

Volume II of II

**Final Environmental Impact
Statement/Environmental
Impact Report**

Response to Comments

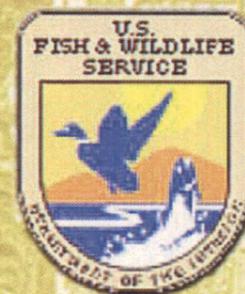
*For Threatened and Endangered Species
Due to the Urban Growth within the
Multiple Habitat Conservation Program Planning Area
SCH NO. 93121073*

Lead Agencies:

**United States
Fish and Wildlife Service**

and

**San Diego
Association of Governments**



March 2003

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Prepared by:

**P&D Environmental 
RECON
Onaka Planning & Economics**

March 2003

**FINAL ENVIRONMENTAL IMPACT STATEMENT/
ENVIRONMENTAL IMPACT REPORT
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Attachment RS-1 Excerpt from San Elijo Ranch Development Agreement with the City
of San Marcos and Specific Plan



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION IX
 75 Hawthorne Street
 San Francisco, CA 94105-3901

MB 4/2
 LC

Letter 1: EPA

EPA-1. This comment confirms that the EPA conducted an independent review of the environmental document and concluded that there were no objections to the findings. Comment does not identify any deficiencies in the document.*

Lee Ann Carranza
 U.S. Fish and Wildlife Service
 2730 Loker Avenue West
 Carlsbad, CA 92008

April 22, 2002

Dear Ms. Carranza:

EPA-1 The U.S. Environmental Protection Agency (EPA) has reviewed the Draft Environmental Impact Statement/Report (DEIS/R) for a *Multiple Habitat Conservation Program (MHCP) for Threatened and Endangered Species Due to Urban Growth in the MHCP Planning Area; Cities of Carlsbad, Encinitas, Escondido, Oceanside, and San Marcos; SAN DIEGO COUNTY, CALIFORNIA* (CEQ #010537. #D-SFW-K70013-CA). Our comments are provided under the National Environmental Policy Act (NEPA), the Council on Environmental Quality's NEPA Implementing Regulations (40 CFR 1500-1508), and Section 309 of the Clean Air Act. The U.S. Fish and Wildlife Service (FWS) is the lead agency for purposes of complying with NEPA; the San Diego Association of Governments (SANDAG) is the lead agency in complying with the California Environmental Quality Act (CEQA).

The MHCP is a comprehensive, multi-jurisdictional planning program designed to create, manage and monitor an ecosystem preserve in northwestern San Diego County; the MHCP study area encompasses approximately 175 square miles. The preserve system is designed to protect viable populations of native plant and animal species, and their habitat(s) in perpetuity, while accommodating continued economic development and quality of life considerations for the area's residents. The DEIS/R analyzes environmental effects associated with (1) adopting the MHCP and five Subarea Plans for Carlsbad, Encinitas, Escondido, Oceanside and San Marcos; and (2) issuing "incidental take" permits for covered species pursuant to the Endangered Species Act and the State's Fish and Game Code. The San Diego region has more rare, threatened and endangered species than any comparable land area in the continental United States. Nationally, it has been identified as a major "hot spot" for biodiversity and species endangerment, as well as one of the nation's most rapidly-growing regions. This combination of high biodiversity, large numbers of unique and rare species, and rapid urbanization has led to region-wide conflicts between biological conservation and economic development. The MHCP's goal is to "target the highest quality habitats for preservation, while allowing development of less important habitat areas." (p. ES-3).

The DEIS/R fully evaluates four alternatives: Alternative 1 (Focused Planning Area No. 1); Alternative 2 (Focused Planning Area No. 2, the Preferred Project); Alternative 3 (Biological Core and Linkage Areas); and Alternative 4 (No Action/No Project). Five alternatives were

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

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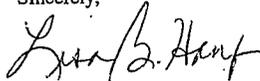
US FWS
 CARLSBAD FIELD OFFICE, CA

eliminated from detailed analysis as they do not meet the MHCP's objectives. These five are: preservation of only coastal sage scrub; preservation of only listed species; preservation of only public lands; a "hard line" option; and inclusion of Camp Pendleton, Fallbrook Naval Weapons Station, and unincorporated County properties in the MHCP.

EPA's review did not identify any substantive concerns about the project or this DEIS/R. We thus rate the DEIS/R as LO (Lack of Objections). Please consult the attached "*Summary of EPA Rating Definitions*" for detailed information on EPA's rating system. EPA strongly supports a multi-species, multi-habitat approach as well as implementing "adaptive management" techniques. EPA believes that a strong, continuing commitment by the lead Federal and State authorities (as well as municipal and county entities) for planned developments which are town-centered, transit- and pedestrian-oriented, and utilize a mix of housing, commercial and retail uses, would enhance the benefits of this regional conservation planning effort. This type of development can minimize potential adverse impacts to water quality by reducing nonpoint source erosion and sedimentation, and reducing stormwater discharges to surface waters. Additionally, emphasizing this type of development reduces vehicular trips, traffic congestion and air pollution, and, more broadly, minimizes environmental degradation. We strongly recommend a focus maximizing "in-fill" opportunities and siting developments near existing infrastructure, which is generally less costly (financially and environmentally) and reduces the need to utilize undeveloped land for new developments. EPA respectfully urges the Service and the SANDAG, in consultation with county and municipal authorities, to adopt such an approach.

We appreciate the opportunity to comment on the DEIS/R. Please send one copy of the FEIS/R to me at the letterhead address (mailcode: CMD-2) when it is filed with EPA's Washington, D.C. office. If you have any questions regarding our comments, please call my staff reviewer, David Tomsovic, at 415-972-3858.

Sincerely,



Lisa B. Hanf, Manager
Federal Activities Office

Attachment: 1
"*Summary of EPA Rating Definitions*"

SUMMARY OF EPA RATING DEFINITIONS

This rating system was developed as a means to summarize EPA's level of concern with a proposed action. The ratings are a combination of alphabetical categories for evaluation of the environmental impacts of the proposal and numerical categories for evaluation of the adequacy of the EIS.

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 has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the 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 analysed 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 analysed in the draft EIS, which should be analysed 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."



DEPARTMENT OF THE NAVY
SOUTHWEST DIVISION
NAVAL FACILITIES ENGINEERING COMMAND
1220 PACIFIC HIGHWAY
SAN DIEGO, CA 92132-5190

11000
Ser 00G/044
22 Apr 02

Letter 2: Navy

Navy-1. Comment serves as an introduction and/or cover transmittal to the attachment.
No additional response is necessary.*

Mr. Gary Gallegos, Executive Director
San Diego Association of Governments
First Interstate Plaza, Suite 800
401 B Street
San Diego, California 92101

Dear Mr. Gallegos:

NAVY-1 Thank you for the opportunity to comment on the Multiple Habit Conservation Program draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS). Our comments, as addressed in enclosure (1), are submitted for your appropriate consideration.

If you have any questions regarding these documents, Mr. Michael Stroud is available at 532-2319.

Sincerely,

G. A. ENGLE
Captain, CEC, U.S. Navy
DOD Federal Regional Liaison
Representative for Region IX

Enclosure

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

COMMENTS on MHCP DRAFT EIS/EIR

	Draft EIS/EIR Statement	Comment
NAVY-2 Page 1-15	<p>1.4.1 U.S. Fish and Wildlife Service The USFWS will be responsible for deciding whether to issue or deny incidental take permits for those species listed on the Covered Species List (Section 2.1). Pursuant to Section 10(a)(1)(B) of the federal ESA, the USFWS may issue a permit authorizing take incidental to an otherwise lawful activity, if the applicant provides a Conservation Plan meeting the following factors identified in Section 10(a)(2)(B):</p> <ul style="list-style-type: none"> i. The taking will be incidental. ii. The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking. iii. The applicant will ensure that adequate funding for the plan will be provided. <u>iv. The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.</u> 	<p>1. At no place in the Draft EIS/EIR is recovery of Federally listed threatened and endangered species addressed, nor is a discussion or analysis included regarding how or if the MHCP supports existing or draft recovery plans.</p> <p>2. The EIS/EIR does not discuss issuance of incidental take authorizations for preserve maintenance, management or use (recreational activities).</p>
NAVY-3 Page 2-80	<p>Military lands were removed from the planning area in 1994 when the Marine Corps began work on a comprehensive habitat conservation plan for the Marine Corps Base Camp Pendleton (Base). Given the mission of defense associated with military lands, it was determined that a Base-specific HCP plan would be most prudent. The Marine Corps has continued to coordinate their planning efforts with the MHCP <u>to ensure linkages are maintained across planning boundaries.</u></p>	<p>MCB Camp Pendleton Natural Resource Management program emphasizes maintaining regional linkages in conjunction with other regional planning efforts. However, Camp Pendleton is unaware of any planning efforts that ensure linkages are maintained across Base boundaries. Military mission and readiness requirements preclude Camp Pendleton from entering into agreements that may limit potential future land uses.</p>
NAVY-4 Page 3-1	<p>This area of north coastal San Diego County is known for its natural beauty and mild Mediterranean climate, which make it a popular recreational and tourist destination. The area is largely developed, with approximately 30 percent consisting of vacant lands that still support natural vegetation communities. Major</p>	<p>A note needs to be added that while lands on Camp Pendleton are largely undeveloped and naturally vegetated lands, they are extensively used for military training which generates unique species preservation and management issues that may not be fully compatible</p>

NAVY-2. The MHCP is not seen as a component of any adopted Recovery Plans. NCCPs and HCPs are not equivalent to Recovery Plans and are not required to meet recovery standards, although they cannot preclude recovery. They are therefore designed to be and are considered compatible with species Recovery Plans to the degree feasible. The management program will be adopted as part of the Implementing Agreement and, as appropriate, any incidental take necessary to conduct the maintenance and management will be approved through that process.

NAVY-3. The statement that “the Marine Corps has continued to coordinate their planning efforts with the MHCP to ensure linkages are maintained across planning boundaries” has been deleted in the Final Draft. The MHCP has maintained habitat and linkages up to the Camp Pendleton boundary, therefore providing opportunities for cross boundary linkages. Responsibility for maintaining such linkages therefore falls to Section 7 consultations between the USFWS and the Marine Corps pertaining to the Corps’ Integrated Natural Resources Management Plan.

NAVY-4. The statement accurately reflects that there are large areas of naturally vegetated land on Camp Pendleton.

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AC/S ES Comments on Draft MHCP Documents

	land uses within the study area include residential, commercial, and industrial development; parks, preserves, and golf courses; and agriculture. <u>Larger areas of undeveloped and naturally vegetated lands adjoin the study area, particularly on unincorporated lands to the east and south, and on Camp Pendleton to the north.</u>	with adjacent MHCP preserve management.
NAVY-5	Page 3-28 Table 3.3-2, (Preliminary MHCP Covered Species List) lists the Pacific pocket mouse as a covered species in the Encinitas, Escondido, Oceanside, and San Marcos subarea plans. Appropriate habitat for the Pacific pocket mouse, however, is not found in those areas. Table 4-66 of the Public Review Draft MHCP Volume II states in footnote 4 that for Escondido and San Marcos are "considered to far inland to support Pacific pocket mouse".	Why does a subarea receive coverage for a species that would not/could not be found in that area?
NAVY-6	Page 3-31 The Pacific little pocket mouse (<i>Perognathus longimembris pacificus</i>) was historically found on the coast in Oceanside and possibly Encinitas, but is not currently known to occur in the study area. <u>Potential habitat for the species - sparse vegetation on fine sandy soils within about 4 miles of the coast - is scattered throughout the coastal cities.</u> One unverified observation was reported in 1989 in Lux Canyon, Encinitas, but more recent surveys have failed to detect the species there.	Is the remaining potential habitat for this species included in the preserve design to support potential recovery?
NAVY-7	Page 4-58 The mountain lion has a large geographical area and is known from Camp Pendleton, Palomar, Carlsbad, San Marcos, Escondido, and other areas in the County. This species probably occupies some of the larger natural habitat areas, such as Daley Ranch in Escondido. Given the large geographical range of this species, the conservation goal is to ensure species persistence within the plan area and contribute to regional population viability by providing suitable movement corridors between larger habitat blocks. The MHCP will achieve this goal by conserving large blocks of habitat contiguous with natural habitat outside of the study area such as Camp Pendleton, north and east of	The MHCP has no large blocks of habitat contiguous with Camp Pendleton. Page 1-7 contains the statement "North/south connectivity across the study area is currently only functional for birds, due to intervening areas of development" As no other portion of the MHCP is contiguous with Camp Pendleton the mountain lion is unlikely to receive any value from the MHCP near Camp Pendleton. Section 3.1.2 Preserve Configuration in Volume II states North-south

NAVY-5. Pacific pocket mice were historically recorded in both Oceanside and Encinitas. Although recent surveys have not found them in these cities, it is possible that small populations still exist. Coverage for this species in MHCP cities is contingent on the cities accepting the possibility of reintroduced populations, if such action is recommended by the species recovery program. As a subregional plan, all cities contribute to success of the MHCP via joint funding and coordination of management and monitoring actions, among other things. Therefore, cities not supporting potential habitat for a species may still receive credit for actions that contribute to viability of that species in the subregion.

NAVY-6. As detailed in Volume II of the MHCP, approximately 54% of high quality habitat and 77% of moderate quality habitat for Pacific pocket mouse is expected to be conserved within the coastal cities. Several areas to be conserved are under consideration as potential PPM translocation receiver sites in the event establishing new populations in these areas is determined to be necessary for recovery of the species (Spencer et al. 2001).

NAVY-7. Text was revised for this Final Draft to reflect that there are no large habitat blocks for mountain lions in the MHCP area adjacent to Camp Pendleton. Adjacent to Camp Pendleton, the primary contribution of the MHCP for mountain lions is buffer habitat for lions using larger habitat areas on Camp Pendleton and adjacent federal lands. North-south connectivity for lions is not assured across the MHCP area, although landscape linkages are maintained between larger habitat areas within the MHCP area and adjacent lands in the unincorporated county. The MHCP was prepared with a review of the known or presumed open space offsite. Although future planning efforts can not assure that these linkages will be retained, the Wildlife Agencies will carefully review future planning or development in context with the MHCP preservation plan.

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Enclosure (1)

AC/S ES Comments on Draft MHCP Documents

	<p>Escondido, and the unincorporated core area. While conservation of an adequate geographic area for this species within the study area may not be feasible (home range of a male mountain lion is typically a minimum of 144,000 acres, and only 26,876 acres of suitable habitat acres exist in the study area, of which approximately 16,392 acres will be conserved), conservation of large habitat blocks contiguous with natural habitat outside the study area will facilitate the conservation of suitable corridors between major blocks of habitat that will benefit this species. Due to the limited availability of habitat in the study area, implementation of the MHCP is not expected to substantially increase or decrease the population viability of the mountain lion; however, large blocks of habitat are likely to contribute to the continued persistence of mountain lions in San Diego County.</p>	<p>connectivity across the study area is currently only functional for birds, due to intervening areas of development.</p>
<p>NAVY-8</p>	<p>Page 4-101</p> <p>When considering whether the goals of the NCCP will be met for a specific species, it is important to consider the species conservation and management not only in its local setting, but also as a part of a larger regional context. Some species, for example, may experience initial net loss from the MHCP; however, the project will also restore and enhance the habitat in critical areas for the species. Important : stepping-stone linkages will be provided, with an extensive management program that will focus on monitoring and restoration for several species, including the gnatcatcher. The linkages will enhance connectivity not only within the MHCP Plan, but to larger regional habitat conservation plans, including the MHCOSP, ongoing conservation efforts on Camp Pendleton, and the City of San Diego's MSCP, thus leading to an overall greater viability of the species in the long term.</p>	<p>This sounds like take is being authorized for the MHCP partially based on conservation efforts and programs in adjacent areas.</p>
<p>NAVY-9</p>	<p>Page 4-120</p> <p>There are no known major populations, critical locations, or known occurrences of any mammals in the Oceanside subarea. Based on the marginal to partial conservation of habitat, the Pacific little pocket mouse, northwestern</p>	<p>How can species that require large contiguous areas like the mountain lion, and southern mule deer be considered adequately conserved when</p>

NAVY-8.

The MHCP was not analyzed as a stand-alone project. The impacts and viability of species to be maintained in the long term can only be ensured through regional conservation. Consequently, an NCCP plan must look both inside and outside the planning area. However, the plan has no regulatory authority over lands outside its boundaries, including lands on Marine Corps Base Camp Pendleton.

NAVY-9.

The Subarea Plan conserves potential habitat for mountain lion and mule deer adjacent to larger areas outside the City of Oceanside. This contributes to the regional viability of these species, which are more dependent on larger habitat blocks outside the study area. The Subarea Plan is not expected to have adverse impacts on these species.

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Enclosure (1)

AC/S ES Comments on Draft MHCP Documents

	San Diego pocket mouse, San Diego black-tailed jackrabbit, <u>mountain lion</u> , and <u>southern mule deer</u> will be adequately conserved. There are no known major populations or recorded locations for Stephens' kangaroo rat, and this species may be extirpated from the plan area. This species will be adequately conserved by the Subarea Plan, since the Oceanside FPA will help maintain the potential for natural recolonization of suitable habitats, and any newly found occupied habitat areas will receive additional conservation under the MHCP Narrow Endemic and Critical Population Policy. Therefore, no significant impacts would occur.	the plan states that connectivity only exists only for avian species that use "stepping stones"?
NAVY-10	Page 4-154 Table 4.3-2 Conservation of Sensitive Species for Each Alternative. Western Snowy Plover. Alternative 2 conserving 90% of known occurrences and 23% of habitat.	Conserving only 23% of habitat does not support Achievement of Conservation Goals under Summary of Findings and Conditions for Coverage for this species as stated on page 4-286 of Volume 2 (Biological Analysis and Permitting Conditions) of the Draft MHCP Plan. The stated Conditions for Coverage for this species includes that "the MHCP will adequately conserve this species by conserving <u>all</u> potential habitat and critical locations," Other species whose conservation of known occurrences and habitat for Alternative 2 in Table 4.3-2 and/or within a specific subarea plans (Table 4.3-5) that fail to met Conditions for Coverage identified in Volume 2 of the Draft MHCP Plan include Thread-leaved Brodiaea, San Diego Barrel Cactus, and Nuttall's Lotus.
NAVY-11	Page 4-171 Table 4.3-3 Summary of Endangered, Threatened, and Rare Species & Finding of Significance states for the Western Snowy Plover that the MHCP will have "less than significant impact on the Western Snowy Plover"	Per Section 4.3.2.4, Summary of Significance, on page 4-101, the EIR/EIS states "the following analysis will make mandatory finding of significance if there is any reduction in the number of endangered, rare, or threatened species." Allowing 10% of known occurrences of the Western Snowy Plover to be removed seems to

NAVY-10. Those areas utilized by the plover are adequately protected. The 23% of habitat conserved is misleading, as pointed out in MHCP Volume II, because nearly all beach areas outside the FPA are manicured recreational beaches, and not nesting habitats. Approximately 82% of those areas currently utilized for nesting will be conserved. The western snowy plover is also fully protected by the CDFG, thus no lethal take is allowed. Thread-leaved brodiaea and Nuttall's lotus are protected under the Narrow Endemic policies, which provide substantially more protection for these species than it would appear by reviewing the percent of habitat conserved. The barrel cactus has 86% of the major populations and critical locations protected, which is considered adequate.

NAVY-11. See comment Navy-10.

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Enclosure (1)

AC/S ES Comments on Draft MHCP Documents

		<p>be a reduction in its number and would require a mandatory finding of significance.</p> <p>In addition, allowing destruction of 77% of remaining Western Snowy Plover habitat in the MHCP area seems to be a substantial loss of habitat and contrary to the statement "CEQA Section 15065 states that a mandatory finding of significance must occur if a given project: "has the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish and wildlife species" also made in Section 4.3.2.4.</p> <p>Further, San Diego County has been assigned a significant responsibility in the Draft Western Snowy Plover Recovery Plan that a 77% destruction of remaining Western Snowy Plover habitat is unlikely to support.</p> <p>Other endangered, rare, or threatened species in this table that are not being conserved at 100% should be revisited to reevaluate significance in accordance with the stated Summary of Significance position made in Section 4.3.2.4.</p>
<p>NAVY-12</p> <p>Table 4.3-2 and Table 4.3-5</p>	<p>Table 4.3-2, Conservation of Sensitive Species for Each Alternative, identifies numbers (and percent) of occurrences and habitat for each alternative to be conserved. Table 4.3-5, Conservation of Sensitive Species for Subarea Plans, identifies numbers (and percent) of occurrences and habitat conserved in each subarea plan.</p>	<p>Numbers of occurrences and habitat identified being conserved in Table 4.3-2 for alternative 2 do not match the sum of the numbers of occurrences and habitat identified being conserved in Table 4.3-5 for all of the subarea plans for several species including Western Snowy Plover, California gnatcatcher and pacific little pocket mouse.</p> <p>If the conservation of species and their habitat is not being conserved in one of the subarea plans, where are they being conserved, who will manage that area, when will a management plan be available for review and why isn't that</p>

Navy-12.

Table 4.3-5 includes five cities that have submitted subarea plans (excluding Solana Beach and Vista). Other errors with numbers reported have been corrected in this Final Draft.

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Enclosure (1)

AC/S ES Comments on Draft MHCP Documents

information provided in Table 4.3-5?

COMMENTS on PUBLIC REVIEW DRAFT OCEANSIDE SUBAREA Plan

	Draft Oceanside Subarea Plan Statement	Comment
NAVY-13 Page 2-6	Section 2.2.3 Transportation and Utility Corridors - A major SDG&E electrical transmission corridor runs generally north-south through central Oceanside. This transmission corridor is coincident with many of the remaining habitat patches in this portion of the city and was planned as a potential "spine" for a north-south linkage system across the city.	What type of vegetation/habitat exists in or will be restored in the potential 'spine' for a north south linkage on SDG&E Electrical Transmission Corridor? Who will manage the "spine", for which species /habitat and what is proposed for an exotics control program for this area with such an extensive edge effect?
NAVY-14 Figure 2-4	Planned Land Uses	Colors are too close in color/shade to be able to differentiate between many of the Planned Land Uses. Specific problems exist with: Estate A .5-.9 DU/AC, Estate B 1-3.5 DU/AC, Single Fam Det 3.6-5.9 DU/AC, and Med Density A Res 6-9.9 DU/AC; Med Dens B Res 10-15 DU/AC, Med Dens C 15.1-20.9 DU/AC, Med Density Res 21-28.9 DU/AC, and Urban High Dens Res 29-43 DU/AC; Commercial Neighborhood, Commercial General, Commercial Special and Professional; Industrial General and Industrial Light.
NAVY-15 Page 3-1	3.1.2 Biological Surveys Ogden biologists conducted biological surveys at selected locations that had not been previously or recently surveyed, that had undergone significant recent changes in land use, or that were considered potentially important to regional metapopulation connectivity for California gnatcatchers.	What is the time frame that was used to define "recently surveyed" ?
NAVY-16 Page 3-28	North of Fire Mountain Drive, relatively large	Core habitats are not established on

NAVY-13. Conservation, restoration, and management of the SDG&E corridors and associated habitat patches are addressed in the Oceanside Subarea Plan.

NAVY-14. The comment addresses the quality of Figure 2-4 of the EIS/EIR. The final City of Oceanside Subarea Plan will modify the colors on the map to improve differences between various shades of color.

NAVY-15. The recent surveys refer to the lack of studies between 1995 and 2000.

NAVY-16. Reference to core areas on Camp Pendleton implies nothing about land management status. It simply refers to existing biological conditions – specifically, that large areas of natural vegetation communities on base support a large breeding population of gnatcatchers.

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Enclosure (1)

AC/S ES Comments on Draft MHCP Documents

	blocks of occupied breeding habitat are found on both sides of El Camino Real (sufficient to support approximately 5 or more pairs of gnatcatchers on each side). These habitats are connected by line-of-site to other habitat patches north of Oceanside Boulevard, on the west end of the city-owned El Corazon parcel. Habitats on El Corazon may support an additional 8 to 10 breeding territories. In concert with breeding habitat south of Oceanside Boulevard, this area could represent a major stepping stone halfway between the Calavera core area in Carlsbad and core areas on Camp Pendleton.	Camp Pendleton training lands and their designation on Camp Pendleton is not supported by Camp Pendleton natural resource management programs or Military Mission.
NAVY-17 Page 3-38	6. SDG&E power line easements from Mission Avenue and SR-76, north to the San Luis Rey River. Open space should remain undeveloped under the SDG&E power line easements, between the northern stepping stone and the San Luis Rey River. These two alignments provide alternative crossing locations for the combined SR-76 and Mission Avenue alignments. Connectivity with the San Luis Rey River is essential for providing the gnatcatchers with several dispersal routes to the core gnatcatcher population in Camp Pendleton.	Core populations have not been identified nor established on Camp Pendleton training lands and their designation on Camp Pendleton is not supported by Camp Pendleton natural resource management programs or Military Mission.
NAVY-18 Page 4-3	4.1.2 Limitations: No continuous north-south landscape or habitat linkages remain in the city to accommodate wildlife movement between core habitats on Camp Pendleton to the north and the Carlsbad-Calavera Highlands area to the south. Remaining natural habitats in the city are mainly on small, isolated fragments of undeveloped land. East-west corridors associated with drainages to the Pacific Ocean are also fragmented, but to a lesser degree than potential north-south linkages. With the exception of the San Luis Rey River and Pilgrim Creek, these east-west corridors do not currently connect with biological core areas.	Core habitats are not established on Camp Pendleton training lands and their designation on Camp Pendleton is not supported by Camp Pendleton natural resource management programs or Military Mission.
NAVY-19 Page 4-3	4.1.3 Objective 3 - Maintain viable populations of sensitive plant species.	How does this subarea plan measure and determine viable populations?
NAVY-20 Page 4-4	4.1.4 Objective 4 - Maintain viable	How does this subarea plan measure and

Navy-17. See Navy-16.

Navy-18. See Navy-16.

Navy-19. The plan has not measured or determined viable populations. Maintaining viable populations of sensitive plants is stated as a plan objective, but it is acknowledged that objectively defining and measuring viability is extremely difficult and scientifically controversial. The objective is rewritten as "Contribute to regional viability of sensitive plant species".

Navy-20. See Navy-19.

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	populations of sensitive animal species and species that are indicators of important habitat.	determine viable populations?
NAVY-21 Page 4-5	Natural habitats in Oceanside are highly fragmented, yet may still play a critical function in ecosystem connectivity and the viability of high priority species. Despite the high degree of urbanization and habitat fragmentation, undeveloped areas of Oceanside appear to be critical to regional habitat connectivity and species conservation for the California gnatcatcher. Remaining habitat fragments in the city may serve as a functional gnatcatcher stepping-stone corridor, which allows for continued genetic and demographic connectivity for the species between gnatcatcher <u>core areas on Camp Pendleton</u> to the north and Carlsbad to the south. In addition, riparian and wetland habitats throughout the city provide essential habitat for a number of high priority species, including the least Bell's vireo, southwestern willow flycatcher, western snowy plover, and California least tern.	"Core areas" designation on Camp Pendleton is not supported by Camp Pendleton management programs or Military Mission.
NAVY-22 Page 6-6	Fire Changed Circumstances. A "changed circumstance" fire is one that can be controlled in a 24-hour period by local firefighting resources. Much of the land covered by the subarea plan is located in arid areas that are susceptible to wildfires, which can adversely affect or impact habitat communities and ecosystems. It is important to acknowledge, however, that fire is a natural phenomenon in southern California and a <u>differentiation must be made between a "natural" fire and one that has catastrophic impacts.</u> In implementing the subarea plan, the city will use best management practices and coordinate with local fire departments to minimize adverse impacts of fire, and to monitor and respond to potential adverse biological impacts when they occur.	Reference or include information regarding how a differentiation will be made between a nature fire and one that has catastrophic impacts.

Navy-21. See Navy-16.

Navy-22. This section of the Oceanside NCCP/SAP is intended to describe fire as a natural phenomenon in Southern California which predates urban development, or even European settlement. Fire which destroys a component of the preserve system may have catastrophic impacts regardless of origin. Section 6.2.2 has been changed and defines both a changed circumstance fire and an unforeseen circumstance fire in order to respond to the requirement of the "No Surprises" Rule. The section does not describe what classifies as a "catastrophic" fire and this language will be modified in the final plan to be clearer. Section 7 of the Oceanside SAP describes adaptive management actions to be taken in the event of fire regardless of origin or circumstance.

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Letter 3: USGS

USGS-1. Comment is a transmittal to the attached letter.*

Date: April 29, 2002

To: Jim Bartel
U. S. Fish & Wildlife Service, Carlsbad office

From: Andrea Atkinson, Ph.D.
U.S. Geological Survey
5745 Kearny Villa Rd, Suite M, San Diego, CA 92123
Phone: 858-637-6906 Fax: 858-974-3563
Email: andrea_atkinson@usgs.gov

Re: Resubmission of comments on USGS letterhead for the "MHCP Biological Monitoring Plan, Vol. 1, dated December 2001"

Dear Jim Bartel,

USGS-1 Following are comments for the "MHCP Biological Monitoring Plan, Vol.1." These are the same comments submitted on Friday, April 26, 2002. However now they are submitted on USGS letterhead as requested by my supervisor. If this is too late, please use the previously submitted comments.

Sincerely,

Andrea J. Atkinson

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.



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USGS-2. Comment supports the approach taken by the MHCP.*

Date: April 12, 2002

To: Jim Bartel
 U. S. Fish & Wildlife Service, Carlsbad office

From: Andrea Atkinson, Ph.D.
 U.S. Geological Survey
 5745 Kearny Villa Rd, Suite M, San Diego, CA 92123
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Christopher Haas, M.S.
 U.S Geological Survey
 1147 East Sixth Street, Corona, CA 92879
 Phone: 909-735-0774 Fax: 909-735-0916
 Email: chaas@usgs.gov

Re: Comments on the "MHCP Biological Monitoring Plan, Vol. 1,
 dated December 2001"

Comments on the "MHCP Biological Monitoring Plan, Vol. 1,
 dated December 2001"

USGS-2 Developing Monitoring Framework ahead of the rest of the monitoring plan
 We commend the concept of starting with a monitoring framework for "what" should be monitored and "why" before jumping into the details of "when, where, and how". This is a critical decision and should lead to a better plan. We also liked the fact that the plan tries to articulate "questions" to drive monitoring and research. Overall the monitoring framework shows some good thought and is a good initial start. We have some comments both on the overall approach and some specific elements of the plan with the objective of making the plan a stronger, clearer, information rich, and more management responsive monitoring plan.

USGS comments on
 MHCP Monitoring Plan, Vol. 1

1

April 12, 2002

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Organization of the Monitoring Plan

Our first comments center on the fundamental organization of the monitoring plan and the role of adaptive management.

- USGS-3 1. The "Compliance monitoring" should be clearly placed in a separate section from "Effectiveness monitoring".
- USGS-4 2. In order for adaptive management to be functional, the monitoring and management plan frameworks must be developed together, preferably in the same document. Monitoring will in general be conducted for three reasons:
- Assess whether a plan is meeting its stated species-specific conservation goals.
 - Provide reliable and timely information to allow effective management actions
 - Validate critical assumptions and reduce/remove uncertainties regarding management
- At the minimum, the types of management actions that are possible at different scales of the program need to be articulated and used to ground the monitoring plan. The intensity of the monitoring will often be a reflection of not only the species being monitored, but the type of management actions that are available for correcting problems and at what point actions should be implemented.
- USGS-5 3. Clear conceptual models are needed. These conceptual models should 1) focus at the level of the habitats and associated covered species and important relationships, 2) articulate the physical and biological processes that maintain those habitats and species, 3) articulate the human and natural pressures that cause reductions in habitat quality and can negatively impact biological communities and species, 4) articulate the types of management actions that could be used to correct problems in the system, and 5) articulate the critical assumptions and uncertainties and identify which are a priority for validation.

Currently the organization of the monitoring plan is fragmented, putting monitoring for species, processes, and threats in separate places. This makes it very difficult to evaluate since the purposes for monitoring them are linked together. Without the links being stated explicitly among the difference parts of the system, its hard to prioritize among monitoring recommendations or evaluate what has been left out, or even evaluate if the fundamental thinking behind the selection of the monitoring elements is correct or not. The links between these different elements need to be made explicit. These conceptual models do not need to be overly detailed or explain all possible relationships. But they should explain the basic thinking behind the development of the monitoring plan and the links between management actions and the goals.

Clarity should be an underlying principle of this plan. The clearer the reasoning is explained, the easier it is to evaluate, the easier it will be to get people to coordinate, and the easier it will be to create a solid adaptive management program. Given the "no surprises" policy of USFWS, it is imperative that the monitoring and

- USGS-3. The section on Compliance Monitoring has been separated from the section on Effectiveness Monitoring. Please see revised monitoring plan.
- USGS-4. Examples of potential management actions have been added to the revised monitoring plan.
- USGS-5. The monitoring plan has been restructured in response to the USGS comments and has been organized according to the outline provided in this comment. A section entitled Conceptual Habitat Model has been developed for each vegetation community type. Also, sections on corridors and exotic species have been developed separately from the rest of the plan. See revised monitoring plan.

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management be clearly articulated with the reasoning behind them to the extent possible, while trying to allow for future changes and flexibility.

A possible different way to organize

Landscape model

Habitat models

- Riparian habitat & species
 - Habitat description & quality
 - Physical & biological processes that support habitats and species
 - Covered species
 - Threats to covered species, habitats, processes
 - Management actions – types, when would intervention be considered
 - Special issues, critical assumptions
 - Monitoring and research recommendations
- Coastal Sage Scrub (same as above)
- Lagoon habitat & species (same as above)
- Vernal pools (same as above)

Special Issues

- Connectivity issues & corridors
- exotic species
- linkage to other NCCPs and state and federal lands (critical assumptions, research, monitoring coordination)

USGS-6 4. All monitoring should be goal and question driven

This plan does a good job of trying to identify the relevant monitoring and research questions involved. Monitoring must be question driven. However, the program would benefit if the questions became even more specific. This is where having the possible management actions and conceptual models fleshed out would be an assistance.

USGS-7 5. Make sure research and learning is proactive rather than reactive. We had some concerns that research was often recommended after a negative trend had been detected. We wished to interject a note of caution because if research into causes of a problem are only initiated after a species is already in crisis, then its possible the species may go extinct before conclusions are reached about causes and types of possible actions. At the minimum, making corrective actions after a species is in crisis is more costly than catching a problem early. A more proactive approach would involve attempting to learn more about the system and resolve critical uncertainties before crises are reached. This requires some wisdom and a good process for strategizing and prioritizing research needs. Being proactive is in general more cost-effective than reactive. However, one can't research everything. The program should anticipate setting aside at least some money each year to do targeted research to resolve critical uncertainties in assumptions, causes of

USGS-6. Text has been modified to make the questions more specific. See revised monitoring plan.

USGS-7. Adaptive management will be addressed as part of the preserve management plan. Briefly, it will consist of reallocation of management funds to provide for changes in the status of a species or advances in scientific knowledge. Adaptive management does not involve additional funding or land preservation.*

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declines, relationships among elements of the system, and effectiveness of different management actions.

USGS-8 6. Some "monitoring" questions are actually research questions. Some of the identified "monitoring" questions are actually shorter-term research questions that are targeted at reducing critical uncertainties. When these questions require short-term commitments rather than long-term, this should be identified so that it is understood that the "monitoring" for these elements will not occur through the entire duration of the plan.

USGS-9 7. The monitoring plan should tie back to the goals in the MHCP plan and these goals should be monitorable and accomplishable. Often monitoring goals mention maintaining "viable" populations. How is this being interpreted? A population continues to exist with no discernable negative trends in all reserves found in the baseline? A population exists at the end of the plan in at least one of the reserves regardless of trends and disappearance in some of the reserves? The population is considered "viable" as concluded by a population viability analysis? Population is self-maintaining without human intervention? Population is self-maintaining with minimal human intervention? Can populations wink out of some reserves and be re-established with assistance? A little more discussion of this goal of "viability" would be helpful. And then discussion of when intervention would be needed for different habitats and species would help ground the monitoring recommendations. Also will conservation goals be able to change in the future as more information becomes available?

Approach to monitoring & research

USGS-10 1. Explain which species will be monitored with what approach. The plan appears to break down the intensity of monitoring into three groups

- relative abundance
- presence/absence or changes in distribution
- habitat extent and distribution as surrogate

The plan should more clearly specify which species will be monitored with which approach and why each species is included in each category. This lack of clarity greatly increased our concerns while reading the plan.

For example, the plan mentions monitoring narrow endemic plants and vernal pool species using relative abundance and distribution. Some of these species such as fairy shrimp would be better monitored as presence/absence in vernal pools and distribution of occupied pools. Similarly, although relative abundance may be appropriate for some plant species, it may be more than is really necessary for others.

In contrast the bird species should probably be monitored with indexes of relative abundance rather than merely presence/absence.

USGS-8. The duration of each monitoring task cannot be determined at this time. Sampling protocols are currently being field-tested, or in some instances, have yet to be finalized and are therefore subject to change. Initially, preserve-level monitoring must be conducted annually at all MHCP preserve areas by the cities and the wildlife agencies. In the future, after the range of natural conditions is established, the frequency of monitoring may be reduced.*

USGS-9. The comment raises several questions that cannot be answered at this time. The wildlife agencies, with assistance from USGS, will be responsible for structuring the protocols and data analysis to answer the questions in the revised monitoring plan. The monitoring plan does not establish thresholds for intervention. Conservation goals may change in the future as more information becomes available.*

USGS-10. The monitoring plan relies on the information contained in Vol. II of the MHCP Plan as the initial basis for developing monitoring and management strategies, and the monitoring plan does not repeat this information. It is acknowledged that the understanding of most of the species' ecologies is poor and it is assumed that the strategies for monitoring and management will evolve as more information is gathered. However, the strategies for monitoring each species are summarized in Appendix A.3 of the revised monitoring plan, and the text of the revised plan describes the rationale for the intensity of monitoring each species. At a minimum, all covered species are monitored for presence/absence in all areas of the preserve. Additional quantitative monitoring is proposed for some species, depending on a variety of factors, including the importance of the MHCP study area to the survival of the species as a whole. Generally, the level of monitoring is greater for species with site-specific permit conditions than for species with habitat-based permit conditions. Monitoring is also more intensive for narrow endemic species than for other species and more intensive for listed species than for unlisted species. Monitoring protocols for plants also vary depending on whether the species is an annual herbaceous species or a perennial shrub species. This has been clarified in the revised monitoring plan.

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In addition, when will habitat mapping be used as a surrogate? What are the criteria for selecting the species monitored this way? Will there be occasional validation monitoring to check that the assumed relationship between extent and distribution of habitat continues to hold over the decades?

2. Please clarify using presence/absence data to monitor species

USGS-11 It was unclear how presence/absence data would be used to monitor trends. Will this be using a percent area occupied with a reserve? Will this be the number of reserves occupied? More detail is needed. Presence/absence data can be used, but how it will be interpreted must be carefully thought through ahead of time. Given that presence/absence data is less powerful than abundance data, at what point will management assume that an unacceptable trend is occurring? Triggers or thresholds must be identified beforehand.

Simply knowing the spatial extent of plant and animal populations does not guarantee a viable population which is the goal for many of the covered species. Explanations of the assumptions being made about the relationship of species distribution within and across reserves to population viability are critical to assessing this portion of the monitoring plan.

Another concern is that the numerous research questions appear to want to use the status and trends data to answer hypotheses? It needs to be clearer what type of data will be used to answer these questions. Are these the same species being monitored using presence/absence and distribution? Again presence/absence data may be less powerful for these purposes. More detail is needed.

3. Give criteria for sub-regional monitoring site selection in "selected preserve areas"

USGS-12 In Section 2.2, page 12, it mentions that sub-regional monitoring will only be conducted at "selected preserve areas". What is criteria for selecting the sub-regional monitoring locations? What are the questions this monitoring will be used answer?

4. Clarify different levels of focus for different species groups

USGS-13 It's not clear why some biological communities have more monitoring/research questions than others. For example, there are 4 different monitoring and research questions for riparian habitats and selected species, but only one for coastal sage scrub birds. Can more explanation be given regarding why these are the most important questions for each community? Why are pressures such as brown-headed cowbird nest parasitism monitored for riparian birds, but nest predation is not monitored for coastal sage scrub birds? Maybe this is reasonable, but it needs explanation.

5. Explain priorities behind recommended research questions and effects on management

USGS-14 What are the priorities for the various research questions? Are some considered of higher priority than others? For example, the question on page 17, "How does vernal pool hydrology vary among pools, and do the respective hydrologic regimes change over time?" – how will this inform management decision-making? The reasons

USGS-11. Presence/absence information is generally being collected to ensure that preserve managers are aware of the suite of covered species that are present in each preserve unit and for which they are responsible for managing. The monitoring plan has been revised to clarify the types of monitoring that will be used for each species. However, the revised monitoring plan is still largely a framework plan with many details still to be worked out. The wildlife agencies are testing some protocols for monitoring, and will provide more specific strategies for monitoring once data from these tests have been analyzed.

USGS-12. The revised monitoring plan has identified some potential areas to site subregional monitoring locations, based on locations of critical and major populations of the covered species, as defined in Volume II of the MHCP Plan. The actual number and location of monitoring stations have not yet been determined. The wildlife agencies will be responsible for selecting the monitoring locations using a statistically defensible approach. Monitoring questions are included for subregional monitoring (see Sections 3.1.4 and 3.2.4).

USGS-13. The intensity of monitoring varies with each species depending on a variety of factors, including the importance of the MHCP study area to the survival of the species as a whole. Generally, the level of monitoring is greater for species with site-specific permit conditions than for species with habitat-based permit conditions. Monitoring is also more intensive for narrow endemic species than for other species and more intensive for listed species than for unlisted species. Monitoring protocols for plants also vary depending on whether the species is an annual herbaceous species or a perennial shrub species. This has been clarified in the revised monitoring plan.

USGS-14. There is no priority to the various monitoring questions. Many of the monitoring questions are intended to provide a better understanding of the particular resource, which may or may not result in changes in management decisions, depending on the results obtained.

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for why these questions are a priority needs to be explained, as well as how they will impact management decision-making.

Comments on specific sections

USGS-15 2.1.1 Covered species accounting:
"No population or location-specific monitoring is necessary for covered species not currently documented within the study area...but if future populations are discovered they will be monitored". Presumably these are species like Quino checkerspot butterfly -- How will they be discovered if they are not being surveyed for? Will these be incidentally looked for during the remainder of the baseline surveys for species known to be present? This requires making sure the people conducting other surveys know to look for these species and how to identify them.

This section mentions monitoring non-spatial data such as "percentage of population conserved and lost and population size through time". Again it would be helpful to know which species will be tracked via abundance, distribution, or just habitat tracking as a surrogate. Please be more specific. Its confusing because it seems like other areas of the plan imply that most monitoring will be presence/absence.

I assume that changes in distribution of a population within a reserve will be tracked while taking into account fluctuations in habitat (i.e. fire patterns, land use, human activity, etc...)?

USGS-16 2.1.2 There are 5 questions outlined on p. 7. For question 2, define occupancy: does this mean proportion of habitat occupied, proportion of preserve occupied, or just presence somewhere within the reserve, etc...? For question 3, do distributions change-spatially (if so, at what scale) or temporally?

Baseline surveys: define comprehensive.

"Recent surveys conducted as part of CEQA or NEPA"-are these comprehensive? Presumably the methodology and sampling effort probably varies.

Vegetation communities: how is condition of vegetation communities being measured, other than relative abundance of exotics?

Vegetation survey question # 2: regarding relating vegetation community changes to changes in covered species distributions. This sounds like a research question? Will the presence/absence data be sufficient to answer this question? Again more information about how you are conducting the distribution, presence/absence surveys would be helpful.

Vegetation community map updates: regarding updating maps at 5-year intervals for species for which the habitat accounting process will be used (non-narrow endemic, habitat, and landscape-level species)— Maybe this should be altered to remap

USGS-15. The monitoring plan has been revised to include surveys of potential habitat for species not currently known to occur in the study area. Appendix A summarizes the monitoring strategies for each covered species. Changes in distribution of a population within a reserve will be tracked while taking into account fluctuations in habitat.

USGS-16. The five questions have been deleted and replaced with questions and protocols specific to the resources being monitored.

Studies completed for CEQA and NEPA may have different methodologies than those conducted for preserve management. Upon adoption of the MHCP, the referenced protocols will ensure that future studies provide comparable data. Comprehensive baseline surveys should be similar to those conducted when preparing technical reports for a CEQA document, with the addition of identifying potential management issues and providing a baseline for long-term monitoring, especially for covered species. Vegetation mapping and mapping of exotics should be conducted as described in Appendix B. This appendix also discusses the types of factors to be considered when evaluating condition of vegetation communities (e.g., percent composition of invasive species, percent of bare ground caused by trails or off-road vehicles, evidence of grazing or tilling). The purpose of the community classification and mapping is to develop not just a map of communities but also a map of community features that are relevant for habitat management activities.

Much of the biological monitoring could be considered research, in that data will be collected to answer specific questions. Data can be utilized for research purposes. As clarified in the revised monitoring plan, some species surveys will be presence/absence surveys, while other protocols will be used for other species.

As stated in the monitoring plan, it may be desirable to refine maps more frequently if vegetation community changes occur more frequently (e.g., by flood disturbance or frequent recreational activities). However, for purposes of tracking vegetation community changes across the MHCP, it would be helpful if there are also consistent dates for comparison. Habitat features critical to each species are included in the MHCP Plan Vol. II, although coverage conditions for habitat-based covered species are not based on acreages of vegetation communities with features critical to each species. The primary purpose of periodic updates of vegetation community maps is to determine if there have been major changes in vegetation community composition (e.g., shrubs to grasslands).

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vegetation every five years or after major fire and flood events or other disturbance events like nearby rapid urban development. If the monitoring status of these species is dependant on measuring the habitat they are associated with, then 5-year intervals may be too long for some species (again the species being monitored this way would be helpful to know). Each species should have a list of habitat features that are critical to its persistence; therefore, if one of these features is impacted on a reserve, a more rigorous evaluation needs to be in place.

USGS-17

Vegetation Community Map Updates: 1- regarding documenting changes in distribution or characteristics of habitats that would trigger management actions – please give an example. What type of management actions would be triggered by these changes?

USGS-18

Fire history: consider adding mapping/measuring the proportion of habitat burned per fire or per year. Are any of the covered plant species fire dependent? What will the fire management strategy be?

USGS-19

Selected covered species: There are statements under each species group that state tracking distribution and relative abundance– but relative abundance is not mentioned in the questions at the top of page 10. This is confusing. Also, when will more intensive monitoring be triggered in this plan such as reproductive rates, mortality rates, sources of mortality, sex ratios, dispersal distances and success, inter- and intraspecific interactions, etc... A better understanding of these variable in some cases might lead to more effective management and allow more effective determination of problems later if species start to decline. This has been the case with riparian birds. Such studies do not need to be carried out exhaustively; rather they should serve as baseline ecological studies that should dictate management decisions.

USGS-20

Narrow endemic plants and vernal pool species: "The objective of the narrow endemic plant and vernal pool species monitoring is to annually track their distribution and relative abundance in all preserve areas where they occur" – do all of these need to have rigorous relative abundance measures?

USGS-21

Lagoon species: question 1-"what areas are these species using": Please define the species being referred to here and the level of monitoring for them. Are these species measured using relative abundance measures? Again, what is the criteria that makes these different from those species monitored via distribution only. What are the main pressure on these species in this habitat? What are the possible range of management actions? Will there be any studies about which predators threaten lagoon species, how they are getting to lagoon areas, etc.?? (see exotic species below)

USGS-22

Exotic species: Has the plan considered including additional exotic vertebrate species that threaten covered species???? (i.e. red fox, opossum, cats, dogs, black rats, cowbirds, bullfrogs). Why is it limited to invasive plants and ants? More

USGS-17.

An example of changes in characteristics of habitat that would trigger management actions: an increase in exotic species composition of a vegetation polygon also supporting a narrow endemic plant population. This should trigger actions to remove or control the exotic species.

USGS-18.

The monitoring plan has been revised to include mapping the proportion of habitat burned per fire or per year. Many of the covered plant species are fire-dependent, as described in Vol. II of the MHCP Plan. The fire management strategy will likely be different for different preserve areas, depending on surrounding land uses, size of the preserve, topography, and types of vegetation communities present on the preserve. The wildlife agencies and individual cities recognize that a fire management strategy should be developed as part of the area-specific management directives for each preserve area.

USGS-19.

The plan has been revised to clarify types of monitoring for each species. Trigger points for implementing more intensive monitoring have not been established. It is agreed that a better understanding of these variables will lead to more effective management.

USGS-20.

The narrow endemic plant species occur in very few locations within the MHCP planning area, and most of these are or will be subject to edge effects. Also, there are no data on the natural variation in populations of these species. Therefore, it is important to collect data on relative abundance at all locations where they occur.

USGS-21.

The plan has been revised to address these issues.

USGS-22.

The monitoring plan has been revised to require preserve managers to annually observe and record the relative abundance of red fox, opossum, cats, dogs, black rats, cowbirds, bullfrogs, African clawed frogs, nonnative turtles, and nonnative fish in the preserve and areas of highest use (Section 4.2.3). The plan has been revised to include information on the impacts of exotic ant species (Section 4.2.1). Currently, there are no known data on effective control of these species, other than preventive measures. It is anticipated that more information on potential management options will be identified as part of the monitoring program, and then the effectiveness of these actions will be tested.

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explanation about the hypothesized effects of Argentine and fire ants would be useful. Which species are these hypothesized to effect? (e.g. horned lizards, riparian birds, etc.) What actions are currently available to control them or should experiments about developing actions be included? (is this the purpose of question #4?)

This section would benefit from having more of the specific threats/pressures detailed and the possible management actions articulated. This would help ground the monitoring in an adaptive management framework.

USGS-23 2.2 Subregional monitoring

What are the specific questions that this monitoring is supposed to answer? How will the "Selected preserve areas" be chosen?

USGS-24 2.2.1 Why not monitor the whole riparian bird community rather than just these 3 species? Would it take that much more effort? The 4 questions are a good start, but how about testing what management techniques reduce nest parasitism/predation? Read Braden, et al. (1997).

USGS-25 2.2.2 Why are there fewer questions here than for riparian species? Why aren't there the same concerns on nest predation for these species as riparian species (particularly gnatcatchers)? This may be a valid decision, but the reasoning should be articulated for the difference. What are the threats and what are the range of management options?

USGS-26 2.2.3 Herpetofauna: How will this data be used to inform management decision-making? What are the hypothesized threats and range of management actions?

USGS-27 2.2.4 Wildlife corridors: Are wildlife corridors assumed to provide gene flow between two existing populations (exchange across generations), provide dispersal corridors to sink habitats (seasonal movement), or daily movement for fauna to areas that are not big enough to sustain them full time? These assumptions will affect how and why the corridors should be monitored and what additional assumptions must be tracked as well. Efforts should be made to see how corridor design influences dispersal, what are the different demographics that utilize corridors, etc...

USGS-28 Question 1: Are animals gaining access to coastal habitats using these corridors or is the effect more localized to the areas around the corridors? Are these corridors merely part of individual animals' home range?

USGS-29 Question 3: It's good to know the level of road kill, but what factors are associated with road kill. For carnivore viability, what is the reproduction and dispersal success of individuals in coastal reserves/more fragmented portions of the MHCP?

USGS-30 A number of pressures/threats have not been discussed at all or only discussed in a limited way such as additional non-indigenous species (feral cats & dogs, bullfrogs,

USGS-23. The revised monitoring plan has identified some locations for subregional monitoring, based on locations of critical and major populations of the covered species, as defined in Volume II of the MHCP Plan. Monitoring questions are included for subregional monitoring (see Sections 3.1.4 and 3.2.4).

USGS-24. The monitoring plan has been revised to incorporate these suggestions.

USGS-25. The monitoring plan has been revised to incorporate these suggestions.

USGS-26. Some data, such as the herpetofauna data, are being collected to monitor regional trends in wildlife species populations or communities as a measure of ecological condition of the habitat. In some instances, these data may exhibit patterns that may eventually result in some management alternatives. The monitoring plan has been revised to describe threats and management actions.

USGS-27. The MHCP Plan assumes that, by allowing top predators to control mesopredators in small coastal lagoon systems, nest predation on ground-nesting birds will be reduced. Therefore, maintaining connections between coastal lagoons and inland habitat as corridors, primarily for coyote movement, was a specific element of the MHCP preserve design. It is also assumed that the corridors allow both for intergenerational movement and gene flow between populations as well as provide habitat for individual animals, depending on the specific species. However, the monitoring program is intended to demonstrate whether large mammals are using the connections as movement corridors, allowing animals access into areas that are not large enough to sustain them full time.

USGS-28. Wildlife corridor use has not been documented at this time.

USGS-29. Wildlife data have not been collected to answer these questions quantitatively or qualitatively.

USGS-30. The monitoring plan has been revised to incorporate discussions of conceptual models.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

stocked trout, introduced red fox, black rats, etc) altered hydrology in riparian systems, nitrogen pollution, light effects, edge effects, pests, increased density of indigenous predators like raccoons, recreation impacts, contaminants, grazing. These should be incorporated into conceptual models.

USGS-31 3.0 How will coordination occur with monitoring and management on state and federal lands? For example, are the fire management strategies in the MHCP preserve system compatible with federal and state lands?

USGS-32 3.1 MHCP Conservancy. The concept of a single entity in charge of monitoring across reserves in the MHCP is a good idea and would hopefully both reduce costs and increase coordination of protocols across the preserves allowing sub-regional analysis. Consistency in monitoring and assessment across reserves will be critical for evaluating the overall effectiveness of the plan in conserving species. Without coordination across the various individual cities this assessment at the sub-region level will be very difficult. Will sampling techniques and intervals be consistent across reserves? In 1.3.1 it states that some data collected at the preserve level will be aggregated and analyzed to detect subregion-wide patterns and trends. This will be difficult if individual city plans vary in sampling technique and interval. Also, what is the basis and criteria for sampling. "certain aspects of resource status and ecological condition at selected locations"? Wildlife agencies...will conduct the "same level" of preserve monitoring. Same level should be defined more clearly.

USGS-33 The process by which the monitoring plan can be changed in the future needs to be clearly articulated.

USGS-31. The wildlife agencies and cities will coordinate implementation of monitoring and management. If the MHCP Conservancy is created, its primary responsibility will be to coordinate and implement the monitoring and management plan.

USGS-32. It is intended that some monitoring will be conducted in a standardized fashion across all preserve areas of the MHCP, using the same techniques and at the same intervals. Ultimately, it is anticipated that monitoring efforts would be conducted in a standardized fashion across the entire NCCP region.

USGS-33. The MHCP monitoring and management program is still in the process of development. Some of the sampling strategies are still being formulated, and some protocols are being tested in the field. Data from ongoing monitoring programs (e.g., the USGS herpetofauna monitoring and the USFWS coastal sage scrub bird monitoring) are being analyzed to better understand the appropriate number of sampling points, duration, monitoring intervals, etc. for meaningful analysis and interpretation. The monitoring program will continue to be reviewed and refined, as baseline data are being collected and management plans are being prepared for the preserve. The wildlife agencies and cities will refine the monitoring program together to ensure that it meets the needs for preserve managers, permit compliance, and implementation feasibility and cost.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.



science for a changing world

U. S. Geological Survey
Biological Resources Division
San Diego Field Station
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San Diego, California 92123

Date: 4/26/02
From: Andrea Atkinson
Phone: (858) 637-6879 Fax: (858) 974-3563

To: Jim Bartel
Company: USFWS
Fax #: 760-431-7688

Number of pages (including this one): 10

Comments:

Dear Jim Bartel,

USGS-34: Attached are comments on the "MHCP Biological Monitoring Plan, Volume 1" dated December 2001. These comments were discussed at a meeting on April 17, 2002 with the Conservation Biology Institute, USFWS personnel and CDFG personnel. These comments have not been revised since that date.

— Andrea Atkinson
858-637-6906

USGS-34. This is an introductory statement to the comments that follow. Comments associated with this letter are duplicate to those presented in USGS-2 through USGS-33. Please see those responses.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.



science for a changing world

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To: Jim Bartel
Company: USFWS
Fax #: 760-431-9618

Number of pages (including this one): 11

Comments:

See Attached

April 12, 2002

Comments on the
"MHCP Biological Monitoring Plan, Vol. 1, dated December 2001"

By
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Developing Monitoring Framework ahead of the rest of the monitoring plan

We commend the concept of starting with a monitoring framework for "what" should be monitored and "why" before jumping into the details of "when, where, and how". This is a critical decision and should lead to a better plan. We also liked the fact that the plan tries to articulate "questions" to drive monitoring and research. Overall the monitoring framework shows some good thought and is a good initial start. We have some comments both on the overall approach and some specific elements of the plan with the objective of making the plan a stronger, clearer, information rich, and more management responsive monitoring plan.

Organization of the Monitoring Plan

Our first comments center on the fundamental organization of the monitoring plan and the role of adaptive management.

1. The "Compliance monitoring" should be clearly placed in a separate section from "Effectiveness monitoring".
2. In order for adaptive management to be functional, the monitoring and management plan frameworks must be developed together, preferably in the same document. Monitoring will in general be conducted for three reasons:
 - Assess whether a plan is meeting its stated species-specific conservation goals.

USGS comments on
MHCP Monitoring Plan, Vol. 1

April 12, 2002

- Provide reliable and timely information to allow effective management actions
- Validate critical assumptions and reduce/remove uncertainties regarding management

At the minimum, the types of management actions that are possible at different scales of the program need to be articulated and used to ground the monitoring plan. The intensity of the monitoring will often be a reflection of not only the species being monitored, but the type of management actions that are available for correcting problems and at what point actions should be implemented.

3. Clear conceptual models are needed. These conceptual models should 1) focus at the level of the habitats and associated covered species and important relationships, 2) articulate the physical and biological processes that maintain those habitats and species, 3) articulate the human and natural pressures that cause reductions in habitat quality and can negatively impact biological communities and species, 4) articulate the types of management actions that could be used to correct problems in the system, and 5) articulate the critical assumptions and uncertainties and identify which are a priority for validation.

Currently the organization of the monitoring plan is fragmented, putting monitoring for species, processes, and threats in separate places. This makes it very difficult to evaluate since the purposes for monitoring them are linked together. Without the links being stated explicitly among the different parts of the system, its hard to prioritize among monitoring recommendations or evaluate what has been left out, or even evaluate if the fundamental thinking behind the selection of the monitoring elements is correct or not. The links between these different elements need to be made explicit. These conceptual models do not need to be overly detailed or explain all possible relationships. But they should explain the basic thinking behind the development of the monitoring plan and the links between management actions and the goals.

Clarity should be an underlying principle of this plan. The clearer the reasoning is explained, the easier it is to evaluate, the easier it will be to get people to coordinate, and the easier it will be to create a solid adaptive management program. Given the "no surprises" policy of USFWS, it is imperative that the monitoring and management be clearly articulated with the reasoning behind them to the extent possible, while trying to allow for future changes and flexibility.

A possible different way to organize

Landscape model

Habitat models

- Riparian habitat & species
 - Habitat description & quality
 - Physical & biological processes that support habitats and species
 - Covered species
 - Threats to covered species, habitats, processes

- Management actions – types, when would intervention be considered
- Special issues, critical assumptions
- Monitoring and research recommendations
- Coastal Sage Scrub (same as above)
- Lagoon habitat & species (same as above)
- Vernal pools (same as above)

Special Issues

- Connectivity issues & corridors
- exotic species
- linkage to other NCCPs and state and federal lands (critical assumptions, research, monitoring coordination)

4. All monitoring should be goal and question driven

This plan does a good job of trying to identify the relevant monitoring and research questions involved. Monitoring must be question driven. However, the program would benefit if the questions became even more specific. This is where having the possible management actions and conceptual models fleshed out would be an assistance.

5. Make sure research and learning is proactive rather than reactive. We had some concerns that research was often recommended after a negative trend had been detected. We wished to interject a note of caution because if research into causes of a problem are only initiated after a species is already in crisis, then its possible the species may go extinct before conclusions are reached about causes and types of possible actions. At the minimum, making corrective actions after a species is in crisis is more costly than catching a problem early. A more proactive approach would involve attempting to learn more about the system and resolve critical uncertainties before crises are reached. This requires some wisdom and a good process for strategizing and prioritizing research needs. Being proactive is in general more cost-effective than reactive. However, one can't research everything. The program should anticipate setting aside at least some money each year to do targeted research to resolve critical uncertainties in assumptions, causes of declines, relationships among elements of the system, and effectiveness of different management actions.

6. Some "monitoring" questions are actually research questions. Some of the identified "monitoring" questions are actually shorter-term research questions that are targeted at reducing critical uncertainties. When these questions require short-term commitments rather than long-term, this should be identified so that it is understood that the "monitoring" for these elements will not occur through the entire duration of the plan.

7. The monitoring plan should tie back to the goals in the MHCP plan and these goals should be monitorable and accomplishable. Often monitoring goals mention

maintaining "viable" populations. How is this being interpreted? A population continues to exist with no discernable negative trends in all reserves found in the baseline? A population exists at the end of the plan in at least one of the reserves regardless of trends and disappearance in some of the reserves? The population is considered "viable" as concluded by a population viability analysis? Population is self-maintaining without human intervention? Population is self-maintaining with minimal human intervention? Can populations wink out of some reserves and be re-established with assistance? A little more discussion of this goal of "viability" would be helpful. And then discussion of when intervention would be needed for different habitats and species would help ground the monitoring recommendations. Also will conservation goals be able to change in the future as more information becomes available?

Approach to monitoring & research

1. Explain which species will be monitored with what approach. The plan appears to break down the intensity of monitoring into three groups

- relative abundance
- presence/absence or changes in distribution
- habitat extent and distribution as surrogate

The plan should more clearly specify which species will be monitored with which approach and why each species is included in each category. This lack of clarity greatly increased our concerns while reading the plan.

For example, the plan mentions monitoring narrow endemic plants and vernal pool species using relative abundance and distribution. Some of these species such as fairy shrimp would be better monitored as presence/absence in vernal pools and distribution of occupied pools. Similarly, although relative abundance may be appropriate for some plant species, it may be more than is really necessary for others.

In contrast the bird species should probably be monitored with indexes of relative abundance rather than merely presence/absence.

In addition, when will habitat mapping be used as a surrogate? What are the criteria for selecting the species monitored this way? Will there be occasional validation monitoring to check that the assumed relationship between extent and distribution of habitat continues to hold over the decades?

2. Please clarify using presence/absence data to monitor species

It was unclear how presence/absence data would be used to monitor trends. Will this be using a percent area occupied with a reserve? Will this be the number of reserves occupied? More detail is needed. Presence/absence data can be used, but how it will be interpreted must be carefully thought through ahead of time. Given that presence/absence data is less powerful than abundance data, at what point will management assume that an unacceptable trend is occurring? Triggers or thresholds must be identified beforehand.

Simply knowing the spatial extent of plant and animal populations does not guarantee a viable population which is the goal for many of the covered species. Explanations of the assumptions being made about the relationship of species distribution within and across reserves to population viability are critical to assessing this portion of the monitoring plan.

Another concern is that the numerous research questions appear to want to use the status and trends data to answer hypotheses? It needs to be clearer what type of data will be used to answer these questions. Are these the same species being monitored using presence/absence and distribution? Again presence/absence data may be less powerful for these purposes. More detail is needed.

3. Give criteria for sub-regional monitoring site selection in "selected preserve areas"
In Section 2.2, page 12, it mentions that sub-regional monitoring will only be conducted at "selected preserve areas". What are the criteria for selecting the sub-regional monitoring locations? What are the questions this monitoring will be used to answer?

4. Clarify different levels of focus for different species groups
It is not clear why some biological communities have more monitoring/research questions than others. For example, there are 4 different monitoring and research questions for riparian habitats and selected species, but only one for coastal sage scrub birds. Can more explanation be given regarding why these are the most important questions for each community? Why are pressures such as brown-headed cowbird nest parasitism monitored for riparian birds, but nest predation is not monitored for coastal sage scrub birds? Maybe this is reasonable, but it needs explanation.

5. Explain priorities behind recommended research questions and effects on management. What are the priorities for the various research questions? Are some considered of higher priority than others? For example, the question on page 17, "How does vernal pool hydrology vary among pools, and do the respective hydrologic regimes change over time?" – how will this inform management decision-making? The reasons for why these questions are a priority need to be explained, as well as how they will impact management decision-making.

Comments on specific sections

2.1.1 Covered species accounting:

"No population or location-specific monitoring is necessary for covered species not currently documented within the study area...but if future populations are discovered they will be monitored". Presumably these are species like Quino checkerspot butterfly – How will they be discovered if they are not being surveyed for? Will these be incidentally looked for during the remainder of the baseline surveys for species

known to be present? This requires making sure the people conducting other surveys know to look for these species and how to identify them.

This section mentions monitoring non-spatial data such as "percentage of population conserved and lost and population size through time". Again it would be helpful to know which species will be tracked via abundance, distribution, or just habitat tracking as a surrogate. Please be more specific. Its confusing because it seems like other areas of the plan imply that most monitoring will be presence/absence.

I assume that changes in distribution of a population within a reserve will be tracked while taking into account fluctuations in habitat (i.e. fire patterns, land use, human activity, etc...)?

2.1.2 There are 5 questions outlined on p. 7. For question 2, define occupancy: does this mean proportion of habitat occupied, proportion of preserve occupied, or just presence somewhere within the reserve, etc...? For question 3, do distributions change-spatially (if so, at what scale) or temporally?

Baseline surveys: define comprehensive.

"Recent surveys conducted as part of CEQA or NEPA"-are these comprehensive? Presumably the methodology and sampling effort probably varies.

Vegetation communities: how is condition of vegetation communities being measured, other than relative abundance of exotics?

Vegetation survey question # 2: regarding relating vegetation community changes to changes in covered species distributions. This sounds like a research question? Will the presence/absence data be sufficient to answer this question? Again more information about how you are conducting the distribution, presence/absence surveys would be helpful.

Vegetation community map updates: regarding updating maps at 5-year intervals for species for which the habitat accounting process will be used (non-narrow endemic, habitat, and landscape-level species)- Maybe this should be altered to remap vegetation every five years or after major fire and flood events or other disturbance events like nearby rapid urban development. If the monitoring status of these species is dependant on measuring the habitat they are associated with, then 5-year intervals may be too long for some species (again the species being monitored this way would be helpful to know). Each species should have a list of habitat features that are critical to its persistence; therefore, if one of these features is impacted on a reserve, a more rigorous evaluation needs to be in place.

Vegetation Community Map Updates: 1- regarding documenting changes in distribution or characteristics of habitats that would trigger management actions -

please give an example. What type of management actions would be triggered by these changes?

Fire history: consider adding mapping/measuring the proportion of habitat burned per fire or per year. Are any of the covered plant species fire dependent? What will the fire management strategy be?

Selected covered species: There are statements under each species group that state tracking distribution and relative abundance-- but relative abundance is not mentioned in the questions at the top of page 10. This is confusing. Also, when will more intensive monitoring be triggered in this plan such as reproductive rates, mortality rates, sources of mortality, sex ratios, dispersal distances and success, inter- and intraspecific interactions, etc... A better understanding of these variable in some cases might lead to more effective management and allow more effective determination of problems later if species start to decline. This has been the case with riparian birds. Such studies do not need to be carried out exhaustively; rather they should serve as baseline ecological studies that should dictate management decisions.

Narrow endemic plants and vernal pool species: "The objective of the narrow endemic plant and vernal pool species monitoring is to annually track their distribution and relative abundance in all preserve areas where they occur" -- do all of these need to have rigorous relative abundance measures?

Lagoon species: question 1-"what areas are these species using": Please define the species being referred to here and the level of monitoring for them. Are these species measured using relative abundance measures? Again, what is the criteria that makes these different from those species monitored via distribution only. What are the main pressure on these species in this habitat? What are the possible range of management actions? Will there be any studies about which predators threaten lagoon species, how they are getting to lagoon areas, etc.?? (see exotic species below)

Exotic species: Has the plan considered including additional exotic vertebrate species that threaten covered species???? (i.e. red fox, opossum, cats, dogs, black rats, cowbirds, bullfrogs). Why is it limited to invasive plants and ants? More explanation about the hypothesized effects of argentine and fire ants would be useful. Which species are these hypothesized to effect? (e.g. horned lizards, riparian birds, etc.) What actions are currently available to control them or should experiments about developing actions be included? (is this the purpose of question #4?)

This section would benefit from having more of the specific threats/pressures detailed and the possible management actions articulated. This would help ground the monitoring in an adaptive management framework.

2.2 Subregional monitoring

What are the specific questions that this monitoring is supposed to answer? How will the "Selected preserve areas" be chosen?

2.2.1 Why not monitor the whole riparian bird community rather than just these 3 species? Would it take that much more effort? The 4 questions are a good start, but how about testing what management techniques reduce nest parasitism/predation? Read Braden, et al. (1997).

2.2.2 Why are there fewer questions here than for riparian species? Why aren't there the same concerns on nest predation for these species as riparian species (particularly gnatcatchers)? This may be a valid decision, but the reasoning should be articulated for the difference. What are the threats and what are the range of management options?

2.2.3 Herpetofauna: How will this data be used to inform management decision-making? What are the hypothesized threats and range of management actions?

2.2.4 Wildlife corridors: Are wildlife corridors assumed to provide gene flow between two existing populations (exchange across generations), provide dispersal corridors to sink habitats (seasonal movement), or daily movement for fauna to areas that are not big enough to sustain them full time? These assumptions will affect how and why the corridors should be monitored and what additional assumptions must be tracked as well. Efforts should be made to see how corridor design influences dispersal, what are the different demographics that utilize corridors, etc...

Question 1: Are animals gaining access to coastal habitats using these corridors or is the effect more localized to the areas around the corridors? Are these corridors merely part of individual animals' home range?

Question 3: It's good to know the level of road kill, but what factors are associated with road kill. For carnivore viability, what is the reproduction and dispersal success of individuals in coastal reserves/more fragmented portions of the MHCP?

A number of pressures/threats have not been discussed at all or only discussed in a limited way such as additional non-indigenous species (feral cats & dogs, bullfrogs, stocked trout, introduced red fox, black rats, etc) altered hydrology in riparian systems, nitrogen pollution, light effects, edge effects, pets, increased density of indigenous predators like raccoons, recreation impacts, contaminants, grazing. These should be incorporated into conceptual models.

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3.1 MHCP Conservancy. The concept of a single entity in charge of monitoring across reserves in the MHCP is a good idea and would hopefully both reduce costs and increase coordination of protocols across the preserves allowing sub-regional analysis. Consistency in monitoring and assessment across reserves will be critical for evaluating the overall effectiveness of the plan in conserving species. Without coordination across the various individual cities this assessment at the sub-region level will be very difficult. Will sampling techniques and intervals be consistent across reserves? In 1.3.1 it states that some data collected at the preserve level will be aggregated and analyzed to detect subregion-wide patterns and trends. This will be difficult if individual city plans vary in sampling technique and interval. Also, what is the basis and criteria for sampling "certain aspects of resource status and ecological condition at selected locations"? Wildlife agencies....will conduct the "same level" of preserve monitoring. Same level should be defined more clearly.

The process by which the monitoring plan can be changed in the future needs to be clearly articulated.

CALIFORNIA COASTAL COMMISSION

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May 2, 2002

Gary Barberio, Senior Planner
Advanced Planning and Housing Division
City of Encinitas
505 South Vulcan Ave.
Encinitas, CA 92024

RE: Encinitas Draft Subarea Plan
Multiple Habitat Conservation Program

Dear Mr. Barberio:

CCC1-1

Coastal Commission staff have reviewed the City's draft subarea plan, which has been prepared as part of the proposed San Diego County Multiple Habitat Conservation Program (MHCP). The MHCP will establish a coordinated habitat preserve system to protect listed species and rare native vegetation while accommodating regional development needs. We recognize that creation of an effective habitat preserve requires a careful balancing of preservation and mitigation requirements, as well as enforceable monitoring, remediation, and an adequately funded maintenance program for the preserve area. The following comments represent our concerns about the information provided in the subarea plan, and provide suggestions for clarifying and strengthening the habitat protection and preserve establishment process in the coastal zone.

CCC1-2

One of our primary concerns is the lack of formal linkage and consistency between the subarea plan and the City's certified LCP. The subarea plan acknowledges that for all projects proposed within the coastal zone, the certified LCP and the Coastal Act will continue to be the controlling standard of review, and the City must continue to implement all existing provisions of the LCP that protect sensitive resources, whether or not those provisions are specifically mentioned in the subarea plan. The subarea plan notes that one of its purposes is to provide general guidance for long-term land use planning within the City. The land use plan of the LCP is also intended to provide this type of planning guidance. Therefore, the City's LCP should be updated to reflect current state and federal requirements for protection of listed species and sensitive vegetation, and to include appropriate mitigation measures, as provided in our comments below. Further, both the subarea plan and the LCP should be amended to provide for a resolution of any conflicts that may arise between these plans, in a manner that requires compliance with the LCP when addressing activities in the coastal zone.

CCC1-3

Another concern is the lack of specificity for proposed activities that may require take of listed species, and the impacts that may result from such activities. Although the subarea plan identifies a number of public and private projects that may require authorization for take of listed species, insufficient information is provided for the identification of specific anticipated impacts. For such activities, and for all future activities not mentioned in the

Letter 4: California Coastal Commission 1

CCC1-1. The comment provides an introduction to the following issues.*

CCC1-2. Section 6.3, City Implementation Actions and Policies, of the Encinitas Subarea Plan states that "within 1 year of the signing of an Implementing Agreement with the wildlife agencies, it will develop and schedule action on any General Plan, Local Coastal Program, and Municipal code amendments necessary to implement the subarea plan. This action will assure consistent implementation of the subarea plan through city policy, private and public project review and approval, and guidelines for operation and management of public lands." Sections 6.3.2 and 6.3.3 of the Plan require the City to enact an urgency ordinance to ensure compliance with the Plan during the period of time between adoption of the Plan and IA and the adoption of any necessary amendments to the City's General Plan, Local Coastal Program, and Municipal Code. The City of Encinitas does not perceive any conflicts between the City's adopted LCP and the draft Subarea Plan. The Planning Commission and City Council can consider this comment in their review and consideration of the Encinitas Subarea Plan.

CCC1-3. Individual projects are still subject to the CEQA review process, and site-specific analysis and mitigation will be required as necessary. Sections 4 and 6 of the Plan outline the process the City will follow in reviewing future proposed projects (both public and private) to ensure compliance with the Plan. "Softlined" or "Mitigation Ratio" lands within the draft FPA will continue to be reviewed on a project-by-project basis utilizing current, site-specific biological reports at the time of project proposals to ensure compliance with the Plan and other applicable GP, LCP, and Municipal Code provisions. It is not likely to revise the Plan at this time to include site-specific standards or boundaries on all "Mitigation Ratio" coastal zone lands within the FPA.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

subarea plan, it should be understood that approval of the subarea plan by the resource agencies does not provide any exemptions from LCP or Coastal Act requirements that would normally be applied to projects located in the coastal zone or which may affect coastal resources. When these projects have reached the appropriate planning stage, they will continue to be subject to Commission review under the requirements of the City's certified LCP and the Coastal Act. Based upon the limited information that is available in the subarea plan, we cannot provide individual reviews or recommendations for potential activities on individual sites at this time. In addition, based upon our experience with other subarea plans, the absence of such site-specific information will potentially result in future differences over the level of resource protection that needs to be provided and key questions about the siting of any proposed development. The subarea plan should be revised at this time to include site-specific standards and/or development/preservation boundaries ("hardlines") for remaining undeveloped coastal properties. These should also be incorporated into the LCP through an amendment.

CCC1-4 We are also concerned that the City has not provided sufficient information in the subarea plan for us to conclude that the funding necessary to implement the subarea plan will be guaranteed. At this time, we cannot find that an effective fiscal strategy has been provided to carry out the identified acquisitions and mitigation program, or, alternatively, how the subarea plan will be effectively implemented if the projected and necessary funds are not received. As noted on pages 5-3 through 5-5, it is unclear whether the proposed MHCP regional financing program will be established and adequate to cover needed expenditures. In the case of *National Wildlife Federation v. Babbitt* (E.D. Cal. 2000) 128 F.Supp.2d 1274 1291-3, the court invalidated the ITP partially on the grounds of the failure of the ITP to provide for adequate funding to implement the associated HCP, in violation of ESA § 10(a)(2)(B)(iii). The plan needs to have a dedicated management authority with a reliable and predictable source of funding for maintenance and monitoring and, where applicable, remediation and adaptive management if unforeseen circumstances should warrant it. The plan should also specify the means for transferring management responsibilities if the management authority should cease to exist. The subarea plan should include a detailed plan for monitoring, management and enforcement that is realistic, has adequate funding in place, and which spells out responses to unforeseen situations or occurrences requiring enforcement or remedial action.

CCC1-5 Section 30107.5 of the Coastal Act defines an "environmentally sensitive area" (ESHA) as "any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments." Section 30240 requires that "environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas." These Coastal Act provisions and standards support a finding that many areas within the coastal zone containing coastal sage scrub (CSS), especially if occupied by listed species (e.g., gnatcatchers) or used for foraging by those species, are ESHAs. Other vegetative communities, such as southern maritime chaparral (SMC), may also be ESHA based upon the ecological value and uniqueness of the habitat and upon

CCC1-4. Section 5.2 of the Plan outlines the funding and financing plan for the Encinitas Subarea Plan. In the absence of a regional funding source, the City of Encinitas will fund the implementation of the Plan through development fees, project endowments, and the City's general fund. This includes adaptive management and monitoring of the biological resources. Although public acquisition of habitat land is not required to meet the conservation goals within the Encinitas Subarea Plan, the City has sought and will continue to seek outside funding to assist with the purchase of important habitat and open space lands. The primary funding source for the management and monitoring of habitat areas proposed for conservation is the regional funding program described in the MHCP. Prior to establishment of that program, the City will fund the management of City-owned habitat lands proposed for conservation, and new developments which conserve habitat areas as mitigation for impacts will manage those areas.

CCC1-5. This comment provides information regarding the Coastal Act and ESHAs. The Planning Commission and City Council will consider this comment in their review and consideration of the Encinitas Subarea Plan.*

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

the presence of endangered plant and animal species and/or their foraging habitat. However, such determinations must be made on a case-by-case basis, and not all areas of CSS or SMC will warrant an ESHA designation.

CCC1-6

Additionally, the Coastal Act acknowledges that conflicts may occur between one or more of its policies, and "in such cases, conflicts should be resolved in a manner which on balance is the most protective of significant coastal resources." (Section 30007.5) In order to protect viable and connected habitat areas, which take into account the mobility and foraging requirements of listed and covered species, it may be preferable to take a regional approach to the preservation of ESHAs, such as the regional conservation approach of the MHCP and the associated subarea plans. Under this scenario, Commission staff may recommend that the Commission approve a program that may have some adverse impacts to ESHAs, in order to obtain greater overall protection of contiguous, high-quality habitat necessary for the maintenance and recovery of listed species.

CCC1-7

The protection of coastal sage scrub and southern maritime chaparral habitat is of particular importance in these remaining areas of native vegetation. We recommend that standards for coastal zone properties addressed under Section 5 be provided in the subarea plan to require preservation, at minimum, of 67% of the onsite coastal sage scrub and at least 75% of gnatcatchers. If impacts to native vegetation and/or ESHA are unavoidable, the following mitigation ratios should be required for coastal zone properties:

- 2:1 for coastal sage scrub
- 3:1 for all other rare native vegetation except wetlands
- 3:1 for riparian areas
- 4:1 for vernal pools, other seasonal wetlands, and salt marsh

The proposed mitigation ratios in Table 4-4 should be revised to be consistent with these requirements, and should also be cross-referenced in the LCP through an amendment. It should be noted that in the coastal zone, the mitigation program must include *creation of new habitat*; *preservation* of existing, onsite vegetation cannot be considered as mitigation under the Coastal Act. The area of such created habitat must be at a ratio of at least 1:1 to the area adversely impacted. The mitigation ratios we recommend take into account the foraging value of non-occupied CSS and CSS-mixture areas, and compensate for the initial lower habitat value of an immature vegetative community, and the fact that the success rate of revegetation efforts is often less than 100%.

CCC1-8

It is preferred that adverse impacts within the coastal zone be mitigated inside the coastal zone. However, mitigation outside the coastal zone will be considered acceptable if, in addition to meeting the criteria identified above, the mitigation clearly ensures higher levels of habitat protection and value in the context of a regional habitat preservation program.

CCC1-6.

