning areas with 70% preservation goals. The 1996 MSCP Plan does not include focused planning areas within the unincorporated areas of the County nor does it include the 70% conservation overlay. The Metro-Lakeside-Jamul segment includes goals and criteria for private land portions of the segment and 100% conservation for public lands being dedicated to the preserve. Within the Lake Hodges and South County segments of the County Subarea Plan, with the exception of lands in the major and minor amendment areas, the lands which will be preserved (100% conservation) and developed are identified on the Subarea Plan maps. The goals and criteria in County's Subarea Plan and the draft Biological Mitigation Ordinance will ensure that core areas and linkages are conserved and that appropriate preserve design will be achieved.

10(l) The wildlife agencies concur that linkages between core areas are essential in sustaining not only "genetic strength," but also wildlife populations in the core preserves. "Archipelago linkages" are the preserve option of last resort in circumstances where existing development has already eliminated direct habitat connections, such as occurs in the Lakeside area. This area is considered to be an important connection, possibly the only connection, for linking populations of the California gnatcatcher from the southern Otay/Sweetwater population to the northern Lakeside/Poway population, and further north to the MHCP. It is recognized that the Lakeside habitat archipelago is not likely to be an effective corridor for most mammals and reptiles. However, because these habitat patches are occupied by breeding pairs of California gnatcatchers, and are within a direct line of site, it is believed that they would function to allow for genetic exchange, and immigration and emigration for the gnatcatcher. Due to the existing urban development to the west, the Lakeside habitat archipelago likely represents the westerly most location of coastal sage scrub habitat to provide a north/south connection for the gnatcatcher. Other habitat linkages for large mammals are still intact to the east near Harbison Canyon to El Capitan Reservoir. The existing location of Interstate 8 likely represents a barrier to certain species, particularly small, less mobile species. However, less mobile species are less likely to be adversely affected by a barrier such as Interstate 8, because large blocks of habitat containing necessary breeding and foraging habitat are included within the MHPA preserve area south and north of Interstate 8.

10(m) Fire is a vital component of the natural history of our local scrublands (e.g., Zedler 1977). Many of the native plant species that constitute coastal sage scrub and chaparral are adapted to periodic burning through stump sprouting. For some chaparral species, fire is the primary event that initiates seed opening and/or dispersal, and returns the fuel load to usable soil nutrients. Hence, fire itself is not an un-natural or deleterious event. However, increased fire frequency may have a substantial adverse effects on the biota (Zedler, Gautler and McMasher 1983).

One of the shortcomings of a large contiguous preserve is that disease, predators, wildfires, and other potential ecological catastrophes may sweep through the entire preserve unabated (Simberloff and Cox 1987, Simberloff, Farr, Cox, and Mehlman 1992). Although a major goal of the MSCP preserve design was to link large blocks of habitat, some connections within the MHPA are tenuous. While these tenuous links may be perceived as shortcomings from the perspective of wildlife movement corridors, they provide places where the intentional interruption of ecological catastrophes could be focused. For example, roads through the preserve may represent ideal fire breaks.

Given the configuration of the MHPA, it is unlikely that ecological catastrophes could sweep throughout the preserve. Following wildfires, the remaining unaffected preserve lands would represent source populations for immigration/colonization into the affected areas following recovery of the habitat, which for some habitats may be as quickly as the following year. In addition to the large blocks of habitat that constitute most of the MHPA, numerous smaller habitat fragments, many of which support native sensitive species, are included in the MHPA. The biota of these fragments also may perform the role of source populations following ecological catastrophes.

10(n) Preserve management is described in general terms in the MSCP Plan, Volume 1, Section 6. The MSCP Plan and individual subarea plans specify the types of compatible development and compatible activities. Specific guidance is provided in Section 6 (see revisions to Section 6.3.1 of the MSCP Plan, Volume I) for the content of area-specific management directives. Through the Implementing Agreement for each subarea plan, the permittee's specific obligations for carrying out (and funding) its preserve management and monitoring will be assured. Preserve management costs are discussed in Section 7.0 of the MSCP Plan, Volume I. See also **Theme Response XIX, Preserve Management.**

10(o) The County has examined the properties in this area. Several of these sites are already developed for recreational uses or are non-native habitats. The County has included areas in the preserve where the owners have approved inclusion of their property. As more information is gathered on the status of these sites, the County may include additional open space areas into the preserve.

10(p) The regional habitat mapping was conducted at a scale of 1" = 2000'. Mapping accuracy was estimated to be between 70% to 90% depending on vegetation type. Coastal sage scrub and chaparral habitats are sometimes difficult to distinguish with aerial photos. In recognition of this variable mapping accuracy, the boundary of the core and linkage areas typically includes a substantial buffer of adjacent chaparral habitat where core patches of coastal sage scrub were the focus of the preserve design. However, at the specific locations referenced, the core boundary was drawn at the boundary of the mapped coastal sage scrub. Habitat dominated by chaparral is in the two areas of concern, which are within the South County segment of the County Subarea Plan. The detailed analyses for these areas were made during the subarea planning process.

10(q) The County and wildlife agencies worked with the Las Montañas project to modify the project so that it incorporate a corridor (habitat linkage) through the project.

10(r) The biological core and linkage map was developed as an initial tool for subregional conservation planning. It was always intended that subarea plans would provide updated biological information to support site-specific preserve planning. Therefore, the subregional core and linkage map will not be "updated" as the commenter suggests, but rather will be replaced by the collective subarea plan maps.

10(s) To identify core and linkage areas, an extensive geographical information system database of vegetation communities, species locations, elevation, slope, soil, drainages, and other physical parameters was used to develop a habitat evaluation map. The core and linkage areas were defined as areas generally supporting high concentrations of sensitive biological resources or important habitat areas which link core areas together or which link core areas to habitat areas outside of the MSCP study area. The core and linkage and habitat evaluation maps are designed to identify important areas, and site-specific field survey at the project level would be used to identify the core and linkage areas on a parcel basis. This process provides for adapting the linkages to site specific habitat conditions. The Metro-Lakeside-Jamul segment of the County Subarea Plan includes opportunities for continued public

input on how the final core and linkage areas would be designed through CEQA review. The criteria used for defining core and linkage areas included maintaining ecosystem function and processes, including large animal movement as appropriate. Core areas 6, 8, 9, 11 and 12 would be the primary areas which sustain deer and mountain lions within the MSCP, and they are linked to each other or to habitat outside the MSCP by linkages "D", "C" and "N". Each core area is linked to other core areas or to habitat areas outside of the MSCP by at least one linkage that is adequate for smaller predators such as coyotes. Core areas have redundant connections to each other through either linkages or directly to help ensure that the balance in the ecosystem would be maintained. An extensive monitoring program would also be implemented by the wildlife agencies to detect unanticipated changes in ecosystem function and allow for adaptive management of the preserve system.

When designing the core and linkage maps, and the final preserve design, sustaining the movement of large mammals was a primary concern. The mountain lion and mule deer were two focus species. Maintaining linkages for large animals was accommodated in preserve design to the maximum extent possible. These two species are included as covered species by in the MSCP because of the conservation provided for these species by the MSCP preserve system. However, that does not mean that they will be present in all parts of the preserve system. They are currently absent from some of the more urbanized portions of the proposed preserve system, and are not likely to return. In those areas, the emphasis was place upon setting aside sufficient habitat area and linkage to sustain populations of coyotes and bobcats in order to maintain a healthy predator-prey relationship within the preserve. Monitoring and management of many of the important corridors will be conducted as a part of the MSCP Plan in order to assure corridor viability.

10(t) Section 6.2 of the MSCP Plan contains general guidelines for land uses within and, in some cases, adjacent to the Preserve. Specific guidelines are provided within the individual Subarea Plans. These issues have been clarified in revised Section 6 of the MSCP Plan, Volume I.

With respect to agriculture, the MSCP Plan notes that existing agricultural activities would be allowed to continue but that agricultural lands in critical areas may be purchased from willing sellers. The MSCP Plan also notes that federal and state regulations for controlling use of pesticides and fertilizers are considered adequate to minimize impacts to wildlife from agricultural activities.

Regarding low density residential development, the MSCP Plan does not specify a low density residential lot size or density that would be considered compatible within the MHPA. The Plan states that low density residential uses (1 du/1 acre or larger) may be compatible with certain restrictions. The Plan states that Subarea Plans and associated regulations and ordinances should provide incentives to cluster development away from core biological areas and sensitive resources. Chapter 6.2 of the MSCP Plan, Volume I, also states that careful planning of access, building pads, utilities, fencing, brush management and landscaping should be employed in low density residential areas to minimize impacts.

With respect to commercial and industrial uses, the MSCP Plan states that these uses generally are not compatible within the MHPA. The compatibility of commercial and industrial uses adjacent to the preserve would be based on specific design considerations for individual projects and would be regulated by guidelines included in individual Subarea Plans.

Regarding military use, as stated in the MSCP Plan and the Draft EIR/EIS, military lands are included within the MSCP study area but are being planned separately by the military. Compatible uses on military lands would be defined as part of that separate planning effort.

With respect to itinerant worker camps, the MSCP Plan states that these uses are incompatible with preserve areas and linkages and should be removed. The MSCP Plan notes that these areas would be difficult to monitor and control.

Regarding recreational uses, Chapter 6.2 of the MSCP Plan, Volume I, notes that a key objective of the Plan is to provide public recreation and educational opportunities within the preserve and states that individual Subarea Plans and habitat management plans should address allowable recreational uses and their location to ensure protection of biological resources. Golf courses are not identified as a specifically compatible or incompatible use within preserve areas and linkages in the MSCP Plan. The appropriateness of locating a specific golf course within a specific preserve area would need to be evaluated on a project-specific and Subarea Plan level.

10(u) The wildlife agencies agree that the plan has tremendous potential and through careful preserve design and management should result in protection for the plan's covered species and their habitats in perpetuity.

VALLE DE ORO COMMUNITY PLANNING GROUP
P. O. BOX 3958
LA MESA, CA 91944-3958

October 14, 1996

Mr. John Kovak, Senior Planner
Development and Environmental Planning Division
City of San Diego
1222 First Avenue, 5th. Floor
San Diego, CA 92101

SUBJECT: San Diego City/County Multiple Species Conservation Program and Associated Draft EIR/EIS dated August 1996.

Mr. Kovac:

This letter expresses this Planning Group's concerns with the Multiple Species Conservation Plan in its present Draft form, as it currently reaches its final stages of negotiation among local, state, and federal governmental agencies. This Planning Group retains serious concerns about the pending agreements on this Plan among the involved government agencies, particularly the LOCAL JURISDICTIONS as they are referenced in all of the pertinent documents. Documents under current public review are: EIR/EIS document for the MSCP, and Volumes I & II as MSCP Resource Documents.

BACKGROUND

Our Group has been actively involved in this MSCP process at least since early 1993. Our comments have been provided on the MSCP data-base, its interpretation, various aspects of mitigation, and proposals by Local Jurisdictions (such as the County of San Diego). Thus, our Group concerns have been known for several years, they are certainly not "Plan-busters", and they are actually quite reasonable and equitable for all concerned.

The Valle de Oro Planning Group is elected to advise the County of San Diego in matters of land use, as has been the case for the last 18 years, nearly the life span of the current ESA. This Planning Group includes a broad spectrum of the Community, both technically trained members, and individuals with an ample

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background in biology, conservation, and environmental issues. Moreover, some of our membership has instructed and trained personnel who are now employed in all of the government agencies involved in the MSCP deliberations, as well as individuals working in the environmental-consulting sector. We certainly do not come to you with a casual or impractical perception of the environmental concerns we express, and have expressed, over the future of the ESA and the MSCP. Equitable, fair, and broad implementation of the ESA and the proposed MSCP, has been, is now, and will continue to be a matter of prime concern to this Planning Group.

DISCUSSION OF ISSUES

It is the considered opinion of this Group that the proposed MSCP is flawed. It will allow weakly-compensated TAKES of habitats and sensitive species. It will produce a fragmented "Preserve" area, with seriously impaired connectivity and Wildlife corridors. Habitat destruction and species elimination will be accelerated in areas outside the Preserve. In the same way that desert dunes are completely different than coastal estuaries, the not-in-kind/any quality mitigations allowed in the MSCP violate biology and conservation principles. 10(a)

With the preceding points in mind, the Planning Group itemizes below its major concerns on the impending MSCP, and various "draft" proposals by Local Jurisdictions on Ordinances and agreements among local, state, and federal agencies.

SPECIES COVERAGE

As other commenters have indicated (including the Board of Supervisors, San Diego Co., letter of Oct. 2, 1996), the EIR/EIS and Vols. I and II Resource Documents repeatedly list groups of sensitive species as adequately covered (protected) under various provisions of the MSCP, BUT in complete absence of any biological documentation of adequate coverage. There are calls for addition of such documentation to the EIR/EIS, presumably to validate statements that species or habitats are adequately protected. For reasons expanded below, we believe such an addition will NOT be adequate. Neither sensitive habitats nor sensitive species will be adequately covered, protected, or mitigated in the currently proposed MSCP. 10(b)

VOLUNTARY PARTICIPATION

None of the documents, EIR/EIS, Resource Documents, proposed "Agreements", or any Biological Mitigation Ordinance, should include VOLUNTARY involvement in the MSCP. With a good 10(c)

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conservation document intended to CONSERVE those sensitive natural resources, within or outside ANY "PRESERVE" AREA, all citizens, private and public agencies (includes the military) should be required to participate AND mitigate impacts. Private property and "essential" services may be important considerations, but they do not constitute inalienable rights! Any of the Agreement documents (draft) and any Biological Mitigation Ordinance (draft) should be rewritten in final form to mandate inclusion, and to eliminate all exemptions. 10(c)

COUNTY MITIGATION PLAN

The incipient MSCP fails to require adequate mitigations. Although "Tiering" of habitats may be biologically realistic, to allow unequal-quality or not-in-kind mitigations for habitat TAKE is illogical. The REASON habitats are sensitive relates directly to the fact that they are in short supply (and deserve conservation) because of uncontrolled TAKES in the past.

The County's MSCP mitigation plan appears to be an extension of the current process and standards for the issuance of 4D-Rule Habitat Loss Permits for Coastal Sage Scrub. Under the County's administration of this process we are already seeing extirpation of sensitive species outside of the proposed multihabitat preservation areas. In every case, off-site properties utilized to mitigate these losses have not provided for conservation, in-kind, of the species taken nor conservation of the same type or quality of habitat. 10(d)

The least important, steep-slope areas within the future preserve area are being accepted as mitigation for take of high-quality habitat that is occupied by listed species.

Given the vicissitudes of County, State, and Federal conservation programs, this mitigation policy (not-in-kind/not-in-quality) can lead to an accelerated decline in the species and habitats of concern. As good-quality functioning habitat and sensitive species are extirpated outside of the preserve, areas of equal habitat type and quality within the intended preserve will increase dramatically in cost. This will occur for two reasons: 1. The County's insistence that participation in the preserve must be "voluntary"; 2. Some of the most important habitat lands dominate lower-gradient slopes which are also most suitable for development.

From the beginning, the preserve area must be built of the same type and functional quality of habitat (occupied vs. non-occupied) that is being extirpated outside of the preserve. If you want to take two California Gnatcatcher territories outside of the preserve, then you must guarantee conservation of at least two occupied territories in the preserve. Otherwise, in 10(e)

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20-30 years we could have total extirpation outside of the preserve area and a very high risk that much of the good-quality functioning habitat areas within the future preserve will have been degraded by owners who do not wish to participate voluntarily in the program. 10(e)

Intended to replace the County's Resource Protection Ordinance is a "draft" Biological Mitigation Ordinance which appears in the Volume II Appendix I Resource Document. This change from "Resource Protection" to "Biological Mitigation" represents a major shift in County policy that emphasizes mitigation over conservation of sensitive resources. Its major points are summarized by an October 2, 1996 Planning Report from San Diego County, commenting on the MSCP documents (p. 6). Candidly, the points of the BMO are primarily examples of attempts to escape from MSCP requirements. None is more blatant than the approximately one dozen project types to be EXEMPTED from the Ordinance, and thus from MSCP requirements (from Agriculture to Mineral Extraction to Public Services to Public Recreation, i.e. golf courses). 10(f)

Some of these are controlled inadequately by the Local Jurisdiction proposing the exemptions...not the least of these is the mineral extraction permit process, in which conditions and so-called restoration plans are difficult, or impossible, to ENFORCE. Exemptions are effectively a carte blanche for habitat elimination as the entrepreneur sees fit. There is more than one reference to the document: "Deal Points" of the Board of Supervisors with the resource agencies. That document contains the same exemption/escape-clause mind set found above. Yet NO COPY of deal points is supplied in the Volumes I and II, Resource Documents. 10(g)

IN-KIND conservation must be the rule: Coastal Sage Scrub TAKE demands Coastal Sage Scrub MITIGATION. Take of habitat supporting listed species demands mitigation supporting the same species. Any other allowances represent political solutions, not conservation solutions. 10(h)

MODEL AGREEMENT

A copy of San Diego County's proposed "Agreement" with agencies on the MSCP (dated Aug. 9, 1996) proposes far too many attempts at exemptions from MSCP PARTICIPATION! Exemptions should not be so broad nor so absolute. Additionally, the repeated references to "SIGNIFICANT MATERIAL BREACH" of MSCP are confusing. The nature of violations should be made clear; and a violation is a violation. "Significant Material Breach" is yet another local jurisdiction's attempt to avoid or escape MSCP requirements by creating a vague category of "violation" about which attorneys 10(i)

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and bureaucrats can argue and waste public funds doing so. Such references will surely help to "handcuff" agencies in any type of enforcement of an MSCP. 10(i)

USE OF DEVELOPER'S CONSULTANTS

Based on our many years of experience, we believe that accurate identification and reporting of resources frequently will not occur in development projects processed through County Government. The County's process allows land speculators and developers to hire their own environmental consultants and oversee the results of their work. Over the years we have lost all confidence that this process will result in truthful, objective reporting of resources and analysis of significance. But this is the same process that the County will use to build a voluntary preserve system and track conformance with the MSCP. This process is based on a direct conflict of interest. It should not be trusted. 10(j)

70% PRESERVATION AREAS

Since much of the Multi-Habitat Planning Area relies upon 70% preservation areas, conservation of important habitat and the actual preserve design are not sufficiently defined in those areas to insure the development of an overall preserve system that will protect the species of interest. This is especially problematic in linkage areas where the land has been subdivided into many parcels. 10(k)

Further definition and the development of criteria for the 70% areas will be required to insure preserve continuity within the core areas and linkages.

ARCHIPELAGO LINKAGES

Some of the proposed linkages are archipelago in nature. Without some form of direct connectivity, we anticipate that this configuration will result in continued decline in amphibian, reptilian, and large mammalian wildlife species.

In assessing the long-term efficacy of this conservation plan, we believe that the linkages between core areas are essential in sustaining the genetic strength of wildlife populations in the core preserves. We do not believe that archipelago linkages will serve this purpose over the long term. 10(l)

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LOSS OF "FRINGE" HABITAT AREAS CURRENTLY PROTECTED UNDER THE COUNTY'S RESOURCE PROTECTION ORDINANCE (RPO) COULD JEOPARDIZE LONG-TERM SURVIVAL OF SOME SPECIES.

Our primary concern here is the manner in which wildfires are fought by local fire districts and the forestry department. It is our observation that wildfires can quickly overload local firefighting resources. The usual result is to focus those resources on defending home sites and other improved properties rather than attempting to stop the burning in open brushlands. In the past, entire regions have been devastated in one event.

By designing "core" area preserves that will, most certainly, be surrounded by high-value development, we may be setting the stage for the loss of all of a region's remaining habitat in one event.

10(m)

In the case of California Gnatcatchers, if there are no fringe-area habitats to which they can retreat, the loss may be total and may be permanent if intended linkages are also destroyed.

The very nature of our sensitive wildlife habitats causes them to be constantly under threat of destruction by fire. The priorities we have for fighting wildfires mean that habitat will burn while homes and businesses are being protected.

Under these conditions, preserve areas defined by "hard" boundaries may be inappropriate -- especially if most areas outside of the preserve are allowed to develop to the extent that all fringe-area habitat is lost.

PRESERVE MANAGEMENT

As habitat is consolidated and set aside to bring about the focus needed to preserve it on a long term basis, it is recognized that some species will suffer both in loss of numbers and loss of current "home range". Thus, the very act of implementing the MSCP will push some species further toward extinction. While some of this is necessary to preserve on a long term basis as much of our natural habitat and wildlife as possible, it does create an imperative to manage very carefully that which will be left in the designated preserve areas.

Managing and maintaining the preserve areas will require similar attention to that afforded our national parks. Also, there will have to be monitoring of all property owners within and contiguous to the preserve areas to ensure that their land uses remain compatible with the objectives of the MSCP. This type of discipline will not be easily achieved and it will not be inexpensive. Setting up the MSCP is one thing, but managing the preserve after it is established will be just as important.

10(n)

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RON ROBERTS
CHAIRMAN
SUPERVISOR, FOURTH DISTRICT
SAN DIEGO COUNTY BOARD OF SUPERVISORS

October 14, 1996

Mr. Gail Kobetich
Carlsbad Field Office Supervisor
U.S. Fish and Wildlife Service
2730 Loker Avenue
Carlsbad, California 92009

Dear Mr. Kobetich:

I am writing on behalf of the Board of Supervisors to thank you for the opportunity to comment on the Draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the Multiple Species Conservation Program (MSCP). The County views the MSCP as a very significant program to protect our sensitive environmental resources while allowing for necessary economic development in the San Diego region. As an active participant in the MSCP, the County is greatly concerned with both the plan's acceptance by the public as well as its defensibility. Thus, our comments are intended to enhance the plan, make its supporting documents more readable for the public in order to improve its defensibility. The County's and regional goals must be supported by adequate environmental review.

COMMENTS ON THE DRAFT EIR/EIS

The following are intended to be specific comments on the EIR/EIS from the County as a responsible agency and should be subject to a response in the Final EIR/EIS. Please note that neither the County nor other participants in the MSCP may realize their expectations with respect to both the goals and the process of this Program unless the EIR/EIS is adequate for these purposes. The current draft may be so limited in its analysis that there is a significant possibility that the preparation of supplemental or subsequent environmental review will be required. Such a possibility would undoubtedly delay the implementation of the Program 16(a)

On September 23, 1996, the wildlife agencies provided a supplemental document containing biological information. This document was neither circulated at the commencement of the public review period nor incorporated by reference in the manner required by the California Environmental Quality Act (CEQA). Since 16(b)

COUNTY ADMINISTRATION CENTER • 1600 PACIFIC HIGHWAY, ROOM 335 • SAN DIEGO, CALIFORNIA 92101
(619) 531-5544 • Fax (619) 595-2252 • E-MAIL RON-ROBERTS@co.san-diego.ca.us
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it provides additional data to support otherwise conclusionary statements with regard to biological impacts, it is essential that it be both referenced and fully available during the public review period. Additionally, CEQA requires a 45-day period for the public to review and comment on a draft EIR, therefore, the County requests that the comment period be extended beyond the current October 15, 1996, to November 7, 1996, to give the public the additional period required by law to review the EIR/EIS. 16(b)

I. Lack of Biological Data

The EIR/EIS does not contain sufficient biological data to demonstrate that preserve design is adequate to protect the species proposed for inclusion on the covered species list. The EIR/EIS offers a number of conclusions, but fails to state the scientific data to support these conclusions. For example, throughout Chapter 4.3 no biological data is cited to support identification of impacts, significance, or mitigation. It appears that Table 4.3-1 is the sole basis for concluding that the Plan adequately conserves the species covered by the Plan, yet no supporting data is cited. Similarly, discussion of linkages within the document fail to cite sufficient biological information to show that the linkages proposed for preservation will be sufficient to serve the needs of the species proposed for inclusion on the list. 16(c)

Where information is cited, the EIR/EIS includes conflicting data for individual species concerning whether the risk is high or low, all of the populations are preserved, and whether or not a species is covered. The process used to determine which of the sensitive species and vegetation communities is covered by the Plan has not been described in the Plan or the EIR/EIS. The MSCP resource document includes basic data on the biology of the species as well as for the preservation of individual sensitive species. However, the Plan and EIR/EIS do not explain how these standards were used to determine the species coverage. This set of data and biological standards are necessary for the public to understand the adequacy of the Plan and for the various jurisdictions to consider in deciding whether to adopt the Plan and Subarea Plans. This information is also important in setting standards for future monitoring.

Failure to include this biological data is significant for other reasons. In creating a streamlined process for permit review, it was intended that this EIR/EIS serve as a program EIR to fulfill CEQA requirements for subsequent projects. Compliance with National Environmental Protection Act (NEPA) and CEQA requirements is highly questionable in the absence of supporting data to show that the MSCP Plan will ensure the survival of the species on the covered species list. 16(d)

It is our understanding that the data and analysis supporting the Plan are available. Please expand Table 4-3, and wherever else necessary, to include additional supporting biological data and analysis.

II. Lack of Biological Analysis Justifying the use of Regional Multiple Species Habitat Preserves as Mitigation for Project Impacts to Individual Sensitive Species

Under current environmental regulations, when impacts occur to an individual species, mitigation measures are directed toward reducing the impacts to that species and its habitat. The MSCP allows for a broader approach allowing mitigation through assemblage and protection of multiple species preserves. As a result, under this new approach, mitigation measures may not be directed towards the specific species being impacted. The philosophy behind the MSCP Plan is that the development of multiple species preserves benefits the suite of species covered by the plan, and the cumulative effects of protecting the preserves system will benefit all of the covered species. Thus, mitigation resulting in the development of the preserve offsets any individual species impacts. We have been unable to find sufficient biological analysis supporting this approach in the documents. If we intend to use the EIR to streamline subsequent project review, this information should be added. 16(e)

III. Failure to Inform Clearly

A. The Organization of the Document is Confusing.

The EIR/EIS fails to clearly convey information about the project clearly. Its organization is confusing and thereby obscures significant points of analysis. Since an EIR/EIS must adequately inform the public and decision makers for it to meet the requirements of NEPA and CEQA, organizational confusion is a significant concern. Two examples illustrate the difficulties created by the organization of the EIR/EIS.

First, the document does not inform the reader from the beginning that it is prepared as a programmatic EIR/EIS for the MSCP Plan and a project level EIR/EIS for the Subarea Plans. This information is not revealed until Page 4.1-3. In order for analysis to be meaningful, the reader should know from the beginning of the document what it represents. 16(f)

Second, the wide dispersion of each of these elements: (1) description of impacts; (2) significance of impacts; and (3) mitigation of impacts makes the text hard to follow and understand. For example, the impact analysis for Issue I in the Biological Resources chapter is on Page 4.3-44. Its significance is stated on Page 4.3-150. Mitigation measures are stated on Page 4.3-174. Internal references to sections within the EIR/EIS do not bridge the gap in communication created by dispersing logically related information throughout a voluminous text.

B. The Treatment of Alternatives Within the Text is Confusing and Omits An Important Alternative From Discussion.

Although CEQA and NEPA require analysis of feasible alternatives to the project, the text of the EIR/EIS does not always make it clear that the Multiple Species Habitat Planning Area was the alternative used to design the goals and objectives of the project and Subarea Plans. Failure to provide conclusions explaining why an alternative was not chosen in any given context creates confusion. There are few internal clues to guide the reader concerning the status of any alternatives in relation to the actual project. 16(g)

IV. Failure to Discuss the Significance of Committing Irretrievable Resources to the Project

The EIR/EIS recognizes that sensitive populations of plants and animals will be lost if the MSCP Program is implemented. Because this loss will be the consequence of the Plan, the EIR/EIS should discuss two significant contingencies that could have important impacts on these resources if they are ultimately committed to the Plan.

First, the EIR/EIS fails to discuss the effects of the lack of funding at the Federal, State, or local level, or any combination would have on the Plan. The effect of lack of funding would have on survival of covered species or whether it would lead to additional listings is not addressed. Although the Implementing Agreement addresses this contingency by suggesting smaller preserve design, the EIR/EIS fails to consider at what level of funding preserve redesign would be required or at what level of funding the actual survival of the species would be in jeopardy. Since additional scientific research is required to implement the Plan to determine monitoring levels and to develop techniques to monitor species survival, the EIR/EIS should address the impact of lack of funding on these activities and their overall relation to the Plan. 16(h)

Second, the EIR/EIS fails to discuss the effect of withdrawal of the Federal Government from the program. The EIR/EIS does not address whether such withdrawal would jeopardize the species protected by the Plan.

V. Lack of Adequate Project Description

The project description on Page 3.30 fails to specify the boundaries of the project and to describe the nature and location of the sensitive species and habitats that are the focus of the MSCP as they now exist. A more accurate project description is found in Volume I of the MSCP Resource Document, Pages 4.36 through 4-79, describing the habitat by location. An accurate project description is vital to identifying the resources potentially impacted by the project. 16(i)

VI. Confusing and Inadequate Incorporation By Reference

The EIR/EIS fails to meaningfully incorporate by reference a number of other documents. In most cases, no summary of the incorporated material is included. Often no citation is given to the particular portion of the document that is referenced. For example, on Page 3-33, the EIR/EIS includes in its description of sensitive habitats a reference to the three-volume MSCP Resource Document without specifying which portion is applicable. The same defective incorporation occurs on Page 4.3-40 in the discussion of the basis for the covered species list. 16(j)

VII. Failure to Designate the Listing Status of Species

The State or Federal listing status of a species is not designated in tables widely dispersed throughout the text. Moreover, there are no internal references to the tables which do indicate the species' status. 16(k)

COUNTY SD C

VIII. Failure to Clearly Address the Impacts to Species Outside the Preserves

The EIR/EIS draws the conclusion that there will be impacts to species outside the preserve, but fails to state what those impacts will be. The EIR/EIS does not address the issue of whether these species will be completely lost outside the preserve areas and whether, if this conclusion is true, the preservation of the species within the preserve areas will be so significant that the loss is warranted. This is a central issue in the decision-making process that is not directly addressed by the document. Moreover, no table or chart shows in one simple format, the number of populations of a species lost, the number preserved, or their locations. This may lead to a requirement for the preparation of supplemental or subsequent EIRs, undercutting one of the Program's major goals. 16(l)

IX. Incorrect Table Concerning Otay Valley Regional Park

The EIR/EIS contains a table with an incorrect conclusion about the significance of the impact of the Otay Valley Regional Park Concept Plan. The Table ES-4, on Page ES-18, lists the impacts from the project as significant and not mitigated whereas the text on Page 4.3-235 correctly analyzes the impacts as less than significant after mitigation. 16(m)

X. Failure To State Clearly the Goal of the MSCP

The EIR/EIS fails to state that the goal of the MSCP Plan is to preserve existing populations of sensitive and threatened species and to prevent the need for future listings. This should be included as part of the project description. The EIR/EIS focuses on the trade-off between need for listings and future development, but fails to emphasize a key element of the MSCP program--prevention of endangerment in the future. In this respect, absence of biological data is a central defect of the EIR/EIS because there are no facts given to support the assumption that large 16(n)

preserve design will facilitate species' survival rather than preservation of isolated patches of habitat. 16(n)

XI. Need to Clarify the Definition of Important Farmland

Another issue that needs clarification concerns the discussion of agriculture. The EIR/EIS misstates how agriculture has evolved in the County. The EIR/EIS relies on the California Department of Conservation (CDC) definition of important farmlands. That is a statewide designation. San Diego County is unique and a better definition is needed. The County would be happy to assist in developing a better definition. The involvement of the County Farm Bureau and University of California Extension Farm Advisor would be helpful. 16(o)

XII. Please advise how the EIR/EIS addresses the County's Deal Points (Attachment A) with particular emphasis on the Subarea Plan.

In conclusion, the County appreciates the work of the City of San Diego and the co-lead agencies in coordinating the preparation of the MSCP Plan and the EIR/EIS process. In addition, the County wishes to recognize the role of the wildlife agencies in responding quickly to the concerns of the Board of Supervisors, particularly the Deal Points, and looks forward to continuing to work with the City and wildlife agencies' staff to resolve these important issues. If you have any questions, please contact Robert Asher of the Department of Planning and Land Use at 694-3722. 16(p)

Sincerely,

RON ROBERTS
Chairman
Board of Supervisors

RR/tf

cc: City of San Diego
California Department of Fish and Game

ATTACHMENT A

ANALYSIS OF MULTIPLE SPECIES CONSERVATION PROGRAM (MSCP) PLAN DEAL POINTS

1. There must be a package deal--certainties and assurances that a "deal is a deal." The local jurisdictions must be assured by the Federal Government that the MSCP will only occur once. There must be assurances that if other species were listed as endangered or threatened under the Federal or State Endangered Species Act (ESA), there would not be a need to capture additional lands/habitat to be included in the program.

   The U.S. Fish and Wildlife Service (USFWS) and California Department of Fish and Game (CDFG) have agreed to this deal point with two limited exceptions. First, if a species not covered by the MSCP Plan is listed in future, the USFWS and CDFG may require additional land to support the species habitat, but this conservation measure is last in order of preference. The wildlife agencies have promised to look first to enhanced management practices and land acquisition within the preserve to protect a species listed in future. Second, if the USFWS and CDFG make a finding of Extraordinary Circumstances, they may acquire additional land for the preserve. This type of acquisition, however, is limited to willing sales by willing sellers and, therefore, meets the requirements of Deal Point 1.

2. Assurances by the Federal and State Resource Agencies regarding protection and certainty for future projects must be formal and reliable.

   In their letter of April 29, 1996, the USFWS and the CDFG have agreed that the assurances they provide to the parties to the MSCP should be formal and reliable. These assurances will be embodied in the Implementing Agreement, currently being negotiated between the County and the wildlife agencies. The Implementing Agreement is a contract between the Federal and State Governments and the County. Such contracts may be subject to legal challenge and judicial interpretation. County Counsel is prepared to advise your Board concerning this Agreement when negotiations are complete.

3. The MSCP must be revised to require all subarea and/or project plans only meet the biological standards of the agreed upon MSCP Plan as well as the Natural Communities Conservation Planning (NCCP) and 10(a) standards of the reauthorized version of the ESA.

   The USFWS and CDFG have agreed to this deal point by letter of April 29, 1996, to Chairman Ron Roberts. The wildlife agencies have agreed that standards for approval of the Subarea Plans shall be the Federal and State Endangered Species laws, the MSCP, and the Natural Communities Conservation Planning (NCCP) Act. The USFWS has stated that it will base its evaluation of the MSCP Plan on the provisions of Section 10 (a) of the ESA in effect at the time the County's permit application is submitted. Similarly, the CDFG will undertake an analysis of the MSCP based on the requirements of Fish and Game Code Sections 2081 and 2835.

4. The existing Resource Protection Ordinances (RPO) must be modified and reworded so that property owners do not get "hit twice" with exactions upon the adoption of a preserve plan. One set of rules should apply to achieve quality development in the region, and at the same time avoid duplication, unnecessary costs and lengthy timelines.

The USFWS and CDFG have agreed to this deal point. They have agreed that the County's RPO should be revised to avoid "double hits" on landowners. The RPO's are currently being redrafted to coordinate their coverage with the terms of the proposed Biological Mitigation Ordinance (BMO) and to eliminate duplicative coverage.

A draft of the BMO which would apply to all discretionary projects has been proposed to the USFWS and CDFG as part of the County's MSCP Subarea Plan. The proposed BMO is based on an ecological quality habitat approach to mitigation. The proposed ordinance classifies habitats by tiers based on their sensitivity and habitat value. The ordinance sets mitigation ratios for these tiers, requiring more or less mitigation depending upon the sensitivity of the land impacted and the location of the proposed mitigation. The BMO is designed to eliminate uncertainty as to mitigation requirements for discretionary projects and to focus mitigation on areas that will contribute and enhance assembly of the Preserve. In addition to the BMO, discretionary projects remain subject to California Environmental Quality Act (CEQA) review and mitigation requirements. The RPO is currently being redrafted to coordinate its coverage with the terms of the proposed BMO and to eliminate duplicative coverage.

5. Funding for the financing and implementation of the overall preserve system must be assured and made available from the State and Federal Governments. The size and implementation of the preserve system must be contingent on their ability to fund it.

The USFWS and CDFG have not agreed to this deal point. Rather, they have committed to a partnership effort with the County in funding the MSCP. Funding for financing and implementing the overall preserve system is a co-operative effort between the local, State, Federal Governments and private landowners and developers. Federal and State agencies have agreed to use their available resources and priorities to meet a portion of the MSCP requirements. These agencies have promised to acquire half of the lands slated for public acquisition and to assume management and monitoring responsibilities for the lands. Under the terms of the MSCP Plan, funds to acquire the remainder of preserve lands and to provide for their management and monitoring will come from the participating jurisdictions. The MSCP Plan recognizes that funding by local jurisdictions is subject to voter approval. The MSCP Plan estimates the total cost to local jurisdictions, residents, and businesses of implementing the MSCP as an estimated range from $338 to $411 million in 1996 dollars, based on a 30-year benefit assessment program. These costs cover land acquisition and the recurring costs of preserve management, biological monitoring, and program administration. This figure also

covers the establishment of an endowment for management, monitoring, and administration to cover these costs in perpetuity. By the terms of the County's Subarea Plan, where land within the preserve remains in private ownership, costs of maintaining the land in its current state will be borne by the landowner.

Under the terms of the Implementing Agreement, the USFWS and CDFG agree that should the USFWS and/or CDFG be unable to make their contributions to the MSCP, the MSCP Plan and each Subarea Plan will be re-evaluated with possible adjustments to permit coverage and assurances. This provision does not entirely meet the requirement of this deal point that size and implementation of the preserve system must be contingent upon its ability to fund it.

6. The County of San Diego shall not be obligated to any local funding beyond that to which the region as a whole, including participating jurisdictions are obligated.

This deal point is met. The MSCP is based on implementation by local jurisdictions of their Subarea Plans. The County, like every other jurisdiction, is bound only to fund its own Subarea Plan. Thus, its obligation to MSCP is not different from other jurisdictions. The Plan does require development of a Regional Funding Source subject to a vote of the public. The County's contribution to this Regional Funding Source has not yet been identified.

7. Management, maintenance and monitoring must be wholly funded by private conservancies or other private conservation organizations or by voter approved publicly generated funds.

The requirements of this deal point are met. Under the terms of the MSCP Plan, the County will limit any public funding measure to one requiring

17 DAVID FARREL, US EPA #17, 10/15/96

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17(a) The wildlife agencies and applicants agree that implementation of the MSCP would not affect any projects funded by EPA under the Clean Water Act.

17(b) The wildlife agencies and applicants have gone to great lengths to include all interested parties in the MSCP development process as described in EIR/EIS Section 1.6.1.

The MSCP did not include any Native American or tribal lands. Since the wildlife agencies and applicants believed that there would be no effects of the MSCP on Native American community or tribal government interests, copies of the MSCP review documents were not distributed to these entities. In response to EPA's comment, the wildlife agencies have contacted all Native American communities and/or tribal governments within or adjacent to the project area, sent them a copy of the DEIR/EIS executive summary and requested they contact the wildlife agencies if they desired additional information.

17(c) The revised language incorporated in the Final EIR/EIS reflects a modification of Section 2.1.4.4, Streamlining Environmental Review, to clearly indicate that applicable provisions of the Clean Water Act remain in effect.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

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RECEIVED
OCT 1 5 1996

October 11, 1996

Nancy Gilbert, Senior Staff Biologist
US Fish & Wildlife Service
2730 Loker Avenue West
Carlsbad CA 92008

Dear Ms. Gilbert:

The US Environmental Protection Agency (EPA) has reviewed the Recirculated Draft Environmental Impact Statement/Report (Recirculated DEIS/R) for **ISSUANCE OF A PERMIT TO ALLOW INCIDENTAL TAKE OF THREATENED & ENDANGERED SPECIES WITHIN THE MULTIPLE SPECIES CONSERVATION PROGRAM (MSCP) PLANNING AREA, San Diego County, California.** Our comments on the document are provided pursuant to the National Environmental Policy Act (NEPA), Section 309 of the Clean Air Act, and the Council on Environmental Quality's Regulations for Implementing NEPA (40 CFR 1500-1508). EPA previously provided written comments to your office on the original DEIS in 1995. It appears that the comments we made on the original DEIS are not addressed or reflected in the recirculated document, so we again submit them to be addressed in the Final EIS/R (FEIS/R). We also have one new comment regarding the continuing applicability of Section 404 of the Clean Water Act. Our comments are:

1. Relation to EPA-Funded Projects: It does not appear that the proposal would adversely affect any projects funded by the US EPA under the Clean Water Act, for example the International Wastewater Treatment Plant (WWTP) and the North City Water Reclamation Plant. 17(a)

2. Native American Involvement & Concerns: We could not find any reference in the recirculated DEIS/R that Native American communities or tribal governments which could be affected by the proposed action were included in the impact assessment or your agency's NEPA decision-making process. We consider this to be a significant shortcoming, particularly since we brought the issue to your attention in 1995. We note that section 8 of the recirculated document (Persons & Agencies Consulted; Distribution List) does not show that tribal authorities were either consulted or received a copy of the document. 17(b)

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We again urge your agency to make contact with tribal authorities to ensure that their concerns are reflected in NEPA decision-making. As we noted last year, tribal governments should have been consulted during the planning process and should have received a copy of the DEIS. We encourage your agency and the City of San Diego to contact tribal governments adjacent to the planning area to determine their interest in participating in the proposal. The FEIS/R should also address the proposal's consistency with Executive Order 12898 (**Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations**). The US Department of Interior's **Strategic Plan for Environmental Justice** (dated April 11, 1995) contains four goals to carry out Executive Order 12898. Goal #1 provides that the Department of Interior shall involve minority and low-income communities in the environmental decision-making process, which should be reflected in your FEIS/R. 17(b)

For example, the value of habitat preservation and linkages may be improved if tribal lands are included in the impact analysis. Additionally, because of the close proximity of tribal lands, it is possible that tribal lands may be <u>indirectly</u> affected by the proposal. For example, if preserved lands are adjacent to or near tribal lands, these same tribal lands may become desirable for development in the area. The four potentially affected tribes are the Barona Ranch Indian Reservation, the Sycuan Indian Reservation, the Capitan Grande Indian Reservation and the San Pasqual Indian Reservation. To the extent that tribal lands or resources are implicated by the proposed action, you may want to contact the tribal authorities to determine whether they would like to be a cooperating agency.

3. <u>Clean Water Act Section 404</u>: The Final EIS/R should clearly indicate that applicable provisions of Clean Water Act Section 404 and 40 CFR Part 230 will remain in effect for those lands where development can occur. Future developments still need to be consistent with the requirements of Section 404 and 40 CFR Part 230 in terms of avoiding, minimizing and adequately mitigating adverse impacts associated with the placement of fill materials in waters of the United States, including wetlands and other special aquatic sites. We believe that the Record of Decision for the proposed project should reflect the continuing applicability of Section 404, even in lands where development will be allowed under incidental take permits. 17(c)

In light of the issues noted above, particularly issue number 2 (Native American concerns), we have rated the Recirculated DEIS/R as Category EC-2, Environmental Concerns - Insufficient Information. Please refer to the attached "Summary of Rating Definitions and Follow-up Action" which explains EPA's rating system in more detail.

We appreciate the opportunity to comment on the recirculated document. Please send one copy of the FEIS/R to my attention (code: E-3) when it is filed with EPA's Washington, D.C. office. If you have any questions, please call me at 415-744-1584 or David Tomsovic of my staff at 415-744-1569.

Sincerely,

David Farrel, Chief
Office of Federal Activities

Enclosure: 1 (rating sheet)

cc: John Kovac, City of San Diego
Patricia Port, DOI, San Francisco

M.I. #2468

SUMMARY OF RATING DEFINITIONS AND FOLLOW-UP ACTION

Environmental Impact of the Action

LO-Lack of Objections

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC-Environmental Concerns

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

EO-Environmental Objections

The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU-Environmentally Unsatisfactory

The EPA review bas identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of environmental quality, public health or welfare. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommend for referral to the Council on Environmental Quality (CEQ).

Adequacy of the Impact Statement

Category 1-Adequate

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2-Insufficient Information

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

Category 3-Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

*From: EPA Manual 1640, "Policy and Procedures for the Review of Federal Actions Impacting the Environment."

10

So that all involved parties will have a clearer understanding of the commitment required to support the Program on an on-going basis, the MSCP Plan should more adequately address the anticipated preserve management issues and their realistic costs. 10(n)

RANCHO SAN DIEGO OPEN SPACE

Historically the Rancho San Diego development plan encompassed 4500 acres. The concept was to cluster development in several villages separated by greenbelt areas. Open space areas were designated to balance the clustering of residential and commercial village development that was much more intense than the suburban and rural areas which were neighbors to the Rancho San Diego properties. These designations have occurred in areas such as Sweetwater Village, Avocado Village, Cottonwood Village, Monte Vista Village, etc.

Although poorly administered by County Government, much of this designated open space remains undeveloped and currently provides wetland, coastal sage, and grassland habitats for species of interest in the MSCP. Much of it provides key linkages to fringe area preserves and some lie in key biological linkage areas between the Mt. San Miguel and McGuinty Mountain core areas. These designated open space areas should all be planned for 100% preservation:

1. Damon Lane Park and open space south and west of park to Fury Lane (Monte Vista Village) 10(o)
2. Open space south of McGrath aggregate mine extending to and including open space parcel south of Calle Albara (Monte Vista Village)
3. Open space south of Fury Lane adjoining Cuyamaca College wildlife preserve area (Monte Vista Village)
4. Wildlife preserve associated with Cuyamaca College (Monte Vista Village)
5. Open space north of Campo Road between Via Mercado and Jamacha Junction. (Avocado/Monte Vista Villages)
6. Open Space south of Campo Road west of Jamacha Blvd. (This area contains a riparian woodland, year-round creek, and associated coastal sage canyons that provide important habitat linkages to ≈ 200 acres of preserved habitat north of Campo Road) (Sweetwater/Avocado Villages)
7. Open space including upland habitats (Coastal sage and grasslands) south of the Sweetwater River in the vicinity of the Willow Glen/Hillsdale intersection and toward the northeast (Cottonwood Village)

10

"CORE" PRESERVATION AND LINKAGE BOUNDARIES APPEAR TO CONTAIN SIGNIFICANT ERRORS.

Since we are observing that these boundaries are already being utilized in environmental documents for projects, we recommend that the boundaries should be reexamined in the Sweetwater River/San Miguel, McGinty, and Jamul Mountains Complex.

Our field surveys in this area have determined that significant areas of coastal sage scrub, and coastal sage/chaparral combinations with direct "core" associations have been excluded in the current mapping of this region. If current trends in its use continue, this erroneous mapping will lead to loss of key linkage corridors and reduced efficacy of existing riparian woodland/coastal sage combination ecosystems. 10(p)

Areas of immediate concern are:

a. Coastal sage and riparian habitats surrounding the junction of SR94 and Jamacha Blvd.

b. Coastal sage, chaparral, riparian, and oak woodland habitats linking the McGinty Mountain area with the Mt. San Miguel/ Sweetwater River ecosystem (Las Montañas project area and associated areas south of SR94 are key linkages that have been foreshortened or eliminated in the mapping process).

Our wildlife biologists, Mr. John Howard and Dr. Gerald Collier should be involved in this reexamination of boundaries.

LINKAGE "L"

As depicted on Figure 2-2, this linkage primarily relies on Rancho San Diego (RSD) Golf Course properties. Since this golf course has very little natural habitat value it cannot be considered part of a planned multispecies linkage between the Mt. San Miguel and McGinty Mountain core areas. A valid linkage between these core areas must be established south and east of the RSD Golf Course. Such a linkage requires significant alteration of the Hidden Valley Estates project, the Las Montañas project, the southeastern and open space areas of the Steel Canyon project and preservation of coastal sage, oak woodland, and Sweetwater River floodplain areas east of the Rancho San Diego Golf Course.

We believe that the "edge effects" of the approved Hidden Valley project and the proposed Las Montañas project will prove fatal to the functioning of a wildlife corridor through this critical area. The proposed projection of urban development associated with Otay Ranch into the northern Proctor Valley area will further exacerbate this problem through direct impacts to core 10(q)

wildlife populations and growth induction throughout the Mt. San Miguel/Jamul area. 10(q)

FIGURE 2-2, CORE BIOLOGICAL RESOURCE AREAS AND LINKAGES

In addition to the "L" linkage problem, this figure appears to represent initial study information that should be updated. Specifically, core area "7" should be expanded to the northwest to include all of the RSD National Wildlife Refuge and additional RSD and Cuyamaca College open spaces and preserve areas. 10(r)

"CORE" AREA MAPPING APPEARS TO EMPHASIZE COASTAL SAGE, CHAPARRAL, AND WETLAND PRESERVATION AND MAY NOT ADEQUATELY PROVIDE FOR "MULTISPECIES" PRESERVATION.

Our concern begins with our observation that the "core" mapping excludes areas that may be required for movement of large mammals such as mountain lions and deer. Forcing these mammals into confined corridors that will be lined with urban development will eventually lead to loss of the needed genetic transfers.

Decline of the large predators and other less-obvious species will create an imbalance in the natural ecosystem. Our experience indicates that these losses eventually lead to the increased presence of non-native species such as feral cats that can directly affect many of the threatened or endangered birds, reptiles, etc that we are trying to protect. 10(s)

Core preservation areas that are nothing more than a large zoo will not, over the long term, withstand the effects of constrained genetic diversity nor the occasional wildfire. For these reasons, we request that the focused planning or "core" area boundaries be reexamined for our region and we offer our local expertise to help in that process.

COMPATIBILITY OF LAND USES IN AND ADJACENT TO PRESERVE

Agriculture - Since agriculture generally replaces native plant species with non-native and often produces heavy activity impacts (planting, harvesting, cultivating, spraying, etc) at critical times of wildlife migration and breeding, we find this use incompatible for inclusion within a wildlife linkage. We find this especially true when linkages are reduced to narrow corridors or archipelago patterns.

Low Density Residential - Densities in the range of 1 dwelling unit per acre (1.0 DUA) down to 1 dwelling unit per 5 acres (.2 DUA) generally result in total development of the property and removal of native vegetation -- especially as one approaches 1.0 DUA. Subdivisions with this range of lot sizes should not be 10(t)

considered compatible within preserve areas and certainly not within linkage areas. 10(t)

Commercial and Industrial - Both of these uses often involve intense activity and noise generation that should be separated by a buffer zone from core-preserve and linkage areas. For example, commercial or industrial should not qualify to be a buffer between high-density residential and a preserve.

Active Military Use and Worker Camps - Unless more thoroughly defined, both of these uses can result in higher living densities and more impactive ancillary activities than would be expected in high-density residential. Likewise, buffers should be placed between these uses and core preserve or linkage areas.

Recreational Uses - Golf courses appear to be considered exempt or compatible within core and linkage areas. Our experience with three golf courses in this area clearly shows that golf courses do not provide wildlife habitat that will function as either core preserve or linkage for the sensitive species in this region.

CONCLUSION

The MSCP is a plan with tremendous potential. However, if it is not designed to achieve the wildlife preservation goals or it is not successfully managed, buildout around the preserve areas and linkages will preclude future multispecies conservation alternatives. The damage will be irreparable. 10(u)

In some ways, the MSCP can be compared with the reservation program used over two centuries for native Americans. Thus, let us not now, through a lack of adequate attention to anticipated preserve design and management issues, allow the habitat and wildlife in the San Diego region to become victims of a similar fate.

Prepared for VdO by Dr. Gerald Collier, Environmental Biologist and Jack Phillips, Chairman. Contact at (619) 670-0986.

Sincerely,

Jack L. Phillips
Chairman, VDOCPG

Distribution: The Honorable Bruce Babbitt, Secretary of the Interior
County of San Diego Board of Supervisors
City of San Diego
U.S. Fish and Wildlife Service
California Dept. of Fish and Game
San Diego County DPLU
Endangered Habitats League
Sierra Club

As the agency responsible for enforcing the FESA, the U.S. Fish and Wildlife Service ultimately decides if take is incidental. "Incidental Take" means the take of covered species incidental to and not the purpose of the carrying out of an otherwise lawful activity. Authorization of take authorizations as requested would include new development that takes covered species incidental to construction, operation, and maintenance of projects that are otherwise legal. Although a local jurisdiction would enforce existing or new land use regulations pursuant its IA, the wildlife agencies will ensure that jurisdictions comply with take authorizations permit provisions. Noncompliance could result in suspension, or revocation, of take authorizations. See also **Theme Response XXIV, No Surprises Policy.**

11(m) The list on page 3-23 of the MSCP Plan, Volume I, is not the NCCP Guidelines, but the issuance criteria for an take authorizations permit under the federal Endangered Species Act. These requirements were written by Congress; the wildlife agencies do not have authority to change the law. With regard to the first criterion, for a definition of take authorizations, see response to Comment 11(l). With regard to the second criterion, the determination of sufficient mitigation includes consideration of both technological and financial feasibility. Since FESA does not mandate that an HCP ensure recovery of the species, the third criterion requires adequate funding for long-term protection of the species within the plan area, not funding to ensure "survival, health, and recovery of the species" throughout its range. The wildlife agencies interpret criteria four to mean that implementation of the HCP would not be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a covered species in the wild by reducing the reproduction, numbers, or distribution of that species. The Service would make this determination for all of the covered species in its biological/conference opinion.

11(n) This paragraph is a general introduction to more detailed descriptions elsewhere. See revised MSCP Table 3-5 included in the Revisions to the MSCP Plan, January 1997, for specific "proportions" of major populations conserved in the MHPA and associated "specific management actions."

11(o) The wildlife agencies agree that change is a constant in nature. The preserve would be managed in ways responsive to new information as it accrues. Change would be addressed through the adaptive management components of Subarea Plans and the assurances in the Implementation Agreement which determine who is responsible for changes in the conservation program, if needed, to meet biological objectives.

11(p) Conservation measures that would be required by the wildlife agencies to add new species to the Covered Species List are those that would adequately mitigate the impacts of proposed take authorizations of that species and its habitat as required under Section 10(a)(1)(B) of the ESA and under CESA and the NCCP. Such measures would be specific to the needs of the species in question, but may include management, enhancement, and acquisition of its habitat. As described on page 3-25 of the MSCP, the wildlife agencies would first look at options for mitigation within the parameters of the existing permit. If such options are not adequate to meet the species' conservation requirements, the wildlife agencies would determine what additional measures are needed to add the species to the Covered Species

List. Amendments to the Covered Species List would be subject to all provisions of the federal ESA and NEPA and the State CESA and NCCP.

11(q) The MSCP Plan is designed to improve ecosystem health. The federal Endangered Species Act requires that such a plan take steps to ensure survival of the "covered" species while not precluding recovery. See response to Comments 11(a) and 11(e) – 11(j).

11(r) Please refer to **Theme Response XIII, Ecosystem Based Mitigation ("Out-of-Kind")**, and **Theme Response XXII, Sufficiently/Significantly Conserved Vegetation Communities.**

11(s) It is assumed that the comment refers to Page 3-25 of the MSCP regarding sufficiently and significantly conserved habitat. There does not appear to be a typographical error on p. 3-25. Please refer to response to comment 11(v).

11(t) The designation of significantly and sufficiently conserved vegetation community is not a biological designation, but rather a classification/grouping of vegetation communities based on future responsibilities for the conservation of uncovered species should an uncovered species be listed. The factors taken into consideration in this designation scheme are listed in the MSCP Plan, pages 3-25 and 3-26. See **Theme Response XXII, Sufficiently/Significant Conserved Vegetation Communities.**

11(u) See Section 5.3 of the MSCP Plan, Volume I.

11(v) The "excess" described in Section 3.5, paragraph 4.f (p. 3-28), refers to a local agency's purchase of habitat lands as mitigation for impacts of a public project. If the acquired land is in excess of the mitigation required for the project, the additional habitat may be credited for use as mitigation for impacts of a different project.

A program of "in lieu" fees described in Section 3.5, paragraph 4.g (p. 3-28) of the MSCP Plan, Volume I, is an optional method for a take authorization holder to achieve the goals of a subarea plan. According to state law, a local jurisdiction adopting such a fee program must make certain determinations regarding the purpose and use of the fee and segregate the fee revenues from the general fund.

11(w) This list was developed by professional biologists who used the most current concepts in conservation biology and MSCP-specific data to identify guidelines to be followed by each participating jurisdiction to address the NCCP conservation tenets. Additionally, the checklist provides criteria for assessing whether species and habitat are conserved, and provides general guidance for preserve management and monitoring that are essential parts of a permittable subarea plan.

The MSCP Plan (Volumes I and II) provides specific treatments of how habitat conservation and allowed losses will be monitored, how much mitigation will be required for habitat

impacts, and how preserve management and biological monitoring will be conducted. The Model Implementing Agreement (Attachment A to Volume I) provides the legal framework into which the subarea plan requirements are made enforceable. Each of the subarea plans contained in Volume II of the MSCP Plan provides specific descriptions of the allowable uses of the preserve and management conditions. See **Theme Response XIX, Preserve Management.**

11(x) Section 6-2 of the MSCP Plan provides guidelines for land uses within the MHPA, including public use, agriculture, development, mineral extraction, itinerant worker camps, and border patrol activities. Individual subarea plans will provide specifics on how each jurisdiction would address these and other uses. Each jurisdiction will be responsible for ensuring that allowed uses and activities are consistent with subarea plans and compatible with value and function of the preserve system. For actions that are subject to review under CEQA, the jurisdictions must ensure that the activity is consistent with their subarea plan, implementing agreement, and take authorization. Please refer to **Theme Response IX, Allowable Uses within MHPA.**

11(y) The wildlife agencies disagree the document is short on assurances for species and habitats, short on specifics, and short on scientific review. The preserve system was developed by qualified scientists and jurisdictions consistent with the tenets of conservation biology and the NCCP guidelines. Management prescriptions were developed to assure the goals of the MSCP Plan would be met, yet remain flexible enough to accommodate future new information and management techniques. Responsibilities for both the applicants and the wildlife agencies are defined in the Implementing Agreement, thus assuring the mitigation measures are implemented. In addition, plan implementation would result in protection for the plan's covered species and their habitats in perpetuity. Please also refer to **Theme Response XI, Scientific Review Adequacy.**

11(z) Comment noted.

11

SAN DIEGO AUDUBON SOCIETY
2321 Morena Boulevard, Suite D • San Diego CA 92110 • 619/275-0557

10-

Gail Kobetich
US Fish and Wildlife Service
2730 Lokar Ave. West
Carlsbad, CA 92008

Lawrence W. Monserrate
City of San Diego
Development Services Dept.
1222 First Ave. MS 1501
San Diego, CA 92101

Dave Flesh
600 B Street, Third Floor
San Diego, CA 92101

Re: MSCP

This document is so complex, far-reaching, and significant that we in SD Audubon Society have divided the task. You will have or have heard from Phil Pryde, Vice-President, and Jim Peugh, Immediate Past President. As Conservation Chair and MSCP watcher, I add my comments.

It is disappointing to read, in the introduction, the emphasis, not on the survival, health, and recovery of our unique native species and their habitats, but on "streamlining" of permits for projects which impact (negatively) biological resources; on avoiding listings and the cost and constraints thereof on development, hence on employment, on our ecomony, on seeing open space only as an amenity to attract new business. 11(a)

Nowhere is any rationale or justification provided that we need, or can afford, in ecological terms, new business. Such is assumed as a self-evident good. Not everyone, especially experts and scientists, weighing the essential value of natural resources for the survival of all peoples, against the short-term profits for the few, would agree. 11(b)

This is a very short-sighted document, and very disappointing, given the original goals, and the enormous significance of the many unique resources here in San Diego County, and thus what we have and could contribute to the health and survival of biodiversity, ourselves, future citizens, and the planet we inhabit. 11(c)

Further, it is dangerous indeed to consider this program a "model for the nation," as many say it is, or a "success," as some politicians have pronounced it.

The MSCP, true, is a giant step forward from the fragmented, project-by-project biological mitigation areas of the past. The maps, in those past days, 11(d)

100% Recycled

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showed only the development area, with no way, no map, to consider and evaluate corridors and contiguity to the land next door and beyond. This contribution from MSCP is excellent, and has already influenced some planning and projects. This we applaud. 11(d)

However, under "The Specific Objectives of the MSCP" (1-4), I find, #1, "a balance between preservation of natural resources and regional growth and economic prosperity." "Balance," that favorite buzz word, totally inaccurate and unattainable, given the destruction, to date, of the large, critical percentages of our unique natural resources and species, as noted in this document. 11(e)

The other objectives (1-4) are all aimed at helping business, the economy, quality of life as defined as business and economy, all aimed at justifying and legalizing "takings" of species and habitat, appeasing landowners, expediting permits, making sure the plans will " spread implemtation costs "equitably", meaning that we all , taxpayers, citizens , residents, must pay for the costs, finanacial and environmental, for the damage done by developers and profiteers, to ensure that they won't have to pay the financial costs of their projects and profits. 11(f)

There is nothing in this list of objectives mandating the permanent protection, survival, health, and recovery of our unique natural resources, our unique species, plant and animal, our unique habitats and wildlife corridors, our unique biodiversity. Such should be the overall goal of the program, not just "conservation" (undefined). 11(g)

In order to "avoid species extinctions and the need for further listings" (1-5), this program will need to mandate far, far more than it does in this document. 11(h)

Where is the Scientific Review Panel for the overall NCCP, for this first local effort? Independent scientific review is abolutely essential to evaluate this program, to guide sufficient means of monitoring, with powers of enforcement. 11(i)

So much depends on the Implementation Agreements. So much power is given to them, to make this program work. Who will evaluate the validity and viability of these agreements? Who will implement? Who will enforce, on grounds established by whom? With what penalties? 11(j)

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It is good to see (3-21) that "no net loss of wetlands" is mentioned. But such is in the context of complicated measures to get around any simple and clear enforcement of this very important mandate. 11(k)

The "Covered Species" concept and list are very problematical indeed (3-21). "Once the wildlife agencies have approved a subarea plan and signed the corresponding implementing agreement, that local agency will receive permits and/or managment authorizations to directly impact or 'take' these 85 species, pursuant to its approval plan and implementing agreement, if such taking is incidental to otherwise lawful activities," even those listed as threatened or endangered. How can this be? Does this include takings both inside and outside the preserve areas? Who decides if the take is, indeed, "incidental," and by what criteria? What enforcement is there? Further, the "take authoriztion holders" are given even more assurances that they "will not be required to commit additional land, land restrictions, or financial compensation," even if, in the future a covered species is declared endangered or threatened. Given these assurances to developers, what chance do the species have for survival? 11(l)

These assurances sound like the infamous "No Surprises" clause, spelling a free ride for habitat destroyers, and doom for native species. I trust you have a copy of a letter signed by 160 plus eminent scientists opposing, in the strongest terms, the "No Surprises" clause.

The NCCP Guidelines for protection are listed on p. 3-23. We have known these guidelines to be incredibly weak since the beginning, and, in spite of public input from scientists, environmental groups, and citizens, weak they remain: 1) "Incidental" take is not defined. 2) The impacts will "to the maximum extent practicable" be minimized and mitagated. We all recognize this favorite loophole; clearly cost, in money, not species survival, is the criterion. 3) "Adequate funding for long-term protection of species will be provided." The words should be survival, health, and recovery, not just protection. And could you please define "protection" in this context? 4) "The taking will not appreciably reduce the likelihood of survival and recovery of the species in the wild." Two loophole words here, "appreciably "and "likelihood," neither defined, nor are any criteria given. 11(m)

Following these bullets are more qualifications, limits, and undefined words such as "proportion" and "specific management actions." 11(n)

It is notable that there have been modifications to the Covered Species List (3-23) because of 1) federal and state policy clarifications 2) changes in preserve design 3) evaluation of additional species, and 4) new information, 11(o)

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including species location, additional mitigation measures, and taxonomic issues, etc. Please note: changes of these sorts will inevitably continue, plus additional changes from Mother Nature Herself, weather, rainfall, etc., and changes from human activity here and elsewhere. Change is the only constant in nature, say all knowledgable scientists. Thus the absurdity of the "No Surprises" clause and its sub-assurances, noted above. Hence the need to base the program on survival, health, and recovery of species, not just protection, and with protective measures riddled with loopholes. 11(o)

Uncovered species may be added to the Covered list (3-25) by wildlife agencies and additional "conservation measures" prescribed. Please define "conservation measures" in this context. 11(p)

"If MSCP conservation measures will not adequately protect the species, the agencies will work with participants to identify and jointly implement the steps necessary for coverage." For converage? It would seem prudent to take steps toward protection, survival, health, and recovery, not just coverage. 11(q)

We support the habitat-based approach (3-25) rather than a focus on individual species, and we support the agencies' taking steps to "contribute to conservation of uncovered species, should they become listed in the future." However, what are "habitat-based assurances" for uncovered species? (By the way, we support protection of ALL our native species, plant and animal, listed or not, covered or not.) Given all the assurances granted the "take authorization holders," how much can the agencies do to provide additional assurances for the species? 11(r)

Could you please translate the last paragraph on p. 3-215. Surely there is a typo? 11(s)

On p. 3-26 is a list of "sufficiently conserved" vegatation communities. What does "sufficiently conserved" mean? conserved for what? Again, it is dismaying to read that "take authorization holders would not have additional requirements for the conservation of such species." Again, how much can the agencies do, given the advance assurances given to the "take authorization holders"? 11(t)

Our concern about Section 3.5, Use of Subarea Plans to Protect Biological Resources are, first, who decides the adequacy of mitigation? Who will monitor and enforce? What are the penialties? Second, we deplore vague and iffy words such as "emphasise avoidance," (it should be MANDATE avoidance) and "encourage conservation" (it should be MANDATE 11(u)

conservation. Do you realistically anticipate an excess of land for mitigation requirements? Where would the "in lieu" fees go? for what? 11(v)

The Biological Preserve Design Checklist (3.6,3-29) cries out for an independent Scientific Review Panel of knowledgeable local, recognized scientists, experts in their fields, their selection free of politics, to evaluate the Checklist itself, and to evaluate project consistency and management effectiveness. The document says there will be "ongoing evaluation," but by whom? with what power to stop or modify a project or mitigation program? 11(w)

In Section 4 (3-30) there are more undefined words: "appropriate" management within the preserve.... Please define "appropriate," and explain what power managers would have, and who they will be. What are "appropriate" uses within the preserve? Pipe lines? equestrian trails? golf courses? stables? power lines? roads? Who decides what uses are allowed? By what criteria? 11(x)

In sum, we find the document long on assurances for developers and development, short on assurances for the survival, health, and recovery of species, their habitats, and habitat corridors; long on generalities and loopholes, short on definitions, specific criteria, and enforcement mechanisms; long on assertions, short on scientific review. 11(y)

We recognize the many virtues of the overall program; we urge improvements that will ensure success of the program as measured in the survival, health, and recovery of species, which will, in the long run, benefit our economy, our quality of life, and our health and safety; both now and into the future.

And please, no "model for the nation" This is not even a proper model for our own east San Diego County. All ecosystems are unique. 11(z)

Sincerely, Norma Sullivan

Norma Sullivan, Conservation Chair
5858 Scripps St.
San Diego CA 92122

12 FARRAN, INTERNATIONAL BOUNDARY AND WATER COMMISSION, 10/15/96

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12(a) The comments are noted. They do not reflect on the adequacy or sufficiency of the Draft EIR/EIS and responses are not necessary.

12(b) As described on pages 1-18 and 1-19 of the Draft EIR/EIS, no effects on groundwater and/or surface water quality or drainage patterns are anticipated with implementation of the proposed MSCP Plan. Implementation of the Plan would result in creation of an open space preserve to be managed for the benefit of biological resources. In this respect, implementation of the proposed MSCP Plan could have beneficial effects on water quality. An indirect effect of the MSCP Plan involves potential increases in development pressure outside the Preserve which could result in more intense development. Such development might, however, be more compact than currently occurs which could result in a reduced extent of impervious surfaces carrying runoff that could impair water quality. In addition, water quality effects of individual projects would continue to be evaluated on a project by project basis. No features of the proposed project would affect land use, drainage or water quality in Mexico.

12(c) No construction or development activities would be associated with establishment of the MSCP Preserve and therefore no effects on boundary monuments or markers are anticipated. Increased development pressure outside the preserve, an indirect effect of the MSCP Plan, may involve disturbance near the U.S./Mexico border, however, any individual development project would be subject to site-specific project review and any issues associated with boundary monuments or markers would be addressed as part of the individual project review process.

10/15 ; MICC WMIS

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INTERNATIONAL BOUNDARY AND WATER COMMISSION
UNITED STATES AND MEXICO

OFFICE OF THE COMMISSIONER
UNITED STATES SECTION

OCT - 4 1996

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

Dear Mr. Kobetich:

Thank you for the opportunity to review and comment on the Executive Summary of the Recirculated Draft Joint EIR/EIS (DEIR/DEIS) for Issuance of Take Authorizations for Threatened and Endangered Species due to Urban Growth Within the Multiple Species Conservation Program (MSCP) Planning Area. Unfortunately, the summary document does not provide sufficient information to determine what effects the proposed project might have on our activities in the San Diego County area. However, the following information regarding our agency and the effects we will consider in our review of the proposed project are provided for your perusal.

The United States Section of the International Boundary and Water Commission (USIBWC) understands that the proposed study area includes 582,243 acres in southwest San Diego County as well as unincorporated southwestern San Diego County. The USIBWC is aware that the southern boundary of the MSCP Planning Area is the international border with Mexico; the Cleveland National Forest forms portions of the eastern boundary; the Pacific Ocean is on the western boundary; and the San Dieguito River Valley forms the northern boundary. To that end, the USIBWC is taking this opportunity to advise you of two projects which are located in your study area, namely the Tijuana Flood Control Project and the South Bay International Wastewater Treatment Plant (SBIWTP).

The USIBWC was authorized to conclude an agreement with the Mexican government for an international flood control project in the Tijuana River under Public Law 89-640 on October 10, 1966. Subsequent international agreements modified the project, which was dedicated in January of 1979, to provide flood protection to approximately 4,800 acres in the Tijuana River Valley. The USIBWC is responsible for maintaining the United States portion of the Tijuana River Flood Control Project, which includes periodic removal of sediments, to retain the design capacity of the system, in the 70.1-meter (230-foot) wide bottom and 372.8-meter (1,223-foot) long, concrete-lined channel which connects to the Mexican channel at the international boundary. A 1127.8-meter (3700-foot) long, flared energy dissipator with grouted and dumped stone follows the lined channel segment, and earth levees with heights up to 6.4 meters (21 feet) extend north to Dairy Mart Road and south along the international boundary to high ground. Enclosure 1 is a site location map of this flood control project,. which spans the southern portion of your study area. 12(a)

THE COMMONS, BUILDING C, SUITE 310 • 4171 N. MESA STREET • EL PASO, TEXAS 79902
(915) 534-6700 • (FTS) 570-6700

International Boundary and Water Commission, United States and Mexico (IBWC) Minute No. 283 entitled "Conceptual Plan for the International Solution to the Border Sanitation Problem in San Diego, California/Tijuana, Baja California," July 2, 2990, authorizes the two governments to undertake a project to provide for the proper collection, treatment and final disposal of sewage in excess of existing facility capacities. Construction of the SBIWTP, a 25 million gallon per day (mgd) system designed to treat wastewater origination in Tijuana, Mexico is underway with final completion expected in early 1998. Enclosure 2 depicts major elements of the wastewater treatment plant, which are located within your project area. 12(b)

Additionally, the IBWC entered into the Treaty of February 3, 1944 for "Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande" (1944 Water Treaty). The USIBWC, under the authority found in 22 U.S.C. 277 a-d, is responsible for ensuring that the United States Government meets the obligations incurred in those agreements. Activities proposed during the assembly and management of this project to conserve biological resources within the Multi-Habitat Planning Area (MHPA) which have the potential of causing adverse impacts to both countries include, but are not limited to: grading or modification of the natural terrain and drainage ditches; and construction of buildings, barriers, walls, roads, fences, utilities, berms, and dikes. We would request that any adverse impacts to the groundwater and/or surface water quality within your project area, and the present drainage patterns to and from Mexico be addressed, and that measures to prevent potential transboundary pollution problems in either country are anticipated. The proposed action must in no way cause impact to Mexico. 12(c)

The USIBWC is also obligated by the Gadsen Treaty of 1853 and the Boundary Convention of 1882 to work with the Mexican Section of the IBWC to maintain IBWC monuments and markers along the United States/Mexico international boundary. Therefore, we would request that any actions you propose near the international boundary address the adverse impacts to the visibility and permanent placement of the boundary monuments and markers. Enclosure 3 is a list of western land boundary monuments in San Diego County, California.

Additionally, along certain areas of the international boundary, a 60-foot wide area of public lands was reserved by Presidential Proclamation in 1907. From the executive summary, it is difficult to determine whether preservation actions are scheduled in this area, and you may choose to avoid this buffer zone as a precautionary measure to prevent displacement of any of the IBWC monuments.

Again, thank you for the opportunity to review and comment on the Executive Summary of the Recirculated DEIR/DEIS for Issuance of Take Authorizations for Threatened and Endangered Species due to Urban Growth Within The MSCP Planning Area. Please provide me with one copy of the Final EIR/EIS when it is available.

Sincerely,

Yusuf E. Farran

Yusuf E. Farran, P. E.
Division Engineer
Environmental Management Division

Enclosure: (3)
As Stated

13 C.D. STOUT, ALPINE LAND PRESERVATION ACTION COMMITTEE, 10/15/96

13(a) Refer to **Theme Response XI, Scientific Review Adequacy.**

13(b) Approval of the MSCP Plan by the participating local jurisdictions is a policy decision and there is no evidentiary basis required to make such a policy decision. The Plan would be forwarded to the wildlife agencies as part of the application for state and federal take authorizations. Submitting a permit application under Section 10 of the federal Endangered Species Act does not represent a violation of that Act.

13(c) Please refer to **Theme Response XI, Scientific Review Adequacy.**

13(d) Habitat fragmentation has had serious impacts upon many species within the MSCP study area. One of the principal tenets of the Natural Community Conservation Planning (NCCP) Conservation Guidelines is the need to design a habitat preserve system that minimizes fragmentation. The MSCP Plan attempts to accomplish this difficult task within an area that has already experienced significant fragmentation. Therefore, the focus of planning was not only on preserving large unfragmented blocks of habitat, but of linking those blocks together through preservation of corridors, and potentially of management/restoration of degraded corridor areas.

Scientific research conducted in San Diego indicates that the rarer species, such as the California gnatcatcher, are more susceptible to extinction in small and isolated patches of habitat (Soule, M. et.al. 1988. Reconstructed dynamics of rapid extinctions of chaparral-requiring birds in urban habitat lands. *Conservation Biology.* Vol. 2[1]:75-92.). Recent research conducted for the NCCP by Dr. John Rottenberry, from U.C. Riverside (DFG 1996 unpublished report), indicates that the California gnatcatcher is a fair umbrella species for avian biodiversity. When the gnatcatcher is present, there tends to be overall higher avian diversity on a particular site. Given the gnatcatcher's rather limited dispersal capabilities, sustaining connectivity for this species likely provides connectivity for a wide array of other species. Not all species will persist in all habitat patches, but the conservation of an interconnected preserve will maintain common species within the MSCP preserve system.

Each species covered (and those considered but not given coverage) by the MSCP Plan was individually evaluated in the context of the habitat and corridor needs of that species, separate from any linkage to gnatcatcher habitat requirements. There are many portions of the preserve system that do not support gnatcatcher habitat, but are included in the preserve.

The MSCP was initiated as a multiple species, multiple habitats-based plan, not just a plan for the coastal California gnatcatcher and coastal sage scrub. The design and analysis for the plan was based on species-specific parameters (when available), habitat-based preservation, a complex habitat evaluation map, preserve design principles, NCCP guidelines, and Section 10(a) criteria of the

federal Endangered Species Act. Conservation of biological core resource areas and interconnecting corridors, both within the MSCP study area and to habitat areas outside the planning boundary were analyzed and addressed. The individual species to be protected by the MSCP Plan and the level of conservation is summarized in Table 3-5 of the MSCP Plan, Volume I. For information on the data used in developing this table and the biological basis for the plan, please refer to responses to Comments 45(s), 61(a), and 10(p).

13(e) In regards to the request to include all of the comment's referenced articles, it should be noted that all of the articles are readily available from many sources and therefore there is no need to include the entire text of these documents in the Administrative Record. However, by virtue of this letter being part of the Administrative Record, all of the citations contained in the letter are also part of the Administrative Record.

13

October 13, 1996

Land Development Review Division
City of San Diego
1222 First Avenue
Mail Station 501
San Diego, CA 92101

RECEIVED
OCT 10 1996

Re: Comment on draft EIR/EIS for the MSCP

Dear Sirs:

In the past I have supported the formation of the MSCP in San Diego County. However, it is now clear that this plan is inadequate in its ability to protect in the long term many threatened, endangered and sensitive species. The reason for this is a lack of objective scientific review. The MSCP claims to preserve a number of species, but objective research by independent, non-agency scientists which would support the plan for each particular species included have not been done. 13(a)

Therefore, there may be a lack of substantial evidence under CEQA justifying the adoption of the MSCP. If it is adopted it is an apparent violation of the Endangered Species Act because many species will be doomed to extinction in island preserves, or subject to a highly improbable chance of survival. 13(b)

The MSCP can not have validity unless reviewed, designed and endorsed by professional scientists trained in ecology, population biology, systematics, conservation biology and related fields. While the scientific community may not reach perfect concensus on some issues, the input of objective scientists in the process is essential. I express this view as a trained scientist and as one concerned about the preservation of biodiversity. 13(c)

Below I list a number of recent papers, reviews and commentaries from Science and Nature on the topic of species extinctions and habitat integrity. As Science and Nature are the two leading scientific journals in the world, these articles indicate that issues of habitat size, fragmentation and species extinction are very much a topic of current 13(d)

research. These papers therefore manifest many unresloved questions. 13(d)

For example, reference 5 below presents data in which species isolated in fragmented habitats are doomed to extinction, and surprisingly the most likely to become extinct are the currently most abundant, *i.e.* rabbits, crows. This highlights how little we understand about the effects of habitat fragmentation on the environment.

The MSCP proports to provide 'corridors' connecting the proposed island preserves. However, there is a striking lack of scientific data supporting the idea that preserving patches of minimally connected habitat, containing one species in a particular ecosystem (coastal sage scrub / California gnatcatcher), will necessarily protect in perpetuity the many other species claimed to be protected by the MSCP.

Therefore, I am opposed to the adoption of the MSCP if in so doing the plan claims to provide protection for any endangered or threatened species other than the California gnatcatcher.

Please supply for the record an answer to the following question: what are the specific data supporting the concept that species other than the gnatcatcher will be preserved in the forseeable future by the MSCP?

What are the individual species to be protected? And what are the data justifying the protection of each of these species in the long term by the MSCP?

Please include this letter in the Administrative Record concerning the EIR for the MSCP in San Diego County.

Further, I request that all of the referenced articles listed below be included into the Administrative Record; although copies are not enclosed, I have read and studied each of these articles and have copies in my files, and I am using them as a basis for this comment letter. Therefore, by including this letter I request that these citations to the scientific literature also become a part of the Administrative Record. 13(e)

This letter is four pages long.

Yours sincerely,

C. D. Stout, Ph. D
President, Alpine Land Preservation Action Committee.
P. O. Box 2146
Alpine, CA 91903

cc: Gail Kobetich
U. S. Fish and Wildlife Service
2730 Loker Avenue West
Carlsbad, CA 92008

References:

1. Urban extinction of birds. J. M. Diamond, Nature 333: 393 (1988).
2. Hostile landscapes and the decline of migratory songbirds. R. A. Askins, Science 267: 1956 (1995).
3. Regional forest fragmentation and the nesting success of migratory birds. S. K. Robinson, et al., Science 267: 1987 (1995).
4. Connecting landscape patterns to ecosystem and population processes. P. Karalva and U. Wennergren, Nature 373: 299 (1995).
5. Habitat destruction and the extinction debt. D. Tilman, et al., Nature 371: 65 (1994).
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10. No shortcuts in new maps. P. Kareiva, Nature 365: 292 (1993).
11. Status and prospects for success of the Endangered Species Act: A look at recovery plans. T. H. Tear, et al., Science 262: 976 (1993).
12. Building a scientifically sound policy for protecting endangered species. T. Eisner, et al., Science 268: 1231 (1995).

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14. Extinction and conservation in Cebu. P. Magsalay, T. Brooks, G. Dutson and R. Timmins, Nature 373: 294 (1995).
15. Minimum population grows larger. E. Culotta, Science 270: 31 (1995).
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17. The benefits of natural disasters. D. Tilman, Science 273: 1518 (1996).
18. Exploring biodiversity's benefits. E. Culotta, Science 273: 1045 (1996).
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22. Productivity and sustainability influenced by biodiversity in grassland ecosystems. D. Tilman, D. Wedin and J. Knops, Nature 379: 718 (1996).
23. Earth's peeling veneer of life. D. W. Morris, Nature 373: 25 (1995).
24. Ecological determinants of species loss in remnant prairies. M. K. Leach and T. J. Givinish, Science 273: 1555 (1996).
25. Effects of disturbance on river food webs. J. T. Wootton, M. S. Parker and M. E. Power, Science 273: 1558 (1996).

14 VAN COLLINSWORTH, PRESERVE WILD SANTEE 10/4/96

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14(a) The goal of the MSCP Plan is to provide a regional preserve system based on contributions from the involved jurisdictions. On their own, many jurisdictions would not receive permit coverage for all species that would be covered in Volume I, the regional plan. The differential among jurisdictions is based on the amount of remaining habitat and its location within the proposed preserve. The City of Santee Subarea Plan provides two alternatives, both of which provide open space on Fanita Ranch that would contribute towards the viability of the MSCP preserve.

14(b) The MSCP Plan proposes to include 27,000 acres of habitat lands within the preserve system that would not have been conserved through local jurisdiction ordinances and zoning. Also, through good preserve design, the MSCP Plan can assure that much of the habitat lands conserved through ordinances will contribute to the overall preserve system. The regional funding element of the MSCP Plan will be used to purchase those private lands that are necessary for assuring connectivity of habitat lands that ordinances or zoning would retain. The residents within an individual jurisdiction would be contributing toward building the overall preserve system, not just the preserve within their jurisdiction. A number of open space areas on Fanita Ranch have in the past been proposed for development. Much more of this portion of the City of Santee Subarea Plan could be developed under City ordinances, but instead has been set aside as open space.

14(c) One of the policies of the MSCP Plan is that acquisition of habitat would only be achieved from willing sellers on a fair market value basis. The intent is to work with landowners who desire to develop their properties to ensure that their proposed projects are compatible with the MSCP preserve and consistent with the jurisdiction's approved subarea plan. If the landowner chooses, and the City of Santee agrees, Fanita Ranch could be purchased with regional funds or sold as credits through a conservation bank agreement. Without such agreement, the wildlife agencies must assess the proposed preserve as currently configured in Santee.

The City of Santee, by letter dated October 16, 1996, requested that the EIR/EIS analyze the impacts of adding the entire 2,550 acre Fanita Ranch to the preserve and thus removing the potential development in the City. Full protection of Fanita Ranch has already been addressed in the Biologically Preferred alternative. Therefore, if such an alternative was selected by the City of Santee, no further environmental analysis would be required.

14(d) Deleting the proposed conserved habitat land in the North Magnolia in exchange for all of Fanita Ranch is not one of the alternatives addressed in the EIR/EIS, but the MHPA alternative included a substantial portion of Fanita Ranch. The Biologically Preferred alternative included all of Fanita Ranch, which would be a beneficial, but not required, addition to the MHPA alternative.

14(e) The species analysis included language regarding risk, primarily to recognize where management conditions would be necessary to assure adequate conservation. A revised MSCP Table 3-5 has been prepared that provides a more complete assessment of species conservation and specific conditions that are required to meet the standard for coverage. The revised MSCP Table 3-5 included in the Revisions to the MSCP Plan, January 1997, indicates that 85 species are adequately conserved.

14(f) Each jurisdiction has the authority to determine the adequacy of mitigation for projects within its legal boundary. If a jurisdiction determines, as part of the environmental review process, that mitigation must occur within a specified area, then that finding can be made a condition of the project's approval. The MSCP Plan provides a mechanism for assuring that all of the necessary habitat will be obtained through a combination of regulations, mitigation and purchase. Regardless of whether the jurisdictions restrict mitigation to specific areas, the MSCP will assure that all identified preserve lands can be obtained. The MSCP Plan provides the option to jurisdictions to mitigate on a regional basis, but the final decision on mitigation mechanisms and constraints lies with the participating local jurisdictions who retain land use authority.

14(g) Fanita Ranch (Santee) is included as part of the Mission Trails/East Elliott/Santee core area, and conservation of a significant amount of habitat within Fanita Ranch would occur with the MHPA alternative. By itself, Fanita Ranch is not considered a regional biological core area. The MSCP Resource Document states that core areas are defined as areas supporting a high concentration of sensitive biological resources and that inclusion of unfragmented core resource areas should be maximized within the final preserve boundaries to the extent possible. Within the larger core area, the MHPA alternative proposes to conserve a large portion of the habitat in a configuration that reduces future fragmentation potential. This is consistent with the objective for core area resource conservation. Excluding military lands, 75% of this biological core area is proposed for preservation by the MSCP (see Table 3-2, MSCP Plan, Volume I).

14(h) The MSCP preserve alternatives do not set an arbitrary percentage of habitat land that must be conserved by each jurisdiction. Rather, the MSCP preserve design alternatives evaluated the resources in each habitat area and developed a preserve design that would be expected to meet the regional conservation standards so that species could be covered by take authorizations. The amount of habitat that is conserved by each jurisdiction can affect the number of species for which it would be issued take authorizations, making the jurisdiction dependent upon the participation of other jurisdictions for issuance of take authorizations for certain species. In fact, Santee's take authorizations for several species, including the California gnatcatcher, are dependent upon the approval and implementation of the City and County of San Diego subarea plans.

14(i) Comment noted.

14(j) Comment noted.

14(k) Comment noted.

14(l) The City of Santee's acknowledgment of the habitat value of Fanita Ranch, and its action to propose an alternative that includes all of the property in the subarea plan is noted. As stated in response to Comment 14(c), full protection of Fanita Ranch has already been addressed in the Biologically Preferred alternative. If such an alternative were selected by the City of San Diego and Santee, no further environmental analysis would be required.

14

Preserve Wild Santee

9222 Lake Canyon Road
Santee, CA 92071
(619) 258-7929
10/4/96

Ms. Nancy Gilbert
U.S. Fish and Wildlife Service
2730 Loker Avenue West
Carlsbad, CA 92008

Mr. John Kovac
City of San Diego
Development & Environmental Planning Division
1222 First Avenue, 5th Floor
San Diego, CA 92101

Comments on the Multiple Species Conservation Program EIR/EIS:

For more than two years dedicated members of Preserve Wild Santee have toiled to educate the community about the great opportunity we have to build a regional wildlife preserve. Our approximately 1,200 members support a viable regional preserve and have worked to influence and change the configuration of Santee's sub-area plan. The MSCP process has been touted nationally as a "model process" which has been open and allowed developers and environmentalists to reach a consensus on what should be protected and potentially developed.

Preserve Wild Santee would like to know what these people are talking about, because sadly, the description of the process cited above has not been our experience. Active members of Preserve Wild Santee were excluded from the early negotiations between American General Corporation, the Wildlife Agencies, and the City of Santee. Those negotiations decided the configuration of Santee's sub-area plan and there has been virtually no change since then despite substantial, overwhelming, and consistent criticism of those boundaries by Santee citizens. 14(a

The land conserved in Santee is almost completely what would be undeveloped regardless of the MSCP. Almost all of it is protected by our own hillside or floodplain ordinance. Moderate value habitat has been protected in the preserve at the North end of Magnolia Avenue, while "very high value biological core" habitat on Fanita Ranch has been allowed to be fragmented and developed. Why should the residents of Santee pay $20 to $25 annually to purchase habitat when their best wildlife habitat is not going to be protected by the plan? Unfortunately, Santee may not be unique. Do other sub area plans only protect what wouldn't be developed anyway due to ordinance? What appears to be taking shape is a regional plan which buys out owners of speculative landholdings so that larger more developable landholders can develop their properties without being hindered by the Endangered Species Act. If what is taking place in Santee is typical of the region, then neither Preserve Wild Santee, nor the community of Santee as a whole, will be able to support the plan. 14

A significant revision to Santee's sub-area plan must take place for Santee citizens to support the region: 1

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Preserve Wild Santee

1. Santee's plan must include all of 2,567 acre Fanita Ranch.
2. The inclusion of Fanita Ranch must strengthen the regional preserve. Fanita Ranch's inclusion in the MHPA must not be used as rationalization for deleting other "less valuable" lands from the preserve in another jurisdiction. 14(c)
3. Santee lands in the North Magnolia "geographic bowl" may be deleted if it would promote the touted "development compromise." The addition of Fanita Ranch must lower the risk for species region wide. 14(d)

Specific Criticisms:

The region:
Only 30% of the original 98 indicator species examined are adequately protected with a low risk rating in the MHPA. 70% of the original 98 indicator species examined are at risk within the MHPA. That means we don't have a large enough, or well enough configured land base to protect our biodiversity. More contiguous land must be added region wide. It doesn't make sense to spend millions and still not adequately protect our biodiversity. 14(e)

Funding Mechanism:
If it is fair to ask property owners in every jurisdiction to buy habitat for the sake of the region, then it should also be fair for every jurisdiction to be included in the market of conservation credits. The City or County of San Diego, should not be able to exclude Santee or any other jurisdiction from selling conservation credits to their markets. Treat Santee fairly, as an equal player, or expect Santee to withdraw. The ability to create a Conservation Bank on Fanita Ranch may be the key to solving Santee's land use dilemma and preserving our highest quality habitat. 14(f)

Santee:
Santee's Preserve boundaries are badly flawed and should be altered. The main problem is that Fanita Ranch should be included entirely within the regional preserve.

Fanita Ranch has been identified by Multiple Species Conservation Plan scientists as "Core Biological Resource Area." Core areas are defined as "the basis for the preserve system. They are the foundation on which preserve boundaries should be drawn. They possess biological resources, which if were fragmented, or lost, could not be mitigated elsewhere." 14(g)

Fanita Ranch boundaries violate NCCP guidelines for preserve design, by badly fragmenting biological core habitat with three development bubbles and four major roads. Roads and development must be eliminated on Fanita Ranch.

Santee's plan conserves moderate value habitat in the North Magnolia area at 90-100% conservation rates while conserving biological core habitat on Fanita Ranch at only 55%. That does not make sense. If Santee, needs luxury homes , then they should be built on the moderate value habitat at North Magnolia, not on the "very high value core habitat" of Fanita Ranch.

Preserve Wild Santee

Santee's participation relative to other jurisdictions is superficial. For example:
-Santee contributes only 40% of coastal sage scrub habitat to the MSCP vs. 70% for San Diego.
-Santee contributes only 55% of its core biological habitat vs. 68%-96% of core habitat for most other jurisdictions. 14(h)
-Santee's contribution represents only 2% of the cities land available for residential development.
-Almost all of the land contributed by Santee to the MSCP would not be built on anyway due to city ordinance (hillside or floodplain).
-Poway is preserving twice as much of its city as MSCP open space preserve than is Santee.

One possible compromise:
North Magnolia (450-500 acres): Capable of densities on average of about 1 unit/acre. If the property was held by one owner and master planned it is capable of greater density.
Many properties are difficult to develop (slope, no utilities) and are not worth much. 14(i)
One owner holds 150 acres:
Other holdings range from 40 acres to 1/2 acre in size.
There are 350 acres of N. Magnolia in the preserve and about 100-150 acre out.
There are already two subdivisions approved (silver estates and Magnolia Estates).
Silver Estates is 70 acres, about 20 acres have already been developed.
Magnolia Estates is 33.9 acres (58 units + one large lot).
Brainstorm Scenario:
Step 1. Regional Funding mechanism provides funds to land trust to buy 400 acres of North Magnolia (250 are going to be purchased by our present plan).
Step 2. Land Trust trades 400 acres of North Magnolia to American General for 400 acres on Fanita Ranch.
Step 3. Regional Funding Mechanism buys remaining 2,200 acres of Fanita Ranch through the Land Trust. 14(j)
Step 4. Land Trust creates a Conservation Bank on Fanita Ranch and rolls back sales of mitigation credits to the region.
Step 5. American General purchases mitigation credits from the Fanita Conservation Bank for 400 acres and develops a master planned luxury development in North Magnolia.
Results:
American General gets their profit by selling Fanita Ranch and lots in North Magnolia. Santee gets 300-400 luxury homes, the region gets the most valuable wildlife habitat preserved. Santee residents are not deluged with traffic.
Another scenario might consider County holdings in the Town Center to supplement or replace holdings in North Magnolia. The advantage is that the County is a single holder and the land could be traded straight across without the need of money from a regional funding mechanism. There would be less traffic impacts and infrastructure costs because people would live adjacent to Santee's commercial center. 14(

Nearly, 90% of Southern California's coastal sage scrub habitat is gone. Preserve Wild Santee is merely

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Preserve Wild Santee

asking that the best of what remains be adequately conserved.

Santee is not only cheating the region with the current configuration, but we are cheating ourselves out of a better quality of life.

Van K. Collinsworth
Director

Addendum 10/11/96:

Santee's final public comment hearing amended (at our request) Santee's sub-area plan on a 5-0 vote of the city council. An alternative sub-area plan reflecting TOTAL preservation of Fanita Ranch has been attached to the existing plan.

Preserve Wild Santee fully supports the total preservation alternative. We believe it is the most appropriate land use for BOTH the wildlife biology and the human community of Santee. 14(I)

15 MIKE COLEMAN, OTAY WATER DISTRICT, 10/15/96

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15(a) The comments are noted. They do not reflect on the sufficiency or adequacy of the Draft EIR/EIS and responses are not necessary.

15(b) The comments are noted. They do not reflect on the sufficiency or adequacy of the Draft EIR/EIS and responses are not necessary.

15(c) The comment is noted. The revised language in the Final EIR/EIS reflects the fact that the "Water Reclamation Master Plan" should be called the "Otay Water District, Water Resources Master Plan."

15(d) The comments are noted. They do not reflect on the sufficiency or adequacy of the Draft EIR/EIS and responses are not necessary.

15

...Dedicated to Community Service
10595 JAMACHA BOULEVARD, SPRING VALLEY, CALIFORNIA 91977
TELEPHONE: 670-2222, AREA CODE 619

October 14, 1996

W.O. 8014

Mr. John Kovac
Senior Planner/DSD/EAS
City of San Diego
Land Development Review Division
1222 First Avenue, MS 501
San Diego, CA 92101

VIA FAX 236-6620
& U.S. MAIL

Subject : RECIRCULATED DRAFT JOINT EIR/EIS FOR THE MULTIPLE SPECIES CONSERVATION PROGRAM (MSCP)

Dear Mr. Kovac:

The Otay Water District (OWD) is pleased to respond to the City of San Diego's Joint Draft Environmental Impact Report (EIR) / Draft Environmental Impact Statement (EIS) for the Multiple Species Conservation Program (MSCP).

We understand the City of San Diego and the U.S. Fish and Wildlife Service (USFWS) are co-lead agencies for the proposed project. The City is the lead agency for the preparation of the EIR and the USFWS is the lead agency for preparation of the EIS. Otay Water District (OWD) is a Special District with designation as a "Responsible Agency" with decision-making authority under the MSCP.

OWD is a participant in the MSCP having prepared a Subarea Plan which is incorporated as part of the MSCP and analyzed in the Joint Draft EIR/EIS. As listed in the EIR/EIS, future discretionary actions to go before the OWD Board of Directors will involve approval of the MSCP Plan, adoption of the OWD Subarea Plan, and approval of the Implementing Agreement to incorporate OWD preserve areas into the preserve boundaries as shown on the MSCP Plan.

The revised MSCP Plan and recirculated Joint Draft EIR/EIS includes project level information related to OWD that was previously not included in the first draft EIR/EIS.

The OWD Subarea Plan identifies land that will be managed by the District for conservation purposes and describes water provision facility improvements (OWD Capital Improvement Program) that will be mitigated by the permanent conservation of habitat on District lands. OWD plans to permanently preserve 230 acres of habitat within an area identified as the San Miguel Habitat Management Area (HMA). Conserved lands will function as components of the

15(a)

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MSCP preserve system; ownership and habitat management responsibilities will be retained by the District. 15(a)

OWD supports the MSCP in the project purpose to assemble and manage a preserve for conservation of biological resources within the Multi-Habitat Planning Area and goal of preservation of Core Biological Resource areas and linkages.

Comments on the Joint EIR/EIS and Plan are as follows:

- OWD concurs with the EIR/EIS analysis that no significant impacts are identified for the OWD Subarea Plan at the project level of analysis. 15(b)

- The reference used throughout the document in the Otay Water District sections termed "Water Reclamation Master Plan" should be corrected to read "Otay Water District, Water Resources Master Plan". 15(c)

- Just prior to press time for the MSCP and Recirculated Joint Draft EIR/EIS the California Department of Fish & Game had requested minor amendments to the OWD Subarea Plan such as an Executive Summary and other minor clarifications. These changes will now be completed by the District with the close of the Draft Joint EIR/EIS along with any other comments received during the draft review process. The minor changes to the Subarea Plan document will be consistent with the EIR/EIS. 15(d)

Please contact me at 670-2293 if you need any further information or have any questions.

Sincerely,

Michael F. Coleman

Michael F. Coleman, AICP
Environmental Specialist

MC/jkp

cc: Tim Stanton, OWD
Bart Mumford, OWD
Jim Peasley, OWD
Terry Kreuiter, OWD
Tom Held-RECON, OWD
Keith Merkel-Merkel, Inc.,
June Collins, Dudek
Robert Leiter, City of Chula Vista
Dave Flesh, City of San Diego
Bill Tippets, Cal Fish & Game
Nancy Gilbert, USFWS
Jerre Stallcup, Ogden

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16 R. ROBERTS, COUNTY OF SAN DIEGO, 10/16/96

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16(a) The lead agencies have addressed the County's specific comment regarding the sufficiency of the biological analysis set out in the Draft EIR/EIS in several of the following responses. Generally, the Draft EIR/EIS assumes that subsequent environmental review may be required for individual projects within the MSCP study area. The lead agencies, however, do not anticipate any further environmental review for the federal, state and local actions considered by the Draft EIR/EIS, described on pages 1-11 through 1-14 of the environmental document and summarized in the first paragraph of the abstract to the document.

16(b) The referenced September 23, 1996 document does not introduce new information or additional data to support otherwise conclusionary statements about biological impacts. The document is a compilation of the documentation listed on pages 4.3-2 and 4.3-3 of the Draft EIR/EIS, all of which was available for review by the public at local libraries and at the local offices of the wildlife agencies prior to the time the Draft EIR/EIS was distributed for public review. To accommodate additional review of the document, the lead agencies extended the public review period for the Draft EIR/EIS from October 15, 1996 to October 29, 1996. Please refer to **Theme Response VIII, Public Involvement.**

16(c) Table 4.3-1 is not the sole basis for concluding that the MSCP Plan adequately conserves species covered by the Plan. Substantial biological data were used to demonstrate that the preserve design is adequate to protect the covered species. These data are cited on pages 4.3-1 through 4.3-3 of the Draft EIR/EIS and incorporated by reference on pages 4.1-1 and 4.1-2. Table 4.3-1, however, has been revised to better portray the biological data.

The adequacy of linkages by themselves are not the reason for providing species coverage under the MSCP Plan. A great number of factors such as the size of the preserve system, configuration, quality of habitat, and habitat management and monitoring proposals, in concert with the linkages, provide the rationale for permit coverage and for species. Pages 4.3-174 through 4.3-179 of the Draft EIR/EIS summarize some of these features for the proposed Plan and alternative scenarios.

16(d) Revised MSCP Table 3-5 included in the Revisions to the MSCP Plan, January 1997, provides a more detailed explanation of species coverage under the MSCP. One of the County of San Diego's Deal Points for the MSCP is that "The MSCP must be revised to require all subarea and/or project plans only meet the biological standards of the agreed upon MSCP Plan as well as the Natural Communities Conservation Planning (NCCP) and 10(a) standards of the reauthorized version of the Endangered Species Act." The U.S. Fish and Wildlife Service (Service) will base its evaluation of the MSCP Plan on the provisions of Section 10(a) of the current version of the ESA and the Department of Fish and Game would undertake an analysis of the MSCP Plan based on the requirements of Fish and Game Code Section 2081/2835 Management Authorizations.

Specific examples of locations where conflicting data are included in the Draft EIR/EIS are not provided in the comment and it is therefore not possible to respond to the comment regarding conflicting data.

It is not the purpose of the Draft EIR/EIS to determine whether species have been appropriately placed on the Covered Species List. The wildlife agencies will determine which species will be authorized for take. The purpose of the Draft EIR/EIS is to document the degree to which significant effects would occur to species on the Covered Species List due to the take authorizations proposed to be issued by the wildlife agencies and, further, to determine whether measures incorporated in the proposed Plan would effectively mitigate identified significant effects. This is the focus of the analysis in the Draft EIR/EIS. For this reason, it is not necessary that the Draft EIR/EIS explain how the biological data were used to determine species coverage. Nevertheless, as described above, the Draft EIR/EIS specifically cites the biological data that form the basis of the proposed MSCP Plan and those data were used to evaluate impact significance and mitigation effectiveness in the Draft EIR/EIS. Monitoring is an important component of mitigation as described on pages 4.3-178 through 4.3-180 of the Draft EIR/EIS.

16(d) As noted in response to Comment 16(c), there has not been a failure to cite or reference biological data in the Draft EIR/EIS. Likewise, it is not necessary in the Draft EIR/EIS to "show that the MSCP Plan would ensure the survival of the species on the covered species list." Such analysis would be completed by the wildlife agencies prior to determining whether or not to issue take authorizations. The focus of the Draft EIR/EIS is on the significance of impacts to species that could be taken with issuance of the proposed permits and the effectiveness of proposed mitigation measures. Mitigation measures for the proposed MHPA are described in detail on pages 4.3-180 through 4.3-183 of the Draft EIR/EIS.

16(e) The concept of a habitat preserve supporting multiple species is well-recognized in conservation biology theory and reflected in the NCCP Conservation Guidelines documented in the Draft EIR/EIS. The NCCP concept and preserve design tenets are documented on pages 1-1, 1-2, 1-3, 1-5, 2-2, 2-11 and 4.3-3 through 4.3-5 of the Draft EIR/EIS. Within the Metro-Lakeside-Jamul segment of the County's subarea plan, the proposed Biological Mitigation Ordinance (BMO) would apply. The description of the BMO on page 2-42 of the Draft EIR/EIS notes that out-of-kind mitigation may occur in conjunction with implementation of the BMO. In these ways, the Draft EIR/EIS clearly documents the mitigation philosophy incorporated in the proposed MSCP Plan. This philosophy is also documented in the MSCP Plan and associated subarea plans.

The design and analysis for the plan was based on species-specific parameters (when available), habitat-based preservation, a complex habitat evaluation map, preserve design principles, NCCP guidelines, and Section 10(a) criteria of the federal Endangered Species Act. Conservation of biological core resource areas and interconnecting corridors, both within the MSCP study area and to habitat areas outside the planning boundary were analyzed and addressed. The individual species to be protected by the plan and the level of conservation is summarized in revised MSCP Table 3-5 included int he Revisions to the MSCP Plan, January 1997. For information on the data used in the development of this

table and the biological basis for the MSCP Plan, please refer to responses to Comments 45(a) and 10(l). Please refer also to **Theme Response XIII, Ecosystem Based Mitigation ("Out-of-Kind").**

16(f) The organization of the Draft EIR/EIS is described on pages 1-23 through 1-24 of the document and the organization of the environmental consequences section is described on pages 4.1-1 through 4.1-7. As noted in the comment, the program level and project level analyses included in the Draft EIR/EIS are identified on Table 4.1-1 (pages 4.1-4 and 4.1-5) of the document. The Lead Agencies decided to introduce the reader to this concept at this place in the document since it marks the beginning of the environmental analysis. No analysis is presented in prior sections of the document. Reference is also made to the program and project level analyses included in the document in the Executive Summary to the Draft EIR/EIS (page ES-7).

With respect to the wide dispersion of the descriptions of impacts, significance of impacts, and mitigation of impacts, Section 4.1 of the Draft EIR/EIS (pages 4.1-1 through 4.1-7) describes the organization of the environmental consequences section, and contains internal references throughout. To provide further clarity in the organization of the environmental consequences section, the table in **Theme Response XV, Document Organization**, has been prepared which specifically references the page numbers within the Draft EIR/EIS where impacts, significance and mitigation information is given for each of the actions, issue statements and alternatives addressed in the document. As noted in the table, significance statements and mitigation recommendations are provided only for those actions or alternatives for which significant impacts have been identified. This concept is also explained on page 4.1-6 of the Draft EIR/EIS.

16(g) Page 2-1 of the Draft EIR/EIS states that the MHPA is the proposed project and, throughout the document, wherever the heading "MHPA" is shown, it is followed by the words, "Proposed Project" (examples are shown on pages 4.2-1, 4.2-65 and 4.2-67). The alternatives selected for detailed analysis are defined beginning on page 2-53 of the Draft EIR/EIS, and are identified as "scenarios" in headings throughout the document. It should be noted that the MHPA was not used to "design the goals and objectives of the project and Subarea Plans." Rather, the project goals and objectives were established by the NCCP Conservation Guidelines and supplemented by other considerations of the MSCP Working Group throughout the development of the MSCP Plan. The MHPA was developed in accordance with those goals and objectives by the variety of participants in the planning effort as described on pages 1-2 and 1-3 of the Draft EIR/EIS. Page 2-1 of the Draft EIR/EIS further describes the cooperative planning process that led to the development of the MHPA. Likewise, pages 2-51 and 2-52 of the Draft EIR/EIS describe the alternatives developed as part of the planning effort and identifies those alternatives that were considered and rejected and those that were retained for detailed analysis. The "important alternative" that was eliminated from discussion is not identified in the comment and, therefore, a specific response to that comment cannot be provided.

16(h) Section 15126(f) of the CEQA Guidelines states that an EIR should describe "any significant irreversible environmental changes which would be involved in the proposed action should it

be implemented." This discussion may include use of non-renewable resources. Such a discussion is provided in Section 7.0 of the Draft EIR/EIS. As discussed in Section 7.0, these changes included shifts in land use patterns and irretrievable loss of species that could be taken outside the preserve.

With respect to funding, an integral component of the MSCP Plan is the financing and funding plan which is described in detail in Chapter 7.0 of the MSCP Plan, and summarized on pages 2-16 through 2-20 of the Draft EIR/EIS. It is not necessary to discuss a scenario involving lack of funding in the Draft EIR/EIS since such a scenario is not part of the proposed project or the alternatives. Likewise, withdrawal of the federal government from the program is not part of the proposed project or the alternatives and is, therefore, not addressed in the Draft EIR/EIS.

16(i) The proposed project is described and illustrated in detail on pages 2-1 though 2-20 of the Draft EIR/EIS. Figures 2-1 and 2-2 illustrate the boundaries of the proposed MHPA and Table 2-1 documents the acreages of the various vegetation types included within the MHPA. The Covered Species List is summarized on Table 2-2. Given the regional scale of the plan, it was not possible to include graphics showing all locations of the covered species in the Draft EIR/EIS. Selective species maps are, however, incorporated by reference in the document and available for review at local libraries as stated on pages 4.1-1 and 4.1-2 of the Draft EIR/EIS.

16(j) Documents incorporated by reference in the Draft EIR/EIS are described on page 4.1-1 and the table on page 4.1-2 notes where documents incorporated by reference may be reviewed by members of the public.

16(k) The listing status of species considered for coverage under the MSCP Plan is noted in the first column of Tables 4.3-1 and 4.3-2, title Scientific Name/Common Name/Status. Explanations for the status symbols are given in the footnotes at the end of the tables.

16(l) The approach to the analysis of individual species is described on pages 4.3-8 and 4.3-40 through 4.3-44 of the Draft EIR/EIS. As described on those pages, it was assumed, for purposes of analysis, that species on the covered species list located outside the proposed MHPA would be taken under the proposed MSCP Plan, with the exception of wetland vegetation communities. Pages 4.3-40 and 4.3-41 summarize species that will continue to receive protection outside the preserve due to their listing status or affiliation with wetlands.

The species analysis approach is further described on page 4.3-44 of the Draft EIR/EIS and impacts to species and habitats are divided into six categories throughout the analysis of the MHPA, the Subarea Plans and the alternatives. These categories are: Direct Impacts to Covered Species, Direct Impacts to Uncovered Species, Direct Impacts to Vegetation Communities/Habitats, Indirect Impacts to Covered Species, Indirect Impacts to Uncovered Species, and Indirect Impacts to Vegetation Communities/Habitats. Impacts to species outside the preserve are addressed in several of these categories. For example, in the discussion of Direct Impacts to Covered Species contained in the paragraph on page

4.3-45 of the Draft EIR/EIS includes those species to which there would be significant direct impacts outside the MHPA as proposed. Indirect impacts to uncovered species outside the MHPA, are described in detail on pages 4.3-50 and 4.3-51 of the Draft EIR/EIS. Similar discussions are provided throughout Section 4.3 for the Subarea Plans and alternatives. Tables 4.3-1 and 4.3-2 document the populations anticipated to be lost or conserved under the proposed MHPA and alternatives. In the context of a regional-scale project such as the proposed MSCP Plan, it is not possible to identify the specific locations of populations to be lost. Figures 2-1 and 2-2, however, depict the boundaries of the proposed MHPA preserve, and populations to be lost would generally be located outside the preserve.

16(m) The Otay Valley Regional Park reference on Table ES-4 is incorrect and has been corrected in the revised language included in the Final Joint EIR/EIS.

16(n) The objectives of the MSCP are described on page 1-7 of the Draft EIR/EIS. Objective 4, as shown on page 1-7, states that an objective of the MSCP Plan is to "Develop and implement a program for the conservation and management of habitats of federal and state endangered, threatened or rare species, thereby reducing the human-related causes of species extirpation within the MSCP study area." Although averting the need to list species in the future is a goal of the MSCP, it is not necessary from the standpoint of evaluating plan impacts to specifically recognize this objective in the EIR/EIS. The Draft EIR/EIS does not focus on the trade-off between need for listings and future development, rather it focuses on the specific impacts associated with issuance of permits, agreements and management authorizations, pursuant to the MSCP Plan, as shown on page 1-7. The analysis of the alternatives did take into account the issue of fragmentation and its impact on species survival. This objective is well-documented in conservation biology theory and is central to the tenets of the NCCP Conservation Guidelines, which are a cornerstone of the MSCP Plan.

16(o) See **Theme Response VII, Farmland Mapping.**

16(p) The County Deal Points were approved by the County Board of Supervisors as guidance for County Planning Department staff to develop the County's Subarea Plan and Implementing Agreement. The Deal Points are not regulatory. The EIR/EIS does not specifically address these Deal Points, but rather assesses the environmental effects of the subarea plan, which was developed using the Board of Supervisors' Deal Points as negotiated with the wildlife agencies (see page 1-1 of the County's Subarea Plan).

18 DENNIS MOSER, 4S/KELWOOD, 10/15/96

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18(a) See response to Comment 94(a).

18(b) The inclusion of the County areas within a single subarea plan is not contrary to the NCCP Planning and Conservation Guidelines. The MSCP program was initiated several years prior to enactment of the NCCP Act and was included under the NCCP umbrella as an NCCP based on it being an ongoing Multiple Species Conservation Program when the NCCP Act became law. The MSCP Plan was developed as a comprehensive plan for all jurisdictions within the MSCP study area. Upon completion of the MSCP Plan, each participating local jurisdiction in the MSCP study area has an opportunity to obtain state and federal take authorizations based on the totality of the MSCP. The subarea plan concept was developed following the March 1995 draft of the MSCP to allow participating local jurisdictions to tailor their implementation program to fit with their situation. The County portion of the MSCP was divided into segments to allow for additional tailoring of implementation mechanisms. The segments were intended to be portions of a single subarea plan for take authorization issuance purposes, and the Draft EIR/EIS analyzes the county portion of the MSCP on a subarea plan basis (e.g., all segments in aggregate).

18(c) The Conservation Goals for the Lake Hodges segment of the County's Subarea Plan have been provided on Table 1-2. Negotiated conservation areas have met their portion of the goals in Table 1-2 and any additional projects will meet conservation requirements through the major amendment process.

18(d) Each table (Table 1-2 and 2-1) used a slightly different vegetation classification scheme. With the exception of grasslands, in general, conservation targets for vegetation communities have been met for the Lake Hodges segment. It is possible that the two amendment areas within the Lake Hodges segment would contain the approximately 83 acres of grassland necessary to complete the biological goal of 305 acres for grassland vegetation community. The 4-S Ranch project does not have any additional obligation for conservation of vegetation communities than currently depicted by the hardline boundary for the project. The County's implementing the "D2" designator may conserve minor amounts of additional grasslands. The County and the wildlife agencies will determine when the goals have been met for all vegetation communities through the annual reporting process.

18(e) Species protection goals for the overall County Subarea Plan are presented on pages 1-13 through 1-15 of the County Subarea Plan. Species protection goals have not been established for individual segments of the Subarea Plan. It is acknowledged that narrow endemics have been addressed in areas where field survey data are complete.

18(f) Page 2-2 of the Lake Hodges segment will be revised to state that with the exception of the major amendment areas, Figure 1-3 of the County Subarea Plan depicts the preserve and

development areas for the Lake Hodges segment. Figure 1-3 reflects the preserve design for the (1) Rancho Cielo, (2) 4S Ranch, (3) Santa Fe Valley and (4) Madura projects.

18(g) Section 2.3.1 of the County Subarea Plan will be deleted. The assurances associated with significantly and sufficiently conserved vegetation communities are associated with the MSCP Plan as a whole and not with segments of the County's Subarea Plan. These assurance will be incorporated into the County's Implementing Agreement.

18(h) Comment noted. The suggested language will be incorporated in the County Subarea Plan, page 2-22, part D, last sentence.

18(i) The final sentence on page 2 of Attachment 1 to the Lake Hodges segment of the County Subarea Plan will be changed to indicate that the number of territories remaining will probably increase as the vegetation recovers from large fires in 1990 and is expected to provide habitat for an estimated 74 pairs of gnatcatchers.

18(j) The three segments of the County Subarea Plan are described and illustrated in detail on pages 3-38 through 3-46 of the Draft EIR/EIS. The land use analysis (pages 4.2-45 through 4.2-51) includes the three segments. In addition, the Draft EIR/EIS combines the impacts associated with the three segments and the species analyses were done for the MSCP Plan as a whole. Impacts and conservation were broken down by segment in the County Subarea Plan. Sufficient information is provided in the EIR/EIS, MSCP Plan and the County Subarea Plan to facilitate their use overtime.

18(k) The discussion on pages 2-38 and 2-42 of the Draft EIR/EIS states that the Biological Monitoring Ordinance (BMO) would apply to all lands designated as Category 3 by the wildlife agencies in any of the three segments of the County Subarea Plan. The BMO would not apply to lands designated as Category 1 or 2, including lands where preserve lines have already been agreed upon.

18(l) Table 2-6 of the MSCP, Volume II, indicates that 4,473.3 acres of land would be preserved within the Lake Hodges segment, rather than 4,778 acres as stated in the EIR/EIS. The acreage cited in the MSCP Plan has been incorporated in the revised language included in the Final EIR/EIS.

18(m) The three segments of the County Subarea Plan are detailed in the MSCP, Volume II, in which the acreages of habitat preservation and loss are identified. These acreages are incorporated by reference into the Biology Section of the EIR/EIS in the revised language incorporated in the Final EIR/EIS. The three segments are described in detail in the Project Description of the EIR/EIS (Section 2.2.6.1, page 2.1-38) and are evaluated in the Land Use Section under the heading of the County of San Diego Subarea Plan (page 4.2-45). Table 4.3-16 of the EIR/EIS includes the total acres within the entire County of San Diego MSCP Subarea, not by individual segment.

The MSCP Plan has been revised to clarify that within the MSCP study area, the proposed BMO would be applicable only within the Metro-Lakeside-Jamul segment and the Major and Minor Amendment portions of the Lake Hodges and South County segment plans. Hard lines in the other two segments are addressed in the analysis of the EIR/EIS, and dedications per the BMO would not be required in these areas.

18(n) The EIR/EIS addresses the potential impacts of implementing the proposed MSCP Plan on the existing environment by comparing the effects expected to result from plan implementation to the existing setting , that is, the No Action alternative.

The wildlife agencies expect habitat outside of the preserves (other wetlands and military lands) to be either lost or substantially degraded over time to such an extent that lands outside the preserves would not support listed species. The preserve system and its management in perpetuity is expected to compensate for the expected loss of habitats and the species supported by them. These concepts and impacts associated with these actions are described in detail the Draft EIR/EIS.

Measures will be incorporated into site design for future projects and framework management plans to address edge effects. The MSCP Plan has been modified to address these provisions (see revised Section 6.0 of the MSCP Plan, included in the Revisions to the MSCP Plan, January 1997).

18(o) It is noted (in the revised language) that the proposed BMO would be applicable only within the Metro-Lakeside-Jamul segment and minor amendment areas of the County Subarea Plan; the other two segments primarily consist of negotiated areas, and dedications per the BMO would not be required.

18(p) Indirect impacts of the project within the County of San Diego MSCP Subarea were determined to be significant. Within the Metro-Lakeside-Jamul segment of the County Subarea Plan, these impacts would be mitigated to a level below significant through the implementation of the County's proposed BMO. In the Lake Hodges and South County segments (hard lines areas), indirect impacts already have been mitigated through the design, review, and agency negotiations of specific projects within these segments. In the Major and Minor Amendment portions of these segments, the proposed BMO would apply.

KELWOOD

Kelwood Development Company
10840 Thornmint Road
Suite 110
San Diego, CA 92127
Tel: (619) 674-1300
Fax: (619) 674-1301

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October 15, 1996

Mr. John Kovac, Senior Planner
City of San Diego
Environmental Analysis Section
1222 First Avenue, Fifth Floor
San Diego, CA 92101

Ms. Sherry Barrett
U.S. Fish and Wildlife Service
2730 Loker Avenue West
Carlsbad, CA 92008

Subject: Comments on the Re-circulated Draft Joint EIR/EIS – Multiple Species Conservation Program (MSCP);
LDR No. 93-0287; SCH no. 93121073

The following comments are submitted on behalf of 4S Kelwood, the owners and project proponents for 4S Ranch located in the unincorporated area of San Diego County, in the proposed Lake Hodges Subarea Plan.

I. Implementing Agreement

A. The current draft of the model Implementing Agreement provides Third Party Beneficiary status when required mitigation is "assured". Third Party Beneficiary status provides certainty to landowners that they will not be required to provide more land and/or money as long as they participate in the MSCP as required in the Subarea Plan. This certainty is necessary for all landowners, but is particularly necessary for large scale projects that will require many years to develop. Such projects require financing over a long period of time, and in phases. The land, facilities and dedications of all types are also done in phases. The assurances granted to Third Party Beneficiaries are necessary to obtain all of the commitments necessary to complete such projects.

The IA should be clarified to state that Third Party Beneficiary status becomes effective upon that discretionary approval that defines the preserve boundary. In some jurisdictions, this will be a specific plan or precise plan. In others, it may be a tentative map. The conditions of approval that require biologic mitigation may allow phased dedication with construction phases, but the requirement to dedicate the preserve over time and the definition of the preserve boundary would run with the land. Any change to the preserve boundary would be an amendment to the County

18(a)

take authorization, and would require the County to notify the resource agencies and to obtain their approval. 18(a)

B. The resource agencies are only allowing a single subarea plan for those portions of the County within the MSCP. This is contrary to the NCCP Planning and Conservation Guidelines which plainly intended to allow several (up to twelve) subarea plans in recognition of the many differences that exist among the various jurisdictions as well as the locations of and unique requirements of existing large blocks of habitat.

This "one size fits all " approach forces the imposition of the proposed project on areas that are not ready to be planned. Such premature action often misses important constraints or opportunities that later threaten the achievement of the plan in question. The unique needs of each area may not be addressed because they did not yet manifest themselves. Management needs of the resources in the LHSP may be very different from those in other segments. Such needs might not be recognized in a plan for the entire county. 18(b)

Finally, this approach results in a single take authorization being given for the entire subarea plan. Should major violations occur in one segment, the permit covering all segments would be rescinded. Segments that were carrying out agreed upon activities to assemble and manage their portions of the preserve would be punished for actions in another area over which they have no control.

This approach by the resources agencies is "all stick and no carrot", and will ultimately be counterproductive to MSCP implementation. Each segment of the County should be recognized as subarea plans as originally proposed. The Implementation Agreement for the County of San Diego should allow separate take authorizations for each segment.

II. Lake Hodges Segment/Subarea Plan 18(c)

A. Clarification is needed to better describe how the Conservation Goals in Section 1.2.2 relate to the Lake Hodges Segment Plan (LHSP). Significant differences exist between the acreages listed for preservation in Table 1-2 and those listed in Table 2-1. For example, the LHSP preserves 217 acres of grassland within fixed lines while Table 2-1 sets a goal of 305 acres. With the exception of two 18(d)

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small amendment areas, the lines in the LHSP are fixed. There will be no additional land coming from those areas. The text of the LHSP should state that the hard line areas meet the stated conservation goals. 18(d)

B. All previous versions of the Subarea Plan have included species protection goals. The Subarea Plan should clarify the relationship between these goals, the individual segments and later requirements that certain narrow endemic plant species be avoided. In the LHSP, the preserve was largely based on field survey data and narrow endemics have already been avoided as much as feasible. This should be reflected in the Subarea Plan. 18(e)

C. Language on page 2-2 of the LHSP states that no MHPA map will be adopted within this segment. With the exception of two small amendment areas, the lines in the LHSP are fixed. The language in the LHSP is confusing and should be clarified. 18(f)

D. The language on page 2-5 of the LHSP discusses "significantly conserved" habitats but not "sufficiently conserved habitats". The LHSP should be revised to reflect the two different levels of habitat level coverage as described in the MSCP. 18(g)

E. The language on page 2-21 should be clarified with respect to mitigation that will be required for disturbance in the preserve due to infrastructure. The following language should be added to the last paragraph on the page:

> "Disturbance inside the preserve due to infrastructure necessary to support the project shall be as required in Section 2.8." 18(h)

F. Attachment 1, page 2 states that there will be habitat remaining for at least 74 pair of California gnatcatchers. It is well known that populations of gnatcatchers vary hugely over time dependent upon any number of factors. Judgments about the adequacy of this preserve should not be based on a specific number of pairs of gnatcatchers, when populations are so variable. The statement with respect to California gnatcatcher should be revised to read: 18(i)

KELWOOD

"--adequate habitat for this species will be maintained in the 2,600+ acres of CSS and other suitable habitats being preserved in the LHSP." 18(i)

III. EIR/EIS

A. The EIR/EIS project description does not adequately describe the segments of the County Subarea Plan. The amount of habitat conserved, special provisions included, and projects covered should be summarized from the Lake Hodges (LHSP) and South County segment plans, as is done for the individual community plan areas in the City of San Diego. Such description should be continued throughout the EIR/EIS and is necessary to assure that the public has all relevant information in reviewing the proposed project. It is also necessary if the EIR/EIS is to be effectively used over time as a programmatic document that contributes to streamlining of the environmental process (a stated goal and County deal point). 18(j)

It should be clearly stated in the project description (and other areas as appropriate) that the areas within the LHSP where preserve lines have already been agreed upon meet the requirements of the Biologic Mitigation Ordinance (BMO) and no additional mitigation under the BMO will be required. Such areas include all areas shown as preserve in Figure 2-11, except the amendment areas. 18(k)

B. Table 4.2-13 states that 4,778 acres of private land will be included in the LHSP, while the LHSP states that the preserve will consist of 4,743.3 acres. Table 4.2-13 should be revised to reflect the correct acreage as listed in the LHSP. 18(l)

C. Chapter 4.3-Biology and associated tables need to address the various segments of the County Subarea Plan. The EIR/EIS needs to establish the amounts of the various habitats being saved/lost so future projects and their amendments can be evaluated to assure that they are in conformance with and are contributing properly to the proposed preserve system. Such information is necessary to assure that the EIR/EIS can function as a programmatic document.

In the discussion of the direct and indirect biologic impacts and application of the BMO, it should be noted that hard lines exist in the majority of two of the three 18(m)

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segments, and that dedications per the BMO will not be made in such areas. The impacts in the hard line areas should be addressed in the EIR. 18(m)

D. Chapter 4.3-Biology, does not address the impacts of the proposed project (take authorizations in return for the imposition of a preserve) on the existing environment; rather it addresses the impacts of the existing environment on the proposed project. Please provide such an analysis.

In the LHSP, the imposition of the preserve in return for the granting of take authorizations results in the creation of a cohesive preserve where none previously would have existed. While some "take" will be allowed, it will be less than would occur in the existing setting. In addition, the proposed project could consider the potential conflicts between the existing setting and the proposed project, and be designed in such a way to deal with the conflicts. Edge effects were considered in creating the project design and will, in addition, be handled through the management and monitoring program. The impact of the proposed project will result in beneficial impacts to biologic resources. 18(n)

E. The mitigation section of Chapter 4.3-Biology addresses the implementation of the BMO. Mitigation in the hard line areas is not addressed. Please provide information on mitigation for the hard line areas of the County of San Diego Subarea Plan. 18(o)

F. Section B.1.6.1 and 2 should note mitigation will not be provided per the BMO Tier structure in the hard line areas such as LHSP, as such areas already designate the necessary open space. 18(p)

Very truly yours,

Kelwood Development Company
Managing Partner
For and on behalf of 4S Kelwood General Partnership

Dennis M. Moser, AIA
General Manager, Kelwood Development Company

19 LAURIE J. MCKINLEY, ALLIANCE FOR HABITAT CONSERVATION, 10/11/96

R **19(a)** The public review period for the Draft EIR/EIS was extended from October 15, 1996 through October 29, 1996. Please refer to **Theme Response VIII, Public Involvement.**

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ALLIANCE FOR HABITAT CONSERVATION
416 University Avenue, Suite 200
San Diego, CA 92103
(619) 296-4394

October 11, 1996

Mr. John Kovac, Senior Planner
City of San Diego
Development and Environmental
Planning Division
1222 First Avenue, 5th Floor
San Diego, CA 92101

VIA FAX

Ms. Sherry Barrett
U.S. Fish & Wildlife Service
2730 Loker Avenue West
Carlsbad, CA 92008

Re: Draft MSCP Plan/Subarea Plans and EIR/EIS comments
Request for Extension

Dear Mr. Kovac and Ms. Barrett,

Given the volume of material presented in the draft MSCP Plan/Subarea Plans and EIR/EIS, and the extent of the issues related to these documents which will require formal, written comment, the Alliance for Habitat Conservation respectfully request a 30-day extension of the comment period. 19(a)

Thank you for your consideration.

Sincerely,

Laurie J. McKinley

Laurie J. McKinley
Executive Director

cc: Mayor Susan Golding, City of San Diego
Chairman Ron Roberts, County of San Diego

20 CINDY BURRASCANO, CALIFORNIA NATIVE PLANT SOCIETY, OCTOBER 15, 1996.

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20(a) Please refer to **Theme Response I, Species Analysis Approach.**

20(b) It is the responsibility of each take authorization holder to ensure that existing field data for individual projects adequately addresses information needs for CEQA review. Additional surveys would be necessary to determine project specific impacts where preserve configuration has not yet been determined. These surveys would be used to avoid impacts to sensitive resources and determine mitigation, in accordance with subarea plans and local ordinances.

20(c) Please see response to Comment 20(ap).

20(d) Because of existing development constraints and other land-use issues, configuration of the proposed preserve with regard to edge-to-area ratio does not follow classic preserve design tenets. Instead, the preserve is more linear with greater exposure to edge effects from adjacent land uses. This design was considered in determining the management conditions which are described in the revised Table 3-5 of the MSCP Plan included in the Revisions to the MSCP Plan, January 1997.

20(e) The jurisdictions and the wildlife agencies agreed that imposing a buffer around the preserve would result in additional land-use restrictions on private land owners. The MSCP Plan, therefore, requires that the jurisdictions incorporate good land-use planning principles into projects adjacent to the preserve to reduce or eliminate impacts from these projects into the preserve (see page 6-1 of MSCP Plan, Volume I). The concept of "a line is a line" is applicable both to defining the limits of the preserve and to the need to keep development impacts out of the preserve.

20(f) The wildlife agencies work with the Border Patrol and review their proposed actions through NEPA and Section 7 of the federal Endangered Species Act (ESA) to ensure they are able to effectively carry out their mission while avoiding and minimizing impacts to sensitive species. Guidance for Border Patrol activities is provided on Page 6-5 of the MSCP Plan, Volume I.

20(g) Page 6-7 of the MSCP Plan, Volume I, discusses the preparation of fire management plans by preserve managers to address both biological and safety goals. Such fire management plans would need to ensure that any prescribed burns used to manage covered species and their habitats would not compromise the safety of nearby residents and structures.

20(h) See responses to Comments 45(ai) and 98(ae).

20(i) Approximately 3,254 acres of vernal pool habitat occurs within the MSCP study area, most of which (2,071 acres, or 64 percent) is under military jurisdiction at MCAS Miramar. Of the

remaining, 1,183 acres, 847 acres (or 72 percent) occur within the boundaries of the MHPA. Approximately 40 acres of additional vernal pool habitat is being preserved as part of the California Terraces-Otay Corporate Center North and South projects on Otay Mesa, resulting in the conservation of a total of 887 acres (or 75 percent). All vernal pools within the MHPA will be conserved at 100 percent, regardless of the underlying percent preservation category. In this way, they will be addressed in subarea plans through the identification of specific measures to ensure that impacts are avoided or minimized to the maximum extent practicable, habitat monitoring and management will occur, and unavoidable impacts are mitigated. Conservation measures for wetlands, including vernal pools, will be preserved at 100 percent inside the MHPA and impacts will be avoided outside of the MHPA. The proposed Vernal Pools Unit of the San Diego National Wildlife Refuge would provide management oversight for vernal pools and their constituent species, contributing towards recovery goals for listed taxa through the preservation of existing and historic habitat. Vernal pools are also afforded protection through the Clean Water and Endangered Species Acts. See also response to Comment 20(j).

20(j) The information in Table 3-1 of the MSCP Plan, Volume I, reflects the accurate acreage of maritime succulent scrub within the City of San Diego, excluding the habitat under military jurisdiction on Point Loma. Table 3-3 is correct. Total and conserved acreages respectively are as follows: Chula Vista 17/16; San Diego 1133/681; County 285/158; and Military 368/120.

20(k) *Pogogyne abramsii, Pogogyne nudiuscula, Orcuttia californica, Navarretia fossalis,* and *Myosurus minimus* var. *apus* occur in vernal pools and related wetlands. Wetlands, inside and outside the Multi-Habitat Preserve Area (MHPA), will continue to be subject to regulations of the U.S. Army Corps of Engineers and the California Department of Fish and Game. *Pogogyne abramsii, Pogogyne nudiuscula, Orcuttia californica,* and *Navarettia fossalis* will also be included on the City of San Diego's list of narrow endemics. *Myosurus minimus* var. *apus* has not been included as a covered species under the MSCP, and therefore has not been included as a narrow endemic species.

Within the City of San Diego, the only major population of *Lotus nuttalianus* (adjacent to the San Diego River Flood Control Channel) has been proposed to be 100% preserved within the MHPA. Other major populations potentially at risk occur on U.S. Navy property (Silver Strand and Imperial Beach) outside the jurisdiction of the City of San Diego. Adding *L. nuttallianus* to the City of San Diego's list of narrow endemics would not provide any additional protection to the Navy populations. The preservation of the Navy populations of *L. nuttallianus* will be addressed under the Navy's proposed Natural Resource Management Plan.

20(l) In addition to the status report issued every three years, each participating local jurisdiction would be required to provide an annual public accounting, both by project and cumulatively, of habitat acreage destroyed and conserved within its subarea, and would submit this information to the wildlife agencies and regional coordinating entity (see page 6-11 of MSCP Plan,Volume I).

20(m) Please refer to revised MSCP Table 3-5 included in the Revisions to the MSCP Plan, January 1997. Also see response to Comment 76(m).

20(n) The last sentence has been changed to state "Only chemicals approved by USFWS and CDFG, and applied by properly trained individuals, will be used within the preserve areas."

20(o) As a result of existing development that has occurred within both the Sweetwater River Vailey and the Otay River Valley, the preservation of existing open habitat areas which function as linkages through these valleys is a focus of the Subarea Plans for both the City of San Diego and Chula Vista. The widths retained in each Subarea Plan are adequate to retain the viability of these linkages.

20(p) Within the Appendices for the Chula Vista Subarea Plan there are tables intended to identify the vegetation totals by major project. The aggregate totals throughout the entire Subarea Plan, as well as the entire MSCP study area, are most critical to determining the viability of the MSCP preserve. Individual acreage totals by major project would be included in the final Subarea Plan; however, they were not broken out at time of Draft completion.

20(q) It is acknowledged that maritime succulent scrub is present on the Sunbow II slopes. On the MSCP vegetation maps, maritime succulent scrub is shown together with coastal sage scrub. The statement on page 9 of the Chula Vista Subarea Plan simply references the vegetation community on the Sunbow II property as it appears on the MSCP vegetation maps.

20(r) The purpose of the MSCP Plan is for the preservation of sensitive plant and animal species throughout South San Diego. This Plan as well as the implementing Subarea Plans propose to balance the land use planning in the region with the need to preserve the area's natural resources. Active park needs for the subregion need to be planned for and need to be planned to be sensitive to adjacent resources. The Otay Valley Regional Park Concept Plan does not propose any active recreation areas within the MHPA areas to be included in the preserve. Sensitive park master planning and implementation are expected to protect open space core and linkage areas.

20(s) The database utilized for this area of the MSCP identified seven acres of sycamore alluvial woodland. This information was derived from the biological surveys and information compiled with the Otay Ranch Program EIR.

20(t) Impacts to the vernal pools south of the proposed Otay Ranch resort would require analysis and mitigation pursuant to the U.S. Army Corps of Engineer's permitting requirements and under CEQA.

20(u) See **Theme Response XX, Severability of Take Authorizations.**

20(v) The Bougainvillea project was recently approved by the City of San Diego. The Hidden Trails project is not approved by the City of San Diego. Inclusion of this project in the list of projects in the approval process does not in any way limit the City Council in their consideration of the discretionary map and permit applications. Section 9.17 of the City of San Diego Draft Implementing Agreement identifies three categories for projects in the approval process. The projects identified on page 2 of the City's MSCP Subarea Plan are listed in Exhibit H of the Implementing Agreement under the categories described in Section 9.17. Bougainvillea and Hidden Trails are listed among the seven projects in Category 1. Category 1 projects have approved or proposed development footprints that conform to the MSCP Plan and Subarea Plan preserve design. Mitigation related to covered species has not yet been determined but would be determined consistent with MSCP Plan, the Subarea Plan and the Implementing Agreement.

20(w) The City of San Diego's Subarea Plan has removed San Diego ambrosia (*Ambrosia pumila*) from the list of MSCP covered species that are known to occur in the Otay River Valley and Otay Mesa. Orcutt's bird beak (*Cordylanthus orcuttianus*) remains on the list of species occurring on Otay Mesa. Additional comments noted. Also see response to comment 20(p).

20(x) Any future Natural Resource Management Plan for the Mission Trails Regional Park would be developed with the dual purpose of preserving and protecting the Park's natural resources while at the same time providing recreational uses as anticipated by the adopted Master Plan. Development of a Natural Resource Management Plan would be completed with and incorporating the MSCP's overall goals and policies. The active park uses listed on page 16 are proposed outside of the City's MHPA. The uses are listed for informational purposes only and are either existing or anticipated by the adopted Mission Trails Regional Park Master Plan.

20(y) The five sensitive plant species mentioned are found in the Urban Habitat Areas as follows:

(a) Orcutt's brodiaea is located on Montgomery Field, and on a mesa above Carroll Canyon in Mira Mesa, which, though not within the formal preserve boundaries, is nevertheless a protected site. The Carroll Canyon siting is from a mid-1980's biotechnical report entered into the Natural Diversity Database and City staff assume that since the site has been fenced, the population is still extant. The site may be monitored occasionally for disturbance once the MSCP monitoring work commences. The Montgomery Field siting is from Ellen Bauder's 1986 surveys. The City is currently cooperating with the FAA and wildlife agencies to develop an airport maintenance plan that minimizes impacts to pool areas and watersheds, and the City and Wildlife agencies are working on a Resource Management Plan for the Montgomery Field pools.

(b) Short-leaved dudleya is within the UCSD Scripps Reserve, managed by the University of California Natural Reserve System. The last siting was from informal CNPS surveys in 1995.

(c) San Diego button celery is located on Montgomery Field (Bauder, 1986), and is also located on the same Carroll Canyon, Mira Mesa site as the Orcutt's Brodiaea. The Carroll Canyon site is currently fenced and undisturbed. Montgomery Field would be managed as stated under Orcutt's brodiaea above.

(d) Willowy monardella is located in Carroll Canyon (2 sitings), in Rattlesnake Canyon (1 siting), and in San Clemente Canyon (4 sitings). The latest surveys in Rattlesnake and Carroll Canyons were in 1989, however no mention of sitings in Carroll Canyon are listed in those surveys. The Ogden maps may show previous NDDB reports. All of these areas would be managed similarly by the City of San Diego Park and Recreation Department once Rattlesnake and Carroll Canyons are dedicated as open space consistent with the Mira Mesa Community Plan. San Clemente Canyon (Marion Bear Park) would continue to be managed by the City of San Diego Park and Recreation Department according to its Natural Resource Management Plan.

(e) San Diego goldenstar is located in Montgomery Field, reverified in 1994 surveys, and managed as stated under Orcutt's brodiaea above.

20(z) Montgomery Field is included in the City of San Diego's Urban Habitat Area, and the vernal pools with *Pogogyne abramsii* are included within the preserve areas.

20(aa) Comment noted. The Subarea Plan has been revised to delete the statement.

20(ab) Refer to response to comment 20(ap) regarding *Ambrosia pumila*.

There are no known locations of *Astragalus tener* var *titi* within the City of San Diego's Subarea. If the species is located in the future impacts would be regulated by the Environmentally Sensitive Lands ordinance which direct development to the least sensitive portion of the site.

Design criteria addressing public safety from fire hazards are established in the City's "Landscape Technical Manual." Requirements to implement brush management between habitable structures and flammable vegetation exist and will continue in a manner appropriate to reduce the risk of damage to housing.

The City of San Diego's Subarea Plan does not propose controlled burns. The need for controlled burns will be addressed in an area-specific management directive as appropriate. The

reference to fuel modification management is related to brush management which would be incorporated into individual development plans which are proposed adjacent to the preserve.

Section 1.3 of the City of San Diego's Subarea Plan will be modified to include all conditions necessary for coverage, as provided in the revised Table 3-5.

20(ac) The land use adjacency guideline related to *Invasives* and *Exotics Control and Removal* is intended for plant species only. The land use adjacency guidelines related to *Barriers* is intended to address invasive non-native animal species.

20(ad) Comment noted. See response to Comment 20(w) above.

20(ae) Any future Natural Resource Management Plan for the Mission Trails Regional Park would be developed with the dual purpose of preserving and protecting the Park's natural resources while at the same time providing recreational uses as anticipated by the adopted Master Plan. Development of a Natural Resource Management Plan would be completed with consideration of the MSCP's overall goals and policies. See also response to Comment 20(x).

20(af) The Land Use Adjacency guidelines in the City of SanDiego's Subarea Plan (p.51-52) contain (design) guidelines on several issues, including brush management. This applies throughout the preserve, but includes avoidance and minimization of impacts to covered species such as the Del Mar manzanita and coast white lilac. Further, Adjacency Management Issues, page 58, discusses the enforcement, dissemination of educational information on fire management (among other items), and installation of barriers and signage to control impacts.

The City of San Diego's Subarea Plan (Section 1.5.12) states that fire management in the City of San Diego focuses on the provision of brush management within and adjacent to the preserve. Fire concerns are currently regulated by the Landscape Ordinance and Landscape Technical Manual. Pending development of an wildland/open space fire management plan by the City's Fire Department could include additional measures such as those identified in the comment.

20(ag) Please refer to response to Comment 20(k).

20(ah) Revisions to the City of San Diego wetland definition have been proposed in order to address consistency with the federal definition, while trying to take into consideration local variation. The modified definition would appear as part of the City's implementing ordinance for the MSCP. This ordinance, entitled the Environmentally Sensitive Lands Ordinance, would limit encroachment into areas identified as part of the City's MHPA. The major river valleys within the City of San Diego (San Dieguito, Carmel Valley, Los Peñasquitos, San Diego River, Otay River Valley, and Tijuana River Valley) have been included within the boundaries of the MHPA.

20(ai) Sycamore Alluvial Woodland was mapped as part of the 4S Ranch and Madura Subdivision projects by Dudek & Associates, Inc.. This vegetation designation was used to describe areas where an open woodland of sycamores exists with little other "riparian" species other than occasional elderberry. Other than the fact that the typical Sycamore Alluvial Woodland in Holland (1986) contains *Aesculus californica*, this community is identical to that described in Holland as Sycamore Alluvial Woodland. It is sometimes locally described as Southern Sycamore-Alder Riparian Woodland. Other locations where this community exists in San Diego County are Pala and Pauma Valley.

20(aj) While fire may be required for the reproduction of species in Southern California, current fire frequency will likely be adequate to allow for reproduction of fire dependent species. Fuels management to prevent/reduce fire that may cause adverse impact to vegetation communities is likely to be more needed than managed fire. The purpose of discussion of section 2.5.1 is to identify the requirement that new development must provide for a fuel modification zone adjacent to new development.

20(ak) Comment noted.

20(al) If the selected alignment of SR-125 is in a location different than shown on the Otay Ranch approved GDP, the GDP will be modified if necessary. The Johnson Canyon lands would then become part of the open space.

20(am) See **Theme Responses X, Habitat Conservation Accounting Model, and XX, Severability of Take Authorizations.** The Metro-Lakeside-Jamul segment of the County of San Diego Subarea Plan includes conservation goals by species and vegetation communities and specific core and linkage design criteria. The wildlife agencies and the public will have an opportunity to review and monitor the County's adherence to these conservation and design goals on a project-by-project basis during the project review process pursuant to the California Environmental Quality Act. Additionally, the County is also required to have conservation of habitat in "rough step" with development. The wildlife agencies would also meet with the County on a yearly basis to ensure that this "rough step" requirement is being met. The wildlife agencies have developed habitat preservation vs. development graphs by vegetation community to assist them in determining if the "rough step" requirement is being met.

20(an) See response to Comment 20(l).

20(ao) Avoidance requirements for narrow endemic species occurs in several locations in various subarea plans. MSCP Table 3-5 has also been revised to identify avoidance requirements for narrow endemic species. The City of San Diego has added several vernal pool species to their list of narrow endemic species (see revised MSCP Table 3-5). The County provides the equivalent level of avoidance for vernal pools and by extension to vernal pool species.

20(ap) The main population of ***Acanthomintha ilicifolia*** at McGinty Mountain would be conserved through implementation of the Metro-Lakeside-Jamul segment of the County Subarea Plan. As a species found in group A of the County of San Diego's Sensitive Plants List, those populations which occur within the County's Metro-Lakeside-Jamul segment would receive protection through their Biological Mitigation Ordinance which requires avoidance of populations as a first priority, with a minimum on-site preservation of 80 percent for unavoidable impacts unless this precludes all reasonable use of the property. In these instances, in-kind preservation is required at ratios from 1:1 to 3:1. *Acanthomintha ilicifolia* is also on the list of narrow endemics which requires avoidance of impacts to the species within the MHPA. Other populations that would be conserved within the County's Metro-Lakeside-Jamul segment include those at El Capitan, Asphalt, Inc. and Sky Mesa. Projects will be required, through site design criteria, to minimize effects of development on the preserve, including drainage. Preserve management plans would also include measures to preclude or minimize edge effects to conserved populations (see revised Table 3-5).

Re: Ambrosia pumila – Species verifications made by the San Diego Chapter of the California Native Plant Society are noted and the misidentified populations of *Ambrosia confertiflora* have been omitted from the analysis for species coverage. A very small population of *Ambrosia pumila* which occurs along the San Diego River in Rancho San Diego is now under the management authority of the U.S. Fish and Wildlife Service (Service) as it occurs within the boundaries of the San Diego National Wildlife Refuge. The Service will be responsible for the maintenance and enhancement of this population. Additionally, the wildlife agencies are currently working with the City of San Diego to identify an alternative location for a portion of the proposed campground in Mission Trails Regional Park which would affect no more than 10 percent of this population of *Ambrosia pumila* and not affect the core populations. If this is not accomplished, and adequate preservation and management cannot be assured, *Ambrosia pumila* would be deleted from the Covered Species List.

Regarding the statement of occurrence for *Ambrosia pumila* in coastal sage scrub habitat, all relevant tables would be revised to delete this reference as the primary habitat for this species. (see Revised Table 3-5).

Ambrosia pumila is not a coastal sage scrub species; the tables have been modified to delete this reference.

Re: Aphanisma blitoides – 90% of potential habitat for *Aphanisma blitoides* would be conserved through the conservation of 92 percent of southern foredune and 88 percent of coastal bluff scrub habitats within the MHPA. Potential habitat for *Aphanisma blitoides* also occurs on military lands (Silver Strand, Point Loma). This species has been added to the narrow endemics list, which ensures that impacts to newly discovered populations of this species within the MHPA are avoided or minimized to the maximum extent practicable, conserved populations are managed, and that unavoidable impacts are mitigated. The preservation of southern foredune and coastal bluff scrub habitats would also provide sites for potential reintroduction of populations into historic locales.

Re: Arctostaphylos glandulosa ssp. crassifolia – Over 90 percent of the major populations of *Arctostaphylos glandulosa* ssp. *crassifolia* would be conserved within the boundaries of the MHPA. As a species found in group A of the County of San Diego's Sensitive Plants List, those populations which occur within the County's Metro-Lakeside-Jamul segment would receive protection through their Biological Mitigation Ordinance which requires avoidance of populations as a first priority, with a minimum on-site preservation of 80 percent for unavoidable impacts unless this precludes all reasonable use of the property. In these instances, in-kind preservation is required at ratios from 1:1 to 3:1. Management plans for areas in which *Arctostaphylos glandulosa* ssp. *crassifolia* occurs would be required to ensure that healthy populations are maintained.

Re: Arctostaphylos otayensis – Ninety-five percent of the major populations of *Arctostaphylos otayensis* would be conserved in the MHPA, the majority of which are on lands administered by the Bureau of Land Management or within open space associated with Otay Ranch. *Arctostaphylos otayensis* is found in group A of the County of San Diego's Sensitive Plants List; those populations which occur within the County Metro-Lakeside-Jamul segment would receive protection through their Biological Mitigation Ordinance which requires avoidance of populations as a first priority, with a minimum on-site preservation of 80 percent for unavoidable impacts unless this precludes all reasonable use of the property. In these instances, in-kind preservation is required at ratios from 1:1 to 3:1. This species is often associated with gabbro soils, and over 34,000 acres of metavolcanic soils are conserved within the MHPA. Management plans for areas in which *Arctostaphylos otayensis* occurs would be required to ensure that healthy populations are maintained. Coordination with U.S. Immigration and Naturalization Service (INS) is ongoing to achieve border protection goals, while also avoiding impacts to sensitive biological resources.

Re: Astragalus tener var. titi – *Astragalus tener var. titi* is not known to occur within the MSCP study area, however, potential habitat is being conserved through the conservation of 92 percent of southern foredune habitat (123 acres) within the MHPA. A maximum of 11 acres of potential habitat for this species could be impacted. This species has been added to the narrow endemics list. Inclusion on the narrow endemics list ensures that impacts to newly discovered populations of this species within the MHPA are avoided or minimized to the maximum extent practicable, conserved populations are managed, and that unavoidable impacts are mitigated. The preservation of southern foredune habitat also provides sites for potential reintroduction of populations into historic locales.

Re: Brodiaea orcuttii – All identified major populations of *Brodiaea orcuttii* in the MSCP planning area occur within MHPA boundaries or under the purview of the County of San Diego in their Metro-Lakeside-Jamul segment. The populations in the vicinity of Foster Truck Trail and Wildwood Ranch near San Vicente have been identified as critical populations and would receive 100 percent preservation in the County of San Diego's Subarea Plan. Preserve management plans for the Mira Mesa population would be required to specifically address edge effects. Although not part of the MSCP, populations of *Brodiaea orcuttii* which occur on military lands would likely be included in the Natural Resource Management Plans prepared for each military installation on which it occurs. This species also occurs at Montgomery Field which would be managed as Urban Habitat Lands under the City of San

Diego's Subarea Plan. As a species often associated with wetlands, it is also afforded some protection by the Clean Water Act.

Re: Ceanothus cyaneus – Over 80 percent of the major populations of *Ceanothus cyaneus* would be conserved in the boundaries of the MHPA. Management plans for areas in which *Ceanothus cyaneus* occurs would be required to ensure that healthy populations are maintained.

Re: Ceanothus verrucosus – Section 6.3.34 of the MSCP Plan discusses preserve management guidelines. Management plans for areas in which *Ceanothus verrucosus* occurs would be required to ensure that healthy populations are maintained. Coordination with INS will focus on achieving Border protection goals, while also avoiding impacts to sensitive biological resources, particularly where this species occurs on Spooner's Mesa. Criteria developed as part of these efforts would be incorporated into the subarea plans prepared for the cities of San Diego and Chula Vista, as well as the County of San Diego, as appropriate.

Re: Cordylanthus maritimus ssp. maritimus – With the exception of a recently discovered population of *Cordylanthus maritimus ssp. maritimus* on the Naval Radar Receiving Facility, Imperial Beach, all extant naturally-occurring and transplanted populations of this taxon would be conserved within the MHPA. *Cordylanthus maritimus ssp. maritimus* is restricted to coastal salt marsh habitat and also afforded protection under local, state, and federal wetlands protection policies and guidelines. The Natural Resources Management Plan is being prepared for Naval Radar Receiving Facility, Imperial Beach, and includes a discussion of this taxon. The population mapped in the County of San Diego's South Bay Marine Biology Study Area is not believed to be extant, or to represent an historic record. See Revised Table 3-5 for specific management conditions.

Re: Cordylanthus orcuttianus – Seventy-five percent of the major populations of *Cordylanthus orcuttianus* would be conserved within the MHPA. This species on group B of the County of San Diego's Sensitive Plants List. Populations within the County's Metro-Lakeside-Jamul Segment would receive protection based on their Biological Mitigation Ordinance which requires avoidance of populations as a first priority, with a minimum on-site preservation of 80 percent for unavoidable impacts unless this precludes all reasonable use of the property. In these instances, in-kind preservation is required at ratios from 1:1 to 3:1. A portion of the population in the Otay River Valley lies outside of the MHPA, however, it would be subject to the County of San Diego's Biological Mitigation Ordinance which requires the preservation of at least 80 percent. A population in Otay Ranch occurs in a major amendment area where all proposed development is subject to CEQA and NEPA, as well as approval by the wildlife agencies. Recognizing the vulnerability of this species to edge effects and foot traffic, measures to reduce such risks would be included in all Subarea Plans where this species occurs. See specific management conditions in revised Table 3-5.

Re: Corethrogyne filaginifolia var. linifolia – Forty-eight percent of the major populations of *Corethrogyne filaginifolia var. linifolia* and 67 percent of southern maritime chaparral would be conserved within the MHPA. This taxon has been merged, along with varieties *C.f. incana* and *C.f.*

filaginifolia, into the more widespread *Lessingia filaginifolia*. This taxon is, however, still retained on the list of covered species and would be considered adequately conserved within the MSCP study area should its taxonomic status change in the future.

This taxon typically occurs in ecotonal areas and open areas in southern maritime chaparral and coastal sage scrub where it occurs on marine sandstone substrates. This indicates that the species may not be a successful competitor, requiring habitat edges and open areas to thrive. As a result, the location of this species in areas subject to edge effects is likely the result of its ecological requirements rather than poor preserve design.

Re: Dudleya blochmaniae ssp. brevifolia – One hundred percent of the major populations of *Dudleya blochmaniae ssp. brevifolia* are conserved in the MHPA. Adequate consideration and management of conserved populations is critical in ensuring the survival of this species. Conservation of *Dudleya blochmaniae* ssp. *brevifolia* at Crest Canyon and at Neighborhood 8a will require species-specific management. *Dudleya blochmaniae ssp. brevifolia* is also on the list of narrow endemics which requires avoidance of impacts to populations within the MHPA.

Neighborhood 8a currently proposes 100 percent conservation of this taxon within its project boundaries. Management recommendations specific to areas where this taxon occurs (found in the City of San Diego's Subarea Plan, Carmel Valley Neighborhood 8a/Torrey Pines Community) include:

(a) Redirect human access from vernal pools and dudleya populations through signage and fencing as necessary to delineate and protect the sensitive areas;

(b) Monitor sensitive areas for off-road and off-trail use, take measures to prevent such use and repair damage (including area closure);

(c) Assess Crest Canyon for the need for protection from overuse. Take necessary measures to protect sensitive species within the canyon, clearly demarcate trails, and control off- trail use in the area. Consider the use of signage, fencing or other barriers both within and at the edges of the canyon.

(d) Restore southern maritime chaparral in Crest Canyon

The wildlife agencies will work with the University of California, San Diego to ensure the protection of the population of *Dudleya blochmaniae* ssp. *brevifolia* which occurs adjacent to Skeleton Canyon on the campus of UC San Diego. See revised Table 3-5 for specific management conditions.

Re: Dudleya variegata – Approximately 56 percent of the major populations would be conserved within the MHPA and additional populations occur in amendment areas. All development proposals within amendment areas are subject to approval by the wildlife agencies. Development proposals within major amendment areas are also subject to NEPA and CEQA review. *Dudleya variegata* on the list of narrow endemics which requires avoidance of impacts to the species

within the MHPA. As a species found in group A of the County of San Diego's Sensitive Plants List, those populations which occur within the Metro-Lakeside-Jamul segment of the County Subarea Plan would receive protection through their Biological Mitigation Ordinance which requires avoidance of populations as a first priority, with a minimum on-site preservation of 80 percent for unavoidable impacts unless this precludes all reasonable use of the property. In these instances, in-kind preservation is required at ratios from 1:1 to 3:1 coordination with INS is ongoing to achieve border protection goals, while also avoiding impacts to sensitive biological resources. The populations in Poway were considered in the analysis of conservation for this species. See revised Table 3-1 for specific management conditions.

Re: Dudleya viscida – Preserve managers would be given the opportunity, prior to clearing/grading, to collect seed or transplant individuals of *Dudleya viscida* into suitable habitat within the preserve.

Re: Hemizonia conjugens – Approximately 66 percent of the major populations of Otay tarplant would be conserved within the MHPA. *Hemizonia conjugens* is on the list of narrow endemics which requires avoidance of impacts to the species within the MHPA. As a species found in group A of the County of San Diego's Sensitive Plants List, those populations which occur within the Metro-Lakeside-Jamul segment of the County Subarea Plan would receive protection through their Biological Mitigation Ordinance which requires avoidance of populations as a first priority, with a minimum on-site preservation of 80 percent for unavoidable impacts unless this precludes all reasonable use of the property. In these instances, in-kind preservation is required at ratios from 1:1 to 3:1. The Otay Ranch Resource Management Plan requires avoidance of populations within the Otay River Valley through project design. One of the major populations occurs in an amendment area, any development in such areas would be subject to approval by the wildlife agencies. See revised Table 3-5 for specific management conditions.

Re: Lotus nuttallianus – Ninety-two percent of southern foredune habitat, which is the potential habitat for *Lotus nuttallianus*, would be conserved within the MHPA and provide sites for re- introduction into historic locales. The largest populations of *Lotus nuttallianus* occur on military lands, which are not part of the MSCP. The wildlife agencies are currently working with the U.S. Navy to provide protection for this species where it occurs on military lands in South Bay (i.e., Silver Strand). *Lotus nuttallianus* is a species which would likely be addressed in Natural Resources Management Plans prepared for each base. See revised Table 3-5 for specific management conditions.

Re: Navarretia fossalis – Approximately 63 percent of the major populations of *Navarretia fossalis* would be conserved in the MHPA. Eighty-eight percent of the vernal pool habitat in the MSCP area would be conserved. Conservation measures in the City of San Diego's Subarea Plan state that wetlands, including vernal pools, would be preserved at 100 percent inside the MHPA and impacts outside of the MHPA would be avoided. Unavoidable impacts to vernal pools outside the MHPA would be mitigated at a range of ratios from 2:1 to 4:1. As a species found in group A of the County of San Diego's Sensitive Plants List, those populations which occur within the Metro-Lakeside-Jamul segment of the County Subarea Plan would receive protection through their Biological Mitigation Ordinance which

requires avoidance of populations as a first priority, with a minimum on-site preservation of 80 percent for unavoidable impacts unless this precludes all reasonable use of the property. In these instances, in-kind preservation is required at ratios from 1:1 to 3:1. The Otay Ranch Resource Management Plan includes protection for vernal pools with sensitive species.

The proposed Vernal Pools Unit of the San Diego National Wildlife Refuge would provide management oversight for *Navarretia fossalis* and contribute toward recovery goals through the preservation and management of extant and historic habitat. *Navarretia fossalis*, as a wetland species, is afforded additional protection under local, state, and federal wetlands protection policies and guidelines.

Section 6 of the MSCP Plan, Volume I, also addresses border patrol activities and directs that preserve management plans include provisions for conflict resolution in order to balance resource protection and INS goals. Coordination with INS is ongoing to achieve border protection goals, while also avoiding impacts to sensitive biological resources. See revised Table 3-5 for specific management conditions.

Re: Orcuttia californica – Within the MSCP study area, this species only occurs on Otay Mesa and in Spring Canyon. Eighty-six percent of the single major population of *Orcuttia californica* would be conserved within the MHPA. Within the MSCP study area, 88 percent of vernal pool habitat is being conserved. Conservation measures in the City of San Diego's Subarea Plan state that wetlands, including vernal pools, would be preserved at 100 percent inside the MHPA and impacts outside of the MHPA would be avoided. Unavoidable impacts to vernal pools outside the MHPA would be mitigated at a range of ratios from 2:1 to 4:1. *Orcuttia californica* has been added to the City of San Diego's list of narrow endemics and is in group A of the County of San Diego's Sensitive Plants The Otay Ranch Resource Management Plan includes protection for vernal pools with sensitive species.

The proposed Vernal Pools Unit of the San Diego National Wildlife Refuge would provide management for *Orcuttia californica* and contribute toward recovery goals through the preservation and management of extant and historic habitat. *Orcuttia californica* habitat is also afforded protection under local, state, and federal wetlands protection policies and guidelines.

Re: Pogogyne abramsii – Within the MSCP study area, 88 percent of this species' habitat would be conserved within the boundaries of the MHPA. The major populations of *Pogogyne abramsii* occur on military lands at Marine Air Corps Station, Miramar and, as such, are not part of the MSCP. The City of San Diego has added *Pogogyne abramsii* to its list of narrow endemics. Conservation measures in the City of San Diego's Subarea Plan state that wetlands, including vernal pools, would be preserved at 100 percent inside the MHPA and impacts outside of the MHPA would be avoided. Unavoidable impacts to vernal pools outside the MHPA would be mitigated at a range of ratios from 2:1 to 4:1. *Pogogyne abramsii* habitat is also afforded protection under local, state, and federal wetlands protection policies and guidelines. Revised Table 3-5 provides specific management conditions for this species.

That population of *Pogogyne abramsii* which occurs at Montgomery Field was mistakenly omitted from the original mapping, but was included in the 1996 analysis and will be managed under the Urban Habitat Lands in the City of San Diego's Subarea Plan. The proposed Vernal Pools Unit of the San Diego National Wildlife Refuge would provide management for *Pogogyne abramsii* and contribute toward recovery goals through the preservation and management of extant and historic habitat.

Re: Pogogyne nudiuscula – Ninety-six percent of all mapped points for *Pogogyne nudiuscula*, which represents 91 percent of the major populations, would be conserved in the MHPA. Three of the four points mapped south of Otay Mesa Road are extirpated, or believed to be historic locations. The same is true for the population in the California Terraces project area. This means that 100 percent of the extant populations are conserved within the MHPA. Additionally, 26 percent conservation of Stockpen soils in the MHPA are being conserved which would provide opportunities for vernal pool restoration and subsequent restoration of *Pogogyne nudiuscula* populations into historic habitat. The City of San Diego has added *Pogogyne nudiuscula* to its list of narrow endemics.

Conservation measures in the City of San Diego's Subarea Plan state that wetlands, including vernal pools, would be preserved at 100 percent inside the MHPA and impacts outside of the MHPA would be avoided. Unavoidable impacts to vernal pools outside the MHPA would be mitigated at a range of ratios from 2:1 to 4:1. *Pogogyne nudiuscula* habitat is afforded additional protection under local, state, and federal wetlands protection policies and guidelines. Revised Table 3-5 provides specific management conditions for this species.

The Otay Ranch Resource Management Plan includes protection for vernal pools with sensitive species. The proposed Vernal Pools Unit of the San Diego National Wildlife Refuge would provide management for *Pogogyne nudiuscula* and contribute toward recovery goals through the preservation and management of extant and historic habitat.

20

California Native Plant Society

October 15, 1996

Lawrence C. Monserrate
City of San Diego
Land Development Review Division
1222 First Ave, MS 501
San Diego, CA 92101

RECEIVED
OCT 15 1996

Re: Multiple Species Conservation Program (MSCP) Plan
Dep. No. 93-0287 SCH 93121073

Dear Mr. Monserrate:

The San Diego Chapter of the California Native Plant Society (CNPS) has attempted to review the draft Environmental Report (EIR)/Environmental Impact Statement (EIS) for the Multiple Species Conservation Program (MSCP) Plan in addition to the MSCP Plan Volume 1, the MSCP Subarea Plans Volume II, and the Implementing Agreement. We have serious concerns about the adequacy of the data used to develop the program, the adequacy of the presentation of the data for public review, and the adequacy of the preserve design. Our comments will discuss some of the broader issues with the MSCP plan, some specific comments concerning subarea details, some concerns associated with the City of San Diego implementing agreement and the Environmentally Sensitive Lands ordinance, followed by specific comments concerning individual plant species.

We were disappointed in the documentation used to discuss the plan. The EIR/EIS document is poorly structured. No data beyond a summary table was provided in any of the documents for individual species. One could not review the adequacy of the data since there was no discussion of where main populations of species are located nor were any maps of the data provided. Two of our members visited public libraries (the main Chula Vista library and a small City of San Diego branch library) in order to review the information and neither library had any additional supporting information available. Had wildlife agencies not made that data available for the public to review, we would have had to legally challenge the adequacy of the documents. Programmatic EIRs must provide the data which is the basis for decision making and that data must be available for public review.

In general we are concerned with the lack of clear responses to NOP comments and questions. We raised some very specific questions in our NOP response that were not answered. We are resubmitting our comments in hopes that questions will be clearly answered. Perhaps we did not make it clear in our previous comments but we wish to also understand the post-MSCP CEQA review process in reference to uncovered sensitive species in the plan area.

A general issue which causes error in this conservation approach is that data was never field verified. Our organization did field check data for one species we felt was at risk of extirpation with the MSCP preserve design. We found that species misidentification had led to a findings of coverage for *Ambrosia pumila*. The proposed plan will lead to the extirpation of the species in San Diego County. We unfortunately did not verify data for other species in a systematic manner. We continue to have concerns about the proper identification of populations of *Hemizonia conjugens*. There is apparently misunderstanding of the distinctiveness of the species by some local consulting firms as evidenced by statements made to the City of Chula Vista Resource Commission 20(a)

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concerning *Hemizonia conjugens* and impacts from the proposed I 125 project. We know that populations of Willowy monardella west of I-805 in San Clemente Canyon are largely historical since only two strands of the species were located after multi-year extensive survey efforts in the area. See individual species discussions for further details of concerns. 20(a)

Exhibit I in the Implementing Agreement Document (page 8) states surveys conducted as part of the MSCP may be used where agreed upon. Lack of field verification of data for both habitats and species makes the use of MSCP data suspect to us. We request that only current field data be applicable for project level planning efforts. 20(b)

The Multiple Species Conservation Program (MSCP) Volume 1 Resource Document states "The overall goal of the MSCP is to develop a preserve system that will maximize and enhance biological diversity in the region and to conserve viable populations of endangered, threatened, and key candidate species and their habitats within the MSCP study area, thereby preventing local extirpation and ultimate extinction." We find the proposed preserve design cannot accomplish those goals. Local extirpation is a probable outcome for *Ambrosia pumila*, *Aphanisma blitoides*, *Astragalus tener* var *titi*, and a variety of bird species with this plan. Please explain how the plan will prevent local extirpation of the listed plant species.

The United States Fish and Wildlife Service (USFWS) must consider 5 factors in reaching its decision to issue an incidental take permit for a species (pages 1-11 and 1-12 of the EIR/EIS). Included in those five factors are: Are the impacts of the proposed taking of covered species minimized and mitigated to the maximum extent possible, Is the proposed take such that it will not appreciably reduce the likelihood of survival and recovery of the covered species in the wild, and Are there other measures that should be required as a condition of the permit. We find that the current preserve design does not minimize and mitigate to the maximum extent possible impacts to species listed below and that the plan appreciably reduces the likelihood of recovery for *Ambrosia pumila*, *Aphanisma blitoides*, *Astragalus tener* var. *titi*, *Hemizonia conjugens*, *Lotus nuttallianus*, *Navarretia fossalis*, *Orcuttia californica*, *Pogogyne nudiuscula*, and *Rosa minutifolia*. Please explain how this plan has minimized the impact to these species and how the plan does not appreciably reduce the likelihood of recovery of these species. 20(c)

Biological criteria for preserve design are listed from page 4-4 to 4-10 in the MSCP Resource Document and contain 11 bulleted items which address reserve configuration, buffering, and ability to manage the preserve for the desired use. Various areas of the proposed preserve violate the criteria. A shape which minimizes the edge-to-area ratio of preserve blocks (NCCP tenets #2 and #7) is suggested when the possibility exists to design the shape of preserve areas. Viewing of the proposed MSCP preserve maps (Figure 2-1 in the EIR/EIS) demonstrates the overall non-compliance with a minimized edge-to-area ratio. The plan has a long narrow preserve even in areas not already constrained by development. Other alternatives had better edge-to-area ratios but have been previously rejected by jurisdictions. What is the likely impact of this preserve design on the preservation of species and on the financial costs of managing the preserve? 20(d)

The plan was to provide the ability to preserve blocks buffered by areas of limited intensity development (NCCP tenet #7). High density development is planned up to the edge of the preserve. How is NCCP tenet #7 met with this plan? It seems clear from experiences with linear City of San Diego parks adjacent to development that at times the lack of buffers will cause a conflict with the 20(e)

California Native Plant Society

ability to manage the preserve for its desired use or that the costs of managing those lands for the preservation of native species is greatly increased. 20(e)

In the southbay we do not see the ability of preserves to be managed for desired use (NCCP tenet #7) because of the dire impacts associated with illegal border crossing and actions by those attempting to control illegal border crossings. The degradation of Spring Canyon and Otay Mountain has been dramatic over the past few years. There is no reason to believe that impacts to these areas will change any time in the foreseeable future. Is there a solution to this issue or is there any coordination efforts with local INS agents? 20(f)

Throughout the plan area we do not find requirements of development projects along preserve boundaries that would enable the safe use of fire as a management tool within the preserve. The exception to this statement is in the southbay where development requirements were incorporated to improve conditions for border control purposes. Native grassland restoration and some species regeneration is dependent upon fire cycles. The long term viability of some of the species cannot be assured if all fires are suppressed due to the hazards to adjacent development associated with improper setback requirements. 20(g)

Figure 2-2 in the MSCP Plan Volume 1 shows 14 linkages for the preserve. The ability of preserves to be connected by adequate corridors to adjacent habitat patches (NCCP tenets #4 and #5) is a criteria of the preserve but few of the 14 linkages are shown as conserved. The preservation of linkages A, B, D, H, I, J, K, L, M, and N (10 out of 14 linkages) is not guaranteed with the current preserve design. As far as we can tell, linkages F and G are present but highly constrained. It is not at all clear that there is adequate connectivity with patches outside the MSCP study area (NCCP tenets #4 and #5). Please explain why or how linkages are provided with the current preserve design. 20(h)

Rare habitats are not adequately preserved (Resource document 4-3 criteria). Vernal pools are not quantified in the documents but is apparent from sensitive species maps that pools lie outside of the preserve. How will vernal pools be preserved? Native grasslands are not quantified in the documents. If this rare habitat has not been identified, how can it be incorporated into a viable preserve? According to Table 3-3, only 47% of Maritime succulent scrub is protected, 62% of Southern maritime chaparral, 61% of Freshwater marsh, 57% of Oak riparian forest, and negligible shallow and deep bays is protected. We are concerned about the adequacy of these protection levels. Standards and guidelines developed for the program are not met. Given that Cactus wren are already in danger of local extirpation with current numbers, please explain the level of the impact to Maritime succulent scrub.

The plan seems to be placing jurisdictions in direct conflict with the no net loss policy for wetlands. The City of Chula Vista proposes to conserve only 76% of its Southern coastal salt marsh, 40% of its Freshwater marsh, 84% of its Riparian scrub, 51% of its Natural flood channel, and 11% of its Shallow bay. The City of Del Mar does not plan to preserve any of its Freshwater marsh. The City of National City plans to preserve 58% of its Riparian scrub and 2% of its Shallow bay. The City of Poway is preserving only 12% of its Freshwater marsh, 84% of its Riparian forest, and 37% of its Riparian scrub. The City of San Diego is preserving 68% of its Freshwater marsh, 85% of its Riparian scrub, and 5% of its Shallow bay. Santee is preserving only 40% of its Freshwater marsh, 18% of its Riparian forest, 65% of its Riparian scrub, and 54% of 20(i)

its Natural flood channel. Unincorporated areas (County) are preserving 69% of Freshwater marsh, 66% of Riparian forest, 50% of Oak riparian forest, 77% of Riparian woodland, 68% of Riparian scrub, 57% of disturbed wetlands, and 88% of Natural flood channels. Please explain how no net loss of wetlands is to occur with these levels of impact throughout the region. 20(i)

That any vernal pools would be omitted from the preserve is not acceptable given the historic loss of this habitat type. That vernal pools with sensitive species are not included in the preserve is not comprehensible given the stated goals of the program. That a sensitive vernal pool species could not be covered due to the level of impact proposed by this plan to its few remaining pools demonstrates an inadequacy of the planning process.

Numbers for Maritime succulent scrub do not add up correctly. Table 3-3 (page 3-18) states there are 1803 acres in the study area. Table 3-1 (pages 3-9 to 3-15) have a total of 1435 acres between the City of Chula Vista, City of San Diego, and the Unincorporated area. In meetings with wildlife agencies, the missing acreage was credited to military lands on Point Loma. While I believe this is true, do figures for the City of San Diego double count this habitat (1133 acres in study area with 721 acres total MHPA acres). 20(j)

The endemics list in the EIR/EIS (page 4.3-8) does not contain *Pogogyne abramsii*, *Pogogyne nudiuscula*, *Orcuttia californica*, *Navarretia fossalis*, *Myosurus minimus* ssp *apus*, or *Lotus nutallianus*. The draft Exhibit I in the Implementing Agreement document does not contain these species either. Section A.3. of Exhibit I (page 6) does not place any limit on encroachment into Sensitive Biological Resources such as is implied by the narrow endemics language in Section 10.8.G.3 of the Implementing Agreement (page 25). Please clarify the discrepancy. 20(k)

A 3 year public reporting period is too infrequent to ensure the preserve design and the jurisdictions are fulfilling their expectations (Plan 6.4.3 page 6-12). Informal yearly reporting would be more desirable. 20(l)

Ambrosia pumila does not occur in CSS as represented on tables in the documents. 20(m)

Please expand the bulleted item in the Plan (Section 6.3.8 on page 6-10) concerning exotic species to invasive non-native species (this would include control efforts for frogs and pigs in addition to exotic plant species). Further on in section 6.3.8 there is a discussion of chemical use to control exotic plants. Licensed Pest Control Advisors usually prescribe an approach for removal of organisms while Licensed Pest Control Applicators make the application. You will effectively destroy active volunteer efforts with the requirement for licensing. Typically, unlicensed volunteers undergo a training program to enable them to assist in eradication of pest plants when herbicide will be used. The County Agricultural Commissioner has no requirements regulating volunteers using unrestricted compounds. Please amend this section of the plan to allow volunteer participation in exotic plant removal with appropriate training. 20(n)

Subarea Plans

City of Chula Vista

1. Page 3 of the document implies that linkages are preserved but the Sweetwater and Otay River linkages are not preserved with the proposed preserve design. 20(o)

2. Throughout the document there are Appendices alluded to that are not included (example: page 7 "see Appendix for significant on-site vegetation acreage to be preserved"). References should be deleted or preferably included in the document. 20(p)

3. Sunbow II slopes are listed as Coastal sage scrub but in actuality are Maritime succulent scrub (Section 4.1.1.7 page 9). This might help to explain why Chula Vista only lists 17 acres of Maritime succulent scrub in their habitat acreage tables. It is unlikely that the current City of Chula Vista only contains 17 acres of Maritime succulent scrub given the Sunbow property, Rice Canyon and lands along Telegraph Canyon road that are currently in the city. Please verify the data in tables. 20(q)

4. The document states that the Otay Valley Regional Park draft concept plan is consistent with preserve goals but the plan proposes active recreation in a linkage area containing sensitive species (*Hemizonia conjugens, Opuntia parryi* var. *serpentina*, and *Cordylanthus orcuttia*). This is not in conformance with linkage requirements or good management policy for sensitive species. 20(r)

5. The document states that San Ysidro Mountains Parcel of Otay Ranch contains 7 acres of Sycamore alluvial woodland. Please consult with Todd Keeler-Wolf, Vegetation Specialist for the California Department of Fish and Game in Sacramento. He has assured the San Diego Chapter of CNPS repeatedly that our region does not contain this very rare habitat. 20(s)

6. The Sensitive Resource Study Area, which contains vernal pools with sensitive plant species, is specifically called out as an area Wildlife agencies shall not object to development of, yet the area contains a non-covered sensitive plant species (Section 4.3.1.1.3.a.3.f). CEQA and Federal 404 permitting processes are required to deal with this issue and wildlife agencies cannot shirk their responsibilities to uncovered species. 20(t) 20(u)

City of San Diego

1. Both Bougainvillea and Hidden Trails are listed as projects included in the approved negotiated projects list but to date we have seen no approved environmental documentation for these projects (page 2). These projects should not be included on this list. 20(v)

2. The document states that Spring Canyon and the Otay River Valley support Ambrosia pumila (page 6 and 7). They do not. Please confirm status with Keith Greer of the City's Planning Department (or equivalent department) and Craig Reiser (local botanist). Also please note that Orcutt's bird's-beak is found on Hidden Trails. 20(w)

3. Some of the active park uses listed for Mission Trails Regional Park on page 16 are incompatible with species protection. See additional discussion under individual species. 20(x)

4. Under the section Other Urban Habitat Areas (page 18) are sensitive plant species for which we would like additional information. Where are the Orcutt's brodiaea, Short-leaved dudleya, San Diego button celery, Willowy monardella, and San Diego goldenstar listed located? When were the last surveys conducted and what increased management will be provided with MSCP preserve adoption. 20(y)

5. Is Montgomery Field included as an Other Urban Habitat area? Are the Montgomery Field vernal pools with *Pogogyne abramsii* part of the MSCP preserve? 20(z)

6. Since grading has occurred for projects adjacent to and north of Los Penaquitos Canyon, wildlife usage of the linkage west of the canyon has increased (page 21). The document implies the linkage is most likely not being used by wildlife. This statement needs to be re-examined given current levels of usage of the area. 20(aa)

7. Page 45 lists coverage conditions for various species. We object to the discussion for *Ambrosia pumila (1)*. The species is much rarer than the plan describes and avoidance of the population is required to ensure the species will not be extirpated with the MSCP plan. We object to the lack of avoidance of impact for *Astragalus tener* var *titi* if any is found in the planning area (3). The species is probably locally extirpated but if it is found in the planning area it should be preserved in situ. Design criteria for development of areas adjacent to *Arctostaphylos glandulosa* var. *crassifolia* and *Ceanothus verrucosus* need to ensure that controlled burns of the open space areas will not put housing at risk (2) (5). Why is there no discussion of vernal pool species in this section? 20(ab)

8. The Invasives section on page 52 should be expanded to read "6. No invasive non-native species shall be introduced into areas adjacent to the preserve." 20(ac)

9. The Otay Mesa Area has no confirmed *Ambrosia pumila* populations (section 1.5.3 page 60). 20(ad)

10. A Natural Resource Management Plan should be developed for Mission Trails Regional Park (Priority 1 on page 76) but the plan should preserve and protect natural resources even if that protection is in conflict with the Master Development Plan. Page 80 suggests that a Natural Resource Management Plan has been started for the park. To our knowledge this has not occurred. 20(ae)

11. We would request that specific design criteria be established for developments adjacent to areas containing Del Mar manzanita and Coast white lilac such as utilized for border control to enable active management of preserve lands for fire. This would need to be incorporated in a few areas in the future urbanizing area. 20(af)

12. The narrow endemics list on page 111 contains no vernal pool species (*Pogogyne abramsii*, *Pogogyne nudiuscula*, *Orcuttia californica*, *Navarretia fossalis*, *Myosurus minimus* var. *apus*, or *Lotus nuttallianus*. These species require protection outside of preserve areas to ensure the species can recover. 20(ag)

13. The City proposes to change its wetlands definition criteria to Army Corp of Engineers criteria. This will result in the loss of addition wetlands especially in flood fringe areas. We have seen that when development is allowed in floodplains (Mission Valley, Tijuana River Valley, and Sorrento Valley) natural drainages tend to become channelized due to human health concerns and property damage resulting in a loss of rare habitat. We request that the City reconsider its decision to lessens wetlands definition criteria. 20(ah)

<u>County of San Diego</u>

1. Table 2-1 (page 2-3) lists Sycamore alluvial woodland as a habitat but this is a highly restricted community not found in San Diego County. 20(ai)

2. Since controlled burning may be required for the continued persistence of some species, development plans should incorporate designs such that fire danger is lessened to the development (Section 2.5.1 pages 2-15). Species requiring periodic fires for regeneration are *Arctostaphylos* species and *Ceanothus* species. 20(aj)

3. Tier III Non-native grassland should be mitigated independent of the land containing covered sensitive species. The plan is an attempt to have an equitable sharing of the costs of habitat preservation and to move away from species driven preservation criteria to habitat driven conservation. 20(ak)

4. Since Highway 125 is no longer being proposed for Johnson Canyon, will this high quality land be incorporated into the preserve? 20(al)

Implementing Agreement

We are concerned that take permits in one jurisdiction are not adequately tied to conservation in another jurisdiction. Species of particular importance to CNPS would be Orcutt's brodiaea, Wart-stemmed ceanothus, Orcutt's bird's-beak, Variegated dudleya, San Diego button-celery, Otay tarplant, San Diego goldenstar, Prostrate navarretia, Snake cholla, CA Orcutt grass, and Otay mesa mint. Coverage for these species should be associated with successful MSCP adoption in other jurisdictions. 20(am)

Public reporting requirements are not adequate. Three years is too long to wait to ensure the plan is functioning. Some form of yearly accounting should be made available for public review. 20(an)

We did not find avoidance language in Exhibit I concerning narrow endemic species. Please clarify where information can be found as to what happens to narrow endemic species outside of the preserve. Please expand the list to include *Lotus crassifolius* and vernal pool species. 20(ao)

Species Analysis

Acanthomintha ilicifolia

Preservation of the main population at McGinty Mountain is not adequate. The majority of the plants on the mountain will be lost with this preserve design. We are also concerned about the connectivity of the largest known population of San Diego thornmint with native vegetation in the Otay Lakes area. Development requirements should be such that connectivity to natural vegetation is maintained and drainage is not altered for the population. Please examine means for the impact reduction to the major thornmint population at El Capitan.

Ambrosia pumila

Surveying of MSCP identified populations found that the Otay River Valley and Spring Canyon populations do not exist. The more common species *Ambrosia confertiflora* is present at those sites. The population at State Route 67 and Lakeside Road could not be found although a closely 20(ap)

related species, *Ambrosia confertiflora* was prevalent. The populations in the Jamul area have been greatly reduced in size due to development. State Route 52 has impacted the majority of sites located in the Mission Trails/Santee area. Development of a day use area at Mission Trails Regional Park will cause the remaining viable population of *Ambrosia pumila* to be at risk. Smaller populations occur at Gillespie Field and by the Del Dios Highway in the planning area. The San Diego Chapter of CNPS and the Southwest Center for Biodiversity are submitting listing petitions to both the California Department of Fish and Game and the U.S. Fish and Wildlife Service because of the level of impact this program is currently proposing for this species. A draft copy of the state petition has been submitted to the Natural Heritage Division and is currently undergoing their initial review process for petitions. The final state petiton is expected to be submitted this week.. The species is being put at risk of local extirpation and current plans make recovery of the species unlikely. Strong management is needed for this species. Transplantation of the remaining viable population is not acceptable.

Aphanisma blitoides
Aphanisma has probably already been extirpated from San Diego County. Coverage makes loss of any discovered population impossible if that population occurs outside of the preserve area. This would be in direct conflict with MSCP goals of no local extirpations. This species would receive better protection by not being covered.

Arctostaphylos glandulosa ssp *crassifolia*
Del Mar manzanita is dependent on a fire cycle. The document needs to specifically require development design criteria that will enable controlled burning of the habitat supporting this species if the species is to remain in viable populations. Perhaps design criteria required for border patrol needs in the southbay could be incorporated for fire cycle dependent species.

Arctostaphylos otayensis
Otay manzanita is dependent on a fire cycle. The document needs to specifically require development design criteria that will enable controlled burning of the habitat supporting this species if the species is to remain in viable populations. Perhaps design criteria required for border patrol needs in the southbay could be incorporated for fire cycle dependent species.

Astragalus tener var. *titi*
Coastal dunes milk vetch has probably already been extirpated from San Diego County. Coverage makes loss of any discovered population impossible if that population occurs outside of the preserve area. This would be in direct conflict with MSCP goals of no local extirpations. This species would receive better protection by not being covered.

Brodiaea orcuttii
The species protection is limited in the study area due to the species occurrence on military lands. Since few of the major populations can be guaranteed protection, the San Vicente populations should be conserved as a means of improving the point conservation which is only at 33%.

Ceanothus cyaneus
Lakeside ceanothus is dependent on a fire cycle. The document needs to specifically require development design criteria that will enable controlled burning of the habitat supporting this species if the species is to remain in viable populations. Perhaps design criteria required for border

patrol needs in the southbay could be incorporated for fire cycle dependent species. The Crest-Harbison Canyon population should be included in the preserve since edge impacts will be an issue for preserved populations and the species is endemic to the area.

Ceanothus verrucosus
5 out of 5 major populations in the Carmel Mountain area are inadequately preserved. The species is highly edge impacted at other locations and is a fire cycle dependent species. Conservation of populations on Carmel Mountain and in Santa Fe Valley is needed since the possibility for fire management still occurs in these areas. The document needs to specifically require development design criteria that will enable controlled burning of the habitat supporting this species if the species is to remain in viable populations.

Cordylanthus maritimus ssp *maritimus*
There are probably only 8 occurrences for this species with 4 of those occurrences in the MSCP study area. All populations should be preserved given the rarity of the species.

Cordylanthus orcuttianus
This species must be preserved 100% in the Otay River Valley. Active recreation is not a compatible use for this species. The area containing this species is a linkage area. The Hidden Trails population on Otay Mesa is not shown on maps.

Corethrogyne filaginifolia var. *linifolia*
Both major populations of Del Mar sand aster are to be impacted. It is imperative that additional protection is provided to the species on Carmel Mountain. The edge impact to this species is high in all preserved areas.

Dudleya blochmaniae ssp. *brevifolia*
Short-leaved dudleya has a limited distribution and is highly susceptible to foot traffic as evidenced by lack of blooming plants at the Torrey Pines extension area and Crest Canyon. Carmel Mountain contains 2 high density populations of the species and some smaller populations. Sufficient buffer area must be provided to the species to ensure that impacts from surrounding development do not appreciably reduce the likelihood of recovery of the species. Since the dudleya is extremely small and cryptic and grows on scenic overlooks on flat mesa tops, effective measures to reduce impacts from people will be required. Preservation of 3.4 out of 4 major populations is not sufficient given the rarity of the species. Better buffering of the populations is needed.

Dudleya variegata
The Poway major populations are not shown on maps. Given that only 56% of major populations are preserved and at least half are subject to edge effects impacts to this species need to be reduced. The plant is small and subject to trampling.

Dudleya viscida
Please incorporate seed collection and transplantation for impacted plants.

Hemizonia conjugens
This is a species with inadequate protection with the MSCP plan. 7 out of 7 of the major populations will be impacted to some degree. Table 4.3-1 suggests that 4.1 out of 7 major

20(ap)

populations will be impacted but in reality all 7 major populations will undergo some level of impact associated with development. We unfortunately did not conduct spring surveys for this species. Plants protected on the northern parcel of San Miguel Ranch are of suspect identification given the soil type in the area. There is apparently some confusion on the part of local surveyors as to the characteristics that define this species and we fear that preserved populations associated with San Miguel ranch are misidentified species. Major populations in the Otay River Valley are at risk from active recreation planned for the area. It is difficult to justify that this plan has minimized the impact to the species to the maximum extent possible. The plan appreciably reduces the likelihood of recovery of the species. Given the natural fluctuations in populations density, greater efforts are needed to eliminate impacts to major populations. Additional protection is needed for this species.

Lotus nuttallianus
This species is at risk due to its presence in highly urbanized areas where it occurs outside of military lands. The City of San Diego has impacted populations along the San Diego River Flood Control Channel. Mitigation for past impacts has had minimal efforts applied. The city continues to mulch over and plant areas historically supporting the species. Silver Strand populations are frequently suggested to be impacted by plans for Highway beautification projects with landscaping. A golf course has been repeatedly proposed for the Radio Towers area. *Carpobrotus edulis* is a threat to dune areas but little is being done about it. The MSCP plan must clearly call for changes in management of lands supporting this species. Regular monitoring of the species is needed as well as activities to reduce the likelihood of loss of populations (i.e. prohibit development plans impacting the species, remove invasive exotic plants from habitat areas, and encourage native landscaping along Silver Strand).

Navarretia fossalis
This species is inadequately protected by the plan. The current preserve design does not minimize and mitigate impacts to the maximum extent possible. Road projects allowed as permitted uses in the preserve will impact the only major population in the study area. Continued impacts from border patrol activities and lack of protection in Spring Canyon and Chula Vista will enable local extirpation of the species.

Orcuttia californica
Species has a highly limited distribution and is located in Spring Canyon, a highly disturbed area necessary for border control activities. Without active management practices in Spring Canyon, the species is likely to be lost on non-military lands in the county. The plan does not appreciably increase the recovery of the species.

Pogogyne abramsii
Montgomery Field populations are not mapped. A list of vernal pools need to be conserved outside of military lands at Miramar since preservation of the species at Miramar is no longer guaranteed. The plan needs to specify preservation of B7-8, D1, I1, I6A-C, Teledyne, General Dynamics, C10-13, and B11 pools.

Pogogyne nudiuscula
The species cannot support any losses without the plan appreciably reducing the likelihood of recovery of the species. Pools J21, J27, J28W, J29, and J30 must be preserved. Stockpen soil type

20

impacts must be avoided if there is to be any chance for recovery of the species. Major roadways must identify routes which avoid impacts to vernal pools. 20(ap)

The San Diego Chapter of CNPS and the statewide CNPS organization are very interested in the final MSCP environmental documentation and in knowing of any jurisdictional meetings where the program will be discussed for approval of a preserve design. Please inform us of dates for hearings in any of the local jurisdictions. We hope our comments will help to improve the plan and provide sufficient data for management of our limited natural resources.

Sincerely,

Cindy Burrascano

Cindy Burrascano
San Diego Chapter President

21 MICHELE A. STAPLES, SAN LUIS REY MWD, 10/10/96

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21(a) Comment noted.

21

LAW OFFICES OF
SUSAN M. TRAGER
A PROFESSIONAL CORPORATION
THE LANDMARK BUILDING
2100 S. E. MAIN STREET
SUITE 104
IRVINE, CALIFORNIA 92614

TELEPHONE
(714) 752-8971
TELECOPIER
(714) 863-9804

SUSAN M. TRAGER
MICHELE A. STAPLES

October 10, 1996

Mr. John Kovac, Senior Planner
Development and Environmental Planning Division
City of San Diego
1222 First Avenue, 5th Floor
San Diego, CA 92101

Mr. Thomas Oberbauer, Regional Planner
Policy Section of Resource Planning
Department of Planning and Land Use
County of San Diego
5201 Ruffin Road, Suite B
San Diego, CA 92123

Subject: Multiple Species Conservation Plan; Request for Confirmation of Status and for Notification of Further California Environmental Quality Act Proceedings on North County Multiple Species Conservation Plan

Dear Messrs. Kovac and Oberbauer:

This office represents the San Luis Rey Municipal Water District (the "District"). The District, which is located in North County, is not included within the Multiple Species Conservation Plan ("MSCP") area currently under review. However, we have been informed by Mr. Tom Oberbauer, Department of Planning and Land Use, County of San Diego, that the North County area will be included in an amendment to the MSCP. We understand that further studies and an Environmental Impact Report/ Environmental Impact Statement ("EIR/EIS") for the North County area will be prepared and are currently scheduled to be completed in the late fall of 1997. For that reason, the District is not submitting comments at this time on the EIR/EIS on the MSCP. If we have been misinformed, please contact me immediately so that we may comment on the EIR/EIS currently under review.

This letter is intended to serve as the District's formal request for notification of any environmental review undertaken pursuant to the California Environmental Quality Act ("CEQA") 21(a)

with regard to the MSCP for the North County area. We request to be included on (1) the list of interested organizations and individuals to be notified pursuant to CEQA Guidelines Sections 15072, 15083, and 15087(a); (2) the list of organizations, individuals, and agencies to receive notice of a subsequent EIR/EIS pursuant to CEQA Guidelines Section 15162; (3) the list of organizations, individuals, and agencies to receive notice of a supplement to an EIR/EIS pursuant to CEQA Guidelines Section 15163(c); and (4) the list of organizations and individuals to receive notice of reliance on an earlier EIR/EIS pursuant to CEQA Guidelines Section 15153(c). 21(a)

In addition, we request to be notified in advance of any approval of a notice of exemption or any addendum to a previously approved EIR/EIS which may be considered in connection with the MSCP for the North County area.

Please forward the requested notifications to:

Michele A. Staples, Esq.
Law Offices of Susan M. Trager
2100 S. E. Main Street, Suite 104
Irvine, California 92714

The District looks forward to the opportunity to review and comment on any MSCP prepare for the North County area.

Sincerely,

LAW OFFICES OF SUSAN M. TRAGER
A Professional Corporation

Michele A. Staples

Michele A. Staples

MAS:hjb
cc: Mr. Robert H. Pankey, President
San Luis Rey Municipal Water District

22 STEVE RAY, CITY OF NATIONAL CITY, 10/10/96 (ALEXANDER)

22(a) The MSCP Plan is a subregional NCCP plan and, as such, is designed to provide overall direction for the development of a habitat preserve system by individual jurisdictions and other entities. In this regard it functions much as the general plan of a city would function relative to community and project plans. To assist local jurisdictions in the development of Subarea Plans, maps at a scale of greater definition are available for the cost of reproduction.

22(b) Each local jurisdiction has the option to prepare or not to prepare a Subarea Plan. If a jurisdiction's decision makers decide to prepare a Subarea Plan, that jurisdiction must cover the costs of doing so. As of November 1, 1996, eight of the eleven cities in the MSCP study area have prepared, or are preparing, Subarea Plans. The costs have been covered by the cities.

22(c) There may be no benefit to National City from preparation of a Subarea Plan. Jurisdictions which have enrolled in the NCCP program are required to produce such plans, but this does not apply to National City since the City has not enrolled. The MSCP does not preclude proponents of public or private projects within the City from seeking take authorizations directly from the wildlife agencies.

As a result of meetings held with National City staff on October 19, 1994, the Multiple Habitat Plan Area (MHPA) will include only bayfront and riparian wetlands which are currently in federal, state or, other governmental ownership. Privately owned uplands east of I-5 were removed from the MHPA at City staff's direction. A portion of National City's extension into the far south bay is included in the MHPA.

22(d) The reference on page 3-7 Volume I of the M5CP Plan addresses inclusion of public bayfront and riparian wetlands in the MHPA. National City was given the option of excluding these public lands in the letter of December 4, 1995, referenced above. It was clear at the City Council meeting of June 6, 1995, that National City did not want to prepare a Subarea Plan to submit with the MSCP. This decision is documented on page 5-16 of the MSCP Plan, Volume I.

The MSCP places no new requirements on National City, and includes only publicly owned wetlands in the MHPA. National City is free to prepare a Subarea Plan at any future date, if the City chooses to do so, or the City may also pursue other existing permit processes at its option.

22(e) At the request of the wildlife agencies, the need for a regional habitat conservation plan (the MSCP Plan) was discussed in the 1990 Draft and 1991 Final EIR/EIS for the Secondary Treatment System and Associated Sludge Management Facilities. Copies of the Joint EIR/EIS were sent to each local government in the Metropolitan Sewerage System (MSS) service area, including the City of National City. As explained in the Joint EIR/EIS, preparation of the MSCP Plan would provide no mitigation for

improvements to the MSS. The benefits of the MSCP Plan, as explained in the Plan, are available to all public and private parties in the region, not just to the local jurisdictions that decide to prepare a Subarea Plan. Consequently, it is expected that the costs should be covered equitably by all who would benefit. A portion of the cost of preparing the MSCP Plan would be passed on to all participating agencies of the MSS, including the City of National City.

22(f) The City of National City has contributed toward MSCP preparation costs. The charges are to recover a portion of the costs covered by the Clean Water Program and are not available for other planning purposes. The cost of preparing the MSCP Plan, less contributions from sources not connected to the Metropolitan Sewerage System (MSS), i.e., County Water Authority, Caltrans, San Diego County Regional Transportation Commission, San Diego Gas & Electric Company, and wildlife agencies, are being billed to each participating agency based on the agency's capacity in the MSS.

22(g) The comments are noted and updated information is included in the revised language incorporated in the Final EIR/EIS.

22(h) Future coordination by individual jurisdictions with the MSCP Plan should be through the Carlsbad, California Field Office of the U.S. Fish and Wildlife Service Field and the San Diego, California Office of the California Department of Fish and Game.

22

City of National City
Planning Department
1243 National City Blvd., National City, CA 91950 (619) 336-4310
ROGER G. POST - DIRECTOR

October 10, 1996

John Kovac, Senior Planner
Development and Environmental Planning Division
City of San Diego
1222 First Avenue, 5th Floor
San Diego, CA 92101

Subject: Comments on MSCP Plan and Draft EIR/EIS

Thank you for the opportunity to comment on the MSCP Plan and Draft EIR/EIS. Please consider the following in your decisions regarding this Plan and its potential applications.

- The documents contain a vast amount of information concerning a large area, 900 square miles. Much of the data may be useful at a regional level but lacks the detail that would be needed to guide local decisions. The maps contained in the document are at a scale that makes it impossible to locate specific areas in National City. 22(a)

- The requirement for subarea plans may make up for the level of detail lacking in the MSCP. However, the costs to prepare these plans are placed on local agencies, such as National City. 22(b)

- The benefit of preparing a subarea plan for National City is not evident for several reasons. The City contains little undeveloped land, and vacant parcels are typically already impacted or surrounded by urban development. Areas that contain resources are shown in the attached copy of a map prepared by MSCP consultants prior to finalizing the MSCP Plan. This map includes as proposed preserve areas Paradise Marsh, the Sweetwater River Flood Control Channel, and a portion of the County Park land within the Sweetwater River channel near Plaza Bonita. All these are identified as riparian/wetlands on the map. They are in Federal, State or County ownership and are already protected by City policy and regulations. Appropriately not included on the map is the City owned parcel near Sweetwater Road and Rt. 54. Clarification is needed whether it was intended that the preserve area contain the salt flats within National City's jurisdiction at the southern end of San Diego Bay, since the attached map also did not show them as included. However, the level of information in the Plan is not precise and is less clear than 22(c)

Recycled Paper

- the attached map. For similar reasons, the City did not join other jurisdictions in signing agreements with the State with regard to the Natural Community Conservation Program (NCCP) nor participate in designing the environmental preserve called out in the MSCP. 22(c)

- The Plan states, on page 3-7, that National City has agreed to include a portion of the City in the MHPA, (the preserve area). No such agreement has occurred. To the contrary, at the City Council meeting of June 6, 1995, MSCP representatives were informed of the City's reluctance to take part in the Program. 22(d)

- The MSCP apparently has no authority other than through implementation of subarea plans by local jurisdictions. However, it is noted in the MSCP that the Plan's development began as a way to address the mitigation needs of the City of San Diego for planned improvements to the Metropolitan Sewerage System. Is this still one of the reasons for the Plan? To what extent will the costs of implementing the MSCP be passed on to those served by this system, including National City, regardless of benefit from the planned environmental preserve? National City should not be required to share in costs, especially since it has not made a determination to participate in the Program. 22(e)

- It is understood that National City has already contributed toward MSCP preparation costs. Can any of these funds be made available for other planning purposes?

  The City is investigating further our contributions made towards the cost of the MSCP document, and our share of costs based upon capacity in the Metro system. Contributed costs should be reviewed with regard to relative benefit, such as allocation of funds for acquisition of open space as well as mitigation value for projects in National City. This should credit the City for all protected areas within its boundaries, including the salt flats if intended to be included in the preserve. 22(f)

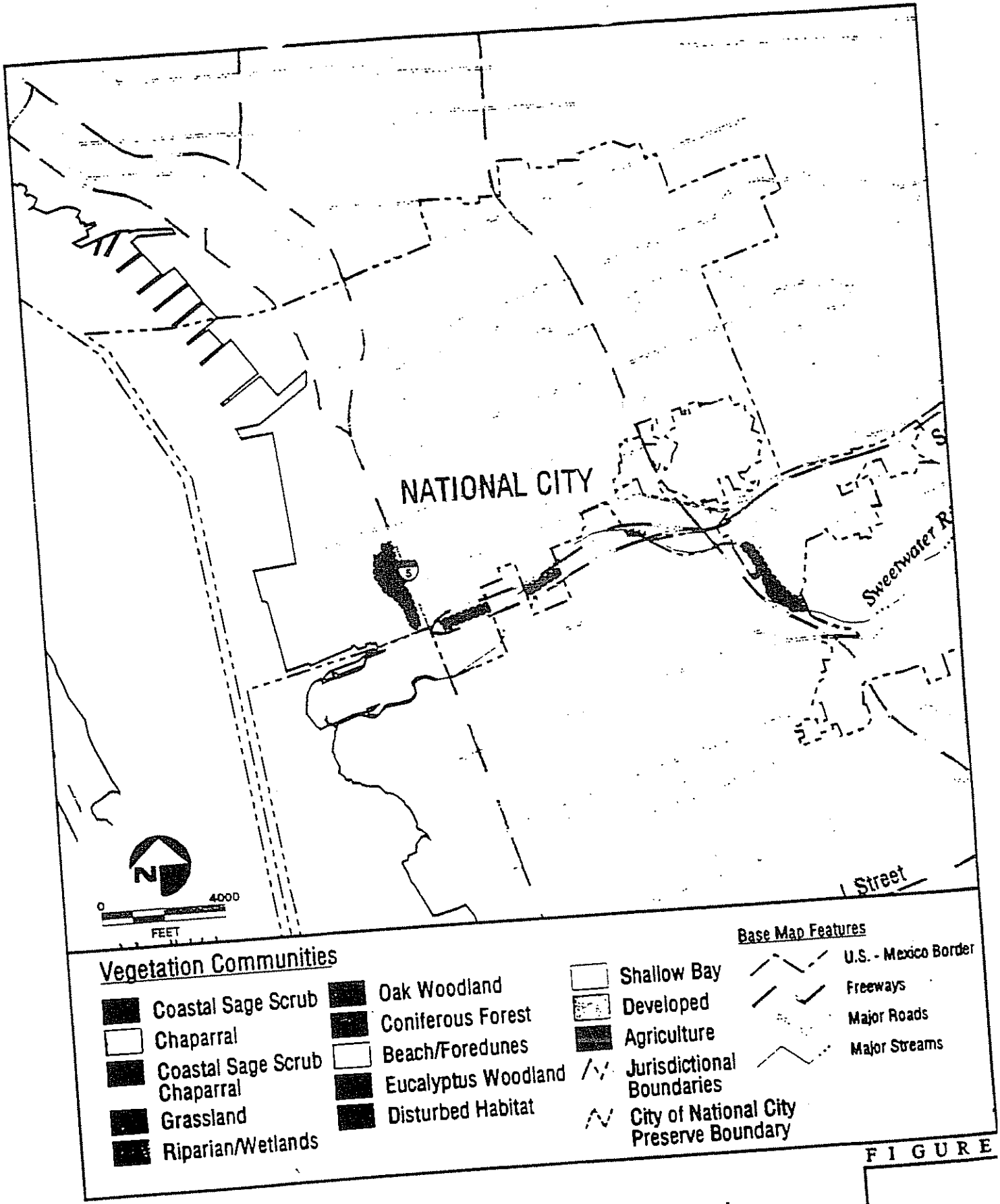
- Page 3-23 of the EIR/EIS mentions that National City is updating the General Plan. The City adopted the Revised General Plan last month. It also mentions that information was not available on land use types and acreages. On the contrary, however, the Planning Department can provide estimates if they are needed. 22(g)

Continuing coordination on this Plan would be appreciated. 22(h)

Steve Ray

Steve Ray,
Principal Planner

cc: Meryl Balko, Deputy Director, MSCP Coordinator,
Office of the City Manager,



FIGURE

OGDEN

City of National City Preserve Lands

23 ANNE DEBEVOISE, PROPERTY OWNER, 10/14/96

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23(a) Comment noted. See also response to Comment 6(a) and **Theme Response VIII, Public Involvement.**

23(b) It is assumed that the commentor refers to the inclusion of property within the proposed MHPA by the City of San Diego as not voluntary. It has been long established that local governments may exercise their police powers through regulations adopted by elected officials to reasonably regulate the use and appropriate development of private property. The proposed delineation of the MHPA and application of land use policies and development restrictions have been designed to balance individual property rights with the overall welfare of the community.

Generally speaking, the proposed development regulations are equivalent to existing regulations. In order to achieve a regional interconnected habitat system and the benefits associated with the MSCP it is necessary to incorporate some lands into the MHPA that to date have not been considered biologically sensitive to ensure conservation of blocks of core biological areas such as Black Mountain.

23(c) Comment noted.

23(d) Parcel specific biology surveys were used in the regional habitat mapping of the MSCP when available. The regional mapping was prepared at 1″ = 2,000′ and is not parcel-specific. The proposed preserve delineation of the subject property is based on a parcel level biology survey which was verified in the field. Modification to preserve boundaries can be made without amending the MSCP Plan and Subarea Plan where the new preserve boundary results in the preserve area of equivalent or higher biological value (see Volume II, MSCP Subarea Plans, City of San Diego Subarea Plan). Amendments to the MSCP Plan and Subarea Plan would require the approval of the state and federal wildlife agencies. Please refer to **Theme Response XI, Scientific Review Adequacy.**

23(e) Please refer to **Theme Response XXVI, Permit Streamlining.**

23(f) Please refer to **Theme Responses III, Economic Impacts and Impacts on Population and Housing and V, Taking of Private Property.**

23(g) Comment noted. Assessment of property value for tax purposes is the responsibility of the County Tax Assessor. According to the state Revenue and Taxation Code (Sec. 423), special factors are to be considered in the valuation of open space land which is subject to an enforceable restriction, for example, land subject to the Williamson Act contract or agreement, open space or conservation easement, or a wildlife habitat contract.

23(h) Please refer to **Theme Response VIII, Public Involvement.**

23(i) Development of a trail system would be proposed only on properties that are either publicly owned or where a property owner has conveyed the appropriate easement to the City or other. The City does not propose the development of trails systems on private property where permission has not been granted.

23(j) In implementing the MSCP, various public agencies may conduct land acquisition, such as the U.S. Fish and Wildlife Service, Bureau of Land Management, California Department of Fish and Game, and local jurisdictions participating in the MSCP. Each agency has or will determine a procedure for acquiring habitat lands, including identification of acquisition priorities, sources of acquisition funds, responsibility for management of habitat lands. Under the MSCP Plan, these activities will be coordinated through a proposed Implementation Coordinating Committee (MSCP Plan, Volume I, p. 5-21).

Prior to establishment of the Implementation Coordinating Committee, private landowners interested in offering their properties for sale should contact the city or the county in whose jurisdiction the properties are located.

23(k) As described on page 4.2-83 of the Draft EIR/EIS, the MSCP Plan contains provisions to ensure that existing agricultural operations would be allowed to continue with implementation of the proposed MSCP Plan. The County Subarea Plan contains additional information regarding the retention of existing agricultural uses on pages 4.2-93, 4.2-95, 4.2-96, 4.2-97, 4.2-98, 4.2-99 and 4.2-100 of the Draft EIR/EIS.

23(l) Within the City of San Diego's Subarea Plan, additional biological surveys would be required when new development is proposed on lands within the MSCP preserve where the City and applicant agree that the MSCP biological data needs refinement to ensure compliance with the Subarea Plan requirements and as required by CEQA. Biological monitoring reports to monitor the functionality of the preserve would be conducted by the City and wildlife agencies.

Local, state and federal governments will be responsible for conducting and funding all management and monitoring activities within their public lands and any private lands that they acquire or are conveyed in fee or by appropriate conservation easement to them (MSCP Plan, Volume I, Section 6.3, 7.3.2, 7.3.3 and the Model Implementing Agreement).

The general public would only be allowed to enter property within the preserve that is either publicly owned or where the property owner has provided the appropriate easements which allow public access to and/or across their property. Brush management on properties within or adjacent to the preserve would be the responsibility of the property owner as is the case under the current regulations. Responsibility for brush management activities are described in Section 6.3 of the MSCP Plan, Volume I.

23(m) Small property owners are invited to attend future hearings on the MSCP Plan and Final EIR/EIS. Property owners will be advised of the dates, times, and locations of these meetings by public notice and by publication of notices in the *San Diego Union-Tribune* and the *San Diego Daily Transcript*. The hearings are expected to be held beginning in early 1997.

23

Anne E. DeBevoise, Ph.D.
5072 San Joaquin Drive • San Diego, CA 92109 • (619) 274-5354

14 October 1996

John Kovac, Senior Planner
Development and Environmental Planning Div.
City of San Diego.
1222 First Avenue, 5th Floor
San Diego, CA 92101

Dear Mr. Kovac,

This letter is in response to the recently published EIR/EIS for the Multiple Species Conservation Plan (MSCP) for San Diego. Clearly, much time and effort has gone into these documents. Because the reports are so large, I can not address all the issues that I have with this plan. Indeed, many of the concerns that were initially brought up by small property owners, including our family, were not resolved. My comments include:

1. Forty-five days to review the EIR/EIS documents (over 10 pounds of double-side paper) is an inadequate amount of time for private citizens. Perhaps individuals who are employed by the City, State or Federal government, or a large development company, and are assigned to this project, have had enough time to read and comment on the EIR/EIS. More time should have been allowed. 23(a)

2. Inclusion of an individual's or family's property in the MSCP plan is not voluntary. This is not fair. Not only that, up to 75% of the land can never be used in the future, without compensation, even if there are no endangered species or State/Federal sensitive habitats on the property. Indeed, the most common habitat in Southern California (Chaparral) essentially has been elevated to a sensitive habitat. Yes, I know that this is suppose to be a multiple habitat program, but I believe that the plan is too aggressive for the acquisition budget (and in some people's eyes, it's the agencies that are considered greedy). 23(b) 23(c)

3. Environmental information used in preparing the EIR/EIS was not accurate. On several occasions I submitted detailed environmental information on our family's property and was told that the information was too detailed or small scale to make changes in the MSCP maps. Tom Story tells me they know that the environmental information is not all correct. Yet, this information is used to draw lines across parcels, defining which part of a parcel is in the MSCP boundary. Will the owner have to go through lengthy (and probably costly) procedures in the future, going to the City Planning Dept., State Fish & Game and the Federal Fish & Wildlife agencies to have these lines drawn correctly over their property? What if one or more of the agencies doesn't agree? What then? 23(d) 23(e)

4. Small property owners will witness a substantial decline in the value of their property. Who in their right mind would buy a parcel known to be so constrained, with up to 75% of the land deemed unusable except for habitat conservation? Answer: A governmental agency or developer acquiring mitigation land. This is a very small market base. Few buyers are fabulously wealthy and prefer native habitat (instead of additional homes or growing crops on that remaining space). I have spoken with several Realtors who have witnessed a decline in the sale of properties proposed to be in the MSCP, while adjacent properties are selling. Perhaps properties near the MSCP will increase in value, but those properties IN the MSCP that will lose otherwise developable land, will be devalued. 23(f)

5. Owners within the MSCP will have the same amount of taxes, despite the fact they may have substantially lower developable areas. Taxes should be substantially lowered, I propose by the same percentage amount of land that is proposed to be in the MSCP. Indeed, for long-time owners, (over 10 years) taxes should be refunded, proportional to the land in the MSCP. 23(g)

6. Small property owners have not had an active voice in the preparation of the MSCP plan. I attended many MSCP Workshops, and watched City, State, Federal employees, plus representatives of large development companies and environmental groups discuss, argue and decide what the MSCP plan would be. Mr. David Flesh acknowledged that there was little input by small property owners in the MSCP planning process, in a public hearing at a Planning Commission meeting. Unfortunately, the problem was never resolved. To my knowledge, there never was a small property owner on the MSCP workshop board, or any other discussion group. My experience was that small property owners were relegated to being in the audience, and were allowed to make comments at the end of the meeting. Note: Since these meetings were during business hours, it made it hard for private citizens to attend, unless they took time off from work. Additionally, notices of these meetings were not sent to small property owners unless they knew about the meetings, and specifically requested to be on the mailing list. 23(h)

The absence of small property owners "at the table" during the MSCP Workshop planning process was and is unacceptable.

The bottom line: The MSCP plan clearly is a deal between big business, governmental agencies and environmental groups. Yet, it is the small property owner that will suffer the financial consequences.

7. Who will accept responsibility for the trails on private property? The liability, litter, loitering (or worse squatting), and other nefarious activities that owners once grouped as trespassing easily could be a big problem for small property owners. 23(i)

8. What criteria will be used for acquisition of private property? Acquisition is expected to take many decades, but what happens to owners that are elderly (example: 75 years old)? They can not wait 20 years or more for their land to be acquired. Also, what if these same individuals are in jeopardy financially and need to sell their land now? Are provisions being made to accommodate these special circumstances? 23(j)

9. Parcels under cultivation should not be in the MSCP. Farmers have enough difficulty in making a living in Southern California. This plan adds another burden to them. 23(k)

10. The City, or State or Federal government should take responsibility for 1) conducting the biological surveys (initial and ongoing, if needed), 2) brush management, and 3) the liability for citizens that enter private property to enjoy the "open space." 23(l)

11. It is not too late to have workshops and dialogues with small property owners so that they can share their ideas, suggestions, concerns, etc. Small property owners can be part of the solution, rather than the ones left with the financial consequences. 23(m)

I want to say that I believe in the preservation of wild spaces, for the benefit of the native species and human enjoyment. However, I feel that MSCP is not fair to the owners. Indeed, it is grossly unfair to the small property owners. I'd say more, but time does not permit a more lengthy discourse.

Sincerly,

Anne E DeBevoise

Anne E. DeBevoise, Ph.D.

24 KATHLEEN MCINTOSH, LEAGUE OF WOMEN VOTERS, 10/15/96

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24(a) See **Theme Response VIII, Public Involvement.**

24(b) As described on pages 4.3-2 and 4.3-3 of the Draft EIR/EIS, the best available biological data were used in the development of the MSCP Plan. The NCCP Conservation Guidelines presented on pages 4.3-3 through 4.3-5 were also used. These guidelines call for preservation of large blocks of habitat and adequate linkages, among other criteria based on principles of conservation biology.

24(c) Neither the responsibility nor the process for listing species under either the state or federal endangered species acts, including the assessment of species for listing as threatened or endangered, would be altered by the issuance of take authorizations permits for the MSCP. As stated in Section 9.7 of the Model Implementing Agreement, to the extent required and permitted by law, the wildlife agencies would take into account the species and habitat protection efforts of the MSCP Plan, subarea plans, and all other existing conservation efforts in any future determinations concerning the potential listing of species that occur within the MSCP study area.

24(d) The comment does not specifically address where this unmitigated impact to coastal sage scrub is located, or how the impact would occur. All MSCP subarea plans require mitigation for impacts to coastal sage scrub habitat.

24(e) Comment noted. Please refer to **Theme Response IV, MSCP Financing Plan: Regional Source of Funds.**

24

October 15, 1996

Mr. John Kovac, Senior Planner
City of San Diego
Development and Environmental Planning Division
1222 First Avenue, 5th Floor
San Diego, CA 92101

Subject: **Comments on EIR/EIS for the MSCP Plan**

Dear Mr. Kovac:

The League of Women Voters of the City and County of San Diego supports the preservation of the physical, chemical and biological integrity of the ecosystem. We promote resource conservation, stewardship and long range planning, with the responsibility for managing natural resources shared by all levels of government. We also promote public understanding and participation in decision making as essential elements of responsible and responsive management of our natural resources. Based on these positions, we support the goals of the Multiple Species Conservation Program (MSCP) and applaud the vision and leadership of the participating agencies and organizations.

We submit the following comments on the joint Environmental Impact Report / Environmental Impact Statement on the MSCP:

1. We urge continued involvement of citizens as the planning process proceeds toward adoption and implementation. Funding of the public information process must be provided. **24(a)**

2. All boundaries and buffer zones should be based on biological data.

3. Assure adequate habitat is preserved to maintain a viable biodiversity of species.

4. Habitat linkages between core preserve areas should be wide enough to provide effective corridors. **24(b)**

5. Please respond to the comment made by the Sierra Club on page 4 of their comment letter dated July 11, 1996 regarding Chapter 2, Project Description A. We believe clarification of the process regarding the future listing of endangered species not on the covered species list is essential. **24(c)**

LWV OF SAN DIEGO
9948 Hibert St., #102 • San Diego, CA 92131
Tel: (619) 693-0903 • Fax: (619) 693-0436
The League of Women Voters is a nonpartisan political organization with membership open to all citizens of voting age.

6. There is a large amount of significant, not mitigated impact to Coastal Sage Scrub habitat. We urge further investigation into improving the protection of the habitat. 24(d)

7. We support the development of a funding mechanism which provides revenue sufficient to meet the needs of full implementation of the MSCP, which meets tests of equity, and takes into account flexibility, economic effects, simplicity, efficiency and accountability. 24(e)

Thank you for this opportunity to address our positions. We look forward to continuing our involvement in the implementation process of the MSCP.

Sincerely,

Kathleen McIntosh, President
League of Women Voters of San Diego

Sylvia Hampton, President
League of Women Voters of San Diego County

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25 MARILYN J. SCHUPP, S.D. IMPERIAL CATTLEMEN'S ASSOC., 10/11/9

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25(a) We have modified the MSCP Plan to clarify that the incidental take provisions discussed in Section 6.2.2 apply to those agricultural lands shown on the MSCP vegetation database in Figure 2-1 of the MSCP Plan. Incidental take associated with grazing on agricultural lands shown on Figure 2-1 may, at the discretion of the jurisdiction, be covered by a jurisdiction's take authorizations. Grazing or other agricultural uses outside of these lands would not be covered by these take authorizations.

We have also modified the MSCP Plan to address livestock grazing under the Safe Harbor provisions discussed in section 6.2.2 of the MSCP Plan. Under this provision, farmers and ranchers may voluntarily enter into agreements with the wildlife agencies that give the landowners assurances that activities that benefit species or their habitats will not later trigger a new regulatory responsibility or burden. Please refer to the Revisions to the MSCP Plan, January 1997 and revised language incorporated in the Final EIR/EIS.

25(b) The H.E.L.P. Plan referenced is being developed specifically for the San Joaquin Valley and, as such, it is not applicable in its present form to San Diego County. Concepts in the H.E.L.P. Plan may be applicable, and the San Diego Cattlemen's Association is encouraged to initiate the process of developing a similar program for San Diego County.

25(c) The MSCP Plan does not address livestock grazing on Bureau of Land Management and U.S. Forest Service land nor does the MSCP Plan include any new regulation of livestock grazing on private lands. Remainder of the comment noted.

25(d) The term "Responsible Agency" is defined in the California Environmental Quality Act and Guidelines. Responsible Agencies are agencies which would use an Environmental Impact Report prepared by a Lead Agency as the CEQA document for the Responsible Agency's approval of their project. In this case, the Department of Fish and Game would use the City of San Diego's EIR as their CEQA document in approving the Natural Community Conservation Plan for the MSCP subregion. Responsible Agencies provide comments on an EIR to the Lead Agency as do other interests. The remainder of comment noted.

25(e) The comments are noted. The comments do not reflect on the adequacy or sufficiency of the Draft EIR/EIS or the data included in the MSCP Plan and responses are not necessary.

25(f) Comment noted. Estimated costs of implementing the MSCP, including costs of habitat acquisition and management, and potential revenues to fund such costs are described in the MSCP Plan, Volume I, Section 7.0. Please refer to **Theme Response IV, MSCP Financing Plan: Regional Source of Funds.**

25(g) The MSCP planning process has been one of consensus building, aimed at protection of both the region's natural biological heritage and the region's economy. The MSCP Working Group has served as an advisory committee to the MSCP since its inception in 1991 and has attempted to represent the interests and concerns of all stakeholders. The formation of the MSCP Policy Committee, composed of local elected officials, and numerous public workshops and hearings have also served to include as many suggestions as possible from the various stakeholders. However, it has not been possible to "incorporate any and all documents and suggestions" from each stakeholder and still result in a consensus-based program that is acceptable to the wildlife agencies, who would be granting the take authorizations.

25(h) Comment noted. As stated in the EIR/EIS, all land use regulations outside the City of San Diego are in no way under the jurisdiction of the City and would remain under current jurisdictions such as the County and the City of Chula Vista if the MSCP is approved. Subarea plan adoption and individual implementing agreements are left to the discretion of each participating local jurisdiction. Each jurisdiction would hold separate public hearings for plan adoption and negotiate separate implementing agreements with state and federal wildlife agencies. As an interested party, your organization will be notified when future hearings to consider the MSCP are conducted.

25(i) Comment noted. Please refer also to response to Comment 25(a).

SAN DIEGO COUNTY CATTLEMEN'S ASSOCIATION
~~CCA~~

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Marilyn J. Schupp
P.O. Box 272
Palomar Mountain, CA 92060
702-265-5748

October 11, 1996

City of San Diego
Development Services Department
Development and Environmental Planning Division
1222 First Street, M.S. 501
San Diego, CA 92101

Re: MSCP EIR Comments

The San Diego-Imperial County Cattlemen's Association has several concerns regarding the formation and implementation of the Multiple Species Conservation Program. To date, as the MSCP EIR has been written, there leaves little doubt that the grazing of livestock will not be protected within nor adjacent to the boundaries created for "habitat corridors" and "linkages." The MSCP EIR contains specific language that omits "grazing activities" from the Incidental Take provisions (Section 6.2.2) and exclusion of "livestock grazing areas" from the Safe Harbor provisions in the document. This creates a situation that we cannot tolerate. This focused attack on one aspect of agriculture is inappropriate and unjust. The grazing of livestock within the city and county occupies thousands and thousands of acres of land. Some of these acres are included in the bounds of the MSCP. This omission of livestock grazing as a protected and viable aspect of local agriculture would harm and damage the very people who generously contribute to the economy and communities of the cities and county of San Diego. 25(a)

The cattleman has been a part of the economy of San Diego county since the birth and discovery of San Diego and the great state of California. Currently, and for some time now, our state California Cattlemen's Association has been working diligently with California Department of Fish and Game and the U.S. Fish and Wildlife agencies regarding both Incidental Take and Safe Harbor provisions that would protect the cattleman's efforts while grazing livestock. The H.E.L.P (Habitat Enhancement Landowner Program) Plan is a program for a general permit under the state and federal ESAs to allow "incidental take of terrestrial threatened and endangered species in the course of otherwise lawful agricultural and emergency response and repair actions on agricultural lands." In this plan there are benefits to both agricultural producers and species alike. The Cattlemen's associations, along with the local and state Farm Bureaus, have a mutual policy commitment to non-regulatory, wholly voluntary, incentive-based conservation. The creation of the H.E.L.P. Plan is a workable proposal. This plan was presented to CDFG and FWS in September after months of meetings and discussions with those agencies and representatives of the diverse agricultural organizations throughout the state of California. This spirit of cooperation must be continued otherwise months of work and negotiations will suffer a major setback. The San Diego-Imperial County Cattlemen urge you at this time to considered the H.E.L.P. Plan as a program to follow for the agricultural community in the MSCP. This includes language within the MSCP that reflects the grazing of livestock as a viable, reliable, economical, and respected agricultural activity. We are confident that the California Cattlemen's Association is more than willing to present this program and its benefits to your staff upon request. They can be contacted at 916-444-0845, Sheila Massey, Sr. Director Government Affairs. 25(b)

Clearly the agricultural community is currently more than ever over-regulated by local, state, and federal mandates and regulations. Cattlemen grazing livestock on public lands already must meet stringent requirements of the US Forest Service and Bureau of Land Management when acquiring permits to graze cattle on those lands. Local governmental agencies have numerous regulations and ordinances already in place controlling the use of private property. This has a direct affect on agriculture, including livestock 25(c)

25(c)

grazing. There are numerous state and federal environmental programs controlling the use of private property and the implementation of agricultural endeavors. Locally the environmental group SOFAR has created a legally questionable assault on agricultural lands throughout the county of San Diego, tying up production, physical improvement capabilities, and creating financial and economical burdens on farmers and ranchers throughout San Diego County. These layers and layers of regulations, ordinances, and laws from governmental agencies, companioned by numerous environmental groups lobbying their agendas with a disregard for agriculture has the agricultural community smothered. The cattleman, having committed his life to cattle and the land, works very hard everyday of the year in the production of beef. The cattleman has demonstrated for years that he is a wonderful steward of the land upon which he must depend in order to survive in cattle production. Through his stewardship and ownership of these lands many species have been maintained and in many cases prospered. The MSCP is a plan that must come to the reality that incentives to protect species is a positive approach to success. Omitting protection for specific agricultural activities, such as livestock grazing, is a disincentive and sends a negative message that affects the spirit of cooperation necessary in order to protect both the rancher and the wildlife. Language within this document must be based on sound scientific evidence. This ultimately would garner the respect for our cattle industry that we deserve. As the MSCP could become the blueprint for future "habitat" corridors and "linkages" countywide and perhaps eventually statewide, it is imperative that language from within its pages is proper and supportive for and of the livestock industry.

25(d)

City of San Diego documents regarding the MSCP state that "The City's intention is to design a process to ensure equitable consideration of individual participating landowners' needs." We insist "landowner's needs" are protected in the MSCP. This will help to ensure consideration of landowner's needs in the two remaining sub-regional habitat plans for the County that will follow this one. The County Board of Supervisors held a public input meeting, October 2, 1996. At this meeting Ron Rempel (Dept. Fish and Game) testified that he had no idea as to how the langnage of omitting livestock grazing from incidental take and safe harbor were entered into the document. Subsequently Mr. Rempel submitted a letter to the SD County Farm Bureau that stated, "we (DFG) recommend that the sections of the draft MSCP EIR/EIS be modified to: (1) delete the exclusion regarding grazing from both the incidental take and safe harbor sections of the documents; and (2) modify the wording in the incidental take section to make it clear that obtaining incidental take coverage for on-going agricultural activities does not require farmers to apply for permits nor require the approval of the Department." The San Diego-Imperial County Cattlemen fully support item #1 and request that you consider implementing that change in the MSCP. Item #2 we support as well but would like the inclusion of ranchers in the portion ". . . does not require farmers AND RANCHERS to apply . . . " In this same letter of October 6, 1996, Mr. Rempel assured Mr. Eric Anderson, President San Diego County Farm Bureau, that "Our (DFG) role in the draft MSCP EIR/EIS is that of an agency which will provide comments, not as an agency who prepared or determined the content of the draft MSCP EIR/EIS." We are confused as to the above statement when in an earlier letter written to a lead agency July 12, 1996, Mr. Rempel states, "Please include the Department of Fish and Game as a Responsible Agency for the MSCP EIR/EIS." Because we are not confident in what one says is what will be done the San Diego-Imperial County Cattlemen requests all future correspondence as it relates to the MSCP, and any and all other plans and proposals that will affect or are specific to the grazing of livestock, lands related to the grazing of livestock, language affecting the ranching/cattle industry, and any and all other reference to the cattle industry be sent to P.O. Box 272, Palomar Mtn., CA 92060. In order to ensure a mutual and cooperative atmosphere between the public and private sector, we as representatives of the cattle industry in San Diego County want to be kept abreast of and current to ongoing local plans and programs that will affect our livelihoods. We appreciate and thank you for this opportunity to help formulate our future.

25(e)

The San Diego-Imperial County Cattlemen are in support of the San Diego County Farm Bureau's efforts with the City of San Diego to include the following "Deal Points": deferred mitigation, safe harbor (to include livestock grazing), incidental take (to include livestock grazing), best management options, and voluntary incorporation which establishes incentives for private land to be placed in the MSCP. We

further support any and all further San Diego County Farm Bureau's concerns and demands in respect to the appropriate language in the MSCP to ensure protection for agricultural, including the grazing of livestock. 25(e)

Another major concern of the San Diego-Imperial County Cattlemen is the financing and general ramifications of the MSCP Plan. With estimated costs for the massive plan to be in the billions it is critical that the burden not be upon the property owner, who is only the victim in this case. Just how will the financing be generated to accommodate land acquisitions, habitat maintenance, program management and planning, etc.? It is our opinion that counties and cities should not be held responsible for the entire burden of financing this MSCP, nor the other two sub-regional plans. State and Federal moneys should carry more than the majority of the financial responsibility as it is they who are demanding this entire scenario in the first place. In no way should the financial burden be upon the shoulders of the private property owner! Since 1991 when all of this planning effort began the question of financing has been asked over and over. We keep hearing no cost estimates are available. We would like an answer! It is difficult to imagine that a project of this magnitude could continue on blindly without the admitted knowledge of how much, for how long, and who will pay for the implementation of the entire scheme. 25(f)

Again, The San Diego-Imperial County Cattlemen encourage you to recognize, support, and incorporate any and all documents and suggestions from our state California Cattlemen's Association. As the MSCP is considered the "blueprint" for future habitat corridors and linkages throughout the state, and perhaps the nation it is only appropriate that the City of San Diego should respect the opinions and suggestions from outside its boundaries. 25(g)

In conclusion, in spite of and despite all that has been said and done between the "agriculturists" and the authors of the MSCP the views and opinions of staff continues to ignore and omit many of the suggestions and recommendations from the agricultural community. The ranching industry in San Diego County has been particularly offended as the attitude toward the cattle industry remains and is treated as a threat rather than as a viable and responsible attribute to the environment. We depend on the land for survival in our business. We cherish and nourish the land upon which we depend. We have provided habitat and coexisted with flora and fauna since cattle were first introduced in the 1500's. We are proud of the land, proud of ourselves, and love the business we are in. As the MSCP is written today the language within really hurts the cattle industry which in turn will hurt the wildlife. Cattle herds in San Diego County are valued at over $14,000,000. This generates many dollars into the local economy. We must have economic viability otherwise it is a no win situation for all. We therefore insist that you consider and mediate all of the concerns mentioned in this comment letter. Unless and until corrections and additions are made to the MSCP that satisfy the viability of the cattle industry both in the city and county of San Diego we ask that a final vote for acceptance of the MSCP by the City of San Diego be postponed. 25(h) 25(i)

We respectfully request to be informed of any further decisions regarding the future of the MSCP. We are looking forward to cooperation in the future.

Sincerely,

Marilyn J. Schupp

Marilyn J. Schupp, President
San Diego-Imperial County Cattlemen's Association

cc: San Diego County Farm Bureau
California Cattlemen's Association
County of San Diego - Members of the Board of Supervisors
San Diego City Council Members

26 TIMOTHY MOORE, IRON MOUNTAIN CONSERV., 10/14/96

26(a) The comment is noted. Assembly, establishment, management and monitoring of the preserve, as described in the MSCP Plan, are intended to mitigate for impacts to covered species and habitats outside the preserve. The vehicles for implementation of the MSCP Plan and assembly of the preserve contained in the various Subarea Plans are described in the Draft EIR/EIS. The Subarea Plans have various implementing mechanisms including mitigation ratios and design criteria. The mitigation measures that would ensure implementation of the MSCP Plan at both the program level and the Subarea Plan level are described in detail on pages 4.3-180 through 4.3-183 and 4.3-189 through 4.3-197 of the Draft EIR/EIS. These pages describe measures incorporated in both the MSCP Plan and the Subarea Plans.

26(b) Under the MSCP Plan, each take authorization holder will determine mitigation standards appropriate to the subarea plan and prepare a habitat management plan as part of the subarea plan (MSCP Plan, Volume I, p. 6-6). Preserve management on private lands could vary, depending on whether habitat lands are dedicated to a public agency for management or whether such lands are maintained as privately-owned open space (MSCP Plan, Volume I, p. 6-7). See **Theme Response XIX, Preserve Management.**

26(c) Comment noted. Please refer to **Theme Response IV, MSCP Financing Plan: Regional Source of Funds.**

26(d) Implementation of the MSCP or public acquisition of habitat lands would not eliminate or reduce the mitigation obligation of public and private projects that impact habitat. Rather, each take authorization holder would determine mitigation standards consistent with its subarea plan (MSCP Plan, Volume I, p. 3-28).

26(e) The discretionary actions covered in the Draft EIR/EIS are summarized on pages 1-11 through 1-14 and described in detail on pages 2-1 through 2-51 of the Draft EIR/EIS. Only these actions are covered in the Draft EIR/EIS and individual projects would be subject to separate environmental review. The degree to which additional biological surveys would be required for individual projects would depend upon the nature of the projects and the requirements of the specific jurisdiction within which the project is being processed. Participation in the MSCP would not preclude project specific impact analyses and mitigation plans. Indeed, private and public development contributions are identified as one of the sources of preserve assembly in Chapter 4.0 of the MSCP Plan, Volume I. The ways in which these contributions would be made are specified in the individual subarea plans.

26(f) Please refer to **Theme Response XIII, Ecosystem Based Mitigation ("Out-of-Kind").**

26(g) Please refer to **Theme Response XXII, Sufficiently/Significantly Conserved Vegetation Communities.**

The conservation of several vegetation communities, including oak woodland and grassland, is lower than the conservation levels for most other vegetation communities. The Covered Species List does not include several of the evaluation species which occur in oak woodland and grassland vegetation communities because of the low conservation level. The issue of market values of properties, including mitigation lands was taken into consideration during the development of the MSCP Plan as was the rarity of various vegetation communities. Lengthy discussions occurred at the public Working Group meetings on how to ensure that the preserve is assembled in a manner that does not leave acquisition of the rarest of vegetation communities until the end to preserve.

Each subarea plan includes specific mechanisms to assure that this would not occur. Grouping habitat by tiers and requiring within-tier mitigation was incorporated into subarea plans to deal with the rarity and biological value differences between some vegetation communities. The no-net-loss standard in the City and County of San Diego's subarea plans for wetlands is also a safety net to ensure that the rarest habitats are conserved as impacts to them occur. The wildlife agencies would be tracking the amount of habitat by vegetation community conserved and developed by jurisdiction to ensure that the amount of each vegetation community conserved stays in rough step with the amount lost. This would allow to the wildlife agencies to ensure that the local jurisdictions are meeting their conservation commitments on a gross acreage basis, preserve design basis and on specific vegetation community basis. Of the extant oak woodland and oak riparian forest within the MSCP study area, 94% occurs within two jurisdictions, the County of San Diego and the City of San Diego. Oak woodland and native grassland vegetation communities are both Tier 1 vegetation communities which have to be mitigated within tier. Additionally, within the Metro-Lakeside-Jamul segment of the County Subarea Plan, 93% of the Tier 1 vegetation community is either oak woodland or riparian oak forest. As a result, a minimum of 90% of the impacts to oak woodlands would have to be mitigated in-kind, primarily at a 2:1 ratio, since there would be no other options available. The City of San Diego has committed to conserve a minimum of 90% of each Tier 1 vegetation community within the MHPA; the conservation level for oak woodland and riparian oak forest is 86%, all of which would be conserved within the preserve. Additionally, oak riparian forest is a no-net-loss habitat. Cottonwood-sycamore riparian forest, sycamore alluvial woodland, vernal pool, wet meadow, vernal swale or seep and alkali meadow or seep generally meet the Corps of Engineers definition of wetlands which have a no-net-loss requirement and as a result, would have to be mitigated in-kind. Where permanent impacts occur, restoration or creation of the same habitat type would be required. Maritime succulent scrub and southern maritime chaparral are both Tier 1 habitats and as such, would be conserved at the 90% or greater level within the City of San Diego's MHPA, which is where the majority of these two habitat types occur.

Each subarea plan specifies how the jurisdictions' portion of the MSCP preserve would be accomplished using mitigation ratios, encroachment limits and agreed upon open space dedications. The City of San Diego and the City of Chula Vista have incorporated mitigation ratios similar to the County of San Diego for projects which are not subject to encroachment limits or open space agreements. Projects which are approved subject to the MSCP and associated subarea plans would either:

(1) provide mitigation for project impacts based on mitigation ratios; (2) develop and conserve areas already defined (hardline areas); or (3) be limited to a maximum 25% development area on the least sensitive portion of the parcel (City of San Diego Subarea Plan).

26(h) The MSCP Plan does not establish the mitigation ratios for each jurisdiction. Rather, it provides the framework within which the preserve would be established and provides flexibility for each jurisdiction to determine how to implement their portion of the MSCP Plan within their boundaries and with their own ordinances and zoning. The specifics on the implementation mechanisms that are used by each jurisdiction are found within their subarea plans. In addition to negotiated hard lines, the City of San Diego will use zoning inside the preserve and mitigation ratios for impacts outside the preserve. The County of San Diego and the City of Chula Vista use hard lines to delineate preserve areas within properties where conservation has already been negotiated with the landowner. Outside of these hard lined areas, these two jurisdictions use mitigation ratios, in addition to conservation goals to determine conservation requirements.

26(i) Within the MSCP study area there is very little acreage left to be developed within the coastal areas that does not currently have agreed upon open space boundaries incorporated into subarea plans. Mitigation for most if not all of these sites have a requirement for mitigation to occur in coastal areas. There has been concern during the MSCP planning process that cheaper lands inland would be used to mitigate impacts to more expensive coastal properties. The wildlife agencies have both emphasized the need that mitigation for coastal impacts remain in the coastal areas, and have enforced that approach during the processing of projects under the 4(d) Rule permitting process.

The non-wetland habitats on this list are already incorporated into the tiered mitigation scheme of the MSCP subarea plans, and are all assigned to the most sensitive Tier I category. Impacts to these communities can be mitigated out-of-kind, but only with another Tier I community. All of the non-wetland habitats listed in the comment are coastal habitats. Therefore, any out-of-kind mitigation would remain in the coastal areas. Wetlands will be mitigated in-kind. Please also refer to **Theme Response XIII, Ecosystem Based Mitigation ("Out-of-Kind").**

26(j) The assumptions used to evaluate whether the proposed plan was sufficient for offering coverage for certain species was not based on a best case scenario only. The assumptions used were based on reasonable expectations. This is consistent with NEPA and CEQA regulations which require an analysis of reasonably foreseeable actions and impacts. The requirement to conduct a "worse case scenario" analysis was removed from NEPA regulations to avoid having agencies conduct endless hypothesis and speculation.

26(k) The MSCP Plan was initiated as a multiple species, multiple habitats-based plan, not just a plan for the coastal California gnatcatcher and coastal sage scrub. The design of, and analysis for, the Plan was based on species-specific parameters (when available), habitat-based preservation, a complex habitat evaluation map, preserve design principles, the NCCP guidelines, and Section 10(a)(1)(B)

criteria of the federal Endangered Species Act. Conservation of biological core resource areas and interconnecting corridors, both within the MSCP study area and to habitat areas outside the planning boundary, were analyzed and addressed. The individual species to be protected by the Plan and level of conservation are summarized in Table 3-5 of the MSCP Plan, Volume I. For information on the data in developing this table and the biological basis for the Plan, please see **Theme Response I, Species Analysis Approach,** and revised MSCP Table 3-5 included in the Revisions to the MSCP Plan, January 1997.

The MSCP Biological Goals, Standards, and Guidelines for Multiple Species Preserve Design (Guidelines) were originally developed as an alternative to prematurely drawing preserve boundaries. The goals of the Guidelines were to allow flexibility in establishing preserve boundaries based on specific surveys, land use, ownership, and economic information and to provide a planning context for conservation standards. Understanding the importance and extent of the region's habitat and target species is essential. The Guidelines were intended to provide a way to measure the success of the incremental building of a preserve system and to assist in future management and maintenance decisions. The emphasis of the Guidelines is to preserve sufficient varieties of habitat types in large enough areas and with sufficient linkages, wildlife corridors, and to create a regional, interconnected system.

Biological resources are not the only factors considered in determining which land would be conserved. The jurisdictions within the MSCP study area considered the biological information, other land use plan and community plan needs, economic factors and other nonbiological objectives. Six of these jurisdictions have proposed the subarea plans as presently described in MSCP Plan, Volume II. The wildlife agencies must consider all available biological information in determining whether to issue a Section 10(a)(1)(B) permit and management authorization under State Fish and Game Code Section 2081/2835. The issuance of take authorizations must meet the issuance criteria stated in section 10(a) of the federal Endangered Species Act. The Guidelines provide pertinent biological information but are not necessarily the equivalent of the Section 10(a) issuance criteria. Please see response to comment 20(ap) regarding *Ambrosia pumila*. Please see **Theme Response I, Species Analysis Approach.**

26(l) Revised MSCP Table 3-5 included in the Revisions to the MSCP Plan, January 1997 incorporates portions of various tables, charts, etc. from the MSCP and describes the rationale for coverage, including the level of conservation of known populations and potentially occupiable habitat, the basis for coverage (landscape, special management, etc.), and the details of the coverage. Revised MSCP Table 3-5 includes the monitoring approach that would document conservation of populations and preserve function. Please see **Theme Response XVI, Risk Factors.**

26(m) Specific mitigation requirements for development impacts and/or edge effects will be determined at the time of the development proposal. Any development authorized by the take authorization holders will be subject to CEQA, and must be in conformance with the MSCP Plan and relevant subarea plan. Revised Table 3-5 included in the Revisions to the MSCP Plan, January 1997, identifies specific measures for individual species.

California brown pelican: Protection and management of known roosting areas will occur as part of the subarea plan management directives.

Light-footed clapper rail: Protection and management of known nesting areas will occur as part of the subarea plan management directives.

White-faced ibis: Protection and management of known nesting areas will occur as part of the subarea plan management plans.

26(n) Revised MSCP Table 3-5 included in the Revisions to the MSCP Plan, January 1997, identifies specific measures for individual species.

California brown pelican: The findings are consistent for this species. The EIR/EIS Findings (from Table ES-3) for the brown pelican states that after mitigation, impacts are considered "Less than Significant" for the proposed project (MHPA). The mitigation and conservation provided by the MSCP Plan and subarea plans are anticipated to meet state and federal take authorization issuance standards. Most of the brown pelican roosting and foraging sites are not subject to the MSCP, but the wildlife agencies anticipate working with the military, Port District and other agencies to ensure that roosting and foraging sites will be maintained.

26(o) Please refer to Section 1.6.1–1.6.3 of the City of San Diego Subarea Plan for a discussion of protections and mitigation for species associated with these habitats.

26(p) Please refer to Section 1.6.1-1.6.3 of the City of San Diego Subarea Plan for a discussion of the proposed mitigation. In accordance with Section 10.8F of the City Implementing Agreement, the existing Resource Protection Ordinance would be utilized in the short term in the review of development projects to determine impacts and appropriate mitigation measures. However, the mitigation ratios developed during the MSCP process would be utilized upon approval of the IA. Within 180 days after the effective date of the MSCP Implementing Agreement, the City has proposed to have updated regulations (i.e. the Environmentally Sensitive Lands Regulations) adopted. These revised regulations would serve as an improved implementing tool for the MSCP.

26(q) The 25 percent vernal pool conservation within the MHPA is based on the percent of all vernal pools within the boundary of the MSCP study area including vernal pools on MCAS Miramar. Vernal pools on Department of Defense lands do not occur within areas that are subject to the land use planning authorities of the local jurisdictions participating in the MSCP. Therefore, no estimated level of conservation is attributed to the MHPA. The 25 percent figure gives the erroneous impression that 75 percent of vernal pool habitat would be eliminated. Vernal pools on Department of Defense land would be addressed in a multiple species plan prepared by the Marine Corps. Additionally, as wetlands, vernal pools are also under the jurisdiction of the U.S. Army Corps of Engineers pursuant to Section 404 of the

Clean Water Act. Impacts to vernal pools with listed threatened or endangered species on Department of Defense would be addressed through Section 7 of the Endangered Species Act.

Approximately 3,254 acres of vernal pool habitat occur within the MSCP study area, most of which (2,071 acres, or 64 percent) is under military jurisdiction at MCAS Miramar. Of the remaining 1,183 acres, 847 acres (or 72 percent) occur within the boundaries of the MHPA. Approximately 40 acres of additional vernal pool habitat is being preserved as part of the California Terraces-Otay Corporate Center North and South projects on Otay Mesa, resulting in the conservation of a total of 887 acres (or 75 percent). All vernal pools within the MHPA would be conserved at 100 percent through avoidance and no-net-loss policies, regardless of the underlying percent preservation category. Conservation measures in the City of San Diego's Subarea Plan also state that impacts to wetlands, including vernal pools, would be avoided both inside and outside of the MHPA. Vernal pools within the MHPA would be managed to maintain and enhance their habitat values. Additionally, the proposed Vernal Pools Unit of the San Diego National Wildlife Refuge would provide management oversight for vernal pools and their constituent species, contributing towards recovery goals for listed taxa through the preservation of existing and historic habitat.

26(r) In determining whether the impacts to species are significant, both the context and severity of adverse and beneficial impacts are considered. Context includes the status of the species range wide and locally; the importance of the affected population to the recovery and survival of the species; existing and future threats to the species; and the degree to which the MSCP Plan contributes to the species' conservation. Severity includes the duration and intensity of the impact; the degree to which possible effects on the species are highly uncertain or involve unique or unknown risks; the degree to which the action may establish a precedent for future actions with significant effects on the species; and whether the action is related to other actions with individually insignificant but cumulatively significant impacts on the species. An effect that cannot meaningfully be detected, measured, or evaluated relative to the species' status or habitat as a whole was determined to be insignificant and require little to mitigate or minimize the potential take associated with the proposed action. Based on the wide-ranging nature of these species, and the minor role of the MSCP study area in their overall conservation, the wildlife agencies determined that the impacts of the proposed action on these species was insignificant. Please refer also to responses to Comments 45(i), 45(k), 45(l), 45(q), 45(r), and 39(d).

26(s) The City of San Diego Subarea Plan acknowledges that the East Elliot area provides several alternatives for major north-south wildlife corridors along the City's eastern boundary. The reference to the future potential development of a City landfill was included as an alternative to residential development along the far eastern boundary in recognition of the multi-year planning for such use in that general area. This reference is not intended to suggest a preference for the use or its location. Any future development of a landfill would be required to undergo separate environmental documentation to identify impacts, alternatives and mitigation measures.

26(t) The wildlife agencies concur that simply collecting and reseeding vernal pool species into other preserved pools would not mitigate impacts for the permanent loss of vernal pool habitat. Use of transplant of vernal pool seed material would be in conjunction with standard vernal pool mitigation requiring preservation of vernal pools, and restoration/enhancement of existing disturbed vernal pools. Avoidance, minimization, and mitigation would be required consistent with the federal no-net-loss policy, the Clean Water Act Section 404(b)(1) guidelines, and local, state, and federal regulations and guidelines. Seed collection and transplantation of vernal pool species would only be utilized where it is determined that the species of concern would benefit by salvage of individuals or genetic material, and that the use of the receiving pools would not damage the vernal pools or other sensitive species within the pools. Mitigation that includes vernal pool restoration and species transplantation would require that only qualified individuals with demonstrated experience in vernal pool restoration be allowed to plan and carry out the work. Creation of vernal pools has not proven to be successful in San Diego County and thus is not a generally acceptable mitigation measure. Restoration of historical vernal pool sites and enhancement of degraded vernal pools, in conjunction with preservation are typically the mitigation measures that most effectively offset unavoidable impacts to vernal pool habitat.

26(u) The page cited, EIR/EIS 4.3-113, reflects the wording in Article II, No. 2 of the County's draft BMO. This exemption is for projects that have hard-line preserve/development boundaries in an approved County Subarea Plan. Most of the lands within the Lake Hodges and South County Segments of the County's Subarea Plan have hard-line preserve/development boundaries and the BMO would not apply to these lands.

26(v) The City of San Diego is proposing to modify the existing Resource Protection Ordinance (RPO) to implement the MSCP. This new ordinance, called the Environmentally Sensitive Lands Ordinance (ESL), would be applicable over the entire City's jurisdiction. Mitigation under the ESL would consist of a system of "habitat tiers". All predominate terrestrial vegetation communities have been characterized into one of four tiers based on rarity and sensitivity (as depicted on Exhibit N of City's Implementing Agreement). Mitigation for impacts to these habitats would be based on the habitat tier and the location of the mitigation relative to the boundaries of the MHPA. The Tier system provides a system of incentives that would help implement the MSCP.

26(w) Although recognized as "sensitive" by the California Native Plant Society (Skinner and Pavlik 1994), *Salvia munzii* was not included on the target species list owing to its relative abundance in the southwestern portion of the study area. It is a dominant or co-dominant in coastal sage scrub around Otay Lakes. Because this species is considered sensitive, mitigation of future impacts to Munz's sage would be identified per CEQA. Because it is *not* on the Covered Species List, if it becomes listed in the future (as a result of a significantly diminished area of occupancy), impacts to it would be subject to all of the regulations of the federal ESA, California ESA, and CEQA.

26(x) Comment noted. Please see the MSCP Plan, Section 7.0, for description of estimated habitat management and biological monitoring costs and proposed sources of funds. Cost to

manage the preserve ($37 to $47 per acre per year) was estimated from actual expenditures for open space management by the City and the County of San Diego. Cost incurred by comparable open space preserves in California averaged $38 per acre per year (MSCP Plan, Volume I, p. 7-16).

26(y) The Border Patrol, as a federal agency, is not subject to the terms of the MSCP. The wildlife agencies work with the Border Patrol and review their proposed actions through NEPA and Section 7 of the Endangered Species Act to ensure they are able to effectively carry out their mission while avoiding and minimizing impacts to sensitive species. The biological opinions that result from Section 7 consultations provide the Border Patrol with take authorizations coverage. Page 6-5 of the MSCP Plan, Volume I, provides recommendations for coordination with the Border Patrol.

26(z) See Revisions to the MSCP Plan, January 1997, regarding future infrastructure and mineral extraction. Specific requirements are also included in each jurisdiction's subarea plan.

26(aa) The May 1993 MSCP Biological Goals, Standards and Guidelines were developed to assist in multiple species preserve design and were not intended specifically as a management tool.

Please refer to **Theme Response XIX, Preserve Management**, and Revisions to the MSCP Plan, January 1997. Section 5.8.3 on Page 5-21 of the MSCP Plan, Volume I, describes the Habitat Management Technical Committee which would be formed to coordinate preserve management activities among jurisdictions and non-governmental organizations that manage lands. Section 6.4.2 on page 6-11 of the MSCP Plan, Volume I, describes the Biological Monitoring Plan that has been developed by the wildlife agencies to identify specific covered species and representative habitat locations for monitoring and to describe standardized methodologies for collecting and analyzing the data. The wildlife agencies would assume the primary responsibility for coordinating the monitoring program, analyzing data, and providing information and technical assistance to the take authorization holders. Each take authorization holder would be responsible for the management and biological monitoring of its own public lands, lands obtained as mitigation, and lands within its jurisdiction that have been acquired through the regional funding program (see section 6.3.2, page 6-6 of the MSCP Plan, Volume I).

26(ab) Fire is a vital component in the natural cycle of most of our native shrub communities (e.g., Zedler 1977). Many native shrubs are adapted to periodic burning through stump- and crown-sprouting. For some species, fire is the primary event that initiates seed opening and/or dispersal. Hence, fire itself is not an un-natural or deleterious event. However, increased fire frequency may have substantial adverse affects on the biota (Zedler, Gautler and McMasher 1983). The absence of recovery of the native shrub vegetation following a fire in 1993 is not unusual and does not mean that the habitat has been converted to annual grassland. Succession and/or recovery is a slow, gradual process.

The Subarea Plans encompassed by the MSCP identify permitted land uses adjacent to, and within, the preserve. These land-use guidelines should help minimize the potential risk of wildfires degrading the edge of the preserve. Monitoring and management of the MSCP preserve are

described briefly in Section 4.3-178 of the EIR/EIS. The Biological Monitoring Plan was developed by the wildlife agencies. The Plan includes a description of the responsibilities and coordination efforts between the MSCP Plan participants and the wildlife agencies, biological monitoring objectives, and existing monitoring efforts. Through monitoring efforts, areas that potentially are subject to frequent burns could be identified and receive special measures to inhibit wildfires and stimulate shrub recovery.

26(ac) The intent of the MSCP is to allow local jurisdictions to permit projects that are consistent with their take authorizations. These take authorizations would be issued pursuant to Section 10(a)(1)(B) under the federal Endangered Species Act and through management authorizations under the California Endangered Species Act and the NCCP. In addition to receiving these take authorizations, the jurisdictions would sign an implementing agreement with the wildlife agencies that clarifies their responsibilities for implementing the program. Failure to do so would result in a violation of the permit and/or a breech of contract, either of which can initiate a suspension or revocation of the take authorizations. The wildlife agencies would continue to work with the jurisdictions to ensure successful implementation of the program.

26(ad) Section 14.1 of the Model Implementing Agreement requires that each participating jurisdiction would continually account, by project and cumulatively, for the amount and location of habitat acreage (by habitat type) lost and preserved within the subarea, including acres conserved within the MHPA and acres committed to land development both within and outside of the MHPA. The results of this accounting would be compared to the objective implementation criteria in the MSCP Plan and the subarea plan to assure that adequate progress toward implementation of the MSCP Plan and the subarea plan is being achieved and that habitat preservation is proceeding in rough step with development. Pursuant to 50 CFR 13.45 of the Implementing Regulations for the ESA and Section 14.2 of the implementing agreements, the wildlife agencies would require all jurisdictions to submit an annual report on all activities conducted under their take authorizations to ensure compliance with its terms and conditions. This report is part of the public record and would be made available upon request. Further public review of this report would be at the discretion of the individual jurisdictions. In addition to this annual report, every 3 years, the participating jurisdictions would issue a MSCP status report and hold public hearings to receive public comment (see Section 14.4 of the Implementing Agreements). This MSCP status report would be accompanied by a biological monitoring report prepared by the wildlife agencies and a preserve management report submitted by the managers of each preserve (see Section 6.4.3 of the MSCP Plan, Volume I). Provisions for permit suspension and revocation are provided in Section 16 of the Model Implementing Agreement

The responsibility for listing species under either the state or federal endangered species acts, including the assessment of species for listing as threatened or endangered, would not be altered by the issuance of take authorizations pursuant to the MSCP Plan. As stated in Section 9.7 of the Model Implementing Agreement, to the extent required and permitted by law, the wildlife agencies would take into account the species and habitat protection efforts of the MSCP Plan, subarea plans, and all other

existing conservation efforts in any future determinations concerning the potential listing of species that occur within the MSCP study area.

26

Iron Mountain Conservancy

P.O. Box 2342
Ramona, California 92065
(619) 789-0549

October 14, 1996

John Kovac
City of San Diego
Development Services Department
1222 First Street, MS 501
San Diego, CA 92101

Re: Comments on the Draft Joint EIR/EIS for the Multiple Species Conservation Plan

Dear Mr. Kovac,

The Iron Mountain Conservancy appreciates this opportunity to comment on the draft joint EIR/EIS for the Multiple Species Conservation Plan (MSCP). After reviewing the EIR/EIS and supporting documents, including the MSCP Volumes I and II, draft Implementing Agreement, Biological Monitoring Plan for the MSCP, and MSCP 1995 and 1996 Specie Evaluations, we have a number of concerns and issues we would like to see addressed in the final EIR/EIS.

We realize the amount of effort and expertise that went into creating the MSCP, and we believe that the approach to preserve design was valid biologically. The plan as it is now written (including the EIR/EIS), however, does not contain a mechanism for requiring mitigation which is necessary to create and manage the preserve system. We believe that the success of the MSCP is dependent on the consistent and thorough application of CEQA on a project by project basis including required mitigation ratios that are calculated to achieve the conservation goals of the plan. The preserve itself is used as a mitigation measure throughout the EIR/EIS, but no mitigation requirements are specified that would contribute to creating this preserve. Presumably a project proponent would need to purchase mitigation land and contribute to a preserve management fund in exchange for developing land and impacting sensitive biological resources. The EIR/EIS, however, does not specify how much land or how much money for management is required or even that it is required of a land developer at all. The unincorporated County segment of the MSCP preserve system depends on 40 percent

26(a)

26(b)

of its new land purchases to come from taxpayer dollars (calculated from Table 4-8 in the MSCP). With an unspecified contribution from project developers and a tenuous assumption that adequate public funds will be available, the preserve system is expected to emerge. This is not adequate mitigation for the vast impacts that would result from development within the MSCP area as a result of the issuance of take permits by the USFWS and CDFG for 85 sensitive species. 26(b) 26(c) 26(d)

One major issue of concern, which is not clear in the EIR/EIS, should be made explicit. The provisions should be included that 1) participation in the MSCP should not preclude project speccific biological surveys under CEQA, and 2) participation in the MSCP should not preclude project specific impact analyses and mitigation plans for impacts to sensitive habitats and species regardless of whether they are covered by the MSCP. CEQA and local regulations are the only mechanisms by which the MSCP preserve will be created to protect unliste sensitive species and habitats. 26(e)

If the MSCP will allow out-of-kind general habitat mitigation to replace species-specific mitigation for impacts to threatened or endangered species, it is likely to result in significant impacts that have not been anticipated. It appears that under the MSCP a project proponent can impact a significant population of a sensitive species, such as Lakeside ceanothus or arroyo southwestern toad and mitigate for it by contributing to purchase of any part of the MSCP preserve within a subarea. There is no mechanism by which extirpation of a single sensitive species will be prevented. A significant portion of a species distribution could be destroye while still upholding the preserve design and principles of the MSCP. To mitigate these significant impacts of the MSCP to potentially all of the covered species, a measure should be added to the MSCP and subarea plans that explicitly requires that significant project impacts to sensitive species 1) be subject to CEQA review and 2) be mitigated in-kind by preserving and/or restoring that species to a level commensurate with the impact. 26(f)

Several sensitive habitats are not "sufficiently" nor "significantly conserved" under the MHPA preserve design. In addition to the lack of project-specific mitigation requirements for impacts to sensitive habitats and species, these habitats are not even mitigated by the goals for the ultimate preserve system. The habitat types not sufficiently conserved by the MSCP include Engelmann oak woodland, coast live oak woodland, native grassland, and non-native grassland supporting sensitive species. As mitigation for these impacts, we recommend that the MSCP and subarea plans explicitly require that project impacts to these habitats be mitigated by "in-kind" preservation and/or restoration of the same habitat type of equal or greater quality. 26(g)

In addition, specific mitigation ratios should be set for all of the MSCP, similar to the ratios specified in the County Biological Mitigation Ordinance (BMO). 26(h)

A strong tendency exists, based on market values of mitigation lands, for the least expensive lands to be bought and preserved first, with the most valuable lands being left out of the preserve until a future period when development pressures are likely to be extreme. The chances of these lands being adequately preserved are slim. Coastal habitat types are particularly at risk because land values are much higher in the coastal areas. The unique or rare habitats for which "in-kind" mitigation should be required to ensure that the final preserved configuration develops as planned include the following: maritime succulent scrub, southern maritime chaparral, coastal bluff scrub, coastal dunes, Torrey pine forest, oak riparian forest, cottonwood-sycamore riparian forest, sycamore alluvial woodland, vernal pool, wet meadow, vernal swale or seep, and alkali meadow or seep. 26(i)

In regard to the assumptions made to evaluate whether the proposed MHPA preserve would result in adequate coverage of species and habitats, we recommend that a range of preservation levels be calculated, including the best case and the worst case scenarios under the proposed plan. This would give a more realistic data set on which to base determinations of adequate coverage. All of the assumptions made are based on the best case scenario only (page 4.3-2 of the EIR/EIS). 26(j)

There is a lack of supporting evidence and justification for inclusion of a number of the sensitive plant and animal species as "adequately conserved" and covered for issuance of take authorizations. The conservation levels in the MHPA for several of the most highly sensitive species conflict with the MSCP Biological Standards and Guidelines (May 1993). One example is San Diego ambrosia which, according to Table 4.3-1, would have only 60 percent of its major populations conserved by the MHPA, i.e., "one of two major populations inadequately conserved (Mission Trails/Santee)". The MSCP Biological Standards and Guidelines state that 100 percent of the known populations in Santee and Otay Mesa should be preserved. In reference to Table 4.3-1, we concur with the evaluation of risk level to populations within the MSCP study area. However, the risk level should be directly related to whether a species is adequately conserved by the MSCP. Species which have a moderate to high level of risk are species for which total population(s) are too small within the MHPA to predict continued long-term viability. It is our contention that these species should not be covered for issuance of take authorizations without adequate mitigation. Species that are under high risk yet were considered "adequately covered" include the following: 26(k)

San Diego ambrosia	coastal dunes milk vetch
wart-stemmed ceanothus	Del Mar sand aster
variegated dudleya	Otay tarplant
heart-leaved pitcher sage	willowy monardella
prostrate navarretia	San Diego mesa mint

26(l)

small-leaved rose	arroyo southwestern toad
golden eagle	burrowing owl
coastal cactus wren	California gnatcatcher

26(l)

Species that are under moderate risk or have a low percent of populations conserved by the MSCP, but that were termed "adequately covered", also should have specific mitigation requirements for development impacts and/or edge effects or should not be included in take authorizations. These species include the following:

San Diego thorn-mint	Del Mar manzanita
Otay manzanita	Encinitas baccharis
Orcutt's brodiaea	slender-pod jewelflower
Lakeside ceanothus	Orcutt's bird's beak
short-leaved dudleya	sticky dudleya
Palmer's ericameria	San Diego button-celery
Nuttall's lotus	San Diego goldenstar
snake cholla	California Orcutt grass
Otay Mesa mint	San Miguel savory
Gander's butterweed	narrow-leaved nightshade
Parry's tetracoccus	Salt marsh skipper
San Diego fairy shrimp	Southwestern pond turtle
California brown pelican	White-faced ibis
Northern harrier	Cooper's hawk
Swainson's hawk	Ferruginous hawk
Light-footed clapper rail	Long-billed curlew
Southwestern willow flycatcher	Mountain lion

26(m)

In addition to the contradictions and lack of justification for inclusion of species in the take authorizations discussed above, contradictions between the EIR/EIS findings (Table 4.3-1) and the U.S. Fish and Wildlife Service (USFWS) evaluations are evident in the MSCP 1995 and 1996 Species Evaluations document. The USFWS did not consider a number of species adequately conserved by the MHPA for various reasons (without numerous additional conditions. As one example, San Diego mesa mint is termed adequately conserved in th EIR/EIS, but was identified in the MSCP 1995 and 1996 Species Evaluations by the USFWS as not adequately protected. "...the Service concurs with the MSCP Standards and Guidelines and Reiser's recommendations for this species...[it] is not adequately protected as none of the populations are guaranteed 100 percent preservation under the plan". The species for which the EIR/EIS findings are inconsistent with the USFWS evaluations (without additional conditions) are as follows:

26(n)

26(n)

Encinitas baccharis	Orcutt's brodiaea
Lakeside ceanothus	variegated dudleya
Palmer's ericameria	San Diego button-celery
Otay tarplant	Parry's tetracoccus
heart-leaved pitcher sage	Nuttall's lotus
San Diego goldenstar	prostrate navarretia
San Diego mesa mint	small-leaved rose
Arroyo southwestern toad	California red-legged frog
Brown pelican	Northern harrier
Cooper's hawk	Swainson's hawk
Ferruginous hawk	Golden eagle
Willow flycatcher	California gnatcatcher
Least Bell's vireo	Rufus crowned sparrow
Grasshopper sparrow	Tricolored blackbird

26(o)

On page 4.3-42 it is acknowledged that sensitive plant and animal species that occur in chaparral and grassland will be at greater risk due to a lower level of conservation and mitigation and continued development pressure. We are referred to the Subarea Plans for protections or mitigation; however, the only specific mitigation measures with replacement ratios are for the Metro-Lakeside-Jamul segment of the County Subarea Plan in the areas with undetermined development status where the County BMO would apply. Please clarify if the lack of specific mitigation is an intentional omission from the Subarea Plans and explicitly state the mechanisms for mitigation if it is not. If the City of San Diego RPO is intended to be implemented within the City of San Diego Subarea Plan, it should be included in an appendi to the plan.

26(p)

26(q)

Table 4.3-1 indicates that only 25 percent of vernal pools will be preserved in the MHPA. This is completely inadequate considering the level of sensitivity of this habitat and the degree of development that has already occurred to vernal pools.

26(r)

In reference to the impact analysis (page 4.3-45) and Table 4.3-1, no justification is given for the determination that impacts to golden eagle, Swainson's hawk, ferruginous hawk, American peregrine falcon, northern harrier, mountain plover, long-billed curlew, American badger, mountain lion, and southern mule deer are insignificant.

26(s)

In the analysis of the City of San Diego Subarea Plan (page 4.3-94), it is stated that "Development of a landfill should not require an amendment to the Subarea Plan if the extent of impacts associated with the landfill are essentially equivalent to the eastern development."

On the next page it is stated that "the landfill footprint shall not exceed 25 percent of th Preserve area in East Elliot. This is confusing; please clarify. The areas proposed for placement of a landfill (i.e., Spring Canyon and/or Oak Canyon) are the most biologically sensitive areas in the East Elliot area (including important populations of several endangered species and regional wildlife corridors) and should be highest priority for inclusion in the preserve. Landfill alternatives in less biologically sensitive lands should be designated. 26(s)

As per the Otay Mesa Community Plan (page 4.3-98), simply collecting and reseeding vernal pool species into other preserved Otay Mesa pools will not mitigate impacts to this very sensitive resource. Introduction of different genetic material, net loss of vernal pool habitat, and the questionable value of attempting to "create" artificial pools make this mitigation wholly inadequate. 26(t)

It is unclear on page 4.3-113 if the Metro Lakeside-Jamul segment is an approved HCP/NCCP Subarea Plan that would be exempt from the BMO. If it is not, could it become exempt fro the BMO if approved in the future? Why doesn't the BMO apply to all unincorporated County lands? We are led to believe that the BMO is the mechanism for mitigation for the entire Subarea Plan. 26(u)

Would the City's RPO apply to the entire area covered by the City of San Diego Subarea Plan? Where does the Tier system mentioned on page 4.3-193 for the City's RPO come from? 26(v)

Alternative 1 of the County of San Diego Subarea Plan would have significant unmitigated impacts to, not only the species listed on page 4.3-196, but also to Munz sage. This is a sensitive species not covered by the MSCP which is a dominant component in some of the coastal sage scrub and chaparral in the Lower Otay Reservoir area, but with an extremely limited distribution in the U.S. A major portion of its distribution would be destroyed by an amendment to develop the habitat south of Lower Otay Reservoir (with development to the north of the reservoir already proposed). This is a case in point of the potential for sensitiv species not analyzed by the MSCP to be significantly impacted and not mitigated, and even potentially put in jeopardy. This type of impact should specifically be addressed in the EIR/EIS. 26(w)

Regarding the biological monitoring and management for the MSCP, the funding sources and relative amounts need to be identified. Land developers should be required to contribute an adequate amount of money to an endowment fund that would ensure the long term monitoring 26(x)

and management of the preserve lands purchased. The estimate of $37 - $47 per acre is far short of actual annual management costs. 26(x)

There needs to be specific criteria and guidelines, including a training manual, for Border Patrol activities to limit off road vehicle damage in the border regions. Criteria and guidelines should be included as mitigation for the anticipated impacts within the preserve system fo development of future infrastructure and sand and gravel mining. The MSCP Standards and Guidelines (May 1993) should be included for the long term monitoring and management of the preserve. 26(y) 26(z) 26(aa)

It is likely that much of the edge areas will become degraded. The Eagle Peak wildfire (1993) is an example of what we can expect where suburbs and wildlands don't mix well. A dense suburban development (San Diego Country Estates) abutting the Cleveland National Forest has resulted in repeated burning and gradual conversion of Diegan sage scrub to annual grass dominated scrub. The 20 pair of California gnatcatchers that were on the site cannot re-occupy it fully without active management and more compatible land uses. 26(ab)

The MSCP plan puts the faith and responsibility in the local jurisdictions such as "Subareas" where there could be a breakdown in expertise, staffing, funding, or a sincere will to create an ecologically viable preserve. The effect of authorizing so many jurisdictions with the power of granting take permits takes it out of the hands of natural resource professionals. 26(ac)

There must be no hindrance of the USFWS and the CDFG in their means and authority to oversee, judge independently, and if necessary to reclaim their authority and suspend the power they have yielded to local jurisdictions. This plan should have adequate mechanisms such that the granting agencies are able to reverse "take authorizations" promptly enough to protect imperiled species. Agencies should be fully unhindered in their authority to implement further sensitivity listings or critical habitat determinations. 26(ad)

Thank you for the opportunity to comment on this EIR/EIS. We look forward to a continuing dialouge about the MSCP.

Sincerely,

Timothy P. Moore
President, Iron Mountain Conservancy

27 TIMOTHY GRAVES, GRAVES ENGINEERING, 10/14/96

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27(a) The analysis of No Project alternative is a CEQA EIR requirement for all proposed projects as a disclosure of relative impacts of the proposal to conditions both existing (actual ground conditions) and planned/envisioned by General Plans, Community Plans, land use designations and zoning regulations (when appropriate). In most situations involving undeveloped land and considering plan-to-ground impact analysis, the No Project alternative would pose no significant effects. However, the No Project alternative by its "do nothing" scenario, does not meet the disclosed purpose and intent of the proposed project. If deemed appropriate by consideration of this document and public input, the decision makers at a public hearing may vote to choose any project alternative analyzed in the EIR/EIS including the No Project alternative.

27(b) The EIR/EIS determined that impacts to planned housing and facilities in the future community of East Elliott is significant and not mitigated. These determinations were made with consideration that measures are available and possible to mitigate impacts to a planned, non-existing community such as East Elliott; however, these measures (such as specific plan amendments and rezones) are not proposed concurrently with the proposal and therefore, the impacts remain not mitigated at this time.

27(c) The federal action of issuance of take authorizations authority to local jurisdictions does provide greater certainty in processing of projects. Concurrent consideration of all permits by a participating local jurisdiction to approve development involving potential impacts to listed species, allows permit streamlining and provides greater certainty than current permit process of a separate state-federal process following local approval. Please refer to **Theme Response XXVI, Permit Streamlining.**

27(d) The County's Sycamore Landfill boundary is not within the City's portion of the MHPA. The expansion of the landfill would be the subject to its own separate environmental documentation which would include an analysis of impacts, alternatives, and mitigation measures.

27(e) The City of San Diego is proposing to modify the existing Resource Protection Ordinance to implement the MSCP; this new ordinance is called the Environmentally Sensitive Lands Ordinance (ESL). The designation of an area as open space under the East Elliot Community Plan Amendment would not change the right of a property owner to develop pursuant to the underlying zone of the property and provisions of the ESL . The ability to process a development under the ESL would be available for all private property within the MHPA.

27(f) The Plan amendment was initiated in October 1994. Plan amendment initiations are not noticed since they do not involve a public hearing. Staff held a meeting with the East Elliott property owners at Graves Engineering Offices on May 4, 1995 . During that meeting the proposed MSCP Plan and its impacts on the East Elliott area including necessity of concurrently amending the East Elliott

Plan to implement MSCP were discussed. In addition, a series of widely advertised meetings were held to explain the MSCP including plan amendments necessary to implement the program. At a workshop held at West Hills High School (adjacent to East Elliott), on April 22, 1995, a number of East Elliott property owners were present. Staff explained the program and implementing measures in a brief presentation followed by a question and answer session with these land owners. The East Elliott Planning Advisory Committee has been noticed regarding at least six Planning Commission and City Council workshops and hearings regarding MSCP. Discussions of the implementing measures, including plan amendments, took place at several of these public workshops and hearings.

Property owners impacted by MSCP and planning groups including the East Elliott Planning Advisory Committee have been and will continue to be noticed of all hearings regarding the MSCP and related plan amendments and will continue to have opportunities to provide input by speaking at hearings and/or submitting written comments.

Rezoning of property in East Elliott is not being proposed or recommended as part of implementation of the MSCP Plan. Permitted land use is determined by the zone applied to a property. Most of the East Elliott area has long had R1-40000 zoning which allows approximately 1 dwelling unit per acre.

Although a decision has not yet been made about whether and where to locate a new landfill, the City is studying this issue and intends to make a decision on this issue following completion of the landfill siting study.

27(g) Revised language has been incorporated in the Final EIR/EIS to show that 1,380 acres is designated for residential development in the 1971 Elliott Community Plan. The City has not prevented development of East Elliott. This area has long had zoning that would permit some development and a plan that would permit development of 2,760 residential units. However, most of the owners feel that neither the development intensity allowed by the existing R-1-40000 zoning nor the development pattern in the 1971 Plan provided as much development potential as they would like. Therefore, they may have not developed under the existing zone, in hopes of obtaining zoning and plan changes that would allow more intense development.

27(h) Changes to the General and Community Plan are addressed in the EIR/EIS Land Use Section, Page 4.2-29 thru 4.2-33.

27(i) Refer to response to Comment 27(g).

27(j) Total displacement of housing from the East Elliott area is not suggested by the City of San Diego Subarea Plan. Totally restrictive subsequent implementing zone is not envisioned. Since East Elliott is "centrally located" relative to the MSCP study area, the displacement of housing designated for this area to outside the preserve resulting in the stated associated impacts is speculative.

27(k) See response to Comment 27(b).

27(l) See response to Comment 27(j).

27(m) No measures assured to mitigate housing impacts are available at this time; therefore, the EIR/EIS determination is appropriate.

27(n) The referenced recommendation is contained in Regional Economic Prosperity Strategy prepared by the San Diego Association of Governments and is not a part of the MSCP Plan or the EIR/EIS. A general discussion of forecast growth and economic impacts is included in the EIR/EIS. Please see also **Theme Response III, Economic Impacts and Impacts on Population and Housing.**

GRAVES ENGINEERING INC.
A California Corporation

October 14, 1996

RECEIVED
OCT 1996

City of San Diego
Development Services Department
Land Development Review Division
1222 First Avenue, MS 501
San Diego, CA 92101

Subject: Comments Regarding Draft EIR/DEIS
Multiple Species Conservation Program [MSCP] Plan
Dep No. 93-0287 / SCH 93121073

On behalf of my clients, Calprop Corp/Mission Gorge, LLC, I have reviewed the MSCP, the above referenced environmental documents and draft implementing agreements. For the past 9 years my firm has been the lead consultant for the preparation and processing of an updated Community Plan for the East Elliot Community Planning Area. A statement of my qualifications to comment on the subject documents is attached.

My review is based upon my personal qualifications and knowledge of the East Elliot area. The MSCP Joint DEIR/DEIS as it now stands is insufficient, incomplete and inaccurate. Detailed comments corresponding to the original documents are attached.

Sincerely,

GRAVES ENGINEERING, INC.

Timothy J. Graves, P.E.
President

attch: Comments
Qualifications
Photographic Exhibits A-E

8963 Complex Drive, Suite A, San Diego, CA 92123-1416 619/565-9512; FAX 619/565-9515
Civil & Public Works Engineering, Land Planning & Environmental Analysis

D:\PROJECTS\EE\MSCP.TJG
[1]

Timothy J. Graves, P.E.

Statement of Qualifications

I am a registered Civil Engineer with a bachelors degree in Civil Engineering. I have been a consultant and President of Graves Engineering since 1979. In this capacity, I have been responsible for hundreds of projects and supervised the preparation of scores of EIRs/EISs. Along with my key staff, I have been certified to prepare environmental documents by the County of San Diego. We have had environmental documents certified in most jurisdictions in the County.

Graves Engineering has been the lead consultant for the preparation of an updated Community Plan for East Elliott since the plan amendment process was initiated by the Planning Commission in 1987. In addition, I currently serve on several official City Boards including:

Clairemont Mesa Community Planning Group
Tecolote Canyon Citizen's Advisory Committee
East Elliott Planning Advisory Committee
Land Development Advisory Board

I feel I am particularly well-qualified to comment on the MSCP DEIR/DEIS as it pertains to the East Elliott Community Planning Area.

Registrations:	State of California, Professional Civil Engineer - RCE 27003 State of Washington, Professional Engineer - PE 0031961
Education:	San Diego State University, B.S. Civil Engineering
Certifications:	County of San Diego, Department of Planning & Land Use in the areas of Engineering, Hydraulics, Hydrology, and Traffic for the preparation of Environmental Impact Report and/or Technical Reports County of San Diego, Department of Environmental Health Services in the fields of Septic System Design and Percolation Testing.

Comments: Multiple Species Conservation Program - MSCP Joint DEIR/DEIS
Aug. 1996 SCH No.93121073

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ES-22	THE IMPACTS ON EAST ELLIOTT ARE SIGNIFICANT AND NOT MITIGATED. The project and the DEIR/DEIS make no effort to mitigate the impacts to the East Elliott Community Planning Area to a level of insignificance. No mitigation measures are proposed nor discussed.	27(b)
1-5	IMPROVED CERTAINTY FOR TIMELY DEVELOPMENT PERMIT PROCESSING. The DEIR/DEIS fails to analyze how the objective of more certainty in processing of projects could be met. The statement that "the MSCP provides greater certainty" is unsupported by any facts or specific recommendations for regulatory relief.	27(c)
2-28	SYCAMORE LANDFILL The County's 427-acre landfill at Sycamore Canyon is within the boundaries of the plan, but the future destruction of several hundred acres of highly valuable habitat is not analyzed . There are no recommendations concerning how the landfill should be implemented, nor how its impacts to the preserve can be mitigated. Further, since the California Gnatcatcher has been listed as a Threatened Species under the Endangered Species Act, the County has destroyed approximately 10 acres of high quality habitat at the Sycamore Landfill. This appears to be a violation of corresponding Federal, State and Local Laws designed to preserve and protect the endangered/threathened species and their habitats. This apparent violation of environmental protection laws is neither addressed nor mitigated in the DEIR/DEIS.	27(d)

Attached are aerial photographs taken immediately preceeding the listing in 1993 and in January 1996, which illustrate the expansion of the disturbed area [Exhibits A,B]. Also attached are three photographs of habitat maps prepared by the MSCP which confirm that a highly valuable Coastal Sage Scrub habitat has been taken by the expansion of the landfill since the listing [Exhibits C,D,E]. Feasible mitigation must be discussed, proposed and implemented for this unwarranted and unexplained taking of sensitive environmental resources. 27(d)

2-30 ENVIRONMENTALLY SENSITIVE LANDS PERMIT PROCESS.

The Environmentally Sensitive Lands Permit option is represented to be available to all private lands within the preserve, but the text of the East Elliott Community Plan Amendment [included in the draft implementing agreements] effectively removes all development capability. 100% permanent open space preservation is deemed to be part of the plan for the East Elliott Community Planning Area. 27(e)

2-34 EAST ELLIOTT COMMUNITY PLAN AMENDMENT.

The Draft EIR/EIS reports that a Community Plan Amendment, which "cancels" all development capability on nearly all of the land, had been in process since October of 1994. The general public, as well as the property owners of land within the East Elliott Community Planning Area, were not notified of the initiation of this Plan Amendment, and have not been given any opportunity to input the process as required by law.

In fact, the MSCP and Subarea Plans do not leave <u>all</u> private property owners reasonable or economically viable use of their land. There are areas, such as East Elliott, where all development capability is "canceled." Even the small portion of East Elliott, which was not included in the preserve [117 acres], has its development capability delayed until after a decision is made about the new landfill. The City refused, and continues to refuse, to make a decision about the new landfill within East Elliott. 27(f)

RESIDENTIAL USES.

The City has prevented development of East Elliott since the adoption of the original Community Plan in 1971. The plan nevertheless exists and has been mischaracterized in the DEIR/DEIS. 27(g)

The existing Community Plan allows 1380 acres of the 2862 acre planning area to be developed. The plan estimates that 2,760 residential units could be developed. The Plan Amendment would allow no more than 117 acres of development. And even that small area cannot bedeveloped if the City selects another portion of the planning area as a future landfill site. The DEIR/DEIS does not analyze the effects of such a change to the General Plan and its various elements. 27(g)

3-19 RESIDENTIAL USES.

The City has prevented development of East Elliott since the adoption of the original Community Plan in 1971. The plan nevertheless exists and has been mischaracterized in the DEIR/DEIS.

The DEIR/DEIS inaccurately states that the existing Community Plan allows only 400 acres of development. The plan allows 1380 acres of development [see comments on page 2-34 and page 4.2-30]. The City, however, will not allow any private development within East Elliott.

3-43 SOLID WASTE DISPOSAL SITE OPTIONS.

The DEIR/DEIS assumes a landfill land use at East Elliott. The DEIR/DEIS does not addressed the consistency of a landfill with the existing Community Plan, and does not analyze the impacts of that landfill. 27(h)

4.2-30 EAST ELLIOTT COMMUNITY PLAN DATA.

The City has prevented development of EAST ELLIOTT since the adoption of the original Community Plan in 1971. The plan nevertheless exists and has been mischaracterized in the DEIR/DEIS.

The text and facts in Table 4.2-10 which are characterized as reflecting the adopted 1971 Community Plan are in error. Page 44 of the Elliott Community Plan indicates that there are 2760 dwelling units planned on 1380 residentially planned acres rather than the 400 acres of residential development which is stated in both text and tables throughout the document. The City, however, will not allow any private development within East Elliott. 27(i)

4.2-32 EXISTING COMMUNITY PLAN GOALS.

The land use impact analysis states that "the amendment would be consistent with the Community Plan goals to maximize open space preservation."

The implementation of the open space program discussed on page 39 of the Community Plan indicates that the City will find funds to buy the open space. The DEIR/DEIS fails to analyze the inconsistency between the existing and proposed community plans and the MSCP.

27(j)

REDUCED VEHICLE TRIPS. The statement that the reduction of the residential uses in East Elliott "would result in a reduction of vehicle trips...is considered an environmental benefit" is unsupported by facts or analysis. Several places in the text [including page 4.6-45] disclose an assumption that development capability eliminated by the Preserve will be displaced to other areas outside the preserve. Since East Elliott is centrally located within the region, a displacement of housing to areas outside of the preserve will almost certainly result in longer trips, more congestion and energy consumption, and decreased air quality.

4.5-9 PUBLIC SERVICES AND THE EAST ELLIOTT COMMUNITY PLAN

The MSCP reduces the developable area from 1380 acres to 117 acres making a feasible facilities financing plan impossible. The DEIR/DEIS considers the resultant impacts to future residents owing to the lack of facilities and services to be a significant impact, but does not recommend mitigation. 27(k)

4.6-25 MITIGATION FOR REDUCTION IN HOUSING UNITS.

The DEIR/DEIS states that "preserve implementation would lead to the cancellation of 1,200 planned housing units within the East Elliott Community Planning area." In fact, the reduction would be more than 2,000 units [see comment 4.2-30.]. No analysis is provided concerning the effects of this reduction on the Housing Element and no mitigation is recommended. 27(l)

4.6-43 HOUSING IMPACT MITIGATION.

The DEIR/DEIS states that "No measures are incorporated in the MSCP Plan to mitigate impact", and that the "impact remains significant and not mitigated". Mitigation to eliminate or at least substantially reduce impacts is required. 27(m)

4.6-44 ECONOMIC PROSPERITY

The MSCPand DEIR/DEIS [pp. 1-5] purport to establish their conformance with the SANDAG "REGIONAL GROWTH MANAGEMENT STRATEGY [RGMS]. The Regional Economic Prosperity Strategy is an element of RGMS. Recommendation #7, on page 24, speaks to the MSCP. It states that the MSCP will definitely impact the local economy, and that "These plans should include an analysis on the impact on the local economy." 27(n)

The DEIR/DEIS are glaringly deficient since they do not discuss the Prosperity Element of the Growth Management Strategy, and they do not include an economic impact analysis. Instead, they merely mention the issue in Section 4.6.3. This is inadequate because it does not provide any qualitative or quantative economic analysis based upon a factual foundation.

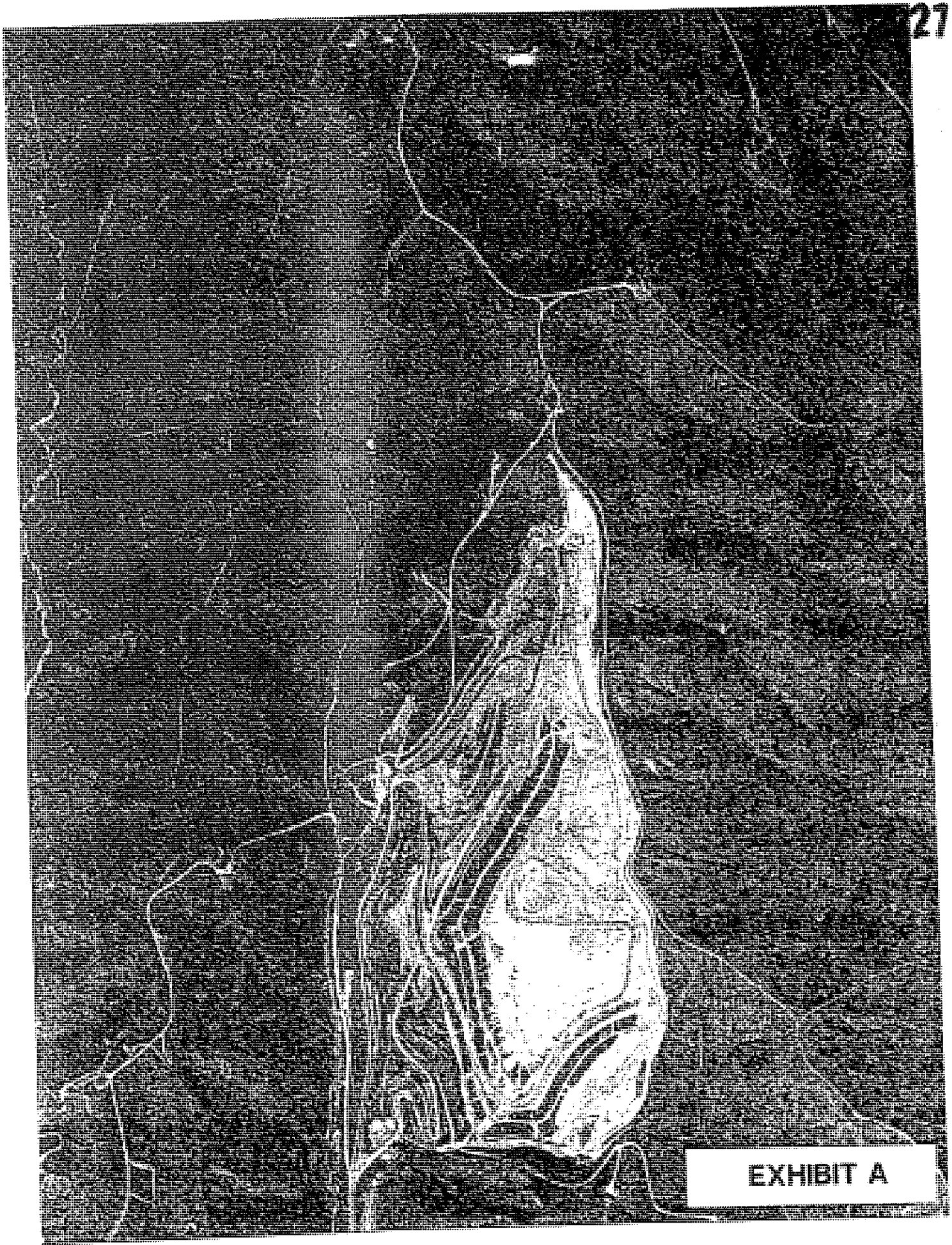


EXHIBIT A

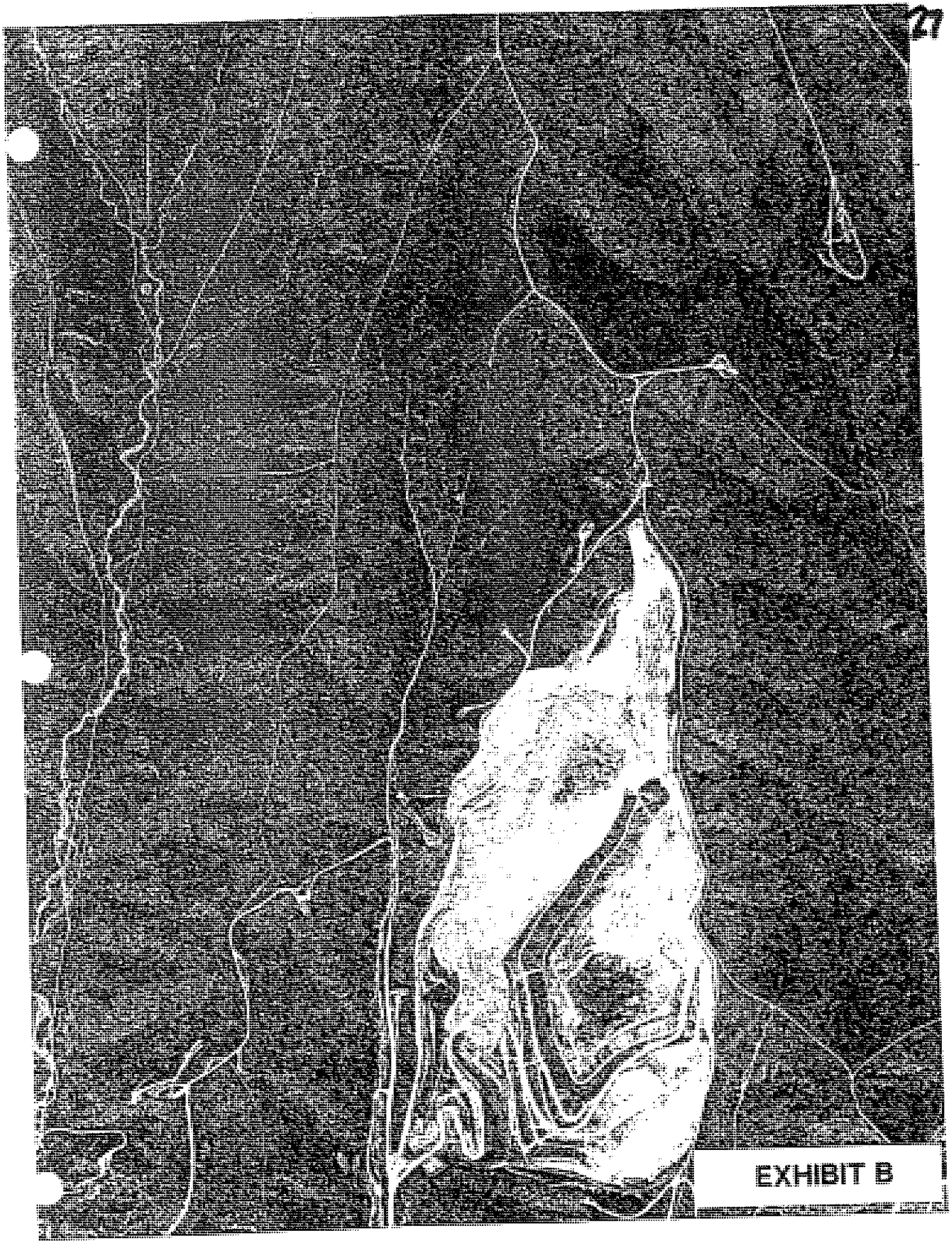
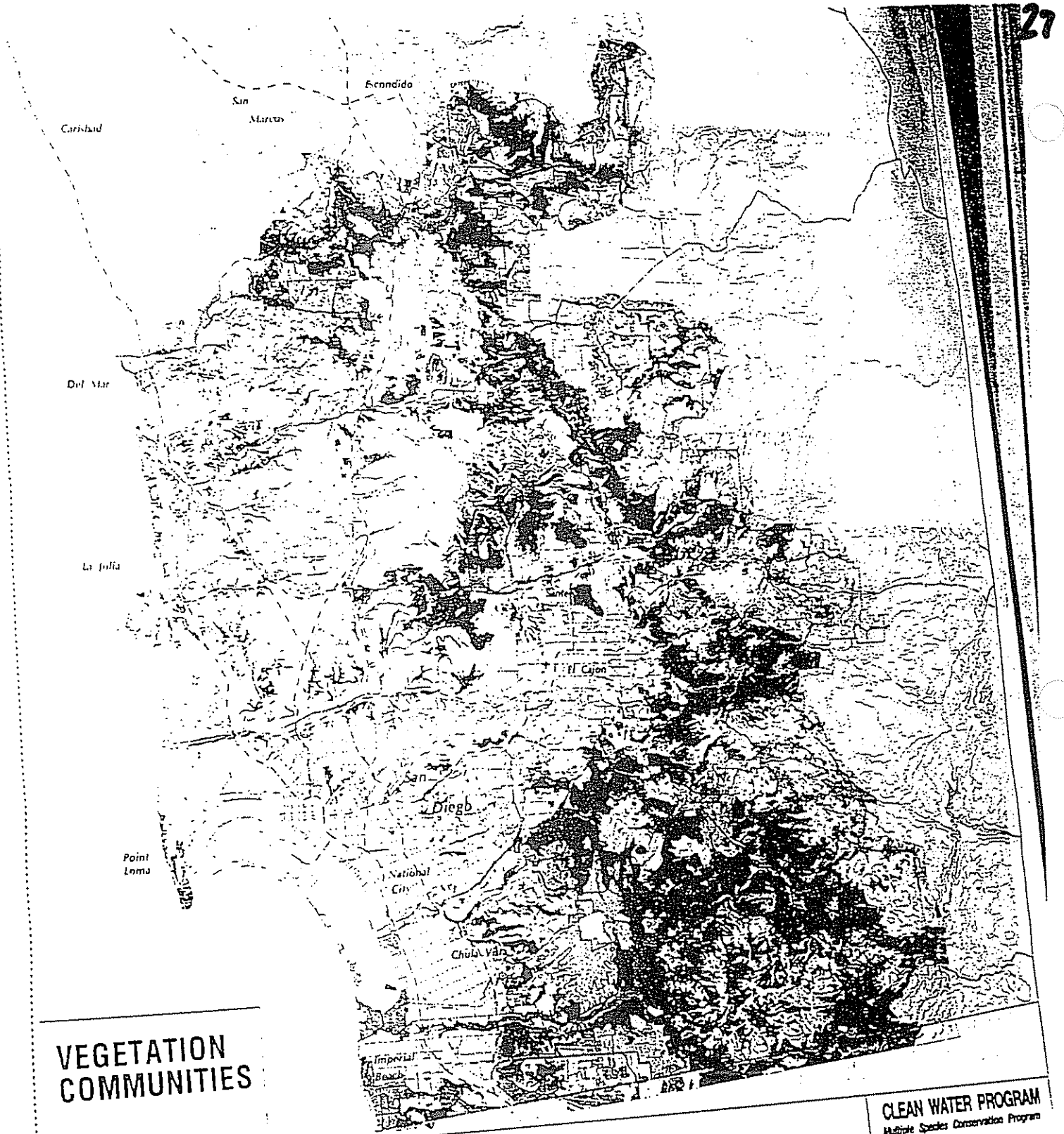


EXHIBIT B



VEGETATION COMMUNITIES

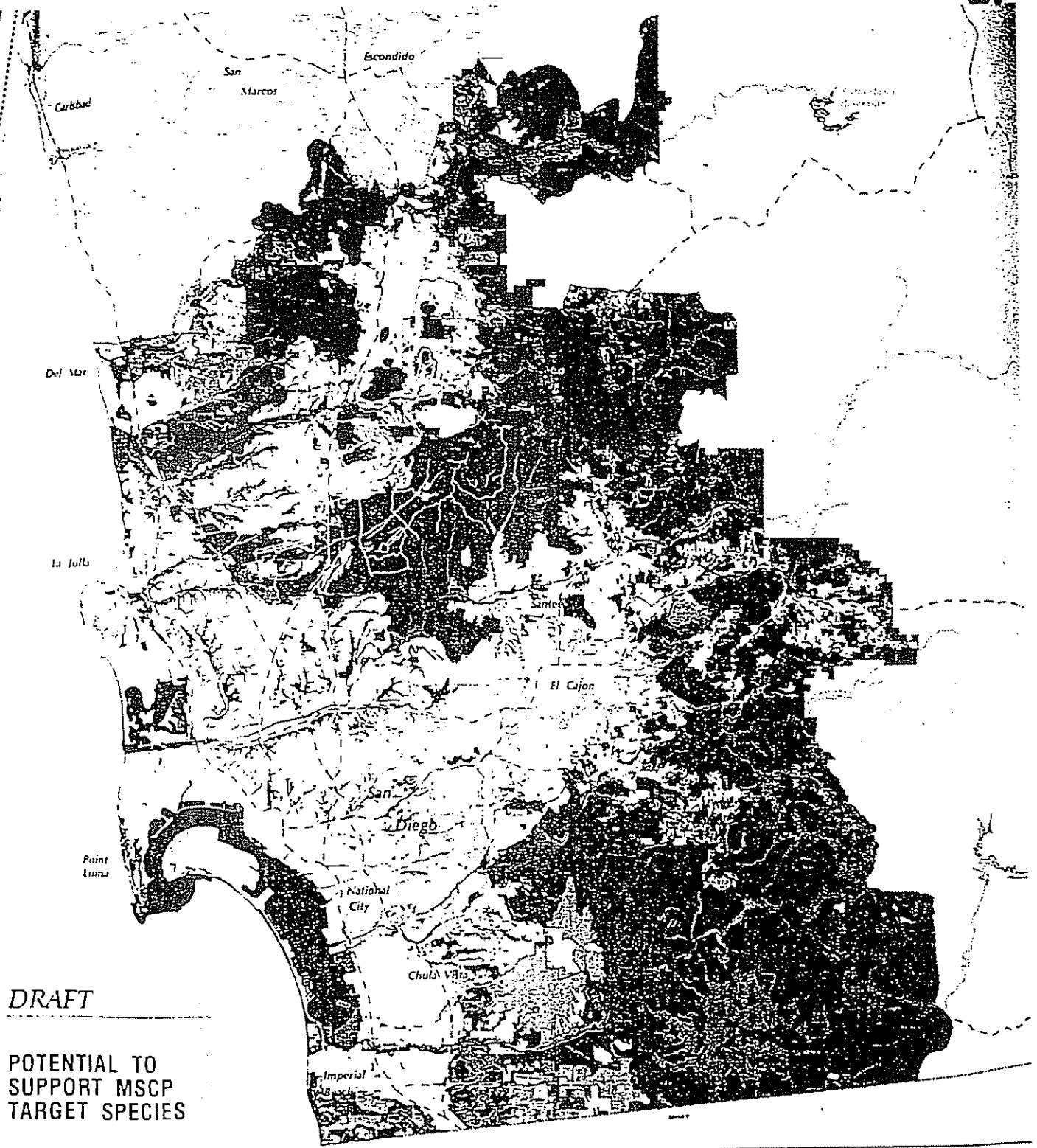
CLEAN WATER PROGRAM
Multiple Species Conservation Program

N

LEGEND

- Coastal Sage Scrub
- Chaparral
- Coastal Sage Scrub Chaparral
- Grassland
- Riparian/Wetlands
- Oak Woodland
- Coniferous Forest
- Beach/Foredunes
- Disturbed Habitat
- Developed
- Agriculture
- MSCP study area boundary

EXHIBIT C



DRAFT

POTENTIAL TO
SUPPORT MSCP
TARGET SPECIES

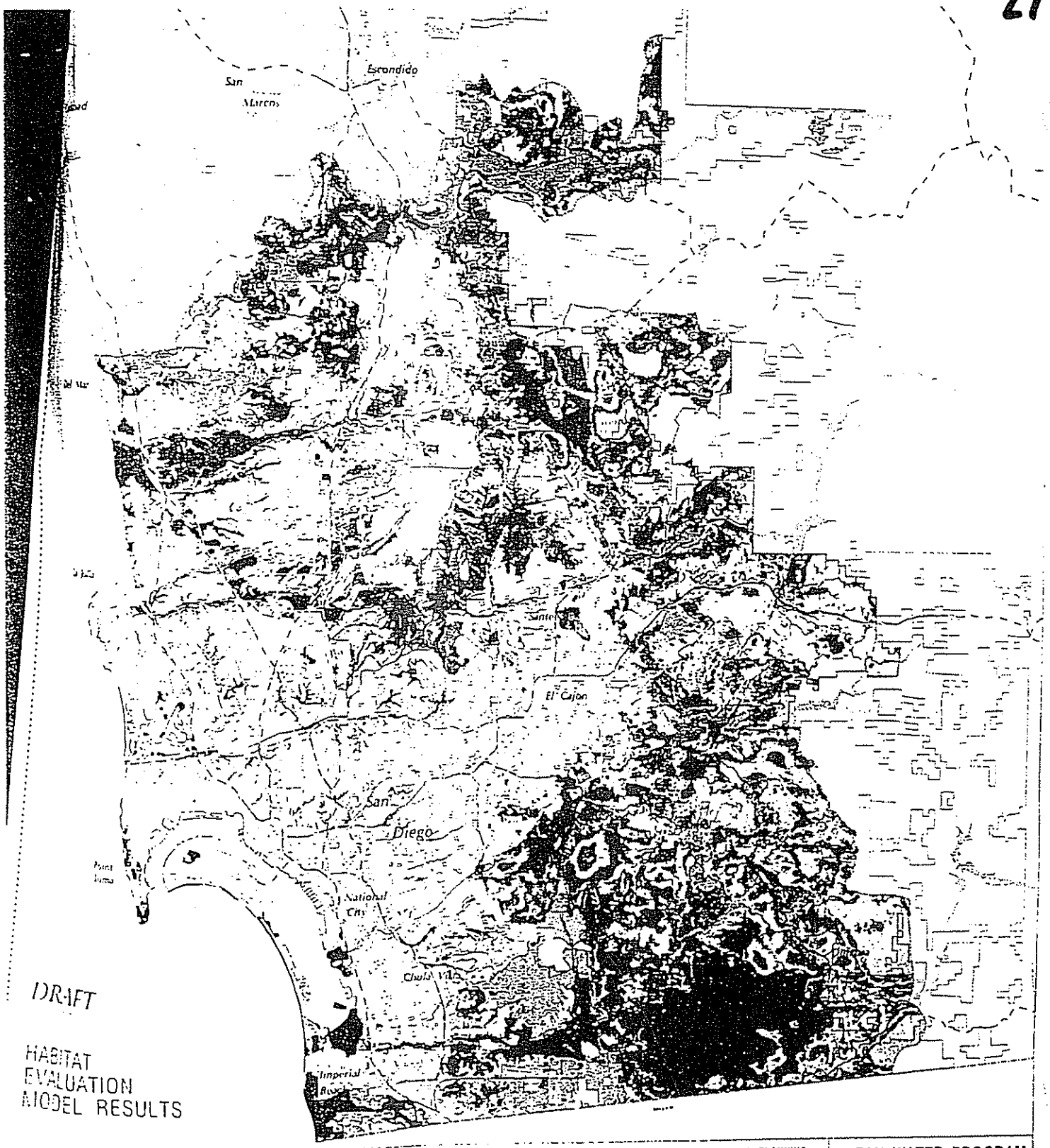
LEGEND

- No potential (no sensitive species)
- Low potential (< 10 target species)
- High potential (> 20 target species)
  No habitats with 10 - 20 target species
- Developed
- Disturbed
- Agriculture

NOTE: FOR GENERAL PLANNING PURPOSES ONLY. FIELD CHECKING ESSENTIAL FOR SPECIFIC PROJECTS.