This comment provides information regarding the Coastal Act and ESHAs. The NCCP takes a regional approach to preserving ESHAs. The Planning Commission and City Council can consider this comment in their review and consideration of the Encinitas Subarea Plan.*

CCC1-7.

Table 4-4 of the Plan proposes mitigation ratios for impacts to natural vegetation and habitat based on habitat groups that include wetland/riparian, rare upland, coastal sage scrub, chaparral, and annual grasslands. These ratios as proposed are generally in excess of what is currently required by the Resource Agencies for impacts of development projects. In addition, mitigation ratios are proposed for habitat groups (chaparral and annual grasslands) that currently do not require mitigation by the Resource Agencies. See comment CCC1-5.

The issue of "creation" of new habitat, versus preservation of existing habitat raised by the Commission is problematic. The current status quo in regards to mitigation approved by the Resource Agencies is to allow preservation (on- and off-site) to count as mitigation for project impacts. Creation of new habitat is not even necessarily possible for all habitat groups (i.e., southern maritime chaparral). In addition, one of the basic tenets of the MHCP is to preserve the highest quality habitat in the most biologically viable locations and the concept of allowing habitat preservation (both on- and off-site) to count as mitigation for project impacts is one of the largest "carrots" of the MHCP. See comment CCC1-5.

CCC1-8.

The proposed mitigation policies of the Plan are found in Section 4.3.1.5 and the identified priorities for mitigation are "(1) onsite, (2) elsewhere in FPA within the city and city's Sphere of Influence, and (3) outside the city in the FPA of adjacent jurisdictions or gnatcatcher core area in the unincorporated area." See comment CCC1-5.

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CCC1-9

It is also important to provide adequate buffers to protect sensitive habitat and/or ESHA from impacts resulting from development or use of adjacent areas. The plan should establish buffers for coastal habitat according to the following guidelines:

- A minimum 100 foot buffer shall be required from all freshwater and saltwater wetlands areas.
- A minimum 50 foot buffer shall be required from riparian areas and coast oak woodlands. No development or brush management shall take place within the buffer area for these habitat types except as otherwise specified herein.
- If a riparian area is associated with steep slopes (>25%), the 50 foot buffer shall be measured from the top of the slope.
- For steep slopes not associated with a riparian area, and for nonsteep areas (<25% slope) with native vegetation, a minimum 20 foot buffer shall be required. For steep slopes, the buffer shall be measured from the top of the slope. No development may be located within the buffer except as otherwise specified herein. However, if brush management is required for fire protection, Zone 3 (to a maximum of 20 feet) may be located within the buffer area if allowed by the fire management authority.
- Zones 1 and 2 for brush management and fire protection, where required, shall be located on the portion of the property proposed for development and outside of required buffers. Any plantings in Zone 2 must consist of native vegetation appropriate to the habitat.
- Recreation trails and public access pathways may be permitted in the required buffer area within the 15 feet closest to the adjacent developable area, provided that the construction of the trails and/or pathways and their proposed uses are consistent with the preservation goals for adjacent habitat, and that appropriate measures are taken for their physical separation from sensitive areas.

CCC1-10

Mitigation for impacts to any sensitive habitat should be required consistent with the previously-listed replacement ratios. In some instances, application of the standards to subject properties may require a greater percentage of habitat and/or species preservations. Also of particular importance is the protection of Narrow Endemic species. The standards should require 100% conservation of Narrow Endemics within the Focus Planning Area. Additionally, development of coastal zone properties which have more than 80% of the total site acreage in ESHA should be limited to a maximum development area, such as 20%-25% of the site.

CCC1-11

Table 2-4 and Page 4-12 of the subarea plan list some of the public projects that are anticipated to occur within the city. The descriptions of these projects are summarized and provide little detail. As a planning document, the subarea plan does not claim to identify all of the projects that will eventually be proposed under the blanket ITP authorization, and does not "hardline" or draw development/preservation footprints on individual parcels. It must be emphasized that although incidental take for these projects may be addressed in the subarea plan, all other existing requirements for review, permitting and compliance must still be fulfilled, including consistency with the LCP and Coastal Act for those projects within the coastal zone. Existing requirements for LCP

CCC1-9. Section 2.3, General Plan, Local Zoning, and Ordinances, references the City's existing buffer standards (both habitat and fire brush management). These standards would continue to apply to projects after the adoption of the Plan. See comment CCC1-5.

CCC1-10. See comments CCC1-5 and CCC1-7. See also Section 4.3.1.2, also Narrow Endemic Species Policies.

CCC1-11. This comment addresses the requirement of certain activities allowed within the City's preserve plan will also be required to meet LCP and Coastal Act requirements.*

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and Coastal Act review cannot be waived through adoption or implementation of the subarea plan.

CCC1-12 Page 4-12 states that, among other uses, environmental interpretation/education/research activities and nature centers, utility lines and roads, and certain infrastructure and public facilities are considered conditionally compatible with the biological objectives of the City's preserve plan and thus will be allowed within the preserve area. Within the coastal zone, these types of proposed activities must still meet applicable LCP and Coastal Act requirements for habitat protection, preservation of views and natural landforms, and wetland impacts.

CCC1-13 Page 4-16 states that the subarea plan addresses avoidance, minimization and mitigation measures for wetland habitats which are subject to development impacts, and that compliance with the subarea plan terms will constitute the full extent of mitigation measures for the take of covered species. However, development in coastal wetlands is also subject to the requirements of Section 30233 of the Coastal Act. This section identifies specific permitted uses in wetlands, which are allowable only if they are unavoidable and represent the least environmentally damaging feasible alternative. If development is proposed that is consistent with Section 30233 and the LCP's standards for identification and protection of sensitive habitat areas, then mitigation for adverse impacts within the coastal zone should be required as previously described.

CCC1-14 Page 4-16 notes that "softline" areas (properties that are subject to general, areawide standards) included in the preserve planning area will be "hardlined" during the development process according to the general and site-specific standards for development and habitat protection that are provided in the subarea plan. Section 4.3.2 addresses several undeveloped properties that are likely to contain sensitive biological resources. However, the plan provides little specific information on these resources, including location, density, habitat value and connectivity requirements, and states that "site-specific biological surveys of these properties will be conducted when the properties are proposed for development. At that time, onsite conservation and mitigation requirements will be imposed consistent with the goals of this subarea plan." As previously stated, in order to effectively coordinate the planning process, and ensure consistency between the LCP and the subarea plan, "hardline" standards for these key undeveloped properties should be developed at this time. The standards and accompanying information should clearly identify site-specific natural resources, appropriate locations of onsite development/preservation areas, and establish an effective wildlife corridor and linkage system. Absent such specificity, it is difficult to see how a viable preserve system will be created. The hardline standards should be incorporated into both the LCP and the subarea plan.

CCC1-15 On page 5-3, it is stated that "of the nearly 730 acres of natural habitat found in softline areas, it is anticipated that slightly over one-half will be permanently conserved in exchange for development of other habitat areas." On page 7-3, reference is made to allowing private landowners who benefit from the City's ITP to be responsible for habitat management of preserve lands that they choose to retain in private ownership. Preserve

CCC1-12. This comment addresses the requirement of certain activities allowed within the City's preserve plan will also be required to meet LCP and Coastal Act requirements.*

CCC1-13. The City of Encinitas contends that their existing LCP (Land Use and Implementation Plan) is consistent with Section 30233 of the Coastal Act and all existing applicable permitted uses in wetlands provisions of the LCP will continue to be implemented after adoption of the Plan.

CCC1-14. See comment CCC1-3.

CCC1-15. See comment CCC1-5.

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areas in the coastal zone, or preserve areas outside the coastal zone that are intended to mitigate for adverse impacts inside the coastal zone, must be secured in a manner that will ensure permanent preservation of the area solely for habitat conservation and other clearly compatible uses, such as low-impact passive recreation (walking trails, etc.). Acceptable means of securing preservation include an offer to dedicate land to an approved agency, a permanent easement for habitat preservation with appropriate underlying zoning reflected in the LCP land use plan, or a transfer of fee title to a public or non-governmental land conservancy or conservation entity. It is not sufficient to merely rezone a portion of a property for open space, in the absence of such additional protective measures and/or a corresponding amendment to the certified LCP. Additionally, maintenance, management and monitoring of preserve areas must be undertaken by a professional conservation entity, and should not be the responsibility of individual landowners, with or without City oversight.

CCC1-16 Page 6-2 provides for phased local implementation of the subarea plan, "using city regulations, ordinances and land use plan approval in the interim to achieve the goals of the MHCP." A timeline for full implementation of the subarea plan should be prepared and incorporated into the proposed management plan to ensure accountability and effectiveness. This section should also be revised to include the LCP as the existing land use regulation in the coastal zone.

CCC1-17 Section 6.3.2 identifies the regulatory actions that will be taken to implement the subarea plan. These actions should include a requirement to update and amend the LCP to include enhanced resource protection requirements, and ensure cross-referencing and consistency between the two plans.

CCC1-18 Page 6-16 states that "adjustment to preserve boundaries can be made without the need to amend the subarea plan or MHCP if the adjustment will result in the same or higher biological value to the preserve system. The determination of biological value is made by the local jurisdiction and must have the written concurrence of the wildlife agencies." The Commission should be included in the list of reviewing agencies for any adjustments within the coastal zone or that may affect coastal zone resources. The Commission should also be included in the list of reviewing agencies for future amendments or updates to the subarea plan, the implementing agreement, easements and development agreements for activities in the coastal zone, and activities that affect any coastal zone resource or use.

CCC1-19 Page 7-4 implies that new development to support active recreational uses, such as roads, parking lots, landscaping and buildings, may be allowed in certain areas of the preserve, including "designated areas of Encinitas Ranch, San Elijo Lagoon, Indian Head Canyon, Magdalena Ecke Park, Oak Crest Park, and Quail Botanical Gardens." However, development activities of this nature in areas which are designated as *preserve* lands (as opposed to general public parklands) would be contradictory to the basic concept and intent of habitat preservation, and should not be allowed. Passive recreational uses, such as footpaths and trails, may be allowable uses in certain portions of the preserve area where impacts to ESHA can be avoided.

CCC1-16. Refer to Section 6.3, City Implementation Actions and Process.

CCC1-17. Refer to Section 6.3.2, Regulatory Actions, 2., for a description of the specific implementation action the City will undertake in relationship to the GP/LC-LUP (see also Section 2.3.1 of the Plan, which defines the term "General Plan").

CCC1-18. The CCC will be apprised of any changes to the Subarea Plan within the Coastal Zone through the CEQA process to notify responsible agencies, or if any changes to the LCP are required. See comment CCC1-5.

CCC1-19. Active recreational and related support facility developments that resulted in habitat impacts would require minimization and mitigation in the same manner private development proposals would. Some of these "parklands" are within the coastal zone, and any development would be required to comply with the LCP.

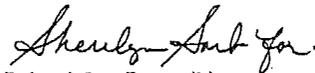
* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

CCC1-20 As part of the application process for the federal incidental take permit (ITP) associated with the subarea plan, the Commission may assert federal consistency jurisdiction pursuant to the requirements of the federal Coastal Zone Management Act (CZMA)(16 USC §1456) and its implementing regulations (15 CFR Part 930). If the Commission asserts jurisdiction, it will evaluate the subarea plan to determine if it is consistent with the federally approved California Coastal Management Program, which includes the California Coastal Act and the City of Encinitas' Local Coastal Program (LCP).

CCC1-21 As previously stated, the lack of detail and specificity in the subarea plan prevents us from conducting an effective assessment of the plan's likely impacts on coastal zone resources. Although the City of Encinitas is largely developed, there are still a number of undeveloped coastal properties with significant native vegetation. At this time, we cannot determine the extent of potential impacts to rare habitat and/or ESHA in the coastal zone, whether adequate mitigation will be required and implemented, or how a viable preserve system would be established. For these reasons, the subarea plan needs to be amended at this time to include site-specific "hardline" standards and development/preservation boundaries for the remaining undeveloped properties in the coastal zone, to demonstrate how an effective, cohesive preserve and mitigation system will be established in these areas. A corresponding LCP amendment will also be required. If you have additional information that you can provide for our review, we would certainly attempt to provide more specific direction. Furthermore, if you can identify some alternate means to address these concerns, we would be available to discuss them.

CCC1-22 A decision to assert federal consistency jurisdiction would be based on the Commission staff's determination that there are reasonably foreseeable effects on coastal zone resources from the proposed plan [15 CFR § 930.54(a)(2)]. If Commission staff cannot adequately determine the plan's likely effects on coastal zone resources, it may also be necessary to assert such jurisdiction. We hope this information will be helpful to you. If you have any questions regarding these matters, or need further information, please call Keri Akers in the San Diego office at (619) 767-2370. Commission staff is available for additional meetings as necessary.

Sincerely,



Deborah Lee, Deputy Director
California Coastal Commission

Cc: Wayne Spencer
Janet Fairbanks, SANDAG
Nancy Gilbert, USFWS
Bill Tippits, CDFG
HCP Team

- CCC1-20. Neither the MHCP nor Subarea Plans affect the ability of the CCC to enforce its regulations as authorized and consistent with its legal authorizations.
- CCC1-21. See comments CCC1-3 and CCC1-5.
- CCC1-22. See comments CCC1-3 and CCC1-5.

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CALIFORNIA COASTAL COMMISSION

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April 30, 2002

Lee Ann Carranza
U.S. Fish and Wildlife Service
2730 Loker Avenue West
Carlsbad, CA 92008

RE: Multiple Habitat Conservation Program and Draft EIS/EIR
SCH No. 93-121073

Dear Ms. Carranza:

CCC2-1

Coastal Commission staff has reviewed the draft Multiple Habitat Conservation Program (MHCP) plan and the draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR) that has been prepared for the plan. The MHCP will establish a coordinated habitat preserve system to protect listed species and rare native vegetation in northern San Diego County, while accommodating regional development needs. To this end, the MHCP includes an identified regional Biological Habitat Core and Linkage Area (BCLA) that constitutes a preferred preserve alternative. The BCLA identifies all large contiguous areas of native habitat, areas supporting major and critical species populations or habitat areas, and the important linkages and movement corridors between these areas. The BCLA is intended to serve as a "base layer" planning tool to identify remaining natural resource areas and set the scope of regional conservation efforts. Within the BCLA, Focused Planning Areas (FPAs) have been designated at the subarea level to ensure conservation of the most biologically significant habitat areas, and minimize preserve fragmentation.

CCC2-2

Once approved, the MHCP and its subarea plans will serve as a Habitat Conservation Plan (HCP) under U.S. Fish and Wildlife Service (USFWS) regulations and will apply to approximately 186 square miles in northwestern San Diego County. These plans will replace interim regional restrictions on the "take" of California gnatcatchers and other covered species, and will allow limited "incidental take" of those species under the Endangered Species Act. The MHCP and subarea plans are also intended to meet the criteria for the southern California NCCP program. The objectives of the southern California NCCP program include identification and protection of habitats in sufficient amount and distribution to ensure long-term conservation of coastal sage scrub communities and the California gnatcatcher, as well as other listed species and sensitive habitat types.

CCC2-3

In general, the HCP and NCCP processes, as implemented through the subarea plans, are intended to promote the preservation of important natural resources by identifying and implementing an interlinked natural communities preserve system, and by directing development to the most appropriate areas with the least adverse impacts. Through these

Letter 5: California Coastal Commission 2

CCC2-1. The comment provides the CCC's understanding of the MHCP and BCLA.*

CCC2-2. The comment provides the CCC's understanding of the MHCP and NCCP.*

CCC2-3. The comment provides the CCC's understanding of the MHCP.*

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multi-species and multi-agency natural community planning and management processes, both state and federal resource agencies (i.e., the California Department of Fish and Game and the U.S. Fish and Wildlife Service) have adopted a long-range approach to habitat management and species conservation that differs substantially from the more traditional piecemeal and fragmented mitigation approaches to addressing adverse habitat impacts. Although HCPs have been prepared for areas as small as a single lot, the MHCP and its subarea plans are intended to function at the citywide or regional level, instead of focusing on impacts to individual properties.

CCC2-4

Commission staff supports the underlying goals and objectives of the HCP/NCCP programs and does not think their goals and objectives and those set forth in the Coastal Act are mutually exclusive. Although the focus of the programs differ, many of the natural resources at stake are the same, and the ultimate goal of protecting covered species and sensitive habitats is shared by all these programs. Therefore, it is both possible and necessary for the MHCP and Local Coastal Programs (LCPs) to be implemented in an integrated fashion so that each complements and supports the other, and together provide the highest overall level of protection for sensitive natural coastal resources within the coastal zone and San Diego County. Therefore, we offer the following general and specific comments on the draft MHCP and EIS/EIR to assist you in the preparation of the final plan and environmental documents.

CCC2-5

Section 30240 of the Coastal Act requires that "environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas." Section 30107.5 of the Coastal Act defines an "environmentally sensitive area" (ESHA) as "any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments." These Coastal Act provisions and standards support a finding that many areas within the coastal zone containing coastal sage scrub (CSS), especially if occupied by listed species (e.g., gnatcatchers) or used for foraging by those species, are ESHAs. Other vegetative communities, such as southern maritime chaparral (SMC), may also be ESHA based upon the ecological value and uniqueness of the habitat and upon the presence of endangered plant and animal species and/or their foraging habitat. However, such determinations must be made on a case by case basis, and not all areas of CSS or SMC will warrant an ESHA designation.

CCC2-6

The Coastal Act also acknowledges that conflicts may occur between one or more of its policies, and "in such cases, conflicts should be resolved in a manner which on balance is the most protective of significant coastal resources." (Section 30007.5) In order to protect viable and connected habitat areas, which take into account the mobility and foraging requirements of listed and covered species, it may be preferable to take a regional approach to the preservation of ESHAs, such as the regional conservation approach of the MHCP and the associated subarea plans. Under this scenario, Commission staff may recommend that the Commission approve a program that may have some adverse impacts to ESHAs, in order to obtain greater overall protection of contiguous, high-quality habitat necessary for the maintenance and recovery of listed

- CCC2-4. The comment provides the CCC's understanding of the MHCP.*
- CCC2-5. The comment provides an introduction to ESHA under the Coastal Act. See CCC1-5 and CCC1-6.*
- CCC2-6. The comment provides an introduction to ESHA under the Coastal Act. See CCC1-6.*

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species. We recognize that creation of an effective habitat preserve requires a careful balancing of preservation and mitigation requirements, as well as enforceable monitoring, remediation, and an adequately funded maintenance program for the preserve area.

CCC2-7 Commission staff suggests the following standards should be incorporated into the subarea plans and implemented in the coastal zone to meet the requirements of the Coastal Act. Adequate mitigation ratios for habitat impacts are especially important for ensuring success of the MHCP's conservation efforts. Table 4-7 of the draft MHCP plan provides mitigation ratios for general habitat groups found within the regional planning area. Mitigation ratios of 3:1 for rare upland species and 2:1 for coastal sage scrub are proposed within the focused planning area. Within the coastal zone, a mitigation ratio of 2:1 is acceptable for coastal sage scrub; all other environmentally sensitive habitat must be mitigated at 3:1, with the exception of wetlands which are addressed below.

CCC2-8 Additionally, within the coastal zone the mitigation program must include creation of new habitat within the coastal zone at a minimum ratio of 1:1. Remaining required mitigation may include restoration as well as creation, and should take place within the coastal zone to the maximum extent feasible. The mitigation ratios we recommend take into account the foraging value of non-occupied CSS and CSS-mixture areas, and compensate for the initial lower habitat value of an immature vegetative community, and the fact that the success rate of revegetation efforts is often less than 100%. It should be understood that preservation of existing, onsite vegetation would not be considered as mitigation under the Coastal Act.

CCC2-9 In Section 3.6 of the draft MHCP plan, it is stated that wetland communities will continue to be regulated by California Fish and Game Code Section 1600 et seq. and Section 404 of the Clean Water Act. However, it should be understood that within the coastal zone, development in coastal wetlands is also subject to the requirements of Section 30233 of the Coastal Act which identifies specific permitted uses in wetlands, and it only allows such impacts if they are unavoidable and for the least environmentally damaging feasible alternative. If any impacts are proposed for development that is consistent with Section 30233 and the LCPs standards for identification and protection of sensitive habitat areas, then mitigation for adverse impacts within the coastal zone shall require new creation of wetlands within the coastal zone at a ratio of 3:1 for riparian areas and 4:1 for wetlands, vernal pools and other seasonal wetlands, and salt marsh.

CCC2-10 It is also important to provide adequate buffers to protect wetland and upland habitat which will be located in the preserve areas. The Commission typically requires minimum 100-foot buffers be provided between approved development and wetland habitat, and 50-foot buffers be provided for riparian habitat located within the coastal zone. Additionally, we suggest buffers should be required for coastal zone upland habitat according to the following guidelines:

- A minimum 100 foot buffer shall be required from all freshwater and saltwater wetland areas.

CCC2-7. The mitigation ratios have been established based upon the needs of the covered species. The ratios in the MHCP are appropriate. It should be recognized that there are mitigation ratios established for resources not currently requiring mitigation.

CCC2-8. Preservation of higher quality habitat is considered mitigation under the ESA, CESA, and CEQA. The ability to create habitat is also questionable for some habitats (e.g., maritime chaparral) or not appropriate in other situations (e.g., non-native vegetation).

CCC2-9. It will be noted in the text of Section 3.6 of the MHCP Volume I that wetlands within the Coastal Zone are also regulated by Section 30233 of the Coastal Act and any applicable Local Coastal Plan regulations. The MHCP has been modified to incorporate the following wetland mitigation ratios:

REPLACEMENT MITIGATION RATIOS FOR IMPACTS TO WETLAND VEGETATION COMMUNITIES [1]

Wetland Vegetation Community	Mitigation Ratio [2]
Coastal salt marsh	4:1
Alkali marsh	4:1
Estuarine	4:1
Saltpan/mudflats	4:1
Oak riparian forest	3:1
Riparian forest	3:1
Riparian woodland	3:1
Riparian scrub	1:1 to 2:1
Fresh water	1:1
Freshwater marsh	1:1 to 2:1
Flood channel	1:1 to 2:1
Disturbed wetlands	1:1 to 2:1
Vernal pool	2:1 to 4:1

Notes:

1. These communities are subject to the goal of no net loss in acreage, function, and biological value (see Sec. 3.6.1). The highest priority will be given to impact avoidance and minimization. Replacement of habitat subject to unavoidable impact will occur through restoration or creation of substitute habitat areas, generally of the same kind and in the vicinity of the impacted habitat.

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2. Mitigation ratios applicable in areas subject to review by the California Coastal Commission will be addressed in the cities' respective subarea plans. Such ratios may differ from those noted here.

The MHCP has also been modified as identified below:

New MHCP Text:

"Wetland communities (vernal pools, saltpan, salt marsh...) within the MHCP study area include areas subject to California Fish and Game Code Section 1600 et seq. and Section 401 and 404 of the federal Clean Water Act. These wetland communities that occur within the Coastal Zone also include areas subject to Section 30233 of the California Coastal Act and applicable Local Coastal Plan regulations. Such areas will continue to be regulated by these state and federal statutes."

- CCC2-10. Wetland buffers are normally determined during the development review and approval process on a case-by-case basis. Buffer widths are also more appropriately determined based on the functions and values of the wetland resources being buffered. It is not appropriate to prescribe wetland buffer widths in this regional-level document. For projects within the Coastal Zone, the Coastal Commission has the jurisdiction to enforce wetland buffer guidelines.

See comment CCC2-9 for additional response.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

- A minimum 50 foot buffer shall be required from riparian areas and coast oak woodlands. No development or brush management shall take place within the buffer area for these habitat types except as otherwise provided herein.
- If a riparian area is associated with steep slopes (>25%), the 50 foot buffer shall be measured from the top of the slope.
- For steep slopes not associated with a riparian area, and for nonsteep areas (<25% slope) with native vegetation, a minimum 20 foot buffer shall be required. For steep slopes, the buffer shall be measured from the top of the slope. No development may be located within the buffer except as otherwise provided herein. However, if brush management is required for fire protection, Zone 3 (to a maximum of 20 feet) may be located within the buffer area if allowed by the local fire management authority.
- Zones 1 and 2 for brush management and fire protection, where required, shall be located on the portion of the property proposed for development and outside of required buffers. Any plantings in Zone 2 must consist of native vegetation appropriate to the habitat.
- Recreation trails and public access pathways may be permitted in the required buffer area within the 15 feet closest to the adjacent developable area, provided that the construction of the trails and/or pathways and their proposed uses are consistent with the preservation goals for adjacent habitat, and that appropriate measures are taken for their physical separation from sensitive areas.

CCC2-11

It is not clear how the funding necessary to implement the subarea plans will be guaranteed in order to carry out their preservation and mitigation programs, or, alternatively, how the subarea plans will be effectively implemented if necessary funds are not received. Sufficient information is not available to determine how the proposed MHCP regional financing program will be established and adequate to cover needed expenditures. In the case of *National Wildlife Federation v. Babbitt* (E.D. Cal. 2000) 128 F.Supp.2d 1274 1291-3, the court invalidated the ITP partially on the grounds of the failure of the ITP to provide for adequate funding to implement the associated HCP, in violation of ESA § 10(a)(2)(B)(iii). The subarea plans will require one or more dedicated management authorities with reliable and predictable sources of funding for maintenance and monitoring and, where applicable, remediation and adaptive management if unforeseen circumstances should warrant it. These responsibilities should not remain with individual private landowners or be conducted without local government oversight. The MHCP plan and subarea plans should also specify the means for transferring management responsibilities if the management authority or authorities should cease to exist. The MHCP plan and subarea plans should include a detailed plan for monitoring, management and enforcement that is realistic, has adequate funding in place, and which spells out responses to unforeseen situations or occurrences requiring enforcement or remedial action.

CCC2-12

In most cases, implementation of the subarea plans in the coastal zone will also require an amendment to the certified LCP to incorporate the subarea plan, reconcile any differences between the requirements of the certified LCP and those of the subarea plan, and establish preserve boundaries which are consistent with the MHCP's identified FPAs

CCC2-11. Funding for project implementation is generally not a subject to be analyzed pursuant to NEPA or CEQA. NEPA and CEQA require the EIS/EIR to assess the impact of a project on the natural and physical environment and on the relationship of people with the environment. See CFR, Title 40, Sect. 1508.14, and California Public Resources Code Sec. 21100. However, the following is offered as general clarification.

Implementing a preserve system for the MHCP will involve actions by local jurisdictions as well as by federal and state agencies. Some of those actions, such as commitment of public lands for habitat use, can occur without new funding. Other actions, such as management of habitat lands conserved as mitigation for project impacts, will be funded by organizations or individuals responsible for project development. Key to successful implementation of the MHCP is that important habitat areas be conserved at a rate which at minimum preserves the continued viability of target species and mitigates for impacts which occur. The costs to fund the MHCP are presented in Section 7.0 of the MHCP Volume I. Since habitat loss allowed under the plan would not occur all at once, public financing for the MHCP is not immediately required. Under the plan, implementation would be periodically monitored to insure that adequate conservation occurs over time. The Final MHCP also provides for interim funding of selected conservation actions. The need for funding of specific conservation tasks will be reviewed, and if necessary supplementary actions taken, while the jurisdictions pursue a regional funding program.

The federal Endangered Species Act ("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 prepared. The Secretary may also require other assurances that the plan will be implemented. The MHCP provides the framework for the funding necessary to implement the program. The assurances of such funding will be provided in the draft Implementing Agreement for each city, which will undergo a formal public comment period identified in the Federal Register once the Wildlife Agencies receive a request for a 10(a)1(B) permit and a Section 2835 permit for the Subarea Plan.

The MHCP envisions that habitat acquisition, habitat restoration, and management, monitoring, and administrative costs will be funded by participating local jurisdictions through a cooperative regional funding

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program, to be placed on a ballot for voter approval within three years of the approval of the plan (Final MHCP, Vol. I, Sec. 7.2 and Table 7-2). The MHCP also identifies a range of funding sources that may be used, such as property tax, Mello-Roos special tax, sales tax, and benefit assessment.

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

- Commitment of public lands owned by participating local jurisdictions to the preserve and their management for biological resources.
- Management of existing state and federal lands as part of the preserve.
- Recently completed acquisition of selected properties using state and local funds, such as some of the stepping stone parcels in the City of Oceanside upland parcels in the City of Encinitas along the south shore of Batiquitos Lagoon, a key linkage area in the City of Carlsbad, and Bernardo Mountain in the City of Escondido.
- Interim funding of selected conservation actions as described in the Final MHCP, Subarea Plans, and Implementing Agreements.
- Requirement of mitigation of impacts from new public and private projects.

The Wildlife Agencies (USFWS and CDFG) will, through implementing agreements with participating jurisdictions, "monitor plan implementation" and "ensure that habitat conservation proceeds in step with development" (MHCP, Vol. I, Sec. 5.2.3). Furthermore, "[i]f the Wildlife Agencies determine that the Subarea Plan is not being implemented as required, the Wildlife Agencies and the city will take the actions specified in the Subarea Plan and Implementing Agreement to remedy the situation" (MHCP, Vol. I, Sec. 5.3.8). The requirement to review will apply if a regional funding program is not approved in a timely manner, and an alternative remedy may require each jurisdiction to develop and implement a funding source adequate to meet its share of the MHCP and Subarea Plan implementation as it continues to pursue a regional funding source.*

CCC2-12. Comment concurs with the provisions of Section 5.1.2 of the MHCP Plan which address the continuing authority of the Coastal Act and certified LCPs

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in the Coastal Zone. It does not address the adequacy of the EIS/EIR, no response necessary. However, under CEQA, mitigation must be feasible and practicable, and the Implementing Agreement and Permits shall require enforcement of those commitments.*

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

and are supported by adequate development standards and requirements. The certified LCP includes both a land use plan and implementation plan which should be referenced in the subarea plan as applicable in the coastal zone. Therefore, we concur with the provisions of Section 5.1.2 of the MHCP plan, which reiterates the continuing authority of the Coastal Act and certified LCPs in the coastal zone.

CCC2-13.

Further, as we understand it, the MHCP plan is an umbrella document for regional planning which will be used as a basis for more specific local subarea plans. No federal permit is associated with the MHCP plan. However, since the subarea plans will be the basis for federal incidental take permit (ITP) authority which will be granted to participating local governments for take of listed species, specificity in the subarea plans as to the extent and nature of impacts to environmentally sensitive habitat areas is critical to determine consistency with both the Endangered Species Act and the Coastal Act. As part of the application process for the ITPs associated with the subarea plans, the Commission may assert federal consistency jurisdiction to review one or more of the subarea plans for cities containing lands located within the coastal zone or affecting uses or resources of the coastal zone, pursuant to the requirements of the federal Coastal Zone Management Act (CZMA)(16 USC §1456) and its implementing regulations (15 CFR Part 930).

CCC2-14

Finally, the Commission should be included in the list of reviewing agencies for future amendments or updates to the MHCP plan or subarea plans, adjustments of the preserve boundaries, amendments to implementing agreements, and in the preparation of easements and development agreements for activities in the coastal zone and activities that affect any coastal zone resource or use.

CCC2-15

We hope this information will be helpful to you. If you have any questions regarding these matters, or need further information, please call Keri Akers in the San Diego office at (619) 767-2370. Commission staff is available for additional meetings as necessary.

Sincerely,



Deborah Lee, Deputy Director
California Coastal Commission

Cc: Janet Fairbanks, SANDAG
Nancy Gilbert, USFWS
Bill Tippetts, CDFG
HCP Team

- CCC2-13. The MHCP nor Subarea Plans affect the ability of the CCC to enforce its regulations as authorized and consistent with its legal authorizations.
- CCC2-14. Any future action entailing modification of a city's LCP will be provided to the CCC.
- CCC2-15. Does not address the adequacy of the MHCP or EIS/EIR, no response is necessary.*

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CALIFORNIA COASTAL COMMISSION

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April 30, 2002

Jerry Hittleman, Senior Planner
Planning Department
City of Oceanside
300 North Coast Highway
Oceanside, CA 92054-2885

RE: Oceanside Draft Subarea Plan
Multiple Habitat Conservation Program

Dear Mr. Hittleman:

CCC3-1 Coastal Commission staff have reviewed the City's draft subarea plan, which has been prepared as part of the proposed San Diego County Multiple Habitat Conservation Program (MHCP). The MHCP will establish a coordinated habitat preserve system to protect listed species and rare native vegetation while accommodating regional development needs. Staff also met with you and Mr. Wayne Spencer in September 2001 to discuss our initial findings and share information regarding the review process. We recognize that creation of an effective habitat preserve requires a careful balancing of preservation and mitigation requirements, as well as enforceable monitoring, remediation, and an adequately funded maintenance program for the preserve area. The following comments represent our concerns about the information provided in the subarea plan, and provide suggestions for clarifying and strengthening the habitat protection and preserve establishment process in the coastal zone.

CCC3-2 One of our primary concerns is the lack of formal linkage and consistency between the subarea plan and the City's certified LCP. The subarea plan notes that one of its purposes is to provide general guidance for long-term land use planning within the City. The land use plan of the LCP is also intended to provide this type of planning guidance. However, the resource protection policies of the certified LCP are outdated, and do not provide specific direction for the definition or preservation of sensitive native vegetation, and make only limited reference to protection of environmentally sensitive habitat areas (ESHA) as defined in Section 30107.5 of the Coastal Act. The LCP should be updated to reflect current state and federal requirements for protection of listed species and sensitive vegetation, and to include appropriate mitigation measures, as provided in our comments below. The LCP should also be specifically linked with the subarea plan, either through reference or through incorporation of the subarea plan as an appendix or other supporting document.

CCC3-3 Additionally, both the subarea plan and the LCP should be amended to provide for a resolution of any conflicts that may arise between these plans, in a manner that requires compliance with the LCP when addressing activities in the coastal zone. The subarea

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- CCC3-1. Comment provides an introduction to the letter.*
- CCC3-2. The City of Oceanside will process a Local Coastal Plan Amendment (LCPA) to facilitate consistency between the City's Local Coastal Plan (LCP) and City's Subarea Plan. The LCPA will also reflect current state and federal requirements for the protection of listed species and sensitive vegetation.
- CCC3-3. The Subarea Plan will be updated to incorporate new information and relevant comments from public agencies and the public prior to adoption. Projects proposed in the Coastal Zone will be reviewed for conformance with the State Coastal Act, City of Oceanside LCP, City of Oceanside Subarea Plan (upon adoption) and other City Ordinances and regulations.

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plan acknowledges that for all projects proposed within the coastal zone, the certified LCP and the Coastal Act will continue to be the controlling standard of review. The City must continue to implement all existing provisions of the LCP that protect sensitive resources, whether or not those provisions are specifically mentioned in the subarea plan.

CCC3-4

Another concern is the lack of specificity for proposed activities that may require take of listed species, and the impacts that may result from such activities. Although the subarea plan identifies several public and private projects that may require authorization for take of listed species, insufficient information is provided for the identification of specific anticipated impacts. For such activities, and for all future activities not mentioned in the subarea plan, it should be understood that approval of the subarea plan by the resource agencies does not provide any exemptions from LCP or Coastal Act requirements that would normally be applied to projects located in the coastal zone or which may affect coastal resources. The plan acknowledges that when these projects have reached the appropriate planning stage, they will continue to be subject to Commission review under the requirements of the City's certified LCP and the Coastal Act. Based upon the limited information that is available in the subarea plan, we cannot provide individual reviews or recommendations for potential activities on individual sites at this time. Future LCP amendments and/or coastal development permits may be necessary to ensure that the proposed activities, and others which may be contemplated in future, are consistent with the Coastal Act. The City may wish to revise the subarea plan at this time to include site-specific standards and/or development/preservation boundaries for remaining undeveloped coastal properties.

CCC3-5

We are also concerned that the City has not provided sufficient information in the subarea plan for us to conclude that the funding necessary to implement the subarea plan will be guaranteed. At this time, we cannot find that an effective fiscal strategy has been provided to carry out the identified acquisitions and mitigation program, or, alternatively, how the subarea plan will be effectively implemented if the projected and necessary funds are not received. As noted on pages 5-26 and 5-27, it is unclear whether the proposed MHCP regional financing program will be established and adequate to cover needed expenditures, and "in the absence of an MHCP regional funding program...funds for ongoing management of the city-owned habitat system would need to be identified..." In the case of *National Wildlife Federation v. Babbitt* (E.D. Cal. 2000) 128 F.Supp.2d 1274 1291-3, the court invalidated the ITP partially on the grounds of the failure of the ITP to provide for adequate funding to implement the associated HCP, in violation of ESA § 10(a)(2)(B)(iii). The plan needs to have a dedicated management authority with a reliable and predictable source of funding for maintenance and monitoring and, where applicable, remediation and adaptive management if unforeseen circumstances should warrant it. The plan should also specify the means for transferring management responsibilities if the management authority should cease to exist. The subarea plan should include a detailed plan for monitoring, management and enforcement that is realistic, has adequate funding in place, and which spells out responses to unforeseen situations or occurrences requiring enforcement or remedial action.

CCC3-4. Review and approval of projects under the City's LCP and the State Coastal Act will not be changed upon adoption of the Subarea Plan. The Subarea Plan does not eliminate CEQA review for project sites impacting biological resources.

CCC3-5. Funding for project implementation is generally not a subject to be analyzed pursuant to NEPA or CEQA. NEPA and CEQA require the EIS/EIR to assess the impact of a project on the natural and physical environment and on the relationship of people with the environment. See CFR, Title 40, Sect. 1508.14, and California Public Resources Code Sec. 21100. However, the following is offered as general clarification.

Implementing a preserve system for the MHCP will involve actions by local jurisdictions as well as by federal and state agencies. Some of those actions, such as commitment of public lands for habitat use, can occur without new funding. Other actions, such as management of habitat lands conserved as mitigation for project impacts, will be funded by organizations or individuals responsible for project development. Key to successful implementation of the MHCP is that important habitat areas be conserved at a rate which at minimum preserves the continued viability of target species and mitigates for impacts which occur. Since habitat loss allowed under the plan would not occur all at once, public financing for the MHCP is not immediately required. Under the plan, implementation would be periodically monitored to insure that adequate conservation occurs over time. The Final MHCP also provides for interim funding of selected conservation actions. The need for funding of other conservation tasks will be reviewed, and if necessary supplementary actions taken, while the jurisdictions pursue a regional funding program.

The federal Endangered Species Act ("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 prepared. The Secretary may also require other assurances that the plan will be implemented. The MHCP provides the framework for the funding necessary to implement the program. The assurances of such funding will be provided in the draft implementing agreement for each city which will undergo a formal public comment period identified in the Federal Register once the wildlife agencies receive a request for a 10(a)1(B) permit and a Section 2835 permit for the subarea plan.

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The MHCP envisions that habitat acquisition, habitat restoration, and management, monitoring, and administrative costs will be funded by participating local jurisdictions through a cooperative regional funding program, to be placed on a ballot for voter approval within three years of the approval of the plan (Final MHCP Plan, Vol. I, Sec. 7.2 and Table 7-2). The MHCP also identifies a range of funding sources that may be used, such as property tax, Mello-Roos special tax, sales tax, and benefit assessment.

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

- Commitment of public lands owned by participating local jurisdictions to the preserve and their management for biological resources (approximately 6,430 acres).
- Management of existing state and federal lands as part of the preserve (approximately 1,480 acres).
- Interim funding of selected conservation actions as described in the Final MHCP, Subarea Plans, and Implementing Agreements.
- Recently completed acquisition of selected properties using state and local funds, such as some of the stepping stone parcels in the City of Oceanside, upland parcels in the City of Encinitas along the south shore of Batiquitos Lagoon, a key linkage area in the City of Carlsbad, and Bernardo Mountain in the City of Escondido.
- Requirement of mitigation of impacts from new public and private projects.

The Wildlife Agencies (USFWS and CDFG) will, through Implementing Agreements with participating jurisdictions, "monitor plan implementation" and "ensure that habitat conservation proceeds in step with development" (MHCP, Vol. I, Sec. 5.2.3). Furthermore, "[i]f the Wildlife Agencies determine that the subarea plan is not being implemented as required, the Wildlife Agencies and the city will take the actions specified in the Subarea Plan and Implementing Agreement to remedy the situation" (MHCP, Vol. I, Sec. 5.3.8). The requirement to review will apply if a regional funding program is not approved in a timely manner, and an alternative remedy may require each jurisdiction to develop and implement a funding source adequate

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to meet its share of the MHCP and Subarea Plan implementation as it continues to pursue a regional funding source.

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CCC3-6 Section 30107.5 of the Coastal Act defines an "environmentally sensitive area" (ESHA) as "any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments." Section 30240 requires that "environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas." These Coastal Act provisions and standards support a finding that many areas within the coastal zone containing coastal sage scrub (CSS), especially if occupied by listed species (e.g., gnatcatchers) or used for foraging by those species, are ESHAs. Other vegetative communities, such as southern maritime chaparral (SMC), may also be ESHA based upon the ecological value and uniqueness of the habitat and upon the presence of endangered plant and animal species and/or their foraging habitat. However, such determinations must be made on a case-by-case basis, and not all areas of CSS or SMC will warrant an ESHA designation.

CCC3-7 Additionally, the Coastal Act acknowledges that conflicts may occur between one or more of its policies, and "in such cases, conflicts should be resolved in a manner which on balance is the most protective of significant coastal resources." (Section 30007.5) In order to protect viable and connected habitat areas, which take into account the mobility and foraging requirements of listed and covered species, it may be preferable to take a regional approach to the preservation of ESHAs, such as the regional conservation approach of the MHCP and the associated subarea plans. Under this scenario, Commission staff may recommend that the Commission approve a program that may have some adverse impacts to ESHAs, in order to obtain greater overall protection of contiguous, high-quality habitat necessary for the maintenance and recovery of listed species.

CCC3-8 The protection of coastal sage scrub and southern maritime chaparral habitat is of particular importance in these remaining areas of native vegetation. We recommend that standards for coastal zone properties addressed under Section 4.3.2. be provided in the subarea plan to require preservation, at minimum, of 67% of the onsite coastal sage scrub and at least 75% of gnatcatchers. If impacts to native vegetation and/or ESHA are unavoidable, the following mitigation ratios should be required for coastal zone properties:

- 2:1 for coastal sage scrub
- 3:1 for all other rare native vegetation except wetlands
- 3:1 for riparian areas
- 4:1 for vernal pools, other seasonal wetlands, and salt marsh

The proposed mitigation ratios in Table 5-2 should be revised to be consistent with these requirements, and should also be cross-referenced in the LCP through an amendment. It should be noted that in the coastal zone, the mitigation program must include *creation* of new habitat; *preservation* of existing, onsite vegetation cannot be considered as mitigation under the Coastal Act. The area of such created habitat must be at a ratio of at least 1:1 to the area adversely impacted. The mitigation ratios we recommend take into

CCC3-6. Comment provides an introduction to the CCC's ESHA policies. The City concurs with the definition of environmentally sensitive areas under the Coastal Act and recognizes that some such areas occur within the City's Coastal Zone.*

CCC3-7. Comment provides an introduction to the CCC's ESHA policies. The City agrees that regional planning for sensitive resources is a good approach and is consistent with NCCP planning.*

CCC3-8. The mitigation ratios have been established based upon the needs of the covered species. The ratios in the Oceanside Subarea Plan (Table 5-2) are appropriate and are generally consistent with, and in some cases higher than, those recommended in the comment. It should be recognized that the plan establishes mitigation ratios for some resources previously not requiring mitigation, and that the ratios are set up to create incentives for conserving habitats in the most important areas for reserve design.

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account the foraging value of non-occupied CSS and CSS-mixture areas, and compensate for the initial lower habitat value of an immature vegetative community, and the fact that the success rate of revegetation efforts is often less than 100%.

CCC3-9

It is preferred that adverse impacts within the coastal zone be mitigated inside the coastal zone. However, mitigation outside the coastal zone will be considered acceptable if, in addition to meeting the criteria identified above, the mitigation clearly ensures higher levels of habitat protection and value in the context of a regional habitat preservation program.

CCC3-10

It is also important to provide adequate buffers to protect sensitive habitat and/or ESHA from impacts resulting from development or use of adjacent areas. The plan should establish buffers for coastal habitat according to the following guidelines:

- A minimum 100 foot buffer shall be required from all freshwater and saltwater wetland areas.
- A minimum 50 foot buffer shall be required from riparian areas and coast oak woodlands. No development or brush management shall take place within the buffer area for these habitat types except as otherwise specified herein.
- If a riparian area is associated with steep slopes (>25%), the 50 foot buffer shall be measured from the top of the slope.
- For steep slopes not associated with a riparian area, and for nonsteep areas (<25% slope) with native vegetation, a minimum 20 foot buffer shall be required. For steep slopes, the buffer shall be measured from the top of the slope. No development may be located within the buffer except as otherwise specified herein. However, if brush management is required for fire protection, Zone 3 (to a maximum of 20 feet) may be located within the buffer area if allowed by the fire management authority.
- Zones 1 and 2 for brush management and fire protection, where required, shall be located on the portion of the property proposed for development and outside of required buffers. Any plantings in Zone 2 must consist of native vegetation appropriate to the habitat.
- Recreation trails and public access pathways may be permitted in the required buffer area within the 15 feet closest to the adjacent developable area, provided that the construction of the trails and/or pathways and their proposed uses are consistent with the preservation goals for adjacent habitat, and that appropriate measures are taken for their physical separation from sensitive areas.

CCC3-11

Mitigation for impacts to any sensitive habitat should be required consistent with the previously-listed replacement ratios. In some instances, application of the standards to subject properties may require a greater percentage of habitat and/or species preservations. Also of particular importance is the protection of Narrow Endemic species. The standards should require 100% conservation of Narrow Endemics within the Focus Planning Area. Additionally, development of coastal zone properties which have more than 80% of the total site acreage in ESHA should be limited to a maximum development area, such as 20%-25% of the site.

CCC3-9.

The goals and objectives of the MHCP and associated Subarea Plans is to provide better protection of the biological resources. Adverse impacts within the Coastal Zone will be mitigated within the Coastal Zone, unless mitigation outside the Coastal Zone can clearly be demonstrated to create a greater net benefit to the affected resources in the context of a regional habitat conservation program.

The proposed mitigation polices of the Plan are found in Section 4.3.1.5 and the identified priorities for mitigation are "(1) onsite, (2) elsewhere in FPA within the city and city's Sphere of Influence, and (3) outside the city in the FPA of adjacent jurisdictions or gnatcatcher core area in the unincorporated area."

CCC3-10.

Section 5.2.4 of the City of Oceanside Subarea Plan provides the following buffer standards and policies that will apply to all wetland vegetation communities within the City:

- **Conservation and Buffer Requirements along San Luis Rey River.** *Wherever development or other discretionary actions are proposed in or adjacent to riparian habitats along the main stem San Luis Rey River, the riparian area and other wetlands or associated natural habitats shall be designated as biological open space and incorporated into the preserve. In addition, a minimum 100-foot biological buffer shall be established for upland habitats, beginning at the outer edge of riparian vegetation. Within the 100-foot biological buffer, no new development shall be allowed, and the area shall be managed for natural biological values as part of the preserve system. In the event that natural habitats do not currently (at the time of proposed action) cover the 100-foot buffer area, habitats appropriate to the location and soils shall be restored as a condition for the proposed action. In most cases, coastal sage scrub vegetation shall be the preferred habitat to restore within the biological buffer.*
- **Conservation and Buffer Requirements along Tributaries and Creeks.** *Wherever development or other discretionary actions are proposed in or adjacent to riparian habitats (not including the main stem San Luis Rey River), the riparian area and other wetlands or associated natural habitats shall be designated as biological open space and incorporated into the preserve. In addition, a minimum 50-foot biological buffer, plus a minimum 50-foot planning buffer (total width of both equals 100 feet) shall be established for upland habitats, beginning at the outer edge of*

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riparian vegetation. The planning buffer serves as an area of transition between the biological buffer and specified land uses on adjoining uplands. Footpaths, bikeways, and passive recreational uses may be incorporated into planning buffers, but buildings, roads, or other intensive uses are prohibited. All other provisions listed in the previous paragraph for the San Luis Rey River shall also apply.

- CCC3-11. See Response CCC3-8 concerning mitigation ratios. The comment is correct in that application of all standards, including both Subarea Plan standards as well as CCC standards, may require subject properties to conserve a greater percentage of habitat species than implied by ratios alone. The Subarea Plan does not remove any existing authority of the CCC over projects under their purview, and the CCC will be able to establish buffers or other requirements for projects located within their jurisdiction on a case-by-case basis. The criteria established for allowances of take of Narrow Endemics have been based upon the biology of the species, balanced against a need to allow the potential for some economic uses of lands that might support them.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

CCC3-12 Page 2-30 of the subarea plan lists the private and public projects within the City that it anticipates permitting within the subarea plan. The descriptions of these projects are summarized and provide little detail. As a planning document, the subarea plan does not claim to identify all of the projects that will eventually be proposed under the blanket ITP authorization, and does not "hardline" or draw development/preservation footprints on individual parcels. It should be noted that although incidental take for these projects may be addressed in the subarea plan, all other existing requirements for review, permitting and compliance must still be fulfilled, including consistency with the LCP and Coastal Act for those projects within the coastal zone. Existing requirements for LCP and Coastal Act review cannot be waived through adoption or implementation of the subarea plan.

CCC3-13 Page 5-5 states that "some privately owned habitat will be conserved or protected in future through an open space easement established in conjunction with the City's review and approval of development projects." Pages 7-1 and 7-2 also state that "responsibility for maintaining and managing preserve areas consistent with this subarea plan generally remains with the fee owner of a particular preserve area", and that "active habitat management may not occur if the landowner retains fee title, though grading and clearing will continue to be regulated by the City." This approach is insufficient to ensure long-term protection of resources or adequate management and monitoring of the regional wildlife corridor network. Preserve areas in the coastal zone, or preserve areas outside the coastal zone that are intended to mitigate for adverse impacts inside the coastal zone, should be secured in a manner that will ensure permanent preservation of the area solely for habitat conservation and other clearly compatible uses, such as low-impact passive recreation (walking trails, etc.). Acceptable means of securing preservation include an offer to dedicate land to an approved agency, a permanent easement for habitat preservation with appropriate underlying zoning reflected in the LCP land use plan, or a transfer of fee title to a public or non-governmental land conservancy or conservation entity. It is not sufficient to merely rezone a portion of a property for open space, in the absence of such additional protective measures and/or a corresponding amendment to the certified LCP. Additionally, maintenance, management and monitoring of preserve areas must be undertaken by a professional conservation entity, and should not be the responsibility of individual landowners, with or without City oversight.

CCC3-14 Page 6-2 provides for phased local implementation of the subarea plan, "using city regulations, ordinances and land use plan approval in the interim to achieve the goals of the MHCP." A timeline for full implementation of the subarea plan should be prepared and incorporated into the proposed management plan to ensure accountability and effectiveness. This section should also be revised to include the LCP as the existing land use regulation in the coastal zone.

CCC3-15 Page 6-9 of the subarea provides that the LCP Land Use Plan and the San Luis Rey River Specific Plan will be amended by reference to classify conserved habitat lands as undevelopable open space. As provided in section 4 of the subarea plan, three major areas are identified for preservation and restoration efforts: the Wildlife Corridor Planning Zone, and two Pre-Approved Mitigation Areas. These areas are located outside

CCC3-12. For all projects located in the coastal zone, they will need to adhere to the applicable standards of the Coastal Act.

CCC3-13. The majority of the preserve area inside and outside the Coastal Zone will be protected through conservation easements and managed by qualified non-profit wildlife management organizations, the City or other public agencies such as the California Department of Fish and Game (e.g. Buena Vista Lagoon). Section 7.1.2 discusses the responsibilities on private lands. Specific management requirements will be established in the development agreements.

CCC3-14. A schedule for implementation of the Subarea Plan will be formulated upon completion of the City of Oceanside Final Subarea Plan in 2003.

CCC3-15. Section 7.3 of the City's Subarea Plan provides area-specific management guidelines for the following areas:

- Wildlife Corridor Planning Zone;
- San Luis Rey River;
- Oceanside Harbor;
- Buena Vista Lagoon; and
- Existing Conservation Banks.

Site-specific standards have been incorporated for the subject properties to the degree feasible, based on existing information.

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of the coastal zone, with the exception of the Lawrence Canyon area and the north shore of Buena Vista Lagoon. Site-specific standards should be included in the subarea plan, as necessary, for the remaining undeveloped properties in these coastal areas to ensure that the long-term preserve design and management goals of the subarea plan can be met. These standards should also be cross-referenced in the LCP.

CCC3-16 Page 6-16 states that "adjustment to preserve boundaries can be made without the need to amend the subarea plan or MHCP if the adjustment will result in the same or higher biological value to the preserve system. The determination of biological value is made by the local jurisdiction and must have the written concurrence of the wildlife agencies." The Commission should be included in the list of reviewing agencies for any adjustments within the coastal zone or that may affect coastal zone resources. The Commission should also be included in the list of reviewing agencies for future amendments or updates to the subarea plan, the implementing agreement, easements and development agreements for activities in the coastal zone, and activities that affect any coastal zone resource or use.

CCC3-17 As part of the application process for the federal incidental take permit (ITP) associated with the subarea plan, the Commission may assert federal consistency jurisdiction pursuant to the requirements of the federal Coastal Zone Management Act (CZMA)(16 USC §1456) and its implementing regulations (15 CFR Part 930). The decision to assert federal consistency jurisdiction will be based on the Commission staff's determination that there are reasonably foreseeable effects on coastal zone resources from the proposed plan [15 CFR § 930.54(a)(2)]. If the Commission asserts this jurisdiction, it will evaluate the subarea plan to determine if it is consistent with the federally approved California Coastal Management Program, which includes the California Coastal Act and the City of Oceanside's Local Coastal Program (LCP).

CCC3-18 We hope this information will be helpful to you. If you have any questions regarding these matters, or need further information, please call Keri Akers in the San Diego office at (619) 767-2370. Commission staff is available for additional meetings as necessary.

Sincerely,



Deborah Lee, Deputy Director
California Coastal Commission

Cc: Wayne Spencer
Janet Fairbanks, SANDAG
Nancy Gilbert, USFWS
Bill Tippits, CDFG
HCP Team

CCC3-16. All projects located within the Coastal Zone will be required to adhere to all applicable requirements of the CCC. The CCC has been and will continue to be a reviewing agency.

CCC3-17. Neither the MHCP nor Subarea Plans affect the ability of the CCC to enforce its regulations as authorized and consistent with its legal authorizations. The City understands that the California Coastal Commission may assert federal consistency jurisdiction under the federal Coastal Zone Management Act, and may evaluate the Subarea Plan to determine if it is consistent with the California Coastal Management Program, California Coastal Act, and the City of Oceanside's Local Coastal Program.

CCC3-18. This comment offers closing remarks and agency contact information.*

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.



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Letter 7: County of San Diego

SDCo-1. The comment provides an introduction to comments presented.*

SDCo-2. The comment provides an introduction to comments presented.*

April 26, 2002

TO: Attn: Janet Fairbanks Attn: Lee Ann Carranza
SANDAG U.S. Fish and Wildlife Service
401 B Street, Suite 800 2730 W. Loker Avenue
San Diego, CA 92101-4231 Carlsbad, CA 92008

FROM: Gary Pryor, Director
Department of Planning and Land Use

RE: Comments on Draft MHCP EIS/EIR and Draft MHCP Plans Volume I
and II

SDCo-1 The County of San Diego has received and reviewed the draft Multiple Habitat Conservation Program (MHCP) Plan Volume I and II, along with the supporting draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR). The County would like to thank you for the opportunity to comment on these documents and in response to these draft documents the County, as a *responsible agency*, is providing this comment letter that details deficiencies and inadequacies in the MHCP Plan, EIS/EIR and supporting documents. Contrary to the omissions in the EIS/EIR the County is a responsible agency and this should be reflected in the EIS/EIR (CEQA Guidelines §15381).

The following letter is organized to guide the MHCP planners and EIS/EIR preparers with revisions of the documents, corrections to general inconsistencies, and re-evaluation and assessment of environmental impacts.

SDCo-2 **1.0 GENERAL COMMENTS ON THE EIS/EIR**

The EIS/EIR is fundamentally flawed and deficient in numerous ways, including an incomplete project description; a lack of adequate significance criteria; an unreasonable range of alternatives; a deficient analysis of direct and cumulative impacts; infeasible mitigation measures; and an absence of a plan-to-ground analysis. In addition to these insufficiencies the format of the EIS/EIR is poorly constructed, and difficult and frustrating to read. Given these deficiencies it would be foreseeable that the County would have further comments on the EIS/EIR once major revisions have been made. Based on these substantial inadequacies and others detailed in this letter, major

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revisions and recirculation of the draft EIS/EIR are required (CEQA Guidelines §15088.5(a)).

1.1 Proposed Action/Project Description

SDCo-3

As currently proposed the project description is incomplete and does not accurately reflect the "whole of the action." The project should be defined in one single action and should not be divided into multiple actions (CEQA Guidelines §15378(a)). Specifically, the project description defines the boundaries and aspects of the plan within the incorporated cities. Additionally, the description identifies portions of the unincorporated area (approximately 400-500 acres of a gnatcatcher breeding core area within Harmony Grove and Elfin Forest) that will need to be included as a part of the preservation plan. However, the EIS/EIR only vaguely discusses how this plan will be implemented through General Plan amendments, Local Coastal Plan amendments and other city ordinances and policies. In order to accurately reflect the whole of the action all the necessary changes to all General Plan amendments, Local Coastal Plan amendments and changes to other city ordinances and policies must be referenced and examined under a single environmental document. This has not been presented in the EIS/EIR.

SDCo-4

In addition, based on statements made in Chapter 7.0 Issues Not Considered Significant it is apparent that the "whole of the action" is much greater than detailed in the project description. For example, on page 7-3 it states, "An indirect effect of implementing the proposed project (issuing incidental take permits) may effect the location and character of development by increasing development outside the preserve, thus 'shifting' densities from the preserve to areas outside of the preserve." From this statement it can be inferred that density shifts may take place as a result of the proposed plan. If this is true, further discussion must be included on a General Plan level that outlines specifically where shifts in density may occur, both in the cities and the unincorporated portion of the County. Moreover, if density is shifting, further analysis must be completed that evaluates all the impacts associated with this action including but not limited to analyzing changes in transportation circulation; decreases in air quality due to the creation of more hot spots; and decreases in water quality due to a higher concentration of pollutants.

SDCo-5

As mentioned above, the MHCP Plan intends on preserving approximately 400-500 acres of habitat in the unincorporated portion of the County. However, the project description does not state exactly where this 400-500 acres of preserve will be located, and whether the preserve will conflict with the County's General Plan or other applicable plans and policies. A full and complete discussion must be included that details exactly where the preserve will be established and how implementation of the preserve will occur, especially since the 400-500 acres preserve lands mentioned above are outside of direct land use authority of all the local agencies listed in the plan.

SDCo-6

Also, the description of the plan should identify how the plan will function on a regional level. For example, the EIS/EIR states that future linkages will be established to the north with Camp Pendleton and to east and south with the County. However, the plan

SDCo-3.

CEQA requires that the time for completing the CEQA compliance must involve balancing the requirement to conduct CEQA as early as possible, yet provide sufficient information to make the decision-making process valuable.

The degree of specificity in an environmental document is directed by Section 15146.

Tiering of environmental documents is discussed in Section 15152.

CEQA requires that environmental compliance be conducted as early as possible to enable the environmental considerations to influence the project. As such, it was imperative that the project complete environmental review in sufficient time (CEQA Guidelines Section 15004(b)) to make decisions that could influence the project. However, the ramifications are that it is infeasible to expand the description (CEQA Guidelines Sections 15124 and 15146) to the point of completing all of the GPA, LCP, ordinances and policies. These tools will need to be prepared separately and specifically for any later approved project. Subsequent (CEQA Guidelines Section 15152) environmental clearance may be necessary at that time when a separate and further project description is available. The project description contained in the EIS/EIR is sufficient to address the impacts at a plan level. It is normal for the impact analysis to result in mitigation measures, including ordinances adopted by the lead agency. The MHCP does not preclude requirements for subsequent environmental review. Each project, when it is authorized, must undergo separate CEQA review. This is also standard and similar to the General Plan Update process. Thus, the project addressed the goals and intent of CEQA.

SDCo-4.

The EIS/EIR has disclosed that lands currently designated for development will be preserved as a result of the project. The EIS/EIR has also addressed, to the extent practicable, the indirect impacts associated with the loss of that development potential. For one alternative (BCLA), the impacts are significant. Nothing in the MHCP restricts growth and, thus assuming that the same amount of growth would occur, the conclusion is that the growth would have to be accommodated by more density in the currently designated areas for development or in areas not designated for development. However, that process is a regional planning effort, including input from all of the cities in the region and the unincorporated County. The planning process is updated periodically to refine the general plans for each agency to respond to changes in growth patterns. These plan updates require extensive planning efforts that respond to a variety of issues (existing and planned transportation system,

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water, sewer, and conservation of resources). It is entirely too speculative to address the potential indirect impact at this time. (Section 15145, Speculation: *"If, after thorough investigation, a lead agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact."*) In accordance with Section 15145, the EIS/EIR noted the conclusion and ended the discussion.

SDCo-5. Several comments reference the 400 to 500 acre Gnatcatcher core proposed for the unincorporated portion of the County. The final MHCP plan will be modified to clarify the intent of the core and reflect land acquisition activity that has taken place since the draft plan was written.

The U.S. Fish and Wildlife Service and the California Department of Fish and Game (the wildlife agencies) have stated that a 400 to 500 acre area of contiguous, high quality gnatcatcher habitat capable of supporting 16-23 pairs of gnatcatchers must be conserved in the general vicinity of the circle they inscribed around southwest San Marcos, southeast Carlsbad, and the adjacent unincorporated county. A core breeding habitat area in this general location is considered necessary for preserve design reasons, to assure the viability of the coastal California gnatcatcher stepping-stone corridor across the MHCP study area and therefore gnatcatcher population viability in the region. This core requirement is in addition to conservation already occurring within the incorporated cities in this vicinity. Large contiguous blocks of habitat currently on the ground in the cities of Carlsbad and San Marcos have already been permitted for take by the wildlife agencies, thus making infeasible conservation of the core breeding area totally within MHCP city boundaries. Meeting this core breeding habitat requirement therefore requires conserving land in adjacent portions of the unincorporated county, generally within the spheres of influence of the Cities of Encinitas and San Marcos.

The wildlife agencies and the MHCP cities have agreed that the MHCP will "cause" the conservation of this acreage in the unincorporated county. "Cause" can mean purchase, direct mitigation to, or regulate if the property is annexed to a city. Cities have the authority to prepare plans for their spheres in preparation for future annexations. The wildlife agencies, the cities, and SANDAG recognize that land use authority rests with the County of San Diego until the property is annexed. The wildlife agencies, the cities, and SANDAG understand that the MHCP can only "cause" conservation under certain circumstances. If the County proposes to develop or take coastal sage scrub before the cities purchase, direct mitigation to, or annex the property, then the County would negotiate take permits with the wildlife agencies.

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Over the past several years developers in the Cities of Carlsbad and San Marcos have negotiated mitigation requirements with the wildlife agencies and purchased properties from willing sellers in this gnatcatcher core area. To date, approximately 420 acres have been purchased, conservation easements acquired, or annexations occurred. Of the 420 acres, approximately 328 acres are coastal sage scrub. These lands will be managed in perpetuity for conservation purposes, as will any additional acres caused to be conserved by the MHCP in this area.

The City of Encinitas Subarea Plan requires 67% conservation of coastal sage scrub on any property that chooses to annex to their city. If all the property annexes, a 67% conservation ratio will yield approximately 183 acres of conservation.

Since the draft MHCP plan was written, the City of Carlsbad has increased coastal sage scrub conservation. The final plan will reflect this additional conservation and will be counted towards the 400 to 500 acre requirement within their city limits.

Since conservation occurred due to mitigation requirements, management and monitoring responsibilities rests with the mitigator. It was never the intent of the MHCP, nor does the plan state, that mitigation and monitoring requirements are the responsibility of the County of San Diego.

SDCo-6.

The County of San Diego is currently preparing its North San Diego County Subarea Plan of the MSCP, which covers all unincorporated lands adjacent to or within the MHCP study area. Camp Pendleton is currently preparing a program to manage its upland species. The MHCP has tried to conserve regionally significant linkages and movement corridors to these adjacent planning areas within its planning boundaries. In the event that habitat plans are not adopted in these adjacent areas, the wildlife agencies will determine on a case-by-case basis the potential for projects to jeopardize the continued existence of species.

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should outline how it plans to coordinate linkage areas with jurisdictions beyond the plan's boundaries on adjacent lands in Camp Pendleton and the County.

1.2 Significance Criteria

SDCo-7

The EIS/EIR lacks identifiable quantitative, qualitative, or performance level thresholds of significance to measure the effect of a particular environmental impact. For example, in Section 4.3.1 Criteria for Determining Significance no thresholds of significance with any of the characteristics listed above are included that would enable conclusions to be drawn for the analysis of impacts to biological resources. Section 4.3.1 does not even attempt to set significance criteria as alluded to by the title of this section. Instead, this section states that a mandatory finding of significance must be made pursuant to CEQA and under the MHCP Plan a set of "biological findings must be made for each species under consideration for coverage in the permit." Even though these findings are required, they do not represent thresholds of significance and could not be utilized in drawing the necessary conclusions in regard to significance of impacts to biological resources. This is a flaw that occurs throughout the document and should be addressed and updated to include quantitative, qualitative, or performance level thresholds of significance to measure the effect of a particular environmental impact.

1.3 Range of Alternatives

SDCo-8

CEQA requires that a reasonable range of alternatives to the proposed project be presented in the EIR (CEQA Guidelines §15126.6(c)). As proposed it does not appear that the project presents a reasonable range of alternatives for the following reasons. First, four alternatives to the proposed project are proposed, including a No Project Alternative. However, upon closer review there are really only three alternatives, because Alternative 2, the Preferred Alternative, is also the proposed action/project. The EIS/EIR presents the proposed action/project and Alternative 2 as one in the same. Therefore, since Alternative 2 is truly the proposed action/project all the other alternatives must be compared to this alternative, which is done by the EIS/EIR. However, since Alternative 2 is the proposed action/project all other alternatives must also "substantially lessen any of the significant effects of the project" (CEQA Guidelines §15126.6(a)). Alternative 1 does not accomplish this goal and in fact, has more significant impacts than Alternative 2; therefore, must be rejected as an alternative. Moreover, it can be demonstrated that the both Alternative 2 and 3 are infeasible because they include 400 to 500 acres of preserve in the County, outside of the direct land use authority of all the cities included in the MHCP Plan. As a result, there is no reasonable assurance that the alternatives are feasible, because there is no discussion in the EIS/EIR that details where and how the 400 to 500 acres of preserve will be acquired and preserved in order to allow the MHCP Plan to viably function. In conclusion, as proposed most of the alternatives are infeasible and the EIS/EIR does not present a reasonable range of alternatives and should be revised.

SDCo-7.

The EIS/EIR is a joint NEPA and CEQA document. It also needs to address the impacts of project implementation under Federal and State Endangered Species Acts, as well as the NCCP. The document states that a significant impact will result if a finding is made that the project will: "*substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal*". At a plan level, this significance criterion is quantifiable. Additionally, the analysis included consistency and compatibility with the applicable ESAs and NCCP policies.

SDCo-8.

The alternatives in the EIS/EIR are reasonable and feasible to implement. As noted in Section 2.2 of the EIS/EIR, nine alternatives were considered; however, two of them were eliminated from further analysis, because they did not meet the objectives of MHCP. FPA1 does result in more significant impacts to biology, whereas BCLA reduces impacts to biological resources yet has more significant socio-economic impacts. The environmental document is a joint NEPA and CEQA document. The requirements for addressing alternatives and the proposed project/action differ slightly between NEPA and CEQA. There were three alternatives (plus the No Project/No Action) evaluated in the EIS/EIR. NEPA requires that each alternative be treated equally. Thus, the analysis presented the findings for all alternatives equally. Please see comment SDCo-5 for a more in-depth discussion of the core.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

1.4. Direct and Cumulative Impacts

SDCo-9

There is a substantial lack of analysis of the both direct and cumulative impacts in the EIS/EIR. For example the analysis of impacts to biological resources in Section 4.3 identifies specific species that may be significantly impacted by the project, however, there is not sufficient discussion that addresses which species or habitats will be significantly impacted but adequately mitigated. Furthermore, the cumulative analysis for biological resources in Section 6.3.1 includes no comprehensive analysis on the plan's impacts on a cumulative level. For example, the plan does not address how the take of certain species or developing vacant land will impact biological resources regionally. No analysis appears to be completed to date on a cumulative level for biological resources and pursuant to (CEQA Guidelines §15065(c)) the project's environmental effects that are cumulatively considerable must be evaluated. The EIS/EIR does not satisfy this requirement and must be revised accordingly for all environmental effects that may be individually limited but cumulatively considerable.

1.5 Mitigation Measures

SDCo-10

The proposed action/project does not list explicit mitigation measures that are required to reduce environmental impacts to a level below significance. Instead, the plans defers a majority of the mitigation to future actions through General Plan amendments, Local Coastal Plan amendments and changes to other local ordinances and policies. Also, the project proposes infeasible mitigation measures such as the preserving 400-500 acres of habitat a part of the plan in the unincorporated portion of the County, which none of the cities in the MHCP Plan have direct land use authority over.

1.6 Plan-to-Plan versus Plan-to-Ground Analysis

SDCo-11

As outlined in Chapter 7.0 many of the conclusions in the EIS/EIR are based only on a plan-to-plan analysis and based on these conclusions issues considered not to be significant in the EIS/EIR may in fact be significant if a plan-to-ground analysis were utilized. For example, the conclusions listed for following subject areas: air quality, cultural resources, hazards and hazardous materials, noise, transportation/circulation, public utilities and service systems, geology and soils, and recreation, in Chapter 7.0 all conclude that "the threshold for determining significance is the baseline condition/existing setting, and there are no effects to" . . . *any of the above listed subject areas* . . . "beyond what would occur under the baseline condition/existing setting, there is a less than significant impact, and further analysis is unwarranted." However, from reading the EIS/EIR it is evident that the project has not considered any plan-to ground analysis, because there is no discussion regarding physical conditions on the ground and future conditions on the ground that will occur from implementation of the MHCP Plan. Based on the lack of a plan-to-ground analysis the EIS/EIR does not adequately evaluate all potentially significant impacts and must be revised in order to be an adequate document.

SDCo-9.

The Initial Study documented the rationale for eliminating those issues that would not result in direct, indirect nor cumulative impacts. For biological resources, a survey of the impacts and whether these impacts were mitigable was made. The significance of impacts was identified for each alternative, as well as each City's Subarea Plan. Habitats and species were discussed separately, as well as summarized in tables. Section 4.3 discusses the rationale for each significance determination. Tables were used extensively to support the findings. Section 7 of the EIS/EIR summarizes this discussion. The EIS/EIR has concluded that there are significant cumulative impacts to biological resources. See Section 6.3.1. *"Implementation of the proposed MHCP, and the projects on the cumulative projects list, will result in direct and significant impacts to species on the Covered Species Lists of the programs on the cumulative projects list due to issuance of incidental take permits. Habitat and individuals may be taken as a result of the take permits."*

SDCo-10.

For all significant impacts determined, mitigation measures are proposed at the end of each environmental impacts/environmental consequences analysis. To be included as part of the Final EIR, a Mitigation Monitoring Reporting Program will summarize the required mitigation measures. The performance standards for those mitigation measures have been established. Further environmental review will be necessary at the time that the refinement to the GP, LCP and local ordinances are prepared. As discussed previously, the mitigation requirement (part of the project description for FPA 2) for 400-500 acres of gnatcatcher core is feasible. See Section 4.3.5 for a discussion of the mitigation measures.

SDCo-11.

The commenter identified a general concern related to the specificity and findings of the plan to ground analysis, particularly for those issues found not significant. However, no specifics on these deficiencies were presented other than a general concern for their adequacy. As discussed previously, the direct and indirect impacts were addressed to the extent practicable based upon the specificity of project description. The plan to ground element is also discussed to the extent feasible based upon the level of project information and specificity. The document identifies the maximum acreage and number of critical populations that could be taken as a result of project implementation. Other regional planning documents, and associated environmental review, were incorporated into the analysis. Conclusions based upon the level of specificity are presented. The EIS/EIR has acknowledged that some resources will be affected during implementation; however, existing programs are in

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effect to ensure that (from the MHCP level), no significant impacts would occur.

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2.0 SPECIFIC COMMENTS ON THE EIS/EIR

In order to address the above fundamental flaws of this EIR/EIS, the following specific examples are taken from the document. The following examples are not meant to be an exhaustive, all inclusive discussion, rather are meant to illustrate particular points that address some of the issues mentioned above. Moreover, as suggested in the introduction, given these deficiencies it would be foreseeable that the County would have further specific comments on the EIS/EIR once major revisions have been made.

Summary Section

- SDCo-12 2.1 Pg. ES-8: It is not clear why the proposed project is included as an Alternative 2 to the "proposed project." The summary section should include a brief summary of the proposed actions and its consequences. The document should address the proposed project as such and then identify alternatives that may reduce that project to a level below significance, not the other way around.
- SDCo-13 2.2 Pg. ES-9: Alternative 2 is considered to be infeasible and therefore should be eliminated from analysis in this Draft EIR/EIS. The reason for infeasibility is as follows: mitigation proposed is considered unachievable by the local land use agencies in charge of those resources. This alternative targets additional conservation (mitigation for impacts) outside of the city's jurisdiction in the unincorporated part of the county. Without any consultation from the responsible agencies for the "400 to 500 acres of contiguous coastal sage scrub" it is unknown whether or not these areas may be preserved under the proposed alternative. Infeasible alternatives or projects may not be analyzed in an EIR (CEQA Guidelines §15126.6(c)).
- SDCo-14 2.3 Pg. ES-10: Alternative 3 should be rejected under the same reasoning for Alternative 2.
- SDCo-15 2.4 Table ES-2: County Staff does not concur with the finding of less than significant impacts to adjacent existing and planned land uses. The proposed project targets additional conservation (mitigation for impacts) outside of the city's jurisdiction in the unincorporated part of the county. Without any consultation from the responsible agencies for the "400 to 500 acres of contiguous coastal sage scrub" it is unknown whether or not these areas may be preserved under the proposed project. Some of the land positioned to be reserved contains current development proposals under the jurisdiction of the unincorporated land use agencies.

Chapter 1.0: Purpose and Need For Action

- SDCo-16 2.5 Pg. 1-10: County Staff does not concur with the statement that "extensive coordination between the various HCP planners/agencies" has occurred. Although staff agrees that addressing the boundaries, continuity of preserve

SDCo-12. The environmental document is a joint NEPA and CEQA document. The requirements for addressing alternatives and the proposed project/action differ slightly between NEPA and CEQA. There were three alternatives (plus the No Project/No Action one) evaluated in the EIS/EIR. NEPA requires that each alternative be treated equally. Thus, the analysis presented the findings for all alternatives equally.

SDCo-13. As indicated in the DEIS/EIR, Alternative 2 is preferred because the levels of conservation, including restoring 338 acres and managing and monitoring the preserve in perpetuity, are adequate measures to protect coastal sage scrub species for which the MHCP is seeking coverage. Alternatives 1 and 2 were designated to conserve as much of the BCLA as possible, minimize preserve fragmentation, maximize use of existing public lands and open space, and maintain private property rights and economic viability. Alternative 2 also does not significantly impact the cities' ability to provide housing and employment opportunities for the expected growth over the next 20 years, nor does it require the condemnation of property for purposes of habitat protection. Alternative 2 was determined to be feasible. Since these properties are being acquired from willing sellers, the County has no jurisdiction over these actions.

SDCo-14. Based upon the findings of the environmental analysis, Alternative 3 results in significant and unmitigable socio-economic impacts. This alternative was considered because overall, 84% of the habitat in the total MHCP study area would be conserved. However, the adoption of Alternative 3 may be rejected by the decision makers due to the associated socio-economic impacts; however, alternatives/mitigation measures must be evaluated where they have the opportunity to reduce impacts. The decision makers must weigh the two significant and unmitigated impacts. The BCLA can not be fully implemented at this time, because numerous projects have been approved and developed, resulting in a loss of habitat that constituted the BCLA.

SDCo-15. The gnatcatcher core is being preserved through prior permitting of projects with the resources agencies. If there are development proposals within the geographic area designated for additional conservation, those developments are not precluded from proceeding (as long as they obtain take authorizations and provide appropriate mitigation, including site design issues). The voluntary preservation and acquisition of properties in the gnatcatcher core is not a conflict. All properties acquired to date have been from willing sellers. Therefore, there are no impacts to planned or existing land uses.

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SDCo-16. — The County of San Diego signed a memorandum of agreement in November 1991, agreeing to work with the north county cities, SANDAG and the wildlife agencies in the preparation of the MHCP. When the County decided to drop out and prepare their own plan, SANDAG asked that they remain on the MHCP Advisory Committee. The County sent a staff person to the majority of meetings. All decisions on MHCP policies were made at advisory committee meetings. Please provide information on where “areas designated as hard line preserve areas within the proposed plan contain drastically different land uses adjacent in unincorporated areas therefore negating the continuity of designated preserve areas.” The MHCP is a conservation plan with the goal of “hard-lining” as many areas of natural habitat as possible. SANDAG, through the cities, has made an effort to hardline projects consistent with adjacent land uses.

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areas, consistency in criteria uses, and implementing agreement requirements, is key to validating an HCP plan, this has not yet taken place. Specifically, the project targets additional conservation outside of the city's jurisdiction in the unincorporated part of the county without consultation from the county. In addition, there are areas designated as hard line preserve areas within the proposed plan, which contain drastically different land uses adjacent in unincorporated areas therefore negating the continuity of designated preserve areas.

SDCo-17 2.6

Pg. 1-13: Project Objectives must not be confused with the project description, which is a statement of what the project is. For example, the third bulleted point describes the function of the MHCP preserve system not why the proponents are taking on the project. In addition, two of the objectives are infeasible due to lack of land use authority over some of the areas that are designated for preservation in the unincorporated part of the county.

SDCo-18 2.7

Sec. 1.2.2: Because of the location of the proposed project within the County of San Diego and the impact of the proposed preserve in unincorporated lands within the County, the County should also be identified here as a designated responsible agency.

SDCo-19 2.8

Sec. 1.2.2: This sub-chapter must briefly discuss the type of EIR (e.g. project, program, supplemental) including the rationale and any limitations for the type of EIR selected (CEQA Guidelines §15124 (d), 15160 through 15170).

SDCo-20 2.9

Sec. 1.5.1: It is unclear to County Staff why Land Use Agencies from the County (e.g. MSCP, DPLU) were not included in the public input stages of the formation of the Draft MHCP. The plan directly impacts land use decisions within the unincorporated part of the county, for example, "400 to 500 acres of contiguous coastal sage scrub." If the objective of the public outreach programs was to "involve representatives of interested groups" and to "build a broad base of understanding and support for the programs" it does seem logical that these agencies would be included in the drafting stages providing valuable input as to the feasibility of proposed mitigation measures that impact jurisdictional lands.

SDCo-21 2.10

Pg. 1-21: The EIR may not defer analysis of effects into the future and must analyze project effects at the earliest feasible point in project planning. For example, the bottom of this page identifies concerns related to the loss of habitat from fires and other natural disasters will be addressed through implementation of the ultimate management plan. According to (CEQA Guidelines §15144), these potential impacts should be analyzed in this Draft EIR/EIS document.

SDCo-22 2.11

Pg. 1-22: County Staff does not concur that is the responsibility of the unincorporated areas to "coordinate the linkages" to the proposed project. Rather, this should be accomplished simultaneously during the drafting stages of the proposed plans. For example, areas designated by the proposed plan as core habitat and mitigation areas contain current development plans which may

SDCo-17.

Comment addresses project objectives. The third bullet is: "Establish a partnership among federal, state, and local agencies of government to facilitate review and approval of public- and private-sector land development and construction projects by expediting acquisition of permits from the wildlife agencies." This is an objective of the project. All of the objectives have been evaluated and found feasible.*

SDCo-18.

Comment states San Diego County should be a responsible agency. Response SDCo-5 describes why this is not necessary. Because the acquisition of property is being completed by willing property owners, the County has no land use authority or responsibility. Property permanently conserved and managed for mitigation purposes is the financial responsibility of the developer; therefore, the County will not receive take authorizations, nor will the County have any financial responsibilities for those properties.

SDCo-19.