CLEAN WATER PROGF
Multiple Species Conservation Pr

EXHIBIT D



DRAFT

HABITAT
EVALUATION
MODEL RESULTS

LEGEND

- Moderate
- High
- Very High
- Developed
- Agriculture
- Disturbed
- Publicly Owned Lands

NOTE: FOR GENERAL PLANNING PURPOSES ONLY. FIELD CHECKING ESSENTIAL FOR SPECIFIC PROJECTS.

CLEAN WATER PROGRAM

Multiple Species Conservation Program

N

EXHIBIT E

28 TIMOTHY GRAVES, EAST ELLIOTT PLANNING ADVISORY COMMITTEE, 10/14/96

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28(a) Refer to response to Comment 27(a).

28(b) Refer to response to Comment 27(b).

28(c) Refer to response to Comment 27(c).

28(d) Refer to response to Comment 27(d).

28(e) Refer to response to Comment 27(e).

28(f) Refer to response to Comment 27(f).

28(g) Refer to response to Comment 27(g).

28(h) Refer to response to Comment 27(h).

28(i) See response to Comment 27(i).

28(j) See response to Comment 27(j).

28(k) See response to Comment 27(k).

28(l) See response to Comment 27(l).

28(m) See response to Comment 27(m).

28(n) See response to Comment 27(n).

East Elliott Planning Advisory Committee

October 14, 1996

City of San Diego
Development Services Department
Land Development Review Division
1222 First Avenue, MS 501
San Diego, CA 92101

RECEIVED
OCT 1996

Subject: Comments Regarding Draft EIR/DEIS
Multiple Species Conservation Program [MSCP] Plan
Dep No. 93-0287 / SCH 93121073

The subject documents were discussed at our meeting of September 12, 1996. The East Elliott Planning Advisory Committee [EEPAC] voted unanimously to forward the attached comments to the subject documents.

EEPAC was established by the City Council to be the designated Community Planning Group for the East Elliott area and to provide a forum for public input to a Community Plan Update initiated by the Planning Commission in 1987. In 1993, after years of effort, the City Council put our Community Plan Update on hold for a period of one year while the City considered the possibility of using the area for a new landfill site.

During our review of the subject documents we were shocked to discover that a Community Plan Amendment for our Planning Area had been initiated by the Planning Commission in October of 1994 without our notice or recommendation. The Draft Community Plan Update included in the Draft Implementing Agreements effectively denies any development capability to the entire planning area except the County's Sycamore Landfill. Not only do we object to proposed Update but also to its initiation without consultation with the Planning Group or input from the general public.

Sincerely,

EAST ELLIOTT PLANNING ADVISORY COMMITTEE

for Dr. Thomas Coad
Chairman

Timothy J. Graves
Recording Secretary

8963 Complex Drive, Ste A, San Diego, CA 92123-1416 Phone: 619/565-9512; FAX 565-9515

East Elliott Planning Advisory Committee

Comments: **Multiple Species Conservation Program - MSCP Joint DEIR/DEIS - Aug. 1996 SCH No.93121073**

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8963 Complex Drive, Ste A, San Diego, CA 92123-1416 Phone: 619/565-9512 FAX 565-9515

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The land use impact analysis states that "the amendment would be consistent with the Community Plan goals to maximize open space preservation."

The implementation of the open space program discussed on page 39 of the Community Plan indicates that the City will find funds to buy the open space. The DEIR/DEIS fails to analyze the inconsistency between the existing and proposed community plans and the MSCP.

REDUCED VEHICLE TRIPS. The statement that the reduction of the residential uses in East Elliott "would result in a reduction of vehicle trips...is considered an environmental benefit" is unsupported by facts or analysis. Several places in the text [including page 4.6-45] disclose an assumption that development capability eliminated by the Preserve will be displaced to other areas outside the preserve. Since East Elliott is centrally located within the region, a displacement of housing to areas outside of the preserve will almost certainly result in longer trips, more congestion and energy consumption, and decreased air quality. 28(j)

4.5-9 PUBLIC SERVICES AND THE EAST ELLIOTT COMMUNITY PLAN

The MSCP reduces the developable area from 1380 acres to 117 acres making a feasible facilities financing plan impossible. The DEIR/DEIS considers the resultant impacts to future residents owing to the lack of facilities and services to be a significant impact, but does not recommend mitigation. 28(k)

4.6-25 MITIGATION FOR REDUCTION IN HOUSING UNITS.

The DEIR/DEIS states that "preserve implementation would lead to the cancellation of 1,200 planned housing units within the East Elliott Community 28(l)

Planning area." In fact, the reduction would be more than 2,000 units [see comment 4.2-30.]. No analysis is provided concerning the effects of this reduction on the Housing Element and no mitigation is recommended. 28(l)

4.6-43 HOUSING IMPACT MITIGATION.

The DEIR/DEIS states that "No measures are incorporated in the MSCP Plan to mitigate impact", and that the "impact remains significant and not mitigated". Mitigation to eliminate or at least substantially reduce impacts is required. 28(m)

4.6-44 ECONOMIC PROSPERITY

The MSCPand DEIR/DEIS [pp. 1-5] purport to establish their conformance with the SANDAG "REGIONAL GROWTH MANAGEMENT STRATEGY [RGMS]. The Regional Economic Prosperity Strategy is an element of RGMS. Recommendation #7, on page 24, speaks to the MSCP. It states that the MSCP will definitely impact the local economy, and that "These plans should include an analysis on the impact on the local economy." 28(n)

The DEIR/DEIS are glaringly deficient since they do not discuss the Prosperity Element of the Growth Management Strategy, and they do not include an economic impact analysis. Instead, they merely mention the issue in Section 4.6.3. This is inadequate because it does not provide any qualitative or quantative economic analysis based upon a factual foundation.

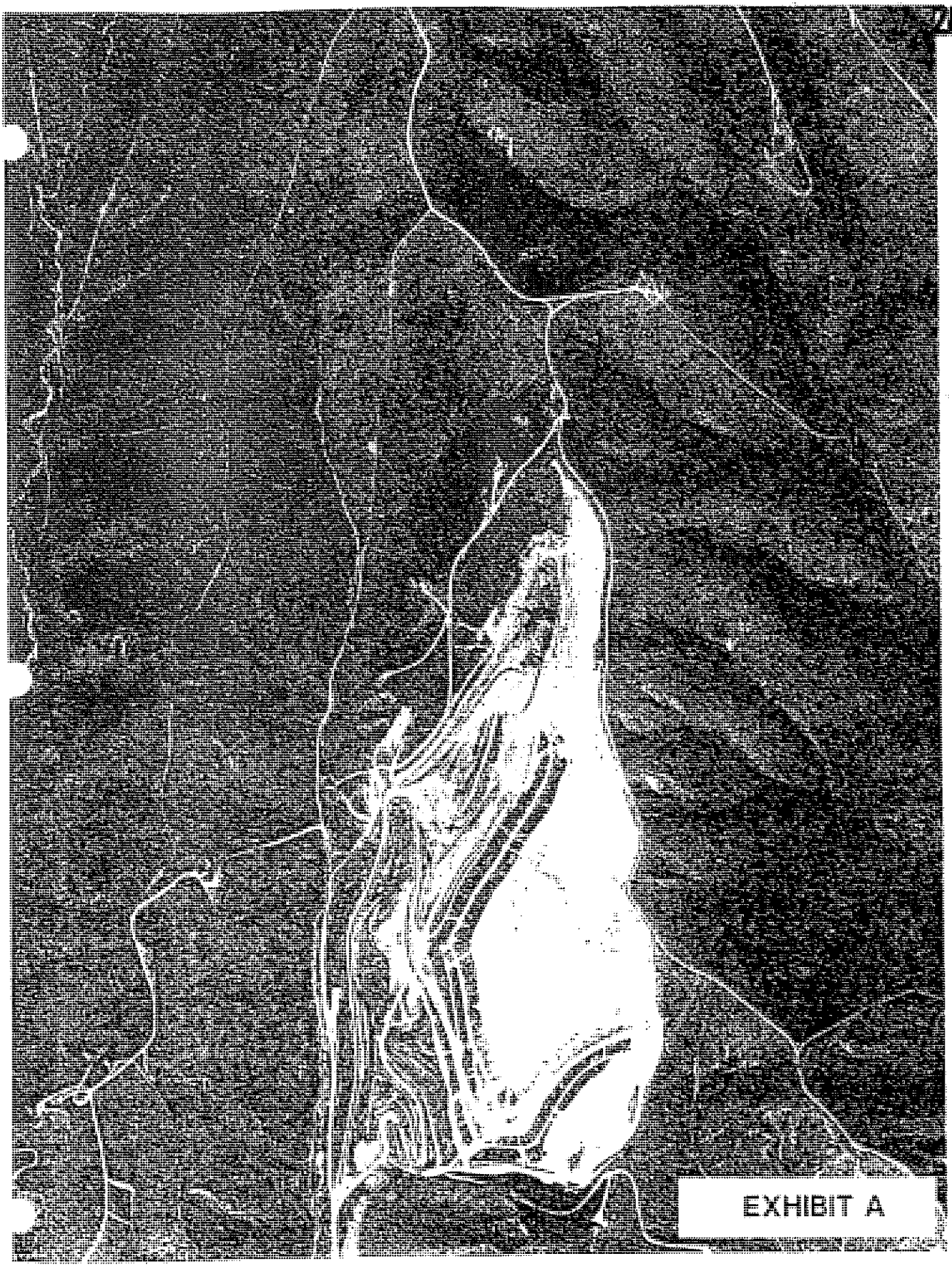
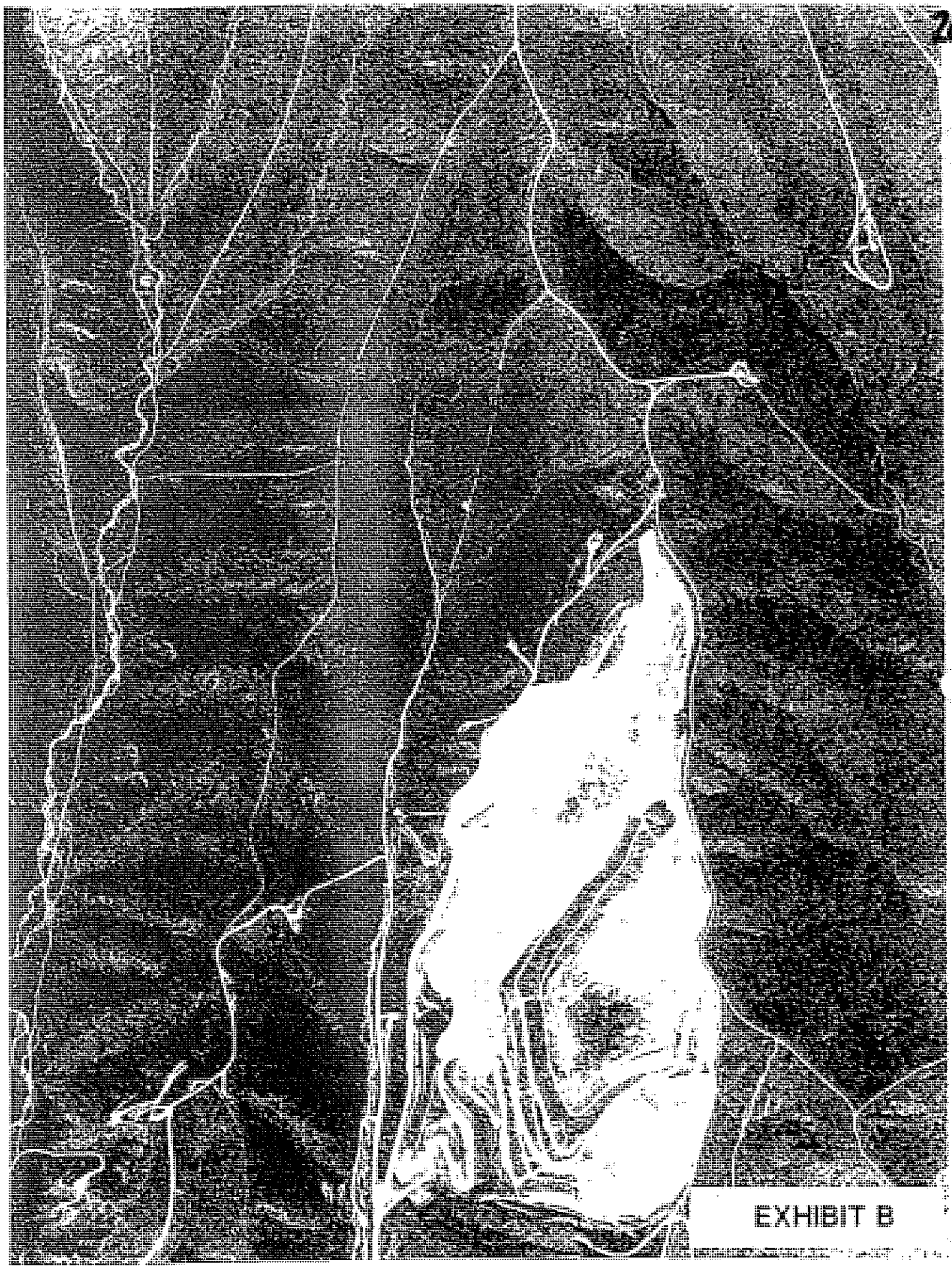


EXHIBIT A



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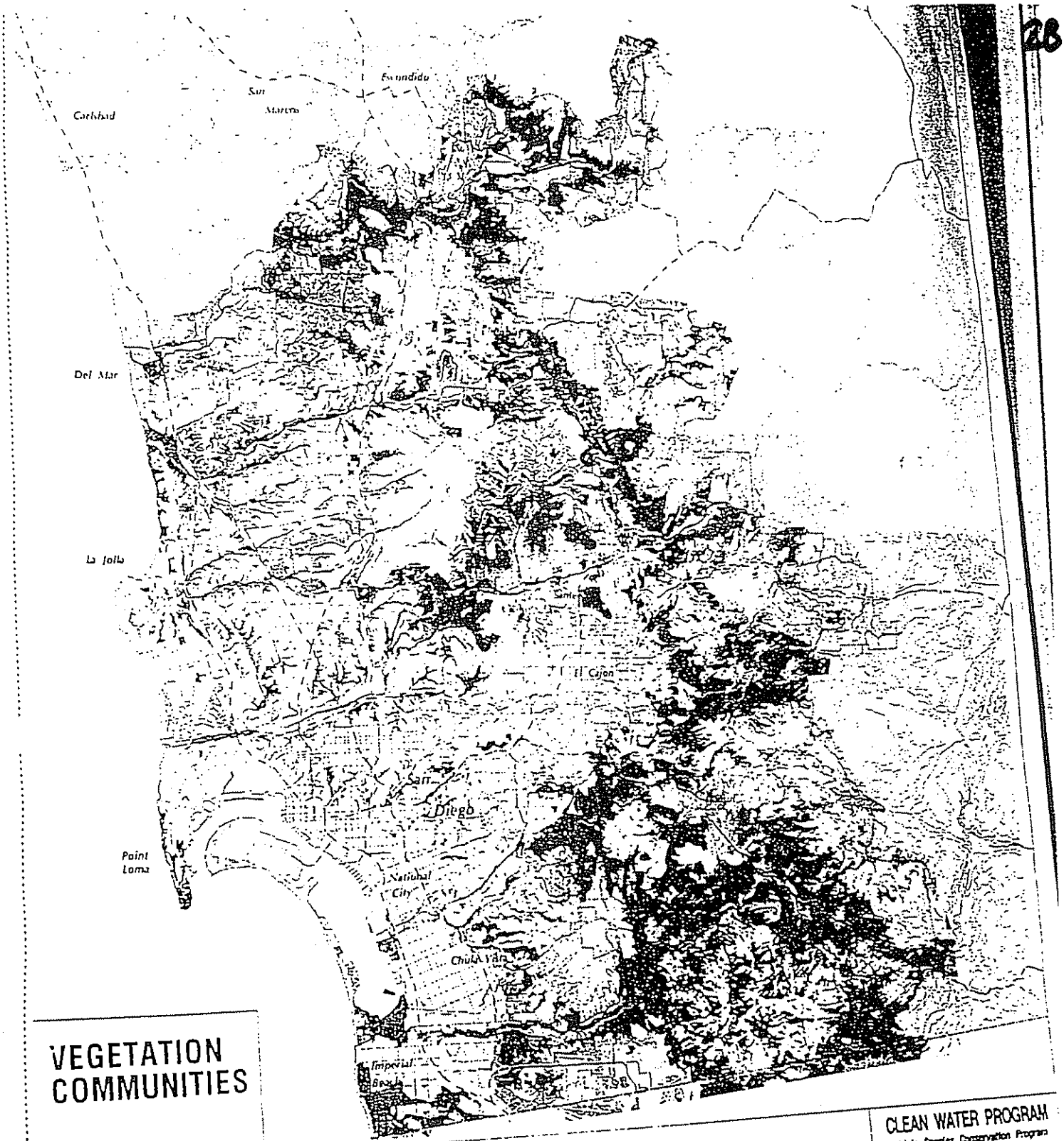


VEGETATION COMMUNITIES

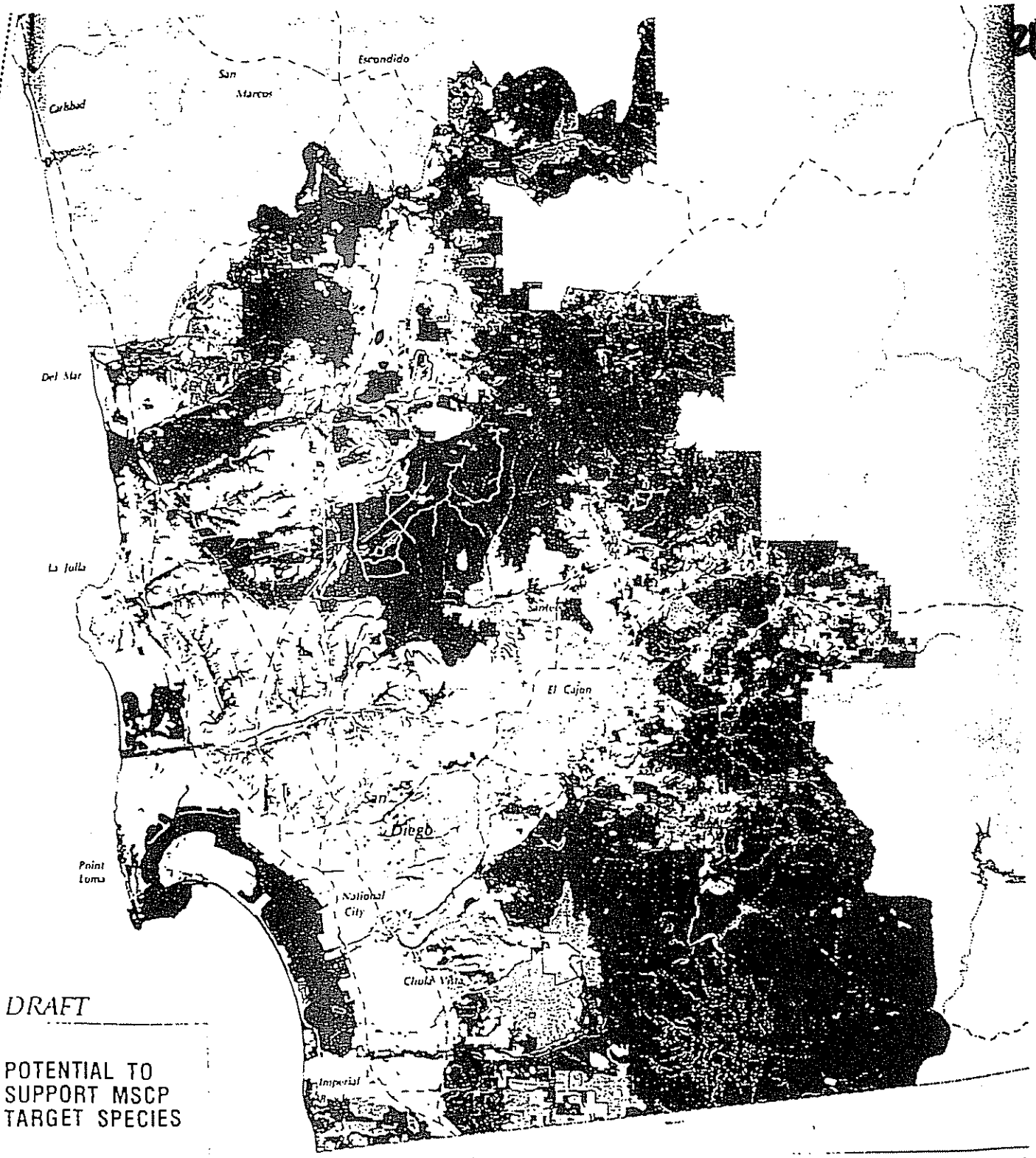
CLEAN WATER PROGRAM
Multiple Species Conservation Program

N

LEGEND

- Coastal Sage Scrub
- Chaparral
- Coastal Sage Scrub Chaparral
- Grassland
- Riparian/Wetlands
- Oak Woodland
- Coniferous Forest
- Beach Foredunes
- Disturbed Habitat
- Developed
- Agriculture
- MSCP study area boundary

EXHIBIT C



DRAFT

POTENTIAL TO SUPPORT MSCP TARGET SPECIES

LEGEND

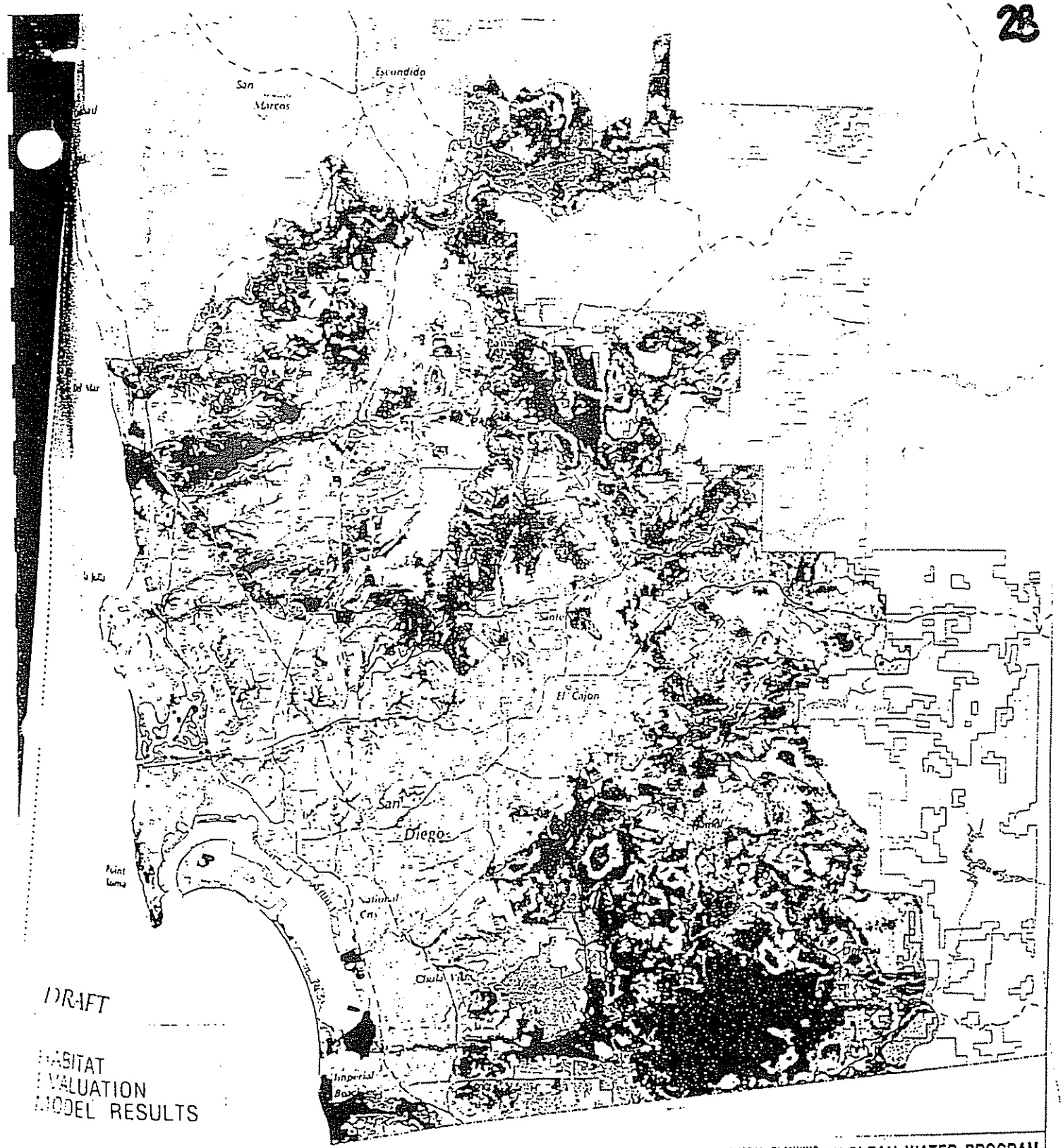
- No potential (no sensitive species)
- Low potential (< 10 target species)
- High potential (> 20 target species) No habitats with 10 - 20 target species
- Developed
- Disturbed
- Agriculture

NOTE: FOR GENERAL PLANNING PURPOSES ONLY. FIELD CHECKING ESSENTIAL FOR SPECIFIC PROJECTS.

CLEAN WATER PROGF
Multiple Species Conservation Pr

N

EXHIBIT D



DRAFT

HABITAT
VALUATION
MODEL RESULTS

LEGEND

- Very High
- High
- Moderate
- Developed
- Agriculture
- Disturbed
- Publicly Owned Lands

NOTE: FOR GENERAL PLANNING PURPOSES ONLY. FIELD CHECKING ESSENTIAL FOR SPECIFIC PROJECTS.

CLEAN WATER PROGRAM
Multiple Species Conservation Program

N

EXHIBIT E

29 JANET RASCHKE, BLACK MOUNTAIN ROAD PARTNERSHIP, 10/15/96

R

29(a) Refer to response to Comment 23(h). Concurrent with the preparation of the MSCP Plan and Subarea Plan, property owners, in the North City Future Urbanizing Area (NCFUA) Subarea IV worked closely with City of San Diego staff in the preparation of the NCFUA Subarea IV Plan. Throughout this process (September 1995 - July 1996) Community and Economic Development staff, and MSCP staff worked hand in hand with every Subarea IV property owner who was actively engaged in the formulation of the Subarea IV Plan. The resulting NCFUA Subarea Plan and the proposed MSCP Subarea Plan are entirely consistent. No increase in regulation or taking of private property has occurred with the approval of the NCFUA Subarea Plan and none is proposed with adoption of the MSCP Plan and Subarea Plan. Public approval of the NCFUA Subarea IV phase shift would allow substantial upzoning of most parcels in Subarea IV. See **Theme Response VIII, Public Involvement.**

29(b) The City of San Diego and wildlife agencies have documented the need for a 1,000' width in the extremely long (4-5 mile) McGonigle Canyon corridor through meetings in the field between landowners and wildlife agency biologists, and through written communications. The Black Mountain Road Partnership property is a potential choke point in a very long corridor. Once the area is fully developed, wildlife would have only this single, relatively narrow area to move through from Black Mountain Park in the north to Los Peñasquitos Canyon Preserve in the south. A bridge is recommended for the undercrossing of the road in that area to allow for adequate movement, and fencing would guide animals to the undercrossing rather than let them cross at points that would cause roadkill. Based on discussions with the wildlife agencies, the corridor as proposed is necessary to assure adequate functioning.

29(c) Per San Diego City Council direction, brush management zones other than Zone 1 are included within the proposed preserve.

29(d) The draft OR-1-2 zone has been revised to retain the one (1) unit per four (4) acres Planned Residential Development option within the NCFUA.

29(e) The list of habitats deemed "significantly conserved" is defined for the purpose of describing wildlife agency contribution for the conservation of species that are "uncovered," i.e., not covered by the MSCP Plan, but are listed in the future (MSCP Plan, pp. 3-25 to 3-27). The list does not establish new obligations for landowners to protect habitat. Non-native grasslands are not sufficiently or significantly conserved by the MSCP and the addition of non-native grasslands to either list is not contemplated or recommended by the City of San Diego. See also **Theme Response XXII, Sufficiently/Significantly Conserved Vegetation Communities.**

29(f) Estimated costs of implementing the MSCP, including costs of habitat acquisition and management, and potential revenues to fund such costs are described in the MSCP Plan, Volume I, Section 7.0.

29(g) Comment noted.

29

BLACK MOUNTAIN ROAD PARTNERSHIPS

October 15, 1996

Mr. John Kovac, Senior Planner
CITY OF SAN DIEGO
Development and Environmental Planning Division
1222 First Avenue, Fifth Floor
San Diego, CA 92101

SUBJECT: Multiple Species Conservation Program; Black Mountain Road Partnerships; Subarea IV of the NCFUA

Dear John:

I represent approximately 58 acres within Subarea IV of the NCFUA (see attached map). The following text includes comments regarding my properties. My comments relate directly to the concept of equity for property owners within the Multi-Habitat Planning Area. Many of the points have been made before, they are the result of my experience with the MSCP and NCFUA planning efforts over the past seven years:

Small Property Owners Left Out: The small property owners have not been included in the planning process for the MSCP. We do not have the range of options to accommodate the MSCP that are available to a large property owner. The result of numerous meetings with City staff is increased regulation and taking of our land. **29(a)**

Corridor Width: Throughout the planning process we have been agreeable to providing for a part of the proposed corridor on a portion of our properties. This corridor has steadily increased in width from 350' to 1,000'. I have requested scientific validation of the corridor width requirements for the past year and a half. The only study provided was the Otay Ranch Wildlife Corridor Study which demonstrates functional corridors of 175' and 500'. The resource agencies have noted that a smaller corridor is acceptable at our site due to narrowing caused by the road and terrain, as well as a wildlife undercrossing. The narrowing of the corridor at this location may preclude road kills and assist in the creation of a functional and safe wildlife undercrossing. In this instance, the City's proposed corridor of 1,000' is unsubstantiated and potentially dysfunctional. **29(b)**

Brush Management: Zones 2 and 3 should be part of the corridor width and not forced onto the adjacent development. Within the NCFUA, the MSCP cannot be realized without attendant development, the onerous requirement of brush management being conducted entirely on developable area is counterproductive. **29(c)**

My review of an earlier City Manager's Report (#96-139) generated the following points:

1. Why doesn't the proposed OR-1-2 zone include the provision for one (1) unit per four (4) acres that is currently permitted within the NCFUA? The loss of the one per four provision could be the death knell for small property owners in the NCFUA. I strongly recommend that the one per four option be retained for the NCFUA. **29(d)**

2. Adding additional habitats to the Significantly Conserved Habitat List creates additional burdens on the property owners within Subarea IV. The costs associated with the inclusion of additional habitats adds to our ever-increasing local fiscal burden for a regional open space system. The addition of non-native grasslands, for example, runs contrary to the positive economic steps taken by the City Council in dramatically reducing water and sewer fees. This proposal adds to the onerous fiscal burden being placed on small property owners. As such, I recommend against adding non-native grasslands habitats to the List. **29(e)**

3. Funding of the MSCP is still the critical issue. Funding sources are key to the success of this program. At a cost of $100,000/acre, a total of $2,700,000,000 is needed if the targeted number of acres are to be acquired (27,000). The report further indicates that the local share of habitat acquisition will be one half or approximately 13,500 acres. This equates to $1,350,000,000. One can assume that the $100,000/acre cost could be much higher, this would result in an attendant escalation of costs. Funding and public support are vital to the successful implementation of the MSCP. Our Subarea IV properties serve as a perfect example of situations that need equitable treatment in a positive manner to assure private sector cooperation. **29(f)**

29

29(g)

I recognize that I am a relatively small property owner but my issues and problems are illustrative of the larger problems facing the MSCP. We support the concept of the MSCP but it must be refined to incorporate reasonable treatment for property owners as well as property users. A healthy balance must be sought and achieved if the planning efforts are to move forward in a positive fashion.

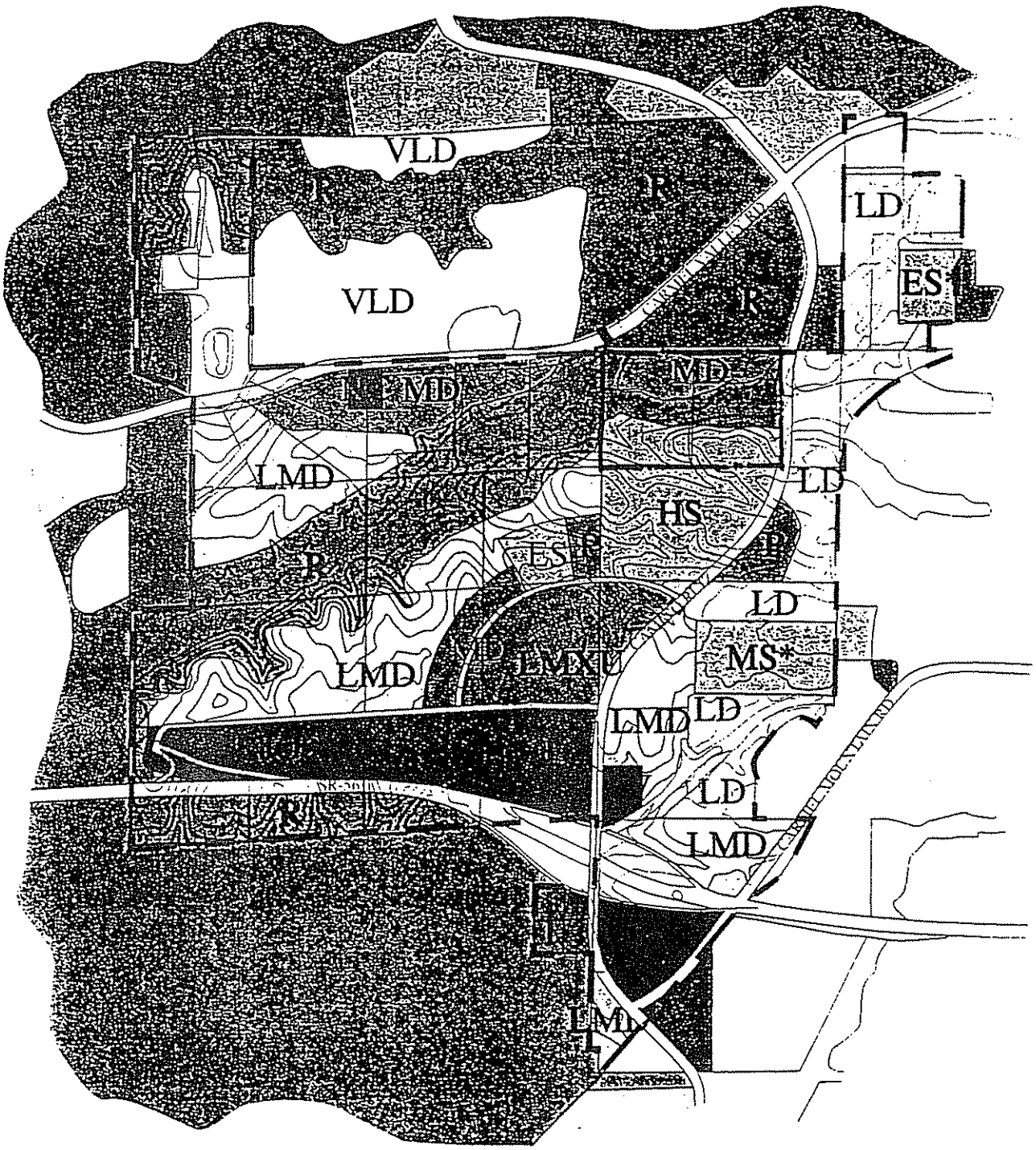
Thank you for your attention to these issues. Please feel free to contact me if you have questions or comments.

Sincerely,

Janet Raschke (CM)

Janet Raschke
Managing Partner
4950 Ladera Sanna
Del Mar, CA 92014 (481-0455)

attachment



TORREY HIGHLANDS ALTERNATIVE 1

Land Use Plan

0 800 1600 2400 3200 4000 FT

April 8, 1996

Figure 4-1

30 D.P. PENDER (U.S. MARINE CORPS), 10/11/96

R

30(a) In response to previous requests by the military, the maps for the preferred alternative, the Multi-Habitat Planning Area, have been revised in the MSCP Plan to depict military lands separately from other uses and ownerships (see Figures 1-1, 1-2, 2-S, 3-1, 3-2, 3-3, 3-4, etc.). The maps for the Coastal Sage Scrub, Biologically Preferred, and Public Lands alternatives have not been similarly modified. Even though one of these alternatives may be selected, planning for conservation purposes on military lands would occur separately from the MSCP through consultations pursuant to Section 7 of the ESA and through Sikes Act agreements.

30(b) The information used for this figure is derived from SANDAG's GIS data base and depicts the existing condition of the habitat as undeveloped. We recognize that some of the lands shown as vacant on military lands are used for military training purposes. This figure in no way affects the ability of the miliary to continue such uses.

30(c) The proposed expansion of the San Diego National Wildlife Refuge (Refuge) represents the wildlife agencies' contribution towards species conservation under the MSCP. The impacts of having certain lands preserved as part of the Refuge and their contribution towards the goals of the MSCP were included in the programmatic impact analysis of the preserve system contained in Section 4.3 of the Draft EIR/EIS. More specific impact analyses would be contained in separate environmental documents addressing various Refuge expansion proposals.

30

UNITED STATES MARINE CORPS
MARINE CORPS AIR BASES WESTERN AREA EL TORO
PO BOX 95001
SANTA ANA CA 92709-5001

IN REPLY REFER TO:
11010.30
AQ/MSCP
11 Oct 1996

City of San Diego
Attn: Mr. John Kovac
Land Development Review Division
1222 First Avenue, Mail Station 501
San Diego, CA 92101

Dear Mr. Kovac:

Thank you for providing an opportunity to comment on the Supplemental Draft Environmental Impact Statement for issuance of Take Authorizations for Threatened and Endangered Species due to Urban Growth within the Multiple Species Conservation Program (MSCP) Planning Area.

The Marine Corps concurs that the proposed Multi-Habitat Planning Area (MHPA) scenario is the best mechanism for conserving sensitive biological resources in the San Diego area. Recognition that military lands are within, but not part of, the MHPA is the best way to plan for military lands given their unique land uses. Please be assured that we are committed to preparing suitable plans for those lands under our stewardship so that we too contribute our fair share to protecting species of concern identified in the MSCP. We look forward to your assistance in our efforts.

Though the proposed action does not include military lands, we are concerned that alternatives being carried forward in the document still include the creation of preserves on military reservations. As we noted in our scoping letter of July 15, 1996, the issue of preserve creation on military reservations is of serious concern. In considering participation in regional ecosystem approaches to resolving land use conflicts, the Department of Defense must consider the following principles:

1. The overriding mission of the Department of Defense is the protection of the national security of the United States, and Military activities on Departmental lands are vital to fulfillment of that mission;

2. Such agreements, and their projects, will not detract from the Department of Defense national defense mission, now, or in the future;

3. Military lands cannot be used for the mitigation of non-Defense impacts occurring off the installation that affect the environment;

4. Military lands cannot be set aside as perpetual environmental preserves. While conservation is, and shall continue to be, practiced on our installations, we must maintain the flexibility to adapt our defense mission to political and technological developments;

5. The Department of Defense's first priority shall be to integrate the management of natural and cultural resources with the military mission within the ecosystem supporting the installation.

The Coastal Sage Scrub, Biologically Preferred, and Public Lands alternatives should be modified so that no military installation lands are included as preserves. In addition, maps and graphics for all alternatives should provide a separate distinction between public lands and federal military reservations throughout the text. This consistency will make clear the relationship of military lands being planned separately from other planning efforts associated with the MSCP. 30(a)

The text generally makes the distinction between land used for military purposes and vacant land. However, Figure 3.2-1 still shows much of MCAS Miramar as being vacant land. This figure should be changed to reflect the military uses of MCAS Miramar and other Department of the Navy lands in the planning area. 30(b)

The FEIS should provide a more complete cumulative impact discussion of the relationship between the expansion of the San Diego National Wildlife Refuge and attainment of the MHPA goals. Though a separate Environmental Assessment is being prepared for this expansion, the FEIS should address notional boundaries and how the expansion will contribute to the goals of the MSCP. 30(c)

Thank you for the opportunity to comment on this evolving land use proposal. If I may be of any further assistance, please contact me at (714) 726-3702.

Sincerely,

D. P. PENDER
Colonel, U.S. Marine Corps
Community Plans and Liaison Officer
By direction of the Commander

Copy to:
USF&WS (Attn: Ms. Nancy Gilbert)
DASN (E&S)
CMC (LF)
CNO (N45)
COMNAVBASE San Diego, CA
NAS Miramar, CA

31 CHRIS WHITE, CALTRANS, 10/10/96

R

31(a) The comments are noted. The additional projects mentioned are reflected in the revised language included in the Final EIR/EIS.

31

STATE OF CALIFORNIA - BUSINESS, TRANSPORTATION AND HOUSING AGENCY

PETE WILSON, Governor

DEPARTMENT OF TRANSPORTATION

DISTRICT 11, P.O. BOX 85406, SAN DIEGO, 92186-5406
(619) 688-6424 TDD Number
(619) 688-6681

October 10, 1996

Mr. Lawrence C. Monserrate, Principal Planner
Land Development Review Division
City of San Diego
1122 First Avenue, Mail Station 501
San Diego, CA 92101

Dear Mr. Monserrate:

Multiple Species Conservation Program (MSCP) Draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS)

Thank you for the opportunity to comment on the Draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the Multiple Species Conservation Program (MSCP) Plan. Caltrans District 11 supports the proposed project, the Multiple Habitat Planning Area (MHPA), as an appropriate program designed to achieve a balance in regional biological and economic goals.

While it is not unreasonable to expect that all practical measures will be taken in the development of future transportation facilities to avoid impacts to biological core areas, at the same time it should be clearly understood that such impacts will probably occur and that appropriate mitigation measures will be developed. For example, in addition to the facilities depicted in Figure 3.4-1, a corridor-level study is currently in progress to evaluate a potential future widening of State Route 94 (SR 94) from Avocado to SR 188. Additionally, interest has been expressed in adding a possible facility to cross Lake Hodges in the vicinity of, but not immediately adjacent to, Interstate 15 (I-15). 31(a)

It is very important to Caltrans that the various subarea plans be implemented in a consistent and equitable manner. This is not to deny the importance of flexibility, but to underscore the significance of regionally structured planning frameworks.

Sincerely,

Chris White

CHRIS WHITE, Chief
Environmental Analysis Branch

32 SCOTT ANDERSON, ANDERPRISES, INC., 10/11/96

R

32(a) The cost to assemble the preserve would be shared among local, state, and federal governments. Private development projects would preserve habitat through avoidance or mitigation consistent with local land use and environmental regulations. Please see **Theme Response V, Taking of Private Property**.

32(b) In implementing the MSCP Plan, land would be acquired by various public agencies, such as the U.S. Fish and Wildlife Service, Bureau of Land Management, California Department of Fish and Game, and participating local jurisdictions. Each agency has or would determine a procedure for acquiring habitat lands, including identification of acquisition priorities, sources of acquisition funds, and responsibility for management of habitat lands. Under the MSCP Plan, these activities would be coordinated through a proposed Implementation Coordinating Committee (MSCP Plan, Volume I, p. 5-21).

Prior to establishment of the Implementation Coordinating Committee, private landowners interested in offering their properties for sale should contact the city or the county in whose jurisdiction the properties are located.

32(c) Fair market value, or the most probable price which a property should bring in a competitive and open market, is generally determined by an appraisal. In determining the value of vacant land, an appraiser uses standard methods, such as sales (or comparable sales) or capitalization of income.

32(d) As described above, each agency engaged in land acquisition would determine acquisition procedures, including priorities for acquisition. These activities would be coordinated through an Implementation Coordinating Committee, which is proposed to be established after approval of the MSCP Plan.

32(e) Enactment and changes to land use zones within the City of San Diego are at the discretion of the City Council. It is not possible to predict whether or how land use zones might be changed if funding for the MSCP is not approved.

32(f) Comment noted. The EIR/EIS determined that land use and housing impacts would be significant and not mitigated.

32(g) See response to Comment 32(f).

32(h) Comment noted. Please be advised that the biological study should be conducted by a qualified biologist and that before its use for any permit/development proposal, the study must be submitted for adequacy and approval by the local jurisdiction staff.

32

Anderprises, Inc.

3167 Carnegie Place
San Diego, CA 92122
(619) 453-0059
fax (619) 453-0735

October 11, 1996

Lawrence C. Monserrate
Principal Planner, City of San Diego
Development Services Department
Land Development Review Division
1222 First Ave., Mail Station 501
San Diego, Ca. 92101

Dear Mr. Monserrate,

This letter is in response to the public notice of completion of the EIR/EIS for the MSCP plan. I would like to compliment the City of San Diego, and all the other agencies involved, on this visionary plan. But, after spending $125 to purchase the three volumes and many hours of reading through the eyes of a private landowner, my major concern is that the cost to assemble the preserve should not be placed upon the shoulders of private property owners. 32(a)

Background

Anderprises, Inc. is a family corporation which owns 57 acres in the Otay Mesa area. Of these 57 acres, the Otay Mesa Community Plan designates 7 acres as Specialized Commercial, approximately 33 acres as low density residential, and the remaining 17 acres as open space. According to the EIR/EIS document, page 2-30, the city of San Diego will change Community Plans no later than 180 days after the Effective Date of the Subarea Plan. Our property is located in Figure 4.2-6 and the land use will be changed to place all 57 acres into open space. We perceive this as a reduction in our land value.

MSCP Concerns

Although we have very limited experience in analyzing these types of documents, we are concerned with the following statement which is sprinkled throughout the various volumes: *"The acquisition of lands for the MSCP preserve will be based on purchases from willing sellers at fair market value or on terms mutually acceptable to the buyer and seller."*

I would like to raise the following concerns: 32(b)

1. There is no procedure identified to allow "willing sellers" to get involved.
   - Who should they contact?
   - How do parties that need to buy mitigation land get involved?
   - Will there be a database set up to track asking and selling prices?
   - Will land sales data be available for public review on a user friendly basis?

2. How will "Fair Market Value" be determined?
   - Highest and best use?
   - New "open space" designation as required by the MSCP plan?
   - Community Plan land use prior to MSCP driven changes?

32(c)

3. There is no priority system identified that determines which parcels are purchased early or late in the 20 year acquisition process. (See Vol. I, pages 7-12, Long-Term Financing, paragraph 2.)
   - Are there parcels that have higher habitat values than others?
   - How does a property owner determine the habitat value of the land?

32(d)

EIR/EIS Concerns

1. Pages 2-30 and 31 Amendments to the General Plan and Permanent Zoning and Resource Protection Regulations: The City plans to rezone all properties no later than 180 days after the effective date of the Subarea Plan. If the MSCP Plan funding does not materialize (heaven forbid) then will the land zoning be changed back to pre-MSCP uses?

32(e)

2. Page 4.6-14 Otay Mesa Community Plan. 242 acres of residential land uses would be eliminated (approximately 33 of those are ours). We consider this to be a significant impact as applied to our property.

32(f)

3. We do not understand how the EIR can conclude that the MSCP will result in significant environmental impacts in the areas of Land Use and Population/Housing when it is within the City's authority to mitigate those impacts by amending its land use documents and rezoning properties. The MSCP should not only accomplish habitat preservation, but it should be the vehicle by which the loss of development due to habitat preservation is realized elsewhere.

32(g)

Preserve Open Space Criteria Concerns

Over the past few years, we have watched the MSCP Plan evolve. It seems that each time we looked at the maps, more and more of our land was being coveted for open space. We have not been able to evaluate the scientific process, if any, applied by the designers of the preserve. We are planning on having a biological study done for our property to see if indeed 100 percent of it warrants open space designation.

32(h)

Thank you for considering these concerns and comments. I hope that they will be evaluated as a function of their impact on private property rights.

Sincerely,

Scott Anderson

Scott Anderson
President

cc: Directors
Sullivan, Wertz, McDade & Wallace
Mayor Susan Golding

33 JOHN WILLETT, SR 125 SOUTH CITIZEN ADVISORY COMMITTEE, OCTOBER 4, 1996

R

33(a) Although the final alignment for SR-125 has not yet been determined, the subarea plan maps for the MSCP show that SR-125 would traverse a portion of the preserve. Construction of SR 125 would be administered through Caltrans and partially funded through the Federal Highway Administration. Therefore, it is not subject to the provisions of the local jurisdiction subarea plans. Take authorizations for federally listed species and their habitats would be authorized through a formal consultation with the U.S. Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act. Please refer to **Theme Response IX, Allowable Uses within the MHPA.**

33(b) Regional circulation roads are permissible in the City of San Diego's Subarea Plan. SR-125 will undergo federal permit review pursuant to the requirements of the Federal Highway Administration and Section 7 of the ESA.

33(c) The City of Chula Vista Subarea Plan identifies SR-125 as exempt from the requirements of the Chula Vista Subarea Plan (ref. Section 6.4.2.5 of Subarea Plan). Mitigation and take authorization for the construction of SR-125 would be addressed independently through the separate Environmental Impact Report/Statement prepared by Caltrans. The City of Chula Vista does identify SR-125 as an exclusion from the preserve (ref. Section 6.5.1.1), similar to other major infrastructure; however, this is in error and conflicts with the prior section noted. The Chula Vista Subarea Plan will be modified to clarify that the mitigation requirements and alignment selection for SR-125 would be outside of the control of the City of Chula Vista's Subarea Plan policies.

33(d) Please refer to response to comment 33(a). SR-125 would not be subject to the provisions of local jurisdiction subarea plans.

33

SR 125 South Citizen Advisory Committee (CAC)
Chairperson, John Willett

October 4, 1996

To: Director, Robert Lieter, City of Chula Vista City Planning Department
Mr. John Kovacs, City of San Diego Development Services Department
Supervisor Gregory Cox, San Diego County Board of Supervisors
General Manager, Richard Reynolds, Sweetwater Authority

Re. Letter of Comment on the MSCP EIR / EIS; SR 125 South Tollway Impact on the Multi-Species Conservation Program - Subarea Plans

To: Whom it may concern:

The following comments are respectfully submitted for consideration by an individual, who is familiar with the proposed development of SR 125 South Tollway, and not as the Chair of the SR 125 South CAC. After a review of the Multi-Species Conservation Program (MSCP) and related environmental documents, and discussions with several individuals, it is suggested that;

> The MSCP Program and related environmental documents be modified and clarified so that there is consistent treatment of regionally significant public facilities which cross the boundaries of more than one MSCP Sub-regional Plan. Specifically, SR 125 South should be identified as a *permitted use* within the MSCP preserve and the applicable Subarea Plans (City of Chula Vista Subarea Plan, City of San Diego Subarea Plan, County of San Diego Subarea Plan, Sweetwater Subarea Plan (not completed) and San Diego Gas & Electric company's Subarea Plan? (status unknown).

DISCUSSION

As understood, the purpose of the MSCP Program is to resolve significant issues through the establishment of a comprehensive conservation program. Page one of the MSCP Program states that the goal of the program is to provide "greater certainty in determining where development should and should not occur". The second page states that this comprehensive and more certain approach to land planning is intended to replace duplicative, and conflicting resource regulations.

Clearly the goals of the MSCP Program are laudable. Pursuit of these goals through the creation of a series of Subarea Plans, it is also meritorious because it places responsibility for land planning where it belongs, at the local level.

However, at least in one instance, this approach has fallen short. Although it appears that the MSCP contemplates the development of SR 125 South, the MSCP documents need clarification to make it clear that SR 125 South is a *permitted use*. Reliance on a series of sub-area plans has failed to consistently plan for regional transportation facilities that cross more thane one Subarea Plan area, specifically SR 125 South.

SR 125 South runs from the Otay Mesa area in the City of San Diego, through the San Diego Counties unincorporated area of the Otay Ranch, through the eastern portions of the City of Chula Vista, connecting to SR-54, near the unincorporated Sweetwater community of Sunnyside and San Miguel. 33(a)

97 Montebello St. Chula Vista, CA. 91919 Tel: (619) 420-1607

This route is within and, therefore potentially is governed by, several MCSP Plans, as follows: 33(a)

* City of San Diego Subarea Plan
* City of Chula Vista Subarea Plan
* County of San Diego - South County Segment Plan
* County of San Diego -Metro - Lakeside - Jamul Segment
* Sweetwater Authority Subarea Plan (not a part of the proposal)
* San Diego Gas & Electric Company Subarea Plan (Status unkown)

Regrettably, it appears that each of these Subarea Plans treat SR 125 South differently.

CITY OF SAN DIEGO

The City of San Diego Subarea Plan does not display or discuss the alternative SR 125 South routes currently under consideration by Caltrans (Brownfield and Brownfield Modified), San Diego's MSCP Plan shows that areas containing these potential alignments are part of the MSCP preserve. The San Diego plan text states that roads identified in community plans are *permitted uses* within the preserve. However, the Otay Mesa Community Plan depicts SR 125 South through Johnson Canyon. This alignment was dropped from further environmental analysis by Caltrans at the request of the Resources Agencies. Thus, it is unclear if the current SR 125 South alignments would be *permitted uses* within the City of San Diego's MSCP Subarea Plan.

The South County Segment Plan States that new public infrastructure necessary and incidental to the development allowed in the approved in the approved projects which create the open space *are permitted* within the subregional preserve system. The plan further provides that certain public infrastructure necessary for public health and safety or economic reasons is *permitted* within the subregional preserve system. These broad polices create the impression that SR 125 South would be a *permitted use* within the preserve. This condition is further supported by a South County Segment Policy relative to Otay Ranch which states that SR 125 South from Otay Mesa through Otay Ranch is *excluded* from the preserve. The South County Segment Plan also provides that SR 125 South is a *permitted use* within the preserve portion of the Otay Valley Regional Park Plan. 33(b)

However, some confusion is created because the South County Segment Plan also states that SR 125 South is *exempt* from the requirements of the South County Segment because it will be reviewed and approved by wildlife agencies through a separate process. Thus the question is created, is SR 125 South a *permitted use*, an *excluded use*, an *exempt use*, or a facility subject to some other kind of environmental review? This kind of conflict, confusion and uncertainty that should be remedied not compounded, through the MSCP program.

To add to the confusion, it must be recognized that SR 125 South is governed by two of the County's MSCP Segments. The applicable regulations from the South County Segment is discussed above. However, a portion of SR 125 South crosses the Metro - Lakeside - Jamul Segment. Within that segment, the regulations states that *"take"* of covered species and the habitat associated with County infrastructure projects may be authorized sing the Minor Amendment process.

CITY OF CHULA VISTA

The City of Chula Vista draft Subarea Plan treats SR 125 South similar to the County of San Diego South County segment Plan. That is, the Chula Vista Plan identifies SR 125 South as a *permitted use* within the preserve, the Otay Valley Regional Park. The Chula Vista Plan also states that SR 125 South is *exempt* from the Chula Vista Plan because it is the subject of a separate environmental review process. Finally, the Chula Vista Plan, like the County of San Diego Plan, identifies that the SR 125 South alignment through Johnson canyon is *excluded* from the preserve. Like the County of San Diego, the exact status of SR 125 South within the Chula Vista Plan is unclear; *excluded*, *exempt*, 33(c)

33

permitted use, or subject to some type of permit process? 33(c)

SWEETWATER AUTHORITY

The northern segment of the SR 125 South as depicted if Figure 2 (Chula Vista Subarea Plan) shows that Horseshoe bend and CAC Alignments cross areas which will be governed by "other agency - preserve planning efforts". One portion appears to be governed by the Sweetwater Authority Plan. Since a Sweetwater Authority Subarea Plan is not of the currently pending MSCP Program, it is difficult to determine the impact of the MSCP Plan on a potential SR 125 South alignment in this area. The Average Habitat Conservation in the MHPA Map (Figure 3.2 MSCP Program, Volume 1) indicates that this area will achieve an 80% conservation standard. The source, authority and rational for this 80% standard is unclear, as is the treatment of the SR 125 South during the time that it takes for a Sweetwater Plan to be prepared. 33(d)

CONCLUSION

The MSCP should add certainty to the land planning and resource protection process. In some instances the Subarea Plans have achieved this goal. In other instances it appears that it fails. Concerning SR 125 South, all MSCP documents should treat the needed facility consistently, as a *permitted use*.

Respectfully,

John Willett

John Willett

c/c Chairman, San Diego County Board of Supervisors
Villages Development (Otay Ranch)
Caltrans Invironmental Analysis Branch
California Transportation Ventures
Chula Vista Chamber of Commerce

97 Montebello St. Chula Vista, CA. 91919 Tel: (619) 420-1607

34 JOHN WILLETT, SR-125 SOUTH CITIZEN ADVISORY COMMITTEE, 9/4/96

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34(a) Please refer to response to Comment 33(b).

34(b) Please refer to response to Comment 33(c).

34(c) SR-125 would be reviewed separately by the wildlife agencies. The quoted material concerning infrastructure applies to infrastructure that would be subject to the requirements of MSCP. SR-125 is exempted from MSCP and would be separately reviewed by the wildlife agencies. Thus, it is not subject to the provisions quoted in the comment letter. Take and mitigation requirements would be fixed at the time that the wildlife agencies conduct their review of SR-125.

34(d) Please refer to response to Comment 33(d).

SR 125 South / MSCP "DISCUSSION" Paper; Relative and Supplemental to SR 125 South CAC Chair's Letter of September 4, 1996

San Diego City

The City of San Diego MSCP Subarea Plan (August 1996) contains one figure and one policy statement which appears to govern the SR 125 South right of way. Figure 11 displays the City of San Diego MHPA - Southern Area Map. The map depicts that the northeastern edge of the Otay Mesa area to be located with-in the proposed preserve boundary. This area is the location of the two alternative SR 125 South southern segment alignments (Brown Field and Brown Field Modified). If this map is enacted, the SR 125 South alignment would cross the preserve.

Policy statement #5, on page 48 of the City of San Diego MSCP Subarea Plan provides, "Roads in the preserve will be limited to those identified in Community Plan Circulation Elements, collectors streets essential for area circulation and necessary maintenance / emergency access roads. Local streets should not cross the preserve except where needed to access isolated development areas. 34(a)

The Otay Mesa Community Plan governs the Otay Mesa area. The Community Plan locates SR 125 South in Johnson Canyon east of the two alignments currently under study by Caltrans in the SR 125 South EIR / EIS. This raises the question of if SR 125 South would be *permitted use* under the City of San Diego MSCP (Policy #5 on page 48). The MSCP should be clarified to state expressly that SR 125 South is *permitted use* within the MSCP preserve area.

Chula Vista

The City of Chula Vista Draft Subarea Plan for the MSCP Program (August 1, 1996) contains one figure (Page 4) and three policy statements potentially governing SR 125 South. The City of Chula Vista MSCP Subarea Plan map (Figure 2) identifies a potential SR 125 South southern alignment as an area within which a *take* authorization would be permitted (Johnson Canyon alignment). However, at the request of the Resource Agencies. this alignment was eliminated from further environmental analysis in favor of the Brown Field and the Brown Field Modified Alignments. Thus, it seems reasonable to delete the Johnson Canyon Alignment as an area in which a *take* authorization would be authorized, but a policy statement within the document which would expressly state that a *take* authorization would be permitted in the SR 125 South alignment as identified through the completed SR 125 South EIR / EIS process.

The City of Chula Vista draft MSCP Plan expressly excludes SR 125 South from the preserve (Page 50), third paragraph states: "The following specific preserve exclusions are identified for Otay Ranch (See Otay Ranch RMP, Section 6.6 for further details) ..... The proposed alignment for SR 125 South from Otay Mesa through Otay Ranch along the preferred alignment is *excluded* from the preserve are, as is the alignment for Alta Road, a near parallel alignment to the east. This specific alignment will depend on the final Caltrans and Wildlife Agencies review and permit process. 34(b)

Page 47 of the Chula Vista MSCP Plan (Section 6.4.2.5) states, "State Route 125 South is *exempt* from the requirements of the Chula Vista Subarea plan because it will be reviewed and *take* list of species will be authorized by wildlife agencies through separate processes."

General Chula Vista MSCP Policy 6.4.1.1 (Page 46) concerning infrastructure of the Chula Vista Plan especially permits necessary infrastructure within the preserve system including "Roads."

San Diego County

The county of San Diego Multi-Species Conservation Program (June 1996) contain a variety of figures and polices which potentially impact the location and construction of SR 125 South.

Figure 1.2 (Page 4) of the County Plan depicts the South County Segment Map, identical to the City of Chula Vista plan, this map authorizes a *take* of habitat for the SR 125 South Alignment through Johnson Canyon. This alignment was deleted from future SR 125 South EIR / EIS analysis at the request of the Resource Agencies in favor of the Brown Field and Brown Field Modified Alignments to the west. Therefore, it would be appropriate to delete the Johnson Canyon alignment as an area within which a *take* may be permitted, and include text within the County MSCP document which would authorize a *take* for the SR 125 South alignment as ultimately adopted.

Like the Chula Vista plan, the County Plan indicates that a portion of the Horseshoe Bend CAC variation alignment falls within the jurisdiction of the Sweetwater Authority MSCP Subarea Plan. Since this plan is not part of the present MSCP package, is impossible to determine regulations which might apply to this alignment. Since SR 125 South is a necessary regional facility, the treatment of SR 125 South should be settled as part of the ongoing MSCP Plan preparation process, and should not wait the development of polices governing the Sweetwater Authority area (see Sweetwater discussion).

Page 1-8 of the draft County of San Diego Subarea Plan contains the "Guiding Principals" which were utilized to develop the Subarea plans. One of the guiding principles provides the following: "Provide for the development of future infrastructure across and adjacent to preserve lands".

Page 1-19 of the County Plan, contains section 1.8.2 Metro-Lakeside-Jamul segment which states "the *take* of covered species and their habitat associated with County infrastructure projects may be authorized using the minoamendment process so long as long as appropriate mitigation is provided and the project does not preclude achieving the conservation goals of the Subarea plan ".

It is interesting to note that the Lake Hodges Segment of the County MSCP (page 2-21) expressly provides "new public infrastructure facilities necessary and incidental to development allowed in the approved projects which contributed to the open space are permitted within the subregional preserve systems, In addition, public infrastructure necessary for the public health and safety is permitted within the subregional preserve system. public infrastructure includes but is not limited to: Circulation Elements Roads ....."

The South county Segment provides similar, but not identical, language. Section 3.3.3 (Infrastructure) of the South County Segment, page 3-33 provides, "New public infrastructure facilities necessary and / or incidental to development allowed within the approved project which creates the open space *are permitted* within the subregional preserve. Certain public infrastructure necessary for public health and safety or economic reasons is permitted within the subregional preserve system. Any impact to habitat, sensitive species or listed species shall be considered to be an *incidental take* . Mitigation guidelines for such impacts are defined in section 3.8."

The South County Segment requires mitigation, while the Lake Hodges Segment permits infrastructure to be constructed without application of mitigation ratios. Section 3.7.3 of the South County Segment states that "State Route 125 South is *exempt* from the requirements of the South County Plan because it will be reviewed and approved by wildlife agencies through a separate process." (page 3-34).

Page 3-36, Section 3.7.6 of the South County Segment identifies specific preserve exclusions within Otay Ranch as follows: "The proposed alignment for SR 125 South from Otay Mesa through Otay Ranch along the preferred alignment is excluded from the Preserve Area, as is the alignment for

34(c)

Alta Road along a near parallel alignment to the east. The specific alignment will depend upon the final Caltrans and wildlife agency review and process." 34(c

Section 3.7.2 concerning the Otay Valley Regional Park expressly permits SR 125 South as *permitted use* within the preserve (page 3-37).

Sweetwater Authority

The northern alignment of the SR 125 South as depicted in Figure 2, shows that the Horseshoe Bend and CAC Alignments cross areas which will be governed by " other agency-preserve planning efforts," One portion appears to be governed by the County of San Diego South County Segment (see County discussion) and the other area appears to be governed by the Sweetwater Authority Plan. Since a Sweetwater Authority Subarea Plan is not part of the currently pending MSCP Program, it is difficult to determine the impact of the MSCP Plan on a potential SR 125 South alignment in this area. The Average Habitat Conservation MHPA Map (Figure 3.2, MSCP Program, Volume 1) indicates that this will achieve an 80% conservation standard. The source, authority and rational for this 80% standard is unclear. 34(d)

35 ALLEN E. SHAW LETTER, 10/11/96

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35(a) The parcel lies at the edge of the Multi-Habitat Planning Area but contains habitat of high sensitivity that is now extremely rare in San Diego: southern maritime chaparral. In addition, it is not isolated or fragmented from the rest of the preserve. The entire eastern edge and half of the southern edge of the parcel lie adjacent to open space which is either in easement or in negotiation for preservation. Therefore, although it does not provide a linkage function, it does provide viable and highly sensitive habitat.

35(b) The MSCP Plan, which covers the entire MSCP study area, deals very generally with fire management and provides flexibility in order to allow (and not dictate) the individual jurisdictions to deal more specifically and locally with the issue. The Fire Department and the Landscape Section of the Development Services Department address brush management through the Landscape Technical Manual (LTM). These are the appropriate groups who deal with the issue currently and would continue to do so. A wildland/open space fire management plan is planned for development by the Fire Department. It would follow the adoption of the MSCP. In addition, the Fire Department is on a Southern California based interagency committee which is developing recommendations for dealing with wildland fires.

35(c) Mapping was done twice in this area: once for the Environmental Tier process for the development of the Framework Plan, and again for the development of a Subarea Plan. The first mapping was done by City staff with the aid of existing maps of this area and surrounding areas, 400' scale aerial photographs, and fieldwork. The second mapping was completed by a biological consulting firm that used 400' scale aerial photos, existing maps, and fieldwork. Both concluded that the form of chaparral located in this area is southern maritime chaparral, based on soils, the level of moisture (fog) in the air, and the presence of sensitive species such as Del Mar manzanita and/or coast white lilac. Regarding fire safety mapping, that has been generally done for the Landscape Technical Manual's Brush Management program (Section 6.4 - Fire Hazard Severity Classification, page 43 of the LTM). The Fire Department determines specific fire hazard severity ratings on individual properties on a case-by-case basis.

35(d) Please refer to response to Comment 35(b).

October 11, 1996

John Kovac, Senior Planner
Development and Environmental Planning Division,
City of San Diego, CA 92101

Re: Comment on the Draft Environmental Impact Report/Draft Environmental Impact Statement of the Multiple Species Conservation Program.

Dear Mr. Kovac:

As property owners within the proposed M.S.C.P. Preserve we have some very real concerns that the EIR/EIS have not fully addressed. Our property lies in both the FUA and Carmel Valley Planning Area (40 acres; Parcel # 304-021-06, Description: SW 1/4 of SE 1/4 SEC 7-14-3W which in street terms borders Old El Camino Real and Marcasel Place. The designation of Said property is unacceptable as it lies at the edge of the Preserve, not in the middle. Therefore it does not perform a linkage function; it merely provides additional habitat of Chaparral. Page C-23 of the **LANDSCAPE TECHNICAL MANUAL**, produced by the City of San Diego Planning Department (November 1989), describe this Chaparral as being a species that, "accumulate dry fuels more rapidly, and in response to drought, drop their leaves more readily and at an earlier stage in the dry (fire) season, (Radtke 1983)." In a meeting with Keith Greer and Sandra Cleise on Monday, September 30, 1996, Ms. Cleise furthered our concerns about the potential of fire hazards within the M.S.C.P. by her statement, "It's not a question of if said property will burn, but when will it burn." As Senior Planner of the Development and Environmental Planning Division, City of San Diego, you are aware of the 1989 Mission Gorge/Santee Fire, the June 30, 1985 Mission Valley/Normal Heights Fire with the main fuel of said fires being Chaparral. **35(a)** **35(b)**

We are not a linkage in the Proposed Preserve as we sit on the edge of the Preserve and our land adjoins the heavily urbanized area. In a phone conversation with Mike Evans of the U.S. Fish and Wildlife Service, Carlsbad, CA, he told us that Mapping was done by aerial photos, old Green Space maps and public input. We feel that properties such as ours, in Urbanized areas, need to be surveyed in such a method that the potential fire hazard can be recognized and addressed with public safety being as important as the environmental issues. **35(c)**

Richard Leake of the Brush Management Division, San Diego Fire Department, in a phone conversation stated that when Chaparral burns it can take up to six to seven years to rejuvenate. We feel that being in a heavily urbanized area and the fact that Chaparral "will burn" eventually, that the potential of loss is great to both the environment and to humans. Only Section 3.5.4. of the Draft EIR, and Section 6.3.4 of the MSCP Volume I, August 1996 and page 52, Section 1.4.3 **35(d)**

35(d)

Number 7 of the MSCP Subarea Plans Volume II, August 1996, refer to fire hazards. This represents that less than two pages out of all three lengthy documents deal with this hazard. To make matters worse, the Fire Management of Section 6.3.4 is vague as all recommendations such as prescribed burning, fire management for human safety, and subarea plans for the future only use the word "**should**" in their guidelines rather than the word "**shall**" which has both strength and meaning.

Required "Open Space" such as ours is nothing but a potential fire hazard, a proven trash dump, as well as housing for transients, and illegal off-road vehicle activity which does not preserve the environment but harms it. We would appreciate hearing from you on this matter as well as being informed on any and all meetings scheduled in the future.

Please address all notices to: Allen E. Shaw
7211 Lantana Terrace
Carlsbad, CA 92009

I can be reached by phone at the following numbers;

(619) 431-0968
(707) 839-8474

Sincerely,

Allen E. Shaw by S. R. Owen

Allen E. Shaw

36 ANTERO RIVASPLATA, STATE CLEARINGHOUSE, 9/30/96

R **36(a)** Comment noted.

36

State of California

GOVERNOR'S OFFICE OF PLANNING AND RESEARCH
1400 TENTH STREET
SACRAMENTO 95814

PETE WILSON
GOVERNOR

LEE GRISSOM
DIRECTOR

October 11, 1996

JOHN M. KOVAC
CITY OF SAN DIEGO PLANNING DEPARTMENT
1222 FIRST AVE, MS 501
SAN DIEGO, CA 92101

Subject: MULTIPLE SPECIES CONSERVATION PROGRAM FRAMEWORK PLAN SCH #: 93121073

Dear JOHN M. KOVAC:

The State Clearinghouse submitted the above named environmental document to selected state agencies for review. The review period is closed and none of the state agencies have comments. This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act. 36(a)

Please call at (916) 445-0613 if you have any questions regarding the environmental review process. When contacting the Clearinghouse in this matter, please use the eight-digit State Clearinghouse number so that we may respond promptly.

Sincerely,

Antero A. Rivasplata

ANTERO A. RIVASPLATA
Chief, State Clearinghouse

36

Notice of Completion

Appendix F

Mail to: State Clearinghouse, 1400 Tenth Street, Sacramento, CA 95814 916-445-0613

See NOTE below

SCH # 93121073

Project Title: MULTIPLE SPECIES CONSERVATION PROGRAM (MSCP) PLAN

Lead Agency: City of San Diego
Contact Person: John Kovac/Mary Ladiana
Street Address: 1222 First Avenue, MS 501
Phone: (619)236-6268/(619)236-6545
City: San Diego **Zip:** 92101
County: San Diego

Project Location

County: San Diego
City/Nearest Community: County-wide
Cross Street: County-wide
Total Acres: 160,000
Assessor's Parcel No.: County-wide
Section: n/a Twp.: n/a Range: n/a Base: SBBM
Within 2 Miles: State Hwy #: County-wide
Waterways: County-wide
Airports: County-wide
Railways: County-wide
Schools: County-wide

Document Type

CEQA:
- ☐ NOP
- ☐ Early Cons
- ☐ Neg Dec
- ☒ Draft EIR
- ☐ Supplement/Subsequent
- ☒ EIR (Prior SCH No.) 93121073
- ☐ Other

NEPA:
- ☐ NOI
- ☐ EA
- ☒ Draft EIS
- ☐ FONSI

Other:
- ☒ Joint Document
- ☐ Final Document
- ☐ Other

Local Action Type

- ☐ General Plan Update
- ☒ General Plan Amendment
- ☐ General Plan Element
- ☒ Community Plan
- ☐ Specific Plan
- ☐ Master Plan
- ☐ Planned Unit Development
- ☐ Site Plan
- ☐ Rezone
- ☐ Prezone
- ☒ Use Permit
- ☐ Land Division (Subdivision, Parcel Map, Tract Map, etc.)
- ☐ Annexation
- ☐ Redevelopment
- ☐ Coastal Permit
- ☒ Other Approve implementing agreement

Development Type*

- ☐ Residential: Units ____ Acres ____
- ☐ Office: Sq.ft. ____ Acres ____ Employees ____
- ☐ Commercial: Sq.ft. ____ Acres ____ Employees ____
- ☐ Industrial: Sq.ft. ____ Acres ____ Employees ____
- ☐ Educational
- ☐ Recreational
- ☐ Water Facilities: Type ____ MGD ____
- ☐ Transportation: Type ____
- ☐ Mining: Mineral ____
- ☐ Power: Type ____ Watts ____
- ☐ Waste Treatment: Type ____
- ☐ Hazardous Waste: Type ____
- ☒ Other 160,000 acre habitat preserve

*No development proposed

Project Issues Discussed in Document

- ☐ Aesthetic/Visual
- ☒ Agricultural Land
- ☐ Air Quality
- ☐ Archeological/Historical
- ☐ Coastal Zone
- ☐ Drainage/Absorption
- ☐ Economic/Jobs
- ☐ Fiscal
- ☐ Flood Plain/Flooding
- ☐ Forest Land/Fire Hazard
- ☐ Geologic/Seismic
- ☐ Minerals
- ☐ Noise
- ☒ Population/Housing Balance
- ☒ Public Services/Facilities
- ☐ Recreation/Parks
- ☐ Schools/Universities
- ☐ Septic Systems
- ☐ Sewer Capacity
- ☐ Soil Erosion/Compaction/Grading
- ☐ Solid Waste
- ☐ Toxic/Hazardous
- ☒ Traffic/Circulation
- ☒ Vegetation
- ☐ Water Quality
- ☐ Water Supply/Groundwater
- ☒ Wetland/Riparian
- ☒ Wildlife
- ☒ Growth Inducing
- ☒ Landuse
- ☒ Cumulative Effects
- ☐ Other

Present Land Use/Zoning/General Plan Use

Project is County-wide and encompasses a variety of land uses, zoning and general plan designations

Project Description

Establish a program for the conservation and management of self-sustaining, viable populations of federally listed an key candidate species and their habitats.

State Clearinghouse Contact: Mr. Chris Belsky (916) 445-0613

State Review Began: 8.29.96

Dept. Review to Agency: 9.27

Agency Rev to SCH: 10.9

SCH COMPLIANCE: 10.11

Please note SCH Number on all Comments

93121073

Please forward late comments directly to the Lead Agency

AQMD/APCD 27 (Resources: 8.31)

Project Sent to the following State Agencies

- X Resources
- ___ Boating
- ___ Coastal Comm
- ___ Coastal Consv
- ___ Colorado Rvr Bd
- X Conservation
- X Fish & Game # 5
- ___ Delta Protection
- X Forestry
- X Parks & Rec/OHP
- ___ Reclamation
- ___ BCDC
- X DWR
- ___ OES
- ___ Bus Transp Hous
- ___ Aeronautics
- ___ CHP
- X Caltrans # 11
- ___ Trans Planning
- ___ Housing & Devel
- ___ Health & Welfare
- ___ Drinking H20
- ___ Medical Waste
- ___ State/Consumer Svcs
- ___ General Services
- ___ Cal/EPA
- ___ ARB
- ___ CA Waste Mgmt Bd
- ___ SWRCB: Grants
- ___ SWRCB: Delta
- ___ SWRCB: Wtr Quality
- ___ SWRCB: Wtr Rights
- X Reg. WQCB # 9
- ___ DTSC/CTC
- ___ Yth/Adlt Corrections
- ___ Corrections
- ___ Independent Comm
- ___ Energy Comm
- X NAHC
- ___ PUC
- ___ Santa Mn Mtns
- *X State Lands Comm
- ___ Tahoe Rgl Plan
- ___ Other: ____

37 ANTERO RIVASPLATA, STATE CLEARINGHOUSE, 10/11/96

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37(a) Comment noted.

(37)

37

State of California

GOVERNOR'S OFFICE OF PLANNING AND RESEARCH
1400 TENTH STREET
SACRAMENTO 95814

PETE WILSON
GOVERNOR

LEE GRISSOM
DIRECTOR

MEMORANDUM

DATE: Sept. 30, 1996

TO: LEAD, RESPONSIBLE, AND TRUSTEE AGENCIES

FROM: Antero Rivasplata, Chief, State Clearinghouse Antero A. Rivasplata

RE: State Clearinghouse Temporary Shutdown on October 22, 1996

Comment Noted

New system software will be installed on the State Clearinghouse computers on Tuesday, October 22, 1996. This will require us to shut down the computers from early that morning until late that afternoon. In concert with the upgrade, the Clearinghouse staff will be in mandatory training classes for most of that day.

As a result, the ability of the Clearinghouse to process and circulate environmental documents will be severely limited on October 22. We will not be able to meet our standard of sending out documents on the same day that we receive them. **Most, if not all, of the environmental documents which we receive on October 22 will begin their review period on October 23.** This temporary shutdown will not affect documents submitted either before or after October 22. 37(a)

Please keep this in mind when scheduling the submittal of Notices of Preparation, proposed Negative Declarations, and draft Environmental Impact Reports to the State Clearinghouse. We apologize for any inconvenience which this may cause. The new system will enable us to continue to serve you in a timely fashion.

38 NOT A LETTER OF COMMENT – ADMINISTRATIVE RECORD.

39 PHILIP PRYDE, SAN DIEGO AUDUBON SOCIETY, NO DATE

R

39(a) Refer to **Theme Response I, Species Analysis Approach.**

39(b) The term "adequately conserved" was used in the MSCP Plan to denote those species considered in a preliminary analysis to meet the take authorization issuance criteria, as provided for take authorizations in Section 10(a)(1)(B) of the federal Endangered Species Act (ESA) and for management authorizations pursuant to the California ESA and NCCP. These criteria require that 1) the taking would be incidental; 2) the applicant would, to the maximum extent practicable, minimize and mitigate the impacts of such taking; 3) the applicant would ensure that adequate funding for the Plan would be provided; 4) the taking would not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and 5) the measures, if any, required by the U.S. Fish and Wildlife Service would be met. Table 3-5 has been revised to reflect whether or not species are expected to meet these criteria. Please refer to revised MSCP Table 3-5 in the Revisions to the MSCP Plan, January 1997.

39(c) The target species list was not just a compilation of federal and state candidate and listed taxa. In addition to federal listed, proposed, and candidate species, the target species list included species that were believed to represent "umbrella species", locally rare and narrow endemics species, species with broad habitat requirements and home ranges such as the mountain lion, species that require corridors such as the mule deer, species that represent key preserve design tenets such as the golden eagle, and species that required specific vegetation communities such as Cooper's hawk, burrowing owl, grasshoppper sparrow, and western bluebirds. The MSCP Plan is a habitat based plan that is intended to result in preservation of sufficient habitat within a system of preserves that would maintain the full range of species dependent upon that habitat.

The species mentioned by the commenter are not threatened with extirpation or extinction locally and are not proposed to be covered by the MSCP Plan. The black skimmer nests in San Diego County and Orange County. It nests on the salt evaporator pond dikes in South San Diego Bay; conservation measures identified for the elegant tern elsewhere in this document provide equal benefit to the black skimmer. The gray vireo nests in montane areas (Laguna Mountains, etc.), outside of the MSCP study area. The long-eared owl is a rare and localized resident and winter visitor (Unitt, 1984); it was formerly fairly common as a resident in the coastal lowland, nesting in the riparian and live oak woodland until the turn of the last century. Conservation measures included in MSCP Plan for other riparian and oak woodland raptors (Cooper's hawk) should benefit the long-eared owl if they recolonize the coastal woodlands of the MSCP study area.

39(d) In determining whether the impacts to species from the proposed MSCP Plan are significant, both the context and severity of adverse and beneficial impacts are considered. Context includes the status of the species range wide and locally; the importance of the affected population to the recovery and survival of the species; existing and future threats to the species; and the degree to which the

plan contributes to the species' conservation. Severity includes the duration and intensity of the impact; the degree to which possible effects on the species are highly uncertain or involve unique or unknown risks; the degree to which the action may establish a precedent for future actions with significant effects on the species; and whether the action is related to other actions with individually insignificant, but cumulatively significant impacts on the species. An effect that cannot meaningfully be detected, measured, or evaluated relative to the species' status or habitat as a whole was determined to be insignificant and require little to mitigate or minimize the potential take associated with the proposed action. Based on the wide-ranging nature of these species, and the minor role of the MSCP study area in their overall conservation, the wildlife agencies determined that the impacts of the proposed action on these species was insignificant.

39(e) See responses to Comments 45(k) and 45(l). Unitt (1984) indicates the ferruginous hawk is an "uncommon winter visitor to grasslands and agricultural fields...largest numbers in the broad valleys extending north and east of Lake Henshaw..." Unitt also indicated the hawks occur sporadically on the coastal slope of the county. San Diego County does not constitute a significant portion of this species' range, therefore conservation measures and/or incidental taking of the species is considered insignificant.

39(f) "Salt Works" have significant wildlife habitat value and include more than just saltpan habitat. The 75% conservation zone applies to the Western Salt operation, but a portion of the ponds (the outermost ponds) are owned by the State Lands Commission and are leased to Western Salt. A total of 603 acres of tidelands and levees/roads at south San Diego Bay are owned by State Lands Commission. The state lands leased to Western Salt Company are subject to an agreement which requires the operations and activities associated with salt production to not adversely affect the wildlife usage of the leased lands. (Lease No. PRC 175.1). In recent years, the lands operated by Western Salt have supported substantial shorebird, seabird and marsh bird species. The Department of Fish and Game intends to pursue a Memorandum of Understanding with the State Lands Commission regarding the leased lands and their importance to the MSCP. In addition, the Service has a proposal under consideration to establish a National Wildlife Refuge in south San Diego Bay which would encompass this resource-rich area. Development of wetlands will continue to be regulated through state and federal regulatory processes. See also responses to Comments 61(f) and 45(k).

37(g) See responses to Comments 45(m) and 45(p).

39(h) The Geographic Information System data for sensitive species in the regional data base consist of point locations and polygons. Point locations represent the specific location of a geographically concentrated population of a rare plant, a small area occupied by a colonial animal, or the place of a single observation of a rare plant or animal. Hence, point data can represent a range of things, the specific feature of which is identified in the documentation that accompanies the data base. Polygons represent an area where a population of a rare species covers a comparatively large space; they are a

substitute for numerous point locations. Many vernal pool complexes also are mapped as polygons rather than numerous points.

In Table 3-5, the phrase "no polygons" simply means that all of the data in the data base are point locations, or that there may be no mapped data at all.

The two points listed for the elegant tern are locations of colonies. For this and several other relatively mobile species, only nesting sites were mapped. General points of observation are not particularly useful for defining important areas for other wide-ranging animals. Analyses for the elegant tern focused on determining whether least tern was covered, assuming that if it was adequately protected, the elegant tern would be protected as well.

39(i) The wildlife agencies have initiated discussions with the military installations within San Diego County to develop conservation plans on military reservations that contribute toward and are consistent with the goals of the NCCP regional planning efforts. It is their intent to address these conservation efforts through formal consultations for listed species pursuant to Section 7 of the ESA and through Sike's Act agreements that provide for the continuance of military missions. Provisions would be included in these agreements to maintain conservation easements over lands necessary for regional conservation should the military reservations revert to other uses in the future.

39(j) See response to Comment 39(a).

39(k) Comment noted.

San Diego Audubon Society: Comments to MSCP Plan - Volume 1

To: City of San Diego, Land Development Review Division

From: San Diego Audubon Society

We would like to begin by saying that we strongly favor the habitat approach to preserving endangered species, as opposed to focusing on individual species. We believe that in the long run the habitat approach has far better prospects for success. Therefore, we endorse the general concept of the MSCP, although we have reservations about some specific aspects of its implementation.

These comments by San Diego Audubon Society are limited to the discussions of the 28 species of birds that were evaluated for the Plan (as listed in Tables 2-1 and 3-5) , and the following comments relate mainly to the summary findings in Table 3-5, and the footnotes that accompany this table.

In general, we found it difficult to comment on the Plan's conclusions as to whether or not a species would be adequately covered, because of the difficulty in understanding how the conclusions contained in Table 3-5 were reached, and insufficient definitions of many of the terms used. 39(a)

We note that of the 28 bird species that were evaluated for the MSCP (table 2-1), 27 are classified either as "adequately conserved" (20) by the plan, or are designated as "insignificant" (7); only the Grasshopper sparrow is not covered (i.e., is not deemed to be adequately covered by the plan). For reasons indicated in the following paragraphs, we are not inclined to be quite so optimistic, at least if "adequately conserved" implies that the species is thought to have good long-term prospects for survival in San Diego County. Indeed, it is not clear if "adequately conserved" refers to the species' status in San Diego County, its local critical habitat, or to the prospects for the species nationally; this should be clarified. 39(b)

To begin with, we wonder if merely using the Federal and California compilations was the best way to get an adequate list of avifauna for evaluation for San Diego's MSCP. The lists are of species of concern nationally, but may not correspond to local avifauna realities. For example, they may include some species that appear to be merely accidental locally, or to be in little danger locally, or even expanding in numbers, such as reddish egret, Canada goose, or brown pelican, while overlooking some species of considerable interest locally, such as black skimmer, gray vireo, or short-eared owl. 39(c)

Because of the difficulty in knowing how Table 3-5's conclusions were derived, we have as many questions as comments. The main ones follow.

We have a very serious concern about the implications of the "insignificant" finding in Table 3-5 (which means that the "MSCP is not a significant portion of the species' range."). We are apparently to assume from the Plan's paragraph 3.3 that if the "insignificant" finding has been made, then this is adequate reason to call the species "covered". However, this does not necessarily seem to mean that its habitat is deemed to be "adequately conserved" in the county. Does the "insignificant" finding imply a) that the species will be protected and stable within the preserve network (and that therefore "take" can occur outside the preserve), or b) does it imply that we are not concerned about its status within the preserve (or outside of it) because its local numbers are "insignificant" (even though they might be declining)? If the latter (which appears to be the case), then we have the following grave concern: if the MSCP is to be a "national model" as is often suggested, then couldn't all future MSCP study areas elsewhere in the country also make the same "insignificant" finding (since they would all probably be a small part of the total range), resulting in universal take permission outside of all MSCP areas, regardless of the actual local or national population dynamics of the species? We see this finding as a serious weakness in the model. 39(d)

Given the rationale (or at least the definition) of the "insignificant" finding, why isn't the bald eagle by this logic deemed "insignificant"; certainly San Diego County is only a minute portion of its total range. Thus, there seems to be inconsistency in the way the "adequately conserved" versus "insignificant" findings are presented. Indeed, for most of the 28 species listed (excluding the California gnatcatcher, etc.), the San Diego region is only a small part of the total range. Surely this is true for the reddish egret, long-billed curlew, burrowing owl, bald eagle, and numerous others. 39(d)

Some comments on other specific avian species evaluated in the Plan:

• Swainson's hawk: given the Comment that is presented in Table 3-5 ("may cause extirpation"), is "insignificant" justified?

• Ferruginous hawk: we wonder whether San Diego County is really an "insignificant" part of its wintering territory? 39(e)

• Golden eagle: is the "insignificant" finding justified given its declining status in the county (see additional comments, below)?

• Snowy plover: Saltworks are "essential", but there are no guarantees that the saltworks will remain a safe habitat for long; development proposals exist even at present. 39(f)

• Burrowing owl: are we giving up on it outside of military bases, etc.? It is questionable that the Plan will prevent its extirpation outside public lands.

• California gnatcatcher: why so much emphasis on one part of the Chula Vista plan? The write up makes it sound like this one area is the key to saving the entire species (?)

For non-migratory species such as the last two listed above (and perhaps for all the listed avian species), the plan appears, at least implicitly, to assume that we know what [minimum] viable populations are for the various species. Having some knowledge of [minimal] viable populations would seem to be very closely connected to any effort to categorize a particular species (such as the gnatcatcher) as "adequately conserved" locally. It seems unlikely that we have enough biological knowledge of these 28 species to feel confident about [minimum] viable populations, particularly when one gets into considerations of stochastic population crashes (see Gilpin and Soule, 1986). For migratory species, the concept is even more problematic; what, for example, does "viable population" mean in the context of a wintering species such as ferruginous hawk? 39(

Other comments and questions concerning Table 3-5:

It is not explained what the phrase "no polygons" [in the study area] means. We're familiar with the term "polygon" as used in GIS mapping, but the phrase "no polygons" seems to have a special meaning here. It was informally suggested to us that "no polygons" as used in Table 3-5 means that the species' locations haven't been adequately mapped. But if this is correct, doesn't this have some serious implications for the creation of a preserve network? It certainly isn't helpful for reader comprehension to simply report that widely ranging species such as Cooper's hawk or rufous-crowned sparrow occur in "no polygons". The usage of this term in the context of the third column of Table 3-5 needs to be clarified. 39)h)

Similarly, what is a "point" in the second column of Table 3-5? Can it mean either one occurrence, or a cluster or group of sightings? If a cluster of sightings, can this cluster be of any size? If so, the numbers being referred to in this column could be very vague and possibly misleading. For example, it seems especially confusing to say that there are [only] "2 points" listed for elegant tern; is one of these "points" all of San Diego Bay? Is the other one Mission Bay? Then what about the other coastal estuaries and lagoons? Perhaps even more importantly, are feeding areas of the elegant and least terns in San Diego Bay specifically protected by the Plan (or by the Port District)?

For several species, there seems to be a strong reliance on military bases. This seems risky. Is there any assurance that if a military base is deactivated in the future, that all of its protected areas will remain unchanged and free from adverse effects under new land uses and tenure? 39(i)

To elaborate on a question posed earlier, does the term "adequately conserved" refer to the local population of the species, or to the local habitat a species requires? In the definition of "adequately conserved by the Plan" (page 3-48), what does "will provide for" mean? Does "will provide for" mean specifically that adequate long term stability of the population will be reasonably assured by the Plan, or does it just mean that a certain amount (presumably, an "adequate" amount) of habitat will be there? Also, the word "adequately" in the phrase "adequately conserved" is necessarily subjective. The Audubon Society is probably less optimistic that some of these species, or their habitat (e.g., golden eagle), will be "adequately conserved" than are those who prepared Table 3-5. 39(j)

Similarly, how can we be confident that a species or habitat is "adequately conserved" when we will not know until the county is fully developed exactly what pieces of the proposed preserve network have actually been acquired and constitute long-term viable habitat?

We are also concerned that in some cases "adequately conserved" or "insignificant" is applied even in situations where the species will not necessarily survive locally in the long run, as for example is the case vis-à-vis the golden eagle.

Finally, we would question that we know as much about the autecology of individual species (the gnatcatcher would be a good example) as the plan assumes we know (but even if our suspicion is correct, it may be that nothing can be done about this in the short run). 39(k)

The foregoing represent some of our concerns. As noted at the start, we strongly support the concept of multi-habitat planning; our goal with these comments is to strengthen the present Plan by making it more understandable. It may be that some of these comments and concerns can be answered by providing more detailed definitions and explanations of concepts and terms used in the Plan. In any event, we hope that the appropriate agencies involved with the MSCP will be able to reply to these various concerns and questions that we have raised, and if appropriate to modify or expand upon the concepts discussed above wherever the occur in the Plan. .

For the San Diego Audubon Society,

Sincerely,

Philip R. Pryde, Vice-President

Reference: Gilpin, M. E. and Soule, M. E. 1986. Minimum viable populations: processes of species extinction. Chapter 2 in Soule, M. E., ed., *Conservation Biology*. Sunderland, MA: Sinauer Associates, pp. 19-34.

40 D. BITNER, EAGLE SURVEY PROJECT, 10/14/96

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40(a) Comment noted. We appreciate the receipt of additional information on the golden eagle. This new information has been incorporated into the MSCP database and analyzed to determine the effects of the plan on the golden eagle. We concur that yearly monitoring and nest protection is essential and these measures would be incorporated into the management plans for each subarea plan requesting coverage for this species. See also response to Comment 45(l).

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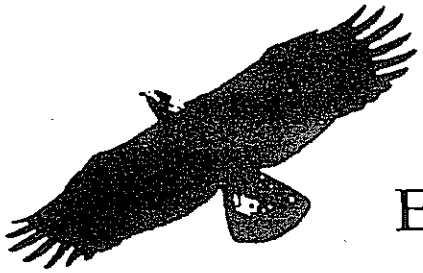

EAGLE SURVEY PROJECT

MSCP / EIR Land Development Review Division
1222 1st Avenue
Mail Station 501
San Diego, Ca 92101

October 14,1996

Dear Review Committee,

We appreciate the opportunity to express our concerns about the MSCP plan that you are about to consider for approval. Primarily I will address the Golden Eagle, one of the species listed in the MSCP. Saving the Golden Eagle within the MSCP area is critical to saving the species within San Diego County and at the same time assures the survival of many other species.

Golden Eagles have large territories which means that if you can save these large predatory birds then by definition you are saving sufficient habitat for many other species of both plants and animals. However if the MSCP plan fails to save these magnificent avian predators then the MSCP plan to save the ecological integrity of the area has failed.

Within the entire MSCP plan map furnished to me by US Fish and Wildlife Service we had documented 44 active Golden Eagle territories prior to the 1950's. Since then and especially since the 1970's this number has been reduced to 25 active territories. Nineteen (19) of those original 44 pairs have been extirpated from San Diego County. All of San Diego County today has only 35-40 out of over 80 Golden Eagle pairs that formerly occupied active territories. The significance of the MSCP plan to the survival of the Golden Eagles in San Diego County has been grossly underestimated in the reports that have been furnished for our review.

The MSCP management area is less than the total map furnished. Therefore let us examine the MSCP area by itself. Twenty seven (27) pairs of Golden Eagles formerly occupied land that falls within the MSCP boundaries. Today only 14 pairs of Golden Eagles survive either entirely or in part within the MSCP Management area. This represents a decline of 52% but still accounts for almost 40% of all of San Diego Counties remaining Golden Eagles.

Noted earlier, only 35 - 40 pairs of Golden Eagles remain in San Diego County. The difference of five pairs represents a couple of non breeding pairs and some year to year fluctuation. We have maintained yearly monitoring of these Golden Eagles since 1990 and have accumulated records from as far back as 1895 to determine the historical nesting of the species in San Diego County. Therefore we have the

40(a)

PO BOX 2209, RAMONA, CA 92069 (619) 789-1932 FAX (619) 789-0525

background and knowledge to recommend what needs to be done to save the remaining Golden Eagles of San Diego County.

Yearly monitoring of the species is essential. Golden Eagles have only one or two young per year. When reproduction is stopped or interrupted over an extended period of time there are no replacement eagles for natural mortality or accidents to adults. Our changing landscape in San Diego County requires that we raise sufficient young eagles that are use to developments and modified land use. Without this conditioning as young eagles replacement of the adults we have today is unlikely and the future is indeed bleak for Golden Eagles in San Diego county. It is highly unlikely that we could successfully recruit new eagles from more remote areas of California.

Protection of nest sites is essential as is protection of the feeding areas. The exact parameters that effect each eagle territory are never easy to assess. The maps that accompany this document show territories that represent the areas that the eagles currently roam over. All of it is not critical to there survival but more detailed studies need to be done for each territory that will enable managers to make wise use decisions and still not jeopardize the future of Golden Eagles in The MSCP area plan.

Without this knowledge and protection climbers , hikers, developers, shooters, and even our park and land managers will continue to make decisions that will ultimately lead to the total loss of Golden Eagles in the MSCP area plan. The current species evaluation plan issued for the MSCP says that it is likely that the long term effect of the plan will be the total loss of the species in the MSCP area. This is unacceptable if this plan is truly one of saving San Diego's biodiversity.

What we are saying is that this plan will ultimately destroy 40% of all of San Diego's remaining Golden Eagles. If Brazil wanted to destroy 40% of their Amazon rain forests and put this down on paper as a management goal, the rest of the world would protest until they changed the plan. What would happen if an individual applied for a permit to the U.S. Fish and Wildlife Service to shoot out one pair of Golden Eagles each year for the next twenty years within the MSCP Area? Do you think they would approve it? Let's hope not !

This however is what we are doing if we know in advance that we are approving a plan that will ultimately destroy all the remaining Golden Eagles in the MSCP management area. We feel that another look needs to be made at what it will take to save a significant portion of our Golden Eagles and do what it takes to keep them alive and well in the preserve areas of the MSCP.

Sincerely yours,

Dave Bittner

Dave Bittner
Co-Director

41 FRED T. SPROUL, 10/15/96

R **41(a)** The wildlife agencies and applicants expect habitat outside of the preserve system with the exception of military lands or constrained lands, to be either lost or substantially degraded over time to such an extent that lands outside the preserve would not support listed species. The preserve system and its management in perpetuity is expected to compensate for the expected loss of habitats and the species supported by them. These concepts and the impacts associated with these actions are described in detail in the Draft EIR/EIS.

Linkages to the north and east were also incorporated into preserve design to allow for wildlife movement in these directions. As noted in the Draft EIR/EIS, habitat conservation plans under the auspices of the NCCP are being contemplated for the northern and eastern parts of San Diego County, therefore the MSCP preserve system should not represent an isolated habitat island.

Management of the preserve system is also an integral part of the plan. The wildlife agencies and applicants recognized that habitat management is essential to avoid habitat degradation through benign neglect and reduce preserve vulnerability from stochastic events such as massive wild fire.

Regarding the suggestion that there is a lack of will on the part of the local jurisdictions to properly implement the mitigation plan, it should be noted that the take authorization holders would be contractually obligated to implement the mitigation provisions of the plan under an Implementing Agreement (IA). Failure to do so could lead to revocation of the take authorizations and potentially subject the permittee to enforcement actions under federal Endangered Species Act (ESA) and California ESA.

41(b) Regarding the assertion that the MSCP "appears to hobble the authority and further supervision of the natural resources agencies", this is not the case. Under the MSCP Plan, participating local jurisdictions would be authorized take for otherwise legal activities, but with that take authorization comes the contractual obligation of implementing the mitigation measures as described in the IA. The IA is the mechanism by which the wildlife agencies are provided assurances that the mitigation and other Plan elements would be completed. The wildlife agencies have oversight authority to determine if the take authorization holders are in compliance with provisions of the IA. The IA does not authorize local jurisdictions to administer either the federal ESA and California ESA, thus, the wildlife agencies are unhindered in their authority to administer these laws.

Regarding the assertion that a "50-year permit period is too long for .... a program which could massively fail in much less time", the applicants have indicated they would request a 50-year permit term which is the time frame used to assess impacts of the proposed actions and assess consistency with the permit issuance criteria. Regarding the suggestion that future citizens, politicians, and biologists should re-evaluate and redirect the effectiveness of the program, it should be noted that the monitoring and

adaptive management provisions of the program provide regular opportunities for evaluation and redirection of the program based on the monitoring results and any applicable new information and technology.

41(c) The MSCP Biological Goals, Standards and Guidelines were not eliminated in developing the preserve system, but in fact were relied upon for the proposed preserve configuration and linkages. "Soft line" boundaries were employed to allow some local jurisdictions flexibility in assembling the preserve while respecting private property rights. Such plan flexibility does not necessarily portend a checker board preserve. As noted in the response above, while the local jurisdictions have responsibility for implementing mitigation provisions within their area of jurisdiction, the wildlife agencies have oversight responsibilities to assure proper implementation of the subregional MSCP Plan.

41(d) The comments are noted. They do not reflect on the adequacy or sufficiency of the Draft EIR/EIS or the data included in the MSCP Plan and responses are not necessary.

41(e) The comment suggests that "central oversight and integration of the monitoring data be undertaken by a large and independent team of biologists whose job and livelihood are not tied to the 'look good' success of the program" and further offers a monitoring model to follow.

The wildlife agencies are required by law to administer federal ESA and California ESA and would be contractually obligated under an Implementing Agreement (IA) to provide oversight and integration of the monitoring data. The wildlife agencies also believe that they would be provided sufficient funding and have the scientific expertise and integrity to accomplish this task in an unbiased manner. The criteria for assessing the success of the mitigation would be tied to scientific information available and tied to the enforcement provisions of the IA. CEQA, and possibly NEPA, compliance would be required for site specific actions not addressed in this programmatic document or in the subarea plans. Please also refer to **Theme Response X, Habitat Conservation Accounting Model.**

41(f) The wildlife agencies believe the MSCP Plan does represent multiple species conservation plan by virtue of the proposed mitigation (preserve system and management) encompassing numerous habitat types. Species would be considered covered by the Plan if they met the issuance criteria under federal ESA, California ESA, and NCCP. Considerations included the amount and quality (among other factors) of habitat included in the preserve system, proportion of populations protected, protective ordinances, or because certain species were unlikely to occur in the area and therefore highly unlikely to be harmed through implementation of the Plan, or effects to species as a whole were insignificant or discountable.

41(g) Wildlife agencies disagree that "the bottom line of the MSCP program is that of inadequate conditions for determining success". Please also refer to **Theme Response IV – MSCP Financing Plan: Regional Source of Funds.**

The wildlife agencies believe that the MSCP Plan is scientifically sound and provides, through the IA, strong assurances that the mitigation programs would be completed. The wildlife agencies believe that species and habitat losses associated with take authorizations would be compensated by maintenance of sufficient habitat associated with establishment of the preserve system and its perpetual management. As noted above, the MSCP does not "hobble" the agencies from administering either federal ESA or California ESA, but, rather, it provides for overarching review of the mitigation program by the wildlife agencies, and provides appropriate mechanisms for assuring adequate funding.

41(h) Comment noted.

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Fred T. Sproul
Post Office Box 848
Ramona, California 92065

October 15, 1996

John Kovac
City of San Diego
Development Services Department
1222 First Street, MS 501
San Diego, California 92101

The big question is whether this Multiple Species Conservation Plan that has had so much diligent effort behind it is truly big enough, inclusive enough, sincere enough and powerful enough to work. The percentages of sensitive species that are touted and the acreages boasted about in the MSCP sound good but are they real? The Preserve may be the last place where the processes of nature will survive, it must work, and any negative margin of error is extirpation. Such extirpations have been catalogued in isolated open space preserves by Dr. Michael Soule, and the gradual decline in diversity is very recognizable and predictable. It will be an interesting case in point, a good PhD thesis for an environmental historian, in about 30 years to compare the results and predictions of this MSCP and its affiliated efforts. If you want a preview, read Under Western Skies by Donald Worster.

The most probable course of events will be that any wild habitat outside the core preserve whether it is sensitive or not, will be brushed-off or graded as soon as Biological Core Areas are established. This will happen because people are now afraid of natural habitat and the government "taking" of land. Whether for the excuse of fire control, or property rights or just because the people who make land use decisions are mostly in the "clear off the land" ideological group - it doesn't matter why, most humans behave this way on land. This will further isolate the core areas and expose them to increased vulnerability from human impacts and "edge effects". Fire is the most probable impact in which large areas of the core biological preserve will undoubtedly be massively threatened. Repeated fires in any large core area will deplete local animal populations directly where recovery would require repopulation from adjacent areas. Most likely there will be no adjacent habitat from which such animal migration could occur as projected above. The MSCP core area is a strategically vulnerable insular design, if it were a military battle front the military would never allow it.

It is likely that much of the edge areas will become degraded. The Eagle Peak wildfire (1993) is an example of what we can expect, where suburbs and wildlands don't mix will. The Cleveland National Forest near a dense suburban development (San Diego Country Estates) this has resulted in Diegan Sage Scrub vegetation getting repeatedly re-burned (3 fires in three successive years) and gradually converted to annual grass dominated scrub. The 20 pair of California gnatcatchers that were on the site cannot re-occupy it fully unless people are controlled, and it is questionable if there is even enough funding to do so even by the professionally trained and federally funded land management agency (the USFS) in

41(a)

the Cleveland National Forest. 41(a)

Connections of the preserve areas to the east (many of these are future urbanizing areas) where development leapfrogs across the preserve - isolating it from the east. It is customary in environmental analyses to address the issues of biological corridors and the context within which a project occurs. This part of the MSCP has passed the responsibility to the S.D. County Biological Mitigation Ordinance. What is the likelihood that San Diego County will make a 180 degree turn-about and begin to enforce the habitat protection policies of the BMO any different than the Open Space Ordinance, Resource Protection Ordinance, Conservation Ordinance and other similar policies that are currently ignored or ineffective? In reality pressures are actually stronger than before to pursue the minimum enforcement of natural resource conservation. The County and other local jurisdictions are not independent enough to hold the line on development, they depend upon it for their tax revenues and power structure. The few exceptions are cities like Encinitas and Escondido, who having already eliminated most of the functional natural habitat within their borders, suddenly try to protect vestigial parcels as keepsakes.

There are many ways in which the MSCP appears to hobble the authority and further supervision of the natural resource agencies. The plan puts a lot of faith and responsibility in "Subareas" administered by independent "jurisdictions" where there could easily be a breakdown in expertise, motivation, staffing, funding or a sincere will to manage the plan. The effect of authorizing so many other jurisdictions with the power of granting take permits takes it out of hands of the natural resource professionals. Less than professional results should be expected.

There must be no hindrance of the USFWS and the CDFG in their means and authority to oversee, judge independently and if necessary to reclaim their authority and to suspend the power it has yielded to local jurisdictions. This plan should have adequate mechanisms such that the granting agencies are able to reverse "take authorization" promptly enough to protect imperiled species. Agencies should be fully unhindered in their authority to implement further sensitivity listing or critical habitat determinations. Fifty years is much too long a lease for a program which could fail massively in much less time. This program should face some very stiff criteria for success and reauthorization in no more than 10 years. A sunset clause should give the next generation of citizens, politicians and biologists to re-evaluate and redirect the effectiveness of this program, future citizens will very probably be even more conscientious about nature - having so little left. 41(b)

As a biologist who has even been involved in the data collection and policies of the MSCP, I find it almost improbable to expect that the plan will work for nature in the long term. The criteria for the preservation of certain species were conservatively determined in the Biological Guidelines to the MSCP. These guidelines have been eliminated in the final draft, and replaced by assurances of percentages of major populations of 41(c)

41

target species that will be preserved by the plan. But wherever "soft lines" are the standard there will be a lot of resistance and compromise, and a checkerboard preserve. The standards of success are dependent upon a very elaborate monitoring program that is to be administered independently by each jurisdiction. How can accurate and enforceable population estimates and success criteria be accurately made and integrated between independent and competing jurisdictions? 41(c)

The first 4D take permit for Diegan Coastal Sage Scrub in Chula Vista is an excellent case in point. For Spa III the City authorized grading of hundreds of acres of the last big intact succulent dominated DCSS full of California gnatcatchers (and lots of other sensitive flora and fauna). There was a dispute between the County of San Diego and City of Chula Vista as to whose 4% of allowable interim take was taken. The jurisdictions may have worked out some kind of agreement, but there is offsite mitigation at increased ratio of habitat with some of the same sensitive resources, but even the consulting biologists admitted there was little equity when comparing the biological resources of the two sites. This example in which natural resources suffered a net loss might be a bigger and better mitigation than any that we will see in the future. 41(d)

The capacity for proof of success of the preserve will only be evident if the Monitoring program is a rigorous and independent study. Central oversight and integration of the monitoring data need to be undertaken by a large and independent team of biologists whose jobs and livelihood are not tied to the "look good" success of the program. An independent commission should evaluate the authenticity of the results, not a blue ribbon committee that has insufficient time, skill or funding carry out the evaluations. The proof of success criteria must be tied to enforcement mechanisms that are backed by CEQA and NEPA. 41(e)

A comparable example is the Agricultural Research Service (ARS) which has a number of "Long Term Ecological Research" stations (LTER) around the United States where trained scientists track the climatic, flora, faunal and other trends. The funding and professionalism that is developed to conduct these studies is a good rigorous model for the MSCP Monitoring Program to follow.

Is it really multiple? Many of the Species Evaluated for MSCP (Table 2-1) and (Table 3-4) are apparently there as mere padding to make the plan look more 'Multiple'. This is false advertising. Many of these species are already on federally owned public land (such as Miramar Naval Air Station, Camp Pendleton, Cleveland National Forest and Otay Mountain) where they are not supposed to be threatened by development anyway. To name just a few such species, the following are "padding":

Shaw's agave, Otay manzanita, Dunn's mariposa lily, Tecate cypress, San Diego mesa mint, Thorne's hairstreak butterfly, Brown pelican, Light-footed clapper rail, Belding's savannah sparrow. Though these are important and even sensitive species they only inflate the purported success of the plan by appearing to "save" these and the rest of the "85 taxa". Many this "85" on Table 2-1 41(f)

are species that are even honestly listed on the table as "not adequately conserved" by the plan, "unknown", "discounted", or "insignificant". I am doubtful if the "1000" species of plants and other natural resources that are also supposed to be preserved is justifiably claimed. Where is a list of those 1000 species and specific justifications of this prediction? 41(f)

The failure of the plan to be forthright is proof that "Multiple" has a very selective and convenient application where and when it the plan chooses out of political convenience rather than according to any biologically based criterion. This chosen list "adequately conserved" species often excludes some of the more functionally important birds of prey, deer and lion, important migratory habitats. How is this really multiple?

The bottom line of the MSCP program is that of inadequate conditions for determining and insuring success of the plan. Unless the following issues can be resolved, the plan lacks the means and the political and financial enforcement power to work. Answers to the following are pertinent:

-If it hobbles the agencies in any way from being properly funded to oversee this program and to commence sensitive species listing promptly, or reverse significant adverse deleterious trends, the program is leaderless and unlikely to succeed. 41(g)

-The plan does not depend upon the passage of local bond initiatives or unfunded mechanisms. Voluntary pay as you go voter approved programs cannot be expected to work.

-Monitoring must be properly conducted and adequately funded.

-Strategic design very vulnerable: Laguna, Eagle Peak fire

-If the result is the wholesale extirpation of natural habitat that is outside the core biological area, the fate of the core area is to become little more than an urban reserve. Such trends outside the preserve should be utilized in determining the criteria of success of the program.

Finally altruism about sensitive species is not the only reason to preserve nature. Sensitive species are an excuse and a means of this end via CEQA, NEPA the Clean Water Act and a number of other laws that protect the public interest in natural resources. But is apparently impossible to legislate a healthy human environment. Humans don't sustain nature as an amenity or a luxury like a park. Nature sustains humanity, it is the source of all life and wealth, it is the only principle asset of life. You don't spend your principle. 41(h)

J. Frank Dobie wrote, "The history of any land begins with nature, and all histories must end with nature".

Respectfully, Fred Sproul

42 JOHN & ESTER WILLIAMSON, OCTOBER 15, 1996

42(a) The majority of the subject property is not proposed to be included in the MSCP preserve. Only the northern-most portion (approximately one-quarter of the site) which is the river valley is proposed to be included in the preserve. It should be noted that the entire site is designated for open space in the update of the Otay Mesa Nestor Community Plan.

42(b) There are restrictions on any new privately-owned commercial recreational uses inside the preserve. There are no restrictions on uses adjacent and outside the preserve, however, site design criteria will be incorporated into the design of such uses adjacent to the preserve.

42(c) The MSCP Plan does not propose a bridge over the river as supposed; the Plan describes design criteria for such a bridge if improvements are needed in the future (City of San Diego Subarea Plan, Section 1.4.3).

42(d) The EIR/EIS recognizes the entire Otay River Valley as a wildlife corridor. The described bridge criteria are intended to improve this linkage if and when the bridge needs to be widened. the environmental consequences of any improvements of the Hollister bridge would be analyzed in a site-specific CEQA environmental document when design is completed and proposed for consideration.

42(e) The bridge criteria are part of this proposed project; the improvement is planned in the adopted community plan.

42(f) Refer to responses to Comments 42(c), 42(d) and 42(e).

42(g) Refer to response to Comment 42(e).

42(h) Comment noted. The EIR/EIS determined that impacts to housing affordability were significant and not mitigated. There were no measures which could be determined to be currently available nor sufficiently detailed and committed to at this time to assure that significant impacts could be reduced to below a level of significance.

42(i) The *San Diego Union-Tribune* article cited in the letter refers to the Future Urbanizing Area (FUA). The MSCP would not cause a change in the overall number of residential units in the FUA from that anticipated in the FUA Framework Plan. In portions of Subareas 3 and 5, development potential would be transferred from land proposed under the MSCP for long term open space use to land proposed for residential development. As a result, units may be clustered at 1 unit per 2-3 acres in some areas which were previously anticipated to develop at 1 unit per 4 acre density. A Specific Plan for Subarea 5 has been approved with residential development at these slightly increased densities

in certain areas and a similar amendment is in process for portions of Subarea 3. Therefore, there would be no inconsistencies with adopted plans and no potentially significant impacts are anticipated. Outside the FUA no unit transfers have been considered in relation to the MSCP.

42(j) Refer to response to Comment 42(h).

42(k) Comment noted.

42(l) Comment noted.

John and Esther Williamson
9512 North Old Stage Road
Weed, CA 96094
(916) 938-2993

John Kovac, Senior Planner
City of San Diego - Development Services Department
1222 First Street, MS 501
San Diego, CA 92101

by fax with hard copy mailed
fax: (619) 236-6620

Re: PUBLIC COMMENT on Draft EIR/EIS for Multiple Species Conservation Plan

Dear Mr. Kovac,

October 15, 1996

We appreciate the opportunity to comment on both the MSCP and the draft EIR prepared on this very extensive habitat protection project. We are adjacent landowners to a designated MSCP linkage area and are south of the Otay River Valley between I-5 and Hollister Street. This MSCP appears to offer both the community at large and its neighbors certain benefits that would not be possible without such a coordinated planning effort. Like most evolving conservation plans of great complexity, however, there still may be minor bugs to work out in this process. These comments will therefore be directed toward correcting a few CEQA inadequacies and MSCP inconsistencies so that eventually this will be a workable program.

BACKGROUND

We have been planning a recreational campground on our land at 408 Hollister Street now for many years and currently have an application pending before the City. In 1975, the City of San Diego approved an EIR and issued a conditional use permit to us for a previous recreational vehicle park at this location. It's Use Permit was maintained — though not used — for 11 years until 1986 while we made modifications to better comply with improvements within the recreational industry and with various agency's planning staff recommendations. Our proposed, visitor-oriented recreational project is consistent with the Otay Valley Regional Park plan /1/ and is also contemplated within the Otay Mesa-Nestor Community Plan. /2/

The Otay Mesa-Nestor Community Plan for example encourages *"visitor and recreation facilities and developments providing public recreational opportunities. If visitor-serving facilities cannot be feasibly located in developed areas, locate them within existing isolated development or at selected points of attraction for visitors."* Our proposed campground fulfills this directive for visitors attracted to the passive recreational opportunities of the MSCP. This campground is also located within easy walking distance of the visitor-serving San Diego Trolley station nearby on Hollister Street.

IMPACTS ON ADJACENT PROPOSED LAND USE SIGNIFICANT BUT NOT MITIGATED

However, the MSCP boundary line appears to have been drawn to include unnecessary amounts of our land for buffering of Otay River habitat. Perhaps this is a simple mapping error considering some inconsistencies noticed within the MSCP and local community plans. This map designation also appears inconsistent with other text in the MSCP. /3/ We have already reduced the size of our proposed campground by about 50% from its earlier approved design, and any further reduction in size may make it economically infeasible. This 14 acre site has had little habitat value as 'disturbed land' left vacant for decades because it is outside the Otay River floodway and contains little wild vegetation and no wetlands. The adjacent 42(a)

sensitive floodway habitat can be adequately buffered without including as much of our land as the MSCP map indicates. 42(a)

The MSCP's Draft EIR (DEIR) however concludes that no significant impacts are anticipated on adjacent proposed land uses because flexibility has been incorporated into the MSCP and Subarea plan. (pp. ES-8,9) The DEIR states (p. 4.2-19) that *"areas available for development would not change substantially from that of the adopted plan."* This may be true on an overall scale of the entire MSCP but not to our long proposed use if the MSCP boundary isn't adjusted. The possible loss or restriction of many acres disallowing active recreational use as campground would be substantial. Thus, the DEIR may be overlooking the MSCP's significant impact to our proposed recreational/open space land use. The DEIR even states that *"the potential for loss or the need to relocate a .... recreational facility is considered to be a significant impact of the [MSCP] project."* (p. 4.5-2) Therefore, the DEIR seems to inconsistently find no significant impacts to adjacent land uses while acknowledging that loss of recreational facilities is a significant impact. To resolve this unmitigated inconsistency may only take some minor mapping adjustment to the proposed MSCP boundary. 42(b)

DEIR DOESN'T EVALUATE SIGNIFICANT IMPACT OF A BRIDGE PROPOSED IN MSCP

The MSCP proposes someday to build a bridge over the Otay Valley River at Hollister Street:

> *"A13: If Hollister Street is widened or improved, a bridge facility should be used to elevate the road above the floodplain at least 12 feet (bottom of bridge to existing grade). The bridge should be designed to allow for maximum flood flows, provide for riparian woodland to generate sediments to build over time, and provide for wildlife, pedestrian, and equestrian movement."* (City of San Diego Subarea Plan p. 9) 42(c)

The Draft Scope of Work letter from the City of San Diego included in DEIR Appendix "A" states that the *"potential effects of the planned regional road alignments on the proposed MSCP Plan preserve core areas and* <u>*habitat linkages*</u> *will also be discussed."* (p. 6) However, no discussion of such effects is actually provided in the DEIR about this bridge over the Otay River Valley linkage. The DEIR is silent in discussion or evaluation of these impacts. Maybe this is an oversight? The DEIR's vague reference to such *"wildlife corridor crossing facilities"* (p. 4.2-63)are not substantial enough discussion under CEQA of the consequences of such a new bridge. 42(d)

This MSCP bridge proposal also isn't a part of the City of San Diego's General Plan nor a part of the Otay Mesa-Nestor Community Plan. Therefore, to the extent that the MSCP proposes such a major street improvement, the MSCP is inconsistent with at least these two Plans and the DEIR fails to note this inconsistency which CEQA requires. 42(e)

This MSCP provision as worded could lead to the extreme imposition of a costly bridge when someday a simple road improvement of a curb, gutter, sidewalk or bike path is proposed to Hollister Street. It could also block vehicular access to our home and driveway near the north end of our property near the Otay River. It might also result in substantial amounts of fill to elevate the lower portions of the roadway within this adjacent Otay River floodplain. To the extent that the MSCP's intent is to provide for habitat linkage and wildlife movement, such minor road improvements would likely not impose wildlife restrictions, and a bridge would not be necessary nor cost effective. If the City needed to provide minor improvements to Hollister Street, it may not want to be held to such a fiscally impossible mitigation having at most meager benefits. Increasing the vegetative cover on the north side of Hollister Street would be far more cost effective for wildlife crossing. The rare occasions of street flooding during extreme storms would also not justify such a costly bridge. 42(

Because the DEIR states that under the "No Project/No Action" alternative, no significant impacts are identified, maybe this bridge isn't a needed mitigation in response to any significant environmental impacts? This MSCP provision could be removed or reworded to eliminate such undesirable consequences and also correct DEIR inconsistencies. 42(g)

HOUSING AFFORDABILITY AND DENSITY CHANGE IMPACTS NOT EVALUATED

The MSCP may create significant land use impacts of inconsistency with the General Plan and the Otay Mesa-Nestor Community Plan with regards to housing affordability which the DEIR identifies. (p. ES-8,9) However, this is not evaluated nor are mitigations proposed as promised. The Draft Scope of Work letter from the City of San Diego included in DEIR/EIS Appendix "A" states that the *"mitigation measures shall be clearly identified and discussed and their effectiveness assessed."* (p. 7) Rather, this DEIR/EIS does not include <u>any</u> mitigations, and instead leaves the significant impacts which it identifies as unmitigated in contradiction to the Notice of Preparation. Part of the process of public comment on such an environmental document involves being able to examine the effectiveness of mitigations. The decision makers need such information also. When feasible mitigations are completely omitted though, that prevents adequate public review within this limited comment period. 42(h)

Similarly, have some housing changes been made and not revealed in this DEIR? Have there been recent changes by the City Council regarding increased housing densities greater than originally planned for parcels that straddle preserve boundaries, so long as the buildings are outside the preserve, as reported in the July 4, 1996 issue of the San Diego Union-Tribune? If so, wouldn't such increased housing density also be considered a potentially significant impact of this project? Might not that change have effects upon neighboring lands and be inconsistent with local community plans? Relocating future housing potential isn't necessarily an undesirable tradeoff for the overall positive benefits of this MSCP's conservation goals, but it should at least be evaluated. If this news story was relevant and accurate, shouldn't these changes be evaluated in this DEIR? 42(i)

MITIGATIONS ARE NOT PROPOSED FOR SIGNIFICANT IMPACTS IDENTIFIED IN DEIR

The DEIR is so lengthy a document that information is sometimes difficult to locate, but it appears as if no mitigations are proposed in this entire DEIR. CEQA requires agencies to adopt feasible mitigation measures to lessen or avoid significant environmental impacts. To effectuate this requirement, EIR's must set forth mitigation measures that decision makers can later adopt. For each significant environmental impact, a draft EIR must identify specific mitigation measures. However, no mitigations are proposed in this DEIR for impacts to adjacent land mentioned above (Issue 2) or such as:

> *"The potential for loss or the need to relocate a .... recreational facility is considered to be a significant impact of the [MSCP] project."* (p. 4.5-2)

Agencies also cannot defer the obligation to formulate and adopt mitigations until later. For example, this proposed measure improperly defers formulating housing affordability impact mitigations:

> 'Mitigation' /4/ for Impact 4.2/CSS/BP-1:
> *"As part of the GP Housing Element Update, identify and address impacts to housing affordability associated with implementation of the MSCP Plan. Ensure that housing affordability is provided under the MHPA in accordance with state law."* (see MHPA-1 (B-"Subarea/Other Plans") pp. 4.2-67, 69)

42(j)

Nor can agencies refuse to consider mitigation measures because another agency will also later have the power to address certain significant impacts. For example: 42(j)

No mitigation is provided for Impact 4.2/MHPA-6 regarding *"conflict with public facilities element of the Otay Mesa Community Plan regarding provision of adequate school and park facilities."* (see p. 4.2-69) The DEIR identifies this impact which could result in an undersupply of public facilities due to implementation of the MSCP as *"significant and not mitigated."*

It isn't impossible nor excessively speculative to provide reasonable mitigations for the DEIR's identified impacts. The choice between project alternatives that the decision makers are required to make should be based upon informed disclosure in this DEIR of the various impacts of the MSCP, appropriate mitigations and their costs. Without considering mitigations, such a comparative alternatives analysis would be unsupportable. 42(k)

RECIRCULATION REQUIRED 42(l)

With the issues raised above, it appears that further environmental review is required of the proposed MSCP. As a result, the DEIR is required to be recirculated for additional public review.

Thank you for considering these comments. The purpose of the MSCP is important, and this EIR process needs to fully reflect thoroughly the dedication underlying its conception.

Yours truly,

John Williamson

MSCP/DEIR review assistance provided by:
Dale LaForest & Associates 101 E. Alma Street, Mt. Shasta, CA 96067 (916) 926-5115

ENDNOTES:

1/ This property is planned in the "Otay Valley Regional Park - Preliminary Concept Plan" for "proposed recreation" development. (Figure 2-17 DEIR) Elsewhere it is specifically mentioned as: "The existing golf practice facility and go-carts/undeveloped open space sites located south of the river between Interstate 5 and Hollister Street (approx. 27 acres) (p. 2-50 of Concept Plan) This site "will be subject to the preserve guidelines of the ... City of San Diego .... for siting and development adjacent to the MSCP preserve. Located outside the boundaries of this Subarea Plan." (p. 28, Vol. 2 of MSCP) Thus, the MSCP notes our property is outside the Preserve boundary, though the map is less clear.

2/ Otay Mesa-Nestor Community Plan p. 57: "Utilize the area between the railroad and I-5 northerly of the existing housing on Conifer Avenue for Commercial - recreational type services that complement the floodplain and open space of Otay Valley. This area could be developed with uses that are interim in nature due to the possibility of flooding. Augmenting recreational uses for the traveler to and from Mexico could be stables, hiking tours, travel trailer parks and other open type specialties which might capitalize upon the proximity to the accessible bay area and Otay Lakes. Utilization of the site will not adversely affect the downstream wildlife habitat areas by increasing runoff or velocity during a 100-year project flood."

3/ "The existing golf practice facility and go-carts/undeveloped open space sites located south of the river between Interstate 5 and Hollister Street (approximately 27 acres. Located outside the boundaries of this Subarea Plan." (p. 29, MSCP Vol. 2, City of San Diego Subarea Plan)

4/ It is unclear if this measure, even if adequately drafted, is indeed a mitigation. It is not listed in the DEIR Summary where mitigations are required to be identified and where this DEIR states that no mitigation measures are proposed. (p. ES-22)

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43(a) In response to a variety of requests, the public review period for the Draft EIR/EIS was extended from the original October 15, 1996 date, to October 29, 1996, resulting in an approximately 60 day public review period. This public review period is longer than required by law and is considered to be adequate given the fact that the Draft EIR/EIS is a recirculation of a previously circulated draft document, as well as the extensive public participation that has occurred throughout the MSCP planning process, including 50 Working Group meetings and 24 noticed meetings and workshops. Please refer to **Theme Response VIII, Public Involvement.**

43(b) The potential for reallocation of land uses within the MSCP study area as a result of implementation of the proposed MHPA is discussed in detail in Section 4.2, Land Use, of the Draft EIR/EIS. As summarized in Table 4.2-1 (page 4.2-3), and discussed on page 4.2-2, implementation of the proposed MHPA may result in conversion of 10,075 acres of unconstrained lands designated for urban uses, to open space uses within the preserve. This represents 24.7% of the total 40,733 acres of such lands designated for urban uses within the MSCP study area. Urban land conversions would occur primarily in the cities of San Diego, Santee and Chula Vista, and in the unincorporated County of San Diego where significant acreages currently designated for urban or low density residential uses would be designated for preserve under the MHPA.

The Draft EIR/EIS acknowledges that reductions in the acreage available for urban uses under the MHPA would result in a change in the pattern of growth, likely intensifying uses in areas currently designated for low density residential development, and potentially affecting community character. However, this effect is not considered significant because of flexibility incorporated in the MSCP Plan and subarea plans, considered allowing limited development to occur within the MHPA, and because substantial acreage exists both within the MSCP study area, and within the MHPA, to accommodate the land use shift. As discussed in Section 4.6, Population/Housing (pages 4.6-2 through 4.6-6), the land use shift is not anticipated to increase significantly average residential density within the MSCP study area. Therefore, impacts associated with urban sprawl are not anticipated. Indeed, the more compact form of development encouraged by SANDAG's adopted Land Use Distribution Element (LUDE), and the increased density that may be associated with land use shifts as a result of the MSCP Plan, may encourage a reduction in urban sprawl and land use shift compared to the No Project alternative.

43(c) As stated on pages 4.2-4 and 4.6-5 through 4.6-6 of the Draft EIR/EIS, land uses shifted as a result of implementation of the MSCP Plan would occur within the MSCP study area, both within and outside the MHPA. It is anticipated that some intensification would occur within existing urban cores, as well as within outlying areas currently designated for lower density development. As discussed on page 4.6-2, separate from the MSCP Plan, and without incorporation of the results of any of the multiple species conservation planning programs currently ongoing in San Diego County, SANDAG has projected a region-wide shortfall in vacant residential land zoned for densities greater than one unit per

acre. To accommodate growth beyond 2005, local jurisdictions would need to redesignate some vacant residential land with density less than one unit per acre to higher densities. Implementation of the MSCP may contribute to this need, but not in order to meet forecast growth to 2005. Please see also **Theme Response III, Economic Impacts and Impacts on Population and Housing.**

Effects of the MSCP Plan on transportation facilities and public services and utilities are discussed in Sections 4.4 and 4.5 of the Draft EIR/EIS respectively. As discussed in these sections, flexibility has been incorporated in both the MSCP Plan and the subarea plans to ensure that facilities may be constructed concurrent with need both within and outside the preserve. As discussed on pages 4.4-2 and 4.5-2 of the Draft EIR/EIS, the analysis concludes that flexibility incorporated in the MSCP Plan would avoid significant impacts to transportation facilities and utilities such as gas, water, electric, phone and sewer. However, as also discussed on page 4.5-2, due to the absence of information on a regional level as to how facilities such as parks, schools, and police and fire stations might be accommodated within or outside the preserve, impacts to these facilities are regarded as significant at the program level. At the project level, these facilities would be accommodated within individual subarea plans.

43(d) Air quality is discussed on pages 1-19 and 1-20 of the Draft EIR/EIS under the discussion of Issues Not Selected For Detailed Analysis. The discussion on these pages notes that air pollution problems in the MSCP study area are primarily related to mobile emissions and acknowledges that implementation of the MSCP Plan may affect the location and character of development. The discussion concludes, however, that implementation of the MSCP Plan would not affect the rate or amount of development within the MSCP study area, and therefore mobile emissions associated with implementation of the MSCP Plan would be similar to that which would occur under the No Action/No Project alternative. As discussed in Section 4.4 of the Draft EIR/EIS, additional congestion on roadway segments is not anticipated with implementation of the MSCP Plan due to flexibility incorporated in the Plan that would permit properly designed roadway segments within designated preserve areas. No circulation element changes are proposed as part of the MSCP Plan or Subarea Plans at this time. It is therefore not necessary to do an air quality analysis associated with mobile emissions on roadway segments.

43(e) It is not necessary to complete a traffic study to analyze the impacts of the proposed MSCP Plan and subarea plans. No Circulation Element changes are proposed as part of the MSCP Plan and subarea plans which would alter the planned regional circulation network. In addition, as noted in Section 4.6, Population/Housing, of the Draft EIR/EIS, while implementation of the proposed MSCP Plan may affect the location and character of development, it would not affect the rate or amount of development within the MSCP study area. Therefore, the planned roadway network should be able to accommodate growth within the MSCP study area with or without implementation of the MSCP Plan. Alterations in the location and character of development would be realized at the time specific development plans are proposed and site-specific environmental studies, including traffic studies as appropriate, would be completed for individual project proposals.

It should be noted that circulation changes are proposed in several of the Community Plan areas for which Community Plan amendments are proposed to implement the MSCP Plan. These changes are described on pages 4.4-6 through 4.4-9 of the Draft EIR/EIS. In these cases where circulation changes are proposed, traffic analyses have been completed as described in the Draft EIR/EIS.

43(f) As discussed in Sections 4.2 and 4.6 of the Draft EIR/EIS, the land use and population/housing analyses completed for the project focused on the MSCP study area. Both the land use and population/housing analyses concluded that sufficient development potential would remain within the MSCP study area, both within and outside the proposed MHPA preserve, to accommodate any land use shifts that would occur as a result of implementation of the MSCP Plan. Significant unincorporated lands are included in the MSCP study area, however, the referenced communities are generally within the boundaries of either the North County Multiple Habitat Conservation Plan (MHCP) or the County's Multiple Habitat Conservation and Open Space Plan. (It should be noted that unincorporated County lands within the MHCP study area are intended to be incorporated into the MSCP study area as part of an MSCP amendment at a later date.) Both the MHCP and the County's Open Space Plan are mentioned in Section 6.0, Cumulative Effects, of the Draft EIR/EIS. As discussed on page 6-4 of this section: "With development pressure being shifted from preserve areas to non-preserve areas, increased urbanization or intensification of land use may occur in areas not presently subject to these kind of development pressures, both within and outside the MSCP study area....these issues are anticipated to arise regardless of any multi-species planning and implementation being conducted in the County due to the growth projected in SANDAG's Series 8 growth forecasts....the magnitude of the shift is anticipated to be minimal in the context of Series 8 projected shortfalls in developable land that would likely result in substantial pressure to increase development intensity with or without the MSCP Plan."

43(g) It is unclear what is meant by "modeling of probable housing shifts" in the comment. A quantitative analysis of anticipated housing shifts was conducted using SANDAG Series 8 population data and the results of the analysis for the proposed MHPA and alternatives are presented in Section 4.6, Population/Housing of the Draft EIR/EIS. For example, page 4.6-5 of the Draft EIR/EIS states that 15,326 housing units are projected to be built in the area covered by the proposed MHPA preserve. The discussion further states that the conservation of habitat lands within the preserve could displace all or a portion of these housing units – which represent up to 11.4 percent of the projected growth – to lands outside the preserve. Similar analyses were completed for the alternatives and the Subarea Plans and are presented in Section 4.6.

43(h) As noted in response to Comment 43(f), the land use and population/housing analyses conducted for the Draft EIR/EIS concluded that sufficient development potential would remain within the MSCP study area, both within and outside the proposed MHPA preserve, to accommodate any land use shifts that would occur as a result of implementation of the MSCP Plan; substantial shifts to "eastern" and "northern" areas are not anticipated. Geology/Soils issues associated with the MSCP Plan are discussed on page 1-19 of the Draft EIR/EIS, under the discussion of Issues Not Selected For Detailed Analysis. As discussed on page 1-19, "increased development pressure associated with implementation

of the MSCP Plan, could result in increased pressure to build on sensitive or unstable geologic formations or soils subject to erosion or other wise unsuitable for development. Increased pressure for development on sensitive hillsides may also occur. Pressure to develop geologically constrained areas within the preserve would, however be eliminated with implementation of the proposed MHPA. Also, encouraging more dense or compact development outside the preserve may reduce the extent of lands subject to development, reduce the extent of overall exposure of sensitive soils and geologic formations when compared with the No Action/No Project Alternative. In addition, existing hillside, grading and building code regulations of the local jurisdictions would continue to apply to proposed developments outside the preserve. Therefore, no effects to geology/soils beyond what would occur under the No Action/No Project alternative are anticipated, making further analysis unwarranted."

43(i) As discussed in response to Comment 43(f), "northern and eastern housing pressures" are not anticipated with implementation of the MSCP Plan. The land use and population/housing analyses conducted for the Draft EIR/EIS concluded that sufficient development potential would remain within the MSCP study area, both within and outside the proposed MHPA preserve, to accommodate any land use shifts that would occur as a result of implementation of the MSCP Plan. Impacts to agriculture within the MSCP study area are discussed on pages 4.2-82 through 4.2-115 of the Draft EIR/EIS.

43(j) As discussed in response to Comment 43(f), "northern and eastern housing pressures" are not anticipated with implementation of the MSCP Plan. The land use and population/housing analyses conducted for the Draft EIR/EIS concluded that sufficient development potential would remain within the MSCP study area, both within and outside the proposed MHPA preserve, to accommodate any land use shifts that would occur as a result of implementation of the MSCP Plan. Impacts to mineral resources within the MSCP study area are discussed on pages 4.2-82 through 4.2-115 of the Draft EIR/EIS.

43(k) As discussed in response to Comment 43(f), "northern and eastern housing pressures" are not anticipated with implementation of the MSCP Plan. The land use and population/housing analyses conducted for the Draft EIR/EIS concluded that sufficient development potential would remain within the MSCP study area, both within and outside the proposed MHPA preserve, to accommodate any land use shifts that would occur as a result of implementation of the MSCP Plan. Air quality is discussed on pages 1-19 and 1-20 of the Draft EIR/EIS under the discussion of Issues Not Selected For Detailed Analysis.

43(l) See response to Comment 43(e).

43(m) As discussed in response to Comment 43(f), "northern and eastern housing pressures" are not anticipated with implementation of the MSCP Plan. The land use and population/housing analyses conducted for the Draft EIR/EIS concluded that sufficient development

potential would remain within the MSCP study area, both within and outside the proposed MHPA preserve, to accommodate any land use shifts that would occur as a result of implementation of the MSCP Plan. No amendments to public facility plans or elements are proposed as part of the MSCP Plan and subarea plans which would alter planned sewerage facilities within the MSCP study area. In addition, as noted in Section 4.6, Population/Housing, of the Draft EIR/EIS, while implementation of the proposed MSCP Plan may affect the location and character of development, it would not affect the rate or amount of development within the MSCP study area. Therefore, planned sewerage facilities should be able to accommodate growth within the MSCP study area with or without implementation of the MSCP Plan. Alterations in the location and character of development would be realized at the time specific development plans are proposed and site-specific environmental studies, including public facilities analyses as appropriate, would be completed for individual project proposals.

43(n) As discussed in response to Comment 43(f), housing shifts anticipated under the MSCP Plan are expected to occur within the MSCP study area, both within and outside the designated MHPA preserve. Such housing shifts may result in increased intensification in urban core areas as well as intensification in outlying areas currently designated for low density residential development. No changes in policies regarding sewage disposal are proposed at this time and, if any are proposed in conjunction with individual development projects, such policy changes would be reviewed in conjunction with review of the individual projects. Economic impacts associated with implementation of the MSCP Plan and alternatives are discussed on pages 4.6-44 through 4.6-55 of the Draft EIR/EIS.

43(o) Actions covered by the Draft EIR/EIS, and required to implement the MSCP Plan and subarea plans, are described on pages 1-11 through 1-14 of the Draft EIR/EIS. A General Plan Amendment is proposed in the City of San Diego. The City of San Diego proposed General Plan Amendment, including proposed text changes, is described in greater detail on pages 2-31 through 2-33 of the Draft EIR/EIS.

43(p) Noise issues are discussed on page 1-21 of the Draft EIR/EIS under the discussion of Issues Not Selected for Detailed Analysis. The discussion acknowledges that increased development pressure resulting from implementation of the MSCP Plan could result in adverse noise impacts outside the preserve, potentially generating increased traffic in localized areas, resulting in higher noise volumes in proximity to sensitive receptors. However, local noise ordinances would continue to apply to development activities both within and outside the preserve, to ensure avoidance, minimization or mitigation of noise impacts associated with development.

43(q) Growth inducement is discussed in Section 5.0 of the Draft EIR/EIS. As discussed previously, analyses included in the Draft EIR/EIS conclude that implementation of the MSCP Plan may affect the location and character of development, but not amount or rate of growth. No direct growth inducing effects would be associated with implementation of the MSCP Plan. Section 5.0 also discusses the relationship of the MSCP Plan to SANDAG's Land Use Distribution Element (LUDE). As discussed

previously, implementation of the MSCP Plan would contribute an increment to the projected region-wide shortfall of developable land, although this contribution is not regarded as significant.

43(r) It is assumed that this comment is referring to the significance criteria uses in Section 4.6, Population/Housing, of the Draft EIR/EIS. The significance criteria presented on page 4.6-1 of the Draft EIR/EIS were applied consistently for the MSCP Plan and alternatives and for the subarea plans and alternatives.

43(s) Section B.1.6.1 analyzes the impact of the preserve on housing availability. Based on projected growth during the period 1990-2005, housing growth in six jurisdictions would require 23,786 acres (EIR/EIS Table 4.6-4). With preserve implementation, 43,060 acres would be available for development. Thus, housing supply for all types of housing would be available. Existing sewer policies would accommodate housing growth and essential public facilities may be placed in preserves with adequate mitigation. Thus, the MSCP preserve has no significant impact on the provision of sewer services. The location of affordable housing is a discretionary land use decision outside the scope of the EIR/EIS.

43(t) Information similar to that presented in Table 2-3 is provided for each of the subarea plans in Section 4.2 of the Draft EIR/EIS. In some cases, changes are expressed in terms of changes in acreages of land designated for specific uses rather than loss of specific housing units. For example, pages 4.2-12 and 4.2-42 present quantitative information on land use changes for the cities of Chula Vista and Santee respectively. Discussion of the various segments of the County of San Diego Subarea Plan is provided on pages 4.2-45 through 4.2-51. In addition, Tables 4.6-4 and 4.6-5 (page 4.6-10 of the Draft EIR/EIS) provide information on residential land and housing supply for the various subarea plans.

43(u) A draft of the proposed Biological Mitigation Ordinance was included in Appendix I of the MSCP Plan, Volume II. It was released for public review on the same date as the Draft EIR/EIS and has been available for comment for the same period as the Draft EIR/EIS. Because the draft Ordinance has been circulated for comment, no recirculation is required.

43(v) The discussion at pp. 2-38 and 2-46 is an analysis of the methods for setting up the preserves within the three County subareas. Detailed discussions of the impacts on land use are found in Section 4.2, Land Use, of the Draft EIR/EIS. Section B.1.6.1 indicates that conversion of lands from urban and low density uses is consistent with the environmental goals of the County related to orderly growth and land use patterns. Much of the land for preserves would come from open space preserved as part of private development. Table 4.2.1 shows by categories the land use designations of vacant lands proposed for the MHPA.

43(w) The purpose of Table 3.2-2, included in the Affected Environment section, is simply to give the reader an overview of planned land uses throughout the MSCP study area. Specific information

is given for each jurisdiction in Section 4.1, Land Use, of the Draft EIR/EIS. Numerous tables are provided in this section. For example, please refer to Table 4.2-1 (page 4.2-3 of the Draft EIR/EIS).

43(x) The MRZ zones described in this section represent the data available from the California Department of Conservation, Division of Mines and Geology (CDC, DMG) regarding extractive resources within San Diego County. As part of the Final EIR/EIS, these data have been updated to include the most recent 1996 information available from CDC, DMG. This is the appropriate data base to use regarding existing extractive resources, as noted by the San Diego Rock Producers in their letter of comment on the Draft EIR/EIS.

43(y) Pages 2-38 and 2-46 describe the methods for assembling the preserves within the three County segments. Detailed discussions of the impacts on land use from the project are found in Section 4.2, Land Use, of the Draft EIR/EIS. Section B.1.6.1 indicates that conversion of lands from urban and low density uses is consistent with the environmental goals of the County related to orderly growth and land use patterns. Much of the land for preserves will come from open space preserved as part of private development. Table 4.2.1 shows by categories the land use designations of vacant lands within the MHPA.

43(z) SANDAG's Series 8 Regional Growth Forecast (Interim Forecast, May 1995) projects that 425,731 units would be built in the San Diego region (i.e., San Diego County) between 1990 and 2015. Of this total, approximately 133,990 units are projected to be built in the MSCP study area between 1990 and 2005 and additional 119,495 units between 2005 and 2015 (EIR/EIS, pp. 3-54 and 4.6-4). The remaining units would be constructed outside the MSCP study area, in north and east San Diego County.

Of the 133,990 units projected to be built in the MSCP study area between 1990 and 2005, 15,326 units are projected by SANDAG to be built inside the MHPA. Some of these units may be built on 17,021 acres of developable land inside the MHPA that is not targeted for conservation; others may be constructed outside the MHPA. It is not possible to estimate precisely how much residential development would occur inside the MHPA. Please see also the earlier discussion of economic impact analysis. Please also refer to **Theme Response III, Economic Impacts and Impacts on Population and Housing.**

43(aa) The right two columns of Table 3.6-7 in the EIR/EIS show the forecast reduction in vacant land through development for the years 1990-2005 and 1990-2015. (A table with corrected headings is included in the revised language incorporated in the Final EIR/EIS.)

As shown in this table, SANDAG has forecast that growth in the MSCP study area between 1990 and 2005 (15 years) would convert 24,820 acres of vacant land to urban use and that growth between 2005 and 2015 (10 years) would convert 40,376 acres (= 65,226 - 24,820). The

substantially higher rate of land conversion forecast for the period after 2005 reflects the fact that vacant land zoned for residential use at urban densities (greater than one unit per acre) is nearly completely developed by 2005. Beyond 2005, remaining vacant residential land is zoned largely for rural densities (less than one unit per acre), indicating a need to rezone such lands to higher densities in order to accommodate the forecast growth.

In preparing the current regional growth forecasts (Series 8), SANDAG and the local jurisdictions did not resolve how growth after 2005 should be allocated, hence there is not an accepted basis for analyzing the potential impact of the MSCP Plan on regional growth after 2005. Please also refer to **Theme Response III, Economic Impacts and Impacts on Population and Housing.**

43(ab) Table 4.2-1 only reflects those areas within the City of Chula Vista's present jurisdictional area, not its entire General Plan area. Statistics from Otay Ranch are included in the Unincorporated column totals.

43(ac) The discussion on pages 4.2-2 and 4.2-4 acknowledges that inclusion of 24% of the designated urban lands within the M5CP study area and within the MHPA represents a substantial portion of the total area designated for urban uses within the study area. The discussion further notes that such a land use shift would likely result in intensification of land uses within urban cores and within areas designated for low density residential development. The degree of anticipated intensification is quantified and discussed in Section 4.6 of the Draft EIR/EIS. The discussion also notes that flexibility has been incorporated in the MSCP Plan, through the percent conservation thresholds and land use compatibility guidelines, to permit some development to be retained within the MHPA. Based on the Criteria for Determining Significance on page 4.2-1 of the Draft EIR/EIS, land use impacts are not regarded as significant.

43(ad) The City of Chula Vista General Plan identifies low density housing as important to the overall balance of the community. The reduction of low density housing opportunities within Villages 14 and 15 would certainly reduce the available acreage designated for low density housing; however, this does not eliminate all low density residential development acreage. There are other opportunity areas within Otay Ranch, EastLake, Salt Creek Ranch, San Miguel Ranch and the Watson Land Company, which if implemented, would provide a higher percentage of estate housing in the planning area than is now enjoyed.

The university site identified within Salt Creek represents only a portion of that identified on the Otay Ranch GDP/SRP. Those areas identified as Village 9 & 10 are designated as the university site, with Salt Creek as an extension of that site. Salt Creek could still function as an area for biological studies, as part of the university land use.

43(ae) The elimination of Village 15 of the Otay Ranch would certainly reduce the number of potential sites for high-end low density housing. However, as stated in the response above, there are other low density housing opportunity sites that could provide an increased percentage of this type of housing.

43(af) The City of Chula Vista includes two alternatives within their subarea plan, the Existing GDP Alternative and the Modified GDP Alternative. The Existing GDP alternative incorporates the status quo for species conservation within the City of Chula Vista and its sphere of influence. Based on preliminary analysis of impacts from proposed developments in the GDP on species, habitats, and preserve design, the wildlife agencies have indicated to the City of Chula Vista that the significance of the impacts may be such that proposed conservation may not meet the findings necessary to issue take authorizations under federal ESA, California ESA, and NCCP.

43(ag) It is assumed that the correct page number reference in the comment is Page 4.3-81. Specific lists of uncovered species that may be affected by implementation of the MSCP Plan are provided on pages 4.3-50 through 4.3-52 of the Draft EIR/EIS. Specific species lists were not prepared for the individual subarea plans, and are not determined to be necessary since the subarea plan analysis focuses on a very general discussion of indirect effects. See **Theme Response XX, Severability of Take Authorization.**

43(ah) Both facts and conclusions are presented in the Draft EIR/EIS to support the conclusions presented on page 4.3-112. Table 4.3-15 documents the sensitive species that would be excluded from the preserve under Alternative 1 to the County Subarea Plan (including 52 locations of California gnatcatcher and 22 locations of cactus wren). Table 4.3-17 document the habitats that would be excluded from the preserve under Alternative 1, including over 900 acres of coastal sage scrub. The Otay Ranch RMP assumed that the area anticipated to be excluded from the preserve under Alternative 1, would be included within the Otay Ranch preserve.

43(ai) Overriding findings were prepared as part of the environmental documentation for the Otay Ranch project that addressed unmitigated impacts to biological resources as well as a variety of other issues. In addition, Alternative 1, addressed on page 4.3-196, assumes development of the university site in addition to the areas in Villages 15 and 15. The university site was not assumed to be developed in the analyses completed for Otay ranch. Support for the conclusions presented on page 4.3-196 is provided in the analysis of Alternative 1 to the County of San Diego Subarea Plan which is presented on pages 4.3-110 through 4.3-113 of the Draft EIR/EIS. The analysis does not contradict the conclusions of previous studies.

43(aj) The analysis does have different mitigations proposed in each alternative because of different preserve designs and levels of habitat and species preservation. The adequacy of the mitigation

for each alternative is judged against how well it meets the specific objectives of the MSCP Plan (refer to Section 1.2 in the Draft EIR/EIS), and the preservation of 85 species on the Covered Species List.

43(ak) Please refer to **Theme Response III, Economic Impacts and Impacts on Population and Housing.**

43(al) The referenced text simply provides a general discussion of the types of effects that could be associated with intensification of land uses in both urban and rural areas that may be associated with land use shifts resulting from implementation of the MSCP Plan. More quantitative discussion of anticipated density changes is provided under the previous Issue in Section 4.6 (pages 4.6-2 through 4.6-26 of the Draft EIR/EIS).

43(am) The 25% criterion is described on page 4.6-1 of the Draft EIR/EIS and is repeated in full as follows: "A shift of greater than 25 percent of the planned residential land uses or population within the MSCP study area from within a preserve scenario boundary to a location outside the preserve is considered a significant impact since a shift of such magnitude could result in substantial changes in locations and patterns of growth." The standard was simply established for purposes of analysis in the Draft EIR/EIS as a threshold basis on which to evaluate the significance of impacts, and is not intended to relate to any published numerical standard. The focus of the criterion is not so much on the 25 percent figure as on a substantial change in locations and patterns of growth; the 25 percent figure is simply used as a general basis on which to evaluate those changes. Focus on "substantial" change is a well-established CEQA mechanism for determining significance (see Appendix G, CEQA Guidelines). Consistent with the criterion, the referenced discussion on page 4.6-28 focuses on maintenance of densities below those currently existing in the MSCP study area, with the land use shift associated with implementation of the MSCP. This is the basis on which the identified impact is determined to be not significant. There is not a relationship between the significance criteria for biological resources impacts and population/housing impacts, nor is there intended to be. As discussed above, the 25% criterion was established based on evaluation of substantial changes in locations and patterns of growth. The 10% criterion on page 4.3-6 of the Draft EIR/EIS was established based on impacts that would be permitted under the take authorizations and other permits to be issued by the resource agencies. The 10% figure was determined to equate to a substantial effect for those species on the Covered Species List but not listed as endangered or threatened for purposes of the programmatic analysis of preserve scenario alternatives.

43(an) As stated in the referenced paragraph, the 25,265 acre shift represents 15.3 percent of the projected developable land in the MSCP study area. This is below the threshold at which it was determined that a shift would result in substantial changes in projected population distribution, locations of development or growth patterns. For this reason, the impact was regarded as not significant.

43(ao) As discussed in the MSCP Plan (page 2-15), SANDAG projected the San Diego region's population to grown from 2.5 million in 1990 to 3.8 million by 2015. In allocating future

population growth to the cities and communities of the region, SANDAG found that the existing General Plans and Community Plans contain vacant lands designated for residential use at "urban" densities (greater than one unit per acre) sufficient to accommodate approximately 3.3 million, which is forecast to be reached in 2005. The local jurisdictions have been working with SANDAG to formulate a Regional Growth Management Strategy both to accommodate residential growth beyond 2005 and to meet quality of life objectives of greater transportation access, reduced congestion, and improved air quality. However, as of November 1996, the land use element of the Regional Growth Management Strategy had not been adopted by the local jurisdictions, leaving the question of accommodating growth beyond 2005 essentially unresolved.

43(ap) The MSCP Plan is designed to address all covered species as if they were listed by the federal and/or state governments. If, in the future, a covered but unlisted species becomes listed as threatened or endangered, the take authorization would become effective concurrent with its listing. Assurances provided in the MSCP Plan and Model Implementing Agreements state that the take authorization holders would not be required to commit additional land, land restrictions, or financial compensation, beyond that described in the subarea plan, for the protection of any covered species (see section 3.3 of MSCP Plan). For uncovered species that may be listed in the future, the wildlife agencies would first determine whether additional conservation measures, beyond those prescribed by the MSCP Plan, are necessary to adequately protect the species. If no such measures are necessary, the species would be added to the Covered Species List using the federal and state take authorization amendment process. If the MSCP Plan conservation measures are not adequate, the wildlife agencies would work with the participants to identify and implement jointly the steps necessary for coverage. In addition, the wildlife agencies and the jurisdictions have grouped vegetation communities (significantly and sufficiently conserved vegetation communities, Section 3.4 of the MSCP Plan) for the purpose of identifying responsibilities for conservation actions needed to add uncovered and unlisted species to the covered species if they are listed in the future. Absence of these take authorizations would result in additional costs of compliance with federal and state endangered species laws. The benefits of take authorizations under the MSCP Plan were not quantified for reasons previously discussed. Please refer to **Theme Response III, Economic Impacts and Impacts on Population and Housing.**

43(aq) As described in section 4.2 of the MSCP Plan, the state and federal governments have committed to contribute 36,510 acres of existing public lands and acquire approximately 13,500 acres over a period of 30 years for the MSCP Plan preserve. The federal acquisitions would occur through Bureau of Land Management land exchanges and with funding from the Land and Water Conservation Fund, National Fish and Wildlife Challenge Grants, Cooperative Endangered Species Conservation Fund, and other sources as described in Section 7.5.1 of the MSCP Plan, Volume I. The state acquisitions would also occur through a variety of sources, as described in section 7.5.2 of the MSCP Plan.

In selecting the lands to be acquired, the wildlife agencies would consider biological value, cost, vulnerability to development, relation to the Bureau of Land Management study

areas and proposed wildlife refuge study boundaries, and proximity of other existing public lands, including state ecological reserves.

43(ar) The benefits of take authorizations provided by the MSCP would accrue to public as well as private projects. To the extent that costs of compliance with federal and state Endangered Species Acts are reduced for public projects, such reductions represent savings to taxpayers. These benefits were not quantified for reasons previously discussed. Please refer to **Theme Response III, Economic Impacts and Impacts on Population and Housing.**

43(as) Value of land in private ownership is generally tied to its development potential. Under the MSCP Plan, private land inside the MHPA may be developed, subject to local land use regulation and environmental review. (Up to 18,960 acres of privately owned habitat lands inside the MHPA are not targeted for conservation and could be developed under the MSCP.) If the development potential is the same before and after implementation of the MSCP Plan, land value would remain comparable. If, in addition, take authorization provided by the MSCP reduces the cost of compliance with federal and state Endangered Species Acts, the property value may increase. The potential increases in land values were not quantified for reasons previously discussed. Please refer to **Theme Response III, Economic Impacts and Impacts on Population and Housing.**

43(at) Implementation of the MSCP Plan may contribute to an increase in the price of land located outside the MHPA. However, this contribution will be offset by other effects of the program, such as reduced environmental mitigation costs, lower carrying costs, and speedier approval of development projects. In addition, the MSCP Plan's effect on land values will be much less than the effects of other factors, such as the rate of growth in the region and local land use regulation. Please refer to **Theme Response III, Economic Impacts and Impacts on Population and Housing.**

43(au) The referenced discussion simply states that accommodation of projected growth "could be" achieved by General Plan densification and by rezoning surplus industrial/commercial land to residential use. Such General Plan changes or rezones would be regarded as individual projects separate from the MSCP Plan and would be subject to separate environmental review. As noted on page 4.6-55 of the Draft EIR/EIS, the referenced economic analyses were completed only at a program level and were not prepared for individual subarea plans. This approach was considered to be appropriate given the regional scale of the proposed MSCP Plan.

43(av) With the exception of the proposed MSCP Plan, and the Central/Coastal Subregion NCCP in Central Orange County, none of the projects listed on the cumulative projects list have been approved or have developed quantifiable preserve designs. It is therefore not possible to quantify the cumulative impacts of the identified projects. For purposes of the cumulative analysis, impacts to biological resources, and land use and public facilities impact, were assumed to be similar to the proposed MSCP Plan.

43

STEPHENSON WORLEY GARRATT SCHWARTZ HEIDEL & PRAIRIE
A LIMITED LIABILITY PARTNERSHIP
LAWYERS
101 WEST BROADWAY, SUITE 1300
SAN DIEGO, CALIFORNIA 92101-8214

LORI A. CHAMBERLAIN
TIMOTHY K. GARFIELD
GREGORY C.M. GARRATT
LYNNE L. HEIDEL
MICHAEL W. PRAIRIE
AMY ROSEN
WILLIAM J. SCHWARTZ, JR.
GARY J. STEPHENSON
JENNIFER TREESE WILSON
DONALD R. WORLEY

OF COUNSEL
ELAINE L. CHAN
KENT H. FOSTER

TELEPHONE
(619) 696-3500

FACSIMILE
(619) 696-3555

E-MAIL
SDLAW@SWGSHP.COM

Writer's ext.

October 15, 1996

Mr. John Kovan, Senior Planner
City of San Diego
1222 First Avenue, 5th Floor
San Diego, CA 92101

Re: MSCP EIR/EIS DEP No. 93-0287

Dear John:

Thank you for the opportunity to comment. On behalf of SNMB, we are forwarding our comments on the draft document.

1. We believe a 45-day public review for the largest municipal project, downzoning hundreds of thousands of acres and effectively upzoning an equal amount, is inadequate. Certainly, a minimum should be 100 days, given the permanent and substantial changes effected by project approval. 43(a)

2. The project is a general plan amendment for <u>hundreds of thousands</u> of acres which is not identified as such. The project will:

(a) Cause a significant, irreversible reallocation of all land uses within the County of San Diego. These impacts are not seriously identified or discussed. Massive shifts of housing will occur as a result of creating the MHPA Greenbelt. Most logically, while some of the development will shift to the more urban core, equally extensive pressures will occur to jump the Greenbelt, thereby causing significant urban sprawl. 43(b)

(b) The DEIR/EIS fails to discuss or identify the impacts of the project upon the existing urban core. Where will the growth shift? What sewer, water, electrical, or sanitation facilities are available or will be needed? Already urban schools and parks and recreation facilities are at capacity or inadequate. What will be the impacts to these public facilities? What about road congestion? 43(c)

(c) Please provide an air quality analysis of the likely changes resulting from reallocation of 10-25% of the region's housing. Why was this not studied? The impacts could be immense and significant, particularly on the roadway segments. 43(d)

(d) Please provide a traffic run and traffic study for shifting 10-25% of the region's housing. Why was this not done? Certainly, reasonable projections of the reallocation are required by CEQA and NEPA. Instead of the MHPA Greenbelt helping the environment, it is quite possible the massive problems resulting will cause significant issues. These issues are not studied, not quantified, and in general not discussed. 43(e)

(e) The project will probably result in considerable pressures to leapfrog the MHPA Greenbelt. Why was this not studied? How much housing is likely to shift further east and north? What are the impacts to the unincorporated areas: Vista, Oceanside, San Marcos, Carlsbad, Alpine, Escondido, Fallbrook, Pauma Valley, Valley Center, Julian, Lake Henshaw, etc? 43(f)

Why would anyone consider it reasonable to cause a 10-25% shift of development without studying the likely effects? 43(g)

(f) Why is there no modeling of the probable housing shifts? 43(h)

(g) What are the geological impacts associated with the likely eastern and northern movements? What plant and animal species may be threatened or impacted as a result? 43(i)

(h) What are the impacts to agriculture which may result from northern and eastern housing pressures? 43(j)

(i) What are the impacts to mineral resources which may result from northern and eastern housing pressures? 43(k)

(j) Please provide an air quality analysis for the impacts which may result from the northern and eastern housing pressures. 43(l)

(k) Please provide a traffic study.

(l) What sewer facilities are available to meet the anticipated demands? What policies, General Plan issues, sanitation or other implications may arise as a result of the housing moving east and north? 43(m)

(m) If present policies for sewer do not change, what are the implications to the region? Will the housing move to the urban core, will the economy simply suffer, will the creators of the MHPA Greenbelt finally acknowledge that their plan has serious and significant long-range impacts upon many facets of our society? 43(n)

(n) What General Plan amendments will be needed to implement the project? What General Plan elements will have to be revised to reflect housing and development shifts resulting from massive relocation of development? What are the textual changes? 43(o)

(o) Please provide a noise analysis of the effect on urban and rural areas. 43(p)

(p) What growth induction will result, in turn, from the housing and development redirection? 43(q)

3. The determination of what is or is not a significant effect seems inconsistent between jurisdictions? Were the same standards applied? If Chula Vista is losing 100% of its large lot zoning, is this not significant? Why was the elimination of estate housing in the City of Chula Vista not considered significant? 43(r)

4. What are the implications of the project upon the County of San Diego's ability to achieve housing affordability goals set by state law? Can the low and moderate housing be built in the unincorporated areas with existing sewer policies? Where will the affordable housing be developed? 43(s)

5. Table 2-3 should be done for every jurisdiction to assist the reader, not just the City of San Diego. 43(t)

6. A copy of the BMO was not included in the DEIR/EIS. In order for the reader to analyze the land use impacts and the mitigation, a full disclosure of the mitigation measures was required by CEQA. Accordingly, a recirculation with the text of the "BMO" is necessary. 43(u)

7. It is extremely difficult to follow the discussion of the County of San Diego subarea plan without greater specifics of what development is being eliminated by the project (pp. 2-38 - 2-46). How much affordable housing? How much industrial? How much estate? What is the underlying zoning? What are the existing land uses and conditions? The BMO is apparently proposed as mitigation, or is it an alternative? Is the BMO the project? The discussion is confusing. 43(v)

8. Table 3.2-2 should be broken out by jurisdiction to assist the reader in understanding the location of the uses and the project impacts to each geographical area by type of land use. This would pinpoint redlining, affordable issues, or even exclusion of high end housing uses. 43(w)

9. Section 3.2.2.2 should contain identification of all existing extractive resources since most are not "zoned." 43(x)

10. Section 3.2.3.6 should be an identification of the land uses impacted by the project in the County. The discussion in no manner represents a reasonable presentation on this issue. The entire unincorporated area is one page with most of the discussion about General Plan policies regarding the "Conservation" Element. What about the Land Use Element, Affordable Housing, Mineral Resources, and Agricultural Element? 43(y)

11. How will the project impact the location of the 487,900 units to be built between 1990 and 2015? 43(z)

12. Table 3.6-7 appears to be mislabeled. The last column should be land needs. Is this table attempting to hide the fact that there is a serious land shortfall for housing by 2015 projected by SANDAG? The project clearly exacerbates the problem. This should be identified as a significant environmental effect which is not mitigated. Chapter 4.6 attempts to hide the significant effect by limiting the discussion to 2005. The text provides (Chapter 4.6) a project justification and does not represent a reasonable review of the consequences of eliminating thousands of acres from development. Is this why Table 2-3 is limited to the City of San Diego? Why is there never a clear and concise presentation of the land availability issue/housing supply issue? The text (p. 3-55) identifies that "there is not enough land." Yet, there is no table for 2015 showing the shortfall by land use type by jurisdiction. 43(aa)

13. Table 4.2-1 appears to be incorrect for at least Chula Vista. Villages 14 and 15 are low density and greater than 27 acres. Is this table designed to hide the effects of the "project" by understating them, or is the adopted Chula Vista General Plan the project described as the MHPA in Table 4.2-1? 43(ab)

14. The last paragraph on 4.2-2 suggests eliminating 24% of lands designated for urban uses is no big deal! Really? Are you serious? This also ignores the 16,726 acres designated for low density. Thus, over 25,000 acres are eliminated. This clearly is significant under any reasonable standard. Page 4.2-4 is a project justification unsupported by any of the third party evidence. 43(ac)

15. Page 4.2-12 misstates the Chula Vista General Plan issue since the modified GDP Alternative eliminates the high end, low density housing which is one of Chula Vista's goals. The modified alternative is also inconsistent because it eliminates the university site. It also is inconsistent because it increases single-family densities in Villages 2 and 4, thereby further reducing the number of lower density units. Just the elimination of Village 15 would pose a significant land use effect--together there should be no debate. 43(ad)

16. The elimination of Village 15 and partial elimination of Village 14 should be identified as a significant effect. Village 15 contained the only significant estate housing in the South Bay, an area noted for its affordable housing. Village 15 majestically overlooks the Otay Lakes, with views of the Olympic Training Center, downtown, Coronado and Point Loma. There is no other similar zoned site in the South Bay. 43(ae)

17. Page 4.3-77 states "the wildlife agencies have indicated that a permit would not be issued." Does this mean the U.S. Fish and Wildlife Service and California Fish & Game have ruled on a permit prior to any application? This seems to raise serious due process issues. 43(af)

18. On page 4.8-81, the text states that "[as] development pressure increases, it will increase greatest outside of the preserve, i.e., where uncovered species occur. Hence, these species will be subject to increased indirect impacts." Please identify the species. If this is a true statement for the Chula Vista Subarea Plan, why isn't it true for all subplans? Why isn't it a true statement for the MHPA? The DEIR/EIS provides no 43(ag)

identification, enumeration or meaningful discussion of the species indirectly impacted. Please identify what, where, when and why. 43(ag)

19. The text at page 4.3-112, last paragraph, presents conclusion and no facts. Why? What studies support the statements made? Don't the Otay Ranch EIR and RMP reach different conclusions? Patches do not necessarily result in blockage or fragmentation. 43(ah)

20. The development of Villages 14 and 15 of the Otay Ranch General Plan causes minor disturbances which are largely found to be mitigated by the Otay Ranch RMP. The text at page 4.3-196 contains only conclusions and contradicts, without scientific backup, the earlier studies. Given the magnitude of the project, Villages 14 and 15 are less than one percent (1%) of impact. If moving "less" than 25% of the housing, eliminating affordable housing, and eliminating estate housing in South Bay is not a significant land use issue, why is a disturbance of a fraction of 1% a significant effect? Why can't the fractional impacts be mitigated by project design measures or other measures? 43(ai)

21. Section 4.3.1.4 fails to set forth the reasons for the determinations of adequate mitigation or inadequate. There seem to be differences depending on the alternative and no scientific justification is provided. 43(aj)

22. Chapter 4.6 incorrectly sets forth a project justification by limiting its discussion to 2005. The text (p. 3-55) clearly states a significant issue in housing supply arises between 2005-2015. Series 8 amply evidences the conclusion that there will be a problem. Chapter 4.6, by limiting its discussion to 2005, does not adequately address the issues. 43(ak)

23. Please identify and support the discussion "In rural areas, increased densities would potentially result in placement of attached units . . . requiring urban levels of service . . . ." (p. 4.6-27.) How many? Where? What urban services? What indirect effects will result? What growth induction will stem from the project? 43(al)

24. At page 4.6-28, it states: "a less than 25 percent shift . . . is less than significant." What is the justification for this standard? Why is a different standard used for determining biological significance? Is this a "normal" test of determining a significant environmental effect. If so, please document. 43(am)

25. Page 4.6-36, certainly shifting 25,265 acres of planned residential ". . . to lands outside the MHPA" represents a significant effect. 43(an)

26. How much land is needed for 2005, 2010, and 2015? By jurisdiction, what is the surplus or shortfall? 43(ao)

27. Your statements on page 4.6-45, first paragraph, contain many conclusions. Please quantify. Since the U.S. Fish and Wildlife Service may still list new and additional species and require more land, what real benefits are there? 43(ap)

28. Please provide Congressional and State authorization for the statement that "the federal and state governments [will] be responsible . . . for . . . one-half . . . ." What federal and state funds? How many? When? How will these be distributed? 43(aq)

29. Please substantiate, with more than a conclusion, your statements regarding saving the taxpayers money. How much? When? How do any savings compare to the costs? Please discuss how future federal listings may impact alleged savings. 43(ar)

30. Please provide factual or documentary support for the assertions made in the last paragraph on page 4.6-45. Land values within the MHPA should be radically reduced. How much? For whom? 43(as)

31. Since land outside the preserve will go up in value (pp. 4.6-45, 46), won't this impact the cost of housing? Its availability? The type of housing? 43(at)

32. If industrial lands are converted to residential (p. 4.6-46) what are the regional implications? What are the implications by jurisdiction? 43(au)

33. Chapter 6.0 is inadequate. Please quantify the cumulative impacts of the identified projects. How many acres? What species are being preserved? What numbers? What are the land uses, transportation and other likely effects of these activities? 43(av)

We appreciate the opportunity to comment.

Yours very truly,

Donald R. Worley

GS:DRW:sc
c:Birch\CityPlan.ltr

44 LYNNE HEIDEL, STEPHENSON, WORLEY GARRATT SCHWARTZ HEIDEL & PRAIRIE, 10/15/96

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44(a) The statement for "location A11" (Draft EIR/EIS Page 4.3-100) referencing Figure 4.3-4, regarding the Saltponds, does not imply that salt extraction process is destructive, rather, it states that if the current salt extraction uses were terminated, the converted use should be compatible with resource goals and objectives of the subarea plan. This is consistent with the City's Subarea Plan found in Volume II of the MSCP Plan, page 66. See also responses to Comments 39(f) and 61(f).

44(b) Land use analysis in this document considers only adopted Community Plans. The impact analysis is on a plan level, no implementing rezones are proposed at this time such that specific existing uses are analyzed. The suggested detailed analysis is beyond the scope of this project.

44(c) As stated in the letter of comment, the salt works are located within the Otay Mesa-Nestor Community Plan area. Amendments to the Otay Mesa-Nestor Community Plan are not proposed as part of the proposed MSCP Plan and are not addressed in the Draft EIR/EIS. No features of the actions addressed in the Draft EIR/EIS would result in a cessation of the existing salt works use, therefore, impacts associated with such a cessation are not addressed in the Draft EIR/EIS. Likewise, no features of the actions addressed in the Draft EIR/EIS would encourage continuation of the salt works, therefore, impacts associated with such a cessation are not addressed in the Draft EIR/EIS . As described on page 4.3-100 of the Draft EIR/EIS, the City of San Diego Subarea Plan simply states that the salt works is anticipated to continue for an undetermined period and that sensitive species using the salt works should continue to be managed to ensure their protection. If, at some future date, the salt works is terminated, the City of San Diego Subarea Plan encourages conversion to a use compatible with MSCP Plan goals and objectives. No statement is made regarding what such a use might be.

44(d) The Draft EIR/EIS does not recommend the cessation of the ongoing activities. Any modification of the salt works that resulted in the loss of sensitive species and/or habitat supporting sensitive species would have an adverse effect on the MSCP.

44(e) The City of San Diego's Subarea Plan, page 9, Preserve Guideline #A11 acknowledges that the existing salt extraction use is expected to continue for an undetermined period and also recognizes that the area provides habitat for sensitive plant and animal species. The plan does not impose any new restrictions on wetlands or their use. In the event that the extraction use is terminated the plan recommends conversion to a use that would be compatible with the preserve.

44(f) It is true that the Draft EIR/EIS identifies the salt ponds as wetland areas and there is little discussion concerning the type of wetland habitat the salt works represents and no discussion about

the impacts implementation of the MSCP Plan might have on the operation of the salt works. The MSCP Plan does not propose to modify the operation of the salt works. The salt works were included within the MHPA because of its high habitat value, its designation as open space in the Otay-Nestor Community Plan, and because the salt works are within a study area addressing a proposal to expand the San Diego National Wildlife Refuge (Refuge). Details concerning the relationship of the salt works to wetland habitats and any impacts which might result from the Refuge expansion effort would be addressed in separate and subsequent environmental documents.

Land use implications on the Otay Mesa-Nestor Community Plan are not discussed in Draft EIR/EIS because no changes to the Otay Mesa-Nestor Community Plan are proposed as a result of the MSCP.

While it may be true that there are no development benefits to be derived from the inclusion of wetlands in the MSCP Plan, including the salt works, the MSCP Plan does not impose any additional constraints on wetland development of the salt works. The MSCP is a habitat conservation plan to be considered as part of an application for take authorizations. A permitted authorization of take in no way changes the federal, state or local laws and regulations pertaining to wetlands. Wetlands represent important habitats for listed and unlisted species, and therefore inclusion of wetlands within the MSCP Plan is entirely consistent with the ecological approach to the habitat maintenance goals of this Plan. Please refer also to **Theme Response XVII, Salt Works.**

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STEPHENSON WORLEY GARRATT SCHWARTZ HEIDEL & PRAIRIE

A LIMITED LIABILITY PARTNERSHIP
LAWYERS
101 WEST BROADWAY, SUITE 1300
SAN DIEGO, CALIFORNIA 92101-8214

LORI A. CHAMBERLAIN
TIMOTHY K. GARFIELD
GREGORY C.M. GARRATT
LYNNE L. HEIDEL
MICHAEL W. PRAIRIE
AMY ROSEN
WILLIAM J. SCHWARTZ, JR.
GARY J. STEPHENSON
JENNIFER TREESE WILSON
DONALD R. WORLEY

OF COUNSEL
ELAINE L. CHAN
KENT H. FOSTER

TELEPHONE
(619) 696-3500

FACSIMILE
(619) 696-3555

E-MAIL
SDLAW@SWGSHP.COM

October 15, 1996

VIA HAND DELIVERY

1996

Mr. John Kovac, Senior Planner
CITY OF SAN DIEGO
1222 First Avenue, 5th Floor
San Diego, CA 92101

Re: MSCP Plan Draft EIR/EIS
DEP No. 93-0287/SCH No. 93121073

Dear Mr. Kovac:

We represent Western Salt Company with respect to its salt works which is located within the Otay Mesa-Nestor Community Plan area of the City of San Diego. The salt works is identified on Figure 2 (Conserved Vegetation Communities in Southern Area) of the MSCP Subarea Plan for the City of San Diego as area A-11 and is discussed on page 9 of the Subarea Plan. Thank you for the opportunity to comment on the Draft Environmental Impact Report/ Environmental Impact Statement ("Draft EIR/EIS") prepared in conjunction with the MSCP. We understand that the public comment period has been extended to October 29, 1996 and we intend to elaborate on the issues introduced in this letter prior to this date.

As stated above, the salt works is mentioned in the MSCP Subarea Plan for the City of San Diego. The Draft EIR/EIS discussion of the impacts of the MSCP on the salt works is found on page 4.3-100 of the document. This brief statement implies that the salt extraction process is destructive of the habitat in which it is located. Furthermore, the analysis seems to assume that the impacts of salt "extraction" are similar to "aggregate extraction." This discussion is clearly in error in that the salt works actually creates and preserves the wetland habitat. The Draft EIR/EIS has failed to address the land use and biological impacts of placing the salt works in the preserve in the event the preserve inhibits the on-going operation of the salt works. Furthermore, there is no discussion of the fact that the draft Otay Mesa - Nestor Community Plan ("Draft Community Plan") encourages the continuation of the salt works and states that such continuation is "consistent with the City's natural resource conservation and open space preservation goals." (See page 1.5 of the Draft Community Plan.) It is acknowledged in the Draft Community Plan that the on-going operation of the salt works serves to preserve the wetland habitat. There is therefore an inconsistency in the land use and biology assumptions of the Draft

44(a)

44(b)

Community Plan and the MSCP and the Draft EIR/EIS and a lack of discussion of these issues in the Draft EIR/EIS. 44(b)

The salt ponds are part of a man made industrial operation. The on-going use of the property is industrial, an industrial use which creates and preserves wetlands. There is no discussion in the Draft EIR/EIS about the impacts and implications of the cessation of the use. Furthermore, there is no acknowledgment that the on-going operation of the salt works should be encouraged or that the goals of the MSCP do not threaten the on-going industrial use. 44(c)

If the salt works are to be included in the MSCP Preserve, Western Salt Company will request that language be incorporated in the MSCP which states that the MSCP shall not be used to inhibit the operation of the salt works, its updating, growth and change. This will not only give assurance to Western Salt Company that the MSCP does not threaten its business, but also that the salt ponds will be preserved. The addition of such language would be consistent with the Draft Community Plan. 44(d)

It should be noted that portions of the salt works are identified as developed on Figure 2 referenced above, but neither the MSCP nor the Draft EIR/EIS address the importance of maintaining the industrial activities on these portions of the salt works. We do not believe that these areas, which are not jurisdictional wetlands, should be included in the preserve at all. The Draft Community Plan will identify the portions of the salt works other than the ponds themselves as "Salt Works" so that they may be altered without creating a conflict with the Draft Community Plan. Western Salt Company will request that similar language be incorporated in the MSCP. There should be discussion of the impacts of the inclusion of the developed areas in the Draft EIR/EIS in that such inclusion could threaten the continued operation of the salt works. Furthermore, there are other portions of the salt works, including Pond 20 and the magnesium chloride ponds, which are not jurisdictional according to Western Salt Company's biology consultant and should not be included in the preserve at all. 44(e)

In summary, there is a lack of information in the Draft EIR/EIS about the salt ponds as a wetland area and the relationship between the salt works and the wetland habitat area. There is no discussion about the impact of the MSCP on the on-going operation of the salt works. There is no detailed discussion of the land use implications of the MSCP on the Otay Mesa-Nestor Community Plan area. Discussion and correction of discussions of these issues should be included within the Draft EIR/EIS. 44(f)

As a general comment, it should be noted that there are no development benefits to be derived from the inclusion of wetlands in the MSCP. The MSCP merely subjects wetlands to new constraints in addition to those already imposed by existing Federal, State and Local regulation. Therefore, the inclusion of wetlands within the MSCP is inconsistent with the intent of the MSCP.

We thank you again for the opportunity to comment on the Draft EIR/EIS for the MSCP.

Very truly yours,

Lynne L. Heidel

Lynne L. Heidel

cc: Mayor Susan Golding and
Members of the City Council

45 DAN SILVER, ENDANGERED HABITATS LEAGUE, 10/14/96

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45(a) See **Theme Response I, Species Analysis Approach** and revised Table 3-5 of the MSCP Plan included in the Revisions to the MSCP Plan, January 1997.

45(b) The MSCP documentation (i.e., Volumes I and II of the MSCP Plan, Draft EIR/EIS, and Volumes I and II of the Resource Document) address the NCCP conservation tenets and guidelines. Chapter 4 of the Resource Document specifically describes 11 factors that incorporate the seven NCCP conservation tenets and were used to guide reserve design and determine acreage targets. This chapter also assessed the habitat value in the MSCP study area, identified habitats/communities that support target species, identified gaps in information and prioritized a research agenda.

At each phase in the preparation of the MSCP Plan, each species' long-term conservation was evaluated considering the relevant NCCP preserve design tenets/criteria using the best available information on species occurrences within the MSCP and its range-wide distribution, habitat preference(s), habitat quality, connectivity requirements to other populations, and configuration to be conserved by the MSCP Plan. It also presumed that management and monitoring would occur as identified in the subregional and subarea plans. The standard of no net loss of habitat value were incorporated in the final assessment of coverage.

Specific assessments of the status and risks for each proposed covered species for each alternative preserve design (focused planning area or FPA), measured against the draft Standards and Guidelines for the MSCP, were presented in Volume I of the Resource Document (Chapter 5). A list of conserved species was developed for each alternative. Subsequently, the MSCP Plan was revised to include another alternative (the Multi-Habitat Planning Area [MHPA]). Based on the increased habitat acreage, strengthened reserve design, more detailed evaluations and the issuance standards for state and federal take authorizations, the number of covered species was increased above the previous reserve design alternatives. Also, in the subregional and subarea context, the MSCP analysis included text maps and written discussions of the acreage and configuration of coastal sage scrub and other habitats that would be conserved.

The Conservation Guidelines (page 9) define no net loss of habitat value as "... no net reduction in the ability of the subregion to maintain viable populations of target species over the long-term..." and specifically acknowledge that "...the goal of no net loss of habitat value may be attainable even if there is a net loss of habitat acreage." The objective determination to be met by the MSCP is whether target species (i.e., covered species in the MSCP Plan terminology) can be shown to be conserved at a level, using the best available data, that assures necessary habitat (including connectivity areas) to conserve the species.

45(c) See **Theme Response XVIII, Recovery of Species.**

45(d) See **Theme Response XVI, Risk Factors.**

45(e) In determining whether the impacts of the MSCP Plan to species are significant, both the context and severity of adverse and beneficial impacts are considered. Context includes the status of the species range wide and locally; the importance of the affected population to the recovery and survival of the species; existing and future threats to the species; and the degree to which the plan contributes to the species' conservation. Severity includes the duration and intensity of the impact the degree to which possible effects on the species are highly uncertain or involve unique or unknown risks; the degree to which the action may establish a precedent for future actions with significant effects on the species; and whether the action is related to other actions with individually insignificant but cumulatively significant impacts on the species. An effect that cannot meaningfully be detected, measured, or evaluated relative to the species' status or habitat as a whole was determined to be insignificant and require little to mitigate or minimize the potential take associated with the proposed action. Based on the wide-ranging nature of these species, and the minor role of the MSCP study area in their overall conservation, the wildlife agencies determined that the impacts of the proposed action on these species was insignificant.

45(f) The 15 point locations for the arroyo toad represent the best available information for this species within the MSCP study area. This species may occur at other locations which have not yet been documented. More thorough surveys may identify other areas occupied by this species. All known localities are not exhibited on the maps. Within the MSCP study area the Arroyo toad is known to occur within the Otay River, Sweetwater River, San Pasqual Valley, San Vicente Creek, and Cottonwood Creek in Marron Valley. All known locations of this species within the MSCP study area occur within the MHPA.

The MSCP is proposed to be a habitat based approach to species preservation. The basic premise is to conserve large interconnected blocks of core habitat areas and their associated species. The arroyo toad is dependent upon riverine habitat and adjacent upland within 1 kilometer of the stream course. The MHPA preserves all known locations of the arroyo toad and 70 percent of all riparian habitats and freshwater marsh. Wetlands impacted outside of the MHPA would be subject to the federal policy of no net loss of function and value, the Section 404(b)(1) Clean Water Act guidelines and local and state regulations. Therefore, wetland habitat outside the preserve is also expected to be maintained at present levels both in total acres and value, although it would not be managed under the MSCP Plan. The intent of including substantial amounts of riverine habitat that is not presently known to be occupied by the Arroyo toad is based on the expectation that this habitat is presently occupied or could be occupied by the target species in the future, and that riverine systems are dynamic and the location of suitable habitat would shift over time.

Management plans for preserve areas must include monitoring and maintenance of occupied breeding habitat including 1 km of adjacent upland foraging habitat. The management plan would include a program to control non-native predators. Upstream activities, both natural and manmade would affect the location and quality of habitat within the MHPA. A minimum 500 meter-wide

management area would be established around habitat within the MHPA to maintain or improve habitat quality for this species. Specifically, publicly owned areas of occupied habitat, and suitable but unoccupied habitat, would be assessed to determine appropriate management measures, to minimize the impact of human use, including prohibitions on the collection of this species; control non- native species; maintain or enhance water regime and quality; and restore or enhance habitat. Non-native predator control such as bullfrog removal is likely to be difficult but important in localized areas. No information that we are aware of is yet available regarding the genetic interchange between river systems. Based on the above information, the arroyo toad was included in the MSCP as a covered species. The Fish and Wildlife Service is in the process of preparing a recovery plan for this species. Habitat preservation, management, and non-native predator removal are key actions that would likely be recommended in a recovery plan.

45(g) The red-legged frog is believed to be extirpated from the San Diego County and thus we do not reasonably expect it to occur or be adversely affected by the MSCP Plan, thus the effects of the MSCP on this species are considered to be discountable. The California red-legged frog, once common and widespread in southern California, is presently only known to be extant from one location in Riverside County. The red-legged frog has declined due to numerous complex factors including habitat loss, non-native predators such as bullfrogs, pollutants and modifications to the natural stream flow regime. This species is found in marshes, slow portions of streams, ponds and other permanent water bodies, particularly those fringed with willows or native cattails. If this species was found to be extant within the county it would likely be within relatively remote, less urbanized areas.

The MSCP Plan proposes to preserve 70 percent of all riparian habitats (11,657 of 12,794 acres) and freshwater marsh (497 of 815 acres). Wetlands impacted outside of the MHPA would be subject to the federal policy of no net loss of function and value, the Section 404(b)(1) Clean Water Act guidelines and local and state regulations. Therefore, wetland habitat outside the preserve is also expected to be maintained at present levels both in total acres and value, although it would not be managed under the MSCP Plan. If the species were found to be extant within the MHPA, or it were reintroduced, it would likely benefit from permanent preservation and management of the wetland habitat and adjacent upland. In particular, management programs for the arroyo toad which include removal of non- native predators such as bullfrogs and sunfish would benefit the red-legged frog. If this species were found to occur outside the MHPA, wetlands avoidance and minimization guidelines within the Subarea Plans, and U.S. Army Corps of Engineer guidance would be expected to preclude project impacts to this endangered species. Through adaptive management, preserve managers would be able to address necessary management of a newly discovered population of red-legged frogs within the MHPA.

45(h) The eight point locations for the Southwestern pond turtle represent the best information available of the known locations of this species within MSCP boundaries. This species may occur at other locations which have not been documented. More thorough surveys may identify other areas occupied by this species. Within the MSCP study area this species is known to occur within the Sweetwater River, Cottonwood Creek, San Dieguito River, Lusardi Creek and Tijuana. River.

The MSCP is proposed as a habitat based approach to species preservation. The basic premise is to conserve large interconnected blocks of core habitat areas and their associated species. The southwestern pond turtle is dependent upon riverine and pond habitat and adjacent upland within 500 meters on either side of the stream course. The MHPA preserves seven out of eight known locations of this species and 70 percent of all riparian habitats and freshwater marsh. Wetlands impacted outside of the MHPA would be subject to the federal policy of no-net-loss of function and value, the Section 404(b)(1) Clean Water Act guidelines and local and state regulations. Therefore, wetland habitat outside the preserve is also expected to be maintained at present levels both in total acres and value, although it would not be managed under the MSCP Plan. The pond turtle would likely benefit from permanent preservation and management of the wetland habitat and adjacent upland. In particular, management programs which include removal of non-native predators such as bullfrogs and sunfish would benefit the pond turtle. A minimum 500 meter-wide management area would be established around pond turtle habitat within preserve areas to maintain or improve habitat quality for this species. Specifically, publicly owned areas of occupied habitat, and suitable but unoccupied habitat, would be assessed to determine appropriate management measures to minimize the impact of human use, including prohibitions on the collection of this species, attempt to control non-native species, maintain or enhance water regime and quality, and restore or enhance habitat.

45(i) The mapped data in the MSCP database for northern harrier do not distinguish between the more common migrants moving through San Diego County and the relatively few nesting individuals. Unitt (1984) indicates that individuals may wander considerably but traditional nest areas/territory areas are used regularly. Nesting individuals may forage in the 3-4 mile area around the nest site. The primary known nesting sites include one or two pairs in the Tijuana River Valley, 1-2 pair on Otay Mesa, and 1-2 pair in South San Diego Bay (in the Sweetwater River National Wildlife Refuge and the southwestern part of the bay). Previously known pairs in the lower Sorrento Valley/Peñasquitos Lagoon, San Dieguito Slough and Proctor Valley are assumed to be extirpated.

The northern harrier exhibits nesting area fidelity but does not appear to exhibit nest site fidelity. The northem harrier typically forages in open marshlands, grasslands, or agricultural areas, presumably near nest sites. This species generally nests on the dry land edges of wetlands and would benefit from existing wetland protection regulations. Known nesting sites in the Tijuana River Valley and Sweetwater Marsh would be maintained and managed pursuant to the City of San Diego subarea plan and the National Wildlife Refuge system. The Tijuana River Valley Regional Park (see page 10 of City of San Diego Subarea Plan) retains some existing agricultural lands (available for foraging harriers); the Tijuana National Estuarine Sanctuary will continue to enhance marshlands and manage for nesting harriers.

The City of San Diego Subarea Plan would preserve lands in the Tijuana River Valley (96%), salt pan dikes, (99%) and the lower Otay River Valley (73%) (see Figure 2, City of San Diego Subarea Plan, "Conserved Vegetation Communities in Southern Area"). Operation of the salt evaporator ponds in south San Diego Bay will retain dikes and salt marsh habitats for foraging northern harriers. The City of San Diego Subarea Plan (page 7) indicates the Otay River Valley is used by the harrier for foraging

and nesting; in addition, the County of San Diego Subarea Plan would conserve over 80% of Proctor Valley, primarily in the southern, more open area.

In the Northern Area of the City of San Diego Subarea Plan (Figure 5 of the City Subarea Plan) lands suitable for utilization by the northern harrier are found adjacent to the San Dieguito Lagoon/lower San Dieguito River Valley (69% conservation of core and linkage areas), Los Peñasquitos Lagoon and lower Sorrento Valley and lower Peñasquitos Canyon (68% conservation of core and linkage areas). The preserve complex including Torrey Pines State Park, Crest Canyon, Los Peñasquitos Lagoon and Los Peñasquitos Canyon Preserve contains sufficient area of nonnative grassland which could support northern harriers (previously known from the Los Peñasquitos Lagoon area).

Lake Hodges Reservoir/San Pasqual Valley (72% of conservation of core and linkage areas) are historic sites for northern harriers (Unitt, 1984). Retention of these areas as reservoir/park use and management of the cornerstone riparian and agricultural lands would provide habitat for northern harriers (City of San Diego Subarea Plan, page 30).

The Biological Monitoring Plan for the MSCP includes monitoring of foraging habitats for raptors. The locations for proposed monitoring are shown in Table 5-6 of the Monitoring Plan, and are consistent with known non-coastal locations of northern harriers. Section 7 of the Monitoring Plan provides an adaptive management process. Management plans for preserve areas with northern harrier nesting habitat would include measures to identify occupied nests, establish 300-500 foot buffers around active nest sites and habitat management actions to maintain or improve northern harrier nesting habitat.

Based on this analysis, breeding populations of northern harrier within the MSCP study area would be maintained and the northern harrier would be adequately conserved. Within preserve areas, a one-quarter mile management zone and 300-foot buffer from low impact activities (recreation) would be established around active nest sites.

45(j) Within the MSCP study area, resident Cooper's hawks primarily use riparian woodland areas and oak woodland habitats. Over 90% of the nests of this species that were examined by Unitt (1984) occurred in oak trees. Cooper's hawks forage in a variety of habitats, including riparian and oak woodlands and grasslands.

Within the MSCP study area, 29 of the 32 recorded occurrences (92%) of Cooper's hawks would be conserved. The proposed Bird Atlas program for San Diego County will map breeding and migrant occurrences of birds including Cooper's hawks, over a five year period. The 32 recorded occurrences in the MSCP data base probably reflects an under representation of the actual number of Cooper's hawk nests in the MSCP study area. The MSCP conserves Cooper's hawks by conserving their nesting and foraging habitat and protecting known or newly discovered nest sites within the preserve.

The Draft City of San Diego Biology Guidelines contain setback requirements for Cooper's hawk nests for future development within the "preserve". The City of San Diego Cornerstone lands contain excellent Cooper's hawk habitats. The City's Goals and Objectives for management of these areas encourage Cooper's hawk use (City of San Diego Subarea Plan, page 95).

The Cooper's hawk would be covered by the MSCP Plan because approximately 55% of its potential foraging and 52% of potential nesting habitat and 92% of the known nesting locations would be conserved. Preserve management plans will include a 300-foot management zone around nesting sites, with minimal disturbance in oak woodlands and oak riparian forests. In the design of future projects within the Metro-Lakeside-Jamul segment, design of preserve areas shall conserve patches of oak woodland and oak riparian forest of adequate size for nesting and foraging habitat. (See Table 3-5 of the Revisions to the MSCP Plan, Volume I.)

45(k) This species was historically a common summer resident in San Diego County, but the local breeding population has been extirpated (Unitt, 1984). At present, the species is only seen in migration in montane valleys (such as Warner Valley) and desert lowlands in San Diego County. The species is widespread throughout North America and there is no reason to believe it would recolonize previous nesting localities in coastal southern California. Thus, impacts of the MSCP Plan on the Swainson's hawks found in the MSCP study area are probably insignificant to the species as a whole and any taking of the species within the plan is insignificant. In addition, preserving more grasslands in the MSCP study area may not have any measurable effect on this species.

45(l) The wildlife agencies have re-evaluated the conservation levels achieved by the MHPA on the golden eagle based on new information received during the EIR/EIS comment period from the Golden Eagles Survey Project. The information provided stated that prior to the 1950s, 44 active golden eagle territories existed on the entire MSCP study area (which includes areas outside the MSCP study area). By 1996, the number of eagle pairs had been reduced to 14 active golden eagle territories within or partially within MSCP boundaries.

Based on this new information it is estimated that nine of the fourteen active nesting territories which are fully or partially within the MSCP study area should remain viable; three could remain viable if certain conditions are met and two pair are likely not to remain viable. Six of these fourteen have known nest site locations within the MHPA or "pre-approved mitigation area". Impacts to the foraging territories of 11 of the pairs is estimated to be less than 20 percent of the total area (See Table 3-5 of the Revisions to the MSCP Plan, Volume I, for percent conservation by territory). Approximately 139,000 acres of potential foraging area consisting of sage scrub, chaparral, grassland and oak woodland would be conserved in the eastern portion of the MSCP study area. The majority of the preserved breeding golden eagle pairs are distributed within large blocks of open space away from urbanized areas of the county. These areas are adjacent to Forest Service and BLM lands and undeveloped areas of the County of San Diego and are predominantly zoned low density residential. Under the County of San Diego's proposed Biological Mitigation Ordinance, this species is considered a Rare, Narrow Endemic Animal

Species, and therefore, mitigation would use avoidance as a first level of priority; unavoidable impacts may not reduce the viability of the affected population unless this results in no reasonable use of property; mitigation must result in a project that would not significantly reduce species viability.

Management plans for conserved lands with nest sites would include measures to minimize disturbance in the vicinity of active and alternate nest sites. Protection of the nest sites is essential to maintaining a breeding population of golden eagles within the MSCP boundaries. Site-specific management plans for the MHPA would include annual monitoring of nests to ensure that active nest sites are not disturbed. Nest site monitoring will include surveys to determine status, reproductive success, and identify any need for adaptive management. A 4,000-foot management zone would be established around active nest sites within the preserve and would be managed to help ensure nesting success. Activities that degrade golden eagle nest sites would be restricted in this zone, particularly during the nesting season.

Twenty-six active nesting areas occur primarily or wholly outside of the MSCP study area. Conservation plans developed for these areas should include measures to conserve adequate habitat to maintain these territories. Based on the level of conservation proposed and with active management and protection of existing nests sites and any future nest site within the preserve, this species is considered to be adequately conserved.

45(m) Within the MHPA, 9,770 acres of grassland habitat would be conserved including portions of Spring Canyon, San Pasqual Valley/Lake Hodges, Otay Mesa northeast of Brown Field, Otay Ranch and River Valley, and Future Urbanizing Area 4. Eight known burrowing owl locations occur within Major Amendment Areas of the South County Segment of the County of San Diego's Subarea Plan. Conservation of burrowing owl nest sites and foraging habitat would be one of the primary factors in the design and approval of preserve areas in the Major Amendment Areas. Management plans for known and potential burrowing owl habitat areas would include habitat management and enhancement measures for the burrowing owl. The wildlife agencies have agreed to work to achieve greater conservation of occupied burrowing owl habitat or suitable expansion habitat through land exchanges, acquisitions, etc. The wildlife agencies would enhance and manage their preserve lands to allow for relocation of burrowing owls to these lands. Emphasis will be placed on relocating burrowing owls from least tern nesting areas to these areas.

Proposed projects both within and outside of the MHPA would be required to survey suitable habitat to determine the presence and abundance of burrowing owls as part of the site-specific CEQA review process. Lands acquired for preservation would be surveyed to determine presence of sensitive species, including the burrowing owl, and appropriate management. Preserved colonies of burrowing owl would be monitored, to assist in determining appropriate management and possible enhancement opportunities. Management plans for the MHPA would include management and enhancement of occupied habitat and suitable unoccupied habitat including identification of historical colony sites and an evaluation of their potential enhancement. Management plans will provide for the enhancement of ground squirrel populations and address the use of herbicides within preserve areas in the

vicinity of colonies. Passive and active relocation of any impacted individuals of this species within the MSCP study area into the identified enhancement areas in accordance with methodology would be a project requirement. Relocation should be in accordance with methodology adopted by the Burrowing Owl Consortium and coordinated with the wildlife agencies. Enhancement may consist of creating artificial burrows, managing vegetation at breeding colonies to optimize nesting and foraging habitat, controlling access by vehicles and people to nesting areas, and predator control. A 300-foot protection zone would be established around all preserved burrowing owl nest sites within the MHPA.

The wildlife agencies contacted members of the Institute for Bird Populations which is a member of the Burrowing Owl Consortium regarding potential conservation and management of the burrowing owl within the MSCP study area.

The jurisdictions have not proposed to expand their Subarea Plans to incorporate additional grassland into the MHPA. The wildlife agencies must analyze the Subarea Plan/HCP as submitted by the applicant.

Persistence of this species in San Diego County is also dependent on adequate conservation of known population concentrations in the Santa Maria Valley and other areas (in the vicinity of Ramona).

45(n) The flycatcher was once much more common in the coastal plain and coastal foothills of San Diego County, but has been largely extirpated because of habitat conversion and possibly brown-headed cowbird nest parasitism (Unitt, 1984). Sporadic populations have occurred on the Tijuana and Sweetwater Rivers, and Jamul Creek. This species has also been detected on the San Diego, and San Dieguito Rivers, Dulzura Creek, and lower Otay Reservoir. In addition to this general information, nine localities have been mapped within the MSCP study area, eight of which occur within the MHPA. Table 3-3 of the MSCP Plan, Volume I, indicates the habitat protection goals for various habitats in the MSCP study area. The southwestern willow flycatcher primarily uses Oak Riparian (S7% conservation), Riparian Forest (81% conservation), and Riparian Woodland habitats (80% conservation). Additionally, the remaining wetland habitats would be conserved through the federal policy of no-net-loss of function and value of wetlands, the application of the Section 404(b)(1) guidelines, and wetland protection policy and guidelines by the State of California and local jurisdictions.

Given the level of development that has occurred to date, and its linear nature, riparian habitat is often subject to edge effects, primarily from existing development. The MSCP Plan would help minimize future adverse impacts of edge effect through preservation of an interconnected landscape level preserve system with specific monitoring and management measures. The Plan requires surveys in suitable habitats during the CEQA process for individual projects and monitoring and brown-headed cowbird control where appropriate. General biological surveys, including surveys for willow flycatcher within suitable habitat, would be part of management on lands dedicated to the preserve. Management plans for the MHPA would include monitoring and management, including a 200-foot

management zone adjacent to occupied habitat. See also revised Table 3-5 of the Revisions to the MSCP Plan, Volume I.

A recovery plan has not been prepared for this species. It is anticipated that the preserve management measures would complement and facilitate any recovery actions developed for this area. With the development of a recovery plan for the southwestern flycatcher, additional provisions and funding may become available.

45(o) Within the MSCP study area, the cactus wren has a few large and several small local populations in remnant succulent sage scrub. Four of the five identified major populations of cactus wren are conserved within the MHPA including Lake Hodges/Wild Animal Park, Santee/Lake Jennings, Sweetwater River, and Otay River Valley/Otay Mesa. Conservation of the Salt Creek population is essential. Sweetwater Park is a minor amendment area requiring agency approval.

The existing distribution of the cactus wren in the MSCP study area has been greatly reduced. Thus, restoration of suitable cactus wren habitat is an important component of the MSCP Plan. Important areas of potential habitat restoration of maritime succulent sage scrub/cactus wren habitat occur within the MHPA as follows: Otay Ranch as required by the Otay Ranch Resource Management Program and General Development Plan; Spring Canyon and lands to the immediate southwest, Dennery Canyon, San Miguel Ranch, Lake Hodges/San Pasqual Valley, Otay River Valley, and Santee/Lake Jennings. Maritime succulent sage scrub habitat restoration on Otay Ranch would occur at a minimum of 1:1 ratio with success being required prior to impact (as required in the Otay Ranch RMP and GDP).

Restoration of disturbed habitats around Spring Canyon could substantially increase the amount of maritime succulent sage scrub available in the southern part of Otay Mesa; where appropriate, planting with cactus suitable for coastal cactus wrens would allow colonization of this area. The City of San Diego has already been acquiring parcels of land in Spring Canyon to mitigate project impacts. The City of San Diego Subarea Plan revisions clarify that restoration of habitats for cactus wren is a priority 1 management policy as established in Table 3-5 of the Revisions to the MSCP Plan, Volume I. Additionally, Spring Canyon occurs within the proposed Vernal Pools Unit of the San Diego National Wildlife Refuge.

Management plans for preserve lands would include active management of major populations of cactus wrens and restoration of maritime succulent sage scrub and cactus patches in the preserve, including active propagation of cactus patches, monitoring of population of cactus wren populations, and active/adaptive management of cactus wren. Occupied breeding habitat and suitable but unoccupied habitat within the preserve would be managed to maintain and enhance populations of cactus wrens, including an adequate management zone adjacent to the occupied habitat. General management needs are identified in Table 3-5 of the Revisions to the MSCP Plan, Volume I.

45(p) The species evaluations were intended as the working analysis of the MSCP Plan by the project biologist, summarizing pertinent information to be considered in evaluating the level of preservation and take that would likely occur as a result of the MSCP Plan. Thus, within the evaluation there is a discussion of areas of concern that need to be taken into consideration in making a decision as to the adequacy of the Plan to protect a specific target species, and recommended conservation or management measures. Areas of concern that need to be taken into consideration include existing circumstances, such as the constraints that presently occur due to existing development in the Lakeside linkage.

The expected level of conservation for the California gnatcatcher was evaluated from a habitat based perspective. It is believed that this species can be most effectively conserved at the habitat or landscape level applying reserve design principles and effective habitat management. The MSCP is proposed to be a habitat based approach to species preservation. The basic premise is to conserve large interconnected blocks of core habitat areas and their associated species within a managed network of reserves and to connect this reserve system to conservation planning efforts occurring outside of the MSCP boundary (MHCP, Water District Subarea Plans and County of San Diego's MHC&OSP).

The MHPA would result in the conservation of 171,917 acres of habitat within 16 identified core biological resource areas and linkages. Approximately 73,000 acres of existing and potential suitable gnatcatcher habitat consisting of coastal sage scrub, maritime succulent sage scrub, coastal sage scrub/chaparral mix would be conserved in an interconnected network of reserves. Over 81 percent of the core areas (Otay, San Miguel, Mission Trails, Santee, Kearney Mesa, Poway, San Pasqual and Lake Hodges) where gnatcatchers occur are conserved. Sixty-five percent (1,819/2,814) of known gnatcatcher locations would be conserved within the MHPA. Sixty-eight percent (57,674 acres) of habitat supporting core gnatcatcher populations is conserved within the MHPA. Seventy percent (30,273 acres) of coastal sage scrub habitat evaluated as having very high value for gnatcatchers, and 62 percent (4,609 acres) of habitat having high value for gnatcatchers would be conserved within the MHPA. These figures are actually an underestimate of the level of conservation that would be achieved because they do not include conservation on military lands. Over 75% of critical habitat linkages between core areas are conserved in a functional manner.

Monitoring of the population and adaptive management of preserves would occur as a result of MSCP Plan implementation. Preserve management would include measures to avoid human disturbance during the nesting period and fire protection measures to avoid degradation of habitat by unplanned fires.

Participating jurisdictions would implement land-use regulations to ensure development impacts within the MHPA meet preserve design criteria.

45(q) The effects of the MSCP Plan on the American badger are believed to be insignificant. Relatively little is known about the current distribution of the badger within San Diego

County. Their secretive nature and low densities have resulted in little site specific data available to analyze the effects of the MSCP Plan on known individual occurrences or populations. In the absence of this information, a habitat based assessment on the effects on the species as a whole was used. It is believed that this species can be most effectively conserved at the habitat or landscape level applying preserve design principles and effective habitat management. The MSCP is proposed to be a habitat based approach to species preservation. The basic premise is to conserve large interconnected blocks of core habitat areas and their associated species within a managed network of preserves and to connect this reserve system to Forest Service and BLM lands, and MHC&OSP planning area to the east, and MHCP to the north of the MSCP study area.

The American badger has a large range that includes most of the western U.S. and arid portions of southwestern Canada, and northern Mexico, and is dependent upon open grassland and shrub habitat. There are some concerns that this species is declining in California. It is expected that this species would benefit from the preservation and management of grassland and sparse shrub habitats conserved for other grassland species including the burrowing owl. Particularly, management practices outlined for the burrowing owl to maintain California ground squirrel colonies may benefit this species.

The jurisdictions have not proposed to expand their Subarea Plans to incorporate additional grassland into the MHPA. The wildlife agencies must analyze the Subarea Plan/HCP as submitted by the applicant.

45(r) Comment noted. The mountain lion was originally selected as a target species for the MSCP because the maintenance of such predators is essential to ecosystem processes and functions within the preserve and because of its large home range requirement and need for functional habitat corridors. This wide-ranging, solitary species can be most effectively conserved at the habitat or landscape level applying preserve design principles and effective habitat management. The MSCP is proposed to be a habitat-based approach to species preservation. The MHPA would result in the preservation of 171,917 acres of habitat within 16 identified core biological resource areas and linkages. Approximately 143,184 acres of potential foraging area for this species, consisting of sage scrub, grassland, chaparral, oak riparian forest, and oak woodland, would be conserved in an interconnected network of preserves. The majority of this habitat (122,200 acres) occurs within the eastern portion of the MHPA in large blocks of habitat away from urbanized areas of the county (the unincorporated areas of the County, San Pasqual/Lake Hodges, and Poway). These areas are adjacent to or connect with Forest Service and BLM lands and undeveloped areas of the County of San Diego that are predominantly zoned low-density residential. Known locations for this species include Peñasquitos Canyon/Torrey Pines State Park, Miramar, Rancho San Diego, Otay Ranch, and Otay Mountain. All of these areas, except MCAS Miramar, which is not a part of the MSCP, have been substantially included within the MHPA. Substantial habitat conservation would occur with implementation of the MHPA including preservation of habitat linkages within and outside the MSCP boundary providing both intra-range and inter-range movement corridors.

Movement corridors to areas supporting deer populations and allowing for immigration and emigration are provided. Beier (1993) indicates that a population of 15-20 adult individuals in an area of 150,000 to 400,000 acres of habitat would be viable if movement corridors are provided. Preservation of suitable habitat within areas north (MHCP and unincorporated County land) and east within the MHC&OS is essential to maintaining viable populations of mountain lions within the MSCP study area. The MSCP has provided for functional habitat linkages to these areas.

The core and linkage areas were defined as areas generally supporting high concentrations of sensitive biological resources or important habitat which link core areas together or which link core areas to habitat outside of the planning boundary. The criteria used for defining core and linkage areas included maintaining ecosystem function and processes, and including large animal movement as appropriate. Core areas 6, 8, 9, 11, and 12 are expected to be the primary areas which sustain deer and mountains lions within the MSCP study area and they are linked to each other or to habitat outside the MSCP by linkages "D", "C", and "N". Each core area is linked to other core areas or to habitat areas outside of the MSCP study area by at least one linkage that is adequate for smaller predators such as coyotes. Core areas have redundant connections to each other through either linkages or directly to help ensure that the balance in the ecosystem is maintained.

Some habitat areas within the home range or territory of the mountain lion would be developed consistent with the MSCP Plan. Design criteria include maintaining movement corridors of at least 1,000 feet. Road crossings should be fitted with under crossings (bridges are preferred but large culverts may also be used). Bridge underpasses should be at least 12 feet in height and at least half as wide as they are long. Fencing should be used along roads to direct crossings to the underpass.

Retention of mountain lions within the more urban portions of the preserve is not desirable due to the high mortality of mountain lions in the vicinity of roads, which may serve as a "population sink". Based on the substantial level of habitat conservation, including preservation of habitat linkages providing both intra-range and inter-range movement corridors, the mountain lion would be adequately conserved.

45(s) The MSCP Plan provides for flexibility in the mechanisms that jurisdictions use to achieve conservation goals. In the County, narrow endemic species would be avoided outside of negotiated hard-lined preserve areas (within the Metro-Lakeside-Jamul segment and within Major and Minor Amendment areas). Within the City of San Diego, narrow endemic species would be avoided inside the MHPA and transplanted into the MHPA if found on projects outside of the MHPA. Within Chula Vista and Santee, narrow endemics would be avoided outside of negotiated hard-lined preserve areas.

45(t) "Bay habitat" is different from "open water," which refers to freshwater reservoirs. Management of open water habitat will retain the value for covered species (e.g., bald eagle feeding). Only the Cities of Chula Vista and San Diego proposed to include bay habitat in their subarea plans. The San Diego Unified Port District is not participating in the MSCP and activities in San Diego Bay that are under

its jurisdiction are not covered by the MSCP Plan. If the Port District proposes any activity that would negatively affect a species that is listed by the federal or state agencies, then a separate permit for that activity would be required of the Port District. Also, many potential actions of the Port District within San Diego Bay are currently and will continue to be subject to permit authority of the U.S. Army Corps of Engineers, State Lands Commission, Regional Water Quality Control Board, and other regulatory agencies that are required to consult with the Service and Department. For these reasons, the species coverage for activities within bays is limited only to those activities under the jurisdiction of the City of San Diego and City of Chula Vista, which have proposed acceptable management and conservation for bay habitat under their control.

The NCCP is a voluntary program for the local jurisdictions, which have the option of obtaining individual project state and federal take authorizations under Section 10(a)(1)(B) of the federal Endangered Species Act (ESA), and Section 2081 of the California Fish and Game Code. The Port District is not permitted to take listed species pursuant to the MSCP, but must obtain project specific authorizations. However, the Port District has indicated that it will revise the Port Master Plan and may prepare a subarea plan that incorporates the Master Plan. The suggestion to delete the bay (open water) foraging bird species from the covered species list is not warranted because only those MSCP participants that are conserving this habitat will be permitted take of covered species.

45(u) Descriptions of the actions addressed in the Draft EIR/EIS are provided in Section 1.5, Decisions To Be Made (pages 1-11 through 1-14). Table 4.1-1 (pages 4.1-4 and 4.1-5) of the Draft EIR/EIS also lists the actions and alternatives addressed in the document. Only the actions listed are addressed in the document. Future actions, including individual projects proposed within the MSCP study area, would be subject to separate environmental review. The level of environmental review required would depend upon the nature of the proposed project and the specific requirements of the local jurisdiction within which the project is located. For some actions, the biological data base incorporated in the MSCP Plan may be determined to be adequate; for other actions, supplemental biological information may be required. Please refer also to **Theme Response XXVI, Permit Streamlining.**

45(v) See **Theme Response IX, Allowable Uses within MHPA.**

45(w) See **Theme Response XXV, Wetlands Protection.**

45(x) Management plans for each jurisdiction will address non-native predator control. At the direction of a City of San Diego Council Committee, the language was revised to state that trapping would be done on a case-by-case basis, and that this would be done on a temporary basis only, upon identification of a significant problem. It was considered to be a highly sensitive issue, and the decision makers wanted to ensure that they had done their best to protect pet owners within the City.

45(y) The wildlife agencies are aware of the significant impacts that would result to the MSCP preserve configuration in south San Diego County in general and to the gnatcatcher and cactus wren in particular should the city of Chula Vista and the County of San Diego not implement alternatives that provide for open space in Salt Creek Canyon. These effects have been assessed in the EIR/EIS, and the wildlife agencies would further evaluate them at the time these two jurisdictions submit their applications for take authorizations. See also **Theme Response XX, Severability of Take Authorizations.**

45(z) Pursuant to 50 CFR 13.45 of the Implementing Regulations for the federal ESA, the wildlife agencies would require all jurisdictions to submit an annual report on all activities conducted under their take authorizations permit to ensure compliance with its terms and conditions. This report is part of the public record and would be made available upon request. The Implementation Coordinating Committee meetings, as described in Section 5.8.4 of the MSCP Plan, will be noticed and open to the public. In addition, every three years, the participating jurisdictions would issue a MSCP status report and hold noticed public hearings to receive public comment. This MSCP status report would be accompanied by a biological monitoring report prepared by the wildlife agencies and a preserve management report submitted by the managers of each preserve.

45(aa) Within the City of San Diego, grasslands occur most prevalently in Otay Mesa and the NCFUA Subareas I and IV. The addition of the grasslands in these areas would be necessary to have coverage of additional grassland dependent species.

Increasing the proposed required mitigation (0.5:1) would partially address the level of protection particularly for NCFUA Subarea IV which if implemented would impact significant acreage of grasslands. Additional funding to acquire key parcels with grasslands would also be necessary. The cost is estimated to range from $10,000 to $15,000 per acre for much of this land. The high cost of grasslands within currently approved projects (e.g., Black Mountain Ranch and California Terraces) would generally make acquisition prohibitive.

The City of San Diego MSCP staff consider increasing mitigation for grasslands or increased acquisition funding to be infeasible at this time. The current proposed mitigation ratios and funding levels are within the analytical parameters acceptable to the San Diego City Council. Council direction is required before different mitigation ratios and funding can be evaluated.

Within the unincorporated portion of the MSCP study area, oak woodlands are not well represented as a vegetation community. They occur either mixed among riparian woodland and are thus covered by wetland regulations, or they exist more as aesthetic features than functional vegetation communities. The County of San Diego's draft Biological Mitigation Ordinance lists oak woodland vegetation as a Tier I community, requiring the highest level of mitigation of any of the communities. This ordinance addresses oak woodland vegetation impacts and mitigation requirements more as a community than a grouping of individual trees and therefore should generate a more viable habitat. In addition,

Engelmann oaks are included on the draft County list of sensitive plants and would need mitigation to occur under those requirements.

The non-native grassland communities in the unincorporated area are predominantly located on Otay Ranch and Rancho San Miguel, where agreements have been negotiated, around Sweetwater Reservoir under the ownership of the Sweetwater Authority, the hills west of Santee, on Daley Ranch and on the western portion of Ramona. The draft ordinance proposes mitigation with a ratio of 0.5:1 for non-native grasslands with sensitive species present. This is considered adequate since a majority of non-native grasslands in the MSCP area have either been included in areas with negotiated agreements, are located in the City of San Diego or proposed for annexation into the City of Chula Vista.

Obviously, there are actions that could insure greater coverage of non-native grasslands including raising the mitigation ratios for non-native grasslands to be 0.5:1 overall and acquiring key grassland areas. Furthermore, while Engelmann oaks are included as sensitive species, the ordinance could be modified to raise the mitigation requirements for oak trees in general. At the present time, the County considers the protections in the proposed Biological Mitigation Ordinance to be adequate.

45(ab) The biological data and rationales used to support the conclusions expressed in the Draft EIR/EIS incorporated by reference on pages 4.1-1 through 4.1-3 and described on pages 4.3-1 through 4.3-7. Rationales for species evaluated for coverage are presented in Table 4.3-1, and discussion of the features of the various alternative scenarios in relation to the NCCP Conservation Guidelines is presented on pages 4.3-174 through 4.3-180.

With respect to document organization, the organization of each environmental analysis section is presented on Table 4.1-1 (pages 4.1-4 and 4.1-5) and internal references are provided to guide the reader to discussions of impacts, significance and mitigation. In addition, in response to this comment, a table has been prepared that lists the specific page numbers for the discussion of impacts, significance and mitigation for the various actions and alternatives addressed in the Draft EIR/EIS is incorporated in **Theme Response XV, Document Organization.**

45(ac) Descriptions of the actions addressed in the Draft EIR/EIS are provided in Section 1.5 Decisions To Be Made (pages 1-11 through 1-14). Table 4.1-1 (pages 4.1-4 and 4.1-5) of the Draft EIR/EIS also lists the actions and alternatives addressed in the document. Only the actions listed are addressed in the document. As shown in Table 4.1-1, a program level of analysis is provided for the overall MSCP Plan while project level analyses are provided for the individual Subarea Plans. Individual projects within the MSCP study area would require additional project-level analysis although the data presented in the Draft EIR/EIS would provide an important framework for any biological analyses required for individual projects. The degree to which additional environmental review would be required beyond a mere consistency determination would be made on a case by case basis for each individual project by the individual jurisdiction within which the project is located.

The Mitigation Monitoring and Reporting Program (MMRP) incorporated into the MSCP Plan and analyzed in the Final EIR/EIS is an important vehicle for "tiering off" the EIR/EIS in supplemental environmental review for individual projects. The MMRP presents the measures identified specifically for the MHPA. For example, for the overall MSCP Plan, required mitigation measures for impacts to biological resources include:

(a) preservation of populations of covered species (per Table 4.3-1);
(b) configuration of the MSCP preserve (per Figure 2-1);
(c) conformance with conservation goals and criteria for individual species (per Table 4.3-1);
(d) implementation of measures included in the MSCP Biological Monitoring Plan.

It is anticipated that the contributions of individual projects to implementation of the measures outlined above would be evaluated on a case by case basis. In this way, the Final EIR/EIS would serve as a first tier analysis for individual projects. Please also refer to Theme Response XVI, Monitoring.

45(ad) See **Theme Responses X, Habitat Conservation Accounting Model, and XIV, Biological Monitoring.**

45(ae) Non-covered species are not the subject of the EIR/EIS; covered species are. Non-covered species would continue to be subject to all existing regulatory requirements (e.g., CEQA, state and federal ESAs, etc.), so impacts to them would be evaluated in the future at the project level.

This document does not provide permits for future impacts to habitat; it does not approve any development plans. Hence, it would not specifically result in impacts to non-covered species.

45(af) See **Theme Response XVI, Risk Factors.**

45(ag) Within the unincorporated portion of the MSCP study area, oak woodlands are not well represented as a vegetation community. They occur either mixed among riparian woodland and are thus covered by wetland regulations, or they consist more as aesthetic features than functional vegetation communities. The County of San Diego's Draft Biological Mitigation Ordinance lists oak woodland vegetation as a Tier I community, requiring the highest level of mitigation of any of the communities. This ordinance addresses oak woodland vegetation more as a community than a grouping of individual trees and therefore generates a more viable habitat. In addition, Engelmann oaks are included on the draft County list of sensitive plants and would need mitigation to occur under those requirements.

The non-native grassland communities in the unincorporated area are predominantly located on Otay Ranch and Rancho San Miguel, where agreements have been negotiated, around Sweetwater Reservoir under the ownership of the Sweetwater Authority, the hills north of Santee, on Daley Ranch and on the western portion of Ramona. The draft ordinance proposes mitigation with a ratio of 0.S:1 for non-native grasslands with sensitive species present. This is considered adequate since a majority of non-native grasslands in the MSCP study area have either been included in areas with negotiated agreements or are located in the City or San Diego or proposed for annexation into the City of Chula Vista.

There are actions that could insure greater coverage of non-native grasslands including raising the mitigation ratios for non-native grasslands to be 0.5:1 overall and acquiring key grassland areas. Furthermore, while Engelmann oaks are included as sensitive species, the ordinance could be modified to include oak trees in general as sensitive species and require mitigation and avoidance to follow the standards for sensitive species.

45(ah) See **Theme Response I, Species Analysis Approach.** Please see previous comments and revised Table 3-5 of the MSCP Plan included in the Revisions to the MSCP Plan, January 1997, for an analysis of species and conditions of coverage.

45(ai) Not all corridors will function for all covered species, and some of these species are not expected to use corridors at all. A corridor's viability was judged based upon the species that would likely use it. Emphasis on assessing the larger regional habitat linkages was to maintain continuous habitat that was sufficient to provide live-in habitat for a wide array to covered species, especially the California gnatcatcher. It was assumed that if the habitat was continuous and supported the gnatcatcher, that the habitat would also support many of the other scrub-dependent covered species. Recent NCCP-related research by U.C. Riverside (CDFG 1996 unpublished report) indicates that the California gnatcatcher does serve as a useful "umbrella species" for many other bird and small mammal species. For narrower corridors in more urbanized areas of the MHPA, the goal was to maintain connectivity for mammalian predators such as the coyote and the bobcat, as these predators are necessary to maintain ecosystem health and predator-prey balance.

In all areas of the MHPA where public infrastructure or other development may impinge or potentially compromise a corridor, each subarea plan has development criteria requiring the avoidance or minimization of impacts to designated corridors. In instances where impacts to corridors are unavoidable, bridges, culverts, fencing, and other measures are required to assure the continued function of that corridor.

Impacts to wildlife movements were judged significant in the Draft EIR/EIS for the Metro-Lakeside-Jamul segment of the County Subarea Plan, with the impacts reduced to a less than significant status through the implementation of the County's proposed Biological Mitigation Ordinance (BMO) and Subarea Plan. The BMO and subarea plan include project design criteria for viable habitat

corridors and the Subarea Plan requires that functioning corridors be maintained. Conducting a hypothetical analysis of corridors for the entire subarea segment with no development projects yet proposed is not meaningful. The wildlife agencies' core biological resource area map (Attachment 1 of the Subarea Plan) identifies a feasible habitat linkages/corridor system for the Metro-Lakeside-Jamul segment that is consistent with the subarea plan goals and criteria. The wildlife agencies will review projects and their open space designs through the CEQA process. The development criteria within the BMO are consistent with the criteria used by the wildlife agencies in negotiating open space and corridor designs for the already-agreed-to hard line preserve areas in the rest of the MSCP study area. Adherence to the Subarea Plan's goals and criteria (as required by the implementing agreement) will result in conservation of appropriate corridors in the Metro-Lakeside-Jamul segment. In addition, the significant habitat linkages within the Metro-Lakeside-Jamul segment have been designated as pre-approved mitigation areas within this subarea plan segment, thus focusing acquisition for mitigation in these linkage areas and increasing the amount of preservation over that gained simply by project on-site preservation.

45(aj) It is assumed that this comment is referring to the sentence at the top of page 4.3-43 of the Draft EIR/EIS which, following a list of sensitive species occurring in non-native grassland habitat, states: "It should be noted, however, that the covered species analysis determined that overall impacts resulting from the proposed action would be insignificant for four of these six species: American badger, ferruginous hawk, golden eagle, and mountain plover (see Table 4.3-1)." The term "insignificant" in this sentence refers specifically to the terminology "insignificant effect" used in Table 4.3-1 and is not meant to be a CEQA significance statement. The revised language included in the Final EIR/EIS clarifies this statement to ensure that the reader understands the meaning of the term insignificant in the sentence.

45(ak) The comment does not refer to a specific error and a specific response is not possible. The Draft EIR/EIS concludes that measures incorporated in the City of San Diego Subarea Plan and other ordinances would provide mitigation for sensitive species occupying chaparral and grassland habitats.

45(al) Since specific maps are not referenced in the comment, a specific response cannot be provided.

45(am) The text and table have been revised to resolve inconsistencies. Please refer to the revised language incorporated in the Final EIR/EIS documentation.

45(an) As stated in the EIR/EIS, the analysis for the Otay Valley Regional Park is programmatic. For the future improvements within the City portion of the regional park, site-specific CEQA environmental review would be required when detailed plans become available for City Council funding consideration.

45(ao) Progressive watershed urbanization is not proposed as part of the MSCP Plan, however, changes in the character of urbanization outside the preserve may be indirectly affected by implementation of the MSCP Plan as analyzed in the Draft EIR/EIS. The discussion of Hydrology/Water Quality on pages 1-18 and 1-19 of the Draft EIR/EIS concludes that preservation of significant portions of watersheds within the MSCP preserve and potential more compact development outside the MSCP preserve indirectly associated with the MSCP Plan, may have beneficial effects on watersheds. Specific watershed effects would need to be evaluated on a case-by-case basis in conjunction with individual urban development proposals.

45(ap) See **Theme Response IX, Allowable Uses within MHPA.**

45(aq) Specific infrastructure projects would be subject to separate environmental review as appropriate, and would be analyzed on a case-by-case basis as they are proposed. Individual projects potentially affecting the MSCP preserve would need to be analyzed in the context of conformance to the MSCP Plan and subarea plans, assuming that the MSCP Plan, and associated subarea plans, are an adopted plan at the time a particular infrastructure project is proposed.

45(ar) The potential annexation of Baldwin properties from unincorporated County land into the City of Chula Vista is not the subject of comparative analysis in this document. Both the County and the Chula Vista prepared separate subarea plans which overlap on the potential annexation area. It was determined that the subarea plans were adequately similar such that regardless of which jurisdiction the area falls, the effects of the preserve would be substantially the same.

45(as) Please refer to response to Comment 25(a).

45(at) Comment noted. Contrary to the commenter's suggestion, the habitat conservation provided under the MSCP Plan and subarea plans and evaluated in the EIR/EIS is intended to mitigate for the growth inducing impacts on the Covered Species Subject to Incidental Take which occur within each participating local jurisdiction with an approved subarea plan. Section 9.16 of the City and Model Implementing Agreements (IAs) will be revised to clarify that to the extent growth inducing impacts extends beyond the boundaries of a participating local jurisdiction's plan, the impacts occurring within other local jurisdictions within the MSCP study area are deemed satisfied to the extent that the other local jurisdictions are also participating in the MSCP through approved subarea plans:

9.16 Growth Inducing Impacts. Once mitigation for a proposed project has been imposed on (**LOCAL JURISDICTION**) or a Third Party Beneficiary in conformance with Sections 10 and 17.1.A of this Agreement, (**LOCAL JURISDICTION**) or a Third Party Beneficiary shall not be required to provide any additional mitigation for any growth inducing impacts such project may have on a Covered Species Subject to Incidental Take and its habitat within those participating local jurisdictions within that portion of the MSCP study area covered by approved subarea plans.

45(au) The list of compatible activities within the MHPA includes child care and residential care facilities, subject to limitations on use, in accordance with the Subarea Plan and implementing ordinance. Golf uses have a footnote that specifies that these are not permitted within the MSCP preserve boundaries in the OR-1-2 proposed zone. Camping parks would only be permitted by Conditional Use Permit, if consistent with the MSCP Plan and approved park master or development plans, such as Mission Trails Regional Park. Commercial stables would only be permitted by Conditional Use Permit, and would be evaluated against the preserve plan and adequate protection of sensitive and covered species. These uses have been analyzed in the overall context of the City of San Diego Subarea Plan. These uses are considered compatible due to the City's commitment to preserve approximately 90% of the MHPA.

45(av) Non-native predator trapping is addressed by the City of San Diego Subarea Plan, Preserve Management Section, and would be conducted on an as-needed basis. If it is inadequate, the adaptive management program would modify management activities to address the impacts and protect covered species.

45(aw) An amendment to the County's Grading and Clearing Ordinance has not been proposed and, therefore, is not addressed in the EIR/EIS. The wildlife agencies have indicated to the County that the exemptions to the grading and clearing ordinance in regards to non-agricultural exemptions may have to be modified to achieve the conservation goals of the County's Subarea Plan. A modification may not be needed if the County achieves the goals without the modification. If a modification to the ordinance is needed to accomplish the goals of the Subarea Plan, it would be subject to CEQA.

45(ax) Please refer to response to Comment 45(aw).

45(ay) Exemptions to the draft BMO were taken into consideration in analyzing impacts to covered species, conservation of vegetation communities and evaluation of the measurable standards to achieve the conservation anticipated by the Subarea Plan. Please refer also to revised language incorporated on page 4.3-114 of the EIR/EIS, included in the Final EIR/EIS documentation.

45(az) Additional information regarding the exemptions to the BMO is incorporated in the revised language included in the Final EIR/EIS. See also responses to comments 51(s), 51(t) and 51(u).

45(ba) The exemptions to the draft BMO for sand and gravel were taken into consideration in analyzing impacts to covered species, conservation of vegetation communities and evaluation of the measurable standards to achieve the conservation anticipated by the Subarea Plan. See also responses to Comments 51(s), 51(t), and 51(u).

45(bb) The potential impacts to the MSCP preserve from law enforcement activities were taken into consideration in analyzing impacts to covered species, conservation of vegetation communities and evaluation of the measurable standards to achieve the conservation anticipated by the Subarea Plan.

45(bc) The MSCP acknowledges that military reservations contain the only remaining areas for the long-term conservation of certain species. Because military reservations are outside the authority of the local jurisdictions, conservation planning for these species would be accomplished through separate avenues such as formal consultations pursuant to Section 7 of the federal ESA and through Sikes Act agreements. It would be the responsibility of the wildlife agencies to ensure that these conservation planning activities are consistent with the goals of the MSCP in conserving covered species and their habitats in ecologically sound preserve configurations that complement the MHPA.

45(bd) See response to Comment 45(s).

45(be) Refer to responses to Comments 45(t), 61(c), 61(f), and 61(h).

45(bf) See responses to Comments 78(ag) and 78(ah). The term "significant" has been deleted from Sections 16.2 and 16.3 and Section 16.2 has been revised to provide for partial as well as total permit suspensions. While, as the commenter points out, any permit violation is, technically speaking, grounds for enforcement action, the Implementing Agreement accurately states the position of the wildlife agencies that suspension or revocation of a local jurisdiction's permit should be triggered by material violations.

45(bg) The take authorizations will be issued for the term of 50 years. After their expiration, the law applicable at that time will apply. The Model Implementing Agreement (IA) adequately reflects this situation.

45(bh) See response to **Theme XIV, Biological Monitoring** and response to Comment 45(br).

45(bi) We agree with the commenter's suggestion that suspension of a local jurisdiction's entire Take Authorization may not be a practical or an appropriate remedy for a particular permit violation. See response to Comment 79(ap). Section 16.2 has been modified to provide for suspension in whole or in part, of a local jurisdiction's Section 10(a) permit.

45(bj) We agree with the commenter that only lands preserved in excess of the mitigation requirements imposed by a local jurisdiction under an approved subarea plan should be available for sale as mitigation for other projects. The first sentences of Sections 9.13 and 9.14 of the IA are meant to cover this situation. However, a sentence will be added to the end of Section 9.13 of the IA will be revised to

clarify that lands required to be avoided under a local jurisdiction's zoning and development regulations are ineligible for inclusion in a conservation bank.

45(bk) See response to Comment 45(ap).

45(bl) We agree that lands annexed into a participating local jurisdiction must be protected either under the annexing jurisdiction's subarea plan or, if the annexing jurisdiction is not participating in the MSCP, but the prior jurisdiction is participating, then protection must be pursuant to the terms of the prior jurisdiction's subarea plan. Section 9.20 will be revised to clarify the annexing jurisdiction's responsibilities toward the annexed lands:

Section 9.20 Annexation of Lands. [**LOCAL JURISDICTION**] shall enforce the terms of the Take Authorizations, Subarea Plan and this Agreement as to all persons or entities subject to its jurisdiction in the event of an annexation of a parcel of land located within another Participating Local Jurisdiction when that annexation is accompanied by other actions which provide the same conservation, acquisition, mitigation, habitat avoidance and management measures as those contained in the Subarea Plan. Annexation of lands under these circumstances shall not require an amendment to the Take Authorization, the Subarea Plan or this Agreement. In all other cases, the City shall amend the Take Authorization, Subarea Plan and, if appropriate, this Agreement, to include the annexed lands and to require the same conservation, acquisition, mitigation, habitat avoidance and management measures applicable to the annexed lands under the prior Participating Local Jurisdiction's Take Authorization and Subarea Plan, or measures of equivalent biological value.

45(bm) See response to Comment 25(a).

45(bn) The granting of a variance does not eliminate the requirement to mitigate for biological impacts. Projects approved by the take authorization holder mut be in conformance with the subarea plan and implementing regulations. Each subarea plan has conservation goals for various key communities which the take authorization holders are obligated to achieve independent of any variances that are approved.

45(bo) See **Theme Responses XXIV, No Surprises Policy, and X, Habitat Conservation Accounting Model.**

45(bp) The goals and criteria are enforceable conditions of the County's subarea plan and will be incorporated into County's Implementing Agreement. As shown in Table 4-2, the specific target conservation goals for the segment are provided, and guidelines for the core and linkage areas specified in Sections 4.2.2 and 4.2.3, respectively. Each project that proposes development would mitigate per the County's proposed Biological Mitigation Ordinance (Figure 4-2), and the wildlife agencies will be able to

review these projects through the CEQA review process. See **Theme Response X, Habitat Conservation Accounting Model.**

45(bq) The Subarea Plan has been revised to be consistent with the proposed implementing ordinance (Environmentally Sensitive Lands [ESL]). This results in the avoidance of narrow endemics inside the MHPA and the translocation of narrow endemics outside the MHPA. The proposed ESL also requires that any development within the MHPA be sited on the least sensitive portion of a parcel. Guidelines for determining the sensitivity within the parcel is provided in the Biology Guidelines to the ESL. Narrow endemics are considered one of the most sensitive areas on a site.

45(br) Refer to **Theme Response XXVI, Permit Streamlining** and response to Comment 45(u).

45(bs) The proposed Environmentally Sensitive Lands (ESL) Ordinance requires a permit for any development that proposes to encroach into Environmentally Sensitive Lands, unless specifically exempted. The definition of development includes any clearing, grubbing or grading.

The draft ESL does not require a permit for grading for the preparation of a site for cultivation of crops where grading for agriculture purposes has occurred in conformance with all legal requirements within the previous three years (Section 143.0110.c(5)). Grading for agriculture on lands that have not been graded for agricultural purposes within the last three years will be subjected to the ESL, including all mitigation requirements.

The proposed ESL is part of the Land Development Code Update project and is out for public review until February 21, 1997. A copy of the ESL may be obtained at the Fifth Floor of the City of San Diego Administration Building, 202 C Street, Fifth Floor, San Diego, CA 92101.

45(bt) Subsequent to the completion of the biological data for the MSCP study area, including the Habitat Evaluation Map, the City of San Diego City Council established criteria for the creation of the preserve which identified a process to include all lands shown as open space in updated or existing community plans, general plans and proposed and approved development plans. The Otay Mesa area north of Otay Mesa Road is significantly constrained based upon these parameters. Efforts have been made to improve upon the existing open space designs of the approved projects subject to approval limitations. The preserve in this area focused on improving wildlife movement by incorporating appropriate structures, and enhancement of degraded areas to improve the existing habitat in the area.

45(bu) The reference to Wild Animal Park expansion is based on the anticipated use per the adopted San Pasqual Valley Plan. The Plan identifies criteria upon which a future project proposal should be considered. The Plan refers to siting any future expansion area in the least sensitive portion of

the undeveloped area of the park based upon updated biological mapping. The future project would be subject to environmental and public review at the time that it is submitted for discretionary approval.

45(bv) Refer to response to Comment 45(au).

45(bw) The presence of non-native predators is considered to be a significant problem and will be dealt with appropriately. Please refer to response to Comment 45(x).

45(bx) Best Management Practices (BMPs) have been developed and instituted in the City since 1993, and all runoff is currently regulated by City ordinance as well as by state law, administered by the NPDES-Stormwater Pollution Control Program in the Streets Division of the City of San Diego Public Works Center. The City and State of California require all construction projects larger than five acres to obtain a State Storm Water Permit, and the City ordinance does not allow for any non-stormwater flows to enter a storm drain system. The City has published informational materials on Best Management Practices that includes a brochure and a binder of a variety of options, and the process has been incorporated into the development and environmental review process. In addition, field inspectors are available to monitor activities citywide.

45(by) The proposed mitigation ratios are designed to provide an incentive for mitigating within the MHPA, while providing flexibility for applicants that wish to mitigate outside the MHPA. Any mitigation proposed outside the MHPA will need to have long-term biological value as assessed on a case-by-case basis. The Biology Guidelines incorporated in the draft ESL provide guidance for assessing the long-term biological values of offsite mitigation areas. When combined with the other proposed implementing measures (e.g., public acquisition, impact avoidance), the potential yields of the proposed mitigation ratios will successfully accomplish the City's conservation targets under the City's Subarea Plan.

45(bz) The proposed "City Manager's" compromise (which has not been acted on) would preserve nearly 500 out of 800 acres of sensitive habitat at no cost to the City.

The Biological Standards and Guidelines recommend preservation of all Southern maritime chaparral in private ownership and in patches of 50 acres or larger. Overall, the proposed City of San Diego's Subarea Plan anticipates preservation of 90% of the Southern maritime chaparral within the City's portion of the MHPA. The City Managers' compromise plan for Neighborhood 8A and related properties would result in direct impacts to 137 acres of Southern maritime chaparral, which are proposed to be mitigated by the preservation of 129 acres of that habitat. See also response to Comment 26(l).

45(ca) All three findings need to be made to qualify for a deviation.

45(cb) The Biology Guidelines incorporated in the draft ESL has been changed from "socioeconomic" to "economic."

45(cc) Table 1 and 2 of the City's Subarea Plan provide information on the amount of conservation and impact (take) of habitat proposed under the Subarea Plan. Habitat will be preserved by the preservation of public lands (e.g., Torrey Pines State Park), negotiated private lands (e.g., Dennery Ranch Open Space), impact avoidance associated with the proposed ESL/OR-1-2 zone and mitigation. The following is a summary of these estimates:

TIER 1 HABITAT	TOTAL MHPA	ESTIMATED TOTAL CONSERVATION
Southern Foredunes	10	9 (90%)
Coastal Bluff Scrub	144	135 (93.8%)
Maritime Succulent Scrub	721	681 (94.5%)
Southern Maritime Chaparral	1,231	1,102 (89.5%)
Oak Woodland	362	329 (90.9%)
Torrey Pine Forest	153	144 (94.1%)
Total	***2,621***	***2,400 (91.5%)***

These numbers have been determined by applying the proposed conservation estimates (100% negotiated private lands, 90% for public lands, and 75% for private lands) for all lands with Tier I habitats in the MHPA (see Figure 3-2 of the MSCP Plan, Volume I,). Mitigation for impacts to Tier I habitat outside the MHPA would promote additional conservation (see pages 11 and 12 of draft Biology Guidelines for details on mitigation).

45(cd) The City of Chula Vista would be refining its Subarea Plan in the context of the EIR/EIS analysis. It is anticipated that the final Subarea Plan would contain only one project with no alternatives. The identification of the Existing or Modified General Development Plan Alternative and/or Policy Option 1 or 2 of the Modified GDP Alternative would be a policy decision to be made by the Chula Vista City Council.

45(ce) Please refer to response to Comment 45(an).

45(cf) In an effort to provide an economic use of private property, the City of Chula Vista, through its own General Plan policies, permits up to 1 dwelling unit per 10 acres on property designated as "Open Space" on its General Plan. In order to provide a continued economic value to private property the City of Chula Vista encourages developers to transfer residential densities where low density residential is allowed on Open Space designated lands to more developable property located outside of areas properties designated as "preserve." However, where no opportunity exists to develop, the City through

its subarea plan policies recognizes the property right that permits the construction of a single home on a large open space lot.

The majority of private land holdings which occur in areas where the proposed MSCP preserve is anticipated are part of larger landholdings which contain other developable areas outside the preserve. The frequency or likelihood of a private property owner wishing to pursue the construction of a single residential structure on constrained lands is remote in the City's General Plan area; however, this property right has been protected in the Subarea Plan.

45(cg) The City of Chula Vista Subarea Plan will be modified to ensure that new infrastructure projects are consistent with achieving the goals of the MSCP Plan and Chula Vista Subarea Plan.

45(ch) The Chula Vista Subarea Plan identifies the need for obtaining permits through appropriate state and federal agencies for proposed alterations to wetlands. Where alterations occur, review through these agency permit processes would be necessary.

45(ci) Please refer to response to Comment 45(s).

45(cj) See **Theme Response XXV, Wetlands Protection** and response to Comment 45(w).

45(ck) The goal of the MSCP is to provide a regional preserve system based on contributions from the involved jurisdictions. On their own, many jurisdictions would not receive permit coverage for all species that would be covered in the regional plan. Habitat preservation statistics amongst cities are not entirely comparable due to significant jurisdictional variations in historical development patterns, adopted General Plans, and the amount and location of habitat lands available. Nevertheless, within the City of Santee's portion of the MHPA, conservation rates of four of five predominate habitats within the City (chaparral, coastal sage/chaparral, grasslands, and riparian scrub), are comparable to the region's average for each habitat. The exception to this is coastal sage scrub, which has a preservation rate of only 40 percent in Santee because approximately 500 acres of this type of habitat exist within isolated areas, completely surrounded by urban development, with questionable long term species persistence. If these acres were added to the City of Santee's total, the percentage of coastal sage scrub conservation would be 58 percent, which is comparable to the rest of the region.

In the City of Santee's comments on the EIR/EIS, the City proposed Alternative C to their Subarea Plan which would include conservation of Fanita Ranch property within the MHPA. All three alternatives for the Santee MHPA are consistent with the biological goals of the MSCP.

45(cl) For these scenarios, either the area shown in Alternative A *or* the area shown in Alternative B would be included within the MHPA.

Since the MSCP Plan was released for public review, the City of Santee has also included an "Alternative C" into its Subarea Plan which includes the potential of the entire Fanita Ranch being included within the MHPA.

45(cm) The City of Santee will add language to its Subarea Plan and future Implementing Agreement which will specify measures to ensure that impacts to endemic species listed within the MSCP Plan are avoided to the maximum extent practicable. Please refer to response to Comment 45(s).

45(cn) The City of Santee's Subarea Plan protection for wetland and riparian habitats is consistent with the MSCP Plan, including reliance on existing federal and state permitting processes. Santee's Implementing Agreement would further address mitigation requirements for these habitats. Please refer to response to Comment 45(w).

45(co) The statement in the Otay Water District (OWD) Subarea Plan is not intended to suggest that all of the service area will be fully developed, but that much of it is undeveloped and that there are plans, including the General Plans of Chula Vista, the County of San Diego, and the City of San Diego, for development that may include open space preserves. The largest of these planned development areas, for instance, is Otay Ranch, where development has begun. In any case, OWD does not and cannot control land development in its service area, which is dependent on land use approvals from the two cities and the county.

45(cp) OWD facilities are built according to the demand caused by land development, which is dependent on local jurisdiction land use approvals, as explained in the preceding response. Primary and secondary growth impacts of land development are the result of local land use approvals, not of the infrastructure provided by OWD, and mitigation for growth impacts is also the responsibility of the jurisdictions, all of which are participants in the MSCP process.

45(cq) This requirement would be added to Section 1.9.1 of the OWD Subarea Plan.

45(cr) In the existing grading and clearing ordinance, parcels smaller than 10 acres in size that are located within the boundaries of the County Water Authority are exempt from the requirements to obtain a grading and clearing permit. The lands within the unincorporated portion of the MSCP all lie within the boundaries of the County Water Authority. In the unincorporated area, the majority of lands that are smaller than ten acres in size are already developed or cleared. Parcels that are smaller than 10 acres in size which remain in natural habitat are generally unusual. Therefore, in real terms, this exemption does not result in a significant area of vegetation loss. Modification of the existing grading and clearing ordinance in order to reduce the size of the exempted parcels is not proposed at this time.

45(cs) The existing grading and clearing ordinance exempts agricultural clearing when it is maintained as agriculture for a minimum of 5 years. This is considered to be a reasonable criterion

for determining the presence of legitimate agricultural uses. There are several factors that have served to limit expansion of agricultural activities in the MSCP study area. They include the cost of water, the value of land and climatic and soil conditions. Clearing that is exempt from the grading and clearing ordinance associated with the expansion of agriculture is not common in the area of the MSCP. Clearing for agricultural uses is much more likely in the northern portions of San Diego County. For this reason, the grading and clearing ordinance is not being modified associated with the MSCP, although the County intends to work further on these issues with regard to conservation plans for the northern portion of the County.

45(ct) The proposed BMO simply conforms to existing CEQA Guidelines which define categories of activities that may be regarded as "projects" under CEQA (PRC Section 21065 and CEQA Guidelines Section 15378). Only those activities determined to be "projects" are subject to CEQA. No features of the proposed BMO would change the CEQA definition of a project and therefore no analysis of the exemptions incorporated in the BMO require analysis in the Draft EIR/EIS. The wildlife agencies will consider all exemptions incorporated in the BMO prior to issuance of take authorizations for the County of San Diego Subarea Plan.

Design designators, or "D" designators, are a feature of the County zoning ordinance and may be used for a wide variety of design considerations on individual lots, including protection of biological resources. The "D" designator language identifies the specific resource or feature of concern for each zone parcel on which the designator is placed. Such designators may be applied to individual projects within the County Subarea Plan area on a case-by-case basis depending upon the particular issues associated with each individual project.

45(cu) The definition of "an essential public facility or project" will be modified to delete the term "recreational facility." For an essential public facility to be exempt, the County must make the following findings:

a. The facility or project is consistent with adopted general or subregional plans and the MSCP Subarea Plan;

b. All possible mitigation measures have been incorporated into the facility or project, and there are no feasible, less environmentally damaging, location, alignment or non-structural alternatives that would meet project objectives;

c. Where the facility or project encroaches into steep slopes, native vegetation will be used to revegetate and landscape cut and fill areas; and

d. Where the facility or project encroaches into steep slopes, native vegetation will be used to revegetate and landscape cut and fill areas; and

e. No mature riparian woodland is destroyed or reduced in size due to otherwise allowed encroachments.

f. All Critical Populations of Sensitive Plant Species listed on Attachment B (List of Critical Populations of Sensitive Plant Species) will be avoided.

Each of the above findings must be made before an essential public facility can be found to be exempt from the requirements of the Biological Mitigation Ordinance. Although it is true that under CEQA an authority considering an application for an essential public facility may make overriding findings, the County's Implementing Agreement will require the County to only approve projects that are consistent with the MSCP Plan and the County Subarea Plan, Implementing Agreement and take authorizations.

45(cv) The Board of Supervisors supports maintaining sand, gravel, and mineral extraction in San Diego County. Sand, gravel, and mineral extraction can occur in a manner consistent with the MSCP Plan and the County Subarea Plan. Under the terms of the Subarea Plan, existing operations inside and outside the preserve will be allowed to continue according to their approved permits, as long as their operations have been considered in determining preserve boundaries. Facility expansions (Major Use Permit amendments) will also be allowed on a case-by-case basis, provided that direct and indirect biological impacts have been addressed. Thus, expansion of an existing facility would trigger environmental review at the time of expansion and impacts of the expansion would be considered.

Section 6.4.2 of the MSCP Plan, Volume I, has been revised to acknowledge that new mining operations within the MHPA, exclusive of dedicated preserve land, could occur if the facility locations, operations, and restoration plans (after taking into consideration the mitigation for the facilities and their operation) does not reduce the value and function of the preserve for covered species either short term or long term; and restoration plans are developed and implementation assured to restore any habitat impacted by mining activities.

In order to qualify for an exemption from the proposed County Biological Mitigation Ordinance, the following findings must be made for a mineral extraction operation:

a. The facility or project is consistent with adopted general or subregional plans including the MSCP Plan and the County Subarea Plan;

b. All appropriate mitigation measures have been incorporated that meet the standard for mitigation required by the California Environmental Quality Act and State Surface Mining and Reclamation Act;

c. Any wetland buffer area shall be restored to protect environmental values of adjacent wetlands;

d. In a floodplain, any net gain in functional wetlands and riparian habitat shall result in or adjacent to the area of extraction;

e. Native vegetation shall be used on steep slope lands to revegetate and landscape cut areas and fill areas in order to substantially restore the original habitat value, and slopes shall be graded to produce contours and soils which reflect a landform that is consistent with the surrounding area; and

f. Mature riparian woodland may not be destroyed or reduced in size due to sand, gravel and mineral extraction.

These findings except for the changes indicated are identical to those of the County's existing Resource Protection Ordinance.

45(cw) Comment noted. The proposed Biological Mitigation Ordinance applies whenever a discretionary permit is sought. Under this standard, the draft Ordinance applies unless there is an applicable CEQA exemption. The criteria for application of the Ordinance is not "feasibility of mitigation" but whether the project is exempt under CEQA or its guidelines. Drafting additional "variances" will further complicate and dilute its application. Mitigation ratios are requirements set out in the draft Ordinance are not based on whether mitigation is "feasible" but on the nexus and rough proportionality between impacts and the required mitigation. The proposed BMO takes into consideration the conservation value of both the impact and mitigation site.

45(cx) Comment noted. The County Subarea Plan recognizes infrastructure already planned and infrastructure whose location will be determined in the future. Infrastructure already planned has been taken into consideration as part of the development of hard-line areas. The impacts of infrastructure developed in the future will be considered at the time it is proposed as part of the environmental review process.

45(cy) All construction operations conducted by the U.S. Immigration and Naturalization Service (INS) or National Guard are subject to NEPA and to consultation pursuant to Section 7 of the ESA if they may affect a federally listed species. Policies regarding Border Patrol activities and fire management are provided in the MSCP Plan, Volume I, on pages 6-5 and 6-7, respectively. In addition, the wildlife agencies and the County are participating in the implementation of a Memorandum of Understanding that describes appropriate responses to wildfires occurring in south San Diego County.

45(cz) Comment noted.

45(da) Comment noted.

45(db) Comment noted.

45(dc) Comment noted. The intent of the wording in the BMO is that species surveys be conducted using appropriate protocols acceptable to the wildlife agencies.

45(dd) The mitigation ratios were developed to both mitigate impact and assemble the preserve. They accomplish both of these goals as documented by the MSCP Plan, Volume I, and EIR/EIS. Grassland mitigation in the County is a requirement unless a project proponent can demonstrate, using survey protocols acceptable to the wildlife agencies, that the site neither supports covered species nor provides foraging opportunities for raptors. Base on this assumption that covered species or foraging opportunities are present, it is very unlikely that any non-native grassland areas will go unmitigated.

45(de) Comment noted.

45(df) Comment noted.

45(dg) During the project design process the, impacts will be minimized by siting development on the least sensitive areas. The habitat evaluation model incorporated small patches of low quality habitat into the high and very high category where appropriate to avoid the identified problem.

45(dh) These ratios were developed in cooperation with the MSCP Working Group, and include appropriate incentives to encourage mitigation within the MHPA.

45(di) Comment noted.

45(dj) Please refer to response to Comment 45(s).

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ENDANGERED HABITATS LEAGUE
Dedicated to the Protection of Coastal Sage Scrub and Other Threatened Ecosystems

Dan Silver • Coordinator
8424A Santa Monica Blvd. #592
Los Angeles, CA 90069-4210
TEL/FAX 213 • 654 • 1456

Oct. 14, 1996

John Kovac, Senior Planner
Land Development Review Division
City of San Diego
1222 First Ave., 5th Floor
San Diego, CA 92101

Gail Kobetich, Field Supervisor
U.S. Fish and Wildlife Service
2730 Loker Ave. West
Carlsbad, CA 92008

Ron Rempel, NCCP Program Manager
Calif. Dept. of Fish and Game
1416 Ninth St.
Sacramento, CA 95814

RE: Multiple Species Conservation Program: MSCP Plan; MSCP Subarea Plans; Draft Environmental Impact Report/Draft Environmental Impact Statement; and Model Implementing Agreement

Dear Messrs. Kovac, Kobetich, and Rempel:

The Endangered Habitats League wishes to submit the following comments on the above-referenced documents.

I INTRODUCTION

The Endangered Habitats League is an organization of Southern California conservation groups and individuals dedicated to ecosystem protection, improved land use planning, and collaborative conflict resolution. As a stakeholder in the MSCP Working Group, we have worked assiduously towards a successful program. During these last several years, we have been firm supporters of the MSCP *process;* soon it will be time to judge the final *result.*

We cannot stress enough the need for a meaningful public comment period—one which responds constructively to points raised. This is because the plan as presented has serious flaws which need correction if it is to become acceptable. The undoing of the major policy decisions made heretofore is not being requested; to the contrary, we believe that, given the will, the plan's deficiencies can be remedied using the existing framework. Our fundamental concerns are threefold: that the plan be honest—that, in terms of species coverage, it accomplishes what it purports; that its implementation, particularly in the "softline" areas, be fully assured; and that it serve as an adequate program EIR for future projects. We are willing to work with the applicants and the regulatory agencies to achieve these goals.

These comments will first discuss general issues which cut across the subareas, under the heading, MSCP Plan. There will follow comments on the EIR/EIS, the model Implementing Agreement, and the individual subarea plans. In order to facilitate resolution of issues, comments will usually consist of a brief discussion of the problem followed by an outline of suggested remedies.

II MSCP PLAN COMMENTS

A. The biological information presented is inadequate for informed decision-making. (3.3)

Discussion: The document transmits little of the solid biological work which we observed during plan development. The reader gains little understanding of *why* the reserve may function, nor of the justification for species coverage. For a plan which is sure to receive nation-wide scrutiny, its deficiencies in terms of information presented are shocking. The choice not to interpret data for the reader's benefit also create a perception of disdain.

The basic criteria for species coverage appears to be that of sustaining "viable populations" within the plan area. Coherent explanations to support such determinations are not provided, however. The species table supplies only minimal raw data and conclusions, and the Species Evaluations are actually "worksheets," comprised of dense data whose biological meaning is often indiscernible. At times, the information presented in the Evaluations directly contradicts the proposed coverage determination.

An aspect of the coverage proposals which detracts from their rigor and intelligibility is a relative lack of methodology. There is no organizing framework in which to place the bulk of the determinations, such as biological status, habitat type, or informational needs. The only guidance offered is generic, as found in the Species Evaluations: 1) sufficient data were available to determine that MSCP populations were important to the species' overall survival; 2) sufficient data were available to determine that the plan would conserve a significant and necessary amount of the species' range/habitat; and 3) management would occur consistent with the needs of the species. Unfortunately, though, these basic standards do not find clear or defensible explanation.

Suggested remedy: The biological underpinnings of the MSCP should be presented in far more detail. The role of the MSCP Biological Standards and Guidelines should be discussed, and also included should be the descriptions of the biological care areas and linkages contained in the 1995 Public Review Draft. Critical is an exposition of how the proposed plan conserves sufficient biological values (e.g., coastal sage scrub source populations, raptor foraging habitat) within each biological core area and linkage.

Finally, the justification for each covered species should be presented in a coherent and organized narrative. A variation on the Species Evaluation framework is suggested:

- If possible, analyze species in groups, for example, vernal pool or coastal sage scrub-associated species. This will help relate coverage to the system of cores and linkages. If possible, identify species with a substantial data base which may serve as "umbrellas" for others.

- For each species, the sufficiency of the data base should be examined, with an emphasis on the pertinence of the available data as to its biology. For example, do number and percent of "points" conserved support inferences as to population status across the plan area?

- The amount and configuration of habitat proposed for preservation should be measured against the species' breeding, foraging, and other needs, such that a determination of viable populations, appropriately distributed, is justified. The specific geographic 45(a)

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areas which support this conclusion should be described, and the reasoning process elucidated. 45(

- For species requiring management actions, these should be specified and assurance as to implementation given.
- Statutory requirements—10(a) standards, NCCP Conservation Guideline standards, etc.—should be assessed.

B. Consistency with the Natural Communities Conservation Planning (NCCP) Guidelines has not been determined.

Discussion: The Dept. of Fish and Game promulgated these Guidelines for use in conserving the coastal sage scrub ecosystem, and the U.S. Fish and Wildlife Service, in the final rule for the California gnatcatcher, adopted them as best available scientific information. Nevertheless, references to the Guidelines are cursory, and key components are completely neglected, including the criteria of "no net loss of habitat value from the present" as defined by the viability of populations. It is important that all the standards employed be defined early in the document and carried through each subarea plan. 45(b)

Suggested remedy: Fully analyze Guidelines consistency for coastal sage scrub and its dependent species, on both plan and subarea levels. Given its importance, this analysis should be recirculated for public comment.

C. The relationship of the MSCP to recovery planning is unclear.

Discussion: In carrying out the ESA's goal of species recovery, the Service apparently intends to rely on the 10(a) standard alone (not appreciably preclude the likelihood of recovery). However, over much of the plan area, future, additional recovery options will be effectively precluded. Does this not make the MSCP a *de facto* recovery plan? 45(

Suggested remedy: Given the above circumstances, the MSCP Plan should document that the standards used—viable populations, no-net-loss of habitat value from the present for coastal sage scrub species, etc.—contribute to recovery rather than merely not appreciably reduce its likelihood.

D. The coverage of species remaining at "high risk" is not acceptable. (3.3)

Discussion: In evaluating species coverage, the document stratifies species into low, medium, and high risk. "High risk" is defined as "not adequately protected and/or potentially subject to edge effects." By definition, a species *still vulnerable* despite proposed conservation measures—a species at "high risk" of eventual extirpation due to inadequate habitat protection or adverse edge effects—cannot be said to meet federal or state Endangered Species Act or NCCP Conservation Guidelines standards. It is worth noting that during plan development, these same risk stratifications were used to evaluate various preserve scenarios, with a "high risk" determination indicating that additional conservation measures were needed before coverage could be granted.

The species table is also inconsistent in its treatment of the risk factors. For instance, only sometimes are management measures identified which might ameliorate them.

Suggested remedy: The decision to label species with a *residual* risk factor—whether low, moderate, or high—is fundamentally ill-conceived, for it confuses criteria useful in the process of plan development with those ultimately necessary for judging coverage. The issue is not residual risk but rather whether the risk factors *have been reduced by the plan* to levels which assure continued viable 45(d)

populations. If the preserve and management measures do not reach this goal, then coverage should not be granted. 45(d)

E. The category of coverage due to "insignificance" is poorly applied. (3.3.1)

Discussion: "Insignificance" is defined in the Species Evaluations as "an effect which cannot be measured, relative to the species' status as a whole." The application of this policy to multiple species planing is severely flawed, as it conflicts with the Service's over-riding goal of conserving ecosystems. Thus, a species for which the MSCP plan area is "not a significant portion of its range" may nevertheless be an integral component of the MSCP ecosystem, and deserve fully equivalent conservation measures. Instead, the document uses the "insignificant" label to dismiss factors which place these species at "high risk," thereby failing to take measures to ensure that they *remain* functioning components of the ecosystem. Aldo Leopold's dictum, "The first rule of intelligent tinkering is not to throw away the pieces," bears repetition. In another sense, the logic behind "insignificance" will lead to the progressive contraction of a species' range over time, as the cumulative impacts of losing local populations on the edge of the range are not considered. 45(e)

The other major problem with this category is that is has been applied inconsistently and without adequate biological rationale. Some species which might be considered "insignificant" due to a wide range outside the plan area are so labeled, and some are not. There is rarely (the burrowing owl being an exception) a discussion which give substantive reasons for a determination one way or the other. At best, application appears arbitrary, and at worst, on the basis on convenience.

Suggested remedy: The best resolution is to drop this unfortunate and inherently confusing terminology. Instead, coverage for species within the MSCP should be granted only upon a demonstration of adequate conservation.

F. Coverage for many species is not justified by the information presented. (3.3)

A review of the Species Evaluations discloses many serious problems, yet a defensible covered species list is a *precondition* for our support. In some cases, as will be noted below, the ultimate decision reached as to coverage is in direct contradiction to requirements formulated in the Species Evaluations themselves. This has led to a regrettable loss of program credibility which, unless rectified, could end in an abuse of discretion. Selected species are discussed below; other comment letters will provide additional evaluations.

1. *Arroyo toad.*

Discussion: The data base in terms of distribution and abundance is inadequate. How does the exceedingly small tally of only 15 point locations support a determination of viable populations across the plan area? No indication is given as to how genetic interchange will be maintained. No information is provided as to how specific breeding requirements (water velocities, gravel terraces of appropriate particle size) are to be maintained in the face of upstream urbanization and resultant stream and sediment flow alteration. *Very importantly, there is no analysis to support a finding that adequate non-breeding (foraging and dispersal) habitat (uplands within 1 km of streams) is afforded to arroyo toad populations by the preserve.* Finally no relationship to a recovery plan for this endangered species has been provided. The document itself states, "Because this species' distribution and habitat requirements in San Diego County remain poorly understood, the risk to the species is unknown." Thus, on the basis of the information provided, the inclusion of this species on the covered species list appears arbitrary and capricious.

Suggested remedy: Better population and distribution data is needed, as is assurance of adequate connectivity and maintenance of essential habitat and breeding conditions. The availability of adequate, *safe* foraging habitat (including freedom from road kill) should be either documented or 45(f)

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provided. Sufficient management, e.g., bullfrog control, should be assured. The role of the MSCP in regional species recovery should be discussed. 45(f)

2. *Red-legged frog.* 45(g)

The document states that this species "may" be extirpated, but that few surveys have been done. There is thus insufficient information given on which to base a finding of "discountable."

3. *Southwestern pond turtle.*

Discussion: Only 8 point locations are know; how can such miniscule data on distribution and abundance support a determination of viable populations in the plan area? In fact, the Species Evaluation repeatedly classified data as insufficient. (Coverage is "Unknown, would receive some protection from federal and state wetland regulations." Risk to the species is "Unknown." "Because of insufficient site specific data, regarding this species' distribution, it is unclear how changes to the MHPA will affect this species.") Only 52% of potential habitat is protected, and this, in and of itself, cannot justify a finding of viable populations. Also, no information is supplied on watershed protection. Finally, the document states that insufficient buffers are provided: "Most areas within MHPA appear to have insufficient upland buffers." (500 metes is recommended). On the basis of the information presented, the inclusion of this species on the covered species list appears arbitrary and capricious. 45(h)

Suggested remedy: Better population and distribution data is needed, as is assurance of adequate connectivity and maintenance of essential habitat conditions. Adequate buffering of ponds by upland habitat should be documented or provided.

4. *Northern harrier.*

Discussion: A biological rationale for the "insignificance" finding is not provided. Critical survey data on nest sites and breeding pair is missing. Instead, in the Species Evaluation, there is a dense data set regarding potential habitat and the eventual finding of moderate to high risk based on the "high loss of foraging and breeding habitat; the occurrence of this species maybe further reduced within the MSCP planning area." It is acknowledged that "significant potions of this habitat remain at risk, depending upon application of San Diego County's Biological Mitigation Ordinance," yet there is no analysis of the effects that Ordinance would actually have.

Habitat adequate for coverage is repeatedly stated to depend upon preservation of "key" grassland areas: "1) the area west of Black Mountain; 2) the area designated as Neighborhood 10 and 8A; and 3) the Sweetwater/Otay Ranch/East Otay Mesa area." "Each of these areas is becoming increasingly and substantially fragmented under the proposed plan with a high amount of take. The Service recommends more habitat with less edge effect be preserved in the areas mentioned above. Ideally, at least one of the major grassland areas mentioned above should be preserved in a large intact block as it exists currently." There is no information presented as to what extent, if any, these recommendations for additional grasslands were consummated. As a result, the coverage proposed appears arbitrary and capricious. In addition, the criteria of a 300 foot nest buffer should be applied to low impact activities such as a trail *within* the preserve, rather than to the edge of suburban development. 45(i)

Suggested remedy: Survey data on breeding pair should be obtained, adequate buffering of nest sites should be ensured, and the protection of necessary grassland foraging habitat should be either documented or secured. As noted above, the document itself supplies a range of solutions, e.g., west of Black Mountain. Other potential areas are San Pasqual Valley, Spring Canyon, and Daley Ranch.

5. *Cooper's hawk.* 45(j)

Discussion: No analysis is given to support the conclusion that preservation of approximately 52% of habitat, "with significant portions of potential habitat . . . [remaining] at risk" would continue to support viable populations of this species. Furthermore, survey data on the location of nest sites is needed; potential foraging habitat is of itself insufficient information upon which to base a finding of coverage. The document itself also recommends that "Oak Woodland and Oak Riparian Forest in the areas north of San Vicente Reservoir and the Jamul/Dulzura area be preserved and that disturbance be minimized in the oak woodlands in the MHPA." 45(j)

Suggested remedy: The conclusion that viable populations are conserved needs far more support, including nest site data. Also, the specific measures recommended in the document should be *ensured* within the County subarea plan.

6. *Swainson's hawk.*

Discussion: Recommendations for additional grasslands protection were made, and the "Service would consider this species 'covered' if most of the potential foraging habitat was preserved, primarily the Black Mountain grassland area and the Otay Ranch/Mesa area." There is no indication if this occurred or to what extent. 45(k)

Suggested remedy: The protection of necessary grassland foraging habitat should be either documented or secured.

7. *Golden eagle.*

Discussion: The determination of "insignificance" has not been justified biologically. The Species Evaluation concludes that high risk results due to "loss of foraging and breeding habitat," and that this "may preclude long-term successful breeding." It is unknown whether recommendations to conserve additional grassland habitat were carried out. It was acknowledged that "Much uncertainty remains concerning the location of potential development and current nesting localities within the proposed preserve." Nest sites were felt to be highly vulnerable to edge effects. There is no final assessment as to how many eagle pair would remain, and where. 45(l)

Suggested remedy: The protection of necessary foraging habitat in conjunction with adequately buffered nest sites should be either documented or secured. Potential additions include north and west of Black Mountain, Otay Mesa, San Pasqual Valley, and Daley Ranch.

8. *Burrowing owl.*

Discussion: Due to its precipitous decline in San Diego County and across the state, the burrowing owl is a species at high risk for future listing. According to the Species Evaluations, it has been identified by the California Secretary of Resources as a prime candidate for the "proactive" approach of multiple species planning. The MSCP has abjectly failed in this regard, despite years of knowledge that grasslands preservation was inadequate.

The available abundance and distribution data is insufficient to determine viable populations; the data necessary for a determination of coverage within the plan area includes surveys for breeding pair. The document itself, however, acknowledges that the populations levels associated with the 24 point locations, or whether they represent wintering birds or breeding pair, are unknown. How, then, have the "Recommended Management Conditions" (p. 262) been met? These include: "a) Identification of any colonies consisting of five or more breeding pair. If no such colonies remain, identification of historical colonies that are appropriate for enhancement; b) Preservation of colonies consisting of five or more pair, or of targeted enhancement areas." 45(m)

The first Species Evaluation showed that the 37% of grasslands being protected would, *at a minimum*, result in loss of about half of the remaining owls. It concluded that, "additional habitat would need to be preserved beyond that preserved under the MHPA if this species is to be adequately addressed under the plan." Coverage for the City of San Diego, for example, depended upon additional "grasslands and agricultural lands that are compatible with burrowing owls in San Pasqual Valley and Spring Canyon areas." Unfortunately, subsequent MHPA modifications protected 640 *fewer* acres. The document also states, "The level of protection has decreased in the County. The protection goals should be higher in the County . . ." It was concluded that, "Protection for this species has diminished. The conditions placed on our original findings have not been met." 45(m)

The proposed "coverage" for the burrowing owl is thus in direct contradiction to the Species Evaluations. Indeed, rather than support a finding that necessary habitat or populations have been protected, the information instead renders such a determination arbitrary and capricious.

Regarding the "associated actions" included in the species table's finding, it is proposed to permit the potential take of impacted owls in conjunction with "passive relocation protocols." Such relocation is of mixed and often limited success (personal communication, Pete Bloom) and therefore is *not* a substitute for the protection of existing breeding colonies and ground squirrel populations. Has the Burrowing Owl Consortium been consulted as to the adequacy of the overall MSCP plan?

Suggested remedy: Survey data adequate to judge distribution and population viability should be assembled. Targets for sufficient, additional habitat preservation should be met. Finally, appropriate management measures—consistent with Recommended Management Conditions c) and d)—should be assured, along with the caveats noted above in relation to translocation.

The burrowing owl is ripe for listing as endangered; it is thus imperative from all perspectives—conservation, jurisdictional, development—that more and appropriate habitat be brought into the preserve system. Locations which might provide large, suitable grassland patches are north and west of Black Mountain in the City of San Diego Future Urbanizing Area, Otay Mesa, San Pasqual Valley, Spring Canyon, and Daley Ranch.

9. *Southwestern willow flycatcher.*

Discussion: The Species Evaluation states that the large edge effects (affecting over 40% of habitat) would have to be ameliorated prior to coverage, yet there is no information that this has been accomplished, or that management measures are anything but speculative. 45(n)

Suggested remedy: Document adequate buffering from edge effects, and demonstrate the role of this regional plan in the recovery of the species.

10. *Coastal cactus wren.*

Discussion: The Species Evaluation initially states the importance of "protecting and buffering all habitat, whether occupied or not." The need to improve buffering and strengthen linkages was *specified* for several areas, yet information as to the subsequent achievement of these goals is not given. The second evaluation disclosed deteriorating conservation at Otay Ranch (loss of occupied habitat at Poggi Canyon) and increased edge effects. Another series of conditions for coverage was formulated, yet it is *unknown*—and doubtful—whether these were achieved (that is, conservation of "ecologically viable" maritime succulent scrub at Otay Mesa, Del Mar, Point, Loma, La Jolla, National City, Jamul Mts., and Imperial Beach). The ultimate determination of coverage appears based on insufficient information and therefore arbitrary and capricious.

Suggested remedy: Clear parameters for cactus wren conservation need to be established and the plan *documented* to have meet them, referencing the locations. The protection of additional 45(o)

maritime succulent scrub appears to be needed and/or a *far more substantial and assured* program of habitat enhancement and restoration. 45(o)

11. *California gnatcatcher.*

Discussion: The Species Evaluations are packed with information of limited practical use to the reader, such as permutations of "% points." No meaningful analysis is given as to why these levels are or are not sufficient, such as the resultant numbers of inter-breeding pairs. The evaluation first states that incursions into core population areas are too serious and that the "proposed MHPA configuration and preservation designations . . . are too uncertain to allow a high degree of confidence." It identifies poor linkages, such as across I-8 as potentially fatal flaws, and states that coverage could only be given if there were a "demonstration" of improved linkage as well as as improved "integrity of population cores."

The next evaluation provides no clear assessment of whether these goals were met. To the contrary, there is significantly reduced conservation in multiple areas, affecting major subpopulations. Risk is considered to be "high," with a key linkage "tenuous at best," and conservation in Lake Hodges and Santee/E. Elliot "relatively low with high edge effects." (Santee impacts 71% of "mapped points.") It is recommended that the Lakeside linkage in western Jamul, be more secure and that greater conservation in Santee be seriously considered. *It is unknown the extent to which the necessary improvements (enhanced integrity of core populations and linkages) were made.* At best, we can conclude that insufficient justification is provided for coverage of the gnatcatcher; continued high risk is acknowledged. 45(p)

Suggested remedy: A detailed analysis is needed of the extent of core populations protected, as well as of the source-sink population dynamics of the plan area. Due to the extreme importance of connectivity, functional criteria for each linkage should be defined and maintenance of these conditions explicitly assured.

12. *American badger.*

Discussion: No meaningful level of information is provided the status of badger populations, nor is any rationale provided for the determination of "insignificance." No consideration has been given to the role of this species in the ecosystem whose protection is the object of this program. 45(q)

Suggested remedy: Protection of additional, intact grassland blocks would benefit this species.

13. *Mountain lion.* 45(r)

Given the importance of top predators to the ecosystem, the categorization of this species as "insignificant" reflects the ill-conceived coverage policies of the Service.

G. <u>Narrow endemic species are insufficiently protected.</u> (Also, see City of San Diego Comment A, below.)

Discussion: Three general problems exist with the approach to narrow endemic species. First, the different subareas do not consistently require such avoidance. The County clearly does so, the City of San Diego does so confusingly, and Chula Vista and Santee do not appear to do so at all. Secondly, even when avoidance is required, there are no or insufficient criteria to judge the biological adequacy of the avoidance undertaken or the circumstances under which avoidance might be found to be *infeasible.* Thirdly, many management prescriptions, found throughout the Species Evaluations, are not reflected within the subarea plans or management proposals. 45(s)

Remedy: First, ensure consistent avoidance for narrow endemics in all the subareas. Then, in all subareas, supply criteria for the biological adequacy of avoidance and supply criteria to use if findings of infeasibility are to be made. Use of measures such as translocation should be tied to meeting such criteria. Also, include all necessary management measures as conditions of the permits. 45(s)

H. Species dependent upon open water are not adequately protected.

Discussion: The document incorrectly assumes that open water foraging habitat will be protected. Much of this open water, however, is thoroughly unprotected and under the control of the Port District. Activities such as jet ski parks may effectively destroy foraging habitat. 45(t)

Suggested remedy: The Port District should prepare a subarea plan, or delete from the covered list species whose open water foraging habitat is under threat of incompatible use.

I. There is insufficient incorporation of future project approvals into the California Environmental Quality Act (CEQA) process. (5.2)

Discussion: To gain third party benefits of the permits, future projects will have to demonstrate consistency with a subarea plan. This will require varying levels of additional environmental review, such as surveys of habitat types and species presence, hydrologic or other studies, identification of narrow endemics, avoidance measures, on and off-site alternatives analysis, etc. It is vital that this additional review be conducted through the CEQA process and use CEQA documents (Negative Declarations, EIRs) as vehicles, as only thereby can the public be assured of opportunity for comment, public hearings, a standard of evidence, and judicial recourse. Thus far, only the County subarea plan specifies appropriate use of CEQA in project consistency determinations. 45(u)

Suggested remedy: Each subarea plan should provide a narrative and a flowchart for subsequent project review which incorporates the CEQA process.

J. There is inconsistent and unclear treatment of new public facilities within the preserve.

Discussion: The permits being issued are predicated upon an anticipated level of habitat protection and fragmentation. If the reserve is diminished or fragmentation increased due to *new, unanticipated* infrastructure or other public facilities, the basic permit conditions have been altered. Because the impacts of infrastructure are often major and adverse, it is vital that the plan be unambiguous on this subject and and consistent across the subareas. At this point, there is neither clarity nor consistency (although the City of San Diego subarea appears appropriately restrictive).

Suggested remedy:

1. *"Hardline" areas.*

For projects with clearly transient and insignificant impacts (such as a buried pipeline in a relatively non-sensitive area) the minor amendment process may suffice. Any project other project must go through the *major amendment* process. Given the propensity of new infrastructure to alter reserve function, the following criteria are suggested as conditions of major amendment approval:

a) The facility must be essential to either public health or safety, strictly defined.

b) There must be no feasible alternative outside the preserve, despite increased cost.

c) The least impactive project design must be adopted. 45(v)

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d) All impacts must be fully mitigated such that there is no loss of preserve function, no-net-loss of habitat value to all covered species, and no loss of total reserve acreage. 45(v)

2. *"Softline" areas.*

All new public and private facilities and infrastructure should be fully consistent with the subarea plan and in compliance with that jurisdiction's implementing ordinances.

The response to the above comment should pertain to each subarea.

K. Reliance on U.S. Army Corps of Engineers/Clean Water Act 404 permits and on Dept. of Fish and Game 2081 Streambed Alteration Agreements is insufficient as currently proposed in some subareas.

Discussion: Due to the major role of wetland and riparian habitats on the covered species list, consistency in the treatment of these habitats is essential throughout the plan area. In some subareas, though (Chula Vista and Santee), wetland and riparian species are afforded coverage based upon anticipated no-net-loss mitigation requirements being imposed through 404 permits and/or by adequate mitigation through 2081 agreements. There is insufficient assurance of species protection on several levels, however. For 404 permits, the Corps does *not* necessarily require in-kind mitigation so as to maintain no-net-loss of covered species habitat, as is assumed by the plan; the use of Nationwide Permits may cause smaller yet highly significant impacts to go completely unmitigated; and the role of the Service is only advisory except in the case of listed species. For 2081 agreements, the ability of the Dept. to *require* project redesign or mitigation is hardly absolute, as the Dept. operates under the assumption that "agreement" among the parties must be reached. 45(w)

Suggested remedy: The affected subareas should address wetland and riparian species through their subarea plans rather than rely on other regulations which may not meet subarea goals. As a example of regulations for riparian and wetland-dependent species which satisfy MSCP, federal, and state requirements, the City of San Diego's policies and implementing ordinances can be used (although not the City's *definition* of wetlands, which is neither well-suited to local conditions nor streamlined).

L. Non-native predator control procedures are inadequate. (6.3.8)

Discussion: Feral animals, particularly cats, have been documented in numerous studies to have major adverse, often devastating, impacts on birds and other species. *The mere presence of feral animals or the presence of free-ranging pets is, on the basis of these studies, a fully adequate basis for the institution of humane trapping measures.* 45(x)

Suggested remedy: In all the subarea plans, control of non-native predators (feral and free-ranging pet animals) must occur without the need to "document" adverse impacts, as these impacts are *known* to occur on the basis of mere presence of the animals, and "documentation" by way of dead body counts is infeasible.

M. The consequences of Chula Vista not adopting Modified GDP Policy Option 2, and the County not adopting its Proposed MHPA rather than Alternative 1, are inadequately recognized. (Also see City of Chula Vista Comment A.)

Discussion: The document (in the EIR/EIS particularly) notes the severe adverse consequences to unmitigable and essential core biological areas and connections (southeast of Otay Lakes, Salt Creek, Proctor Valley area) if Chula Vista and the County do not adopt their environmentally preferred alternatives. While acknowledging the impacts to coastal sage scrub dependent species such as the California gnatcatcher and coastal cactus wren *for these two subareas*, the plan does not acknowledge the ramifications for the MSCP plan as a whole and for all other subareas requesting incidental take of 45(y)

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these species. Due to the regional nature of the MSCP, and the central importance of the areas in question as *source populations* for regional population viability, permits for incidental take of the gnatcatcher, cactus wren, and perhaps other species should not be issued to any jurisdiction on the basis of the MSCP plan unless the Chula Vista Modified GDP Policy Option 2 and the County's Proposed MHPA are adopted. 45(y)

Suggested remedy: Modify the MSCP list of covered species subject to incidental take to include the gnatcatcher and cactus wren only upon appropriate actions by the County and Chula Vista.

N. Plan reviews must have full public participation and input. (6.4) 45(z)

Discussion of problem/Suggested remedy: The annual and triannual reviews require far more than a public meeting. There should be a formal public review and comment period, with responses to comments.

O. Improvements in meeting program objectives in terms of ecosystem protection, species coverage, and assurance should be considered.

Discussion: A purpose of the MSCP is to conserve the ecosystem of the southwestern county on a habitat basis. Another purpose is to provide broad assurances, such as on a habitat basis, for the coverage of species at risk of listing in the future. These goals have not been well-achieved for at least two ecosystem cornerstones: grasslands and oak woodlands. While it is acknowledged that the preserve will, of necessity, have some deficiencies, and that biologically preferred alternatives were rejected for feasibility and other reasons, there are nevertheless practical effects which merit consideration at this time, particularly, the very limited assurances available to the jurisdictions and third party beneficiaries for the inadequately conserved habitats.

Currently, neither grasslands nor oak woodlands (nor chaparral) are deemed sufficiently or significantly conserved, assuring *no* state or federal responsibilities in the event of future listings *and creating the presumption of additional avoidance and mitigation requirements for private and public landowners.* Also, as noted in Comment F above, there are grave concerns about coverage for key species, such as the burrowing owl, as proposed under the existing plan. There are also ramifications of the failure to adequately conserve grasslands and oak woodlands to future use of the MSCP as a program-level EIR/EIS (discussed below in EIR/EIS Comment F). From both the conservation and development perspectives, it would be preferable if additional conservation measures were taken now, while the most biologically effective, least costly, and least disruptive options are still available. 45(aa)

Suggested remedy: Improved conservation measures and thus improved assurances for grasslands and oak woodlands are a "common ground" issue. We thus request that the wildlife agencies prepare an assessment of the following questions:

- What additional lands would secure improved coverage and assurances in these habitats?
- What additional mitigation measures or funding, in which subareas, would be needed to accomplish the above?
- What is the feasibility of these actions?

II EIR/EIS COMMENTS

A. Particularly in regard to biological resources, the EIR/EIS does not form an adequate basis for informed decision-making. 45(ab)

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Discussion: To follow any alternative's or subarea plan's impacts and mitigation analysis, the reader must attempt to piece together widely scattered, discontiguous fragments of text. Also, for each level of analysis (impacts, mitigation, determination of significance) there is little supporting biological rationale, and such analysis cannot be referenced elsewhere else in the document. 45(ab)

Suggested remedy: Improve organization and supply adequate supporting information and analysis.

B. The draft EIR/EIS does not facilitate use as a program EIR.

Discussion: It was anticipated that the MSCP Plan would be able to function to a large extent a program EIR under CEQA. The goal would be, that, when future projects analyzed and mitigated their impacts, it would be possible to "tier-off" the MSCP program EIR , incorporating its analysis by reference, and thereby avoiding duplicative review and efficiently assembling the reserve system. However, it does not appear that the EIR presented for review was drafted with this purpose in mind, as it narrowly focuses on the impacts of *permit issuance.* 45(ac)

Suggested remedy: For both the MSCP plan and the subareas, clarify to what extent this document is anticipated to function as a program EIR for the analysis and mitigation of the individual and cumulative biological impacts of future projects. In particular, please specify the extent to which additional environmental review will be required *beyond a mere consistency determination,* particularly for potentially significant impacts to non-covered *yet CEQA-sensitive* species (see Comment F below).

C. There is insufficient methodology to assess the continued efficacy of the proposed mitigation measures. (Also, see Implementing Agreement Comments C and J below.)

Discussion: For future projects to make use of the MSCP's mitigation measures for complying with CESA and FESA, these mitigation measures must obviously continue to be valid over time. Similarly, for future project review under CEQA, unless impacts continue to be mitigated to insignificant levels using the MSCP-approved measures, either additional mitigation or findings of infeasibility and over-riding consideration would have to be adopted. Thus, it is essential that the Mitigation Monitoring Program continually demonstrate that the reserve is properly functioning, that preserve assembly is proceeding as anticipated, and that adaptive management measures are working; in short, that the MSCP has not "gone stale." However, neither the Mitigation Monitoring Program, nor any subarea plan, now contains *measurable criteria* through which the continued efficacy of the mitigation measures might be objectively assessed. For this reason, the document is gravely deficient. 45(ad)

Suggested remedy: Each subarea plan should contain measurable performance standards for both biological goals and preserve assembly. The biological monitoring criteria should specify, for each covered species: numbers of individuals or populations, as appropriate; geographic locations; and acceptable fluctuations. These standards should be closely related to the criteria under which coverage was granted in the first place. For preserve assembly, standards for acreage and configuration are needed, as well as the establishment of an appropriate ratio between ongoing habitat loss and preservation. Through these means, the policies identified in the Implementing Agreement (9.3) would be implemented.

D. There is confusion over which impacts are addressed by the plan, particularly in regard to non-covered, sensitive species.

Discussion: The document first states (4.3-46) that direct impacts to non-covered sensitive species are not significant with the rationale that the proposed action—permit issuance for covered species—does not directly affect them. (This rationale is repeated in the subarea sections.) On the very next page (4.3-47), though, after acknowledging that take of covered species will result in 45(ae)

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significant direct impacts to vegetation communities, the obvious fact is acknowledged that significant direct impacts may indeed occur to the non–covered, sensitive species dependent upon these very same habitats. Analysis of these impacts is apparently meant to be deferred to *later* CEQA and NEPA review. 45(ae)

Suggested remedy: Clarify whether direct impacts to non–covered sensitive species are a) considered to be insignificant on the dubious basis that the action doesn't affect them; b) are considered potentially significantly impacted through the loss of vegetation communities yet insufficiently analyzed on a program level; or c) something else. This determination is vital to knowing how the EIR/EIS may be used as a program level document for a tiering analysis for potentially significant impacts under CEQA to non–covered species. The role of proposed avoidance and mitigation under the subarea plans, including use of the habitat mitigation tables, also needs explication in this regard (see Comment F below).

E. <u>There is no basis for determining that impacts to "high risk" covered species have been reduced to insignificant levels under CEQA.</u>

Discussion: On page 4.3-212, the document states that the basis for determining insignificance after mitigation is the ability of the preserve design to "result in protection of the resource." However, "high risk" species are defined as remaining vulnerable *despite* the proposed conservation measures, due to being "not adequately protected and/or potentially subject to edge effects." Thus, a plain understanding of the English language indicates that impacts to these species cannot be said to be "reduced to insignificance" by the MSCP Plan. 45(af)

Suggested remedy: Acknowledge that impacts to species which remain at "high risk" have not been reduced to insignificant levels through the mitigation measures proposed. All actions needed to ameliorate risk factors, whether additional habitat protection or management practices, should be identified in the plan and carried out.

F. <u>For "vegetation communities," there is insufficient analysis, resulting in confusion and inconsistencies.</u>

Discussion: As intimated in Comment D above, this category of impact analysis is severely flawed. The only parameter for which any supporting data is provided is gross vegetation community acreage; other key factors of biological functioning (configuration, disturbance regimes) are treated either in a conclusory manner or not at all (e.g., 4.3-183). Simply referencing the wildlife agency's determinations of "sufficiently covered" or "significantly covered" does not automatically, and without substantial analysis, translate into a justification that impacts to entire habitat types are somehow mitigated to insignificant levels under CEQA.

The document is also internally inconsistent in issuing a blanket determination that impacts to *all* the vegetation communities are mitigated to insignificant levels when it elsewhere repeatedly acknowledges that for grassland and oak woodland, overall preservation is deficient. Grassland, oak woodland, and chaparral are not even considered "sufficiently covered" or "significantly covered" by the wildlife agencies. To conclude that impacts to these *lesser–conserved* habitats are mitigated to the same level of significance by the preserve as are the *greater–conserved* habitats is thoroughly inconsistent and unsupported by substantial analysis.

These same problems extend into the individual subarea plans and to other vegetation communities. For the County, it is acknowledged that the County Biological Mitigation Ordinance provides significantly less protection and mitigation for non–native yet ecologically vital grasslands. In the City of San Diego, the conclusion that impacts to southern maritime chaparral and maritime succulent scrub are mitigated to insignificant levels fails to analyze noncompliance with the Biological 45(ag)

Standards and Guidelines and the severe fragmentation anticipated on Carmel Mountain and Otay Mesa, respectively. 45(ag)

A very serious point of confusion arising from the cavalier treatment of vegetation communities is the failure to distinguish between the habitat types and their dependent species. In stating that impacts to these vegetation communities are "reduced to insignificance," what implication—if any—does this have for *non–covered* species in these habitats, on which future projects may have potentially significant impacts under CEQA? For vegetation communities deemed sufficiently or significantly covered, does compliance with the habitat mitigation tiers afford *any* programmatic basis for assessing significance of impacts after mitigation? For those habitats whose conservation is *acknowledged to be inadequate*—grasslands, oak woodlands, chaparral, etc.—there is clearly *no* basis for relying on the MSCP's proposed avoidance and mitigation system.

The key result of all this is a presumption: that *particularly* for species dependent upon the lesser–conserved habitats, potentially significant impacts under CEQA to non–covered yet otherwise sensitive species would *not* be mitigated to insignificance by the preserve. For example, if a future project caused potentially significant impacts to the CEQA–sensitive loggerhead shrike or white–tailed kite, new environmental review would be required. The document appears to agree—it states that analysis of non–covered, sensitive species is deferred.

In summary, the issues related to vegetation communities and dependent species go to the heart of what many thought the MSCP would accomplish in terms of analyzing future projects under CEQA. The biologically rational, yet streamlined system which was a point of common ground is still elusive.

Suggested remedy: The category of vegetation communities needs to be re-thought and much clarification provided as to future use of the document on a programmatic level. This clarification should extend to the potential application of the MSCP habitat mitigation tiers to non–covered, CEQA–sensitive species in significantly, sufficiently, and inadequately conserved habitats. We request that the information garnered in response to MSCP Plan Comment O above (additional lands to increase conservation in the now–inadequately conserved habitats) also be discussed in relation to these questions.

G. <u>There is inadequate basis for determining that impacts to many of the covered species have been reduced to insignificant levels under CEQA.</u>

Discussion: MSCP Plan Comment A above points out that the information provided for each covered species does not constitute an intelligible and substantive analysis upon which informed decisions can be based. MSCP Plan Comment F(1–13) above notes some animal species for which the reserve does not appear to provide adequate conservation; other comment letters may disclose problems for additional species. Comment G points out significant deficiencies in the protection of narrow endemic species. Also, for many species, determinations of the significance of mitigation depends upon compliance with the NCCP Conservation Guidelines; as noted in MSCP Plan Comment B, this analysis has not occurred. Until, in all these areas, the quality of the information and analysis improves and/or necessary additional lands, mitigation, or management measures are identified and required, there is an insufficient basis to find that impacts to the species proposed for coverage are mitigated to insignificant levels through the MSCP. 45(ah)

Suggested remedy: The steps outlined above should be taken on the plan and subarea levels.

H. <u>There has been insufficient analysis to show that impacts to wildlife movement are reduced to insignificance.</u> (4.3.2.1, 4.3.2.3)

Discussion: The document's analysis of wildlife movement is virtually non–existent. It lists the linkages and then concludes, on the basis of a gross figure of 75% maintenance, and without *any* site– 45(ai)

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specific analysis, that, except for the Metro–Lakeside–Jamul segment, impacts to wildlife movement are insignificant. A rate of 75% preservation might be meaningless, of course, for all but avian species if a highway interrupted the linkage. 45(ai)

For the Metro–Lakeside–Jamul segment, the document lists design parameters which are not yet implemented. It does not examine any specific sites (for example, the "archipelago" in Lakeside) for their ability to function as corridors for the various covered species, nor does it analyze the applicability and feasibility of the parameters to any actual site. There is no substantial rational for concluding that impacts to wildlife movement are reduced to insignificant levels.

Suggested remedy: Impacts to wildlife movement require site–specific analysis, using a representative range of affected species, e.g., avian, large and small mammal, herpetological, etc. In the Metro–Lakeside–Jamul segment, the ability of the County's implementing ordinance to effectively maintain connectivity values also needs site–specific analysis.

I. Miscellaneous issues.

1. On page 4.3-43 the document disregards its own cautions and mixes insignificance determinations under NEPA (i.e., coverage due to wildlife agency policies of "insignificance") with those needed for CEQA. 45(aj)

2. Document error: The City of San Diego *does* propose mitigation for chaparral and non–native grassland. 45(ak)

3. Maps are in conflict on Hidden Trails boundaries in the Otay Mesa area. 45(al)

4. Text on page 4.3-212 regarding the significance level of mitigation for various indirect impacts is not consistent with the table. 45(am)

5. It is unclear how the significant impacts of the Otay Valley Regional Park, including impacts to connectivity, will be mitigated to insignificance. 45(an)

6. Impacts to the covered wetland and riparian species from water pollution and altered stream flows from progressive watershed urbanization have not been analyzed or mitigated. 45(ao)

7. Impacts from any future, *unanticipated* infrastructure and public facilities within the preserve need analysis and procedures for mitigation to insignificance, unless all such projects are required to go through the major amendment process. Please clarify and analyze for each subarea. 45(ap)

8. The impacts from proposed route 905 are likely to be major and adverse. These impacts have neither been analyzed nor mitigated. 45(aq)

9. The impacts of annexation without assumption of preserve responsibilities has not been analyzed in the EIR/EIS. 45(ar)

10. The cumulative impacts of take anticipated due to ongoing agricultural activities have not been sufficiently analyzed nor shown to amount to be reduced to insignificant levels. 45(as)

11. The growth inducing impacts of new infrastructure—both that anticipated and unanticipated by the preserve—have not been analyzed, yet these are claimed to be fully mitigated in the Implementing Agreement. 45(at)

12. The full range of compatible and conditionally compatible uses allowed within the preserve by the City of San Diego has not been analyzed. (See City of San Diego Comment F below.) 45(au)

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13. The impacts of inadequate non-native predator trapping have not been analyzed. (See MSCP Plan Comment L above.) 45(av)

14. The impacts to the County subarea of non-agricultural exemptions to the Grading and Clearing Ordinance have been inadequately analyzed, if at all. (See County of San Diego Comment A below.) 45(aw)

15. The impacts to the County subarea of exemptions to the Grading and Clearing Ordinance for agricultural clearing have been inadequately analyzed, if at all. (See County of San Diego Comment B below.) 45(ax)

16. The impacts to the County subarea of exemptions to the Biological Mitigation Ordinance for all CEQA-exempt activities, such as ministerial building permits, have been inadequately analyzed, if at all. (See County of San Diego Comment C below.) 45(ay)

17. The impacts to the County subarea of exemptions to the Biological Mitigation Ordinance for all public and many private facilities have been inadequately analyzed, if at all. (See County of San Diego Comments D below.) 45(az)

18. The impacts to the County subarea of exemptions to the Biological Mitigation Ordinance for sand, gravel, or mineral extraction have been inadequately analyzed, if at all. (See County of San Diego Comment E below.) 45(ba)

19. The impacts to the County subarea from exempted law enforcement and emergency services activities and projects have been inadequately analyzed, if at all. (See County of San Diego Comment H below.) 45(bb)

20. The Plan assumes protection and management of natural resources on military lands consistent with MSCP objectives, though this is speculative. Neither the impacts to the covered species nor the ramifications to the proposed subarea permits of less-than-anticipated military contributions have been analyzed. 45(bc)

21. The impacts to narrow endemics due to inconsistent and inadequate conservation measures has not been analyzed. (See MSCP Plan Comment G above.) 45(bd)

22. The impacts due to inadequate protection of open water have not been analyzed. (See MSCP Plan Comment H above.) 45(be)

III IMPLEMENTING AGREEMENT COMMENTS

A. <u>The meaning of the term "significant material breech" is unknown.</u> 45(bf)

Discussion: It is illogical that some material breeches would be "significant" and some would not. What is the difference? Any deviation from the plan *must* be considered a potential indication for permit enforcement action. Otherwise, there is an incentive for permit holders to tolerate relatively minor breeches.

Suggested remedy: Delete the work "significant," and clarify that any breech is potential grounds for enforcement actions.

B. <u>The "Other permits" section as it pertains to the Dept. of Fish and Game is deficient.</u> (9.8) 45(bg)

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Discussion: The document states that the Dept. will not require additional mitigation for the take of covered species pursuant to CEQA, yet CEQA requirements for such mitigation may persist *after* the term of this agreement, irrespective of mitigation performed on the basis of the California Endangered Species Act. 45(bg)

Suggested remedy: Clarify that the assurance of no additional mitigation is for the term of the agreement only.

C. Provisions are inadequate for Reporting and Biological Monitoring and regarding Mutual Assurances for Conservation of Covered Species. (14.0, 9.3) (Also see EIR/EIS Comment C above.)

Discussion: The statement in 14.5, that it is "necessary to determine whether Covered Species and their habitats are being maintained by the MSCP *as expected*" (italics added), makes plain the need to define the term "as expected" with measurable criteria. At this time, there is no objective or sufficient manner of fulfilling the monitoring requirements of this section. 45(bh)

A similar need exists in the case of Mutual Assurances for Conservation of Covered Species (9.3). These assurances—for each subarea—must also be founded upon measurable criteria.

Suggested remedy: A consistent set of measurable criteria for both biology and preserve assembly are the foundation for many aspects of this plan. They should be tailored according to the contribution of each subarea, placed in those documents, and then either reproduced in the Implementing Agreements or appropriately referenced.

D. Procedures for enforcement of the permit conditions are inadequate. (16.0)

Discussion: It was the choice of some subareas to implement their plans with other than hardline reserves. In the County there are large "softline" areas in which preserve boundaries remain unestablished, and in the City of San Diego, "percent" area also subject to criteria-based implementation. Successful implementation—and therefore carrying-out of permit conditions—depends upon consistent and appropriate application of the City's Environmentally Sensitive Lands Ordinance and the County's Biological Mitigation Ordinance. The ability of the wildlife agencies to fully and effectively enforce the terms of the MSCP permits must therefore be specially adapted to these phased, softline subareas.

There are two preconditions for effective permit enforcement in the softline areas: project-by-project oversight and the availability of enforcement options short of the so-called "nuclear option" of total suspension or revocation. An example of the need for project-by-project oversight is the tenuous linkage through Lakeside, which could be cut off by a single project; annual or other periodic view is could therefore not assure preserve assembly. (It should be noted that the CEQA process already allows for appropriately timed review.) 45(bi)

The second factor— a more flexible range of enforcement than very unlikely-to-be-exercised total permit suspension or revocation—should target the offending project rather than penalize the entire subarea. The appropriate solution is to grant third party beneficiary status only to projects judged consistent by the wildlife agencies. Legally, it would be hard to justify plan benefits to such nonconforming projects. This approach also creates the proper incentives for plan conformance and allows suspension or revocation to be reserved for appropriate indications.

Suggested remedy: For all softline and percentage subareas or subarea segments, plan consistency should be assured on a project specific basis. Permit enforcement must present a range of options, using the timely granting of third party beneficiary status to consistent projects.

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E. Mitigation banking procedures are unenforceable. (9.14)

Discussion: It would, of course, be completely inappropriate for lands *avoided* through 10(a) or CEQA requirements to be "double-dipped" by a property owner and sold as mitigation for other projects. While this eventuality is *now* mostly foreclosed by a policy letter issued by the U.S. Fish and Wildlife Service and the Dept. of Fish and Game, that policy letter is subject to change at any time without any amendment to the MSCP plan. 45(bj)

Suggested remedy: Land avoided through the project approval process should be defined as ineligible for mitigation banking *in the Implementing Agreement.*

F. The assurance that no additional mitigation will be required for the growth-inducing impacts of new infrastructure is unjustified. (9.16)

Discussion: This section of the Implementing Agreement has no supporting basis in the EIR/EIS or any other part of the MSCP. It is simply conclusory. 45(bk)

Suggested remedy: A full analysis is required of all potential growth-inducing impacts, including mitigation and level of significant after mitigation. In the absence of such analysis, this section should be deleted.

G. Procedures in the event of annexation are inadequate. (9.20)

Discussion: As it stands now, it is *optional* for the annexing jurisdiction to assume the permit responsibilities of the previously unincorporated subarea. Failure to do so, however, may so alter the viability of populations so as to jeopardize the take permits of one or more of the other subareas as well as the third party beneficiaries. The impacts of annexation without assumption of preserve responsibilities have not been analyzed in the EIR/EIS. 45(bl)

Suggested remedy: Procedures regarding annexation need refinement so as to eliminate the possibility of permit responsibilities going unassumed. Signatory jurisdictions should agree to implement the same or equivalent protections in the event of annexation.

H. Agricultural issues are unresolved. (9.21)

Discussion: If incidental take due to ongoing agricultural activities is to be covered under the plan, then a determination must be made that such take will result in insignificant cumulative impacts to the covered species. 45(bm)

Suggested remedy: A full analysis of cumulative impacts due to ongoing agricultural activities should be incorporated into the EIR/EIS. An essential prerequisite of such a determination of cumulative insignificant is likely to be the cooperative formulation and adoption by the agricultural community of best management practices which maximize habitat values in the course of their operations. These are now entirely missing.

I. Deficiencies in plan implementation due to variances require compensation.

Discussion: In subarea plans implemented through softline or percentage areas, there is recourse for findings of infeasibility at the project level. There is no procedure for compensation to the reserve system, however, if such findings are made and anticipated mitigation therefore does not occur. 45(bn

Suggested remedy: If a jurisdiction grants a variance or makes a finding of infeasibility, that jurisdiction should be responsible for making up the difference within a specified period of time.

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J. Extraordinary circumstances determination factors are insufficient. (9.6. B.)

Discussion: Similar to the above concerns voided in Comment C above, Extraordinary circumstances depend upon the demonstration of an "unanticipated adverse change in the population of any Covered Species." "Unanticipated" from *what?* As noted in EIS/EIS Comment C above, there is a pressing need for measurable criteria for both biological monitoring and preserve assembly. Without these criteria there can be to objective assessment of whether extraordinary circumstances have occurred. 45(bo)

Suggested remedy: Add measurable criteria for both biological monitoring and preserve assembly to the list of Relevant Factors.

K. In softline segments, objectively assessable standards must be created to trigger enforcement actions.

Discussion: Standards are needed to assess whether preserve assembly is proceeding "on schedule." Otherwise, appropriate implementation of the permit conditions cannot be assured at any point over the life of the permit. One set of criteria should link habitat lost to habitat preserved; this should be assessed periodically. Another set of criteria should set acreage parameters for preservation of each habitat type over time. For example, if too much of a single habitat is lost quickly, reserve completion may be jeopardized due to loss of flexibility in assembly options as well as to loss of the resource *per se.* 45(bp)

Suggested remedy: Habitat-specific acreage targets should be set over time, with deviation beyond a fixed limit grounds for permit enforcement actions. Acceptable ratios for habitat lost compared to preserved should also be set. These preserve assembly standards should appear in the legally-binding subarea Implementing Agreements.

IV. CITY OF SAN DIEGO SUBAREA COMMENTS

A. Protections for narrow endemic species are internally inconsistent. (ESL p. 6, 8) (Also see MSCP Plan Comment G above.)

Discussion: The draft implementing ordinance is not consistent with the subarea plan with respect to the protection of narrow endemics. The subarea plan at 1.6.4 (p. 111) accurately describes our understanding of the policy which the implementing ordinance should carry out. The implementing ordinance also gives no clear indication as to how individual projects will comply with the subarea plan policy. In addition to criteria for the biological adequacy of avoidance, any determination of *unavoidable* impacts should be supported by findings based on specific criteria. Only after those findings are made should a measure such as translocation (as described in 143.0141(h) of the draft ESL) be utilized as mitigation. To attain further consistency, the "additional measures" (presumably translocation) for narrow endemics outside the MHPA, as referenced in the City Implementing Agreement (section 10.0), should also be clarified to occur only after findings of infeasibility are made. 45(bq)

Suggested remedy: Rewrite the implementing ordinance so it is consistent with the subarea plan, formulate criteria for biologically adequate avoidance, and specify findings which must be made prior to mitigating unavoidable impacts off-site. These measures, including the findings, should be carried through consistently in all relevant documents.

B. Use of CEQA process for future project review and consistency determinations. 45(br)

See MSCP Plan Comment I above.

C. Grading and clearing procedures for agriculture are not clear. (1.6.1) 45(bs)

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45(bs)

Discussion: Clearing for development under the guise of agriculture has been employed by unscrupulous landowners who wish to avoid mitigation requirements. Mechanisms to prevent this are not present or have not been located by this reader, nor are mitigation requirements discussed for legitimate agricultural clearing.

Suggested remedy: Formulate grading and clearing safeguards in regard to agriculture, and state mitigation requirements for impacts.

D. Fragmentation on Otay Mesa in the Southern Area is not justified. (1.2.1)

45(bt)

Discussion: The preserve segment in the Otay Mesa area is highly convoluted and fragmented (e.g., California Terraces, Dennery Ranch). There is no explanation of how this meets reserve design criteria, how it adequately protects the covered species and maritime succulent scrub, nor why project redesigns were deemed infeasible.

Suggested remedy: Demonstrate that the design of the Southern Area meets biological standards for preserve configuration and for Tier 1 habitat preservation, particularly in reference to the MSCP Biological Standards and Guidelines. Otherwise, corrective measures should be undertaken.

E. Wild Animal Park expansion is open-ended. (1.2.5 San Pasqual Valley)

45(bu)

Discussion: Potential expansion of the Wild Animal Park is mentioned yet no specifics are given of its extent, impacts, mitigation, or consistency with the preserve.

Suggested remedy: Given the biological importance of the San Pasqual area, pleas provide full information on this project.

F. Compatible uses within the preserve are overly-broad

45(bv)

Discussion: The MSCP plan includes low density single family homes as conditionally compatible with the preserve, as well as low impact activities such as trails. However, in its Draft Environmentally Sensitive Lands Regulations and Draft Open Space Residential Zone (OR-1-2) (Exhibit L), the list of compatible activities goes far beyond anything previously contemplated: child care facilities, golf, camping, commercial stables, etc. The EIR/EIS analyzed none of these uses, which are far more impactive than the *previous* compatible or conditionally compatible uses in terms of traffic, edge effects, human incursions, etc. It is noted that while these uses are presumably within the 25% development area, there is no guarantee that they will be sited to form a preserve *boundary* rather than become *internal* to the preserve.

Suggested remedy: In the absence of compelling reasons to allow these uses, they should be prohibited as incompatible. If compelling reasons exist, they should be required to be sited at the boundary of the preserve and special mitigation measures adopted to control edge effects.

G. Non-native predators are not adequately controlled. (1.5.2)

45(bw)

See MSCP Plan Comment J above. The City's language is *totally unsatisfactory* as it requires that "a significant problem has been identified." As noted above, such identification is infeasible. Also, what criteria are proposed? There is also no justification for limiting trapping to temporary measures. The impact to the preserve from the City's inadequate non-native predator control has not been analyzed in the EIR/EIS.

H. Impacts to wetland/riparian species from watershed deterioration are not considered.

45(bx)

Discussion: Impacts to the covered wetland and riparian species from water pollution and altered stream flows from increasingly urbanized watersheds have not been analyzed in the EIR/EIS nor mitigated. 45(bx)

Suggested remedy: The City should formulate and adopt best management practices for existing development and institute state-of-the art measures to prevent adverse water quality impacts and altered stream flows from new development.

I. Ratios in the Environmentally Sensitive Lands Ordinance provide insufficient disincentive to mitigate outside the preserve.

Discussion: Particularly for Tier II and III impacts, the differential between mitigation outside and inside the preserve is minimal, and will not provide sufficient incentive. 45(by)

Suggested remedy: Increase the ratios to provide greater incentive for mitigating inside preserve.

J. Biological justification is not present for poor and fragmented concepts on Carmel Mountain (Neighborhood 8A). How do these meet Biological Standards and Guidelines for southern maritime chaparral? (1.4) 45(bz)

K. Other issues in the Environmentally Sensitive Lands Ordinance: 45(ca)

1. In the Deviation section, please clarify whether all three findings have to be made (p. 20). If only one is required, then the proposal is unacceptable.

2. In the Deviation section, the phrase "socio" should be deleted from "socioeconomic," as there is no clear understanding what "socio" means. Only objectively measured considerations related to economic use should be considered. 45(cb)

3. Please clarify how the Council's directive that 90% of Tier I habitat within the MHPA be protected has been implemented. 45(cc)

V. CITY OF CHULA VISTA COMMENTS

A. It is imperative to adopt the Modified GDP Policy Option 2 alternative. (3.0)

Discussion: As explained in the EIR/EIS, failure to adopt the Modified GDP Policy Option 2 alternative (an alternative University site with full preservation of Salt Creek Canyon) will make the issuance of 10(a) permits for the California gnatcatcher and other coastal sage scrub species impossible. We would like to add the following information which further substantiates the conclusions in the EIR/EIS relating to Salt Creek Canyon:

Salt Creek Canyon has long been recognized as an indispensable cornerstone of a regional species protection plan. According to the Otay Ranch Draft Environmental Impact Report, "This area is the richest on the ranch with regard to California Gnatcatcher and cactus wren. Salt Creek Canyon supports 26% (38/144) of California gnatcatcher points of occurrence and 62% (37/60) of coastal cactus wren locations. Salt Creek is also an important raptor resource area and supports sensitive species such as orange-throated whiptail, northern harrier, ferruginous hawk, golden eagle, prairie falcon, Bell's sage sparrow, and blue grosbeak." The DEIR concluded that Salt Creek Canyon contained "Non-mitigable coastal sage scrub/maritime succulent scrub that should be preserved as natural open space."

During project review (letter of Nov. 13, 1991) the U.S. Fish and Wildlife Service stated, "The Service concurs that the proposal to place the university within Salt Creek Canyon is a significant and 45(cd)

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unmitigable impact. Substantial populations of the proposed endangered California gnatcatcher occur within this location. This site represents a major core population of this species. A preliminary assessment is that such a proposal would fail to meet the requirements of a 10(a) permit pursuant to the Endangered Species Act." 45(cd)

From the above, it is abundantly clear that all 400 acres of Salt Creek Canyon must be preserved as part of the City's MSCP subarea plan in order to gain permits for take of the California gnatcatcher and for numerous other prelisting assurances. To reduce it in size, as proposed in Policy Option 1, would cause unmitigable impacts to a core resource area and would jeopardize the California gnatcatcher. In regard to potential reductions, it should be noted that in their recent (April 14, 1995) assessment of the Otay Ranch project relative to the MSCP, the Service called for *additional* protection of Salt Creek Canyon *beyond* that shown in the General Development Plan. Thus, in order to "adequately preserve California gnatcatcher and coastal cactus wren," it was recommended to "Pull development back from Salt Creek to provide buffers and avoid impacts to habitat in side drainages."

Also, as noted in MSCP Plan Comment M, above, if Chula Vista does not adopt the Modified GDP Policy Option 2 alternative, there will be cascading impacts to the covered species lists for other subareas.

Suggested remedy: We commend the City of Chula Vista and the wildlife agencies for working cooperatively to craft solutions which may make the adoption of Modified GDP Policy Option 2 acceptable and feasible for all parties.

B. Otay Valley Regional Park design and mitigation is unresolved. (4.3.2.3) 45(ce)

Please see EIR/EIS Comment I(2) above.

C. Low density development. (6.2)

Discussion: The document lists low density development as "compatible" with the preserve, yet the location of such uses within the preserve are not clear. 45(cf)

Suggested remedy: Please identify anticipated locations and provide impact analysis and mitigation measures.

D. New public facilities and infrastructure within the preserve is inadequately controlled, sited, and mitigated. (6.4.1) 45(cg)

See MSCP Plan Comment J above. The current proposals of Chula Vista are particularly deficient, as they would allow essentially uncontrolled impacts from new infrastructure. Proposed is an open-ended, *pre-approval* of all projects, along with mitigation rations which do not reflect actual impacts to preserve fragmentation and connectivity.

F. Please clarify the meaning of "review" of channelization by the wildlife agencies. Does this requires their formal approval? (6.4.7.2) 45(ch)

G. Narrow endemic species are not protected. 45(ci)

See MSCP Plan Comment G above.

H. Wetland and riparian species are not protected to MSCP standards. 45(cj)

See MSCP Plan Comment K above.

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VI CITY OF SANTEE COMMENTS

A. Santee has not made a fair share contribution to the preserve nor demonstrated biological sufficiency.

Discussion: A review of percentages of existing habitat protected within each subarea disclose a consistently substandard performance by the City of Santee. A salient example is its contribution of only 40% of its existing coastal sage scrub while other subareas are over 60%. Similar deficiencies exist for percent of core biological areas protected, etc. Justification as to why Santee's contribution meets biological standards has not been provided. 45(ck)

Suggested remedy: Other jurisdictions should not carry Santee's fair share of species protection. Santee should therefore commit to a purchase of the entire Fanita Ranch, or to the acquisition of a very great part of it, as part of the regional funding and acquisition plan.

B. Alternatives A and B are not adequately explained. 45(cl)

C. Narrow endemic species are not protected. 45(cm)

See MSCP Plan Comment G above.

D. Wetland and riparian species are not protected to MSCP standards. 45(cn)

See MSCP Plan Comment K above.

VII OTAY WATER DISTRICT COMMENTS

A. The statement that the 125 square mile service area is "anticipated to develop" is not supported by fact and may not occur if better land use planning preserves these economically valuable open space resources. (1.4) 45(co)

B. "Secondary growth impacts" are not automatically mitigated. (1.8) 45(cp)

Discussion: As noted in EIR/EIR Comment I(11) and Implementing Agreement Comment F above, no supporting analysis has been offered to justify this conclusion.

Suggested remedy: Provide a full analysis of the potential impacts of induced growth and demonstrate full mitigation or delete this provision.

C. The requirement should be added to "Site projects outside of core areas except where infeasible." (1.9.1) 45(cq)

VIII COUNTY OF SAN DIEGO COMMENTS

A. Non-agricultural exemptions in the Grading and Clearing Ordinance may prohibit the issuance of MSCP-based take permits to the County.

Discussion: The presence of effective controls on unauthorized grading and clearing of native vegetation is essential to the ability to successfully implement a "softline" plan, where preserve boundaries are not yet identified; anything less is a "fatal flaw." Without such controls, loss of areas critical to preserve function could easily be irretrievably destroyed. In the Metro-Lakeside-Jamul segment, the high existing degree of fragmentation and the very constrained nature of preserve options (especially for connectivity) make the rigorous control of unauthorized clearing—even of small patches—an absolute necessity. 45(cr)

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45(cr)

Unless grading results in more than 3,000 cubic yards of displacement, it is exempt from discretionary review. For grubbing and clearing, any activity which occurs outside the County Water Authority (CWA) boundary or, within that boundary, on a single family parcel of less than 10 acres in size, is exempt from discretionary review. These are exemptions of major import, yet their potential impacts on reserve function and assembly—individually and cumulatively—have not received analysis in the EIR/EIS. This is a serious deficiency. That significant impacts may occur is demonstrated by the coincidence of small parcels with the biological care areas and linkages visualized on the MSCP parcel-size map.

From a legal standpoint, unless lands necessary for preserve assembly are protected from unauthorized loss, implementation of the preserve is no longer assured. Also, the permits are explicitly based upon quantified levels of take and preservation for each species as well as maintenance of connectivity. Unauthorized grading and clearing may render these projections moot, and thereby eliminate the grounds for permit issuance. The lack of mitigation for non-discretionary actions will also detract from an assurance of adequate funding.

Suggested remedy: The impacts of the grading and clearing exemptions need analysis. If individually or cumulatively significant, either the exemption thresholds will have to be lowered or a *site plan review* process will have to be adopted which ensures that all grading and clearing is *consistent with the subarea plan.*

B. The exemption for agricultural clearing under the Grading and Clearing Ordinance may prohibit the issuance of MSCP-based take permits to the County.

Discussion: In addition to the exemptions described above, the Grading and Clearing Ordinance exempts any lands for which the owner signs a written statement that the land will be planted within one year and maintained in agricultural use for five years. Besides eliminating avoidance and mitigation requirements for the legitimate agricultural clearing of new habitat lands, this procedure allows unscrupulous parties to clear native vegetation in an unregulated manner under the *guise* of agriculture, and then to develop it without mitigation.

Given the fragmented and tenuous nature of the Metro-Lakeside-Jamul segment, the impacts from agricultural clearing—both legitimate and illegitimate—may be significant. The EIR/EIS has not analyzed these important factors, however, another serious deficiency. The impacts of unmitigated agricultural clearing to preserve assembly as well as to biology should be considered. If corrective measures are not taken, these impacts may preclude the issuance of take permits, as reserve implementation and anticipated levels of conservation and take would no longer assured.

45(cs)

Suggested remedy: Resolution will require close collaboration with the farming community. An immediate point of consensus should be to tighten procedures to prevent illegitimate clearing. A length of planting of 15 years should be required, strict monitoring should be put in place, and criminal penalties should exist for signing a false statement. The requirement for planting must also run with the land, in the event of an ownership change.

Unless the analysis of agricultural clearing discloses no potentially significant individual or cumulative impacts to preserve biological function or assembly, a determination will have to be made that each clearing activity is consistent with the subarea plan. To comply with federal and state law, occupancy by any listed species will also have to be determined, and any immediate mitigation requirements met. In all other cases (that is, when the clearing is consistent with the subarea plan and listed species are not present) we support the concept of "deferred mitigation," as discussed by the San Diego Farm Bureau. Here, a basic survey is conducted (at public expense) and if that land ever converts to a non-agricultural use, mitigation occurs at that time. This is the best way to close the loopholes which allowed habitat to be converted to development without mitigation.

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C. The exemption of all CEQA-exempt activities from the Biological Mitigation Ordinance may prohibit the issuance of MSCP-based take permits to the County.

Discussion: This exemption involves all ministerial permits, such as building permits and some lot splits. Exempt would be single family home construction; the extent to which associated or supplemental grading and clearing outside the building pad itself would be exempt is unclear. Due to the fragmented and tenuous conditions in the Metro-Lakeside-Jamul segment, and ubiquitous presence of small parcels, the individual and cumulative impacts from the exemptions for CEQA-exempt activities from appropriate avoidance and mitigation may have significant effects upon reserve function (including connectivity) and assembly. These potential impacts have not been analyzed in the EIR/EIS. The impacts may preclude the issuance of take permits, as reserve implementation and anticipated levels of conservation and take are no longer assured. 45(ct)

It is noteworthy that in the Lake Hodges subarea's Santa Fe Valley Specific Plan, the County recognized the critical nature of single family homes, and designated portions of the Santa Fe Valley Specific Plan with a "Design designator" where site-specific planning was needed, such as pad placement on the lot.

Suggested remedy: If analysis discloses potential individual or cumulative adverse effects from currently ministerial actions, such as building permits, a process should be developed to ensure consistency with the subarea plan. Various technical solutions are currently part of County land use processing, such as site plan reviews.

D. Exemption of public and many private facilities from the Biological Mitigation Ordinance prohibits the issuance of MSCP-based take permits to the County.

Discussion: The exemption is for "any essential public facility or project, or recreational facility which includes public use." The term "essential" is inadequately defined, and makes no reference to legitimate public health or safety concerns. The exemptions includes almost every conceivable recreational activity, such as golf courses, ORV parks, stadiums, etc., as even if private,these projects have "public use." This exemption therefore introduces a *huge* range of unregulated projects into the planning process, which may proceed without appropriate siting and mitigation.

The language which accompanies the exemption only requires feasible mitigation measures or alternatives when these "would meet project objectives." This allows "feasibility" to be determined on a CEQA basis; lost would be effective requirements to adopt less damaging alternatives or to adopt adequate mitigation measures. The result of this exemption could therefore be significant unmitigated impacts accompanied by CEQA finding of over-riding consideration. Also, in the same section, the meaning of the "any net gain" language which appears in relation to wetland encroachment is unclear.

The individual and cumulative impacts of this gaping exemption from the Biological Mitigation Ordinance are potentially devastating to the fragmented and tenuous Metro-Lakeside-Jamul segment. These extensive potential impacts to the reserve have not been analyzed in the EIR/EIS, a serious deficiency. The public and private facilities exemptions, with their distinct potential for CEQA over-rides, surely preclude the assurance of preserve implementation and render projections for loss and conservation levels of covered species moot. Therefore, permits could not be issued.

Suggested remedy: Corrective actions should proceed on two level. The first is to restrict the exemption to *strictly defined* public facilities essential to the public health and safety. There is no reason whatsoever to exempt *any* recreational facility, public or private, or private facilities which happen to admit the public. 45(cu)

The *legitimate* concern to be dealt with, however, is the obligation of local governments to provide facilities essential to public health and safety. Such strictly-defined facilities might continue to be exempt from the Ordinance if the exemption conditions were amended to ensure subarea plan consistency and to ensure appropriate avoidance and mitigation. 45(cu)

E. The exemption from the Biological Mitigation Ordinance for sand, gravel, or mineral extraction may prohibit the issuance of MSCP-based take permits to the County.

Discussion: These operations cause major impacts to sensitive riparian and wetlands areas and to associated uplands. The proposed reliance on CEQA, which has over-riding findings, is thoroughly unsatisfactory. Also, there has been no evidence provided to conclude that the State Surface Mining and Reclamation Act requires a level of avoidance and mitigation equivalent to the Biological Mitigation Ordinance, nor that the revegetation promised will meet a performance standards for success. Enforcement of the Act is historically lax. The EIR/EIS fails to analyze the impacts of these exemptions. The resultant impacts are likely to preclude the issuance of take permits, as reserve implementation and anticipated levels of conservation and take are no longer assured. 45(cv)

Suggested remedy: As there is no reason to treat the sand, gravel, or mineral extraction differently from any other business, these exemptions are best deleted.

F. There are no criteria for determining "infeasibility" and therefore the granting of variances from plan compliance is uncontrolled. (1.11, 4.2.3)

Discussion: Unless the criteria for infeasibility are explicitly defined in the plan and/or the Biological Mitigation Ordinance, the County may rely on CEQA definitions of infeasibility, which are open-ended, self-selected determinations based upon "project purposes" and over-riding social and economic factors. This would undermine the basic methodology of implementing the subarea plan via a reliable and consistently applied ordinance. We note that the City of San Diego defined variance criteria much more completely. 45(cw)

Suggested remedy: For private projects, infeasibility criteria should be consistent with U.S. Constitutional law, that is, deprivation of reasonable economic use. For public projects, variances should be granted *if* public health and safety—strictly defined—would otherwise be jeopardized.

G. Criteria for infrastructure within hardline segments are insufficient. (2.7.2)

Discussion: The document fails to differentiate between "new infrastructure" already anticipated by the plan as a result of approved public and private facilities, and those projects which might be proposed later and are *unknown at this time*. The latter category is best described as "new, unanticipated infrastructure within the preserve." 45(cx)

Please see MSCP Plan Comment J above for further discussion and suggested remedy.

H. The scope of discretion given to law enforcement and emergency personnel needs re-evaluation. (2.7.5)

Discussion: The need to allow emergency and law enforcement activities within the preserve is recognized, but the document goes far beyond legitimate needs. Instead, it gives blanket authorization to any activity which an agency might wish to undertake, *whether that action is an emergency or not.* It allows the construction of *any project* without review or selection of less damaging alternatives. For example, the INS or National Guard could site a huge national headquarters and employee training center in the middle of the preserve at its sole discretion. There is also no justification for the 45(cy)

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exemption of *non–emergency* activities, such as construction, from the mitigation requirements of any other public facility. 45(cy)

The broad and highly significant impacts to the preserve from exempted law enforcement and emergency services have not been analyzed in the EIR/EIS.

Suggested remedy: The only acceptable basis for emergency and law enforcement activities occurring within the preserve is the formulation and adoption of best management practices for emergency services and, for all non–emergency activities, the cooperative adoption of best management practices, the adoption of least damaging alternatives, and full mitigation for impacts. Training in best management practices for providers of emergency services should be included in the reserve management plan (see San Diego Gas and Electric Co. NCCP Plan for a model).

I. The option of Lusardi Creek/San Dieguito River corridor acquisitions should be included as a potential mitigation under 2.8.2 A., as it is under 2.8.2 B. 45(cz)

J. Agreeing not to "preclude" reserve goals is insufficient. (4.3)

Discussion: The County does not agree to follow wildlife agency recommendations on project consistency; it reserves the right to make its own judgement as to not "precluding" reserve goals. Meeting the threshold of "not precluding" takes extreme measures to prove and fails to account for cumulative impacts; only an agreement to ensure project *consistency* is compatible with assured preserve assembly. 45(da)

Suggested remedy: The County should agree to only approve projects consistent with the subarea plan.

K. Land conservation projections neglect lands estimated to be preserved due to avoidance of impacts. (4.4) 45(db)

L. The Biological Mitigation Ordinance should make explicit the need to undertake all necessary surveys for narrow endemics, sensitive plants and animals, or other species whose mitigation *may* be required under the Ordinance or under CEQA. 45(dc)

M. The Biological Mitigation Ordinance does not mitigate impacts to covered species to the maximum extent practicable under section 10(a) or to the extent feasible under CEQA.

Discussion: Under current County policies (Resource Protection Ordinance and "Greenbook" guidelines), mitigation occurs at higher rates than is now proposed. For example, current policy does not generally allow the use of undevelopable floodplain or steep slopes land as project mitigation; this practice is, however, institutionalized in the proposed Ordinance. Also, mitigation ratios for habitats previously considered rare or sensitive have been significantly reduced (e.g., oak woodland from 1-3:1 to generally 1:1; coastal sage from 1-3:1 to generally 1:1). For non–native grasslands, current policy is to fully mitigate (at least 1:1) if any of a comprehensive list County and state "sensitive" plant and animal species is present. The proposed Ordinance would reduce that requirement to a *drastically abbreviated* list (that is, the MSCP covered species) and would *in addition* reduce the mitigation ratio for non–native grassland occupied by a sensitive species in half, to 1/2:1. Very importantly, this "double–reduction" is inconsistent with the reason why a 1/2:1 ratio was proposed in the first place, namely, that sensitive species were *presumed to occur in approximately half the grasslands.* 45(dd)

These major, across–the–board reductions are *prima facie* evidence that mitigation is not occurring to the maximum extent practical under federal law or to the extent feasible under state law. The truth of this is immediately evident upon comparison with requirements in the City of San Diego. 45(de)

45

There, using the same overall ratio scheme, developers are required to mitigate at a 1/2:1 ratio for *all* non-native grasslands. There is no reason to believe that what is feasible in the City is infeasible in the County—where mitigation lands are, in fact, far *less costly* to acquire than in the more expensive coastal zone. 45(de)

In addition, it is our belief that under the proposed system, many non-native grasslands, which are of relatively small patch size, would escape mitigation altogether as *only* those potentially used by the covered species list raptors—large species like the golden eagle and northern harrier—could be mitigated. To the contrary, under the current County system, use by smaller raptors would trigger mitigation, as species such as the white-tailed kite and loggerhead shrike are considered sensitive.

These various reductions cumulatively violate a cardinal and long-standing principle of the MSCP, that is, mitigation will occur at the *same aggregate level* as today. Finally, the continued use of unreliable, contentious, and expensive surveys for non-native grasslands violates another basic goal of the habitat-based ratio table—that of a streamlined, habitat-based, and biologically rational mitigation system. We again stress that the reduction of mitigation to a 1/2:1 ratio *already factors in* the issue of species presence.

The ecological role played by non-native grassland is fundamentally the same as the played by native grasslands; the role of non-native grasslands in supporting raptors is incontrovertible. The County must fully recognize the biological value of this habitat in the ratios if its mitigation system is to credible.

Suggested remedy: It is possible to exchange some lower ratios for greater consistency of application; this may result in an aggregately equivalent rate of mitigation. Therefore, adoption of the City of San Diego ratios for non-native grasslands could constitute an acceptable remedy.

N. <u>In article IV of the Biological Mitigation Ordinance, the qualifier "reasonable" in the phrase "reasonable connectivity" (pertaining to mitigation lands outside core areas) should be deleted.</u> 45(df)

Discussion: "Reasonable" has no biological meaning, and can be variously interpreted.

Suggested remedy: Substitute "fully adequate".

O. <u>Biological core areas outside of a subarea plan are insufficiently defined.</u> (III (1)b(i)) 45(dg)

Discussion: To limit the definition of such areas to high or very high value habitat would exclude the preservation of biologically important habitat, which, while in isolation might be considered "lower" value, is actually essential to the overall viability of a habitat patch.

Suggested remedy: Include in the definition the phrase, "or moderate value within a matrix of high or very high value."

P. <u>Ratios in the Biological Mitigation Ordinance provide insufficient disincentive to mitigate outside the preserve.</u> 45(dh)

Discussion: Particularly for Tier II and III impacts, the differential between mitigation outside and inside the preserve is minimal, and will not provide sufficient incentive.

Suggested remedy: Increase the ratios to provide greater incentive for mitigating inside the preserve.

45

Q. The practice of placing fuel modification zones within development boundaries should be continued.

Discussion: It is the responsibility of a development project to protect itself from fire hazard with fuel modification zones. It is not the role of the pubic to subsidize private development projects by degrading public lands in order to provide this function. (It is noteworthy that the property values of private parcels are significantly increased by their proximity natural to open space.) Furthermore, fuel modification zones are extensively denuded of native vegetation, and these impacts require standard mitigation. The inclusion of fuel modification zones within development boundaries is an existing land use implementing policy for the County of San Diego, and constitutes an analytical premise which underlies the County subarea plan and the covered species list; no other scenario has been analyzed in the EIR/EIS. 45(di)

Suggested remedy: Continue current County policy of incorporating necessary fuel modification zones into development project boundaries, and continue to require mitigation for impacts to the native vegetation and associated species as a result of vegetation modifications.

R. Protection for narrow endemics should be improved. 45(dj)

See MSCP Plan Comment G above.

We thank the agencies and jurisdictions for considering our views.

Sincerely,

Dan Silver,
Coordinator

46 THOMAS MAURIELLO, LAW OFFICE OF THOMAS D. MAURIELLO, 10/16/96

46(a) Comment noted. The validity of the Section 4(d) Rule for the California gnatcatcher is beyond the scope of the proposed action. However, contrary to the commenter's contention, the Section 4(d) Rule for the gnatcatcher is fully consistent with the conservation needs of the gnatcatcher as is required for the issuance of special rules for threatened species under Section 4(d) of the federal Endangered Species Act, 16 U.S.C. § 1533(d). The U.S. Fish and Wildlife Service (Service) documented the conservation benefits expected to accrue to the gnatcatcher from the development and implementation of Natural Community Conservation Planning efforts in the preamble to the final Section 4(d) Rule. See 58 Fed. Reg. 65088-96. The purpose of the NCCP program is to achieve long-term regional protection for the gnatcatcher and other coastal sage scrub species through an interlinking system of permanent multi-species preserves. The wildlife agencies believe that conservation planning for the gnatcatcher on a regional scale, through the NCCP process, affords the best opportunity to provide for both the protection of the gnatcatcher and the unique coastal sage scrub vegetation community in which it is found. The Section 4(d) Rule has been instrumental to the successful development of NCCP subregional plans.

46(b) The wildlife agencies disagree that the Section 4(d) Rule for the gnatcatcher violates the federal ESA. The federal ESA does not itself prohibit the take of threatened species such as the California gnatcatcher. A prohibition on the take of most threatened animal species has been imposed through the promulgation of a general Section 4(d) Rule by the Service which is codified at 50 C.F.R. 17.31(a). However, where, as for the gnatcatcher, a special rule has been promulgated, Subsection 17.31(c) provides that the general take prohibitions contained in Subsection (a) do not apply; rather, the particular prohibitions and exceptions applicable to the gnatcatcher are those identified in the special rule.

46(c–f) See **Theme Response XXIV, No Surprises.**

46(g) The Service has chosen to place listed and unlisted covered species on take authorizations, with effective dates for unlisted species tied to the date of listing should they be listed in the future. Unlisted species covered in an HCP are subject to the same substantive requirements as listed species. The Service's Biological/Conference Opinion and Findings and Recommendations would address each covered species to ensure that all criteria for issuance of an take authorizations permit are met. Please refer to **Theme Response XXII, Sufficiently/Significantly Conserved Vegetation Communities.**

46

Law Office of
THOMAS D. MAURIELLO

ADMITTED TO PRACTICE:
California
New Jersey
Pennsylvania

550 West B Street
Suite 385
San Diego, CA 92101

TEL: (619) 515-1144
FAX: (619) 231-0561

October 16, 1996

John Kovac
Development & Environmental
Planning Division
City of San Diego
1222 First Avenue, 5th Floor
San Diego, CA 92101

Gail Kobetich
United States Fish & Wildlife Service
2730 Loker Avenue West
Carlsbad, CA 92008

Re: Comments on August 1996 Multiple Species Conservation Program Plan

Dear Mr. Kovac and Ms. Kobetich:

I am an attorney practicing in San Diego County. My practice includes cases under the Endangered Species Act, as well as under other federal and state resource statutes. I am writing on my own behalf to submit comments on certain aspects of the proposed MSCP Plan, discussed below. I do not purport to have any special expertise in scientific areas, and my comments are directed to what I perceive to be legal flaws with the Plan.

I. The MSCP Plan Violates Section 4(d) of the ESA.

The MSCP Plan does not meet the criteria for authorizing incidental take of threatened species pursuant to section 4(d) of the federal ESA. That section authorizes the USFWS to issue special rules permitting the take of threatened species if it finds that this is "necessary and advisable to provide for the *conservation* of such species." (16 U.S.C. § 1533(d).) "Conservation" in turn is defined as:

> to use and the use of *all* methods and procedures which are necessary to bring any . . . threatened species to point at which the measures provided pursuant to this chapter are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management . . . and, in the extraordinary case where population pressures within a given ecosystem cannot otherwise be relieved, may include regulated taking.

46(a)

(16 U.S.C. § 1532(3).) Accordingly, the courts have held that, in order to implement this conservation mandate, take of threatened species may only be authorized under section 4(d) in "extraordinary cases" where population pressures within a given ecosystem cannot otherwise be relieved. (Christy v. Hodel, 857 F.2d 1324, 1336-37 (9th Cir. 1988); Sierra Club v. Clark, 755 F.2d 608, 612-13 (8th Cir. 1985).) 46(a)

The MSCP Plan and the 4(d) rule for coastal California gnatcatcher violate the conservation requirements of section 4(d) of the ESA, because they authorize incidental take of the gnatcatcher for reasons other than relief of ecosystemic population pressures. Rather, the MSCP Plan and the 4(d) rule authorize take of threatened species incidental to development and other activities that have nothing to do with conservation of species. Furthermore, take of other threatened and all endangered species cannot be authorized under the 4(d) rule, but requires the issuance of incidental take permits pursuant to section 10(a) of the ESA and the USFWS' implementing regulations. (50 C.F.R. §§ 17.22, 17.32.) 46(b)

II. The USFWS' and CDFG's "No Surprises" Policy Violates the Federal and State ESAs

The USFWS' "no surprises" regulatory assurances policy was adopted, without public review and comment, in September 1994. This policy precludes the USFWS from ensuring the survival and recovery of current and future listed species, contrary to the mandates of sections 2, 4, 7, 9 and 10 of the ESA. Under the "no surprises" provisions, if new information or changed circumstances reveal that the terms and conditions of the MSCP Plan are inadequate to ensure the continued survival and recovery of the species covered by the plan, the federal government is nevertheless unable to require additional land acquisitions or restrictions and/or money to protect these species, unless it pays for and implements such mitigation itself. However, the government has not guaranteed that adequate funding will be available to do so. The "no surprises" policy thus allows take to proceed, but provides no guaranteed protection for species in the event that a habitat conservation plan's biological assumptions later prove invalid. CDFG has adopted a similar policy in negotiating take authorizations under section 2081 of the state ESA. 46(c) 46(d)

This "no surprises" policy unlawfully forecloses the USFWS from using "all methods and procedures necessary" to conserve species and from insuring that its actions will not jeopardize the continued existence of listed species, in violation of its duties under sections 2, 4 and 7 of the ESA. Further, the policy prevents the federal government from ensuring that an incidental take permit fully mitigates all impacts to, and does not jeopardize the continued existence of, listed species and provides adequate funding under section 10. Moreover, the "no surprises" policy impermissibly requires the federal government to assume mitigation and funding responsibilities 46(e) 46(f)

in the future, when section 10 clearly requires the take permit applicant to fulfill these obligations. Finally, in implementing the policy, the USFWS Region 1 has unlawfully allowed currently unlisted species to receive take authorizations if and when they become listed in the future, even if these species have not individually been treated in a habitat conservation plan as if they were listed under the ESA. (*See* USFWS Region 1 Guidelines for Determining Covered Species Lists and Assurances Relative to Habitat Conservation Planning, Aug. 1, 1995.) 46(g)

Thank you in advance for your consideration of the above comments.

Very truly yours,

Thomas D. Mauriello

47 GHIO, EGGER & GHIO,9/24/96

R

47(a) Comment noted.

47(b) The project site is located in the Otay River Valley and is designated for open space in the adopted and proposed update of the Otay Mesa-Nestor Community Plan. The designation has been in effect since 1979. The site is zoned floodway, and A-1-10 with a floodplain fringe overlay zone. Use of the site for agriculture is permitted and is consistent with the open space designation of the Community Plan. In addition to the open space in the Community Plan, the site is also included within the planning area of both the proposed Otay River Valley Regional Park and the proposed federal South San Diego Wildlife Refuge. Although the site may not provide habitat within the MSCP preserve it is considered to contribute to the wildlife corridor in this area.

47

EGGER & GHIO CO., INC.

GROWERS & SHIPPERS OF VEGETABLES
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POST OFFICE BOX 530054 • SAN DIEGO, CALIFORNIA 92153-0054 • TELEPHONE (619) 222-4800

September 24, 1996

John Kovac, Senior Planner
Development and Environmental Planning Division
City of San Diego
1222 First Avenue - 5th Floor
San Diego, CA 92101

Re: MSCP

Dear Mr. Kovac:

This is to reiterate and confirm our prior communications concerning our approximately 131 acres in the Otay Mesa - Nestor community plan area. Our property is not appropriate for habitat protection and there are no benefits by virtue of including our property in the MSCP designated areas. 47(a)

We continue to insist that our property should be excluded from the MSCP designated areas. 47(b)

Sincerely,

EGGER & GHIO, INC.

By: Emil Ghio
Emil Ghio, Secretary-Treasurer

EG/e:

48 LARRY PURCELL, SAN DIEGO COUNTY WATER AUTHORITY, 10/16/96

R

48(a) The comments are noted. Corrections have been made in the revised language included in the Final EIR/EIS.

48

San Diego County Water Authority
A Public Agency
3211 Fifth Avenue • San Diego, California 92103-5718
(619) 682-4100 FAX (619) 297-0511

October 16, 1996

Mr. John Kovac
City of San Diego
Development and Environmental Planning Division
Environmental Analysis Section/Public Projects
1222 First Avenue, 5th Floor
San Diego, CA 92101

Dear Mr. Kovac:

Recirculated Draft EIR/EIS for Issuance of Take Authorizations for Threatened and Endangered Species due to Urban Growth within the MSCP Planning Area (SCH No. 93121073)

The San Diego County Water Authority (Authority) has reviewed the Recirculated Draft Environmental Impact Report/Environmental Impact Statement for the *Issuance of Take Authorizations for Threatened and Endangered Species due to Urban Growth within the MSCP Planning Area* and offers the following for your consideration.

General Comments

The proposed Multi-Habitat Planning Area (MHPA), as developed under the Multiple Species Conservation Program (MSCP), will provide a significant contribution to the preservation of regional biodiversity in southern California. Although not contemplating subarea plan development under the auspices of the MSCP, the Authority has maintained long-standing support for MSCP goals and objectives through both financial contributions and participation as a member of the MSCP Working Group.

As a regional public facility provider, the Authority is presently working with the resources agencies to develop a focused Subregional Natural Communities Conservation Plan/Multi-Species Conservation Plan (NCCP/MSCP) specific to the activities and needs of the Authority. This approach will provide the desired regulatory certainty necessary to construct and maintain the infrastructure required to provide a safe and reliable water supply to San Diego County. The Authority's NCCP/MSCP will function independently of, but be compatible with, other habitat or species conservation plans prepared by local governments, public agencies or private parties. Any land acquisition associated with

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• Yuima

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MUNICIPAL WATER DISTRICTS
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• Olivenhain • Rincon del Diablo
• Padre Dam • Valley Center
• Rainbow • Yuima

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implementation of the Authority's NCCP/MSCP will benefit regional habitat preservation goals and may not be confined solely to within the MHPA boundaries.

Specific Comments

Page 3-42, Section 3.5.1, Paragraph 1: A review of our records indicates that the Authority supplied 262,998 acre-feet of water to the listed member agencies within the MSCP area during fiscal year 1993, not the 340,000 stated in the document. Authority supplies to these same agencies in fiscal years 1994 and 1995 totaled 238,814 and 243,188 acre-feet, respectively.

Page 3-42, Section 3.5.1, Paragraph 1: The list of primary Authority water distribution projects is incomplete and includes projects located outside the MSCP planning area. Additional major projects include the Scripps Ranch Pipeline, North County Distribution Pipeline, Valley Center Pipeline, and the San Marcos Pipeline. However, the San Marcos Pipeline, Valley Center Pipeline, North County Distribution Pipeline, Escondido Raw Water Pump Station and Pipeline No. 6 do not occur in the MSCP area. 48(a)

Page 3-42, Section 3.5.1, Paragraph 2: On August 15, 1996 the Authority Board of Directors certified the Final EIR for the Emergency Storage Project (ESP) and identified Olivenhain/Lake Hodges/San Vicente as the preferred alternative. Most of the facilities associated with this alternative are located in the MSCP study area. Action by the U.S. Army Corps of Engineers to approve the Final EIS is pending.

Please retain the Authority on your mailing list to receive the Final EIR/EIS when available. We look forward to continuing work with the City and others on this important program. If you have any questions, please contact me at (619) 682-4158.

Sincerely,

Laurence J. Purcell

Laurence J. Purcell, Manager
Water Resources Planning

AM/LP/s

D:\DATA\WORDS\MSCPCLTR.DOC

49 JANET NICKERMAN, 10/15/96

R **49(a)** This issue is outside the scope of the MSCP and the EIR/EIS.

49

October 15, 1997

OCT 1 7 1998

Mike Evans
Fish and Wildlife Service
2730 Loker Ave West
Carlsbad, CA 92008

Dear Mr. Evans

I am responding to the Fish and Wildlife Decision to drop all category II species from the listing process. I am very concerned about this decision because I feel many species will be adversely affected and as a result there will be an increase of species being pushed to the brink of extinction. The problem is that if a species do not require federal protection as a rule there is little or no documentation required on the condition of that species. Many species will quietly disappear. This will make the developers happy but it will be a disaster for the environment. 49(a)

I sincerely hope The Fish and Wildlife Service will reconsider it's decision. I feel this is a terrible mistake and it undermines the painful progress that has taken many years to accomplish.

Sincerely,

Janet Nickerman

Janet Nickerman

50 KIM KILKENNY, VILLAGE DEVELOPMENT, 10/15/96

50(a) The MSCP documents recognize SR-125 as a use that would traverse the preserve. Because Caltrans has not yet selected a preferred alternative, the alignment shown is that which is currently delineated in the jurisdictional General Plans. Should an alternative be selected prior to finalization of the subarea plans, the maps would be changed accordingly. We note that the Johnson Canyon alternative was removed from the SR-125 EIR, resulting in better preserve configuration and a higher conservation of maritime succulent scrub.

50(b) The statement that SR-125 is "exempt from the Subarea planning process" on page 4.4-2 of the Draft EIR/EIS is clarified in the revised language included in the Final EIR/EIS. The referenced discussion should state that the portion of SR-125 within the South County Segment of the County Subarea Plan is currently the subject of separate environmental review and separate impact analyses and mitigation requirements would be developed for that project. An evaluation of the relationship of the proposed SR-125 project to the MSCP Plan would be required as part of the analysis of the SR-125 project. See also responses to Comments 33(a–d).

50(c) The comments are noted and the information in Table 4.2-15 has been updated in the revised language included in the Final EIR/EIS.

50(d) Impacts of constructing the University Site in Salt Creek Canyon are discussed on pages 4.3-80 (Table 4.3-8 and the discussion under the heading "Direct Impacts to Vegetation Communities/Habitats" on page 4.3-82), and pages 4.3-155 and 4.3-156 (Analysis of Significance).

The proposed location of a university in Salt Creek Canyon, as discussed in City of Chula Vista's Subarea Plan under Policy 1 Option, would result in substantial adverse impacts to regional populations of California gnatcatchers and cactus wrens. These impacts would not only reduce the number of individuals of these species within Salt Creek Canyon, as shown in Table 4.3-8, but they would also affect all adjacent populations that interact with these core populations. The intent of the MSCP is to preserve core population areas and ensure adequate linkages between them to provide for re-population of areas affected by environmental variables (weather, fire, human impacts, etc.). Within core areas, the population dynamics eventually result in natality exceeding mortality, which leads to emigration. Within linkage areas, mortality exceeds natality, leading to immigration. Policy Option 1 would fragment a core population area resulting in only habitat linkage remnants. These linkage areas are too small and subject to too much edge effect to support viable populations. This population is the only likely source population for populating the Otay Lakes, Otay Mesa, and the Otay River Valley areas due to its existing high densities of both gnatcatchers and cactus wrens. Therefore, loss of this core area would have significant effects on the portion of the MSCP study areas south of Interstate 8 and west of Otay Mountain.

50(e) The wildlife agencies would make a finding whether or not the Otay Ranch mitigation adequately meets the federal and state take authorization standards at the time Chula Vista and the County of San Diego submit their permit applications. The statement in the Table 4.3-1 does not impose a greater than 1:1 mitigation ratio, it merely acknowledges that this is the minimum based on prior agreements.

The agreements reached between the landowner and the wildlife agencies did not negate the requirements in the Otay Ranch Resource Management Plan and General Development Plan that the success of maritime succulent scrub restoration be demonstrated prior to impacts to MSS. Use of in-tier mitigation for MSS on Otay Ranch versus in kind mitigation would be contrary to the Otay Ranch RMP and the agreements between the wildlife agencies and the landowner regarding no net loss of this rare habitat type.

50(f) Impacts of constructing the University Site in Salt Creek Canyon are discussed on pages 4.3-80 (Table 4.3-8 and Direct Impacts to Vegetation Communities/Habitats), and pages 4.3-155 and 4.3-156 (Analysis of Significance). See response to Comment 50(d).

50(g) As discussed in the MSCP Plan (page 2-15), SANDAG projected the San Diego region's population to grow from 2.5 million in 1990 to 3.8 million by the year 2015. In allocating future population growth to the cities and communities of the region, SANDAG found that the existing General Plan and Community Plans contain vacant lands designated for residential use at "urban" densities (greater than one unit per acre) sufficient to accommodate approximately 3.3 million, which is forecast to be reached in the year 2005. The local jurisdictions have been working with SANDAG to formulate a Regional Growth Management Strategy both to accommodate residential growth beyond 2005 and to meet quality of life objectives of greater transportation access, reduced congestion, and improved air quality. However, as of November 1996, the land use element of the Regional Growth Management Strategy had not been adopted by the local jurisdictions, leaving the question of accommodating growth beyond 2005 essentially unresolved.

The analysis of Population/Housing in Section 4.6 of the Draft EIR/EIS indicates that the extent of habitat and open space conservation proposed by the MSCP Plan would not affect the region's ability to accommodate growth to the year 2005, consistent with SANDAG forecasts. Beyond 2005, the lack of an adopted land use element of the Regional Growth Management Strategy makes projection of potential impact highly uncertain, since current forecasts do not provide a reliable basis for comparison. That is , measures that may be required to accommodate growth beyond the year 2005 with the MSCP cannot be clearly distinguished from those measures which may be required in the absence of the MSCP. For purposes of environmental review under CEQA and NEPA, analyses of population and housing impacts were therefore limited to the year 2005. Please see **Theme Response III, Economic Impacts and Impacts on Population and Housing.**

50(h) Table 4.6-2 on p. 4.6-4 of the EIR/EIS compares forecast 2005 to existing 1990 data on population and housing located within the alternative preserve planning areas. The column with heading, "Percent of MSCP 1990-2005 Net Growth," shows the percentage growth in population and

housing which has been forecast to take place within the alternative preserve planning areas. These percentage figures indicate the extent to which habitat conservation and population/housing growth must be reconciled in the alternative preserve planning area, if the Series 8 Regional Growth Forecast is used as a basis of comparison. For example, within the MHPA, housing units are forecast to grow by 66%, while within the CSS preserve planning area, they are forecast to grow by 294%.

50(i) In Table 4.6-3 on p. 4.6-4 of the Draft EIR/EIS, the figure of "82" under "Total MSCP Study Area" and across from "Proposed MHPA" is an error. The correct figure should be "82,290." This table shows estimates of developable land, i.e., land free from physical constraints as identified by local jurisdictions and subject to special planning considerations, for the MSCP study area under alternative preserve planning scenarios. For example, for the proposed MHPA, approximately 82,290 acres of physically unconstrained land would be available for development. (It should be noted that some constrained land would also be developed, subject to special regulations such as those for steep slopes.) The last column, "Estimated Residential Portion," shows the amount of physically unconstrained land that would be available for residential use, if the ratio of residential to non-residential land use is the same as that which exists in the developed portion of the MSCP study area in 1990.

50(j) The paragraph at the bottom of p. 4.6-5 of the Draft EIR/EIS is in error and should read as follows:

> *From Table 4.6-3, a total of 17,021 acres of private land would be available within the MHPA for development of housing units and other types of development. An additional 65,269 acres of private land would be available for development outside the MHPA but within the M5CP study area for a total of 82,290 acres of private land available for development. Assuming the approximately 59.3 percent of the total private land available for development within the M5CP study area (both within and outside the MHPA) would be available for development, approximately 48,798 acres would be available to accommodate the projected 133,990 housing units. This would accommodate forecast growth to 2005, based on the 1990 average gross residential density of 3.10 DU/acre, and leave 39,067 acres of vacant land (23,167 acres of residential land) which could support an additional 121,100 housing units to be developed after 2005. Total housing units which could be built in the M5CP study area is 255,090 (= 133,990 + 121,100), compared to SANDAG's forecast of 254,495 to be built between 1990 and 2015. It is anticipated that this development would occur both within and outside the MHPA. The project density and the resultant overall density would be within the 3.10 DU/acre gross residential density currently (1990) within the study area.*

SANDAG's 5eries 8 Regional Growth Forecast showed that there is insufficient quantity of land zoned for urban residential density (greater than one unit per acre) to accommodate

growth after 2005. That is, it would be necessary to convert some lands which are currently zoned for rural densities (less than one unit per acre) to urban densities.

The analysis in the EIR/EIS showed that there is sufficient land to accommodate the forecast growth, if the existing 1990 gross residential density of 3.10 DU/acre is maintained in the future. This conclusion does not contradict that of Series 8 Forecast. Please see **Theme Response III, Economic Impacts and Impacts on Population and Housing.**

50(k) The County Subarea Plan will be modified to incorporate the proposed changes.

50(l) The MSCP Plan and Subarea Plans state that, with appropriate design considerations, roads would be a permitted use within the preserve. This includes the Otay Lakes Cornerstone Lands.

50

Village
DEVELOPMENT

Quality master planned communities since 1974

October 15, 1996

Mr. John Kovac
City of San Diego
600 B Street, Suite 500
San Diego, CA 92101

Ms. Nancy Gibert
U. S. Fish and Wildlife Service
2730 Loker Avenue West
Calrsbad, CA 92008

Mr. Bob Leiter
Planning Director
City of Chula Vista
276 4th Avenue
Chula Vista, CA 91910

Mr. Robert Copper
Deputy Chief Administrative Officer
County of San Diego
1600 Pacific Highway, Room 335
San Diego, CA 92101

Dear Gentlepersons:

Attached are comments concerning the MSCP EIR/EIS. Also included are specific comments regarding the County of San Diego South County Subarea Plan, and the City of San Diego Subarea Plan.

Your consideration of these comments is appreciated.

Sincerely,

Kim John Kilkenny
Vice President

KJK/ash

Enclosure

cc: Jerry Jamriska, City of Chula Vista
Bob Asher, County of San Diego
Ron Rempel, Department of Fish and Game
Gail Kobetich, U.S. Fish and Wildlife Service

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KJK/ASH 10/15/96

11975 El Camino Real, Suite 104 • San Diego, CA 92130
Tel. 619-259-2934 • Fax. 619-259-4364

I. COMMENTS ON THE MSCP EIR/EIS

SR 125 - Johnson Canyon Alignment

Several maps contained in the MSCP and MSCP EIR/EIS (figures 2-1, 2-2, 2-12, 2-5), exclude SR 125 South right-of-way crossing the Otay River Valley from the preserve. These maps reflect the Otay Ranch General Development Land Plan which locates SR 125 in Johnson Canyon, consistent with the City of Chula Vista General Plan the County of San Diego General Plan and City of San Diego General Plan. However, at the request of the resource agencies, the draft SR 125 EIR/EIS eliminates the Johnson Canyon Alignment from further environmental analysis leaving the Brown Field and Brown Field Modified Alignments. Accordingly, the Subarea Plans and MSCP EIR/EIS should be modified to depict the preservation of Johnson Canyon and attendant habitat, yet textually state that SR 125 is a permitted use within the preserve. If this approach is taken, the Maritime Succulent Scrub, and other habitats located in the Johnson Canyon area can be counted as preserved. 50(a)

Consistent Treatment of SR 125

I concur with the concerns expressed by John Willett in the attached letter of October 4, 1996, in which he states that the various MSCP Subarea Plans treat the SR 125 right-of-way differently. He recommends that SR 125 be treated consistently, as a permitted use.

Concerning such consistent treatment, page 4.4-2 of the draft EIR/EIS states that SR 125 "Would not be prohibited with implementation of the proposed (MSCP) project and significant impacts to the regional transportation system associated with potential realignment or deletions of portions of these roadways would not occur." The EIR/EIS also explains that the planned extension of SR 125 is "exempt from the subarea planning process." It is unclear from this discussion if exemption from the planning process means that SR 125 is a permitted use within the preserve as discussed in section 4.4.1.1.A.1, or if SR 125 is not analyzed in EIR/EIS and thus subject to MSCP preserve regulations or additional environmental review. This should be clarified. 50(b)

Otay Ranch Acreage

Page 4.2-49, table 4.2-15 (development projects covered by MSCP) contains erroneous information relative to the Otay Ranch GDP. The number of acres in urban land use is approximately 9,208, not 11,000. The number of acres in open space is approximately 13,691, not 12,000. With respect to the project's approval status, the General Development Plan was approved in 1993. A Sectional Planning Area Plan for the northern portion of the project was approved in 1996, and a Tentative Map is pending. Additionally, a Sphere of Influence Update was approved in July 1996, placing the western 10,000 acres of Otay Ranch in Chula Vista's Sphere of Influence. 50(c)

On page 4.6-5, the analysis concludes "approximately 64,413 acres would be available to accommodate the projected 133,999 housing units. This would accommodate forecast growth to 2005 and leave 38,744 acres of vacant land which could support an additional 202,240 housing units." Based on this analysis, the EIR/EIS concludes that the MSCP plan would not significantly affect the region's ability to accommodate projected housing needs within the MSCP study area during the period of 1990 to 2005 and beyond. This conclusion conflicts directly with the SANDAG analysis summarized on page 4.6-2 which states, the region does not have sufficient amounts of residentially zoned developable land to accommodate future projected housing growth. SANDAG projects that by the year 2005, the region will have effectively run out of residentially designated land upon which to accommodate future housing growth. The SANDAG Series 8 Population Forecast does not account for the significant loss of residentially zoned land caused by the adoption of the MSCP plan. It is obvious that the adoption of the MSCP plan would seriously aggravate the region's ability to provide sufficient residentially zoned land to serve future population and economic growth. 50(j)

II. COMMENTS ON THE SAN DIEGO SOUTH COUNTY MSCP PLAN

Page 3-12. The first paragraph under "G. Otay Ranch" should be modified to reflect approximately 13,000 acres of open space (not 12,000).

The second paragraph, should be updated to state that LAFCO approved a revised City of Chula Vista Sphere of Influence to include the western portion of Otay Ranch.

The third paragraph, last sentence should delete the word "ownership."

Page 3-13. The discussion under "Otay Valley Parcel" should be modified to indicate that the 6 out-parcels are not included in the Otay Ranch GDP, as opposed to "property not owned by Baldwin Vista."

Page 3-15. The third full paragraph should be modified to reflect the fact that the City of Chula Vista has adopted the Phase 2 RMP and the County of San Diego has adopted those portions of the Phase 2 RMP which were a requirement of initial Otay Ranch SPA. These portions include identification of the preserve owner manager, adoption of a conveyance schedule and adoption of a preserve funding plan.

Page 3-16. The last paragraph should be modified to reflect that the referenced agreement is with Village Development, not the Baldwin Company. 50(k)

Page 4.3-8, Table 4.3.2 (Species Evaluated for Coverage Under the MSCP)
Page 4.3-23, Maritime Succulent Scrub. The table states that Coastal Cactus Wren is adequately conserved by the MHPA plan based upon the Chula Vista GDP B alternative. This alternative excludes the location of a university within Salt Creek. This conclusion is stated elsewhere within the EIR/EIS, however, the EIR/EIS contains little analysis documenting the rationale as to why the 288 acre University on the edge of Salt Creek would result in the conclusion that the Coastal Cactus Wren, region-wide, would inadequately conserved. 50(d)

The table also states that the finding of adequacy is dependent upon Maritime Succulent Scrub habitat restoration at a "minimum" of a 1 to 1 ratio within Otay Ranch. Implicit is the statement that a higher mitigation ratio could be imposed within Otay Ranch. The identified Otay Ranch GDP restoration ratio is 1 to 1, as an absolute figure, not a minimum. Secondly, the table states that restoration success must be demonstrated prior to impact on MSS. Pursuant to the agreement with the resource agencies concerning modifications to the Otay Ranch Plan, it should be understood that there is no requirement that success be demonstrated prior to any permitted impact to MSS. Furthermore, since MSS restoration is, as of yet, an unproven technique, alternative mitigation should be permitted within this subarea. Use of the identified tiered mitigation ratio is suggested as permissible alteration mitigation. 50(e)

Page 4, 3-23 California Gnatcatcher. The finding relative to the California gnatcatcher states that it is based upon the Chula Vista modified GDP B Alternative Plan (no University in Salt Creek). Again, the EIR/EIS fails to provide any analysis documenting the conclusion that the construction of a University on 288 acres near Salt Creek would be sufficiently detrimental so as to lead to the conclusion that California gnatcatcher could not be adequately conserved throughout the entire region. 50(f)

Page 4.6-2 Population and Housing
The EIR/EIS impact analysis limits it's focus to the period of 1990 to 2005. Since it is unlikely that the MSCP Program will be adopted this calendar year, the housing and population analysis is limited to only a 9 year horizon. This is a woefully inadequate period of analysis for a conservation program that will permanently affect development throughout the San Diego region. 50(g)

Table 4.6-2, Population and Housing Unit Forecast
The portion of this table dealing with population appears consistent and rational. The portion dealing with housing units can not be deciphered. In particular, the fourth column depicting "percent of MSCP 1990 to 2005 net growth," does not appear to relate to anything germane. 50(h)

Table 4.6-3, concerning "forecast developable land" again, is difficult to decipher. In particular, the figure "82" appears to be an error. 50(i)

Page 3-17. The note at the bottom of the page should be modified to acknowledge that revegetation requirements are affected by Village Development's Agreement with the wildlife agencies. 50(k)

III. CITY OF SAN DIEGO MSCP SUBAREA PLAN

Page 35-37. The San Diego City Subarea Plan establishes the Otay Lakes Cornerstone Lands. Several preserve exclusions are identified on pages 35-36 for the cornerstone lands. While the exclusions include existing access and service roads, the exclusions do not expressly identify Circulation Element roads as a permitted use within the preserve. On the other hand, page 48 of the San Diego City Subarea Plan expressly states that roads identified as Community Plan Circulation Elements are permitted uses within the preserve. However, it is unclear how this policy impacts the Otay Lakes Cornerstone Lands since the properties covered, are not within the City of San Diego, but are in the City of Chula Vista and within the County unicorporated area. Chula Vista's and the County's general plans include, Circulation Element roads impacting Otay Lakes Cornerstone Lands. These plans depict relocation of Otay Lakes Road crossing the area between the Upper Otay Reservoir and the Lower Otay Reservoir. The plans also depict relocation and expansion of Proctor Valley Road north of the reservoirs. The MSCP plan should be clarified to expressly state that such routes are permitted uses within the Otay Lakes Cornerstone Lands. 50(l)

51 KAREN MESSER AND PHILIP UNITT, SAN DIEGO NATURAL HISTORY MUSEUM, 10/15/96

R **51(a)** To receive take authorizations pursuant to the California Endangered Species Act, Natural Community Conservation Planning Act (NCCP), and Section 10 of the federal Endangered Species Act, applicants (jurisdictions and special districts) must demonstrate that they have mitigated the impacts of the proposed take in accordance with requirements of Section 10(a)(1)(B) of the federal ESA and management authorization under the California ESA and the NCCP. These criteria require, among other things, that the applicant would, to the maximum extent practicable, avoid, minimize, and mitigate the impacts of taking, and that such taking would not appreciably reduce the likelihood of the survival and recovery of the species in the wild. The U.S. Fish and Wildlife Service will use the best scientific and commercial data available to make this finding through preparation of a biological opinion on the proposed permit issuance. The level of take, conservation, mitigation, and management is described in Table 3-S of the revisions to the MSCP Plan, Volume I. Please see responses to Comments 45(l)/(m)/(n) for specific information regarding the southwestern willow flycatcher, golden eagle, and the burrowing owl. Please see **Theme Response XVIII, Recovery of Species.**

The Biological Goals, Standards, and Guidelines for Multiple Species Preserve Design (Guidelines) were originally developed as an alternative to prematurely drawing preserve boundaries. The goals of these Guidelines were to allow flexibility in the establishment of preserve boundaries based on specific survey data, land use, ownership, and economic information, and to provide a planning context for conservation standards. Understanding the importance and extent of the region's habitat and target species was essential. The Guidelines were intended to provide a way to measure the success of the incremental building of a preserve system and to assist in future management and maintenance decisions. The emphasis of the Guidelines is to preserve sufficient varieties of habitat types in large enough areas and with sufficient linkages, and wildlife corridors, to create a regional, interconnected system that preserves the target species.

The biological resources are not the only factors considered in determining which land would be conserved. The jurisdictions considered the biological data, other land use plan and community plan needs, economic factors and other nonbiological objectives, and have proposed the subarea plans provided in the MSCP Plan, Volume II. The wildlife agencies must consider all of the available biological information in determining whether to issue a Section 10(a)(1)(B) permit under the federal ESA and management authorization under California Fish and Game Code Section 2081/2835. The issuance of take authorizations for covered species must meet the issuance criteria of these acts. The Guidelines provide biological information but are not necessarily the equivalent of the legal issuance criteria.

51(b) Please see responses to Comments 45(i) and 45(l) on northern harrier and golden eagle. The MSCP would not decrease protection for the bald eagle. This species does not nest within the MSCP boundary, and foraging areas are maintained and conserved within the MSCP study area.

The MSCP does not rely exclusively on federal wetlands regulations. Approximately 1,719 acres out of 1,870 acres of coastal salt marsh (92 percent) are included within the MHPA. The remaining 151 acres (8 percent) would continue to be protected by existing federal and state wetland regulations, and local regulations that would ensure a no-net-loss of wetland habitat. This mitigation measure would be a requirement of subarea plans.

The five species of concern to the commenter are unlisted species which presently do not require take authorizations, nor have they been requested to be addressed within the MSCP Plan. These species would continue to be addressed on a project-by-project basis through the CEQA process.

51(c) The MSCP mapping program was initiated in 1991. Spatial information for sensitive species was derived from various sources having varying spatial accuracy. A limited update of selected sensitive species (e.g., California gnatcatcher sightings reported from 1992 to 1995) was accomplished in 1995. The specific point locations referenced for peregrine falcon and elegant tern were not included in this database update; however, the new peregrine falcon sites and the elegant tern sites in the Salt Works were considered in the evaluations of covered species.

Both the owl and wren data were recorded during the late 1980s and were considered relevant to the planning process. The burrowing owl evaluation focused on known major populations and areas supporting extensive grassland habitat. Historical localities were considered relevant in terms of presence of potentially suitable habitat. The cactus wren distribution was reviewed by a local expert (K. Weaver). The evaluation for cactus wren also focused on major populations.

Comment noted regarding the cactus wren and burrowing owl on the south side of Lake Hodges. This information will be added to the MSCP database.

51(d) The MSCP Biological Goals, Standards and Guidelines were not adopted as measures to be implemented by the MSCP, but rather were used as "tools" during the evaluation of each species proposed for coverage under the MSCP. Information contained in the Draft Standards and Guidelines helped develop narrow endemics lists for the various subarea plans, the critical populations list for the County of San Diego Subarea Plan, and described in text form the major populations and core habitat areas for certain species. Table 3-5 of the MSCP Plan has been revised to display specific conditions that will be enforceable conditions of the take authorizations. The revised Table 3-5 is included in the Revisions to the MSCP Plan, January 1997.

The City and County of San Diego both have geographical information systems (owned or on contract) which include all data points for known locations of the covered species within

their subarea, and data points for specific populations of species which they must conserve. These data are also in the wildlife agencies' geographical information system, are available to all jurisdictions, and the wildlife agencies will be maintaining the MSCP data base over time and will be providing updates to the participating local jurisdictions on a regular basis. The take authorization holders' project approval process will include review of MSCP data base to ensure that the project does not encroach on a population of a species for which protection is required. The wildlife agencies review of project-level conservation and take, combined with the overall biological monitoring, will enable the wildlife agencies to determine if each take authorization holder is meeting their obligation.

51(e) Under the MSCP Plan, each take authorization holder or local jurisdiction would determine mitigation standards appropriate to the subarea plan (MSCP Plan, p. 3-28) and prepare a habitat management plan as part of the subarea plan (see also **Theme Response XIX, Preserve Management**). Preserve management responsibilities on private lands would remain with the landowner. If habitat lands are dedicated to a public agency for management, they would be managed using the public finding source.

For the purposes of financing analysis, it was assumed that up to 75% of the habitat lands associated with project development would be dedicated to a public agency for management. The local jurisdiction would determine the ultimate responsibility for habitat management through their adoption of preserve management plans improving preserve management consistency. Implementation of the Otay Ranch Resource Management Plan and the Rancho del Sol monitoring program will remain the responsibility of these developments.

51(f) Please refer to **Theme Response IV, MSCP Financing Plan: Regional Source of Funds.**

51(g) New information regarding the golden eagle was provided during the public comment period. Using these data, the wildlife agencies have re-evaluated the status of golden eagle and believe that with proper nest site management, a viable breeding population of golden eagles can be maintained within the MSCP study area. Thus, this species is considered to be adequately conserved. Please see response to Comment 45(l).

The wildlife agencies have re-evaluated the status of the northern harrier, specifically assessing available information regarding known or suitable nesting and foraging areas for this species. Please see response to Comment 45(i).

The wildlife agencies believe that with active management of suitable habitat for the burrowing owl and species-specific mitigation, a viable population of burrowing owls can be maintained within the MHPA. Please see response to Comment 45(m) for the burrowing owl.

51(h) Comment noted. We concur that planning a preserve for the more mobile avian species is more difficult. If either the Natural History Museum or Buena Vista Audubon has additional pertinent information on current nesting locations for any of the species being considered by the MSCP Plan, the wildlife agencies request that this information be provided and we would enter it into the data base .

51(i) See response to Comment 51(d). Avoidance language and requirements to reduce edge effects are included in the revised Table 3-5 as appropriate. The requirement for site specific surveys still exist under CEQA. In the City of San Diego Subarea Plan, site specific surveys may be necessary in siting the 25% buildable area of parcels within the preserve, per the Environmentally Sensitive Lands Ordinance. Specific requirements are identified in the City of San Diego Subarea Plan for southwestern willow flycatcher, least Bell's vireo and tricolored blackbird (page 46, City San Diego Subarea Plan, MSCP Plan, Volume II). The County of San Diego will require surveys through the process in the Biological Mitigation Ordinance (Appendix 1, County Subarea Plan, MSCP Plan, Volume II). Page 4-15 of the County's Metro-Lakeside-Jamul segment describes the County's project review process which will integrate Subarea Plan compliance within the regular project approval process, including adequate and appropriate surveys as are currently required through CEQA (see also response to Comment 81[ax]). The County Subarea Plan contains a list of narrow endemics and critical populations for which avoidance is the primary mitigation focus. The species analyses include breeding/nesting areas and even specific nesting sites (golden eagle, least tern, elegant tern) and the goals and criteria are designed to maximize retention of key breeding areas.

51(j) Due to a lack of detailed distribution data for most of the target wildlife species, conservation of preferred habitats was used as a surrogate for species distribution. This habitat-based approach was considered to be the most pragmatic way to evaluate the level of species conservation. Core populations were presumed to be associated with the larger expanses of preferred habitat. Known occupied sites were also considered in the species evaluations.

51(k) See responses to Comment 45(i) and 45(l) regarding eagle and northern harrier. Please see Table 3-5 in the Revisions to the MSCP Plan, Volume I for analysis of the coverage for these species. See also responses to Comments 51(a) and 51(b).

51(l) See responses to Comments 45(j) and 45(l).

51(m) Projects must also be consistent with the Environmental Protection Agency Section 404(b)(1) Guidelines that require demonstration that impacts could not be avoided and that the least damaging alternative be selected. Nesting locations would be considered in the review of specific project proposals. Please also see conditions in revised MSCP Table 3-5 included in the Revisions to the MSCP Plan, January 1997, regarding riparian dependent species.

51(n) See **Theme Response XVII, Salt Works.** MSCP Plan, Volume 1, includes Figure 3-2 that shows the south San Diego Bay as 75 percent conserved. This area contains saltpan and shallow bay habitats. Table 3-1 shows the Saltpan vegetation community to be preserved 100% (76 out of 76 acres) in the City of Imperial Beach, and 99% (136 out of 138 acres) in the City of San Diego. Table 3-3 shows 212 acres out of 235 acres as being preserved in the MHPA, yielding an overall 90% preservation rate. Footnote number 3 for Table 3-3 indicates that military lands are included in the total study area acreage but are not included in the MHPA. Thus, the remaining acreage includes 2 acres not within the MHPA and 21 acres (10%) of saltpan which occur in the MSCP study area within military lands. Although the City of Imperial Beach is not participating in the MSCP, the MSCP Plan has included their 100% conservation of Saltpan because they occur on other public lands. The conservation of 99% of the saltpan habitat by the Plan (excluding Imperial Beach and Military) does sufficiently preserve this habitat. The wildlife agencies are responsible for working with each military base on conservation issues to complement planning efforts occurring through the MSCP. Table 3-5 shows 100 percent conservation of elegant tern data points (the elegant tern nests in the saltworks area). Although only 75 percent conservation is shown for the area that includes the saltworks, existing wetland regulations will require no net loss of acreage, function and value of the saltpan and shallow bay habitat types, and full compensation for impacts to sensitive and listed species dependent upon the wetland habitats. Take of covered species associated with dike/levee maintenance during the nesting period for water birds is not included under the proposed take authorizations. The 99% conservation rate of south bay habitats, excluding military lands, combined with the requirements that all wetland impacts be mitigated, will result in the ability of South San Diego Bay to support covered species.

No loss of shallow or deep bay habitat is proposed under the MSCP Plan. The amount of bay habitat conserved by the MSCP Plan is a function of the amount of bay habitat under the participating jurisdictions land use authority. Uses of bay habitat is primarily under the jurisdiction of the Navy, Port District, and State Lands Commission, none of which are participating in the MSCP. Projects within these habitats will be subject to state and federal wetlands regulations. Any actions by non-participating jurisdictions (or parties that are not included within the cities of San Diego or Chula Vista) that could impact open water foraging habitat will be required to seek and obtain individual project approvals for those actions. Therefore, it is appropriate to include the identified bay foraging species in the Covered Species Lists for the Cities of Chula Vista and San Diego.

"Salt-works" have significant wildlife habitat value and includes more than just saltpan habitat. The 75% conservation zone applies to the Western Salt operation, but a portion of the ponds (the outermost ponds) are owned by the State Lands Commission and are leased to Western Salt. A total of 603 acres of tidelands and levees/roads at south San Diego Bay are owned by State Lands Commission. The state lands leased to Western Salt Company are subject to an agreement which requires the operations and activities associated with salt production not to adversely affect the wildlife usage of the leased lands. (Lease No. PRC 175.1). In recent years, the lands operated by Western Salt have supported substantial shorebird, seabird and marsh bird species. The Department of Fish and Game intends to pursue a Memorandum of Understanding with the State Lands Commission regarding the leased

lands and their importance to the MSCP. In addition, the wildlife agencies has a proposal under consideration to establish a National Wildlife Refuge in south San Diego Bay which would encompass this resource-rich area. See also, responses to comments 39(d), and 61(g), regarding the salt-works.

51(o) The draft HCP for the least Bell's vireo the commenter refers to has not been adopted. The commenter is correct that the HCP is not incorporated into the MSCP Plan and efforts to complete this HCP have been abandoned in favor of covering the vireo under the MSCP Plan. However, a draft Recovery Plan for the vireo is presently under review; when adopted, this Recovery Plan may recommend additional management actions for the vireo. Implementation of the MSCP Plan would not preclude the development of a recovery plan for these two species. Rather, it is anticipated that the MSCP Plan can achieve some of the recovery goals for the least Bell's vireo and the willow flycatcher.

51(p) The MSCP did not specifically review mosquito programs for their potential impact to covered species, and they are not covered by the MSCP Plan. Those programs that affect wetland habitats will be addressed under the wetlands regulations, and are subject to specific wetland permitting requirements. These programs are part of the public health and safety responsibility of the Mosquito Abatement Districts, and their actions are subject to CEQA review, the ESA's and FIFRA. The wildlife agencies will review any new programs and activities through the CEQA process for actions that conflict with MSCP conservation goals. Flood control and water storage activities are not covered under the MSCP take authorizations. Sand mining activities are described in revised Section 6.2.4 of the MSCP Plan, Volume I.

51(q) See Table 3-5 in the Revisions to the MSCP Plan, Volume I, which includes mandatory conditions for coverage.

51(r) Biological monitoring under this Plan would not begin until area-specific management directives are finalized. However, some baseline data have been collected through contracts administered by the CDFG. Bird and small mammal surveys for a limited number of future recommended survey monitoring sites provide some pre-plan baseline data that will be reviewed and may be used to modify and improve the basic monitoring approach that is proposed in the Biological Monitoring Plan for the MSCP. Accounting of site-by-site conservation and take (based on acres) is required (see Model Implementing Agreement, Section 14.1) and must be reported to the wildlife agencies annually. These issues also are addressed in **Theme Response XIV, Biological Monitoring.**

51(s) Comment noted. Avoidance standards for essential public facilities and for sand and gravel extraction are set out in the Biological Mitigation Ordinance and are almost identical to those contained in the County's existing Resource Protection Ordinance.

For an essential public facility to be exempt from the BMO the following findings must be made:

(a) The facility or project is consistent with adopted general or subregional plans and the MSCP Subarea Plan;

(b) All possible mitigation measures have been incorporated into the facility or project, and there are no feasible, less environmentally damaging, location, alignment or none environmentally damaging, location, alignment or non-structural alternatives that would meet project objectives;

(c) Where the facility or project encroaches into a wetland or flood plain, mitigation measures are incorporated that result in a net gain in wetland and/or riparian habitat;

(d) Where the facility or project encroaches into steep slopes, native vegetation will be used to revegetate and landscape cut and fill areas; and

(e) No mature riparian woodland is destroyed or reduced in size due to otherwise allowed encroachments.

(f) All Critical Populations of Sensitive Plants species listed on Attachment B will be avoided.

Sand and gravel extraction projects are required to meet the following standards:

(a) The facility or project is consistent with adopted general or subregional plans and the MSCP Subarea Plan;

(b) All appropriate mitigation measures have been incorporated that meet the standards for mitigation required by the California Environmental Quality Act and State Surface Mining and Reclamation Act;

(c) Any wetland buffer area shall be restored to protect environmental values in or adjacent to the area of extraction;

(d) Native vegetation shall be used on steep slope lands to revegetate and landscape cut areas and fill areas in order to substantially restore the original habitat value, and slopes shall be graded to produce contours and soils which reflect a landform that is consistent with the surrounding area; and

(e) Mature riparian woodland may not be destroyed or reduced in size due to sand, gravel and mineral extraction.

51(t) Comment noted. "Recreation facilities" will be removed from the exemption. The definition of essential public facility will be revised to read:

"Essential Public Facility or Project": Any structure or improvement necessary for the provisions of services for the health and safety of the public, which must be located in the particular location to serve its purpose and for which no less environmentally damaging location, alignment, or non-structural alternative exists.

51(u) Section 6.4.2 of the MSCP Plan, Volume I, will be revised to read "New mining operations, exclusive of dedicated preserve land, are considered compatible with the preserve if they meet the following conditions: "The facility location, operation, and restoration plan (after taking into consideration the mitigation for the facility and its operation) does not reduce the value and function of the preserve for covered and sensitive species either short term or long term; and restoration plans are developed and implementation assured to restore any habitat impacted by mining activities.

The MSCP Plan further recognizes that direct and indirect impacts of new mining operations on the preserve and special preserve management provisions will be addressed through the existing California Environmental Quality Act process.

51(v) Please refer to response to Comment 51(t).

51(w) The reference to motorized recreational uses on public lands applies to public lands administered by the Bureau of Land Management in the Otay Mountain area. The Bureau of Land Management has agreed to manage their lands consistent with the biological goals of the MSCP.

51(x) Impacts to new uses within the preserved lands (hiking, cycling, etc.) will be evaluated at the time when they are proposed and would have to be consistent with maintaining the biological values for which the preserve was established. Existing approved uses on preserve lands were taken into consideration in the species evaluations. It is beyond the scope of the EIR/EIS to evaluate the biological impacts of all existing uses on public land.

51(y) See responses to Comments 51(u), 51(v), and 51(w).

51(z) See response to Comment 51(s).

51(aa) See response to Comment 45(j).

51(ab) Comments noted. The County Subarea Plan will include the conditions on revised MSCP Table 3-5 included in the Revisions to the MSCP Plan, January 1997.

51(ac) See revised Table 3-5 included in the Revisions to the MSCP Plan, January 1997.

51(ad) See response to Comment 45(l).

51(ae) Comments noted. Please see response to Comment 45(n), and revised Table 3-5 included in the Revisions to the MSCP Plan, January 1997.

51(af) See response to Comment 45(p) regarding California gnatcatcher, **Theme Response II, Population Viability Analysis**, and response to Comment 14(c) regarding Fanita Ranch.

51(ag) The use of the upper portions of Lake Hodges by white-faced ibis depends on the water level of the lake. This species typically uses flooded fields and shallow water areas for foraging. During periods of low water levels of the reservoir, ibis are sometimes found west of Interstate 15; in periods of high water, this habitat extends east of the highway.

The mapped clapper rail location at San Dieguito Slough was identified during the late 1980's when clapper rails were found in several atypical habitats in San Diego County. The species is typically found in coastal tidal salt marsh habitat with substantial amounts of cordgrass.

51(ah) For the species that have substantial data points (e.g., gnatcatcher and cactus wren), power analysis techniques will be evaluated by the wildlife agencies as the monitoring plan is implemented.

The MSCP Biological Monitoring Plan is adaptable and when a potentially more effective sampling protocol is identified, it will be evaluated for incorporation into the monitoring program.

The "before-after-control-impact" (BACI) comparisons proposed were considered by the wildlife agencies when they developed the monitoring plan. Conducting these studies could be useful to preserve managers. The important areas to conduct these studies are private lands that are slated for inclusion into the preserve and for which new, significant human impacts are anticipated adjacent to a preserve. They were not included because wildlife agency personnel likely will not have legal access to these areas until the land becomes part of the preserve, making it difficult to develop baseline data. However, to the extent that the identified monitoring sites can be surveyed prior to the adjacent land uses changing, it may be feasible for the monitoring plan to develop a set of "control and treatment" areas that would serve as the basis for BACI comparisons.

Appropriate burrowing owl nest site monitoring will be incorporated into the monitoring plan, but monitoring all nest sites is infeasible because of access restrictions. Preserve management plans will include monitoring requirements for burrowing owl nests within preserve areas.

Verifiable anecdotal survey data will be included as part of the data base associated with the monitoring program as appropriate (such as nest site locations). Surveys and "Christmas Counts" by avocational birders will not be included as part of the formal monitoring data base. Existing survey efforts (e.g., CA least terns and light-footed clapper rails, and least Bell's vireo) or new survey efforts (e.g., Otay Ranch General Development Plan requirements) that produce long-term data sets by professional biologists will be included in the overall monitoring program data base to supplement the proposed Biological Monitoring Plan surveys. The MSCP does not relieve projects from obligations to conduct monitoring that was previously required through project approvals.

Additional survey efforts, such as the Golden Eagle Project or the San Diego County Bird Atlas, would be useful to supplement the proposed MSCP monitoring plan. However, the currently proposed MSCP monitoring plan is considered sufficient for providing the monitoring of the conserved habitats and covered species.

The list of references on statistical methods will be noted and made available to the wildlife agencies and participating local jurisdictions when implementing the MSCP monitoring plan.

San Diego Natural History Museum

Gail Kobetich, Field Supervisor
U.S. Fish and Wildlife Service
2730 Loker Ave west
Carlsbad, CA 92008

Larry Eng, PhD
NCCP Coordinator
California Dept. of Fish and Game
Sacramento, CA 95814

SUBJECT: MSCP recirculated draft joint EIR/EIS, Public Comments

Dear Supervisor Kobetich and Dr. Eng,

The mission of the San Diego Natural History Museum is "to interpret the natural world through research, education, and exhibits, to promote understanding of the evolution and diversity of San Diego and Baja California, and to inspire in all people respect for the environment." Among its purposes is to "emphasize this unique and diverse region" and to "provide dynamic leadership in natural history and environmental education." The Museum has been involved in these activities since its founding in 1874. It is committed to taking a leading role in educating the public about the MSCP. We offer these comments in the hope of helping the MSCP achieve its goal of conserving multiple species.

Buena Vista Audubon Society is the coastal north county chapter of the National Audubon Society. Our chapter has over 1400 members in the cities of Oceanside, Vista, Carlsbad, San Marcos, Encinitas, Del Mar, and unincorporated areas of San Diego county. We are a non-profit organization dedicated to the enjoyment, appreciation, and preservation of nature. Our chapter sponsors several bird walks each month, and our membership enjoys bird watching in the "back country" of the County. In addition, we have a strong educational role, with thousands of school children visiting our nature center each year. We are represented on both the Multiple Habitat Conservation Plan and the Carlsbad Habitat Management Plan working groups.

The successful implementation of the south county MSCP is thus doubly important to our memberships: we are concerned with preservation of our County's unique flora and fauna in all its extraordinary diversity, including the south county where many of the richest wildlife areas

remain. We are also concerned with the MSCP as a model for subsequent north county planning [illegible]

[illegible] have worked [illegible] housing and [illegible] [illegible] to support the MSCP.

[illegible] the plan.

While we believe the overall plan may represent an improvement for most species from the status quo, and may be the best plan that could be negotiated in the real world, we are concerned that it not be oversold. It is our firm opinion, [illegible] in the detailed species comments [illegible] [illegible] to the Act", as required under [illegible] for a Habitat Conservation Plan.

For example, with the exception of the [illegible] the level of take or conservation of occupied habitat has not been quantified, for lack of information. No estimates of population viability under the preserve, formal or informal, have been presented. No estimates of the numbers of breeding pairs in the study area have been made. For many species, no detailed study of the viability of conserved habitat has been made or planned.

Indeed, for some species such as the Willow Flycatcher and the Golden Eagle, legal protection may be decreased under the current MSCP. Nonetheless, if the plan is adequately implemented, actual enforcement may increase. Protection may be at a reasonable or realistic standard for most bird species on the covered species list, such as the Western Bluebird or the Canada goose, for which the MSCP is not critical. For other species which are nearer to extirpation, such as the Burrowing Owl and the Golden Eagle, we are quite concerned and feel that the plan must be held to a higher standard.

We believe the MSCP began with the intention of achieving a high standard for most avian covered species. The MSCP Conservation Standards and Implementation Guidelines were drawn up early in the planning process and are excellent. It was the intention of the MSCP to implement these guidelines, and they are referenced in the species evaluations which support the findings for each species. However, with a few notable exceptions, we have been unable to find implementing language in the plan.

We believe that, were the MSCP Standards and Guidelines better implemented for most species, the plan would meet an acceptable standard. For some species, this entails better identification of the species needs, and planning for further acquisition.

Unsupported claims for broad bird species coverage.

The MSCP lists 85 covered species, of which 27 are birds. It is generally understood that covered species are those for which the plan has provided "adequate conservation" (page 3-21). We are concerned that this broad coverage for bird species will be oversold to the public, who are not aware of the underlying technical issues. In our opinion, the conservation of only five of these bird species is actually addressed by the MSCP as it currently stands. 51(a)

Of the covered 27 species, for nine the official finding or analysis is that the MSCP has an "Insignificant Effect" from the point of view of survival of the species. Two of these, the Golden 51(b)

Eagle and Northern Harrier, are breeding birds which may be extirpated from the MSCP area under the plan. We are concerned about these two species. The others occur only marginally, sporadically, or formerly in the MSCP area, with the exception of the Long-billed Curlew, Canada Goose, and Western Bluebird. The Bald Eagle is covered as "adequately conserved", but occurs only sporadically in the MSCP area. The MSCP may decrease protection for this species from current law. Twelve more species are strictly coastal or wetland dependent; the MSCP relies exclusively on existing federal regulations protecting wetlands and offers no additional conservation. We are concerned that the MSCP may decrease regulatory authority over these wetland species. This leaves only five bird species for which the MSCP has actually made a conservation planning effort which is judged by the Agencies to be adequate: California Gnatcatcher, Cactus Wren, Rufous-crowned Sparrow, Burrowing Owl, and Cooper's Hawk. 51(b)

We discuss the actual level of conservation of these five species in detail below.

In addition, we are very concerned with other species which are not covered such as the White-tailed Kite, Grasshopper Sparrow, Lesser Nighthawk, Sage Sparrow and Swainson's Thrush whose survival in the MSCP area is open to question.

Inadequate information about key species.

The actual level of conservation achieved by the plan is unknown for all bird species but the Gnatcatcher and Cactus Wren. Systematic surveys were never carried out for most species, so the level of conservation will not be known until site-specific surveys are carried out. Under the current plan, this will not happen until the permitting process, if at all. Major populations have not yet been identified.

Percentage conservation of "species localities" in the MSCP data base is not informative, as often there are very few sightings, nesting locations are not mapped, and there are repeat counts of the same territorial pairs. Breeding and nonbreeding localities are not distinguished. Table 3-5 lists the number and percent of "major populations" and "points" conserved. This is misleadingly precise for the bird species, and is not a good indicator of level of conservation. 51(c)

To assess the maps, we spot-checked certain of the "covered species" whose distributions are well known to the community or to us. The discrepancies are alarming. For a few of many examples, only one of the three known Peregrine Falcon nest sites is mapped, yet a symbol for this species appears in the urban area of Escondido. The only nesting colony of the Elegant Tern in San Diego County, in the salt works at the south end of San Diego Bay, is not mapped. On the south side of Lake Hodges, just west of I-15, there are four symbols for the Cactus Wren and one for the Burrowing Owl. Yet the Burrowing Owl has been extirpated from this site for at least 7 years, and there is in fact only a single pair of Cactus Wrens, inhabiting the single cactus thicket. At least one of the Burrowing Owl locations on the map is there because of the presence of owl pellets. We are not aware that Burrowing Owl pellets can reliably be distinguished from those of more common owl species.

No remedy if the level of conservation of the plan is found to be inadequate.

At the current time, there is no way to assess the level of conservation for many species. Hence there should be a mechanism for a remedy if the actual level of conservation is low, especially for high-risk species such as the Burrowing Owl, the Golden Eagle, and the Northern Harrier.

Under the current structure of the MSCP, if a species is "covered", even with a standard leading to possible or probable extirpation, as for the Golden Eagle, no further acquisition can be required by any participating jurisdiction. And yet it is not known what the level of conservation will be for the Eagle. This "no surprises" assurance may be appropriate for a species such as the 51(d)

Gnatcatcher, where it is clear what the level of conservation and take is, and where many projects have been reviewed specifically for their impacts to the species. However, it is clearly inappropriate for species such as the Burrowing Owl, the Golden Eagle and others for which there is as yet no information about the level of conservation in the MSCP. Some more flexible structure must be found for these species. 51(d)

Few specific management guidelines or species-specific planning guidelines.

The MSCP standards and guidelines, and the recommendations in the species evaluations contain many specific recommendations for each species. Often the conclusion is "adequately conserved *if* the following are addressed". On very few occasions are these specific recommendations implemented in the findings, or in the implementing agreements.

For species of concern such as those mentioned in attachment A, some mechanism of establishing project-by-project planning and management guidelines must be established. These guidelines should meet the overall standards of the species evaluations in the MSCP. Adequate funding must also be assured. 51(e)

Currently, a project proponent is often responsible for funding management or monitoring of project mitigation, as with the Otay Ranch Resource Management Plan or Rancho del Rey monitoring program. Under the MSCP, it seems that this financial burden may be transferred to the public. Please comment. 51(f)

Extent of conservation of grassland within the preserve.

The following covered species were found to be "adequately conserved with the additional conservation of grassland" in the 1995 species evaluations. The 1996 evaluations then note that grassland conservation has decreased.

Golden eagle
Northern harrier
Burrowing owl

These are all breeding species in the county. The loss of any one of them is unacceptable. 51(g)

Without additional conservation of grassland, none of these species can be considered adequately conserved. The amount of additional grassland necessary has not been estimated, because of inadequate surveys for these species. Yet the MSCP currently has no mechanism for such conservation, and indeed seems to preclude it.

Coverage for bird species.

For many avian species, planning the preserve is more difficult than for well-mapped sedentary species. The breeding populations may be mobile, as in the case of the Tricolored blackbird, or, as for most of the remaining covered species, there may not be adequate information about the location of the major breeding populations.

In general, we find the level of protection for many birds on the covered species list to be as yet inadequate. In coming to this conclusion, we have relied heavily on the USFWS MSCP species evaluations from 1995 and 1996 provided to the public as part of the comment process. These species-by-species evaluations provide a summary of the rationale behind the proposed findings as detailed in Table 3-5 of the draft EIR/EIS. For the most part, we are concerned with stronger implementation of the staff recommendations in the species evaluations, and with an inadequate assessment of current nesting localities. A brief summary of our concerns follows. More detailed species by species comments are in attachment A. 51(h)

1. Many of the MSCP standards and guidelines and staff recommendations detailed in the species evaluations have not been implemented in the findings in Table 3-5, or elsewhere in the plan that we have been able to find. In particular we are concerned when specific avoidance language for breeding and associated habitat has not been incorporated into the ordinances and Implementing Agreements which provide the contractual basis for the plan, site specific surveys are not expressly required, or adequate buffers as called for have not been implemented. 51(i)

2. There is inadequate information on which to base a planning effort, as described above. The target level of conservation for impacted species is presented in summary on page 4-3-180 of the EIR.. 51(j)

   1. "Preservation of a majority of core or major populations of the covered species within the MHPA preserve."

   As noted, core populations or major populations for many covered bird species have not been identified in the MSCP. Whether core populations have been included in the MHPA is not known at this time. Whether core populations will be preserved, if included in the MHPA, is even more uncertain for many species.

3. Two breeding raptor species which are not adequately conserved by the plan, Golden Eagle and Northern harrier, are nonetheless given coverage under the finding of "insignificance". A substantial portion of the county's breeding populations of both species is in the MSCP study area. Under the current plan, these breeding populations would be substantially reduced, and possibly extirpated. Coverage is presumably given because "the continued survival of the species is not dependent upon the populations or range included in the MSCP study area". We object to such coverage for these important species in the strongest possible terms. We suggest that, at a minimum, the staff recommendations in the species evaluations be implemented, as detailed below. 51(k)

4. As recognized in the implementation guidelines and staff recommendations, alternative nest sites and foraging localities must be preserved for many species such as Golden Eagle, Cooper's Hawk and Tricolored Blackbird. Many species shift among alternative sites for predator avoidance. Preserving only currently occupied sites may preclude long-term viability. 51(l)

5. For riparian dependent species such as the Tricolored Blackbird, White-faced Ibis, Southwestern Willow Flycatcher, and Least Bell's Vireo, coverage is based upon the existing "no net loss" of wetlands policy under the Clean Water Act. 100% conservation of resources such as breeding localities is assumed, although few specific avoidance policies are incorporated into the MSCP. In the model Implementing Agreement, p.17, assurance is given that "If such projects are consistent with the MSCP, the Subarea Plan, this Agreement, the federal no net loss of wetlands policy, then the UFWS and CDFG will not require or recommend any further measures." This would seem to preclude, for example, requirement of avoidance of known nesting localities of the above species, unless such a requirement is explicitly included in the MSCP. 51(m)

6. The same comment applies to coastal or salt-marsh dependent species (Elegant Tern, California Least Tern, Snowy Plover, California Brown Pelican, Light-footed Clapper Rail, both Savannah Sparrows). We are especially concerned about the level of conservation at Western Salt works. In the species evaluation of the California Least Tern, it is noted that the 850 acres at the Salt works is of importance to 94 bird species, and that existing wetlands regulations may not provide protection for these species. The 51(n)

level of protection at the Salt works must be increased in order to provide adequate "coverage" for many of these species. 51(n)

7. We are especially concerned for currently listed species such as the Willow Flycatcher and the Least Bell's Vireo. Will the MSCP override the current HCP which is in place for the Vireo? The HCP is much more specific and detailed than the MSCP. Will the MSCP preclude the drawing up of a detailed, site-specific conservation plan for the Flycatcher, such as the HCP is for the Vireo? No such plan currently is incorporated into the MSCP. 51(o)
8. Wetlands impacts from flood control activities, sand mining proposals, water storage proposals, and mosquito control programs are not addressed in the findings or the overall MSCP, as called for in the species evaluations. The level of protection in the subarea plans varies widely. 51(p)
9. Management guidelines for preserved habitat are frequently given in the species evaluations, or incorporated by reference from the MSCP standards an guidelines. With a few exceptions, we were unable to find specific implementation of these guidelines in the subarea plans or the Implementing Agreement. These include avoidance of disturbance, exclusion of human access, control of feral predators, and removal of exotic plant species. 51(q)
10. Species specific monitoring programs have not been adequately implemented. Reporting of site-by-site conservation and take has not been required. This is addressed more fully in the attached comments on the monitoring program, attachment B . 51(r)

Land use issues within the preserve.

Existing standards for permitted uses within the preserve are highly variable. For example, standards for necessary roads within the preserve for the City of San Diego subarea plan are well thought out. The corresponding standards for the County plan represent a weakening of existing regulatory oversight.

As a remedy, we suggest that explicit standards for public access should be incorporated into the MSCP, such as are in the City of San Diego's Public Access, Trails, and Recreation guidelines (p 56). Avoidance standards for necessary infrastructure should also be made explicit, such as are on p 47 ff. of the City's plan. Avoidance standards for other permitted uses, such as sand and gravel mining, should also be made explicit. Such MSCP standards are sometimes referred to in the subarea plans, although to our knowledge they do not exist; at other times the lack of such standards in the subarea plan makes it seem that no standards apply. 51(s)

In the County Biological Mitigation Ordinance:

1. Exemptions. Article II, page 3, #9. Exemption from the BMO is appropriate only for facilities <u>essential to public safety</u>. Please define "essential public facility or project" more narrowly. On page 6, add "essential", as in "necessary for the provision of any <u>essential</u> public services." In particular "recreational facilities which include public use" should not be exempt. This is entirely inappropriate. 51(t)
2. Exemptions. Article II, page 4, #10. Exemption for any sand, gravel or mineral extraction project. We note that the City of San Diego has exempted only <u>existing</u> mining operations. The BMO requires only avoidance of mature riparian woodland for these activities. As noted in our comments on avian species, these activities have potential enormous impacts on listed and sensitive species. The MSCP apparently precludes any additional avoidance or mitigation through other permitting processes. This exemption is inappropriate without specifically addressing impacts to covered species. 51(u)

In the County Subarea plan:

- There are many references to trails, recreational facilities, mountain biking, horseback riding (e.g. p 2-20, p 3-33). All reference MSCP standards, or habitat management plans. This makes it extremely important that disturbance standards for sensitive species be explicitly incorporated into the MSCP. Often, for avian species these are to be found in the MSCP standards and guidelines. We would like it to be made explicit that these standards apply. **51(v)**
- Please evaluate the impact of "equestrian, hiking, bicycle and motorized recreational uses for existing or proposed routes on public land" on the affected sensitive species, as permitted in the South County segment within the preserve. (p 3-33) Does this language reduce existing regulatory oversight over such uses, as it appears to? We are strongly opposed to this provision. **51(w)**
- The exemption for public infrastructure is too broad. (p3-33) "Certain public infrastructure necessary for public health and safety or economic reasons is permitted..." This description is too broad and too vague. **51(x)**
- The avoidance language for impacts to resources from infrastructure in the County segment plans is too broad and too vague. (2.7.3 D, p 2-22) This would seem to represents a significant reduction in regulatory authority over currently listed species. Please incorporate more explicit language as in the City's plan. **51(y)**

Conclusion

Thank you for the opportunity to comment on the MSCP. We would like to incorporate by reference the comments of the Golden Eagle Survey Project, San Diego Audubon Society, and the Endangered Habitats League. We hope to be able to continue a constructive involvement with the MSCP planning process, and more importantly, with its implementation on the ground.

Sincerely,

Karen Messer
Conservation Chair
Buena Vista Audubon Society

Philip Unitt
Collection Manager, Birds and Mammals
San Diego Natural History Museum

Attachments: A. Covered Species Comments.
B. Monitoring program comments.

Attachment A: Avian covered species. page 1

Cooper's Hawk

Only 43% of the nesting habitat for this species is estimated to be preserved and unaffected by edge (further than 200 ft. from the edge of the reserve). As the recommended buffer for a nest site is 300 ft., a conservative estimate would be the loss of 60% of potential nest sites in the MSCP study area. Adequate information on existing breeding localities is apparently not available at this time to more accurately assess the level of conservation in the MSCP.

The 1995 species evaluation concludes that "there is a substantial lack of information in determining impact to this species" because of the high level of exclusion of oak woodlands and the uncertainty of which of the oak woodlands in the planning area will be preserved. Hence the actual loss of nesting localities may be higher than 60%. There is no assessment of viability of the preserved population. The 1996 species evaluation asserts that the 1995 findings were "adequately conserved", but there is no written evidence to support this.

The MSCP Standards and Implementation Guidelines for this species are excellent. They are incorporated by reference into the species evaluation, in which the Service concurs with them. We ask that they be adequately implemented, so that a substantial fraction of the existing and potential nest sites within the preserve areas will be preserved, monitored and managed. We ask that this be done in the findings as well as the implementing ordinances and agreements, so that the standard is clear.

Guideline 4, which requires the establishment of buffer zones around nesting sites, has been so implemented, and is a positive model. The findings in table 3-5 require 300 foot avoidance around nesting sites within the preserve. Note, however, that while the City of San Diego ESL incorporates such avoidance language (p.6), we could find no such language in the County Biological Mitigation Ordinance or other subarea plans. For example, nesting Cooper's hawks do not appear on the list of rare, narrow endemic animal species for which avoidance is a first priority.

For this species to be adequately covered, we ask that at a minimum the staff recommendations in the 1996 species evaluation be implemented:

1. "A substantial amount of oak woodland and associated foraging habitat be preserved in the area north of San Vicente reservoir and the Jamul/Dulzura area."

   Comment: These areas currently appear to be outside the pre-approved mitigation area (Figure 1, attachment 1 of County subarea plan). Implementation guideline 1 states that "larger stands of dense oak woodland should be prioritized for preservation", and that "nesting and foraging habitat must be conserved as a contiguous unit." This recommendation attempts to address that issue, which appears to be currently unresolved.

2. Oak woodlands in the 70% conservation areas be preserved at a higher standard. Staff recommendation is that they "not be subject to disturbance".

   Comment: Again this attempts to address guideline 1.

In addition, the MSCP standards and guidelines as referenced include:

Standard 1. "Include within the open space preserve sufficient occupied and potential habitat (as determined by specific, subsequent studies) to maintain a viable population of breeding and wintering Cooper's hawks."

We have been unable to find language implementing this standard. Please add language to the findings requiring surveys in breeding season during the CEQA

51(2)

Attachment A: Avian covered species. page 2

51(z)

process in suitable habitat proposed to be impacted, as has been done for several listed riparian species. Without such surveys, the avoidance is empty. Nest sites are not currently known, and will not be detected outside of breeding season.

As for potential habitat, Shuford (1993) in a bibliographic review notes that Cooper's hawks require dense canopy cover in mature oak stands (65%-95% cover) with sparse ground cover. As Cooper's hawks do not use the same nest year after year, alternative sites must also be preserved.

Standard 2. "Stabilize and maintain preserved breeding and wintering populations."

We have been unable to find language implementing this standard. Please require monitoring for this species, which is not currently incorporated into the monitoring program (guideline 5). Design the monitoring protocol to an established power standard; for example, so that a 20% decline per year in occupied sites will be detected with 80% probability. Prohibit human activity within the buffer zone during breeding season (guideline 4), and restrict human activity in associated foraging habitat (guideline 5).

Standard 3. "Enhance preserved breeding and wintering populations that have a reduced probability for long-term viability."

We have been unable to find language implementing this standard. Please establish a method whereby a jurisdiction and the service can agree on acceptable remedies and enhancement measures if the preserved population continues to decline (guideline 3). Restrict human activity in the preserve which will degrade Cooper's hawk habitat (guideline 2).

51(aa)

Burrowing Owl

We agree with Secretary Wheeler's recognition of the Burrowing Owl as a flagship species. We support the goal of conserving this species at risk before it becomes formally listed. Because the burrowing owl is in steep decline with a large population remaining only in the Imperial Valley, a small fraction of its original California range, and because it may be held as an example of proactive conservation planning, we believe that MSCP should be held to a high standard for this species. This is a species who's listing as endangered in California is likely to be necessary unless conservation measures taken now are successful..

We are very concerned that the June 21 1996 species evaluation concludes that "the level of protection has decreased within the county," and that protection goals should be higher. The original findings were "adequately conserved with the conservation of additional grasslands", particularly in San Pasqual Valley and Spring Canyon.

We appreciate that the findings for this species as listed in Table 3-5 are more detailed than most. Avoidance language inside the reserve is incorporated into the City of San Diego's ESL guidelines (2f, p.6), and relocation is required outside the reserve (p 17). However, we have found no such language for the County or other subarea plans. (This species does not appear on the list of rare, narrow endemics for the County.) In addition, the recommendation from the species evaluations for management and enhancement of preserved colonies consistent with the recommendations of the Burrowing Owl Consortium has not been incorporated. Hence there are no guidelines for buffers, disturbance avoidance, predator control, or the amount of habitat to be preserved near a colony. No mechanism is provided for future implementation of enhancement and management

51

Attachment A: Avian covered species. page 3

recommendations when the statewide burrowing owl management plan is complete, as also recommended.

Most disturbing is the tremendous uncertainty about the level of conservation achieved for this species, especially given the reduced level of grassland conservation. Apparently no adequate inventory of Burrowing Owl colonies has been done. For example, the subarea plan for San Pasqual Valley, apparently an important burrowing owl area, does not list the species as occurring. That 10 occurrences out of 24 in the GIS data base are conserved is virtually meaningless without more detailed information. Are these nest sites? If so, do they consist of five or more breeding pairs? Will the conserved sites remain viable? Burrowing Owls are known to be extirpated from at least one site on the map (e.g. south side of Lake Hodges). Where are the management and avoidance conditions? From personal communication with local experts, it seems likely that the Otay mesa population is one of the largest remaining in the county. How large is this population and is it conserved?

This species cannot be considered covered until some assessment of conservation level can be made, and it can be determined that major populations have been preserved. At a minimum, known current and recent nesting sites should be identified and mapped, and existing colonies with greater than five breeding pairs should be preserved. From discussion with local experts, such a survey would not be difficult to carry out during the breeding season (May, June, July), as the most likely nest locations are easily identified. Some assessment of the viability of the preserved sites should be presented, including an analysis of associated foraging habitat. Management guidelines should be incorporated into the findings which incorporate predator control. The monitoring program should be increased in frequency from every three years. Measurable standards for the plan should be established, and possible remedies should be proposed. The plan for the burrowing owl should be brought closer to an HCP standard, given the species' high profile and extreme sensitivity. 51(aa)

Tricolored Blackbird

The species has declined precipitously in San Diego County over the last 20 years, so it must be considered "high risk" on the basis of its known history. This is a species which may be listed in the future.

We are concerned that only 77% of breeding habitat has apparently been included in the MHPA and that apparently much of the remainder is subject to edge effects. There has been no analysis of protection of foraging habitat, and no implementation of upland buffers as given in the MSCP standards and guidelines. In addition, impacts to the species from the proposed recreational activity in the Otay river valley have not been addressed.

We concur with the 1995 species evaluation that the species is not adequately protected; the 1996 evaluation notes that revisions have decreased protection for this species. The Tricolored Blackbird cannot be considered adequately covered without additional protections. 51(ab)

This intensely gregarious species shifts some of its colony sites from year to year, probably to avoid predation. Therefore, conservation of multiple large freshwater marshes is essential to conservation of the species in the MSCP area; coverage based only on conservation of existing colony sites as required by the findings is likely inadequate.

Existing wetlands protections for Tricolored breeding habitat is not sufficient for conservation of the species, as clearance of marsh vegetation in a few public parks, as has been done in the past (Lindo Lake, Santee Lakes), could be catastrophic to the few remaining colonies.

Attachment A: Avian covered species. page 4

Northern Harrier

We strenuously object to the coverage given this species as "insignificant". Northern Harriers exist as a breeding population in San Diego county. Harrier numbers have declined historically as recognized by the species' inclusion on the Audubon Blue List and the state Species of Special Concern. We cannot agree to consider a species "adequately conserved" on the grounds that its extirpation as a breeding bird from the MSCP would not jeopardize its continued existence in the wild.

Upgrade risk from Moderate/High to High.

The MSCP standards and guidelines as presented in the 1995 species evaluations were not implemented. The 1996 revisions note that grassland habitat for this species is further reduced.

This species risks a substantial loss of its breeding population in the MSCP area. The extent of conservation of the breeding localities is not known, and may be substantially less than the nominal 58% conservation of "points". There is no assurance that wetland areas which contain nesting localities will be conserved, and no assurance that wetland mitigation sites will be suitable for new nest sites. In addition, without further assurance, breeding locations within conserved areas may be substantially degraded, as there is no assurance that associated foraging habitat will be conserved. 51(ac)

Recommendations from the 1995 species evaluations:

- √ Require site specific surveys to determine existing and potential nesting and foraging habitats.
- √ Identify important wintering and breeding populations to be preserved.
- √ Preserve a minimum of 640 contiguous acres of breeding/foraging habitat per preserved pair.
- √ preserve a 300' buffer around nest sites
- √ preserve at least one major grassland area in a large intact block as it exists currently (west of Black Mountain, Neighborhood 8a, Sweetwater area).

Additional recommendations:

- √ Subarea plans with substantial breeding populations should be required to include specific monitoring protocols for this species. These subareas would include the Sweetwater River estuary, Otay river, Proctor Valley, Otay Mesa, the Tijuana River Estuary, Sorrento Valley, northeast Lake Hodges, and the south San Marcos site.
- √ Use avoidance as a first priority for existing nest sites within a core area or MHPA. Take of occupied nesting habitat inside or outside the preserve should be mitigated with preservation of the same.
- √ Establish guidelines which encourage preservation of contiguous foraging habitat near established nest sites.
- √ Establish feral predator control programs.

Golden Eagle.

We object strongly to coverage given this species on the grounds of "insignificance". From conversations with Dave Bittner of the Golden Eagle Project, of the 35 nesting pairs of eagles in 51(ad)

the county, 14 have nesting territories or feeding territories at least partially within the MSCP area. Hence the MSCP is certainly important to the species in our county. We cannot accept coverage of the Golden Eagle on the grounds that its eventual loss to the county is insignificant for the species as a whole. It is an integral part of our wildlife heritage. It is estimated that many of the Eagle nests in our county have been in use for close to a hundred years. If the MSCP is not in fact leading to additional protections for the Golden Eagle as compared to the status quo, it should be improved, or else the Eagle should be removed from the covered species list. 51(ad)

We note with distress that the species evaluation concludes that risk for this species is high, and that the MSCP "may preclude long-term successful breeding of this species."

In order to support the coverage of the Golden Eagle, we ask that stronger implementing language be included in the plan. Specifically, the MSCP standards and guidelines should be implemented for preserved pairs. Coverage for this species should at a minimum be withheld until a more adequate assessment of its conservation can be assessed. The guidelines are quite detailed, but in summary:

1. The primary nest site as well as two alternative nest sites should be preserved for each preserved pair.
2. Sufficient foraging habitat should be identified for preserved pairs on the basis of field studies. Specifically, the Golden Eagle Project survey data should be incorporated into the MSCP, and used as the basis for further radio-telemetry studies to identify territorial needs for this species. Acquisitions should be identified and targeted to improve the long-term viability for the Eagle.
3. Management standards for human impact must be established, particularly during the nesting season (January 15 to July 1). A sufficient buffer zone (4000 feet) around nest sites must be established, as in guideline 4. A public education campaign should be funded. Adequate enforcement mechanisms need to be identified. Human disturbance near the nest site has been one of the primary causes of nest abandonment in our county (Bittner, pers. communication); large developments are slated to go in near many of the nest sites in the MSCP.
4. Adequate monitoring for the Golden Eagle and other raptors must be planned for and funded. We suggest funding the Golden Eagle Survey and incorporating it into the MSCP monitoring program, or funding a similar survey with a similar level of effort.
5. In addition, some assessment of the viability of the preserved population should be made. Measures to stabilize, maintain, and enhance the preserved population should be identified and included in the implementing agreements for the plan. Funding mechanisms should be identified.

Currently the MSCP contains language stating that it supersedes the Bald Eagle Protection Act without affording offsetting protections. There is some question in our minds that, were the current plan accepted, the MSCP could constitute a violation of the BEPA.

Southwestern Willow Flycatcher

Only ephemeral populations or individual pairs are now known within the MSCP, although the species was once fairly widespread. Substantial suitable and historically occupied habitat still occurs in the MSCP area. Recovery of the species is probably dependent upon habitat enhancement, which is not addressed. From the table, apparently only 80% of suitable riparian 51(ae)

Attachment A: Avian covered species. page 6

habitats are conserved within the MHPA. The table says that all historically occupied areas are in the MHPA, yet the species evaluation is uncertain on this point. Please clarify. The MSCP standard calls for inclusion of all documented breeding habitat. Have any surveys been carried out in the 20% of excluded potential habitat? 51(ae)

In addition, the species evaluation concludes that the flycatcher is not adequately protected unless the following issues are addressed. Please include appropriate requirements in the findings in table 3-5, as was done for cowbird control:

1. A management plan needs to be drawn up to manage for sucessional habitat, and control for exotic weeds

   Adequate funding must be in place for such management.

2. Adequate upland buffers must be provided.

To our knowledge, no special buffering requirements for Flycatcher habitat have been included. Please incorporate a standard for upland buffers.

The species evaluation also recommends management for impacts due to flood control activities, sand mining proposals, water storage proposals, and mosquito control programs. To our knowledge, no such management program has been provided. The level of protection from, for example, sand mining varies widely by subarea. The City of San Diego has excellent language addressing potential impacts from sand mining: the County has exempted sand mining from the BMO. This latter would seem to be a weakening of regulatory authority in the case of the Willow Flycatcher from the status quo.

California Gnatcatcher

We appreciate that a tremendous amount of work has gone into the plan directed towards conservation of the Gnatcatcher. We also appreciate that conservation of wildlife is difficult in a heavily urbanizing environment with many conflicting land use pressures. Whatever inadequacies may be in the plan with regards to the Gnatcatcher are less a result of lack of knowledge, than of these conflicting pressures. We are disturbed, however, at the low level of conservation for the Gnatcatcher. The risk for the Gnatcatcher remains extremely high.

Notes on the PVA

We note that viability of the reserve has been assessed on the basis of a computer simulation (a "population viability analysis" or PVA). We are concerned that too much reliance has been place on the estimate of extinction from this model, and of minimum viable population size.

While such computer simulations may be useful for making qualitative assessments about reserve design (e.g. is one corridor or another more important), it is inappropriate to draw a quantitative conclusion (e.g. the Gnatcatcher has a 95% chance of surviving for the next 200 years). We concur with page 3-41 of the Draft MSCP Plan: the PVA is "...a tool in comparing various preserve configurations, but not necessarily in determining the adequacy of a preserve.

That the model has been misinterpreted in this manner is evident from table 3-8 of the draft MSCP. There a confidence interval (5% ± 7.8%) has been given for the extinction probability. We note that this confidence interval is meaningless: it assumes the input parameters are exactly known and that the computer model itself is exactly correct for the population dynamics of the Gnatcatcher.

The situation is analogous to the large computer models which are used to predict the economy. The problem is there are too many uncertainties about the model. The input parameters are not 51(af)

known, and it is not known whether the many underlying assumptions of the model are accurate approximations, or whether some important feature has been omitted.

An important paper on the use of such PVA models was the feature paper in the June 1995 issue of Journal of the American Statistical Association. The International Whaling Commission uses such a model the for Bowhead whale, and the article addresses how to assess the uncertainty of the predictions from a PVA. The article describes exactly how the PVA was used in the case of the Gnatcatcher, (based on appendix A-7 dated Feb. 1993 which contains the PVA for the Gnatcatcher, and replies to specific questions by Ogden staff). It also describes what is wrong with this approach: 51(af)

> "Assigning values to a [PVA]'s many inputs is hard, and taking account of the uncertainty associated with them is even harder. A typical approach is informal, as follows. A first guess at the input parameters is made, and the model is run. If the corresponding outputs seem implausible, then the inputs are adjusted and the model rerun; this is repeated until a satisfactory set of inputs has been found. Finally, a sensitivity analysis is performed in which the inputs are varied....the range of values of the outputs of interest is used informally as a rough confidence interval.
>
> **There is little justification for this approach."**

We note that many of the intermediate runs of the model showed very high extinction probabilities with equally plausible parameter values, and that the final runs show a declining population which stabilizes at 20% of its starting value. (p 3-41, draft plan)

Specific concerns.

When we read the 1995 species evaluations, there is a long list of concerns. Most important are tenuous linkages, and low level of conservation for population cores. The analysis concludes there is "an excessively high degree of incursion into population cores that confounds the ability to predict long-term viability." The 1996 species evaluations conclude that conservation has worsened.

Please address the following issues:

- ✓ The Lakeside linkage should be more secure.
- ✓ Santee has an unacceptable high level of take, particularly the key area of Fanita Ranch.
- ✓ The evaluation concludes that survival of the Gnatcatcher is dependent on "additional protection in key population cores."

White-faced Ibis.

Some of the most important non-breeding habitat for White-faced Ibis is just east of I-5 along the south side of the San Dieguito river bottom in a seasonal wetland. The species is mapped only on the west side of I-5. The clapper rail noted there is outdated. 51(ag)

Monitoring program comments - page 1

Comments on the Biological Monitoring Plan

[Karen Messer is a statistician and Professor of Mathematics, California State University, Fullerton.]

As the Plan recognizes, the monitoring program of the MSCP will be an extremely important component of its success. We strongly support the efforts of the MSCP and other regional NCCP plans to collect regional data in a standardized format and location, and, as much as possible, according to standardized sampling protocols. Such standardization would represent a big step forward for knowledge of the natural history of our region.

We also strongly support the creation of a regional monitoring and management advisory committee, with representation from the local scientific community and local experts on specific covered species. We support formal incorporation into the MSCP monitoring program of existing monitoring efforts such as are listed in the Plan, section 1.3, as well as some additional ones. The monitoring committee could help to standardize protocols and reporting methods, and could effectively give input on monitoring locations and needs. In addition, the committee could help draw up training standards and perhaps certification standards for species which are difficult to detect, such as the Forest Service, the Breeding Bird Survey, and Pt. Reyes Bird Observatory have for some of their survey efforts.

Our major concerns with the current Plan are level of effort provided for, and specificity of, the sampling designs. In general, we would like to see more sensitive bird species surveyed for, especially given the current lack of knowledge of breeding and foraging needs as detailed in our previous comments.

Summary of proposed protocols.

There are three main monitoring protocols we will discuss in the plan. Our comments are focused on bird species because we are most familiar with them. However many of the same points may apply to reptiles/amphibians as well. We give brief comments which are later elaborated:

Covered species. Animal species. p 5-21

Purpose: to detect long-term population trends in indicator species. Secondarily, to monitor impacts of human disturbance. Two major monitoring protocols for birds: Gnatcatcher/ Cactus Wren CSS censuses (31 points) and Burrowing Owl / grassland species surveys (10 points). Each survey will be run once every three years.

1. The frequency of the survey may be inadequate to detect a trend, especially with a time-series analysis as proposed. Most simple time series procedures (e.g. a Durbin-Watson test) require at least 15 data points, which would be 45 years worth of data!! Any trend analysis would probably be better done first by a t-test or repeated measures ANOVA and then by OLS regression, which gives unbiased (but not theoretically efficient) estimates in this setting. (Also, see the examples in references 2, 3, 6). For the Gnatcatcher and the Cactus Wren, sufficient data exists that a power analysis can be done, to see how many points in time would be required to reliably estimate a given percentage decline.
2. If all points cannot be surveyed every year, a better design may be a lattice design, in which some points are surveyed every year, and others less frequently. This can give considerably more power for the same level of effort. (There is a good example of this kind of survey that I can't find the reference to right now.)

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3. These surveys should be sharpened to include a Before-After-Control-Impact design (a BACI design, see reference 1) which would assess impacts to a given site by comparison with one or more unimpacted control or reference sites, with replication before and after impact. The analysis would be by ANOVA or MANOVA. It should be designed to assess effects of specific human activities at specific locations: horse trails, biking/hiking trials, disturbance by dogs, ORV impacts, isolation into a small patch, etc.. There is tremendous uncertainty on the part of existing preserve managers how to quantify and manage for these kinds of impacts, as stated at the Research and Land Management Conference 9/12/96 on the MSCP. Again a power analysis needs to be done, to make sure the proposed monitoring can detect an impact of a given size.
4. The Gnatcatcher/ Cactus Wren survey should be reviewed, after a power analysis is done, to make sure that important populations of each species are represented. More precise objectives for the survey should be presented; i.e. which populations are being monitored, what magnitude of trend is expected to be detected, which impacts are being tested for. An reassessment of the number of points and their locations should be done with these more precise objectives.
5. The Burrowing Owl census should be designed after an initial survey of known current and historic nest sites. Such a survey would not be difficult, and could probably be carried out in one breeding season. Currently there is not enough information in the MSCP data base to design a good monitoring protocol. There are few enough Burrowing Owls that each preserved pair should be monitored. A grassland point count, as described below, can be incorporated into the Burrowing Owl monitoring.

Habitat. p 3-5

To identify human impacts which may degrade habitat value.

Monitor plant cover, density, frequency, and with special attention to weedy invasives. 29 locations, every five years.

The incorporation of stratified sites within each location, stratified by distance to the edge, is a good idea. This will possibly allow for quantification of edge effects.

Again, a power analysis should be done, and a BACI design drawn up for proposed impacts.

Corridor monitoring. p 4-1

To assess what species are actually using the designated wildlife corridors.

There should be an initial assessment of how well corridors are performing prior to projects which will highly constrain them, and then immediately after. Again, a BACI design is called for, with a power analysis.

Existing surveys which may be incorporated.

In addition to the MSCP protocols, several existing monitoring efforts pertinent to birds are described in the Monitoring plan (1.3). Some of these are more formal than others.

1. Bird surveying and small mammal trapping in CSS by Dr. John Rotenberry , et al, of UC Riverside under contract to CDFG.

This study used a 5 minute fixed radius point count for the bird survey. From the 11 focal areas, two sites are in the MSCP area (Wild Animal park, n=12 and

Monitoring program comments - page 3

Sweetwater river n=15). There are apparently 125 point count localities in Southern California.

This may provide baseline data on species assemblages in healthy CSS. There is a huge amount of associated vegetation data.

John Lovio has unpublished spot-mapping data which may be of even higher quality and is more detailed, within the MSCP area.

2. Audubon monthly bird surveys at Mission Bay, Penasquitos Lagoon, and San Dieguito Lagoon.

We assume these surveys are similar to our north county surveys of Buena Vista Lagoon and Batiquitos Lagoon These surveys are of limited use for all but the strongest population trends, as they are informal. They really only give anecdotal evidence, and should not be counted on in the MSCP monitoring plan. Volunteers can be more effectively incorporated using other protocols.

The following are mentioned without elaboration:

3. Audubon Christmas bird counts.

These counts are not useful for assessing population trends, or relative species abundance. The level of effort is too variable and uncontrolled. They should not be counted on in the MSCP monitoring plan

4. USFWS Breeding Bird Survey.

We am unaware of which active BBS routes exist in the MSCP study area. It is a good idea to reactivate any existing routes, and incorporate them into the MSCP monitoring effort. This survey protocol is standardized across the US, and can detect long term trends for abundant species. There are training standards for BBS participants. This is a way for volunteers to participate in the monitoring program. We note that some existing routes may no longer be useful because of traffic noise.

5. Least tern and Clapper Rail Surveys by USFWS and CDFG.

These should be continued, and incorporated into the MSCP.

6. Riparian bird surveys conducted by Prof. Barbara Kus at San Diego State.

This or a similar survey should be expanded and incorporated into the MSCP.

The survey protocol has been a complete census of breeding Least Bell's Vireos over selected study sites of about 3 miles in length on the San Diego River, the Sweetwater River (ended in 1993) and the Tijuana river estuary. Willow Flycatcher and other species have been observed incidental to the primary Vireo survey, but the survey protocol does not reliably detect these..

A more comprehensive pair of riparian surveys should be incorporated into the MSCP. A Vireo census should continue during appropriate breeding season (March to July or August) which would also survey for Swainson's Thrush, Yellow Warbler, Yellow-breasted Chat, and Warbling Vireo. We note that Swainson's Thrush is an excellent indicator of habitat quality, and is in serious decline.

A second survey should focus on Willow Flycatcher in the appropriate breeding season in June-July.

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We recommend that Dr. Kus be included in the planning and implementation of the vireo survey in order to maintain long term consistency, and that Phil Unitt be consulted on the flycatcher survey.

7. Otay Ranch Resource Management Plan, long term monitoring of SD County Water Authority, Rancho Del Rey monitoring program.

   No information was given on these monitoring efforts, and we were unable to find further information. As noted above, we are concerned that the financial burden of monitoring for projects like these, which currently falls on a project proponent, may be transferred to the public.

In addition, there are regional survey efforts underway or proposed which are large scale and incorporate volunteers. These should strongly be considered for incorporation into the MSCP.

8. The Golden Eagle Project.

   This is a county wide survey of breeding Golden Eagles which has been underway for 5 years. It is the source of the most accurate information on Eagles in the county. We recommend that this survey be funded to do telemetry, and be formally incorporated into the monitoring plan of the MSCP.

9. The San Diego County Breeding and Wintering Bird Atlas

   This will be a county wide breeding bird atlas similar to that for Marin county. Again, it incorporates volunteers on a large scale effort. It will provide distributional information for most of the breeding birds in the county. The San Diego Natural History Museum is the principal sponsor.

Additional surveys.

1. A point count should be incorporated to assess general population trends and species diversity in the reserve. This should be drawn up using the recommendations in references 2 and 4. It should possibly be stratified by habitat type; e.g. grassland, woodland, CSS. Such a point count could perhaps be piggybacked onto more specialized monitoring plans. The number of stations necessary should be assessed from pilot data according to a power analysis. The duration of the count at each station should be given according to recommendations in references 2 and 4.
2. A raptor survey should be incorporated. Again, this is not a difficult survey to carry out. Useful examples are the Fallbrook raptor survey carried out by Pete Bloom, or the 1991 Ogden raptor survey on Otay Ranch / Otay mesa. It is possible that such a survey could be partially carried out or supplemented by volunteers in the Bird Atlas project.
3. A monitoring protocol for the Tricolored Blackbird should be drawn up.

Some useful references.

1. Underwood, A.J. (1992). Beyond BACI: the detection of environmental impacts on populations in the real, but variable, world. *J. Exp. Mar. Biol. Ecol.*, 161: 145-178.
2. Ralph, C.J., Sauer, J.R., and Droege, S. (1995) Monitoring Bird Populations by Point Counts. USDA Forest Service Gen. Tech. Rept. PSW-GTR-149
3. Sauer, J.R., Barker, R.J, and GeisslerP.H. (1994) Statistical aspects of modeling population changes from population size data. In Kendall, Lacher, eds. Wildlife toxicology and population modeling. CRC press.

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4. Ralph, C.J., Guepel, G.R., De Sante, D.F., *et al.* (1993) Handbook of Field Methods for Monitoring Landbirds. USDA Forest Service Gen. Tech. Rept. PSW-GTR-144
5. Sampson, P.D. and Guttorp, P. (1991). Power transformations and tests of environmental impact as interaction effects. *Am. Statist.*, 45:83-89
6. Sauer, J.R. Droege, S. eds. (1990) Survey designs and statistical methods for the estimation of avian population trends. Biological Report 90(1). Washington DC: Fish and Wildlife Service, US Dept. Interior.

52 NIALL FRITZ, CITY OF SANTEE, 10/16/96

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52(a) The comment is noted. This designation for the Fanita Ranch property was assumed in the analysis of the Biologically Preferred Scenario for the City of Santee. This alternative would not change the analysis included in the Draft EIR/EIS.

52(b) The comment is acknowledged. This change to the City of Santee Subarea Plan would not change the analysis included in the Draft EIR/EIS.

52(c) All of the biological assessments/evaluations performed in support of the EIR/EIS were based on the MHPA (proposed project). As circumscribed in the Plan, the MHPA (preserve) includes only a portion of Fanita Ranch. Obviously, inclusion of the entire 2,550-acre Fanita Ranch in the preserve would increase the habitat available for several target species and improve the preserve configuration at the local level. However, these changes would not affect the Covered Species List, the evaluations of wildlife corridors, or the overall conclusions of the EIR/EIS.

52(d) An item is included in the revised language included in the Final EIR/EIS documentation correcting the statement that the General Plan allows for a maximum of 3,500 units on Fanita Ranch. The statement reads: "Based on a 1995 Amendment to the City of Santee General Plan, Fanita Ranch is no longer allowed a maximum of 3,500 units. The General Plan now dictates that specific categories of lot sizes would be achieved."

52(e) An item is included in the revised language included in the Final EIR/EIS documentation correcting the statement that 2,542 residential units are anticipated in the future within the City's Hillside Overlay and Low Density zones. The statement reads: "Due to the City's Hillside Overlay Ordinance, which limits maximum density based on average slope, approximately 635 to 1271 residential units are anticipated within the City's Hillside Overlay and Low Density zones."

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CITY OF SANTEE

City Manager
Ronald L. Ballard

Mayor
Jack E. Dale
City Council
Jim Bartell
Lori Howard
James A. Rumine
Hal Ryan

October 16, 1996

Lawrence C. Monserrate, Principal Planner
City of San Diego
Development Services Department
Land Development Review Division
1222 First Avenue, Mail Station 501
San Diego, Ca 92101

Re: Comments on the Draft Multiple Species Conservation Program EIR\EIS

Dear Mr. Monserrate:

The City Council of the City of Santee has completed its review of the Draft MSCP Plan and the EIR\EIS for the Multiple Species Conservation Program (MSCP). The following are their comments:

The City Council has amended the Santee Subarea Plan text (amended text attached) as follows:

Section 1.0 Description of Subarea

Added the following:

Alternative "C" as shown on the Subarea Plan Map, would place a portion or all of the Fanita Ranch presently designated for development into the Preserve. This alternative would increase the MHPA up to a maximum of approximately 3,480 acres. **52(a)**

Section 1.5 Planning Criteria for the San Diego River and 90 Percent Preserve Areas

Added the following: **52(b)**

The Carlton Oaks Golf Course will be permitted to continue operations indefinitely, including that portion of the Golf Course located within the Preserve. Operations include on-going usage, maintenance, and future renovations and alterations which do not increase impacts upon the Preserve.

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OCT-18-96 FRI 04:54 PM CITY OF SANTEE 619 562 9376 P.02

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The following comments pertain to the EIR/EIS:

The EIR/EIS should analyze the impacts of adding potentially the entire 2,550 acre Fanita Ranch to the Preserve and thus removing the potential development from the City of Santee, as referred to in the additional language to Section 1.0 of the Santee Subarea Plan mentioned above. 52(c)

Page 4.2-42

Wording should be changed within next to last paragraph to reflect that there was also a General Plan Amendment in 1995 affecting the Fanita Ranch. The statement that the General Plan allows for a maximum of 3,500 units is no longer applicable and should be eliminated. Any other reference within the document regarding the Fanita Ranch allowing a maximum of 3,500 units should also be eliminated. The present General Plan no longer states a maximum amount of dwelling units, but instead dictates categories of lot sizes to be achieved. 52(d)

Page 4.2-44

Paragraph 2 states that 2,542 residential units are anticipated in the future within the City's Hillside Overlay and Low Density zones. Due to the City's Hillside Overlay Ordinance, which limits maximum density based on average slope, the true potential for these areas is only 25%-50% of this amount. This statement should be changed accordingly. 52(e)

The City of Santee appreciates the opportunity to review this EIR\EIS. If you have any question, please call Douglas Williford, Principal Planner, at 258-4100, ext. 167.

Sincerely,

Niall Fritz, Director
Department of Development Services

NF:DW

DRAFT MSCP SUBAREA PLAN - CITY OF SANTEE

1.0 Description of Subarea

This subarea plan covers the corporate boundaries of the City of Santee. The Santee subarea includes 16.6 square miles of territory and had a January 1, 1995 population of 54,315. The subarea is a suburban area of metropolitan San Diego, and is presently approximately 57 percent developed and 43 percent (or approximately 4,600 acres) vacant. The City of Santee is projected to grow to 70,000 residents by the year 2015, as well as experience significant commercial development within the City's Town Center during this same time period.

The Multi-Habitat Planning Area (MHPA) within this subarea is 2,300 acres in size. Alternative "C", as shown on the Subarea Plan Map, would place a portion or all of the part of the Fanita Ranch presently designated for development into the Preserve. This alternative would increase the MHPA up to a maximum of approximately 3,480 acres. The MHPA is almost entirely composed of biological core areas. It is predominately located in the northern portion of the subarea, but also includes the San Diego River floodway through the central portion of the subarea as well as an area within and adjacent to Mission Trails Regional Park in the southwestern portion of the subarea. The MHPA within this subarea is dominated primarily by coastal sage scrub, and secondarily by communities of chaparral, grassland, and riparian\ wetlands habitat.

1.1 Covered Species List

The covered species list for this subarea is the same as is described within the MSCP. It is recognized that not all species designated on this list occur within this subarea.

1.2 Land Use Considerations Adjacent to MHPA

Description of Existing Land Uses Within MHPA

With the exception of the San Diego River, there are virtually no existing land uses within the Santee MHPA. The only exception to this is the existence of a single dwelling unit and access driveway located within the North Magnolia area. Within the San Diego River portion of the MHPA there presently exists a sand mining operation along the eastern section of the River, limited pedestrian trails and a pedestrian footbridge along the central section of the River, and portions of a golf course along the western section of the River.

Land Use Planning Issues Adjacent to the MHPA

Land use compatibility adjacent to the MHPA shall be as shown within Table A (attached). Criteria for fencing, lighting, and signage shall be consistent with the MSCP Plan.

Where the MHPA is adjacent to development, this interface area will be designed in such a way so as to limit to the extent possible impacts from adjacent development on the MHPA. A project by project analysis will be made through the existing environmental review process for project review (i.e.- CEQA) to determine the most appropriate manner to accomplish this. This analysis shall be a required part of all CEQA review when development is occurring adjacent to the MHPA.

Mitigation measures to ensure limitation of development impacts will include, but shall not be limited to the following:

- fencing areas between development and the MHPA. Fencing should be designed in such a way as to inhibit domestic animals from crossing into the MHPA. This involves appropriate fence height and type of fencing.
- appropriate setbacks of buildings from the MHPA to reduce noise and light impacts, as well as to leave sufficient room for landscaping adjacent to the MHPA boundary. Adjacent lighting should be shielded and directed away from preserve areas and noise impacts to the preserve areas should be less than 60 db(A) Ldn.
- landscaping adjacent to the MHPA, which shall include non-invasive landscaping.
- Informational signage near public access areas indicating that biological resources are not to be disturbed or destroyed and that the MHPA is a protected habitat preserve.
- When in hillside areas, the border between the MHPA and development should make use of topography so as to inhibit access into the MHPA except in designated trail areas. This can be accomplished by locating development at elevations (manufactured pads, etc.) which are different than the adjacent MHPA, either upslope or downslope.
- Fuel modification areas shall be addressed per Section 1.4.

1.3 Roads proposed through the MHPA

The following design considerations will pertain to roads within the MHPA:

1. Roads in the preserve areas are limited to those identified in the Circulation Element of the General Plan and those which will be identified in the Fanita Ranch Specific Plan (see Subarea Plan Map). In addition, there may be a limited number of minimum width (20 feet) public utility access roads and local roads or private driveways to access isolated development areas. The only utility expected to require access roads within the preserve is Padre Dam Municipal Water District (approximate location shown as dashed line on map). All other utilities will either be within areas outside the preserve, or in SDG&E's case, are preparing their own development and preserve plans for Resource Agency review and approval. Any proposal to construct any road within the preserve will be subject to Resource Agencies review and will require CEQA review.

2. Where roads enter and traverse portions of the preserve, provisions shall be taken to provide for wildlife movement, such as adequate fencing to direct wildlife movement and the use of undercrossings or bridges where provided.

3. Roads within the preserve shall be constructed at the minimum width feasible, given traffic and safety considerations, in order to minimize habitat fragmentation and disruption of wildlife movement and breeding areas. Roads within the preserve should provide for fully-functional wildlife movement, incorporating bridges or other acceptable crossings where needed.

4. Preserve access points and maintenance roads, where they cross the preserve, shall be designed and controlled in such a way as to inhibit public access except at designated public trailheads. This may include the use of fencing, landscaping, signage, or other design controls as deemed appropriate.

1.4 Preserve Management

A Preserve Management Plan for areas outside the Fanita Ranch will be prepared in conjunction with the City's Implementing Agreement with the Resource Agencies. A Preserve Management Plan specific to the Fanita Ranch shall be incorporated within the Fanita Ranch Specific Plan. The City-wide Preserve Management Plan will incorporate management guidelines found within the MSCP and will be provided to the Resource Agencies for review and comment within six months of the signing of the Implementation Agreement. The Preserve Management Plan shall address, as appropriate:

- maintenance activities and priorities
- predator and exotic species control
- fire management
- restoration of vegetation, if needed
- hydrology
- public access control
- signage
- fencing
- lighting

Activities within the MHPA shall be consistent with Table A (attached) and the MSCP Plan. Any activity proposed to take place within the MHPA which has the potential to disturb habitat shall require the specific approval of the City of Santee, through either a Development Review Permit, a Conditional Use Permit, and /or a Grading Permit and must be consistent with the City's Subarea Plan. When such a Permit is requested of the City, a copy of the request shall be sent to the Resource Agencies for comment and response.

Within the Santee MHPA, the uses most likely anticipated to occur include hiking trails, passive recreation, fire management, and public utility facilities and access roads. Within the 90 percent preserve areas, single family homes may occur within the 10 percent developable area.

Fire management shall be consistent with the guidelines found within the MSCP Plan. Typically, a fire management buffer will be 50 feet in width, adjacent to developed areas. Fire management buffers will be located outside the MHPA whenever new development occurs.

They will normally consist of non-flammable landscaping in these areas of new development. In areas of existing development, fire management areas generally already exist and will be included within the MHPA. Normally, these areas have either been cleared of vegetation entirely or vegetation has been cut low to the ground.

1.5 Planning Criteria for the San Diego River and 90 Percent Preserve Areas

San Diego River

The San Diego River is a unique resource within the Santee MHPA. It has traditionally served as both an urban/recreational resource as well as an important environmental resource. Within Santee, the River's biological habitat has substantially been protected while at the same time having urban uses built adjacent to it. The City's General Plan as well as the Town Center Specific Plan both call for this multi-functional use of the River and its adjacent areas to continue.

Specifically, the San Diego River's existing habitat will continue to be preserved and any removal of uses presently within the floodway (i.e.- the RCP sand mining operation), will be replaced by habitat, as documented within the approved RCP Reclamation Plan. The Carlton Oaks Golf Course will be permitted to continue operations indefinitely, including that portion of the Golf Course located within the Preserve. Operations include on-going usage, maintenance, and future renovations and alterations which do not increase impacts upon the Preserve. The existing floodplain of the River will be constricted to the approximate boundaries of the floodway through fill and subsequent development consistent with the Town Center Specific Plan. The preserve will match this future floodway/floodplain boundary as shown on the Subarea Map. Any wetlands mitigation required by development within Town Center will be directed as a first priority within the City of Santee. All impacts to wetlands, including the floodplain of the San Diego River from the build out of the Town Center Specific Plan, will continue to be subject to the permitting processes under Section 404 of the Clean Water Act and Section 1600 of the State Fish and Game Code (Streambed Alteration Agreement).

Any buffers for the River habitat will be within the preserve line and no additional buffers will be required outside of the preserve line. Therefore, as has occurred elsewhere along the River, development will occur adjacent or in close proximity to the preserve line.

North Magnolia Area and Privately Owned Parcels Adjacent to Mission Trails

These areas include 90 percent preserve areas as well as 100 percent preserve areas. Within the 90 percent preserve areas, 10 percent of the area will be available for development. The number of lots within these 10 percent areas will be determined through zoning regulations and the slope density formula as determined pursuant to the Hillside Overlay District. Lot sizes will average at least 20,000 square feet. Within this 10 percent developable area, new development shall comply, to the greatest extent practical and feasible, with the following requirements:

1. The amount of habitat disturbance and removal shall be limited to the extent feasible and necessary for the purpose of development. Development shall be defined as to include all impacts to habitat, including corrals, orchards, access roads, etc.

2. Sensitive biological core resources, covered species and their habitats, habitat linkages, wildlife movement corridors, watershed and interface areas are appropriately preserved and protected.

3. The objectives of the Subarea Plan and the MSCP are substantially met.

4. Mitigation will be required for the disturbance or removal of any habitat. Such mitigation may involve purchasing additional land within the preserve for permanent preservation, setting aside remaining undeveloped portions of developing parcels for permanent preservation, restoring or enhancement areas of disturbed habitat, or a combination of these. Mitigation will be directed as a first priority to the 90 percent areas.

5. Development shall be concentrated in areas of non-sensitive or lowest quality habitat, if feasible, and shall be sited in such a way so as to avoid disruption of sensitive resources including biological core areas, covered species and their habitats, habitat linkages, watershed areas, and wildlife corridors.

6. Development shall be located as close as possible to existing or planned public or private roads and access easements, utility easements, or other required improvements to minimize fragmentation of habitat areas.

7. It is preferred that all areas of habitat preserved adjoin other existing or planned preserve areas in order to promote large contiguous areas necessary for watershed, habitat, and viewshed protection.

8. Lighting for newly developed areas shall be shielded or directed away from surrounding natural habitats.

9. Fences should not be erected where they will restrict wildlife movement and the functionality of contiguous preserve areas.

10. Development, including roads, shall be set back from riparian corridors a sufficient distance to avoid any damage or adverse effects to these areas. Setbacks shall be increased depending on the extent of impacts to the preserve.

11. Trail construction shall take into consideration and not disrupt important biological resources.

12. Septic systems, if permitted by City of Santee regulations and all other appropriate agencies, shall not degrade the quality of surface and subsurface waters, or the other

habitats considered sensitive within the preserve. Septic systems, including leach fields, should be kept within areas designated for development within the MHPA.

13. In addition to these specific requirements, development projects and other activities that result in habitat removal shall also consider the applicable regulations, requirements, guidelines, policies, strategies, and mitigation measures contained within the Santee General Plan, Municipal Code, and any other applicable adopted ordinance or policy of the City of Santee.

1.6 Interim and Long-term Protection of the MHPA

There are several different policy and ordinance protections existing within the City of Santee for the MHPA. All hillside areas, which make up the majority of the MHPA, are covered by the Hillside Overlay District, a resource protection ordinance which both significantly limits density based on slope as well as acts to protect environmental resources. This ordinance is, in turn, supported by numerous resource protection policies found within the Conservation and Open Space Elements of the General Plan. The San Diego River is also protected by the Flood Damage Prevention Ordinance which acts to control development within the floodway and floodplain.

The City's Grading Ordinance requires City review and approval for any grubbing, clearing, brushing , or grading proposed within any environmentally sensitive areas including hillside areas, floodways and floodplains, wetlands, or designated open space areas. This would include areas both inside and outside tbe proposed MHPA.

All the above mentioned ordinances and policies are hereby incorporated by reference into the Santee Subarea Plan. Once the MSCP and local MHPA is adopted by the City of Santee, the MHPA will be included as part of the City's General Plan.

Mitigation

Mitigation measures for projects affecting covered species inside and outside of the MHPA will include one or more of the following: dedication of remaining habitat on-site; purchase of off-site habitat within the preserve at a ratio of generally not less than 1:1 and not more than 2:1 (unless otherwise specified for a particular type of habitat), of habitat disturbed; restoration or enhancement of degraded habitat; and/or payment of an in-lieu fee for habitat acquisition if such a fee program is established by the City of Santee. An estimate of how the Santee Subarea Preserve will be accomplished is as follows:

1. The Fanita Ranch (a 2,550 acre development within the northern portion of the City) and Magnolia Estates (a 140 acre development within the north Magnolia area of the City) will be self-mitigating and will together contribute a total of 1,430 acres to the preserve.

2. Within the 90 percent Preserve Area there are 430 acres:

   - 43 acres develop.
   - 137 acres will be dedicated as a condition of development (based on zoning restrictions and the Hillside Overlay District's slope density formula, an average of one unit per four acres is estimated, resulting in one acre developed for every four acres of land). This dedication will serve as the required mitigation for these properties.
   - 250 acres will need to be purchased.

3. Outside of the Preserve (and not within the Fanita Ranch or Magnolia Estates) there are 470 acres of Coastal sage scrub within the Santee Subarea:

   - 60 percent of this total is expected to develop (approximately 280 acres)
   - Mitigation at a minimum ratio of 1:1 is required for development of CSS outside of preserve.
   - In exchange for permitting 280 acres of CSS to develop outside the preserve, a minimum of 280 acres of habitat must be purchased inside the preserve (30 acres more than what is needed to be purchased within the Santee Subarea Plan). The City of Santee will coordinate with the Wildlife Agencies to determine the highest priority locations for this addition mitigation

4. All other areas within the Santee MHPA are either already preserved (i.e.- Mission Trails Regional Park) or are already entirely constrained through existing ordinances (i.e.- Floodway of the San Diego River).

5. Mitigation required as a condition of development within Santee will be directed to areas within the Santee MHPA as a first priority.

Funding

Regional and local funding for implementation of the MSCP Plan may occur through a regional ballot proposition. Optional sources of funding include an assessment levied by local or regional utility providers or decreasing the extent of the MHPA with the lowest priority areas being deleted from the Plan. It is proposed within this draft Subarea Plan that the City of Santee will support the development and implementation of appropriate regional funding mechanisms for the acquisition and management of habitat lands within the MSCP.

Preserve Ownership and Maintenance

All areas accepted as permanent preserve shall be legally designated as an open space and habitat preserve and will be required to be transferred either in fee or by easement to a public or private organization which has the demonstrated capability and interest to perform all necessary maintenance and management activities required within the preserve. The requirements for this maintenance and management shall be established in conjunction with the local development permit process and through the Mitigation Monitoring Program as a requirement of CEQA.

The City of Santee shall require, for all such permanent preserve areas, an Irrevocable Offer of Dedication or similar such legal vehicle, which permits the City, at any time, to take possession of the property if it determines it is in the best interests of the City to do so, and/or to require dedication of such lands to an appropriate conservation entity. The City shall also require that the owner of the permanent preserve, permit the City and the designated MSCP management/monitoring entity for habitat/species management and monitoring access onto the preserve in order to do any maintenance or management which the City deems necessary to further the biological goals of the preserve or to protect the public's safety, as discussed in greater detail within the Management Plan.

1.7 Analysis of Subarea's Consistency with Biological Preserve Design Criteria in the MSCP

The Santee subarea and MHPA is consistent with the biological preserve design criteria found within the MSCP Plan. Specifically the following findings are made:

- The subarea is making a substantial contribution to the preservation of the Mission Trails, Miramar, East Elliot, Santee core by preserving approximately 2,000 acres of this area (the San Diego River is in addition to this). Any take of covered species authorized within the City of Santee will not compromise the viability of the populations. The amount of each significant habitat type and the percentage of preservation of these habitat types within Santee are shown in Table B (attached).

- All covered species existing within the subarea are receiving adequate protection. The species included on the Covered Species List are considered to be directly affected by the issuance of the incidental take permit since they would no longer receive ESA protection outside of the preserve.

  Plant species on the Covered Species List that are represented (or expected to be represented) by populations within the City of Santee include San Diego ambrosia, slender-pod jewelflower (expected),variegated dudleya (expected), San Diego barrel cactus, willowy monardella, San Diego goldenstar (expected), San Diego mesa mint, and narrow-leaved nightshade (expected).

  Animal species on the Covered Species List that are represented (or expected to be represented) by populations within the City of Santee include Riverside fairy shrimp (expected), arroyo southwestern toad (expected), southwestern pond turtle (expected), California red-legged frog (expected), orange-throated whiptail, San Diego horned lizard, Cooper's hawk, tricolored blackbird (expected), California rufous-crowned sparrow, golden eagle, ferruginous hawk, Swainson's hawk, coastal cactus wren, norhern harrier, southwestern willow flycatcher (expected), American peregrine falcon (expected), bald eagle (expected), coastal California gnatcatcher, western bluebird (expected), burrowing owl (expected), least Bell's vireo, mountain lion, southern mule deer, and American badger (expected).

Covered species within the City of Santee to which no direct impacts are anticipated to occur include Swainson's hawk, ferrugineous hawk, American peregrine falcon, American badger, mountain lion, and southern mule deer. Direct impacts are anticipated to all other plant and animal species identified above; these impacts would represent a component of the impacts identified for these species as part of the MSCP Plan MHPA.

- Adequate connections to other subareas and habitat patches outside the subarea are being maintained. This includes connectivity to Mission Trails Regional Park, East Elliott, Miramar, the unincorporated subarea north of Santee (which includes Sycamore County Park and the Goodan Ranch), and the core biological area east of the City. In regards to the connection through Padre Dam Municipal Water District's Santee Lakes property, as a condition of development within the Fanita Ranch, the property owner of the Fanita Ranch shall assist PDMWD in ensuring that this habitat connection is in place prior to development taking place.

- Preservation of diverse habitats, including coastal sage scrub, grasslands, and wetlands is being accomplished.

- Large blocks of habitat are being preserved, particularly within the Fanita Ranch. The largest block of habitat not being preserved is Rattlesnake Mountain, due to its general isolation to other habitat areas and having not been included as part of the biological core area.

1.8 Finding of Consistency with the MSCP's MHPA

The Santee MHPA is consistent with the MHPA contained within the MSCP Plan.

1.9 Process for Amending Subarea Plan

The process and criteria for amending the Subarea Plan shall be consistent with the MSCP Plan.

53 ROBERT LEITER, CITY OF CHULA VISTA, 10/14/96

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53(a) The subarea will be revised to include this change and this information was used in analyzing Policy Option 1.

53(b) See **Theme Response I, Species Analysis Approach.**

53(c) Comment noted. Please refer to response to Comment 45(ad).

53(d) The confusion in the Tables results from its incorrect title and the inadvertent omission of footnotes for Table 4.3-9. Its title should be "Table 4.3-9. Potential Loss of Land Associated with the City of Chula Vista Subarea Plan Policy Option 2." The footnotes should be:

(a) [for "Acreage in City" column] Acreages in this column are based on existing conditions acreages for individual Subarea Plans taken from Table 3-1 of the MSCP Plan, Volume I (City of San Diego 1996). These acreages reflect the Subarea Plan boundaries incorporated into the MSCP Plan and illustrated in Figure 1-3 of this EIR/EIS.

(b) [for "MHPA Conserved" column] Acreages in this column are taken from the MSCP Resource Document (City of San Diego 1995g). These acreages are based on jurisdictional boundaries that formed the basis of the analysis at the time the alternative scenarios were developed. Due to the different data base used for the two columns in this table, acreages in this column may not directly relate to acreages in the existing conditions column. For purposes of this analysis, however, the data provide an adequate indication of the relative impacts of the various Subarea Plans and alternative scenarios.

Policy Option 2 is the MHPA preserve (project), the acreages of which were based on the City of Chula Vista incorporated area. Policy Option 1 is the MHPA minus the university site; the acreages for this option were calculated including the Otay Ranch component which is outside of the incorporated area. Because of these differences, the only accurate way to portray the differences in the two policy options is to specifically identify those acres and species that would be excluded from the preserve under Policy Option 1. The revised language in the Final EIR/EIS will identify these changes.

The proposed location of a university in Salt Creek Canyon, as discussed in Chula Vista's Subarea Plan under Policy 1 Option, would result in substantial adverse impacts to regional populations of California gnatcatchers and cactus wrens. These impacts would not only reduce the number of individuals of these species within Salt Creek Canyon, as shown in Table 4.3-8, but they would

also affect all adjacent populations that interact with these core populations. The intent of the MSCP is to preserve core population areas and ensure adequate linkages between them to provide for re-population of areas affected by environmental variables (weather, fire, human impacts, etc.). Within core areas, the population dynamics eventually result in natality exceeding mortality, which leads to emigration. Within linkage areas, mortality exceeds natality, leading to immigration. Policy Option 1 would fragment a core population area resulting in only habitat linkage remnants. These linkage areas are too small and subject to too much edge effect to support viable populations. This population is the only likely source core population for populating the Otay Lakes, Otay Mesa, and the Otay River Valley areas due to its existing high densities of both gnatcatchers and cactus wrens. Therefore, loss of this core area would have significant effects on the MSCP areas south of Interstate 8 and west of Otay Mountain.

53(e) The biological analysis approaches for the City of Chula Vista Subarea Plan and the City of San Diego Subarea Plan, beginning on pages 4.3-77 and 4.3-85 of the Draft EIR/EIS respectively, are identical. Both analyses focus on direct impacts to covered species, direct impacts to uncovered species, direct impacts to vegetation communities/habitats, and indirect impacts associated with the proposed actions which involve issuance of permits to take covered species. The analyses focus on the impacts to existing conditions that would occur in conjunction with implementation of the proposed Subarea Plans and issuance of permits. For example, the discussion on page 4.3-77 specifically lists plant and animal species in the City of Chula Vista that may be affected by implementation of the proposed Subarea Plan; a similar discussion is provided for the City of San Diego on page 4.3-85. Likewise, Table 4.3-9 (page 4.3-79) quantifies habitats that may be affected by implementation of the City of Chula Vista Subarea Plan, and a similar analysis is presented for the City of San Diego on Table 4.3-13 (page 4.3-87). With respect to edge effects, the analyses for both the City of Chula Vista and City of San Diego Subarea Plans conclude that land uses permitted within and adjacent to the preserve may result in indirect impacts to sensitive habitats and species as noted on pages 4.3-80 and 4.3-86 respectively. Linkages are incorporated in both the City of Chula Vista and City of San Diego Subarea Plans that would provide benefits to the preserve as described on pages 4.3-223 and 4.3-224 respectively. It is not the purpose of the Draft EIR/EIS to determine whether or not the proposed preserve is adequate for the stated purposes; the Draft EIR/EIS does, however, conclude that impacts to biological resources associated with both the City of Chula Vista and City of San Diego Subarea Plans would be adequately mitigated by features incorporated in both Subarea Plans.

53(f) The Implementing Agreement, General Plan Amendments, and potential changes in zoning are programmatic in nature, and specific project-level analyses are still required.

53(g) The revised language included in the Final EIR/EIS indicates that the City of Chula Vista may be adopting implementing ordinances or general plan amendments.

53(h) Figure 1-4 reflects the current subarea plan area the property is currently in. Should annexation occur, the property will be in the City of Chula Vista's subarea and subject to its

requirements. Since the County's Subarea Plan and Chula Vista's Subarea Plan requirements for these properties are identical, the environmental consequences will not change.

53(i) Figure 2-2 does not show the area south of Lower Otay Reservoir as 100% conserved. It shows this area as either outside the preserve (white on Figure 2-2) or 90–95% conserved (blue on Figure 2-2). The areas in the vicinity of the Lower Otay Reservoir that are shown as 100% conserved on Figure 202 are those areas designated for open space as part of the Otay Ranch General Development Plan or those areas included in the BLM wilderness area. The Chula Vista Subarea Plan map (Figure 2-5) shows the area south of Lower Otay Reservoir either as outside the preserve or as the subject of other agency preserve planning efforts. Figures 2-2 and 2-5 are not inconsistent.

53(j) The revised language included in the Final EIR/EIS indicates that the San Miguel Ranch project is a tentative development plan and that the Citv of Chula Vista has not adopted the necessary General Plan amendments and zone changes to implement this tentative plan.

53(k) The revised language included in the Final EIR/EIS indicates that the circulation element road from Otay Valley Road south across Otay Valley and terminating at the boundary of the City of San Diego (Figure 4.2-6, page 4.3-33) is not shown on the Chula Vista Circulation Element of the General Plan and is not analyzed by the EIR/EIS. The text will acknowledge it is deleted, but the map will not be revised.

53(l) The revised language included in the Final EIR/EIS indicates that plans for an amphitheater and water park have been approved on the site identified as Otay Rio Business Park on Figure 4.2-7 (page 4.2-36).

53(m) Analyses of the various alternative preserve scenarios were based on the existing data for the subregion. Based on that data, a portion of the Rancho del Rey SPA III was included within the Biologically Preferred Scenario. Recent changes (e.g., removal of habitat) certainly may affect the BP scenario.

53(n) Comment noted; the statements on pages ES-4 and ES-18 are erroneous. The correct information is provided on pages 4.3-197, 198, and 214 of the Draft EIR/EIS. These changes are noted on the revised language included in the Final EIR/EIS.

53(o) As requested, a section has been prepared that addresses the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity. This section is in the revised language included in the Final EIR/EIS.

53(p) Wildlife corridors and habitat linkages perform different roles at different locations. Small linkages may facilitate local animal movement; larger habitat blocks may facilitate regional

movement; concrete culverts and golf courses may accommodate short-range movement of larger animals; archipelagos of habitat islands may provide corridors for birds. Hence, no generalized criticism of a corridor is valid without identifying the species that supposedly would use the corridor, and what function such movement would have (gene flow, greater foraging territory, etc.).

53(q) The Sweetwater and Otay rivers are included as the major east-west linkages in the southern portion of the MHPA. Both of these linear habitat features support a variety of sensitive species, probably provide corridor functions, and would receive considerable protection under existing wetland regulations. On the other hand, neither represents a contiguous, undisturbed band of riparian habitat. A large portion of the Sweetwater River is occupied by golf courses, and most of the Otay River has been subject to former sand and gravel extraction activities. Nonetheless, these are the two most significant features around which to assemble linkages. The Draft EIR/EIS specifically addresses the Otay Regional Park Plan; no such "development" plans exist for the Sweetwater River.

53(r) Comment noted. The purpose of this document is to respond directly to the letters of comment.

53(s) Comment noted. It is not the purpose of Draft EIR/EIS to identify priorities for the expenditure of money for the Otay Ranch project.

53(t) Comment noted. The City of Chula Vista was provided with a copy of the County of San Diego Biological Mitigation Ordinance.

53(u) See response to Comment 53(d).

53(v) The "final" configuration of the MHPA preserve for the Otay Ranch Lands (including linkages) was negotiated primarily between the Baldwin Company and the wildlife agencies. These negotiations resulted in the elimination of some of the smaller, potentially non-viable linkages and smaller habitat fragments, combined with the elimination of several proposed development areas on Otay Ranch. The configuration of the preserve on Salt Creek Ranch is intended to conform with the approved GDP.

53(w) Table 4.3-1 presents the quantitative species analyses for the MSCP study area as does revised MSCP Table 3-5 included in the Revisions to the MSCP Plan, January 1997.

53(x) Comment noted.

53(y) The biological database used in the analysis contained in the Draft EIR/EIS is described on pages 4.3-2 and 4.3-3 of the Draft EIR/EIS. It is correct that the purpose of the Draft EIR/EIS is to disclose impacts associated with the MSCP Plan. The South County segment of the County Subarea

Plan includes the eastern portion of the Bonita Component of the City of Chula Vista Subarea Plan. The South County segment of the County Subarea Plan is illustrated in Figure 2-13 of the Draft EIR/EIS. The remainder of the Bonita area is included in the Metro-Lakeside-Jamul segment of the County Subarea Plan.

53(z) It is assumed that this comment is referring either to the area around Otay Lakes or the area around Sweetwater Reservoir. These areas are proposed to be 80% and 90% and 95% conserved, respectively, as part of the MHPA. It is assumed that the referenced "minor amendment areas around the river" are the areas along the Otay River immediately west of Otay Ranch, in the City of Chula Vista. These areas are not shown for preservation in the MHPA but, as identified in the City of Chula Vista Subarea Plan, have strong potential for preservation.

53(aa) Comment noted. The distribution of the cactus wren is relatively well known in coastal San Diego County. It is a conspicuous animal that has been considered sensitive for many years; hence, a considerable amount of distribution data have accumulated. Recent studies on the taxonomy of the species (e.g., Rea 1986, Rea and Weaver 1990) also have contributed to our knowledge of the species. See revised MSCP Table 3-5 in the Revisions to the MSCP Plan, Volume I.

53(ab) The configuration of the MHPA preserve on Otay Ranch (including Poggi Canyon) was determined through negotiations between the Baldwin Company and the wildlife agencies. This configuration was included in the MSCP's analysis of species coverages.

53(ac) The land use designations approved in the Otay Ranch GDP apply even if segmentation occurs.

53(ad) The future development of SPAs on Otay Ranch would be subject to site-specific, project-level CEQA review. Any sensitive biological resources that may be impacted would be identified and mitigated in conformance with CEQA. Any potential impacts to vernal pools would be subject to Section 404 permits of the Clean Water Act, and mitigation would be required. Covered species are still subject to CEQA review and require mitigation; they not longer require agency permits. The GDP and Resource Management Plan (RMP) require the conservation of the *Acanthomintha* population.

53(ae) The goal of a multiple-habitat, multiple-species reserve is to preserve the integrity of functioning ecosystems. Although the Draft EIR/EIS focused on target species, non-sensitive species would be well protected in the large blocks of habitat in the preserve. Almost by definition, non-sensitive species are more wide ranging, less susceptible to perturbation, and are represented over a wider landscape than the target species.

53(af) It is impossible to predict where in coastal San Diego County the quino checkerspot may become re-established naturally in the future, if at all. It apparently was locally extinct in coastal San Diego County from about 1982-1995. A colony was discovered on Otay Mountain in spring

1996. According to Camille Parmesan and Michael Singer, University of Texas (pers. comm.), the population on Otay Mountain is unlikely to be present there next year. The extremely poor condition of the larval food plant in April 1996 strongly suggested that the larvae would not survive. Because of the current suspected absence of this species from the MHPA and its unpredictable nature of colonization, its use in preserve design is ill-advised. Because of its association with vernal pools and coastal sage scrub, it is highly likely that many potentially-colonizable areas are captured within the preserve.

Based on long-term studies on *Euphydryas editha* populations throughout the western United States and Canada, Parmesan (in *Nature*, 1996) concluded that the species is becoming locally extinct in the lower elevation and southern portions of its range, possibly in response to changes in global climate. Because San Diego County is at the southern edge of this species' range, its disappearance may be part of a natural phenomenon.

53(ag) Based on the existing data base and recent survey work, the red-legged frog is not expected to occur within the MSCP study area. If present, it is unlikely to occur in considerable numbers, and it would be restricted to riparian/wetland habitats that would receive protection under existing state and federal wetland regulations. The determination of "covered" status for many species for which distribution data were unavailable was based on amount of potential habitat preserved rather than number of locations included in the preserve.

53(ah) Coverage of *Ambrosia pumilla* is contingent upon the protection of 90% of the population in Mission Trails Regional Park.

53(ai) For purposes of the analysis in the Draft EIR/EIS, it was assumed that populations of species on the covered species list located outside the preserve would be taken, with a few exceptions, including narrow endemics. Non-covered species outside the preserve would receive the same level of regulatory (CEQA, ESA, etc.) protection that they currently receive; their regulatory status would not change.

53(aj) As with many species for which limited distribution data were available, the arroyo southwest toad is considered "covered" based on its habitat being conserved at a high level. Seventy percent of potentially-occupied habitat is included in the preserve, including those areas most likely to support a toad population. See also revised MSCP Table 3-5 included in the Revisions to the MSCP Plan, January 1997. See also response to Comment 45(f).

53(ak) The highlighted species in Table 4.3-1 represent state (CDFG) and federal (USFWS) listed species, species proposed for federal listing, species listed as rare by CDFG, species listed as Category 1 candidates for listing (wildlife agencies), and NCCP target species. Please see revised MSCP Table 3-5 included in the Revisions to the MSCP Plan, January 1997.

53(al) Monitoring and management of the MSCP preserve are described briefly in Section 4.3-178 of the EIR/EIS. A Biological Monitoring Plan was developed by the wildlife agencies. The Plan includes a description of the responsibilities and coordination efforts between the MSCP Plan participants and the wildlife agencies, biological monitoring objectives, and existing monitoring efforts. Please refer to **Theme Response XIV, Biological Monitoring Plan.**

53(am) Comment noted.

53(an) Comment noted.

53(ao) Although habitat fragments may appear to contribute little to overall preservation of biological resources, they may perform several important roles in maintaining the long-term viability of the preserve system. Small habitat patches ("postage stamp preserves") may provide ample habitat for populations of rare plants. They may provide refuges for species escaping from ecological catastrophes such as fire. They may represent a portion of an archipelago of habitat islands providing stepping-stone linkages among or between larger habitat patches.

From an anthropocentric perspective, small patches of native habitat adjacent to residential areas, where children have access, may provide the stimulus for an interest in, and concern for, the natural environment. And thus may make an intangible contribution in terms of education.

53(ap) Monitoring and management of the MSCP preserve are described briefly in Section 4.3-178 of the EIR/EIS. A Biological Monitoring Plan was developed by the wildlife agencies. The Plan includes a description of the responsibilities and coordination efforts between the MSCP Plan participants and the wildlife agencies, biological monitoring objectives, and existing monitoring efforts. It is expected that through monitoring and management the introduction of exotic plants and feral animals into the preserve will be minimized. Please also refer to **Theme Response XIV, Biological Monitoring Plan.**

53(aq) Recreation uses such as equestrian activities will be addressed by each jurisdiction's Preserve Management Plan(s).

53(ar) Section 6.2 of the City of Chula Vista Subarea Plan indicates that low density residential uses are *conditionally* compatible with the biological objectives of the MSCP and thus *may* be allowed on private lands within and adjacent to the MHPA if accompanied by appropriate mitigation. Low density residential uses would be evaluated on a project-by-project basis to determine whether these proposed uses are consistent with the subarea plan and preservation of biological resources.

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CITY OF
CHULA VISTA
PLANNING DEPARTMENT

October 14, 1996

City of San Diego
Development Services Dept.
Environmental Analysis Section/Public Projects
1222 First Avenue, 5th Floor
San Diego, CA 92101
Attn: John Kovacs

Dear Mr. Kovacs:

The City of Chula Vista has completed its review of the Environmental Impact Report/Environmental Impact Statement (EIR/EIS) on the proposed Multiple Species Conservation Plan. The following are the City of Chula Vista's major comments on the EIR/EIS. As you are aware we have previously forwarded minor and technical comments directly to your environmental consultant.

COMMENTS RELATED TO UNIVERSITY SITE ANALYSIS

1. Subarea Plan Description

The Subarea Plan description on page 2-23: University Site should be revised to read as follows:

University Site: A potential university site is identified in the approved Otay Ranch GDP, portions of which could be located in the Otay Ranch Portion of Salt Creek, an area designated for preservation in the proposed MHPA. The site is located above the slopes that define Salt Creek Canyon and consists of approximately 288 acres. The site has been located to avoid impacts to Salt Creek Canyon, and to provide wildlife movement corridors to Otay Lake between the Olympic Training Center and the University site, and between the Otay River Valley and BLM lands located to the east. The very short corridor to Otay Lake adjacent to the Olympic Training Center is 500-750 feet wide, a width acceptable in other portions of the proposed project. Other corridors are at least 1,000 feet wide. This information has previously been provided to the lead agencies and should be used in analyzing Policy Option 1. 53(a)

Lack of Biologic Analysis

The EIR/EIS presents a large and varied data base which, together with various assumptions, were used to determine the amount of species occurrences and habitat that were being preserved by the proposed project (the preserve system). A number of conclusions are stated relating to this data. The document fails, however, to provide any analysis that allows the decisionmaker to understand how the conclusion was reached. For example, the EIR/EIS states that 95% of the known occurrences of Otay manzanita, 70% of San Diego goldenstar, 80% of narrow-leaved nightshade, 62% of orange-throated whiptail would be preserved overall by the proposed project. No information is provided that states why this level of preservation is enough. The statement, "This is enough because...", is never completed. Such information is necessary for each covered species in order for a decisionmaker to make an informed decision. In addition, such information is necessary if the EIR/EIS is to be used as a programmatic document for subsequent projects. 53(b)

It is understood that statements that might be interpreted as "pre-decisional" to the Biologic Opinion must be avoided. However, the EIR/EIS must meet the requirements of CEQA which requires analysis. The analysis required for CEQA and that required for the Biological Opinion are different and may even reach different conclusions. Please provide the requested analysis.

3. Analysis of Impacts, Significance and Mitigation for the Proposed Project

The proposed project (per Section 2) is the assembly and management of a preserve for biologic purposes under the MSCP. The issue is whether the implementation of the proposed project would effectively protect species and habitats. This issue cannot be answered using the information presented. 53(c)

The information presented in tables 4.3-8,9 and 10 do not allow the reader to compare the differences between the proposed project and Policy Option 1. For example, Table 4.3-9 states that 16 out of 17 acres of maritime succulent scrub will be preserved under Policy Option 1 while Table 4.3-10 states that 25.9 acres of this same habitat would be excluded from the preserve under Policy Option 1. How can this be if there are only 17 acres under Policy Option 1 to begin with?

Table 4.3-8 states that Policy Option 1, which includes the 288 acre university site, would exclude 41 locations of California gnatcatcher and 22 locations of cactus wren. Is this with or without the unincorporated portions of the Otay Ranch component of the Subarea Plan? Also, does this analysis take into account the fact that major fires have occurred on portions of this site on at least two separate occasions since these surveys 53(d)

were done? Is it known whether these fires have affected the long-term viability of the site for habitat purposes? 53(d)

In order for a decisionmaker to properly consider the impacts of the two alternatives and make a meaningful decision, the same information for both must be presented. Please provide tables that include the Otay Ranch component for both the proposed project and Policy Option 1.

The information presented in Table 4.3-1 states that 2,814 "points" are known for California gnatcatcher in the MSCP study area, and that 1,819 points will be conserved under the proposed project. It is assumed that this excludes points for the MHCP and NAS Miramar. The difference between the impacts of the proposed project and Policy Option 1 are very small. In addition, Policy Option 1 provides corridors that meet or exceed the standards stated in the EIR/EIS, meets the requirements for preservation listed in the Otay Ranch RMP, and preserves more of this particular population of gnatcatchers than is done in other areas of the proposed project.

In light of the information presented above, considering that corridors are being proposed in Policy Option 1 that are as required by the resource agencies in other areas of the MSCP, and considering that the additional loss is well within the range allowed in other cores, please include analysis to support the stated conclusions in the draft document that implementation of Policy Option 1 would make suspect the viability of the entire MSCP preserve. Such an analysis is important to allow decisionmakers to make a reasoned and informed decision about the proposed project.

4. Analysis of the Impacts of the Proposed Project on the Existing Environment

Information presented in the EIR does not analyze the proposed project's impact on the existing conditions as is done for the City of San Diego. Instead, the EIR/EIS analyzes the impact of the existing environment on the proposed project, as if the proposed preserve were already assembled. Such analysis leaves open the question of whether the preserve will function biologically. It is assumed that configuration and edge effects were considered in designing the preserve, and that the proposed project is adequate for the stated purposes. However, the "analysis in reverse" included in the EIR/EIS precludes any such conclusion. In addition, the net benefit that will result through implementation of the proposed project (as opposed to what would happen under the existing setting) is never stated. 53(e)

Please analyze the impacts of the proposed project on the existing environment in the same manner as was done for the City of San Diego.

GENERAL COMMENTS

1. The document initially on page ES-7 identifies the subarea plans as a project level of analysis. It is our opinion that the implementing agreement, general plan amendments and any zone changes necessary to implement the City of Chula Vista's subarea plan are programmatic in nature and would be followed by more specific project level analysis. 53(f)

2. Table 1-1 on page 1-12 indicates that the City of Chula Vista would not be adopting implementing ordinances or community plan amendments (general plan). This may not be the case and this table should be modified to so indicate. 53(g)

3. Figure 1-4 on page 1-15 indicates that some areas such as the western parcel of the Otay Ranch and the San Miguel Ranch as being subareas under the County of San Diego - south county segment. This figure should have some recognition of the fact that this is an overlap area under which the jurisdiction may change and that implementation of the MSCP would be by the City of Chula Vista rather than the County of San Diego. 53(h)

4. Figure 2-2 on page 2-4 shows the area south of the Lower Otay Reservoir as 100% conserved. This is inconsistent with the proposed subarea plan and the tentative agreement between US Fish and Wildlife Service, California Department of Fish and Game and the property owners. It is also inconsistent with the Chula Vista General Plan as depicted in Figure 2-5 on page 2-22. 53(i)

5. Section B.1.1 on page 4.2-14 references a tentative development plan for the San Miguel Ranch project. It should be noted in this section that this is a tentative agreement and that the City of Chula Vista has not adopted the necessary general plan amendments and zone changes to implement this tentative plan. 53(j)

6. Figure 4.2-6 on page 4.2-33 delineates a circulation element road within the City of Chula Vista from Otay Valley Road southerly across the Otay Valley terminating at the City of San Diego jurisdictional boundary. This roadway is not shown on the Chula Vista Circulation Element of the General Plan and, therefore, should be deleted. 53(k)

7. Figure 4.2-7 on page 4.2-36 indicates the Otay Rio Vista Business Park within the City of Chula Vista. Although this subdivision is technically valid, plans for an amphitheater and water park have been approved on this site. 53(l)

8. Section B.3.1 on page 4.2-58 indicates in the second paragraph that the biologically preferred scenario would primarily affect the Rancho del Rey SPA III project. Because almost all of this development has received approval of final subdivision maps, almost all of the property has been grubbed and cleared and most of the area has been graded, any major changes are not realistically feasible. 53(m)

9. The EIR/EIS contains a table with an incorrect conclusion about the significance of the impact of the Otay Valley Regional Park Concept Plan. The Table, ES-4, at Page ES-18 lists the impacts from the project as significant and not mitigated whereas the text at Page 4.3-235 correctly analyzes the impacts as less than significant after mitigation. 53(n)

10. Until recently, EIRs analyzing impacts associated with certain kinds of projects, including projects involving the preparation of joint CEQA/NEPA documents, were required under CEQA to include a section addressing "[t]he relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity." That requirement, was repealed by the Legislature in 1994. Because NEPA documents must still address the subject, however, a "joint EIR/EIS" must still address the topic. In contrast, the MSCP EIR, a joint CEQA/NEPA document, does not. 53(o)

RESOURCE CONSERVATION COMMISSION COMMENTS

The City's Resource Conservation Commission has also reviewed the draft EIR/EIS, and has requested that the attached comments be forwarded to you for response.

Thank you for the opportunity to provide comments at this time. Please feel free to contact Duane Bazzel, Principal Planner, at 691-5101 if you have any questions regarding the matters addressed in this letter.

Very truly yours,

Robert A. Leiter

Robert A. Leiter
Director of Planning

Attachment: Resource Conservation Commission Comments on Draft MSCP EIR/EIS, dated September 30, 1996

(F:\home\planning\mscpeir.l)

53

ATTACHMENT

SYY

COMMENTS FROM THE RCC SPECIAL MEETING OF SEPTEMBER 30, 1996

Present: Commissioners Burrascano, Hall, Marquez, Thomas, Fisher; absent: Yamada.

Also present: Doug Reid, Bob Leiter, Planning Dept.; June Collins, Dudek Company

1. Thomas - concerned about the linkage corridors, that habitats would be choked off between area/sub-area plans. Figure 2-20 shows how cores and linkages were developed with the biologically preferred alternative in mind. 53(p)

2. The RCC expressed concern whether the Sweetwater River and Otay Rivers are the two linkages designed to link core preserved areas. Dudek (June Collins) noted they already provide protection and it has already been analyzed in the plan. She further noted that the Otay Regional Park Plan restricts active recreation in these areas. This EIR only evaluates the concept Otay Regional Park Plan but is not specifically dealt with. 53(q)

3. Marquez noted letters in response to the Notice of Preparation weren't always answered directly; Dudek stated they were indirectly commented upon throughout various sections of the EIR. 53(r)

4. Hall - Concerned about the amount of money spent on the Nature Interpretive Centers, that one was enough, and others are too costly to maintain. Dudek stated one is planned for Otay Valley Park but is not in this EIR; it is in the sub-area plan if funding becomes available. These facilities should be a lower priority than acquisition for conservation purposes. 53(s)

5. Marquez requested but did not receive a copy of the Biological Mitigation Ordinance; Dudek to provide. 53(t)

6. Burrascano - On page 4-3-79, Table mentions Maritime Succulent Scrub, but the numbers are misrepresented. Dudek - noted the footnotes, which are missing from these particular tables, explains the numbers used and obtained by Ogden studies. (Table 4-3-1 shows how the footnote should appear to explain these numbers). Dudek explained that the Subarea plan includes incorporated and unincorporated areas; Ogden used numbers from City of Chula Vista's incorporated boundaries. Burrascano felt the database is therefore inconclusive as the numbers don't add up to the 17 acres of preserve, as stated in table. 53(u)

7. Fisher - concern with Poggi Canyon and Salt Creek Ranch, where some MSS and CSS corridors are now missing from the map. Beginning p. 21-23 of subarea plan shows revision of gains and losses of sensitive species. Dudek said they had negotiated between Baldwin, U.S. Fish & Wildlife and U.S. Fish & Game to create a better preserve design and meet regional species conservation goals. Leiter stated that Salt Creek reflects the GDP. Fisher requested to check configuration of open space, finger canyons, etc. as they're different from previous maps. 53(v)

8. Burrascano - numbers of species being impacted are not listed—species are there but not the numbers. Dudek showed Chula Vista's subarea plans table. No species were counted on individual sub-area plans, and no separate maps were prepared. Dudek also explained that the County had also asked what level of quantitative analysis documents needed to be included in EIR. 53(w)

9. Burrascano - felt the EIR is inadequate under CEQA. Leiter noted that the U.S. Fish & Wildlife service will provide detailed follow-up comments through the biological opinion document. He also has problems with connection of corridors and will include this in EIR. This issue will already be addressed, especially at the university site. 53(x)

10. Noted that the biological database and sensitive species list were provided by the U.S. Fish & Wildlife as the federal lead agency; Dudek based their scientific findings and criteria from this list. Purpose of the EIR is to disclose impacts associated with the MSCP Plan, i.e., loss of species and other significant impacts. It was requested that Dudek come back with the County's plan in the Bonita area as it was not included in the EIR. 53(y)

11. RCC commented that since the data is inadequate, it requested the City to keep the area around the reservoir a total preserve area. Asked how Dudek dealt with the minor amendment areas around the river? Ms. Collins stated the studies were done by Ogden and counted as 75% preserve; she didn't know answer. She'll find out how they based their information and will make comment in her follow-up report. 53(z)

12. Marquez - question about survival of cactus wren within regional plan. Page 4-3-23 shows cactus wren is adequately conserved but feels the data is inadequate. 53(aa)

13. Fisher suggested that rather than building, leave Poggi Canyon as is or put significant amounts of natural open space. Continuous land would be preferred in order to keep and maintain the scrub found in the canyon for now. Keep natural lands to prevent flooding later and destroy natural species and habitat that is still there. 53(ab)

14. Marquez - Asked if Dudek looked at and analyzed the segmentation of large projects such as the Otay Ranch; would it change the significant preserve levels? Dudek stated that resource agencies have looked at it and reviewed plans. The approved land use plans are the land use regulations on the properties regardless of the ownership. 53(ac)

15. Burrascano - Sensitive Resource Study area, Village 13 of Otay Ranch, p. 24f of subarea plan - the large area shows vernal pool and Acanthomintha. She asked that as development occurs, if sensitive species are found, would it still be covered or will a trade-off occur? Ms. Collins stated a 404 permit will be required as it is designated development. If sensitive species are found, there is already a clause to adjust and provide coverage for that species already addressed in the EIR. Also, according to CEQA, they would need a subsequent document. 53(ad)

16. RCC was concerned that non-sensitive species could possibly be put at greater risk. Leiter will address it in the plan rather than the EIR. 53(ae)

17. Fisher - concern about the Quino Checkerspot Butterfly which was dormant but was recently found. 53(af)

18. Fisher - Page 4-3-19, Table 2.2 describes the Red-legged frog as "discountable" and wanted that defined. Page 4-3-27 defines discountable as being not reasonably expected to occur in the MSCP study area. Fisher noted it had not been surveyed for but they have been observed, and could possibly be listed. 53(ag)

19. Marquez - ambrosia pumila (San Diego ambrosia) should not be included on the list as a new listing is coming out. Also, this is being confused with the ambrosia confertiflora and does not need to be included in the document. This is the wrong plant and it appears to be showing a lot of impacts. This is one example of inadequate scientific basis. 53(ah)

20. Burrascano - Additional level of protection for species outside the preserve will be adequately covered. Covered species list - covered within preserve. 53(ai)

21. Fisher - Refer to arroyo toad p. 4-3-18, concern with finding it within Otay Valley, and the potential impact in that area. Stated that these impacts were not significant enough, and if it's outside the preserve, they have permission to take it. EIR mentions it's measured in a "kilometer" limit of occupied breeding habitat. 53(aj)

22. Marquez asked about the shaded boxes in Table 4-3-1 shaded boxes. Page 4-3-27 shows the key but it's incomplete and inadequate. Ms. Collins to verify and ensure its consistency in data. The shaded boxes should be priority species and federally and state proposed species. 53(ak)

23. Thomas - asked if there was an ongoing monitoring plan in the preserve. Dudek said yes, there is a biological monitoring plan but it's not required in the MSCP. It will be included in implementing agreements between individual federal and state agencies and local jurisdictions. 53(al)

24. Thomas suggested to circulate reports locally, regionally, and federally with an electronic database, including developers, could be linked to universities through internet and have the global information include trash areas, rebuilt areas, development, etc. and more specific information made available to the public. 53(am)

25. Thomas - need MSCP technical committee involved with technical aspects of the project to include natural historians, ecologists, science ombudsmen, biologists, and other than just non-technical local staff—those with more expertise 53(an)

26. Marquez asked why these areas (part of the finger canyons within the City of Chula Vista, north of H Street) are being included as open space as it is such a small fragmented 53(ao)

area. She doesn't want credit for open space because it's too steep, and it doesn't connect with anything. 53(ao)

27. Thomas - addressed exotic plants and ferrell domestic animals within finger canyons. Inadequate preserve design of canyons make it difficult to manage. EIR should address more closely within the monitoring plan. 53(ap)

28. Hall - asked about the Biological Mitigation Ordinance for county. Horse property on Chula Vista lots. Annexing areas will keep existing zoning. Horses are not generally permitted on City of Chula Vista lots. If areas in Bonita are annexed, will the same County regulations regarding horses apply to these lots? 53(aq)

29. Did Dudek do an analysis of homes per acre in the General Plan pre-MSCP (allowable in preserve) used for take. Marquez had great concern with the one dwelling unit per one acre allowable in preserved area. She did not agree with the low density as explained on page 6-3 of the subarea plan. It says it may be compatible and allows private land too easily accessible to sensitive areas. 53(ar)

54 ART LETTER, TIA JUANA VALLEY COUNTY WATER DISTRICT, 10/15/96

R

54(a) Impacts to agriculture in the Tijuana River Valley are discussed on pages 4.2-97 and 4.2-98 of the Draft EIR/EIS. The discussion on these pages acknowledges that the central floodplain portion of the river valley has been cultivated for over 100 years, although recently agricultural productivity has been hampered due to high levels of salt deposits in the soils. The analysis concludes that the proposed MSCP Plan would not result in significant adverse impacts to agriculture in the Tijuana River valley since both the City of San Diego and County of San Diego Subarea Plans allow for existing agricultural uses to continue, with restoration of native habitats only after agricultural uses cease.

54(b) Comment noted.

54(c) The MSCP Plan and subarea plans adequately reflect the Tijuana River Valley Regional Park as a mix of active and passive recreational opportunities. On pages 9 and 10 of City of San Diego Subarea Plan (MSCP Plan, Volume II), the park is described. The City's Subarea Plan states that the County is developing the Regional Park and that it will include a mixture of recreational opportunities, sustainable agriculture, and native habitats. The Subarea Plan further recognizes that the area is unique in its relationships with local, state, federal, and international agencies and citizen groups, in its issues, including a proposal to consider the valley a United Nations designated Biosphere Reserve which incorporates a sustainable, multiple use, and conservation concept. The Subarea Plan contains specific guidelines for development of the park on pages 10 and 11.

54(d) Comment noted. The MSCP Plan recognizes and preserves existing, ongoing agricultural/equestrian operations. Neither the proposed preserve plan nor subsequent implementation would force these existing uses out of the valley.

54(e) The proposed City of San Diego Subarea Plan is consistent with existing land use plans and would improve the habitat value of existing conservation lands within the Tijuana River Valley and Estuary. Please refer to response to Comment 54(d).

54(f) Comment noted.

54(g) The City of San Diego Subarea Plan (Section 1.4, Page 47) identifies land uses that are considered compatible within the preserve. This section states that existing uses within the preserve which are not included on the compatible land uses list are considered conditionally compatible and would either be managed for compatibility or phased out in the long term. Uses may be phased out through acquisitions from willing sellers or changes in land use initiated by property owners. Expansion of existing uses would need to be in compliance with applicable regulations and would need to minimize

adverse effects on the preserve. The Subarea Plan anticipates existing uses can and may continue within the preserve.

54(h) Comment noted. Please also see **Theme Response IV, MSCP Financing Plan: Regional Source of Funds.**

54(i) Comment noted.

54

Tia Juana Valley County Water District

2222 Coronado Avenue, Suite F
San Diego, CA 92154-2037
(619) 429-6106
Fax: (619) 429-4186 • E-Mail: TJVCWD@aol.com

A Public Agency Incorporated
January 24, 1946
Celebrating 50 Years

October 15, 1996

John Kovac, Senior Planner
Development and Environmental Planning Division
City of San Diego
1222 First Avenue, 5th Floor
San Diego, CA 92101

Dear Mr. Kovac:

The Board of Directors of the Tia Juana Valley County Water District (District) has reviewed your Multiple Species Conservation Program (MSCP Plan) final documents dated August, 1996. As you know, the District has previously reviewed the Draft MSCP and Multiple Habitat Planning Area (MHPA) documents for the entire study area as they relate to the City of San Diego's proposed Multiple Species Conservation Program. We have also corresponded with the City of San Diego on June 21, 1995 and December 22, 1995 regarding our concerns about the total MSCP plan and program as well as the MHPA sub-regional area known as the Tijuana River Valley. The District appreciates the changes that have been made in the sub-regional MSCP Plan and the MHPA to reflect our previous concerns. However, the changes identified in the Final MSCP documents do not go far enough to adequately reflect the substantial concerns previously identified by the Tia Juana Valley County Water District. Therefore, the District must oppose the City of San Diego Multiple Species Conservation Program and MSCP Plan as identified in the final documents dated August, 1996.

For the record, the District's perception of the appropriate and balanced land use mix in the Tijuana River Valley is largely consistent with the officially adopted City of San Diego Local Community Plan (LCP) for the Tijuana River Valley as opposed to the Final City of San Diego Multiple Species Conservation Program-MSCP Plan. The District's future vision for the Tijuana River Valley includes the following balanced mix of land uses:

- Maximum agricultural production to reflect the excellent combination of weather and soils found in the Tijuana River Valley. At the present time, agricultural production in the Tijuana River Valley is being restored to pre-1980 levels. The District believes that the Final MSCP Plan does not reflect the importance of agriculture in a balanced land use vision for the future of the Tijuana River Valley. **54(a)**
- The Tijuana River Valley is emerging as a major equestrian center for the entire South Bay. The equestrian related activities which are presently expanding in the Tijuana River Valley include a growing horse breeding industry. Expanding horse-related commercial and recreation businesses and various government attempts to accommodate horse trails and horse-related activities in public works projects in the Tijuana River Valley give this equestrian activity a much higher priority for the future. Unfortunately, the Multiple Species Conservation Program and the MSCP Plan do not adequately reflect the importance of the Tijuana River Valley as a major equestrian center for the South Bay. **54(b)**

BOARD OF DIRECTORS

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Marguerite S. Strand, General Counsel
Judy Goldstein, Office Secretary

5A

- The promise of a regional park primarily being undertaken by the County of San Diego to maximize the open space and rural nature of the Tijuana River Valley continues to grow in importance. The future of the Tijuana River Valley Regional Park containing a balanced mix of active and passive recreation opportunities for the citizens of both the San Diego and Tijuana metropolitan areas is significant and unfortunately is not adequately reflected in the Multiple Species Conservation Program, the MSCP Plan or the MHPA. 54(c)
- The District considers the substantial habitat acreage in the Valley already devoted to the preservation of endangered species to be more than enough, in land use and zoning terms, to provide our share of adequate protection for future multiple species conservation efforts. Any expansion of existing acreage in the Valley to be designated solely for the purpose of creating habitat to protect endangered species is being vigorously opposed by the District. Unfortunately, the MSCP Plan and the MHPA show such expansion, particularly over time, as attempts are being made to force other legitimate activities and land uses (i.e., agricultural production and equestrian recreation) out of the Valley. The future vision of the Valley created in the Multiple Species Conservation Program is not consistent with either the adopted City of San Diego LCP or the District's goals for balanced and multiple land uses in the Tijuana River Valley. 54(d)
- The District strongly supports the realization of the potential found in the Tijuana River Valley National Estuarine Research Reserve. We believe, in accord with many others, that this saltwater estuary has the potential to be one of the largest and most precious estuaries of its kind on the West Coast of the North American Continent. However, there already have been adequate lands set aside in the Tijuana River Valley for the purposes of this important national resource. Unfortunately, the Multiple Species Conservation Program, the MSCP Plan and the MHPA all reflect a substantial expansion of the estuary into eastern portions of the Valley presently identified for other significant land uses. Again, this vision as identified in the MSCP Plan and the MHPA exceeds the District's concept of a balanced land use approach for the future of theValley incorporating multiple land uses all living and working together in harmonious juxtaposition. 54(e)

<u>For all of the reasons identified previously, the District cannot support the City of San Diego Multiple Species Conservation Program or the sub-area plan for the Tijuana River Valley. On behalf of the property owners, businesses and residents of the Tijuana River Valley, we must oppose this program as presented in the final documents dated August, 1996.</u> 54(f)

Furthermore, the District is still having problems with two concepts as identified in the overall Multiple Species Conservation Program. The first relates to adequate assurances for private property owners that will maintain their current land uses and businesses within designated Multiple Habitat Planning Areas. We do not see an adequate long term commitment to these private property owners or businesses should they wish to continue and/or expand their activities. On the contrary, the program appears to single out unwanted private property owners as non-conforming in future MHPA's and therefore, applies subtle and undesirable pressure on existing property owners and businesses to vacate their land uses as quickly as possible. We believe that this is the wrong approach to developing a successful Multiple Species Conservation Program. 54(g)

54

Secondly, we do not believe that the Multiple Species Conservation Program can be approved prior to a vote of the people as to how the identified $338.8 million to $411.3 million cost of the program will be financed over the next thirty years. Table 7-2 in Volume I identifies a range of acquisition, maintenance, property tax and sales tax costs per household spread over the entire San Diego region which can be a substantial economic hardship to each household in the region. We believe that it is imperative that a public information program be undertaken by the City of San Diego which would immediately identify these projected annual costs per household to finance the MSCP Plan over the next thirty years. After such a public information program is completed, the entire financing plan including private property costs, taxes and assessments, local government acquisition costs and state and federal contributions to acquisition and maintenance costs should be put to a vote of the taxpayers prior to the final adoption of the Multiple Species Conservation Program. 54(h)

The District has made many previous attempts to convince the City of San Diego that the basic thrust of the Multiple Species Conservation Program is not in the best interests of the citizens, residents and businesses found within the boundaries of Tijuana Valley County Water District. Although threats to the residents, property owners and businesses within the District's area of jurisdiction are the primary reasons for our opposition, we also believe that the entire region will not be best served by the adoption of this major public policy statement. The present and future of the substantial and varied economic and environmental assets found within the Tijuana River Valley will not be best served by the proposed City of San Diego Multiple Species Conservation Program. Therefore, the District would urge the City of San Diego to either modify the Final Multiple Species Conservation Program in accordance with our previous comments or to abandon this program before any further attempts are made to adopt the MSCP plan and program as official government policy in the Tijuana River Valley, the City of San Diego as well as most of the County of San Diego. 54(i)

As always, the District appreciates the opportunity to work with the City of San Diego on matters of mutual interest and concern. Although we do not always agree, we appreciate the City of San Diego's willingness to incorporate District concerns in your plans, programs and public policies.

Best Wishes,

Art Letter
General Manager

AL/jg

cc: District Board of Directors
Mayor Susan Golding
Councilman Harry Mathis, District 1
Councilman Byron Wear, District 2
Councilwoman Christine Kehoe, District 3
Councilman George Stevens, District 4
Councilwoman Barbara Warden, District 5
Councilwoman Valerie Stallings, District 6
Councilwoman Judy McCarty, District 7
Councilman Juan Vargas, District 8

Chairman Ron Roberts
Supervisor Greg Cox, 1st District
Supervisor Dianne Jacob, 2nd District
Supervisor Pam Slater, 3rd District
Supervisor Bill Horn, 5th District

55 MCKINLEY/NIELSEN, ALLIANCE & BIA, 10/21/1996

R

NOT A LETTER OF COMMENT. ADMINISTRATIVE RECORD.

56 RON REMPEL, CDFG.

R

NOT A LETTER OF COMMENT. ADMINISTRATIVE RECORD.

57 MICHAEL BECK, EHL MEETING PARTICIPANT.

R

NOT A LETTER OF COMMENT. ADMINISTRATIVE RECORD.

58 JOHN M. DEBEVOISE, 10/11/96

R

58(a) Comment noted.

58(b) The MSCP is designed to address all covered species as if they were listed by the federal and/or state governments. If, in the future, a covered but unlisted species becomes listed as threatened or endangered, the take authorization would become effective concurrent with its listing. Assurances provided in the MSCP Plan and Model Implementing Agreements state that the take authorization holders would not be required to commit additional land, land restrictions, or financial compensation, beyond that described in the subarea plan, for the protection of any covered species (see Section 3.3 of MSCP Plan, Volume I). For uncovered species that may be listed in the future, the wildlife agencies would first determine whether additional conservation measures, beyond those prescribed by the MSCP Plan, are necessary to adequately protect the species. If no such measures are necessary, the species would be added to the Covered Species List using the federal and state take authorization amendment process. If the MSCP conservation measures are not adequate, the wildlife agencies would work with the participants to identify and jointly implement the steps necessary for coverage. In addition, the wildlife agencies have determined that certain vegetation communities have been conserved to the degree that they would contribute towards the conservation necessary to add the species to the Covered Species List (see section 3.4 of the MSCP Plan, Volume I). Based on the above, the benefits to landowners are the streamlining of the permit process and the greater degree of certainty provided for future developments with regard to mitigation for covered species and their habitats.

58

JOHN M. DEBEVOISE
41700 CAMINO DEL VINO
TEMECULA, CA 92592

OCTOBER 11, 1996

1996

JOHN KOVAC, SENIOR PLANNER
DEVELOPMENT AND ENVIRONMENTAL PLANNING DIVISION
CITY OF SAN DIEGO
1222FIRST AVENUE, FIFTH FLOOR
SAN DIEGO, CA 92101

COMMENTS ON THE MSCP DOCUMENTS AS OF OCTOBER, 1996

PREVIOUS DOCUMENTS HAVE SHOWN AN INTENTION TO MINIMISE THE COST TO THE TAXPAYERS AT THE EXPENSE OF THE LAND OWNERS. THIS REPORT SHOWS A CHANGE. SAN DIEGO MAYOR SUSAN GOLDING HAS STATED THAT PROPERTY OWNERS ARE NOT TO BE VICTIMIZED, AND THE PRESENT REPORT DOES INCLUDE STATEMENTS TO THE EFFECT THAT PRIVATE PROPERTY RIGHTS WILL BE RESPECTED. THAT IS A MOST WELCOME SHIFT. 58(a)

I WILL NOT COMENT ON MANY DETAILS IN THE report WHICH I EXPECT OTHERS TO COMMENT ON. HOWEVER, SECTION 3.4 AND SECTION 5.3, WHICH CONCERN POSSIBLE FUTURE LISTINGS, LEAVE THE PRCCEDURES AND THE EFFECTS ON PROPERTY VERY UNCERTAIN. THAT CCULD BECOME A VERY SERIOUS PROBLEM. 58(b)

SINCERELY,

JOHN M. DEBEVOISE

John M. DeBevoise

59 T. WILSON, WATSON LAND COMPANY, 10/11/96

R **59(a)** At meetings held between staff from wildlife agencies and the City of Chula Vista with Mr. Tim Wilson (Watson Land Company) on the subject of establishing "hard line" preserve/development boundaries for the proposed development of the Watson Land Company property, the need for a minimum level of biological survey information was expressed. Biological information provided by Mr. Wilson was to be reviewed for adequacy by the wildlife agencies toward an eventual determination on a "Minor Amendment" to the City of Chula Vista Subarea Plan. Mr. Tim Wilson has not provided biological data regarding the location of covered species on the property and therefore it has not been possible to evaluate his conceptual project for consistency with the MSCP Plan.

Because the biological analysis provided in the Draft EIR/EIS did not include survey data for the Watson Land Company parcel and the results of potential environmental impacts of development on this parcel, it was determined by the wildlife agencies that the inclusion of this parcel could not be addressed under the MSCP EIR/EIS. However, continued discussions between the property owner and the staff from each agency would examine where and if appropriate preserve boundaries could be established through a Minor Amendment to Chula Vista Subarea Plan.

Ongoing discussions between the wildlife agencies and City of Chula Vista staff aimed at establishing guidelines for the "Minor Amendment" process are anticipated prior to adoption of the Chula Vista Subarea Plan and Implementing Agreement. Determinations as to whether an amendment to the draft Subarea Plan can occur prior to its final adoption or whether an amendment must occur post-adoption would be forthcoming. Correspondence would be transmitted to Mr. Wilson independent of this EIR/EIS appraising him of these issues.

59

Watson Land Company

City of San Diego Land Development Review Division
1222 First Avenue
5th Floor
San Diego, CA 92101

October 11, 1996

Re: Public Comment on City of Chula Vista Draft MSCP EIR/EIS

Dear Sirs,

On October 1, 1996 I wrote you a letter regarding our land (160 acres under parcel number 585-150-02) and our comments to the Chula Vista Subarea Plan ("CVSP") for the MSCP.

This letter contains my additional comments to the CVSP for the MSCP.

As stated in the previous letter, our property has been designated a "Minor Amendment" area under the CVSP. According to Section 4.3.1.2 of the CVSP, this means we have:

> "...land which could be annexed into the City; however, agreements with Wildlife Agencies and CDFG and the City on ultimate preserve boundaries have not been negotiated."

But, according to the same section of the CVSP which addresses our property specifically:

> "The largest of the private propeties in this Component, aside from the Otay Ranch, is the Watson Land Company property; a 160 acre parcel located north and east of the 1,200 acre Salt Creek Ranch development project and surrounded on the north and east by the Otay Ranch. The owner of the Watson Land Company has expressed strong interest in: 1) annexing to the City of Chula Vista, 2) develolping a portion of this parcel under the policies of the Chula Vista General Plan (the current General Plan Low Density designation would permit approximately 226 units, and 3) being included in the City's preserve plan. In order to develop in the City of Chula Vista, approval of a GDP and SPA Plan will be required. Inclusion into the City's preserve plan will require agreement between the Wildlife Agencies, the City and the property owner. ***It is the intent of the City of Chula Vista to identify preserve boundaries on the Watson Land Company property before finalizing this Subarea Plan."*** (Emphasis mine).

As related in our October 1, 1996 letter, we recently met (09/23/96) with representatives from the USFWS, CDFG and City of Chula Vista to discuss whether it was possible to identify preserve boundaries on our property prior to approval of the CVSP. The general consensus from the Wildlife Agencies was that it was not possible because we did not have enough detailed environmental information on our site at the time. (At that meeting we had an environmental constraints map prepared by Barry Jones in May of 1991, which I assumed would be enough information to indentify preserve boundaries. My assumptions were based on discussions with Nancy Gilbert of USFWS and Theresa Stewart of CDFG during a meeting with my land planner, Steve Estrada, Duane Bazzel (City of Chula Vista) and myself on 05/23/96.) 59(a)

59(a)

However, after meeting with various consultants during the last week and better understanding exactly what information we have available on our property, I now believe that we do have enough detailed information to indentify preserve boundries on our property prior to approval of the CVSP and would like to realize the intent of both the City of Chula Vista (as stated above) and Watson Land Company. To identify the preserve boundaries, I am assuming this means we would have to amend the CVSP prior to its approval.

The following facts lead us to believe that we can now draw "hard lines" on our property prior to finalization of the CVSP:

1) Annexation of our property should be complete by mid November, according to Rick Rosalier of the City of Chula Vista;
2) We have created a "bubble" plan for development, utilizing several levels of "overlays" to demonstrate our sensitivity to the environmental constraints on our property as delineated on a vegetation map developed by Barry Jones in May of 1991;
3) We definitely would like to be part of the preserve plan;
4) We have completed a draft GDP/SPA which is now ready for filing with the City of Chula Vista;
5) We have exhibits showing how our project relates to the Salt Creek Ranch and the Otay Ranch (Greg Smith parcel) developmentally and environmentally;
6) We have exhibits delineating the amount (in acres) of the different habitat types to be developed and conserved;
7) We have an analysis of the fuel management zones;
8) We have an analysis of the management plan for preserve lands;
9) We have an exhibit showing the amount of land to be developed vs. the amount of open space (in acres and as a percentage of total project area).

To date, our confusion regarding the MSCP process as well as economic considerations have prevented us from filing a development plan (GDP/SPA) with the City of Chula Vista. But we intend to do so as soon as we resolve the preserve boundaries issue (at which point we anticipate that development capital will be available to us). To that end, we feel that if the Wildlife Agencies and the City of Chula Vista would analyze all of the above data and meet with us to discuss our plans, we could indentify the preserve boundaries before the CVSP is approved. And, as that has been the representation from the City of Chula Vista and their/our intent from the initiation of the MSCP process, we would like to proceed along those lines and ask for direction from you and/or the Wildlife Agencies and/or the City of Chula Vista as to what needs to happen for us to achieve our objectives.

Sincerely,

Dr. Timothy Wilson
13039 Brixton Place
San Diego, CA 92130
619-259-8922

60 F.F. HEWITT, JAMUL-DULZURA PLANNING GROUP, 10/19/96

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60(a) The MSCP Plan creates no new regulations, rather, it provides a framework within which each local jurisdiction would develop and implement a subarea plan that describes how they would implement the MSCP Plan within their boundaries. Local jurisdictions would use various existing mechanisms, such as land-use zoning, resource protection ordinances, and CEQA review processes. Prior to receiving a permit, each participating local jurisdiction must sign an Implementing Agreement, which is a legal contract, with the wildlife agencies that outlines their responsibilities under the MSCP Plan and their subarea plan. Failure to abide by this Implementing Agreement would result in breech of contract and/or violation of the permit, either of which can initiate a suspension or revocation of the take authorizations. It is the wildlife agencies' responsibility to ensure that each local jurisdiction is in conformance with its responsibilities. The permit authority passed from the wildlife agencies to the local jurisdictions would apply only to those actions for which the local jurisdictions have discretionary authority. Therefore, there would be no confusion over past and future "take" of covered species. Landowners that violate the local zoning or ordinances would be subject to penalties by the local jurisdictions and also by the wildlife agencies if the illegal activity results in take of listed species.

60(b) See **Theme Response VIII, Public Involvement**

60(c) See response to Comment 60(b).

60(d) The MSCP has evolved using an iterative process involving landowners, elected officials, the public, state and federal officials, and other stakeholders. The MSCP Plan and subarea plans are a result of this iterative process and these plans are analyzed in the EIR/EIS.

60(e) The term State Species of Special Concern (SSC) was first used in 1978 when the California Department of Fish and Game compiled information on various species throughout the State which were known by biologists and organizations to be declining. The information was intended to be used by land management agencies, developers, landowners, and the general public to help them protect populations of these species before they became endangered. A species of special concern has no legal status, thus there is no special requirement to protect these species (such as the law provides for threatened and endangered species), to consider potential adverse impacts of a project upon the species and its habitat. Species of special concern are often considered during the CEQA process and are typically analyzed as locally declining or sensitive species. Species of special concern do not have the legal protection under the Fish and Game Code based on their occurrence on the SSC list. Their relevance to the MSCP is that the list of SSC species was used to help identify the species to be evaluated in 1991 and that they are considered as locally sensitive species for conservation planning purposes.

60(f) The revised draft Biological Mitigation Ordinance would define a sensitive species as any one of the following: "(a) Those species that are included on generally accepted and documented lists of plants and animals of endangered, threatened, or of special concern by the Federal Government or the State of California; (b) Those species listed on Attachment B, List of Critical Populations of Sensitive Plants; Attachment E, List of Species Covered by the MSCP Plan; Attachment F, List of Rare, Narrow Endemic Animal Species; Attachment G, List of San Diego County Sensitive Plants; (b) Those species that meet the definition of 'Rare or Endangered Species' under the CEQA Guideline set out in 14 Cal. Admin. Code Section 15380."

A sensitive species is one that is in significant decline or known to exist in very small numbers so that conservation measures are necessary to ensure its survival and recovery.

60(g) Under the MSCP Plan, all covered species are treated as though they are listed. This treatment allows the covered species to be included on take authorizations so that take authorization become effective for the species concurrent with its listing under the federal or California Endangered Species Acts by the federal or state governments, respectively. Prior to their official listing, species have no legal protections under these statutes, except under the contractual provisions of the Implementing Agreements.

60(h) A specific page number reference is not given for this comment, therefore a specific response is difficult. The term "insignificance" is used in two primary ways in the biological analysis in the Draft EIR/EIS. From a CEQA perspective, page 4.3-6 of the Draft EIR/EIS lists the criteria for determining significance of impacts to species and habitats. Identified impacts below the level of the threshold criteria listed on page 4.3-6 would be regarded as insignificant. The term "insignificant effect" is also used on Table 4.3-1 of the Draft EIR/EIS. As noted in the Findings Definitions for that table, presented on page 4.3-27, and insignificant effects is defined as "an effect that cannot meaningfully be detected or measured, relative to the species' status as a whole; MSCP is not a significant portion of species' range."

60(i) Please refer to **Theme Response XIV, Biological Monitoring.**

Each take authorization holder must review proposed development projects and require modifications as necessary to ensure that the projects meet the species avoidance requirements in the MSCP Plan, Subarea Plan and take authorizations. The City and County of San Diego both have Geographical Information Systems (owned or on contract) which include all data points for known locations of the covered species within their subarea, and data points for specific populations of species which they must conserve. These data are also in the wildlife agencies' Geographical Information System and the information is available to all local jurisdictions. The wildlife agencies would maintain the MSCP data base over time and would provide updates to the participating local jurisdictions on a regular basis. The take authorization holders' project approval process will include review of MSCP data base to ensure that the project does not encroach on a population of a species for which protection is required. The

wildlife agencies review of project-level conservation and take, combined with the overall biological monitoring, will enable the wildlife agencies to determine if each take authorization holder is meeting its obligations.

Habitat-level biological monitoring will be completed every five years, which is appropriate for assessing long-term environmental changes. Because of this monitoring schedule for specific biological parameters, the triennial MSCP program reports will not always include new long-term habitat level monitoring information. Species specific biological monitoring, including site-specific plant monitoring, will occur at least every three years and the results will be included in the triennial reports. As monitoring information is gathered and analyzed, and new monitoring techniques developed, the monitoring plan will be modified as appropriate. The biological monitoring plan is also part of the adaptive management program for the MSCP and monitoring will be used to modify management of the preserve, as appropriate. All take authorization holders are required to meet all of their obligations specified in their MSCP Subarea Plan and Implementing Agreement. The wildlife agencies will meet at least annually with each take authorization holder to review their compliance with their subarea plan and Implementing Agreement and to review their annual report on take and conservation. (See Sections 14 and 16 of the Model Implementing Agreement).

Unless exempted by local ordinances, private lands within the MSCP study area cannot be cleared, graded, or developed prior to review by the permitted jurisdiction or special entity. For most private lands within the proposed preserve, the presumption is that until a specific proposal is made for the property, the land will remain in essentially its current condition. If a private landowner chooses to pursue development through the MSCP, then the project will have to conform to the subarea plan. This will allow the participating local jurisdiction and state and federal governments to determine if the project poses significant potential to degrade the preserve.

60(j) Take of listed species in violation of a land use regulation or zoning ordinances may result in prosecution under the federal ESA and California ESA. Take of covered species is only authorized for projects permitted and developed consistent with the appropriate participating local jurisdiction's subarea plan, which by reference includes pertinent regulations and ordinances.

60(k) Comment noted. The boundaries for Metro-Lakeside-Jamul segment of the County Subarea Plan reflect specific planning constraints and not political decisions. The boundary of the Metro-Lakeside-Jamul segment is based on (1) city limits; (2) the eastern boundary of the MSCP study area; and (3) areas outside of major blocks of habitat with negotiated preserve boundaries. The eastern boundary of the Subarea Plan is coterminous with the eastern boundary of the MSCP study area and was set at the start of the MSCP process and is based on the limits of the waste water treatment facilities existing and future service area.

The Lake Hodges and South County segments contained more lands where the owners negotiated preserve boundaries for incorporation into the County Subarea Plan than did the

Metro-Lakeside-Jamul segment. The Biological Mitigation Ordinance includes incentives for conservation of land within core and linkage areas.

60(l) The Orange County fee structure is not being contemplated for the San Diego County subarea. The County of San Diego is willing to work with small landowners on a fee structure if it would help small landowners deal with their mitigation issues. The MSCP Plan and County of San Diego Subarea Plan are intended to simplify and reduce the costs associated with both large and small development projects.

60(m) The MSCP Plan does not impose new restriction on agriculture and it recognizes agriculture as a land use that is compatible and even desirable adjacent to preserve lands.

60(n) The implementation of the County Subarea Plan does not require an amendment to the County's General Plan. The County Subarea Plan also does not supplant any elements of the General Plan, but rather provides the mechanism for landowners to comply with the state and federal Endangered Species Acts in an expedited and predictable manner.

60(o) The County has had and will continue to have publicly noticed meetings and hearings on its subarea plan and BMO. See also **Theme Response XXVI, Permit Streamlining.**

60(p) The objectives of the MSCP Plan are listed on page 1-7 of the Draft EIR/EIS. Objective 2 is to "provide a plan for general pubic benefit through open space conservation and access to natural preserves for passive recreation and an improved quality of life, which also would attract new business to the region." In this context, the term quality of life refers to increased open space and access to natural preserves. It is not the purpose of the Draft EIR/EIS to determine whether or not all the stated objectives of the MSCP Plan are met by the proposed project. It is the purpose of the Draft EIR/EIS to evaluate the environmental impacts associated with implementation of the proposed actions.

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Jamul-Dulzura Community Planning Group
PO Box 613
Jamul, CA 91935

19 October 1996
JDCPG6-10-19-1

Supervisor Dianne Jacob, Second District
Board of Supervisors
San Diego County Administration Building
1600 Pacific Highway, Room 335
San Diego, CA 92101-2470

Subj: MSCP Proposed for San Diego County

Dear Supervisor Jacob:

During our 24 September 1996 JDCPG meeting, our planning group voted unanimously (9 FOR, zero against, with no abstentions) to send you this letter providing our comments on the Multiple Species Conservation Plan (MSCP) proposed for San Diego County. The City of San Diego's comments on the MSCP stimulated this letter, thus they, also, have been provided a copy.

The Jamul-Dulzura Community Planning Group (JDCPG) has reviewed the MSCP Plan and the DEIR/ EIS, and provides the following comments for the Board of Supervisors to incorporate into their decision-making process for the MSCP.

We support the intent and purpose of the MSCP, and we appreciate the commitment and effort involved in the plans' preparation. The JDCPG is anxious to see a reasonable plan that will protect the natural resources of the County of San Diego, and assure the residents of our rural community that the proposed plan will not place an unfair financial or regulatory burden on the landowners nor encumber their enjoyment of their property.

We applaud the development of a plan that will protect the natural resources of the area and will preserve the rural character of our community; however, <u>we have concerns about some aspects of the proposed plan</u>. The MSCP creates regulations that are not clearly defined. Who is going to enforce the regulations and how will the regulators be able to discriminate between what "take" has occurred in the past and what has occurred after the implementation of the plan? 60(a)

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Overall, we feel that the citizens of our planning area have not been kept sufficiently informed concerning the MSCP. As a result there is considerable concern that the MSCP has been driven by environmental issues, economic concerns, and political forces outside of our community. For an example, notification of the proposed planning efforts were minimal. Except for the official notifications to the Planning Group, only a few members of this group received any information about the process and opportunities for the general public to participate. The MSCP is a plan that will materially affect the character of this community and the use of the property of our constituency. Local participation should have been included in its development. 60(b)

More should be done to include the citizens and the community in the planning process. Mailings to citizens should be distinctive and very informative; they weren't. The information should be presented in a format that conveys the importance of the message; it wasn't. The notification referred to the San Diego City MSCP; it should include reference to the San Diego County MSCP. As a result many people were mislead into believing that the flier was not relevant to them because they live in the County. Considering the impact of this plan on the citizens of this area, there was not a clear and unambiguous notification of what the MSCP Plan is and how it would affect the small landowners in the county. 60(c)

The plan has undergone many iterations and, when one compares the preliminary planning documents with the final version, the plan has obviously changed significantly. The changes include the boundary of the MSCP plan area, the proposed areas in the reserve area, and the development of a Biological Mitigation Ordinance, to name a few. The reasons for these changes have not been adequately described to the community at large, the individual landowners, nor the Planning Group. 60(d)

The JDCPG is pleased to embrace a plan that uses sound scientific principles on which to develop a habitat planning effort to preserve the natural resources in the county. There are some important assumptions made by the MSCP. These assumptions rely on information and considerations that are not defined and the conclusions in the MSCP have not been clearly described. Some specific examples are: 60(e)

What are State Species of Special concern? There is no definition of the term in the MSCP nor can the statutory definition in the California Department of Fish and Game Code be applied to the provisions and the species covered by the MSCP. 60(f)

What is considered a sensitive species? The plan lists them, but it does not define the term except to say that they are the species listed on the sensitive species list. Every animal and habitat is sensitive to something. 60(g)

Since covered species of the plan are "to be treated as though they are listed." **Does that mean that the provisions of the Endangered Species Act (ESA) will be enforced by the MSCP for these unlisted species under the broad ESA definition of "take"?** 60(g)

What does the term "insignificance" mean in terms of impact to species, habitat or mitigation of impacts? 60(h)

What does monitoring mean? Who will do it, and how will monitoring be done on private property? Who will decide what monitoring will be done? How will the monitors know if they are monitoring the appropriate characteristics of the plan? Or is monitoring a device for Zoning and Land Use Code enforcement to intrude on private property? 60(i)

Enforcement provisions are not defined and could include requiring retroactive code enforcement, and the Implementing Agreement clearly holds the current owner responsible for making corrections. The Implementation Agreement requires the enforcement of local Land Use and Zoning Codes with the threat of Federal Law Enforcement under the Endangered Species Act. **Will it be the case that a landowner who violates a Land Use Regulation or Zoning Ordinance will face prosecution under the ESA because the MSCP links these regulations by the Implementing Agreement?** 60(j)

We strongly support the protection of the natural resources and understand that biological criteria were defined for the goals and objectives of the MSCP; however, we are aware that the boundaries of the plan are determined not by biotic communities but seem to be drawn for the convenience of other political jurisdictions. The Metro-Lakeside-Jamul subarea seems to be what is left over after the other jurisdictions and the development community carved out what they wanted. The provisions of the plan cut arbitrarily through the Jamul-Dulzura Planning Area and as a result it is impossible for us to determine the consequences of the plan if implemented. **How can we of the JDCPG be assured that these politically determined boundaries adequately address the biological and environmental issues that the plan purports to address? Why wasn't the eastern boundary drawn along the boundaries of important biological communities?** 60(k)

The streamlining of project review is a laudable goal and the Jamul-Dulzura Community Planning Group encourages streamlining of the review process. However, the MSCP seems to streamline the processing of plans only for the large developers, who have the resources to do the mandatory biological studies and have large amounts of money budgeted for buying mitigation lands. We understand that in the multiple species plan in Orange County the fee for providing mitigation for impacts is about $50,000.00 per acre. It seems that mitigation and exaction fees for development at this level are destined to prevent small landowners from doing anything. Large development companies can absorb these costs only if they develop high density subdivisions. The 60(l)

development of high density subdivisions, even if they cluster them, is contrary to our vision of the rural character that we wish to foster. 60(l)

Having labored hard and long to preserve the rural character of this area, the JDCPG welcomes the development of an MSCP that encourages the protection of the threatened and endangered species in this county. However, the current MSCP Plan and Implementing Agreement treat agricultural land and impact agricultural activities equivalently to housing developments. Also, it does not appear to recognize the rural character of the Jamul-Dulzura Planning Area, which incorporates viable agriculture as desirable development that helps preserve the rural character of the area. We oppose restrictions on agriculture and other low-impact economic pursuits, which are consistent with the rural character of this community, without sound scientifically-proven justification. Agriculture should be encouraged in the Jamul-Dulzura Planning Area. Prosperous and economically viable agriculture will reduce the pressure for residential development in our area. Requiring mitigation for agricultural activities at the same level as residential development destroys the economic viability of agriculture and may actually encourage residential development over agriculture. 60(m)

The MSCP appropriately identifies the need for planning and the protection of habitats and ecosystems whose beauty enhances the character of our area. However, the Biological Mitigation Ordinance places an undue burden on the citizens that live in the Jamul-Dulzura Planning Area because the developed urban areas did not plan wisely. The MSCP Plan, as presently constituted, subverts the goals and intentions of the General Plan and our Community Plan, which were developed through a process that included the entire community in this area and the adjacent communities. The MSCP calls for the amendment of the General Plan. **Are we to presume that the MSCP planning should supersede all other elements and considerations of the General Plan?** The JDCPG has used the provisions of the General Plan to guide our vision of this community. We have been adamant in our desires to see a completely constituted General Plan. In the past we have criticized projects and proposals that did not comply with the General Plan (i.e., the Tecate Rezoning effort and the lack of an agricultural element in the General Plan). We have expressed our concerns for amending the General Plan to suit the desires of special interest groups. **How can we now embrace the MSCP that will require major amendments to the existing General Plan?** We feel that the revisions necessary to address the concerns of the MSCP can be only done in a new General Plan planning effort, so that all of the elements of the General Plan are addressed in the context of open public debate. 60(n)

We support the MSCP effort and wish to commend the diligence and commitment of those who have crafted the plan, but we are concerned that the planning effort was done lacking sufficient public debate and without appropriate concern for the economic consequences to the small land owner. The role of local planning groups such as ours is to ensure that local regulations and desires of local citizens are incorporated into the planning decisions that effect our community. We are concerned that the MSCP, as presently being written, takes the dialog and decision- 60(o)

making out of the control of the local community. The MSCP delegates the decisions to the Resource Agencies, who do not share our vision for our community nor do they share the same level of concern as the citizens of this community. 60(o)

No one will argue against a plan that promises to improve the quality of life. However, nowhere in the plan, the EIS/EIR, or the Implementing Agreement is "quality of life " defined. **Once defined, how will the plan improve the "quality of life"? Having made the assertion that the plan will improve "quality of life," what will the measure of effectiveness (MOE) be for improved "quality of life" in this plan, and who will measure it and guarantee it?** 60(p)

Sincerely,

Frank F. Hewitt
Chairman

COPY

cc: City of San Diego
Development Services Department
Environmental Analysis Section/Public Projects
1222 First Avenue, 5th Floor
San Diego CA 92101

Department of Planning and Land Use
County of San Diego
Attn: MSCP
5201 Ruffin Road, Suite B
San Diego, CA 92123

61 J. PEUGH, SAN DIEGO AUDUBON, 10/13/96

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61(a) See response to Comment 45(c).

61(b) MSCP Table 3-S, included in the Revisions to the MSCP Plan, January 1997, has been revised to include a consolidated explanation of the rationale for coverage.

61(c) The MSCP Plan, Volume I, includes Figure 3-2 that shows the south San Diego Bay as 75 percent conserved. This area contains saltpan and shallow bay habitats. Table 3-1 shows the Saltpan vegetation community to be preserved 100% (76 out of 76 acres) in the City of Imperial Beach and 99% (136 out of 138 acres) in the City of San Diego. Table 3-3 shows 212 acres out of 235 acres as being preserved in the MHPA, yielding an overall 90% preservation rate. The note at the bottom of Table 3-3 indicates that military lands are included in the total study area acreage but are not included in the MHPA. Thus, the remaining acreage includes 2 acres not within the MHPA and 21 acres (10%) of saltpan which occur in the study area within military lands. Although the City of Imperial Beach is not participating in the MSCP Program, the MSCP Plan has included their 100% conservation of saltpan because they occur on other public lands. The conservation of 99% of the saltpan habitat by the MSCP Plan (excluding Imperial Beach and Military) does sufficiently preserve this habitat. The wildlife agencies are responsible for working with each military base on conservation issues to compliment planning efforts occurring through the MSCP. Table 3-5 shows 100 percent conservation of elegant tern data points (the elegant tern nests in the saltworks area). Although only 75 percent conservation is shown for the area that includes the saltworks, existing wetland regulations will require no net loss of acreage, function and value of the saltpan and shallow bay habitat types, and full compensation for impacts to sensitive and listed species dependent upon the wetland habitats. Take of covered species associated with dike/levee maintenance during the nesting period for water birds would not be provided for in the take authorizations. The 99% conservation rate, excluding military lands, of south bay habitats, combined with the requirements that all wetland impacts be mitigated, will result in the ability of South San Diego Bay to support covered species.

No loss of shallow or deep bay habitat is proposed under the MSCP Plan. The amount of bay habitat conserved by the MSCP Plan is a function of the amount of bay habitat under the participating local jurisdictions land use authority. Uses of bay habitat is primarily under the jurisdiction of the Navy, Port District and State Lands Commission, none of which are participating in the MSCP. Projects within these habitats will be subject to state and federal wetlands regulations. Any actions by non-participating jurisdictions (or parties that are not included within the cities of San Diego or Chula Vista) that could impact open water foraging habitat will be required to seek and obtain individual project approvals for those actions. Therefore, it is appropriate to include the identified bay foraging species in the Covered Species Lists for the Cities of Chula Vista and San Diego.

California brown pelican: The findings are consistent for this species. The EIR/EIS Findings (from Table ES-3) for the brown pelican states that after mitigation, impacts are considered "Less

than Significant" for the proposed project (MHPA). The wildlife agency evaluation for the brown pelican states that protection of roosting and foraging sites is the main management recommendation, and that through working with the military and complying with wetlands regulations, the risk to the species is moderate and hence adequately conserved.

61(d) It is not the responsibility of local jurisdictions to enforce state and federal wetland regulations. Changes to these regulations would be subject to separate environmental review.

61(e) Revised MSCP Table 3-5 included in the Revisions to the MSCP Plan, January 1997, displays the conservation level for vernal pools within the MSCP study area.

61(f) Comment noted. "Salt-works" have significant wildlife habitat value and includes more than just saltpan habitat. The 75% conservation zone applies to the Western Salt operation, but a portion of the ponds (the outermost ponds) are owned by the State Lands Commission and are leased to Western Salt. A total of 603 acres of tidelands and levees/roads at south San Diego Bay are owned by State Lands Commission. The state lands leased to Western Salt Company are subject to an agreement which requires the operations and activities associated with salt production not to adversely affect the wildlife usage of the leased lands. (Lease No. PRC 175.1). In recent years, the lands operated by Western Salt have supported substantial shorebird, seabird and marsh bird species. The Department of Fish and Game intends to pursue a Memorandum of Understanding with the State Lands Commission regarding the leased lands and their importance to the MSCP. In addition, the wildlife agencies have a proposal under consideration to establish a National Wildlife Refuge in south San Diego Bay which would encompass this resource-rich area.

The MSCP Plan, Volume I, includes Figure 3-2 that shows the south San Diego Bay as 75% conserved. Table 3-1 shows the Saltpan vegetation community to be preserved 100% (76 out of 76 acres) in the City of Imperial Beach and 99% (136 out of 138 acres) in the City of San Diego. Table 3-3 shows 212 acres out of 235 acres as being preserved in the MHPA, yielding an overall 90% preservation rate. Footnote number 3 for Table 3-3 indicates that military lands are included in the total study area acreage, but are not included in the MHPA. Remaining are 2 acres not within the MHPA and 21 acres (10%) of saltpan which occur in the study area within military lands. Although the City of Imperial Beach is not participating in the MSCP, the MSCP Plan has included their 100% conservation of saltpan because this habitat occurs on other public lands. The conservation of 99% of the saltpan habitat by the Plan (excluding military) does sufficiently preserve this habitat. The wildlife agencies are responsible for working with each military base on conservation issues to complement planning efforts occurring through the MSCP. See also **Theme Response XVII, Salt Works.**

61(g) The 100% conservation assumption for the referenced salt marsh area incorporated in the MSCP Plan and the City of Chula Vista Subarea Plan reflects the fact that this area would be 100% included within the preserve and that no features of these plans would disturb this area. If existing

conditions result in effects requiring remedial action, such effects would need to be addressed by the appropriate parties.

61(h) The City of Imperial Beach is not currently a participant in the MSCP. Any actions or projects that are proposed by the City of Imperial Beach that potentially impact listed species, wetlands or other regulated species/habitats within the city's jurisdiction will be addressed through individual regulatory permits. Mitigation requirements identified through individual subarea plans will be consistent with the objectives and goals of the MSCP Plan. The City of San Diego has prepared a subarea plan that addresses its portion of the Tijuana River and Estuary. California State Parks and the U.S. Fish and Wildlife Refuge System are participating in the NCCP program and will manage their lands consistent with the MSCP objectives.

Actions taken by Mexico are not subject to local, state or federal regulations, and could not be covered by the MSCP Plan. However, through the International Boundary Water Commission (IBWC), both the United States and Mexican governments are working to reduce the release of untreated effluents into the river and estuary. That project will improve water quality within the river and estuary.

Implementation of the MSCP Plan will result in a level of conservation specified in the Plan.

61(i) The analysis for the regional park was conducted for the approval of conceptual park plan. For future park improvements within the jurisdiction of the City of San Diego, subsequent site-specific CEQA environmental review would be required as detailed plans are considered for funding by the City Council. As a part of this site-specific review, viable corridor width and habitat functions would be addressed.

61(j) As discussed in Section 3.4.2 of the MSCP Plan, designation of a habitat type as significantly conserved simply denotes potential funding mechanisms for conservation of species within those habitats should they be listed in the future. Designation of a habitat type as significantly conserved does not imply a management commitment. Open water is not depicted as a separate habitat type on the generalized vegetation maps included in the MSCP Plan. It is, however, represented within ponds and streams throughout the MSCP study area and these areas of open water habitat, if they are included within the preserve, would be managed in accordance with the requirements of the individual Subarea Plans within which they are located.

61(k) This issue has been clarified in revisions to the MSCP Plan, Volume I, Section 6 included in the Revisions to the MSCP Plan, January 1997.

61(l) The comment incorrectly describes the proposal in the MSCP Plan regarding management on private lands. Active management would occur on lands that are voluntarily dedicated

(transferred in fee title) to an appropriate government agency or non-profit organization or conveyed through a conservation easement. Mitigation lands and lands purchased through public acquisition would also be actively managed. Lands which are not conveyed or dedicated would not be actively managed. Management of lands conserved through easements on private property will be the responsibility of the property owner. The obligation to perform the required management activities will be established through permit subdivision map conditions of approval. Enforcement of permit conditions is the responsibility of the take authorization holder (local jurisdiction). Biological monitoring will occur on all lands included within the preserve. Please refer to **Theme Response IV, MSCP Financing Plan: Regional Source of Funds.**

61(m) See **Theme Response XIX, Preserve Management** and Revisions to the MSCP Plan, Volume I, Section 6.3.1.

61(n) The language in Section 9.8 of the proposed Implementing Agreement is not intended to "minimally satisfy regulations over actually protecting wetlands". The streamlining concept concerning Clean Water Act Section 404 permits relates to the issue of effects to wildlife and wildlife habitat associated with the action subject to a Section 404 permit. The effects to wildlife and wildlife habitat is one of many possible resource issues encountered when processing a Section 404 permit application (as noted by the comment) . The Section 404 permit process could be streamlined by virtue of MSCP Plan implementation having already addressed certain wildlife impacts and having an appropriate mitigation scheme in place. This could represent one less resource issue that needs to be addressed. The MSCP Plan does not grant to local jurisdiction regulatory authority over other resources issues (water quality, flood protection, etc.) under the jurisdiction of the Army Corps of Engineers and Environmental Protection Agency and there is no intent on the part of the wildlife agencies or local jurisdictions to do so under the MSCP.

61(o) The mitigation ratios proposed under the MSCP Plan relate to compensation for wildlife habitat values only. There is no intent for these mitigation ratios to address mitigation which might be required to compensate for potential losses for other wetland functions. Mitigation strategies to compensate for potential losses of other wetland functions would be subject to other regulatory processes.

61(p) Comment noted.

61(q) Comment noted.

61(r) Not addressed.

61(s) Comment noted.

61(t) Comment noted.

61(u) The San Pasqual Valley Plan and the MSCP Plan are consistent and provide for resource protection and conservation.

61(v) Comment noted. The retention of ponds developed for sand and gravel operations will be reviewed during the development and implementation of State Mining and Reclamation Act plans.

61(w) Comment noted.

61(x) The wildlife agencies and applicants share these aspirations and goals for the MSCP. Wetland restoration and revegetation standards must be site specific and therefore will be developed at the time when restoration is proposed or required.

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SAN DIEGO AUDUBON SOCIETY
2321 Morena Boulevard, Suite D • San Diego CA 92110 • 619/275-0557

October 13, 1996

Lawrence C. Monserrate
Development Services Department
Land Development Review Division
City of San Diego
202 C Street
San Diego, California 92101

Subject: COMMENTS ON THE MULTIPLE SPECIES CONSERVATION PLAN PACKAGE

The San Diego Audubon Society will be submitting several comment letters on this document as explained in the letter submitted by Norma Sullivan, the Conservation Chairperson. We strongly commend the concept of protecting at risk species by protecting their habitat in segments that are large enough to be viable and by providing adequate wildlife corridors between the segments.

We wish to submit the following specific comments on the various documents. The comments will be grouped by document title below.

MULTIPLE SPECIES CONSERVATION PLAN, VOLUME 1 (August 1996)

CONSISTENCY WITH SPECIES RECOVERY PLANNING

The objective of the Endangered Species Act is to provide for the recovery and eventual de-listing of endangered species. It is not clear that the MSCP is designed to support this worthwhile objective. We urge that the MSCP documents be augmented to demonstrate that, or assess whether, the conserved areas will be adequate to support populations large enough to satisfy species recovery plans and to facilitate the de-listing of each of the covered species. Table 3-5, SPECIES EVALUATION FOR COVERAGE UNDER THE MSCP, identifies the level of risk to each of the species. This table also should include a statement of the likelihood of eventual recovery and delisting of each of the covered species under MSCP as a measure of whether the species is adequately protected. 61(a)

COVERED SPECIES

There are a number of inconsistencies in the rationale for the selection of the species covered by this Program. We urge that this rationale, and the list itself be carefully evaluated in light of the comments received from the various conservation groups. The final criteria should be whether inclusion will improve the likelihood of recovery for each of the species. 61(b)

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FORAGING AREA FOR LEAST TERNS, ELEGANT TERNS, SKIMMERS, AND BROWN PELICANS

The MSCP lists California Least terns and Elegant terns as covered species. Many of the region's Least Tern nesting areas in Mission Bay and San Diego Bay are marked as being 100% protected. The salt works, where the Elegant terns nest are shown to be 70 to 75% conserved. Table 3-5 states that 100% of the populations are conserved. However on the map showing Conserved Habitat, Figure 3-2, no foraging area in San Diego Bay or Mission Bay is colored as being protected. The populations of these species will not be preserved by just the conservation of nesting areas. foraging areas supporting the nesting areas must also be protected and managed, to some extent, to assure the conservation of these Terns. Similarly, California brown pelicans are listed as a covered species, but their major foraging areas, San Diego Bay and the ocean, are not covered under MSCP. How will these foraging habitats be managed or conserved under the MSCP? 61(c)

The MSCP will allow expedited development outside of the preserve area. Adequate foraging area must be defined and conserved to support the populations anticipated by the recovery plans for all three species. It should be noted that Table 3-3 indicates that 0% of deep bay habitat and only 4% of shallow bay habitat is conserved. These habitats are essential for production of the fish that these covered species depend on as well as for foraging range for the covered birds. A very large portion of the bay foraging area of these three covered species is managed by the Port of San Diego, which is not a participant in the MSCP. As such, it is doubtful that these species should be included in the covered species list without the participation of the Port District in the MSCP.

INTERNAL SUFFICIENCY OF THE MSCP

In several instances (including paragraph 3.2.1. Wetlands) it is assumed that Federal and State wetland protection regulations are adequate to protect habitats required by several of the listed species. These regulations can change. If these regulations are significantly weakened, the species depending on them will be at increased risk. To maintain the level of species conservation stated in the MSCP it is necessary that the current versions of these wetland protections be specifically adopted and enforced by the MSCP jurisdictions if State and Federal regulations are weakened. This protection should be part of the Implementation Agreements. 61(d)

VERNAL POOLS

Several vernal pools species are included in the covered species list, but the data for vernal pools are not included in tables 3-1 or 3-3 that describe the acres of all of the other covered habitat types. We urge that these tables be modified to specifically include habitat conservation data on vernal pools. Vernal pool habitat has experienced one of the highest levels of loss in our region. There is a general opinion that adequate amounts of vernal pools have not been conserved in the MSCP to protect the viability of the species that they support. 61(e)

SALTPAN HABITAT

Saltpan is listed as a sufficiently covered habitat in Section 3.4, but no data for saltpan is included in tables 3-1 or 3-3. There is very little of the region's historical saltpan remaining in the planning area due to previous development. It is very hard to imagine that the viability of all species that depend on saltpan habitat can considered to be sufficiently preserved with such a small portion remaining.

Table 3-3 lists saltpan habitat as being 90% conserved. From figure 3-2 it appears that a significant portion of the conserved saltpan is in the Western Salt ponds in South San Diego Bay. If that this the saltpan mentioned there are several concerns. It is understood that the salt works have immense wildlife support value for many insect invertebrate and bird species. However the habitat contained in the salt works is not primarily traditional saltpan habitat. They differ from natural saltpan habitat in many ways including the type of use made by nesting birds, the type of foraging that they support, and the way that they should be managed. Managed salt ponds should be identified as a separate and unique habitat type in the presentation of covered habitat, the need for predator management, maintenance and rehabilitation of dikes, and in management agreements in general. Figure 3-3 identifies the salt works as being 75% conserved. Does that mean that the 90% is conserved at a 75% rate. If so, that would suggest that 68% is actually conserved. 61(f)

CHULA VISTA

The Chula Vista Wildlife Preserve and other Coastal and subtidal portions of Chula Vista are shown on figure 3-2 as being 100% conserved. The Chula Vista Wildlife Preserve saltmarsh area is eroding away and remedial action is needed. But, we are not aware of any plans to remediate this loss of habitat. This property is under the jurisdiction of the Port of San Diego, which is not a participant in the MSCP. The conservation of this area can not be assured by the MSCP as there will be no Implementation Agreement with the Port. 61(g)

IMPERIAL BEACH

Figure 3-2 shows the western and part of the northern portion of the Tijuana Estuary as being 100% conserved. Some of this area is multifamily residential along Seacoast Drive. Figure 3-2 shows that this area is within the jurisdiction of the City of Imperial Beach. Imperial Beach is not a participant in the MSCP. Much of the area in question is under the ownership of the US Fish and Wildlife Service and the California Department of Fish and Game., but planning and land use jurisdiction rest with Imperial Beach which has no agreement with the MSCP. Adjacent development will not be required to satisfy the guidelines specified by the MSCP plan such as prohibitions of urban runoff being released into the preserve, limitations on lighting, etc. Seventy three percent of the watershed of the Tijuana River valley and Estuary is in Mexico. Sediments and water quality can not be managed. The International Wastewater Treatment Plant is considering protracted live stream discharge of partially treated effluent into the valley. How can 100 percent habitat conservation can be assured under these circumstances. 61(h)

61

OTAY VALLEY

The Otay River Valley is an important habitat corridor and riparian habitat. It is shown as 70 to 75% conservation in Figure 3-2. The development plans for the Otay River Valley Regional Park include large numbers of playing fields in area that would have been riparian habitat. If current park development plans are maintained, the corridor and habitat functions of this area will be considerably less than stated. This seems to conflict with the guidelines in Section 6.2.1, Public Use, (page 6-2) of Volume 1, that state that active recreation facilities are generally incompatible in the preserve area. 61(i)

OPEN WATER

Paragraph 3.4.2 lists open water as being a community that is significantly covered. By what means is open water habitat to be managed. From figure 3-1 it does not appear that any of the participating jurisdictions in MSCP contain any open water habitat. Is this a subarea that will be managed by the Federal Government? If so is there a subarea plan and implementation agreement that will protect open water habitat and the species that depend on it? What open water habitat will be conserved? What percent conservation is required to achieve the programs objectives or is expected? 61(j)

MINERAL EXTRACTION

Section 6.2.4 Mineral Extraction begins stating the permanent impacts that sand, rock and gravel extraction have on wildlife habitat. The next paragraph states that existing operations inside and outside of the preserve may continue. It then proceeds to discuss facility expansion and new extraction facilities. For the impacts stated, and from observations of extraction operations in the region, it is clear that sand, rock, and gravel extraction are not appropriate within the preserve. They directly destroy critical habitat and cause erosion and siltation damage downstream. The road use and infrastructure needed to support them is very destructive to wildlife and to habitat. Within the preserve, leases or permits should not be extended, facilities should not be allowed to enlarge, no new leases should be granted, and opportunities should be sought to buy out existing leases. 61(k)

Outside of the preserve, permits for any extensions, expansions, or new facilities should fulfill the MSCP's principle of the preservation of the function and value of all wetland habitats, inside or outside the preserve.

PRESERVE MANAGEMENT ON PRIVATE LANDS

In paragraph 6.3.3 it is stated that the 75% of private land that is set aside for habitat by land use regulation within the preserve will not be actively managed for the MSCP. This land is a significant portion of the preserve. Active management is required for all habitat land within the preserve, especially control of feral animals, invasive vegetation, off road vehicle use, other unauthorized recreational use, etc. Without systematic management it is misleading to identify this land as being conserved to a high level. Inappropriately managed private property will not only not provide adequate habitat value, it will also tend to cause degradation, through habitat 61(l)

61

fragmentation and edge effects, to adjacent managed preserve areas. A better management solution must be developed for these lands. 61(l)

PREDATOR AND EXOTIC SPECIES CONTROL

Paragraph 6.3.8 (page 6-9) states some of the impacts of feral animals on sensitive species. These impacts are very likely to have a major influence on whether many of the various habitat communities in the preserve system will actually support the covered species. Feral cats, pet cats, and pet dogs will be an important problem, but they are not discussed in the list of management measures to be taken. The management of the preserve must include a substantial systematic, not just "limited", trapping and effective deterrent regulations to keep pet owners and advocates of "feral cat management" from misusing the preserve at the expense of the wildlife. 61(m)

SAN DIEGO IMPLEMENTING AGREEMENT

LOCAL AUTHORITY FOR SECTION 404 PERMITS

According to Section 9.8, Other Regulatory Permitting, A. Other Permits, the City of San Diego will "identify the least burdensome measures required or recommended, if any, to ensure consistency with the federal policy of no net loss of wetland functions and values..." The language of this statement suggests that the emphasis will be on minimally satisfying regulations over actually protecting wetlands. This minimal level of wetlands protection would not support the protection of the covered wetland species. We urge that language be added such as: "...to ensure the adequate protection of wetland habitat and to ensure consistency with the federal policy of..."

Later, the same paragraph states that the agencies will coordinate "to further streamline the process for issuance of permits pursuant to Section 404 of the Clean Water Act for those projects that are in conformance with the MSCP, the Subarea Plan, and this Agreement." This statement raises concern for the protection of our wetlands. Wetlands are important for more reasons than just the protection of endangered species.

The wetlands of our region serve many functions besides providing habitat for recognized at-risk and endangered species. A few are: protection of people and property from storm and flood damage, improving both surface and ground water quality, improving ground water recharge, erosion control, habitat for game and common wildlife, nurseries for fish, and for recreation and scenic value. Our region has lost more that 90% of its wetlands. We are seriously impacted by the loss of each of these benefits. These other benefits of wetlands are not covered by "the MSCP, the subarea plan, and this agreement". It is not appropriate that the MSCP should reduce the effectiveness of the protection of our region's wetlands. Also, it is not clear that the local government agencies have the technical personnel, resources, and institutional experience to replace the functions of the regulatory agencies. If any "streamlining" of 404 is implemented, a high level of oversight, interaction, and responsibility from state and federal regulatory agencies should be maintained. 61(n)

The 404 process works to assure that a project avoids degrading wetlands, seeks to minimize unavoidable impacts as much as is practicable, and requires adequate mitigation for unavoidable impacts. This is an essential process. Any streamlining should completely satisfy that conceptual sequence. There should be a clear procedure for the Federal Government to intervene, suspend, or to rescind, the local issuance of wetlands permits if local actions do not adequately protect local wetlands. 61(n)

DRAFT CITY OF SAN DIEGO BIOLOGICAL GUIDELINES

MITIGATION FOR WETLAND IMPACTS

In paragraph III. B. 1. a. we commend the intent to require full mitigation of wetlands functions and values for projects where impacts can not be avoided. However the mitigation ratios listed in Table 1 are inadequate to satisfy that intent. The creation of wetland habitat as a means of mitigation typically does not provide the full species diversity of a natural wetland. As such, the created wetland is less likely to survive environmental fluctuations and is very unlikely to replace the functions and values of a natural wetland, even a degraded one. As a result mitigation ratios involving created wetlands must be high, and monitoring and maintenance responsibility must be extended substantially. 61(o)

MANAGEMENT OF AREAS IMPACTING WETLANDS

In paragraph I. B. 3. (pg. 17), Management Element there is no discussion of managing land in the watershed of wetlands to prevent loss of wetland function and value. If this issue is not addressed, there is little likelihood that conserved wetlands will be able to provide the wildlife support value needed for the MSCP to achieve its biological goals. Of special importance are preventing year-round drainage into riparian areas and wetlands that would normally not experience it. Additionally, highly erosive rain-flows from developed areas must be reduced to more natural flow velocities before they enter natural creeks, canyons, or wetlands. Also, runoff that is contaminated or carrying unnatural sediment loads must be cleaned before being directed into preserve areas or wetlands outside of the preserve area. Management of the preserve system must extend to the watershed that impacts the preserve and other wetlands for biological goals to be met. We were please to see the discussion of these items in the San Diego City Subarea Plan, Section 1.4.3, Page 51. 61(p)

DEVIATIONS

In section IV. (pg. 19) standards for Deviations are established. It is important that all applications for Deviations be reviewed by the relevant regulatory agencies before the application goes to the City Council for approval. The information resulting from the agency review should then be provided to the Council before they consider the issue. 61(q)

DRAFT AMENDMENTS TO GENERAL PLAN AND COMMUNITY PLANS

FLOODPLAIN PROTECTION

The discussion of Floodplain and Hillside regulations on page 306a lists the purposes and intents for regulating floodplain land use as protecting "the public 61(r)

health, safety, and general welfare". It continues that these regulations "also tend to conserve the environmentally sensitive qualities of floodplains." We urge that this be modified to include "protection of water quality and erosion management" in the list of purposes and intents. The benefits of protecting the natural infrastructure value of floodplains to the public must be considered a goal, not an incidental byproduct. 61(r)

In discussing floodplain zoning on page 306a the following statement is made: "Such plans should distinguish between urban (e.g. Mission Valley) and non urban systems (e.g. San Dieguito Valley)." For all of the purposes quoted in the previous paragraph this distinction should not be attempted. Mission Valley should be an important urban habitat area. It also should be a viable corridor between the wildlife rich upper San Diego River (Mission Trails Park, etc.) and the wildlife rich mouth of the San Diego River (including the Mission Bay Park's Southern Wildlife Refuge) as it was just a few decades ago. Future planning should work to eliminate the few habitat corridor discontinuities in Mission Valley.

MSCP VOLUME II: MSCP SUBAREA PLANS (AUGUST 1996)

Please note that the comments on general principles in the City of San Diego Subarea should be applied where appropriate throughout the MSCP area.

PRESERVE GUIDELINES FOR OTAY MESA

Item A7 (page 7), the proposal to mitigate impacts to vernal pools by transplanting species, either plant or animal, into pre-existing pools with existing populations of the same or different species should be carefully considered. In general it seems ill advised on the basis of genetic considerations to do so, and should be reviewed by persons qualified by virtue of having carried out and published scientific research in the field. 61(s)

PRESERVE GUIDELINES FOR CARMEL VALLEY (Page 25)

The co-occurrence of three freeways, the railroad, a new pump station, and an area of approved intensive development within or immediately adjacent to the Los Penasquitos Lagoon have obviously had severe impacts on the functioning of the lagoon. To offset the gauntlet of obstructions to wildlife movement and wetland functions and to reduce further impacts to the lagoon, it is recommended that serious consideration be given to abandoning Sorrento Valley Road as a vehicular thoroughfare, and converting it into a pedestrian/bicycle route. This approach would significantly reduce short-term impacts due to construction needed to upgrade Sorrento Valley Road, and would help to reduce the long-term cumulative and edge effects on the lagoon. 61(t)

PRESERVE GUIDELINES FOR LAKE HODGES/SAN PASQUAL VALLEY (Page 30)

Many concerns regarding the San Pasqual Valley may have been addressed in the San Pasqual Valley Plan. However, from the map included with this document (Fig. 7) it is clear that some stretches of the Santa Ysabel Creek are afforded little to no protection, in spite of its importance as a riparian habitat and wildlife corridor. Since this is a planning document it would seem wise to designate intended uses on City land, such as expanded riparian and transition zone buffer habitats, as part of the 61(u)

Preserve now. This has been done in many other places where disturbed habitat targeted for restoration is already included in the Preserve. 61(u)

While the use of a low-flow pilot channel is not necessarily counter to biological needs of the Preserve in this area, it is certainly a project which must be executed carefully, and with a clearly limited purpose. Any pilot channel must be ecologically compatible with the Preserve; we suggest that any maintenance be conducted at times of year to avoid breeding birds and other sensitive resources, and that if maintenance is necessary, vegetation in the channel be selectively managed to provide habitat year-round (for example, Least Bell's Vireo's may respond favorably to habitat manipulated to provide the maximum number of relatively young willows). Seasonal flooding is part of the cycle of a river valley, and maintains the soil's fertility; therefore, flooding needs to be accommodated as part of the natural and agricultural systems. By allowing fields to flood occasionally, and the stream channel to meander, erosive forces can be kept to a minimum, and the groundwater can be recharged at a maximal rate. (The section on Flood Control, p. 50, is obviously pertinent.) However, natural and desirable flooding of the valley may be harmful to the ecosystem if agricultural lands harbor pollutants which then drain into the riparian system. Measures should be taken immediately to eliminate toxic chemical and nutrient inputs to San Pasqual Valley agricultural areas, to eliminate existing pollutant loads on the land, and to manage runoff, with the ultimate goal of eliminating all negative effects upon surface and groundwater quality in the Preserve.

LAND USE CONSIDERATIONS/GENERAL PLANNING/MINING (Pages 49 & 50)

(Item 1) As mentioned in the comments on Volume 1, sand mining is incompatible with Preserve function and no expansions or extensions should permitted. Opportunities should be sought to reduce or terminate and restore the sites of existing operations where possible.

(Item 4) Man made ponds resulting from mining activities can be detrimental to the riparian ecosystem by allowing breeding of exotic species and excluding native species from potential breeding, foraging, and sheltering habitat. Toxicity problems can result from these ponds. These negative impacts on native wildlife should be carefully considered before allowing these ponds to be left as part of a site restoration. 61(v)

LAND USE ADJACENCY GUIDELINES/DRAINAGE (Page 51)

(Item 1) The list of materials that should not be released into the Preserve is comprehensive, but does not explicitly mention freshwater or sediment. Freshwater input at inappropriate times and in increased volumes may be highly detrimental to various ecosystems which do not naturally experience it, such as small or intermittent flowing riparian systems and salt or brackish marshes, and should therefore be prevented. Increased rates of sedimentation and scouring result when watersheds become less permeable due to development, and have rapid and detrimental impacts on many types of downstream systems, including mature oak riparian forests and tidal saltmarshes. Detention basins not only adjacent to, but also within the watershed of, the Preserve, should therefore: (1) contain all dry weather flows and allow them to 61(w)

61

evaporate or to percolate into the watertable, and (2) retain storm water runoff that exceeds the volume and velocity that would naturally flow off fully permeable land before development. 61(w)

GENERAL MANAGEMENT RECOMMENDATIONS/RESTORATION (page 55)

"Wetland restoration/revegetation proposals are subject to permit authorization by federal and state agencies." While these may be sufficient at the moment to achieve the species' protection and recovery goals of the MSCP, what recourse is there if these agencies' standards are altered such that restored habitat functional quality and/or quantity are diminished? We recommend that specific standards for wetland restoration and revegetation be incorporated into the MSCP.

61(x)

Again, we support the concept of the MSCP, but are concerned that the protections offered may not be adequate to satisfy to protect the biodiversity of our region. We value the immense effort that has been expended to get the program this far. We urge that the problems pointed out by San Diego Audubon's comment letters, and those of other conservation organizations be seriously considered in the final stages of the development of the Program. It is vital that the best scientific information and problem solving resources be used in this final stage to cause this program to satisfy its wildlife, economic, and quality of life objectives.

Sincerely,

James A. Peugh

James A. Peugh
Past President

62 J. LUIS FLORES-SILVA, 10/12/96

R

62(a) Refer to **Theme Response III, Economic Impacts and Impacts on Population and Housing.** See also response to Comment 64(b).

62

SAN DIEGO CA., OCTOBER 12, 1996.

FROM: J.LUIS FLORES-SILVA
2822 CORONADO AVE.
SAN DIEGO CA 91154-2146

TO:MULTIPLE SPECIES CONSERVATION PROGRAM
C/O CITY OF SAN DIEGO
600 B STREET, SUITE 500
SAN DIEGO CA. 92101

DEAR SIR:

I WRITE TO STATE MY OPOSISTION TO THE EIR/EIS WHICH DEMAGES THE VALUE OF MY LOTS.

I AM A W II VETERAN OF 79 YEARS OF AGE. WE ACQUIRED THE LAND WITH MANY SACRIFICES LON AGO.

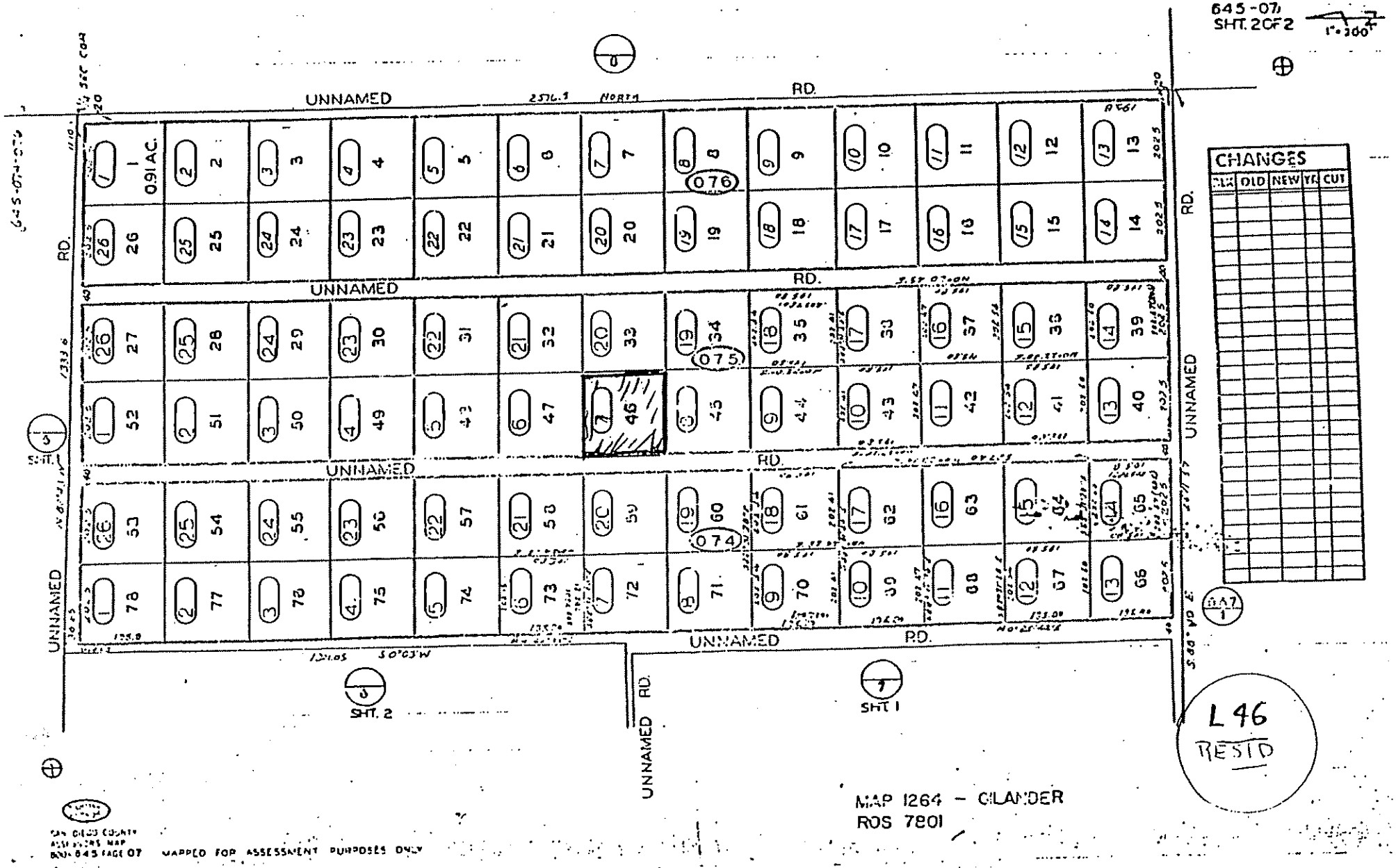
THE LOTS:
a) LOT #46 OILANDER
MAP No. 001264
DOCUMENT #385208 62(a)

b) LOT #74 BELVIDERE
MAP No. 001267
DOCUMENT #101700

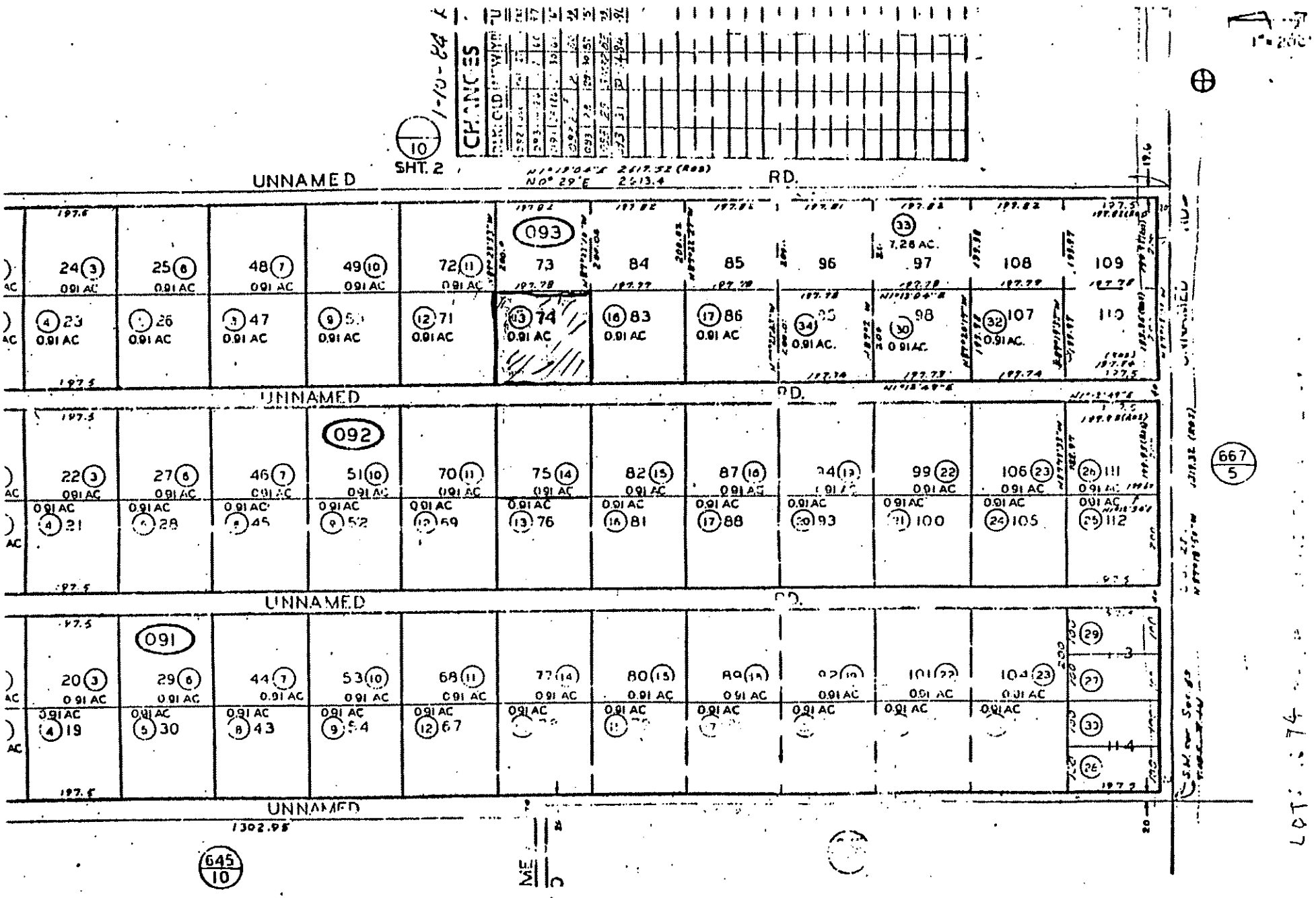
SINCE WE PURCHASED THE LAND WE HAVE ONLY SEEN PROOBLEMS. WITH THIS NOTICE WE SEE MORE PROBLEMS. BECAUSE YOU HAVE DESTROIED THE VALUE OF OUR LAND, YOU SHOULD BUY IT. WE LOOK FORWARD TO YOUR RESPONSE.

SINCERELY

J. LUIS FLORES-SILVA


645-07
SHT. 2 OF 2
1" = 300'
UNNAMED RD.
UNNAMED RD.
UNNAMED RD.
UNNAMED RD.
UNNAMED RD.
UNNAMED RD.
UNNAMED RD.
0.91 AC.
076
075
074
SHT. 1
SHT. 2
SHT. 1
CHANGES
BLK
OLD
NEW
YR
CUT
L46
RESID
MAP 1264 - GILANDER
ROS 7801
SAN DIEGO COUNTY
ASSESSORS MAP
BOOK 645 PAGE 07
MAPPED FOR ASSESSMENT PURPOSES ONLY

62



ASSESSMENT PURPOSES ONLY

ROS 9169

"While this plat is believed to be correct, the company assumes no liability for any loss occurring by reason of reliance thereon."

62

21

MAKE CHECK PAYABLE TO PAUL BOLAND, TAX COLLECTOR

1994 TO PAY 1st INSTALLMENT

SEND THIS STUB WITH YOUR PAYMENT

ST25 645 075 07 00 08070

23.59 A
259.56 B
495.53 C

THIS INSTALLMENT AMOUNT ⟶ ****235.97

DELINQUENT AFTER DEC. 10, 1994

FLORES-SILVA J LUIS
2822 CORONADO AVE
SAN DIEGO CA 92154

ENTER MAIL ADDRESS CHANGE

01000023597645075070010000235976450750700 73 HH

2

MAKE CHECK PAYABLE TO PAUL BOLAND, TAX COLLECTOR

1994 TO PAY 2nd INSTALLMENT

SEND THIS STUB WITH YOUR PAYMENT

ST25 645 075 07 00 0807

33.59 D
269.56 E
529.12 F

THIS INSTALLMENT AMOUNT ⟶ ****235.9

DELINQUENT AFTER APRIL 10, 1995

TO PAY BOTH INSTALLMENTS BY DEC. 10, 1994 SEND BOTH STUBS ALONG WITH YOUR PAYMENT OF 471.94

FLORES-SILVA J LUIS
2822 CORONADO AVE
SAN DIEGO CA 92154

ENTER MAIL ADDRESS CHANGE

02000023597645075070020000235976450750700 71 HH

PLEASE FORWARD THIS BILL TO NEW OWNER IF PROPERTY HAS BEEN SOLD

6450750700
FLORES-SILVA J LUIS
2822 CORONADO AVE
SAN DIEGO CA 92154

1994

SECURED PROPERTY TAX BILL
COUNTY OF SAN DIEGO STATE OF CALIFORNIA
FISCAL YEAR JULY 1, 1994 TO JUNE 30, 1995

PAUL BOLAND, COUNTY TAX COLLECTOR

1600 PACIFIC HIGHWAY, ROOM 162
SAN DIEGO, CA 92101-2474

PARCEL NUMBER				TAX RATE AREA
645	075	07	00	08070

D48436 046134 01724

YOUR TAX DISTRIBUTION

AGENCY	BASE	RATE	TAX AMOUNT
1% TAX ON NET VALUE		1.00000	4182
VOTER APPROVED BOND DEBT			
SAN DIEGO CITY	NET	0.00834	34
ELEMENTARY SCHOOL	NET	0.05032	210
HIGH SCHOOL	NET	0.00000	0
OTHER EDUC PURPOSES	NET	0.00000	0
METRO WATER DISTRICT	NET	0.00890	37
COUNTY WTR AUTHORITY	NET	0.00135	5
TOTAL ON NET VALUE		1.06891	4470
FIXED CHARGE / BENEFIT FEE			
CO MOSQUITO/RAT CTRL	FUND#511911		33
MWD WTR STANDBY CHRG	FUND#672675		115
CWA WTR AVAILABILITY	FUND#675418		100
TOTAL AMOUNT			4719

PROPERTY ADDRESS:

DESCRIPTION OF PROPERTY:
LOT 46

SUBDIVISION NAME:
OILANDER

MAP NO:
001264

DOCUMENT NO:
385208

DOCUMENT RECORDING DATE:
10/11/84

OWNERS' NAMES OF RECORD MARCH 1, 1994:
FLORES SILVA J LUIS

DESCRIPTION	VALUES AND EXEMPTIONS
LAND	$ 41825
IMPROVEMENTS	41825
TOTAL L & I	
PERSONAL PROPERTY	
EXEMPTIONS:	
HOMEOWNER'S	
OTHER	
NET TAXABLE VALUE	$ 41825

	1st INSTALLMENT 10% PENALTY AFTER DEC. 10, 1994	2nd INSTALLMENT 10% PENALTY + $10 COST AFTER APRIL 10, 1995	TOTAL TAX PENALTIES APPLY WHEN SHOWN
TAX ⟶	235.97	235.97	471.9
10% PENALTY			
COST			
TOTAL			471.96

TAX PAYMENTS 236-2424 ADDRESS CHANGES 531-5556 VALUATION 531-5781 AUTOMATED 24 HOUR PAYMENT INFORMATION

1

MAKE CHECK PAYABLE TO PAUL BOLAND, TAX COLLECTOR

1994 **TO PAY 1st INSTALLMENT**

SEND THIS STUB WITH YOUR PAYMENT

ST23 646 093 13 00 08213

27.87 A
306.60 B
585.33 C

THIS INSTALLMENT AMOUNT → ****278.73

DELINQUENT AFTER DEC. 10, 1994

FLORES-SILVA J LUIS
2822 CORONADO AVE
SAN DIEGO CA 92154

ENTER MAIL ADDRESS CHANGE

01000027873646093130010000278736460931300 61 dd

2

MAKE CHECK PAYABLE TO PAUL BOLAND, TAX COLLECTOR

1994 **TO PAY 2nd INSTALLMENT**

SEND THIS STUB WITH YOUR PAYMENT

ST23 646 093 13 00 08213

37.87 D
316.60 E
623.20 F

THIS INSTALLMENT AMOUNT → ****278.73

DELINQUENT AFTER APRIL 10, 1995

TO PAY BOTH INSTALLMENTS BY DEC. 10, 1994 SEND BOTH STUBS ALONG WITH YOUR PAYMENT OF 557.46

FLORES-SILVA J LUIS
2822 CORONADO AVE
SAN DIEGO CA 92154

ENTER MAIL ADDRESS CHANGE

02000027873646093130020000278736460931300 69 dd

PLEASE FORWARD THIS BILL TO NEW OWNER IF PROPERTY HAS BEEN SOLD

6460931300
FLORES-SILVA J LUIS
2822 CORONADO AVE
SAN DIEGO CA 92154

1994

SECURED PROPERTY TAX BILL
COUNTY OF SAN DIEGO STATE OF CALIFORNIA
FISCAL YEAR JULY 1, 1994 TO JUNE 30, 1995

PAUL BOLAND, COUNTY TAX COLLECTOR

1600 PACIFIC HIGHWAY, ROOM 162
SAN DIEGO, CA 92101-2474

PARCEL NUMBER				TAX RATE AREA
646	093	13	00	08213

D48436 046134 01725

YOUR TAX DISTRIBUTION

AGENCY	BASE	RATE	TAX AMOUNT
1% TAX ON NET VALUE		1.00000	48754
VOTER APPROVED BOND DEBT			
SAN DIEGO CITY	NET	0.00834	407
ELEMENTARY SCHOOL	NET	0.05032	2453
HIGH SCHOOL	NET	0.00000	00
OTHER EDUC PURPOSES	NET	0.00000	00
MUNICIPAL WATER DIST	NET	0.00300	146
METRO WATER DISTRICT	NET	0.00890	433
COUNTY WTR AUTHORITY	NET	0.00135	65
TOTAL ON NET VALUE		1.07191	52258
FIXED CHARGE / BENEFIT FEE			
CO MOSQUITO/RAT CTRL	FUND#511911		338
WATER AVAILABILITY	FUND#665511		1000
MWD WTR STANDBY CHRG	FUND#672675		1150
CWA WTR AVAILABILITY	FUND#675460		1000
TOTAL AMOUNT			55746

PROPERTY ADDRESS:

DESCRIPTION OF PROPERTY:
LOT 74

SUBDIVISION NAME:
BELVIDERE

MAP NO:
001267

DOCUMENT NO:
101700

DOCUMENT RECORDING DATE:
03/20/84

OWNERS' NAMES OF RECORD MARCH 1, 1994:
FLORES SILVA J LUIS

DESCRIPTION	VALUES AND EXEMPTIONS
LAND	$ 48754
IMPROVEMENTS	
TOTAL L & I	48754
PERSONAL PROPERTY	
EXEMPTIONS:	
HOMEOWNER'S	
OTHER	
NET TAXABLE VALUE	$ 48754

	1st INSTALLMENT 10% PENALTY AFTER DEC. 10, 1994	2nd INSTALLMENT 10% PENALTY + $10 COST AFTER APRIL 10, 1995	TOTAL TAX PENALTIES APPLY WHEN SHOWN
10% PENALTY COST TOTAL	278.73	278.73	557.46

[illegible]	DOROTHY CHILTON	DEWEY DAVISSON	CLARENCE DARBY	JOSEPHINE COSENTINO	JOSEPHINE COSENTINO
8 43 CLARA DAVISSON	7 44 CLARA DAVISSON	8 45 DEWEY DAVISSON	7 46 SUE WALLS (0 92)	8 47 DEWEY DAVISSON	7 48 CURTIS WATSON
9 54 CLARA DAVISSON (0 91)	10 55 CLARA DAVISSON	9 53 DEWEY DAVISSON	10 51 DEWEY DAVISSON	9 50 CURTIS WATSON (0 93)	10 49 CURTIS WATSON
12 61 DOROTHY CHILTON	11 68 DOROTHY CHILTON	12 69 GEORGE GILDRED	11 70 GEORGE GILDRED	12 71 CURTIS WATSON	11 72 CURTIS WATSON
13 78 ROBERT [illegible]	14 77 [illegible] JACOB	13 76 JOHN THON	14 75 DEWEY DAVISSON	13 74 C. WEESNER	[illegible] 73 [illegible]
16 79 AGNES EVANS	15 80 [illegible]	16 81 JOHN THON	15 82 MATTIE DAVISSON	16 83 MATTIE DAVISSON	84
17 90 DASIE STONEY	18 89 DEWEY DAVISSON	17 88 JOSEPH KITCHEY	18 87 MATTIE DAVISSON	17 86 MATTIE DAVISSON	85
20 91 DEWEY DAVISSON	19 92 DASIE STONEY	20 93 MARY WIRTH	19 94 DELLA KIPP	95	96
21 102 JOSEPH KITCHEY	22 101 ARTHUR SORENSON	21 100 DEWEY DAVISSON	22 99 DEWEY DAVISSON	27 98	97
24 103 ARTHUR SORENSON	23 104 [illegible]	23 105 ERNEST LLOYD	23 106 ATHNETT	107	108

CITY OF

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63 W. STEVENS, WILLIAM G. STEVENS, 10/17/96

R

63(a) The comment is noted. It is acknowledged that the Draft EIR/EIS is a complex document that addresses a wide variety of actions and alternatives. Guideposts have been included in the document to explain its organization and improve readability. The 24 page Executive Summary outlines the highlights of the document. The actions addressed in the document are described on pages 1-11 through 1-14. Section 4.1, and Table 4.1-1, again summarize the actions addressed in the document and outline the format of the analysis of environmental consequences. In addition, internal references are included in the document to guide the reader to analysis of significance and mitigation statements following the overall impact analyses. See **Theme Response XV, Document Organization.**

63(b) Section 14.1 of the Implementing Agreements requires that each participating local jurisdiction would continually account, by project and cumulatively, for the amount and location of habitat acreage (by habitat type) lost and preserved within the subarea, including acres conserved within the MHPA and acres committed to land development both within and outside of the MHPA. The results of this accounting would be compared to the objective implementation criteria in the MSCP Plan and the Subarea Plan to assure that adequate progress toward implementation of the MSCP Plan and the Subarea Plan is being achieved and that habitat preservation is proceeding in rough step with development. Pursuant to 50 CFR 13.45 of the Implementing Regulations for the federal Endangered Species Act and Section 14.2 of the Implementing Agreements, the wildlife agencies would require all jurisdictions to submit an annual report on all activities conducted under their take authorizations to ensure compliance with the terms and conditions. This is a public report and would be made available upon request. Public review of this report would be at the discretion of the individual jurisdictions. In addition to this annual report, every three years the participating local jurisdictions would issue a MSCP status report and hold public hearings to receive public comment (see Section 14.4 of the Implementing Agreements). This MSCP status report would be accompanied by a biological monitoring report prepared by the wildlife agencies and a preserve management report submitted by the managers of each preserve.

63

October 17,1996

City of San Diego
Development and Environmental Planning Division
Environmental Analysis Section/Public Projects
1222 First Avenue, 5th Floor
San Diego, CA 92101

Attn: John Kovac, Senior Planner

re: "MSCP"

Mr. Kovac;

I have spent the last evening scanning the EIR/EIS and executive summary of the "MSCP".
I have two comments that may be pertinent to this project.

1. At its present stage it is nearly in comprehensible to any one other than some one presently involved in this project or some one like a student who has been given the task of understanding this project. **63(a)**

2. I think the project needs a sunset clause in it to ensure periodic review of the project's progress. This review needs to happen oftener than the 50 year financing period. Maybe it should happen every 10 years or when ever a city or agency exercises it's "pull out option". **63(b)**

Yours Truly;

William G. Stevens

William G. Stevens
P.O. Box 2157
Julian, CA 92036

64 THERESA VASQUEZ, 10/14/96

R

64(a) The MSCP Plan states as a goal that "Private development exactions should not be increased over existing requirements" (MSCP Plan, Volume I, p. 4-1). See also **Theme Response V, Taking of Private Property.**

64(b) Under the MSCP Plan, public agencies would acquire privately owned habitat land only from willing sellers. Owners who do not wish to sell their property may develop the property subject to local land use regulation and environmental review, which may include avoidance or setting aside of some habitat areas.

VASQUES
5138 PACIFICA DR.
SAN DIEGO, CAL 92109
(619) 273-1246

64

ATTENTION : [redacted] FAX 533-4267
Mr. John Kovac, Senior Planner, Dev. & Environmental Plann

Date : October 14, 1996

RE : EIR Assessors Parcels: 310-010-09 & 10
owned by Paul & Carol Distabile
Lee & Florence Taylor
Horace & Theresa Vasques

I represent the owners of the above referenced property which we purchased in June 1980.

On Friday, Oct 11, it came to my attention that the deadline for response comments to an EIR that may affect our property are due by Oct. 15.

We did not receive notice of this opportunity to comment. I understand that the report requiring comment is voluminous. Since I will be unable to review the document, my comments will not be specific. I wish to go on record with general comments that I hope will be considered by anyone who is involved in legislating regulations dealing with privately held property.

PLEASE CONSIDER THE IMPACT THAT RESTRICTIVE RULINGS HAVE ON PROPERTY OWNERS, PARTICULARLY THE SMALL PROPERTY OWNER.

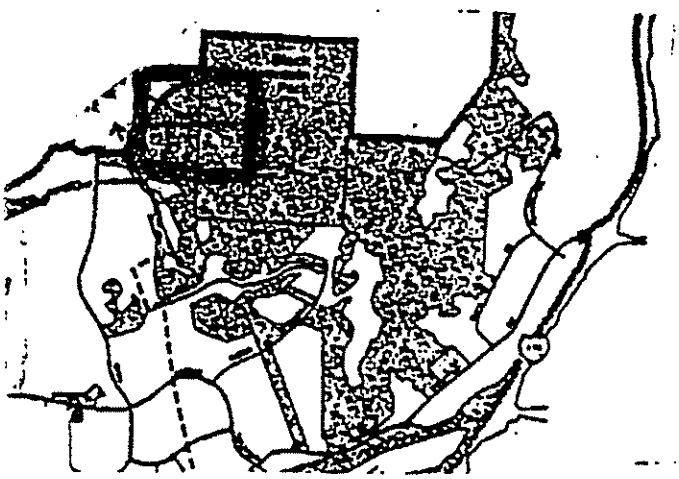
We agree that the environment needs to be protected and we want to cooperate within reason. Protecting the environment is the responsibility on every individual. The Nation must share the burden, not just the property owner. 64(a)

We paid for our property and have been paying taxes on it for the past 16 years. It is unfair that we bear the full burden to benefit the total population.

FUNDS MUST BE MADE AVAILABLE TO MAKE RESTITUTION TO THE PROPERTY OWNER BEFORE SETTING ASIDE PROPERTIES FOR ENVIRONMENTAL PURPOSES.

Please address this issue in your document if you have not already done so. 64(b)

Thank you for your attention.



Theresa Vasques

cc: Tom Story
FAX 236-6478

65 R. D'SPAIN, DESCANSO SPONSOR GROUP, 10/20/96

65(a) The referenced statement on page 4-11 of the MSCP Plan simply describes the Otay-Sweetwater Planning Area portion of the San Diego National Wildlife Refuge. This discussion is not intended to imply that Otay Valley Regional Park uses would be incorporated in the MSCP preserve. Potential uses in the Otay Valley area are depicted on the City of Chula Vista, County of San Diego (South County segment), and City of San Diego Subarea Plans, and in Figures 2-5, 2-12 and 4.3-4 of the Draft EIR/EIS, respectively. As shown in these figures, the City of Chula Vista Subarea Plan includes provisions for active recreational uses in the Otay River Valley subject to the polices of the Otay Ranch Resource Management Plan. The County of San Diego and City of San Diego Subarea Plans do not contain such provisions.

65(b) Please refer to responses to Comment 16.

65(c) Please refer to responses to Comments 45 and 84.

65(d) The comments are noted.

65

DESCANSO SPONSOR GROUP
P.O. BOX 38 DESCANSO CA 91916

Gary Pryor, Director
Department of Planning and Land Use
5201 Ruffin Rd.
San Diego, CA 92123-1666

October 20, 1996

Subject: Multiple Species Conservation Program (MSCP)
Request from DPLU for Descanso Sponsor Group (DSG) input regarding this issue .

Dear Gary Pryor:

At the regular September 19 meeting of the DSG, a subcommittee was formed to address this issue, and reported to the Group at the regular October 17, 1996 meeting. The following Motion was made regarding the material presented by the subcommittee, which was approved, and is enclosed: **65(a)**
Motion: That the County reject the MSCP **as it is written**, and consider the following report from DSG regarding the MSCP;
Vote: 8 in favor, none opposed, no abstentions, 1 member absent.

ruth D'Spain, DSG Secretary

cc: Tom Oberbauer

DEPT. OF PLANNING & LAND USE

DESCANSO SPONSOR GROUP
P.O. BOX 38 DESCANSO, CA 91916

October 20,1996

Subject: Descanso Sponsor Group (DSG) Response for request from DPLU regarding the Proposed Multiple Species Conservation Program (MSCP).

1. The DSG agrees with the :Comments on the Draft EIR/EIS" made by the County to the City in a draft letter from the Board of Supervisors to the Mayor of San Diego. These comments refer to the inadequacy of the EIR and include:
   A. Lack of biological data.
   B. Lack of biological analysis justifying the use of regional multiple species habitat preserves as mitigation for project impacts to individual sensitive species.
   C. Failure to inform clearly.
   D. Failure to discuss the significance of committing irretrievable resources to the project.
   E. Lack of adequate project description.
   F. Confusing and inadequate incorporation by reference.
   G. Failure to designate the listing status of species.
   H. Failure to address clearly the impacts to species outside the preserves.
   I. Incorrect table concerning Otay Valley Regional Park.
   J. Failure to state clearly the goal of MSCP.
   K. Need to clarify the definition of important farmland.

65(b)

2. Comments from Scientists who have reviewed the plan include:
   A. Predictability of success of the Preserve.
   B. Bio-diversity is more than a listing of a few species.
   C. Fragmentation of the Preserve.
   D. Linkages are inadequate throughout the area.
   E. Detrimental effects that can occur along man-made edges of Preserves are not addressed.

The MSCP as proposed is not protection for bio-diversity.
There is no scientific basis or support for the plan.
The preserve is flawed because of the multitude of fragmentation's by highways, electrical facilities, etc..
As designed, land that is within the preserve is permitted to develop to 25% of the property configuration.
The plan is not grounded in the General Plan.
There is no change in density criteria.

65(c)

Property should be purchased with developer money, not public funds, because it is a developer plan.
There must be measurable criteria for review of the plan to ensure continued success. 65(c)
Nothing should be set in stone; the natural process, the preservation process and the planning process are constantly evolving, as should this plan.
Adopting a plan prior to the groundwork being in place is adopting a plan intending it to fail.

For the above reasons the DSG will not support the MSCP as proposed. The DSG urges the County of San Diego and the City of San Diego to work on the plan in order to:

1. Ground the MSCP in the General Plan.
2. Clearly state the goal of the MSCP and proceed to that goal. 65(d)
3. Develop measurable criteria.
4. Clear up the inadequacies of the EIR/EIS.
5. Make a plan to succeed, rather than as it is, planning to fail, in the preservation of both sensitive habitats as well as the livability of the human species within the San Diego County community.

Thank you for your attention to the comments of the Descanso Sponsor Group.

ruth D'Spain, DSG Secretary.

66 VIVIAN MARQUEZ, 10/20/96

66(a) Only data from 1985 to present from project surveys of at least 100 acres were recorded. Exceptions include older sensitive species data from areas such as parks and reserves where the resources are protected, and areas of high biological importance that are known to be extant. California Natural Diversity Database data known to be older than 1985 were not used, although some CNDDB data used were not dated.

Several areas had multiple years of gnatcatcher surveys. These were included in the database to document the historical record. However, only the most recent gnatcatcher sightings were used in the species analyses. To further reduce the potential redundancy in the gnatcatcher database, point localities within 200 feet of each other were assumed to be "double counts" and these pairs of point locations were merged into a single point for the final analysis. This made the spatial distribution of gnatcatchers more even and less biased toward areas with intensive survey effort.

Early in the MSCP program, the team of biologists recognized the spatial bias in the database. This concern lead to the development of a habitat evaluation model that received extensive review by many agency and academic biologists, including the State of California's Scientific Review Panel of biologists. The general consensus of that review process was that the final composite habitat evaluation map was a conservative, yet scientifically defensible evaluation of the relative value of habitats within the MSCP study area. Standards and Guidelines for habitats and target species were also prepared to assist jurisdictions in developing MSCP subarea plans.

66(b) See responses to Comments 20(a), 20(m), 20(ab), and 20(ap).

66(c) See **Theme Response IX, Allowable Uses within MHPA.**

66(d) Comment noted.

66(e) Take authorizations of covered species would be based upon implementation of the MSCP Plan and subarea plans as described in these plans, and in the EIR/EIS.

66(f) Comment noted. The rationale for authorizing the future take of currently unlisted covered species, should they become listed in the future, is adequately explained in the MSCP Plan, Volume I, and in the EIR/EIS.

66(g) The proposed location of a university in Salt Creek Canyon, as discussed in City of Chula Vista Subarea Plan under Policy Option 1, would result in substantial adverse impacts to the Otay Mesa core population of California gnatcatchers. These impacts would not only reduce the number of

individuals of gnatcatchers within Salt Creek Canyon, as shown in Table 4.3-8, but they would also affect all adjacent populations that are dependent upon this area as a source population. The intent of the MSCP is to preserve core population areas and ensure adequate linkages between them to provide for re-population of areas affected by environmental variables (weather, fire, human impacts, etc.). Within core areas, the population dynamics eventually result in natality exceeding mortality, which leads to emigration. Within linkage areas, mortality exceeds natality, leading to immigration. Policy Option 1 would fragment a core population area resulting in only habitat linkage remnants. These linkage areas are too small and subject to too much edge effect to support viable populations. This population is the only likely source core population for populating the Otay Lakes, Otay Mesa, and the Otay River Valley areas due to its existing high density of gnatcatchers. Therefore, loss of this core area would have significant effects on the portion of the MSCP study area south of Interstate 8 and west of Otay Mountain.

66(h) The 100% conservation assumption reflects the fact that this area would be 100% included within the preserve and that no features of the MSCP Plan would disturb this area. If existing conditions result in effects requiring remedial action, such effects would need to be addressed by the appropriate parties.

66(i) The designation of significantly and sufficiently conserved vegetation community is not a biological designation, but rather a classification/grouping of vegetation communities based on future responsibilities for the conservation of uncovered species should an uncovered species be listed. The factors taken into consideration in this designation scheme are listed in the MSCP Plan, Volume I, pages 3-25 and 3-26. See **Theme Response XXII, Sufficiently/Significantly Conserved Vegetation Communities** and Revisions to the MSCP Plan documentation, January 1997.

66(j) The comment is noted. Please refer to revised Table 3-5 included in the Revisions to the MSCP Plan, January 1997, for discussion of the rationale for coverage of species, including grassland species.

66(k) See revised Table 3-5 included in the Revisions to the MSCP Plan, January 1997. If more than 10% of the populations at Mission Trails Regional Park is impacted, this species is no longer covered.

66(l) Active recreation uses within Otay Valley Regional Park would not be included within the MSCP preserve.

66(m) Habitat acquisition costs were estimated by local jurisdiction staff based on their knowledge of vacant land transactions. Analysis of recent transactions showed that from 89% to 94% of land sold had prices below the average land costs implied by those estimates (MSCP Plan, Volume I, p. 7-15). The conservatism of these estimates is justified by the lack of precise knowledge regarding which

properties would need to be acquired. Prior to placing a funding measure on the ballot, the jurisdictions would review these estimates in light of updated information.

66(n) Active use areas within Mission Trails Regional Park are not included within the City of San Diego's portion of the MHPA. However, the majority of the park's lands are used for passive recreation and will be conserved as part of the City's Subarea Plan.

66(o) The Implementing Agreement between the wildlife agencies (USFWS, CDFG) and a participating local jurisdiction contains provisions regarding review and coordination of the implementation of a subarea plan. If adequate progress towards implementation is not being achieved, actions as specified in the subarea plan and the Implementing Agreement may be undertaken by the wildlife agencies and the participating local jurisdiction. Please also see **Theme Response IV, MSCP Financing Plan: Regional Source of Funds.**

66(p) A timetable for implementation of a regional funding program is included in the MSCP Plan, Volume I (p. 7-22). The local jurisdictions would begin a process to secure this funding and identify a new or existing structure through which regional funds would be allocated to the jurisdictions on a fair-share basis.

66(q) Although each take authorization holder or participating local jurisdiction has some flexibility to design a mitigation strategy appropriate to its needs, the jurisdiction must also show adequate progress toward meeting the conservation targets established in their subarea plan. Thus, it is unlikely that price alone would be the determining factor in the selection of mitigation sites. Both the annual implementation meetings between the wildlife agencies and the take authorization holder, as described in the Implementing Agreement, and meetings of the Implementation Coordinating Committee, with membership of the wildlife agencies, local jurisdictions, and others, would provide on-going review and evaluation of the conservation that is accomplished over time. See also **Theme Response III, Economic Impacts and Impacts on Population and Housing.**

66(r) See **Theme Response XXV, Wetlands Protection.**

66(s) Donations of private land to the preserve may occur for benevolent or charitable reasons to achieve tax advantages. In many cases, a landowner may prefer a tax credit or tax deduction over additional income from selling a parcel.

66(t) See **Theme Response XX, Severability of Take Authorizations.**

66(u) It is the responsibility of each permitted jurisdiction to ensure existing field data for individual projects adequately address information needs for CEQA review and to ensure compliance with subarea plans and implementing ordinances. Such information needs may require additional surveys.

Such survey information would be used to avoid impacts to sensitive resources and determine mitigation, in accordance with subarea plans and local ordinances.

66(v) Projects consistent with the MSCP Plan and appropriate subarea plan and Implementing Agreement which are approved by the take authorization holders would become "Third Party Beneficiaries" to the take authorization holders' Section 10(a)(1)(B) permit for take authorizations under the federal Endangered Species Act and through management authorizations under the California Endangered Species Act and the NCCP Act. In addition to receiving these take authorizations, the jurisdictions would sign an Implementing Agreement with the wildlife agencies that clarifies their responsibilities for implementing the program. Failure of a jurisdiction to meet its responsibilities would result in a violation of the permit and/or a breech of contract, either of which can initiate a suspension or revocation of the take authorizations. The wildlife agencies would continue to work with the jurisdictions to ensure successful implementation of the program.

66(w) Comment noted. This change will be incorporated.

66(x) The responsibility for implementing the MSCP Plan would rest with the holders of the federal and state take authorizations, namely the local jurisdictions and other agencies receiving such authorizations. The specific requirements for each take authorization holder would be contained in the Implementing Agreements, and would include preparation of habitat management plans. The wildlife agencies would also have a role in habitat management and monitoring, both in enforcing the conditions of the Implementing Agreements, and in managing and monitoring their share of lands contributed to the preserve. The two committees recommended by the MSCP Plan would serve to coordinate these efforts and would allow ongoing input on technical and other issues. The two committees would <u>not</u> be making policy decisions concerning preserve management or implementation. The selection process for the Implementation Coordination Committee and the Habitat Management Technical Committee is not specified in the MSCP Plan to allow flexibility in how these two committees are formed, however, the membership and responsibilities of each committee is outlined on page 5-21 of the MSCP Plan, Volume I. The responsibilities of the Habitat Management Technical Committee involve coordination on <u>habitat</u> management issues, though input on patrolling, recreation and other activities would be helpful to ensure that habitat management efforts are effective in species protection.

66(y) Section 6.2 of the MSCP Plan, Volume I, provides guidelines for land uses within the preserve. Specific guidelines would be incorporated into each jurisdiction's subarea plan. Residential densities of 1 unit per acre may be compatible on the edges of the preserve, but would result in greater impacts within a core area or a constrained linkage. The jurisdictions would need to evaluate each development proposal and ensure that it is consistent with the goals and criteria of their subarea plan.

66(z) The MSCP Plan identifies active park uses as generally incompatible within the preserve areas and linkages. As such, portions of Mission Trails Regional Park with existing and proposed

We thank you for the opportunity to comment on the MSCP, and would be happy to assist in any efforts to revise the current plan in order to provide adequate protection for vernal pool species using scientific data and analyses.

Sincerely,

Marie A. Simovich

Dr. Marie A. Simovich

Jamie L. King

Dr. Jamie L. King

Stacie A. Hathaway

cc: Mr. Gail Kobetich, US Fish & Wildlife Service, Carlsbad
Mr. Bill Tippets, California Department of Fish & Game. San Diego
Mr. Michael Beck, Endangered Habitats League

74 MUELLER & CRANDALL, NATURAL HERITAGE INSTITUTE, 10/28/96

R

74(a) Comment noted. The Council on Environmental Quality's Regulations for Implementing the National Environmental Policy Act require a minimum 45-day comment period for a Draft EIS. The Draft EIR/EIS comment began on August 28, 1996 and was scheduled to close on October 15, 1996 (47 days), however, in response to several requests for a comment period extension, the comment period was extended until October 29, 1996 (an additional 15 days). See also **Theme Response VIII, Public Involvement.**

74(b) No specific rationale is provided to support the contention that the MSCP Plan fails to meet the issuance standards for state and federal take authorizations. It is important to note, however, that it is not the applicant's responsibility to determine if the MSCP Plan meets the issuance standards under the FESA, CESA and NCCP Act. Such determinations are the statutory authority of the appropriate wildlife agency. The wildlife agencies will make their decisions regarding issuance of take authorizations after the completion of the review process for the permit application, finalization of the NEPA/CEQA document and after all appropriate documents have been prepared, including a Section 7 Biological Opinion.

The MSCP Plan provides for the conservation of the southwestern San Diego County ecosystem through the assembly and management of a preserve in excess of 170,000 acres. The MSCP conserves habitat for all of the proposed covered species and this conservation includes protection, restoration, and enhancement. Although there is not a statutory requirement to achieve a "net benefit" in order to authorize take under state statutes, the MSCP Plan would likely result in a net benefit to proposed covered species as compared to existing conditions.

The U.S. Fish and Wildlife Service (USFWS) must also prepare a biological/conference opinion, currently being drafted, which will also analyze the effects of the proposed action on the 85 species covered by the MSCP Plan. Once these processes have been completed, the wildlife agencies would determine if the criteria for issuance of take authorizations have been met. The USFWS will summarize its findings and rationale on how it reached its decision in an internal document often referred to as the Set of Findings, or Findings and Recommendations. Note again that the wildlife agencies have not yet made a final decision on whether to issue permits/management authorizations.

74(c) The criteria for determining species coverage as presented in the MSCP Plan were not intended to replace federal and state standards for approval of take authorizations. The analysis in the MSCP Plan and Draft EIR/EIS were used to determine the level of assurances that could be provided to applicant(s), to fully analyze the effects of the implementation of the MSCP Plan, and to determine the significance of the impacts, pursuant to NEPA and CEQA. It is the wildlife agencies' responsibility to determine whether or not the issuance criteria for take authorizations have been met, not the applicant's. Pursuant to Section 10(a)(2)(B) of the FESA, the USFWS will issue take authorizations, if, after opportunity for public comment, it finds that: the taking would be incidental; the applicant would, to the maximum

extent practicable, minimize and mitigate the impacts of such taking; the applicant would ensure that adequate funding for the plan would be provided; the taking would not appreciably reduce the likelihood of the survival and recovery of the species in the wild; adequate assurances that the MSCP Plan would be implemented are provided; any other measures required by the USFWS are met. The wildlife agencies have not made a final decision on whether these criteria have been met. The wildlife agencies' decision will be based upon the MSCP Plan and, for each participating jurisdiction, the subarea plan and IA. The decision would also take into consideration the Final EIR/EIS and Record of Decision (ROD), and the biological/conference opinion, currently being prepared by the Service. The USFWS would summarize its findings and present its rationale for determining whether permit issuance criteria have been met in an internal document, referred to as its Findings and Recommendations, which are provided to the Regional Director prior to permit issuance or denial. Should the wildlife agencies determine that these regulatory criteria have been met, then take authorizations would be issued to the applicant local jurisdiction(s).

74(d) As stated in response to Comment 11(a), recovery of listed species is not a statutory requirement of the conservation planning process. While the USFWS encourage applicants to develop Habitat Conservation Plans (HCPs) that are consistent with or contribute to recovery plan objectives, the USFWS cannot mandate that an HCP recover all covered species. Rather, the wildlife agencies must ensure that HCPs would not preclude recovery. This standard is supported by the issuance criteria for take authorizations which require, among other criteria, that the proposed take authorizations would "not appreciably reduce the likelihood of survival and recovery of the species in the wild". Such determinations are made in the biological/conference opinion on the proposed issuance of permit(s), and are utilized in the internal decision document, Findings and Recommendations to help support the USFWS determination of whether this particular issuance criterion has been met. See also response to Comment 74(b) and **Theme Response XVIII, Recovery of Species.**

74(e) The MSCP Plan is based upon the best available scientific information. As stated in response to comment 74(b), the Service will, through preparation of its Biological Opinion and internal Findings and Recommendations document, determine if species have been covered to Section 10(a)(1)(B) standards. Similarly, so will CDFG make its decision on whether the MSCP Plan and subarea plans meets the Section 2081 management authorization criteria. See also **Theme Response I, Species Analysis Approach** and **Theme Response XI, Scientific Review Adequacy.**

74(f) The criteria for determining whether a species would be insignificantly affected by the MSCP Plan are not intended to replace the criteria for issuance of take authorizations permits pursuant to Section 10(a)(1)(B) of FESA or Section 2081 of CESA. The criteria for determining if a species is "insignificantly affected" by the MSCP are meant to help define the amount of mitigation necessary, in terms of altering preserve design or management or other appropriate mitigation measures. Under the FESA, impacts to covered species are related to the amount of take, and the identified impacts must be minimized and mitigated to the maximum extent practicable. The term significance is more appropriately used in referring to a level of impact under NEPA or CEQA. Determining insignificance of impacts to species however can help in the determination of species coverage under the MSCP Plan. For species

insignificantly affected by the MSCP, mitigation requirements would be minimal. However, the determination of whether or not the issuance criteria have been met for each species covered by the MSCP Plan would ultimately be made by the wildlife agencies.