The type and limitations of the EIS/EIR were described and read as follows: "As required by both CEQA and NEPA, lead and responsible agencies must be identified that will be responsible for approval and review/comment on the environmental document. SANDAG is identified as the lead agency for the CEQA compliance requirements of the project, and the USFWS is identified as the lead NEPA agency for the proposed project. Each of the seven cities within the MHCP, as well as CDFG, are designated responsible agencies. Adoption of the MHCP, Subarea Plans, and issuance of incidental take authorizations are required to be evaluated under NEPA and CEQA. Individual projects that require a subsequent discretionary action from a State of California agency will be subject to additional CEQA review, in accordance with the standard entitlement process." The EIS/EIR has indicated that future project specific entitlements will require additional project-level CEQA review. Those future CEQA reviews will be able to tier and/or incorporate by reference the EIS/EIR.

SDCo-20.

See response SDCo-16.* Also, County staff were invited, and participated in, an MHCP subcommittee meeting (April 14, 1998) with the specific agenda of discussing county involvement and land assembly options for the unincorporated gnatcatcher core area requirement. County input and concerns at this meeting was considered in developing MHCP policies to meet this requirement. In addition, the development of the MHCP Plan has involved a substantial amount of public input and meetings throughout the process. An MHCP Advisory Committee was established in 1992 to provide a forum for public discussion and consensus building on issues and proposed policies. The Advisory Committee averaged one meeting per month over an eight-year

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period (1992-2000). The Advisory Committee includes representatives from the seven participating cities, the County and City of San Diego, the wildlife agencies, public facility providers, environmental groups and organizations, property owners, developers, and various citizen and special interest groups. A list of the groups represented on the MHCP Advisory Committee is provided below:

- City of Del Mar
- City of Solana Beach
- City of Encinitas
- City of Carlsbad
- City of Oceanside
- City of Vista
- City of San Marcos
- City of Poway
- City of Escondido
- City of San Diego
- County of San Diego
- San Diego County Water Authority
- U.S. Fish and Wildlife Service
- California Department of Fish and Game
- U.S. Marine Corps
- U.S. Navy
- TransNet
- Caltrans
- San Dieguito River Joint Powers Authority
- Alliance for Habitat Conservation
- Standard Pacific of San Diego
- Shea Homes
- McMillin Companies
- Hillman Properties
- Endangered Habitats League
- Audubon Society
- Sierra Club
- Fallbrook Land Conservancy
- Buena Vista Audubon Society
- Palomar Audubon Society
- San Diego Gas and Electric Company
- Zoological Society of San Diego
- Citizen's Coordinate for Century 3
- Farm Bureau

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- Bureau of Land Management
- National Forest Service, Cleveland NF
- Assoc. of Environmental Professionals
- San Pasqual Indian Reservation
- San Diego County Taxpayers Association
- Linnie Cooper Foundation
- Building Industry Association
- Escondido Chamber of Commerce
- Greater San Diego Chamber of Commerce
- North County Transit District
- U.C. Natural Reserve System

Several other opportunities for public outreach have occurred including:

- Initial Memorandum of Agreement (MOA) dated December 1991.
- NCCP Enrollment, August 1992.
- Public review of Vegetation and Sensitive Species Maps – 1993 and 1997.
- Public review of the Consultants' Working Draft-MHCP, 1998.
- A community meeting was held on April 4, 2002 at the City of Carlsbad's Faraday Office. As a member of the MHCP Advisory Committee, County staff was invited. SANDAG staff, staff from the five north county cities preparing subarea plans, the wildlife agencies, and the consultant team was available to provide information and answer questions regarding the MHCP, the subarea plans and the EIS/EIR.

Public Outreach materials were prepared by a Regional Public Outreach Committee. The County of San Diego was a member of this committee, thus jointly helped prepare the following materials:

- *Preserving Our Native Environment -- A Joint Plan for the San Diego Region.* A brochure prepared by the Regional Public Outreach Committee.
- *Endangered Species Display.* The display describes the local habitats and endangered species in the region, explains the methodology used to determine high-quality habitat areas, describes how local programs are

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addressing national issues of habitat conservation, and invites the public to get involved.

- *Room to Roam.* A short video presentation was prepared to accompany the Endangered Species Display.
- *Slide Show.* A slide show was also developed that describes why these programs were started, how they are unique from prior efforts, and what the programs plan to accomplish.
- *Public Presentations.* A letter offering a presentation from a representative of the Regional Public Outreach Committee was sent to organizations, groups, and agencies that will be most affected or interested in hearing about the programs.
- *Tabletop Display.* Designed to be taken on the road, this display can sit on a table at local or statewide conferences and workshops.
- *General Assembly of Elected Officials on Habitat Conservation Planning and the Endangered Species Act.* The Assembly was held on March 4, 1994. Bruce Babbitt was the keynote speaker, over 700 people attended.
- *Bulletin for Landowners: Environmental Management.* The Bulletin is designed to be distributed at the zoning counter to landowners who have questions about the Endangered Species Act and the habitat conservation planning efforts.

Individual jurisdictions also conducted public workshops and collaborative meetings to inform city councils, local nonprofit groups, environmental organizations, and property owners of the MHCP.

A Notice of Intent (NOI) to prepare an EIS in compliance with NEPA was published in the Federal Register on April 15, 1999. A Notice of Preparation (NOP) of a draft Joint EIS/EIR was also published on April 13, 1999 in the San Diego Union-Tribune, San Diego Transcript, Asian Journal, La Prensa, Voice & Viewpoint, and the Coastal and Inland editions of the North County Times. The NOP was also distributed by mail to 538 recipients. An Initial Study (IS) of the MHCP was also prepared and distributed with the NOP for public review. On May 5, 1999, SANDAG, USFWS, and CDFG held a public scoping meeting to solicit public comments during the 30-day

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NOI/NOP public scoping period. The meeting was advertised in the NOI and NOP and held at Encinitas City Hall.

- SDCo-21. Page 1-21 lists issues raised by the public in the scoping meeting. The issue of loss of habitat from fires and natural disasters was addressed and the environmental effects presented in the EIS/EIR, thus, the analysis was not deferred. Site-specific management for each preserve will be identified at the time that the preserve is assembled. Certain locations will need to have more strenuous fire management control (adjacent to sensitive land uses, such as residential), whereas the larger tracts may not be subject to active control of fires. It is acknowledged that acts of God will occur and that different management activities may be necessary based upon the level of disturbance. Much of the habitat is fire tolerant (it will naturally restore after a fire); therefore, habitat is not lost.
- SDCo-22. The County unilaterally discontinued and withdrew from the process of concurrent planning in the northwestern San Diego region. SANDAG, USFWS, nor CDFG have any authority to force the County to complete their planning process. The MHCP evaluated existing and presumed corridors to the extent feasible. However, if the County proceeds with a habitat planning effort, since the County has delayed their planning, the County will need to coordinate with adopted plans that are contiguous with the County's resources. See also responses SDCo-16 and SDCo-20.

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be approved and underway prior to implementation of the proposed MHCP. This may have been avoided if proper coordination between all involved agencies occurred prior to this Draft EIR/EIS.

Chapter 4.0: Environmental Impacts/Environmental Consequences

SDCo-23 2.12 Pg. 4-49: This page states that the loss of 500 acres of chaparral habitat in northwest Escondido is not a significant impact due to the lack of sensitive populations. This area needs to be clearly defined on the vegetation map provided in the EIR. It is the opinion of County staff that this finding be revised as San Diego County supports a very diverse set of indigenous plants and animals which contains a high number of rare and endangered and otherwise sensitive species of plants and animals, and the loss of any large habitat block west of the Interstate-15 should be viewed as a threat to continued regional biodiversity. In addition, certain types of vegetation communities and their associated species are limited in area and considered to be highly sensitive. Their conservation is important to the region in order to maintain the diversity of species as well as protect the rare and endangered species that exist in this County. The concept of Island Biogeography as discussed by MacArthur and Wilson (1967) demonstrates that in order to conserve biological diversity, it is necessary to maintain large areas of habitat that are connected by corridors. Natural habitats in parts of the San Diego Region exist as islands in a sea of developed landscapes. In order to conserve the sensitive wildlife and plants in this region, it is necessary for the preservation of large blocks of habitat in a manner that connects them together. The loss of this significant block of chaparral habitat should therefore be considered a significant impact, as it would contribute to the preservation of species by providing a community in which to inhabit and a crossing route for large mammals. This is another indication that this MHCP process would benefit from the input of independent scientific review as was utilized in the North County Subarea MSCP process.

SDCo-24 2.13 Pg. 4-160: This page contains the note section for Table 4.3-2, Conservation of Sensitive Species for Each Alternative. Note (1) states that the species indicated in the table fall under the protection of the MHCP Narrow Endemic Species Policy. It continues to state, "Both inside and outside the FPA, impacts to narrow endemic populations shall be avoided to the maximum extent possible. Inside FPAs, mitigation for unavoidable impacts and management practices must be designed to achieve no-net-loss of narrow endemic populations, occupied acreage, or population viability. In no case shall a city permit more than 5% loss of narrow endemic populations or occupied acreage within the FPA." It is a strong recommendation of County staff that the 5% loss referred to above be clarified in terms of 5% of a single population, 5% within a single jurisdiction's boundaries, or 5% of the total population. This will avoid confusion in the implementation of this policy. It should also be clearly stated how population numbers of narrow endemics are to be calculated.

SDCo-23. The EIS/EIR states: "One significant block of chaparral (500 acres) that is not included in the FPA is in northwest Escondido. This large area of chaparral habitat does not appear to support any major populations, critical locations, or known occurrences of sensitive species. In addition, it does not serve as a link to other habitat areas. Chaparral habitat in San Marcos would be fragmented by potential impacts (25% conservation ratio). Despite the loss of these chaparral habitats at the MHCP level, this impact is not significant because of the lack of sensitive populations." No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

The loss of approximately 500 acres of CSS habitat in northwest Escondido was addressed in an EIR prepared for the approved specific plan, tentative map and development agreement for Palos Vista Neighborhood 3 (renamed Escondido Highlands). As described on page 4-13 of the SAP, Neighborhood 3 is approved for the development of 39 agricultural estate lots, effectively allowing the removal of all natural habitat (with the exception of an area designated for preservation of cultural resources). The development agreement vests this entitlement until 2007. Subsequent biological analysis prepared by Dudek and Associates (January 29, 1999) confirmed the previous EIR analysis and did not identify any new listed species on the property. Therefore the City of Escondido has no authority to require additional conservation on this property unless the development agreement expires in 2007, or in the event that a significant modification to the project is proposed. The SAP text (page 4-13) recognizes the circumstances under which additional conservation may be required.

SDCo-24. The maximum 5% loss is of the species' population or acreage (whichever is most appropriate for a species) within that city's FPA. Since this is an MHCP policy that applies to all subarea plans, this would cumulatively ensure a maximum 5% loss within the MHCP FPA. Whether and how population numbers of narrow endemics are to be calculated for determining percent loss will be determined by more detailed biological assessment under the monitoring plan. Population numbers are difficult to quantify for many narrow endemics. For example, annual plants undergo extreme yearly fluctuations; plants that grow from corms or bulbs have yearly variation in their above-ground visibility; and fairy shrimp experience extreme yearly or seasonal fluctuations. For such species, occupied acreages, relative densities, stratified sampling designs, etc., may be required to quantify abundance and degree of losses. A goal of the monitoring plan is to help resolve such issues.

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3.0 GENERAL COMMENTS ON MHCP PLAN VOLUME I AND II

3.1 Interim Funding

SDCo-25 Funding for MHCP appears to rely on potential regional sources such as increases in a general tax, establishment of Mello-Roos special tax, revenue bond, or an assessment bond. However, this cannot be assured. In order to comply with the needs to identify funding for the plans, each jurisdiction must identify general fund or other sources for interim implementation of financing for the program. There is discussion of funding in each Subarea plan, but this discussion is not in-depth and some of it depends on federal and state funding. The Subarea plans need adequate identification of an interim funding source until a regional funding source becomes available.

3.2 Independent Science Review

SDCo-26 Section 1.3.1 of the MHCP Volume I states that the establishment of a Scientific Review Panel in 1997 was used on an "as-needed basis". However, the County recommends that SANDAG consider obtaining a complete independent scientific review for the MHCP plan. The scientific information and approach used for preserve planning within the MHCP is based on the MSCP. However, since the creation of the MSCP, the County has changed its process for preserve planning and has retained independent science advisors to review the preserve planning process. The County has found that with their North County plan, the independent science advisors reviewed the MSCP based modeling and provided valuable suggestions for improving the preserve planning process for the North County MSCP. These suggestions were addressed and incorporated and provided the County with a stronger scientific basis for the North County planning effort.

3.3 Memorandum of Understanding

SDCo-27 If the EIR is certified using County unincorporated lands as a means to provide habitat for gaining coverage for sensitive species, then the County strongly recommends discussion between key representatives of the MHCP and the County over how this area is to be acquired, managed and monitored and what roles and responsibilities each jurisdiction will have. The outcome of this discussion may be a Memorandum of Understanding.

3.4 County Land within MSCP

SDCo-28 Under the County's North County MSCP, the County is going to permanently protect the crash hazard area around Palomar Airport and manage it for habitat. This property should be treated as cornerstone land within the plan that the County will be including in its North County planning efforts and should not be included in the MHCP.

SDCo-29 Under the County's North County MSCP, the County is going to preserve the San Elijo Ecological Preserve. It should be treated as a cornerstone property within the plan that

SDCo-25. This comment also raises funding issues, which are not a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment. Funding for the 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 the relationship of people with that environment. See CFR, Title 40, Sec. 1508.14 and California Public Resources Code Section 21100. However, the following is offered as general clarification.

Implementing a preserve system for the MHCP will involve actions by local jurisdictions as well as by federal and state agencies. Some of those actions, such as commitment of public lands for habitat use, can occur without new funding. Other actions, such as management of habitat lands conserved as mitigation for project impacts, will be funded by organizations or individuals responsible for project development. Key to successful implementation of the MHCP is that important habitat areas be conserved at a rate that at minimum preserves the continued viability of target species and mitigates for impacts. Since habitat loss allowed under the plan would not occur all at once, public financing for the MHCP is not immediately required. Under the plan, implementation would be periodically monitored to ensure that adequate conservation occurs over time. The Final MHCP also provides for interim funding of selected conservation actions. The need for funding of other conservation tasks will be reviewed, and if necessary supplementary actions taken, while the jurisdictions pursue a regional funding program.

The federal Endangered Species Act ("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 prepared. The Secretary may also require other assurances that the plan will be implemented. The MHCP provides the framework for the funding necessary to implement the program. The assurances of such funding will be provided in the draft implementing agreement for each city which will undergo a formal public comment period identified in the Federal Register once the wildlife agencies receive a request for a 10(a)1(B) permit and a Section 2835 permit for the subarea plan.

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The MHCP envisions that habitat acquisition, habitat restoration, and management, monitoring, and administrative costs will be funded by participating local jurisdictions through a cooperative regional funding program, to be placed on a ballot for voter approval within three years of the approval of the plan (Public Review Draft MHCP Plan, Vol. I, Sec. 7.2 and Table 7-2). The MHCP also identifies a range of funding sources that may be used, such as property tax, Mello-Roos special tax, sales tax, and benefit assessment.

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

- Commitment of public lands owned by participating local jurisdictions to the preserve (approximately 6,430 acres).
- Management of existing state and federal lands as part of the preserve (approximately 1,480 acres).
- Interim funding of selected conservation actions as described in the Final MHCP, Subarea Plans, and Implementing Agreements.
- Recently completed acquisition of selected properties using state and local funds, such as some of the stepping stone parcels in the City of Oceanside, upland parcels in the City of Encinitas along the south shore of Batiquitos Lagoon, a key linkage area in the City of Carlsbad, and Bernardo Mountain in the City of Escondido.
- Requirement of mitigation of impacts from new public and private projects.

The Wildlife Agencies will, through Implementing Agreements with participating jurisdictions, "monitor plan implementation" and "ensure that habitat conservation proceeds in step with development" (MHCP, Vol. I, Sec. 5.2.3). Furthermore, "[i]f the Wildlife Agencies determine that the Subarea Plan is not being implemented as required, the wildlife agencies and the city will take the actions specified in the subarea plan and implementing agreement to remedy the situation" (MHCP, Vol. I, Sec. 5.3.8). The requirement to review will apply if a regional funding program is not approved in a timely manner, and an alternative remedy may require each jurisdiction to develop and implement a funding source adequate to meet its

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share of the MHCP and Subarea Plan implementation as it continues to pursue a regional funding source.

SDCo-26. SANDAG recognizes the value of independent scientific input and review and has obtained significant scientific guidance throughout the process. Although the plan document itself has not been subject to formal scientific review, the MHCP Biological Goals, Standards, and Guidelines document (Ogden 1998)—which formed the scientific foundation for MHCP planning and analysis—was reviewed by a respected group of independent scientists. To the extent practicable, their input was incorporated. These reviewers (and their primary areas of expertise) were as follows: Dr. Jonathan Atwood, Manomet Observatory for Conservation Sciences (California gnatcatcher, coastal cactus wren, and other songbirds); Dr. Pat Herron Baird, California State University, Long Beach (shorebirds and other birds); Peter Bloom (raptors); Dr. John Brown, Smithsonian Institute, National Museum of Natural History (butterflies and other invertebrates); Dr. Ted Case, University of California San Diego (reptiles, amphibians, and ecological communities); Kevin Crooks (medium and large mammals and wildlife movement corridors); Dr. Barbara Kus, San Diego State University (least Bell's vireo, southwestern willow flycatcher, and other birds); Karen Miner, California State Parks (bats); Dr. Paul Beier, Northern Arizona State University (mountain lion and movement corridors); Thomas Oberbauer, County of San Diego (vegetation communities and sensitive plants); and Dr. Derek Langford, County of San Diego (vegetation). Additional scientists were consulted on an as-needed basis for particular questions and species issues, including Dr. Robert Fisher, U.S. Geological Survey (reptiles and amphibians); Stephen J. Montgomery (Stephens' kangaroo rat); Ed Ervin, U.S. Geological Survey (reptiles and amphibians); and Dr. Andrea Atkinson, U.S. Geological Survey (biological monitoring and statistics). The habitat evaluation model developed for the MSCP plan and adapted for use by the MHCP was also subject to independent scientific review by some of the above individuals as well as by Dr. J Michael Reed, University of Nevada, Reno (reserve design and population viability analysis). The MHCP's scientific foundations thus generally received more intensive scientific input and review than most other habitat conservation plans, including the MSCP. Independent scientific review is generally not appropriate for other aspects of conservation plans, including the implementation policies, economic considerations, and legal findings.

SDCo-27. Comment addresses coordination between MHCP and County representatives. See response SDCo-5.

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SDCo-28. The adopted Comprehensive Land Use Plan McClellan-Palomar Airport dated April 1994 (CLUP) does not include reference to a "crash hazard area" as stated in the comment letter. Therefore, it is not possible to provide a definitive response to this comment. If the comment refers to property west of the airport, that land includes privately owned industrial lots and City-owned land proposed for golf course development. Some of the privately owned lots are already developed. It would not appear to be feasible to protect this general area and manage it for habitat purposes.

If the comment is intended to refer to the County-owned land east of El Camino Real that forms part of the landing approach pattern, that land has been specifically excluded from the MHCP. The Carlsbad Subarea Plan also specifically depicts this County-owned property as "Not A Part" of the Subarea Plan. If the County's plan is to preserve that property and manage it for habitat as stated in the comment letter, the MHCP would support that action as beneficial to the MHCP preserve system. It should be noted that the City of Carlsbad holds an easement to construct Faraday Avenue across that property, and their subarea plan proposes to proceed with this road.

SDCo-29. The San Elijo Ecological Reserve is owned in part by the State of California and the County of San Diego. It is designated a California Ecological Reserve under Title 14 of the State Code. It is an Environmentally Sensitive Habitat Area (ESHA) as defined by the Coastal Act. In addition, it is designated an ecological resource open space park in the City of Encinitas General Plan and the Local Coastal Program. The Department of Fish and Game has an ongoing relationship with the San Elijo Lagoon Conservancy to assist with management, enhancement and restoration actions within the ecological reserve that provide conservation benefits to species that utilize the lagoon. Because of these existing conditions it is clear that only limited facilities connected to visitor use could be constructed at the Lagoon. That portion of the Lagoon that is owned by the County of San Diego, as shown on the MHCP land ownership map, will not be third party beneficiary eligible areas through the City of Encinitas' incidental take permit, but will be assumed to be eligible for take and credit for conservation under the North County subarea plan Multiple Species Conservation Program.

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the County will be including in its North County planning efforts and should not be included in the MHCP.

SDCo-30 The County would like to ensure that any County property included in the Focused Planning Area for the MHCP maintain its current status in the future in order to ensure conservation of appropriate properties.

SDCo-31 Parklands owned and operated by the County of San Diego are considered and designated as multiple use properties and should not be included in the MHCP preserve system or included in the acreage commitment for build out of the MHCP preserve. The following is a list of Park lands located within the MHCP planning area in Section 4.3.1 of the MHCP Plan Volume I that should not be included as part of the MHCP preserve:

San Eligo Lagoon
Rancho Guajome (Adobe & Campground)
Quail Gardens
Magdalena

SDCo-32 The County would like clarification about Table 4-5 of the MHCP Plan, Volume I. This table indicates that there are 670 acres of County land in the MHCP Study Area to be included in the MHCP preserve. However, it is unclear specifically where the land is located that is included in this 670 acres. Please provide the locations with attendant acreages.

3.5 Proportion of Coastal Sage Scrub in County of San Diego

SDCo-33 County staff would like further justification for placing the entire 500 acre gnatcatcher breeding core in the unincorporated area. Based on our approximations of the US Fish and Wildlife 'circle' and SANDAG habitat data we have found that about 1,750 acres of Diegan Coastal Sage Scrub lies within the incorporated cities and within the US Fish and Wildlife's circle. However, only approximately 950 acres of Diegan Coastal Sage Scrub lie within the unincorporated area in that circle. The County feels that the preservation of 500 of their 950 acres of coastal sage scrub places an inordinate amount of this mitigation in the unincorporated area and would like further justification for this action.

4.0 SPECIFIC COMMENTS ON BIOLOGICAL MONITORING PLAN VOLUME I

SDCo-34 County staff realizes that the first volume provides the general framework for the management and monitoring program and the second volume of this plan will deal with specific details and responsibilities. County staff would appreciate the opportunity to review the second volume when it is released. Land acquisition and monitoring will likely occur in the unincorporated area of the County (i.e., 500 acres of coastal sage scrub habitat). County staff would like to assure that management and monitoring practices in this area are to County of San Diego MSCP standards. The current MSCP Biological Monitoring Plan is under review by a Sub-committee of the Implementing Coordinating Committee of the MSCP. It may be advisable for the second volume of

SDCo-30. The cities/SANDAG prefer to see properties conserved that contain biological resources valuable to the preserve. No City has authority to enter County-owned property without permission to modify its physical condition with the possible exception of weed abatement for fire hazard management, or in the case of a public emergency. Any subsequent land use action (rezones or General Plan Amendments) would have to undergo CEQA review.

SDCo-31. Regarding San Elijo Lagoon, please see comment SDCo-29. Guajome Park is not included in the MHCP. The cities do retain land use authority over property within their city limits. Quail Gardens is designated an ecological resource/open space/park in the City of Encinitas General Plan and the Local Coastal Program. Magdalena Ecke Park is designated as a park and zoned for open space in the Encinitas Ranch Specific Plan and the Local Coastal Program. Like the San Elijo Lagoon, the County, as owners of these two parks will not have third party beneficiary status to The City of Encinitas' incidental take permit, but will be assumed to be eligible for take and credit for conservation under the Multiple Species Conservation Program North County subarea plan.

SDCo-32. The locations are as follows:

- Guajome Park in Vista – 60 acres (removed from the MHCP in the final plan)
- San Marcos Landfill – 39 acres
- Magdalena Ecke Park – 28 acres
- Quail Gardens – 10 acres
- San Elijo Lagoon – 533 acres.

SDCo-33. See response SDCo-5. Also, note that much of the 1,750 acres of coastal sage scrub referred to as being within the incorporated cities will be conserved within the FPA. The 400 to 500-acre breeding core requirement is additional to this conservation, for reserve design reasons.

SDCo-34. The Subcommittee of the Implementing Coordinating Committee of the MSCP will be provided with a copy of the revised MHCP monitoring and management plan for review.

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the MHCP Biological Monitoring Plan to be reviewed by this sub-committee to ensure that comparable and scientifically valid practices are being utilized throughout the sub-regions of the NCCP Habitat Conservation Program of San Diego County. This would allow for research on the datasets of the region as a whole.

SDCo-35 Also, the Draft MHCP Plan, Volume I, Section 6.3.1 states that "Unless otherwise included within the Subarea plan each city will submit to the wildlife agencies for review a draft framework management and monitoring plan within six months of issuance of take authorization. The draft framework management plan will be available for public review. The framework plan will be reviewed and approved by the wildlife agencies and finalized by the city within an additional three months." County staff seeks clarification of whether the Preserve Management Guidelines sections of the Draft City Subarea plans are intended to fulfill this requirement.

SDCo-36 4.1 Section 1.2 relates to the preparation of area-specific management directives. County staff would appreciate for the threshold for the preparation of Area-specific management directives to be clearly stated. Will the threshold for the preparation of area-specific management directives be based on a minimum size of habitat or the sensitive resources that it contains?

SDCo-37 4.2 Section 1.3.1 relates to preserve-level and Subregional-level monitoring. It states that "some data collected at the preserve level will be aggregated and analyzed to detect patterns and trends that may not be discernable at individual preserve areas..." County staff would appreciate clarification on the process used to select these data and the scientific validity of this process.

SDCo-38 4.3 Section 1.3.2 relates to compliance and effectiveness monitoring. County staff seeks clarification of the method of selecting a MNCP conservancy to fulfill the management and monitoring requirements set forth in the plan. What will the minimum qualifications be of the MHCP Conservancy?

SDCo-39 4.4 Section 2.1 refers to biological monitoring of covered species. It states that annual monitoring will occur for "selected covered species." County staff seeks clarification on the basis for selecting these species for annual monitoring.

SDCo-40 4.5 Section 2.1.2 relates to fire management practices. County staff advises that the Border Agency Fire Council also be contacted for knowledge relating to this topic.

SDCo-35. The management sections of the subarea plans are intended to serve as the framework management plan. Each city is also required to comply with the MHCP Monitoring and Management Plan.

SDCo-36. All preserve lands require the preparation of Area-Specific Management Directives. There is no minimum size of habitat. The revised monitoring and management plan clarifies this.

SDCo-37. The wildlife agencies or their designated entity will specify standardized data collection methods and analysis.

SDCo-38. If implemented, the MHCP Conservancy must be able to fulfill all monitoring and management requirements to the satisfaction of the cities and wildlife agencies, either through its own staff or through contracts with a qualified entity(ies).

SDCo-39. The monitoring and management plan has been revised to clarify that annual monitoring is required for all covered species. However, the intensity of monitoring varies depending on whether permit conditions are habitat-based or site specific, whether the species is a narrow endemic, and the federal and state listing status of the species.

SDCo-40. The final monitoring plan recommends contacting the Border Agency Fire Council for knowledge related to this topic.

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If you have any questions on these comments County staff would be glad to meet with you. We look forward to future coordination with you, as we do with our North County plan.

Sincerely,



GARY L. PRYOR, Director
Department of Planning and Land Use



Kate Stonelake
<KStonelake@nctd.org>
>

To: "leeann_carranza@fws.gov" <leeann_carranza@fws.gov>
cc: Leslie Blanda <LBlanda@nctd.org>
Subject: NCTD Comments on the MHCP Draft EIS/EIR, SCH NO. 93-121073.

04/26/2002 04:36 PM

Ms. Carranza,

NCTD-1

Please find attached North County Transit District (NCTD) Comments on the Draft EIS/EIR for Threatened and Endangered Species due to the Urban Growth within the Multiple Habitat Conservation Program (MHCP) Planning Area, SCH NO. 93-121073.

<<MHCP EIS-EIR Final Letter.doc>>

Copies have been provided to you via fax and Post as well.

Please feel free to contact me at (760) 967 2817 should you have any questions.

Very truly yours,
Kate Stonelake



Assistant Planner, NCTD MHCP EIS-EIR Final Letter.doc

Letter 8: North County Transit District

NCTD-1. Comment serves as a transmittal to the actual comment letter.*

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

April 26, 2002

Lee Ann Carranza
US Fish and Wildlife Service
2730 W. Loker Avenue
Carlsbad, CA. 92008

SUBJECT: NORTH COUNTY TRANSIT DISTRICT (NCTD) COMMENTS ON THE DRAFT EIS/EIR FOR THREATENED AND ENDANGERED SPECIES DUE TO THE URBAN GROWTH WITHIN THE MULTIPLE HABITAT CONSERVATION PROGRAM (MHCP) PLANNING AREA, SCH NO. 93-121073.

Dear Ms. Carranza:

This letter contains NCTD's comments regarding the draft EIS/EIR for Threatened and Endangered Species due to the Urban Growth within the Multiple Habitat Conservation Program (MHCP) Planning Area. Based on this review, NCTD believes that a more detailed and thorough analysis is required regarding the determination of significant impacts to Transportation and Circulation services. In particular, NCTD is of the opinion that transit and rail projects should be included in discussions regarding impacts to planned transportation and circulation projects, that the proposed criteria for determining significance to regional transportation/circulation is limited in its scope, and that a more adequate representation of railroad right-of-way corridors throughout North County San Diego should be depicted in figures and included in regional transportation discussion. NCTD requires this additional information so that it may completely and accurately assess the potential impacts that the Project may have on NCTD, with regard to rail projects in both NCTD's existing right-of-way and its future acquisitions.

NCTD COMMENTS:

1. Page ES-3, Project Location: "...Major land uses within the study area include residential, commercial, and industrial development; parks, preserves, and golf courses; and agriculture..."

NCTD-2. Comment serves as in introduction and summarizes the concerns from NCTD. Individual responses will follow regarding the specifics. However, it should be noted that the conclusion from these responses is that the EIS/EIR adequately addressed the issue of transportation.

NCTD-3. The Executive Summary is intended to provide the reader with the overall conclusions of the project. It is not intended to be all encompassing. The Environmental Setting/Affected Environment documents the detailed land use distribution (see Table 3.2-1, Figures 3.2-1 and 3.2-2, and text associated with those references). Transportation and utilities are also discussed as separate categories in both the Executive Summary and sections in the EIS/EIR.

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NCTD-2

NCTD-3

As indicated in SANDAG INFO: Land Use in the San Diego Region, Public Facilities & Utilities (of which transportation is a component) is a major land use in the San Diego Region. However, this land use has not been included in this EIS/EIR's project location description of major land uses in the study area. Table 1 on page 5 of SANDAG INFO, Generalized Land Use (1990 and 1995), shows Public Facilities & Utilities as occupying 9.7% (263,741) of existing San Diego County acreage in 1995. Table 3 on page 7, 1995 Generalized Land Use (Acres) by Major Statistical Area, identifies 53.6% (141,277) of existing acreage in North San Diego County West as being occupied by Public Facilities & Utilities. Therefore, due to the amount of acreage occupied by Public Facilities & Utilities in the MHCP Study Area, this land use should be included as one of the major land uses referred to in the Executive Summary Project Location description.

NCTD-4. Since project level plans for all transportation projects are not available at this time, it is impossible to quantify the number requested. It has been concluded that the project has no effect on existing facilities because the MHCP does not alter the existing development or operations of existing facilities. Future development will need to adhere to standards specified in each of the Subarea Plans and MHCP.

NCTD-5. There are numerous utilities and transportation providers within the MHCP geographic coverage. It should be recognized that any development would require the utility or transportation provider to address right-of-way noise, construction, staging, buffers and mitigation for both direct and indirect impacts. The MHCP and associated Subarea Plans have provided the flexibility for the construction of infrastructure; however, that infrastructure will need to address the least environmentally damaging design and implement mitigation measures. This is not substantially different than what occurs today, with the exception that the MHCP cities will have the authorization to issue the take permits.

NCTD-4

2. Page ES-11, Table ES-1 – Comparison of FPA Impacts on Vacant Land Designated for Future Development: "...Industrial, TCU...Alternative 1 - 239 acres; Alternative 2 - 240 acres; Alternative 3 - 705 acres..."

Of each Alternative TCU acreage portion listed on this Table, how many Transportation Future Development acres are proposed to be dedicated/impacted? Where is this Transportation acreage located?

How, if at all, does the Project propose to affect NCTD right-of-way from Oceanside to Escondido, including the Oceanside-Escondido Second Main Track Project?

How, if at all, does the Project propose to affect NCTD right-of-way along the coast?

NCTD-5

3. Page ES-15, Table ES-2 – Summary of Significant Impacts: "...Regional Transportation and Circulation...Will implementation of the alternative result in significant impacts to the transportation and circulation network?...Less than Significant..."

NCTD is a state-created agency operating and maintaining a railroad that is of essential national, state, and regional importance. This railroad serves intra and interstate commerce (freight), as well as national passenger rail (Amtrak) and regional commuter rail (Coaster), which is operated by NCTD as a transit provider. NCTD is owner of a portion of the Los Angeles-San Diego (LOSSAN) rail corridor in San Diego County (from the Orange County boundary to the southern city limits of the City of Del Mar) and operates and maintains all of the LOSSAN corridor in San Diego County. Therefore, any designation of NCTD right-of-way as being "conserved;" any restrictions regarding right-of-way noise, construction (such as grading and staging areas), maintenance, or access; any implications requiring the erection of physical barriers or functional buffers; or any additional mitigation, review process or demonstration that the MHCP or City Subarea Plans would seek to

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impose on NCTD projects would potentially significantly impact the transportation and circulation services provided by NCTD. As a result, this EIS/EIR should reflect that if any of the aforementioned affects occur, the proposed MHCP and Subarea Plans would have significant impacts on the transportation and circulation services.

In addition, NCTD is of the opinion that the discussion in this EIS/EIR regarding the significance of impacts to transportation and circulation is generally too broad and does not address potential issues, such as those mentioned above. A detailed analysis is needed to determine any significant transportation and circulation impacts, and to identify appropriate mitigation measures. Please note, however, that if preserve areas do seek to affect NCTD right-of-way, flexibility must exist within the preserve plans to allow for public utilities, such as railroads, to develop.

NCTD-6

For example, will proposed MHCP preserve locations seek to affect or include NCTD right-of-way property located along the Coastline or throughout Oceanside to Escondido? If so, this would be an impact in need of further analysis, and NCTD reserves its right to address this topic based on adequate information. Does the MHCP propose to designate as "preserved" all wetland and aquatic habitats within and adjacent to the following lagoons: San Elijo Lagoon, Batiquitos Lagoon, Aqua Hedionda Lagoon, Buena Vista Lagoon, and the San Luis Rey River? If so, the designation of "preserved" would have a significant affect on NCTD right-of-way located in those areas, thereby requiring further analysis in this EIS/EIR.

NCTD-7

Furthermore, page 2-15 of this EIS/EIR states that "private property rights will be fully respected and upheld, and land will be acquired only from willing sellers at fair market value or upon terms mutually satisfactory to the buyer and seller." This statement would seem to indicate that the MHCP could not designate as "preserved" lands that are under ownership of "unwilling" sellers. Therefore, should not any private land that has been designated as "preserved" in this EIS/EIR, but has not been acquired from a willing seller, be identified as such or not be included in preserved/designated acreage totals?

NCTD-8

4. Page ES-31, Regional Transportation and Circulation: "...This Joint EIS/EIR concludes that existing and future regional and local circulation networks can be implemented through design guidelines incorporated into the proposed MHCP Plan and Subarea Plans. This will minimize or avoid impacts to regional transportation and circulation...Each city's Circulation Network, SANDAG's RTP, and future discretionary actions analyze the direct and indirect impacts to the circulation network...No significant impacts have been identified for the proposed project or the alternatives. It is assumed that for any of the alternatives... the regional and local circulation will be built in accordance with the existing General Plans and the RTP."

NCTD-6. All wetlands in the entire MHCP will be subject to no-net-loss policies. This does not change the existing regulatory process. Furthermore, impacts to jurisdictional wetlands of the US Army Corps of Engineers and California Department of Fish and Game will remain subject to their no-net-loss policies. The MHCP does not regulate the wetlands; however, to avoid discrepancies between MHCP Subarea Plan permitting and the permitting process, the Subarea Plan would be providing for no-net loss of wetlands.

NCTD-7. The MHCP has not implemented 100% conservation on any property that had an unwilling owner. However, the MHCP has proposed conservation levels that require (if the program is approved) a certain proportion of the land to be conserved, while allowing the owner with a reasonable use of the site.

NCTD-8. The design guidelines in the MHCP would not substantially alter the design and permitting of infrastructure. If an NCTD project (within the geographic bounds of the MHCP) results in impacts to regulated biological resources, then NCTD will obtain its take permit either through the City as a third party beneficiary or from USFWS/CDFG. As to the restrictions associated with right-of-way noise, construction, maintenance, etc., these issues would have to be implemented with or without the MHCP.

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This EIS/EIR's conclusion, "that existing and future regional and local circulation networks would be implemented through design guidelines incorporated into the proposed MHCP Plan and Subarea Plans," would have a significant impact on how transportation and circulation services are currently designed, permitted, and provided. Therefore the statement that "this will minimize or avoid impacts to regional transportation and circulation" is not accurate and should be changed to reflect as such.

Have the above mentioned "design guidelines" been drafted, seen, or commented on by the agencies or organizations that would be affected?

NCTD-9

With regard to the analysis of direct and indirect impacts to the circulation network conducted by each city's Circulation Network, SANDAG's RTP, and future discretionary actions, was train traffic taken into consideration and considered a component of that circulation network? Only roadway traffic is mentioned throughout this EIS/EIR.

NCTD-10

For the statement, "...No significant impacts have been identified for the proposed project or the alternatives..." please see Comment # 3 with regard to significance of impacts.

Have transportation agencies had the opportunity to comment on the assumption set forth in this EIS/EIR that "...for any of the alternatives...regional and local circulation will be built in accordance with the existing General Plans and the RTP...?"

NCTD-11

5. Page ES-32-36, Subarea Plans: The Subarea Plans for Carlsbad, Encinitas, Escondido, Oceanside, and San Marcos each state "...No significant impacts were noted for any regional transportation..."

Please see Comment # 3.

NCTD-12

6. Page ES-34, Table ES-5 – Significance of each Subarea Plan:

Please see Comment # 3.

NCTD-13

7. Page 1-6, Para. 3: "...2. Larger preserves are better...The largest remaining blocks of habitat (more than a few hundred acres each) will be substantially conserved, particularly in northeast Escondido (Daley Ranch and Escondido Water District lands), north Oceanside (adjacent to Camp Pendleton), northeast Carlsbad (the Carlsbad Highlands area), and in northern and

NCTD-9. The EIS/EIR does not analyze train traffic or potential delays created by railway service.

NCTD-10. Please see response NCTD-5, -6, and -7.

NCTD-11. Please see response NCTD-5, -6, and -7.

NCTD-12. Please see response NCTD-5, -6, and -7.

NCTD-13. Please see response NCTD-5, -6, and -7.

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southwestern San Marcos. In addition, the relatively large blocks of wetland habitats associated with the coastal lagoons are substantially conserved...”

Please see Comment # 3.

NCTD-14

8. Page 1-7, Para. 3: “...5. Link preserves with corridors...East/west linkages, primarily along narrow riparian corridors, will be maintained to most of the coastal lagoons...”

Please see Comment # 3.

NCTD-15

9. Page 1-7, Para. 5: “...7. Protect preserves from encroachment...The framework plan and area-specific management directives will address management and monitoring actions for proposed infrastructure such as roads and trails, as well as fencing, ...[and] signage...”

Please see Comment # 3 and Comment # 4.

NCTD-16

10. Page 1-23, Para. 1: “For Land Use and Planning, environmental effects have been identified as potentially significant for conflicts with plans, policies, or regulations adopted for the purpose of avoiding or mitigating an environmental effect...”

If environmental effects have been identified as potentially significant with regard to Land Use and Planning, how can this EIS/EIR state that any effects to transportation and circulation would be less than significant? Land Use and Planning is a critical component in the planning, development, and construction stages of transportation and circulation projects. Insofar as regulatory land use powers exist, NCTD will continuously engage in the process of ensuring that resources such as time, capital, and labor are allocated properly and in accordance with applicable land use laws. Therefore, any significant impact that may result to Land Use and Planning from this project should be taken into consideration when determining the significance of impacts to the various land uses in the project study area, such as transportation and circulation.

NCTD-17

11. Page 1-23, Para. 2: “...1.5.4 Issues Not Considered Significant and Not Selected for Detailed Analysis... Transportation/Circulation...”

NCTD-14. Please see response NCTD-5, -6, and -7.

NCTD-15. Please see response NCTD-5, -6, and -7.

NCTD-16. The land use impacts were found to be significant related to : “Direct conflict or land use incompatibility with adjacent existing and planned land uses. Criteria for determining incompatibility with adjacent land uses will be determined using the Guidelines for Compatible Land Uses, Preserve Management and Monitoring found in Chapter 6 of the MHCP Plan as well as the individual Subarea Plans.

Direct conflict or land use inconsistency with the environmental goals of the general plans and community plans (including Local Coastal Programs, as applicable) of the jurisdictions participating in the MHCP Plan.” Since the MHCP and associated Subarea Plans were prepared with the assumption that the regional circulation network (including planned regional infrastructure) would be constructed, the findings that adoption and implementation of the MHCP would not result in any significant impacts is correct.

NCTD-17. See response NCTD-8.

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As mentioned in Comment # 10, potential significant impacts have been identified in this EIR for Land Use and Planning, a significant component in the planning, development, and construction of transportation and circulation projects. In addition, Comment # 3 identifies a number of factors, that if occur, would result in significant impacts to transportation and circulation services. Such factors include: any designation of NCTD right-of-way as being "conserved;" any restrictions regarding right-of-way noise, construction, maintenance, or access; any implications requiring the erection of physical barriers or functional buffers; and any additional mitigation, review process or demonstration that the MHCP or City Subarea Plans would seek to impose on NCTD projects would potentially significantly impact the transportation and circulation services provided by NCTD. Therefore, due to the overriding number of potential significant impacts to transportation and circulation, this category should have been considered a significant issue and selected for detailed analysis.

NCTD-18

12. **Page 2-14, Para.1: "...Private projects that propose impacts to wetlands must demonstrate with substantial factual evidence that the impact is essential to maintaining some economic or productive use of the property and that no feasible alternative will eliminate or minimize the impact or otherwise result in greater biological value. If impacts to wetlands cannot be avoided while retaining economic or productive use of the property, an evaluation of biological functions and values shall be made based on the best available science...."**

That a private project must "demonstrate with substantial factual evidence that the impact is essential to maintaining some economic or productive use of the property" imposes a hardship, and subjective standard, on the agency proposing the project. Who determines what is deemed to be "substantial factual evidence"? When is an impact "essential"? What is meant by "some economic or productive use of the property", and how is it demonstrated?

In addition, that a private project must "demonstrate...that no feasible alternative will eliminate or minimize the impact or otherwise result in greater biological value" imposes a hardship on, and therefore significantly impacts, the agency proposing the project. Who prepares and pays for this alternatives analysis? Who is the analysis submitted to? What guidelines govern acceptance of the analysis?

That "an evaluation of biological functions and values shall be made based on the best available science" if "impacts to wetlands cannot be avoided while retaining economic or productive use of the property" imposes another hardship on, and therefore significantly impacts, the agency proposing the project. Who prepares and pays for this evaluation? Who is the evaluation submitted to? What guidelines govern approval or disapproval of the evaluation? If the local jurisdiction does not initially concur, can the agency then appeal to the USFWS and CDFG? If not, this

NCTD-18. Impacts to wetlands must be avoided to the maximum extent practicable under the existing regulatory programs (USACOE, CDFG and CCC). Thus, any applicant for a project must provide the wildlife agencies with verification that the impacts cannot be avoided; if not avoided, the impacts have been minimized and the mitigation is adequate. This analysis will be submitted to the applicable City for processing through its entitlement process. If an applicant is denied a permit by the agency, the appeal process is through the standard program (either to the next level in the City or through legal challenge). Wetland mitigation will be incorporated as part of the Implementing Agreement and take permit for each City. Specifically, the MHCP states, "Projects that propose to impact a wetland must demonstrate with substantial factual evidence that the impact is essential to maintaining some economic or productive use of the property and that no feasible alternative would eliminate or minimize the impact or otherwise result in greater biological value. If impacts to wetlands cannot be avoided while retaining economic or productive use of the property, an evaluation of biological functions and values shall be made based on the best available science...Any unavoidable impacts to wetlands must be mitigated to result in no net loss of wetland vegetation acreage and biological function and value within the MHCP subregion and preferably, but not necessarily, within the same drainage and city. Subarea plans may apply stricter avoidance standards for wetlands inside the FPA than outside the FPA. However, the no net loss standard must be achieved regardless of location."

In implementing the appropriate mitigation for wetland habitat, the following management guidelines must be incorporated:

1. For wetlands currently in or proposed for open space, each jurisdiction shall prepare a management plan to ensure maintenance and monitoring of this habitat and its species.
2. For wetlands currently in or proposed for open space, each jurisdiction shall prepare a management plan to restore disturbed portions of this habitat, including management and restoration plans for sensitive species occurring in this habitat.
3. Where conditions are appropriate, create new wetlands by converting disturbed upland habitat.

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would be a significant impact on the agency's ability to work with these governmental entities in the planning and development of projects.

NCTD-19

13. **Page 2-13, Para. 4: "...Road or utility projects that must cross wetlands and that are permitted under MHCP Subarea Plans will be required to demonstrate that the crossing will occur at the least overall biologically sensitive location and that all feasible minimization measures have been employed..."**

That a project must "demonstrate that the crossing will occur at the least overall biologically sensitive location and that all feasible minimization measures have been employed" imposes a hardship on, and therefore significantly impacts, the agency proposing the project. The least overall biologically sensitive location may not be consistent with the preferred alignment for a project, such as a second main track railroad project that is looking to utilize the right-of-way and engage in curve straightening.

NCTD-20

14. **Page 2-25, Development Process: "Each of the Subarea Plans will include standards, criteria, and policies that will apply to development projects as they are proposed in each jurisdiction. If such standards and criteria are met and the policies are followed, project proponents will receive take authorization as 'third-party beneficiaries'"**.

Additional standards, criteria, and policies that will be applied to development projects by the various Subarea Plans will impose additional hardships and have significant impacts on how various land uses, such as transportation and circulation services, are currently planned and provided, especially to the extent that NCTD is a regional agency.

NCTD-21

15. **Page 2-29, Figure 2.2-1, Focused Planning Area ~ Alternative # 1, Page 2-30, Figure 2.2-2, Focused Planning Area ~ Alternative # 2, Page 2-34, Figure 2.2-3, Focused Planning Area ~ alternative # 3:**

These figures do not show the railroad right-of-way. The reader must speculate as to whether Hardline, Softline, and Biological Core and Linkage Areas pictured on the figures exist on, or next to, various portions of NCTD railroad right-of-way.

Would you please include a figure within this EIS/EIR that clearly depicts railroad right-of-way existing along the Coastline and inland from Oceanside to Escondido, and clearly delineates whether the mapped hardline, softline, and biological core and linkage areas are located on, or next to, the railroad right-of-way.

NCTD-19. See NCTD-18.

NCTD-20. If NCTD wants to take advantage of the City's ability to issue take authorization, NCTD will need to incorporate the referenced standards, criteria and policies. Otherwise, NCTD can go to the wildlife agencies and obtain take authorizations through individual permitting.

NCTD-21. The Railroad alignments have been added to Figures 3.4-1 and 3.4-2. Similarly, the roadways depicted on these figures do not represent the entire right-of-way of each facility, rather the general location of the facility. Future projects as depicted in the Regional Transportation Plan or the city's subarea plans are still subject to environmental review.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

16. Page 2-43, Figure 2.3-1, City of Carlsbad Subarea Plan,
Page 2-65, Figure 2.3-4, City of Oceanside Subarea Plan,
Page 2-71, Figure 2.3-5, City of San Marcos Subarea Plan:

These figures do not show railroad right-of-way. The reader must speculate as to whether Hardline Areas, Sofline Areas, Offsite Mitigation Zones, Wildlife Corridor Planning Zones, Corrective Action Areas, and Vernal Pool Major Amendment Areas pictured on the maps, exist on, or next to, various portions of NCTD railroad right-of-way.

The Oceanside-Escondido Rail Project will be located on both existing and new railroad rights-of-way extending from Oceanside inland through Vista and San Marcos to Escondido. This project consists of improving 22 miles of existing railroad right-of-way between the Oceanside and Escondido Transit Centers and adding 1.7 miles of new right-of-way to California State University San Marcos to establish a complete new passenger rail system including new vehicles, stations, a maintenance facility, and right-of-way improvements. The purpose of the Oceanside-Escondido Rail Project is rooted in the existing and increasing congestion projected for the SR-78 corridor, which SANDAG has identified as one of the region's highest priority guideway (transit) corridors (SANDAG 1992). Review of the Subarea Plans, imparticularly Figure 2.3-4, shows that the Oceanside-Escondido Rail Project will be located in a Pre-approved Mitigation Area, a Wildlife Corridor Planning Zone, an Offsite Mitigation Zone I, and possibly a Hardline Preserve and Corrective Action Area.

Would you please identify on each Subarea Plan, railroad right-of-way that exists along the Coastline and inland from Oceanside to Escondido, and clearly delineate whether hardline, softline, offsite mitigation, wildlife corridor, corrective action and/or vernal pool major amendment areas are located on, or next to, such railroad right-of-way.

In addition, if the various Subarea Plans do propose to affect NCTD right-of-way, flexibility must exist within the preserve plans to allow for public utilities, such as railroads, to develop. To the extent that the current environmental documents fail to identify and analyze with specificity these delineations, NCTD reserves it right to address this topic based on adequate information.

17. Page 2-67, City of Oceanside Zoning Ordinance: "...A review process similar to the Hillside Development Plan could be required for all development within the Subarea..."

As previously commented, any required review process that may be imposed on development projects within the Subarea Plan would have a significant impact on the

NCTD-22. See NCTD-20 and 21.

NCTD-23. If NCTD wants to take advantage of the City's ability to issue take authorization, NCTD will need to incorporate the referenced standards, criteria and policies. Otherwise, NCTD can go to the Resources agencies and obtain take authorization through individual permitting.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

planning and approval processes currently in place for those developers.

NCTD-24

18. Page 3-3, Figure 3.2-1, Existing Land Use MHCP Study Area:

As indicated in the legend as Transportation, please identify NCTD railroad right-of-way corridors appropriately.

NCTD-25

19. Page 3-5, Figure 3.2-2, Planned Land Use MHCP Study Area:

As indicated in the legend as Transportation, please identify NCTD railroad right-of-way corridors appropriately.

NCTD-26

20. Page 3-11, Figure 3.2-3, Important Farmland MHCP Study Area:

Please identify NCTD railroad right-of-way corridors.

NCTD-27

21. Page 3-14, Figure 3.2-4, Mineral Resources MHCP Study Area:

Please identify NCTD railroad right-of-way corridors.

NCTD-28

22. Page 3-19, Figure 3.3-1, Vegetation Communities:

Please identify NCTD railroad right-of-way corridors.

NCTD-29

23. Page 3-35, Regional Transportation/Circulation: "The existing Regional Transportation System is illustrated in Figure 3.4-1. Regional highway system components include state highways, regional arterials, and local streets and roads (SANDAG Regional Transportation Plan, April 2000)....To accommodate population and development growth in the region, SANDAG developed the 2020 Regional Transportation Plan (RTP). The Highway Plan identifies the facilities and programs necessary to meet the increasing travel needs through year 2020....The RTP proposes expansion of the freeway and expressway system, with most of the new routes implemented prior to the year 2005...."

Upon reviewing the SANDAG Regional Transportation Plan, one will notice that Figure 3.4-1 does not illustrate the Regional Transportation System as this EIS/EIR states. Rather, this figure illustrates the 2020 Highway Plan located on page 7 of the

NCTD-24. See NCTD-21.

NCTD-25. See NCTD-21.

NCTD-26. See NCTD-21.

NCTD-27. See NCTD-21.

NCTD-28. See NCTD-21.

NCTD-29. SANDAG is currently preparing an update for the RTP. It is not the intent of this environmental document to provide environmental clearance for all transportation projects on a project basis. This document is an environmental document addressing the implications of adopting a MHCP and associated Subarea Plans. Although some projects may require additional mitigation (i.e., mitigation ratios are established for non native grasslands where currently, non native grasslands are not typically mitigated in areas outside of NCCP) this is not considered to result in significant impacts to those projects.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

SANDAG RTP.

This EIS/EIR does not discuss transit, railroads, or their respective rights-of-way. Nor does this EIS/EIR reflect that transit ridership, as well as highways, is a concern and plan objective of the 2020 Regional Transportation Plan. Public transportation services are provided both for trips within the region and for trips between San Diego and adjacent areas. NCTD is responsible for 33 bus routes in a service area of more than 1,000 square miles, and is also responsible for Coaster commuter rail service, which provides 18 trips daily between Oceanside and Center City San Diego. There are currently about 77 miles of freeway over capacity during peak periods, therefore, the RTP has traditionally recommended major transit facilities and services as a primary means of increasing person-carrying capacity in heavily congested corridors. *Transnet*, a 20-year local sales tax passed by voters in 1987 to provide funding for highways, local roads and public transit, will fund improvements to Coaster commuter rail service in the coastal corridor, as well as rail transit service in the Oceanside to Escondido Corridor. Therefore, to more accurately portray the Regional Transportation System, transit should be discussed and the figure illustrating the 2020 Transit Plan on page 9 of the 2020 RTP should be included in this EIS/EIR as well.

NCTD-30. See NCTD-21.

NCTD-31. See NCTD-21.

NCTD-32. See NCTD-4.

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NCTD-30

24. Page 3-41, Figure 3.4-2, Local Circulation Network:

This Figure does not show the railroad right-of-way. The reader must speculate as to whether MHCP Focused Planning Areas (FPAs) pictured in this study area, exist on, or next to, various portions of NCTD railroad right-of-way.

Would you please identify on this figure railroad right-of-way that exists along the Coastline and inland from Oceanside to Escondido, and clearly delineate whether the proposed Focused Planning Areas are located on, or next to, such railroad right-of-way.

In addition, if the Focused Planning Areas do propose to affect NCTD right-of-way, flexibility must exist within the preserve plans to allow for public utilities, such as railroads, to develop.

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NCTD-31

25. Page 4-5, Figure 4.2-1, Planned Land Use FPA Alternatives 1 & 2:

As indicated in the legend as Transportation, please identify NCTD railroad right-of-way corridors appropriately.

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NCTD-32

26. Page 4-7, Table 4.2-1 – Impact of Conservation on Planned Land Use by City:
FPA Alternative 1: "...Industrial, TCPU...Carlsbad - 137 acres; Encinitas – 2 acres; Escondido – 10 acres; Oceanside – 49 acres; San Marcos – 16 acres;

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

Solana Beach – 0 acres; Vista – 25 acres; Total Cities – 239 acres...”

See Comment # 2.

NCTD-33

27. Page 4-11, *City of Carlsbad*: “The City of Carlsbad Subarea Plan includes standards for land uses adjacent to the preserve to maintain the biological functioning and viability of the preserve. These standards include requirements related to fire management, erosion control, landscaping, fencing, signs, lighting, and predator and exotic species control...”

See Comment # 3.

NCTD-34

28. Page 4-11, *City of Encinitas*: “The City of Encinitas Subarea Plan includes guidelines for land uses adjacent to the preserve...These guidelines include requirements related to drainage and toxics, erosion and sedimentation, lighting, noise, barriers, landscaping, and fire and brush management...”

See Comment # 3.

NCTD-35

29. Page 4-12, *City of Escondido*: “The City of Escondido Subarea Plan includes guidelines for land uses adjacent to the preserve to maintain the biological functioning and viability of the preserve...”

See Comment # 3.

NCTD-36

30. Page 4-12, *City of Oceanside*: “The City of Oceanside Subarea Plan includes standards for the preserve design...These guidelines include requirements related to buffers for tributaries and creeks and to fire and fuel management...”

See Comment # 3.

NCTD-37

31. Page 4-12, *City of San Marcos*: “The City of San Marcos Subarea Plan includes standards for the preserve design...These guidelines include requirements related to landscaping, lighting, and fencing...”

See Comment # 3.

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NCTD-33. See NCTD-5.

NCTD-34. See NCTD-5.

NCTD-35. See NCTD-5.

NCTD-36. See NCTD-5.

NCTD-37. See NCTD-5.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

NCTD-38

32. Page 4-15, Figure 4.2-2, Important Farmland MHCP Study Area, FPA Alternatives 1 & 2:

See Comment # 24.

NCTD-38. See NCTD-30.

NCTD-39. See NCTD-30.

NCTD-40. See NCTD-4.

NCTD-41. See NCTD-4.

NCTD-42. See NCTD-21.

NCTD-43. See NCTD-21.

NCTD-39

33. Page 4-19, Figure 4.2-3, Mineral Resources MHCP Study Area, FPA Alternatives 1 & 2:

See Comment # 24.

NCTD-40

34. Page 4-23, Table 4.2-4 – Impact of Conservation on Planned Land Use by City: FPA Alternative 2: "...Industrial, TCPU...Carlsbad - 137 acres; Encinitas – 2 acres; Escondido – 10 acres; Oceanside – 49 acres; San Marcos – 16 acres; Solana Beach – 0 acres; Vista – 25 acres; Total Cities – 239 acres; Core CGN Habitat – 1 acre; Total – 240 acres..."

See Comment # 2.

NCTD-41

35. Page 4-28, Table 4.2-5 – Impact of Conservation on Planned Land Use by City: BCLA Alternative 3: "...Industrial, TCPU...Carlsbad - 441 acres; Encinitas – 4 acres; Escondido – 10 acres; Oceanside – 136 acres; San Marcos – 60 acres; Solana Beach – 0 acres; Vista – 54 acres; Total Cities – 704 acres; Core CGN Habitat – 1 acre; Total – 705 acres..."

See Comment # 2.

NCTD-42

36., Page 4-29, Figure 4.2-4, Planned Land Use BCLA Alternative 3:

As indicated in the legend as Transportation, please identify NCTD railroad right-of-way corridors appropriately.

NCTD-43

37. Page 4-34, Figure 4.2-5 Important Farmland MHCP Study Area BCLA Alternative 3:

This Figure does not show the railroad right-of-way. The reader must speculate as to whether Biological Core and Linkage Areas (BCLAs) pictured in this study area, exist on, or next to, various portions of NCTD railroad right-of-way.

Would you please identify on this figure railroad right-of-way that exists along the

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

Coastline and inland from Oceanside to Escondido, and clearly delineate whether the proposed Biological Core and Linkage Areas are located on, or next to, such railroad right-of-way.

In addition, if the Biological Core and Linkage Areas do propose to affect NCTD right-of-way, flexibility must exist within the preserve plans to allow for public utilities, such as railroads, to develop.

NCTD-44

38. Page 4-38, Figure 4.2-6, Mineral Resources MHCP Study Area BCLA Alternative 3:

See Comment # 37.

NCTD-45

39. Page 4-47, Figure 4.3-1 Vegetation Communities within the MHCP Study Area:

Please identify NCTD railroad right-of-way corridors.

NCTD-46

40. Page 4-53, Figure 4.3-2, Recorded Locations of Sensitive Species* MHCP Study Area and FPA Alternatives 1 & 2:

See Comment # 16.

NCTD-47

41. Page 4-59, Figure 4.3-3, Recorded Locations of California Gnatcatchers FPA Alternatives 1 & 2:

See Comment # 16.

NCTD-48

42. Page 4-75, Figure 4.3-4, Focused Planning Area (FPA) and Biological Core and Linkage Area (BCLA) MHCP Study Area:

This Figure does not show the railroad right-of-way. The reader must speculate as to whether Focused Planning Areas (FPAs) and Biological Core and Linkage Areas (BCLAs) pictured in this study area, exist on, or next to, various portions of NCTD railroad right-of-way.

Would you please identify on this figure railroad right-of-way that exists along the Coastline and inland from Oceanside to Escondido, and clearly delineate whether the proposed Focused Planning Areas and Biological Core and Linkage Areas are located on, or next to, such railroad right-of-way.

NCTD-44. See NCTD-21.

NCTD-45. See NCTD-21.

NCTD-46. See NCTD-22.

NCTD-47. See NCTD-22.

NCTD-48. See NCTD-21.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

In addition, if the Focused Planning Areas and Biological Core and Linkage Areas do propose to affect NCTD right-of-way, flexibility must exist within the preserve plans to allow for public utilities, such as railroads, to develop.

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NCTD-49

43. Page 4-95, Figure 4.3-5, Recorded Locations of Sensitive Species* MHCP Study Area and BCLA Alternative 3:

See Comment # 37.

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NCTD-50

44. Page 4-100, Figure 4.3-6, Recorded Locations of California Gnatcatchers BCLA Alternative 3:

See Comment # 37.

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NCTD-51

45. Page 4-215, 4.4 REGIONAL TRANSPORTATION/CIRCULATION, 4.4.1 Criteria for Determining Significance: "For this section, the following criteria are used to determine significance of an impact:

- If the project would result in the elimination or reconfiguration of transportation/circulation facilities necessary to achieve MHCP Plan or Subarea Plan goals that will result in increased traffic congestion or unacceptable levels of service (Level of Service D or below), these are regarded as significant impacts..."

Could you please provide an explanation as to how the above criterion was established?

The above criterion this EIS/EIR uses to measure the level of significance the MHCP has on regional transportation and circulation is limited in its scope. In determining the level of significance MHCP impacts have on transportation and circulation services, this EIS/EIR needs to take into consideration such factors including, but not limited to, the following:

- If the project would result in the elimination or reconfiguration of any transportation and circulation facilities or services, whether they be in existence or in planning stages;
- If the project would result in any alteration or hindrance to maintenance of transportation and circulation facilities;
- If the project would result in any limitation to access of transportation and

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NCTD-52

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NCTD-53

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NCTD-49. See NCTD-21.

NCTD-50. See NCTD-21.

NCTD-51. SANDAG, serving as the lead agency for this EIR established the criteria based upon a review of CEQA Guidelines and the City of San Diego's Multiple Species Conservation Program.

NCTD-52. The MHCP does not affect any existing development. Should a proposed project result in the take of a covered species or associated habitat, then a discretionary project would need to comply with the requirements. If alteration or maintenance would result in impacts, that project would need to comply with CEQA and associated Endangered Species Act. This significance criteria has no validity.

NCTD-53. See NCTD-52.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

- circulation facilities;
- NCTD-54 • If the project would result in any limitation or restriction to the future expansion of transportation and circulation facilities;
- NCTD-55 • If the project would result in any impediment or encumbrance to the property or right-of-way of transportation and circulation agencies.
- NCTD-56 • If the project would result in the imposition of additional mitigation by transportation and circulation agencies;
- NCTD-57 • If the project would result in the imposition of additional review processes, demonstrations, evaluations, standards, criteria, or policies that would apply to transportation and circulation development projects as they are proposed in each jurisdiction;
- NCTD-58 • If the project would result in any alterations to Land Use and Planning Policies that transportation and circulation agencies currently adhere to and are accustomed to following.

NCTD-59 46. **Page 4-215, Para. 3: "...Although major roadways are considered to be incompatible with preserve goals, the MHCP Plan acknowledges that existing and planned regionally important facilities such as roads and other key infrastructure are expected to be included in Subarea Plans in a manner which will allow a functional preserve..."**

Does the above reference to "existing and planned regionally important facilities such as roads and other key infrastructure" include existing and planned railroad right-of-way and facilities?

If so, what is meant by "in a manner which will allow a functional preserve"? What measures, if any, are proposed to be taken if the "key infrastructure" that is to be included in the Subarea Plan is not consistent with a functional preserve? Who assumes financial responsibility for conforming an existing key infrastructure so that it will allow for a functional preserve?

NCTD-60 47. **Pages 4-216 to 218, Environmental Impacts/Consequences for the Subarea Plans of Carlsbad, Encinitas, Escondido, Oceanside, and San Marcos:**

As in Comment # 23, each City Subarea Plan discussion dwells solely on environmental impacts and consequences to street and road construction projects,

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- NCTD-54. Future expansion of any facilities would need to comply with CEQA and Endangered Species Acts. If NCTD wants to take advantage of the City's ability to issue take authorization permits, NCTD will need to incorporate the referenced standards, criteria and policies. Otherwise, NCTD can go to the wildlife agencies and obtain take authorization permits through individual permitting.
- NCTD-55. See NCTD-52.
- NCTD-56. See NCTD-54.
- NCTD-57. See NCTD-54.
- NCTD-58. See NCTD-54.
- NCTD-59. Existing and planned railroad rights-of-way were not specifically addressed by the plan, but would be treated similarly to existing and planned roadways. Determining how infrastructure projects affect reserve functionality requires site-specific analysis and compliance with all applicable guidelines for avoiding, minimizing, and mitigating impacts on species or reserve function.

The federal Endangered Species Act ("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 prepared. The Secretary may also require other assurances that the plan will be implemented. The Implementing Agreement will ensure that adequate funding for the plan will be provided.

The Public Review Draft MHCP Plan requires that a portion of habitat acquisition (\$17.1 million), a portion of habitat restoration (\$1.7 million), and management, monitoring, and administrative costs (\$32.6 million in year 2000 present value) be funded by participating local jurisdictions through a cooperative regional funding program, to be placed on a ballot for voter approval within three years of the approval of the plan (Public Review Draft MHCP Plan, Vol. I, Sec. 7.2 and Table 7.3). The Draft MHCP Plan identifies a range of funding sources that may be used, such as property tax, Mello-Roos special tax, sales tax, and benefit assessment.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

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

- Commitment of public lands owned by participating local jurisdictions to the preserve and their management for biological resources (approximately 6,430 acres).
- Management of existing state and federal lands as part of the preserve (approximately 1,480 acres).
- Recently completed acquisition of selected properties using state and local funds, such as some of the stepping stone parcels in the City of Oceanside and upland parcels in the City of Encinitas along the south shore of Batiquitos Lagoon, a key linkage area in the City of Carlsbad, and Bernardo Mountain in the City of Escondido.
- Requirement of mitigation of impacts from new public and private projects.

The wildlife agencies (USFWS and CDFG) will, through implementing agreements with participating jurisdictions, "monitor plan implementation" and "ensure that habitat conservation proceeds in step with development" (Draft MHCP Plan, Vol. I, Sec. 5.2.3). Furthermore, "[i]f the wildlife agencies determine that the subarea plan is not being implemented as required, the wildlife agencies and the city will take the actions specified in the subarea plan and implementing agreement to remedy the situation" (Draft MHCP Plan, Vol. I, Sec. 5.3.8). The requirement to review will apply if a regional funding program is not approved in a timely manner, and an alternative remedy may require each jurisdiction to develop and implement a funding source adequate to meet its share of the MHCP and subarea plan implementation 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 CFR, Title 40, Sec. 1508.14, and California Public Resources Code, Sec. 21100).

NCTD-60. See NCTD-29. Also, the cities are the agencies covered by the MHCP which is why their projects are included in the plan. The MHCP doesn't preclude

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

NCTD projects; NCTD can be a third party beneficiary to the city's permits, or they can obtain permits directly from the wildlife agencies.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

neglecting to discuss transit, railroads, and their respective rights-of-way. Transit ridership, as well as highways, is a concern and plan objective of the 2020 Regional Transportation Plan. Major Regional Transit Projects that have been identified in the 2020 RTP include: The Oceanside-Escondido Rail Project; Double-tracking of the entire line from Oceanside to Center City San Diego; and the North County Fair Extension. These projects should be included in each of the appropriate City Subarea Plan discussions regarding impacts, along with the road/street projects that have already been identified.

In addition, as each Subarea Plan environmental impact discussion states, "Implementation of the Subarea Plan will not preclude implementation of the circulation projects identified in the above element of the 'X' General Plan," the same analysis should be done for the aforementioned proposed rail projects. In doing such an analysis, please refer to Comment #3 and Comment # 45 addressing significance of impacts and criteria.

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NCTD-61

48. **Page 4-218, MHCP Plan: "No significant impacts to the regional transportation facilities will occur as a result of implementation; thus, no mitigation is necessary."**

See Comment # 3, Comment # 45, and Comment # 47.

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NCTD-62

49. **Page 7-8, Last Paragraph: "The proposed project will...not preclude the development of planned roadways..."**

Does the proposed project seek to preclude the development of planned rail projects? As addressed in previous comments, a more detailed analysis is needed to adequately determine the significance of impacts to all aspects of transportation and circulation services, including transit and rail, not just roadways, and including future, not just existing, rail projects.

Thank you for the opportunity to comment on the Draft EIS/EIR for Threatened and Endangered Species due to the Urban Growth within the Multiple Habitat Conservation Program (MHCP) Planning Area, dated December 2001. Please feel free to contact me at (760) 967-2817 should you have any questions regarding our comments.

Very truly yours,

NCTD-61. See NCTD-5, 51, 52, 53, 54, 55, 56, 57, 58, and 60.

NCTD-62. It is not the intent of this environmental document to provide environmental clearance for all transportation projects on a project basis. This document is an environmental document addressing the implications of adopting a MHCP and associated Subarea Plans. Although some projects may require additional mitigation (i.e., mitigation ratios are established for non native grasslands where currently, non native grasslands are not typically mitigated in areas outside of NCCP) this is not considered to result in significant impacts to those projects.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

Kate Stonelake
Assistant Planner, NCTD

cc: Leslie Blanda, NCTD



City of Carlsbad

Planning Department

April 29, 2002

Janet Fairbanks
SANDAG
401 B Street, Suite 800
San Diego, CA 92101

RE: COMMENTS ON THE DRAFT EIR/EIS FOR THE MULTIPLE HABITAT CONSERVATION PLAN – CARLSBAD SUBAREA PLAN

The Carlsbad Habitat Management Plan (HMP) is one of five Subarea Plans included in the MHCP. The draft HMP is dated December 1999 and has not been revised since that time. However, there are three categories of changes that will need to be made before the HMP is finalized and approved. The City wishes to inform the public of the anticipated changes.

CBD-1 First, applications for development have continued to come in. Some of these have received approvals from the City. Others have not received City approvals but have attained hardline status as a result of discussions with the wildlife agencies. A few have also received take permits from the wildlife agencies. These actions will require the City to make some modifications to properties discussed in the HMP to reflect their changed status, notably Kelly Ranch, Calavera Hills, Bressi Ranch, the Raceway and Palomar Forum, the Summit, Cantarini, and Holly Springs.

CBD-2 Secondly, the City has been involved in discussions with the Coastal Commission regarding properties in the coastal zone. The discussions have not been completed but will likely result in some modifications to either the hardlines or standards for certain properties that are addressed in the HMP. These projects include the proposed City Golf Course, Kevane, the Promenade, and miscellaneous other properties in the coastal zone.

CBD-3 The third category of modifications results from settlement of litigation. These include Villages of La Costa/MAG Properties and Manzanita Partners. Villages of La Costa has a modest increase in onsite preservation due to that settlement, and Manzanita Partners has some added onsite revegetation and enhancement.

CBD-4 These changes do not affect the overall preserve design or levels of conservation and would therefore be consistent with the analysis and findings of the EIR. Persons desiring more information regarding any of these properties can contact me at (760) 602-4602.

Sincerely,

Don Rideout
Principal Planner

DR:cs

c: Planning Director

Letter 9: City of Carlsbad

CBD-1. This comment addresses existing development applications. The MHCP and associated Subarea Plans will direct development that is proposed subsequent to the adoption of the applicable plan. The acreages for projects approved (including impacts and preserved resources) have been updated.

CBD-2. This comment addresses potential changes to hardline or standard preserve areas within the City based on ongoing discussions. Any modifications to the standards or hardlines will be reviewed by the wildlife agencies. As long as the modifications are determined to be beneficial, the EIS/EIR findings would be similar and not require any additional evaluation. It is assumed that any discretionary approval would undergo the appropriate project level CEQA review.

CBD-3. This comment addresses the results of litigation within the City, and habitat preserve acreages. The results of settlements of existing litigation will not affect the conclusions reached in the MHCP, Subarea Plans, or EIS/EIR.

CBD-4. This comment provides closing remarks.*

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.





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15 September 1998

Janet Fairbanks
SANDAG
Multiple Habitat Conservation Plan
401 B St, Suite 800
San Diego, CA 92101-4231

Re: Consultants' Working Draft, North County MHCP Plan

Dear Janet:

- UCSD-1 [The University of California owns the 218-acre Dawson-Los Monos Canyon Reserve, which straddles the boundary between Carlsbad and Vista, and encompassing the most pristine stretch of the Agua Hedionda Creek. (This fact would be appropriately included in Section 2.5 LAND OWNERSHIP.) The University's Natural Reserve System manages the reserve as a naturally-functioning ecosystem which is available for teaching and research from primary school to university level. More information on the Reserve can be found at the following web address: <http://nrs.ucop.edu/reserves/dawson.html>
- UCSD-2 [Because of its mission to serve the public through education and conservation of the state's resources, the Natural Reserve System is a Trustee Agency under the California Environmental Quality Act. The Natural Reserve System (NRS) is not an enrolled participant in the NCCP program. However, we have an agreement to cooperate with the Department of Fish and Game when it is mutually beneficial. We have not received any requests for the inclusion of this University property in the FPA.
- UCSD-3 [The NRS is concerned about the implications of the currently-proposed preserve design for the MHCP, as illustrated in the "Consultants' Draft". Attached to this letter are Figures 2-6 and 3-1(b), enlarged to 200%, depicting Habitat Quality (solid copy) and Focused Planning Area (FPA), with the Consultant's additional recommendations (transparency overlay). The overlaying allows one to observe that there are large areas of very high-, and high-quality habitat that are omitted from the FPA. Conversely, there are low-habitat areas that are included. For example, just south of Palomar Airport Road there is one such large area. The rationale for inclusion and exclusion of such properties is not made clear. This circumstance may lead to confusion and be counterproductive in achieving conservation goals, for instance, when it is assumed that "...habitat within the FPA generally has greater conservation value..." (page 3-16)

Letter 10: UCSD

- UCSD-1. Comment introduces ownership of property.*
- UCSD-2. Comment addresses the fact that UCSD's property is not enrolled in the NCCP. The Memorandum of Understanding for Natural Community Conservation Planning between the University of California Natural Reserve System and the California Department of Fish and Game (February 1998) acknowledges the common interests of the NCCP and UCNRS System. To the extent practicable, the NRS committed to consider including its reserve lands into the NCCP Preserves. And, the Department committed, to the extent practicable, to consider NCCP preserves designs that would enhance the ecological status of NRS lands. The MHCP preserve design includes lands adjacent to the Dawson Reserve, and it is anticipated that the UCNRS would commit this property to the MHCP preserve.

UCSD-3. Habitat quality is determined by a GIS-based habitat evaluation model that ranks the relative biological value of land within the study area. The results of the model are used to prioritize lands for inclusion within the FPA. It is not possible to include all of the highest quality areas and there are numerous reasons for high quality habitat areas to be excluded from the FPA. For example, some high quality parcels have already been approved for development, or are privately owned and can only be shown as soft-lined areas. Conversely, there are several reasons for inclusion of low quality habitat. For example, these areas may already be dedicated as open space, low quality habitat may act to connect other higher quality areas, or these areas may buffer high quality habitat from development. Habitat within the FPA generally does have greater conservation value. Conservation value must consider other issues besides the habitat evaluation model, such as reserve configuration.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

UCSD-4

We are particularly concerned about the area immediately to the south of the Dawson Reserve, deemed very high-, and high-quality habitat, that was included in the Biological Core and Linkage Area, but which has been omitted from the FPA. The development of this property, owned by T&G Investments, would likely jeopardize the long-term viability of the Dawson Reserve, and our ability to manage it for the designated purpose. We have been reiterating this concern for several years, but have not seen any evidence of this issue included in any resulting plans, including the current one, which shows the property along the southern boundary of the Dawson Reserve as being outside the FPA.

UCSD-4.

The project was modified in response to previous comments from UCSD. The modification was to provide a 300-foot setback of any development from the property line boundary with the Dawson Reserve.

UCSD-5

The guidelines laid out in Section 3.8, BIOLOGICAL PRESERVE DESIGN CHECKLIST, give clear indications that this property should be included in the FPA in order to achieve many of the goals of the MHCP, and of the Carlsbad Subarea Plan. Among them are:

- the property has extensive patches of sensitive habitat ranked very high and high biological value
- the property would contribute to a large block of unfragmented habitat, including the southern ridgeline of the Dawson Reserve
- the property, together with the Dawson Reserve, would contribute to a large block of habitat that contributes to the preservation of wide-ranging species, including bobcat and coyote, which are found on the Dawson Reserve, and which are necessary for maintaining ecosystem structure
- the property, if preserved, would contribute to the survival of a complex, functional ecosystem, including a large array of habitat types, including mature oak-riparian forest, southern mixed chaparral with Ceanothus species, coastal sage scrub and native grassland
- the area would contribute to a linkage, and perhaps habitat, for California gnatcatchers; a single, singing individual was observed moving through non-coastal-sage scrub habitat in the Dawson Reserve on September 11, 1998
- the protection of part or all of the T&G property would ameliorate edge effects on the Dawson Reserve

UCSD-5.

The General Preserve Design guidelines provided in Section 3.8 describe the conservation planning concepts that should be considered when developing the ultimate preserve system within the individual jurisdictions. These biologically based guidelines are considered in conjunction with competing land use planning interests within the cities. See also response to UCSD-4.

We believe that within the current method of preserve assembly there are still many opportunities to obtain a better preserve design in the vicinity of the Dawson Reserve and in other areas. We hope that the MHCP process will take full advantage of scientific knowledge about preserve design, monitoring, and management to result in the best possible outcome.

Sincerely,

(Original signed)

Dr. Joshua Kohn, Associate Professor of Biology,
Chairman, Faculty Advisory Committee
Natural Reserve System
Biology Department
University of California, San Diego
9500 Gilman Drive
La Jolla, CA 92039-0116

cc: US Fish and Wildlife Service
California Department of Fish and Game
Carlsbad City Council

MHCP Consultants' Draft
UCSD NRS Comment letter
page 2

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

UNIVERSITY OF CALIFORNIA, SAN DIEGO

UCSD

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SANTA BARBARA • SANTA CRUZ

Natural Reserve System
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La Jolla, CA 92093-0116

Phone: (858) 534-2077
Fax: (858) 822-0696
ikay@ucsd.edu

FACSIMILE COVER SHEET

To: LeeAnn Carranza

Affiliation: USFWS

Fax: (760) 431-9618 Phone:

Date: 4/29/02 Number of pages (including this one): 4

From: Isabelle Kay

Affiliation: UCSD Natural Reserve System

Fax: (858) 822-0696 Phone: (858)-534-2077

Comments:

Letter referenced in the comments on the DRAFT EIR/EIS for the MHCP (SCH. NO. 93121073)

Isabelle Kay



NATURAL RESERVE SYSTEM
9500 GILMAN DRIVE
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29 April, 2002

Lee Ann Carranza
US Fish and Wildlife Service
2730 Loker Avenue West
Carlsbad, CA 92008
VIA FACSIMILE to (760) 431-9618

Re: DRAFT EIR/EIS for Threatened and Endangered Species Due to the Urban Growth within the Multiple Habitat Conservation Program Planning Area (SCH. NO. 93121073)

Dear Ms. Carranza:

UCSD2-1

The Dawson Reserve is located at the center of the second-largest area of core biological habitat in the study area, which itself is almost at the center of the study area. Major habitats within the Reserve's boundaries include mixed grassland, native grassland, chaparral/sage scrub mix, southern mixed chaparral, coast live oak woodland, sycamore-oak riparian forest, and willow-dominated riparian woodland. It is managed, as part of the statewide University of California Natural Reserve System, to provide educational opportunities in a prime example of undisturbed natural habitat. It surrounds the Aqua Hedionda Creek as the creek runs through the steep Los Monos Canyon. Upstream are the cities of San Marcos and Vista, and Carlsbad lies downstream. Carlsbad and San Marcos are projected to experience human population growth exceeding all other areas in the county in the next 18 years, with stunning annual predicted growth rates of 2.4% and 2.7%, respectively.

UCSD2-2

The University of California Natural Reserve System clearly has an extreme interest in maximizing the degree to which the Dawson Reserve remains part of a larger, naturally functioning ecosystem. The statewide NRS has established an agreement with the Department of Fish and Game to work together for the mutual benefit of both parties to coordinate in the NCCP process on a case-by-case basis for each of the UC Natural Reserves. However, no discussion has occurred regarding enrolling the Dawson Reserve in the MHCP, and therefore the 218 acres of diverse habitats it encompasses should not be counted towards this program.

UCSD2-3

The University of California Natural Reserve System is a Trustee Agency called out in CEQA because of its role in managing its lands in a natural state for the benefit of the people of California. Throughout the development of the Carlsbad HCP and the MHCP concept and plan, the NRS has attempted to become engaged in the process of preserve design and management.

REVISED FINAL

UCSD-2

UCSD2-1. Comment introduces ownership of property.*

UCSD2-2. It is not necessary for individual properties to enroll in the NCCP program. The City of Carlsbad's enrollment in 1992 effectively enrolled all land within the city limits. The portion of the UCSD property within Carlsbad is designated Open Space in both the General Plan and Zoning. Therefore, the property has been included in the proposed preserve system.

UCSD2-3. Habitat quality is determined by a GIS-based habitat evaluation model that ranks the relative biological value of land within the study area. The results of the model are used to prioritize lands for inclusion within the FPA. It is not possible to include all of the highest quality areas and there are numerous reasons for high quality habitat areas to be excluded from the FPA. For example, some high quality parcels have already been approved for development, or are privately owned and can only be shown as soft-lined areas. Conversely, there are several reasons for inclusion of low quality habitat. For example, these areas may already be dedicated as open space, low quality habitat may act to connect other higher quality areas, or these areas may buffer high quality habitat from development. Habitat within the FPA generally does have greater conservation value. Conservation value must consider other issues besides the habitat evaluation model, such as reserve configuration.

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UCSD2-4 At a very late stage in the discussion of the approach to be followed for the MHCP, the UCSD office of the NRS gained a place at the table of the MHCP Public Advisory Committee. However, FPAs had already been established by the City of Carlsbad, and the "Facilities Management Zone", #16, in which the Dawson Reserve is included had already been drawn up in such a way that major impacts to the Reserve would inevitably result. Specifically, the exclusion of the Carlsbad Oaks North property from the Preserve design would significantly reduce the contiguous habitat by 60 percent, affecting the Reserve's ability to support various sensitive indigenous species. We have continued at every possible opportunity to register our strong opposition and concerns regarding the severe impacts that development of this property, as conceived, would have on the Dawson Reserve.

UCSD2-5 There has never been an adequate explanation of how and why the development footprint of this project remained essentially unchanging for the past decade, regardless of the huge changes on the ground and in perception about the needs of the remaining resources for increased protection. The site is biologically extremely rich, which is reflected in the designation of "high quality" for its habitat, which includes mature oak riparian forest, freshwater marsh, southern mixed chaparral, and coastal sage scrub. In fact, the verbiage on page 2-3 regarding the goals of the MHCP appear not to have applied to the Carlsbad Oaks North project. One of the letters expressing our concerns on the matter has been attached for reference.

UCSD2-6 The Dawson Reserve, together with the adjacent Tchang property to the south (currently proposed for development as the Carlsbad Oaks North), supports a San Diego Coast Horned Lizard population. The planned conversion of approximately 67% of the property into building pads for light industrial uses will destroy much of this habitat. This local observation, together with the observations listed in Table 4.3-3, suggests that unless the Tchang property is sufficiently preserved to support the horned lizard population it shares with the Dawson Reserve, this species should not be considered "covered" under the MHCP.

UCSD2-7 The Dawson Reserve, as alluded to above, has suffered tremendous impacts from upstream development, largely in the riparian zone, but also upslope of the creek in non-riparian areas. These effects are not limited to the Dawson Reserve, and should be modeled for their impacts on the preserve system as a whole, and the riparian areas in particular. The problems within the Dawson Reserve include:

- 1) The surface waters of the Aqua Hedionda are severely polluted.
- 2) Year-round urban runoff supports invasive exotic species, including plants and animals, and permits their use of the riparian corridors as a means of expansion.
- 3) Flood flows cause severe scouring, resulting in downcutting and widening of the creek bed; habitats for riffle and pool species disappear; banks are undercut, and roots of riparian species are exposed; both young and mature specimens of bank-stabilizing species, such as oaks and sycamores are undermined and killed; debris dams cause additional flooding and worsening of the degradation.

The hydrology and water quality section of the EIR/EIS should discuss the problems and proposed solutions or mitigation measures in depth.

General comments

UCSD2-4. The project was modified in response to previous comments from UCSD. The modification was to provide a 300-foot setback of any development from the property line boundary with the Dawson Reserve.

UCSD2-5. The plans have been the subject of detailed biological study and analysis for over 10 years. The conservation standards utilized in the plans are those legally recognized standards stated in the U.S. and California Endangered Species Acts, the Federal Habitat Conservation Planning Handbook, the State of California's Natural Community Conservation Planning Program Planning Process Guidelines, and other authoritative sources. The analyses have concluded that the plans, while allowing some impacts to occur, will be adequate to prevent the extinction of the species of concern during and beyond the lifetime of the permits. See response to comment UCSD2-4.

UCSD2-6. The wildlife agencies have determined that what is currently proposed is not adequate for conservation for the San Diego horned lizard. However, this species is not currently considered covered under the MHCP (see Table 3-6 of MHCP Volume I) for various reasons described in the species analyses, including those cited in the comment.

UCSD2-7. The issues raised in the comment are project related impacts of urban development. They were not nor will they be exacerbated by implementation of the MHCP. Thus, the resolution of these issues are outside the scope of the MHCP.

Additionally, the comment concerns impacts of existing developments upstream of the Dawson Reserve. It is beyond the scope of the EIS/EIR to address such effects via mitigation or other means. The adverse effects experienced in the Dawson Reserve will be addressed by implementation of the MHCP monitoring and management program.

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UCSD2-8

There is not enough discussion of the losses to date of habitat throughout the MHCP study area, and thus, an overly positive expression of the conservation outcomes of the MHCP. For instance, while under the land use discussion, it is revealed that currently 25% of land is undeveloped, and that in future 85% of land will be residential, commercial, industrial and institutional, combined, the true problem for habitat and ecosystem preservation is that another 10% of the total study area will be converted from open space to urban development. In light of the fact that we have already lost at least 90% of the coastal sage scrub (since only 7.6% of the land remains in what must have been the dominant vegetation type), it appears that higher levels of conservation should have been the goal for this project. Table 3.3-1 is very helpful in revealing the area remaining of each habitat type relative to the overall study area. However, there should also be an expression of the extant habitat and the projected habitat protected in perpetuity relative to the pre-development scenario, in order to lend a feeling of the true problem for conserving functional ecosystems.

UCSD2-9

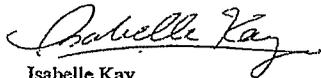
Another problem with the analysis as a whole is the assumption that wetlands in general, and riparian areas in particular, will be protected through drawing lines around the existing habitats. Unfortunately, we have discovered the hard way that increasingly concentrated development has severe impacts on the natural drainages. The increased development density that must result of necessity through implementing this plan will have exacerbated effects on the downstream riparian systems where the upper watersheds have not been selected for increased habitat preservation. Therefore, hydrology and water quality should NOT be included under "ISSUES NOT CONSIDERED SIGNIFICANT" (p.7-1), but should be analyzed in some depth. This is extremely important in light of the fact that all of the surface and receiving waters in the area of interest are impaired, largely due to the non point-source impacts of urbanization.

UCSD2-10

With regard to covered species, it is recommended that bobcat be considered for inclusion and study. This species is a more appropriate indicator of ecosystem function on the scale of remaining habitat in the MHCP study area than are mountain lion. Bobcat still occur in sufficient numbers to be able to gain meaningful information about top predator use of fragmented habitat, whereas coyote are too adaptable to anthropogenic conditions, and mountain lion clearly cannot persist in most of the remaining habitat in the MHCP. For example, bobcat have reproduced at the Dawson Reserve in the past decade, whereas mountain lion and deer were apparently extirpated when SR 78 was built.

Thank you for the opportunity to comment on this document.

Sincerely,



Isabelle Kay
Manager and Academic Coordinator
UCSD Natural Reserve System

UCSD2-8.

The losses to date are reflected in the Existing Conditions/Affected Environment. The impact analysis focused on addressing the impacts of implementing the take authorization (and allowing development to continue) as specified in the MHCP. The EIS/EIR addressed retaining the majority of the extant habitat (i.e., BCLA). This alternative was deemed to result in significant and unmitigated social and economic impacts. Please see Page 4-236 of the Draft EIS/EIR for a discussion of BCLA Alternative 3 socioeconomic analysis.

UCSD2-9.

The analysis on Pages 7-6 and 7-7 of the EIS/EIR concluded that adoption/implementation of the MHCP would not result in significant impacts. This level of analysis is adequate and is supported by substantial evidence. This comment, however, will be forwarded to decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

UCSD2-10.

It is agreed that the bobcat is an appropriate indicator of ecosystem function, particularly in light of recent scientific information. The bobcat is not considered sensitive or likely to be listed as threatened or endangered, and so need not be included in the covered species analysis. Although including the bobcat in analyses would perhaps add meaningful information, it would not change conclusions concerning covered species.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

April 29, 2002

Ms. Janet Fairbanks
San Diego Association of Governments
401 B Street
San Diego, CA 92101

RE: Comments on Draft EIR/EIS for MHCP

Dear Janet:

Thank you for this opportunity to comment on the Draft EIR/EIS for the Multiple Habitat Conservation Program (MHCP). Our Co-Chair Jim Whalen has represented the Alliance at the advisory group. As you know, the Alliance for Habitat Conservation is a membership organization representing 17 large landowners in San Diego County. Our purpose is to help represent and protect landowner interests, while balancing the needs of the environment and our quality of life. Many of our members are landowners in the MHCP plan area and as such are interested in the impacts this may or may not have.

The Alliance was created in the late 80's to help support the NCCP program in San Diego. As a supporter, we feel very strongly that the assurances afforded to landowners must be protected and be of a longstanding nature. In our experience with other NCCP's, time can be the greatest threat to the adoption of future programs.

In our opinion, the MHCP EIR should establish two key objectives: 1) impacts to covered species need to be "less than significant" under CEQA; and 2) covered species and habitats need to be adequately conserved to provide for the issuance of take permits. It appears, however, that these key thresholds have not yet been achieved and will severely undermine the value of the EIR. In short, the Alliance feels the EIR as it is currently written is deficient in several areas. Please see our comments below.

General Comments

The following comments are on specific sections of the plan. We request a response to each of them, particularly if the responders have a problem with the requested changes.

Page ES-5, Project Objectives, 4th bullet:

Letter 11: Alliance for Habitat Conservation

AHC-1. Comment includes introductory statements and the finding of significant impact for select species. The following text was taken substantially from the EIS/EIR. The possibility exists that a particular species will be conserved under the NCCP guidelines, but be subject to a mandatory finding of significance under CEQA Guidelines 15065(b). One of the objectives of the NCCP program is to accommodate land use; therefore, it is not feasible to preserve all of the individuals/habitats because it would result in significant impacts to land uses in the communities.

Species listed in Table 4.3-3 include species that are either endangered or threatened under the federal or state acts. CEQA does not define rare species. Therefore, for the purposes of this environmental document, CDFG and the USFWS were consulted in preparing the list of species that should be considered rare (California Department of Fish and Game 2001). Species that are being considered "rare" in this environmental document are categorized as such based upon one or more of the following criteria:

- Species which are known or believed to have an extremely limited distribution, and/or occur in very small or localized populations.
- Species which are recognized as being potentially worthy of federal or state listing status, based upon limited range (i.e., more or less restricted to coastal southern California or portions thereof), and a generally recognized decline throughout that range. Coastal southern California is broadly considered to include San Diego, Orange, and western Riverside counties.
- Species whose current populations or continued persistence are likely to be significantly reduced by identifiable threats.
- California Native Plant Society (CNPS) List 1B plant species and many of the State Species of Special Concern are considered to fit this criteria.
- Species that are Candidate or proposed for endangered or threatened status.

Although it would have been preferred that the analysis concluded that the impacts would be mitigated to below a level of significance; as noted in the

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AHC-1

above quotation, the conclusions of CEQA significance may differ from the analysis to substantiate coverage.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

AHC-2

Add "...and contribute to the recovery of the listed MHCP covered species." More broadly, the EIR is silent on the impacts of critical habitat designation to property owners within the plan area. Recent court decisions in New Mexico indicate that, contrary to the long-standing stance of the U.S. Fish & Wildlife Service, critical habitat designation does have a financial effect. The MHCP plan area is substantially covered by critical habitat for the California gnatcatcher, as well as for the arroyo toad, tidewater goby, and other species. The EIR need not address speculative issues, but how the MHCP addresses critical habitat needs to be spelled out. For example, what measures is the MHCP taking to get critical habitat designation removed once the plan is approved? If that does not occur, what will be the effects of those designations on the granting of take authorizations?

Page ES-7, Alternatives, first paragraph, 4th sentence:

AHC-3

"The MHCP is ...a comprehensive and complete Conservation Program..." We need to make clear that the MHCP is not the starting point from which additional land or money can be extracted from landowners.

Further, it is not clear that the MHCP will have the same level of assurances as the Multiple Species Conservation Plan (MSCP). The documents do not specify and it must be made clear for landowners to ascertain the value of moving forward with this program.

Page ES-9, Alternative No. 2:

AHC-4

There is apparently a cost associated with the restoration of CSS. The document, however, does not delineate the cost of and funding for the 338 acres of CSS. Restoration and its funding can be seen as a deferred mitigation measure that needs to be defined and discussed in the document.

AHC-5

There also appears to be the necessity of significant portions of land for the CAGN from the County of San Diego. The County, however, is not a part of the MHCP plan. The County's own plans are potentially different or in conflict with the MHCP and this conflict must be remedied for the benefit of the overall regional planning process. In addition, the cost of acquiring and managing this CAGN core acreage should be fully discussed in Section 4 (Environmental Impacts/Environmental Consequences) of the document since it is a mitigation measure.

AHC-6

In general, the requirement that "the preserve...be managed and monitored in perpetuity, and financing responsibilities...be identified and assigned" should be fully discussed in Section 4 (Environmental Impacts/Environmental Consequences) as mitigation for the plan's impacts.

AHC-2.

The wildlife agencies will provide technical assistance and work closely with applicants with respect to HCPs currently under development and future HCPs to identify lands essential for the long-term conservation of the species and appropriate management for those lands. The minimization and mitigation measures provided under these HCPs are expected to protect the essential habitat lands designated as critical habitat for these species. If an HCP that addresses species that have a critical habitat designation is ultimately approved, we will reassess the critical habitat boundaries in light of the HCP. The wildlife agencies intend to undertake this review when the HCP is approved, but funding and priority constraints may influence the timing of such a review.

AHC-3.

Comment addresses the scope of the MHCP plan and assurance. In actuality, the MHCP is not a complete plan. The plan (FPA 1 nor 2) does not provide adequate coverage and protection for grasslands nor species associated with that habitat. The subregional MHCP contains the same assurances, albeit in some cases updated, that appeared in the MSCP. This is because the MHCP Advisory Committee worked on development of these same assurances cooperatively with the MSCP Advisory Committee in 1995 and 1996. The same language also appears in the description of the Department of Interior "No Surprises Policy". The MHCP also clearly defines "Changed and Unforeseen Circumstances"; this is now required language, and was not a part of the MSCP when adopted in 1997. Specific definitions of changed and unforeseen circumstances provide clarity concerning when, how, and if additional land or money is required of any party to an implementing agreement, including the wildlife agencies. Furthermore, the final plan will have updated policies on changed and unforeseen circumstances.

AHC-4.

Comment addresses the cost of restoration of CSS. There is a cost associated with the restoration. The comment is referring to a statement in the EIS/EIR Executive Summary. More detailed information is presented in Chapters 3 and 4 of the EIS/EIR, as well as in the MHCP and associated subarea plans. This is not deferred mitigation. The requirements and performance standards have been specified in the MHCP and Subarea Plans. Funding requirements for all components of the program have been estimated in the MHCP and will be assured through the implementing agreement.

AHC-5.

Comment addresses the role of San Diego County in the MHCP Plan. As a point of clarification, the acquisition of the CAGN core is not mitigation, it is part of the project description. The implementation or acquisition of this area will be a result of mitigation for project impacts; however, this is the premise

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of the acquisition of most of the preservation area (acquired or dedicated as part of project approvals). While creating the County's habitat conservation plan for the north county, the County of San Diego will need to recognize the status of preserved lands within their boundary. Most of the CAGN core has been preserved over the past two years through mitigation actions of private developers. The developers and the wildlife agencies have agreed on land management and monitoring responsibilities.

AHC-6. Comment addresses analysis of preserve monitoring requirements in the EIS/EIR. The requirement is addressed in Chapter 4 of the EIS/EIR and was, thus, analyzed. Without the management and monitoring program, in perpetuity, many of the impacts would not be considered reduced to below a level of significance.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

Section 2.1.1 Overall Plan Description, Wetlands, Page 2-14, 2nd Paragraph, 2nd to last sentence:

AHC-7

"The determination of relative biological value with and without the project shall require USFWS and CDFG written concurrence within 30 days of receipt of written request for concurrence by the local jurisdiction."

This requirement does not address the possibility that the wildlife agencies may not concur with the determination of relative biological value. What contingency exists for this likely potential? Has the MHCP planning team outlined the steps involved to remedy agency non-concurrence? The point being that the EIR/EIS needs to discuss the process if there is non-concurrence, otherwise, there is jeopardy that additional land use impacts could occur without mitigating steps.

Section 2.1.2 Biological Preserve Assembly, Financing Plan, Page 2-17:

AHC-8

The AHC has been greatly concerned with the costs of financing the preserve assembly. It is not adequate to simply establish policies and assumptions to finance the MHCP, particularly when the funding of such is mitigation in the form of acquisition of core areas, restoration of areas to native habitat, and management and monitoring of preserve areas and the covered species. The costs and funding sources for preserve assembly need to be fully specified and described in Section 4 (Environmental Impacts/Environmental Consequences).

Sections 3.2 (Land Use) and 3.6 (Housing):

AHC-9

"Average density under the 2020 forecast is 5.5 units per acre, about 10 percent lower density than in 1995." (Page 3-50)

The AHC is aware of the efforts by SANDAG and other local cities, many in the North County, to adopt "Smart Growth" principles dealing with maximizing land use in urbanized areas. The main point is to provide adequate density for our population growth. Given that population growth and demand for housing continue to outpace housing supply and that the MHCP is expected to increase conservation levels within the study area, thereby decreasing the amount of developable land, this figure causes us great concern. In fact, if the amendments to the General Plans and associated ordinances referred to in Section 4.2.5 (Mitigation Measures for Impacts to Land Use) are to fully mitigate impacts to land use from the MHCP, the opposite should be true. It seems logical to conclude that average density would increase.

AHC-7.

If USFWS and CDFG do not concur with the determination of relative biological value, USFWS and CDFG will provide nonconcurrence in a jointly written letter to the applicant within 30 days which will provide rationale for nonconcurrence and the necessary corrective measures, including any additional information as necessary. If the applicant responds with a commitment to apply the necessary corrective measures for concurrence, USFWS and CDFG will provide concurrence in writing that the City can proceed in permitting the project, provided that the conditions outlined are incorporated into any permit issued. If the applicant does not commit to the necessary corrective measures, they must notify the City, USFWS, CDFG, and any other appropriate agency, such as the Army Corps of Engineers or Regional Water Quality Control Board, to meet within 30 days to resolve the differences in an effort to reach concurrence. Until such concurrence is met, the City can not issue the permit. It is the intent of the wildlife agencies to resolve such issues expeditiously.

AHC-8.

Comment addresses financing aspects of preserve maintenance, acquisition, management, and monitoring. The requirement has been discussed under Section 2.1.3 of the EIS/EIR. Without the management and monitoring program, in perpetuity, many of the impacts would not be considered reduced to below a level of significance. The requirements and performance standards have been specified in the MHCP and Subarea Plans.

The comment also raises the issue of funding which is not an environmental issue. However, based upon a review of the funding requirements of the MHCP and potential sources of funds, it has been determined that funding of the MHCP is feasible. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment. 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 CFR, Title 40, Sec. 1508.14, and California Public Resources Code Sec. 21100. However, the following is offered as general clarification.

Implementing a preserve system for the MHCP will involve actions by local jurisdictions as well as by federal and state agencies. Some of those actions, such as commitment of public lands for habitat use, can occur without new funding. Other actions, such as management of habitat lands conserved as mitigation for project impacts, will be funded by organizations or individuals

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responsible for project development. Key to successful implementation of the MHCP is that important habitat areas be conserved at a rate which at minimum preserves the continued viability of target species and mitigates for impacts which occur. Since habitat loss allowed under the plan would not occur all at one once, public financing for the MHCP is not immediately required. Under the plan, implementation would be periodically monitored to insure that adequate conservation occurs over time. The Final MHCP also provides for interim funding of selected conservation actions. The need for funding of other conservation tasks will be reviewed, and if necessary, supplementary actions taken while the jurisdictions pursue a regional funding program.

AHC-9. Comment addresses Smart Growth and available land for housing needs. Under the existing planning, density was forecast to be 5.5 DU/AC in the MHCP area. This density is 10% less than that projected in 1995. The quoted section is from the Existing Conditions/Affected Environment: this states what the conditions are today, without the project. It is recognized that SANDAG and other cities are attempting to resolve some of the housing issues with Smart Growth concepts, of which one of the premises is to increase densities in areas that can accommodate the density.

The figures for residential density cited in the draft EIS/EIR and the comment exclude non-residential land uses, such as the proposed habitat preserve system, parks, and areas which cannot be developed due to physical constraints. The reduction in average housing density between the base and target years of SANDAG's 2020 Forecast is due to many factors, including the general plans of the local jurisdictions. SANDAG and its member jurisdictions have identified this as an important regional issue and have adopted and proposed policies and actions to promote "Smart Growth" in the region.

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- AHC-10 It seems that the best measure of housing impact is to use a ration of housing units to usable land. Otherwise, the statements and resulting figures could be deceiving.
- AHC-11 In any event, the document needs to be more specific about the type of amendments to General Plans and associated ordinances that would be necessary to mitigate impacts to Housing; including potential minimum lot size standards and potential unit yields, transfer of density, etc. The plan should fully explain the menu of options or minimum requirements for the participating jurisdictions.
- Sections 3.4:**
- AHC-12 This section only generally discusses the Regional Transportation Plan but does not discuss any of the specific circulation element projects planned within the MHCP Subarea Plans. The planned and proposed road projects for the different cities should be discussed in this section of the document unless the participating jurisdictions plan to do additional CEQA review for their cities.
- Pages 4-8 and 4-9:**
- AHC-13 The expectation that the "CCC will generally support the technical aspects of the plan" (page 4-8, 3rd Paragraph, last sentence) does not seem to take into consideration the recent example of the Carlsbad HMP and the CCC's unwillingness to issue a federal consistency determination. This has resulted in an over two-year moratorium on its final approval and the associated requirement for significant plan changes all as a result of their own separate standard for "Environmentally Sensitive Habitat Areas." The current CCC policy is that impacts to ESHA's are largely prohibited. This clearly conflicts with the MHCP allowances for impacts to what would be considered ESHA's.
- AHC-14 Therefore, of the four basic principles as listed at the bottom of page 4-9, two appear to be unsupported by the facts at this time. It cannot be assumed that state, federal and local agencies will cooperate and that the adoption of the MHCP will not result in significant impacts to coastal issues. Has the CCC issued a different opinion for the MHCP?
- Sections 4 (CEQA Significance Analysis for Species) and 4.3.2.4 (Summary of Significance):**
- AHC-15 The AHC is concerned that the CEQA Section dealing with a mandatory finding of significance for any reduction in the number of individuals of an endangered, rare, or threatened species is not clear, particularly in the conclusion made with
- AHC-10. Comment addresses the methods used in the EIS/EIR to determine housing impacts. Potential impacts on residential land use and measures of densities contained in that analysis (Draft EIS/EIR, Sec. 4.6) are based on acres of "unconstrained" or "usable" land, as shown in SANDAG's GIS database. Each local jurisdiction has its own definition of "constrained" land. Generally, constrained lands include steep slopes, flood plains, and other areas which would not ordinarily be developed or which, if developed, would require special planning review.
- AHC-11. Comment addresses future General Plan and Ordinance amendments. CEQA requires that environmental compliance be conducted as early as possible to enable the environmental considerations to influence the project. As such, it was imperative that the project completes environmental review in sufficient time (CEQA Guidelines Section 15004(b)) to make decisions that could influence the project. However, the ramifications are that it is infeasible to expand the description (CEQA Guidelines Sections 15124 and 15146) to the point of completing all of the GPA, LCP, ordinances and policies. These tools will need to be prepared specifically for the project approved. Subsequent (CEQA Guidelines Section 15152) environmental clearance may be necessary at that time when there is further project description available.
- AHC-12. Comment addresses transportation and circulation element projects and environmental documentation. Each participating jurisdiction will be responsible for the preparation of project specific environmental documents when the individual circulation element projects are proposed (designed). The EIS/EIR was responsible for analyzing the environmental impacts based upon the level of project description available. Thus, similar to land development projects proposed by private developers, the projects, when proposed, will need to conduct project-specific CEQA review.
- AHC-13. Comment indicates concern related to future regulatory oversight by a State Agency.*
- AHC-14. Comment indicates concern related to future regulatory oversight by Federal and State agencies.*
- AHC-15 Comment addresses the mandatory findings of significance for select species. The conclusions for these species were based on the findings that it could not be relatively assured that these species would not have a reduction in numbers over time. Because of management, restoration, and adherence to narrow
- * This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

endemic/wetland policies, the remainder of the species would be protected sufficiently that a reduction is not projected. Please see response AHC-1.

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regard to the Summer-Holly, Blochman's Dudleya, Sticky Dudleya, Cliff Spurge, Nuttall's Scrub Oak, San Diego Horned Lizard, and Orange-Throated Whiptail.

AHC-16 It appears that the MHCP will result in a significant and *unmitigable* (emphasis added) impact to (the above species) for purposes of CEQA Section 15065(b).⁷ There is a connection missing in this statement between what is significant and what is unmitigable. An impact that is significant is not necessarily unmitigable, and certainly not unmitigable under the definition of CEQA Section 15065. The AHC believes this conclusion is incorrect.

AHC-17 If the MHCP conservation strategies mitigate impacts to Summer-Holly, Blochman's Dudleya, Sticky Dudleya, Cliff Spurge, Nuttall's Scrub Oak, San Diego Horned Lizard, and Orange-Throated Whiptail to below a level of significance, then this should be the conclusion contained both in Section 4 and Tables throughout the document. The MSCP took a different path on this and should be used as a model for the MHCP since the plan is adopted and approved.

Pages 4-55 (3rd Paragraph, 7th Sentence) and 4-112 (2nd Paragraph, 2nd Sentence):

AHC-18 The AHC is concerned that the EIR is suggesting that surveys in areas planned for development were flawed or biased. The AHC requests that substantiating evidence be provided to justify this comment. Without evidence, these comments should be removed.

Page 4-115:

AHC-19 What is the basis of the CSS mitigation ratio of 3:1 for the Oceanside Subarea Plan? Is the Oceanside plan different from all of the other plans in the San Diego region? If so, why? The plans, and resulting mitigation ratios should be taken as a whole and not be treated separately. Political boundaries are just that, and mitigation, regardless of jurisdiction, should be consistent, particularly for CSS. Some rationale needs to be offered on this discrepancy.

Page 4-117 (1st Paragraph, last sentence):

AHC-20 The sentence beginning "There are a few sensitive plant species..." should be the start of the second paragraph on this page.

Section 4.4 Regional Transportation/Circulation

AHC-21 Although it is true that the RTP has undergone existing environmental review both on a regional and local level (page 4-215, Sec. 4.4.2, last paragraph), it has

AHC-16. Comment addresses the mandatory findings of significance for select species. Please see response AHC-1. The conclusion is correct. The EIS/EIR presents a detailed description of the methodology and assumptions for the analysis. Substantial data are presented to support the conclusions.

AHC-17. Comment addresses the significance findings for select species in EIS/EIR. The MHCP conservation strategies do not fully mitigate the impacts to below a level of significance under CEQA. Findings under the NCCP can be made that the species are adequately conserved despite those impacts. The MSCP is a different plan covering a larger geographic area. Although this may appear to be a discrepancy, the thresholds for determining significance vary between the two laws.

AHC-18. Comment addresses EIS/EIR statements regarding past biological surveys. There are no "protocol" survey methodologies required for the two herptiles, at this time. Surveys for these two species conducted to date generally include those parcels proposed for development. Thus, the data base is biased (lands not proposed for development have not been surveyed). It is also recognized that over the past years, the type and intensity of surveys for these species have increased. The text will remain as written.

AHC-19. Comment addresses mitigation ratios for Oceanside Subarea Plan. Each subarea plan is responsible for providing mitigation ratios to meet the objectives of their subarea plan. To meet the requirements to establish the conservation areas, when contrasted with the future impacts, a 3:1 mitigation ratio was required.

The 3:1 mitigation ratio for CSS is required in the City of Oceanside Subarea Plan Wildlife Corridor Planning Zone and pre-approved mitigation areas to encourage on-site preservation in these areas and preserve a higher percentage of CSS in these critical habitat areas.

AHC-20. Comment suggests typographical modifications. Typographical recommendation will be considered. Comment does not address the adequacy or accuracy of the analysis.*

AHC-21. Comment addresses environmental review and transportation projects. If the MHCP were not adopted, each of the projects would still have to undergo extensive design engineering, landscape and mitigation planning. To an extent, it can be argued that with the implementation of the MHCP, the costs

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will be reduced since the designers will know in advance the parameters for the approval process.

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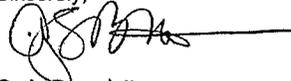
not undergone environmental review under the project processing circumstances that would be created by the MHCP. The AHC believes that subjecting the circulation and transportation projects to the standards of the MHCP will result in a significant impact. We have concluded, therefore, that the conclusion for the Subsections under Section 4.4.3 (Subarea Plans) that "no significant impacts...will result" is therefore incorrect. These sections should consider the additional design, engineering, landscaping, and mitigation costs of having projects comply with the MHCP Subarea Plans compatibility guidelines. Section 4.4 needs to discuss these impacts to transportation and circulation from implementation of the MHCP.

Section 4.5 Public Services and Utilities

AHC-22
The same conclusion as stated above regarding no significant impacts reappears in the analysis for Public Services and Utilities. The AHC believes the same comments as stated above apply to this section.

Once again, thank you for considering our comments on the Draft EIR/EIS for the MHCP. We look forward to your response to these comments. If you or your staff has any questions or comments, please feel free to contact me at (619) 236-8397.

Sincerely,



Craig Benedetto
Executive Director

AHC-22. Comment addresses environmental review and public service and utilities projects. Please see response AHC-21.

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April 29, 2002

Ms. Janet Fairbanks
San Diego Association of Governments
401 B Street
San Diego, CA 92101

RE: Industry response to the MHCP Draft EIR/EIS

Dear Ms. Fairbanks,

The Building Industry Association of San Diego is comprised of 1,350 member companies representing a workforce of 90,000 men and women. The BIA has reviewed the Draft EIR/EIS for the Multiple Habitat Conservation Program (MHCP) and provides the following comments and recommendations.

The BIA has been a long-time participant in the creation of the Multiple Species Conservation Programs for the city and county of San Diego. Our participation was based on the premise (voiced by state and federal officials) that in exchange for enhanced environmental mitigation, private landowners would achieve regulatory certainty and bring an end to protracted negotiations and needless project delays.

Regrettably, the intent of the MSCP has yet to be fully achieved. It has been subject to continued litigation and staff interpretation. Needless to say, these actions leave our industry with a high degree of skepticism.

The MHCP must not be used as a basis for additional mitigation and regulation; rather it must be a complete and comprehensive conservation. With several species findings listed as "significant and unmitigable," the BIA questions whether the MHCP achieves the intended assurance levels congruent to the Multiple Species Conservation Plan.

In its current form, the EIR/EIS lacks specificity needed to ensure the program's success and integrity.

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Letter 12: Building Industry Association of San Diego

BIA-1.

This comment provides an introduction to the letter and also raises the question of significant and unmitigable for covered species. As noted on Page 4-61 of the Draft EIS/EIR: "The possibility exists that a particular species will be conserved under the NCCP guidelines, but be subject to a mandatory finding of significance under CEQA Guidelines 15065(b). One of the objectives of the NCCP program is to accommodate land use; therefore, it is not feasible to preserve all of the individuals/habitats because it would result in significant impacts to land uses in the communities.

Species listed in Table 4.3-3 include species that are either endangered or threatened under the federal or state acts. CEQA does not define rare species. Therefore, for the purposes of this environmental document, CDFG and the USFWS were consulted in preparing the list of species that should be considered rare (California Department of Fish and Game 2001). Species that are being considered 'rare' in this environmental document are categorized as such based upon one or more of the following criteria:

- Species which are known or believed to have an extremely limited distribution, and/or occur in very small or localized populations.
- Species which are recognized as being potentially worthy of federal or state listing status, based upon limited range (i.e., more or less restricted to coastal southern California or portions thereof), and a generally recognized decline throughout that range. Coastal southern California is broadly considered to include San Diego, Orange, and western Riverside counties.
- Species whose current populations or continued persistence are likely to be significantly reduced by identifiable threats."

California Native Plant Society (CNPS) List 1B plant species and many of the State Species of Special Concern are considered to fit this criteria. Species that are Candidate or proposed for endangered or threatened status are also considered to fit these criteria.

Although it would have been preferred that the analysis concluded that the impacts would be mitigated to below a level of significance; as noted in the above quotation, the conclusions of CEQA significance may differ from the analysis to substantiate coverage. It should also be recognized that CEQA

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(and NEPA) require that the analysis be conducted on a plan to ground perspective. Thus, although technically there are significant and unmitigable impacts associated with implementation of the plan (due to the loss of individuals of listed or rare species), the impacts of not implementing the MHCP are greater for biological resources.

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Quality of Field Surveys (Pg 4-55)

BIA-2 The EIR impeaches (without evidence) the quality of species field surveys in areas planned for development. "*Field surveys conducted for these species were often unequal in intensity, methods and biased in area planned for development.*" This is unsubstantiated, defamatory language toward building industry professionals and has no place in the EIR. It would appear that this is being used exclusively to defend habitat acreages as a better representation of conservation of the affected species. It can be argued that the authors of the EIR/EIS have failed in its due diligence in providing conclusions based on sound science.

Sensitive Habitats (pg 4-130)

BIA-3 The language contained in Alternative 2 findings on sensitive habitat is confusing. While it states, "sensitive habitats that *are not adequately conserved* by the FPA Alternative 2 are coastal sage scrub, and coastal sage scrub and chaparral mix." Yet it goes on to state that impacts to coastal sage scrub are *avoided* by the addition of 400 to 500 acres of high-quality, contiguous coastal sage scrub in the incorporated area..." Since Alternative 2 is tied to the acquisition of 400 – 500 acres of coastal sage scrub how can they not be adequately conserved? Please provide clarity.

Also, there is no mention of any coordination with the County of San Diego on the likelihood of acquiring the necessary acreage for the core area and what impacts the county's North County NCCP planning will pose for core area acquisition. In light of the importance the core area will have on the program's success, some assurances on the county's role would be in order.

CEQA Significance Analysis for Species (pg 4-64)

BIA-4 Several species are listed as "*resulting in a significant and unmitigable impact.*" (Summer-Holley, Blochman's Dudleya, Sticky Dudleya, Cliff Spurge, Nuttall's Scrub Oak, San Diego Horned Lizard and Orange-Throated Whiptail) Yet, the EIR states that their "*viability and persistence will be ensured through mitigation options available both within the MHCP boundaries and external to the MHCP.*"

It is possible that an impact that is significant is not therefore unmitigable, and certainly not unmitigable under the definition of CEQA Section 15065. As written, the aforementioned species would be subject to regulatory requirements beyond the MHCP, subjecting landowners and developers to additional process delays beyond what is needed today. This is counter to the intent and goal of the MHCP.

No Discussion On Critical Habitat Designations

BIA-5 The MHCP plan area is overlaid by critical habitat designations for a variety of species such as the California Gnatcatcher, and the Arroyo Toad, yet there is no analysis on the impacts of critical habitat on landowners. The MHCP should specify what measures will

BIA-2. This comment addresses a statement in the EIS/EIR regarding field surveys in planned development areas. There is no "protocol" survey methodology required for the two herptiles, at this time. Surveys for these two species conducted to date generally include those parcels proposed for development. Thus, the data base is biased (lands not proposed for development have not been surveyed for these species). It is also recognized that over the past years, the type and intensity of surveys for these species have increased. The text stays as written.

BIA-3. Several comments reference the 400 to 500 acre Gnatcatcher core proposed for the unincorporated portion of the County. The final MHCP plan will be modified to clarify the intent of the core and reflect land acquisition activity that has taken place since the draft plan was written.

The U.S. Fish and Wildlife Service and the California Department of Fish and Game (the wildlife agencies) have stated that a 400 to 500 acre area of contiguous, high quality gnatcatcher habitat capable of supporting 16-23 pairs of gnatcatchers must be conserved in the general vicinity of the circle they inscribed around southwest San Marcos, southeast Carlsbad, and the adjacent unincorporated county. A core breeding habitat area in this general location is considered necessary for preserve design reasons, to assure the viability of the coastal California gnatcatcher stepping-stone corridor across the MHCP study area and therefore gnatcatcher population viability in the region. This core requirement is in addition to conservation already occurring within the incorporated cities in this vicinity. Large contiguous blocks of habitat currently on the ground in the City of Carlsbad have already been permitted for take by the wildlife agencies, thus making infeasible conservation of the core breeding area totally within MHCP city boundaries. Meeting this core breeding habitat requirement therefore requires conserving land in adjacent portions of the unincorporated county, generally within the spheres of influence of the Cities of Encinitas and San Marcos.

The wildlife agencies and the MHCP cities have agreed that the MHCP will "cause" the conservation of this acreage in the unincorporated county. "Cause" can mean purchase, direct mitigation to, or regulate if the property is annexed to a city. Cities have the authority to prepare plans for their spheres in preparation for future annexations. The wildlife agencies, the cities, and SANDAG recognize that land use authority rests with the County of San Diego until the property is annexed. The wildlife agencies, the cities, and SANDAG understand that the MHCP can only "cause" conservation under certain circumstances. If the County proposes to develop or take coastal sage

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scrub before the cities purchase, direct mitigation to, or annex the property, then the County would negotiate take permits with the wildlife agencies.

Over the past several years developers in the Cities of Carlsbad and San Marcos have negotiated mitigation requirements with the wildlife agencies and purchased properties from willing sellers in this gnatcatcher core area. To date, approximately 383 acres have been purchased, conservation easements acquired, or annexations occurred. These lands will be managed in perpetuity for conservation purposes, as will any additional acres caused to be conserved by the MHCP in this area.

The City of Encinitas Subarea Plan requires 67% conservation of coastal sage scrub on any property that chooses to annex to their city. If all the property annexes, a 67% conservation ratio will yield approximately 183 acres of conservation.

Since the draft MHCP plan was written, the City of Carlsbad has increased coastal sage scrub conservation. The final plan will reflect this additional conservation and will be counted towards the 400 to 500 acre requirement within their City limits.

Since conservation occurred due to mitigation requirements, management and monitoring responsibilities rests with the mitigator. It was never the intent of the MHCP, nor does the plan state, that mitigation and monitoring requirements are the responsibility of the County of San Diego.

BIA-4. This comment refers to the finding of significant and unmitigable impact for select species. The EIS/EIR acknowledges that impacts to some species are significant and mitigable, while impacts to other species are unmitigable. Please see response BIA-1.

BIA-5. Several comments reference the 400 to 500 acre Gnatcatcher core proposed for the unincorporated portion of the County. The final MHCP plan will be modified to clarify the intent of the core and reflect land acquisition activity that has taken place since the draft plan was written.

The U.S. Fish and Wildlife Service and the California Department of Fish and Game (the wildlife agencies) have stated that a 400 to 500 acre area of contiguous, high quality gnatcatcher habitat capable of supporting 16-23 pairs of gnatcatchers must be conserved in the general vicinity of the circle they inscribed around southwest San Marcos, southeast Carlsbad, and the adjacent

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unincorporated county. A core breeding habitat area in this general location is considered necessary for preserve design reasons, to assure the viability of the coastal California gnatcatcher stepping-stone corridor across the MHCP study area and therefore gnatcatcher population viability in the region. This core requirement is in addition to conservation already occurring within the incorporated cities in this vicinity. Large contiguous blocks of habitat currently on the ground in the cities of Carlsbad and San Marcos have already been permitted for take by the wildlife agencies, thus making infeasible conservation of the core breeding area totally within MHCP city boundaries. Meeting this core breeding habitat requirement therefore requires conserving land in adjacent portions of the unincorporated county, generally within the spheres of influence of the Cities of Encinitas and San Marcos.

The wildlife agencies and the MHCP cities have agreed that the MHCP will "cause" the conservation of this acreage in the unincorporated county. "Cause" can mean purchase, direct mitigation to, or regulate if the property is annexed to a city. Cities have the authority to prepare plans for their spheres in preparation for future annexations. The wildlife agencies, the cities, and SANDAG recognize that land use authority rests with the County of San Diego until the property is annexed. The wildlife agencies, the cities, and SANDAG understand that the MHCP can only "cause" conservation under certain circumstances. If the County proposes to develop or take coastal sage scrub before the cities purchase, direct mitigation to, or annex the property, then the County would negotiate take permits with the wildlife agencies.

Over the past several years developers in the Cities of Carlsbad and San Marcos have negotiated mitigation requirements with the wildlife agencies and purchased properties from willing sellers in this gnatcatcher core area. To date, approximately 420 acres have been purchased, conservation easements acquired, or annexations occurred. Of the 420 acres, approximately 328 acres are coastal sage scrub. These lands will be managed in perpetuity for conservation purposes, as will any additional acres caused to be conserved by the MHCP in this area.

The City of Encinitas Subarea Plan requires 67% conservation of coastal sage scrub on any property that chooses to annex to their city. If all the property annexes, a 67% conservation ratio will yield approximately 183 acres of conservation.

Since the draft MHCP plan was written, the City of Carlsbad has increased coastal sage scrub conservation. The final plan will reflect this additional

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conservation and will be counted towards the 400 to 500 acre requirement within their city limits.

Since conservation occurred due to mitigation requirements, management and monitoring responsibilities rests with the mitigator. It was never the intent of the MHCP, nor does the plan state, that mitigation and monitoring requirements are the responsibility of the County of San Diego.

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be taken for the removal of critical habitat designation upon approval of the plan or what impact these designations will have on the granting of take authorizations.

Overall Plan Description, Wetlands (Pg 2-14)

In the cases of wetlands regulations, the EIR states that the FWS and DFG will be required to provide written concurrence on the determination of relative biological value within 30 days of receipt of written request for concurrence by the local jurisdiction.

There is no process to address the likelihood that the wildlife agencies would not concur with the determination of relative biological value. Regulatory certainty is dependant upon a mutually agreeable process with quantifiable deadlines.

Land Use and 3.6 Housing

"Average density under the 2020 forecast is 5.5 units per acre, about 10 percent lower density than in 1995." (Page 3-50)

Given that population growth and demand for housing continue to outpace housing supply and that the MHCP is expected to increase conservation levels within the study area, thereby decreasing the amount of developable land, this figure raises alarm. In fact, if the amendments to the General Plans and associated ordinances referred to in Section 4.2.5 (Mitigation Measures for Impacts to Land Use) are to fully mitigate impacts to land use from the MHCP, the opposite should be true. Logically, average densities should increase.

It is possible that the 2020 figure, defined as "the ratio of total housing units to developed residential land" is deceiving if it is to account for preserve, open space and unusable lot areas as well. If this is the case, then this needs to be clarified. A more accurate figure would account for the ratio of housing units to land falling within usable lot area, possibly usable open space and/or common areas, and residential (non-circulation element) roads.

Otherwise, the reason for the decrease in density should be explained within the context that impacts to land use (housing) are apparently fully mitigated.

The document needs to be more specific about the type of amendments to General Plans and associated ordinances that would be necessary to mitigate impacts to Housing; primarily that minimum lot size standards should be reduced to account for the loss in developable land that, under the current General Plans and ordinances, would translate into a loss of residential yields, thereby impacting both land use and housing negatively. Allowing for smaller lot sizes is an essential mitigation measure. Do the jurisdictions intend to provide for this allowance?

BIA-6.

There is no description of a process to address non-concurrence by the wildlife agencies with proposed wetland mitigation areas. The final MHCP will include a description of a requirement to meet and confer if the wildlife agencies do not concur with the determination of relative value following completion of the "evaluation of wetland functions and values" described in the MHCP. In this unusual circumstance the wildlife agencies would be responsible for notification of their nonconcurrence within the 30-day review period. If USFWS and CDFG do not concur with the determination of relative biological value, USFWS and CDFG will provide nonconcurrence in a jointly written letter to the applicant within 30 days which will provide the rationale for nonconcurrence and the necessary corrective measures, including any additional information as necessary. If the applicant responds with a commitment to apply the necessary corrective measures for concurrence, USFWS and CDFG will provide concurrence in writing that the City can proceed in permitting the project, provided that the conditions outlined are incorporated into any permit issued. If the applicant does not commit to the necessary corrective measures, they must notify the City, USFWS, CDFG, and any other appropriate agency, such as the Army Corps of Engineers or Regional Water Quality Control Board, to meet within 30 days to resolve the differences in an effort to reach concurrence. Until such concurrence is met, the City can not issue the permit. It is the intent of the wildlife agencies to resolve such issues expeditiously.

BIA-7.

Under the existing planned land use, SANDAG's 2020 Forecast indicates that average residential density will be 5.5 DU/AC in the MHCP area. This density is 10% less than that of 1995. The quoted section is from the Existing Conditions/Affected Environment which discusses the current planning without implementing the project. It is recognized that SANDAG and other cities are attempting to resolve some of the housing issues with Smart Growth concepts, of which one of the premises is to increase densities in areas that can accommodate the density.

The figures for residential density cited in the draft EIS/EIR and the comment exclude non-residential land uses, such as the proposed habitat preserve system, parks, and areas which cannot be developed due to physical constraints. The reduction in average housing density between the base and target years of SANDAG's 2020 Forecast is due to many factors, including the general plans of the local jurisdictions. SANDAG and its member jurisdictions have identified this as an important regional issue and adopted or proposed policies and actions to promote "Smart Growth" in the region.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

BIA-6

BIA-7

BIA-8

BIA-8. Housing impacts were not deemed significant under FPA 1 or 2. CEQA requires that environmental compliance be conducted as early as possible to enable the environmental considerations to influence the project. As such, it was imperative that the project completes environmental review in sufficient time (CEQA Guidelines Section 15004(b)) to make decisions that could influence the project. However, the ramifications are that it is infeasible to expand the description (CEQA Guidelines Sections 15124 and 15146) to the point of completing all of the GPA, LCP, ordinances and policies. These tools will need to be prepared specifically for the project approved. Subsequent (CEQA Guidelines Section 15152) environmental clearance may be necessary at that time when there is further project description available.

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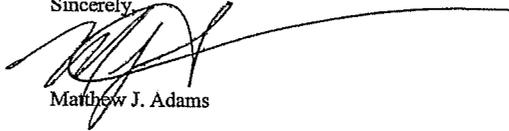
Role of the California Coastal Commission (Pg 4-8 and 4-9)

BIA-9

The MHCP is placing considerable faith in the concurrence of the California Coastal Commission and that it will "generally support the technical aspects of the plan" However, recent Coastal Commission history reveals a different perspective. The current Coastal Commission policy is that impacts to ESHA's under its perceived jurisdiction are largely prohibited. This clearly conflicts with the MHCP allowances for impacts to what would be considered ESHA's.

The Building Industry Association of San Diego appreciates the opportunity to comment on the MHCP EIR/EIS. We look forward to working together to create a management plan that provides the level of certainty necessary to balance the needs of all concerned.

Sincerely,



Matthew J. Adams

BIA-9. Comment indicates concern related to future regulatory oversight by a State Agency.*

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

California Native Plant Society – Center for Biological Diversity
Elfin Forest/Harmony Grove Town Council – Escondido Citizens Ecology Committee
Friends of Cerro de las Posas – Friends of Daley Ranch
Harmony Grove/Eden Valley Citizens Group – National Wildlife Federation
Preserve Calavera – San Diego Audubon Society – Sierra Club

Letter 13: California Native Plant Society

CNPS-1. Comment provides an introduction to the entities included as commenters.*

DELIVERED VIA ELECTRONIC AND REGULAR MAIL

April 29, 2002

Ms. Lee Ann Carranza
U.S. Fish and Wildlife Service
Carlsbad Field Office
2730 Loker Ave. West
Carlsbad, CA 92008

Janet Fairbanks
San Diego Association of Governments
401 B Street, Suite 800
San Diego, CA 92101

Re: Draft Multiple Habitat Conservation Program
Draft EIS/EIR for Threatened and Endangered Species Due to Urban Growth within the
Multiple Habitat Conservation Program Planning Area

Dear Ms. Carranza and Ms Fairbanks:

CNPS-1 Thank you for the opportunity to comment on the draft MHCP plan, the draft EIS/EIR and the draft subarea plans for the Cities of Carlsbad, Encinitas, Escondido, Oceanside, San Marcos, Solana Beach and Vista. This letter is provided on behalf of (XX GROUPS). Please keep all of these organizations on distribution lists for any MHCP-related notices.

The California Native Plant Society is a statewide non-profit organization of amateurs and professionals with a common interest in California's native plants. The Society seeks to increase understanding of California's native flora and to preserve this rich resource for future generations.

The Center for Biological Diversity is a non-profit conservation organization dedicated to protection of endangered species and wild places through science, policy, education, and

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environmental law. The Center has long been interested in the MHCP, and offers its habitat conservation planning expertise to assist in improving the program.

The Elfin Forest/Harmony Grove Town Council is a non-profit 501(c)(3) corporation whose board of directors is elected by the community each year to provide a forum for the presentation of issues concerning all the residents of CSA107, which includes the communities of Elfin Forest and Harmony Grove.

Friends of Daley Ranch is a 501(c)(3) organization founded when Daley Ranch opened. Our mission is to promote (1) protection and enhancement of the Daley Ranch biological resources; (2) education in ecology and conservation and (3) responsible recreational use consistent with protection of the Ranch resources.

The National Wildlife Federation is the nation's largest member-supported conservation and education group dedicated to uniting individuals, organizations, businesses and government in order to protect wildlife, wild places, and the environment. National Wildlife's western field office in San Diego is working to protect and restore species and habitats threatened by sprawl by promoting smart growth alternatives.

Preserve Calavera is a grass-roots organization of residents and users of the Calavera area open space. We are dedicated to the preservation and protection of this area- the largest remaining contiguous native habitat in coastal north county.

San Diego Audubon Society is a 501(c)(3) organization dedicated to fostering the protection and appreciation of birds, other wildlife, and their habitat. We represent approximately 3000 members in San Diego.

The Sierra Club was founded to educate and inform citizens concerning the value of our natural environment with the goal of promoting its conservation. Consistent with those goals, the San Diego Chapter has a vital interest in ensuring that the proposed MHCP will improve the conservation of sensitive habitats in the northern cities of San Diego county.

CNPS-2 | The Natural Community Conservation Planning (NCCP) program was designed to create regional conservation and development plans that protect entire communities of native plants and animals while streamlining the process for compatible economic development in other areas. These comments are provided in the hope that the final MHCP will in fact reflect a balance that preserves the highest quality habitats and critical linkage areas while allowing sustainable economic development elsewhere.

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CNPS-3 The stated overall goal of the MHCP is "to maintain biodiversity and ecosystem health in the region while maintaining quality of life and economic growth opportunities." It is important that these goals and the relative weight given to each of them be considered in light of the fact that the MHCP study area is now largely developed.

CNPS-4 Of the 111,865 acres in the study area only approximately 26.7% (29,895 acres) remains as open space supporting natural vegetation communities. It is therefore essential that the MHCP preserve the highest possible percentage of the remaining natural areas, provide strong protections for covered species, and is assured of an adequately funded and active preserve management and monitoring program.

CNPS-5 The proposed "Preferred Alternative" described in the MHCP EIS/EIR would conserve only 66% of the natural habitats remaining in the MHCP study area. This 66% level of conservation proposal is grossly inadequate. Conserving only 66% of the remaining habitat will result in preservation of only 17-18% of the original natural vegetation communities in the study area. This level of conservation is too low to maintain a viable preserve for covered species and vegetation given the significant fragmentation of the study area.

CNPS-6 The Biological Core and Linkages Alternative 3 is a far superior and necessary alternative as it would conserve 84% of remaining habitat in the MHCP area. This would result in conservation of 22-23% of the original natural vegetation communities in the study area. According to the draft EIS/EIR,

This alternative is the biologically preferred preserve alternative because it identifies all large contiguous areas of habitat, all areas supporting major and critical species populations or habitat areas, and all important functional linkages and movement corridors between them.

CNPS-7 Land development has been and continues to be heavily emphasized in the MHCP study area, so goals of the MHCP advocating the preservation of the maximum remaining valuable habitat should be given the highest priority. In a highly fragmented region, preservation of additional key acreage can have a dramatic impact on preserve viability through expansion of core areas, addition or widening of linkages and the reduction of edge effects. The draft MHCP and EIR/EIS are totally incorrect when they claim that preserving the additional acreage under the biological core alternative "... would place unacceptable constraints on development with a resulting impact on population, housing and employment growth." The preservation of an additional 5,982 acres clearly will result in negligible negative economic effects given that the area already supports approximately 82,000 developed acres

CNPS-3. Comment reiterates goal of MHCP.*

CNPS-4. Comment indicates that preservation management and monitoring are important aspects of the program.*

CNPS-5. Comment indicates that the level of conservation is inadequate. The viability of the preserve has been discussed in the MHCP, and the EIS/EIR has analyzed the impacts of the conservation program. The final plan reflects changes to the focused planning area that have occurred since the draft plan was released for public review. Changes include increased conservation within the focused planning area and new set asides secured through land development exactions, mitigation, and public acquisitions. Please note that as a conservation plan, the MHCP does more than set aside open space, and adds protections that would not occur without the plan. The plan 1) preserves habitat that is now not protected under any state, federal or local law, 2) provides comprehensive subregional management of lands where now none exists, 3) provides for ongoing biological monitoring where now none exists, and 4) provides an acquisition component that identifies key areas where acquisition will increase conservation above levels analyzed in the draft plan. Please note that the percent conservation estimates in the plan reflect the minimum level of conservation guaranteed by the plan. The cities have stated that they anticipate a higher percent conservation as projects are entitled, open space set aside, and mitigation assured, and as additional lands are acquired from willing sellers.

CNPS-6. The EIS/EIR analyzed the BCLA and concluded that from a biological perspective, that alternative was preferred; however, there were significant socioeconomic impacts that would result. It was concluded that FPA2 was environmentally preferred, balancing all of the environmental issues.

CNPS-7. Comment disagrees with the conclusions in the EIS/EIR regarding socioeconomic issues. Socioeconomic issues are discussed in Section 4.6 (Page 4-227) of the EIS/EIR. With the growth projections that have been estimated, the impacts to socioeconomic would be significant for the BCLA at the MHCP level, and significant for the San Marcos subarea plan.

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CNPS-8

Constraints on development of the last remaining open spaces will actually have a positive effect on the economic health of North County for a number of reasons. The value of existing homes will be enhanced by proximity to preserved open space, increased recreational opportunities are provided by preserved open space, fewer subdivisions mean less traffic and accompanying reductions in area residents quality of life, and preservation of open space and natural vegetation reduces the level of non-point source water pollution; preventing the degradation of beach water quality is vital to maintaining the economic stimulation provided by tourists and visitors.

CNPS-9

As noted on page 2-1 of the draft MHCP "... this area of north coastal San Diego County is known for its natural beauty... which make(s) it a popular recreational and tourist destination." Unfortunately, cities participating in the MHCP have demonstrated an unfortunate eagerness to sacrifice this natural beauty to accommodate the plans of developers and land speculators. The results are apparent in a landscape which now largely consists of thousands of acres of tract homes and commercial sites interspersed with fragmented natural areas.

CNPS-10

Based on this, the MHCP should do everything possible to protect remaining natural open space. In an area which has been more than 70% developed, short sighted political, and narrow financial, concerns must not continue to take precedent over biological imperatives in providing for the conservation of remaining natural habitats.

CNPS-11

Comments in the following attachments provide recommendations for improvement of the MHCP, and address our concerns in greater detail. Thank you for your consideration.

Sincerely,

Cynthia Burrascano

Cynthia Burrascano
California Native Plant Society

David Hogan

David Hogan
Center for Biological Diversity

Evelyn Alemanni

Evelyn Alemanni
Elfin Forest/Harmony Grove Town Council

Joan B. Parron

Joan B. Parron
Escondido Citizens Ecology Committee

CNPS-8.

The EIS/EIR examined potential adverse impacts on population, housing, and employment (draft EIS/EIR, Sec. 4.6). Although positive economic impacts, such as those cited by this comment, may offset the adverse impacts, lack of data (such as value of open space for recreation) precluded a quantitative comparison of positive and negative benefits.

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 significantly 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 change to the environment caused by the project, and mitigation under CEQA is limited to measures which address 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).

Section 1508.14 Human environment.

"Human environment" shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. (See the definition of "effects" (Section. 1508.8).) This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.

Section 1508.8 Effects

"Effects" include:

- (a) Direct effects, which are caused by the action and occur at the same time and place.

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(b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems. Effects and impacts as used in these regulations are synonymous. Effects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

CNPS-9. Comment presents a point of view related to the status of development.*

CNPS-10. Comment presents a point of view related to the status of development.*

CNPS-11. Comment references future issues that will follow.*

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Comments on the MHCP and EIR / EIS

April 29, 2002

Page 5

Larry Osen
Friends of Cerro de las Posas

V. Barnard - Witt
for Kevin Barnard

Harmony Grove/Eden Valley Citizens Group

Diane Nygaard

Diane Nygaard
Preserve Calavera

Janet A. Anderson

Janet A. Anderson
Sierra Club

Sally A. Thomas

Sally A. Thomas
Friends of Daley Ranch

Kevin M. Doyle

Kevin M. Doyle
National Wildlife Federation

Allison Rolfe

Allison Rolfe
San Diego Audubon Society

cc: California Coastal Commission
California Department of Fish and Game
City of Carlsbad
City of Encinitas
City of Escondido
City of Oceanside
City of San Marcos

CNPS-12. Provides a list of attachments to the comment letter.*

List of Attachments

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Attachment 1
Recommendations to improve the MHCP

The MHCP should be improved according to the following recommendations, in no particular order of priority to ensure conservation, ensure that permitted activities will not appreciably reduce the likelihood of survival and recovery of the covered species, ensure that impacts to covered species are minimized and mitigated to the maximum extent practicable and to build public trust and support for the program:

- CNPS-13 • Adopt the Biological Core and Linkage Area Alternative 3;
- CNPS-14 • Ensure that assurances for conservation of covered species and vegetation are mandatory, clear and sophisticated, consistent with “no surprises” assurances provided to participating cities and beneficiaries;
- CNPS-15 • Provide essential baseline data regarding the location and number of populations and individuals of covered species and vegetation communities;
- CNPS-16 • Clearly and prominently present mandatory conditions of species coverage in MHCP Volumes I and II, subarea plans and implementing agreements;
- CNPS-17 • Use the example of the City of San Diego’s wetlands “deviations” (Attachment 10) to clearly define in MHCP Volume I, the subarea plans and implementing agreements those limited circumstances when impacts will proceed despite provisions for, as described variously, “avoidance to the maximum extent practicable” and “total avoidance” of narrow endemic and obligate wetland species and critical locations;
- CNPS-18 • Provide essential details regarding the specific number and location of populations or individuals of narrow endemic and wetland obligate species that will be lost with application of allowable impacts such as the 5% allowable loss of narrow endemics within Focus Planning Areas.
- CNPS-19 • Simplify MHCP language to provide “avoidance to the maximum extent practicable” for all narrow endemic species, wetland obligate species and critical locations of narrow endemics;
- CNPS-20 • Establish a contingency fund for compensation of property owners where all economically viable property use has been removed;

CNPS-13. Since the BCLA was originally designed, the Cities and Wildlife Agencies have approved projects that were part of the BCLA and some projects have been constructed. This has effectively eliminated some of the biological resources that constitute the BCLA. Portions of the BCLA contain properties currently designated for conservation at 75%. To conserve the remaining 25% would require the Cities or Wildlife Agencies to acquire properties; some of these property owners are not willing sellers. Page 2-38 of the EIS/EIR discusses these limitations.

CNPS-14. The Biological Analysis and Permitting Conditions prepared for the MHCP documents assurances for conservation of covered species and vegetation. Actions by the jurisdictions in implementing the MHCP are specifically designed to assure the levels of conservation described in the Biological Analysis.

CNPS-15. MHCP Volume II (Biological Analyses and Permitting Conditions) provides detailed information on conservation levels for ecological communities and covered species. The location, number of populations, and conserved acreage for covered species is provided in Section 4 of Volume II. A complete analysis of the conservation of ecological communities is provided in Section 3 of Volume II.

CNPS-16. MHCP Volume II clearly and prominently presents the mandatory conditions for species coverage for each species. This level of detail is not appropriate for MHCP Volume I. Where the mandatory conditions for species coverage translate to specific conservation or preserve management measures within a city, the individual subarea plan includes this information. The Implementing Agreements have not yet been drafted.

CNPS-17. Comment references wetland-related definitions. The MHCP and Subarea Plans have specified requirements for impacts to wetlands. See Section 3.6.1 of MHCP Volume I.

Specifically, the MHCP states, “Projects that propose to impact a wetland must demonstrate with substantial factual evidence that the impact is essential to maintaining some economic or productive use of the property and that no feasible alternative would eliminate or minimize the impact or otherwise result in greater biological value. If impacts to wetlands cannot be avoided while retaining economic or productive use of the property, an evaluation of biological functions and values shall be made based on the best available science...Any unavoidable impacts to wetlands must be mitigated to result in

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no net loss of wetland vegetation acreage and biological function and value within the MHCP subregion and preferably, but not necessarily, within the same drainage and city. Subarea plans may apply stricter avoidance standards for wetlands inside the FPA than outside the FPA. However, the no net loss standard must be achieved regardless of location.”

In implementing the appropriate mitigation for wetland habitat, the following management guidelines must be incorporated:

1. For wetlands currently in or proposed for open space, each jurisdiction shall prepare a management plan to ensure maintenance and monitoring of this habitat and its species.
2. For wetlands currently in or proposed for open space, each jurisdiction shall prepare a management plan to restore disturbed portions of this habitat, including management and restoration plans for sensitive species occurring in this habitat.
3. Where conditions are appropriate, create new wetlands by converting disturbed upland habitat.

CNPS-18. It is not possible to provide the specific number and location of the populations or individuals that may be lost in the future with the application of the 5% allowable loss of narrow endemics in soft-lined FPA areas. This will be tracked by the compliance monitoring component of implementation.

CNPS-19. Section 3.6.1 of MHCP Volume I spells out that wetlands must be avoided to the maximum extent possible, and details how this finding is to be determined for each project. Appendix D of Volume II spells out that impacts to narrow endemic species must be avoided to the maximum extent possible, and details how this finding is to be made for each project. The language for the wetlands and narrow endemics policies were worked out with extensive input from environmental groups.

CNPS-20. Comment raises an issue related to funding. The financing plan is also described on Page 2-17 of the EIS/EIR. The MHCP addresses this issue by identifying funds needed for public acquisition of habitat land (MHCP, Sec. 4.1.2 and 7.2.1).

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- CNPS-21 • Establish a fund to assist state and federal wildlife agencies in their efforts to oversee MHCP compliance and implementation;
- CNPS-22 • Establish a fund to provide enforcement of existing private land open space management obligations;
- CNPS-23 • Clarify that all "Required Conservation and Management Actions" identified in the MHCP Volume II section Species-Specific Conservation Analyses and Conditions for Coverage are in fact mandatory, and reference these obligations in MHCP Volume I, the subarea plans, implementing agreements and others;
- CNPS-24 • Clarify location information on species-specific "conditions" for coverage and for "critical locations" of narrow endemic species to be "totally avoided as presented in Table 3-7 of MHCP Volume 1 and in Volume II;"
- CNPS-25 • Expand the list of narrow endemic species to include Blochman's dudleya, Quino checkerspot and Stephen's kangaroo rat;
- CNPS-26 • Expand the list of narrow endemic species "critical locations" in MHCP Table 3-7 to include all critical locations identified in Volume II, section 4, as well as the two critical locations of Southwestern willow flycatcher on the San Luis Rey River and Pilgrim Creek, two critical locations of the Coastal cactus wren in the San Pasqual Valley and Lake Hodges, and two critical locations of Harbison's dun skipper in north and east Escondido;
- CNPS-27 • Add language to Table 3-7 specifying inclusion of any newly discovered populations in the study area of San Diego ambrosia, Orcutt's spineflower, Orcutt's hazardia, Quino checkerspot, Coastal cactus wren, Pacific pocket mouse, and Stephen's kangaroo rat, and vernal pools on the Palomar airport, Heatt properties and Manzanita Partners properties for San Diego fairy shrimp, and vernal pools on the Manzanita Partners property for San Diego button-celery;
- CNPS-28 • Provide a list of critical locations, including as-yet unidentified-populations of species that may not be considered "narrow endemic," yet which may still be rare throughout their larger ranges and in need of improved conservation attention within the MHCP study area. These species are Sticky dudleya, Nuttall's scrub oak, Engelmann oak, Salt marsh skipper, Arroyo southwestern toad, Southwestern pond turtle, Least tern, Southwestern willow flycatcher, California gnatcatcher, Least Bell's vireo, Belding's savannah sparrow, and Large-billed savannah sparrow.
- CNPS-29 • Revise conditions for species coverage to require surveys for all narrow endemic and other important species in any suitable habitat, including but not limited to Encinitas

- CNPS-21. The MHCP Plan and a subarea plan (SAP) comprise both a habitat conservation plan (HCP) under the federal ESA and a NCCP plan under the state NCCP Act. As such, the plans describe conservation actions to be implemented by the local jurisdiction as a take authorization holder, along with the assurance of funding required for implementation. Accordingly, the MHCP Plan and the SAP do not directly address funding of actions by federal and state agencies; instead, they will be addressed in the budgets of the federal and state governments.
- CNPS-22. Privately owned mitigation habitat will be managed according to project-specific guidelines established in connection with development approval. Some projects have entered into agreement with an approved management organization; others have dedicated habitat lands to state or local agencies or management organizations. The MHCP provides estimates of funding needed, at public expense, to manage privately owned habitat lands which are not currently managed consistent with MHCP guidelines.
- CNPS-23. Required conservation and management actions are, by definition, mandatory. As such they are referenced in MHCP Volume I (Section 3.3.1) and will become conditions of take authorizations issued by the wildlife agencies and incorporated into the implementing agreement.
- CNPS-24. It is impossible to detail the exact location information for species-specific conditions and critical locations of narrow endemics based on existing information. These are to be delineated on a project-specific basis and tracked via the adaptive management and monitoring program.
- CNPS-25. Blochman's dudleya, Quino checkerspot, and Stephens' kangaroo rat do not meet the definition of narrow endemics: "Those species that are highly restricted by their habitat affinities, edaphic (soil) requirements, or other ecological factors, and that have limited but important populations within the MHCP area, such that substantial loss of these populations or their habitat within the MHCP area might jeopardize the continued existence or recovery of that species (Ogden. 1998. Biological Goals, Standards, and Guidelines for Multiple Habitat Preserve Design. Prepared for SANDAG. February.)." The MHCP study area is not essential to regional conservation or recovery of Quino checkerspot or Stephens' kangaroo rat, since neither species is currently known to occur in the study area or is likely to occur in sustainable numbers in the future. Blochman's dudleya is distributed from San Luis Obispo County into Baja, California, Mexico. Although populations of Blochman's dudleya within the MHCP study area are important to the

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species' conservation, loss of these populations would not likely "jeopardize the continued existence or recovery of that species" and therefore do not meet the definition of narrow endemic.

- CNPS-26. All known critical locations of MHCP narrow endemics are listed in Table 3-7. Note that the names provided for some critical populations represent collections of multiple points in the database, so each point does not necessarily have a unique place name. The southwestern willow flycatcher is not a narrow endemic. Table 3-7 has been revised to clarify locations of Harbison's dun skipper and coastal cactus wren critical locations.
- CNPS-27. The title of Table 3-7 has been changed to indicate that it only lists *known* critical locations of narrow endemic species, and a footnote has been added to stress that additional locations that meet the definition of critical could be found in the future and would be subject to the critical location policy. In addition, the condition that all populations of narrow endemic species, whether currently known or found in the future, are subject to the narrow endemic policy has been added to the species conditions in Volume II for all narrow endemic species. However, stating as the comment requests that *any* newly discovered populations would automatically be deemed critical (which is a biological determination) would be pre-decisional. Furthermore, not all locations listed in the comment are known to support populations of the species addressed. Note also that two of the species addressed in the comment are not narrow endemics and are therefore not addressed in Table 3-7 of the MHCP (Quino checkerspot and Stephens' kangaroo rat). The MHCP study area is not considered essential to conservation or recovery of either of these species, and it is highly unlikely that any populations of these species found in the study area in the future would meet the definition of a critical location.
- CNPS-28. Narrow endemic species critical locations have been analyzed in Volume II, Table 3-7. As-yet-unidentified populations can not be described until field surveys locate those populations.
- CNPS-29. The revised MHCP Biological Monitoring and Management Plan requires baseline surveys for all covered species on conserved lands. Lands proposed for development will be surveyed for MHCP covered species and other sensitive species as part of the CEQA process.

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- ┌
CNPS-30

 - Remove MHCP Volume 1, subarea plans and implementing agreement language providing participating cities with the option of utilizing non-binding policies or other regulatory guidance for implementation of MHCP obligations;
- ┌
CNPS-31

 - Remove MHCP Volume 1, subarea plans and implementing agreement language providing participating cities with the option of allowing out-of-kind or out-of-group mitigation;
- ┌
CNPS-32

 - Remove MHCP Volume 1, subarea plans and implementing agreement language providing participating cities with the option of utilizing in-lieu mitigation fees;
- ┌
CNPS-33

 - Revise all MHCP documents to provide assured, new protective management and monitoring or enforcement of existing obligations for private open space, or remove private open space acreage figures from estimated preserve totals, especially homeowners association private open space;
- ┌
CNPS-34

 - Provide a mandatory time frame for preparation, funding and immediate implementation of area specific management directives for all lands as they are brought into the preserve in MHCP Volumes I, subarea plans, implementing agreements and other implementing documents;
- ┌
CNPS-35

 - Correct mapping and location description inaccuracies for covered species and vegetation in all MHCP documents and subarea plans;
- ┌
CNPS-35A

 - Provide conditions for coverage addressing re-introduction, management and monitoring, and mandatory surveys in all suitable habitat for Quino checkerspot, Orcutt's spineflower, Arroyo southwestern toad, Coastal cactus wren, Pacific pocket mouse and others, or remove these from the list of covered species;
- ┌
CNPS-36

 - Convene an independent body of scientists to prepare, and revise MHCP documents to include species specific, measurable biological goals and objectives for each covered species;
- ┌
CNPS-37

 - Revise MHCP documents to provide step-down levels of take of covered species and vegetation commensurate with implementation conservation conditions and provision of funding;
- ┌
CNPS-38

 - Prohibit all harmful land uses within the preserve such as grazing except as necessary in very limited circumstances to beneficially manage target covered species populations and vegetation;

- CNPS-30.

There are no no-binding requirements for jurisdictions in implementing the MHCP. The implementing agreements that will be developed between the wildlife agencies and jurisdictions are fully binding on all parties. There are cases where flexibility is allowed in implementation of the MHCP but in each case any resulting conservation action must be of "equal or greater biological value".
- CNPS-31.

This comment which requests deleting an option proposed in the MHCP to mitigate development impact with conservation of unlike ("out-of-kind" or "out-of-group") vegetation is not accompanied by discussion of either scientific or policy reasons. In the MHCP study area, however, out-of-kind mitigation is an important vehicle for conservation, for example, in the City of Oceanside SAP, where a key objective is to conserve habitat areas in certain geographic locations, and in the City of Carlsbad SAP, where a mitigation fee program is proposed to assist in the conservation of core CGN habitat. The MHCP will monitor the impacts and implementation of the conservation to ensure that the conservation is in rough-step proportion to the types of resources impacted. Remedial action is required if it is determined that the conservation is not in rough-step proportion.
- CNPS-32.

In-lieu mitigation fees provide an alternative method for projects to satisfy mitigation requirements efficiently and for the Cities to direct conservation actions (e.g., acquisition, management) to areas of identified need. Accordingly, the MHCP has retained in-lieu mitigation fees as an optional source of funding for conservation actions.
- CNPS-33.

The conservation totals in the MHCP Plan have been revised to reflect those acreages that will be managed pursuant to the MHCP guidelines, upon dedication to the preserve, and those acreages that are currently in private open space, including homeowners' association open space. The cities will seek to amend the management requirements in these private open space preserves once a regional funding source is established.
- CNPS-34.

Area-specific monitoring and management plans must be developed and approved by the wildlife agencies for preserve lands no later than 2 years after lands are dedicated to the preserve and implemented immediately upon approval of the management plan. This language is reflected in the final MHCP Plan and the Biological Monitoring and Management Plan and is recommended for inclusion in all subarea plans and implementing agreements.

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CNPS-35 The MHCP database has been updated and corrected wherever new data or inaccuracies are discovered. We have repeatedly requested documentation of new or refined species locations or other mapping issues. Without explicit information on the purported inaccuracies mentioned in the comment, we cannot respond with specific changes,

CBI/SANDAG mapping discrepancies. Reintroduction into the MHCP study area is not a biologically reasonable option for Quino checkerspot, Arroyo southwestern toad, or coastal cactus wren. Allowing for reintroduction of Pacific pocket mouse into appropriate habitats is already a species condition, and the basis for considering this species covered by the MHCP. Surveys are already required for the species listed in the comment, and appropriate management and monitoring activities would be required if and when the species are found.

CNPS-36. SANDAG recognizes the value of independent scientific input and review and has obtained significant scientific guidance throughout the process. Although the plan document itself has not been subject to formal scientific review, the MHCP Biological Goals, Standards, and Guidelines document (Ogden 1998)—which formed the scientific foundation for MHCP planning and analysis—was reviewed by a respected group of independent scientists. These reviewers (and their primary areas of expertise) were as follows: Dr. Jonathan Atwood, Manomet Observatory for Conservation Sciences (California gnatcatcher, coastal cactus wren, and other songbirds); Dr. Pat Herron Baird, California State University, Long Beach (shorebirds and other birds); Peter Bloom (raptors); Dr. John Brown, Smithsonian Institute, National Museum of Natural History (butterflies and other invertebrates); Dr. Ted Case, University of California San Diego (reptiles, amphibians, and ecological communities); Kevin Crooks (medium and large mammals and wildlife movement corridors); Dr. Barbara Kus, San Diego State University (least Bell's vireo, southwestern willow flycatcher, and other birds); Karen Miner, California State Parks (bats); Dr. Paul Beier, Northern Arizona State University (mountain lion and movement corridors); Thomas Oberbauer, County of San Diego (vegetation communities and sensitive plants); and Dr. Derek Langsford, County of San Diego (vegetation). Additional scientists were consulted on an as-needed basis for particular questions and species issues, including Dr. Robert Fisher, U.S. Geological Survey (reptiles and amphibians); Stephen J. Montgomery (Stephens' kangaroo rat); Ed Ervin, U.S. Geological Survey (reptiles and amphibians); and Dr. Andrea Atkinson, U.S. Geological Survey (biological monitoring and statistics). The habitat evaluation model developed for the MSCP plan and adapted for use by the

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MHCP was also subject to independent scientific review by some of the above individuals as well as by Dr. J Michael Reed, University of Nevada, Reno (reserve design and population viability analysis). The MHCP's scientific foundations thus generally received more intensive scientific input and review than most other habitat conservation plans, including the MSCP. Independent scientific review is generally not appropriate for other aspects of conservation plans, including the implementation policies, economic considerations, and legal findings.

Scientific peer review for the MHCP is provided by the panel of science advisors who have participated in development of the Plan, and review of the Biological Analysis. Peer review may also be provided by any independent advisors employed by the wildlife agencies to evaluate management and monitoring for covered species in the preserve.

“Legal peer review”: When referencing the implementing agreements, the adequacy of the documents is determined by federal and state solicitors, city attorneys, or their representatives, who have prepared the agreements.

CNPS-37. The intent of the comment is unclear. The MHCP requires that conservation of habitats and species occur in “rough step” with take of these resources. Levels of conservation and take will be tracked via the compliance monitoring program and annual reporting.

CNPS-38. Harmful land uses are already prohibited within reserve areas. Livestock grazing in native habitats is currently extremely limited to non-existent within the MHCP study area. Reserve management plans will identify compatible and incompatible uses of each reserve based on biological conditions, including the potential, focused use of grazing where it might help achieve biological goals.

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- CNPS-39 Provide for independent scientific and legal peer review of the MHCP program prior to approval;
- CNPS-40 Release biological opinions, ESA Section 10 findings and implementing agreements for public review and comment.

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CNPS-39. Please see CNPS-36.

CNPS-40. The documents requested are publicly available from the U.S. Fish and Wildlife Service and California Department of Fish and Game.*

After completion of this EIS/EIR we expect the MHCP participating Cities to request an Incidental Take Permit under Section 10 of the Act and Section 2835 of the NCCP Act for each of their Subarea Plans. When these applications are received, the public will be notified through the Federal Register and pursuant to CEQA and provide a public comment period on the respective Subarea Plan(s), Implementing Agreements(s), and any subsequent NEPA or CEQA requirement(s). These documents will include ordinance(s), General Plan Amendment(s), or other tools that are necessary to ensure the MHCP and Subarea Plans are implemented fully. In addition, each City is required to have an Urgency Ordinance that will be established once the permit is issued in order to fully implement the MHCP and Subarea Plan before the new ordinances and/or General Plan Amendments can be finalized.

Once the public comment period closes, comments are addressed, and the Wildlife Agencies and City(s) finalize the respective Subarea Plan(s), Implementing Agreement(s), and any subsequent NEPA or CEQA requirement(s), the Service will issue an Incident Take Permit under Section 10 of the Act concurrently with the Department's issuance of a Section 2835/NCCP permit to the City(s). The ordinances and/or General Plan Amendments will be part of the agreement between the City(s) and the Wildlife Agencies. If the agreement is not fully implemented, the Wildlife Agencies will work with the City(s) to rectify the problem, and if unresolved, the permit will be revoked. The Wildlife Agencies will continue to receive notification of future project processing and meet annually with each City to review their conformance with the MHCP. If the Cities are not appropriately applying the ordinances and MHCP requirements, or propose to revise these requirements, the Wildlife Agencies will determine whether the Cities are appropriately implementing the MHCP.

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Attachment 2
General comments on the MHCP and Subarea Plans

CNPS-41 Coastal Act Compliance

The California Coastal Act (January 2002) Article 6 Section 30250 (a) discusses location of development and states development should only take place "where it will not have significant adverse effects, either individually or cumulatively, on coastal resources."

In accordance with the Coastal Act, development must avoid significant impacts to coastal resources. MHCP preferred alternative 2 does not meet this requirement. Table 4-3-6 clearly states both coastal sage scrub and Coastal California gnatcatcher are not adequately preserved without mitigation using non-coastal resources. Both the Carlsbad and Oceanside Subarea plans do not sufficiently protect coastal resources as required by the Coastal Act for these two resources. It is not clear from the tables if coastal resources are adequately protected in the Oceanside Subarea plan specifically for *Lotus nuttallianus* (Nuttall's lotus), *Sterna antillarum browni* (Ca least tern), and *Plegadis chihi* (White-faced ibis). The same concern holds for the White-faced ibis in the Encinitas Subarea plan. Please modify the plan until it is in conformance with Coastal Act requirements.

CNPS-42 NCCP Act Compliance

Compliance with the California Natural Community Conservation Act of 1991 is required of the MHCP. It appears, however, that this MHCP is exempt from Senate Bill 107, an act passed by the California Senate in January 2002, to improve the 1991 law. However, we strongly recommend that to the extent possible, these improvements and higher standards specified in SB 107, be put into effect in the development of the MHCP. Because all future development application in the North County Region will be required to comply with SB 107, it seems appropriate that the regional habitat conservation plan also conform to its more stringent standards and regulations.

CNPS-43 Non-covered species and post MHCP approval CEQA compliance

How will non-covered species be dealt with in CEQA documents post-MHCP plan approval? CEQA sufficient analysis is not provided in the MHCP EIR/EIS for most non-covered species, yet there is the expectation that once the MHCP is approved there will be no additional land commitments for rare species in the plan area. Please examine this issue especially for *Atriplex pacifica*, *Centromadia parryi ssp. australis*, *Centromadia pungens ssp. laevis*, and *Heterotheca sessiliflora*.