74(g) The Lead Agencies agree that one of the goals of the MSCP Plan is to establish a conservation program designed to maintain viable populations of covered species and preserve their habitats. While it is unclear what is meant by this comment, the conservation of viable populations of covered species ensures the survival of these species, and may, combined with other regional conservation efforts, promote the recovery of many other species. As discussed in response to Comment 11(a), recovery of listed species is not a statutory requirement of the conservation planning process. The criteria for issuance of take authorizations is provided on page 3-23 of the MSCP Plan. The wildlife agencies have not yet made a determination of whether the MSCP Plan meets the take authorization criteria.

74(h) See **Theme Response I, Species Analysis Approach** and responses to Comments 45(a), 74(b), 74(c), and revised Table 3-5 included in the Revisions to the MSCP Plan documentation, January 1997.

74(i) See **Theme Response IX, Allowable Uses within MHPA.** Development of new public infrastructure or other public facilities within the preserve would be guided by the MSCP guidelines for land uses within the preserve (see also revisions to the MSCP Plan, Volume I) and by more specific policies within each Subarea Plan. The City of San Diego Implementing Agreement (Section 10(G)(4)) allows the City of San Diego to permit, on a case-by case basis, additional encroachment to accommodate community plan public facilities, provided that the overall level of preservation of habitat within the MHPA does not fall below 90% and that the biological objectives of the MHPA are not compromised. Also, the additional encroachment would require mitigation, pursuant to the mitigation ratios/tiering scheme presented in Exhibit N of the IA. The other jurisdictions' construction of infrastructure must meet the subarea plan goals, including mitigation. It is anticipated that the other subarea plans would adopt similar restrictions for future habitat loss/disturbance associated with public infrastructure and other permitted uses, consistent with the guidelines established by the MSCP Plan. If local jurisdictions adopt subarea plans without sufficient restrictions for habitat loss within the preserves, permit issuance for those subarea plans may be precluded.

74(j) See **Theme Response XXV, Wetlands Protection.**

74(k) The wildlife agencies would evaluate the City of Chula Vista's selected alternative to determine if it meets state and federal take authorization issuance standards at the point in time that they submit their permit application. This application, along with the City's final subarea plan and implementing agreement would be available for a 30-day public review period, before a decision is made to issue take authorizations.

74(l) No features of the proposed MSCP Plan or the Biological Mitigation Ordinance would alter existing exemptions or features incorporated in the County grading and clearing ordinance. The analyses included in the MSCP Plan and the Draft EIR/EIS recognize the exemptions incorporated in existing ordinances.

74(m) Please refer to **Theme Response IV, MSCP Financing Plan: Regional Source of Funds**. Unforeseen circumstances are addressed in the Implementing Agreement under Section 9.6, "Extraordinary Circumstances" (MSCP Plan, Volume I, Attachment A).

74(n) The wildlife agencies believe that Section 9.6 of the IA adequately addresses "unforeseen" or "extraordinary" circumstances. We assume that this comment refers to the funding section of the IA. Lack of adequate funding, severance of a jurisdiction from the MSCP, or failure of a jurisdiction to complete and implement a Subarea Plan would not be considered an "unforeseen circumstance." The wildlife agencies and local jurisdictions have foreseen the possibility of these circumstances and planned for them accordingly. The IA describes the procedure for what happens in the event of a funding shortfall. The commenter did not identify specific problems with this procedure to which we can respond.

74(o) The wildlife agencies disagree with this comment. The NCCP Conservation Guidelines were not ignored in developing the preserve system, but in fact were relied upon heavily for the proposed preserve configuration and linkages (MSCP Resource Document, Sections 4 & 5). The preserve scenarios were analyzed for consistency with the NCCP Conservation Guidelines in the Draft EIR/EIS in Sections 4.3.1.4 and 4.3.2.

The EIR/EIS identified areas where impacts are significant and not mitigated to a level of less than significant. However, the wildlife agencies and applicants agree that mitigation measures presented are sufficient to offset significant impacts to conserved species. The establishment of the preserve system and its perpetual management provides that sufficient amounts of habitat would be maintained across the landscape whereby species should be able to persist in perpetuity. Thus, the impacts associated with take would be mitigated to a level of less than significant when compared to the No Action alternative. The wildlife agencies believe that species and habitat losses associated with take authorizations would be compensated by establishment of the preserve system and its perpetual management.

74(p) The wildlife agencies disagree that the EIR/EIS is poorly crafted, disorganized, overly conclusionary, and fails to provide an adequate basis for reasoned decision making. Due to the broad scope of the MSCP Plan, which is consistent with the regional planning emphasis required by the NCCP Act, and the numerous actions proposed by the jurisdictions involved, the project is complex and thus requires extensive environmental documentation. The EIR/EIS was formatted with the above in mind. The EIR/EIS contains "road maps" explaining the organization of the document in Sections 1.8 and 4.1 and contains numerous references to other documents or other portions of the EIR/EIS for ease of navigating through the voluminous information required for proper environmental analysis and disclosure. The

wildlife agencies and applicants believe the volume and quality of information is more than adequate for reasoned decision making. Please refer also to **Theme Response XV, Document Organization.**

74(q) See **Theme Response VI, Alternatives.**

74(r) The Draft EIR/EIS considered a wide range of alternatives through development of the habitat conservation plan and through the scoping processes required under NEPA and CEQA. The Draft EIR/EIS rigorously explores and objectively evaluates all reasonable alternatives in detail (40 CFR 1502.14). The lead agencies and other entities responsible for CEQA compliance are not required to analyze alternatives in detail which do not satisfy the purpose and need stated in Chapter 1 of the Draft EIR/EIS. The Council on Environmental Quality (CEQ) has written, "there is no need to disregard the Applicant's purposes and needs and the common sense realities of a given situation in the development of alternatives" (*Federal Register*, 48 FR 34263). Further, the lead agencies adhere to the sentiments expressed by the court in *Resident in Protest-135 v. Dole*, 583 F. Supp. 660-61(D. Minn. 1984), "A reasonable alternative is one which would effectuate the purposes of the project. If an alternative does not implement the purposes of the project it certainly is not reasonable and no purpose is served by requiring a detailed discussion of its environmental effects since the alternative would never be adopted."

74(s) The Carmel Mountain area was included in the analysis for the Biologically Preferred alternative.

74(t) It is true that none of the alternatives reduces all impacts to levels of insignificance. CEQA requires proposed actions to be analyzed and, to the extent possible, be mitigated to levels of insignificance, or, a finding of overriding considerations must be made.

74(u) If the Biologically Preferred alternative is adopted by the local jurisdictions and forwarded to the wildlife agencies as part of an application for take authorizations, the wildlife agencies would determine if it meets issuance criteria for take authorizations.

74(v) Based on its analysis that certain alternatives considered would not effectuate the purpose and needs stated in the Draft EIR/EIS, the applicant appropriately informed the wildlife agencies they would not implement those alternatives if analyzed and selected. Using the common sense approach suggested in CEQA's guidance and in Residents (see response to Comment 74[r]), certain alternatives were eliminated from detailed analysis (see Draft EIR/EIS Section 2.2.1).

74(w) The EIR/EIS contains sufficient information for local jurisdictions to make a reasoned choice as to whether to adopt the proposed MSCP Multi-Habitat Planning Area or another alternative. The EIR/EIS also contains sufficient information to be used for processing applications for the authorizations and used for making findings on whether the take authorizations should be issued or not.

74(x) The cumulative analysis included in Section 6.0 of the Draft EIR/EIS is adequate. A list of past, present and reasonably foreseeable projects is provided in Section 6.2 (pages 6-1 and 6-2 of the Draft EIR/EIS). Analysis of the cumulative environmental effects of these projects is provided in Section 6.3 (pages 6-3 through 6-4).

It is not necessary for the Draft EIR/EIS to analyze the cumulative impacts of potential future infrastructure and public facilities construction allowed within the preserve area for several reasons: 1) such an analysis would be purely speculative since no construction of such facilities is proposed at this time and the specific locations and design features of such facilities are unknown at this time; 2) no features of the actions analyzed in the Draft EIR/EIS propose construction of such facilities and any such facilities construction would be subject to separate environmental review consistent with the requirements of the individual jurisdiction within which the facilities are located; and 3) analyses included in the Draft EIR/EIS conclude that construction of such facilities, if proposed at some future date, would need to occur in a manner consistent with guidelines incorporated in the MSCP Plan and Subarea Plans.

As discussed on page 6-3, quantitative analysis of impacts to species and habitats associated with the projects on the cumulative projects list is not possible since, with the exception of the Orange County Central/Coastal NCCP, quantitative analyses of preserve designs have not yet been completed. The projects are, however, planned to be consistent with the NCCP Conservation Guidelines which call for adequate design and configuration of preserves, thus avoiding significant, unmitigated impacts to species and habitats of concern. This type of analysis is not crucial to conclusions regarding the level of species and habitat protection provided by the MSCP Plan since the Draft EIR/EIS focuses on impacts to species within the MSCP study area, including preservation of species and habitats both within and outside the preserve.

The Draft EIR/EIS does not make determinations regarding whether or not a species may be legitimately covered by the MSCP Plan nor is it the purpose of the Draft EIR/EIS to do so. The Draft EIR/EIS simply identifies environmental impacts associated with issuance of permits and authorizations to take species on the Covered Species List. Justification for issuance of take authorizations is the responsibility of the wildlife agencies.

74(y) The EIR/EIS, being a programmatic analysis, in large part represents a cumulative impact study by virtue of the broad scope of the subregional planning effort where the impacts of all the reasonable foreseeable actions within the MSCP study area are described, influences outside the MSCP study area which potentially could affect the same resources affected in the Plan area were also analyzed. The EIR/EIS did consider the loss of species in the MSCP study area and outside the MHPA area. The wildlife agencies expect habitat outside of the preserves (other than wetlands and that on military lands) to be either lost or substantially degraded over time to such an extent that they would not support listed species. The preserve system and its management in perpetuity is expected to compensate for the expected loss of habitats and the species supported by them. These concepts and impacts associated with these actions are described in detail in the Draft EIR/EIS.

Impacts to listed species outside of the MSCP study area will continue to be regulated by FESA and CESA. Impacts to nonlisted species are impossible to predict, however, the MSCP Plan was developed in the expectation that other subregional planning efforts would be conducted in the future (identified in the Draft EIR/EIS Section 1.1.3. and Section 6) and provided preserve linkages to areas outside the MSCP study area in anticipation that future NCCP planning efforts would result in substantial conservation benefits for species occupying multiple habitats within San Diego County and ultimately be linked to other NCCP planning efforts already completed and those underway.

Impacts due to planned and future infrastructure development in the preserve area were described in the Draft EIR/EIS in subarea plans, and were analyzed on both a programmatic basis and by subarea plan. See revisions to MSCP Plan, Volume I, Section 6. Growth inducing impacts were addressed in the Draft EIR/EIS, Section 5.

74(z) The Draft EIR/EIS includes an adequate discussion of project impacts and mitigation measures. Impacts are quantified in detail in Chapter 4.0 of the Draft EIR/EIS, and specific mitigation measures are numerically identified for each identified significant impact. The document includes Criteria for Determining Significance for each environmental category analyzed in the Draft EIR/EIS. The document does not defer analysis of impacts to non-covered species to later stages of environmental review, rather the document states that no direct impacts to these species would be associated with issuance of permits and authorizations to take species on the Covered Species List, the primary action addressed in the Draft EIR/EIS. The Draft EIR/EIS does not eliminate environmental review for subsequent projects within the MSCP study area, but rather provides the first tier of analysis for subsequent projects. Only the actions identified on pages 1-11 through 1-14 of the Draft EIR/EIS are addressed in the document. Other projects would be subject to separate environmental review in accordance with the requirements of the individual jurisdictions within which such projects are located.

The Criteria for Determining Significance of impacts to species on the Covered Species List are clearly stated on page 4.3-6 of the Draft EIR/EIS. As stated, any impacts to species listed as endangered or threatened by a state or federal agency are regarded as significant; impacts to 10% or more of major populations or point locations of species on the Covered Species List but not listed as endangered or threatened are considered significant. These Criteria for Determining Significance are independent of the risk factors identified by the wildlife agencies in their analysis of Species Evaluated For Coverage Under the MSCP, as identified on Table 4.3-1 of the Draft EIR/EIS.

The analysis of direct impacts to vegetation communities/habitats is separate from the discussion of "sufficiently" or "significantly" conserved habitats as can be seen, for example, by review of pages 4.3-46 through 4.3-48 of the Draft EIR/EIS. Direct loss of vegetation communities/habitats would be associated with take authorizations of covered species, as discussed on page 4.3-48 and quantified in Table 4.3-4, while the concept of "sufficiently" and "significantly" conserved habitats is related responsibilities for funding conservation of uncovered species that become listed in the future that are dependent on such habitats. The Draft EIR/EIS concludes that significant direct impacts to a wide range of vegetation communities/habitats would occur with implementation of the overall MSCP Plan, including

grassland and chaparral, as documented on page 4.3-151 of the Draft EIR/EIS (Item 4.3-MHPA-2). The Draft EIR/EIS further concludes that these impacts would be mitigated by features incorporated in the MSCP Plan as noted on page 4.3-183 (Item 4.3-MHPA-2), including achievement of conservation targets for vegetation communities.

With respect to annexations, it is assumed that the requirements of the MSCP Plan would apply to lands annexed from unincorporated areas to city boundaries since both the County of San Diego and individual cities within the MSCP study area are participants in the MSCP Plan. For example, the Subarea Plans of the City of Chula Vista and the County of San Diego have been coordinated in areas that may potentially be annexed to the City of Chula Vista in the future. A change in this assumption would require review and consideration of possible amendments to the MSCP Plan, which may require supplemental environmental review depending upon the nature of any specific amendments.

Integrity and connectivity of preserve blocks are analyzed on a subarea plan level on pages 4.3-223 through 4.3-229 of the Draft EIR/EIS. Analysis at a greater level of detail than the Subarea Plan level is not necessary since the Draft EIR/EIS does not address site-specific projects.

Exemptions incorporated in the County Grading and Clearing Ordinance for parcels outside the County Water Authority boundary represent existing conditions, are not proposed as part of the MSCP Plan and therefore do not required analysis in the Draft EIR/EIS. The Draft EIR/EIS simply analyzes the environmental effects of implementation of the County of San Diego Subarea Plan and assumes that the preserve would be assembled in the County in accordance with the requirements of the subarea plan. It may be necessary to make modification to these exemptions to meet the goals of the subarea plan.

Growth inducing impacts associated with the MSCP Plan are described in Section 5.0 of the Draft EIR/EIS. As discussed in the Draft EIR/EIS, implementation of the MSCP Plan would not affect the amount or rate of growth but may affect the pattern and distribution of growth within the MSCP study area. In this respect, the MSCP Plan would not be growth inducing. The analysis also concludes that the effect of the MSCP Plan on the pattern and distribution of growth would be dwarfed by the overall region-wide shortfall in developable land projected by SANDAG after the year 2005. It is not necessary to address growth inducing effects of infrastructure allowed within preserves since any such infrastructure would be consistent with already-adopted plans for the regions. No features of the MSCP Plan would alter the adopted circulation and public facilities elements of participating jurisdictions and no additional infrastructure that may accommodate growth is proposed as part of the MSCP Plan.

It is not a purpose of the MSCP Plan to remove existing legal roadblocks to development. The objectives of the MSCP Plan are listed on pages 1-7 of the Draft EIR/EIS. As shown, objectives of the MSCP Plan related to economic growth and development call for establishment of a "workable balance between preservation of natural resources and regional growth and economic prosperity," and establishment of a partnership between agencies to "facilitate review and approval of public and private sector land development and construction projects." These objectives of the MSCP Plan

would not induce growth but would provide for appropriate review and consideration of a wide variety of factors including preservation of resources and economic prosperity.

74(aa) The assumptions for determining significance were clearly described in the EIR/EIS and the reasoning behind determination for either significance or insignificance also described. Neither NEPA or CEQA require objective, measurable criteria be used to determine significance if impacts. In fact, based on the definition of *significantly* (40 CFR 1508. 27) and *significant impact* (CEQA, Appendix G) contained in regulatory guidance, determination of significance is somewhat subjective in that significance is evaluated based on the magnitude of the effect (intensity) within the context of the situation (context). It should be noted that the authors of the regulations governing NEPA and CEQA crafted the language concerning significance with the understanding that many determinations of significance must be based largely on professional judgement since many, many significance determinations cannot be assessed using strictly quantitative methodologies.

The EIR/EIS is a programmatic document describing the overall impacts of implementing the MSCP Plan and other alternatives. Many site specific projects or actions cannot be authorized or approved under the programmatic document or the subarea plans. Site specific actions or projects must be subject to additional environmental analysis either under CEQA or perhaps NEPA (if the action has a federal nexus). Therefore, rather than impermissibly deferring environmental analysis on noncovered species, the EIR/EIS described impacts to noncovered species on a programmatic level, *appropriately* deferring site-specific environmental analysis to the time when site specific actions are proposed for approval.

74(ab) Preserve responsibilities would be assumed in the event of annexation of unincorporated areas to city boundaries. Also see response to comment 74(z).

74(ac) An analyses of growth-inducing impacts of the MSCP is in Chapter 5 of the EIR/EIS. The EIR/EIS found that while the provision of a regional preserve system would likely be regarded as an enhancement to the region's quality of life, it would not directly induce growth. As summarized in the EIR/EIS, while the designation of the MHPA would likely result in a shifting of the location, type, and pattern of growth within the region, this shift would not be considered significant, since available developable land would be sufficient within the study area to accommodate this shift without significant impacts to community character due to increases in development intensities. Pursuant to the subarea plans, public infrastructure and facilities identified in general plans that would impact the MHPA would be subject to case-by-case approval and would be required to mitigate impacts.

74(ad) See **Theme Response X, Habitat Conservation Accounting Model and Theme Response No. XX, Severability of Take Authorizations.**

74(ae) See **Theme Response XXIV, No Surprises.**

74(af) The commenter suggests that the Implementing Agreements unlawfully restrict the federal, state and local governments' exercise of their regulatory powers. The wildlife agencies disagree with this comment. The issuance of an incidental take permit by the USFWS and the issuance of a management authorization by CDFG is an exercise of the agencies' respective regulatory powers. The IAs, which set forth the mitigation, enforcement and management obligations assumed by the local jurisdictions necessary to enable the USFWS and CDFG to issue the management authorizations, are consistent with and implement the statutory requirements contained in Section 10(a) of the Endangered Species Act, Section 2081 of CESA and the NCCP Act. Nothing in the IAs explicitly or implicitly prohibits or constrains either the wildlife agencies or any participating local jurisdiction from exercising their respective police powers or responsibilities under federal, state and/or local law. In the event of future decision by a participating local jurisdiction to authorize an action that would have the effect of violating the Take Authorizations, the wildlife agencies would be entitled to take appropriate action to suspend, revoke or otherwise enforce the terms and conditions of the Take Authorizations.

The following provision has been added as Section 25.9 to the City of San Diego's IA and Model IA to clarify that nothing in the IAs is intended to limit the authority of the wildlife agencies to enforce the provisions of or otherwise carry out their respective responsibilities under the federal and/or state Endangered Species Acts or other applicable federal and state law:

** SECTION 25.9

25.9. Consistency with Authorizing Statutes. This Agreement is consistent with the statutory authority of the USFWS under the ESA and other applicable federal laws, and of the CDFG under the CESA, the NCCP Act and other applicable state laws. Likewise, nothing in this Agreement is intended to nor shall be construed to limit or compromise the statutory authority of the USFWS or the CDFG under such laws.

74(ag) The commenter also contends that the IAs purport to waive the statutory requirements of other federal and state statutes such as the Migratory Bird Treaty Act (MBTA), the National Environmental Policy Act (NEPA), the California Environmental Quality Act (CEQA) and the Natural Communities Conservation Act.

Turning first to the MBTA, the U5FWS disagrees that the IAs purport to waive the requirements of the MBTA. Section 50 C.F.R. § 21.27 of the regulations implementing the MBTA allows for the issuance of special use permits for migratory birds. In consideration of the benefits to the listed MBTA species provided for under the MSCP and subarea plans, the IAs provide that the Take Authorizations covering MBTA migratory birds listed under the ESA also constitute special use permits for these species under the MBTA. The special use permit provision under the MBTA is not waived, but rather is being combined with, the federal incidental take permit being issued for those species.

The IA also does not waive the requirements of CEQA or the NCCP statute. Pursuant to California Fish and Game Code Section 2820, all Natural Community Conservation Plans must be approved by CDFG. CDFG is therefore a CEQA "responsible agency" for the MSCP and its constituent subarea plans. As a CEQA responsible agency, CDFG is required by 14. C.C.R. § 15096 to determine whether the MSCP Plan and the subarea plans meet CEQA's mitigation requirements. If the City certifies the EIR, CDFG must then decide whether to approve the City's Subarea Plan and IA. If it approves the subarea plan, CDFG must file a notice of determination for the subarea plan, based on the EIR/EIS. Thus, CDFG must formally determine whether the City's Subarea Plan provides adequately for the mitigation of wildlife irrespective of the IA. The IA neither expands nor limits CDFG's CEQA responsibilities with respect to the City's Subarea Plan.

Section 9.8 of the IA accurately reflects the position of the wildlife agencies that with certain identified exceptions, the MSCP and Subarea plans and the EIS/EIR completed for those plans, fully address the impacts on and the mitigation requirements of the Covered Species under NEPA and CEQA. (Section 9.8 recognizes that additional NEPA and CEQA mitigation may be required for 1) wetland covered species, 2) in the event of unanticipated extraordinary circumstances (Section 9.6 of the IA), or 3) if there is a failure of federal or state funding contributions to implement the MSCP Plan (Section 15.3)). The wildlife agencies therefore agree not to require additional mitigation under CEQA or NEPA for impacts to the covered species resulting from land development covered by the MSCP and Subarea plans.

Nothing in the Implementing Agreement waives the obligation of the local participating jurisdiction to evaluate the effects on the environment of future projects as required by CEQA, aside from the effects on the covered species which have already been evaluated in the EIS/EIR prepared on behalf of the MSCP and Subarea plans. Additionally, if a project would result in an effect on a covered species that was not evaluated in the EIS/EIR, such effect would also be required to be evaluated in the environmental document prepared for the project.

It is also important to note that under the MSCP Plan, the IA and the City's Subarea Plan, project-specific environmental effects must still be evaluated and quantified on an individual basis. By approving the MSCP Plan, CDFG would approve a comprehensive program for environmental mitigation, but it would retain its responsibility under CEQA to consult with local jurisdictions in evaluating and quantifying the environmental effects of individual projects. In this way, CDFG can assist local jurisdictions in ensuring that the mitigation proposed in the MSCP Plan is properly implemented with respect to the specific environmental effects of individual projects. The commitments made under Section 9.8 of the IA are fully consistent with NEPA and CEQA.

74(ah) The wildlife agencies disagree. See **Theme Responses I, Species Analysis Approach, X, Habitat Conservation Accounting Model, XIV, Biological Monitoring,** and revised Table 3-5 of the MSCP Plan included in the Revisions to the MSCP Plan, January, 1997. Sections 10 and 14 of The City of San Diego's and Section 14 of the Model IA have been revised to explicitly require each

participating local jurisdiction to meet its conservation goal. See revised City of San Diego Model IA, Section 10.2, January 1997.

74(ai) See **Theme Response X, Habitat Conservation Accounting Model and Theme Response XIV, Biological Monitoring.**

74(aj) There is no way to identify with certainty which "material" violations would trigger the suspension or revocation provisions of the Take Authorizations. The approval by a participating local jurisdiction, contrary to the provisions of the MSCP Plan and/or a subarea plan, of a major project in a core habitat or critical linkage area identified for preservation under the MSCP Plan and/or a subarea plan would almost certainly constitute a material violation of the permit. The wildlife agencies must review each potential violation on a case by case basis to determine what, if any, enforcement action would be appropriate under the particular circumstances. As indicated in response to Comment 79(au), Section 16.2 of the IAs will be modified to clarify that the USFWS need not suspend a participating local jurisdiction's entire permit for a single violation, but instead retains the regulatory flexibility to suspend the permit in part as appropriate address the violation.

The wildlife agencies agree with the commenter that use of both "significant" and "material" to describe violations for which enforcement action can be taken creates confusion. In the wildlife agencies view a "material" violation of the permit necessarily means a "significant" violation of the permit. In order to eliminate the confusion created by use of both terms, "significant" has been deleted from Section 16.2.A. and C., 16.3.A. and C and 16.4 of the City and Model IAs.

74(ak) The commenter suggests that in the unlikely event that no violation of the permit were to occur, but a covered species was nevertheless found to be jeopardized by the MSCP Plan, the wildlife agencies would be without recourse to protect the species. As discussed in **Theme Response XXIV, No Surprises,** the federal and state governments have a wide variety of tools at their disposal to insure that the covered species are adequately protected within the MSCP study area. More fundamentally, the wildlife agencies strongly disagree with the commenter's premise that any action contemplated under the MSCP Plan and approved subarea plans would have the effect of jeopardizing a covered species. The wildlife agencies may not legally and would not in any circumstance authorize an action that would be likely to jeopardize the continued existence of a covered species.

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Natural Heritage Institute

114 SANSOME STREET, SUITE 1200
SAN FRANCISCO, CA 94104
TEL: (415) 288-0550/FAX: (415) 288-0555
e-mail: nhi@igc.apc.org

Non-Profit Law and Consulting in Conservation of Natural Resources and the Global Environment

Gregory A. Thomas
President

October 14, 1996

Mr. John Kovac
Development and Environmental Planning Division
City of San Diego
1222 First Ave., 5th Floor
San Diego, CA 92101

Mr. Gail Kobetich
U.S. Fish and Wildlife Service
2730 Loker Ave. West
Carlsbad, CA 92008

RE: **Comments on August 1996 Multiple Species Conservation Program Plan, Draft Environmental Impact Report/Draft Environmental Impact Statement, and City of San Diego Implementing Agreement**

Dear Mr. Kovac and Mr. Kobetich:

On behalf of the Natural Resources Defense Council, Inc., the San Diego Chapter of the Sierra Club, Save Our Forests and Ranchlands, and Chapparal Greens, we submit these comments on the August 1996 MSCP Plan, the draft EIR/EIS for the MSCP Plan, and the City of San Diego Implementing Agreement. For the record, we are disappointed that the agencies chose to provide only 45 days for public comment on these documents. This time period is unreasonably short give the length and complexity of the documents and significance of the issues involved. Nevertheless, we attempt herein to cover as many issues as possible given the time constraints. 74(a)

I. MSCP PLAN COMMENTS.

A. The MSCP Plan Fails to Meet the Standards of Section 10 of the ESA and Section 2081 of CESA.

Pursuant to the 4(d) rule for the coastal California gnatcatcher (58 Fed. Reg. 65088 (Dec. 10, 1993)), the Natural Community Conservation Planning Act (NCCP Act - Cal. Fish & Game Code § 2800 *et seq.*) and the NCCP Process Guidelines, any plan prepared under the NCCP program must meet the requirements of both section 10(a) of the federal Endangered Species Act (ESA, 16 U.S.C. § 1539(a)) and section 2081 of the California Endangered Species Act (CESA, Cal. Fish & Game Code § 2081). There is a serious question whether the MSCP Plan meets the criteria of these statutes. 74(b)

In order to approve the MSCP Plan under the ESA, the U.S. Fish and Wildlife Service (USFWS) must find, among other things, that:

(1) the applicant will minimize and mitigate the impacts of the taking to the maximum extent practicable;

(2) the applicant will ensure that adequate funding is available to carry out the plan and has set forth procedures to deal with unforseen circumstances; and

(3) the taking will not appreciably reduce the likelihood of the survival and recovery in the wild of each species covered by the plan (i.e. will not jeopardize the continued existence of the species).[1]

(16 U.S.C. § 1539(a)(2); 50 C.F.R. §§ 17.22(b)(2), 17.32(b)(2).) These requirements apply to all species "covered" by a plan, i.e. listed as well as unlisted species. The legislative history of the ESA indicates that, in order to be covered under the terms of a habitat conservation plan and incidental take permit, unlisted species must be treated *as if they are listed.* (*See* House Rep. No. 835, 97th Cong., 2d Sess, pp. 30-31 (1982).)

In addition, the California Department of Fish & Game (CDFG) cannot approve the MSCP Plan under CESA unless the plan "conserves, protects, restores and enhances," and results in a "net benefit" to, each candidate and listed species covered by the plan. (CDFG Procedures for Preparation of a CESA Memorandum of Understanding and Acquisition of Habitat Management Lands Pursuant to Section 2081 of CESA (Aug. 19, 1993), and Planning and Conservation League v. Dep't of Fish & Game, S.F. Superior Court No. 970119, Order filed Jan. 17, 1996, currently on appeal.) In addition, CDFG guidelines for take permit approval, like the federal ESA, require take permit applicants to fully minimize and mitigate the effects of the proposed take of species and to provide a permanent, secured source of funding to implement these mitigation measures. 74(b)

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[1] This is standard is essentially the same as the standard the USFWS must use to determine whether to issue a "no jeopardy" opinion after engaging in formal consultation under section 7(a)(2) of the ESA (16 U.S.C. § 1536(a)(2)). In determining compliance with this standard, the USFWS must consider the effects of the project on the species' prospects of recovery as well as survival. (Idaho Dep't of Fish & Game v. NMFS, 850 F. Supp. 886 (D. Or. 1994); USFWS Preliminary Draft Handbook for Habitat Conservation Planning and Incidental Take Permit Processing, Sept. 15, 1994.)

The MSCP Plan does not adequately ensure "no jeopardy" to covered species' prospects of survival and recovery, nor does it necessarily provide a "net benefit" to and "conserve, protect, restore and enhance" covered species, as required by the federal and state ESAs, respectively.[2] Furthermore, the plan does not adequately minimize and mitigate impacts to covered species, or provide adequate funding to implement the plan, as required by these laws. 74(b)

1. The criteria for determining species coverage in the MSCP Plan are inconsistent with federal and state standards for approval of take permits.

The criteria for determining whether species are covered under the MSCP Plan are inconsistent with the standards for approval of take permits in the federal and state ESAs. The MSCP Plan does not analyze whether the plan will reduce the likelihood of survival and recovery of, and will conserve, protect, restore and enhance and result in a net benefit to, each covered species. Instead, the MSCP Plan determines whether a given species has been "adequately conserved," or will be "insignificantly" or "discountably" affected.

While the MSCP Plan conclusorily states that "adequately conserved" species are conserved at a level that "should meet . . . take issuance standards"[3] under the federal and state ESAs, the definition of "adequately conserved" does not satisfy these standards. The MSCP Plan indicates that species proposed for coverage under the "adequately conserved" category generally meet the following criteria:

(1) sufficient data were available to determine that the populations within the MSCP study area are important to the species' overall *survival*; 74(c)

(2) sufficient data were available to determine that the MSCP Plan would conserve a significant and necessary amount of the species' range/habitat; and

(3) the known conserved habitat will be managed consistent with the needs of the species.

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[2] For the same reasons, if the USFWS issues a "no jeopardy" opinion after engaging in formal consultation on the MSCP under section 7(a)(2), the USFWS' approval of the plan also could violate that section of the ESA.

[3] *See* "The Process for Determining Adequately Conserved Species Under the First (1995) and Second (1996) MSCP Draft Plans."

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Contrary to the criteria under the federal and state ESAs, these criteria do not consider the effect of the MSCP Plan on the species' recovery as well as survival, nor do they ensure that the MSCP will provide a net benefit to, or will conserve, protect, restore and enhance, the species purportedly covered. Furthermore, none of the criteria indicate whether the protections in the MSCP Plan will actually protect the species; rather, they simply indicate whether a significant portion of the species' overall populations and habitat is found in the MSCP Plan area. However, this determination does not indicate the level of protection that species which meet the MSCP "adequately covered" criteria will in fact receive and whether this level of protection complies with federal and state standards for issuance of a take authorizations. 74(d)

As a related matter, the "adequately conserved" coverage criteria contain vague, undefined terms which allow determinations of coverage to be made without precise information on the MSCP Plan's effect on the species, and without a clear method for determining whether and how "adequately conserved" species will be conserved to federal and state ESA standards. For example, how was the determination made that populations are "important" to a species' overall surival? Important in what respect? What is a "significant and necessary" amount of the species' range and habitat - is it 90%, 80%, over 50%? What is "known conserved habitat" within the softline areas? What is "sufficient data"? Is the MSCP Plan based on the best available scientific information, as required by the federal ESA? What does "consistent with the needs of species" mean? 74(

Similarly, the criteria for determining whether a species will be "insignificantly affected" by the MSCP Plan do not satisfy the criteria under the federal and state ESAs. The MSCP Plan states that "[s]pecies proposed for coverage under this definition generally meet all or at least one of the following criteria:

(1) the species' range and major populations/breeding areas exist primarily outside of the MSCP study area;

(2) the continued survival of the species is not dependent upon the populations or range included in the MSCP study area;

(3) the MSCP conserves a substantial amount of habitat that potentially could support or be used by the species; [and/or]

(4) the proposed conserved habitat will be managed consistent with the needs of the species."

Again, these criteria consider only the effect of the MSCP Plan on the survival, but not the recovery, conservation, protection, restoration and enhancement of the species. Further, like 74(

the criteria for "adequately conserved" species, these criteria contain ambiguous and open-ended terms that make it extremely difficult to determine the actual level of protection covered species that allegedly meet these criteria will receive, and how this level of protection relates that which is required by the federal and state ESAs. 74(f)

Overall, the basic criterion for determining species coverage is that the MSCP Plan will adequately ensure "viable populations" of the species in question. This standard is *per se* inconsisent with the standards for approval of take permits under the federal and state ESAs, as it wholly ignores any impact to the species' prospects of recovery. While the plan does state that it will automatically be found consistent with any future recovery plan, this conclusion is at odds with the criteria for determining species coverage, as described above. Moreover, there is no supporting analysis or factual or scientific basis for this statement in the plan. For all of these reasons, the MSCP Plan currently does not satisfy the section 10(a) and state ESA take permit approval criteria. 74(g)

2. The MSCP Plan's determination of covered species lacks an adequate factual and scientific basis.

Even assuming *arguendo* that the MSCP Plan species coverage criteria are legally adequate and equivalent to the "no jeopardy," "conserve, protect, restore and enhance" and "net benefit" criteria in federal and state law, there is insufficient analysis and information in the plan to determine whether species proposed for coverage actually meet these criteria. The technical "work sheets" (Species Evaluations) merely contain raw data and the agencies' ultimate conclusions as to whether or not a given species is covered by the plan, and contain little or no analysis to support this conclusion. The work sheets do not even evaluate whether and how the plan satisfies the agencies' own vague criteria for determining coverage (see above).

Furthermore, the agencies' conclusions of coverage are often inconsistent with what little information is provided. For example, the work sheets often indicate that a species remains at high or moderate risk even after MSCP Plan implementation, and yet still conclude that the species is "adequately conserved," or that risks to the species are "insignificant." Such conclusions are internally inconsistent and arbitrary and capricious on their face.[4] In other cases, the work sheets indicate that the precise level of risk to the species due to the MSCP Plan cannot be determined or is dependent upon future contingencies or implementation of vague and

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[4] "High risk" is defined as "not adequately protected and/or potentially subject to edge effects." High risk species therefore *by definition* cannot be considered adequately covered, or considered subject to merely "insignificant" or "discountable" effects. 74(h)

unspecified management measures. Granting coverage to such species in these circumstances is also arbitrary and capricious. In either circumstance, the MSCP Plan demonstrates that the agencies cannot ensure "no jeopardy" to these species' survival and recovery, or that these species will be "conserved, protected, restored and enhanced" and will receive a "net benefit" as required by the federal and state ESAs. Animal species for which coverage is currently unjustified include, but are not limited to, the arroyo toad, red-legged frog, southwestern pond turtle, northern harrier, Cooper's hawk, Swainson's hawk, golden eagle, burrowing owl, southwestern willow flycatcher, coastal cactus wren, coastal California gnatcatcher, American badger, and mountain lion.[5] 74(h)

3. Other aspects of the MSCP Plan also are inconsistent with the take permit standards of the federal and state ESAs.

Regardless of the adequacy of the covered species list, several other aspects of the MSCP Plan do not meet the species protection (no jeopardy, net benefit, "conserve, protect, restore and enhance" and minimize and mitigate) standards in the federal and state ESAs. First, the plan is inconsistent with the standards for approval of take permits under the federal and state ESAs because it allows new infrastructure to be constructed within the reserve system without adequate mitigation standards. 74(i)

Second, the plan assumes that full, in-kind mitigation to wetland and riparian species will occur through the Army Corps of Engineers' permit process under section 404 of the Clean Water Act and CDFG's permit process under sections 1601 and 1603 of the Fish and Game Code. However, this assumption is erroneous because neither the Army Corps nor CDFG necessarily require full in-kind mitigation in every circumstance. Off-site, out-of-kind mitigation may be allowed in a number of situations; in addition, impacts to species may be allowed without any mitigation through the Army Corps' nationwide or programmatic general permit processes. 74(j)

Third, the MSCP Plan unjustifiably assumes that the City of Chula Vista will adopt the environmentally preferred options. The plan and the EIS/EIR both acknowledge that, if the city does not adopt these options, severe and unmitigable impacts will occur to essential core biological areas and connectivity of reserves. Because the areas within Chula Vista's jurisdiction are central to the overall population viability of the coastal California gnatcatcher and the coastal

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[5] For a discussion of why the coverage determinations for these species are arbitary and capricious and an abuse of the agencies' discretion, please refer to the comments of the Endangered Habitats League. 74(

cactus wren, impacts to these areas would undermine the population viability assumptions for these species which underlie both the MSCP Plan as a whole and MSCP Subarea Plans. 74(k)

Finally, the numerous exemptions from the County of San Diego Grading and Clearing Ordinance and Biological Mitigation Ordinance also undermine the viability and conservation benefits of the MSCP Plan. This casts serious doubt on the plan's assumptions of adequate conservation or insignificant effects and undercuts the basis for making findings of plan adequacy under section 10(a) of the ESA and section 2081 of CESA. 74(l)

4. Funding for the MSCP Plan is inadequate.

Section 11.0 of the Implementing Agreement indicates that long term funding for the MSCP plan, and therefore plan implementation, will require voter approval. Furthermore, the IA expressly recognizes that funding may be further compromised if participating local jurisdictions opt out of the MSCP Plan or fail to complete and implement a subarea plan. This is contrary to the requirements of section 10(a) and CESA section 2081 guidelines which require the permit applicant to provide a permanent, reliable and guaranteed source of funding for the plan. The plan also fails to adequately address procedures for unforeseen circumstances, as required by the regulations implementing section 10(a) of the ESA. (*See* USFWS Preliminary Draft Handbook for Habitat Conservation Planning and Incidental Take Permit Processing, Sept. 15, 1994, pp. 34-35, 37; CESA section 2081 implementing guidelines.) 74(m) 74(n)

B. The MSCP Plan Does Not Include An Analysis of the Plan's Consistency With the NCCP Guidelines.

The MSCP Plan also is inadequate because it does not contain an analysis of consistency with the NCCP Conservation Guidelines. In the section 4(d) rule for the gnatcatcher, the USFWS stated that an NCCP must be prepared in compliance with the guidelines in order to be approvable under the federal ESA. However, the MSCP Plan totally ignores key components of the Guidelines altogether, such as the requirement for "no net loss of habitat value." 74(o)

II. COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT/ ENVIRONMENTAL IMPACT REPORT (EIS/EIR).

In general, the EIS/EIR is a poorly drafted, disorganized and overly conclusory document that fails to provide an adequate basis for reasoned decisionmaking, as required by both the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA). The EIS/EIR also fails to meet other fundamental requirements of NEPA and CEQA, as described below. 74(p)

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A. The EIS/EIR Does Not Contain An Adequate Alternatives Analysis.

NEPA requires an EIS/EIR to "rigorously explore and objectively evaluate all reasonable alternatives," and to explain why alternatives not analyzed were eliminated from detailed consideration. (40 C.F.R. § 1502.14(a).) Consideration of alternatives is the "heart" of an EIS. (40 C.F.R. § 1502.14.) The EIS/EIR must therefore "devote substantial treatment to each alternative considered in detail so that reviewers may evaluate their comparative merits." (40 C.F.R. § 1502.14(b).) It also must explain how each alternative will or will not achieve the policies of NEPA and other relevant environmental laws. (40 C.F.R. § 1502.2(d).) The analysis also must include alternatives not within the federal lead agency's jurisdiction. (40 C.F.R. § 1502.14(c).) Finally, the analysis must identify the agency's preferred alternative and include appropriate mitigation measures for each alternative analyzed in detail. (40 C.F.R. § 1502.14(e), (f).) 74(q)

CEQA similarly requires an EIS/EIR to describe a "reasonable range of alternatives to the project . . . which could feasibly attain the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives." (14 C.C.R. § 15126(d).) This discussion must focus on alternatives "capable of eliminating any significant adverse environmental effects or reducing them to a level of insignificance, even if these alternatives would impede to some degree attainment of project objectives of would be more costly." (County of Inyo v. City of Los Angeles, 71 Cal. App. 3d 203 (1977); 14 C.C.R. § 15126(d)(1).) The analysis must describe the rationale for selecting the alternatives to be discussed and why other alternatives were rejected as infeasible during the scoping process. (14 C.C.R. § 15126(d)(2).) Alternatives selected for discussion must be evaluated in sufficient detail "to allow meaningful evaluation, analysis and comparison with the proposed project." (14 C.C.R. § 15126(d)(3).)

The adequacy of an EIS/EIR's discussion of alternatives is determined by a "rule of reason." Thus, an EIS/EIR will generally be held adequate if it evaluates a "reasonable range" of alternatives. (Kings County Farm Bureau v. Hanford, 221 Cal. App. 3d 692 (1990); Alaska Wilderness Recreation and Tourism v. Morrison, 67 F.3d 723, 729 (9th Cir. 1995).) The range is dictated by "nature and scope of the proposed action," and must be sufficient to permit the agency to make a "reasoned choice" and to "foster informed public participation and decisionmaking." (Alaska Wilderness, 65 F.3d at 729; 14 C.C.R. § 15126(d)(5).) 74(r)

The alternatives analysis for the Subarea Plans in the EIS/EIR fails to meet these basic legal requirements. It does not analyze a reasonable range of alternatives, nor does it analyze the alternatives that were selected in sufficient depth. The document does not discuss a number of key alternatives that would reduce the significant environmental effects of the project, 74(s,

including a "hard line" preserve option, or alternatives involving the City of San Diego Subarea Plan (particularly the Carmel Mountain Area). Alternatives that were selected for analysis do not necessarily eliminate or reduce the MSCP Plan's significant environmental effects, as required by CEQA. Even the "Biologically Preferred" alternative is insufficient: the EIS/EIR acknowledges that it does not meet all objectives of the MSCP and that it does not sufficiently protect grasslands, oak woodlands, and chapparal. Further, a number of reasonable alternatives appear to have been eliminated from consideration solely on the basis that the negotiating parties did or will not agree to them. This is not a valid justification for eliminating alternatives from analysis under NEPA and CEQA. In sum, the range of alternatives selected for analysis and the depth of discussion does not permit the decisionmaking agencies and the public to make a reasoned choice. 74(s) 74(t) 74(u) 74(v) 74(w)

B. The EIS/EIR Does Not Adequately Analyze Cumulative Impacts.

An EIS/EIR must analyze "cumulative actions, which when viewed together have cumulatively significant impacts." (40 C.F.R. § 1508.25(a)(2); *see also* 14 C.C.R. § 15130.) "Cumulative impact" is defined as the impact on the environment that results from "the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions." (40 C.F.R. § 1508.7.) "Cumulative impacts" are also defined as "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." Cumulative impacts may result from "individually minor but collectively significant actions taking place over a period of time." (14 C.C.R. § 15355.) Thus, an agency cannot ignore significant impacts by considering the environmental effects of individual projects in isolation from past and reasonably foreseeable future projects. (Inland Empire Public Lands Council v. Schultz, 992 F.2d 977, 981 (9th Cir. 1993).) The Region 1 USFWS Habitat Conservation Planning Guidelines emphasize that "an evaluation of the cumulative effects of the proposed action is particularly important in conservation planning because the intent of the process is to consider a host of different activities . . . over a long period of time, affecting the entire plan area." (Guidelines, p. 30.)

An adequate cumulative impacts analysis must include several basic components. First, it must summarize all past, present and reasonably foreseeable future projects (including projects outside the agency's control and unrelated to the proposed action). (40 C.F.R. § 1508.7; 14 C.C.R. § 15130(b)(1).) The projects discussed must include not only approved projects (whether or not under construction), but projects currently undergoing environmental review. Second, the EIS/EIR must contain a "reasonable analysis" of the anticipated environmental effects of these projects. Third, CEQA requires cumulative impact analyses to include "specific reference[s] to additional information" and state where that information is available. (14 C.C.R. 74(x)

§ 15130(b)(2).) Finally, both NEPA and CEQA require an EIS/EIR to examine "reasonable options" for mitigating or avoiding any significant cumulative effects identified in the document. (40 C.F.R. § 1508.25(b)(3); 14 C.C.R. § 15130(b)(3.) 74(x)

The EIS/EIR does not include an adequate cumulative impacts analysis because it does not analyze the cumulative impacts of both planned and potential future infrastructure and public facilities construction allowed within the reserve area. The document also does not address the cumulative impacts of the plan's growth-inducing effects (see further discussion below). Finally, the EIS/EIR does not adequately evaluate the total cumulative loss of species and habitat within the MSCP area in combination with losses outside of the MSCP area, such as East and North County. This type of analysis is crucial to the viability of the conclusions regarding the level of species and habitat protection provided by the MSCP Plan. Indeed, a number of species coverage determinations were made on the basis of the existence of species populations largely outside of the plan area. If such species are not protected in these outside areas, this undermines the EIS/EIR's determinations that the species may be legitimately covered by the MSCP. 74(y)

C. The EIS/EIR Contains An Inadequate Discussion of Project Impacts and Mitigation Measures.

Both NEPA and CEQA require an EIS/EIR to "provide a full and fair discussion of significant environmental impacts." (40 C.F.R. § 1502.1; *see also* 14 C.C.R. § 15126(a).) In addition to cumulative impacts, an EIS/EIR must include a discussion of direct and indirect impacts of the project and mitigation measures for any significant effects identified. (40 C.F.R. §§ 1502.16(a), (b), (h); 1502.14(f), 1508.25(b), (c).) Indirect effects include growth inducing effects and and other effects related changes in land use patterns, population density or growth rate. (40 C.F.R. § 1508.8(b).) CEQA also requires environmental documents to analyze specifically the growth-inducing and unavoidable significant effects of the project. (14 C.C.R. § 15126(b), (g).) In addition, the EIS/EIR must describe all reasonable measures necessary to minimize or avoid each significant impact identified. If several measures are identified to mitigate an impact, the EIS/EIR must discuss the basis for selecting a particular measure. (40 C.F.R. §§ 1502.16(h), 1508.25(b)(3); 14 C.C.R. § 15126(c).)

As with the analysis of alternatives, such discussion must satisfy a "rule of reason" which requires a "reasonably thorough" discussion of impacts and mitigation measures. (Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 352 (1989).) The environmental documentation must contain a "sufficient degree of analysis to provide decision makers with information which intelligently takes into account environmental consequences." (14 C.C.R. § 15151.) Conclusory documents will not suffice. (Concerned Citizens of Costa Mesa v. 32nd Dist. Agricultural Assn., 42 Cal. 3d 929 (1986).) The analysis must be supported by maps, 74

diagrams, citations to studies, and other relevant technical data "sufficient to permit a full assessment of significant environmental impacts by reviewing agencies and members of the public." (40 C.F.R. §§ 1502.22(a), 1502.25; 14 C.C.R. §§ 15147, 15148.) 74(z)

The EIS/EIR fails to meet these basic legal requirements. First, the document does not include any objective, measurable criteria by which to evaluate the significance of project impacts and the long term efficacy of proposed mitigation measures. The EIS/EIR also impermissibly defers analysis of impacts to non-covered species to later stages of environmental review. This is wholly unjustified given that the document is supposed to constitute a programmatic EIS/EIR intended to streamline or even *eliminate* subsequent environmental review for specific projects proceeding under the plan. Furthermore, CEQA clearly requires information regarding project impacts to be provided *prior* to project approval. (*See, e.g.*, Sundstrom v. County of Mendocino, 202 Cal. App. 3d 296, 311 (1988).)

The EIS/EIR also inexplicably determines that impacts to certain covered species are insignificant, even though it acknowledges that these species will remain at "high risk" even after plan implementation. These conclusions of insignificance are not supported by any evidence in the record, and violate CEQA requirements concerning mandatory findings of significance. (*See* 14 C.C.R. § 15065.) Similarly, the document makes an unwarranted and unsupported determination that impacts to all vegetation communities are mitigated to insignificant levels, while at the same time admitting that grassland and chapparal are not even considered "sufficiently covered" or "significantly covered," and that the MSCP Plan will result in an overall 50% loss of habitat types in the plan area. The EIS/EIR also generally lacks adequate supporting data. 74(aa)

In several other respects, the document's analysis of environmental impacts is severely deficient. For example, the EIS/EIR does not adequately analyze the impacts of: annexation of unincorporated areas to city boundaries without assumption of preserve responsibilities; integrity and connectivity of reserves at a site-specific level; exemptions to the County of San Diego Grading and Clearing Ordinance for parcels outside of the County Water Authority boundary and for agricultural clearing; and exemptions to the County of San Diego Biological Mitigation Ordinance for CEQA-exempt activities, public facilities, and sand, mineral and gravel extraction, to name a few. 74(ab)

Finally, the EIS/EIR completely fails to analyze the growth-inducing impacts of the MSCP Plan, particularly new infrastructure allowed within the reserves, and the concommitant impacts to species and habitat, as required by NEPA and CEQA. This omission is particularly glaring given that one of the fundamental purposes of the MSCP Plan is to facilitate economic growth by removing existing legal roadblocks to development. The plan admits "[t]he MSCP 74(ac)

will help achieve many objectives regarding the growth and economy of the San Diego region" and that "the federal listing of the California gnatcatcher has threatened has restricted the region's ability to accommodate future growth and development in coastal habitats." The EIS/EIR likewise states that "the MSCP [will] facilitate and improve certainty of development outside the preserve area." 74(ac)

III. COMMENTS ON THE DRAFT CITY OF SAN DIEGO IMPLEMENTING AGREEMENT (IA).

A. The IA Impermissibly Allows Incidental Take to Proceed Without Concurrent Implementation of Species Conservation Measures.

Sections 4.0, 5.0 and 17.0 of the IA allow individual signatories and third party beneficiaries of the IA to receive take authorizations even if other key entities have not become Participating Local Jurisdictions or Participating Special Entities, or even if other signatories or beneficiaries to the IA are not implementing or fulfilling their respective obligations under the plan and IA. Yet, the IA expressly acknowledges that the rationale for issuing incidental take permits is dependent upon plan implementation. Allowing incidental take to proceed without a guarantee of plan implementation thus necessarily vitiates the basis for permit issuance and severely jeopardizes ability of both the MSCP Plan as a whole and the subarea plans to achieve their species conservation goals. Realization of these goals is dependent upon each component of the plan being fully implemented. 74(ad)

B. The IA's Regulatory Assurances Provisions Are Inconsistent With Both the Federal and State ESAs and Numerous Other Laws.

Sections 6.0, 9.0 and 13.0 of the IA limit both the circumstances under which the federal government may require additional mitigation measures, as well as the type of mitigation that may be required. These provisions implement the USFWS' "no surprises" regulatory assurances policy adopted, without public review and comment, in September 1994. This policy precludes the USFWS from ensuring the survival and recovery of current and future listed species, contrary to the mandates of sections 2, 4, 7, 9 and 10 of the ESA. Under the "no surprises" provisions, if new information or changed circumstances reveal that the terms and conditions of the MSCP Plan are inadequate to ensure the continued survival and recovery of the species covered by the plan, the federal government is nevertheless unable to require additional land acquisitions or restrictions and/or money to protect these species, unless it pays for and implements such mitigation itself. However, the government has not guaranteed adequate funding will be available to do so. In fact, the USFWS' obligations under the IA are expressly made subject to the availability of appropriated funds to implement the agreement (section 24.7), 74(

and in some cases, contributions by other state and local government signatories (section 9.7). The IA thus allows take to proceed, but provides no guaranteed protection for species in the event that the MSCP Plan's biological assumptions later prove invalid. 74(ae)

These provisions of the IA foreclose the USFWS from using "all methods and procedures necessary" to conserve species and from insuring that its actions will not jeopardize the continued existence of listed species, in contravention of its duties under sections 2, 4 and 7 of the ESA. Further, these provisions prevent the federal government from ensuring that an incidental take permit fully mitigates all impacts to, does not jeopardize the continued existence of, listed species and provides adequate funding under section 10. Moreover, the no surprises provisions impermissibly require the federal government to assume mitigation and funding responsibilities in the future, when section 10 clearly requires the take permit applicant to fulfill these obligations. Finally, the policy inappropriately allows currently unlisted species to receive take authorizations if and when they become listed in the future, even though, for the reasons described in Section I above, these species have not been treated as if they were listed under the ESA, and the MSCP Plan does not satisfy section 10(a) requirements for issuance of take permits for these species. The IA even restricts future mitigation and conservation responsibilities of local government signatories and third party beneficiaries for subsequently-listed species that are not even covered by the MSCP Plan. Such restrictions are completely inconsistent with the conservation goals and mandates of the ESA.

For the same reasons, the provisions in section 9.0 and 13.0 impermissibly restrict CDFG's public trust obligation to conserve, protect, restore and enhance listed species under sections 711.7, 1802, 2052 and 2055 of the Fish and Game Code, and to engage in formal consultation pursuant to sections 2090-2095 of the Fish and Game Code.

In addition to the federal and state ESAs, sections 6.0, 9.0 and 13.0 also unlawfully restrict federal, state and local governments' exercise of their regulatory powers under a host of other laws, including NEPA and CEQA, the NCCP Act, California Native Plant Protection Act, sections 1601 and 1603 of the Fish and Game Code, the federal Migratory Bird Treaty Act (MBTA), and the federal Bald Eagle Protection Act. The U.S. Supreme Court has repeatedly held that state agencies cannot contract away their police powers. (*See, e.g.,* Stone v. Mississippi, 101 U.S. 814, 819 (1879); Atlantic Coast R.R. Line v. City of Goldsboro, 232 U.S. 548, 554-562 (1914); U.S. Trust Co. v. New Jersey, 431 U.S. 1, 24-25 (1977).) The same rationale prohibits federal agencies from contracting away their regulatory and public trust authorities, unless expressly authorized to do so by Congress. (*See, e.g.,* Lynch v. United States, 292 U.S. 571, 579 (1934); Bowen v. Public Agencies Opposed to Social Security Entrapment, 477 U.S. 41, 52 (1986); *cf.* Home Tel. & Tel Co. v. City of Los Angeles, 211 U.S. 265, 273 (1908).) The California courts also have repeatedly held that local agencies do 74(af)

not have the power to contract away their police powers and "bind the hands" of future City Councils and Boards of Supervisors. (*See, e.g.*, City and County of San Francisco v. Cooper, 13 Cal. 3d 898, 929 (1975); Mueller v. Brown, 221 Cal. App. 2d 319, 324-25 (1963).) 74(af)

Furthermore, even assuming such contracting away of regulatory authority is lawful, neither the IA nor the MSCP Plan make the findings required under the statutes whose mandates the IA purports to waive. The IA simply conclusorily states, without analysis or evidence, that the requirements of these other laws will be met by the MSCP Plan. The IA fails to justify the conclusion that the mitigation provided in the MSCP Plan will satisfy the biologic mitigation and other requirements of these statutes. (Indeed, incidental take is not even authorized in the first instance under the MBTA and so no such take can be authorized through the MSCP Plan or the IA, regardless of the level of mitigation provided.) Waivers of future CEQA mitigation are particularly unjustified given the inadequate analysis and mitigation of environmental impacts in the "program" EIS/EIR and MSCP Plan, and the vague process for analyzing future project consistency with the MSCP Plan and EIS/EIR. Such waivers are also inconsistent with the NCCP Process Guidelines and CEQA Guidelines, which require subsequent, project-level environmental analysis for program EIRs on NCCPs. 74(ag

C. The Findings In the IA Are Unsupported By Evidence and Analysis in the Record.

The findings supporting the issuance of take authorizations in section 12.0 are contradicted by the provisions in sections 6.0, 9.0, 11.0 and 13.0 of the IA and are arbitrary and capricious and unsupported by adequate analysis, facts and evidence in the record. (*See* Topanga Assn. for a Scenic Community v. City of Los Angeles, 11 Cal. 3d 506 (1974).) The viability of the findings also depend upon plan implementation, which, for the reasons discussed above, is far from guaranteed. At the same time, however, the IA allows incidental take to proceed without guaranteed species conservation. CDFG's findings also use the wrong legal standard: "adequately provide," instead of "conserve, protect, restore and enhance." 74(ah)

D. The IA's Monitoring and Enforcement Provisions Are Inadequate.

The provisions in sections 14.0 and 16.0 regarding biological monitoring and reporting and enforcement are also inadequate under the federal and state ESAs. These provisions simply require "adequate progress" to be made toward implementation, and that habitat preservation proceed "in rough step" with development, but do not define what these terms mean. Section 14.0 also provides that "no Participating Local Jurisdiction or Participating Special Entity will be subject to an annual, quantitative habitat preservation requirement." This means that the MSCP Plan will not provide any specific level of benefits to species, contrary to the 74(ai)

requirements of the federal and state ESAs. 74(ai)

The IA also fails to define the phrase "significant material violation." What types of violations will be considered significant and material enough to warrant permit suspension or revocation? What remedies are available for less than significant violations? Are these violators to go completely unpunished? What if a large number of violators commit individually "insignificant" but cumulatively substantial violations? What if there is no significant material breach, but the USFWS nevertheless determines that implementation of the MSCP Plan will jeopardize the continued existence of a covered species? The IA provides no remedies in these circumstances. Finally, what is considered a "reasonable opportunity" to cure a breach? 74(aj) 74(ak)

These and other issues must be clarified and the wildlife agencies must be given a full range of remedies before the IA and MSCP Plan can be approved.

Thank you for your careful consideration of our views.

Sincerely,

TARA L. MUELLER
Attorney at Law

CHARLES STEVEN CRANDALL
Law Offices of Steve Crandall

75 MCCORMICK, S. THE NATURE CONSERVANCY, 29 OCTOBER 96

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75(a) Comment noted.

75(b) Comment noted.

75(c) Comment noted. The wildlife agencies agree with the suggestion that the MSCP articulates, for each species covered, a clear set of conditions and needs regarding preservation, management actions. The wildlife agencies have provided this information in revised MSCP Table 3-5, included in the Revisions to the MSCP Plan, January 1997. See also **Theme Response I, Species Analysis Approach.**

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The Nature Conservancy

The Nature Conservancy
[illegible] Via Marina
Mission Viejo, California [illegible]
[illegible]
fax [illegible]

California Regional Office
[illegible] Mission Street, [illegible] Floor
San Francisco, California [illegible]
[illegible]
fax [illegible]
fax [illegible]

October 29, 1996

John Kovac, Senior Land Planner
Land Development Review Division
City of San Diego
1222 First Avenue, 5th Floor
San Diego, CA 92101

Gail Kobetich, Field Supervisor
U.S. Fish and Wildlife Service
2730 Loker Avenue West
Carlsbad, CA 92008

Ron Rempel; NCCP Program Manager
California Dept. of Fish and Game
1416 Ninth Street
Sacramento, CA 95814

Re: Multiple Species Conservation Program: Planning Documents and Implementing Agreements; Subarea Plans and Associated Implementing Agreements

Gentlemen:

Thank you for the opportunity to provide The Nature Conservancy's comments on the MSCP Plan, the draft EIR/EIS, and the City of San Diego's subarea plan and implementing agreement. The Nature Conservancy shares your commitment to ecosystem protection in collaboration with well-planned economic activity in the MSCP area. **75(a)**

The MSCP is an uprecedented attempt to resolve land use conflicts and create a sustainable balance between the economy and the environment. We recognize and applaud the exceptional effort you have made over the past six years to reach this stage, and you are to be congratulated and commended for nearing resolution to this extremely complicated and difficult process. **75(b)**

We acknowledge that the goal of MSCP, and all planning processes under the NCCP program, is to create a balance between conservation and the economy. This balance is expressed by the set of long-term assurances granted under the plan that guarantee conservation and economic benefits. Conservation assurances include well-designed and adequately funded, managed, and monitored preserve systems. On the economic side, assurance is achieved by predictable land-use rules, one-stop permitting, and local decision making. Based on continuing discussions with stakeholders in MSCP and our own **75(c)**

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evaluation, we believe that these assurances, as currently described, are out of balance in the MSCP and implementing documents. The guarantees granted to jurisdictions and third-party beneficiaries under the proposed plans and implementing agreements appear to require more assurance of the specific conservation outcomes contemplated by these documents. 75(c)

The issue of assurances is most clearly manifested in the list of species for which take permits will be granted (the "covered species" list). MSCP as proposed contains several provisions that present challenges in determining the adequacy of conservation for the species on this list, including, among other things, the broad severability provisions of the plan for certain species, the timing of take authorizations as related to performance of conservation outcomes for many species, and the uncertainty surrounding the "soft line" reserve definitions in part of the planning area. The lack of detail in the management and monitoring program is particularly concerning, since exemplary land management is the primary mitigation measure that justifies most take authorizations. We believe these difficulties should be cleared up before entitlements and other long-term economic assurances are granted.

There are a number of ways to fix this issue; the key is to make sure that the conservation outcomes proposed under the plan are achieved. An approach to resolving these concerns, and one we recommend, is to leave the agreements and number of covered species much as they are, but for each species to articulate a clear set of conditions and needs regarding preservation, management actions, monitoring protocols and data collection. These conditions should be included in the plans and implementing agreements and a clear demonstration made by the parties as to how these conditions will be met and enforced. This approach would restore the balance of conservation and economic certainty critical to broad-based community support of the plans.

The Nature Conservancy remains firmly committed to the conservation and economic balance at the core of MSCP. We have invested substantial resources in furthering public outreach and implementation funding in the subregion, and will continue to support a well-considered approach to this difficult challenge. We appreciate the enormous effort it has taken to bring this complex process so close to completion, and we stand ready to assist you in any way we can.

Sincerely,

Steve McCormick

Steve McCormick
Vice President and Regional Director

76 BURRASCANO, CINDY, CALIFORNIA NATIVE PLANT SOCIETY, OCTOBER 28, 1996

76(a) Refer to response to Comment 20(a).

76(b) Refer to response to Comment 20(b).

76(c) Refer to response to Comment 20(c).

76(d) Refer to response to Comment 20(d). The design of the MHPA is constrained by existing development, which results in a linear preserve that increases edge-to-area ratio. Preserve management plans will be required to address how edge effects to covered species will be avoided or minimized (see **Theme Response XIX, Preserve Management**).

76(e) Refer to response to Comment 20(e).

76(f) Refer to response to Comment 20(f).

76(g) Refer to response to Comment 20(g).

76(h) Refer to response to Comment 20(h).

76(i) Refer to response to Comment 20(i).

76(j) Refer to response to Comment 20(j).

76(k) Refer to response to Comment 20(k).

76(l) Refer to response to Comment 20(l).

76(m) Refer to response to Comment 20(m).

76(n) Refer to response to Comment 20(n).

76(o) Refer to **Theme Response XIX, Preserve Management**, and the Revisions to the MSCP Plan, January 1997, regarding Section 6.3.1.

76(p) Refer to response to Comment 20(o).

76(q) Refer to response to Comment 20(p).

76(r) Refer to response to Comment 20(q).

76(s) Refer to response to Comment 20(r).

76(t) Refer to response to Comment 20(s).

76(u) While the MSCP preserve area identified within the Chula Vista Subarea Plan indicates that certain "Sensitive Resource Area(s)" may be developable, this does not relieve a developer from the requirements of CEQA and federal Section 404 requirements. Please also refer to responses to Comments 20(t) and 20(u).

76(v) Refer to **Theme Responses XIX, Preserve Management, and XXV, Wetlands Protection.**

76(w) Refer to **Theme Response XIX, Preserve Management.**

76(x) Refer to response to Comment 20(v).

76(y) Refer to response to Comment 20(w).

76(z) Refer to response to Comment 20(x).

76(aa) Refer to response to Comment 20(y).

76(ab) Refer to response to Comment 20(z).

76(ac) Refer to response to Comment 20(aa).

76(ad) Refer to response to Comment 20(ab).

76(ae) Refer to response to Comment 20(ac).

76(af) Refer to response to Comment 20(ad).

76(ag) Refer to response to Comment 20(ae).

76(ah) Refer to response to Comment 20(af).

76(ai) Refer to response to Comment 20(ag).

76(aj) Refer to response to Comment 20(ah).

76(ak) The data base shows no records of Orcutt's spineflower in the Tijuana River Valley or extant in the City of San Diego (the recorded population in Torrey Pines State Park has not been seen in recent years). The subarea plan will be revised to delete it from the list of species in the Tijuana River Valley.

76(al) The Conserved Vegetation Communities in Northern Area graphic has been revised to include note # C27 which was inadvertently omitted from the figure. The note is located outside of the MHPA (in the white area) immediately to the west of note # C26. This area includes the existing developed portion of the General Dynamics property.

76(am) City of San Diego Water Utilities owned land around the San Vicente Reservoir is included as part of the "Cornerstone Lands" and is subject to the Cornerstone Lands Agreement (Exhibit K, to the San Diego Implementing Agreement). The properties surrounding San Vicente Reservoir are part of the County's Subarea Plan, Metro-Lakeside-Jamul segment. MSCP Plan, Volume II, Section 4.2.1 of the County's Subarea Plan provides design criteria for implementing the subarea plan on a project-by-project basis. These criteria address the need to preserve the biological integrity of linkages.

76(an) Refer to response to Comment 20(ai).

76(ao) Refer to response to Comment 20(aj).

76(ap) Refer to response to comment 20(ak).

76(aq) Refer to response to Comment 20(al).

76(ar) The habitat preservation acreage goals were generated by utilizing the preserve design depicted in Figure 1-3 of the 1995 draft MSCP Plan. By following the design criteria and meeting the species and vegetation community conservation goals, an adequate and functioning preserve system will be developed. These goals and criteria were used to evaluate the conservation of species by the plan. The maritime succulent scrub which occurs in the County Subarea Plan occurs primarily on to Otay Ranch. The areas of preservation are those from the Otay Ranch project. The areas of impact are isolated patches of habitat in the canyons which do not connect to other habitat. Most of the oak woodland vegetation community occurs in the Metro-Lakeside -Jamul segment of the plan. The conservation level of oak

woodland was factored into the species evaluations. The majority of the oak woodland community in San Diego County is located in the eastern portions of the County.

For wetland habitats, there is a federal requirement for No-Net-Loss. The acreage of conserved habitat may be a bit misleading because of the no net loss requirement inside and outside of the core biological resource areas. The acreage figures reflect conservation within core biological resource areas.

76(as) The acreage of native grasslands for the Lake Hodges segment of the County Subarea Plan was derived from draft environmental documents in the area. The 0.09 acre should be 0.9 acre and the table will be corrected.

76(at) Habitats which do not occur in this segment will be deleted from the list on page 2-5.

76(au) The United States Immigration and Naturalization Service (INS) activities will continue to subject to consultation with the USFWS. The County's take authorizations would not cover their activities. The impacts of INS activities is beyond the scope of the MSCP Plan and EIR/EIS.

76(av) See response to Comment 76(ar).

76(aw) Table 3-2 does not include lands owned by the City of San Diego.

76(ax) Vernal pools occur within other vegetation communities and have not been broken out separately. Due to their sensitivity they are treated separately and will be subject to the no net loss of function and value.

76(ay) Vernal pool species were not included in the narrow endemic list for the Metro-Lakeside-Jamul segment of the County Subarea Plan because by including vernal pool habitat on the narrow endemics list, all vernal pool species received protection equivalent to being on the narrow endemics list. Additionally, there are no known vernal pool locations in that segment.

76(az) Comment noted. The exemption requires that all possible mitigation measures be employed.

76(ba) Comment noted. The exception requires all appropriate mitigation measures in conformance with CEQA and Surface Mining and Reclamation Act (SMARA) and additional mitigation measures. Please refer to the information on mineral extraction included in the Revisions to the MSCP Plan documentation, January 1997.

76(bb) Comment noted. The redraft of the Biological Mitigation Ordinance eliminates "generally."

76(bc) Refer to response to Comment 20(am). See also **Theme Response XX, Severability of Take Authorizations.**

76(bd) Refer to response to Comment 20(an).

76(be) Refer to response to Comment 20(ao).

76(bf) See **Theme Response XIX, Preserve Management** and Revisions to the MSCP Plan, January 1997, regarding Section 6.3.1.

76(bg) Refer to response to Comment 20(ap).

76

California Native Plant Society

San Diego Chapter P.O. Box 1390 San Diego, CA 92112-1390

Lawrence C. Monserrate
City of San Diego
Land Development Review Division
1222 First Avenue, MS 501
San Diego, CA 92101

October 28, 1996

RECEIVED
OCT 28 1996
DEVELOPMENT SERVICES

Re: Multiple Species Conservation Program (MSCP) Plan
Dep. No. 93-0287 SCH 93121073

Dear Mr. Monserrate:

The San Diego Chapter of the California Native Plant Society (CNPS) has attempted to review the draft Environmental Impact Report (EIR)/Environmental Impact Statement (EIS) for the Multiple Species Conservation Program (MSCP) Plan in addition to the MSCP Plan Volume 1, the MSCP Subarea Plans Volume II, and the Implementing Agreement for the City of San Diego. We have serious concerns about the adequacy of the data used to develop the program, the adequacy of the presentation of the data for public review, and the adequacy of the preserve design. Our comments will include discussion of some of the broader issues with the MSCP plan, specific comments concerning the subarea details, concerns associated with the City of San Diego Implementing Agreement and the Environmentally Sensitive Lands Ordinance, followed by specific comments concerning individual plant species.

General Issues

We were disappointed in the documentation used to discuss the plan. The EIR/EIS document is poorly structured. No data beyond a summary table was provided in any of the documents for individual species. One could not review the adequacy of the data since there was no discussion of where main populations of species are located nor were any maps of the data provided. Two of our members visited public libraries (the main Chula Vista library and a small City of San Diego branch library) in order to review the information and neither library had any additional supporting information available. Had US Fish and Wildlife and California Department of Fish and Game personnel not made data available, we would have had to legally challenge the adequacy of the documents. Programmatic EIRs must provide the data which is the basis for decision making and that data must be available for public review.

Clear responses to NOP comments and questions are lacking. We raised some very specific questions in our NOP response that were not answered. We are resubmitting our 76(a)

comments in hopes that questions will be clearly answered. One comment that the document addresses but did not clearly answer is, what is the post-MSCP CEQA mitigation process in reference to uncovered sensitive species in the plan area? 76(a)

Error in the MSCP conservation approach results from reliance on data that was never field verified. Our organization field checked data for one species we felt was at risk of extirpation with the MSCP preserve design. We found that species misidentification was abundant in the data and led to a findings of coverage for *Ambrosia pumila* which is not appropriate with the actual level of protection provided by the preserve design. We unfortunately did not verify data for other species in a systematic manner. We continue to have concerns about the proper identification of populations of *Hemizonia conjugens*. There is apparently misunderstanding of the distinctiveness of the species by some local consulting firms as evidenced by statements made to the City of Chula Vista Resource Commission concerning *Hemizonia conjugens* and impacts from the proposed I-125 project. We know that populations of *Monardella linoides* ssp. *viminea* west of I-805 in San Clemente Canyon are only historical since only two above ground strands of the plant were located after extensive multi-year survey efforts in the area. Data for *Rosa minutifolia* is in error. There is only one known occurrence of this plant in the United States. See individual species discussions for further details.

Exhibit I in the Implementing Agreement Document (page 8) states that surveys conducted as part of the MSCP may be used where agreed upon. Lack of field verification of data for both habitats and species makes the use of MSCP data suspect to us. We request that only current field data be applicable.

The Multiple Species Conservation Program (MSCP) Volume 1 Resource Document states, "The overall goal of the MSCP is to develop a preserve system that will maximize and enhance biological diversity in the region and to conserve viable populations of endangered, threatened, and key candidate species and their habitats within the MSCP study area, thereby preventing local extirpation and ultimate extinction." We do not believe that the proposed preserve design can accomplish those goals. Local extirpation is a probable outcome of this plan for *Ambrosia pumila, Aphanisma blitoides, Astragalus tener* var *titi*, and a variety of bird species. Please explain how the plan will prevent local extirpation of the listed plant species. 76(b)

The United States Fish and Wildlife Service (USFWS) must consider 5 factors in reaching its decision to issue an incidental take permit for a species (pages 1-11 and 1-12 of the EIR/EIS). Included in those five factors are:

Are the impacts of the proposed taking of covered species minimized and mitigated to the maximum extent possible?

Is the proposed take such that it will not appreciably reduce the likelihood of survival and recovery of the covered species in the wild? 76(c)

76

Are there other measures that should be required as a condition of the permit? 76(c)

We find that the current preserve design does not minimize and mitigate to the maximum extent possible impacts to the following listed species: *Ambrosia pumila*, *Aphanisma blitoides*, *Astragalus tener* var. *titi*, *Hemizonia conjugens*, *Lotus nuttallianus*, *Navarretia fossalis*, *Orcuttia californica*, *Pogogyne nudiuscula*, and *Rosa minutifolia*. We also believe the plan appreciably reduces the likelihood of recovery for these species. Please provide the following information:

1. Specify how the plan will minimize impacts to these species
2. Specify how the plan will enhance, not reduce recovery of the species

Biological criteria for preserve design (page 4-4 to 4-10) in the MSCP Resource Document contain 11 bulleted items which address reserve configuration, buffering, and ability to manage the preserve for the desired use. Various areas of the proposed preserve violate the criteria. A shape which minimizes the edge-to-area ratio of preserve blocks (NCCP tenets #2 and #7) is suggested when the possibility exists to design the shape of preserve areas. Viewing of the proposed MSCP preserve maps (Figure 2-1 in the EIR/EIS) demonstrates the overall non-compliance with a minimized edge-to-area ratio. The plan has a long narrow preserve even in areas not already constrained by development. Other alternatives previously rejected by jurisdictions had better edge-to-area ratios. What is the likely impact of this preserve design on the preservation of species? What is the likely impact of this preserve design on the financial costs of managing the preserve? 76(d)

The plan was to provide the ability to preserve blocks buffered by areas of limited intensity development (NCCP tenet #7). High density development is planned up to the edge of the preserve. How does this plan satisfy NCCP tenet #7? It seems clear from experiences with linear City of San Diego parks adjacent to development such as Tecolote Canyon or Marian Bear Natural Park, that at times the lack of buffers will cause a conflict with the ability to manage the preserve for its desired use (preservation of biological values) or that the costs of managing those lands for the preservation of native species is greatly increased. With recent fires in the area it should be abundantly clear that buffering benefits both the preserve and the development adjacent to the preserve. 76(e)

In the southbay we doubt whether preserves can be managed for desired use (NCCP tenet #7) because of the impacts associated with illegal border crossing and actions by those attempting to control such crossings. The degradation of Spring Canyon and Otay Mountain has been dramatic over the past few years. There is no reason to believe that impacts to these areas will change any time in the forseeable future. Have there been any coordination efforts with local INS authorities? 76(f)

Throughout the plan area we do not find requirements for development projects along preserve boundaries that would enable the safe use of fire as a management tool within the preserve. The exception to this statement is in the southbay where development 76(g)

requirements were incorporated to improve conditions for border control purposes. Native grassland restoration and regeneration for certain species are dependent upon fire cycles. The long term viability of some of the species cannot be assured if all fires are suppressed due to the hazards to adjacent development associated with inadequate setback requirements. Adequate development setbacks help in both protecting the preserve and in protecting houses when there are uncontrolled burns. 76(g)

Figure 2-2 in the MSCP Plan Volume 1 shows 14 linkages for the preserve. The ability of preserves to be connected by adequate corridors to adjacent habitat patches (NCCP tenets #4 and #5) is a criteria of the preserve but few of the 14 linkages are shown as conserved. The preservation of linkages A, B, D, H, I, J, K, L, M, and N (10 out of 14 linkages) is not guaranteed with the current preserve design. As far as we can tell, linkages F and G are present but highly constrained. It is not at all clear that there is adequate connectivity with patches outside the MSCP study area (NCCP tenets #4 and #5). Please clarify how each linkages will be preserved. 76(h)

Rare habitats are not adequately preserved (Resource Document 4-3 criteria). Vernal pools are not quantified in the documents but it is apparent from sensitive species maps that pools lie outside of the preserve. How will vernal pools be preserved? Native grasslands are not quantified in the documents. If this rare habitat has not been identified, how can it be incorporated into a viable preserve? According to Table 3-3, only 47% of Maritime succulent scrub is protected, 62% of Southern maritime chaparral, 61% of Freshwater marsh, 57% of Oak riparian forest, and negligible shallow and deep bays are protected. We are concerned about the adequacy of these protection levels. Standards and guidelines developed for the program are not met with these low preservation levels. Please explain why deviations from the goals for these already limited habitats is acceptable. Given that Cactus wren are already in danger of local extirpation with current numbers per the previous resource documents, please explain the level of the impact to Maritime succulent scrub.

The plan seems to be placing jurisdictions in direct conflict with the no net loss policy for wetlands. The City of Chula Vista proposes to conserve only 76% of its Southern coastal salt marsh, 40% of its Freshwater marsh, 84% of its Riparian scrub, 51% of its Natural flood channel, and 11% of its Shallow bay. The City of Del Mar does not plan to preserve any of its Freshwater marsh. The City of National City plans to preserve 58% of its Riparian scrub and 2% of its Shallow bay. The City of Poway is preserving only 12% of its Freshwater marsh, 84% of its Riparian forest, and 37% of its Riparian scrub. The City of San Diego is preserving 68% of its Freshwater marsh, 85% of its Riparian scrub, and 5% of its Shallow bay. Santee is preserving only 40% of its Freshwater marsh, 18% of its Riparian forest, 65% of its Riparian scrub, and 54% of its Natural flood channel. Unincorporated areas (County) are preserving 69% of Freshwater marsh, 66% of Riparian forest, 50% of Oak riparian forest, 77% of Riparian woodland, 68% of Riparian scrub, 57% of disturbed wetlands, and 88% of Natural flood channels. Please explain how no net loss of wetlands is to occur with these levels of impact throughout the region. Avoidance of wetlands should be incorporated into agreements with all jurisdictions. 76(i)

76

That any vernal pools would be omitted from the preserve is not acceptable given the historic loss of this habitat type. That vernal pools with sensitive species are not included in the preserve is not comprehensible given the stated goals of the program. That a sensitive vernal pool species (*Myosurus minimus* ssp. *apus*) could not be covered due to the level of impact proposed by this plan to its few remaining pools demonstrates an inadequacy of the planning process. 76(i)

Numbers for Maritime succulent scrub do not add up correctly. Table 3-3 (page 3-18) states there are 1803 acres in the study area. Table 3-1 (pages 3-9 to 3-15) have a total of 1435 acres between the City of Chula Vista, City of San Diego, and the Unincorporated area. In meetings with USFW and CDFG, the missing acreage was credited to military lands on Point Loma. While this is most likely true, do figures for the City of San Diego recount this habitat (1133 acres in study area with 721 acres total MHPA acres) or is the actual MHPA acreage value incorrect for the City of San Diego? 76(j)

The list of endemics in the EIR/EIS (page 4.3-8) does not contain *Pogogyne abramsii*, *Pogogyne nudiuscula*, *Orcuttia californica*, *Navarretia fossalis*, *Myosurus minimus* ssp *apus*, *Brodiaea orcuttii*, or *Lotus nutallianus*. These species are endemic to the plan area or are of highly limited distribution. The list does contain two species not endemic to the plan area (*Brodiaea filifolia* and *Berberis nevinii*). Please correct these omissions and errors. The draft Exhibit I in the Implementing Agreement document does not contain the listed species either. Section A.3. of Exhibit I (page 6) does not limit encroachment into Sensitive Biological Resources such as is implied by the narrow endemics language in Section 10.8.G.3 of the Implementing Agreement (page 25). Please clarify the discrepancy in the language in the different sections. 76(k)

A 3 year public reporting period is too infrequent to ensure that the preserve design and the jurisdictions are fulfilling their expectations (Plan 6.4.3 page 6-12). Yearly reporting by jurisdictions with a public hearing and findings of plan conformance are needed. Findings of plan conformance need to be made on a yearly basis by USFW and CDFG. 76(l)

Ambrosia pumila does not occur in CSS. Tables in the documents are erroneous in this respect. If this statement is incorrect, please report which population does occur in coastal sage scrub. 76(m)

Please expand the bulleted item in the Plan (Section 6.3.8 on page 6-10) concerning exotic species to read invasive non-native species (this would include control efforts for frogs and pigs in addition to exotic plant species). Section 6.3.8 discusses chemical usage to control exotic plants. Licensing requirements are not accurately discussed. Licensed Pest Control Advisors usually prescribe an approach for removal of organisms while Licensed Pest Control Applicators make the application. You will effectively destroy active volunteer efforts with the requirement for Pest Control Advisor 76(n)

licensing for volunteers. Typically, unlicensed volunteers undergo a training program to enable them to assist in eradication of pest plants when herbicide will be used. The County Agricultural Commissioner has no requirements regulating volunteers using unrestricted compounds. Please amend this section of the plan to allow volunteer participation in exotic plant removal with appropriate training. 76(n)

Are management plans required for species at the issuance of take permits or the adoption of a habitat conservation plan? The document clearly allows take of species but it is not clear that there is sufficient protection of species. 76(o)

Subarea Plans

City of Chula Vista

1. Page 3 of the document implies that linkages are preserved, the Sweetwater and Otay River linkages are not preserved with the proposed preserve design. 76(p)

2. Throughout the document Appendices are aluded to but not included (example: page 7 "see Appendix for significant on-site vegetation acreage to be preserved"). Such references should be deleted if not included in the document. 76(q)

3. Sunbow II slopes are listed as Coastal sage scrub but in actuality are Maritime succulent scrub (Section 4.1.1.7 page 9). This might help to explain why Chula Vista only lists 17 acres of Maritime succulent scrub in their habitat acreage tables. It is unlikely that the current City of Chula Vista only contains 17 acres of Maritime succulent scrub given the Sunbow property in Poggi Canyon, Rice Canyon, and lands along Telegraph Canyon road that are currently in the city. Please verify the data in tables. 76(r)

4. The document states that the Otay Valley Regional Park draft concept plan is consistent with preserve goals but the plan proposes active recreation in a linkage area containing sensitive species (*Hemizonia conjugens*, *Cordylanthus orcuttia*, *Opuntia parryi* var *serpentina*). This is not in conformance with linkage requirements or good management policy for sensitive species. 76(s)

5. The document states that San Ysidro Mountains Parcel of Otay Ranch contains 7 acres of Sycamore alluvial woodland. Todd Keeler-Wolf, Vegetation Specialist for the California Department of Fish and Game in Sacramento, has assured the San Diego Chapter of CNPS that our region does not contain this very rare habitat. 76(t)

6. The Sensitive Resource Study Area, which contains vernal pools with sensitive plant species, is specifically cited as an area in which the Wildlife agencies shall not object to development, yet the area contains a non-covered sensitive plant species and vernal pools (Section 4.3.1.1.3.a.3.f). CEQA and Federal 404 permitting processes are required to deal with this issue and wildlife agencies cannot shirk their responsibilities to uncovered species. 76(u)

76

7. We are concerned over the lack of avoidance language for wetland habitats including vernal pools. Army Corp of Engineer 404 permits require avoidance of impact and when an impact is unavoidable, it must be minimized and mitigated. Please reflect these requirements in your documents. 76(v)

8. Does Park and Recreation management plans for open space parks adequately manage sensitive species? Please explain how practices for Rice Canyon are protecting the San Diego ambrosia population reported for this canyon. 76(w)

City of San Diego

1. Both Bougainvillea and Hidden Trails are listed as projects included in the approved negotiated projects list but to date we have seen no approved environmental documentation for these projects (page 2). These projects should not be included on this list. 76(x)

2. The document states that Spring Canyon and the Otay River Valley support *Ambrosia pumila* (page 6 and 7). They do not. Please confirm status with Keith Greer of the City's Planning Department and Craig Reiser (local botanist). Also please note that Orcutt's bird's-beak is found on Hidden Trails and has been previously reported during the public review process for Hidden Trails. 76(y)

3. Some of the active park uses listed for Mission Trails Regional Park on page 16 are incompatible with species protection. See additional discussion under individual species. 76(z)

4. Under the section 'Other Urban Habitat Areas' (page 18) sensitive plant species are listed for which we need additional information. Where are the Orcutt's brodiaea, Short-leaved dudleya, San Diego button celery, Willowy monardella, and San Diego goldenstar located? When were the last surveys conducted? What increased management will be provided with MSCP preserve adoption? 76(aa)

5. Is Montgomery Field included as an 'Other Urban Habitat Area'? Are the Montgomery Field vernal pools with *Pogogyne abramsii* part of the MSCP preserve? 76(ab)

6. Since grading has occurred for projects adjacent to and north of Los Penaquitos Canyon, wildlife usage of the linkage west of the canyon has increased (page 21). The document implies the linkage is most likely not being used by wildlife. This statement needs to be re-examined given current levels of usage of the area. 76(ac)

7. Page 45 lists coverage conditions for various species. We object to the discussion for *Ambrosia pumila* (1). The species is much rarer than the plan describes and avoidance of the population is required to ensure the species will not be extirpated with the MSCP plan. We object to the lack of avoidance of impact for *Astragalus tener* var *titi* if any actually occurs in the planning area (3). The species is probably locally extirpated but if it is found in the planning area it should be preserved in situ. Design criteria for development of areas adjacent to *Arctostaphylos glandulosa* var. *crassifolia* and *Ceanothus verrucosus* need to 76(ad)

76

ensure that controlled burns of the open space areas will not put housing at risk (2) (5). Why is there no discussion of vernal pool species in this section? 76(ad)

8. The Invasives section on page 52 should be expanded to read "6. No invasive non-native species shall be introduced into areas adjacent to the preserve." 76(ae)

9. The Otay Mesa Area has no confirmed *Ambrosia pumila* populations (section 1.5.3 page 60). 76(af)

10. A Natural Resource Management Plan should be developed for Mission Trails Regional Park (Priority 1 on page 76) that preserves and protects natural resources even if that protection is in conflict with the Master Development Plan. Page 80 suggests that a Natural Resource Management Plan has been started for the park. To our knowledge this has not occurred. 76(ag)

11. We would request that specific design criteria be established for developments adjacent to areas containing Del Mar manzanita and Coast white lilac such as utilized for border control requirements to enable active management of preserve lands for fire. This would need to be incorporated in a few areas in the future urbanizing area. 76(ah)

12. The narrow endemics list on page 111 contains no vernal pool species (*Pogogyne abramsii*, *Pogogyne nudiuscula*, *Orcuttia californica*, *Navarretia fossalis*, *Myosurus minimus* var. *apus*, *Brodiaea orcuttii*, or *Lotus nuttallianus*. These species require protection outside of preserve areas to ensure the species can recover. 76(ai)

13. The City proposes to change its wetland definition criteria to Army Corp of Engineer's criteria. This will result in the loss of additional wetlands especially in flood fringe areas. We have seen that when development is allowed in floodplains (Mission Valley, Tijuana River Valley, and Sorrento Valley) natural drainages tend to become channelized with concrete due to human health concerns and property damage. This results in a loss of rare wetland habitat. We request that the City reconsider its decision to reduce wetlands definition criteria. 76(aj)

14. Orcutt's spineflower is listed as occurring in the City on page 10. Is this data correct? 76(ak)

15. Figure 5 on page 23 has no C27 as described in the text on page 27. Which area is not included in the preserve? 76(al)

16. The functionality of the preserve on the southeast side of San Vicente Resevior is questionable. Emergency Water Storage plans call for increased water storage at the resevior making the amount of land on the southeast side of the resevior insufficient to provide a land connection. Please expand the preserve in this area. 76(am)

California Native Plant Society

County of San Diego

1. Table 2-1 (page 2-3) lists Sycamore alluvial woodland as a habitat but this is a highly restricted community not found in San Diego County. See comment 5 from the City of Chula Vista section. 76(an)

2. Since controlled burning may be required for the continued persistence of some species, development plans should incorporate designs such that fire danger is lessened to the development (Section 2.5.1 pages 2-15). Species requiring periodic fires for regeneration include *Arctostaphylos* and *Ceanothus* species. 76(ao)

3. Tier III Non-native grassland should be mitigated independent of the land containing covered sensitive species. The plan is an attempt to have an equitable sharing of the costs of habitat preservation and to move away from species driven preservation criteria to habitat driven conservation. Mitigation for the habitat should not be dependent upon the species identified in the habitat. 76(ap)

4. Since Highway 125 is no longer proposed for Johnson Canyon, will this high quality land be incorporated into the preserve? 76(aq)

5. The goals for some habitats appear to be low given the rarity of the habitats. Please review the goals for Maritime succulent scrub (currently 158 acres out of 285), Oak woodland (currently 2206 acres out of 4999), and wetland habitats. What is the biological justification for the goal chosen since levels do not reach the acreage expected from the Standards and Guidelines developed for the program? 76(ar)

6. Table 2-1 lists 60.4 acres of native grassland. Where does this value come from since Native grasslands were not quantified with the program? The table also lists a habitat not occurring in the plan area (Sycamore alluvial woodland). Alkali meadow calculations are incorrect. The table lists 0.09 acres preserved out of 1.1 acres. This is not 82% preservation of the habitat. 76(as)

7. The Lake Hodges subarea plan lists a variety of habitats as being in the subarea that are not. Page 2-5 states Beach, Southern coastal bluff scrub, Southern foredunes, Torrey pines forest, Saltpan, Southern coastal saltmarsh, and Tecate cypress forest are in the Lake Hodges subarea. We doubt the validity of this list. 76(at)

8. Roads, lights, and fences can be placed anywhere in the preserve at the request of INS. This precludes the ability of the preserve to be managed for its biological values in conflict with NCCP requirements. INS activities have resulted in the inadvertent filling of a vernal pool on Otay Mesa and could easily have resulted in the extirpation of a species in the United States (*Lotus crassifolius* var. *otayensis*) due to inadequate planning associated with road projects. Since impacts to sensitive species can usually be avoided with just a modicum of planning, there must a review process for impacts of INS activities within the preserve. Unrestricted permission for impacts of preserve lands is not in compliance with NCCP requirements. 76(au)

California Native Plant Society

9. The South County plan lists insufficient habitat conservation for Maritime succulent scrub (179/290 acres), Freshwater marsh (175/313 acres), Riparian forest (283/503 acres), Riparian scrub (543/870 acres), and Oak woodland (297/341 acres). Are these preservation levels consistent with MSCP Standards and Guidelines? What is the biological justification for this level of preservation? **76(av)**

10. Acreage for Freshwater marsh, Riparian forest, Riparian scrub, and Oak woodland do not match between Tables 3-1 and 3-2. Please explain the differences. **76(aw)**

11. No vernal pool acreages are given in Tables 3-1 and 3-2. **76(ax)**

12. The list of endemic species in Table 4-5 has no vernal pools species although many species are endemic to the area. Please explain why vernal pool species are not included on the list. **76(ay)**

13. The exemptions included under Article II of the Biological Mitigation Ordinance (BMO in Appendix 1) are too broad. Item 9 exempts any recreational facility that includes public use at the disecration of the permitting agency (County Board of Supervisors). This would mean a video arcade could be placed in an area surrounded by preserve lands. Please specify types of facilities that would be exempt from BMO under Item 9. **76(az)**

14. Item 10 of the BMO would permit sand, gravel, or mineral extraction throughout the county preserve. This is not acceptable and is in conflict with NCCP guidelines requiring the ability to manage the preserve for preserve goals. ESA 10A requirements for not appreciably reducing the likelihood of survival and recovery of the species would be violated with non-controlled extraction activities. **76(ba)**

15. Article IV.A.3.a states that mitigation ratios shall generally be followed for habitats. The line should read shall be followed for habitats. Generally is insufficient to guarantee the preserve will be acquired. **76(bb)**

Implementing Agreement

1. We are concerned that take permits in one jurisdiction are not adequately tied to conservation in another jurisdiction. Plant species of particular importance to CNPS for the City of San Diego would be Orcutt's brodiaea, Wart-stemmed ceanothus, Orcutt's bird's-beak, Variegated dudleya, San Diego button-celery, Otay tarplant, San Diego goldenstar, Prostrate navarretia, Snake cholla, CA Orcutt grass, and Otay mesa mint. Coverage for these species should be dependent upon successful MSCP adoption in other jurisdictions since take will be allowed for these species. **76(bc)**

2. Public reporting requirements are not adequate. Three years is too long to wait to ensure the plan is functioning. A yearly accounting should be made available for public **76(bd)**

review. Some type of findings of compliance needs to be made by each jurisdiction and by the wildlife agencies on a yearly basis. 76(bd)

3. We did not find avoidance language in Exhibit I concerning narrow endemic species. Please clarify where information can be found as to what happens to narrow endemic species outside of the preserve. Please expand the list to include *Lotus nuttalliamus* and rare vernal pool species. 76(be)

4. We could not find requirements for compliance with an adequate management plan for individual species. We have not seen that lack of funding for exotic control programs has stopped artichoke thistle from taking over thornmint patches or stopped giant cane from converting riparian areas. We have seen that landscaping plans can impact habitat of sensitive species. 76(bf)

Species Analysis

Acanthomintha ilicifolia

Preservation of the main population at McGinty Mountain is not adequate. The majority of the plants on the mountain will be lost with this preserve design and since this is one of the major populations, this is not acceptable. Please adjust preserve lines. We are also concerned about the connectivity of the largest known population of San Diego thornmint with native vegetation in the Otay Lakes area. Development requirements should be such that connectivity to natural vegetation is maintained and drainage is not altered for the population. Please examine how to reduce the impacts to the major thornmint population at El Capitan.

Ambrosia pumila

Surveying of MSCP identified populations found that the Otay River Valley and Spring Canyon populations do not exist. It is the more common species *Ambrosia confertiflora* that occurs at those sites. Data for Spring Canyon can be confirmed with Keith Greer of the City Planning Department. The population at State Route 67 and Lakeside Road could not be found although the closely related species *Ambrosia confertiflora* was prevalent. The populations of *Ambrosia pumila* in the Jamul area have been greatly reduced in size due to development. State Route 52 has impacted the majority of sites located in the Mission Trails/Santee area. Development of a day use area at Mission Trails Regional Park will cause the remaining viable population of *Ambrosia pumila* to be at risk. Smaller populations occur at Gillespie Field and by the Del Dios Highway in the planning area. The San Diego Chapter of CNPS and the Southwest Center for Biodiversity are submitting listing petitions to both the California Department of Fish and Game and the U.S. Fish and Wildlife Service because of the level of impact this program is currently proposing for this species. Additional data concerning the state petition can be obtained from Diane Ikeda and Roxanne Bittman of CDFG Natural Heritage Division. The species is being put at risk of local extirpation and current plans make recovery of the species unlikely. Of the 25 MSCP reported populations, only 5 can be confirmed extant and 2 of those are in precarious condition. Transplantation of the remaining viable population is not acceptable and in conflict with the stated goals of the program. 76(bg)

Aphanisma blitoides
Aphanisma has probably already been extirpated from San Diego County. Being "covered" makes loss of any newly discovered population possible if that population occurs outside of the preserve area. This would be in direct conflict with MSCP goals of no local extirpations. This species would receive better potential protection by not being a covered species.

Arctostaphylos glandulosa ssp *crassifolia*
Del Mar manzanita is a fire dependent species. The document needs to specifically require development design criteria that will allow controlled burning of the habitat supporting this species if the species is to remain in viable populations. Perhaps design criteria required for border patrol in the southbay could be incorporated for fire cycle dependent species. Development such as that seen adjacent to Marian Bear Natural Park inhibits the ability of jurisdictions to appropriately manage the preserve.

Arctostaphylos otayensis
Otay manzanita is a fire dependent species. The document needs to specifically require development design criteria that will allow controlled burning of the habitat supporting this species if the species is to remain in viable populations. Perhaps design criteria required for border patrol in the southbay could be incorporated for fire cycle dependent species. Development such as that seen adjacent to Marian Bear Natural Park inhibits the ability of jurisdictions to appropriately manage the preserve.

Astragalus tener var. *titi*
Coastal dunes milk vetch has probably already been extirpated from San Diego County. Being "covered" makes loss of any newly discovered population possible if that population occurs outside of the preserve area. This would be in direct conflict with MSCP goals of no local extirpations. This species would receive better potential protection by not being a covered species.

Brodiaea orcuttii
The species protection is limited in the study area due to its occurrence on military lands. Since few of the major populations can be guaranteed protection, the San Vicente populations should be conserved as a means of improving the point conservation which is only at 33%. One cannot assume military lands are available for conservation.

Ceanothus cyaneus
Lakeside ceanothus is a fire dependent species. The document needs to specifically require development design criteria that will allow controlled burning of the habitat supporting this species if the species is to remain in viable populations. Perhaps design criteria required for border patrol in the southbay could be incorporated for fire cycle dependent species. Development such as that seen adjacent to Marian Bear Natural Park inhibits the 76(bg)

ability of jurisdictions to appropriately manage the preserve. The Crest-Harbison Canyon population should be included in the preserve since edge impacts will be an issue for all preserved populations and the species is endemic to the area.

Ceanothus verrucosus
All 5 of the major populations in the Carmel Mountain area are inadequately preserved. The species is highly edge impacted at other locations and is a fire dependent species. Conservation of populations on Carmel Mountain and in Santa Fe Valley is needed since the possibility for fire management still occurs in those areas and not in others. The document needs to specifically require development design criteria that will enable controlled burning of the habitat supporting this species if the species is to remain in viable populations.

Cordylanthus maritimus ssp *maritimus*
There are probably only 8 occurrences for this species with 4 of those occurrences in the MSCP study area. All populations should be preserved given the rarity of the species. This is a wetlands species so avoidance should already be guaranteed.

Cordylanthus orcuttianus
This species must be preserved 100% in the Otay River Valley. Active recreation is not a compatible use for this species. The area containing this species is a linkage area. The Hidden Trails population on Otay Mesa is not shown on maps.

Corethrogyne filaginifolia var. *linifolia*
Both major populations of Del Mar sand aster are to be impacted. It is imperative that additional protection is provided to the species on Carmel Mountain. The edge impact to this species is high in all preserved areas. We are hoping the plan is adequate to preserve the species but remain skeptical.

Dudleya blochmaniae ssp. *brevifolia*
Short-leaved dudleya has a limited distribution and is highly susceptible to foot traffic as evidenced by lack of blooming plants at the Torrey Pines extension area and Crest Canyon. Carmel Mountain contains 2 high density populations of the species and some smaller populations. Sufficient buffer area must be provided to the species to ensure that impacts from surrounding development do not appreciably reduce the likelihood of recovery of the species. Since the dudleya is extremely small and cryptic and grows on scenic overlooks on flat mesa tops, effective measures to reduce impacts from people will be required. It is not clear that the preserve design included on MSCP maps can provide sufficient protection for this species. Better buffering of the main populations is needed. Preservation of 3.4 out of 4 major populations is not sufficient given the rarity of the species.

76(bg)

76

Dudleya variegata
The Poway major populations are not shown on maps. Given that only 56% of major populations are preserved and at least half are subject to edge effects impacts to this species need to be reduced. The plant is small and subject to trampling.

Dudleya viscida
Please incorporate seed collection and transplantation for impacted plants.

Hemizonia conjugens
This is a species with inadequate protection with the MSCP plan. All 7 of the major preserved populations will be impacted to some degree. Table 4.3-1 suggests that 4.1 out of 7 major populations will be impacted but in reality all 7 major populations will undergo some level of impact associated with development. We unfortunately did not conduct spring surveys for this species. Plants protected on the northern parcel of San Miguel Ranch are of suspect identification given the soil type in the area. There is apparently some confusion on the part of local surveyors as to the characteristics that define this species and we fear that "preserved populations" associated with San Miguel Ranch are misidentified species. Since other populations of confirmed *Hemizonia conjugens* will be lost with development of the San Miguel Ranch project, it is imperative that confirmation of species identification be performed on the northern parcel to ensure true mitigation is being provided for the species. Major populations in the Otay River Valley are at risk from active recreation planned for the area. It is difficult to justify that this plan has minimized the impact to the species to the maximum extent possible. The plan appreciably reduces the likelihood of recovery of the species. Given the natural fluctuations in population density, greater efforts are needed to eliminate impacts to major populations.

Lotus nuttalianus
This species is at risk due to its presence in highly urbanized areas where it occurs outside of military lands. The City of San Diego has impacted populations along the San Diego River Flood Control Channel. Mitigation for past impacts has been minimal. The city continues to mulch over and plant areas which historically supported the species. Silver Strand populations are frequently suggested to be impacted by plans for Highway beautification projects with landscaping. A golf course has been repeatedly proposed for the Radio Towers area on Silver Strand. *Carpobrotus edulis* is a threat to dune areas but little is being done about it. The MSCP plan must clearly call for changes in management of lands supporting this species. Regular monitoring of the species in needed as well as activities to reduce the likelihood of loss of populations (i.e. prohibit development plans impacting the species, remove invasive exotic plants from habitat areas, stop mulching historical habitat of the species along the San Diego River, and encourage native landscaping along Silver Strand). Coverage without specific management restrictions places this species at high risk of extirpation in the plan area. 76(bg)

76

76(bg)

Navarretia fossalis
This species is inadequately protected by the plan. The current preserve design does not minimize and mitigate impacts to the maximum extent possible. Road projects allowed as permitted uses in the preserve will impact the only major population in the study area. Continued impacts from border patrol activities and lack of protection in Spring Canyon and Chula Vista could lead to the local extirpation of the species.

Orcuttia californica
The species has a highly limited distribution and is located in Spring Canyon, a highly disturbed area used for border control activities. Without active management practices in Spring Canyon, the species is likely to be lost on non-military lands in the county. The plan does not currently provide for recovery of the species.

Pogogyne abramsii
Montgomery Field populations are not mapped. A number of vernal pools need to be conserved outside of military lands at Miramar since preservation of the species at Miramar is no longer guaranteed. The plan needs to specify preservation of pools B7-8, D1, I6A-C, Teledyne, General Dynamics, C10-13, and B11 if species recovery is to occur.

Pogogyne mdiuscula
The species cannot support any losses without appreciably reducing the likelihood of recovery of the species. Pools J21, J27, J28W, J29, and J30 must be preserved. Impacts to Stockpen soils must be avoided if there is to be any chance for recovery of the species. Major roadways must identify routes which avoid impacts to Stockpen soils.

In summary, CNPS is very concerned about the adequacy of the document. The San Diego Chapter of CNPS and the statewide CNPS organization are very interested in the final MSCP environmental documentation and in knowing of any jurisdictional meetings where the program will be discussed for approval of a preserve design. Please inform us of dates for hearings in any of the local jurisdictions. We hope our comments will help to improve the plan and provide sufficient data for management of our limited natural plant resources.

Sincerely,

Cindy Burrascano

Cindy Burrascano
San Diego Chapter President

77 MCGUIRE, HEWITT & MCGUIRE, 10/28/96

77(a) Comment noted.

77(b) A figure depicting the proposed land use changes and MHPA open space for Carmel Valley is included in the Final EIR/EIS documentation, January 1997.

77(c) Carmel Valley Neighborhood 8A proposed Compromise Precise Plan has not been agreed to by all of the property owners. This lack of consensus regarding the appropriate development footprint, current litigation against the City of San Diego, and the direction of the City Council to preserve the full range of their discretionary authority regarding the proposed precise plan for Neighborhood 8A indicates that inclusion of these proposals as Category 1 projects is premature.

77(d) Refer to responses to Comments 77(w) and 77(x). The proposed City Manager Compromise Precise Plan does not propose to delete Carmel Creek Road.

77(e) Comment noted. The figure will be revised to correspond to the proposed Del Mar Highlands Estates Project.

77(f) Figure 4.2-3 of the EIR/EIS will be reviewed and corrected if not consistent with the proposed City of San Diego Subarea Plan proposals.

77(g) Page 4.2-33 contains no reference to Appendix C. Reference to Appendix C will be reviewed and corrected if not accurate. Community plan amendments to implement the MSCP Plan have been prepared at City of San Diego expense and appear as Attachment J to the City of San Diego Implementing Agreement. The Draft Implementing Agreement and attachments were available for public review on August 28, 1996. A revised Draft (December 20, 1996) is available for review at public libraries throughout the San Diego area and at the City of San Diego Metropolitan Wastewater Department, 600 "B" Street, Records Management Room, Fifth Floor, San Diego, CA 92101.

77(h) Council direction regarding project approval procedures is beyond the scope of the MSCP EIR/EIS.

77(i) Comment noted.

77(j) The U.S. Fish and Wildlife Service has completed a formal consultation, pursuant to Section 7 of the ESA, with the Marines at MCAS Miramar for the proposed Base Closure and Realignment Activities. The Biological Opinion (File Number 1-6-95-F-33) resulting from this consultation concluded that the proposed activities would not jeopardize the continued existence of federally listed

species. As a term and condition of the Biological Opinion, the Marines will develop and implement a Multispecies Habitat Management Plan (MHMP) in a manner that is consistent with the guidelines that have been established for subarea plans within the MSCP. The MHMP must demonstrate that it has included or addressed the following checklist in designing the conservation areas: a) retain highest biodiversity feasible by including spatially representative examples of extensive patches of sensitive habitats; b) retain large blocks of unfragmented habitat, following natural topography (ridges and watersheds), where possible; c) retain large, interconnected blocks of habitat that contribute to the long-term management of wide-ranging species; d) define a configuration that minimizes edge effects and edge-to-area ratio; e) retain full viability of each core gnatcatcher population and the key linkage areas between them as identified in either the MHMP or subsequent field work, and retain connectivity to other private or public lands in open space; f) include appropriate management and land use planning criteria to minimize edge effects from adjacent land uses inside the conservation areas; g) outline uses within these areas that are compatible with the complement the biological viability of the area; and h) include monitoring criteria for species and habitats that reflect priorities as determined in the above measures.

77(k) The referenced page of the Draft EIR/EIS simply lists the items included in the City of San Diego Subarea Plan that are relevant to the Carmel Valley Community Plan area. Page 4.3-90 of the Draft EIR/EIS concludes that implementation of these features would not result in significant biological impacts. The discussion does not require that these features be constructed but refers to the City of San Diego Subarea Plan regarding the status of, and requirements for, construction of these features.

77(l) Comment noted. The statement is part of the City of San Diego Subarea Plan and is included per City Council direction.

77(m) The EIR/EIS accurately reflects the content of the Biological Monitoring Plan. Any modifications to preserve boundaries would be accomplished only after consultation among the wildlife agencies, local agency, and affected property owners.

77(n) Applications for Lorenz Parcel and Peñasquitos West projects are not in process at this time (January 1997).

77(o) In conjunction with certification of the Final EIR/EIS and the City of San Diego Subarea Plan, the City Council will also consider whether or not to adopt the proposed General Plan amendments. As discussed in Section 2 of the Draft EIR/EIS, the proposed General Plan amendments are actions that must be adopted by the City Council to implementation the requirements of the City Subarea Plan.

77(p) The reference on page 4.2-22 and 23 of the EIR/EIS refers to the total acres of land converted from urban uses to open space. As indicated in Table 4.2-7, the total acreage of open space would increase by 172 acres. The 172 acre increase in open space corresponds to the 172 acre decrease

in the acreage of the urban categories shown in Table 4.2-7 including residential, commercial, parks and other urban development.

77(q) The statement made on page 4.2-23 of the EIR/EIS is inconsistent with the conclusions of Section 4.4, Transportation/Circulation, of the EIR/EIS. The discussion in Section 4.4, page 4.4-6 correctly states that the City of San Diego is currently evaluating the potential deletion of a portion of Carmel Creek Road planned to extend through Neighborhoods 8 and 8a. As stated on page 4.2-22 the Neighborhood 8a precise plan is currently being processed at the City. A conclusion regarding the potential effects of this deletion has not been reached. The discussion on page 4.2-23 has been revised in the revised language included in the Final EIR/EIS to reflect the conclusions made in Section 4.4.

77(r) Potential impacts to Developer Impact Fees and the Public Facilities Financing Plans are not dismissed by the EIR/EIS. As stated on page 4.2-24, based on an analysis of the proposed MHPA, the City has determined that funding of the facilities listed on page 4.2-24 could be affected by the proposed housing unit loss and associated loss of revenue. This determination is based on the best available information available to the City at the time the EIR/EIS was circulated for public review. An impact is not identified for the proposed project at this time because it is anticipated that funding issues would be addressed as a part of the separate planning process being conducted for the Neighborhood 8a Precise Plan. Please also see **Theme Response III, Economic Impacts and Impacts on Population and Housing.** Page 4.2-24 states that the Public Facilities Financing Plan (PFFP) would not be used as a funding source for preserve management or maintenance.

77(s) The statement made on page 4.2-25 of the EIR/EIS is inconsistent with the conclusions of Section 4.4, Transportation/Circulation, of the EIR/EIS. The discussion in Section 4.4, page 4.4-6 correctly states that implementation of the MHPA would not impact planned circulation systems within the North City Future Urbanizing Area (NCFUA). The discussion on page 4.2-25 has been revised in the revised language included in the Final EIR/EIS to reflect the conclusions made in Section 4.4.

77(t) Figure 4.2-6 accurately reflects the adopted Community Plan and adopted Precise Plan uses for the Western Otay Mesa Area. The California Terraces Substantial Conformance application has recently been submitted and has not yet been adopted by the City. Based on the preliminary status of the recent California Terraces applications, it is the position of the City of San Diego that, while the community plan and precise plans may be amended in the future to reflect the recent applications, the community plan amendments currently discussed in the EIR/EIS reflect adopted plans and ,therefore, are adequate for purposes of finalizing the EIR/EIS.

77(u) The discussion contained on page 4.2-76 is based on input from the Department of the Navy regarding MCAS Miramar. It is beyond the scope of the EIR/EIS to address the internal planning process for the MCAS Miramar Habitat Conservation Plan.

77(v) The referenced discussion on page 4.3-86 is not meant to imply that CEQA mitigation would be required in addition to that proposed by the MSCP Plan for impacts to sensitive upland communities/habitats outside the preserve. The discussion is simply meant to indicate that CEQA would continue to apply to projects both within and outside the preserve. Mitigation requirements under CEQA would be determined by the individual jurisdiction within which a particular project is located. In many cases, it is anticipated that conformance to MSCP Plan or subarea plan requirements would be determined to be adequate mitigation for impacts to species and habitats covered by the MSCP Plan.

77(w) As stated on page 4.4-2 the EIR/EIS concludes that the planned extensions of SR-905, SR-56 and SR-125 would not be prohibited with implementation of the proposed project. However, it is not possible for the wildlife agencies to conclude that the MSCP would not "in any way affect implementation of SR-56". As discussed on page 4.4-2 and 3 of the EIR/EIS, the MSCP Plan recommends measures to minimize potential impacts from roadways on the functioning of the preserve. It is expected that when specific road projects are proposed additional measures will be recommended and required to avoid impacts to resources due to roadway construction.

77(x) The issue regarding the possible deletion of a roadway connecting Neighborhoods 8 and 8a has not yet been resolved by the City. As a result, the discussion in Section 4.4 will not be revised for the Final EIR/EIS.

77(y) Please refer to the introductory paragraph under General Planning and Design Guidelines Section 1.4.2. (first sentence). These guidelines are intended to be considered for projects both within and adjacent to the preserve. The specific measure noted (#3 under Roads and Utilities) is a design guideline for the siting of temporary and permanent roads and/or construction areas on the least sensitive portion of the site. This measure is intended to be applied within the preserve. However, some of the measures would apply to development adjacent to the preserve such as those on Fencing, Lighting and Signage (#2). The guidelines should be applied as appropriate for development within or adjacent to the preserve. Also, please refer to Section 1.4.3 for additional guidelines to be considered for development adjacent to the preserve.

77(z) Section 1.4.2 #1 discusses several alternative measures for barriers that may be applied to ensure that conservation within the preserve is achieved. Fencing is only one alternative measure. Others include natural rocks/boulders and specific non-invasive vegetation which is useful in controlling use/access. Projects within and adjacent to the preserve would be evaluated for the appropriate measure, if any, to be included in development approvals. Section 1.5, Preserve Management, has identified some areas which need some form of barriers either to direct wildlife, control/direct public use and access, and/or protect sensitive species.

77(aa) It is expected that brush management on projects that have negotiated a hard line wold occur as negotiated. In some cases, this would result in brush management Zones 2 and 3 occurring outside the preserve.

77(ab) Mitigation programs would be developed for individual projects as they proceed through the development approval process. The management measures identified in Section 1.5 of the Subarea Plan may or may not be negotiated as part of an individual project's mitigation program.

77(ac) Except as noted above (77ab) and to satisfy applicable City of San Diego development regulations (e.g., brush management), management activities will be the responsibility of the landowner. Conserved lands dedicated to the City will be managed by the City. Lack of funding to accomplish priority 2 and 3 management recommendations will not be a basis for permit suspension.

77(ad) Management activities will be accomplished by the City only after private lands are dedicated as open space.

77(ae) See response to Comment 77(ad).

77(af) See responses to Comments 77(ab) and 77(ac).

77(ag) The proposed mitigation ratios and guidelines of the City of San Diego Biological Guidelines, as referenced in the existing Resource Protection Ordinance and proposed Environmentally Sensitive Lands Ordinance, will be required of applicants for projects subject to environmental review and applicable ordinances.

RECEIVED 77

OCT 29 1996

DEVELOPMENT SERVICES

HEWITT & McGUIRE, LLP

ATTORNEYS AT LAW

DEAN DUNN-RANKIN
CHARLES S. EXON
ANDREW K. HARTZELL
HUGH HEWITT
MARK R. MCGUIRE

19900 MacArthur Boulevard, Suite 1050
Irvine, California 92612
(714) 798-0500 • (714) 798-0511 (fax)

DENNIS D. O'NEIL
JAY F. PALCHIKOFF
PAUL A. ROWE
WILLIAM L. TWOMEY
JOHN P. YEAGER

October 29, 1996

VIA HAND DELIVERY

Mr. John Kovac
City of San Diego
Development Services Department
Development and Environmental Planning Division
1222 First Street, M/S 501
San Diego, CA 92101

Mr. Gail Kobetich
U.S. Fish and Wildlife Service
2730 Loker Avenue West
Carlsbad, CA 92101

MSCP Plan Comments
600 B Street, Suite 500
San Diego, CA 92101

Re: **Draft Multiple Species Conservation Program Plan ("MSCP"), the Draft Joint EIR/EIS For Issuance of a Permit to Allow Incidental Take of Threatened and Endangered Species Within the Multiple Species Conservation Program (MSCP) Planning Area in San Diego County, California, DEP No. 93-0287, SCH No. 93121073 ("EIR/EIS") and Related Implementing Actions**

Gentlemen:

This firm represents Pardee Construction Company ("Pardee"). Pardee owns several parcels of undeveloped and partially developed land in the City of San Diego (the "City"). Pardee's comments on the draft MSCP and EIR/EIS are in large part focused on items of particular concern to it, but Pardee does want to add its voice to those other landowners and landowners' representatives who have expressed concern with the fact that after all the years and all the effort, it is far from clear that the MSCP, as proposed, provides benefits for landowners commensurate with the considerable costs to be borne by them. 77(a)

77(a) If the MSCP is to succeed, it must deliver on the items the City and Service touted the MSCP would provide, namely, streamlining of project review and certainty regarding mitigation requirements for biological impacts. It must also allocate the cost of the program fairly among beneficiaries, and it must not change the rules mid-game.

On this latter point, Pardee is very troubled by the fact that to date the City has failed to include an exhibit depicting the preserve boundary adjacent to Neighborhood 8A in the Carmel Valley portion of its Subarea Plan. Instead, the City has provided acreage figures only and says even these should be thought of as "general proposals subject to change." (EIR/EIS p. 4.2-22)

77(b) Pardee expended a great deal of time and effort meeting with representatives from the City, the United States Fish & Wildlife Service, and the California Department of Fish & Game to reach an agreed upon biological mitigation line for Neighborhood 8A. The line was agreed to by all parties and is shown on the proposed Neighborhood 8A Precise Plan which the City Manager recommended to the City Council for approval more than a year ago. An exhibit depicting the line has been included in other MSCP draft documents. Thus there is absolutely no valid basis for excluding an exhibit showing the "hard-line" dividing the preserve and developable portions of Neighborhood 8A.

Similarly, the City Manager's Compromise Plan for Carmel Valley Neighborhood 8A/Del Mar Highlands Estates (87-1041, 93-0138 and 94-0576) should be added to Category 1 of Exhibit H of the City of San Diego's MSCP Implementing Agreement ("IA"), pursuant to Section 9.17 of the IA. This project clearly qualifies for the protection afforded by Category 1. In fact, the City Manager's Compromise Plan for Carmel Valley Neighborhood 8A/Del Mar Highlands Estates constitutes a project design more detailed than General Dynamic's Beeler Canyon project which is currently included in Category 1.

77(c) The City's explanation that Neighborhood 8A is still going through the development process is inadequate. The City has drawn "hard" MSCP boundaries over areas with already approved and vested projects (even though the MSCP boundaries conflict with the existing approvals) and has drawn hard lines over areas with no specific development designation at all. If drawing hard lines is appropriate in these instances, why is it so problematic to draw hard lines for Neighborhood 8A? The MSCP Program is supposed to provide a comprehensive approach to biological planning for Covered Species. The MSCP is being adopted as a program in advance of General Plan amendments and Community Plan revisions that will be needed to implement the MSCP program. The MSCP, even at the program level, is to draw hard lines wherever possible. Thus, the City must provide an exhibit illustrating the agreed upon line for Neighborhood 8A as part of the final EIR.

The City, at page 4.2-23 of the EIR/EIS, provides a narrative description of the boundaries and increased preservation for Neighborhood 8A that was agreed upon by the resource agencies and the City and is embodied in the City Manager's Compromise Plan. The final EIR\EIS ought to provide an exhibit depicting the described line. This currently agreed upon line represents an acceptable preserve configuration. Also, Pardee believes the proposed deletion of a circulation element street, Carmel Creek Road, planned for Neighborhood 8 and 8A is inappropriate. Traffic studies have shown that Carmel Creek Road and Carmel Country Road are both required to provide adequate traffic capacity for Carmel Valley south of State Route 56. 77(d)

The graphic (Figure 4.2-3) depicting the North City Future Urbanizing Area on page 4.2-25 inaccurately depicts the MSCP in the following respects and, accordingly, should be corrected:

a. The MSCP boundary in the Del Mar Highlands Estates project area, an approximate 400-acre area in the northwest portion of Subarea III, has been negotiated with City MSCP staff and the wildlife agencies. The graphic does not appear to accurately reflect those negotiations. The graphic should therefore be corrected, especially on the western portion, to reflect the agreement reached with City staff and the resource agencies. 77(e)

b. The MSCP boundaries for the remaining portion of Subarea III were generally developed to reflect conformity with the most recent draft of the Subarea III Plan submitted by Pardee to the City of San Diego. Given the scale of Figure 4.2-3, these differences should barely be discernable. The graphic contained in the EIR/EIS (*i.e.*, Figure 4.2-3), however, does not appear to reflect the MSCP boundaries which have been discussed with City staff. We would therefore request that the graphic be revised to depict such MSCP boundaries. 77(f)

The reference on page 4.2-33 to Appendix C is erroneous. Exhibit "C" to the Draft EIR/EIS does not contain the complete text of proposed General Plan and Community Plan amendments. The correct reference to the proposed Plan amendments should be made when they are made available to the public. We also request that the EIR/EIS clarify that any such amendments made necessary because of the MSCP will be initiated and paid for by the City, per established City Council policy. 77(g)

The discussion in the EIR/EIS (at 4.2-33) concerning amending the Otay Mesa Community Plan fails to consider that the San Diego City Council has adopted a substantial conformance policy for approval of the redesign of certain projects, including the California Terraces project. Section 9.17 of the proposed Implementing Agreement for the City of San Diego provides that the California Terraces and Otay Corporate Center projects have received 77(h)

all necessary approvals from the City of San Diego and are considered vested under California law. Project approval should not be delayed by the process of amending precise plans. The Precise Plan for the California Terraces project provides for modifications by Process One which is equivalent to substantial conformance ministerial approval. In the event that an amendment is necessary, the projects should be approved by substantial conformance with the understanding that the Precise Plan Amendment will be subsequently approved in conjunction with phased amendment of the General Plan and associated Community Plan amendments by the San Diego City Council. 77(h)

In light of the fact that the MSCP will result in a reduction in units in various community plans, the City should commit now to ensuring that PFFP obligations on a per unit basis will not increase. 77(i)

The discussion at page 4.2-76 assumes a functioning wildlife corridor and valuable habitat will remain at NAS Miramar, but the most recent document discussing the Marine's proposed expansion of NAS Miramar shows proposed housing in what appears to be important movement corridors. Has the United States Fish & Wildlife Service engaged in a consultation with the Marines, and did they consider the relationship of Miramar's habitat to the MSCP preserve? Note that Table 4.3-1 indicates that coverage for 11 of the MSCP's Covered Species is dependant on adequate preservation of NAS Miramar's valuable habitat. Please explain further what assumptions are made with respect to habitat protection at NAS Miramar and why these assumptions are justified. 77(j)

At pages 4.3-88-04; the EIR/EIS lists specific requirements of the Subarea Plan for Carmel Valley and the North County Future Urbanizing Area. Generally, these appear to be acceptable provisions, but the EIR/EIS should clarify that those improvements listed as "only required if funds permit" are not critical to the viability of the preserve. The EIR/EIS should also make clear that landowners will not be responsible for funding these improvements. 77(k)

The statement at page 3.4-90 that the "Preserve boundaries may be modified by City Council action on the Carmel Valley Neighborhood 8A Precise Plan" should be eliminated. 77(l)

At page 4.3-179; the EIR/EIS states that "...adaptive management may include reconfiguration of preserve boundaries...." Pardee believes that established lines should remain fixed unless a landowner (in consultation with the resource agencies and the appropriate local agencies) voluntarily chooses to move them. 77(m)

Pardee also notes that several additional projects need to be included in Exhibit H of the City of San Diego's IA, consistent with Section 9.17 of the IA. Pardee has previously noted that the City Manager's Compromise Plan for Carmel Valley Neighborhood 8A/Del Mar 77(n)

77

Highlands should be included in Category 1 of Exhibit H. Carmel Valley Neighborhood 10 North (96-0561) should be included in Category 1. The Lorenz Parcel in Subarea V of the NCFUA and the Peñasquitos West Pardee parcel in Subarea IV of the NCFUA should be included in Exhibit H. 77(n)

Additional comments on the EIR/EIS and the City of San Diego Subarea Plan are attached hereto.

Thank you for the opportunity to comment.

Sincerely,

Mark R. McGuire

MRM/dcw

COMMENTS ON THE MSCP EIR/EIS AND THE CITY OF SAN DIEGO SUBAREA PLAN (ORDERED CHRONOLOGICALLY)

Draft EIR\EIS

Page 2-30:	The EIR/EIS references a requirement for the City Council to adopt conforming amendments to the General Plan and rezoning to implement the MSCP. Can this document bind future City Councils? What happens if these actions don't occur?	77(o)
Page 4.2-22:	The total acres in Carmel Valley converted from urban use are listed as 172 acres. Table 4.2-7 only shows 124 acres. Why is there a discrepancy?	77(p)
Page 4.2-23:	There is insufficient analysis to conclude that a circulation element street may be deleted.	77(q)
Page 4.2-24:	Impacts to the Carmel Valley DIF appear to be summarily dismissed without any analysis of environmental or financial impacts. Please explain why such impacts are not considered significant. Also, the comment that the PFFP will not be used for ongoing management or maintenance of the MSCP should be reiterated.	77(r)
Page 4.2-25	The Draft Joint EIR/EIS notes that the elimination of the section of Camino Santa Fe will require upgrading of other unidentified roadways. How will these improvements be phased and financed?	77(s)
Page 4.2-33:	The land use plan illustrated in Figure 4.2-6 for California Terraces is not consistent with the Substantial Conformance application which is currently being reviewed by the City. This plan appears to include the eastern elementary school site which has been rejected by the State of California because of proximity to Brown Field. Please correct this map.	77(t)
Page 4.2-76:	In the absence of a comprehensive plan for Miramar, there is no guarantee that the wildlife corridors between NAS Miramar and East Elliot and Beeler Canyon will be maintained. Indeed, the most recent documents by the Marine Corps show proposed housing in these sensitive areas. What is the biological basis for the recent USFWS publication of a Biological Opinion that does not address such impacts and which could preclude the success of the MSCP?	77(u)
Page 4.3-86:	Under Direct Impacts, this section states that sensitive habitats outside the preserve would continue to require mitigation under CEQA. This seems to leave open the possibility of being required to mitigate *in*	77(v)

addition to the MSCP. The language needs clarification. Is this a reference to sensitive habitats not covered by the MSCP? 77(v)

Page 4.4-2 — We concur with the Draft Joint EIR/EIS that it is impossible to prohibit public transportation corridors through preserve areas. Pardee requests the City/U.S. Fish and Wildlife Service/California Department of Fish and Game acknowledge that the MSCP will not impair or in any way affect implementation of SR-56. 77(w)

Page 4.4-6 — The potential deletion of portions of Carmel Creek Road through Neighborhoods 8A and 8 has been recently rejected as a viable option by the City Council. Please revise the EIR\EIS to reflect this action. 77(x)

City of San Diego Subarea Plan

Page 47, Section 1.4.2: — These policies are guidelines are applicable to development *adjacent to the preserve*. Number 3 states that existing habitat must not be disturbed unless unavoidable when constructing temporary roads, staging areas and access roads, and that revegetation is required. This should be clarified to be applied to areas *inside the preserve*. Areas outside the preserve may well be in development areas where disturbance and take of covered resources is allowed. 77(y)

Page 49, Section 1.4.2: — Fencing, Lighting, and Signage: The EIR/EIS identifies residential and commercial uses as incompatible uses when adjacent to the preserve and states that incompatible uses should be fenced. Would fencing be required for all such uses adjacent to the preserve? This could be prohibitively expensive. Fencing should be at the option of the landowner, as is proposed for the County's Subarea Plan. Will any mandatory fencing be part of the local jurisdiction's or state federal finding of preserve management? 77(z)

Page 52: — Brush Management: It should be noted that in areas where the preserve boundary has already been negotiated as a hard line, including wildlife corridors, all brush management in Zones 2 and 3 will be inside the preserve. 77(aa)

Page 54: — It is stated that, "In addition, some of the management recommendations may be implemented as part of mitigation requirements for development projects both within and adjacent to the Preserve." The Biology Guidelines are not clear as to whether 77(ab)

additional actions *over and above provision of land per the Tier structure* will be required of project proponents. Please explain exactly what management actions may be required as mitigation that exceeds the land provision requirements. This is especially necessary to resolve potential conflicts with other sections of the EIR/EIS and Subarea Plan that state that landowners will not be required to undertake management activities as long as they dedicate the land within the preserve as open space. **77(ab)**

Page 58: Priority 2: Both these sections would be done as funding is available. Are these activities necessary and required as part of the City's permits? If there is no funding available, would this be grounds for permit suspension? **77(ac)**

Page 62: Priority 1: Please confirm that these actions will be carried out by the City after the land is dedicated as open space. **77(ad)**

Page 93: Carmel Valley Neighborhood 8A: Please confirm that these actions will be carried out by the City after the land is dedicated as open space. **77(ae)**

Page 105: Vernal Pool Management guidelines: Please confirm that the City will be responsible for carrying out this program on vernal pools located within the MSCP preserve that are nor in private ownership. If this plan is to be imposed on private property owners, please so state and provide the plan for public review, comment and Council action. **77(af)**

Page 109: Mitigation Plan: In reviewing this plan and the associated Biology Guidelines, it is not clear exactly what can be imposed on a landowner as mitigation. Will habitat restoration, certain management activities, and/or species translocation be required as mitigation over and above land dedication per the Tier structure in the Biology Guidelines? How can any landowner determine exactly how much mitigation would be necessary? Should these additional mitigation burdens be imposed at the discretion of staff? How are these reconciled with the "certainty" that the MSCP claims to provide? **77(ag)**

78 HEWITT AND MCGUIRE (ALLIANCE FOR HABITAT CONSERVATION AND BIA), IMPLEMENTING AGREEMENT COMMENTS, 10/29/96

R

78(a) The wildlife agencies agree with the commenters that it is appropriate for Third Party Beneficiary status to vest at the point at which the review of a project's biological impacts has been completed (i.e., certification of the CEQA environmental document) and the mitigation has been imposed on the landowner/developer through a condition of development that runs with the land and is enforceable against the landowner/developer and any successor in interest. Section 17.1.A of the City of San Diego and Model IAs has been revised to so state. See response to Comment 94(a) for the revised language for Section 17.

78(b) The wildlife agencies agree with the commenters' suggested revision to this section. Section 17.2 of the City and Model IAs has been revised to add the word "termination." This section has also been revised to clarify that the authorization to take Covered Species Subject to Incidental Take provided under the City's land development approvals will remain in effect as to Third Party Beneficiaries:

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

78(c) Comment noted. The take authorization issued by the local jurisdiction is a component of the specific land development approval granted by the jurisdiction. Thus the authorization properly continues for so long as the development approval remains in effect. See response to Comment 94(a) for additional revisions to Section 17.

78(d) Section 9.4 accurately states the assurances provided to the permittees (local jurisdictions) and Third Party Beneficiaries. Those assurances include an assurance of no additional land, additional land restrictions or additional financial compensation. The last two paragraphs of Section 6.0 are unnecessary in light of the specific assurances contained in Section 9 of the IA, and therefore have been deleted.

78(e) Third Party Beneficiaries who elect to retain ownership of preserve lands which have been set aside to satisfy a mitigation obligation will be required to maintain and/or manage the lands, as appropriate in accordance with the area-specific management directives developed for the lands by the local jurisdiction pursuant to the MSCP Plan subarea plans and framework management plans. Further, the agencies agree with the commenters that if the lands are dedicated to a participating local jurisdiction,

the jurisdiction and not the landowner should be responsible for the management, maintenance, and monitoring of the lands. However, the local jurisdiction has the discretion to accept or reject each individual offer of dedication.

78(f) Comment noted. Sections 9 and 17 of the City of San Diego and Model Implementing Agreements already provide ample legal assurances to Third Party Beneficiaries that the mitigation obligations imposed on them in connection with a particular project by the local jurisdiction will not be modified and the authorization to take Covered Species Subject to Incidental Take granted to them through the participating local jurisdiction's development approval will remain in effect notwithstanding a suspension or revocation of the participating local jurisdiction's Take Authorizations by one or both of the wildlife agencies. The proposed addition to Section 17 is unnecessary and is not accepted.

78(g) Comment noted. Section 17.1.A of the City of San Diego and Model IAs has been revised to clarify that Third Party Beneficiary status attaches at the point at which the review of a proposed project's biological impacts and a determination of mitigation has occurred and the mitigation has been imposed on the landowner/developer as a condition of development that is recorded and runs with the land and is binding on the landowner/developer and any successor in interest. Section 9.16 has also been revised to make it consistent with Section 17.1.A. See responses to Comments 94(a) and 79(aa) for the revisions to Sections 17.1.A and 9.16, respectively.

78(h) Comment noted. The second sentence of Section 9.7.B has been revised as follows to clarify that it applies only to Covered Species Subject to Incidental Take and not to all covered species and by adding a new sentence to the end of the provision.

** 9.7.B. <u>Covered Species</u>. ... If a Covered Species Subject to Incidental Take is not listed as threatened or endangered under the CESA as of the Effective Date ... such listing. CDFG shall take all necessary steps within its legal authority to make the CESA/NCCP Take Authorization effective promptly as to Covered Species Subject to Incidental Take accepted by the Commission as a candidate for listing.

78(i) Comment noted. This section as written properly applies to any species other than a covered species and accurately states that additional mitigation measures are those that are necessary to add the species to the list of covered species. The suggested revision is not accepted.

78(j) Comment noted. The provision applies to species which are not adequately covered by the MSCP Plan. The wildlife agencies do not agree that any additional mitigation that may be required to add such species to the list of covered species must be funded by federal, state or public sources, or that modifications to habitat management practices or reallocation of habitat acquisition funds should be allowed that would adversely affect a covered species.

However, Section 9.7.C.2.a.i has been revised as follows to clarify that prior to requesting any additional conservation measures, the wildlife agencies and Take Authorization Holders will first attempt to address the species' conservation needs using existing MSCP management resources:

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

78(k) Comments noted. Paragraphs 2.d and 2.e of Section 9.7.C have been revised to include the suggested language outlining USFWS's legal authorities. We have also added language outlining CDFG's authorities. We do not agree to the commenters' suggestion to delete language that would allow additional mitigation with the consent of the local jurisdiction.

Section 9.7.C.2.d of the IAs has been revised to add the following new sentences after the first sentence of that paragraph:

** d. Sufficiently Conserved Vegetation Communities. ... under the CESA and ESA. For purposes of this paragraph, steps within the legal authority of USFWS include, but are not limited to, USFWS-funded habitat acquisition, USFWS funded species relocation and land exchanges to secure necessary habitat. For purposes of this paragraph, steps within the legal authority of CDFG include, but are not limited to CDFG-funded habitat acquisition, CDFG-funded species management and CDFG-funded species relocation. Consequently, [**LOCAL JURISDICTION**]shall not be required without its consent to provide ....

The first sentence of Section 9.7.C.2.e of the IAs has also been revised to delete "will not occur" and in its place provide "will be governed by applicable state and federal law." As revised, Section 9.7.C.2.e states as follows:

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

78(l) Comment noted. We do not agree that extraordinary circumstances are limited to changes affecting a Covered Species Subject to Incidental Take. The MSCP Plan is a multi-jurisdictional, interdependent plan. Covered species are those determined to be adequately protected by the MSCP Plan as implemented through each approved subarea plan. The assurances provided by the wildlife agencies for MSCP covered species are offered in exchange for the commitments of each local jurisdiction to provide the mitigation outlined in its subarea plan for each covered species affected by the subarea plan, and not, as the commenters suggest only for those covered species for which immediate Take

Authorization is allowed. Thus the extraordinary circumstances provisions of the IA apply to any covered species and may trigger the need for modifications to the preserve management program or habitat acquisition program as necessary to insure that the covered species is adequately protected under the MSCP Plan and the assurances regarding future Take Authorization for such covered species remain in effect.

The term "significant" in Section 9.6.A adequately describes the nature and degree of the change in the population of a covered species necessary to trigger a finding of Extraordinary Circumstances. The commenters' suggested addition of "substantial" to the proviso is not accepted.

78(m) Comment noted. The factors relevant to a determination of Extraordinary Circumstances by the USFWS are consistent with those set forth in the "No Surprises" Policy announced by the Secretaries of Interior and Commerce on August 11, 1994. Evaluation of the effect that a failure to adopt additional conservation measures would have on the likelihood of the survival and recovery of the species is consistent with the standard for issuance of an incidental take permit in the first instance under Section 10(a)(2)(B)(iv) and the standard used to determine the likelihood of jeopardy to a listed species under Section 7(a)(2) of the Act pursuant to 50 C.F.R. 402.02. The commenters' suggestion that reference to recovery of the species exceeds the requirements of the ESA, or that the likelihood of jeopardy to a covered species is irrelevant except at the moment of permit issuance is incorrect, and the suggested deletion of this term is not accepted.

78(n) The suggested addition of the requirement that evidence of extraordinary circumstances be "clear and convincing" is consistent with the "No Surprises" Policy. Section 9.6.C will be revised to accordingly. Section 9.6.C. will also be revised as suggested by the commenters to provide that an "Extraordinary Circumstances" finding must be made by the Director or Regional Director of USFWS after consideration of all of the information submitted by the local jurisdiction:

C. Burden and Documentation. The USFWS ... available that is clear and convincing.... Any finding of Extraordinary Circumstances must be made by the Director or Regional Director of the USFWS or the Director of the CDFG, after consideration of all information submitted by the CITY OF SAN DIEGO in accordance with Paragraph D, below.

78(o) As discussed more fully in the response to the commenters' comments on section 9.6.A., "extraordinary circumstances" may apply to any covered species provided protection in the MSCP Plan. Therefore, the suggestion that an "extraordinary circumstances" finding be limited to Covered Species Subject to Incidental Take is not accepted. The commenters' suggestion that a proposed finding by USFWS and/or CDFG of "extraordinary circumstances" be provided in writing and clearly document the bases for the proposed finding is accepted. Finally, the wildlife agencies agree that where advance written notice of an "extraordinary circumstances" finding cannot be provided, a written response to the local jurisdiction should be provided within 120 days of the agencies' receipt of any information from the local jurisdiction bearing on the finding. Section 9.7.D. has been revised to incorporate these changes as follows:

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

78(p) Comment noted. The Implementing Agreement accurately states that the wildlife agencies will not seek additional mitigation in the form of land, land restrictions or financial compensation from a participating local jurisdiction without its consent. The Implementing Agreement also provides that once the mitigation established for a particular development project has been imposed on a landowner/developer in conformance with Sections 10 and 17 of the Implementing Agreement, neither the wildlife agencies nor the local jurisdiction will alter the mitigation established for the project. The wildlife agencies have no legal authority to seek mitigation, in the first instance, from landowners subject to the MSCP Plan and subarea plan ("general landowners"). Any mitigation obligation on the part of a landowner would be imposed by the local jurisdiction during the local land use development process in conformance with the provisions of the Subarea Plan and Section 10 of the IA. As noted above, once imposed on the landowner/developer, the mitigation could not thereafter be changed except in accordance with Section 17.C.

78(q) The wildlife agencies agree with the suggested revision to this paragraph of the City of San Diego and Model IAs. The first sentence of Section 9.6.F has been revised to add the word "suspend" following the word "terminate."

78(r) Comment noted. The wildlife agencies are fully committed to implementation of the MSCP Plan and subarea plans through federal and state contributions to plan implementation. Section 15.3 commits the agencies to exercise all available authorities and utilize all available resources to ensure such contributions are made. The commenter requests that Section 15.3 identify the authorities the wildlife agencies intend to rely upon to meet their commitment to contribute to the acquisition, management and monitoring needs of the MSCP Plan, and that the section acknowledge the long-term nature of that commitment. The commenters' points are well taken. Section 15.3 of the City of San Diego and Model IAs has been revised to reflect the means available to the wildlife agencies to satisfy their obligations under the program, such as through the use of budget authority, land exchanges, and personnel.

Section 15.3 has also been revised to provide that in the event of a shortfall in the federal and/or state contribution, prior to making any adjustments to permit coverages and assurances the wildlife agencies will first seek to address the shortfall through a reallocation of existing management resources and existing habitat acquisition funds, provided such reallocation would not adversely affect any covered species.

Language has also been added to Section 15.3 to clarify that contributions to habitat acquisition by the federal and state governments will occur through varying mechanisms and at varying levels. Federal and state contributions toward habitat acquisition will be made during the first 30 years of the program while other contributions, for purposes such as management and monitoring, will continue throughout the life of the program.

The wildlife agencies disagree with commenters' suggestion that a reevaluation of the MSCP Plan and subarea plans should only be triggered if a failure of federal or state funding is likely to result in jeopardy to a Covered Species Subject to Incidental Take. The wildlife agencies have made an unprecedented commitment to assist in implementing the MSCP Plan through federal funding and land acquisition efforts. It is in part through these commitments that coverage and assurances have been extended to the broad array of species, both listed and unlisted, included on the list of covered species. While Section 15.3 commits the wildlife agencies to do everything within their legal authorities to assure that their contributions to the MSCP Plan are realized, a failure, in whole or in part, of such contributions of necessity will require a re-evaluation of the Plan with possible adjustments to permit coverage and assurances. Such re- evaluation must properly address the plan's protections for all covered species, and not simply as the commenters suggest, whether jeopardy to a listed Covered Species Subject to Incidental Take is likely.

Section 15.3 has been revised as follows:

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

through the reallocation of existing federal, state and/or regional funds identified for MSCP Plan implementation, provided such reallocation does not adversely affect any covered species.

78(s) Comment noted. This section has been revised to provide assurances to project proponents that, subject to the exceptions identified in this section, the mitigation measures required by a local jurisdiction in compliance with the Implementing Agreement, the MSCP Plan, the subarea plan and the federal wetland policy and regulations, shall constitute the full extent of mitigation directed at the Incidental Take of Covered Species Subject to Incidental Take. Section 13.1 has also been revised to assure project proponents that – whether they have achieved Third Party Beneficiary status or not – they will not be subject to additional mitigation recommendations from USFWS for such impacts as a result of Section 7 consultations so long as their projects are consistent with the MSCP Plan and subarea plans.

The commenters' suggestion that the assurances provided in this Section should extend to mitigation for any impacts to Sufficiently or Significantly Conserved Vegetation Communities independent and apart from the mitigation directed at the Incidental Take of Covered Species Subject to Incidental Take that may occur within those vegetation communities is incorrect. The Sufficiently and Significantly Conserved Vegetation Communities provisions of Section 9.7.C. commit the state and federal governments to contribute, respectively, all or an equitable proportion of the additional mitigation that may be necessary to add a new species to the list of covered species that is dependent on a particular sufficiently or significantly covered habitat type. These provisions are not intended to provide a blanket assurance of no further mitigation for particular habitat types, but rather to commit the state and federal governments to contribute toward the mitigation directed at the incidental take of species – other than covered species – that are dependent on certain habitat types.

Section 9.8 has also been revised as requested by the commenters to add two new paragraphs as 9.8.C and 9.8.D which provide that to the extent consistent with NEPA and CEQA, USFWS, CDFG and the local jurisdictions shall rely on the EIR/EIS as the environmental documentation for permits issued by USFWS, CDFG and the City pertaining to the Covered Species Subject to Incidental Take.

Finally, the reference to the Migratory Bird Treaty Act in this Section has been deleted because the relationship of the Take Authorizations to that statute is addressed separately in Section 9.8.B:

9.8.A. Other Regulatory Permitting. The Parties acknowledge that proponents of land development projects in the Subarea may be subject to permit requirements of agencies not parties to this Agreement, and to separate permit requirements which may be imposed by the USFWS or the CDFG, such as under Fish and Game Code Sections 1601 and 1603. Except as provided in Section 9.6 (Extraordinary Circumstances"), Section 15.3 ("Failure to Provide Federal or State Contribution") and this paragraph, compliance with the terms of this Agreement, the MSCP Plan, the Subarea Plan, the federal policy of "no net loss" of wetland functions and values, and the Environmental Protection Agency's Section 404(b)(1) guidelines (40 C.F.R. Part 230) shall constitute the full extent of mitigation measures directed

specifically at the Incidental Take of Covered Species Subject to Incidental Take required or recommended by the USFWS pursuant to the ESA and NEPA, and by the CDFG pursuant to CESA, the NCCP Act, and CEQA, in conjunction with other federal and state permits within the Subarea. Furthermore, the USFWS and CDFG will coordinate with [**LOCAL JURISDICTION**], the U.S. Army Corps of Engineers, and the U.S. Environmental Protection Agency to further streamline the process for issuance of permits pursuant to Section 404 of the clean Water Act for those projects that are in conformance with the MSCP Plan, the Subarea Plan and this Agreement. The Parties intend to begin work on creating this streamlined process within six months of the Effective Date, with the goal of being able to implement this streamlined process within two years of the Effective Date. The public and affected stakeholders will be invited to participate in this effort.

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

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

See response to Comment 98(az) for the revised language of Section 13.1.

78(t) See response to Comment 78(s).

78(u) Comment noted. As explained above in responses to Comment 78(s), the MSCP Plan and subarea plan are not intended to address all mitigation that may be required by a local jurisdiction for impacts to a particular habitat type, but to provide full mitigation for impacts related to the incidental take of Covered Species Subject to Incidental Take that may occur within those habitat types.

Therefore, the suggested revision to Section 13.2 is not accepted. See also response to Comment 74(ae) and **Theme Response XXII, Sufficiently/Significantly Conserved Vegetation Communities.**

78(v) Comment noted. Under existing USFWS policy, an incidental take permit for a listed Covered Species Subject to Incidental Take may also constitute a Special Use Permit under 50 C.F.R. § 21.27 for the take of such species which are protected under the Migratory Bird Treaty Act (MBTA), except for the bald eagle. Such dual coverage is not extended automatically to any covered species. However, an applicant who wishes coverage under the MBTA for any non-ESA listed covered species may apply separately for a Special Use Permit for that species under 50 C.F.R. § 21.27. The language regarding treatment of migratory bird covered species in the City of San Diego Model IAs accurately reflects current USFWS policy.

78(w) The wildlife agencies agree with the commenter. Section 13.1 has been revised to apply to "existing and prospective" Third Party Beneficiaries. See response to Comment 98(az).

78(x) Comment noted. Sections 13.1 and 9.6 effectively limit any additional mitigation that could be requested of a local jurisdiction or Third Party Beneficiary by USFWS through a future Section 7 consultation involving a plan activity to Additional Conservation Measures as defined in Section 9.6.E. The regulations at 50 C.F.R. § 402 strictly control the time limits for completion of a Section 7 consultation by USFWS.

While USFWS anticipates that no interruption of the Take Authorizations should occur during any reinitiation of a Section 7 consultation, it is not legally possible, as the commenters recognize, to guarantee that the Take Authorizations would remain in effect during the pendency of the consultation under all circumstances. The above identified provisions of the City and Model IAs, along with Section 9.6.D address the commenters' concerns.

78(y) Comment noted. Please see Section 6.1 of the Revisions to the MSCP Plan, January 1997.

78(z) Comment noted. The City of San Diego's ability to contribute its portion of the MSCP preserve lands requires that mitigation lands be provided within the City's jurisdiction boundaries. The last sentence of this section of the City' IA has been modified to delete the term "extraordinary circumstances" and replace it with "except as may otherwise be agreed to by the parties." The term "extraordinary circumstances" has a specific meaning in the IA and is not intended to apply to this provision:

** 10.8.G.

2. ... The Parties agree that lands used to mitigate impacts will be located within the CITY OF SAN DIEGO's jurisdictional boundaries except as may otherwise be agreed to by the Parties where preserve function would be significantly enhanced.

78(aa) The City of San Diego must retain the flexibility to make minor adjustments to MHPA boundaries, with the concurrence of the wildlife agencies, as necessary to insure effective implementation of the Subarea Plan. The City has agreed that it will provide public notice of, and an opportunity for public comment on, any proposed adjustments to MHPA boundaries in instances where the City will be exercising its discretionary authority. Public notice and opportunity for comment would not be required for technical boundary changes approved by the City through a ministerial process which does not require environmental review under CEQA. Section 10.7 of the City's IA has been revised as follows:

10.7 Boundary Line Adjustments. Adjustments to the CITY OF SAN DIEGO'S MHPA boundaries may be made in limited circumstances. Such adjustments require the concurrence of the USFWS and CDFG as set forth in Section 5 of the MSCP Plan and Section 1.1.1 of the Subarea Plan and require public notice and an opportunity to comment in those instances where the CITY OF SAN DIEGO will exercise its discretionary authority in making an adjustment. This Agreement need not be amended to reflect such adjustments.

78(ab) Comment noted. See response to Comment 79(at). The City has agreed to ensure that a public process is followed in the adoption of any substantive modifications to the draft ESL Biology Guidelines, and this provision of the Implementing Agreement has been modified to so provide. If a proposed modification to the Guidelines would affect the City's ability to implement the subarea plan, an amendment to the Take Authorizations would also be required. The amendment process provides the public with notice and an opportunity to comment on the proposed amendment.

78(ac) Comment noted. The wildlife agencies disagree. The first scheduled public report will be due three years following issuance of the Take Authorizations to enable a sufficient period of time for start up and implementation of the MSCP Plan and subarea plan to occur before formal evaluation of implementation progress takes place.

78(ad) Comment noted. It is not necessary at the annual implementation meeting to require the wildlife agencies to provide written findings to support a determination that adequate progress toward plan implementation is not being achieved. Section 16 of the Implementing Agreement provides for written documentation by USFWS and CDFG well in advance of any action to suspend or revoke the Take Authorizations for failure by a local jurisdiction to implement a subarea plan as agreed to. The annual implementation meeting is intended to enable the parties to review the past year's progress on plan implementation and to provide the parties with an opportunity to resolve issues of plan implementation in a cooperative fashion.

78(ae) In general, maintenance includes actions to maintain current biological values. Management actions would be those necessary to protect and enhance the quality and function of the preserve for covered species.

78(af) Comment noted. See response to Comment 78(e). The commenters' suggestion that the words "maintenance and monitoring" should be added after "management" in Sections 9.9 and 9.7.C.2.d is accepted. The provisions have been revised to include "maintenance and monitoring."

78(ag) Comment noted. A "reasonable" action is by definition a "feasible" action. The suggestion that the term "feasible" be added to Sections 16.2 and 16.3 is not accepted. Likewise, the suggestion that "fairness to the City of San Diego" be added as a consideration in what actions are necessary to remedy a permit violation is not accepted. Fairness to the permittee would always be considered in determining what actions are appropriate to allow reinstatement of the Take Authorizations.

78(ah) Comment noted. The provision as written appropriately limits an emergency suspension or revocation of the Take Authorizations to situations involving a material violation of the Take Authorizations or breach of the Implementing Agreement that is likely to result in jeopardy to a covered species. The provision will be revised to require written notice to the local jurisdiction of the circumstances underlying the suspension or revocation. As discussed in response to Comment 74(al), the term "significant" is superfluous and will be deleted from the provision. Section 16.4 has been revised as follows:

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

78(ai) Comment noted. The commitments regarding mitigation and future take authorizations provided to the local jurisdictions by the wildlife agencies apply to all covered species. In return for those assurances, the local jurisdictions commit to implement the MSCP Plan and subarea plan with regard to all covered species, not simply those that are currently listed under the state or federal ESAs. Indeed, the conservation measures implemented under the MSCP Plan and subarea plans may provide a basis for a future determination not to list a covered species as threatened or endangered. Consistent with the broad scope of the assurances provided by the wildlife agencies, Section 16.5 correctly provides that the local jurisdictions remain fully obligated to carry out the mitigation, enforcement and management obligations for all land development activities undertaken or approved prior to the suspension or revocation.

78(aj) Comment noted. Section 16 provides the procedures for enforcement of the local jurisdiction's Take Authorizations and remedies for violations of the Take Authorizations. Section 5, on the other hand, addresses the severability of the Take Authorizations issued to individual local jurisdictions participating in the MSCP. Inclusion of a reference to Section 16 in Section 5 is thus inappropriate.

78(ak) See response to Comment 85(b).

78(al) Comment noted. Section 2.6 has been revised as follows:

** 2.6 "CESA/NCCP Authorization" means the authorization issued in accordance with this agreement by CDFG under CESA (including but not limited to, California Fish and Game Code § 2081) and the NCCP Act (including but not limited to, California Fish and Game Code §§ 2825(c) or 2835), or any take authorization issued by the California Fish and Game Commission under the NCCP Act (including but not limited to, California Fish and Game Code § 2830), to permit the Take of a Species listed under CESA as threatened or endangered, or of a species which is a candidate for such a listing, or of a species identified pursuant to § 2835. These legal authorities are wholly independent of each other.

78(am) The commenters are correct that the City of San Diego's Subarea Plan considered alone does not adequately provide for the conservation and management of all covered species within the MSCP study area. The City's Subarea Plan does adequately provide for the conservation and management of the Covered Species Subject to Incidental Take within the City's MHPA. The comment about CDFG's findings which references the March 17, 1995, joint guidance document is duly noted. Regarding the comment about the use of the California Conservation Corps or local community conservation corps, please note that Section 2825(d) does not require a finding in this regard and requires use of these organizations, only "to the extent practicable." It is, nonetheless, the CDFG's intent to seek participation from the CCC or local community conservation groups where appropriate.

Under the NCCP Act, CDFG's approval is required for NCCP Act plans, such as the MSCP Plan and the City of San Diego's Subarea Plan. For purposes of such approval, CDFG is therefore a CEQA responsible agency and must make the formal findings required by CEQA regarding the MSCP Plan and the subarea plan. Section 12.5, however, is not intended to fulfill CDFG's responsibilities in this regard. The IA contemplates that, concurrent with execution of the IA, CDFG will issue a formal approval of the City of San Diego's Subarea Plan, with appropriate findings under the NCCP Act, and take authorization under the NCCP Act and CESA. For simplicity, these will probably be contained in a single document. This document will then be filed with the CDFG's notice of determination as a responsible agency under CEQA. The proposed findings contained in Section 12.5 are intended simply to summarize the findings that will be made in CDFG's formal approval of the City's Subarea Plan. CDFG's formal findings under the NCCP Act, CESA and CEQA will be consistent with the findings in 12.5, but will be more detailed. For clarification, Section 12.5 has been revised as follows:

** 12.5. The CDFG has found, following opportunity for public comment, that the MSCP and the Subarea Plan and this Agreement (1) adequately provide for the conservation and management of the Covered Species Subject to Incidental Take and their habitat within the MSCP Area and the Subarea, 2) 2) satisfy all legal requirements under both CESA and the NCCP Act necessary for the CDFG to issue a CESA/NCCP Authorization for the Covered Species Subject to Incidental Take, and 3) are consistent with the NCCP Process and Conservation Guidelines. The CDFG has found that the Subarea Plan, in combination with the MSCP Plan, meets the requirements of the NCCP Act for an NCCP Plan, and has approved the Subarea Plan as an NCCP Plan. The CDFG has found further that the MSCP Plan, the Subarea Plan, and this Agreement provide adequately for the mitigation of potential "significant effects on the environment" (as defined in California Public Resources Code § 21068) which may result to Covered Species Subject to Incidental Take and their habitat (pursuant to California Government Code § 66474) that may result from the land development activities in the Subarea.

78(an) CDFG disagrees that a separate take authorization must be distributed publicly. Any such take authorization will be based on the MSCP Plan, the City of San Diego's Subarea Plan, the IA and the EIR/EIS, all of which have been distributed for public review. As discussed above, CDFG believes that the clearest method to implement its statutory authority under CESA, the NCCP Act, and CEQA would be to issue a document concurrent with execution of the IA which evidences CDFG's approval of the City's Subarea Plan and IA under the NCCP Act and which authorizes take pursuant to the NCCP Act and CESA. The document will be filed with CDFG's notice of determination under CEQA.

CDFG agrees with the commenters' suggestion that take coverage should be extended to any Covered Species Subject to Incidental Take upon its acceptance by the California Fish and Game Commission as a candidate for listing under CESA following the Effective Date.

In accordance with the foregoing, Section 12.6 has been revised as follows:

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

78(ao) Comment noted. The USFWS believes it is appropriate to make findings regarding the entire Subregional MSCP Plan as well as the participating local jurisdiction's Subarea Plan. The Section 4(d) Special Rule for the coastal California gnatcatcher requires USFWS to evaluate whether the NCCP

subregional plan meets the standards for issuance of an incidental take permit under 50 C.F.R. § 17.32(b)(2). As provided under 12.2, the findings regarding covered species pertain to implementation of the subregional MSCP/NCCP. Findings regarding the Covered Species Subject to Incidental Take, which are those covered species for which the participating local jurisdiction's subarea plan independently meets the criteria for issuance of an incidental take permit, are contained in Section 12.3 and relate solely to implementation of the local jurisdiction's particular subarea plan. Section 12.3 incorporates by reference the findings contained under 12.2 for covered species as they relate to the Covered Species Subject to Incidental Take, which are by definition a subset of the covered species.

The first sentence of 12.2 has been revised to clarify that the finding regarding Incidental Take of the Covered Species applies to the entire MSCP study area so long as such incidental take is in accordance with the MSCP Plan as implemented by the subarea plans. This sentence along with the first sentence of Section 12.3 has also been revised by deleting the word "finds" and replacing it with "has found." As pointed out in Response to Comment 78(ao), in connection with CDFG's findings, the USFWS will also issue separate formal findings prior to signing the IA.

The first sentence of Section 12.2 has been revised as follows:

** 12.2 Findings - USFWS - Covered Species. The USFWS has found, following opportunity for public comment, that (a) the taking of Covered Species within the MSCP study area in accordance with the MSCP Plan as implemented by the subarea plans will be incidental to the carrying out of otherwise lawful activities; ....

The first sentence of Section 12.3 has also been revised as follows:

** 12.3 Findings - Covered Species Subject to Incidental Take. In addition to the findings in Section 12.2 above, the USFWS has found that the Covered Species Subject to Incidental Take will be adequately conserved in the Subarea as result of the Subarea Plan and this Agreement....

78(ap) Comment noted. The commenters correctly note that the last sentence of this section should be clarified to provide that take of the California gnatcatcher within the MSCP study area pursuant to the Section 4(d) Special Rule is lawful so long as such take occurs in accordance with the MSCP, as implemented through approved subarea plans. The last sentence of Section 12.7 has been revised to read as follows:

** 12.7. Findings - Section 4(d) Special Rule ... Accordingly, the USFWS finds that the MSCP and the Subarea Plan are consistent with and satisfy the conditions under the 4(d) Special Rule, and there fore the Incidental Take of the California gnatcatcher within that portion of the MSCP study area covered by approved Subarea Plans , including [**LOCAL JURISDICTION'S* *] Subarea Plan, is lawful.

78(aq) Comment noted. The commenter correctly points out that implementation of the Subarea Plan will adequately provide for the conservation and protection of the Covered Species Subject to Incidental Take within the subarea – not the entire MSCP study area – as the section currently states. The first sentence of Section 9.3 has been revised as follows:

** 9.3. Conservation of Covered Species. Implementation of the MSCP through the Subarea Plan in accordance with this Agreement will adequately provide for the conservation and protection of the Covered Species Subject to Incidental Take and their habitat in the Subarea in perpetuity....

78(ar) Comment noted. The MSCP Plan and EIR/EIS do not include specific analysis of the potential critical habitat requirements, as defined in 50 C.F.R. § 424.12, of each covered species. In fact critical habitat has only been determined for least Bell's vireo and proposed for the southwestern willow flycatcher within the MSCP study area. While it is very likely that future critical habitat designations for listed covered species within the MSCP study area would closely resemble the preserve system proposed under the MSCP Plan, it is not accurate to suggest that the proposed MSCP preserve system incorporates all of lands that would be included in a future critical habitat determination for any of the covered species. However, USFWS agrees that the MSCP Plan incorporates special management considerations necessary for the conservation of the covered species within the MSCP study area consistent with those that would likely be addressed in a critical habitat rule. Section 9.18 will be revised to add two new sentences that reflect this consideration. Consistent with the other mitigation assurances included in the Implementing Agreement, Section 9.18 of the City of San Diego and Model IAs assures the local jurisdiction and Third Party Beneficiaries that a future determination of critical habitat for a Covered Species Subject to Incidental Take will not result in the imposition of additional mitigation. See also **Theme Response XXIII, Critical Habitat Determination.**

The following language has been added to the beginning of Section 9.18:

** 9.18 Critical Habitat. The USFWS agrees that it will consider the MSCP Plan and subarea plan in its preparation of any proposed designation of critical habitat concerning any covered species and agrees that, consistent with 50 C.F.R. 424.12, the MSCP, as implemented through approved subarea plans, incorporates special management considerations necessary to manage the covered species in a manner that will provide for the conservation of the species involved[11] within the MSCP study area. Except as otherwise provided in this Agreement, and consistent with the assurances provided under Section 9 of this Agreement, USFWS agrees that if critical habitat is designated ....

78(as) Comment noted. The purpose of Section 21.3 is to assure that the habitat conservation provided pursuant to the MSCP Plan and approved subarea plans is permanent, just as the habitat loss contemplated under the MSCP Plan will be permanent notwithstanding the term of the Agreement. During the term of the Take Authorizations issued pursuant to the MSCP Plan and IA, the

wildlife agencies have agreed that once the mitigation has been established for a particular project, or portion thereof, by a local jurisdiction and committed to by the project proponent, no additional mitigation will be required for Incidental Take or habitat loss resulting from that project.

In the highly unlikely event that following the expiration of the Take Authorizations, a covered species were to reinhabit an area developed under the MSCP Plan, then, subject to then existing FESA and CESA requirements, a new incidental take permit would be required. However, should the local jurisdiction apply for new Take Authorizations, it is likely that the MSCP Plan would continue to provide an adequate basis for issuance of such authorizations.

78(at) Comment noted. Section 9.2 refers to CESA, the NCCP Act and the California Native Plant Act because CDFG is responsible for administering these laws. The CDFG does not have the authority to determine conclusively whether the MSCP Plan, the IA or the City of San Diego's Subarea Plan comply with laws the CDFG does not administer, such as the Subdivision Map Act, the Porter-Cologne Water Quality Act, etc. CDFG is a responsible agency under CEQA and will make appropriate findings in that capacity concurrent with its execution of the IA.

The U.S. Environmental Protection Agency and not USFWS, administers The Clean Water Act and is responsible for determining violations of the Act.

78(au) The City agrees it would be appropriate for the public to be notified of circumstances that might result in material changes to the MSCP Plan, Subarea Plan or Take Authorization and intends to provide such notice. However, it is not appropriate to add such a provision here. This section simply establishes the means by which any notices required under the Agreement will be provided to the identified parties.

78(av) The parties agree to inclusion of a "force majeure" provision in the IA. However, the provision is properly limited to the parties to the IA – the wildlife agencies and the local jurisdiction– and should not extend to Third Party Beneficiaries. The extent to which landowner/developer delays in meeting the mitigation obligations imposed under a local development approvals are excused under "force majeure" circumstances will depend on the land use policies of each local jurisdiction.

The City of San Diego and Model IAs have been revised to add a new Section 24.0 to read as follows:

** 24.0 Force Majeure. In the event that [**LOCAL JURISDICTION**] is wholly or partially prevented from performing obligation s under this Agreement because of unforeseeable causes beyond the reasonable control of and without the fault or negligence of [**LOCAL JURISDICTION**] ("force majeure"), including but not limited to acts of God, labor disputes, sudden actions of the elements, or actions of federal or state agencies, or other local jurisdictions, [**LOCAL JURISDICTION**] shall be excused from whatever performance is affected by such unforeseeable cause to the extent so affected, and

such failure to perform shall not be considered a material violation or breach, provided that nothing in this Section shall be deemed to authorize any Party to violate ESA or CESA, and provided further that:

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

(2) Within two weeks after the occurrence of the force majeure [**LOCAL JURISDICTION**] gives USFWS and CDFG written notice describing the particulars of the occurrence;

(3) [**LOCAL JURISDICTION**] uses its best efforts to remedy its inability to perform (this paragraph shall not require the settlement of any strike, walkout, lock-out or other labor dispute on terms which, in the sole judgement of [**LOCAL JURISDICTION**] are contrary to its interest); and

(4) When [**LOCAL JURISDICTION**] is able to resume performance of its obligations, [**LOCAL JURISDICTION**] shall give USFWS and CDFG written notice to that effect.

78(aw) Comment noted. The USFWS and CDFG as sister agencies, respectively, to other federal and state agencies who have agreed to contribute lands to the MSCP, are confident of the commitment these agencies have made to manage their public lands consistent with the habitat and species conservation goals of the MSCP. The agencies have evidenced this commitment by entering into separate Memoranda of Understanding (MOUs) with USFWS and/or CDFG. The Bureau of Land Management has entered into an MOU with the USFWS, the County of San Diego, the City of San Diego and the San Diego Association of Governments for "Cooperation in Habitat Conservation Planning and Management," dated July 1994. Similarly, The California Department of Parks and Recreation has entered into an MOU with CDFG "for Coastal Sage Scrub Natural Community Conservation Planning by the State Parks System," dated April 1994. It is not necessary for the agencies to sign the Implementing Agreements executed by USFWS and CDFG with each local jurisdiction. Moreover, the USFWS and CDFG will have a continuing role under FESA and CEQA in reviewing the effects on the covered species and their habitats of actions carried out, funded or authorized by the federal and state agencies on the contributed public lands.

78(ax) Comment noted. This section has been revised as follows to clarify the respective status and roles of the City of San Diego and CDFG in the CEQA review process.

** 18.2 State Law-CEQA. Implementation of the MSCP is an action subject to CEQA review. The CITY OF SAN DIEGO is a lead agency for the project and has completed an Environmental Impact Report addressing the MSCP in accordance with CEQA requirements. CDFG is a responsible agency under CEQA for the purposes of approving the MSCP Plan and the Subarea Plan under the NCCP Act.

78(ay) Comment noted. The Section (renumbered as 25.2) has been revised to clarify that assignment or other transfer of a Section 10(a) permit is governed by applicable USFWS regulations. Under current regulations, a Section 10(a)(1)(B) permit may not be assigned or otherwise transferred:

25.2 Successors and Assigns. ... Assignment or other transfer of the Section 10(a) Permit shall be governed by then-current USFWS regulations; under the applicable regulations in place on the Effective Date, a Section 10(a) permit may not be assigned or transferred.

78(az) The commenter is correct. Section 1.11 has been revised to provide as follows:

** 1.11. Preservation of natural vegetation communities and wildlife will significantly enhance the quality of life in the San Diego region and set aside lands for future use and enjoyment of the citizens within the MSCP study area, the state and the nation.

78(ba) Comment noted. The commenters' suggested addition of a new Section 9.22 to the IAs has not been accepted.

78(bb) Section 2.9 has been revised to incorporate the suggested revision. See response to Comment 79(i) for revised language.

78(bc) Comment noted. This provision is clear as written.

78(bd) Comment noted. The section is clear as written.

78(be) The reference to Section 12.4 in this section has been revised to correctly identify Section 12.5.

78(bf) See response to Comment 94(a) for revised Section 17.

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HEWITT & McGUIRE, LLP

ATTORNEYS AT LAW

DEAN DUNN-RANKIN
CHARLES S. EXON
ANDREW K. HARTZELL
HUGH HEWITT
MARK R. MCGUIRE

19900 MacArthur Boulevard, Suite 1050
Irvine, California 92612
(714) 798-0500 • (714) 798-0511 (fax)

DENNIS D. O'NEIL
JAY F. PALCHIKOFF
PAUL A. ROWE
WILLIAM L. TWOMEY
JOHN P. YEAGER

October 29, 1996

VIA MESSENGER AND FAX

Gail Kobetich
Field Supervisor
U.S. Fish & Wildlife Service
2730 Loker Avenue West
Carlsbad, CA 92008

Mr. John Kovac
City of San Diego
Development Services Department
Development and Environmental Planning Division
1222 First Avenue, M/S 501
San Diego, CA 92101

MSCP Plan Comments
600 B Street, Suite 500
San Diego, CA 92101

Re: **Comments on Proposed Model Implementing Agreement (August 16, 1996 Draft) and Proposed City of San Diego Implementing Agreement (August 16, 1996 Draft) for San Diego Multiple Species Conservation Program Plan, Section 10(a) Permit Application and Draft Joint EIR/EIS, DEP No. 93-0287, SCH No. 93121073**

Dear Messrs. Kobetich and Kovac:

This firm represents both The Alliance for Habitat Conservation (The Alliance) and the Building Industry Association of San Diego (BIA/SD) and submits the following comments on the above-referenced draft Model Implementing Agreement (Model IA) and draft City of San Diego Implementing Agreement (San Diego IA) on their joint behalf.

I. INTRODUCTION/IMPORTANCE OF THE IMPLEMENTING AGREEMENTS

Both The Alliance and BIA/SD have invested considerable time and effort in working with the City of San Diego (City), the United States Fish & Wildlife Service (USFWS), the California Department of Fish & Game (CDFG) and the other potentially participating local jurisdictions for many years in an attempt to achieve a workable program to establish a regional multi-species reserve system in southern San Diego County which will provide both long-term, comprehensive conservation of the region's important biota and up front certainty regarding the necessary level of biological mitigation in the land development process. The Alliance and BIA/SD also have understood that a second principal and fundamental goal has been to achieve a program design that equitably spreads the costs and burdens for biological mitigation and enhancements among land developers, the citizens of the region and the State and federal governments.

The Model IA and the San Diego IA are extremely critical documents to the success or failure of the MSCP. The precise contents of their provisions are likely to be determinative of whether the proposed MSCP plan will actually be able to achieve its widely advertised, laudable objectives or whether implementation of the proposed program ultimately will be seen by the citizens of San Diego and the region as a plague, introducing further uncertainties into the land use process and inviting endless rounds of litigation by disgruntled groups for the entire 50-year life of the permit program.

Currently, both the Model Implementing Agreement and San Diego Implementing Agreement fail, in their present forms, to achieve the levels of assurance, predictability and finality which are reasonably required for the City, the other participating local jurisdictions and landowners within the region. In many instances we believe that current provisions fail to achieve the intent of the wildlife agencies, the City or both. Accordingly, based on our understandings of the program principles embraced by both the local jurisdictions and the wildlife agencies, the agencies and local jurisdictions should be prepared to incorporate our proffered modifications, since these modifications remedy defects which preclude the IA, and thus the MSCP itself, from operating in accordance with those principles. Except for those provisions which have been added by the City, USFWS or CDFG in the latest versions of the Model IA and San Diego IA, the modification requests herein have been made to the City and the wildlife agencies previously on one or more occasions. We believe that a number of our requested revisions will be universally recognized as appropriate and necessary, and we believe that we may agree with the City and the wildlife agencies in principle on components of the program for which we provide comments herein, but that the current language in the IA's does not adequately achieve those principles. We understand that the USFWS, CDFG or City may be less enamored of others. Yet The Alliance and BIA/SD believe that the requested modifications must be incorporated into the Model IA and San Diego IA if the MSCP is to have any chance of meeting its objectives and of receiving landowner and business community support.

COMMENTS PROVIDED HEREIN ARE FULLY APPLICABLE TO BOTH THE DRAFT MODEL IA (TO BE USED FOR PERMITTEES SEEKING SECTION 10(A) INCIDENTAL TAKE AUTHORIZATION PURSUANT TO THE SAN DIEGO MSCP) AND FOR THE DRAFT SAN DIEGO IA (SUBMITTED IN CONNECTION WITH THE CITY'S SECTION 10(A) PERMIT APPLICATION). EXCEPT FOR COMMENTS TO SECTIONS 10 AND 11 (WHICH ARE STILL LEFT BLANK IN THE MODEL IA) EACH COMMENT PERTAINS TO BOTH THE MODEL IA AND THE SAN DIEGO IA. GENERALLY, WHEN SPECIFIC EXISTING PROVISIONS ARE RESTATED WITH SUGGESTED MODIFICATIONS, SUCH PROVISIONS ARE EXCERPTED FROM THE SAN DIEGO IA. THE ALLIANCE AND BIA/SD REQUEST THAT THE SAME MODIFICATIONS BE MADE TO THE COMPARABLE PROVISIONS OF THE MODEL IA.

II. NECESSARY CHANGES TO THE IMPLEMENTING AGREEMENT

1. Third Party Beneficiaries.

Section 17.1(C). This section inappropriately delays the attainment of Third Party Beneficiary rights; these rights should vest at the time the project proponent has received project approval from the local jurisdiction permittee which approval is conditioned by the local jurisdiction on performance of the appropriate MSCP conforming biological mitigation conditions. To require more from the project proponent before the "No Surprises" assurances can be obtained is unnecessary given the local land development approval processes of the jurisdictions which may participate in the MSCP. For example, the local jurisdiction's adoption of a formal resolution of approval which conditions the right to develop the project on compliance with the applicable MSCP biological mitigation conditions for that project can assure that mitigation activities proceed in the appropriate lock-step with any development activities. Moreover, Sections 9.19 and 10 of the IA require the City to ensure that the local subarea biological mitigations are fulfilled. Any failure of enforcement by the local jurisdiction could constitute breach of the IA and be grounds for permit suspension under Section 16.

Section 17.1(C)'s approach is also misguided as many biological mitigation components of a development project, such as avoidance, do not lend themselves to a reasonable or feasible method of "bonding" guarantee. Consequently, a project proponent would be hard pressed to rely on the assurance provided to Third Party Beneficiaries since such status could later be challenged if someone were to subsequently argue that some aspect of the mitigation was not properly assured. Furthermore, the timing for the formal posting of a performance bond or other assurance with the City generally is not in the control of the project proponent. Various city staff typically participate in the process, resulting in further time delay and exposure for the project proponent. 78(a)

Accordingly, Section 17.1(C) should be modified as follows: 78(a)

> C. Following the adoption ~~approval~~ by the CITY OF SAN DIEGO of a formal resolution of conditional project approval which establishes the mitigation obligation of a project proponent under the MSCP Plan in accordance with Section 10 of this Agreement or a formal resolution which establishes the MSCP biological mitigation obligation pursuant to another agreement ~~any project or activity by a Third Party Beneficiary in accordance with Section 10 of this Agreement and following receipt by the CITY OF SAN DIEGO from the Third Party Beneficiary of assurance (e.g., a mitigation bond) that the Third Party Beneficiary will provide all mitigation related to Covered Species required by the CITY OF SAN DIEGO in accordance with Section 10 of this Agreement~~, the Parties shall not alter an existing mitigation obligation imposed by the CITY OF SAN DIEGO on the Third Party Beneficiary pursuant to Section 10 of this Agreement without the express written consent of the USFWS, CDFG, City of San Diego and Third Party Beneficiary, except as otherwise specifically allowed under Sections 9.6 and 9.7 of this Agreement.

Section 17.2. This section must apply to permit terminations, as well as revocations and suspensions, and should clarified as follows:

> 17.2 Effect of Take Authorization Revocation, Termination or Suspension. In the event that the USFWS and/or CDFG revoke, terminate or suspend the Take Authorizations issued to the CITY OF SAN DIEGO pursuant to this Agreement, the assurances provided to Third Party Beneficiaries under this Agreement and Take Authorizations provided to Third Party Beneficiaries under this Agreement and any related CITY OF SAN DIEGO documents will remain in effect as to every individual Third Party Beneficiary which fulfills the mitigation obligations imposed upon it by the CITY OF SAN DIEGO in compliance with Section 10 of this Agreement. 78(b)

Section 17.1(B). It also is important to insure through this IA that the "Assurances" and Third Party Beneficiary status are passed along to subsequent purchasers of the land. Thus Section 17.1(B) should be modified as follows: 78(c)

B. The authorization for Incidental Take approved by the CITY OF SAN DIEGO ~~to~~ **for** the Third Party Beneficiary shall be for the length of time and run concurrent with the specific land development approval granted by the CITY OF SAN DIEGO. **This authorization shall run with the land**. 78(c)

Section 6.0. The second paragraph of this Section (Legal Authority of the USFWS) must be clarified to note that the No Surprises Policy provides assurances that the USFWS will not seek additional mitigation that requires the expenditure of money, land set asides, **or further land use restrictions** from not only the City of San Diego, but also Third Party Beneficiaries and landowners within the City. We understand that the wildlife agencies intend to provide assurances that they will not come back to the local jurisdiction permittee for increased mitigation, and that by providing such assurances the agencies intend to provide that same set of assurances to all landowners within the local jurisdiction that mitigation obligations will not be increased on them. However, the IA currently is not sufficiently clear on this issue.

Accordingly, the second and third sentences of the second paragraph should be modified as follows: 78(d)

> "Under the No Surprises Policy, if Subregional and Subarea HCPs (such as the MSCP and the Subarea Plan, respectively), as implemented, protect identified unlisted species as if they were listed, the USFWS will not seek additional mitigation that requires the expenditure of money**,** ~~or~~ land set asides **or further land use restrictions** from the CITY OF SAN DIEGO **, Third Party Beneficiaries or other landowners within the City of San Diego with respect to property owned within the City of San Diego**. The No Surprises Policy also assures the CITY OF SAN DIEGO **, Third Party Beneficiaries and other landowners within the City of San Diego** that if an approved Habitat Conservation Plan is implemented as proposed, the USFWS will not seek additional land or financial compensation if "unforeseen" or "extraordinary" circumstances should later arise with respect to either listed or unlisted covered species."

Section 14.7(D) (Preserve Management Obligations). The statements in this Subsection regarding non-Third Party Beneficiary landowners are appropriate. However, the language of this subsection implies that Third Party Beneficiaries may have management, maintenance or monitoring obligations on their land. No such obligations should be imposed on Third Party Beneficiaries if such individuals offer to dedicate their open space lands to the local jurisdiction. That is, the local jurisdiction should not be able to avoid maintenance; 78(e)

management and monitoring costs by refusing to accept lands offered by the landowner. Accordingly, this Subsection must be modified to clearly state that Third Party Beneficiaries shall not be required to manage, maintain or monitor their lands for purposes of the MSCP if such individuals have offered to dedicate their lands to the local jurisdiction. 78(e)

Section 17. Since Third Party Beneficiary status is provided at the time the Local Jurisdiction has granted the project approval with biological mitigation measures conditioned, the following language should be added to Section 17.

> **It is acknowledged and agreed by the Parties hereto that any covenants, assurances or commitments provided with respect to the extent and limitation of the mitigation, compensation or habitat protection or enhancement measures which will be required in connection with the development and operation of the MSCP are: (1) intended to be relied upon by and to benefit [**LOCAL JURISDICTION**] and Third Party Beneficiaries; (2) made with full knowledge and effect thereof; (3) made in exchange for valuable and adequate consideration provided by [**LOCAL JURISDICTION**] and Third Party Beneficiaries; and (4) made with the understanding that such assurances and commitments will not be amended, changed or increased except in accordance with this Agreement.** 78(f)

Section 9.16 (Growth Inducing Impacts). The protections and "No Surprise" assurances should flow to either the local jurisdiction permittee or to Third Party Beneficiaries once they have obtained project approvals conditioned by the necessary MSCP biological mitigation obligations. The protections should not be withheld until mitigation is completed. Mitigation may take several years or more to complete, whereas the reliance on the project approvals will begin upon their issuance. Consistent with our comments concerning Section 17.1(C) above, Section 9.16 should be modified as follows:

> ~~Once the CITY OF SAN DIEGO or a Third Party Beneficiary has satisfied the mitigation requirements [established in conformance with Section 10 of this Agreement applicable to~~ With respect to a public infrastructure project which the CITY OF SAN DIEGO itself proposes to construct or ~~to~~ a private land development project, the CITY OF SAN DIEGO or a Third Party Beneficiary shall not be required to provide any additional mitigation for any growth inducing impacts such project may have on the habitat of a Covered Species Subject to Incidental Take within the MSCP Area, following the adoption by the CITY OF SAN DIEGO of a formal resolution of conditional project 78(g)

approval which establishes the mitigation obligation of the project proponent under the MSCP Plan in accordance with Section 10 of this Agreement or a formal resolution which establishes the MSCP biological mitigation obligation pursuant to another agreement. 78(g)

2. *Necessary Revisions to Provision Addressing the Effect of Future Listings of Covered Species.*

Section 9.7(B). The Alliance and BIA/SD request that the following sentence be added to the end of Section 9.7(B) to address any future invocation of Cal. Fish & Game Code § 2830 during the life of the program: 78(h)

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

3. *Necessary Revisions to Provisions Addressing the Effect of Future Listings of Non-Covered Species.*

The IA's provisions at Section 9.7 to address the ramifications of the listing of a non-Covered Species are inadequate. To maintain the intent of the program, the distinctions made therein as set forth in the MSCP Plan and the IA, and the intent of the assurances to be given by the wildlife agencies, Section 9.7(C) should be modified as follows:

> C. Non-Covered Species. If a species which is not a Covered Species is subsequently proposed for listing as threatened or endangered under the ~~ESA or~~ CESA or is accepted by the California Fish and Game Commission as a candidate for listing after the Effective Date, or if a species which is not a Covered Species Subject to Incidental Take is subsequently proposed for listing as threatened or endangered under ESA, and it is determined by the USFWS or CDFG based on reliable scientific evidence that such species occupies the MSCP Area, the USFWS and CDFG will (1) identify the minimally necessary conservation measures, if any, ~~which are necessary~~ to adequately protect the species, and (2) determine whether such conservation measures are beyond those prescribed by the MSCP. Although such conservation measures may be identified after such species is proposed for listing, the CITY OF SAN DIEGO may choose not 78(i)

to approve and implement such measures until the species is actually listed. Upon application by a Participating Local Jurisdiction which meets the requirements of the ESA and CESA, and following compliance with applicable procedures, Incidental Take of a non-covered, listed species shall be authorized. 78(i)

1. Adequate Conservation Measures Already in MSCP.

[NO CHANGE NECESSARY TO THIS SECTION.]

2. Inadequate Conservation Measures in the MSCP.

a. Additional Conservation Measure Priorities. If the conservation measures already contained in the MSCP, the Subarea Plan and this Agreement do not adequately fulfill the conservation measures identified pursuant to subsection C above, then the USFWS and CDFG will work with the CITY OF SAN DIEGO and other Participating Local Jurisdictions to identify and jointly implement the Additional Conservation measures **minimally** necessary to add such species to the list of Covered Species and the list of Covered Species Subject to Incidental Take. In developing a set of Additional Conservation Measures, the parties will look to the following, in order of preference:

i. Habitat management practices and enhancement opportunities within the MHPA **which are funded, if necessary, from federal, state or public sources**, provided these measures do not **significantly** adversely affect any Covered Species.

ii. Habitat acquisition through the reallocation of Federal, State and/or regional funds identified for MSCP implementation, provided such reallocation does not 78(j)

significantly adversely affect any Covered Species. 78(j)

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

c. Significantly Conserved Vegetation Communities.

[NO CHANGE NECESSARY TO THIS SECTION.]

d. Sufficiently Conservation Vegetation Communities. If any species described in subsection C.2.a., above, is dependent upon a Sufficiently Conserved Vegetation Community, and if the USFWS and CDFG approve subarea plans for the CITY OF SAN DIEGO, City of Chula Vista, City of Poway and County of San Diego, then the USFWS and CDFG will use all of their legal authorities to provide for the conservation and management of the habitat of such species, within the Sufficiently Conserved Vegetation Communities, sufficiently to enable the addition of such species to 78(k)

the list of Covered Species and the list of Covered Species Subject to Incidental Take, and to enable the issuance of Take Authorizations for such species in the event they become listed under the ESA or CESA. **For purposes of this paragraph, steps within the legal authority of USFWS include, but are not limited to, USFWS-funded habitat acquisition, USFWS-funded species relocation and land exchanges to secure necessary habitat.** Consequently, the CITY OF SAN DIEGO shall not be required~~, without its consent,~~ to provide any conservation or management for such species beyond that provided in the MSCP and the Subarea Plan. 78(k)

e. Application for Take Authorization. The CITY OF SAN DIEGO makes no representation or commitment to pursue a Section 10(a) Permit from the USFWS or a CESA/NCCP Authorization from the CDFG for such non-covered species, and in the absence of any such Take Authorization, the Take of such species **will be governed by applicable state and federal law**~~may not occur~~. The USFWS and CDFG shall process any applications which may be submitted for Take Authorization for such species in accordance with the requirements of the ESA and CESA.

4. *Necessary Modifications to Extraordinary Circumstances (Section 9.6).*

Subsection A (Definition). The IA must not allow a change regarding a species which the Subarea Plan does not include as a covered species (*i.e.*, a Covered Species Subject to Incidental Take) to trigger the Extraordinary Circumstances provisions. Also, a change which can trigger this provision should not only have to be a change which is qualitatively significant and adverse, the degree of change should also have to be quantitatively "substantial." Thus Section 9.6A should be modified as follows:

A. Definition. For the purposes of this Agreement, the term "Extraordinary Circumstances" shall mean either (I) a significant, unanticipated **and substantial** adverse change in the population of any Covered Species **Subject to Incidental Take** or their habitat within the MSCP Area; or (II) any significant new or additional 78(l)

> information relevant to the MSCP that was not anticipated by the Parties at the time the MSCP was approved and that would likely result in a significant **and substantial** adverse change in the population of any Covered Species **Subject to Incidental Take** or their habitat within the MSCP Area. The term "Extraordinary Circumstances" as used in this Agreement shall have the same meaning as "Unforeseen Circumstances" under 50 C.F.R. §§ 17.22 and 17.32. The occurrence of one or more of the events identified under Section 5 of this Agreement shall not be considered an Extraordinary Circumstance. 78(l)

Subsection B (Relevant Factors). This subsection provides a partial list of factors which the wildlife agencies may consider in determining whether to invoke a finding of Extraordinary Circumstances. The use of the "recovery" standard in the final factor (No. 6) is troubling and exceeds the requirements of FESA. Use of the term also creates an unacceptably vague threshold.

Under Section 7 of FESA, the USFWS may not act so as to likely jeopardize the continued existence of the species. Use of the much more amorphous standard of "recovery" is not required by law. We believe that the USFWS is inappropriately incorporating 16 U.S.C. § 1539(a)(2)(B)(iv) into Section 9.6(B), so as to give this requirement, governing USFWS action at the time of the Section 10(a) permit application approval, an ongoing role which the statute never intended it to play. The § 1539(a)(2)(B)(iv) requirement is applicable only at the time the permit application is initially evaluated. Accordingly, the reference to "recovery" should be eliminated. 78(m)

Subsections C&D (Burden/Documentation and Advance Notice). The USFWS and CDFG have in previous Implementing Agreements for other multi-species HCP's incorporated a standard of "clear and convincing." We believe that this standard should also be in the MSCP IA's. In addition, as provided in IA's for other approved HCP's, findings of Extraordinary Circumstances should have to be made by the USFWS Director or Regional Director (with no power to delegate) or the Director of the CDFG. The USFWS or CDFG also should be required to clearly document in writing the circumstances and analyses which justify the invocation of the finding.

Accordingly, the following changes should be made to Sections 9.6(C) and (D):

> C. Burden and Documentation. The USFWS and CDFG shall have the burden of demonstrating that Extraordinary Circumstances exist, using the best scientific and commercial data available **that is clear and convincing**. Any findings of Extraordinary 78(n)

Circumstances must be clearly documented and based upon reliable technical information regarding the biological status and habitat requirements of the affected species. **Any finding of Extraordinary Circumstances must be made by the Director or Regional Director of the USFWS or the Director of the CDFG, after consideration of all information submitted by the CITY OF SAN DIEGO in accordance with Paragraph D, below.** 78(n)

D. Advance Notice. Except where there is a substantial threat of imminent, significant adverse impacts to a Covered Species **Subject to Incidental Take**, the USFWS and CDFG shall provide at least sixty (60) days **advance written** notice of a proposed finding of Extraordinary Circumstances**, the specific facts that may constitute Extraordinary Circumstances and the evaluation of the factors described in 9.6B**, during which time the USFWS and the CDFG shall meet with the CITY OF SAN DIEGO to discuss the proposed finding and to provide the CITY OF SAN DIEGO with an opportunity to submit information to rebut the proposed finding. **Only where the USFWS or CDFG concludes, following consultation with the CITY OF SAN DIEGO that existing measures available under the MSCP and Subarea Plan cannot adequately address the situation and that Additional Conservation Measures are the only means to adequately address the situation shall the USFWS or CDFG proceed to finalize a finding of Extraordinary Circumstances. Where advance notice cannot be given, the USFWS or CDFG shall consider any additional information submitted by CITY OF SAN DIEGO after a finding of Extraordinary Circumstance and shall be required to issue written findings in response to this information within 120 days of its receipt.** 78(o)

Subsection E (Limits on Additional Conservation Measures). Section 9.6(E) must be modified to make clear that neither the wildlife agencies nor the local jurisdiction permittee will seek additional exactions from general landowners within the local jurisdiction which holds the Section 10(a) permit. As discussed in our comments to Section 6.0 of the IA above, we understand that it is not the intent of the wildlife agencies to seek such additional exactions from general landowners within the local jurisdiction which holds the Section 10(a) permit, but the current language of the IA does not clearly provide that the agencies will not do so. Also, the clause regarding consent should be eliminated since parties to the Agreement can always provide consent to have their own particular obligations increased. Accordingly, the last sentence of Section 9.6(E) should be modified as follows: 78(p)

"Additional Conservation Measures shall be limited to modifications of the CITY OF SAN DIEGO's preserve management program or habitat acquisition program as set forth in the Subarea Plan and this Agreement, and shall not involve the commitment of additional land or additional land restrictions or additional financial compensation on the part of the CITY OF SAN DIEGO, **landowners within the MHPA** or Third Party Beneficiaries ~~without their consent~~." 78(p)

Subsection F (Effects on Take Authorization). Since an indefinite suspension is equivalent to a termination, this provision should be modified to prevent indefinite suspensions as well as terminations and revocations. Accordingly, The Alliance and BIA/SD suggest that Section 9.6(F) be modified as follows:

F. Effects on Take Authorization. A finding of Extraordinary Circumstances shall not be grounds to terminate**, suspend** or otherwise revoke the Take Authorizations issued pursuant to this Agreement provided that the CITY OF SAN DIEGO cooperates with the USFWS and CDFG in identifying and implementing fair, reasonable and necessary modifications to the preserve management and habitat acquisition program, as specified in subsection E, above. The USFWS retains the right, as authorized under Section 5 of the ESA, 16 U.S.C. § 1534, and the CDFG retains the right as authorized by the CESA and/or NCCP Act, to purchase habitat within the MSCP Area to conserve Covered Species or any other species of concern. 78(q)

5. *Effect of Failure to Provide Federal or State Contribution.*

The potential devastating effect of the current language contained in new Section 15.3 on the MSCP cannot be overstated.

We understand that the wildlife agencies intended that a change to the MSCP via this provision would only occur in the event that a shortfall in the state or federal contribution, combined with the then-current operation of the MSCP, was found by the USFWS to be likely to jeopardize the continued existence of one or more of the Covered Species Subject to Incidental Take which are listed as "threatened" or "endangered" under ESA, consistent with the provisions of Section 16.4 of the IA. This intent needs to be reflected in this provision. We also request that the concept of multiple methods for state and federal contribution be clarified, that the long-term nature of this program be better reflected and that a meet and confer process be incorporated into these provisions. Accordingly, we request the following modifications: 78(r)

15.3 Failure to Provide Federal or State Contribution. The Parties acknowledge that the MSCP Plan and Subarea Plans are long-term in nature, that the wildlife reserve system to be established by virtue of the MSCP will be developed over a period of many years and that the state and federal contribution to the MSCP program will likewise be made at various times during the life of the program, and possibly over a period of many years. State and federal contributions to the MSCP may take a variety of forms including, but not limited to, land donations, land exchanges, the establishment of wildlife reserves, personnel, monitoring, habitat enhancement and direct funding. Consistent with 16 U.S.C. § 1536(a)(2), if following the exercise of all available authority and utilization of all available resources the USFWS and/or CDFG contribution committed to the MSCP cannot be provided, and if the USFWS finds in writing that such contribution shortfall is likely to jeopardize the continued existence of a Covered Species Subject to Incidental Take which is also a species listed as "threatened" or "endangered" under the ESA, the USFWS shall provide such written findings and supporting analysis to the CITY OF SAN DIEGO. After providing such written documentation to the CITY OF SAN DIEGO, the USFWS, CDFG and CITY OF SAN DIEGO shall meet and confer, and the MSCP and each approved subarea plan will be re-evaluated by the USFWS and CDFG in consultation with the CITY OF SAN DIEGO and the other local jurisdiction permittees. ~~with possible adjustments to permit coverage and assurances, in light of the extent of the USFWS and CDFG contributions.~~ The Parties shall first determine whether sufficient conservation measures can avoid the jeopardy using measures available under Section 9.7(C)(2)(a) and (b). If such measures are not sufficient to avoid the jeopardy, and if the USFWS sets forth its findings and analysis on this issue in writing, then USFWS may remove the species from the list of Covered Species Subject to Incidental Take. 78(r)

6. *The Impact of the MSCP on Other Resource Regulatory Permitting.*

The Alliance and BIA/SD strongly urge the Parties to make modifications and clarifications to Section 9.8(A). For example, proponents of land development projects often do not have their local project approvals in hand when they must process a Section 404 permit with the Army Corps of Engineers. Thus, project proponents, in addition to Third 78(s)

Party Beneficiaries, must receive the necessary assurances in this section. Reference to "project proponents" is made in the second instance for purposes of clarification consistent with our requested clarification to Section 6.0. Additionally, we understand the MSCP program to be designed to prevent double mitigation for impacts not only to Covered Species Subject to Incidental Take, but also to Sufficiently and Significantly Conserved Vegetation Communities. As we understand the wildlife agencies' intent, the agencies wish to assure project proponents that once they have obtained project approvals pursuant to CEQA, neither the CDFG or USFWS will seek any additional biological mitigation through any other regulatory process for any other species or habitats (except for impacts to "Waters of the United States" pursuant to Section 404 of the Clean Water Act and obligate species of such Waters). We also understand that the agencies must retain the right to comment on non-Covered Species and the placement of development footprints (consistent with the MSCP subarea plans) for projects within the MHPA in the course of the CEQA process.
To reflect these intentions while providing the intended level of assurances to landowners, the following changes must be made:

9.8 Other Regulatory Permitting.

A. Other Permits. The Parties acknowledge that proponents of land development projects in the Subarea may be subject to permit requirements of agencies not parties to this Agreement, and to separate permit requirements which may be imposed by the USFWS or the CDFG, such as under the Migratory Bird Treaty Act (discussed below) and Fish and Game Code sections 1601 and 1603. Except as provided in Section 9.6 ("Extraordinary Circumstances"), Section 15.3 ("Failure to Provide Federal or State Contribution"), and this paragraph, **once a project has undergone CEQA review and been approved by the CITY OF SAN DIEGO,** compliance with the terms of this Agreement, the MSCP and the Subarea Plan, and compliance with the mitigation, compensation and habitat management obligations contained in this Agreement and/or imposed by the CITY OF SAN DIEGO on ~~proponents of land development projects~~ **Third Party Beneficiaries** within the Subarea in accordance with this Agreement, shall constitute the full extent of mitigation measures ~~directed specifically at the Incidental Take of Covered Species Subject to Incidental Take~~ required or recommended by the USFWS pursuant to the ESA, **CEQA and** NEPA, and by the CDFG pursuant to CESA, the NCCP Act, ~~and~~ CEQA **and the California Fish & Game Code**, in conjunction with other federal and state permits within the Subarea. Provided, however, that additional mitigation may be required or recommended by the

78(s)

USFWS for impacts to wetlands which are under the jurisdiction of the U.S. Army Corps of Engineers pursuant to Section 404 of the Clean Water Act (33 U.S.C. § 1344) and the individuals of species dependent on such wetlands, through the Section 404 permitting process and any necessary Section 7 (16 U.S.C. § 1536) consultation thereunder. In such situations, for land development projects that conform with the mitigation directed at wetland dependent Covered Species imposed by the CITY OF SAN DIEGO pursuant to the Subarea Plan and this Agreement, the USFWS and CDFG will work cooperatively with the CITY OF SAN DIEGO, **proponents of land development projects** and Third Party Beneficiaries to streamline State and Federal permitting processes and to identify the least burdensome measures required or recommended, if any, to ensure consistency with the federal policy of no net loss of wetland functions and values, and the Environmental Protection Agency's 404(b)(1) guidelines (40 C.F.R. Part 230). If such projects are consistent with the MSCP, the Subarea Plan, this Agreement, the federal no net loss of wetlands policy, and the 404(b)(1) guidelines, then the USFWS and CDFG will not require or recommend any further measures. Furthermore, the USFWS and CDFG will coordinate with the CITY OF SAN DIEGO, the U.S. Army Corps of Engineers, and the U.S. Environmental Protection Agency to further streamline the process for issuance of permits pursuant to Section 404 of the Clean Water Act for those projects that are in conformance with the MSCP, the Subarea Plan and this Agreement. Except as otherwise provided in this Agreement, the USFWS and CDFG agree not to impose or seek to impose on the CITY OF SAN DIEGO or Third Party Beneficiaries **or proponents of land development projects** any additional mitigation directed specifically at the protection and conservation of Covered Species Subject to Incidental Take **, Sufficiently Conserved Vegetation Communities or Significantly Conserved Vegetation Communities** related to any land development projects within the Subarea through any agency approval process, whether or not such agency is a party to this Agreement, beyond those mitigation measures provided pursuant to this Agreement. 78(s)

A new subsection should also be added to Section 9.8 to provide for substantially the following: 78(t)

> In issuing any permits or other approvals pertaining to land development activities within the CITY OF SAN DIEGO for any Covered Species Subject to Incidental Take or for any Sufficiently Conserved Vegetation Communities, absent a finding of Extraordinary Circumstances under Section 9.6, and subject to any requirements of NEPA and to the maximum extent permitted by law, USFWS shall rely on and shall utilize the EIR/EIS prepared in conjunction with the MSCP Plan as the NEPA environmental document for such permits and approvals and for any other approval process subject to its jurisdiction or involvement with regard to potential impacts on Covered Species Subject to Incidental Take and Sufficiently Conserved Vegetation Communities. To the maximum extent permitted by law, CDFG and the CITY OF SAN DIEGO shall rely on the EIR/EIS prepared in conjunction with the MSCP Plan/HCP as appropriate CEQA documentation for any future approvals regarding potential impacts to Covered Species Subject to Incidental Take or for any Sufficiently Conserved Vegetation Communities within the CITY OF SAN DIEGO.
>
> The Parties understand and intend that the EIR/EIS prepared in conjunction with the MSCP Plan/HCP will operate, to the maximum extent permitted by law, as a "program" EIR and EIS pursuant to applicable provisions of the Council on Environmental Quality NEPA regulations (40 C.F.R. Section 1500 et seq.), the CEQA Guidelines (14 C.C.R. Section 15000 et seq.) and the NCCP Act. Accordingly, the CITY OF SAN DIEGO shall, consistent with the provisions of CEQA and to the maximum extent permitted by law, rely on and utilize the EIR prepared in conjunction with the MSCP/HCP in evaluating future land use planning decisions, and in issuing any permits or other approvals within the MSCP Area. Subsequent activities will be examined in light of the program EIR/EIS to determine if additional environmental documentation is required.
>
> Consistent with the March 17, 1995 Joint CDFG and USFWS Statement Regarding CEQA Determinations of Significant Impacts under the NCCP Program, the CITY OF SAN

> DIEGO, CDFG and USFWS find that CITY OF SAN DIEGO's Subarea Plan creates a system of interconnected reserves designed to: (1) promote biodiversity; (2) provide for high likelihoods for persistence of target species in the Subarea, and (3) provides for no net loss of habitat value from the present, taking into account management and enhancement. No net loss of habitat value means no net reduction in the ability of the MSCP Area to maintain viable populations of target species over the long-term. The CDFG, USFWS and CITY OF SAN DIEGO acknowledge that for projects implemented pursuant to and in conformance with this Agreement, the MSCP Plan and Subarea Plan, project-related impacts to coastal sage scrub, Sufficiently Conserved Vegetation Communities and Covered Species Subject to Incidental Take shall be considered to be mitigated to insignificant levels. 78(t)
>
> In this respect, CDFG and the CITY OF SAN DIEGO have determined that compliance with the MSCP/HCP and this Agreement mitigates or avoids impacts to Covered Species Subject to Incidental Take and Sufficiently Conserved Vegetation Communities and, absent a finding of Extraordinary Circumstances as defined and provided in Section 9.6, any Take authorized by this Agreement will not constitute a significant impact on the Covered Species Subject to Incidental Take or the Sufficiently Conserved Vegetation Communities.

Section 13.2. As discussed above, the CDFG should not be able to double hit for mitigation for impacts to Covered Species, nor should the agency be allowed to double hit for impacts to Sufficiently or Significantly Conserved Vegetation Communities. We believe that this principle is also embraced by the wildlife agencies. Thus Section 13.2 must be modified as follows:

> 13.2 Consultations by CDFG. Except as otherwise required by law, and barring a finding by CDFG of Extraordinary Circumstances, for projects and/or project impacts subject to the Subarea Plan CDFG shall not recommend or otherwise seek to impose through consultation with other public agencies any mitigation, compensation or habitat enhancement requirements regarding the protection, conservation or recovery ~~Take~~ of Covered Species , Sufficiently Conserved Vegetation Communities or Significantly Conserved Vegetation Communities within the Subarea other than the requirements 78(u)

prescribed in and pursuant to the MSCP, the Subarea Plan and this Agreement. 78(u)

7. *Migratory Bird Treaty Act.*

Section 9.8(B) must be modified to ensure that MBTA coverage will extend to all birds species covered by the MBTA which are also Covered Species Subject to Incidental Take, even if those species are not currently listed as threatened or endangered under ESA. This shortfall can be remedied by the City submitting an application for an MBTA permit now, to cover those MBTA species which are also proposed to be Covered Species. The Special Purpose Permit under 50 C.F.R. § 21.27 is not limited to species listed under ESA, and the regulations governing the use of MBTA Special Purpose Permits indicate that MBTA permit coverage for MBTA species which are also Covered Species Subject to Incidental Take is appropriate. Thus, the first sentence of Section 9.8(B) should be modified and replaced with the following provisions:

> "The USFWS has reviewed the CITY OF SAN DIEGO's application under the MBTA and has found that the MSCP Plan and Subarea Plan significantly benefit the migratory birds listed as Covered Species Subject to Incidental Take by virtue of the establishment of the MHPA and associated biological regulations adopted pursuant to Section 10 of this Agreement. The USFWS also finds that the success of the MSCP requires that permittees be provided sufficient certainty as to necessary mitigation obligations for impacts to biological resources. Accordingly, within 60 days of issuing the Section 10(a) Permit, the USFWS shall issue ~~The Section 10(a) Permit issued pursuant to this Agreement also constitutes~~ a Special Purpose Permit under 50 C.F.R. § 21.27 for the Take of those Covered Species Subject to Incidental Take ~~which are listed as threatened or endangered under the ESA and~~ which are also protected by the Migratory Bird Treaty Act, except for the Bald Eagle. Upon the addition to the list of Covered Species Subject to Incidental Take of any species covered by the MBTA, and after the CITY OF SAN DIEGO has submitted an MBTA application for a Special Purpose Permit for such species, the USFWS shall process such application within 60 days." [REMAINDER OF SECTION UNCHANGED] 78(v)

8. *Section 7 Consultations.*

Section 13.1 must be expanded to include "**proponents of a land development projects**" since Section 7 consultations often must occur before landowners have obtained the final local jurisdiction approvals for a project (and therefore before they have become Third Party Beneficiaries). The current exclusion of this class of person ignores the realities and interplay of the local, state and federal approval processes for development activities. In fact, the City of San Diego's Biology Guidelines emphasize processing at the federal level at this earlier stage. 78(w)

9. *Statement Regarding the Effects of a Reinitiation of the USFWS Internal Section 7 Consultation on the MSCP.*

Under 50 C.F.R. § 402.16, the USFWS may determine from time to time during the life of the MSCP plan that it must reinitiate the Section 7 consultation initially conducted by the USFWS when it approved the MSCP under ESA. Likewise, citizens may seek to compel such reinitiations from time to time. We understand that the wildlife agencies do not intend for the program to be suspended during the course of such additional consultations nor for additional mitigations to be required at the conclusion of such consultations beyond those additional mitigations which may be utilized pursuant to the Unforeseen Circumstances provisions of Section 9.6(E) and (F). This issue is extremely critical to the success of the program. Accordingly, we propose the following new Section 9.22:

> **Section 9.22. Effect of Reinitiation of Section 7 Consultation on MSCP. The USFWS shall work diligently to conclude any reinitiated Section 7 consultation on the MSCP Plan or Subarea Plan as quickly as possible and, to the maximum extent allowable by law, shall maintain the Take Authorizations in effect during the course of such Section 7 consultation. If, at the conclusion of such Section 7 consultation the USFWS concludes that Additional Conservation Measures are required, such Additional Conservation Measures shall conform to the maximum extent possible to the original terms of the MSCP and Subarea Plan. Additional Conservation Measures shall be limited to modifications of the CITY OF SAN DIEGO's preserve management program or habitat acquisition program as set forth in the Subarea Plan and this Agreement, and shall not involve the commitment of additional land or additional land restrictions or additional financial compensation on the part of the CITY OF SAN DIEGO, landowners within the CITY OF SAN DIEGO or Third Party Beneficiaries. A** 78(w)

determination by the USFWS that Additional Conservation Measures are required shall not be grounds to terminate, suspend, or otherwise revoke the Take Authorizations issued pursuant to this Agreement, provided that the CITY OF SAN DIEGO cooperates with the USFWS and CDFG in identifying and implementing fair, reasonable and necessary modifications to the preserve management and habitat acquisition program. 78(x)

10. Development within the MHPA.

Section 10.8(G)(4) must be revised to eliminate the last sentence, which provides: "The indirect impacts of development will be addressed in the Environmentally Sensitive Lands permit to ensure protection of the sensitive biological resources remaining on the premises outside of the development area." This sentence is extremely vague and inconsistent with the third sentence which states that "No mitigation will be required for the 25% encroachment." It is unclear what is meant by "indirect impacts of development" and how such impacts would be addressed in the permit. Indirect effects are often couched in terms of edge effects. Such edge effects are being addressed globally in the MSCP program by creating a preserve which contains large blocks of valuable habitats with sufficiently sized corridors. Thus there should be no double counting for such indirect effects as they are addressed by the preserve design/configuration. Landowner accounting for edge effects is a form of mitigation; such mitigation is precluded by the third sentence for land within the MHPA. 78(y)

11. Location of Project Mitigation.

Section 10.8(G)(2). The MSCP is designed to establish a regional preservation system which overcomes, to the maximum extent possible, blind allegiance to local jurisdiction boundaries. Requiring that mitigation land contributions be confined to lands within the City's boundaries, as opposed to the larger MSCP Area, runs directly counter to the regional concept of this program and could significantly and unnecessarily increase the costs of the program without providing a commensurate increased biological benefit. Accordingly, the last sentence of Section 10.8(G)(2) should be modified as follows: 78(z)

> "The Parties agree that lands used to mitigate impacts **should** ~~will~~ be located within the CITY OF SAN DIEGO jurisdictional boundaries, except **as otherwise provided by City Council** ~~in the event of extraordinary circumstances~~ where the preserve function is ~~significantly~~ enhanced."

12. *Amendments and Preserve Line Adjustments.*

Section 10.7 allows for various preserve boundary changes to be made by the City of San Diego or local jurisdiction (with the approval of the USFWS and CDFG) without requiring an amendment of the IA. This provision should be modified to provide that boundary line adjustments may be made by the local jurisdiction permittee without requiring an amendment to the IA, but only at the request of a property owner and provided that such owner has the concurrence of the CDFG and USFWS. Accordingly, Section 10.7 should be modified as follows: 78(aa)

> 10.7 Boundary Line Adjustments. Adjustments to the CITY OF SAN DIEGO's MHPA boundaries may be made in limited circumstances with the concurrence of the USFWS ~~and~~ , CDFG **and effected landowner** as set forth in Section 5 of the MSCP Plan and Section 1.1.1 of the Subarea Plan, without the need to amend this Agreement.

13. *Mitigation Guidelines*

Section 9.12. This Section must be changed to eliminate the ability of the City to modify the Mitigation Guidelines without the need to amend the IA. Subsequent modifications to the Mitigation Guidelines could have a major impact on the operation of the MSCP. Accordingly, such modifications should only occur after a written explanation and analysis of the proposed modifications are made in the public report to be issued under Section 14.4 and after the associated public hearing has provided the public the opportunity to discuss and comment on such proposed changes. 78(ab)

14. *Timing of Public Hearing and Report on Program.*

Section 14.4 should be modified to provide that the first public hearing and report will be scheduled for the summer of 1998, and scheduled every three years thereafter. 78(ac)

15. *Annual Implementation Meeting.*

Section 14.3 should be modified to require the wildlife agencies to document in writing the facts and analyses which they used to reach any conclusions that adequate progress in Subarea Plan implementation is not being achieved or that a Subarea Plan is not providing sufficient coverage for a Covered Species. Accordingly Section 14.3 should be modified as follows: 78(ad)

14.3 Annual Implementation Meeting. Once each year, the CITY OF SAN DIEGO shall meet with the USFWS and the CDFG to review and coordinate implementation of the Subarea Plans. The parties will review the Annual Report described in Section 14.2 above, for the purposes of evaluating the implementation of the MSCP during the preceding year and the adequacy of the overall progress being made towards reaching the conservation goals of the MSCP and the Subarea Plan. Items to be considered in the evaluation include, but are not limited to, all contributions towards the preservation of habitat lands, such as public lands, private mitigation lands, land donations, land acquisitions, and management activities undertaken or proposed on habitat lands. No Participating Local Jurisdiction or Participating Special Entity will be subject to any annual, quantitative habitat preservation requirement, given the uncertainties created by natural economic and land development fluctuations. If the USFWS and the CDFG determine that adequate progress towards implementation of the Subarea Plan is not being achieved **the CDFG and USFWS shall set forth their findings and the basis for such findings in writing (including identification and explanation of the facts and analyses used to reach such findings), and** the USFWS, the CDFG, and the CITY OF SAN DIEGO will take the actions specified in the Subarea Plan and this Agreement to remedy that situation. If the USFWS and CDFG determine that adequate progress towards implementation of the Subarea Plan is being achieved, but is nevertheless not providing sufficient protection to Covered Species **the CDFG and USFWS shall set forth their findings and the basis for such findings in writing (including identification and explanation of the factors and analyses used to reach such findings), and** then the Parties shall work cooperatively and take appropriate actions consistent with the MSCP and Subarea Plan (such as altering management activities or redirecting mitigation and acquisition) in order to address the situation). 78(ad)

16. References to Maintenance, Management and Monitoring Commitments. The IA's should provide definitions for the terms "maintenance," "management" and "monitoring." The first sentence of Section 10.6 should be modified to provide that the local jurisdiction permittee shall be responsible for managing lands within the MSCP Area which have been offered for dedication to the local jurisdiction for purposes of management by the landowner. The local jurisdiction should not be allowed to evade responsibility for management by not 78(ae) 78(af)

accepting the offer. The phrase "maintenance and monitoring" should be added after the term "management" where this term is used in Sections 9.9 and 9.7(C)(2)(d). 78(af)

17. Reinstatement of Suspended Section 10(a) Permit or CESA/NCCP Authorization.

In identifying those specific actions necessary to effectively redress the violation or breach in Section 16.2(B) and 16.3(B), the USFWS and CDFG should be required to limit such actions to those that are both reasonable and feasible. 78(ag)
The USFWS and CDFG should also be required to consider "fairness to the City of San Diego" in addition to the other required considerations currently set forth in Section 16.2(B) and 16.3(B).

18. Emergency Situations Allowing USFWS or CDFG to Suspend or Revoke Without Following Normal Procedures.

The Alliance and BIA/SD understand the need for the wildlife agencies to be able to respond more rapidly where a breach of the IA is likely to jeopardize the continued existence of a species; however, the following modifications should be made to Section 16.4 to ensure that this provision is only invoked when truly warranted:

> 16.4 Circumstances Constituting Jeopardy to Listed Species. In the event of a significant material violation of the Take Authorizations or breach of this Agreement by the CITY OF SAN DIEGO and the existence of circumstances which are likely to jeopardize the continued existence of a Covered Species listed as threatened or endangered under the ESA or CESA, the USFWS and/or CDFG may, as a last resort, and after meeting and conferring with the CITY OF SAN DIEGO **and describing and analyzing those circumstances in writing**, suspend or revoke the Take Authorizations without resorting to the procedures specified above**, if necessary to avoid jeopardizing the continued existence of a Covered Species in accordance with 16 U.S.C. § 1536(a)(2)**. 78(ah)

19. City of San Diego Obligations in the Event of Suspension or Revocation.

Section 16.5 should be modified as follows to comport with current law:

> 16.5 The CITY OF SAN DIEGO's Obligations In The Event of Suspension or Revocation. In the event that the USFWS and/or CDFG suspend or revoke the Take Authorizations issued to the CITY OF SAN DIEGO under this Agreement, the CITY OF SAN 78(ai)

> DIEGO will remain obligated to fulfill its mitigation, enforcement and management obligations in accordance with this Agreement for all land development activities undertaken and approved prior to the breach which led to the suspension or revocation, **but only if and to the extent that such activities have resulted in, or do result in, Incidental Take of Covered Species Subject to Incidental Take which are actually listed at the time of such suspension or revocation**. 78(ai)

20. Severability.

The Implementing Agreement provides the Wildlife Agencies with a right to suspend, revoke or terminate the IA because of a breach by a Local Jurisdiction Permittee under Section 16. Accordingly, the third sentence of Section 5.0 (Severability) should be clarified with the following addition:

> "The CITY OF SAN DIEGO's Take Authorization may not be suspended, revoked or terminated against its will due solely to the actions or inactions of any other person or entity, including the other local jurisdictions identified in Exhibit B (whether or not they have become Participating Local Jurisdictions)**; rather, suspension, revocation or termination shall be governed by Section 16**." 78(aj)

21. HCP Funding Provisions.

Section 11. Please see comments contained in the BIA/SD comment letter on the joint draft EIR/EIS. Provisions regarding the certainty of the City's funding contributions must be significantly strengthened. 78(ak)

22. Necessary Modifications to CESA/NCCP Authorization Provisions (Including Issuance and Findings).

Section 2.6 (Definition). Under Cal. Fish and Game Code Section 2835 (NCCP Act), the CDFG is authorized to permit the incidental take of any species whose conservation and management is provided for in a CDFG-approved NCCP. Accordingly, the IA should make clear that for all species for which CDFG is issuing CESA/NCCP Authorization, the CDFG has found that the species' conservation and management has been provided for by the MSCP and Subarea Plan. 78(al)

Accordingly, Line 7 of Section 2.6 of the IA should be modified to state: 78(al)

"candidate for such a listing, or of a species ~~listed as an~~ identified ~~species~~ pursuant to Section 2835. These"

Section 12.5. The current language must be clarified. Line 3 of this Section states that the City's Subarea Plan adequately provides for the conservation and management of the Covered Species within the MSCP Area, as opposed to the Subarea. Although the CDFG may be able to make such a finding under the provisions of the NCCP Act, the draft EIR/EIS does not contain any discussion of such analysis by the CDFG; accordingly, such analysis and discussion should be added to the EIR/EIS. Alternatively, the Parties may simply have meant to state that the Subarea Plan adequately provides for the conservation and management of Covered Species within the Subarea or that when taken together with specific other subarea plans, the City's Subarea Plan adequately provides for the Covered Species within the MSCP Area. Similarly, the IA also needs to clarify in lines 5-6 of Section 12.5 whether the CESA/NCCP Authorization being granted to the City of San Diego is for the Covered Species or the Covered Species Subject to Incidental Take, inasmuch as Line 3 suggests that the coverage should extend to the broader Covered Species list. 78(am)

It is imperative that either Section 12.5 or 9.8 (see comments to that section, above) contain a finding (as required by the March 17, 1995 USFWS/CDFG joint guidance document for CEQA Determinations of Significant Impacts under the NCCP Program) that the MSCP Plan, together with the applicable Subarea Plan, **"creates a system of interconnected reserves designed to: (1) promote biodiversity, (2) provide for high likelihoods for persistency of target species in the subregion, and (3) provide for no net loss of habitat value from the present, taking into account management and enhancement."**

The CDFG also should make a finding in Section 12.5 regarding the use of the California Conservation Corps or local Conservation Corps, as required by Cal. Fish and Game Code Section 2825(d).

Section 12.6. The actual CESA/NCCP Authorization should be embodied in this IA. If the CDFG is proposing to issue a separate document to constitute the Take Authorization, a draft of this document must be distributed for public review and comment. We believe that the more prudent course is to modify the existing IA as necessary to contain the CESA/NCCP Authorization and to circulate such revised IA for public review and comment.

Section 12.6 should also be modified by adding the following sentence to the end of this section: "The CDFG agrees to use all legal authority to extend the CESA/NCCP Authorization to any Covered Species Subject to Incidental Take which is 78(an)

designated as a candidate species after the Effective Date." This sentence would be in keeping with the allocation of authority set forth in Cal. Fish & Game Code Section 2830. 78(an)

23. *Findings by USFWS.*

Covered Species (Section 12.2) - The findings in subparts (b), (c) and (d) are confusing and problematic in their current form. They need to be strengthened and made more accurate. The USFWS can only make findings with respect to the particular subarea plans which have been submitted and which the USFWS has reviewed, yet the findings seem to attempt to encompass more. In subpart (b), the IA should specify the particular subarea plans to which it refers. Subpart (c) should refer to the "**commitments being made by the City, the funding sources identified and the funding actually provided for herein.**" The document should state how the USFWS can state at this time in subpart (d) that the requested taking of Covered Species will not appreciably reduce the likelihood of survival and recovery since only certain Subarea Plans have been submitted for USFWS review and approval. Perhaps this latter reference was intended to be "Covered Species Subject to Incidental Take"; alternatively, perhaps the drafters intended to discuss findings made after review of the other subarea plans within the MSCP. Please clarify. 78(ao)

24. *Findings Regarding Section 4(d) Special Rule.*

Section 12.7. Please explain how the USFWS and CDFG can find, based only the City of San Diego's approved Subarea Plan and the MSCP Plan that Incidental Take of the gnatcatcher "within the MSCP Area" is lawful. (See lines 6-7). Since the City of San Diego Subarea Plan is being approved at this time, we understand this finding relative to the Subarea, but a finding applying to the entire MSCP Area at this time, without review and approval of other Subarea Plans, is confusing. Perhaps the reference should be to the City of San Diego's Subarea. Findings for the MSCP Area should reference the other necessary subarea plans. 78(ap)

25. *Conservation of Covered Species Finding.*

Section 9.3. The statement in the first sentence of Section 9.3 appears overbroad and therefore not fully supportable. It is unclear how the USFWS and CDFG can find that the implementation of the MSCP Subarea Plan for City of San Diego can adequately provide for the conservation and protection of the Covered Species in the MSCP Area in perpetuity, as opposed to within the MSCP Subarea for City of San Diego. It would seem that findings relative to the MSCP Area should reference the other necessary subarea plans for these findings. Please clarify. 78(aq)

26. Critical Habitat.

Section 9.19. The Alliance and BIA/SD suggest that the City and USFWS recognize the relationship between MSCP preserve design and the statutory elements governing the determination of critical habitat and, by so doing, provide assurances to the City, Third Party Beneficiaries and the citizens of San Diego given that relationship. The Alliance and BIA/SD suggest that the following language be added to Section 9.19:

> (a) Section 424.12 of the ESA regulations specifies 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 NCCP Conservation Guidelines' and MSCP conservation guidelines' tenets of reserve design, as reviewed in the MSCP Plan and EIR/EIS, is to identify habitat essential to the conservation of the Covered Species and, thus, these conservation guidelines specifically address one of the fundamental requirements of a critical habitat designation. In turn, the MSCP Plan, in conforming with those guidelines, provides for the establishment of a reserve system and management program which maintain net habitat value for the Covered Species within the MSCP Area 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 Covered Species and (2) provide for, through the management program and Subarea Plans, "special management considerations" and "protections" specified in the foregoing critical habitat determination regulation.
>
> (b) The MSCP Plan also identifies the "principal biological or physical constituent elements within the defined area that are essential to the conservation of the [Covered] 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 MSCP Area essential to the conservation of the Covered Species are set forth in Chapters of the MSCP Plan and Chapters of the EIR/EIS and were applied directly in the formulation of the reserve system as reviewed in the MSCP and EIR/EIS. Consistent with 50 C.F.R. § 424.12(c), the specificity of the

78(ar)

reserve design allows for compliance 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." 78(ar)

(c) 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 Covered Species is to be addressed at the subregional, as well as regional, level. Given the scale of the MSCP Area, the scale of the MHPA permanent preserve system and the comprehensive nature of the special management considerations incorporated into the management program, USFWS concludes that the preserve system and management program identify or will identify, and include within the preserve system, the habitat "essential to the conservation" of the Covered Species and the "special management" measures necessary to manage habitat within the MSCP Area in a manner that will "provide for the conservation of the species involved."

(d) Based on the preceding paragraphs, USFWS agrees that, consistent with the Assurances Policy set forth in Section 6.0, in the event that a critical habitat determination is made for any Covered Species Subject to Incidental Take, no additional mitigation in the form of land, land use restriction or financial compensation shall be required of the CITY OF SAN DIEGO, Third Party Beneficiaries or landowners within the Subarea Plan Area through the section 7 consultation process under ESA or otherwise.

27. *Term of Agreement and Preservation Responsibilities.*

The Alliance and BIA/SD request the following modifications to Section 21.3 to clarify long-term assurances and commitments:

> 21.3 Permanent Preservation. Notwithstanding the stated term as herein set forth, the Parties agree and recognize that once Take of a Covered Species has occurred and/or their habitat modified within the Subarea, such Take and habitat modification will be permanent, and the subsequent recurrence, and incidental take 78(as)

thereof, of a Covered Species in an area developed under the MSCP will not result in a Take of the species in violation of 16 U.S.C. § 1538. The Parties also therefore agree that the preservation ~~and maintenance~~ of the compensation habitat ~~provided for under this Agreement~~ shall likewise be permanent and extend beyond the term of this Agreement, except for lands acquired or maintained for in-advance mitigation for future projects. 78(as)

28. *Agency Statements Regarding Program's Compliance With Applicable Law*

Section 9.2. This Section fails to reference the California Fish and Game Code generally, the Planning and Zoning Law, the Subdivision Map Act, the Porter-Cologne Water Quality Act and the Cortese-Knox Act, as well as those regulations promulgated pursuant to those laws. Such representations were provided in earlier drafts of the IA released to the public, but they have since been eliminated. The public should be entitled to receive representations from the City and CDFG that compliance with and the operation of, this program will not violate these other statutes. Similarly, the USFWS should provide a representation that compliance with, and the operation of, the MSCP does not violate the provisions of the federal Clean Water Act. 78(at)

29. *Notice.*

Section 24.3. This Section should be modified to require the City Manager to issue a public notice when the City receives a notice of Unforeseen Circumstances, a claim of breach of the Agreement, or a notice pursuant to Section 15.3 from the USFWS or CDFG. This Section should also provide for specific, direct notice to be provided to all Third Party Beneficiaries in such circumstances. 78(au)

30. *The Need for a Force Majeure Provision.*

A new subsection should be added to Section 24 addressing force majeure events as follows:

In the event that the City of San Diego or a Third Party Beneficiary is wholly or partly prevented from performing obligations under or pursuant to this Agreement because of unforeseeable causes beyond the reasonable control of and without the fault or negligence of the City of San Diego or Third Party Beneficiary ("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 78(av)

jurisdictions, the City of San Diego or Third Party Beneficiary 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 or Third Party Beneficiary to violate ESA or CESA, and failure to perform shall not be considered a material breach, provided that: 78(av)

(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 City of San Diego gives USFWS and CDFG written notice or the Third Party Beneficiary gives the City of San Diego written notice describing the particulars of the occurrence;

(3) The City of San Diego or Third Party Beneficiary 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 City of San Diego or Third Party Beneficiary, are contrary to its interest); and

(4) When the City of San Diego or Third Party Beneficiary is able to resume performance of its obligations, the City of San Diego shall give USFWS and CDFG written notice or the Third Party Beneficiary shall give the City of San Diego written notice to that effect.

This language is similar to that provided in the Orange County Central/Coastal NCCP IA.

31. *Preserve Management by Other State and Federal Agencies.*

The provision in Section 14.7(C), with regard to federal and state agencies which are not signatories, is meaningless since it cannot be binding on those agencies. What is the practical ramification of these lands not being maintained, managed and monitored 78(aw)

consistent with the MSCP? The draft EIR/EIS does not discuss this possibility. If there is a significant negative effect, these agencies should become signatories to the IA. 78(aw)

32. *CDFG's CEQA Review Obligations.*

Section 18.2. Please address in this section CDFG's CEQA review obligations and actions in connection with the issuing the CESA/NCCP Authorization. 78(ax)

33. *Statement on Permit Transferability.*

Section 24.2. The last sentence in this section should be eliminated ("Under current USFWS regulations, the Section 10(a) Permit may not be assigned or otherwise transferred."). Many in the public have requested that the Department of Interior modify this particular provision in the course of the current regulatory revisions, and the statement could later be misinterpreted to state that permit transfers will be restricted regardless of future changes to the controlling regulations. 78(ay)

Additional Corrections

34. *Biological Benefits of MSCP Extend to Residents of the State and Nation.*

Recital 1.11 should be modified to acknowledge that the significant habitat and wildlife conservation measures of the MSCP benefit not only citizens within the MSCP Area, but also residents of the State and nation. The importance of the MSCP to the larger state and national audience is a major reason for the participation of the state and federal government in the program. 78(az)

35. *Definition of "Additional Conservation Measures".*

Consistent with our suggested addition of Section 9.22 to address the reinitiation of the Section 7 consultation on the MSCP, Section 9.22 should be referenced in this definition as well. 78(ba)

36. *Definition of "Dependent upon".*

Our reading of this definition and understanding of biological principles suggests that the word "and" in lines 3 and 5 should be changed to "or." 78(bb)

37. *Section 9.6(B).*

The following typographical error should be corrected:
". . . (2) the percentage ~~or~~ of the range adversely affected by the MSCP, (3) the percentage of the range conserved by the MSCP . . . ." 78(bc)

38. *Section 10.8(A)*
The first sentence of Section 10.8(A) should be clarified to provide: "In general, MHPA lands within the CITY OF SAN DIEGO to be conserved will be conserved by the following methods, consistent with the MSCP and. . . ." 78(bd)

39. *Section 12.6.*
In line 2, the reference to "Section 12.4" should be to "Section 12.5." 78(be)

40. *Section 17.1(B)*
The word "to" in line 2 should be changed to "for." 78(bf)

III. CONCLUSION

As noted at the beginning of this letter, these comments have been made numerous times in response to previously released draft versions of the Model IA. Unfortunately, these necessary corrections and clarifications have not yet been incorporated into the document. We would not remain so tenacious in pressing these points if they were not critical to the success of the MSCP and our decision as to whether to support the program in its final form.

The Alliance and BIA/SD believe that failure to adopt the modifications and clarifications requested herein will guarantee the failure of the MSCP. The Alliance and BIA/SD stand ready to work with the City, USFWS, CDFG and other local jurisdictions if these entities are willing to address the above concerns and if the necessary revisions to the MSCP and the analyses contained in the draft EIR/EIS (as set forth more particularly under separate cover) can be achieved.

The Alliance and BIA/SD request that the City prepare a "red-lined" version of the Model IA and San Diego IA to reflect any future changes to these two documents, compared to the August 1996 versions released for public comment and that the City make such a "red-lined" version available to interested members of the public upon their request.

We appreciate the opportunity to comment on the draft Model IA and draft San Diego IA. Should you have any questions regarding the above, please do not hesitate to contact the undersigned.

Sincerely,

Andrew K. Hartzell

AKH/lcc

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cc: Mayor Susan Golding
Michael Mantell
Michael Spear, Regional Director USFWS
The Honorable John Garamendi

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79(a) The biological assurances are found in the commitments of the take authorization holders to implement the preserve in a biologically sound configuration that incorporates habitat for the covered species and to manage the preserve for covered species and their habitat in perpetuity. See **Theme Responses X, Habitat Conservation Accounting Model and XIX, Preserve Management.**

79(b) See responses to Comments 79(z) and 79(aq).

79(c) See responses to Comments 79(o) and 79(p).

79(d) Section 12.2. of the Model IA describes the findings that the USFWS must make, including that the MSCP Plan as implemented by the subarea plans will, to the maximum extent practicable, minimize and mitigate the impacts of such taking. The USFWS will make these findings prior to a decision on permit issuance.

79(e) See **Theme Responses XVI, Risk Factors and XIX, Preserve Management.** See also Revisions to the MSCP Plan, Volume I, January 1997, regarding Section 6.3.1.

79(f) Comment noted. The 4(d) Special Rule for the California gnatcatcher is codified at 50 C.F.R., §17.41(b). The agencies do not believe there is a need to attach it as an exhibit to the Implementing Agreement.

79(g) Comment noted. The implementing agreements for each local jurisdiction or other take authorization holder will include a Habitat Conservation Accounting Model which will be utilized by the USFWS, CDFG and The local jurisdiction to insure that the habitat conservation commitments of the take authorization holders are met. See **Theme Response No. X, Habitat Conservation Accounting Model.** "Implemented" under Section 2.7 of the City of San Diego and Model IAs means that the habitat conservation and management commitments contained in the MSCP Plan and subarea plans are carried out in rough step with development as evaluated under the Habitat Conservation Accounting Model. The MSCP Plan and subarea plans have also been developed consistent with the NCCP Conservation Guidelines to achieve the biological goal of persistence of the covered species within the MSCP study area. The MSCP Plan and subarea plans provide for adaptive management of the preserve lands to insure that necessary changes in management to address the results of biological monitoring and research will occur. Therefore it is not necessary to add the term "properly functioning" to Section 2.7 of the City of San Diego and Model IAs. Addition of this term to Section 2.7 could also create confusion because it is used under the No Surprises policy announced by the Secretaries of the Interior and Commerce and has a specific meaning under that policy. See also **Theme Response XXIV, No Surprises.**

79(h) Comment noted. Table 3-5 of the MSCP Plan, Volume I, has been revised to reflect the basis for inclusion of each species as a covered species and the special management prescriptions or other conditions applicable to the species under the MSCP Plan. See revised Table 3-5 in the Revisions to the MSCP Plan documentation, January 1997. See also **Theme Responses I, Species Analysis Approach and X, Habitat Conservation Accounting Model.**

79(i) The commenter is correct to state that a species may be dependent on more than one vegetation community to undertake essential behavioral patterns. However, the vegetation community must provide primary space for the exercise of an essential behavioral pattern, such as feeding, growing or reproduction, in order for a species to be considered "dependent upon" that vegetation community. Each determination of whether a species is dependent on one or more vegetation communities must be made on a case-by-case basis. The definition has been revised to reflect the possibility that a species is dependent on more than one vegetation community as follows:

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

79(j) See **Theme Response XX, Severability of Take Authorizations.** If the inclusion of a particular species on the list of Covered Species Subject to Incidental Take is dependent upon the implementation of a particular subarea plan, and that jurisdiction terminates its participation in the MSCP, then removal of that species from the list of Covered Species Subject to Incidental Take may be required. Although Section 5 of the Model IA contains language to this effect, it was inadvertently omitted from the City of San Diego's Model IA. Section 5 of the City's IA has been revised to add the following language:

** 5.0 SEVERABILITY

... Likewise, the list of Covered Species Subject to Incidental Take (Exhibit D), as it exists as of the Effective Date, is in no way dependent upon the contemporaneous or subsequent approval of any other MSCP Subarea Plans, or the continued participation in the MSCP of any other Participating Local Jurisdiction or Participating Special Entity. The list of Covered Species Subject to Incidental Take, as it exists on the Effective Date, will not be amended to remove any species from that list so long as the CITY OF SAN DIEGO fulfills its obligations under this Agreement. However, if the addition of a species to the List of Covered species Subject to Incidental Take after the Effective Date (pursuant to Section 23.2 of this Agreement) is dependent, in whole or in part, upon the implementation of any other MSCP Subarea Plan(s), and the Participating Local Jurisdiction(s) associated with such Subarea Plan(s)

terminates its participation in the MSCP, or fails to implement its Subarea Plan(s), then removal of such added species from the List of Covered Species Subject to Incidental Take may be required.

Section 5 has also been revised to clarify that only those additions of covered species to the City's list of Covered Species Subject to Incidental Take which occur after the effective date of the City's Take Authorizations could be affected by another participating local jurisdiction's failure to implement its subarea plan or termination of participation in the MSCP Plan. See the revisions to the City of San Diego's IA.

79(k) See **Theme Response XXIV, No Surprises Policy**. See also response to Comment 111(p). The discussion of the "No Surprises" Policy in this Section of the City of San Diego and Model IAs is unnecessary and has been deleted because specific assurances regarding future mitigation requirements have been specifically evaluated by the wildlife agencies for the MSCP Plan and are provided to the local jurisdictions and Third Party Beneficiaries under the operative provisions of Section 9 of the Agreements.

79(l) The City of San Diego will select the preferred alternative based on public comments received through environmental public review process and through noticed public hearings. The alternatives analysis for the MSCP Plan is incorporated in the EIR/EIS.

79(m) See **Theme Response XVIII, Recovery of Species.**

79(n) See **Theme Response XVI, Risk Factors, Theme Response XIX, Preserve Management** and Table 3-5 included in the Revisions to the MSCP Plan, Volume I, January 1997. Section 10.6.B of the City's IA has been revised to provide for the preparation and submission to USFWS and CDFG of a draft framework management plan within six months of the issuance of the Take Authorizations which will incorporate species-specific management actions set forth in Table 3-5 of the MSCP Plan, Volume I, as well as preserve-wide management actions for the preserve areas covered by the City's Subarea Plan. The framework management plan must by finalized and submitted to USFWS and CDFG for approval within nine months of the issuance of the Take Authorizations. The framework management plan will incorporate a requirement for the subsequent preparation and implementation of area-specific management directives covering logical and discrete areas of land within the subarea as those lands are committed to the preserve. Prior to the development and implementation of the area-specific directives, the City shall maintain for habitat value those lands it manages pursuant to Section 10.6.A.

Section 10.6.B of the City's IA has been revised as follows:

** 10.6.B. Preserve Management Program. Within six months of the Effective Date, the CITY OF SAN DIEGO shall submit to the USFWS and CDFG for review a draft framework management plan for that portion of the MHPA which is within the Subarea, in accordance with Section 6.3.1 of the MSCP Plan. Within nine months of the Effective Date, the CITY OF SAN DIEGO shall submit a final

framework management plan to the USFWS and CDFG for approval. The framework management plan shall incorporate the species-specific management actions set forth in Table 3-5 of the MSCP Plan as appropriate, as well as preserve-wide management actions which shall not exceed the cost for management set forth in Section 7.3.2 of the MSCP Plan. The framework management plan shall also incorporate a requirement for the subsequent preparation and implementation of area-specific management directives, which shall be prepared in a phased manner for logical and discrete areas of land within the subarea as those lands are committed to permanent preservation. Until such time that area-specific management directives are formulated and applied to logical and discrete areas within the subarea plan, the CITY OF SAN DIEGO agrees to maintain for habitat value those lands it is obligated to manage, as specified above in Section 10.6.A.

79(o) See **Theme Response XVI, Risk Factors, Theme Response XIX, Preserve Management,** and revised Table 3-5 and revised Section 6.3.1 of the MSCP Plan, Volume I, included in the Revisions to the MSCP Plan documentation, January 1997. The commenter's interpretation of the "No Surprises" Policy is incorrect. See **Theme Response No. XXIV, No Surprises.**

79(p) Comment noted. See **Theme Responses IV, MSCP Financing Plan: Regional Source of Funds.** The wildlife agencies disagree with the commenter's view that the federal and state governments would be unable to finance conservation measures that could be necessary to address unforeseen/extraordinary circumstances. As an initial matter, the wildlife agencies believe that the likelihood of an unforeseen/extraordinary circumstance arising under the MSCP Plan is remote. The MSCP Plan was developed using the best available biological information available about the species and habitats addressed in the plan and has been designed using sound principles of conservation biology, including the NCCP Conservation Guidelines. Provisions for monitoring and adaptive management of preserve areas are built into the MSCP Plan to allow for modifications to the land acquisition and habitat management programs throughout the life of the MSCP Plan as necessary to address new information or changed circumstances. This proactive approach to species and habitat management greatly reduces the likelihood of an extraordinary circumstance occurring. If, despite the protections built into the MSCP Plan, an unforeseen/extraordinary circumstances finding is made, the wildlife agencies have a wide variety of means at their disposal to respond to the needs of any species adversely affected by unforeseen circumstances. As noted in **Theme Response No. XXIV, No Surprises,** these measures may include agency-funded habitat acquisitions, land exchanges, management techniques, species relocations, and habitat restoration and enhancement. Through the means outlined above, the MSCP Plan does provide adequate measures to deal with unforeseen/extraordinary circumstances as required in 50 C.F.R. § 17.32.

79(q) The commenter's concern that Section 9.7 could be interpreted to mean that USFWS and CDFG would focus on the existence of the MSCP Plan and subarea plans rather than on the conservation actually provided for the species under the plans in making future listing decisions under the ESA, CESA and NCCP is well taken. That is not the parties' intent. This provision has been modified to focus on the "habitat conservation" provided under the MSCP Plan and other plans rather than existence of the plans themselves. Section 9.7.A of the City and Model IAs have been revised as follows:

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

79(r) The commenter inadvertently refers to Section 9.7.B. Comment noted. The agencies believe it is appropriate for them to recommend to the local jurisdictions additional conservation measures that would be necessary to the enable incidental take coverage to be extended to a new species under the MSCP Plan and subarea plans. As experts in wildlife and plant biology and conservation, the wildlife agencies are well equipped to recommend viable conservation measures to protect uncovered species. Before take coverage under FESA, CESA or NCCP, respectively, is extended to a new species, the substantive and public review requirements of each statute must be complied with.

79(s) The commenter inadvertently refers to Section 9.7.B. Comment noted. See response to Comment 79(i).

79(t) The City of San Diego will insure that a public process is provided for any material changes to the Mitigation Guidelines. The draft ESL Biology Guidelines will be approved by separate resolution of the City Council. The resolution will stipulate that before changes can be made to the Mitigation Guidelines, USFWS and CDFG must be consulted and the changes must be approved by the City Council, thus ensuring a public process. A proposed modification to the draft ESL Biology Guidelines that would materially alter the MSCP Plan and subarea plan would also trigger the need for a formal amendment to the Section 10(a) permit. The permit amendment process includes an opportunity for public review and comment. If the City Council were to amend the draft ESL Biology Guidelines in a manner which is inconsistent with or contrary to the obligations imposed pursuant to the MSCP Plan and subarea plan, the USFWS and/or CDFG would have available all of the enforcement remedies afforded to them under the Implementing Agreement and applicable federal and state laws and regulations.

Section 9.12 has been revised to add the following sentence after the second sentence of the provision:

*** 9.12 Mitigation Guidelines ... The CITY OF SAN DIEGO will approve these mitigation guidelines by separate resolution of the City Council, which resolution will stipulate that any subsequent changes to the adopted guidelines must be approved by the City Council, thereby ensuring a public process for such changes.

79(u) See **Theme Response XIII, Ecosystem Based Mitigation ("Out-of-Kind"), and Theme Response X, Habitat Conservation Accounting Model.**

79(v) The commenter is correct that lands that are not biologically viable are not suitable for mitigation and cannot be counted as "excess mitigation." The MHPA was designed to include only biologically viable lands and is itself intended to be biologically viable. Any lands contributed within the preserve system would therefore be biologically viable. Lands outside the preserve system are not covered by Section 9.13.

79(w) See **Theme Responses XIX , Management, XVI, Risk Factors** and revised Table 3-5 of the MSCP Plan included in the Revisions to the MSCP Plan documentation, January 1997.

79(x) Comment noted. Contrary to the commenter's suggestion, the habitat conservation provided under the MSCP Plan and subarea plans and evaluated in the EIS/EIR is intended to mitigate for the growth inducing impacts on the Covered Species Subject to Incidental Take which occur within each participating local jurisdiction with an approved subarea plan.

Section 9.16 of the City of San Diego and Model IAs will be revised to clarify that to the extent growth inducing impacts extend beyond the boundaries of a participating local jurisdiction's plan, the impacts occurring within other local jurisdictions within the MSCP study area are deemed satisfied to the extent the other local jurisdictions are also participating in the MSCP through approved subarea plans:

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

79(y) Comment noted. See **Theme Response XXIV, No Surprises.**

79(z) The City of San Diego will insure that a public process is provided if material modifications to the regulatory mechanisms provided under the subarea plan for implementing the MSCP and subarea plan or to the legal encumbrances placed on lands pursuant to the subarea plan are proposed. The regulatory mechanisms for implementing the MSCP Plan will be approved by resolution (e.g. General Plan amendments) or by an ordinance (ESL regulations) enacted by the City Council. The resolutions or ordinances will stipulate that before changes can be made to the Mitigation Guidelines, USFWS and CDFG must be consulted and the changes must be approved by the City Council, thus ensuring a public process. A proposed modification to the regulatory mechanisms that would materially alter the MSCP Plan and Subarea Plan would also trigger the need for a formal amendment to the Section 10(a) permit. The permit

amendment process includes an opportunity for public review and comment. If the City Council were to modify the regulatory mechanisms in a manner which is inconsistent with or contrary to the obligations imposed pursuant to the MSCP Plan and Subarea Plan, the USFWS and/or CDFG would have available all of the enforcement remedies afforded to them under the Implementing Agreement and applicable federal and state laws and regulations.

Section 9.19, "Duty to Enforce," of the Implementing Agreement will be modified to clarify that any exercise by the City of its discretionary authority, whether during or following the term of the Implementing Agreement, to modify the regulatory protections or legal encumbrances provided for lands under the subarea plan, must be consistent with the MSCP Plan and subarea plan and must be accomplished through a public process which affords the public notice and an opportunity to comment on the proposed modifications. Section 143.0150 of the City of San Diego's proposed Environmentally Sensitive Land Regulations requires that covenants of easements protecting mitigation lands shall contain provisions providing for the enforcement of their terms by the wildlife agencies.

If, following the term of the IA, the local jurisdiction proposes to make discretionary changes to the legal encumbrances or regulatory protections covering the preserve lands that are inconsistent with the MSCP Plan and subarea plan, this section of the IA recognizes the continuing legal authority of the wildlife agencies to insure that any such changes are consistent with the MSCP Plan and subarea plan and do not result in a net loss of habitat value or acreage for the covered species.

9.19. The third sentence of Section 9.19 will be revised as follows to insure that advance notice of and an opportunity to comment on any proposed modifications to the legal encumbrances or regulatory protections provided for lands to be preserved under the MSCP Plan and subarea plans are provided to the public as well as the wildlife agencies:

** 9.19 Duty to Enforce ... Notwithstanding the term of this Agreement, if at any time following the end of the term of this Agreement [**LOCAL JURISDICTION**]proposes to exercise its discretionary authority to modify the regulatory protections or legal encumbrances provided for such lands under the Subarea Plan, the proposed modifications must be accomplished through a public process in which the public, and USFWS and CDFG, receive advance notice and the opportunity to comment, and must be consistent with the MSCP Plan and the subarea plan such that there is no net loss of habitat value or acreage for the covered species....

79(aa) The commenter inadvertently referred to section 9.20 instead of 9.21 of the Implementing Agreement. See also response to Comment 25(a). At the option of the local jurisdiction incidental take coverage under the Take Authorizations may be extended to those lands shown as agriculture on Figure 2-1 of the MSCP Plan for so long as they are actively used for agricultural purposes. If lands identified on Figure 2-1 as agriculture are retired from agricultural use, the incidental take coverage for agricultural use would no longer apply. Active agricultural use includes usual and customary fallowing of lands. This section has been revised as follows to clarify its intent.

** 9.21 Agricultural Uses. At the option of [**LOCAL JURISDICTION**], the Take Authorizations may apply to those lands within the Subarea Plan actively being used for agricultural purposes. For purposes of this paragraph, the phrase "agricultural purposes" includes crop rotation, animal production, forage production and grazing, and the phrase "actively being used for" means those lands shown on the MSCP vegetation database depicted on Figure 2-1 of the MSCP Plan for so long as they are maintained in active agricultural use. The Take Authorization will become effective as to such lands upon an application by the owner of such lands to [**LOCAL JURISDICTION**] for a Certificate of Inclusion, and the issuance by [**LOCAL JURISDICTION**] of a Certificate of Inclusion to the owner of such lands. This Certificate shall depict on an attached map the lands (by parcel number, acreage and owner) to which the Take Authorizations apply and shall specify the parcel number(s) and the acreage that the Certificate of Inclusion covers. [**LOCAL JURISDICTION**] commits to enforce the applicable provisions of the MSCP Plan, Subarea Plan, Take Authorizations and this Agreement to each recipient of a Certificate of Inclusion.

Because the City of San Diego has indicated that it wants incidental take coverage for existing agricultural uses, the language in the first sentence of Section 9.21 of the City's draft IA, which now suggests that coverage of existing agricultural use is optional on the part of the City, will also be revised as follows to reflect the City's decision to cover such use:

** 9.21 Agricultural Use The Take Authorization shall apply to those lands within the subarea plan actively being used for agricultural purposes.

79(ab) See **Theme Response I, Species Analysis Approach, Theme Response X, Habitat Conservation Accounting Model, Theme Response XVI, Risk Factors, Theme Response XIX, Preserve Management**, and revised Table 3-5 of MSCP Plan, Volume I, included in the Revisions to the MSCP Plan documentation, January 1997.

Section 10.2 of the City of San Diego IA has been revised by adding a new Subsection 10.2.A which requires the City, USFWS, and CDFG to use the Habitat Conservation Accounting Model attached to the City's Implementing Agreement to assess whether the City is meeting its obligation to ensure that habitat preservation is proceeding in rough step with development. Such assessment will be carried out on a continuing basis and the City's progress in meeting its conservation targets will be evaluated as part of the acreage accounting and reporting process set forth in Section 14 of the City's IA.

** 10.2.A Habitat Conservation Accounting Model. The CITY OF SAN DIEGO agrees that the Habitat Conservation Accounting Model attached as Exhibit F to this Agreement shall be utilized by the CITY OF SAN DIEGO, the USFWS and CDFG as a tool to assess whether the CITY OF SAN DIEGO is meeting its obligation to ensure that habitat preservation is proceeding in rough step with development, within the context of the acreage accounting and annual reporting process set forth in Section 14 of this Agreement.

Each participating local jurisdiction is expected to utilize a similar Habitat Conservation Accounting Model which will be referenced in each jurisdiction's implementing agreement. Sections 14.1 through 14.3 of the City of San Diego and Model IAs will also be revised to reference the Habitat Conservation Accounting Model. See revised City of San Diego and Model IAs for the new language.

79(ac) See response to Comment 79(ab) and revised Section 6.1 of the MSCP Plan included in the Revisions to the MSCP Plan documentation, January 1997.

79(ad) We agree with the commenter. Section 10.6.B of the City of San Diego's IA has been revised to provide for the preparation and submission to USFWS and CDFG of a draft framework management plan within six months of the issuance of the Take Authorizations which will incorporate species-specific management actions set forth in Table 3-5 of the MSCP Plan as well as preserve-wide management actions for the preserve areas covered by the City of San Diego's Subarea Plan. The framework management plan must by finalized and submitted to USFWS and CDFG for approval within nine months of the issuance of the Take Authorizations. The framework management plan will incorporate a requirement for the subsequent preparation and implementation of area-specific management directives covering logical and discrete areas of land within the Subarea as those lands are committed to the preserve. Prior to the development and implementation of the area-specific directives, the City shall maintain for habitat value those lands it manages pursuant to Section 10.6.A. See response to Comment 79(n) for revised Section 10.6 of the IA.

Public notification and review of framework management plans is not required, but has been provided. The introductory note to Section 10 of the Model IA has also been modified to require incorporation of these additional management requirements. See also **Theme Responses XVI, Risk Factors, and XIX, Preserve Management.**

79(ae) The commenter is correct. The last sentence of this section will be revised to refer generally to Section 1.2 of the City of San Diego's Subarea Plan.

** 10.8.C <u>Core and Linkage Areas</u>....The targeted percentage of preservation for each specific core biological resource area is set forth in Section 1.2 of the Subarea Plan.

79(af) The proposed amendments to the Open Space Element of the City's Progress Guide and General Plan are intended to reflect the concepts and terminology of the MSCP Plan. As drafted, there is latitude for local jurisdictions to tailor their respective MSCP implementation strategies to the unique circumstances and regulatory approaches particular to each jurisdiction. Pursuant to City Council direction in April 1994, City of San Diego staff have prepared the General Plan and Community Plan amendments necessary to ensure achievement of the conditions and obligations of the City's Subarea Plan and Implementing Agreement.

Attachment J contains the recommended amendments to establish the land use policy framework for the City's land development code. The wildlife agencies' review of proposed changes to the City's General Plan and Environmentally Sensitive Lands Ordinance has been properly limited to those modifications that relate to implementation of the MSCP Plan and the Subarea Plan. The wildlife agencies express no opinion about other amendments to the General Plan and Environmentally Sensitive Lands (ESL) Ordinance proposed by the City.

79(ag) Comment noted. See responses to Comments 79(t) and 79(z) which clarify the public process that would be applicable to a proposed modification to its Land Use regulations or Guidelines by the City. If the City were to modify its Land Use regulations or Guidelines in a manner that impaired its ability to carry out the Subarea Plan, the wildlife agencies could avail themselves of all of remedies provided under the Implementing Agreement and applicable federal and state laws and regulations. As provided in Section 10.8.G.1, any modification to the mitigation ratios must provide for the same or higher levels of conservation and be otherwise consistent with the MSCP Plan and subarea plan. Violation of this provision by the City would also be the basis for appropriate enforcement action by the wildlife agencies as provided in the Implementing Agreement and pursuant to applicable federal and state laws and regulations.

The commenter correctly points out that the use of the term "amendment" in Section 10.8.G.1 to refer both to changes in the mitigation ratios and changes in the IA creates confusion. The first sentence of this paragraph has been revised to refer to changes in the mitigation ratios as "modifications" while retaining use of the term "amendment" to refer to changes in the Implementing Agreement.

Section 10.8.G.1 is revised as follows:

** 1. Habitat Conservation and Mitigation Ratios. The Parties agree that classifications of habitat types into tiers, and mitigation ratios by tier, as shown in Exhibit N, shall be adopted by the CITY OF SAN DIEGO. Modifications to these ratios may be made upon mutual agreement of the Parties and following all legally required public hearings and environmental review, without the need to amend this Agreement, provided such modifications provide for the same or higher levels of conservation and are consistent with the MSCP Plan and this Subarea Plan. All Tier I impacts ....

79(ah) See **Theme Response XIII, Ecosystem Based Mitigation ("Out-of-Kind").**

79(ai) See revised Section 1.0 of the MSCP Plan, Volume I included in the Revisions to the MSCP Plan documentation, January 1997. See also **Theme Responses XVI, Risk Factors and XIX, Preserve Management.**

79(aj) Comment noted. It was not the intent of the Lead Agencies to imply that funds to implement the plan should only be raised on an MSCP-wide basis. The last sentence of Section 11.2 has been revised to read as follows:

**11.2

A. Regional Funding of Local Costs. ... The MSCP Plan intends that funds to cover these local costs will be raised on a regional, County wide, or MSCP Area-wide basis.

79(ak) See **Theme Response IV, MSCP Financing Plan: Regional Source of Funds.**

79(al) The schedule contained in the MSCP Plan and IA requires that the participating local jurisdictions begin a process to procure long term regional funding within 18 months of federal and state approvals of the first subarea plan(s) and to have in place a source(s) of funds within an additional 18 months. The obligation of the City of San Diego to meet this timetable is firmly established in Section 11.2.C. of the IA, and the consequences of not providing adequate funding within that timeframe are set out in Section 11.2.D of the IA.

The wildlife agencies recognize, however, that the process of establishing a regional funding program will require that the participating local jurisdictions jointly identify and pursue one or more sources of funds, a complicated endeavor that does not lend itself to precise timetables and deadlines. Consequently, the wildlife agencies believe that a degree of flexibility should be retained in the process to accommodate good faith efforts and substantial progress that has been made by the participating local jurisdictions toward establishing a regional funding program. In the event that the participating local jurisdictions fail to meet the funding timetable, the wildlife agencies will assess the circumstances and determine whether an adjustment to the schedule is warranted.

Section 11.C.3 of the City's IA requires that, in the event that a regional funding source is not successfully implemented within the three year period, the City establish and implement a source of funding adequate to meet its share of the MSCP Plan and Subarea Plan implementation costs until a regional funding program can be established. Additionally, if the regional and/or local funding source(s) is not implemented as required, then a reevaluation by the wildlife agencies of the scope and validity of the Take Authorizations will occur as provided in Section 11.2.D. of the City's IA.

Section 11.C.3. has been revised to clarify that the establishment of a local funding source adequate to carry out the City's obligations under the MSCP Plan and Subarea Plan is intended to enable the City to maintain its Take Authorizations while it continues to pursue, along with other participating local jurisdictions, the establishment of a regional funding source for the MSCP program:

** 11.C.3. Reassessment of Regional Funding. The Parties recognize that achieving the goal of long-term funding may be compromised if any of the jurisdictions identified in Exhibit B withdraw from the MSCP or fail to complete and obtain approval of a Subarea Plan. If such circumstances arise before long-term regional funding is secured, the Parties agree to reassess, along with the other Participating Jurisdictions, the long term funding approach. If at the conclusion of the time allowed under subsection C.2., above, a regional funding source has not been established, then the CITY OF SAN DIEGO shall establish and implement a funding source adequate to meet its share of MSCP and Subarea Plan implementation costs, while it continues to pursue, with other Participating Jurisdictions, establishment of a regional funding source.

79(am) Comment noted. The provision as written adequately recognizes that the Take Authorizations may be suspended or revoked if funding essential to meet local habitat acquisition and management obligations is not provided. In the event of the failure of a regional funding source, it is the intent of the wildlife agencies to work closely with the participating local jurisdictions to identify and implement any alternative implementation strategies that might provide the species conservation necessary to enable the Take Authorizations to proceed in whole or in part. See Section 11.D.2 of the City of San Diego and Model IAs.

79(an) See the Revisions to the MSCP Plan, volume I, Section 6.4.1, which will be moved to Section 5, included in the Revisions to the MSCP Plan documentation, January 1997.

79(ao) See revised Section 1, Biological Goals of the MSCP Plan, Volume I, included in the Revisions to the MSCP Plan documentation, January 1997. See also **Theme Responses X, Habitat Conservation Accounting Model, and XXIV, No Surprises Policy**.

79(ap) The Lead Agencies agree with the commenter that suspension of a local jurisdiction's entire permit because of a single instance of non-compliance may not always be an appropriate or realistic enforcement mechanism to correct a particular permit violation. The regulation governing suspension of ESA incidental take permits at 50 C.F.R. § 13.27 enables the Service to suspend the City of San Diego's or another participating local jurisdiction's incidental take permit in whole or in part. It provides the USFWS with the necessary flexibility to apply an appropriately measured response to discrete permit violations. Consistent with 50 C.F.R. § 13.27, the suspension could be appropriately limited in scope or duration depending upon the particular circumstances of the violation.

To clarify the Service's enforcement flexibility, Section 16.2 A and B. of the City of San Diego and Model IAs have been revised to clarify that the Section 10(a) permit may be suspended in whole or in part as follows:

** 16.2 The Section 10(a) Permit.

A. Permit Suspension. Consistent with 50 C.F.R. §§ 13.27-13.29, in the event of any material violation of the Section 10(a) Permit, or material breach of this Agreement by the City of San Diego, the USFWS may suspend the Section 10(a) permit in whole or in part; provided, however, that it may not suspend the Section ....

B. Reinstatement of Suspended Permit. In the event the USFWS suspends the Section 10(a) Permit, in whole or in part, as soon as possible but no later ... Upon performance of such necessary actions, the Service shall immediately reinstate the Section 10(a) Permit, or the suspended portion thereof. It is the intent of the parties that in the event of any total or partial suspension of the Section 10(a) Permit all parties shall act expeditiously and cooperatively to reinstate the Section 10(a) Permit.

79(aq) The City of San Diego's obligations under the subarea plan continue even after suspension or revocation of the Take Authorizations as to all development projects approved prior to the suspension or revocation. Section 16.5 of the City and Model IAs will be modified as follows to clarify that the local jurisdiction remains obligated to carry out its subarea plan obligations for all land development activities approved prior to the breach which led to the suspension or revocation:

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

79(ar) The Comment is noted. We point out that Section 16.5 refers to suspension, revocation or termination of the Section 10(a) Permit while Section 22 refers to termination of the Agreement by the local jurisdiction. There is a clear distinction between the USFWS or CDFG's regulatory authority to terminate a permit and a permittee's discretion to surrender a permit, discontinue the permitted activity and withdraw from the IA setting forth the permittee's obligations with respect to the permit. While the wildlife agencies may take regulatory action to suspend or revoke a permit only in the event of a violation of the permit, a permittee may voluntarily choose to surrender a permit. The wildlife agencies have no authority to compel the permittee to retain the permit but can compel the permittee to satisfy all permit obligations incurred while the permit was in effect.

In response to the comment, Section 22 of the City and Model IAs has been clarified to accurately state that the local jurisdiction may withdraw from the IA rather than terminate it, that the Local Jurisdiction's withdrawal from the IA constitutes a surrender of the Take Authorizations, and that notwithstanding any withdrawal from the IA, the local jurisdiction remains responsible for carrying out all of the mitigation obligations, including habitat acquisition, management and monitoring, and

enforcement obligations incurred by the local jurisdiction prior to surrender of the Permit and withdrawal from the IA.

Section 22 has been revised as follows:

** Section 22. Withdrawal

A. Upon 90 days written notice to USFWS and CDFG and all other participating local jurisdictions, [**LOCAL JURISDICTION**] may unilaterally withdraw from this agreement provided:

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

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

B. [**LOCAL JURISDICTION'S**] withdrawal from this Agreement shall not affect the obligations of [**LOCAL JURISDICTION**] with respect to mitigation lands or other lands owned or controlled by [**LOCAL JURISDICTION**] and included in the MHPA.

In addition the following language will be added to the end of the last sentence of Section 22.B of the City of San Diego's IA to reflect the specific agreement reached between the wildlife agencies and the City regarding the Cornerstone Lands:

... provided that the obligations of the City of San Diego with respect to the Cornerstone Lands as set forth in the Cornerstone Lands Agreement attached as Exhibit K, shall be controlled by the terms of that Agreement.

C. Any Incidental Take associated with land development projects approved by [**LOCAL JURISDICTION**] for which mitigation has been assured as provided in Section 17 shall continue to be authorized under the terms of the Take Authorizations provided [**LOCAL JURISDICTION**] continues to carry out its obligations under this Agreement with respect to such Take as provided in Sections 9.19, 10, 14 and 17 of this Agreement.

D. Withdrawal of [**LOCAL JURISDICTION**] from this Agreement shall be deemed to constitute a surrender of [**LOCAL JURISDICTION'S**] Take Authorizations issued pursuant to this Agreement.

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Sierra Club, San Diego Chapter
3820 Ray Street
San Diego, CA 92104
Phone: 299-1741; Fax 299-1742

October 30, 1996

Jack McGrory, City Manager
City of San Diego
Attention: John Kovac
Land Development Review Division
1222 First Ave., 5th Floor
San Diego, CA 92101

Gail Kobetich, Field Supervisor
U.S. Fish and Wildlife Service
2730 Loker Ave., West
Carlsbad, Ca 92008

Ron Remple, NCCP Program Manager
California Department of Fish and Game
1416 Ninth Street
Sacramento, CA 95814

Subject: Sierra Club Comments on The Draft - August 16, 1996 Implementing Agreement for the MSCP

Dear Messrs. McGrory, Kobetich and Rempel:

Following are the comments of the San Diego Chapter of the Sierra Club concerning the Draft Implementing Agreement for the MSCP.

I. SUMMARY Of Comments

1) The Agreement lacks a balance of "assurances" for development and environmental interests. Development interests are guaranteed a "one-time deal" while there are no assurances that the biological objectives are realized—only that a potentially biologically non-functioning preserve system will be put in place. 79(a)

2) The enforcement and termination machinery is inadequate and unbalanced. It is not realistic to expect that the "nuclear option-only" approach for the federal or state agencies to seek remedies can function effectively and the paired "termination only for cause" and "termination for any reason at any time" for the two parties to the Agreement is patently unbalanced. 79(b)

3) Failure to distinguish between the circumstances relating to a failure to meet the test of a "properly functioning Habitat Conservation Plan" and "Extraordinary Circumstances." 79(c)

4) Absence in the Agreement of any findings to support the conclusions that the take has been minimized. 79(d)

5) The Agreement, coupled with the Subarea Plan, fails to provide the assurances relating to "Preserve Management" necessary to address the condition of a range of species identified as "covered" but subject to "high risks." 79(e)

II. Section-By-Section Comments

1.0 RECITALS

1.8 The Section 4(d) Special Rule should be included as an exhibit. 79(f)

2.0 DEFINITIONS

2.7 To be "adequately conserved" that "MSCP is implemented." To be "adequately conserved" MSCP should be BOTH "implemented and properly functioning." 79(g)

2.8 There are no "findings" in the referenced Table 3-5; there are "COMMENTS" under the "RISK/COMMENT" column. In general Table 3-5 does not include "measures" to ensure "adequate coverage." This definition highlights one of the underlying problems with the MSCP draft—it fails to define specific measures that can ensure adequate coverage for species that continue to be identified as "high risk" under the plan. 79(h)

2.9 The concept that species are "dependent" on a single vegetation community as a "primary source" for food, reproduction, etc. or "that vegetation community would provide" the primary biological physical elements essential for the conservation of the species" is not scientifically supportable generalization. Species may depend on a variety of vegetation communities for different, but essential, needs. 79(i)

4.0 PHASED IMPLEMENTATION and 5.0 SEVERABILITY

"Phased implementation" implies at least a "commitment to implement." What if major jurisdictions within the MSCP NEVER implement the MSCP program. How can an approval of one jurisdiction's implementing agreement that depends, in part, on a regional program, still be considered valid if critical elements of the regional program are not implemented? Alternatively, if coverage for the City of San Diego is being established independently of the MSCP regional-level program, where is the justification to support this "severable" conclusion. There is a "having it both ways" dimension to this logic: the City of San Diego's conservation contribution is minimized because it is part of a regionally-coordinated program; however, if the regionally coordinated program is NOT implemented, the City program, which has been based on a regional MSCP, is judged adequate. 79(j)

79

6.0 LEGAL AUTHORITY OF THE USFWS

The "No Surprises" discussion makes no reference to the "no surprises" requirements that an HCP agreement be "designed to provide an overall net benefit for that particular species and contained measurable criteria for the biological success of the HCP which have been met or are being met." A general problem with the draft MSCP is that it fails to adequately contain "measurable criteria for biological success." What the discussion fails to point out is that, under the "No Surprises" policy, if the MSCP is "NOT properly functioning", the City and Third Party Beneficiaries are NOT assured against the need for additional land or financial compensation to maintain "coverage." A basic MISTAKE the Implementing Agreement makes is to mix the "properly functioning" standard in the "No Surprises" policy with the separately identified "extraordinary circumstances" provisions. 79(k)

8.0 SATISFACTION OF LEGAL REQUIREMENTS

The draft MSCP Plan does not include any clear documentation to support the fact that the Biologically Preferred Alternative is "not practicable" and therefore why it should not be selected as the way "the impacts of such Incidental Take will, to the maximum extent practicable, be minimized and mitigated. 79(l)

The draft MSCP Plan does not include any clear documentation to support the conclusion that the likelihood of "recovery of the Covered Species in the wild" will not be appreciably reduced. The planned loss of nearly 40% of Coastal Sage Scrub and the acknowledged tenuous, and largely unprotected, nature of the Lakeside area linkage, suggest that the recovery of the California gnatcatcher could be significantly, and negatively, impacted by the MSCP. 79(m)

9.0 MUTUAL ASSURANCES

9.2 Compliance with Applicable Laws The "habitat management obligations contained in this Agreement" reference here are lacking. For example, the habitat management conditions referenced in 10.6 Preserve Management do not address the range of "risk" issues in the basic "Coverage" table, Table 3-5 79(n)

9.3 Conservation of Covered Species For the "No Surprises" policy to apply, the MSCP "coverage" plan must demonstrate that it is "properly functioning" with respect to "measurable criteria for the biological success of the HCP." The draft Agreement is lacking such "measurable criteria for biological success" or a clear reference to them in any other enforceable MCSP document.

9.4 No Additional Land or Money Required Again the issue of what the implications of a "NOT properly functioning" preserve system are not addressed. What if the MSCP is "Not functioning properly" because t is failing to meet "measurable criteria for biological success" that require additional land or money to "function properly"? 79(o)

79

9.5 Extraordinary Circumstances There are two basic problems with the treatment of "Extraordinary Circumstances": 79(o)

1) The Agreement inappropriately mixes together the "properly functioning" criteria relating to "measurable criteria for biological success" (which is NOT a for "not seeking additional mitigation for a species" with "extraordinary circumstances" that relate to new information or "unforeseen circumstances." "Nonperformance" of the plan relative to its "measurable criteria for biological success" is NOT an "Extraordinary Circumstance;" it is a failure to "properly function" and is subject to "additional mitigation," if such mitigation is necessary to accomplish "proper functioning."

2) Limiting the provision of "additional measures" that require land or money to the federal or state partners violates the underlying policy of "partnership" in the MSCP. In addition, there is no basis presented for concluding that the federal and state government ALONE can finance the required actions to address "unforeseen circumstances." Therefore, this provision, violates the requirement in the Federal Code that: "the applicant will ensure that adequate funding for the conservation plan and procedures to deal with unforeseen circumstances will be provided" (Section 17.32); 79(p)

9.7 Future Listings

A. Consideration of the MSCP and Similar Plans "(P)rotection or conservation efforts" are not bases for judging determinations for "listing." "Anticipated protection results from MSCP and related programs" do seem an appropriate consideration in "listing" decisions, but these should be based upon "demonstrated performance" not just planned promises. 79(q)

B. Non-Covered Species Why should the Wildlife Agencies be responsible for identifying the "conservation measures" "necessary to adequately protect the species"? This is a complete reversal of the standard listing procedure where the applicant for incidental take identifies the conservation measures. If the species in question has not been judged to be "covered" under the MSCP Plan, it seems inappropriate to again evaluate this question. The presumption should be that additional measures are necessary and that it is the responsibility of the applicant agencies to evaluate and propose them.

1. Adequate Conservation Measures Already in MSCP The procedures anticipated for "amend(ing) this Agreement" are not specified. The determination of "coverage" for a species previously determined to be "NOT covered" should require a full-scale public notice and review process.

2. Inadequate Conservation Measures in the MSCP 79(r)

79

a. Additional Conservation Measure Priorities Same comment as 1-above. A full public process should be required. 79(

b. Significantly Conserved Vegetation Communities "Dependence" upon "Significantly Conserved Vegetation Community" is inappropriately defined. Some species (such as migratory or foraging birds) do not have a "primary" dependency on a single vegetation community but depend upon a complementary relationship among vegetation communities that is not addressed in the procedure used to determine "significantly covered" (a procedure which is itself lacking in scientific credibility). 79(s)

9.12 Mitigation Guidelines

It is legally inappropriate and unacceptable for the mitigation guidelines, which are at the heart of the MSCP plan, to be "modified" without a formal Amendment and without public notice and review, as implied by this provision. 79(t)

The discussion does not address the issue of whether out-of-tier mitigation is permitted IF the conservation of a particular habitat type is NOT occurring in the anticipated proportion to the loss of the particular habitat type. 79(u)

9.13 Contribution and Banking of Excess Mitigation

The discussion fails to distinguish "lands contributed" that are "biologically viable" and those which are not. Only "biologically viable" lands (which should be defined in the Agreement) should be permitted as "mitigation" or as "excess mitigation" It is not adequate that the issue of "viability" be addressed in the City's Guidelines, since these can be changed without formal MSCP amendment. This discussion is especially confusing since mitigation "outside the preserve system" can receive mitigation credit. 79(v)

9.15 Habitat Conservation Measures

The "habitat management" provisions in the City's Subarea Plan are generally not sufficiently detailed to address the "high risk" conclusions in the Covered Species Table, 3-5. 79(w)

9.16 Growth Inducting Impacts

The statement about mitigation in this section improperly extends beyond the limits of the MSCP, which is limited to "mitigation measures directed specifically at the Incidental Take of Covered Species Subject to Incidental Take required or recommended . . ." (as correctly described in 9.8 Other Regulatory Permitting. 79(y

9.18 Critical Habitat 79(y)

79

79(y)

"Properly functioning" is nowhere defined. This is a critical concept that is at the heart of the "No Surprises" policy. Without a clear definition of this concept, there is no basis for the application of the "No Surprises" policy to the MSCP.

9.19 Duty to Enforce

There must be a clear public notification of a determination by the City and Wildlife Agencies that a modification of regulatory protections or legal encumbrances results in "no net loss of habitat value or acreage for the Covered Species." And there must be a recourse for a challenge to such determinations. 79(z)

9.20 Agricultural Uses

In a 50-year plan it is not appropriate to define lands "being actively used for agricultural purposes" as "those lands shown on the MSCP database in 1994 as agriculture." If lands are taken out of agricultural use for long periods of time, the incidental take provisions should not apply unless their specific impacts on species viability is evaluated. 79(aa)

10.0 IMPLEMENTATION RESPONSIBILITIES OF THE CITY OF SAN DIEGO

10.1 Compliance with Preserve Guidelines

The provisions in Sections 1.2.1, 1.2.2, 1.2.3, 1.2.4 and 1.2.5 fail to meet the conditions necessary to reduce "high risk" identified in the Coverage Table, 3-5 of the MSCP Plan. 79(ab)

10.4 Compliance with Land Use Adjacency Guidelines

The *Land Use Adjacency Guidelines* in Section 1.2.2 of the Subarea Plan is not adequate to address the frequent problems of "high risk" "edge effects" identified in the Coverage Table, 3-5 of the MSCP Plan. 79(ac)

10.6 Preserve Management

Same comment as 10.1. The provisions for Preserve Management in the Subarea Plan are not adequate or sufficiently detailed to reduce "high risk" to species identified in the Coverage Table, 3-5 of the MSCP Plan.

Given the significant number of species identified as "covered" that continue in the "high risk" category, Preserve Management Plans will be of major significance. The Subarea Plan acknowledges that the "preserve management" provisions it outlines are very general and will need to be detailed. However, neither the Agreement nor the Subarea Plan define the role of the Wildlife Agencies in the review or approval of such Preserve Management Plans nor the process for public notification and involvement relative to these Preserve Management Plans. 79(ad)

10.8 Assembly and Protection of the MHPA

C. Core and Linkage Areas

Technical: It appears that the intent was to reference Sections 1.2.1 79(ae)

through (not and) 1.2.5 of the Subarea Plan. 79(ae)

D. Amendments to the General Plan and Community Plan

The draft amendments in Exhibit J include changes to the General Plan that are NOT directly related to the implementation of the MSCP Plan, but, as described by the City staff, "generally update elements of the General Plan relating to open space planning. Several of these provisions, such as the reduction in the priority of open space planning for urbanized areas, could have major negative impacts to the community. It is entirely inappropriate for the Wildlife Agencies to enter into an agreement which commits them to supporting changes which extend beyond the MSCP Plan and which can be detrimental to community planning. Any reference to Appendix J should be strictly limited to those elements of the proposals necessary to implement the MSCP.

G. Permanent Zoning and Resource Protection Regulations 79(af)

This provision contains the same problems as identified in D. Amendments to the General Plan and Community Plans. The proposed *Environmentally Sensitive Lands Regulations* contain changes that do not directly relate to MSCP implementation and which could be detrimental to resource protection in San Diego. It is INAPPROPRIATE for the Wildlife Agencies to endorse and promote such provisions which are unrelated to the implementation of the MSCP Plan.

What is the recourse if the Wildlife Agencies object to "discretionary modifications" of the Regulations or Guidelines—suspension of the Implementing Agreement?

Habitat Conservation and Mitigation Ratios

The CEQA process was never intended to provide a basis for challenging a determination that a change to Mitigation Ratios is "not consistent with the MSCP Plan and the Subarea Plan." Specific procedures for public notice and involvement in the Wildlife Agency review of such proposed changes should be incorporated into the Agreement. At the least, the presentation should be consistent in referring to changes that do not require a formal Amendment as "modifications" rather than "amendments." 79(ag)

If the Wildlife Agencies determine that a proposed "modification" does not "provide for the same or higher levels of conservation" or is "not consistent with the MSCP Plan and the Subarea Plan, what happens—a requirement that a formal Amendment be submitted.

Mitigation for habitat outside the preserve should require IN-KIND mitigation NOT In-tier, as proposed. In-kind mitigation outside the preserve should be another dimension of the INCENTIVE the MSCP Plan proposed for in-preserve mitigation.

1. Development within the MHPA 74(ah)

79

The "biological objectives of the MHPA" are never clearly or adequately presented in the Subarea Plan or defined in the Implementing Agreement. 79(ah)

2. Specific Conditions for Species Coverage

There is no "Findings" portion of either Table 3-5 or Section 1.3 of the Subarea Plan. The concept of "findings" is a good one which should be implemented when the "risk" assessment indicated there is "high risk" for "covered" species and "specific conditions" need to be applied to establish "coverage." 79(ai)

11.0 FUNDING RESPONSIBILITES OF THE CITY OF SAN DIEGO

11.2 Regional Funding

A. Regional Funding of Local Costs

It could be a confusing mistake NOT to encourage a County-wide approach to funding for habitat protection and to imply that the funding mechanism should be limited to the "MSCP area." 79(aj)

B. Short-term Regional Funding

There is a clear acknowledgment in the work of the Dialogue group that the first three years, before a regional funding source is hopefully established, that funding be available to purchase parcels "critical" to the integrity of the preserve. It is not adequate for the City to indicate its intention "to seek financing for the acquisition of private lands within he MHPA during the first three years." A specific source of funding for this period, and a general level of available funding, should be specified. "Promises" to seek funding for the long-term may be adequate, but the program must be initiated on an established financial base. 79(ak)

C. Long-term Regional Funding

2. Timetable

It is NOT consistent with the "adequate funding" requirements under Section 10(a) to permit an unspecified period for extension of the funding "schedule" if indefinable "good faith efforts" are being made. And it is unwise to politically to create this open-ended situation. A final timetable for funding should be established—no late that 4 years from Permit Authorization. 79(al)

D. Effect of Inadequate Funding on Take Authorizations

It should be made clear that the failure to provide adequate funding for the implementation of the MSCP according to the identified "Timetable" is a "material breach" and a basis for 79(am)

79

termination of the Agreement. It is appropriate to provide an option for "assess(ing) the impact of the funding deficiency on the scope and validity of the Take Authorizations—but this should be the alternative to a specified right of termination. 79(am)

14.0 REPORTING BIOLOGICAL MONITORING AND PRESERVE MANAGEMENT

14.2 Annual Reporting and 14.3 Annual Implementation Meeting

The Annual Reporting and Implementation Meetings should include a provision for public release of the annual report, an opportunity for a period of review and a public meeting opportunity for comments. 79(an)

14.3 Biological Monitoring

Maybe the most basic issue concerning the MSCP Plan is the question, "biological monitoring against what biological standards?" The Implementing Agreement draft contains no biological standards, does not refer to any specific biological standards in the Subarea Plan nor does it provide a process for the establishment of such standards.

Biological Standards for judging whether the MSCP Plan is "properly functioning" need to be provided in the Subarea Plan. Compliance with such standards needs to be made a condition of the Implementing Agreement. With out a requirement for compliance with an explicit set of Biological Standards there is NO mutual assurance relative to the biological objectives of the MSCP Plan. 79(ao)

Neither the Subarea Plan, nor the Implementing Agreement" contain "measurable criteria" for species to "determine whether Covered Species and their habitats are being maintained by the MSCP as expected." (Emphasis added)

16.0 REMEDIES AND ENFORCEMENT

16..2 The Section 10(a) Permit A. Permit Suspension

The only enforcement mechanism provided the federal agency is suspension of the entire City of San Diego Section 10(a) Permit. It is unrealistic to expect that this single remedy, the so-called "nuclear option" can be an effective means for enforcing the Implementation Agreement. This "all-or-nothing" concept is completely inconsistent with the well-established concept of "progressive discipline." For the Wildlife Agencies to even notice their intent to take this radical step, the violation would need to be of a very sweeping magnitude. This "total showdown" will not encourage resolution of differences; it encourages "bluff calling."

The Implementing Agreement needs to provide for intermediate measures for remedying non-compliance—short of essentially the complete suspension of the MSCP program. The most logical option, should there be noticed and demonstrated non-compliance with major 79(ap)

elements of the program, would be the re-establishment of the project-by-project federal review and approval authority for listed species, such as provided for under the Special 4(d) Rule. 79(ap)

16.5 The CITY OF SAN DIEGO's Obligations In the Event of Suspension or Revocation

The act of "take authorization" is the granting of project approval NOT implementation of the development project. The Agreement identifies that the City's obligations are tied to "development activities undertaken and approved prior to the breach . . ." (emphasis added). There is an imbalance here: the "take" is authorized upon approval but the City's obligation does not commence UNTIL the project is developed. 79(aq)

The City's "obligations in the event of suspension" should apply to development projects upon their approval.

22.0 TERMINATION

There is a serious question about the "balance" of any contractual arrangement whereby one of the parties can terminate ONLY when there is a "significant material violation" or "an actual species "jeopardy"(as provided for with respect to the federal agency in the draft Agreement) while the other party can "terminate" "at any time if it has complied with its obligations to date under this Agreement" (as is the case with respect to the City of San Diego under the draft Agreement). 79(ar)

Respectfully Submitted,

Craig Adams

Craig Adams
Chapter Coordinator
Sierra Club, San Diego Chapter

FINAL EIR/EIS
ISSUANCE OF TAKE AUTHORIZATIONS FOR THREATENED AND ENDANGERED SPECIES DUE TO URBAN GROWTH WITHIN THE MULTIPLE SPECIES CONSERVATION PROGRAM (MSCP) PLANNING AREA
LDR No. 93-0287
SCH No. 93121073

VOLUME 2 OF 2

Applicant:
CITY OF SAN DIEGO
600 "B" Street, Suite 500
San Diego, CA 92101

Lead Agencies:
CITY OF SAN DIEGO, CALIFORNIA
DEVELOPMENT SERVICES DEPARTMENT
ENVIRONMENTAL ANALYSIS SECTION/ PUBLIC PROJECTS
1222 First Avenue, 5th Floor
San Diego, CA 92101

and the

UNITED STATES FISH AND WILDLIFE SERVICE
2730 Loker Avenue West
Carlsbad, CA 92008

January 1997

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VOLUME 2

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IV. MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

I. INTRODUCTION

A. Revisions to the MSCP Plan and Other Associated Documents

Subsequent to public review of the Draft EIR/EIS and prior to preparation of this Final EIR/EIS, and in response to comments received on the Draft EIR/EIS, revised language has been incorporated in the MSCP Plan and some of the associated documents. Language in certain sections of the following documents has been revised:

- MSCP Plan, Volume I
- Model Implementing Agreement
- City of San Diego Subarea Plan
- City of San Diego Implementing Agreement
- City of Santee Subarea Plan

None of the revised language developed in response to comments affects the analysis or conclusions presented in the Draft EIR/EIS and no new significant environmental effects would be associated with the actions addressed in the Draft EIR/EIS as a result of the revised language developed in response to comments. It should be noted that text modifications have also been made to certain portions of the Draft EIR/EIS in response to comments received . These minor text modifications are presented in Section II of this Final EIR/EIS.

Four documents containing the changes to the MSCP Plan and associated documents described above, and the Final EIR/EIS documentation, have been prepared. These documents include the following:

Document 1 contains the following:

- Revisions to the MSCP Plan, Volume I
- Revisions to the Model Implementing Agreement
- Revisions to the City of San Diego Subarea Plan
- Revisions to the City of Santee Subarea Plan

Document 2 contains the following:

- Volume 1 of 2 of the Final EIR/EIS

Document 3 contains the following:

- Volume 2 of 2 of the Final EIR/EIS

Document 4 contains the following:

- Revisions to City of San Diego Implementing Agreement and Attachments

B. FINAL EIR/EIS FORMAT

The Final EIR/EIS for the MSCP and associated actions is comprised of the Draft EIR /EIS, dated August 1996, and this Final EIR/EIS document, prepared in two volumes. Volume 1 includes the **Introduction, Changes to the Draft EIR/EIS, and Letters of Comment on the Draft EIR/EIS and Responses (Theme Responses and Letters 1–79). Volume 2 consists of Letters of Comment on the Draft EIR/EIS and Responses (Letters 80–121), and The Mitigation Monitoring and Reporting Program.** The Draft EIR/EIS was previously reproduced and was distributed for public review on August 29, 1996. It has not been reproduced as a part of the Final EIR/EIS documentation.

In addition, the City of San Diego has prepared Findings and a Statement of Overriding Considerations in accordance with CEQA (CEQA Sections 15091 and 15093). These documents are not bound with the Final EIR/EIS, but have been clipped to the back of Volume 2 of the Final EIR/EIS.

III. LETTERS OF COMMENT ON THE DRAFT EIR/EIS AND RESPONSES (Letters 80-121)

A total of 121 letters of comment were received in response to the Draft EIR/EIS for the MSCP Plan. The lead agencies prepared responses to each comment received during the public review period. Responses to these comments have been prepared in two parts — **Part A: Theme Responses, and Part B: Individual Responses.**

The Theme Responses address general topics of concern raised in the letters of comment. Generalized theme responses have been prepared to respond to these topics. Each theme response has been assigned a roman numeral and a title. A list of the theme responses is provided below.

Number	Topic
I	Species Analysis Approach
II	Population Viability Analysis
III	Economic Impacts And Impacts on Population And Housing
IV	MSCP Financing Plan: Regional Source of Funds
V	Taking of Private Property
VI	Alternatives
VII	Farmland Mapping
VIII	Public Involvement
IX	Allowable Uses Within MHPA
X	Habitat Conservation Accounting Model
XI	Scientific Review Adequacy
XII	Voluntary Participation
XIII	Ecosystem Based Mitigation ("Out-of-kind")
XIV	Biological Monitoring
XV	Document Organization
XVI	Risk Factors in Table 3-5
XVII	Salt Works
XVIII	Recovery of Species
XIX	Preserve Management
XX	Severability of Take Authorizations
XXI	Indirect Impact on Agricultural Land
XXII	Sufficiently/Significantly Conserved Vegetation Communities
XXIII	Critical Habitat Determination
XXIV	No Surprises
XXV	Wetlands Protection
XXVI	Permit Streamlining

The Individual Responses respond specifically to each individual comment in each comment letter. Each letter is assigned an Arabic numeral. A list of the letters showing a letter number reference and the author of the letter is provided below.

As indicated in the list provided below, the numbering system for the comments includes five letters for which no responses were prepared. These letters are not considered to be official letters of comment on the Draft EIR/EIS and are simply part of the administrative record. As a result, responses were not prepared for these letters.

LETTER NO.	ORGANIZATION
1	Sierra Club, San Diego Chapter
2	Watson Land Company
3	California Department of Forestry & Fire Protection
4	Citizens for Private Property Rights
5	Citizens for Private Property Rights
6	Carmel Valley Planning Board
7	Pacific Bay Homes
8	Marsh Committee, San Diego Wetlands Advisory Board
9	San Diego Rock Producers Association
9A	San Diego Rock Producers Association
10	Valle de Oro Planning Group
11	San Diego Audubon Society
12	International Boundary and Water Commission
13	Alpine Land Preservation Action Committee
14	Preserve Wild Santee
15	Otay Water District
16	R. Roberts, San Diego County
17	US-Environmental Protection Agency
18	Kelwood
19	Alliance for Habitat Conservation
20	California Native Plant Society
21	Law Offices of Susan M. Trager
22	National City Planning Department
23	A.E. DeBevoise, Ph.D.
24	League of Women Voters
25	San Diego County Cattlemen's Association

LETTER NO.	ORGANIZATION
26	Iron Mountain Conservancy
27	Graves Engineering Inc.
28	East Elliott Planning Advisory Committee
29	Black Mountain Road Partnerships
30	US Marine Corps
31	Caltrans – District 11
32	Anderprises, Inc.
33	SR-125 South Citizens Advisory Committee
34	SR-125 South Citizens Advisory Committee
35	Allen E. Shaw
36	California Office of Planning and Research
37	California Office of Planning and Research
38	NOT AN OFFICIAL LETTER OF COMMENT — ADMINISTRATIVE RECORD
39	San Diego Audubon Society
40	Eagle Survey Project
41	Fred T. Sproul
42	John & Esther Williamson
43	Stephenson Worley Garrat, Schwartz, Heidel & Prairie
44	Stephenson Worley Garrat, Schwartz, Heidel & Prairie
45	Endangered Habitats League
46	Law Offices of T.D. Mauriello
47	Egger & Ghio Co., Inc.
48	San Diego County Water Authority
49	Janet Nickerman
50	Village Development
51	San Diego Natural History Museum
52	City of Santee
53	City of Chula Vista
54	Tia Juana Valley County Water District
55	NOT AN OFFICIAL LETTER OF COMMENT – ADMINISTRATIVE RECORD
56	NOT AN OFFICIAL LETTER OF COMMENT — ADMINISTRATIVE RECORD
57	NOT AN OFFICIAL LETTER OF COMMENT — ADMINISTRATIVE RECORD
58	John M. DeBevoise

LETTER NO.	ORGANIZATION
59	Watson Land Company
60	Jamul-Dulzura Planning Group
61	San Diego Audubon Society
62	J. Luis Flores-Silva
63	William G. Stevens
64	Theresa Vasques
65	Descanso Sponsor Group
66	Viviane Marquez
67	C. Boyd & K. Winter
68	Craig A. Sherman, Attorney-at-Law
69	Sibylle Hartmann
70	Mischa Dobrotin
71	Department of the Navy
72	Rachel Thomas
73	M. Simovich, et.al., University of San Diego Department of Biology
74	Natural Heritage Institute
75	The Nature Conservancy
76	California Native Plant Society, San Diego Chapter
77	Hewitt & McGuire L.L.P., Attorneys-at-Law
78	Hewitt & McGuire L.L.P., Attorneys-at-Law
79	Sierra Club, San Diego Chapter
80	Sierra Club, San Diego Chapter
81	Sierra Club, San Diego Chapter
82	Dan C. Holland, Ph.D.
83	Ellen Bauder, Ph.D., SDSU Department of Biology
84	Save Our Forests and Ranchlands
85	Alliance for Habitat Conservation
86	Stephenson, Worley, Garrett, Schwartz, Heidel & Prairie
87	NOT AN OFFICIAL LETTER OF COMMENT — ADMINISTRATIVE RECORD
88	Otay Mesa Planning Group
89	San Diego Wild Animal Park
90	General Dynamics Property Management Group
91	San Diego Off-Road Coalition
92	San Diego Audubon Society
93	Luce, Forward, Hamilton & Scripps

LETTER NO.	ORGANIZATION
94	Latham & Watkins
95	The Green Store
96	San Diego County Taxpayers Association
97	Rodrick Dossey
98	Southwest Center for Biological Diversity
99	Janice Zamudio
100	J. Whalen Associates
101	San Diego Hang Gliding & Paragliding Association
102	The Eastlake Company
103	American General Land Development, Inc.
104	Farm Bureau, San Diego County
105	Endangered Habitats League
106	C.A. Coyle, Attorney-at-Law
107	Hewitt & McGuire L.L.P., Attorneys-at-Law
108	Edward Ervin, UCSD, Department of Biology
109	Kevin Crooks, UC Santa Cruz, Department of Biology
110	Law Offices of Charles Stevens Crandall
111	Christine Kerbstat
112	San Diego Association of Realtors
113	Carmel Mountain Conservancy
114	Mark W. Dodero
115	Friends of Los Peñasquitos Canyon Preserve
116	Carmel Valley Community Planning Board
117	Bernie Brandt
118	The Desert Protective Council
119	Edward Navarro, Superintendent, San Diego Coast District, California Department of Parks & Recreation
120	Craig A. Sherman, Attorney-at-Law
121	Cindy Burrascano

PART B (CONTINUED)
MSCP FINAL EIR/EIS
INDIVIDUAL RESPONSES

80 ADAMS, SIERRA CLUB, 10/30/96

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80(a) The Draft EIR/EIS has been prepared and circulated in accordance with both NEPA Regulations and CEQA Guidelines. Significant environmental effects of the actions analyzed in the Draft EIR/EIS are described in detail in Section 4.0 of the document and summarized in Tables ES-2 through ES-6 included in the Executive Summary. Tables ES-2 through ES-6 also provide a comparative analysis of the impacts of alternatives analyzed in the Draft EIR/EIS and disclose environmental impacts associated with the proposed project in relation to the alternatives. Mitigation measures are identified and numbered in the Draft EIR/EIS. For example, measures to mitigate impacts to species and habitats associated with the proposed MHPA are clearly identified as mitigation measures 4.3-MHPA-1 through 4.3-MHPA-5 on pages 4.3-180 through 4.3-183 of the Draft EIR/EIS. See **Theme Response XV, Document Organization.**

It is assumed that testimony before the Board of Supervisors has been incorporated in the County's letter of comment on the Draft EIR/EIS. Responses to these comments are incorporated in the responses to Comments 16(a) through 16(p).

80(b) See response to Comment 80(a). Biological data used to support the analyses contained in the Draft EIR/EIS are summarized on pages 4.3-2 and 4.3-3 and incorporated by reference in Section 4.1. It is not the purpose of the Draft EIR/EIS to provide or support conclusions regarding species "coverage." Rather, it is the purpose of the Draft EIR/EIS to disclose impacts associated with issuance of permits or authorizations to take species included on the Covered Species List. Rationales for including a particular species on the Covered Species List would be included in the findings for the authorizations issued by the wildlife agencies.

The review period for the Draft EIR/EIS was fully consistent with both NEPA and CEQA Guidelines. In response to expressed concerns, the review period was extended from October 15, 1996, to October 29, 1996, for a total review period of 56 days.

80(c) Discussion of the scoping and Notice of Preparation (NOP) process is presented on pages 1-14 through 1-18 of the Draft EIR/EIS. As noted on page 1-17, an NOP for the Recirculated Draft EIR/EIS was distributed on June 7, 1996. Responses to relevant environmental comments are incorporated in the text of the Draft EIR/EIS in the appropriate sections. Without specific reference to NOP comments that were not addressed, a more specific response cannot be provided to this comment.

80(d) Impacts to species and habitats, and their significance, are described and quantified in the Draft EIR/EIS. Specific impacts to species associated with the MHPA and alternatives are documented on Table 4.3-2 of the Draft EIR/EIS. As stated on page 4.3-45, impacts to all species on the Covered Species List are regarded as significant with the exception of those listed at the bottom of the page. Impacts to habitat associated with the overall MHPA are quantified on Table 4.3-3. Similar tables appear throughout Section 4.3 of the Draft EIR/EIS for the alternatives and the subarea plans. For the proposed

MHPA, significant impacts to species are specifically identified on pages 4.3-150 and 4.3-151 under Item 4.3-MHPA-1. Likewise, significant impacts to vegetation communities/habitats are specifically identified on page 4.3-151, Item 4.3-MHPA-2.

80(e) A "hard line" preserve system throughout the County is evaluated in the Coastal Sage Scrub (CSS) Scenario and the Biologically Preferred (BP) Scenario. These alternatives are evaluated for the County Subarea Plan throughout the Draft EIR/EIS. See also **Theme Response VI, Alternatives.**

80(f) The alternatives considered and not selected for detailed analysis, as well as those selected for detailed analysis, are described in detail on pages 2-51 through 2-67 of the Draft EIR/EIS. The alternatives discussed on these pages represent a reasonable range of alternatives to the proposed actions, consistent with the requirements of both NEPA and CEQA. Both the CSS Scenario and the BP Scenario analyzed for the City of San Diego Subarea Plan include alternative reserve configurations in the Carmel Mountain area. Without more specific information on the referenced alternative for the Carmel Mountain area, a more specific response cannot be provided. See also **Theme Response VI, Alternatives.**

80(g) It is assumed that the term "insignificance" in this comment is referring to the definition of a finding of "insignificant effect" for certain species as noted in Table 4.3-1. The term "insignificant effect" is defined in the Findings Definitions at the conclusion of Table 4.3-1 (page 4.3-27 of the Draft EIR/EIS). These findings definitions simply represent an analysis tool used by the wildlife agencies in evaluating species for coverage under the MSCP Plan and were not used in the determination of CEQA or NEPA significant effects in the Draft EIR/EIS. The criteria for determining CEQA or NEPA significance in the Draft EIR/EIS, for impacts to biological resources, are listed on page 4.3-6 of the document. See also **Theme Response XVI, Risk Factors.**

80(h) The discussion on page ES-6 does not state that the amount of "mitigation" under the project-by-project review process would be the same as under the proposed MSCP Plan. The text states that, for purposes of the region-wide analysis completed for the MSCP, the total acreage conserved (e.g. not developed) under the No Action/No Project alternative would be similar to that which would occur under the proposed MSCP Plan. The discussion goes on to state that the configuration of conserved lands would likely be substantially different under the No Action/No Project alternative than under the MSCP Plan.

Specific mitigation ratios are not proposed as part of the MSCP Plan. Mitigation mechanisms, including ratios in some cases, are being developed by individual jurisdictions in conjunctions with individual subarea plans. Please see also response to Comment 80(aa).

80(i) Growth inducing impacts associated with the MSCP Plan are described in Section 5.0 of the Draft EIR/EIS. As discussed in this section, implementation of the MSCP Plan would not affect the amount or rate of growth, but may affect the pattern and distribution of growth within the MSCP study area. In this respect, the MSCP Plan would not be growth inducing. The analysis also concludes that the

effect of the MSCP Plan on the pattern and distribution of growth would be dwarfed by the overall region-wide shortfall in developable land projected by SANDAG after 2005.

The MSCP Plan does not have stated objectives regarding the growth of the San Diego region. The objectives of the MSCP Plan are listed on pages 1-7 of the Draft EIR/EIS. As shown, objectives of the MSCP Plan related to economic growth and development call for establishment of a "workable balance between preservation of natural resources and regional growth and economic prosperity," and establishment of a partnership between agencies to "facilitate review and approval of public and private sector land development and construction projects." These objectives of the MSCP Plan would not induce growth but would provide for appropriate review and consideration of a wide variety of factors including preservation of resources and economic prosperity.

80(j) It is assumed that this comment is referring to the discussion of the MHPA on page ES-2 of the Executive Summary. It is not clear from the comment why the statements noted represent an inadequate project description and a specific response cannot be provided. In addition to the brief discussion on page ES-2, the project is described, quantified and illustrated in detail on pages 2-1 through 2-20 of the Draft EIR/EIS.

80(k) The discussions on pages 1-2 and 2-1 of the Draft EIR/EIS describe the process that was used to select the MHPA as the proposed project. It should be noted that the MHPA represents the project selected by the participating local jurisdictions as the project applicants. The MHPA has not yet been approved by the permitting and authorizing agencies and would not be approved until the environmental review process has been completed.

80(l) The discussion of the scoping process on pages 1-14 though 1-18 of the Draft EIR/EIS includes discussion of areas of known controversy.

80(m) Loss of species and habitats outside preserve areas is a primary focus of the analysis in the Draft EIR/EIS since one of the primary actions addressed in the document is issuance of permits and authorizations to take species on the Covered Species List outside of designated preserve areas. The analyses presented on pages 4.3-45 through 4.3-174 of the Draft EIR/EIS focus on this topic for both the MSCP Plan and alternatives and the Subarea Plans and alternatives. For example, impacts to species outside the preserve for the MHPA and alternatives are clearly quantified on Table 4.3-2 and further described on pages 4.3-150 and 4.3-151.

The second column of Table 4.3-2 specifies the impacts to each covered species associated with the MHPA with regard to the percentage of data points, the percentage of major populations, and percentage of polygons containing the species. Where there are no data points or polygons for covered species, the percentage of the species' habitat to be impacted is provided. For habitats, Table 2-1 on page 2-5 of the Draft EIR/EIS summarizes the total acreage of habitats within the MHPA, the conservation target acreage within the MHPA, the percentage of vegetation conserved within

the total MSCP study area. It can be assumed under this plan that any habitat not included in the MHPA, unless otherwise regulated (e.g., wetlands, floodplains, steep slopes) on military lands could be lost to development.