CNPS-44 Unincorporated Gnatcatcher Core Area

The acreage requirement for this offsite mitigation obligation is described inconsistently throughout the MHCP:

CNPS-41. Each City with land in the Coastal Zone will need to obtain Coastal Commission approval of Local Coastal Plan Amendments. The Coastal Commission has the responsibility and authority to review and approve/deny the LCPA.

CNPS-42. The MHCP is specifically exempted from the requirements of SB 107, which revised the obligations of NCCP participants with regard to planning agreements, the planning process, public input, and scientific review. Section 2830(b)(1) of the legislation states that plans entered into prior to January 1, 2001 and carried out pursuant to Rule 4(d) for the California gnatcatcher (e.g., MHCP, MSCP and Orange County NCCP efforts) are not required to meet the new requirements, which are effective January 1, 2002.

Despite that exemption, the MHCP has addressed many of the requirements imposed by SB107. Since the MHCP began in 1992, an Advisory Committee was convened to provide a forum for noticing and conducting public meetings, and preparing and discussing written information (policy/issue papers) about the program. Numerous other outreach efforts were prepared for the MHCP ranging from slide shows on the NCCP efforts in San Diego County to a General Assembly of Elected Officials to a public/cable television presentation. Also, the MHCP effort prepared all of the required California Endangered Species Act (CEQA) and National Environmental Policy Act (NEPA) documentation and reports. Please also see response SDCo-20.

Also, the MHCP utilized independent, scientific specialists to review and comment on the scientific needs and direction of the plan. At least 13 recognized specialists reviewed the Biological Goals, Standards, and Guidelines document and evaluated the habitat evaluation model that formed the basis of the conservation plan. The final conservation plan reflects input from these experts. Please also see response SDCo-26.

CNPS-43. CEQA compliance will be required for all discretionary projects. If a project impacts a rare, threatened, or endangered species, compliance with Section 15065 of CEQA will be required. A biological analysis will be required for any project that has the potential to have a significant impact to biological resources. This includes covered and noncovered species.

CNPS-44. Several comments reference the 400 to 500 acre Gnatcatcher core proposed for the unincorporated portion of the County. The final MHCP plan will be modified to clarify the intent of the core and reflect land acquisition activity that has taken place since the draft plan was written.

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The U.S. Fish and Wildlife Service and the California Department of Fish and Game (the wildlife agencies) have stated that a 400 to 500 acre area of contiguous, high quality gnatcatcher habitat must be conserved in the general vicinity of the circle they inscribed around southwest San Marcos, southeast Carlsbad, and the adjacent unincorporated county. A core breeding habitat area in this general location is considered necessary for preserve design reasons, to assure the viability of the coastal California gnatcatcher stepping-stone corridor across the MHCP study area and therefore gnatcatcher population viability in the region. This core requirement is in addition to conservation already occurring within the incorporated cities in this vicinity. Large contiguous blocks of habitat currently on the ground in the City of Carlsbad have already been permitted for take by the wildlife agencies, thus making infeasible conservation of the core breeding area totally within MHCP city boundaries. Meeting this core breeding habitat requirement therefore requires conserving land in adjacent portions of the unincorporated county, generally within the spheres of influence of the Cities of Encinitas and San Marcos.

The wildlife agencies are therefore requiring the MHCP cities to "cause" the conservation of this acreage in the unincorporated county. "Cause" can mean purchase, direct mitigation to, or regulate if the property is annexed to a city. Cities have the authority to prepare plans for their spheres in preparation for future annexations. The wildlife agencies, the cities, and SANDAG recognize that land use authority rests with the County of San Diego until the property is annexed. The wildlife agencies, the cities, and SANDAG understand that the MHCP can only "cause" conservation under certain circumstances. If the County proposes to develop or take coastal sage scrub before the cities purchase, direct mitigation to, or annex the property, then the County would negotiate take permits with the wildlife agencies.

Over the past several years developers in the Cities of Carlsbad and San Marcos have negotiated mitigation requirements with the wildlife agencies and purchased properties from willing sellers in this gnatcatcher core area. To date, approximately 383 acres have been purchased, conservation easements acquired, or annexations occurred. These lands will be managed in perpetuity for conservation purposes, as will any additional acres caused to be conserved by the MHCP in this area.

The City of Encinitas Subarea Plan requires 67% conservation of coastal sage scrub on any property that chooses to annex to their city. If all the property

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annexes, a 67% conservation ratio will yield approximately 183 acres of conservation.

Since the draft MHCP plan was written, the City of Carlsbad has increased coastal sage scrub conservation within the unincorporated County core. The final plan will reflect this additional conservation and will be counted towards the 400 to 500 acre requirement.

Management and monitoring in perpetuity is a responsibility of the mitigator.

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Page 4-23, Vol 1, "... at least 500 acres of core gnatcatcher habitat ..."
Page 5-16, Vol 1, "... approximately 400 to 500 acres of high quality gnatcatcher habitat ..."
Page 5-16, Vol 1, "... approximately 500 acres of unincorporated land ..."
Page 3-6, Vol II, "... at least 400 acres of high quality gnatcatcher breeding habitat ..."

Please clarify and make consistent that the requirement is a minimum of 500 acres of high quality gnatcatcher breeding habitat. Note that this will likely require conserving more than 500 acres of total land, because the conserved land will likely be a mix of high quality gnatcatcher breeding habitat and other habitat types.

- CNPS-45 Mitigation Ratios (Volume I, page 4-18)
The ratios should vary by whether they are inside or outside of the BCLA, not whether they are inside or outside of the FPA. Some biologically important lands included in the BCLA were apparently excluded from the FPA for political or economic reasons. The biological value of the impacted land should be the basis for determining mitigation ratios, not developer interests.
- CNPS-46 Specific responsibilities for management and monitoring
Section 6 of Volume I provides conceptual guidelines for preserve management, but there is neither an organizational structure outlined nor are functions defined and responsibilities assigned. Preserve management, restoration and fire management specialists, biological monitoring database maintenance, GIS database maintenance, enforcement, physical maintenance of preserve areas (e.g., fences, signs, removal of exotics, trash removal), biological surveys, public outreach, environmental education, and volunteer coordination are all necessary functions that will require an extensive commitment of personnel. These personnel and their duties as well as their organizational structure and funding source must be included in the MHCP.
- CNPS-47 Hard- and soft-line preserve areas
Large blocks of important habitat are identified inside the biological core, but are inexplicably excluded from the Focus Planning Area (e.g., in northwest Escondido and portions of San Marcos). These areas must be included in the hardline FPA to conserve covered species and fully minimize and mitigate take, or justification should be provided for why this is not necessary.
- CNPS-48 The water district lands north and east of Escondido are shown as "softline" (less than 90% conservation). These lands should be fully protected as watershed lands, with little if any development, and included as a hardline FPA.
- CNPS-49 The relationship between the FPA and future roads requires clarification. A number of planned regional circulation element roads would cross proposed reserve areas. Hardline

CNPS-45. The idea of having mitigation ratios vary with whether impacts occur inside or outside of the BCLA (rather than FPA) was debated in the MHCP Advisory Committee. Some participating cities disagree with this policy option. Consequently, use of BCLA for setting mitigation requirements was not made an MHCP policy, although individual cities can adopt this as a policy in their subarea plans. The City of Oceanside has elected to do so. Note that assembling the reserve is not dependent solely on mitigation ratios, and that conservation is adequate for covered species based on the overall levels of conservation, regardless of how these levels are achieved--by mitigation ratios or other specific policies.

CNPS-46. The MHCP Plan, subarea plans, and Biological Monitoring and Management Plan require that all the functions described by the comment be implemented. The cities are discussing a strategy for implementation that addresses all of these functions and have committed to providing all functions, either individually or as part of a group. Responsibilities for these functions may be phased by individual cities in such a way that all functions are ultimately provided in some collective way, that is, the functions ultimately will be shared among all the cities. Thus, it is anticipated that the organizational structure for implementation will evolve as additional coordination and data management are required and as a regional funding source is established.

CNPS-47. The area in northwest Escondido has an approved development agreement that allows removal of all existing habitat.

The loss of approximately 500 acres of CSS habitat in northwest Escondido was addressed in an EIR prepared for the approved specific plan, tentative map and development agreement for Palos Vista Neighborhood 3 (renamed Escondido Highlands). As described on page 4-13 of the Subarea Plan, Neighborhood 3 is approved for the development of 39 agricultural estate lots, effectively allowing the removal of all natural habitat (with the exception of an area designated for preservation of cultural resources). The development agreement vests this entitlement until 2007. Subsequent biological analysis prepared by Dudek and Associates (January 29, 1999) confirmed the previous EIR analysis and did not identify any new listed species on the property. Therefore, the City of Escondido has no authority to require additional conservation on this property unless the development agreement expires in 2007, or in the event that a significant modification to the project is proposed. The Subarea Plan text (page 4-13) recognizes the circumstances under which additional conservation may be required.

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CNPS-48. The "water district lands" were acquired from the Escondido Mutual Water Company in 1987. The property includes approximately 1,657 acres of property in the vicinity of Lake Wohlford and along Valley Center Road. The Lake Wohlford property surrounds approximately 79 acres of BLM land. The water district lands are currently improved with a number of public uses, such as the Lake Wohlford campgrounds and recreation areas and the police shooting range, which is approved for expansion.

Pursuant to MHCP policies, all the wetland and riparian habitats will be preserved at 100%. The biological analysis assumes that the remaining "softline" area is proposed to preserve 80% of the existing natural habitat. This allows flexibility for the City to consider a portion of the property for new or expanded public uses which have not been identified. Given the City significant contribution to the overall preserve system, the overall conservation of 80% is deemed adequate.

CNPS-49. Each of the Subarea Plans lists anticipated Circulation Element road improvement projects that could directly impact the Focused Planning Area. Related land uses that are considered conditionally compatible with the biological objectives of the city's preserve are also provided. Any proposed Circulation Element road improvement project would need to be consistent with the policies and standards of the Subarea Plan. The City's Planning Commission and City Council will consider this comment in their review and consideration of the Subarea Plans.

The MHCP and subarea plans assume that all adopted General Plan Circulation Element roads will be implemented subject to the MHCP design criteria and subsequent environmental review. Planned Circulation Element roads in the City of Escondido are listed and mapped in Appendix A of the Escondido Subarea Plan. Anticipated road improvements have been incorporated into the FPA design on hardlined properties. On softlined properties, future road improvements will be subject to the MHCP design criteria.

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preserve areas must be off limits to road construction.

CNPS-50 Important information is lacking regarding the location and impacts of infrastructure to support the development bubbles in the preserve. Some of the subarea plans include proposed roads, but do not address other infrastructure such as sewer, water, transmission lines, pump stations, etc.

CNPS-51 Table 2.1-1 Species comments
Note that *Comarostaphylis diversifolia* and *Corethrogyne filaginifolia* are misspelled.

CNPS-52 Several species indicated for potential coverage are out of range and unlikely to occur within certain cities. Many of these species are very rare or have very restricted distributions. Given the high percentage of developed land and the relatively low preservation (66 percent of natural habitat) within the preferred alternative, it is not realistic to "cover" species within subarea plans where the species is currently not known to occur. Species that are out of range within Table 2.1-1 include:

Chorizanthe orcuttiana (Oceanside, Escondido); this species is not known north of Encinitas and is not expected north of Carlsbad. Escondido is considerably farther inland than this species has ever been recorded. If this extremely rare species were discovered within either city, the population must be protected.

Corethrogyne filaginifolia var. linifolia (Oceanside); Although this species is mapped within Oceanside, the identify of this population is questionable and should be re-examined. This taxon has not been confirmed north of Carlsbad, where most populations are integrated. This taxon is found primarily in Encinitas, Del Mar, and Solana Beach.

Dudleya blochmaniae ssp. blochmaniae (Escondido); This species does not occur more than 4 miles from the coast in San Diego County and is very unlikely in Escondido.

Dudleya blochmaniae ssp. brevifolia (Escondido, Oceanside); This species is restricted to sandstone mesas and cobble barrens within 2 miles of the coast and Escondido is far inland of that. This species has not been found north of Del Mar although potential habitat is located within Encinitas and Carlsbad. Oceanside is out of range and apparently lacks suitable habitat.

Lotus nuttallianus (Escondido); This species is known only from beaches on the immediate coast. Escondido is too far inland.

CNPS-53 This table is somewhat unclear. It appears that Cities would only get coverage for species that are marked. Yet according to subarea plan discussions the statement "Once other MHCP Subarea Plans have been approved, the City of . . . may receive take authorizations for all species

CNPS-50. See comment CNPS-49 above. Any proposed public infrastructure improvement project would need to be consistent with the policies and standards of the Subarea Plan in the same manner as any private development proposal.

CNPS-51. Comment acknowledges typographical error. Spelling will be corrected in the final.*

CNPS-52. The comment presumes that a species must be found within a particular city to achieve coverage in that city; however, the MHCP is a subregional plan to which all participating cities contribute, and from which all participating cities gain appropriate assurances. The ultimate goal is for all cities to share one common (subregional) covered species list once all conservation obligations have been fulfilled. Note that cities not supporting populations of a particular species may still support its conservation via their contributions to regional and subregional funding sources and via the subregional management and monitoring program. The process for determining species coverage for a city, contingent on actions in other cities, is outlined in Figure 3-2 of MHCP Volume I. A city not currently supporting a particular species can gain coverage for it (i.e., assurances in the unlikely event the species is ever found there) provided that all other cities that do support significant populations or habitat for that species are meeting all necessary conservation conditions.

CNPS-53. Upon approval of all the subarea plans, cities will receive take authorizations for all species listed on Table 2.1-1 (MHCP Covered Species List). Not all species may be present in each jurisdiction.

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on the MHCP covered species list (Table 2.1-1)." Is the intention here that "all" means all species or only those species that are marked within each City Subarea plan? This needs to be clarified.

Species specific comments

CNPS-54

There is some concern over the mechanism for coverage on a subarea plan basis versus a total plan. *Brodiaea filifolia* is a case in point. Although it would be considered covered under most subarea plans, and the species conservation analysis implies relatively good conservation, the reality is quite different. The majority of the known individuals of this species appear to be in amendment areas. Thus, under the best of conditions the plan would only protect perhaps 30 percent of the individuals in North San Diego County. Conservation and coverage over the entire plan should be linked to overall conservation. It diminishes the purpose of the plan if small section (i.e. subareas) can get coverage yet overall the species fares badly. The plan should withhold coverage to any species regardless of how well specific subareas do unless reasonable coverage of a species is attained throughout the MHCP planning area.

CNPS-55

Conservation estimates provided throughout the document (e.g. page 4-179) appear too optimistic to be based on recent observations. The planning area is THE critical core population area for *Brodiaea filifolia*. As such conservation should be very high. Based on map overlays, it would seem that conservation of this species is far less than indicated. Carlsbad for example is stated as having 96 percent conservation. However this is misleading since large and significant populations have been eliminated in recent years and the populations that remain are generally not in well configured conservation areas and are at considerable risk from edge effects. Without including the major populations in San Marcos, which are either not within a preserve area (Mission Road population) or in amendment areas (Los Posos, Pacific, etc.) the agencies should strongly reconsider giving any coverage for this species. Carlsbad, Vista, Encinitas, and San Marcos are largely responsible for declines in this species that lead to State and Federal listings. Conservation of *Brodiaea filifolia* within all these cities should be at least 80% before any subarea is given coverage.

CNPS-56

In April 2001, the Oceanside population of *Dudleya blochmaniae* along the I-5 was observed to support about 2,100 seedlings and immature individuals of this species. Page 4-179 of the plan identifies only 50% of this population. The large scale distribution map for this species indicates that a third population in the planning area was found in northeastern Carlsbad portion of Carlsbad. From the maps it is difficult to determine if the population is within a preserve area or not. However, if it is not, we believe that this species should not be included on the covered species list for Carlsbad.

CNPS-57

Based on impacts to historic populations of *Quercus dumosa* in the City of Carlsbad, the City should be conserving a minimum of 80% of remaining populations. First the City needs to determine where these populations are all located.

CNPS-54.

The comment is concerned with the action of severability; if the subarea plans are approved independent of one another, what are the assurances of overall conservation; coverage of any species should be withheld unless there is reasonable coverage attained throughout the MHCP planning area. Severability is an important provision for the participating jurisdictions. The motivation to participate in a regional plan is based on the understanding that each city retains land use control within its boundaries. At the same time it is acknowledged that the actions or inaction of one agency cannot be allowed to jeopardize the continued existence of the species of concern. Therefore, in issuing take permits to each jurisdiction the wildlife agencies retain sufficient oversight and authority to safeguard the species while allowing the cities to be severable from each other. If a city were to lose its take authorization, either in total or for a given species, there would be adequate protections for the species due to Section 9 of the Endangered Species Act which prohibits take without permits. As to *Brodiaea filifolia*, it should be recognized that this species is a narrow endemic and will be subject to the more stringent requirements for this designation. The MHCP will not permit 30% take of this species.

CNPS-55.

The analysis of coverage cannot be based on overlays of species locations alone. Species-specific conditions and the narrow endemic and wetlands protection policies add additional conservation. The plan cannot retroactively affect existing developments or development agreements that have already removed species populations. For the example given (*Brodiaea filifolia*) the conservation analysis and conditions clearly state that at least 95% of point localities inside the FPA, and 80% outside the FPA must be conserved for the species to be covered.

The final analysis included significant new data on this species' distribution, and concluded that the MHCP may contribute to the conservation within the area by conserving 93% of point locations (55 of 70 locations within the FPA) and conserving 92% of the critical locations and major populations within the study area. Species-specific conditions have been added to ensure adequate conservation.

CNPS-56.

The 50% conservation identified for the Oceanside population of Blochman's dudleya is based on the FPA conservation level shown for this area. However, the population would be conserved at a higher level under the narrow endemic and critical location policies. The Carlsbad population is inside a reserve area.

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CNPS-57. In San Diego County, Nuttall's Scrub Oak has been documented below 500-meters elevation in Carlsbad, Encinitas Questhaven, San Dieguito County Park, Del Mar, Carmel Valley, and Miramar. The Carlsbad and Encinitas locations occur in the MHCP. It should be noted that this species was only recently described, and its full distributional range has yet to be defined. This species generally occurs in sandy soils near the coast, in association with southern maritime chaparral and coastal sage scrub.

An estimated 353 acres (88%) of southern maritime chaparral will be conserved as a result of existing preserve design and application of the City's measures contained in Table 9 of the Subarea Plan.

Two major and critical populations of this species have been identified in Carlsbad and both are completely in proposed hardline conservation areas north of Palomar Airport Road, east of El Camino Real. These are considered critical locations. All of the major populations are proposed for conservation within hardline preserves. There are eight other locations mapped in the city: two are preserved in hardline open space and three are adjacent to hardline conservation areas.

All of the conserved "points" fall within the preserve, and will be avoided in biological core and linkage areas, per the City's measures contained in Table 9 of the SAP. The areas where this species is conserved typically are greater than 50 acres in size and are contiguous with other native habitats. This configuration increases the probability that appropriate species-specific pollinators and seed dispersal agents will persist in the preserve.

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CNPS-58 How can coverage for Lotus nuttallianus be justified when the population in Oceanside falls outside of preserve boundaries? What and where is the compensating mitigation for this impact in the coastal zone?

###

CNPS-58. The narrow endemic and critical location policies would apply to this population of Lotus nuttallianus even outside FPA boundaries, so that at least 80% of the population would need to be conserved regardless of location. No impact is planned in this area.

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Attachment 3
Comments on the Carlsbad Subarea Plan

Overview

CNPS-59 Conservation planning in north county is highly dependent upon what happens in Carlsbad. Carlsbad is the only coastal city with remaining core habitat. This core habitat, and the linkages both east/west and north/south through the city are the heart of the regional conservation plan. The regional plan will not work unless this core habitat is protected, and the critical linkages are effective. In spite of this, the level of conservation of both the core habitat, and key linkages are insufficient to assure the success of the regional plan.

CNPS-60 Section A2 Goals and Objectives includes a list of biological, conservation, land use, and economic objectives for the Plan. These are very general statements- and nowhere is there any indication of a goal to actually change the status of a threatened/endangered species. The ultimate purpose of the entire NCCP process is to reverse the decline of species. Quantifiable, measurable goals need to be specified in order to provide any basis to evaluate plan success, and determine when corrective action is needed. The biological goals that are stated are not stated in a form that is measurable, nor is it clear who makes the determination that a goal has been met. For example, one of the goals is to "maintain functional wildlife corridors and habitat linkages within the County and to the region...." What is a functional wildlife corridor? What large mammals are included? Who determines if this is met?

CNPS-61 It is clear that the focus of the Plan is a single species- the threatened California Coastal Gnatcatcher (CCG)-and not the entire list of 47 sensitive plants and animals shown on Table C-11. The Plan will be used as justification for take permits for all 47 species. The Plan must therefor clearly demonstrate that it protects sufficient habitat to support the populations of all of these species. The focus on coastal sage scrub in the preserve design does not assure that all of these species are adequately protected.

CNPS-62 Core habitat will only continue to function as intended if both the core habitat and effective linkages between cores are protected. The plan allows significant degradation of both the core areas, and the connecting linkages. Reduction in size of the contiguous core, bisecting core habitat with roads, constraining of linkages all reduce the viability of the Plan.

CNPS-63 Overall Conservation Proposed
Carlsbad proposes to preserve 65% of the existing sensitive habitat citywide or 5,705 acres. The overall MHCP biological core and linkage area proposes to preserve 82% or 24,531 of 29,895 acres of natural habitat plus an additional 18% of other vacant land. The BCLA alternative would preserve 93% of the sensitive habitat in Carlsbad (EIR/EIS Table 2.3-1) Land in Carlsbad is preserved at a higher rate than other cities in north county because it contains the

CNPS-59. Several comments stated that the preserve design of the Carlsbad HMP is inadequate due to insufficient total acres, size and shape of core areas, size and shape of linkages, edge effects, Hardline Areas, Standards Areas, preserve management, funding for implementation, or other reasons. In most cases, these comments express an opinion on the part of the commenter and are not accompanied by substantiating facts or information. The plans have been the subject of detailed biological study and analysis for over 10 years. The MHCP planning efforts have been conducted by experienced, credentialed professionals having expertise in the fields of conservation biology, botany, mammalogy, herpetology, ornithology, invertebrates, economics, and environmental law. The conservation standards utilized in the plans are those legally recognized standards stated in the U.S. Endangered Species Act, the Federal Habitat Conservation Planning Handbook, the State of California's Natural Community Conservation Planning Program Planning Process Guidelines, and other authoritative sources. The analyses have concluded that the plans, while allowing some impacts to occur, will adequately conserve the species of concern during and beyond the lifetime of the permits.

The comment recommends that the Goals and Objectives section of the plan include quantifiable goals. The Goals and Objectives section is intended to describe the overall intent and direction of the plan. Quantifiable objectives for each species are included in Appendix C.

Conservation of habitat was quantified for each habitat. The plan focused on species that were either listed or were in need of protection. It is acknowledged in the MHCP and Subarea Plans that grasslands and associated species were not adequately protected.

CNPS 60. The comment recommends that the Goals and Objectives section of the plan include quantifiable goals. The Goals and Objectives section is intended to describe the overall intent and direction of the plan. Quantifiable objectives for each species are included in Appendix C.

CNPS-61. Conservation of habitat was quantified for each habitat. The plan focused on species that were either listed or were in need of protection. It is acknowledged in the MHCP and Subarea Plans that grasslands and associated species were not adequately protected.

CNPS-62. Please see response CNPS-59.

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CNPS-63. Based upon the findings of the environmental analysis, Alternative 3 results in significant and unmitigable socio-economic impacts. The adoption of Alternative 3 may be rejected by the decision makers due to the associated socio-economic impacts; however, alternatives/mitigation measures must be evaluated where they have the opportunity to reduce impacts. The decision makers must consider significant and unmitigated impacts. To fully mitigate all impacts to below a level of significance would be infeasible. It was concluded that Alternative 2 was environmentally preferred, balancing all of the environmental issues.

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major core habitat and connecting linkages.

The low level of conservation proposed is of even greater concern because of the impacts on both the core habitat and linkages- impacts that effect the entire region. Most of the proposed land for preservation in north county will have 100% of their area subject to significant adverse edge effects.(See MHCP Figure 2-4 Focused Planning Areas Edge Effects MHCP Study Area.) Much of the preserved land in Carlsbad is in large parcels that provide much greater protection from these adverse edge effects. The result is that this land is of much greater importance for protection of species than many small fragments.

CNPS-64 These overall numbers do not show the severity of the impact on specific habitat type and the associated species that are the real focus of this conservation effort. Coastal sage scrub(CSS) habitat preservation is at the core of the MHCP planning process. The Plan proposes to preserve only 64% of the remaining CSS- and much of this is being lost in large parcels. In contrast, the BCLA preserves 91% of the CSS.

CNPS-65 Another issue with the Plan is the designation of farmland as Standards Areas with their lack of definition for how this will contribute to the overall preserve plan. The BCLA alternative will conserve 2,094 acres or 58% of the existing Important Farmland in the city. The analysis in the EIR/EIS concludes that implementation of the BCLA will preserve ongoing agricultural operations and not result in any significant impacts to this use.

CNPS-66 In light of the fact that San Diego county has "more rare, threatened and endangered species than any comparable land area in the United States" (MHCP Vol. 1, Section 1.2 paragraph 1) and is considered a major "hotspot" on a global scale, the biological aspects of this plan are of far greater importance than the economic growth needs for the city or the north county region. Edward O. Wilson's article "How to Save Biodiversity" defines hotspots as "habitats that are both at the greatest risk, and shelter the largest concentrations of species found nowhere else." (1) While the city has known for years that the natural habitats being destroyed for development were unique, they chose to ignore the opportunities to be good stewards of these valuable resources- resources that belong to us all. The conservation of only 65% of these remaining native habitats is ignoring once again the important biological value of all of the remaining vegetation communities and the sensitive species that need them to survive.

CNPS-67 It is recommended that the Carlsbad Habitat Management Plan be amended to provide for the conservation of all of the areas identified in the BCLA. It is also essential that additional funding be provided to support these necessary increased levels of acquisition of land for conservation and for its on-going protection and management.

CNPS-68 Specific Additional Areas Recommended for Conservation
The Biological Core and Linkages Alternative provides for 5,906 acres of conservation within Carlsbad, as compared to only 4,955 in the Plan. It is impossible from reviewing the

CNPS-64. Please see response CNPS-63.

CNPS-65. Preservation of agricultural or disturbed land is necessary in some cases to create wildlife corridors where they would not otherwise be possible due to the absence of existing habitat. Much of the native vegetation in Carlsbad has been fragmented by grazing and farming over the past 150 years. In locations such as Bressi Ranch and Robertson Ranch, the only way of providing a wildlife corridor is to preserve some of the farmland as permanent open space and revegetate it with native plants. The preservation of these farmlands would occur at the time of development of that particular property. Revegetation would occur concurrent with development, either as a condition of development or through MHCP funding sources.

CNPS-66. As noted in the comment, the MHCP acknowledges that the "region" is considered a major hot spot on a global scale. The goals and objectives of the MHCP (as well as regional planning to the north, east, and south) is the continued existence and viability of the sensitive resources in the region. The MHCP represents a small area of this region. Additionally, the goal is to balance the needs of biology and society, while not jeopardizing the resources. Some comments state that the biological aspects of the plan are more important than the economic or social aspects of the plan. This is a value judgment on the part of the commenter. The intent of the plans is to balance wildlife conservation and other societal values. For example, the region has pressing needs in the areas of transportation, housing, and wastewater treatment, among others. The primary purpose of the plans is to arrive at a workable accommodation between these sometimes conflicting needs. This balancing of disparate needs is not a weakness of the plans and is instead the purpose of the plans.

Some comments have stated that urban and suburban development practices over the past decades have resulted in the current situation in which native vegetation is reduced in total area and fragmented, and several species of plants and animals are in decline or considered rare, sensitive, threatened, or endangered. The plans are based on the understanding that past actions have led to the current situation and that future development, if not modified pursuant to the plans, could potentially result in extirpation of some species. However, the retrospective assignment of responsibility for past actions has no place in such a planning effort. The current plans are forward-looking and are intended to modify land use policies such that the historic decline of species in this region will be halted. The plans are not intended in any way to compensate for the effects of past actions.

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CNPS-67. The EIS/EIR analyzed the BCLA and concluded that from a biological perspective, that alternative was preferred; however, there were significant socioeconomic impacts that would result. It was concluded that FPA2 was environmentally preferred, balancing all of the environmental issues. The BCLA alternative can not be implemented at this time, because the Wildlife Agencies and Cities have approved projects that will result or have resulted in the loss of habitat in the BCLA. Additionally, land use authorities must allow for the reasonable use of private property; 100% conservation is not considered a legally viable alternative.

CNPS-68. Please see response CNPS-67.

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documents to determine exactly where these additional 951 acres are located (mapping is at too large a scale). All of the land identified in the BCLA alternative should be conserved in addition to those specified in the Plan. It is assumed that most of these parcels are already included in the BCLA, but some may not be. We urge the Wildlife agencies to include the entire BCLA. In addition, there are several sensitive species locations that are not included in the BCLA. See Figure 4.3-5 Recorded Locations of Sensitive Species MHCP Study Area and BCLA Alternative 3 from draft EIR/EIS. All of these additional locations need to be added to the proposed hardline preserve design.

The following comments summarize our concerns about where the Plan is not in compliance with conservation principles.

- ┌ Recovery
CNPS-69 There is neither a goal for recovery, or actions that are specific to address "recovery" for any of the threatened/endangered species that will be subject to take permits as a result of this plan. Recovery means that a species is no longer at risk of extirpation in this area or extinction overall.
- ┌ Stewardship
CNPS-70 The Standards Areas are not sufficiently integrated with the Plan to assure that all lands are managed to protect the health of both the local creeks and lands with sensitive habitat. There is significant sensitive habitat included in these areas. The habitat needs to be mapped, conservation requirements need to be specified, and there needs to be provision for public accountability for agricultural lands consistent with other land uses.
- ┌ Figure 4.3-5 Recorded Locations of Sensitive Species MHCP Study Area and BCLA
CNPS-71 Alternative 3 shows significant populations of sensitive species within the proposed Standards Areas.
- ┌ Prevention
CNPS-72 There is language in the text that talks about "no net loss of wetlands," but there is inadequate provision for wetland buffers that are essential to assure the health of the riparian habitat. Furthermore that plan talks about riparian buffers of 50' from the riparian plant banks and another 50' of planning buffer. These buffer requirements have not been met in many areas and the result is that impacts to critical wetlands are not adequately prevented. Water quality controls have not been integrated with the plan. Funding levels are insufficient to support an effective prevention program.
- ┌ Science Based Standards
CNPS-73 There is no scientific basis upon which to make a determination that the proposed Plan is likely to result in recovery of at-risk species. Several narrow endemic species with critical populations in Carlsbad are not even specifically addressed in the preserve assembly criteria and

CNPS-69. The MHCP is not seen as a component of any adopted Recovery Plans. NCCPs and HCPs are not equivalent to Recovery Plans and are not required to meet recovery standards, although they cannot preclude recovery. They are therefore designed to be and are considered compatible with species Recovery Plans to the degree feasible. The management program will be adopted as part of the Implementing Agreement and, as appropriate, any incidental take necessary to conduct the maintenance and management will be approved through that process. Responsibility lies with the USFWS to prepare Recovery Plans for species. There are no Recovery Plans for most of the species being addressed in the MHCP. Therefore, the MHCP has relied on the guidance in the HCP Handbook starting on page 3-20.

CNPS-70. Please see response CNPS-59. The plans recognize and address the fact that significant populations of some species are located in Standard Areas. The Standards proposed for these areas are intended to conserve, to the maximum extent feasible, the species.

CNPS-71. The plans recognize and address the fact that significant populations of some species are located in Standards Areas. The Standards proposed for these areas are intended to conserve, to the maximum extent feasible, the species.

CNPS-72. The comment states that protection of wetlands is inadequate due to inadequate buffers, insufficient integration with upland habitat, water quality impacts, and other reasons. The treatment of wetlands in the plan has been written consistent with the standards of the Clean Water Act (particularly Section 404 and the requirements of the Army Corps of Engineers), Section 1600 et seq. of the California Fish and Game Code, and for properties located within the Coastal Zone, the California Coastal Act. The plans are not intended to replace the existing 404 and 1600 permit processes. After approval of the plans, any impacts to wetlands for either private or public projects will still be required to obtain these permits separately. However, the plans have been designed to protect and conserve, to the maximum extent feasible, wetland species that are also species of concern. Examples would include the Least Bell's Vireo, Arroyo Southwestern Toad, and Tidewater Goby. In addition, vernal pools receive the maximum level of protection under the plans. In the Carlsbad subarea plan, 100% of existing vernal pools and their species will be conserved. Wetland mitigation ratios have been added to the MHCP, as follows.

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**REPLACEMENT MITIGATION RATIOS FOR IMPACTS
TO WETLAND VEGETATION COMMUNITIES [1]**

Wetland Vegetation Community	Mitigation Ratio [2]
Coastal salt marsh	4:1
Alkali marsh	4:1
Estuarine	4:1
Saltpan/mudflats	4:1
Oak riparian forest	3:1
Riparian forest	3:1
Riparian woodland	3:1
Riparian scrub	1:1 to 2:1
Fresh water	1:1
Freshwater marsh	1:1 to 2:1
Flood channel	1:1 to 2:1
Disturbed wetlands	1:1 to 2:1
Vernal pool	2:1 to 4:1

Notes:

1. These communities are subject to the goal of no net loss in acreage, function, and biological value (see Sec. 3.6.1). The highest priority will be given to impact avoidance and minimization. Replacement of habitat subject to unavoidable impact will occur through restoration or creation of substitute habitat areas, generally of the same kind and in the vicinity of the impacted habitat.
2. Mitigation ratios applicable in areas subject to review by the California Coastal Commission will be addressed in the cities' respective subarea plans. Such ratios may differ from those noted here.

However, the plans have been designed to protect and conserve, to the maximum extent feasible, wetland species that are also species of concern. Volume I identifies guidance for buffers, standards are identified in Volume II, and other requirements are located in the Subarea Plans. These measures will provide program-level mitigation for water quality; however, site-specific measures will be required at the project level. Examples would include the Least Bell's Vireo, Arroyo Southwestern Toad, and Tidewater Goby. In addition, vernal pools receive the maximum level of protection under the plans. In the Carlsbad subarea plan, 100% of existing vernal pools and their species will be conserved.

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CNPS-73. Please see response CNPS-57. The MHCP indicates the following requirements for Subarea Plans to protect biological resources:

“Both inside and outside of the FPA, impacts to narrow endemic populations shall be avoided to the maximum extent practicable while maintaining some economic or productive use of the property as supported by substantial factual evidence. Inside of FPAs, mitigation for unavoidable impacts and management practices must be designed to achieve no net loss of narrow endemic populations, occupied acreage, or population viability within the FPA. In no case shall a city permit more than 5% loss of narrow endemic populations or occupied acreage within the FPA (whichever measure is biologically most appropriate for the species based on the best available science). Outside of FPAs, subarea plans must require maximum avoidance of impacts to critical and major populations, and, in priority order, avoidance, minimization, and mitigation for impacts to any populations. In no case shall a city permit more than 20% loss of narrow endemic locations, population numbers, or occupied acreage within the city (whichever measure is biologically most appropriate for the species). Unavoidable impacts should be mitigated based on species-specific criteria defined in subarea plans. Such mitigation should be designed to minimize adverse effects to species viability and to contribute to subarea plan biological objectives. Any land conserved for mitigation that supports narrow endemic species must be added to the MHCP preserve system and managed for the continued viability of the population. Mitigation for unavoidable impacts must be designed to achieve no net loss of narrow endemic population locations, occupied acreage, or population viability in the MHCP subregion and preferably, but not necessarily, within each subarea. If mitigation is proposed to occur outside the subarea plan boundary, such that a net loss would result within the subarea, then the selected mitigation alternative must be demonstrated, based on substantial factual evidence, to produce greater benefit to the species than would feasible mitigation alternatives inside the subarea.

Regardless of location, populations listed as “Critical” in the MHCP Biological Goals, Standards, and Guidelines (Ogden 1998) must be totally avoided, and any populations that are later discovered and determined to meet the criteria for a critical population must be maximally avoided while allowing some economic or productive use of property as supported by substantial factual evidence. If impacts to narrow endemics cannot be avoided while retaining economic or productive use of the property, then acquisition of the property for conservation purposes shall be pursued as a high priority, but only from willing sellers.”

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the land that is targeted for acquisition. There is not even an assessment of the impact on the key species that is the focus of the Plan- the California Coastal Gnatcatcher.(CCG) How many exist today and how many will exist after this plan is implemented?

Legal Assurances

CNPS-74

The impacts of global warming on natural communities is just beginning to be understood. What is clear is that ecosystems are responding to climatic changes. What was once considered an "act of God", like a major fire, can now be a reasonable expectation. These issues have been the focus of several recent scientific panels.(2) The assurances in the Plan fail to take into account these changes, and by so doing excludes these from requirements for adaptive management. The assurances language needs to specifically identify issues related to global warming and climatic change and require adaptive management for these conditions.

Public Participation.

CNPS-75

The draft report was re-issued along with the two volume draft MHCP, and the entire EIR/EIS document. The amount of material for the public to review is overwhelming. One public open house, held April 4, 2002 when there was less than one month left to review and comment on all of the documents was not a good faith effort to get public involvement- this was the first time the public had the opportunity to see the Plan in relationship to the overall regional planning effort.

Throughout this ten year planning effort the public has been essentially ignored. City officials apparently assumed that meetings with landowners, and with other stakeholders through the MHCP Advisory Committee were sufficient.

CNPS-76

The level of effort to educate, inform, and involve the public has not been proportional to the level of impact on the public- millions of dollars of public cost, and a fifty year plan that will determine if species can be preserved.

CNPS-77

In addition to not being adequately involved in the process of developing this Plan, the public is not included in a meaningful way in the Plan itself. There is not one mention of public review and input in the entire section on preserve management. The public role is limited in a way that is inconsistent with conservation principles. The public is not to just be told the results of decisions- they are to be involved in a meaningful way.

CNPS-78

Adaptive Management

CNPS-79

Adaptive management is given lip service in the Plan- but there is no clarification of what this means, how it will be applied, what triggers the response, who is responsible for corrective action, and how this will be integrated with long term management of this land. Furthermore, there are no provisions for adding land to the preserve or funding for any adaptive management measures included.

CNPS-74.

Adaptive management strategies will be proposed based upon findings of the monitoring. Most of the habitats in southern California have been adapted to periodic disturbance by fires. Depending upon the size of the preserve and land uses adjacent to the preserves, fire/fuel management may differ. The issues of global warming are too speculative to attempt to quantify at this time; however, as indicated earlier, the monitoring program will identify shifts or trends in population and the program implements adaptive management strategies, as appropriate. The final Subarea Plans will comprehensively address changed and unforeseen circumstances such as fires, flood, climatic drought, increase in invasive species, and future listings of noncovered species.

CNPS-75.

The Carlsbad Subarea plan was developed with the benefit of extensive public involvement and participation beginning over 10 years ago. An Advisory Group with balanced membership was formed in March 1991 and met monthly through 1994. Numerous written comments were received and considered in the plan. The plan then went into a dormancy period until 1998. At that time, public outreach continued in the form of a Speakers Bureau which attended many public meetings. In 1999 the City of Carlsbad held public hearings on its Subarea Plan before the Planning Commission and City Council. Notice of availability of the plan was published in the Federal Register in 2000, and again many comments were received. Thus, public participation has been extensive throughout the development of the plan.

CNPS-76.

Please see response CNPS-75.

CNPS-77.

Please see response CNPS-75.

CNPS-78.

Public participation in the implementation of the plans will be provided. The format for that participation has not yet been determined. SANDAG and the participating cities will give careful consideration of the various alternative means of providing participation.

CNPS-79.

Under the MHCP Plan, each conservation area must be managed to maintain and enhance habitat for covered species and other natural communities within the MHCP preserve system. The MHCP goal is to "manage" the preserve by allowing natural ecological processes to continue with minimal impact from humans. This responsibility bears with it the obligation to know the locations and condition of various resources on the preserve at all times, from season to season and year to year. Management entails careful observation (monitoring) and documentation to record how the natural communities respond to different

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levels and types of land uses, as much as it entails taking action. The preserve monitoring and management plan and its implementation must evolve with our understanding of the resources and their responses to various environmental and man-induced conditions, i.e., management must be “adaptive”. For this reason, the monitoring and management plan provides management options that may or may not be implemented, depending on the status of resources and the potential impacts of human management and adjacent land uses at any point in time.

Each city will review its monitoring and management obligations regularly with the preserve manager and decide how and where management actions should be prioritized to address threats to habitats and species. Management funds and management actions will be reallocated as necessary. In addition, each city has an annual contingency fund to address “changed circumstances”. Contingency funds not used during a given year will roll over to the following year, such that there is an accumulation of funds to meet “changed circumstances”.

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┌ Enforcement.
CNPS-80 Provisions for citizen challenges must be clearly spelled out. Provisions of federal and state law for species protection are not easily accessible to the local citizen. The Plan needs to document the process for enforcement and reinforce the right of local citizen suits to enforce the provisions of the Plan.

┌ Funding, Implementation, and Monitoring.
CNPS-81 There is not an adequate funding plan that assures implementation of the required levels of conservation, resources for adaptive management, and the permanent management of the preserved land. The currently nonexistent "regional funding source" is critical to plan implementation, but after ten years of planning effort has not been determined, and consequently there is no time frame for provision of these funds.

The federal and state share of land acquisition has not been guaranteed, and funds for local acquisition do not appear to be sufficient for the need. Without the provision of adequate funds this plan is just a piece of paper.

The monitoring process also does not provide timely, comprehensive information.

┌ A.8 Item 2
CNPS-82 It is stated that " Onsite and offsite mitigation lands for the projects are treated as already conserved if the lands have been explicitly delineated...". These are major projects with hundreds of acres of mitigation. The Plan needs to clearly identify the number of onsite and offsite acres per project by habitat type. The lack of information makes it impossible to determine where there are still unallocated mitigation requirements that could be applied within the city of Carlsbad- either toward the BCLA areas, or other targeted areas for conservation.

┌ A.8 Item 3
CNPS-83 The end of the sentence is missing- a clear statement is required about where and how many acres are being contributed by the Fieldstone HCP.

┌ C. page C-1
CNPS-84 The sixth bulleted item states that in 1997 the vegetation and species maps were further updated and refined. It is assumed that Figure 3 is the updated vegetation map- but there is not map that shows location of target species by species. This lack of information makes it impossible to assess how well the plan has addressed species specific issues.

┌ It is also unclear what has been updated since specific references such as that in D.2.B
CNPS-85 state the area " has not been recently surveyed. " There needs to be a better explanation about where data has been updated and where it has not been.

Item 3 states that current information is now available for the narrow endemic species-

CNPS-80. The plans do not and should not provide any avenues of enforcement different from what already exists in state and federal law. There will be preserve managers with the authority to enforce the law and issue violations for infractions.

CNPS-81. 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 CFR, Title 40, Sec. 1508.14, and California Public Resources Code, Sec. 21100).

Implementing a preserve system for the MHCP will involve actions by local jurisdictions as well as by federal and state agencies. Some of those actions, such as commitment of public lands for habitat use, can occur without new funding. Other actions, such as management of habitat lands conserved as mitigation for project impacts, will be funded by organizations or individuals responsible for project development. Key to successful implementation of the MHCP is that important habitat areas be conserved at a rate which at minimum preserves the continued viability of target species and mitigates for impacts which occur. Since habitat loss allowed under the plan would not occur all at once, public financing for the MHCP is not immediately required. Under the plan, implementation would be periodically monitored to insure that adequate conservation occurs over time. Thus the need for funding of specific conservation tasks will be reviewed, and if necessary supplementary actions taken, while the jurisdictions pursue a regional funding program. Thus the need for funding of specific conservation tasks will be incremental yet assured through the City's IA, while the jurisdictions pursue a regional funding program.

The federal Endangered Species Act ("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 prepared. The Secretary may also require other assurances that the plan will be implemented. The MHCP provides the framework for the funding necessary to implement the program. The assurances of such funding will be provided in the draft Implementing Agreement for each City which will undergo a formal public comment period identified in the Federal Register once the Wildlife Agencies receive a request for a 10(a)1(B) permit and a Section 2835 permit for the Subarea Plan.

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The MHCP envisions that habitat acquisition, habitat restoration, and management, monitoring, and administrative costs will be funded by participating local jurisdictions through a cooperative regional funding program, to be placed on a ballot for voter approval within three years of the approval of the plan (MHCP, Vol. I, Sec. 7.2 and Table 7-2). The MHCP also identifies a range of funding sources that may be used, such as property tax, Mello-Roos special tax, sales tax, and benefit assessment.

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

- Commitment of public lands owned by participating local jurisdictions to the preserve.
- Management of existing state and federal lands as part of the preserve.
- Interim funding of selected conservation actions as described in the Final MHCP, Subarea Plans, and Implementing Agreements.
- Recently completed acquisition of selected properties using state and local funds, such as some of the stepping stone parcels in the City of Oceanside, upland parcels in the City of Encinitas along the south shore of Batiquitos Lagoon, a key linkage area in the City of Carlsbad, and Bernardo Mountain in the City of Escondido.
- Requirement of mitigation of impacts from new public and private projects.

The Wildlife Agencies (USFWS and CDFG) will, through Implementing Agreements with participating jurisdictions, "monitor plan implementation" and "ensure that habitat conservation proceeds in step with development" (MHCP, Vol. I, Sec. 5.2.3). Furthermore, "[i]f the Wildlife Agencies determine that the subarea plan is not being implemented as required, the wildlife agencies and the city will take the actions specified in the subarea plan and implementing agreement to remedy the situation" (MHCP, Vol. I, Sec. 5.3.8). The requirement to review will apply if a regional funding program is not approved in a timely manner, and an alternative remedy may require each jurisdiction to develop and implement a funding source adequate

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to meet its share of the MSCP and Subarea Plan implementation as it continues to pursue a regional funding source.

- CNPS-82. The statement referred to in this comment is a part of the Introduction. It is intended only to summarize the way in which the plans address four projects which have already received take authorizations. It is not intended to be a detailed explanation of the mitigation requirements of each of those projects.
- CNPS-83. The comment refers to a typographical error. A more thorough explanation of the mitigation requirements of the Fieldstone Habitat Conservation Plan is included on page D-71 of the subarea plan. For a complete discussion of the mitigation requirements, please refer to the Fieldstone Habitat Conservation Plan documents.
- CNPS-84. The subarea plan does not include a map showing species locations for several reasons. Some properties have not been surveyed by the property owners, or the survey information has not been provided to the City. Where survey information was available, the data were reviewed by the MHCP biological consultants and the wildlife agencies to ensure accuracy. The data were then analyzed on a regional scale, and the results are included in the Public Review Draft MHCP Volume II and EIS/EIR (see Figure 4.3-3). Finally, the scale of maps that can be reasonably included in the subarea plan makes detailed species location maps largely unreadable. For these reasons, the City chose not to include species location maps in the subarea plan. Full-scale maps were made available during numerous public meetings and were on file at the SANDAG offices.
- CNPS-85. Please see response CNPS-84.
- CNPS-86. Please see response CNPS-84.

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but these are not shown on any of the figures. In contrast, in the Oceanside Sub-area plan there were several figures that showed the locations for all of the key populations of narrow endemic and other targeted species. This allows a determination as to the extent of conservation by species that cannot be done with the Carlsbad Plan because of the lack of this information. Why make a point of having updated all of the maps and then include none of them in the version of the Plan submitted for public review and comment?

C.2 Habitat and Species

Paragraph 2 referencing Table 2 lists 14 species that the city is not requesting coverage for at this time even though these are species covered in the MHCP. The explanation for the exclusion of these species is insufficient. Only one of the species is documented as occurring in Carlsbad, but the habitat types are and there is no assessment of the probability of occurrence. Why are these species excluded? What would trigger their inclusion?

Many of the target species require or benefit from grassland habitat for cover and foraging, yet the proposed mitigation does not assure adequate retention of this habitat type.

C.3 Existing Levels of Conservation

The three categories of existing conserved land have vastly different historical monitoring. There needs to be some assessment of current condition/quality of these lands. Those that do not meet the standards need to have requirements for restoration. It is assumed that at least part of the dedicated open space/easements lands are managed by HOA's (or developers where land has not yet been turned over to an HOA). These lands are often not maintained to preserve habitat. For example in Phase 1 of the Calavera Hills dedicated open space we have previously documented areas of incursion by non-native plants, erosion from improper drainage off of new roads, habitat destruction by off-road vehicle use, and other issues that have caused, and continue to cause, habitat destruction/degradation.

The plan needs to address these issues with the condition of existing conserved land. Where there has been a loss of habitat there must be provisions that require its restoration to the levels approved in the original mitigation plan for the project. Land cannot be counted as conserved until there is verification that the acreage by habitat remains in acceptable condition.

C.4 Assessment of Conditions and Options

Item 2 The city approved a less than optimum configuration of open space with the Fieldstone HCP- so while the city and wildlife agencies have no ability to require further conservation from this project- they do have the ability- and the obligation to see that the remaining mitigation requirement is used to optimize conservation. There are over 300 acres of remaining mitigation from this project. Losses in Carlsbad should be mitigated in Carlsbad- until all of the acres required for the BCLA and critical population locations have been addressed. Then excess credits can be applied to other priorities in the region. This may mean that the city has to find additional funds for land acquisition- that is the price for giving up prime habitat

CNPS-87. The list of "covered" species for the Carlsbad subarea plan includes some species for which take authorization will only be given if other subarea plans are also approved with adequate conservation levels. Thus, these species could be considered "conditionally covered". It is anticipated that the other subarea plans will be approved as adequate for those species, and the City of Carlsbad will then request take authorization. However, if the other subarea plans are not approved, or if conservation of those species is not adequate, the City of Carlsbad will not have take authorization for those species. Species which are not known to occur in Carlsbad were included in the subarea plan because of the potential for their occurrence due to suitable habitat.

CNPS-88. The Draft EIS/EIR addresses species which require or benefit from grassland habitat and significant/unmitigated impacts were identified for those which had insufficient conservation.

CNPS-89. Implementation of the subarea plan will include a comprehensive preserve management program as described in Section F. The preserve management plan will address issues such as ownership, existing and past levels of management, invasive species, and maintenance of target species.

Although large-scale restoration projects are not planned nor required by the HMP, restoration is necessary to enhance linkages and disturbed habitats and should include reintroduction of native species and eradication of nonnative ones. Project-specific mitigation plans should identify where restoration is most needed. Appendix C of the Carlsbad Subarea Plan identifies restoration priorities based on the need for connectivity, territory size, and the potential to enhance habitats of sensitive species. Restoration feasibility should be based on an assessment of the level of effort required, costs, access, physical factors, biological conditions, and adjacent land uses.

CNPS-90. The comment incorrectly states that the City of Carlsbad approved the Fieldstone Habitat Conservation Plan with an inadequate level of conservation. The Fieldstone Plan was approved by the U.S. Fish and Wildlife Service and the California Department of Fish and Game after completion of all legally mandated reviews and public notification. The opinion that the plan is inadequate is not substantiated by any facts or information. The Fieldstone Plan further requires that offsite mitigation be located outside of Carlsbad in an area that contains a critical gnatcatcher population and provides a critical regional linkage. Additional conservation in Carlsbad could not accomplish both of these objectives. In any case, the

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Fieldstone plan is an existing take permit that was approved in 1995, and not subject to the current subarea plan.

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within the city when they had the option to retain it.

CNPS-91 Item 3 Carlsbad does include several large blocks of habitat- that are identified as core habitat in both the Plan and the MHCP. The plan needs to emphasize the importance of preserving these cores- as they will be less subject to edge effects and have much greater probability of remaining viable than small isolated fragment, or narrow connecting linkages.

CNPS-92 The wildlife corridors, referred to as linkages in the Plan, are only viable if they will support a viable population of coyotes or other predators. Too much of these corridors rely on stepping stones. This works for brief period of bird movement, but cannot sustain breeding populations in isolated patches, surrounded by development, with no access for the predator population. The Plan needs to identify the impacts of edge effects on these habitat fragments, and then determine that there are a sufficient number with connectivity for predators to assure viability.

CNPS-93 Furthermore, it is clear from the historical record, and the discussion summarized in section 5.3.9 of the MHCP that there were, and are, better alternatives for conservation of large blocks of core habitat than what is proposed in the Plan. The Fieldstone HCP was approved in the middle of the regional planning effort and this would have provided an essential coastal area core habitat.

CNPS-94 The Calavera area core habitat has large blocks with excellent potential for CSS restoration- in fact 183 acres of the Calavera Highlands Mitigation Bank was supposed to have been restored 7 years ago as part of the Highway #76 road widening project mitigation. Caltrans was not held accountable for their failed restoration, and this land is not now counted as CSS as it should be. The proposed regional plan essentially puts all of the eggs in one basket- the core Gnatcatcher habitat that is yet to be acquired. Meanwhile other existing land, contiguous with core habitat, with excellent restoration potential is not being preserved. It is not responsible planning to allow all viable alternatives to be lost. The core habitat at Calavera and what is left in southeastern Carlsbad both need to be retained- at least until it is demonstrated that the new Gnatcatcher core is viable and proven.

CNPS-95 D.2.A Core 1 FPA
There is a statement that a narrow strip of riparian habitat may function as a wildlife movement corridor, but " it is not considered a landscape level linkage." A riparian area is part of the wetlands habitat that are supposed to be 100% conserved. This area needs to be distinguished on habitat maps and its conservation needs to be assured. The intent of this exclusion is unclear and it appears to be a violation of the standards included in the MHCP. This needs further clarification.

CNPS-96 D.2.B Core 2 and Linkage FPAs
This area is identified as a possible major population for the Least Bell's Vireo, yet

CNPS-91. The comment acknowledges the importance of the core areas that will be conserved by the subarea plan.*

CNPS-92. The Draft EIS/EIR has analyzed edge effects on the preserve system, as well as the ability of mid-level predators to utilize the corridors and linkages. See Section 4.3.2 of Draft EIS/EIR. The Carlsbad Oaks North project has been approved by the City and is now in a Section 7 process with the Army Corps of Engineers and the USFWS. The unincorporated core has preserved 328 acres to date; funds to purchase the remaining core are discussed in the financing section of the MHCP, Section 7.

CNPS-93. Please see response CNPS-90 regarding Fieldstone Habitat Conservation Plan.

CNPS-94. Please see response CNPS-59.

CNPS-95. The comment refers to a discussion of a portion of Buena Vista Creek. The area in question has already been constricted by existing development. The statement in the subarea plan was intended only to indicate that this portion of the creek will serve a limited purpose for wildlife movement, but it cannot be expanded or significantly improved due to existing constraints.

CNPS-96. Surveys for species on both privately owned and publicly owned land are conducted by biologists who are retained by the owner of the property. For properties where active planning for development is taking place, surveys must be conducted and the information shared with all involved agencies. If a property owner is not planning for development, there is no legal requirement for property owners to survey their property for sensitive species. The City has neither the funds nor the legal authority to survey for species on properties without the consent of the property owner. There are numerous properties in the City of Carlsbad and the entire MHCP area that have not yet been surveyed, even though it is believed that sensitive species may be on the property.

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"recent survey data is lacking." Current surveys are needed for all core areas and linkages.

CNPS-97 The linkage between Core 2 and Core 3 includes short stepping stones. Since this is the major connecting link through Oceanside the quality of this connection needs to be improved. This particularly needs to support predator population movements. Studies by Crooks and Soule support the critical needs for predator movement to protect avian species. (3)

CNPS-98 The corridors identified do not meet the minimum standards for a wildlife corridor identified in the MHCP- 1,000 feet wide with a pinch point of at least 500' for a length of no more than 400'. The corridor- particularly between Core 2 and Core 3 because of its relationship to movement through Oceanside to Camp Pendleton must be improved to at least meet these minimum standards.

CNPS-99 Corridor viability in this area is also compromised by major roadways. There need to be specific means to address these roadway barriers. Undercrossings are preferred in most locations, but other measures can be considered depending upon topography and other site specific conditions.

CNPS-100 D.2.C Core 3 and Linkage FPAs Part of Link B is through a Standards area- the "opportunities for enhancement and restoration" need to be specified to assure a viable corridor. Link B also includes major roadway barriers that must be addressed.

CNPS-101 D.2.D Core 4 and Linkage FPAs An undercrossing of Palomar Airport Rd is needed at Linkage Area F. Another undercrossing is being provided as part of the mitigation for grasslands at the Carlsbad Raceway. The corridor must protect ability for predator movement. Without an undercrossing in this area this is not a viable corridor.

CNPS-102 D.2.E Core 5 and linkage FPAs Portions of the linkage in this area include habitats within the neighboring city of San Marcos. The purpose of doing regional planning is to assure that these locations across jurisdictional boundaries are part of an integrated plan. It is not enough for Carlsbad to put in their plan that there is potential linkage here- it needs to be fully addressed with contact with the neighboring jurisdiction and coordinated planning between the two cities.

CNPS-103 Furthermore, portions of this linkage are also in the city of Vista. There are significant opportunities for integration of the open space and landscaped areas of the industrial park with the Carlsbad Raceway project. This is particularly important because of the constrained width of the wildlife corridor in this area.

CNPS-104 Also the buffer for the wetlands in this area do not meet the minimum criteria for

CNPS-97. The linkage between Core Areas 2 and 3 is largely fragmented by existing development in the Calavera Hills Area. The BCLA excluded all developed or graded areas, and the remaining undeveloped land that contains some vegetation was included in the BCLA. Although some steps can be taken to improve the quality of the habitat in the corridor, it will remain a stepping-stone linkage.

CNPS-98. Please see response CNPS-97.

CNPS-99. Roadway crossings for wildlife are a topic of some discussion among biologists. Studies have been conducted on the ability of large mammals to cross roads or use undercrossings, but few studies have examined these issues with respect to the species of concern to the MHCP. Undercrossings such as bridges or culverts have been used in some situations and are proposed for some future roads. However, a bridge or culvert is not reasonable or appropriate for every road. Anecdotal evidence suggests that the mid-level predators (coyote and bobcat) that would be the focus of such crossings would cross a road at grade level. It is agreed that there needs to be specific means to address roadways as barriers to wildlife movement throughout the MHCP. As a result, development guidelines in MHCP Volume I address this issue and MHCP Volume II includes more specific measures necessary for specific covered species. However, this question will be addressed on a case-by-case basis, using the best available scientific information, to determine whether an undercrossing structure would be reasonable and beneficial to the target species.

CNPS-100. The linkage between Core Areas 2 and 3 is largely fragmented by existing development in the Calavera Hills Area. The BCLA excluded all developed or graded areas, and the remaining undeveloped land that contains some vegetation was included in the BCLA. Although some steps can be taken to improve the quality of the habitat in the corridor, it will remain a stepping-stone linkage.

The definition of a Standards Area means that no detailed planning has been done for the property. The Standards indicate the biological goals that must be achieved. The precise means for achieving the goals will be determined at the time development is proposed subject to the CEQA process. For roadway-related concerns, please see response CNPS-99.

CNPS-101. Please see response CNPS-99.

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CNPS-102. Core Area 5 adjoins the Cities of Vista and Oceanside. The MHCP has resulted in coordinated planning between the three cities to the maximum extent feasible in light of each city's local land use authorities. Wetland replacement ratios and buffers requests are found in Volume I of the MHCP and Subarea Plans. See the Public Review Draft MHCP Plan Volume II, Figure 2-4 which shows the coordination of the BCLA between the cities.

CNPS-103. Please see response CNPS-102.

CNPS-104. Please see response CNPS-102. Linkage Area E, which connects Core Areas 6 and 7, consists primarily of a power line corridor surrounded by existing development. There are two small finger canyons branching off the power line corridor, but aside from these areas, there is no opportunity to enlarge Linkage Area E. Despite its limited width, it is shown in the plan because it is the only remaining link between Core Areas 6 and 7.

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wetlands protection and must be improved.

- CNPS-105 D.2.F Core 6 and Linkage FPAs
Linkage Areas E and F do not meet the minimum corridor standards of the MHCP. Improvements are needed to at least this minimum level.
- CNPS-106 D.2.G Core 7 and Linkage FPAs
Where the Plan relies on "landscape linkages" landscaping criteria need to be established to assure the continued viability of this linkage.
- CNPS-107 Where golf courses are contiguous with native habitat specific criteria need to be provided to prevent adverse impacts on the native habitat from the golf course operations. Golf courses have significant and adverse impacts on the environment. These include increased run-off and run-off containing large amounts of fertilizers and pesticides. This run-off soaks into the water table and ends up in our creeks and lagoons. All of the sensitive species that depend upon this riparian habitat are impacted. Provisions need to address both existing and new golf courses. New courses especially should be required to meet the newest standards to minimize golf course impacts. (4)
- CNPS-108 D.2.H Core 8 and Linkage FPAs
There is a break between Linkage F and Core Area 8 which significantly reduces its value as a corridor. This needs to be addressed.
- CNPS-109 D.2.I Special Resource Areas
The three Special Resource Areas are not given boundaries nor does Table 3 show any acreage by habitat type.
- CNPS-110 SRA 2- the identified vernal pool location is critical for several species. Boundaries, buffers and protection measures need to be specified.
- CNPS-111 There are other vernal pool locations that need to be identified as special resource areas- particularly those north of Palomar Airport Rd and at El Camino/La Costa. Vernal pools are an area for special focus in the MHCP and are supposed to be 100% protected. In order to assure this, all of the locations must be clearly identified with protection measures/buffers specified.
- CNPS-112 The historic El Salto Falls along Buena Vista Creek should also be identified as an SRA- for the combination of historical, cultural, and biological significance. This should include special consideration of buffer zones, and protection during construction.
- CNPS-113 D.3.A Existing Hardline Preserve Areas
A detailed table is needed that shows acres by project and by habitat type. In the absence of this information it is not possible to assess that this is accurate and that all mitigation

- CNPS-105. Please see response CNPS-59.
- CNPS-106. The HMP includes appropriate restoration and landscaping guidelines to ensure linkage viability. Each City will provide site-specific guidelines to be implemented.
- CNPS-107. The MHCP does not have the authority to require existing golf courses to modify their operations for the protection of the preserve system unless those operations would constitute take of a listed species. Water quality issues can be addressed under the NPDES permit process. New golf courses will be required to provide adequate buffers and to employ best management practices for minimizing impacts to adjacent habitat.
- CNPS-108. The gap between Linkage Area F and Core Area 8 is the already developed Aviara Master Plan. It includes an existing golf course and homes.
- CNPS-109. Special Resources Areas were designated as part of the BCLA process. Although they were considered too small and constrained to be included as either core or linkage areas, they have some value to the preserve system and should be managed to maximize their value. Some SRAs contain populations of listed species, such as the Poinsettia vernal pools. Others represent the only remaining connectivity for wildlife in already developed areas. Further geographic analysis of these areas is not necessary because of their limited size. They will be given more detailed attention in the preserve management plans.
- CNPS-110. Please see response CNPS-109.
- CNPS-111. The locations of all documented vernal pools and watersheds have been included in the MHCP and in the subarea plan. Protection measures are identified in Volume II.
- CNPS-112. The historic El Salto Falls is located on the boundary between Carlsbad and Oceanside. Although the falls have no documented biological importance, their cultural and hydrologic significance may merit designation as a SRA. The Cities of Carlsbad and Oceanside will consult on the question of SRA treatment prior to approval of the implementing agreement.
- CNPS-113. Because Existing Hardline Areas have already been conserved by previous actions of federal, state or local governments, no additional benefit would

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derive from including a table showing the contributions of each project. That information is available for review in the City's planning files.

Fee-owned rights-of-way (ROWs) will be subject to the existing agreement between the Wildlife Agencies to manage resources. Those ROWs not owned are not subject to this agreement and will be subject to site-specific review by the Wildlife Agencies.

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requirements have been accounted for.

CNPS-114 There are significant SDG&E easements through much of the areas identified as hardline preserve. These easements are either fee-owned right-of-way or simply rights-of-way owned by others. The distinction limits SDG&E's requirements under the NCCP as they are only required to mitigate and maintain natural habitat in the fee-owned areas. How much of these easements are fee-owned in Carlsbad?

CNPS-115 Throughout this area most of these easements are routinely graded, both for maintenance access and for fire protection. If this practice is to be continued, then the acreage for these easements needs to be deducted from the sensitive habitat totals. If this practice will not continue, then criteria to assure habitat protection need to be specified with appropriate implementing/management agreements with SDG&E.

CNPS-116 When these powerlines build up corrosion they build up a disturbing "humming" sound. The sound is very irritating to humans. Are there any studies that show its impacts on wildlife activity- particularly the sensitive species? Is there any verification that CCG will use such a power line corridor?

CNPS-117 If restoration is planned within these easements who will pay for it? Who will be responsible for on-going maintenance?

CNPS-118 There are several projects approved since this draft plan was initially prepared that resulted in revised hardline boundaries. Because we were aware of these changes we submitted a request for the list- but this should have been included as an addendum or plan update so that everyone reviewing the plan was fully aware of these changes. The city chose to re-issue a three year old report rather than making the updates that should have been part of the process to evaluate the city's plan as part of the overall regional effort. (See Attachment 2 for list of projects with changed hardline boundaries.)

CNPS-119 D.3.B Proposed Hardline Preserve Areas

The plan needs to be updated to reflect the most recent agreements with the California Coastal Commission with respect to mitigation for the proposed municipal golf course. Since it is now reported that the environmental mitigation required for the course make it prohibitively expensive and it is now likely that the City will not proceed with this project- a contingency plan should be provided as part of this Plan. There are major spillover effects from the changes to this project- whichever way the city goes the response should be integrated with the regional conservation effort with full opportunity for public review and comment. The city knew this was an issue before this draft was re-circulated but chose to ignore this issue in the Plan.

CNPS-120 Group picnic areas are proposed to be included within the preserve corridor at Hub Park. This would normally not be an accepted use in hardline preserve. If it is to be included, then

CNPS-114. SDG&E is not a party to the MHCP because they have entered into an independent agreement with the Wildlife Agencies. The powerline easements in some areas have the effect of providing linkages for wildlife. On the other hand, some disturbance within the powerline corridor does occur periodically due to SDG&E maintenance activities. The MHCP cannot reasonably estimate the effects of SDG&E maintenance on the preserve system, but anecdotal evidence suggests that it is likely to be minimal. Gnatcatchers and other sensitive species are routinely observed in the powerline corridors, including the key corridor linking Oceanside to Camp Pendleton. No substantiating facts or information were included in the comment to raise a fair argument that the acreage of powerline corridors should be subtracted from the total preserve system acreage.

CNPS-115. Please see response CNPS-114.

CNPS-116. Please see response CNPS-114.

CNPS-117. Restoration areas have not yet been determined. Management and maintenance will be specified in the Implementing Agreement.

Following approval of the MHCP Subregional Plan, each City will submit its subarea plan for approval by the wildlife agencies. Carlsbad will be revising its subarea plan to include the new Hardline Areas and any other revisions that may be needed. The revisions will also include changes recommended by the California Coastal Commission. The net effect of these revisions will be to slightly increase the total area of the preserve system.

CNPS-118. Projects continue to move forward concurrent with the review and approval of the MHCP Subregional Plan. It should be noted the subarea plans, Implementing Agreement, and ordinances will go out for public review before the Wildlife Agencies issue an Implementing Agreement.

CNPS-119. The City is proceeding with the municipal golf course project. Discussions with the Coastal Commission have led to minor revisions to the golf course, and it is anticipated that the Coastal Commission will now support the project. No contingency plan is required for any property addressed in the subarea plan. Additionally, please see response CNPS-118.

CNPS-120. The preserve management plan which will be prepared subsequent to approval of the MHCP will include specific management controls for passive recreation (picnic areas and other public use areas) within the preserve system.

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specific management controls need to be added to address issues like closed trash containers, litter control, etc.

CNPS-121 It is assumed that fire breaks are not part of preserve acreage. However, there are many areas where reducing the size of fire breaks would significantly improve the viability of what often are very constrained corridors. There is precedent in Carlsbad for allowing glass walls behind residences in exchange for a much reduced fire break. (Portions of Calavera Hills Phase II) All areas where such changes could significantly improve the preserve design should be identified, prioritized, and included within the Plan and the financing proposal for the Plan.

CNPS-122 There is no constraint on land uses that common sense says are not consistent with the intent of the preserve system. A police shooting range is one such inappropriate land use in the middle of what is supposed to be a nature preserve. This issue is of particular concern because not only Carlsbad, but Escondido and Oceanside are also proposing to do the same thing. Such ranges do not meet exterior noise levels specified in the city ordinance. If such a use is to be allowed, then the impact of these excessive noise levels on the preserve area species needs to be evaluated.

CNPS-123 Roads would need to be provided to access the shooting range- the acres and impacts of these roads have not been considered and must be identified and deducted from preserve land. The location adjacent to the sensitive riparian area makes this an even worse choice.

CNPS-124 The SDG&E easements discussed previously are also an issue in the proposed hardline areas. Either these areas need to be deducted from the land preserved, or there need to be detailed agreements that assure habitat is maintained in these corridors.

CNPS-125 Part of the ability of the public to effectively monitor preservation status is to include them in the reporting on mitigation banks- both public and private. In the past the city has taken the position that they have no role in this process- it is just between the developer and the non-profit organization contracted to manage the mitigation bank. (At Calavera Heights managed by TET through McMillin Homes). Reporting on mitigation banks needs to be included in the overall public reporting and review system.

CNPS-126 The CSS conserved habitat shown on Table 8 at 64% in the Plan does not match the total shown on Table 3-4, Volume I of the MHCP at 71%- please clarify.

CNPS-127 Figure 8
This needs to be updated to reflect current agreements between the city and the CA Coastal Commission.

CNPS-128 Figure 9 Bressi Ranch
In spite of the policy of no net loss of wetlands and that avoidance is the first choice, this

CNPS-121. The preserve management plan will identify areas where existing fire breaks and utility access roads may be eliminated or reduced in width. In such cases, disturbed areas will be revegetated.

The City is considering other locations for the police firing range. Although the proposed site in the Calavera Area has not been eliminated from consideration, the comment regarding potential conflicts with the preserve system has been noted.

CNPS-122. This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment. The City is considering other locations for the Police firing range. Although the proposed site in the Calavera Area has not been eliminated from consideration, the comment regarding potential conflicts with the preserve system has been noted. Table 8 of the Carlsbad Habitat Management Plan states there are 3,315 acres of coastal sage scrub in the City. The MHCP Volume I, Table 3-4 states there are 2,298 acres of coastal sage scrub in the City. The MHCP study area does not contain areas that have been approved for take (i.e., Fieldstone) or areas that are not seeking take authorizations (i.e., County-owned property). The Carlsbad Plan includes all property within the City limits.

CNPS-123. Please see response CNPS-122.

CNPS-124. Please see response CNPS-114.

CNPS-125. Mitigation areas should be distinguished from formal Mitigation Banks. The former will require monitoring by the City as part of the preserve system. The latter are subject to agreements between the property owner/operator and the wildlife agencies. In the case of the Carlsbad Highlands Conservation Bank, which is the only formal bank in Carlsbad, ownership is turned over in phases to the State of California which will be responsible for management. Reporting on the management of state owned lands will also be included in the annual monitoring of the preserve system.

CNPS-126. The inconsistency in numbers can be explained by the fact that slightly different methodologies and GIS assumptions were used to estimate conservation in the Carlsbad HMP (prepared by the City of Carlsbad) and the

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MHCP (prepared by SANDAG). Also, the MHCP estimates do not include development projects permitted by the wildlife agencies (i.e., Fieldstone).

CNPS-127. The City will review Table 8 to reflect the increased acreage of conservation in the coastal zone.

CNPS-128. The Bressi Ranch project area has already been issued a 404 permit and Section 7 Consultation to address both wetland impacts and coastal sage scrub impacts. Wetland impacts are to ephemeral drainages lined with tamarisk subspecies (an invasive plant). Temporary impacts will be mitigated by creation of southern willow scrub and other native riparian vegetation in a drainage that is likely to support a more consistent water flow. This occurred after publication of the December 1999 Draft of the subarea plan. The 404 permit and Section 7 did not alter the Hardline design as shown in the subarea plan, but it did alter the legal status of the property from being a Proposed Hardline to an Existing Hardline. When the subarea plan is revised, this change will be incorporated.

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project includes significant wetlands habitat impacts. Clarify how the wetlands criteria were addressed in the configuration of this project.

Figure 10 Carlsbad Oaks North
CNPS-129 The proposed road extension of Faraday is through wetlands- A critical segment of the degraded Agua Hedionda creek and watershed. Section 3.7.2 of the MHCP states that "Road or utility projects that are to be permitted under an MHCP sub-area plan will be required to demonstrate that crossings of sensitive habitat will occur at the least overall biologically sensitive location and that all feasible minimization measures have been implied." It is clear from review of the vegetation map that there are other locations that would have less impact on sensitive habitat. This roadway location and development outline have not changed in over 20 years- since the 1981 original submittal to the city for this project. There is no evidence that any effort has been put into a less environmentally damaging roadway location.

The development boundary on the southwestern portion of the site is too large for just an intersection of two roads- and is an area where a large fragment of CSS and Southern Maritime Chaparral will be impacted. The destruction of these habitats is not justified by the proposed development- what is the explanation for this?
CNPS-130

Figure 11 Holly Springs
CNPS-131 One large interior portion of preserve land should be connected on both the north and south to the large contiguous open space to improve its viability.

Figure 12 Kelly Hillman Property
CNPS-132 This area is part of Core 3. Roadway undercrossings are an issue here to assure that this area can function as part of the core and for movement up though Oceanside.

Figure 13 South Coast
CNPS-133 Integration with adjacent sensitive habitat in Oceanside needs to be specified. Not all of the wetlands habitats are avoided. See prior discussion re non-compliance with MHCP standards for wetlands avoidance.

Figure 14 Raceway
CNPS-134 Wetlands impacts were not avoided in this project that just recently had the EIR approved. Connectivity with adjacent sensitive habitat in both San Marcos and Vista needs to be integrated into the Plan to improve the functioning of this key regional wildlife corridor.

The SDG&E easement is a key link through this area. This needs to be integrated with the recently approved wildlife undercrossing of Palomar Airport Rd.
CNPS-135

Figure 15 Manzanita Partners
CNPS-136 El Camino Real creates a barrier that results in most of this area becoming isolated

CNPS-129. The alignment of Faraday Avenue east of El Camino Real and its wetland impacts are currently under review in a project level EIR and 404 application. That process will result in a determination by the appropriate agencies of the Least Environmentally Damaging Practicable Alternative. If that process significantly revises the Hardline design, it will be shown in the revised final subarea plan.

CNPS-130. Development areas are proposed at the intersection of Faraday Avenue and El Fuerte Street. See CNPS-59 regarding the acceptability of impacts.

CNPS-131. Please see response CNPS-59.

CNPS-132. The Kelly Ranch project has been issued a 404 permit and Section 7 consultation, as well as a Local Coastal Program Amendment from the California Coastal Commission. The issue of road crossings and other conservation questions were thoroughly analyzed in those permit processes. Because the project is now fully permitted and under construction, no modifications to the project can be made. The final Subarea Plan will include this project as a hardline.

CNPS-133. Please see responses CNPS-59 and CNPS-72.

CNPS-134. Please see responses CNPS-72 and CNPS-102. The Raceway is now in a Section 7 process with the USACOE and USFWS.

CNPS-135. Please see responses CNPS-72 and CNPS-102.

CNPS-136. The Manzanita Partners Project has already received a 404 permit and Section 7 consultation, which includes grading necessary for the widening of El Camino Real along the frontage of the property. Therefore, no modifications to the project or the design of the road are possible at this time. In addition, some vernal pools are located near the road.

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fragments. An undercrossing of the roadway should be provided in this area.

CNPS-137

Figure 16 Veteran's Memorial Park

This area is part of the BCLA. A roadway undercrossing needs to be addressed to protect this linkage.

CNPS-138

Figure 17 Hub Park and SDG&E

Roadway crossings for wildlife need to be addressed in this area.(probably just outside the project boundaries to the east.)

CNPS-139

Figure 18 Lake Calavera

As discussed previously, the police shooting range is an inappropriate land use in the middle of a preserve, contingency plans need to be provided for the golf course mitigation, and the plan does not address the need to add roads through hardline preserve to access the shooting range or any other public facility that would be located in this area. Basic standards for mitigation of destruction of hardline preserve are at least 4:1, but this area would also require wetlands impacts that should have an even greater penalty.

CNPS-140

Figure 20 Hieatt

Conservation boundaries create an isolated fragment- connection should be provided- even if this is just a landscaped area.

CNPS-141

Figure 21 Fox-Miller

This is part of the BCLA linkage area. Well over 25% of the site remains for development even if all of the on-site CSS is preserved. The proposed development boundaries are not consistent with plan criteria and are not consistent with the BCLA preserve design.

CNPS-142

Figure 22 Calavera Heights

Wetlands impacts have not been avoided as required in the MHCP standards. The reconfigured preserve boundaries have relocated the regional wildlife crossing. The new wildlife corridor is bisected by three roadway crossings. College Blvd. is of the greatest concern because of the width of the roadway and the volume of traffic it will be carrying. An undercrossing or other means to protect this area for a wildlife crossing needs to be provided.

CNPS-143

This project is an example of the impacts of this Plan failing to address habitat quality issues. Two prime CSS hillsides, currently occupied by nesting CCG, contiguous with the core habitat will be destroyed while a degraded interior village isolated by major roadways will be preserved. These qualitative differences are not apparent from just looking at lines on a piece of paper- but they are very real to the plants and animals who will now be forced onto a less desirable habitat- and many of whom will become roadkill.

CNPS-137. Roadway undercrossings have been included in Faraday Avenue to facilitate connectivity between City owned properties north and south of the road.

CNPS-138. This comment recommends a roadway undercrossing for Cannon Road to the east of the Hub Park/SDG&E property. However, there is a bridge in Cannon Road over Macario Canyon Creek specifically for the purpose of providing a wildlife undercrossing. The height of the bridge is 30 ft. and its east end and 50 ft. at its west end. There are actually two separate bridge structures with a 14 ft. wide open space between them.

CNPS-139. The City is considering other locations for the Police firing range. Although the proposed site in the Calavera Area has not been eliminated from consideration, the comment regarding potential conflicts with the preserve system has been noted.

CNPS-140. The Hieatt property is bounded on its north and east sides by existing industrial development and on its south side by the McClelland Palomar Airport. Connectivity opportunities only exist to the west on the City's proposed golf course property. A wildlife corridor has been incorporated in the golf course design to connect with the Hieatt property as much as possible.

CNPS-141. The Fox-Miller property contains a significant and critical population of thread-leaved brodiaea. The Hardline design for the property conserves 80% of this population. The remainder of the population will be translocated to portions of the conserved area that have suitable soils and topography but no existing brodiaea. Coastal sage scrub on the site is fragmented and not valuable for conservation.

CNPS-142. The Calavera Hills project has been analyzed in a separate project level EIR. The comment incorrectly states that the wildlife corridor was "relocated". No wildlife corridor was previously designated on this property. Rather, steep slopes and powerline corridors were designated as open space because they are constrained and not developable. In the preparation of the subarea plan, the wildlife agencies strongly recommended a wildlife corridor across the portion of the property known as Village K. The project was designed and approved with this corridor. It is acknowledged that some existing and planned roads will cross the corridor at various points. Please see response CNPS-99 regarding road undercrossings. It should be noted, an undercrossing is planned for College Boulevard within the Calavera area.

CNPS-143. Please see responses CNPS-59 and CNPS-142.

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Figure 23 Shelly Property
CNPS-144 This figure and Figure 3 show CSS to the east of this property- but Figure 2.3-1 City of Carlsbad Habitat Management Plan in the draft EIR/EIS show this area as developed. Furthermore Figure 4.3-5 in the Draft EIR/EIS shows this area as part of the core USFWS Circle for Gnatcatcher Conservation. This area would have good potential for restoration for CSS and should be targeted for acquisition as part of the effort to assemble core habitat.

Figure 24 Cantorini
CNPS-145 It is unclear from the map that all of the marshland is being preserved- please clarify. This area is part of Link C between Core 3 and 5 in the Plan, and is entirely within the boundaries of the BCLA. All of this area should be targeted for conservation.

Figure 25 Kevane
CNPS-146 This property includes one of the largest remaining stands of Southern Maritime Chaparral- yet very little of it is proposed for preservation, and much more than 25% of the site is being used for development.

The project is not named on Figure 2.3-1 in the EIR/EIS so it is impossible to determine where it is located. Where is this parcel? Is it part of the BCLA?
CNPS-147

C. Standards Areas
CNPS-148 This discussion by LFMZ does not sufficiently relate back to the prior discussion of core habitat and linkages. The basis of the regional plan is to protect core habitat and linkages- the LFMZ areas have use for Carlsbad- but have no relevance to the regional conservation plan. The discussion should focus on how each area supports the core and linkages. The analysis should focus on that and the standards should relate to actions to protect the core and linkages.

Only 8 of the 25 zones are identified as having areas subject to the "Standards Areas" requirements. All sensitive habitat remaining in the city should either be subject to hardline preserve, or the standards areas requirements. This would include agricultural areas at such time as these are converted to other uses- not all of these areas are identified in the current limited list of Standards Areas.
CNPS-149

It is not sufficient to identify "biological resource issues" and then not relate these back to a specific standard requirement. Basic standards should apply to all zones. At a minimum these should include:
CNPS-150

- protection of core habitat and habitat contiguous with cores as a priority in determining areas for development. For example Zone 15 does not even state that protection of the core habitat is an objective.

- protection of wildlife corridor linkages as shown in the BCLA linkages alternative

CNPS-144. The area east of the Shelley property is unincorporated county land. It is not specifically addressed in the MHCP or the Carlsbad subarea plan because it is outside of the study area. However, some conservation acquisitions are occurring there. The Shelley property is not currently a target for acquisition because the cost would not be justified by the marginal benefit of complete conservation as opposed to the Hardline design.

CNPS-145. It is not reasonable or biologically justified to require conservation of the entire Cantarini property. No substantiating facts or information are included in the comment to support the recommendation. As shown on Figure 24, the southwestern half of the property is largely agricultural land with little connectivity value. The existing habitat and the wildlife corridor alignment are on the eastern edge of the property. The cost of acquisition would not be justified by the marginal benefit of complete conservation as opposed to the Hardline design.

CNPS-146. The Kevane Proposed Hardline design is being reviewed as part of the discussions with the Coastal Commission. It is anticipated that the level of conservation of southern maritime chaparral will increase, but that cannot be quantified at this time. Therefore, the subarea plan and EIS/EIR take a conservative approach by showing the Hardline design as the minimum level of conservation that will occur.

CNPS-147. Please see response CNPS-146.

CNPS-148. References to Local Facility Management Zones (LFMZs) in Carlsbad are intended only for convenience in locating specific properties. The LFMZs are not intended to have any particular biological significance or relationship to core habitat and linkage areas. Additionally, see Response CNPS-59.

CNPS-149. Properties identified as Standards Areas are only those which have sufficient habitat to merit consideration for onsite preservation. Section D.6 of the subarea plan outlines measures to minimize and mitigate impacts to habitats and species. The text indicates that these measures are applicable to all properties in the City that contain any of the vegetation types identified in the plan as sensitive. Annual grassland, agricultural land, and disturbed land are included as vegetation types requiring mitigation. They are subject to the proposed in-lieu mitigation fee.

CNPS-150. Please see response CNPS-99.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

- criteria to limit roadway extensions and the elimination of unnecessary roads from preserve lands consistent with MHCP policy 3.7.2. For example, the discussion for Zone 15 states that "sensitive design" for roadways or utilities should be used- this is much less restrictive than the MHCP policy.

- the provision of roadway undercrossings, bridges, or other appropriate means to support the wildlife corridors

- the protection of 100% of the populations of narrow endemic identified as major/critical on Table 3-7 of the MHCP.

- no net loss of riparian or wetlands habitat including requirements to first avoid impacts per section 3.6.1 of the MHCP

- a requirement for additional field surveys for sensitive species where habitat type indicates any potential for their occurrence

- protection of agricultural uses as long as there is no destruction of existing sensitive habitat on lands so designated

- specify additional protection of areas identified as SRA's

- provide full conservation of all land included in the BCLA alternative.

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CNPS-151 Figure 27 should have an overlay of the 25 LFMZ's- as was done in the EIR Figure 2.3-1 depicting the same information- but in a much more user friendly way.

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CNPS-152 It is stated that "The standards require 100% conservation of Narrow Endemics within a focus planning area." Focus planning area is not defined in Section B- although the map is. If it is assumed that this includes all of the core, linkages, and SRA's (with no map boundaries provided) this still leaves significant populations of narrow endemics outside of these boundaries.

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CNPS-153 Furthermore, this policy is not consistent with all of the provisions of the MHCP Appendix D Narrow Endemic Species Policy and Critical Population Policy. The complete MHCP policy should be adopted as part of the Plan.

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CNPS-154 The standards areas shown on Figure 26 do not match those shown on Figure 27- particularly for the key linkage in Zone 15.

┌
CNPS-155 Map should be revised to show all areas shown on the EIR/EIS as BCLA parcels as part of the Standards areas if they are not already included in hardline or proposed hardline

CNPS-151. When the subarea plan is revised, Figure 27 will be modified to include the Local Facilities Management Zones for reference.

CNPS-152. Although some minor populations of Narrow Endemic species may occur outside of the BCLA, there are no known "significant" populations outside the BCLA. The Carlsbad subarea plan contains provision stating that if significant populations of Narrow Endemics are subsequently found outside the BCLA, those populations will be treated the same as populations inside the BCLA. Additionally, see CNPS-59.

CNPS-153. The MHCP Narrow Endemic policy applies to all subarea plans.

CNPS-154. Figure 27 is missing some Standards Areas. The final version of the subarea plan will correct this exhibit.

CNPS-155. Please see response CNPS-149.

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designations.

CNPS-156 C.4 The Preserve System and Resulting Levels of Conservation
The combination of preserve components does not assure a minimum level of conservation of each habitat type. The Plan must include a quantified minimum acres to be conserved by habitat type.

CNPS-157 In addition to the minimum there needs to be provisions for an additional level of conservation to allow for "adaptive management." In other counties this has taken the form of additional buffer zones being established for a period of time- then if it is shown that a lesser level of conservation can meet the plan goals these lands are released for development. The Plan has not provisions for adaptive management to result in additional land conserved- this needs to be built in as a contingency from the beginning or there will be no opportunity to accommodate this in the future.

CNPS-158 It is stated that the preserve system "has been designed to the maximum extent feasible, to ensure that species addressed by the HMP continue to survive in healthy and thriving populations in Carlsbad." If these species were healthy and thriving they would not be listed as threatened and endangered. This statement is completely ludicrous.

CNPS-159 The numbers cited for preserved land include 744 acres of disturbed land that is assumed to be restored to sensitive habitat. These numbers are only accurate when 100% of this land is restored to a level that supports the target species. A time schedule for the restoration of this land, with specific measurable performance standards must be established.

CNPS-160 C.5 MHCP Participation by City
51.6 acres is included for the Municipal Golf Course, which is currently problematic. There needs to be an update to the Plan based on the current agreement with the CA Coastal Commission and a contingency plan in the event that this project does not move forward.

CNPS-161 Based on the proposed contribution of a little over 300 acres to the core gnatcatcher habitat it is stated that this will "allow the HMP to be severable from the MHCP." Supporting acquisition of the core parcel is not sufficient to justify separation of Carlsbad from the regional MHCP. Table 3-7 in the MHCP shows the interrelationship of the cities with respect to the preservation of several key species. Carlsbad cannot be separated without impacting the regional conservation plan for these species. Specifically these impacted species include: San Diego thorn mint, Del Mar manzanita, Thread-leaved brodiaea, San Diego button-celery, Nuttall's Lotus, San Diego Goldenstar, Little mousetail, Prostrate navarretia, California Orcutt grass, Riverside fairy shrimp, and Oblivious tiger beetle.

CNPS-162 In addition, there is certainly the potential that adaptive management solutions for the region require some participation by Carlsbad. The MHCP was developed as a regional plan.

CNPS-156. Please see response CNPS-59.

CNPS-157. Please see response CNPS-79.

CNPS-158. Please see response CNPS-59.

CNPS-159. It is not possible to establish a time schedule for implementation of conservation measures for all properties because these requirements will be made part of development approvals. The preserve system will be built incrementally through a combination of mitigation and acquisition. Conservation activities will begin as soon as a particular property or portion of property attains conservation status. This typically occurs through dedication in fee title or conservation easement. For properties that are not currently planning development, it may be many years before dedications occur. The Wildlife Agencies will review impacts and conservation to ensure that the program is implemented in rough step proportionality.

CNPS-160. Please see response CNPS-119.

CNPS-161. Please see response CNPS-54.

CNPS-162. The City of Carlsbad will be responsible for implementing the Subarea Plan including management. The City is proceeding with the municipal golf course project. Discussions with the Coastal Commission have led to minor revisions to the golf course, and it is anticipated that the Coastal Commission will now support the project. No contingency plan is required for any property addressed in the subarea plan. The MHCP has been prepared to allow severability (each City proceeding on its own timeline). If additional Cities complete the process, additional species are covered.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

While one city should have the option to remove themselves from the regional plan- there should be some additional conditions associated with this- such as providing bonding for compliance with plan provisions, continued funding participation for maintenance of the regional core habitat, and others that will be needed to assure the continued viability of the regional plan.

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CNPS-163 C.6 Measures to Minimize Impact on HMP Species and Mitigation Requirements

The standard for Narrow Endemics is not sufficient. 100% of populations identified as major/critical must also be conserved.

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CNPS-164 There need to be some restrictions on the ability of the City Council to approve mitigation outside the city. This should be allowed only at the core Gnatcatcher area until such time as sufficient land has been acquired in the core area.

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CNPS-165 Public projects are being held to a lower standard for wetlands avoidance than are private projects- there is no justification for this distinction. If anything, public projects should be held to a higher standard.

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CNPS-166 Part of the CEQA review for wetlands impacts needs to address cumulative impacts on a watershed basis- particularly in those watersheds that lead to impaired waterbodies at the coast- like the Agua Hedionda Lagoon. The recent Pew Ocean Commissions report "Coastal sprawl: The Effects of Urban Design on Aquatic Ecosystems in the United States" suggests strategies and tools that will help preserve these coastal ecosystems. These need to be incorporated into the formal project review and mitigation planning process. (5)

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CNPS-167 There are two other areas of documented vernal pools in Carlsbad as previously discussed- these need to be properly acknowledged in this Plan, mapped and protected.

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CNPS-168 Table 11 Mitigation Ratios for Impacts to HMP Habitats
Type C - there should be no de minimus exclusions for Type C or Type D, instead these should be accumulated and all impacts should require mitigation.

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CNPS-169 Type F agricultural lands includes many sensitive habitats- mitigation must be for the habitat type- after surveying.

┌
CNPS-170 Type G - Hardline preserve- there should be an added requirement that impacts to hardline preserve land should require 5:1 mitigation for Types A-E and 5 times the fee requirement for Type F. It should also be required that hardline mitigation must be within the city limits except under specific conditions.

┌
CNPS-171 E.1 Regulatory Implementation
A time schedule needs to be specified for when the actions identified in items B through E are completed. Since the drafts are already prepared this should be within a matter of months.

CNPS-163. Please see response CNPS-59.

CNPS-164. If the program did not allow for some impacts to narrow endemics, some properties would need to be acquired. While the cities generally concur with the recommendation to focus mitigation in the jurisdiction where the impact occurs, implementation of the MHCP on a regional basis may require out-of-city mitigation in some cases. For example, some cities will have few if any areas suitable for mitigation. In other cases, mitigation banks may exist or may be established in areas that are high priorities for conservation. If out-of-city mitigation is not allowed, it may not be feasible to sell out the mitigation bank using only the mitigation generated by that city. Good preserve planning suggests that the cities should be flexible about allowing out-of-city mitigation in situations where it is biologically preferred.

CNPS-165. Please see response CNPS-72.

CNPS-166. Please see response CNPS-72.

CNPS-167. Please see response CNPS-111.

CNPS-168. The comment addresses the "de minimus exemption" for impacts to coastal sage scrub habitat. This policy is the purview of the wildlife agencies and is not a part of the MHCP or the subarea plans.

CNPS-169. Lands mapped as agricultural will require survey at the time development is proposed. If sensitive habitat types are observed on the property, they will be addressed pursuant to the subarea plan.

Any encroachment into the hardline preserves will be reviewed carefully to ensure that all protective measures are retained.

CNPS-170. Please see responses CNPS-59 and CNPS-164.

CNPS-171. Implementation actions for the subarea plan will include mandated times for public review of such items as General Plan Amendments, Zone Changes, and Local Coastal Program Amendments. Some implementation actions may be appealed or otherwise challenged. A reasonable amount of time must be allowed for these actions to be completed. Flexibility is warranted when a jurisdiction is proceeding in good faith and unforeseen events delay necessary implementation actions.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

- Figure 30
 CNPS-172 Explain how this process is integrated with the EIR certification and CEQA, particularly where and how public input is provided for.
- E.3 Plan Amendments
 CNPS-173 Equivalency findings, consistency findings, and plan amendments all require public notice and opportunities for review and comment. It is not acceptable for this to function like the Section 7 consultation process with all of the dealing occurring behind closed doors. These are public resources, and the public has a right to be included in the process.
- E.4 Coordination with Regional Conservation Efforts
 CNPS-174 Add a section F. The city will participate in adaptive management efforts to support the regional plan.
- E.5 Additional Implementation Measures
 CNPS-175 There is no discussion of public involvement in the Annual Review or the Preserve Management Plan. The public provides an essential element of program oversight, and must be included at these key points in the process.
- CNPS-176 Three years is too long a period for the Phase 2 activities- Carlsbad has had this draft plan completed for over three years already- there is no reason it should take another three years to complete these actions.
- CNPS-177 Item 2 under Phase 2 is the first place where the Plan acknowledges the need to provide for wildlife undercrossings and or bridges in certain zones. These of course are critical elements to assure the viability of the proposed wildlife corridors in several areas. This is not a potential cost- it is a known cost and needs to be included as part of the initial funding program to implement the plan. A reasonable estimate of these costs needs to be made and these costs are part of the basic funding program.
- E.6 Financing
 CNPS-178 The Municipal Golf Course is included as a key item in the overall financing plan- even though this is now very uncertain. Contingency planning needs to be included for this.
- CNPS-179 The following additional items are essential as part of the basic plan implementation and must be included in the financing plan:
- additional land acquisition to support the BCLA alternative level of conservation
 - roadway undercrossings/bridges

- CNPS-172. In Figure 30, the step labeled "Normal City Review" includes the CEQA review and other actions required by state law and local ordinance. Public review and comment on CEQA documents will occur as per state law.
- CNPS-173. This comment expresses an opinion regarding public review of actions that may be taken subsequent to approval of the subarea plan. In all cases, public review will be provided as specified in state and federal law. In some instances the City will choose to provide a level of public participation that exceeds the requirements of law. No substantiating facts or information were provided in the comment to support the contention that current law provides an inadequate level of public involvement.
- CNPS-174. The City concurs with the recommendation to add a statement regarding cooperation with regional adaptive management efforts.
- CNPS-175. Please see response CNPS-173.
- CNPS-176. Please see response CNPS-171. Because of a variety of regulatory constraints, the time period to implement Phase 2 has been proposed as three years. The City's goal is not to take that long; however, to ensure that all issues are covered adequately, appropriate time for processing must be allocated.
- CNPS-177. Please see response CNPS-99.
- CNPS-178. Please see response CNPS-119.
- a. Please see response CNPS-59.*
 - b. Please see response CNPS-99.
 - c. Please see response CNPS-79.
 - d. Although the City intends to carry out some public information and education programs, there is no requirement for such a program and it is not necessary to establish a budget for it. The comment does not include any substantiating facts or information to support its recommendation.
 - e. See above.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

- restoration of the 744 acres that are currently disturbed land but are being counted as part of the preserve system
- contingency funds for adaptive management actions
- public education program- this should not be left to an annual appropriation from the city's general fund

All of these issues need to be addressed both in the overall financing plan, and in the fee structure to be imposed on the developers of private projects.

CNPS-179 The estimated cost of \$ 75 per acre per year for habitat management and monitoring is highly suspect. Oceanside estimated a cost of \$ 86.60 per acre for upland habitats and \$ 500 per acre for wetlands. Effective control of offroad vehicles alone would probably cost \$ 75 per acre per year- and is not currently being done. Adequate funding is essential for the plan to work. Independent analysis should be made of the costs to manage this land and there should be some consistency of cost elements between the participating north county cities.

CNPS-181 There also need to be penalty and sanction fees included as part of the overall financing program. There is no reason to believe that things like illegal grading will stop once the Plan is approved. These fees should be intended as a deterrent to illegal actions, such as an illegal take, but would also provide the funds to mitigate for such actions when they occur. Currently the USFWS imposes these sanctions- but often there are no financial penalties. However, under the Plan the city is issuing the permits, then they should also be responsible for assuring compliance and imposing penalties and sanctions for violations of plan provisions. The city will have to compensate for habitat-destruction or degradation as it reduces their ability to meet the objectives of the Plan.

CNPS-182 There also needs to be an appeal process built in so that when the city is the violator there is some ability to assure that they are subject to the same sanctions.

CNPS-183 F.1 Interim and Permanent Management

Currently the management of preserved lands is highly fragmented, and this plan does nothing to assure that there will be any improvement in the current system. Private property owners have several different ways of managing their habitat. In some cases land easements are given to a non-profit like TET, in others the HOA is responsible, and in others, for many years as master planned communities are being built, the project developer is responsible. Only the non-profits see management of the habitat as a major responsibility. These private lands very easily get lost in the cracks, and chronic problems get worse over time. Off road vehicle users in core areas like Calavera often ride over land managed by 4 different agencies in a few hundred feet. Each has a different approach, and there is no integrated plan to address shared problems. For example, recently TET and the DF&G dumped two truckloads of boulders in interior trails of the

CNPS-179. The estimated average cost of habitat management reflects types and sizes of habitat areas proposed for conservation. The difference between costs used in the Cities of Carlsbad and Oceanside is due to the larger habitat areas proposed for inclusion in Carlsbad.

CNPS-180. A consistent methodology was used to estimate annual costs of habitat management for the MHCP. The method was based on analysis of management costs for existing open space and habitat preserves in San Diego County, with allowances for differences in location, habitat type, and the size of preserve area. The methodology is described in Section 7.2.3 of the Final MHCP.

CNPS-181. Illegal activities are also subject to civil and criminal penalties.

CNPS-182.. Any appeal processes will be those provided under state and federal law.

CNPS-183. Several comments stated that the preserve design is inadequate due to insufficient total acres, size and shape of core areas, size and shape of linkages, edge effects, Hardline Areas, Standards Areas, preserve management, funding for implementation, or other reasons. In most cases, these comments express an opinion on the part of the commenter and are not accompanied by substantiating facts or information. The plans have been the subject of detailed biological study and analysis for over 10 years. These studies and analyses have been conducted by experienced, credentialed professionals having expertise in the fields of conservation biology, botany, mammalogy, herpetology, ornithology, invertebrates, economics, and environmental law. The conservation standards utilized in the plans are those legally recognized standards stated in the U.S. and California Endangered Species Acts, the Federal Habitat Conservation Planning Handbook, the State of California's Natural Community Conservation Planning Program Planning Process Guidelines, and other authoritative sources. The analyses have concluded that the plans, while allowing some impacts to occur, will be adequate to prevent the extinction of the species of concern during and beyond the lifetime of the permits. The Preserve Manager will be responsible for implementing the preserve management responsibilities. After Implementing Agreements are signed, the Cities will sign a Memorandum of Agreement to work together to assure management consistency in the preserve.

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Calavera Highlands Mitigation Bank because the city is not providing sufficient monitoring and enforcement of offroad vehicles.

CNPS-184 There are no criteria specified that indicate when a species is being adversely impacted. Specific standards need to be identified. Also, who is making this determination, and upon what basis?

CNPS-185 Figure 31 does not include all of the privately owned conserved land. For example, Calavera Hills Phase I mitigation land (exclusive of Calavera Heights) is not shown although it is managed by the HOA. It appears that most of the HOA managed open space has been excluded from this figure.

CNPS-186 F.1.B City of Carlsbad
As discussed previously, \$ 75 per acre per year is insufficient to provide for adequate management of this land. Furthermore reasonable cost escalation needs to be included in the financing plan.

CNPS-187 F.1.C Privately Owned Conserved Lands
Need to add Calavera Hills Phase I open space, exclusive of Calavera Heights. This land should be integrated with other preserved land management- particularly since it is part of a core habitat.

CNPS-188 Land managed under HOA's, that is identified as sensitive habitat, should be managed as part of an integrated system of preserve management. HOA's have no public accountability, and little interest in preserving habitat for habitat. There are numerous cases where homeowners "trim" natural vegetation that blocks their view, expand their garden into what is supposed to be protected open space, and allow herbicide or other chemicals from landscaped areas to degrade adjacent sensitive habitat. This issue will be even more important as habitat becomes more fragmented and more if it is within the boundaries of master planned communities. Leaving this land outside of an integrated preserve management system also eliminates any ability for public review or effective oversight.

CNPS-189 The Plan should restrict any new fragmented management in favor of an integrated system of preserved land management.

CNPS-190 F.2.A Habitat Restoration and Revegetation
One of the initial steps is to establish performance standards for any restoration project- the monitoring plan is then designed to address these standards- this identifies performance monitoring as a step at the end of the process- it needs to be built in at the beginning.

CNPS-191 It is stated that "large scale restoration projects are not planned nor required...". However- 744 acres of disturbed land is identified as part of the preserve and all of this will

CNPS-184. The criteria for "take" of a listed species are those stated in the U.S. and California Endangered Species Acts. The criteria for "impact" are stated in the California Environmental Quality Act. Monitoring for take of species and impacts to species will be provided as an ongoing part of preserve system management and review of individual development projects.

CNPS-185. Figure 31 is not intended to be a comprehensive depiction of all conserved land. Its purpose is to indicate the larger conserved lands that are owned by other governmental agencies and a few examples of private owners. The point of this discussion is to show that there currently exists a patchwork of ownerships with differing levels of management.

CNPS-186. Please see response CNPS-183.

CNPS-187. Please see response CNPS-185.

CNPS-188. Please see response CNPS-89.

CNPS-189. Please see response CNPS-89.

CNPS-190. Please see response CNPS-89.

CNPS-191. Please see response CNPS-159.

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require restoration- over 700 acres sounds like a pretty significant project. Since this restoration is part of the preserve design, a specific time frame and standards for this should be included in the plan.

CNPS-192 F.2.B Recreation and Public Access
Hand-in-hand with public access is the need for an extensive public outreach program. In most areas volunteers are the keys to a successful program (like the San Dieguito River Park). There needs to be more of a focus on this public outreach/public involvement- particularly in light of the financing constraints on the Plan.

CNPS-193 The statement that off-road vehicle use is not compatible in the preserve is not strong enough. It needs to be specified that off-road vehicles are prohibited in all preserve lands- and there need to be severe fines for violations, and repeat offenses.

CNPS-194 F.2.B.1 Follow Guidelines for Future Recreational Expansion
The prescription to locate roads and other construction "away from sensitive areas" is not sufficient. Roads are particularly onerous and any road in preserve lands must meet the full requirements of the MHCP. The acreage for all such uses shall be deducted from preserve lands and once land has been approved as part of the preserve any take must be mitigated at the 5:1 ratio.

CNPS-195 F.2.B.2 Develop a Recreation Plan.
The plan for trails within the preserve must be integrated with the overall city and regional system of trails. Access from primary adjacent residential neighborhood needs to be specifically planned for- the alternative is a multitude of unplanned trails that are much more damaging and do not assure that the most sensitive resources are protected.

CNPS-196 F.2.B.3 Special Recreational Activities
Appropriate signage indicating allowed and unallowed uses needs to be addressed. Trail "construction" needs to be minimized- and standards for 6' width for mountain biking need to be re-looked at. The normal standards used for recreational trails are greatly in excess of what should be used in preserve areas. Furthermore the mountain biking community does not want wide smooth trails.

CNPS-197 F.2.B.4 Public Access
There are many areas where the size of the habitat fragment or nature of the biological resource should result in a determination to completely restrict public access, perhaps with some exclusion for special circumstances. The UC -Dawson Reserve completely restricts access, except for reservations limited to small groups and conducted under supervision.

One of the tasks in the management plan needs to identify areas needing complete restriction and establishing procedures related to the special management needs of such areas.

CNPS-192. Regarding public outreach, please see response CNPS-178e. The City of Carlsbad intends to make use of volunteers to the extent feasible and appropriate.

CNPS-193. The City intends to take steps to eliminate off-road vehicles from the preserve system consistent with our legal and fiscal capabilities. Enforcement, penalties and fines will be as provided in state law.

CNPS-194. Please see response to CNPS-59.

CNPS-195. The City concurs with the need to integrate trails planning with the preserve planning. That coordination is already occurring as part of the HMP and the Citywide Trails Plan.

CNPS-196. Please see response CNPS-195. Final design and environmental impacts of trails will be addressed in project-specific environmental review.

CNPS-197. The preserve management plan will address areas where public access should not be allowed due to the sensitivity of the biological resources. The preserve management plan will include provisions that restrict certain activities during the nesting season or in any area deemed sensitive to encroachment impacts.

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Vernal pools would certainly be included as part of such areas.

F.2.C Hydrology and Flood Control

Add provisions that standard maintenance, such as clearing and dredging of flood control channels shall not be done during the breeding season of riparian birds. Also all new development should contain run-off on site, using detention basins or other suitable measures and prevent runoff into preserve areas.

F.2.E

CNPS-198

Enforcement will be critical to the long term success of the preserve system- particularly given the low level of management and funding that is proposed. Because many of the preserved lands in Carlsbad and throughout the MHCP area cross jurisdictional boundaries there needs to be coordinated planning between local area police departments, support groups like the Senior Patrols, other enforcement agencies like the DGF Game Wardens, and local volunteers. Oftentimes an off-roader enters preserve land from one city and leaves into another- neither sees it as a priority to address this.

The entire system of monitoring and controlling such areas needs to be revamped. In Carlsbad currently the designated offroad team sets their own schedule for when and where areas are patrolled. There are no records kept of citations by area so it is impossible to determine where the greatest problems are. Nor does an officer know when he stops someone if they are a repeat violator or not. There also is no follow-up when a member of the public calls in a license number of a violator. There is no record kept of repeat violators- although it is obvious that there are a small number of repeat violators who routinely use these areas for off-roading with no consequence. Extensive outreach and working with the retail stores and organizations supporting offroad use also needs to be built into the program.

And most importantly- as discussed previously, there needs to be a system of fines and penalties that would both help serve as a deterrent and provide funds for enforcement activities.

F.3.A Fire Management

CNPS-199

Fire is part of the natural process of maintaining a healthy native ecosystem. Not just controlled burns, but other burns as they occur should be managed to support the ecosystem and not just be routinely extinguished.

Where fuel management zones encroach into preserve lands this needs to be accounted for in the determination of preserve acres- cleared, sprinklered, brushed areas are not native habitat.

F.3.B Erosion Control

CNPS-200

Erosion control within the preserve has to be integrated with erosion control outside of the preserve. City-wide provisions for addressing erosion control needs to be established. Since

CNPS-198. Please see response CNPS-193.

CNPS-199. Fire management must be coordinated with the fire protection agencies. In general, brush management zones for fire protection occur within the development area. However, there are some instances in which brush management will occur in the preserve area. In these case, brush management activities will be coordinated with the wildlife agencies.

CNPS-200. Erosion control is addressed by NPDES. Non-native species will be addressed in the preserve management plan.

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all wetlands are preserved and water takes the lowest elevation as a practical matter it is not possible to require that no new surface drainage is directed into the preserve- it all ends up there anyway. Other BMP's must be applied to ensure protection from siltation and pollutants.

F.3.C Landscaping Restrictions

Landscaping materials are not just a problem at preserve edges- the natural seed dispersal process has incursions of non-native plants throughout the preserve lands. Major pockets of invasives need to be addressed as one of the first tasks after the preserve is established.

Exotic invasive plants need to be controlled everywhere- not just in preserve or public lands. There should be restrictions on their sale in local nurseries, public education encouraging removal, and the ability to take action in serious cases.

F.4 Institutional Arrangement

Assigning specific responsibilities can wait to the implementing agreement- but there should be some determination of levels of effort required for both initial and on-going management activities - then a cost estimate can be developed that would help determine funding needs and the fee structure for private development. There has been a completely inadequate estimate of the costs to carry out the tasks identified. Without adequate funding this plan is just a piece of paper- much more attention needs to be paid to developing reasonable staff time and cost estimates.

This also needs to address the process for reporting problems with preserve management. Perhaps something like the system now in place for storm water violations. First reports to the city would keep a log and take corrective action, with appeal to FWS if the problem is not addressed.

G.1.F Severability from MHCP

See prior discussion. The interdependence of north county cities is clearly identified in the MHCP. Severability protects each city from non-compliance by others-but it doesn't help the endangered species. If one city pulls out, then populations of sensitive species in another city may become more critical. There needs to be some mechanism to assure that the overall MHCP remains viable.

G.2 Provisions for Changed and Unforeseen Circumstances and "No Surprises" Rule

These provisions as stated are not consistent with conservation principles, current understanding of how ecosystems function, or the provisions for adaptive management included in other sections of the Plan.

The climactic changes associated with global warming are likely to result in circumstances that are identified in the Plan as "unforeseen" but in fact are not.

CNPS-201. The preserve management plan will address start-up costs and ongoing costs. Adequacy of funding for management and monitoring will be determined by the wildlife agencies as part of their approval of the implementing agreement. A mechanism similar to that recommended by the commenter will be specified as part of the preserve management plan.

CNPS-202. Severability is an important provision for the participating jurisdictions. The motivation to participate in a regional plan is based on the understanding that each city retains land use control within its boundaries. At the same time it is acknowledged that the actions or inaction of one agency cannot be allowed to jeopardize the continued existence of the species of concern. Therefore, in issuing take permits to each jurisdiction the wildlife agencies retain sufficient oversight and authority to safeguard the species while allowing the cities to be severable from each other. If a city were to lose its take authorization, either in total or for a given species, there would be adequate protections for the species due to Section 9 of the Endangered Species Act which prohibits take without permit. Additionally, if another City was dependent upon the City in noncompliance for coverage of one or more species, the other City would lose its coverage for that species.

CNPS-203. The implementing agreements for each city will specify the provisions of the "No Surprises" rule consistent with federal and state policy at that time. The MHCP and the subarea plans do not set that policy and are not proposing any modifications to that policy.

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CNPS-201

CNPS-202

CNPS-203

The phrase “ if it is necessary to mitigate the impacts of changed circumstance... “ needs to be clarified. Who makes this determination? What is the appeal process?

Other Comments
CNPS-204 Buffer Land

A key issue that has not been addressed in this sub-area plan nor in the overall MHCP is that there is no provision to target additional land that may be needed if it is determined that species continue to decline after the plan is put into place. Other places (for example San Joaquin County) have established “buffer lands.”” These are targeted areas that are not permanently hardline preserved, but are preserved until certain conditions are met and it can therefor be determined that a lesser level of conservation will meet plan objectives. In the absence of such provisions- explain how adaptive management will be able to address future problems with inadequate habitat or excessive habitat fragmentation.

Golf Courses
CNPS-205

Golf courses have significant and adverse impacts on the environment. Carlsbad has several existing and more golf courses proposed. Specific provisions need to be developed to protect the adjacent preserve lands from increased runoff- and from the effects of runoff containing large amounts of fertilizers and pesticides. This run off soaks into the water table and ends up in our creeks and lagoons. The sensitive species that depend upon these riparian habitats are all impacted. These provisions need to address both existing and planned new courses. New courses should be encouraged to meet the newest standards to minimize golf course impacts.(3)

Wildlife Undercrossings
CNPS-206A

Wildlife tunnels/bridges are essential for the proposed wildlife corridors to be functional, yet they have not been included in the Plan. Wildlife movement needs to be provided for with all new roadway construction, and retrofits of existing roads must also be addressed when they are part of the identified linkages. The needs for these capital improvements must be surveyed and programmed into the capital improvement plans. These needs to be addressed both in the financing plan, and the implementation schedule.

Multiple agencies are often involved in major infrastructure projects like roadways or utilities. Explain how Caltrans, utility companies and other agencies projects will be evaluates and implemented in light of the provisions in the Plan and the MHCP. What role and control will the city have as the permitting agency with take authorization? Will these agencies be subject to at least the minimum mitigation requirements included in the Plan?

Core Habitat Road Density Standards
CNPS-207

The national parks have developed what is referred to as “Road Density Standards.” These determine the density of roads allowed in sensitive areas. Studies of large mammals have shown that normal activities are adversely impacted when roads exceed specified levels- and

CNPS-204. Based upon analysis of the existing conditions and development associated with the take authorization, it was not deemed necessary to implement a buffer contingency in the North County. It should be recognized that ultimately, the preserve system will be completed; however, the impacts and mitigation will take place over an extended period. (The permit is proposed for 50 years.) Thus, the annual monitoring will ascertain the status of the species and any additional measures (adaptive management) to ensure that the species are not jeopardized.

CNPS-205. Please see response CNPS-107.

CNPS-206a. Please see response CNPS-99.

CNPS-206b. If an outside agency such as Caltrans proposes a project that will impact sensitive habitat or species, that agency will need to comply with the California Environmental Quality Act, the Coastal Act, the Endangered Species Act, and other requirements. If the agency needs take authorizations from the wildlife agencies, it must either obtain third-party beneficiary status through the city's take permit or it must obtain its own take permit directly from the wildlife agencies. Nothing in the MHCP or subarea plans prohibits a property owner from applying directly to the wildlife agencies for a take permit.

CNPS-207. The Road density standard used for National Parks is not applicable to an urban wildlife reserve as will be created in north San Diego county. Studies of movement of large mammals are also not applicable to this subregion where the majority of species of concern are plants, birds, and reptiles. As stated in response CNPS-66, the plans are not intended to prevent all impacts to habitat and species, nor are they intended to preclude infrastructure that is needed to serve existing or future human populations of the region. Infrastructure projects will, however, be required to comply with all minimization and mitigation requirements of the plans in order to obtain the necessary take authorizations.

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these vary by animal. (6)(7) Roadway extensions into preserved lands are a significant issue throughout north county- but particularly in Carlsbad where at least four extensions are proposed into core habitat- including Reach 4 of Cannon Rd that will bisect the largest remaining contiguous native habitat in the coastal north county area. Specific studies are needed to identify the impacts of such roadway extensions. These should then be used as the basis for both open road and total road density standards similar to what is done in the national parks.

CNPS-208

Schedule

Because of the interdependence of the plans in north county, it is reasonable to require dates by which key provisions must be put into place- or subject a city to penalties for adversely impacting species conservation of the region.

CNPS-209

Contingency Planning

The Carlsbad Sub-Area Plan, and the entire MHCP, are seriously flawed by failing to include any provisions for contingency planning. The plans presume that Camp Pendleton will remain as core breeding habitat, consequently there is a need to develop only one additional block of core Gnatcatcher habitat. In fact, the Marine Corps has been actively lobbying for some time to reduce these requirements. Last week it was reported that " Marine Corps officials said Tuesday that they are stepping up efforts to get congressional relief from a growing number of federal laws that protect endangered or threatened species..."(8) Carlsbad gave away entitlements to their largest block of CSS (with the Fieldstone HCP) without adequate contingency plans in place. The Plan still allows the destruction of over a third of the remaining sensitive habitat- without knowing that this level will support viable populations of the target species.

Carlsbad is reported to have capital reserves of over \$ 300million. The city doesn't do their financial planning without putting something aside for a rainy day- they shouldn't do their habitat conservation planning that way either.

Endnotes

- (1) Wilson, Edward O., How to Save Biodiversity, The Nature Conservancy, Spring 2002.
- (2) Excerpts from the Intergovernmental panel on Climactic Change from Goodstein, Carol "A Sea Change", the Nature Conservancy, September/October 2001.
- (3) Kuznik, Frank, Charting a New Course, National Wildlife, August/September 1993.
- (4) Crooks, K.R., and M.E. Soule. 1999. Mesopredator Release and Avifaunal Extinctions in a Fragmented System. Nature 400:563-566.
- (5) From the website, Pew Oceans Commission, quoting Dana Beach from his report Coastal Sprawl: The Effects of Urban Design on Aquatic Ecosystems in the United States", final report

CNPS-208. Please see response CNPS-171.

CNPS-209. This comment does not address the adequacy of the document. The City of Carlsbad has implemented a plan coordinating with all cooperating entities. The County is currently undergoing a planning process. Carlsbad can only comment on the County's plan to connect with Carlsbad's corridors. As to the military lobbying, it is speculative to conclude that endangered species planning will be voided on military lands.

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to be issued Fall 2002, pewoceans.org .

(6) Mace, R.D. and T.L. Manley.1993. South Fork Flathead Grizzly Bear Project:Progress Report for 1992. Montana Department Fish, Wildlife and Parks. Kalispell, MT.

(7) Thiel, R.P. 1985 Relationship Between Road Densities and Wolf Habitat Suitability in Wisconsin. The American Naturalist: 113:404-407.

(8) NC Times, April 24, 2002, "Pendleton Brass:Laws Constrict Training." Gidget Fuentes.

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Attachment 4
Comments on the Encinitas Subarea Plan

CNPS-210 The purpose of this attachment is to provide comments on the draft Encinitas Subarea Plan for the Multiple Habitat Conservation Program (MHCP).

We certainly appreciate the amount of time, effort, and money that has been spent in this attempt to plan for the preservation of native plants and wildlife in the San Diego area. We thank all those involved for their diligence, their hard work, and their perseverance. We especially thank the City and citizens of Encinitas who have always supported the preservation of our natural areas and native plants.

CNPS-211 We wish success for this project. However, considering the pressures of development here, especially near the coast, we believe that during the preparation of the habitat plan, we have lost and are continuing to lose critical habitat. We are concerned that the level of conservation proposed in the MHCP will be inadequate to reach the stated goals of species and ecosystem conservation. Under the Preferred Plan Encinitas' plan shows a conservation rate of 82%, which is the highest of the five cities that have prepared subarea plans. We commend Encinitas for this level of conservation and encourage them to do even better; under the BCLA Alternative, Encinitas could conserve 95% of its remaining valuable habitat. We encourage the City of Encinitas and the Wildlife Agencies to amend this subarea plan to conserve the highest level of the remaining valuable habitat. At a public discussion on the MHCP, Gary Barbario, the Planner for the City of Encinitas said that more of the BCLA could be conserved by acquisitions from willing sellers. We encourage efforts by the cities and Wildlife Agencies to include sufficient levels of funding in their plans to allow acquisition of all environmentally valuable land available from willing sellers. Under the BCLA Alternative, 95% of CSS and 100% of chaparral could be conserved in Encinitas instead of 71% CSS and 75% chaparral under the Preferred Plan. Also, under this alternative, 93% of the Southern Maritime Chaparral could be conserved, instead of 86% in the Preferred Plan. These are valuable habitats that should be conserved at the highest levels.

A major concern in the Encinitas Subarea Plan is that many of the areas proposed for the Preserve are in existing Homeowners' Associations Open Space areas. Often Homeowners' Associations are not sensitive to the valuable habitat in their common areas. Also, the residents are not sensitive to the fragile nature of the ecosystems and topology surrounding them. At the meeting referred to above, Gary Barbario suggested that Preserve lands in Homeowners' Associations could be protected either by acquisition by the city or by educational measures. Yet acquisition is unlikely, and education is only a good start. Possibly, the City could acquire easements that would give them the authority to monitor and manage Preserve lands in homeowners' associations, including preventing damaging and unlawful activities. The City of

CNPS-210. Selection of Alternative 3, relative to the City of Encinitas, would require extensive outright acquisition of properties. One of the basic tenets of the MHCP involves the concept that land will only be purchased at fair market value from willing sellers. MHCP cities will not utilize condemnation in implementing individual subarea plans. Since the BCLA was originally designed, the Wildlife Agencies and Cities have approved projects and projects have been constructed that were originally part of the BCLA. Some projects designated at 75% would have to be acquired by the Wildlife Agencies or Cities to be 100% conserved.

CNPS-211. Comment noted. Certain portions of the City of Encinitas preserve area have already been permanently reserved as open space and are in private ownership, much of which is homeowners associations where no active biological management and monitoring was required or is occurring. As a part of the ongoing responsibilities associated with the future issuance of an IA, it is anticipated that the City will need to attempt to acquire access rights to actively manage and monitor these areas. While this might not be entirely successful, it is important to recognize the existing biological value of these existing private open space areas and seek to actively manage and monitor these areas in the future.

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Encinitas, in conjunction with the Wildlife Agencies, should research methods that other jurisdictions have used to protect Preserve areas that are in homeowners' associations ownership to determine the most effective way to protect the Preserve lands. The City must ultimately secure the authority to protectively manage and monitor, and prevent damaging and unlawful activities on all lands counted to preservation totals.

CNPS-212 Section 2, Tables 2-2, 2-3
How will the MHCP be reconciled with city zoning and city planning? What commitment has the city made to the plan?

CNPS-213 Section 3, Figure 3-4
The Softline Focused Planning Areas on Figure 3-4, include wetlands and steep slopes adjacent to Batiquitos Lagoon. Why are those constrained areas not included in Hardline FPAs?

Section 3, Table 3-1 on page 3-2.

This Table, assigns 2,490 acres to the Biological Core and Linkage Areas (BCLA) What procedure has been adopted for making sure these areas remain undeveloped and viable as wildlife/natural habitats? What rules or ordinances need to be or have been adopted by the city in order to maintain these areas? What plan is there for compensating landholders? This acreage constitutes 95% of the remaining valuable natural habitat in Encinitas according to Table 3-1. But only 2,088 or 84% is to be conserved. Why? What happened to the other percents? Will this lost habitat be lost to roadways or to development? Saving 84% of the remaining 95% valuable habitat is a loss. What or who do you believe will use the lost habitat so that it cannot be saved?

CNPS-214 Section 4, Table 4-1b
This Table purports to be a "Summary of Vegetation Types Conserved Within Encinitas by Management Status" however, more than 25% of the total 2173 acres to be conserved are under the control of Homeowners Associations and will not be managed for biological resources unless regional funds are available to pay for such management. Unless some clear source of funding, and responsible management is delineated, such acreage should not be included in the preserved acreage of the City. Is there a model available to assist cities and homeowners associations in drawing up and following a plan to protect natural areas? If not, who or what agency will be assigned to set up and coordinate this task? How will it be funded?

CNPS-215 In the same Table, 25 acres of Riparian Scrub and 19 acres of other wetlands outside the FOA will not be managed for biological resources, whether or not funding is available. And yet these very acreages are included in the Total Conserved Lands. Without proper monitoring and management, such lands should not be included as Conserved Lands.

CNPS-216 Section 4, page 4-19
Development permits issued while this habitat plan was being formulated were not supposed to exceed a five percent (5%) take of species. Where is the tabulation? How many gnatcatcher pairs existed in the MHCP area at the beginning? How many for each year

CNPS-212. Section 6.3, City Implementation Actions and Policies, of the Encinitas Subarea Plan states that "within 1 year of the signing of an Implementing Agreement with the wildlife agencies, it will develop and schedule action on any General Plan, Local Coastal Program, and Municipal code amendments necessary to implement the subarea plan. ... This action will assure consistent implementation of the subarea plan through city policy, private and public project review and approval, and guidelines for operation and management of public lands." Sections 6.3.2 and 6.3.3 of the Plan require the City to enact an urgency ordinance to ensure compliance with the Plan during the period of time between adoption of the Plan and IA and the adoption of any necessary amendments to the City's General Plan, Local Coastal Program, and Municipal Code. The City of Encinitas does not perceive any conflicts between the City's adopted LCP and the draft Subarea Plan. The Planning Commission and City Council can consider this comment in their review and consideration of the Encinitas Subarea Plan.

CNPS-213. In developing the Encinitas FPA, "hardlined" boundaries were consistently only indicated for properties that had already been developed, graded, built, etc., such that development approvals had been exercised and the actual preserve boundaries were in place. Sections 4 and 6 of the Plan outlines the process the City will follow in reviewing future proposed projects (both public and private) to ensure compliance with the Plan. "Softlined" or "Mitigation Ratio" lands within the draft FPA will continue to be reviewed on a project-by-project basis utilizing current, site-specific biological reports at the time of project proposals to ensure compliance with the Plan and other applicable GP, LCP, and Municipal Code provisions. It is not feasible to revise the Plan at this time to include site-specific standards or boundaries on all "Mitigation Ratio" lands within the FPA. Please see response CNPS-210.

CNPS-214. Please see response CNPS-211.

CNPS-215. Section 4.3.1.1 of the Encinitas Subarea Plan describes wetland policies. As indicated on page 4-18, any impacts associated with listed wetland vegetation communities requires mitigation that would achieve no net loss of both wetland acreage and biological value within the city. Wetland mitigation sites are required to be designated as preserve lands and managed for biological values. Therefore, Table 4-1b considers the listed wetland vegetation types to be conserved under the Encinitas Subarea Plan.

CNPS-216. The City of Encinitas and San Diego Association of Governments maintains an accounting of Coastal Sage Scrub (CSS) take under the 4(d) Special Rule

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of the Natural Community Conservation Program. This information is available for public review. As of this time, the 5% take limit of CSS habitat has not been exceeded in the City of Encinitas. Figure 3-4 of the Encinitas Subarea Plan portrays known locations of California gnatcatchers in the city as of 1999.

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thereafter? Where is the proof that take never exceeded 5%?

CNPS-217 Section 6, Changed Circumstances, pages 6-5 and 6-6
The property surrounding Rancho Santa Fe Road from La Costa Boulevard to Melrose burned while this plan was in progress. It was prime habitat. Was this species loss taken into consideration as this plan was prepared? If so, what changes were made? Is restoration of the burned site taken into consideration?

CNPS-218 In that fire, coordination of fire departments was inadequate. Each department had different and non-coordinating communications devices and equipment. Procedures for cooperation were ragged or non-existent, and lines of authority were not established. What changes have been made to be better prepared to protect natural areas? Have any been recommended by this document? If so, what, and if not, why not? *Hazardia orcuttii* was being cleared on fenced protected habitat lands at Manchester Preserve by the Fire Department for training purposes. This was at a time when the plant was being examined by the state for listing.

CNPS-219 Another Changed Circumstance that is obviously occurring as we wait for adoption of this or any other plan is displacement of natural species by invaders. This plan does not touch upon this subject, but it must. Displacement is ongoing. It has long been recognized as a menace to natural communities and native species. Any plan that purports to protect natural areas must expect invasive species and plan for the control of plants, wildlife and human impact.

CNPS-220 Page 6-2, Sequential adoption, states that jurisdictions may prepare and execute IAs on separate schedules and that the coverage of some species in Encinitas may depend on conservation actions in another jurisdiction. What are the assurances for the native species if Encinitas allows degradation to occur while counting upon another jurisdictions saving them -- and then the other jurisdiction decides they are not responsible for the needs of Encinitas? Page 6-5, top paragraph states that take authorization will be _ severable from those granted to other jurisdictions or entities. How does this guarantee preservation of species?

CNPS-221 The last paragraph on 6-2 says the city will receive assurances from the wildlife agencies. Are these assurances that the wildlife will continue to prosper? What is meant by assurances ?

CNPS-222 Section 6, page 6-3
This document states throughout that a primary purpose is to simplify the project approval process by eliminating duplicative regulatory and mitigation processes, including project-by-project take authorizations for each listed species. (See Improved Regulatory Process under 6.1.3, page 6-3). Please explain what is duplicative about project-by-project take authorizations.

Local Land Use, Page 6-4, and last paragraph 6-7

CNPS-217. The majority of the Harmony Grove fire was located outside of the City of Encinitas Subarea Plan boundaries. However, the majority of undeveloped, burned CSS within the plan boundaries has been included in the Focused Planning Area. Although this area was burned, it will naturally return to a climax community. It should be recognized that coastal sage scrub is adapted to fire and is not "destroyed".

CNPS-218. Section 7.2 (page 7-4) of the Encinitas Subarea Plan provides policies for fire management in the Focused Planning Area.

CNPS-219. Section 7.2 (page 7-7 through 7-8) describes preserve management policies of the Encinitas Subarea Plan as related to predator and exotic species control.

CNPS-220. The City of Encinitas covered species list will expand as other MHCP cities execute IA's. Certain species will not be placed on the Encinitas covered species list until these other MHCP cities execute IA's. Significant impacts to sensitive species that are not on the Encinitas covered species list will be mitigated through the environmental review process under the California Environmental Quality Act (CEQA). In addition, any take of endangered or threatened species not covered by the plan would be subject to the federal permitting processes under the Federal and/or State Endangered Species Acts, as applicable.

CNPS-221. As stated on page 6-2, the city will receive assurances from the wildlife agencies through the Implementing Agreement. These assurances are described in section 6.2 of the Encinitas Subarea Plan.

CNPS-222. Approval of the Encinitas Subarea Plan would preauthorize future projects to take listed species covered under the plan. If the plan is not implemented, individual projects resulting in take of listed species may be subject to Sections 7 or 10(a) federal permitting process under the Endangered Species Act. Projects having the same or similar impacts have to undergo consultation to acquire permits for the take of these resources. During this time, the project applicant is also undergoing environmental review by the lead agency (in this case, one of the cities). The environmental review includes CEQA by the cities as well as separate processing, oftentimes by both Wildlife Agencies.

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CNPS-223 Simplifying project approval by by-passing the regulatory agencies for fifty years suggests that the cities are prepared to hire a staff biologist trained in the needs of endangered species contained within the city and cognizant of the requirements of the MHCP? Since this document relieves responsibility from the regulatory agencies, surely the jurisdictions will be required to take it up and hire the necessary staff. Has this been considered in the City budget?.

CNPS-224 Page 6-14, section 6.3.5, second sentence
These approvals for take authorizations in accordance with the subarea plan shall not be a cause for amendment of the subarea plan. Why not, if the take proves to be excessive or in any other way the list of project approvals and the yearly conferences demonstrate that changes need to be made?

CNPS-225 Page 6-15
Amendments to the plan are allowed on page 6-15, but this section does not include the possibility of amendment in case the plan is failing to conserve. Why not?

CNPS-226 What is the justification for excluding land annexations of less than 40 acres from consultation with the wildlife agencies? What stops a large landholder from annexing his property 40 acres at a time? How many landholders in the city or its sphere of influence have fewer than 40 acres? How many landholders have more than 40? What about a developer who persuades small landholders adjacent to each other to annex to the city, then purchases landholdings totaling more than 40 acres in congruity? This seemws to us to be a danger.

CNPS-227 Page 6-22
Considering the MHCP Committee Structure, there is no Scientific Advisory Committee. One seems to us to be vital to the success of the plan. How do you expect to gain scientific advice as to the problems and the successes?

CNPS-228 Page 6-23
A non-profit land conservancy is taken for granted on page 6-23. What is the name and structure of this conservancy?

CNPS-229 Fire Management, page 7-4,k
This section states vegetation clearing "should" involve brushing rather than disking. Again, the word "should" must be changed to "shall" to make brushing a legal requirement, not just a suggestion, especially since brushing "shall" be prohibited during breeding season, and "shall" require an approved erosion control program. By disking, both these rules can be ignored.

CNPS-230 Page 7-5, 7-6
The management measures on pages 7-5 and 7-6 do not include signs such as educational signs, leash your dog, or keep off signs. Such signs may be useful in maintaining the integrity of the natural areas and should be suggested in the MHCP as possible management measures.

CNPS-223. Approval of the Encinitas Subarea Plan does not relieve the city from assessing biological resource impacts of a project in accordance with CEQA. Wildlife biologists have been and will continue to be contracted by the city and project applicants when conducting environmental review for projects having potential impacts on biological resources. In addition, the Resource Agencies will continue to have review and oversight responsibilities under both CEQA and the MHCP Plan.

CNPS-224. As noted in Section 6.7 (page 6-18), the Encinitas Subarea Plan allows for the addition of species to the covered species list. Section 6.4 indicates that subarea plan amendments may be necessary to accommodate major changes in conservation levels, preserve design, or large annexations of land. In addition, Section 6.5 allows for boundary adjustments to the Focused Planning Area if, for example, new biological information is obtained through site-specific studies.

CNPS-225. Please see response CNPS-224. The plans do allow for additional measures to be implemented through the adaptive management program.

CNPS-226. Although annexations of less than 40 acres do not require consultation with the wildlife agencies, Section 6.6 of the subarea plan requires their notification in compliance with the process described in Section 6.3.4. In addition, Section 6.6 of the Plan states that all future annexations of land to the city (regardless of acreage) will be subject to the requirements of the Plan.

CNPS-227. Section 6.10 of the Plan describes the Cooperative MHCP Implementation Structure, including the roles and responsibilities of a variety of interested parties (MHCP Elected Officials Committee, the MHCP Advisory Committee, the Staff Subcommittee, the Stakeholders Subcommittee, and the MHCP Land Conservancy), which will work with a team of science advisors appointed by the Conservancy Board. This structure will be updated in the final Subarea Plan to reflect the MHCP final subregional plan implementation structure as adopted by the SANDAG Board of Directors. Within this structure, many opportunities exist for qualified scientists to participate in the MHCP implementation.

CNPS-228. The actual name and structure of the "MHCP Land Conservancy", whose general structure is described in Section 6.10.3, would be determined when it is established.

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CNPS-229. The Encinitas Planning Commission and City Council can consider this comment in their review and consideration of the Encinitas Subarea Plan.*

CNPS-230. Under item #3 of the "Public Education and Enforcement" section (page 7-9), the city would consider the use of signs that explain preserve management goals and guidelines.

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- On page 7-9, first line, the word "should" shall be replaced by the word "shall."
- CNPS-231
- Pages 7-9 and 10
- CNPS-232 Education measures should include suggestions for school programs on any level. Please include suggestions for the formal education of area school children.
- Page 7-23, item 7
- CNPS-233 What mechanized methods are extant that do the same job as burns? Please be specific.
- Page 7-14, line 4 paragraph 2
- CNPS-234 Another "should" must be changed to "shall", so that "Recreational activities at Batiquitos Lagoon and elsewhere within the preserve SHALL be controlled". . .
- And in the next paragraph, where "fencing will be used only where necessary," why not change will to "should" to leave open the possibility that fencing can be used wherever without having to be proved necessary ? (Whatever "necessary" means.)
- CNPS-235
- Page 7-14
- CNPS-236 Eliminate the words "as necessary" second line from the bottom of page 7-14. Once again, "as necessary" is open to interpretation and unnecessary controversy. It is best to plan to remove invasive species from native lands wherever they occur and as rapidly as plans and funds are ready to do so without having to consider if such removal is "necessary."
- Page 7-15, item 3, /Additional Monitoring and Management
- CNPS-237 Why does this plan include the words "in an adequate amount and configuration" without stating adequate for how many species? That is, stating adequate to maintain existing species, increasing numbers of particular species, etc.
- Page 7-15, item 5
- CNPS-238 Eliminate the words "as appropriate" end of item 5, page 7-15.
- Page 7-16, item 8:
- CNPS-239 Is "must" a legal word? If not, please change "must" to "shall".
- Item 9, page 7-16
- CNPS-240 This item concerning buffers is not clear. The width of necessary buffer area between development and natural space has no fixed scientific width. Required width is dependent upon many factors, such as type and configuration of natural area, land configuration, density and type of human use, etc. Therefore, the "should" in the last sentence (requiring the use of native species) must be changed to "shall."
- Item 11, page 7-16
- CNPS-241 Here is another "should" that must be changed to "shall". Invasive exotic species use SHALL be prohibited near open space areas and avoided or minimized throughout the specific

- CNPS-231. The Encinitas Planning Commission and City Council can consider this comment in their review and consideration of the Encinitas Subarea Plan.*
- CNPS-232. The Encinitas Planning Commission and City Council can consider this comment in their review and consideration of the Encinitas Subarea Plan.*
- CNPS-233. "Alternative, mechanized methods" may include brushing or thinning by hand using mechanical equipment.
- CNPS-234. The Encinitas Planning Commission and City Council can consider these comments in their review and consideration of the Encinitas Subarea Plan.*
- CNPS-235. The Encinitas Planning Commission and City Council can consider these comments in their review and consideration of the Encinitas Subarea Plan.*
- CNPS-236. The Encinitas Planning Commission and City Council can consider these comments in their review and consideration of the Encinitas Subarea Plan.*
- CNPS-237. Adequate acreage and configuration may differ, based upon the needs of the individual species. Configuration of the preserve differs for avian, herptile, small mammal, and medium mammal species. The Encinitas Planning Commission and City Council can consider these comments in their review and consideration of the Encinitas Subarea Plan.*
- CNPS-238. The Encinitas Planning Commission and City Council can consider these comments in their review and consideration of the Encinitas Subarea Plan.*
- CNPS-239. The Encinitas Planning Commission and City Council can consider these comments in their review and consideration of the Encinitas Subarea Plan.*
- CNPS-240. The Encinitas Planning Commission and City Council can consider these comments in their review and consideration of the Encinitas Subarea Plan.*
- CNPS-241. The Encinitas Planning Commission and City Council can consider these comments in their review and consideration of the Encinitas Subarea Plan.*

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plan area. Eliminate the words "to the degree feasible." Considering the multitude of plants that grow easily in this climate, it is never necessary to allow invasive exotic species and their sale and use should/"shall" be illegal in this area.

CNPS-242 We will let the "should" pass in item 12, although it would be better to say "shall" and eliminate the non-binding words "to the extent feasible."

CNPS-243 It would be good to state under 7.3.2 that the Lux property "shall" be a priority acquisition considering its value to the preserve plan.

Recreation and Public Access, page 7-18
Change "should" to "shall", line 4

CNPS-244 In conclusion, we urge the City of Encinitas to preserve the maximum amount of its remaining valuable habitat by enlarging the acreage of proposed acquisitions through the support of additional funding. Encinitas also needs to provide strong protections for Preserve lands which are in private ownership. Thank you for the opportunity to comment on the Encinitas Subarea Plan.

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CNPS-242. The Encinitas Planning Commission and City Council can consider these comments in their review and consideration of the Encinitas Subarea Plan.*

CNPS-243. The Encinitas Planning Commission and City Council can consider these comments in their review and consideration of the Encinitas Subarea Plan.*

CNPS-244. Please see response CNPS-210.

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Attachment 5
Comments on the Escondido Subarea Plan

CNPS-245 Section 1: Introduction and Overview.
Table 1-1, Page 1-3

It is difficult to tell from this table those species that are "Proposed Covered" and are actually pertinent to the analysis of the Escondido Subarea Plan. The primary focus of the Escondido Subarea Plan should be placed on species that occur in or have the potential to occur in Escondido. While Table 3-2 shows species that occur in or are likely to occur in Escondido, it does not indicate which species the MHCP will adequately conserve and will be covered by the permit. Comparing the two tables is confusing since the list of species is different with each table. We recommend that you revise Table 1-1 into one table or multiple tables that show the following:

- Those "Proposed Covered Species" that occur or potentially occur in the Escondido Subarea and could thus be affected by the Escondido Subarea Plan.
- Those "Proposed Covered Species" that are unlikely to occur in the Escondido Subarea (e.g., those only occurring along the immediate coast) and are covered solely by conservation in other subareas.
- Those species that occur or could potentially occur in Escondido but are not considered to be "Proposed Covered Species" in the MHCP area. This table should give information on the current status of each of these species in regards to the MHCP (e.g., currently under review by wildlife agencies, insufficient information to determine plan effects, conservation goals are not met or met or extirpated from the study area).

CNPS-246 This last category would be helpful for landowners, city officials, and other interested parties. It identifies those sensitive MHCP target species that are not covered by permits pursuant to the MHCP Plan. This could be a starting point for determining which species need to undergo the traditional environmental review process, with any necessary permits issued by State and Federal agencies. What will be the environmental review process for species that are not adequately conserved by the MHCP and thus are not covered by the take permit? Can additional mitigation beyond MHCP conditions be required? We are concerned that grassland species such as Northern Harrier, Burrowing Owl, Grasshopper Sparrow, and Tricolored Blackbird will not be adequately conserved by the MHCP. Why is more grassland habitat not set aside to conserve critical locations of grassland species?

CNPS-245. Table 1 will be formatted to indicate Proposed Covered Species that occur or potentially occur in Escondido; by default, this will also indicate Proposed Covered Species that are unlikely to occur in Escondido. Since Table 1-1 includes only the Proposed Covered Species lists, the inclusion of other species not proposed for coverage would be confusing, and are best included in a separate table.

CNPS-246. All sensitive MHCP target species will continue to be evaluated on a project-level basis pursuant to CEQA and applicable state and federal laws, regardless of whether they are included on the Covered Species list. The CEQA process will determine whether additional mitigation is required for species that are not on the Covered Species list.

Regarding grasslands, Table 4-1 of the Escondido SAP indicates that 81% of the grassland within the BCLA and 62% of the grassland within the study area is conserved. These figures are likely to increase with revisions to the FPA map to recognize existing conservation in Daley Ranch Areas I and II. As described in the EIR, additional conservation of grasslands is deemed infeasible due to associated impacts to population and housing.

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CNPS-247 Section 2: Description of the Escondido Subarea
Sections 2.2.1 and 2.2.2

The City of Escondido is to be commended for currently owning and administering 60 percent of the remaining natural habitats in the Escondido Subarea and designating 5,218 of these acres as parks and open space.

CNPS-248 Tables 2-1 and 2-2

There is a discrepancy between the amount of remaining natural open space in the text and Tables 2-1 and 2-2. What is the correct number for acres of natural open space remaining in the Escondido Subarea? Footnotes in both tables do not explain how differences in data layers and methods of calculation lead to discrepancies between land use and vegetation layers. Rounding areas would not appear to account for the magnitude of these discrepancies. On Table 2-2 it is also unclear what is meant by the superscript 3 that the land use calculation for Daley Ranch is out of date. Shouldn't the acreage for Daley Ranch be put into the currently correct land use category? The number of acres of open space should be consistent between tables and text to facilitate analyses.

CNPS-249 Section 2.2.3

CALTRANS, utility companies, and other agencies will be responsible for their own permitting requirements (pages 1-2 and Section 2.2.3). Explain in more detail how their projects will be evaluated and implemented in light of the MHCP. What role and control will Escondido officials have over siting of alignments and projects to avoid impacts to the preserve? Will these agencies be required to mitigate unavoidable direct impacts by purchasing or creating habitat within the Escondido preserve area? Will MHCP requirements in terms of habitat replacement ratios, mitigation measures, conservation policies and guidelines be followed by these agencies within the Escondido Subarea?

CNPS-250 Section 3: Biological Resources

It would be helpful if this document had a section on regional and local wildlife movement that explicitly showed where critical regional habitat linkages and corridors occur. Critical wildlife linkages and corridors are only briefly mentioned on page 3-5, paragraph 4. How do linkages in the MHCP analysis specifically integrate with corridors and linkages identified in the previous Master Plan for Parks, Trails and Open Space (Master Plan)? This is especially important for the east to west linkage in the northeast portion of the subarea. This is considered an important regional linkage in the MHCP, connecting open space on Daley Ranch with open space east of Valley Center Road, including habitats at Lake Wohlford. We concur that preserving large blocks of habitat on either side of Valley Center Rd is critical for this regional linkage. However, there needs to be a discussion of how this linkage will be preserved under the MHCP when Valley Center Road is widened in the near future. Will there be wildlife underpasses? Or will animals cross the road, and if so will there be physical barriers (e.g., now we have a cement divider) to successful movement across the road? The Escondido Subarea Plan should provide specific detail concerning what areas of the linkage need to be preserved and what measures are required to ensure animal movement across Valley Center Road. For example,

CNPS-247. Comment provides support for Escondido's management responsibilities.*

CNPS-248. The discrepancy between the acreage of total natural open space in Tables 2-1 and 2-2 is two acres (9,177 acres compared to 9,179 acres), which is an insignificant amount attributable to rounding. The detailed breakdowns within each table are not intended for comparison. Table 2-1 reflects ownership, not land use. Table 2-2 reflects land use as indicated on the 1995 SANDAG layers, which preceded the Daley Ranch acquisition (as noted in the footnote). The General Plan designation for Daley Ranch has since been changed to Public Lands/Open Space.

Privately owned lands currently preserved as open space are not included in the "parks and open space" category in Table 2-2, since they are typically designated as a Specific Plan Area in the General Plan. Examples include the Rancho San Pasqual, Escondido Highlands and Lomas Del Lago Specific Plan Areas.

CNPS-249. Development activities proposed by utility companies (such as SDG&E) and other public agencies (such as the County) that have approved Incidental Take Permits will be processed in accordance with those permits. Where no such ITPs have been approved, the applicability of the City's Subarea Plan will be determined by whether any discretionary action is otherwise required from the City and whether the agency seeks to achieve third party beneficiary status from the City's ITP. If no take authorization is required by these agencies, the City will review and comment on the proposed project through the CEQA process. If the action would result in impacts/take of listed species, authorization would be required from the Service and Department.

CNPS-250. Regional wildlife corridors within the Escondido General Plan area were evaluated as part of the City's adopted Master Plan for Parks, Trails and Open Space. The master plan identifies ideal wildlife corridor characteristics (e.g., corridor width, vegetative cover, water source, connectivity / barriers) and conceptual wildlife corridor alignments. The master plan assumes a corridor that is acceptable to the three focal species (mountain lion, mule deer and bobcat) and should also be adequate for other more tolerant species. Implementation measures include the requirement for detailed biological analyses addressing wildlife corridor movements and coordination with the County to monitor proposed development in the unincorporated area to insure connectivity.

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The Subarea Plan applies to property over which the City has land use authority, specifically property within the City limit and City-owned property in the unincorporated area. ~~The Master Plan for Parks, Trails and Open Space~~ addresses policies for the entire General Plan area. Properties proposed for annexation will be evaluated for conformance with the adopted City policies, including the Master Plan for Parks, Trails and Open Space. Properties proposed for development within the County (within the City's General Plan area) will continue to be evaluated through the environmental review process with opportunity for City comment; however land use authority will remain with the County in those instances. The City feels it is unnecessary to replicate the master plan policies in the Subarea plan; however, additional text will be added to the subarea plan to cross-reference the requirements of the adopted Master Plan for Parks, Trails and Open Space regarding potential wildlife corridors.

The City's Master Plan for Parks, Trails and Open Space recognizes that the existing Valley Center Road functions as a barrier to east/west wildlife corridor movement, and focuses on north/south connections. The County of San Diego is responsible for the construction of the Valley Center Road widening project from the City limits north to Valley Center, including the segment that bisects the City's watershed lands. Environmental clearance has been completed and the design engineering is underway. While no wildlife underpasses are proposed, the project will result in the removal of the existing concrete median barrier and thereby eliminate a physical barrier to wildlife movement. Further comments regarding the roadway design should be directed to the County Public Works Department. The City of Escondido is also proposing to widen Valley Center Road from the County project limits south to Bear Valley Parkway. Preparation of a draft Environmental Assessment/EIR is underway (City Case File #ER 99-33). The EA/EIR will include an analysis of potential wildlife corridors through this segment as well as the appropriateness of design features to accommodate wildlife movement.

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will the fourth recommendation in Section 4, Page 4-14, be applied to the Valley Center Road Widening? What specific areas need to be conserved for a wildlife corridor in light of proposed future development for this area. An analysis of how the Escondido Subarea Plan integrates with the Master Plan for Parks, Trails and Open Space is needed in order to evaluate how well linkages and corridors will be preserved under the MHCP preserve.
Figure 3-2

CNPS-251 Please show developed, agricultural, and natural areas surrounding the Escondido Subarea Plan similar to what Figure 3-3 does for sensitive species location. This would facilitate an evaluation of the BCLA in terms of preserve design and linkages with habitats outside the Escondido Subarea Plan.

CNPS-252 Section 3.2.4
Based on the Vegetation Map for MHCP (Figure 2-2 of the Draft MHCP, Vol II), the Quail Hills gnatcatcher population does not seem as poorly connected to coastal sage scrub and core gnatcatcher populations as portrayed in Section 3.2.4. The Quail Hills population is approximately 1.5 miles (straight line) from gnatcatcher locations in Del Dios. It appears connected via a fairly contiguous north-south alignment of coastal sage scrub and chaparral habitats to occupied gnatcatcher habitat in Del Dios, Mount Israel, and Lake Hodges. The Lake Hodges California Gnatcatcher population is considered a core population in the Multiple Species Conservation Plan. According to Vol. II of the Draft MHCP (Ogden 2000, Section 4, page 4-333) California Gnatcatchers are more capable than previously thought of moving through a mosaic of natural and nonnative areas. Results of dispersal studies presented in Section 4, suggest a median dispersal of less than 2 miles in one study, with an upper end to dispersal of about 6 miles through natural and developed areas. Thus, the Quail Hills population is located less than the median distance for dispersal to another population of gnatcatchers in Del Dios that is adjacent to the core population at Lake Hodges. Figure 3-3 shows 21 California Gnatcatcher locations in the Escondido Subarea Plan, of which 6 (~29%) are in the Quail Hills area. Why isn't this population at least partially preserved?

CNPS-253 Section 4: Preserve Design and Land Use Considerations
Figure 4-1
The map shows a number of locations in light stippled green representing natural habitats. Are these the future development footprints in the Softline Focused Planning Areas? Do these natural areas also represent areas that have the potential for future development but have no current or pending Specific Area Plan?

CNPS-254 Section 4.1
The actual level of preservation could be significantly less than indicated by Table 4-1 if up to 10% of hardline preserve areas can be developed. The table appears to show the best case scenario by including all habitats within the hardline areas as being conserved. There should be a column in Table 4-1 that shows the worst case scenario also, where 10% development is assumed in these hardline areas. Specific Plans (e.g., Daley Ranch) and approved development agreements

CNPS-251. Figure 3-3 will be revised to include developed, agricultural and natural areas surrounding the SAP boundary.

CNPS-252. The Quail Hills area is not within the BCLA. Subsequent biological analysis was conducted by Dudek and Associates, Inc. (DUDEK June 17, 1998) and discussed with the City staff and wildlife agencies in August and September 1999. DUDEK presented an analysis of long term conservation options for the gnatcatchers on site. Connectivity of natural habitat was identified as the major obstacle in the long-term conservation of gnatcatchers on the site due to the isolated nature of the resources, as documented in a letter by DUDEK dated September 13, 1999. Revegetation options were evaluated and deemed infeasible, based on constraints such as existing parcel sizes and development patterns, and the City's planned land use and Circulation Element improvements. The topographic constraints, road alignment design standards, and buffering requirements necessitate grading the entire site; therefore preservation of a portion of the site is infeasible and would result in an isolated fragment. Further, the City of Escondido General Plan designates the Quail Hills property for industrial development; development of the property is a high priority for the City to improve its employment base and economic health. Based on these considerations, the wildlife agencies concurred that on-site conservation was not feasible.

It should be noted that an application for a new tentative map and Specific Plan (including a proposed power plant and industrial subdivision) for this property has been submitted to the City (City Case File #ER 2001-12). The project is undergoing CEQA review.

CNPS-253. The light stippled green areas represent natural habitats outside any Softline areas, and are thus anticipated to be developed. Some of these areas may have pending development applications. All documents referenced in this response are available to the public to review.

CNPS-254. Table 4-1 represents the conservation threshold used in the biological analysis. Conservation of hardline properties varies from 90-100%, depending on the specific location. These assumptions have been mapped. Active recreation areas such as Kit Carson Park and Lake Dixon assume 90% conservation of existing habitat, to provide flexibility in developing future recreational opportunities. Other hardline areas, such as Daley Ranch and private open space conserved via an approved Specific Plan, assume 100% conservation. These assumptions are reflected in the acreage of Table 4-1,

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and therefore represent minimum ("worst case" from the commenting organization's viewpoint) conservation. Therefore no changes are warranted.

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should detail what type of development will occur in these hardlined preserve areas. This potential 10% loss of preserve habitat is potentially significant in analyzing the adequacy of the Escondido Subarea Plan, especially if impacts occur in sensitive habitats or areas that support sensitive species. The text (pages 4-2 and 4-6) should also provide a discussion of the best (100% hardline areas conserved) and worst case scenarios (90% hardline areas conserved) for each habitat type and for the BCLA. This discussion should include the number and percentage of acres conserved under both scenarios.

Section 4.2
CNPS-255 Please provide a table listing the 20 species that will be included on Escondido's initial list of covered species. This is not very clear from Tables 1-1 or 3-2.

Page 4-7, Paragraph 2
CNPS-256 The text states that "Listed species not on the covered species list will continue to be regulated under the state and federal ESAs". Does this mean that additional habitat could be required for open space preservation as mitigation for significant impacts to these listed species? Would this habitat be mitigated locally? Would it become part of the preserve? What will happen to those sensitive species that are not listed as threatened or endangered (e.g., Federal Species of Concern and California Species of Special Concern) and are not covered by the MHCP? Will there be any environmental review? Would project proponents be required to mitigate significant impacts to these species?

Section 4.3.1
CNPS-257 The introductory paragraph to this section is unclear. The second sentence is confusing and appears circular in logic. Please explain exactly what is meant. Please reference what specific policies are being referred to? How is brushing within the preserve a compatible land use to the biological objectives? How are utilities and roads compatible to biological objectives within the preserve?

Why is brushing allowed in the preserve? Shouldn't areas that are brushed be considered a buffer zone outside of the actual preserve? Are brushed areas included in the amounts of habitat acreage that are considered preserved? If so, brushed areas that are shown in Specific Plans and other environmental documents and agreements, should be excluded from calculations for total habitat acreage conserved for each habitat type. Especially troubling is the existing land uses statement in the last bullet. What is meant by existing land uses at the time of subarea adoption? Does this mean that if motorcycles or off-road vehicles have been used on a particular parcel, that this use could continue after that parcel was placed in the preserve? Does this mean that livestock grazing and agricultural practices could continue within the preserve? Please clarify this bullet.

Pages 4-8 - 4-10
CNPS-258 Daley Ranch- To effectively assess the efficacy of the Escondido Subarea Plan, there

CNPS-255. The initial list of covered species is already indicated on Table 1-1 as those species that are not contingent upon subarea plan approval in another city. Adding this information to Table 3-2 would be confusing to the reader. No changes are warranted.

CNPS-256. Please see response CNPS-246. Mitigation is encouraged, but not required, to be accomplished locally pursuant to the policies in Escondido SAP Section 5.2.1. Project-level analysis will determine the appropriate mitigation, which may (or may not) be added to the preserve system.

CNPS-257. The text in Section 4.3.1 will be revised to clarify that "preserve" refers to hardlined FPA properties. Land uses within hardlined areas are either existing or approved and vested prior to the adoption of the subarea plan. This section recognizes that the City has no legal authority to require changes to legally-established and vested uses. Language will be added to clarify that existing *legally established* uses will be allowed to continue, and that new or expanded uses will be reviewed in accordance with the MHCP and SAP policies.

Brush management activities *for existing and approved projects* have already been factored into the conservation assumptions. The habitat has already been removed in areas where brush management is already occurring (e.g., Kit Carson Park), and is therefore not included in the acreage of existing natural habitat. Existing brush management approved for other hardline projects is already incorporated into the development footprint.

CNPS-258. The use areas at Daley Ranch are governed by the approved Conservation Bank Agreement and Master Plan, which include maps of the three areas. The Subarea Plan text and map regarding Daley Ranch reflect these approvals, and no modifications are proposed. No modifications to the text or map are warranted since the Conservation Bank agreement and master plan remain the governing documents.

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needs to be a figure showing the footprint of the three planned use areas (e.g., Areas I, II, and III) in Daley Ranch (perhaps adopted from the Daley Ranch Specific Plan). These use areas are not clear from Figure 4-1. In Figure 4-1 the large light green and the green stippled areas in the center of the preserve appear representative of Areas I and II. If so, these areas seem much larger than the ~200 acres that are described for park development out of the 3,000+ acre total. Daley Ranch comprises such a large component of Escondido's contribution of open space to the MHCP preserve, thus, it is important to assess where park development will occur when analyzing the Escondido Subarea Plan.

Page 4-10
CNPS-259 Lake Dixon- The "dog park" was recently developed.

Page 4-10
CNPS-260 Rancho San Pasqual Specific Plan- What amendments were made to the Rancho San Pasqual Specific Plan in 1997? Will there be increased development? From the text it appears that the project is fully developed. However, in Figure 4-1, there are natural habitats shown in stippled green that surround the edge of the Rancho San Pasqual Development and are also adjacent to hardline planning areas. In the Escondido Subarea Vegetation Map (Figure 3-1) these areas are shown as coastal sage scrub. Are these natural areas considered buffers or areas of potential further development? What types of activities will occur in these areas? From the text it appears that these areas of natural habitat are not part of the preserve and are not part of the 447 acres of natural open space. Is this interpretation correct? The text also states that there are a number of activities that can occur in the hardlined open space (e.g., firebreaks, fencing, utility lines, etc.). How much preserve acreage will be impacted by these activities?

Page 4-11
CNPS-261 Kit Carson Park- Are impacted areas of open space (e.g., firebreaks, public art pieces, etc.) included in acres of vegetation conserved in Kit Carson Park? If so, the calculations for acres of habitat conserved in Table 4-1 and in the text (e.g., pages 4-2 and 4-6) should exclude those acres of habitat that will or have been cleared or modified.

Page 4-12
Montreux- Are impacted areas of open space (e.g., utilities, drainage and control facilities, roads) included in the acres of vegetation conserved? If so, the calculations for acres of habitat conserved in Table 4-1 and in the text (e.g., pages 4-2 and 4-6) should exclude those acres of habitat that will or have been cleared or modified. The Montreux property is now known to support a major population of *Encinitas bacharis*. The preserve should include lands that support this major population. Table 5-10 should be changed to included this critical population of *Encinitas bacharis*. The parcel bridges the Elfin Forest Preserve and the LakeHodges area and should be preserved. The current preserve design is not contiguous and it is not clear if additional plants are located on the property.

Page 4-12
CNPS-262 Dorn- Are impacted areas of open space (e.g., utilities, drainage and control facilities,

CNPS-259. Comment noted. The text will be revised.

CNPS-260. The Rancho San Pasqual Specific Plan area is fully developed. The 1997 amendment approved a redesign of the residential lots in the upper valley area. No further development is allowed under the existing General and Specific Plans. The FPA map has been revised to reflect the boundary of the approved Specific Plan and the open space areas, which have been conserved in perpetuity. The uses permitted within the hardlined areas are already established, and hence have no impact on the conservation assumptions.

CNPS-261. The FPA map for Kit Carson Park has been refined to reflect the boundary of the hardline preserve area. Firebreaks around the perimeter are preexisting, and therefore have already been accounted for in the 90% conservation figures. The public art piece is in the developed portion of the park and has no impact on the conserved area.

Comment addresses the findings of the biological report prepared for the Montreux Specific Plan. As of September 30, 2002, the Escondido Creek Conservancy and the County of San Diego purchased the Montreux project site, ensuring the land is to remain as open space and be conserved in perpetuity. Therefore, no future development will occur on the Montreux property.

CNPS-262. The FPA map shows the Dorn property (northeast of Montreux) as a softline property. The biological analysis assumes 50% conservation of existing habitat on this site; brush clearing, grading, utilities and other development impacts would not be included in the conserved areas. While the subdivision map has been approved, the property is indicated as a softline property since the development entitlement is not vested.

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roads) included in the acres of vegetation conserved? If so, the calculations for acres of habitat conserved in Table 4-1 and in the text (e.g., pages 4-2 and 4-6) should exclude those acres of habitat that will or have been cleared or modified.

Is the Dorn open space area shown as a hardline area (not softline) on Figure 4-1? It is hard to tell from the text where the Dorn project is located on Figure 4-1 as it is not clear that there is a parcel northwest of the Montreux project. Is the Dorn property to the northeast? What is the softline project on Figure 4-1 that is north of the northeast corner of Montreux?

CNPS-263 Page 4-13
Escondido Highlands- Will there be any impacts (e.g., utilities, roads, etc.) to open space in Neighborhoods 1 and 2 of the Palos Vista Specific Plan? If so, the calculations for acres of habitat conserved in Table 4-1 and in the text (e.g., pages 4-2 and 4-6) should exclude those acres of habitat that will or have been cleared or modified.

CNPS-264 Roads and Utilities, Pages 4-13, 4-14:
How is feasibility determined when it is decided to site utility lines, facilities, roads, and other structures inside the preserve? What are the specific criteria, standards, and thresholds used to determine whether or not an alignment or development footprint is infeasible? Who ultimately determines that it is infeasible to avoid directly impacting the preserve?

CNPS-265 When roads cross the preserve, who determines whether a bridge or culvert will be used to facilitate wildlife movement under the road? What criteria are used to determine that a culvert will be used rather than a preferred bridge?