In response to previous requests by the military, the maps for the preferred alternative, the Multi-Habitat Planning Area, have been revised in the MSCP Plan to depict military lands separately from other uses and ownerships. The maps for the Coastal Sage Scrub, Biologically Preferred, and Public Lands alternatives have not been similarly modified. We note, however, that should one of these alternatives be selected, planning for conservation purposes on military lands would occur separately from the MSCP through consultations pursuant to Section 7 of the FESA and through Sikes Act agreements.

80(n) Impacts to wildlife movement for the proposed MHPA and alternatives, and the Subarea Plans and alternatives, are discussed on pages 4.3-217 through 4.3-236 of the Draft EIR/EIS. Under the MHPA, approximately 75 percent of habitat areas identified as linkages between the largest habitat areas and between the core areas are maintained (page 4.3-219). In addition, the MHPA has built in redundancy to ensure adequate connection of the habitat areas. Five linkages with undetermined development status, as described on page 4.3-219, would be subject to state and federal wetland regulations and thus some level of protection. Furthermore, on pages 4.3-233 and 4.3-234, the EIR/EIS explains that within the Metro-Lakeside-Jamul segment of the County Subarea Plan, planning guidelines contained in the Biological Mitigation Ordinance (BMO) establish clear parameters for maintaining and enhancing important habitat linkages and wildlife corridors, which are summarized on page 4.3-234.

80(o) Chapter 1.0 of the Draft EIR/EIS does not contain the analysis of the County's BMO. Analyses of the BMO are provided on pages 4.2-51, 4.2-79, 4.2-102, 4.3-113, 4.3-229, 4.4-12, 4.5-15, 4.6-15, and 4.6-36 of the Draft EIR/EIS. Therefore, the Draft EIR/EIS contains sufficient analysis of the draft Biological Mitigation Ordinance to support its adoption. The Draft EIR/EIS explains the operation of the ordinance, the biological basis for its structure, and its place in implementing the MSCP. At the time that the Resource Protection Ordinance (RPO) is redrafted and revised pursuant to the direction of the San Diego County Board of Supervisors on May 1, 1996, an EIR would be prepared to analyze the impacts of those changes. At present, RPO has not been changed and remains in effect.

80(p) Because of substantial changes to the project, this second Draft EIR/EIS was recirculated for public review. The comments received on the first Draft EIR/EIS are categorized and discussed in the second Draft EIR/EIS, Section 1.6.1.

80(q) Discussion of landform/aesthetic impacts associated with the proposed MSCP Plan is provided under the heading Aesthetics/Light, Glare and Shading on pages 1-20 and 1-21 of the Draft EIR/EIS. The proposal does not include any revision to regulation governing hillside development within the City of San Diego. Analysis of this suggested change is beyond the scope of this document.

80(r) The San Diego Unified Port District was informed several years ago that the MSCP planning process was underway. It has been the District's position that it would prepare a habitat conservation plan for lands within its jurisdiction. In a letter dated August 25, 1995, to the City of San Diego Planning Department, Melissa Mailander, Associate Environmental Management Analyst with the District, offered the following statement to be incorporated into the Final EIR/EIS for the Multiple Species Conservation Program.

> "The San Diego Unified Port District is a special purpose district created by the California Legislature and as such has discreet authority over the state lands entrusted to it. The District's trust purposes are to further the development of commerce, navigation, fisheries, and recreation for the tidelands of San Diego Bay. In addition, the Port Master Plan states that the District "would protect, preserve, and enhance natural plant and animal life in the Bay as a desirable amenity, an ecological necessity, and a valuable resource." The District has dedicated 17% (447 acres) of all tidelands and 33% (1,818 acres) of submerged lands specifically for wetland conservation and habitat enhancement purposes. The District is in the process of developing a comprehensive habitat management plan for these tidelands in coordination with the Interagency Water Quality Panel and our own Port Master Plan update. As part of (the) planning process, the District would take into consideration the subregional plans developed for the Multiple Species Conservation Program."

80(s) The U.S. Navy has conducted baseline studies in preparation of its "San Diego Bay Integrated Natural Resources Management Plan." These baseline studies contain data on natural resources from throughout San Diego Bay (i.e., from throughout the bay ecosystem). Any management actions taken by the Navy as a result of its Plan would be limited to lands under the Navy's jurisdiction. The data from the Navy's baseline studies are available for use by any of the other entities with jurisdictions over lands in San Diego Bay.

80(t) The designation of significantly and sufficiently conserved vegetation communities is not a biological designation, but rather a classification/grouping of vegetation communities assigning responsibilities for the conservation of uncovered species should an uncovered species be listed in the future. The factors taken into consideration in this designation scheme are listed in the MSCP Plan, Volume I, pages 3-25 and 3-26. Please refer to **Theme Response XXII, Sufficiently/Significantly Conserved Vegetation Communities.**

80(u) Both acres of acquisition need and costs of implementing the MSCP are conservatively estimated in the MSCP Plan. The cities of Chula Vista, Poway, San Diego, and Santee and the County of San Diego independently estimated acres of habitat acquisition needed to implement their subarea plans. Total of these estimates was 25,160 acres (MSCP Plan, Volume I, Table 4-3, p. 4-7). A

contingency of 1,840 acres was added to arrive at a MSCP study area-wide acquisition need of 27,000 acres. The jurisdictions' estimate of 25,160 acres also includes 4,550 acres that may be conserved as mitigation for public and private projects. For purposes of the financing plan, however, it was assumed that these areas would be publicly purchased, without reliance on project mitigation.

Acquisition cost is also conservatively estimated. As noted in the MSCP Plan, Volume I, p. 7-15, the low and high estimates used in the financial analysis imply average land costs of $9,700 and $13,300 per acre. A review of recent vacant land sales indicated that the median price was $4,400 per acre and that 89% and 94%, respectively, of lands sold were priced below $9,700 and $13,300.

Regarding the alternative of project-by-project permitting and mitigation, historical experience indicates that preparation, negotiation, and approval of habitat conservation plans (HCPs) under the federal Endangered Species Act can be costly and time consuming. Take authorization that would become available under the MSCP would substantially reduce these costs. A comparison of mitigation costs under the CSS scenario and No Project alternative was provided in the MSCP Resource Document.

80(v) The County's Subarea Plan included a goals and criteria segment which is a numerical and narrative description (acres of vegetation communities, species location capture rates, design criteria, etc.) of the preapproved mitigation areas identified on the wildlife agencies' map. Using goals and criteria is a preserve assembly process, not an alternative preserve assembly. Thus, under any of the design scenarios outlined in Section 2.2, the County could have assembled the preserve based on "hard lines" or goals and criteria.

Individual projects will continue to be subject to CEQA and reviewed by the wildlife agencies during the CEQA process. Comments, as appropriate, regarding the project's consistency with the County Subarea Plan and wildlife issues outside the scope of the MSCP Plan and Subarea Plan may be submitted by the wildlife agencies during the CEQA review process. The subarea plan will be modified to reflect the wildlife agencies' role in individual project review. The County will make the decisions on appropriate mitigation locations, but only mitigation within the preapproved mitigation areas will contribute towards meeting the Subarea's measurable goals for conservation. The anticipated results of the mitigation strategy for the Metro-Lakeside-Jamul segment of the County Subarea Plan are identified and incorporated in Table 4-8 of the Subarea Plan. The BMO is drafted as a County-wide ordinance and the reference to mitigation outside of a Subarea Plan is referring to lands outside of the current MSCP study area. Within the County Subarea, the mitigation land does not have to support the same vegetation community (i.e. the mitigation may be ecosystem based) so long as the vegetation community being impacted is in the same or in a higher tier than the vegetation community impacted. The tiers for the County Subarea Plan are displayed in Table 4-6 of the Subarea Plan. Outside of an approved Subarea Plan area, mitigation must be in-kind.

The County's implementing agreement will include language regarding the circumstances under which the wildlife agencies can withhold Third Party Beneficiary status for a specific

project and how annual reviews will be used to determine if the County is in compliance with the take authorizations and the process for take authorization suspension and termination. The County's Implementing agreement will be subject to a 30-day public review period (*Federal Register Notice*) when the County submits its 10(a)(1)(B) permit application to the USFWS.

80(w) The discussion of alternatives takes place at p.2-51 in Section 2.2, "Alternatives." This section discusses the design scenarios that were considered as a basis for preserve design. Section 2.2.6. discusses the preserve operation under the design alternative chosen, the Multi-Habitat Planning Area (MHPA) model. The central environmental issue discussed in the text, is the impact on the environment of the preserve design chosen. The issue of "hard lines" versus preserve design criteria is a method of implementing the design alternative chosen, not a design alternative in itself. Thus, under any of the design scenarios outlined in Section 2.2, the County could have assembled the preserve based on "hard lines" or criteria. The text states clearly that mitigation would be directed toward biological resource core areas and that other areas may qualify as biological resource core areas apart from those "pre-approved" by the wildlife agencies.

The question of which governmental agency reviews individual land use projects is not a proper subject for environmental impact analysis, but is a legal question. The Constitutional doctrine of separation of powers reserves local land use jurisdiction to the State of California which in turn has delegated this discretionary authority to the County. Under the subarea plan and the Implementing Agreement, the wildlife agencies would continue to fulfill their statutory roles under the state and federal endangered species acts and CEQA. Moreover, the public would continue to have opportunity to comment on individual projects under the CEQA process.

Biological Resource Core Area is defined according to clearly specified criteria in the Biological Mitigation Ordinance. The maps developed by the wildlife agencies may be used as tools to determine areas that the agencies, themselves, regard as significant areas in which mitigation should take place. The concept of the wildlife agencies developing maps to aid in determining mitigation requirements is not inconsistent with the County's initial no-line approach. The maps used by the wildlife agencies have not been adopted by the County and it is clear that the County does not represent that these maps show hard line preserve configurations.

80(x) The Lakeside coastal sage scrub archipelago linkage is a focus for preservation. This is likely the only remaining coastal sage scrub connection between sage scrub lands south of Interstate 8 and sage scrub lands to the north. While the connection is currently fragmented into a series of habitat islands, California gnatcatchers still occupy most of these habitat patches. The usefulness of this linkage is primarily for avian species including the gnatcatcher. The primary habitat linkage is the chaparral-riparian-oak woodland linkage further east in Harbison and Chocolate Canyons. There is a large drainage with natural vegetation that is spanned by a large bridge which allows passage under I-8 at this location.

The MSCP Plan was developed acknowledging the functional uncertainty of this coastal sage scrub connection, but this is the only existing coastal sage scrub linkage in this area and, as a result, there are no other options. The acreage of habitat within this linkage is small and its primary importance is dispersal recolonization if gnatcatchers are extirpated from some areas. Over 12,000 acres of acquisitions are targeted for the Metro-Lakeside-Jamul segment of the County Subarea Plan, including lands that will help to preserve the linkage. The County, public and the wildlife agencies will continue to review projects within the Metro-Lakeside-Jamul segment and the County's and wildlife agencies' focus will be on preserving the viability of this linkage. See also response to Comment 10(l).

80(y) As stated on page 2-51 of the Draft EIR/EIS, the Multiple Habitat Scenario was not selected for detailed analysis because of its similarity to the MHPA, which is addressed in detail in the Draft EIR/EIS. The Multiple Habitat Scenario served as a stepping-stone in providing one of the building blocks for the MHPA.

80(z) The proposed amendments to the General Plan have been drafted to include the open space policies reflective of the MSCP Plan. The General Plan would retain the open space policies related to other habitat areas within the City. Many of the open space areas envisioned for protection under the existing open space element have either been acquired for open space or protected through the subdivision process. It is not the intent of the amendments to the General Plan to redefine open space planning bur rather to reflect the change in open space planning indicative of the MSCP. The proposed General Plan amendments would not result in a reduction of hillside protection.

80(aa) As described in Section 3.3.2 of the EIR/EIS, mitigation guidelines proposed by the City and the County of San Diego are based on a "tier" system of classifying the rarity and sensitivity of various habitats found in the MSCP study area. These guidelines differ from the habitat-specific mitigation guidelines contained in existing resource protection ordinances (RPOs) of the two jurisdictions.

The MSCP Plan states as a policy goal that private development exactions should not be increased beyond existing requirements. Development contributions should be made in accordance with development regulations, where habitat impacts are avoided, and through compensatory mitigation of unavoidable impacts. (MSCP Plan, Volume I, page 4-1)

The estimated conservation of privately owned habitat, including both on-site avoidance and off-site mitigation, but excluding public acquisition, was prepared by participating local jurisdictions, based on the tier system of habitat classification and the policy goal stated above.

Estimates of total conservation and total potential impact to privately owned natural habitat are contained in Table B-4c of the MSCP Plan, Volume II. It is estimated that upon completion of the MSCP, 88,393 acres of privately owned habitat would be included in the preserve. Subtracting 27,000 acres of public acquisition, 61,393 acres would be conserved through avoidance and mitigation. It is also estimated that up to 14,983 acres of habitat inside the MHPA (the planning area for the preserve) and 41,990 acres outside the MHPA may be developed. Total private development impacting habitat is

estimated to be 56,973 acres. In this case, the ratio of habitat area conserved (in the preserve) to area impacted (inside and outside the MHPA) is 1.08 to 1 (= 61,393 / 56,973). If the constrained area outside the MHPA is added to the conserved area, then the ratio is 1.94 to 1 (= (61,393 + 49,197) / 56,973).

Some portion of the 49,197 acres of habitat on physically constrained land outside the MHPA may also be developed. If, for example, 50% of constrained lands outside the MHPA is developed and 50% is retained as natural open space, the corresponding ratios of conservation to impact would be 0.75 to 1 (not counting constrained lands outside the MHPA as conserved) or 1.05 to 1 (counting constrained lands as conserved).

Thus, conservation-to-impact ratio under the MSCP Plan, using these various definitions, range from 0.75 to 1 to 1.94 to 1, with likely values near 1 to 1. These ratios are comparable to the historical experience in the City of San Diego. A review of 21 land development projects approved under the City's RPO between 1987 and 1993 showed that the average conservation-to-impact ratio was 1.08 to 1, including the 2,500-acre Black Mountain project, and 0.86 to 1, excluding that project. It should be noted, however, that mitigation ratios for specific habitats, such as coastal sage scrub, were significantly higher--sometimes up to 3 to 1. The ratios described above refer to the total area of all natural habitats.

The commenter is correct that mitigation ratios for specific habitats under the MSCP or the subarea plans may be more or less than ratios indicated in the existing City and County of San Diego RPOs or their guidelines. However, on average, conservation obligations for private projects are similar to the historical experience.

80(ab) Construction of planned roadway facilities is not an action addressed in the Draft EIR/EIS and construction of any such facilities would be subject to separate environmental review. Environmental review for facilities within the MHPA would need to demonstrate conformance with the guidelines for such facilities included in the MSCP Plan and relevant subarea plans. Regional transportation plan roads are shown on Figure 3.4-1 of the Draft EIR/EIS. Some arterial roads are shown on the Subarea Plan maps of the individual jurisdictions. With the exception of the City of San Diego landfill siting study which includes portions of the East Elliott area described in the Draft EIR/EIS, no landfills are planned at this time in the MHPA. In fact, page 4.5-9 of the Draft EIR/EIS states that a future landfill in the East Elliott area would be located outside the boundaries of the MHPA. The MSCP Plan describes landfills as a permitted use in the MHPA, subject to certain restrictions, as described in Section 6.2.3 of the MSCP Plan, Volume I.

80(ac) The region-wide shortfall of available land for housing is not described anywhere in the Draft EIR/EIS as an "MSCP problem." Please refer to a more detailed discussion of this issue in Section 5.0, Growth Inducement. It is not the purpose of the Draft EIR/EIS to analyze a desire of the citizens of San Diego for a regional growth management strategy.

80(ad) The Biological Mitigation Ordinance, which is fully analyzed in the EIR/EIS, is the only proposed change in the County's existing RPO. The remaining portions of RPO remain in effect. An EIR will be completed when other revisions to RPO are made. The proposed Biological Mitigation Ordinance, like the RPO, requires an analysis of the biological resources on the property as a starting point. The proposed ordinance sets out specific requirements for mitigation based on types of habitat and specifically requires avoidance of certain sensitive animal and plant populations. The proposed ordinance directs mitigation toward areas that help assemble a preserve which meets the goals and criteria.

80(ae) It is the purpose of the Draft EIR/EIS to disclose both the positive and negative impacts associated with the various actions addressed in the document. The positive aspects of potential shifts in development are noted on pages 1-19, 1-20, and 1-22 of the Draft EIR/EIS and are alluded to in the discussion of the No Action/No Project alternative on page 2-66.

80(af) The proposed amendments to the General Plan have been drafted to include the open space policies reflective of the MSCP Plan. The General Plan would retain the open space policies related to other habitat areas within the City. Many of the open space areas envisioned for protection under the existing open space element have either been acquired for open space or protected through the subdivision process. It is not the intent of the amendments to the General Plan to redefine open space planning but rather to reflect the change in open space planning indicative of the MSCP. The proposed General Plan amendments would not result in a reduction of hillside protection.

80(ag) The impact of all reasonably foreseeable future facilities have been accounted for in the preserve design. Within the City of San Diego, all capital improvements must be consistent with the proposed City subarea plan, and would also undergo subsequent separate CEQA review when project specific details are prepared. Analysis of a possible, but unplanned, landfill is not only premature but beyond the scope of the proposed project. See also **Theme Response IX, Allowable Uses within MHPA.**

80(ah) The significance conclusions for land use impacts in the Metro-Lakeside-Jamul segment of the County Subarea Plan do not differ from the conclusions of the analysis for subarea plans prepared by other participating local jurisdictions or other segments of the County Subarea Plan. For the Metro-Lakeside-Jamul Segment, as for other plans, the Draft EIR/EIS concludes that implementation of the proposed MSCP Plan and subarea plans would result in conversion of lands designated for urban uses within the preserve, resulting in a land use shift. For the Metro-Lakeside-Jamul segment, this shift is not regarded as significant because sufficient flexibility has been incorporated in the MSCP Plan, the County of San Diego Subarea Plan, and the BMO, and sufficient opportunities exist for development outside the preserve area, to accommodate the anticipated shift. Table 4.2-13 indicates that approximately 527 acres of urban designated lands would be shifted in the Metro-Lakeside-Jamul segment. The analysis does not imply that no land use changes would occur in this segment.

80(ai) No projects have existing permits which can "supersede" the subarea plan in the Metro-Lakeside-Jamul segment.

80(aj) The County's proposed Biological Mitigation Ordinance would be implemented in concert with the Metro-Lakeside-Jamul segment of their subarea plan. The Subarea Plan provides preserve design criteria and conservation goals to implement the MHPA. These criteria and goals must be met during their project approval process.

80(ak) Comment noted. The level of involvement of environmental groups in the determination of the amount, type and location of biological mitigation varied significantly. On some projects the mitigation requirements were established through negotiations between wildlife agency staff and property owners only. For other projects, all parties participated on the negotiations. See also **Theme Response VIII, Public Involvement.**

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Sierra Club, San Diego Chapter
3820 Ray Street
San Diego, CA 92104
Phone: 299-1741; Fax 299-1742

October 30, 1996

John Kovac
Land Development Review Division
City of San Diego
1222 First Ave., 5th Floor
San Diego, CA 92101

Gail Kobetich, Field Supervisor
U.S. Fish and Wildlife Service
2730 Loker Ave., West
Carlsbad, Ca 92008

Ron Remple, NCCP Program Manager
California Department of Fish and Game
1416 Ninth Street
Sacramento, CA 95814

Subject: Sierra Club Comments on The Recirculated Draft Joint EIR/EIS Issuance of Take Authorizations For Threatened and Endangered Species Due to Urban Grwoth Within The Multiple Species Conservation Program (MSCP) Planning Area. LDR No. 93-0287; SCH No. 93121073

Dear Messrs. Kovac, Kobetich and Rempel:

Following are the comments of the San Diego Chapter of the Sierra Club concerning the Draft Joint EIR/EIS for the MSCP.

A. CONCLUSIONS

The *Draft Joint EIR/EIS Issuance of Take Authorizations for Threatened and Endangered Species Due to Urban Growth Within the Multiple Species Conservation Program (MSCP) Planning Area* (hereafter referred to as "the *Draft Joint EIR/EIS*") **fails to meet either its federal NEPA purpose** "to provide a full and fair discussion of significant impacts and inform the decision-makers and the public of reasonable alternatives that would avoid or minimize adverse impacts" **or the state CEQA purposes** to: a) inform government decision-makers and the public about potential, significant environmental effects of proposed activities; b) identify ways environmental damage can be avoided or significantly reduced: and c) disclose to the public the reasons why a governmental agency approved a project if significant environmental effects are involved.

The public and decision-makers will not be aided by this draft document—unless it is significantly reformatted and improved. They have quickly learned to avoid the draft 80(a)

document's irrelevancies and confused, plodding organization. The MSCP process, which included substantial and high-quality biological analysis and extensive community involvement, deserves a clearer and more complete environmental analysis documentation that is reflected in the *Draft Joint EIR/EIS* 80(a)

Representatives of a broad range of interests, including farm groups, building industry and land owner representative, community groups and environmental spokespersons, plus County planning staff have already offered public testimony before the San Diego Board of Supervisors to a range of inadequacies in the *Joint EIR/EIS.*

B. ***Draft Joint EIR/EIS* CONCERNS SUMMARIZED**

The problems with the *Joint EIR/EIS*, about which there appear to be a broad consensus, can be summarized as follows:

1. The document is poorly organized, confusing, and unnecessarily redundant 80(b)
2. Inadequate information is provided to support basic conclusions—particularly concerning the "coverage" of species
3. There has been an inadequate review period

In addition, the *Joint EIR/EIS* has the following major problems:

1. Substantive Comments On the Notice of Preparation Were Ignored and Have Never Been Responded To 80(c)

   A number of the concerns identified below were presented by the Sierra Club and others (see Sierra Club letter of July 11, 1996 to John Kovac, City of San Diego). These comments, and those made by others, remain unaddressed.

2. Significant Impacts Are Ignored or Inadequately Documented

   Most critically, the major loss of habitat and species that will be the result of—or will be facilitated by--the proposed MSCP Plan action is nowhere adequately described or evaluated. 80(d)

3. Key Alternatives Are Not Identified or Analyzed

   For example, the failure to address the option of a "hard-line" preserve system throughout the County area may be viewed as a necessary "political call", but it does not follow the EIR/EIS rules. 80(e)

4. The Project Impact Analysis Includes Only Either Sweepingly Irrelevant or Very Selective Alternatives Analysis and Is Inadequate

   For example, even in the face of considerable and ongoing pubic controversy 80(f)

over the appropriate preserve configuration in the Carmel Mountain area, NO ALTERNATIVES are identified or analyzed for the City of San Diego Subarea Plan—except the "straw men" Coastal Sage Scrub and Biologically Preferred MSCP plan area-level options. Important and "reasonable alternatives" were ignored and not analyzed. 80(f)

5. The "High Risk" of Local Extirpation of Some of the "Covered Species" in the MSCP Plan Area Is A "Significant Impact" Under CEQA that Is Not Negated by New Policy Directions by the Secretary of Interior Concerning the "Insignificance" of MSCP Populations of These Species 80(g)

6. The Basic Policy Trade-off—Between Project-by-Project Review and the MSCP Plan is Not Adequately Addressed

   The conclusion in the *Draft Joint EIR/EIS* that the amount of mitigation under the MSCP "would be similar" (ES-6) to that under the existing project-by-project review is not substantiated in the draft and only vaguely referenced DRAFT MSCP Plan. In some cases, MSCP mitigation ratios are proposed to be reduced from those in present use under CEQA and local resource protection ordinances, even compared to actual results under present "negotiated" practices. 80(h)

7. The "Growth Inducing Impacts" of the Project--Which Has Stated Objectives Regarding the Growth of the San Diego Region—Have Not Been Identified or Analyzed

   The draft MSCP Plan (Pg. 1-1) states that "The MSCP will help achieve many objectives regarding the growth and economy of the San Diego region." The draft MSCP Plan identifies that, "the federal listing of the California gnatcatcher as threatened has restricted the region's ability to accommodate future growth and development in coastal habitats." (Pg. 1-5) One of the basic purposes of the MSCP—known to all—is to remove the present restrictions on development associated with this listing and to provide for increased development. The *Draft Joint EIR/EIS* itself states, "the MSCP would facilitate and improve certainty of development outside the preserve area." Stated baldly, the MSCP Plans says that "it intends to induce growth that has been restricted by the listing of the California gnatcatcher; then it denies any "growth inducing" impacts. 80(i)

C. SECTION-BY-SECTION COMMENTS

EXECUTIVE SUMMARY

1. Inadequate Project Description

   There is a discussion of focusing "public acquisition" and "mitigation for major development projects" within the MHPA, but there is no reference to general project mitigation (except within county "no-line" areas). Also, it is 80(j)

debatable whether the "no-line" areas of the draft MSCP Plan ENSURE conservation—and therefore whether these "no-line" areas should be counted when calculating "core biological resource areas and linkages conserved." 80(j)

2. <u>There Is No Statement Of Why the Proposed Project Alternative Has Been Selected</u> – as required by 15126(d)(1), *CEQA Guidelines* 80(k)

3. Areas of Know Controversy Are Not Identified - as required in *CEQA Guidelines* 151123. Points of controversy are many and widely known, but nowhere identified. 80(l)

4. The Significant Loss of Species and Habitats Outside the Preserve Areas That Will Be ENCOURAGED by This Draft Plan Is Not Clearly Identified

   The Draft Plan provides for the direct protection of only slightly over 50% of the remaining habitat in the MSCP area. Whether these impacts are "adequately mitigated" is the major matter at issue. However, the impacts prior to consideration of the program of mitigation should be clearly identified. 80(m)

5. The Conclusion That The Impact On the "Movement Of Wildlife Species" Would Be "Less Than Significant" Before Mitigation Is Unsupportable

   The Draft MSCP provides for the protection of only about 50% of existing natural habitat, and the loss of significant habitat area including wildlife corridors, which will certainly impact wildlife movement. The Draft Plan argues these disruptions can be mitigated by the remaining, and sometimes enhanced corridors, but the impacts are clear. 80(n)

Chapter 1.0 Purpose and Need

1. The *Draft Joint EIR/EIS* Analysis Is Not Adequate To Support the County's Adoption of the Biological Mitigation Ordinance, As Indicated

   The potential impacts of the ordinance compared to the present County Resource Protection Ordinance have not been evaluated in the *Draft Joint EIR/EIS.* 80(o)

2. The Cursory and Non-Specific Treatment of Comments On the Earlier *Draft Joint EIR/EIS* Is Inappropriate

   This is reflected in the fact that many of the earlier identified deficiencies have been ignored and remain unaddressed. Similar treatment is afforded the comments on the Notice of Intent—with similar results. 80(p)

3. Potentially Significant Impacts to Landform and Visual Quality Have Not Been Properly Analyzed

   The "Geology/Soils" discussion, under "Issues Not Selected For Detailed Analysis," state that "existing hillside, grading and building code regulations of the local jurisdictions would continue to apply to proposed developments outside the preserve" and that there will be no effects beyond the No Action/No Project alternative. The City of San Diego's implementing ordinance proposed reductions in hillside protection—both outside the 80(q)

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preserve and inside the preserve. These changes must be acknowledged and analyzed. 80(q)

Chapter 2.0 Alternatives Including the Proposed Project

1. The Failure of the Port of San Diego To Participate In MSCP Planning and the Significance of This Deficiency Is Not Acknowledged

   The Draft MSCP Plan purports that it addresses, and provides adequate "coverage" to species that depend upon habitat areas under the control of the Port of San Diego. The Port has NO habitat management plan and its commitments to proceed with such plans have lagged. The reference in the *Draft Joint EIR/EIS* to the Navy's baseline studies "as preparation of a multi-resources management plan for the entire bay in 1996-97" is very confusing. Is it a Navy plan for the entire bay, or Navy data for a Port plan for San Diego Bay or a plan for the elements of the bay under Navy jurisdiction? "Wildlife management" for San Diego Bay resources remains uncertain. 80(r) 80(s)

2. The Impacts of Absolving Private Land Owners From Any Responsibility to Help Protect Un-Covered Species that Become Listed In "Significantly Conserved Vegetation Communities" Is Not Addressed

   The establishment of these categories of "vegetation community coverage" is an acknowledged policy call that is not based on clear criteria (only a non-quantified list of factors). What if the federal, state and local governments don't, without the assistance of private contributions, have the funds to take the necessary actions to protect species, should they become listed, that are dependent upon these "covered habitats" ? This is a "No Surprises" Policy issue; to our knowledge, no NEPA analysis has been conducted with respect to the "No Surprises" Policy. The Draft MSCP provides the opportunity and illustrates the need for an evaluation of the impacts of the policy. 80(t)

3. The Analysis Takes a Consistently "Rosy Scenario" Approach To Analyzing the "Proposed Project"

   An example is the discussion of acquisition from "willing sellers" or by "friendly condemnation" as adequate to protect critical areas of the preserve. In general, there is a lack of sensitivity analysis with respect to the analysis of the Proposed Project. In contrast, application of present "project-by-project" mitigation procedures is dismissed in a cavalierly negative fashion as ineffective without evidence and as a matter of "common knowledge." 80(u)

4. With the Exception of Areas Where Differences Remain in Negotiations Between Land Owners (or Jurisdictions) and the Wildlife Agencies, REAL ALTERNATIVES Are Generally Not Identified or Analyzed-- Particularly At the Subarea Plan Level 80(v)

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For example, in spite of a continuing debate over the future of the Carmel Mountain area, there is no alternatives evaluation of this area. There are other areas in this same "point of controversy" category, such as Fanita Ranch in Santee, and others which deserve consideration merely on their merits. 80(v)

The criteria for Subarea alternative consideration seems to be based SOLELY on whether there is a continuing disagreement in negotiations between the landowners, or jurisdictions, and the Wildlife Agencies. The interests of other stakeholders are not weighed. This is an arbitrary determination made at the convenience of the responsible agencies. Reasonable, and important, alternatives are not evaluated. If alternatives have been evaluated pursuant to project level approvals, the analysis of alternative should be specifically referenced.

This situation reflects the unbalanced nature of the subarea planning process. The only alternatives which are formally analyzed are those forwarded by the Wildlife Agencies, land owners or jurisdictions. Reasonable alternatives forwarded by other parties are neither recognized nor addressed.

5. <u>The County's Policy Desire To Promote Its Deal/Negotiation Points Does Not Shield It From the Requirement For Evaluating Reasonable Alternatives</u>

The "no-lines" Metro-Jamul Segment seems to be presented on a "take-it-or leave-it, no alternatives" basis. CEQA and NEPA require alternatives. Pre-decision by a policy body is not a basis for establishing "unreasonableness."

The confused nature of the text regarding the Metro-Jamul Segment and discussions with County and Wildlife Agency representatives suggest strongly that there is confusion, and differing interpretations of how the MSCP plan for this area will function. The extent to which "individual development projects will continue to be reviewed on an individual basis" and by whom (the Wildlife Agencies?), the degree to which mitigation can be accomplished outside the so-called, "predefined mitigation areas", and the effectiveness of the incentives to encourage mitigation in certain areas have not been described adequately or analyzed either in the *Draft Joint EIR/EIS* or the Draft MSCP Plan. The discussion on Page 2-42 as to how "mitigation may, in some cases, be permitted outside the preserved lands on areas defined as linkages between high value habitats" reflects this confusion. Since the "predefined mitigation areas" include linkages and since with "no-lines" the "preserve lands" are only those where there are approved projects or mitigation, the meaning of this is entirely unclear.

The plan for the Lakeside-Jamul segment reads like a "house of cards" with the players building from more than one deck and according to different plans. Contrasts and questions abound: "the wildlife agencies have created 80(w)

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80(w)

their own maps" (Pg. 2-38) vs. "deal point" about "no-lines"; an incremental, as-yet-undetermined definition of "biological core areas" vs. "predetermined mitigation areas" with accounting for meeting conservation targets limited only to these predefined areas; project review with the claimed ability to pull the entire County permit for "significant material breach" of the plan vs. a proposed annual-only review. This element of the Proposed Project needs to be clarified BEFORE it can be analyzed.

6. The Level of Existing Fragmentation and Tenuous/Uncertain Nature of the Lakeside-Jamul Segment Element Suggest That the Plan Should Evaluate the Contingency That There May Be No Functional Linkage In This Area

Decision makers and the public deserve to know the potential implications of this non-speculative, reasonably probable scenario. The Lakeside-Jamul linkage has been identified as critical and already tenuous for some time now. The "no-line" plan makes it more so. The Population Viability Analysis forth California gnatcatcher should be rerun testing the likely possibility that the planned linkage may likely not be functionally viable. 80(x)

7. The Multiple Habitat Scenario Should Not Be Eliminated From Further Analysis Because It Provides the Best Basis Of Comparison Regarding Recent Changes To An Earlier Plan Draft With A Wide Basis Of Support 80(y)

The failure to present this baseline alternative make it impossible for the public to understand the changes have occurred since the process of preserve design was essentially delegated to the individual jurisdiction sinc the earlier public review draft.

Chapter 3: Affected Environment

In general, this section is straightforward and well organized

1. The Magnitude of the Proposed Changes To The City of San Diego's General Plan Need To Be More Clearly Presented (3.2.3.4)

The presentation that the "City will amend the General Plan Land Use Maps as well as open space and conservation elements to reflect the City's Subarea Plan" is misleading. The proposed changes to these elements of the General Plan would redefine the City's basic approach to open space planning and could have the effect of reducing the protections and lowering the priorities of certain types of open space, particularly in developed areas of the City. These changes need to be clearly identified and their impacts evaluated. 80(z)

2. The Consistent Representation That The Proposed MSCP Mitigation Ratios Are the Same As Existing Mitigation Ratios Is Not Accurate (3.3.2)

In general, the mitigation ratios that are proposed are significantly lower than the formal standards that have been the basis for decision making by both the wildlife agencies and local jurisdictions. There is uncertainty and disagreement about what the actual history of mitigation has been. The more accurate contention is that the mitigation ratios are not being reduced "from actual practice"—which leaves open the issue of why mitigation standards have not been followed. At the least, the basis for these types of claims need to be distinguished and clearly documented. 80(aa)

3. The Potential Impacts Of Planned Roadway Systems On the Viability and Functioning of The MSCP Preserve System Have Not Been Analyzed

The Regional highway development plan is taken as a given in the EIR/EIS analysis. There is no clear indication whether the preserve system has been planned to minimize the impacts of these clear threats to wildlife and to corridor and core integrity nor is their an analysis of their potential impacts. While the text makes general references to the relationship of existing and planned transportation facilities to the MSCP preserve, there should be a clear map showing the location of existing and planned transportation facilities to the preserve design. These same comments apply to existing and planned landfills. 80(ab)

4. The Complementary Relationship Of the MSCP Planning Effort and The Efforts At Regional Growth Management Are Inadequately Addressed (3.6.2.3)

Citizens of San Diego have clearly expressed their concern over the impacts of unplanned growth on their quality of life and have expressed their desire for "regional growth management planning." The "problem" of "region-wide shortfall of available land for housing" is not an "MSCP problem" as implied in the analysis. It relates to a broader concern with the pattern of sprawl development that has dominated—its impacts on congestion, costs of services and facilities and loss of resource values and reductions in quality of life. There is no indication in the analysis that San Diego citizens want a regional growth management strategy and that the MSCP program is a consistent element of this desire and plan. 80(

Chapter 4.0 Environmental Consequences

4.2 LAND USE

1. "Inconsistency With Key Land Use Regulations, Particularly Resource Protections Ordinances" Should Be Identified As A Criteria To Determine Significance Or As An Issue For Discussion (4.2) (B.1.4.2) (4.2.1.1)

Both the City and County Subarea Plans propose major, substantive changes in there Resource Protection Ordinances, probably the most basic local regulations designed to protect the environment. Proposed changes to these ordinances should be carefully evaluated for their potential environmental impacts; they have not been. 80(ad)

2. Potential Positive Impacts, Of Shifting Development As A Result of MSCP Implementation, Are Not Identified

The analysis of Land Use fails to acknowledge the fact that the Regional Growth Management Strategy's Land Use Distribution Element encourages 80(ae)

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"focusing new growth within walking distance of major transit services, providing mixed-use districts as the centers of the region's communities, providing residential uses within major employment areas, and providing safe and convenient pedestrian and bicycle access." (Description from Chapter 5: Growth Inducement, Page 5-2) 80(ae)

This means that, while the MSCP has potential inconsistencies with local jurisdictional plans, it may actually be promoting the regional-level plan. Granted, there are policy conflicts here, but they deserve to be identified and aired.

It also should be noted that regional-level analyses of local jurisdictional land use plans have consistently concluded that jurisdictions have over-planned and over-zoned for industrial uses at the expense of land for residential development.

3. The Proposed Changes To the City of San Diego's General Plan Contain Major Policy Changes That Could Have Significant Impacts On the Environment Have Not Been Identified Or Analyzed (B.1.4.2) 80(af)

   These proposed changes include: a) redefinition of "open space" and "open space planning"; b) reduction in hillside protections,

4. The Impacts Of Proposed Facility Improvements, Such As Planned Landfills and Highways, On The Functioning of the Proposed MSCP Preserve Have Not Been Identified Or Analyzed (B.)

   For example, there is no serious discussion of the compatibility of the existing and proposed landfills in the East Elliot Community Plan with the proposed preserve in that area. The conclusion that "The proposed open space uses would also be more compatible with the two landfills than would residential uses" begs the issue of the potential impacts a major landfill could have on preserve functioning, such as from introduced predators. (B.1.4.2) 80(ag)

5. The Discussion of the County, Lakeside-Jamul Area Contains A Logical Inconsistency—Arguing That the Need To Convert Land Planned For Development For the MSCP Preserve Will Not Result In Land Use Impacts (4.1.6.1)

   On the one hand, the discussion acknowledges that significant land, in addition to that presently planned for open space, will need to be devoted to the MSCP preserve. On the other hand, it argues that "...development intensities and types anticipated by the approved Regional Land Use element could be implemented..."

   The statement, "Although, as indicated in Table 4.2-13, implementation of 80(ah)

the preserve within the Metro-Lakeside-Jamul Segment would require the conversion of property designated for urban uses to open space, it is not anticipated that significant conflicts with approved land use plans would occur" isn't logical. For other jurisdictions, the Land Use analysis indicates that these types of "required conversions from planned development" are significant impacts. Unfortunately, the data provided does not provide a quantified indicator of the magnitude of this shift from "planned development" to "planned preserve" for the Lakeside-Jamul Segment. 80(ah)

The discussion about "required conversion" in B.1.6.2 is then contradicted in B.1.6.3 which argues that under the Biological Mitigation Ordinance, the primary machinery for implementing the MSCP in the Lakeside-Jamul Segment, "no features of the BMO would supersed(typo) the type of land uses currently designated for private land."

The discussion on this topic consistently sounds like doubletalk: "The MSCP plan for the Lakeside-Jamul Segment will change the rules, with the new Biological Mitigation Ordinance, to build the MSCP Preserve--BUT nothing will change." "Present plans will not result in an adequate preserve for the area, but the plan intends to build the preserve without changing the present plans." One is left with the impression that the only way the preserve will be accomplished in this area is through straight purchase—which is the apparent underlying intent of its proponents. Of course, if this were the case, it would violate the underlying principle of a PRIVATE-public partnership and would have significant implications for the financial feasibility of the entire MSCP Program.

6. <u>The Impacts of the Proposed Policy For Lakeside-Jamul That Places Existing Permits Ahead Of Preserve Needs On the Biological Viability Of the Preserve Has Not Been Identified Or Evaluated</u>

   The ability of projects with existing permits to "supersede" the Subarea Plan, as proposed in the Subarea Plan, could have a significant impact on the preserve and on its feasibility. No information is provided as to the extent of this circumstances or to it possible impacts relative to the critical configuration issues that have been identified in the Lakeside-Jamul Segment. 80(ai)

7. <u>The Project-By-Project Philosophy Of The County Biological Mitigation Ordinance For the Lakeside-Jamul Segment Directly Contradicts The Underlying "Preserve Planning" Philosophy and Tenants of the MSCP</u> 80(aj)

MISCELLANEOUS COMMENT:

1. Page ES-2 of the Executive Summary. The *Draft Joint EIR/EIS* grossly MISREPRESENTS the level of involvement which "environmental groups" have had in "negotiations" regarding the mitigation for major projects. 80(ak)

Such involvement was generally "minimal" and "after-the-fact" or arbitrarily selective. 80(ak)

Respectfully Submitted,

Craig Adams

Craig Adams
Chapter Coordinator
Sierra Club, San Diego Chapter

81 CRAIG ADAMS, SIERRA CLUB COMMENTS ON THE MSCP, 10/30/96

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81(a) Comments noted.

81(b) See **Theme Response I, Species Analysis Approach.**

81(c) See **Theme Response XIV, Biological Monitoring.**

81(d) See **Theme Responses XVI, Risk Factors and XIX, Preserve Management.**

81(e) The County and wildlife agencies are not in conflict on this issue. The Biological Mitigation Ordinance (BMO) directs mitigation toward land that is defined as Biological Resource Core Areas. The ordinance sets lower mitigation ratios when mitigation takes place within Biological Resource Core Area. The wildlife agency maps of preapproved mitigation areas identify which areas have already been determined to meet the definition of core area for mitigation purposes (e.g. mitigation within these preapproved areas qualifies for reduced mitigation requirements). Thus project applicants, by referring to the wildlife agencies' map, can determine in advance where mitigation ratios will be lower. Lower mitigation ratios are designed to be an incentive for mitigation within these Biological Resource Core Areas, leading to preserve being assembled based on conservation within these areas.

81(f) See response to Comment 79(ap).

81(g) The MSCP Plan addresses the take and conservation of covered species within participating jurisdictions. All other types of environmental and community quality protections would continue to be addressed through project approvals subject to applicable zoning, development regulations, and environmental review.

81(h) See **Theme Response IX, Allowable Uses within MHPA.**

81(i) Under Section 10(a)(1)(B) of the federal ESA, the wildlife agencies may permit the take of individuals of a species or area of occupied habitat. For the MSCP Plan, take has been estimated using both methods, depending upon the level of information known about a particular species. Table 3-5 of the MSCP Plan displays the number and percent of points, polygons, and major populations conserved. Where appropriate, the latter category uses the percent of potential habitat conserved. Actions on military lands that may affect listed species would be subject to formal consultation pursuant to Section 7 of the federal ESA. See also revisions to Table 3-5 of the MSCP which provides the rationale for species coverage included in the Revisions to the MSCP Plan, Volume I, January 1997.

81(j) The estimated amount of take is provided in revised Table 3-5 included in the Revisions to the MSCP Plan documentation, January 1997. Preservation of approximately 75% of the remaining habitat represents a significant amount of conservation.

81(k) Physically constrained lands inside the MSCP study area, but outside the MHPA, should not be considered as preserved for the purposes of the MSCP, due to several factors. First, by their nature and location, habitat on constrained lands outside the MHPA are generally fragmented, with limited biological value. Second, of the 74,806 acres of constrained lands, 49,197 acres are privately owned. While portions of these lands have physical constraints to development (such as steep slopes) and require special planning review, development or agriculture is not uniformly prohibited in these areas. Some development could occur, and, except under special circumstances, such as wetlands protected by the Clean Water Act, the development may not be subject to biological review.

81(l) Table 3-5 of the Draft EIR/EIS has been revised to incorporate portions of various tables, charts, etc. from the MSCP Plan and describe the rationale for coverage, including the level of conservation of known populations and potentially occupiable habitat, which provides the basis for coverage (landscape, special management, etc.), and details of the coverage. Table 3-5 of the MSCP Plan has been revised to include the monitoring approach that would document conservation of populations and preserve function. Refer to revised Table 3-5 n the Revisions to the MSCP Plan documentation, January 1997.

81(m) See **Theme Response I, Species Analysis Approach.**

81(n) In determining whether the impacts of the plan to species are significant, both the context and severity of adverse and beneficial impacts are considered. Context includes the status of the species range wide and locally; the importance of the affected population to the recovery and survival of the species; existing and future threats to the species; and the degree to which the MSCP Plan contributes to the species' conservation. Severity includes the duration and intensity of the impact; the degree to which possible effects on the species are highly uncertain or involve unique or unknown risks; the degree to which the action may establish a precedent for future actions with significant effects on the species; and whether the action is related to other actions with individually insignificant but cumulatively significant impacts on the species. An effect that cannot meaningfully be detected, measured, or evaluated relative to the species' range, status or habitat as a whole was determined to be insignificant and require little to mitigate or minimize the potential take associated with the proposed action. Based on the wide-ranging nature of these species, and the minor role of the MSCP study area in their overall conservation, the wildlife agencies determined that the impacts of the proposed action on these species was insignificant.

81(o) See **Theme Responses XVI, Risk Factors and XIX, Preserve Management.**

81(p) See response to Comment 80(r).

81(q) The MSCP Plan is designed to mitigate the impacts of the proposed issuance of take authorizations permits under Section 10(a)(1)(B) of the federal Endangered Species Act and management authorizations under the California Endangered Species Act and the Natural Communities Conservation Planning Act. Section 10 of the federal ESA requires that the wildlife agencies make a series of findings, including that the taking would not appreciably reduce the likelihood of the survival and recovery of the species in the wild. The USFWS will make this finding through preparation of a biological opinion on the proposed permit issuance. The USFWS has not yet prepared final recovery plans for the majority of the federally listed species on the proposed covered species list. However, it is apparent that the current direction of existing habitat conservation in San Diego County would result in fragmentation of remaining habitat and thus certainly preclude recovery for these sensitive species. Implementing the MSCP Plan would change this direction and promote the recovery of the covered species through conservation of habitat in a preserve system that would provide management funding. See also **Theme Response XVIII, Recovery of Species.**

81(r) See response to Comment 1(a) and **Theme Response I, Species Analysis Approach.**

81(s) See **Theme Response XXII, Sufficiently/Significantly Conserved Vegetation Communities.**

81(t) Of the 171,917 acres to be included in the MSCP preserve, 81,750 acres (47.6%) are currently in public ownership; 63,170 acres (36.7%) would be conserved through avoidance and mitigation associated with private development; and 27,000 acres (15.7%) would be protected through public acquisition. Non-acquisition sources thus account for 84% of the proposed preserve.

Conservation of these lands would occur through site-specific planning, avoiding impacts to important habitat areas and directing development to less significant areas. With respect to wildlife corridors and habitat linkages, in most areas of the MHPA there is sufficient existing habitat to allow alternative configurations.

81(u) Contributions of land to the preserve in the Metro-Lakeside-Jamul segment of the County Subarea Plan will occur as the result of development occurring within this area. The County Subarea Plan and BMO require mitigation based on habitat tier at specified mitigation ratios. Three significant variables which affect the level of conservation in this segment were incorporated into the estimates of the amount of land that would be contributed to the preserve from development in this segment. They were (1) the percentage of projects that would mitigate their impacts outside of the preapproved areas; (2) the mitigation ratio that would be applicable, and (3) the estimated number of acres of development. The assumptions used are included in the County Subarea Plan, Table 4-8. The numbers used to construct Table 4-8 were conservative estimates regarding the number of acres of preservation within the wildlife agencies' preapproved mitigation areas. Only lands conserved within the wildlife agencies' preapproved mitigation areas contribute toward the County meeting its conservation goals for the Metro-Lakeside-Jamul segment of their subarea plan. With over 110,000 acres of vegetation

communities in the Metro-Lakeside-Jamul segment which, if developed, must be mitigated, the subarea plan only assumes that 10,650 acres of conservation within preapproved areas will occur. The remaining conservation (approximately 13,000 acres) needed to reach the total goal for the area will be met through local, state and federal acquisition efforts. The 13,000 acres is included in MSCP Plan, Volume I, Table 4-3 as the acquisition needed for the Metro-Lakeside-Jamul segment of the County Subarea Plan.

81(v) In the event that there is a shortfall in the local funding, the wildlife agencies will review the entire MSCP program to determine if take authorizations should be revoked, suspended or can remain in effect based on the level of conservation and habitat loss that has occurred. There may be alternative solutions (e.g., private land donations, state and federal land acquisition loans to the local jurisdictions, water district funding, state bond funds for local open space acquisition, etc.) for local funding shortfalls that will allow the take authorizations to remain in effect. The solution may also be to downsize the preserve and reduce the covered species list to fit with the new preserve size. Any downsizing of the preserve and/or reduction in the covered species list would necessitate a public process open to stakeholder input. See also **Theme Response XXIV, No Surprises.**

81(w) The MSCP is based on a single financing plan, as described in Section 7.0 of the MSCP Plan. It is not intended that each subarea plan should prepare a separate financing plan. Please see **Theme Response IV, MSCP Financing Plan: Regional Source of Funds.**

81(x) The MSCP Plan and subarea plans include specific habitat conservation requirements along with either a fixed preserve design or specific preserve design criteria. Table 3-5 of the MSCP Plan translates these goals and criteria into species-specific conservation levels (please refer to revisions to Table 3-5 included in the Revisions to the MSCP Plan documentation, January 1997). The conservation levels are carried over into each subarea plan and the goals must be met by the take authorization holders. Sections 10 and 11 of the Implementing Agreements will provide the assurances that the habitat conservation and species conservation goals will be met. Failure to meet these goals by the take authorization holder may result in suspension or revocation of the take authorizations.

81(y) The proposed approach in the Metro-Lakeside-Jamul segment is not the traditional project-by-project approach. It is a preserve assembly approach which will create the preserve and conserve species and vegetation communities in the pattern and amounts anticipated by the County Subarea Plan.

As discussed in response to Comment 81(g), there is no contradiction in the Biological Mitigation Ordinance and the wildlife agencies' approach. The agencies' map is simply one way of arriving at a determination of which land meets the qualifications of Biological Resource Core Area.

The County's Implementing Agreement will include language regarding the circumstances under which the wildlife agencies may withhold Third Party Beneficiary status for a specific project. Annual reviews will be used to review the County's overall compliance with the take

authorizations. Upon issuance of the take authorizations, the County will be obligated to only authorize projects consistent with the MSCP Plan, Subarea Plan and Implementing Agreement, including meeting the goals and criteria portions of the subarea plan. This, in combination with the acquisitions by the local, state and federal agencies, will result in assembling the preserve system which achieves the conservation goals on which the take authorizations are based.

81(z) The evaluation of boundary adjustments would be made by the local jurisdictions with concurrence by the wildlife agencies. Only those adjustments that result in the addition of the same or higher biological value to the preserve would be processed without a formal amendment to the subarea plan. The adjustment would still be disclosed with substantiating information provided in the environmental document which is circulated for public review and comment. Since only those adjustments that maintain or improve the preserve would be processed in this manner, significant impacts to the preserve should not result. Proposed adjustments that do not meet the equivalency test, as described in the MSCP Plan, would be subject to a formal amendment to the MSCP Plan and associated subarea plan.

The reference to inclusion of adjustments in the annual report is to provide an annual summary. As stated in the MSCP Plan and subarea plan, boundary adjustments can only occur with the concurrence of the wildlife agencies which would precede the actual adjustment.

81(aa) Pursuant to 50 CFR 13.45 of the Implementing Regulations for the federal ESA, the wildlife agencies require all participating local jurisdictions to submit an annual public report on all activities conducted under their take authorizations to ensure compliance with its terms and conditions. This report is part of the public record and would be made available upon request. Further public review of this report would be at the discretion of the individual jurisdictions. The wildlife agencies would meet annually with individual jurisdictions to discuss their compliance with the terms and conditions of their permits. The wildlife agencies would not require that this meeting be publicly noticed. In addition to the annual report, every 3 years, the participating jurisdictions would issue a MSCP status report and hold public hearings to receive public comment. This MSCP status report would be accompanied by a biological monitoring report prepared by the wildlife agencies and a preserve management report submitted by the managers of each preserve.

81(ab) The proposed approach in the Metro-Lakeside-Jamul segment is not the traditional project-by-project approach. It is a preserve assembly approach which will create the preserve and conserve the species and vegetation communities in the pattern and amounts anticipated by the subarea plan.

81(ac) The summary presentation refers to the differences in "hard line" preserve areas and goals and criteria preserve areas. The "hard line" areas are located in the Lake Hodges and South County Segments. In these areas, mitigation for the non-permit amendment areas has been negotiated and agreed to by the landowners and the wildlife agencies. Land which is not part of a "hard line" area, may become

part of the plan through the Major or Minor Amendment process. For amendment areas, all mitigation requirements would be negotiated with the wildlife agencies before the amendment is approved.

The statement, "Within the Metro-Lakeside-Jamul segment there are no lands considered 'covered' by the Plan without incorporating mitigation and avoidance requirements," means that lands within this segment have not been the subject of negotiations with the wildlife agencies. Take of covered species is only authorized on lands within the Metro-Lakeside-Jamul segment when a project which is consistent with the MSCP Plan, Subarea Plan, and Implementing Agreements and the project is approved by the County.

The draft BMO will be revised to correct drafting problems. The incentives in the BMO are adequate to meet the objectives. There are not inconsistencies between the wildlife agencies and County's description of the core biological resource areas and mitigation requirements. Projects would be subject to the requirements of the Biological Mitigation Ordinance and the ordinance directs mitigation to Biological Resource Core Area. The role of the pre-approved mitigation areas has been previously discussed in response to Comment 81(y).

81(ad) The term "Metro" was not selected to imply any level of future development within the area. The Metro-Lakeside-Jamul segment name is a compilation of the names of various planning areas for this segment. The Metro planning area is generally located south and east of Lake Hodges.

81(ae) See response to Comment 80(r).

81(af) See response to Comment 25(a).

81(ag) See **Theme Responses XVI, Risk Factors, and XIX, Preserve Management.**

81(ah) The jurisdictions and the wildlife agencies agreed that imposing a buffer around the preserve would result in additional land-use restrictions on private landowners. The MSCP, therefore, requires that the jurisdictions confine development impacts to development areas to reduce or eliminate impacts from these projects into the preserve (see page 6-1 of the MSCP Plan, Volume I). Fencing and control of non-native predators and invasive species is addressed for each species in Table 3-5 and would be incorporated into preserve management plans. The concept of adaptive management would provide for redirection of funding and other resources toward unanticipated problems affecting covered species and the preserve. See also revisions to the MSCP Plan, Volume I, (Appendix B, Preserve Management).

81(ai) The MSCP Plan is a regional habitat conservation plan that is intended to meet the requirements of FESA, CESA, and NCCP. The list of optional sources of funds was determined through extensive discussions by the MSCP Working Group, the MSCP Policy Committee, and hearings and workshops held by City Councils and Planning Commissions of participating local jurisdictions. These discussions led to the elimination of utility-based revenues from the list of funding options.

81(aj) A comparison of the acquisition estimate of the MSCP Plan to that of the March 1995 Public Review Draft MSCP Plan involves two issues. The first issue is the estimate of total public acquisition. The estimate in the MSCP Plan is 27,000 acres, where the estimate in the Public Review Draft ranged from 24,000 acres to 40,500 acres (Public Review Draft, Section 3.3, pp. 3-46 ff.). Thus, the estimate in the MSCP Plan is closer to the low estimate of public acquisition shown in the Public Review Draft than the high estimate.

The second issue is the allocation of acquisition responsibility between the federal and state governments, on the one hand, and local jurisdictions, on the other. The allocation proposed in the Public Review Draft would have included purchases of off-site mitigation by private development projects as part of the "local share" of acquisition. In preparing the MSCP Plan, however, the local jurisdictions and the wildlife agencies agreed not to consider offsite mitigation and to share the acquisition responsibility equally between the federal/state governments and the local jurisdictions, at 13,500 acres each.

81(ak) Periodically, elements of the MSCP Plan received scientific review. For example, the vegetation community mapping and habitat evaluation model elements were reviewed by the State Scientific Review Panel established by the Natural Communities Conservation Planning (NCCP) Act of 1991. In addition, the MSCP Plan has undergone two widely noticed public reviews, one beginning in March 1995, the other beginning in August 1996. At the outset of both of these public review periods, numerous copies of the MSCP Plan were distributed to individuals in academic and scientific positions. From the beginning, the MSCP planning process has been open to public involvement. There has been no resistance to public or scientific review.

The MSCP database was distributed for public review in spring 1992 and spring 1993 to correct inaccuracies in the vegetation communities and sensitive species mapping. After each review period, revisions were made to the maps, where appropriate, based on public comment. Among others, the environmental groups received maps for review during these two time periods. See also **Theme Response XI, Scientific Review Adequacy.**

81(al) Comment noted.

81(am) The San Diego City Council's direction on October 31, 1996 regarding Carmel Valley Neighborhood 8A was to address the acquisition of properties proposed as open space. Statements by individual Council members regarding their view of the proposed Manager's Compromise Plan were not part of the approved motion.

81(an) The development bubble in the Del Mar Mesa area is part of a negotiated agreement between the City, the NCFUA Subarea V community, and the wildlife agencies, and would remain shown for development unless the parcel is purchased. This parcel is partially disturbed, having been historically farmed, and is at the edge of the Del Mar Draft EIR/EIS core area, not in the middle. It

is recognized that the resource core would be more intact if development did not occur there, but the priority for public purchase is the large amount of land identified as the Del Mar Draft EIR/EIS core area.

81(ao) The August 1996 Draft City of San Diego Subarea Plan identifies Montaña Mirador as part of the proposed preserve with a note as suggested by the commenter (see MSCP Plan, Vol. II, City of San Diego Subarea Plan, Page 27, Note C24).

81(ap) Inclusion of this parcel within the preserve was considered during the San Pasqual Plan Update that occurred in 1995. Due to the lack of habitat on the site it was considered to be of lower priority for inclusion in the preserve but was identified as having long term restoration potential. Once restored, the site could add upland habitat adjacent to the riparian area that has been included in the preserve. The site is currently under lease negotiations for the production of organic agriculture. The revised lease would include measures to set aside a portion of the site for coastal sage scrub restoration. Additional areas may be included in the lease as agriculture activity is terminated in the long term.

81(aq) See **Theme Response XVI, Risk Factors.**

81(ar) The high level of fragmentation of the MSCP preserve design for south Otay Mesa is primarily the result of previously approved projects. The configuration of this portion of the preserve will be considered in the overall analysis of the proposed MHPA in determining issuance of take authorizations.

81(as) See response to Comment 45(bq).

81(at) Comment noted. The draft Biological Mitigation Ordinance, which is fully analyzed in the Draft EIR/EIS, is the only proposed change in the County's existing Resource Protection Ordinance (RPO). The remaining portions of RPO remain in effect. An EIR will be completed when revisions to RPO are made. The proposed Biological Mitigation Ordinance, like the RPO, requires an analysis of the biological resources on the property as a starting point. The proposed ordinance sets out specific requirements for mitigation based on types of habitat and specifically requires avoidance of certain sensitive animal and plant populations. In this respect, the proposed ordinance is more restrictive than existing RPO. In addition, the proposed ordinance is drafted to direct mitigation toward certain areas that would lead to creation of a preserve.

81(au) The City of San Diego's "Wetlands" definition was revised to be consistent with the federal definition. The City will continue to review projects under RPO and CEQA for effects on wetlands. See also **Theme Response XXV, Wetlands Protection.**

81(av) See **Theme Responses XVI, Risk Factors and XIX, Preserve Management.**

81(aw) The mitigation ratios that appear in Exhibit N provide a sufficient level of incentive to direct mitigation inside the MHPA. Coupled with the other implementing measures (e.g. public

acquisition, impact avoidance), the proposed mitigation ratios would successfully achieve the City's conservation targets identified in the City of San Diego Subarea Plan. Modeling conducted by Todd Olson (*Application of the Habitat Unit Mitigation to the Project Mitigation Component of the MSCP Plan First Supplement* dated August 9, 1995) supports the validity of the proposed incentive based ratios.

81(ax) See response to Comment 81(i).

81(ay) Comment noted. The Biologically Preferred Scenario included the conservation of Fanita Ranch and was analyzed in the EIR/EIS.

81(az) Comment noted. The list of covered species for Santee based on only their subarea plan is significantly less than other subarea plans and would not include several key species including the California gnatcatcher. Only with the other identified jurisdictions could Santee receive coverage for the identified species. Please refer to **Theme Response XX, Severability of Take Authorizations.**

81(ba) The species and vegetation community protection goals are intended to serve as measurable criteria. Species occurrences are used as part of the conservation goals and they reflect known information and are appropriate for inclusion as protection goals. Please refer also to **Theme Response X, Habitat Conservation Accounting Model.**

The public involvement in case-by-case determinations will be through the CEQA process for the specific project, which is no change from the current process.

81(bb) The wildlife agencies will be making their decisions on the adequacy of the MSCP Plan, subarea plan (including mitigation and monitoring requirements) and Implementing Agreement based on the information in the documents and public input during the NEPA and CEQA processes. Their issuance of the take authorization for specific species is their approval of the mitigation ratios for various vegetation communities and the implementing agreements are the enforceable contract between the wildlife agencies and the local jurisdiction that requires the ratios used to be as specified in the subarea plan. Issuance of a take authorization to a local jurisdiction allows the local jurisdiction to approve projects which result in incidental take of covered species The incidental take of a covered species is then covered by the local jurisdictions take authorization. For incidental take on a project to be covered by the jurisdiction's take authorizations, the project must be approved in conformance with the jurisdictions' subarea plan, Implementing Agreement and the MSCP Plan. The CEQA process will be used by the local jurisdictions to: disclose the impacts of the project; identify the mitigation being imposed to comply with their subarea plan, Implementing Agreement and the MSCP Plan; and provide for public input on the project. The wildlife agencies will continue to have the opportunity to comment on projects, but their enforcement of compliance with take authorizations will be independent of the CEQA process.

81(bc) The requirement for a minor amendment for a project does not eliminate nor supplant the normal CEQA process for the project, but rather requires the additional step described in the subarea plan. Public involvement will be through the CEQA process for the project.

81(bd) The County Subarea Plan was evaluated as a whole and not based on its component segments.

81(be) See response to Comment 45(bp).

81(bf) The comment is noted. The number in the table is the correct number and the number in the assumption will be changed in the County Subarea Plan.

81(bg) (a) ***Use of CEQA exemption too broad*** – The CEQA exemptions in the County's proposed BMO are nearly identical to the ones in the current County Resource Protection Ordinance (RPO).

(b) ***Criticism of "Interim Sensitive Lands Ordinance"*** - Comment noted.

(c) ***Criticism of Director DPLU Authority*** – Comment noted. Discretionary permits will be subject to eh same public review requirements that exist currently.

(d) ***Criticism of exemption for recreational facility*** – Comment noted. This exemption will be deleted from the draft ordinance.

(e) ***Who will determine viability of proposed mitigation lands*** – The County will make this determination assisted by the wildlife agencies pre-approved mitigation maps, and their comments during the CEQA process and pursuant to Draft EIR/EIS and NEPA.

(f) ***Who decides what is a biological resource core area*** – The County makes this decision using the criteria set out in the Biological Mitigation Ordinance and the habitat quality maps included in the County Subarea Plan and MSCP Plan. The tables and ratios in the Biological Mitigation Ordinance are designed to provide certainty as to mitigation requirements and to avoid on-going conflict. Under the terms of the ordinance, an initial biological resource study is performed using appropriate protocols to determine which resources exist on the property. By means of this study, vegetation communities on the project site are identified and quantified and the presence of a Rare, Narrow Endemic Animal Population, a Sensitive Plant Population, or a Critical Population of Sensitive Plants are determined. The information gathered is used to design the project and determine the mitigation requirements consistent with the BMO, Subarea Plan and the County's take authorizations. During the CEQA process for the project, the public and the wildlife agencies will have an opportunity to provide input on the determination of what is a biological core resource area.

(g) ***Who decides outside the Subarea Plan*** – The procedure is the same as described above except that the take of listed species would have to be authorized by the wildlife agencies.

(h) ***Relationship between wildlife agency "preapproved mitigation areas" and "biological resource core areas"*** – Unclear. The BMO defines biological resource core areas. The "preapproved mitigation areas" are not intended to represent biological resource core areas as defined by the BMO.

(i) ***Objection to term "core linkage"*** – Comment noted. This term describes linkages within large blocks of habitat that link important core areas together and is consistent with maintaining functional linkages (which support sensitive species) between core areas.

(j) ***Determination of mitigation requirements called uncertain*** – Article IV will be substantially redrafted to set out more clearly the process involved in implementing the BMO. See explanation under part (f) above. The ordinance sets up specific criteria for determining Biological Resource Core Areas and this approach is intended to create greater rather than less certainty.

(k) ***Objection to failure to include a definition of "Significant Population"*** – The revised draft BMO will include the following definition: "significant population" shall be those populations specified in a Subarea Plan as critical population and a group or groups of a sensitive species, wherever located, the loss of which would preclude the recovery of the species.

(l) ***Objection to extent of encroachment*** – The BMO sets avoidance as the first design priority in Biological Resource Core Areas. For sites containing sensitive plants, avoidance is also a first level priority. For sensitive plants on Groups A and B of the San Diego County Sensitive Plant list, loss may not exceed 0-20% of the population on site. Mitigation for other sensitive plants is based on habitat and determined according to the tier levels drafted into the BMO. Mitigation for Rare and Narrow Endemic Animal Species shall use avoidance is a first level priority.

(m) ***Continuation of Habitat loss permits*** – Upon the issuance of state and federal take authorization for the County's Subarea Plan, the 4d interim habitat loss permit process for the Subarea Plan area will be eliminated. The Section 4(d) Special Rule interim habitat loss permit process for the remainder of the County will remain unchanged.

(n) ***Criticism of Tier Mitigation System as uncertain.*** Comment noted. The draft BMO provides criteria designed to provide project certainty.

(o) ***Criticism of "shall be generally followed*** – Comment noted. The revised draft BMO will clarify this issue.

(p) ***Lack of Table 2*** – A full set of tables will be furnished with the revised draft of the BMO.

(q) ***Question about Groups C and D on Attachment D*** – The revised draft of the BMO clarifies the relationship of these groups.

(r) ***Incorrect reference to Article IV, C.*** – The revised draft of the BMO will address all referenced internal inconsistencies.

81(bh) The comment is noted. It is anticipated that the implementing mechanisms incorporated in the MSCP Plan and the County Subarea Plan will adequately result in establishment of a preserve system that meets the goals of both the MSCP Plan and the subarea plan.

81(bi) (a) Species protection goals are intended to serve as measurable criteria and will be the basis of the wildlife agencies annual compliance review. Page 4-21 of the County Subarea Plan states "Only lands conserved within wildlife agency preapproved areas will contribute toward meting the conservation goals." As such, the preapproved mitigation areas reflect the only verified solution to meeting the species and vegetation community goals and core and linkage design criteria to which the County is committing.

(b) Biological resource core areas have the same definition in the BMO as was used to define core biological resource areas in the MSCP Plan, Volume I, Figure 2-2. Since the same definition is used, it is reasonable to conclude that using the definition in the BMO will result in an outcome nearly identical to Figure 2-2.

(c) The preserve design criteria are essentially identical to the criteria used to create the MHPA map in the March 1995 Public Review Draft of the MSCP Plan. Their application then created an appropriate preserve design, and their application by the County must result in an appropriate preserve design or the County's take authorizations will be suspended or revoked by the wildlife agencies.

(d) The potential for leakage was taken into consideration in estimating the amount of lands conserved in the Metro-Lakeside-Jamul segment through mitigation. Contributions of land to the preserve in the Metro-Lakeside-Jamul segment of the County Subarea Plan will occur as the result of development occurring within this area. The County BMO requires mitigation based on habitat tier and specified mitigation ratios. Three significant variables which affect the level of conservation in this segment had to be incorporated into the estimate of the amount of land that would be contributed to the preserve from development in this segment. They were (1) the percentage of projects that would mitigate their impacts outside of the preapproved areas, (2) the mitigation ratio that would be applicable, and (3) the estimated number of acres of development. The assumptions that were used are included in the County Subarea Plan, Table 4-8. The numbers used to construct Table 4-8 were conservative estimates which should reflect a worst case scenario regarding the number of acres of preservation within the wildlife agencies' preapproved mitigation areas. Only lands conserved within the wildlife agencies' preapproved mitigation areas contribute toward the County meetings its conservation goals for the Metro-Lakeside-Jamul segment of their subarea plan. With over 110,000 acres of vegetation communities in the Metro-Lakeside-Jamul segment which, if developed, must be mitigated, the County Subarea Plan assumes that only 19,650

acres of conservation within preapproved areas will occur. The remaining conservation (approximately 13,000 acres) to reach the total goal for the area will be met through local, state and federal acquisition efforts. The 13,000 acres is included in MSCP Plan, Volume I, Table 4-3 as the acquisition need for the Metro-Lakeside-Jamul segment of the County Subarea Plan.

(e) See (d) above.

(f) The Implementing Agreement for the County Subarea Plan will clearly define the County's role and responsibilities for achieving the conservation targets that are the basis for issuance of their take authorizations.

81(bj) Comment noted.

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Sierra Club, San Diego Chapter
3820 Ray Street
San Diego, CA 92104
Phone: 299-1741; Fax 299-1742

October 30, 1996

Jack McGrory, City Manager
City of San Diego
Attention: John Kovac
Land Development Review Division
1222 First Ave., 5th Floor
San Diego, CA 92101

Gail Kobetich, Field Supervisor
U.S. Fish and Wildlife Service
2730 Loker Ave., West
Carlsbad, Ca 92008

Ron Remple, NCCP Program Manager
California Department of Fish and Game
1416 Ninth Street
Sacramento, CA 95814

Subject: Sierra Club Comments on The Multiple Species Conservation Program, MSCP Plan, Volumes I and II, August, 1966

Dear Messrs. McGrory, Kobetich and Rempel:

Following are the comments of the San Diego Chapter of the Sierra Club concerning the Multiple Species Conservation Program, MSCP Plan, Volumes I and II.

INTRODUCTION

The Sierra Club remains optimistic the San Diego area can fashion a Multiple Species Conservation Program that will efficiently, effectively and fairly protect our region's outstanding biodiversity, carefully balanced with the area's other quality-of-life values. However, our review of the draft MSCP Plan and supporting documents leads us to conclude the MSCP program remains very much a "work in process" requiring significant refinement and improvement before it can meet its objectives and gain our support.

We are concerned that a "rush-to-judgment" timetable is being imposed and that key issues are not fully understood, evaluated or publicly discussed. The approximately 60 days that has been provided for this review was not adequate.

The Multiple Species Conservation Program has potentially sweeping implications for San Diego. It deserves careful review, thorough analysis of issues and full public discussion. This draft of the MSCP plan and the subarea plans reflects very significant changes from previous drafts. The project-by-project and jurisdiction-by-jurisdiction plan formulation process that has

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81(a)

characterized the most recent iteration of the MSCP plan has limited effective public participation. Our comments here reflect only some of the concerns we intend to express as the public review process associated with jurisdictional consideration of the various elements of the MSCP Program continue

The comments here will be directed to the MSCP Plan August 1996 Volume I, MSCP Plan and to the Volume II, Subarea Plans. We have made comments on the Draft Joint EIR/EIR in another communication; these EIR/EIS comments are incorporated by reference. Our discussion here is organized to address: Underlying Criteria For Evaluation; Summary of Club MSCP Position; Summary of Key Issues; and Detailed Comments on the MSCP Plan and Subarea Plan.

Sierra Club Criteria for MSCP Adequacy

In contrast to the long lists of heavily value-driven negotiating points that has characterized much of the MSCP discussion, the Sierra Club's criteria for adequacy are rather straightforward and practical:

- Meet the requirements of law
- Provide clear evidence that the MSCP program objectives are being realized in the Plan
- Provide reasonable assurances that the MSCP program can be implemented, as planned; and
- Establish clear enforcement provisions, if the program is failing to meet its objectives and the requirements of law are not being satisfied

Simply put, we are merely asking that the MSCP Plan demonstrate that it can work to meet its objectives.

Our review of the August 1996 MSCP Plan indicates that problems remain to be addressed with respect to each of these baseline criteria.

Sierra Club MSCP Position

The San Diego Chapter of the Sierra Club continues in its long-standing support for the concept of the Multiple Species Conservation Program. With the exception of the "no-lines" approach to preserve development, which we judge to have fatal flaws, the basic building blocks presented in the MSCP Plan provide a sound basis for refining and completing MSCP Program development.

The specifics of the draft MSCP Plan, as our comments will indicate, do not yet meet elementary program design and performance criteria. The support the Sierra Club hopes it can provide the MSCP program, as decision makers consider it, will depend on reasonable responsiveness to the concerns we have raised previously and reiterated here. Importantly, these concerns coincide closely with those of a broad range of environmental and community groups that have been involved in the MSCP program. We stand prepared to continue work with the range of shareholders involved in the MSCP program to produce the

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additional refinements this review will indicate are necessary to develop a program that is effective and widely publicly supported. 81(a)

Key Issues and Concerns Summarized

1. The Species Coverage--The MSCP Plan Claims--Has Not Been Adequately Established. If Clear Evidence That The Plan Can Ensure Species Viability Is Lacking, "Coverage" Should Not Be Extended

   The August 1996 Plan fails to provide evidence establishing that the proposed preserve system meets a primary objective of the MSCP program--protection of threatened species and maintenance of San Diego's unique biodiversity. A consistent, understandable and compelling methodology for establishing "species coverage" is missing. An evaluation of preserve design is missing and the evidence presented is often contradictory of the conclusions reached. 81(b)

2. The MSCP Lacks Standards For Judging MSCP Plan Implementation Performance

   How the preserve is being implemented is secondary to how well the species, the preserve is designed to protect, are fairing. Without species-and ecosystem-based performance standards their will be no clear basis for management of the preserve, and adjustments to it, if necessary. 81(c)

3. Management Measures Have Not Been Established In The Plan To Address The Potential For Significant Edge Effects To The Planned Preserve That Result In A "High Risk" To Species Claimed To Be "Covered" 81(d)

4. The "No-Lines" Plan For the Lakeside-Jamul Segment Does Not Provide Reasonable Assurances That The Biological Objectives of the MSCP Plan Can Be Met

   The wildlife agencies and the County provide different interpretations of how the plan for this area will operate—the County arguing against any lines and the wildlife agencies insisting that their "predetermined mitigation areas" will drive the formation of the preserve. This apparent "false agreement" does not produce confidence the "no-lines" plan can be effectively implemented. 81(e)

5. "Pulling-The-Permit" As The ONLY Option For Enforcing Non-Performance Under the Plan Is Not Workable. Intermediate remedies must be designed. 81(f)

6. Protection of Threatened Species Should NOT Become A Trade-off For Reductions In Other Types of Environmental and Community Quality Protections As Proposed In Parts of the MSCP Plan 81(g)

7. The MSCP Plan Isn't Clear That Public Infrastructure, Just As In the Case of Private Development, Should Be Planned To Best Complement The MSCP Preserve and Should Provide Mitigation To Support Preserve Development 81(h)

MSCP PLAN - VOLUNE I - Section-By-Section Comments

CONSERVATON PLAN - Section 3

1. The Modest Nature Of The Habitat Protection Goals of the MSCP Plan and The Large Amount of Habitat Loss Anticipated Under The Plan Is Not Clearly Presented (3.2)

The federal Endangered Species Act requires a clear specification of the estimated take of species under a proposed Habitat Conservation Plan and a showing that such take has been minimized. Because the MSCP Plan is intended to provide "coverage" of unlisted, as well as listed species, this "take" estimate must extend to the full list of "covered" species. The MSCP Plan does not provide clear information in this respect. 81(i)

The best estimate of "take" is probably the "Estimated Conservation of Habitats and Potential Developable Lands" Table B-4d in Volume II. This table estimates an expected "loss" to development of about 73,468 of habitat lands, or about 25%. This is a significant loss for a highly developed area that has already experienced nearly a 50% development conversion of its area. 81(j)

Significantly and unfortunately, the MSCP Plan fails to systematically take into account and to evaluate the fact that, under present local regulations, substantial portions of habitat lands outside the Multiple Habitat Planning Area (MHPA) will be preserved. For example, of the 130,675 acres of habitat lands outside the MHPA, about 74,806 acres, or nearly 60%, are identified as "constrained." These areas can continue to provide habitat values and contribute to species preservation.

While the appropriate emphasis of the MSCP Plan is on the development of a preserve system that protects a network of "biological cores and linking corridors", it is unfortunate that the potential biological contributions of these outside-the-MHPA, "constrained" lands were not factored into the analysis.

On the one hand, the analysis of the biological values of these "constrained" areas might be able to significantly contribute to the biological viability, especially the robustness, of the overall MSCP Plan. After all, the MSCP Plan depends in critical instances on an "island network" for at least one of its critical linkages (in the Lakeside-Jamul area). 81(k)

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On the other hand, the failure to clearly acknowledge the significance of these "constrained" lands contributes to the obvious and continuing pressure to modify local regulations and to remove these "constraints." A clear evaluation of the biological significance of these "constrained" areas could contribute to the biological "confidence level" of the MSCP Plan and to the recognition of the continued need for, and contribution of, these local protections, particularly those relating to hillside development limitations, 81(k)

2. The Species-By-Species Evaluation Of The Adequacy of Conservation To Establish "Coverage" Lacks Clear Methodology and Clear Standards (3.3) 81(l)

3. The "Covered" Conclusions Of The Species Evaluation In Many Instances Conflict With The Evidence

A number of the comment letters that will be submitted will detail the problems with the Covered Species analysis. From the start of the process, we have made clear that there must be a clear basis to support the "biological integrity" of the MSCP Plan.

The continuing and widespread concerns over this issue suggest that additional analysis and documentation is needed to establish an effective and legally defensible program. The confidence of the public, and their willingness to support and to help fund the MSCP Plan, depends upon the biological credibility of the MSCP Program.

In summary, the species coverage analysis suffers from the following series of problems:

- The data that is available is frequently so sketchy, or of such questionable quality, that any conclusions are difficult to reach

- Conclusions about the absence of a species in the MSCP area are not backed up by sufficient surveying

- Protection of numbers of species occurrence points does not adequately weigh specific breeding and foraging requirements

- The use of percent of habitat protection as a proxy for species viability is questionable, especially when species have rather unique demands and large proportions of key habitat areas are predicted to be lost under MSCP

- Conclusions frequently depend upon the performance of MSCP measures, such as the County Biological Mitigation Ordinance, that is uncertain or suspect 81(m)

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- Some of "covered" conclusions appear to be based on conditions for preserve improvement or special management that it is not clear have been met. Promises of "adaptive preserve management" are not adequate to justify coverage when such management is critical to species viability. Management necessary for species coverage must be detailed as part of the plan. 81(m)

- In some cases, there is literally no information, but "coverage" is declared

- Species that depend on habitats that are identified as "not adequately conserved" are judged to be "covered"—an apparent contradiction

- "Coverage" determinations do not seem to take into account species interdependencies and ecosystem interactions, such as in the case of the large predators.

4. We Doubt San Diegans Will Be Willing To Accept The Loss Of Species From the MSCP Area Because Thev Are Judged To Be "Insignificant" To The Species Survival Nationally 81(n)

5. Species Judged To Be At "Uncertain Risk" or "High Risk" Because Of Potentially Significant Edge Effects Should Not Be Considered "Covered" UNTIL There Are Management Practices In The MSCP Plan Or In-place 81(o)

6. The Marked Absence Of Anv Formal Participation Bv the Port Of San Diego In The MSCP Process Calls Into Question The "Covered" Conclusions For Species Dependent On Bav-Related Waters and Coastal Areas 81(p)

7. There Is No Apparent Attempt To Demonstrate That The MSCP Plan Will Not Appreciablv Reduce The Likelihood of Species RECOVERY In the Wild—One of the Clear Requirements For The MSCP Plan's Approval 81(q)

8. The Adequacv of the Configuration of The MSCP Preserve, Which Is Critical To Species Protection, Has Not Been Svstematically Evaluated With Respect To the Natural Communities Conservation Program Conservation Guidelines Or With Available Analvtical Techniques

The Underlying Concept of the MSCP is that a well-designed preserve system will allow the San Diego area to efficiently protect its biodiversity while permitting development necessary for economic and other human needs. Under the concept, "preserve configuration is 81(r)

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And yet, the MSCP Plan documents provide no clear evaluation of the preserve design. Techniques are available, and have been applied during the MSCP process to earlier preserve designs, to evaluate "preserve configuration or geometry." Requests for this type of analysis have been made but there has been no response. 81(r)

9. The MSCP Plan's Concept of "Conserved Vegetation Communities" Lacks A Documented Basis and Invites Misinterpretation and Inappropriate Application (3.4.2)

The MSCP Plan proposes to include the concepts of "sufficiently conserved vegetation communities" and "significantly conserved vegetation communities." A listing of factors used in this determination is included but there is no documentation detailing these factors (such as, patch size and amount of ecotone conserved) and no criteria or documentation is provided to distinguish vegetation communities determined to be "sufficiently covered" from those only "significantly covered." These classifications are not based in either state or local law and are strictly judgmental.

Technically, the two categories of "covered vegetation communities" have a limited application. They describe the locus of responsibility for actions needed to protect species that are not covered by the MSCP Plan but become listed subsequent to plan approval. In general, they transform a partnership between public and private to protect species into a shift of total responsibility to governmental units and the public. 81(s)

There is little question, however, that the "sufficiently covered" and "significantly covered" vegetation communities categories will be misapplied and exploited outside the specific context of their intended meaning. These characterizations will be used, not only to limit the responsibility of landowners to contribute to the protection of species listed after plan approval, but also to argue against the need for protection of habitat resources of local significance, unrelated to state or nationally threatened species.

The attempt here is to establish an "enough protection standard" based only on an evaluation (and a "soft" one at that) of threatened species impacts and apply it, across the board, to all types of habitat development considerations.

ASSEMBLING THE MSCP PRESERVE - Section 4

1. Design of the Preserve Does Not Make Adjustments For The Practical Difficulties Associated With The Policy To "Only Acquire Private Lands From Willing Sellers At Fair Market Value" 81(t)

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It is unrealistic to expect that all private land within the preserve areas it would be preferable to acquire will be able to be acquired at reasonable prices from willing sellers. Therefore, the preserve design should anticipate there will be slippages in acquisition that need to be compensated for in preserve design. There is no indication that this was a preserve planning design consideration. Without adjusting for this likely contingency, it is likely that the designated preserves will have significant functional deficiencies. 81(t)

2. The High Uncertainty Of The "No-lines" Element of the MSCP Plan Raises Questions About the Acquisition Estimates Of the Plan (4.1.2)

In discussions regarding the "no-lines" approach for the already highly fragmented Lakeside-Jamul Segment, the wildlife agencies have stressed the likely need to publicly acquire major portions of the critical linkages in this area. It is not clear that the particular circumstances of uncertain private contributions in this area have been factored into the overall acquisition plan. 81(u)

3. The Implications Of A Local Funding Shortfall Under the MSCP Plan Remain Unclear (4.3.2)

A critical legal requirement for the program is that "adequate funding for long-term protection of the species will be provided" (Page 3-23 MSCP Plan). It is critical that voters and local officials understand clearly what the outcome will be if local funding "promised" under the MSCP is not forthcoming. 81(v)

The Plan indicates in the event of local funding shortfalls that "the wildlife agencies will assess the impact of the funding deficiency on the scope and validity of the take authorizations." What does this mean? That the take permit will be withdrawn or modified? And what procedures will apply? Those relating to Extraordinary Circumstances or some other process?

IMPLEMNTATION STRATEGY AND STRUCTURE - Section 5

1. Subarea Plans Should Be Required To Include A Plan Of Funding For MSCP-Related Acquisition, Not Merely A "Commitment to Participate In Developing a Local Funding Source" As Is Proposed (5.2.2)

The requirement that "funding for long-term protection" must be provided is hardly met by a "commitment to plan for funding", the content requirement for subarea plans. While it is understandable that MSCP funding can not be finalized until there is a plan in place, there is no reason why the subarea plans should not include a "funding plan", including contingency provisions. 81(w)

2. Implementing Agreements Should Include An "Assurance" Provision For "Meeting Biological Objectives" (5.3 Implementing Agreements)

"Assurances" are provided in the Implementing Agreement model for every interest, except the intended primary focus of the MSCP Program—the species to be protected. A provision of Implementing Agreements should require that: objective biological standards be set; the consequences of non-compliance with the biological standards be clearly anticipated and described. 81(x)

3. The "Goals and Criteria, No-Lines" Program for the Lakeside-Jamul Segment of the County Subarea Plan Does Not Provide A Reasonable Level of Assurance That The MSCP Program's Biological Objectives Will Be Met

The proposed approach in the Lakeside-Jamul segment is a continuation of the project-by-project approval process that has been judged to be "not working" and that the MSCP "plan the preserve" approach was designed to replace.

The Lakeside-Janul plan has been described to us in very different terms by County and wildlife agency representatives and its discussion in the Subarea Plan and the draft EIR/EIS is loaded with contradictions. In the draft Biological Mitigation Ordinance, the County intends to decide what constitutes "core biological areas." At the same time, the wildlife agencies have established a set of core areas in the form of "predetermined mitigation areas" they intend will be used to determine compliance with the "goals and criteria." 81(y)

The opportunity for "two sets of rules" confusion and conflicts here are obvious. The County has the authority to approve what it alone determines is appropriate with the wildlife agencies only option being to shut down (or threaten to shut down) the entire MSCP Program in the County. In an area where there is a great deal of underlying uncertainty whether the preserve system, even if implemented as planned, will work, there are no assurances that the preserve will be implemented. In the end, the preserve system, and the resources they support, will suffer.

4. There Should Be a Process For Public Notification and For Public Involvement When Subarea Plan Amendments and Preserve Boundary Adjustments Are Proposed (Section 5.4.2)

It is common for "good plans" to be incrementally amended to the point where they are not recognizable. The draft MSCP Plan proposes a process of modifications without formal amendments if the adjustment will result in the same or higher biological value of the preserve." The problem is that the "biological value" issue has been controversial and 81(z)

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difficult to quantify. 81(z)

Even if the Wildlife Agencies must concur in preserve or MHPA boundary adjustments, there must be a clear opportunity for public comment on such proposed changes. The plan should include a public notice requirement and a provision that the jurisdictions AND the Wildlife Agencies will consider public comments prior to their action to consider modifications.

Reference is made to the use of the California Environmental Quality Act (CEQA) process for MSCP boundary adjustments. The CEQA process is not structured to consider the "equivalent biological values" test of such amendments. It is an appropriate companion to such determinations, but it is not a substitute for the structured consideration of these potentially significant changes.

The "expeditious review" of proposed subarea plan amendments or preserve boundary adjustments in Section 5.5 Wildlife Agency Actions To Implement the MSCP should include a specific reference to the opportunity for public notice and comment to the Wildlife Agencies.

The draft indicates that "amendments to subarea plans should be included in annual reports to wildlife agencies." This is very problematic if it implies that jurisdictions can process projects that involve MSCP boundary modifications and AFTERWORD seek the concurrence of the Wildlife Agencies. Modifications of boundaries should require Wildlife Agency approval, with clear public notice and an opportunity for public comment, prior to a local jurisdictional action that is based on such modifications.

5. The "Annual Implementation Meeting" Should Be Publicly Noticed and Should Include the Opportunity For Public Comment On A Pre-released Implementation Report (Section 5.4.4) 81(aa)

6. The "No-Lines, Goals and Criteria-Only" Element of the County Subarea Plan Provides Inadequate Assurances That Biological Objectives Will Be Met (Section 5.6.1, County of San Diego)

The proposed approach for the Lakeside-Jamul Segment appears to run contrary to the underlying intentions of the MSCP—to move away from the project-by-project approach and to establish more certainty about what is to be protected and developed. Its declared intent to "incrementally assemble the open space system" seems contrary to these directions. 81(ab)

The summary presentation is confusing. First, there is a statement that "Within the Metro-Lakeside-Jamul Segment there is no lands considered 'covered' by the plan without incorporating mitigation and avoidance requirements." This is followed by the conclusion that, 81(ac)

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"Under this process, the County plan will receive full coverage for all the covered species associated with the MSCP Plan. How can this County "segment" receive "coverage" when the lands that comprise it are not considered "covered." 81(ac)

At a later point, we will present some detailed concerns regarding the proposed County Biological Mitigation Ordinance. Here let us summarize some concerns: 1) the draft ordinance has many technical drafting problems (such as inappropriate references) which make it difficult to understand; 2) the "incentives" it attempts to provide are not strong enough to produce the intended objectives; and 3) there are inconsistencies or uncertainties regarding the procedures that have been described to us by the Wildlife Agencies and those in the ordinance—such as in the process for designation of "core biological areas" and the determination of mitigation requirements.

The "summary" presentation makes no clear reference to the "Preapproved Mitigation Areas" which are identified in the County Subarea Plan (Volume II, Attachment 1, Page 3 to the Metro-Lakeside-Jamul Segment). The Wildlife Agencies indicate that these designations are the KEY to ensuring that the goals and the criteria relating to "preserve design" will be met. However, the role of these Preapproved Mitigation Areas is not identified or discussed.

Finally, there is the issue of why the term "Metro-Lakeside-Jamul Segment" is being employed. Is it an attempt to imply that the MSCP Plan support the idea that this area should be "metropolitanized" in an urbanized fashion? As indicated elsewhere, the MSCP is not a "general planning" process and should not be represented as such. "Lakeside-Jamul Segment", as an option, seems descriptive an adequate. 81(ad)

7. <u>We Do Not Feel That the Representation That the Port of San Diego Has Been, or Is, Working To "Support" The MSCP Is Accurate</u> (Section 5.6.5, Port of San Diego)

The Port of San Diego has been singularly uninvolved in the MSCP process. This lack of involvement in, and explicit support of, the MSCP by the Port of San Diego is not a minor concern. Many of the biological resources the MSCP Plan proposes to "cover" depend very heavily on land and water areas over which the Port District claims exclusive jurisdiction. It is difficult to understand how "coverage" can be extended to these resources when the Port of San Diego has been uninvolved in, and has not made commitments with respect to, the draft MSCP Plan. This situation is 81(ae)

PRESERVE MANAGEMENT AND REPORTING - Section 6

1. <u>The Potentially Significant Impacts Of Agricultural Operations On the Functioning of the MSCP Preserve Are Essentially Ignored</u> (Section 81(af)

6.2.2)

Agriculture deserves specialized MSCP Program treatment—it provides broad open space values and can offer important habitat and buffering values. However, unrestricted agricultural activities can have significant negative impacts on the functioning of the preserve and should not be exempted from the MSCP which is the real effect of the plan as it has been proposed. 81(af)

For examples, the impacts of grazing (technically, of "over-grazing") on natural habitats, especially on riparian corridors, are widely recognized. Major portions of identified biological core areas and linkages are grazed or have the potential to be grazed. Therefore, there are potentially significant impacts on the MSCP preserve. One problem is that there has not been an evaluation of the impacts this activity could have on the preserve system.

The August 1996 MSCP Plan charges "subarea plans or preserve management plans" with the responsibility to "identify how to minimize potential impacts of agriculture on native vegetation, hydrology, soil quality, and native songbird populations, particularly parasitism by brown-headed cowbird which is associated with livestock feeding and holding areas." The charge to address agriculture and preserve management in the subarea plans section is there, but a review of subarea plans indicates that potential agricultural impacts on preserve functioning have not been evaluated and agriculture is essentially exempted from the MSC planning and implementation process.

Agriculture will be gaining benefits from the MSCP Plan. They have responsibilities to contribute and, given their commitments to "resource stewardship", they should be able to do so easily.

2. <u>Inadequate Attention Is Given in the MSCP Plan To The Importance of the Early Development of "Habitat Management Plans"</u> (Section 6.3.1)

The biological evaluation of the MSCP Plan (in Section 3) indicates there are a number of "covered" species that face a "high risk" future and whose protection depends on the development of habitat management plans to address risk concerns, particularly those associated with edge effects.

The draft MSCP indicates either that subarea plans will include a "habitat management plan" or that jurisdictions will "provide a management plan subsequently as a condition of the implementing agreement." Where such "management plans" are essential to establishing the "coverage" for species, it seems essential that these "preserve management plans" be developed up-front, not promised in 81(ag)

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81(ag)

the future.

3. Fencing and Predator and Exotic Species Control Is Treated In A Very Perfunctory Manner, When The Coverage Analysis Indicates That Edge Effects Place Many of the "Covered" Species At High Risk

The decision to eliminate the concept of "buffering" based on the "lines-a-line" political campaign and sloganeering has quite logically resulted in a situation where the "management" of edge effects is critical to the success of the preserve.

As a reminder, the earlier preserve design assumed that "buffering" provisions would apply adjacent to the preserve. "Buffering", of course, is a concept that is standard practice for land use planning and regulation, such as for the protection of public open spaces. When this "buffering" was removed, no adjustment was made to compensate for what amounted to a "significant reduction" in the effective size of the preserve. 81(ah)

So called "adaptive management" of the preserve is now recognized as essential to preserve success. However, the tools, necessary for such management, such as fencing and predator control are not adequately addressed.

FINANCIAL HABITAT ACQUISITION AND MANAGEMENT

1. The MSCP Plan Fails To Present Reasonable Funding Source Options For Public Discussion—Specifically, Utility-Based Revenue Sources

A major responsibility of the MSCP public review draft is to provide citizens with a complete range of reasonable options. One possible funding source for a regional preserve system are revenues associated with regional utility systems.

Utility services, such as for water and gas and electric extend on a broad regional basis and have a relationship to the extension of development that is creating the threat to the region's biodiversity which is the focus of the MSCP Plan. Utility-based revenues were discussed as a funding source at the Working Group level but have been eliminated in the latest draft. The elimination of utility-based revenues as and MSCP funding source is apparently a political response to the opposition by utility organizations to any consideration of these funding sources.

Local funding for implementation of the MSCP, which is essential to the program's long-term success, remains uncertain. Voters need confidence that a full range of alternatives has been evaluated. It is premature to eliminate potential funding sources simply because there 81(ai)

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is institutional opposition. 81(ai)

2. A Clear Explanation Is Missing As To Why The Extent of Local Acquisition Increased From the Draft Plan Low of 2,700 Acres To the Plan Level of 13,500 Acres (Section 7.0, Summary of Regional Funding Program)

To the MSCP Plan documents credit, it attempts to provide a cross-walk, or comparison, between the funding analysis and plan in the March, 1995 MSCP Draft and the August, 1996 Plan. However, the explanation of why the level of local acquisition changed from as low as 2,700 acres to the estimated 13,500 acres is not clear. 81(aj)

Since the voter-taxpayers will be asked to provide significant funding for the MSCP Program, it is important they be given a clear picture of the funding options that were examined and the basis for the choice that is recommended in the Plan.

ACKNOWLEDGMENTS - Section 8

1. The Report Conveys The False Impression That The MSCP Plan Received A Broad Scientific Review—It Did Not!

The Acknowledgments includes a long list of "Biological Data Contributors And/Or Reviewers. This could be interpreted to mean there was extensive and independent review of the MSCP Plan. There was not and efforts to introduce this kind of review were resisted throughout the development process and during the review phase. 81(ak)

Many, maybe most, of the independent biological experts listed in this table participated only in their capacity as "data contributors." Unfortunately, their participation in a review capacity was not solicited or provided for.

Technical Correction: Craig Adams, Sierra Club has been added as a member of the San Diego Dialogue Committee for MSCP Local Funding listed on Page 8-2. 81(al)

MSCP SUBAREA PLANS - Volume II, Selective Section-By -Section Comments

CITY OF SAN DIEGO

1. The inclusion of the so-called, Manager's Compromise as the MSCP Plan for Carmel Valley Neighborhood 8A Is Not Justified Biologically and Is In Violation Of the Clear Direction of the City Council (Figure 5, Page 23)

The significance of the Carmel Mountain area to the Biological integrity of the preserve system has been documented in extensive testimony to 81(am)

the City Council in its deliberations on this matter. The Council directed the City Manager to improve the plan with respect to this area beyond his "Manager's Compromise." The MSCP Plan reflect no change from, and therefore no improvement over, the Manager's original proposal. 81(am)

The significance of this area to the success of the MSCP Plan has been testified to by a series of biological experts at a number of formal hearings on this matter.

2. The "Island" of Development Proposed In The Middle Of The Del Mar Mesa Core Is Inappropriate

This "unprotected" "development bubble" in the middle of a core area is in clear violation of the critical regional habitat role assigned the Del Mar Mesa. The potential edge effects of this area on the Mesa are potentially significant and not analyzed. The City Council has indicated the desirability that this area be purchased or otherwise protected. 81(an)

The MSCP Plan should identify this area as part of the MSCP Preserve.

3. The Area Identified As "Montana Mirador" Should Be Included In The MSCP Preserve

The area of this proposed development has been identified by the City Council as a desirable area for potential purchase and inclusion in the MSCP Preserve. To make the area eligible for consideration for possible MSCP-related funding, it should be included within the MSCP preserve. If necessary, such a designation could include the fact that the property has an existing approved Tentative Map which takes precedence over general MSCP preserve-related regulations. 81(ao)

4. The MSCP Plan For the Hodges-San Pasqual Valley Needs To Be Enhanced

There is substantial City-owned land in this area with high potential habitat value. There has not been a systematic evaluation of the complementary value improved habitat protection could have on the improvement of water quality in Lake Hodges and for the expanded potential utilization of the groundwater basin.

At the least, the City lands that have been identified for "interim agricultural use" with the goal of "eventual long-term restoration to native upland habitat" should NOT be excluded from the preserve, as proposed (on Page 32 of the Subarea Plan). Logically, if the objective is long-term restoration, the area should be included in the MSCP.

Note: The lead-in to the listing of "Preserve Exclusions and Guidelines" 81(ap)

under the Hodges Reservoir/San Pasqual Valley section does not seem accurate. The "exclusions" are characterized "in order to provide for current and future requirements of the City of San Diego Water Utilities Department (the property owner) and the County Water Authority (CWA)." However, several of the exclusions, such as the "bridge widening" and exclusion for "interim agricultural use" do not seem to fit this characterization. 81(ap)

5. The Preserve Management Plans in Section 1.5 Of the Subarea Plan Lack Sufficient Detail To Respond To The "High Risk" Characterizations For Many Of The Species Identified As "Covered" In the MSCP Analysis 81(aq)

6. Excessive Fragmentation of the Proposed MSCP Preserve in the Southern Area On Otay Mesa Remains Unacceptable (1.2.1) 81(ar)

   No analysis has been conducted for these area relative to the preserve design criteria contained in the NCCP Conservation Guidelines.

7. The Implementing Provisions Do Not Provide For Measures "To Ensure That Impacts To "Narrow Endemic Species" Are Avoided To the Maximum Extent Practicable—Whether They Are Inside Or Outside the Preserve—As Provided For in the MSCP Plan (in Section 3.3.2) and the Subarea Plan, Section 1.6.4. 81(as)

8. Proposed Roll-backs In Existing Protections Of Sensitive Resources, Such as With Respect to Hillsides, and the Proposed Reductions In The Role and Involvement of Community Planning Groups In Open Space Planning are Unacceptable

   The draft Comments by the Environmental Subcommittee of the Council of Planning Chairs on this topic, titled "Community Planning Committee's Response to the Multiple Species Conservation Program (MSCP), October, 22, 1996 are incorporated into these comments in their entirety by reference. 81(at)

   Given the sweeping nature of the proposed replacement of the City Resource Protection Ordinance by the Environmentally Sensitive Lands Ordinance and its inclusion in the even more sweeping Zoning Code Update package, the Sierra Club intends to provide additional comments on the draft Environmentally Sensitive Lands Ordinance (ESL). One problem in the review of the MSCP package is that an understanding of the ESL requires the "Definitions" which were not included in the document.

9. The Proposed Roll-Back Of City Protections For Wetlands, Such As The Proposed Redefinition of Wetlands, the Proposed Use of CEQA-Based Mitigation Guidelines Outside the Preserve and The Proposal To Remove City Review of The Wetlands Elements of Proposed 81(au)

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Developments Is Inappropriate AND Undermines the Biological Objectives of the MSCP. 81(au)

10. The "Land Use Adjacency Guidelines" Do Not Adequately Address The Serious Problems Of Edge Effect And the Resulting "High Risk" Identified In the "Coverage" Evaluation (1.4.3) 81(av)

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11. For Tier II Lands, The Incentive For Mitigation Within the Preserve Needs to Be Increased From the Proposed 50% Bonus To The 100% Bonus Proposed For Tiers I and III (Exhibit N To The Implementing Agreement) 81(aw)

12. The "Take Estimates" Should Be Supplement To Include Estimates For Take Of Especially Sensitive Species, Such As The California Gnatcatcher, and Including Impacts, Direct and Indirect, To Major Populations

    The City's Subarea Plan is to be commended for including a clear presentation on the estimated "taking" of sensitive vegetation communities. However, since it is practicable to do so, an estimate should be prepared for the anticipated loss of key species—as required under the Federal ESA incidental take procedure. 81(ax)

CITY OF SANTEE

1) The Subarea Plan Should Be Amended To Include the "Total Preserve Alternative" Recently Recognized By the City As A Mitigation Bank Within the MSCP Preserve System 81(ay)

2) Several Inadequacies of the Subarea Plan Need To Be Remedied

   - The biological core area identified on Fanita Ranch is highly fragmented by the proposed Subarea Plan

   - Santee has failed to make a fair share contribution to the regional preserve system with low-percentage contributions of coastal sage scrub, other key habitats and proportion of core biological area protected 81(az)

   - There is inadequate protection of grasslands which has been identified as less than adequately conserved by the MSCP Plan

   - The preserve design fails to meet the criteria in the NCCP Conservation Guidelines by not protecting the highest value habitat and through excessive fragmentation

COUNTY OF SAN DIEGO

1) It is unclear whether the "Species Protection Goals" in Table 1-3 Are Intended To Serve As "Measurable Criteria" and As The Basis For Biological Monitoring and Plan Compliance Checking Stated differently, their use and application is unclear.

   Also, with admittedly inadequate survey data, the use of "occurrences" as a basis for "protection goals" seems highly questionable—a 81(ba)

conclusion it is our understanding has been expressed consistently by biological reviewers. 81(ba)

The County Subarea Process seems to be loaded with case-by-case determinations, amendments and variances—is this the "certainty" that is the driving objective of the MSCP Plan? And what is the role of the public, and their access to, these negotiations?

2) The Concept in 1.4 of The County Subarea Plan Regarding Negotiating Mitigation Ratios On A Project-By-Project Basis and With The Public Involvement Limited To CEQA Comments Seems Very Suspect

More generically, in cases where the Wildlife Agencies, specifically the U.S. Fish and Wildlife Service, have the ultimate decision-making authority, such as in the case of these "negotiated" mitigation ratios, it is difficult to see how the CEQA process, which is a state legislatively based procedure, can be used in a federal decision-making process. 81(bb)

3) The Process For Public Notice and For Public Involvement In the Decision-Making Process of Concurrence By the Wildlife Agencies Under the Minor Amendment Process in 1.10.1 Is Unspecified 81(bc)

4) The "County Subarea Plan" consists of two distinctly different types of "plans" that need to be evaluated separately: a) the hard lines plans for the Lake Hodges and South County Segments, which are very much like other subarea plans which are based on "hard lines"; and b) the Lakeside-Jamul Segment which is significantly different from any other subarea plan. 81(bd)

5) The Logic Used To Establish the Conservation Targets For Lakeside-Jamul Segment Is Flawed.

The habitat protection goals were based upon an earlier assumption that there would be preserve boundaries for the so-call Lakeside-Jamul Segment (specifically, the "MHPA preserve alternative"), just as elsewhere in the MSCP area. Since the hard-line preserve approach has been defined to be a very highly efficient solution to habitat protection that cannot be realized with a less well-defined preserve configuration, it is not logical to use a hard-line preserve-based set of habitat preservation targets as a basis for a non-boundary preservation approach. If a "hard-line" preserve is not being defined, the habitat conservation goals need to be set at a higher level, since the system is likely to be less efficient in protecting species that with a hard-line preserve.

A comparison of the Lakeside-Jamul Habitat Protection Goals to the Overall County goals for habitat types show they are typically lower than for the other segments of the County. Since the other areas have "hard-line" preserves, this result is contrary to reasonable 81(be)

expectations. 81(be)

6) The Discussion of Land Conservation (4.4) contains difference assumptions than are used in the referenced table.

For example, the text says for Tier II that 60% will be mitigated I the preapproved areas while the accompanying table uses a 70% figure. The differences in these assumptions could significantly affect the public cost of the program. 81(bf)

7) The Biological Mitigation Ordinance Is Verv Poorlv Drafted and Needs To Be Corrected, Clarified and Recirculated For Comment. It contains what seem to be loophole after loophole. Technical problems with the draft Biological Mitigation Ordinance include:

- The use of the CEQA exemption is too broad and is essentially open-ended, since it might be further modified Article II. 1.

- The reference to the "Interim Sensitive Lands Ordinance" is pure propaganda. It has been shown that the County Board adopted the ordinance at issue as a regular, permanent protection for the resources of the County. Article II. 4.

- The provision allowing the Director of Planning and Land Use to unilaterallv determine that there are no environmentally sensitive lands involved or that a prior permit provides equivalent standards to the Ordinance precludes Wildlife Agency overview and citizen review. Article II. 6.

- The proposed exemption for "recreational facility which includes public use", again with out any indication of Wildlife Agency participation could have a major impact on preservation Article II. 9.

- It is unclear who will determine the "viability" of proposed mitigation lands "outside the biological resource core areas." Article III. 1. Footnote #1.

- Who decides what is a 'biological resource core area" based on meeting one or more of the criteria in Article III. 1. a.—County staff unilaterally or with Wildlife Agency concurrence and what about public involvement. Because mitigation requirements and credits are based on these determinations, this appears to be a prescription for ongoing uncertainty and conflict.

- The same questions of "who decides?" apply to "land outside an approved Subarea Plan—presumably the Lakeside-Jamul Segment. Here the determination is ever more open-ended because there is no Subarea Plan-defined "biological resource 81(bg)

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81(bg)

core area."

- The relationship between the Wildlife Agency "preapproved mitigation areas" and the "biological resource core areas" is unclear.
- The term "Core linkage" appear to run contrary to biological theory which indicates that "functional linkages between core areas" should be able, relative to certain types of species, to be able to "support" sensitive resources.

- Under Article IV. Determination of Mitigation Requirements what is inside of or not inside a biological resource core area is uncertain and a point of case-by-case negotiation. The idea of demonstrating "reasonable connectivity to extant open space patches and ability to sustain viable wildlife and plant populations" offers little certainty, an invitation for loopholes and the high probability of ongoing conflicts.

- There is no definition of "significant populations of species" nor a specification of who makes this determination under Article IV.

- Unlike the provision in some Subarea Plans which strictly limit the extent of encroachment into identified sensitive core areas, the Biological Mitigation Ordinance merely requires the siting of development to "minimize impact to habitat." The only specific limits are to "sensitive plant populations" under Article IV. B.

- The relationship between the administration of the proposed Biological Mitigation Ordinance and the suggested continuation of the interim process for Habitat Loss Permits is unclear. Does this mean there must be Wildlife Agency concurrence with a County determination or only an ability to comment under the CEQA process as implied elsewhere?

- The Tier Mitigation System depends on the determination of "biological resource core areas" which is a uncertain project-by-project proposition.

- Wording that provides that mitigation ratios "shall generally be followed for habitats", such as in Article IV. A. 3. a. is a concern.

- There is no Table 2 on Attachment A as referred to in Article IV. A. 3. b. Apparently the reference should be to "Column 2"

- Inclusion of an attachment ("Attachment C") which has Groups A, B, C and D when the ordinance applies only to Groups A and B is very confusing.

81(bg)

- The reference in Article IV. C. to "Article III, Item 6" is not correct (apparently the reference is to Article III, Item 10) In the same paragraph there is a reference to "Attachment D" which apparently relates to the not identified attachment following Attachment B.

The draft Biological Mitigation Ordinance is loaded with a series of technical problems and is a puzzle to decipher. It should be revised and recirculated for review.

8) The Schedule of Mitigation Ratios (Table 4-7) Provides Inadequate Incentives To Ensure An Appropriate Preserve Configuration and The Realization of The Plan's Biological Objectives 81(bh)

For example, in the critical Tier II category, the bonus for mitigating inside a "biological core area" rather than outside a core area, when the impacts are within the core area, is only 25% (1.5:1 vs. 2:1)

9) For the Following Reasons, We Have No Confidence That The Lakeside-Jamul Segment Plan, As Outlined, Can Provide Any Reasonable Assurance That The Habitat Protection Goals Can Be Met

a) The role of the "preapproved mitigation area map" and the general relationship of the County to the Wildlife Agencies is unclear.

b) How the "biological resource core areas" will be determined, and how the Wildlife Agencies relate to the County in this process, is unclear.

c) Meeting the Habitat Protection Goals does NOT mean that the "functioning preserve" objectives can be realized; the "preserve configuration" criteria and process to ensure their application are too confused and uncertain. 81(bi)

d) There is the potential for substantial "leakage" in mitigation to areas that do not contribute significantly to the preserve.

e) The option to reducing many of these uncertainties is to increase public purchase of critical lands; there are limited and uncertain funds to pursue this as a fall-back strategy.

f) There appear to be underlying inconsistencies in the way the Wildlife Agencies view the process and the perspectives of the County—a discrepancy that does not generate confidence in the "workability" of the approach.

9) The Only Circumstance Where the Type of No-lines, Case-by-Case, Flexible System, Contemplated by the Lakeside-Jamul Segment Proposal, Could Work To Produce the Species Protection Objectives, In Our Estimation, Would Be a Project-By-Project Sign-off By The Wildlife Agencies 81(bj)

We look forward to working with you on the concerns we have expressed here and on those forwarded by other reviewers

Respectfully,

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Craig Adams

Craig Adams
Chapter Coordinator
San Diego Sierra Club

82 DAN HOLLAND, 10/29/96

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82(a) Comment noted. See responses to Comments 82(b) through 82(u).

82(b) Table 3-5 in the MSCP Plan and Table 4.3-1 in the EIR/EIS list all of the 93 species evaluated and indicate which ones are adequately conserved by the MSCP Plan and which ones are not.

82(c) It is obvious that having full knowledge of the life history, genetic structure, and demography of each species of concern would allow for development of the most effective conservation strategy. Unfortunately, limited funding, resources, and time does not allow for the full gamut of information to be gathered on individual species before ongoing habitat loss would result in certain extirpation in the wild. In the realm of conservation biology, we must often make assumptions about specific aspects of a species' biology to first ensure the conservation of its habitat. After first ensuring that these species are retained in the wild, we can pursue funding to examine other features of their biological needs.

82(d) The PVAs for the gnatcatcher and cactus wren were only one component of the biological analyses conducted in developing the alternative preserve designs. Generally, listed species, such as the gnatcatcher, were given somewhat higher priority for conservation than unlisted species.

82(e) The Habitat Evaluation Model was developed in response to the lack of spatially unbiased data regarding the distribution of target species. All components of the model are based on generally accepted concepts of conservation biology and empirical analyses where available. The model serves as a regional planning tool in delineating the core and linkage areas within the study area. The model is a regional landscape assessment conducted at a regional scale and is not intended to substitute for site-specific biological evaluations of proposed development. The model provides a regional context within which specific parcels can be evaluated with more detailed information regarding a site's biological resources. Site-specific assessment is required for all environmental evaluations under CEQA and NEPA. Unbiased systematic sampling of the study area was considered infeasible for a variety of reasons (e.g., lack of access to many private properties; insufficient sampling effort both spatially and temporally). Based on the funds available, focused surveys were made of areas believed to have key landscape characteristics (e.g., the Lakeside sage scrub linkage) or having a high diversity of habitats (e.g., Marron Valley). Over 33,000 acres of habitat were surveyed during the preparation of the MSCP Plan (10% of the available habitat). Since the final value category of the model was a maximum function, a site needed to be ranked Very High in only one of six model components to be assigned to the Very High category. This conservative categorization made the model insensitive to any one of the evaluation components. A detailed description of the model is provided in Appendix A-10 of the MSCP Resource Document.

82(f) The review of the literature and survey reports was conducted in 1991 and early 1992. Subsequent reports were incorporated when they become available and were provided to the MSCP

program. A focused update of selected species locality data was incorporated in the database in 1995. A survey of museum records indicated that the spatial accuracy of the collection site was too vague to be comparable to more recent mapping information gathered from survey reports. Often the collection site was determined to no longer support suitable habitat due to subsequent development of the site. The commenter is correct that data on minimum viable population sizes are generally not available.

82(g) The basic assumption of Gap Analysis is that the level of current protection of a species' preferred habitats would be indicative of the conservation status of the species. This is a standard assumption of most endangered species assessments made by the wildlife agencies. The approach has been defensible for proposals to list species as endangered, and therefore it is relevant to a regional planning program such as the MSCP. The Gap Analysis was conducted to determine which habitats might already be adequately protected prior to implementation of an approved preserve design.

82(h) The degree of protection and conservation of a given target species was made based on the proportion of suitable habitat being conserved and the inclusion of identified major populations within the preserve. The amount of conservation for each proposed covered species is provided in revised MSCP Plan Table 3-5 included in the Revisions to the MSCP Plan, Volume I, January 1997.

82(i) The information that the comment refers to is contained in the December 1993 working draft of the MSCP Plan. Subsequent to the preparation of that draft, the MSCP has undergone several changes, including the preparation of an additional alternative, the Multiple Habitat Planning Area (MHPA). This alternative is described in the current MSCP, Volumes I and II (August 1996). It describes how the conservation of 85 species that are proposed for coverage will be met and revised Table 3-5 provides a summary of the conservation and specific management requirements to meet the take authorization standards. As described in the Draft EIR/EIS (August 1996) and summarized in Table ES-3 (Summary of Impacts to Covered Species), the MHPA and Biologically Preferred (BP) alternatives mitigate their impacts. As shown in Table ES-4 (Summary of Biological Resource Impacts), the MHPA and BP alternatives adequately mitigate their impacts to vegetation communities and covered species or pose no significant impacts on the non-covered species. See also **Theme Response I, Species Analysis Approach.**

82(j) It is assumed the commenter is referring to Page 6-7, Section 6.3.4 of the MSCP Plan, Volume I, regarding Fire Management, since "p.8-48" is non existent in the MSCP Plan, Volumes I and II, and Section 8 of the EIR/EIS is on "Acknowledgments" rather than on "Fire Management."

The potential short- and long-term effects of fire were taken into consideration during the design of the MHPA and will also be taken into consideration in the management of the preserve. The preserve management plans will incorporate fire management considerations for habitat management and public safety. The commenter's suggestions will be considered in the formulation of these plans. Although modeling of fire scenarios for the preserve planning area may be an interesting exercise, fire is not the determining factor regarding where various vegetation communities exist. NCCP

design tenets developed by nationally recognized conservation biologists were used to help design the preserve and its design and size will buffer against any short-term impacts of fire. Prescribed burning may be one of the management tools used for preserve management along with fuel modification zones to reduce the potential for catastrophic fire. Future development projects adjacent to preserves will include provision for fuel management zones to protect against wildfires. The wildlife agencies, local jurisdictions and various fire protection agencies have a draft Memorandum of Understanding which address these urban-wildland interface issues.

82(k) Specific discussions regarding the effects of non-native species present within the MSCP study area are beyond the scope of the MSCP Plan. The presence of these non-native and invasive species is an existing condition of the preserve planning area. Preserve management plans will address non-native species issues as appropriate. For example, the City of San Diego Subarea Plan addresses Invasive Exotics Control and Removal on pages 58 and 59, MSCP Plan, Volume II, through a prioritization of measures to reduce or eliminate problems. Preserve monitoring will occur that will identify such problems, and appropriate management actions will be taken. See also response to Comment 61(m).

82(l) As stated on page ES-1 of the MSCP Resource Document, and page 1-1 of the MSCP Plan, Volume I, the MSCP was originally developed to be a comprehensive habitat conservation planning program that addressed multiple species habitat needs and the preservation of native vegetation communities for a 900-square-mile area in southwestern San Diego County. The conservation goal of the MSCP for wetlands and wetland-dependent species is based on the federal and state policies of "No-Net-Loss." All subarea plans are to incorporate this concept. Jurisdictional wetlands would continue to be regulated under the Federal Clean Water Act (Section 404) and the California Fish and Game Code (Section 1600 et seq.). It was always recognized by the MSCP Plan that wetlands are important habitat that would continue to be regulated under these laws whether it occurs within or outside of areas designated MHPA.

We concur that riparian areas provide habitat for sensitive species and, that by their linear nature, are subject to edge effects. The discussion on page 12-25 is intended to provide generalized goals and policies. It is acknowledged that impacts with appropriate off-setting mitigation would occur under the existing federal Section 404 permit and State of California Section 1600 et seq. agreement processes, and that cumulative impacts and edge effects are particularly difficult to address. These are fundamental reasons why a regional multi-habitat plan at a landscape level is needed to minimize the project-by-project approach to how biological resource impacts are addressed.

82(m) Comment noted. It is recognized that existing potable water supply reservoirs have a variety of impacts to the natural riverine system. Flushing flows from reservoirs within the MSCP study area are unlikely, except under conditions of peak mid-winter runoff resulting in spillage over the top of the dams at Lake Hodges, San Vicente Reservoir, Sweetwater Reservoir, and Otay Lakes. The wildlife agencies will work with the City of San Diego to minimize damaging instream flow releases for reservoirs that occur outside of the MSCP study area, including El Capitan and Barrett Reservoir. These agencies are presently working with four water districts in preparation of subarea plans for water district lands and

projects both within and outside of the MSCP study area. These subarea plans are not addressed within the MSCP Plan, however, they will be subject to a separate NEPA/CEQA public review processes. Issues relating to the rate and amount of water flow release would be discussed in these subarea plans and environmental review documents.

Given that existing reservoirs have, and would continue to, alter the natural flow regime of downstream riverine habitat, occupied breeding habitat for the arroyo toad within the MHPA would be monitored to ensure that sufficient amounts of suitable low-gradient sandy stream habitat is maintained. The intent of including substantial amounts of riverine habitat that is not presently known to be occupied by target species is based on the expectation that portions of these areas are likely presently occupied (but have not been surveyed), or could be occupied by the target species (including the arroyo toad and southwestern pond turtle) in the future. Riverine systems are dynamic and the location of suitable habitat will shift over time.

The general policies listed in the Executive Summary, pages 12-25 to 27, are not intended to result in management measures that would adversely affect suitable arroyo toad habitat. This information found in the MSCP Resources Document is superseded by the City of San Diego Subarea Plan.

The open water of the reservoir would be managed for potable water supply needs. It is expected it would continue to provide high habitat value to wildlife. The additional biological management measures provided by the MSCP Plan would maintain and enhance the existing habitat values of these reservoirs.

82(n) See Section 6.2.4, included in the Revisions to the MSCP Plan, January 1997. See also responses to Comments 45(f), 45(g) and 45(h).

82(o) The methodology followed for the MSCP surveys was general in nature due to the large number of target species being assessed. A given site was evaluated for the potential to support species that typically are less detectable, such as nocturnal toads and frogs. Focused survey effort for specific target species was not within the scope of the survey effort. The survey effort is more analogous to the Rapid Response Habitat Assessment protocol, which provides a relative assessment of an area's biological diversity. Night surveys were not conducted during the MSCP surveys. The goal of the surveys was not to have a complete, quantitative accounting of species distribution and abundance, but rather a relative assessment of habitat quality and biodiversity. The survey results were not extrapolated to taxonomic groups (e.g., reptile diversity), but the results provided a relative assessment of overall diversity of plants and animals between areas examined. Formulation of preserve design alternatives relied upon habitat diversity as a surrogate for species diversity and a consensus process involving the experience of numerous field biologists and recognized experts of specific species.

82(p) Comments noted. See responses to Comments 82(r) through 82(u).

82(q) Please see response to Comment 45(g).

It is acknowledged that biological surveys for the entire MSCP study area have not been conducted. The determination of "discountable" for this species does not result in the abandonment of the MSCP study area for the potential recovery of the red-legged frog. To the contrary, the assurances of preservation of 70% of the riparian habitat, including freshwater marsh, within a managed, interconnected preserve system would provide increased opportunities to carry out recovery actions within the MHPA. The risk to the species from implementation of the MSCP Plan is deemed low, based on information that the impact is likely to be discountable, and given the level of habitat preservation and management that is proposed.

Comment noted. The database will be amended to note that California red-legged frogs are known to move extensive distances (greater than one kilometer).

82(r) The MSCP Plan provides a habitat-based approach to species conservation. The basic premise is to preserve large, interconnected blocks of core habitat areas and their associated species, and to provide active management. Management plans for the MHPA would include monitoring and maintenance of occupied breeding habitat, including a one kilometer area of adjacent upland foraging habitat within the preserve. The management plan would also include a program to control non-native predators. The permits for each subarea plan would be conditioned to include these requirements.

The condition in revised Table 3-5 of the MSCP Plan, Volume I (see Revisions to the MSCP Plan, January 1997) states that "Management plans would address preservation of sheltering and foraging habitat within one kilometer of occupied breeding habitat within the preserve." This area was not intended to be taken as a diameter around a siting location for an arroyo toad. The intent of this condition was to ensure that sufficient foraging/sheltering habitat is managed and protected in addition to the necessary breeding habitat for known occupied habitat. It is recognized that intra- and interannual movement of toads would occur and, given the dynamic nature of riverine system, that suitable habitat would shift over time. As previously stated, the MSCP Plan is habitat-based, and would continue to preserve habitat within the MHPA regardless of the successional stage. The plan includes adaptive management which would allow for maintenance of critical areas, or shifting of management priorities to new areas. The MHPA would result in the conservation of 12,154 acres of riparian woodland, riparian forest, oak riparian forest, riparian scrub and freshwater marsh habitats in various successional stages. It is expected that target species that utilize these habitats would benefit from the assurance of conservation and habitat management.

The GIS-mapped data is only one tool used in the analysis of the MSCP Plan. Other information not on the GIS Known Species Location maps was used by the consultant, local jurisdictions, and the wildlife agencies. As was discussed with the commenter personally, known locations not indicated on the MSCP maps include the Sweetwater River, Otay River Valley, and San Pasqual Valley. These data were, however, included in the analysis. Based on the high level of habitat preservation and management within the MHPA, and the policies and guidelines that would maintain wetland values and

functions outside of the MHPA, it is expected that the arroyo toad would be adequately conserved by the Plan. Please also see response to Comment 45(f).

82(s) Please see responses to Comments 45(h) and 82(r).

82(t) It is acknowledged that complete information on the distribution and abundance of the San Diego horned lizard is not available. The San Diego horned lizard is a species that is considered to be relatively widespread within the MSCP study area, although sparsely distributed within common habitat types. NCCP-sponsored research by the University of California, San Diego (pers. comm., Drs. Ted Case and Robert Fisher) found that 13 out of 18 amphibian-reptile sample sites supported horned lizard populations.

The MHPA preserves 171,917 acres of habitat within rapidly urbanizing San Diego County including 71,274 of coastal sage scrub, 855 acres of maritime succulent scrub, 54,945 of chaparral, 1,111 acres of maritime chaparral, 11,657 acres of riparian habitats, 9,770 acres of grassland and other habitats. It is recognized that San Diego horned lizard locational data is incomplete and that the species is not distributed evenly throughout expected vegetation communities. Therefore, the locational point data were used to determine occupied habitat. The primary approach to conservation of this species is to provide large blocks of interconnected habitat that would allow for the natural ecological processes to occur. The maintenance of coyote populations is believed to be critical in controlling non-native predators such as feral cats by maintaining natural levels of native mesopredators.

Within urban preserves, it is expected that non-native species, particularly Argentine ants, would be of primary management concern. All subarea plans within which San Diego horned lizards occur must include management plans that would address control of Argentine ants. It is expected that control of non-native plant species and limiting additional sources of water in to the preserve would be important in controlling non-native ants.

82(u) It is acknowledged that the preferred approach to designing a viable preserve system is to have "long-term data from a number of sites in which environmental conditions of interest were not only known with certainty, but could potentially be manipulated over time, to track both species-specific and area-specific effects." This level of information, however, is not presently available for use in permit application decisions for most species. Moreover, prior to the MSCP planning effort, activities that result in habitat loss and degradation (e.g., development) have proceeded in a piecemeal fashion with little consideration of a comprehensive plan to retain habitat and their constituent wildlife and plant species over the long term. Despite the absence of long-term data, the wildlife agencies and the jurisdictions believe that a habitat-based planning effort, using the information that is presently available, would provide substantial habitat protection for the target species, including the orange-throated whiptail. Regional habitat-based plans incorporated into the General Plans and Community Plans of each participating jurisdiction are believed to be a superior approach to maintaining sensitive species and habitat values in a rapidly urbanizing area than the present hap-hazard project development. Available information

indicates that the preservation of multiple habitat types within a 171,917-acre interconnected, managed preserve would conserve viable self-sustaining populations of the orange-throated whiptail.

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OCT 29 1996

Ms. Nancy Gilbert
United States Fish and Wildlife Service
2730 Loker Ave. West
Carlsbad, CA
92008

Mr. John Kovac, Senior Planner
Land Development Review Division
City of San Diego
1222 First Avenue, 5th Floor
San Diego, CA
92101

Mr. Bill Tippets
California Dept. of Fish and Game
4949 Viewridge Avenue
San Diego, CA
92123

29 October 1996

Dear Ms. Gilbert, Mr. Kovac and Mr. Tippets,

The following material will constitute my response to the request of the parties involved for comments on the Multiple Species Conservation Plan. I have divided my comments into four basic areas, specifically:

1) Questions, comments and concerns about material presented in the Executive Summary. While I realize that this is a summary document, the most efficient and constant way to deal with some points was by to refer directly to this section, rather than "jump" back and forth between multiple supporting documents.

2) Questions, comments and concerns about specific concepts or ideas discussed (or not discussed) within supporting documents. These deal with areas such as reservoirs, fire, the effects of exotic species, etc.

3) A critical analysis of the biological survey methodology presented in supporting documentation by the authors. Since much of the subsequent analysis and discussion is predicated upon this material, I felt that not only was this warranted but critical to the review as a whole.

4) Species-specific comments concerning inferences and determinations made within the MSCP. These are of necessity brief, but hopefully will be of value to the Service and other parties interested in this matter.

Although I have generally tried to be positive in my review and analysis where possible, I must state up front that I am severely disappointed with the MSCP product as a whole. Because in large part of the time constraints under which I working to produce this review, I was unable to conduct the breadth and depth of analysis that I would have wished. I did read and consider the material at length. However, this not withstanding, in my view these documents (and as a result the Plan itself) are critically if not fatally flawed.

82(a)

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One of the many problems, perhaps the most basic, is that this has been touted to the public and indeed the world as being the "cutting edge" of science and conservation biology. Although this may have been the intent, it has, in my opinion, certainly not appeared to have been planned or executed in that manner. Frankly, this process has all the appearances of "cargo cult" science, a description usually applied to nanotechnology.

82(a)

Because of the need to meet the submission deadline with this document, I was unable to complete the Literature Cited section. However, I will be glad to send you this if you feel it appropriate. Thank you in advance for your opportunity to comment on this process. Please do not hesitate to contact me if I can provide additional information.

Sincerely,

Dan C. Holland, Ph.D.

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Executive Summary -Specific Comments and Questions

p.ES-7 regarding Target Species

The first paragraph states that of the 93 target species addressed by the MSCP, "... not all are proposed to be adequately protected by the plan." I suggest that it would be appropriate to reference a table at this point that lists exactly which species are proposed to be adequately protected and which are not. 82(b)

p. ES-9 regarding criteria and considerations for preserve design

The first full paragraph states that "To effectively protect and manage rare species populations, it is critical to understand the genetic structure and demography of the species of concern." I would make two points here: first, it is not only rare species that we need to understand these factors, it is in the not-as-yet-rare species as well, as their long-term persistence and response to disturbance in a reserve system will also be influenced by these factors. Second, although this sounds good in the executive summary, where is the discussion within the body of the MSCP documents of how it is to be applied in practice? This is too important a consideration to be given merely passing "lip service". 82(c)

p.ES-9 regarding Population Viability Analysis

I do not quarrel with the concept of value of PVA's, agreeing that "While PVA's should not be used as a definitive measure of preserve adequacy, they can be used as a tool in comparing various preserve configurations." I am greatly concerned that because of the general lack of rigorous scientific information in the MSCP documents as a whole, there has been an inordinate reliance on this information (as derived from gnatcatcher and cactus wren demographic data) in formulating and adjusting general and specific reserve design criteria. I think that few would argue that a reserve system design concept intended primarily for birds may well not be the best system for small mammals, snakes, amphibians or a number of other groups. 82(d)

p. ES-10 regarding the Habitat Evaluation Model

The statement is made herein that "In the absence of adequate and systematically-collected biological data for the entire study area, the model uses biological and physical data related to the potential presence of 93 target species and factors that contribute to high biodiversity". There are numerous problems with this statement and idea, not the least of which is that the fact that, as any modeler understands, the strength and validity of the model is directly related to and dependent upon the quality and quantity of the data available. All conclusions drawn from the model are based upon implicit assumptions about rigor and applicability ("real-world" relevance). Unfortunately, as the species-specific documentation freely and repeatedly admits, there is insufficient information to answer many of the most basic questions about their distribution and ecology. Furthermore, examination of the context and depth (or lack of same) in many parts of the text concerning general and specific applicability of information and ideas based upon models and other data reveals that an awareness of the "real-world" and the problems of uncertainty does not figure heavily in the discussion. A properly designed and implemented research effort would have (and still could) yielded the data necessary for an scientifically based, adequate and defensible reserve system. Furthermore, it is not necessary to have data for the "entire study area" as claimed - correctly designed and executed sampling efforts would be sufficient - that is why we have a science of statistics. 82(e)

This section continues "Site-specific verification of biological resources (or lack of biological resources) is needed before land use decisions for sites are finalized". This claim, while accurate, seems somewhat incomplete, both in practice and context. It would be more correct to say that this information is critical to the

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general design process, and that the presence or absence of data influences the nature of the process itself, thus by default producing effectively finalized land-use decisions. Given some of my comments in this document concerning the nature of the data available, what plans or assurances are in place that the collection ("verification") and integration of additional data will occur before land use decisions are "finalized"? 82(e)

Furthermore, given some of the inherent uncertainties in the data - both in terms of collection methodology, reliability and applicability, would it not be appropriate to discuss how some of these factors might influence the rankings and distribution of habitat values (as noted on ES-11)?

p. ES-12 regarding Biological Goals, Standards and Guidelines

This section states "The guidelines are a synopsis of the scientific information available on the region's habitats and sensitive species". My dictionary defines a synopsis as "a statement giving a brief, general review or condensation". Perusal of the City of San Diego's Biology Guidelines and the Bibliography for the MSCP reveals an interesting situation. Fifteen of the 22 references in the Guidelines document are primary literature. Only 17 of 395 references in the Bibliography are primary. There is no evidence from this or associated documents that any museum records or many of the significant number of the primary literature records (a critical part of review of the scientific information on species) were used, nor what approximate percentage (10%? 50%? 90%?) of the primary literature is represented by the sources cited. The references in Vol. 1 (13.0) of the MSCP Resource Document are generally better; of 440 references the majority are primary literature. However, there are significant problems with this situation as well. First, the sources are inconsistently referenced (sometimes not at all) in the text. Second, some are irrelevant to the species of concern, and including them gives a false impression of adequate review. Third, many important references are missing. For the five species of sensitive amphibians and reptiles, I count four specific references for the western pond turtles, three for the California red-legged frog, two for the San Diego horned lizard, two for the orange-throated whiptail, and one for the arroyo toad. While there is not a vast literature on these species, this does not represent an adequate review. Furthermore, several key references were not included, the most obvious of which is work on the arroyo toad by Sweet (1992, 1993). Subjectively, given the nature and number of "references", it is curious that there was not more discussion on many important topics within the MSCP that are adequately and often extensively covered within the primary literature. Citation of relevant sources within the text would assist the reviewer not only to ascertain that coverage of the subject is complete and adequate, but also to allow for further investigation of particular topics or sources by interested parties. 82(f)

This section also states "in many cases, it is not known how much of a habitat or species will need to be preserved in order to ensure viable, self-sustaining populations". In fact, are these factors known with *any certainty* (based upon PVA's or any other form of scientific analysis in which the assumptions and parameters can be checked and tested) for *any* species in the MSCP (aside from gnatcatchers and cactus wrens)?

p. ES-13 regarding Gap Analysis

The statement is made that "The MSCP gap analysis is habitat based, rather than species based, due to a lack of sufficient distributional data on most target species in the MSCP study area. Inferences can be drawn regarding the current level of a species' protection based upon the percent of its habitat, the percent of Very High and High value habitats, and the percentage of the biological core resource areas and linkages preserved in biological open space". The basic problem with this premise is that there is no discussion of the fact that there are levels of uncertainty involved in each step of the process, and that each factor in the equation is dependent upon a set of assumptions about the nature and reliability of the data (as discussed previously). Furthermore, if these uncertainties (minimally) act in an additive fashion (if not synergistic), then they would render "inferences... drawn" from the information progressively less and less rigorous and potentially defensible. This 82(g)

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point, and other assumptions inherent in and potential shortcomings of the method, needs open discussion within the body of this section.

p. ES-14 regarding Gap Analysis

The statement is made concerning the slightly > 30% conservation of chaparral, coastal sage scrub, and grassland currently protected or planned for preservation "... The adequacy of this acreage in meeting preserve design objectives depends upon the location and resource value of these areas. The distribution of these habitats within protected areas is currently fragmented and would require significant acreages of additional habitat in order for this level of protection to be adequate. The majority of core cactus wren and gnatcatcher populations in coastal sage scrub is not currently protected or planned for open space; therefore, these species are not adequately protected." Given that 1 the best available data seems to concern cactus wrens and gnatcatchers (via PVA's and other information 2) the last sentence in this paragraph represents the most likely situation in the opinion of the authors, and 3) that all other species have (as is repeatedly stated in the body of MSCP documents) even less data available for analysis, what are we to conclude about the degree or protection and adequacy of coverage for the remaining sensitive species? 82(h)

p. ES-16 regarding summary of Conservation Analysis

The statement is made that "the MH and BP scenarios support a similar number of priority target species (31 and 33, respectively) and other target species (32 and 40 species, respectively, ...and high biodiversity (80 and 86%, respectively, of the Very High value habitats in the study area); however the BP scenario provides greater assurances of long-term viability and ecosystem functionality by virtue of its larger buffers,...". In other words, under the best of all possible scenarios and assuming that everything "works" as planned and a host of other factors do not change the nature of the MSCP "equation", a minimum of 20 of the 93 sensitive species (21%) and 7 of the 14 rare habitats (50%) have no rigorous assurance of continued persistence under this plan. At the presumed "middle" of the spectrum is the PL scenario, in which only 35 of the 93 sensitive species (37%) and 6 of the 14 rare habitats (43%) are minimally assured of continued persistence, subject to the same constraints noted above. The presumed bottom end of the spectrum is the CSS scenario, with protection of 28% of the sensitive/target species, and none of the rare habitats. Given 1) the problems with the nature and extent of the data 2) the uncertainties in the assumptions and analytical process as discussed (minimally) above and 3) the non-consideration of potential changes in the future that may affect the dynamics of the situation (such as increased frequency of fire, increased edge and exotic effects and a number of other factors), it seems obvious to me that none of these scenarios, even under the best of conditions provides any reasonable assurance that the current plan is appropriate or workable, or even necessarily internally consistent with the stated goals of the process. 82(i)

Other general comments (not restricted to pages or sections noted)

There are several important points which I feel have received cursory or no treatment within the body of this document, and yet have a potentially significant individual and cumulative impact on the MSCP process and plan. These are briefly discussed below. 82(j)

p. 8-48: Fire Management - I will not go into specific criticisms of this section, rather I have a general suggestion. Given the importance of fire as both an ecological and human safety factor in the MSCP, I would suggest that it would be appropriate to include in this or a similar section a detailed discussion of the general

history of fire within the MSCP area, especially as it relates to land use patterns, successional changes, community dynamics and habitat fragmentation. This could then be expanded upon to model scenarios for the effects of fire on the MSCP area and surrounding communities in the future, projecting likely scenarios under various conditions for 5, 10, 20 and 50 year time spans. This information is critical to allow reviewers to examine the potential short- and long-term effects of fire in relation to patch dynamics, successional patterns, management concerns and practices, reserve and area-specific species richness, population stability and viability of target species, and a number of other situations.. This information can and probably would affect the parameters for design, implementation and management of reserve areas and other lands within the MSCP area. 82(j)

p. 8-75: Predator control and Exotic species - The discussion of actual and potential problems with predator control and exotic species is at best cursory and incomplete. There is no specific discussion of the fact that many exotic species have documented negative effects on native species, other than a passing reference to cowbirds in the Preserve Management Guidelines. Where is the discussion concerning the effects of the host of exotic fish species present within the MSCP area, including but not limited to bass, sunfish, catfish, fathead minnow, exotic gobies, etc.? Where is the discussion of the exotic amphibian and reptile species, including African clawed frogs, bullfrogs, red-eared sliders, snapping turtles and soft-shell turtles? What about exotic bird species including cowbirds, starlings, etc.? Where is the discussion of exotic mammals such as red fox, opossum and house mouse? The issues and implications concerning these and other species are discussed in a single paragraph, despite the presence of a significant amount of primary literature detailing general and specific problems with exotics. This section is patently inadequate, and needs serious revision and discussion along the lines of the conditions previously specified with regard to reservoirs, riparian areas, etc. 82(k)

p. 12-25: Riparian Areas - Although the MSCP was originally designed primarily to preserve and maintain upland habitats, the value(s) of riparian systems, not only as "corridors" and linkage areas, has long been recognized. These areas are critical as baseline habitats for a number of sensitive species, including arroyo toads, western pond turtles, California red-legged frogs, as well as a number of other species (such as the two-striped garter snake), a significant portion of whose range is contained within the MSCP. By their very nature, riparian systems are long and thin, and therefore subject to increased edge effects, increased probability of fragmentation and effective isolation, and are among the most heavily altered of all ecosystems in California. My evaluation of the general and specific discussion on riparian systems is that it is cursory and inadequate. Assertions that 100% of the existing riparian habitat will be protected under the MSCP are contextual not adequately supported by documentation in the available material. Many of these areas are degraded to various degrees, subject to current and likely future impacts from a variety of sources, and there status is subject to change. Current wetland regulations (specifically 404) do not deal adequately with cumulative impacts, edge effects, isolation and fragmentation problems and a host of other concerns. The MSCP documents (minimally) require a thorough, referenced and rigorous discussion of 1) the inherent problems in protecting and managing riparian systems 2) their relationships (not merely as corridors and linkage areas) to other communities and 3) the probable impacts of both upstream and downstream development of various types (urbanization and associated infrastructure, reservoirs, agricultural practices, etc.) and degrees on the short- and long-term stability and viability of the reserve system. In my opinion this discussion is currently lacking, but is absolutely critical to allow the reviewer to analyze the potential that the stated general goals of the MSCP will indeed be met. 82(l)

p. 12-26: Reservoirs - There are several reservoirs within or adjacent to the MSCP area, all of which have and continue to affect both the biological and physical environment in their immediate vicinity as well as for considerable distances in the surrounding area. Their effects on the physical and biological environment both upstream and downstream is significant; for a brief review of the physical aspects I would suggest Mount (1995). Reservoirs affect the biotic environment in a number of ways, among them 1) direct loss of habitats inundated by the reservoir 2) creation of barriers to normal inter- or intradrainage dispersal 3) a decrease in the 82(m)

potential for gene flow 4) fragmentation and isolation of populations of aquatic species dependent upon fluvial habitats 4) providing an effectively infinite source population for exotic species (such as sunfish and bullfrogs) that allows them to invade and become established in areas where that would otherwise be difficult or improbable 5) alteration of local microclimatic conditions and 6) alteration of successional patterns and processes both downstream and upstream from the reservoir. this is not an exhaustive list, but will serve as a format for a very brief discussion of species-specific effects. The arroyo southwestern toad (*Bufo microscaphus californicus*) is a federally listed endangered species endemic to cismontane southern California and a few desert slope drainages. This species is one of the most highly specialized of all west coast anurans, depending upon maintenance of a particular set of habitat conditions produced by periodic flow conditions in larger (2nd-6th order) streams. Construction of reservoirs throughout southern California has resulted in the inundation and destruction of arroyo toad habitat in all systems in which this species occurs or formerly occurred. The presence of reservoirs has proved an effective barrier to normal upstream/downstream movement of individuals, and has fragmented and isolated remaining populations. Bullfrogs and sunfish (introduced species) are often dependent upon the local conditions created by reservoirs to persist or spread in many southern California drainages. Sunfish prey on the toad eggs and larvae, while bullfrogs prey on juveniles and adults. Of critical short and long-term importance and related to some of the factors noted above is the problem of atypical flow regimes. Flow regimes that do not match closely the historical pattern within a given drainage can and do cause major problems for arroyo toads. Breeding activity is keyed to late winter/spring rains, and eggs are deposited in shallow pools along stream margins. Except in abnormal situations, the natural flow regime is such that eggs will develop into larvae, which will in turn develop into juvenile toads, with a relatively low probability of being subject to "flushing" flows. Unfortunately, reservoirs produce annual abnormal water flow situations such as high late spring-early summer releases), which frequently flush eggs, larvae and adult toads downstream to less suitable or unsuitable habitat, resulting in direct or eventual mortality. In the long term, toads are dependent upon periodic scouring flows to maintain the structure and local distribution of breeding pools, as well as to restrict or reset successional patterns in the growth of riparian vegetation. Areas in which common dominant species such as willow (*Salix* spp.), mulefat (*Baccharis viminea*) and other species begin to stabilize and shade cobble/sand bar areas and adjacent pools become less suitable as toad habitat as time progresses. Periodic scouring returns these microhabitats to an earlier (often primary) successional stage and often increases their suitability as toad habitat. The lack of scouring flows from reservoirs, or the atypical timing of these flows, may have significant negative impacts on arroyo toad populations within the MSCP. Since most of the reservoirs either exist within the MSCP area (San Vicente, Lake Hodges, Sweetwater) or on the edges (El Capitan, Loveland) or drain though the MSCP area (Barrett, Sutherland, Wohlford), any discussion of the effective coverage and protection supposedly provided by the Plan must by default consider the impacts of reservoirs and reservoir operations. Existing information in the plan dealing with riparian areas and reservoirs (12-27 regarding recommended policies for riparian habitats) may in fact be in conflict with preservation and maintenance of toad populations, since 1) there is no discussion within the body of the text on this species and 2) the recommended policy states that a goal is to "Restore and enhance riparian habitat in floodplains in a manner that is compatible with both flood control and continued agricultural farming." Furthermore, "The restoration plan should be tailored to provide habitat for target species (e.g. Least Bell's vireo, willow flycatcher, yellow warbler and other breeding riparian birds)." The habitat requirements of arroyo toads for early successional stages of riparian habitat and adjacent upland habitats may directly conflict with these goals. Furthermore, the exclusion of the reservoirs and surrounding areas as "cornerstone lands" will also likely directly conflict with existing arroyo toad protection under the ESA, as well as significantly influence the finding that the species is "adequately covered" by the protection plan. I would suggest that a detailed discussion of these problems and impacts be included within the body of the Plan.

Similar concerns and other factors apply to western pond turtles and California red-legged frogs. Since these species (and the arroyo toad) are "covered" by the existing plan, a referenced, rigorous general and

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species-specific discussion of direct and indirect reservoir impacts is critical to allow examination of the influence of these factors on the status of these species within the MSCP. 82(m)

p. 12-26: Sand and gravel operations - The statement is made (12-26) that "Sand and gravel extraction consistent with the San Pasqual Valley plan and other land use plans may be compatible with habitat preservation and should be permitted only with the following conditions and controls...". This statement is unsupported by any documentation and unlikely in many respects to be true. Sand and gravel operations produce many of the same problems for arroyo toads, western pond turtles, California red-legged frogs and several other aquatic species of reptiles and amphibians noted above for reservoirs. The basic nature of a sand and gravel extraction operation creates an area and set of environmental conditions that did not historically exist within the evolutionary history of California's riparian systems. As there are several existing and planned operations of this type within the MSCP, there needs to be a referenced and rigorous discussion concerning short- and long-term impacts on both a local and regional scale, and their potential effects on the MSCP and particularly on the sensitive and target species. 82(n)

Survey results - The "Field Protocol for MSCP Wildlife Surveys" (A-5-1 to A-5-13) and appendix A-6).

This portion of the report is very interesting, since it forms a substantial part of what little empirical information is presented in the MSCP documents, and presumably was the basis for at lest some, if not many of the conclusions and inferences used to formulate and modify the overall planning effort and reserve design. There are several substantial problems with this section. First, the information content of the report concerning the survey methodology is very low, the coverage of survey techniques is cursory at best, and there is no discussion of appropriate time frames or environmental conditions for survey efforts. This section of the report should allow a reviewer, at the minimum, to ascertain that 1) the authors and/or surveyors are aware of and practice appropriate survey methods for all species 2) that these surveys were conducted under appropriate environmental conditions likely to yield observations of the species of concern and 3) that there were repeated surveys to allow for the effects of a) local variation in environmental conditions and b) interobserver variation, sufficient to insure that if species was present it had a high probability of being detected, or conversely if absent rigorously determined to be so. Given the existing information in this section, this report fails to demonstrate that it meets any of these criteria. For example in relation to survey methodology - even through the report purports to survey for spadefoot toads, arroyo southwestern toads, California red-legged frogs, western pond turtles and two striped garter snakes (all highly aquatic species), the sum total of the survey methodology (under "Special Survey Techniques) is "Aquatic habitats should be checked for fish and tadpoles and amphibian egg masses. Several tadpoles or eggs can be sampled and keyed out at the office without significant impacts to the local population. Also note depth of pools, water quality, and/or flow, and note protruding objects suitable for turtle basking." As most herpetologists and many biologists with even limited experience surveying for these species are aware, this description of survey methods would be grossly inadequate to determine presence/absence under all but the most optimal conditions. For example, is there any discussion of the fact that activity in pond turtles varies significantly across the course of a day as well as seasonally? That turtles do not necessarily require emergent basking sites? That most spadefoot toad activity is nocturnal and occurs prior to the survey period described in A-6-1? That arroyo toads are almost invariably nocturnal? That red-legged frogs are essentially the same, but can be occasionally be found by careful searching during daylight hours under certain conditions? That two-striped garter snakes also tend to become nocturnal during the early summer, and are generally scarce in later summer? Were any of the surveys conducted nocturnal? If so, for how long and under what conditions? All of these factors (and many more) affect the accuracy of surveys, and yet there is no mention - even a general mention - that they were considered in the surveys. This lack of awareness is in part 82(o)

reflected in the results as shown in Table A-6.7. In 18 areas, there are only four instances of observations or spadefoot toads (a fairly widespread species), none of arroyo toads, and none of western pond turtles. Additionally, there is only a single observation of a western (=Coronado) skink out of 18 sites, which is somewhat curious given that this species occurs in most habitat types and in significant numbers throughout much of southwestern San Diego County. I suspect that the survey methodology used was in large part what is often referred to as the "bird and butterfly" method of walking through a given area of habitat and noting what is observed, which is supported by the statement (A-5-1) that "The surveys will be conducted as a walk-through approach rather than a transect or grid system". I and other scientists have empirical data that indicates that this is a totally inadequate survey methodology for most species of reptiles and amphibians, particularly those species listed as "targets" or "sensitive". Furthermore, many coastal sage scrub and chaparral communities known to harbor diverse and abundant reptile and amphibian faunas are essentially unsurveyable by this method.

In relation to environmental conditions - we are told in A-6-1 that "surveys were conducted from April through July 1992". There is no discussion of the area or effort-specific environmental conditions during these efforts, nor any discussion of how variation in these factors might affect results. As a just one example, what were the weather conditions at the time of each survey and in the period preceding the survey? For orange-throated whiptails, coastal rosy boas and red diamond rattlesnakes (target and sensitive species) this can be a critical factor in the potential for observation of these species. Yet, based upon the available information, we have no way of determining this.

In relation to the concern regarding repeated surveys - We are told (A-6-1) that approximately 22 areas totaling 33,500 acres were surveyed during the study period. In fact, this at best is confusing if not somewhat misleading as Tables A-6.1 and A-6.2 indicate that both sites #1 (Boden Canyon) and # 17 (Otay Mesa) are listed as 0 acres ("No access"), with no sensitive plants nor any sensitive wildlife species noted, that two Lake Hodges sites were combined, and that while plant species were somehow recorded at Rockwood Canyon (listed as "No Access") no animal species were observed. Therefore, the correct figure should be either 18 or 19 areas surveyed. Further examination of the text and tables indicates that aside from the statement (A-5-1) that "There will be a one time survey conducted at each site... sites will be evaluated and prioritized regarding need for repeat surveys", there is no discussion or tabulation of the number of surveys conducted, the number of people involved, whether or not there *were* repeated surveys, whether or not the surveyors switched between areas in at least a minimal attempt to avoid observer bias, the actual time spent surveying at each site, or a host of other factors that would affect the accuracy and precision of the survey. Without this information it is effectively impossible to determine if sufficient survey effort was expended to insure adequate coverage to deal with at least some of the issues noted above.

Given these concerns, what does the actual data presented say and are there concerns about the nature of the information? Cismontane San Diego County holds or recently held approximately 9 native and 2 introduced amphibian species, and 37 native and at least 2 introduced reptile species. Given that there is expected to be at least some variation from survey site to survey site based upon factors such as habitat variation, (all sites may not hold all species) what do the survey results indicate about breadth of the surveys (ignoring for the moment the consideration of depth, discussed in part above)? Table A-6.3 lists the total number of **all** amphibian and reptile species encountered at each site. The total number ranges from a low of 0 (at Poway) to 2 (at Del Dios Hwy SW, Del Dios Hwy SE) to a maximum of 20 (at Marron Valley). The mean number of species detected at all sites (n = 18) was 9.33. Assuming that minimally, 1) certain species with wide distributions and habitat tolerances are likely to be present at all sites (such as the San Diego gopher snake, common kingsnake, night snake, San Diego ringneck snake, Southern Pacific rattlesnake, striped racer, western fence lizard, San Diego alligator lizard, western skink, Pacific treefrog, Pacific slender salamander) and 2) that by chance alone, only half (n=23) of all potential (n=46) species are present, how well do these survey results reflect what is or might actually be present? As determined by these surveys, only the "richest" area (Marron Valley) holds close (20) to

the **minimal** expected number of species (23). Twelve (66%) of the sites held less than half of the minimal number of expected species.

Based solely upon these survey results, it could be argued that amphibian and reptile species diversity for these areas is remarkably low. In fact, this is probably not the case. Based upon existing information (not incorporated into the above-noted results) about the regional distribution and ecology of many species of amphibians and reptiles, it is likely that there are many more species present than were noted during the surveys. However, because of the inadequate nature of the methodology used and the documentation, the reviewer is unable to distinguish between these two alternatives. Regardless, because this information was and is presumably used in the formulation, design and implementation of the reserve areas, it is critically important that it be as accurate and precise as possible. Any survey that, on the average, notes only on average 40% (mean of 9.33 of 23 species) of the *minimum* number of species likely to occur in an area is grossly and unacceptably inaccurate, the general disclaimer that "A number of the target species will probably not be directly observed during the surveys." (A-5-2) not withstanding.

In summary on this section, a strong case can be made that there is insufficient information presented to 1) determine if appropriate and adequate survey effort was expended to accurately assess the presence/absence of sensitive and target species 2) allow determination of whether or not there indeed even sufficient *total* information presented to be useful in the considerations for the design, implementation and management of reserves. In my opinion, this situation represents a critical deficiency that affects the entire MSCP effort, and needs to be immediately and rigorously addressed by the agencies involved in the process.

Species-specific comments - The MSCP lists five species of amphibians and reptiles that are "covered" under the Plan. These species and the determinations made (Table 4.3-1) are:

Species	Finding	# and % major populations conserved	# and % of points conserved
Orange-throated whiptail	Adequately conserved by the plan	56% of CSS, chaparral and riparian scrub	not mapped
San Diego horned lizard	Adequately conserved by the plan	56% of CSS, chaparral and riparian scrub	184.6/291 (63%)
Southwestern pond turtle	Adequately conserved by the plan and protection of state and federal wetlands regulations	70% of riparian habitats and fresh-water marsh	6.8/8 (86%)
California red-legged frog	Discountable	70% of riparian habitats and fresh-water marsh	not mapped
Arroyo southwestern toad	Adequately conserved by the Plan and protection by state and federal wetlands regulations. Management	70% of riparian habitats and fresh-water marsh	14.5/15 (97%)

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	plans will address preservation of sheltering and foraging habitat within 1 km of occupied breeding habitat within the preserve, and to the extent possible control/removal of non-native predators		

There are several major problems with this data and inherent assumptions, and I strongly disagree that any of these species are "adequately covered" by the plan , for at least two reasons. First and foremost, there is in my opinion and the opinion of most other herpetologists knowledgeable about these species, insufficient data to allow for a rigorous and objective determination of their status and potential for survival under the MSCP. Second, the available data and nature of the plan does not justify a finding of "adequately covered" by anything other than a largely subjective determination. Species-specific comments, questions and concerns follow.

California red-legged frog	Discountable	70% of riparian habitats and fresh-water marsh	not mapped

California red-legged frog (CRLF): This frog was formerly widely distributed within southern California and occurred within the MSCP area (Jennings and Hayes 1995). There is no rigorous documentation of the occurrence (or extirpation) within the MSCP area contained within the body of the text or references. Assertions of total extirpation regional are based in part upon limited anecdotal evidence, and a very limited number of surveys. In my opinion and that of other herpetologists familiar with the species are the region, there is some probability (admittedly not large) that small, isolated populations may exist in the area. However, to assume, on the basis of very limited evidence that the impacts to the species are "discountable" ignores two important considerations. First, that adequate survey effort has not been to date expended to insure with any reasonable degree of certainty that the species is indeed extirpated within this region. Therefore, this would be a necessary but not sufficient condition to warrant this determination. Second, even if this were shown to be the case, what impact would the effective abandonment of a significant portion of the frogs (historical) range have on the potential for recovery (and de-listing or down-listing) of the species, especially given the nature of long-term and "no surprises" considerations in proposed agreements? At the minimum, adequate answers to both these questions need to be provided before an effective evaluation of the potential effects of the MSCP on this species can be made.

Furthermore, there are some minor but significant errors within the tabular material and supporting species accounts. The habitat-based estimate of the habitat conserved is identical to that of the southwestern pond turtle, and presumably derived from it. Although the two species do or did co-occur in many areas, there are significant differences in their some of their habitat tolerances, and thus this figure for the CRLF may not be totally accurate. Second, CRLF are known to move extensive distances (> 1 km) overland, not just the 98' cited on p. 206.

Given 1) the discussion above 2) the perilous status of the one known remaining population in southern California (Riverside Co.) and 3) the general range-wide decline of the species (est. 75% - Jennings and Hayes 1995), there seems to be no documented reason, based upon either empirical evidence or substantial discussion, of how a finding that the risk to the species is "low" (p. 206) or that the effects of the MSCP on the species are "discountable". As such, I would strongly suggest that the finding of "adequately conserved by the plan" is not warranted and should be rescinded.

Arroyo southwestern toad	Adequately conserved by the Plan	70% of riparian	14.5/15

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and protection by state and federal wetlands regulations. Management plans will address preservation of sheltering and foraging habitat within 1 km of occupied breeding habitat within the preserve, and to the extent possible control/removal of non-native predators	habitats and fresh-water marsh	(97%)

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Arroyo southwestern toad (AST): This species is largely a cismontane southern California endemic, and has been extirpated from 76% of its historic range (Jennings and Hayes 1995). Remaining populations are at risk from a wide variety of impacts, including operation and management practices of reservoirs, predation by exotic species, alteration of riparian and upland habitats, direct mortality from vehicles, and other factors. There are several problems with the data presented above. First, as noted in the species accounts (p. 203-204), recent evidence indicates that AST make extensive use of upland habitats up to *at least* 1 km from the watercourse. This information was made available to the USFWS in early 1995, but was not incorporated into the species accounts until September 1996. There is no discussion within the body of the MSCP document as to how this information might affect the potential location, size, operation and management of reserve and other areas for this and other species.

Second, the finding states that "... the plan will address preservation of sheltering and foraging habitat within 1 km of occupied breeding habitat...". There are at least two major problems with this a) on a minimum area (circular) plot, a 500 m radius encompasses only 25% of the area of a 1 km radius, which is the actual distance used by toads. Comparable figures for linear or square distances differ slightly. Thus, the 1 km distance should be treated as a radius, and not a diameter b) The finding clearly states that this figure only applies to "occupied" breeding habitat. Due to both intra- and interannual movement of toads and the dynamic nature of the local habitat, breeding sites may vary significantly in location from year to year. Thus, under this plan it would be possible to engage in activities in a given time and within an area that could significantly affect the size, stability and viability of toad populations as long *as they were not located within 1 km occupied breeding habitat, regardless of whether or not that habitat is likely to be occupied in the future.* This is a clearly unacceptable situation if the continued existence of toads within the reserve system is a matter of concern. Third, several other problems exist. The data on the presence or documented absence of the of the toad within the MSCP is seriously inadequate, and is probable cause for questioning the validity of conclusions drawn from it. Existing data (Campbell et al 1996) available to the USFWS indicates that there are several localities for AST within the MSCP that were not considered in the general or site-specific analyses. This is in part reflective of an overall problem with the nature and lack of rigor in the data collection effort, and also indicative of the patently inadequate survey efforts expended on this and other species (see specific comments elsewhere in this document). The document states that 14 of 15 localities within the MSCP are conserved. My examination of the localities on the locality map for this species at the USFWS office in Carlsbad on October 29 indicates only 14 sites. Furthermore, all of these are located within a single approximately 10-20 km stretch of one drainage. It is uncertain whether (at best) this represents a single population of toads or repeated observations of isolated individuals over time. This is not determinable with the information presented. Contextually, the determination of "adequate coverage" based even in part upon this information seems disingenuous at best and patently deceptive at worst. The area of occurrence is downstream from a reservoir, and subject to most of the problems discussed elsewhere (see comments on reservoirs) and a few others. The ecology of this species requires consideration of a large number potential impacts from a variety of sources over times frames ranging from weekly to decades-long intervals. In my opinion, the nature of the text and available information does not indicate that there has been any significant consideration of these factors in evaluating the status of this species within the MSCP area. Given this, and 1) the very limited nature of the existing information 2) the highly

82(r)

contextual claim of 97% coverage of point localities 3) the failure to incorporate and consider other locality information and 4) the failure to incorporate minimally adequate safeguards for upland habitats for the species, it seems obvious that the claim that the species is "adequately covered" by the MSCP either does not rest on objectively derived analysis of the situation, or is based upon a serious misinterpretation of the species ecology. As such, I would strongly suggest that the finding of "adequate conserved by the plan" is not warranted and should be rescinded.

Southwestern pond turtle	Adequately conserved by the plan and protection of state and federal wetlands regulations	70% of riparian habitats and fresh-water marsh	6.8/8 (86%)

Southwestern Pond Turtle (SWPT): As with the two species above, there are major problems with the MSCP as it applies to this species. First, the assessment of distribution of the turtle is based upon inadequate data. Examination of species maps at the USFWS on 29 October indicates that only 8 localities are documented within the MSCP area. Data available to the Service since 1992 and other sources indicates that this is not an accurate figure. Second, the table claims that 6.8 of these "sites" are conserved. My examination of the data indicates that the following situation exists.

	MSCP				City of San Diego system	
% site conserved	100	90	80	70	100	75
number of records	1	3	0	2	1	0

Thus, at best only 6.1 of 8 sites are "conserved", which represents 76%, not the 86% claimed in the table. Third, individual sightings of western pond turtles do not constitute evidence of a population (the same holds true for other species). In fact, for a variety of reasons (see Holland 1991,1994, Holland and Bury in press) individuals may persist for decades in areas long after the population has effectively ceased to exist as a functional ecological unit. Thus, at the minimum this information may only represent 8 pond turtles, not necessarily 8 populations.

Fourth, information presented in the species account (p. 208) acknowledges that "Adequate buffers may not be present in the current preserve design to conserve nesting areas of this species, as areas between 3 and 402 m are utilized for laying eggs". Furthermore, WPTs utilize upland habitats during most of the year for overwintering, overland travel and other factors. Holland (1994) notes that overland movements of at least 5 km between drainages are known.

Fifth, there is no discussion nor consideration of the effects of reservoirs (see previous discussion) on this species, despite the fact that all records are for impounded drainages. Sixth, the statement is made that the species "Would receive some protection per federal and state wetland regulations." This is a valid statement, but highly contextual. Given that the species must lay its eggs outside wetland areas, and that it is generally dependent upon upland habitats for a variety of other reasons, depending upon wetland regulations for protection - even if 100% effective - is obviously inadequate. Therefore, as with the arroyo toad and red-legged frog, the determination that this species is "adequately covered" by the MSCP does not appear to be based upon either sufficient data, an accurate assessment of the existing data, or an adequate understanding of the species' ecology. As such, I would strongly suggest that the finding of "adequately conserved by the plan" is not warranted and should be rescinded.

San Diego horned lizard	Adequately conserved by the plan	56% of CSS, chaparral and riparian	184.6/291 (63%)

scrub

San Diego horned lizard (SDHL): As with all other species discussed so far, there are major problems with the data and analysis on this species. First, examination of the species distribution map for SDHL at the USFWS office produces different figures than those noted in the table above. Because of severe time constraints, some points in my analysis may have been missed; however I estimate that this should not change the collective results by more than 2-3% maximum.

	MSCP				City of San Diego system	
% site conserved	100	90	80	70	100	75
number of records	41	20	11	1	20	9

I counted a total of 258 locality records within the MSCP, and 283 localities plotted (in total) on the map. This differs significantly from the tabular figure of 291. Furthermore, on a percentage and category basis, my analysis indicates that only a total of 102 localities are within conserved areas, yielding an effective total of 95.25 points (36.9%) of the points conserved under the best of scenarios, not the 56% claimed in the table. Even assuming the error in my analysis is as high as 10%, there are significant differences between these two figures. Second, as previously noted with the pond turtle, we have no way of determining the actual number (to say nothing of size or other important factors) of populations.

Third, existing evidence (Holland unpubl. data) indicates that SDHL are far more patchily distributed than previously thought, and that not only do population densities vary significantly within a "common" habitat type (e.g. CSS or chaparral), there is also considerable interannual variation in apparent population size. Thus, for a SDHL, not all CSS or chaparral is of equivalent value as habitat. Consideration of these (and numerous other factors) is critical to any objective determination of the potential for adequate coverage within the MSCP area, but there is no evidence or data presented in the text that indicates that this is the case. Fourth, existing and recently acquired data (Holland unpubl. data, R. Fisher pers. comm.) makes consideration of several other factors (given superficial treatment in the text) critical to evaluate the status of the SDHL within the MSCP. The documented negative effects of Argentine ants on the primary prey of SDHL - native ants - (Argentines often effectively replacing them in disturbed areas) needs serious consideration given that the implementation of the MSCP will allow massive levels of habitats alteration and provide major opportunities for the invasion and establishment of Argentine ants in areas where they do not now occur. The frequency, timing and intensity of fire may also affect this species, most likely through the potential for conversion of CSS and chaparral to mixed systems or grasslands. Additionally, SDHL may be far more susceptible to certain edge effects (such as predation by domestic or feral cats and dogs) than many other species. Given that 1) the existing data indicates that under the best of conditions only 56% of "points" (not necessarily populations) will be conserved (or 36.9% by my analysis) 2) that there are untested and likely erroneous assumptions implicit in the habitat-based analysis that may significantly affect probable persistence of populations and 3) that additional information on edge effects, impacts of exotic species and other factors need to be considered in evaluating the status of the species the current finding does not appear to be based upon any objective analysis of the data. As such, I would strongly suggest that the finding of "adequately conserved by the plan" is not warranted and should be rescinded.

Orange-throated whiptail	Adequately conserved by the plan	56% of CSS, chaparral and riparian scrub	not mapped

82(t)

Orange-throated whiptail (OTW): Although this species occurs over a wider area and has a greater number of documented occurrences within the MSCP than the other reptile species, similar concerns apply. My analysis of the distribution maps at USFWS indicates that there are a total of 303 localities indicated. The following analysis is subject to the same potential errors noted the SDHL, due in large part to the nature of the maps and overlays.

	MSCP				City of San Diego system	
% site conserved	100	90	80	70	100	75
number of records	61	49	8	125	48	12

As only a habitat-based analysis is presented for this species, direct comparisons with tabular figures are not possible. My analysis indicates that a total of 256 of 303 points (84.5%) are conserved, whereas the habitat-based analysis indicates that only 56% is conserved. However, as has been indicated elsewhere, this does not indicate the actual number of populations potentially conserved. OTWs can be locally abundant, however densities vary by several hundred percent within "common" habitat types (such as CSS). As indicated with SDHL, population numbers apparently fluctuate significantly on an interannual basis. The major problem with the MSCP as regards this species is the underlying problem with all the species discussed, and indeed is a major flaw in the overall concept of the plan. ***Specifically, adequate data to address questions relevant to the protection and maintenance of this and many other species within the proposed reserve system, in my opinion simply does not exist.*** The authors of these documents must surely be aware that this is a major concern about the process, and yet have failed to deal with the question either in the body of the discussion or by presenting adequate data. To adequately address this situation with OTW's, we would need long-term data from a number of sites in which environmental conditions of interest (exotics present vs. absent, % of edge present, variable fire history, etc.) were not only known with certainty, but could potentially be manipulated over time to track both species-specific and area-specific effects. Baseline data on population dynamics in control vs. experimental sites could be integrated into the considerations for reserve design and management. While the work of Dr. Fisher and Dr. Case will provide some answers to a few of these questions, the study is basically short-term and limited in scope. The guiding principle here should be that this data is in place **prior to** any attempt to begin to implement reserve design considerations. *Post hoc* justification and examination, not matter how well intentioned, is a poor excuse for failure to properly plan in the first place, and the constraints it places on rigorous scientific inference are significant.

With the OTW, as with the other species, there is not sufficient data to allow for adequate analysis of the potential effects of the reserve design or operation on the probability of the persistence of this species under the MSCP. For general reasons discussed above and previously stated in regard to AST, CRLF, SWPT and SDHL, it does not appear that any objective analysis of the data supports the contention that the species is "adequately conserved". As such, I would strongly suggest that the finding of "adequately conserved by the plan" is not warranted and should be rescinded.

82(u)

83 BAUDER/SDSU, 10/29/96

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83(a) In response to concerns, the public review period for the Draft EIR/EIS was extended from October 15, 1996 to October 29, 1996 for a total of 56 days. The public review process was in accordance with CEQA and NEPA Guidelines. In addition, significant public participation has been incorporated throughout the MSCP planning process including 50 Working Group meetings open to the public, workshops and public notices distributed to over 35,000 property owners. Additional public participation will be sought during the hearing process for the MSCP Plan. Please refer also to **Theme Response VIII, Public Involvement.**

83(b) It is acknowledged that the Draft EIR/EIS is a complex document reflecting the region-complexity of the MSCP Plan itself, and the multiple actions and alternatives analyzed in the Draft EIR/EIS. It is also recognized that the MSCP Plan has been in the planning stages for over 5 years with input provided by numerous sources throughout the planning process. This plan evolution process has, however, resulted in a unified and coherent MSCP Plan, the objectives of which are clearly stated on page 1-7 of the Draft EIR/EIS.

The focus of the Draft EIR/EIS is on evaluation of the environmental impacts of the discretionary actions addressed in the document. Those actions are described on pages 1-11 through 1-14 of the Draft EIR/EIS and are summarized in Table 4.1-1. Features are incorporated in the Draft EIR/EIS to facilitate review of the document in the context of the multiple actions and alternatives addressed. These features include the Executive Summary, a description of the document organization on pages 1-23 and 1-24, a description of the approach to analysis of environmental consequences in Section 4.1-1, internal references to significance and mitigation statements following impact analyses, and numerical references for significant impacts and mitigation measures. The Mitigation Monitoring and Reporting Program (MMRP) incorporated in the Final EIR/EIS further highlights the specific impacts and mitigation measures associated with the proposed MHPA. Please refer also to **Theme Response XV, Document Organization.**

83(c) The comment is noted. The referenced article is herein incorporated by reference in the Final EIR/EIS.

83(d) Section 10(a)(1)(B) of the FESA requires that applications for take authorizations of listed species meet 5 issuance criteria, which are 1) the taking would be incidental; 2) the applicant would, to the maximum extent practicable, minimize and mitigate the impacts of such taking; 3) the applicant would ensure that adequate funding for the MSCP Plan would be provided; 4) the taking would not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and 5) the measures, if any, required by the U.S. Secretary of the Interior as being necessary or appropriate for the purposes of the MSCP Plan would be met. The USFWS' biological opinion on the issuance of the Section 10(a)(1)(B) permit would determine whether or not the proposed permit issuance would appreciably reduce

the likelihood of survival and recovery of the covered species in the wild. The standards for proposed rules for listing of species under the FESA do not apply to applications for incidental take permits.

83(e) See **Theme Response XVI, Risk Factors.**

83(f) The MSCP Plan provides for the mitigation of impacts within the discretionary authority of the participating local jurisdictions. The Plan recognizes that the majority of *Pogogyne abramsii* populations occur on MCAS Miramar, which is not a part of the MSCP. These populations would be conserved through formal consultation pursuant to Section 7 of the FESA and through development of Sike's Act agreements with the Marine Corp.

The Fish and Wildlife Service has completed a Biological Opinion on the effects of the Base Realignment and Closure Act on vernal pool species on MCAS Miramar (File Number 1-6-95-F-33). As a term and condition of this Biological Opinion, the Marines are required to include specific vernal pool management zones in the MCAS Miramar Multispecies Habitat Management Plan (MHMP), which would integrate MCAS Miramar's military mission requirements with the conservation of natural resources based on ecosystem management principles. The Marines would involve the Service, the Army Corps of Engineers, and the California Department of Fish and Game in the development of the rehabilitation actions for the remainder of vernal pools on MCAS Miramar. Such actions would include programmatic instructions which assure that maintenance, training, and other land uses would not compromise the integrity of the vernal pool resources. The Marines would implement these programmatic instructions by Air Station orders, or other appropriate regulatory means. The MHMP will be submitted for approval by the Army Corps of Engineers and wildlife agencies by October 1998.

The population of *Pogogyne abramsii* which occurs on Montgomery Field (and which was inadvertently omitted from the MSCP mapping) was included in the 1996 analysis and increases the level of conservation of the species. This area will be managed as Urban Habitat Lands in the City of San Diego Subarea Plan. All vernal pools within the MHPA will be conserved at 100 percent, regardless of the underlying percent preservation category. Conservation measures in the City of San Diego Subarea Plan states that wetlands, including vernal pools, will be preserved at 100 percent inside the MHPA and impacts outside of the MHPA will be avoided to the maximum extent feasible. Unavoidable impacts must be mitigated consistent with the Subarea Plan. Additionally, as a federally endangered wetland species, *Pogogyne abramsii* will receive additional protection through the local, state, and federal wetlands protection regulations and guidelines. As such, the level of protection afforded *Pogogyne abramsii* under the MSCP Plan is expected to adequately conserve this species. The proposed Vernal Pools Unit of the San Diego National Wildlife Refuge would provide management oversight for *Pogogyne abramsii* and contribute towards recovery goals through the preservation of existing and historic habitat.

All of the extant populations of *Pogogyne nudiuscula* are included in the MHPA, and all vernal pools within this boundary will be conserved at 100 percent, regardless of the underlying percent preservation category. Conservation measures in the City of San Diego Subarea plan state that

impacts to wetlands, including vernal pools, will be avoided both inside and outside of the MHPA. Approximately 26 percent of the Stockpen soil series which occurs in the MSCP study area is conserved in the MHPA. Additionally, as a federally endangered wetland species, *Pogogyne nudiuscula* will receive additional protection through the local, state, and federal wetlands protection regulations and guidelines. Considering the above measures, the level of protection afforded *Pogogyne nudiuscula* under the MSCP Plan is expected to adequately conserve this species. Additionally, the proposed Vernal Pools Unit of the San Diego National Wildlife Refuge would provide management oversight for *Pogogyne nudiuscula* and contribute towards recovery goals through the preservation of existing and historic habitat on Stockpen soils and maintenance of habitat integrity. Please refer also to soils conservation analysis summary table included in the revised language in the Final EIR/EIS at page 4.3-48.

83(g) The MSCP is not only conserving species through the dedication of lands in fee title of conservation easements, but it would also provide management and monitoring of species to ensure continual protection. It is anticipated that this water tank proposal on McGinty Mountain will be dropped, although the final decision by the Otay Water District Board is not due until later this year. Therefore, the *Acanthomintha illicifolia* populations on McGinty Mountain are not expected to be impacted and the loss of *Acanthomintha illicifolia* on McGinty Mountain would not be authorized by the take authorizations for the MSCP. The *Acanthomintha ilicifolia* populations in Peñasquitos Canyon are being protected through fencing and signage via the Resource Management Plan for that area, and will be closely monitored over time to ensure that the populations remain healthy and undisturbed. Surveys conducted by biologists from TetraTech in the spring of 1996 did not identify *Acanthomintha ilicifolia* within any of the proposed pipeline alternative alignments for the City of San Diego's Water Repurification Pipeline project.

83(h) The distribution of *Orcuttia californica* within the MSCP study area is limited to populations on Otay Mesa, all but one of which is conserved within the boundaries of the MHPA. All vernal pools within these boundaries will be conserved at 100 percent, regardless of the underlying percent preservation category. Conservation measures in the City of San Diego Subarea Plan state that impacts to wetlands, including vernal pools, will be avoided both inside and outside of the MHPA. Additionally, *Orcuttia californica* will receive additional protection through the Clean Water and Endangered Species Acts. The U.S. Fish and Wildlife Service will continue to work with the U.S. Marine Corps to ensure that populations under the jurisdiction of MCAS, Miramar, are adequately protected. The proposed Vernal Pools Unit of the San Diego National Wildlife Refuge would provide management oversight for *Orcuttia californica* and contribute towards recovery goals through the preservation of existing and historic habitat. Large populations of *Orcuttia californica* also occur outside of the MSCP study area. Considering the above measures, the level of protection afforded *Orcuttia californica* under the MSCP Plan is expected to adequately conserve this species. See also **Theme Response XVI, Risk Factors.**

83(i) In addition to the protections afforded to wetlands through the U.S. Army Corps of Engineer's permit process under Section 404 of the Clean Water Act and the CDFG's permit process under Fish and Game Code 1600 et seq., the County and the City of San Diego have both included mitigation requirements in their subarea plans to avoid, minimize and mitigate impacts to wetland habitats.

The Cities of Chula Vista and Santee will revise their subarea plans prior to issuance of take authorizations to also include these provisions. These mitigation requirements supplement the federal and state regulations, because they address wetland vegetation communities that may not fall under within the jurisdiction of the state and federal statutes. Both the City and the County, in cooperation with the wildlife agencies, intend to pursue a regional permit with the ACOE that would address the specific wetland requirements in San Diego County.

The request to analyze all projects potentially affecting vernal pools that have been proposed within the past five years is outside the scope of this EIR/EIS.

83(j) See response to Comment 83(f).

83(k) See response to Comment 83(f).

83(l) The transplantation of vernal pool plant propagules by itself is not considered to be an adequate mitigation measure for the loss of vernal pool habitat. Transplantation is only used in conjunction with accepted vernal pool mitigation practices requiring avoidance, minimization, and mitigation of impacts. Unavoidable impacts are generally mitigated by require onsite or offsite vernal pool preservation, and restoration/enhancement of existing disturbed vernal pools. Impacts to wetlands, including vernal pools, would b required to be consistent with the Clean Water Act Section 404(b)(1) Guidelines; the federal policy of "No-Net-Loss" of wetland function and value; and local, state, and federal regulations and guidelines. Seed collection and transplantation of vernal pool species would only be used where it is determined that the species of concern would benefit by salvage of individual plants, seeds, or genetic material, and that the receiving pools and their associated species would not be damaged. Transplantation would only occur within appropriate vernal pool complexes and pools.

The wildlife agencies agree that restoration of disturbed vernal pools and historical pool habitat is a good tool to augment and enhance habitat. Preservation and expansion of populations of some vernal pool species will require the protection of restorable, suitable soils within the appropriate matrix of vegetation and necessary topographic conditions. The MSCP would conserve 88 percent of vernal pool habitat (outside of military lands) within a matrix of preserved natural habitat. The Service has proposed the Vernal Pool Unit of the San Diego National Wildlife Refuge to conserve and restore vernal pools and their associated endangered and sensitive species.

83(m) The sale of mitigation credits to mitigate development impacts on private land is desirable to ensure that during the life of the MSCP, the habitat values of Water Utilities owned land is permanently conserved. The draft agreement allows private purchase of mitigation credits <u>only</u> after the City has acquired private lands as mitigation for public project impacts (see Section 4[b[[1] of the Cornerstone Lands Conservation Bank Agreement). See also response to Comment 91(a).

The City Charter provision that requires compensation to the Water Utilities Enterprise Fund for sale, encumbrances or use of Water Utilities land is valid and operable independent of state and federal endangered species and wetland laws. City and specifically Water Utilities Department projects are subject to all applicable state and federal environmental laws.

83(n) Pages 6-1 through 6-4 of the Draft EIR/EIS address the cumulative impacts of other conservation planning efforts in San Diego County, and Riverside and Orange counties. The conservation of any given species within the different subregions must be considered in the context of the species' range and distribution. For some species, complete loss of the population in the MSCP study area would not jeopardize the species as a whole (e.g., barn owl/mountain lion) because their primary range and greatest populations are outside of the MSCP study area. For other species, such as light-footed clapper rail, the loss of the southern San Diego population could have a substantial effect on the population as a whole. The balance of conservation that reflects each species' importance in each planning area would be accomplished through the coordination of these programs in scientific, public policy and finance/ acquisition strategy aspects through the MSCP Implementation Strategy Subcommittee.

In determining the impacts of take within the boundaries of the participating local jurisdictions on the survival and recovery of the covered species, the wildlife agencies consider the existing baseline and future cumulative effects for each proposed covered species, including those of other NCCPs and HCPs.

83(o) The MSCP is an ongoing multi-species plan under the NCCP that addresses coastal sage scrub and other vegetation communities of southwestern San Diego County. As a result of the ecosystem focus for the MSCP, the MSCP had to provide for the conservation of twenty-five vegetation communities within the study area. Additional NCCP plans are being developed or have been proposed for development which would address the remaining portions of San Diego County (MHCP and MHCOSP). There were over 90 species representing all vegetation communities in the plan which were evaluated in the process of developing the MSCP. Trade-offs between gnatcatchers, cactus wrens, orange-throated whiptail and other species were not made in developing the MSCP as the breadth of the cover species list demonstrates.

83(p) The discussions of hydrology/water quality and geology/soils on pages 1-18 and 1-19 of the Draft EIR/EIS acknowledge that, although implementation of the MSCP Plan would have no direct effects on hydrology/water quality and geology/soils, Plan implementation would contribute indirectly to potential changes in the form and character of development. Such changes are not anticipated to result in adverse hydrology/water quality and geology/soils impacts, however, for two primary reasons: 1) likely changes in development patterns would result in more compact development which would result in reduced areal extent of disturbance of natural geologic formations and native soils, and reduced extent of impervious surfaces associated with development; and 2) less development would occur within the designated preserve area than would be anticipated in the absence of the MSCP Plan which would also result in less disturbance of natural landforms and extent of impervious surfaces.

83(q) The discussion on pages 2-13 through 2-15 of the Draft EIR/EIS is not intended to analyze impacts to watersheds associated with implementation of the MSCP Plan. This discussion is incorporated in the project description in Section 2.0 of the Draft EIR/EIS and is simply intended to inform the reader regarding the watersheds within the MSCP study area that would be included within the proposed MHPA. As noted above, no direct impacts to watersheds and hydrology/water quality would be associated with implementation of the MSCP Plan, and the Plan's contribution to indirect effects associated with changes in the form and character of development in the MSCP study area would not be regarded as significant.

83(r) Both the proposed conservation of vegetation communities in the MSCP study area and the proposed take authorizations are based on what currently exists within the boundaries of the participating jurisdictions. The MSCP Plan is not intended to mitigate for all past losses, but rather to address potential future losses and mitigate accordingly. It is fully acknowledged that the remaining natural vegetation communities within the MSCP study area are significantly reduced from pre-European settlement. It is neither the intent of the MSCP nor the requirement of FESA or CESA to regain the historical amount and configuration of habitat in San Diego County. Instead, the MSCP intends to establish and manage a preserve configuration that provides for the conservation of the remaining viable populations of covered species and their habitat.

83(s) The analysis of the No Action/No Project alternative included in the Draft EIR/EIS assumes that future development would occur in a pattern similar to that which has occurred in the past. The historical pattern of land development in San Diego County has resulted in a fragmented pattern of open space and ongoing decline of sensitive species. It is assumed in the Draft EIR/EIS that this pattern would continue under the No Action/No Project alternative.

83(t) The comment is noted. It does not reflect on the adequacy or sufficiency of the Draft EIR/EIS or the data included in the MSCP Plan and no response is necessary.

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SDSU

DEPARTMENT OF BIOLOGY
COLLEGE OF SCIENCES
SAN DIEGO STATE UNIVERSITY
SAN DIEGO CA 92182-4614

(619) 594-6767

October 29, 1996

I appreciate very much the opportunity to comment on the DJEIR/EIS for the Multiple Species Conservation Plan. This is one of the most significant land use decisions for San Diego County since the national forest lands were set aside. It will irrevocably change the density, form and character of land development in an area of 900 square miles. I am deeply dismayed at the inadequate length of the comment period given the complexity and gravity of the issues. It is not possible, nor reasonable, for the interested public to set aside their job and family responsibilities in order to respond to a time table that appears to be set without concern for the community at large. The CEQA process recognizes that expertise and insight not available to decision makers resides within the community. The review period should be long enough to allow this expertise and insight to be brought to bear on the documents. The inadequacy of the review period is compounded by the fact that so many materials are included in the DJEIR/EIS by reference only and hence are not available without special arrangements. 83(a)

I understand the immense difficulties associated with producing this document and the efforts expended. Unfortunately, the final product is still very difficult to analyze. The Plan, as presented in the DJEIR/EIS, is confusing, vague, contradictory, lacking in detail and without a clear focus, reflecting its multiple origins and goals: mitigation for the clean water program, pilot program for preservation of one habitat (coastal sage scrub) under the NCCP, facilitation of real estate development, consolidation of mitigation for all development, avoidance of listing of the gnatcatcher, preclusion of additional state or federal listings of plants or animals as threatened or endangered and an ESA implementation model for the nation. 83(b)

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As a scientist who specializes in vernal pool habitats and species and other narrow endemic plants, I have, over the past 15 years, freely provided data, commentary, maps, constructive suggestions, plans and analysis to various agencies, jurisdictions and consultants. My critical comments here reflect the fact that I am unable to find evidence that these positive offerings have been incorporated. I am hopeful that my commentary will lead to a better plan that will provide viable, sustainable habitat for San Diego's biological diversity and maintain functioning wildlands for wildlife, watershed and other services provided by natural ecosystems. I am attaching to my comments a copy of "The Report of the Ecological Society of America Committee on the Scientific Basis of Ecosystem Management" that was recently published in the journal Ecological Applications (6: 665-691). Please consider this a part of my official comments. I know that the NCCP had guidelines for preserve design, but I would like to ask that this most recent and succinct document by the world's most respected scientific ecological society be applied to the MSCP Plan. Please note the report's emphasis on "uncertainty, surprise, and limits to knowledge" (p. 666) as well as the importance attached to sustainability. 83(c)

Species and habitats

The information presented on individual species does not approach the standard for proposed rules and is inadequate to support the conclusions. It furthermore, does not provide reassurance that species' exitence is not being jeopardized.

Please explain the biological meaning behind the columns of Table 4.3-1 labeled "# and % of points" and "# and % of polygons". Aren't these just mapping constructs? How is a "major population" defined? What weight has been given to year-to-year variability in numbers and distribution? When a number of major populations is considered conserved, does this mean that complete populations are conserved plus some fraction of another (example 4.1 of 7 for *Hemizonia conjugens*), or fractions of all extant populations that add up to the conserved 83(d)

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number (portions of 7 that add up to 4.1)? What is the spatial relationship of the conserved populations? What portion of the historic range do they represent? Based on current information of the biology of a particular species, what is the probability of among population genetic differentiation? 83(d)

How were risks assigned to individual species? The rationale for assigning risks is not clear and the data supporting the assignment is not included. Please construct a table for each species identifying the various types of risks applicable to each species and the degree for each type. (For an example of what I have in mind, please review Table 3 presented in the Vernal Pool Management Plan I prepared for NAS Miramar). Cite studies and documents that can substantiate the conclusions. I believe this information is in most cases available. The most recent information on risks/changed conditions has not been included in the DJEIR/EIS. Glaring omissions concern the proposed widening of Otay Mesa Road (DEIR circulated in July) and the proposed SR 125 (DEIR circulated simultaneously with this document), changed border policy and the realignment of NAS Miramar. The two road projects will have profound impacts on habitat fragmentation, severing of wildlife corridors and dispersal linkages, loss of rare soil types to development, alterations to hydrology and direct loss of rare plants and animals. They are barely mentioned. 83(e)

How can a species such as *Pogogyne abramsii* be considered conserved or covered when the preponderance of its populations occur on US Navy lands? The Navy lands are not covered by this plan. The risk of loss on these lands is substantial and is not identified or discussed in the documents. How can *Pogogyne nudiuscula* be considered conserved or covered when there are only 5 populations in close proximity to one another? When losses of the one soil type on which it is found are substantial and continuing? On what basis is "moderate" risk assigned to this species? Please indicate how recovery for this species has not/will not be precluded. by loss of Stockpen soils, habitat fragmentation, competition from exotics, altered hydrology, increased point source air/water pollution and increased disturbance and other factors. How can *Acanthomintha ilicifolia* be considered conserved or 83(f) 83(g)

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covered when a water repurification project pipeline is proposed across its best site (Sycamore Canyon)? And water tanks were proposed for the McGinty Mountain site? And the population at Los Penasquitos Canyon faces severe on-going disturbance? All of these sites are supposedly "protected" and yet it is clear that the risk of loss and disturbance is high even on "protected" lands and that additional protective measures are needed. 83(g)

On what basis is *Orcuttia californica* considered at only "moderate" risk? This is contrary to an analysis I provided to the Fish and Wildlife Service last year. 83(h)

Has an analysis been completed of the protection afforded vernal pools by federal wetland laws? This protection is invoked in the risks/comments column of Table 4.3-1, but the history of such protection (its degree and efficacy) is not documented. What other protections, in addition to wetland laws, will there be for the vernal pool habitat and pool-dependent species if this plan is approved? What changes in protective mechanisms will there be as a result of the plan? Please analyze all projects potentially affecting vernal pools that have been proposed within the past five years and identify the fate of each pool and which laws, regulations, policies or practices provided protection and the specific type of protection afforded. Identify all cases of habitat loss and the type, amount and location of mitigation. Such an analysis will not only provide documentation of the degree of protection afforded these species and the vernal pool habitat, but also the level of commitment of local decision making bodies to vernal pool protection. 83(i)

How does the amount, spatial distribution and degree of disturbance of the vernal pool habitat present in 1996 compare to what is presented in the report I prepared for the California Department of Fish and Game in 1986? It is imperative to document the type and amount of loss during this period so as to predict the impacts of or analyze proposed changes to vernal pool protections that accompany this plan. 83(j)

The vernal pool habitat is scarcely mentioned in the DJEIR/EIS, except in passing reference to the proposed refuge, the presence of vernal pool species on military lands, as an overlay on the GIS maps, several items in the community plans, etc. The scale of the vernal 83(k)

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pool habitat made it imperative to map it differently from other habitat/vegetation types, and I strongly support this approach. However, the document does not contain sufficient information to determine the likely impacts the plan will have on vernal pools and therefore the appropriateness and adequacy of steps that will be taken to monitor, minimize and mitigate these impacts. In some cases, the specific guidelines have already been violated (design of the culvert under Otay Mesa Road that provides a linkage between pool habitat north and south of the road). Additionally, procedures to deal with both expected and unexpected circumstances cannot be analyzed because the risk analysis is lacking or inadequate for both the species and the habitat. 83(k)

Why is transplantation considered an adequate or appropriate mitigation tool for loss of habitat that has already been diminished by over 95%? Can transplantation be considered to meet the standard of maintenance of populations "in the wild" when species are no longer in their natural association with each other, the soils and upland habitats? Restoration is a reasonable tool to augment and enhance habitat, but at the present rate, many sub-types of pool (sub-types identified primarily by soils, species assemblages and climate) will exist primarily as restored or artificial habitat. Stabilization and expansion of populations of some species will be difficult or impossible with any additional loss of restorable substrate and the reduction of the soil and vegetation matrix in which pools are embedded. 83(l)

Other issues

Why are publicly-held lands (Cornerstone Lands) being used for mitigation of development on private lands? In regard to encumbrances, can the City Charter override state and federal endangered species and wetlands laws? 83(m)

If this plan is part of a "coordinated and seamless coverage for the 4,200-square mile County" and interconnects with other proposed plans for Southern California, what are the 83(n)

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cumulative impacts of adjacent and interconnected NCCP's/HCP's? How does this affect the analysis of species whose primary distribution is not within the San Diego MSCP? 83(n)

Will other natural community plans be developed for San Diego County in addition to the coastal sage scrub NCCP? Is this plan considered to preclude development of plans for other natural communities such as the twelve mentioned on page 1-7? What safeguards have been developed to prevent bias in this plan for coastal sage scrub and its three target organisms (cactus wren, gnatcatcher and orange-throated whiptail) at the expense of other species that only partially co-occur with these three species? 83(o)

The justification for not providing detailed analyses of hydrology/water quality and geologically sensitive lands is inadequate. The document states that the MSCP plan will irrevocably change the density, form and character of land development in an area of 900 square miles. How can this not affect hydrology and water quality? If, hypothetically speaking, development is more concentrated in the lower Sweetwater drainage but less so in the upper Otay drainage compared to the no-plan alternative, why won't this adversely affect flooding, groundwater recharge and water quality in the Sweetwater drainage? It is precisely the density, form and character of development that <u>does</u> affect hydrology and water quality. On what rests the assertion that "Pressure to develop such geologically constrained areas within the preserve would ... **be eliminated** with implementation of the proposed MHPA and alternative scenarios."? (bold my addition) 83(p)

The analysis of watersheds is inadequate (pages 2-13 through 2-15). Again, changes in the density, form and character of land development are critical to understanding impacts on watersheds, hydrology and water quality. The interrelationship of these factors and watersheds is not addressed. 83(q)

When considering the percent of particular vegetation communities or habitats that will be conserved this must be judged against the percent of the estimated extent of the pre-development habitat that remains, and its original natural configuration must be compared to that predicted with the ultimate assembly of reserves under the guidance of the plan. 83(r)

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Furthermore, percents mask important considerations such as spatial relationships and connectivity, as well as thresholds of size and distribution below which habitat sustainability cannot be expected. 83(r)

The no-project alternative needs greater depth of analysis. For example, if development of 25% of "conserved" lands is allowed under the plan, what percent of lands remain undeveloped under existing regulations? I would assume that the plan reduces edge-to-area ratios. Can this be documented? 83(s)

Again, may I state my professional commitment to ecosystem and natural habitat preservation. I have serious reservations regarding the proposed plan because it does not provide me with the information and analysis necessary to make a judgment on its possible success in better "conserving" biodiversity and functional, sustainable ecosystems compared to the other alternatives presented, including the no-project alternative. 83(t)

Sincerely,

Ellen T. Bauder

Ellen T. Bauder, Ph D

Plant Ecologist

Attachment to 83
E Bauder letter

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THE REPORT OF THE ECOLOGICAL SOCIETY OF AMERICA COMMITTEE ON THE SCIENTIFIC BASIS FOR ECOSYSTEM MANAGEMENT[1]

NORMAN L. CHRISTENSEN (Chair)
Nicholas School of the Environment, Duke University, Durham, North Carolina 27708 USA

ANN M. BARTUSKA
U.S. Department of Agriculture, Washington, D.C. 20090 USA

JAMES H. BROWN
Department of Biology, University of New Mexico, Albuquerque, New Mexico 87131 USA

STEPHEN CARPENTER
Center for Limnology, University of Wisconsin, Madison, Wisconsin 53706 USA

CARLA D'ANTONIO
Department of Integrative Biology, University of California, Berkeley, California 94720 USA

ROBERT FRANCIS
Fisheries Research Institute, University of Washington, Seattle, Washington 98195 USA

JERRY F. FRANKLIN
College of Forest Resources, University of Washington, Seattle, Washington 98195 USA

JAMES A. MACMAHON
Department of Biology, Utah State University, Logan, Utah 84322 USA

REED F. NOSS
Department of Fisheries and Wildlife, Oregon State University, Corvallis, Oregon 97330 USA

DAVID J. PARSONS
USDA Forest Service, Leopold Institute, Missoula, Montana 59807 USA

CHARLES H. PETERSON
Institute of Marine Sciences, University of North Carolina, Chapel Hill, North Carolina 27599 USA

MONICA G. TURNER
Zoology Department, University of Wisconsin, Madison, Wisconsin 53706 USA

ROBERT G. WOODMANSEE
Rangeland Ecosystem Science, Colorado State University, Ft. Collins, Colorado 80523 USA

Abstract. Ecosystem management is management driven by explicit goals, executed by policies, protocols, and practices, and made adaptable by monitoring and research based on our best understanding of the ecological interactions and processes necessary to sustain ecosystem composition, structure, and function.

In recent years, sustainability has become an explicitly stated, even legislatively mandated, goal of natural resource management agencies. In practice, however, management approaches have often focused on maximizing short-term yield and economic gain rather than long-term sustainability. Several obstacles contribute to this disparity, including: (1) inadequate information on the biological diversity of environments; (2) widespread ignorance of the function and dynamics of ecosystems; (3) the openness and interconnectedness of ecosystems on scales that transcend management boundaries; (4) a prevailing public perception that the immediate economic and social value of supposedly renewable resources outweighs the risk of future ecosystem damage or the benefits of alternative management approaches. The goal of ecosystem management is to overcome these obstacles.

Ecosystem management includes the following elements: (1) Sustainability. Ecosystem management does not focus primarily on "deliverables" but rather regards intergenerational sustainability as a precondition. (2) Goals. Ecosystem management establishes measurable

[1] For a copy of this 27-page report, available for $4.00, or for further information, contact The Ecological Society of America, 2010 Massachusetts Avenue, NW, Suite 400, Washington, DC, 20036. Ph: (202) 833-8773; Fax: (202) 833-8775.

goals that specify future processes and outcomes necessary for sustainability. (3) Sound ecological models and understanding. Ecosystem management relies on research performed at all levels of ecological organization. (4) Complexity and connectedness. Ecosystem management recognizes that biological diversity and structural complexity strengthen ecosystems against disturbance and supply the genetic resources necessary to adapt to long-term change. (5) The dynamic character of ecosystems. Recognizing that change and evolution are inherent in ecosystem sustainability, ecosystem management avoids attempts to "freeze" ecosystems in a particular state or configuration. (6) Context and scale. Ecosystem processes operate over a wide range of spatial and temporal scales, and their behavior at any given location is greatly affected by surrounding systems. Thus, there is no single appropriate scale or time frame for management. (7) Humans as ecosystem components. Ecosystem management values the active role of humans in achieving sustainable management goals. (8) Adaptability and accountability. Ecosystem management acknowledges that current knowledge and paradigms of ecosystem function are provisional, incomplete, and subject to change. Management approaches must be viewed as hypotheses to be tested by research and monitoring programs.

The following are fundamental scientific precepts for ecosystem management. (1) Spatial and temporal scale are critical. Ecosystem function includes inputs, outputs, cycling of materials and energy, and the interactions of organisms. Boundaries defined for the study or management of one process are often inappropriate for the study of others; thus, ecosystem management requires a broad view. (2) Ecosystem function depends on its structure, diversity, and integrity. Ecosystem management seeks to maintain biological diversity as a critical component in strengthening ecosystems against disturbance. Thus, management of biological diversity requires a broad perspective and recognition that the complexity and function of any particular location is influenced heavily by the surrounding system. (3) Ecosystems are dynamic in space and time. Ecosystem management is challenging in part because ecosystems are constantly changing. Over time scales of decades or centuries, many landscapes are altered by natural disturbances that lead to mosaics of successional patches of different ages. Such patch dynamics are critical to ecosystem structure and function. (4) Uncertainty, surprise, and limits to knowledge. Ecosystem management acknowledges that, given sufficient time and space, unlikely events are certain to occur. Adaptive management addresses this uncertainty by combining democratic principles, scientific analysis, education, and institutional learning to increase our understanding of ecosystem processes and the consequences of management interventions, and to improve the quality of data upon which decisions must be made.

Ecosystem management requires application of ecological science to natural resource actions. Moving from concepts to practice is a daunting challenge and will require the following steps and actions. (1) Defining sustainable goals and objectives. Sustainable strategies for the provision of ecosystem goods and services cannot take as their starting points statements of need or want such as mandated timber supply, water demand, or arbitrarily set harvests of shrimp or fish. Rather, sustainability must be the primary objective, and levels of commodity and amenity provision must be adjusted to meet that goal. (2) Reconciling spatial scales. Implementation of ecosystem management would be greatly simplified if management jurisdictions were spatially congruent with the behavior of ecosystem processes. Given the variation in spatial domain among processes, one perfect fit for all processes is virtually impossible; rather, ecosystem management must seek consensus among the various stakeholders within each ecosystem. (3) Reconciling temporal scales. Whereas management agencies are often forced to make decisions on a fiscal-year basis, ecosystem management must deal with time scales that transcend human lifetimes. Ecosystem management requires long-term planning and commitment. (4) Making the system adaptable and accountable. Successful ecosystem management requires institutions that are adaptable to changes in ecosystem characteristics and in our knowledge base.

Adaptive management by definition requires the scientist's ongoing interaction with managers and the public. Communication must flow in both directions, and scientists must be willing to prioritize their research with regard to critical management needs. Scientists have much to offer in the development of monitoring programs, particularly in creating sampling approaches, statistical analyses, and scientific models. As our knowledge base evolves, scientists must develop new mechanisms to communicate research and management results. More professionals with an understanding of scientific, management, and social issues, and the ability to communicate with scientists, managers, and the public are needed.

Ecosystem management is not a rejection of an anthropocentric for a totally biocentric worldview. Rather it is management that acknowledges the importance of human needs while at the same time confronting the reality that the capacity of our world to meet those needs in perpetuity has limits and depends on the functioning of ecosystems.

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Introduction

We should manage so as not to deny future generations the opportunities and resources we enjoy today.

A century ago, only a few prescient individuals were concerned about the sustainability of the variety of ecosystems that provide the commodities and services upon which humans depend. Large expanses of "the frontier" remained, the sea was considered unexplored and underexploited, and the natural world was seen solely as a cornucopia whose raison d'être was to provision human needs, as well as an infinite sink for human wastes and pollutants.

During this century, human populations, along with their demands for space, commodities, and amenities from ecosystems, have increased by over fivefold (e.g., Karlin 1995). At the same time, evidence has mounted that there are limits to the stress such systems can withstand and still remain viable. We have witnessed the collapse of agricultural ecosystems in the southeastern United States and midwestern "Dust Bowl," and watched the spread of desert into rangeland in the Southwest. That the frontier is gone is nowhere more vividly symbolized than in the western forests where our wish to sustain harvests from dwindling supplies of old-growth timber has run headlong into our legislated commitment to preserve the diverse biota comprising those ancient woods. Marine fisheries, once thought to be inexhaustible, are now impoverished, and access to these resources has become a matter of serious international dispute. The impact of forest management activities on breeding habitat for migratory fishes has highlighted the reality that the sustainability of many ecosystems depends on connections to other systems that extend well beyond individual ownerships, traditional borders of management jurisdiction, and even international boundaries.

We should manage so as not to deny future generations the opportunities and resources we enjoy today. At its core, ecosystem management assumes that intergenerational sustainability must be a precondition rather than an afterthought, not only for the continued production of "goods" or commodities, but also for the maintenance of critical "services" that ecosystems provide (Box 1). Goods represent those items that we commonly buy and sell and have monetary value in the market place. Society also depends on the services that ecosystems provide such as clean air and water, which we value but are not typically given monetary value. All of these goods and services derive from a diverse array of functions performed by ecosystem.

We rely on highly managed ecosystems such as croplands, estuarine aquacultural systems, or forest plantations for producing ecosystem goods; however, the sustainability of such intensively managed ecosystems is strongly dependent on the matrix of less managed ecosystems in which they are embedded (e.g., Lubchenco et al. 1993).

In recent years, sustainability has become an explicitly stated, even legislatively mandated, goal of management agencies charged with the stewardship of natural resources. In practice, however, management strategies and tactics have often focused on maximizing short-term yield and economic gain, rather than long-term sustainability. Several factors contribute to this disparity between goals and practices, including: (1) gross undersampling of nearly all environments and consequent poverty of information on their biological diversity; (2) widespread ignorance of the functioning and dynamics of ecosystems; (3) the openness and interconnectedness of ecosystems on spatial and temporal scales that exceed greatly the bounds of any management authority; and (4) a prevailing public perception that exploitation of supposedly renewable resources

Box 1. Ecosystem goods and services. Healthy ecosystems perform a diverse array of functions that provide both goods and services to humanity. Here, goods refer to items given monetary value in the market place, whereas the services from ecosystems are valued, but rarely bought or sold.

Ecosystem processes include:

- Hydrologic flux and storage
- Biological productivity
- Biogeochemical cycling and storage
- Decomposition
- Maintenance of biological diversity

Ecosystem "goods" include:

- Food
- Construction materials
- Medicinal plants
- Wild genes for domestic plants and animals
- Tourism and recreation

Ecosystem "services" include:

- Maintaining hydrological cycles
- Regulating climate
- Cleansing water and air
- Maintaining the gaseous composition of the atmosphere
- Pollinating crops and other important plants
- Generating and maintaining soils
- Storing and cycling essential nutrients
- Absorbing and detoxifying pollutants
- Providing beauty, inspiration, and research

(Modified from Ehrlich and Ehrlich 1991, Lubchenco et al. 1993, and Richardson 1994)

Box 2. Selected definitions of ecosystem management.

. . . regulating internal ecosystem structure and function, plus inputs and outputs, to achieve socially desirable conditions.
(Agee and Johnson 1988)

. . . the careful and skillful use of ecological, economic, social, and managerial principles in managing ecosystems to produce, restore, or sustain ecosystem integrity and desired conditions, uses, products, values, and services over the long term.
(Overbay 1992)

. . . the strategy by which, in aggregate, the full array of forest values and functions is maintained at the landscape level. Coordinated management at the landscape level, including across ownerships, is an essential component.
(Society of American Foresters 1993)

. . . a strategy or plan to manage ecosystems for all associated organisms, as opposed to a strategy or plan for managing individual species.
(Forest Ecosystem Management Team 1993)

. . . the optimum integration of societal values and expectations, ecological potentials, and economic plus technological considerations.
(Eastside Forest Health Assessment Team 1993)

. . . a resource management system designed to maintain or enhance ecosystem health and productivity while producing essential commodities and other values to meet human needs and desires within the limits of socially, biologically, and economically acceptable risk.
(American Forest and Paper Association 1993)

. . . integrating scientific knowledge of ecological relationships within a complex sociopolitical and values framework toward the general goal of protecting native ecosystem integrity over the long term.
(Grumbine 1994)

. . . integration of ecological, economic, and social principles to manage biological and physical systems in a manner that safeguards the ecological sustainability, natural diversity, and productivity of the landscape.
(Wood 1994)

has immediate economic and social value sufficient to outweigh the risks of damage to future ecosystem services or any alternative management goals.

More than a century of ecological research and natural resource management experience has taught us that ecosystems are far more complex and difficult to manage than was thought at the time that resource management agencies such as the Forest Service, National Park Service, and National Marine Fisheries Service were established. With limited understanding of the importance of diversity and complexity in ecological systems, utilitarian management has generally proceeded on the notion that we can simplify the structure and composition of ecosystems to achieve efficient production of specific goods such as timber, fish, or agricultural crops at no risk to sustainability. Our grossly inadequate understanding of the important role of natural disturbance processes to sustained ecosystem function certainly supported so-called "object-oriented" management protocols for our wilderness parks that denied their ever-changing character (Agee and Johnson 1988).

As with all of the sciences, ecological understanding and models of ecosystem functioning are provisional and subject to change. However, mechanisms for adjustment of management goals and strategies as ecosystems change and as our knowledge base improves are often limited or absent. Recent reports of the National Academy of Sciences (National Research Council 1990, 1992*a*) have emphasized the negative consequences of this limited ability to adapt to changing conditions and new information.

Defining Ecosystem Management

No fewer than 18 Federal agencies have committed to the principles of ecosystem management (Congressional Research Service 1994). Similar commitments have been made by a variety of state and local land managers, nongovernmental organizations, and corporations involved in natural resource management. Furthermore, elements of ecosystem management are mandated for federal lands in a number of important pieces of legislation (Appendix 1). Nevertheless, there is little agreement on the exact meaning of this phrase (Box 2). This diversity of definitions brings to mind the fable of the six blind men and the elephant, with each definition reflecting the specific perspective, agenda, or interest of the author. However, a cynic might claim that, rather than touching different parts of the ecosystem management elephant, each "blind man" is grabbing a different item and claiming to have grabbed an elephant.

So, what is the elephant? Franklin (1996) suggested that ecosystem management is ". . . managing ecosystems so as to assure their sustainability." Sustainability is indeed *the* central goal or value of ecosystem management. Notions of sustainability are at least implicit in other management protocols or schemes; however, the focus is typically on sustaining the delivery of desired goods and services. *Ecosystem management is management driven by explicit goals, executed by policies, protocols, and practices, and made adaptable by monitoring and research based on our best understand-*

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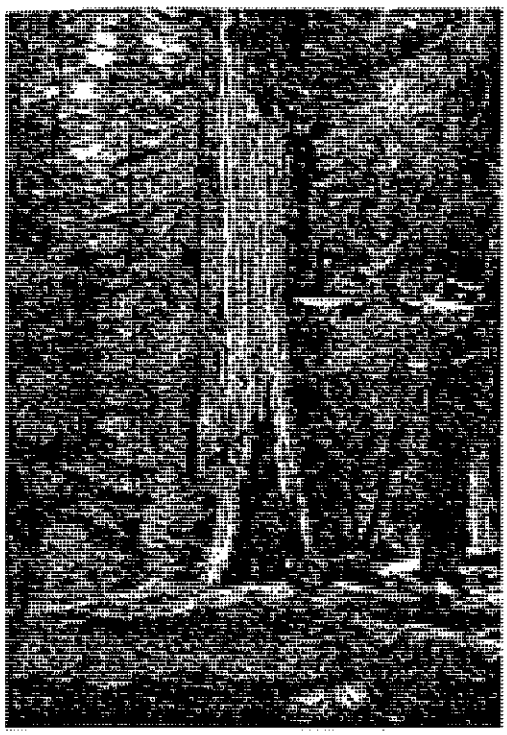


Box 7. Fire in the Sierra Nevada conifer forest. Nearly a century of fire suppression has presented a serious challenge to efforts to assure the long-term sustainability of the conifer forests of the Sierra Nevada. Disruption of a prehistoric fire regime characterized by frequent low intensity (both lightning and native American ignited) fires has resulted in increasingly hazardous fuel loadings, altered forest structure, and changes in mosaics of age class and species composition (Kilgore 1973). State and Federal agencies are increasingly turning to prescribed burning as a tool to reduce fuels and restore fire as a natural process. In so doing they must address philosophical and policy questions, as well as face a myriad of restrictions and constraints.

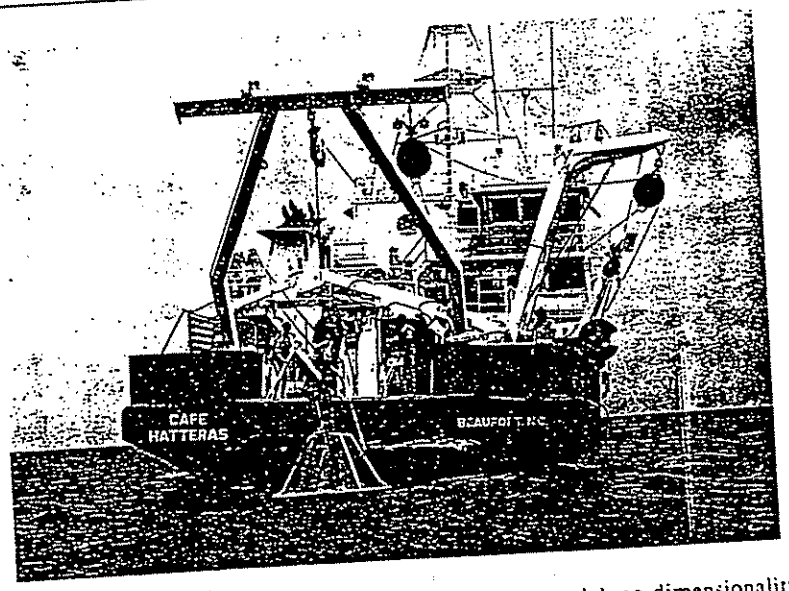
Specific challenges to the restoration of fire to the Sierra mixed conifer forest include understanding natural forest dynamics and the effects of fire suppression on those dynamics, dealing with multiple political and management constraints, and in the case of natural areas, resolving the question of whether aboriginal burning should be considered part of the "natural" scene. These questions influence the establishment of objectives for managing a specific area, while the latter constraints affect the level to which those objectives can be accomplished. Constraints of special concern include the presence of unnatural fuel accumulations (resulting in uncharacteristically large and intense fires), fragmented landscapes, the increasingly important wildland–urban interface, changing ignition patterns (e.g., arson), air quality limitations (burning is frequently limited by local air quality restrictions), agency funding, and threats of public liability. Progress made to date leaves significant doubts over the prospects of ever successfully restoring fire to its natural role in even the national parks of the Sierra Nevada (Parsons 1995).

The fact that we now understand that presettlement fire regimes of the Sierra Nevada were actually characterized by long-term fluctuations driven largely by climatic variation (Swetnam 1993) further complicates efforts to restore natural fire. Improved understanding of the relationships between fire, vegetation and climate will be required to accommodate predicted future global climatic change (Overpeck et al. 1990). Should surrogates for fire (e.g., mechanical clearing or chemical treatment) need to be employed to reduce hazardous fuels over significant areas, an entirely new set of challenges will confront managers attempting to use ecosystem management principles in the Sierra Nevada.

management all the more compelling and important. Over the past five decades, our numbers have grown from 2.5 to nearly 5.7 billion. Depending on assumptions upon which such predictions are based, human populations will likely reach 7–9 billion by the year 2020. The resources upon which our populations depend are delivered from ecosystems in finite quantity and the capacity for delivery of such resources is not distributed uniformly across the globe or in patterns that necessarily correlate with the areas of greatest human demand.

It is also equally certain that demands for the different kinds of goods and services provided by ecosystems will change. The "frontier," as our forebears viewed it, is gone. Two centuries ago, it was possible for our nation to disturb and deforest virtually its entire eastern half, leaving almost no trace and only a fragmentary understanding of its presettlement forests. We now understand that the management of the 19th century has left us with impoverished landscapes, and we have come to value all the more the few areas of near-pristine habitat that remain intact.

Many of our most celebrated "environmental trainwrecks" are not disputes between the "rights of nature" vs. the human demands for resources, rather they are conflicts among competing human demands. In the Pacific Northwest, so long as demand was light, forestry was not seen as competing with the commercial anadromous fishing industry. Today, those competing demands are a core issue in the development of sus-



Box 8. Limits to knowledge in marine environments. The vastness and three-dimensionality of the marine environment combined with an historical lack of necessary research incentives present unique limitations on our ability to acquire knowledge in these ecosystems. For example, recent discoveries of new habitats such as deep-sea vents (Grassle 1986), cold seeps (Williams 1988), and whale carcasses (Smith et al. 1989), with attendant unique biological communities illustrate the depth of our ignorance of the range of marine habitats. Similarly, sampling of just the larger seafloor invertebrates on the continental shelfbreak only ≈50–80 km off the mid-Atlantic coast revealed 1202 species, 520 of which were new to science (Blake et al. 1987). The presence of abundant small species of phytoplankters in the oceans, the picoplankton, has only been known since 1979 (Waterbury et al. 1979). Genetic analysis has only recently revealed that certain species of importance to human society (notably the pollution indicator, *Capitella capitata*: Grassle and Grassle 1976; the universal biomonitor of water-column pollution, *Mytilus edulis*: McDonald et al. 1992; and certain corals and other reef invertebrates: Knowlton et al. 1992) are actually complexes of multiple species. Within-species genetic diversity is virtually undescribed for marine organisms (see Alberte et al. 1993).

tainable management strategies for Pacific Northwest forests.

The mismatch between the spatial and temporal scales at which humans make resource management decisions and the scales at which ecosystem processes operate present the most significant challenge to ecosystem management. Boundaries between ownerships and jurisdictions rarely match the domain of ecosystem processes. Such mismatches are often at the basis of human conflict. For example, rivers more than any other natural feature form the borders between counties, states, and countries, and thus invite conflict over the management of resources dependent on water-driven ecosystem processes.

Such resource disputes demonstrate the limitations of human institutions to achieve consensus regarding the setting and achieving of resource management goals and objectives across increasingly large scales of time and space. Few would deny concerns over such regional resources as the forests of the Pacific Northwest or the North Atlantic fishery. However, we have identified few mechanisms to translate the actions occurring within individual forest ownerships or local fishing communities into strategies to reconcile competing demands for resources or promote a regional vision for sustainability.

To say that ecosystem management is about managing human activities is not necessarily to call for increased regulation or "command and control." A rich array of policy options exists to pursue these goals. Concerns such as the rights of private property owners and local loss of jobs are not likely to diminish and ecosystem management must include strategies that deal positively with those concerns.

Humans and naturalness

"Natural" is one of the most ambiguous terms in our language, yet persists in usage because it signifies something of great esthetic and spiritual importance to many people. Although naturalness is often assumed

to be unmeasurable, Anderson (1991) offered three criteria for assessing the relative naturalness of any area: (1) the amount of cultural energy required to maintain the system in its present state; (2) the extent to which the system would change if humans were removed from the scene; and (3) the proportion of the fauna and flora composed of native vs. non-native species. For example, a natural forest ecosystem that is self-maintaining changes little (barring stand-replacing disturbance) if left alone, and is composed of native species, is more natural than a tree farm.

A strict dichotomy of natural vs. unnatural breaks down when humans are considered part of an ecosystem. The Darwinian revolution united humans and nature in the most fundamental way—by origin. However, human cultural evolution has led to behaviors and artifacts that are qualitatively distinct from the rest of nature. The "everything is natural" view is just as dangerous in natural resources management as it is in human social behavior. Behaviors that are quite natural and that contribute to individual fitness may nevertheless be destructive in society or in natural ecosystems.

Natural is a relative rather than absolute concept. Small "natural areas" in a sea of development are heavily affected by their surroundings (Burgess and Sharpe 1981, Noss 1983) with edge effects known to penetrate great distances from their boundaries (Wilcove et al. 1986). Even the largest and most remote wilderness areas are not immune to effects of industrial civilization such as global warming, stratospheric ozone depletion, and long-distance transport of pollutants. Thus, no purely natural areas exist anywhere. Yet few would disagree that a remnant of virgin forest or tallgrass prairie is more natural than a clearcut or a shopping mall.

Natural areas, even if less than pristine, have a critical role to play in society and in ecosystem management. One of the greatest potential values of natural areas is as benchmarks or control areas for management experiments. This value was recognized by Aldo Leopold (1941, 1949), who pointed out that wilderness provides a "base-datum of normality" for a "science of land health." Scientists shudder to think of experiments without controls, but this is the case for much of current natural resource management (Noss 1991). Existing natural areas are imperfect baselines for many reasons, but they are the best we have. Ecosystem management, because it is essentially experimental and adaptive, requires natural areas as controls. The importance of ecosystem representation as a conservation goal, as well as the concept of endangered ecosystems, is discussed in Appendix 2.

Thus, the naturalness idea remains useful but is in need of significant revision if it is to contribute to enlightened ecosystem management. In many situations the term "historic" can be substituted for "natural" to describe the condition of a landscape before substantial alteration by human activity. Many agencies have goals

Box 9. Human impacts are ubiquitous and complex: the Bering Sea ecosystem. The Bering Sea is one of the world's most biologically productive marine regions. Most noteworthy are its many species of large marine mammals, its variety of seabirds, and its diversity of fish and shellfish. The Bering Sea ecosystem includes 450 species of fish, crustaceans, and mollusks, of which 50 species are commercially important. These fish and shellfish are a food source for millions of seabirds and at least 25 species of marine mammals

These biological resources are the foundation of the subsistence economy and culture of the indigenous peoples inhabiting the margins of the Bering Sea, and their cultural integrity is dependent upon the continued availability of these resources. Commercial interests from the United States, as well as from Russia, Japan, Poland, Korea, Taiwan, and China have also exploited these resources during the past 200 yr, taking a variety of species including fur seals, whales, sea otter, salmon, crab, shrimp, halibut, cod, herring, sole, flounder, rockfish, sablefish, and walleye pollock. Marine mammals are no longer harvested commercially, but production of fish and shellfish from the Bering Sea contributes at least 5% of the world's fishery production. Except for salmon, which have supported a commercial fishery since the turn of the century, the commercial utilization of the fish and shellfish resources of the Bering Sea began about 1950. In the early years of fishery development, stocks were aggressively harvested with little regard for sustainable use. By the mid-1970s, rockfish (most significantly Pacific Ocean Perch) and halibut stocks had been severely reduced. King crab populations and fisheries collapsed in the late 1970s. The 1980s saw a complete shift in the exploitation of the valuable groundfish resources of the U.S. Exclusive Economic Zone from predominantly foreign to exclusively domestic.

Recent declines in the populations of some Bering Sea marine mammals and seabirds have raised questions concerning the impact of present fisheries management on these fish-eating species. For instance, Stellar sea lions have declined by 50–80% in the last two decades and are now classified as "threatened" under the Endangered Species Act. The population of harbor seals may be only 15% of its 1970s level. Bering Sea populations of pelagic seabirds such as murres and kittiwakes are also exhibiting significant declines. Some contend that these declines are due to a lack of food caused by overfishing of walleye pollock upon which these marine mammals and seabirds depend. Others believe that these changes are due to other factors, including natural cycles in productivity mediated by climate, entanglement in abandoned nets and other debris, shooting by fishermen, pollution, and disease.

to reconstruct landscapes to some historical condition (say, as described by an early naturalist such as William Bartram) or alternately to simulate a natural or historic condition or process with current management. Restoration projects rely on historical models of some type. However, for ecosystem management it is important to recognize that any point in time is a single frame in a very long movie. Returning to a specified historic condition may not be possible; rather, a more sensible goal may be to restore natural disturbance regimes, hydrology, and other ecological processes (Noss 1985) that maintain biological elements of interest. Reconstructions of presettlement vegetation or studies of remaining natural areas in the region are essential for restoration projects based either on pattern- or process-oriented goals.

Given the dependency of heavily managed ecosystems on subsidies from less intensively managed systems, protection of natural areas in reserves is an essential component of an overall ecosystem management plan. A broad range of experimental treatments and corresponding control areas will be needed to answer many of the most important scientific questions related to ecosystem management.

The goal of preserving an area in its "natural" state presents significant challenges to the process of ecosystem management. The long and ubiquitous influence of human activities has both muddled our ability to define what is natural and greatly complicated the task of restoring and maintaining natural ecosystems. The combination of human-caused impacts (e.g., air pollution, fire suppression, introduction of alien species, or habitat fragmentation) and natural environmental change has altered ecological systems to the point that the composition, structure, and processes characterizing the "naturalness" of the area must often be first restored (White and Bratton 1980, Jordan et al. 1987). In many cases the best we can hope for is an approximation of naturalness that minimizes the influences of human activities.

Science as a Model for Ecosystem Management

The greatest triumph of a scientist is the crucial experiment that shatters certainties of the past and opens up new pastures of ignorance . . .
William D. Ruckelshaus

What do you mean you don't know how many acid lakes there are? William D. Ruckelshaus

The acknowledgment of uncertainty is the basis for adaptive management (Holling 1978, Walters 1986, Lee 1993). Given that we still have much to learn about the behavior of ecosystems, science is, in fact, the most appropriate model for the adaptive management of ecosystems.

At root, science is little more than honest question-asking that considers all knowledge provisional and open to discussion. Hypotheses based on specific expectations derived from models of how the world works are tested by observations or experiments that acknowledge the limitations of bias and precision. In some cases our models of how the world works are refined or reinforced; in others they are proven to be inadequate and are replaced.

Managers, as well as those they serve, must accept that knowledge and modes of understanding related to ecosystem function and best management practice are provisional and subject to change with new information. In this context, management goals, protocols, and directives should be viewed as hypotheses of ways to achieve clearly stated operational goals. Monitoring programs then represent specialized kinds of research programs designed to test the hypothesis that current management will achieve the desired goals (Peterson 1993).

Goals and expectations

Often, the overarching goal in management is the sustained provision of many goods and services. For example, goals for a large forested ecosystem might include fiber production, water provision or control, hunting and fishing, recreation, and preservation of biological diversity. As a prerequisite for adaptive management, such broadly stated goals must be translated into specific operational objectives and expectations. The phrase "desired future condition" has been widely used in literature as a euphemism for such operational objectives, although, given the dynamic character of ecosystems, "desired future behavior" might better capture the objectives. Thus, to determine whether management activities are leading toward desired goals in our hypothetical forest ecosystem, expectations might be expressed in terms of forest productivity or age-class distribution, water flows, wildlife population sizes, human visitation, and status of rare and endangered species, respectively. It is essential that such expectations be stated in terms that relate to specific measurements that can be incorporated into monitoring programs.

Objectives and expectations should not be stated solely in terms of the management activities themselves. For example, where a natural disturbance must be simulated such as with prescribed fire, the management program should not have as its sole goal the reintroduction or maintenance of disturbance in the ecosystem. Rather, the implementation of a prescribed fire program should lead to specific expectations with respect to key ecosystem properties and processes such as biological diversity, nutrient availability, species recruitment, etc. (Christensen et al. 1989).

Models

Knowing exactly what to expect from complex systems is a nontrivial challenge, and models are essential to meeting this challenge. Models may take the form

of simple compartment diagrams that provide a means of organizing information or expressing connections and relationships, or they may be developed as complex computer simulations that allow us to depict processes operating through time and across landscapes.

It is not possible to design monitoring programs to measure the dynamics of every species and ecosystem process. Models can be useful in identifying particularly sensitive ecosystem components or in setting brackets around expectations for the behavior of particular processes. They can be especially useful in identifying indices and indicators that provide a measure of the behavior of a broad suite of ecosystem properties. Finally, models often provide useful tools for exploring alternative courses of action (Lee 1993).

Modeling is often criticized because of its blatant attempt to simplify the complexity inherent in ecosystems, but that is indeed its virtue. Lee (1993) characterized models as "indispensable and always wrong." He goes on to say,

> *predictions of [ecosystem] behavior are . . . incomplete and often incorrect. These facts do not decrease the value of models, but they do make it clear that ecosystem models are not at all like engineering models of bridges or oil refineries. Models of natural systems are rarely that precise or reliable. Their usefulness comes from their ability to pursue the assumptions made by humans—assumptions with qualitative implications that human perception cannot always detect.*

Monitoring

Monitoring refers here to data gathering and analysis focused on management expectations and designed to test the success and efficacy of management actions. Within the framework of ecosystem management, monitoring programs should be designed to determine whether management actions are moving the ecosystem toward desired future conditions and trajectories, i.e., toward goals and expectations.

Monitoring programs should be based on accepted rigorous statistical sampling designs and pay particular attention to issues of precision and bias in data gathering. Nevertheless, true replication of measurements is often impossible and in some cases sample sizes are necessarily small. Bias in data gathering is often unavoidable owing to patterns of ownership, accessibility of areas, or limited sampling techniques. These limitations are not an excuse not to establish monitoring programs, but they should be reflected in any conclusions regarding the effectiveness of management actions (Holling 1978, Walters 1986).

The design, development, and maintenance of monitoring programs requires commitment and long-term vision. In the short term, such programs represent an additional cost and are particularly hard to maintain where personnel are not necessarily permanent. In some cases, necessary measurements can be quite costly. However, it is also true that monitoring can provide a basis for understanding the costs of particular management interventions. The scientific community has much to contribute to the development of programs that will maximize information return relevant to specific management goals while minimizing costs.

We do not currently have adequate monitoring programs to assess regional ecological conditions. The Environmental Protection Agency's (EPA) Environmental Monitoring and Assessment Program (EMAP), United States Geological Survey's (USGS) National Stream Quality Accounting Network (NASQAN), and the National Oceanic and Atmospheric Administration's (NOAA) Coast Watch are aimed in the right direction. However, the overall lack of consistent support for long-term monitoring will continue to hinder progressive ecosystem management.

A decision to continue, modify, or abandon a management strategy is conditioned by perceptions of the magnitude of consequences if we are wrong, as well as value systems associated with those consequences. Within the framework of ecosystem management, we must focus on decisions that present the greatest risk to long-term sustainability.

Data management and timely feedback

Enormous amounts of ecosystem data are gathered by a wide variety of private and public resource managers, but complaints of inaccessibility and incompatibility are common. Standards for data gathering are better developed in some areas (e.g., hydrology and climate) and nonexistent in others (e.g., biological diversity). Furthermore, it is too often the case that budget limitations, institutional structures, or personnel changes result in the loss of valuable information.

Advances in computer networking and information storage now provide the means to organize, access, and distribute large quantities of data. Institutional structures should guarantee that such information is fed back to managers in a timely fashion and in a form that is directly relevant and accessible to their management activities.

Research

There is much that we do not know or understand about the structure and functioning of ecosystems. Feedback from adaptive management will certainly reduce our level of ignorance, but research focused on a more detailed understanding of ecosystem processes is critical. Research programs driven solely by the immediate needs of management risk overlooking new insights and opportunities. However, programs that are innocent of an understanding of public concerns and priorities risk being irrelevant.

Scientists should not labor under the illusion that management is limited simply by the supply of data or that communication is a unilateral problem of infor-

mation flow to managers. There is a large array of potentially interesting problems that the research community might wish to tackle, but only a considerably smaller subset of that array is relevant to compelling management questions. Open lines of communication between managers and researchers are critical to the setting of priorities for specific research needs.

Education

There is clearly a need for additional education if successful adaptive management systems are to be developed. Managers have much to learn with regard to the setting of goals and expectations, monitoring, and data handling, and scientists require greater understanding of the priorities of and challenges to ecosystem managers. However, public education is critical. The limited public understanding of how science is done, much less the nuances of specific scientific issues, present special challenges to adaptive management. Public expectations of both managers and scientists are often unrealistically high, a situation that is sometimes fostered by actions and statements of managers and scientists. It will be unlikely that society will accept "science as a model for ecosystem management" in the absence of a clearer understanding of the importance of uncertainty to both science and management.

Implementing Ecosystem Management

Clearly, ecosystem management requires application of ecological science to natural resource actions. Moving from concepts to practice is a daunting challenge and will certainly require the following steps and actions.

Defining sustainable goals and objectives

Critics argue that ecosystem management is little more than a collection of strategies aimed at reducing extractive use of natural resources and preserving natural ecosystems. Although maintaining biological diversity and establishment of wilderness preserves may be important strategies in an ecosystem management plan, and in some areas maintenance of natural systems may be a central goal, ecosystem management should be seen as the collection of protocols and actions that allow us to deliver the essential goods and services of ecosystems in perpetuity. Ecosystem management does not deny the need or wish to harvest fiber from our forests, fish from our coastal waters or lakes, or energy from rivers and streams. It simply confronts the reality that in order to meet these needs or wants sustainably, we must value our ecosystems for more than just economically important goods and services. Given the reality of human population growth and increasing demands for ecosystem goods and services, the issue of sustainable management is especially compelling.

Only a small minority would consciously advocate policies or activities that would diminish the capacity of ecosystems to provide, at levels that we enjoy today, goods and services to future generations. Indeed, sustained capacity and potential are legally mandated requirements for most public agencies charged with the stewardship of natural resources. What we have learned is that, however good our intentions, management that focuses on commodity resources alone, that does not acknowledge the importance of diversity and complexity, that is not aware of influences of and impacts on surrounding areas, and that concerns itself with short time frames, is not likely to be sustainable in the long term.

Sustainable strategies for the provision of ecosystem goods and services cannot take as their starting points statements of need or want such as mandated timber supply, water demand, or arbitrarily set harvests of shrimp or fish. Rather, sustainability must be the primary objective, and levels of commodity and amenity provision adjusted to meet that goal.

Reconciling spatial scales

Implementation of ecosystem management would be greatly simplified if the spatial scales and borders of management jurisdictions were congruent with the behavior of processes central to sustained ecosystem functioning. This is rarely the case for ecological processes, and, given the variation in spatial domain among processes, a perfect fit for all processes simultaneously is virtually impossible. Thus, reconciliation of objectives and actions of the various stakeholders within the domain of an ecosystem must be a central element in implementation of sustainable management strategies. "Because ecosystems exist at several geographic scales, so, too, should efforts to coordinate activities that affect them" (Government Accounting Office 1994).

In some cases, stakeholders may be identified by simply matching maps of ownership with the appropriate ecosystem boundaries, such as the domain of a watershed. More often, stakeholders also include parties who have no title or legal jurisdiction, but are dependent on or have an interest in the goods and services provided by an ecosystem. For example, communities dependent on clean water delivered from a watershed are obvious stakeholders in the management of that watershed. In other situations, such as the management of old-growth forests in the Pacific Northwest or populations of marine mammals in coastal waters, the network of stakeholders is very complex. People who may never visit a Douglas-fir–hemlock forest or see a humpback whale nevertheless have strong commitments to their conservation as evidenced by a willingness to support nongovernmental organizations focused on these issues. They too are undeniably stakeholders.

This committee was not charged with exploring the intricacies of strategies for identifying stakeholders and reconciling conflicts among their interests and objec-

tives. Nevertheless, we do recognize this as one of the greatest challenges to implementation of ecosystem management, and that the success of any ecosystem management plan depends on the identification and involvement of stakeholders "up front" in the planning process. There is a growing literature on the theory and practice of conflict resolution (see, for example, Lee 1993) and a growing number of case studies where ecosystem management strategies have been implemented despite complex patterns of jurisdiction and a multiplicity of competing interests (Box 10).

Reconciling temporal scales

Ecosystem management must deal with time scales that transcend human lifetimes and almost certainly exceed the timelines for other political, social and economic agendas. Public and private management agencies are often forced to make fiscal year decisions about resources whose behavior is better measured in centuries. Given sufficient time and space, unexpected events are certain to happen: however, managers are rarely prepared for such surprises.

To implement ecosystem management, we must develop strategies that incorporate long-term planning and commitment, while recognizing the need to make short-term decisions. Ecosystem management is not an antidote for surprise; rather, it is an approach to management that acknowledges that unlikely events do happen (Holling 1993).

Making the system adaptable and accountable

Successful ecosystem management depends on institutions that are adaptable to variations and changes in ecosystem characteristics, as well as to changes in our knowledge base. Ecosystem managers must acknowledge ignorance and uncertainty, and adaptive management must be an integral component of ecosystem management implementation. As indicated above, managers must recognize that knowledge and understanding are provisional and see their activities as experimental.

To argue that management should be viewed as experimental is not to advocate capricious implementation of untried or avante garde actions. It is rather to acknowledge the limits of our understanding of the consequences of even conventional management procedures to the complex array of ecosystem components and processes necessary for sustained function. Lee (1993) outlines a number of institutional conditions that affect the implementation of experimental approaches to management. Decision-makers must be committed to improving outcomes over biological time scales, be aware of the experimental nature of management, and be willing to accept the risk of perceived failures. To do this, managers and decision-makers must have the understanding of stakeholders and a mandate for action in the face of uncertainty. Managers who profess certain knowledge engender like expec-

Box 10. Ecosystem management of the Great Barrier Reef, Australia. Coral reef ecosystems have long been treasured by both ecologists and the general public for their biodiversity, complexity, and beauty (Darwin 1842, Connell 1978). The primary economic value of these ecosystems has traditionally been the opportunities they afford for observation and recreation. However, in recent years, increased consumptive uses of coral reef ecosystems and various polluting activities on land have created the potential for destroying their integrity and diminishing the services they provide. The Great Barrier Reef Marine Park Authority has developed a model ecosystem management plan to protect one of the world's most diverse coral reefs (Kelleher and Kenchington 1992).

The Great Barrier Reef Marine Park is not a National Park, but rather a protected area managed for multiple uses, with integrated oversight by the Great Barrier Reef Marine Park Authority (GBRMPA). Zoning is the tool used to allow, yet separate, conflicting usages. A few activities such as oil and gas exploration, minerals mining, littering, spearfishing by scuba, and taking of some larger fishes, are prohibited throughout the Park. Three main zones are identified: (1) preservation zones, where only strictly controlled scientific research is allowed: (2) marine national park zones, where permitted uses are scientific, educational, and recreational: and (3) general-use zones, where various uses are permitted including recreational and commercial fishing using practices compatible with the maintenance of ecosystem integrity. In addition, smaller, special-use zones are designated to protect critical breeding or nesting sites, or to provide important protection for natural areas or research. To cope with increases in ecotourism on the reef a special tourist strategy has been adopted to allow viewing of the natural reef free of the impacts of fishing, but restricting floating structures to specific areas.

Ecologically sustainable utilization is the core principle of the GBRMPA. Public involvement and education are critical to this ecosystem management plan which emphasizes public accountability, efficiency of operation, minimization of regulation, adaptability to changing circumstances, and scientific credibility. Preservation zones provide the "touchstone" for evaluation of patterns of change in overall ecosystem behavior.

tations from the public and justified condemnation when policies fail or actions result in surprises.

Changes in organizational cultures and commitments will be critical to the implementation of adaptive management (Lee 1993). Resources must be sufficient to implement appropriate monitoring systems, some of which may require measurements at very large scales. Furthermore, there must be sufficient institutional stability and sustained commitment to measure long-term outcomes. Monitoring and research programs are likely to add significant costs to management in many cases and their added value may not be realized in the short term.

Institutional cultures must encourage learning from experience and research. Enhanced communication among scientists, managers, and decision makers is essential. There is a clear need for partnerships between the scientific and management communities (Likens 1992).

The role of scientists in ecosystem management

"Science as a model for ecosystem management" is unlikely to become reality unless scientists are involved with managers and the public in adaptive management processes. Clearly ecological science is critical to the development and refinement of models necessary for effective management. But, this is not simply a matter of unilateral information flow—scientists telling managers what is important. Although management is starved for information, its needs are often quite particular. Communication must flow in both directions and become an iterative dialogue, and the scientific community must understand what pieces of information are critical and be willing to prioritize its research accordingly.

Scientists have much to offer in the development of monitoring programs. They can assist in the development of sampling approaches and statistical analyses that will increase precision and minimize bias. Models can help in the identification of key indices of ecosystem functioning that can reduce monitoring costs. Scientists have much to gain from assisting in this area. Although monitoring efforts may not be designed to address basic research questions, it is the case that such data sets have provided a wellspring of long-term information to research.

Delivering a refereed journal publication to a manager's desk is not sufficient if we wish our best science to move quickly into management application. We must develop improved means to communicate effectively and clearly the results of management experiments, as well as basic research. This will call for more professionals with an understanding of the scientific, management, and social issues, and the ability to communicate with scientists, managers, and the public. The need for adaptive management is certainly a persuasive argument for a continuous training philosophy aimed at achieving effective dialogue between managers and researchers as our needs and knowledge base change.

Epilogue

Lore to the contrary, it might be argued that natural resource management was in fact the first of human professions. The successes and failures of human societies on this planet have been and will continue to be inextricably linked to cycles of resource use and ecological change.

If the creator were a corporate manager, he or she might well pose the question, "has human management added value to the earth?" From a purely human perspective, the reply would likely be an emphatic yes. After all, there are now 5.5 billion of us.

But, any corporate manager knows that, when inventories are depleted and the physical plant is allowed to deteriorate, it is possible to make money in the short term while watching your net worth waste away. Such is the road to bankruptcy. Businesses routinely make decisions with short-term costs, but obvious benefits to their long-term sustainability.

This metaphor captures the sense of intergenerational equity and the stewardship responsibilities that are central to an ecosystem management philosophy. Ecosystem management is the ecological analog to the economic stewardship of a trust or endowment dedicated to benefit all generations.

Ecosystem management is not a rejection of the anthropocentric for a totally biocentric world view. Rather, it is management that acknowledges the importance of humans needs while at the same time confronting the reality that the capacity of our world to meet those needs in perpetuity has limits and depends on the functioning of ecosystems.

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APPENDIX 1

Legislation as a Driver for Ecosystem Management on Federal Lands

In the United States, much of the impetus for ecosystem management has come from legislation implemented over the past few decades to regulate and mitigate environmental impacts. While many laws specifically addressed activities on Federal lands, a significant number dealt with all lands and resources.

The Wilderness Act (1964) and Wild and Scenic Rivers Act (1968) addressed the need by the public for "an area where the earth and community of life are untrammeled by man—where man himself is a visitor who does not remain." Areas created by these special designations and set-asides, similar to National Parks, are an attempt to isolate unique resources from development or intrusion, with the assumption such isolation will preserve and protect.

In addition to laws focusing on specific resources, other laws were enacted which cut across multiple ownerships and which addressed overall quality of the environment. The Clean Water and Clean Air Acts, although initially authorized in the late 1940s and early 1950s, underwent substantial revision in the 1970s, 1980s and 1990s, in order to address emerging issues. In these acts, the public exerted its right to "protect its (the public's) interest in values which are not a part of property title . . . but which can be harmed by the actions of the landowner" (Society of American Foresters 1993).

The most significant piece of legislation during this period of time may be the National Environmental Policy Act (NEPA, 1969), which fully acknowledges the tension between growing demands for natural resources and the ability to sustain those resources in its entreaty to ". . . encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate

damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the nation; and to establish a Council on Environmental Quality." NEPA only applies to federal lands and actions significantly affecting the environment, in contrast to the Endangered Species Act (ESA, 1973), which refers to all lands and management activities. The ESA brings forward the idea of ecosystem conservation in order to protect species and "encourages the States and other interested parties . . . to develop and maintain conservation programs."

While the ESA does acknowledge the importance of ecosystems, in reality, efforts have focused on individual species, rather then developing strategies for the ecosystems within which these species survive. This is not an indictment of the process, but a recognition that ecosystem complexity was too great to address under normal regulatory processes. By the 1990s, the large number of plants and animals listed as threatened or endangered is forcing us to develop conservation strategies within an ecosystem context. For example, strategies to address Pacific salmon stocks are incorporating watershed management. Recent events in the Pacific Northwest reflect the next step in the evolution of integrated resource management in which entire ecosystems are managed as integrated units that include individual species.

APPENDIX 2

Ecosystem Representation as a Conservation Goal

Ecosystem management, as an experimental and adaptive process, requires that examples of various kinds of ecosystems be protected as benchmarks or control areas for comparison to manipulated sites. Only then can effects of management practices be separated from natural processes. Thus, the familiar conservation goal of representing all ecosystem types in protected areas takes on a new urgency.

Representation is one of the most widely accepted goals of conservation. Early efforts to identify and preserve a broad spectrum of natural communities in North America were led by the Committee on the Preservation of Natural Conditions of the Ecological Society of America. In 1926, the Committee published the *Naturalist's Guide to the Americas* (Shelford 1926), a description of biomes and their remaining natural areas. This committee evolved into a separate organization, the Ecologists' Union, which became The Nature Conservancy in 1950. Another committee of the Ecological Society of America, the Committee for the Study of Plant and Animal Communities, assessed the adequacy of protection of ecosystems in three classes of nature sanctuaries, with the highest class being fully protected areas, with virgin vegetation and large enough to contain all the animal species in self-maintaining populations historically known to have occurred in the area (Shelford 1933, Kendeigh et al. 1950–1951).

Most strategies for representing ecosystems have had to be content with smaller natural areas that harbor less than complete biological communities (e.g., no large predators). Much of this effort has been led by The Nature Conservancy, by state natural areas programs, and by a professional society, The Natural Areas Association. The Nature Conservancy has called its community-level conservation strategy a "coarse filter" (Noss 1987) and has estimated that 85–90% of species can be protected by conserving examples of natural communities, without having to inventory and manage each species individually. This interesting idea seems reasonable but has not been tested empirically. A potentially serious limitation of the coarse filter or any representation strategy based on vegetation is that natural communities are not stable; they change as species respond more or less independently to environmental gradients in space and time. For instance, when climate changes, species track shifting habitat conditions at different rates determined by their dispersal capacities and other aspects of autecology (Davis 1981, Graham 1986).

Given the instability of natural communities, one sensible way to represent biodiversity at the ecosystem level is to maintain the full array of physical habitats and environmental gradients in an interconnected network of reserves (Noss 1987, 1992, Hunter et al. 1988). The Canadian Council on Ecological Areas is conducting an "Ecoregion Gap Analysis" (unpublished reports) to assess representation of "enduring features" defined by slope position, topography, soil type, bedrock geology, and other abiotic variables within each classified ecoregion. Gaps in representation of habitats defined in this way would become priorities for protection. The U.S. Fish and Wildlife Service Gap Analysis, in contrast, is based mainly on maps of existing vegetation as determined by remote sensing. Vegetation usually provides a good surrogate for the rest of biodiversity in the short term (Scott et al. 1993). A comparison of gap analysis results based alternately on vegetation and abiotic variables would be instructive.

Practical advantages of a coarse filter include efficiency and cost-effectiveness (it is easier to deal with dozens or even hundreds of ecosystem types than thousands or millions of species) and the assumed ability to protect species we know nothing about and could not begin to inventory individually. Furthermore, a coarse filter can be applied at any level of classification hierarchy. Unfortunately, no accepted classification of communities or ecosystems exists for the United States. Ecosystems are more difficult to classify than species. At which level of classification hierarchy should natural communities be recognized, inventoried, and protected? In California, for example, should we recognize 52 wildlife habitat types (Mayer and Laudenslayer 1988), 375 natural communities (Holland 1987), or something in between? Because ecosystems at any level of classification can become endangered (Noss et al., *in press*), a hierarchical classification with cross-walks to other classifications is needed. The classification used in a particular case will depend on which level of hierarchy works best for the spatial scale or level of detail desired. The Nature Conservancy is developing a hierarchical classification of vegetation consistent with a global UNESCO framework and has completed a preliminary series-level (i.e., dominant plant species) classification for the western U.S. (Bourgeron and Engelking 1992).

Endangered ecosystems

The biodiversity crisis involves more than the endangerment and extinction of individual species. It also involves the loss and degradation of habitats, species assemblages, and natural processes. Such losses represent biotic impoverishment at an ecosystem level of organization. Loss of biodiversity at the ecosystem level has been most severe in the temperate zone because this region has been so intensively settled and exploited by people. As natural ecosystems decline in area or are degraded in structure, function, or composition, the species associated with them also decline—hence, an ever-expanding list of endangered species. Protecting and restoring endangered ecosystems may be a more efficient way to protect rare species than managing them one by one. The associated strategy of representation takes this idea one step further by securing viable examples of all ecosystem types in a network of protected areas.

A recent U.S. Fish and Wildlife Service report (Noss et al. 1995), reviewed and synthesized data on endangered eco-

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TABLE A1. Critically endangered, endangered, and threatened ecosystems of the United States. Decline, refers to outright destruction, conversion to other land uses, or significant degradation of ecological structure, function, or composition since European settlement. Estimates based on quantitative studies and qualitative assessments (see Noss et al. 1995 for references and discussion).

Critically endangered (>98% decline)

- Old-growth and other virgin stands in the eastern deciduous forest biome
- Spruce–fir forest in the southern Appalachians
- Red and white pine forests (mature and old-growth) in Michigan
- Longleaf pine forests and savannas in the Southeastern Coastal Plain
- Pine rockland habitat in South Florida
- Loblolly/shortleaf pine–hardwood forests in the West Gulf Coastal Plain
- *Arundinaria gigantea* canebrakes in Southeast
- Tallgrass prairie east of Missouri River and on mesic sites across range
- Bluegrass savanna–woodland and prairies in Kentucky
- Black Belt prairies in Alabama and Mississippi and Jackson Prairie in Mississippi
- Oak savanna in Midwest
- Wet and mesic coastal prairies in Louisiana
- Lakeplain wet prairie in Michigan
- Sedge meadows in Wisconsin
- Hempstead Plains grasslands on Long Island, New York
- Serpentine barrens, maritime heathland, and pitch pine–heath barrens in New York
- Coastal rocky headlands in New Hampshire
- Prairies (all types) and oak savannas in Willamette Valley and foothills of Coast Range, Oregon
- Palouse prairie (Washington, Oregon, and Idaho, plus similar communities in Montana)
- Native grasslands (all types) in California
- Alkali sink scrub in southern California
- Coastal strand in southern California
- Ungrazed sagebrush steppe in Intermountain West
- Basin big sagebrush in Snake River Plain of Idaho
- Atlantic white cedar stands in the Great Dismal Swamp of Virginia and North Carolina, and possibly across entire range
- Streams in Mississippi Alluvial Plain

Endangered (85–98% decline)

- Old-growth and other virgin forests in regions and states other than those listed above, except Alaska
- Mesic limestone forest and barrier island beaches in Maryland
- Coastal plain Atlantic white cedar swamp, maritime oak–holly forest, maritime red cedar forest, marl fen, marl pond shore, and oak openings in New York
- Coastal heathland in southern New England and Long Island
- Pine–oak–heath sandplain woods and lake sand beach in Vermont
- Floodplain forests in New Hampshire
- Red spruce forests in central Appalachians (West Virginia)
- Upland hardwoods in the Coastal Plain of Tennessee
- Lowland forest in southeastern Missouri
- High-quality oak–hickory forest on the Cumberland Plateau and Highland Rim of Tennessee
- Limestone cedar glads in Tennessee
- Wet longleaf pine savanna and eastern upland longleaf pine forest in Louisiana
- Calcareous prairie, Fleming glade, shortleaf pine/oak–hickory forest, mixed-hardwood–loblolly pine forest, eastern xeric sandhill woodland, and stream terrace sandy woodland/savanna in Louisiana

TABLE A1. Continued.

- Slash pine forests in southwestern Florida
- Red and white pine forests in Minnesota
- Coastal redwood forests (California)
- Riparian forests in California, Arizona, New Mexico
- Coastal sage scrub (especially maritime) and coastal mixed chaparral in Southern California
- Dry forest on main islands of Hawaii
- Native habitats of all kinds in lower delta of Rio Grande River, Texas
- Tallgrass prairie (all types combined)
- Native shrub and grassland steppe in Oregon and Washington
- Low elevation grasslands in Montana
- Gulf Coast pitcher plant bogs
- Pocosins (evergreen shrub bogs) and ultramafic soligenous wetlands in Virginia
- Mountain bogs (Southern Appalachian bogs and Swamp forest–bog complex) in Tennessee and North Carolina
- Upland wetlands on the Highland Rim of Tennessee
- Saline wetlands in eastern Nebraska
- Wetlands (all types combined) in south-central Nebraska, Missouri, Iowa, Illinois, Indiana, Ohio, California
- Marshes in Carson–Truckee area of western Nevada
- Low elevation wetlands in Idaho
- Woody hardwood draws, glacial pothole ponds, and peatlands in Montana
- Vernal pools in Central Valley and Southern California
- Marshes in Coos Bay area of Oregon
- Freshwater marsh and coastal salt marsh in Southern California
- Seasonal wetlands of San Francisco Bay, California
- Large streams and rivers in all major regions
- Aquatic mussel beds in Tennessee
- Submersed aquatic vegetation in Chesapeake Bay, Maryland and Virginia
- Mangrove swamps and salt marsh along the Indian River Lagoon, Florida
- Seagrass meadows in Galveston Bay, Texas

Threatened (70–84% decline)

- Riparian forests nationwide (other than in regions listed above), including southern bottomland hardwood forests
- Xeric habitats (scrub, scrubby flatwoods, sandhills) on Lake Wales Ridge, Florida
- Tropical hardwood hammocks on central Florida keys
- Alvar grassland, calcareous pavement barrens, dwarf pine ridges, mountain spruce–fir forest, inland Atlantic white cedarswamp, freshwater tidal swamp, inland salt marsh, patterned peatland, perched bog, pitch pine–blueberry peat swamp, coastal plain poor fens, rich graminoid fen, rich sloping fen, and riverside ice meadow in New York
- Saline prairie, western upland longleaf pine forest, live oak–pine–magnolia forest, western xeric sandhill woodland, slash pine–pond cypress/hardwood forest, wet and mesic spruce pine–hardwood flatwoods, wet mixed hardwood–loblolly pine flatwoods, and flatwoods ponds in Louisiana
- Northern hardwood forest, aspen parkland, and jack pine forests in Minnesota
- Old-growth ponderosa pine forests in northern Rocky Mountains, Intermountain West, and eastern Cascades Mountains
- Maritime-like forests in Clearwater Basin of Idaho
- Woodland and chaparral on Santa Catalina Island
- Southern tamarack swamp in Michigan
- Wetlands (all kinds) in Connecticut, Maryland, Arkansas, Kentucky
- Marshes in Puget Sound region, Washington
- Cienegas (marshes) in Arizona
- Coastal wetlands in California

systems in the United States. Ecosystems were defined generally and included vegetation types, plant associations, natural communities, and habitats defined by floristics, structure, age, geography, condition, and other ecologically relevant factors. Data were variable in quality, but for each ecosystem type, the most reliable and recent estimates of loss or degradation were cited. All estimates of ecosystem losses >50% are reported, as well as some other documented losses (for example, of wetlands) of <50% for comparison.

Noss et al. (1995) identified those ecosystems at greatest risk. Grasslands and savannas stand out in the top category of "critically endangered," but in the larger list wetlands and forests appear just as imperiled. Aquatic and nearshore marine systems, though underrepresented in terms of number of "types" imperiled, have been seriously degraded throughout the nation. For example, 81% of fish communities nationwide are adversely affected by human activities and 98% of streams are degraded enough to be unworthy of federal designation as wild or scenic rivers (see references in Noss et al. 1995). Losses of all kinds of ecosystems have been most severe in the South, Northeast, Midwest, and California, but no region of the U.S. has escaped damage.

Endangered and threatened ecosystems have declined to their present condition because no comprehensive program to conserve ecosystems has been in place in the United States. Ecosystem management can contribute to ecosystem conservation if it places high priority on identifying and mapping ecosystem types that have declined greatly in extent or quality, then puts in place programs to protect and restore these types. Many scientists have suggested that some kind of "endangered ecosystems act" or similar legislation may be needed to achieve ecosystem conservation in the U.S. (Ehrlich and Ehrlich 1986, Noss and Harris 1986, Hunt 1989, Orians 1993).

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84(a) Comment noted.

84(b) The General Plan is atop the hierarchy of local government law regulating land use. The California Supreme Court has described the General Plan as a "charter for future development," Lesher Communications Inc. v. City of Walnut Creek (1990) 52 C3d 531. The MSCP is subject to both federal NEPA requirements and State CEQA review processes. The MSCP Plan is being developed to obtain state and federal take authorizations for covered species, thereby allowing the County to integrate compliance with the state and federal Endangered Species Acts into the local land use approval processes. The Covered Species List was formulated based on the types and amounts of habitat being conserved within the preserve. See also **Theme Responses I, Species Analysis Approach, and XXIV, No Surprises.**

84(c) Comment noted.

84(d) Comment noted.

84(e) The EIR/EIS for the MSCP Plan evaluates the MSCP Plan's impacts, both direct and indirect, including those on scenic, watershed, dark sky, agriculture, etc. It is not the County's intention to amend the General Plan to incorporate the MSCP within that document nor is it legally required to be incorporated in the General Plan. The MSCP Plan is not a land use action that is derivative of, or required to be consistent, with the General Plan, nor is it necessary to amend the County's General Plan to implement the MSCP Plan or County Subarea Plan.

84(f) The comment has accurately quoted sections of the Government Code and referenced cases.

84(g) The MSCP Plan is being developed to obtain state and federal take authorizations for covered species, thereby allowing the County to integrate compliance with the state and federal Endangered Species Acts into the local land use approval processes. The County of San Diego's General Plan is legally adequate. The 20 Agricultural Preserve Land Use designation of the Land Use Element and the Conservation and Open Space Elements are presently being revised to remedy the defects identified in the case challenging General Plan Amendment 94-01 and this issue is beyond the scope of the MSCP EIR/EIS. Also see response to Comment 84(e).

84(h) Comment noted.

84(i) Comment noted.

84(j) Comment noted.

84(k) See response to Comment 84(g).

84(l) See response to Comment 84(g).

84(m) See response to Comment 84(g).

84(n) See responses to Comments 84(e) and 84(g).

84(o) Consistency with the County's General Plan is not required in order for the County to adopt and implement the MSCP Plan and County Subarea Plan. Challenges to a General Plan based on consistency must be based on a statutory requirement for consistency.

84(p) See responses to Comments 84(e), 84(g), and 84(o).

84(q) See responses to Comments 84(e), 84(g), and 84(o).

84(r) See responses to Comments 84(e), 84(g), and 84(o).

84(s) Comment noted.

84(t) The Draft EIR/EIS provides a full review and analysis of the proposed MSCP Plan and alternatives. The document fully discloses to the public the environmental impacts of the proposed actions addressed in the document. Please refer also to responses to Comments 84(v), 84(w), 84(ah), 84(ai), 84(aj), 84(ak), and 84(al).

84(u) Section 3.3.1 of the MSCP Plan, Volume I, page 3-23, discusses the additions to the Covered Species List from the 1995 Public Review Draft to the current Plan. The factors discussed in this section that resulted in additions to the list are: 1) federal and state policy clarifications, 2) changes in preserve design, 3) evaluation of additional species, and 4) new information, including species location, additional mitigation measures, taxonomic issues, etc. See **Theme Response I, Species Analysis Approach and XI, Scientific Review Adequacy.**

84(v) The environmental setting of the project is described in detail on pages 3-1 through 3-56, Section 3.0, Affected Environment. Existing agricultural resources are described and illustrated on pages 3-7 through 3-12. Watersheds within the MSCP study area are described and illustrated on pages 2-13 through 2-15.

Relevant planning documents affecting the MSCP planning process are described on pages 3-13 through 3-29 of the Draft EIR/EIS. The first issue in the land use analysis (Section 4.2 of the Draft EIR/EIS) poses the question: "Would the proposed project result in a use which is inconsistent with

the General Plan or Community Plans within the study area and existing environmental plans of member cities and County, participating agencies, or other policy mandates, including propositions?" The analysis of this issue statement, presented on pages 4.2-1 through 4.2- 4, and 4.2-12 through 4.2-54 for the proposed MHPA and Subarea Plans, fully identifies any inconsistencies between the proposed project and existing general plans, regional plans and relevant planning documents.

84(w) The Draft EIR/EIS fully discloses the impacts associated with the proposed actions and alternatives analyzed in the document. It does not rely on future area plans or vague monitoring programs to identify certain impacts and mitigation measures. For example, Table 4.2-1 (page 4.3- 3) of the Draft EIR/EIS, clearly quantifies that land use shifts that may occur throughout the MSCP study area with implementation of the proposed MHPA. Likewise, page 4.3-2 (page 4.3-28) of the Draft EIR/EIS, quantifies impacts to biological resources associated with the proposed MHPA and alternatives. Significant biological impacts associated with the proposed MHPA are clearly identified as impacts 4.3-MHPA-1 through 4.3-MHPA-5 on pages 4.3-150 and 4.3-151 of the Draft EIR/EIS. Measures to mitigate those impacts are clearly identified on pages 4.3-180 through 4.3-183.

84(x) The MSCP Plan does not determine if development should occur, but rather determines how a project would comply with the state and federal Endangered Species Acts should a local land use jurisdiction authorize a development project. There are no plans to amend the County General Plan to incorporate the MSCP Plan, nor is there any requirement that the General Plan be amended. Although MSCP Plan is not statutorily required to be consistent with the General Plan, there are no inconsistencies between MSCP Plan and the County General Plan. See also responses to Comments 43(b), 43(f), 43(q), and 45(w).

84(y) Existing development does necessarily pose constraints on the configuration of the preserve system; the MSCP study area is not a clean slate for preserve design. Furthermore, the first objective of the MSCP Plan stated on page 1-7 of the Draft EIR/EIS is to establish and maintain a workable balance between the preservation of natural resources and regional growth and economic prosperity. To this point, preserve design principles must be applied in a manner that is consistent with this objective, recognizing that existing development precludes certain conservation opportunities (e.g., some habitat linkages).

Impacts to the preserve from future infrastructure projects, developments, etc., were taken into consideration in the preserve design and species analysis.

84(z) The comment is noted.

84(aa) None of the goals for the MSCP Plan, Volume I, page 1-4, included the establishment of preserve that meet the stated definition "wilderness." The MSCP preserve will have some of the characteristics (as defined by the commenter) of wilderness including supporting viable, self-

reproducing genetically diverse populations of some plants and animals and its 171,000+ acres supports extensive areas of native vegetation.

The MSCP Plan, Volume I, and EIR/EIS clearly acknowledge the proposed MHPA as an urban wilderness, that is, natural habitat patches connected to each other surrounded by urban development.

84(ab) Target species were not chosen because of their legal status rather than using large-bodied species, specialized species, keystone species and highly mobile low-density species. A review of Table 4.3-1 (pages 4.3-9 - 4.3-27 of the Draft EIR/EIS) indicates that several species without legal status (other than regulated for or protected from hunting) are on the list of covered species; Canada goose, western bluebird, grasshopper sparrow, mountain lion, and southern mule deer. These species are important considerations for general biodiversity and help fill gaps where a focus on state or federally designated sensitive could result in a lack of protection for some habitats. Furthermore, many, if not most, of the species on the covered species list are habitat specialists (e.g., arroyo southwestern toad, light-footed clapper rail). Several of the plants are narrow endemics (e.g., San Diego thorn-mint, San Diego ambrosia). The covered species list does not include any keystone species (i.e., species that have a disproportionately large effect on other species in a community or ecosystem) because the current scientific data are inadequate to identify keystone species for the MSCP study area.

84(ac) It is recognized that specific edge effects have not be well studied; however, general adverse impacts, as listed by the commenter, are acknowledged and management of the preserve system would include the study and control of these effects. The MSCP Plan, Volume I, Section 6.0, Preserve Management and Reporting, addresses in detail guidelines for land uses within the preserve and preserve management activities, including issues relating to edge effects such as use of pesticides and fertilizers adjacent to preserves, fencing and lighting, and predator and exotic species control. Required habitat management plans must address these issues. See also **Theme Response XIX, Preserve Management Plans.**

84(ad) The MSCP Plan in Section 2.2 describes the habitat evaluation map, which incorporates vegetation communities, species locations, elevation, slope, soils, drainages, and other physical parameters, was used to identify important habitat linkages and corridors from a regional perspective. It was not intended to substitute for site-specific field survey data and species evaluations. The MHPA includes 75 percent of habitat areas identified as linkages between the largest habitat areas and between core areas (Draft EIR/EIS, page 4.3-21). Five linkages with undetermined development status, as described on page 4.3-219, would be subject to state and federal wetland regulations and thus some level of protection. Furthermore, on pages 4.3-233-234, the EIR/EIS explains that within the Metro-Lakeside-Jamul segment, planning guidelines contained in the Biological Mitigation Ordinance establish clear parameters for maintaining and enhancing important habitat linkages and wildlife corridors, which are summarized on page 4.3-234. The two important north-south corridors, H and I of Figure 2-2 of the MSCP Plan, Volume I, reflect the existing habitat fragmentation in this part of the study area. Section 6.3.5 of the

MSCP Plan, Volume I, page 6-8, discusses the role of restoration in preserve management and states that "Partial or complete restoration may be necessary to enhance linkages and disturbed habitats..."

84(ae) See **Theme Response II, Population Viability Analysis.**

84(af) The three keys to achieving the biological goal of the MSCP Plan are preserve and assembly, management (including adaptive management) and monitoring. The MSCP Plan, Subarea Plans and Implementing Agreements specify who each of these will be accomplished, thereby achieving the biological goal of the MSCP. See also responses to Comment 45(ai) regarding linkages. Landfills and sand and gravel extraction may occur within the MHPA but not within the preserved lands. The commenter is incorrect in the assumption that the preserve design was based on species with legal status. Several preserve designs were developed including designs based on standard conservation biology preserve design tenets and then the alternative preserve designs evaluated to determine the extent to which they provided for the conservation of various species, both listed and unlisted. The MSCP Plan is a habitat-based conservation plan, not a species-based conservation plan. Please refer also to **Theme Responses XIV, Biological Monitoring and XIX, Preserve Management.**

84(ag) It is beyond the scope of the EIR/EIS to analyze the transcripts of the court case mentioned.

84(ah) The Draft EIR/EIS does not rely on existing County ordinances to mitigate impacts associated with land use shifts associated with implementation of the MSCP Plan. As discussed in Sections 4.2 and 4.6 of the Draft EIR/EIS, implementation of the MSCP Plan would not affect the amount or rate of growth within the MSCP study area, but may result in increased densities in some areas due to shifting of land uses outside the preserve. The Draft EIR/EIS acknowledges (see pages 4.2-2 through 4.2-4, and 4.6-27 through 4.6-28, that such land use shifts could result in adverse impacts to community character and conflicts with environmental goals of relevant plans regarding provision of an orderly pattern of development. A similar analysis is presented for the County of San Diego Subarea Plan on pages 4.2-45 through 4.2-51. For the County of San Diego, the identified land use shifts are not regarded as significant and therefore no mitigation measures, including reliance on existing County ordinances, are recommended. As noted in the analysis, of the 101,268 to be potentially located within the MSCP preserve, 56% of the goal would be met primarily through voluntary contributions and pubic open space within the Lake Hodges and South County segments of the County Subarea Plan. By establishing the preserve through the approved specific plan process and public lands, land use patterns established by the County Regional Land Use Element would not be significantly affected. See also **Theme Response I, Species Analysis Approach.**

84(ai) The cumulative analysis included in Section 6.0 of the Draft EIR/EIS is adequate. A list of past, present and reasonably foreseeable projects is provided in Section 6.2 (pages 6-1 and 6-2 of the Draft EIR/EIS. Analysis of the cumulative effects of these projects is provided in Section 6.3 (pages 6-3 through 6-4).

The cumulative analysis does not rely on national forest lands as being adequately protected. The referenced comment on page 6-4 simply notes that large areas of chaparral are found on public lands in eastern San Diego County (Cleveland National Forest and BLM lands) where federal protections are in place. In no way does the cumulative analysis rely on protection of chaparral on national forest lands to support a conclusion that cumulative impacts to chaparral would either not be significant, or would be mitigated. Indeed, page 6-3 notes that cumulative impacts to chaparral habitat outside the preserve would not be significant because they would be limited to indirect effects to the portion of the habitat not occupied by sensitive species.

Page 6-4 of the Draft EIR/EIS acknowledges that intensification of land use may occur outside preserves with implementation of regional conservation programs on the cumulative projects list. This impact is not regarded as significant, however, in the context of SANDAG's projected shortfall of available land for development with or without the regional conservation programs. This conclusion does not contradict other statements in the document that impacts outside the preserve would be mitigated by existing ordinances since the Draft EIR/EIS does not rely on existing ordinances to mitigate impacts outside the preserve.

Section 6.0 focuses on cumulative effects associated with potentially significant effects analyzed in the Draft EIR/EIS, namely biological resources, land use, population/housing, and infrastructure and public services. These topics include the issues of community character and traffic circulation, which are also discussed in detail in Sections 4.2 and 4.4, respectively, of the Draft EIR/EIS. Groundwater quality was not selected for detailed analysis in the Draft EIR/EIS and this topic is discussed on pages 1-18 and 1-19 of the document.

84(aj) Growth inducement associated with the proposed project is addressed in Section 5.0 of the Draft EIR/EIS. The discussion in this section is adequate. The project does not propose any residential development, nor would it induce residential development. As stated in the Draft EIR/EIS, the project would not affect the amount or rate of growth within the MSCP study area. Intensification of land uses outside the preserve may be an indirect effect of implementation of the MSCP Plan. However, this effect is not regarded as a significant contribution to growth inducement for the reasons stated in Section 5.0 of the Draft EIR/EIS.

84(ak) The Draft EIR/EIS analyzes a full range or reasonable alternatives for both the overall MSCP Plan and the Subarea Plans, consistent with both NEPA and CEQA Guidelines. See also **Theme Response VI, Alternatives.**

It is assumed that the reference to an alternative analyzing "what would happen to open space viability if the County lived up to its own goals and policies in the General Plan," is a reference to the type of open space system that would be provided under an existing General Plan alternative. The No Action/No Project alternative analyzes such an existing conditions scenario. The analysis concludes that the amount of land conserved under such a scenario would likely be similar to that which would occur under the proposed MHPA. The configuration of open space lands would likely be

different, however, and more fragmented under such a project by project approach, rather than the regional planning approach proposed as part of the MSCP Plan.

84(al) Comment noted. The Draft EIR/EIS discussion of economic impacts focused on those issues that could potentially result in adverse environmental consequences, such as future development of housing and property tax revenues which would be used to support public services. The EIR/EIS also discusses potential impacts to agricultural lands (Section 4.2.3).

The EIR/EIS did not discuss impacts to tourism, since the project is more likely to impact tourism positively than negatively and indirect environmental consequences cannot adequately be determined. The EIR/EIS also did not address impacts to the military in San Diego, since conservation plans are separately prepared for habitat lands found on military installations. See also **Theme Response III, Economic Impacts and Impacts on Population and Housing.**

84(am) The goal of the MSCP is not to increase suburban development, but to efficiently conserve habitat. If successfully implemented, the program is also anticipated to improve the region's quality of life and reduce the costs of compliance with federal and state Endangered Species Acts. These in turn may increase development outside the MHPA, as discussed in EIR/EIS Section 4.6.3 (p. 4.6-46), but this would reduce urban sprawl and divert development away from the rural areas.

84(an) Comment noted. Please see also response to Comment 84(am).

84(ao) Comment noted.

84(ap) While the MSCP Plan was developed to meet the legal requirements of the federal Endangered Species Act, the Plan is intended to preserve the biological diversity of the MSCP Plan study area in a manner which is consistent with the NCCP Act and the Conservation Guidelines which were developed for the Coastal Sage Scrub Ecosystem. The goals of the MSCP Plan are listed on page 1-4 of the MSCP Plan, Volume I.

84(aq) Comment noted.

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SAVE OUR FOREST AND RANCHLANDS
P.O. Box 475
Descanso CA 91916
October 29, 1996

Nancy Gilbert, Senior Staff Biologist
U.S. Fish & Wildlife Service
2730 Lokar Avenue
Carlsbad CA 92008

Re: Multi-Species Conservation Program; Multi-Species Conservation Program Plan; and Environmental Impact Report/Environmental Impact Statement

Dear Ms. Gilbert:

Save Our Forest and Ranchlands ("SOFAR"), a group dedicated to the protection of watershed, wilderness, and agricultural resources in San Diego County, submits the following overview and comments on the EIR/EIS for the MSCP.

Overview. In recognition of the profound political, legal, and administrative changes involved in conceiving and implementing biodiversity or habitat protection plans that cover entire regions, which regions encompass not only diverse biotic communities, but also different land use authorities, it is necessary to begin with an overview of the political and economic interests behind the so-called Multi-Species Habitat Planning effort, a 900-square mile planning effort purporting to cover 85 endangered or sensitive species and involving some of the most expensive and desirable real estate in the nation.

It is appropriate here to recall the warning sounded by the framers of our Constitution to the threat posed by the accumulation of political power into a single agency and by the perennial attempt of special interests to undermine the public good. Given the historical domination of special interests in the area of land use planning in Southern California and the unusual concentration of authority in the MSCP planning effort, it is a legitimate question to ask whether or not the claims of the MSCP plan to represent biodiversity and public interest are really valid.

Perhaps one of the most alarming and potentially dangerous changes in the MSCP planning effort is the shift from what may be generally called a "separation of powers" in traditional land use planning towards the concentration of power in a

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single authority. As our Forefathers warned us, the potential of abuse is proportional to the concentration of power. The MSCP plan has become especially vulnerable to abuse of political power because the drafters, implementers, and overseers of the Plan are concentrated in the same agency, i.e., Fish & Wildlife Service and the State Department of Fish & Game, and are subject to the direct influence of those with the greatest interest in the outcome of the Plan, i.e., developers. 84(a)

It is important to note that the State of California defines the General Plan as a "constitution" for all land use decisions. Within that "constitutional" framework, what may be called a "separation of powers" traditionally exists between planners, biologists, the public, and local, state, and federal environmental authority. This traditional method of planning has guaranteed the right of full public disclosure and judicial remedy. The blatant attempts by special interests to undermine state CEQA review, to institute federal "no surprise" policies, and to supplant the local land use authority gives rise to the question of whether the entire MSCP is developer-driven or a scientifically-based biodiversity plan. Questions abound concerning the scientific validity of the Plan and the fact that political rather than scientific considerations have gone into formulating the Covered Species List. 84(b)

On page 1.1, the MSCP is introduced as a comprehensive planning program linking a system of preserves together, which will provide permanent, viable habitat for at least 85 endangered, potentially endangered, or sensitive (covered species), falling under the joint jurisdiction of the U.S. Fish and Wildlife (USWF) and the California Department of Fish and Game (CDFG), two of the lead agencies of the project. One of the aims of this project is to eliminate the need of agencies empowered to protect endangered species from having to halt development projects on a piecemeal basis from destroying the habitat of a single species, i.e., the gnatcatcher. The DEIR/EIS states that project-by-project planning and species-by-species protection have been a general failure and have resulted in continued threats not only to orderly economic development, but to the general habitat of a multitude of potentially endangered species. The MSCP Plan is thus an attempt to balance economic demands of development with the demands of wildlife agencies empowered to protect endangered species. 84(c)

The current plan is, in effect, a result of a negotiating process between two antagonists: development interests that dominate local politics, and wildlife agencies that have federal and state authority to intervene in local affairs. Thus, debate over the MSCP Plan has largely been premised on the demands and limits of authority as represented by two titans: a powerful federal bureaucracy, on the one hand, and a collection of powerful developer interests on the other. The hyperbole of this contest has reached epic proportions. The hopes and fears, claims and 84(d)

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counterclaims seem to have no bounds. Supporters of the Plan, along with the press, regularly call it a "model to the nation," a final solution to all environmental problems. Opponents have called it a threat to basic rights and an unnecessary intrusion of an over-reaching of federal bureaucracy. Property interests threaten to withdraw from the program by excluding private land or conditioning their participation on assurances for adequate funding for acquisition. In some cases opponents are actively working to change federal law and undermine the power of the Endangered Species Act to mandate local standards. 84(d)

What appears to be lost in this struggle between titans is the common interest of the community as ruled by its general plan, which plan is also empowered to protect all its natural resources, not just endangered species, for the common good of the entire community now and for future generations.

While recognizing that it is the specific purpose of this DEIR to solicit comments regarding the adequacy of the MSCP Preserve Plan and its alternatives, SOFAR believes it especially important to locate the MSCP Plan within the framework of the County General Plan, the ultimate authority by and in which the MSCP Plan must acquire actual legal status with respect to rights, obligations, and agreements of all concerned parties. In short, the MSCP must be evaluated not only for its adequacy to protect local endangered species, but also for its impact on the General Plan and other aspects of the environment not covered under the "umbrella" of the Endangered Species Preserve areas, i.e., scenic watershed, dark sky, agriculture, and common wildlife. 84(e,

General Plan Issues

Under California law, every city and county must adopt a general plan as the "constitution" for that jurisdiction's physical development. Cal. Gov. Code §65300. A general plan must include, at a minimum, seven mandatory elements: (1) land use; (2) circulation; (3) housing; (4) conservation; (5) open space; (6) noise; and (7) safety. All other land use regulations, actions or approvals must be consistent with the jurisdiction's general plan. See e.g., *Lesher Communications, Inc. v. City of Walnut Creek*, 52 Cal.3d 531, 541 (1990) (zoning ordinance); *Friends of "B" Street v. City of Hayward*, 106 Cal.App.3d 988, 989 (1980) (public works); Cal. Gov. Code §65860 (zoning); id. §§66473.5, 66474 (subdivision approval). Because the general plan is the "constitution for all future developments" within a county, "[t]he propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements." See 84(.,

Citizens of Goleta Valley v. Board of Supervisors, 52 Cal.3d 553 (1990) ("[T]he keystone of regional planning is consistency - between the general plan, its internal elements, subordinate ordinances, and all derivative land use decisions"). 52 Cal.3d at 572-73 (citations omitted); *de Botarri v. Noreo City Council*, 171 Cal.App.3d 1204, 1212 (1985); Gov. Code § 65300.5. 84(f)

An adequate general plan is critical to the adoption of the MSCP because it is the standard against which all development in a community is assessed, and there can be no valid planning and development decisions without a valid general plan. (*Save El Toro Association* (1977) 74 Cal.App.3d 64, 73). For example, major use permits, which derive from the zoning ordinance, must be consistent with the general plan. (*Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176). As set forth below, the San Diego County General Plan does not comply with state law. Therefore, the MSCP Plan within County lands cannot be approved. 84(g)

The following is a description of General Plan elements that relate to natural resource protection as required by State law.

Conservation Element[1]

Government Code Section 65302(d): [The general plan shall include] a conservation element for the conservation, development, and utilization of natural resources including water and its hydraulic force, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals, and other ***natural resources***. That portion of the conservation element including waters shall be developed in coordination with any countywide water agency and with all district and city agencies which have developed, served, controlled or conserved water for any purpose for the county or city for which the plan is prepared. The conservation element may also cover...(3) [r]egulation of the use of land in stream channels and other areas required for the accomplishment of the conservation plan... and (5) [p]rotection of watersheds (p. 116, emphasis added).

Cities and counties have been required to have conservation elements in their general plans since December 31, 1973. Conservation element issue are perhaps even more timely today than in the early 1970's. ***Finite resources*** continue to dwindle as do those which are renewable (in the absence of proper management). At the same time California's population continues to increase and, consequently, 84(h)

[1]State of California General Plan Guidelines, Office of Planning and Research.

so does resource demand. It is therefore vital and ***mandatory*** that local governments address resource concerns in their conservation elements (p. 118, emphasis added). 84(h)

In *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692 (as modified 222 Cal.App.3d 516a) the California Court of Appeal affirmed that a general plan may consist of several documents. Nevertheless, the information in associated documents, when not referenced by the general plan, may not compensate for deficiencies in the conservation element (p. 118). 84(i)

The conservation element overlaps provisions found in the open space, land use, safety and circulation elements. It differs, however, from other portions of the general plan in that it is almost exclusively oriented toward ***natural resources*** (p. 118, emphasis added).

Open Space Element[2]

Government Code Section 65561: The Legislature finds and declares as follows:

(a) That the preservation of open space land, as defined in this article, is necessary not only for the maintenance of the ***economy*** of the state, but also for the assurance of the continued availability of land for the production of food and fiber, for the enjoyment of ***scenic beauty,*** for recreation and for the use of ***natural resources.***

(b) That discouraging premature and unnecessary conversion of open space land to urban uses is a matter of ***public interest*** and will be of benefit to urban dwellers because it will discourage noncontiguous development patterns which unnecessarily increase the costs of community services to community residents.

(c) That the anticipated increase in the population of the state demands that cities, counties, and the state at the earliest possible date make definite plans for the preservation of ***valuable open space land*** and take positive action to carry out such plans by the ***adoption and strict administration*** of laws, ordinances, rules and regulations as authorized by this chapter or by other appropriate methods...

(e) That for these reasons this article is necessary for the promotion of the general welfare and for the protection of the public interest in open space lands.

[2]State of California General Plan Guidelines, Office of Planning and Research. 84(j)

The issues addressed by an open space element shall include any of the following (Government Code Section 65560 and Public Resources Code Section 5076).

Open space for the preservation of natural resources including, but not limited to:

- Areas required for the preservation of plant and animal life including ***habitat for fish and wildlife;***
- Areas required for ecologic and other scientific study; rivers, streams, bays and estuaries; coastal beaches, lake shares, banks of rivers and streams, and watersheds.

Open space used for the managed production of resources including, but not limited to:

- ***Forest lands, rangeland, agricultural lands and areas of economic importance for the production of food or fiber.***

Open space for the Preservation of Natural Resources

- Inventory of natural vegetation, fish and wildlife and their habitats, including rare and endangered species (Map) (CO, LU)
  - Inventory of plants, natural communities and special animals using the California Department of Fish and Game's "Natural Diversity Data Base." The data base covers all areas of the state and produces overlay printouts for use with the U.S.G.S. quadrangle maps Contact the Non-Game Heritage Program of the California Department of Fish and Game.
  - Listing of the types of animals that might be found in a particular habitat, the time of year they might be found there, and their activities using information from the "Wildlife Habitat Relationships Program." Contact the Wildlife Management Division of the California Department of Fish and Game.

Open Space for Resource Management

- Inventory of forest resources (LU, CO)
  - Description of the type, location, amount, and ownership of forests with a value for commercial timber production, wildlife protection, recreation, watershed protection, aesthetics, and other purposes (map).
- The management and protection of forestry resources (LU, OS)
- The conservation of forests for wildlife protection, recreation, aesthetic purposes, etc. (LU, OS)
- The protection and preservation of oak woodlands (OS)
- The management and use of agricultural soils (LU, OS)
- The protection of plant species and their habitats (OS)
- ***The protection of rare and endangered plants and animals and their habitats*** 84(j)

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(OS) (emphasis added). 84(j)

Pursuant to California Government Code Section 65564, "Every local open space plan shall contain an action program consisting of specific programs which the legislative body intends to pursue in implementing its open space plan" (open space zoning pursuant to Government Code Section 65910, e.g., exclusive agriculture zones, large-lot zones, overlay zones for hazard areas, etc.).

San Diego County has the inherent authority and is mandated by State law to enact broad regulations to protect its natural resources for the health and general welfare of its own community, yet has singularly failed to meet minimum standards for natural resource protection, relegating what are supposed to be co-equal elements of the General Plan to a subordinate and derivative status. Furthermore, as documented below, one General Plan element is missing and others are legally inadequate. 84(k)

<u>General Plan Legally Inadequate Because of the Failure to Adopt an Agriculture Element</u>

Section 65300.5 of the Government Code provides that the elements of a County's general plan must comprise an internally consistent statement of policies:

> In construing the provisions of this article, the Legislature intends that the general plan and elements and parts thereof comprise an integrated, internally consistent and compatible statement of policies for the adopting agency.

See *Garat v. City of Riverside*, 2 Cal.App.4th at 286; *Sierra Club v. Board of Supervisors*, 126 Cal.App. at 704. Grasetti Decl. ¶¶2 and 3. Where a required element is missing, the general plan is invalid.

Three required elements of the County's General Plan (including the Land Use, Conservation, and Open Space Elements) expressly rely upon an Agricultural Element being adopted to inventory and protect agricultural lands.

On December 10, 1975 when the County adopted the Conservation Element of the County's General Plan, it deferred discussion of the required Soils Section until adoption of the Agricultural Element (" Element") which it therein authorized and mandated. Work began on the now-mandated Ag Element in 1977. Just two years later, in 1979, the Board of Supervisors adopted the Land Use Element ("LUE") of 84(l,

the General Plan – a regional blueprint which lays the foundation integrating public facilities and transportation with industrial, commercial, residential, and agricultural land uses for the entire County. With the exception of the agricultural designator (known as Ag Designator 20), all 26 land use designations found in the LUE were given specific density determinations. However, minimum lot size criteria for agriculture were again deferred to the Ag Element. Tragically, the Ag Element was never adopted. Instead, one-sixth of the land mass of San Diego County, comprising its most valuable agricultural resources, has been left with contradictory General Plan guidance. 84(l)

Under the California Williamson Act, the County has a policy granting tax relief to private landowners who agree to keep their lands in agricultural use within designated Agricultural Preserves. In the County there are approximately 107,000 acres that remain "under contract" through the Williamson Act and thousands acres more that are in Agricultural Preserves and not under contract but are nevertheless required to have uses compatible with agriculture. Instead of adopting the required Ag Element and protecting the Williamson Act lands, the County passed General Plan Amendment 94-01 which gave the Ag 20 Designator a blanket 8-acre minimum lot size.

County's General Plan is Inadequate Because its Open Space, Conservation, and Land Use Elements are Inadequate Under California Law

The County of San Diego is bound by the findings of the San Diego Superior Court that the Conservation and Open Space Elements of the County's General Plan are inadequate.

On January 11, 1996, a Superior Court in the Count of San Diego issued a judgment on an appeal involving the exact same issues raised by this project. Judge McConnell, in Case No. 676630, made findings that certain elements of the County's General Plan were inadequate and so could not be relied upon in making an informed decision on a project. Specifically, the Court found that the Conservation Element of the County's General Plan is inadequate because it defers consideration of some issues to an Agricultural Element which does not exist. Additionally, the Court found the Open Space Element of the County's General Plan to be inadequate because it also defers consideration of protective measures to a non-existent Agricultural Element. Finally, the Court mandated that no decision on similar projects be made until the defective General Plan elements were made adequate. 84(m)

SOFAR raises the same objections to the County's Conservation and Open Space Elements in this matter as were raised and defined in San Diego Superior Court, Case No. 676630. Both cases primarily involve the inadequacies of the County's Conservation and Open Space Elements. More importantly, the litigating parties in both cases were the same, specifically SOFAR vs. County of San Diego and Board of Supervisors. 84(n)

As a general point of law, "A second action between the same parties on a different cause of action is not precluded by a former judgment. But the first judgment operates as an estoppel or conclusive adjudication as to such issues in the second action as were actually litigated and determined in the first action. 7 Witkin, Cal. Pro., Judgment Section 253, pg. 691. "The parties are deemed the same when those between whom the evidence is offered were on opposite sides on the former case, and a judgment or other determination could in that case have been made between them alone, though other parties were joined with both or either." Id at Section 283, pg. 721. 84(o)

Here, SOFAR and the County/Board of Supervisors were both parties to the previous case. Therefore, under California law, the County and Board of Supervisors is collaterally estopped from taking the position that the Conservation and Open Space Elements of the General Plan are adequate. Case law is in accord. "...Where the challenge is to a general plan or a local sphere of influence plan...the determination will apply equally to all developments the area." *Bereford Neighborhood Assn. v. City of San Mateo*, 207 Cal.App.3d 1180, 1189 (1989). See also, *Buena Vista Gardens Apartments Assn. v. City of San Diego Planning Dept.*, 175 Cal.App.3d 289 (1985); *Camp v. Board of Supervisors*, 123 Cal.App.3d 334 (1981).

County Lacks Authority To Approve County Portion Of MSCP Plan Because County's General Plan Land Use Element Is Inadequate Pursuant To Government Code Section 65302(a)

The County of San Diego does not have authority to approve its portion of the MSCP Plan because the Land Use Element of its General Plan does not comply with State law. Government Code Section 65302(a) requires that "[t]he land use element *shall* include a statement of the standards of population density and building intensity recommended for the various districts and other territory covered by the plan." (emphasis added).[3]

[3]Gov. Code §65302(a) provides: The general Plan shall consist of a statement of development policies and shall include a diagram of diagrams and text setting forth objectives, principles, standards, and plan proposals. The plan shall include the following elements: 84(p)

In this case, the Land Use Element of the County of San Diego's General Plan fails to contain standards of population density. Under Policy 2, Land Use Designations and Use Regulations, p. II-13, the Land Use Element states, "These land use designations shall include maximum density (and in certain cases, a minimum density) allowed on that designation...." The land use designators, however, do not contain statements of population density. Rather, they set standards for building intensity by specifying minimum parcel size and number of dwelling units per parcel (see Land Use Element, II-17–II-29).

The Court of Appeals for the Fifth District has observed, "population density" and "building intensity" are not synonymous. *Twain Harte Homeowners Association, Inc. v. City of Tuolumne County*, 138 Cal.App.3d 664, 669, 188 Cal.Rptr. 233 (Fifth District, 1982). A statement of "population density" must "[refer] to numbers of people in a given area and not to dwelling units per acre, unless the basis for correlation between the measure of dwelling units per acre and number of people is set forth explicitly in the plan." Id. at 699. The San Diego County Land Use Element does not correlate the number of dwelling units per acre with population. Like the general plan in *Twain Harte Homeowners*, the San Diego County General Plan's Land Use Element fails to include "an appropriate statement of standards for population density based upon numbers of people." Id. Thus, the Land Use Element of San Diego County's General Plan is not in substantial compliance with Gov. Code §65302(a).

The Court of Appeals for the First District reached a similar conclusion in *Camp v. Mendocino County Board of Supervisors*, 123 Cal.App.3d 224, 176 Cal.Rptr. 620 (1981). In that case, the court held that the Mendocino County General Plan failed to comply with Gov. Code §65302(a) because "[i]t is ...impossible to relate a tabulated 'density standard' of population to any location in the County." Id. at 349-350.

(a) A land use element which designated the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, including agriculture, natural resources, recreation and enjoyment of scenic beauty, education, public buildings and grounds, sold and liquid waste disposal facilities, and other categories of public and private uses of land. *The land use element shall include a statement of the standards of population density and building intensity recommended for the various districts and other territory covered by the plan.* (emphasis added)

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County Lacks Authority to Approve County Portion of MSCP Plan Because the County's General Plan Conservation Element is Inadequate Pursuant to Government Code §65302(d)

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Under Government Code Section 65302, every county's general plan shall contain:

> (d) A conservation element for the conservation, development and utilization of natural resources including water..., forests, soils, rivers..., harbors, fisheries, wildlife, minerals and other natural resources.

In this instance, the County of San Diego has deferred implementation of the Conservation Element required under Section 65302 to its Agricultural Element of the General Plan. However, the County has never officially adopted a valid Agricultural Element to the General Plan. Since the County does not have an Agricultural Element, it does not have a Conservation Element. A Conservation Element is mandatory under Section 65302. Courts have held, "The lack of a mandatory element invalidates the general plan if the missing element is directly involved in the project under review. The issuance of a use permit is beyond the authority of the issuing agency if the general plan is deficient in its treatment of mandatory elements which are involved in the uses sought by the permit." *Kings County Farm Bureau v. City of Hanford*, 221 Cal.App.3d 692, 742 (1990).

The Conservation Element is directly involved in the project under review because the project will affect forests, soils, wildlife, minerals, and other natural resources. Thus, under the holding of Kings County Farm Bureau, approval of the County portion of the MSCP Plan is beyond the authority of the County because the County's General Plan is deficient in its treatment of a mandatory element. 84(q)

The land which is the subject of this action is designated for conservation and agricultural uses under the General Plan and in fact is, and has been, used primarily for conservation and agricultural purposes. The absence of the mandatory soils section and Agriculture Element makes it impossible for the County of San Diego to comply with the Planning and Zoning Law in that the General Plan is lacking critical data necessary to develop a comprehensive, long-range plan to guide the development and/or conservation of lands in San Diego County. Without the required soils section and Agriculture Element, the County of San Diego has no reference to guide its land use decisions and all such decisions are arbitrary as a matter of law.

County Lacks Authority to Approve County Portion of MSCP Plan Because the County's General Plan Open Space Element is Inadequate Pursuant to Government Code §65563

Under Gov. Code §65563, every city and county is required to "prepare, adopt, and submit to the Secretary of the Resources Agency a local open-space plan for the comprehensive and long-range preservation and conservation of open-space land within its jurisdiction." A local open-space plan is required to "contain an action program consisting of specific programs which the legislative body intends to pursue in implement its open-space plan." Gov. Code §65564. In order to give effect to "an action program consisting of specific programs..." there must be "an inventory of available open space resources...." *Save El Toro Association v. Days*, 74 Cal.App.3d 64, 141 Cal.Rptr. 282 (First District, 1977).[4]

The San Diego County General Plan's Open Space Element fails to contain an adequate inventory of open-space lands within the county as required to give effect to the intent of Gov. Code §65564. In its description of the category "Open Space Design of Private lands," the Open Space Element states: "This category of open space is not illustrated on the Open Space Element map except where the Board of Supervisors has approved a private development plan that includes designed open space (P. I-24). Thus, there is no inventory of privately owned lands which could possibly be designated as open space according to the "action program consisting of specific programs: required by God. Code §65564. A similar failure to create an inventory of open-space land rendered a general plan invalid in *Save El Toro Association*. In that case, the court reasoned that "without an inventory of available open space resources there cannot be a plan [implementing open-space preservation] as contemplated by the Open Space Lands Act[,] only isolated uncoordinated projects the type of development the act was specifically intended to prevent." Id. at 73. The goals of the Open Space Lands Act, Gov. Code §§665560-665570, set out in the legislative history demonstrate that the legislature intended that an open-space land inventory contain both land actually designated as open space and land undesignated but available for designation. These goals recognize that:

> (b)...discouraging premature and unnecessary conversion of open-space land to urban uses is a matter of public interest and will be of benefit to

[4]Gov. Code §65563(b) required the interim open-space plan in effect until December 31, 1977 to contain "a description of the methods by which open-space resources will be inventoried and conservation methods determined." Thus, at a minimum, an inventory of open-space lands is necessary in order to determine appropriate conservation methods.

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> urban dwellers because it will discourage non contiguous development patterns which unnecessarily increases the costs of community services to community residents....[T]he anticipated increase in the population of the state demands that cities, counties, and the state at the earliest possible date make definite plans for the preservation of valuable open-space land and take positive action to carry out such plans by the adoption and strict administration of laws, ordinances, rules and regulations as authorized by this chapter or by other appropriate methods. *Save El Toro Association v. Days*, 74 Cal.App.3d at 71.

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The land which is the subject of this action is designed for open space and agricultural uses under the General Plan and in fact is, and has been, used primarily for open space and agricultural purposes. The inadequacies of the Open Space Element and the absence of an Agriculture Element make it impossible for the County of San Diego to comply with the Planning and Zoning Law in that the General Plan is lacking critical data necessary to develop a comprehensive, long-range plan to guide the development and/or conservation of lands in San Diego County. Without an adequate Open Space Element or Agriculture Element, the County of San Diego has no reference to guide its land use decisions and all such decisions are arbitrary as a matter of law.

Historical Causes Of Inadequate General Plan

Over twenty years ago, on December 12, 1973, on the threshold of adopting the Open Space Element, then Supervisor Jack Walsh drafted a truly prescient letter on the future of open space in San Diego County, stating:

> Today we will discuss a topic of great controversy in San Diego County. The resolution of the open space issue will have enormous effects on the ***nature and quality of life in this county for decades to come.*** Again, suggestions are legion, but instead of turning to professionals, or at least a representative group of citizens, we find ourselves on the threshold of accepting a plan which, in effect, reflects the wishes of a group most devoted to limiting open space. The ad hoc committee on open space, which designed the open space element, had no less ***than 2/3 of its*** membership holding a vested interest in limiting open space - either due to ***extensive land holdings, or careers in development, construction, or real estate sales.*** This is a group clearly unrepresentative of the community was a whole. But, just as clearly, it is the entire citizenry that

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> will be asked to live with this plan, for limitations on open space affect all citizens and will affect them for many years to come (emphasis added).

Since the writing of that letter SOFAR has documented a twenty-year history of failed planning attempts all borne at tremendous cost to taxpayers (7.5 million). Special interests have controlled the San Diego County General Plan and consequently natural resource protection has been compromised to the point where San Diego County and Southern California in general have become the epicenter of species extinction in the world.

The dominance of special interests, as mentioned by Jack Walsh, that set open space planning on its tragic course twenty years ago is playing no less of a role in the debate over the MSCP Plan. What has not yet been revealed in the debate is that the foundation itself, the General Plan, is massively flawed. San Diego County planning, through its General Plan elements, has been a charade covering up the fact that urban-type densities have been placed over all the County's natural resource lands, i.e., scenic, watershed, wilderness, agriculture, and dark sky. No amount of mitigation or acquisition, whether it be done on a project or regional basis, can overcome this fundamental weakness in the San Diego County General Plan.

It is misleading to say, as the proponents of the MSCP Plan constantly do, that project-by-project planning is the cause of environmental degradation and species extinction in San Diego County when the truth points to something deeper. That something deeper was unveiled in 1991 when San Diego County officials attempted to keep urban-type General Plan densities on vital inholdings inside the Cleveland National Forest. The adequacy of those land use designator densities was challenged in court, and during the trial a critical County memo surfaced revealing the key to the whole environmental problem:

> Point out that EIRs, gr. water regs., RPO, etc., all of which apply at the project level, are not adequate, nor are the right mechanism to get at the larger problem of lot compaction in prime habitats...it just causes false expectations and project by project delays if the ***density/lot size issue*** is not adequately set in the General Plan and regulatory ordinances. Parcel by parcel analysis is not adequate to address overall density and buildout impact (Healy Memo, emphasis added).

Following a successful legal challenge to the County's action, the San Diego County citizenry, through the initiative process, changed General Plan densities on 80,000 **84(s)**

acres of vital watershed, wilderness, and scenic inholdings in the Cleveland Forest from a 4-acre to a 40-acre minimum lot size. The people acted to make the Forest whole again. Had the usual tools of acquisition or mitigation been used without changing the General Plan, developer interests would have been paid off to the tune of 1 billion dollars by the American taxpayers. Instead of allowing such a scandal, the people clearly placed the blame on a developer-driven General Plan and by a two-thirds victory margin voted to change the Plan and solve the problem.

On the other hand, in the debate over the MSCP Plan, the blame has unfairly fallen on endangered species themselves and on the agencies charged with their protection. The U.S. Fish & Wildlife Service faces an impossible task. With acquisition and mitigation as their only tools, the lead agencies are trying to stitch together a so-called "seamless" 171,900 acre preserve system which includes 63,000 acres of private land in a multitude of jurisdictions, each with different and at times contradictory planning categories.

The U.S. Fish & Wildlife Service finds itself besieged by both property interests and environmentalists. Property interests say the Feds are "taking" too much. Environmentalists say they are being given too little. In the irony of ironies environmentalists actually find themselves hoping that a species becomes endangered and gets a "listed" status in order that U.S. Fish & Wildlife can step in and do the natural resource planning that all along we could and should have done ourselves. But U.S. Fish & Wildlife has no authority to make actual land use decisions (i.e., establish uses and densities). Rather, it can only issue or deny a permit to take (develop) the habitat of an endangered species. What has been lost in the debate over the MSCP Plan is the real cause of our environmental problems: the absence in the General Plan of a co-equal status for natural resources as required by State law.

With its only power being the threat to deny taking [development] permits, U.S. Fish & Wildlife finds itself the subject to immense political pressure to negotiate and compromise. Meanwhile, the MSCP Plan is being implemented by the very tools that brought us the crisis in the first place: mitigation and acquisition.

Perhaps the greatest casualty in this endangered species debate is the truth about bio-diversity and our essential relation to it. Lost in the political hype and marketing of images and maps, plans and preserves are such questions as whether or not we can ultimately "buy" bio-diversity or whether or not nature is ultimately an end or a means. This question has been asked and answered in different forms again and 84(s.

again over the ages. Perhaps the most eloquent answer was given by Chief Seattle when then President Pierce offered to buy tribal land in the Washington area. Seattle responded: *How can you buy the sparkle in the water or the freshness of the air?* It is a profound question that we are struggling to answer here in San Diego County. We are trying to buy a plan to save 85 covered species that could well become the **Schindler's List of Bio-Diversity**. Left out of this Schindler's List are the flowers, the meadowlands, the trees and the streams that are valuable not because they are endangered, but because they are an integral part of our natural community.

In a nutshell the problem that faces adequate implementation of the MSCP is this: with urban General Plan densities existing on all County resource lands outside the forest, how can the MSCP Plan, through a process of mitigation and acquisition, establish its "seamless" system of preserves without causing further plan inconsistencies, environmental degradation, and enormous and unnecessary cost to the American taxpayer?

To answer this question we must keep in mind the example of the inholdings of the Cleveland National Forest which, before being changed by the initiative, had the same land use designators that are currently outside the Forest on similar natural resource lands. Had those same forest inholdings been protected by the method of MSCP through mitigation or acquisition, it would have cost approximately one billion dollars to the American taxpayer. Therefore, we have an obligation to ask whether or not the MSCP Plan, as it is currently being implemented, is the true answer to the problem of bio-diversity loss in San Diego County.

On the surface, the MSCP Plan looks like a good idea. Its intent is to "plan for habitat preservation to protect [the] region's biodiversity, create an interconnected open space system of native habitats and allow for economic development." While these are worthy goals, they are goals that a well-written and responsibly-executed general plan would pursue from the outset. However, because San Diego's General Plan has, since the real estate boom of the 1970's and '80's, consistently failed to protect biodiversity and such other necessities, a crisis situation has emerged that apparently requires the intervention of a complex, expensive habitat conservation program. MSCP, which would be carried out by the U.S. Fish & Wildlife Service, California Department of Fish & Game, the County of San Diego, the City of San Diego, and ten other local jurisdictions, would cost somewhere between $433 million and $751 million over 30 years. In the larger scheme of things, these are not enormous sums, However, they are unnecessary. If the General Plan adequately 84(s)

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addressed biological concerns, there would be no need for this stop-gap measure.[5] 84(s)

MSCP Plan Fails To Meet CEQA Guidelines

- It mischaracterizes the project's expected impacts on biology, dark sky, agriculture, scenic, and common wildlife;

- It fails to accurately characterize the project's impacts on Park and Forest resources, and fails to provide adequate mitigation measures for these impacts;

- It fails to adequately analyze the project's effects considered together with other projects planned in the area, and fails to propose adequate mitigation measures for these effects;

- It fails to accurately characterize the project's likely growth-inducing effects;

- It does not contain an adequate mitigation monitoring program;

- It does not adequately discuss alternatives to the proposed project;

- It mischaracterizes economic impacts;

- It fails to address impacts to key corridor/linkage areas, and mitigate those impacts; and

- It fails to address the impacts of the County's Biological Mitigation Ordinance.

The DEIR/EIS must therefore be revised substantially to comply with the requirements of CEQA. A supplemental draft EIR should be circulated to allow the public an opportunity for full review and comment on the required additional information. A supplemental EIR should rely on a thorough critique of the County's General Plan, its inconsistencies, and inadequate resource protection ordinances.

Furthermore, SOFAR is concerned that approval of this project would set a deleterious precedent by dramatically altering the established policies concerning development in the rural areas of San Diego County. The approval of this project would allow a level and intensity of development far beyond that contemplated by

[5]Bio-Rational Planning: An Ecological Approach to Land Use Planning in San Diego County, p. 88. 84(t)

the existing General Plan and zoning provisions. As discussed below, the proposed project would involve housing densities incompatible with rural, agricultural, and watershed areas. The approval of this project could enable more intensive development of areas designated with 18 Multiple Rural Use Land Designator, 19 Intensive Agriculture Designator, 20 Agricultural Preserve Designator, and the RCA Regional Category throughout the County, with significant adverse environmental results in the unincorporated areas. In addition, the MSCP Plan is inconsistent with numerous other provisions of the San Diego County General Plan, and therefore may not legally be approved. 84(t)

EIR Fails To Satisfy Requirements Of CEQA

Use of this draft EIR as the basis for a final EIR would violate both the letter and spirit of CEQA. CEQA requires a draft EIR to be an informational document which will inform public agency decision-makers and the public generally of the significant effects of a project, identify possible ways to minimize those effects, and describe reasonable alternatives to the project. The EIR for the proposed project fails to fulfill any of these fundamental goals.

The deficiencies discussed below should be addressed in a supplemental draft EIR. The supplemental EIR should be recirculated for additional public comment. CEQA Guidelines §15163.

Draft EIR Is Inadequate Because It
Fails To Properly Describe The Proposed Project

The EIR provides a legally inadequate analysis of the potential impacts of the project because it is based on an incomplete project description. "An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." *County of Inyo v. City of Los Angeles*, 71 Cal.App.3d 185, 192-93 (1977).

The DEIR/EIS begins with a very questionable premise that basically the same preserve size in the 1995 DEIR/EIS supported a coverage of 57 species, and now in 1996 with no change in size or quality suddenly supports the coverage of 85 plant and animal species. There is insufficient documentation to justify the increased species coverage. Also, the boundaries of the preserves themselves are contingent on: (1) adequate funding; (2) buffer zones and related edge effects; (3) the status of private lands; (4) uses and densities already designated in preserve areas; and (5) and on coordinated simultaneous adoption by many jurisdiction of the so-called 84(u)

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"seamless" preserve system. These contingencies have not been adequately described or analyzed. Furthermore, the County portion of the MSCP is without any preserve boundaries whatsoever. Since the County portion of the Plan contains the most important biological part of the preserve system, the lack of analysable preserve boundaries renders the EIR/EIS completely inadequate. This inadequacy cannot be mitigated by simple adoption of the Biological Mitigation Ordinance, which itself is environmentally flawed. 84(u)

In addition, the Board of Supervisors, on October 11, 1995, approved thirty deal/negotiation points that were to be settled between Federal Government, landowners, the County, and the City. This extraordinary action undermines any stable basis for the MSCP Plan. The very concept itself of "negotiating" a General Plan amendment is contrary to law and the authority by which these deal points are being negotiated is also non-existent under State law. A general plan is the legislative act of a community, not a "deal" concocted by power brokers.

Another glaring example of the inadequacy of the project description is the omission the Second Dwelling Unit Ordinance adopted by the County in May, 1994. Each lot in the Jamul, Ramona, Alpine, and Lakeside area could easily be permitted a second unit. In other words, the number of dwelling units may be as high as double the number described in the EIR. Nevertheless, the EIR completely ignores the potential impacts of the doubling in the number of dwelling units and the consequent increases in population on traffic, water supply, construction, grading, biology, and virtually every other impact discussed in the DEIR/EIS.

DEIR/EIS Is Inadequate Because It Fails To Properly Describe The Project's Environmental Setting

A draft EIR "must include a description of the environment in the vicinity of the project, as it exists before the commencement of the project, from both a local and regional perspective." CEQA Guidelines §15125; see also *Environmental Planning and Info. Council v. County of El Dorado*, 131 Cal.App.3d 350, 354 (1982). The environmental setting discussion is deficient because it fails to adequately analyze existing environmental conditions, especially with respect to watershed and agricultural resources. Thousands of acres in the eastern section of the MSCP Plan are undeveloped and consist of valuable watershed, agricultural, and grassland areas. The environmental and planning importance of these lands has not been properly addressed.

The environmental setting discussion must also include analysis of any 84(v)

inconsistencies between the proposed project and existing general plans, regional plans, and any other relevant planning such as RCA guidelines. Guidelines §15125(b). The EIR must discuss the significant impacts resulting from any project inconsistencies with the planning documents. Discussed below in the sections describing project impacts, the MSCP DEIR/EIS fails to adequately discuss and analyze the impacts of inconsistencies of the project with relevant planning documents. 84(v)

DEIR/EIS Does Not Adequately Disclose Or Analyze Significant Environmental Impacts, Nor Does It Discuss Sufficient Mitigation Measures To Offset Significant Impacts

In addition to the limitations imposed by the inadequate project description and environmental setting discussion, the DEIR/EIS does not adequately discuss the basis for many of its conclusions, fails to address a number of potentially significant effects, and impermissibly relies on future area plans and vague monitoring programs to identify certain impacts and mitigation measures. The DEIR/EIS remains so deficient in many areas as to mislead the public and decision makers about the extent of impacts and the adequacy of proposed mitigation measures. CEQA requires that an EIR must not only identify the impacts, but must also provide "information about how adverse the impacts will be." *Santiago County Water Dist. v. County of Orange*, 118 Cal.App.3d 818, 831 (1981). Below we describe the specific inadequacies of the DEIR/EIS's environmental impacts analysis. 84(w)

Open Space Impacts

The project will have substantial impacts on open space, both by placing development in an area which is now open space, and by bringing more residents to the area which will increase demands on remaining open space.

The project is flatly inconsistent with several relevant County General Plan open space policies, including concentration of residential development, preservation of open space, preservation of agriculture, encouragement of larger lot sizes, providing areas for public recreational use, and dedication of public access to open space. The DEIR/EIS provides no adequate analysis of the environmental impacts that will result from this inconsistency.

The parts in the preserve where 70- 80% of the area is to be preserved in open space is in essence no different from a typical development project. Why would open space have to be purchased or densities increased when normal mitigation 84(x)

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measures would preserve the same amount of land? 84(x)

Biological Impacts

For several decades in San Diego County, city and county officials have been aware of the severe damage that our natural areas have been suffering as a consequence of rampant development. However, few serious efforts were made to prevent significant losses of biodiversity by our political leaders.

One token program to preserve vernal pools that began in the late 1970's had disastrous results. The destruction of more than 800 vernal pools was mitigated by the purchase of one vernal pool, the land connecting several pools groups (Bauder 1995) (please see Exhibit 1 for cited literature). By 1990, 96% of our county's vernal pools had been destroyed forever (Oberbauer 1990). In fact, most of our coastal ecosystems, including coastal salt marshes and maritime sage scrub, have suffered greater than 85% losses (Oberbauer 1990). Other systems, such as riparian woodlands, freshwater marshes, and mixed chaparral, have also suffered as a result of unrestrained development and a lack of conservation planning.

Because we have waited so long to do real conservation planning, much of the MSCP study area (about 38%) is already urban development. The configuration of the MSCP preserve is largely dictated by existing development rather than by basic principles of preserve design. Furthermore, if conservation planning had been done sooner, we could have protected potential corridors that are now constrained or cut off by development. 84(y)

With the introduction of the statewide NCCP program, many conservationists became hopeful that our state's conservation crisis would be seriously addressed. Many ecologists and conservation biologists agree that, from a biological point of view, the original concept and the NCCP is good. However, many of these scientists also believe that local planners have diverged from the original intent of the NCCP, and that the planning process is dominated by politics and developer interests, rather than by sound conservation planning and independent scientific review. These latter comments have been directly specifically at the MSCP.

In the 1992 Peninsular Range Ecosystem Conference, Dr. Michael Soulé stated that there are three types of conservation: 1) for sustainable use of resources; (b) for biodiversity; and (3) for wilderness. The MSCP will now be briefly be evaluated to determine if it qualifies as one of the three types of conservation.

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MSCP and Conservation for Sustainable Use of Resources. Within the MSCP planning area, there is some agriculture, mining, livestock grazing, and other use of natural resources; however, these activities do not dominate land use in the MSCP study area. The primary consumptive activity in the MSCP study are is urban development, and this activity is not sustainable. Conservation for sustainable use of resources is not an objective of the MSCP, and does not (and could not) qualify as conservation for sustainable use or resources. 84(z)

MSCP and Conservation of Wilderness. Many proponents of the MSCP have been promoting it in the media as "wilderness." The mission statement for the Wildlands Project describes some of the characteristics that "wilderness" has, including: (a) extensive areas of native vegetation; (b) viable, self-reproducing, genetically diverse populations of plants and animals, including large predators; and (c) lack of roads and other human cultural artifacts (Wild Earth 1995).

Even the largest core areas within the MSCP preserve are by no means extensive (see Exhibit 2). The largest core area (according to the core area and linkage description, which is larger than the proposed Multi-Habitat (MH) scenario) measures approximately 49 square miles (imagine a square seven miles on each side.) This is not extensive by wilderness standards. For the sake of comparison, the Olympic National Park assemblage in the State of Washington is nearly one million acres (Dietrich 1992), and this area may still fail to meet the above criteria. 84(aa)

Dr. Paul Beier studied mountain lions in the Santa Ana Mountains (the northern-most portion of the Cleveland National Forest). He states that mountain lions are an indicator or "umbrella" species for the viability of a whole system (Beier 1993). He found that his study area of 1114 square kilometers (275,158 acres) was too small to support a viable population of mountain lions, and that movement corridors linking the Santa Ana cougar population to outside habitat is essential to their survival. Yet, the entire MSCP preserve combined is small than Beier's study area. The proposed MSCP preserve cannot support a viable population of mountain lions on its own; therefore, it lacks the second characteristic of wilderness.

All of the landscape linkage and core areas in the MSCP preserve are crossed by trails, roads, and freeways. Nearly any point in any core is within one half of a mile (0.8 km) of a man-made trail, road, or freeway.

Thus, the MSCP preserve fails to meet all three characteristics of wilderness that are described in the Mission Statement of the Wildlands Project.

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MSCP and Conservation of Biodiversity. If our goal in the MSCP is to preserve genetic, species, and community-level biodiversity, then one approach to the problem is to choose a list of species of interest that, if protected, would likely result in the protection of the region's biodiversity. The most likely candidates to be included on this list are large-bodied species, specialized species, keystone species, and highly mobile low-density species (Shaffer 1981; Beier 1993; Primack 1993). We should be reasonably sure that if we protect our species of interest (by protecting enough of their habitat in the right configuration), then we will be protecting most of the other species as well. In the MSCP, however, target species are chosen because of their legal status.

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Many academic ecologists and conservation biologists state that there is not enough research behind MSCP conservation planning. One researcher qualified this by adding that there is never enough research, but went on to say that there is a minimum amount of basic research needed in order to properly plan and manage a preserve. The bulk of the research for MSCP conservation planning comes from thematic mapping, habitat evaluation, and GAP analysis. Little field research has been done, and most of it has centered on the gnatcatcher.

To illustrate the lack of scientific support for the MSCP plan, four aspects (out of many) of the plan will be discussed below. The aspects that will be discussed are edge effects, biological linkages, population viability analysis, and fragmentation.

A. Edge Effects: There are detrimental effects that can occur along man-made edges of preserves. These include:

- exposure of native flora along edges to heat and wind;
- invasion by non-native species;
- invasion by ornamental species that are grown in yards, along roads and freeways, and in other landscaped areas;
- pollution runoff from yards, streets, and agricultural areas, and changes in moisture that results from runoff;
- an increase in native generalist species that benefit from human presence;
- predation of native animals by domesticated or feral cats and dogs;
- noise, lights, and other disturbances; and
- the creation of trails and other disturbances by residents and transients.

Each of these effects will impact each species of interest (or in the MSCP, target 84(a

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species) differently. The net result may be a loss of habitat area for each species of interest, and this must be factored into any population viability analysis (PVA); however, this is not possible since many of these effects have not been studied. 84(ac)

B. Linkages in the MSCP: Beier and Lowe provides guidelines for planning wildlife corridors. They state: *"The critical features of a wildlife corridor are not physical traits, such as its length or width or vegetation, but rather how well a particular piece of land fulfills several functions."* These functions include: wide-ranging animals can travel, migrate and meet mates; plants can propagate; genetic interchange can occur; populations can move in response to environmental changes and natural disasters; and individuals can recolonize habitats from which populations have been locally extirpated (Beier and Lowe 1992).

The MSCP document identifies the core areas that each linkage is designed to connect, identifies "focal target species," and provides maps showing the linkages. As stated above, the target species are chosen for legal reasons, rather than for biological ones. Likewise, the viability of the corridors should be evaluated according to their ability to support corridor dwellers, and to allow the migration of suitably chosen passage species. The MSCP document simply makes brief statements about the types of habitat through which the California gnatcatcher has been known to disperse, and does not describe the suitability of each linkage for the dispersal of each "focal target species." This evaluation, along with specific measurements for proposed linkages, is essential in evaluation connectivity between core areas.

All of the proposed landscape linkages are crossed by trails, freeways, or roads (see Exhibit 2). Many are constrained or fragmented by existing development. Furthermore, all of the land in most of the proposed corridors is privately owned, and participation in the program is voluntary. The final configuration of each corridor is not yet known, and this makes them difficult to evaluate.

The mountain lion, which is included on the target species list because it is considered a "specially protected species" as a result of the voter approved Wildlife Protection Act of 1990, may be helpful in determining if a corridor is passable. In the list of target species, the mountain lion is probably the best "umbrella "species." Dr. Beier (1993) states:

> *I do not advocate using cougars as a proxy for all species of concern. However, the management decisions will not await the conclusion of* 84(ad)

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long-term studies on sedentary species. In western North America, use of data from telemetered cougars may be the most expedient way to interject biological facts into the analysis of environmental impact and mitigation related to corridors.

However, this sort of research has not been done prior to the final phases of MSCP planning. One glaring example of a completely inadequate corridor analysis concerns the two most important corridors in the MSCP, known as Interstate 8 at Lakeside (H), and Dehesa to El Capitan Reservoir (I). These two corridors are the main links between the entire southern and northern parts of the MSCP. At the present time both these corridors are virtually impassible to large mammals. Since Corridor H at Lakeside is heavily urbanized, it may permit no passage at all to any animals. There is no evidence on the record to support the viability of these linkages.

The usefulness of biological linkage and stepping stones will be essential to the survival of many species in the MSCP preserve. Because the viability of corridors affects the ability of a species to recolonize an area in which it has become locally extinct, this must be factored into the PVA for each species. 84(ad)

C. Predictability of the Success of the MSCP: As mentioned above, the MSCP Target Species List is based on legal rather on than biological criteria. Even so, a PVA should be done for each species that is on our chosen list. This requires extensive study of each population. In the MSCP, only two PVA's have been done (out of a list of 87 target species), and the PVA for the cactus wren, along with the qualitative risk assessments for the other species, have been described by one prominent ecological researcher as "wholly inadequate." The gnatcatcher PVA is by far the most comprehensive, but even so, some data was lacking and estimates had to be used. Furthermore, the probability of extinction for the gnatcatcher is very sensitive to changes in the maximum population growth rate.

PVA's are important in getting some idea of how large a preserve should be configured. Without such estimates, we do not have any idea how well a preserve will protect species diversity. Although no confident determination of minimum viable population size has been made for any species (Shafer 1990), PVA's are useful quantitative tools for predicting the probability of extinction of a species. These predictions are insufficient for the MSCP, which adds to the uncertainly of the ability of the plan to achieve its biological objectives. 84(ae)

D. Fragmentation in the MSCP Preserve: Even after the plans have been finalized and implemented, the MSCP preserve will continue to suffer from what Soulé and others describe as the "secondary fragmentation" that occurs in native habitats near 84(af)

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developed areas (Soulé et al 1992). They state:

> *The primary fragmenting event is the construction of a road, with or without associated housing developments. Later, the habitat remnants may be subdivided by additional development. But these isolated events are just the beginning. Trails soon appear...and neighborhood children remove the plant cover during the creation of camping sites for "forts." The edges of the remnant are nibbled away by expanding gardens and backyards. These incursions are essentially irreversible to scrub and chaparral-type associations because the vegetation is brittle and very slow to re-establish after removal. The portion of chaparral habitat in a fragment decreases over time, and before long no point in the remnant is more than a meter or two from some kind of artificial opening.*

With this in mind, consider the following:

- Many of the core areas and corridors are crossed by roads and freeways. These can present significant barriers to dispersal for many species.

- Virtually every area in the MCFPA is covered by a network of trails, contributing to secondary fragmentation. There is almost no point in any core area or linkage that is more than 0.5 miles (0.8 km) from a trail, road, or freeway.

- Negotiation points proposed by developers include: the building of roads in habitat areas; the construction of roads, fences, and lighting systems that may be required by law enforcement, fire control agencies, the National Guard...within the preserve (and clearance of vegetation around related structures); the construction of landfills within the preserve system boundaries; and sand and gravel mining within the preserve. Within the preserve these activities will be subject to regulation, but will still contribute to fragmentation of the preserve.

All of these activities within the preserve are significant sources of habitat loss and fragmentation, and influence negatively the ability of the preserve to protect biodiversity. This underlines the importance of properly managing the preserve to minimize further human-caused degradation. Management of the preserve will be very costly, and will be conducted by landowners, developers, several local jurisdictions, and by State and Federal resources agencies. Regardless of how good the plan is, failure to properly implement the plan and manage the preserve could, by itself, lead to significant losses of biodiversity in the MSCP study area. 84(af)

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Summary on Biodiversity. The basic idea of preserving large, connected habitat areas and intact ecosystems is a very good one. However, from the perspective of conservation for the preservation of biodiversity, there are three main problems with the MSCP. The first is that the MSCP focuses on species with legal status, rather than those whose protection would likely lead to the protection of all biodiversity in the study area. Second, there is simply not enough basic research to support the plan. Third, only one serious attempt at conducting a PVA was done, and this was for the gnatcatcher. From a biological point of view, the MSCP could most accurately be described as a plan to protect the California gnatcatcher and the coastal sage scrub it requires. The MSCP is a plan to deal with restraints placed on urban development by the ESA when the gnatcatcher gained threatened status. It is not a plan to conserve biodiversity in southwestern San Diego County. 84(a

Following the above outlined guidelines of Dr. Soulé, the MSCP does not meet the requirements for conservation of natural resources, biodiversity, or wilderness. Regardless of the original intent of the NCCP, it is our fear that the failure of the MSCP to seriously address conservation on any level will provide a precedent for similar failures in other areas that are developing and adopting NCCP plans.

* * *

Originally, the County's participation in habitat conservation was supposed to be based almost wholly on the strategy outlined in the book *In Our Own Hands: A Strategy for Conserving Biological Diversity in California.* The Wildlife Habitat and Open Space Update Project was adopted in 1991 and followed all of the recommendations outlined in *In Our Own Hands.* It was to be a comprehensive open space update based on General Plan guidelines and not on the Endangered Species Act. It is somewhat strange, therefore, to find no mention in the DEIR/EIS of the distinction between ESA-based and General Plan-based open space planning as described in the opening remarks of this comment letter. The change to endangered species planning represents a fundamental change in planning philosophy.

In Our Own Hands provides some rather exhaustive references to grassland, watershed, wetlands, grazing, and forest and park preserves that point to the principle that civilization and all our manufactured wealth ultimately depend on the preservation of California's biodiversity in all its forms. The kind of biodiversity that can be squeezed into a preserve system with urbanization surrounding it on all sides is not what *In Our Own Hands* is talking about. Its opening paragraph states: 84(ag)

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> California's bountiful natural resources are the wellspring of the State's economic wealth and its worldwide fame as a desirable place to live. To the public, these resources are often thought of as logs to cut, soil to plow, clean water to drink, fish to catch and redwoods to stand in awe of. But, in fact, these are only a few of the benefits we receive from California's biological diversity. This diversity is sometimes splendidly apparent, as when the deserts flower in the spring or when, in the winter sunset, a phenomenal variety and abundance of bird species descend on the coastal lagoons or inland wetlands. More often, however, these riches go unperceived, for California's patchwork diversity of habitats can best be grasped by a trained eye aloft and its diversity of genetic information must be viewed with microscopic vision *(In Our Own Hands)*.

In Our Own Hands states that forest and park preserves are critical to the preservation of biodiversity in all its forms yet in the MSCP Plan intensification of urbanization along the western boundary of the Cleveland Forest could overwhelm forest resources.

The strategy outlined in *In Our Own Hands* includes a very important section about the strengthening of existing laws:

> 5. Ensure Implementation and Enforcement of Existing Laws (p. XIX).
> Both unenforceable laws and inadequate funding and staffing diminish the effectiveness of existing laws for biodiversity conservation. The legislature must strengthen existing laws to enhance enforcement capabilities. To assure the laws are carried out requires augmenting the capacity of resource and environmental agencies to collect data and enforce laws by increasing staff allotted to those purposes.

Especially relevant here is testimony from the Central Mountain Plan trial concerning Forest viability. Habitat planning information was supposed to be used as a guide to set minimum densities for the general protection of lands in Designators 20, 23, and 18, and not simply to draw a preserve boundary overlay (see trial transcript). The trial transcript constitutes a bible of information about the relationship of natural resources, biodiversity, planning, the MSCP Plan, the County's interpretation of the MSCP Plan, and finally General Plan open space protection. Never was there a hint that the County's Open Space Plan was to be implemented by acquisition and mitigation while leaving old plan densities in place.

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The DEIR/EIS admits the likelihood of increased urbanization in areas outside the preserves but continually relies upon existing County ordinances to mitigate for those impacts. On the other hand, it states that mitigation outside of the preserve is supposed to be directed to secure habitat inside the preserve. Furthermore, as outlined in this letter, county zoning and resource protection ordinances have failed to offer any natural resource protection whatsoever.

For these reasons, the DEIR/EIS violates CEQA's fundamental requirements for providing the public with information necessary to assess the environmental impacts of the project. A supplemental draft EIR should enumerate the cumulative biological impacts and how in fact they will be mitigated by open space easements and the monitoring program.

With respect to county lands involved in the MSCP Plan, it is essential that a new DEIR/EIS rely on the standards adopted by the County when it approved the program for its Open Space Element Update. 84(a)

Cumulative Impacts

An EIR must discuss significant "cumulative impacts." CEQA Guidelines, Section 15130(a). "Cumulative impacts" are defined as "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." CEQA Guidelines, Section 15355(a). "[I]ndividual effects may be changes resulting from a single project or a number of separate projects." CEQA Guidelines, Section 15355(a).

A legally adequate "cumulative impacts analysis" views a particular project over time and in conjunction with other related past, present, and reasonably foreseeable probable future projects whose impacts might compound or interrelate with those of the project at hand. "Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time." CEQA Guidelines, Section 15355(b). The cumulative impacts concept recognizes that "[t]he full environmental impact of a proposed...action cannot be gauged in a vacuum." *Whitman v. Board of Supervisors*, 88 Cal.App.3d 387, 408 (1979).

To be adequate, the discussion must include the following elements: (1) either (a) a list of past, present, and reasonably anticipated future projects, including those outside the agency's control, that have produced, or are likely to produce, related or cumulative impacts, of (b) a summary of projections contained in an adopted 84(ai)

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general plan or related planning document that is designed to evaluate regional or areawide conditions, provided that such documents are referenced and made available for public inspection at a specified location; (2) a summary of such individual projects' expected environmental effects, with specific reference to additional information stating where such information is available; and (3) a reasonable analysis of all the relevant projects' cumulative impacts, with an examination of reasonable options for mitigating or avoiding such effects. (CEQA Guidelines, Section 15130(b)...) 84(ai)

The DEIR/EIS fails to adequately consider the cumulative effects of the proposed project together with other reasonably foreseeable future projects in the area. The Cumulative Analysis (p. 6.4) improperly relies on the National Forest lands as being adequately protected. The County itself, in implementing the Forest Conservation Initiative (GPA 95-01), is contemplating at its expiration date the total elimination of the regulations contained in the Initiative and a return to former planning categories. Also, new development outside the preserve, and even in forest lands, could justify increases in density by relying on the MSCP Plan. For example, this recently happened in the Descanso Range of the Cleveland National Forest where a project increased its density 85 times over the allowed Forest Initiative density and justified this density increase by relying on the County's MSCP Plan (see Oaks at Descanso EIR Addendum). A host of projects could intensify development and use the same rationale to justify increases in density.

While the DEIR/EIS admits to increased urbanization or intensification of land use outside the preserve, it dismisses these impacts as insignificant because they would "arise regardless of any Multi-Species Conservation Plan program." This contradicts other statements in the DEIR/EIS that impacts outside the preserve would be mitigated by existing ordinances.

The EIR's scant discussions of the various cumulative impacts of the combined projects on biology, community character, groundwater quality, and traffic circulation are wholly inadequate. Other cumulative impacts are completely ignored. A supplemental draft EIR must address all of the cumulative impacts posed by this and other planned projects for consideration by the public.

Growth-Inducing Impacts

The EIR fails to adequately discuss the growth-inducing impacts of this project. This project proposed a level and intensity of residential development not contemplated by the County when it adopted the applicable planning documents. The project 84(aj)

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would clearly alter the fundamental County planning policy to "[e]ncourage continuance and expansion of agricultural uses in appropriate portions of the unincorporated area" (Goal 2.5, Land Use Element); and to "[e]nsure preservation of contiguous regionally significant open space corridors (Goal 2.6, Land Use Element). The project would replace untouched open space outside the preserve area with excessive residential development. 84(aj)

If this project is approved, it will at the very least encourage the conversion of other lands within the County classified as "rural" to this intensive residential use. The DEIR/EIS summarily dismisses this possibility with its statement that: "None of the features of the proposed MHPA or alternative scenarios would directly induce growth." The DEIR/EIS indicates that development pressure would be shifted from preserve areas to non preserve areas and be subject to increased urbanization or intensification of land use. The approval of this project would set a clear growth-inducing precedent for all lands outside the preserves.

Furthermore, the adoption of the County portion of the MSCP Plan could set a deleterious precedent for the County's own Open Space Update, which, as already mentioned, is supposed to be guided by different standards.

The DEIR/EIS Does Not Adequately Discuss Alternatives To The Proposed Project

CEQA requires that an EIR "[d]escribe a range of reasonable alternatives...which could feasibly attain the basic objectives of the project and evaluate the comparative merits of the alternatives." CEQA Guidelines, §15126(d); *Village Laguna of Laguna Beach v. Board of Supervisors*, 134 Cal.App.3d 1022, 1028 (1982); *Citizens of Goleta Valley v. Board of Supervisors (Goleta I)*, 197 Cal.App.3d 1167, 1180-81 (1988). CEQA requires that an EIR "produce information sufficient to permit a reasonable choice of alternatives so far as environmental aspects are concerned." *San Bernardino Valley Audubon Soc'y v. County of San Bernardino*, 155 Cal.App.3d 738, 750-51 (1984). The "key issue" is whether the alternatives analysis "fosters informed decision-making and informed public participation." CEQA Guidelines §15126(d). The discussion must focus on alternatives capable of either eliminating any significant adverse environmental effects or reducing them to a level of insignificance, even if such alternatives would be more costly or to some degree would impede the project's objectives. CEQA Guidelines §15126(d)(3).

The DEIR/EIS discusses a number of project alternatives: (1) the coastal sage scrub; 84(a...

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(2) the biologically preferred; (3) the public lands; and (40 the no project alternative. What is missing in this reasonable range of alternatives is an analysis of what would happen to open space viability if the County lived up to its own goals and policies in the General Plan. For the County portion of the MSCP Plan, a General Plan conformance should be analysed. CEQA requires that the EIR explain why environmentally superior alternatives are rejected. CEQA Guidelines §15126(d). As the California Supreme Court held in *Laurel Heights Improvement Assoc. v. Regents of the University of California*, 47 Cal.3d 376, 405 (1989), "[i]f the [lead agency] considered various alternatives and found them to be infeasible...those alternatives and the reasons they were rejected...must be discussed in the EIR in sufficient detail to enable meaningful participation and criticism by the public." The DEIR/EIS does not identify or explain why the environmentally superior alternative was rejected. 84(ak)

Economic Impacts

The economic impact section of the MSCP Plan is completely deficient, turning logic entirely upside-down. The DEIR/EIS analyses the MSCP Plan exclusively in terms of the economic impacts to development. Nowhere do we find any mention of the four basic pillars of San Diego region's economy as documented by the Chamber of Commerce Report: tourism; military; light manufacturing; and agriculture. The preservation of biodiversity should have been discussed in light of its contributions to the industries just mentioned. Instead, the analysis assumes that development is the primary source of wealth in our region. 84(al)

Just the opposite was concluded in a recent Bank of America Report entitled "Beyond Sprawl," which details the overwhelming negative economic impacts that poorly planned suburban development can have on the region's economy. The increased development that is anticipated by adoption of the MSCP Plan will have deleterious impacts to tourism and agriculture, the first and fourth largest industries, respectively. There is no analysis whatsoever of these impacts. 84(am)

There is massive evidence to support the fact that economic wealth is dependent on environmental health. It has been well documented that productive open space lands, such as watershed and agriculture, produce surplus revenue. In fact, statistics demonstrate that in the long run residential and commercial development are not self-supporting in terms of tax revenues meeting service costs. We have only to look at Orange County to prove this point. In addition, the City of San Diego and the City of El Cajon find themselves in a deficit condition. 84(an)

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It is not the preservation of development that should be the focus of the MSCP Plan, but rather the preservation of biodiversity for its own sake. It is this thought, we repeat, that is the fundamental assumption of *In Our Own Hands:* "California's bountiful natural resources are the wellspring of the State's economic wealth and its worldwide fame as a desirable place to live." 84(ao)

Conclusion

It is now clear from the above comment that an ESA-based preserve system is by its very nature a supplement, not a substitute, for the larger landscape issues of watershed, common wilderness, and agriculture. What is needed is what Supervisor Walsh called for 20 years ago and what was recently attempted in 1994 during GPA 94-01 (see Rural Task Force letter): a regional General Plan amendment based on sound natural resource viability. It is the *sine qua non* of a viable MSCP Plan. 84(ap)

The Endangered Species Act is a national policy meant to be the last bastion of defense when all else has failed. It was never meant to be the first principle of planning as it has now become in San Diego County.

We have demonstrated in precise detail that the County has both the authority and power to enact such legislation on its own. Using endangered species as a planning tool may backfire because natural resources outside the preserves will not be regarded as inherently valuable, and when the preserves fail to provide adequate protection for biodiversity, as they are likely to do, it will then be too late. Biodiversity that is not valued for its own sake but for the sake of development may not long prevail. 84(aq)

Thank you for the opportunity to comment.

Sincerely,

DUNCAN McFETRIDGE
President

Encsl.
In Our Own Hands: A Strategy for Conserving
Biodiversity in California (cont.)

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Future Rural Task Force Letter
Central Mountain Trial Transcript
Draft Agriculture Element
Bio-Rational Planning: An Ecological Approach
to Land Use Planning in San Diego County
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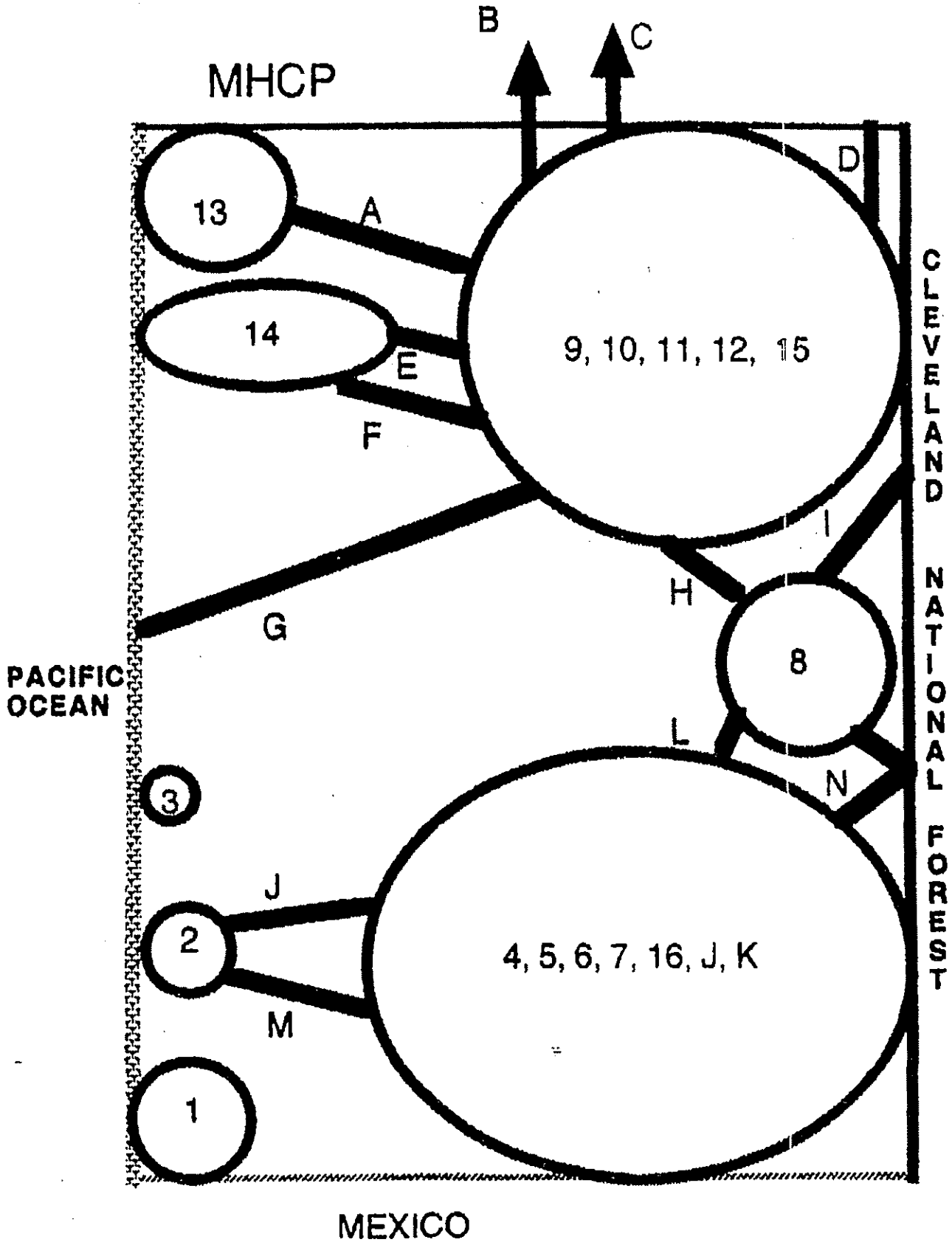
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Exhibit 2

Enclosure 1: Table of Core Areas:

Volume I of the MSCP document provides area figures for the core areas in the MSCP study area. These core areas are larger than those found in the proposed MHPA scenerio, but since they are the only figures given I will have to use them for comparisson.

Core Area 1.....3810 acres (1542 ha)
Core Area 2.....3477 acres (1408 ha) (>MHPA)
Core Area 3.....1002 acres (406 ha) (>MHPA)
Core Area 4.....22513 acres (9114 ha) (vry frag'ed in MHPA)
Core Area 5.....28633 acres (11592 ha)
Core Area 6.....8520 acres (3449 ha)
Core Area 7.....14106 acres (5710 ha)
Core Area 8.....17957 acres (7270 ha) (>MHPA)
Core Area 9.....11749 acres (4756 ha)
Core Area 10.....19071 acres (7721 ha) (>MHPA)
Core Area 11.....31762 acres (12859 ha)
Core Area 12.....31111 acres (12596 ha)
Core Area 13.....11591 acres (4693 ha) (>MHPA & frag'ed)
Core Area 14.....11264 acres (4560 ha) (>MHPA & frag'ed)
Core Area 15.....1863 acres (745 ha) (>MHPA & frag'ed)
Core Area 16.....20283 acres (8212 ha) (>MHPA)

Enclosure 2: Corridors:

Bio Linkage	Cross# of Freeways	Comments: MSCP Doc*	Observ fm MHPA Map+
A	1	high degrad/devel	severly fragmented
B	N/A	narrw band of CSS	N/A (outside MSCP)
C	N/A	to Camp Pendleton	N/A (" ")
D	0	constrained by lack of cons. on sides	none
E	1		none
F	1		none
G	4		riparianalongI-8
H	1	fraged due to development	severly fraged/develop
I	1		none
J	2		riparian
K	0		fragmented
L	0	constrained by existing develop	must X frwy in core
M	2		fragmented
N	1	nat'l but constrained	none

*MSCP Document, vol I. pages 210-211
+Fig 2-20 of joint EIR/EIS

85 IAN GILL, ALLIANCE FOR HABITAT CONSERVATION, OCTOBER 29, 1996

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85(a) Comment noted.

85(b) The Model Implementing Agreement and the City of San Diego's Implementing Agreement have been modified to (1) reflect long-term nature of the state and federal commitment to assist in preserve assembly (13,500 acres of habitat acquisition) and (2) include wording that review and potential revision of take authorization coverages would not be based on short-term analyses of state and federal acquisitions. See also **Theme Response IV, MSCP Financing Plan: Regional Source of Funds.**

85(c) Comment noted

85(d) The Model Implementing Agreement and the City of San Diego's Implementing Agreement already includes language regarding how take authorizations amendments will be done and any modification will require a public process and will include written findings for changes in permit coverages. Any changes in the take authorizations will require the use of the best available scientific and commercial information and the findings would include any biological reasons for a change in take authorization coverages.

85(e) The MSCP Plan, Volume I, Table 7-7 includes a process and schedule for developing a local funding source. Each jurisdiction's implementing agreement will include a commitment by the jurisdiction to support the establishment of a local funding source. The local funding program requirement is flexible and provides for combining of funding sources to meet the local jurisdictions obligations.

85(f) MSCP Plan, Volume I, Section 7.1 Financing Policies, Method of Regional Funding will be revised to read "If a broad-based regional funding sources identified in the MSCP Plan, Volume I, Table 7-2 is selected, it will be submitted to the voters for approval". The MSCP Plan and EIR/EIS include a reasonable range of financing alternatives and the selected financing mechanism(s) does not necessarily have to be one of the mechanisms identified in the MSCP Plan.

85(g) Commercial and/or industrial assessments were included in the MSCP Plan for illustrative purposes only. Any broad based funding mechanism which is selected will be fair and equitable.

85(h) Some local jurisdictions are developing interim financing strategies to simplify the implementation of their subarea plans, but the development of an interim financing strategy is not a requirement of their implementing agreement.

85(i) Comment noted. Please see responses to Comments 78(a) through 78(bf).

85(j) The Draft EIR/EIS is a program-level EIR/EIS for the overall MSCP Plan and tiering from the Draft EIR/EIS may be used for future project applications. Descriptions of the actions addressed in the Draft EIR/EIS are provided in Section 1.5, Decisions To Be Made (pages 1-11 through 1-14). Table 4.1-1 (pages 4.1-4 and 4.1-5) of the Draft EIR/EIS also lists the actions and alternatives addressed in the document. As shown in Table 4.1-1, a program level of analysis is provided for the overall MSCP Plan, while project level analyses are provided for the individual subarea plans.

The project may be able to use the EIR/EIS as the project level CEQA document, depending on the features of the particular project under consideration. Individual projects within the MSCP study area will likely require additional project-level analysis for a wide variety of issues other than those addressed in the Draft EIR/EIS. The data presented in the Draft EIR/EIS would provide an important framework for any biological analyses required for individual projects. The degree to which additional environmental review would be required, beyond a mere consistency determination, will be made on a case by case basis. Many of the subarea plans require avoidance of specified biological resources, including specific preserve design criteria and determination of mitigation requirements based on project-specific impacts to biological resources. See **Theme Response XXVI, Permit Streamlining**

85(k) See **Theme Response XXV, Wetlands Protection.**

85(l) The concept of a line is a line was proposed by the City of San Diego's Natural Resources, Conservation and the Arts (NRCA) Committee of the City Council in response to the Alliance's request to not include buffers into the adjacent development areas as was originally proposed in the March 1995 Public Review Draft of the MSCP Plan (pages 4-1 to 4-3). The buffers proposed in the March 1995 Draft MSCP Plan recognized that uncontrolled impacts from adjacent development could extend into the preserve areas 200+ feet, thereby severely reducing the biological value of the preserve areas. To address the Alliance's concerns regarding buffers and to avoid the need to increase the size of the preserve, especially linkages, the concept of a-line-is-a-line (i.e. the preserve is on one side of the line and the development, including its impacts are on the other side of the line) was adopted. One of the principles in adopting the line-is-a-line concept was that local land use decision makers would use good land use planning, primarily site design measures, to help contain development impacts within the development area. This approach provides maximum flexibility to the local land use authority. Effects associated with new development have the potential to impact the preserve if appropriate site design measures are not incorporated into projects. The City of San Diego's fuel management zone 3 can be located within the preserve on future projects and would be considered impact/mitigation neutral. The requirements to included measures in management plans to deal with edge effects to specific species occurs throughout revised Table 3-5 in the Revisions to the MSCP Plan, Volume I, and the need for these mitigation measures are documented in the EIR/EIS.

Neither the San Diego City Council nor the County Board of Supervisors provided direction to put buffers inside of the preserves, their direction was to eliminate buffers (inside or outside)

and the MSCP Plan and EIR/EIS reflect this direction. Integration of good land use planning principles and site design measures into future projects is the responsibility of the local land use jurisdiction.

85(m) The Third Party Beneficiary status is designed to achieve this certainty. For Third Party Beneficiaries, the take authorization runs with the land as do the mitigation requirements. The specific mechanisms to provide this certainty would be incorporated into the implementing agreements for each subarea plan. No specific examples of where the commenter believes this principle was violated are provided and therefore specific responses cannot be provided.

85(n) Please refer to response to Comment 79(n).

85(o) In developing the MSCP, the local jurisdictions, BIA and the Alliance insisted on severability of take authorizations among jurisdictions. As a result, each jurisdiction had to develop a plan implementation strategy which conserved vegetation communities in "rough step" with development (i.e. loss of habitat). In order to achieve this "rough step" performance standard, some jurisdictions opted to limit where mitigation could occur. Requiring mitigation within jurisdictions also reduces the potential that disproportionate amounts of coastal resources would be developed without proportionate conservation of coastal resources.

85(p) Thirty-four percent of the grasslands would be conserved by the MSCP Plan, and coverage for 18 grasslands species is provided by the Plan. Even with this low habitat conservation rate, 21% of the total species covered by the Plan utilize grasslands even though grassland represent only 8% of the habitat within the MSCP. This high level of species coverage is provided even though grassland impacts would be mitigated at the lowest level of any vegetation community. The state and federal Endangered Species Act and CEQA require mitigation for significant impacts, and the deletion of mitigation requirements for impacts to grasslands would clearly be inconsistent with the state and federal ESAs. The San Diego City Council and the San Diego County Board of Supervisors directed that the MSCP Plan and subarea plans use the ESAs' standards.

85(q) The comments are noted.

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RECEIVED

OCT 29 1996

DEVELOPMENT SERVICES

COMMENTS TO THE PROPOSED MSCP PLAN, EIR/EIS, IMPLEMENTING AGREEMENT AND RELATED DOCUMENTS

Submitted to the
City of San Diego
and the
United States Fish & Wildlife Service

October 29, 1996

Prepared by:

Alliance for Habitat Conservation
416 University Avenue, Suite 200
San Diego, CA 92103

Building Industry Association of San Diego County
6336 Greenwich Drive, Suite A
San Diego, CA 92122

Greater San Diego Chamber of Commerce
402 West Broadway
San Diego, CA 92101

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October 29, 1996

Mr. John Kovac
City of San Diego Development Services Department
Development and Environmental Planning Division
1222 First Street, M/S 501
San Diego, California 92101

Mr. Gail Kobetich, Field Supervisor
U.S. Fish and Wildlife Service
2730 Loker Avenue West
Carlsbad, California 92008

MSCP Plan Comments
600 "B" Street, Suite 500
San Diego, California 92101

RE: Draft Multiple Species Conservation Program (MSCP) and the Draft Joint EIR/EIS For Issuance of a Permit to Allow Incidental Take of Threatened and Endangered Species Within the Multiple Species Conservation Program (MSCP) Planning Area in San Diego County, California, DEP No. 93-0287, SCH No. 93121073 (EIR/EIS).

Ladies and Gentlemen:

The enclosed documents constitute joint comments from the Alliance for Habitat Conservation, the Building Industry Association of San Diego County, and the Greater San Diego Chamber of Commerce. Our organizations have each reviewed the draft MSCP Plan, Subarea Plans and EIR/EIS in view of the promise of the MSCP program: to *balance* the region's environmental, economic development and housing needs.

All our organizations believe we have come a long way in the development of the initial concept of a large-scale multi-habitat preserve which would revolutionize biological protection as we know it. The development of a plan for this innovative approach has been challenging to all participants due to the unique nature of the process and the lack of practical examples which would act as guideposts. The distance we have come by working together with the agencies should continue to act as a catalyst to all parties to satisfactorily complete the plan.

To this end, we have embarked on the MSCP planning process with a keen focus on the following primary goals: 1) To provide protection to listed and sensitive species sufficient to meet federal and state permit standards, and by so doing avoid potential economic 85(a)

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disruption that would be caused by additional future state and federal species listings. 2) To provide a program that will streamline the environmental review process for future projects which may have impacts to listed and sensitive species. 3) To benefit all residents by equitably distributing program costs. 85(a)

It is the assurance of protection against future listings, the promise of streamlined permitting and the commitment to equitably fund the preserve program which bring together the organizations represented by this letter. Only if these assurances are clearly incorporated into the program Plan, EIR/EIS, Implementing Agreements and all other regulatory documents related to this program can we support the proposed MSCP preserve effort.

With this in mind, we provide the following comments.

1. Funding

The MSCP preserve is proposed to be funded through three primary sources: exactions from new development, state and federal contributions, and a broad-based local funding program. Seventy percent of the acquisition of privately-owned lands for the preserve is projected to be exacted from new development. The responsibility for acquisition of the remaining 30% is split between the federal and state government, who have committed to purchase up to 13,500 acres, and the participating local agencies who must also purchase 13,500 acres. 85(b)

- Federal and State Contributions

Over the last few budget cycles, the federal and state legislative and executive bodies have shown true leadership in the request and appropriation of precious monetary resources for the purpose of acquiring land to build out the MSCP preserve. Our organizations, along with local jurisdictions and environmental groups, have played a large role in helping to encourage these appropriations. We recognize our ongoing responsibility in the years ahead to make certain the adequate level of funding is realized to meet the state and federal obligations. 85(c)

The Model Implementing Agreement should recognize both the long-term nature of this program to avoid the need to review and revise permit coverage if any budget shortfalls occur, as well as the other contributions available to the federal and state wildlife agencies to help construct the preserve. Further, written findings should be made which indicate the *BIOLOGICAL* reasons for any decision to change permit coverage. 85(d)

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- Local Contributions

The local funding program is critical to the success of the MSCP. Without a solid, certain and broad-based local funding program, federal and state incidental take permits may be at risk. The MSCP Plan, as written, lacks a real commitment to the development of a local funding program. The Plan should detail a process and schedule, including specific milestones, that will be followed in order to meet the local funding responsibility. The local funding program should provide maximum flexibility to combine funding sources as needed to meet program obligations. 85(e)

Statements from elected officials across the county regarding the need to place *any* funding measure on the ballot, whether required by law or not, may limit the opportunity to choose from a variety of options and thus jeopardize potential long-term, broad-based local funding. Discussion of *all* viable funding sources available to local jurisdictions which do not rely on increased exactions, fees or taxes levied on new development or businesses should also be included in the plan. 85(f)

The local funding component should reflect the fact that all residents in our region will benefit from the MSCP and should therefore carry their fair share of the financial burden. Commercial and/or industrial assessments, as currently discussed in the draft Plan, represent a "double-hit" to the business and development community, and violate this concept of fair and equitable distribution of MSCP costs. 85(g)

We recognize that some time will be needed to educate the public as to the importance of the MSCP and the critical nature of broad-based funding. In the interim, however, a short-term financing program must be identified to address the gap created during the development leading up to the adoption of a permanent funding plan.

Recently, our groups participated in the effort by the San Diego Dialogue to develop a local "gap" financing program. The resulting report, unfortunately, does not adequately define the nature and commitment of funding by the local jurisdictions and therefore leaves questions in our minds about how or when these moneys will materialize. This short-term program must identify one or more explicit funding mechanisms and a financing commitment must be in place *prior to adoption of any MSCP implementation ordinances.* 85(h)

2. ***Assurances***

The assurances against future federal and state endangered species listings need clarification and strengthening. Assurances from the wildlife agencies are primarily encompassed in the commitments made through the MSCP Implementing Agreements. 85(i)

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85(i)

Our organizations have spent a great deal of time detailing necessary changes to the Implementing Agreements that we believe would provide a level of assurance against future uncertainty that will be acceptable to the business community.

Recently, the U.S. Fish and Wildlife Service opted to *not* list a plant species due to its protection under this program. We recognize and appreciate the good faith nature of this decision. Further clarifications in the I.A. are needed, however, to incorporate a higher level of certainty for landowners.

These proposals are provided in this package as formal comments in the form of a letter from the legal firm of Hewitt and McGuire. It is our recommendation that these changes be incorporated into both the model Implementing Agreement and the City of San Diego's Implementing Agreement which will accompany their 10(a) permit application, as well as other jurisdictions' I.A.'s as they are developed and signed.

3. ***Streamlining the Permit Process***

Two issues germane to the promise held out by the MSCP of a streamlined regulatory process are the represented ability to use the MSCP EIR/EIS as a program document for subsequent, future development projects and the commitment that the MSCP would create a "one-stop-shop" for federal and state regulatory permitting.

- Program EIR

In order to address the first element of this streamlining commitment, the EIR/EIS must be comprehensive in its analysis of impacts to the species and vegetation communities covered by the Plan to provide a legally defensible basis for subsequent "tiering" by consistent future project applications. Our concerns have been carefully identified in the attached comments on both the EIR/EIS and the Model Implementing Agreement.

85(j)

It should be noted, however, that the millions of dollars and the unprecedented amount of biological review which went into the MSCP, to our collective knowledge, has created the most substantial scientific database of its kind anywhere in the United States. Therefore, to the maximum extent possible, the EIR/EIS should stand as a legally acceptable program document and be recognized as such in all of the documents and ordinances related to the MSCP. This means that projects consistent with the MSCP preserve boundaries and policies should be able to use the EIR/EIS as the project-level CEQA document.

- "One-Stop-Shop" / Wetlands Permitting (Other Agencies Review)

The second issue, creating a "one-stop-shop" for permitting was one of the primary motivations for the landowning community to participate in this program. We have been hopeful that *all* natural resource-based permits could be garnered under one program, which would thus save time and money and create the environment of certainty which is so critical to the land development process.

The program as proposed does appear to delegate state and federal wildlife agency permitting to the participating jurisdictions. Other agencies, however, like the U.S. Environmental Protection Agency and the Army Corps of Engineers (ACOE) have not been included in the development of the MSCP and therefore represent another layer of regulation which could then lead to mitigation "double hits" and continue to extend the lengthy and costly process of seeking regulatory approval from a multitude of federal, state and local agencies. This is an unacceptable continuation of the "business as usual" approach that the MSCP was intended to replace. 85(k)

In our estimation of the program, the acreage set aside and the regulatory controls for exactions and mitigation appear more than adequate to justify a higher level of protection for the species and habitats involved than is currently being discussed. For example, impacts to the wetland areas in the MHPA will require mitigation similar to levels already exacted under local regulatory controls (and therefore will meet and may even exceed the current federal standard). Despite these stringent requirements, the ACOE's Section 404 permit is not included among the MSCP's benefits. These permits *must* be included under this program for the MSCP to meet one of its key objectives.

The EPA and ACOE should immediately be brought into the MSCP, if not as direct signatories, through memoranda of agreement. To facilitate this, a commitment should be sought from the highest levels in all the agencies to broker a deal which would create in reality what we have all discussed in theory: a *truly* streamlined process for land development which also adequately protects the environment.

4. *Edge Effects / "The Line is the Line"*

- "The Line is the Line"

According to the plan documents and the attendant assumptions, a "buffer" area of *at least* 200 feet was considered in the MSCP preserve design. Ultimately, the preserve build-out will total more than 170,000 acres. The preserve size, configuration and delineated 85(l)

assumptions clearly demonstrate that any edge effects and/or buffer issues have been adequately considered and mitigated by the preserve area. 85(l)

Unfortunately, certain aspects of the plan, the EIR/EIS, the implementing agreements, biological regulations (on a jurisdictional level) and suggestions from resource agency personnel more than suggest that buffer considerations will *still* play a large part in the project approval process.

Both the San Diego City Council and the County Board of Supervisors have taken clear policy action to limit the consideration of buffers to *within* the preserve line. We stand firm in our resolve that no additional land or design restrictions will be required for projects located adjacent to the preserve other than those areas where "hardlines" have not yet been drawn.

- Agreements on Hardline Areas

One of the fundamental principles of the MSCP is certainty for landowners. This certainty is embodied in a number of different ways. The most basic of certainties is that when an agreement is reached with a landowner on hardlines delineating preserve and development areas, the line cannot be altered without the consent of all parties, *including* the landowner.

Examples already exist where an agreement was made on these "hardlines" which were incorporated into the public draft MSCP only to be unilaterally changed without notification or the consent of the landowner. This action, and its ramifications, violates this key principle and understanding of the MSCP causing great concern among all potential participants and thus shaking the underpinning for the supposed benefits of this program. The I.A. must be changed to preclude these kinds of decisions from occurring in an inappropriate manner. 85(m)

5. ***Ambiguous Program Requirements***

A number of specific projects or recommendations have been identified in the individual sub-area plans which provide for enhancement, restoration or other such activities to benefit the operational viability of the preserve design. These may or may not be essential components of the management and maintenance program.

It is unclear, however, which projects, recommendations or "guidelines" are critical to the preserve's operation and which simply further enhance the preserve function. This distinction must be delineated. Additionally, this delineation should break-down the costs 85(n)

85(n)

in tiers which identify the highest priorities for immediate public funding and the lower priorities which *might* be funded sometime in the future.

6. *Mitigation and Coverage*

- Mitigation Obligations

An important concept of the MSCP, as developed by the MSCP Working Group, was a table of ratios which would allow for the tabulation of mitigation for impacts as proposed during the development process. This table could then allow for "out-of-kind" mitigation for habitat impacts. This flexibility was an acknowledgement that all habitats needed to build-out the preserve were important, thus it is crucial that impacts to one type of habitat outside of the preserve can be mitigated with the same or different habitat-type within the preserve, if using the agreed upon ratios.

85(o)

In no way should this capability be diminished during the adoption process. Further, the MSCP covers a number of jurisdictions. The ability to cross jurisdictional boundaries and mitigate *anywhere* in the preserve, so long as the preserve land commitment of the individual jurisdictions are ultimately achieved, is an important component of the MSCP and the mitigation agreement reached some time ago. Any limitations in the implementing documents should be removed.

- Grasslands

One of the habitats where development is most likely to occur in this region are non-native grasslands. A number of species which use non-native grassland habitats are included in the plan, but grasslands are not afforded the same protection as other conserved habitats *even though mitigation for impacts to this habitat is now being proposed.*

85(p)

The MSCP purports to be based upon a great many assumptions: one of which is that this program will not create greater restrictions than already exist under current law. Mitigation for grasslands represents regulation over and above what is currently required. This might be considered a benefit if and only if grasslands are afforded the same recognition of other conserved habitat-types. Therefore, the list of conserved habitats should be modified to include grasslands, or the mitigation for grasslands should be removed from the jurisdiction's implementing ordinances.

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CONCLUSION

The previous comments regarding the plan should by no means be considered to constitute an exhaustive delineation of our concerns. The enclosed documents are intended to deal more specifically with those issues which represent the utmost concern to the landowning and business community who have participated in the development of the MSCP.

It should be noted that a number of other documents which will help implement the preserve, including local jurisdictional ordinances, have either not been released for public review or have been released but responses to public comment have not been provided. We reserve the right to comment on these documents as new drafts become available.

Our organizations have cautiously watched and worked together with other participants in the development of the MSCP, anticipating that we can move past the current process of lengthy and costly project approvals while concurrently protecting the resources which so uniquely characterize this region. We appreciate the opportunity to provide these comments for your consideration. 85(q)

A great deal of progress has been made to this point but much more has yet to be accomplished before the program can be adopted. We stand ready to assist in whatever way possible to resolve our concerns and thus finalize a program which warrants our support.

Very Truly Yours,

Ian M. Gill, President
Building Industry Association of San Diego County

Dennis M. Moser, Co-Chair
Alliance for Habitat Conservation

James E. Whalen, Co-Chair
Alliance for Habitat Conservation

Stephen P. Cushman, Chairman
Greater San Diego Chamber of Commerce

cc: Mayor Susan Golding and Members of the San Diego City Council
Chairman Ron Roberts and Members of the San Diego County Board of Supervisors
Mayor Jack Dale and Members of the Santee City Council
Mayor Shirley Horton and Members of the Chula Vista City Council

86 LYNNE HEIDEL, WESTERN SALT COMPANY, H. G. FENTON MATERIAL COMPANY AND FENTON-WESTERN PROPERTIES, INC., 10-29-96

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86(a) Salt ponds are generally wetlands and often provide important habitat for a variety of water birds including many of the MSCP's covered species. The MSCP does not propose a no-take policy for wetlands, but rather recognizes the state and federal policy of "No-Net-Loss" of wetlands, including values and function. The take authorizations issued to the local jurisdictions participating in the MSCP program will cover the take of covered species which occurs incidental to projects which are authorized pursuant to the take authorizations. This authorization for take through the local jurisdictions does substitute for obtaining the appropriate agreements/permits needed to carry out work outside of ACOE jurisdictional wetlands. The wildlife agencies have committed in the Model Implementing Agreement to work with the ACOE and other agencies to develop a Section 404 permit for the MSCP study area.

Both the MSCP Plan and draft update of the Otay-Mesa-Nestor Community Plan anticipate the continued operation of the salt works for extraction of salt. The City of San Diego Subarea Plan and EIR/EIS will be revised to the identify the activity at the salt works as evaporation for salt recovery rather than salt extraction. The intent of the statement regarding management for species was intended to acknowledge that the current management of the salt works for salt recovery provides habitat for a wide variety of species and that the salt works is compatible with the goals of the MSCP. The MSCP Plan does not require, implicitly or explicitly, any increased regulation of the salt works. The map which depicts the salt ponds in the preserve has been changed to delete the 10 acre salt works facility as well as the property north and east of Bay Boulevard. Please also see **Theme Responses XVII, Salt Works, and XXV, Wetlands Permitting.**

86(b) The reference to breaching of the levees has been deleted from the City of San Diego's Subarea Plan.

86(c) See response to Comment 86(a) above.

86(d) Maintenance of the status quo with regard to the salt works is compatible and anticipated by the MSCP Plan and EIR/EIS. Since the MSCP Plan does not propose a change in the salt works, there are no environmental impacts associated with including the salt works in the Plan and therefore the EIR/EIS does not need to be modified to address this issue. See also **Theme Response XVII, Salt Works.**

86(e) The reference to breaching the leased tidelands has been deleted from the City of San Diego's Subarea Plan

86(f) Please see responses to Comments 86(a) through 86(e).

86(g) The Cornerstone Lands Agreement pertains only to City of San Diego owned lands. The reference to distance and elevation was a general description of the reserved areas and only applies to City-owned lands. No private lands are subject to the Conservation Banking Agreement.

86(h) See response to Comment 86(g).

86(i) Section 6.2.4 has been revised to acknowledge that sand and gravel extraction may occur within the MHPA based on meeting specific criteria. Please see Revisions to the MSCP Plan, Volume I, January 1997, Section 6.2.4.

86(j) Guideline A.10 refers to all aggregate extraction areas within the preserve and is not restricted only to floodplain areas. Currently there is still aggregate mining in the Otay Valley open space corridor, mostly on slopes being mined by the Nelson Sloane Co. Guideline A.10 applies to this and any other extraction activities in the MHPA.

86(k) The preserve in the cited reference refers to lands dedicated to the preserve (for their biological values) either through mitigation or acquisition. The term preserve does not include all lands within the MHPA in the City of San Diego and its equivalent in the County. Expansion of existing and new sand and gravel extraction facilitates would be subject to the County's BMO, the conditions described in the City of San Diego's Subarea Plan, Appendix B, or to other jurisdictions regulations as appropriate. As indicated in response to Comment 86(j), MSCP Plan Section 6.2.4 has been revised.

86(l) The discussion on page 4.2-85 of the EIR/EIS describes the broad guidelines under which mining activities may be compatible with achieving the biological goals of the MSCP. The definition of "full mitigation" will vary from project to project and would be determined by the local land use authority, consistent with their take authorization, on a case-by-case basis. Please also see the revised MSCP Plan Section 6.2.4 included in the Revisions to the MSCP Plan, January 1997.

86(m) The EIR/EIS has been revised to reflect that the continued operation of the salt works is consistent with the MSCP Plan and that the salt works provide important habitat for many of the covered species. The City of San Diego's Subarea Plan has been revised to indicate that the habitat on the salt works is important to the South Bay ecosystem and that it is not the intent of the Subarea Plan to reduce, eliminate, or modify the salt production process associated with the salt works. The letter from Dudek & Associates, Inc. regarding the operation and biological value of the salt works was helpful and the biological value of the salt works has been taken into consideration in the covered species evaluations.

86(n) See responses to Comments 86(a) – 86(m).

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STEPHENSON WORLEY GARRATT SCHWARTZ HEIDEL & PRAIRIE
A LIMITED LIABILITY PARTNERSHIP
LAWYERS
101 WEST BROADWAY, SUITE 1300
SAN DIEGO, CALIFORNIA 92101-8214

LORI A. CHAMBERLAIN
TIMOTHY K. GARFIELD
GREGORY C.M. GARRATT
LYNNE L. HEIDEL
MICHAEL W. PRAIRIE
AMY ROSEN
WILLIAM J. SCHWARTZ, JR.
GARY J. STEPHENSON
JENNIFER TREESE WILSON
DONALD R. WORLEY

OF COUNSEL
ELAINE L. CHAN
KENT H. FOSTER

TELEPHONE
(619) 696-3500

FACSIMILE
(619) 696-3555

E-MAIL
SDLAW@SWGSHP.COM

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DEVELOPMENT SERVICES

October 29, 1996

VIA HAND DELIVERY

Mr. John Kovac, Senior Planner
CITY OF SAN DIEGO
1222 First Avenue, 5th Floor
San Diego, CA 92101

Re: Comments on the Draft MSCP and
Comments on the MSCP Plan Draft EIR/EIS
DEP No. 93-0287/SCH No. 93121073

Dear Mr. Kovac:

We represent Western Salt Company, H. G. Fenton Material Company and Fenton-Western Properties, Inc., which may be collectively referred to herein as "Fenton," with respect to a number of properties located throughout the County of San Diego. Fenton operates a salt works along the southern edge of San Diego Bay and operates sand and gravel extraction facilities as well as related businesses in various parts of the San Diego region. Approximately fifteen hundred (1500) acres of Fénton's property would be located in areas of the Preserve proposed to be created by the Multiple Species Conservation Program ("MSCP").

This letter supplements our letter of October 15, 1996 a copy of which is attached as Enclosure 1. The October 15, 1996 letter commented on the Draft EIR/EIS with respect to the salt ponds and salt works. This letter includes comments not only on the Draft EIR/EIS but also on the MSCP and the City of San Diego Subarea Plan ("Subarea Plan") and the Implementing Agreement by and between City of San Diego, United States Fish and Wildlife Service and the California Department of Fish and Game ("Implementing Agreement"). It also expands the focus of the comments beyond the salt ponds and salt works to provisions of the referenced documents related to Cornerstone Lands and mining, extraction and processing facilities.

86

I. SALT WORKS

1. Comments on MSCP and Subarea Plan

Generally, salt ponds are wetlands, but the MSCP in its discussion of wetlands does not specifically address the unique nature of salt ponds or their relationship to Western Salt Company's salt works. As discussed in our previous letter, however, the salt ponds are mentioned in the Subarea Plan. The MSCP basically states that the existing protections afforded jurisdictional as well as non-jurisdictional wetlands are confirmed. There are no "take" allowances proposed for wetlands either in the MSCP, the Subarea Plan or the Implementing Agreement. If there is no change to wetlands regulation by virtue of the MSCP, the inclusion of wetlands in the MSCP is of questionable value to either the owners of wetlands or the public at large. From Western Salt Company's point of view, MSCP represents a threat to an on-going business because it includes not only the salt ponds in the Preserve, but also the salt plant itself and all nearby properties whether wetlands or not.

The MSCP and the Subarea Plan discourage the on-going operation of the legitimate and beneficial business of salt production. The Subarea Plan identifies the salt pond area as A-11 on Figure 2. As mentioned above, the term "Salt Ponds" is sweepingly applied to not only the salt ponds which are jurisdictional wetlands, but to developed portions of the salt works and other property with Western Salt Company's ownership which are not part of the salt works.

Furthermore, a misunderstanding of the salt production process is reflected in the Subarea Plan as well as the Draft EIR/EIS. First, on page 9 of the Subarea Plan, Fenton's use of the property is described as "salt extraction." The process actually used is an evaporative process, not an extractive process. The evaporative process is not mining. Second, the fact that animal and plant species are currently found on the property is due to the operation of the salt works and not to a management program as implied in the Subarea Plan. Therefore, to say that "sensitive animal and plant species should continue to be managed" is inaccurate. Finally as stated in our previous letter, the draft Otay Mesa-Nestor Community Plan ("Community Plan") encourages the continued operation of the salt works because such use serves to preserve valuable habitat. The draft Community Plan specifically states the continuation of the salt works is "consistent with the City's natural resource conservation and open space preservations goals."

The Subarea Plan is inconsistent with the recommendations of the draft Community Plan. If the salt works are to be included in the Preserve, Western Salt Company requests that language be incorporated in the MSCP, the Subarea Plan and Implementing Agreement similar to that in the draft Community Plan. The added language should state that the MSCP shall not be used to inhibit the operation of the salt works, its updating, growth or change. This will not 86(a)

only give assurance to Western Salt Company that the MSCP does not threaten its business, but also that the salt ponds will be preserved. 86(a)

On page 66 of the Subarea Plan, a Specific Management Recommendation is made for the Otay River Mouth area. The recommendation is to restore the tidelands leased for salt mining by breaching the levees in several locations. This discussion is not included within the discussion of area A-11 or in the section of the Subarea Plan related to the salt works, but the tidelands leased from the State are a vital part of the salt works. The leased tidelands provide the area in which the primary system of the evaporative process is located. If the levees were breached, the area of the salt works where the initial evaporative process occurs would be lost, resulting unavoidably and immediately in the demise of the salt works. Attached hereto as Enclosure 2 is a letter prepared by Dudek & Associates which discusses the importance of the salt works and the nature of the salt ponds as a valuable habitat area. The recommendation that the levees be breached should be deleted from the Subarea Plan. 86(b)

2. Comments on Draft EIR/EIS

The relevant discussion of the salt works in the Draft EIR/EIS is found on page 4.3-100. As mentioned above, the Draft EIR/EIS erroneously refers to the salt production process as "extraction" and seems to assume that the impacts of salt "extraction" are similar to "aggregate extraction." The Draft EIR/EIS also implies that the salt production process is destructive of the habitat in which it is located. As discussed above, the salt works utilizes an evaporative process not a mining or extractive process and it actually creates and enhances habitat. 86(c)

The Draft EIR/EIS fails to address the land use and biological impacts of including the salt works in the Preserve in the event such inclusion inhibits the on-going operation of the salt works. As stated in the letter from Dudek & Associates, there is a strong case for the maintenance of the status quo with respect to the salt works. This lack of analysis is in direct conflict with the Draft EIR/EIS criteria for determining significance as set forth on page 4.2-1. It is stated repeatedly throughout Chapter 4.2 of the Draft EIR/EIS that percent conservation thresholds are incorporated in the Preserve design and that inclusion in the Preserve will result in wetlands preservation, but there is no discussion of the potential impact of cessation of the salt works on wetlands and on endangered species that could be the direct result of inclusion in the Preserve. 86(d)

There is also no discussion in the Draft EIR/EIS of the recommendation in the Subarea Plan that the leased tidelands be breached. The effect of such breaching would not only destroy the salt works as a business but would cause a degradation of the habitat area for plant and animal species. It should be clear that there is no incentive in the MSCP for Western Salt Company to preserve the habitat area should it be unable to operate its business. 86(e)

In summary, there is a lack of information in the Draft EIR/EIS about the salt ponds as a wetland area and the relationship between the salt works and the wetland habitat area. There is no discussion of the impact of the MSCP on the on-going operation of the salt works, but there is an indication that the goal of the MSCP is to terminate the salt works. Furthermore, there is no detailed discussion of the land use implications of the MSCP on the Otay Mesa-Nestor Community Plan area or of the inconsistencies between the documents. Discussion and correction of discussions of these issues should be included within the Draft EIR/EIS. 86(f)

II. CORNERSTONE LANDS

1. MSCP Comments

Section 4 of the MSCP describes the policies and methods of assembling the Preserve. Section 4.3.1 describes the contributions of existing local public lands and specifically describes "City of San Diego Cornerstone Lands." The Cornerstone Lands Conservation Bank Agreement ("Conservation Bank Agreement") is identified as Exhibit K of the Implementing Agreement. Although the City of San Diego is named in the Conservation Bank Agreement as the owner of the cornerstone lands, the description of the cornerstone lands appears to extend beyond the ownership of the City. For example, Western Salt Company owns properties in Janal Ranch in the City of Chula Vista which are located adjacent to Upper and Lower Otay Lakes. Pursuant to Exhibit K of the Conservation Bank Agreement, the City reserves certain rights over land within 300 feet horizontal from the proposed high water level of Lower Otay Lake and 300 feet horizontal from the 550 foot contour defining Upper Otay Lake. Some of the property within the described 300 feet is owned by Western Salt Company. Attached as Enclosure 3 are two maps which illustrate this fact.

The intent of the MSCP, the Subarea Plan and the Conservation Bank Agreement is not clear as to whether this property is actually intended to be included in the cornerstone lands. Furthermore, the lack of clarity is exacerbated by the fact that some of the cornerstone lands are excluded from the Preserve in the Subarea Plan. Preserve Exclusions relative to Otay Lakes cornerstone properties are listed on pages 35-36 of the Subarea Plan. Pursuant to Exclusion 4 it appears that the City lands within 300 feet horizontally from the high water level of Lower Otay Lake and dam are excluded from the Preserve, but that private lands are not. If this is an accurate interpretation, it appears that cornerstone lands must also include privately owned property. This, of course would be a contradiction of the Conservation Bank Agreement. Pursuant to Exclusion 5 the area of Upper Otay Lake and dam and the shoreline area within 300 feet horizontally from the 550 foot contour is excluded. In Exclusion 5 no distinction is made relative to City versus privately owned land. 86(g)

It should be noted that in some cases the 300 foot area described in the MSCP and Conservation Bank Agreement is located on uplands in the City of Chula Vista. Furthermore, in some cases this area is across a road and on grazing lands. For these reasons the description and treatment of the cornerstone lands must be reviewed. 86(g)

2. Draft EIR/EIS Comments

There is no discussion of the Exclusions in the Draft EIR/EIS, but the discussion of cornerstone lands in this document appears to assume that the cornerstone lands are those owned by the Water Utilities Department. Furthermore, there is no recognition that some of the cornerstone lands are located outside the City of San Diego on uplands and are separated from the Otay Lakes by roadways. This should be clarified in the Draft EIR/EIS in order to be consistent with the Subarea Plan. 86(h)

III. MINING, EXTRACTION AND PROCESSING FACILITIES

1. MSCP Comments

Section 6.2.4 of the MSCP discusses Mineral Extraction. Although the MSCP states that existing mining facilities will be allowed to continue, such operations will be severely hampered by their inability to expand. Furthermore, new facilities would be infeasible because of the requirements to avoid adverse direct and indirect impacts and to restore native habitat impacted by mining. Mining by its very nature will have adverse impacts as those are described in the MSCP, and restoration of native habitat over the areas mined would be infeasible if not impossible. Consideration of the social and economic benefits of the extraction process must be taken into consideration as they would be pursuant to the CEQA review. Construction and maintenance of the infrastructure of the region is dependent on local sources of sand and gravel. If this industry is precluded from operating in the region, the economic growth and vitality of the region will be seriously impaired. 86(i)

On page 9 of the Subarea Plan, it is indicated that upon completion of extraction activities within the Otay River Valley, revegetation with native vegetation should occur. It should be noted that the floodplain of the Otay River Valley has been completely mined; mining within the floodplain ceased in 1972; all of the Valley is in the Preserve, and all of the former mining areas have been revegetated. Therefore, the "guideline" on page 9 with respect to area A-10 on Figure 2 is irrelevant and inaccurate. 86(j)

On page 49 of the City of San Diego Subarea Plan, the goals of the MSCP become clear with respect to mining. "In the long-term, it is envisioned that no sand or other mining activities will occur in the Preserve." The only sources of sand in San Diego County are located either within the Preserve or its equivalent within the MHCP. Sand is needed for concrete, stucco 86(k)

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and asphalt which are vital building materials. If there is to be no sand mining within the Preserve, there will be no sand production in the San Diego region. On page 49 the impossible or impractical goals discussed in Section 6.2.4 of the MSCP are reiterated. 86(k)

2. Draft EIR/EIS Comments

Section 4.2.3.1 of the Draft EIR/EIS perpetuates the flaws of the MSCP and the Subarea Plan. The document states that existing operations would remain and have the potential to expand if impacts can be fully mitigated. There is no description of what constitutes full mitigation, but clearly an extraction operation by its very nature does not mitigate its impacts while the operation is on-going. Because there is no clear indication of what will constitute full mitigation it is inaccurate for the Draft EIR/EIS to conclude that no adverse direct or indirect impacts will occur as a result of the MSCP policies regarding mining. 86(l)

Section 6.2.3 of the MSCP begins with a statement that "[T]he MSCP has been prepared under the fundamental policy that private property rights shall be respected." With respect to operating salt works and to mining operations, this principal seems to have been forgotten. There is no assurance that the salt works may continue to operate even though it preserves and enhances valuable wetlands. Existing mining facilities are threatened because such facilities may be prevented from growth and expansion. Although the MSCP touts an improved regulatory process, in actuality no such improvement is proposed for wetlands and in fact, an additional regulatory burden has been added to wetlands properties. Astonishingly, there is no discussion either in the MSCP, the Subarea Plans, the Implementing Agreements or the Draft EIR/EIS of the beneficial and necessary continuation of salt works and mining operations. Only negative impacts of such operations are assumed and mentioned. The destruction of this industry in San Diego County could have far reaching economic impacts on continued growth because the products of these operations are essential to growth, development and maintenance of infrastructure. The lack of discussion, acknowledgment and resolution of these issues leaves the MSCP as well as the Draft EIR/EIS flawed and incomplete. 86(m)

Very truly yours,

Lynne L. Heidel

Lynne L. Heidel

cc: Mayor Susan Golding and
Members of the City Council

86

STEPHENSON WORLEY GARRATT SCHWARTZ HEIDEL & PRAIRIE
A LIMITED LIABILITY PARTNERSHIP
LAWYERS
101 WEST BROADWAY, SUITE 1300
SAN DIEGO, CALIFORNIA 92101-8214

LORI A. CHAMBERLAIN
TIMOTHY K. GARFIELD
GREGORY C.M. GARRATT
LYNNE L. HEIDEL
MICHAEL W. PRAIRIE
AMY ROSEN
WILLIAM J. SCHWARTZ, JR.
GARY I. STEPHENSON
JENNIFER TREESE WILSON
DONALD R. WORLEY

OF COUNSEL
ELAINE L. CHAN
KENT H. FOSTER

TELEPHONE
(619) 696-3500

FACSIMILE
(619) 696-3555

E-MAIL
SDLAW@SWGSHP.COM

October 15, 1996

VIA HAND DELIVERY

Mr. John Kovac, Senior Planner
CITY OF SAN DIEGO
1222 First Avenue, 5th Floor
San Diego, CA 92101

RECEIVED
1996

Re: MSCP Plan Draft EIR/EIS
DEP No. 93-0287/SCH No. 93121073

Dear Mr. Kovac:

We represent Western Salt Company with respect to its salt works which is located within the Otay Mesa-Nestor Community Plan area of the City of San Diego. The salt works is identified on Figure 2 (Conserved Vegetation Communities in Southern Area) of the MSCP Subarea Plan for the City of San Diego as area A-11 and is discussed on page 9 of the Subarea Plan. Thank you for the opportunity to comment on the Draft Environmental Impact Report/ Environmental Impact Statement ("Draft EIR/EIS") prepared in conjunction with the MSCP. We understand that the public comment period has been extended to October 29, 1996 and we intend to elaborate on the issues introduced in this letter prior to this date.

As stated above, the salt works is mentioned in the MSCP Subarea Plan for the City of San Diego. The Draft EIR/EIS discussion of the impacts of the MSCP on the salt works is found on page 4.3-100 of the document. This brief statement implies that the salt extraction process is destructive of the habitat in which it is located. Furthermore, the analysis seems to assume that the impacts of salt "extraction" are similar to "aggregate extraction." This discussion is clearly in error in that the salt works actually creates and preserves the wetland habitat. The Draft EIR/EIS has failed to address the land use and biological impacts of placing the salt works in the preserve in the event the preserve inhibits the on-going operation of the salt works. Furthermore, there is no discussion of the fact that the draft Otay Mesa - Nestor Community Plan ("Draft Community Plan") encourages the continuation of the salt works and states that such continuation is "consistent with the City's natural resource conservation and open space preservation goals." (See page 1.5 of the Draft Community Plan.) It is acknowledged in the Draft Community Plan that the on-going operation of the salt works serves to preserve the wetland habitat. There is therefore an inconsistency in the land use and biology assumptions of the Draft 86(n)

86(n)

Community Plan and the MSCP and the Draft EIR/EIS and a lack of discussion of these issues in the Draft EIR/EIS.

The salt ponds are part of a man made industrial operation. The on-going use of the property is industrial, an industrial use which creates and preserves wetlands. There is no discussion in the Draft EIR/EIS about the impacts and implications of the cessation of the use. Furthermore, there is no acknowledgment that the on-going operation of the salt works should be encouraged or that the goals of the MSCP do not threaten the on-going industrial use.

If the salt works are to be included in the MSCP Preserve, Western Salt Company will request that language be incorporated in the MSCP which states that the MSCP shall not be used to inhibit the operation of the salt works, its updating, growth and change. This will not only give assurance to Western Salt Company that the MSCP does not threaten its business, but also that the salt ponds will be preserved. The addition of such language would be consistent with the Draft Community Plan.

It should be noted that portions of the salt works are identified as developed on Figure 2 referenced above, but neither the MSCP nor the Draft EIR/EIS address the importance of maintaining the industrial activities on these portions of the salt works. We do not believe that these areas, which are not jurisdictional wetlands, should be included in the preserve at all. The Draft Community Plan will identify the portions of the salt works other than the ponds themselves as "Salt Works" so that they may be altered without creating a conflict with the Draft Community Plan. Western Salt Company will request that similar language be incorporated in the MSCP. There should be discussion of the impacts of the inclusion of the developed areas in the Draft EIR/EIS in that such inclusion could threaten the continued operation of the salt works. Furthermore, there are other portions of the salt works, including Pond 20 and the magnesium chloride ponds, which are not jurisdictional according to Western Salt Company's biology consultant and should not be included in the preserve at all.

In summary, there is a lack of information in the Draft EIR/EIS about the salt ponds as a wetland area and the relationship between the salt works and the wetland habitat area. There is no discussion about the impact of the MSCP on the on-going operation of the salt works. There is no detailed discussion of the land use implications of the MSCP on the Otay Mesa-Nestor Community Plan area. Discussion and correction of discussions of these issues should be included within the Draft EIR/EIS.

As a general comment, it should be noted that there are no development benefits to be derived from the inclusion of wetlands in the MSCP. The MSCP merely subjects wetlands to new constraints in addition to those already imposed by existing Federal, State and Local regulation. Therefore, the inclusion of wetlands within the MSCP is inconsistent with the intent of the MSCP.

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We thank you again for the opportunity to comment on the Draft EIR/EIS for the MSCP.

Very truly yours,

Lynne L. Heidel

Lynne L. Heidel

cc: Mayor Susan Golding and
Members of the City Council

DUDEK & ASSOCIATES
A California Corporation

Engineering,
Environmental Sciences and
Management Services

Corporate Office:
605 Third Street
Encinitas, California 92024

619.942.5147
Fax 619.632.0164

28 October 1996

Allen M. Jones, AICP
Planning and Land Manager
Fenton-Western Properties
7220 Trade Street, Suite 300
San Diego, CA 92121

Subject: *Western Salt Works*

Dear Mr. Jones:

At your request, I have prepared this letter addressing the biological importance of the Western Salt Works, with special reference to perpetuation of the current operation. I understand that this letter may be submitted as an attachment to other evidence and arguments in response to the Draft Environmental Impact Report/Environmental Impact Statement (Draft EIR/EIS) for the Multiple Species Conservation Plan (MSCP).

The biological significance of South San Diego Bay and the Salt Works has been recognized by many (e.g., Unitt, 1984; MacDonald et al. 1990; U. S. Fish and Wildlife Service, 1994). The U. S. Fish and Wildlife Service stated that 70% of California's coastal wetlands have been lost, and cited the substantial role that San Diego Bay plays in providing foraging and resting areas for wetland dependent species (FWS 1994). As a subset of coastal wetlands, tidal mudflats are one of the most depleted wildlife habitats in San Diego County. Unitt (1984) stated that tidal mudflats were found in San Diego County only around San Diego and Mission Bays, and at the mouths of San Diego and Tijuana Rivers. Recent lagoon restoration efforts may result in the exposure of additional tidal mudflats (e.g., San Elijo Lagoon), however, this remains a scarce habitat. What remain of the coastal wetlands, wildlife generally share with humans, with a consequent adverse impact on wildlife. Unitt (1984) stated that all of the county's coastal wetlands are degraded to some extent by human activity, "with an adverse effect on much of the county's avifauna."

The sensitivity of ground-nesting birds to human interference and exogenous predation is well known and well documented (Brown and Morris, 1995; Burger et al., 1995; Loegering et al., 1995; Wang et al., 1995). These affects are not confined to nesting birds but also have an impact on foraging or resting birds during the non-breeding season. Migratory shorebirds, waterfowl and other waterbirds are under strict energetic pressure and disturbances at feeding or loafing sites can have disastrous effects on individual and population health.

Salt Works Operations

The salt works operation has primary, secondary, pickling, and crystallizer systems which include over 40 ponds. Initially, saltwater is introduced into the system via tidal influence. This water enters the primary ponds and is transported under Otay River by a 30-inch siphon pipe. It continues through the remaining primary ponds (6 ponds total). The increasingly saline water

is then mechanically introduced into the secondary ponds where it flows through 8 ponds via flumes and gates. The brine, which has reached sodium chloride saturation, is then mechanically pumped from the secondary system into 3 pickling ponds where the salinity is increased. The brine is then pumped into the crystallization ponds to evaporate. Finally, when harvested, the remaining water is sluiced off and the remaining salt is removed for drying and storing.

Brine shrimp are commercially produced in various ponds within the secondary system between May through December.

Jurisdictional Wetlands

According to detailed land surveys we conducted earlier this month, at least portions of the secondary system, as well as pond 20, appear *not* to be subject to Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act. In other words, these areas appear not to be "bay waters," "navigable waters" or "wetlands."

Biological Resources

Birdwatchers and ornithologists have historically had occasional access to parts of the Salt Works property, such as for specific studies and Christmas Bird Counts. In addition, birds using some of the area are visible from public thoroughfares. However, the most comprehensive compilation of bird use of the Salt Works was provided by the FWS for the period 1993-1994 (FWS 1994).

A total of 94 water-associated bird species were recorded using the Western Salt Works in 1993-94 (FWS 1994). Most of the species are wetland-dependent, and a substantial number (23) are considered endangered, threatened or sensitive. A total of five species (numbering in the thousands of individuals) were recorded as breeders on the Western Salt Works dikes; regionally, breeding colonies of black skimmer, California least tern, western snowy plover, black-necked stilt, and American avocet are considered extremely important. In addition to diversity, the salt works provided habitat for an large amount of avian biomass. During the 1993-1994 study, an average of over 10,000 water-associated birds used the Western Salt Works per day (3.7 millon birds/year) (FWS 1994).

Examination of the bird census results and other information (FWS 1994) indicates that all of the primary system ponds and a large number of the secondary system ponds contain brine shrimp, other invertebrates and fish that are prey to a large number of migratory waterfowl and shorebirds.

The primary benefits that the current operation provides wildlife are several: maintenance of high productivity; maintenance of habitat diversity that is attractive to many different species of

wildlife; site security; and ability to effect management (e.g., predator control).

The salt works provide a managed, productive wetland system that is attractive to and secure for a large number of shorebirds and waterfowl. The managed system provides diverse food resources, and diverse, remote, and secure resting and nesting opportunities. If the salt works operation ceased, a number of adverse consequences may occur. Primary among these would be a lapse in site security, allowing increased human access to sensitive resting or nesting areas, and probable direct mortality of eggs and nestlings (as a result of humans and their pets). It is highly likely that nesting colonies of the threatened western snowy plover (*Charadrius alexandrinus nivosus*), endangered California least tern (*Sterna antillarum browni*) and others such as black skimmer (*Rhynchops niger*), royal tern (*Sterna maxima*), American avocet (*Recurvirostra americana*), black-necked stilt (*Himantopus mexicanus*), and killdeer (*Charadrius vociferus*) would be disturbed. Many other species, some of them sensitive, maintain large winter populations within the secluded ponds; these also may be disturbed by increased or uncontrolled human use. The second potentially significant adverse consequence of a cessation of the current use would be a loss of productivity of the ponds. The ponds support algae, brine shrimp, other invertebrates, and fish, which constitute a food resource for the large shorebird and waterfowl population.

Although it may be possible to construct and manage a system that is more beneficial to sensitive wildlife than the current operation, any changes to the current system would be experimental and the results would be speculative. It would be difficult to justify changes that would even temporarily dislocate or reduce the viability of least tern, snowy plover, black skimmer or royal tern colonies or reduce resources for the large wintering populations. A majority of the biota associated with the salt works relys on a long-term, historical, complexly managed system in which water levels, sality levels, water sequencing inputs and outflows, and other factors affect prey abundance, nesting sites, loafing sites, and resting sites. Any changes to the number or characteristics of dikes, water flow, salinity level, water level, water sequencing, or other factors may have extreme and unpredictable adverse affects to the overall biota and biological productivity of the salt works. Additionally, the overall viability of some species' populations in San Diego and as a whole may be in question if modification of the current operation is implemented without proper research.

In their concluding remarks in *Avifauna of South San Diego Bay*, the FWS (1994) made a strong case for maintenance of the status quo with respect to the Salt Works: "The Bay's value to wildlife can only be maintained if the integrity of existing habitats remains intact. This can be accomplished by providing protection through proper land stewardship, planning future enhancement goals to increase wildlife values of the Bay, and by cooperation among Federal, State and local agencies as well as other stakeholders to resolve land use conflicts."

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Very truly yours,

DUDEK AND ASSOCIATES, INC.

Harold G. Wier

Harold A. Wier
Botanist/Biological Sciences Manager

87 BLUM, R., CITY OF SAN DIEGO ENVIRONMENTAL SERVICES, 10/29/96

R

Internal City comment. Administrative record only.

88 M. A. VOGT, OTAY MESA PLANNING GROUP, 10/29/96

R

88(a) A review of the housing goals in the adopted 1981 Otay Mesa Community Plan does not reveal any conflicts between the proposed MSCP Plan and the Community Plan goals. An amendment to the Otay Mesa Community Plan (not a comprehensive update) is proposed to occur concurrently with MSCP Plan adoption. While the development areas would be revised from those in the adopted Community Plan, none of the goals in the housing element are proposed to be changed.

88(b) The substantial conformance procedure for development projects is a processing method that is not appropriately addressed in the MSCP Plan or environmental document. The method used to process projects is a procedural matter determined primarily by state law that would not have any environmental impacts.

88(c) If property is turned over to the City in fee title, the City is responsible for maintenance. If a property owner retains title to a property and a conservation easement is placed over the property, the owner is responsible for maintenance. If the conservation easement provides for a government entity or approved conservation organization to manage the property for its biological values, management and maintenance would be funded by the local funding source.

88(d) The transition areas are intended to be a transition between natural open space and urban uses, not a buffer to the preserve. This is not in conflict with the concept that "a-line-is-a-line" and good land use practices (primarily site design features) would be incorporated into new projects next to the preserve which contain the projects' impacts within the project area.

88

OTAY MESA PLANNING GROUP

Established by the
City of San Diego
February 21, 1990
Resolution #90-018

October 29, 1996

Mr. John Kovac
City of San Diego
Development Services Department
Development and Environmental Planning Division
1222 First Street, MS 501
San Diego, CA 92101

Mr. Dave Flesh
City of San Diego
Metropolitan Wastewater Department
MSCP Plan Comments
600 B Street, 5th Floor
San Diego, CA 92101

Mr. Gail Kobetich
U.S. Fish and Wildlife Service
2730 Loker Avenue West
Carlsbad, CA 92008

RE: Comments on Draft MSCP Plan and Draft EIR/EIS

Gentlemen:

On behalf of the Otay Mesa Planning Group, I am writing to provide comments on the Draft EIR/EIS for the Multiple Species Conservation Program (MSCP) and the Draft MSCP Plan.

The Otay Mesa community is more impacted by the proposed MSCP than any other community in the City of San Diego. Since the community plan was adopted for Otay Mesa in 1981, the total housing units projected for development to support the expanding industrial and commercial base has been reduced to approximately half the original number.

The MSCP Plan does not reflect the goals set forth in the housing element of the Otay Mesa Community Plan, and the community plan will require a comprehensive update once the MSCP is adopted. Because of the extraordinary number of housing units that will be lost in Otay Mesa due to implementation of the MSCP Plan, it is important that previously approved housing projects in Otay Mesa be given expedited review. 88(a)

The MSCP Plan and Draft EIR/EIS fail to mention that on July 1, 1996, the San Diego City Council adopted a substantial conformance policy for expedited approval of previously approved projects that have been modified due to the MSCP. The Otay Mesa Planning Group feels strongly that these projects should not be delayed or incur additional processing fees, since the changes that they are required to make are a direct result of the MSCP. The Draft 88(b)

Planning Group meetings are held on the 3rd Wednesday of every month at 2320 Paseo de las Americas, #216 Otay Mesa, CA 92173

For more information please call Kristen McDade (619) 296-4394

88

EIR/EIS should reflect the decision of the San Diego City Council to allow for substantial conformance review of these previously approved projects. 88(b)

In addition, the proposed community plan amendment submitted by the City as part of their federal Incidental Take permit application incorporates language that gives us cause for concern. New language is proposed to be added to the community Open Space Element, including nine "open space proposals." The community planning group requests clarification on proposals #6 and #9.

Proposal #6: **Open space area which cover portions of an ownership and where reasonable development rights still exist on portions of the ownership, should be dedicated by the owner/developer, through an open space/conservation easement. Long-term maintenance should be provided on an individual basis or by an open space management entity that may be formed to implement the MSCP.** 88(c)
Although it is our understanding that open space areas will be dedicated in fee title or through an open space/conservation easement, it is our understanding that long-term maintenance of all MSCP preserve land will be the responsibility of the City. Please clarify.

Proposal #9: **Transition areas should be established between urban uses and the open space system, along traffic corridors and canyon overlooks where feasible and appropriate. Such transition areas may be developed by providing additional maintenance and planting grass, shrubs and trees that provide a sensitive transition between uses.** 88
We understand that in formulating the MSCP, the City Council adopted several policies related to
the program. One important policy stipulates that all open space buffers will occur ***within*** the preserve. Please clarify this proposal to require "transition areas."

The Otay Mesa Planning Group appreciates the opportunity to comment on this important project. Thank you for your consideration.

Sincerely,

Michael A. Vogt
Chair

cc: Mayor Susan Golding
Councilman Juan Vargas, District 8

89 ROBERT McCLURE, WILD ANIMAL PARK, OCTOBER 28, 1996

R

89(a) Note 5 on page 35 of the City of San Diego Subarea Plan (MSCP Plan, Volume II) is virtually identical to the language of the San Pasqual Valley Plan (Proposal 7, page 29) and is included in the subarea plan at the direction of the City of San Diego Council.

89(b) Comment noted. The opportunity for public review and comment on the Draft EIR/EIS and MSCP Plan and subarea plan is now closed. The Wild Animal Park will be noticed, along with the other commenters, when the Final EIR/EIS is available, and what the ultimate decisions are of the wildlife agencies and Lead Agencies. The Wild Animal Park will have the opportunity, along with other interested individuals and organizations, to continue to provide comments on the implementation of the MSCP Plan and subarea plans through review of the triannual monitoring reports (see Revisions to the MSCP Plan, Volume I, Section 5, January 1997).

89

cc John Kovac

October 28, 1996

SAN DIEGO WILD ANIMAL PARK
15500 SAN PASQUAL VALLEY ROAD
ESCONDIDO CALIFORNIA 92027-7017
619-742-8702
FAX:619-746-7081
ZOOLOGICAL SOCIETY OF SAN DIEGO

Mr. Tom Story
City of San Diego Development Services Dept.
1222 First Avenue, 5th Floor
San Diego, CA 92101

Subject: Draft EIR on the MSCP Program and City of San Diego Subarea Plan

Dear Tom:

We have reviewed the Draft EIR on the MSCP program and the City of San Diego's Subarea Plan. We submit the following recommended changes to the Subarea Plan text.

City of San Diego Subarea Plan, page 35, recommended deletions are indicated by the strikeout:

> 5. Wild Animal Park expansion area. Development should proceed according to the Park's Long-Range Facilities Plan. Expansion in the undisturbed area will require an amendment to the Conditional Use Permit and ~~should be based~~ upon updated biological mapping conducted by the Wild Animal Park. ~~Expansion should be limited to the sensitive portion of the leasehold (B13 on Figure 7).~~ 89(a)

These changes are consistent with the San Pasqual Community Plan, which anticipates an expansion into the undisturbed area in the vicinity of the monorail. Consideration of this expansion will be in the context of the Park's Master Plan, which will be prepared this coming year.

We would like to discuss with you the specific and practical implications of the Wild Animal Park's compliance with these draft MSCP documents. Based on these discussions, we may have other recommendations on the specific language in the City's Subarea Plan, Implementing Agreement, or Environmental Sensitive Lands Ordinance before these documents are approved by the City Council. 89(b)

Thank you for considering our comments.

Sincerely,

Robert M. McClure
General Manager

RMM/ms

90 KUDLAC, GENERAL DYNAMICS PROPERTY MANAGEMENT GROUP, 10/29/96

R **90(a)** Comment noted.

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DEVELOPMENT SERVICES

90

GENERAL DYNAMICS
Property Management Division

29 October 1996

Jeffrey Kudlac, Staff Vice President
Property Management & Development
(619) 694-3775 (909) 484-4800

Mr. John Kovac
City of San Diego
Development Services Department
Development Environmental Planning Division
1222 First Street, MS 501
San Diego, CA 92101

Dear Mr. Kovac:

Thank you for the opportunity to provide comments to the MSCP Sub Area Plan on behalf of General Dynamics Corporation.

We have reviewed the provisions in the Sub Area Plan which relate specifically to General Dynamics Beeler Canyon property and believe that the guidelines proposed for areas C25, C26 and C27 accurately summarize the boundaries of the proposed Preserve and the relationship between the Beeler Canyon property and the implementation of the MSCP as discussed with City staff. 90(a)

Very truly yours,

Jeff Kudlac

Jeff Kudlac

91 ELLIOT, J, SAN DIEGO OFFROAD COALITION, 10/29/96

R

91(a) Per City Council direction, City staff continues to work with the public and state agencies on possible ORV park locations. Locating this use within 30 minutes of major population centers provides several benefits which the Council recognized. Section 6.2.1 of Volume 1, MSCP Plan identifies off-highway vehicle use as incompatible with preserves and linkages except as specified in a subarea plan. An ORV park is not part of the MSCP Plan and public lands dedicated to the preserve cannot be used to mitigate the impacts of an ORV park. Sale of public mitigation credits for private project impact is allowed pursuant to Section 4(b)(1) of the Cornerstone Lands Conservation Bank Agreement, which is Exhibit K to the City of San Diego Implementing Agreement. Mitigation for an ORV park will be identified during the process of selecting and evaluating the biological impacts of an ORV park.

91(b) Inconsistencies between the descriptions of active recreational use on pages 3-43 and 4.5-2 of the Draft EIR/EIS are acknowledged. These inconsistencies have been clarified in the revised language incorporated in the Final EIR/EIS. The language on these pages is not, however, intended to provide an explicit definition of active recreational use but rather to provide a general description of the types of recreational uses that are considered active. The MSCP Plan states that active recreational uses would generally be incompatible with the biological goals of core areas and linkages, but may be compatible at the edges of core preserves. Based on the MSCP Plan definition, off-road vehicle use would be considered an active recreational use. Offroad vehicle use is considered to be incompatible with preserves and linkages, except on designated roads. Vegetation communities are grouped by Tier. This does not imply that all areas of each vegetation community are currently supporting optimal habitat for various species. Dennery Canyon habitat, especially the Maritime succulent scrub vegetation community, has been severely impacted by unauthorized and uncontrolled ORV use and as a result, significant impacts to California gnatcatchers and cactus wrens have occurred. The heavily impacted areas on western Otay Mesa are excellent sites for restoration using ORV funds, since ORVs did the damage.

91(c) The preserve management guidelines provided in the MSCP Plan recognize the effects to vegetation communities and sensitive species resulting from motorized recreation within a preserve system. This clarification will be made in the South County segment of the County Subarea Plan. Off road vehicle park sites are also incompatible with a preserve system. The California Department of Fish and Game, however, is working with County of San Diego to identify an appropriate ORV park that would not conflict with the MSCP preserve.

91(d) Comment noted. See response to Comment 91(c).

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OCT 29 1996

DEVELOPMENT SERVICES

San Diego
OFF-ROAD
Coalition

P.O. Box 712214 Santee, CA 92072-2214
(619) 449-8648

October 28, 1996

Mayor Susan Golding
City of San Diego
202 C Street
San Diego, Ca. 92101

Re: Comments on the MSCP Environmental Impact Report

Dear Mayor Golding,

Thank you for the opportunity for providing input on this plan.

Plan Does Not Reflect Current Council Directions

During public hearings on the City of San Diego Subarea, concerns were raised over the possible loss of the motorized recreational area in the Dennery Canyon area of Otay River Valley. Dennery Canyon has been a popular Off-Road Vehicle recreation area for over 40 years. Due to approved development plans on the mesas overlooking the canyon and the subsequent conversion of the canyon into a narrow wildlife corridor, the council voted that ORV use would be inappropriate for this area. However, the Mayor and council also expressed a great need for an ORV park in San Diego, voting to instruct staff to work with ORV groups in establishing an ORV park. This MSCP plan should reflect that an ORV park is to be part of the MSCP proposal. Mitigation lands for this park would come from the public lands being included within the MSCP. 91(a)

EIR/EIS Gives Conflicting and Inaccurate Definitions

Under chapter 3: Affected Environment, #3.57 Park Facilities defines active parks as parks associated with school facilities or residential development. But within chapter 4.5: Public Services & Utilities, active recreation is defined as those recreational uses which create significant impacts at <u>any</u> level of use. It then goes on classifying these types of uses which included motorized off-road vehicle (ORV) use.

ORV use is not associated with school facilities or residential development, so under this definition ORV parks would not be classified as active recreational uses. ORV parks are not highly developed facilities. They utilize natural terrain and native plant species. Improvements are generally restricted to restroom facilities, watering system, and parking area. Within modern developed parks, impacts from vegetation loss and soils displacement are minimal. Dennery Canyon has had over 40 years of 91(b)

completely uncontrolled ORV use without any maintenance whatsoever yet staff has classified this area as Tier 1 habitat. It contains one of the highest concentration of gnatcatchers within the MSCP. EIR/EIS classification of ORV impacts as significant at any level of use is incorrect. A clear distinction should be drawn when discussing ORV recreation to differentiate ORV park use and ORV trail use. ORV trails serve a different type of recreational activity, one that is dispersed and less intensive. The vehicles are different, quieter, less aggressive tire designs, smoother power delivery, they are measurably less obtrusive. ORV trail impacts are very similar to those imposed by mountain bikes and equestrians. One does not measure equestrian trail impacts by observing opening day at Del Mar or the Lakeside Rodeo; one does not measure ORV trail impacts by observing Thanksgiving Day at the Imperial Sand Dunes. 91(b)

General Guidelines for Preserve Management Conflicts With Sub-Area Plans, County General Plan, Bureau of Land Management Plans, MSCP EIR/EIS

Section 6.2 of the plan states that should any inconsistencies exist between the general guidelines and the subarea plans, that the subarea plan shall take precedence. The majority of the open space acreage being committed to this plan does not prohibit motorized recreation. These include the County of San Diego General Plan, BLM South Coast Plan and the MSCP South County Sub Area. The basic management guidelines should allow motorized recreation; if individual subareas feel that it cannot be accommodated, let the subarea exclude it. The original draft MSCP plan contained a "Recreational Use Compatibility Chart". In reponse to public input, this chart had been removed from the plan. Unfortunately, it has been replaced by text within the EIR/EIS. The preserve management guidelines should be rewritten to allow ORV trail use within areas similar to those allowed by equestrians and bicyclists (see wording on South County Subarea) without any further mitigation. The plan should also allow ORV park sites with appropriate mitigation. This would bring the management guidelines into conformance with the subarea plans, which are supposed to take precedence over management guidelines. This would eliminate some of this project's impacts on public facilities (4.5.1 Issue 1). This would also remove some of the inconsistencies between this plan, the county general plan, existing environmental and management plans for both the county and other participating agencies (4.2.1 Issue 1) 91(c)

Large Scale Development Plans Should Not Result In Restrictions On Public Lands

While acknowledging that private property owners have the right to develop their properties, the mitigation for that development should not be born on the backs of the recreational off-roading public. 91(d)

Respectfully submitted,

John Elliott
Vice-Chairman, SDORC

92 PEUGH, SD AUDUBON SOCIETY, 10/28/96

R

92(a) Comment noted.

92(b) See **Theme Response XVIII, Recovery of Species.**

92(c) See **Theme Responses XVI, Risk Factors, and XIX, Preserve Management.**

92(d) See response to Comment 61(c).

92(e) See response to Comment 8(c).

92(f) See response to Comment 73(a).

92(g) See response to Comment 61(f).

92(h) See response to comment 80(r).

92(i) See response to Comment 61(h).

92(j) See response to Comment 61(i).

92(k) See response to Comment 61(j).

92(l) See response to Comment 61(k).

92(m) See response to Comment 61(l) and **Theme Response XIX, Preserve Management.**

92(n) See response to Comment 45(x).

92(o) The intent of the wording regarding the use of approved chemicals is to prevent the use of inappropriate chemicals (e.g., chemicals in the preserve which would affect the long-term productive capacity of the preserve, chemicals which would significantly affect individuals or populations of covered species, etc.) Appropriate chemicals to control invasive exotic plants and animals would still be used in the preserve. Volunteers will continue to be involved to the extent that they are available to control invasives and the wording in the MSCP Plan should not be interpreted to reduce or limit their opportunities to help manage the preserves.

92(p) See response to Comment 61(n).

92(q) Comment noted.

92(r) See response to Comment 61(o).

92(s) See response to Comment 8(l).

92(t) See response to Comment 8(m).

92(u) See responses to Comments 8(n) and 8(o).

92(v) The City of San Diego's general principles apply to projects and lands subject to the City's Subarea Plan only.

92(w) See response to Comment 8(t).

92(x) See response to Comment 8(u).

92(y) See response to Comment 8(x).

92(z) See response to Comment 8(y).

92(aa) Including specific standards for wetland restoration is beyond the scope of the MSCP Plan since it must be done on a site specific basis. Page 55 of the City of San Diego's Subarea Plan (MSCP Plan, Volume II) includes the elements that will be required in restoration or revegetation plans. These are anticipated to be similar to those requirements under current state and federal wetlands regulations. See also response to Comment 8(e).

92(ab) Comment noted. Listing of short-leaved dudleya is not within the scope of the MSCP EIR/EIS. The justification for withdrawal of the proposed rule for this species is provided in the cited *Federal Register* notice.

92(ac) The state and federal ESAs specify the listing processes and listing criteria for species and they will not be changed by the MSCP. One of the benefits resulting from the MSCP Plan will be an ecosystem based preserve which will reduce the potential for species to decline to the level that they need to be listed. See also **Theme Response XXIV, No Surprises.**

92(ad) Comment noted.

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SAN DIEGO AUDUBON SOCIETY
2321 Morena Boulevard, Suite D • San Diego CA 92110 • 619/275-0557

October 28, 1996

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DEVELOPMENT SERVICES

Lawrence C. Monserrate
Development Services Department
Land Development Review Division
City of San Diego
202 C Street
San Diego, California 92101

Subject: COMMENTS ON THE MULTIPLE SPECIES CONSERVATION PLAN PACKAGE

The San Diego Audubon Society will be submitting several comment letters on this document as explained in the letter submitted by Norma Sullivan, the Conservation Chairperson. We strongly commend the concept of protecting at risk species by protecting their habitat in segments that are large enough to be viable and by providing adequate wildlife corridors between the segments. 92(a)

We wish to submit the following specific comments on the various documents. The comments will be grouped by document title below.

MULTIPLE SPECIES CONSERVATION PLAN, VOLUME 1 (August 1996)

CONSISTENCY WITH SPECIES RECOVERY PLANNING

The objective of the Endangered Species Act is to provide for the recovery and eventual de-listing of endangered species. It is not clear that the MSCP is designed to support this worthwhile objective. We urge that the MSCP documents be augmented to demonstrate that, or assess whether, the conserved areas will be adequate to support populations large enough to satisfy species recovery plans and to facilitate the de-listing of each of the covered species. Table 3-5, SPECIES EVALUATION FOR COVERAGE UNDER THE MSCP, identifies the level of risk to each of the species. This table also should include a statement of the likelihood of eventual recovery and delisting of each of the covered species under MSCP as a measure of whether the species is adequately protected. 92(b)

COVERED SPECIES

There are a number of inconsistencies in the rationale for the selection of the species covered by this Program. We urge that this rationale, and the list itself be carefully evaluated in light of the comments received from the various conservation groups. The final criteria should be whether inclusion will improve the likelihood of recovery for each of the species.

We do not believe that any species that is categorized as being at "high risk" should be included as a covered species under this program. If the risk is high, then the survival of the species is obviously not assured, and it should not be covered. Perhaps there should be another category of "species that may be covered if we do a good enough job." Incidental take for these species would not be allowed until the risk is brought down to a moderate level by habitat management, creation, or restoration. 92(c)

100% Recycled

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FORAGING AREA FOR LEAST TERNS, ELEGANT TERNS, AND BROWN PELICANS

The MSCP lists California Least terns and Elegant terns as covered species. Many of the region's Least Tern nesting areas in Mission Bay and San Diego Bay are marked as being 100% protected. The salt works, where the Elegant terns nest, are shown to be 70 to 75% conserved. Table 3-5 states that 100% of the populations are conserved. However on the map showing Conserved Habitat, Figure 3-2, no foraging area in San Diego Bay or Mission Bay is colored as being protected. The populations of these species will not be preserved by just the conservation of nesting areas. foraging areas supporting the nesting areas must also be protected and managed, to some extent, to assure the conservation of these Terns. Similarly, California brown pelicans are listed as a covered species, but their major foraging areas, San Diego Bay and the ocean, are not covered under MSCP. How will these foraging habitats be managed or conserved under the MSCP? 92(d)

The MSCP will allow expedited development outside of the preserve area. Adequate foraging area must be defined and conserved to support the populations anticipated by the recovery plans for all three species. It should be noted that Table 3-3 indicates that 0% of deep bay habitat and only 4% of shallow bay habitat is conserved. These habitats are essential for production of the fish that these covered species depend on as well as for foraging range for the covered birds. A very large portion of the bay foraging area of these three covered species is managed by the Port of San Diego, which is not a participant in the MSCP. As such, it is doubtful that these species should be included in the covered species list without the participation of the Port District in the MSCP.

INTERNAL SUFFICIENCY OF THE MSCP

In several instances (including paragraph 3.2.1 Wetlands) it is assumed that Federal and State wetland protection regulations are adequate to protect habitats required by several of the listed species. Similarly, CEQA is used to define the review, public disclosure, and other functions for the MSCP. These regulations can change. If these regulations are significantly weakened, the species depending on them will be at increased risk. To maintain the level of species conservation stated in the MSCP it is necessary that the current versions of these wetland protections be specifically adopted and enforced by the MSCP jurisdictions if State and Federal regulations are weakened. This protection should be part of the Implementation Agreements. 92(e)

VERNAL POOLS

Several vernal pools species are included in the covered species list, but the data for vernal pools are not included in tables 3-1 or 3-3 that describe the acres of all of the other covered habitat types. We urge that these tables be modified to specifically include habitat conservation data on vernal pools. Vernal pool habitat has experienced one of the highest levels of loss in our region. There is a general opinion that adequate amounts of vernal pools have not been conserved in the MSCP to protect the viability of the species that they support. 92(f)

SALTPAN HABITAT

Saltpan is listed as a sufficiently covered habitat in Section 3.4, but no data for saltpan is included in tables 3-1 or 3-3. There is very little of the region's historical saltpan remaining in the planning area due to previous development. It is very hard to imagine that the viability of all species that depend on saltpan habitat can considered to be sufficiently preserved with such a small portion remaining. 92(g)

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Table 3-3 lists saltpan habitat as being 90% conserved. From figure 3-2 it appears that a significant portion of the conserved saltpan is in the Western Salt ponds in South San Diego Bay. If that this the saltpan mentioned there are several concerns. It is understood that the salt works have immense wildlife support value for many insect invertebrate and bird species. However the habitat contained in the salt works is not primarily traditional saltpan habitat. They differ from natural saltpan habitat in many ways including the type of use made by nesting birds, the type of foraging that they support, and the way that they should be managed. Managed salt ponds should be identified as a separate and unique habitat type in the presentation of covered habitat, the need for predator management, maintenance and rehabilitation of dikes, and in management agreements in general. Figure 3-3 identifies the salt works as being 75% conserved. Does that mean that the 90% is conserved at a 75% rate. If so, that would suggest that 68% is actually conserved. 92(g)

CHULA VISTA

The Chula Vista Wildlife Preserve and other Coastal and subtidal portions of Chula Vista are shown on figure 3-2 as being 100% conserved. The Chula Vista Wildlife Preserve saltmarsh area is eroding away and remedial action is needed. But, we are not aware of any plans to remediate this loss of habitat. This property is under the jurisdiction of the Port of San Diego, which is not a participant in the MSCP. The conservation of this area can not be assured by the MSCP as there will be no Implementation Agreement with the Port. 92(h)

IMPERIAL BEACH

Figure 3-2 shows the western and part of the northern portion of the Tijuana Estuary as being 100% conserved. Some of this area is multifamily residential along Seacoast Drive. Figure 3-2 shows that this area is within the jurisdiction of the City of Imperial Beach. Imperial Beach is not a participant in the MSCP. Much of the area in question is under the ownership of the US Fish and Wildlife Service and the California Department of Fish and Game., but planning and land use jurisdiction rest with Imperial Beach which has no agreement with the MSCP. Adjacent development will not be required to satisfy the guidelines specified by the MSCP plan such as prohibitions of urban runoff being released into the preserve, limitations on lighting, etc. Seventy three percent of the watershed of the Tijuana River valley and Estuary is in Mexico. Sediments and water quality can not be managed. The International Wastewater Treatment Plant is considering protracted live stream discharge of partially treated effluent into the valley. How can 100 percent habitat conservation can be assured under these circumstances. 92(i)

OTAY VALLEY

The Otay River Valley is an important habitat corridor and riparian habitat. It is shown as 70 to 75% conservation in Figure 3-2. The development plans for the Otay River Valley Regional Park include large numbers of playing fields in area that would have been riparian habitat. If current park development plans are maintained, the corridor and habitat functions of this area will be considerably less than stated. This seems to conflict with the guidelines in Section 6.2.1, Public Use, (page 6-2) of Volume 1, that state that active recreation facilities are generally incompatible in the preserve area. 92(j)

OPEN WATER

Paragraph 3.4.2 lists open water as being a community that is significantly covered. By what means is open water habitat to be managed. From figure 3-1 it does not appear that any of the participating jurisdictions in MSCP contain any open water habitat. Is this a 92(k)

92

subarea that will be managed by the Federal Government? If so is there a subarea plan and implementation agreement that will protect open water habitat and the species that depend on it? What open water habitat will be conserved? What percent conservation is required to achieve the programs objectives or is expected? 92(k)

MINERAL EXTRACTION

Section 6.2.4 Mineral Extraction begins stating the permanent impacts that sand, rock and gravel extraction have on wildlife habitat. The next paragraph states that existing operations inside and outside of the preserve may continue. It then proceeds to discuss facility expansion and new extraction facilities. For the impacts stated, and from observations of extraction operations in the region, it is clear that sand, rock, and gravel extraction are not appropriate within the preserve. They directly destroy critical habitat and cause erosion and siltation damage downstream. The road use and infrastructure needed to support them is very destructive to wildlife and to habitat. Within the preserve, leases or permits should not be extended, facilities should not be allowed to enlarge, no new leases should be granted, and opportunities should be sought to buy out existing leases. 92(l)

Outside of the preserve, permits for any extensions, expansions, or new facilities should fulfill the MSCP's principle of the preservation of the function and value of all wetland habitats, inside or outside the preserve.

PRESERVE MANAGEMENT ON PRIVATE LANDS

In paragraph 6.3.3 it is stated that the 75% of private land that is set aside for habitat by land use regulation within the preserve will not be actively managed for the MSCP. This land is a significant portion of the preserve. Active management is required for all habitat land within the preserve, especially control of feral animals, invasive vegetation, off road vehicle use, other unauthorized recreational use, etc. Without systematic management it is misleading to identify this land as being conserved to a high level. Inappropriately managed private property will not only not provide adequate habitat value, it will also tend to cause degradation, through habitat fragmentation and edge effects, to adjacent managed preserve areas. A better management solution must be developed for these lands. 92(m)

PREDATOR AND EXOTIC SPECIES CONTROL

Paragraph 6.3.8 (page 6-9) states some of the impacts of feral animals on sensitive species. These impacts are very likely to have a major influence on whether many of the various habitat communities in the preserve system will actually support the covered species. Feral cats, pet cats, and pet dogs will be an important problem, but they are not discussed in the list of management measures to be taken. The management of the preserve must include a substantial systematic, not just "limited", trapping and effective deterrent regulations to keep pet owners and advocates of "feral cat management" from misusing the preserve at the expense of the wildlife. 92(n)

The same section contains the sentence "Only chemicals approved by the USFWS and CDFG and applied by licensed pest control advisors should be used for pest control." This sentence immediately follows a sentence on the removal and management of invasive exotic plant species. Are the two sentences independent? We would concur that the poisoning of animals in the preserve should be very tightly controlled. However, if the quoted sentence relates to herbicides used for invasive plants that could be a problem. A number of environmental organizations work on the removal of invasive plants at urban preserve areas 92(o)

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92(o)

within the MSCP preserve. For some invasives, judicious use of herbicides is required. It is not clear that public agencies have either the labor, funds, or the day-to-day contact with these areas to adequately replace these volunteers. It is likely that these preserve areas would suffer a lack of control of these invasives without the volunteers efforts. We urge that volunteers receive training and be allowed to continue with their efforts that require approved herbicides.

SAN DIEGO IMPLEMENTING AGREEMENT

LOCAL AUTHORITY FOR SECTION 404 PERMITS

According to Section 9.8, Other Regulatory Permitting, A. Other Permits, the City of San Diego will "identify the least burdensome measures required or recommended, if any, to ensure consistency with the federal policy of no net loss of wetland functions and values..." The language of this statement suggests that the emphasis will be on minimally satisfying regulations over actually protecting wetlands. This minimal level of wetlands protection would not support the protection of the covered wetland species. We urge that language be added such as: "...to ensure the adequate protection of wetland habitat and to ensure consistency with the federal policy of..."

Later, the same paragraph states that the agencies will coordinate "to further streamline the process for issuance of permits pursuant to Section 404 of the Clean Water Act for those projects that are in conformance with the MSCP, the Subarea Plan, and this Agreement." This statement raises concern for the protection of our wetlands. Wetlands are important for more reasons than just the protection of endangered species.

92(p)

The wetlands of our region serve many functions besides providing habitat for recognized at-risk and endangered species. A few are: protection of people and property from storm and flood damage, improving both surface and ground water quality, improving ground water recharge, erosion control, habitat for game and common wildlife, nurseries for fish, and for recreation and scenic value. Our region has lost more that 90% of its wetlands. We are seriously impacted by the loss of each of these benefits. These other benefits of wetlands are not covered by "the MSCP, the subarea plan, and this agreement". It is not appropriate that the MSCP should reduce the effectiveness of the protection of our region's wetlands. Also, it is not clear that the local government agencies have the technical personnel, resources, and institutional experience to replace the functions of the regulatory agencies. If any "streamlining" of 404 is implemented, a high level of oversight, interaction, and responsibility from state and federal regulatory agencies should be maintained.

The 404 process works to assure that a project avoids degrading wetlands, seeks to minimize unavoidable impacts as much as is practicable, and requires adequate mitigation for unavoidable impacts. This is an essential process. Any streamlining should completely satisfy that conceptual sequence. There should be a clear procedure for the Federal Government to intervene, suspend, or to rescind, the local issuance of wetlands permits if local actions do not adequately protect local wetlands.

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DRAFT CITY OF SAN DIEGO BIOLOGICAL GUIDELINES

DEFINITION OF WETLANDS

Paragraph I. A. 2. on pages 2 and 3 provide a definition of wetlands. We appreciate the specific inclusion of "vernal pools and naturally formed streams with intermittent flow". These two habitat types are especially important for our region which is characterized by extreme rainfall variation from season to season and year to year. We are pleased to see that they will be preserved both inside and outside the preserve area. 92(q)

MITIGATION FOR WETLAND IMPACTS

In paragraph III. B. 1. a. we commend the intent to require full mitigation of wetland functions and values for projects where impacts can not be avoided. However the mitigation ratios listed in Table 1 are inadequate to satisfy that intent. The creation of wetland habitat as a means of mitigation typically does not provide the full species diversity of a natural wetland. As such, the created wetland is less likely to survive environmental fluctuations and is very unlikely to replace the functions and values of a natural wetland, even a degraded one. As a result mitigation ratios involving created wetlands must be higher and monitoring and maintenance responsibility must be continued for many years. The ratios listed are only appropriate for types of habitats in which mitigation success rates have proven to be high. Wetlands are not among these. 92(r)

MANAGEMENT OF AREAS IMPACTING WETLANDS

In paragraph I. B. 3. (pg. 17), Management Element there is no discussion of managing land in the watershed of wetlands to prevent loss of wetland function and value. If this issue is not addressed, there is little likelihood that conserved wetlands will be able to provide the wildlife support value needed for the MSCP to achieve its biological goals. Of special importance are preventing year-round drainage into riparian areas and wetlands that would normally not experience it. Additionally, highly erosive rain-flows from developed areas must be reduced to more natural flow velocities before they enter natural creeks, canyons, or wetlands. Also, runoff that is contaminated or carrying unnatural sediment loads must be cleaned before being directed into preserve areas or wetlands outside of the preserve area. Management of the preserve system must extend to the watershed that impacts the preserve and other wetlands for biological goals to be met. We were please to see the discussion of these items in the San Diego City Subarea Plan, Section 1.4.3, Page 51. 92(s)

DEVIATIONS

In section IV. (pg. 19) standards for Deviations are established. It is important that all applications for Deviations be reviewed by the relevant regulatory agencies before the application goes to the City Council for approval. The information resulting from the agency review should then be provided to the Council before they consider the issue. 92(t)

DRAFT AMENDMENTS TO GENERAL PLAN AND COMMUNITY PLANS

FLOODPLAIN PROTECTION

The discussion of Floodplain and Hillside regulations on page 306a lists the purposes and intents for regulating floodplain land use as protecting "the public health, safety, and general welfare". It continues that these regulations 'also tend to conserve the environmentally sensitive qualities of floodplains." We urge that this be modified to include "protection of water quality and erosion management" in the list of purposes and intents. The 92(u)

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benefits of protecting the natural infrastructure value of floodplains to the public must be considered a goal, not an incidental byproduct. 92(u)

In discussing floodplain zoning on page 306a the following statement is made: "Such plans should distinguish between urban (e.g. Mission Valley) and non urban systems (e.g. San Dieguito Valley)." For all of the purposes quoted in the previous paragraph this distinction should not be attempted. Mission Valley should be an important urban habitat area. It also should be a viable corridor between the wildlife rich upper San Diego River (Mission Trails Park, etc.) and the wildlife rich mouth of the San Diego River (including the Mission Bay Park's Southern Wildlife Refuge) as it was just a few decades ago. Future planning should work to eliminate the few habitat corridor discontinuities in Mission Valley.

MSCP VOLUME II: MSCP SUBAREA PLANS (AUGUST 1996)

Please note that the comments on general principles in the City of San Diego Subarea should be applied where appropriate throughout the MSCP area.

PRESERVE GUIDELINES FOR OTAY MESA 92(v)

Item A7 (page 7), the proposal to mitigate impacts to vernal pools by transplanting species, either plant or animal, into pre-existing pools with existing populations of the same or different species should be carefully considered. In general it seems ill advised on the basis of genetic considerations to do so, and should be reviewed by persons qualified by virtue of having carried out and published scientific research in the field.

PRESERVE GUIDELINES FOR CARMEL VALLEY (Page 25)

The co-occurrence of three freeways, the railroad, a new pump station, and an area of approved intensive development within or immediately adjacent to the Los Penasquitos Lagoon have obviously had severe impacts on the functioning of the lagoon. To offset the gauntlet of obstructions to wildlife movement and wetland functions and to reduce further impacts to the lagoon, it is recommended that serious consideration be given to abandoning Sorrento Valley Road as a vehicular thoroughfare, and converting it into a pedestrian/bicycle route. This approach would significantly reduce short-term impacts due to construction needed to upgrade Sorrento Valley Road, and would help to reduce the long-term cumulative and edge effects on the lagoon. 92(w)

PRESERVE GUIDELINES FOR LAKE HODGES/SAN PASQUAL VALLEY (Page 30)

Many concerns regarding the San Pasqual Valley may have been addressed in the San Pasqual Valley Plan. However, from the map included with this document (Fig. 7) it is clear that some stretches of the Santa Ysabel Creek are afforded little to no protection, in spite of its importance as a riparian habitat and wildlife corridor. Since this is a planning document it would seem wise to designate intended uses on City land, such as expanded riparian and transition zone buffer habitats, as part of the Preserve now. This has been done in many other places where disturbed habitat targeted for restoration is included in the Preserve.

While the use of a low-flow pilot channel is not necessarily counter to biological needs of the Preserve in this area, it is certainly a project which must be executed carefully, and with a clearly limited purpose. Any pilot channel must be ecologically compatible with the Preserve; we suggest that any maintenance be conducted at times of year to avoid breeding birds and other sensitive resources, and that if maintenance is necessary, vegetation in the channel be selectively managed to provide habitat year-round (for example, Least Bell's Vireo's may 92(x)

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respond favorably to habitat manipulated to provide the maximum number of relatively young willows). Seasonal flooding is part of the cycle of a river valley, and maintains the soil's fertility; therefore, flooding needs to be accommodated as part of the natural and agricultural systems. By allowing fields to flood occasionally, and the stream channel to meander, erosive forces can be kept to a minimum, and the groundwater can be recharged at a maximal rate.(The section on Flood Control, p. 50, is obviously pertinent.) However, natural and desirable flooding of the valley may be harmful to the ecosystem if agricultural lands harbor pollutants. Measures should be taken immediately to eliminate toxic chemical and extreme nutrient inputs to San Pasqual Valley agricultural areas to minimize negative effects upon surface and groundwater quality in the Preserve. 92(x)

LAND USE CONSIDERATIONS/GENERAL PLANNING /MINING (Pages 49 & 50)

(Item 1) As mentioned in the comments on Volume 1, sand mining is incompatible with Preserve function and no expansions or extensions should permitted. Opportunities should be sought to reduce or terminate and restore the sites of existing operations where possible. 92(y)

(Item 4) Man made ponds resulting from mining activities can be detrimental to the riparian ecosystem by allowing breeding of exotic species and excluding native species from potential breeding, foraging, and sheltering habitat. Episodic toxicity problems can result from these often stagnant ponds. These negative impacts on native wildlife should be carefully considered before allowing these ponds to be left as part of a site restoration.

LAND USE ADJACENCY GUIDELINES/DRAINAGE (Page 51)

(Item 1) The list of materials that should not be released into the Preserve is comprehensive, but does not explicitly mention freshwater or sediment. Freshwater input at inappropriate times and in increased volumes may be highly detrimental to various ecosystems which do not naturally experience it, such as small or intermittent flowing riparian systems and salt or brackish marshes, and should therefore be prevented. Increased rates of sedimentation and scouring result when watersheds become less permeable due to development, and have rapid and detrimental impacts on many types of downstream systems, including mature oak riparian forests and tidal saltmarshes. Detention basins not only adjacent to, but also within the watershed of, the Preserve, should therefore: (1) contain all dry weather flows and allow them to evaporate or to percolate into the watertable, and (2) retain storm water runoff that exceeds the volume and velocity that would naturally flow off fully permeable land before development. 92(z)

GENERAL MANAGEMENT RECOMMENDATIONS/RESTORATION (page 55)

"Wetland restoration/revegetation proposals are subject to permit authorization by federal and state agencies." While these may be sufficient at the moment to achieve the species' protection and recovery goals of the MSCP, what recourse is there if these agencies' standards are altered such that restored habitat functional quality and/or quantity are diminished? We recommend that the specific standards for wetland restoration and revegetation be incorporated into the MSCP itself. 92(aa)

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OTHER

WITHDRAWAL OF SHORT-LEAVED DUDLEYA AS A CANDIDATE SPECIES

We were very disappointed to find, in the Federal Register of October 7, page 52402-52403, that the Short-leaved Dudleya has been withdrawn as a candidate for listing as an Endangered Species because of the likely implementation of the MSCP. The decision to list a species should be based solely on the risk of extinction, a biological issue. We understand that later decisions on protection and recovery must be based on a broad range of issues including land use, availability of funds, etc. The MSCP Preserve System does not yet exist, and management and monitoring procedures are not yet defined or field tested. We feel strongly that not listing this plant will eliminate adequate accountability for its survival and recovery. There will be many unpredicted conflicts, delays, and uncertainties in the MSCP process in the next months. It is premature to base listings on an early presumption of the outcome. 92(ab)

This withdrawal also tends to weaken the perceived credibility of the MSCP. We urge that the FWS reverse the withdrawal unless it can clearly project this plant's survival and recovery based on conservative assumptions. We strongly urge that the existence of the MSCP not be used in the near future as an excuse not to list at-risk species. Only after the program matures, the preserve is largely acquired, and monitoring and management is well established and evaluated the existance of the MSCP might serve such a role.

NO SURPRISES

The "No Surprises" policy is a great concern to the chapter as mentioned in the letter by Norma Sullivan. The assurances of the MSCP should be derived from the adequacy of the preserve design, acquisition, and management. If these are inadequate to protect a new, uncovered plant or animal in the covered habitat types, it should not be covered by the program. Shifting the responsibility for protecting additional species to state and federal seems dysfunctional. It leads to a concern that the "No Surprises" policy could be facilitated by agencies choosing to not list at-risk species to avoid having to expand the preserve; especially if these agencies do not have adequate funds to protect the additional species. 92(ac)

CONCLUSION

Again, we strongly support the concept of the MSCP, but are concerned that the protections offered are not adequate to protect the biodiversity of our region. We value the immense effort that has been expended to get the program this far. We especially appreciate the interactions with the enforcement agencies to enable us to better understand the program. We urge that the problems pointed out by San Diego Audubon's comment letters, and those of other conservation organizations be seriously considered in the final stages of the development of the Program. There are substantial problems with the program that must be fixed before it will be adequate. It is vital that the best scientific information and problem solving resources be used in this final stage to allow this program to satisfy its wildlife, economic, and quality of life objectives. 92(ad)

Sincerely,

James A. Peugh

James A. Peugh
Past President

93 CRAIG K. BEAM, LUCE, FORWARD HAMILTON AND SCRIPPS, 10/29/1996

R

93(a) Comment noted

93(b) In evaluating a possible redirection of residential growth to existing agricultural lands, the following factors should be considered. SANDAG's Series 8 Regional Growth Forecast indicates that there is in the county sufficient vacant land with appropriate urban, residential zoning to accommodate housing growth to the year 2005. To accommodate growth from 2005 to 2015, it will likely become necessary to redesignate some of the low density residential land (less than one unit per acre) to densities greater than one unit per acre. With such redesignation, Series 8 Forecasts show that housing growth could be accommodated on lands already designated for residential use, without the conversion of agricultural lands. Please see **Theme Response XXI, Indirect Impact on Agricultural Land.**

The MSCP addresses activities proposed to be newly undertaken within the MHPA or the preserve. Legal and existing, or ongoing, activities, such as existing agricultural operations, are not affected by the MSCP.

93(c) As noted above, implementation of the MSCP Plan would not necessarily lead to a widespread urbanization of agricultural lands. The MSCP Plan also would not limit existing or ongoing agricultural operations.

93(d) The discussion contained in the EIR/EIS, Section 3 and 4.2, represents a plan-to-ground analysis routinely used by jurisdictions in CEQA documents to determine potential impacts of public and private projects on agricultural productivity. See **Theme Responses VII, Farmland Mapping, and XXI, Indirect Impact on Agricultural Land.**

93(e) See response to Comment 25(a).

93(f) See **Theme Response XXI, Indirect Impact on Agricultural Land.**

93(g) See response to Comment 25(a).

93(h) Neither the MSCP Plan or subarea plans include measures to regulate the extent or type of agriculture which can occur. The MSCP Plan is not a land use regulatory plan, but rather a program to simplify compliance with the FESA and CESA. There is no deferral of the analysis of the environmental impacts associated with farming since the MSCP Plan does not regulate farming.

93(i) See **Theme Response I, Species Analysis Approach.**

93(j) Not all corridors will function for all covered species, and some of these species are not expected to use corridors at all. A corridor's viability was judged based upon the species that would likely use it. Emphasis on assessing the larger regional habitat linkages was to maintain continuous habitat that was sufficient to provide live-in habitat for a wide array to covered species, especially the California gnatcatcher. It was assumed that if the habitat was continuous and supported the gnatcatcher, that the habitat would also support many of the other scrub-dependent covered species. Recent NCCP-related research by U.C. Riverside (CDFG 1996 unpublished report) indicates that the California gnatcatcher does serve as a useful "umbrella species" for many other bird and small mammal species. For narrower corridors in more urbanized areas of the MHPA, the goal was to maintain connectivity for mammalian predators such as the coyote and the bobcat, as these predators are necessary to maintain ecosystem health and predator-prey balance.

In all areas of the MHPA where public infrastructure or other development may impinge or potentially compromise a corridor, each subarea plan has development criteria requiring the avoidance or minimization of impacts to designated corridors. In instances where impacts to corridors are unavoidable, bridges, culverts, fencing, and other measures are required to assure the continued function of that corridor.

Finally, the MHPA incorporates redundancy into the connectivity within the habitat preserve system. Multiple corridors between large blocks of core habitat were delineated wherever possible. A good example is found in the Lakeside area, where the "Lakeside archipelago" connection of coastal sage scrub habitat just north of Interstate 8 primarily serves avian species. However, terrestrial species still have a regional linkage across Interstate 8 just to the east through the Crestridge Conservation Bank-Harbison Canyon-Chocolate Canyon to City of San Diego lands around El Capitan Reservoir. A large bridge across Chocolate Canyon allows ready access under Interstate 8 for most species.

The wildlife agencies and local jurisdictions are responsible for the biological monitoring of the preserve. Biological data will be monitored in conformance with the MSCP Biological Monitoring Plan that has been provided by the wildlife agencies. This biological monitoring plan establishes an array of sampling stations for landscape-level monitoring of vegetation community trends; species-specific vegetation monitoring; monitoring of wildlife corridors; coastal sage scrub-dependent bird and mammal monitoring; grassland raptor monitoring; and general and focused herpetofauna monitoring. Monitoring sites were chosen to focus on reported occurrence areas or higher quality habitat areas that may support covered species. Biological data will be analyzed and used to support actions to be undertaken as part of the adaptive management process.

93(k) See **Theme Response I, Species Analysis Approach** and revised MSCP Table 3-5 included int he Revisions to the MSCP Plan, Volume I, January 1997.

93(l) See **Theme Response I, Species Analysis Approach** and revised MSCP Table 3-5 included in the Revisions to the MSCP Plan, Volume I, January 1997.

93(m) Adequate information exists to make the conclusions in the EIR regarding impacts of the project to individual species including take of covered species. This information is incorporated by reference and is discussed in Section 4.1 of the EIR/EIS. As a result, no additional noticing or recirculation of the document is necessary to comply with CEQA.

93(n) See **Theme Response IV, MSCP Financing Plan: Regional Source of Funds** and response to Comment 104(n). The draft Implementing Agreement includes state and federal commitments to acquire land for the preserve, and the Implementing Agreements cannot be executed until after the Notice of Determination and Record of Decision are issued. The mitigation measures in the subarea plans are reasonable and feasible and were developed based on a consensus process involving stakeholders. The rate of preserve assembly associated with mitigation for individual projects is related to the development rate, which will fluctuate over time. Since impacts won't occur until development occurs, the low development rates will result in the avoidance of impacts rather than unmitigated impacts as implied. The mitigation measures associated with new development were taken into consideration in the analysis of species coverages. Because of (1) the up-front dedication of public lands, (2) the project specific mitigation required in subarea plans, and (3) the preserve acres recently acquired by the state and federal governments, there has been adequate conservation to off-set take during the first 36 months of the program, the time frame in which a local funding source will be identified and implemented.

With respect to the role of public funding in program implementation, it should be noted that under the MSCP Plan all public and private projects which impact sensitive species and their habitats, both inside and outside the MHPA, would continue to be subject to mitigation requirements, such as minimizing impacts, on-site conservation of species and habitats, or off-site mitigation. That is, adoption of the MSCP Plan and the associated subarea plans must be followed by project review and approval by the take authorization holder (e.g., a local jurisdiction), before the actual take of species is authorized. The USFWS and CDFG will also annually review and coordinate the implementation of the MSCP Plan and the associated subarea plans, including an annual accounting of habitats impacted and conserved, and, if required, take appropriate actions to remedy the situation (MSCP Plan, Volume I, Section 5.4.4). Please see also the discussion of the adequacy of the financing plan referenced above.

Alternative funding sources discussed in Section 7.0 of the MSCP Plan are feasible, as defined by CEQA, since they are "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors" (CEQA Guidelines, Section 15364). Economic feasibility is described in Section 7.0 of the MSCP Plan, Volume I, and environmental feasibility is addressed by the conservation plan described in Section 3.0.

Legal authorizations for the alternative funding sources are also discussed in Section 7.0. The passage of Proposition 218 in November 1996 may necessitate additional authorization or clarification by the California Legislature for the use of AB 2007 or SB 445 (two of the optional funding sources discussed in the MSCP Plan), but the MSCP Plan addresses the possible need for such legislative

action in the proposed timetable for implementation of the regional funding program (MSCP Plan, Section 7.4.2).

Social feasibility, as it relates to potential population and housing impacts, is addressed in Section 4.6.1 of the EIR/EIS. Finally, there are no known technological impediments to establishing public financing programs, which have an extensive history of successful application.

The requirement for mitigation of impacts to sensitive species and their habitats, including avoidance and off-site mitigation, is an existing practice of federal and state wildlife and resource agencies and local jurisdictions and is, therefore, a feasible method of conserving species and habitat.

It should be noted that the MSCP preserve would be assembled over time, as development takes place either inside or outside the MHPA. If there are few projects which impact habitat and generate off-site mitigation, then existing habitat and open space would continue to support sensitive species. The balance of habitat impact and conservation will be subject to annual review and, if necessary, remedial action, as noted above.

93(o) An analysis of the effects of the proposed subarea plans including the County of San Diego and the Cities of Chula Vista, San Diego and Santee on planned land uses including agriculture is provided in issue numbers 1 and 3 of Section 4.2 of the EIR/EIS. As indicated in Table 4.2, a majority of the vacant lands planned for agriculture use potentially converted to open space as a part of the project are contained in the County and the City of San Diego. The total acreage of planned agricultural lands to be converted to open space is zero or a relatively minor percentage of the total agricultural lands within the MHPA for the other participating local jurisdictions including Chula Vista, Coronado, Del Mar, El Cajon, Imperial Beach, La Mesa, National City and Santee (See Table 4.2-1).

An analysis of the individual Community Plan amendments proposed by the City of San Diego is also contained in Issue 1 and 3 of Section 4.2. As shown in Table 4.2-1 a majority of the vacant lands planned for agriculture within the City are located in the Lake Hodges and south San Diego areas. As discussed on page 4.2-97-98, measures have been incorporated in to the City Subarea Plan to allow for existing agricultural operations in the Tijuana River Valley to continue with a long term goal of either restoration to native habitats or other uses consistent with the County Subarea Plan. The Lake Hodges /San Pasqual area refers primarily to the San Pasqual Valley Community Plan. An update of the San Pasqual Valley Plan, which incorporated the proposed preserve, was adopted by the City of San Diego as a separate project in June 1995. An analysis of the impacts of the proposed preserve on planned agriculture in San Pasqual is contained in the environmental analysis of the Community Plan update.

See also **Theme Response XXI, Indirect Impact on Agricultural Land.**

93(p) The development of a San Joaquin Valley H.E.L.P. was initiated by the California Farm Bureau Federation as a response to a very similar program that was being developed by state and

federal agencies and agriculturists. The H.E.L.P. has not been finalized and is it still undergoing significant modification in order to meet state and federal ESA requirements. It is being specifically tailored to meet the needs of agriculturists in the San Joaquin Valley. Because the San Joaquin Valley H.E.L.P. has not been released to the public, it has not been subject to CEQA/NEPA review. It also has not been approved by any state or federal agency. Based its current status, it would be inappropriate to include it or its concepts into the MSCP. Additionally, the state agricultural organizations (Farm Bureau, Cattlemen's Association, etc.), during the initial discussions of a San Joaquin Valley H.E.L.P., made it clear that these types of programs must be developed through the leadership of the agricultural community and not by local, state and federal agencies.

93(q) Comment noted. All future proceedings regarding the MSCP Plan will be noticed consistent with local jurisdictions' policies and ordinances and consistent with state and federal noticing requirements.

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LUCE, FORWARD, HAMILTON & SCRIPPS LLP

ATTORNEYS AT LAW • FOUNDED 1873

CRAIG K. BEAM, PARTNER
DIRECT DIAL NUMBER (619) 699-2482

OUR FILE NO. 23144-00001

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OCT 29 1996

DEVELOPMENT SERVICES

October 29, 1996

VIA HAND DELIVERY

Mr. John Kovac
Ms. Mary Ladiana
City of San Diego
Land Development Review Division
1222 First Avenue, Fifth Floor
San Diego, California 92101

Re: Comments of the San Diego County Farm Bureau with Respect to the Multiple Species Conservation Program ("MSCP") Plan Environmental Impact Report ("EIR")/ Environmental Impact Statement ("EIS")
DEP No. 93-0287/SCH#93121073

Dear Mr. Kovac and Ms. Ladiana:

This letter transmits the comments of the San Diego County Farm Bureau with respect to the EIR/EIS for the MSCP Plan.

The Farm Bureau has been cooperating with the City of San Diego, County of San Diego, and federal and state agencies responsible for the protection of natural resources, including the U.S. Fish & Wildlife Service and California Department of Fish & Game, during the preparation and consideration of the MSCP.

The Farm Bureau's cooperation and support is dependent, however, upon an MSCP Plan which correctly assesses the importance of agriculture to San Diego County and contains provisions to avoid impacting ongoing agricultural operations.

The current draft of the MSCP Plan and its accompanying EIR do not accurately assess the magnitude nor importance of agriculture in San Diego County, nor does the Plan contain provisions minimizing its impacts upon agriculture. 93(a)

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93(a)

THE IMPORTANCE OF AGRICULTURE TO THE SAN DIEGO REGION

The importance of agriculture in San Diego County is highlighted by a few key statistics. Even though, when judged from the standpoint of soil conditions, San Diego County should not be conducive to successful agriculture, the hard work of the County's 6,200 farms presents a different picture.

San Diego County produces agricultural crops and livestock with an annual value of more than one billion dollars. Our County ranks twentieth in the United States in agricultural production and ninth in the State of California.

San Diego County ranks first in the nation with respect to the value of its floracultural, nursery, greenhouse and sod products. It also ranks first in the nation in the production of avocados.

Due to the high cost of water (in excess of $600 per acre foot) and land, farming in San Diego County is expensive. Growers are encouraged, therefore, to raise agricultural products with a high dollar per acre on small parcels of land.

Over 65% of the farms in San Diego County are on nine or fewer acres.

On a more human scale, it is important to remind ourselves that farms in San Diego County are predominantly small businesses. Many times, they are family owned and often have existed through several generations within a family.

Agriculture and grazing form the social fabric of the rural areas of San Diego County. Contrary to popular assumption, agriculture is not a "interim use" in most areas of the County, except where it is threatened with regulatory extinction caused by the combined weight of state, federal and local regulations.

As stewards of the land, the members of the San Diego County Farm Bureau hope that the MSCP Plan is one they may coexist with, as opposed to realize as one more form of regulation which threatens agriculture as an honorable business and way of life.

LUCE, FORWARD, HAMILTON & SCRIPPS LLP
ATTORNEYS AT LAW • FOUNDED 1873

COMMENTS ON THE ADEQUACY OF THE MSCP EIR

The Farm Bureau's concern is that the MSCP may have two types of significant environmental affects to agriculture which are largely unaddressed by the draft EIR. These include the redirection of residential growth caused by the MSCP, resulting in pressures to prematurely convert economically productive farm land to residential uses and limitations or prohibitions against upon ongoing farming activities based upon the assumption that farming activities are incompatible with the MSCP; especially in areas within any potential preserve. 93(b)

Both the premature conversion of agricultural lands to non-agricultural purposes and limitations upon the use of existing agricultural lands may result in significant adverse direct and indirect environmental effects. Loss of productive agricultural activities will also result in a significant adverse economic effects, which will impact the region. 93(c)

The following issues are the San Diego Farm Bureau's comments to the City of San Diego, the Lead Agency for the MSCP program on the MSCP Plan with respect to EIR SCH No. 93121073:

1. Chapter 3 of the EIR "The Affected Environment" is an inadequate description of the extent or land area constituting significant agricultural resources. As such, the EIR fails to adequately describe the environmental setting as required by CEQA Guideline 15125. See San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislas (1994) 27 Cal.App.4th 713 [EIR found inadequate for improperly disclosing extent of riparian habitat]. Chapter 3 fails to identify agricultural lands which are significant by using erroneous criteria, namely whether or not they constitute "prime" farmland pursuant to the standards contained in state law, not whether the agriculture is economically productive regardless of soils type.

The EIR uses the criteria adopted by the California Department of Conservation ("CDC") to identify "significant agricultural lands" (Section 3.2.2.1). This program divides agricultural lands into six classifications. Figure 3.2-4 only characterizes approximately 3,800 acres as prime farmland and 3,500 acress of the 37,600 acres within the MSCP Study Area as farmlands of "Statewide" and "Local" importance respectively, using a soils classification map as the sole basis for the conclusion that only these lands are important to San Diego County. 93(d)

It also classifies approximately 5,900 acres of the Study Area as "unique" farmlands.

This methodology, which is used to determine the importance of farmland under the EIR including the references contained on Figure 3.2-4 "Farmlands within MSCP Study Area," is flawed.

The EIR ignores applicable provisions of the Williamson Act that include in its definition of Prime Farmland farmland that has produced crops of a sales value in excess of $200 per year. (See, Govt. Code Section 51201(c)4. Under this definition of "Prime Agricultural Land" considerably more lands should be included in the agricultural resource base which is considered impacted by the MSCP Program, if it is approved. Table 3.2-3 "Important Farmlands" also ignores alternate definitions of Prime Farmland which are appropriate for San Diego County, which are not dependent upon soils classification nor criteria involving developed irrigation water supply.

If the definition within the Williamson Act were applied to Table 4.2-16 contained on page 4.2-82 of the EIR, land in excess of 40,000 acres of agriculture within the MPA Study area meets the "Prime Agricultural Land" definition of the Williamson Act.

As a result of this failure to properly determine the extent of affected farmlands, the impact analysis fails to properly consider whether or not the proposed project would adversely affect Prime Farmlands. See San Joaquin Raptor, supra. Studies undertaken by the County of San Diego by its Agricultural Commissioner has established the viability and growth of agriculture in San Diego County, dominated by high value crops located on relatively small farmland parcels.

Another deficiency of the EIR is that it appears to be a "plan to plan" analysis violative of Environmental Planning & Info Council v. County of El Dorado (1982) 131 Cal.App.3d 350.

In El Dorado, the court held that an EIR must analyze the impacts of the proposed plan on the existing environment, not just on the differences from the existing plan. The court ruled that although the proposed plan called for substantially less growth than the existing plan, the EIR was held inadequate because it did not describe the changes that the proposed plan would make to the existing environment. The EIR for the MSCP Plan suffers from this inadequacy. 93(d)

For example, in the Section 4.0 "Environmental Consequences" (Impact Analysis) of the EIR, Table 4.2-1 "Generalized Land Use Designations of Vacant Lands" assumes agriculture only on the basis of land designations on various municipal general and community plans, not whether farming operations are in existence.

As a result, there are many agricultural operations in various areas of the County which are permitted uses but not the ultimate anticipated or depicted land use for the area. This is true for virtually all areas of the County classified as "Rural Residential" which permit agriculture as a matter of right but contemplate some type of residential land use in the future. The EIR's analysis therefore suggests that even though agriculture exists in many areas, unless it is listed on an appropriate general or community plan as the ultimate use, it is not considered to be impacted by the MSCP Plan regardless of whether or not it would otherwise be rendering or impacted impermissible by the Plan.

This is a failure to recognize the physical existence of agriculture, in favor of planning designations results in a further investigation of the amount of significant agricultural land in San Diego County.

Even the EIR's understated analysis of the MSCP Plan's impact on agriculture, Table 4.2-1 provides that 6,087 acres within the MSCP plan Study Area only 1,901 acres would remain available upon implementation of a proposed MHPA Alternative. Of this amount, only 938 acres would be authorized within the unincorporated areas of the County.

Agricultural production is the fourth largest source of revenues within the County. The impact on agricultural land use by the EIR is woefully understated and based upon both faulty data and faulty analysis. Similar erroneous analyses are anticipated under the "Coastal Sage Scrub" scenario and the "Biologically Preferred" scenario.

It must be noted the EIR states there are no significant land use effects anticipated to be caused by the anticipated loss of agricultural lands. Given the importance and position of agriculture in San Diego County, this conclusion, made with an inadequate method of determining what constitutes Prime Agriculture and based upon a review of Planned land uses, appears to be wholly without merit. See Environmental Planning & Info Council v. County of El Dorado, supra [held: comparing existing general plan with a new general plan, the EIR must address the existing level 93(d)

of actual physical development in the county as the base line for the comparison, not the existing plan]. Under CEQA Guideline 15125(c), a proposed plan must examine existing physical conditions as well as future conditions envisioned by the plan. In other words, the proper base line for an EIR's analysis of environmental impacts is existing physical conditions.

Volume I, Chapter 6, of the MSCP Plan proposes constraints to existing agricultural operations, in its provision addressing Incidental Take Authorization for Ongoing Agricultural Activities (Volume 1, page 6-3). This provision does not propose authorization for incidental take protection for ongoing agricultural activities but merely notes that it may be "supported."

The EIR contends on page 4.2-83 that the MSCP Plan "would minimize impacts of the program on existing agricultural operations.". It goes on to note "Due to the flexibility incorporated in the MSCP Plan it is not anticipated that implementation of the preserve would adversely affect existing agricultural operations."

Unfortunately, this statement is inconsistent with and unsupported by the draft MSCP's policies regarding agricultural uses within and adjacent to the preserve. Contrary to the "conclusion" of the EIR the actual language of Chapter 6 notes with respect to "Incidental Take Provisions for Ongoing Agricultural Activities," [t]he implementing agreements and/or implementing regulations should address this incidental take provision, define which ongoing active farming operations will be eligible to receive take authorizations (grazing activities are not eligible for this take provision). provide a map of lands subject to this provision and define the permitting mechanism." (Emphasis added.)

In other words, the MSCP proposal is that all ongoing agricultural activities must be the subject of a written contract, i.e., an implementing agreement defining what farming operations will be eligible to receive take authorization (i.e., review the more than 200 types of agricultural operations in San Diego County) and provisions defining where existing agricultural operations must seek and obtain a permit.

These provisions cannot be implemented without environmental analyses of both the farming practices and biological survey of areas seeking incidental take authorization. The administrative burden created by the regulations cannot be fairly characterized as "minimizing the impacts of the 93(d)

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93(d)

program on existing agricultural operations." The MSCP literally proposes the individual permitting of all existing agricultural operations.

Similarly speaking, the proposed "Safe Harbor Provision," contained in Chapter 6 of the draft MSCP does not and should not be viewed as giving comfort to existing agriculture. It merely notes that a safe harbor provision could be the topic of an agreement to be negotiated on a "case-by-case" basis. 93(e)

2. The EIR assumes that there will be an effective secondary impact or "displacement" of land uses within the MSCP planning area. As development within areas slated for preservation of natural resources occurs, pressure will be placed upon agricultural lands under any of the project alternatives discussed to convert to residential or commercial uses. This pressure will be exacerbated by the fact that some types of farmlands may be drained of natural resources. This secondary impact of the approval of the MSCP plan is neither discussed nor considered, although the anticipated affect of the MSCP, namely a shifting of land uses from one area to the other in reaction to a shortage of land for development, is anticipated. There is no analysis of the magnitude of land use changes in the plan area. Any analysis therefore of the magnitude environmental effects of the shift in land uses is rendered nearly impossible. An EIR must address indirect, as well as direct, environmental impacts that are likely to result from a project in both the short term and the long term. CEQA Guideline 15126(a); El Dorado Union High School District v. City of Placerville (1983) 144 Cal.App.3d 123. The pressure for increased development outside of areas slated for preservation is a reasonably foreseeable consequence of the MSCP, and therefore must be analyzed. See Laurel Heights Improvement Assn. v. Regents of University of California (1988) 47 Cal.3d 376, 379.

The EIR's discussion of an anticipated shortfall of land necessary to serve a projected residential housing needs does not discuss what other land uses will suffer pressure to convert to residential and commercial use, i.e. will be affected by this secondary or indirect impact.

The EIR highlights the pressure to convert agricultural land into residential uses by noting on page 5-2 that: 93(f)

> "The current SANDAG Series 8 population forecast shows the region growing by 51% by the year 2015. The Series 8 forecast distributes the projected population growth across the region based on the land use and growth policies of each jurisdiction. In the Series 8 model, the existing local jurisdiction land use plans were not able to accommodate the region-wide forecast. The model used to generate the forecast ran out of land planned for urban residential development by the year 2005. In the year 2005, only 14,000 vacant urban residential acres would remain in the region . . . since land is a finite resource, removing development potential from the MSCP Study Area would shrink the supply, possibly accelerating the time when developable land is exhausted." [Emphasis added]

93(f)

This statement makes the case that there will be pressure upon agricultural land to convert to other land uses, especially since agricultural land is generally already cleared of natural resources, with attendant other impacts occasioned by the shifting and land use designations.

3. The MSCP plan and EIR assume without any factual substantiation whatsoever that certain types of agricultural activities, including without limitation, grazing, are potentially incompatible uses with an MSCP preserve system.

The EIR has also, without a factual analysis to support its conclusions, stated that the issues giving rise to potential incompatibility of agricultural uses and a preserve will be addressed in subarea plans or preserve management plans, and at the same time concluded that there are no significant impacts on agricultural land uses.

The impact analysis of the EIR ignores the Plan's impact on 69,000 acres of grazing lands within the MHPA.

The EIR on page 4.2-84 argues that the MSCP Plan will have no impacts to these grazing lands, on the theory that no discretionary action is required to permit grazing.

93(g)

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93(g)

This ignores the MSCP's proposed denial of incidental take provision for grazing activities set forth in Chapter 6 of the draft MSCP.

The EIR's conclusion, therefore, that the MSCP, because it does not apply to grazing land will have no impact, ignores the fact that grazing operations will continue to be at risk and subject to potential liability resulting from any inadvertent taking of a covered species.

As noted by the letter from Ms. Marilyn J. Schupp dated October 11, 1996, conveying the EIR comments of the San Diego-Imperial County Cattlemen's Association, grazing activities have existing in San Diego County for in excess of 100 years. Cattle herds in San Diego County are valued at over $14 million, which generate many dollars to the local economy.

The EIR cannot fairly state, therefore, that the MSCP Plan does not have a significant effect on grazing in San Diego County, where it does not continue to authorize this ongoing business as a matter of right.

The MSCP Plan assumes in its prohibition of the granting incidental take protection for grazing activities, that grazing is incompatible with a preserve.

No research or analysis of any type is offered to support this contention, although this regulatory point of view places 69,000 acres of grazing land within the MHPA Area at risk.

Scientific studies, including the analyses that have been prepared by governmental agencies such as the United States Forest Service suggest that grazing can be an appropriate management tool in various types of ecosystems.

The attached paper, from "WildFlower — Journal of the National Wildflower Research Center," provides a good review of the issue.

The EIR's assumption that grazing is incompatible with preserve goals, is unsupported by evidence or analysis, and as such should not stand as an analysis supporting policies which will limit the viability of grazing within the confines of the MSCP Plan.

How can it be determined whether the MSCP will adversely impact agriculture, until it is known what type of agriculture will be allowed and its extent, which is to be deferred to approval of Subarea Plans?

This constitutes a deferral of an important part of the EIR's impact analysis to subarea plans. It also is a failure to identify what type of MSCP Plan requirements or mitigation measures may be deemed necessary, within Subarea Plans to make them consistent with the MSCP Plan. The absence of such analysis or the reliance upon unknown future mitigation measures violates CEQA. See Kings County Farm Bureau v. City of Hanford (1990) 221 Cal.App.3d 692, 727-728. In Sundstrom v. County of Mendocino (1988) 202 Cal.App.3d 296, the court held that the county violated CEQA by approving a project without first resolving uncertainties regarding the project's potential environmental impacts, instead deferring such analysis to a future date. See also, Oro Fino Gold Mining Corp. v. County of El Dorado (1990) 225 Cal.App.3d 872, 884-885. 93(h)

4. The EIR's impact analysis is flawed. It is only supported by conclusions without supporting analyses, with respect to the biological viability of the various preserve options studied. Conclusions are inadequate to support the EIR's findings, with respect to covered species.

The EIR was circulated without the "MSCP 1995 and 1996 Species Evaluations" prepared by the U.S. Fish and Wildlife Service and California Department of Fish and Game, dated September 1996, which apparently contains further data addressing its conclusions regarding the MSCP's anticipated success in preserving covered species. 93(i)

The provisions of the "Species Evaluations" are not incorporated by reference into the text of the EIR in a matter prescribed for by CEQA. Thus, throughout Chapter 3.5 of the EIR, a number of conclusions are offered regarding the Plan's protection of animals and plants but no biological data is cited to support the identification of MSCP's impacts, statements regarding the significance of impacts or statements regarding the adequacy of mitigation.

In particular, Table 4.3-1 is the sole basis for concluding that the MSCP Plan adequately conserves the species listed in the Table, but is totally without supporting data including references to supporting data.

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Similarly, the EIR's discussion with respect to wildlife corridor linkages also fails to demonstrate or even reference biological information sufficient to support the contention that the linkages are of sufficient size and adequate design to serve the needs of various covered species proposed for inclusion on the covered species list. 93(j)

The public at large, as well as Responsible Agencies, such as the County of San Diego, are unable to determine the adequacy of the MSCP Plan for reasons of its incorporation by reference or inclusion of the biological standards and other data necessary for various jurisdictions to consider in deciding whether or not to adopt the MSCP Plan and Subarea Plans. 93(k)

The lack of biological data also renders it difficult, if not impossible, to establish standards for monitoring of the adequacy of the plan in future years, a key requirements of CEQA pursuant to its mitigation monitoring requirements.

Perhaps most notably absent in the EIR, however, is any discussion and/or supporting data, (including references to supporting data) to support the EIR's analysis that the MSCP will adequately mitigate the impact on various covered species through the assemblage of a preserve and protection of the habitat types contained therein for covered species which would otherwise be impacted outside of the boundaries of such a preserve. 93(l)

Thus, the EIR's conclusions that mitigation resulting from the development of a preserve would offset any individual species impacts, including the taking of covered species, whether or not they are listed pursuant to either the California Endangered Species Act or the Federal Endangered Species Act, is wholly lacking support in the document.

The inadequacy of the data set forth to support these contentions of the EIR is in violation of various provisions of CEQA. In Citizens of Goleta Valley v. Santa Barbara (1988) 197 Cal.App.3d 167, the court held that mere reference to other material in an EIR does not give the public sufficient information and does not suffice for consideration of the lead agency of the material. In order to rely on material outside the EIR, the lead agency must notify the public of its intent to rely on said material and the specific information in the other material used to support the decision. CEQA Guideline 15150 sets forth the procedural requirements to incorporate by reference materials not included within the text of the EIR. As stated above, the MSCP EIR fails to incorporate by reference or provide any information whatsoever regarding the conclusion that 93(m)

the MSCP will adequately mitigate the impact on various covered species. Under these circumstances, the lead agency must issue a new notice and recirculate the EIR for comments after it has included the significant information previously omitted. Public Resources Code § 21092.1; CEQA Guideline 15088.5; Laurel Heights Improvement Assn. v. Regents of the University of California (1993) 6 Cal.4th 1112. 93(m)

5. The EIR's conclusions with respect to the adequacy and availability of Program funding, including those which require the acquisition of land and/or its management and maintenance for preserve purposes are speculative, at best due to a lack of defined and committed funding sources. Without an assured funding source, a Section 10(a) permit may not be issued pursuant to federal law. Section 10(a)(1)(B)(ii) includes the requirement that, "the applicant [City of San Diego] will ensure that adequate funding for the Plan will be provided."

CEQA requires that feasible mitigation measures be adopted to mitigate significant environmental effects. Feasible means "capable of being accomplished in a successful manner within a reasonable period of time taking into consideration economic, environmental, legal, social and technological factors" (See, Guideline 15364). In this case, the acquisition of land and/or the acquisition of land for purposes of formation of a preserve and/or acquisition of land to mitigate the impact of takings of covered species outside the preserve does not appear to be "feasible" as required by CEQA.

The EIR stresses the need to fund land acquisition which may range from $338,000,000 to $411,000,000. Conversely, it has identified three types of acquisition funding sources, namely funds advanced by the federal or state government, local funding through one or more debt mechanisms such as open space districts, community facility districts, or special assessment districts and finally the use of mitigation measures or development exactions, as a funding and acquisition approach.

None of the mechanisms set forth above in the EIR are "feasible" as defined and required by CEQA. Nor is the maintenance of the preserve assured as required by federal law for the issuance of a Section 10(a) permit. 93(n)

There have been no contractually binding commitments by either the state or federal government to fund their pro rata share of the land acquisition costs. None are identified in the EIR nor legally committed to by any document referenced in the EIR.

The local funding options are speculative at best. As the EIR notes, any local funding option must, as a matter of policy, be approved by the voters. Voter approval has neither been sought nor obtained. In addition, most if not all of the proposed assessment district or open space maintenance district local funding mechanisms will be adversely affected if not rendered effectively unavailable should Proposition 218 scheduled for consideration on the November 5 General Election, known as "Voter Approval for Local Governmental Taxes Limitations on Fees, Assessments and Charges" be approved. This initiative will constitutionally preclude a spread of assessments where only generalized benefits are realized by the assessed parcels.

Even assuming the local funding land acquisition mechanisms addressed in the EIR would be legally available under Proposition 218, it is clear that Proposition 218 would require an annual affirmative approval to assure continued preserve maintenance funding, which can only be accomplished following extensive annual property owner elections.

The "exaction" method of financing also is infeasible. The EIR discusses the anticipated rate of population growth or consumption of land during the next 20-year period. It is to be noted that even the land that is assumed to be developed was 100% covered with natural resources that had to be mitigated in accordance with mitigation ratios, the absorption in acreage of such land would still be less than that required, during any reasonable time frame to trigger a requirement (development exaction) to acquire land for purposes of preserve formation.

The amount of natural resources which can be anticipated to be consumed by new development projects, over any reasonable period of time considered by the EIR is not enough, to trigger mitigation measures requiring the acquisition of habitat within the preserve, which is anticipated to be acquired through regulatory exactions.

Taken as a whole, the funding mechanisms therefore do not meet the CERA requirements of feasible funding mechanisms calling into question the viability of the MSCP Plan. CERA prescribes. An EIR must demonstrate with substantial evidence the effectiveness of proposed mitigation measures. Public Resources Code §§ 21002, 21100. Absent such evidence to support 93(n)

the conclusion that mitigation measures will be effective, courts will find the EIR inadequate. Sacramento Old City Assn. v. City Council (1991) 229 Cal.App.3d 1011, 1027. In San Franciscans for Reasonable Growth v. City & County of San Francisco (1984) 151 Cal.App.3d 61,79, the court held that the failure to specifically identify a funding mechanism for transit improvements violated CERA. The MSCP EIR's failure to adequately identify feasible funding measures similarly causing to question the validity of the EIR. 93(n)

6. The EIR fails to identify, address and resolve conflicts with the Planning policies of other agencies such as the County of San Diego with respect to the preservation of agricultural land, and policies supporting the continued viability of agriculture.

The EIR merely references a need to potentially change land use designations in various jurisdictions, should the MSCP Plan be approved, on a subarea-by-subarea plan.

93(o)

It provides no specific analysis of the conflicts or inconsistencies of the various adopted plans, such as general plans, applicable to subareas which foster the continued viability of agricultural land uses.

There is neither an analysis of the direct impacts of the inconsistent requirements of the MSCP Plan with respect to such existing land use plans and policies, nor the indirect results of modifying the existing plan provisions.

7. The County of San Diego, in its letter of comments on this EIR/EIS, addressed to the Mayor of the City of San Diego, has also listed a number of concerns, which are attached hereto and incorporated herein by reference, as if set forth fully by the San Diego County Farm Bureau.

As a general recommendation, the Farm Bureau suggests that the City of San Diego and state and federal regulatory agencies, should consider in lieu of the current proposed regulations and treatment of agricultural activities pursuant to the MSCP, the parameters and requirements of the attached H.E.L.P. (Habitat Enhancement Landowner Program). This Program, which is being discussed on a statewide basis, provides some regulatory options which are worthy of consideration in the context of the MSCP as it relates to grazing and agricultural lands. 93(p)

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LUCE, FORWARD, HAMILTON & SCRIPPS LLP

ATTORNEYS AT LAW • FOUNDED 1873

Thank you for the opportunity to comment on this EIR/EIS. The San Diego Farm Bureau requests a written notification of any and all other proceedings being undertaken with respect to this MSCP EIR/EIS and Plan and Program to the San Diego County Farm Bureau, care of Mr. Eric Anderson, 1670 East Valley Parkway, Escondido, California 92027, and Mr. Craig K. Beam. Luce, Forward, Hamilton & Scripps, LLP, 600 Broadway, Suite 2600, San Diego, California 92101. 93(q)

Very truly yours,

Craig K. Beam

Craig K. Beam
for
Luce, Forward, Hamilton & Scripps LLP

/s/

Eric Anderson
President
San Diego County Farm Bureau

CKB:tlg
Enclosures
cc: Ms. Judy Fowler (with enclosures)

94 A. D. HAYNIE, LATHAM AND WATKINS, 10/29/96

R **94(a)** We agree with the commenter that once the landowner/developer is obliged to provide specific mitigation for a proposed development project, the landowner/developer should be assured that the mitigation will not be subsequently modified. Section 17.1.A has therefore been revised to provide that Third Party Beneficiary status shall attach to a landowner/developer once the local jurisdiction has determined the mitigation required for the impacts of a particular project on biological resources; and the mitigation has been imposed through a condition of development, (e.g., development agreement, tentative map, etc.) which is recorded and runs with the land and is enforceable and binding upon the landowner/developer or any successor in interest.

Section 17.1.A has also been revised to require, as a condition of attaining Third Party Beneficiary status, that the landowner/developer maintain the biological values of the lands committed for mitigation during the period between the time Third Party Beneficiary status is attained and the mitigation is satisfied in accordance with Section 17.1.D.

In order to insure that development and development-related activities such as grading do not begin before the mitigation is satisfied or has been guaranteed, Section 17 has been revised to clarify that the mitigation obligation must be satisfied through conveyance of a conservation easement, fee title, etc., or guaranteed through an irrevocable offer of dedication, letter of credit, pledged savings account, mitigation bond or other equivalent guarantee securing in full the mitigation obligation, at the time a grading or grubbing permit is issued for the approved development project. Where a guarantee is provided, the local jurisdiction shall establish a deadline for satisfaction of the mitigation obligation. That deadline may not exceed one year from the date a permit for grading or grubbing is issued.

We further agree that it is appropriate to provide a landowner/developer with the flexibility to attain Third Party Beneficiary status for all phases of a multi-phase project by committing to satisfy the mitigation required for an entire project (provided sufficient information about its impacts to covered species are known), or, incrementally, as development approvals are granted for specific phases of the multi-phase project. In order for Third Party Beneficiary status to attach incrementally to a discrete phase of a multi-phase project, the mitigation must not be functionally dependent, in the context of the MSCP Plan and subarea plan, on the mitigation to be provided for subsequent phases of the project. Section 17.1.A. has been revised to clarify this option.

Finally, a new Subsection B has been added to clarify that once a project has been approved, subsequent modifications to the project which increase or substantially alter impacts to biological resources will result in a loss of Third Party Beneficiary status as will a failure on the part of the Third Party Beneficiary to maintain the biological values of the land committed for mitigation.

Section 17 of the City of San Diego and Model IAs have been revised as follows:

** 17.0 THIRD PARTY BENEFICIARIES

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

A. Creation of Third Party Beneficiary Status. The creation of Third Party Beneficiary status shall occur during [**LOCAL JURISDICTION's**] permitting process at the point in time when (1) review of the project's impacts on biological resources and a determination of necessary mitigation has occurred in compliance with Section 10 of this Agreement (i.e., certification of the CEQA environmental document), 2) the determined mitigation includes an immediately-effective requirement to maintain the biological values of the land committed for mitigation, and 3) the mitigation has been imposed through a condition of development (such as a development agreement or a tentative map condition), that is recorded and runs with the land and is enforceable against and binding upon the Third Party Beneficiary and any successor in interest to the Third Party Beneficiary. Third Party Beneficiary status may be attained for a project as a whole or, for a discrete phase(s) of a project, so long as the mitigation for the discrete phase(s) is not functionally dependent in the context of the MSCP Plan and Subarea Plan upon the mitigation proposed for subsequent phases.

B. Maintenance of Third Party Beneficiary Status. Third Party Beneficiary status will remain in effect unless, prior to the issuance of a take authorization in accordance with paragraph D, below, the Third Party Beneficiary alters the project in a manner that increases or substantially alters impacts to biological resources evaluated pursuant to Paragraph A, above or fails to maintain the biological values of the land committed for mitigation pursuant to Paragraph A, above. In such circumstance, the Third Party Beneficiary status is automatically extinguished, and the subsequent creation of Third Party Beneficiary status will require biological review and imposition of mitigation for the increased or altered impacts pursuant to paragraph A.

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

D. Authorization for Take Conferred By Local Jurisdiction To Third Party Beneficiary. The authorization for Incidental Take approved by [**LOCAL JURISDICTION**] to the Third

Party Beneficiary shall be for the length of time and run concurrent with the specific land development approval granted by [**LOCAL JURISDICTION**]. However, no grading or grubbing activities may be commenced by the Third Party Beneficiary pursuant to [**LOCAL JURISDICTION'S**] development approval, until the mitigation established pursuant to paragraph A above has been fully satisfied (via conservation easement, transfer of fee title, etc.) or is guaranteed (via irrevocable offer of dedication, mitigation bond, letter of credit, pledged savings account or other equivalent mechanism) to occur within a timeframe approved by [**LOCAL JURISDICTION**], which timeframe shall not under any circumstance exceed one year from the date the permit for grading or grubbing is issued.

Consistent with the above revisions to Section 17, the definition of Third Party Beneficiary in Section 2.33 will be revised to provide as follows:

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

94(b) Note #C21 has been revised to include a reference to an "average 400 - 500 " which is consistent with the approved plans. The other suggested deletions have been made and are included as revisions to the City of San Diego Subarea Plan.

94(c) In many cases it is difficult to distinguish between non-native grassland and agricultural land as part of aerial photo interpretation mapping efforts. We agree that some agricultural lands may have been mapped as grassland and vice-versa. However, it is important to note that both grasslands and agricultural lands may serve similar habitat functions, either as foraging areas or as linkages, and therefore may be important to preserve design. The BMR Project has the legal right to develop under an approved development agreement, Vesting Tentative Map and associated permits. The mapping discrepancies will not affect the rights and development potential of the project.

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LATHAM & WATKINS

ATTORNEYS AT LAW
701 "B" STREET, SUITE 2100
SAN DIEGO, CALIFORNIA 92101-8197
TELEPHONE (619) 236-1234
FAX (619) 696-7419

PAUL R. WATKINS (1899-1973)
DANA LATHAM (1898-1974)

CHICAGO OFFICE
SEARS TOWER, SUITE 5800
CHICAGO, ILLINOIS 60606
TELEPHONE (312) 876-7700
FAX (312) 993-9767

LONDON OFFICE
ONE ANGEL COURT
LONDON EC2R 7HJ ENGLAND
TELEPHONE + 44-171 374 4444
FAX + 44-171-374 4460

LOS ANGELES OFFICE
633 WEST FIFTH STREET, SUITE 4000
LOS ANGELES, CALIFORNIA 90071-2007
TELEPHONE (213) 485-1234
FAX (213) 891-8763

MOSCOW OFFICE
113/1 LENINSKY PROSPECT, SUITE C700
MOSCOW, RUSSIA 117198
TELEPHONE + 7-503 956-5555
FAX + 7-503 956-5550

NEW JERSEY OFFICE
ONE NEWARK CENTER
NEWARK, NEW JERSEY 07101-3174
TELEPHONE (201) 639-1234
FAX (201) 639-7298

NEW YORK OFFICE
885 THIRD AVENUE, SUITE 1000
NEW YORK, NEW YORK 10022-4802
TELEPHONE (212) 906-1200
FAX (212) 751-4864

ORANGE COUNTY OFFICE
650 TOWN CENTER DRIVE, SUITE 2000
COSTA MESA, CALIFORNIA 92626-1925
TELEPHONE (714) 540-1235
FAX (714) 755-8290

SAN FRANCISCO OFFICE
505 MONTGOMERY STREET, SUITE 1900
SAN FRANCISCO, CALIFORNIA 94111-2562
TELEPHONE (415) 391-0600
FAX (415) 395-8095

WASHINGTON, D.C. OFFICE
1001 PENNSYLVANIA AVE., N.W., SUITE 1300
WASHINGTON, D.C. 20004-2505
TELEPHONE (202) 637-2200
FAX (202) 637-2201

October 29, 1996

Mr. Lawrence C. Monserrate
City of San Diego
Development Services Department
Land Development Review Division
1222 First Avenue, Mail Station 501
San Diego, California 92101

Re: Comments to MSCP Plan and Draft EIR/EIS

Dear Larry:

We represent the Black Mountain Ranch Project ("BMR Project"), a large master planned community located in the Future Urbanizing Area of the City of San Diego. We have a few specific comments that we would appreciate your considering prior to finalizing the Multiple Species Conservation Program ("MSCP") Plan and the corresponding Draft Environmental Impact Report/Environmental Impact Statement ("Draft EIR/EIS").

1. Draft Implementing Agreement

Section 17.1.C. of the Draft Implementing Agreement should be revised to, at a minimum, allow development agreements to bestow third party beneficiary status on a developer/property owner. The following modification is recommended:

> 7.1.C Following approval by the CITY OF SAN DIEGO of any project or activity by a Third Party Beneficiary in accordance with Section 10 of this Agreement and following receipt by the CITY OF SAN DIEGO from the Third Party Beneficiary of assurance (e.g. a mitigation bond, development agreement, or other

94(a)

acceptable documentation) that the Third Party Beneficiary will provide all mitigation related to [continue without changes]. 94(a)

(2) City of San Diego Subarea Plan and Draft EIR/EIS

Item C21 on page 26 of the City of San Diego's Subarea Plan and on page 4.3-93 in the Draft EIR/EIS should be changed as follows:

> C21. The La Jolla Valley area (Lusardi Creek) will be enhanced and restored into a fully functional native riparian corridor and maintained at an average 400 ~~500 feet~~ foot width. The Black Mountain Ranch Project shall preserve the average 400 foot wide corridor and restore approximately 12 acres as required in the approved development plans. ~~along its entire length as part of the Black Mountain Ranch Project. In the event that this project does not proceed, if any other land use is allowed, then the wildlife corridor must be widened to 1000 feet and restoration plans included in any future development project.~~

This revision would clarify that the requirement is for a 400 foot wide corridor of which the BMR Project is responsible for the restoration of approximately 12 acres. The remaining acreage in the corridor will be available to others parties that may want to restore it as part of their individual off-site mitigation needs. This change would be consistent with the BMR Project's approved development plans and project-related environmental documentation, both of which concluded that a 400 foot width achieves the necessary biological resources preservation and mitigation consistent with the MSCP Plan and limits the BMR Project's responsibility to restore only 12 acres of riparian habitat within the corridor. 94(b)

This revision would further clarify that there is no need for increasing the corridor from 400 feet to 1,000 feet along Lusardi Creek in the event that the BMR Project does not move forward. A 1,000 foot corridor requirement is not supported by the Draft EIR/EIS or the prior environmental documentation approved by the City and state and federal resource agencies for the BMR Project. Moreover, it is our understanding that the state and federal resource agencies have approved a 400 foot wide corridor along Lusardi Creek for the adjacent 4S Ranch development project.

(3.) Draft EIR/EIS - Non-Native Grassland Mapping of BMR Project

The vegetation mapping in the Draft EIR/EIS includes categories of non-native grassland, agricultural, disturbed, and others. The vegetation within the BMR Project is mapped predominantly as non-native grassland. See Figure 3.3-1 of the Draft EIR/EIS. It should be understood that these alleged non-native grasslands have been in active agricultural use since the 94(c)

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94(c)

1880's and were row cropped for tomatoes until the late 1980's. In fact, the land use map in the Draft EIR/EIS indicates that the BMR Project is in predominantly agricultural use. See Figure 3.2-1 of the Draft EIR/EIS.

We presume that the BMR Project has been mapped as non-native grassland because it has been used for cattle grazing since the late 1980's. The reality is that the approved development plans for the BMR Project will result in development of approximately 1,776 acres for mixed uses and conservation of over 2,000 acres as public and private open space. Agricultural use (dry farming) of portions of the property not included in the approved development plans for the BMR Project (approximately 900 acres) will continue into the future. Therefore, the areas not included as conserved open space areas in the approved development plans should not be considered non-native grassland habitat for purposes of habitat planning. We would request, therefore, that Figure 3.3-1 be amended to label the non-conserved areas of the BMR Project as agricultural and/or disturbed lands.

Making the requested change to Figure 3.3-1 and considering the non-conserved portions of the BMR Project as agricultural and/or disturbed lands rather than non-native grasslands is a fair result. The BMR Project will dedicate approximately 1,638 acres of grazing land as permanent open space, which would provide long term, sustainable grassland habitat. This open space exceeds the BMR Project's current development impact area of 1,438 acres and would result in a conservation ratio of 1.1:1 conserved habitat relative to current development area of the BMR Project. Development of areas within the BMR Project designated for future development would still result in a conservation ratio of 0.8:1 for conserved habitat relative to development area. The BMR Project, therefore, has more than mitigated for any potential impacts to non-native grasslands that may result from both current and future development plans.

We appreciate your consideration of these comments. If you have any questions concerning any of the above, please do not hesitate to contact us.

Very truly yours,

Allen D. Haynie

Allen D. Haynie
of LATHAM & WATKINS

cc: Wayne Hill
Gail MacLeod

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95 COLLEEN DIETZEL, THE GREEN STORE, 10/13/96

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95(a) MSCP Plan, Volume I, Section 1.0, Introduction, paragraph two (page 1-1) explains that the historic loss of native vegetation, and the continued threat of extirpation or extinction of many species has prompted local, state and federal agencies along with leaders of business, community and conservation organizations to seek a solution that simultaneously protects biological resources and the economic opportunities of the region. San Diego is often cited as a national model because it is one of the first multi-jurisdictional ecosystem-based planning efforts in the U.S. and it was developed with broad public input.

95(b) The MSCP Plan proposes that funding for habitat acquisition and management be obtained in part from the federal and state governments and in part from a new regional funding program in the MSCP study area. Federal and state funds would be obtained from existing programs for the protection of species and habitats, some of which are described in Section 7.5 of the MSCP Plan, and from other programs which may be established in the future. Alternative sources for a regional funding program are also described in the MSCP Plan, Volume I, Section 7.0. Public acquisition would comprise approximately 16% of the proposed MSCP preserve. This acquisition is intended to improve upon the preserve configuration which would be achieved by utilizing only existing public lands, regulation and future project mitigation.

95(c) When this project began in 1991, the data collected were the most current at that time. This database was updated in 1992, 1993, and again in 1995 for selected species. In 1992, surveys were conducted for selected species in areas covering approximately 33,000 acres. Field inventories of species occurring in more than 300,000 acres of habitat were not feasible given time and monetary constraints. Additional data have been provided during the public comment period. These data are incorporated in the Final EIR/EIS and do not change the analyses or conclusions in the Draft EIR/EIS.

95(d) The MSCP Plan proposes coverage for 85 sensitive species within a regional preserve system. This preserve system would also benefit other rare and common species that reside in southwestern San Diego County through protection of a diversity of vegetation communities in an ecologically sound preserve configuration.

95(e) See **Theme Response VIII, Public Involvement.**

95(f) Comment noted. Please note that the "common good" for this project is not narrowly defined as an "intrinsic good" of natural habitat preservation, but one which equally considers regional economic well-being and preservation of private property rights as well as the assured, continued viability of natural communities.

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DEVELOPMENT SERVICES

THE GREEN STORE
4827 A VOLTAIRE ST.
SAN DIEGO, CA 92107
225-1083

October 13, 1996

John Kovac, Senior Planner
Development and Environmental Planning Division
City of San Diego
1222 First Avenue, 5th Floor
San Diego, California 92101

Dear Mr. Kovac:

This letter is in regards to my comments on the EIR/EIS for the Multiple Species Conservation Program. While I support the concept of the MSCP Plan the current model does not address some serious issues. The following is a list of my concerns and comments that I would like addressed:

1. Why is San Diego County being used as a national model for a comprehensive habitat conservation plan when historically this city has been politically influenced by developers interests which is evident by its poor landuse planning and piecemeal development? 95(a)

2. Where is the money for acquisition and habitat protection? And why are taxpayers having to pay for acquisition of land that enforced zoning laws wouldn't have allowed development on currently? 95(b)

3. Given the magnitude of the project why wasn't more current data used? Why was fragmented data and historical records used instead of taking inventories of all species? 95(c)

4. Protection of only 82 species and those only protected within the preserve is not adequate given the uncertainties of the effects of fire, disease, ozone depletion, global warming, air and water pollution, etc. on plant and animal species. 95(d)

5. The public process for the MSCP Plan was not adequate. The public comment period is too short. The plan is too complicated and not enough was done to involve and educate the public on the seriousness of its implications. For example, the public does not even know that taking of a species means the killing of a species. 95(e)

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In conclusion, those who have been involved in this plan all know the cost of suburban sprawl both to plant and animal species and to humans so I won't go in to it. As an environmental educator I will do my best to inform the public of its implications to them and their children. Its time we put our own self interests aside and do what is best for the common good and for the future generations of this planet. 95(f)

Respectfully,

Colleen Dietzel

Colleen Dietzel

96 SCOTT BARNETT, S.D. CO. TAXPAYERS ASSN., 10/29/96

R **96(a)** Estimated costs of habitat acquisition were prepared by each of the local jurisdictions in which such acquisitions are planned. In addition, prices from recent sales of vacant and unimproved lands throughout the MSCP study area were reviewed for comparison with the jurisdictions' estimates. On average, the estimated prices are conservative and substantially higher than the recorded prices (see MSCP Plan, Volume I, page 7-15).

96(b) In the MSCP Plan, the responsibility for habitat acquisition is shared equally between the federal and state governments on the one hand and the participating local governments on the other, or 13,500 acres each. The federal Anti-Deficiency Act and similar state laws define the extent to which state and federal agencies can commit funding. Taking into consideration these laws and the state and federal ESA's, the assurances expressed in the MSCP Plan, Volume I, Sections 4.2.2 and 7.1, are the appropriate assurances on the part of the state and federal governments. While this is the legal limit of the state and federal assurances, the state and federal governments have already expressed their commitment to carrying out their land preservation commitments. They have already acquired over 2,000 acres of their 13,500 acre commitment. Based on already appropriated funding, they would acquire another 1000 acres by the close of federal fiscal year 1997. This represents over 20 % of their acquisition commitments in less than 3% (1 year of a 30 year commitment) of the time anticipated in the MSCP Plan. Since the enactment of the California Environmental Quality Act (CEQA), lead agencies have had the responsibility to assess the impacts to the environment and require mitigation for significant adverse impacts for projects they approve. The MSCP Plan and subarea plans are designed to fit into the existing process and not only fulfill the requirements of CEQA, but also the requirements of the state and federal Endangered Species Act. This results in significant permit streamlining and would reduce the costs of future development.

The MSCP Plan also states that, if federal/state funding is not provided as committed, the MSCP Plan will be re-evaluated with possible adjustments to take authorization coverage and assurances. It should be noted that federal and state acquisitions would take place over a 30-year period. Initial acquisitions were from local landowners who will be developing other lands they own within the MSCP study area.

It is anticipated that the influx of federal and state funds to San Diego for habitat acquisition would stimulate local economic activity, as described in the EIR/EIS, page 4.6-4S.

96(c) Under the MSCP Plan, federal and state governments would manage habitat lands which they currently own and lands which they acquire with federal and state funds (MSCP Plan, Volume I, page 7-16. Local governments would manage habitat lands which they own and lands which they acquire with funds generated in the region. Under the MSCP Plan, the local jurisdictions which currently manage habitat and open space, at a cost of approximately $1.23 million in 1995, would continue to fund

this level of management in the future. The local jurisdictions will also utilize the regional funding program described in the MSCP Plan to fund management of newly acquired habitat lands.

96(d) As described in the EIR/EIS Section 4.6.3, there is a sufficient supply of vacant, developable land designated for residential use to accommodate forecast growth, even after the conservation targets of the MSCP Plan are met. That is, implementation of the MSCP Plan does not necessarily increase infill development in currently urbanized areas. Where such development does occur in response to market considerations, it is anticipated that such development would mitigate impacts to public services, in accordance with measures established as part of CEQA review and analysis of individual projects.

96(e) Due to a sufficient supply of vacant, developable residential land, the implementation of the MSCP Plan would not necessitate conversion of commercial- and industrial-zoned lands to residential. Although such conversions may occur in response to property owners' requests and market considerations, they would not constrain commercial and industrial development. SANDAG's Series 8 Regional Growth Forecasts indicate that there is over 9,000 acres of vacant and developable commercial- and industrial-zoned land in excess of that needed to support future commercial and industrial development in the MSCP study area through the year 2015.

96(f) The economic impact of costs per household and costs per acre of commercial or industrial property should be considered in conjunction with the potential economic impact of the MSCP Plan as a whole. The latter impact is discussed in the EIR/EIS Section 4.6.3. In general, it is anticipated that implementation of the MSCP Plan would facilitate approvals of business expansion plans, reduce delays in the environmental review process, and reduce compliance and carrying costs, contributing to a more secure and less costly business environment and improving the region's ability to retain companies and attract investment. The influx of federal and state funds to the San Diego region would also stimulate local economic activity. The positive economic impacts of plan implementation would be reflected in higher property values and aggregate regional income.

96(g) Implementation of the MSCP Plan may contribute to an increase in the price of land located outside the MHPA. However, the increase may be offset by other effects of the program, such as reduced environmental mitigation costs, lower carrying costs, and speedier approval of development projects. In addition, the MSCP Plan's effect on land values will be much less than the effects of other factors, such as the rate of growth in the region and local land use regulation. Please see also the earlier responses to Comments 96(d) and 96(f) on economic impact .

96(h) For property acquired by the public from a private owner, tax value would be reduced to zero. However, this acquisition would occur as part of the overall implementation of the MSCP Plan, which would facilitate development outside the MHPA. Since the increase in tax base resulting from

facilitated development would exceed the price of habitat land, the net effect would be to increase the region's aggregate property tax base and revenue.

96(i) Planning for the two other regional habitat conservation programs in San Diego County (Multiple Habitat Conservation Program in north San Diego County and Multiple Habitat Conservation and Open Space Program in east San Diego County) is currently underway, but they have not estimated funding needs for acquisition or management. In the absence of this information, it is not possible to evaluate the combined funding needs of the MSCP and the other regional programs. With respect to local funding, however, the MSCP financing plan is based solely on projected revenues from sources within the County.

96(j) The MSCP Plan does not require farm lands to be removed from production and provides incidental take for on-going agricultural activities to encourage their retention. The conversion of agricultural lands to development is primarily influenced by market forces which are not associated with the MSCP Plan. Approximately 1,800 acres of agricultural land (located in the City of San Diego subarea) are targeted for future conservation, in part to meet the configuration needs of the preserve. It is assumed that existing agricultural uses will continue on these lands.

As in the case of public habitat acquisition, the tax values of habitat lands would likely be reduced to zero when they are conserved, but this reduction in tax base would be more than offset by the increase in tax base from future development that is facilitated by implementation of the MSCP Plan.

96(k) No modification of existing roadways is required by subarea plans and new roads will be constructed consistent with the MSCP Plan and subarea plans. Construction of roads consistent with the MSCP Plan and subarea plans is not expected to increase construction costs since most new roads are already being designed and constructed consistent with the requirements which were incorporated in the MSCP Plan and subarea plans. The MSCP Plan does not change existing local road/traffic standards for new projects. The MSCP preserve design does not preclude the construction of needed roads, although the elimination of some development areas will result in some roads not being constructed thereby reducing infrastructure maintenance costs. No increase in public infrastructure cost has been identified as a result of MSCP Plan implementation. The issuance of take authorizations based on the MSCP Plan and subarea plans is intended to preclude construction delays (including job reductions which could be associated with construction delays) that may be associated with the current project-by-project compliance with the state and federal ESAs. The process for construction of needed public projects will be streamlined by the MSCP Plan, thereby reducing costs to the taxpayers while conserving jobs.

96(l) The Public Lands alternative was previously evaluated and it did not provide for conservation of key species, including the California gnatcatcher. As a result, the Public Lands alternative

does not achieve the goals of the MSCP program since it would not lead to the issuance of take authorizations for key species.

96(m) Please see **Theme Response IV, MSCP Financing Plan: Regional Source of Funds.**

96(n) Lack of public funding for the MSCP would not affect project proponents with development permits in the study area. The MSCP Plan and the Implementing Agreement contain provisions for the review of subarea plan implementation and remedies that may become necessary in case public funding is not available in a timely manner. Lack of funding by itself is not a cause for the revocation or suspension of the Implementing Agreement. Even in the event of such revocation or suspension, the agreement contains assurances to proponents of projects which have received permits under the MSCP and which are in compliance with the terms of the permit and mitigation requirements.

Developers/landowners who become Third Party Beneficiaries to the local jurisdiction's take authorization would continue to receive the benefits of the take authorization even if subsequently the local jurisdiction's take authorizations were suspended or revoked. The consequences of a shortfall in the local funding source are addressed in MSCP Plan Section 7.1 and are further defined in the model implementing agreement. The consequences of a state and federal funding shortfall are addressed in Section 15.3 of the model implementing agreement.

San Diego County Taxpayers Association

1010 Second Avenue, Suite 100-B • San Diego, CA 92101 • (619) 234-6423 FAX (619) 234-7403

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October 29, 1996

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DEVELOPMENT SERVICES

Mr. John Kovac
Ms. Mary Ladiana
City of San Diego
Land Development Review Division
1222 First Ave, Fifth Floor
San Diego, CA 92101

RE: Questions on the MSCP Environmental Impact Report & Environmental Impact Statement.

Dear Mr. Kovac and Ms. Ladiana:

The San Diego County Taxpayers Association has the following questions regarding the proposed MSCP:

-Land Valuation:

We continue to have concerns regarding the accuracy of land valuation figures. Would it not be best to identify representative distribution of land types and locations to be included in the MSCP and value that distribution specifically? **96(a)**

-Federal/State Funding:

The original MSCP plan estimated that the Federal and State governments would purchase 19,100 acres of land for the high acquisition scenario, which is now revised to 13,500. This reduction implies that the Federal and State governments will purchase 50% of the land. Given current and funding availability, and competition for habitat funds across the country, is it realistic to assume that half of the acquisition will be financed with non local funding sources? **96(b)**

What funding will be utilized if the Federal and State funds do not materialize?

What will be the impact of the influx of State and Federal dollars into the region? Will such funds stay in the County as originally suggested, or more likely, will they transfer into other investments which do not stimulate the economy because of their passive nature?

-Maintenance & Management:

What sources of funding have been identified to cover the maintenance and management costs (approximately $45/acre ?) of the proposed preserve? If a voter approved local funding source is to be used then at what point in the process will voter approval be asked for and what funding source will be used for maintenance and management prior to this? **96(c)**

-Economic Impacts

Displaced Development: What will be the impacts of "infilling" residential development on municipal services? How will existing communities accommodate additional needs for schools, police, and fire services? What will be the impact on already overburdened infrastructure (streets, water and sewer) and how will the funds be generated to pay for necessary improvements? 96(d)

If currently zoned commercial and industrial-designated lands are to be converted to residential how will that impact the potential loss of future jobs and tax revenues? 96(e)

What will be the economic impact of the $20-25 per household (estimated by the plan) tax increase to pay for the MSCP ? 96(f)

What will be the economic impact of the estimated $71-78 per acre commercial tax increase ?

What will be the effect upon cost of land and development and allocation of land uses, especially housing? Will not land values increase where development becomes more feasible, thus driving up development costs? 96(g)

Property Tax loss. The Rea and Parker report commissioned by the Taxpayers Association indicates a loss of future property tax revenues of $8.4 million per year. The current MSCP does not address this issue. How will local government make up this loss of revenue and still have funds available to purchase habitat land? 96(h)

If the other proposed habitat conservation plans in the county proceed, how will that effect the availability of funding sources (both local and outside) and what will the economic impacts be? 96(i)

How will the region's economy be impacted by eliminating farm lands from production? 96(j)

-Impacts on proposed roadways

What impact will the proposed subarea plans have on planned road widening and new construction projects? Will mitigation requirements for certain roadways increase the cost of public construction projects? By how much? Will elimination of certain projects result in increased traffic impacts in local communities causing a greater burden and cost to local communities? How will elimination of public projects impact future job loss and related economic activity? 96(k)

-Public Lands Alternative

Could not the goals and objectives of the MSCP be met by primarily utilizing lands already in public ownership and lesson the cost to the taxpayer? 96(l)

-Funding Plan

Does not Federal law require that a local funding plan be in place before approval and implementation of the MSCP? 96(m)

How will the preserve be financed if, the voters turn down a tax increase ?

-Impact on Property Owners

How would property owners subject to the MSCP be impacted if funding (local, state and federal) does not meet expectations? Would property owners have their permits revoked? 96(n)

Thank you for considering the questions we have raised.

Sincerely,

Scott Barnett
Executive Director

97 RODRICK DOSSEY, 10/29/96

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97(a) Comment noted.

97(b) The proposed take authorizations would remain in effect for a period of 50 years, or until termination of the permit or agreement. However, all parties to the agreements recognize that take of a covered species and/or modification of their habitat would be permanent. Therefore, the preservation and maintenance of the habitat provided for under the MSCP Plan would likewise be permanent and extend beyond the 50-year term of the agreement (see section 21.3 of the Model Implementing Agreement). Please see also **Theme Response IV, MSCP Financing Plan: Regional Source of Funds.**

97(c) The data base used to develop the MSCP Plan contains numerous records of species observations based on surveys conducted for the M5CP, for CEQA project reviews, and other purposes. The compilation of these data are shown on Table 3-5 of the MSCP Plan as point observations, polygons, and major populations within the preserve. For several species, the number of individuals is not as important as the protection of adequate amounts of its potential habitat in an ecologically sound preserve configuration. These conclusions are further described in revised MSCP Plan, Volume I, Table 3-5. See also **Theme Response I, Species Analysis Approach.**

97(d) Comment noted.

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DEVELOPMENT SERVICES

Rodrick Dossey
7723 Linda Vista Rd.
San Diego, CA 92111

City of San Diego
Development Services Department
Land Development Review Division
1222 First ave, mail station 501
San Diego, CA 92101

Dear Reviewer,

The MSCP concept of creating a single large permanent reserve for the protection of sensitive species in San Diego and allowing the remainder of San Diego to be developed is the correct approach for endangered species management. I would support such a plan wholeheartedly. Unfortunately the plan proposed in the draft EIR fails to live up to my expectations and I imagine the expectations of much of the public. 97(a)

The portion of the MSCP concept allowing much of San Diego to be developed is the only part of the MSCP concept still intact with the plan. The other two parts of the MSCP concept, creating a large permanent reserve and protecting the sensitive species, have both been compromised to the point I cannot support the plan.

A large permanent reserve seems incompatible with the plans duration of fifty years, while lengthy it isn't permanent. It doesn't seem compatible with some subarea plans allowing development of up to %25 of the parcels within the reserve. Furthermore there is no guarantee that there are sufficient funds to acquire the necessary parcels to complete the preserve as envisioned. There are promises that key corridors and parcels which are intended for development will be targeted first. These will also be the most expensive parcels to obtain, when there is no permanent funding mechanism yet established. This compromises the ability of the plan to establish a large enough preserve system to deliver the protection promised by the plan. 97(b)

The second part of the concept, protection of sensitive species, also is affected by the size of the reserve. Further there wasn't any censusing of the sensitive species to determine the populations size or even if the populations were still there and intact. Without knowing something as basic as how many individuals exist how can the document say they are adequately protected? Additionally the methodology for determining if a sensitive species was covered or not seems very unscientific. For example the gnatcatcher was at high risk under the analysis, yet it has been listed as a covered species. That is only one example of many inconsistencies within the document in how it determined if a species was protected or not. This falls short of.the type of long term planning needed to protect those sensitive species if large parts of their populations would be destroyed. 97(c)

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The MSCP concept has been proposed as a model for our nation, yet the plan as it stands currently fails to assure two out of the three expectations fundamental to the MSCP. It would be unfortunate if it is approved as written. These issues I believe can all be corrected. If they aren't we will have done a disservice to the people of San Diego. Rather than creating a model for endangered species management for the nation of which San Diegans can be proud, we'll have created simply a park. 97(d)

Sincerely

Rodrick Dossey
Concerned Citizen of San Diego

98 ALLISON ROLFE, SW CTR. FOR BIO. DIVERSITY, [RECEIVED] 10/29/96

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98(a) Implementation of the MSCP Plan goes far beyond traditional Habitat Conservation Plans which focus on mitigation for adverse impacts to listed species. The MSCP Plan was developed to conserve a functioning ecosystem through the conservation of all vegetation communities in an appropriate configuration and quantity. As a result, the assembly of the MSCP preserve requires the equitable sharing of responsibilities for its creation. The preserve will be assembled through mitigation and land dedication for new development, dedication and acquisition by the local jurisdictions, and dedication and acquisition by the state and federal governments. This sharing of the burden to create ecosystem based preserve (rather than a project mitigation based preserve) has been fundamental in the process.

98(b) The MSCP Plan was developed as a habitat based plan which provides for the conservation of the ecosystem and its function in the areas subject to the plan. The MHPA for the MSCP has been analyzed on a species-by-species basis and the conservation levels for each species are calculated and presented in the revised Table 3-5 included in the Revisions to the MSCP Plan, Volume I, January 1997. Information from the MSCP Plan, Volume I, Sections 2, 3 and the data and information referenced in the MSCP Plan and Draft EIR/EIS regarding species conservation and conditions is presented in the revised Table 3-5. The adoption of the MSCP Plan, subarea plans and issuance of take authorizations does not exempt jurisdictions and developers from compliance with the ESAs, but rather provides the mechanism for compliance with the ESAs for covered species.

98(c) It is acknowledged that the MSCP Plan and associated Draft EIR/EIS are complex projects that require time and attention to review and understand. The City of San Diego Subarea Plan and Model Implementing Agreement were included in the MSCP Plan documentation distributed for public review. The referenced species evaluation forms that were available after the Draft EIR/EIS were distributed for public review do not represent new information. These forms, compiled in a document dated September 23, 1996, simply represent a compilation of documentation listed on pages 4.3-2 and 4.3-3 of the Draft EIR/EIS, all of which were available for review at public libraries throughout the San Diego area and at the local offices of the wildlife agencies at the time the Draft EIR/EIS was distributed for public review. In response to a variety of comments, the public review period for the Draft EIR/EIS was extended form October 15, 1995 to October 29, 1996. Please refer also to **Theme Responses VIII , Public Involvement, and XV, Document Organization.**

98(d) See **Theme Response I, Species Analysis Approach** and revised Table 3-5 incorporated in the Revisions to the MSCP Plan, January 1997.

98(e) The take authorizations authorized in the internal biological opinion was relevant only to the interim provisions of the Section 4(d) Special Rule for the gnatcatcher, which provided for a maximum 5% loss of coastal sage scrub habitat while long-term NCCP plans were developed. The take

authorized under the MSCP Plan, therefore, is not constrained by that cap, except to the extent that previously authorized take would be considered in the baseline information in the forthcoming internal biological opinion on the proposed issuance of take authorizations permits under the MSCP Plan.

98(f) Each subarea plan includes specific conservation requirements by vegetation community (e.g., Table 3-1 of the MSCP Plan, Volume I). The Implementing Agreements require each take authorization holder to maintain records and report annually on the amount and location of habitat authorized for development and conserved by vegetation community. The wildlife agencies will review the local jurisdictions reports and verify compliance with the requirement that conservation be in rough step with development. See also **Theme Responses X, Habitat Conservation Accounting Model and XIV, Biological Monitoring.**

The wildlife agencies will coordinate the biological monitoring of the preserve. Biological data will be collected in conformance with the MSCP Biological Monitoring Plan that has been provided by the wildlife agencies. This biological monitoring plan establishes an array of sampling stations for landscape-level monitoring of vegetation community trends; species-specific vegetation monitoring; monitoring of wildlife corridors; coastal sage scrub-dependent bird and mammal monitoring; grassland raptor monitoring; and general and focused herptofauna monitoring. Monitoring sites were chosen to focus on reported occurrence areas or higher quality habitat areas that may support covered species. Biological data will be analyzed and used to support actions to be undertaken as part of the adaptive management process.

The Implementing Agreement (IA) signed by each take authorization holder would require them to meet the MSCP Plan and subarea plan resource conservation objectives. Section 14 of the IA identifies the information collection and reporting requirements and Sections 16 of the IA identifies the process for addressing problems and for enforcing the conditions necessary to correct those problems.

98(g) Prior to issuance of take authorizations permits, the wildlife agencies must prepare an internal biological opinion that assesses the impacts of the proposed action. This document must assess both cumulative future impacts and the current baseline status of each species. The authorized take of wide-ranging species under the MSCP Plan would, therefore, be considered in future permitting programs.

98(h) The biological opinion that would be prepared on the proposed issuance of take authorizations permits for subarea plans under the MSCP Plan must address whether or not the proposed action would destroy or adversely modify designated critical habitat. A biological opinion is currently being prepared for the MSCP Plan and for the City of San Diego Subarea Plan and will address one of the issuance criteria for take authorization. One of the criteria is that the issuance of a take authorization would not appreciably reduce the likelihood of the survival and recovery of the species in the wild. In its biological/conference opinion, the wildlife agencies would use the best available scientific information to evaluate impacts to species covered by the MSCP Plan and to designated critical habitat within the MSCP planning area. In compliance with 16 U.S.C. 1536(a)(2), the wildlife agencies must ensure that issuance

of a take authorization would not likely jeopardize the continued existence of any of the species covered by the MSCP Plan or result in the destruction or adverse modification of designated critical habitat. After the wildlife agencies make its final decision on take authorization issuance, the biological/conference opinion would be available for public review, upon request.

98(i) Section 10(a)(1)(B) of the federal ESA requires that applications for take authorizations of listed species meet five issuance criteria, which are 1) the taking would be incidental; 2) the applicant would, to the maximum extent practicable, minimize and mitigate the impacts of such taking; 3) the applicant would ensure that adequate funding for the plan would be provided; 4) the taking would not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and 5) the measures, if any, required by the U.S. Secretary of the Interior as being necessary or appropriate for the purposes of the plan would be met. The wildlife agencies' biological opinion on the issuance of the Section 10(a)(1)(B) permit would determine whether or not the proposed permit issuance would appreciably reduce the likelihood of survival and recovery of the covered species in the wild.

98(j) Assurances for participating local jurisdictions and Third Party Beneficiaries are based on their contributions to the conservation of species and vegetation communities as specified in the MSCP Plan, Subarea Plan, and Implementing Agreements.

The MSCP program is an ecosystem based conservation program which focuses both on the conservation of the coastal sage scrub ecosystem in the MSCP study area and on the conservation of specific species at a level which meets the standard of FESA, CESA and the NCCP Act. The MSCP Plan conserves habitat for all of the proposed covered species. The term conservation encompasses the concepts of restoration, protection and enhancement, all of which are components of the MSCP Plan. The implementation of the MSCP will benefit covered species in that it will permanently conserve (and provide for management) over 171,000 acres of diverse vegetation communities (in an linked preserve system). There is a "net benefit" to the species over the existing conditions.

The MSCP Plan will support the issuance of "take" or management authorizations under the NCCP Act (California Fish and Game Code Section 2800 et seq.). The NCCP finding for authorizing taking of species is that "any identified species whose conservation and management is provided for in a department approved natural community conservation plan." The MSCP provides documentation to establish that the necessary conservation, management, monitoring, and funding are provided to support decisions regarding covered species.

In comparison to the traditional project-by-project mitigation approach, species, vegetation communities and ecosystem health and function will be greatly enhanced under the MSCP. As appropriate, species specific management requirements located in various documents have been aggregated into the revised Table 3-5 in the Revisions to the MSCP Plan, Volume I, January 1997. The implementation of these management measures along with managing the preserves for intended biological benefits is a requirement that is incorporated into the implementing agreements. The biological health and

function of the preserve system will be monitored using the monitoring program developed by the wildlife agencies. The term "insignificant" is defined in response to Comment 39(d). A net benefit finding is not required to issue a management authorization.

98(k) Please see responses to Comments 45(a) and 74(b) through 74(f).

98(l) See **Theme Response XXV, Wetlands Protection.**

98(m) Analysis of best-case and worst-case scenario justifications for covered species and habitats is not a requirement of either CEQA or NEPA. Rather, the analysis of alternative scenarios is properly focused on a range of reasonable alternatives. Please also see **Theme Response I, Species Analysis Approach.**

It should be noted that it is not the purpose of the Draft EIR/EIS to justify the list of species and habitats evaluated for coverage. This evaluation will be made by the wildlife agencies prior to issuance of take authorizations. The Draft EIR/EIS focuses instead on the direct and indirect impacts to species and habitats associated with issuance of take authorizations for the proposed project and alternative scenarios.

98(n) Throughout Section 4.0 of the Draft EIR/EIS, the alternatives are analyzed at the same level of detail as the proposed project. Please refer to Section 4.1 of the EIR/EIS for a description of the analysis approach and **Theme Responses I, Species Analysis Approach and XV, Document Organization.**

98(o) The GIS database was digitized at a scale of 1:24,000 with an expected accuracy of ± 100 feet. Systematic error was not a concern since this error source averages out across the entire MSCP study area. The habitat mapping accuracy was assessed at between 70 to 90% depending on habitat type and patch size. Where directional bias in the database was a potential, conservative approaches in favor of assuming lower levels of conservation for selected areas in question generally prevailed. Overall, worst-case conservation assessments were made in developing the MSCP Plan.

98(p) The jurisdictions and wildlife agencies together determined which parcels in the Biological Core Areas were placed in the MHPA based on a combination of biological sensitivity and land use and economic constraints.

98(q) The goal of the MSCP Plan is to provide a regional preserve system based on contributions from the involved jurisdictions. On their own, many jurisdictions, including the City of Santee would not receive permit coverage for all species that would be covered in the regional plan. The differential among jurisdictions is based on the amount of remaining habitat and its location within the proposed preserve. The City of Santee Subarea Plan provides two alternatives, both of which provide open

space on Fanita Ranch that would contribute towards the viability of the MSCP preserve. Santee has also requested the inclusion of a new alternative that provides for complete protection of Fanita Ranch. Full protection of Fanita Ranch was analyzed under the Biologically Preferred alternative in the EIR/EIS. The wildlife agencies would evaluate these alternatives and determine the number of species that can receive take authorizations based on their subarea plan on its own and the number that would be covered by the MSCP as a regional plan.

98(r) Acreages of maritime succulent scrub, southern maritime chaparral, and oak woodland located outside the proposed MHPA are shown on Table 4.3-4 (page 4.3-49 of the Draft EIR/EIS). Impacts to these habitats were considered to be adequately mitigated by features incorporated in the MSCP Plan and subarea plans and therefore, no overriding findings are needed. Implementation of the MSCP Plan would result in the conservation of 60 percent maritime succulent scrub, 67 percent southern maritime chaparral, and 47 percent of oak woodlands. Impacts to each of these vegetation communities will be mitigated on a project-by-project basis. Most of the impacts to maritime succulent scrub will be from the loss of small patches on Otay Ranch, while the larger blocks of this habitat will be conserved. The City of San Diego will conserve these habitats at the 90% level within its portion of the MHPA.

98(s) In determining whether the impacts to species are significant, both the context and severity of adverse and beneficial impacts are considered. Context includes the status of the species range wide and locally; the importance of the affected population to the recovery and survival of the species; existing and future threats to the species; and the degree to which the MSCP Plan contributes to the species' conservation. Severity includes the duration and intensity of the impact; the degree to which possible effects on the species are highly uncertain or involve unique or unknown risks; the degree to which the action may establish a precedent for future actions with significant effects on the species; and whether the action is related to other actions with individually insignificant but cumulatively significant impacts on the species. An effect that cannot meaningfully be detected, measured, or evaluated relative to the species' status or habitat as a whole was determined to be insignificant and require little to mitigate or minimize the potential take associated with the proposed action. Based on the wide-ranging nature of these species, and the minor role of the MSCP study area in their overall conservation, the wildlife agencies determined that the impacts of the proposed action on these species was insignificant. The extirpation of burrowing owl, golden eagle, northern harrier from the planning region is not anticipated to occur as a result of the MSCP Plan.

98(t) The narrow endemics species list was developed by the wildlife agencies to focus additional conservation measures on plant species which were being evaluated in the MSCP Plan. The criteria they used included: endemism, threat, adequacy of the preserve to ensure their conservation, population levels, autecological factors, and distribution information.

98(u) Please see **Theme Response XXII, Sufficiently/Significant Conserved Vegetation Communities.**

98(v) Please see **Theme Response XXIV, No Surprises.**

98(w) Please see **Theme Response XIII, Ecosystem Based Mitigation ("Out-of-Kind").**

98(x) A participating local jurisdiction's take authorization would remain effective so long as it fulfills its obligations under its implementing agreement. The wildlife agencies have assessed the amount of mitigation versus impacts of take proposed for each species in each jurisdiction. Based on this assessment, each participating local jurisdiction's implementing agreement would have two attachments entitled "Covered Species" and "Covered Species Subject to Take authorizations." The Covered Species list would include those species within the MSCP study area which would be adequately conserved by the MSCP Plan. Covered Species Subject to Take authorizations are those species which are adequately conserved by an individual local jurisdiction's subarea plan (see page 5 of the Model Implementing Agreement). Take authorizations would cover only those covered species determined by the wildlife agencies to be adequately covered by the subarea plan and other approved subarea plans (see page 9 of the Model Implementing Agreement under Phased Implementation). Additions to the latter list from the former would be dependent upon approval of subsequent subarea plans, as described in each subarea plan. Similarly, if one or more local jurisdictions terminates its participation in the MSCP Plan or fails to implement its subarea plan, then this list may be reduced accordingly (see page 9 of the Model Implementing Agreement).

98(y) Page 5-1 of the MSCP Plan cites the April 22, 1996 Guiding Principles developed by Mayor Golding, Secretary Babbitt, and Undersecretary Mantell. These guiding principles provided management direction for preparing the MSCP Plan, subarea plans, and implementing agreements. They in no way preclude the ability to make changes in the MSCP Plan based on public comment. Copies of the guiding principles can be obtained from the City of San Diego, U.S. Fish and Wildlife Service, or the California Department of Fish and Game offices.

98(z) For consistency of analysis it was necessary to provide a "hard line" throughout the City of San Diego Subarea Plan. The City Manager's compromise plan, while not adopted, represents agreement with many Neighborhood 8A property owners, the City and wildlife agencies. The City Manager's compromise plan for Neighborhood 8A was analyzed in the EIR/EIS. Several other biological core areas in the City of San Diego such as Otay Mesa, Black Mountain, and Del Mar Mesa are not proposed for 100% conservation. Prior adopted land use plans were a factor in delineating the proposed preserve boundary. Neighborhood 8A was not treated differently from other properties.

98(aa) The MSCP Plan discusses the establishment of conservation banks as an optional method of habitat conservation (MSCP Plan, Volume I, page 4-17). Regarding the establishment of a conservation bank on public land, the only bank proposed as part of the MSCP Plan is the City of San Diego Cornerstone Lands. Under a proposed conservation bank agreement for the Cornerstone Lands, conservation (mitigation) credits would be sold primarily to public agencies for public project mitigation. Conservation credits may also be sold to private project proponents, but only to the extent that other

privately owned habitats are acquired by the City. Sale of conservation credits to public agencies would not affect the MSCP Plan's estimated need for public acquisition, since the latter excludes habitat purchase for public project mitigation. Sale of conservation credits to private project proponents under the proposed terms of the conservation bank agreement would also not affect the estimated need for public acquisition.

Potential impacts from the sale of conservation credits of future public conservation banks to private project proponents would need to be evaluated on a case-by-case basis and addressed in the applicable conservation bank agreement.

Conservation banks operated by each jurisdiction were taken into consideration in estimating preserve assembly costs. Analysis of the financial implication of specific conservation banks based on operation is beyond the scope of the EIR/EIS.

98(ab) The MSCP Plan conservatively estimates the amount and cost of public acquisition needed to assemble the preserve. For example, the estimated acquisition need of 27,000 acres includes 4,550 acres of habitat lands that may be acquired for project mitigation (MSCP Plan, Volume I, p. 4-6). The estimated acquisition cost is substantially higher than sales prices of recent transactions in unimproved, vacant land (MSCP Plan, Volume I, p. 7-15). Thus, minor variations in mitigation credits are not anticipated to affect the conclusions of the financing analysis.

98(ac) As described on page 1-13 and shown on Table 4.1-1 of the Draft EIR/EIS, the following subarea plans are analyzed in the document: City of Chula Vista, Coronado, City of San Diego, City of Santee, County of San Diego and City of Del Mar. These subarea plans will not receive additional public review. Individual projects within the jurisdictions that prepared subarea plans will, however, be subject to the standard review process of the individual local jurisdiction within which the project is located.

98(ad) The language in Section 13 of the Model Implementing Agreement has been modified to state that for projects that future consultations pursuant to Section 7 of the ESA would be written to be consistent with the requirements of the MSCP Plan and local subarea plans. Please refer to the Revisions to the Model Implementing Agreement, January 1997.

98(ae) Many of the corridors and the preserve design in the western portion of the MSCP study area are below the recommended 1,000 foot width because of previous development approvals. The same is true of the edge issues mentioned. Nearly all of the projects that result in reduced corridor width and created the edges on the maps were approved outside of the MSCP planning process. The MSCP Plan and subarea plans include standards for preserve design and the preservation of linkages which would be enforceable measures both through the implementing agreements and local ordinances. Each project approved subsequent to the approval of the MSCP Plan must be in conformance with the MSCP Plan and appropriate subarea plan and provide the mitigation as specified. The implementing agreement for each jurisdiction would include a list of projects which were previously approved by local jurisdictions

and which would have to obtain take authorizations on their own from the wildlife agencies. Projects in this category would be required to meet the standards for issuance of state and federal take authorizations regardless of any findings of overriding considerations that the local jurisdiction may have made in approving the project. An example of this type of project is the Cal Terraces project on western Otay Mesa.

98(af) Subdivisions in the Metro-Lakeside-Jamul segment of the County Subarea Plan will be evaluated based on the County's Biological Mitigation Ordinance (BMO). The BMO includes requirements for evaluating the biological resources on the property and criteria for determining the significance of a piece of property in regards to assembling a regional preserve system. The BMO also incorporates the mitigation ratios and habitat tiers from the subarea plan which will be used to determine the preservation/mitigation requirements for developing a piece of property.

98(ag) Floodplain mapping is generally done on a localized basis and detailed floodplain mapping is not available for a regional-scale plan such as the proposed MSCP Plan. Lack of inclusion of floodplains within the proposed MHPA would not result in their channelization. Any channelization proposals would be subject to review by the individual jurisdiction within which the project is located, as occurs under existing conditions.

Watersheds within the MSCP study area are mapped and the extent to which watersheds have been included within the MHPA has been quantified. This topic is discussed and illustrated on pages 2-13 through 2-15 of the Draft EIR/EIS.

98(ah) Comment noted. An analysis of the level of conservation of soils which support edaphically restricted plant species has been prepared as a revision to the MSCP Plan, Volume I. Please also refer to the revised language incorporated in the Final EIR/EIS on page 4.3-48.

98(ai) The City of San Diego and Model Implementing Agreements were circulated for public review concurrent with the Draft EIR/EIS since they are integral parts of the MSCP Plan and the City's Subarea Plan. The revised implementing agreements will be in redline-strikeout format.

98(aj) Comments on the City of San Diego's IA can be made through the public hearing process. The revised City of San Diego IA is available for review at public libraries throughout the San Diego area as well as the City of San Diego Metropolitan Wastewater Department, 600 "B" Street, Records Management Room, Sixth Floor, San Diego, CA 92101.

The HCP handbook was prepared by the USFWS' Washington Office as guidance for preparation of HCPs and the associated documents, including implementing agreements. The handbook is still in draft form and is not regulatory, and there is no requirement that there be a finding of consistency between the MSCP Plan implementing agreements and the template provided in the

handbook. The implementing agreements for the MSCP Plan are being developed with the Department of the Interior Solicitors and would be legally binding contracts.

98(ak) The revised City of San Diego IA includes measurable criteria and the findings that the wildlife agencies would make in regards to species coverages, performance standards and the process for suspension or revocation. The wildlife agencies would issue the take authorization for a period of 50 years. It would be inconsistent to issue findings every three years. If participating local jurisdictions are not meeting their obligations at any point in time, the wildlife agencies would take the appropriate corrective action(s).

98(al) The implementing agreements do not differentiate between covered species based on the concepts of insignificant and discountable. Species for which the effects are discountable or insignificant must also meet the issuance standards of the ESA, CESA and the NCCP Act, recognizing that the amount of mitigation required would be commensurate with the level of impact.

98(am) The first sentence of Section 3.2 in the City and Model IAs has been revised as follows to clarify that all of plans provisions are incorporated by reference:

** 3.2 The MSCP Plan and subarea plan and each of their provisions are intended to be and by this reference are incorporated into the implementing agreement. Guidelines which were part of the subarea plan would be incorporated into the implementing agreement.

98(an) The commenter is correct that Section 9.5 accurately states the assurances of the wildlife agencies in the event of unforeseen circumstances. Those assurances include a commitment not to require any additional land, land restrictions or financial compensation from the Participating Local Jurisdiction or Third Party Beneficiaries (Section 9.6.E). The last two paragraphs of Section 6 which discuss the "No Surprises" Policy are unnecessary in light of the specific commitments contained in Section 9 of the IA, and therefore have been deleted from the City of San Diego and Model IAs.

98(ao) A significant change is one that is important and the wildlife agencies will determine if a significant unanticipated change has occurred. See also response to Comment 78(l).

98(ap) Comment noted. See **Theme Response XXIV, No Surprises.**

98(aq) An opportunity for public review and comment will be provided if the take authorizations are amended to add a new species to the list of covered species. Any take authorization amendment would require environmental review under NEPA and CEQA which are subject to legal requirements for public review and comment provided under statute. Additionally, NEPA requires a 30-day notice for federal Section 10(a) permits.

98(ar) Covered species is the appropriate term.

98(as) The list of species in Section 9.7.C.2.f of the City of San Diego IA is a list of species which have been determined to not be dependent one of the sufficiently or significantly conserved vegetation communities and therefore the assurances do not apply to the identified species.

98(at) The IAs, MSCP Plan, and the subarea plans assume that the wildlife agencies will consult with the local jurisdictions regarding individual projects and will make appropriate recommendations. Section 9.8 of the City of San Diego IA simply reflects the wildlife agencies' commitment to make recommendations within the framework of the MSCP Plan and the local jurisdictions' subarea plans. Except where specifically noted otherwise in the plans and IAs, only mitigation measures contemplated in the MSCP Plan or the subarea plans will be required or recommended for projects covered by approved subarea plans. As discussed in response to Comment 78(s), Section 9.8 of the City of San Diego IA has been revised to simplify and clarify its intent. Please refer to that response for the new language included in that section.

98(au) Yes. As outlined in response to Comment 79(s), regarding Section 9.12 of the IA, a substantive modification to the Mitigation Guidelines will trigger a public process. See also **Theme Response X, Habitat Conservation Accounting Model** for a discussion of the method that will be used to assure habitat conservation is occurring in rough step with development.

98(av) See response to Comment 79(x).

98(aw) Comment noted. The approximate acreage figures included in Section 10.2 of the City of San Diego's IA adequately describe the City's preserve implementation obligations under the subarea plan.

98(ax) As stated in Section 10.3 of the City of San Diego's IA, the City agrees to implement the General Preserve Guidelines and Specific Preserve Guidelines. The subarea plan appropriately recognizes that application of certain preserve guidelines may not be feasible in every circumstance.

98(ay) It is beyond the scope of the EIR/EIS to analyze the environmental effects of the City of San Diego's proposed implementing regulations. A separate EIR is being completed for the City's proposed MSCP implementing regulations (Environmentally Sensitive Lands Ordinance [OR-1-2]). The EIR would address changes between the City's existing Resource Protection Ordinance and the proposed ESL and OR-1-2. As currently proposed, the 75% conservation area is not considered mitigation for impacts related to the 25% development area, but is considered a requirement of the OR-1-2 zone and ESL ordinance. Development would be precluded on the 75% non-development area as a condition of the land development permit and/or subdivision map. Narrow endemics and vernal pools would be specifically addressed in the ESL.

The protection of narrow endemic species outside the preserve is addressed in Section 143.0141(h) of the City of San Diego's Environmentally Sensitive Lands Regulations which provides that: "Mitigation for any impacts to narrow endemic species must include translocation of these species into biologically protected open space when biologically feasible in addition to any mitigation identified Section 143.0141(g)." Section 143.0141(g) provides that mitigation may include preservation or dedication of on-site sensitive biological resources which would include those narrow endemic species identified in the MSCP Plan.

The second sentence of Section 10.8.G.3 of the City's IA has been revised as follows by adding a reference to the MSCP Plan and the City's proposed Environmentally Sensitive Land Ordinance:

** 10.8.G.

3. ... For certain species identified as "narrow endemic species," impacts will be avoided to the maximum extent practicable inside the MHPA and additional measures for their protection outside the MHPA shall be required as provided in the Environmentally Sensitive Lands Ordinance and the MSCP Plan.

The MSCP EIR/EIS evaluates the regional MSCP Plan, the City of San Diego's Subarea Plan and the Implementing Agreement. The City's proposed implementing ordinances (ESL) and OR-1-2 zone) are part of the Land Development Code Update project. A separate draft EIR has been prepared for the Code Update project (LDR No. 96-0333/SCH. No. 96081056) which addresses the proposed implementing ordinances. The Code Update Draft EIR is out for public review until February 6, 1997 and may be obtained at the office of Land Development Review Division, 1222 First Avenue, Fifth Floor, San Diego, CA 92101.

Where a project has utilized all of its development area potential, as allowed under the proposed implementing ordinances, then as a condition of permit approval by the City Council, a covenant of easement would be recorded against the title of the property for the remainder area. The covenant would preclude any future development within the remainder area and would run with land. The covenant is required as a condition of permit approval and is not necessarily related to CEQA mitigation.

Section 10.8.G.3 describes preservation requirements for narrow endemics and wetlands, including vernal pools. Further details are also provided in the draft implementing ordinances.

98(az) Comment noted. The U.S. Fish and Wildlife Service disagrees with the commenter's view that USFWS should be able to impose mitigation measures in a Section 7 biological opinion that exceed the mitigation required to be provided under the approved subarea plan involving the same project. Projects that will be subject to mitigation requirements under a subarea plan should not face the prospect of additional mitigation at the recommendation of USFWS simply because a consultation under Section 7 of the ESA will be required as a result of other federal agency involvement in the project.

With the exception of consultations involving Section 404 permits which are separately addressed under Section 9.8.A of the Implementing Agreements, the mitigation recommended by the USFWS pursuant to a Section 7 biological opinion should to the maximum extent appropriate, be consistent with the mitigation that the local jurisdiction will require for the project pursuant to the approved subarea plan, and in no event should the mitigation be greater than what will be required.

However this section of the City and Model IAs will be revised to better clarify the relationship between the biological opinion prepared by USFWS in connection with the issuance of Section 10(a) permits for the MSCP and subarea plans and future biological opinions required under Section 7 of the ESA for actions that are also covered by an approved Subarea Plan:

** 13.1. Section 7 Consultations. To the maximum extent appropriate, in any consultation under Section 7 of the ESA (16 U.S.C. § 1536) involving [**LOCAL JURISDICTION**] and/or an existing or prospective Third Party Beneficiary with regard to Covered Species Subject to Incidental Take, the USFWS shall ensure that the biological opinion issued in connection with the proposed project which is the subject of the consultation is consistent with the biological opinion issued in connection with the MSCP and Subarea Plan provided that the proposed project is consistent with the MSCP Plan and Subarea Plan. Any biological measures included ...CONTINUE WITH PROVISION TO END.

98(ba) See responses to Comments 74(af) through 74(aj).

98(bb) Comment noted. As indicated in response to Comment 78(r), federal and state contributions to the MSCP will be made through various mechanisms and at varying levels throughout the life of the program, with the exception of the federal and state contribution toward habitat acquisition, which will occur during the first thirty years of the program. The implementing mechanisms built into the program are designed to ensure that the preserve system will be established before essential resources disappear. Indeed, among the primary considerations for the wildlife agencies is the value of a parcel to the preserve system and its vulnerability to development.

98(bc) The statement that "additional environmental review" will be required for future subarea plans means that any subarea plan that was not submitted as part of the MSCP Plan and evaluated in the EIR/EIS prepared in connection with the MSCP must undergo separate analysis under the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA).

Under NEPA, such additional environmental review may take the form of an environmental assessment tiered to the EIR/EIS prepared for the MSCP Plan or a separate EIS if the issuance of an incidental take permit would result in significant adverse environmental impacts that were not addressed in the original EIR/EIS on the MSCP Plan. A full opportunity for public review and comment on the NEPA document and the subarea plan would be provided prior to issuance of an incidental take permit under Section 10 of the ESA.

98(bd) After the local jurisdictions have been issued Take Authorizations, the wildlife agencies will not be involved in the review and approval of projects on a project-by-project basis. However, USFWS and CDFG will maintain oversight and monitoring responsibility over implementation of the MSCP Plan and subarea plans and may comment upon individual projects through the normal CEQA process or pursuant to their oversight and monitoring roles. As indicated in response to Comment 79(ap), regarding Section 16.2 of the IAs, the USFWS possesses the regulatory flexibility to fashion appropriate responses to particular permit violations short of suspension of the entire permit.

98(be) Comment noted. The note to Table I in Exhibit I of the City of San Diego IA has been revised to accurately state that "mitigation for wetland impacts must be in kind and achieve no net loss of wetland function and value. The IA has been modified to include Section 404(B) guidelines.

98(bf) The reference to the Resource Protection Ordinance is correct as it is used to describe current regulations that provide for resource protection. A reference to the Environmentally Sensitive Lands Ordinance, which is proposed to replace RPO, has been added to the Draft General Plan Open Space Element amendments.

98(bg) The San Diego City Charter requires compensation to the Water Enterprise Fund for the use, sale or encumbrance of water utilities owned assets for non-water production and watershed management purposes.

98(bh) Should any of the subarea plans be changed significantly from what was analyzed in the EIR/EIS, further environmental review would be necessary. In addition, prior to issuance of a permit, all participating local jurisdictions must submit a permit application and implementing agreement to the wildlife agencies. In accordance with the ESA, the permit application, HCP, and implementing agreement must be made available for a 30-day public review. Thus far, only the City of San Diego has submitted an application, which was published for public review along with the EIR/EIS.

98(bi) Acreage figures in the City of Chula Vista Subarea Plan and the EIR/EIS analysis do not reflect the inclusion of East Orange Avenue or other major infrastructure; however, it is anticipated that these facilities would be constructed as necessary to implement the City's General Plan goals.

98(bj) The intent of the agreement with the Baldwin Company was to improve preserve design on Otay Ranch for the overall benefit of covered species. It is acknowledged that this agreement would result in additional losses of sensitive species and habitats in the area of the barley field, however, these are in areas that are, or are proposed to be, fragmented and surrounded by development. Impacts to the vernal pools south of the proposed Otay resort would require analysis and mitigation pursuant to the Clean Water Act and CEQA.

98(bk) The Otay Ranch project was approved by the County and City of Chula Vista and findings of overriding consideration were made in relation to coastal sage scrub mitigation. The biological preserve design problems associated with this project were commented on extensively by the wildlife agencies during the CEQA process and only a portion of the recommended changes were made. Because of the preserve design issues, the landowners have agreed to modify the project design to be consistent with the goals of the MSCP Plan. These modifications were made to allow the Otay Ranch Project to be covered by the MSCP and subarea plan take authorizations. The modifications to the Otay Ranch Project is a good example of how the MSCP Plan is improving the conservation of species over the existing project-by-project process.

The implementing agreement for each local jurisdiction will include a list of projects which were previously approved by the local jurisdiction and which will have to obtain take authorizations on their own from the wildlife agencies. Projects in this category will be required to meet the standards for issuance of state and federal take authorizations regardless of any findings of overriding considerations that the local jurisdiction may have made in approving the project. An example of this type of project is the Cal Terraces project on western Otay Mesa.

With the issuance of the take authorizations for the MSCP, the local jurisdictions will have the responsibility for the mitigation requirements for all future projects. Their obligation is to only approve projects which are consistent with their subarea plan and which meet the mitigation/ encroachment requirements as specified in their subarea plan and implementing agreement. For MSCP covered species (i.e. species for which the MSCP provide for conservation which meet the state and federal take authorization issuance standards), the mitigation/encroachment requirements in the subarea plan will, on an ecosystem basis, reduce the projects' impacts to less than significant levels.

98(bl) The City of Chula Vista has identified alternative scenarios in its Draft Subarea Plan. These alternatives address a Subarea Plan with a 400-acre and a 288-acre university within the Salt Creek area as well as an alternative with no university in Salt Creek. The Otay Ranch policy language describing the proposed university land use describes a site which locates a university on Villages 9 & 10 (west of Salt Creek), with the potential to locate facilities to the east of, but not within, Salt Creek Canyon (ref. adopted GDP/SRP, 1993). Approval of a final Subarea Plan for the City of Chula Vista would need to adhere to the findings of the EIR/EIS. The City of Chula Vista would be addressing these issues in the context of approving its final Subarea Plan, developing its Implementation Agreement and its approval of the MSCP Plan. See also revised Table 3-5 in the revised MSCP Plan, Volume I, regarding conditions of coverage of gnatcatchers and cactus wren.

98(bm) The EIR/EIS and MSCP Plan include acknowledgment of potential edge effects and the requirements to reduce edge effects to less than significant levels based primarily on project design features.

98(bn) The City of Chula Vista has not adopted policies as of yet which assure that an estimated 75% of minor amendment areas would be conserved. Policies aimed at achieving this level of conservation would be focused within "Minor Amendment Areas with Strong Preserve Potential" (See Subarea Plan Map). Other Minor Amendment Areas include properties which have development potential as well as some preserve potential. These areas are not expected to achieve a level of 75% conservation. The City expects to provide a process by which Minor Amendment Areas can be evaluated on a case-by-case basis consistent with its Implementation Agreement.

98(bo) The City of Chula Vista draft Subarea Plan identifies long-term mineral extraction and mining operations as an incompatible land use; however, existing such operations and/or the expansion of same when temporary, are considered conditionally compatible within the preserve and subject to potential mitigation requirements for impacts.

98(bp) City of Chula Vista development policies discourage development within a 100-year floodplain, with the exception of potential park facilities. The Chula Vista draft Subarea Plan does not reflect any development, other than potential park facilities within the floodplains. No development is proposed within the preserve boundaries of the MSCP Plan.

98(bq) The City of Del Mar's conservation goals are provided in Table 3-1 of Volume I of the MSCP Plan. All of the areas shown as conserved habitat in the subarea plan (Figure 1) are 100% conservation areas. However, the City retains the right to implement lagoon restoration within Area 4 in conformance with the San Dieguito Lagoon Enhancement Program. The subarea sections "Project Design Standards" and "Protection of Resources" apply to habitat lands outside the conservation areas. As projects are proposed, they will have to conform to these standards, which include setbacks from wetlands and minimizing edge impacts to the conserved areas. These complete City standards are included by reference into the subarea plan.

98(br) The location of the preserve lands, including slope, was taken into consideration in the species analyses.

98(bs) The analysis beginning on page 4.3-217 of the Draft EIR/EIS addresses effects of the proposed project on the movement of wildlife species. The broad assumptions used in the analysis are presented on pages 4.3-217 through 4.3-219. As discussed, the analysis focused on the degree to which particular corridors or linkages were incorporated in the proposed MHPA and alternatives.

In addition, some of the Subarea Plans, particularly the City of San Diego Subarea Plan, include recommendations for bridges or culverts in certain locations. Since these features are recommendations and not specific proposals at this time, and since specific design information is not available for these features, the analysis in the Draft EIR/EIS did not depend upon construction of these features. The analysis concludes, however, that such features would generally have beneficial effects when compared with historical types of crossings involving barriers and fills.

98(bt) See revised conditions for coverage of *Ambrosia pumila* in revised Table 3-5 included in the Revisions to the MSCP Plan, Volume I, January 1997.

98(bu) Please see response to Comment 76(al).

98(bv) The acreages for the exclusions have not been deducted from the overall preserve acreage since the acreages for all of the use exclusions are not known (See Note on Table 1) . The exclusions were noted for descriptive purposes only. Future specific projects would be subject to their own environmental documentation including an assessment of biological impacts. Siting of the pipeline would be subject to the siting criteria established for any development within or adjacent to the preserve which requires avoidance of habitat and development in the least sensitive portion of the site (See Section 1.4.2 - Roads and Utilities - Construction and Maintenance Policies). It should be noted that the City of San Diego's Subarea Plan has an overall conservation goal of 90% within the preserve (MHPA). This allows for limited development to occur within the preserve including limited water facilities. The conservation target for public lands within the MHPA is approximately 94%.

98(bw) City brush management requirements apply to all new development within the city regardless of proximity to the proposed preserve. New subdivisions of land are required to accommodate brush management outside of publicly owned open spaces. As proposed brush management Zone 2/3 will be merged and may occur within the proposed preserve. Brush management Zone 1 is considered an impact. Zone 2/3 would not be considered an impact, but would generally be 25–30 feet narrower than the current width of separate Zones 2 and 3.

98(bx) The purpose of the public review period for the proposed issuance of take authorizations is to allow review by all parties interested in the proposed action. We received numerous letters from scientists with knowledge of the biological resources in the San Diego area providing their analysis of the proposed conservation for the covered species.

98(by) The Subarea Plan has been revised to be consistent with the Implementing Agreement and draft ESL regulations regarding impacts to narrow endemics. Outside the preserve, additional measures for their protection such as translocation into the preserve as described in the draft Biology Guidelines (page 17) may be required. The associated mitigation program would require monitoring to ensure the successful translocation of the species.

Please refer to page 7, third paragraph, of the draft Biology Guidelines for a full description of essential public projects. Generally, essential public projects include facilities identified in adopted Community Plans such as major circulation roads, water and sewer lines, schools, and parks etc.

At a minimum, it is expected that "Reasonable Use" is achieved or exceeded through the City's proposed implementing regulations (ESL, OR-1-2) which establishes a base development area of 25% for a parcel. A definition of reasonable use as such does not exist. A legal determination for

reasonable use is a case by case factual determination, established through a court of law. Essential public facilities are facilities identified in an adopted community plan or Capital Improvement Program.

98(bz) If local public funding for implementation of the MSCP is not available, the City and wildlife agencies would evaluate alternative means for satisfying the terms of the Implementing Agreement. Revocation of the permit is one option. As noted in the MSCP Plan, in the event that adequate local funding is not provided, the wildlife agencies and local jurisdictions will develop a strategy to address the shortfall (MSCP Plan, Volume I, page 7-4).

98(ca) Fire management buffers will be determined on a case-by-case basis in conjunction with review of individual projects.

98(cb) The Town Center Specific Plan is an adopted plan. It is beyond the scope of the EIR/EIS to analyze the effects of the Town Center Specific Plan.

98(cc) The analyses included in the Draft EIR/EIS did not assume that features that would be implemented "if feasible" would be implemented. Such features, if they are implemented, would provide a benefit in addition to the assumptions used in the analysis in the Draft EIR/EIS. The Subarea Plan is analyzed as a specific project in the Draft EIR/EIS. The analysis in the Draft EIR/EIS does not address future public or private projects; such projects would be subject to separate environmental review and would need to demonstrate consistency with the guidelines and requirements of the Santee Subarea Plan.

98(cd) Projects within the City of Santee would be subject to overall MSCP Plan policies regarding narrow endemics.

98(ce) The "D" designator is defined in the County Zoning Ordinance and in the approved Santa Fe Valley Specific Plan. Figure 1-2 depicts the area authorized for take and the major and minor amendment areas. Figure 1-3 depicts the dedicated preserve areas. The no-take areas on Figure 1-2 are coterminous with the public land and dedicated open space areas on Figure 1-3. The linkages and core habitat conservation areas are included in the dedicated open space area depicted on Figure 1-3. Within major or minor amendment areas, linkages and conservation areas (as appropriate) will be identified during the amendment process. The evaluations of species coverages was based on the preserve design shown in the MSCP Plan.

98(cf) The maritime succulent scrub which occurs within the County Subarea Plan occurs primarily on Otay Ranch. The areas of preservation are those from the Otay Ranch project. The areas of impact are isolated patches of habitat in the canyons which do not connect to other habitat. The extant southern maritime chaparral within the County subarea is less than 60 acres, most of which occurs in small isolated patches in the Rancho Santa Fe area. These isolated patches are generally existing open space, but since no agreement on their conservation was negotiated as part of the County Subarea Plan, no credit

was taken for their conservation. It is very unlikely that the status of the southern maritime chaparral patches will not change.

98(cg) The park concept plan was analyzed in the EIR/EIS and is included as Figure 2-17 in that document.

98(ch) The open space easement for Rancho Cielo is described on the referenced page. The take of California gnatcatchers on the Rancho Cielo project was previously approved through a Section 4(d) Special Rule interim habitat loss permit issued by the County. The County is currently in process of transferring the density from the area of the temporary easement which will result in a permanent easement. The approved Rancho Cielo project was taken into consideration during the analysis of the preserve design for the MSCP. If a local jurisdiction desires to vacate an open space easement, it will require a new CEQA document, a take authorization amendment, and replacement mitigation.

98(ci) Subsurface infrastructure (pipelines, cables, etc.) rights-of-ways for developments that traverse preserve areas will be revegetated. Larger infrastructure such as circulation element roads will be designed consistent with the project approval and subarea plan including specific design considerations and mitigation. Preserve management plans will include measures to avoid or minimize impacts during operation and maintenance of subsurface infrastructure in the preserve areas.

98(cj) The County Subarea Plan will be modified to indicate that the covered projects in the Lake Hodges segment will continue to be subject to Fish and Game Code Section 1600 et. seq. and Section 404 of the Clean Water Act.

98(ck) Open Space II does include the golf course. It is treated separately from Open Space I. However, the area of natural habitat within Open Space II has been included in the total biological open space associated with the MSCP Plan.

Section 2.8.2(A) of the Subarea Plan will be modified to make it clear that mitigation for temporary impacts within the preserve will be primarily through revegetation and mitigation for permanent impacts through preservation of habitat (acquisition of land or mitigation bank credits) within the Lake Hodges segment that enlarges and enhances the preserve. The acquisition would be from willing sellers. Additionally, Section 2.8.2 of the Subarea Plan will acknowledge that the major and minor amendment process will include specifying the mitigation requirements for biological impacts.

98(cl) The Lusardi Creek corridor varies in width from 400 to over 1,000 feet and its width was taken into consideration as part of the species evaluations. Section 2.8.2 acknowledges that there are opportunities to enhance the Lusardi Creek corridor but this does not imply that the proposed corridor is inadequate. The corridor width is the maximum possible while maintaining the ability of property owners to develop a portion of their property.

98(cm) Section 2.9 of the Subarea Plan states that all projects proposed in the Lake Hodges segment must be in conformance with the Lake Hodges segment of the Subarea Plan. The EIR/EIS analyzed the potential impacts that could occur based on conformance with the Lake Hodges segment of the Subarea Plan. There is no requirement to address the worst and best case scenarios.

98(cn) Individual projects may require revegetation and monitoring. The County requires monitoring, conformance with success criteria that is developed for each project, and assurances (bonding, etc.) That the revegetation is successfully accomplished. Section 2.11 of the Subarea Plan is applicable only to the Lake Hodges segment of the County Subarea Plan. Each jurisdiction which requires revegetation for impacts to biological resources will specify revegetation criteria that are appropriate as part of the project's approval process.

98(co) Loma del Sol is an existing approved project that needed special consideration. The County's draft Biological Mitigation Ordinance and Metro-Lakeside-Jamul segment's goals and criteria will preclude this from occurring in the future.

The Pointe project is currently applying for a Habitat Loss Permit. There will be additional offsite mitigation for this project. The MSCP Plan and subarea plan are designed to mitigate projects to less than significant levels with individual projects contributing their fair share to achieve the overall benefits of the program.

98(cp) Compatible agricultural uses would be located to avoid impacts to any sensitive natural resources. There are some existing agricultural uses within the boundaries of the conceptual park area.

98(cq) Motorized recreational uses may be compatible on public lands (e.g., on existing designated routes on BLM lands) in accordance with appropriate management plans. Economic reasons refer to decisions by the decision making body that may occur after regional analysis and evaluation of the impacts and benefits.

98(cr) The limited development areas for the Otay Ranch project are adjacent to preserve areas and some development areas are surrounded by preserved open space, but the development areas are not included within the Otay Ranch preserve. Limited development areas (e.g., interpretive centers, active recreation areas on disturbed agricultural lands, etc.) may be included in the Otay Ranch open space at a later date. The potential for limited development areas were taken into consideration during the analysis of the MSCP. Most of the exclusion areas have been eliminated from the MHPA except for the limited development areas which are not part of the preserve. Infrastructure facilities (pipelines, etc.) would cross the preserve.

98(cs) Under the terms of the ordinance, an initial biological resource study is performed using appropriate protocols to determine which resources exist on the property. By means of this study,

vegetation communities on the project site are identified and quantified and the presence of a Rare, Narrow Endemic Animal Population, a Sensitive Plant Population, or a Critical Population of Sensitive Plants are determined. The information gathered is used to design the project and determine the mitigation requirements consistent with the BMO, Subarea Plan, and the County's take authorizations.

98(ct) Habitats were grouped by tier because it is the most appropriate method for these calculations since within tier mitigation is allowed.

98(cu) The County park land near Sweetwater Dam is shown as a minor amendment area and is not part of the preserve system. It includes camping and active recreation areas. As an amendment area, it is not part of the preserve, nor is it covered by the take authorizations until a minor amendment is approved.

98(cv) The maps are out of sequence to reduce the amount of paper needed to print the document. Figure 2 is an 8.5 x 11 inch map that could be printed on the backside of the wildlife agency letter and Figure 1 is an 11 x 14 inch foldout map and therefore could not be printed on the back of the wildlife agency letter. Their order in the document does not affect their use. Figure 2 combines into a single color scheme the core and linkages depicted in Figure 2-2 of the MSCP Plan. Figure 1 (Wildlife Agency Preapproved Mitigation Areas) was developed layering the habitat evaluation map (MSCP figure 2-3) and the core and linkage map for the Metro-Lakeside-Jamul area to identify the most appropriate areas for mitigation. Conservation of the preapproved mitigation lands will conserve habitat in the proper amount and configuration to meet the goals and criteria requirements of the Metro-Lakeside-Jamul segment of the County Subarea Plan.

98(cw) It is not possible to specifically determine how many projects fall under exemption 7, but it is probably a very low number if any.

98(cx) The Draft Biological Mitigation Ordinance prepared by the County includes definitions of biological resource core areas. Also see response to Comment 81(y).

98(cy) The draft Subarea Plan detailed the mitigation requirements set forth in the Otay Water District's (OWD) Water Resources Master Plan and Capitol Improvements Program (CIP) for coastal sage scrub and riparian habitats and vernal pools. The mitigation for impacts resulting from the OWD's activities will be avoidance and minimization through construction design, planning and operations. For those unavoidable impacts, the OWD's Habitat Management Area (HMA) on the south side of San Miguel Mountain will be their primary mitigation "bank". The HMA contains 230.5 acres in an area which contributes to long term conservation within the MSCP study area. Approximately 42 acres of coastal sage scrub impacts are anticipated within the first 5 years of the District's CIP to be mitigated at the HMA. This is described within the Otay Water District Subarea Plan.

98(cz) The term "effective population size" was used in error and should be read as "population." This change does not affect the analysis of species for coverage.

98(da) Comment noted.

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Southwest Center for Biological Diversity

4772 Coronado Ave.
San Diego, CA 92107
TEL: 223.9218

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DEVELOPMENT SERVICES

City of San Diego
Development Services Department
LAND DEVELOPMENT REVIEW DIVISION
1222 First Avenue, Mail Station 501
San Diego, CA 92101

RE: Comments Regarding Recirculated Draft Joint EIR/EIS, Issuance of Take Authorizations for Threatened and Endangered Species Due to Urban Growth Within the MSCP Planning Area. LDR No. 93-0287, SCH No. 93121073.

Dear Mr. Kovac and Mr. Kobetich:

Thank you for the opportunity to comment on the Draft MSCP EIR/EIS. On behalf of the Southwest Center for Biological Diversity, I would like to submit the following comments, concerns, and questions.

Introduction

To begin I would like to offer some general comments on the MSCP plan itself, as well as on the content and organization of this letter.

The efforts in San Diego County to attempt regional conservation planning are highly commendable and demonstrate true political leadership. We began with an excellent concept, and operated within the unique political context of this region to make that concept real. Today we are faced with the task of evaluating the product which has evolved in response to a unique set of political circumstances. This is important because the plan for this region, if adopted, may set the wrong precedent for other jurisdictions and the rest of the nation. Regardless of whether we determine that this plan is biologically viable or at least "the best we could get," we are obliged, for the sake of other regions attempting to embark on the HCP process, to comment on the political context from which it evolved. This product, the EIR/EIS, is not neutral or ideal, it is a function of a political reality subject to disparities of power. Some stakeholders have more leverage than others and the plan before us is a product of a series of negotiations between stakeholders leveraging unequal amounts of power. The question that arises then (independent of the functionality of the preserve design) is, have the responsibilities of building the preserve been distributed equally? 98(a)

Phoenix Office
P.O. Box 39362
Phoenix, AZ 85069
TEL: 602.246.4170
FAX: 602.249.2576
E-mail: silver@indirect.com

Tucson Office
P.O. Box 17839
Tucson, AZ 85731
TEL: 520.733.1391
FAX: 520.733.1404
E-mail: swcbd@igc.apc.org

New Mexico Office
P.O. Box 102
Pinos Altos, NM 88053
TEL: 505.388.7832
E-mail: swcbd@igc.apc.org

Conceptually, there are at least two ways to "build a preserve." The first would be, that for every significant impact outside of the preserve area, that impact should be mitigated (in rough proportion to existing regulations) within the designated preserve boundaries instead of in piece-meal locations (often the case with project-by-project planning). The second option would be to transfer density rights out of a preserve area in order to provide for denser development potential in areas away from open space. In both cases the result would be deliberate delineation of open space areas versus development areas. Complete and dense use of areas designated for development allows for other areas to remain totally in open space and therefore avoids the problem of urban sprawl. These two options are indicative of methods that could be employed to plan comprehensively and wisely for an area with increasing population density. They could, on their own, act as significant building blocks for a preserve, absorbing the majority of "costs" for creating a preserve. Put simply, the plan as described in the EIR/EIS costs more than it should monetarily, or in other words, the burdens are not being distributed equitably.

Other jurisdictions and areas attempting HCPs should know that the two fundamental conceptual tools (as described above) for building a preserve were precluded in this region by the existing political context. Specifically, on a project basis mitigation requirements in San Diego are often far less than should be expected because current decisions are made by those who perceive "economic benefits" to be greater than the need to mitigate. This perception is false, however, because these benefits are usually short-term and often cancelled out by the costs incurred in order to provide public services and facilities.

"It is easy enough to make money in the short term while watching the net worth waste away. Such is the road to bankruptcy."

The second conceptual approach to building a preserve (transferring density rights) is also precluded by the dominant political point of view. It is often the case that when a project is approved, zoning code amendments are made as a part of the discretionary decision to approve a project. This type of amendment is just one of many made for a given project and tends to be treated as a ministerial, rubber-stamp decision which it is not. Given that "up-zones" are granted without much thought, developers have come to perceive these actions as entitlements. Contributing nothing in exchange for the privilege to develop at a higher density than would have been permitted under the existing zoning, these types of decisions amount to a windfall for developers. Given this scenario, density has no value and therefore, transfer of rights to it is an ineffective tool for building a preserve.

It is true that these circumstances are not always the case, however, they do seem to be a dominant trend in land use decision-making for the City of San Diego (the jurisdiction to serve as the model for other cities and

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jurisdictions). In light of these trends, it becomes clearer that little leverage exists that can force developers to carry their fair share of the costs incurred by the plan. In the absence of sufficient developer contributions, the preserve will primarily be constructed via purchase (i.e. acquisition costs assumed by the local, state and federal governments) and contribution of land by smaller property owners. 98(a)

". . . the conservation lobby will continue to be fobbed off with areas of low commercial value little threatened by development. . ."

This context, although a minute glimpse into the politics of the region, is important for understanding the fundamental conceptual flaws irrespective of the details of the plan which will ultimately determine biological viability.

Furthermore, conceptually we tend to consider this plan pro-active, which it is, however, pro-active does not mean that we are starting from a position of ideal conditions and avoiding future problems from that point. The plan is pro-active only to the extent that the imminent decline of many species was anticipated and needed to be avoided. For other previously listed species, the plan serves as a minimum effort to prevent their further decline. In a rapidly urbanizing region such as San Diego, concomitant loss of habitat results in the need for a "safety net" approach to species protection. Land-use planning has failed to account for species and their habitats, and in some cases this plan constitutes a last ditch effort. The MSCP should therefore not be used to give blanket assurances that exempt participants from the Endangered Species Act if the plans prove to be inadequate. As George Miller, Committee on Resources, U.S. House of Representatives states:

> "With proper monitoring, such a voluntary conservation program can relieve the burdens of the Endangered Species Act enforcement while providing a broader, ecosystem-based approach to species conservation. Of course, the agreements would have to include specific targets for species abundance. If species continue dangerous declines under the conservation agreement, or other conservation targets are not met, the usual Endangered Species Act mandates would come into play."

Assurances offered to the jurisdictions and third-party beneficiaries should be roughly proportional to the likelihood that they can accomplish what they claim in terms of providing for species conservation. The final EIR/EIS should address the legality of offering assurances to jurisdictions and developers that exempt them from compliance with the ESA in the future based on a plan that has so many unknowns. What are the targets for species abundance with this plan? 98(b)

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This letter will begin by commenting on general concerns related to the compliance of the plan with legal mandates, followed by broader questions relating to the plan itself. I will then raise questions and discuss concerns related to the Implementing Agreement. Subarea Plan specifics will follow. Many issues, concerns and questions should be cross-referenced and lumped together, however in the interest of time, concerns will be raised in the order in which they appear in the relevant document. 98(b)

I would also like to explain that during my involvement in the process many of these questions have been asked and answered. In fact some have been asked many times. If it seems that I am asking simple questions or repeating questions that have been asked in the past, it is only because the answers to these questions are still unclear, and I see this as the opportunity to get a single definitive answer? The number of questions posed in this letter is indicative of the vague nature and complexity of the program and process. It is impossible for the Southwest Center for Biological Diversity, as a conservation organization, to support the plan even though we support the concept, when so many questions remain unanswered.

Conformance with Legal Mandates

✔ Case law regarding NEPA requires that an EIS be able to stand on its own. The number of documents subject to concurrent review for this plan is inexcusably cumbersome. Cross-referencing is a problem because of the number of referenced materials. Some were not readily available (I wasted two afternoons and got a parking ticket trying to get the I.A. and permit application for the City of San Diego) and others were available late (species evaluation forms were available after the Draft EIR/EIS was issued). Given the cumbersome nature of documents and the variable availability and date of issuance, the length of the public comment period was insufficient. 98(c)

✔ Information was provided by the wildlife agencies that defined coverage and evaluated individual target species. It is impossible to determine what criteria was used for determining which target species would be designated as "covered." There is no detectable logic, pattern or consistency. For example some species evaluated as being subject to "high risk" are covered, while others are not. What criteria was used for determining species coverage? The information provided by the species evaluation sheets is interesting and some of the recommendations are excellent, yet it is impossible to determine how that relates to the policy decisions which determined "covered" species. Ultimate determinations regarding coverage are policy decisions made by the regional office. Are these policy decisions consistent with FWS standards, policies and 98(d)

precedents? Are these policy decisions as "arbitrary and capricious" as they appear to be? 98(d)

✔ The basis on which the NCCP rule was finalized for the issuance of 4(d) permits is questionable. The internal consultation for the FWS indicated that the number of California gnatcatchers taken had exceeded what was determined to be permissible. Is this considered in the plan? 98(e)

✔ For high-effect planning efforts, such as the MSCP, a monitoring plan must be included that establishes criteria of program success and procedures for remediation if criteria are not met. Where is this discussed in the plan? 98(f)

✔ For species that overlap more than one FWS Region, there should be coordination with the lead region responsible for the species prior to issuance of the permit to ensure FWS-wide consistency. This means that everyone takes responsibility for ensuring the conservation of the species, or no one does. It may be the case that the MSCP plan may have a neutral effect on a species in this region if it is only a portion of its range. However, at some point, in some region there must be a net positive effect on the species in order to assure its conservation. In conformance with section 10(a) conservation measures for species specific management do (or should) result in net benefit to the species as a whole. Who will take responsibility for the species if the model (the MSCP plan) and the plans that follow from it claim a "neutral" effect. Will the last area to submit a plan have to compensate for the other regions? 98(g)

✔ Because issuance of a section 10(a) permit is a Federal action subject to section 7 compliance, an HCP such as the MSCP must address direct and indirect effects, cumulative effects, critical habitat, jeopardy to affected fish, wildlife, and plants located within a proposed HCP area. In which portion of the document is consideration of critical habitat discussed? (This statement will be revisited in comments to follow). 98(h)

✔ When jeopardy is being considered, recovery of listed species should also be considered. In what portion of the plan is species specific recovery and management discussed? 98(i)

✔ Assurances for jurisdictions and Third Party Beneficiaries must be based on measurable criteria that result in an overall net benefit for that species, otherwise additional mitigation may be sought in order to maintain a properly functioning HCP agreement. What are the species specific criteria, such as management plans, that can be evaluated and measured? Where is assurance of net benefit to covered species discussed? Isn't the term "insignificant" contradictory to the notion of "net benefit"? 98(j)

✔ For species determined to be "adequately conserved" on the covered 98(k)

species list, general attempts at avoidance, minimization, mitigation and acquisition do not substitute for species specific management plans. Without provisions to ensure the conservation of individual species there is no measurable criteria. The MSCP may not derogate the mandates of other environmental statues such as the ESA which requires species specific provisions. For example, without species specific conservation requirements, the MSCP cannot ensure that jeopardy of of Dudleya brevifolia will not occur (plants must be considered to the section 7 jeopardy standard), however this species was not listed as endangered based on the prospect of a functioning MSCP. If the NCCP, or MSCP thereof, is used as a justification for failing to list a species under state and federal endangered species laws, or if it is implemented in a manner inconsistent with the regulatory standards of state and federal endangered species act laws, it clearly has the potential to undermine or subvert the legislative purposes that lead to enactment of both ESA and CESA. Given this, how can the decision not to list Dudleya brevifolia based on the MSCP plan be justified? 98(k)

✔ According to NEPA regulations, in order to ensure that environmental effects of a proposed action are fairly assessed, the probability of the mitigation measures being implemented must also be discussed. For example, covered species should be adequately conserved by the MSCP, not rely on potential conservation through Section 404 permitting. The Clean Water Act could be changed in the future (as indicated in Section 9.8 of the I.A. for the City of San Diego). Furthermore, if there is a history of nonenforcement or opposition to such measures, the EIS should acknowledge such opposition to such measures. Where in the document have these factors been discussed? 98(l)

* many of the standards described above for conforming with the intent of the ESA and the section 10 program are taken from the FWS Handbook for Habitat Conservation Planning and Incidental Take Permit Processing

General Comments on the Plan

✔ In my comment letter regarding the NOP/NOI, I discussed, in detail the need for best-case and worst-case scenario justifications for covered species and habitats. Are best-case and worst-case scenario assumptions evaluated and discussed in the EIR/EIS? 98(m)

✔ While the proposed MHPA plan is addressed in some detail, it is difficult to conclude that the alternatives to the proposed plan were analyzed to the same level and depth. The reader is left wondering what might happen if the alternatives were adopted. 98(n)

✔ What is the level of accuracy of the GIS database and how was the error rate accounted for in the plan's quantitative analyses and acreage 98(o)

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98(o)

goals?

✔ What rationale was used in determining which parcels in the Biological Core Areas in Figure 2-2 where placed in the MHPA preserve while others were omitted? 98(p)

✔ Santee's conservation of 40% of its coastal sage scrub would not mitigate its direct impacts to listed and sensitive species to below significance. At what stage would overriding findings be adopted? 98(q)

✔ For habitat types that are locally rare (e.g., maritime succulent scrub, southern maritime chaparral, and oak woodland) conservation of less than 75% would appear to be below standards to avoid and to mitigate unavoidable impacts to below significance. Will overriding findings be adopted? 98(r)

✔ Species proposed for coverage based on "insignificant effect" may be extirpated from the area (e.g., golden eagle, northern harrier, burrowing owl). This must be a significant effect under CEQA. Will overriding findings be adopted? 98(s)

✔ The list of narrow endemic species (p. 3-24) is selective and does not include many species one would expect to find in such a category. What criteria were used to determine this list? 98(t)

✔ Section 3.4.2 lists criteria used to determine which vegetation communities were categorized as significantly and sufficiently conserved. Habitat types with less than 2,000 acres remaining in the MSCP area are included with less than 75% conservation (e.g., maritime succulent sage scrub and southern maritime chaparral). Is a score sheet based on the listed criteria available for each habitat type that could be included in the final EIR/EIS? 98(u)

✔ What happens if the sufficiently and significantly conserved habitat types require additional conservation down the line and the state and/or federal governments won't budget any money to buy the lands? Are local jurisdictions and private developers covered for new projects in these habitats or is this an unforeseen circumstance? Is this worst-case scenario evaluated in the EIR/EIS? 98(v)

✔ If in-kind mitigation is eliminated or significantly reduced, how will the more costly coastal resources be conserved? 98(w)

✔ Page2-17. How will the acceptance of the "generic credits" concept ensure the timely and adequate mitigation of vegetation communities of critical concern?

✔ Page 2-19. Rather than making the statement that "each take 98(x)

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authorization holder contributes its fair share to assemble the MSCP preserve as specified in its Subarea Plan" without justification, please provide comparisons with existing regulations. 98(x)

✔ Page 4-1. It is not clear from this section what was included in the "agreement" between Susan Golding, Bruce Babbit and Michael Mantell. The details of this agreement should have been included in the public review documents and referenced in this section. How does this agreement affect the opportunity to make changes to the MSCP plan based on public comment? 98(y)

✔ Page 4.2-22. Neighborhood 8A is discussed in terms of a potential development plan. The City Manager's Compromise Plan for Neighborhood 8A should not be considered as part of the plan. Discussions for this area are being conducted separately from the MHPA. Why is Neighborhood 8A. as a core resource area in the MSCP preserve, being treated differently than other properties? Why the exception? 98(z)

✔ Does the EIR/EIS analyze the financial implications of having existing public lands "bank" mitigation credit? 98(aa)

✔ Does the EIR/EIS analyze the financial implications of having an unknown number of mitigation banks receive more than a 1 credit per acre value? 98(ab)

✔ Page 5-2 states that the EIR/EIS is a programmatic document for the subarea plans and a project-level environmental document for land use plan amendments submitted by the jurisdictions with subarea plans. Yet only the City of San Diego appears to provide close to enough information for a project-level analysis. Which subarea plans have been submitted as project-level? What additional public review will these plan receive? 98(ac)

✔ In Section 13 of the draft model implementing agreement, it states that in any consultation under Section 7 of the ESA with regard to covered species, the FWS shall adopt the biological opinion issued in connection with the Subarea Plan and MSCP. Will a biological opinion be issued that includes specific terms and conditions required of the Third Party Beneficiary in sufficient detail to consider project-level impacts and mitigation needs? Does this only apply to covered species? 98(ad)

✔ From looking at the maps provided, it appears that many of the regional and local corridors and linkages shown for development plans that will receive permits through the MSCP process are well below the recommended 1000 foot minimum. The amount of edge is also extremely high with fingers of development spreading everywhere. What assurances will be provided that negotiations on future projects will not result in designs that stray so far from MSCP and NCCP guidelines? Will any changes be made to the proposed projects to move them toward better compliance with MSCP and NCCP guidelines? Any project that has 98(ae)

not yet received federal and state permits and would be covered by this plan should fully meet the standards and guidelines of the MSCP and be fully mitigated under CEQA. The final EIR/EIS should delineate all known projects that would receive permits through this plan that were not fully mitigated for biological impacts and received overriding findings. 98(ae)

✔ How was the potential for subdivision of parcels dealt with, particularly in the evaluation of predicted conservation levels in soft-line areas? 98(af)

✔ The EIR/EIS should quantify impacts to lands mapped within the 100-year floodplain. If these areas are not included in the preserve, their future development will lead to channelization and additional impacts to the environment. 98(ag)

✔ The MSCP analysis should quantify the level of preservation of rare soil types such as clay, gabbro and metavolcanic derived soils. For species such as Hemizonia conjugens that are known to inhabit restricted soils, the species evaluation should include the level of protection of the soils within the range of the species. 98(ah)

Draft Implementing Agreement for the City of San Diego

✔ The Implementing Agreement, by its nature the over-arching legal agreement, should be circulated for public comment and review after the comments on the Draft EIR/EIS have been accepted and changes have been made and reflected in the Final EIR/EIS. A final I.A. should be made available for review with strike out/delete for all changes from the public review draft. 98(ai)

✔ How well does the I.A. for the City of San Diego conform with the Template Implementing Agreement (Appendix 6) used by FWS in the Draft Handbook for HCP and Incidental Take Permit Processing? 98(aj)

✔ All I.A.'s with Participating Local Jurisdictions should include the following:

* Because the MSCP is built on future actions with varying degrees of flexibility, there must be measurable criteria in order to evaluate whether the MSCP is meeting ESA requirements.

* Agencies must make findings at a minimum of 3 year intervals so that assurances can be measured and enforced. This should include a public hearing with testimony.

* "Certainty" must be ensured per Section 8.0 of the I.A.

1. there must be discernible points in time when "findings" are 98(ak)

made by the wildlife agencies. 98(ak)

2. agency comments pursuant to any CEQA review process must be afforded the value and weight of MSCP implementation "findings."

3. "Findings" should be mandatory and should include specific quantifiable criteria, or should be discretionary when the criteria are interpretive.

✔ Section 1.4. This section, and future sections seems to assume that species are covered because they are "adequately conserved by the MSCP." How are insignificant and discountable categories included in the I.A.? 98(al)

✔ Section 3.2. This section incorporates "terms" of subarea plans and the MSCP plan. What about all of the guidelines? 98(am)

✔ Section 6.0, paragraph 5. The statement about unforeseen circumstances is different here than in section 9.5. What is the potential that additional land or financial compensation could be required due to unforeseen circumstances? Isn't section 9.5 the correct interpretation? 98(an)

✔ Section 9.6. (A) What is a "significant" change and who will set the standard or be the judge? 98(ao)

✔ Section 9.6 (E). If, due to extraordinary Circumstances, additional lands are found to be needed to adequately conserve a covered species, can the permit be pulled if the City and/or third party beneficiaries choose not to adopt the commitment? 98(ap)

✔ Section 9.7(C1). If Parties agree to amend the permit to add previously non-covered species to the covered species list, what type of public review will be provided? Full public review should occur. 98(aq)

✔ Section 9.7 (C2i) The term "Covered Species" should be broadened to a term like "sensitive species." 98(ar)

✔ Section 9.7 (C2f) What criteria were used to determine the list of species? Some of them are dependent on coastal sage scrub at least in part? The three species proposed to be covered by assurances in subsection c are species that Table 3-5 lists as having insufficient data on life history. Why do the assurances apply to them? 98(as)

✔ Section 9.8 (8 lines from bottom of page). Why couldn't the agencies recommend further measures? They wouldn't be required? 98(at)

✔ Section 9.12. Will public review be required for modifications to 98(au)

mitigation guidelines? What criteria are to be used to judge that conservation of habitats are occurring in "anticipated proportion?" Where is the anticipated proportion described? 98(au)

✔ Section 9.16. Is this section intended to refer only to those infrastructure projects analyzed in the MSCP EIR/EIS? 98(av)

✔ Section 10.2. Will the "approximate" acreage be specified later or will a range be included? 98(aw)

✔ Section 10.3. What does it mean to say that the City will implement Guidelines when these guidelines need only be implemented "if feasible" or "if practical"? 98(ax)

✔ Section 10.8 Please have the final EIR/EIS compare and contrast the proposed City regulations with the old regulations. (2) When 25% of the land is developed, how will the City ensure that the remaining 75% of the land will be conserved? Isn't the conservation of the remaining 75% basically mitigation for the 25%? (3) Narrow endemics and vernal pools must have better preservation clearly detailed in this section. 98(ay)

✔ Section 10.8 With respect to the language regulating narrow endemics, the language in the I.A. should be changed to reflect prior agreements such that "impacts will be avoided to the maximum extent practicable inside <u>and outside</u> the MHPA."

✔ Section 13.0. (second line from bottom) The last part of the sentence starting with, "provided that the FWS shall not impose" should be deleted from the sentence. 98(az)

✔ Section 12.5. The I.A should also satisfy CEQA obligations as they relate to provision of adequate mitigation of potential "significant effects on the environment." 98(ba)

✔ Section 15.3. Is there a time limit for federal and state contribution. Will the reassessment be done before the resources are gone? 98(bb)

✔ Section 18.1. What exactly does the statement, "additional environmental review will be required for future subarea plans" refer to? What will the additional review constitute? 98(bc)

✔ For variances, FWS concurrence should be required. The agencies should have the ability to withhold Third Party Beneficiary status should they not concur. 98(bd)

✔ The note beneath Table 1 in Exhibit I should be changed to to say, "Any impacts to wetlands must be mitigated "in-kind," <u>function, and value,</u> and achieve a "no-net loss." 98(be)

✔ In the Draft Open Space Element of the General Plan, on page 324, shouldn't the underlined portion refer to the Environmentally Sensitive Lands Ordinance instead of the Resource Protection Ordinance? 98(bf)

✔ Exhibit K, page 3. Why are the City's Cornerstone Lands allowed to be sold as Conservation Credits? 98(bg)

MSCP Subarea Plans

✔ Chula Vista. Page 3. Since Chula Vista anticipates "revisions to this plan" before final adoption, does that mean that they will have to repeat this NEPA/CEQA procedure? This should be the case since materials referenced in the draft plan were not available for review, such as the Appendix containing vegetation acreage to be conserved by project. 98(bh)

✔ Chula Vista. Page 9. How does the plan deal with areas shown on the maps as preserved, but in the future will include roads such as the Orange Avenue extension. Have these areas been deleted from preserve numbers even though they appear as preserved on the maps? 98(bi)

✔ Chula Vista. Page 24. Section (f) states that the Sensitive Resource Study area within Village 13 of Otay Ranch will be removed from the GDP/SRP. The Baldwin Agreement appears to trade away some of the most rare habitats in southern California, namely vernal pools and maritime succulent sage scrub, for less sensitive coastal sage scrub located more inland. Have the Wildlife Agencies adopted this proposal? The adopted Otay Ranch project failed to mitigate loss of coastal sage scrub to below significance and overriding findings were required. This appears to be one example of attempting to use the regional planning process to push through individual projects that are not adequately mitigated. The EIR/EIS should clearly list the projects that have received local approvals despite inadequate mitigation for biological resources and would receive state and federal take permits through this process. Will the state and federal governments require mitigation to below significance for these projects and all future projects? 98(bj) 98(bk)

✔ Chula Vista. Page 26 and Page 35 The City of Chula Vista can change its mind and propose a university site to the east of the Salt Creek drainage, but it should not try to claim that it is consistent with the approved GDP/SRP policies. It should go through an approved amendment process and clearly analyze the additional impacts that would occur with this new proposal. 98(bl)

✔ Chula Vista. Page 42. Since this subarea plan, as well as the other subarea plans, will only apply guidelines for uses inside and adjacent to the preserve "where possible" and "to the extent feasible," the reader can only assume that few of these guidelines will be followed. Has the 98(bm)

floodway through fill and subsequent development consistent with the Town Center Specific Plan. Is the Town Center Specific Plan an adopted plan? Does the City already have 404 and 1600 permits for this project? What alternatives to this plan were considered? 98(cb)

✔ City of Santee. Page 5. The entire subarea plan is rather vague. For example, requirement number 2 states that resources should be "appropriately preserved and protected, " but there are no details on how this goal will be implemented. Many of the "requirements" include qualifiers such as "it is preferred" or "if feasible." How could the EIR/EIS possibly address this plan at the project level? 98(cc)

✔ City of Santee. Page 8. Santee's plan does not address narrow endemics. No avoidance language is included. In addition, it appears that narrow endemics have not received adequate mitigation within Fanita Ranch. Due to the probability that Santee's proposed plan will result in significant unmitigated impacts to sensitive species, including narrow endemics, additional mitigation should be a requirement of permit issuance. 98(cd)

✔ County of San Diego. Figure 1-2 (the first one). Where is the "D" designator defined? Why are there two different maps (also Figure 1-3)? Which map did the County use to determine conservation of habitat (same question for figures 1-2 and the 1-3s)? Where are the minimum 1000 foot corridors and linkages provided through Santa Fe Valley, Ranch Cielo and 4S Ranch? In Figure 1-2, where are the corridors through the large "major amendment" area northwest of Proctor Valley Road? Projects should not receive permits through the MSCP unless they do a better job of meeting MSCP goals and NCCP guidelines. 98(ce)

✔ County. Page 1-11. How was it decided that conserving only 55% of a rare habitat type such as maritime succulent sage scrub was sufficient? Conserving 8% of the southern maritime chaparral is enough? Why is it not feasible to conserve additional acreage of these rare habitats? 98(cf)

✔ County. Page 1-19. How can the reader determine the importance of the plan's proposed coverage for the 1996 park development plans if they are not provided or summarized? Were the potential impacts analyzed in the EIR/EIS? 98(cg)

✔ County Page 2-7. An open space easement for a 10-year period? How was this addressed in the EIR/EIS and species analysis? On subsequent pages it is not clear if all permanent open space will be biological open space with clear restrictions. What will happen if a jurisdiction tries to vacate an easement? 98(ch)

✔ County. Page 2-21. What acreage was used in the EIR/EIS for unknown impacts from future infrastructure not included on maps? This section refers to Figures from the Santa Fe Valley Plan but they are not 98(ci)

attached. Does the County have protocols to avoid and minimize impacts from maintenance operations? 98(ci)

✔ County. Page 2-24. The language regarding wetlands is inconsistent with the MSCP. Does the wording in the MSCP assume that a jurisdiction adopts set criteria and mitigation for wetlands? 98(cj)

✔ County. Page 2.-24. For Santa Fe Valley, open space II is not defined as natural open space. Doesn't it include golf courses? Section 2.8.2 (A) is not a complete sentence and its meaning is unclear. 98(ck)

✔ County. Page 2-25. The Lusardi Creek corridor does not appear to meet the MSCP guidelines. How wide is this corridor? The subarea plan seems to admit that it is not wide enough to be truly functional (subheading B, first bullet. see also page 2-27). Why wasn't this corridor expanded during negotiations? 98(cl)

✔ County. Page 2-25. Section 2.9. This section does not address existing exemptions to the regulations and ordinances that leave habitat at risk. Many of these exemptions are proposed for the subarea plan. How did the EIR/EIS analyze the potential impacts from these exemptions, both for interim protection and for putting together the preserve. Shouldn't a best and worst case scenario be calculated? 98(cm)

✔ County. Page 2-26. The wording on revegetation monitoring and maintenance is vague. Will all projects in all jurisdictions that mitigate through revegetation be required to meet minimum success criteria? Who will determine these criteria and assure that they are biologically meaningful? 98(cn)

✔ County. Page 3-10 This section states that the Loma Del Sol project impacts six of the eight pairs of gnatcatchers with no clear mitigation for these losses. Since humans prefer to develop areas that often provide the best habitat for gnatcatchers, what assurances can be made that this high ratio of take of gnatcatchers to preservation of gnatcatchers will not continue in the unlined areas of the county? The section on the Pointe states that overriding findings were needed to approve this project. Will this project be covered under this plan without additional mitigation? All projects covered by this plan should be required to mitigate to below significance. 98(co)

✔ County. Page 3-19. What is the definition of "compatible agricultural uses" and will there be limitations on disturbance to existing habitat? 98(cp)

✔ County. Page 3-33. Motorized recreational uses within the preserve were not listed as a compatible land use in the MSCP. What restrictions will be placed on the location of any such uses in the preserve? In section 3.7.3, what is meant by "economic reasons" regarding public infrastructure? 98(cq)

98

✔ County. Page 3-36. B. Maps for Otay Ranch show the Limited Development Areas in the Preserve. Aren't these areas in the managed preserve in the Otay Ranch GDP/RMP? Have all the exclusions listed in section 3.7.6 been excluded from the preserve for the EIR/EIS analysis? 98(cr)

✔ County. Page 4-20. Bullet 1. Won't the County evaluate potential impacts to all sensitive species in all habitat types? 98(cs)

✔ County. Page 4-21. Bullet 2. Habitat types should not be grouped by tiers and should be analyzed separately. 98(ct)

✔ County. Page 4-25. This section does not mention the County Park at the base of Sweetwater Dam. In the MSCP plan it appears that this park is excluded from the preserve, but in Figure 1-2 it is shown as a minor amendment area. Which is correct. This park provides habitat for a variety of sensitive resources and key areas should be included in the preserve. 98(cu)

✔ County. Wildlife Agencies figures 1 and 2 (they seem to be in reverse order). What criteria were used to differentiate between the core areas and the pre-approved mitigation areas? 98(cv)

✔ County. BMO. Pages 2-4. How many projects fall under the exemptions under article II and the definition in No. 7? An exemption for recreational facilities could mean almost anything. Were these exemptions taken into account in the analyses for the EIR/EIS? 98(cw)

✔ County. BMO. Pages 4-5. The definition of a core area is different from the map provided by the wildlife agencies. How will this be resolved? 98(cx)

✔ Otay Water District. It appears as if defined mitigation is not included Will the requirements be similar those for the City of San Diego? 98(cy)

Misc. and Species Evaluation Issues

✔ Please explain why the term "population size" is used on some species evaluation forms, while the term "effective population size" is used on others. Is enough genetic information available to determine an "effective population size" for a species? 98(cz)

✔ We request notification of any final action taken on this program. 98(da)

Thank you very much for you time and consideration. We look forward to continued involvement in the plan because we believe that "the main threat to biodiversity lies in denial of individual responsibility." The time allocated to respond to comments in truly appreciated.

Sincerely,

Allison Rolfe

Allison Rolfe

References

Gowdy, J.M. and C. N. McDaniel. 1995. One world, one experiment: addressing the biodiversity-economic conflict. Ecological Economics 15:181-192.

Miller, G. Ecosystems Management: Improving the Endangered Species Act. Ecological Applications 6 (3) 717-720.

99 JANICE ZAMUDIO, 10/29/96

R

99(a) Comment noted.

99(b) Comment noted.

99(c) Comment noted. It is envisioned that the preserve implementing zone would permit continuing agricultural use and allow new agricultural uses with restrictions (by the proposed ESL). The OR 1-2 zone anticipates a 25% development area on each parcel. Existing brush management requirements will continue to be implemented.

99(d) See response to Comment 25(a) and **Theme Response XXI, Indirect Impact on Agricultural Lands.**

99(e) See **Theme Response III, Economic Impacts and Impacts on Population and Housing.**

99(f) No new or additional fees for new development are proposed to implement the MSCP. The regional funding mechanism is proposed to be put to a vote of the people.

99(g) The City of San Diego Subarea Plan does not include any "no build zones," nor does it include requirements to build on steep hillsides thereby requiring expensive grading. The OR 1-2 zone would allow for development of 25% of each parcel, maintenance of existing density yield and allow for the 25% encroachment to occur on the least sensitive portion of the property.

99(h) Comment noted. The City of San Diego Subarea Plan was created by starting with lands currently publicly owned and then adding private property only where needed to ensure biological viability to enable coverage of as many species as possible.

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Janice Zamudio

7797 La Jolla Vista Dr.
La Jolla, CA. 92037

Phone (619) 452-0878
Fax (619) 552-8187

October 29, 1996

John Kovac, Senior Planner
Development and Environmental Planning Division
City of San Diego
1222 First Avenue, 5th Floor
San Diego, California 92101

RE: Comments on the EIR/EIS of the MULTIPLE SPECIES CONSERVATION PROGRAM

This (MSCP) program was originally set up to meet the Metropolitan Wastewater Department's needs to mitigate the biological impacts of the mandated improvements to the region's sewage treatment facilities and potential secondary impacts associated with these improvements. It was a program that was also intended to speed up the permit process - a joint effort by KEY PROPERTY OWNERS city planners and local jurisdictions to eliminate the lengthy mitigation process on a per parcel basis. What started out as innocent and worthy enough has snowballed to a monstrous project in itself with multiple issues riding piggyback. 99(a)

I might add that the KEY PROPERTY OWNERS that participated in the planning process (in the NCFUA) were only the two large owners out of approximately 160 owners (NCFUA) Needless to say the Golden rule prevailed. Many small property owners were simply designated as open space as we were. Much of the land would certainly be developed, but much of the future competition was simply wiped out. 99(b)

Our family owns 32 acres of A1-10 land that is over 70% Mesa top in an area known as Del Mar Mesa that the MSCP proposes to preserve. It is an area of Rural Residential which permited agriculture as a matter of right. According to proposed MSCP guidelines we can only use 25 to 30% - 8 or 9 acres. A loss of over half of our usable land, which incidentally by remaining wild - will increase risk of fire. 99(c)

The plan will cause less farmland to be available in San Diego now and in the future. It proposes constraints to existing agricultural operations and does not propose authorization for incidental take protection for ongoing activities but merely notes that it may be "supported". It is attempting to regulate all ongoing agricultural activities and discourages farming on previously unfarmed land because it refused to allow deferred mitigation for agriculture. It assumes that all new agriculture will someday be converted to urban use which may not be the case. 99(d)

The plan will cause property values to go up in the allowed areas of development but will cause land in the proposed preserve to go down, much inequity among land owners. 99(e)

99

JANICE ZAMUDIO

Comments on the EIR/EIS of the MSCP
page 2

The cost of buying a new home in this area will go up. The City Council refuses to put the funding issue on the ballot (Theyknow what the voters would tell them) so the money to purchase the open space is projected to come from extra fees charged at the time permits are taken out. Putting these on top of the already large fees will add to the price considerably. Whatever fees are added to the cost of the house - they will triple over the life of a loan before they are paid off. 99(f)

This plan will cause land to be developed that should not be - I have seen examples of really excessive grading to use the hillsides that should have been left alone or developed at a much lower density. With so much land in the no build zone it will put more pressure on the land that CAN be developed. 99(g)

One of the problems with the MSCP is that it doesn't judge the developability of a parcel on its own merit topographically, but rather on: who owns it where it is located and what happens to be growing on it at the present time? 99(h)

We feel the way it is written at the present time, MSCP should only be applied to lands now publicly owned.

Very sincerely,

Janice Zamudio

Janice ZAmudio, for the Zamudio family.

100 WHALEN, J. WHALEN ASSOCIATES, OCTOBER 29, 1996,

R **100(a)** Implementing agreements developed by each participating local jurisdictions would specify the mechanism(s) which would confer Third Party Beneficiary status to a parcel of land. The mechanism(s) specified would provide for both Third Party Beneficiary status and mitigation obligations to run with the land.

100(b) The Helix Companies properties would derive the benefits of participating in the MSCP Plan at the point when their properties/projects achieve Third Party Beneficiary status as defined by the County of San Diego's implementing agreement. The County's implementing agreement would be subject to a 30-day public review and comment period when the County submits their Section 10(a) permit application and implementing agreement to the wildlife agencies.

100(c) The Board of Supervisors directed County staff to incorporate into the final subarea plan the maps submitted to County staff in mid-October. The preserve design (configuration) for the Helix Company properties within the County's jurisdiction have been incorporated into the County's Subarea Plan. The yet to be determined projects that the Helix Company may propose on those properties would be processed by the County. During the County processing of the projects, appropriate CEQA review would be done, and consistency with the County's Subarea Plan would be determined. Avoidance of narrow endemic species would be required and would be based on the botanical surveys carried out as part of the CEQA process. The characteristics of the development (road location, number of lots, slope constraints, etc.) would be subject to future County action and CEQA review.

100(d) Comment noted. Evaluations are based on the MSCP Plan as a whole, not individual plans. Based on the identified factors the wildlife agencies used in MSCP Plan Section 3.4.2, grasslands were not determined to be sufficiently or significantly conserved.

100(e) Storm water detention basins and water tanks would be considered essential public facilities. Essential public facilities are compatible uses within the preserve.

100(f) Comment noted. The area in question is located in a gradational area between CSS and mixed chaparral. There was a discrepancy in the vegetation classification by two qualified biologist conducting separate surveys in overlapping areas of two City projects. Any new survey on the site should be conducted by a qualified biologist and submitted to the City when a development permit approval is sought by the owner.

100(g) Comment noted. Please refer to previous response to Comment 100(f). Long-term isolation of small habitat patches does generally reduce their value; some small patches continue to support MSCP covered species. It is incorrect to assume that small patches of habitat have negligible biological value.

100(h) The proposed project does not propose to rezone any property. Subsequent rezoning for implementation of the preserve would be the subject of a subsequent CEQA document. Specific parcels have not been identified for rezoning however due to existing land use protections and development. It is not anticipated that rezones would occur on urban lands within the City's MHPA. The property at Montezuma and Fairmont Avenue is not proposed for rezoning.

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JWA J. Whalen Associates

Balancing the needs of the environment with those of business

4517 Santa Monica Avenue

San Diego, California

92107

619 . 222-5856

619 . 222-6450 FAX

October 29, 1996

Mr. John Kovac
City of San Diego
1222 First Avenue, M.S. 501
San Diego, CA 92101

RE: COMMENTS ON MSCP Plan and Subarea Plans

Dear Mr. Kovac:

This firm represents the Helix Companies in their involvement in Multiple Species Conservation Program (MSCP) matters. Thank you for this opportunity to provide our comments on the Multiple Species Conservation Program final draft plan documents. In this letter, our comments are specifically directed at the MSCP Plan and the City and County of San Diego Subarea Plans. Comments are also provided on the draft EIR/EIS for the MSCP.

GENERAL COMMENTS

1. Assurances and Implementation

The Helix Companies are members of the ALLIANCE FOR HABITAT CONSERVATION, a landowner advocacy group. The Alliance's general comments on the MSCP draft plan, Implementing Agreement and EIR/EIS are hereby incorporated by reference. While Helix has a number of important concerns on the MSCP planning process, in particular, we are concerned that weaknesses within the Model Implementing Agreement and Covered Species list must be corrected to provide the long-term certainty needed for master-planned communities with multi-year build-outs (such as our County projects) to make full use of what the MSCP promises. 100(a)

Particularly in regards to our County projects, we are concerned about when we will be able to derive the benefits of participating in MSCP as Third- Party Beneficiaries and how useful the extensive documentation embodied in the EIR/EIS will be in streamlining the CEQA process. Helix may not prepare tentative maps at this stage of the planning process, 100(b)

yet it is making permanent open space commitments of significant value to the MSCP. Clearly, Helix should be a Third-Party Beneficiary, yet the draft Implementing Agreement is unclear about when this status is conferred. Please discuss when Helix obtains Third-party status. 100(b)

2. MHPA Mapping

The development and open space areas maps were submitted to the County staff in mid-October for incorporation into the final County Subarea Plan. The maps represented agreement between the U.S. Fish & Wildlife Service and the California Department of Fish & Game on satisfactory development and open space areas for all of the Helix properties which were subject to the negotiations which took place at the end of July, 1996.

While an agreement to further memorialize these negotiations has not been completed, it was acknowledged that with the exception of the avoidance of narrow endemic species (in particular Lakeside Ceanothus and Encinitas Baccharis), there would be no changes to the preserve and development lines which were provided to the County staff, nor a need for additional approvals from the wildlife agencies. 100(c)

It is also our understanding that a permit consistent with the County (and City, if applicable) Take Authorizations will be provided consistent with the subject negotiations, and that for the County properties, elements of the Jamul-Lakeside segment of the Subarea Plan which conflict with the attached maps will not be applicable to the Helix properties. Please confirm this understanding.

COUNTY SUBAREA PLAN COMMENTS

1. Covered Species List

The County should seek to regain those species removed from the Final Draft MSCP Plan's Covered Species list which depend on grasslands. If landowners agree to mitigation for impacts to grasslands, then they should also get coverage for the full suite of grassland species, if not the habitat. Table 1-3 in the Subarea Plan appears to support this position: 97% of the known point locations of the grasshopper sparrow are protected, as is 59% of the total grasslands found in the unincorporated areas. Why does the County not get coverage for the grasshopper sparrow? 100(d)

2. *Land Use Considerations Adjacent to the MHPA*

Assurance of the conditional compatibility of certain uses within or adjacent to the MHPA is needed in order for some resource-sensitive projects to be feasible.

Storm water detention basins are frequently sited within the MHPA. As a rule, these basins will be planted with riparian and wetland vegetation and are intended to provide valuable year-round sources of fresh water and vegetative cover for local wildlife. (The basins will need to be cleaned out periodically of the silt which fills them during the rainy season, but the edges can be left alone.) Water tanks are also frequently found within open space because they need to be at higher elevations on a site, many times in areas where the preserve is located. These uses need to be determined to be conditionally compatible uses within the preserve and not subject to further mitigation. 100(e)

CITY OF SAN DIEGO SUBAREA PLAN COMMENTS

1. Mapping

In past communications, we have noted that the City shows more coastal sage scrub on our property than actually exists on the site. Detailed mapping for the Helix comprehensive conservation plan indicates <.5 acre of the property are sage scrub and that none of it will be impacted by our development. (Some of this may already be gone to a City road-widening project.) 100(f)

2. Habitat Value

The discussion on the habitat value of the urban preserve areas overstates the resource value. Work done by Soule' suggests that the contrary view is more true, which is that due to the long term isolation and small size of the area, the habitat value is negligible. We believe our biological resource studies confirm this, and therefore will operate under this assumption unless the City can establish otherwise. 100(g)

3. Zoning

Please confirm that the proposed OR 1-2 zone will not be applied to our property at Montezuma and Fairmount Avenues, where our recorded lots exist. This could unnecessarily impede our ability to develop the property. 100(h)

EIR/EIS COMMENTS

The ALLIANCE comments on the draft EIR/EIS that pertain to this section are hereby incorporated by reference.

We appreciate the opportunity to provide these comments. We look forward to seeing their incorporation into the final plan which is approved by the Board of Supervisors and the City Council.

Very truly yours,

James E. Whalen
President

CC: Bob Asher, County of San Diego
Karen Scarborough, City of San Diego

Attachment

101 BETTS, SD HANG GLIDING AND PARAGLIDING ASSOCIATION, 10/28/96

R

101(a) Comment noted.

101(b) Implementation of the MSCP Plan will not alter the existing conditions relative to hang gliding or paragliding within the MSCP study area. Section 6 of the MSCP Plan does not specifically list hang gliding or paragliding as compatible or incompatible with preserve management. On private land, public access is controlled by the landowner. Each subarea plan will determine compatible uses during its preparation using criteria found on page 6-1 of the MSCP Plan, Volume I. Three of the five major gliding sites identified are under the jurisdiction of either the U.S. Forest Service or BLM; these agencies have agreed to manage their lands consistent with the MSCP. The remaining two, Torrey Pines and "little" Black Mountain are within the City of San Diego, Northern Area. The City of San Diego's Subarea Plan (MSCP Plan, Volume II, pages 82 - 87) states that the existing Torrey Pines Community Plan policies are not proposed to be changed. The priorities for the Black Mountain Park area are to 1) prevent off-trail access and use, and 2) Park and Recreation Department will assess overuse of open space areas and take corrective actions. The SDHGPA should continue to be involved as partners with the landowners and land managers of the currently used gliding sites to ensure appropriate gliding uses are maintained.

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San Diego Hang Gliding and Paragliding Association, Inc.

Response
to the
Multiple Species Conservation Program

October 1996

101

October 28, 1996

John Kovak, Senior Planner
Development and Environmental Planning Division
City of San Diego
1222 1st Avenue
San Diego, CA 92101

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OCT 29 1996
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Dear Mr. Kovak,

Hello, the San Diego Hang Gliding and Paragliding Association, Inc. (SDHGPA), would like to comment on the Multiple Species Conservation Program. Our organization's Site Director, Floyd Fronius, gave me your name and address after he stopped by to see you week before last. He suggested we respond to the MSCP. I first went to a public library and spent some time reviewing both volumes of the publication and found it quite interesting. I've personally worked part-time for the Cleveland National Forest as a botanist doing field surveys for plants such as those listed in the MSCP. The Cleveland National Forest has also had me help on the plant surveys done at hang glider sites within the Forest Boundary.

Modern foot-launched soaring by humans (hang gliding and paragliding) has evolved significantly from the image that the public has of the early developmental years. Today's advanced hang glider pilot can reach altitudes in excess of 17,000 feet and fly cross country distances well over 100 miles (the current world record is 308 miles, set in the USA). Along with all the necessary equipment, hang glider pilots also need very specific regions of land in order to engage in their recreation. Certain mountain spots, depending on terrain and prevailing weather conditions, are needed for launch sites. Unobstructed and reasonably level fields are the preferred landing sites. Southern California, with its topography and climate, offers the hang glider pilot extremely good opportunities for recreational soaring all year. The only major obstacle faced by the approximately 2,000 regional hang glider enthusiasts is finding launch and landing sites that are both legal and accessible. With the high cost of California real estate, public land owned by The City of San Diego, San Diego County, the Bureau of Land Management or the National Forest Service is our main source of prospective suitable flying sites. Pete Wilson, while he was Mayor of San Diego, pointed out to us that "hang gliding" was not specifically listed as a recreation in Civil Code Section 846. In 1988 we worked with State Assemblyman Bill Bradley to amend Civil Code Section 846 in order to immunize private landowners from tort liability while granting permission to hang glide on their property. This section of the California Civil Code was adopted by the State Legislature to encourage private landowners to allow the public to use their land for recreation.

San Diego County has a long history of gliding, soaring, hang gliding and more recently, paragliding (paragliders are considered by the FAA to be Class 3 hang gliders). Early experiments in gliding started in San Diego with John J. Montgomery in 1883. Later experimenters included such personages as Waldo Waterman, Fraser Curtis and W. H. Bowlus in the 'teens and 20's. Those early flights took place on various shallow coastal slopes and later progressed to the cliffs of Point Loma. In 1928 Anne and Charles Lindbergh launched their gliders from Mt. Soledad and Anne became the first woman in the USA to achieve a glider pilot's license. In 1937 the Associated Glider Clubs of Southern California leased the bluff at Torrey Pines from the City of San Diego and they still soar there today. In 1972, Taras Kiceniuk launched the first hang glider at Torrey Pines. In 1982-83 I was president of the Torrey Pines Soaring Council when paragliders were beginning to be developed at Torrey Pines.

The SDHGPA was originally formed as the Ultralight Flyer's Organization (UFO) at it's first meeting on February 3, 1973, at the home of Bob Fronius, the father of Floyd Fronius. Since that time the monthly meetings have been held at various buildings in Balboa Park, with the War Memorial Building as the current location. In 1976 the UFO became incorporated in the State of California as a non-profit corporation. The name was changed in 1987 to the San Diego Hang Gliding Association, Inc.

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Many of our pilots fly both hang gliders and paragliders and both types of foot-launched gliders need and use the same locations so in 1993 we added "and Paragliding" to our name.

The SDHGPA has worked with many government agencies in order to promote recreational hang gliding in southern California. We contribute funds to maintain Sheephead Road in the Descanso District of the Cleveland National Forest. Our organization has an "Adopt a Trail" and a special permit to launch in the Anza-Borrego Desert State Park. Through the United States Hang Gliding Association (SDHGPA is an affiliated chapter) we provide landowners with $1,000,000 liability coverage. California Civil Code Section 846 and Government Code Section 831.7 immunize landowners from tort liability when they grant permission to hang glider enthusiasts to use their land for recreational activities. For the first few years of hang gliding at Torrey Pines the UFO obtained the Special Use Permit that is required under City Ordinance No. 12538. In 1978 a special organization, the Torrey Pines Hang Gliding Association (TPHGA), was formed to take over the administration of that particular site. The TPHGA was incorporated as a non-profit corporation in the State of California in 1989. The Special Permit for Torrey Pines is currently held by the private concessionaire that has a contract and lease with the City of San Diego.

There are five major hang gliding/paragliding sites in San Diego County that are located in areas affected by the MSCP: Torrey Pines, Black Mountain near Peñasquitos, Black Mountain near Pamo Valley north of Ramona, El Cajon/El Capitan Mountain near Lakeside, and Otay Mountain. There have historically been many more active sites in San Diego, but they have either been developed to the point that the gliders were crowded out or access was restricted by the landowners, such as San Miguel Mountain. The terrestrial needs of foot-launched gliders are quite minimal, a shallow to steep slope on a promontory that faces the prevailing wind for launch and a reasonably unobstructed level field in which to land. Launching and landing is by foot so the impact is similar to running. Vehicular access to near launch sites is preferred although all pilots know they sometimes must carry their equipment and gliders some distance. At larger mountain sites pilots sometimes fly many miles cross-country and know that they might not have vehicular access to near where they land so they are prepared to do a bit of hiking. The airlines consider hang gliders as "Personal portable sporting gear".

Hang gliding and paragliding at the Torrey Pines Gliderport is very well established and regulated. Launch and landing occur in specially designated areas within the Torrey Pines City Park. If a pilot finds there is not enough updraft created by the on-shore wind hitting the cliff to lift the glider high enough for a cliff top landing, they must land on the beach. Following a beach landing the pilot must dis-assemble and pack the glider up one of the established foot trails used by the many beach visitors.

Black Mountain near Peñasquitos has been home to hang gliders almost as long as Torrey Pines, beginning in the very early 1970's. There are four equally important launch sites at Black Mountain (known as "Little Black" by glider enthusiasts). The turn-out at the peak is favored by intermediate to advanced pilots. The middle peak to the north is especially popular with the paraglider pilots because of its shallow slope. The lower 300 foot knob is most San Diego pilots first "altitude" flight. Below this knob is the landing area that has a shallow slope coming down from the knob that is a major training hill for San Diego area beginners.

Black Mountain near Pamo Valley north of Ramona has been a major hang glider site since 1975. Pilots refer to it as "Big Black" and it is the site of the SDHGPA's annual Big Black Fly-In. The launch site is on a shoulder just south of the peak, at approximately 4000 feet above sea level. Landings occur in a large field in the valley or on a small plateau on the side of the mountain. The mountain is in the Palomar Ranger District of the Cleveland National Forest and the SDHGPA works with the Forest Service to make sure all gliding activities meet Forest regulations. Joan Wynn, spokesperson for the USFS, has stated that Pamo Valley is on the Forest's "wish list".