CNPS-266 Flood Control, Pages 4-14, 4-15:
Again, who determines the feasibility of preserving a floodplain upstream of the preserve? What specific criteria, standards, and thresholds are used to determine feasibility?

CNPS-267 Section 4.3.2- Land Uses Planned Adjacent to the Preserve
Who will be monitoring lands adjacent to the preserve to ensure compliance with the Adjacency Guidelines? Who will monitor and ensure compliance for private preserve lands, especially those owned by private landowner associations? Provide further details on the specifics of monitoring lands adjacent to the preserve and ensuring compliance with Escondido Subarea Adjacency Guidelines.

CNPS-268 Landscaping Restrictions, Page 4-17, 4-18
Will landscaping restrictions be imposed on existing developments adjacent to the preserve? How will landscaping restrictions be monitored and enforced in private residences?

Section 4.4- Guidelines for Preserve Design in Softlined Areas
Schooler et al., pages 4-18, 4-19

What specifically is meant by "taking" of property? What criteria, standards, and thresholds are used to determine whether property is being "taken"? Who determines if property

CNPS-263. The Escondido Highlands Neighborhoods 1 and 2 are fully developed pursuant to the approved Palos Vista Specific Plan. The FPA hardline area reflects the open space areas that are already conserved. Since the site is fully developed, the assumed conservation of 100% of existing natural habitat already reflects the areas disturbed by the existing improvements. No further improvements are proposed or anticipated. No changes are warranted.

CNPS-264. The feasibility of infrastructure improvements will be evaluated on a project-by-project basis. Preliminary engineering studies are prepared to evaluate design alternatives. Following CEQA review, the determination of feasibility is made by the City Council. This analysis will address the conformance of the project to the standards (see MHCP Volume I) required for project-level site planning. In addition to environmental considerations, other factors considered by the City Council include General Plan policies and standards, public input, financing, and agency permitting requirements.

CNPS-265. Please see response CNPS-264.

CNPS-266. Please see response CNPS-264. Public agencies that have permitting authority over floodplain issues include the City of Escondido, Regional Water Quality Control Board, U.S. Army Corps of Engineers and California Department of Fish and Game, and the U.S. Fish and Wildlife Service if listed species are present.

CNPS-267. Until such time as a regional management entity is formed and funded, the City of Escondido will continue to monitor preserve lands owned by the City, and will monitor proposed new activities on adjacent properties that may affect the preserve as spelled out in the IA. Existing legally established uses and activities will be allowed to continue. Specific monitoring responsibilities are still being developed, and will be determined as part of the City's application for an Incidental Take Permit. The City of Escondido does not have the authority or financial resources to take on management and monitoring responsibilities for private open space lands. Existing private open space will continue to be managed by the property owner or homeowner association.

CNPS-268. The landscape restrictions are intended as guidelines, and information regarding appropriate landscape practices will be made available to homeowners. New development will be evaluated for compliance with the guidelines. The City of Escondido does not intend to impose new landscape restrictions on existing developments such as single family residences.

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is being taken?

CNPS-269 Bernardo Mountain Phase II- Pages 4-19, 4-20
Paragraph 1- See previous comments regarding "taking".
Paragraph 2- Were the 184 acres with no development entitlements set aside as dedicated open space per requirements of the tentative subdivision map in 1989? Regarding the statement that 184 acres are intended to be set aside as open space with a maximum of 25% potentially developed, is this a condition of the City of Escondido and the wildlife agencies under the approved tentative map or is it a voluntary goal of the developer? What does the statement mean that proposed development in the revised tentative map is within the same "general" building envelope? Is the development footprint in the revised tentative map larger than in the previous tentative map approved in 1989? Will there be a difference in the magnitude of impacts to natural habitats under the new tentative map compared with the approved tentative map?

CNPS-270 Lake Wohlford and Surrounding Habitats-page 4-21
Figure 4-1 is rather confusing when compared to the text describing the Lake Wolford lands owned by the city. It appears that several of the existing developed areas are not included within the boundaries of the Escondido Subarea Plan. For instance, the boat dock area, the airplane landing strip, and the existing police shooting facility do not appear as developed areas within the Escondido Subarea Boundaries. Do the specified use areas delineated as exclusion areas refer to the light green stippled areas southeast of Lake Wohlford and near Valley Center Road on Figure 4-1?

CNPS-271 We are concerned about the expansion of the police shooting facility that is to be annexed from Valley Center. This expansion should be designed and sited in such a way as to avoid any impacts to wildlife movement through this critical linkage and any impacts to sensitive habitats (e.g., oak woodlands) and species (e.g., Harbison's Dun Skipper). If there are any proposed development footprints available for this project, they should be shown on Figure 4-1. This would allow an analysis of whether MHCP standards and requirements are met, particularly in regards to ensuring wildlife movement through this critical linkage and maximal avoidance of impact to sensitive habitats (e.g., oak woodlands) and species (e.g., Harbison's Dun Skipper).

CNPS-272 Section 5: Preserve Assembly and Conservation Actions
Table 5-1
The number of acres of natural habitat should be consistent for Tables 2-1, 2-2, 4.1, 5.1, and in the text in Section 2. It would help in analyzing the Escondido Subarea Plan to have this number consistent between all tables and the text.

CNPS-273 Table 5-1 shows that only ~39% of natural habitat will be conserved on privately owned softlined lands. However, on Page 4-1, the last sentence states that "Conservation targets within these softlined areas range from 50-80%..." Please explain the discrepancy. The City of Escondido is providing the majority (74%) of natural habitat conservation as compared with private landowners. A level of only 39% preservation of softlined projects is insufficient,

CNPS-269. The San Dieguito River Park JPA has entered into a purchase agreement to acquire the entire Bernardo Mountain property. The City of Escondido has agreed to contribute \$1.87 million in State grant funds towards this purchase. If acquired the property will be permanently preserved as open space.

CNPS-270. The existing developed areas on City-owned property (boat dock area, police shooting facility) are within the Subarea Plan boundary, shown as softline areas. The uses are cited as exclusion areas in recognition that they are existing uses, which are allowed to remain. A portion of the existing airstrip extends offsite.

CNPS-271. The police shooting facility expansion is an approved project, and the property was annexed to the City on September 10, 2001. The environmental impacts of the project were assessed in the negative declaration (ER 97-02), certified on January 17, 2001. Since the project has not been constructed yet, the footprint is not shown as a hardline area. This project is incorporated by reference into the Subarea Plan as a project approved by the City.

CNPS-272. The discrepancy between the acres of natural habitats on Tables 2-1, 2-2, 4-1 and 4-1 ranges from 9,108 to 9,206 acres, which is approximately 1%. While it is ideally desirable to have all the acreages match, this is not feasible due to the differences in the data layers and methods of calculation, as noted in the footnotes. The City feels this level of accuracy is adequate, and the tables will not be revised. Further, the acreages are estimates based on the information available. Project level analysis will refine these numbers.

CNPS-273. The categories of "hardline" and "softline/standards" used in Table 5-1 are defined in footnotes 3 and 4. The "softline/standards" category includes all privately-owned habitat areas for which target conservation of upland habitat is less than 90%, including 0%. Thus, although the subset of softline areas with target conservation between 50% to 75% would result in average conservation consistent with that range, this table is intended to show the average rate of conservation for all privately owned areas, taking into account areas which may be lost to development.

On page 4-1, the conservation targets (expressed as a percent of natural habitat conserved) refer to both public and private lands. The biological analysis assumed conservation levels on specific private properties ranging from 50% - 75%. On steeper sites, the assumed conservation level is 75%, while flatter properties were generally assumed at lower levels. The 80%

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conservation level is only proposed on public lands. The City feels that a 75% conservation level on private lands is the maximum amount which can be required without raising a potential "taking" issue. This is consistent with the maximum conservation assumed on private lands within other approved habitat conservation plans where development plans have not been submitted. Additional conservation would also result in significant land use and housing impacts as discussed in the EIS/EIR. Further, the City feels the proposed overall conservation levels are adequate, regardless of ownership.

It should be noted that the low conservation levels on privately-owned properties may be warranted when offset by the high level of conservation and the large amount of City-owned public land that is designated for the preserve system. From a management perspective, it is also more desirable to have the preserve lands in public rather than private ownership.

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especially in light of the 75% requirement for conservation of natural habitats in the Schooner and Bernardo Mountain softlined properties.

- CNPS-274 Other Areas, Page 5-6
Who will monitor and enforce compliance of preserve adjacency guidelines for lands that are privately owned? What type of management practices will be implemented in these areas? Who will ensure that the habitats, plants, and animals in these preserve areas are not impacted by incompatible activities within the preserve?
- CNPS-275 5.2.2 Narrow Endemic Species Standards
Explain what type of mitigation will result in no net loss to an endemic species if there is an allowed 5% in the FPA and 20% loss outside the FPA? The creation or restoration of habitat could eventually result in no net loss if the endemic species occupies this habitat. However, what provision is there for the circumstance where the endemic species does not successfully colonize the newly created habitat, resulting in a net loss? What if the restored or created habitat only supports a fraction of the population that was originally taken?
- CNPS-276 Table 5-3
Please provide another column showing whether the species has the potential to occur in the Escondido subarea.
- CNPS-277 Bullet 1, Pages 5-9, 5-11
Define the criteria and threshold for determining that reasonable use of the property is precluded. Who determines whether reasonable use is precluded?
- CNPS-278 Bullet 4, Page 5-11
How will buffer widths and allowable activities within conserved population sites of Narrow Endemics be determined for each species at each site? Who will have final authority on these determinations?
- CNPS-279 Section 5.2.3 Wetlands Mitigation Standards
No Net Loss Policy, Page 5-12
What happens if mitigation measures implemented for unavoidable impacts to wetlands fail to achieve the no net loss policy in regards to biological value? Will additional mitigation measures be required?
- CNPS-281 Section 5.3.1 Funding needs of Plan Implementation
The sentence following the three bullets on page 5-14 is redundant with the first sentence of this section.
- CNPS-282 Section 6: Subarea Plan Implementation Policies
Section 6.1.2 Take Authorizations

- CNPS-274. The preserve adjacency considerations are intended as guidelines, and information regarding appropriate management practices will be made available to homeowners and homeowner associations. New development will be required to comply with the guidelines. The City of Escondido does not intend to impose new management restrictions on existing developed properties or homeowner associations. Private homeowner associations will continue to manage common open space lands in accordance with existing CC&Rs and conditions of project approvals.
- CNPS-275. As stated on page 5-11, the mitigation options for achieving the no net loss goal for narrow endemic species is discussed in the species justifications of the MHCP Volume II. As with any mitigation requirement, monitoring will be required for any restoration. In the event that a population does not become established, remedial action is warranted.
- CNPS-276. Table 5-3 will be revised to include a column indicating whether a species is likely to occur in Escondido.
- CNPS-277. The City's approval body (i.e., Director of Planning and Building, Planning Commission or City Council, as determined by the type of development application) will make a finding to determine whether reasonable use is precluded.*
- CNPS-278. As stated on page 5-11, the buffer widths and allowable activities will be determined on a case by case basis, through the environmental review process, based on the criteria discussed in the species justifications of the MHCP Volume II.
- CNPS-279. The City's approval body (i.e., Director of Planning and Building, Planning Commission or City Council, as determined by the type of development application) will make a determination regarding buffer widths and allowable activities.*
- CNPS-280. Mitigation monitoring is required under CEQA to insure that measures are adequately implemented. Wetland impacts and mitigation will continue to be regulated by ACOE and CDFG. Section 404 permits and CDFG Streambed Alteration Agreements require management and monitoring programs, which are typically monitored for five years. If biological goals are not accomplished within that time period, additional measures may be imposed or the timeframe for compliance may be extended.

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Specifically, the MHCP states, "Projects that propose to impact a wetland must demonstrate with substantial factual evidence that the impact is essential to maintaining some economic or productive use of the property and that no feasible alternative would eliminate or minimize the impact or otherwise result in greater biological value. If impacts to wetlands cannot be avoided while retaining economic or productive use of the property, an evaluation of biological functions and values shall be made based on the best available science...Any unavoidable impacts to wetlands must be mitigated to result in no net loss of wetland vegetation acreage and biological function and value within the MHCP subregion and preferably, but not necessarily, within the same drainage and city. Subarea plans may apply stricter avoidance standards for wetlands inside the FPA than outside the FPA. However, the no net loss standard must be achieved regardless of location."

In implementing the appropriate mitigation for wetland habitat, the following management guidelines must be incorporated:

1. For wetlands currently in or proposed for open space, each jurisdiction shall prepare a management plan to ensure maintenance and monitoring of this habitat and its species.
2. For wetlands currently in or proposed for open space, each jurisdiction shall prepare a management plan to restore disturbed portions of this habitat, including management and restoration plans for sensitive species occurring in this habitat.
3. Where conditions are appropriate, create new wetlands by converting disturbed upland habitat.

CNPS-281. The redundant sentence will be deleted.

CNPS-282. The Implementing Agreement (IA) between the City and the wildlife agencies will define the monitoring responsibilities, remedies and enforcement mechanisms. The IA must be approved in order for the wildlife agencies to issue an incidental take permit. A Model IA is contained in Attachment B of the MHCP Volume I. The City will be responsible for implementing the Subarea Plan for both private and public projects, including the City's capital improvement program projects. The City will be responsible for overseeing management and monitoring responsibilities until such time as a regional entity such as a conservancy is established. The City may hire consultants, such as biologists, to assist in monitoring activities. The CDFG and USFWS will monitor plan implementation and will retain the ability to suspend, revoke or terminate the incidental take permit, as defined in the IA.

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Mitigation measures adopted under CEQA will be monitored in accordance with a Mitigation Monitoring Program, which defines the mitigation measures, responsible entity and timeframe for completion.

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There appears to be very little review of how the City of Escondido implements the Escondido Subarea Plan. Please explain specifically what mechanisms are in place to ensure that the City of Escondido complies with requirements and conditions of the Escondido Subarea Plan to ensure that habitats and species are conserved. In a number of cases, the City will be implementing its own development projects and at the same time overseeing compliance of these same projects. Who will do the monitoring? Will there be a separate department within the city government to monitor compliance and to manage habitats within the preserve? Will employees from departments that are developing projects also monitor compliance of that project? Will the City of Escondido hire biologists with the appropriate training and expertise to evaluate biological issues and to monitor compliance? Explain what role the CDFG and USFWS will play in monitoring proper implementation of the Escondido Subarea Plan, beyond the annual meeting and year end report. Are these agencies able to suspend or revoke Escondido's authority to issue take permits if the City is in noncompliance with the requirements of the MHCP and Escondido Subarea Plan? What happens if required mitigation measures are not properly implemented by a project proponent? Additional language should be included in this plan to describe the monitoring process in greater detail and to provide for an appropriate level of oversight by the wildlife agencies.

CNPS-283. The anticipated revisions to the General Plan and Zoning Code have been identified in Section 6.3.2. The timeframe for adoption of any amendments and the remedies for failure to comply will be spelled out in the IA. Approval of future ordinances must be consistent with adopted MHCP requirements, unless an amendment to the IA is approved by mutual agreement.

CNPS-284. The implementing agreement has not yet been prepared, but will be required prior to issuance of the incidental take permit. Once an application is received from a city, the subarea plan and IA will be published in the Federal Register for public comment. The IA will address enforcement measures. Refer to the Model IA in the MHCP Volume 1, Attachment B.

CNPS-285. The word "voluntary" will be deleted. The Subarea Plan will not alter the procedures defined under CEQA.

CNPS-283 Section 6.3.2 Regulatory Actions

When implementing the plan, what happens when there are substantial conflicts between existing land use, zoning or other city regulations and MHCP conditions? What if the City can not amend all the laws and regulations as required by the plan? At what point would it be determined that the City was not in compliance with MHCP and thus not covered by the take permit? What if new ordinances and regulations are adopted in the future that conflict with MHCP conditions?

CNPS-284 Bullet 9, Page 6-10

Explain what legal or enforcement measures will occur if the City of Escondido does not comply with all the terms and conditions of the subarea plan implementing agreement. Are there any criminal or monetary penalties to the city or its personnel for failure to abide by the conditions of the Escondido Subarea Plan?

CNPS-285 Section 6.3.4: Development Review and Approval Process

Wildlife Agency Consultation, Pages 6-13, 6-14

It is stated that the wildlife agencies may request voluntary consultation with the city in regards to a project undergoing CEQA review. Does this mean that the City can refuse to discuss a project with the agencies? The term "voluntary" should be removed as the wildlife agencies should be able to comment on and consult with the City on projects undergoing CEQA review whether the City agrees to the consultation or not. This should be part of the oversight process that ensures implementation of Escondido Subarea Plan conditions.

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Attachment 6
Comments on the Oceanside Subarea Plan

Overview

CNPS-286

Oceanside has very little sensitive habitat remaining, yet it is a critical link between core habitat to the south in Carlsbad and the large tracts of high quality native habitat right across the city border to the north in Camp Pendleton. The regional plan will not work unless linkages are provided through Oceanside, yet the level of conservation indicated in the Oceanside Subarea plan is extremely low.

CNPS-287

Section 1.2 indicates that concerns about the threatened California Gnatcatcher were the primary reason for Oceanside to undertake the Subarea planning process. Judging from the results of that process it is clear that the focus has been on this single species- and not the entire list of 61 sensitive plants and animals shown on Table 3-2 that have been documented in Oceanside. The Plan will be used as justification for take permits for all 61 species. The Plan must therefore clearly demonstrate that it protects sufficient habitat to support the populations of all 61 species. The focus on coastal sage scrub stepping stones in the preserve design does not assure that all of these species are adequately protected.

The entire Oceanside Plan is based on the premise that the primary wildlife corridor is through central Oceanside by El Corazon. In fact, it is likely that a much more viable, or at least a critical secondary corridor exists further east through Jeffries Ranch and Guajome Regional Park. The central wildlife corridor boundary does not extend all of the way to the city limit boundary on the north. Since the specified intent is to assure movement through Oceanside, the boundaries should extend all of the way to the city limit line on the north side. Even though much of this area is in mitigation banks, it is still important to integrate this as part of the entire corridor.

Overall Conservation Proposed

CNPS-288

In light of the fact that San Diego county has "more rare, threatened and endangered species than any comparable land area in the United States" (MHCP Vol. 1, Section 1.2 paragraph 1) and is considered a major "hotspot" on a global scale, the biological aspects of this plan are of far greater importance than the economic growth needs for the city of Oceanside or the north county region. Edward O Wilson's article How to Save Biodiversity defines hotspots as "habitats that are both at the greatest risk, and shelter the largest concentrations of species found nowhere else."(1)

CNPS-289

Oceanside proposes to preserve 58% or 2,742 of the 4,704 acres of remaining natural habitat. The overall MHCP Biological Core and Linkage Area (BCLA) delineates 82% or 24,531 of 29,895 acres of natural habitat plus an additional 18% of other vacant land as suitable for

CNPS-286.

The City of Oceanside Subarea Plan Wildlife Corridor Planning Zone is constrained by existing development and roads. This main wildlife corridor through the City relies on habitat preservation and restoration along the SDGE transmission corridor, which is covered by an approved NCCP/HCP as well as preservation, restoration, and acquisition of portions of key adjacent parcels. The biological analysis for the plan and wildlife corridor determined that a sufficient level of conservation and wildlife movement would occur. The goal of the plan was to contribute to the regional viability of as many species as possible, and not a single species. No city can ensure, by itself, that it can independently protect sufficient habitat to support any species of concern, which is why cooperative, regional planning is required. A primary contribution of the Oceanside plan to regional conservation is to conserve and improve north-south connectivity for California gnatcatcher populations, because this is essential to the regional viability of this species. We disagree that a more viable corridor for connecting gnatcatcher core populations exists in the eastern portion of the city. Detailed biological analyses and field studies by numerous knowledgeable biologists determined that the most viable stepping-stone corridor across the city is associated with the SDGE transmission corridor in the central part of the city. The Jeffries Ranch area is not adequately connected to gnatcatcher core populations to the south to be considered a more viable corridor. We agree that it supports important biological resources and may contribute as a secondary corridor to the overall regional function of the preserve system. There is no need to extend boundaries of the Wildlife Corridor Planning Zone to the northern boundary of the city. Although we recognize that, biologically and functionally, the wildlife corridor connects all the way across, the purpose of the planning zone is to designate where certain guidelines are necessary to conserve key parcels. These implementation guidelines are not necessary outside the zone as currently mapped.

CNPS-287.

The goal of the plan was to contribute to the regional viability of as many species as possible, and not a single species. No city can ensure, by itself, that it can independently protect sufficient habitat to support any species of concern, which is why cooperative, regional planning is required. A primary contribution of the Oceanside plan to regional conservation is to conserve and improve north-south connectivity for California gnatcatcher populations, because this is essential to the regional viability of this species. We disagree that a more viable corridor for connecting gnatcatcher core populations exists in the eastern portion of the city. Detailed biological analyses and field studies by numerous knowledgeable biologists determined that the most viable stepping-stone corridor across the city is associated with the SDGE

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transmission corridor in the central part of the city. The Jeffries Ranch area is not adequately connected to gnatcatcher core populations to the south to be considered a more viable corridor. We agree that it supports important biological resources and may contribute as a secondary corridor to the overall regional function of the preserve system. There is no need to extend boundaries of the Wildlife Corridor Planning Zone to the northern boundary of the city. Although we recognize that, biologically and functionally, the wildlife corridor connects all the way across, the purpose of the planning zone is to designate where certain guidelines are necessary to conserve key parcels. These implementation guidelines are not necessary outside the zone as currently mapped.

- CNPS-288. Comment indicates that plan should focus more on biology than socioeconomic concerns.*
- CNPS-289. Many areas included within the BCLA but excluded from the FPA and the proposed reserve system are isolated grasslands or disturbed habitats. Others support sensitive resources but do not contribute greatly to reserve configuration or value. Other properties that do support valuable resources and might contribute to reserve design cannot be shown as conserved due to existing legal agreements or other constraints. Development on **any** property supporting biological resources requires mitigation that will contribute to assembling the reserve system, including protection and restoration within the essential stepping-stone corridor. Without some allowance for development in less biologically valuable areas, the plan could not assure conservation and management on those properties considered most essential to meeting the plan's biological goals.

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MHCP preservation. Oceanside proposes to preserve only 68% of the regional BCLA within the city. This lower level of conservation is of even greater concern because almost all of the areas of conservation (except for the existing mitigation banks at the northern city boundary) are all small habitat fragments with 100% of their area subject to significant adverse edge effects. (See Figure 2-4 Focused Planning Areas Edge Effects MHCP Study Area.)

CNPS-290 However, these overall numbers do not show the impact on specific habitat type and the associated species that are the real focus of this conservation effort. Coastal sage scrub (CSS) habitat preservation is at the core of the MHCP planning process. Oceanside proposes to preserve only 50% of the remaining CSS. Even within the focus of preservation efforts within the city- the Wildlife Corridor Planning Zone (WCPZ) there is less than 100% conservation.

CNPS-291 The City of Oceanside has a history of concern for the unique environmental resources of the area. It adopted an Environmental Resource Management Element to their General Plan in 1975 with provisions for the preservation of sensitive lands. However, over the years these provisions have become inadequate and the City's environmental resources have shrunk at an alarming rate. In 1995, Oceanside began to assess the remaining resources to provide a base for their sub-area planning process. While the city government has known for years that the natural habitats being destroyed for development were unique, they have neglected opportunities to be good stewards of these valuable resources- resources that belong to us all. The conservation of only 58% of these remaining native habitats is once again neglecting the important biological value of all of the remaining vegetation communities and the sensitive species that need them to survive. Nor has Oceanside targeted vacant/disturbed land for preservation- even where this would add to contiguous habitat and improve the functioning of the constrained wildlife corridors.

CNPS-292 Without the SDG&E easements there would be no possibility of achieving any viable wildlife corridor through the city. Nothing less than the Biological Core and Linkages Area level of conservation alternative of 3,281 (EIR/EIS Table 2.3-6 Biological Conservation, City of Oceanside Focused Planning Area Alternative) will provide acceptable environmental conservation. We recommend that the Oceanside Sub-Area plan be amended to include this additional acreage.

CNPS-293 **Specific Additional Areas Recommended for Conservation**
The Biological Core and Linkages Alternative provides for 3,281 acres of conservation within Oceanside, as compared to only 2,420 in the Plan. It is impossible from reviewing the documents to determine exactly where these additional 861 acres are located (mapping is at too large a scale). The following are specific recommendations for areas that should be conserved in addition to those specified in the Plan. It is assumed that most of these parcels are already included in the BCLA, but some may not be. We urge the Wildlife agencies to include the entire BCLA and any of the following parcels that have not already been included into the approved preserve design.

CNPS-290. 100% conservation is not achievable in the WCPZ given the high cost of land in this area, and legal constraints. Restoration of disturbed lands to coastal sage scrub within this zone is a key component of the plan, and will actually increase net coastal sage scrub within the WCPZ by about 145 acres relative to existing conditions. Much of the coastal sage scrub outside this zone, and excluded from the MHCP FPA, is small scraps on steep slopes that do not contribute greatly to reserve design.

CNPS-291. The City of Oceanside has taken a pro-active approach in preserving habitat through past project development. This has occurred through adherence to the Environmental Resource Management Element of the General Plan and environmental policies in the adopted Local Coastal Program. Since 1992, the City has been an active participant in the North County Multiple Habitat Conservation Program and has coordinated closely with environmental groups, Wildlife Agencies and the public on all projects involving sensitive habitat.

The City has coordinated with the Wildlife Agencies and public on projects. In addition, all projects involving habitat impacts or take were required to obtain outside agency permits prior to grading or construction. Since 1992, coastal sage scrub impacts were processed under the Section 4(d) process or a Section 7 consultation for a 404 permit which involve review by biologists, agency staff and the public. Impacts to wetland habitat have all undergone extensive review and permitting under Sections 404 and 401 of the Federal Clean Water Act and Section 1601 and 1603 of the California State Fish and Game Code.

The draft Subarea Plan includes provision for extensive restoration of vacant, disturbed parcels. Approximately 136 acres of land in key portions of the wildlife corridor area are planned to be restored to native habitat.

CNPS-292. About 539 additional acres would need to be conserved for the BCLA conservation alternative. Much of this additional acreage would include highly disturbed and isolated habitat areas that would not contribute greatly to reserve design or species conservation. Some of these properties are already legally entitled for development. The plan must provide a balance between biological conservation and economic development. In some cases, increasing the level of conservation would prevent any economic use of a private property and would therefore constitute a property taking. Properties having high biological value that cannot be guaranteed high conservation at this time are considered high priority for acquisition, from willing landowners,

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to increase the level of conservation above the minimum level guaranteed under the FPA alternative.

CNPS-293. Responses will be provided for individual parcels below. Please note that the reference to 2,420 acres of conservation in the comment omits an additional 322 acres of wetlands, for a total of 2,742 acres of guaranteed conservation within Oceanside. Thus, the BCLA alternative would add about 539, not 861 acres, relative to the FPA alternative.

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- CNPS-294 Marron Rd by Buena Vista Creek- wetlands impacts and connection between core habitat at Calavera and Buena Vista Mira Costa College- wetlands area north of the security parking lot- not mapped.
- CNPS-295 Oak Riparian Park- wetlands area not correctly delineated all the way up to underground channelization Garrison Creek by - area of willow riparian wetlands is not mapped.
- CNPS-296 Location A North of SR78 at proposed crossing- beginning of corridor in Oceanside with no visible CSS from the south side of the road. Open space patches available.
- CNPS-297 SDG&E E easement corridor- full acquisition to meet minimum corridor width requirements of 1,000 feet per MHCP criteria. Part of this already appears to be in public ownership at Mira Costa.
- CNPS-298 East side El Camino Real Golf Course - to provide a secondary route through this constrained area.
- CNPS-299 Pocket park by Viscaya - connects to slopes along the El Camino Real Golf Course and the power line easement through Mira Costa. Provides a good alternate route.
- CNPS-300 Mesa Dr/El Camino Real up to Sub-station - landscape areas need to be restored to CSS to provide line-of-sight for the corridor.
- CNPS-301 Location G Corridor crossing of SR 76 and Mission Ave. - This is a major road kill area. Undercrossings are needed with some acquisition to provide space for wildlife access to the undercrossings on each side of the two roads.
- CNPS-302 Buena Hills/Vista Way- a good slope patch with no sound wall and good line of site from the bank behind Quarry Creek. While this doesn't have good connectivity to the north, it does provide an alternate SR78 crossing point.
- CNPS-303 West of RDO/Vista Way by strawberry stand- there is a narrow connecting corridor through housing at Paseo del Laura. Bank currently has some native and some landscaped plant materials.
- CNPS-304 South of Mission Ave. by the city boundary- location of major critical population of San Diego Ambrosia.
- CNPS-305 Coast Highway at SLR River- location of the major critical population of Nuttall's Lotus. Location of major/Critical population of San Diego Barrel Cactus- not mapped
- CNPS-306 Melrose at Oceanside Blvd - location of the major critical location of the burrowing owl.
- CNPS-307 Buena Vista- location of the population of the Oblivious Tiger Beetle. This is shown on Table 3-

- CNPS-294. The undeveloped portion of Maron Road by Buena Vista Creek is in the City of Carlsbad and is addressed in their Subarea Plan.
- CNPS-295. All wetland and upland areas south of the creek in Oak Riparian Creek are planned to be preserved per the MHCP and Oceanside no net loss policy. Garrison Creek wetlands, east of El Camino Real will be preserved as stated in the Subarea Plan. A detention basin project is approved in this area, but will only impact a small area along the perimeter of the basins.
- All wetland and upland areas south of the creek in Oak Riparian Park, including Calavera Creek that bisects the park, are planned to be preserved per the MHCP and Oceanside no net loss policy. Portions of the creek and upland areas have been mapped. The new mapping will be compared to the Subarea Plan vegetation mapping and incorporated into the final Subarea Plan, if appropriate. Garrison Creek wetlands, east of El Camino Real, will be preserved as stated in the draft Subarea Plan. A detention basin project is approved in this area, but will only impact a small area along the perimeter of the basins. Recent mapping for the detention basin project will be compared to the draft Subarea Plan and incorporated into the final Subarea Plan, if appropriate.
- CNPS-296. It is not clear where the parcel is located. Apparent open spaces adjacent to the golf course are not available for conservation. Restoration of CSS is recommended for disturbed slopes along the corridor north of Location A.*
- CNPS-297. Various portions of the SDGE transmission line corridor are in public ownership. SDGE has an approved NCCP/HCP – they have agreed to protect habitat and allow some restoration within their easement/ownership areas. Areas adjacent to the transmission corridor will be evaluated for protection as open space as development occurs. The areas adjacent to the transmission line through Mira Costa College are under the jurisdiction of the Community College District, and therefore not subject to city land use authority. In addition, existing improvements (buildings, tennis courts, parking lots, etc.) adjacent to the SDG&E easement through Mira Costa College would preclude assemblage of a 1,000-foot-wide wildlife corridor through this area.
- CNPS-298. Existing CSS adjacent to the El Camino Real Golf Course are considered a secondary corridor route in the Subarea Plan. The Subarea Plan allows onsite mitigation in this area and large portions of the existing CSS are planned to be preserved as native habitat.

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- CNPS-299. There are a string of open space connections near the golf course, including the pocket park at Viscaya Way and the SDGE easement along the south side of El Camino Real. The majority of this area is not proposed for development. However, the southeastern extent of the SDGE easement in this area is highly developed (tennis courts, commercial development, SR 78, etc.) and does not provide connections to any open space areas.
- CNPS-300. The City has been working with SDGE to landscape the substation area with native plants including CSS species where appropriate.
- CNPS-301. Wildlife undercrossings can be explored where feasible, however, these transportation corridors are highly developed and sites are limited. Any development in the area will be required to comply with the MHCP standards for wildlife corridors.
- CNPS-302. This area is highly developed and it is unlikely that California gnatcatchers or other species will use this point to cross SR 78. It is more likely they will utilize the wildlife corridor connection just east of El Camino Real as shown in the Oceanside and Carlsbad Subarea Plans.
- CNPS-303. The property south of the narrow vegetated slope is zoned for commercial development. This is a very narrow connecting point that does have some native plants, however, it is too small and isolated and because of brush management needs and development patterns in the area, it will not function as a wildlife corridor.
- CNPS-304. The population of *Ambrosia pumilla* has been surveyed; no development has been proposed that will impact this population. This property has been added to the FPA.
- CNPS-305. A population of Nuttall's lotus has been identified south of the San Luis Rey River in this area. It is in an open space area between the bike trail and the river that will not be developed. Surveys in this area have not identified any population of Coast barrel cactus. However, the major population of barrel cactus on the north side of the River, east of I-5, is on steep slopes that will not be developed.
- CNPS-306. The location noted is not considered a major or critical location for burrowing owls. There is one record from the area, but the habitat is considered too isolated to reliably support burrowing owls over the long term.

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CNPS-307. The MHCP database contains no records of oblivious tiger beetle. This species inhabits intertidal areas of beaches and lagoons, which are subject to no net loss. All salt marshes and estuaries in coastal cities are considered critical locations, even though there are no recent records of the species in the study area. No impacts to this species are therefore anticipated.

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7 in the MHCP as a narrow endemic species with a critical population in Oceanside.

CNPS-308 Sensitive Species locations not addressed in BCLA- See Figure 4.3-5 Recorded Locations of Sensitive Species MHCP Study Area and BCLA Alternative 3 from draft EIR/EIS. There are significant concentration of sensitive populations in both the Agricultural Exclusion Zone and just outside of the proposed WCPZ.

CNPS-309 General Comments About the Plan
Prevention of Wetlands Loss
There is language in the text that talks about "no net loss of wetlands," but there are existing wetlands habitats that were not identified on the maps and summary tables, and there is inadequate provision for wetland buffers that are essential to assure the health of the riparian habitat. Furthermore the plan talks about riparian buffers of 50' from the riparian plant banks and another 50' of planning buffer. These buffer requirements have not been met in many areas and the result is that impacts to critical wetlands are not adequately prevented.

CNPS-310 Legal Assurances
The impacts of global warming on natural communities is just beginning to be understood. What is clear is that ecosystems are responding to climatic changes. What was once considered an "act of God", like a major fire, can now be a reasonable expectation. The assurances in the Plan fail to take into account these changes, and by so doing excludes these from requirements for adaptive management. The assurances language needs to specifically identify issues related to global warming and climatic change and require adaptive management. (1)

CNPS-311 Public participation.
We believe that the City has been inadequate in its publicity about the plan, both during the period of plan preparation and during the recent four-month comment period. Now that the plan is well defined we encourage the City to provide information about the plan to members of the public as it progresses through the approval process and into implementation. Although there are provisions for public involvement during the time of Preserve Assembly and Management and Monitoring in the Plan, we would also encourage continued public notification about Plan progress through less formal means. These public forums should be varied in nature, encompassing not only normal city council and committee meetings, but also neighborhood meetings at libraries and schools, educational programs at the public school and community college level, and presence at public gatherings such as street fairs. Aspects of the preserve that require public knowledge and cooperation, such as allowed uses of the preserve and adjacent lands, protection of the preserve from exotic species including pets, management and monitoring techniques, including adaptive management, and untoward effects of irrigation water, artificial lights and noise on native species are all types of information concerning the preserve that will be of value to local citizens and could be spread through the above mentioned informal means.

CNPS-308. Sensitive species in the Agriculture Exclusion Zone are concentrated in remnant native habitats (especially riparian) between agricultural fields. These are protected per resource protection guidelines outlined in Section 5 of the Subarea Plan. Some of these areas have been added to the FPA. Other sensitive species observation points are in small or isolated habitat areas that do not contribute significantly to reserve design.

CNPS-309. Fine-scale inaccuracies in vegetation mapping are to be expected in large-scale maps. These are rectified by the finer-scale, project-specific mapping and surveys that are required during plan implementation. The plan cannot remove existing developments, some of which occurred within 50 or 100 feet of wetlands before any buffer regulations were enacted. The plan will ensure that future developments meet the minimum buffer standards, including restoration of native upland habitats within the buffer zones.

CNPS-310. Adaptive management strategies will be proposed based upon findings of the monitoring. Most of the habitats in southern California have been adapted to periodic disturbance by fires. Depending upon the size of the preserve and land uses adjacent to the preserves, fire/fuel management may differ. The issues of global warming are too speculative to attempt to quantify at this time; however, as indicated earlier, the monitoring program will identify shifts or trends in population and the program implements adaptive management strategies, as appropriate.

CNPS-311. There have been numerous opportunities for public input on development of and the City of Oceanside Public Review Draft Subarea Plan. Since its inception in 1993, MHCP Advisory Board meetings, often held monthly have been open to the public. The City of Oceanside has held various workshops at the Planning Commission, Economic Development Commission and City Council. Workshops for affected property owners have been held as well as for organizations such as the League of Women Voters. In addition, numerous one on one meetings both in the City offices and in the field have occurred with interested members of the public on a ongoing basis.

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CNPS-312 Enforcement.
Provisions for citizen challenges must be clearly spelled out. Provisions of federal and state law for species protection are not easily accessible to the local citizen. The Plan needs to document the process for enforcement and reinforce the right of local citizen suits to enforce the provisions of the Plan. The only role for the public in enforcement is described in section 7.2.8, which is limited to those lands formally included in the preserve system. This limitation excludes the public from its legitimate function of involvement in all actions related to the Plan- not just the last step of the process. Much of this information can be conveyed in the public forums mentioned above.

CNPS-313 Funding, Implementation, and Monitoring.
There is not a funding plan that assures implementation of the Plan. The currently nonexistent "regional funding source" is critical to plan implementation, but after ten years of planning effort has not been determined, and consequently there is no time frame for provision of these funds. The federal and state share of land acquisition has not been guaranteed, and funds for local acquisition do not appear to be sufficient for the need. Without the provision of adequate funds this plan is just a piece of paper.

The monitoring process also does not provide timely, comprehensive information.

CNPS-314 Specific Comments On Sub-Area Plan
Figure 2-2 Existing Land Uses
There are errors in the ownership categories as shown in 1995, and there have been several changes in public land use that are not reflected on this figure. Consequently this figure and all of the related summary tables include errors that overstate public ownership, and will tend to make it more difficult and costly to achieve even the levels of conservation that are shown. This is of particular concern in the area designated as the WCPZ. The 1995 mapping shows all of El Corazon, including the 99-acre Collins property in public ownership. The Collins property was not owned by the city in 1995. It was purchased later, and in 2001 about 19 acres of it was sold. Furthermore the city has been in a three year planning process that includes giving most of this land to a developer for a private hotel and golf course. Much of this site is already sensitive habitat, and most of the rest has good potential for significant habitat restoration area.

CNPS-315 2.1 Regional Location
How does a north/south "stepping stone" linkage for coastal sage scrub satisfy the MHCP's ecosystem preserve plan? Webster's dictionary defines ecosystem as "a community of animals and plants and the environment with which it is interrelated." These fragments are not a functioning ecosystem in themselves.

CNPS-316 2.2.1 Master Plan for Parks and Recreation
The Master Plan also includes provisions for a park at El Corazon. Since this is a key site within the central wildlife corridor the Master Plan needs to specifically address the integration of the El Corazon park site with the MHCP.

CNPS-312. Please see response to CNPS-193. Additionally, each project will be required to undergo environmental review for any discretionary action. Thus, the public is noticed in accordance with CEQA regulations.

CNPS-313. 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 CFR, Title 40, Sec. 1508.14, and California Public Resources Code, Sec. 21100).

Implementing a preserve system for the MHCP will involve actions by local jurisdictions as well as by federal and state agencies. Some of those actions, such as commitment of public lands for habitat use, can occur without new funding. Other actions, such as management of habitat lands conserved as mitigation for project impacts, will be funded by organizations or individuals responsible for project development. Key to successful implementation of the MHCP is that important habitat areas be conserved at a rate which at minimum preserves the continued viability of target species and mitigates for impacts which occur. Since habitat loss allowed under the plan would not occur all at once, public financing for the MHCP is not immediately required. Under the plan, implementation would be periodically monitored to insure that adequate conservation occurs over time. Thus the need for funding of specific conservation tasks will be reviewed, and if necessary supplementary actions taken, while the jurisdictions pursue a regional funding program. Thus the need for funding of specific conservation tasks will be incremental yet assured through the City's IA, while the jurisdictions pursue a regional funding program.

The federal Endangered Species Act ("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 prepared. The Secretary may also require other assurances that the plan will be implemented. The MHCP Plan provides the necessary assurances that these conditions will be met.

The MHCP envisions that habitat acquisition, habitat restoration, and management, monitoring, and administrative costs will be funded by participating local jurisdictions through a cooperative regional funding program, to be placed on a ballot for voter approval within three years of the

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approval of the plan (MHCP, Vol. I, Sec. 7.2 and Table 7-2). The MHCP also identifies a range of funding sources that may be used, such as property tax, Mello-Roos special tax, sales tax, and benefit assessment.

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

- Commitment of public lands owned by participating local jurisdictions to the preserve and their management for biological resources.
- Management of existing state and federal lands as part of the preserve.
- Interim funding of selected conservation actions as described in the Final MHCP, Subarea Plans, and Implementing Agreements.
- Recently completed acquisition of selected properties using state and local funds (approximately 36 acres) in the City of Oceanside.
- Requirement of mitigation of impacts from new public and private projects.

The Wildlife Agencies (USFWS and CDFG) will, through Implementing Agreements with participating jurisdictions, "monitor plan implementation" and "ensure that habitat conservation proceeds in step with development" (MHCP, Vol. I, Sec. 5.2.3). Furthermore, "[i]f the Wildlife Agencies determine that the subarea plan is not being implemented as required, the wildlife agencies and the city will take the actions specified in the subarea plan and implementing agreement to remedy the situation" (MHCP, Vol. I, Sec. 5.3.8). The requirement to review will apply if a regional funding program is not approved in a timely manner, and an alternative remedy may require each jurisdiction to develop and implement a funding source adequate to meet its share of the MHCP and Subarea Plan implementation as it continues to pursue a regional funding source.

CNPS-314. Ownership and other information and data will be updated in the final Subarea Plan.

CNPS-315. The plan does not state or imply that stepping stones represent a functional ecosystem by themselves. However, maintaining and restoring these stepping stones will contribute to maintaining ecosystem function at the regional scale,

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by ensuring that at least certain bird species can disperse between large core areas outside the study area. It is beyond the power of this or any other conservation plan to recreate predevelopment patterns and processes by removing a major city.

CNPS-316. The City of Oceanside Subarea Plan has specific guidelines for preservation and restoration of habitat within portions of the "El Corazon" site. The City will consider including open space areas in El Corazon when it updates the Parks and Recreation Master Plan in the future.

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2.2.3 Transportation and Utility Corridors

CNPS-317

Why haven't wildlife tunnel/overpasses been planned for these major roadways that constrain potential linkages, especially the recent SR-76 construction? The city has been aware of the need to create this wildlife corridor (Sub-area Plan) for years. Wildlife movement needs to be provided for with all new roadway construction, and retrofits of existing roads need to be prioritized and programmed into the capital improvement plans for Plan implementation. Explain how Caltrans, utility companies and other agencies projects will be evaluated and implemented in light of the MHCP and Oceanside Plan. What role and control will Oceanside have over things like roadway alignments in order to avoid impacts to the preserve? Will these agencies be subject to the same mitigation requirements- with a priority on mitigation within the WCPZ? Who will make the determination that these projects are consistent with the preserve plan? Who will determine that proposed mitigation is acceptable- for example the use of a culvert instead of a bridge for a wildlife crossing? Will revegetation take place within the SDG&B & E transmission corridor? Who will pay for the restoration? Who will manage and pay for its on-going maintenance?

2.4 Known and Anticipated Projects

CNPS-318

Figure 2-7 shows the location of the anticipated city infrastructure projects, but there is no table that summarizes the amount of take authorizations by habitat type. It is therefore unclear how these have been accounted for in the detailed habitat conservation summaries. Is the mitigation for these takes part of the hardline conservation acreage totals? If so, there should be detailed tables that identify the take/project and the mitigation acreage's for each take. This is especially of concern within the WCPZ where there are a significant number of public infrastructure projects.

CNPS-319

The private projects also require a more detailed explanation of the amount of take/habitat type and the mitigation. Several of these private projects are located within the WCPZ, or are key connectors between core habitats. These projects are of specific concern and include:

CNPS-320

Quarry Creek Shopping Center - This project is part of the regional wildlife corridor connecting core habitat in Calavera with that along Buena Vista Creek. This has not been adequately coordinated with the City of Carlsbad. The extension of Marron Rd is shown as a public project in this area- but the traffic study is just being done now and preliminary reports are that there is little justification for this road if Carlsbad revises their development plans.

CNPS-321

Wanis View Estates - This area should be identified as included within the WCPZ and should at a minimum, be subject to all of the additional conditions that are proposed for land within the corridor.

CNPS-322

Evergreen Nursery - Since this project is adjacent to Loma Alta Creek, and part of the WCPZ it is of particular concern.

CNPS-317.

Caltrans was the lead agency on the SR 76 Expressway project. A wildlife crossing was constructed at Guajome Regional Park, just east of North Santa Fe. The MHCP has designated standards for wildlife crossings (see Volume I). The City when appropriate will consider future crossings and undercrossings. Agencies such as Caltrans, SDGE and NCTD will take the lead on their projects and will prepare their own CEQA documents and analysis. Biological impacts will be evaluated at a project level by these agencies with public review by the City and public. Habitat restoration within the SDGE easement or ownership areas, when needed (portions of the SDGE easement already contain habitat) will need to be funded by adjacent development. The underlying property owner in SDGE easement areas will fund ongoing maintenance. Habitat in SDGE ownership will be managed in accordance with their approved Habitat Management Plan.

There is currently one wildlife crossing under SR 76 at Guajome Regional Park. An additional wildlife crossing may be proposed for the future phases of SR 76 expansion, which will be just east of Melrose Drive to I-15. Most of this stretch is in the County of San Diego's jurisdiction. The County will be establishing standards and guidelines for siting and designing road crossings for various species. This may become part of the County's NCCP plan implementation standards, and may be applied to other SAPs.

CNPS-318.

Public infrastructure projects will be evaluated for biological impacts and mitigation under CEQA at the project level. Biological impacts will be minimized and mitigation will be implemented in conformance with the Subarea Plan, as necessary. The take authorizations by habitat type have not been calculated for most of the anticipated City infrastructure projects. Tables and maps will be used in the final Subarea Plan to show habitat types and any agreed upon hardline areas relative to public infrastructure projects, where available. Most of the infrastructure projects shown are long term and will not be implemented in the near future.

CNPS-319.

Detailed information on approved and planned private projects can be obtained at the City of Oceanside Planning Department. Where available, detailed habitat information for planned private projects will be included in the final Subarea Plan. Otherwise, the new projects will have to comply with the standards identified in the MHCP and Subarea Plans.

CNPS-320.

The Quarry Creek Commercial project avoided impacts to biological resources and put the portion of Buena Vista Creek on their site under a permanent open space easement. Future development areas to the east of the

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Quarry Creek project are in Carlsbad and will be evaluated under their development process and Subarea Plan.

CNPS-321. The Wanis View Estates project was approved by the City and Wildlife Agencies (e.g., 404 permit, 1601 Streambed Alteration Agreement and 401 Certification) and is being implemented in accordance with these approvals. The MHCP/Subarea Plans will be updated to reflect the changes in project status since the time that the MHCP/Subarea Plans were proposed. See the revised figures in the FEIS/EIR.

CNPS-322. Evergreen Nursery has placed Loma Alta Creek (including buffer areas) and CSS on the southern portion of the site in an open space easement that is being managed by a non-profit open space management firm. The permitting and open space configuration of this project was formulated in conjunction with the U.S. Fish and Wildlife Service, California Department of Fish and Game, U.S. Army Corps of Engineers, and Regional Water Quality Control Board. The approved open space plan for the nursery site is designed to facilitate wildlife movement in the east/west corridor along Loma Alta Creek.

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CNPS-323 Vallas Country Club Development - Public comments for this 4-unit single family residential development closed on March 15, 2002. The project would impact .5 acres of CSS, requiring 1.5 acres of mitigation since it is within the WCPZ. .9 acres is proposed preserved on site and .5 acres would be within the contiguous 31.6-acre site owned by the project applicant. The concern is that this project parcel meets the "deminimus" provisions of the wildlife agencies- and these provisions are still applicable to this critical WCPZ area.

CNPS-324 How many parcels within the WCPZ are potentially going to result in "deminimus" findings? If this is significant, then there should be some guidelines developed that require mitigation to be within the WCPZ. Mitigation should be configured to improve the functioning of the corridor- and not just to add more fragmented small parcels.

CNPS-325 Several Projects were identified as "permitted Under the City of Oceanside Sub-Area Plan." (Page 2-30) It is unclear what the distinction is in the earlier section and this section since several of these projects are now underway in advance of approval of the Plan. This includes the Master Plan of Drainage, and the Jeffrey Ranch Project. The anticipated amount/location of takes and mitigation should be specified. Again it is unclear how these have been accounted for. In the Carlsbad HMP project specific figure were provided showing the boundaries of takes by habitat type. In the absence of this kind of information it is impossible to assess the impacts of these five pages of detailed projected projects.

CNPS-326 3.1.1 and .2 Existing Information
Is the most recent data as of 1996? Clearly this needs to be updated to reflect current condition. What is the plan to provide a more complete accurate picture of existing conditions, and how will this information continue to be updated?

CNPS-327 3.1.2.1 Vegetation Mapping
Paragraph 1- undeveloped land "along slopes south of Oceanside Blvd." is outdated. Evergreen Nursery now occupies land from south of Oceanside Blvd., across Loma Alta Creek and to the top of this slope. This area is of particular concern because of the riparian corridor which constitutes one of the major east/west local wildlife corridors that bisects this piece of land. Construction is currently underway both in the creek bed, and along the upslope watershed. There are inadequate riparian buffers at this location that are not consistent with the provisions of the MHCP.

CNPS-328 Slopes on the south side of Oceanside Blvd, east of El Camino Real have been developed in 2001. This data should be updated. Since vegetation mapping is based on aerial photographs, how is the health of the vegetation community determined? What efforts have been made to take health of the native habitat into account- both for determining preservation and for restoration priorities?

CNPS-329 3.1.2.3 Habitat Linkages and Dispersal Corridors
This section addresses CCG movement only. What about terrestrial species movement in

CNPS-323. CSS impacts related to the Vallas Country Club Estates project are under 1 acre and will be processed under "de minimus" findings that require the concurrence of the U.S. Fish and Wildlife Service and California Department of Fish and Game.

CNPS-324. It is not possible to predict how many projects in the WCPZ will be processed under "de minimus" provisions. However, once the City receives a permit, 4(d) processing no longer exists. The Wildlife Agencies are responsible for any changes to this regulation.

CNPS-325. The public projects listed as potentially being permitted after Subarea Plan approval are on-going or long-term projects. The same applies to the private projects listed in this section. This section of the Subarea Plan will be re-analyzed in the final Subarea Plan. Public as well as private projects will need to comply with the standards in the MHCP/Subarea Plan.

CNPS-326. Section 3.1.1 and 2 will be updated using biological information from projects that have occurred since the mid-1990s.

CNPS-327. Please see response CNPS-322.

CNPS-328. The monitoring program includes a process for regularly updating and refining vegetation mapping. Relative health of vegetation communities is based on proportion of nonnative and weedy species and evidence of disturbance (brushing, disking, off-road vehicle use, litter, erosion, etc.). Restoration opportunities and priorities were ranked in the field by a restoration specialist, using criteria outlined in Section 3.1.2.4 of the Subarea Plan. Site-specific preserve management plans and the monitoring program will evaluate vegetation health as a routine part of adaptive management.

CNPS-329. See response CNPS-315 concerning the role of the stepping-stone corridor. Existing conditions already preclude creating a functional north-south movement corridor for terrestrial species, such as reptiles, amphibians, and mammals. Please note that the plan did not create existing conditions; it is striving to overcome these conditions to contribute to ecosystem function and species viability in spite of these conditions. The plan cannot feasibly undue damage done for these species by development of a major urban area with multiple heavy-use roads. The plan strives, nevertheless, to improve conditions for a set of species for which it can provide a significant regional benefit. The California gnatcatcher is one of the most dispersal-limited bird species in the region; so planning a stepping-stone corridor to accommodate

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its inter-generational dispersal across Oceanside will benefit many other bird species (especially other scrub-living songbirds). We agree that there are areas where line-of-sight connectivity is constrained, but this is an existing condition that cannot be undone (e.g, by razing existing commercial buildings). However, detailed, on-the-ground surveys were conducted by knowledgeable biologists to ensure that the best possible combination of habitat patches, with the best possible line-of-sight connectivity and habitat quality, were included in the Wildlife Movement Planning Zone. Although gnatcatchers are primarily "bush flitters," ornithologists have observed adults chasing their fledglings up in spiral flights to great heights (more than 40 feet), followed by a dispersal flight by the young birds to the nearest visible habitat patch (L. Jones and J. Atwood, personal communications). Other ornithologists have observed gnatcatchers crossing major roadways, such as Interstate 5 (personal communications from J. Atwood, P. Mock, K. Preston, J. Lovio). Numerous studies in population biology and population genetics indicate that even very limited dispersal greatly enhances population viability for species with patchy distributions (for example, one successful dispersal between core populations every few generations). We reviewed evidence of gnatcatcher occupancy of habitat patches in central Oceanside and found overwhelming indirect evidence that gnatcatchers do successfully disperse between habitat patches, and do nest in habitat patches, within the WMPZ, thus facilitating inter-generational migration across the study area. The monitoring plan recommends testing this directly with a color-banded population of gnatcatchers.

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the "potential wildlife movement corridors." Avian only is not acceptable and does not make this a viable wildlife corridor. How were the potential obstacles to CCG line-of-sight restrictions addressed? There are places in the proposed corridor with very poor line-of-sight conditions or the need to gain quite a bit of altitude to succeed in accessing the next stepping stone. As CCG are bush flitters, other than the annual dispersal of fledglings, how much dispersal is feasible given this altitude requirement? Provide data that supports the conclusions that CCG will not have difficulty crossing the major east/west roadways that block the WCPZ. (SR -78 and 76)

CNPS-330 The slopes just south of Oceanside Blvd. are very steep and do not make this a high quality crossing area without substantial improvements that have not been addressed in the Plan.

CNPS-331 Paragraph 1 states that there are 5,110 acres of natural vegetation. This is inconsistent with Table 3-1 and other text references to 4,704 acres. Footnotes 1 and 2 do not account for this discrepancy. These inconsistencies make it difficult to determine actual acreage of natural habitat remaining in Oceanside and to assess the adequacy of the conservation plan.

CNPS-332 Table 3-1 states that approximately 18% of Oceanside is natural habitat. The proposed conservation of 2,420 is roughly half of what is left within the city. The purpose of the NCCP and MHCP is not to agree to such a low percentage of conservation because the city is already largely built out. The extent of build-out should result in a higher percentage of conservation rather than lower. Much more conservation is needed to assure some viability to an otherwise meager corridor. BCLA acreage must be added to this conservation plan. This would improve the north/south "stepping stone" corridor and should significantly improve its functioning for both avian and terrestrial wildlife.

CNPS-333 Table 3-1 has a line item for "disturbed" acreage. Much of what is identified as native habitat is significantly disturbed. These disturbed areas all need to be documented and targeted for restoration where they are being included in the count of habitat acres.

CNPS-334 3.2.2 Sensitive Species
There are a number of concerns with Table 3-2 Sensitive Species Occurring or Potentially Occurring in Oceanside:

- the potential occurrence rate for mountain lion is identified as low- although there are two reported cases of mountain lion traffic fatalities on Highway # 76 in the last 8 months. Existing presence is higher than reported and would be even higher if adequate wildlife corridors were provided for in this Plan.

CNPS-335 - many of the listed plant and animal species require grassland habitat, yet this habitat type is not an integral part of this Plan, and the proposed mitigation rate of .5:1 or just payment of fees with no specified mitigation does not assure adequate retention of this habitat type and the species that are dependent upon it.

CNPS-330. The steepness of these slopes is actually considered a benefit, to provide birds with an elevated view across Highway 78 to coastal sage scrub on the other side, and to allow for them to cross above traffic. Although the steepest slopes may not offer excellent nesting habitat, they are used by foraging and dispersing gnatcatchers.

CNPS-331. The natural vegetation and other data have been re-analyzed in the final Subarea Plan to include updated information and fix discrepancies.

CNPS-332. See responses CNPS-5, 290, 292, and 329.

CNPS-333. Section 3.2.4 of the Subarea Plan discusses priority areas for restoration within the regional corridor. The sites selected for restoration were based on conservation priority. It would not benefit the wildlife corridor or sensitive species to restore all vacant disturbed parcels throughout the City. Site specific management plans will identify additional reserve areas in need of restoration.

CNPS-334. Comment noted. Dispersing lions from Camp Pendleton or other large open areas may well wander onto roads within Oceanside, but it is unclear where wildlife corridors for mountain lions would be desirable within this highly urbanized city on the Pacific coast.

CNPS-335. The 0.5:1 mitigation ratio was formulated through input from the MHCP Advisory Committee. Previously, no mitigation was required for impacts to nonnative grasslands. The cities believe a low ratio for these annual or nonnative grasses is warranted to encourage development on these areas relative to more sensitive habitats, such as coastal sage scrub. Grassland dependent species were generally found to not be adequately conserved by the MHCP or Oceanside Subarea Plan, so the cities are not receiving take authorizations for these species.

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CNPS-336 - why is the occurrence potential of plant species only addressed as "detected" and not rated as Low, Medium, or High potential like the animal species. Wouldn't more conservation of the remaining CSS and other habitat improve the likelihood of some of the species identified as not detected to occur in Oceanside?

CNPS-337 - Many of the plant species listed in the CNPS column occur in grassland and CSS habitat. Wouldn't conservation of more of these habitats improve the likelihood of some of these plant species to occur in Oceanside?

CNPS-338 The San Diego Barrel cactus is identified as both major and critical- it should be mapped and shown on Figure 3-2. It is impossible to determine if the population is located in an area proposed for preservation or not. If it has not been proposed for preservation, then this needs to be added as an additional area of conservation needed.

CNPS-339 The major /critical population of San Diego Ambrosia south of Mission Avenue by the city boundary is in an area not proposed for protection, and one with the lowest requirements for mitigation (offsite Mitigation Zone II.) The critical population requires protection. This parcel of land should be targeted for acquisition or other means should be used to assure preservation of this population.

CNPS-340 The major critical population of Nuttall's Lotus appears to be just north of the hardline preserve boundary, and is within the coastal zone. Natural resources within the coastal zone have additional protection requirements. This area also needs to be targeted for corrective action.

CNPS-341 The burrowing owl is mapped in only one area- an area that will not be protected. There is also good potential for occurrence in some of the unmapped agricultural exclusion zone. Further surveying should be done for this species then a species specific protection plan needs to be developed.

CNPS-342 Most of the animal species listed occur in the wetlands habitats- a habitat type that is 100% percent protected. That is primarily why they do occur. If more of the "other" types of habitats were 100% conserved this list would be much longer!. It seems logical that conserving the remaining CSS, grassland, and other habitats would constitute more of the "critical locations" for "major populations" to occur in!

CNPS-343 All of the animal species listed are avian. The health of an ecosystem is not determined by avian species only. Doesn't this send up a red flag? Shouldn't more attention be paid to other terrestrial animals to ensure a viable ecosystem?

CNPS-344 3.2.3.2 California Gnatcatcher Dispersal Corridors
Regional Corridor

Please show developed, agricultural and native habitats in the areas next to the city boundaries. This would facilitate an evaluation of the regional linkages.

CNPS-336. Occurrence potential was inadvertently omitted from Table 3-1 in the Draft Oceanside Subarea Plan. This has been rectified for the final.

CNPS-337. See response CNPS-335.

CNPS-338. See response CNPS-305.

CNPS-339. See response CNPS-304. Narrow endemic species, such as San Diego Ambrosia are protected under Section 5.2.3, Narrow Endemic Species Standards. Preservation of narrow endemic species is required regardless of where they occur.

CNPS-340. The population of Nuttall's Lotus is in an area between the San Luis Rey River and bike trail that is not planned for development and is protected by open space zoning. As a narrow endemic, at least 80% of the population needs to be conserved regardless of location.

CNPS-341. The burrowing owl is not a covered species due to insufficient conservation in Oceanside and the rest of the MHCP. The location in question is unlikely to reliably support burrowing owls.

CNPS-342. The comment is correct that wetlands are 100% preserved in the MHCP, due to the no-let-loss policy. In addition, wetlands are protected under the Federal Clean Water Act and State Fish and Game Codes. Processing projects that may effect wetlands will continue to be processed through the U.S. Army Corps of Engineers, California Department of Fish and Game and Regional Water Quality Control Board under a "no net loss" mitigation policy. Upland habitats are conserved to the extent feasible, however, in order to create a north/south wildlife corridor connecting core populations of species to the south to other core population to the north, isolated habitat areas away from the main corridor will be allowed greater development potential. Mitigation from impacts in these outlying areas will be directed either to the wildlife corridor or approved mitigation areas.

CNPS-343. The comment is unclear on where it is referring to all species being "avian." If it is referring to the list of species for which Oceanside supports major and critical locations (page 3-17) it is incorrect, because butterflies and turtles are not avian. Nothing about ecosystem health was intended by this factual list. The fact is that most sensitive species of non-avian species are already extirpated from Oceanside due to previous impacts.

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CNPS-344. The large scale Subarea Plan maps and MHCP maps show adjacent developed, agricultural and native habitat areas. San Diego County has started their North County MSCP Subarea and additional information may be available on adjacent lands. Where feasible, this information will be shown in the final Subarea Plan.

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CNPS-345 SDG&E easements are either fee-owned Rights-of-Way or simply Rights-of-Way owned by others. The distinction limits SDG&E's requirements under the NCCP. They are required to mitigate and maintain natural habitat in the fee-owned right-of-way only. How much of the SDG&E easements are fee-owned?

CNPS-346 The existing SDG&E easement is used as linkage between stepping-stone patches. In many areas this easement is regularly cleared of vegetation. The result is a corridor with no cover, no food, and no ability to support species. There needs to be a major modification in the way habitat conservation is integrated with the need to be able to access and maintain the power lines. As there is very little existing vegetation along the power line easement upon what evidence do you base the conclusion that the CCG will use this as a corridor?

CNPS-347 When the SDG&E power lines build up corrosion they build up a disturbing "humming" sound. The sound is very irritating to humans. Are there any studies that show its impacts on wildlife activity- particularly the sensitive species that are planned to rely upon this corridor for their survival? Is there any verification that the CCG will use such a power line corridor?

CNPS-348 The regional corridor is only viable if it will support a viable population of coyotes or other predators. Too much of the corridor relies on stepping-stones. This works for brief periods of bird movement, but cannot sustain breeding populations in isolated patches, surrounded by development, with no access by predator population. The plan needs to identify the impacts of edge effects on these isolated habitat fragments, and then determine if there remain a sufficient number of parcels of large enough size/connectivity to assure coyote and other predator survival

CNPS-349 The text only describes preservation of the corridor for gnatcatchers- what about the other protected species that are all subject to take permits once this plan is approved. If a species is to be included for a take permit, then there needs to be sufficient analysis of the population, habitat and preserve requirements to assess the potential for species survival. There is insufficient information to make this assessment for any of the other species.

CNPS-350 The corridor crosses SR-78 on the east side of El Camino Real. There is no native vegetation on the north side of SR-78 at this location to invite any CCG crossing. As this is the beginning of the proposed corridor in Oceanside it is critical to have healthy natural habitat with good line of sight conditions. Both the habitat and the line of sight conditions are missing at this location. Given this, on what basis are you presuming that this is a viable link in the corridor?

CNPS-351 This segment is very dependent upon the SDG&E easement. How much of the 100-500 foot corridor falls into the narrow range as it does not appear that this area meets the minimum definitions of an acceptable corridor in the MHCP- this requires verification that it either meets the minimum or if not, what corrective action is proposed?

The alternative route needs to also be protected because of the degraded condition of

CNPS-345. SDG&E owns approximately 40 acres of transmission line and substation land inside the City of Oceanside Wildlife Corridor Planning Zone (WCPZ). It is not known how many acres are subject to easements recorded in favor of SDG&E. However, habitat lands owned in fee by SDG&E are subject to its subregional habitat conservation plan, and habitat lands with easements are subject to the MHCP and the subarea plan (SAP). In either case, the applicable plan identifies habitat areas for conservation or for potential take subject to mitigation. Thus, lands under easement to SDG&E may be subject to additional management guidelines to protect biological resource values, so long as these do not preclude SDG&E from carrying out necessary maintenance and management actions.

CNPS-346. Please see response CNPS-114. The majority of the SDGE easement is anticipated to be used as a movement corridor and not a breeding area for California gnatcatchers and other species. Where feasible, the City will work with SDGE to maintain existing native vegetation and restore native vegetation in the corridor.

CNPS-347. There are no known studies of the effects of electrical transmission noise on songbirds, but gnatcatchers have been shown to have high tolerance for highway noise. Numerous records of gnatcatchers using electrical transmission corridors exist in the study area.

CNPS-348. The presence of predators will likely remain at current levels with implementation of the Subarea Plan. The stepping stone approach is the only viable approach given current development patterns in the WCPZ and other areas of Oceanside.

CNPS-349. The corridor and Subarea Plan are designed to provide protection and coverage of 25 plant species and 35 animal species. MHCP Volume II presents the requested analysis for all species. The Oceanside Subarea Plan specifically analyzes the stepping stone corridor for gnatcatchers, because of the unique importance of this corridor for this species. Conserving, restoring, and managing this land as natural habitats will benefit many other species.

CNPS-350. The line of site between this site and Carlsbad have been verified through site visits by biologists working on the Subarea Plan, City staff, and Wildlife Agency staff. The plan requires that the south-facing slopes on this parcel be revegetated with native plant species. Several meetings were held with Caltrans concerning the possibility of restoration within Caltrans right-of-way along SR 78, but this issue has not been resolved.

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CNPS-351. Although minimum wildlife corridor widths cannot be met in this area, sufficient area will be provided to allow movement between core areas.

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what is identified as the primary route.

CNPS-352 The segment described in paragraph five states there is line-of-sight connectivity to habitat patches on the north side of Oceanside Blvd. This area of El Corazon has been the site of dump-and-fill operations for about the last two years. The west end of the site is highly disturbed land with steep gullies. Where exactly are the habitat patches that are assumed to be the stepping-stones in this area?

CNPS-353 The corridor between the intersection of Mesa DR and El Camino Real and the SDG&E substation is nearly devoid of natural vegetation. The substation is on an upward slope, so the habitat to the north is not visible. Why do you believe the CCG will be able to effectively use this route?

CNPS-354 The SDG&E Substation has a very narrow western edge. There are large items stored just at the crest. It seems unreasonable to assume that the CCG would instinctively use this segment. This area could be improved by converting some of the non-native landscaping in the area to native, and restoration of CSS on part of the disturbed areas of the Substation site.

CNPS-355 The paragraph 7 area of the SDG&E easement to Mission Ave. at the bottom of this slope is completely bare. There is nothing to invite dispersal in this area. Extensive restoration is needed in this area.

CNPS-356 The western corridor along the southern slope of the San Luis Rey river valley is very steep and comprised of non-native grasses. Why do you assume this area will support CCG movement?

CNPS-357 Local Corridors Associated with the Regional Gnatcatcher Corridor
The east/west local corridor along the slopes of Loma Alta Creek and Oceanside Blvd between College Ave. and I-5 are cited as "feeder" corridors. Where do you think they are "feeding" from? College Blvd. heading east is a dead end into shopping centers and housing. Heading west is a dead end at I-5. New development (Evergreen Nursery) is currently under construction along these slopes. This local corridor has little significance in relation to the regional corridor. These areas are another missed opportunity that could have provided for east/west terrestrial movement.

CNPS-358 3.2.3.3 Constrained Segments of the Regional Corridor
The Location A corridor crossing has no CSS on the north side of SR78, a major obstacle with the roadway itself, and no line-of-sight vegetation. How do you suggest that this is a viable route? There are some small open spaces to the east, on the north side of Vista Way (frontage road) that if restored to CSS might increase the likelihood of CCG use of this for movement toward the alternate corridor. Revegetation along the SDG&E power line adjacent to Mira Costa College could be another alternative. Since the crossing of SR78 has to be accomplished for the corridor to be feasible these areas are critical and all possible routes should be included in this

CNPS-352. South-facing slopes on and the western portion of El Corazon, west of the SDGE easement, are to be preserved and enhanced in accordance with the Subarea Plan criteria for this area. At least 35 acres of coastal sage scrub restoration are required in the western portion of El Corazon.

CNPS-353. SDGE has agreed to use native vegetation (CSS species) to the extent feasible around the substation in conjunction with present and future redevelopment of that area. A portion of the property south of the substation could be revegetated with native species in the future.

CNPS-354. Please see response CNPS-353.

CNPS-355. The portion of the SDGE easement in the vicinity of Mission Avenue could be re-vegetated in the future. However, the area is outside the City's authority and would need to be approved by SDG&E.

CNPS-356. It is not assumed that the southern slopes of the western portion of the San Luis Rey River will support California gnatcatchers; however, they may facilitate their movement through the area. Gnatcatchers use sparse scrub patches and fennel in crossing these areas. Without continued discing, scrub vegetation is expected to increase naturally, and portions of the area in question are to be actively restored to coastal sage scrub.

CNPS-357. Gnatcatchers currently nest in the "feeder" corridors in question. Thus, these east-west drainage slopes will provide fledgling birds that are likely to enter habitats along the main stepping stone corridor. The fact that these east-west corridors are terminated by existing development on either end is beyond control of the plan, which nevertheless recognizes their potentially important contribution to regional ecosystem function.

CNPS-358. Please see response CNPS-350. The SDGE easement area along the south side of Mira Costa College does not provide a viable connection to areas to the south.

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Plan.

CNPS-359 At location B through the El Camino Real Golf Course there is good potential to do some coastal sage scrub restoration that would greatly improve the viability of this segment of the corridor. The rough areas and landscaped areas could be modified and have no adverse impact on the use of the course. There needs to be some kind of incentive or tax break that would encourage private landowners to restore habitat in key areas - especially those within the WPCZ. Without significant improvement at this location this segment is not viable and this makes Location A even less functional.

CNPS-360 At location C, given the limitations of A and B this is like a third strike. How many CCG are likely to even reach this segment of the corridor?

CNPS-361 Location D has a 1,500' swath of native habitat that is mostly grassland on the slopes with some CSS between the railroad tracks and Oceanside Blvd. Extensive revegetation will be needed to make this area viable as a corridor. On February 16, 2002 two CCG were found in the area directly east of the high school and south of Oceanside Blvd. However, this is in an area that is planned for light industry which will further constrain this segment. There is no native vegetation on the north side of Oceanside Blvd. to invite CCG to crossover into El Corazon. This section of El Corazon is very disturbed with a few non-natives (castor-bean and mustard blooming now). Development is underway on both sides of Oceanside Blvd. as a further inhibitor.

CNPS-362 Calling Location G "potentially restricted" is a gross understatement. The physical conditions at this location make its current condition completely unrealistic as a crossing location.

CNPS-363 4.1 Biological Preserve Design and Limitations
It sounds like the limitations are provided as excuses for failure. For each limitation there needs to be a specific work-around plan to address the limitation- merely describing the limitation is not enough.

The Plan does not cover 100% of the listed species- only the 61 identified. Does that mean that there may be additional preservation required for listed species not covered by the Plan? How will the environmental review and mitigation for non-covered species differ from the process that will be used for the covered species?

Oceanside has not defined any core habitat areas. The San Luis Rey River corridor, mitigation banks adjacent to Pendleton , Jeffries Ranch next to Guajome Regional Park, and El Corazon all qualify as core habitats and should be considered as such. They are large areas with significant populations of sensitive species, and with good potential for connectivity. They are shown on the MHCP as Biological Core and Linkage Areas and are areas that require special attention.

CNPS-359. Incentives to encourage private landowners to revegetate with native species could be explored; however, under current regulations, this would only occur on a voluntary basis.

CNPS-360. The corridor is not envisioned as facilitating movement by individuals entirely across the city in a single season (although this is entirely possible, based on results of empirical studies of color-banded gnatcatchers by J. Atwood, P. Mock, and others). The stepping-stone concept envisions inter-generational dispersal across the study area: Birds breeding within the corridor, or in the core areas it connects, supply young birds that settle elsewhere along the corridor (perhaps the next available stepping stone "patch"). According to extensive literature on population biology and population genetics of fragmented populations, only one successful dispersal per generation is needed to maintain sufficient gene flow.

CNPS-361. A detention basin is planned and permitted in Loma Alta Creek east of El Camino Real and east of the Fire Station and school. A portion of this area will be preserved. As stated previously, south-facing slopes on El Corazon are proposed for revegetation with native CSS species under the plan.

CNPS-362. Location G on Figure 3-8 is similar to location A and B which involve crossing a major transportation corridor. Although, free movement of wildlife cannot be expected in these areas, it is possible that periodic movement of birds through these areas would occur. See also responses CNPS-329, 356, and 360.

CNPS-363. See response CNPS-287. CEQA review will require biological surveys and mitigation for impacts to biological resources, whether or not they are covered species under the Oceanside Subarea Plan. We disagree with characterizing the specified parcels in Oceanside as "core areas."

A "no net loss" policy is included in the Subarea Plan. In addition, wetland permitting will continue to be the responsibility of the U.S. Army Corps of Engineers, California Department of Fish and Game and Regional Water Quality Control Board.

These parcels do not meet the criteria to be classified as "core areas" due to their small size and the influence of edge effects across their entirety. Core areas must be large enough to minimize edge effects and sustain species populations and ecosystem functions (e.g., natural fire and hydrological cycles) with a minimum of human intervention. Nevertheless, the plan does

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recognize that these areas support significant populations of selected species and may be important to reserve viability. Note that Guajome Regional Park is not a part of the study area; Jeffries Ranch has been added to the FPA; the San Luis Rey River is acknowledged as a critical location for numerous species and has always been included in the FPA; the Mitigation Banks are by definition part of the reserve; and while El Corazon is highly disturbed, the western portion is included in the FPA as an important part of the reserve system.

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There is no specific objective related to protection of wetlands, and watersheds. Wetlands and water are critical to protection of sensitive habitat and species. Watersheds connect large areas and need to be integrated with planning for habitat protection. How will protection of upland watershed be assured- particularly where this crosses city or other jurisdictional boundaries? What criteria, standards, and thresholds will be used to determine the adequacy of wetland and watershed protection?

CNPS-364

4.1.3 Objective 3- Maintain Viable populations of sensitive plant species.

It is not correct to state that there are no opportunities for creating large intact habitat preserves. There are 4 such areas with good potential as described above.

CNPS-365

4.2 Land Use and Ownership Considerations

The focus of acquisition is only on "willing" sellers. It is up to the city, and regional MHCP to provide a package of incentives/disincentives that would encourage everyone who owns land with sensitive habitat to support the local and regional plans for habitat preservation. Also "selling" should not be the only alternative.

There is no constraint on land uses that common sense says are not consistent with the intent of preserve design. A key example of this is the proposed outdoor police shooting range adjacent to the Prince of Peace Abbey. While there is no CSS directly impacted by this project, there are CSS and other sensitive habitat all around the proposed shooting range. The range will require exception to the existing exterior noise limits. Since no gnatcatchers were found immediately on or adjacent to the project site they were not considered of concern. The whole idea of establishing a preserve system is to increase the numbers of each species that is now identified as threatened or endangered. These additional numbers will have to reside somewhere- presumably on the habitat being preserved. All land uses within and adjacent to preserved sensitive habitat should assume that the habitat will be occupied, even if it was not on the last (often outdated) survey.

CNPS-366

Carlsbad and Escondido also both propose locating a police shooting range within a core habitat area. It is convenient to locate a shooting range where there are not nearby residents to complain about the noise. The impacts of this noise are also a problem on the animals of this area that should also be considered sensitive receptors. A police shooting range is a public function. There are lots of parcels of public land where this could be located without causing impacts to sensitive species.

Land uses adjacent to the preserve are also an issue. Who will be monitoring these lands to assure compliance with the Plan? Furthermore, noise guidelines should be developed for sensitive species.

CNPS-367

4.3.1 Designation of Preserve Planning Zones
Wildlife Corridor Planning Zone

The northern boundary of this area should go all the way to the city limits- there is no

CNPS-364. The referenced areas are not large enough (on a scale of thousands of acres) to be considered core areas; they are highly disturbed by ecological standards, cannot sustain natural ecological processes (e.g., fire cycles), and would not sustain viable populations in perpetuity without active management. The description in the Oceanside Subarea Plan that remaining habitats in Oceanside are greatly fragmented, subject to adverse edge effects, and do not qualify as "large, intact habitat preserves" per NCCP standards is correct as written. This does not imply they are unimportant to MHCP goals, but that the resultant reserve system must be intensively managed. Please see response CNPS-363.

CNPS-365. Tax credits are available for properties that are dedicated as open space to a government agency. The General Plan policies, zoning, the Local Coastal Program and other land use regulations will be used to promote preservation of native habitat in conformance with the Subarea Plan. A police shooting range is no longer proposed adjacent to Tuley Canyon and coastal sage scrub habitat.

CNPS-366. Comment noted. Please see response CNPS-365.

CNPS-367. See response CNPS- 287. The WCPZ boundary does not extend to the Camp Pendleton boundary because wildlife corridor connections from the San Luis Rey River north are shown as either protected or pre-approved mitigation areas. Landscaping or restoration plans in this area will require the use of California native plants. All land within the WCPZ will be considered for preservation in conformance with the Subarea Plan guidelines.

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justification for arbitrarily cutting the corridor off at the San Luis Rey River. The whole intent is for this to define a corridor from the Calavera core area of Carlsbad to the core habitat at Camp Pendleton. While much of this land is already in mitigation banks or protected, it all needs to be integrated with planning for the corridor. Designation as part of the corridor provides additional protection. This protection needs to extend all of the way to the city boundary and not arbitrarily stop short.

Landscaping restrictions need to be in force everywhere, with levels of requirements depending upon the location of the parcel and its impact on the plan. For example, some invasives, like pampas grass should not be allowed anywhere in the city.

The text indicates that "undeveloped" land that may serve as movement or dispersal corridors should be avoided. Such land needs to be specifically evaluated for its potential to add to the size of contiguous habitat or the functioning of the corridor. "Avoid" does not mean that such land is targeted for preservation. All land within the WCPZ should be considered for its potential to improve the corridor.

Offsite Mitigation Zone II

CNPS-368 The area by Jefferies Ranch provides an alternative regional wildlife corridor. This area should also be defined as a wildlife corridor- with the same conditions in effect for the WCPZ. The options for mitigation should be prioritized as they are in the other areas.- for example the first priority should be to complete the WCPZ.

Figure 4.3-5 Recorded Locations of Sensitive Species MHCP Study Area and BCLA

CNPS-369 Alternative 3 shows significant populations of sensitive species within the proposed Agricultural Exclusion Zone. Guidelines for conservation are particularly important because the agricultural land area provides significant opportunities for a much better wildlife corridor than the one that is currently proposed under the Plan- the Wildlife Corridor Planning Zone through central Oceanside. The language that excludes agricultural land exempts one class of landowners from requirements that should apply to all- a duty to ensure that actions do not harm public trust resources. There is significant sensitive habitat included in these areas identified for agricultural exclusion. The habitat needs to be mapped, conservation requirements need to be specified, and there needs to be provision for public accountability for agricultural lands consistent with other land uses.

4.4 Biological Preserve Criteria

CNPS-370 The 480 acres of biological open space to be preserved within the WCPZ is not specified by habitat type, except that a minimum would be 210 acres of CSS. The text and tables need to specify existing acreage's by habitat type, and the acres proposed for preservation within the WCPZ, Off site Mitigation Zone I and Offsite Mitigation Zone II. It is impossible to assess the conservation plan without a better understanding of the preservation of habitat type within each of the three areas.

CNPS-368. The option of providing a connection from the San Luis Rey River along the east side of the Jeffries Ranch project to the unnamed creek to the south is being explored by the applicant, City and Wildlife Agencies.

CNPS-369. The Agricultural Exclusion Zone area is highly developed with agricultural and residential uses. Agricultural uses are important and are protected under the Clean Water Act and other regulations. Within this zone wetland areas will be maintained under the "no net loss policy" and CSS will be subject to mitigation if impacted. Some wildlife movement will occur in this area, but breeding habitat will be limited.

Lands mapped as agricultural will require survey at the time development is proposed. If sensitive habitat types are observed on the property, they will be addressed pursuant to the subarea plan. Any encroachment into the hardline preserves will be reviewed carefully to ensure that all protective measures are retained.