The El Cajon/El Capitan Mountain site is accessed by launching from across the valley at a location called Blossom Valley. Pilots then gain altitude to soar over the mountain peak. Part of the

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mountain is within the Cleveland National Forest and part of it is owned and administered by the Bureau of Land Management. The launch site is currently on undeveloped private land. The SDHGPA is trying to negotiate purchase of part of this property. Our organization has also contacted the Forest Service and BLM about developing a launch site on the mountain. The SDHGPA responded to the BLM South Coast Resource Management Plan about this site.

Otay Mountain is a very popular gliding site especially in the spring when pre-frontal weather conditions bring southerly winds. There are two south facing launch sites and one west facing launch higher up the mountain. Landing occurs in undeveloped fields south of the mountain near the international border with Mexico. The SDHGPA also responded to the BLM South Coast Resource Management Plan about this site. A copy of that response is included with this response and comment. The BLM answered our response stating that with the creation of the "Wildlife Management Area" our hang gliding activities would not be hampered and that we would be allowed access to the sites we were currently utilizing. A copy of a BLM letter stating that hang gliding is considered "incidental use of the land" is also included here.

There are two major hang gliding/paragliding sites in San Diego County that are not covered by the MSCP. They are the entire Buckman Springs area southeast of Pine Valley and Mount Laguna just off Highway S-1, the Sunrise Highway. The Buckman Springs site is called "Horse Canyon" by glider pilots and is entirely within the Cleveland National Forest. The SDHGPA is a "Forest Partner" with the USFS and contributes money to maintain access roads and landing areas. The Mount Laguna site has three launch areas, one each on USFS, BLM and State Park land. The launch site within the boundary of the Anza-Borrego Desert State Park requires a special annual permit. One condition of this permit is a signed letter of permission from a land owner in Mason Valley below the launch sites. The SDHGPA satisfied this requirement by purchasing our own five acre parcel of land.

Once airborne hang gliders and paragliders are subject to all the same Federal Aviation Administration rules and regulations as any other aircraft. The SDHGPA has worked with the FAA to mark hang glider sites on the aviation Sectional Charts with the "hang glider" icon. Torrey Pines, Mount Laguna and Horse Canyon are all marked with the icon. An article written for a local FAA safety newsletter is included here, it is titled "Hang Gliding Sites Around the San Diego Area". The SDHGPA also works with the California Department of Forestry airborne fire bombers to avoid conflicts, a large map marking all San Diego hang gliding sites is on the wall in their pilots' lounge at Ramona Airport.

In section 6 of the MSCP, Guidelines for Land Uses Within the Preserve, it states "Riding and hiking trails will be allowed within appropriate portions of the preserve to provide passive recreational opportunities for the public." In each subarea report is the language "Access for hang gliding and hot air ballooning shall be limited to existing dirt roads now used for such purposes unless the roads are to be rehabilitated. Departure/take off areas for such activities are and shall remain located outside of the preserve." The scale of the maps in the MSCP volumes make it difficult to determine the exact proximity of our launch sites to the preserve. Foot-launched gliding sites have specific physical requirements and there are very few remaining gliding sites left in San Diego. Moving a few feet to one side is often not practical or possible. We ask that access to all currently used hang gliding and paragliding sites be permitted in the future and that continued consideration for our recreation be given in future planning.

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We thank you very much for thinking of us in the MSCP planning volumes, sometimes we think no one notices us unless someone gets hurt. Maybe going unnoticed can be a good thing.

Sincerely, Donald B. Betts

Donald B. (Breck) Betts for the SDHGPA
P.O. Box 420238
San Diego, CA 92142-0238

SAN DIEGO HANG GLIDING & PARAGLIDING
ASSOCIATION

HANG GLIDING SITES AROUND THE SAN DIEGO AREA

Hang Gliding activities in the San Diego area, especially in the mountains of the eastern part of the county, are greater than depicted on the San Diego Terminal Control Area Chart. The Hang Glider operations at the Torrey Pines Gliderport are well known and marked on the chart with the hang glider icon. The other sites are not marked and pilots are generally unaware of the current capabilities of modern hang gliders.

The past decade has seen a dramatic advance in the technology of these foot launched soaring craft and the skill level of the pilots who fly them. Their average glide ratio is 10:1 with a sink rate of about 200 fpm. All hang gliders carry emergency parachutes, the latest designs are rocket deployed. Pilots fly with two-way radios (most are licensed HAM operators), electronic altimeters, variometers (climb indicators) and compasses. More advanced pilots are equiped with supplemental oxygen and GPS navigation devises.

1. Buckman Springs: Hang Glider pilots refer to this site as Horse Canyon. The launch site is on the ridge east of the rest area on the Interstate 8 dog leg just south of Pine Valley. Pilots will know this area as check point PILLO on Victor 66. This is a popular soaring site all year round, epsecially on weekends, which has recently attracted many paraglider enthusiasts as well. They may be found up to 10,000 feet and will travel north or east over fifty miles. Because of inbound traffic on Victor 66 descending to Lindbergh Field, the hang gliders are instructed to leave the area when above 9,000 feet.

2. Mount Laguna: The launch site is at Kwaaymii Point, a cul-de-sac off of the Sunrise Highway, ten miles southeast of Julian on the scarp overlooking the desert. This is a very active site in the warmer months with flights up to 10,000 feet. Hang gliders usually fly cross country from here, eventually landing many miles away to the north or east with the current open distance record of 145 miles (past Barstow). Most of the hang glider activity is over the mountain ridges between Mt. Laguna and Warner Hot Springs. On weekends in the summer months, pilots can expect hang gliders within a twenty mile radius of Julian.

3. Big Black Mountain: This is Black Mountain north of Ramona overlooking Pamo Valley. Hang glider pilots call this site Big Black. The launch is near the peak at 4000 feet. This site is not as popular as it used to be, with soaring flights rarely reaching altitudes of 8,000 feet. Expect moderate hang glider activity within 2000 feet of the terrain around Pamo Valley. The gliders seldom go cross country from here.

4. Little Black Mountain: This site is called Little Black and is the 1500 ft mountain between Penasquitos and Rancho Bernardo that has multiple communication towers at the summit. This is a very popular practice site for both hang gliders and paragliders. Most flights never include altitudes of more than 1000 feet over the terrain but pilots should be aware of the increased activity, especially on weekends.

5. Torrey Pines: The gliderport here is considered a "Mecca" of the international foot-launched soaring community. Any day of the week and any time of the year pilots can find as many as 50 hang gliders and paragliders soaring over these coastal cliffs. Sailplanes, the original gliders that pioneered these bluffs over sixty years ago, still enjoy soaring here during March and April. Because of the San Diego TCA, all gliding activity at Torrey Pines has a strict ceiling of 1500 feet MSL between Scripps pier and the lagoon south of Del Mar.

6. Otay Mountain: This site is moderately popular with both hang gliders and paragliders and is usually flown in winter and late spring during pre-frontal conditions. Altitudes of 2000 feet above the terrain are sometimes reached. The gliders are mostly found over the southern slopes or the peak of the mountain and stay well away from the traffic of Brown Field.

7. El Cajon Mountain: Hang glider and paraglider pilots call this area "Blossom" after the Blossom Valley launch site. On some maps the mountain, 10 miles northeast of Gillespie Field, is labeled either El Capitan or Rock Mountain. The gliders can be encountered up to 2000 feet over the ridges on either side of the big valley west of the El Capitan Resevoir dam. Again, weekends are the most popular time for soaring.

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GEORGE DEUKMEJIAN
GOVERNOR

State of California
GOVERNOR'S OFFICE
SACRAMENTO 95814

TELEPHONE
(916) 445-2841

June 23, 1988

Mr. Donald B. Betts
P.O. Box 461
Pine Valley, CA 92062

Dear Mr. Betts:

Thank you for your correspondence concerning Assembly Bill 3177.

I am pleased to tell you that I have signed this legislation into law. Your comments were helpful to me in reaching my decision.

Thank you again for taking time to share your views with me.

Most cordially,

George Deukmejian

George Deukmejian

COMMENTS

1) In Simpson v. United States (1981) 652 F.2d 831, the court explained the legislative intent and rationale for Civil Code Section 846:

> "The intent of the California legislature in adopting California Civil Code Section 846 was to encourage landowners to open their property to the public for recreation. Such encouragement was necessitated by the threat of tort liability which in recent years has led landowners to bar people from trespassing on their land. When viewed against its intent and purpose, the statute has a rational relationship to a legitimate state purpose and is able therefore, to withstand an equal protection challenge."

In Delta Farms Reclamation District v. Superior Court (1983) 33 Cal.3d 699, the court reiterated this position:

> "The purpose of section 846 is to encourage property owners 'to allow the general public to recreate free of charge on privately owned property.' (citations omitted)"

This purpose is accomplished by "immunizing landholders from the liability they would otherwise have incurred for ordinary negligence toward nonpaying recreational users of their land." (New v. Consolidated Rock Products Co. (1985) 171 Cal.App3d 681.)

The sponsor of this measure is an individual, Mr. Donald B. Betts, who is associated with the Torrey Pines Hand Gliding Association (TPHGA) and United States Hang Gliding Association (USHGA). Apparently, in recent years, both Associations have experienced difficulty in obtaining liability insurance. As a result, the activities of both Associations have been curtailed. The sponsor believes that the immunity contained in AB 3177 will induce private property owners to permit access to their property for the purpose of hang gliding.

ASSEMBLY SUBCOMMITTEE ON THE ADMINISTRATION OF JUSTICE
LLOYD G. CONNELLY, Chairperson

AB 3177 (Bradley) - As Introduced: February 10, 1988

SUBJECT: This bill states that a landowner owes no duty of care, except as otherwise specified, to people who "hang glide" on his or her property.

DIGEST

Current law, Civil Code Section 846, provides that an owner of real property "owes no duty of care to keep the premises safe for entry or use by others for any recreational purpose or to give any warning of hazardous conditions ... (emphasis added)"

Section 846 defines "recreational purpose" to include fishing, hunting, spelunking, parachuting, snowmobiling, and other recreational pursuits.

This bill adds "hang gliding" to the list of recreational purposes to which the limited immunity in Section 846 applies.

ASSEMBLY BILL No. 3177

Introduced by Assembly Member Bradley

February 10, 1988

An act to amend Section 846 of the Civil Code, relating to real property.

LEGISLATIVE COUNSEL'S DIGEST

AB 3177, as introduced, Bradley. Real property: obligations of owners.

Under existing law, an owner of real property owes no duty of care to persons using his or her property for recreational purposes, as defined, under specified conditions.

This bill would revise the definition of recreational purposes in this provision to include hang gliding.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 846 of the Civil Code is amended to read:

846. An owner of any estate or any other interest in real property, whether possessory or nonpossessory, owes no duty of care to keep the premises safe for entry or use by others for any recreational purpose or to give any warning of hazardous conditions, uses of, structures, or activities on such premises to persons entering for such purpose, except as provided in this section.

A "recreational purpose," as used in this section, includes such activities as fishing, hunting, camping, water sports, hiking, spelunking, sport parachuting, riding, including animal riding, snowmobiling, and all

other types of vehicular riding, rock collecting, sightseeing, picnicking, nature study, nature contacting, recreational gardening, gleaning, *hang gliding,* winter sports, and viewing or enjoying historical, archaeological, scenic, natural, or scientific sites.

An owner of any estate or any other interest in real property, whether possessory or nonpossessory, who gives permission to another for entry or use for the above purpose upon the premises does not thereby (a) extend any assurance that the premises are safe for such purpose, or (b) constitute the person to whom permission has been granted the legal status of an invitee or licensee to whom a duty of care is owed, or (c) assume responsibility for or incur liability for any injury to person or property caused by any act of such person to whom permission has been granted except as provided in this section.

This section does not limit the liability which otherwise exists (a) for willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity; or (b) for injury suffered in any case where permission to enter for the above purpose was granted for a consideration other than the consideration, if any, paid to said landowner by the state, or where consideration has been received from others for the same purpose; or (c) to any persons who are expressly invited rather than merely permitted to come upon the premises by the landowner.

Nothing in this section creates a duty of care or ground of liability for injury to person or property.

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§ 846. Duty of care or warning to persons entering property for recreation; Effect of permission to enter

An owner of any estate or any other interest in real property, whether possessory or nonpossessory, owes no duty of care to keep the premises safe for entry or use by others for any recreational purpose or to give any warning of hazardous conditions, uses of, structures, or activities on such premises to persons entering for such purpose, except as provided in this section.

A "recreational purpose," as used in this section, includes such activities as fishing, hunting, camping, water sports, hiking, spelunking, sport parachuting, riding, including animal riding, snowmobiling, and all other types of vehicular riding, rock collecting, sightseeing, picnicking, nature study, nature contacting, recreational gardening, gleaning, hang gliding, winter sports, and viewing or enjoying historical, archaeological, scenic, natural, or scientific sites.

An owner of any estate or any other interest in real property, whether possessory or nonpossessory, who gives permission to another for entry or use for the above purpose upon the premises does not thereby (a) extend any assurance that the premises are safe for such purpose, or (b) constitute the person to whom permission has been granted the legal status of an invitee or licensee to whom a duty of care is owed, or (c) assume responsibility for or incur liability for any injury to person or property caused by any act of such person to whom permission has been granted except as provided in this section.

This section does not limit the liability which otherwise exists (a) for willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity; or (b) for injury suffered in any case where permission to enter for the above purpose was granted for a consideration other than the consideration, if any, paid to said landowner by the state, or where consideration has been received from others for the same purpose; or (c) to any persons who are

expressly invited rather than merely permitted to come upon the premises by the landowner.

Nothing in this section creates a duty of care or ground of liability for injury to person or property.

Added Stats 1963 ch 1759 § 1. Amended Stats 1970 ch 807 § 1; Stats 1971 ch 1028 § 1; Stats 1972 ch 1200 § 1; Stats 1976 ch 1303 § 1; Stats 1978 ch 86 § 1; Stats 1979 ch 150 § 1; Stats 1980 ch 408 § 1; Stats 1988 ch 129 sec 1.

Amendments:

1970 Amendment: (1) Substituted "fishing, hunting" for "taking of fish and game" in the first paragraph; (2) added "riding," in the first paragraph; (3) substituted "for entry or use for the above purposes" for "to take fish and game, camp, hike or sightsee" in the second paragraph; (4) substituted "purposes" for "purpose" after "for such" in the second paragraph; and (5) substituted "to enter for the above purposes" for "take fish and game, camp, hike or sightsee" in the third paragraph.

1971 Amendment: Added "rock collecting," after "riding," in the first paragraph.

1972 Amendment: Added "including animal and all types of vehicular riding," in the first paragraph.

1976 Amendment: Added "spelunking," after "hiking," in the first paragraph.

1978 Amendment: (1) Substituted "any recreational purpose" for "fishing, hunting, camping, water sports, hiking, spelunking, riding, including animal and all types of vehicular riding, rock collecting, or sightseeing" in the first paragraph; (2) substituted "purpose" for "purposes" after "for such" in the first paragraph, after "for the above" and "safe for such" in the third paragraph, and after "for the above" in the fourth paragraph; (3) added the second paragraph; and (4) added ", or where consideration has been received from others for the same purpose" in the fourth paragraph.

1979 Amendment: Added "sport parachuting," in the second paragraph.

1980 Amendment: Substituted "or any other interest in real property, whether possessory or nonpossessory," for "in real property" wherever it appears near the beginning of the first and third paragraphs.

1988 Amendment: Added "hang gliding," after "gardening, gleaning," in the second paragraph.

Collateral References:

Witkin Summary (9th ed) Torts §§ 163, 761, 912 et seq.

Cal Jur 3d (Rev) Government Tort Liability § 51.

Cal Jur 3d Premises Liability § 2.

Miller & Starr, Cal Real Estate 2d §§ 15:35, 15:67, 21:30, 25:17, 29:29.

Jury instructions—Court applies objective standard to landowners' liability instruction under Civil Code Section 846. CEB Civ Litig Rep (1985) Vol 7 No. 8 p 251.

Objective standard applied to determine whether landowner's failure to warn trespassers of danger on property was "willful or malicious" under Civil Code Section 846. CEB Real Prop L Rep (1985) Vol 8 No. 8 p 191.

Forms:

See form set out below, following Notes of Decisions.

Proof of Facts:

Dangerous or defective amusement ride. 25 Am Jur Proof of Facts 2d 613.

Premises liability: Willful or wanton conduct causing injury to entrant. 48 Am Jur Proof of Facts 2d 275.

Law Review Articles:

Review of Selected 1988 Legislation. 20 Pacific LJ 733.

Should California landowners have tort immunity from recreational users? (1988) 16 Western St LR 201.

Annotations:

Effect of statute limiting landowner's liability for personal injury to recreational user. 47 ALR4th 262.

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Response and Comments

to the

South Coast Resource Management Plan

by the

San Diego Hang Gliding Association

November, 1991

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November 12, 1991

Area Manager
Bureau of Land Management
P.O. Box 2000
North Palm Springs, CA 92258-2000

Dear BLM Area Manager,

Hello, the San Diego Hang Gliding Association, Inc., would like to comment on the "South Coast Resource Management Plan and Environmental Impact Statement" of 1991. The plan contains some great ideas, especially the Preferred Alternative, and we will offer some suggestions that are particular to our activities.

Modern foot-launched soaring by humans (hang gliding) has evolved significantly from the image that the public has of the early developmental years. Today's advanced hang glider pilot can reach altitudes in excess of 17,000 feet and fly cross country distances well over 100 miles (the current world record is 302 miles, set in the USA). Along with all the necessary equipment, hang glider pilots also need very specific regions of land in order to engage in their recreation. Certain mountain spots, depending on terrain and prevailing weather conditions, are needed for launch sites. Unobstructed and reasonably level fields are the preferred landing sites. Southern California, with its topography and climate, offers the hang glider pilot extremely good opportunities for recreational soaring all year. The only major obstacle faced by the approximately 2,000 regional hang glider enthusiasts is finding launch and landing sites that are both legal and accessable. With the high cost of California real estate, public land owned by the Bureau of Land Management or the National Forest Service is our main source of prospective suitable flying sites.

In the area covered by this Management Plan are four regions of land under BLM administration either currently used as hang glider launch sites or that offer great potential. There are no regular landing sites currently being used on the BLM land but there exists very good potential for future use. In the San Diego County Management Area the launch sites include Otay Mountain, Tecate Peak, and El Cajon Mountain. In the Riverside-San Bernardino County Management Area the Poppet Flat region is a good hang glider launch. In the Beauty Mountain Management Area the region around Oak Grove and Chihuahua Valley offer some landing site potential.

Otay Mountain is one of Southern California's best hang glider soaring sites for both spring and fall weather systems. Figure 1 shows three different takeoff spots currently in use. Site (A) is along the west side road to the summit and is on a south facing slope. This takeoff point is primarily used during prefrontal weather conditions when the southerly wind comes straight up the slope. Turnouts along the dirt road with space to park 8 to 10 vehicles would alleviate any foreseeable traffic problems. Glider set-up is accomplished to the south off the road. There is a short dirt spur road at (B) that leads to the west facing launch site. This launch site is preferred when the winds are more westerly as the fronts pass thru the area. At the top of the mountain, near Doghouse Junction, is the northwest facing takeoff point (C) that is best for the postfrontal winds. The higher elevation also enhances the desirability of this spot for hang glider takeoffs. When flying from launch point (C) the pilot will usually land in a field next to Otay Lakes Road. The field is private property owned by the Daley Corporation. Mr. Don Daley Jr. has offered to give us permission to land on these fields when we provide him with liability waivers and insurance. Mr. Daley has said that he plans to develop these fields in the future and at that time will give us access thru his property to BLM administered land on the northern plateaus of Otay Mountain. These plateaus , marked (D), offer good landing field potential for future use.

In the Preferred Alternative there is mention of developing recreation in the Otay Mtn. area, along with preserving the sensitive ecology of the region. We believe the impact of recreational hang gliding can be minimal and that proper management can be effectively maintained. The three launch sites mentioned above are not in the major groves of Tecate Cypress, we have not physically surveyed the areas marked (D) in figure 1. The mountain is very unique and should be preserved in its natural state as much as possible and we are concerned that some federally designated "Wilderness" areas specifically forbid hang gliders. We ask that hang glider activity be incorporated into the future plans for the administration of Otay Mountain by the Bureau of Land Management.

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Tecate Peak has been a favorite hang glider soaring site for many years and is unique in its profile to Santa Ana wind conditions. Figure 1, point (E), shows the location of the takeoff area which is off the roads near the tower installations. The San Diego Hang Gliding Association (formerly incorporated as the Ultralite Flyers Organization or UFO) has had official permission to conduct hang gliding activities at this site (please see Appendix I). In most recent time there has been some confusion on our part about which office administers Tecate Peak and about public access to the road that crosses private land on the way to the summit. We would like to see the Management Plan include some light recreational hang glider use of the area, we are sensitive to the religious significance of Kuchamaa to the Native Americans and respect their desire for privacy on the mountain. Please consider our renewed use of the mountain for hang gliding.

El Cajon Mountain is a hang glider soaring site that has been historically accessed from the air. That is to say, the pilots launch from one spot, and then hopefully gain enough altitude to glide over the San Diego River to the mountain in search of better updrafts. Figure 2, spot (A) shows the old takeoff on private land that has recently been closed down. The sites marked (B), (C) and (D) are potential launch sites on public land administered by BLM that could reopen this spectacular site. Our organization has been working on this avenue for many years (please see Appendix II). We ask that the Resource Management Plan include acquiring access across private land to these sites so that hang gliding can once again be enjoyed over El Cajon Mountain.

In the Riverside-San Bernadino County Management Area there is an excellent soaring site the hang glider pilots call "Soboba" because it is near the Soboba Indian Reservation. Figure 3, point (A) marks the current takeoff point which is on private land. The access to this spot is first thru the Soboba Indian Reservation, then on thru the Poppet Flat BLM land to the private land. The landowner has contacted the president of the United States Hang Gliding Association about enhancing his property to meet the needs of the hang glider pilots. Apparently he desires to develop his land including an aerial tramway to the ridge. We ask that research be done to develop a suitable hang glider launch point on the BLM land to ensure future recreational access, possible locations are marked (B), (C) and (D). We also ask that efforts be made to obtain public right-of-way access across private land to the Poppet Flat area. The Soboba Indian Reservation has been very accomodating in allowing hang glider enthusiasts permission to cross their land, although the policy seems to vary into exclusion at times. Public access to the BLM land would guarantee continued use.

Figure 4 has a parcel of BLM administered land marked (A) in the Beauty Mountain Management Area. Oak Grove Valley, Chihuahua Valley and the Anza plains are on one of the local hang glider pilots' favorite cross-country soaring routes that have taken them as far as Barstow in the Mojave Desert. This parcel is a very good example of the potential for designated landing sites on public land. Please pardon the pun, but landing a hang glider is usually a low impact event. Public access is the problem faced by hang glider pilots that land on public land administered by either the BLM or the National Forest Service.

The San Diego Hang Gliding Association has worked with many government agencies in order to promote recreational hang gliding in southern California. We contribute funds to maintain Sheephead Road in the Descanso District of the Cleveland National Forest. Our organization has an "Adopt a Trail" and a special permit to launch in the Anza-Borrego State Park. Thru the United States Hang Gliding Association (SDHGA is an affiliated chapter) we provide landowners with $1,000,000 liability coverage. California Civil Code Section 846 and Government Code Section 831.7 immunize landowners from tort liability when they grant permission to hang glider enthusiasts to use their land for recreational activities.

We ask that you please include consideration of our land use needs in the South Coast Resource Management Plan. We will be available for any detailed planning that requires our input and we truly look forward to working with the Bureau of Land Management.

Sincerely,

Donald B. (Breck) Betts, of the
San Diego Hang Gliding Association
P.O.Box 408
(28717 Lebanon Rd.)
Pine Valley, CA 91962-0408
res: (619) 473-9743, wk: (619) 534-2473
FAX: (619) 534-5332

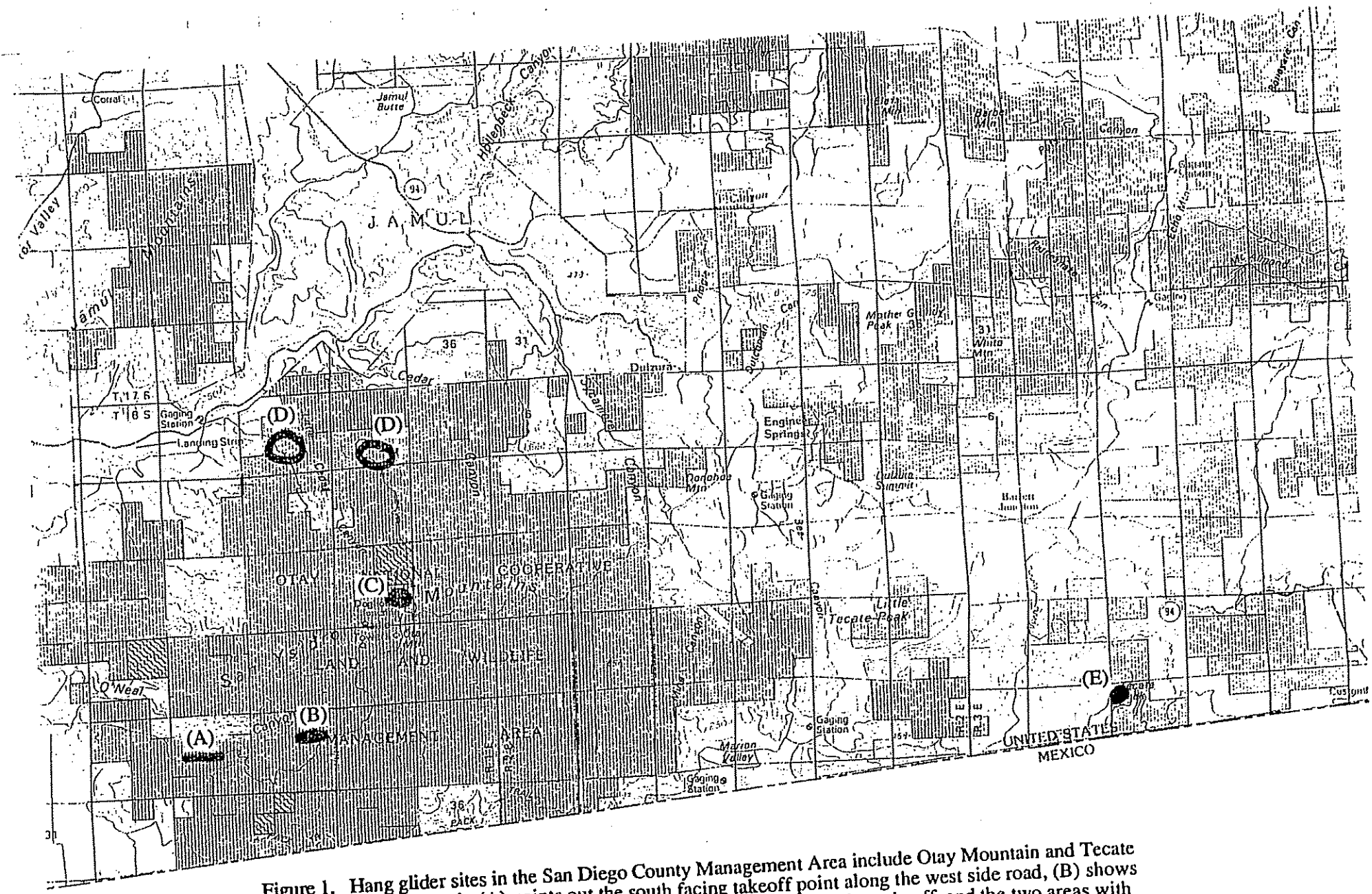

Figure 1. Hang glider sites in the San Diego County Management Area include Otay Mountain and Tecate Peak. On Otay Mountain (A) points out the south facing takeoff point along the west side road, (B) shows the west facing takeoff, (C) designates the location of the northwest facing takeoff, and the two areas with (D) marked are potential future landing sites on northwestern plateaus. The top of Tecate Peak (E) offers good takeoffs to the west, north and especially to the east during Santa Ana wind conditions.

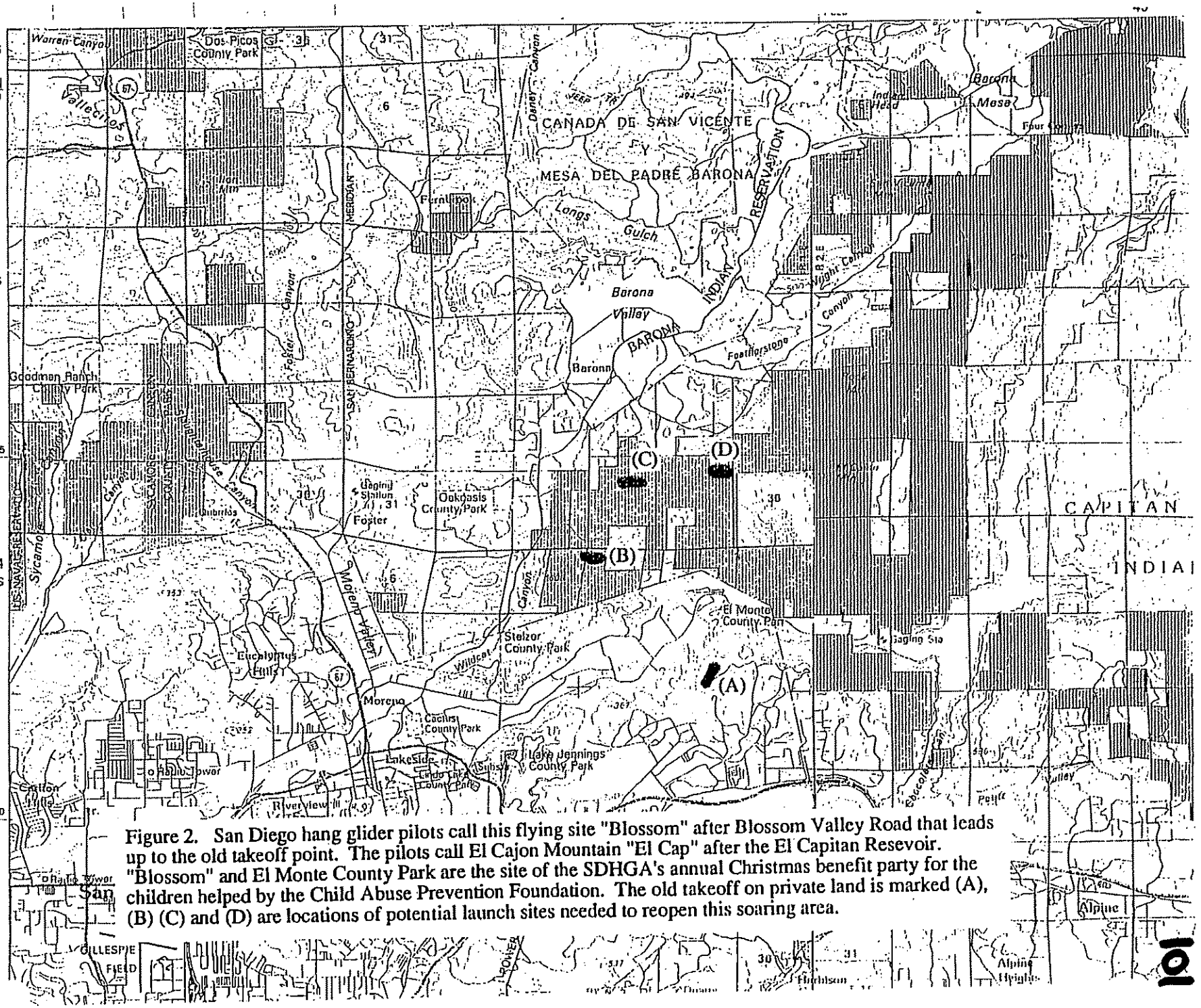

Figure 2. San Diego hang glider pilots call this flying site "Blossom" after Blossom Valley Road that leads up to the old takeoff point. The pilots call El Cajon Mountain "El Cap" after the El Capitan Resevoir. "Blossom" and El Monte County Park are the site of the SDHGA's annual Christmas benefit party for the children helped by the Child Abuse Prevention Foundation. The old takeoff on private land is marked (A), (B) (C) and (D) are locations of potential launch sites needed to reopen this soaring area.

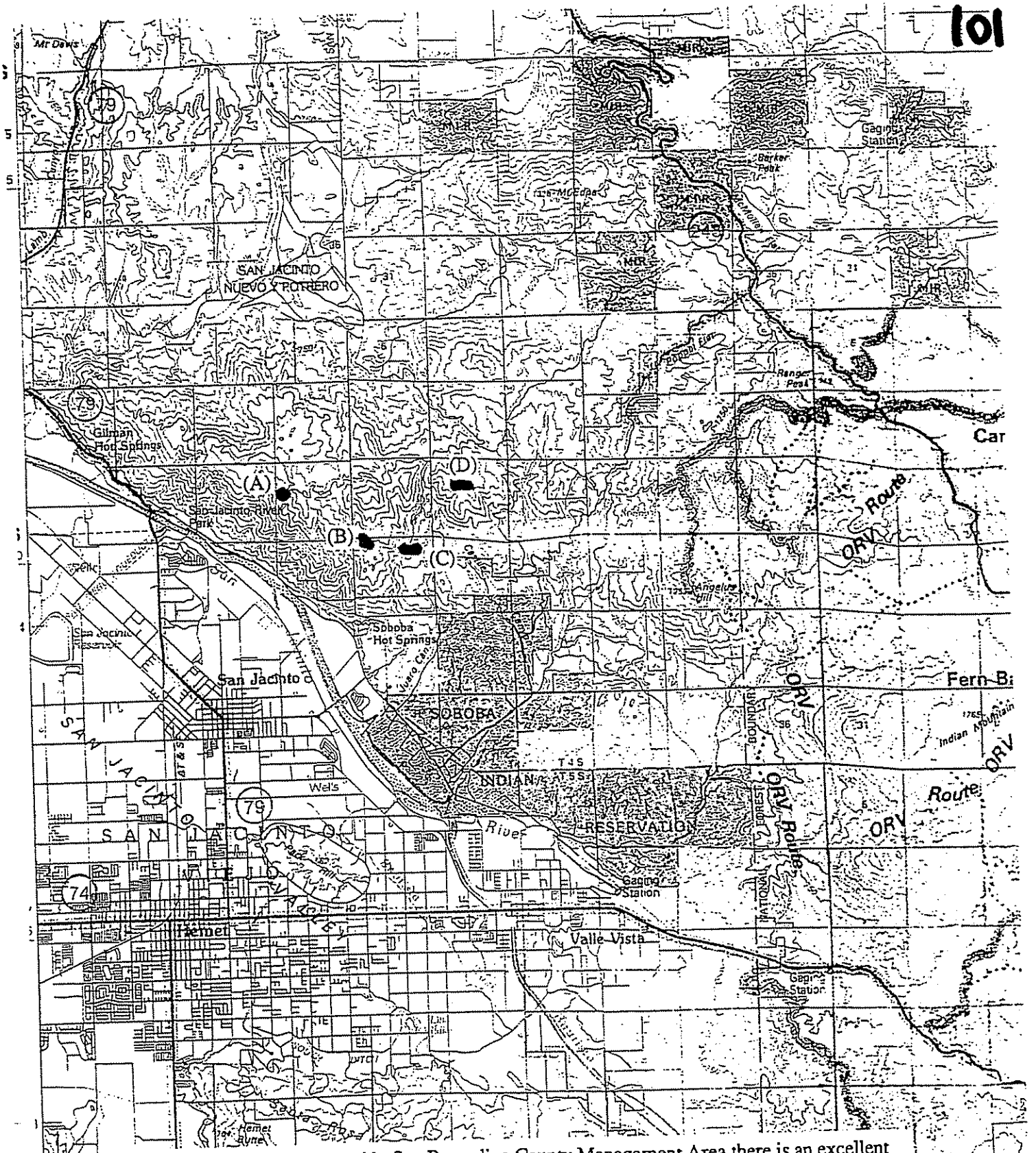

Figure 3. In the Riverside-San Bernadino County Management Area there is an excellent soaring site the hang glider pilots call "Soboba" after the Soboba Indian Reservation. (A) marks the current takeoff point which is on private land. Potential new takeoff points on public land administered by BLM are shown as (B), (C) and (D). This area is shown as Poppet Flat in the South Coast Resource Management Plan.

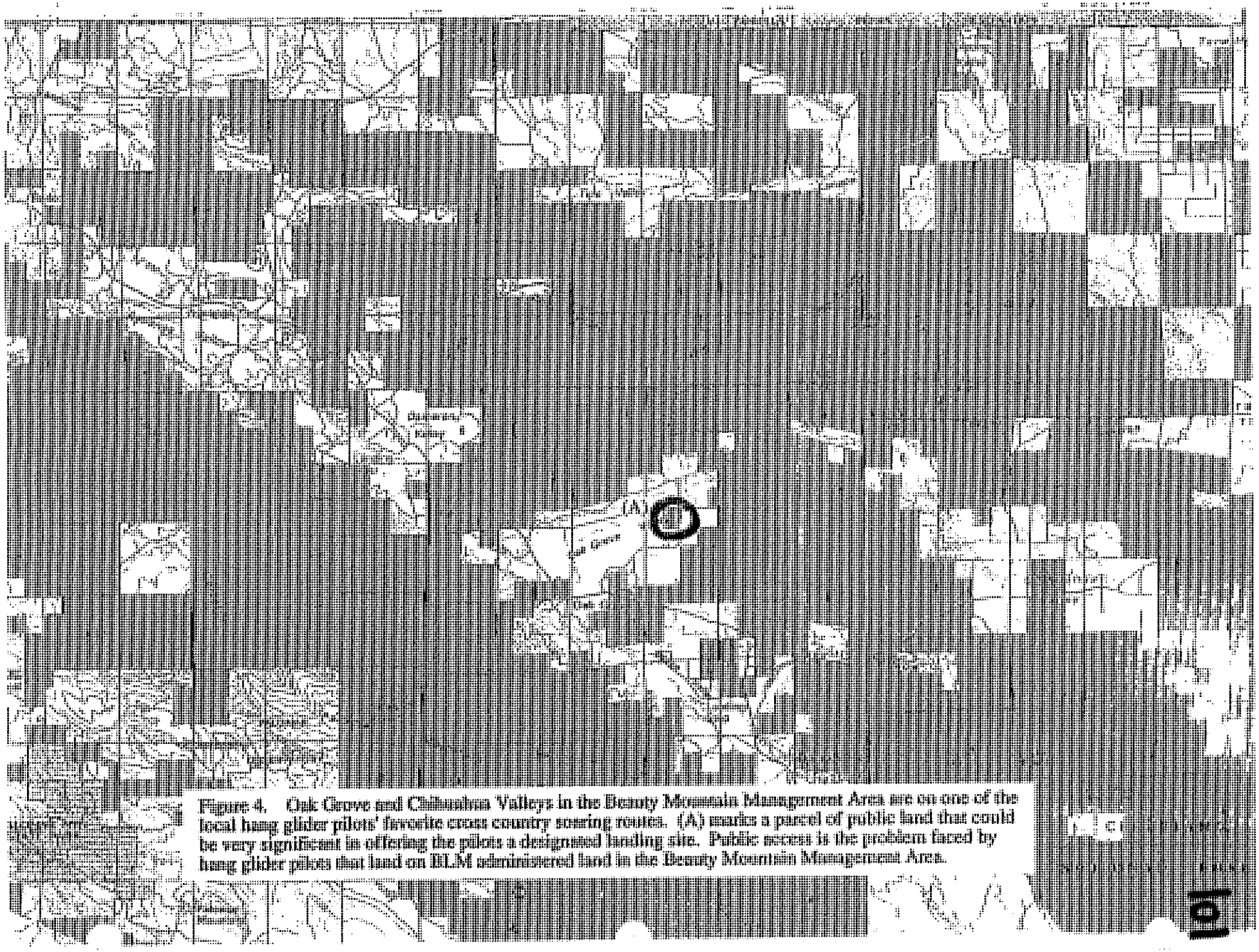

Figure 4. Oak Grove and Chihuahua Valleys in the Beauty Mountain Management Area are on one of the local hang glider pilots' favorite cross country soaring routes. (A) marks a parcel of public land that could be very significant in offering the pilots a designated landing site. Public access is the problem faced by hang glider pilots that land on BLM administered land in the Beauty Mountain Management Area.

IN REPLY REFER TO

United States Department of the Interior

8343 (C-067.4

BUREAU OF LAND MANAGEMENT
El Centro Resource Area
333 South Waterman
El Centro, California 92243

APR 30 1982

Mr. John Ryan
The Hang Gliding Center
4206 Sorrento Valley Blvd., Suite K
San Diego, California 92121

Dear Mr. Ryan:

By this letter, I wish to inform you that we have notified the California Division of Forestry that we have conditionally agreed to have your private lock placed on the Tecate Peak access road.

Please understand that Tecate Peak has considerable religious significance to the Native Americans of the Southern California area. We, as a multiple use agency, wish to provide for various activities such as yours, however, we also have the responsibility to protect the rights of Native Americans. Therefore, we ask that you coordinate with the Native American Elders Society, Steve Esquibel, so to avoid any conflicts with their religious activities. This coordination would consist of notifying them in writing or by means mutually agreeable, of the dates and times you wish to utilize the access road. You will not use the area if the Native Americans will be on the mountain.

We understand that you propose to use the area one or two times a month, on weekends, and your group would consist of from two to five people each time. You will be using the established road only and will "take off" with your hang gliders from the road, just below the communication site. Your landing area will be on private land near the Boy Scout camp near the base of Tecate Mountain.

You will not conduct these activities in conflict with any Native American ceremonies in progress, respecting their right to conduct religious or ceremonial activities undisturbed.

Should any conflicts or degradation to the resources become evident, the Bureau of Land Management may remove your padlock and thus control your access to the mountain via Tecate Mountain road.

I apologize for the delay in processing your request and hope now that you will be able to conduct your recreation activities as requested. Please don't hesitate to contact us if we can be of further service.

Please contact the following persons for coordination of your activities:

Mr. Ignacio Scerato, Chairman
Southern California Tribal Chairman's Assoc.
P. O. Box 1470
Valley Center, California 92082
(714) 745-3315

Mr. Steve Esquibel, Secretary
Native American Elder's Society
1641 Felicita
Escondito, California 92025
(714) 745-7491

Copies of this letter have been forwarded to each of the above gentlemen.

Sincerely,

Roger D. Zortman
Area Manager

cc: Mr. Ignacio Scerato, Valley Center, CA
Mr. Steve Esquibel, Escondito, CA

IN REPLY REFER TO

6250 (C-067.4(

101

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
El Centro Resource Area
333 South Waterman
El Centro, CA 92243

APR 30 1982

Mr. Barrett Neal
California Department of Forestry
2249 Hamija Road
El Cajon, CA 92020

Dear Mr. Neal:

Mr. John Ryan has contacted us regarding the placement of their personal padlock on the Tecate Mountain Road gate. They wish to have access by a limited amount of people (2 to 5) in order to conduct hang gliding operations. Mr. Ryan stated further that he had your approval and that you simply needed assurance from the Bureau of Land Management that we had no objections.

We have obtained the names of the four individuals involved and have instructed them not to include access for additional individuals without letting us know their names and addresses.

We do not have any objection to these individuals placing a padlock on the Tecate Peak gate.

Sincerely,

Roger D. Zortman
Area Manager

cc: John Ryan
The Hang Gliding Club
4206 Sorrento Valley Blvd., Suite K
San Diego, CA 92121

Michael G. Windle
P.O. Box 72470
San Diego Ca. 92122

28 April 1980

Bureau of Land Management
2800 Cottage Way, Rm. E2841
Sacramento Ca. 95825

Dear Sir or Ms.,

As chairperson of the El Capitain site acquisition committee I'm authorized by our corporation to gather, negotiate, and arrange for the use of El Capitain mountain (Also known as El Cajon Mnt.) as a recreational flying site. Our non-profit corporation, Ultralite flyers Organization Inc., operates out of San Diego California. The purpose of our corporation is to promote safe training, equipment, & flying sites for the members of our organization.

El Capitain is one of the few mountains in the area which possesses the charactics needed for safe, consistent, & legal hang gliding flying. The mountain is reasonably close in(only about twenty miles traveling distance form central San Diego), it has a 3,000 ft vertical takeoff over landing, it faces into the prevelant winds (southwest), and the area is a designated recreational flying area.

The vast majority of El Capitain mountain is either public domain or national forest. Most all of our favorite flying sites are located on or in conjunction with U.S. Govt. lands. For this reason our organization is fairly familiar with dealing directly with Govt. officials in the opening up, & maintenace of these sites. At this time we are dealing with the El Centro branch of the BLM regarding the El Capitain site. Your represenatives there are in favor of our proposed use of this site for recreational flying and have in fact sent us applications for a recreational use permit. We are writing your office at this time in order to further clarify the status of the land use atop El Capitain mountain as there has been a great deal of controversy betwix several local groups as to the use, preservation, & property rights of those interested in the site for ecological, mining, & recreational purposes.

The El Centro office has mostly been quite supportive in our efforts to gather the kind of information we need to begin the process of opening up the public land for recreational use and enjoyment. They have given us information on the past history of the site as regards their opinion of the legality of traveling over an existing dirt road that crosses the public lands. The two groups that have in the past conflicted over the use of the mountain (The El Capitain Mining District - a collection of mining calimants on the mountain who portend to exclusively control nine square miles of the mountain i.e. the entire mountain, and the San Diego autoban society - a group with ecological ideals in preserving the area for ecological & zoological purposes) have dealt extensively with the El Centro office. In fact just recently the Autoban Society has been granted a lease on a sizable acreage of land in the area which the miners fought real hard to prevent.

The El Centro office has informed us that the right to pass over the public-land road is perfectly within our rights so long as we don't have to cross over private property in doing so. That private property owners don't have the obligation to allow us acess to the public land even if they have the only acess route onto the public land. The office informed us that the miners claim to exclusive use of the public-land was unfounded & that we could secure a recreational use permit if enough signatures were submitted through individual letters & if we met the provisions of Land Resource Management(2000); Recreation and Public Purposes Act. The office felt that once a recreational use permit was issued we would have a better chance of secureing a permanent easement through certain private property for access to the top of the mountain.

Contrary to this opinion is the position of the miners. They portend to have exclusive control of the mountaintop. They have place signs surrounding the entire mountain indicating their exclusive interest in the land stating on these signs that there is no public domain in the area. They have placed no trasspassing signs & various gates about the mountain, they have made claims of extensive mining being performed when in reality the only noticeable evidence of mining is the scattered about & broken down equipement one finds at the foot of the hill. People living at the foot of the only accessible road to the top

have stated that they have not witnessed anything resembling mining for at least the past five years, Many of the statements made by the miners conflict with each other from month to month. They have filed the required proof of labor reports each year at the county recorders office but in checking out these reports the only work one finds filed is extremely small capital outlays & even then the work is mostly for road maintenace. The miners claim to have a quasi municipality within their mining district and claim that they will soon be hiring a deputy marshal who will have the authority to arrest people & turn them over to the authorities. They state that since they have Placer mining claims they then, since some of the claims are patented, have the same rights as private property owners with respect to the acreage covered in their claims. They have stated that the El Centro office has their head in the sand and that all the filings are through the Sacramento office. In short, we have found the miners, their corporations, & their corporate directors to be experts at dealing in missatement of fact,misstatement of in some cases of their actual activities, & experts at throwing out a big line of confusion to anybody interested in getting atop of the mountain.

It appears that the real purpose of these corporations is eventual acquisition of the acreage atop the mountain through the guise of patented mining claims.

What can the Sacramento office do for us? Well we would like to get an opinion from your office as regards their exclusive use of the nine square miles of land atop the mountain that is covered by their mining claims. We would like to know everything that can be dug up relating to the claims they have & the physical dimensions thereof. We would like an opinion from you as regards mining claim regulations since we have no way of knowning regulations in this highly specialized area of public land use. We would like to know if it is legal for them to sell keys to the access gate at $25 a piece(this gate is on their private land & landlocks the public dirt road which ends through the back of their property. (this road has been in existence since the late 1800's). If in fact they are misleading the general public as regards the public land, are they in violation of any public statutes (ie. section 1063 of title 43 of the U.S. annotated code)? Could we cause to be instituted an investigation into their practices given they have been operating on a fraudulent basis?

The sections I'm interested in are as follows:
(1) Township 14S, Range 1 East sections 34, 35, & 36 of the San Bernardino base & meridian lines.
(2) Township 14S, Range 2 East section 31 of the San Bernardino base & Meridian lines.

Various names under which these people operate are as follows:
(1) Trimountain Mining & milling co., a mining partnership
(2) Bettlors corp.
(3) Shenma Corp.
(4) Alfred Lehman
(5) Boots Placers claims Rec. Nov. 12 197[illegible] F/P 313566 & F/P 3135[illegible]
(6) King Stalalite
(7) El Capitain Mining District
(8) Star of Shenma mining association
(9) Arthur clay mines

Also enclosed are a few copies of their proof of labor filings.

Thank you for your assistance in this matter.

Earnestly,

Michael G. Windle
Chair person, El capitain site acqusition committee
Ultralite Flyers Organization, Inc.

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

El Centro Resource Area
333 South Waterman
El Centro, California 92243

TAKE PRIDE IN AMERICA

10

IN REPLY REFER TO

1120
(C-067.21)

March 12, 1990

Donald Betts
San Diego Hang Gliding Association
P. O. Box 408
Pine Valley, California 92062

Dear Mr. Betts:

Your letter of February 1, 1990, regarding landing hang gliders on public lands was forwarded to this office for response.

Landing hang gliders on public lands would be considered "casual use", and would not require a permit from BLM. "Casual use" means any short term non-commercial activity which does not cause appreciable damage or disturbance to the public lands, their resources or improvements, and which is not prohibited by closure of the lands to such activities. All vehicle use would be restricted to existing roads.

However, there is no public access to the BLM lands identified in your letter. An easement or permission to cross the adjoining private lands would have to be obtained from the landowners. The County Tax Assessor's office will be able to assist you with the names and addresses if you provide a legal description, i.e., township, range and section, or county parcel number.

If you have any further questions, please feel free to contact our Realty Specialist, Lynda Kastoll, at the above address, or telephone (619) 352-5942.

Sincerely,

G. Ben Koski

G. Ben Koski
Area Manager

101

§ 831.7. Liability to participant in or spectator to hazardous recreational activity

(a) Neither a public entity nor a public employee is liable to any person who participates in a hazardous recreational activity, including any person who assists the participant, or to any spectator who knew or reasonably should have known that the hazardous recreational activity created a substantial risk of injury to himself or herself and was voluntarily in the place of risk, or having the ability to do so failed to leave, for any damage or injury to property of persons arising out of that hazardous recreational activity.

(b) As used in this section, "hazardous recreational activity" means a recreational activity conducted on property of a public entity which creates a substantial (as distinguished from a minor, trivial, or insignificant) risk of injury to a participant or a spectator.

"Hazardous recreational activity" also means:

(1) Water contact activities, except diving, in places where or at a time when lifeguards are not provided and reasonable warning thereof has been given or the injured party should reasonably have known that there was no lifeguard provided at the time.

(2) Any form of diving into water from other than a diving board or diving platform, or at any place or from any structure where diving is prohibited and reasonable warning thereof has been given.

(3) Animal riding, including equestrian competition, archery, bicycle racing or jumping, boating, cross-country and downhill skiing, hang gliding, kayaking, motorized vehicle racing, off-road motorcycling or four-wheel driving of any kind, orienteering, pistol and rifle shooting, rock climbing, rocketeering, rodeo, spelunking, sky diving, sport parachuting, body contact sports (i.e., sports in which it is reasonably foreseeable that there will be rough bodily contact with one or more participants), surfing, trampolining, tree climbing, tree rope swinging, water skiing, white water rafting, and wind surfing.

(c) Notwithstanding the provisions of subdivision (a), this section does not limit liability which would otherwise exist for any of the following:

(1) Failure of the public entity or employee to guard or warn of a known dangerous condition or of another hazardous recreational activity known to the public entity or employee that is not reasonably assumed by the participant as inherently a part of the hazardous recreational activity out of which the damage or injury arose.

(2) Damage or injury suffered in any case where permission to participate in the hazardous recreational activity was granted for a specific fee. For the purpose of this paragraph, a "specific fee" does not include a fee or consideration charged for a general purpose such as a general park admission charge, a vehicle entry or parking fee, or an administrative or group use application or permit fee, as distinguished from a specific fee charged for participation in the specific hazardous recreational activity out of which the damage or injury arose.

(3) Injury suffered to the extent proximately caused by the negligent failure of the public entity or public employee to properly construct or maintain in good repair any structure, recreational equipment or machinery, or substantial work of improvement utilized in the hazardous recreational activity out of which the damage or injury arose.

(4) Damage or injury suffered in any case where the public entity or employee recklessly or with gross negligence promoted the participation in or observance of a hazardous recreational activity. For purposes of this paragraph, promotional literature or a public announcement or advertisement which merely describes the available facilities and services on the property does not in itself constitute a reckless or grossly negligent promotion.

(5) An act of gross negligence by a public entity or a public employee which is the proximate cause of the injury.

Nothing in this subdivision creates a duty of care or basis of liability for personal injury or for damage to personal property.

(d) Nothing in this section shall limit the liability of an independent concessionaire, or any person or organization other than the public entity, whether or not the person or organization has a contractual relationship with the public entity to use the public property, for injuries or damages suffered in any case as a result of the operation of a hazardous recreational activity on public property by the concessionaire, person, or organization.

Added Stats 1983 ch 863 § 1.
Review of 1983 legislation. 115 Pac LJ 686.

CIVIL CODE OF THE STATE OF CALIFORNIA

§ 846. Duty of care or warning to persons entering property for recreation; Effect of permission to enter

An owner of any estate or any other interest in real property, whether possessory or nonpossessory, owes no duty of care to keep the premises safe for entry or use by others for any recreational purpose or to give any warning of hazardous conditions, uses of, structures, or activities on such premises to persons entering for such purpose, except as provided in this section.

A "recreational purpose," as used in this section, includes such activities as fishing, hunting, camping, water sports, hiking, spelunking, sport parachuting, riding, including animal riding, snowmobiling, and all other types of vehicular riding, rock collecting, sightseeing, picnicking, nature study, nature contacting, recreational gardening, gleaning, hang gliding, winter sports, and viewing or enjoying historical, archaeological, scenic, natural, or scientific sites.

An owner of any estate or any other interest in real property, whether possessory or nonpossessory, who gives permission to another for entry or use for the above purpose upon the premises does not thereby (a) extend any assurance that the premises are safe for such purpose, or (b) constitute the person to whom permission has been granted the legal status of an invitee or licensee to whom a duty of care is owed, or (c) assume responsibility for or incur liability for any injury to person or property caused by any act of such person to whom permission has been granted except as provided in this section.

This section does not limit the liability which otherwise exists (a) for willful or malicious failure to guard or warn against dangerous condition, use, structure or activity; or (b) for injury suffered in any case where permission to enter for the above purpose was granted for a consideration other than the consideration, if any, paid to said landowner by the state, or where consideration has been received from others for the same purpose; or (c) to any persons who are expressly invited rather than merely permitted to come upon the premises by the landowner.

Nothing in this section creates a duty of care or ground of liability for injury to person or property.

Added Stats 1963 ch 1759 § 1. Amended Stats 1970 ch 807 § 1; Stats 1971 ch 1028 § 1; Stats 1972 ch 1200 § 1; Stats 1976 ch 1303 § 1; Stats 1978 ch 86 § 1; Stats 1979 ch 150 § 1; Stats 1980 ch 408 § 1; Stats 1988 ch 129 sec 1.

In Simpson v. United States (1981) 652 F.2d 831, the court explained the legislative intent and rationale for Civil Code Section 846:

"The intent of the California legislature in adopting California Civil Code Section 846 was to encourage landowners to open their property to the public for recreation. Such encouragement was necessitated by the threat of tort liability which in recent years has led landowners to bar people from trespassing on their land. When viewed against its intent and purpose, the statute has a rational relationship to a legitimate state purpose and is able therefore, to withstand an equal protection challenge."

ORDINANCE NO. 12538

(New Series)

AN ORDINANCE AMENDING CHAPTER VI, ARTICLE 3, OF THE SAN DIEGO MUNICIPAL CODE BY ADDING SECTION 63.02.32 RELATING TO ISSUANCE OF PERMIT TO CONDUCT OR PARTICIPATE IN ANY SOARING OR GLIDING ACTIVITY.

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Chapter VI, Article 3, of the San Diego Municipal Code be and the same is hereby amended by adding Section 63.02.32 to read as follows:

SEC. 63.02.32 SOARING OR GLIDING ACTIVITY – PERMIT

(a) The following words and phrases, wherever used in this section, shall be construed as defined herein unless from the context a different meaning is intended or unless a different meaning is specifically defined and more particularly directed to the use of such words or phrases.

(1) "Hang gliding" shall mean flight by an motorless, heavier than air, contrivance now known or hereafter invented, used or designed for navigation of or flight in the air in which the pilot, crew and passengers are carried externally to the frame of such contrivance.

(2) "Full-scale glider soaring" shall mean flight by any motorless, heavier than air, aircraft now known or hereafter invented, used or designed for navigation of or flight in the air, in which the pilot, crew and passengers are carried internally within the frame of such aircraft.

(3) "Radio-controlled model glider operations" shall mean flight by any unmanned, motorless, heavier than air contrivance, now known or hereafter invented, used or designed for flight or navigation, which is controlled from the ground by radio signals.

(b) Any person who, on any park, beach or other property owned or maintained by The City of San Diego, conducts or participates in any soaring or gliding activity, including, but not limited to, hang gliding, full-scale glider soaring, and operation of radio-controlled model gliders, without first having obtained a permit from the City shall be guilty of a misdemeanor.

(c) No permit shall be issued unless all of the following conditions are met:

(1) The applicant shall submit and maintain a certificate of personal injury and liability insurance in the amount of Five Hundred Thousand Dollars ($500,000) combined single limit, naming the City as an additional named insured, and providing that in event of cancellation of the policy, the City will be provided at least 30 days' written notice.

(2) The applicant shall present and have approved by the City Manager a complete set of flight regulations, rules and procedures related to safety standards and operations.

(3) The applicant shall agree to abide by all rules and regulations approved by the City Manager for the protection of persons and property during flight operations.

(4) The applicant shall agree to indemnify and save City harmless from any and all liability for damage to property or injury to or death of persons resulting from applicant's activities on the ground or in the air.

(5) The City Manager determines that the requested location of the gliding or soaring activity does not endanger the safety of persons or property.

(d) A permit shall be issued for a term of twelve (12) months and be renewable during the eleventh month of the term. Each permit shall contain the following information: name and address of holder, date of issuance, expiration date, the location of the approved activity.

(3) Upon notification that a person holding a permit under this section is in violation of subsections (c) (1) or (3) of this section, the City Manager shall order a hearing before a hearing officer, appointed by the City Manager, to be conducted within 30 days of such notification. The City Manager upon ordering such hearing shall mail by certified or registered United States mail written notice of such hearing to the person holding the permit at the address shown on the permit currently filed with the City Manager. Failure to respond to such notice shall be considered to be a surrender of such permit.

(f) Upon denial of a permit under this section, the person requesting such permit shall have the right to appeal such decision before the hearing officer within 30 days of such denial.

(g) Hearings heard by a hearing officer shall be conducted with recognition of constitutional rights of due process of law including proper notice, the right to appear at the hearing personally or with representation, the right to present evidence, the right to confront and examine witnesses and the right to have written findings and conclusions. The hearing officer may consider hearsay evidence as part of his determination except that no finding or recommendation may be based solely on such hearsay evidence unless the hearsay evidence is supportive or supplementary to other legally competent evidence.

(h) The hearing officer's written report of findings of fact and recommendation shall be completed and submitted to the City Manager for approval within 10 days of the hearing.

(i) The effect of the decision by the City Manager to revoke or suspend a permit issued under this section shall be stayed while an appeal to the Public Facilities and Recreation Committee is pending or until the time for filing such appeal has expired.

(j) Within ten (10) days of the decision of the City Manager, the appellant may appeal to the Public Facilities and Recreation Committee of the City Council by filing a request therefor with the City Clerk. A decision of the City Manager shall be final if an appeal is not filed in accordance herewith.

(k) If no appeal is filed within ten (10) days, permits which have been suspended or revoked by the City Manager shall immediately be surrendered to the City Manager and the person surrendering such permit shall cease all soaring or gliding activity permitted under this section.

(l) The appellant shall present his case to the Council Committee. The department representing the City Manager shall then present its case after which the appellant shall be afforded an opportunity for rebuttal.

(m) The Public Facilities and Recreation Committee members may at any state of the proceedings direct questions to the appellant or the department. It may also summon witnesses or call for other evidence, and continue the hearing to a later date.

(n) After the presentation by the appellant and the department, the Public Facilities and Recreation Committee shall, upon motion, close the hearing and make its decision on the appeal. Three affirmative votes of a County Committee are required to reverse, modify, or uphold the decision of a hearing officer. If the decision of the City Manager to suspend or revoke the permit is upheld, the permit shall be immediately surrendered to the City Manager.

(o) Subject to the permanent rules of the Council, the decision of the Council Committee shall be the final administrative remedy.

(p) Any person who conducts or participates in any soaring or gliding activity under this section with a suspended or revoked permit shall be guilty of a misdemeanor.

(q) Any person who operates any hang glider, full scale glider, radio-controlled model glider on any park, beach, or other property owned or maintained by the City of San Diego, in willful or wanton disregard for the safety of persons or property shall be guilty of a misdemeanor.

Section 2. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

Introduced on December 18, 1978.

Passed and adopted by the Council of The City of San Diego on January 2, 1979.

AUTHENTICATED BY:

PETE WILSON,

Mayor of The City of San Diego, California.

CHARLES G. ABDELNOUR,

City Clerk of The City of San Diego, California.

By EARNEST H. COOK, Deputy.

(SEAL)

Published January 16, 1979 80-1235

102 KATY WRIGHT, THE EASTLAKE CO., OCTOBER 29, 1996

102(a) A review of the referenced figures does not indicate that any Eastlake properties were depicted as "undetermined development status." All lands depicted as having "undetermined development status" are within the County of San Diego's Metro-Lakeside-Jamul segment of the County Subarea Plan.

102(b) The refuge planning areas depicted on figure 4-4 are planning areas, not refuge boundaries. The USFWS will release a draft Environmental Assessment for the San Diego National Wildlife Refuge in the near future for public review and comments on the planning area boundaries should be submitted to the USFWS at that time. Determining the planning area boundaries for the National Wildlife Refuge is beyond the scope of the EIR/EIS.

102(c) See **Theme Response IV, MSCP Financing Plan: Regional Source of Funds.** The 171,920-acre MSCP preserve would be assembled from existing public lands (81,750 acres or 47%), private lands conserved through the development process (63,170 acres or 37%), federal and state acquisition (13,500 acres or 8%), and local acquisition (13,500 acres or 8%) (MSCP Plan, p. 4-2). Thus 82% of the proposed preserve would not require regional funding for acquisition, and much of the implementation strategy described in the MSCP Plan and subarea plans addresses management of existing public lands and private conservation through avoidance and off-site mitigation. The wildlife agencies and take authorization holders, including participating local jurisdictions, would annually review the implementation of the MSCP Plan and subarea plans. As noted in the Plan, if adequate local funding is not provided, the wildlife agencies and local jurisdictions will develop a strategy to address the shortfall.

102(d) The City of Chula Vista's take authorization would cover incidental take of covered species on lands mapped as active agriculture in the SANDAG data base. See MSCP Plan, Volume I, Figure 2-3 for lands mapped as agriculture. These lands would also be eligible for "safe harbor" agreements.

102(e) See response to Comment 86(g).

102(f) See response to Comment 102(a) and 102(d).

102(g) See **Theme Response XXVI, Permit Streamlining.**

102(h) The MSCP Plan does not contain specific guidelines regarding land uses adjacent to the preserve, noting that the such guidelines would be contained in individual subarea plans. Pages 41 and 42 of the City of Chula Vista Subarea Plan describe compatible land uses adjacent to the preserve. The general criteria note that a wide variety of land uses are anticipated to occur adjacent to the preserve

and state that there will be no requirements for buffers outside the preserve system. The general criteria call for appropriate site design with landscaping, fencing, lighting and signage sensitively designed adjacent to the preserve to minimize adverse impacts. No specific restrictions are included in the City of Chula Vista Subarea Plan regarding Eastlake property adjacent to the Otay Lakes.

102(i) The Final EIR/EIS and MSCP Plan, Volume I, Section 6.2.2, have been revised to clarify incidental take provisions. Please refer to the revised language in the Final EIR/EIS documentation and the Revisions to the MSCP Plan, January 1997.

102(j) Figure 3.2-1 is a regional-scale map based on SANDAG's county-wide existing land use coverage and is not intended to reflect, or be used for evaluation of, agricultural land uses on specific properties. Identification and treatment of agricultural uses on specific properties in the City of Chula Vista would be subject to the requirements of the City of Chula Vista Subarea Plan.

102(k) Figures 3.2-1 and Figures 3.2-4 are regional-scale maps based on different data bases (SANDAG's county-wide existing land use coverage, and CDC's important farmlands coverage respectively) and are not intended to match. There are not inconsistencies between the maps since one represents existing land uses and the other represents designated important farmlands. Neither map is intended to reflect, or be used for evaluation of, existing or designated agricultural uses on specific properties. Likewise, the quantitative farmland analysis included in Section 4.2 of the Draft EIR/EIS was completed at regional and subarea plan levels and is not intended to quantify potential impacts to farmlands at a project level.

102(l) Figures 3.3-1, 3.2-1 and 3.2-4 are regional-scale maps and are not intended for use for evaluation of individual properties. There are not inconsistencies between the maps since they represent different things: Figure 3.3-1 represents vegetation communities, Figure 3.2-1 represents existing land uses, and Figure 3.2-4 represents important farmlands as mapped by the CDC. The regional-scale mapping reflected in the MSCP Plan is not intended to be used to identify project-specific habitat tiers. Identification of habitat tiers would occur with individual mapping for individual projects and, in the case of Eastlake, the requirements of the City of Chula Vista Subarea Plan would apply regarding this issue.

102(m) Reference to East Orange Avenue is included in the revised language included in the Final EIR/EIS. The comment is correct in noting that neither the Salt Creek area south of Otay Lakes Road nor the 45-acre site south of the Olympic Training Center are included within the preserve boundary shown on the City of Chula Vista Subarea Plan. It is not the purpose of the Draft EIR/EIS to identify specific locations having local land use approval and not subject to the conditions of take authorizations granted with the MSCP Plan to participating local jurisdictions.

102(n) The referenced figure depicts the preserve boundaries considered under the Coastal Sage Scrub Scenario, one of the alternatives addressed in the Draft EIR/EIS. The alternative scenarios were

developed for analysis purposes and are not intended to specifically reflect local land use approvals or development agreements for individual projects. It is noted that features of the Coastal Sage Scrub Scenario would not be consistent with land use approvals for the Eastlake project.

102(o) The referenced figure depicts the preserve boundaries considered under the Biologically Preferred Scenario, one of the alternatives addressed in the Draft EIR/EIS. The alternative scenarios were developed for analysis purposes and are not intended to specifically reflect local land use approvals or development agreements for individual projects. It is noted that features of the Biologically Preferred Scenario would not be consistent with land use approvals for the Eastlake project.

102(p) The referenced figure depicts the preserve boundaries considered under the Public Lands Scenario, one of the alternatives addressed in the Draft EIR/EIS. The alternative scenarios were developed for analysis purposes and are not intended to specifically reflect local land use approvals or development agreements for individual projects. It is noted that features of the Public Lands Scenario would not be consistent with land use approvals for the Eastlake project. The vegetation mapping shown on the referenced figure was completed at a regional-scale and is not intended to reflect project-specific information for the Eastlake property.

102(q) Figure 3.2-2 is a regional-scale map using SANDAG's public ownership coverage. It is not intended to reflect specific ownership conditions on individual properties. Designated open space lands are not shown on the graphic.

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Post-it® Fax Note 7671	Date 10/29/96	# of pages ▶ 6
To: Dave Flesh	From Kathy Wright	
Co./Dept.	Co. EC	
Phone # 533-5262	Phone # 421-0127	
Fax # 533-4267	Fax # 421-1830	

October 29, 1996

THE EASTLAKE COMPANY

Mr. Dave Flesh
Metropolitan Wastewater Department
City of San Diego
600 "B" Street, Mail station 905
San Diego, CA 92101

SUBJ: MSCP COMMENTS

MSCP PLAN

1. Figures 3-1 through 3-4 show an area within EastLake as "undetermined development status". While the area known to EastLake as the "land swap" has yet to annex to Chula Vista, the property has Chula Vista General Plan land use designations assigned and it is intended that this area be annexed to Chula Vista in 1997. It therefore, should be included in the Chula Vista Subarea boundary. **102(a)**

2. Page 4-11 indicates that the USFWS, in planning the San Diego National Wildlife Refuge, is studying several areas for inclusion in the Refuge. USFWS insists that the Service will only purchase from willing sellers. The EastLake Company and the Western Salt Company are in no way interested in selling any portion of EastLake to the Service. This position has been communicated to the Service on several occasions. It appears that the continued insistence on showing EastLake property in the Refuge is inconsistent with the stated goals of the Service. This landowner wishes all portions of EastLake be removed from consideration for the Refuge. **102(b)**

3. Page 5-20, section 5.8.2. The EIR/EIS does not adequately address the impacts on the development community and the regional housing supply which could occur should a bond issue or regional funding strategy not be implemented. **102(c)**

4. Page 6-3. The discussion under agriculture in 6.2.2.1 specifically indicates active ongoing farming as an acceptable use eligible to receive take authorizations. The EastLake property has been dry-farmed for decades. The EIR should contemplate this as an acceptable use under the definitions provided in section 6.2.2.1. Further, the property should be subject to "safe harbor" provisions for agricultural lands that have been farmed. **102(d)**

IMPLEMENTING AGREEMENT/CORNERSTONE LANDS CONSERVATION

Exhibit K of the Cornerstone Lands Agreement, page 1, indicates that the Agreement will reserve an easement area that is within 300 feet horizontal from the 490.7 foot high water line of Lower Otay Lake and within 300 horizontal feet of the 550 foot contour defining Upper Otay Lake. **102(e)**

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As shown on the enclosed exhibit, this definition includes approximately 30 acres of private property in EastLake (as well as the Olympic Training Center), which is located within the City of Chula Vista. The current language appears to be tantamount to an agreement between the City of San Diego and the Resource Agencies to seek restrictions on property not owned by the City of San Diego in order to create a buffer zone. 102(e)

The Cornerstone Lands Agreement should be amended to include only City of San Diego property located east of Wueste Road for lands adjacent to Lower Otay and it should exclude private property in Chula Vista that is within 300 feet of the 550 foot contour of Upper Otay Lake.

EIR/EIS

1. The document is inconsistent and incorrect in its land use designation of the undeveloped portions of EastLake, thus making the analysis of the impact on EastLake and the overall impact on farmlands impossible to determine. 102(f)

2. The adoption of the MSCP will complicate the entitlement process for The EastLake Company. The property is within the MHPA boundary and although not within the preserve area, we will be forced to seek additional land use authorization from USFWS and CDFG regarding land development activity whereas local jurisdictional authority alone would only have been sufficient prior to the MSCP. The analysis of this additional entitlement cost is not adequately addressed in the EIR/EIS. Given that the EastLake property is devoid of any sensitive resources and it is outside of the preserve boundary, there are not tangible benefits to EastLake as a result of the MSCP. 102(g)

3. The document does not adequately address how implementation of the MSCP will affect land development efforts on property adjacent to the proposed MHPA preserve and how the MSCP EIR/EIS will be utilized in connection with such efforts. We are specifically concerned with our land adjacent to Upper and Lower Otay Lakes. 102(h)

4. The EIR's conclusion that the MSCP does not apply to grazing land, ignores the fact that grazing operations will continue to be at risk and subject to potential liability resulting from any inadvertent taking of a covered species. 102(i)

5. Figure 3.2-1, page 3-6. Although difficult to read at this scale, the figure indicates that the EastLake neighborhoods of the Trails, Vistas, Woods and Land Swap are existing agricultural lands. The map appears to specifically exclude Salt Creek, which, in fact is also an existing agricultural land. 102(j)

6. Figure 3.2-4, page 3-10. Although difficult to read at this scale this figure is again inconsistent in its designation of the EastLake property. The figure indicates that EastLake neighborhoods of "local importance" for farmlands include the Trails, Woods, Vistas and the Land Swap. However, the Salt Creek area of the property and the Olympic Training Center are shown as grazing land. The entire undeveloped portion of EastLake, including Salt Creek, should be designated agriculture in the same manner and there should be some internal consistency between this figure and figure 3.2-1. The 150 acre OTC site is not grazing land and should not be indicated as grazing on this exhibit. The correction of the errors mentioned could total several hundred acres and the impact on the analysis of farmlands is therefore, not known. 102(k)

7. Figure 3.3-1, page 3-30. The figure indicates that the undeveloped EastLake property is agricultural on the MSCP vegetation communities map. Again this is inconsistent (yet accurate) with figures 3.2-1 and 3.2-4 as noted above. As such, the EastLake property is a Tier IV land under the definition provided on page 3-34. 102(l)

8. Page 4.2-72 contains an analysis of circulation issues associated with the MHPA in the City of Chula Vista. The document does not include East Orange Avenue from SR-125 to Wueste Road as a roadway that could traverse the preserve. This highway is in the Chula Vista General Plan and it should be included in the analysis. Second, the Chula Vista General Plan and the EastLake III General Development Plan designate Salt Creek south of Otay Lakes Road as a "park" with active recreational uses anticipated. The two documents noted also designate a 45 acre site, south of the Olympic Training Center, as "park". Although these two sites are not in the preserve they are within the MHPA boundary and should be contemplated by this EIR/EIS as having existing local land use approval and therefore not subject to MSCP conditions. 102(m)

9. Figure 2-18, page 2-54. The figure indicates that private land within EastLake's Salt Creek is "public land" under the Coastal Sage Scenario. However, in the EastLake III General Development Plan, Salt Creek has zoning for both open space and parks. Additionally, a 45 acre area south of the Olympic Training Center is zoned park. The figure is inconsistent with the adopted Chula Vista General Plan, EastLake III General Development Plan and adopted EastLake Development Agreement. 102(n)

10. Figure 2-19, page 2-58. Same as comments provided in number 9 above. 102(o)

11. Figure 2-21, page 2-63. Same as comments provided in number 9 above. In no way does the Salt Creek area of the property contain oak woodlands. The designations on this exhibit, relative to Salt Creek, are completely incorrect as well as inconsistent with other vegetation maps in the document. 102(p)

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12. Figure 3.2-2, page 3-8. The figure indicates public ownership of land owned by EastLake in Salt Creek. Other designated open space lands within EastLake and Chula Vista are not included. Therefore, this designation is inconsistent with the treatment of other open space areas in Chula Vista. 102(q)

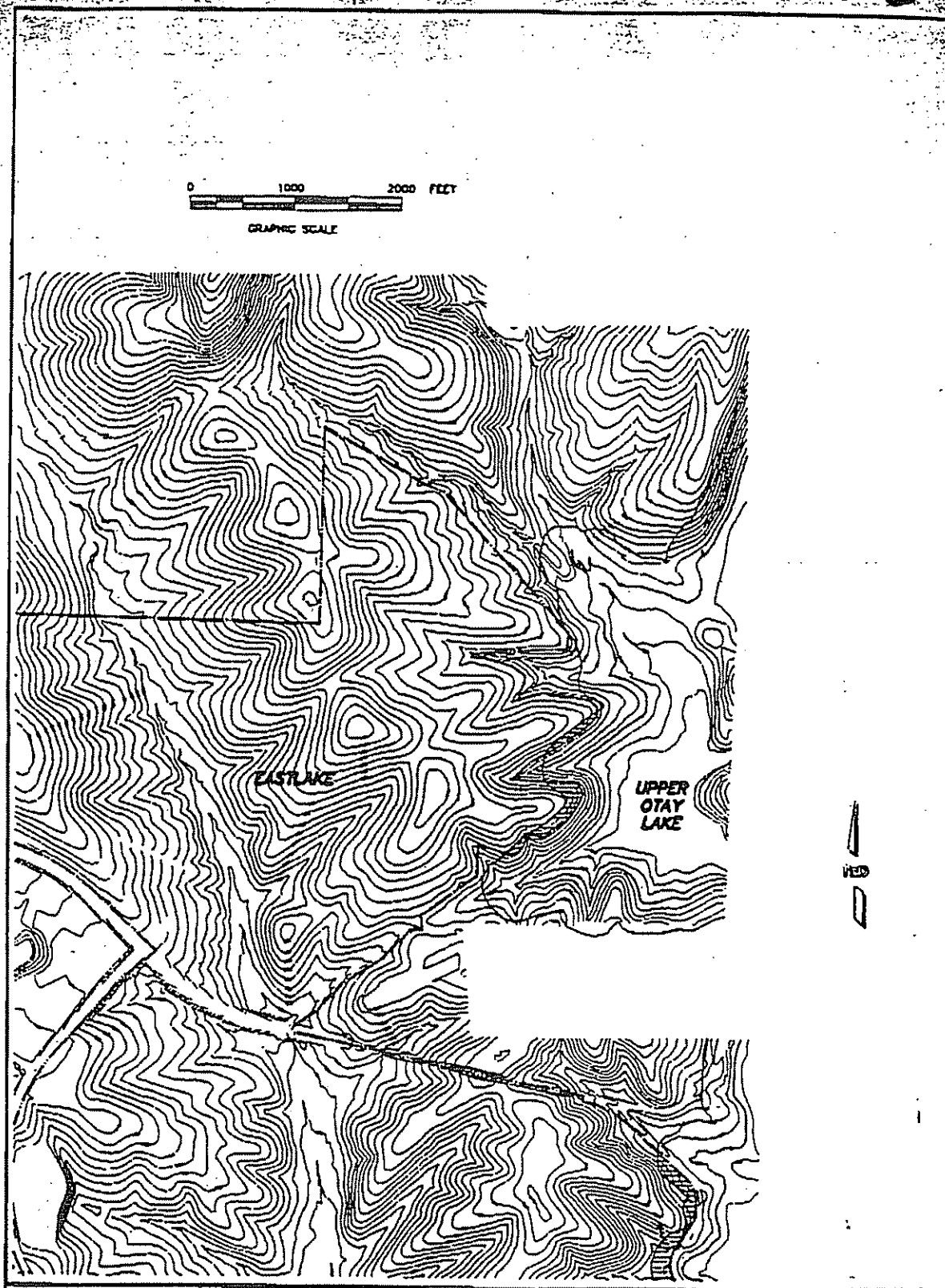
Thank you for the opportunity to comment.

Sincerely,
THE EASTLAKE COMPANY

Katy Wright

Katy Wright
Project Manager

cc. Allen Jones, Fenton-Western Properties
Duane Bazzel, City of Chula Vista

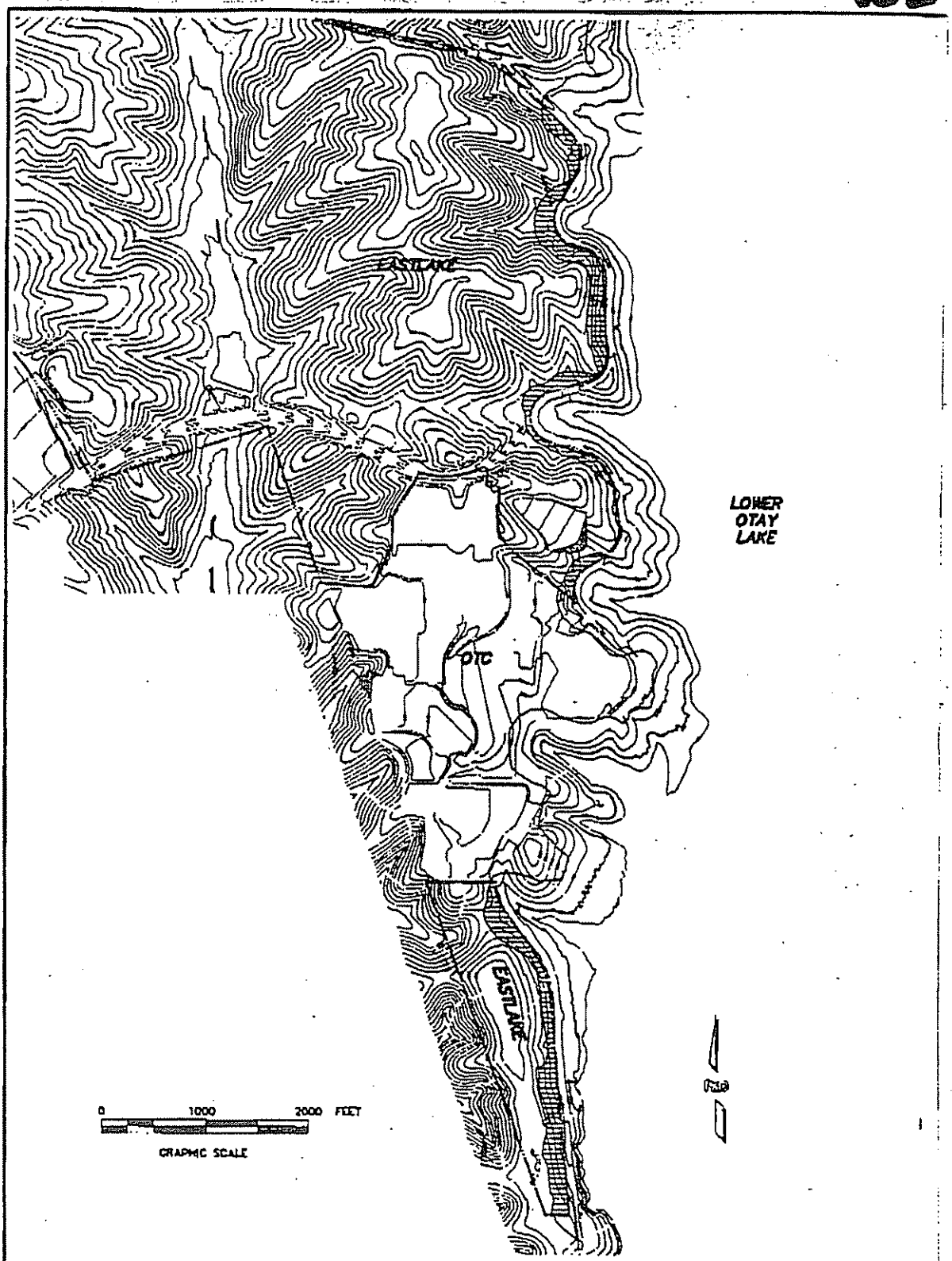


EASTLAKE
UPPER OTAY LAKE

LEGEND

- EASTLAKE PROPERTY LINE
- 490.7' HIGH WATER LINE (HWL)
- 850.0' HIGH WATER LINE (HWL)
- 300' FROM HWL
- 300' AREA WITHIN EASTLAKE PROPERTY

PREPARED BY
PBD CONSULTANTS



EASTLAKE
LOWER OTAY LAKE

LEGEND

- EASTLAKE PROPERTY LINE
- 450.7' HIGH WATER LINE (HWL)
- 550.0' HIGH WATER LINE (HWL)
- 300' FROM HWL
- 300' AREA WITHIN EASTLAKE PROPERTY

PBD CONSULTANTS

103 JOHN POTTS, AMERICAN GENERAL, OCTOBER 29, 1996

103(a) Comments noted. Please refer to responses to Letter of Comment 107 for responses to concerns expressed by the Alliance for Habitat Conservation. See also **Theme Response XXVI, Permit Streamlining.**

103(b) It is assumed that the commenter meant to refer to Figure 3-2 on page 3-3 of the MSCP Plan, Volume I. The EIR/EIS and biological determinations for the MSCP Plan are based on the conservation of 69 percent of the site consistent with the approved project. The designation of 70-75% conservation reflects an approximation of the conservation goals for the area. Figure 3-2 has no regulatory status that affects or modifies the conditions of the tentative map.

103(c) The difference between the 2,300 acre figure (City of Santee Subarea Plan) and the 2,136 acre figure (MSCP acreage in MHPA) represents the habitat expected to be developed within the 90 percent preserve portion of the Subarea Plan. The 2,067 acres is the minimum acreage to be conserved in the City of Santee portion of the MHPA. If more than 90 percent of the habitat within this portion of the MHPA is preserved, then the acreage would increase. A clarification of this issue will be included in the City of Santee's Subarea Plan prior to application for take authorizations.

103(d) Coverage for a species based on the MSCP Plan is based on an analysis of the conservation provided by the MSCP Plan as a whole, not on which projects provide mitigation for a specific vegetation community. The take authorizations will be issued to the participating local jurisdictions. Santee's conservation level is below the average for all jurisdictions, 27% compared to an MSCP-wide conservation rate of 38%. The MSCP preserve only conserved 34% of the known locations of grasshopper sparrows. Information gathered in the future may provide data to indicate the preserve includes adequate habitat for this species to be added to the covered species list through the take authorization amendment process.

103(e) Each Subarea Plan includes measures to contain project impacts within the project area. This is a fundamental tenet of the line-is-a-line concept put forth by the Alliance for Habitat Conservation. In regards to the Fanita Ranch project, the MHPA line depicted in the City of Santee's Subarea Plan was intended to be a hard line preserve boundary which provided an acceptable balance between impacts and conservation. The referenced water tanks and their access roads were acknowledged to occur within the preserve area. No golf course holes or facilities were to occur within the preserve. If the golf course intrudes into the preserve, additional mitigation lands and/or a revised preserve design will have to be developed in concurrence with the wildlife agencies. The Fanita Ranch project is still subject to California Fish and Game Code Section 1600 et. seq and Section 404 of the Clean Water Act.

103(f) Conditional compatibility for utilities and water facilities such as water tanks, access roads, and water detention basins are already provided for within the City of Santee Subarea Plan (Table A) and Section 1.3.

103(g) The identification of potential mitigation measures in Section 1.2 was intended to provide guidance during the project specific review process regarding site design measures needed to contain project impacts within the development area. Fencing and landscaping are just two of the techniques to control human intrusion into the preserve. The specific measure(s) to accomplish this would be determined at the specific project design level. The fuel management zone would also be determined at the project design stage.

103(h) Comment noted.

103(i) The roads referred to are permitted. The map in the City of Santee's Subarea Plan submitted for issuance of take authorizations will be changed to reflect this.

103(j) The City of Santee Subarea Plan does not state or is not intended to imply that the ongoing preserve management of the Fanita Ranch would be the responsibility of the project developer. The Subarea Plan requires that a Preserve Management Plan for the Fanita Ranch be incorporated within the Fanita Ranch Specific Plan. The preparation of the Preserve Management Plan would be the responsibility of the City, with possible assistance from the project proponent.

103(k) Any activities/projects proposed within the MHPA would have to be evaluated as to its impacts to the preserve, covered species, and vegetation communities. Any significant impacts would have to be mitigated. It should not be assumed that a passive recreation area and staging area would automatically be compatible with the conservation goals of the MSCP Plan.

Grading and fuel management in specific locations within the mitigation lands portion of the Fanita Ranch project may be acceptable, but this issue will have to be agreed upon between the City of Santee, wildlife agencies, and American General.

The stated understanding of the fuel management zone is incorrect. The San Diego Fire Chief's Association/wildlife agencies' understanding on fuel modification is for existing development. The fuel modification zone for new developments will be determined on a project-by-project basis consistent with achieving the conservation goals of the MSCP Plan and the City of Santee's Subarea Plan. Only the City of San Diego has proposed a 2-zone fuel modification area. The wildlife agencies agreed to considering the City of San Diego's 2-zone concept as being impact neutral based on their subarea plan as a whole (e.g., 25% development areas, 90% conservation of Tier 1 habitats, etc.). The impacts of fuel management zones in other jurisdictions would be determined on a project-by-project basis.

103(l) The Fanita Ranch project preserve design was negotiated with the City of Santee and the wildlife agencies, and was not based on specific mitigation ratios. There is no excess mitigation associated with the Fanita Ranch and hence, no mitigation banking opportunities exist. Wetland impacts will still require obtaining federal Section 404 permit(s) and state Section 1600 agreement(s).

103(m) The long-term management of the preserve is the responsibility of the take authorization holders. The Technical Advisory Committee is a forum for information exchange, coordination, and development of adaptive management measures.

103(n) Comment noted.

103(o) See **Theme Response XVI, Risk Factors.** The City of San Diego's Subarea Plan Section 1.4.3, Land Use Adjacency Guidelines (page S1) identifies measures that should be addressed during the planning or management phases of preserve assembly. These measures include issues ranging from drainage to brush management, all of which would normally be considered as part of the environmental review associated with the development review process. The majority of the guidelines address site design considerations only and will not result in the requirement of additional land.

The guidelines specifically describe the policy for brush management zone locations as approved by the City Council. That is, Zone 1 would be located on the development area (outside the preserve) and Zone 2/3 could be located within the preserve under certain (most) circumstances. The expectation is that Zone 1 brush management would for the most part occur immediately adjacent to the preserve. This zone does not allow habitable structures.

103(p) Section 1.4.3 does not include a discussion of water tanks and utility access roads. Detention basins are discussed in the context of providing an appropriate mechanism for filtering toxic and noxious materials adjacent to the preserve. The previous section (1.4.1) identifies compatible land uses which do include utility roads and limited water facilities. These water facilities are not anticipated to include water tanks or detention basins except possibly in certain situations which involve limited scale and sensitive design measures.

103(q) The grasshopper sparrow will be deleted from the list on page 81 of the City of San Diego's Subarea Plan. Based on the existing information, the MSCP preserve design does not appear to be adequate to support the issuance of take authorizations for the grasshopper sparrow.

103

American General
Land Development, Inc.

9404 Genesee Avenue Suite 340 • La Jolla CA 92037 • 619-455-1234 • Fax 619-453-2010

A Subsidiary of
American General Corporation

October 29, 1996

Mr. R. David Flesh
City of San Diego
202 C Street
San Diego, CA 92101

RE: COMMENTS ON MSCP Plan and Subarea Plans

Dear Mr. Flesh:

Thank you for this opportunity to provide our comments on the Multiple Species Conservation Program final draft plan documents. In this letter, our comments are specifically directed at the MSCP Plan and the Cities of San Diego and Santee Subarea Plans. Comments are also provided on the EIR/EIS for the MSCP.

1. General Comments

American General is a member of ALLIANCE FOR HABITAT CONSERVATION. The Alliance's general comments on the MSCP draft plan, Implementing Agreement and EIR/EIS are hereby incorporated by reference. In particular, weaknesses within the Model Implementing Agreement and Covered Species list must be corrected to provide the long-term certainty needed for a master-planned community with a multi-year build-out such as our Fanita Ranch project. Regarding this project, we are very concerned about when we will be able to derive the benefits of participating in MSCP and how useful the extensive documentation embodied in the EIR/EIS will be in streamlining the CEQA process. 103(a)

2. Montana Mirador

In Figure 3-3, the City of San Diego shows our Montana Mirador project as 70-75% conserved. While the City may choose to analyze its preserve biology based on this level of conservation, there is currently no written agreement that the property will not be developed as the approved Vesting Tentative Map indicates. That map also shows 69% of the property in open space, not 70-75%. If the property cannot be acquired within the time period which has been discussed, the City's MHPA will need to be adjusted to reflect this circumstance. 103(b)

AMERICAN GENERAL

103

SANTEE SUBAREA PLAN

1. Description of Subarea 1.0

The City notes in paragraph 2 that the MHPA subarea stretches over 2,300 acres. This figure is not correct. As noted in Table B of the Subarea plan, and in Table 3-1 on pages 3-13 and 3-14 of the MSCP plan, the actual Subarea Plan is 2,136 acres. The inconsistency needs to be corrected. 103(c)

2. Subarea Plan Section 1.1 Covered Species List

The City should seek to regain those species removed from the Final Draft MSCP Plan's Covered Species list which depend on grasslands. If landowners agree to mitigation for impacts to grasslands, then they should also get coverage. This is particularly applicable to the Fanita Ranch project in Santee, which has made particular efforts to conserve grasslands in its agreement with the wildlife agencies. In fact, 80% of the on-site population of one grassland species, the Grasshopper Sparrow, is conserved in the MHPA configuration of Fanita Ranch. This species is still not considered conserved; AG and the agencies are currently engaged in discussions to resolve this issue. 103(d)

3. Subarea Plan Section 1.2 Land Use Considerations Adjacent to the MHPA

Assurance of the conditional compatibility of certain uses within or adjacent to the MHPA is needed in order for some resource-sensitive projects to be feasible. The document needs to reflect this assurance. For example, a golf course is planned for the Fanita Ranch in Santee. Portions of the course are planned to comprise the buffer between conserved riparian areas on the western boundary of the property and the developed areas to the east, and as such will be partially within, as well as adjacent to the MHPA. Additionally, locations for approximately three water tanks and access easements are planned for an area within the MHPA in Fanita Ranch. 103(e)

Storm water detention basins are also within the MHPA. These basins will be planted with riparian and wetland vegetation and are intended to provide valuable year-round sources of fresh water and vegetative cover for local wildlife. (The basins will need to be cleaned out periodically of the silt which fills them during the rainy season, but the edges can be left alone.) The water tanks and detention basins are shown on the attachment labeled "Fanita Ranch Open Space". 103(f)

In the section on mitigation measures to limit development impacts on the MHPA, we have the following concerns:

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- The statement seems to suggest that all of the mitigation measures will be employed to minimize impacts. While most of the six measures are workable as drafted, two of them, fencing and fuel modification, are not.
- It is infeasible to fence the entire preserve in the Fanita Ranch project. The staggering cost to install it and then to maintain the fence in perpetuity outweigh the benefits, when other measures such as landscaping can do the same thing with much less cost. 103(g)

- Fuel modification is addressed in the comments on Preserve Management. 103(h)

4. *Subarea Plan Section 1.3 Roads Proposed through the MHPA.*

It is assumed that the roads through the MHPA serving Fanita Ranch are permitted, especially Fanita Parkway along the Santee Lakes and reclamation plant, Cuyamaca Street from the east, and the two roads that connect Planning Area D (northeast corner of property) to Area C (center of the property). The text section says to see the Subarea Plan map, but none of these roads are shown on it. 103(i)

(We wish to note that due to the relatively narrow width and light vehicular travel planned for the two roads serving Planning Area D, no culverts have been required by the wildlife agencies to allow for passage of wildlife.)

5. *Subarea Plan Section 1.4 Preserve Management*

This section appears to suggest that the preserve management for the Fanita Ranch project will be the responsibility of the project. This is entirely inconsistent with the broad thrust of the MSCP plan or its written policy statements. That thrust says that except for brush management, the maintenance, management and monitoring of preserve lands will be the joint responsibility of the wildlife agencies and the local jurisdictions. The only situation where preserve management would not be the responsibility of the public is in the cases where the property owner wishes to retain fee ownership of the preserve areas. Under no other circumstances is American General (or its successors in interest) equipped or prepared to manage a wildlife preserve which is for the benefit of all of the citizens of Santee and the region. 103(j)

While it is not objectionable for American General to prepare a Preserve Management Plan for the property, it seems more appropriate that the City do it themselves, since they or other entities they appoint will be responsible to maintain the preserve just like any other element of community infrastructure. We will work with the city of Santee to clarify this matter.

Fanita Ranch may propose an area for passive recreation and a staging area within the MHPA at the far northern end of the property next to the Sycamore Canyon riparian areas. Its uses will be consistent with the overall MSCP preserve management goals and objectives. 103(k)

Approximately 10 acres of "natural slope contouring" to comply with the City of Santee's grading ordinances will occur as appropriate, some of which will occur within the preserve. All slopes will be revegetated with the adjacent vegetative type seed mix. Fire management is another area where the larger MSCP plan policies affect planning. In most cases, the brush management areas will be outside of the MHPA line, but in several areas of constrained development areas, the brush management area will straddle the preserve boundary, again, consistent with the broader MSCP plan policies. 103(k)

Our understanding of the current fire management policy is that the wildlife agencies have completed, or nearly completed, an agreement with the San Diego region's fire marshals which provides for a 30-foot irrigated non-combustible area next to the structure and a 70-foot area of 50% thinning, adjacent to the preserve, for a total of 100 feet. The MHPA boundary would be the line between the two zones.

The Subarea Plan's Fuel Modification and Preserve Management policies, at least for the Fanita Ranch project, are not consistent with the regional solutions; regional solutions arduously reached through negotiations between property owners, environmental groups and the wildlife agencies to create a "package deal." While imperfect in some regard for all parties, the aggregate "package deal" represents a reasonable compromise which will protect both resources and private property rights. Any significant departure from this compromise threatens the viability of the entire MSCP plan.

6. *Subarea Plan Section 1.6 Interim and Long-Term Protection of the MHPA*

Mitigation

The preserve boundaries and mitigation for upland habitat impacts for the Fanita Ranch project were negotiated with the wildlife agencies and the City of Santee over the last several years. American General concurs that the project is self-mitigating; in fact, once the MSCP's standard mitigation ratios are applied, we believe that there is an argument to be made that there is "extra" land (of about 400 acres) that AG is exploring placing into a conservation bank. Wetlands mitigation negotiations have not been completed, but AG expects to replace what is eliminated through development with replacement habitat consistent with state and federal wetlands regulations. 103(l)

Preserve Ownership and Maintenance

The previously stated position on preserve management applies. The City will likely participate in the Technical Advisory Committee being set up to oversee, with the wildlife agencies, the long term operation of the preserve. 103(m)

7. Analysis of Subarea's Consistency with Biological Preserve Design Criteria in the MSCP

The ALLIANCE comments on the draft EIR/EIS that pertain to this section are hereby incorporated by reference. 103(n)

SAN DIEGO SUBAREA PLAN

1. Edge Effects

Upon a reading of the draft MSCP EIR/EIS, Subarea Plan and Environmentally Sensitive Lands ordinance, there is an inference that, through the development planning process, the apparent preserve shortcoming, caused by so-called "edge effects," is to be corrected. This may be an inconsistency that has not been cleaned up in the ongoing revision of the documents, since it is our understanding that additional land will not be required as a result of the long term management program, nor would setbacks and design restrictions be added later. 103(o)

2. Compatible Uses within the Preserve

In section 1.4.3 of the Subarea Plan, the discussion of detention basins, water tanks, and utility access roads should indicate that there can be conditionally compatible uses within the preserve. 103(p)

3. Grasshopper Sparrow

On section 1.5.8 (page 81) of the Subarea Plan, the covered species list includes the grasshopper sparrow. This is deleted from other lists. Is it considered covered in the northern area of the City? 103(q)

The ALLIANCE comments on the draft EIR/EIS that pertain to this section are hereby incorporated by reference.

The MSCP has the potential to truly streamline the development process if its promise is realized. We appreciate the opportunity to provide these comments. We look forward to seeing their incorporation into the final plan which is approved by the City Council.

Very truly yours,

John T. Potts

John Potts
Managing Director

c: Niall Fritz, City of Santee, w/o
Karen Scarborough, City of San Diego, w/o

attachment

104 ERIC ANDERSON, FARM BUREAU, 10/29/96

104(a) The intent of the public review period for the EIR/EIS is to provide an opportunity for public input on the changes to the Subarea Plans and MSCP Plan that are covered in the Draft EIR/EIS. The information covered by the EIR/EIS represents the most current drafts of the Subarea Plans and MSCP Plan that would be considered for approval by participating jurisdictions. As a result, the EIR/EIS does not need to be recirculated.

Additional opportunities for public input and public hearings will be available in accordance with CEQA and the MSCP planning process. Public hearings would be scheduled when the Final EIR/EIS, MSCP Plan and the City of San Diego are heard by the participating local jurisdictions. In accordance with the MSCP planning process, additional public hearings would be required for participating local jurisdictions to adopt individual subarea plans for their jurisdictions.

104(b) See responses to Comments 93(b) and 93(c).

104(c) The MSCP Plan contemplates land purchases from willing sellers. There are no commitments at this time to change the existing ordinance and any changes would have to be submitted to the County Board of Supervisors for adoption. At that time, any effects on property owners resulting from changes would be considered. See **Theme Response III, Economic Impacts and Impacts on Population and Housing.**

104(d) Comment noted.

104(e) See response to Comment 104(b). The MSCP Plan or Subarea Plans do not place restrictions on existing or ongoing agricultural operation. However, the MSCP Plan recommends that existing policies should be used (1) to allow incidental take of listed species that occurs as a result of ongoing agricultural operation; and (2) to form cooperative agreements between wildlife agencies and farmers which encourage the establishment or restoration of natural habitat on agricultural land, through financial, management, regulatory, or other incentives. These policies may have a positive economic impact to agricultural operation.

104(f) The MSCP Plan addresses impacts to and conservation of all major habitats or vegetation communities. Conversion of natural habitat, such as grasslands, to agricultural use would not be subject to a more restrictive review or mitigation than conversion of habitat to urban use.

See revisions to MSCP Plan, Volume I, Section 6.2.2 on agriculture included in the Revisions to the MSCP Plan, January 1997.

104(g) The subarea plans for the Cities of Santee, Chula Vista, San Diego, Del Mar, Coronado, the County of San Diego, and the Otay Water District were included in MSCP Plan, Volume II, and were available for public comment and review. The statement that the subarea plan takes precedence of the MSCP Plan is incorporated into the MSCP Plan to clearly identify which document controls should a discrepancy be identified.

104(h) Chapter 3.0 acknowledges that changes in subarea plans may occur, including annexations. Changes not anticipated in the MSCP will require plan amendments, including opportunities for public input. The state and federal take authorization would be issued for 50 years to provide certainty for landowners and local jurisdictions. See **Theme Response XXIV, No Surprises.**

104(i) The sentence from the MSCP Plan, Volume I, states: "Each subarea plan contributing to this total describes a process for allowing development outside the preserve to be mitigated by conservation inside the preserve, and a method for the interim protection of habitats in the MHPA until a preserve plan is finalized and lands are acquired or conserved through the development process."

104(j) Neither the MSCP Plan nor the Subarea Plans prohibits the use of private property by the landowner. The just compensation clause of the 5th amendment to the U.S. Constitution establishes the standards under which federal, state, and local governments must compensate a landowner for the taking of private property. The MSCP Plan and associated subarea plans have been developed in compliance with these standards, as interpreted by the U.S. Supreme Court over the past 200 years. Land uses would continue to be regulated by the local jurisdictions based on the local jurisdiction's zoning ordinances, general plans, etc. Please see **Theme Response V, Taking of Private Property.**

104(k) The MSCP Plan is designed to address all covered species as if they were listed by the federal and/or state governments. If in the future, a covered but unlisted species becomes listed as threatened or endangered, the take authorization would become effective concurrent with its listing. Assurances provided in the MSCP Plan and Model Implementing Agreements state that the take authorization holders would not be required to commit additional land, land restrictions, or financial compensation, beyond that described in the subarea plan, for the protection of any covered species (see Section 3.3 of MSCP Plan, Volume I). For uncovered species that may be listed in the future, the wildlife agencies would first determine whether additional conservation measures, beyond those prescribed by the MSCP Plan, are necessary to adequately protect the species. If no such measures are necessary, the species would be added to the covered species list using the federal and state take authorization amendment process. If the MSCP conservation measures are not adequate, the wildlife agencies would work with the participants to identify and jointly implement the steps necessary for coverage. In addition, the wildlife agencies and the jurisdictions have grouped vegetation communities (significantly and sufficiently conserved vegetation communities (Section 3.4 of the MSCP Plan, Volume I) for the purpose of identifying responsibilities for conservation actions needed to add uncovered and unlisted species to the Covered Species List if they are federally or state listed in the future. Based on the above, the benefits to landowners

are the streamlining of the permit process and the greater degree of certainty provided for future developments with regard to mitigation for covered species and their habitats.

104(l) The preserve design checklist described in Section 3.6 of the MSCP Plan, Volume I, pages 3-29 and 3-30, applies to the subarea plan and framework management plan to be prepared by the take authorization holder or local jurisdiction. In particular, preserve management and biological monitoring criteria described on page 3-30 apply to habitat lands under the management responsibility of the take authorization holder and not to all habitats conserved through avoidance during the development process. When privately owned habitat land is protected by a conservation or open space easement, however, then the easement would prohibit uses incompatible with the area's biological function. The MSCP Plan will not prevent landowners from allowable uses of their land in accordance with existing federal, state, and local laws and regulations.

104(m) Some agricultural lands have been included within the City of San Diego's MHPA since they may provide linkages between habitat areas, and raptor foraging habitat. Private lands currently in agricultural use could continue. Private lands which are not currently in agricultural use but are designated and zoned for agriculture use would be allowed, if consistent with the jurisdictions' regulations.

104(n) See revised Section 7 in the Revisions to the MSCP Plan, Volume I. The Federal Anti-deficiency Act and similar state laws define the extent to which state and federal agencies can commit funding. Taking into consideration these laws and the state and federal ESA's, the assurances expressed in the MSCP Plan, Volume I, Sections 4.2.2 and 7.1, are the appropriate assurances on the part of the state and federal governments. While this is the legal limit of the state and federal assurances, the state and federal governments have already expressed their commitment to carrying out their land preservation commitments. They have already acquired over 2,000 acres of their 13,500 acre commitment. Based on already appropriated funding, they would acquire another 1000 acres by the close of federal fiscal year 1997. This represents over 20 % of their acquisition commitments in less than 3% (1 year of a 30 year commitment) of the time anticipated in the MSCP Plan. Since the enactment of the California Environmental Quality Act, the Lead Agencies have had the responsibility to assess the impacts to the environment and require mitigation for significant adverse impacts for projects they approve. The MSCP Plan and subarea plans are designed to fit into the existing process and not only fulfill the requirements of CEQA, but also the requirements of the state and federal Endangered Species Act. This results in significant permit streamlining and would reduce the costs of future development.

104(o) The portion of the City of San Diego's cornerstone lands which will generate conservation banking credits are those portions which could be developed. The City has chosen to not develop them, but rather to include them in a conservation bank. They will receive income from the lands based on the sale of conservation credits. The owners of the Carlsbad Highlands, Crestridge and San Vicente conservation banks have also availed themselves of this opportunity.

104(p) Comment noted. The plan language quoted describes ordinances that will generally be used until new ordinances, regulations, etc. are in place to implement subarea plans. For the County to obtain take authorizations from the wildlife agencies will likely require modification of the existing brushing and clearing ordinance. No changes in this ordinance have been submitted to the County Board of Supervisors. If and when changes are proposed, the effects on property owners will be considered.

104(q) The MSCP generally eliminates project-by-project review by the wildlife agencies in regards to compliance with the state and federal ESAs, except as provided in some portions of the County Subarea Plan.

104(r) Section 6.1, page 6-1, of the MSCP Plan, Volume I, recommends that impacts of land uses adjacent to the preserve on covered species or their habitats should be reduced or eliminated through good land use planning principles. The Plan does not require buffers outside the preserve system.

104(s) The intent of the provision in Section 6.2.2 of the MSCP Plan, Volume I, is to describe how incidental take for agricultural operations on lands, as shown on Figure 2-1 of the MSCP Plan, can be provided by a local jurisdiction. There is no provision in the ESA or its implementing regulations for a "blanket permit" for a particular activity. Therefore, each jurisdiction must identify within its subarea plan the mechanism by which farming operations will be eligible to receive take authorizations, such as a "certificate of inclusion." The certificate must identify the location of the lands by map, and indicate the parcel number, acreage and current landowner to which the take authorizations apply. The local jurisdiction must commit to enforce the applicable provisions of the subarea plan, take authorizations, and implementing agreement as they apply to each recipient of a certificate of inclusion (see section 9.21 of the Model Implementing Agreement). The particular crop grown on individual properties has no bearing on this provision of the MSCP Plan. These clarifications have been made in the Revisions to MSCP Plan, Volume I, Section 6.2.2. See also **Theme Response XXI, Indirect Impact on Agricultural Land.**

104(t) The MSCP has been modified to acknowledge that agriculture is a compatible use adjacent to preserves. Please refer to Section 6.2.2 of the MSCP Plan, Volume I, on agriculture included in the Revisions to the MSCP Plan, January 1997.

104(u) The reference to agricultural lands being de facto buffers has been deleted from revised Section 6.2.2 of the MSCP Plan. Please refer to the Revisions to the MSCP Plan, January 1997.

104(v) See response to Comment 25(a).

104(w) Comment noted. The MSCP Plan anticipates a voter-approved funding mechanism.

104(x) Brush management/fuels management for the protection of new developments will be the responsibility of the new development and will funded by the new development. The local fire departments, districts and CDF will have the responsibility for determining the size and location of fuels management zones. In addition, the MSCP Plan also requires preparation of detailed fire/fuel management plans conjunction with the wildlife agencies. The preserve fire management plans will be designed to reduce the potential for catastrophic fire events which affect both the preserve and adjacent urban areas. The Wildland Urban Interface MOU for fire/fuels management strategy for San Diego County, when adopted, will provide construction and brush management standards around existing and future developments. When adopted into the Uniform Fire Code, these standards will be used by all fire agencies in San Diego County to ensure consistent treatment of the urban/wildland interface. Subarea plans also provide brush management guidelines or incorporate existing local guidelines which will be used until the countywide standards are completed.

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Farm Bureau San Diego County

1670 East Valley Parkway, Escondido, CA 92027 • (619) 745-3023 • Fax: (619) 489-6348

October 29, 1996

The Honorable Mayor Susan Golding
City of San Diego
202 "C" Street
San Diego, CA 92101

Dear Mayor Golding:

The San Diego County Farm Bureau would like to thank you for the opportunity to comment on the Multiple Species Conservation Program (MSCP) Plan and the Draft Environmental Impact Report/ Environmental Impact Statement (EIR/EIS). As a county wide association of farmers and ranchers, Farm Bureau represents the interests of the agricultural industry as well as rural communities. Agriculture is San Diego County's fourth largest industry and brings in over $1 billion in direct sales to the economy.

First, Farm Bureau must point out that there have been substantial changes in the documents concerning agricultural issues, from what was noticed for public hearings, and adopted and committed to by the City of San Diego. These changes require that the comment period be reopened, the EIR/EIS be recirculated, and further public hearings be held. 104(a)

Farm Bureau views the MSCP plan as a severe threat to both the rights of individual farmers and ranchers as private property owners, and to the continued persistence and economic viability of agriculture in San Diego County. The program, as written, offers no benefit to agricultural landowners, since it does not clearly allow for incidental take of listed species through agricultural activities, and it will certainly accelerate and concentrate urban growth on the most productive, highest value agricultural lands. 104(b)

The contemplated practices of regulating land uses, including contemplation of modifications to grubbing and clearing ordinances to make them more burdensome, will result in damages to private property owners (including farmers) from the loss of value of their lands. These losses will be the result of the regulations imposed on landowners, and the loss of marketability and value of land that is targeted for preservation. 104(c)

In view of these factors, Farm Bureau strongly urges that this plan not be adopted. 104(d)

Since farmers have no ability to pass on increased production costs, because markets for most agricultural products are global in nature, (that is, prices are often determined by market forces affected by worldwide supplies and worldwide demand) increased costs mean local farmers lose their competitiveness. Costs to farmers associated with the implementation of this plan are likely to include mitigation requirements for conversion of natural lands to agriculture, (in certain areas of the MHPA) and conversion of lands in one form of 104(e)

agriculture, (i.e. grazing) to another. The typical costs of mitigation simply are not economically bearable for agricultural land use activities. 104(e)

The requirement that urban development more heavily mitigate for its impacts on the nature landscape, the higher the number of species impacted and the quality of habitat disturbed, will result in developments being placed on the best and most productive farmland in the county at an increasing rate.

Since farmlands with the most intensive agricultural uses are also likely to harbor the least number of sensitive species and habitat, the cost of mitigation for developing those lands to urban uses will be lower. That means the farmlands outside of preserve areas will be more attractive economically to develop than natural lands. Neither the plan, nor its environmental documents address this issue. Farm Bureau urges that this issue be analyzed and recognized as the serious threat that it poses to the continuance of agriculture in San Diego County. 104(f)

The problem of loss of productive agricultural lands will also be accelerated through the land use regulations imposed by the plan on farmland inside preserves, and the high costs (or outright prohibition) of conversion of private land, held for future agricultural use, from a natural state to agriculture. In short, as farmland is more quickly gobbled up by development near urban centers, farmland in preserve areas or high habitat value areas, will not be able to make up for that loss by converting land into new production, or lower productive land to a more productive use.

Issues of concern in the MSCP plan to San Diego County Farm Bureau

1) The Subarea plans have precedence over the MSCP plan, therefore the public has no real idea what the whole plan is going to be. 104(g)

Chapter 3.0 of the plan indicates that, "Subarea plans may change over time as preserve boundaries are refined and as annexations occur between the incorporated cities and the County. Subarea plans may include policies different than those in this plan. In the event of any inconsistencies between the general guidelines in the MSCP Plan and specific requirements in a subarea plan, the subarea plan shall take precedence." 104(h)

This effectively means that the public has been told that they can expect to have to comply with a plan that is in constant flux, and may bear no resemblance to the plan that has actually been released for public review here.

2) The Plan commits to undefined regulatory programs for "interim protection" of unacquired private lands in preserve areas.

Section 3.2 of the plan indicates that each subarea will have a process for allowing development outside the preserve, and, "a method for the interim protection of habitats in the MHPA until a preserve plan is finalized and lands are acquired or conserved through the development process." 104(i)

This means the land use authorities will be prohibiting the legal uses of private property, that are otherwise allowed by zoning, resulting in serious violations of private property rights. This is unacceptable. 104(i)

3) Prohibiting the normal, legal uses of private property unnecessarily exposes the City of San Diego, and other land use authorities to liability for fifth amendment takings of private property.

By unnecessarily inserting themselves between the state and federal wildlife agencies, in order to act as the implementers of the endangered species acts, and by extending regulations far beyond those acts, the local land use agencies are exposing themselves to gigantic fiscal liability for uncompensated regulatory takings. 104(j)

4) The plan does not sufficiently solve the problem of future listings of species in the area The plan does not provide "assurances."

Section 3.4 outlines the process for covering new species with the incidental take permit. However, some habitats that are not covered by the plan, (i.e. grasslands, chaparral, oak woodlands) are likely to present severe problems when species inhabiting them get listed in the future. 104(k)

5) Section 3.6 of the plan indicates a far too stringent restriction on unacquired private property.

Page 3-30. Section 3.6 of the MSCP Plan discusses preserve management and biological monitoring. It states that only certain uses will be allowed, specifically, "Appropriate uses within the preserve that are compatible with and complement the biological function of the area." 104(l)

Uses on unacquired land must be allowed according to their zoning, entitlements and other processes. To bar the use of private land for agricultural purposes, because it does not "complement the biological function of the area," will certainly be considered an unconstitutional taking by the City, or other land use authority.

6) The Plan includes agricultural lands as corridors and wildlife linkages. 104(m)

Private lands in agricultural uses should be excluded from these designations.

7) The state and federal governments are allowed to penalize the local participants for their lack of contribution to the program.

Section 4.2.2 outlines how, if the state or federal governments do not come forward with their portion of their commitment to this program, the permit can be altered to cover fewer species and habitats. Considering that it is very likely that the both the state and the federal governments will not be able to muster the financial resources to meet their end of the deal, the plan will surely not provide even the limited "assurances" sought by the species covered at this point. Similar language is also included in Section 7.1. This is unacceptable. 104(n)

8) The City requires fair market value compensation for "encumbrances" to its land, while encumbering thousands of private property owners with severe regulations without compensation.

Explained in Section 4.3.1, regarding City of San Diego Cornerstone lands, the plan states that the City requires compensation for encumbrances to its lands. Yet, the City is apparently ready to severely encumber thousands of acres of private property, with thousands of individual owners, while offering no compensation for the encumbrances it imposes. The City should recognize this is a terrible inequity. 104(o)

9) Contemplated changes to existing grubbing and clearing ordinances are unacceptable.

Section 5.1 begins with language indicating that grubbing and clearing ordinances will be used to ensure that habitat is not lost prior to local approval. Section 5.4 also indicates, "The actions for MSCP implementation may be phased, provided that existing regulations on grading and grubbing protect habitats consistent with the MSCP in the interim between signing of an implementation agreement and permanent preservation actions." 104(p)

Farm Bureau views any action to change the existing grubbing and clearing ordinance to prohibit agricultural clearing as unacceptable to agriculture.

10) The Plan does not eliminate the "project by project review" by the Service and Fish and Game.

As an intended goal from the outset, elimination of project by project review has not been achieved, and it should be recognized that this plan has failed to produce that result. 104(q)

11) The preserves will have uncompensated regulatory impacts to unacquired private lands around them.

The language in Section 6.1 indicates that the preserves will incorporate buffer zones around them that will impact the use of private property, again exposing the City and other jurisdictions to legal liability. 104(r)

12) Language in the plan about agricultural uses and incidental take is unacceptable and has been altered from that approved previously in the public process. 104(s)

Section 6.2.2 has several areas Farm Bureau disagrees with. First, it should be recognized that agriculture *is* a compatible use adjacent to preserves (not, as the plan says, *can* be compatible.) 104(t)

Agricultural lands should not be labeled as "buffers" whether de facto or not. This invites planners to freeze agricultural lands in their present use, which is inappropriate. 104(u)

The allocation of incidental take to agricultural activities should specifically be allowed. Th current language stating that it is "supported" is not acceptable. It is also contrary to what 104(v)

104

the public was told previous to the release of this document. The public actions of the lead agencies in preparation of this document indicated that agricultural activities, including grazing, would automatically be covered by the incidental take permit. This is a clear violation of the public process, and language restoring these intents should be reinstituted.

13) The options for a regional funding source lean toward increases in property taxes.

104(w)

Three of four proposed funding options involve raising assessments of taxes on private property holders. The fourth, increasing the sales tax, is the only contemplated option that actually would have all those that benefit form the preserves paying for them. Farm Bureau views increases on the tax burden of land owners to pay for a program that benefits the entire public as inequitable. Contrary to language in Section 7.4.1, Farm Bureau urges that all funding options must be voter approved.

14) Provisions for brush management should be carefully scrutinized.

104(x)

The existing language for management of brush in and around the preserves in Section 7.3.2, is inadequate. In light of the recent fire in Carlsbad, this issue should be carefully reviewed again, and public safety issues brought to the forefront in consideration. The recent conflagration was a terrible loss of property. This plan should never be the cause of future losses of property, or worse, loss of human life, because public safety concerns were not adequately addressed.

It is hoped that you will seriously reconsider moving forward with this plan, and that you will consider the tremendous impacts this plan will likely have on the future viability and very existence of agriculture in the county. Once again, we thank you for the opportunity to comment on these documents at this time, and would again urge that they be recirculated for public comment and hearings as indicated above. Thank you.

Sincerely,

Eric Anderson
President

105 SILVER, DAN, ENDANGERED HABITAT'S LEAGUE, OCTOBER 28,1996

R

105(a) See **Theme Response I, Species Analysis Approach.**

105(b) Please refer to revised MSCP Plan, Volume I, Table 3-5 included in the Revisions to the MSCP Plan, January 1997. Revised Table 3-5 incorporates portions of various tables, charts, etc. from the MSCP Plan and describes the rationale for coverage, including the level of conservation of known populations and potentially occupiable habitat, the basis for coverage (landscape, special management, etc.), and details of the coverage. Table 3-5 of the MSCP Plan has been revised to include the monitoring approach that will document conservation of populations and preserve function. Please also refer to **Theme Response I, Species Analysis Approach.**

105(c) Please refer to response to Comment 45(b).

105(d) Please refer to response to Comment 45(c).

105(e) Please refer to response to Comment 45(d).

105(f) Please refer to response to Comment 45(e).

105(g) Please refer to response to Comment 45(f).

105(h) Please refer to response to Comment 45(g).

105(i) Please refer to response to Comment 45(h).

105(j) Please refer to response to Comment 45(i).

105(k) Please refer to response to Comment 45(j).

105(l) Please refer to response to Comment 45(k).

105(m) Please refer to response to Comment 45(l)

105(n) Please refer to response to Comment 45(m).

105(o) Please refer to response to Comment 45(n).

105(p) Please refer to response to Comment 45(o).

105(q) Please refer to response to Comment 45(p).

105(r) Please refer to response to Comment 45(q).

105(s) Please refer to response to Comment 45(r).

105(t) The San Diego horned lizard is a species that is widespread within the MSCP study area and in areas to the north and east which have also been designated as NCCP Subregional planning areas. NCCP-sponsored research by the University of California, San Diego found that 13 out of 18 of their amphibian-reptile sample sites supported horned lizard populations, again indicating their widespread presence (pers. comm. Drs. Ted Case and Robert Fisher). These sites were dominated by coastal sage scrub habitat. Research is continuing on the habitat parameters most important to sustaining the horned lizard. Preliminary results point to cryptogramic soils and possible distribution of harvester ant colonies.

The MSCP Plan would preserve 56 percent of potential habitat, including 62 percent of coastal sage scrub, 49 percent of chaparral, and 38 percent of coastal sage scrub/chaparral and 63 percent of known point occurrences of this species (see revised MSCP Plan, Table 3-5, in the Revisions to the MSCP Plan, Volume I). Habitat linkages to the east and north would also be maintained, assuring connectivity to significant populations of this species in areas adjacent to the MSCP preserve.

Conservation of large blocks of protected habitat has been emphasized in the MSCP preserve to provide appropriate habitat for horned lizard and to impede invasion of Argentine ants into horned lizard habitat. While certain smaller habitat fragments in the more urban portion of the preserve system may require management of this exotic, sufficient larger blocks of habitat exist to minimize the likely influence this pest species.

While the distribution of this species in the MSCP study area is not uniform, scientific evidence indicates that it is fairly widespread. By maintaining habitat connectivity with adjacent planning areas, and appropriately managing habitat lands to control harmful non-native species and human disturbances, this species would persist in the MSCP study area.

105(u) The comment is noted. Vernal pools would continue to be regulated as a special aquatic habitat under Section 404 of the federal Clean Water Act and mitigation would be required in accordance with existing regulations.

105(v) Please refer to response to Comment 45(s).

105(w) Please refer to response to Comment 45(t).

105(x) Please refer to response to Comment 45(u).

105(y) Please refer to response to Comment 45(v).

105(z) Please refer to response to Comment 45(w).

105(aa) Please refer to response to Comment 45(x).

105(ab) Please refer to response to Comment 45(y).

105(ac) Please refer to response to Comment 45(z).

105(ad) Please refer to response to Comment 45(aa).

105(ae) A separate Subarea Plan is currently being prepared by several water districts. Other districts have the option to prepare a Subarea Plan at any time they choose.

105(af) Please refer to response to Comment 45(ab).

105(ag) Please refer to response to Comment 45(ac).

105(ah) Please refer to response to Comment 45(ad).

105(ai) Please refer to response to Comment 45(ae).

105(aj) Please refer to response to Comment 45(af).

105(ak) Please refer to response to Comment 45(ag).

105(al) Please refer to response to Comment 45(ah).

105(am) Please refer to response to Comment 45(ai).

105(an) Please refer to response to Comment 45(aj).

105(ao) Please refer to response to Comment 45(ak).

105(ap) Please refer to response to Comment 45(al).

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105(az) Please refer to response to Comment 45(av).

105(ba) Please refer to response to Comment 45(aw).

105(bb) Please refer to response to Comment 45(ax).

105(bc) Please refer to response to Comment 45(ay).

105(bd) Please refer to response to Comment 45(az).

105(be) Please refer to response to Comment 45(ba).

105(bf) Please refer to response to Comment 45(bb).

105(bg) Please refer to response to Comment 45(bc).

105(bh) Please refer to response to Comment 45(bd).

105(bi) Please refer to response to Comment 45(be).

105(bj) Roads are not proposed on Otay Mountain.

105(bk) See response to Comment 74(al) regarding Sections 16.2 and 16.3 of the City of San Diego and Model IAs. The term "significant" has been deleted from Sections 16.2 and 16.3 and Section 16.2 has been revised to provide for partial as well as total permit suspensions. While, as the commenter points out, any permit violation is, technically speaking, grounds for enforcement action, the implementing agreement accurately states the position of the wildlife agencies that suspension or revocation of a local jurisdiction's permit should be triggered by material violations. Please also refer to response to Comment 45(bf).

105(bl) Once the Implementing Agreement terminates, biological impacts will be determined and mitigation imposed in accordance with then applicable law, including the California Environmental Quality Act. Please also refer to response to Comment 45(bg).

105(bm) Please refer to response to Comment 45(bh).

105(bn) The wildlife agencies agree with the commenter's suggestion that suspension of a participating local jurisdiction's entire Take Authorization may not be a practical or an appropriate remedy for a particular permit violation. See response to Comment 79(ap) regarding Section 16.2 for a more detailed discussion of this issue. Section 16.2 of the City and Model IAs has been revised to provide for suspension in whole or in part, of a local jurisdiction's Section 10(a) permit. Please also refer to response to Comment 45(bi).

105(bo) The wildlife agencies agree with the commenter that only lands preserved in excess of the land development requirements imposed by a participating local jurisdiction under an approved subarea plan should be available for sale as mitigation for other projects. The first sentences of Sections 9.13 and 9.14 of the IAs are meant to cover this situation. However, a sentence has been added to the end of Section 9.13 of the IAs to clarify that lands required to be avoided under a participating local jurisdiction's land development requirements are generally ineligible for inclusion in a conservation bank:

** 9.13. Contribution and Banking of Excess Mitigation

. . . Lands required to be avoided or which are outside of allowable development areas pursuant to [**LOCAL JURISDICTION'S**] zoning requirements are not excess mitigation lands and are generally ineligible for inclusion in a conservation bank.

Please also refer to response to Comment 45(bj).

105(bp) The wildlife agencies disagree with the comment. Growth inducing impacts are analyzed in Sections 5 and 6 of the EIR/EIS. Section 9.16 has been revised to clarify its scope. See

response to Comment 79(x) for the revised language for this section. Please also refer to response to Comment 45(bk).

105(bq) The wildlife agencies agree that lands annexed into a participating local jurisdiction must be protected under the annexing jurisdiction's subarea plan. The annexing jurisdiction will be responsible to insure that any development of the annexed lands is consistent with the conservation goals of the MSCP Plan and subarea plan. Section 9.20 has been revised to clarify the annexing jurisdiction's responsibilities toward the annexed lands:

** 9.20 Annexation of Lands. Upon an annexation of lands, [**LOCAL JURISDICTION**] shall amend its subarea plan to insure that any development of the annexed lands proceeds in accordance with the conservation goals of the MSCP Plan and subarea plan. Amendment of [**LOCAL JURISDICTION'S**] take authorization may also be required in certain instances involving an annexation of lands.

Please also refer to response to Comment 45(bl).

105(br) Please refer to response to Comment 45(bm).

105(bs) Please refer to response to Comment 45(bn).

105(bt) The wildlife agencies agree with the commenter that the MSCP Plan should incorporate objective criteria to monitor implementation of the Plan through comparisons of habitat preserved to habitat lost and also comparisons of the types of habitat preserved with the types of habitat lost. See **Theme Response X, Habitat Conservation Accounting Model** and response to Comment 45(bo).

105(bu) Please refer to response to Comment 45(bp).

105(bv) Please refer to response to Comment 45(bq).

105(bw) Please refer to response to Comment 45(br).

105(bx) Please refer to response to Comment 45(bs).

105(by) Please refer to response to Comment 45(bt).

105(bz) Please refer to response to Comment 45(bu).

105(ca) Please refer to response to Comment 45(bv).

105(cb) Please refer to response to Comment 45(bw).

105(cc) Please refer to response to Comment 45(bx).

105(cd) Please refer to response to Comment 45(by).

105(ce) Please refer to response to Comment 45(bz).

105(cf) Please refer to response to Comment 45(ca).

105(cg) Please refer to response to Comment 45(cb).

105(ch) Please refer to response to Comment 45(cc).

105(ci) Please refer to revised Table 3-5 in the Revisions to the MSCP Plan documentation, Volume I, January 1997.

105(cj) Please refer to response to Comment 45(cd).

105(ck) Please refer to response to Comment 45(ce).

105(cl) Please refer to response to Comment 45(cf).

105(cm) Please refer to response to Comment 45(cg).

105(cn) Please refer to response to Comment 45(ch).

105(co) Please refer to response to Comment 45(ci).

105(cp) Please refer to response to Comment 45(cj).

105(cq) Please refer to response to Comment 45(ck).

105(cr) Please refer to response to Comment 45(cl).

105(cs) Please refer to response to Comment 45(cm).

105(ct) Please refer to response to Comment 45(cn).

105(cu) Please refer to response to Comment 45(co).

105(cv) Please refer to response to Comment 45(cp).

105(cw) Please refer to response to Comment 45(cq).

105(cx) Pages 2-13 through 2-15 of the Draft EIR/EIS describe the watersheds included within the MSCP study area and the degree of inclusions of those watersheds within the MHPA. Inclusion of 53% of the total habitat acres of the identified watersheds within the MHPA would encourage maintenance of existing hydrologic regimes. This issue would also be addressed in conjunction with wetland permitting efforts for individual projects.

105(cy) Please refer to response to Comment 45(cr).

105(cz) Please refer to response to Comment 45(cs).

105(da) Please refer to response to Comment 45(ct).

105(db) Please refer to response to Comment 45(cu).

105(dc) Please refer to response to Comment 45(cv).

105(dd) Please refer to response to Comment 45(cw).

105(de) Please refer to response to Comment 45(cx).

105(df) Please refer to response to Comment 45(cy).

105(dg) Please refer to response to Comment 45(cz).

105(dh) Please refer to response to Comment 45(da).

105(di) The ratios in the BMO are intended to be applied except where inappropriate, for practical reasons.

105(dj) Please refer to response to Comment 45(dc).

105(dk) Please refer to responses to Comments 45(dd) and 45(de).

105(dl) Please refer to response to Comment 45(df).

105(dm) Please refer to response to Comment 45(dg).

105(dn) Please refer to response to Comment 45(dh).

105(do) Please refer to response to Comment 45(di).

105(dp) Please refer to response to Comment 45(dj).

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ENDANGERED HABITATS LEAGUE

Dedicated to the Protection of Coastal Sage Scrub and Other Threatened Ecosystems

Dan Silver • Coordinator
8424A Santa Monica Blvd. #592
Los Angeles, CA 90069-4210
TEL/FAX 213•654•1456

Oct. 28, 1996

RECEIVED

OCT 31 1996

DEVELOPMENT SERVICES

John Kovac, Senior Planner
Land Development Review Division
City of San Diego
1222 First Ave., 5th Floor
San Diego, CA 92101

Gail Kobetich, Field Supervisor
U.S. Fish and Wildlife Service
2730 Loker Ave. West
Carlsbad, CA 92008

Ron Rempel, NCCP Program Manager
Calif. Dept. of Fish and Game
1416 Ninth St.
Sacramento, CA 95814

RE: **Multiple Species Conservation Program: MSCP Plan; MSCP Subarea Plans; Draft Environmental Impact Report/Draft Environmental Impact Statement; and Model Implementing Agreement**

Dear Messrs. Kovac, Kobetich, and Rempel:

The Endangered Habitats League wishes to submit the following comments on the above-referenced documents.

I INTRODUCTION

The Endangered Habitats League is an organization of Southern California conservation groups and individuals dedicated to ecosystem protection, improved land use planning, and collaborative conflict resolution. As a stakeholder in the MSCP Working Group, we have worked assiduously towards a successful program. During these last several years, we have been firm supporters of the MSCP *process;* soon it will be time to judge the final *result.*

We cannot stress enough the need for a meaningful public comment period—one which responds constructively to points raised. This is because the plan as presented has serious flaws which need correction if it is to become acceptable. The undoing of the major policy decisions made heretofore is not being requested; to the contrary, we believe that, given the will, the plan's deficiencies can be remedied using the existing framework. Our fundamental concerns are threefold: that the plan be honest—that, in terms of species coverage, it accomplishes what it purports; that its implementation, particularly in the "softline" areas, be fully assured; and that it serve as an adequate program EIR for future projects. We are willing to work with the applicants and the regulatory agencies to achieve these goals.

These comments will first discuss general issues which cut across the subareas, under the heading, MSCP Plan. There will follow comments on the EIR/EIS, the model Implementing Agreement, and the individual subarea plans. In order to facilitate resolution of issues, comments will usually consist of a brief discussion of the problem followed by an outline of suggested remedies.

II MSCP PLAN COMMENTS

A. The biological information presented is inadequate for informed decision-making. (3.3)

Discussion: The document transmits little of the solid biological work which we observed during plan development. The reader gains little understanding of *why* the reserve may function, nor of the justification for species coverage. For a plan which is sure to receive nation-wide scrutiny, its deficiencies in terms of information presented are shocking. The choice not to interpret data for the reader's benefit also create a perception of disdain.

The basic criteria for species coverage appears to be that of sustaining "viable populations" within the plan area. Coherent explanations to support such determinations are not provided, however. The species table supplies only minimal raw data and conclusions, and the Species Evaluations are actually "worksheets," comprised of dense data whose meaning is often indiscernible. At times, the information presented in the Evaluations directly contradicts the coverage determination eventually proposed.

An aspect of the coverage proposals which detracts from their rigor and intelligibility is a lack of methodology. There is no organizing framework in which to place the bulk of the determinations, such as biological status, habitat type, or informational needs. The only guidance offered is generic, as found in the Species Evaluations: 1) sufficient data were available to determine that MSCP populations were important to the species' overall survival; 2) sufficient data were available to determine that the plan would conserve a significant and necessary amount of the species' range/habitat; and 3) management would occur consistent with the needs of the species. Unfortunately, though, even these do not find clear or defensible explanation. 105(a)

Suggested remedy: The biological underpinnings of the MSCP should be presented in far more detail. The role of the MSCP Biological Standards and Guidelines should be discussed, and also included should be the descriptions of the biological care areas and linkages contained in the 1995 Public Review Draft. For each biological core area and linkage, there should be an exposition of how the proposed plan conserves sufficient biological values (coastal sage scrub source populations, raptor foraging habitat, linkage function, etc.).

Finally, the justification for each covered species should be presented in a coherent and organized narrative. A variation on the Species Evaluation framework is suggested:

- If possible, analyze species in groups, for example, vernal pool or coastal sage scrub-associated species. If possible, identify species which may serve as "umbrellas" for others.

- Discuss the data base, which will vary between species. For well or predictably-distributed species, information at the reserve design level—landscape and habitat data—may suffice. For others, only more detailed information, such as survey-based abundance and distribution data, can establish the levels of take and conservation required for permit issuance. An example of the latter is nest sites and foraging territories for raptors. For each species, an assessment should be made as to whether the information available is adequate for decision-making, and the reasons given. 105(b)

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- The amount and configuration of habitat proposed for preservation should be measured against the species' breeding, foraging, and other needs, such that a determination of coverage is justified. Hydrological conditions should be part of the assessment for riparian and wetland species. The specific geographic areas which support the species should be described, and the reasoning behind a conclusion of sufficient habitat elucidated. Clear figures for take and conservation should be provided. 105(b)

- Each species' management needs should be identified. These should be made conditions of the permit, and then carried through to each subarea's management plan.

- The meeting of statutory requirements—section 10(a), NCCP Conservation Guidelines, etc.—should be assessed.

B. Consistency with the Natural Communities Conservation Planning (NCCP) Guidelines has not been determined.

Discussion: The Dept. of Fish and Game promulgated these Guidelines for use in conserving the coastal sage scrub ecosystem, and the U.S. Fish and Wildlife Service, in the final rule for the California gnatcatcher, adopted them as best available scientific information. Nevertheless, references to the Guidelines are cursory, and key components are completely neglected, including the criteria of "no net loss of habitat value from the present" as defined by the viability of populations. It is important that all the standards employed be defined early in the document and carried through each subarea plan. 105(c)

Suggested remedy: Fully analyze Guidelines consistency for coastal sage scrub and its dependent species, on both plan and subarea levels. Given its importance, this analysis should be recirculated for public comment.

C. The relationship of the MSCP to recovery planning is unclear.

Discussion: In carrying out the ESA's goal of species recovery, the Service apparently intends to rely on the 10(a) standard alone (not appreciably preclude the likelihood of recovery). However, over much of the plan area, future, additional recovery options will be effectively precluded. Does this not make the MSCP a *de facto* recovery plan? 105(d)

Suggested remedy: Given the above circumstances, the MSCP Plan should document that the standards used—viable populations, no-net-loss of habitat value from the present for coastal sage scrub species, etc.—contribute to recovery rather than merely not appreciably reduce its likelihood.

D. The coverage of species remaining at "high risk" is not acceptable. (3.3)

Discussion: In evaluating species coverage, the document stratifies species into low, medium, and high risk. "High risk" is defined as "not adequately protected and/or potentially subject to edge effects." By definition, a species *still vulnerable* despite proposed conservation measures—a species at "high risk" of eventual extirpation due to inadequate habitat protection or adverse edge effects—cannot be said to meet federal or state Endangered Species Act or NCCP Conservation Guidelines standards. It is worth noting that during plan development, these same risk stratifications were used to evaluate various preserve scenarios, with a "high risk" determination indicating that additional conservation measures were needed before coverage could be granted.

The species table is also inconsistent in its treatment of the risk factors. For instance, only sometimes are management measures identified which might ameliorate them. 105(e)

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Suggested remedy: The decision to label species with a *residual* risk factor—whether low, moderate, or high—is fundamentally ill-conceived, for it confuses criteria useful in the process of plan development with those ultimately necessary for judging coverage. The issue is not residual risk but rather whether the risk factors *have been reduced by the plan* to levels which assure continued viable populations. If the preserve and management measures do not reach this goal, then coverage should not be granted. 105(e)

E. The category of coverage due to "insignificance" is ill-conceived and poorly applied. (3.3.1, Species Evaluations p. 2)

Discussion: "Insignificance" is defined in the Species Evaluations as "an effect which cannot be measured, relative to the species' status as a whole." The application of this policy to the MSCP is potentially severely flawed, as it may conflict with the program's goal of conserving ecosystems. Thus, a species for which the MSCP plan area is "not a significant portion of its range" may nevertheless be an integral component of the MSCP ecosystem, and deserve fully equivalent conservation measures. Aldo Leopold's dictum, "The first rule of intelligent tinkering is not to throw away the pieces," bears repetition. Serial use of an "insignificant" finding will also lead to the progressive contraction of a species' range over time. Where does it end?

This category of coverage has also been applied inconsistently, and without supporting biological rationale. Some species which might be considered "insignificant" due to a wide range outside the plan area are so labeled, and some are not. There is rarely (the burrowing owl being an exception) a discussion which gives substantive reasons for a decision one way or the other. At best, application appears arbitrary, and at worst, on the basis on convenience.

The critical factor from our point of view is whether coverage under the "insignificant" rubric implies that *local extirpation* within the plan area is an anticipated outcome. This concern arises because the standard for coverage due to "insignificance" found in the Species Guidelines—"The MSCP conserves a substantial amount of habitat that potentially could support or be used by the species"—pointedly leaves out the "necessary habitat" language applied to the "adequately conserved" species. Furthermore, the species table dismisses factors which leave these species at "high risk," as though local extirpation were acceptable. 105(f)

It must be stressed that extirpation of species *currently extant* within the plan area, even if technically "legal" under the federal Endangered Species Act, has never been part of the MSCP program nor is it an acceptable outcome for the *public* partners in this venture. The golden eagle, for example, is not "insignificant" to San Diegans. The inherent contradiction of placing a species likely to be extirpated on a "covered species list" also has regulatory implications: If an applicant purposely chooses *not* to conserve an adequate portion of a wide-ranging species' range, what have they done to deserve the legal and financial benefits of permit issuance?

Suggested remedy: For many reasons, the ecologically unsound and inherently confusing "insignificance" methodology should be entirely dropped from the MSCP Plan. Furthermore, it should be clearly stated that, as a matter of policy, "coverage" under the MSCP requires a high likelihood of species *persistence* within the plan area, regardless of the species' overall range. As a worst-case scenario, if the MSCP plan area is so irretrievably damaged that it can no longer, by itself, sustain populations of a species, then habitat which substantially and adequately *contributes* to maintaining viable populations range-wide should be conserved (such as mountain lion territories).

F. Coverage for many species is not justified by the information presented. (3.3)

A review of the Species Evaluations discloses many serious problems, yet a defensible covered species list is a *precondition* for our support. In some cases, as will be noted below, the ultimate decision reached as to coverage is in direct contradiction to requirements formulated in the Species Evaluations 105(g)

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themselves. This has led to a regrettable loss of program credibility which, unless rectified, could end in an abuse of discretion. Selected species are discussed below; other comment letters will provide additional evaluations. 105(g)

1. *Arroyo toad.*

Discussion: The data base in terms of distribution and abundance is inadequate. How does the exceedingly small tally of only 15 point locations support a determination of viable populations across the plan area? Due to several factors—the extreme degradation of riparian systems in the plan area, the arroyo toad's rarity, and its specialized habitat and hydrological requirements—the *gross* amount of stream-side habitat preserved predicts neither species occurrence nor survival. Only survey-based data allows a calculation of take and conservation adequate for permit issuance.

No information is provided as to how essential breeding requirements (water velocities, gravel terraces of appropriate particle size) are to be maintained in the face of upstream dams and urbanization, with resultant stream and sediment flow alterations. *Also very importantly, there is no analysis to support a finding that adequate non-breeding (foraging and dispersal) habitat (uplands within 1 km of streams) is afforded to arroyo toad populations by the preserve.* No indication is given as to how genetic interchange will be maintained, and finally, the relationship of the MSCP to a recovery strategy for this endangered species has been ignored.

The document itself states, "Because this species' distribution and habitat requirements in San Diego County remain poorly understood, the risk to the species is unknown." Thus, on the basis of the information provided, the inclusion of this species on the covered species list appears arbitrary and capricious.

Suggested remedy: Better population and distribution data is needed, and a determination of those streams and watersheds important to species survival and recovery. The presence of adequate, *safe* foraging habitat (including safety from road kill) should be either documented or provided. Protection of existing and potential habitat from sand and gravel mining and other impacts should be assured. The permit conditions should set watershed and hydrological standards which create and maintain desired habitat and breeding conditions. These conditions should be met through the subarea management plans, and include reservoir discharge regimes. Other management measures, such as exotic predator (e.g., bullfrog and sunfish) control, should be included. The role of the MSCP in regional species recovery should be discussed.

2. *Red-legged frog.*

Discussion: The document states that this threatened species "may" be extirpated, but that few surveys have been done. There is thus insufficient information upon which to base a finding of "discountable." Furthermore, no provisions for reintroduction are made. Under this circumstance, how is this species better off than if left *uncovered* by the MSCP and still subject to a subsequent recovery plan? 105(h)

Suggested remedy: The role of the MSCP plan area in species survival and recovery should be assessed. Appropriate conservation measures, such as reintroduction, should be considered and implemented through the subarea management plans.

3. *Southwestern pond turtle.*

Discussion: Only 8 point locations are know; how can such miniscule data on distribution and abundance support a determination of viable populations in the plan area? Only 52% of potential habitat is protected. Due to the widespread degradation of the plan area's riparian systems, this gross number does not translate into needed information on ponds, upland buffers, hydrological conditions, or 105(i)

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populations. In fact, the document ignores hydrological issues, and also states that, "Most areas within MHPA appear to have insufficient upland buffers." (500 metes is recommended.) Levels of take and conservation *cannot* be adequately inferred. 105(i)

The Species Evaluation repeatedly classified data as insufficient: Coverage is "Unknown, would receive some protection from federal and state wetland regulations." Risk to the species is "Unknown." "Because of insufficient site specific data, regarding this species' distribution, it is unclear how changes to the MHPA will affect this species." Thus, on the basis of the information presented, the inclusion of this species on the covered species list appears arbitrary and capricious.

Suggested remedy: Better population and distribution data is needed. Maintenance of essential habitat and breeding conditions, through appropriate watershed and hydrologic management, should be conditions of a permit. Avoidance of impacts, including safety from sand and gravel mining, is required. The presence of adequate buffering of ponds by upland habitat should be documented or provided.

4. *Northern harrier.*

Discussion: A biological rationale for the "insignificance" finding is not provided. Critical survey data on nest sites and breeding pair is missing. Instead, in the Species Evaluation, there is a dense data set regarding potential habitat and the eventual finding of moderate to high risk based on the "high loss of foraging and breeding habitat; the occurrence of this species maybe further reduced within the MSCP planning area." It is acknowledged that "significant potions of this habitat remain at risk, depending upon application of San Diego County's Biological Mitigation Ordinance," yet there is no analysis of the effects that Ordinance would actually have.

Habitat adequate for coverage is repeatedly stated to depend upon preservation of "key" grassland areas: "1) the area west of Black Mountain; 2) the area designated as Neighborhood 10 and 8A; and 3) the Sweetwater/Otay Ranch/East Otay Mesa area." "Each of these areas is becoming increasingly and substantially fragmented under the proposed plan with a high amount of take. The Service recommends more habitat with less edge effect be preserved in the areas mentioned above. Ideally, at least one of the major grassland areas mentioned above should be preserved in a large intact block as it exists currently." There is no information presented as to what extent, if any, these recommendations for additional grasslands were consummated. As a result, the coverage proposed appears arbitrary and capricious. In addition, the criteria of a 300 foot nest buffer should be applied to low impact activities such as a trail *within* the preserve, rather than to the edge of suburban development. 105(j)

Suggested remedy: Survey data on breeding pair should be obtained, adequate buffering of nest sites should be ensured, and the protection of necessary foraging habitat should be either documented or secured. As noted above, the document itself supplies a range of solutions, e.g., west of Black Mountain. Other potential areas are San Pasqual Valley, Spring Canyon, and Dulzura–Jamul near Route 94.

5. *Cooper's hawk.*

Discussion: No analysis is given to support the conclusion that preservation of approximately 52% of habitat, "with significant portions of potential habitat . . . [remaining] at risk" would continue to support viable populations of this species. Survey data on the location of nest sites is needed; potential foraging habitat is of itself insufficient information upon which to base a finding of coverage. Also, the subarea plans do not consistently require avoidance of impacts. The document itself recommends that "Oak Woodland and Oak Riparian Forest in the areas north of San Vicente Reservoir and the Jamul/Dulzura area be preserved and that disturbance be minimized in the oak woodlands in the MHPA." 105(k)

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Suggested remedy: The conclusion that viable populations are conserved needs more support, including nest site data. Preserve alterations may be necessary. Consistent avoidance measures should be added to the subarea plans. In the County, the specific measures recommended in the Species Evaluation should be assured. 105(k)

6. *Swainson's hawk.*

Discussion: Recommendations for additional grasslands protection were made, and the "Service would consider this species 'covered' if most of the potential foraging habitat was preserved, primarily the Black Mountain grassland area and the Otay Ranch/Mesa area." There is no indication if this occurred or to what extent. 105(l)

Suggested remedy: The protection of necessary grassland foraging habitat should be either documented or secured.

7. *Golden eagle.*

Discussion: The determination of "insignificance" has not been justified biologically. The Species Evaluation concludes that high risk results due to "loss of foraging and breeding habitat," and that this "may preclude long-term successful breeding." It is unknown whether recommendations to conserve additional grassland habitat were carried out. It was acknowledged that "Much uncertainty remains concerning the location of potential development and current nesting localities within the proposed preserve." Nest sites were felt to be highly vulnerable to edge effects. There is no final assessment as to how many eagle pair would remain, and where. 105(m)

Suggested remedy: The protection of necessary foraging habitat in conjunction with adequately buffered nest sites should be either documented or secured if this species is to be "covered." Potential additions include north and west of Black Mountain, Otay Mesa, San Pasqual Valley, and Jamul-Dulzura near Route 94.

8. *Burrowing owl.*

Discussion: Due to its precipitous decline in San Diego County and across the state, the burrowing owl is a species at high risk for future listing. According to the Species Evaluations, it has been identified by the California Secretary of Resources as a prime candidate for the "proactive" approach of multiple species planning. The MSCP has abjectly failed in this regard.

The data set used to judge population viability is *severely* inadequate. Only 24 point locations are plotted. The document itself acknowledges that the populations levels associated with these 24 point locations—and whether these locations represent wintering birds or breeding pair—are unknown. How, then, have the "Recommended Management Conditions" (Species Evaluations, p. 262) been met? These conditions include: "a) Identification of any colonies consisting of five or more breeding pair. If no such colonies remain, identification of historical colonies that are appropriate for enhancement; b) Preservation of colonies consisting of five or more pair, or of targeted enhancement areas."

Also, due to the patchy and poorly predictable distribution of this rare species, *gross* acres of grassland cannot alone establish levels of take and conservation, or reliably predict suitability for relocation attempts.

The first Species Evaluation concluded that the 37% of grasslands being protected would, *at a minimum*, result in loss of about half of the known point locations. It then stated that, "additional habitat would need to be preserved beyond that preserved under the MHPA if this species is to be adequately addressed under the plan.". Coverage for the City of San Diego, for example, depended upon additional "grasslands and agricultural lands that are compatible with burrowing owls in San 105(n)

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Pasqual Valley and Spring Canyon areas." *Unfortunately, subsequent MHPA modifications protected 640 fewer acres.* The document also states, "The level of protection has decreased in the County. The protection goals should be higher in the County . . ." It was concluded that, "Protection for this species has diminished. The conditions placed on our original findings have not been met." 105(n)

Thus, the proposed "coverage" for the burrowing owl is in direct contradiction to the findings in the Species Evaluation. The level of data is also clearly inadequate to meet the criteria contained in the "Recommended Management Conditions." Rather than support a finding that necessary habitat or populations has been protected, the information presented instead renders such a determination arbitrary and capricious.

Regarding the "associated actions" included in the species table's finding, it is proposed to permit the potential take of impacted owls in conjunction with "passive relocation protocols." Such relocation is of mixed and often limited success (personal communication, Pete Bloom) and therefore is *not* a substitute for the protection of existing breeding colonies and ground squirrel populations. Has the Burrowing Owl Consortium been consulted as to the adequacy of the overall MSCP plan?

Suggested remedy: Survey data adequate to judge distribution, abundance, and population viability should be assembled. Targets for additional, suitable habitat preservation—either of existing owl populations or of grasslands with secure ground squirrel colonies—should be met. Finally, appropriate management measures—consistent with Recommended Management Conditions c) and d)—should be assured, along with the caveats noted above in relation to translocation.

The burrowing owl is ripe for listing as endangered; it is imperative from all perspectives—conservation, jurisdictional, development—that more and appropriate habitat be brought into the preserve system. Areas which may provide large, suitable grassland patches are north and west of Black Mountain in the City of San Diego Future Urbanizing Area, Otay Mesa, San Pasqual Valley, Spring Canyon, and Dulzura–Jamul near Route 94.

9. *Southwestern willow flycatcher.*

Discussion: The Species Evaluation states that major edge effects—affecting over 40% of habitat—would have to be ameliorated prior to coverage. There is, however, no evidence that this has been accomplished or that the management measures are anything but speculative. 105(o)

Suggested remedy: Document or provide adequate upland buffering from edge effects. Specify necessary management measures, and carry these through to the subarea plans. Demonstrate an appropriate contribution to the recovery of the species.

10. *Coastal cactus wren.*

Discussion: The Species Evaluation initially states the importance of "protecting and buffering all habitat, whether occupied or not." The need to improve buffering and strengthen linkages was *specified* for several areas, yet information as to the subsequent achievement of these goals is not given. The second evaluation disclosed deteriorating conservation at Otay Ranch (loss of occupied habitat at Poggi Canyon) and increased edge effects. Another series of conditions for coverage was formulated, yet it is *unknown*—and doubtful—whether these were achieved (that is, conservation of "ecologically viable" maritime succulent scrub at Otay Mesa, Del Mar, Point, Loma, La Jolla, National City, Jamul Mts., and Imperial Beach). The ultimate determination of coverage appears based on insufficient information and therefore arbitrary and capricious.

Suggested remedy: Clear parameters for cactus wren conservation need to be established and the plan *documented* to have meet them, referencing the locations. The protection of additional 105(p)

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maritime succulent scrub appears to be needed and/or a *far more substantial and assured* program of habitat enhancement and restoration. 105(p)

11. *California gnatcatcher.*

Discussion: The Species Evaluations are packed with information of limited practical use to the reader, such as permutations of "% points." No meaningful analysis is given as to why these levels are or are not sufficient, such as the resultant numbers of inter-breeding pairs. The evaluation first states that incursions into core population areas are too serious and that the "proposed MHPA configuration and preservation designations . . . are too uncertain to allow a high degree of confidence." It identifies poor linkages, such as across I-8 as potentially fatal flaws, and states that coverage could only be given if there were a "demonstration" of improved linkage as well as as improved "integrity of population cores."

The next evaluation provides no clear assessment of whether these goals were met. To the contrary, there is significantly reduced conservation in multiple areas, affecting major subpopulations. Risk is considered to be "high," with a key linkage "tenuous at best," and conservation in Lake Hodges and Santee/E. Elliot "relatively low with high edge effects." (Santee impacts 71% of "mapped points.") It is recommended that the Lakeside linkage in western Jamul, be more secure and that greater conservation in Santee be seriously considered. *It is unknown the extent to which the necessary improvements (enhanced integrity of core populations and linkages) were made.* At best, we can conclude that insufficient justification is provided for coverage of the gnatcatcher; continued high risk is acknowledged. 105(q)

Suggested remedy: A detailed analysis is needed of the extent of core populations protected, as well as of the source-sink population dynamics of the plan area. Due to the extreme importance of connectivity, functional criteria for each linkage should be defined and maintenance of these conditions explicitly assured.

12. *American badger.*

Discussion: The badger is an example of condoning and indeed "covering" a species whose local extirpation appears likely under the MSCP. The document repeatedly makes the recommendation to "conserve additional grassland habitat," though this was not carried out. The significance of the badger to the ecosystem whose protection is the object of the MSCP has not been considered. 105(r)

Suggested remedy: Protection of additional, intact grassland blocks would benefit this species. Unless the plan can provide adequate habitat and avert local extirpation, it should be contrary to MSCP policy to place it on the covered species list (see Comment E above).

13. *Mountain lion.*

Discussion: Given the importance of top predators to the ecosystem, the mountain lion is another example of the poorly conceived and applied "insignificance" policy. 105(s)

Suggested remedy: If the plan area cannot support lions independently, there should be a substantial contribution to viable lion territories in adjoining areas. Otherwise, "coverage" is contradictory.

14. *San Diego horned lizard.*

Discussion: Inadequate attention has been given to the patchy and unpredictable distribution of this animal. Without more selective criteria for suitable habitat and/or focused surveys, it cannot be 105(t)

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assured that major and sufficient populations are being incorporated into the preserve. Sufficiently unfragmented blocks of habitat are also needed; only these can withstand Argentine ant invasion. 105(t)

Suggested remedy: The proposed preserve needs assessment using the criteria noted above. Permit conditions should specify management standards for known, critical horned lizard habitat, such as Otay Mountain. It should be noted here and elsewhere that Otay Mountain, referenced in several documents as a 100% preservation area, is now proposed for fragmentation with roads and other facilities.

15. *Vernal pool species*

Creation of new pools should be prohibited as a mitigation measure, due to widespread failure of this technique. Please see other letters for additional comment on this subject. 105(u)

G. Narrow endemic species are insufficiently protected. (Also, see City of San Diego Comment A, below.)

Discussion: Three general problems exist with the approach to narrow endemic species. First, the different subareas do not consistently require such avoidance. The County clearly does so, the City of San Diego does so confusingly, and Chula Vista and Santee do not appear to do so at all. Secondly, even when avoidance is required, there are no or insufficient criteria to judge the biological adequacy of the avoidance undertaken or the circumstances under which avoidance might be found to be *infeasible*. Thirdly, many management prescriptions, found throughout the Species Evaluations, are not reflected within the subarea plans or management proposals. 105(v)

Remedy: First, ensure consistent avoidance for narrow endemics in all the subareas. Then, in all subareas, supply criteria for the biological adequacy of avoidance and supply criteria to use if findings of infeasibility are to be made. Use of measures such as translocation should be tied to meeting such criteria. Also, include all necessary management measures as conditions of the permits.

H. Species dependent upon open water are not adequately protected.

Discussion: The document incorrectly assumes that open water foraging habitat will be protected. Much of this open water, however, is thoroughly unprotected and under the control of the Port District. Activities such as jet ski parks may effectively destroy foraging habitat. 105(w)

Suggested remedy: The Port District should prepare a subarea plan, or delete from the covered list species whose open water foraging habitat is under threat of incompatible use.

I. There is insufficient incorporation of future project approvals into the California Environmental Quality Act (CEQA) process. (5.2)

Discussion: To gain third party benefits of the permits, future projects will have to demonstrate consistency with a subarea plan. This will require varying levels of additional environmental review, such as surveys of habitat types and species presence, hydrologic or other studies, identification of narrow endemics, avoidance measures, on and off-site alternatives analysis, etc. It is vital that this additional review be conducted through the CEQA process and use CEQA documents (Negative Declarations, EIRs) as vehicles, as only thereby can the public be assured of opportunity for comment, public hearings, a standard of evidence, and judicial recourse. Thus far, only the County subarea plan specifies appropriate use of CEQA in project consistency determinations. 105(x)

Suggested remedy: Each subarea plan should provide a narrative and a flowchart for subsequent project review which incorporates the CEQA process.

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J. There is inconsistent and unclear treatment of new public facilities within the preserve.

Discussion: The permits being issued are predicated upon an anticipated level of habitat protection and fragmentation. If the reserve is diminished or fragmentation increased due to *new, unanticipated* infrastructure or other public facilities, the basic permit conditions have been altered. Because the impacts of infrastructure are often major and adverse, it is vital that the plan be unambiguous on this subject and and consistent across the subareas. At this point, there is neither clarity nor consistency (although the City of San Diego subarea appears appropriately restrictive).

Suggested remedy:

1. *"Hardline" areas.*

For projects with clearly transient and insignificant impacts (such as a buried pipeline in a relatively non-sensitive area) the minor amendment process may suffice. Any project other project must go through the *major amendment* process. Given the propensity of new infrastructure to alter reserve function, the following criteria are suggested as conditions of major amendment approval: 105(y)

a) The facility must be essential to either public health or safety, strictly defined.

b) There must be no feasible alternative outside the preserve, despite increased cost.

c) The least impactive project design must be adopted.

d) All impacts must be fully mitigated such that there is no loss of preserve function, no-net-loss of habitat value to all covered species, and no loss of total reserve acreage.

2. *"Softline" areas.*

All new public and private facilities and infrastructure should be fully consistent with the subarea plan and in compliance with that jurisdiction's implementing ordinances.

The response to the above comment should pertain to each subarea.

K. Reliance on U.S. Army Corps of Engineers/Clean Water Act 404 permits and on Dept. of Fish and Game 2081 Streambed Alteration Agreements is insufficient as currently proposed in some subareas.

Discussion: Due to the major role of wetland and riparian habitats on the covered species list, consistency in the treatment of these habitats is essential throughout the plan area. In some subareas, though (Chula Vista and Santee), wetland and riparian species are afforded coverage based upon anticipated no-net-loss mitigation requirements being imposed through 404 permits and/or by adequate mitigation through 2081 agreements. There is insufficient assurance of species protection on several levels, however. For 404 permits, the Corps does *not* necessarily require in-kind mitigation so as to maintain no-net-loss of covered species habitat, as is assumed by the plan; the use of Nationwide Permits may cause smaller yet highly significant impacts to go completely unmitigated; and the role of the Service is only advisory except in the case of listed species. For 2081 agreements, the ability of the Dept. to *require* project redesign or mitigation is hardly absolute, as the Dept. operates under the assumption that "agreement" among the parties must be reached.

Suggested remedy: The affected subareas should address wetland and riparian species through their subarea plans rather than rely on other regulations which may not meet subarea goals. As a example of regulations for riparian and wetland-dependent species which satisfy MSCP, federal, and 105(z)

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state requirements, the City of San Diego's policies and implementing ordinances can be used (although not the City's *definition* of wetlands, which is neither well-suited to local conditions nor streamlined). 105(z)

L. Non-native predator control procedures are inadequate. (6.3.8)

Discussion: Feral animals, particularly cats, have been documented in numerous studies to have major adverse, often devastating, impacts on birds and other species. *The mere presence of feral animals or the presence of free-ranging pets is, on the basis of these studies, a fully adequate basis for the institution of humane trapping measures.*

Suggested remedy: In all the subarea plans, control of non-native predators (feral and free-ranging pet animals) must occur without the need to "document" adverse impacts, as these impacts are *known* to occur on the basis of mere presence of the animals, and "documentation" by way of dead body counts is infeasible. 105(aa)

M. The consequences of Chula Vista not adopting Modified GDP Policy Option 2, and the County not adopting its Proposed MHPA rather than Alternative 1, are inadequately recognized. (Also see City of Chula Vista Comment A.)

Discussion: The document (in the EIR/EIS particularly) notes the severe adverse consequences to unmitigable and essential core biological areas and connections (southeast of Otay Lakes, Salt Creek, Proctor Valley area) if Chula Vista and the County do not adopt their environmentally preferred alternatives. While acknowledging the impacts to coastal sage scrub dependent species such as the California gnatcatcher and coastal cactus wren *for these two subareas*, the plan does not acknowledge the ramifications for the MSCP plan as a whole and for all other subareas requesting incidental take of these species. Due to the regional nature of the MSCP, and the central importance of the areas in question as *source populations* for regional population viability, permits for incidental take of the gnatcatcher, cactus wren, and perhaps other species should not be issued to any jurisdiction on the basis of the MSCP plan unless the Chula Vista Modified GDP Policy Option 2 and the County's Proposed MHPA are adopted. 105(ab)

Suggested remedy: Modify the MSCP list of covered species subject to incidental take to include the gnatcatcher and cactus wren only upon appropriate actions by the County and Chula Vista.

N. Plan reviews must have full public participation and input. (6.4)

Discussion of problem/Suggested remedy: The annual and triannual reviews require far more than a public meeting. There should be a formal public review and comment period, with responses to comments. 105(ac)

O. Improvements in meeting program objectives in terms of ecosystem protection, species coverage, and assurances should be considered.

Discussion: A purpose of the MSCP is to conserve the ecosystem of the southwestern county on a habitat basis. Another purpose is to provide broad assurances, such as on a habitat basis, for the coverage of species at risk of listing in the future. These goals have not been well-achieved for at least two ecosystem cornerstones: grasslands and oak woodlands. While it is acknowledged that the preserve will, of necessity, have some deficiencies, and that biologically preferred alternatives were rejected for feasibility and other reasons, there are nevertheless practical effects which merit consideration at this time.

Currently, neither grasslands nor oak woodlands (nor chaparral) are deemed sufficiently or significantly conserved, creating the presumption of additional avoidance and mitigation requirements for private and public landowners in the event of future listings. There are grave concerns over the 105(ad)

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proposed coverage of some key species, such as the burrowing owl, and acknowledgement that other key species, such as the grasshopper sparrow, are not covered at all. The failure to adequately conserve grasslands and oak woodlands also limits the scope to which the MSCP might be used in the future as a program-level EIR (discussed below in EIR/EIS Comment F). From both the conservation and development perspectives, it would be preferable if additional conservation measures were taken now, while the most biologically effective, least costly, and least disruptive options are still available. 105(ad)

Suggested remedy: Improved conservation measures and enhanced coverage and assurances for grassland and oak woodland species are a "common ground" issue. We thus request that the wildlife agencies prepare an assessment of the following questions:

- What additional lands would secure improved coverage and/or assurances for species in these habitats?
- What additional mitigation measures or funding, in which subareas, would be needed to accomplish the above?
- What is the feasibility of these actions?

P. The MSCP Plan neglects water district lands and operations.

Discussion: Water district lands contain important natural resources and serve watershed functions. Their operations, e.g., dams, critically influence the hydological regimes for numerous covered species. There is little or no consideration of these factors in the plan. 105(ae)

Suggested remedy: Each water district (in addition to the Otay Water District) should enter into a subarea plan which appropriately contributes to preserve function.

III EIR/EIS COMMENTS

A. Particularly in regard to biological resources, the EIR/EIS does not form an adequate basis for informed decision-making.

Discussion: To follow any alternative's or subarea plan's impacts and mitigation analysis, the reader must attempt to piece together widely scattered, discontiguous fragments of text. Also, for each level of analysis (impacts, mitigation, determination of significance) there is little supporting biological rationale, and such analysis cannot be referenced elsewhere else in the document. 105(af)

Suggested remedy: Improve organization and supply adequate supporting information and analysis.

B. The draft EIR/EIS does not facilitate use as a program EIR.

Discussion: It was anticipated that the MSCP Plan would be able to function to a large extent a program EIR under CEQA. The goal would be, that, when future projects analyzed and mitigated their impacts, it would be possible to "tier-off" the MSCP program EIR, incorporating its analysis by reference, and thereby avoiding duplicative review and efficiently assembling the reserve system. However, it does not appear that the EIR presented for review was drafted with this purpose in mind, as it narrowly focuses on the impacts of *permit issuance.*

Suggested remedy: For both the MSCP plan and the subareas, clarify to what extent this document is anticipated to function as a program EIR for the analysis and mitigation of the individual and cumulative biological impacts of future projects. In particular, please specify the extent to which additional environmental review will be required *beyond a mere consistency determination,* 105(ag)

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particularly for potentially significant impacts to non-covered *yet CEQA–sensitive* species (see Comment F below). 105(ag)

C. There is insufficient methodology to assess the continued efficacy of the proposed mitigation measures. (Also, see Implementing Agreement Comments C and J below.)

Discussion: For future projects to make use of the MSCP's mitigation measures for complying with CESA and FESA, these mitigation measures must obviously continue to be valid over time. Similarly, for future project review under CEQA, unless impacts continue to be mitigated to insignificant levels using the MSCP–approved measures, either additional mitigation or findings of infeasibility and over-riding consideration would have to be adopted. Thus, it is essential that the Mitigation Monitoring Program continually demonstrate that the reserve is properly functioning, that preserve assembly is proceeding as anticipated, and that adaptive management measures are working; in short, that the MSCP has not "gone stale." However, neither the Mitigation Monitoring Program, nor any subarea plan, now contains *measurable criteria* through which the continued efficacy of the mitigation measures might be objectively assessed. For this reason, the document is gravely deficient. 105(ah)

Suggested remedy: Each subarea plan should contain measurable performance standards for both biological goals and preserve assembly. The biological monitoring criteria should specify, for each covered species: numbers of individuals or populations, as appropriate; geographic locations; and acceptable fluctuations. These standards should be closely related to the criteria under which coverage was granted in the first place. For preserve assembly, standards for acreage and configuration are needed, as well as the establishment of an appropriate ratio between ongoing habitat loss and preservation. Through these means, the policies identified in the Implementing Agreement (9.3) would be implemented.

D. There is confusion over which impacts are addressed by the plan, particularly in regard to non–covered, sensitive species.

Discussion: The document first states (4.3-46) that direct impacts to non–covered sensitive species are not significant with the rationale that the proposed action—permit issuance for covered species—does not directly affect them. (This rationale is repeated in the subarea sections.) On the very next page (4.3-47), though, after acknowledging that take of covered species will result in significant direct impacts to vegetation communities, the obvious fact is acknowledged that significant direct impacts may indeed occur to the non–covered, sensitive species dependent upon these very same habitats. Analysis of these impacts is apparently meant to be deferred to *later* CEQA and NEPA review. 105(ai)

Suggested remedy: Clarify whether direct impacts to non–covered sensitive species are a) considered to be insignificant on the dubious basis that the action doesn't affect them; b) are considered potentially significantly impacted through the loss of vegetation communities yet insufficiently analyzed on a program level; or c) something else. This determination is vital to knowing how the EIR/EIS may be used as a program level document for a tiering analysis for potentially significant impacts under CEQA to non–covered species. The role of proposed avoidance and mitigation under the subarea plans, including use of the habitat mitigation tables, also needs explication in this regard (see Comment F below).

E. There is no basis for determining that impacts to "high risk" covered species have been reduced to insignificant levels under CEQA.

Discussion: On page 4.3-212, the document states that the basis for determining insignificance after mitigation is the ability of the preserve design to "result in protection of the resource." However, "high risk" species are defined as remaining vulnerable *despite* the proposed conservation measures, due to being "not adequately protected and/or potentially subject to edge effects." Thus, a plain 105(aj)

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understanding of the English language indicates that impacts to these species cannot be said to be "reduced to insignificance" by the MSCP Plan. 105(aj)

Suggested remedy: Acknowledge that impacts to species which remain at "high risk" have not been reduced to insignificant levels through the mitigation measures proposed. All actions needed to ameliorate risk factors, whether additional habitat protection or management practices, should be identified in the plan and carried out.

F. For "vegetation communities," there is insufficient analysis, resulting in confusion and inconsistencies.

Discussion: As intimated in Comment D above, this category of impact analysis is severely flawed. The only parameter for which any supporting data is provided is gross vegetation community acreage; other key factors of biological functioning (configuration, disturbance regimes) are treated either in a conclusory manner or not at all (e.g., 4.3-183). Simply referencing the wildlife agency's determinations of "sufficiently covered" or "significantly covered" does not automatically, and without substantial analysis, translate into a justification that impacts to entire habitat types are somehow mitigated to insignificant levels under CEQA.

The document is also internally inconsistent in issuing a blanket determination that impacts to *all* the vegetation communities are mitigated to insignificant levels when it elsewhere repeatedly acknowledges that for grassland and oak woodland, overall preservation is deficient. Grassland, oak woodland, and chaparral are not even considered "sufficiently covered" or "significantly covered" by the wildlife agencies. To conclude that impacts to these *lesser-conserved* habitats are mitigated to the same level of significance by the preserve as are the *greater-conserved* habitats is thoroughly inconsistent and unsupported by substantial analysis.

These same problems extend into the individual subarea plans and to other vegetation communities. For the County, it is acknowledged that the County Biological Mitigation Ordinance provides significantly less protection and mitigation for non-native yet ecologically vital grasslands. In the City of San Diego, the conclusion that impacts to southern maritime chaparral and maritime succulent scrub are mitigated to insignificant levels fails to analyze noncompliance with the Biological Standards and Guidelines and the severe fragmentation anticipated on Carmel Mountain and Otay Mesa, respectively.

A very serious point of confusion arising from the cavalier treatment of vegetation communities is the failure to distinguish between the habitat types and their dependent species. In stating that impacts to these vegetation communities are "reduced to insignificance," what implication—if any—does this have for *non-covered* species in these habitats, on which future projects may have potentially significant impacts under CEQA? For vegetation communities deemed sufficiently or significantly covered, does compliance with the habitat mitigation tiers afford *any* programmatic basis for assessing significance of impacts after mitigation? For those habitats whose conservation is *acknowledged to be inadequate*—grasslands, oak woodlands, chaparral, etc.—there is clearly *no* basis for relying on the MSCP's proposed avoidance and mitigation system.

The key result of all this is a presumption: that *particularly* for species dependent upon the lesser-conserved habitats, potentially significant impacts under CEQA to non-covered yet otherwise sensitive species would *not* be mitigated to insignificance by the preserve. For example, if a future project caused potentially significant impacts to the CEQA-sensitive loggerhead shrike or white-tailed kite, new environmental review would be required. The document appears to agree—it states that analysis of non-covered, sensitive species is deferred. 105(ak)

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In summary, the issues related to vegetation communities and dependent species go to the heart of what many thought the MSCP would accomplish in terms of analyzing future projects under CEQA. The biologically rational, yet streamlined system which was a point of common ground is still elusive. 105(ak)

Suggested remedy: The category of vegetation communities needs to be re-thought and much clarification provided as to future use of the document on a programmatic level. This clarification should extend to the potential application of the MSCP habitat mitigation tiers to non-covered, CEQA-sensitive species in significantly, sufficiently, and inadequately conserved habitats. We request that the information garnered in response to MSCP Plan Comment O above (additional lands to increase conservation in the now-inadequately conserved habitats) also be discussed in relation to these questions.

G. There is inadequate basis for determining that impacts to many of the covered species have been reduced to insignificant levels under CEQA.

Discussion: MSCP Plan Comment A above points out that the information provided for each covered species does not constitute an intelligible and substantive analysis upon which informed decisions can be based. MSCP Plan Comment F(1-13) above notes some animal species for which the reserve does not appear to provide adequate conservation; other comment letters may disclose problems for additional species. Comment G points out significant deficiencies in the protection of narrow endemic species. Also, for many species, determinations of the significance of mitigation depends upon compliance with the NCCP Conservation Guidelines; as noted in MSCP Plan Comment B, this analysis has not occurred. Until, in all these areas, the quality of the information and analysis improves and/or necessary additional lands, mitigation, or management measures are identified and required, there is an insufficient basis to find that impacts to the species proposed for coverage are mitigated to insignificant levels through the MSCP. 105(al)

Suggested remedy: The steps outlined above should be taken on the plan and subarea levels.

H. There has been insufficient analysis to show that impacts to wildlife movement are reduced to insignificance. (4.3.2.1, 4.3.2.3)

Discussion: The document's analysis of wildlife movement is virtually non-existent. It lists the linkages and then concludes, on the basis of a gross figure of 75% maintenance, and without *any* site-specific analysis, that, except for the Metro-Lakeside-Jamul segment, impacts to wildlife movement are insignificant. A rate of 75% preservation might be meaningless, of course, for all but avian species if a highway interrupted the linkage.

For the Metro-Lakeside-Jamul segment, the document lists design parameters which are not yet implemented. It does not examine any specific sites (for example, the "archipelago" in Lakeside) for their ability to function as corridors for the various covered species, nor does it analyze the applicability and feasibility of the parameters to any actual site. There is no substantial rational for concluding that impacts to wildlife movement are reduced to insignificant levels. 105(am)

Suggested remedy: Impacts to wildlife movement require site-specific analysis, using a representative range of affected species, e.g., avian, large and small mammal, herpetological, etc. In the Metro-Lakeside-Jamul segment, the ability of the County's implementing ordinance to effectively maintain connectivity values also needs site-specific analysis.

I. Miscellaneous issues.

1. On page 4.3-43 the document disregards its own cautions and mixes insignificance determinations under NEPA (i.e., coverage due to wildlife agency policies of "insignificance") with those needed for CEQA. 105(an)

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2. Document error: The City of San Diego *does* propose mitigation for chaparral and non–native grassland. 105(ao)

3. Maps are in conflict on Hidden Trails boundaries in the Otay Mesa area. 105(ap)

4. Text on page 4.3-212 regarding the significance level of mitigation for various indirect impacts is not consistent with the table. 105(aq)

5. It is unclear how the significant impacts of the Otay Valley Regional Park, including impacts to connectivity, will be mitigated to insignificance. 105(ar)

6. Impacts to the covered wetland and riparian species from water pollution and altered stream flows from progressive watershed urbanization have not been analyzed or mitigated. Similarly, the impacts to these species from the management practices of water districts, and from the operation of their current and planned facilities, have not been analyzed. 105(as)

7. Impacts from any future, *unanticipated* infrastructure and public facilities within the preserve need analysis and procedures for mitigation to insignificance, unless all such projects are required to go through the major amendment process. Please clarify and analyze for each subarea. 105(at)

8. The impacts from proposed route 905 are likely to be major and adverse. These impacts have neither been analyzed nor mitigated. 105(au)

9. The impacts of annexation without assumption of preserve responsibilities has not been analyzed in the EIR/EIS. 105(av)

10. The cumulative impacts of take anticipated due to ongoing agricultural activities have not been sufficiently analyzed nor shown to amount to be reduced to insignificant levels. 105(aw)

11. The growth inducing impacts of new infrastructure—both that anticipated and unanticipated by the preserve—have not been analyzed, yet these are claimed to be fully mitigated in the Implementing Agreement. 105(ax)

12. The full range of compatible and conditionally compatible uses allowed within the preserve by the City of San Diego has not been analyzed. (See City of San Diego Comment F below.) 105(ay)

13. The impacts of inadequate non–native predator trapping have not been analyzed. (See MSCP Plan Comment L above.) 105(az)

14. The impacts to the County subarea of non–agricultural exemptions to the Grading and Clearing Ordinance have been inadequately analyzed, if at all. (See County of San Diego Comment A below.) 105(ba)

15. The impacts to the County subarea of exemptions to the Grading and Clearing Ordinance for agricultural clearing have been inadequately analyzed, if at all. (See County of San Diego Comment B below.) 105(bb)

16. The impacts to the County subarea of exemptions to the Biological Mitigation Ordinance for all CEQA–exempt activities, such as ministerial building permits, have been inadequately analyzed, if at all. (See County of San Diego Comment C below.) 105(bc)

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17. The impacts to the County subarea of exemptions to the Biological Mitigation Ordinance for all public and many private facilities have been inadequately analyzed, if at all. (See County of San Diego Comments D below.) 105(bd)

18. The impacts to the County subarea of exemptions to the Biological Mitigation Ordinance for sand, gravel, or mineral extraction have been inadequately analyzed, if at all. (See County of San Diego Comment E below.) 105(be)

19. The impacts to the County subarea from exempted law enforcement and emergency services activities and projects have been inadequately analyzed, if at all. (See County of San Diego Comment H below.) 105(bf)

20. The Plan assumes protection and management of natural resources on military lands consistent with MSCP objectives, though this is speculative. Neither the impacts to the covered species nor the ramifications to the proposed subarea permits of less-than-anticipated military contributions have been analyzed. 105(bg)

21. The impacts to narrow endemics due to inconsistent and inadequate conservation measures has not been analyzed. (See MSCP Plan Comment G above.) 105(bh)

22. The impacts due to inadequate protection of open water have not been analyzed. (See MSCP Plan Comment H above.) 105(bi)

23. On Otay Mountain, the impacts of habitat fragmentation due to proposed roads and other facilities have not been analyzed. (See MSCP Plan Comment F(14) above.) 105(bj)

IV IMPLEMENTING AGREEMENT COMMENTS

A. <u>The meaning of the term "significant material breech" is unknown.</u>

Discussion: It is illogical that some material breeches would be "significant" and some would not. What is the difference? Any deviation from the plan *must* be considered a potential indication for permit enforcement action. Otherwise, there is an incentive for permit holders to tolerate relatively minor breeches. 105(bk)

Suggested remedy: Delete the work "significant," and clarify that any breech is potential grounds for enforcement actions.

B. <u>The "Other permits" section as it pertains to the Dept. of Fish and Game is deficient.</u> (9.8)

Discussion: The document states that the Dept. will not require additional mitigation for the take of covered species pursuant to CEQA, yet CEQA requirements for such mitigation may persist *after* the term of this agreement, irrespective of mitigation performed on the basis of the California Endangered Species Act. 105(bl)

Suggested remedy: Clarify that the assurance of no additional mitigation is for the term of the agreement only.

C. <u>Provisions are inadequate for Reporting and Biological Monitoring and regarding Mutual Assurances for Conservation of Covered Species.</u> (14.0, 9.3) (Also see EIR/EIS Comment C above.) 105(bm)

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Discussion: The statement in 14.5, that it is "necessary to determine whether Covered Species and their habitats are being maintained by the MSCP *as expected*" (italics added), makes plain the need to define the term "as expected" with measurable criteria. At this time, there is no objective or sufficient manner of fulfilling the monitoring requirements of this section. 105(bm)

A similar need exists in the case of Mutual Assurances for Conservation of Covered Species (9.3), for these assurances must also be founded upon measurable criteria. Once established in this section, these standards will form the basis for assessing subarea plan compliance and for guiding ongoing adaptive management.

Suggested remedy: A consistent set of measurable criteria for both biology and preserve assembly are the foundation for many aspects of this plan. They should be tailored according to the contribution of each subarea, placed in those documents, and then either reproduced in the Implementing Agreements or appropriately referenced.

D. Procedures for enforcement of the permit conditions are inadequate. (16.0)

Discussion: It was the choice of some subareas to implement their plans with other than hardline reserves. In the County, there is a large "softline" segment in which preserve boundaries remain unestablished. In the City of San Diego, the "percent" areas depend upon criteria-based impact avoidance. Therefore, successful plan implementation and achievement of permit conditions depend upon consistent and appropriate application of, respectfully, the County's Biological Mitigation Ordinance and the City's Environmentally Sensitive Lands Ordinance. To ensure full and effective permit enforcement, the tools at the wildlife agencies disposal must be specially adapted to these phased or softline subareas.

There are two preconditions for effective permit enforcement in the softline areas: first, the assurance of subarea plan consistency on an individual project basis, and secondly, the availability of enforcement options short of the so-called "nuclear option" of total permit suspension or revocation. An example of the need for individual project consistency is the tenuous linkage through Lakeside, which could be cut off by a single nonconforming project; annual or other *periodic* view could not assure preserve assembly. (It should be noted that the existing CEQA process allows for appropriately timed review.) 105(bn)

The second factor—a more *flexible* range of enforcement actions than unlikely-to-be-exercised total permit suspension or revocation—should target the offending project rather than penalize the entire subarea. The appropriate solution is to grant third party beneficiary status only to projects judged by the wildlife agencies to be consistent with the subarea plan. Legally, it would be hard to justify according plan benefits to such nonconforming projects. This suggested approach also creates the proper incentives for plan conformance and allows permit suspension or revocation to be reserved for appropriate indications.

An analogous concern exists for any approved project which does not meet its obligations over time. Plan benefits should also be able to be *withdrawn* on a selective, project-specific basis.

Suggested remedy: For all subareas or subarea segments employing softline or percentage techniques, MSCP compliance should be assured on an individual project basis, rather than through periodic review. Also, permit enforcement should draw upon a flexible and effective range of options, such as through the granting of third party beneficiary status solely to MSCP-consistent projects. In all subareas, these benefits should be able to be withdrawn from projects which do not meet their obligations.

E. Mitigation banking procedures are unenforceable. (9.14) 105(bo)

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Discussion: It would, of course, be completely inappropriate for lands *avoided* through 10(a) or CEQA requirements to be "double-dipped" by a property owner and sold as mitigation for other projects. While this eventuality is *now* mostly foreclosed by a policy letter issued by the U.S. Fish and Wildlife Service and the Dept. of Fish and Game, that policy letter is subject to change at any time without any amendment to the MSCP plan. 105(bo)

Suggested remedy: Land avoided through the project approval process should be defined as ineligible for mitigation banking *in the Implementing Agreement.*

F. The assurance that no additional mitigation will be required for the growth-inducing impacts of new infrastructure is unjustified. (9.16)

Discussion: This section of the Implementing Agreement has no supporting basis in the EIR/EIS or any other part of the MSCP. It is simply conclusory. 105(bp)

Suggested remedy: A full analysis is required of all potential growth-inducing impacts, including mitigation and level of significant after mitigation. In the absence of such analysis, this section should be deleted.

G. Procedures in the event of annexation are inadequate. (9.20)

Discussion: As it stands now, it is *optional* for the annexing jurisdiction to assume the permit responsibilities of the previously unincorporated subarea. Failure to do so, however, may so alter the viability of populations so as to jeopardize the take permits of one or more of the other subareas as well as the third party beneficiaries. The impacts of annexation without assumption of preserve responsibilities have not been analyzed in the EIR/EIS. 105(bq)

Suggested remedy: Procedures regarding annexation need refinement so as to eliminate the possibility of permit responsibilities going unassumed. Signatory jurisdictions should agree to implement the same or equivalent protections in the event of annexation.

H. Agricultural issues are unresolved. (9.21)

Discussion: If incidental take due to ongoing agricultural activities is to be covered under the plan, then a determination must be made that such take will result in insignificant cumulative impacts to the covered species. 105(br)

Suggested remedy: A full analysis of cumulative impacts due to ongoing agricultural activities should be incorporated into the EIR/EIS. An essential prerequisite of such a determination of cumulative insignificant is likely to be the cooperative formulation and adoption by the agricultural community of best management practices which maximize habitat values in the course of their operations. These are now entirely missing.

I. Deficiencies in plan implementation due to variances require compensation.

Discussion: In subarea plans implemented through softline or percentage areas, there is recourse for findings of infeasibility at the project level. There is no procedure for compensation to the reserve system, however, if such findings are made and anticipated mitigation therefore does not occur. 105(bs)

Suggested remedy: If a jurisdiction grants a variance or makes a finding of infeasibility, that jurisdiction should be responsible for making up the difference within a specified period of time.

J. Extraordinary circumstances determination factors are insufficient. (9.6. B.)

105(bt)

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Discussion: Similar to the above concerns voided in Comment C above, Extraordinary circumstances depend upon the demonstration of an "unanticipated adverse change in the population of any Covered Species." "Unanticipated" from *what?* As noted in EIS/EIS Comment C above, there is a pressing need for measurable criteria for both biological monitoring and preserve assembly. Without these criteria there can be to objective assessment of whether extraordinary circumstances have occurred. 105(bt)

Suggested remedy: Add measurable criteria for both biological monitoring and preserve assembly to the list of Relevant Factors.

K. In softline segments, objectively assessable standards must be created to trigger enforcement actions.

Discussion: Standards are needed to assess whether preserve assembly is proceeding "on schedule." Otherwise, appropriate implementation of the permit conditions cannot be assured at any point over the life of the permit. One set of criteria should link habitat lost to habitat preserved; this should be assessed periodically. Another set of criteria should set acreage parameters for preservation of each habitat type over time. For example, if too much of a single habitat is lost quickly, reserve completion may be jeopardized due to loss of flexibility in assembly options as well as to loss of the resource *per se.* 105(bu)

Suggested remedy: Habitat–specific acreage targets should be set over time, with deviation beyond a fixed limit grounds for permit enforcement actions. Acceptable ratios for habitat lost compared to preserved should also be set. These preserve assembly standards should appear in the legally–binding subarea Implementing Agreements.

V CITY OF SAN DIEGO SUBAREA COMMENTS

A. Protections for narrow endemic species are internally inconsistent. (ESL p. 6, 8) (Also see MSCP Plan Comment G above.)

Discussion: The draft implementing ordinance is not consistent with the subarea plan with respect to the protection of narrow endemics. The subarea plan at 1.6.4 (p. 111) accurately describes our understanding of the policy which the implementing ordinance should carry out. The implementing ordinance also gives no clear indication as to how individual projects will comply with the subarea plan policy. In addition to criteria for the biological adequacy of avoidance, any determination of *unavoidable* impacts should be supported by findings based on specific criteria. Only after those findings are made should a measure such as translocation (as described in 143.0141(h) of the draft ESL) be utilized as mitigation. To attain further consistency, the "additional measures" (presumably translocation) for narrow endemics outside the MHPA, as referenced in the City Implementing Agreement (section 10.0), should also be clarified to occur only after findings of infeasibility are made. 105(bv)

Suggested remedy: Rewrite the implementing ordinance so it is consistent with the subarea plan, formulate criteria for biologically adequate avoidance, and specify findings which must be made prior to mitigating unavoidable impacts off–site. These measures, including the findings, should be carried through consistently in all relevant documents.

B. Use of CEQA process for future project review and consistency determinations. 105(bw)

See MSCP Plan Comment I above.

C. Grading and clearing procedures for agriculture are not clear. (1.6.1) 105(bx)

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Discussion: Clearing for development under the guise of agriculture has been employed by unscrupulous landowners who wish to avoid mitigation requirements. Mechanisms to prevent this are not present or have not been located by this reader, nor are mitigation requirements discussed for legitimate agricultural clearing. 105(bx)

Suggested remedy: Formulate grading and clearing safeguards in regard to agriculture, and state mitigation requirements for impacts.

D. Fragmentation on Otay Mesa in the Southern Area is not justified. (1.2.1)

Discussion: The preserve segment in the Otay Mesa area is highly convoluted and fragmented (e.g., California Terraces, Dennery Ranch). There is no explanation of how this meets reserve design criteria, how it adequately protects the covered species and maritime succulent scrub, nor why project redesigns were deemed infeasible. 105(by)

Suggested remedy: Demonstrate that the design of the Southern Area meets biological standards for preserve configuration and for Tier 1 habitat preservation, particularly in reference to the MSCP Biological Standards and Guidelines. Otherwise, corrective measures should be undertaken.

E. Wild Animal Park expansion is open-ended. (1.2.5 San Pasqual Valley)

Discussion: Potential expansion of the Wild Animal Park is mentioned yet no specifics are given of its extent, impacts, mitigation, or consistency with the preserve. 105(bz)

Suggested remedy: Given the biological importance of the San Pasqual area, pleas provide full information on this project.

F. Compatible uses within the preserve are overly-broad

Discussion: The MSCP plan includes low density single family homes as conditionally compatible with the preserve, as well as low impact activities such as trails. However, in its Draft Environmentally Sensitive Lands Regulations and Draft Open Space Residential Zone (OR-1-2) (Exhibit L), the list of compatible activities goes far beyond anything previously contemplated: child care facilities, golf, camping, commercial stables, etc. The EIR/EIS analyzed none of these uses, which are far more impactive than the *previous* compatible or conditionally compatible uses in terms of traffic, edge effects, human incursions, etc. It is noted that while these uses are presumably within the 25% development area, there is no guarantee that they will be sited to form a preserve *boundary* rather than become *internal* to the preserve. 105(ca)

Suggested remedy: In the absence of compelling reasons to allow these uses, they should be prohibited as incompatible. If compelling reasons exist, they should be required to be sited at the boundary of the preserve and special mitigation measures adopted to control edge effects.

G. Non-native predators are not adequately controlled. (1.5.2)

See MSCP Plan Comment J above. The City's language is *totally unsatisfactory* as it requires that "a significant problem has been identified." As noted above, such identification is infeasible. Also, what criteria are proposed? There is also no justification for limiting trapping to temporary measures. The impact to the preserve from the City's inadequate non-native predator control has not been analyzed in the EIR/EIS. 105(cb)

H. Impacts to wetland/riparian species from watershed deterioration are not considered. 105(cc)

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Discussion: Impacts to the covered wetland and riparian species from water pollution and altered stream flows from increasingly urbanized watersheds have not been analyzed in the EIR/EIS nor mitigated. 105(cc)

Suggested remedy: The City should formulate and adopt best management practices for existing development and institute state–of–the art measures to prevent adverse water quality impacts and altered stream flows from new development.

I. Ratios in the Environmentally Sensitive Lands Ordinance provide insufficient disincentive to mitigate outside the preserve.

Discussion: Particularly for Tier II and III impacts, the differential between mitigation outside and inside the preserve is minimal, and will not provide sufficient incentive. 105(cd)

Suggested remedy: Increase the ratios to provide greater incentive for mitigating inside preserve.

J. Biological justification is not present for poor and fragmented concepts on Carmel Mountain (Neighborhood 8A). How do these meet Biological Standards and Guidelines for southern maritime chaparral? (1.2.4) 105(ce)

K. Other issues in the Environmentally Sensitive Lands Ordinance:

1. In the Deviation section, please clarify whether all three findings have to be made (p. 20). If only one is required, then the proposal is unacceptable. 105(cf)

2. In the Deviation section, the phrase "socio" should be deleted from "socioeconomic," as there is no clear understanding what "socio" means. Only objectively measured considerations related to economic use should be considered. 105(cg)

3. Please clarify how the Council's directive that 90% of Tier I habitat within the MHPA be protected has been implemented. 105(ch)

L. The City's Management Plans are incomplete in regard to many species.

Discussion: The findings in the species table, as well as the Species Evaluations themselves, contain numerous recommended management measures for plant and animal species, particularly for narrow endemics. Because many of these never find their way into the City's proposed Management Plans, these plans are presently inadequate. 105(ci)

Suggested remedy: The Management Plans should incorporate all the management measures identified in the Species Evaluations and in other relevant sections of the MSCP document.

VI CITY OF CHULA VISTA COMMENTS

A. It is imperative to adopt the Modified GDP Policy Option 2 alternative. (3.0)

Discussion: As explained in the EIR/EIS, failure to adopt the Modified GDP Policy Option 2 alternative (an alternative University site with full preservation of Salt Creek Canyon) will make the issuance of 10(a) permits for the California gnatcatcher and other coastal sage scrub species impossible. We would like to add the following information which further substantiates the conclusions in the EIR/EIS relating to Salt Creek Canyon: 105(cj)

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Salt Creek Canyon has long been recognized as an indispensable cornerstone of a regional species protection plan. According to the Otay Ranch Draft Environmental Impact Report, "This area is the richest on the ranch with regard to California Gnatcatcher and cactus wren. Salt Creek Canyon supports 26% (38/144) of California gnatcatcher points of occurrence and 62% (37/60) of coastal cactus wren locations. Salt Creek is also an important raptor resource area and supports sensitive species such as orange-throated whiptail, northern harrier, ferruginous hawk , golden eagle, prairie falcon, Bell's sage sparrow, and blue grosbeak." The DEIR concluded that Salt Creek Canyon contained "Non-mitigable coastal sage scrub/maritime succulent scrub that should be preserved as natural open space." 105(cj)

During project review (letter of Nov. 13, 1991) the U.S. Fish and Wildlife Service stated, "The Service concurs that the proposal to place the university within Salt Creek Canyon is a significant and unmitigable impact. Substantial populations of the proposed endangered California gnatcatcher occur within this location. This site represents a major core population of this species. A preliminary assessment is that such a proposal would fail to meet the requirements of a 10(a) permit pursuant to the Endangered Species Act."

From the above, it is abundantly clear that all 400 acres of Salt Creek Canyon must be preserved as part of the City's MSCP subarea plan in order to gain permits for take of the California gnatcatcher and for numerous other prelisting assurances. To reduce it in size, as proposed in Policy Option 1, would cause unmitigable impacts to a core resource area and would jeopardize the California gnatcatcher. In regard to potential reductions, it should be noted that in their recent (April 14, 1995) assessment of the Otay Ranch project relative to the MSCP, the Service called for *additional* protection of Salt Creek Canyon *beyond* that shown in the General Development Plan. Thus, in order to "adequately preserve California gnatcatcher and coastal cactus wren," it was recommended to "Pull development back from Salt Creek to provide buffers and avoid impacts to habitat in side drainages."

Also, as noted in MSCP Plan Comment M, above, if Chula Vista does not adopt the Modified GDP Policy Option 2 alternative, there will be cascading impacts to the covered species lists for other subareas.

Suggested remedy: We commend the City of Chula Vista and the wildlife agencies for working cooperatively to craft solutions which may make the adoption of Modified GDP Policy Option 2 acceptable and feasible for all parties.

B. Otay Valley Regional Park design and mitigation is unresolved. (4.3.2.3) 105(ck)

Please see EIR/EIS Comment I(2) above.

C. Low density development. (6.2)

Discussion: The document lists low density development as "compatible" with the preserve, yet the location of such uses within the preserve are not clear. 105(cl)

Suggested remedy: Please identify anticipated locations and provide impact analysis and mitigation measures.

D. New public facilities and infrastructure within the preserve is inadequately controlled, sited, and mitigated. (6.4.1)

See MSCP Plan Comment J above. The current proposals of Chula Vista are particularly deficient, as they would allow essentially uncontrolled impacts from new infrastructure. Proposed is an open-ended, *pre-approval* of all projects, along with mitigation rations which do not reflect actual impacts to preserve fragmentation and connectivity. 105(cm)

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F. Please clarify the meaning of "review" of channelization by the wildlife agencies. Does this requires their formal approval? (6.4.7.2) 105(cn)

G. Narrow endemic species are not protected. 105(co)

See MSCP Plan Comment G above.

H. Wetland and riparian species are not protected to MSCP standards. 105(cp)

See MSCP Plan Comment K above.

VII CITY OF SANTEE COMMENTS

A. Santee has not made a fair share contribution to the preserve nor demonstrated biological sufficiency.

Discussion: A review of percentages of existing habitat protected within each subarea disclose a consistently substandard performance by the City of Santee. A salient example is its contribution of only 40% of its existing coastal sage scrub while other subareas are over 60%. Similar deficiencies exist for percent of core biological areas protected, etc. Justification as to why Santee's proposed contribution meets biological standards has not been provided. 105(cq)

Suggested remedy: Other jurisdictions should not carry Santee's fair share of species protection. Santee should therefore commit to a purchase of the entire Fanita Ranch, or to the acquisition of a very great part of it, as part of the regional funding and acquisition plan.

B. Alternatives A and B are not adequately explained. 105(cr)

C. Narrow endemic species are not protected. 105(cs)

See MSCP Plan Comment G above.

D. Wetland and riparian species are not protected to MSCP standards. 105(ct)

See MSCP Plan Comment K above.

VIII OTAY WATER DISTRICT COMMENTS

A. The statement that the 125 square mile service area is "anticipated to develop" is not supported by fact and may not occur if better land use planning preserves these economically valuable open space resources. (1.4) 105(cu)

B. "Secondary growth impacts" are not automatically mitigated. (1.8)

Discussion: As noted in EIR/EIR Comment I(11) and Implementing Agreement Comment F above, no supporting analysis has been offered to justify this conclusion. 105(cv)

Suggested remedy: Provide a full analysis of the potential impacts of induced growth and demonstrate full mitigation or delete this provision.

C. The requirement should be added to "Site projects outside of core areas except where infeasible." (1.9.1) 105(cw)

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D. There is inadequate attention given to creating and maintaining appropriate hydrological regimes for the wetland and riparian-dependent covered species. 105(cx)

IX COUNTY OF SAN DIEGO COMMENTS

A. Non-agricultural exemptions in the Grading and Clearing Ordinance may prohibit the issuance of MSCP-based take permits to the County.

Discussion: The presence of effective controls on unauthorized grading and clearing of native vegetation is essential to the ability to successfully implement a "softline" plan, where preserve boundaries are not yet identified; anything less is a "fatal flaw." Without such controls, loss of areas critical to preserve function could easily be irretrievably destroyed. In the Metro-Lakeside-Jamul segment, the high existing degree of fragmentation and the very constrained nature of preserve options (especially for connectivity) make the rigorous control of unauthorized clearing—even of small patches—a priority for effective regulation.

Unless grading results in more than 3,000 cubic yards of displacement, it is exempt from discretionary review. For grubbing and clearing, any activity which occurs outside the County Water Authority (CWA) boundary or, within that boundary, on a single family parcel of less than 10 acres in size, is exempt from discretionary review. These are exemptions of major import, yet their potential impacts on reserve function and assembly—individually and cumulatively—have not received analysis in the EIR/EIS. This is a serious deficiency. That significant impacts may occur is demonstrated by the coincidence of small parcels with the biological care areas and linkages visualized on the MSCP parcel-size map.

From a legal standpoint, unless lands necessary for preserve assembly are protected from unauthorized loss, implementation of the preserve is no longer assured. Also, the permits are explicitly based upon quantified levels of take and preservation for each species as well as maintenance of connectivity. Unauthorized grading and clearing may render these projections moot, and thereby eliminate the grounds for permit issuance. The lack of mitigation for non-discretionary grading and clearing will also have cumulative impacts on the ability to build-out the preserve from the financial perspective. 105(cy)

It should be noted that the County usually determines mitigation requirements during the subdivision process. However, the owner of a 10 acre parcel could legally clear the land of all sensitive vegetation, and *then* subdivide, escaping all mitigation requirements. Also, if the major interest of the County lies in reducing regulation on single family home sites, then changing the exemption threshold from 10 acre to 2 acre parcels would *still* exempt essentially all home-builders in Metro-Lakeside-Jamul.

Suggested remedy: The impacts of the grading and clearing exemptions need careful analysis in the EIR/EIS. *If individually or cumulatively significant, the exemption thresholds will have to be lowered and/or a site plan review process will have to be adopted which ensures that all grading and clearing is consistent with the subarea plan.* The lower the exemption threshold, though, the less need arises for individual site plan review. The most practical solution will probably be to substantially reduce the clearing exemption threshold, while still minimizing the regulation of single-family home sites.

B. The exemption for agricultural clearing under the Grading and Clearing Ordinance may prohibit the issuance of MSCP-based take permits to the County.

Discussion: In addition to the exemptions described above, the Grading and Clearing Ordinance exempts any lands for which the owner signs a written statement that the land will be planted within one year and maintained in agricultural use for five years. Besides eliminating avoidance and 105(cz)

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mitigation requirements for the legitimate agricultural clearing of new habitat lands, this procedure allows unscrupulous parties to clear native vegetation in an unregulated manner under the *guise* of agriculture, and then to develop it without mitigation. 105(cz)

Given the fragmented and tenuous nature of the Metro–Lakeside–Jamul segment, the impacts from agricultural clearing—both legitimate and illegitimate—may be significant. The EIR/EIS has not analyzed these important factors, however, another serious deficiency. The impacts of unmitigated agricultural clearing to preserve assembly as well as to biology should be considered. If corrective measures are not taken, these impacts may preclude the issuance of take permits, as reserve implementation and anticipated levels of conservation and take would no longer be assured.

Suggested remedy: Unless the analysis of agricultural clearing discloses no potentially significant individual or cumulative impacts to preserve assembly or biological functions and values, mechanisms should be put in place which ensure subarea plan consistency and which lead to appropriate mitigation. Several options, alone or in combination, may be effective. Individual site reviews may be needed to identify, and avoid, clearing which jeopardizes the preserve. To comply with state and federal law, surveys for occupancy by listed species may be needed, and mitigation determined. A more proactive alternative—which we support—is that of cooperative "safe harbor" agreements (or variations thereof), in which net habitat values are maintained (for example, through management practices), even though one portion of the parcel might be cleared. For non–listed species, "deferred mitigation" is a worthwhile consideration, whereby mitigation is deferred to such time as conversion to a non–agricultural use may occur.

Resolution of the agricultural issues will also require the tightening of the procedures intended to prevent illegitimate clearing. A length of planting of 15 years should be instituted, strict monitoring should be put in place, and criminal penalties should exist for signing a false statement. The requirement for planting must also run with the land, in the event of an ownership change.

C. <u>The exemption of all CEQA–exempt activities from the Biological Mitigation Ordinance may prohibit the issuance of MSCP–based take permits to the County.</u>

Discussion: This exemption involves all ministerial permits, such as building permits and some lot splits. Exempt would be single family home construction; the extent to which associated or supplemental grading and clearing outside the building pad itself would be exempt is unclear. Due to the fragmented and tenuous conditions in the Metro–Lakeside–Jamul segment, and ubiquitous presence of small parcels, the individual and cumulative impacts from the exemptions for CEQA–exempt activities from appropriate avoidance and mitigation may have significant effects upon reserve function (including connectivity) and assembly. These potential impacts have not been analyzed in the EIR/EIS. The impacts may preclude the issuance of take permits, as reserve implementation and anticipated levels of conservation and take are no longer assured. 105(da)

It is noteworthy that in the Lake Hodges subarea's Santa Fe Valley Specific Plan, the County recognized the critical nature of single family homes, and designated portions of the Santa Fe Valley Specific Plan with a "Design designator" where site–specific planning was needed, such as pad placement on the lot.

Suggested remedy: If analysis discloses potential individual or cumulative adverse effects from currently ministerial actions, such as building permits, a process should be developed to ensure consistency with the subarea plan. Various technical solutions are currently part of County land use processing, such as site plan reviews.

D. <u>Exemption of public and many private facilities from the Biological Mitigation Ordinance prohibits the issuance of MSCP–based take permits to the County.</u> 105(db)

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Discussion: The exemption is for "any essential public facility or project, or recreational facility which includes public use." The term "essential" is inadequately defined, and makes no reference to legitimate public health or safety concerns. The exemptions includes almost every conceivable recreational activity, such as golf courses, ORV parks, stadiums, etc., as even if private,these projects have "public use." This exemption therefore introduces a *huge* range of unregulated projects into the planning process, which may proceed without appropriate siting and mitigation. 105(db)

The language which accompanies the exemption is unclear as to the alternatives analysis, avoidance, and mitigation which would actually occur. While the document states that, as a condition of exemption, "All possible mitigation measures have been incorporated into the facility or project, and there are no feasible, less environmentally damaging, location, alignment or non-structural alternatives that would meet project objectives," it is unclear whether these determinations proceed *through or independent of* the CEQA process. If determined through CEQA, then "feasibility" can be self-defined by the lead agency and over-riding findings of social or economic benefit can also be issued, resulting in significant unmitigated impacts to the preserve. Also, in the same section, the meaning of the "any net gain" language, which appears in relation to wetland encroachment, is unclear.

The individual and cumulative impacts of this gaping exemption from the Biological Mitigation Ordinance are potentially devastating to the fragmented and tenuous Metro-Lakeside-Jamul segment. These extensive potential impacts to the reserve have not been analyzed in the EIR/EIS, a serious deficiency. The public and semi-public facilities exemptions, with their distinct potential for CEQA over-rides, surely preclude the assurance of preserve implementation and render projections for loss and conservation levels of covered species moot. Therefore, permits could not be issued.

Suggested remedy: From the perspective of preserve assembly and permitting, the preferred remedy is to delete the exemption entirely. However, for good reasons, local governments seek the assurance that essential public services will continue to be provided. A reconciliation of these concerns could occur through a two-step revision of the proposed exemption. First, it would have to be narrowed to public facilities essential to the public health and safety, *strictly defined.* There is no justification whatsoever to exempt any recreational facility, public or private, or private facilities which happen to admit the public.

The second step would be to clarify and/or amend the conditions under which essential facilities *gain* exemption from the Ordinance, so that the preserve maintains equal or greater functional and resource values. The result of this proviso would be flexibility rather than strict adherence to the particulars of the Ordinance. A process to facilitate the resolution of future public facilities issues may be helpful, as well, and should be put in place.

E. <u>The exemption from the Biological Mitigation Ordinance for sand, gravel, or mineral extraction may prohibit the issuance of MSCP-based take permits to the County.</u>

Discussion: These operations may cause major impacts to sensitive riparian and wetland areas and to associated uplands. Proposed covered species which would be impacted include the arroyo toad, southwestern pond turtle, least Bell's vireo, and southwestern willow flycatcher. The exemption proposes reliance—in some fashion—on CEQA: "All appropriate mitigation measures have been incorporated in conformance with the California Environmental Quality Act. . ." Does this mean mitigation in conformance with the CEQA *standard* of mitigation to insignificant levels, or does it mean mitigation through the CEQA *process,* which allows residual *unmitigated* impacts through over-riding considerations? Are the impacts eligible for mitigation only those "significant" under CEQA?

Also, the conditions listed do not require the *avoidance* of sensitive wetland and riparian resources. Instead, a vague and unsatisfactory mitigation standard is proposed: "In a floodplain, any 105(dc)

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net gain in functional wetlands and riparian habitats shall result in or adjacent to the area of extraction." There are thus no "in-kind" mitigation requirements or enforceable performance standards which might, for example, ensure that suitable arroyo toad habitat is maintained. *As unmitigable impacts to covered species would not have to be avoided, a "fatal flaw" arises for permit issuance.* 105(dc)

Finally, there is no requirement whatsoever for the avoidance and mitigation of impacts to uplands. No evidence is provided that the State Surface Mining and Reclamation Act—even if enforced—would mandate an appropriate level of resource protection, or that the promised revegetation will meet performance standards for success.

The EIR/EIS fails to analyze the effects of these exemptions. The resultant impacts are likely to preclude the issuance of take permits, as reserve implementation and anticipated levels of conservation and take are no longer assured.

Suggested remedy: There is no reason to treat sand, gravel, or mineral extraction differently from any other business; other industries, equally engaged in providing important goods and services, are not proposed for special treatment. This exemption should be deleted and subarea plan consistency thereby assured.

F. <u>There are no criteria for determining "infeasibility" and therefore the granting of variances from plan compliance is uncontrolled.</u> (1.11, 4.2.3)

Discussion: Unless the criteria for infeasibility are explicitly defined in the plan and/or the Biological Mitigation Ordinance, the County may rely on CEQA definitions of infeasibility, which are open-ended, self-selected determinations based upon "project purposes" and over-riding social and economic factors. This would undermine the basic methodology of implementing the subarea plan via a reliable and consistently applied ordinance. We note that the City of San Diego defined variance criteria much more completely. 105(dd)

Suggested remedy: For private projects, infeasibility criteria should be consistent with U.S. Constitutional law, that is, deprivation of reasonable economic use. For public projects, variances should be granted *if* public health and safety—strictly defined—would otherwise be jeopardized.

G. <u>Criteria for infrastructure within hardline segments are insufficient.</u> (2.7.2)

Discussion: The document fails to differentiate between "new infrastructure" already anticipated by the plan as a result of approved public and private facilities, and those projects which might be proposed later and are *unknown at this time.* The latter category is best described as "new, unanticipated infrastructure within the preserve." 105(de)

Please see MSCP Plan Comment J above for further discussion and suggested remedy.

H. <u>The scope of discretion given to law enforcement and emergency personnel needs re-evaluation.</u> (2.7.5)

Discussion: The need to allow emergency and law enforcement activities within the preserve is recognized, but the document goes far beyond legitimate needs. Instead, it gives blanket authorization to any activity which an agency might wish to undertake, *whether that action is an emergency or not.* It allows the construction of *any project* without review or selection of less damaging alternatives. For example, the INS or National Guard could site a huge national headquarters and employee training center in the middle of the preserve at its sole discretion. There is also no justification for the exemption of *non-emergency* activities, such as construction, from the mitigation requirements of any other public facility. 105(df)

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The broad and highly significant impacts to the preserve from exempted law enforcement and emergency services have not been analyzed in the EIR/EIS. 105(df)

Suggested remedy: The only acceptable basis for emergency and law enforcement activities occurring within the preserve is the formulation and adoption of best management practices for emergency services and, for all non–emergency activities, the cooperative adoption of best management practices, the adoption of least damaging alternatives, and full mitigation for impacts. Training in best management practices for providers of emergency services should be included in the reserve management plan (see San Diego Gas and Electric Co. NCCP Plan for a model).

I. The option of Lusardi Creek/San Dieguito River corridor acquisitions should be included as a potential mitigation under 2.8.2 A., as it is under 2.8.2 B. 105(dg)

J. Agreeing not to "preclude" reserve goals is an unacceptable standard. (4.3)

Discussion: The document states that,"Projects authorized by the County will not preclude the County from meeting the biological and preserve design criteria for this segment, considered both on an individual project basis and a cumulative basis." The standard of "not preclude" is an unacceptable standard, as it is, on a practical basis, very difficult to determine if any particular project makes preserve completion "impossible," which is what "preclude" means. Enforcement of the permit conditions by the wildlife agencies on the legal standard of "not preclude" would therefore be infeasible.

Also, the "not preclude" standard has adverse impacts to property owners. For example, while one project might not "preclude" meeting preserve criteria for a linkage, it might, through poor design, well make completing the linkage more difficult for neighboring property owners, who will have to compensate for the deficiencies. An equitable, "level playing field" is thereby denied. For these reasons, it is in the best interests of *all* parties to adopt a standard of subarea plan *consistency* for authorized projects. 105(dh)

Suggested remedy: Both the Implementing Agreement and subarea plan should reflect a commitment on the part of the County to authorize projects "consistent" with the plan and permit conditions.

K. Clarification is needed for the application of the mitigation ratios. (BMO p. 9)

Discussion: Referring to the proposed habitat–based mitigation ratios, the Ordinance states, "These rations shall generally be followed for habitats." The meaning of word "generally" is unclear. Does it mean that the rations will be applied haphazardly or only when convenient? Or instead, does it mean that, for practical reasons relating to parcel sizes, *de minimis* deviations from exact acreages might be allowed?

From the perspective of state and federal permitting, *only* a strictly applied ordinance, not susceptible to inconstant or arbitrary use, can conceivably meet legal standards of assured implementation. From the public perspective, it is *only* the certainty of application which makes these relatively low mitigation ratios acceptable. The concerns voiced in Comment F above, on the need for pre–defined criteria for variances, are integral to this comment, as well. 105(di)

Suggested remedy: The word "general" in the above sentence should be deleted. The application of the mitigation ratios should be rigorous, with variance procedures strictly defined. Only *de minimis* deviations should be allowed from the exact amount of land calculated as required for mitigation.

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L. The Biological Mitigation Ordinance should make explicit the need to undertake all necessary surveys for narrow endemics, sensitive plants and animals, or other species whose mitigation *may* be required under the Ordinance or under CEQA. 105(dj)

M. The Biological Mitigation Ordinance does not mitigate impacts to covered species to the maximum extent practicable under section 10(a) or to the extent feasible under CEQA.

Discussion: Under current County policies (Resource Protection Ordinance and "Greenbook" guidelines), mitigation occurs at higher rates than is now proposed. For example, current policy does not generally allow the use of undevelopable floodplain or steep slopes land as project mitigation; this practice is, however, institutionalized in the proposed Ordinance. Also, mitigation ratios for habitats previously considered rare or sensitive have been significantly reduced (e.g., oak woodland from 1-3:1 to generally 1:1; coastal sage from 1-3:1 to generally 1:1). For non-native grasslands, current policy is to fully mitigate (at least 1:1) if any of a comprehensive list of County and State "sensitive" plant and animal species is present. The proposed Ordinance would reduce that requirement to a *drastically abbreviated* list (that is, the MSCP covered species) and would *in addition* reduce the mitigation ratio for non-native grassland occupied by a sensitive species in half, to 1/2:1. Very importantly, this "double-reduction" is inconsistent with the reason why a 1/2:1 ratio was proposed in the first place, namely, that sensitive species were *presumed to occur in approximately half the grasslands.*

These major, across-the-board reductions are *prima facie* evidence that mitigation is not occurring to the maximum extent practical under federal law or to the extent feasible under state law. The truth of this is immediately evident upon comparison with requirements in the City of San Diego. There, using the same overall ratio scheme, developers are required to mitigate at a 1/2:1 ratio for *all* non-native grasslands. There is no reason to believe that what is feasible in the City is infeasible in the County—where mitigation lands are, in fact, far *less costly* to acquire than in the more expensive coastal zone.

Furthermore, under the proposed system, many non-native grasslands, which are of relatively small patch size, would escape mitigation altogether, as *only* those potentially used by the covered species list raptors—large species like the golden eagle and northern harrier—could be mitigated. To the contrary, under the current County system, use by smaller raptors may trigger mitigation, as species such as the white-tailed kite and loggerhead shrike are considered sensitive. The creation of this loophole exacerbates the extent to which mitigation obligations will be reduced below current levels. Taken together, the various reductions cumulatively violate a cardinal and long-standing principle of the MSCP, that is, mitigation will occur at the *same aggregate level* as today.

The uncertainty over what patch size of grassland deserves mitigation deprives the grassland-dependent species of assured levels of take and conservation, and therefore removes the basis for permit issuance. This uncertainty will also inevitably result in project-by-project disputes between developers, the wildlife agencies, the jurisdictions, and private citizens. For example, were the raptor surveys adequate to avoid mitigation? Contention and litigation hardly meet the County's goal of a streamlined, habitat-based mitigation system.

The ecological role played by non-native grassland is fundamentally the same as the played by native grasslands; the role of non-native grasslands in supporting raptors is incontrovertible. The County must fully and consistently recognize the biological value of this habitat type in the mitigation ratios if its system is to be credible. We again stress that the reduction of mitigation to a 1/2:1 ratio *already factors in* the issue of sensitive species presence.

Suggested remedy: Only in the anticipation of even-handed and consistent application, have we have supported the streamlined approach to mitigation reflected in the County's proposed habitat-based ratios. It is therefore unacceptable for a glaring exception to these principles to be put in place for 105(dk)

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an important biological community. As a remedy for species dependent upon non-native grasslands, a compromise using the *low* ratio of 1/2:1 yet *coupled with* fully consistent application—as found in the City of San Diego's proposal—could be acceptable. 105(dk)

N. In article IV of the Biological Mitigation Ordinance, the qualifier "reasonable" in the phrase "reasonable connectivity" (pertaining to mitigation lands outside core areas) should be deleted.

105(dl)

Discussion: "Reasonable" has no biological meaning, and can be variously interpreted.

Suggested remedy: Substitute "fully adequate".

O. Biological core areas outside of a subarea plan are insufficiently defined. (III (1)b(i))

Discussion: To limit the definition of such areas to high or very high value habitat would exclude the preservation of biologically important habitat, which, while in isolation might be considered "lower" value, is actually essential to the overall viability of a habitat patch. 105(dm)

Suggested remedy: Include in the definition the phrase, "or moderate value within a matrix of high or very high value."

P. Ratios in the Biological Mitigation Ordinance provide insufficient disincentive to mitigate outside the preserve.

Discussion: Particularly for Tier II and III impacts, the differential between mitigation outside and inside the preserve is minimal, and will not provide sufficient incentive. 105(dn)

Suggested remedy: Increase the ratios to provide greater incentive for mitigating inside the preserve.

Q. The practice of placing fuel modification zones within development boundaries should be continued.

Discussion: It is the responsibility of a development project to protect itself from fire hazard with fuel modification zones. It is not the role of the pubic to subsidize private development projects by degrading public lands in order to provide this function. (It is noteworthy that the property values of private parcels are significantly increased by their proximity natural to open space.) Furthermore, fuel modification zones are extensively denuded of native vegetation, and these impacts require standard mitigation. The inclusion of fuel modification zones within development boundaries is an existing land use implementing policy for the County of San Diego, and constitutes an analytical premise which underlies the County subarea plan and the covered species list; no other scenario has been analyzed in the EIR/EIS. 105(do)

Suggested remedy: Continue current County policy of incorporating necessary fuel modification zones into development project boundaries, and continue to require mitigation for impacts to the native vegetation and associated species as a result of vegetation modifications.

R. Protection for narrow endemics should be improved.

See MSCP Plan Comment G above. 105(dp)

We thank the agencies, jurisdictions, and other stakeholders for considering our views.

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Sincerely,

Dan Silver

Dan Silver,
Coordinator

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an important biological community. As a remedy for species dependent upon non-native grasslands, a compromise using the *low* ratio of 1/2:1 yet *coupled with* fully consistent application—as found in the City of San Diego's proposal—could be acceptable. 105(dk)

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Discussion: Particularly for Tier II and III impacts, the differential between mitigation outside and inside the preserve is minimal, and will not provide sufficient incentive. 105(dn)

Suggested remedy: Increase the ratios to provide greater incentive for mitigating inside the preserve.

Q. The practice of placing fuel modification zones within development boundaries should be continued.

Discussion: It is the responsibility of a development project to protect itself from fire hazard with fuel modification zones. It is not the role of the pubic to subsidize private development projects by degrading public lands in order to provide this function. (It is noteworthy that the property values of private parcels are significantly increased by their proximity natural to open space.) Furthermore, fuel modification zones are extensively denuded of native vegetation, and these impacts require standard mitigation. The inclusion of fuel modification zones within development boundaries is an existing land use implementing policy for the County of San Diego, and constitutes an analytical premise which underlies the County subarea plan and the covered species list; no other scenario has been analyzed in the EIR/EIS. 105(do)

Suggested remedy: Continue current County policy of incorporating necessary fuel modification zones into development project boundaries, and continue to require mitigation for impacts to the native vegetation and associated species as a result of vegetation modifications.

R. Protection for narrow endemics should be improved.

See MSCP Plan Comment G above. 105(dp)

We thank the agencies, jurisdictions, and other stakeholders for considering our views.

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Sincerely,

Dan Silver

Dan Silver,
Coordinator

106 COURTNEY A. COYLE, 10/29/96

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106(a) See **Theme Response V, Taking of Private Property.**

106(b) Comment noted. Discretionary permit processing and associated CEQA review would remain unchanged. Adoption and implementation of MSCP Plan does not affect the Coastal Development Permit (CDP) processes. As stated as a purpose and intent of the project, the adoption and implementation would streamline the discretionary development permit process for projects that impact covered species. It also addresses the cumulative impacts to covered species. All projects would continue to be subject to CEQA.

106(c) The MSCP Plan is not intended to become the sole planning tool for local jurisdictions, nor would it replace CEQA review or requirements for Coastal Act compliance. These statutes would remain in force and their requirements would need to be met for local land use approvals. Techniques for MSCP Plan, Volume I implementation and reporting are described in Sections 5.0 and 6.0 of the MSCP Plan. As described in the MSCP Plan, local implementation of approved subarea plans would be the responsibility of individual jurisdictions. Each take authorization holder would provide an annual accounting of habitat acreage disturbed and conserved. Consolidated reporting and public hearings would occur every three years. This process is intended to maintain local control and minimize reporting requirements while at the same time assuring adequate accounting and public input. Please refer to Section 6.4 of the MSCP Plan, Volume I, for additional information on this process.

106(d) Implementation of the MSCP Plan would occur through one or more of the following: amendments to general plans and community plans, zoning and land use regulations, and ordinances. Existing protections of hillsides, and open spaces are being retained. See Exhibits I, J, L and N of the City of San Diego Implementing Agreement.

Within the City of San Diego, the implementation of the MSCP Plan and subarea plan would result in over 50% of the undeveloped lands being conserved for their habitat values. Slope-constrained lands, new park development and other neighborhood amenities would also result in the preservation of open space within the City of San Diego. Implementation of the MSCP Plan would result in greater conservation of open space in a more functional pattern than would occur without the MSCP Plan. See also **Theme Response X, Habitat Conservation Accounting Model.**

106(e) Both biological monitoring and take authorization compliance auditing will occur. The wildlife agencies will be coordinating the biological monitoring program and its implementation. Take authorization compliance auditing will also be conducted by the wildlife agencies as a separate and distinct task. The funding for the biological monitoring will be a combination of wildlife agency and local funding (see Implementing Agreements, Sections 14 and 15).

106(f) The ordinances, regulations, etc. used to implement the MSCP Plan do not expire if the take authorizations are suspended or revoked. Any action to change them would require public hearings and appropriate CEQA compliance.

106(g) The MSCP Plan proposes to conserve 85 sensitive species within a regional preserve system. This preserve system would also benefit other rare and common species that reside in southwestern San Diego County through protection of a diversity of vegetation communities in an ecologically sound preserve configuration.

The data base used to develop the MSCP preserve system contains numerous records of species observations based on surveys conducted for the MSCP Plan, for CEQA project reviews, and other purposes. These data are incorporated into the species analysis in the revised MSCP Plan Table 3-5. For several species, the number of individuals is not as important as the protection of adequate amounts of potential habitat in an ecologically sound preserve configuration.

It is the responsibility of each permitted jurisdiction to ensure that existing field data for individual projects adequately address information needs for CEQA review. Additional surveys using appropriate protocols would be necessary to determine project specific impacts where preserve configuration has not yet been determined. These surveys would be used to avoid impacts to sensitive resources and determine mitigation, in accordance with subarea plans and local ordinances.

106(h) The MSCP Plan emphasizes conservation of existing habitat, with a minor emphasis on habitat restoration. Restoration of vegetation communities, especially upland communities, is an expensive and uncertain proposition which has met with mixed results. Research into restoration of such habitats as coastal sage scrub is underway, and success rates may improve in the future. There are still many areas within the MSCP study area that support high quality habitat for a wide array of species and preserve design emphasized its conservation. Conservation of existing functional habitats supporting a high natural biodiversity is biologically and economically preferable to restoring or creating habitat artificially. Restoration will generally be limited to enhancement of existing disturbed habitat areas, critical habitat linkage areas, restoration of cut and fill slopes within the MHPA, and restoration for species specific needs (e.g. cactus wren and clapper rails).

The MSCP Plan acknowledges that military reservations contain the only remaining areas for the long-term conservation of certain species. Because military reservations are outside the authority of the local jurisdictions, conservation planning for these species will be accomplished through separate avenues such as formal consultations pursuant to Section 7 of the federal ESA and through Sike's Act agreements. It will be the responsibility of the wildlife agencies to ensure that these conservation planning activities are consistent with the goals of the MSCP Plan in conserving covered species and their habitats in ecologically sound preserve configurations that are compatible with the MHPA. Provisions will be included into these agreements that stipulate that conveyance of lands to private interests will conform to the measures required through transference of responsibilities in a deed restriction.

106(i) Definitions of terms pertinent to ensuring compliance with the terms of the permit and implementing agreement are provided in Section 2 of the Model Implementing Agreement.

106(j) The comment is noted. See **Theme Response IV, MSCP Financing Plan: Regional Source of Funds.** MSCP funding mechanisms are described in detail in Section 7.0 of the MSCP Plan, Volume I.

106(k) One of the tenets of the MSCP Plan is that it would not impose a building moratorium and that it would respect private property rights; lands would only be purchased from willing sellers. With the exception of the Metro-Lakeside-Jamul segment of the County's Subarea Plan, the MHPA has been drawn with hard-line boundaries. The City of San Diego proposes to rezone the lands within the MHPA to allow only 25 percent encroachment. The County must ensure that proposed development projects within the Metro-Lakeside-Jamul segment of the County Subarea Plan meet its requirements with regard to preserve design and species conservation.

106(l) Analyses of pollution, runoff and watershed impacts associated with implementation of the MSCP Plan are not deferred in the Draft EIR/EIS. Please refer to pages 1-18 through 1-22 of the Draft EIR/EIS for discussion of these issues.

The conservation provided by the proposed preserve for covered species takes into consideration the proposed development of Fanita Ranch and SR-125. With regard to the expansion of the MCAS Miramar, projects on military lands are not subject to the provisions of the MSCP Plan, but rather to Section 7 of the FESA, NEPA regulations, and other relevant federal regulations.

106(m) The purpose of the MSCP Plan is to provide mitigation for the proposed take authorizations of covered species, as required in Section 10(a)(1)(B) of the federal ESA. The participating local jurisdictions are pursuing this Plan as a means to streamline the federal and state take authorization processes through development of an ecosystem-level preserve that provides for the conservation of multiple species and their habitats. The three original species to which the commenter refers are the NCCP target species (cactus wren, orange-throated whiptail, and California gnatcatcher), which are to be addressed in all NCCP coastal sage scrub plans. See also **Theme Response IV, MSCP Financing Plan: Regional Source of Funds.**

106(n) See **Theme Response X, Habitat Conservation Accounting Model.**

106(o) See **Theme Response VIII, Public Involvement.**

106(p) The analysis for covered species and the EIR/EIS has incorporated the effect of vested or "pipelined" projects.

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COURTNEY ANN COYLE
ATTORNEY AT LAW

232 PLAYA DEL SUR
LA JOLLA, CA 92037

TELEPHONE: 619-454-8687 E-MAIL: COURTCOYLE@AOL.COM FACSIMILE: 619-454-8493

Ms. Nancy Gilbert
U.S. Fish and Wildlife Service
2730 Loker Avenue West
Carlsbad, CA 92008 fax: 431-9624

Mr. John Kovac
City of San Diego Development & Environmental Planning Division
1222 First Avenue, 5th Floor
San Diego, CA 92101 fax: 236-6620

Mr. Tom Overbauer
5201 Ruffin Road, Suite B
San Diego, CA 92123 fax: 694-3373

October 29, 1996

Re: Comments on the County and City of San Diego's EIR/MSCP Plan for San Diego

While recognizing that many good people have worked tirelessly for several years on this project, the following are some concerns, for the record, which may be desirable to be addressed before final approval of the plans and before this program is exported to other regions. Thank you for the opportunity to comment during this extended comment period.

1. Takings and Precedent concerns. Because of the current climate regarding "property rights" each jurisdiction should encourage the concurrent enactment of policy goals in their broad policy documents including general plans. In light of the Ehrlich decision, jurisdictions may be best able to protect themselves from such claims if they can show that the regulation was legislatively determined via across-the-board balancing rather than determined solely on an ad hoc basis.

Another concern is that the plans may be a de facto codification of Candidate Dole's proposed takings legislation. Over the last two hundred odd years, the courts have repeatedly declined to establish a bright line percentage of diminution in value triggering a taking. However, these plans, by establishing a 25% trigger, may be venturing where courts have repeatedly, and with good reason, declined to go. The public should not have to pay for what developers are already obliged to mitigate. Moreover, a recent law review article by John F. Hart titled "Colonial Land Use Law and Its Significance for Modern Takings Doctrine" disavows much of the asserted underpinnings of the modern "property rights" movement. For your reference, it appears in the Harvard Law Review at Vol. 109:1252, 1996. 106(a)

Because of the national attention this program has received, and will continue to receive, it is imperative that we remain mindful of its precedent setting nature. This is an experiment borne of crisis; not a model.

2. Planning and Implementation concerns. Significantly, over the last several years, both the County 106(b)

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and City of San Diego have undergone a wholesale withering of its Planning Departments. Through staff and budget cutbacks these departments are shadows of what they once were. Accordingly, there has been a sea change in the workload of these departments. Through Orwellian changes, the city planning department is now labeled the "Development Services Department." Developers are the clients; the underlying resources often lack champions. We have been informed that the recent vacancy of the chief of the planning department will not be filled, and instead, the City Manager will occupy the field. The Zoning Code Update draft EIR is forthcoming; the stated purpose of this Code is to create one-size-fits-all zoning for the entire city and to increase ministerial permitting. Moreover, the City has stated its belief that its zoning does not need to be consistent with its general plan because of its "charter city" status. It is unclear how such inconsistency with bedrock hierarchical planning principles will effect the implementation of the MSCP and its policy objectives. This is a brave new world of habitat planning; perhaps charter city status has outlived any purported beneficial use. 106(b)

The point is that the MSCP must not be examined in a vacuum; it must be examined within the context of other land use planning mechanisms in our area. One needs only experience the permitting and cross-jurisdictional problems associated with Coastal Development Permits to recognize the serious permitting and enforcement voids in these sensitive areas. One wonders if the already over-taxed localities will be able to keep track of take statistics. MSCP proponents must be able to say to themselves that the city and county have done such a great job protecting resources and implementing the law that we want to hand over the remainder of the authority to them. The MSCP plan must not become the sole planning tool for the localities, nor should it be allowed to replace CEQA review or Coastal Act compliance; they are not interchangeable. This cannot be stated clearly or often enough. 106(c)

Implementation must encourage active and open public review and disclosure, flesh out the across-the-counter permitting procedures, authority, and education, and mandate meaningful findings and accountability. Without such measurable, objective criteria it may be impossible for the legal requirements of certainty to be met, making the implementing agreements void or voidable. The plans must make the leap and describe with specificity how these plans and data will be carried out within the jurisdictions. Checks and balances must be clearly developed and written into the draft plans. Cities will always have an inherent conflict of interest between encouraging development which, in theory, increases the tax base versus adequately conserving land-based resources. Such conflict was what created the Endangered Species Act in the first place. The city of San Diego cannot suffer all density and no amenities. Many areas of the city are already underparked, as acknowledged in their community plans, and should not loose their open space resources, including canyons and bluffs, to encroachment. 106(d)

It may be wise and efficient to create special staff positions at the local and state agencies and jurisdictions to monitor the permits, takes, and educate all the way to the counter and public levels. Further, a distinction must be maintained between biological monitoring staff and permit monitoring staff. 106(e)

And, above all else, if the plans fail, a reversionary clause or reopener clause should be crafted so that the previous protective ordinances, repealed in favor and in anticipation of MSCP, would be reactivated so that there is no net loss of protective mechanisms. 106(f)

3. Science, Data, and Standards concerns. The preserve areas are created through the examination of several species but not all species. To my knowledge over 1,000 known species were not studied. Moreover, much of the data is now five years old and less than one half of the data was field verified. Thus, we cannot really know what we are losing and its value. It appears that some key data may be missing because, by definition, it simply takes a long time to acquire adequate population viability data. We are told that the developers cannot wait for the science; I question whether this fulfills a "best 106(g)

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science" approach. Science cannot, and should not, be politicized. Independent science and peer review ought to be proactively encouraged. Regular data review and species trends must be compiled for public review and comment. 106(g)

Regarding habitat, many species have likely been forced to occupy marginal habitat because that is all that remains; a focus should be on restoration of high quality habitat, not just preservation of current habitat. Similarly, a comprehensive policy must be developed regarding military lands which contain some of the last and best stretches of urban open space. During a time of base closure and realignment, comprehensive plans must be in place to quickly capture such lands. (See Harvard's recent Biodiversity Project examining Camp Pendleton). 106(h)

The MSCP programs contain new phrases and standards. The language contained therein is new, untried, and untested; we do not yet know what "minimal viability," "adequately conserved," "extraordinary circumstances" really means. Reasonable minds might differ. Other language, such as "recovery" is wholly absent. The risk of these unknowns must be weighed before site specific land use controls are abdicated. 106(i)

4. Funding and Political Will issues. The MSCP has been worked on for a number of years. However, it is curious that no substantial pot of funding has been created to nest egg these plans. Any person starting a business would likely not open its doors, no matter how solid its business plan may be, without having a nest egg ready to go. It is also curious that no major conservancy or land trust has helped to guide public agencies and private groups through successful, major MSCP-specific acquisitions or viable mitigation banking constructs. Further, intellectual consistency dictates that if no vote of the people is required for 360 million dollars of stadium renovations and convention center expansions, that other projects undertaken to enhance the public good, land values, and tourism dollar, such as the MSCP, should also be exempted from such a vote. If the elected officials really believe in the MSCP program and its necessary funding realities, the money could - and should - be found up front. 106(j)

In 1972, the county commissioned a report titled "An Open Space System for the San Diego Region." This report studied and made recommendations regarding comprehensive planning of open space in San Diego County. If these recommendations had been followed then, we may not have been placed in our current situation; certainly if the plan had been implemented then, the associated costs for land acquisition would have been greatly reduced. I am uncertain as to what makes the current MSCP plan more compelling and workable, particularly in the absence of funding.

5. Reserve Design, Orderly Construction and Preservation. A major concern is the large window of time, twenty to thirty years, within which the reserve lands will be captured. Precedent for carrying out rational design is unfortunately scarce in San Diego. The fate of the Future Urbanizing Area in the north County of San Diego is instructive. Here the voters determined that this large area should not be developed unless there was a need for it (other areas virtually buildout) and that a comprehensive plan for its intelligent and orderly development had been conceived. What has in fact occurred is a piecemeal encroachment through general plan amendments and variances and their associated development into the area. One need look no further than the adverse impacts of patchwork quilt in-holdings in the Cleveland National Forest to recognize the adverse biological consequences of piecemealing habitat acquisition. Because of the amount of time slated for acquisition, the current lack of funding, and the established developer-friendly political culture, the public should have every reason to expect that a similar fate may befall MSCP appropriate lands. Moreover, what holds true of direct impacts of development will also hold true of the indirect impacts of alleged support uses including golf, camping, and other commercial uses. The documents should specifically state that, "uses of reserve lands will not preclude reserve success." 106(k)

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Currently several proposed projects, such as the SR 125 Tollroad and the Fanita Ranch development would irretrievably fragment core areas. (See letter from Felicia Marcus, US EPA, dated September 16, 1996) Moreover, additional expansion of the Miramar airport would severely impact the extensive vernal pools on site. (See April 11, 1996 letter from Gail Kobetich to Mr. Michael Stroud in the supplemental EIR for Miramar). Based on the above, it is unclear whether the MSCP will be successful without effective, concurrent land use control mechanisms such as meaningful long-range planning, an urban limit line and a comprehensive infill and redevelopment program for our already urbanized areas. Moreover, under Sundstrom, a complete analysis of pollution, run-off, and watershed impacts of expects buildout cannot be deferred. Currently, EIRs for our region appear to already improperly defer project specific mitigation to the as yet prospective MSCP. 106(l)

6. Penalty for Noncompliance, Failure to Monitor Mitigation, and Assurances. It is my understanding that the MSCP was created to encourage biodiversity. It was to be a conservation plan, not a mitigation plan. However, as the project stands currently, it appears to be more of a development facilitating plan. This revision is fine as long as this intent language is clearly acknowledged. Further, the impact of such revisions are reflected in the poor job most states, including California, have done regarding biodiversity preservation. (See the July 1996 Defenders of Wildlife report: "Saving Biodiversity, A Status Report on State Laws, Policies and Programs;" and Bruce Babbitt's October 3, 1996 press release regarding the Species Survival Commission of the World Conservation Union report). 106(m)

As negotiations progressed on this program, the number of assurances for developers and landowners grew while the assurances for scientifically viable resource populations remained nearly static. If already existing public lands and land that is currently nondevelopable become the primary sources for the MSCP, it is difficult to understand what concessions have been made by landowners in this consensus process. It is my understanding that the covered species list originally consisted of 3 species; it now stands at 85. Further, the "no surprises policy" has no nexus with sound conservation biology and will inevitably cause the taxpaying public at large to assume the burdens of risk allocation for private developers. Adequate funding must be created to allocate the risk of funding future modifications to the reserve boundaries as our science evolves and improves over time. Mutual assurances must be crafted.

The best of what remains must be adequately conserved. Conservation depending on self-regulating and self-reporting has often proven ineffective. The monitoring program must have teeth in it to avoid running afoul of Public Resources Code Section 21081.6(b) requiring fully enforceable mitigation measures. Moreover, citizen enforcement mechanisms must be clearly set out. 106(n)

7. Public input and Negotiation concerns. Despite the fact that the process was billed as a collaborative one, using a consensus approach, the majority of the negotiations and certainly the majority of its early development was not centered on broad-based participation. To this day, there appears a lack of neighborhood involvement in which citizens are aware of how the MSCP will impact their particular areas. This constituency must be educated about the plan. This has not yet occurred. 106(o)

Finally, an analysis of arguably vested or "pipelined" projects should be done to accurately gauge what core areas may be already in a compromised position. Data should be adjusted accordingly. 106(p)

Again, thank you for the opportunity to comment on this issue of great concern to the city, county, citizens and resources of San Diego. It is my hope that meaningful regional planning around ecosystems and habitats, while encouraging sustainable development, will come to successful fruition in our resource-rich area.

Very truly yours,

Courtney Ann Coyle

107 HEWITT AND MCGUIRE (ALLIANCE FOR HABITAT CONSERVATION AND BIA), 10/29/96

R **107(a)** See **Theme Response III, Economic Impacts and Impacts on Population and Housing.** The MSCP Plan is designed to streamline compliance with CESA, CEQA and FESA, thereby reducing the costs to develop housing and other projects as compared to existing conditions.

107(b) The nature and scope of the MSCP Plan are fully described and depicted in the Draft EIR/EIS. The specific objectives of the MSCP Plan are listed in full on page 1-7 of the Draft EIR/EIS and the MSCP Plan is described in detail on pages 2-1 through 2-20 of the Draft EIR/EIS. The subarea plans and associated implementing mechanisms are described on pages 2-20 through 2-51 of the Draft EIR/EIS. Federal, state and local actions required to implement the MSCP Plan are described on pages 1-11 through 1-14 of the Draft EIR/EIS. Without more specific comment on how the "EIR/EIS needs to articulate more clearly the nature and scope of the MSCP," a more specific response cannot be provided.

107(c) Please see revised MSCP Plan Table 3-5 included in the Revisions to the MSCP Plan, Volume I, January 1997, for the analysis of covered species. See also **Theme Response XXVI, Permit Streamlining.**

107(d) See **Theme Response I, Species Analysis Approach** and revised MSCP Plan Table 3-5 included in the Revisions to the MSCP Plan, Volume I, January 1997.

107(e) The understandings expressed in the comment regarding use of the Draft EIR/EIS to streamline environmental analysis of future projects with respect to covered species are correct. As shown in Table 4.1-1 of the Draft EIR/EIS (pages 4.1-4 and 4.1-5), a program level of analysis is provided in the document for the overall MSCP Plan while project level analyses are provided for the individual subarea plans. Individual projects within the MSCP study area would require additional project-level analysis, although the data presented in the Draft EIR/EIS would provide an important framework for any biological analyses required for individual projects. The degree to which additional environmental review would be required beyond a mere consistency determination would be made on a case-by-case basis for each individual project by the individual jurisdiction within which the project is located.

The Mitigation Monitoring and Reporting Program (MMRP) included in the Final EIR/EIS is an important vehicle for "tiering-off" the Final EIR/EIS in supplemental environmental review for individual projects. The MMRP presents the measures identified specifically for the MHPA. For example, for the overall MSCP Plan, required mitigation measures for impacts to biological resources include:

-- preservation of population of covered species (per Table 4.3-1 of Draft EIR/EIS);

-- configuration of the MSCP preserve in a manner consistent with Figure 2-1 of Draft EIR/EIS;
-- conformance with conservation goals and criteria for individual species (per Table 4.3-1 of Draft EIR/EIS); and
-- implementation of measures included in the MSCP biological monitoring plan.

It is anticipated that the contributions of individual projects to implementation of the measures outlined above, and similar measure identified for specific subarea plans, will be evaluated on a case-by-case basis. In this way, the Final EIR/EIS will serve as first tier analysis for individual projects.

With respect to the comment regarding mitigation ratios, such ratios are not specifically identified in the MSCP Plan, and are identified to varying degrees in the subarea plans addressed in the Draft EIR/EIS. The application of ratios to determine the amount of mitigation required would be determined on a case-by-case basis by the particular jurisdiction within which a specific project is located. Likewise, with respect to edge effects, Section 6.0 of the MSCP Plan simply provides general guidelines regarding land uses within and adjacent to the preserve. The subarea plans contain more specific information regarding land uses within and adjacent to the preserve. The degree to which analysis of edge effects would be required would be determined on a case-by-case basis by the individual jurisdiction within which a particular project is located.

107(f) The Draft EIR/EIS analysis of forecast housing in the MSCP study area is limited to the time period of 1990-2005, since SANDAG's Series 8 Regional Growth Forecast does not fully resolve the issue of accommodating growth beyond the year 2005. Please refer also to **Theme Response III, Economic Impacts and Impacts on Population and Housing.**

107(g) SANDAG's Series 8 forecast indicates that there is a lack of vacant land designated for residential use with densities greater than one unit per acre. The MSCP study area contains a substantial quantity of vacant land designated for residential use with densities less than one unit per acre. Thus, SANDAG's forecast showed that it would be necessary to convert some lands which are currently zoned for residential use with densities less than one unit per acre to densities greater than one unit per acre.

107(h) The paragraph at the bottom of p. 4.6-5 of the Draft EIR/EIS is in error and has been corrected in the revised language included in the Final EIR/EIS. After meeting the conservation targets of the MSCP Plan, there would be 82,290 acres of developable and vacant private land in the MSCP study area. In 1990, the average gross density of the urbanized areas of the MSCP study area was 3.1 dwelling units (DU) per acre (Draft EIR/EIS, page 4.0-3). If future development were to occur at the same density, 255,000 dwelling units may be constructed, or slightly greater than 246,400 units forecast for the study area in the year 2015. In practice, there is likely to be redevelopment of selected urbanized areas, which would place additional units in those areas. However, such redevelopment is not necessitated by the implementation of the MSCP Plan.

107(i) Two measures of residential density are used in the EIR/EIS. The first is the total number of dwelling units in 1990, divided by the total area of developed land in 1990, or 3.1 DU/acre (= 691,666 DUs / 223,288 developed acres). The second is the total number of dwelling units in the year 1990, divided by the total area of land developed for residential use, which occupies approximately 59.3 percent of the total developed land; this density is 5.22 DU/acre (= 691,666 DUs / 132,444 residential acres). The two measures are equivalent and reflect the existing condition in the year 1990.

107(j) Please refer to **Theme Response III, Economic Impacts and Impacts on Population and Housing** regarding the adequacy of the financing plan under the federal ESA.

107(k) Comment noted. As stated in the Draft EIR/EIS, "By increasing the demand for developable land in areas outside the preserve, the proposed project may create a situation that contributes to the increase in the price of land" (page 4.6-46). On the other hand, implementation of the MSCP Plan would tend to decrease environmental mitigation and land carry costs and to expedite approval of development projects. It is difficult to assess the combined effect of these factors on the region's future housing costs. Please refer also to **Theme Response III, Economic Impacts and Impacts on Population and Housing.**

The habitat based approach to environmental mitigation will provide greater certainty to landowners/developers because they will know at the beginning of the permitting process what will be expected of them. Because the percentage of habitat to be protected in the MHPA is also known prior to commencement of project planning and because site specific project analysis will allow sensitive habitat areas to be avoided, these will be significant benefits to covered species.

The MSCP Plan does not enlarge the jurisdiction of the wildlife agencies. The MSCP Plan and subarea plans and the mitigation those plans propose for impacts to species and sensitive habitat types were developed and will be implemented by the local jurisdictions. The MSCP Plan is an attempt by the local jurisdictions to address species conservation on a regional scale in order to provide better protection for sensitive species and habitat types within the MSCP Plan study area, while at the same time affording more certainty and a streamlined environmental review process to landowner/ developers. If the wildlife agencies determine that the MSCP Plan and subarea plans meet the federal ESA and state standards for issuance of take authorizations, the wildlife agencies' role will be to monitor and enforce the terms of the authorizations in accordance with applicable federal and state laws. The participating local jurisdictions retain full jurisdiction over the development and implementation of local land use policies.

107(l) The MSCP Plan contains a timeline for the implementation of a regional funding program. In addition, the proposed preserve would be assembled from various sources, not all of which would require acquisition with public funds. See **Theme Responses X, Habitat Conservation Accounting Model and IV, MSCP Financing Plan: Regional Source of Funds.** The take authorization holders and the wildlife agencies will also meet annually to review and coordinate subarea plan implementation and, if required, take corrective actions as specified in the subarea plan and implementation agreement.

107(m) Comment noted. The MSCP Plan and the implementing agreement contain provisions for the review of subarea plan implementation and remedies that may become necessary in case public funding is not available in a timely manner. In the event that regional funding fails, the wildlife agencies are committed to working closely with the local jurisdictions to minimize any reduction in permit coverage, while alternative funding is pursued. Even in the event of such revocation or suspension, the agreement contains assurances to proponents of projects who have received permits under the MSCP Plan and who are in compliance with the terms of the permit and mitigation requirements.

If the take authorizations were suspended, project proponents requiring incidental take coverage could obtain such coverage by applying individually for a take authorization from one or both of the wildlife agencies as appropriate.

107(n) The specific objectives of the MSCP Plan are presented on pages 1-5 and 1-6 of the Draft EIR/EIS.

107(o) The referenced acreages on page ES-2 of the Draft EIR/EIS state the conservation goal acreage of the proposed MHPA. The anticipated, generalized configuration of the MHPA is depicted on Figure 2-1 of the Draft EIR/EIS. Figure 2-2 depicts average anticipated habitat conservation within the MHPA for all areas with the exception of the County of San Diego's Metro-Lakeside-Jamul segment. The habitat conservation percentages presented in Figure 2-2 and pre-approved mitigation area maps in the Metro-Lakeside-Jamul segment were used to generate the referenced acreages on page ES-2.

107(p) As described on pages 2-30 and 2-31 of the Draft EIR/EIS, the Environmentally Sensitive Lands Ordinance is a mechanism proposed to be used by the City of San Diego to implement the City's Subarea Plan. The City of San Diego's Implementing Agreement proposes to adopt such an ordinance within 180 days of the effective date of the City's Subarea Plan. As stated on page 2-31, the Environmentally Sensitive Lands Ordinance would be subject to separate environmental review.

107(q) As shown in Table 4.1-1 of the Draft EIR/EIS (pages 4.1-4 and 4.1-5), a program level of analysis is provided in the document for the overall MSCP Plan while project level analyses are provided for the individual subarea plans. Individual projects within the MSCP Plan study area would require additional project-level analysis although the data presented in the Draft EIR/EIS would provide an important framework for any biological analyses required for individual projects. The degree to which additional environmental review must be required beyond a mere consistency determination would be made on a case-by-case basis for each individual project by the individual jurisdiction within which the project is located.

107(r) Jurisdictions whose subarea plans are addressed in the Draft EIR/EIS participated in preparation of the document in a variety of ways from straightforward provision of necessary information to review of screencheck draft documents. Broad-scale subarea plan alternatives (Coastal Sage Scrub Scenario and Biologically Preferred Scenario) were developed by the overall MSCP team and not by the

City of San Diego. In addition, localized subarea plan alternatives were identified by the County of San Diego and the City of Chula Vista. An additional localized alternative was identified by the City of Santee during the public review period.

107(s) Significant environmental effects of the MSCP Plan, subarea plans and alternatives are briefly summarized on the tables included in the Executive Summary to the Draft EIR/EIS. In addition, the Mitigation Monitoring and Reporting Program (MMRP) included in the Final EIR/EIS includes a summary of the significant environmental effects associated with the proposed MHPA.

107(t) Since the No Project alternative would have no significant effects, it was not deemed to be necessary to add it to Table ES-2 or the other summary tables included in the Executive Summary.

107(u) As discussed on page 4.2-67 of the Draft EIR/EIS, an update of the City of San Diego's General Plan Housing Element is recommended to address the identified impacts. The impact remains significant and not mitigated simply because specific measures to be incorporated in a Housing Element update have not been identified at this time.

107(v) Since the No Project alternative would have no significant effects, it was not deemed to be necessary to add it to Tables ES-3, ES-4, ES-5 or ES-6.

107(w) As stated on page ES-22, Issue 3 is not represented on Table ES-6. This is due to the fact that the analyses for Issue 3 did not include analysis of the subarea plans and other actions as described in the text of the Draft EIR/EIS.

107(x) A discussion of the relationship between local short term uses and long term productivity is included in the revised language incorporated in the Final EIR/EIS.

107(y) The City Council of San Diego would initially certify the Draft EIR/EIS for the adoption of the MSCP Plan in concept and approve the City's Subarea Plans. Subsequently, each of the responsible agencies would determine the adequacy of this previously certified document for the adoption of the MSCP Plan and the approval of their respective subarea plans.

107(z) The take authorizations described on page 1-11 would be issued to individual jurisdictions and other take authorization holders in conjunction with approval of individual subarea plans and implementing agreements. The areas covered by the take authorizations would be consistent with the areas described in the subarea plans and implementing agreements, and take would therefore occur both inside and outside of the MHPA.

107(aa) The California Department of Fish and Game will be filing a Notice of Determination (NOD) in certifying the Final EIR/EIS as the CDFG's CEQA document for the CDFG's approval of the MSCP Plan as an NCCP. The CDFG is listed as a responsible agency in the MSCP Plan EIR/EIS. In addition to the filing of the NOD, the CDFG will also be making findings of consistency with the NCCP act, issuing CEQA/NCCP authorizations and executing implementing agreements with participating jurisdictions. The environmental consequences of the CDFG issuance of CEQA/NCCP authorizations to the participating jurisdictions were analyzed in the MSCP Plan EIR/EIS. The state take authorizations will authorize the take of covered species consistent with the MSCP Plan and subarea plans for the MSCP study area. The authorized take may occur either inside or outside of the MHPA.

107(ab) The City of Poway has not adopted the MSCP Plan. Rather, the City of Poway adopted its own HCP/NCCP subarea plan, after preparing an Environmental Assessment/Negative Declaration. The City of Poway does not intend to adopt the MSCP Plan per se. However, the subarea plan was prepared using MSCP data and guidelines. This is no different than the process for any MSCP subarea plan except that Poway's time schedule mandated that they could not wait for the MSCP Plan and CEQA/NEPA documentation to be finalized.

107(ac) It is beyond the scope of the Draft EIR/EIS to analyze the legal issues associated with such things as economically viable uses of property. Please refer also to **Theme Response V, Taking of Private Property.**

107(ad) The discussion on page 1-20 of the Draft EIR/EIS notes that air pollution problems in the MSCP study area are primarily related to mobile emissions and acknowledges that implementation of the MSCP Plan may affect the location and character of development. The discussion concludes, however, that implementation of the MSCP Plan would not affect the rate or amount of development within the MSCP study area, and therefore mobile emissions associated with implementation of the MSCP Plan would be similar to that which would occur under the No Action/No Project alternative. As discussed in Section 4.4 of the Draft EIR/EIS, additional congestion on roadway segments that could contribute to increased mobile emissions, is not anticipated with implementation of the MSCP Plan due to flexibility incorporated in the MSCP Plan that would permit properly designed roadway segments within designated preserve areas. No circulation element changes are proposed as part of the MSCP Plan or subarea plans at this time that would affect traffic circulation or congestion.

A wide variety of factors can affect the rate or amount of development in any given area including the economic conditions, employment opportunities, quality of life features such as educational opportunities and public safety, and numerous other considerations. These factors are many and diverse and implementation of the MSCP Plan would have little or no effect on these factors. For this reason, it was assumed that the MSCP Plan would not affect the rate or amount of development. Assumptions were not made regarding the effects the MSCP Plan might have on the cost of development since public funds would be used to assemble much of the MSCP preserve and voluntary participation is encouraged as part of the MSCP Plan.

The Draft EIR/EIS acknowledges that some of the development shifted as a result of implementation of the MSCP Plan could be shifted outside of the MSCP study area. Given the large size of the MSCP study area, however, the significant opportunities for additional development within the study area, and the well-developed employment base within the study area which strongly influences the location of growth, it was assumed that most of the projected development would remain within the MSCP study area. Any indirect contribution by the MSCP Plan to increases in regional vehicle miles traveled were not regarded as significant.

107(ae) Private property would only be actively managed by the City of San Diego, or other conservation entity, if acquired with public funds or if the site is conveyed to the City in fee title or by a conservation easement through the development review process. If the property owner is not a willing seller and no development entitlements are requested (i.e. not a third party beneficiary), the land would not be subject to management.

107(af) The term "covered" is used to refer to species that would receive take authorizations pursuant to the federal ESA, CESA, and NCCP when the MSCP Plan is implemented.

107(ag) The MSCP Plan study area includes 27,940 acres of military land, including 18,364 acres of habitat, 3,710 acres of disturbed, and 5,866 acres of developed. None of this military land is included in the MHPA. If acres of habitat on military lands are subtracted from the total study area habitat acres (315,940-18,364=297,576), approximately 56% of the habitat in the smaller study area (excluding military) is targeted for conservation by the plan (167,667/297,576=56%).

107(ah) The mapping effort relied largely on interpretation of 1:24,000 aerial photography, supplemented by ground-truthing. The small patches of native grassland remaining in the study area could not be detected accurately at this scale. Therefore, native and non-native grassland were both mapped simply as "grassland." Mapping completed for the MSCP Plan did not distinguish between native and non-native grasslands so provision of the requested breakdown on Table 2-1 is not possible.

107(ai) Comment noted. The commenter correctly notes that a shortfall in the federal and/or state contribution committed to the MSCP Plan may require that the MSCP Plan be reevaluated with possible adjustments to permit coverage and assurances in light of the extent of the federal/state contribution. In the highly unlikely event that insufficient federal or state funding compels the wildlife agencies to suspend or revoke permit coverage for one or more species, the assurances provided to participating local jurisdictions consistent with the "No Surprises" Policy (see **Theme Response XXIV**) would no longer be available for the affected species, except as to Third Party Beneficiaries.

107(aj) Please refer to **Theme Response XXII, Sufficiently/Significantly Conserved Vegetation Communities.**

107(ak) Watershed management is important for maintaining the function of rivers, streams, and drainages. Human modification of watersheds can result in alterations of native riparian and wetland vegetation, both increased and reduced flows of water, and alterations in sedimentation and scouring processes. These modifications, in turn, result in changes to water quality, nutrient levels, and the ecology of riparian and aquatic species (e.g., the diversity of communities). Furthermore, riparian drainages and adjacent upland habitats are important habitat linkages and movement corridors for terrestrial species.

107(al) The MSCP Plan analysis was based upon core habitat areas, habitat values, linkages, and distribution of "covered species" populations. Watershed data were included within the Draft EIR/EIS as additional information demonstrating the scope of the proposed planning effort. The amount of preservation of natural habitat lands within a watershed is important in understanding the impacts of current and potential future development on wetland systems within the watershed. Watershed with high amounts of development may require a greater emphasis on preservation of remaining habitats within the watershed to assure a healthy wetlands ecosystem. It may also be an indicator that more management activities would be required within that watershed to sustain wetlands functions. However, watershed statistics were not directly used to develop the MHPA or the list of "covered species." No additional watershed analyses would be done for the MSCP planning documents.

107(am) Please refer to **Theme Response V, Taking of Private Property.**

107(an) The referenced statement on page 2-16 of the Draft EIR/EIS is taken directly from the last paragraph on page 4-1 of the MSCP Plan. The sentence in the MSCP Plan reads, *"Private development exactions should not be increased beyond existing requirements."* Please refer also to **Theme Response V, Taking of Private Property.**

Implementation of the MSCP Plan would not extend the jurisdiction of the wildlife agencies. Take authorizations issued by the wildlife agencies would be fully consistent with the existing regulations of the wildlife agencies. Mitigation ratios are not incorporated in the MSCP Plan, however, some jurisdictions are using mitigation ratios as an implementing mechanism in their subarea plans. Ratios would be applied on a case-by-case basis by the individual jurisdiction within which a particular project is located. Please refer also to response to Comment 107(k).

107(ao) All lands within a hard-line preserve area have the potential to be used as mitigation banks provided they meet the criteria within Section 5.14 of the Model Implementing Agreement. A landowner must be willing to enter into an agreement that includes an agreement to commit the parcel to mitigation banking at the time the first mitigation credit is sold. In addition, the landowner must ensure that the banked land has a habitat management plan and a funding mechanism to guarantee its management in perpetuity. In some instances, restoration of habitat lands on-site may be necessary for the land to be "bankable". Each mitigation bank is different, and banking agreements are tailored to fit the conditions of each bank. However, mitigation banking is an incentive-based approach to private lands preservation that continues to hold great promise, and is encouraged within the MHPA.

5.22 DU/ac). For a specific area, such as the MHPA, forecast density can differ substantially from the regionwide average (see table below).

COMPARISON OF AVERAGE RESIDENTIAL DENSITIES IN MSCP STUDY AREA AND MHPA, 1990 AND 2005

Area	1990 (Existing)			2005 (Forecast)		
	Housing Units	Developed Residential Area	Average Density (DU/ac)	Housing Units	Developed Residential Area	Average Density (DU/ac)
MSCP Study Area	691,666	132,444	5.22	825,656	158,113	5.22
MHPA	23,194	8,476	2.74	38,520	16,273	2.37

Source: SANDAG, Series 8 Regional Growth Forecast; computer analysis of MSCP study area and MSCP inside MHPA (6/27/96).
MHPA Multi-Habitat Planning Area, within which the MSCP preserve would be located.

This table also provides additional information regarding the potential for "displacement" of residential development from areas inside the MHPA to outside the MHPA. The Draft EIR/EIS stated that up to 15,326 units may be displaced by implementation of the MSCP preserve. These units represent the additional housing units to be built between 1990 and 2005, as forecast by SANDAG for the entire MHPA (15,326 = 38,520 – 23,194). This impact would occur only if there is no new residential development inside the MHPA. The MSCP Plan, however, allows for development of up to 17,021 acres of private land inside the MHPA. If 59.3% of this land is developed for residential use, then 10,093 acres of residential development could occur, exceeding the 7,797 acres (= 16,273 – 8,476) of residential development forecast by SANDAG to occur inside the MHPA between the years 1990 and 2005. Thus, the estimated displacement of 15,326 units is a worst-case estimate. Actual impact is likely to be substantially less than this estimate.

107(dr) Under the benefit assessment program described in the MSCP Plan, residential properties are assumed to generate 85% of total annual assessments and commercial/industrial properties, 15%. If no commercial or industrial properties are assessed, residential assessments would need to increase by 17.6% (= 15/85) to generate the same total annual assessments.

107(ds) SANDAG's projected regional shortfall in available residential land is not discussed in detail in Section 4.6 of the Draft EIR/EIS because it is not relevant to an analysis of the direct effects to population and housing of implementation of the MSCP Plan. The shortfall would occur with or without implementation of the MSCP Plan and, as noted in the Draft EIR/EIS, the land use shifts associated with implementation of the MSCP Plan would not be significant in the context of the anticipated regional shortfall. Incorporation of the information from the SANDAG analysis in the Draft EIR/EIS Section 4.6

analysis would serve to minimize the analysis of the effects of implementation of the MSCP Plan on population and housing since those effects would be dwarfed by the overall anticipated regional shortfall.

The potential displacement of 15,326 housing units resulting from implementation of the MSCP Plan is discussed in Chapter 4.6 of the Draft EIR/EIS (p. 4.6-5). Please see also response to Comment 107(dr) above.

The referenced paragraph at the top of p. 5-2 of the Draft EIR/EIS has been revised for clarity. The intent of this paragraph is to discuss the relationship between the potential reduction in developable land resulting from implementation of the MSCP Plan and the forecast shortage in the MSCP study area, and, more generally, in the San Diego region, of vacant land that is zoned for residential use at urban densities (greater than one unit per acre). Series 8 Regional Growth Forecast indicates that this issue may be resolved by rezoning or redesignating vacant land currently zoned for residential use at rural densities (less than one unit per acre) to urban densities. The need for such action would exist irrespective of the MSCP Plan. However, this need may be enhanced, or the timing of such need may be accelerated, as a result of the MSCP Plan. It is in this sense that the effects of reducing developable land through habitat conservation may be more pronounced over the long-term than over the short-term.

At the same time, these observations do not contradict the principal conclusion of the Draft EIR/EIS that, if future residential development were to occur at densities that existed in the year 1990, then there would not be a shortfall in vacant residential land, even with the implementation of the MSCP Plan.

107(dt) The draft ESL Ordinance and associated Biology Guidelines were distributed in the application package for the Implementing Agreement submitted to the wildlife agencies, but are not formally included in the public review of the MSCP Plan and Subarea Plan Draft EIR/EIS. The application of the OR-1-2 zone and Environmentally Sensitive Lands Ordinance would occur at a subsequent date following adoption of the MSCP Plan. At this time, it has not been determined exactly which parcels would be subject to rezoning to implement the MSCP Plan. The rezoning effort would be subject to a separate public review.

The comments submitted on the ESL and Biology Guidelines would be forwarded to Land Development Code (LDC) staff for review and consideration. The proposed LDC and associated EIR were distributed for public review at the end of November 1996.

107(du) The proposed General Plan language uses the term natural open space rather than MSCP open space lands or MSCP lands to describe the lands that are proposed for protection in the MSCP Plan. The terms used in the General Plan are selected to be descriptive and as understandable as possible to users of the document. The document is also designed to be useable for the long term. Abbreviated descriptions such as MSCP are often understood only by a limited audience and for a limited time period. The MSCP program is briefly described on page 304a and 304b of the proposed General Plan language.

107(dv) In the Draft MSCP General Plan Amendment, the term "natural open space" was used to denote the City's proposed MSCP open space system as well as large ecologically valuable areas within the City that the military intends to retain as open space. Due to comments received on the initial draft expressing confusion regarding the term "natural open space" and lack of specific reference to MSCP, it is anticipated that the term "natural open space" will be changed to "Multiple Species Conservation Open Space System or Preserve" in a revised version of the MSCP General Plan Amendment.

The proposed amendment lists strategies for acquiring the open space necessary to implement the MSCP system including purchase. However, the City Council has stated that any MSCP acquisition involving City funds must be preceded by voter approval. Since the voters might decide not to approve such funding, it would be a conflict with Council direction to add specific statements to the General Plan at this time stating that the City should participate in such finding. The purpose of the General Plan is to provide general policy direction on issues related to development of the City but not to get into specifics on funding mechanisms and obligations.

107(dw) The number of species specified on page 334a has been revised to delete the reference to a specific number of species.

107(dx) The purpose and intent of the General Plan is to describe goals and objectives for land use planning in the City. The concept of transition areas between open space and development is one such objective. Other documents translate goals and objectives into specific development guidelines and requirements. The General Plan is not the appropriate place for discussions of the specifics regarding where lines should be drawn to define developable area. Refer to response to Comment 85(l).

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DEVELOPMENT SERVICES

HEWITT & McGUIRE, LLP
ATTORNEYS AT LAW
19900 MacArthur Boulevard, Suite 1050
Irvine, California 92612
(714) 798-0500 • (714) 798-0511 (fax)

DEAN DUNN-RANKIN
CHARLES S. EXON
ANDREW K. HARTZELL
HUGH HEWITT
MARK R. MCGUIRE

DENNIS D. O'NEIL
JAY F. PALCHIKOFF
PAUL A. ROWE
WILLIAM L. TWOMEY
JOHN P. YEAGER

October 29, 1996

Mr. John Kovac
City of San Diego
Development Services Department
Development and Environmental Planning Division
1222 First Street, M/S 501
San Diego, CA 92101

Mr. Gail Kobetich
U.S. Fish and Wildlife Service
2730 Loker Avenue West
Carlsbad, CA 92101

MSCP Plan Comments
600 B Street, Suite 500
San Diego, CA 92101

Re: **Draft Multiple Species Conservation Program Plan ("MSCP") and the Draft Joint EIR/EIS For Issuance of a Permit to Allow Incidental Take of Threatened and Endangered Species Within the Multiple Species Conservation Program (MSCP) Planning Area in San Diego County, California, DEP No. 93-0287, SCH No. 93121073 ("EIR/EIS") and Related Implementing Actions**

Messrs. Kovac and Kobetich:

I. INTRODUCTION

The Building Industry Association of San Diego ("BIA") and the Alliance for Habitat Conservation (the "Alliance") have retained this firm to comment on the proposed MSCP and the draft EIR/EIS. The BIA's members are responsible for approximately 80% of the residential, commercial and industrial development in San Diego County. The Alliance is comprised of numerous private landowners within the region covered by the MSCP; together, the Alliance's members own approximately 70,000 acres of undeveloped or partially developed land within jurisdictions considering adoption of the MSCP. In light of the fact that the BIA and

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Alliance's members are being asked to support a plan where they are expected to provide 70% of the additional land and a substantial portion of the funding to complete the preserve areas and implement the MSCP, the BIA and the Alliance believe their concerns deserve full consideration.

The MSCP began, nearly six years ago, as an environmental mitigation measure for the purported direct and indirect habitat impacts of a planned sewer system expansion project that has since been aborted. Planning of the MSCP has nevertheless continued because the local agencies within the proposed MSCP boundaries are hopeful that the MSCP can attain the objectives set forth in Section 1.2 of the draft EIR/EIS, including the cornerstone objectives of: (1) establishing and ensuring a workable balance between preservation of natural resources and accommodation of regional growth; and (2) spreading implementation costs equitably and in a manner affordable to the region. Representatives of the BIA and the Alliance have spent countless hours discussing with representatives of the federal, state and local agencies involved in the MSCP those items the MSCP must contain to justify its considerable cost to private landowners.

While much work has already been invested in the preparation of the MSCP, the decision whether or not to adopt the MSCP should not and legally cannot be made until the elected decisionmakers and the public have had an opportunity to consider fully the ramifications of adopting such a massive and complex program. Moreover, the California Environmental Quality Act ("CEQA") requires local agencies within the region to give major consideration to the State's policy that every Californian deserves a decent home and satisfying living environment. CEQA also precludes local agencies from reducing the number of homes in a project as a mitigation measure or project alternative if another measure or alternative could provide a comparable level of mitigation. Thus, adoption of the MSCP should only occur if and when it is clear the MSCP will accomplish the objectives set forth in the draft EIR/EIS -- at a price the region can afford. 107(a)

In addition to the general concerns about the MSCP as currently proposed and the EIR/EIS set forth in the remainder of this letter, we have attached a list of specific comments on the MSCP, the EIR/EIS and related implementing documents.

II. GENERAL COMMENTS OR CONCERNS

A. Discussion of the Nature and Scope of the MSCP.

The BIA and the Alliance respectfully submit that the EIR/EIS needs to articulate more clearly the nature and scope of the MSCP. "Only through an accurate view of the project 107(b)

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may affected outsiders and public decision makers balance the proposal's benefits against its environmental costs, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the "no project" alternative) and weigh other alternatives in the balance." County of Inyo, 71 Cal. App. 3d 185, 192-193 (1977). 107(b)

The MSCP has been touted as being, among other things, a program that will "streamline" the environmental review process for impacts to listed and sensitive species and their habitat and that will avoid the need for disruptive state and federal species listings in the future. Accordingly, the agencies must ensure that the MSCP, if adopted, will in fact provide these benefits. The EIR\EIS should therefore contain a thorough analysis of the MSCP's impacts and benefits to "Covered Species" and their habitats as well as a full accounting of how the MSCP, if adopted, will affect development efforts within, adjacent to and well outside of the boundaries of the MHPA. 107(c)

1. The EIR\EIS Should Expand the Biological Analysis of the MSCP's Benefits to Covered Species and Their Habitats.

The BIA and Alliance are concerned that the EIR/EIS may not currently provide an adequate level of biological analysis on the central aspect of the project, namely, how the preserve areas and configuration established by the MSCP would provide "sufficient" protection to those listed and sensitive species intended to be "covered" by the MSCP such that incidental "take" of these species will be permitted within the MSCP Area pursuant to FESA, CESA and the NCCP Act, and such that mitigation provided pursuant to the MSCP and approved Subarea plans will be found sufficient to reduce impacts from development projects within the MSCP Area to a level of insignificance under CEQA and NEPA. Without adequate coverage and an adequate analysis of such coverage in this EIR/EIS, the MSCP has no chance of providing landowners adequate assurances, nor will local agencies and private applicants within the MSCP be able to utilize the certification of this EIR/EIS as a basis for limiting future NEPA/CEQA analyses of individual project-specific impacts to Covered Species and their habitats.

Rather than setting forth as thorough an analysis as could be provided using available data, the document seems to rely primarily on tabulations of percentages of known populations impacted and preserved under the program. Although some attempt is made to incorporate additional biological information and analysis by reference, this approach may be inappropriate given that such biological analysis lies at the heart of the MSCP. NEPA regulations require that "data and analysis in an [EIS] shall be commensurate with the importance of the impact." Summaries, consolidation of information/analysis and incorporation by reference are to be left to the less important issues. 40 C.F.R. Section 1502.15. The EIR/EIS, standing alone, should enable the public to assess the environmental impact of the proposed program on Covered Species and Significantly Conserved and Sufficiently Conserved 107(d)

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Vegetation Communities. See 40 C.F.R. Section 1502.2. As the United States Supreme Court has stated, an EIR/EIS should be "an essentially self-contained instrument, capable of being understood by the reader without the need for undue cross-reference." Baltimore Gas & Electric Company v. Natural Resources Defense Council, 462 U.S. 87, 99-101 fns. 12, 13 (1983). 107(d)

The BIA and Alliance are aware of the fact that a very thorough analysis of these biological issues will necessarily be contained in the USFWS's biological opinion relating to the MSCP, and that there is always concern that any analyses conducted prior to the issuance of the biological opinion could be viewed as "predecisional" of the conclusions to be reached therein. However, the fact that the USFWS will ultimately produce a biological opinion is not grounds for excluding informative data and analysis in the documentation provided to the public during the NEPA/CEQA process. Likewise, it is both necessary and appropriate for the City of San Diego, as the local lead agency, to set forth the data and analysis which it, together with its biological consultants, etc., has collected and conducted and explain to the public why the City has concluded that the biological program *should* satisfy the Section 10(a) permit requirements for the Covered Species and why the Sufficiently Conserved Vegetation Communities should be deemed adequately conserved.

To reiterate, The BIA and Alliance believe further evidence justifying a request for incidental take of Covered Species and their habitats beyond that already presented in the draft EIR\EIS is readily available such that the existing analysis can be strengthened. Additional detailed comments on this point are included in our attached comments.

2. The EIR\EIS Must Explain in More Detail How Implementation of the MSCP will Affect Land Development Efforts Within, Adjacent to, and Well Outside the Boundaries of the Proposed MHPA, and How the MSCP EIR\EIS will be Utilized in Connection with such Efforts.

It is the BIA and Alliance's understanding that the MSCP and the EIR\EIS are intended to be sufficiently comprehensive and specific on the issues of impacts to and mitigation for Covered Species and their habitats, such that individual projects anywhere within the MSCP that are consistent with the adopted plan and applicable Subarea plan will be able to rely on the MSCP EIR\EIS as a means to reduce significantly the amount of environmental analysis required. However, the EIR/EIS does not discuss exactly how this streamlining will occur.

More particularly, the BIA and Alliance understanding is that when evaluating impacts to Covered Species and their habitats after adoption of the MSCP, project applicants with land outside of the MHPA but within the MSCP should only be required to calculate the types of habitat present and in what quantities such habitat will be removed. This information should then be used to determine the amount of mitigation required pursuant to established 107(e)

mitigiation ratios. The discussion of impacts to Covered Species and their habitats in project-specific CEQA or NEPA documentation should be able to be limited to referencing the MSCP EIR\EIS and explaining how the project and the mitigation required of it is consistent with the MSCP and applicable Subarea plan. Project applicants within the MHPA should only be required to conduct the type of biological surveys called for by the applicable Subarea plan and to analyze how the project is designed to be consistent with established criteria for development within that Subarea. 107(e)

In addition, after certification of the EIR/EIS and adoption of the MSCP and Subarea plans, no discussion of cumulative impacts to Covered Species and their habitats (other than simply referencing the MSCP EIR\EIS) in project-specific CEQA\NEPA documentation should be necessary, and participation in and consistency with the MSCP and applicable Subarea plan should be deemed adequate project-specific mitigation. Moreover, projects outside the MHPA and projects meeting established criteria for development within the MHPA should not need to analyze "edge effects" or other potential impacts to the contemplated preserve within the MHPA since edge effects are to be adequately addressed by incorporating any necessary "buffers" within the permanent preserve area.

In the discussion regarding the purposes the EIR\EIS is intended to serve, the draft EIR\EIS states that it will "[p]rovide a data base that will allow future environmental documents to focus on those key issues identified in this Joint EIR\EIS . . ." This does not make it clear that individual projects will be entitled to "tier down" or substantially reduce the level of environmental analysis for project-specific impacts to Covered Species and their habitats. The BIA and Alliance believe the MSCP EIR\EIS can and should be capable of being used in this manner and that this is part of the "streamlining" of environmental review the MSCP is supposed to achieve. If so, the EIR\EIS should state expressly that it is intended to be utilized in this fashion. If the EIR/EIS is not intended to be used in the above-described manner in connection with individual projects being processed after adoption of the MSCP and Subarea plans, then please explain how the above description is incorrect.

B. Impacts on the Region's Ability to Meet the Future Demand for Housing and Essential Infrastructure.

The EIR/EIS must expand its analysis to better explain how the MSCP's strategy of acquisition of preserve land via development exactions on projects outside the preserve boundaries, when combined with the MSCP's significant limitations on development within the ultimate preserve areas, will affect development patterns in the MSCP Area. The BIA and Alliance are concerned that the EIR/EIS understates the MSCP's potential impacts on the region's ability to provide housing, parks, schools, shops, roads, infrastructure, offices, 107(f)

industrial facilities and other development that, together with natural open space, constitute balanced communities. 107(f)

For example, the EIR/EIS concludes that "no significant population/housing impacts have been identified . . . at the MSCP Plan level." However, in reaching this conclusion, the EIR/EIS unduly limits the time-frame of its analysis regarding housing impacts to the next *eight* years, whereas the incidental take permits sought would be for *fifty* years and the land to be preserved as permanent habitat would remain undevelopable *forever*. It is particularly problematic to limit the analysis of housing impacts to the period 1990-2005 when SANDAG has published a study that concludes that the local jurisdictions within the MSCP area *will be unable to accommodate the forecasted regional demand for housing by the year 2005 even without the MSCP*. See Kings County Farm Bureau v. City of Hanford, 221 Cal. App. 3d 692, 728-729 (1990). (It is improper to limit the scope of analysis when omitting information that is reasonable and practical to exclude leads to understating the project's impacts.) 107(g)

It is impossible to square the fact that the region is projected to be facing a serious housing shortage beginning in the year 2005 with the statement in the EIR/EIS that "implementation of the MSCP would not significantly affect the region's ability to accommodate projected housing needs within the MSCP study area during the period 1990-2005 and beyond." Nor is it possible to square the numbers and assumptions the EIR/EIS utilized in analyzing the issue of housing. In particular, the text on page 4.6-5 states that a total of 108,622 acres of private land within the MSCP area will be available for development if the MSCP is implemented, but the total according to the sum of the columns in Table 4.6-3 is only 82,290 acres. Then, at page 5-2, the EIR/EIS states that the total potentially developable land within the MSCP (before removing 22,915 acres for preservation of habitat) is 142,000 acres. These figures do not add up. 107(h)

Further, the assumptions utilized in the analysis of housing impacts are not supported. The housing analysis appears to assume a development density of 5.22 DU/ac when calculating how much land will be needed to meet the years 1990-2005 demand for 133,900 housing units, and assumes that 59.3 percent of the developable land will likely be available for residential development. The assumption that the density of residential development from 1990 to 2005 will average 5.22 DU/ac when looking back it averaged 3.1 DU/ac would appear suspect. The type of housing that will be supplied is dictated entirely by consumer demand, and demand for single family detached housing predominates the San Diego market and is expected to do so far into the future. By using overly optimistic and unlikely density assumptions, the EIR/EIS appears to overlook a very real and substantial impact of the MSCP. 107(i)

Finally, the assumption that almost 60% of the remaining developable acreage will be available for residential development is one that can and ought to be confirmed or revised by 107(j)

analyzing readily available information. If th assumptions made in the EIR/EIS housing analysis are overly optimistic, then the jurisdictions participating in the MSCP may have difficulty accommodating regional growth even during the truncated period analyzed in the EIR/EIS. 107(j)

The EIR/EIS also fails to analyze properly the MSCP's potential impact on the future *affordability* of housing. Instead, the EIR/EIS simply asserts, without any evidence, that "development costs would be higher [if the MSCP is not adopted] . . . because more expensive environmental mitigation would be required on a project-by-project basis." CEQA and NEPA require much more analysis than this, even if the conclusion is supportable. In this instance, the conclusion is itself based on another unsubstantiated assertion, namely, that the MSCP will in fact streamline the environmental process for development projects (by both fixing the requirements for mitigating impacts to existing federal and state listed species and by reducing the likelihood of future disruptive endangered species listings) *without increasing development exactions beyond current levels*.

In fact, landowners believe that they have been subject to a substantial increase in environmental mitigation, exactions and infrastructure costs as a result of the MSCP for several years now despite the fact that the MSCP has not yet been officially adopted. The MSCP treats 52 species as if they are listed under the California Endangered Species Act ("CESA") or federal Endangered Species Act ("FESA") despite the fact that they are not, and even without the MSCP might never be, listed. The MSCP has led to the preparation of environmental ordinances that require new and heightened mitigation ratios, including mitigation for impacts previously treated as insignificant (such as impacts to non-native grasslands). Significantly, the MSCP also *regulates habitat* regardless of whether or not any actual listed species are present -- *an approach far exceeding the requirements of the federal and state endangered species acts* -- and provides substantial protection for numerous plant species which receive only limited protection even when listed under CESA and FESA.

Thus, in effect, the decision to create an extensive multi-species conservation plan covering both listed *and unlisted* species and their potential *habitat* will result in a monumental change to current land use authority and decision-making and will give the United States Fish & Wildlife Service (USFWS) and the California Department of Fish & Game (CDFG) jurisdiction over a substantial amount of land development activity where currently they would have little or no say. If the MSCP is adopted, landowners in the San Diego region will be giving up significant private property rights, local jurisdictions will be obtaining new state and federal sources of regulatory power, and the state and federal resource agencies will be exercising significantly greater control over local governmental matters. 107(k)

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The BIA and Alliance should not be misunderstood. The type of proactive, multi-species planning and reserve system design championed by the MSCP, if done correctly, may constitute an effective and efficient means of providing for the long-term conservation of various sensitive species and ecosystems, which in turn may reduce the possibility of species extinctions and future economic shocks to the region that species listings can bring. But the members of the BIA and Alliance and the citizens of San Diego are being asked to give up significant property rights, accept much more government regulation and embrace a far more expensive regulatory regime and cost of doing business than required by current federal, state and local environmental laws -- and to do this *now* -- in exchange for the *possibility* that in the *future* this approach will prove itself to be better for landowners and the region. 107(k)

At the very least, the EIR\EIS should acknowledge that the MSCP will increase the cost, and therefore the affordability, of housing in the region (before it speculates as to whether such costs might be higher over time in the absence of the MSCP). Indeed, it is precisely because the cost of participating in the MSCP is so high for private landowners that the BIA and others have demanded assurances that project applicants will be able to rely on the conservation benefits of the MSCP (which the development community will be funding in large measure). The necessary levels of assurances must be present in the MSCP before it is adopted.

C. <u>The MSCP Must Address Short-Term and Long-Term Funding Issues</u>.

Section 10(a) of FESA requires an applicant to provide an HCP which specifies "the funding that will be available to implement [the habitat conservation program]." 16 U.S.C. § 1539(a)(2)(A)(ii). In turn, the Secretary must find that the applicant "will ensure that adequate funding for the [HCP] will be provided." 16 U.S.C. § 1539(a)(2)(B)(iii). So far, the MSCP merely provides that the participating local jurisdiction applicants *will attempt* to raise the vast majority of their funding component via future action by the electorate. Of course, local jurisdictions have no control over the electorate. Thus there is no guarantee at this time that there will be adequate long-term or short-term funding for the MSCP. 107(l)

The BIA participated in a discussion led by the San Diego Dialogue to resolve these funding problems. Unfortunately, the Dialogue discussions ultimately resulted in a report without any concrete strategy for obtaining even short-term funding. The BIA and Alliance fear a situation wherein the local agencies' failure to obtain funding leads to either development moratoriums, revocation of the incidental take permits based on the MSCP, *or both*.. Nor is this fear unfounded. The IA provides the CDFG and USFWS with the power to gut the assurances contained in the program if the local regional funding component is not put in place. Indeed, the plug could be pulled on protections to landowners, but the expanded local land use exactions and regulations would still be in force. Clearly, stronger levels of assurances regarding a viable regional funding program must be provided if the MSCP is to have any hope of success. 107(m)

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107(m)

Elected officials must be fully committed to support and campaign for any funding mechanism that would require voter approval, and the agencies must be prepared with alternative funding if such a ballot measure fails.

III. CONCLUSION

The BIA and Alliance viewed the MSCP with trepidation when it was initially conceived. Representatives of the BIA and Alliance, as well as others from the development community, nevertheless have attempted to work earnestly and cooperatively with the City of San Diego, the other local agencies considering adoption of the MSCP and the resource agencies in an effort to arrive at a plan they believed could succeed and that they could support. Much progress has been made from 1991 until now, but more must be accomplished before the MSCP is considered for adoption.

Additional comments are attached. Thank you for the opportunity to comment.

Very truly yours,

Andrew K. Hartzell

AKH:sml
cc: Mayor Susan Golding
Michael Mantell
Michael Spear, Regional Director USFWS
The Honorable John Garamendi

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COMMENTS ON THE MSCP, THE EIR/EIS AND RELATED IMPLEMENTING DOCUMENTS (ORDERED CHRONOLOGICALLY)

EIR/EIS

Executive Summary

Page ES-2:	It would be very helpful to have a list of the project's objectives and goals in one place. The Purpose and Need section should more clearly define the goals and objectives of the project.	107(n)
Page ES-2 (bottom):	It is unclear how the EIR/EIS can describe the precise number of acres that will be in the ultimate preserve when the MHPA does not contain "hard-lines" throughout. Please explain.	107(o)
Page ES-3:	Is adoption of an "Environmentally Sensitive Lands Ordinance" part of the City of San Diego's implementing actions for which this EIR/EIS will be used? If so, it should have been appended or otherwise incorporated into the Plan and/or Subarea Plan document(s) to allow for public review and comment. Please explain.	107(p)
	Please explain how the EIR/EIS will be used by other local agencies in connection with "project" level (as opposed to "program" level) approvals.	107(q)
Page ES-4:	What agency staff/consultants prepared the Subarea Plan alternatives for jurisdictions other than the City of San Diego? Were the staffs of these other agencies involved in the preparation and review of this EIR/EIS?	107(r)
Page ES-7:	It would be very helpful to have all significant environmental effects of the MSCP summarized in one place in EIR/EIS.	107(s)
Page ES-8:	The No Project Alternative should be added to Table ES-2 to allow comparison of all alternatives.	107(t)
Page ES-9:	Why are no measures proposed "at this time" for impacts of the MSCP on the ability of the City of San Diego to meet its affordable housing goals? Are there no feasible mitigation measures?	107(u)

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Page ES-10: The No Project should also be added to Tables ES-3, 4, 5 & 6 to allow for complete comparison. 107(v)

ES-22: Why is the economic analysis of the MSCP Plan (Issue 3) not represented in Table ES-6? 107(w)

Neither the Executive Summary nor the EIR/EIS discusses the relationship between local short term uses and long term productivity. While CEQA no longer mandates such a discussion, NEPA still does. 40 C.F.R. § 1502.16. 107(x)

Purpose and Need

Page 1-9: Please explain the ramifications, under CEQA, of local jurisdictions other than City of San Diego having "responsible" agency status for an EIR/EIS that analyzes projects for which they will be the lead agency (*i.e.*, their Subarea Plans). Who certifies the EIR/EIS as to the analysis of such actions? 107(y)

Page 1-11: Is it anticipated that federal incidental take permits will be issued for listed, Covered Species throughout the entire MSCP area which is "outside" the MHPA? 107(z)

Page 1-13: Section 1.5.1 provides us with a description of the federal process for the issuance of a federal 10(a) permit. Is the State of California considering the issuance of Section 2081 and/or 2835 permits as a result of the adoption of the MSCP? If so, please describe the decision process for the State permit. As with the federal incidental take permit, will the anticipated state permits allow for take of state listed species, and Covered Species if they become listed, for all the area within the MSCP Area which is "outside" the MHPA? 107(aa)

Page 1-14: Did the City of Poway adopt the MSCP Plan? Did it analyze it in its CEQA documentation? Does Poway intend to adopt the MSCP? The fact that Poway has already received approval of its HCP/Subarea Plan illustrates that there is at least one more method between the MSCP and individual "project-by-project" permitting. Why was such an alternative not analyzed? 107(ab)

Page 1-16: The statement that "all private lands designated for preserve planning would retain limited development rights" raises a number of issues. The MSCP does not call for condemnation of private land; however, inverse condemnation is worse than condemnation. Has the EIR/EIS analyzed whether the "limited development 107(ac)

rights" retained will leave all private property owners within the preserve with economically viable use of their land consistent with reasonable investment-backed expectations? 107(ac)

Page 1-20:

The assumption is made throughout the EIR/EIS, including in the context of the Air Quality discussion, that the "MSCP may affect the location and character of development but would not affect the rate or amount of development." On what basis can the EIR/EIS conclude that the rate or amount of development within the MSCP over the course of the MSCP Plan's time horizon (*i.e.*, at least 50 years) will not be affected?

The EIR/EIS assumes the lost development potential of MHPA acreage will simply be "absorbed" by remaining acreage in MSCP Area via increases in density. Was any assumption made regarding how cost might affect development? Explain why it is not at least equally plausible to assume that some development will be "pushed" to areas outside the MSCP altogether, with the result that vehicle miles travelled will increase rather than decrease under the MSCP? 107(ad)

Page 2-1:

If a private landowner is unwilling to sell property needed for the preserve, how will the MSCP ensure adequate management of it for conservation planning purposes? 107(ae)

Page 2-2 (bottom):

What does "covered" mean? Please define this term. Does it mean that for these species the FESA 10(a) standards have been met? Please clarify. 107(af)

Page 2-5

Table 2-1: By including military land in the total study area acres, but not incorporating military data into the projections for preservation, the percentages of vegetation communities shown as preserved are skewed downward. Please delete military acreages from the table for a more accurate depiction of preservation activity related to the MSCP. 107(ag)

Pleaes provide a breakdown of native versus non-native grasslands in Table 2-1. 107(ah)

Page 2-11:

The MSCP Model Implementing Agreement provides that if federal or state contributions over time do not meet the expectations described in the MSCP Plan, the Plan and all subarea plans will be re-evaluated (Section 15.3). Please explain how, if this were to happen, the Plan nonetheless insures that "the permit holders would not be required to commit additional land, land 107(ai)

restrictions, or financial compensation, beyond that described in the subarea plan, for the protection of any covered species." 107(ai)

Page 2-13:

The EIR/EIS concludes that "protection of the vegetation communities..." is ..."in agreement with the statutory purposes and policies of FESA." In the past, assertions have been made by certain groups that habitat-based assurances violate FESA. Please explain in more detail the basis for allowing vegetation-based assurances under FESA. 107(aj)

The EIR/EIS states that "Distribution of conserved habitats relative to land uses within the overall watershed is important to long-term viability of the preserve." Why? Please explain. 107(ak)

The EIR/EIS has previously explained that the MSCP analysis was based on "core area, habitat values and linkages" - not on watersheds. Please explain why the watershed statistics are important. Can the MSCP Plan serve as the basis for a watershed plan? If the percentages of habitat within watersheds tell an important story, then the location of each watershed should be described, and information on the total habitat acreage within each watershed must be provided, in addition to information regarding the primary habitat types found in each watershed, in order for the story to be complete. Please add this information. 107(al)

Page 2-16:

The statement that "property rights will be fully respected and upheld" and the MSCP's decision not to obtain habitat via compulsory condemnation raises questions about the ability to manage private landholdings. Also, landowners within reserves may have development rights that are so minimal that they amount to "no use," but ostensible rights to develop will make claims for compensation more difficult to pursue. 107(am)

The statement (bottom of page) that "private development exactions would not be increased beyond existing requirements" is not supported. New mitigation ratios require mitigation for habitats not previously required to be mitigated, including, for example, non-native grasslands. Implementation of the MSCP would extend the jurisdiction of the resources agencies beyond that provided by the current application of CESA and FESA by covering both occupied and unoccupied habitat and treating 52 non-listed species as if they are listed and requiring sufficient mitigation to "cover" these species. Moreover, the level of development exactions has <u>already</u> been increased significantly due to the MSCP, despite its "unofficial" status. Explain how the 107(an)

EIR/EIS arrived at the above-quoted conclusion. Is it a conclusion or a goal? 107(an)

Page 2-17: Mitigation banks: Once "hard" preserve lines are set, all lands within the MHPA should automatically be considered mitigation bank lands. The intent of the plan is to designate the most biologically important lands for preservation, and to encourage mitigation anywhere within that preserve to assure its assemblage. If lands have high enough biological value to be placed within the preserve, then they have high enough value to be considered part of mitigation bank. 107(ao)

Page 2-17/18: The documents referenced on the bottom of page 17/top of page 18 (April 22 Agreement and County Deal/Negotiation points) should be appended and should be summarized in this section. How does the MSCP Plan in its current form meet the goals and dealpoints specified by these two documents? Are the goals and dealpoints of the Agreement and Dealpoints documents cited here the principle Goals of the MSCP? Are the goals of the Agreement and the County Dealpoints of the October 11, 1995 document achieved by this MSCP project? 107(ap)

Page 2-19: The last line on this page states that "the programmatic environmental document streamlines the environmental process for projects consistent with the MSCP Plan and Subarea Plan." Please describe in detail how this EIR/EIS will be used to streamline future projects. If a future project is consistent with the MSCP Plan and Subarea Plan, how exactly will that project be able to rely on this EIR/EIS for biological impacts to Covered Species and Sufficiently and Significantly Conserved Vegetation Communities under CEQA and/or NEPA? For example, to what extent and under what circumstances would any species-specific surveys be required for: (a) projects within the MHPA; and (b) projects outside the MHPA but within the MSCP? Also, please explain how a development project outside the MHPA will be treated for purposes of determining adequate MSCP mitigation if the project would impact a non-Covered species that utilizes a Sufficiently or Significantly Conserved Vegetation Community (e.g., the patched nose snake). Is compliance with the habitat mitigation ratios (using the Tier system) supposed to mitigate fully for impacts to such species and habitat type under CEQA? 107(aq)

How much of the City of San Diego's MHPA acreage is publically owned? How many of these acres are privately owned? 107(ar)

Of the 52,000 acres to be conserved within the City of San Diego Subarea Plan, how much will come from private land, and how much from lands already publically owned? 107(ar)

The second sentence in last paragraph is unclear. Please clarify. 107(as)

2.1.4.4 Equitable Allocation of Costs: "each take authorization holder contributes its fair share . . . " This represents equitability among jurisdictions, NOT among other stakeholders. The MSCP's preserve is being assembled principally through exactions on landowners and mitigation requirements placed on future development. Of the 90,170 additional acres that need to be acquired, 70% is projected to come from exactions, 15% to be purchased with federal or state money, and only 15% to be purchased through local public funding sources. 107(at)

Page 2-30:

The City of San Diego's adopted MSCP Policies require that all edge effects will be mitigated through management practices within the preserve, and that no additional buffers or other development (Planning) requirements will be placed on new developments outside the MHPA. Please explain how the City will address edge effects in the ESL permit, consistent with this policy? 107(au)

Similarly, Section 10.8(a)(4) of the City of San Diego Implementing Agreement states that for development within the MHPA, "no mitigation will be required for the 25% encroachment." Yet this same provision states that the ESL will address "indirect impacts of development " on sensitive biological resources outside the development area. Having to alleviate edge effects constitutes mitigation. Please explain how the commitment to the proposition that no mitigation (beyond the dedication of 75% of one's property) will be required can be squared with the prior statements. 107(av)

Page 2-33:

The reference to Appendix C is erroneous. It does not contain the proposed CP Amendments. 107(aw)

Page 2-52:

Why are military lands <u>excluded</u> from the MHPA but <u>included</u> in the other alternatives? Please explain why the agencies believe that the alternatives analysis is still valid despite this discrepancy. 107(ax)

Page 3-55:

Tables 3.6-6 and 3.6-7 do not appear to correspond to the discussion in the text regarding their contents. Please revise if necessary. 107(ay)

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Page 4.2-2:

The EIR/EIS acknowledges that converting 24% of land designated for urban uses to open space uses is "substantial," but concludes that the impact is not significant "at the program level" because there is adequate acreage within the MSCP that could be shifted to urban uses. However, there is no analysis explaining or supporting this conclusion. What designations do the 10,000+ acres have currently that would be converted to urban use? Where are they and is such conversion feasible? Past history has shown such conversions to be very rare, difficult and expensive. 107(az)

Please provide information as to how many acres and what percentage of the total of all low density residentially zoned land in the study area will be re-designated for open-space use (and therefore lost to residential use). Please provide this same information (i.e, the number of acres and percentage of study area total) for land that will be changed from urban development designation to open space. 107(ba)

Page 4.2-4:

Please explain how the statement found in the first paragraph of this page ("since substantial acreage exists both within the MSCP study area and within the MHPA to accommodate planned land uses...inconsistencies with GP and CP goals... are not regarded as significant") can be consistent with the statement on page 3-55 that "even without the MSCP there is not enough land to meet residential needs." 107(bb)

Page 4.2-14:
(second paragraph)

The EIR/EIS discussion of Chula Vista's Subarea Plan says four (4) circulation element roads would need to traverse through or adjacent to the proposed core preserve areas, raising the possibility that the roads will not be allowed. The EIR/EIS then concludes that because roads are "conditionally compatible" within the preserve, significant impacts to the Circulation Element associated with deletions or realignments of the four roadways are not anticipated. Is this saying the roads will definitely be permitted within the preserves but with conditions? Please clarify. 107(bc)

Page 4.2-18:

Conversion of 26% of the land designated for urban uses and 50% of the land designated for low density uses within the City of San Diego would seem to have repercussions that could be quite significant in the long run. 107(bd)

Page 4.2-21:

BIA concurs with the determination of the EIR/EIS that the conversion of urban designated land to open space could have a significant effect on the City's ability to provide affordable 107(be)

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housing, but would also submit that an analysis of the MSCP's impacts over a proper time horizon (*i.e.*, the length of the proposed action which is 50 years) would demonstrate that the MSCP will exacerbate the City's anticipated inability to meet the demand for a full-range of housing types. **107(be)**

Page 4.2-29:

BIA concurs with the determination that implementation of the MSCP could have potentially significant impacts on the provision of adequate infrastructure in the Rancho Peñasquitos Community Plan area. However, why were no mitigation measures proposed such as City payment of that portion of the anticipated PFFP funds lost? **107(bf)**

Page 4.2-65-68:

The EIR/EIS sets forth a number of significant adverse land-use impacts of the MSCP with respect to the City of San Diego Subarea Plans, but found no impacts at the MSCP "program level." What threshold of significance did the City use in this analysis? The EIR/EIS did not analyze compatibility with regional programs, such as those adopted by SANDAG. Please explain why. Why were no mitigation measures proposed for the impacts called out as significant other than very general exhortations to "explore whether there are ways to address the issue"? It is not legally adequate to assert that "no measures have been incorporated...or are required by the MSCP Plan," as the EIR/EIS does at page 4.2-67. CEQA requires the EIR preparer to propose what are believed to be feasible mitigation measures to reduce significant project impacts and the decision-maker must adopt all such measures unless they are infeasible. EIR/EIS should clarify that updates and revisions to the various Community Plans required as a result of the MSCP will be done at the City of San Diego's expense. **107(bg)**

Page 4.2-70-71:

The analysis seems to place CEQA on its head in that it focuses on impacts of existing land use on the proposed MSCP preserve resources. This would be a harmless mistake except that the EIR/EIS discusses measures (*i.e.*, restrictions) on development adjacent to the preserve which have been incorporated into the MSCP and that these are to be expanded upon at the implementation level (see page 4.2-75, lines 3-5, for example). **107(bh)**

Any discussion of "edge effects" should be discussed in the biological section of the EIR/EIS. Even more importantly, "edge effects" were taken into account in formulating the preserve design such that projects near the preserve should not be required to **107(bi)**

undertake any but the most inexpensive and easily accomplished measures to promote the preserve (*i.e.*, measures such as the redirection of lights). Is this understanding correct? Please provide a comprehensive list of measures which could be required, by Subarea plan, to account for edge effects. 107(bi)

Page 4.3-1: It is stated that the MHPA was evaluated using criteria that were similar to those used for the other alternatives. What were the criteria? How were they different/the same as those used for the other alternatives? 107(bj)

Page 4.3-2: In Table 4.3-1 and elsewhere in the document (at 4.3-151, for example), it is stated that a minimum edge effect of 200 feet was assumed along the boundary inside the preserve. It is therefore assumed that edge effects were considered, and such considerations were built into, the preserve design process. Thus, the resulting preserve should be adequate to preserve the Covered Species and their habitats in spite of indirect impacts due to edge effects. Please revise the EIR to clearly state whether this assumption is correct. If not, please clearly explain how the preserve is inadequate to deal with edge effects and the impacts this has on the covered species. In order to use the document as a programmatic document, please explain for each subarea the specific constraints are that will be placed on projects both within and adjacent to the MHPA during the planning process and how these will mitigate the indirect impacts. 107(bk)

For example, the City of San Diego Plan Section 1.4.3 identifies 7 requirements for projects located adjacent to the preserve. If a project design complies with all 7 requirements, it is our understanding that no additional measures, design changes or additional open space for "edge effects" are necessary. It is further our understanding that the City will be responsible for the determination that the 7 requirements were met, and that the resource agencies will not be making such determination on a project-by-project basis. Please confirm or clearly state how a project may be required to be revised. 107(bl)

Identified assumptions for analyzing the adequacy of the MHPA coverage afforded to species include an assumption that wetlands and associated species within the MHPA boundary are 100% preserved. Does this assumption allow for a "no net loss approach"? If not, does the amounts allow for any such impacts in the MHPA? If not, how does the EIR/EIS analyze there 107(bm)

potential catastrophic result to development which likely would result from such absolute inflexibility? 107(bm)

Please explain the support for the assumption that "species that occur within preservation areas of less than 90% were assumed to be preserved at the designated level of preservation." 107(bn)

Page 4.3-3 to 5: Please explain how the "biological tools," NCCP Conservation Guidelines, and project goals, objectives and policies were used to design a preserve. What was the planning process? Were the NCCP Planning and Conservation Guidelines met? 107(bo)

Page 4.3-6: In the absence of any explanation of the basis for selecting the significance criteria, they could be seen as arbitrary. Please explain how and why each was selected. For example, why was 10% used? It would seem that some species could easily absorb a larger impact. What is the definition of "substantial reduction" of habitat and "substantial interference of movement"? 107(bp)

Page 4.3-8: Please state how much land was assumed to be developed under each of the alternatives, and whether non-biologic restrictions were considered in identifying the development acreage. 107(bq)

The term "adequate protection" is not defined. Does it mean that 10(a) standards were met? 107(br)

Table 4.3-1: What is the line of reasoning that supports each conclusion reached for determining whether the proposed preserve will protect each of the Covered Species in accordance with the requirements of FESA, CESA and the NCCP Act? 107(bs)

It is recognized that the analysis in the EIR\EIS cannot be "pre-decisional" to the yet to be rendered Biological Opinion for the MSCP; however, a sufficient amount of data and analysis for the conclusions are necessary for public understanding and to provide guidance to those who will rely on this EIR\EIS as a programmatic document over time. Were the significance criteria used in making any assessments regarding the adequacy of coverage? If yes, then please explain how coverage was granted if the decision was made that the criteria were not met. 107(bt)

A review of the table shows that additional land can be required for 35 of the 85 Covered Species. The MSCP proposed to grant certainty to landowners. How can this claim be made when 107(bu)

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additional exactions can be made by the resource agencies for over 30% of the Covered Species? 107(bu)

Table 4.3-1:

It is our understanding that the proposed preserve adequately conserves the 85 covered species irrespective of any plan done for military lands. How are the agencies ensuring that planning done on military lands will not compromise the "biologic function" of the MSCP or cause coverage to be reduced? 107(bv)

It is also our understanding that the military lands were not included in the MHPA. Please confirm that the numbers in the table also exclude military sightings/populations. If not, please revise the table. 107(bw)

It is our understanding from reading the document that the risk factors discussed as footnote 4 of the table are the risk to the species before the MSCP is imposed, and that such risk is reduced through imposition of the MSCP to a level such that the continued existence of the species is no longer at risk. Please confirm. If our understanding is incorrect, please explain for each Covered Species why a finding of "adequately covered by the plan" could be made. 107(bx)

Page 4.3-41:

Reference is made to habitats additionally protected by the state, the City RPO and County BMO. It is our understanding that the City RPO will be replaced by the proposed Environmentally Sensitive Lands (ESL) ordinance once the MSCP is adopted. Please identify and discuss the effect of the proposed change in regulation on the MSCP. 107(by)

Table 4.3-2

The reference to Appendix A-9 of the MSCP Resource Document in footnote 2 should be deleted. If recommendations from that document are relevant to the operation of the preserve system, please set forth those recommendations in the EIR\EIS. 107(bz)

Page 4.3-42:

The statement is made that "Species that occur in chaparral and grassland will be at greater risk. . . " In reading the EIR/EIS, it is our understanding that significant amounts of chaparral and grassland are being conserved. Certainly, more of these habitats are being saved under the MSCP than would occur under existing regulations. Please confirm if this is true. If so, please revise the EIR/EIS to reflect this correct understanding. 107(ca)

In addition, it is our understanding that the mitigation tables proposed by the jurisdictions in their subarea plans include 107(cb)

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required mitigation for grasslands and chaparral. If a project provides mitigation as required by these tables, no additional acreages of these habitats (or any other habitat conserved via the mitigation tables) will be required as mitigation through CEQA. Please confirm. 107(cb)

Page 4.3-43:

The EIR/EIS maintains that the MSCP will have little impact on the overall rate of development. It will shift the location of development but have no impact on the rate of development. Given this assessment, how can it be stated in this section that the MSCP will increase development pressure? It should also be pointed out that examples of the biological resources located outside the MHPA are preserved inside the reserve. The loss of resources outside the preserve is allowed and actually encouraged through the shifting of development, and is not significant because of the amounts of resources located inside the preserve. Please confirm and revise the EIR/EIS. 107(cc)

Page 4.3-45:

The EIR/EIS states that impacts to Covered Species will occur as a result of the MSCP. Within this section, it should be made perfectly clear that the majority of the Covered Species are not listed, and are not protected by CESA or FESA. Local ordinances provide some protection, but not within a large preserve as is being done by the MSCP. Please revise the EIR/EIS to reflect this reality. Please compare the loss of covered species and habitats that would occur under the MSCP with that which would occur using existing regulations. Please elaborate further how this fact was used in determining impacts and level of significance in the evaluation of the proposed project and alternatives. 107(cd)

Page 4.3-46:

The EIR/EIS states that "Implementation of the MHPA would result in better protection of uncovered species that are dependent on sufficiently conserved vegetation communities than for species dependent on significantly conserved habitats." Please explain the biological basis of this statement. Please explain how this would occur, especially since previous explanations of the difference between the two categories of protected habitat state that the only difference is who bears the financial burden. 107(ce)

Page 4.3-86:

Under Direct Impacts, this section states that sensitive habitats outside the preserve would continue to require mitigation under CEQA. This seems to leave open the possibility of being required to mitigate *in addition to the MSCP*. Please explain what exactly is envisioned. 107(cf)

Page 4.3-88:

Restoration is called for in several places in the various sections of the City of San Diego Subarea Plan. It is assumed that the preserve is adequate as proposed, and that restoration would be an enhancement rather than a requirement of the take authorization for the City of San Diego. Please state whether this is correct. If not, please state the acreage and locations that must be restored and identify the cost and responsible party. 107(cg)

Several requirements throughout the Community Plan section include the caveat, "if funding becomes available" or "if feasible". It is assumed that these requirements are not necessary for the City of San Diego take authorizations to remain in force. Please state whether this is correct. If not, please state when these requirements must be carried out, identify the responsible party and estimate the cost of the required facility. 107(ch)

Page 4.3-93:

The analysis of impacts for the City of San Diego Subarea Plan describes the guidelines outlined for each geographic area of the City and recognizes the net positive effect on the biologic resources that will result from MSCP implementation. Isn't this kind of analysis provided for the other subarea plans, and if not, why? 107(ci)

Page 4.3-111:

The BMO will not be used in fixed line areas, i.e., the Lake Hodges and South County subareas. These areas are creating a preserve which is the mitigation for allowed development. Please explain how the existing impacts analysis, which only refers to use of the BMO, addresses the impacts in the fixed line areas. Please explain how the mitigation proposed in the fixed line areas addressed the impacts and how the significance of impacts were determined both before and after mitigation. 107(cj)

Page 4.3-150:

Please explain how the application of the BMO will prevent the "historic pattern of development" from the continuing in the Metro, Lakeside, Jamul segment of the County Subarea Plan. 107(ck)

Page 4.3-175:

It is our understanding that, with the exception of wetland regulations and other non-biologic restrictions, development will be allowed to occur outside the MHPA with no additional land exactions beyond those required by the mitigation tables in the various implementing ordinances. Is this correct, especially considering the language that states that the determination of adequate coverage assumes that environmental laws and resource protection ordinances will continue to be applicable both inside and outside the preserve? If not, please clearly identify and 107(cl)

explain circumstances under which more land could be exacted for biologic resources. 107(cl)

It is stated that the determination of adequate coverage assumes that ". . . preserve management procedures and actions will be implemented as part of the MSCP Plan." Please explain how preserve management will positively impact the preserve. What impacts will proper management offset? 107(cm)

Page 4.3-177: The EIR/EIS states that ". . . the Biologically Preferred Alternative provides greater assurance of long-term viability. . . " This implies that the proposed project does not provide enough assurances of long-term viability. Please explain how the proposed project was evaluated to assure that it is providing "enough" assurances regarding long-term viability. 107(cn)

Page 4.3-179: The EIR/EIS states that "Adaptive management may include reconfiguration of preserve boundaries. . . " It is our understanding that the preserve is adequate as designed. Please explain how and under what circumstances a 171,000+ acre preserve would not be adequate and that the boundaries would need to be reconfigured. How would landowners affected by such a shift be compensated? Where would additional land be found that could be designated for the uses lost through the reconfiguration? Would the preserve boundaries be adjusted such that the overall size would remain the same? 107(co)

Page 4.3-196: Two of the three segments of the County Subarea Plan are largely made up of fixed lines. The BMO will only be used on a very limited basis. Please clarify Section 4.3-MHPA-23a to cover these sections of the County Subarea Plan. 107(cp)

Page 4.3-197: The County Subarea Plan includes conservation targets for conservation of narrow endemic and other sensitive species. Once these targets are met, why is avoidance still required? 107(cq)

The BMO requires mitigation on a habitat basis in accordance with specific mitigation ratios. Please clearly explain those circumstances and list those species for which the BMO habitat mitigation ratios will not be entirely adequate, if any, such that further mitigation will be required on a species-specific basis. Please clearly state how the mitigation required by the ratio tables will be offset by the species-specific mitigation. 107(cr)

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Page 4.3-217: The EIR/EIS states that restoration activities are most likely to be initially focused in linkages. Please explain how much restoration is required for each subarea plan in order for the take authorizations to remain in effect. 107(cs)

Additional Comments on Biology Section of EIR/EIS

- The EIR/EIS presently does not provide an adequate level of biological analysis justifying the issuance of incidental take permits for the Covered Species. Rather than setting forth sufficient data and analysis, the document relies primarily on tabulations of percentages of known populations impacted and preserved under the program. Although some attempt is made to incorporate additional biological information and analysis by reference, this approach has been inappropriately relied upon given that such biological analysis lies at the heart of the MSCP. 107(ct)

  The EIR\EIS would be improved if it provided a much more detailed explanation of the underlying biological principles and tenets of the NCCP program, ecosystem preserve design, and conservation biology. To this end, much of the information and analysis contained in the document entitled "Subregionalization for Natural Communities Conservation Planning" by Peter Brussard and Dennis Murphy (of the Coastal Sage Scrub Scientific Review Panel) should be incorporated and discussed in the EIR/EIS. In addition, important biological information and analysis on the conservation status, biology and habitat needs of the Covered Species which already exists in other documents or sources should be included. Significant information and analysis on the biological and conservation value of the lands within the MHPA reserve system and the significance of Gap analysis used in determining a preserve design sufficient to adequately conserve the Covered Species should also be included. The role and significance of the adaptive management program provided should also be explained and analyzed. With this information and analysis, the public will be better able to evaluate the project under CEQA and NEPA to determine whether the biological resources have been adequately addressed. 107(cu)

  The EIR/EIS itself should discuss the estimates of the existing population numbers for each of the Covered Species within and outside of the MSCP Area and within and outside of the prospective MHPA. The document should clearly identify the studies/surveys upon which such estimates are based and the relative reliability of these efforts. Where gaps in knowledge exist, if any, these should be candidly identified. These population levels should then be analyzed in the context of the lands incorporated into the MHPA permanent reserve (both size of core reserve areas and habitat linkage configurations) to evaluate the sufficiency of the protection afforded to each of the Covered Species. The document should explain why, for each of the Covered Species, the preservation of populations within the MHPA can be expected not to appreciably reduce the likelihood of the survival and recovery of the species in the wild. 107(cv)

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We suspect that for all of the Covered Species, incidental take coverage can be issued, in large part and most simply put, because of the proactive establishment of such a large, interconnected reserve system and the existence of an adaptive management component to the program. Most of the species on the Covered Species list have not been reduced in size to the point where FESA or CESA listing is warranted. Thus we suspect that existing population levels, when analyzed in the context of the specific reserve design (its positive biological attributes of large blocks of suitable habitat, biologically functional linkages, etc.), are such that the MSCP program will be able to ensure that incidental take pursuant to the MSCP program will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. The USFWS should provide such analysis in the draft EIR/EIS for each of the Covered Species. 107(cv)

The EIR/EIS should explain in a more detailed manner how the proposed MHPA preserve design conforms to the set of functioning ecosystem reserve principles set forth in the NCCP Conservation Guidelines and the MSCP Resource Document (Chapter 4). 107(cw)

Additionally: (a) the species population and distribution maps referenced at page 4.1-1 of the EIR/EIS should be provided in the document, and (b) the most up-to-date descriptions of the Core Biological Resource Areas and Linkage Areas preserved by the MHPA should be included. 107(cx)

- The FESA precludes the USFWS from taking any action which is likely to jeopardize the continued existence of a threatened or endangered species. 16 U.S.C. § 1536(a)(2). Page 4.3-41 of the draft EIR/EIS notes that there are two species (Pacific pocket mouse and Orcutt's spineflower) federally listed as endangered which may occur within the MSCP Area but which are considered "non-Covered Species" under the MSCP/HCP. The draft EIR/EIS notes that there will be indirect impacts to these two non-Covered Species, but concludes that such impacts will not be significant. According to the document, the justification for this conclusion is that such species will receive federal protection under FESA. However, FESA generally does not prohibit the loss or conversion of potential, but unoccupied, habitat for listed species. Accordingly, the USFWS must explain how it has concluded that the Pacific pocket mouse's and Orcutt's spineflower's continued survival will not depend on the species' future use of potential but unoccupied habitat of these two species. The current population levels of these two species are very low, and their continued existence may require an expansion of current populations with other currently unoccupied habitat. (For example, such habitat might be necessary for human-induced translocations or for natural migrations or population expansions.) <u>Absent such analysis and a supportable finding that either none of this potential habitat is required or that these two species will be better off under the MSCP, necessary federal permits cannot be issued</u>. 107(cy)

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Please explain the basis for the belief that sufficient amounts of currently occupied habitat exists for both the Pacific pocket mouse and Orcutt's spineflower within the MSCP Area such that these species may experience the loss of potentially suitable, but unoccupied, habitat within the MSCP Area without the likelihood that their continued existence will be jeopardized. 107(cy)

- The EIR/EIS must be expanded to discuss the potential significance of the possible loss of potentially suitable (but unoccupied) habitat for sensitive non-listed species which are also Non-Covered Species under the plan. The document should identify each of these species which could potentially occur in the MSCP Area and explain why loss of potential but unoccupied habitat for these species is not considered a significant impact. 107(cz)

- The draft EIR/EIS notes that four species which are deemed Covered Species (Aphanisma, Nevin's barberry, thread-leaved brodiaea, California red-legged frog) are permitted for incidental take because there will be a "Discountable Effect" under the MSCP program on these species. Table 4.3-1 defines a Discountable Effect as "an effect that would not reasonably be expected to occur because the species is not expected to occur in the MSCP study area." This rationalization, by itself, is inadequate under the provisions of the FESA to provide coverage to these species by virtue of Section 10(a). 16 U.S.C. § 1539(a)(1)(B). The DEIR/EIS does not explain why the incidental take of the "Discountable Effect" species within the MSCP Area would not be significant if, in fact, individuals of the species were to be found within the MSCP Area. Without a further explanation of the analysis conducted, it would appear possible that if individuals of such species were found within the MSCP Area, such occurrence would be of biological significance from the standpoint of range and/or distribution.

  The more detailed discussion of the "Discountable Effect" species in the September 1996 "MSCP 1995 and 1996 Species Evaluations," prepared by the USFWS and CDFG, should be included in the DEIS/EIR. A discussion of the applicability of the Region 1 August 1, 1995 Guidelines for Determining Covered Species Lists should also be provided. Authority for incidental take of a Discountable Effect species would appear justified under FESA <u>only if</u> such a species was sufficiently secure elsewhere in its range outside of the MSCP Area such that any loss of such individuals within the MSCP Area would not be likely to jeopardize the continued existence of the species. Information in the EIR/EIS, however, does not address this. The draft EIR/EIS should also describe why such loss of an unexpected population of individuals within the MSCP Area would not be significant.

  In addition, in order to provide the Section 10(a) permittee with incidental take authority for such species, the USFWS should make one of three findings: (1) some potentially suitable habitat is preserved within the MHPA in which the species could be relocated should members be found within the MSCP Area, 107(da)

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(2) Section 10(a) coverage is appropriate under the No Surprises Policy, such that the federal government will agree to bear the burden for providing any necessary mitigation for the loss of such individuals of the species should they be found within the MSCP Area, or (3) any impacts to or loss of members of these species within the MSCP Area by virtue of land use activities would not be likely to jeopardize the continued existence of the species and, accordingly, the incidental take statement accompanying the Section 10(a) permit to the local jurisdiction should provide authority for the take of any individuals of the species within the MSCP Area. That is, the USFWS may find that while the HCP does not satisfy Section 10(a) criteria for these particular species, the effect of any incidental take of such species within the MSCP Area, should they be found, would not be likely to jeopardize the continued existence of the species as a whole, and therefore would be authorized under the program. 107(da)

- Section 10(a) of FESA requires an applicant to provide an HCP which specifies "the funding that will be available to implement [the HCP]." 16 U.S.C. § 1539(a)(2)(A)(ii). In turn, the Secretary must find that the applicant "will ensure that adequate funding for the plan will be provided." 16 U.S.C. § 1539(a)(2)(B)(iii). The draft EIR/EIS and the accompanying MSCP and subarea plan (which together constitute the HCP) and Implementing Agreement for the City of San Diego must provide a more satisfactory and detailed explanation as to why the funding mechanism set forth for the City of San Diego and for the other local jurisdictions requesting Section 10(a) authorization, meet the FESA standards for issuance of a Section 10(a) permit in this regard.

  The MSCP/HCP provides that the participating local jurisdiction applicants <u>will attempt</u> to raise the vast majority of their funding component via future action by the electorate. Thus the local jurisdiction applicants cannot guarantee at this time that this method will produce a long-term funding component. The local jurisdictions have no control over the electorate, upon which they must entirely rely to produce the long-term local funding component. In fact, the applicants cannot even identify the long-term funding mechanism that will be used or provide specifics regarding this hypothetical. The only short-term funding component appears to be a commitment by local jurisdictions to maintain, manage and monitor existing habitat designated for the long-term preserve and controlled by the local jurisdiction for purposes of the preserve -- and it is not even clear where funding will be obtained for these limited activities. Individuals developing land within the MSCP area also will be obligated to provide necessary mitigation for impacts of their particular development projects. The DEIR/EIS should provide an explanation as to why this uncertain funding component is believed to be sufficient to meet FESA standard. The EIR/EIS should also explain why incidental take which will be authorized prior to the participating jurisdiction's being able to establish a long-term funding mechanism will not be likely to jeopardize the continued existence of any species within the MSCP Area and why 107(db)

such jeopardy is unlikely to occur even if the long-term funding mechanism is never established. 107(db)

Why isn't a detailed process for establishing a funding program included in the MSCP? Such a process should include a schedule and milestones. What will be done at the end of 3 years if a public funding process is not established? What are the program costs that will be incurred during the first 3 years of the program, including acquisition and management/maintenance/monitoring costs? What sources of money will be used by each subarea to meet these obligations? 107(dc)

- The DEIR/S should provide the analytical justification for why the lead agencies believe they may "assume" that the mitigation measures "(*i.e.*, conservation and management of habitat and species)" that reduce the impact under the MHPA alternative too a level less than significant are also sufficient to meet FESA's Section 10(a) standard that such impacts are minimized and mitigated to the maximum extent practicable, as required under 16 U.S.C. Section 1539(a)(2)(B)(ii). (See DEIR/S statement at pg. 4.3-212). The EIR/EIS should make the case regarding why the plan should satisfy the FESA's requirement that the program minimizes and mitigates impacts to the maximum extent practicable. 107(dd)

- The EIR must provide a discussion of the March 17, 1995 Joint USFWS and CDFG Guidance on CEQA Determinations of Significant Impacts under the NCCP Program and that document's impact on conclusions regarding the significance of impacts to Covered Species, coastal sage scrub habitat and other Sufficiently Conserved Vegetation Communities. According to this joint policy, once a subregional NCCP has been approved, project-related impacts to CSS and all species receiving regulatory coverage under the NCCP "shall be considered to be mitigated to insignificant levels." 107(de)

- The DEIR/S appears inconsistent in its description of the result of this proposed project for land development projects in terms of the interplay between the CEQA analysis to be conducted by each of the local jurisdiction Section 10(a) permittees and both the concept of edge effects and the potential mitigation requirements for sensitive species which are not on the Covered Species list (except for the Narrow Endemic Species). A fundamental principle behind the MSCP project is to establish a biologically connected permanent preserve system within the MSCP Area to ensure functioning ecosystems among the habitat types addressed by the MSCP program (*i.e.*, the Sufficiently and Significantly Conserved Vegetation Communities), thereby providing at the same time for a sufficient level of conservation for species which utilize these various habitat types. In fact, the proposed MSCP program results in land development activities providing greater biological mitigation than required under either ESA, CESA or CEQA, in that mitigation will be required for many species which have no protection under either FESA or CESA and the mitigation will be required to be provided in such 107(df)

a way so as to contribute to a region-wide biological preserve. A second fundamental principle of the MSCP program is to provide certainty in the land development process with respect to required biological mitigation for impacts. Accordingly, a proponent of a development project within the MSCP Area should not have to provide any additional biological mitigation for its project beyond the land contributed to the permanent preserve system, except for those additional mitigations which may be required for a Narrow Endemic Species or to satisfy the requirements of Section 404 of the Clean Water Act. 107(df)

The DEIS/R and accompanying documents are too vague on this issue. The MSCP program still seems to allow local jurisdictions to require mitigation for sensitive species which are either non-Covered Species or are not Covered Species Subject to Incidental Take. For example, Section 10.8(G)(4) of the City of San Diego IA currently provides that "The indirect impacts of development will be addressed in the Environmentally Sensitive Lands permit to ensure protection of the sensitive biological resources remaining on the premises outside of the development area." This statement is confusing and should be deleted as our understanding is that "edge effects" and "buffer" issues have been addressed by incorporating such "areas" or "zones" within the permanent preserve boundaries. Likewise, at pg. 4.3-212 of the DEIR/S, the document states, "It should be noted that the MHPA does not mitigate for indirect impacts to non-wetland uncovered species, non-wetland sensitive vegetation communities, and non-sensitive vegetation communities." However, the permanent preserve system in fact should be expected to benefit non-Covered species and sensitive vegetation communities and the like. For instance, the coast patched-nosed snake and coastal rosy boa would both be expected to benefit from the proposed permanent preserve. The statement also contradicts the summary table on pg. 4.3-212-216. This issue must be clarified.

- The EIR/S should identify the specific vernal pool and wetland species which are currently federally listed and which are known to occur within the MSCP Area. A map depicting the known distribution of these species should also be provided. The EIR/EIS should provide a discussion of how the distribution of these species supports its conclusions that the Clean Water Act 404 regulatory program provides the USFWS with sufficient authority to protect these species under the FESA Section 1536(a) requirements given the structure of Section 404 and the Nationwide Permit program (which requires Section 7 consultations for impacts to federally listed species). 107(dg)

- Consistent with the coverage being extended to Covered Species by the CDFG pursuant to the City of San Diego's Implementing Agreement, the EIR/EIS needs to set forth the data and analysis whereby the CDFG can grant NCCP Act incidental take authorization for all of the Covered Species to the City of San Diego. This important information is absent from the document. 107(dh)

- The absence of any flexibility with respect to impacts to Narrow Endemic Species (*i.e.*, the requirement for total avoidance) may create significant detrimental impacts to land use needs other than open space. This component of the MSCP program needs to be analyzed. The MSCP should provide that once the conservation targets for narrow endemics are met, no more preservation anywhere within the MSCP will be required. Toward this end, the preserve management programs should provide for the surveying of a different portion every year until the entire preserve has been surveyed. **107(di)**

- The process of annual accounting for lost habitat (described at pg. 4.3-178 of the EIR/EIS) must be modified to account for both (and distinguish between) acres approved for loss and acres actually developed . Some land development projects may get approved but may never be developed before the land approvals expire; in such cases the non-disturbed (but "approved for loss") acreage should be reclassified as undeveloped. **107(dj)**

- The EIR/EIS must discuss the extent to which any critical habitat (as defined by FESA) is currently located within the MSCP Area and the extent to which such areas may be negatively impacted by the project. Any destruction or adverse modification to areas of critical habitat must be identified, and the USFWS must explain how such impact does not constitute a violation of 16 U.S.C. § 1536(a)(2). **107(dk)**

- The EIR/EIS needs to analyze a worst-case biological analysis wherein take occurs for 3-5 years without securing a long-term funding component at the local level (which time gap could occur since the USFWS and CDFG have the ability to extend the local jurisdiction's time deadline), without securing the federal and state contributions, and then the program is abandoned because of a lack of local, state or federal funding, or some combination of these three events. **107(dl)**

<u>Maintenance, Management, Monitoring Obligations of Landowners Within the MSCP Area</u>.

- The EIR/EIS, the MSCP Plan, the Subarea Plans, and the IA all fail to clearly and adequately identify and describe the situations in which landowners (both those developing lands and those simply holding lands) within the MSCP Area will be required to fund or otherwise bear the expense of maintaining land, managing land or monitoring land included as part of the reserve system. Any situations in which such obligations could be placed on landowners should be identified and described in a separate section of the EIR/EIS and also in the MSCP Plan. Please verify that any costs of maintaining, managing or monitoring land which is to function as part of the MSCP preserve system will in all instances be borne by federal, state or local jurisdiction funding. Please verify that the only exception to this would be an instance in which a Third Party Beneficiary under the IA had refused to provide either the local jurisdiction, the **107(dm)**

CDFG or USFWS with access to the property for purposes of conducting such activities. 107(dm)

Population and Housing

Page 4.6-1 Explain why "two or more" criteri· had to be exceeded. The BIA and the AHC respectfully submit that exceeding either MSCP Program threshold, by itself, should be considered a significant impact.

This EIR/EIS states that increases in the overall residential densities to above 3.10 DU/AC would be deemed to be significant. At 4.6-5, the EIR/EIS appears to utilize a 5.22 DU/AC assumption for future growth between 1990-2005. Nevertheless, the EIR/EIS still concludes that the average residential densities will remain at 3.10. What offsets the projected new development at 5.22 Du/AC such that the average remains constant? 107(dn)

In addition, BIA submits that the assumption that development at an average density of 5.22 DU/AC is unrealistic. Actual densities are likely to be much lower.

Page 4.6-1: The first criteria used to evaluate housing impacts on subarea plans is a measurement of "decreases in projected developable land supply to the point that a jurisdiction will be unable to meet their projected 1990-2005 residential land needs." The use of a timeframe which began six years ago, and ends in nine short years is not adequate to determine the real impacts of a program that is anticipated to take up to 30 years to complete, and is expected to have a minimum lifetime of 50 years (the life of the federal take authorization). Please provide an analysis that more directly relates to the life of this project and provides a more realistic look at housing impacts. 107(do)

Page 4.6-4: Table 4.6-3 Presumably the number "82" in column three, line one is a typographical error. 17,021 plus 65,269 equals 82,290: is this the correct number? 107(dp)

Page 4.6-5: The analysis prepared using acreages from Table 4.6-3 has numbers which do not correspond to the Table. This paragraph should read. . . "from Table 4.6-3, a total of ~~22,915~~ 17,021 acres of private land would be available within the MHPA for development of housing units. . . . An additional ~~85,707~~ 65,269 acres of private land would be available for development outside the MHPA but within the MSCP study area, for a total of ~~108,623~~ 82,290 acres of private land available for development."

Using the assumptions cited, the total land available to accommodate the anticipated 133,990 housing units would be 48,798. 107(dq)

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The assumptions used to project potential lost residential units and then to project the potential to fulfill the projected housing needs for the MSCP area are contradictory and conflict with assumptions presented elsewhere in the MSCP Plan and EIR. Please respond to the following observations: 107(dq)

1. Page 5-2 of the EIR/EIS states that "In the year 2005, only 14,000 vacant urban residential acres would remain in the region." This statement directly conflicts with the finding on page 4.6-5 that 38,744 acres of vacant residential land will remain to support "an additional 202,240 housing units" after 2005.

2. The SANDAG assumption used to project the potential yield from residential acres incorporates a density projection of 5.22 units/acre: thereby finding that only "25,669 acres of residential land would be needed by 2005 to accommodate the 133,990 housing units to be built between 1990-2005." Yet the units that are projected by SANDAG to be built in the area covered by the preserve and therefore lost due to the project - 15,326 - use an assumed density of only 1.13 (22,915 developable acres x 59.3% = 13,586 residential acres removed from residential uses).

   If the SANDAG assumption that figure densities will equal 5.22 is applied to the residential acreage lost to MSCP, a potential 70,918 future units must be displaced: representing 53% of total projected growth.

   If the current average density for the region, stated here to be 3.1, is applied 42,117 units are lost: representing 31% of total projected growth.

   Please explain how the lower density assumption can be used to analyze units lost, while another extremely higher density assumption is used to determine how the remaining MSCP acreage will develop after MSCP is adopted.

Page 4.6-45: Regarding potential residential assessments, what would dollar amount per year over 30 years have to be if no commercial or industrial property is assessed? 107(dr)

Page 5-2 Please explain why the EIR/EIS discusses the MSCP's contraction of available developable acreage, and thus the potential to exacerbate an anticipated housing shortage, in the MSCP area in the Growth Inducement Section of the EIR/EIS rather than in the Population and Housing Section. This is troubling for two reasons. First, the statement that "over the long-term, the reduction of available developable land within the study area due to a preserve may be . . . pronounced" undermines this analysis done and conclusions reached in the 107(ds)

Housing analysis. Second, the Growth Inducement Section only requires an analysis of impacts, and does not require a determination of the significance of the impacts. 107(ds)

Comments on the Environmentally Sensitive Lands (ESL) Regulations

Section 131.0204: The BIA and AHC object to the application of the OR-1-2 zone to all parcels that are only partially within the boundaries of the MSCP preserve. This requires applicants to seek a rezone simply to implement the community plan, which would appear to be an unnecessary and excessive regulation. This action will result in the downzoning of massive amounts of land in the City of San Diego and make it more difficult for those portions of community plans located outside the MSCP preserve to be implemented. It is requested that language be added to either the ESL or to each community plan stating that it is not the intent of any City regulation to increase the complexity, processing time or processing requirements in order to implement the MSCP, and to direct staff to continually seek ways to streamline and simplify the land development process, especially in areas where the MSCP is to be implemented.

Table 131-02B: Permitted Use in the OR-1-2 zone, specifically for MSCP, include passive recreation, natural resource preservation, aquaculture, raising and harvesting of crops, keeping of animals, commercial stables, community gardens, open air markets for sale of agricultural products, single family dwelling units, boarder and lodger accommodations, employee housing, residential care and transitional housing, utilities, bed and breakfast establishments, camping parks and signs (including revolving signs). All of these are required to be within the allowed development area.

Among other things, the zone does not allow active recreation, horticulture and greenhouses, multi-family units, and botanical gardens and arboretums. This does not make sense. Multi-family units, if feasible, would save more land for the preserve than would the same number of single family units. Camping parks are no less disturbing to natural areas than other active recreation facilities.

The permitted use table should be reviewed and explanations provided for why some uses are allowed while similar uses are not.

Section 131.0240: For the OR-1-2 zone, the minimum lot area is 10 acres. Maximum lot coverage is 1 acre. The lot size may be reduced with a Planned 107(dt)

Development. Since the intent of the MSCP is to save the maximum amount of land possible, why is the City forcing a landowner to go through a more difficult, complex process just to cluster and save more land? This seems counter productive. The regulations should be rewritten to establish gross density, and encourage the use of the smallest lot size feasible, including multi-family units, to save the maximum amount of land for preserve purposes. If a landowner has 100 acres adjacent to an area of 6,000 square foot lots, why shouldn't they be encouraged to cluster then 6,000 square foot lots immediately adjacent to the existing ones and save the remaining area. This solution would result in the disturbance of less than 2 acres of land and the set aside of 98 acres for the preserve. Under the existing language, over 10 acres would be disturbed scattered over the entire 100 acre, with driveways extending across the area to each lot. Fewer than 90 acres would be saved for the preserve.

Section 131.025(b); Diagram 131-02D:

This section should be revised to apply to those parcels where a minimum of 25% of the total area is located outside the MSCP preserve. A new diagram and section should be added for those circumstances where less than 25% of a parcel is located outside the MSCP preserve, allowing some encroachment as necessary to a maximum of 25% of the total parcel area.

What limitations are placed on existing uses that area zoned OR-1-2? Can they expand a home or other building? Are there any limitations on the use of existing cleared and/or otherwise disturbed areas?

Will the OR-1-2 zone be applied to those areas where agreement has already been reached on the preserve boundary? If no, will any rezoning be done in such areas? If yes, why? Such action would be tantamount to punishing a landowner for establishing a hard line preserve early.

Section 143.0115(a)(5):

In reviewing the MSCP documents, it is our understanding that take of biologic resources outside the MSCP preserve is not restricted as long as the mitigation requirements of the MSCP are met. If this is correct, please add language to this section clarifying that such resources outside of the MSCP preserve need not be avoided and can be included in the development suitability analysis as developable.

Section 143.0115(a)(6):

This section states that mitigation for biologic resources should be directed to the MSCP preserve within the City and preferable within the same plan area. This conflicts with our understanding that all

107(dt)

lands within the preserve are equally valuable, and that as long as the mitigation ratios are complied with, mitigation may be provided anywhere in the preserve. This limitations proposed in the language discourage participation in the formation of the preserve and should be eliminated.

Section 143.0115(b): Please add language to this section clarifying that it is not necessary to avoid biologic resources outside the MSCP preserve when planning a project, or explain why such language is not being added.

Section 143.0141(a): The requirement for consultation prior to any public hearing could be interpreted to mean that the informal and formal consultation process for obtaining state and federal wetlands permits must be completed prior to any public hearing. This is infeasible. If this is not the intent of the language, please clarify. If it is the intent of the language, please clearly so state.

This section does not clearly state who is responsible for requiring mitigation for wetlands, or how such mitigation is related to that requirement for wetland species under the MSCP. Is City staff the bear this responsibility? Is it left to the resource agencies? Will mitigation be required over and above that required for the MSCP? If yes, how much more will be required and by whom?

Section 143.0141: On the one hand, this section allows unlimited encroachment into biologic resources outside the MSCP preserve. On the other hand, this section requires a site specific impact analysis for biologic resources irrespective of location and the identification of mitigation. Is it the intent of the City to require mitigation other than that required for the MSCP? Is it the intent of the City to require mitigation for non-covered biologic resources other than wetlands and listed, non-Covered Species?

Comments on the Biology Guidelines

Page 2: It is our understanding that the MSCP required mitigation covers the Covered Species list as well as all Sufficiently and Significantly Conserved Vegetation Communities and the species associated with them. If this is correct, please clarify the definitions by adding such language. If this in incorrect, please clearly state exactly what is covered by the MSCP required mitigation and what is not. Please also include any mitigation standards that will be applied over and above that imposed through the MSCP, and clearly described the mechanism by which such additional mitigation will be imposed. 107(dt)

Page 2: The definition is too broad, encompassing the MSCP covered resources, wetlands, non-MSCP listed species, and the habitat of other sensitive species. This overly broad definition will allow mitigation to be assessed against a project that is over and above that established by the MSCP by invoking CEQA. This eliminates the certainty that has long been one of the premises of the MSCP and unfairly increases the mitigation burden on private property owners. Said landowners are already being required to provide two-thirds of the private property that must be acquired for the preserve and area already being required to mitigate for resources that were previously not considered to be sensitive, such as non-native grasslands.

The definition must be limited to MSCP covered resources, wetlands, and non-Covered listed species. Any other species considered sensitive should automatically be analyzed for purposes of being added to the MSCP Covered Species list as provided for in the model Implementing Agreement. In addition, the definitions used for the ESL and Biology Guidelines should be clarified to clearly state that MSCP covered resources includes Sufficiently and Significantly Conserved Vegetation Communities and the species associated with them. The MSCP requires mitigation for such resources and this should be recognized.

Page 2: Section 1 states that applicants will be required to consult with the appropriate state and federal agencies prior to the public hearing for the development proposal and incorporate any such requirements into their project design. It is our understanding that such consultation is not formal, nor is it required that it be completed before a public hearing and project approval occurs. Should an applicant decide to have a project approved prior to completion of informal consultation, that is his right, and he bears all responsibility should the project approval require revision to incorporate state and/or federal wetland requirements. In addition, it is not necessary for an applicant to conduct a formal wetlands delineation for this consultation to occur. Finally, it is our understanding that it is the applicant's decision as to whether to have the City coordinate such consultation or to approach the agencies independently.

Please add clarifying language to this section to reflect this understanding.

Page 5: Section states that development is limited to that area allowed by the OR-1-2 zone. This may be somewhat misleading as the OR-1-2 zone may not be the final zone. Staff has stated several times that the properties so zoned may be rezoned to those uses allowed by the 107(dt)

community plan, provided the applicant implements the MSCP as adopted. Please confirm this understanding if correct. If not, please explain.

Page 8:

Biological Survey Report: The required survey includes mapping of territories, estimates of the amount of habitat used by listed species, specific protocols (where defined) etc. Yet, the mitigation required for covered species is the set aside of habitat per the mitigation ratio table. Why is a landowner being required to do such an extensive survey when the required mitigation is not species specific? The required survey should be the minimum necessary to accurately map habitat, and, if necessary, narrow endemics and listed non-covered species. As part of the streamlining promised by the MSCP, maximum use should be made of the existing MSCP mapping. Accordingly, survey work should be minimized. Please add language to accomplish the above or explain why such a significant amount of additional work is necessary.

Page 9:

Impact Analysis: This section states that indirect and cumulative impacts to covered species have been addressed under the MSCP Plan and may be referenced if adequate. What does this mean? Are there circumstances where the MSCP analysis is not adequate? Please clearly state when the MSCP EIR/EIS is not adequate and describe the necessary additional work that would be required to indirect and cumulative impacts.

In addition, please explain how impacts to Significantly and Sufficiently Conserved Vegetation Communities are to be covered in the impact analysis. It is our understanding that the MSCP required mitigation ratios are adequate for such habitats. If this is correct, please add language clarifying this fact. If incorrect, please explain how the impact analysis is to address habitats.

Page 9.B:

As noted previously, it is unclear what species and habitats will have mitigation required over and above that being required for the MSCP. It is our understanding that, with the exception of non-biological impacts to wetlands and non-Covered listed species, the conformance with the MSCP will constitute all necessary biologic mitigation. If this understanding is correct, then this section should be revised to clearly state this, and to note that the City Council will not be allowed to vary or reduce required mitigation through the project approval process without jeopardizing the take authorizations.

In addition, it should be made very clear that conformance with the MSCP is recognized as adequate under CEQA, that is, conformance 107(dt)

107

with the MSCP is defined as meeting requirements for a determination that impacts are significant but mitigated to below a level of significance, and that (assuming non-covered resources are not present) no further mitigation is necessary. This determination can be made using the MSCP EIR/EIS. Please confirm that this is the intent of the jurisdictions and resource agencies as to the operation of the MSCP. 107(dt)

If our understanding is incorrect, then this section must be revised to clearly identify the process for mitigating for MSCP covered resources (species and habitats) and to clearly state the process for mitigating impacts to those resources not covered by the MSCP. For the latter, mitigation standards that will be applied over and above that imposed through the MSCP must be clearly established. It should be clearly stated that City Council can amend, reduce or override any identified mitigation for non-MSCP resources as is currently allowed under CEQA.

Page 11: Even where the preserve covers less than 75% of a parcel, and development will occur outside the preserve, some encroachment into the preserve may be necessary for a road, drainage structure or other public facility. Such encroachment should be allowed. Mitigation should be in accordance with Table 2.

Pg 12: Mitigation Methods: It is our understanding that landowners will not be required to carry out restoration and other types of mitigation if they satisfy their obligation through provision of land within the MSCP preserve. If this is correct, then the relationship between the various types of mitigation and the overall mitigation obligation should be established. It should be clearly stated that the satisfaction of the mitigation obligation can be through any combination of methods, proposed by the applicant and approved by staff, and that, as appropriate, any method may be substituted for another on an acre for acre basis. If incorrect, please explain how the various types of mitigations will be additive so a landowner can understand exactly how much mitigation will be required in addition to preserve dedication.

Amendments to the City of San Diego General Plan

Page 305a: Consideration for Open Space Preservation: This section never mentions MSCP, or the fact that MSCP accomplishes the protection of large biological important areas. The relationship between the MSCP and this section should be explained and the section revised. 107(du)

107

Page 306: Acquisition: There is no mention made of the MSCP in this section, nor of the acquisition obligation that the City has accepted in developing the MSCP. Please explain and/or revise this section. 107(dv)

Page 334a: Vegetation and Wildlife, Major Habitats: This section states that approximately 200 plant and animal species are federally and/or state endangered, threatene'. rare or proposed or `andidates for listing. Please revise the number to reflect the elimination of the Category 2 and 3 lists at the federal level. 107(dw)

Throughout the document, language has been added that calls for the establishment of transition areas between urban uses and the open space system. By any other name, this is a buffer and conflicts with "a line is a line" philosophy that been part of the assurances offered landowners in developing the MSCP. Please eliminate the language or clearly state that it is not the intent of this language to further reduce developable area. 107(dx)

108 ERVIN, EDWARD, UCSD #108, 10/14/96

R **108(a)** Information regarding the need to monitor arroyo toad population trends is recognized. The monitoring plan for the arroyo toad is outlined in the document titled "Biological Monitoring Plan for the Multiple Species Conservation Program," dated January 25, 1996. Seven riparian plots would be surveyed once every three years for arroyo toads. Three site visits would be made between late March and late May by qualified and permitted biologists familiar with the male arroyo toad's breeding call and identification of toad eggs, tadpoles, and adults. Surveys every three years would provide sufficient information to determine population trends. Quantitative data regarding each sighting of a toad, egg mass, or group of tadpoles, and qualitative data would be gathered and sighting locations would be mapped. Monitoring data would include standard field data observations regarding date, time, temperature, weather conditions, habitat, microhabitat, activity, age class, sex, and behavior or other noted comments. Lack of reproduction would also be noted. Please also refer to responses to Comments 45(f) and 28(m).

UNIVERSITY OF CALIFORNIA, SAN DIEGO

UCSD

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DEPARTMENT OF BIOLOGY, 0116
FAX (619) 534-7108

9500 GILMAN DRIVE
LA JOLLA, CALIFORNIA 92093-0116

108

10-14-96
United States Fish and Wildlife Service
Field Supervisor
2730 Locker Ave. West
(619) 431-9440

Attn.: Gail Kobetich

Re: MSCP DRAFT EIR/EIS

Dear Gail,

This letter is in response to the request for comments on the draft Multi Species Conservation Plan. I reviewed the following documents.

Biological Monitoring Plan for the Multi Species Conservation Program, prepared by Ogden Environmental and Energy Services Co., Inc. (revised April 23, 1996)

MSCP 1995 and 1996 Species Evaluations U.S. Fish and Wildlife Service and California Department of Fish and Game. September 1996

My concerns are specifically related to the arroyo southwestern toad, *Bufo microscaphus californicus*, a federally endangered species (16 Dec 1994, 59FR64589). Two factors are crucial for the conservation and recovery of the endangered arroyo southwestern toad (AST); the preservation and protection of required habitat and a scientific defensible monitoring plan.

When not aggregated for the purpose of breeding, ASTs remain distributed spatially along the damp zone of the riparian corridor and in upland habitat. It is now known that the AST is a highly vagile species. Upland stream terraces and adjacent hillsides are utilized in late fall and winter. Sam Sweet documented (USFS,1993) along stream dispersal distances greater than 0.5 miles (2640 ft.) were common, a few cases exceeded 1 mile (5280 ft.). Dan Holland (pers. comm.) captured the AST in upland habitat 1km (3326 ft.) from the nearest drainage. It is important to recognize that these findings may only represent average dispersal distances.

Specific habitats designed to protect AST populations must address the significance of these findings.

Amphibians demonstrate little independence from their environment, AST is no exception, activity is restricted to periods when sufficient moisture is available. The life history of AST is typical for aridland amphibians, by nature these species are secretive with highly variable activity patterns. It is also important to recognize that

108(a)

interpopulation variability of breeding behavior occurs, even within San Diego Co. The fact that toads at some locations may not even attempt to breed even under what appears to be favorable conditions best illustrates the complex relationship between microclimate and breeding behavior. These animals rely on a consort of environmental factors to trigger necessary physiological changes (gametogenesis, etc.). This relationship is still not fully understood. 108(a)

Under these circumstances, arroyo southwestern toad surveys must be preformed yearly to aquire sufficient data for a meaningful analysis of. population trends.

The most efficient use of limited resources would be to concentrate toad surveys during the time when individuals are most detectable. The period when females are drawn to males calling at breeding pools. Known as periods of aggregation. This "window of opportunity" is also the most productive when the stated goal is monitoring population trends (counting number of individuals, etc.). During breeding seasons with less favorable conditions, a time when individuals may not aggregate and are less detectable, qualitative environmental data should be collected (quality of breeding pools & surrounding habitat, air & water temp, etc.). Collection of this data would require a smaller investment of personnel and time.

Quantitative & qualitative data must be collected when populations are demonstraiting breeding behaviors . When AST populations skip attempts to breed for the season, the collection of qualatative data is necessary for the understanding of the relationship between biotic and physical factors. This information will be valuable for the development of a recovery plan for this species.

Suitable arroyo toad habitat consists of stream segments of fairly low gradient containing open streamside sand or gravel flats, low sandy terraces, and a sand or gravel substrate. These characteristics are produced and maintained by a complex interaction of hydrologic and geologic processes. Depending upon the amount of rain and the time period it was received these physical alterations to the habitat may take place from year to year, within the life of an individual, or on a much larger time scale. Because its habitat requirements are very specific the AST is considered an extreme habitat specialist.

A plan must be in place to protect the fragile and dynamic nature of AST habitat from incompatible uses and impacts. This includes activities upstream as well.

In conclusion, I recommend that the endangered arroyo southwestern toad, *Bufo microscaphus californicus*, be removed from the covered species list untill these fundamental issues vital to the conservation and recovery of this species are adequately addressed by the MSCP.

Sincerely,

Edward Ervin

Edward Ervin

Research Biologist

109 CROOKS, UC SANTA CRUZ, 10/26/96

R

109(a) Comment noted.

109(b) Comment noted.

109(c) Comment noted.

109(d) Comment noted. Many of the smaller canyons within the City of San Diego have been subdivided, are privately owned, and contain parcels developed with a residence. These privately-owned, smaller canyons were not included in the proposed preserve. Placement of preserve boundaries on these parcels would split developed parcels and could lead to subsequent split zoning and boundary delineation difficulties. Only City-owned, relatively smaller canyons and those with open space/non-building easements were included.

109(e) Comment noted.

109(f) Comment noted.

109(g) Comment noted. Please refer to response to Comment 109(d).

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John Kovac
Land Development Review Division
City of San Diego
1222 First Ave. 5th Floor
San Diego, CA 92101

Gail Kobetich
U.S. Fish and Wildlife Service
2730 Loker Ave. West
Carlsbad, CA 92008

October 26, 1996

RE: Multiple Species Conservation Program: MSCP Plan; MSCP Subarea Plans

Dear Mr. Kovach and Mr. Kobetich

I wish to submit the following comments to the above-referenced documents, specifically section 1.2.3 regarding urban habitat areas that are (and are not) included within the MSCP. I am a Ph.D. candidate in Biology working with Dr. Michael Soulé at the University of California Santa Cruz. My research investigates the effect of urban development and subsequent habitat fragmentation on wildlife populations in Southern California. Given that mammalian carnivores are likely most sensitive to fragmentation effects, my research focuses on the suite of mammalian predators still existing in Southern California. My study areas includes both large, unfragmented habitat as well as smaller habitat fragments ("canyons") within the urban areas of San Diego County. 109(a)

As a large urban center, San Diego is unusual because patches of native habitat still exist inside the city limits, and that these canyons still support a diverse array of native plants and animals. Continued protection of the ecological integrity of these canyons is crucial, not only because of the biological importance of the canyons and native biodiversity within, but also important to the citizens of San Diego and their self-expressed quality of life. 109(b)

The canyons of San Diego have become one of the most well-studied series of habitat fragments worldwide. For over a decade, a variety of scientific studies, conducted by researchers from across the United States, have demonstrated the canyons support viable and diverse arrays of native plants, birds, reptiles, amphibians, insects, small mammals, and in my study, mammalian carnivores. These studies have indicated that canyons support species that are of conservation concern in Southern California, such as the California gnatcatcher, as well as other species that are either threatened or extremely rare. Further, many of the studies have indicated that the percent native 109(c)

vegetation is the most important factor determining native biodiversity. 109(c)

Moreover, the canyons are not only important for wildlife populations which reside within them, but are also essential as stepping stones for individuals to move from one core habitat area, across the urban matrix, to another core area. Thus, it is crucial that the spatial organization of canyons in the urban landscape be preserved. As such, series of both large and small canyons must be protected. In the current MSCP plan, many of the canyons that have been under scientific investigation for the past decade are not included within the Preserve. Some of these unprotected canyons represent large tracts of native habitat supporting diverse arrays of native species, and some canyons, even though relatively small, are important links to larger Preserve areas. If these canyons are not to be protected under the MSCP, then continued protection under other authorities is essential. 109(d)

Further, the canyons and their protection are important to the citizens of San Diego. Over the past year I have distributed over 1000 questionnaires to residents living on or near canyons throughout San Diego County. These questionnaires ask about the residents' knowledge of the wildlife populations in the canyons, as well as their perceptions and attitudes towards both canyons and native plants and animals within. One method by which to gauge the importance of an issue to the general public is through their response rates to such surveys. In practice, a 10% return is considered a successful return in such surveys. To date, the response rate to my canyon surveys has been nearly 50%, indicating that the issue of the canyons concerns a large proportion of the general public. 109(e)

Moreover, the people who live near the canyons know an impressive amount about the wildlife that occur there. I have conducted wildlife surveys (primarily for mammalian carnivores) in the canyons for over a year and therefore have considerable scientific data on the distribution and abundance of species. For the most part, the majority of the citizens are an valuable source of information about the canyons, displaying an impressive knowledge of the canyons and the wildlife within. Further, the citizens are concerned with the protection of the canyons. To date, over 80% of respondents have stated that they either agree or strongly agree that it is important to them to conserve the wildlife in their canyons. 109(f)

Although some of the canyons within San Diego are protected under the proposed MSCP, many others, especially smaller canyons, do not receive such protection. If these canyons will not be included in the MSCP, then their continued protection must be ensured. Scientific surveys of both the native plants and animals of the canyons, as well as of the citizens nearby, 109(g)

109

clearly indicate that protection of the ecological integrity of the canyons is essential. Protection is important from a biological perspective, in terms of the native biodiversity in the canyons, important from a scientific perspective, in terms of the productive scientific research ongoing in these areas, and important from a cultural and social perspective, in terms of the quality of life of the citizens of San Diego. 109(g)

Thank you for your consideration,

Kevin Crooks

Department of Biology
University of California
Santa Cruz, CA 95064
(619) 646-0008

110 CHARLES CRANDALL, 10/29/96

R **110(a)** Fires like the one that occurred recently on Otay Mountain are common occurrences within the coastal sage ecosystem and their occurrence was taken into consideration in the design of the MSCP preserve and species analysis. The Draft EIR/EIS analyses the effects of issuance of the take authorizations based on the MSCP Plan. No supplemental EIR/EIS is needed because of the Otay Mountain fire.

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OCT 30 1996

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LAW OFFICES OF
CHARLES STEVENS CRANDALL

110 WEST C STREET, SUITE 711
SAN DIEGO, CALIFORNIA 92101

CHARLES STEVENS CRANDALL*
MICHAEL RAY HARRIS

*ALSO ADMITTED IN NEW JERSEY

TELEPHONE (619) 233-4787
FACSIMILE (619) 233-1081

October 29, 1996

Mr. John Kovac
Development and Environmental Planning Division
City of San Diego
1222 First Ave., 5th Floor
San Diego, CA 92101

Mr. Gail Kobetich
U.S. Fish and Wildlife Service
2730 Loker Ave. West
Carlsbad, CA 92008

RE: Supplemental Comment on August 1996 Multiple Species Conservation Program Plan, Draft Environmental Impact Report/Draft Environmental Impact Statement, and City of San Diego Implementing Agreement

Dear Mr. Kovac and Mr. Kobetich:

It seems apparent, based on the recent loss of significant coastal sage scrub habitat through the Otay Mountain fire last week, that a supplemental EIR/EIS needs to be prepared.

The devastating Otay Mountain fire, destroying almost 15,000 acres (including much prime habitat near the heart of the south County MSCP) is obviously a significant new environmental impact that has never been analyzed. The document should be revised and recirculated based upon this significant new information. 110(a)

Very truly yours,

Charles S. Crandall

CHARLES S. CRANDALL

CSC/tm

cc: Tara Mueller

111 CHRISTINE KERBSTAT (ENDANGERED HABITATS LEAGUE), 10/28/96

111(a) See **Theme Response XV, Document Organization.**

111(b) See **Theme Response 1, Species Analysis Approach**, and revised MSCP Table 3-5 included in the Revisions to the MSCP Plan, January 1997.

111(c) The California Department of Fish and Game must approve the MSCP Plan as an NCCP Plan as required by the Fish and Game Code Section 2800 et seq. The approval of the an NCCP Plan is a project as defined by CEQA and the Department of Fish and Game (as an identified responsible agency) will use the Final EIR/EIS as the CEQA document for approval of the Plan. To approve the Plan as an NCCP Plan, significant impacts to covered species must be mitigated to less than significant levels.

111(d) See **Theme Responses XIX, Preserve Management, and XVI, Risk Factors.**

111(e) The MSCP Plan acknowledges that military reservations contain the only remaining areas for the long-term conservation of certain species. Because military reservations are outside the authority of the local jurisdictions, conservation planning for these species would be accomplished through separate mechanisms such as formal consultations pursuant to Section 7 of the ESA and Sike's Act agreements. It would be the responsibility of the wildlife agencies to ensure that these conservation planning activities are consistent with the goals of the MSCP Plan in conserving covered species and their habitats in ecologically sound preserve configurations that are compatible with the MHPA. Provisions would be included into these agreements that stipulate that conveyance of lands to private interests shall conform to the measures required through transference of responsibilities in a deed restriction. In regards to *Ambrosia pumila*, please see condition in revised MSCP Table 3-5 included in the Revisions to the MSCP Plan, January 1997.

111(f) Within the MHPA 9,770 acres of grassland would be conserved. This represents 34% of the total amount of grassland (28,373 acres) within the MSCP study area. The findings on Table 3-5 in the MSCP Plan (Table 4.3-1 in EIR/EIS) include a finding of insignificant for four species (American badger, ferruginous hawk, golden eagle and mountain plover). The finding of insignificant was intended to mean "an effect that cannot meaningfully be detected or measured, relative to the species' status as a whole. MSCP study area is not a significant portion of these species' range". It was not intended that the use of the term insignificant have any meaning relative to a significant or insignificant finding under CEQA and NEPA. Due to the confusion related to these terms, the U.S. Fish and Wildlife Service is revising this terminology and findings as shown on revised Table 3-5.

The western bluebird is determined to be adequately conserved, and the burrowing owl with specific conditions is considered to be adequately conserved. In analyzing information received during the comment period, the wildlife agencies determined that with nest site management and

protection, the golden eagle would likely retain 12 out of 14 active golden eagle territories within or partially within the MHPA with management to protect nest sites, and thus is considered adequately conserved (Please see response 45(l)). The mountain plover is an extremely localized winter visitor known to occur regularly only in the Tijuana River Valley. It also has been found on Otay Mesa and the mouth of the Otay River. The MHPA conserves 96 percent of the Tijuana Estuary/River Valley, 75-90 percent of the mouth of the Otay River, and 73 percent of the Otay Lakes/Otay Mesa/Otay River Valley Biological Core and Linkage Area. Based on this information this species would likely be retained within the MHPA as a localized wintering visitor. The primary impact to mountain plover is the loss of foraging area due to the conversion of Otay Mesa from agriculture to commercial development. The effect of the MSCP Plan on this species would be positive, because it would ensure the conservation of the few localized wintering areas. Therefore, this species is considered to be adequately conserved.

111(g) See Theme **Response XXII, Sufficiently/Significantly Conserved Vegetation Communities.**

111(h) Comment noted. Text change has been made.

111(i) See response to comment 45(ck).

111(j) See **Theme Response XIX, Preserve Management.**

111(k) See **Theme Response I, Species Analysis Approach** and revised MSCP Table 3-5 included in the Revisions to the MSCP Plan, January 1997.

111(l) The MSCP Plan does not provide for habitat coverage. See **Theme Response XXII, Sufficiently/Significantly Conserved Vegetation Communities.** To add oak woodland, chaparral and grasslands to the significantly or sufficiently conserve habitat list, additional acres of conservation of these habitat would have to occur. The addition of any of these vegetation communities to the sufficiently or significantly conserved list would be based on the wildlife agencies evaluations, using the factors listed in MSCP Plan, Volume I, Section 3.4.2.

111(m) The subarea plans were prepared through a collaborative process consistent with the overall preserve design developed for the MSCP Plan, which was prepared in conformance with the non-regulatory NCCP Conservation Guidelines. The wildlife agencies worked with the local jurisdictions in an advisory capacity to help ensure consistency with the MSCP preserve design and the Conservation Guidelines. The MSCP Plan includes specific conservation requirements for vegetation communities and species, and the Draft EIR/EIS analyzes the impacts on vegetation communities, species and wildlife movement for each alternative and for each subarea plan. As indicated in the Draft EIR/EIS, the subregional and subarea proposed project (MHPA) mitigates identified impacts. The project mitigates the

identified impacts by proposing a preserve with features (size, contiguity, biodiversity and species-specific conservation) consistent with preserve design guidelines.

111(n) The Bureau of Land Management (BLM) has signed a Memorandum of Agreement (1994) for Cooperation in Habitat Conservation Planning and Management with the wildlife agencies, County of San Diego, City of San Diego, and the San Diego Association of Governments committing to manage BLM lands within the MHPA in accordance with MSCP program goals. This Memorandum of Agreement will be updated to reflect all current federal commitments. A similar agreement will be developed for all state lands contributed to the MSCP preserve system. In addition, the State Parks Department has signed an enrollment memorandum stating that they would commit appropriate state lands to the MSCP preserve.

The MSCP premise that 100 percent of Otay Mountain on BLM lands will be preserved is still valid. The wildlife agencies have been working with the BLM and the Border Patrol to address issues concerning the impact of illegal immigration on covered species and their habitats.

111(o) See **Theme Response XIX, Preserve Management.** The implementing agreements will require that take authorization holder prepare a framework management plan and area specific management directives. See Section 6.3.1 of the revised MSCP Plan, Volume I language included in the Revisions to the MSCP Plan, January 1997. Although there is no certification process established for preserve managers, proper preserve management is a condition of the take authorizations and, therefore, must be appropriately carried out. See also Section 16 of the Model Implementing Agreement.

111(p) The wildlife agencies will assume primary responsibility for coordinating the monitoring program, analyzing the data, and providing information and technical assistance to the participating local jurisdictions and participating special entities, and maintaining the master data base.

111(q) See **Theme Responses XIX, Preserve Management, X, Habitat Conservation Accounting Model, and XIV, Biological Monitoring.**

111(r) See **Theme Response XXV, Wetlands Protection.** The Preserve Guideline # 4 does include a reference to the federal and state policy of no net loss. Impacts to wetlands within the preserve would be subject to the Environmentally Sensitive Lands Ordinance as well as the requirements of associated federal and state regulations and the mitigation standard of no net loss of value and function (B1 Guidelines) in the revised model implementing agreement.

111(s) The U.S. Fish and Wildlife Service has completed a formal consultation, pursuant to Section 7 of the ESA, with the U.S. Marine Corps at MCAS Miramar for the proposed Base Realignment and Closure activities. The Biological Opinion (File Number 1-6-95-F-33) resulting from this consultation concluded that the proposed activities would not jeopardize the continued existence of federally listed

species. As a term and condition of the Biological Opinion, the Marine Corps will develop and implement a Multispecies Habitat Management Plan (MHMP) in a manner that his consistent with the guidelines that have been established for subarea plans within the MSCP. The MHMP must demonstrate that it has included or addressed the following checklist in designing the conservation areas: a) retain highest biodiversity feasible by including spatially representative examples of extensive patches of sensitive habitats; b) retain large blocks of unfragmented habitat, following natural topography (ridges and watersheds), where possible; c) retain large, interconnected blocks of habitat that contribute to the long-term management of wide-ranging species; d) define a configuration that minimizes edge effects and edge-to-area ratio; e) retain full viability of each core gnatcatcher population and the key linkage areas between them as identified in either the MHMP or subsequent field work, and retain connectivity to other private or public lands in open space; f) include appropriate management and land use planning criteria to minimize edge effects from adjacent land uses inside the conservation areas; and g) include monitoring criteria for species and habitats that reflect priorities as determined in the above measures.

111(t) Restoration plans would be developed and tailored to meet the requirements of a particular site. Site specific restoration plans may include removal of non-native invasive plants if this is determined to be an appropriate and beneficial restoration measure.

111(u) Impacts to sensitive resources and wetlands will be mitigated consistent with the subarea plans and implementing ordinances and regulations. Exclusion from the Cornerstone Lands does not exempt projects from CEQA review, mitigation requirements or compliance with the Subarea Plan. Excluded areas would still be subject to the avoidance standards of the ESL.

111(v) See revised MSCP Table 3-5 included in the Revisions to the MSCP Plan, January 1997, and response to Comment 45(m) regarding burrowing owl coverage.

111(w) The sentence should read, "Zone 2 would be increased..." The width of the new Zone 2 would typically be less than the current required width of Zones 2 and 3 combined.

111(x) Please see **Theme Response XIX, Preserve Management.**

111(y) Comment noted. Section 10.6 B of the City of San Diego's IA is being revised to clarify that the City will be required to finalize within nine months from the date it receives the Take Authorizations, a framework management plan, approved by the wildlife agencies, which outlines the management prescriptions that will apply to habitat conservation areas covered by the MSCP Plan. The City is also required to develop and implement area-specific management directives as lands become part of the preserve. Further, as provided in Section 14.5 of the IAs, ongoing biological monitoring of habitat conservation areas will be required. The wildlife agencies will provide technical assistance to the local jurisdictions in the development and implementation of the monitoring program and review and analyze monitoring data.

Pursuant to Section 14.4 of the City and Model IAs, the participating local jurisdiction, in conjunction with other local jurisdictions, will prepare and issue a public report every three years which summarizes the status of the MSCP, including the land preserved within the MHPA and total expenditures made toward habitat acquisition, and management and monitoring activities. The local jurisdiction are required to hold a public hearing in conjunction with the issuance of the triennial report. The first and second sentences of Section 14.4 have been revised as follows to clarify that the triennial report is intended to be a joint report prepared cooperatively by all of the participating local jurisdictions:

** 14.4 Public Report/Hearing. Every three years [**LOCAL JURISDICTION**] , in conjunction with the other Participating Local Jurisdictions, shall prepare a public report on the status of the MSCP and shall hold a public hearing in conjunction with the issuance of the report. The report shall incorporate information on the amount of land preserved within the MHPA and otherwise to date ....

111(z) Comment noted. See **Theme Response XXIV, No Surprises.**

111(aa) **Theme Response XXIII, Sufficiently/Significantly Conserved Vegetation Communities.**

111(ab) See **Theme Response XXIV, No Surprises.**

111(ac) See **Theme Response I, Species Analysis Approach**, and revised MSCP Table 3-5 included in the Revisions to the MSCP Plan, January 1997.

111(ad) Comment noted.

111(ae) See **Theme Responses XIX, Preserve Management, and X, Habitat Conservation Accounting Model.**

111(af) The commenter states that the Plan does not contain measurable criteria to evaluate it's biological success. The MSCP Plan does incorporate a general biological goal. However, the commenter is correct in stating that the City of San Diego and Model IAs do not include "net benefit HCP" as a factor to be considered by the wildlife agencies in determining whether an Extraordinary Circumstance which might warrant a requirement of additional mitigation has occurred. Section 9.6.B of the Draft IAs recites six of the seven factors identified under the "No Surprises" policy that the U.S. Fish and Wildlife Service will consider in determining whether "extraordinary circumstances" exist. The one factor omitted from this provision of the IAs is whether the conservation plan was designed to provide a "net benefit" to the covered species.

A "net benefit" HCP under the "No Surprises" policy is a plan which is designed to provide a "net benefit" to the covered species and that contains measurable criteria by which to evaluate the plan's biological success which are being attained. The U.S. Fish and Wildlife Service will not require

any additional mitigation or modifications to the mitigation program provided under the HCP without the consent of the permittee for a "net benefit" HCP. The "net benefit" factor has been excluded from the list of factors identified in Section 9.6.B of the IAs because the MSCP is not a "net benefit" HCP for purposes of the "No Surprises" policy.

While USFWS believes that the conservation provided under the MSCP and Subarea Plans for the covered species is adequate to meet the issuance criteria under Section 10 of the ESA, the participating local jurisdictions (applicants) did not conduct the analyses necessary to demonstrate that the MSCP provides a "net benefit" to each Covered Species for purposes of the "No Surprises" policy. Therefore an assurance of no additional mitigation of any kind which would be extended to "net benefit" plans does not apply to the MSCP.

The discussion of "No Surprises" policy in this section of the City of San Diego and Model IAs is unnecessary and has been deleted because specific assurances regarding future mitigation requirements have been specifically evaluated by the wildlife agencies for the MSCP Plan and are provided to the participating local jurisdictions and Third Party Beneficiaries under the operative provisions of Section 9 of the IAs.

111(ag) Comment noted.

111(ah) See Theme **Responses XIX, Preserve Management, and X, Habitat Conservation Accounting Model.**

111(ai) See Theme **Response X, Habitat Conservation Accounting Model.**

Christine Kerbstat
Post Office Box 1324
Julian, California 92036

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DEVELOPMENT SERVICES

A Woman's Place is in the House... ...and in the Senate

October 28, 1996

To: John Kovac
Land Development Review Division
City of San Diego
1222 First Ave., 5th Floor
San Diego, CA 92101

Gail Kobetich
U.S. Fish and Wildlife Service
2370 Loker Ave. West
Carlsbad, CA 92008

RE: Multiple Species Conservation Program (MSCP): MSCP Plan Vol.I, MSCP Subarea Plans Vol. II, Draft Environmental Impact Report/Draft Environmental Impact Statement (EIR/EIS), Model Implementing Agreement (IA)

Dear Mr. Kobetich and Mr. Kovac:

As an active member of the Endangered Habitats League, I have been following the MSCP with interest for some time and am hopeful that this program can reach the important goals of ecosystem protection and streamlined land use planning for this region. I have been struggling with the above referenced documents to discern if this is the case.

Following an introduction, my comments and questions will be presented in the following document order: EIR/EIS; MSCP Plan I; Subarea Plans II, including City of San Diego implementing ordinances; and Model IA.

Introduction

The information included in the combined documentation would be rather overwhelming under the best of circumstances. As presented, it requires constant cross referencing to try to make sense about many aspects of the program. It would be helpful to have a flow chart or matrix explaining the level of detail appropriate for each document (including the jurisdictional implementing ordinances), and how those support or relate to one another. 111(a)

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Furthermore, the documents are exceedingly difficult to interpret with respect to the stated goals of the program and the policies, criteria and standards that are being proposed to achieve those goals. I simply cannot find the standards that are being used to define thresholds for species coverage or that will be used to monitor the success of the program in the future. Please identify those standards and explain how this program will meet them. It would seem that standards and criteria being proposed to reach those standards should be defined up front in the MSCP Plan, EIR/EIS, and Subarea Plans. 111(b)

Draft EIR/EIS

Section 4.3 Biological Resources

Under "Criteria for Determining Significance", (pgs. 5-6)
Please clarify: "...CEQA impact analysis for this project discuss the level of significance of remaining impacts in relation to the requirements of the NCCP pursuant to Section 2835 of the Department of Fish and Game Code". 111(c)

Table 4.3.1
The Fish and Wildlife Service identified certain findings related requirements that must be met in order for the plan to claim coverage for certain species. These are in both the "high risk" and "moderate risk" categories. Many of these requirements appear to be tied to species specific management and monitoring related to edge effect. Please identify the management and monitoring programs for those species which have such requirements. It must be intended that the jurisdictional Management Plans will be the reference documents for such programs and yet the City of San Diego Management Plan is dramatically deficient in this regard. Please identify the means whereby the findings requirements for covered species will be translated into the Management Plans. Is it intended that if edge effects were properly mitigated that the species would be less "at risk"? Will there be performance standards established to make such determinations? 111(d)

Several species such as *Aphanisma blitoides* are dependent upon preservation on military lands. The footnote (#7, Table 4.3.1) indicates that the federal agencies will "ensure" adequate protection on these lands. What does "ensure" mean? Is this guaranteed? Appropriate preservation on military lands is also critical to reserve configuration and habitat based assurances. Please explain how the military lands will figure into this program and how they relate to species and habitat coverage and assurances.

Ambrosia pumila is a high risk species found only in two places in the county. As I understand it, the population in Santee is proposed for preservation. Would you explain the proposal for the population at Mission 111(e)

111

Trails in the City of San Diego? It appears that it is being proposed to be translocated, and yet will not be considered covered unless the translocation is "successful". This implies that the translocation could be *unsuccessful*, which would obviously be disastrous for this species. Why is the program proposing this risky translocation when surely there are alternative sites for the campground parking or staging area. Has there been any analysis for an alternative parking area? If not, why not? I seem to recall that *Ambrosia* is not on the City translocation list. Is this accurate? 111(e)

4.3-42,43
The discussion about sensitive species that occur in non-native grasslands is confusing. On one hand the document states that of the six species listed, four would not be significantly impacted by the MSCP. The remaining two presumably *would* be significantly impacted and yet both (western bluebird and burrowing owl) are on the covered species list. The bluebird is a low risk species but the owl is a high risk species and the program proposes very poor conservation of its habitat. Please explain the status, preservation standards, and justification for the coverage for this species. 111(f)

Non Sensitive Vegetation Communities/Habitats (4.3-53)
Related to the above issue is the non-native grassland discussion in this section. It appears to be a conclusion that the indirect impacts of the MSCP (i.e. development outside the preserve) will not be significant for this habitat type, and yet non-native grassland is not Significantly or Sufficiently (in the assurances sense) protected. If impacts are not significant and if species dependent upon grasslands are going to be "covered", why isn't the habitat considered Significantly or Sufficiently conserved? What would it take to reach that threshold? 111(g)

B.1.4.2 City of San Diego Implementing Actions- Community Plan Amendments.
Conditions C5 and C6 state *if* funding becomes available that these conditions will be carried out. It is commendable that the City has committed to the expense of bridging certain key linkages to allow for wildlife movement, but even with these mitigations, wildlife corridors are minimal at best in this highly constrained area. There are probably several potential sources for funding these improvements including the MSCP management program. If the commitment is there, funding can be secured for these improvements. These conditions should be changed to read "when" not "if". 111(h)

B.1.5 City of Santee Subarea Plan
Preservation within the City of Santee appears extremely low in comparison to the commitments from other jurisdictions. Proposed losses include 60% of coastal sage scrub, 82% of riparian forest and 73% of grasslands.
Why is this low standard acceptable? Are not the other jurisdictions carrying the water for Santee? 111(i)

111

4.3-MHPA-3 Indirect Impacts to Covered Species

With fully 20% (34,000 acres) of the reserve subject to significant edge effects it would seem extremely important for the program to ensure proper management practices to mitigate these impacts. How is the program going to quantify and qualify this impact in the absence of management plans? Will the commitment to properly manage edge effect be part of the MSCP approval process? Will the Implementing Agreement provide this assurance? Will the Biological Opinion assess management plans for all jurisdictions? 111(j)

Conclusion

To reiterate a fundamental concern about the EIR/EIS document and the program in general: While I consider the MSCP a very strong conservation plan with respect to resource protection, it appears weak in justifying the coverage for the species on the covered species list. It seems that justification for coverage of species is based simply upon the conclusion that there will be a plan, not on why the plan, as proposed, will protect a particular species. *This weakness undermines the very positive aspects of the conservation value of the effort.* Please clarify this issue by explaining the methodology or thought process and standards being applied in reaching these conclusions. 111(k)

MSCP Plan, Volume I

Section 3, Conservation Plan

Other Vegetation Communities

Please explain the process whereby grasslands, oak woodlands and/or chaparral could be added to the covered habitats list. Please include the standards utilized and an explanation of how the amendment process would apply. 111(l)

1. General Preserve Design Criteria

Have these criteria been met by the proposed subarea plans? If not, please indicate deficiencies. Is this a self certification process, or do the wildlife agencies make the determination? Are these criteria consistent with the Conservation Guidelines? 111(m)

Section 4 Assembling the MSCP Preserve

4.2.1 Contributions of Existing Federal and State Lands

This section discusses the Memorandum of Understanding that local participating jurisdictions have with the Bureau of Land Management with regard to management of (BLM) public lands in San Diego County. This 111(n)

agreement should be included as an appendix for reference somewhere in the documentation. As a related issue, please clarify the status of the MSCP planning premise that assumes 100% preservation of resources on Otay Mountain. Is this still a valid premise, and are coverages still dependent upon this assumption? How will this preservation be guaranteed over time? 111(n)

Section 6 Preserve Management and Reporting

6.3.3 Preserve Management on Private Land s
The document states that reserve lands conserved through avoidance will be transferred in fee title to government or non-profit agency if the property owner is willing. Will there be a certification process established to insure that fee title holders are competent reserve managers? What will be the process utilized to reconcile improper reserve management? 111(o)

6.4.2 Biological Monitoring
This section should include an explanation of who will keep the "master" data bank accumulated during MSCP implementation. 111(p)

6.4.3 Consolidated Reporting and Public Hearings
The three year monitoring report may not allow for adaptive management practices to be implemented in a timely manner for certain species. This section should state that determinations regarding species viability trends will be made when necessary, as indicated through ongoing monitoring practices. 111(q)

Subarea Plans, Volume II

Section 1.0 City of San Diego MSCP Subarea Preserve Plan

Preserve Guidelines #4.
This section deals with the wetlands of the Otay Mesa and Otay River Valley areas of the plan. The wetlands supporting covered species in this area are critical to reserve success. This section should be consistent with the City of San Diego Environmentally Sensitive Lands Ordinance (ESL) and include the notion of no net loss of function and value for these wetlands. 111(r)

Section 1.2.2 Eastern Area

NAS Miramar
This section discusses the importance of the Mirmar military lands to the reserve and the transfer of these lands from the Navy to the Marine Corps. 111(s)

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Please clarify if the Navy HMP will be consistent with the MSCP and if not, what are the gaps? Will the Marines be bound to the Navy HMP? The document states that the final draft of the Miramar plan is expected in spring 1996. Is this accurate? If so and this plan is available, it should be an appendix to the Subarea Plan II document. Please clarify the overall planning status for these lands including timelines and goals. 111(s)

Hodges Reservoir/San Pasquel Valley
Will the restoration plans for this area include the removal of non-native invasive plants? 111(t)

Preserve Exclusions and Guidelines
Key habitat areas in Hodges, San Pasquel, Otay and San Vicente Reservoir are proposed to be excluded from the Preserve. Will impacts to sensitive resources be mitigated for according to the mitigation tables in the Biological Guidelines, or does the exclusion include exemption from mitigation? Will exclusion areas in wetland habitats be subject to the avoidance standards of the ESL? 111(u)

Section 1.3 Covered Species List

#13 Burrowing owl
Coverage for this species is questionable. Please elaborate on the "enhancement" condition in this section. In what manner can habitat for this species be enhanced? Is there a standard that the program is attempting to reach with respect to species viability for the owl within the City's subarea plan? 111(v)

Section 1.4.3 Land Use Adjacency Guidelines

Brush Management.
After stating that there will be a new zone 2/3 the document goes on to say that zone 3 (?) will be increased by 30 feet, except in areas with low fire danger. Please reconcile this statement with my understanding that increased encroachment based on fire danger would be limited to 10 feet in zone 2/3. 111(w)

Section 1.5 Preserve Management
Species specific management plans will be necessary for many of the covered species as provided by coverage findings (Table 4.3.1). Much of this information is available in the Species Evaluation document recently provided by the wildlife agencies. This information should be included in the management plans. The City of San Diego's management plan in its present form is deficient in this regard. This issue should be rectified before 111(x)

this document is utilized as a model for other jurisdictional management plans 111(x)

Model Implementing Agreement

The MSCP is intended to give development and regulatory assurances in exchange for adequate preservation of species and habitats. This relationship among program stakeholders is being codified in the Implementing Agreement (IA) under Section 9.0 Mutual Assurances. 111(y)

As presently written, this section of the IA assures Third Party Beneficiaries mitigation thresholds as well as exemption from additional conservation measures resulting from unforeseen circumstances. 111(z)

This section assures participating local jurisdictions and Third Party Beneficiaries that no additional money or land will be required for species on the covered species list. The Sufficiently Covered habitats category assures local jurisdictions that they will have no additional financial obligations for newly listed species dependent upon these habitat types. 111(aa)

It is intended that biological needs of the reserve will not be jeopardized in the event of unforeseen circumstances and that the biological needs of newly listed species will be addressed through the "No Surprises" policy if applicable. 111(ab)

What is not provided is the justification for the covered species and habitats or a method to measure species and reserve viability over time. The assurance for species viability or adequate reserve function cannot be provided without a measurable reference standard. Furthermore, it is only through such a standard that extraordinary circumstances is distinguishable. 111(ac)

Section 9.6A defines "Extraordinary Circumstances" as meaning either (1) a significant, unanticipated adverse change in the population of any covered species subject to Incidental Take or their habitats within the MSCP Area; or (II) any significant new or additional information relevant to the MSCP that was not anticipated by the Parties at the time the MSCP was approved. 111(ad)

Significant new or additional information, and/or adverse changes to populations implies that there is a status baseline of information to measure *against*. 111(ae)

Section 9.6B of the IA describes the relevant factors that will be considered when determining whether or not extraordinary circumstances exist. Subsection (6) describes one of the criterion that will be used in this determination: "whether the MSCP as originally designed to provide an 111(af)

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overall net benefit to the affected species and contained measurable criteria for assessing the biological success of the MSCP..." 111(af)

If this criterion will be used in subsequent determinations, it must be consistent with the criteria used to make the original determination that species and habitats are adequately conserved by the program. 111(ag)

Additionally, there are program monitoring and management responsibilities codified in the IA (Section 14.0) that can only be fulfilled through analysis of ongoing monitoring data collection. From this information to be relevant and meaningful. it must be measured against species and habitat baseline data so that adaptive management practices can be instigated if necessary. The data base implied in this section is not identified. 111(ah)

Section 9.3 of the Implementing Agreement should address this issues by explicitly stating that measurable criteria and standards will be utilized to assess species viability and reserve function and to provide guidance for subarea management plans and reserve monitoring program. 111(ai)

Thank you for considering these issues.

Sincerely,

Christine Kerbstat

Christine Kerbstat

112 GIACALONE, SD REALTORS, 10/29/96

R

112(a) Comment noted.

112(b) CESA and FESA cannot be changed based on contractual agreements. Please also refer to **Theme Response XXVI, Permit Streamlining.**

112(c) Please refer to **Theme Responses XXV, Wetlands Protection, and XXVI, Permit Streamlining.**

112(d) Comment noted. See **Theme Response III, Economic Impacts and Impacts on Population and Housing.**

112(e) Comment noted. See **Theme Response III, Economic Impacts and Impacts on Population and Housing.**

112(f) The Draft EIR/EIS discusses issues associated with provision of affordable housing in accordance with state law on pages 4.2-19, 4.2-6S and 4.2-67. As discussed on these pages, the City of San Diego's Housing Element is currently being updated. It is anticipated that the Housing Element update will address impacts to housing affordability associated with implementation of the MSCP Plan. Since information regarding the Housing Element update was not available at the time the Draft EIR/EIS was distributed for public review, impacts to affordable housing associated with the City of San Diego Subarea Plan were regarded as significant and not mitigated.

112(g) See response to Comment 112(f).

112(h) Comment noted. See also response to Comment 112(f).

112(i) Comment noted. Please refer to response to Comment 112(f).

112(j) See **Theme Responses III, Economic Impacts and Impacts on Population and Housing, and XXVI, Permit Streamlining.**

112(k) Sections 4 and 7 of the MSCP Plan provide the requested information regarding preserve assembly and plan funding. See also **Theme Response IV, MSCP Financing Plan: Regional Source of Funds.**

112(l) See response to Comment 112(k).

112(m) No decision has been made regarding the regional funding sources.

112(n) Comment noted.

112(o) See **Theme Response IV, MSCP Financing Plan: Regional Source of Funds.**

112(p) The MSCP provides for an 18 month period to identify a regional funding source.

112(q) Comment noted. A complete project description is provided in the Draft EIR/EIS.

112(r) The intent of the MSCP Plan is to allow local jurisdictions to permit projects that are consistent with their take authorizations. The result of the program would be a reduction of federal and state involvement in land development activity within the MSCP study area. Unlisted species are included and conserved to the level required for listed species so that take authorizations are granted concurrently with their listing. Take authority from the federal and state governments is through issuance of a Section 10(a)(1)(B) permit under the federal Endangered Species Act and through issuance of management authorizations under the California Endangered Species Act and the NCCP. In addition to receiving these take authorizations, each participating local jurisdiction will sign an implementing agreement with the wildlife agencies that clarifies its responsibilities for implementing the program. The benefit to landowners would come from the streamlining of the permitting process for state and federally listed species and from increased certainty in what mitigation measures would be required for future developments.

112(s) See **Theme Response XXVI, Permit Streamlining.**

112(t) Comment noted.

112(u) See responses to Comments 112(a) through 112(t).

112

SAN DIEGO ASSOCIATION OF REALTORS®

REALTOR®

2231 Camino del Rio South
PO Box 85586
San Diego, CA 92186-5586
Phone: (619) 291-3714
Fax: (619) 295-1365
MLS: (619) 291-5060

16383 Bernardo Center Drive
San Diego, CA 92128
Phone: (619) 592-7171
Fax: (619) 592-7179

Fax-On-Demand:
(619) 491-2977

Officers

Matt Giacalone - President
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October 29, 1996

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John Kovac
City of San Diego
Land Development Review Division
1222 First Avenue, Fifth Floor
San Diego, CA 92101

RE: Recirculated Draft of Joint EIR/EIS Issuance of Take Authorizations for Threatened and Endangered Species Due to Urban Growth Within the Multiple Species Conservation Program (MSCP) Planning Area; LDR No. 93-0287; SCH No. 93-121073

Dear Mr. Kovac:

The San Diego Association of REALTORS® (SDAR) has followed the Multiple Species Conservation Program (MSCP) planning process since its inception. Because SDAR has not spoken against the Plan, the public's perception may be that SDAR supports the MSCP—that perception is incorrect. SDAR has not taken a position on the MSCP because of numerous questions and issues that have not been addressed. Further, SDAR *will not* take a formal position on the MSCP without the responses to three issues.

Assurances

The first issue deals with assurances regarding the binding effect of the MSCP. SDAR strongly believes that the citizens of San Diego, who are expected to fund at least a portion of this immense effort, and the landowners, who have been, and will be, directly impacted in the public interest of species and habitat conservation, need to be assured that the MSCP cannot be eroded by adding additional species. 112(a)

The MSCP must be able to withstand all future challenges, ranging from the desires of a few who seek and find an "unprotected" species to an act of Congress to actually protect a species. Any approvals of the MSCP by the City and County must be contingent upon the assurance that additional species will not be added. Without this assurance, the MSCP will be as good as, or as bad as, the EIR/EIS No Action/No Project Alternative. 112(b)

112

Housing Impacts

The second issue is the Plan's impact on development, particularly housing. In speeches made on this issue, San Diegans are being led to believe that once this habitat preserve is established, the development constraints imposed by government over the last 20 years will be greatly reduced, thereby allowing development to move forward as the market will allow. 112(b)

The truth, however, is that the MSCP is intended to address the issue of biology only and does not include wetlands. This leaves in place all the other environmental constraints such as land use, housing, geology, water, air quality, transportation, energy, noise, public services, utilities, aesthetics, and cultural resources. Will there be an assurance that development streamlining will occur on all governmental levels? 112(c)

In addition to the very narrow relief provided to development outside the MSCP preserve, the MSCP Plan, according to the Draft EIR/EIS, will significantly impact planned and existing housing in the region in an adverse manner. Specifically, the draft EIR/EIS states that under the Biologically Preferred (BP) Scenario the:

> ". . .preserve implementation could displace up to 47,785 housing units that are projected to be built in areas covered by the proposed Preserve Planning Area between 1990-2005. This substantial housing shift could lead to significant local impact such as shortages in housing supply and decreased housing affordability, as well as changes in region-wide housing growth patterns." 112(d)

It goes on further to state:

> "The conservation of 6,267 acres within the BP Preserve would reduce the remaining available developable land to 5,699 acres. This would not be sufficient to meet the 1990-2005 Series Growth Forecast of 15,101 acres of residential land for San Diego. This shortfall may affect local development patterns, residential locations and densities and the timely provision of public services and facilities within the sub-area. This is regarded as a significant impact." [MSCP Draft Plan EIR/EIS at p. 416-24] 112(e)

How will the city mitigate the loss of housng units and resulting impacts in housing affordabilty? (i.e., significant increases to market-rate housing costs). 112(f)

Land Use Impacts

The EIR/EIS makes conclusions similar to the housing impacts regarding the Plan's impacts on land use. Again, these impacts *can* and 112(g)

should be mitigated. SDAR strongly agrees with these conclusions of significance. 112(g)

The California Environmental Quality Act (CEQA) requires agencies to adopt feasible mitigation measures in order to substantially lessen or avoid otherwise significant adverse environmental impacts. (Public Resource Code Sections 21002, 21081(a); CEQA Guidelines, §§ 15002(a)(3), 15021(a)(2), 15091(a)(1).) We are, however, outraged that the Draft EIR/EIS proposes no mitigation measures to alleviate these impacts. It is within the local jurisdictions' police power to mitigate these impacts because the mitigation would be reasonably related to the public welfare (Associated Homebuilders, Inc. v. City of Livermore (1976) 18 Cal.3d 582, 604). 112(h)

SDAR cannot support the MSCP Plan unless we receive a response from the city to address how these impacts will be guaranteed. 112(i)

The EIR/EIS fails to analyze properly the MSCP's potential impact on the future affordability of housing. Instead, it simply states, without any evidence, that "development costs would be higher (if the MSCP is not adopted). . . because more expensive environmental mitigation would be required on a project-by-project basis." It would appear that this conclusion is based on the unsubstantiated assertion that the MSCP will streamline the environmental process for development projects. As stated above, SDAR is not convinced of this conclusion and would like to see hard data of how this can be acheived. 112(j)

Funding

The third issue of concern to SDAR, which is not a subject of the Draft EIR/EIS, but is the question being asked (or should be asked) by every citizen in the region—**who is going to pay for this program?** 112(k)

SDAR has long taken the position that if, in fact, species and habitat preservation is critical and important to the region, then the region as a whole, should be financially responsible. The cost of that public good should not be borne by a one class of citizens (i.e., homeowners) merely because the selected financing mechanism is the easiest to implement. What we are speaking to is the much-discussed parcel tax for the local funding portion of the MSCP Plan. 112(l)

A parcel tax impacts only property owners—not all the region's citizens who will benefit from the preserve. It directly impacts the cost of property whether it is commercial or industrial land used to produce income and taxes or whether it is residential land used to shelter people who have worked hard to achieve the ever-illusive American dream. 112(m)

112

The San Diego Association of REALTORS® will not, and we repeat, will not, support a parcel tax. Even if the MSCP Plan provides valuable benefits to the region, its assurances are guaranteed, and its impacts on housing are mitigated; SDAR cannot support a funding source that is so unfairly limited in scope and chosen only because it is the most expeditious method of securing local funding. 112(n)

The funding must be broad-based such as a sales tax, Department of Motor Vehicles registration fee, or utility tax. Until a broad-based funding source is identified and secured, SDAR will not support the MSCP. The securing of this funding source is not only advocated by this Association, but required by the Federal Endangered Species Act, which mandates that adequate funding for a habitat conservation plan, which the MSCP is intended to be, must be secured. 112(o)

Will the city address the preferred funding alternatives and identify those funding sources before signing their agreement with the state and federal government? 112(p)

Project Description

One of the major reasons why SDAR has not taken a formal position on the MSCP is because SDAR is well-aware of the current federal and state regulations which make the use of one's land very, very difficult. The Association understands the MSCP may replace the current regulations with a program which meets one of the MSCP's stated objectives of establishing and maintaining "a workable balance between preservation of natural resources and to convince SDAR that this objective will be achieved. The project description must provide "an accurate review of the project (so that) affected outsiders and public decision-makers (may) balance the proposal's benefit against its environmental costs, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the "no project" alternative) and weigh other alternatives in the balance (County of Inyo v. City of Los Angeles (1977) 71 Cal.App.3d 185, 192-193). 112(q)

Expansion of Authority

Because the MSCP "covers" unlisted species, the MSCP is a vehicle which would give the United States Fish and Wildlife Service and the California Department of Fish and Game jurisdiction over substantial amounts of land development activity where they currently have little or no say. In addition, the MSCP would provide local agencies with new regulatory power over habitat and species. As a result, the state and federal governments will participate in local matters and the local government will assert state and federal powers. 112(r)

112

This represents a massive expansion of the regulatory powers by all jurisdictions involved. Again, it is another reason why SDAR is not convinced that the MSCP's objective of preservation and economic prosperity can be achieved. Government regulations have proven time-and-time again that they add expense. There is nothing in the MSCP that convinces SDAR that the time and expense which will come with the MSCP will be worth the unexplained benefits touted by its proponents. 112(r)

Will the city work with other government agencies to formulate a streamlined process where only the local agency coordinate and approve development permits? 112(s)

Many, many SDAR members have listened to the proponents of the MSCP with concern. However, the Association was willing to delay formulating a final position while it learned more about the MSCP's impacts, benefits, and costs. The Association is still not satisfied with the responses to those issues and therefore, frankly, many members are urging the Association to take a stand against the MSCP. 112(t)

The San Diego Assocation of REALTORS® requests a written response to the questions posed in this letter before the City Council proceeds to approve the final EIR/EIS Plan for the Multiple Species Conservation Program. 112(u)

Our Association appreciates the opportunity to provide input during the MSCP EIR/EIS public comment period and would appreciate remaining on your circulation list to receive future mailings.

Very truly yours,

Matt Giacalone

Matt Giacalone
President, San Diego Association of REALTORS

Enclosure

cc: Mayor and City Council
Board of Supervisors

113 ISABELLE KAY, CARMEL MOUNTAIN CONSERVANCY, OCTOBER 29, 1996

R **113(a)** The reference on page 2, City of San Diego Subarea Plan (MSCP Plan, Volume II) would be changed as follows to correspond to Section 9.17 of the City of San Diego Implementing Agreement: Most of the listed projects are approved with EIR certified. Refer also to response to Comment 20(v).

113(b) Vernal pools are not categorized as a separate habitat type in the MSCP data base. Please refer to responses to Comments 83(e) through 83(l) for discussion of protection of vernal pools as part of the MSCP Plan.

113(c) The fragmented habitat patches remaining within the urban areas of the City of San Diego's MSCP Subarea Plan do contain remnant populations of covered species. The inclusion of species such as mule deer, wart-stemmed ceanothus and least Bell's vireo on the covered species list did not depend solely on the persistence of these populations in the fragmented habitat patches. For more narrowly distributed species, such as San Diego button celery, snake cholla, California least tern, light-footed clapper rail, etc., some of these urban fragments provide important habitat. For those species to be covered, protection and management of key habitat areas, including fragmented habitat patches, (e.g., least tern nest sites in Mission Bay) were taken into consideration in developing the Covered Species List.

113(d) The MSCP analysis of covered species is based on the preserve design as a whole, not on whether or not a species persists in each patch of habitat. The preserve would include all public lands that the City of San Diego is committing to the preserve system. Populations of some animal species supported by these fragmented habitat will likely persist over time based on their connectivity and/or proximity to other conserved habitats.

113(e) The Carmel Valley Neighborhood 10 Plan was approved containing two wildlife corridors that converge in Shaw Valley, just southwest of Shaw Ridge and then lead northward out to CVREP. These corridors were approved with bridges and culverts to allow wildlife continuous and passage to and through the corridors. The north-facing slopes of Carmel Mountain are an integral part of this system. The north-facing slopes of Shaw Ridge directly to the east of Carmel Mountain, across Carmel Country Road are not considered to be as important as the corridors connecting CVREP to Los Peñasquitos Canyon preserve because they are excessively steep and located between existing and planned development. The major wildlife movement in this area is expected to occur via CVREP and the Carmel Creek floodplain area.

113(f) Comment noted.

113(g) Map labels were constrained by the scale of the maps in the draft document. As many labels as the maps could practically support were on the maps. The City of San Diego Development Services Department maintains versions of the maps at 1 inch = 800 feet scale to better view the details, and any member of the public is invited to make appointments to see these. The maps outline the proposed MHPA and shows where development (i.e. preserve) is intended to occur. Specific proposals for development are not included on the maps as these often change during the submittal process, or may be withdrawn, however these should all occur within the designated development envelope.

113(h) The culvert dimension is correctly referenced as a maximum 2:1 length-to-width ratio.

113(i) Comment noted

113(j) Item C-12 is a note that refers to the need to bridge the major wildlife corridors in the northern area, and is placed at several locations where major roads would cross corridors, and bridges are expected to be provided. The canyon just east of the current (old) Carmel Valley Road as it climbs the hill toward Del Mar Heights Road would provide the connection from Carmel Valley to Gonzales Canyon and into the San Dieguito River Valley. It would need revegetation to provide cover for wildlife as the majority of it is currently being farmed. See response to Comment 76(al).

113(k) The term "adequately conserved" was used in the MSCP Plan to denote those species considered in a preliminary analysis to meet the take authorization issuance criteria, as provided for take authorizations permits in Section 10(a)(1)(B) of the ESA and for management authorizations pursuant to CESA and NCCP. These criteria require that 1) the taking would be incidental; 2) the applicant would, to the maximum extent practicable, minimize and mitigate the impacts of such taking; 3) the applicant would ensure that adequate funding for the plan would be provided; 4) the taking would not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and 5) the measures, if any, required by the U.S. Secretary of the Interior, would be met. Table 3-5 has been revised to reflect whether or not species are expected to meet these criteria. Please refer to revised MSCP Table 3-5 included in the Revisions to the MSCP Plan, January 1997.

113(l–s) See response to Comment 20(ap).

113(t) The amount of habitat conserved in viable patches will constitute the majority the preserve habitat. The conservation rate of core habitat areas, except those which are dominated by military lands (Point Loma and Kearny Mesa), range from 60 percent to 96 percent (MSCP Figure 3-5). These core areas support the majority of sensitive resources that are to be conserved by the MSCP Plan. By conserving habitat in larger blocks, and connecting smaller areas with habitat linkages, the preserve's function is maximized for the covered species.

113(u) The proposed project would not replace RPO, and the comparison of the preserve and lands subject to RPO is not relevant to the impact analysis. The subsequent rezoning of the areas within the preserve combined with the implementation of a revised RPO, the Environmentally Sensitive Lands (ESL) Ordinance is expected to protect biological resources. Subsequent rezoning and implementation of the ESL would be subject to separate CEQA review. It should be noted that in the interim between the time the preserve is approved and ESL is implemented, RPO would be in effect; in addition, other regulations such as Coastal Development permits would also continue to regulate development.

113(v) The I-5 undercrossing is a separate project, planned and designed prior to the MSCP Plan. Caltrans is responsible for the project and its environmental review, which occurred in 1989-1991.

113(w) Comment noted. Wildlife movement in the vicinity is constrained by the relatively low overcrossings of I-5 and Sorrento Valley Road over Carmel Creek as it drains into Los Peñasquitos Lagoon.

113(x) MSCP staff analyzed this connection during the review and approval process for the Sorrento Valley Community Plan and Carmel Mountain Road projects, and concluded that the amount of traffic (with associated noise and roadkill impacts) on Carmel Mountain Road, combined with the width of the existing overpass/bridge structure, is not expected to accommodate significant wildlife movement in the long-term. There is no remaining vegetative cover in the area, development of the Sorrento Hills Community Plan area east of the freeway is already approved, and all remaining connections with Los Peñasquitos Canyon preserve have been lost as a result. See response to Comment 115(e).

113(y) See response to Comment 45(bz).

113(z) The analysis to determine the Covered Species List and the EIR/EIS analysis were based on the Manager's Compromise Plan for Carmel Valley Neighborhood 8A. These analyses utilized the studies and draft EIR for the Neighborhood 8A Precise Plan.

113(aa) See response to Comment 20(ap).

113

Carmel Mountain Conservancy
P.O. Box 910424
San Diego, CA 92191
(619) 682-7026

29 October 1996
Via Facsimile, followed by hard copy

John Kovac
Development Services Department
Land Development Review Division
1222 First Avenue, Mail Station 501
San Diego, CA 92101
FAX: 236-6620

Dear Mr. Kovac,

The following comments are submitted on behalf of the Carmel Mountain Conservancy. The Conservancy has been active for almost two years in efforts to preserve the remainder of Carmel Mountain (i.e. all of Neighborhood 8A) as public biological open space in perpetuity. We view the Multiple Species Conservation Plan as a program with great potential, perhaps the last chance for integrated land use planning and significant conservation. We hope that these comments will help to refine the implementation of the plan.

The MSCP was analyzed by examining three separate documents, and the comments below are segregated by document.

MSCP PLAN, VOLUME II (AUGUST 1996)

SUBAREA PLAN - CITY OF SAN DIEGO

p. 2: How can the projects listed here have been approved when many had not (and some still do not have) completed EIRs? The meaning of a project's presence on the negotiated project list is not made clear, and each of these should have been clearly detailed in the MSCP EIR. **113(a)**

Table 1: Why are vernal pools not listed? Even if the acreage is small -- and it certainly shouldn't be "undetectable" if the critical watersheds are included -- this rarest of habitats must still be counted. **113(b)**

Urban Areas

p. 17: Should fragmented habitat in the urban area really be considered to preserve species such as mule deer, wart-stemmed ceanothus (which requires fire in the long-term), and Least Bell's Vireo, (which requires flooded areas within larger riparian systems?) **113(c)**

The urban areas to be included in the Preserve should be clearly listed, not broadly included in a partial listing (p.17); otherwise it is impossible to judge which species might actually justifiably be "covered" in this area. 113(d)

Northern Area

The descriptions of the southwestern portion of this area claims that Neighborhood 10 contains "two major wildlife corridors that converge at CVREP." This is wishful thinking; the construction of Carmel Country Road is almost certain to have a devastating impact on the movement of wildlife through the area, blocking access to CVREP, and cutting off the high quality SMC habitat on the north slopes of Carmel Mountain from other north-facing slopes of Carmel Valley to the east. Where are the data to support the above quoted statement, especially in light of recent grading and landform changes? 113(e)

Neighborhood 8 largely includes Palacio del Mar, a dense housing development in the Carmel Creek floodplain; this is not just "existing homes, ranches and rural-oriented business" as described. 113(f)

Preserve guidelines

The discussion of the numbered sites -- largely intended wildlife corridors -- is quite inadequate because the scale of the map and the lack of infrastructure labels makes it difficult to determine where many of the locations are. Furthermore, intended housing developments should have been called out in these areas so that the public could determine which parcels of land and which developments contribute positively or negatively to the Preserve Design.) 113(g)

- Carmel Valley

The culvert description probably means a minimum 1:2 width-to-length ratio, or a maximum 2:1 length-to-width ratio. 113(h)

Item C7: consider making a ford (level crossing) and close Sorrento Valley Road permanently to automobile traffic- except emergency vehicles. This road is inadequate as it stands for the purpose of accessing Sorrento Valley businesses, but its widening should be out of the question because of further direct and indirect impacts to Los Peñasquitos Lagoon. This would greatly reduce edge effects on the Lagoon, and it needs every bit of help it can get. 113(i)

- FUA

What is item C-12? Which canyon is a linkage between Carmel Valley and San Dieguito River Valley supposed to go through?

Why is there no discussion of the impacts of the extension of State Route 56? 113(j)

- Rancho Peñasquitos and Beeler Canyon

What is item C-27? It is not shown on the map, and why is it exempt from OR-1-2 re-zoning?

MSCP PLAN, VOLUME 1 (AUGUST 1996)
SECTION 3: CONSERVATION PLAN

In general, species should not be considered "adequately conserved" if there will be no remaining habitat, whether the species is a plant or an animal. 113(k)

A discussion of several species about which the Carmel Mountain Conservancy is particularly concerned follows:

Arctostaphylos glandulosa var. *crassifolia*: The last remaining populations of Del Mar Manzanita within a matrix of undisturbed habitat are found over the entire area of Carmel Mountain, in vegetation dominated by both coastal sage scrub and southern maritime chaparral. It is clear that the current plan (the "Manager's Compromise Plan" for N8A) to develop Carmel Mountain is completely incompatible with this plant being listed as adequately conserved, as it is highly likely that construction impacts, landform changes, intensified recreational use, and fire management on behalf of proposed housing would preclude long-term survival of these populations. This plant requires preservation of all populations within the habitat matrix that will allow it to reproduce successfully. Sandstone terraces and bluffs on which it is found and where it might spread need to be protected from alteration by human effects. **This plant cannot be claimed to be adequately conserved** under the current MSCP plan because it does not preclude that the "Manager's Compromise Plan" will be implemented. 113(l)

Brodiaea orcuttii is found in large densities in vernal pools on Carmel Mountain. These are in the area proposed to be developed under the city of San Diego "Manager's Compromise" Plan for N8A. These pools on Carmel Mountain may represent one extreme of the range over which the species occurs, so it is critical that these populations be preserved to protect the full range of genetic variability of the species. **This species cannot be considered to be adequately conserved** under the current MSCP plan because of the possibility that the "Manager's Compromise Plan" will be implemented. In addition, very little vernal pool habitat is protected by the Preserve, and there is no clear protection for vernal pools outside the MHPA. 113(m)

Ceanothus verrucosus : Carmel Mountain contains one of only two concentrations of this species, and the only remaining coastal populations. Wart-stemmed ceanothus occurs over the entire area of Carmel Mountain, in areas denoted as both Southern Maritime Chaparral (northern area) and Coastal Sage Scrub (southern area.) Because of the "Manager's Compromise Plan" for N8A, in the Carmel Mountain area none of the major populations are slated for conservation, and 9 of the 13 minor populations are to be destroyed. Due to this plant's fire-adapted life cycle, it is highly unlikely that it can be adequately managed in any areas close to development. Currently the city is only protecting 33% of the 113(n)

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known populations in the MHPA, and therefore this species **should not be considered adequately conserved.** 113(n)

Corethrogyne filaginifolia var. linifolia: This narrow endemic occurs only between San Dieguito River valley and Los Peñasquitos canyon, with by far the largest population occurring on Carmel Mountain. This plant is found particularly in the areas of Carmel Mountain not slated for preservation under the Manager's Compromise Plan for N8A, and should therefore **not be considered adequately conserved** under the current MSCP plan. The City of San Diego is responsible for almost 90% of the species, so its conservation measures with regard to this species will affect coverage for the remaining jurisdictions within the MSCP. 113(o)

Dudleya blochmaniae ssp. brevifolia: This species was recently not listed by the Federal government because of the conclusion that it is adequately protected by the MSCP. This is a fallacious argument in light of the current MSCP plan, notably the current Preserve design on Carmel Mountain, which is dictated by the "Manager's Compromise Plan for N8A." These populations need to be protected within the habitat matrix, and with adequate protection for the upslope watershed. If the preserved area is small, Dudleya conservation will conflict with other projected uses of the Preserve in this area, including running, walking, horse-back riding, and mountain biking. A much larger area of Carmel Mountain needs to be set aside than what is proposed in the Manager's Compromise in order to encompass mixed use of the area as well as occupied and potential Dudleya sites. Under the current MSCP Plan, this species **should not be considered adequately conserved.** 113(p)

Ferocactus viridescens: One of the densest populations of Coast Barrel Cactus in the world was found on Carmel Mountain. Recently, over one third of the area in which they occurred has been destroyed due to recent land grading for Neighborhood 10. This represents a dramatic decline, and more is to be destroyed under the Manager's Compromise Plan for N8A. . Although 81% of major populations may be "conserved" within the MHPA, it is highly likely that the continued development to be allowed within the Preserve (25%) will impact many more, due to the vulnerable areas in which they occur. It is also not known how variable the genotype is, so that a failure to preserve the plant throughout its range may not adequately preserve the species. 113(q)

Muilla clevelandii: Current plans for the development of Carmel Mountain will eliminate most if not all known and potential habitat for this plant as there is no preservation of the vernal pool habitat proposed. This would eliminate the most coastal location for this species, thus perhaps decreasing its genetic variability significantly. 113(r)

Phrynosoma coronatum: Carmel Mountain is one of the few sites in coastal San Diego where the Argentine ant is not an immediate threat to the long-term survival of the Coast Horned Lizard. The relative isolation of the mesa top 113(s)

(except where the Sorrento Hills development impinges to the south) is one of the features which makes Carmel Mountain unique, and makes it a haven for native harvester ants and horned lizards. There is excellent habitat and harvester ants are common. However, the current development plans for N8A will inevitably introduce large numbers of Argentine ants and encourage their spread into any remaining habitat proposed for preservation. 113(s)

MULTIPLE SPECIES CONSERVATION PLAN: DRAFT EIR (DEP NO. 93-0287) - (AUGUST 1996)

BIOLOGICAL RESOURCES - MHPA IMPACT ANALYSIS

In general, there is no clear distinction of the acreage of habitats that are in disjunct, fragmented patches from the acreage in large, contiguous preserve areas. While the habitat patches are certainly of value to many species, it should be made very clear the actual accessible and usable acreage of various habitats that are proposed to be conserved for the long-term survival of each covered species. 113(t)

B.1.4.2 San Diego City Implementing Actions

In this section there is no analysis of the differences in acreage between the proposed Preserve and the lands that would have been protected under RPO. While it is stated that biological resources would benefit because land will be converted from urban to open space uses, this is obviously only on paper. Much of the land now slated for urban land uses in the Carmel Valley Community Plan and NCFUA Framework Plan is still undeveloped, and should be subject to RPO of equivalent standards. If the MSCP Plan does not produce conservation to at least these levels it may not be of benefit. 113(u)

- Carmel Valley Community Plan

There is no discussion of the violation of the basic guidelines for wildlife passages by the Caltrans I-5 undercrossing (C7), i.e. the dimensions of this essential corridor make it unlikely that wildlife will actually use it because of its great length and low height. It certainly will not function as corridors should. 113(v)

A discussion is needed of abandoning Sorrento Road as a way to mitigate for the cumulative impacts of the transportation corridor on the movement of wildlife in this area. 113(w)

The C6 linkage between Los Peñasquitos Canyon and LP Lagoon is the only functional one at the moment, and should without doubt be expanded.

The most direct connection for wildlife between the future Preserve area on Carmel Mountain and the Los Peñasquitos Lagoon (and hence Torrey Pines Preserve) is the recently destroyed one under I-5, now occupied by Carmel Mountain Road. This connection could be made viable again if the undercrossing were made wider to accommodate natural vegetation, and if a parking lot on the west side were restored. This is well within the capacity of Caltrans and should be considered and analyzed. 113(x)

The fact that Preserve boundaries in Neighborhood 8A (Carmel Mountain) may be modified by City Council action underscores the influence of special developer interests. Why are the hard-line boundaries not drawn here to include and preserve the previously identified high quality habitats on Carmel Mountain? The current configuration completely eliminates protection for high quality Coastal Sage Scrub and Vernal Pools on the site, and threatens the long-term survival of the Southern Maritime Chaparral. The entire mesa top has been designated highest quality habitat for over a decade, and a core biological area in the MSCP plan. Furthermore, elements of SMC and CSS are intermixed throughout the site, and the whole area constitutes a functional ecosystem, albeit barely large enough to survive at 400 acres, that cannot survive without the preservation of the whole mesa top. The hypocrisy of the entire planning process is herein revealed: small fragments of habitat continue to be created by this plan, yet it is touted as saving large, contiguous areas. 113(y)

The Preserve boundaries should be drawn to include all of Carmel Mountain, and the developers therein should be given the same opportunities and constraints as others: i.e. they should be required to protect 90% of the Tier 1 habitats, and should not be allowed total encroachment in excess of the RPO or equivalent MSCP standards in any proposed plans.

Furthermore, species that are now federally listed as endangered, including Del Mar Manzanita, occur in areas of 8A outside the current Preserve boundaries. The preserve lines should not remain as drawn in the Manager's Compromise Plan for 8A without a thorough investigation of the effects of the plan on the listed species' survival. 113(z)

Dudleya brevifolia was recently not listed as endangered or threatened because of its supposed protection by RPO and the MSCP subsequently. However, it is unclear how this plant will survive in the long-term with housing developments on Carmel Mountain, as proposed, very close by, and with its habitat open to recreational uses. 113(aa)

Table 4.3.13 lists losses of open space by habitat type in the City of San Diego. The area of Southern Maritime Chaparral listed as preserved in the MHPA is 1102 acres; where is this acreage? How will the MSCP need to change if SMC is listed as an endangered habitat?

Thank you for the opportunity to comment. Please do not hesitate to contact us if you have any questions.

Sincerely,

Isabelle Kay

Isabelle Kay

114 MARK DODERO, 10/14/96

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114(a) Comment noted.

114(b) See Theme **Response XVI, Risk Factors and XIX, Preserve Management.**

Although all of the remaining vernal pool habitat is not included within the boundaries of the Multiple Habitats Planning Area (MHPA), its protection is not considered to be piecemeal.

Approximately 3,254 acres of vernal pool habitat occurs within the MSCP study area, most of which (2,071 acres, or 64 percent) is under military jurisdiction at MCAS Miramar. These lands are outside of the protection and management purview of the MSCP Plan. Of the remaining 1,183 acres which are in the MSCP study area, 847 acres (or 72 percent) occur within the boundaries of the Multi-Habitat Planning Area (MHPA). Approximately 40 acres of additional vernal pool habitat is being preserved as part of the California Terraces-Otay Corporate Center North and South projects on Otay Mesa, resulting in the conservation of a total of 887 acres (or 75 percent).

For unavoidable impacts to vernal pools which occur outside of the MHPA, mitigation ratios that range from 2:1 to 4:1 would be required. This equates to conservation (through acquisition and/or restoration) which ranges from 67 percent to 80 percent. For purposes of the MSCP analysis, a 70 percent level of additional conservation through such mitigation is assumed. This results in the conservation of an additional 151 acres of vernal pool resources, bringing the total to 1,038 acres, or 88 percent.

All vernal pools within the MHPA would be conserved at 100 percent, regardless of the underlying percent preservation category. This adds a level of protection for pools which are identified in the future, as well as existing pools. Conservation measures in the City of San Diego's Subarea Plan state that wetlands, including vernal pools, would be preserved at 100 percent inside the MHPA and impacts outside of the MHPA would be avoided to the maximum extent feasible. The proposed Vernal Pools Unit of the San Diego National Wildlife Refuge would provide management oversight for vernal pools and their constituent species, contributing towards recovery goals for listed taxa through the preservation of existing and historic habitat. In some areas, refuge boundaries exceed those of the MHPA. Vernal pools are also afforded protection through the Clean Water and Endangered Species Acts.

114(c) See **Theme Responses XVI, Risk Factors and XIX, Preserve Management.**

114(d) See **Theme Response XXVI, Wetlands Protection.**

114

City of San Diego
Development Services Department
1222 1st Ave. Mail Stop 501
San Diego, CA 92101

October 14, 1996

RECEIVED
OCT 5 1996
DEVELOPMENT SERVICES

RE: Comments on MSCP

To whom it may concern:

My name is Mark Dodero and I am a native San Diegan and a professional biologist. There are several outstanding issues regarding the proposed Multiple Species Conservation Plan which I wish to address. Although I am fully supportive of this type of regional planning effort I am concerned that the long-term viability and sustainability of some MSCP target species populations will not be reasonably assured by this plan.

In the southwestern United States and northwestern Mexico, changes in the distribution of habitat types and their associated species are well document over the last few thousand years. Changes in climate over time are inevitable, whether or not they are induced or enhanced by human activities. The only way species can survive these climatic changes is if they have the ability to move or migrate either along a latitudinal or elevational gradient. Providing an opportunity for species to move north or south and up and down slope is essential for their long-term survival. Many of the proposed MSCP linkage corridors are very narrow and will be constrained by development. These narrow habitat linkages will suffer deleterious edge effects. Adjacent development and the associated disturbance will increase the risk that invasive exotic plant species will invade the habitat and degrade it. In at least one case, a proposed MSCP linkage corridor allows for active recreational use to take place. In my opinion, active recreational use is incompatible with the goal of the linkage serving as a wildlife corridor. Passive recreational activities can be allowed in linkage areas as long as native plant communities provide sufficient buffers to allow wildlife to use the corridor. Populations in any preserve areas which are surrounded by development and have no linkage to other habitat are doomed to local extinction over time. 114(a)

Another important issue is the lack of adequate protection for the rare and endangered vernal pool habitat. The piecemeal protection of individual vernal pool species outlined in the MSCP is unacceptable. Because the County of San Diego has already lost over 97 percent of its vernal pools, the protection, restoration and enhancement of entire vernal pool complexes should be given a high priority. Protection of upland mound areas surrounding the pools is also critical to the long-term viability of these pool complexes. Important vernal plant pollinator species are often associated with the upland sage scrub habitat adjacent to the pools. In addition, the alteration of the natural vernal pool hydrology in a given area can have significant negative effects on plants by changing the duration of water ponding. Disturbances as simple as driving a vehicle across a vernal pool when it is wet will create tracks which can drain the pool, thereby destroying the natural hydrology. 114(b)

It is also my understanding that the mapped populations and there relation to the boundaries or edges of the core biological areas have not been field verified. Field verification is critical to ensure that populations of each species have been correctly identified and that population sizes can be accurately estimated. A number of the target species are found near the edges of core areas which put them at 114(c)

great extinction risk over the long-term. It is well known that preserve areas adjacent to the outer edge or boundary will suffer habitat degradation because of disturbance and associated exotic weed invasion. A number of species including but not limited to *Ambrosia pumila*, *Hemizonia conjugens*, *Lotus nuttallianus*, *Navarretia fossalis*, *Orcuttia californica*, and *Pogogyne nudiuscula* will be at risk because they are inadequately protected by the plan. We already know that longterm survival of species is not ensured just by placing that species in a "protected" preserve area. Many preserve areas will require intense management to protect target species and this will be expensive. **114(c)**

The heavy losses of wetlands proposed by the plan are unacceptable. Greater protection should be given to wetlands and the goal of no net loss should be realized. I think the MSCP must provide greater assurance of protecting target species by evaluating and verifying the size and location of all target species populations before the plan is finalized. In addition narrow linkage areas should be widened and protection levels should be 100 % in these corridors. **114(d)**

Thank you very much for your attention.

Sincerely,

Mark W. Dodero

Mark W. Dodero
4243 Copeland Ave #3
San Diego, CA. 92105

115 MIKE KELLY, FRIENDS OF LOS PEÑASQUITOS CANYON PRESERVE, 10/27/96

R

115(a) Comment noted.

115(b) Please see revised MSCP Table 3-5 included in the Revisions to the MSCP Plan, January 1997, for conditions regarding coverage for *Ambrosia pumila*.

115(c) Issues relating to decisions on the proposed Vernal Pools Unit of the National Wildlife Refuge are beyond the scope of the MSCP Plan. A NEPA Environmental Assessment of this federal action was issued for public review in November 1996.

115(d) See **Theme Response X, Habitat Conservation Accounting Model.**

115(e) See responses to Comments 26(t) and 83(l). The creation of wetland habitat to ensure a "no net loss" of wetlands has been a major component of meeting this federal policy. Wetland habitats, including willow woodlands, freshwater marsh, and coastal salt marsh, have been successfully created from disturbed uplands. Creation of vernal pool habitat, however, has not met with similar success. As a result, the wildlife agencies do not accept creation as mitigation for vernal pool impacts. Restoration of historic vernal pool sites and enhancement of degraded vernal pools and their watershed, in conjunction with in-kind habitat preservation, are typically the mitigation measures that most effectively offset unavoidable impacts to vernal pool habitat.

115(f) The wildlife agencies are aware of the problems associated with translocation of native plant populations and recommend it only when knowledge exists regarding the positive outcome of previous efforts and a translocation site is available that has the right soil conditions and that has no existing native plant populations that will be negatively impacted. Regarding *Ambrosia pumila* specifically, the wildlife agencies have agreed upon a plan with the City of San Diego to avoid at least 90% of the population of *Ambrosia pumila* at the Mission Trails Regional Park Campground development site. The wildlife agencies are not requiring that 10% or less of the population to be impacted be translocated but would offer the opportunity to anyone else who would wish to work with these few plants.

115(g) Exotic predator control is seen as a significant issue and will be addressed appropriately. Please refer also to Comment 45(x).

115(h) The language in the Immigration Bill provides the U.S. Attorney General with discretion to waive the requirements of the ESA and NEPA for expeditious construction of the barriers and roads along the border areas. In October 1996, the wildlife agencies met with staff from Immigration and Naturalization Service (INS), Department of Justice, the Border Patrol, and Council on Environmental Quality in Washington D.C. to discuss this issue. As a result of this meeting, the INS stated that the U.S.

Attorney General had no intention of implementing this waiver and would enter into a memorandum of agreement with the wildlife agencies to ensure continued cooperation along the border.

115(i) Please refer to response to Comment 107(dt).

115(j) A primary benefit of the MHPA would be to retain vernal pools within a larger habitat reserve system, rather than as isolated patches of habitat surrounded by development. This would serve to ensure that the associated species that function to carry propagules, such as rabbits, waterfowl, and mule deer, would be present. The referenced plant species would be added to the City of San Diego's list of narrow endemic species in its subarea plan. Please see response to Comment 26(t).

115(k) Please see response to Comment 20(k).

115(l) Please see response to Comments 115(j), 115(b), and 83(l).

115(m) See response to Comments 115(b) and 45(f).

115(n) As biological surveys have not been conducted for the entire MSCP area, it is possible that a remnant population of red-legged frog could occur within the MSCP planning area where suitable habitat conditions persist. However, based on the available information, the wildlife agencies believe that this species is unlikely to occur in the study area. If it were to be found within the MSCP boundaries, the wetland habitat protection measures would allow for conservation of any newly discovered populations of this endangered species. The federal endangered status of the red-legged frog would not change with the approval of the MSCP. Federal actions that may affect this species, such as the issuance of a U.S. Army Corps of Engineers Section 404 permit, would still require consultation with the U.S. Fish and Wildlife Service under Section 7 of the federal Endangered Species Act. The MSCP Plan does not lower this species' status, it provides habitat protection and management measures that could benefit any extant populations. Please see response to Comment 45(g).

115(o) Seventy percent of freshwater marsh, riparian forest, oak riparian forest, riparian woodland, and riparian scrub would be conserved within the MHPA. Within the MHPA, management plans would address preservation of habitat within 500 meters of either side of occupied pond turtle habitat. The Sloan Canyon population is included within the MHPA boundary. Management measures could include signage, access control, etc. Predator control actions would be determined though the management plans. Please see response to Comment 45(h).

115(p) Several of the proposed management actions proposed are in the City of San Diego's management plan for its subarea plan (see MSCP Plan Volume II, City of San Diego Subarea Plan, page 94), including exotic plant removal and conversion of concrete and riprap channels within Sorrento Valley to natural bank and bottom channels, which should enhance wildlife movements under the "Merge".

115(q) The culvert improvements proposed for the Old Pomerado Road-Scripps Poway Parkway are not within the City of San Diego's jurisdiction, but are within the City of Poway's. These culverts were installed prior to biological work was initiated for the City of Poway Habitat Conservation Plan. According to Jim Nessel, Senior Planner with the City of Poway, bobcats and other small mammals are using the culverts. Undoubtedly, if funding were available and prioritized, improvements could be made at this intersection to benefit wildlife movement. The City of Poway acknowledges the importance of Beeler Canyon-Peñasquitos Creek as a wildlife corridor within its previously approved Habitat Conservation Plan, and has prioritized a portion for future acquisition as open space.

115(r) The portion of the San Dieguito River linkage that passes under Interstate 15 is within the City of San Diego's Subarea Plan boundary, not within the Lake Hodges segment of the Subarea Plan. This is why this linkage point was not discussed in the County Subarea Plan. The following will be incorporated into the City of San Diego's site specific management plan for the area:

- Evaluation of the northern shoreline approaches to the bridge for improving use by wildlife, including: redesign/elimination of barriers and fences and selective revegetation to facilitate wildlife movement;
- Patrolling of the I-15 bridge to control transient activity adverse to wildlife;
- Control of public access to the corridor through the fencing and other appropriate measures.

The San Dieguito River Park JPA will also be active in this linkage area in protecting and managing habitat lands and controlling human activities.

115(s) The MSCP Plan retains the existing riparian corridor. The City's management plan proposed a number of measures to protect, enhance or restore habitat lands within the linkage. Please refer to the MSCP Plan, Volume II, City of San Diego Subarea Plan, pages 101-104, for a detailed discussion of the City's management direction for this area. The linkage to the mountains to the east will be completed through the County's eastern NCCP Plan (the Multiple Habitat Conservation and Open Space Plan) and by the acquisitions and management activities of the San Dieguito River Park JPA.

115(t) The County Subarea Plan requires the preservation of this linkage in a functional manner. The exact number of acres and precise configuration will be determined based on the subarea plan's goals and criteria and implemented through the Biological Mitigation Ordinance and CEQA review process for individual projects. Each proposed project will be evaluated using the Goals and Criteria for Linkages and Corridors listed on pages 4-9 through 4-11 in Section 4 of the County Subarea Plan, Volume II of the MSCP study area. Adherence to these criteria and guidelines will ensure habitat connectivity within this part of the MSCP Plan. The wildlife agencies have also designated pre-approved mitigation areas (see County Subarea Plan Attachment 1, page 3) within the Metro-Lakeside-Jamul segment, which correspond closely to the major linkage areas that were designated as 70% preserved areas within the previous Draft MSCP Plan (July 1995). These areas were considered the important regional linkages that

required conservation if the MSCP preserve was to function properly in this part of the County. In the current MSCP Plan (August 1996), these same areas are to be the focus of on- and off-site mitigation, as well as acquisition through other funding mechanisms, thus preserving the significant linkages.

No wildlife movement study is proposed in this area at this time. Individual projects may require a study of this issue during project development. In addition, the MSCP Biological Monitoring Plan will monitor the habitat status and wildlife use of a number of key linkages within the Metro-Lakeside-Jamul segment of the County of San Diego Subarea Plan.

115(u) The development incorporating wildlife crossing C18 is the approved Fairbanks Highlands project. The at-grade crossing at the head of La Zanja Canyon is associated with a 2-lane residential road.

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Friends of Los Peñasquitos Canyon Preserve

P.O. Box 26523, San Diego, California 92196
619-484-3219 • 619-566-6489 • FAX: 619-271-1425

RECEIVED

OCT 30 1996

DEVELOPMENT SERVICES

Oct. 27, 1996

MSCP/MHPA EIR/EIS Comments
City Development Services Dept
1222 First St, MS 501
San Diego CA 92101

RE: Comments on MSCP Plan Draft EIR/EIS and incorporated referenced documents / DEP N0. 93-0287 / SCH 93121073

The Friends of Los Peñasquitos Canyon Preserve is a 501 (c) 3 non-profit organization with over 400 dues paying members formed in 1984 to protect Peñasquitos Canyon Preserve. Part of our mission has been to expand the preserve and to ensure that functional wildlife corridors and recreational trail connections to other open space areas are preserved. The MSCP is of obvious importance to our Preserve which is designated as one of the core preserves within the MSCP. The future biological health of our open-space park, of its plants and animals, depends in large part on the success of the MSCP. Peñasquitos Canyon Preserve, at 3,700 acres, is too small to maintain viable populations of many species of plants and animals without well-designed, fully functioning linkages or corridors to other core preserves. Whether due to a single catastrophic event (several of last week's fires were bigger than our entire Preserve) or the "death of a thousand cuts" inflicted by insidious "edge effects," a well planned MHPA is our safety net. It is the future reservoir of fresh genes, plants and animals that can rejuvenate or repopulate our area in the future. In a complimentary fashion, we too can serve as a source of flora and fauna for other core preserves — if they can get there. 115(a)

To avoid repetition and a waste of paper, we and other environmental groups commenting on the MSCP have worked out a rough division of labor in commenting on the documents. In this letter the Friends will focus on wildlife corridors and linkages — particularly in the north city area, some future MHPA management issues, and several amphibian species on the covered species list.

We strongly endorse the comments submitted by the following groups: The California Native Plant Society, the Endangered Habitats League, Save Wild Santee and the Buena Vista Audubon/Natural History Museum. We have not had the opportunity to review several other environmental groups' comments in time for this letter. One exception to not repeating comments is our desire to underscore the serious situation of *Ambrosia pumila*. We participated with CNPS in field surveys (Fall 1996) for this plant. The existing data on this plant proved to be largely erroneous, with this rare species being confused with *Ambrosia confertiflora*, a more common species, thus overstating the rarer plant's population points and sizes. Thus this plant is even more rare than previously thought. Coverage for this species can not be justified unless the existing major population on the future campground site in Mission Trails Regional Park is saved — not transplanted. Transplantation is too iffy a proposition to allow it to be used as justification for considering this species to be adequately conserved and covered under the MSCP. Avoidance of impacts is necessary to conserve *Ambrosia pumila*. 115(b)

Miscellaneous Issues

1. **San Diego National Wildlife Refuge (p. 3-1).** We note that the Winterwood and New Salem (Fieldstone) complexes of Vernal Pools are missing from the maps and discussion. We understand both complexes are to be saved. Both support large numbers of Federally Endangered Mesa mint and San Diego Button Celery, along with a host of other sensitive vernal pool related species. The Winterwood Complex is adjacent to a large finger canyon off López Canyon, part of the two-canyon Peñasquitos Canyon Preserve. Hence, it's prospects for future biological health are enhanced by these connections. Interpretive and management plans are currently being developed between a citizens group and the City of San Diego Parks and Recreation Dept. School-based environmental groups (elementary, junior high) have adopted these pools and provided volunteer help for a number of years. Will either or both of these complexes become part of the Refuge? 115(c)

2. **Monitoring of the MSCP Plan (4.3-178).** We agree with the proposal to use two independent processes to monitor the MSCP Plan. We understand the three year period proposed for the Biological Monitoring Plan. Annual data would be of minimal value given the year-to-year fluctuations common to many plant and animal populations. However, we disagree with the proposal that the annual accounting of the acreage, type, and location of habitat conserved and taken be reported publicly only every three years. Since the data will be compiled annually we strongly petition that it be publicly reported annually, in written form and reviewed in a public meeting with comments allowed. Since land use decision making is a highly political process, much can go wrong in a year — espe- 115(d)

115

cially when projects with large acreages are involved. Such large-acreage projects can decisively decide whether certain habitat or species goals can be met or not. Findings: function and value avoid impacts 115(d)

3. **Creation of wetlands.** In a number of places in the MHPA planning documents (Implementing Agreement. Exhibit I. ESL. p. 10) creation of wetlands is accepted as mitigation for future wetlands impacts. We strongly object to accepting this category of mitigation. While restoration or enhancement of vernal pools and other wetland types is proven to work by many years of research and practice, this is not true for creation of wetlands, especially vernal pools. Research and experience have demonstrated the opposite. The creation of fully functional wetlands that have an equivalent "value and function" to natural wetlands is still beyond our reach. The recent Vernal Pool Conference held in Sacramento, Calif. (1996), which brought together the leading experts in this type of wetlands, reported a general consensus that creation of vernal pools to date has been a failure. Our own local experience confirms this. We have observed "vernal pools" that were artificially carved out of the chaparral on the Del Mar Mesa as mitigation for natural pools destroyed by the building of Highway 52. After many years, the artificial pools do not come close to matching the "value and function" of nearby natural pools. 115(e)

4. **Transplantation of rare plant populations.** For a number of plant species, including *Ambrosia pumila*, transplantation of populations is proposed and used as justifying extending coverage to these species. We are not aware that transplantation or translocation of the *Ambrosia pumila* or other rare species with this condition on them has ever been successful. To justify extending coverage to the *Ambrosia* or other plant species we request the following conditions be met:

   1) it should first be documented that transplantation/translocation has been successfully done, or in the absence of such documentation

   2) research be commissioned and an analysis of the ecological conditions the plant requires be described, such as its soil and other abiotic requirements, any biotic associations such as obligate pollinators be identified, etc, and

   3) a small part of the population be transplanted to the proposed site(s) and carefully monitored for a period of no less than 5 years to prove the success of the transplantation.

   In the absence of proof that transplantation/translocation of a particular species is workable, coverage should be based on avoidance of the known populations necessary to ensure the plant's survival. 115(f)

5. **Exotic predator control.** Throughout the management plans for the various subareas the need for control of exotic predators such as bullfrogs, sunfish, feral cats, cowbirds and others is noted. However, the plans require demonstration of need before such control can be instituted. The burden of proof that a species is being harmed by a particular predator is placed on future preserve management. This is mistaken. Costly and time consuming studies are unrealistic and unnecessary. The scientific literature is replete with studies of the harmful predation of these exotic predators on many of the species proposed for coverage for the MSCP. Control of these exotic predators should be recommended without the need for redundant studies to be conducted. 115(g)

6. **Border Patrol/Illegal Immigration.** Recent decisions by the U.S. Congress to exempt the Border Patrol and related illegal immigration control activities from NEPA. ESA and other environmental review, coupled with liberal language in the MSCP itself raise serious questions about the viability of the MSCP in border areas. We request a review of the potential impact of these practices on the MSCP analysis, on the habitat and species in these areas. We believe both the illegal immigration and the efforts to control it are causing serious injury to future preserve areas, impacts that need to be quantified and analyzed for their effect on the over all MSCP, as well as specific species (see Arroyo toad below). 115(h)

7. **Limited Exemptions from Environmentally Sensitive Lands Regulations** (143.0116, Implementing Agreement, Exhibit L, Chapter 14, p. 7). We object to exempting the Calle Cristobal Assessment District area from the requirements of the ESL. No reasons are stated for this or other exemptions to the ESL. 115(i)

8. **Vernal Pool Species.** Officially listed endangered (Fairy shrimp, Mesa mint, San Diego Button Celery) and other sensitive species associated with vernal pools are covered under the plan viz-a-viz Federal and State wetlands regulations since vernal pools are not specifically included in the MSCP. We are concerned, however, that these regulations do not include sufficient buffers to adequately protect the hydrology of the pools. We are aware of isolated vernal pools surrounded by development where insufficient upland (mesa top) habitat was protected. This upland habitat is usually an important part of the hydrological functioning of the pools as well as home to species such as rabbits and mule deer that function to carry propagules from one vernal pool complex to the next — important for long-term viability and recovery. Conserving the "value and function" of wetlands requires protecting the watershed. We recommend that: 115(j)

   1) the MSCP Plan call for protecting vernal pool habitat and associated species as a complete hydrological unit, i.e., with the necessary upland watershed;

   2) *Popogyne ambramsii, Popoyne nudiuscula* and Orcutt's grass be added to the Narrow Endemic Species List (City of San Diego Subarea Plan, p. 111) since they are indeed narrow endemics; 115(k)

3) One vernal pool mitigation measure proposed in the San Diego Subarea Plan (p. 8, item A7) is ill conceived. A7 proposes "collecting and reseeding vernal pool species" from pools to be impacted into "other preserved Otay Mesa pools." In general it is not a biologically sound idea to move organisms from one pool into another, healthily functioning pool. It might make sense if the pool to receive the organisms is one being restored that is deficient in the natural soils and organisms necessary to have fully functional pools. 115(l)

Covered Species

9. **Arroyo southwestern toad (*Bufo microscaphus californicus*).** In participating in summer 1996 surveys for the Arroyo toad with a local expert on this amphibian we were struck by the quite specific habitat requirements of this animal. Many of San Diego's rivers and creeks, including Peñasquitos Creek, don't offer the shallow, slow-moving water, the lack of a canopy over the water, the sandy stretches in the creek and the sandy terraces for burrows this toad requires. This stands in contrast to species such as the Pacific chorus frog, which is less stringent in its requirements and can be considered ubiquitous in local waters. Walking an Arroyo toad transect in optimal habitat on the San Luis Rey River we were struck by the distance we found gravid females crossing to reach trilling, breeding males in the river. As research cited in the species evaluation briefing papers indicates these toads need up to 1 km of habitat beyond the immediate stream or river, including upland habitats for breeding success. The MHPA preserve design and plan is deficient in several respects for the Arroyo toad, not the least of which is the lack of adequate data upon which to base a decision. We recommend that the following conditions be required to justify coverage of this species and that take of this species or its habitat not be permitted until they are met:

   1) Site specific surveys must be done in all areas that contain potential toad habitat to identify existing populations, especially the larger breeding populations;

   2) That predator control programs on bullfrogs, sunfish and other known exotic predators of the toad in its habitat be specified "a priori," without the need to prove harmful impacts (see note 5 above);

   3) That a 1 km buffer on each side of the riparian corridor should be required in known toad habitat areas. Relying on wetlands regulations for such protection will not work since the toad also utilizes upland habitats, even into chaparral and coastal sage scrub;

   4) That water bodies used as "flumes" or for other periodic discharge by water authorities (Jamul, Dulzura Creek, etc.) be studied for the impacts of such discharges on toad populations. Such a study can identify management practices for the water authorities that will minimize or eliminate detrimental impact on downstream toad populations. Agreement to such management practices by the water authorities should be required before a population is considered covered;

   5) That sand mining operations in drainages with known or potential toad populations be studied for their impacts on the toad. Coverage should not extended until it is proven such mining operations do no harm to the toad or its habitat (possible) or sand mining management practices identified and agreed to that eliminate identified negative impacts; if sand mining is shown to be detrimental to the toad new sand mining should be prohibited to justify coverage — the Sloan Canyon area is such an area and has an indeterminate status under the plan and has an application for sand mining pending and the toad is present;

   6) That ways be found to eliminate the negative impact of illegal immigration activities along prime toad habitat on Cottonwood Creek (see Border Patrol, point 6 above);

   7) That the status of the "white hole" of land below Loveland Reservoir be clarified since the toad has been identified in the area. 115(m)

10. **California red-legged frog (*Rana aurora draytoni*).** Coverage for this species is justified by the Plan because it is a "discountable" species, considered "possibly extirpated from San Diego County" that "would receive some protection per federal and state wetland regulations" (Table 4.3-1, p. 4.3-19). Part of the coverage argument is that habitat suitable for the frog is being protected in the MSCP. Hence, should the frog "pop up" it would be protected goes the argument. However, this same habitat has proven unsuitable and has led to its likely extirpation locally. What has changed to make this habitat now suitable should the frog pop up?

    As an officially listed USFWS endangered species we believe the Red-legged frog will receive more protection if it is left off the covered species list. Despite the lack of species specific surveys we and various herpetological experts we have consulted are inclined to agree that it is unlikely this frog is reproducing in any of the major drainages within the MSCP study area. It would likely have been recognized during other surveys. However, it is possible that it is hanging on in minor tributaries, drainages, or ephemeral wetlands not yet dominated by exotic predators such as the bullfrog or large-mouth bass. We believe that it could be surviving in areas that would "fall between the cracks" of the wetlands regulations the MSCP proposes to rely upon for future protection of wetland species and habitats. Hence, we object to extending coverage to this species which would allow its "take" outside the MSCP. Any population of this animal in our local area should be protected in the future whether in or out of the MSCP. Allowing it to stand with its Federal status is a better protection for it than granting MSCP coverage, which effectively lowers its level of protection. Such measures are necessary for a species in decline throughout its known range (Drost, C. and G. Fellers. "Collapse of a Regional Frog Fauna in the Yosemite Area of the California Sierra Nevada, USA." *Conservation Biology* Vol. 10. No. 2. April 1996). 115(n)

115

11. **Southwestern pond turtle** (***Clemmys marmorata pallida***). Question. Table 4.3-1 reports "70% of riparian habitats and freshwater marsh" as conserved, yet the MSCP Species Evaluation 1996 update in the "briefing book" reports just "52% of these [freshwater marsh and riparian] habitat types are identified as conserved by the plan." Which is the correct figure? The difference is substantial. We concur with the same species evaluation paper that "Adequate buffers may not be present in the current preserve design to conserve nesting areas of this species" and that "Most areas within MHPA appear to have insufficient upland buffers." We recommend the following conditions be adopted to justify coverage:

115(o)

1) that a buffer of 500 meters, including upland habitat, be conserved on either side of streams with turtle populations. Wetlands regulations would often fail to conserve sufficient land;

2) that the population in Sloan Canyon be protected;

3) that jurisdictions be required to post signage in appropriate locations against collecting of this species; and

4) that an "a priori" finding is assumed that the mere presence of known exotic predators on this turtle is sufficient "proof" of the need for exotic predator control.

Linkages

12. **The "Merge" Wildlife Corridor/Linkage.** This corridor is identified as "C6" on maps and in the text of MSCP Plan Draft EIR/EIS (City of San Diego Implementing Actions. B.1.4.2 (p. 4.3-88-90). C6). The Subarea Plan for the City of San Diego also discusses this linkage in the text (p.21). Both underestimate the wildlife usage of this corridor under the I-5 and I-805 freeways "(the Merge"), making recommendations under C6 (p.4.3-90) important. This underestimation probably flows from a report done by Ogden Environmental, the "Baldwin Otay Ranch Wildlife Corridor Studies," issued December 1992. This otherwise excellent report used corridors and linkages in the Peñasquitos Lagoon, Peñasquitos Canyon Preserve, Miramar Naval Air Station to establish baseline conditions for what worked and didn't work for certain target wildlife species (Mountain lion, bobcat and mule deer) in the way of tunnels, culverts, bridges and corridors. In descriptions of various corridors/linkages in the North City area with which we are familiar, however, we found an important error. The report identified the corridor labeled "C6" above as a "non-functional corridor" (labelled N1 in the Baldwin report). The current MSCP documents described it thusly: "The linkages to Torrey Pines State Reserve and Los Peñasquitos Lagoon from the east are tentative at best. In the south, a rip-rap channel winds west from Los Peñasquitos Canyon, underneath freeways, local roads, and railroad tracks to gain access to the Lagoon and State Park. This is most likely not being used by wildlife due to the restrictive conditions involved." Despite these gloomy assessments, both the MSCP Plan and the Ogden report considered this the best remaining linkage! Previously, the Carmel Mountain Road corridor had been the best functioning corridor in the north city area, carrying wildlife between Peñasquitos Lagoon and the state park to Peñasquitos Canyon Preserve, Carmel Mountain (8A) and the Del Mar Mesa. Hence, recommendations concerning the "Merge" corridor are important.

It's easy to underestimate this linkage because it is narrow and dark with rip rap on either side, extensive mud flats along the bottom and runs beneath five freeways, roads and bridges. The noise from the traffic above makes it impossible to hear anything near or under it. Despite these drawbacks, wildlife use it, including coyote, fox, mule deer, bobcat and many smaller animals. It is a fully functioning wildlife corridor despite its obvious constraints, and will require careful management and enhancement to protect its function as a corridor. It is a vital link to Torrey Pines State Park and Peñasquitos Lagoon.

Wildlife tracking surveys in this corridor have been conducted by the Friends of Los Peñasquitos Canyon Preserve for the Preserve and by Kevin Crooks, a Ph.D. candidate (Santa Cruz, M. Soulé) for Peñasquitos Lagoon. We have collaborated to share data and have focused specific attention on the "Merge." The Friends wildlife surveys have provided data to support this usage (data on file with our group and City of San Diego Open Space Division) by an abundance of wildlife, including bobcat and mule deer. One of the 20 wildlife transects surveyed by the Friends runs from Peñasquitos Canyon under the merge utilizing the channel. The channel (and the transect) continue into Sorrento Valley where it joins with Soledad (Carroll) Creek. The channel and transect continue under Sorrento Road and the Railroad tracks. The most recent quarterly surveys were conducted in July and October of 1996 and therefore represent up-to-date data. The 1992 Ogden survey may have missed one target species, mule deer, by concentrating on the mud flats and ignoring a levee running along the top of the rip rap on the north side of the Merge. This dirt levee is where our surveys have picked up mule deer tracks traveling under and through the "Merge." Perhaps because of their weight, mule deer utilize the hard packed dirt levee rather than the mud flats below. It's also possible their survey failed to pickup mule deer tracks since the Carmel Mountain Road corridor, an admittedly superior corridor, was still functioning in 1992. After the conversion of this corridor to a 6-lane freeway, the deer, along with other wildlife, may have been forced to use the inferior "Merge" corridor. Transect surveys seemed to indicate increased mule deer use of this corridor, possible due to the destruction of the most important wildlife corridor from the north city area west into Penasquitos Lagoon.

Both the Friends and Crooks surveys demonstrate heavy, consistent use of this corridor between the Preserve and the Lagoon. We recommend the following measures to enhance this important corridor:

115(p)

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1) The recommendation for noise abatement made in the Plan would be helpful.;

2) Improve the cover on top of the southern channel bank behind J&W Redwood. After the 1995 flooding this company altered the bank on top of the levee behind their fence line, including the removal of cover. Perhaps an agreement or easement can be negotiated with this property owner to ensure continued wildlife passage along this bank, that would involve a modest planting of additional cover; 115(p)

3) Monitor the new "Street A" (Sorrento Hills Community Plan), an extension of Vista Sorrento Court, immediately east of the "Merge" for its impacts on wildlife movement. This will add a sixth obstacle for wildlife in this corridor. We are particularly concerned that adequate cover exist along the northern approaches;

4) More cover along the northern bank from the merge west, behind the industrial park currently there, would be helpful for wildlife movement. A similar easement with the property owners there might prove helpful for wildlife;

5) Further west in the channel, as it approaches the railroad tracks and the Lagoon beyond, Giant reed (*Arundo donax*) becomes a barrier in many places to wildlife movement. Is is increasing dramatically in density in the area. If not eradicated, it is capable of completely blocking movement through the area. We recommend that this area and upstream in Carrol Canyon be targeted for removal of this exotic. Giant reed is already under control upstream in Peñasquitos Canyon Preserve.

13. **Beeler Canyon Future Urbanizing Area** (p.4.3-93). This section fails to discuss the wildlife corridor linkage from the Poway Segment of the MSCP into the west end of Beeler Canyon. This linkage is a continuation of the Penasquitos Canyon/Sabre Springs Open Space linkage that runs east from Sabre Springs up over the hills south of Poway Road to the intersection of the Scripps/Poway Freeway and the new Pomerado Road. Wildlife currently have a choice of using four 6 foot culverts that run 300+ feet diagonally across this busy, high speed intersection or crossing at grade. Several surveys by our group (1994, 1995, 1996) failed to find any evidence of any animal using the culverts to move from the old Pomerado road area into the Beeler Canyon area. (Ogden's 1992 Balwin /Wildlife Corridor Study anticipated this problem when the highways in this area were just under construction.)This is probably due to the deficient height to width to length ratio of the culverts and the dark, claustrophobic atmosphere — and the lack of fencing to prevent the traditional wildlife trails that lead up to and across the intersection from being used. These at-grade trails are being utilized to the detriment of the animals, evidence by road kill data on file with the City. The culverts are too low for mature deer to comfortably move through them. If funding should become available, reconfiguring these culverts into a well-designed tunnel corridor might be possible. Fencing should be installed throughout the intersection area to influence wildlife movement as part of such an improvement. 115(q)

14. **County of San Diego MHPA Project Impact Analysis - Issue 2 (Linkages). B.1.6.1. Lake Hodges Segment.** The discussion in this section (p 4.3-228) and in the Subarea Plan is deficient with respect to the San Dieguito River linkage under Interstate 15. While the management plans for many linkages are covered in much detail, little is said about this critical linkage.

Two surveys conducted by our group in Feb. 1996 found bobcat, fox, coyote, racoon and numerous smaller animals using this underpass. Notably absent, however, was evidence of mule deer use there or anywhere near the approaches. The I-15 underpass itself will serve as an adequate wildlife corridor and can be enhanced to suit the needs of wildlife. We make the following recommendations for this linkage:

1) A specific study is recommended for this linkage. A longer study should confirm or contradict our finding of mule deer absence under the I-15 bridge. If absence is confirmed it would be important to identify the nearest mule deer herds and the obstacles preventing their use of this underpass. This is the only east-west linkage we are aware of. The Green Valley corridor goes under I-15 just fine, but dead ends at Pomerado Road and housing developments to the east.

2) Improve the northern approaches to the I-15 bridge. On the northern shoreline, barriers such as the cemented trail, the wide berm on the north side devoid of vegetation and an old chain link fence make it difficult for wildlife to make a quick, direct passage under cover through the area. The approach on the east side of I-15 along the northern shore has generally good cover up to the rip rap. Exotics grow in the rip rap but provide poor cover on the water side. Replacing the rip rap and revegetating with good cover would facilitate wildlife movement on the water side. Deer are probably deterred by the very narrow, 1-2 level strip on top of the rip rap, close to the fence. The old fence, although it has a hole used by wildlife, should be removed. Confused animals, particularly easy-to-panic deer, could end up in trouble here.

3) There is evidence of transient occupancy at night under the bridge. There is no surer barrier to wildlife movement. Policing of this area and removal of transients will be an important management issue.

4) Improve the southern shoreline approaches. In general, these have a lot more promise than the northern, particularly under the bridge. It is narrower, but well wooded up to the bridge. Both approaches have usable trails. Key on the eastern approach on the south side is future development. The tree farm and nurseries probably don't impede wildlife movement in the evening. Other 115(r)

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types of development, particularly if allowed to encroach further into the open space, could impede wildlife. The extensive human activity notable on the south side (fishing, dumping) must be monitored and controlled. The hole in the Caltrans fence on the east end needs to be repaired and continually monitored to limit illegal access. There is evidence of evening parties on the western side. Such activity will definitely impede wildlife movement and needs to be eliminated. 115(r)

15. We were confused in trying to understand the future functioning of linkages in the San Pasqual Valley east into the mountains. Perhaps due to the different subarea and cornerstone land plans involved, we found no coherent narrative that made it possible to make a judgement on these land parcels or the configuration of the future corridors and preserve here. It would be useful to review and develop a more understandable narrative for this whole area. 115(s)

16. **B.1.6.1. Metro-Lakeside-Jamul** Segment (p. 4.3-229). Given the uncertainty of planning in this area and its critical importance for wildlife movement between core preserves, we recommend two things: 115(t)

    1) That target goals for linkages be adopted similar to those target goals for individual species and habitats, and

    2) that a specific study be commissioned to identify wildlife movement through the area at the current time, to aid in future land-use decision making.

17. The wildlife crossing identified as C18 doesn't identify which road and development it crosses, so it is difficult to react to the proposal for a possible at-grade crossing. Which road is this and in which development does it fall? 115(u)

Sincerely,

Mike Kelly

Mike Kelly, president

116 JAN FUCHS, CARMEL VALLEY COMMUNITY PLANNING BOARD, 10/30/96

R

116(a) The circumstances of Carmel Valley Neighborhood 8A, including: over a decade of processing applications, the existing Community Plan designating Carmel Mountain for urban land uses, and the inapplicability of the Resource Protection Ordinance to the largest parcel (Pardee Parcel A) in Neighborhood 8A; all contributed to the development of the City Manager's Compromise Plan. It is beyond the scope of the Draft EIR/EIS to rationalize a jurisdiction's subarea plan proposals. See also response to Comment 98(z).

116(b) Carmel Mountain (Neighborhood 8A) and Neighborhood 10 are depicted as Core biological Areas in Volume I of the MSCP Plan, Figure 2-2. In the opinion of City of San Diego and wildlife agency biologists, the habitat area and configuration associated with the Manager's Compromise Plan will support wildlife movement between Carmel Valley and Los Peñasquitos Canyon Preserve.

116(c) Five major populations of *Ceanothus verrucosus* occur within the MSCP Study area. Two are considered adequately protected, two occur on military land (MCAS Miramar/Point Loma) and the last occurs on Carmel Mountain. Conservation of the two populations that occur on military lands are beyond the scope of the MSCP, but preservation may be addressed in the Marine Corps' Natural Resource Management Plans. Conservation of *C. verrucosus* under the City of San Diego's Subarea Plan would include the requirement to include this species in revegetation efforts and active management to increase remaining populations. Short-leaved dudleya would likewise be actively managed for the maintenance and enhancement of the existing populations. Management would need to address any potential impacts associated with a change in the siltation regime.

116(d) Comments noted. See response to Comment 116(b).

116(e) There are no proposals in the City of San Diego General Plan that would reduce or eliminate protections for open space outside the MSCP boundaries. Additional language has been inserted in the General Plan to highlight the importance of preserving and maintaining community open space.

116(f) The Environmentally Sensitive Lands (ESL) Ordinance is not proposed with this project and is beyond the scope of this environmental analysis. The ESL would be the subject of subsequent, separate CEQA environmental review.

116(g) The open space areas in the Carmel Valley Community Plan would remain physically unchanged and not adversely affected. See also response to comment 116(e).

116(h–i) While the MSCP EIR/EIS sufficiently analyzes the cumulative impacts of future development proposals which may impact covered species, this document does not negate the need for subsequent EIR's. Site-specific issues, including but not limited to landform alteration, cultural resources, traffic circulation and other environmental issues, may require the preparation of subsequent environmental documentation to comply with CEQA. See also **Theme Response XXVI, Permit Streamlining.**

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CARMEL VALLEY COMMUNITY PLANNING BOARD
12760 High Bluff Drive, Suite 160
San Diego, CA 92130
PH: (619) 794-2500/FAX: 259-6173

October 29, 1996

John Kovac, Senior Planner
Development Services Department
Environmental analysis Section
City of San Diego
1222 First Avenue, 5th Floor
San Diego, CA 92101

SUBJECT: RECIRCULATED DRAFT JOINT EIR/EIS:

ISSUANCE OF TAKE AUTHORIZATIONS FOR THREATENED AND ENDANGERED SPECIES DUE TO URBAN GROWTH WITHIN THE MULTIPLE SPECIES CONSERVATION PROGRAM (MSCP) PLANNING AREA (LDR No. 93-0287;SCH No. 93121073)

Dear Mr. Kovac:

We concentrate on the inadequacy of the document regarding Carmel Valley open spaces and biological resources. We also address the EIR/EIS treatment of MSCP-driven proposed changes to the City of San Diego General Plan and environmental planning.

I THE EIR/EIS INADEQUATELY ADDRESSES CARMEL VALLEY OPEN SPACES AND BIOLOGICAL RESOURCES

Carmel Valley's Neighborhood 8A Has Critical MSCP Habitat and Linkages

Carmel Valley's southern area bordering the Los Penasquitos Canyon Preserve is a "biological core area" in the City draft Subarea Plan, valuable both as core habitat and linkages to the key planned and existing regional preserves. For this reason, we have argued consistently that the MSCP include Neighborhoods 8A and 10 in the plan.

The biology and corridor value of Neighborhood 8A (N 8A) is well-documented in both State "NCCP Conservation Guidelines" and the City's draft MSCP Biology Guidelines. 116(a)

The southern maritime chaparral, coastal sage scrub, other chaparral, and wetlands in this location and in this unique configuration support many MSCP target species. Preserving the habitat and connectivity of N 8A to Torrey Pines State Preserve and Los Penasquitos Canyon Preserve and Lagoon is essential to the stated overall goal of "preservation of as much of the core biological resource areas and linkages as possible." [ES-2] 116(a)

The EIR/EIS Inappropriately Ignores The Effects On MSCP Goals By Omitting N 8A From the "Hard Line Preserve"

Yet, much of N 8A is outside of the "hard line preserve" depicted. The EIR/EIS states only that "Preserve boundaries may be modified by City Council action on the Carmel Valley Neighborhood 8A Precise Plan." [4.3-90] Further, "...the Neighborhood 8A Precise Plan is currently being processed by the City. As a result, it is impossible to provide a map showing the precise locations of an MHPA (Multiple Habitat Planning Area) open space system." [4.2-22] And, yet, the N 8A Precise Plan being shown for analysis is the "Pardee/City Manager's Compromise Plan"

We believe the EIR/EIS is seriously flawed in this treatment of N 8A. All of the EIR/EIS's seven "biological tools used to generate and evaluate the MHPA" which are "consistent with the biological tenets presented in the November 1993 Conservation Guidelines," set forth on pages 4.3-3 through 4.3-5, indicate that all of Carmel Mountain/N 8A should be included in the preserve.

The board requests that the MSCP Plan EIR/EIS provide a clear, biologically substantiated explanation as to why all of Carmel Mountain/N 8A has not been included in the proposed MSCP preserve.

To Be Viable, the MSCP "Preserve" Must Include the Unique Habitat of N 8A; the Preserve Should Be Determined By Biological Criteria, Not In Response To Proposed, Unapproved Footprints

Southern Maritime Chaparral is listed as one of twelve major habitats which the MSCP is designed to preserve. The objectives of the MSCP Working Group "are to design a plan that...is ecologically successful." [1-17] Carmel Mountain's vegetation consists chiefly of Southern Maritime Chaparral (281.18 acres) interwoven with Coastal Sage Scrub (84.1 acres); Grassland (7.8 acres); Southern Willow Srub and Vernal Pools. It is characterized in the DEIR for N 8A as a "unique mosaic" of vegetation and habitat types. Southern Maritime Chaparral is an MSCP "Tier One Habitat." The draft City "Biology Guidelines" consistently have called for 100% preservation of any stand of Southern Maritime Chaparral 50 acres or larger, and non-fragmented. 116(b)

N 8A is the only possible "destination" habitat area, as well as the major remaining corridor and link, between Los Penasquitos Canyon Preserve and Lagoon and Torrey Pines State Preserve. Without Carmel Mountain as a destination habitat, the "corridor" between these vital preserves, already severely constrained through approved development at many points, will be over three miles long.

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Specific SMC plant communities argue for inclusion in the preserve, as Tier One habitat: "Ceanothus Verrucosus" is distributed throughout N 8A and the EIR/EIS calls it at "high risk" within the proposed preserve because there are only five major populations, and the majority of one of them—on Carmel Mountain—is not protected by the plan. [4.3-11] One of only three populations of the narrow endemic SMC species, short-leafed dudleya, is on Carmel Mountain. According to the EIR/EIS, "...the jurisdictions and other permit holders will specify measures in their subarea plans to ensure that impacts to these resources are avoided to the maximum extent practicable." [4.3-8]

The EIR/EIS assumption of N 8A, the "Manager/Pardee Compromise Plan", falls far short of accomplishing MSCP target preservation goals for these vegetative communities. Intense residential development a major road are within a couple hundred yards of the dudleya, requiring fencing. Since short-leafed dudleya, apparently, only lives in a particular siltation configuration, and, essentially, must migrate if that siltation pattern begins to change, both locating development close to the plant community and fencing dudleya would lead to demise.

The "Manager/Pardee Compromise Plan" also shows a large "finger" of development extending into the actual proposed preserve boundary, which would increase the edge effects on the remaining open space.

The value of N 8A habitat and its essential linkage to other MSCP core areas argue strongly for inclusion of most of N 8A in the "hard line preserve" focus of the MSCP. The City has been processing various precise plans for N 8A for more than thirteen years. We cannot understand why the EIR/EIS has been limited to a precise plan proposal which has been unanimously denied by the City Planning Commission and which has been the subject of two approved motions by the City Council indicating an intention to deny. In April 1996 the City Planning Commission recommended that "the biological resources should dictate the preserve boundary...based on the belief that the development proposal (Manager/Pardee plan) should not determine the preserve boundary within Neighborhood 8A." 116(c)

We believe that omitting N 8A in this manner from the preserve causes serious flaws in the overall MSCP effort and that the EIR/EIS cannot "talk around" this issue through reference to possible future City Council action. Similarly, the text in the City's draft Subarea Plan should reflect the quality of habitat and preserve guidelines appropriate to N 8A.

Discussion of community plan amendments ("City of San Diego Implementing Actions, B.1.4.2) should be revised to show all of N 8A in the preserve. This discussion should include how Carmel Valley Community Plan environmental goals would be affected by either (1) inclusion of N 8A in the preserve or (2) omitting much of N 8A from the preserve, as the current proposal does. Community Plan goals to be included are: "In a basic sense the open space is the most important land use aspect of the (Carmel Valley) community since it determines community structure while conserving the most important features of the natural environment." (CVCP, P. 92)

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II THE EIR/EIS SHOULD DIRECTLY EVALUATE THE FAR-REACHING CHANGES OF THE MSCP PLAN ON THE CITY'S GENERAL PLAN AND ENVIRONMENTAL PLANNING

Radical Changes In City Open Space Policy Affect Community Planning

Although it addresses the MSCP Plan in broad terms, the EIR/EIS only scantily evaluates the major changes in the City's General Plan "Open Space Element". This companion action to the MSCP Plan would directly re-focus the City's open space planning away from existing community plans to a primary empnasis on "the MSCP Preserve."

While we support the concept of naming a "preserve" to carry out federal and state mandates for protection of the California Gnatcatcher, we believe that other open space and biological goals should be retained. Namely, open space important to communities. Proposed new language to the General Plan "Open Space Element" considers that the primary purpose of the "Natural Open Space System (is to protect) many of the natural landforms that characterize San Diego...." as well as maintaining biodiversity.[draft Implementing Agreement, City of San Diego, August 13, 1996, Exhibit J] 116(d)

All Open Space Outside of the "Preserve" Is Reduced In Value by the MSCP Plan

Despite this stated goal, the proposed General Plan amendments re-prioritize all of San diego's open space system. An entirely new formula designates either "urban amenity open space" or "natural open space." "Natural open space" reads: "This category consists primarily of the biologically sensitive lands designated as an open space preserve in the City's Multiple Species Conservation Program...." [P. 304a] "Urban Amenity Open Space", on the other hand, is "more suitable for a wider variety of human and recreational uses than are lands in the Natural Open Space System...."

While community and regional open space plans now determine what lands can or can't be developed, the proposed new system , effectively, says 'The MSCP Preserve will determine what is or isn't sensitive.' As a result, there will be a reduction or elimination of protection of biologically-related resources and landforms within communities that currently serve to give our communities their form and character.

It appears that this entirely new view of open space is based on the MSCP philosophy that if land is not in the actual "hard line preserve", it will have no open space value to the City. In fact, the proposed changes to the General Plan "Open Space Element" start off with the deletion of existing language stating that "Open Space that is designated in adopted community plans forms the mainstay of this category." [P 304]

We believe that the existing focus on community plans for the City's open space planning is as important as MSCP-designated open space. Lands in community open space may or may not contain federal and state endangered species, but, they provide significant value to the City by forming a break from urban development. Hillsides, canyons, streambeds, etc. go far to preventing walls of development. The EIR/EIS 116(e)

should address the changes in focus and the impact of these proposed changes on open space planning for communities and the City as a whole. 116(e)

Proposed "Environmentally Sensitive Lands Regulations" Remove Existing Environmental Regulations Important To Communities

A second area of concern is that the EIR/EIS inadequately discusses the replacement of all existing environmental regulations with the proposed "Environmentally Sensitive Lands Regulations" (ESL) described in the draft "Land Development/Zoning Code Update." [draft Implementing Agreement, Exhibit L, Draft Environmentally Sensitive Lands Regulations and Draft Open Space Residential Zone (OR-1-2)]

Currently, community plans are drawn and open spaces, biologically sensitive areas, and hillsides are protected through the City's Resource Protection Ordinance, Hillside Review Permit processing, etc. The language of the proposed new ESL clearly replaces these regulations, eliminating community-specific preservation. 116(f)

Because the effect of these changes is to sublimate all community-based open space--whether valuable for biological or landform reasons—to the MSCP-designated open space lands, the EIR/EIS should clearly evaluate the effect of this on existing communities and the open spaces connecting them. 116(g)

It is Questionable If Future Development Proposals Will Be Reviewable By Communities On Their Own Merits

A third area of concern is the "streamlining" of environmental review through adoption of a final MSCP Plan [EIR/EIS 2.1.1.4] "Environmental compliance (CEQA/NEPA)...is accomplished through a joint EIR/EIS for the MSCP Plan and all concurrently submitted Subarea Plans...." In other words, adoption of a final EIR/EIS for the MSCP is seen to be sufficient for all following land use plans and their amendments. In fact, "Subarea Plans submitted subsequent to the EIR/EIS will require additional environmental review, although such documents may tier off the joint EIR/EIS."

This proposal essentially says that the final EIR/EIS will apply for all CEQA review. Development proposals in communities will "tier off" the master EIR/EIS. 116(h)

This proposal further lessens the importance of community plans in open space planning. Community groups largely rely on EIRs with which to analyze development proposals. These EIRs provide the detailed view important to communities in evaluating compliance with their community plans. 116(i)

Because of these broad policy changes regarding City open space planning and regulating, the EIR/EIS should sharply focus on the effects we envision.

Jan Fuchs

Jan Fuchs, Chair

Joan Tukey

Joan Tukey, Vice-Chair

117 BRANDT, BERNIE, OCTOBER 29, 1996

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117(a) See **Theme Response III, Economic Impacts and Impacts on Population and Housing** as well as the revised language in the Final EIR/EIS.

117(b) See **Theme Response III, Economic Impacts and Impacts on Population and Housing** as well as the revised language in the Final EIR/EIS.

117(c) See **Theme Response III, Economic Impacts and Impacts on Population and Housing.** The environmental effects of land use shifts are analyzed in Sections 4.2 and 4.6 of the EIR/EIS. The Biological Mitigation Ordinance is analyzed as a separate discretionary action in the EIR/EIS.

117(d) The Public Lands Scenario was not included in the analysis of any of the subarea plans, including the County Subarea Plan, as described on page 2-53 of the Draft EIR/EIS.

117(e) See **Theme Response III, Economic Impacts and Impacts on Population and Housing.**

117(f) Comment noted.

117(g) See **Theme Response III, Economic Impacts and Impacts on Population and Housing.**

117(h) Comment noted.

117(i) See **Theme Response V, Taking of Private Property.**

117(j) The comment is noted. The significance of the issues discussed under the referenced Issue 3 is recognized. That is why the Issue 3 analysis was included in the Draft EIR/EIS.

117(k) See **Theme Response III, Economic Impacts and Impacts on Population and Housing.**

117(l) Protection of habitats on public lands is considered to be a part of public contribution to the MSCP preserve. Relative contributions of the public and private sectors, including habitat protection on public lands, are described in the MSCP Plan, Volume I, Section 4.1.1.

117(m) No rezoning is being proposed by the County. Changes in zoning in the City of San Diego are the subject of an EIR that was released November 1996 for public review and comment.

117(n) See **Theme Responses V, Taking of Private Property, and III, Economic Impacts and Impacts and Population and Housing.**

117(o) The legislative history of Section 10(a)(1)(B) of the federal Endangered Species Act (ESA) clearly indicates that Congress contemplated that the U.S. Fish and Wildlife Service would approve HCPs that protect unlisted species as if they were listed under the ESA and provide assurances for such unlisted species. See Section 6.0 of the Model Implementing Agreement.

117(p) Comment noted.

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BERNIE BRANDT
2836 CORNELIUS PL.
LEMON GROVE, CA 91945

Tel. 619-464-0448

Fax 619-464-1778

October 28, 1996

John Kovac, Senior Planner FAX: 236-6620
Development and Environmental Planning Division
City of San Diego
1222 First Avenue, 5th Floor
San Diego, CA 92101

RE: Comments on the EIR/EIS for the MSCP dated Aug.1996

Dear Mr. Kovac:

Chapter 4:6, Population and Housing, Page 4:6-1, Criteria for Determining Impact Significance, states "A shift from inside of a Preserve Planning Area to outside a Preserve Planning Area of 25% or greater ----- is considered a significant impact. A shift of such magnitude entails a reduction in local housing supply that could result in adverse impacts to housing affordability and timely provision of public services and utilities." However, on page 4:6-22, under Issue 1, B.3.6 (B.P. Scenario), County Sub-Area Plan, it states that approximately 24% of developable lands in the County of San Diego Sub-Area Plan will have to be shifted to outside the preserve. And yet, it concludes that "no housing density changes are anticipated and no significant population/housing impacts have been identified for the County of Chula Vista." (I assume this was a typographical error and should have said San Diego.) Typographical error aside, I am appalled at the false summary using the criteria called for in determining the significance of impact. 117(a)

Again, under Issue #2 on page 4.6-41, B.3.6. (B.P. Scenario), County of San Diego Sub-Area Plan, criteria for determining significant impacts are completely ignored and even though 19,690 acres, or 34.0% of the residential land will have to be shifted to lands outside the preserve, there is the audacity to conclude that "impacts to population characteristics would be less than significant," and "In summary, no significant population/housing impacts have been identified for the County of San Diego Sub-Area Plan." 117(b)

This report also neglects to say where 34.1% of residential land lost will be shifted to. It also does not differentiate between the three County Sub-Area Plans, nor does it take into consideration the effect of the proposed Biological Mitigation Ordinance. 117(c)

There is no Public Land Scenario for the County Sub Area Plans which constitutes 43% of all MSCP lands. 117(d)

The Impact Analysis for Issue #3 in Ch.4.6, Population and Housing, pages 4.6-44 to 4.6-55 is woefully inadequate, innacurate and speaks in generalities resulting in false conclusions.

4.6.3 ISSUE 3 Would the proposed MSCP Plan affect business investment, job creation, general economic activity, financing of public improvements, household and business finances, property values, property tax base, development rates, or housing and development costs within the study area and generally within the region? 117(e)

The affects of the MSCP on Issue #3 are beyond a doubt the most vital issues determining the economic future of every person within the MSCP study area and the whole region around for a period of fifty years under the Implementing Agreement. 117(f)

No mention is made of the reported loss of 37,550 housing units and the loss of 32,320 jobs (Page 5-2 of the 1995 MSCP) and that was with only 57 protected species. 117(g)

To be at all valid each jurisdiction (as each one must sign their own unique 50 year agreement) should have its own impact analysis on the effect of the MSCP. Each jurisdiction has unique characteristics and diversities and cannot be vaguely generalized into one pattern. The unincorporated county area comprises 43% of the proposed MSCP preserve plus a proposed Biological Mitigation Ordinance with an additional list of several hundred so-called sensitive plants. This is not even mentioned under the impact analysis. 117(h)

To my knowledge, no Economic Impact Study has ever been done on the disastrous financial impact to thousands of private property owners whose lands have already been greatly devalued by the proposed MSCP, and who stand to lose most of their property without compensation or be forced into a biological maintenance program with no limit on requirements or costs. This not only causes devastating financial loss to private property owners who would like to build, but the cumulative financial impact would seriously undermine the financial haelth and economic prosperty of the whole region and everyone in it for years to come. 117(i)

The issues under Issue #3 cannot be ignored but should be individually and fully studied by professionals in each respective field in order to project accurate and realistic figures in an EIR-EIS. 117(j)

In Chapter 4.6, Population and Housing, pages 4.6-1 to 4.6-43, almost all of the tables and conclusions are based on projections up until the year 2005, nine short years from now, and claim there is sufficient land for development. However, the City of San Diego says it will run out of land by 2005, even without the acreage lost to MHPA. On page 4.6-40 there would be a significant shortage before 2005. What happens after 2005? The MSCP Contract goes on for fifty years and the land taken remains in perpetuity resulting in significant adverse impacts. The lack of planning for housing and population after the year 2005 is totally inadequate and inexcusable. 117(k)

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The contribution of existing public lands to the preserve should be accounted for as part of the public cost, as these lands were obtained with tax money and belong to the public who, in turn, will be prohibited (restricted) from its use. 117(l)

The EIR/EIS should list all of the present existing zoning of the private properties affected by the MSCP and MHPA and also the type and locations of all newly required zoning changes to bring land into conformity with the dictates of the MSCP, MHPA proposals as required in the Implementing Agreement. Until this is done, any EIR/EIS is premature and leads to inaccurate conclusions at best. 117(m)

I believe there is insufficient lawful documentation that allows local jurisdictions to specifically rezone private property for the express purpose of bringing it into conformity with a fifty year contract with the federal and state wildlife agencies for a habitat preserve. This is especially in light of the fact that 63,000 acres are not scheduled for compensation for the loss of the land. I believe this is unconstitutional and violates the basic principles and freedoms that our local, state and federal governments were designed to protect. 117(n)

I believe there is insufficient official documentation that allows the U.S. Fish and Wildlife Service to give a take authorization under 10 (a)(1)(b) for any species that they do not list as endangered or threatened, including plant species listed as sensitive by a non-governmental agency. I believe the language used throughout the Joint EIR/ESA is ambiguous as to which plants and animals the federal government will give take authorizations for and when and at what time they will happen. 117(o)

As there is a distinct possibility of future litigation, I hereby reserve the right to re-address vital issues within the Recirculated Draft Joint EIR/EIS Issuance of Take Authorizations for Threatened Species Due to Urban Growth Within The Multiple Species Conservation Program (MSCP) Planning Area, LDR No. 93-0287, SCH No. 93121073. These vital issues, I believe, contain legal inadequacies and deficiences, inaccuracies, inconsistencies, incompleteness, unscientific and erroneous summaries, which may or may not be called attention to in the above letter. 117(p)

Sincerely,

Bernard Brandt

Bernard Brandt

118 ANDERSON, DESERT PROTECTIVE COUNCIL, INC. OCTOBER 29, 1996

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118(a) See **Theme Response XXIV, No Surprises.**

118(b) See response to Comment 25(a).

118(c) The wildlife agencies have indicated to the County that a modification of the exemption may be necessary to achieve the goals of the County Subarea Plan.

118(d) See **Theme Response XIV, Biological Monitoring.**

118(e) Comment noted.

118(f) Comment noted. Another option is the acquisition of land in critical areas from willing sellers.

118(g) Comment noted. The revised County Biological Mitigation Ordinance will include recreational facilities within the definition of essential public facilities. For an essential public facility to be exempt the following findings must be made:

(a) The facility or project is consistent with adopted General Plans or subregional plans and the MSCP Subarea Plan;

(b) All possible mitigation measures have been incorporated into the facility or project, and there are no feasible, less environmentally damaging, location, alignment or nonenvironmentally damaging, location, alignment or non-structural alternatives that would meet project objectives;

(c) Where the facility or project encroaches into a wetland or floodplain, mitigation measures are required that result in a net gain in wetland and/or riparian habitat;

(d) Where the facility or project encroaches into steep slopes, native vegetation would be used to revegetate and landscape cut and fill areas; and

(e) No mature riparian woodland is destroyed or reduced in size due to otherwise allowed encroachments.

(f) All Critical Populations of Sensitive Plants species listed on Attachment B of the BMO would be avoided.

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THE DESERT PROTECTIVE COUNCIL INC.

A NON-PROFIT ORGANIZATION

To safeguard for wise and reverent use by this and succeeding generations those desert areas of unique scenic, scientific, historical, spiritual and recreational value and to educate by all appropriate means children and adults to a better understanding of the desert.

P.O. BOX 2312 • VALLEY CENTER • CALIFORNIA 92082

DESERT PROTECTIVE COUNCIL
ADVISORY PANEL

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Professor of Archaeology

DOROTHY COWPER
Archaeologist

PETE DANGERMOND
Park Consultant

MARY DEDECKER
Botanist

BETTY FORGEY
Desert Tortoise Activist

MICHAEL FROME
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FRANK VASEK
Professor of Botany

LEONARD VINCENT
Professor of Biology

STANLEY WELSH
Museum Curator

FRANK WHEAT
Attorney

HOWARD WILSHIRE
Geologist

DATE:

OCT. 29, 1996

LAWRENCE C. MONSERRATE, PRINCIPAL PLANNER
CITY OF SAN DIEGO, Development Services Department
LAND DEVELOPMENT REVIEW DIVISION
1222 First Avenue, Mail Station 501
San Diego, CA 92191

Dear Mr. Monserrate:

RE: Multiple Species Conservation Program (MSCP) Plan; Comments on the Draft Environmental Impact Report/Draft Environmental Impact Statement

The Desert Protective Council, organized to ensure the preservation of the unique desert environment of Southern California, is also concerned that the natural environment throughout Southern California is given adequate protection. In that regard, we appreciate the opportunity to respond to the Draft EIR/EIS of the Multiple Species Conservation Program. The objective of this program, to preserve indigenous species and habitat at sufficient levels to allow for continuing species viability while supporting land development needs, is commendable.

1) ADDITION AND LOSS OF COVERED SPECIES

The MSCP Plan (page 3-25) describes a process for adding species to the covered species list. However, there does not appear to be a mechanism for removing species from the covered list. This should be added in case the Plan is not adequate to preserve some initially covered species. If a species is not protected by the Plan, even with changes in preserve management designed to enhance its preservation, then its removal from the list could possibly trigger other regulations that would assist in preservation of that species outside of the study area. Even though guarantees have been made to jurisdictions that they will not be required to take further action to protect any of the initially covered species, other areas could be alerted to try to protect any extirpated species through such a delisting or other notification. 118(a)

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2) INTERIM USE OF CURRENT REGULATIONS AND ORDINANCES

According to the Draft EIR/EIS (page 3-7), approximately 104,700 acres of grazing land is located in the study area of 582,243 acres. This means that over 40% of the 255,000 acres of vacant land has been designated as grazing land. There is very little further description of the usage of the lands so designated, or of any planned management of this usage so as to protect native species. As has been extensively documented, the presence of cattle, especially where overgrazing is allowed, has led to the loss of many indigenous plants, especially in the west where water availability is low and native plants are sensitive to overgrazing. There are no county regulations on grazing; the MSCP itself does not address grazing activities. From the maps provided, it appears that some of the grazing areas are located in predetermined mitigation areas. Since studies have shown that the quality of valuable habitat can be vastly improved with sensible management of grazing activities, when such activities occur on identified high value habitat, there should be some provision for encouraging practices that will preserve habitat. 118(b)

These provisions could be similar to the grubbing and clearing ordinances that the county will use to ensure that habitat is not destroyed prior to local approval of habitat loss. This would be consistent with the Phased Local Implementation as described in Section 2.1.4.2 of the Draft EIR/EIS which requires interim use of current regulations and ordinances.

Current regulations allow agricultural clearing with only the requirement that planting will occur over the next 5 years. This requirement should be expanded so that no clearing which would disturb covered species is allowed and there is monitoring of the clearing. 118(c)

3) BIOLOGICAL MONITORING

Monitoring of the Plan as described on page 4.3-178 of the EIR/EIS allows for annual accounting of acreage, type and location of habitat conserved and taken, and biological monitoring to determine if the preserve is meeting conservation goals for covered species. Report of data will be issued every three years.

The Biological Monitoring Plan for the MSCP, Jan. 25, 1996, Rev April 23, 1996, prepared by Ogden, describes in detail the methodology to be used. According to this plan, details of specific covered plant and animal populations will be included in the subarea plans, in the implementing agreements and shown on maps. Such inclusions should be guaranteed.

The baseline for habitat monitoring will be a vegetation map primarily based on color infra-red aerial photography performed in 1990 and updated in 1995. Limited field-verification was performed with detailed verification in selected portions of the 118(d)

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study area. Monitoring is designed to identify adverse changes, but should be expanded to include evaluation of positive changes so that the reasons for these positive changes, e.g., weather, revegetation, good management practices, etc., can be identified. Habitat monitoring locations have been selected but there needs to be a plan for either increasing or decreasing or moving these locations if the studies do not provide sufficient data for analysis. On pg. 3-20, habitat monitoring is stated to be scheduled at five-year intervals. However, since reporting on the monitoring of linkages and species is scheduled to occur at three-year intervals, it might be more effective to have habitat monitoring reported at the same intervals. Also, the Biological Report is scheduled to be presented to the oversight committee at three year intervals. 118(d)

The monitoring program should alert the preserve management to areas that are not meeting the requirements of the preserve with some provision for penalties to be imposed to encourage good preserve management.

Active land use within and immediately adjacent to the preserve may result in significant indirect impacts. Provisions should be made for the monitoring, management and regulation of adjacent uses.

According to the MSCP Plan (page 4-3) the final preserve will consist of 171,920 acres with 63,170 or about 37% of those acres coming from privately owned lands. The Biological Monitoring Plan only covers the preserve itself. Private lands that are being used as mitigation banks will need to be monitored to assure that they adequately fulfill that role over time. Of the many areas that are not yet in the preserve, what assurances do we have that the habitat now on these lands will not degrade over the years? There may be a necessity for changing preserve management and acquisition systems to counteract changes in privately-held lands. Thus during the period of preserve build-up, there needs to be some mechanism for determining possible changes in areas currently identified with high habitat but not yet in the preserve itself.

4) AREAS WITH UNDETERMINED DEVELOPMENT STATUS

A critical portion of the County Subarea is the Metro-Lakeside-Jamul Segment, since plans for this area have not been negotiated with the agencies and there are no "hard line" areas. Instead there are goals and criteria on the number of acres of different habitat types, including corridors and linkage areas which must be included. However, in this area there are severe limitations on the availability of biologically valuable land, including areas of critical connectivity, due to the constraint of existing development. The draft BMO defines as "constrained linkage" areas that provide connectivity between large blocks of core biological resources, but are constrained by existing development. Maintaining these linkages is critical to the long-term viability of the core habitat areas. 118(e)

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Since entry into the preserve of private property will be voluntary, the County needs to develop a mechanism for bringing highly valuable, unique, irreplaceable core habitat and linkage areas into the preserve. For example, allowing single unit development, exempt from regulation in areas with unique, highly sensitive habitat may have the unwanted effect of completely negating the possibility of providing a viable linkage or core area. Some type of review system for sensitive areas is needed to ensure their preservation. One approach would be to identify those lands which are in sensitive areas and provide restrictions to their uses which would facilitate habitat preservation. These restrictions would apply only to private land where development must be limited in order to implement open space policies. To help implement the habitat preservation goals of the MSCP certain development restrictions would be applied to lands identified as being in environmentally sensitive areas suitable for inclusion in the MSCP preserve area. Some of these provisions would address the portion of the land which could be developed, the densities of dwelling units allowed and the management and monitoring of the preserved portion of the land. 118(f)

The Plan now says that public and publicly used facilities are exempt from MSCP. This should be reduced to uses that strictly meet a need for public health and safety, not just general public recreational or meeting types of uses. Should be narrowed to public health and safety. This is found in the BMO, Appendix 1 of the County Subarea Plan, page 3, under 9a.

118(g)

This is a very large and comprehensive plan. The major objective, to preserve unique native species and habitat in the face of strong development pressures, is admirable. However, it is a necessary step and, hopefully, not too late to preserve a quality of life that, once lost, is irretrievable. As a conservation group, the Desert Protective Council is sensitive to the consequences of species and habitat forever lost and we encourage this effort to prevent those losses.

Sincerely,

Janet A. Anderson

Janet A. Anderson
Member, Board of Directors

119 NAVARRO, E., CALIFORNIA DEPARTMENT OF PARKS & RECREATION, 10/29/96

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119(a) The habitat linkages between Torrey Pines State Reserve and other habitat lands to the east are tenuous. This situation is the result of already existing or approved projects, which eliminated the opportunity for major improvements in habitat connectivity to the Torrey Pines State Preserve. The MSCP Plan states that the Sorrento Valley corridor moving west toward the Torrey Pines State Reserve from Los Peñasquitos Canyon "is most likely not being used by wildlife due to restrictive conditions involved." However, recent survey information provided by the Friends of Los Peñasquitos Canyon Preserve (see letter of comment #115 from Friends of Los Peñasquitos Canyon Reserve dated October 27, 1996 in this document) indicates that there is still considerable wildlife activity in this corridor, including coyote, fox, bobcat, and mule deer. Given the current wildlife activity, plus management activities proposed by the City of San Diego, there is some optimism that wildlife movement can be maintained, and perhaps enhanced in this corridor. The two corridors connecting Torrey Pines Ecological Reserve to lands to the east are proposed for long-term monitoring by the MSCP Biological Monitoring Plan, which will help focus management attention on these important corridors. Funding assistance from the State Department of Parks and Recreation could help improve these conditions and help achieve the State Department of Parks and Recreation's goals for Torrey Pines State Reserve.

119(b) The EIR/EIS describes the reductions in land development that would occur under the proposed project compared to current land use in the Community Plans. For those Community Plans that contribute to the Los Peñasquitos watershed, the reduction in developed acres are: Carmel Valley Community Plan (99 acres) and Rancho Peñasquitos Community Plan (190 acres). These reductions, combined with already required improvements to lower Carmel Valley (Carmel Valley Restoration and Enhancement Program) that address freshwater flows and sediments, should benefit the lagoon compared to the existing plans for the watershed.

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OCT 31 1996

DEVELOPMENT SERVICES

San Diego Coast District
9609 Waples Street, Suite 200
San Diego, CA 92121

October 27, 1996

Mr. Lawrence Monserrate, Principle Planner
City of San Diego
Development Services Department
Land Development Review Division
1222 First Avenue, Mail Station 501
San Diego, CA 92101

RE: Dep No. 93-0287/SCH 93121073

Dear Mr. Monserrate,

This letter is in response to the Multiple Species Conservation Program (MSCP) plan and the corresponding Environmental Impact Report/Environmental Impact Statement. Upon review of these documents, the California Department of Parks and Recreation (DPR) has identified two main issues regarding the plan's relationship to, and potential impacts upon, the biological diversity and natural resources of DPR lands in the Torrey Pines area.

Torrey Pines State Reserve (TPSR), which includes Torrey Pines State Park and Los Penasquitos Marsh Natural Preserve, is unique in that it is one of the few large areas of natural coastal habitat remaining within the limits of the City of San Diego. The reserve is also an important contributor to regional biodiversity. Populations of several protected or sensitive species occur on the reserve, including least tern, least Bell's vireo, snowy plover, light-footed clapper rail, California coastal gnatcatcher, San Diego horned lizard, silvery legless lizard, and orange throated whiptail lizard. Large vertebrates such as mule deer, coyote, bobcat, and mountain lion have also been documented to use the reserve.

In light of the high value of the natural resources within the reserve, TPSR is considered a "core biological resource area" and is expected to play an important role in achieving the overall MSCP goal of maintaining local biodiversity in northwestern San Diego county. However, in order for the reserve to contribute significantly to this goal, the MSCP must provide for: 1) effective biological linkages in the form of natural habitat corridors between TPSR and other preserved areas, and 2) the maintenance of high resource values within the reserve by limiting external perturbations such as freshwater input from surrounding development to Los Penasquitos Lagoon. These issues, which are detailed below, are inadequately provided for in the current MSCP plan, and should be addressed more fully in the final EIR.

1. Wildlife corridors

A major goal of the MSCP is to provide habitat corridors that will function as biological linkages among otherwise isolated patches of native habitat. At the current

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the Carmel Mountain underpass provided a functioning wildlife corridor between TPSR and undeveloped lands to the east. However, development activities on Carmel Mountain recently severed this last linkage. It is critical, both for the maintenance of viable populations within the reserve and for the success of the MSCP in maintaining biological diversity in the north county area, that effective wildlife corridors be re-established for TPSR.

The MSCP plan includes two corridors which are intended to connect TPSR with other preserved areas to the east of the reserve. In the south, there is a rip-rap channel which "winds west from Los Penasquitos Canyon, underneath freeways, local roads, and railroad tracks to gain access to the Lagoon and State Park. This is most likely not being used by wildlife due to the restrictive conditions involved." (MSCP vol II, City of San Diego Subarea Plan, pg. 21). The MSCP plan proposes to "enhance the channel and provide noise barriers along I-805 to encourage wildlife movement." (pg. 25). However, these improvements would be made only "if funds become available in the future". In the north, the connection into Los Penasquitos Lagoon is via Carmel Creek (CVREP) which currently has only 6-8 feet of clearance under the I-5 freeway. Because of the extremely small size of this connection, this is also not currently a functioning corridor for most wildlife. The MSCP plan suggests that this corridor may become functional with the I-5 bridge that Caltrans is building over Carmel Creek and if the culvert under Sorrento Valley Boulevard is enlarged. Also, the Sorrento Valley Boulevard culvert may be replaced by a bridge "if funding becomes available".

Neither the south nor north linkages are acceptable as wildlife corridors in their current conditions, and the MSCP plan fails to require the necessary improvements to create high-quality corridors connecting TPSR to other lands. Without major restoration and revegetation, it is unlikely that the south corridor will ever be used by most sensitive or keystone (i.e., mammalian predators) species. It is unclear what is meant by the statement that the rip-rap channel may be "enhanced", but restoration to the level necessary to make this a functioning corridor is clearly neither detailed nor required in the plan. The proposed northern linkage to TPSR is also tenuous, because it relies on extremely narrow connections at Carmel Creek (the I-5 bridge) and Sorrento Valley Boulevard (a culvert). Because the exact diameter and length of the Sorrento Valley Boulevard culvert is not specified, it is not possible to evaluate the effectiveness of this linkage.

Furthermore, the fact that both of the corridors discussed above rely upon the very small probability of funding becoming available at some time in the future is a problem. Unspecified and uncertain funding is a problem for many proposed corridors in the north county area east of Torrey Pines (e.g., C2, C5, C6, C7 on pgs. 22-23). Yet even if such funds do eventually materialize, in the meantime small, isolated populations may decrease below the threshold of viable population size and may go locally extinct as a result of loss of genetic variability, decreased reproductive recruitment, stochastic environmental fluctuations, food web disruptions (e.g., unnatural predator-prey balance), or a number of other factors. It is misleading and inappropriate for the MSCP plan to show corridors on the map which are not currently biologically functioning linkages, and for which there are no assurances of funding specified in the plan. 119(a)

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Based on the above considerations, DPR concludes that the MSCP in its current form does not adequately provide connections of high-quality habitat that will actually function as wildlife corridors for TPSR. As a result, the impact to the reserve will be continued ecological isolation. Consequences of this isolation will likely be decreased viability of populations and loss of diversity both within the reserve and outside the reserve in other preserved areas of northern San Diego county. 119(a)

2. Sedimentation and freshwater input to Los Penasquitos Marsh Natural Preserve

The Los Penasquitos Marsh Natural Preserve is an important wetland resource to San Diego County. Current threats to the native biodiversity of the lagoon are primarily in the form of unnatural levels of sedimentation in the lagoon, and upsets to the delicate balance between seawater, brackish water, and freshwater that exists in natural estuaries like Los Penasquitos. Land development and human activities in the Los Penasquitos watershed have resulted in unprecedented amounts of sediment deposition and freshwater draining into the preserve. Sediments cause degradation of the lagoon bed. As areas become elevated above the water table, wetland and marsh vegetation become displaced by upland and exotic species. Increased freshwater input has also facilitated the ongoing, progressive invasion of non-native vegetation into the lagoon, resulting in replacement of the native community with exotics and in decreased diversity. Estuarine flora and fauna are adapted to survive a relatively wide range of salinity, however they are susceptible to increased mortality when salinity reaches the freshwater extreme. 119(b)

Management efforts to combat these ongoing threats to the ecological health and biodiversity of the preserve are expensive and are not the best solution. Large-scale planning to reduce the amount of sediment and freshwater input into the lagoon is necessary, but is not included in the current MSCP plan. While the MSCP plan provides for the future development of substantial amounts of land within the Los Penasquitos watershed, the plan does not address the point source, non-point source, and cumulative impacts that such development would have on the lagoon in the form of increased sedimentation and freshwater inflow. In order for the Torrey Pines area to continue contributing to the maintenance of biodiversity in San Diego County, it is critical that the biological value of preserved habitats such as the Los Penasquitos Marsh Natural Preserve not be decreased by activities on non-preserved lands.

The California Department of Parks and Recreation requests that the issues presented above be considered in the final versions of the MSCP and EIR/EIS documents.

Sincerely,

Edward Navarro, Superintendent
San Diego Coast District

120 CRAIG A. SHERMAN, 10/24/96

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120(a) See response to Comments 68(a) and 68(b).

120(b) As stated in response to Comment 68(c), the participating local jurisdictions will implement the terms of the MSCP, subarea plan, and land use regulations, mitigation, compensation, and habitat management obligations as committed to in their implementing agreements. It is the responsibility of the wildlife agencies to ensure that the jurisdictions adhere to these commitments.

120(c) See **Theme Response X, Habitat Conservation Accounting Model.**

120(d) Comment noted. See responses to Comments 120(a)–120(c).

120

CRAIG A. SHERMAN
ATTORNEY AT LAW

1901 FIRST AVENUE, SUITE 335
SAN DIEGO, CA 92101-2322

TELEPHONE
(619) 702-7892

FACSIMILE
(619) 702-9291

October 24, 1996

Via Facsimile 467-4235
Cal. Department of Fish and Game
Mr. Ron Rempel
Mr. Bill Tippets
Mr. Dave Lawhead

Re: Multiple Species Conservation Program (MSCP) for the City of San Diego

Dear Sirs:

I forward this recommendation in light of its importance as acknowledged by the agency officials at the October 22, 1996 Endangered Habitats League meeting attended by Mr. Michael Spear, Mr. Gail Kovetich, Mr. Mark Ebbin and Mr. Ron Rempel.

It is imperative that the following be included in all Implementing Agreements with the Participating Local Jurisdictions (PLJ). Because the MSCP is built on future actions with varying degrees of flexibility and discretion, there must be objective measures to evaluate whether the MSCP is meeting the requirements and limitations posed by the respective state and federal Endangered Species Acts.

The resource agencies (USFWS/DFG) must at a minimum every three years make determinative findings, whether PLJ implementation has met the terms of the Agreement. Otherwise, the legal requirement of "certainty," which is derived from the so-called implementation "assurances" cannot be objectively measured and renders the Agreement difficult to enforce as conjecture and may be considered void or voidable. Recognizing the import of all stakeholders participating in success of the MSCP, these "findings" should be made subject to public review with a hearing where public testimony is received. 120(a)

More specifically, to ensure that the "certainty" element of this Agreement can be met per Section 8.0 of the Implementing Agreement, the following considerations should be included:

1) There must be discernible points in time in the MSCP implementation process where the agencies render "findings," such as during the annual evaluation per Section 14.2 or at a minimum every three years per Sections 14.4 and 14.6 of the Implementing Agreement. Placing the authority to make MSCP findings with the PLJ's (as per Section 14.2) is tantamount to letting the fox guard the henhouse.

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2) Resource agency comments pursuant to any CEQA review process must be afforded the value and weight of MSCP implementation "findings." This oversight is necessary for orderly construction and preservation within the preserve, while providing that "assurances" are being maintained as to not foreclose future preserve options. In this manner, each PLJ will necessarily have less discretion in overruling the interpretations and recommendations of the "resource specialists" (agencies). 120(b)

3) These "findings" should be designated as adjudicative (mandatory) where criteria is specific or quantifiable and should be designated discretionary where the criteria is interpretive as established by the requirements and duties in the collective MSCP documents. 120(c)

These considerations are significant because the list of "covered species" under the MSCP is dependent on many future actions and it will be difficult to track each and every PLJ action affecting such species. Additionally, the species specific management plans (by area) will not ensure species protection until ample area of the preserve is acquired. This will take at least 15-20 years for many areas and until then, resource agency "findings" must be binding. 120(d)

Please note, that demands to each PLJ will be made to require them to make "findings" and hold public hearings on an annual basis.

Sincerely,

Craig A. Sherman

cc: Department of Interior, Mr. Mark Ebbin
U.S. Fish and Wildlife Service - Mr. Gail Kovetich, Ms. Sherry Barrett, Ms. Nancy Gilbert
City of San Diego - Rick Duvernay

121 CINDY BURRASCANO, 10/29/96

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121(a) Comments noted. See **Theme Response I, Species Analysis Approach** and revised MSCP Table 3-5 included in the Revisions to the MSCP Plan, January 1997.

121(b) The biological data base used in the Draft Joint EIR/EIS analysis is summarized on pages 4.3-1 through 4.3-3 of the Draft Joint EIR/EIS. The MSCP Resource Document contains much of the referenced biological data base and is available for review at the specific libraries listed on Table 4.1-1 of the Draft Joint EIR/EIS.

121(c) Little mousetail is not proposed as a covered species under the MSCP. Because it is a vernal pool species, it will continue to receive some protection through Section 404 of the Clean Water Act, and it will be addressed through the CEQA review process.

121(d) San Diego Bay is under the jurisdiction of the Port Authority, which is not a participant in the MSCP. Tidal areas and their adjacent wetland will continue to be regulated under Section 404 of the Clean Water Act and Section 10 of the Bays and Harbors Act. Proposed marinas will be required to obtain all permits as presently required. Mission Bay will continue to be managed as a recreation area.

121(e) The proposed MHPA would conserve 66% of the major populations of *Ericameria palmeri* ssp. *palmeri*. This species is also on the list of narrow endemics.

121(f) The MSCP Plan conserves 92 percent of southern foredune habitat, which is the potential habitat for *Lotus nuttallianus*. The largest populations of this species occur on military lands, which are not part of the MSCP Plan. The wildlife agencies are currently working with the U.S. Navy to provide protection for this species where it occurs on military lands in South Bay (i.e., Silver Strand). Management plans will be required to include measures to protect against detrimental edge effects.

121(g) *Ornithnostaphylos oppositifolia, Atriplex pacifica,* and *Camissonia lewisii* were not evaluated for coverage under the MSCP. They will continue to be subject to existing regulations. The MSCP Plan provides mechanisms for amending the take authorizations to include additional, uncovered species in the future (MSCP Plan, Volume I, Section 3.4).

121(h) See **Theme Response XIX, Preserve Management.**

121

October 29, 1996

Lawrence C. Monserrate
City of San Diego
Land Development Review Division
1222 First Avenue, MS 501
San Diego, CA 92101

RECEIVED
OCT 29 1996
DEVELOPMENT SERVICES

Re: Multiple Species Conservation Program (MSCP) Plan
Dep No. 93-0287

Dear Mr. Monserrate:

I have reviewed materials from the first draft and the recirculated draft of MSCP. I am disturbed that impacts of this program to specific species- both covered and uncovered species are not clearly analyzed in any of the official documents I have read. The Resource Documents made available in libraries during the first review period led one to believe the program was based on analysis of a group of species requirements. Three Coastal sage scrub species were to be umbrella species for Coastal sage scrub habitat species. I expect that San Diego ragweed, Nuttall's lotus, burrowing owls, and cactus wren will not be around for my nephew's children if they remain in this area. Cactus wren were suppose to be one of those umbrella species. I am not sure there will be marsh hawks or golden eagles in this area either. That is not what the plan promised us. The recirculated draft document somehow loses the perspective of preservation of our rare species and habitats. 121(a)

The scope of this project made it impossible to conduct field surveys for all lands included in the plan area and sincere attempts have been made to provide adequate data. I would like to see a true discussion of the data in the EIR for this program, not just a summary chart. The focus of what is minimally required under ESA standards is different than what CEQA and the goals of MSCP promised. 121(b)

I would like to still be able to watch the wonders of vernal pools without listening to freeway noise. Will there be anyplace I can go after development in concordance with this plan occurs that would meet those requirements? I have never seen Little mousetail and I would like to see if it is as ugly as its name suggests. Will all non-military Little mousetail be gone in the area before I turn 40 (which is in the not too distant future)? 121(c)

Is there any guarantee that foraging areas for coastal bird species will be preserved with this plan or will all non-state and federal park lands be developed into marinas or grassy areas like Mission Bay? What specific protection does this plan provide for preserving foraging areas for our coastal bird species? 121(d)

Since this plan is suppose to protect rare species in the western portion of the county, please explain how Palmer's ericameria is helped by this plan to even ESA level standards. Are sufficient numbers of plants being placed in preserved lands that will not be impacted by road expansions? I believe most of this species is not currently on preserved public lands. 121(e)

It is not clear to me that Nuttall's lotus receives any protection with this plan although it only occurs on the coast in the southern portion of the plan area and is a covered species. Please explain how this plan will keep this species from being impacted. Are there specific management requirements with adoption of this plan? 121(f)

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The plan should have included information on additional highly restricted species, most of them having highly limited distribution in the coastal areas. *Ornithostaphylos oppositifolia* is known only from the boundary of the United States with Mexico by Tijuana. This species is being driven into extinction in the United States. How is this plan helping this highly restricted species? What management changes will be provided to the area that used to support this species? How will it be helped to recover from our impacts?

Atriplex pacifica is known from only 8-10 places in the plan area with each location only containing 10 plants at most. It is not clear to me that this species will receive any protection from this plan yet there is the expectation of unlimited development outside of the preserve. Given the rarity of this species, analysis of impacts of this plan to this species is expected under CEQA. Please provide specific discussion of the impacts, direct and cumulative, to this species. 121(g)

I expect *Camissonia lewisII* to receive at least limited help if future management plans are developed for Nuttall's lotus. Are there any management plans? How can impacts to species such as this be minimized or avoided if there are not management plans adopted at the same time take is being permitted to habitats? Please explain the impacts of this program to *Camissonia lewisii*.

How will management plans be developed? Is a state or federal employee actually going to go out to preserve lands and see if the mapped species are really there? Are threats in that particular area going to be assessed for each species? Will that analysis be left to local jurisdictions? Or as is currently the usual technique, will we build houses all along narrow steep sided canyons and scenic vistas and walk away from our impacts so that drainage changes, weeds, landscaping, and pets destroy that which the land was set aside to protect? 121(h)

Thank you for the opportunity to comment.

Sincerely,

Cindy Burrascano

Cindy Burrascano
771 Lori Lane
Chula Vista, CA 91910

INTRODUCTION

This Mitigation Monitoring and Reporting Program (MMRP) was prepared for the *Issuance of a Take Authorization for Threatened and Endangered Species within the Multiple Species Conservation Program (MSCP) Planning Area* in San Diego County, California (LDR No. 93-0287, SCH No. 93121073). A joint Environmental Impact Report/Environmental Impact Statement (EIR/EIS) was prepared that identified significant impacts associated with implementing the MSCP. This MMRP complies with the CEQA mitigation monitoring statute (Public Resources Code Section 210181.6) which requires public agencies to adopt such programs to ensure effective implementation of the mitigation measures.

This program shall be a requirement of the discretionary actions required for the City of San Diego to implement the MSCP. These actions include adoption of the MSCP program level plan that identifies the Multiple Habitat Planning (MHPA) area. Other discretionary actions associated with the City of San Diego include the City of San Diego Subarea Plan and associated implementing actions including general plan and community plan amendments. The MMRP will remain on file at the City of San Diego Development Services Department. Other responsible take authorization holders participating in the project shall be responsible for preparing a separate MMRP for mitigation and impacts identified for that take authorization holder.

The following text includes a list of mitigation measures identified in the EIR/EIS prepared for the project and the monitoring efforts necessary to ensure that the mitigation measures are properly implemented. The mitigation and monitoring requirements are presented in their respective order. The EIR/EIS for the MSCP contains an analysis of multiple alternatives and discretionary actions. Only the mitigation identified for the City of San Diego Subarea Plan and the mitigation identified for the Multiple Habitat Planning Area (MHPA) that is relevant to the City of San Diego are included in this document. The numbering assigned to the individual mitigation measures is taken from the EIR/EIS.

1. LAND USE

MHPA-PROPOSED PROJECT – MITIGATION MEASURES

If implemented, the measures listed below for Land Use Impacts MHPA-1 through MHPA-6 could potentially reduce identified land use impacts.

4.2-MHPA-1 **Conflict with goals of City of San Diego General Plan regarding provision of housing affordability** – No measures are incorporated in the proposed project to mitigate housing affordability impacts identified in this section. If implemented, the measure listed below for Impact MHPA-1 could potentially reduce the identified impact.

– – As part of the GP Housing Element update, identify and address impacts to housing affordability associated with implementation of the MSCP Plan. Ensure that housing affordability is provided under the MHPA in accordance with State law.

The measure listed above is not yet formulated and the degree to which it would mitigate the identified impact to housing affordability has not yet been determined because the measure is dependent upon a Housing Element update. No other measures have been incorporated into the proposed project or are required by the MSCP Plan. As a result, impacts to housing affordability are considered significant and not mitigated.

4.2-MHPA-2 **Conflict with Rancho Peñasquitos regarding timely provision of public facilities** – A comprehensive update of the Rancho Peñasquitos Community Plan and PFFP should be undertaken. Efforts should be made to coordinate the update associated with the Subarea Plan with the standard update schedule conducted for all PFFP's within the City. The comprehensive amendment should address the following specific issue:

- An evaluation of facility phasing and financing issues raised by the reduced number of units to be accommodated within the CP area shall be undertaken. The comprehensive update should assure that public facilities are provided in a timely fashion in accordance with City Community Planning and Engineering Capital Projects Department level of services standards.

4.2-MHPA-3/4 **Conflict with residential goals of East Elliott CP regarding orderly development and school and park facilities** – A comprehensive update of the East Elliott Community Plan should be undertaken. Efforts should be made to coordinate the update associated with the Subarea Plan with the standard update schedule conducted for all PFFP's within the City. The amendment should address the following specific issues:

- Analysis required for the CP update should include an evaluation of required school capacity and park facilities needed to serve the remaining 117 acres of residential development within the CP area associated with Alternative One. As part of the CP amendment, provision of school and park facilities to serve the CP residential development in accordance with the adopted standards of the City and the appropriate school district should be assured.

4.2-MHPA-5/6 **Conflict with Otay Mesa PFFP regarding timely provision of public facilities and school and park facilities** - A comprehensive update of the Otay Mesa CP and PFFP should be undertaken. Efforts should be made to coordinate the update associated with the Subarea Plan with the standard update schedule conducted for all PFFP's within the City. The amendment should address the following specific issues:

- An evaluation of facility phasing and financing issues raised by the reduced number of units to be accommodated within the CP area should be undertaken. The update should assure that public facilities are provided in a timely fashion in accordance with City Community Planning and Engineering Capital Projects Department level of services standards.

- Analysis required for the CP update should include an evaluation of required school and park facilities needed to serve the residential development within the CP area. As a part of the CP update, provision of school and park facilities to serve the CP residential development in accordance with the adopted standards of the City and the appropriate school district should be assured.

MONITORING AND REPORTING

Prior to approval of future updates to the General Plan Housing Element, as well as future Community Plan and PFFP updates for the Rancho Peñasquitos, East Elliott and Otay Mesa Community Plans, the City of San Diego Development Services Department shall review the update to determine that efforts have been made to avoid or reduce the identified impacts related to affordable housing as well as the demand for public facilities.

2. BIOLOGICAL RESOURCES

MHPA – PROPOSED PROJECT – MITIGATION MEASURES

4.3-MHPA-1 **Direct Impacts to Covered Species** – Significant impacts to the 35 plant and 25 animal species identified in the Analysis of Significance section of the EIR/EIS and listed in *Attachment 1* to this MMRP are mitigated through the following measures:

1. Preservation of a majority of core or major populations of the covered species within the MHPA preserve (*Attachment 2* to this MMRP); refer also to revised MSCP Table 3-5 included in the Revisions to the MSCP Plan, January 1997.

2. Design and configuration of MHPA preserve (*Figure 1*).

3. Conservation goals and criteria for species (*Attachment 2* to this MMRP); refer also to revised MSCP Table 3-5 included in the Revisions to the MSCP Plan, January 1997.

4. Monitoring and reporting measures included in the *Biological Monitoring Plan for Multiple Species Conservation Program* incorporated in the MSCP Plan.

4.3-MHPA-2 **Direct Impacts to Vegetation Communities/Habitats** – Significant impacts to the habitats supporting covered species identified in the Analysis of Significance section are mitigated through the following measures:

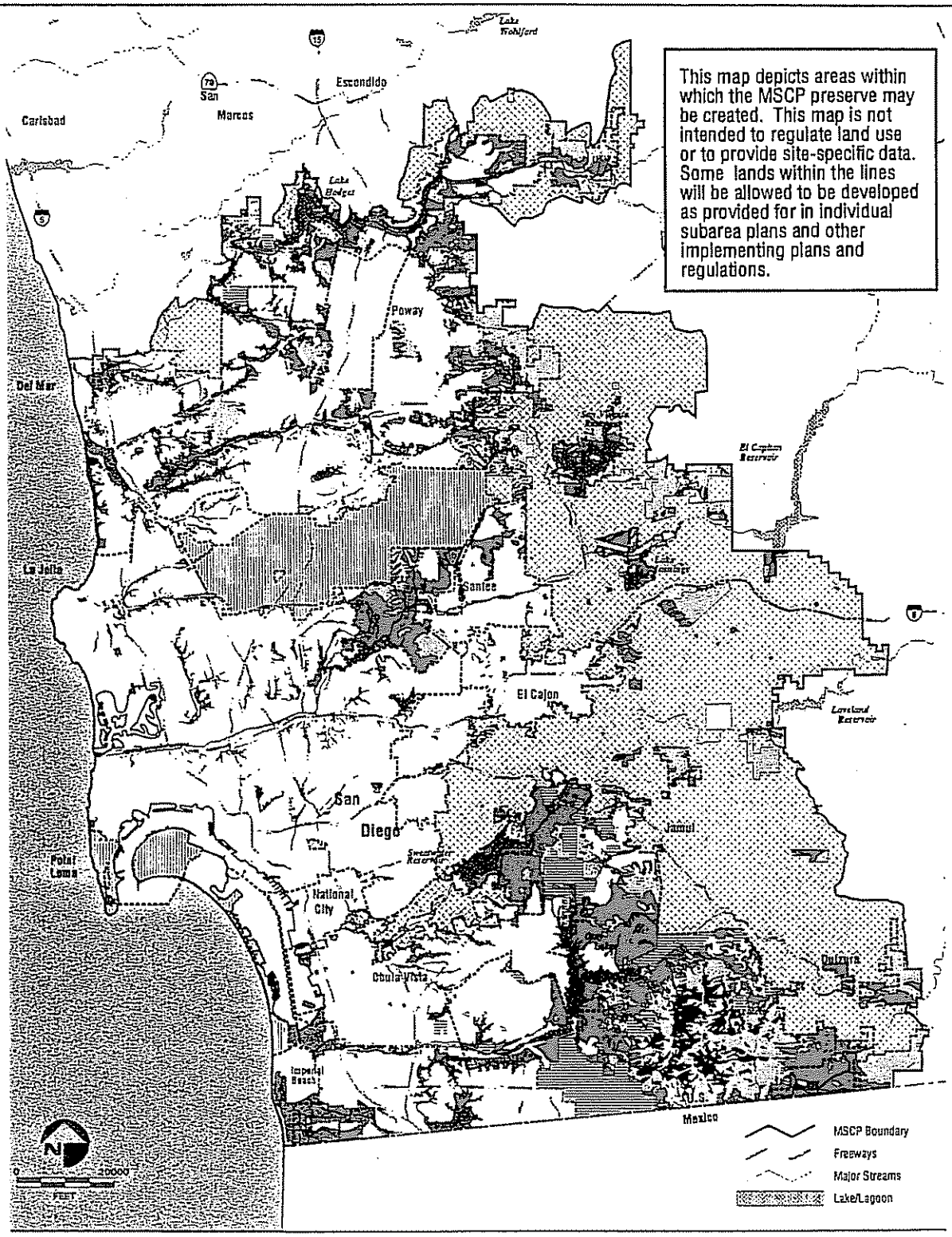
1. Preservation of the majority of core habitats within MHPA preserve (*Figure 1*).

2. Preservation of vegetation communities by design and configuration of MHPA Preserve (*Figure 1*).

3. Conservation targets for vegetation communities (*Attachments 3 & 4* to this MMRP).

4. Monitoring and reporting measures included in the Biological Monitoring Plan for Multiple Species Conservation Program.

4.3-MHPA-3 **Indirect Impacts to Covered Species** – Significant indirect impacts to covered species identified in the Analysis of Significance section of the EIR/EIS may occur through edge effects and other uses within and adjacent to the preserve. These indirect impacts are mitigated through implementation of guidelines provided in subarea plans for uses within the preserve and guidelines for preserve management activities. These guidelines address the following: public uses; agriculture; development; mineral extraction; itinerant worker camps; border patrol; fire management; habitat restoration; hydrology;



Coastal Sage Scrub
Chaparral
Coastal Sage Scrub Chaparral
Grassland
Riparian/Wetlands
Oak Woodland
Coniferous Forest
Beach/Foredunes
Eucalyptus Woodland
Disturbed Habitat
Shallow Bay
Agriculture
Developed
Amendment Areas
Areas with Undetermined Development Status
Military Lands
Subarea Boundaries

Note: For the unincorporated area vegetation communities are shown only for existing conserved areas.

Note: Military lands are not included in the MHPA and separate habitat conservation plans are being prepared.

SOURCE: City of San Diego, MWWD 1996

FIGURE 1

Vegetation Communities in MHPA

fencing, signing, and lighting; predator and exotic species control; species reintroduction; and enforcement. In addition, biological monitoring and reporting procedures serve to mitigate indirect impacts.

4.3-MHPA-4 **Indirect Impacts to Uncovered Non-Wetland Sensitive Species** – Partial mitigation for these impacts would be accomplished through implementation of the Biological Monitoring Plan incorporated in the MSCP Plan. Preserve management guidelines and land use planning tools incorporated in the individual Subarea Plans provide complete mitigation for these impacts as documented in mitigation measures described below for the City of San Diego Subarea Plan.

4.3-MHPA-5 **Indirect Impacts to Non-Wetland Sensitive Vegetation Communities/Habitats** – Partial mitigation for these impacts would be accomplished through implementation of the Biological Monitoring Plan incorporated in the MSCP Plan (City of San Diego, 1996c). Preserve management guidelines and land use planning tools incorporated in the individual Subarea Plans provide complete mitigation for these impacts as documented in mitigation measures described below for the City of San Diego Subarea Plan.

CITY OF SAN DIEGO SUBAREA PLAN – MITIGATION MEASURES

4.3-MHPA-15 **Direct Impacts to Covered Species** - Significant impacts to the 28 plant and 23 animal species identified in the Analysis of Significance section are mitigated through the following measures:

1. Preservation of core or major populations of covered species occurring within the City of San Diego (*Attachment 1* to this MMRP).

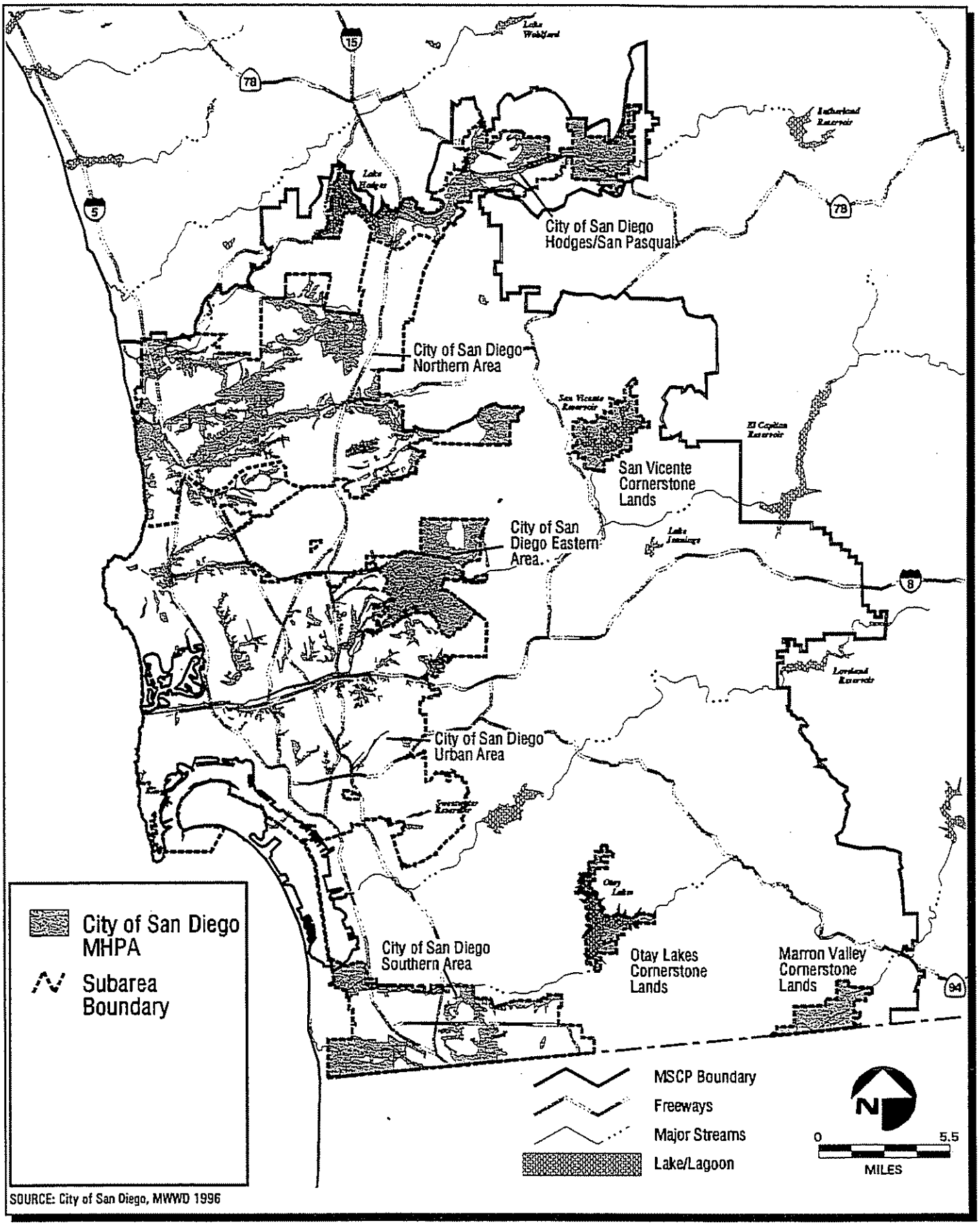
2. Design and configuration of the portion of the MHPA preserve within the City of San Diego (*Figure 2*).

3. Monitoring and reporting measures included in the *Biological Monitoring Plan for Multiple Species Conservation Program* included in the MSCP Plan.

4.3-MHPA-16 **Direct Impacts to Vegetation Communities/Habitats** - Significant impacts to vegetation communities/habitats are mitigated through the following measures:

1. Preservation of core habitats areas occurring within the City of San Diego (*Attachment 3* to this MMRP).

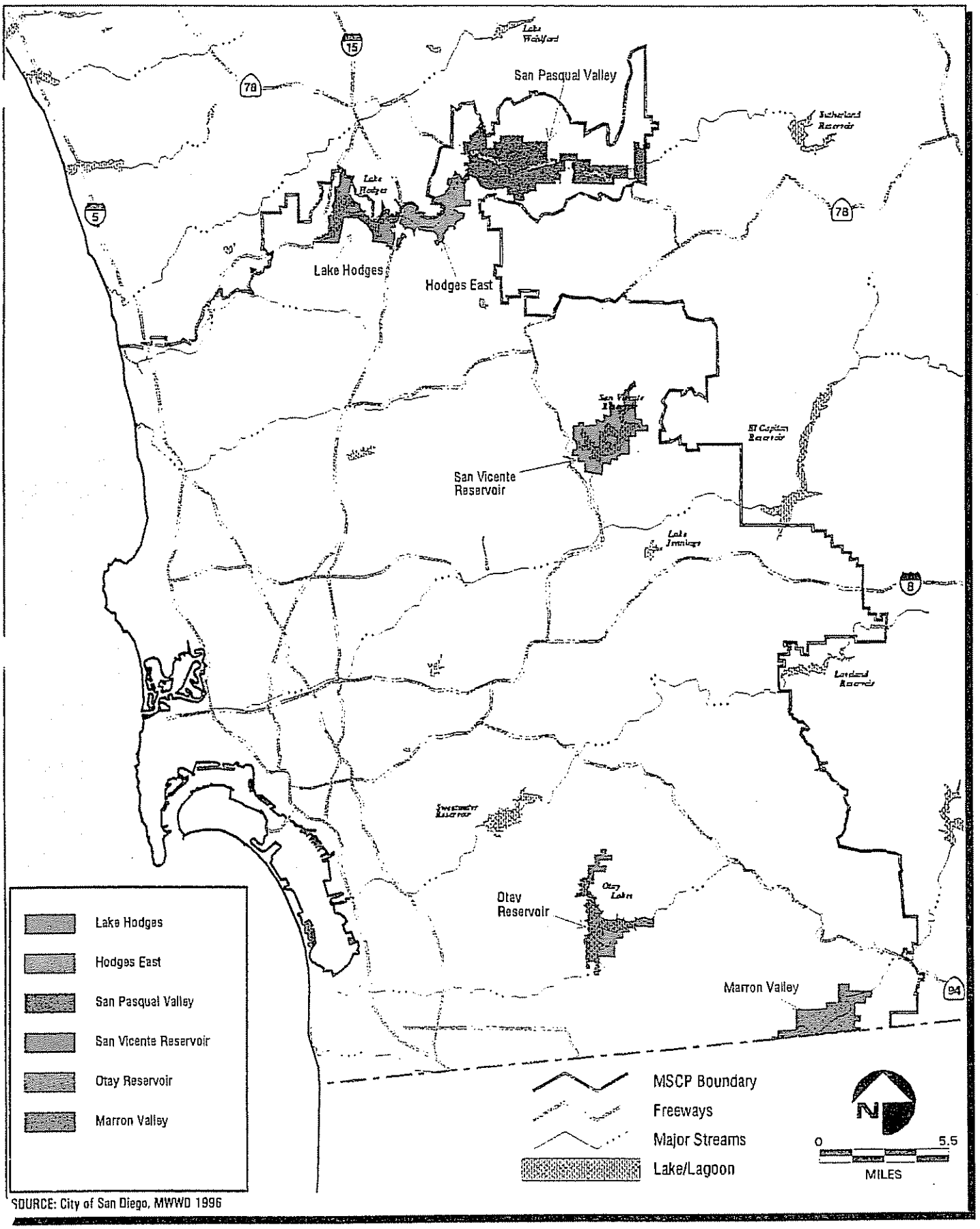
2. Design and configuration of the portion of the MHPA preserve within the City of San Diego (*Figures 2 and 3*).



SOURCE: City of San Diego, MWWD 1996

FIGURE 2

City of San Diego Subarea Plan



SOURCE: City of San Diego, MWWD 1996

FIGURE 3

City of San Diego Cornerstone Lands and San Pasqual Valley

3. Monitoring and reporting measures included in the *Biological Monitoring Plan for Multiple Species Conservation Program* incorporated in the MSCP Plan.

4.3-MHPA-17 **Indirect Impacts** - Significant indirect impacts to covered species, uncovered species, and vegetation communities/habitats may occur through edge effects and other land uses within and adjacent to the preserve. These impacts would be mitigated through implementation of the guidelines and ordinances identified in the City of San Diego Subarea Plan and the City's RPO to a level below significant.

The following mitigation measures would be implemented:

1. Application of the City RPO regarding sensitive species and habitats. Mitigation ratios for impacts to sensitive upland habitats follow a "Tier" system whereby high mitigation ratios are used for highly sensitive and valuable Tier I habitats (e.g., maritime succulent scrub) and corresponding lower mitigation ratios for less sensitive and valuable Tier III habitats (e.g., grassland occupied by sensitive species).

2. Application of land use considerations in Section 1.4.2 of the City of San Diego Subarea Plan regarding general planning policies and design guidelines within the preserve.

3. Application of land use considerations in Section 1.4.3 of the Subarea Plan regarding uses adjacent to the preserve, including avoiding or minimizing indirect impacts due to drainage, toxics, lighting, noise, barriers, invasive species, and brush management.

4. Application of preserve management guidelines in Section 1.5.2 of the Subarea Plan pertaining to the following: public access, trails, and recreation; litter, trash, and materials storage; adjacency management; invasive exotics control and removal; and flood control.

MONITORING AND REPORTING

Another important factor in mitigation is monitoring of the MSCP Plan involves two independent processes:

- Annual accounting of the acreage, type, and location of habitat conserved and taken by permitted land uses and other activities; and

- Biological monitoring to determine if the preserve system is meeting conservation goals for covered plant and animal species.

The information compiled under these two processes will be described in an MSCP status report that will be issued every three years, in conjunction with public hearings held by participating jurisdictions. The two monitoring processes are described in detail below.

Annual accounting of habitat acreage will be provided by each take authorization holder, both by project and cumulatively, of habitat acreage taken and conserved within its subarea. The overall accounting process will specify acreage contributions to the preserve system by jurisdiction or take authorization holder and ownership and provide a map indicating locations of these areas. The accounting process will demonstrate that habitat conservation proceeds in rough proportion with habitat losses to development and that it is in compliance with the MSCP Plan and its implementing agreement. An Implementing Coordinating Committee will coordinate the annual accounting process.

The ***Biological Monitoring Plan*** developed as part of the MSCP Plan is a critical component of the mitigation measures associated with this project. This plan would be adopted by each of the jurisdictions as part of their Subarea Plan. This *Biological Monitoring Plan* includes a description of the responsibilities and coordination of efforts between the MSCP Plan participants and the wildlife agencies, biological monitoring objectives, and existing monitoring efforts. It goes into specific detail regarding methods for biological monitoring of plants, wildlife, and the function of wildlife corridors (e.g., equipment, sampling protocols, habitat value monitoring in representative habitats, data collection and analysis, and schedules). The plan provides a reporting program designed to provide monitoring results to relevant parties (e.g., USFWS, CDFG, a habitat management technical committee, scientists), to notify individual preserve managers of habitats and species within their jurisdictions that require specific management activities, to help prioritize management needs and provide specific recommendations preserve-wide and within each subarea, and to evaluate monitoring priorities for the coming three-year period. An essential component of the monitoring plan is to provide specific habitat and species adaptive management recommendations to reverse any identified declining trends in habitats or species' populations. Such management recommendations may include, but not be limited to, the following: fencing, signage, or re-direction of trails; removal of invasive exotic plant or non-native animal species; erosion control; habitat enhancement or restoration; plant population enhancement or reintroduction; and prescribed burning. Adaptive management may include reconfiguration of preserve boundaries to include more or different habitats or reprioritization of monitoring efforts if a species is found to be declining. Finally, the monitoring plan makes recommendations for research activities, including basic floral and faunal inventories, taxanomic studies, core and linkage studies, habitat and life-history studies, population biology and genetic studies, habitat restoration and/or population reintroduction studies, and management studies.

The mitigation analyses presented below are based on the following assumptions:

- Each participating jurisdiction will contribute its fair share to implementation of the MSCP Plan through their individual subarea plans. Even though individual permits will be issued to the jurisdictions, the overall conservation and long-

term viability of many habitats and species depends on the integrated efforts of the jurisdictions within the MSCP study area.

- Adequate conservation of biological resources will occur on federal lands (e.g., military). (It should be noted that military lands are within the MSCP study area but are not included in the MHPA. The Department of Navy is preparing a separate habitat conservation plan that will identify Habitat Management Zones at Miramar. NAS Miramar has prepared a Comprehensive Natural Resources Management Plan which provides the basis and criteria for the management decisions regarding natural and cultural resources.)

- Existing local, state, and federal environmental regulations will remain in effect (e.g., under state and federal wetland regulations, USFWS and CDFG will still serve in their capacity as lead agencies or advisors for Section 404 and Section 1600 permits).

- Other regional and subregional conservation planning programs will proceed as planned, including the North County Multiple Habitat Conservation Program (MHCP), the County of San Diego Multiple Habitat Conservation and Open Space Program, and other conservation efforts in San Diego, Riverside, and Orange counties.

- Conservation measures included in the findings for each species, including management and restoration activities, are implemented as described in revised MSCP Table 3-5 included in the Revisions to the MSCP Plan, January 1997.

3. PUBLIC SERVICES & UTILITIES

MHPA – PROPOSED PROJECT – MITIGATION MEASURES

4.5-MHPA **Impacts to planned public facilities that would be considered incompatible uses within the proposed preserve:** Individual jurisdictions participating in the MSCP Plan will be required to prepare Subarea Plans or Project Plans. Significant impacts to public facilities identified at the program level will be addressed in greater detail at the Subarea Plan level.

The measure listed above is not designed to mitigate the impacts to public facilities identified in this section because the measure is dependent on completion of Subarea Plans or Project Plans in the future. No measures have been incorporated into the proposed project. As a result, this impact is considered significant and unmitigated. The City of San Diego has complied with this mitigation measure by preparing a Subarea Plan that addresses issues related to public facilities. However, implementation of the Subarea Plan and associated Community Plan amendments would result in impacts to public facilities as described below.

CITY OF SAN DIEGO SUBAREA PLAN – MITIGATION MEASURES

4.5-MHPA-1 **Impacts within East Elliott due to elimination of school and park facilities:** See discussion in *Section 1, Land Use*. Specific recommended measures for the East Elliott CP are listed under *MHPA-3/4* of this MMRP. The measures listed in *Section 1* are not designed to mitigate the public facilities impacts identified in this section because the measures are dependent on a future community Plan amendment process or approval of precise plans. No other measures have been incorporated into the proposed project or are required by the Subarea Plan. As a result, impacts to public facilities are considered significant and unmitigated.

4.5-MHPA-2 **Impacts within Otay Mesa CP due to elimination of school and park facilities:** See mitigation for impacts to school and park sites provided in *Section 1, Land Use* of this MMRP. Specific mitigation measures for the Otay Mesa CP are listed under *MHPA-5/6*.

MONITORING AND REPORTING

Prior to approval of future CP and PFFP updates for the East Elliott and Otay Mesa, the City of San Diego Development Services Department shall review the update to determine that efforts have been made to avoid or substantially reduce the identified impacts related to the demand for school and park facilities.

MITIGATION MONITORING
and
REPORTING PROGRAM

For

Issuance of a Take Authorization for Threatened and Endangered Species Within the Multiple Species Conservation Program (MSCP) Planning Area San Diego County, California

(LDR No. 93-0287)

(SCH No. 93121073)

ATTACHMENT 1

Covered Species for which Significant Impacts Outside the MHPA are Mitigated

January, 1997

ATTACHMENT 1
COVERED SPECIES FOR WHICH SIGNIFICANT IMPACTS*
OUTSIDE THE MHPA ARE MITIGATED

Covered Species	MHPA	Chula Vista Options		Coronado	Del Mar	San Diego	Santee	Unincorporated	
		Policy 1	Policy 2					MHPA	Alt 1
Plants									
San Diego thorn-mint	x	x	x			x		x	x
Shaw's agave	x					x			
San Diego ambrosia	x	x	x			x	x	x	x
Aphanisma	ns			ns	ns	ns			
Del Mar manzanita	x				x	x		x	x
Coastal dunes milk-vetch	x			x					
Encinitas baccharis	x					x		x	x
Orcutt's brodiaea	x	x	x			x		x	x
Slender-pod jewelflower	x					x	x	x	x
Lakeside ceanothus	x							x	x
Wart-stemmed ceanothus	x				x	x		x	x
Salt marsh bird's-beak	x	x	x	x		x			
Orcutt's bird's-beak	x					x		x	x
Del Mar Mesa sand aster	x				x	x		x	x
Short-leaved dudleya	x				x	x			
Variegated dudleya	x	x	x	x		x	x	x	x
Sticky dudleya	x							x	x
Palmer's ericameria	x					x		x	x
San Diego button-celery	x	x	x			x		x	x
San Diego barrel cactus	x	x	x		x	x	x		x
Otay tarplant	x	x	x			x		x	x
Heart-leaved pitcher sage	x							x	x
Nuttall's lotus	x			x	x	x			
Felt-leaved monardella	x							x	x
Willowy monardella	x					x	x	x	x
San Diego goldenstar	x	x	x			x	x		x
Prostrate navarretia	x	x	x			x		x	x
Dehesa bear-grass	x							x	x
Snake cholla	x		x			x			x
California Orcutt grass	x	x	x			x		x	x
Torrey pine	x				x	x			
San Diego mesa mint	x					x		x	x
Otay Mesa mint	x	x	x			x		x	x
Small-leaved rose	x					x		x	x
San Miguel savory	x							x	x
Narrow-leaved nightshade	x					x	x		x
Animals									
San Diego fairy shrimp	x	x	x		x	x		x	x
Riverside fairy shrimp	x	x	x			x	x	x	x
Arroyo southwestern toad	x	x	x		x	x	x	x	x
Southwestern pond turtle	x	x	x		x		x	x	x
San Diego horned lizard	x	x	x		x	x	x	x	x
Orange-throated whiptail	x	x	x		x	x	x	x	x
California brown pelican	x	x	x	x	x	x			
Reddish egret	x	x	x		x	x			

ATTACHMENT 1
COVERED SPECIES FOR WHICH SIGNIFICANT IMPACTS* OUTSIDE THE MHPA ARE MITIGATED

Covered Species	MHPA	Chula Vista Options		Coronado	Del Mar	San Diego	Santee	Unincorporated	
		Policy 1	Policy 2					MHPA	Alt 1
White-faced ibis	x	x	x		x	x			
Canada goose	x					x		x	x
Bald eagle	x	x	x			x	x	x	x
Cooper's hawk	x	x	x		x	x	x	x	x
Light-footed clapper rail	x	x	x		x	x			
Western snowy plover	x	x	x	x	x	x			
California least tern	x	x	x	x	x	x			
Burrowing owl	x	x	x	x	x	x	x	x	x
Southwestern willow flycatcher	x	x	x		x	x	x	x	x
Coastal cactus wren	x		x		x	x	x		x
California gnatcatcher	x		x		x	x	x		x
Western bluebird	x	x	x		x	x	x	x	x
Least Bell's vireo	x	x	x		x	x	x	x	x
California rufous-crowned sparrow	x	x	x		x	x	x		x
Belding's Savannah sparrow	x	x	x	x	x	x			
Large-billed Savannah sparrow	x	x	x	x	x	x			
Tricolored blackbird	x	x	x		x	x	x	x	x

* Significant direct impacts as determined under the MHPA scenario based on the criteria described under *Process Background (Section 4.3 of the Draft EIR/EIS).* Species that would not be significantly impacted under the MHPA are not included in this table.

MITIGATION MONITORING
and
REPORTING PROGRAM

For

Issuance of a Take Authorization for Threatened and Endangered Species Within the Multiple Species Conservation Program (MSCP) Planning Area San Diego County, California

(LDR No. 93-0287)

(SCH No. 93121073)

ATTACHMENT 2

Species Evaluated for Coverage Under the MSCP

January, 1997

ATTACHMENT 2
SPECIES EVALUATED FOR COVERAGE UNDER THE MSCP

SCIENTIFIC NAME COMMON NAME STATUS	# and % OF POINTS CONSERVED[1]	# and % OF POLYGONS CONSERVED[2]	# and % MAJOR POPULATIONS CONSERVED[3]	RISK[4]/COMMENTS
PLANTS				
Acanthomintha ilicifolia San Diego thorn-mint PE/CE	27.5/39 (70%)	6.1/12.6 (41%)	6.8/8 (86%)	Moderate/Dependent upon significant conservation within the County of San Diego's Metro Lakeside Jamul segment and on Otay Ranch.
FINDING: Adequately conserved by the Plan. This is a narrow endemic species addressed within individual subarea plans.				
Agave shawii Shaw's agave */	1.7/6 (28%)	No polygons	3.8/4 (94%)	Low/Potentially subject to edge effects, but appears stable in existing preserves. Essential populations occur on military land (i.e., 32 of 35 sites (91%) within Pt. Loma Ecological Reserve Area).[7]
FINDING: Adequately conserved by the Plan. This is a narrow endemic species addressed within individual subarea plans.				
Ambrosia pumila San Diego ambrosia */	11/16 (69%)	5.3/9.5 (56%)	1.2/2 (60%)	High/1 of 2 major populations inadequately conserved (Mission Trails/Santee=42%) and subject to edge effects. Efforts should be made by the participating jurisdictions and wildlife agencies to acquire and preserve the population of this species located in the City of San Diego on the north side of Mission Gorge Road and west of Mast Boulevard (near the Santee/City of San Diego Corporate Boundary).
FINDING: Adequately conserved based on designation as a narrow endemic species within individual subarea plans and successful transplantation of the Mission Trails campground population.				
Aphanisma blitoides Aphanisma */	Site-specific data not mapped	Site-specific data not mapped	No known extant locations in MSCP 65% of southern foredune habitat	High/ Dependent on military lands.[7]
FINDING: Discountable.				
Arctostaphylos glandulosa var. *crassifolia* Del Mar manzanita PE/	101/135 (75%)	48.8/61.1 (80%)	3.6/4 (91%)	Moderate/Subject to edge effects; project level evaluation showed 50% of individuals are within 500' of development.
FINDING: Adequately conserved by the Plan. City of San Diego Subarea Plan will address species specific management of edge effects and fuel modification on Del Mar Mesa.				
Arctostaphylos otayensis Otay manzanita */	24.7/26 (95%)	3.1/3.1 (100%)	2.9/3 (95%)	Moderate/Subject to edge effects, particularly on Callahan Mountain and its north-trending drainages.
FINDING: Adequately conserved by the Plan.				

ATTACHMENT 2 (*Continued*)
SPECIES EVALUATED FOR COVERAGE UNDER THE MSCP

SCIENTIFIC NAME COMMON NAME STATUS	# and % OF POINTS CONSERVED[1]	# and % OF POLYGONS CONSERVED[2]	# and % MAJOR POPULATIONS CONSERVED[3]	RISK[4]/COMMENTS
Astragalus deanei Dean's milk-vetch */	4.5/6 (75%)	2.7/3.8 (70%)	0.8/1 (80%)	Unknown/Insufficient current data on distribution of species, cannot assure conservation of all the few remaining populations.
FINDING: Unknown conservation level and therefore not covered by the plan.				
Astragalus tener var. *titi* Coastal dunes milk vetch PE/CE	Site-specific data not mapped	Site specific data not mapped	123 out of 188 acres of So. Foredunes are in MHPA (65%)	High/Subject to edge effects. Presumed extirpated; potential locations would likely occur on military land. Potential habitat is adequately conserved through MHPA (65%) or occurs within military or state-owned lands.[7]
FINDING: Adequately conserved by the Plan. Management plan(s) shall include opportunities for reintroduction into appropriate habitat.				
Euphydryas editha quino Encinitas baccharis PE/CE	31/41 (76%)	1.9/3.5 (65%)	2.8/3 (92%)	Moderate/Locations will be indirectly impacted by edge effects, including fuel modification.
FINDING: Adequately conserved by the Plan. This is a narrow endemic species addressed within individual subarea plans.				
Berberis nevinii Nevin's barberry PE/	2/2 (100%) not native populations	No polygons	No major populations	Low/Not known to occur within MSCP.
FINDING: Discountable. This is a narrow endemic species addressed within individual subarea plans.				
Brodiaea filifolia Thread-leaved brodiaea PT/CE	No points	No polygons	Not known to occur in MSCP, 24% of vernal pool and 34% grassland habitat conserved.[5]	Moderate/Species primarily occurs in MHCP. Conduct surveys at appropriate time of year.
FINDING: Discountable, conduct surveys in suitable habitat. This is a narrow endemic species addressed within individual subarea plans.				
Brodiaea orcuttii Orcutt's brodiaea */	41.4/126 (33%)	1.8/9.4 (19%)	3.7/6 (61%) 24% of vernal pool and 34% grassland habitat conserved.	Moderate/Would receive some protection per federal wetland regulations. Manage for edge effects. Military lands are essential to this species (33/126 points); large populations occur outside the MSCP.[7,8]
FINDING: Adequately conserved by the Plan and protection by state and federal wetlands protection regulations.				

ATTACHMENT 2 (*Continued*)
SPECIES EVALUATED FOR COVERAGE UNDER THE MSCP

SCIENTIFIC NAME COMMON NAME STATUS	# and % OF POINTS CONSERVED[1]	# and % OF POLYGONS CONSERVED[2]	# and % MAJOR POPULATIONS CONSERVED[3]	RISK[4]/COMMENTS
Calamagrostis densa Dense read grass none	5.7/6 (95%)	No polygons	5.5/6 (91%)	Low/Potential impact from trails. Potential taxonomic problems.
FINDING: Adequately conserved by the Plan and with trail maintenance/placement appropriately addressed in preserve management plan(s).				
Calochortus dunnii Dunn's mariposa lily */CR	42.8/43 (99%)	2.4/2.4 (100%)	3/3 (100%)	Low/ Assumes 100% preservation of 3 major populations, including amendment area.
FINDING: Adequately conserved by the Plan. This is a narrow endemic species addressed within individual subarea plans.				
Caulanthus stenocarpus Slender-pod jewelflower */CR	37.5/42 (89%)	7.6/10.2 (74%)	3/4 (75%)	Moderate/1 of 4 major populations not included in MHPA, but total distribution not completely known. Recent change in taxonomy has combined this species with *C. heterophyllus*.
FINDING: Adequately conserved by the Plan.				
Ceanothus cyaneus Lakeside coanothus */	5.2/8 (65%)	5.3/49.4 (11%)	3.3/4 (83%)	Moderate/Subject to edge effects, likely more populations occur, surveys are needed. Endemic to MSCP area, narrowly distributed, needs monitoring.
FINDING: Adequately conserved by the Plan and with monitoring appropriately addressed in preserve management plan(s). This is a narrow endemic species addressed within individual subarea plans.				
Ceanothus verrucosus Wart-stemmed ceanothus */	48.4/194 (25%)	320.3/606.1 (53%)	2/5 (40 %)	High/Subject to edge effects. Tha majority of two major populations is protected by the plan; the majority of one (Carmel Mtn.) is not protected by the plan; and the other two major populations occur entirely on military lands.[7]
FINDING: Adequately conserved by the Plan and 1) preserve areas are managed to increase populations, and 2) this species is included within revegetation efforts in appropriate habitats.				
Chorizanthe orcuttiana Orcutt's spineflower FE/CE	No points	No polygons	Unknown[5]	Unknown/One location is outside the plan area and may be subject to extirpation. Some potential habitat occurs in the Cities of San Diego and Del Mar; however, there are no recent known occurrences. All populations should be considered essential and protected.
FINDING: Unknown conservation level and therefore not covered by the plan.				
Cordylanthus maritimus ssp. *maritimus* Salt marsh bird's-beak FE/CE	3/4 (75%)	26.4/25.4 (100%)	3/3 (100%)	Low/Would receive some protection per federal and state wetland regulations.[8]
FINDING: Adequately conserved by the Plan and protection by state and federal wetlands regulations.				

ATTACHMENT 2 (*Continued*)
SPECIES EVALUATED FOR COVERAGE UNDER THE MSCP

SCIENTIFIC NAME COMMON NAME STATUS	# and % OF POINTS CONSERVED[1]	# and % OF POLYGONS CONSERVED[2]	# and % MAJOR POPULATIONS CONSERVED[3]	RISK[4]/COMMENTS
Cordylanthus orcuttianus Orcutt's bird's-beak */	5.5/6 (92%)	72.6/103.3 (70%)	.75/1 (75%)	Moderate/Portions of the major population (Otay River Valley) are subject to edge effects and direct potential impacts.
FINDING: Adequately conserved by the Plan.				
Corethrogyne filaginifolia var. *linifolia* Del Mar Mesa sand aster PT/	31.8/70 (45%)	2.96/7.3 (40%)	.96/2 (48%) 62% of southern maritime chaparral conserved	High/Subject to edge effects. Carmel Mountain area populations will be adversely affected. Portions of both major populations will be impacted and subject to edge effects.
FINDING: Adequately conserved by the Plan.				
Cupressus forbesii Tecate cypress */	24.8/26 (95%)	8.9/8.9 (100%)	98% of Tecate cypress forest	Low/The majority of the population is within MHPA and the remainder may receive some protection per BLM policies. Vulnerable to increased fire frequency[7].
FINDING: Adequately conserved by the Plan and with fire management appropriately addressed in preserve management plan(s).				
Dudleya blochmaniae ssp. *brevifolia* Short-leaved dudleya PE/CE	7.5/10 (75%)	3.4/3.6 (94%)	3.4/4 (86%)	Moderate to High/ 3 major populations subject to edge effects. Needs management of edge effects along existing/proposed interface with development.
FINDING: Adequately conserved by the Plan and with Management Plan for Del Mar Mesa/Carmel Mountain which will include specific measures for maintenance and enhancement of species. This is a narrow endemic species addressed within individual subarea plans.				
Dudleya variegata Variegated dudleya */	196.6/261 (75%)	43/100 (43%)	6.2/11 (56%)	High/2 of 11 major populations not included in MHPA, 1 additional population inadequately conserved, and 6 populations subject to edge effects.
FINDING: Adequately conserved by the Plan. This is a narrow endemic species addressed within individual subarea plans.				
Dudleya viscida Sticky dudleya */	2/3 (67%)	0.2/0.2 (100%)	0.8/1 (75%)	Moderate/One population documented in study area is subject to edge effects. Most of species range is in MHCP and Camp Pendleton.
FINDING: Adequately conserved by the Plan.				

ATTACHMENT 2 (*Continued*)
SPECIES EVALUATED FOR COVERAGE UNDER THE MSCP

SCIENTIFIC NAME COMMON NAME STATUS	# and % OF POINTS CONSERVED[1]	# and % OF POLYGONS CONSERVED[2]	# and % MAJOR POPULATIONS CONSERVED[3]	RISK[4]/COMMENTS
Ericameria palmeri ssp. *palmeri* Palmer's ericameria */	24.8/29 (86%)	.05/1.75 (3%)	4/6 (66%)	Moderate to High/Two major populations subject to potential impacts from proposed projects. Successful mitigation/transplantation for Jamacha Blvd road-widening is essential. Portions of 5 out of the 6 major populations are not conserved.
FINDING: Adequately conserved. This is a narrow endemic species addressed within individual subarea plans.				
Eryngium aristulatum var. *parishii* San Diego button-celery FE/CE	170.4/222 (77%)	5.2/6.8 (76%)	3.6/6 (59%[6])	Moderate/Would receive some protection per federal wetland regulations, but 2 of 6 major populations not included in MHPA and 3 additional populations subject to edge effects. 84% preservation not counting military lands. Military lands are essential to the survival of this species.[7,8]
FINDING: Adequately conserved by the Plan and protection by state and federal wetlands regulations.				
Erysimum ammophilum Coast wallflower */	Site specific date not mapped	Site specific data not mapped	No major populations	Low/Known records within MSCP are now thought to be *E. capitatum.*
FINDING: Adequately conserved by the Plan.				
Ferocactus viridescens San Diego barrel cactus */	888.9/1368 (65%)	191.5/415.5 (46%)	6.5/8 (81%)	Low.
FINDING: Adequately conserved by the Plan.				
Fremontodendron mexicanum Mexican flannelbush PE/CR	7/7 (100%)	No polygons	1/1 100%	High/Factors which limit its distribution to extremely rare occurrences within potential habitats are not understood. Occurs in high wildfire incidence area with little fire management currently provided. Six of the seven points constitutes the one major population (Cedar Creek); less than 200 individuals are estimated in the U.S. Only one known population in Baja, Mexico.
FINDING: Inadequately conserved; insufficient distribution data.				
Githopsis diffusa spp. *filicaulis* Mission Canyon bluecup */	Site specific data not mapped.	Site specific data not mapped.	Unknown[5]	Unknown/Factors that limit its distribution to extremely rare occurrences within potential habitats are not understood. This species is believed to be a fire follower; needs a fire management plan to ensure appropriate fire frequency.
FINDING: Unknown conservation level and therefore not covered by the Plan.				

ATTACHMENT 2 (*Continued*)
SPECIES EVALUATED FOR COVERAGE UNDER THE MSCP

SCIENTIFIC NAME COMMON NAME STATUS	# and % OF POINTS CONSERVED[1]	# and % OF POLYGONS CONSERVED[2]	# and % MAJOR POPULATIONS CONSERVED[3]	RISK[4]/COMMENTS
Hemizonia conjugens Otay tarplant PE/CE	82.6/141 (59%)	134.1/199.9 (67%)	4.1/7 (59%)	High/At least 2 major populations inadequately conserved in MHPA, and 5 major populations may be subject to edge effects.
FINDING: Adequately conserved with monitoring and management of populations within the preserve and, specifically, Chula Vista and the County of San Diego will avoid populations of this species through sensitive design and development of the active recreation areas in the Otay River Valley as described in the Otay Ranch RMP and GDP. This is a narrow endemic species addressed within individual subarea plans.				
Hemizonia floribunda Tecate tarplant */	1/1 (100%)	No polygons	Unknown[6]	Unknown/Insufficient data. Potentially impacted by grazing and off-road vehicles. Major populations occur east of MSCP study area.
FINDING: Unknown conservation level and therefore not covered by the Plan.				
Lepechinia cardiophylla Heart-leaved pitcher sage */	3.4/4 (85%)	No polygons	1/1 (100%)	High/Subject to edge effects. 3 of 4 locations are subject to the County's Biological Mitigation Ordinance, which assumes avoidance and a minimum 80% conservation.
FINDING: Adequately conserved by the Plan. This is a narrow endemic addressed within individual Subarea Plans.				
Lepechinia ganderi Gander's pitcher sage */	25/25 (100%)	3.3/3.3 (100%)	5/5 (100%)	Low/Subject to edge effects. One of the five major populations is subject to the County's Biological Mitigation Ordinance, which assumes avoidance and a minimum 80% conservation.
FINDING: Adequately conserved by the Plan. This is a narrow endemic species addressed within individual subarea plans.				
Lotus nuttallianus Nuttall's lotus */	Site-specific data not mapped	Site-specific data not mapped	4/5 (80%)	Moderate/Subject to edge effects, military lands important for this species. [7]
FINDING: Adequately conserved by the Plan.				
Monardella hypoleuca ssp. *lanata* Felt-leaved monardella none	5/6 (83%)	4.9/4.9 (100%)	3.6/4 (89%)	Low/Subject to some edge effect.
FINDING: Adequately conserved by the Plan. This is a narrow endemic addressed within individual Subarea Plans.				

ATTACHMENT 2 (*Continued*)
SPECIES EVALUATED FOR COVERAGE UNDER THE MSCP

SCIENTIFIC NAME COMMON NAME STATUS	# and % OF POINTS CONSERVED[1]	# and % OF POLYGONS CONSERVED[2]	# and % MAJOR POPULATIONS CONSERVED[3]	RISK[4]/COMMENTS
Monardella linoides ssp. *viminea* Willowy monardella PE/CE	42.0/149 (28%)	12.6/22.1 (57%)	3/4 (75%)	High/ Largest of the 4 major populations on military lands and not included in MHPA. Military populations are critical. 100% preservation within participating jurisdiction lands.[7]
FINDING: Adequately conserved by the Plan.				
Muilla clevelandii San Diego goldenstar */	100.4/144 (70%)	115.0/187.2 (61%)	8/11 (73%)	Low-Moderate/3 of 11 major populations not included in MHPA, and 4 populations are subject to edge effects. The 4S Ranch population will be transplanted into an appropriate preserve area.
FINDING: Adequately conserved by the Plan (including avoidance of populations within City of San Diego's 25% encroachment area).				
Myosurus minimus ssp. *apus* Little mousetail */	6.1/18 (34%)	10.34/12.30 (84%)	.5/2 (25%)[8]	High/Would receive some protection per federal wetland regulations and per inclusion on the proposed County BMO Plant List A, but subject to edge effects. Potential significant impacts from S.R. 125. A significant population occurs on military land. Only one minor population confirmed conserved within MHPA (Upham mitigation site); less than 30% conservation of occurrences within major populations, at most 55% of minor populations conserved.[7,8]
FINDING: Not adequately conserved by the Plan.				
Navarretia fossalis Prostrate navarretia PT/	3/13 (23%)	0.1/0.1 (100%)	.6/1 (63%)	High/Would receive some protection per federal wetland regulations, but subject to edge effects. Expected impacts from S.R. 125 would be significant.[8]
FINDING: Adequately conserved by the Plan and protection by state and federal wetlands regulations. State and federal transportation agencies will need to avoid or adequately mitigate the impacts to this species from the extension of State Route 125.				
Nolina interrata Dehesa bear-grass PT /CE	33/34 (97%)	262/268.9 (97%)	3/3 (100%)	Low/Subject to edge effects. Recommend acquisition of remaining portions of population at Sequan Peak.
FINDING: Adequately conserved by the Plan. This is a narrow endemic species addressed within individual subarea plans.				

ATTACHMENT 2 (*Continued*)
SPECIES EVALUATED FOR COVERAGE UNDER THE MSCP

SCIENTIFIC NAME COMMON NAME STATUS	# and % OF POINTS CONSERVED[1]	# and % OF POLYGONS CONSERVED[2]	# and % MAJOR POPULATIONS CONSERVED[3]	RISK[4]/COMMENTS
Opuntia parryi var. *serpentina* Snake cholla */	21.6/57 (38%)	18/31.8 (57%)	3.3/5 (66%)	Moderate/Subject to edge effects, military lands contain critical populations. [7]
FINDING: Adequately conserved by the Plan based upon Chula Vista "Modified GDP B" Alternative within the City's Subarea Plan. Management Plans will include active restoration and management in appropriate preserve areas. Restoration Plans for preserve areas should include this species within suitable habitat to increase the population. This is a narrow endemic species addressed within individual subarea plans.				
Orcuttia californica California Orcutt grass FE/CE	4.75/8 (59%)	No polygons	0.9/2 (43%)[8]	Moderate/Receives some protection per federal wetland regulations; subject to edge effects and Border Patrol activities. [8]
FINDING: Adequately conserved by the Plan and protection by federal wetlands regulations.				
Pinus torreyana Torrey pine */	7.45/13 (57%)	No polygons	1/1 (100%)	Low/Subject to edge effects.
FINDING: Adequately conserved by the Plan.				
Pogogyne abramsii San Diego mesa mint FE/CE	9.0/62 (15%)	No polygons	0/3[8] 24% vernal pool habitat	High/Receives some protection per federal wetland regulations. Military lands are essential, containing 70-80% of this species [7,8].
FINDING: Adequately conserved by the Plan and protection by federal wetlands regulations.				
Pogogyne nudiuscula Otay Mesa mint FE/CE	86.8/89 (96%)	0.2/0.2 (100%)	0.9/1 (91%)[6] 24% vernal pool habitat	Moderate/Subject to edge effects, receives some protection per federal wetland regulations. All extant populations in U.S. occurs within MSCP; restricted to 3-5 vernal pool complexes on Otay Mesa. [8]
FINDING: Adequately conserved by the Plan and protection by federal wetlands regulations.				
Rosa minutifolia Small-leaved rose -/CE	1/1 transplant	No polygons	1/1 transplant	High/Population will be preserved through transplantation, but preserved individual(s) will be subject to edge effect. Transplant needs adequate buffer, monitoring, and management.
FINDING: Adequately conserved based on CDFG 2081 management authorization for the California Terraces project.				

ATTACHMENT 2 (*Continued*)
SPECIES EVALUATED FOR COVERAGE UNDER THE MSCP

SCIENTIFIC NAME COMMON NAME STATUS	# and % OF POINTS CONSERVED[1]	# and % OF POLYGONS CONSERVED[2]	# and % MAJOR POPULATIONS CONSERVED[3]	RISK[4]/COMMENTS
Satureja chandleri San Miguel Savory None	1.7/3 (57%)	No polygons	No major populations identified	Moderate
FINDING: Adequately conserved by the Plan with placement on the County of San Diego's Plant Species List A or B instead of List D.				
Senecio ganderi Gander's butterweed */CR	7.6/8 (95%)	17.7/17.7 (100%)	2/2 (100%)	Moderate/Subject to edge effects. El Capitan population to be avoided.
FINDING: Adequately conserved by the Plan. This is a narrow endemic species addressed within individual subarea plans.				
Solanum tenuilobatum Narrow-leaved nightshade */	108.8/136 (80%)	1.3/2.1 (61%)	1.8/2 (90%)	Moderate/Known populations and potential habitat adequately conserved in MHPA, but total distribution not completely known; subject to edge effects. There is taxonomic disagreement on this taxon.
FINDING: Adequately conserved by the Plan.				
Tetracoccus dioicus Parry's tetracoccus */	30/30 (100%)	195.4/199.2 (98%)	3/3 (100%)	Moderate/Subject to edge effects and fuel modification.
FINDING: Adequately conserved by the Plan.				
ANIMALS				
Euphydryas editha quino Quino checkerspot butterfly PE/	1.88/2 (94%)	No polygons	Unknown	High/One known extant location in San Diego County. Occurs near vernal pools with host plant *Plantago insularis*. Recent sitings indicate potential ability for recolonization into MSCP area.
FINDING: Unknown conservation level and lack of assurances that Plan will protect preferred habitat (mesa tops/grasslands) and connection to known source populations. Therefore, not covered by the Plan.				
Euphyes vestris harbisoni Harbison's dun skipper */	½ (50%)	No polygons	Unknown	Unknown/Insufficient data on life history/habitat requirements and local distribution.
FINDING: Unknown conservation level and therefore not covered by the Plan based on insufficient distribution and life history data.				

ATTACHMENT 2 (*Continued*)
SPECIES EVALUATED FOR COVERAGE UNDER THE MSCP

SCIENTIFIC NAME COMMON NAME STATUS	# and % OF POINTS CONSERVED[1]	# and % OF POLYGONS CONSERVED[1]	# and % MAJOR POPULATIONS CONSERVED[1]	RISK[1]/COMMENTS
Lycaena thornei Hermes copper butterfly */	3.9/9 (44%)	No polygons	Insufficient data	Unknown/Insufficient life history data to determine value of MHPA.
FINDING: Unknown conservation level and therefore not covered by the Plan based on insufficient distribution and life history data.				
Mitoura thornei Thorne's hairstreak butterfly */	Site-specific data not mapped	100%	98% Tecate Cypress	Low/Needs fire management plan.
FINDING: Adequately conserved by the Plan and with fire management appropriately addressed in preserve management plan(s).				
Panoquina errans Salt marsh skipper */	Site-specific data not mapped	Site-specific data not mapped	92% of saltmarsh habitat	Moderate/Likely to occupy coastal salt marshes in San Diego County (most on public lands). Needs active management.
FINDING: Adequately conserved by Plan.				
Branchinecta sandiegoensis San Diego fairy shrimp PE/	Site-specific data not mapped	Site specific data not mapped	24% of vernal pool habitat	Moderate/Subject to edge effects; would receive some protection per federal wetlands regulations. Military lands are essential to the survival of this species.[7,8]
FINDING: Adequately conserved by the Plan and protection by federal wetland regulations.				
Streptocephalus wootonii Riverside fairy shrimp FE/	2/3 (67%)	No polygons	2/3 (67%) 24% of vernal pool habitat.	Preserved habitat subject to edge effects. Important populations on military land.[7,8]
FINDING: Adequately conserved by the Plan and protection by federal wetlands regulations.				
Bufo microscephus californicus Arroyo southwestern toad FE/SSC	14.5/15 (97%)	Site specific data not mapped	70% of riparian habitats and freshwater marsh.	High/Would receive some protection per federal and state wetland regulations; however this species uses upland habitat up to 1 km. from wetland area. Subject to adverse effects from non-native predators such as bullfrog and sunfish.[8]
FINDING: Adequately conserved by the Plan and protection by state and federal wetlands regulations. Management Plans will address preservation of sheltering and foraging habitat within 1 km. of occupied breeding habitat within the preserve and, to the extent possible control/removal of non-native predators.				

ATTACHMENT 2 (*Continued*)
SPECIES EVALUATED FOR COVERAGE UNDER THE MSCP

SCIENTIFIC NAME COMMON NAME STATUS	# and % OF POINTS CONSERVED[1]	# and % OF POLYGONS CONSERVED[2]	# and % MAJOR POPULATIONS CONSERVED[3]	RISK[4]/COMMENTS
Rana aurora draytonii California red-legged frog FT/SSC	Site-specific data not mapped	Site-specific data not mapped	70% of riparian habitats and freshwater marsh.	Unknown/Possibly extirpated from San Diego County; would receive some protection per federal and state wetland regulations.[8]
FINDING: Discountable.				
Clemmys marmorata pallida Southwestern pond turtle */SSC	6.8/8 (86%)	No polygons	70% of riparian habitats and freshwater marsh.	Unknown/Would receive some protection per federal and state wetland regulations.[8]
FINDING: Adequately conserved by the Plan and protection of state and federal wetlands regulations.				
Cnemidophorus hyperythrus beldingi Orange-throated whiptail */SSC	317.6/514 (62%)	No polygons	56% of CSS and chaparral habitats and riparian scrub.	Low/Subject to monitoring and management plan.
FINDING: Adequately conserved by the Plan.				
Phrynosoma coronatum blainvillei San Diego horned lizard */SSC	184.6/291 (63%)	No polygons	56% of CSS and chaparral habitats and riparian scrub.	Low/Subject to edge effects; needs management to reduce impact of Argentinean ant.
FINDING: Adequately conserved by the Plan. Preserve management plans will address eradication of Argentinean ant to the extent feasible.				
Pelecanus occidentalis californicus California brown pelican FE/CE	2/2 (100%)	No site-specific data	40% of potential roosting habitat; 91% open water, 92% coastal salt marsh.	Moderate/Adequate protection depends on protection and management of roosting and foraging sites, including on military land. Wildlife agencies need to work with Military and Port District to protect roosting and foraging habitat.
FINDING: Adequately conserved by the Plan.				

ATTACHMENT 2 (*Continued*)
SPECIES EVALUATED FOR COVERAGE UNDER THE MSCP

SCIENTIFIC NAME COMMON NAME STATUS	# and % OF POINTS CONSERVED[1]	# and % OF POLYGONS CONSERVED[2]	# and % MAJOR POPULATIONS CONSERVED[3]	RISK/COMMENTS
Egretta rufescens Reddish egret */	2/3 (67%)	No polygons	2/3 (67%) 92%-coastal saltmarsh, 87% flood channel.	Low/ Very few records in MSCP, subject to edge effect.
FINDING: Adequately conserved by the Plan.				
Plegadis chihi White-faced ibis */SSC	4/6 (67%)	No polygons	4/6 (67%) 81% of riparian woodland/forest.	Moderate/Subject to edge effect, but 4 of 6 localities conserved in MHPA; manage breeding habitat at Lake Hodges cornerstone.
FINDING: Adequately conserved by the Plan. Management plan for City of San Diego cornerstone lands will include preservation and management of nesting areas at Lake Hodges.				
Branta canadensis Canada goose none	1.9/6 (32%)	Site-specific data not mapped.	61% of freshwater marsh, 91% open water.	Low/Would receive some protection per federal and state wetland regulations; major foraging areas not included in MHPA. Impacts insignificant.
FINDING: Adequately conserved by the Plan.				
Haliaeetus leucocephalus Bald eagle FT/CE	3/4 (75%)	No polygons	91% open water	Low/This species is an occasional winter resident foraging in the vicinity of eastern water reservoirs.
FINDING: Adequately conserved by the Plan.				
Circus cyaneus Northern harrier -/SSC	28.9/50 (58%)	No polygons	49% of CSS, grassland, marsh habitats, agriculture, saltpans.	Moderate/High loss of foraging and breeding habitat; further reduced species w/in the MSCP; significant portions of habitat at risk; species would receive some protection per federal and state wetland regulations. Where possible, add grassland habitat to the preserve.
FINDING: Insignificant.				

ATTACHMENT 2 (*Continued*)
SPECIES EVALUATED FOR COVERAGE UNDER THE MSCP

SCIENTIFIC NAME COMMON NAME STATUS	# and % OF POINTS CONSERVED[1]	# and % OF POLYGONS CONSERVED[2]	# and % MAJOR POPULATIONS CONSERVED[3]	RISK[4]/COMMENTS
Accipiter cooperii Cooper's hawk --/SSC	47.5/83 (57%)	No polygons	52% of oak habitats.	Moderate/Only 52% of oak habitat will remain. Buffer nest sites (300') within preserve.
FINDING: Adequately conserved by the Plan. Management Plans will include 300 foot impact avoidance area around nesting sites within preserves.				
Buteo swainsoni Swainson's hawk --/CT	Site-specific data not mapped	Site-specific data not mapped	20% of grassland and agriculture .	Moderate/Additional loss of foraging habitat used during migration may cause extirpation of species as a migrant through San Diego; significant portions of potential foraging habitat at risk. Dependent on other regional programs. Where possible add grassland habitat to the preserve.
FINDING: Insignificant.				
Buteo regalis Ferruginous hawk */SSC	1.6/2 (82%)	Site-specific data not mapped	20% of grassland and agriculture.	Moderate/Due to high loss of foraging habitat, particularly Otay Ranch/Mesa; occurrence of this rare species may be further reduced within the MSCP. Risk is dependent upon the application of the County's BMO and other regional programs aimed at raptor conservation. Where possible, add grassland to the preserve. MSCP is not considered to be an important stop-over area during migration.
FINDING: Insignificant.				
Aquila chrysaetos Golden eagle BEPA/SSC	(nesting localities) 28.6/47 (61%)	302.4/474.3 (64%) acres of nesting localities.	28 % of known locations, 49% of potential foraging habitat preserved (grassland, agriculture, chaparral and CSS).	High/Fragmentation and loss of foraging and nesting habitat; may preclude long-term successful breeding of this species. Risk is dependent upon the application of the County's BMO and other regional programs aimed at raptor conservation. Where possible add grassland habitat to the preserve, and include adequate impact avoidance areas around nest sites.
FINDING: Insignificant.				
Falco peregrinus anatum American peregrine falcon FE/CE	5.4/9 (61%)	No polygons	Known nesting sites are not in MHPA.	High/Nest site management is primary issue for this species; risk to species foraging habitat is moderate-low. Only three known nest sites in San Diego.
FINDING: Insignificant.				

ATTACHMENT 2 (*Continued*)
SPECIES EVALUATED FOR COVERAGE UNDER THE MSCP

SCIENTIFIC NAME COMMON NAME STATUS	# and % OF POINTS CONSERVED[1]	# and % OF POLYGONS CONSERVED[2]	# and % MAJOR POPULATIONS CONSERVED[3]	RISK[4]/COMMENTS
Rallus longirostris levipes Light-footed clapper rail FE/CE	9/16 (56%)	1299.2/1435.1 (91%)	92% saltmarsh habitat.	Moderate/Actively manage wetland sites to minimize edge effects. [8]
FINDING: Adequately conserved by the Plan and protection by state and federal wetlands regulations.				
Charadrius alexandrinus nivosus Western snowy plover FT/SSC	8.7/15 (58%)	1059.6/1486.1 (71%)	90% saltpan	Low/Assumes nesting locations on military land is protected. Saltworks are an essential nesting location for this species. [7,8]
FINDING: Adequately conserved by the Plan and protection by state and federal wetlands regulations, and active management of edge effects. This coverage does not include any new impacts to levees or maintenance of levees during reproductive season of nesting snowy plovers.				
Charadrius montanus Mountain plover C/	Site-specific data not mapped	Site-specific data not mapped	20% grassland and agricultural lands	Low
FINDING: Insignificant.				
Numenius americanus Long-billed curlew */SSC	6/16 (38%)	No polygons	20% grassland and agricultural lands	Moderate/assume military land will afford some protection; would receive some protection per federal and state wetland regulations. [7,8]
FINDING: Insignificant.				
Sterna elegans Elegant tern */SSC	2/2 (100%)	No polygons	2/2 (100%) 90% saltpan	Low[8]
FINDING: Adequately conserved by the Plan and protection by state and federal wetlands regulation, and active management of edge effects. This coverage does not include any new impacts to levees or maintenance of levees during reproductive season of nesting elegant terns.				
Sterna antillarum browni California least tern FE/CE	2.9/4 (74%)	306.4/471.8 (65%)	100%	Low/Assumes nesting colonies on military land are protected. [7,8]
FINDING: Adequately conserved by the Plan and protection by state and federal wetlands regulation, and active management of edge effects. This coverage does not include new impacts to levees or maintenance of levees during reproductive season of nesting least terns.				

ATTACHMENT 2 (*Continued*)
SPECIES EVALUATED FOR COVERAGE UNDER THE MSCP

SCIENTIFIC NAME COMMON NAME STATUS	# and % OF POINTS CONSERVED[1]	# and % OF POLYGONS CONSERVED[2]	# and % MAJOR POPULATIONS CONSERVED[3]	RISK[4]/COMMENTS
Speotyto cunicularia hypugaea Burrowing owl */SSC	10.4/24 (44%)	No polygons	20% of grassland and agriculture.	High/Dependent on other regional programs and military lands (Brown Field, NAS Miramar, North Island, Silver Strand). As funding permits, the wildlife agencies will work to achieve greater conservation of occupied burrowing owl habitat or suitable habitat areas where the species population can be expanded.
FINDING: Adequately conserved by the Plan and associated actions that will include: (1) preservation and enhancement of burrowing owls within the MHPA; (2) avoidance of impacts to colonies and pairs to the maximum extent practicable outside the MHPA (permit amendment areas); (3) implementation of passive relocation protocols (as specified in the CDFG Report on Burrowing Owls) on projects that affect burrowing owls; (4) within-tier mitigation for occupied habitat at locations that can be managed to restore, maintain, or enhance burrowing owl habitat values. Where possible, focus acquisitions to increase preservation of grasslands.				
Empidonax traillii extimus Southwestern willow flycatcher FE/CE	7.9/9 (88%)	Site-specific data not mapped	80% of riparian habitats.	Moderate-Low/Areas historically occupied included in MHPA; would receive some protection per federal and state wetland regulations.[5]
FINDING: Adequately conserved by the Plan and protection by state and federal wetlands regulations. Jurisdictions will require surveys during the CEQA process in suitable habitat proposed to be impacted. Development that attracts brown-headed cowbirds near the preserve will include project permit conditions to monitor and control cowbirds.				
Campylorhynchus brunneicapillus couesi Coastal cactus wren */SSC	268.2/397 (68%)	102.5/127.1 (81%)	3.2/4 (79%)	High/Dependent on habitat management, restoration, and other regional programs. 47% of maritime succulent sage scrub conserved. Also occurs within other habitat types containing large patches of *Opuntia*.
FINDING: Adequately conserved by the Plan based on Chula Vista "Modified GDP B" (i.e., no University site in Salt Creek) alternative and implementation of maritime succulent sage scrub habitat restoration on Otay Ranch at a minimum of 1:1 ratio with success being required prior to impact as required in the Otay Ranch RMP and GDP. Management Plans will include active management of major populations and restoration of maritime succulent sage scrub and cactus patches in the preserve.				
Polioptila californica californica California gnatcatcher FT/SSC	1,819/2,814 (65%)	22.4/23.1 (97%)	61% of CSS, MSS, and CSS/CHP habitats.	High/Dependent on retention of populations within military lands, key linkages, other regional programs and additional protection in key population cores.[7]
FINDING: Adequately conserved by the Plan based on Chula Vista "Modified GDP B" alternative (i.e., no University site in Salt Creek). Focus acquisition as identified in table 4-3 in occupied habitat in the Lake Hodges and Lakeside linkage area.				

ATTACHMENT 2 (*Continued*)
SPECIES EVALUATED FOR COVERAGE UNDER THE MSCP

SCIENTIFIC NAME COMMON NAME STATUS	# and % OF POINTS CONSERVED[1]	# and % OF POLYGONS CONSERVED[2]	# and % MAJOR POPULATIONS CONSERVED[3]	RISK[4]/COMMENTS
Sialia mexicana Western bluebird none	3.4/15 (22%)	No polygons	52% of oak and 34% grassland habitats.	Low/Large populations occur on public lands east of study area; dependent on other regional programs.
FINDING: Adequately conserved by the Plan.				
Vireo bellii pusillus Least Bell's vireo FE/CE	282.2/299 (94%)	No polygons	80% of riparian habitats.	Low/Would receive some protection per federal and state wetland regulations.[6]
FINDING: Adequately conserved by the Plan and protection by state and federal wetlands regulations. Jurisdictions will require surveys during the CEQA process in suitable habitat proposed to be impacted. Development that attracts brown-headed cowbirds near the preserve will include project permit conditions to monitor and control cowbirds.				
Aimophila ruficeps canescens California rufous-crowned sparrow */SSC	296.8/418 (71%)	No polygons	61% of CSS, MSS, and CSS/CHP habitats.	Low/Significant portions of potential habitat remain at risk; however, species is tolerant of edge and small patch size and can apparently exist in patchy landscape, including steep slopes with low shrub volume.
FINDING: Adequately conserved by the Plan.				
Passerculus sandwichensis beldingi Belding's Savannah sparrow */CE	27/38 (71%)	No polygons	92% of saltmarsh habitat.	Low/Military habitat on Silver Strand not included in MHPA; manage for edge effects.[7,8]
FINDING: Adequately conserved by the Plan and protection by state and federal wetlands regulations.				
Passerculus sandwichensis rostratus Large-billed Savannah sparrow */SSC	2/4 (50%)	No polygons	92% of saltmarsh habitat.	Low/Military habitat on Silver Strand not included in MHPA; manage for edge effects.[7,8]
FINDING: Adequately conserved by the Plan and protection by state and federal wetlands regulations.				
Ammodramus savannarum Grasshopper sparrow none	31.2/91 (34%)	No polygons	34% of grassland.	High/Loss of 80% of nesting habitat and 66% of all known localities in database; viability is dependent on additional habitat, military, and other regional programs. Local extirpations of this widely ranging species could occur.
FINDING: Not adequately conserved due to high loss of grassland habitat occupied by grasshopper sparrow (66%). Local extirpations may occur. Coverage could be added later if additional data indicates greater levels of preservation for this species.				

ATTACHMENT 2 (*Continued*)
SPECIES EVALUATED FOR COVERAGE UNDER THE MSCP

SCIENTIFIC NAME COMMON NAME STATUS	# and % OF POINTS CONSERVED[1]	# and % OF POLYGONS CONSERVED[2]	# and % MAJOR POPULATIONS CONSERVED[3]	RISK[4]/COMMENTS
Agelaius tricolor Tricolored blackbird */SSC	8.9/15 (59%)	No polygons	77% of freshwater marsh and riparian scrub.	Low/Would receive some protection per federal and state wetland regulations. [8]
FINDING: Adequately conserved by Plan and protection by state and federal wetlands regulations. Jurisdictions will require surveys during the CEQA process in suitable habitat proposed to be impacted. Development that attracts brown-headed cowbirds near the preserve will include project permit conditions to monitor and control cowbirds. Project approvals must require avoidance of active nesting areas during breeding season.				
Plecotus townsendii Townsend's western big-eared bat */SSC	1.75/2 (88%)	No polygons	Unknown	Unknown/Insufficient data on distribution and life history.
FINDING: Unknown conservation level and therefore not covered by the Plan.				
Eumops perotis californicus California mastiff bat */SSC	No points	No polygons	Unknown	Unknown/Insufficient data on distribution and life history.
FINDING: Unknown conservation level and therefore not covered by the Plan.				
Perognathus longimembris pacificus Pacific little pocket mouse FE/SSC	Site-specific data not mapped	Site-specific data not mapped	Unknown	Unknown/only three to four known populations in Southern California. Insufficient data on distribution and life history.
FINDING: Unknown conservation level and therefore not covered by the Plan.				
Taxidea taxus American badger --/SSC	Site-specific data not mapped	Site-specific data not mapped	55% of grassland and CSS habitats.	Unknown/Dependent on other regional programs.
FINDING: Insignificant.				
Felis concolor Mountain lion --/protected	23.1/42 (55%)	No polygons	56% of oak, CSS, chaparral, and riparian habitats.	Moderate/Dependent on other regional programs and adequacy of linkages.
FINDING: Insignificant.				

ATTACHMENT 2 (*Continued*)
SPECIES EVALUATED FOR COVERAGE UNDER THE MSCP

SCIENTIFIC NAME COMMON NAME STATUS	# and % OF POINTS CONSERVED[1]	# and % OF POLYGONS CONSERVED[2]	# and % MAJOR POPULATIONS CONSERVED[3]	RISK[4]/COMMENTS
Odocoileus hemionus *fuliginata* Southern mule deer --/game species	129/291 (44%)	No polygons	56% of oak, CSS, chaparral, and riparian habitats.	Moderate/Dependent on other regional programs and adequacy of linkages.
FINDING: Insignificant.				

[1] # and % of points = number and percentage of point locations in the GIS data base that are targeted for conservation; compared to total number in study area; "no points" indicates no known localities in the study area for this species; "site-specific data not mapped" indicates locations exist, but specific locations are not in GIS data base.

[2] # and % of polygons = number and percentage of polygons in the GIS data base that are targeted for conservation; compared to total number in study area; "no polygons" indicates no known localities in the study area for this species; "site-specific data not mapped" indicates locations exist, but specific locations are not in GIS data base. Fractions will not precisely calculate due to rounding.

[3] # and % of major populations: number and percentage of major populations that are targeted for conservation; compared to total number in study area. Not all major populations are in the GIS data base, i.e., if specific locality data are lacking. In these cases, the percentage of major populations preserved is determined or estimated from the percentage of associated habitat in the MHPA (e.g., if 0% of southern foredunes are preserved, than it is assumed that 0% of coastal dunes milk vetch will be preserved). Fractions will not precisely calculate due to rounding.

[4] Risk = risk of impacts to populations within the MSCP study area; analysis assumes populations within MHPA are protected. (Note – viability of species may still be at risk.)
Low = little or no risk because species is adequately protected within MHPA or majority of population is on protected lands outside the MHPA.
Moderate = species may or may not be adequately protected in MHPA; species is potentially subject to edge effects; species may receive additional protection per federal and state wetland regulations and/or implementation of other regional conservation programs and habitat management.
High = species is not adequately protected and/or potentially subject to edge effects.
Unknown = data insufficient to determine risk.

[5] No occurrances documented in study area; number (if given) refers to percentage of appropriate habitat in MHPA.

[6] Includes vernal pool complexes, and species points and polygons outside complexes (if present).

[7] Important habitat for this species occurs on property owned by the Military or other federal agency. The U.S. Fish and Wildlife Service will address this issue with the appropriately involved federal agency to ensure adequate protection on federal property.

[8] Habitat under the jurisdiction of the U.S. Army Corps of Engineers is presumed to be maintained (no net loss). Projects within suitable habitat will be subject to all existing state and federal regulations including section 7 of the Endangered Species act, as appropriate.

Status (Federal/State)

FE = Federally endangered

PE = Proposed for federal listing as endangered

FT = Federally threatened

PT = Proposed for federal listing as threatened

C = Candidate for federal listing

ATTACHMENT 2 (*Continued*)
SPECIES EVALUATED FOR COVERAGE UNDER THE MSCP

* = Formerly Category 2 or Category 3 for federal listing; no current federal status
Protected = Moratorium on hunting
None = No federal or state status
BEPA = Bald Eagle Protection Act
CE = State endangered
CR = State rare
CT = State threatened
SSC = State Species of Special Concern

Note: Shading indicates priority species (federally and state listed species, species proposed for listing, Category 1 candidate species, and NCCP target species).

Note: Fractions for points, polygons, and major populations will not precisely calculate to percentage due to rounding.

Note: It is assumed that habitat management plans prepared for the preserve areas will include specific guidelines for managing and monitoring covered species. All species should be managed to minimize edge effects, and fire and watershed or tidal regime management plans should be developed, as appropriate. Edge effects may include trampling, dumping, vehicular traffic, competition with invasive species, parasitism by cowbirds, predation by domestic animals, noise, collecting, recreational activities, and other human intrusion.

Source: 1996 MSCP GIS database. Military lands excluded from analysis.

Findings Definitions:
Adequately Conserved based on the Plan: The overall benefits of the multiple-species planning effort to the natural ecosystem will provide for the species that inhabit that ecosystem.
Insignificant effect: An effect that cannot meaningfully be detected or measured, relative to the species' status as a whole. MSCP is not a significant portion of species' range.
Discountable effect: An effect that would not reasonably be expected to occur because species is not expected to occur in MSCP study area
Not adequately conserved by the Plan: Not covered by take authorizations.

* Disturbed habitat, agriculture, and developed areas with habitat value.

MITIGATION MONITORING
and
REPORTING PROGRAM

For

Issuance of a Take Authorization for Threatened and Endangered Species Within the Multiple Species Conservation Program (MSCP) Planning Area San Diego County, California

(LDR No. 93-0287)

(SCH No. 93121073)

ATTACHMENT 3

Vegetation Community Conservation Target Areas within the MHPA by Subarea

January, 1997

ATTACHMENT 3
VEGETATION COMMUNITY CONSERVATION TARGET ACRES WITHIN THE MHPA BY SUBAREA

Vegetation Communities	MHPA Conserved*	Chula Vista***	Coronado	Del Mar	El Cajon	Imperial Beach	La Mesa	National City	Poway	San Diego	Santee	Unincorporated***	Water Districts
Beach	443		140	49		139				115			
Saltpan	212					76				136			
Southern Foredunes	124		25	1		89				9			
Southern Coastal Bluff Scrub	137			2						135			
Coastal Sage Scrub	71,274	1,092		8	105	28	49		4,809	18,951	1,121	44,254	857
Maritime Succulent Scrub	855	16								681		158	
Chaparral	54,945				26				3,978	10,424	544	39,884	89
Southern Maritime Chaparral	1,133			4						1,102	20	5	2
CSS/Chaparral Mix	1,468								48	95		1,325	
Grassland	9,769	272			61	17			353	4,942	178	3,566	380
Southern Coastal Salt Marsh	1,726	225		58		452		47	<1	936			8
Freshwater Marsh	489	6		6		5		<1		232	2	238	
Riparian Forest	1,077	10							8	614	3	348	94
Oak Riparian Forest	3,204	149							351	469	38	2,194	3
Riparian Woodland	588									567		20	1
Riparian Scrub	4,138					172	2	26	42	2,749	80	760	307
Oak Woodland	2,649								110	329	2	2,206	2
Torrey Pine Forest	144									144			
Tecate Interior Cypress Forest	5,591									2		5,589	
Eucalyptus Woodland	326								25	170		120	11
Open Water	5,221	24	185	41		77		141	65	3,699	58	149	782
Disturbed Wetlands	738	6		4		34				583		90	21
Natural Flood Channel	747	19							23	295	21	344	45
Shallow Bay	369	135						9		225			
Deep Bay	0												
Other Habitats**	299	119	<1	2		1		<1	2	157		18	
Subtotal Habitat	167,866	2,073	350	176	192	1,090	51	223	9,814	47,761	2,067	101,268	2,602
Disturbed	2,447									2,447			
Agriculture	1,803									1,803			
Subtotal Vacant Land	171,916	2,073	350	176	192	1,090	51	223	9,814	52,011	2,067	101,268	2,602
Developed	0												
Total	171,916	2,073	350	176	192	1,090	51	223	9,814	52,011	2,067	101,268	2,602

* Targeted percent conservation factors (e.g., 70%, 80%, 90%, etc.) have been applied to acreage for all vegetation communities within the MHPA boundary with the following exceptions: all wetland communities are assumed 100% conserved within the MHPA boundary and all Disturbed, Agriculture, and Developed areas in all subareas except City of San Diego are assumed 0% conserved within the MHPA boundary.

** Disturbed, Agriculture, and Developed areas with habitat value.

*** Shows acreage for Chula Vista Policy Option 2 and County of San Diego under Proposed MHPA (i.e., not Alternative 1).

Source: 1996 MSCP GIS data base. Subareas do not necessarily correspond to jurisdictional boundaries.

MITIGATION MONITORING
and
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For

Issuance of a Take Authorization for Threatened and Endangered Species Within the Multiple Species Conservation Program (MSCP) Planning Area San Diego County, California

(LDR No. 93-0287)

(SCH No. 93121073)

ATTACHMENT 4

Vegetation Community Acres Preserved Within MSCP Multi-Habitat Planning Area (MHPA)

January, 1997

ATTACHMENT 4
VEGETATION COMMUNITY ACRES PRESERVED WITHIN MSCP MULTI-HABITAT PLANNING AREA (MHPA)

Vegetation Communities	Total MSCP Study Area (Acres)	Total MHPA (Acres)	MHPA Conservation Target (Acres)	% of MSCP Veg. Comm. Conserved
Beach	1,202	491	443	37%
Saltpan	235	212	212	90%
Southern Foredunes	188	140	123	65%
Southern Coastal Bluff Scrub	198	146	137	69%
Coastal Sage Scrub	115,504	80,596	71,274	62%
Maritime Succulent Scrub	1,803	899	855	47%
Chaparral	111,335	60,933	59,945	49%
Southern Maritime Chaparral	1,782	1,240	1,111	62%
CSS/Chaparral Scrub	3,877	1,749	1,490	38%
Grassland	28,373	10,926	9,770	34%
Southern Coastal Saltmarsh	1,870	1,719	1,719	92%
Freshwater Marsh	815	497	497	61%
Riparian Forest	1,328	1,078	1,078	81%
Oak Riparian Forest	5,361	3,054	3,054	57%
Riparian Woodland	731	588	588	80%
Riparian Scrub	5,374	4,286	4,286	80%
Oak Woodland	5,600	3,150	2,651	47%
Torrey Pine Forest	169	153	144	85%
Tecate Cypress Forest	5,712	5,641	5,591	98%
Eucalyptus Woodland	1,633	364	326	20%
Open Water	5,726	5,220	5,220	91%
Disturbed Wetlands	928	738	738	80%
Natural Flood Channel	862	746	746	87%
Shallow Bays	9,581	369	369	4%
Pacific Ocean	4,891	3	0	0%
Other Habitat*	864	339	300	35%
Subtotal	***315,940***	***185,266***	***167,667***	***53%***
Disturbed	23,244	5,037	2,447	11%
Agriculture	28,547	4,015	1,803	6%
Developed	214,511	0	0	0%
Subtotal	***266,302***	***9,052***	***4,250***	***47%***
TOTAL	***582,243***	***194,318***	***171,917***	***30%***

* Disturbed habitat, agriculture, and developed areas with habitat value.

Note: Numbers may not sum to total as shown, due to rounding. Vernal pools were mapped as an overlay and thus their acreage is not included in totals. Military lands are included in total study area acreage but are not included in MHPA.

SOURCE: City of San Diego, 1996a.

IV. MITIGATION MONITORING and REPORTING PROGRAM

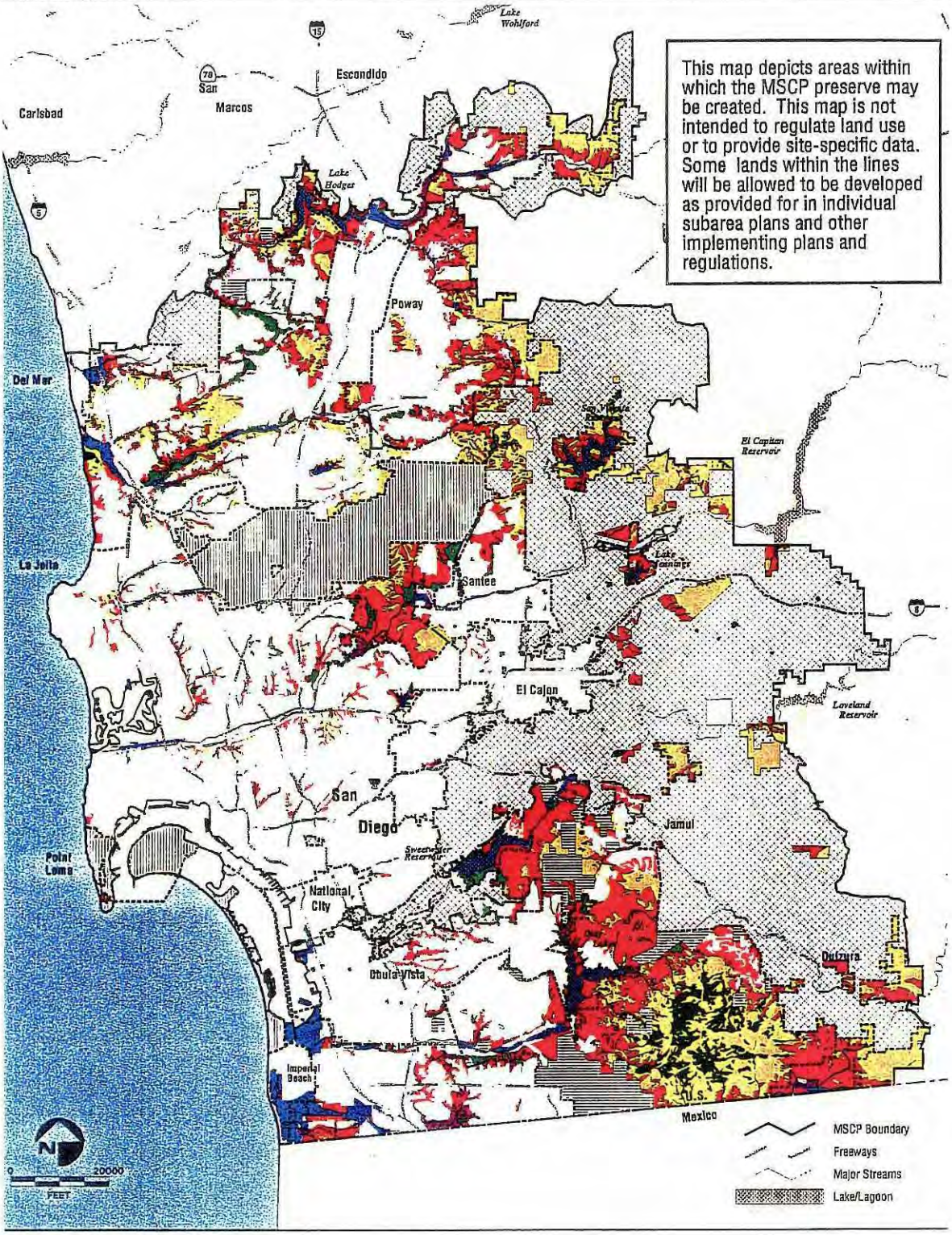
For:

Issuance of a Take Authorization for Threatened and Endangered Species Within the Multiple Species Conservation Program (MSCP) Planning Area
San Diego County, California
(LDR No. 93-0287)
(SCH No. 93121073)

Co-Lead Agency:

THE CITY OF SAN DIEGO
DEVELOPMENT SERVICES DEPARTMENT
ENVIRONMENTAL ANALYSIS SECTION/PUBLIC PROJECTS
1222 First Avenue, 5th Floor
San Diego, CA 92101

JANUARY, 1997



Coastal Sage Scrub
Chaparral
Coastal Sage Scrub Chaparral
Grassland
Riparian/Wetlands
Oak Woodland
Coniferous Forest
Beach/Foredunes
Eucalyptus Woodland
Disturbed Habitat
Shallow Bay
Agriculture
Developed
Amendment Areas
Areas with Undetermined Development Status
Military Lands
Subarea Boundaries

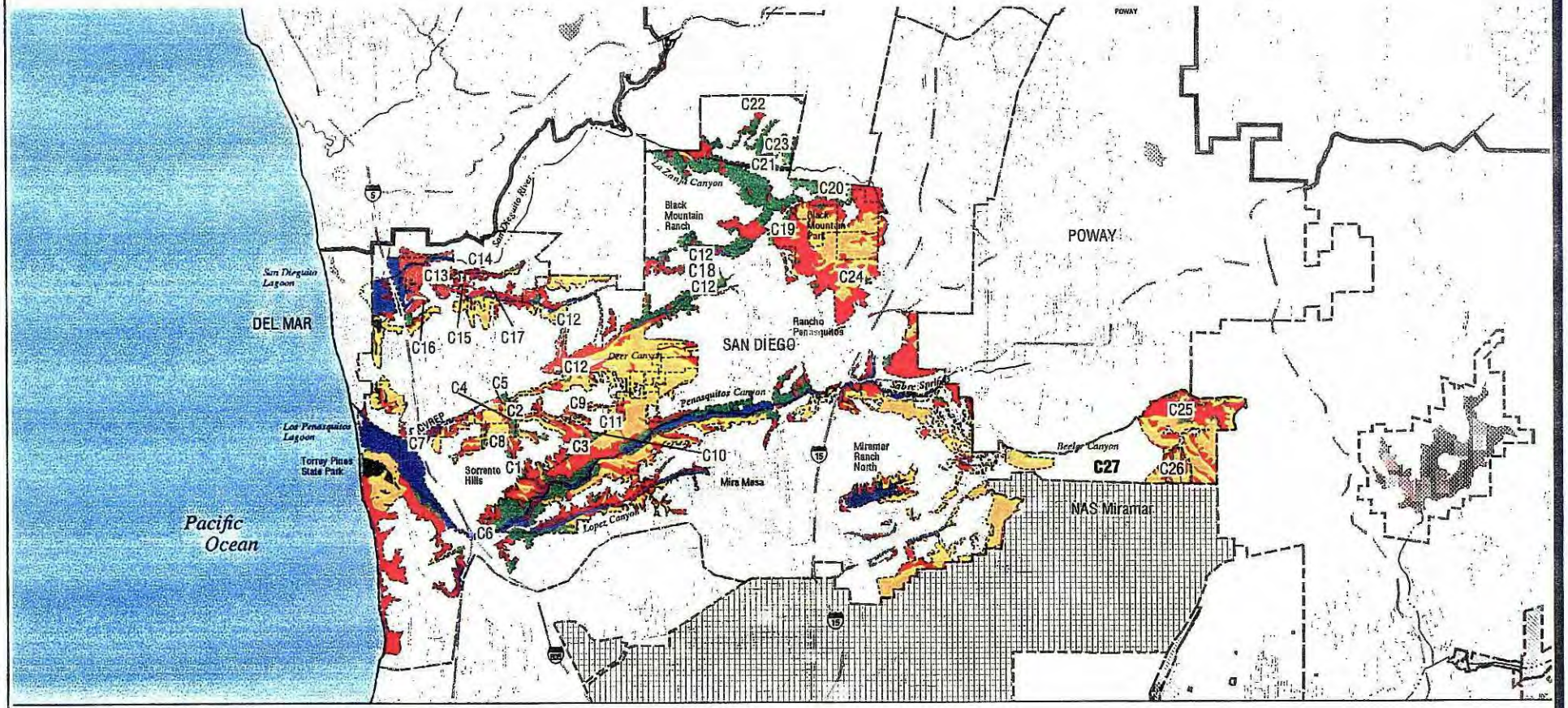
Note: For the unincorporated area vegetation communities are shown only for existing conserved areas.

Note: Military lands are not included in the MHPA and separate habitat conservation plans are being prepared.

SOURCE: City of San Diego, MWWD 1996

FIGURE 1

Vegetation Communities in MHPA

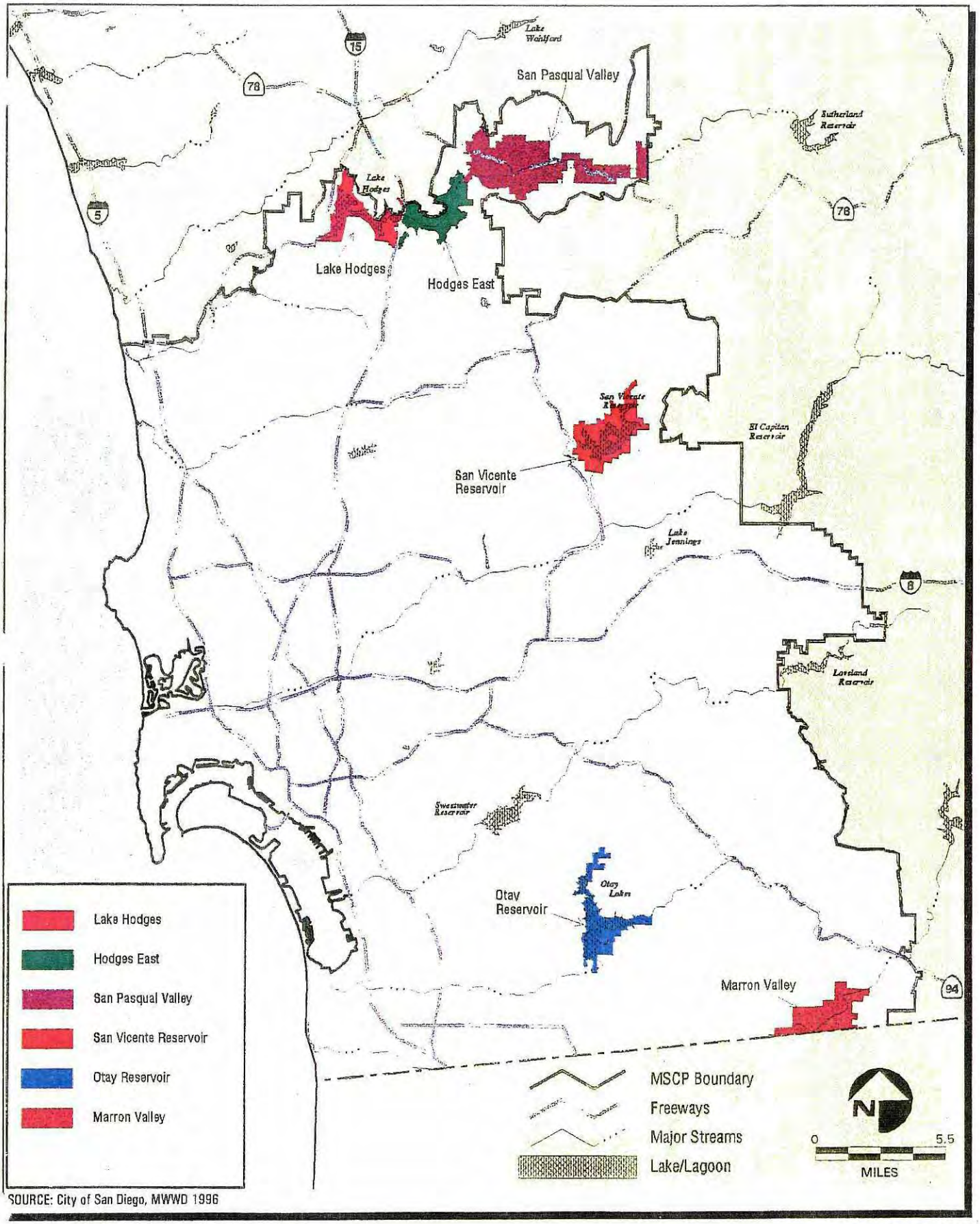


SOURCE: City of San Diego, MWWD 1996

Joint EIR/EIS - Multiple Species Conservation Program (MSCP)

(Revised) Conserved Vegetation Communities in Northern Area

FIGURE 4.3-1



SOURCE: City of San Diego, MWWD 1996

FIGURE 3

City of San Diego Cornerstone Lands and San Pasqual Valley