CNPS-370. Most of the non-coastal sage scrub habitat in the WCPZ is disturbed habitat or annual grasslands (converted from coastal sage scrub by previous disturbances). Since the exact configuration of the final preserve is not known, the recommended calculations are not warranted.

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CNPS-371 It is not enough to say that 50% of the CSS acres will be conserved- it needs to be clear how much is being conserved within the WCPZ, and exactly where it is located.

In some cases the acreage's conserved in the BCLA is less than the Total conservation acres as shown on Table 4-1. This needs to be clarified.

CNPS-372 4.5 Habitats Conserved
The percentage references in the second paragraph do not make sense.

CNPS-373 5.1 Preserve Assembly Components
The text on page 5-1 says 2,420 acres would be preserved, but Table 5-1 shows 2,426. The text implies that the 105 acres of public conservation banks and 175 acres of private conservation banks are included within this total of 2,420 acres. The "Total Conservation Natural Habitat" acres on Table 5-1 does not include the conservation bank acreage. Table 5-1 includes terms that have not been used in this plan- "hardline" and "Softline/Standards." It is impossible to relate this table to the text of the report.

CNPS-374 5.1.1 Existing and Proposed Conservation Banks and Mitigation Areas
The three existing conservation banks total 205.2 acres. This does not match the acreage shown on Table 5-1 of 285- please clarify this discrepancy.

CNPS-375 Provide a summary that shows that number of acres already used in each mitigation bank, as well as the number of acres still available for use.

CNPS-376 Given the available acreage in banks, how many more acres are reasonable to be acquired for private development within the WCPZ?

CNPS-377 Page 5-3 indicates that 25 acres of CSS is supposed to be restored at the Vista de la Valle Mitigation Area by TET. What is the status of this restoration- and if it has not yet been completed, what is the timeframe for its completion?

CNPS-378 Part of the ability of the public to effectively monitor preservation status is to include them on the reporting for all of these mitigation banks. In the past this information has not been made available to the public. In one recent case in Carlsbad the city stated that these reports are just between the manager of the mitigation property (in this case it was also TET) and the project developer. All mitigation bank-reporting needs to be part of the overall public review process. On the proposed city mitigation banks clarify the number of acres of credit expected to be needed for city projects. Are the proposed city banks sufficient to meet the need for public projects? Specify the acres available by habitat type for both the existing and the proposed mitigation banks. Provide an assessment as to their adequacy given the anticipated need.

CNPS-379 The El Corazon site is currently in public ownership and has good potential for restoration. In fact the city has been clearing the property each year to prevent sensitive habitat

CNPS-371. The exact amount or configuration of vegetation communities in each zone is difficult to anticipate. The minimum criteria are spelled out in the plan. Some conservation occurs outside the BCLA, which was an early biological planning tool.

CNPS-372. Percentages clarified in this final draft.

CNPS-373. The three mitigation areas total 307 acres (136 + 121 +50), of which 282 acres are natural habitat (106 + 176). The mitigation banks are a subset of the mitigation areas. Both for mitigation areas in general and for mitigation banks in particular, areas of natural habitat are less than total acres of land owned.

CNPS-374. Please see response to CNPS-373.

CNPS-375. The Whelan Ranch Mitigation Bank is the only approved bank in the City of Oceanside. It would not be useful to provide the number of acres remaining as this number is constantly changing as credits are sold.

CNPS-376. Conservation goals in the Wildlife Corridor Planning Zone (WCPZ) would be met through onsite conservation (avoidance), public acquisition, habitat restoration, and offsite mitigation. In recent years, the City of Oceanside has purchased for conservation approximately 40 acres in the WCPZ and is actively seeking funding for additional purchases. Also, the City and various property owners in WCPZ have agreed, or are in discussion, to identify conservation actions for specific parcels. At this time, it is not possible to estimate how many acres of habitat lands will be purchased by private firms or individuals in the WCPZ. However, the City intends to pursue a combination of public and private actions to achieve the conservation goals of the WCPZ.

CNPS-377. Restoration efforts have been initiated at the Vista De La Valle Mitigation site. Removal of exotic species has been ongoing over the past 2-3 years. Seeding was delayed until later in 2002 due to the low amount of rainfall during the 2001/2002 rainy season.

CNPS-378. Mitigation bank and mitigation area monitoring reports are placed in the project file for that particular project and may be reviewed by the public. An updated status of the mitigation banks and mitigation areas will be provided in the final Subarea Plan document.

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CNPS-379. Section 5.3.1 of the Subarea Plan contains development standards for future restoration and protection of habitat on the El Corazon site. Basically the Garrison Creek area, the western portion of the site (west of the SDGE easement) and a portion of the south-facing slopes along Oceanside Boulevard are to be preserved and enhanced as needed.

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from reestablishing itself naturally through much of the site. This should also be identified as a potential additional mitigation bank site.

5.1.2 Existing Public Open Space

CNPS-380

The publicly owned lands "whose management is considered compatible with preserve goals" needs to be specified. Preserved land in North County has suffered because there has not been integrated management. All lands with habitat value in public ownership should be incorporated into the designated preserve management system.

Who will determine if this land is compatible with the goals?

A key objective should be to provide the potential for additional land acquisition in key areas if it is determined that the current plan is not working and "adaptive management" means that more habitat will be needed. Placing some conditions on additional public land- especially in areas that are contiguous with preserved habitat, within the WCPZ, or the biological core and linkage areas.

5.1.3 Private Open Space

CNPS-381

While it makes sense to include such private open space into an integrated system of preserve management- the costs of maintaining this land should be born by the private landowner. Their projects benefit from the open space and they would need to be maintaining it under existing agreements. The cost to maintain habitat is much less than maintaining other landscaped areas. It is only fair that funds comparable to what they would be paying for maintenance of this land would be provided for maintenance of the land as habitat.

Land managed under homeowner's agreements, which is identified as sensitive habitat, should be managed as part of an integrated system of preserve management. Homeowner's associations have no public accountability, and little interest in preserving habitat for the habitat. There are numerous cases where homeowners "trim" natural vegetation that blocks their view, expand their garden into what is supposed to be protected open space, and allow herbicide or other chemicals from landscaped areas to degrade adjacent sensitive habitat. This issue will be even more important as habitat becomes more fragmented and more of it is within the boundaries of master planned communities. Leaving this land outside the preserve management system also eliminates any ability for public review or effective oversight.

There are some proposed private uses within what is supposed to be preserved land- like the paved golf cart paths, and nursery for hotel resort plants that are proposed at El Corazon. These uses are not allowable within the preserve.

5.1.4 SDG & E Ownerships and Easements

CNPS-382

The width of the easement corridor is not specified, but field observation in many places indicates that this is far less than the 1,000' width for a wildlife corridor in the MHCP guidelines. Furthermore much of this area is routinely cleared- part for access by maintenance equipment,

CNPS-380. The use of public land will be determined by the various plans and programs adopted by the City. These include but are not limited to the Parks and Recreation Master Plan, the Capital Improvements Program, Master Drainage Plan, Water and Wastewater Master Plans, the General Plan, Local Coastal Program, and Harbor Precise Plan.

CNPS-381. In the past, some habitat areas were placed under the responsibility of homeowners associations. Since the mid-1990s when the City began its habitat planning effort, open space areas with native habitat or areas to be restored with native habitat were required to be placed under a conservation easement and managed by a qualified habitat management organization funded through an endowment paid by the developer. If a regional funding source is approved, it is possible that natural open space areas maintained by homeowners associations could be put under public management on a regional level.

CNPS-382. The areas adjacent to the transmission line are constrained by existing development, roads, utility lines, golf courses, and topography. To the extent feasible, new development within 1,000 feet of the SDGE corridor will be required to avoid CSS impacts and in no case shall the corridor be less than 200 feet. Please see Section 5.3.1 for WCPZ development standards.

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and part for fire control. The only reason these areas can function at all as wildlife corridors is that many private owners next to them have buffer landscaping. Specific methods need to be in place to assure minimum corridor functioning. Corridor width, type and density of plantings need to be clearly defined.

5.1.5 Habitat Conserved in Conjunction with Private Development

CNPS-383 It is stated that "Based on a review of developable land in the city, it is estimated that application of the proposed mitigation guidelines will result in offsite conservation of approximately 263 acres directed to the WCPZ or other portions of the city." There are three big concerns with this statement :

- This is a huge risk if the "estimate" turns out to be wrong. The detailed, project by project evaluation that led to this conclusion should be provided so it is possible to assess if this can be verified, and how likely it is that this level of mitigation will be achievable.

- It is of concern that it is not even clear how many of these acres will be required within the WCPZ.

- This implies a maximum of only 263 more acres of conservation within the WCPZ. Is there any scientific basis to determine that this is sufficient to assure preservation of the species included in the take permit- and a functioning corridor?

5.2.3 Narrow Endemic Standards

CNPS-384 One of the guidelines is that " In no case shall the city permit more than 5 percent gross loss of narrow endemic populations or occupied acreage(whichever is most appropriate for the species) within Preserve planning area, or more than 20 percent gross loss within the city as a whole." Since there is no comprehensive survey of populations within the city as a whole it is impossible to determine if this policy has been met, or exceeded. As a practical matter it is likely that surveys are done on a project by project basis - and when the last project site is surveyed someone will be able to determine that -OOPS we nuked too many.

CNPS-385 Good baseline data needs to be established for each of these species- then species specific plans can be developed. The plan and schedule for developing this baseline data needs to be identified.

It is contradictory to say that MHCP critical populations must be totally avoided, and then to say that up to 5% can be taken with mitigation. There is no guarantee of no net loss with a take. The standard should be total avoidance with no loss, period.

The Oblivious Tiger beetle is shown on Table 5-3 as an MHCP Narrow Endemic Species. It is also listed on Table 3-7 in the MHCP as having a critical location in Oceanside at Buena Vista. This narrow endemic species critical location is not mapped in the sub-area plan figures

CNPS-383. The calculation of land to be developed and thereby conserved within the WCPZ was an estimate meant to show that there is sufficient developable land left to conserve open space in the corridor area. In the interim the City has received funds from State and local agencies that has been used to purchase 38 acres within the corridor and an additional 10-acre purchase is pending. In addition, conservation easements have been placed over habitat areas for projects that have developed within the last few years within the WCPZ (e.g., Evergreen Nursery). Therefore, this section of the Subarea Plan will need to be revised to reflect this recent activity.

CNPS-384. The percent conserved calculation is based on the known distribution and abundance of the species at the time it is analyzed for a project. Hence, newly discovered populations would increase the denominator in the calculation, and the scenario envisioned by the comment would not occur so long as the policy is followed.

CNPS-385. Up to 5% gross loss of a critical population may be taken if no feasible alternative exists to totally avoid impacts. However, such loss would only be allowed where no net loss to the population can be assured via accepted, species-specific, mitigation actions, such as captive propagation and relocation.

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showing other sensitive species- in spite of its status as a critical location. This location needs to be added to the figures and if it is not identified as an area for conservation this needs to be added to the list.

5.2.6 Clustering Standards for New Development

CNPS-386

This section allows increases in density or height if 50% of a parcel is not developable. In other sections restrictions occur only if less than 25% of a site is developable. Increasing densities next to preserve land will only increase the edge effects of development(things like 1.7 cats per household.) Any increase in density or height needs to only be approved if there are offsetting provisions to compensate for the increased adverse edge effects of the proposed change.

5.3.1 Wildlife Corridor Planning Zone

CNPS-387

The SDG & E transmission corridor is critical to the functioning of this zone. The information that has been provided is insufficient to assess the viability of this corridor. More detailed mapping is needed to show existing constrictions, areas where development is expected to result in constrictions, and where there are parcels that are expected to be effected by the 25% use of the property provisions.

Figures should be provided that show where the areas of steep slopes are located so it can be determined if these are adding any significant functional improvement to the preserve system or merely count as preserve lands but add nothing of value.

CNPS-388

The proposed landscaping standards are not sufficient to protect the preserve from invasive plants or to encourage the use of natives. Invasive plants should not be allowed anywhere in the wildlife corridor- or for that matter anywhere in the city. They should be specifically prohibited in all new plantings.

CNPS-389

The configuration for the corridor at El Corazon does not meet the minimum wildlife corridor provisions of the MHCP- it must be increased to at least meet this minimum.

CNPS-390

Golf cart paths are not a conditionally compatible use in a preserve. All motorized vehicles are to be restricted. Any service roads remaining should be justified by need and the associated acreage shall be deducted from preserve land acreage.

CNPS-391

It is unclear what is meant by "landscaped golf holes" shall be allowed "in the vicinity." A "golf hole" is surrounded by a green which is surrounded by a rough. All of these are part of the "development" footprint, and are not part of "preserve" land.

CNPS-392

5.3.3 Agricultural Exclusion Zone.

CNPS-393

While it is understandable that current agricultural operations are excluded, it is not reasonable that this land is not subject to at least reasonable monitoring, and has no provisions for future conditions to be added. Other cities, like Carlsbad, have identified these land uses as

CNPS-386. These are some of the planning tools the City may use to protect habitat, however, they will be studied in greater detail and discretionary project review would consider some of these zoning techniques.

CNPS-387. Please refer to SDGE's approved NCCP Plan for details about conservation within their transmission line corridor. SDGE has agreed to coordinate with the City on habitat issues. Detailed development plans and biology reports will be evaluated as development occurs to assure conformance with the WCPZ requirements.

CNPS-388. Figure 2-6, Development Constraints, show areas of steep slopes and other constraints.

CNPS-389. Detailed landscape plans will be evaluated at the project level for conformance with this standard. The use of invasive plants are not allowed on new projects subject to discretionary review whether or not they are in the corridor. The City is not in a position to police landscaping by individual landowners through the participating cities.

CNPS-390. The configuration of the wildlife corridor does meet the minimum standards of the MHCP. The City of Oceanside Subarea Plan has specific guidelines for preservation and restoration of habitat within portions of the "El Corazon" site. The City will consider including open space areas in El Corazon when it updates the Parks and Recreation Master Plan in the future. Section 5.3.1 of the Subarea Plan contains development standards for future restoration and protection of habitat on the El Corazon site. Additionally, it discusses the development standards that must be met in establishing an appropriate wildlife corridor width.

CNPS-391. Golf carts are typically not noisy and operate on batteries. Golf cart paths will be analyzed in detail at the project level to ensure no adverse impacts to the wildlife corridor.

CNPS-392. This means that golf holes with landscaping may be adjacent to or within the vicinity of the wildlife corridor, but would not be counted as part of the requirement minimum 120 acres of habitat. Habitat mapping would be updated on any properties where projects require CEQA. However, the City cannot trespass on private properties to comprehensively map resources in advance of project proposals.

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CNPS-393. Wetland areas in the drainages through the Agricultural Exclusion Zone provide the best corridors through this area. They are protected under the "no net loss" policy. CSS will be protected to the extent feasible, but is found in isolated patches throughout this area. Habitat mapping would be updated on any properties where projects require CEQA. However, the city cannot trespass on private properties to comprehensively map resources in advance of project proposal.

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"Standards Areas." Preserve boundaries have not been specified, but guidelines have been established for preservation that will be imposed as these areas are converted to other uses. Much of this existing agricultural land is adjacent to core habitat at Camp Pendleton, and some provides good connectivity to other core habitat east of Oceanside.

Habitat mapping is required of this land to assure that there are not unauthorized takes occurring.

Furthermore, Figure 4.3-5 in the EIR/EIS shows significant populations of sensitive species in the Agricultural Exclusion Zone- another reason that these areas must be subject to reasonable protection guidelines.

5.4 Corrective Actions

CNPS-394 What is the time frame for correction of the unauthorized take south of Loma Alta Creek?

5.5 .1 Estimated Program Cost

CNPS-395 Provide a definition of Category 1 and Category 2 acquisition land. Clarify if the identified 90 - 100 acres of Category 1 land acquisition plus the 136 acres of restoration will fully assure that all of the objectives of the Oceanside sub-area plan as well as the MHCP will be met with this level.

How many additional acres are needed to fully address all of the identified Biological Core and Linkages areas- and how many of these are already covered in Category 1 or Category 2 lands.

Clarify where the 90 acres of Category 2 acquisition land are located and describe its significance toward achieving the objectives of the plan.

5.5.2 Financing of Implementation Costs

CNPS-396 The proposed mitigation fee for non-native grassland is \$ 4-6,000/acre. In October of 2001 Carlsbad assessed fees for grassland at the Carlsbad Raceway Project that averaged over \$ 6,900/acre. The proposed Oceanside fees seem too low- especially as this is the primary funding source for the city's share of habitat acquisition. The fee structure should have a built-in inflation factor so it is not dependent upon local whim to authorize an increase.

The fees for vacant/disturbed land should also be levied on the city or other public agencies within the city for impacts to publicly owned land.

CNPS-397 The plan includes no sanction or penalty fees for violations. Currently the USFWS imposes penalties for unauthorized habitat takes- and often there are takes with no penalty imposed. However, under the sub-area Plan the loss of habitat impacts the ability of the city to meet the objectives of its plan so it is reasonable that the city would be harmed by violations. Increasing fees for violations is intended as a deterrent- but should also be considered as part of

CNPS-394. The owner was cited and fined for clearing and grubbing without a permit at the time of the violation. The remedial action discussed in the Subarea Plan will occur with future development of the site. In the interim, some native plants are re-establishing on the site.

CNPS-395. Category 1 areas are those with habitat that is essential to meeting the biological objectives of the MHCP or a subarea plan. Category 2 areas are those where, although development subject to impact avoidance, minimization, and mitigation would be consistent with MHCP and subarea plan objectives, public acquisition would substantially enhance conservation value or help meet other open space goals of the local jurisdiction (MHCP, Sec. 4.1.2). These areas have been renamed "Priority Conservation Areas" in the Final MHCP. In the City of Oceanside, category 1 lands are located in the Wildlife Corridor Planning Zone (Draft Oceanside Subarea Plan, Table 5-6). Category 2 lands are located mostly outside the Wildlife Corridor Planning Zone; if purchased, they would serve the City's open space goals. It should be noted that the acreage figures refer to entire parcels; important habitat areas occupy fewer acres.

It should be noted that since the Draft MHCP was prepared, 36 acres of category 1 lands have been purchased using State and local funds, and additional habitat has been permanently conserved in conjunction with adjacent development. Potential need for public acquisition is reexamined in the Final MHCP.

CNPS-396. The proposed mitigation fee program applies to projects which impact annual grassland in Offsite Mitigation Zone II (that is, outside of the Wildlife Corridor Planning Zone) and agricultural, disturbed, and other vacant lands Citywide. It should be noted that impact to these types of vacant land is not currently subject to mitigation requirement. The mitigation fee represents a new requirement under the MHCP and the subarea plan and a substantial source of funding for conservation.

The mitigation fee is not the "primary" funding source for acquisition in the Wildlife Corridor Planning Zone; primary sources are off-site mitigation for impacts to coastal sage scrub and State and federal acquisition grants.

CNPS-397. See Section 6.3.1 Regulatory Actions - City implementation actions are required within 2 years of adoption of the Subarea Plan to include revising the Grading Ordinance to include strengthening enforcement and penalties for

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illegal grading, clearing and other operations within habitat or other sensitive areas.

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the project financing.

CNPS-398 It is not acceptable to defer 100% of the maintenance costs to the regional MHCP funding program. The need for management of this land exists today- and it is clear that it will take some time for the regional mechanism to be put into place. Local funds need to be allocated to cover an interim time period- perhaps with at least partial reimbursement once the regional funding program is in place.

CNPS-399 Clarify the statement "funds for ongoing management of the city-owned habitat system would need to be identified, most likely in conjunction with the San Luis Rey flood control program now under review." How is it anticipated that habitat management funding is tied to flood control funding?

CNPS-400 6.1.2 Take Authorizations
Approval of the sub-area plan alone should not allow the take permits- the plan must be funded before any additional take is authorized, implementing agreements and an approved management plan must also be in place.

The process has the city authorizing its own take permits, and also monitoring its own compliance. What mechanisms will be in place to ensure that projects and mitigation are in compliance with the Plan and the MHCP?

The oversight mechanisms need to be clearly identified, with public review and accountability. The wildlife agencies must be able to rescind a city's ability to issue its own take permits if there are violations of the provisions of the Plan.

The oversight mechanism also must include wildlife agency consultation and comment during the CEQA review.

CNPS-401 6.2.1 Assurances in Implementing Agreements
The phased implementation and severability provisions do not provide adequate protection for species preservation. The interdependence of north county cities is clearly identified both in the MHCP and the Sub-area Plan. Severability protects each city from noncompliance by others- but it doesn't help the endangered species. If one city pulls out, then populations in another city may become more critical. There needs to be some mechanism that assures that the overall MHCP remains viable.

Perhaps the regional funding mechanism could include some discretionary funds which could be used in cases where one city's removal will require additional actions in another.

What happens if required mitigation measures are not implemented by a project sponsor? Currently the local city has broad discretion in determining the adequacy of mitigation implementation and there is no effective appeal of their judgment- even in cases where

CNPS-398. Prior to adoption of a regional funding program, local funds will be used for management of various habitat areas such as the former 36-acre Myers parcel, the San Luis Rey River corridor and other native areas. Habitat areas such as Foss Lake and the Whelan Ranch Mitigation Bank are being managed by non-profit habitat management organizations. If approved, a regional funding source will be utilized to manage other open space areas with habitat.

CNPS-399. Some of the goals of the San Luis Rey Flood Control project are to protect surrounding areas from flooding while providing habitat for wetland species utilizing this corridor. Funding identified for this project will need to address the habitat issues.

CNPS-400. Funding sources will be identified in the Implementing Agreement. Monitoring reports are required on periodic basis to the Wildlife Agencies who will provide some oversight for the plan. Wildlife Agencies, other agencies and the public continue to be involved in the CEQA public review process.

CNPS-401. Please see response CNPS-202.

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implementation is grossly deficient. Who enforces these provisions and how exactly will this process work?

CNPS-402 6.2.2 Changed Circumstances and Unforeseen Circumstances
The climactic changes associated with global warming are likely to result in circumstances that are identified in this plan as "unforeseen" but in fact are not.

The phrase "if it is necessary to mitigate the impacts of changed circumstance..." needs to be clarified. It is assumed that the intent here is that if it is necessary in order to protect species from any long-term adverse impacts- but this needs to be clearly stated.

CNPS-403 6.3.2 Interim Resource Protection
As part of the interim protection there needs to be penalties and sanctions for any unauthorized takes, clearing, brushing or grubbing of vacant land, or conversion of non-agricultural land to agricultural.

CNPS-404 6.3.7 Annual Implementation Coordination Meetings
This annual meeting needs to be publicly noticed, with summary documents available in advance for public review and comment.

CNPS-405 7.1.1 Responsibilities on Public lands
Reporting only every three years is not sufficient. Annual reporting is needed, with advance public notice and opportunities for comment. It is appropriate to establish longer-term priorities, but monitoring and reporting needs to occur at least once per year. Since this also includes assessments of funding adequacy it jeopardizes the entire plan to wait three years to take corrective action.

CNPS-406 7.2.1 Allowable Land Uses Within Preserve Areas
The provision to prohibit active recreation uses including golf courses is not consistent with other provisions of this plan (such as on page 5-20). Golf courses should be prohibited on preserve land and this would include paved golf cart paths.

CNPS-407 7.2.4 Recreation and Public Access
Penalties for off-road vehicle use in preserve land need to be specified at levels high enough to cover costs. Fines for violation of preserve rules need to be retained as part of the preserve funding system. Fines and penalties are meaningless unless there is enforcement. There need to be specific provisions for levels of enforcement. Enforcement plans need to be coordinated with other agencies with enforcement power such as the Department of Fish and game with their wardens on state mitigation land. Efforts should include a significant role for citizen volunteers, volunteer patrols like the existing Senior patrols, as well as uniformed officers.

A key problem with trails is accessing them from adjacent residential neighborhoods.

CNPS-402. The changed and unforeseen circumstances described in the Oceanside Subarea Plan do not include global warming. The possible impacts of this phenomenon are unknown and most potential actions to alter global warming are well beyond the scope of the City. Future impacts are entirely speculative at this time and are consequently "unforeseen".

The phrase "if it is necessary to mitigate the impacts of a changed circumstance..." means that mitigation measures will be undertaken if the expedited analysis conducted by the appropriate wildlife agencies and the City shows that such measures are appropriate, and are required to protect listed species from impacts of a "changed circumstance" event.

CNPS-403. Please see response CNPS-397. Each City has established penalties (civil and/or criminal) for violations of their ordinances.

CNPS-404. The method for holding the annual meeting has not been formulated at this time, yet it is anticipated that the meetings will be publicly noticed, with documents available in advance of the meetings.

CNPS-405. Other reporting period options may be explored in formulation of the Implementation Agreement between the City and Wildlife Agencies.

CNPS-406. Some uses such as golf cart paths will be reviewed on a project level basis for compatibility with open space preserves, but will generally be prohibited in preserve areas.

CNPS-407. All of the ideas stated for prohibiting harmful uses within preserve areas are valid and will be implemented where appropriate upon adoption of the plan.

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Failure to provide access results in people making their own trails which is much more damaging.

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CNPS-408

7.2.5 Predator and Exotic Species Control

Several of the identified management measures should be incorporated in local ordinances- such as nursery ordinances to protect against Argentine ants in container plant stock, and run-off being directed away from preserved land. These kind of management controls need to be part of the formal program implementation with all existing ordinances reviewed for areas where they need to be updated to reflect these management controls.

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CNPS-409

7.2.9 Adaptive Management

Section 7.1.1 specifies reporting only every three years, this needs to be more frequent, particularly where a problem has been identified and a corrective action plan is being implemented.

There are no criteria specified that indicate when a species is being adversely impacted- phrases like "unacceptably slow or delayed" or "species is declining." need to be clear. Who is making this decision, and on what basis?

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CNPS-410

7.3 Area Specific Management Guidelines

There needs to be public access to private land parcel specific management plans- not just those under public ownership.

El Corazon

El Corazon is the most important single piece of land within the WCPZ. It is critical to the viability of the corridor. The Plan proposes to compromise the wildlife corridor in favor of a golf course and resort that do not even have their entitlements to proceed. The Plan should drive restrictions on any future golf course or other land uses on this parcel and not vice versa. There is no justification for allowing golf cart paths within preserve land. Trail width should be limited to 4 feet as it is in the rest of preserve land.

Eternal Hills Cemetery

A comprehensive survey of this entire site is needed in order to determine priority areas for preservation, and restoration. The city has a recent proposal to convert part of this site to an expanded national cemetery. Any cemetery expansion plans need to be subordinate to protection of this prime property within the WCPZ.

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CNPS-411

7.4 Habitat Tracking, Reporting, and Monitoring

An annual public workshop to "brief interested citizens on the progress of preserve assembly" is not a sufficient commitment to a public input process. Individualized reporting plans need to be developed for adaptive management or other corrective action activities.

Extensive research has already been done on the edge effects of fragmented habitat. More

CNPS-408. Argentine ants are already problematic in areas of suitable habitat (moisture). Storm water management is already regulated for urban development.

CNPS-409. Please see response CNPS-405. Please see the draft Monitoring Plan for a more detailed description of MHCP adaptive management techniques.

CNPS-410. Please see responses CNPS-391 and CNPS-392 regarding golf cart paths on El Corazon. The Eternal Hills Cemetery has submitted development plans for expansion of their facilities. A comprehensive biology report is being prepared that will be used in determining any impacts to habitat from the proposed project.

CNPS-411. Habitat areas in Oceanside are fragmented and isolated for the most part. The Subarea Plan identifies key parcels or portions of parcels for preservation and/or enhancement. Lateral corridors are proposed via Loma Alta Creek, San Luis Rey River, Pilgrim Creek and Buena Vista Creek. Through this balanced approach, it is the intent of the plan to provide useable wildlife movement corridors through the City.

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productive research would be to track control measures like number of cats belled, coyote population by habitat fragment, coyote mortality at key roadway crossings, etc.

Other Comments

A key issue that has not been addressed in this sub-area plan nor in the overall MHCP is that there is no provision to target additional land that may be needed if it is determined that species continue to decline after the plan is put into place. Other places (for example San Joaquin County) have established "buffer lands." These are targeted areas that are not permanently hardline preserved, but are preserved until certain conditions are met and it can therefore be determined that a lesser level of conservation will meet plan objectives. In the absence of such provisions- explain how adaptive management will be able to address future problems with inadequate habitat or excessive habitat fragmentation.

Golf courses have significant and adverse impacts on the environment. The Oceanside Plan includes three golf courses within the WCPZ (El Camino Real, El Corazon and Emerald Isle). Specific provisions need to be developed to protect the adjacent preserve lands from increased runoff- and from the effects of runoff containing large amounts of fertilizers and pesticides. This run off soaks into the water table and ends up in our creeks and lagoons. The sensitive species that depend upon these riparian habitats are all impacted. These provisions need to address both existing and planned new courses. New courses should be encouraged to meet the newest standards to minimize golf course impacts.(3) Because of the interdependence of the plans in north county, it is reasonable to require dates by which key provisions must be put into place- or subject a city to penalties for adversely impacting species conservation of the region.

Footnotes

(1) Excerpts from the Intergovernmental Panel on Climactic Change from Goodstein, Carol, A Sea Change, The Nature Conservancy, September/October 2001.

(2) Wilson, Edward O., How to save Biodiversity, The Nature Conservancy, Spring 2002.

(3) Kuznik, Frank, Charting a New Course, National Wildlife, August/September 1993.

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Attachment 7
Comments on the San Marcos Subarea Plan

CNPS-412

Summary

We encourage the City of San Marcos to strive toward the maximum level of conservation in the MHCP, such as shown in Alternative #3, the Biological Core and Linkage Area (BCLA). In the Subarea plan presented, The City of San Marcos fails to conserve much valuable habitat that is shown in the BCLA. (For example, the Highlands and Murai properties in the Hedionda Creek Valley and the ridgeline at Cerro de las Posas) It also conserves areas that are not in the BCLA that have questionable habitat or linkage value. (For example, the landfill area in southern San Marcos)

CNPS-413

In Section 2.3-9, p. 2-74 of the Draft MHCP PLAN EIR/EIS the conservation levels of the San Marcos Subarea Plan for three different alternatives are shown. Under the Preferred Plan (FPA 2), the total conservation level for San Marcos is 47%. This is unacceptably low. The draft EIS/EIR indicates that there are 24,885 acres of valuable habitat remaining in the BCLA (p. 3-21) and San Marcos has 4,243 of those acres, according to the table on p. 2-74. This is about 17% of the total. The City of San Marcos should be able to conserve much more of the remaining valuable habitat. According to the table on p. 2-74, under the BCLA alternative, the City of San Marcos could reach an 80% conservation level, which is much more appropriate. This is the conservation goal that we support.

We understand that in order to achieve a higher level of conservation than the Preferred Plan, it will be necessary to acquire more of the property in the BCLA. This means that more money must be available for acquisitions. We request that the MHCP financing plan include more money for acquisition of environmentally valuable lands in the BCLA.

CNPS-414

As it now stands, the San Marcos Subarea Plan is contrary to sound environmental principles in several important areas. First, the primary objective of the San Marcos plan does not appear to be the recovery of the affected species and the biological needs of the species and ecosystems that are to be protected. Instead the primary goal of the San Marcos Subarea Plan is the development of San Marcos, with only the pieces of valuable habitat and linkages left over from the development process placed in the preserve. This approach results in further fragmentation of valuable habitat and destroys important wildlife corridors, such as in the Hedionda Creek Valley.

CNPS-415

Second, the City of San Marcos Subarea Plan requires a significant amount of mitigation land. We were unable to determine from the information in the plan where these mitigation properties are located. Our concern is that San Marcos is proposing to acquire lands outside of the City so that environmentally valuable habitat areas inside the City can be developed. Also, their habitat re-creation plans, such as revegetation of cut and fill slopes on Cerro de las Posas,

CNPS-412. Substantial evidence is established in the EIS/EIR that adequate species points and habitat acreage are or can be preserved for most of the resources. It is recognized that grassland species will not be adequately covered. Plan feasibility hinges on the balance between habitat preservation and acquisition costs. Please note that the EIS/EIR indicates that the BCLA would result in significant impacts to socioeconomic issues.

The landfill will be revegetated by the County of San Diego per a court-approved landscaping plan. It is correct that the landfill is not in the BCLA. This revegetated area, however, will provide an important linkage in the Southern FPA. See Figure 5 of the City's Subarea Plan illustrating the critical linkage through the closed landfill to the gnatcatcher core area.

The San Marcos Highlands project proposes to place 68 percent of the total project acreage into open space to become part of the FPA. The project has preserved all the occupied California gnatcatcher habitat. The proposed development areas are not occupied, and no take of individuals would occur.

The important areas of the Murai property, such as Agua Hedionda Creek and coastal sage scrub will be the focus of the preserved areas.

CNPS-413. The City's conservation levels ensure connectivity in the critical gnatcatcher corridors in the southern FPA, conserves the large block of unbroken habitat in the Northern FPA.

Conservation levels greater than 80% may result in a taking, and are therefore prohibited by the MHCP which categorically states that takings are to be avoided. The funds needed to purchase property so that 80% conservation levels could be achieved will most likely result in making the MHCP financially infeasible.

The comment requests that more money be available for acquisitions. Plan feasibility hinges on the balance between habitat preservation and acquisition costs. Acquisitions by government agencies will only occur if public funds are made available.

CNPS-414. The City has worked with the San Diego Association of Governments, the California Department of Fish and Game and the United States Wildlife Service in drafting the Subarea Plan document since the inception of the MHCP a decade ago.

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The City's Subarea Plan insures that critical gnatcatcher habitat and wildlife corridors linking the City of Carlsbad and Lake Hodges are maintained.

The plan provides nearly 2,500 acres of conserved native vegetation (May 2000 numbers) and captures many of the critical species points.

CNPS-415. Mitigation for projects located in San Marcos will occur within San Marcos or in the "Unincorporated County Core" habitat. For the Subarea Plan to function, there is a requirement for conservation to occur. Some of the conservation areas are used as mitigation for impacts.

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are not based on sound scientific experience.

CNPS-416 Third, the San Marcos plan allows and promotes development and population growth on habitat essential for the survival of endangered species. For example, San Marcos is approving development in the core gnatcatcher area in the southern part of the City.

CNPS-417 Fourth, the San Marcos plan violates federal and state policies of no net loss for all wetlands. This is also the policy of the MHCP Plan (Draft MHCP Plan, Vol. 1, Section 3.6). San Marcos is proposing development that will impact wetlands, including Agua Hedionda Creek and San Marcos Creek. Where impacts to wetlands are determined to be infeasible due to economic constraints, the MHCP Plan advises the wetlands should be acquired and preserved (Draft MHCP Plan, Vol. 1, Section 3.6, page 3-31).

CNPS-418 We would also like to point out that some of the largest blocks of remaining valuable habitat in the MHCP study area are located in San Marcos. The City has the opportunity to preserve much more of these large blocks of habitat than their plan indicates. Preserving large blocks of habitat is essential to the proper functioning of the Preserve. It helps species to recover from unforeseen circumstances such as fire or flood, it allows wildlife to move along corridors, and minimizes edge effects, which are extremely damaging to the ecosystem.

CNPS-419 In conclusion, for the above-stated reasons, we believe that the San Marcos Subarea Plan is inadequate to meet the stated goals of the MHCP and we call for the City of San Marcos and the Wildlife Agencies to develop a Subarea Plan that conserves the remaining valuable habitat as shown in the BCLA, including adequate funding.

CNPS-420 Pp. 8-9, Covered Species List
This list needs to be updated to conform to the information in the MHCP Public Review Draft Volume II. For example, on p. 8, the list does not indicate any status for wart-stemmed ceanothus, summer holly, variegated Dudleya, San Diego barrel cactus, San Diego marsh elder, Harkinson's dun skipper butterfly and Hermes copper butterfly. However, MHCP Vol. II shows that these are all Federal Species of Special Concern. Have the listings changed for any of the other species on the Covered Species List, pp. 8-9? Have any species been dropped from or added to the list? If so, these changes should be reflected on the list.

CNPS-421 P. 18, Demographics
The statement in the second paragraph under this heading is not clear. The statement reads, "This Subarea Plan covers the City limits and portions of the sphere where portions of approved projects in permanent open space occur in the sphere." What is meant by "portions of approved projects in permanent open space occur in the sphere"? Please explain what projects in the sphere are approved. Note that the Highlands project in the northern sphere is not approved as of this date. What is meant by "projects that occur in permanent open space"? This seems like a contradiction in terms. How can there be a project in permanent open space?
P. 18, Item 2 in the last paragraph

CNPS-416. Please note that the "Unincorporated County Core" gnatcatcher area does not occur within the current City limits. Much misunderstanding arises from the red circle found in Figure 2.2.3 of the Draft EIS/EIR. The Core area occurs within the unincorporated lands found in the County's MSCP - North. The red circle merely indicates the general vicinity of the county core.

CNPS-417. Development of wetlands is predicated upon receiving the necessary permits from the ACOE, CDFG, RWQCB. Should the necessary permits be issued, then all state and federal laws pertaining to wetlands have been implemented. (The MHCP will not have any authority to issue any wetland permits.) Additionally, the Subarea Plan establishes policies of no net loss, and utilization of the least environmentally damaging alternatives for Agua Hedionda Creek and San Marcos Creek.

Specifically, the MHCP states, "Projects that propose to impact a wetland must demonstrate with substantial factual evidence that the impact is essential to maintaining some economic or productive use of the property and that no feasible alternative would eliminate or minimize the impact or otherwise result in greater biological value. If impacts to wetlands cannot be avoided while retaining economic or productive use of the property, an evaluation of biological functions and values shall be made based on the best available science...Any unavoidable impacts to wetlands must be mitigated to result in no net loss of wetland vegetation acreage and biological function and value within the MHCP subregion and preferably, but not necessarily, within the same drainage and city. Subarea plans may apply stricter avoidance standards for wetlands inside the FPA than outside the FPA. However, the no net loss standard must be achieved regardless of location."

In implementing the appropriate mitigation for wetland habitat, the following management guidelines must be incorporated:

1. For wetlands currently in or proposed for open space, each jurisdiction shall prepare a management plan to ensure maintenance and monitoring of this habitat and its species.
2. For wetlands currently in or proposed for open space, each jurisdiction shall prepare a management plan to restore disturbed portions of this habitat, including management and restoration plans for sensitive species occurring in this habitat.
3. Where conditions are appropriate, create new wetlands by converting disturbed upland habitat.

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CNPS-418. Please note that the center of Northern FPA is a large unbroken block of habitat located south of San Marcos Mountains. This ridgeline also forms the western boundary of Twin Oaks Valley. Northern FPA conservation levels along the ridgeline range from 75% to 100%. This will ensure adequate conservation to this large, unbroken block of coastal sage scrub habitat. Additionally, the City's Southern FPA insures that critical gnatcatcher and wildlife corridors linking the City of Carlsbad and Lake Hodges are maintained. Criteria contained in the Subarea Plan ensure connectivity. The plan provides nearly 2,500 acres of conserved native vegetation based on the May 2000 numbers.

CNPS-419. Please note that the Draft EIS/EIR concludes that with the mitigation identified in the EIS/EIR, the City's Subarea Plan would result in most of the impacts reduced to below a level of significance.

CNPS-420. The City's Covered Species list will be updated to include the current status of the covered species.

CNPS-421. The second paragraph will be reworded in the final plan.

Rephrased, this statement refers to projects such as Huff, and Highlands. The Huff property (both inside and outside the City) has recently been acquired and dedicated for 100% conservation.

In these developments there are portions of the project proposed for development that occur within the City limits. There are also portions of these developments where dedicated open space will occur outside the City limits.

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CNPS-422 The chaparral-dominated slopes on the undeveloped ridgeline of Cerro de las Posas, Double Peak and Frank's Peak are included in the "focus of this habitat plan relative to conservation." Why is San Marcos considering a proposal from the developers of San Elijo Hills/Ranch to construct a golf course and clubhouse on this ridgeline, if it is a focus of conservation? On p. 98, it states that the golf course development is expected to destroy about 125 acres of chaparral in this area. How can the destruction of this habitat be reconciled with the focus on conservation of the ridgeline stated on p. 18? Also, the golf course would destroy about 17% of the total estimated population of wart-stemmed ceanothus and about 13% of the total estimated population of summer holly. How can the destruction of these two Federal Species of Special Concern be reconciled with the statement on p. 18 that this area is a focus of the habitat plan relative to conservation?

CNPS-423 P. 20, Section 2.3, General Plan, Zoning, and Local Use Regulation
The "most significant tools" that San Marcos has to use for the implementation of the MHCP are the Conservation Element of the General Plan and the Slope Density Ordinance. However, the City amends the General Plan at will to conform to developers' interests. For example, prior to the SEIR for the San Elijo Ranch project in southern San Marcos, the City of San Marcos' General Plan stated that the City wanted to protect and preserve the ridgeline (Cerro de las Posas). Then the SEIR for San Elijo Ranch mentioned a General Plan Amendment "to bring the project into conformance with this conservation and open space policy." Was the General Plan amended? If so, how was it amended; that is, what was the substance of the amendment? When was it amended? How has the General Plan been amended with relation to the preservation and protection of the ridgeline?

CNPS-424 How will the Conservation Element of the General Plan protect the MHCP Preserve? Has the Slope Density Ordinance been amended since May 23, 2000, to allow for more development on slopes? If so, how was it amended; that is, what is the substance of the amendment(s)? When was it amended?

CNPS-425 An example, on a project level, that illustrates many of the above concerns is the proposed San Marcos Highlands project. San Marcos Highlands project is within the BCLA for the MHCP. This area, predominantly coastal sage scrub also contains riparian habitat and is a recognized wildlife corridor. It is also the headwaters for Agua Hedionda Creek. In Area 2 of the Highlands project, 76 dwelling units are proposed on 26 acres of steep slopes, predominantly 25% or greater. Is this a violation of the Slope Density ordinance? To accomplish this project, according to the DSEIR, the San Marcos Highlands will require cuts 100 feet high by 1,100 ft long, 60 ft high by 400 ft long, 80 ft high by 35 feet long and 75 ft. high by 450 ft long. This is a violation of the grading ordinance, so a variance is being considered. This is a key concern. The soils map, Figure 8 in the College Area Community Plan FEIR, shows that the area of the proposed Highlands project consists of Friant fine sandy loam and Escondido very fine sandy loam. These soil types have moderate to high erosion susceptibility and medium to rapid runoff potential. Runoff is especially harmful here because water from the hillsides flows into Agua

CNPS-422. The San Elijo Hills project contributes 891.8 acres to the preserve system, which is the single largest contribution of any landowner. While the Specific Plan allows for a golf course on the ridgeline, the City has not approved the golf course, but included it as a worse-case scenario.

Wart-stemmed Ceanothus

Based on the entire sample there are 2.49 million individuals occurring on the Mt. Whitney-Double Peak formation. Of this population, 17% will be impacted, leaving 83% (1,992,000 individuals) of this population extant. This is adequate conservation.

Summer Holly

Summer Holly populations are not as dense as wart-stemmed ceanothus. Based on the entire sample (p. 98 SAP) there are an estimated 253,000 individuals in the study area, of which 221,000 individuals remain extant. This is adequate conservation.

CNPS-423. The General Plan states that no residential development will be allowed on the ridgeline. It also specifically allows for recreational amenities and open space. Golf courses have been located adjacent to biological open space.

CNPS-424. The Conservation Element will be amended so that development projects must adhere to the standards contained in the City's Subarea Plan including establishing the preserve (FPA) and ensuring connectivity. The Slope Density Ordinance has not been amended since it was established. The function of the Ordinance is to increase the minimum lot size as the slope of a hill increases. For example in the A-1 zone, an area having little or no slope, according to slope density be able to generate one dwelling unit per acre. In that same zone an area having a steep slope of over 35% would be able to generate one dwelling unit per every eight acres. The slope of the area effectively reduces the number of units that can be constructed in that area.

CNPS-425. The Highlands project retains 68% of the site in natural habitat, including retention of that portion of Agua Hedionda Creek and related water bodies. Additionally, the project provides some wildlife corridors. The Specific Plan established development standards based upon the site's unique resources. Relative to erosion control, NPDES Best Management Practices (BMP) enforced by the Regional Water Quality Control Board will ensure that both construction of the road cuts and final configuration of those road cuts will

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avoid sedimentation impacts. Those same BMPs will preclude impacts from untreated road and urban runoff from reaching Agua Hedionda Creek. The project has been conditioned to incorporate filters throughout the project to ensure that runoff does not reach the Creek in an untreated state. The project is a Specific Plan. Specific Planning in the City allows a project to be designed with added flexibility. To provide more flexibility in implementing a design that provides added overall environmental protection, a Specific Plan does not require strict adherence to slope density or grading ordinances.

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Hedionda Creek. Las Posas Road, proposed to run up along Agua Hedionda Creek, would carry 11,000 to 13,000 vehicle trips per day according to SANDAG 2020 forecast maps. This will add runoff to Agua Hedionda Creek. What assurance does the public have that urban and road runoff will be adequately addressed?

CNPS-426 The San Marcos Highlands project appears to conflict with the goal stated in Section A-5.0 page 62 of the College Area Community Plan (CACP), "To encourage preservation and enhancement of canyons, mountains, and streambeds." How does the San Marcos Highlands project accomplish this?

CNPS-427 Finally, under the Subdivision Ordinance, page 21, it states, "A project can be modified or denied if it is found to cause substantial damage or substantially and unavoidably injure fish or wildlife or their habitat." If the City truly believes it will follow its Ordinances how can it allow such a project to come forward? Please show how the Highlands project supports statements made in this section of the Subarea Plan.

CNPS-428 The City of San Marcos, like the other MHCP cities, has the tools to provide protection of the MHCP Preserve. However, all of these tools -- the General Plan and various ordinances -- can be altered at the discretion of the City Council. How will the Wildlife Agencies monitor San Marcos' actions with regard to the General Plan and applicable ordinances to assure that they are not amended to the detriment of the MHCP Preserve? How will the Wildlife Agencies intervene if they determine that the General Plan and/or applicable ordinances have been or are going to be amended to the detriment of the MHCP Preserve?

CNPS-429 P. 22, Known and Anticipated Projects
a. Circulation Element Streets.

Regarding the statement, "All circulation Element Map collector streets essential for area circulation and existing maintenance roads crossing are deemed consistent with the goals and policies of this Subarea Plan," it is not clear that all of these streets and maintenance roads are consistent with the goals, standards and guidelines for the MHCP. The "Biological Goals, Standards and Guidelines for Multiple Habitat Preserve Design," (Ogden, Feb. 1998) states on p. 6-4 that barriers such as major roads should be minimized through wildlife corridors. How will San Marcos minimize road crossings of MHCP wildlife corridors?

CNPS-430 b. San Marcos Creek Crossings.

Some of these crossings exist; some do not. The existing San Marcos Creek crossings do not meet the guidelines for roads through wildlife corridors, as stated on p. 6-4 (item 8) of the "Biological Goals, Standards and Guidelines for Multiple Habitat Preserve Design." Are improvements to these crossings that adhere to the guidelines (i.e., bridges, fences channeling the wildlife underneath the crossing, etc.) envisioned? If so, how and when will these improvements be accomplished? If not, why not? Will there be public input into the design and construction of these improvements? Of the crossings that do not now exist, how can the public be assured that

CNPS-426. A substantial portion of the project is in open space, thereby implementing the above stated provision of the General Plan. Of the 203 acres associated with the Highlands Project, 135 acres, or 68% of the project is in open space. The open space contains coastal sage scrub and wetlands associated with Agua Hedionda Creek.

CNPS-427. Prior to requiring "take" authorization, the City will be required to prepare and adopt ordinances that meet the goals and objectives of the Subarea to ensure that these are implemented. The Wildlife Agencies and the public will have the opportunity to review these ordinances as they are being adopted. It should be recognized that the Highlands project will be subject to an individual Section 10a/7 process.

The City must make all necessary changes to the General Plan and implementing ordinances to ensure that the City can meet its commitments. These will be included in the legal Implementing Agreement and Take Permit. If the City fails to comply with the request, then the Wildlife Agencies will evaluate whether the permit shall be suspended or terminated while the violation is remedied.

CNPS-428. After completion of this EIS/EIR we expect the MHCP participating Cities to request an Incidental Take Permit under Section 10 of the Act and Section 2835 of the NCCP Act for each of their Subarea Plans. When these applications are received, the public will be notified through the Federal Register and pursuant to CEQA and provide a public comment period on the respective Subarea Plan(s), Implementing Agreement(s), and any subsequent NEPA or CEQA requirement(s). These documents will include ordinance(s), General Plan Amendment(s), or other tools that are necessary to ensure the MHCP and Subarea Plans are implemented fully. In addition, each City is required to have an Urgency Ordinance that will be established once the permit is issued in order to fully implement the MHCP and Subarea Plan before the new ordinances and/or General Plan Amendments can be finalized.

Once the public comment period closes, comments are addressed, and the Wildlife Agencies and City(s) finalize the respective Subarea Plan(s), Implementing Agreement(s), and any subsequent NEPA or CEQA requirement(s), the Service will issue an Incident Take Permit under Section 10 of the Act concurrently with the Department's issuance of a Section 2835/NCCP permit to the City(s). The ordinances and/or General Plan Amendments will be part of the agreement between the City(s) and the Wildlife Agencies. If the agreement is not fully implemented, the Wildlife

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Agencies will work with the City(s) to rectify the problem and if unresolved, we can revoke the permit. The Wildlife Agencies will continue to receive notification of future project processing and meet annually with each City to review their conformance with the MHCP. If the Cities are not appropriately applying the ordinances and MHCP requirements, or propose to revise these requirements, the Wildlife Agencies will determine whether the Cities are appropriately implementing the MHCP.

CNPS-429. The Revised Subarea Plan will establish standards for road crossings including, but not be limited to culverts and undercrossings. The Subarea Plan(s) and Implementing Agreement(s) will be published in the Federal Register for public comment after a permit application is completed.

CNPS-430. The Revised Subarea Plan will establish standards for road crossings. Also, future environmental review as projects go through the Resource Agencies (ACOE, RWQCB, CDFG) will ensure that impacts are minimized, since the MHCP will not issue any wetland permits. The MHCP has established wetland policies that any new project will be required to implement. Expansions or widenings of existing roads will need to incorporate BMPs, as appropriate.

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the future crossings will adhere to the MHCP Guidelines?

CNPS-431 Brookfield Homes has submitted an application to the Army Corps of Engineers for the extension of Melrose Drive across San Marcos Creek and other wetlands impacts due to residential and commercial development. On Jan. 14, 2002, the Sierra Club commented to the Army Corps on this application for wetlands impacts. Our letter stated, "... it appears that the developer is proposing a box culvert type of crossing [for Melrose Drive]." Based on the MHCP Guidelines (p. 6-4), the proposed culvert type of crossing is not adequate for this important wildlife corridor. It appears that the culvert is only 10 feet high. The MHCP Guidelines are clear that underpasses for deer movement should be at least 20 feet high. Deer are present in this area, and any road crossing the wildlife corridor must accommodate their access to and through the corridor. Of course, avoidance of road crossings like Melrose Drive through wildlife corridors, as called for in the MHCP guidelines, would be the most desirable outcome.

CNPS-432 What are the alternatives to the Melrose Drive crossing of San Marcos Creek? How can the Brookfield project be designed so that this road crossing can be avoided? If it is absolutely necessary to construct this road crossing, how can it be designed to adhere to the MHCP guidelines, as stated on page 6-4 of the "Biological Goals, Standards and Guidelines for Multiple Habitat Preserve Design"?

CNPS-433 Recreational crossings within the Preserve and across San Marcos Creek should be avoided as inappropriate to a wildlife corridor. The MHCP Preserve Guidelines, p. 6-4, item 7, states that corridors should have a minimum amount of human disturbance. Every crossing of the Preserve causes fragmentation and creates edge effects which diminish the functionality of the corridor for wildlife. What "recreational crossings" are planned? How can the public be assured that these crossings will adhere to the MHCP Guidelines?

CNPS-434 c. Las Posas Road Alignment Northern Extension
Figure 7 of the subarea plan shows Las Posas Road's being extended to Buena Creek Road, with what appear to be several crossings. This proposed extension of Las Posas Road should be dropped from the subarea plan. A large part of it is in the County, and the County does not support this road extension. Also, the road runs right up the wetlands that are the headwaters of Agua Hedionda Creek, an important waterway in the region. This road and its alignment as shown in Figure 7 are environmentally unacceptable. Why is this extension of Las Posas Road to Buena Creek Road shown in the San Marcos Subarea Plan? Please be specific.

CNPS-435 To the public, the purpose of the Las Posas Road extension appears to be to open up to development the entire Hedionda Creek Valley between the existing Santa Fe Hills development and Buena Creek Road. Is this the case? What environmental impacts will result from this proposed road extension? How can these impacts be avoided?

CNPS-436 According to Volume 1, Public Review Draft of the MHCP, page 3-24 under Wetland

CNPS-431. Project design, including details of the road crossing over Melrose Creek, has been approved by all the Resource Agencies pursuant to Section 7 of FESA. A bridge over San Marcos Creek providing for wildlife movement is a condition of approval.

CNPS-432. The Wildlife Agencies approved the Melrose Drive crossing once an expanded analysis indicated that the road was needed to relieve traffic from the San Elijo Road/Rancho Santa Fe Road intersection. To minimize impacts the Resource Agencies approved a bridge crossing.

CNPS-433. The statement that every trail crossing causes fragmentation and creates edge effect appears to presume that both phenomena have consistent thresholds. Rather, both edge effect and fragmentation vary significantly by species and by vegetation type. The MHCP, the Subarea Plan, and the Wildlife Agencies allow for the inclusion of trails in the preserve. Refer to the Trails Master Plan (part of the City's Conservation Element) for the location of approved trails. These trails will be reviewed on a project-by-project basis. Additionally, the revised FPA maps will show the location of all trails. This information has been supplied to the Wildlife Agencies and will be part of a revised approved Subarea Plan.

CNPS-434. The Las Posas Road extension is shown on the Subarea Plan since it is part of the adopted Circulation Element. This road connection is not to serve existing or future development, but to provide a needed north/south road parallel to Twin Oaks Valley Road. This is especially needed to route regional traffic to the connection of the Las Posas/State Route 78 interchange. Preliminary alignment studies have been completed that indicate the road can avoid the majority of the wetland areas, except for minimum crossings.

CNPS-435. The Las Posas Road extension is shown on the Subarea Plan since it is part of the adopted Circulation Element. This road connection is not to serve existing or future development, but to provide a needed north/south road parallel to Twin Oaks Valley Road. This is especially needed to route regional traffic to the connection of the Las Posas/State Route 78 interchange. Preliminary alignment studies have been completed that indicate the road can avoid the majority of the wetland areas, except for minimum crossings.

Note: This appears to be a selective and partial quote of Section 3.6. A full citation of this Section includes the following wording, "If the wetlands to be impacted are determined to have a low biological value, then they need not be

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Avoidance Mitigation Criteria, "Private projects must demonstrate the impact is essential to maintain some economic or productive use of the property and that no feasible alternative would eliminate or minimize the impact or otherwise result in greater biological value." Because the extension of Las Posas will impact wetlands along Hedionda Creek, please provide evidence that the road is needed to maintain some economic or productive use of the property. Since existing roads in the County can access the Highlands and Murai projects without incurring wetland impacts, why were these alternatives not studied?

CNPS-436 The extension of Las Posas Road will require a variance to the City's Grading Ordinance because a cut of 75 ft. high by 450 ft long will be required. On page 21 of the Subarea Plan, under the Grading Ordinance, it states, "All grading, clearing, brushing, or grubbing of natural or existing grade in the City of San Marcos including sensitive habitats (e.g., coastal sage scrub) is subject to the Grading Ordinance. Permits are reviewed for compliance with established controls. Applications for a grading permit can be modified or denied to insure environmental quality. Erosion control guidelines require protection of environmentally sensitive areas such as wetlands." How does the extension of Las Posas Road meet the requirements of this Ordinance?

CNPS-437 There is no key supplied with the map, Fig 7, which indicates the meaning of the various lines running from the current terminus of Las Posas Road to Buena Creek Road. Please explain meaning of the short dark rectangles.

CNPS-438 d. Questhaven Road/Twin Oaks Valley Road/San Elijo Road
The proposed alignment of this road cuts through the Preserve in at least two areas. It appears that these areas are wildlife corridors. Where this road crosses wildlife corridors, it must be designed in accordance to the MHCP Guidelines as stated on p. 6-4 of the "Biological Goals, Standards, and Guidelines for Multiple Habitat Preserve Design." How can the public be assured that the crossings will adhere to the MHCP Design Guidelines for wildlife corridors?

CNPS-439 e. The Rancho Santa Fe Road Alignment
The proposed alignment of Rancho Santa Fe Road crosses the MHCP Preserve at San Marcos Creek. How is it designed to allow for wildlife movement under the road? The MHCP design guidelines for wildlife corridors (p. 6-4) state that roads crossing wildlife corridors should provide underpasses allowing large mammals and other animals to cross. Also, "Roads crossing the corridor should be fenced by at least a 10-foot fence that channels animals toward the wildlife underpass. These fences should be buried at least 1 foot underground so animals cannot dig underneath. Bridges are the preferred type of wildlife underpass; box and pipe culverts are infrequently used by deer (Ogden, 1992a) but may be used by some smaller animals." Also, "Underpasses targeted for deer movement should be at least 20 feet high..." Etc. Please note that there are deer in the area.

CNPS-440 Rancho Santa Fe Road is potentially a major barrier to wildlife movement unless it is designed to allow the wildlife to cross the road safely. What steps are being taken to assure that

CNPS-436. The Las Posas Road extension will be required to meet the requirements of the MHCP for no net loss of wetlands, and the least environmentally damaging alternative will be implemented.

CNPS-437. There is no meaning to the short dark rectangles other than to indicate approximate R-O-W. A revised map and key will be included in the final Subarea Plan.

CNPS-438. The revised Subarea Plan will contain standards road crossing standards consistent with the MHCP. Additionally, compliance with MHCP Design Guidelines will be assured through the permitting process of the Resource Agencies.

CNPS-439. This section of the project, including the replacement bridge, lies within the improvement plans approved by the Resource Agencies.

Rancho Santa Fe Road is being constructed with one wildlife crossing. It will be an arch culvert with a soft bottom, approximately 13 feet high at the center and approximately 300 feet long. The culvert will also have an opening in the middle to let in light and air.

CNPS-440. Please see response CNPS-439.

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wildlife, including deer, will be able to safely cross Rancho Santa Fe Road?

CNPS-441 It appears from the City of San Marcos' Subarea Plan Map that, north of Melrose Drive and south of Lake San Marcos, Rancho Santa Fe Road will run adjacent to Preserve lands. The Preserve is on the east side of Rancho Santa Fe Road. What steps are being taken to assure that wildlife does not wander onto the roadway?

CNPS-442 f. Projects to be Permitted Under the City of San Marcos Subarea Plan
The statement under this heading is so vague that it is not meaningful. Please explain in detail what is meant and how the subarea plan protects the Preserve from impacts of "additional projects."

P. 26, 3.1.2 Biological Surveys

It states, "These field surveys were limited due to time and also limited to areas that were easily accessible to the public." Which areas had biological field surveys and which areas relied on aerial photographs? Show and discuss where each of these individual areas is located in the proposed Preserve design.

CNPS-443 P. 31, Southern Riparian Woodlands

We note that San Marcos Creek from Lake San Marcos to Highway 78 is not in a part of a focused planning area. Why not? The report states that the largest strip of riparian woodland within the City occurs along this stretch of San Marcos Creek. We also note that this stretch of San Marcos Creek is not part of the MHCP Biological Core and Linkage Area. San Marcos Creek is a regionally significant waterway, and it should be preserved, protected and enhanced. Why is it not included in the Biological Core and Linkage Area? The thin magenta line running along this stretch of San Marcos Creek on the San Marcos Subarea Plan map appears too narrow to protect this important waterway and its flora and fauna. A wider corridor is needed, and conservation plans to protect and restore the Creek should be spelled out. What are the plans to protect and restore this stretch of San Marcos Creek?

CNPS-444 P. 31, 3.2.2 Riparian Communities

Under the heading Southern Riparian Forests, it identifies a riparian forest within the BRMP study area as "...a small patch (five acres along a tributary of Buena Creek) near the western boundary of the City." Buena Creek runs north and west of Agua Hedionda Creek and is located outside the City of San Marcos. Where is the area described in the Subarea Plan? Is this area within the FPA or BCLA? Is this Agua Hedionda Creek?

Under the heading Southern Riparian Woodlands, paragraph 3 states, "...a willow riparian woodland... occurs along the creek on San Marcos Highlands (ERCE 1990)." According to maps supplied by the Carlsbad Watershed Network and Thomas Brothers maps, this creek is Agua Hedionda Creek. The creek originates in San Marcos Highlands and terminates at Agua Hedionda Lagoon. Agua Hedionda Creek is misnamed repeatedly in the Subarea Plan. Please

CNPS-441. Vinyl-coated chain link fencing will be utilized to assure that wildlife does not wander onto the roadway.

CNPS-442. This subsection of Section 2.4 (Known and Anticipated Project) entitled "Projects to be Permitted Under the City of San Marcos Subarea Plan" will be clarified in the final Subarea Plan.

Specific information on the vegetation and sensitive species sighting within the City was obtained from several sources including over 30 biological resource reports, the CNPS Inventory of Rare and Endangered Plants, Beauchamp's Flora of San Diego, Bauder's Vernal Pool studies, and the San Diego Biodiversity Project's Vernal Pool studies. Additionally, the consulting biologists met with experts on the local flora and fauna. This was combined aerial photo interpretation with field truthing conducted from public right-of-way. It should be recognized that this is a program-level environmental document. CEQA review will be conducted at the project level when plans are submitted.

CNPS-443. Specifically, the MHCP states, "Projects that propose to impact a wetland must demonstrate with substantial factual evidence that the impact is essential to maintaining some economic or productive use of the property and that no feasible alternative would eliminate or minimize the impact or otherwise result in greater biological value. If impacts to wetlands cannot be avoided while retaining economic or productive use of the property, an evaluation of biological functions and values shall be made based on the best available science...Any unavoidable impacts to wetlands must be mitigated to result in no net loss of wetland vegetation acreage and biological function and value within the MHCP subregion and preferably, but not necessarily, within the same drainage and city. Subarea plans may apply stricter avoidance standards for wetlands inside the FPA than outside the FPA. However, the no net loss standard must be achieved regardless of location."

In implementing the appropriate mitigation for wetland habitat, the following management guidelines must be incorporated:

1. For wetlands currently in or proposed for open space, each jurisdiction shall prepare a management plan to ensure maintenance and monitoring of this habitat and its species.
2. For wetlands currently in or proposed for open space, each jurisdiction shall prepare a management plan to restore disturbed portions of this

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habitat, including management and restoration plans for sensitive species occurring in this habitat.

3. Where conditions are appropriate, create new wetlands by converting disturbed upland habitat.

CNPS-444. Please note that all wetland areas and associated riparian habitat of the Subarea Plan are accorded protection under existing laws. Approval of the Subarea Plan does not result in the issuance of any wetland permits or alter existing protection under state and federal law. The revised subarea plan will clarify this ambiguity.

Nomenclature will be corrected in the revised draft to address this comment.

As the MHCP vegetation maps (1" = 2,000 ft.) are based upon aerial photographs; thresholds of scale may not allow for this detailed mapping. All riparian areas of the Subarea Plan are accorded protection under the policies of the MHCP.

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correct these errors. Additional examples of this misnaming is found but not limited to:

1. page 34, paragraph 4 and 5.
2. page 39, paragraph 3

P. 32, Paragraph 2, Southern Riparian Woodlands

The document states, "Several other distinct patches of riparian woodlands occur throughout the city." No maps are supplied to show where these locations are. Please supply a map showing the locations of these riparian woodlands and show how these relate to the Preserve design. Are these areas within the FPA or BCLA? Not included in this section are the .15 acres along Agua Hedionda Creek on the Santa Fe Hills site (see Lundstrom & Associates letter dated Aug. 1999, attachment B). Why was this area not listed? List any areas of riparian woodlands not listed in the Subarea Plan. Explain why they were not listed. Provide a map that shows the locations of the above areas as well as the "south side of Deer Canyon road; ...northeast of Country Garden Lane; within Twin Oaks Valley; ...Vista/San Marcos boarder and Linda Vista Drive..."

Paragraph 5, Riparian Scrub

This section does not include other communities of riparian scrub such as the .27 acres along Agua Hedionda Creek on the San Marcos Highlands (documented in URS Biological Report, January 8, 2001, for San Marcos Highlands DSEIR). It also does not include the .22 acres of mulefat scrub along Agua Hedionda Creek on the Santa Fe Hills site (documented in Lundstrom & Associates letter, Attachment B). Why are these areas not listed? List any areas of riparian scrub not listed in the Subarea Plan. Explain why they were not listed.

P. 34, 3.2.3 Marsh and Emergent Wetland Communities

Under the heading Coastal and Valley Freshwater Marsh, paragraph 2, it states, "...the Pond and creek channel on the San Marcos Highlands." This occurs again under the Disturbed Wetlands heading. As previously stated, this is Agua Hedionda Creek. In addition, .14 acres of freshwater marsh exist along Agua Hedionda Creek adjacent to this site in Santa Fe Hills. Additional acres exist throughout the entire length of Agua Hedionda Creek within either the City limits or its sphere of influence. Since these areas are within the BCLA, why were these areas left out of the Subarea Plan? List any areas of freshwater marsh not listed in the Subarea Plan. Explain why they were not listed.

P. 37, 3.2.3 Non native Communities, Eucalyptus Woodland

This paragraph missed two stands of eucalyptus along Agua Hedionda Creek. One stand is on the southern edge, between San Marcos Highlands and Santa Fe Hills and the other is at the northern part of the San Marcos Highlands. Why were these areas not included?

P. 38, 3.3.2 Lacustrine:

CNPS-445. As the MHCP vegetation maps (1" = 2,000 ft.) are based upon aerial photographs; thresholds of scale may not allow for this detailed mapping. All riparian areas of the Subarea Plan are accorded protection under the policies of the MHCP.

CNPS-446. Please see response CNPS-445.

CNPS-447. As the MHCP vegetation maps (1" = 2,000 ft.) are based upon aerial photographs; thresholds of scale do not allow for this detailed mapping.

CNPS-448. As the MHCP vegetation maps (1" = 2,000 ft.) are based upon aerial photographs; thresholds of scale do not allow for this detailed mapping.

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CNPS-445

CNPS-446

CNPS-447

CNPS-448

Why were the stream and ponds that make up Agua Hedionda Creek excluded from this description?

P. 39, 3.3.3 Valley Foothill Riparian/Montane Riparian

CNPS-449

This section states, "All riparian wildlife habitats are extremely significant biological resources. These habitats support the largest number and greatest diversity of wildlife by providing food, water, migration and dispersal corridors, escape, nesting and seasonal thermal cover." In the second paragraph, once again, it calls Agua Hedionda Creek "...the creek on San Marcos Highlands."

Given the issues surrounding Agua Hedionda Creek, the Hedionda Creek Valley and the proposed San Marcos Highlands project, why does the City want to propose residential development and a major road (Las Posas) for this area? Refer to Comment 4: P 20-21, 2.3 General Plan, Zoning and Local Use Regulation, when providing an explanation.

CNPS-450

P 40, 3.3.6 Shrublands

CNPS-451

The Subarea Plan makes an important point when it says that shrublands, particularly the chaparral communities, are areas of extremely high biodiversity in terms of vertebrate and invertebrate species. The Merriam Mountains contain the largest undisturbed shrublands in the Northern FPA. What portion of the Merriam Mountains is within the MHCP Focus Planning Area or BCLA? According to the maps and the County's Resource Conservation Area, the area referred to in the Subarea Plan as "...the hills west of Twin Oaks Valley Road, and east of Neighborhood One of the College Area Plan" is known as the San Marcos Mountains. Is this correct?

Pp. 41-43, 3.4.2 Riparian and Wetland Habitats

CNPS-452

This section of the Subarea Plan clearly identifies the importance of wetlands. It also shows how few wetlands are left within San Diego County; only 9% remained in 1991. Now, however, it is estimated that we are down to the last 3%-4% of our wetlands. With the loss of our wetlands we have experienced a loss in biodiversity and water quality. San Marcos is fortunate to be the caretaker of two important waterways that run to the ocean, San Marcos Creek and Agua Hedionda Creek.

San Marcos Creek runs from the western slopes of the Merriam Mountains and discharges into the Pacific Ocean via Batiquitos Lagoon. "The Draft Carlsbad Watershed Management Plan" (CWMP), March 2002, documents the presence of highly erodible soils, agricultural land uses, grading associated with development projects and removal of native vegetation that have all contributed to significant sedimentation problems within this watershed. Page 4-95 of the CWMP states, "Lake San Marcos is experiencing regular algal blooms, likely exacerbated by urban and irrigation runoff from golf courses within the area." On page 4-95, it also states, "Habitat fragmentation within the San Marcos Creek watershed is extensive... A large area of high quality habitat, as identified in the MHCP, is present on the hills north of San

CNPS-453

CNPS-449. As the MHCP vegetation maps (1" = 2,000 ft.) are based upon aerial photographs; thresholds of scale do not allow for this detailed mapping.

CNPS-450. The referenced projects are in compliance with the adopted General Plan and Circulation Element.

CNPS-451. The commentator has chosen an edited, selective quote. The full sentence in Section 3.3.6 is as follows: "Shrublands encountered west of the Peninsular Range are either coastal sage scrub, southern mixed chaparral, montane chaparral, chamise chaparral, or southern maritime chaparral. Within southern California, shrublands as these exhibit high biodiversity". Note: a monotypic stand of southern mixed chaparral by itself, would not necessarily exhibit "high biodiversity", and can exhibit the exact opposite characteristic. The Merriam Mountains, according to the USGS San Marcos 7.5 minute Quadrangle parallels the east side of the Twin Oaks Valley outside the City limits. The mountainous area west of Twin Oaks Valley south of Buena Creek Road appears to be an isolated ridge south of the main branch of San Marcos Mountains which lies outside the City limits according to the USGS San Marcos 7.5 minute Quadrangle.

CNPS-452. Please note that the Subarea Plan includes wetland conservation polices such as "no net loss" and "least environmentally damaging alternatives".

CNPS-453. San Marcos is an active member of the NPDES program and is implementing all BMPs that assure a comprehensive reduction in waterborne pollutants. Additionally, the Subarea Plan calls for a significant portion of projects in this area to be in permanent natural open space. This being said, it appears that this comment address, on the whole, areas that lie outside City limits. The area identified as, "the largest block of high quality habitat within the watershed occurs along the southern edge of the lower basin ... with large areas of natural habitat to the south in the Escondido Creek and the San Dieguito River watersheds", lies to the south of the City limits and therefore are not part of the Subarea Plan. The area identified as occurring "on the hills north of San Marcos and extends westward into the Agua Hedionda Creek watershed", lies to the north of the City limits and therefore are not part of the Subarea Plan.

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Marcos and extends westward into the Agua Hedionda Creek watershed. The largest block of high quality habitat within the watershed occurs along the southern edge of the lower basin...with large areas of natural habitat to the south in the Escondido Creek and the San Dieguito River watersheds." Page 4-96 states, "Considering how valuable the central and headwater area of the watershed are to land development activities, it is necessary for the North County Subarea Plan to set aside significant portions of the San Marcos Creek Watershed as permanent open space."

CNPS-454

Along with San Marcos Creek, San Marcos is host to Agua Hedionda Creek, the third largest watershed within the Carlsbad Hydrologic Unit. Agua Hedionda Creek contains two drinking water reservoirs, Squires and Lake Calavera for the City of Carlsbad, and runs through the Dawson Los Monos Preserve. Agua Hedionda Creek originates on the southwestern slope of the San Marcos Mountains (aka San Marcos Highlands) and discharges into the Pacific Ocean via Agua Hedionda Lagoon. Although Agua Hedionda Creek is divided by South Santa Fe Road, a proposed major road improvement, due to start 2004, offers a method to re-establish connectivity between the upper and lower portions of Agua Hedionda Creek. On page 4-58 of the CWMP, it states, "...the majority of soil types along the creek are categorized as severely erodible. The prevalence of erodible soil types within the watershed has contributed to significant sedimentation problems associated with agricultural land uses, grading for developments, and removal of native vegetation."

CNPS-455

Presently, Agua Hedionda Lagoon is listed on the 303D list for sedimentation and coliform contamination. According to page 5-36 of "Plan Objectives and Action Items", CWMP, Agua Hedionda Creek is being considered for 303D listing for Diazinon and TDS impairment. Agua Hedionda Lagoon, an important habitat area, was designated in 1973 as critical habitat for the Tidewater Goby, a federally listed endangered species.

CNPS-456

Since riparian and wetland habitats are important in ensuring wildlife connectivity and habitat quality, how will the San Marcos Highlands project and the future Murai project not further degrade Agua Hedionda Creek? How will Diazinon contamination impact wetlands habitats? What assurances does the City provide the public and the Wildlife Agencies that these projects will not degrade habitat value and add to the further degradation of Agua Hedionda Lagoon? Since this area is within the BCLA, why is much of the land near the creek being developed and not preserved? What scientific studies support your answers? Finally, if development results in either wetland or water quality loss downstream, in adjacent Cities, will the City of San Marcos pay for restoration, and if so, how?

CNPS-457

Pp. 44-46, Sensitive Plant and Animal Species

The least Bell's vireo (*Vireo bellii pusillus*) should be added to this list. This endangered species was identified in the Agua Hedionda Creek area, on the Kaufman and Broad property, in the 1999 timeframe. (See Attachment B.)

CNPS-454. The commentator incorrectly refers to the Highlands as occurring on the western slope of the San Marcos Mountains. The Subarea Plan refers to the area, known locally as "P" Mountain, as an isolated ridge south of the San Marcos Mountain. See San Marcos 7.5 Minute Series Quadrangle prepared by the United States Geological Survey (Photo revised 1983). This map clearly shows that the San Marcos Mountains terminate in the urbanized flatlands east of the City of Vista. San Marcos is an active member of the NPDES program and is implementing all BMPs that assure a comprehensive reduction in waterborne pollutants. Additionally, the Subarea Plan calls for a portion of projects in this area to be in permanent natural open space to facilitate preservation of the watershed.

CNPS-455. Comment noted.*

CNPS-456. San Marcos is an active member of the NPDES program. Both Highlands and Murai are and will be required to implement all BMPs, including onsite filtration systems. This will assure a comprehensive reduction in waterborne toxins and pollutants. Additionally, the Subarea Plan calls for portions of both projects to be in permanent natural open space. Furthermore, plan approval will not result in the issuance of any wetland permits, nor will the Plan alter existing regulatory control of state and federal resource agencies over wetlands. RWQCB enforces the implementation of BMPs to ensure minimal impacts and contamination to sensitive water resources. Regional Water Quality Control Board to respond on the science behind BMPs. San Marcos is an active member of the this NPDES program. All projects are required to implement all BMPs.

CNPS-457. One transient least Bell's vireo was noted on the Kaufman and Broad property in 1999. This behavior is not unexpected during the period between March and July, when birds are migrating from south to north. This species has not been documented on the project site since 1999.

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CNPS-458 The report in Attachment B also discusses the possibility of the presence of the Federally endangered arroyo toad in Agua Hedionda Creek. The report concluded that the presence of the toad was possible, but not likely. More detailed studies to determine the presence of the toad in the Agua Hedionda Creek waterway in northern San Marcos should be conducted. How can these studies be undertaken?

CNPS-459 Pp. 44 and 45, 3.5 Sensitive Plan and Animal Species
Brodiaea filifolia: The chart states there are 9000 Brodiaea filifolia plants in the Baldwin Companies' Mitigation Site. Where is the location of this population?

CNPS-460 Orcutt's brodiaea
It is proposed to transplant plants affected by the University Commons project. How successful is this? According to comments submitted by James Dillane to the University Commons SEIR, no translocation programs have been successful. What studies support transplantation?

CNPS-461 Orcutt's linanthus
It lists 50 Orcutt's linanthus individuals along the trail at the upper elevations of the north slope of Double Peak. Is this the area that the City plans to develop into a golf course? If so, how will this population be affected and will it be preserved under the Subarea Plan?

CNPS-462 Grasshopper Sparrow
Where are the grasslands north of Palomar College? How many individual sparrows are present in the site? Has the population increased or decreased and over what time period?

CNPS-463 P. 47, Biological Preserve Design
The second paragraph in this section states that designing the preserve system involves balancing two major goals: biological conservation goals; and property development, property rights, and economic goals.

This is an incorrect approach. Volume I of the Public Review Draft MHCP Plan clearly states: "The overall goal of the MHCP is to maintain biodiversity and ecosystem health in the region while maintaining the quality of life and economic growth opportunities." (p. 1-1) The purpose of the MHCP is to prevent species extinction; economic growth is a constraint on the achievement of this goal. One of the by-products of creating the MHCP Preserve is that areas that do not contain valuable habitat or function as wildlife corridors are identified and may be candidates for development.

CNPS-464 The City of San Marcos has taken the approach of trying to create a Preserve through the development process. This is an inappropriate approach. The correct approach is to identify the important areas of habitat and linkages (which was done in the MHCP by the identification of the Biological Core and Linkage Area) and to determine how these areas can be conserved. As a

CNPS-458. The Arroyo Toad requires a particular riparian habitat not found on the project site. To survey where Toads are not likely to occur would require the program to incur unneeded expense. Additionally, since this habitat is highly regulated by both state and federal resource agencies, a biological reconnaissance would be required for any project potentially impacting wetlands that would have to address the likely occurrence of the Arroyo Toad.

As a reminder, Plan approval will not result in the issuance of any wetland permits, nor will it alter the existing regulatory control of state and federal resource agencies over wetlands.

CNPS-459. The population is in the fenced mitigation area of the Paloma Project.

CNPS-460. Transplantation is not the preferred mechanism for protection; however, it can be used for mitigation. The San Elijo transplant program was initiated last year; therefore, it is too early to assess the success or failure of the program. There is no successful transplantation of Brodiaea comms that are older than five years. However, this project was permitted by Section 7 of the ESA. The Service could not regulate Orcutt's brodiaea through this process, because Orcutt's is not federally listed.

CNPS-461. Location is not part of Area Q (areas of the proposed golf course). It is in the most eastern planning area of SEH. The Orcutt's linanthus population in San Elijo Hills is in open space and will be managed by the habitat manager contracted by the San Elijo Hills Homeowners Association. It will be monitored, and no trail will be allowed near it.

CNPS-462. The large grassland area is on the east side of the northern FPA. Grasshopper sparrows populations in San Marcos are not being actively monitored, so there are no data regarding variation in population size or distribution over time.

CNPS-463. The intent of the MHCP and all NCCP planning processes is to balance the needs of the biological resources while accommodating property development.

CNPS-464. The BCLA has always been a regional planning level tool. BCLA lands were the area from which the FPA were to be assembled. Please note that the EIS/EIR does not identify Alternative 3 (BCLA) as environmentally preferred.

The wetlands will be protected through implementation of the no net loss policies, and required mitigation for any unavoidable impacts to wetlands.

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The sloped areas surrounding Agua Hedionda Creek are addressed in the plan. For example, San Marcos Highlands project proposes to place 68 percent of the total project acreage into open space to become part of the FPA preserved as open space.

Those lands in the City's FPA that are not in the BCLA were added because of their biological importance after consultation, and in certain cases at the request of the Wildlife Agencies.

The Subarea Plan preserves the large unbroken block of CSS habitat associated with "P" Mountain, provides a critical corridor for gnatcatcher distribution between Carlsbad and Lake Hodges.

The statement that the Plan's conservation levels are inadequate is without a basis. Substantial evidence is established in the EIS/EIR that adequate species points and habitat acreage is preserved. Section 4.3 addresses the vegetation conservation levels as well as species-specific conservation levels.

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result of San Marcos' incorrect approach to assembling the Preserve, the City has failed to include valuable habitat/linkage areas in their Subarea Plan (such as the Agua Hedionda Creek Valley in northern San Marcos and the University Commons area in southern San Marcos) and has included areas in their proposed Preserve system that are outside of the Biological Core and Linkage Area and provide questionable value to the Preserve, such as the landfill area in southern San Marcos. Also, San Marcos' Preserve system is fragmented; a major objective of the MHCP is to prevent the continuation of habitat fragmentation, which is a major factor in species extinction in this region. Finally, San Marcos' subarea plan allows a totally unacceptable amount of destruction of valuable habitat such as Coastal Sage Scrub (CSS) and chaparral. According to the EIS/EIR for the MHCP, p. 2-74, San Marcos' Subarea Plan under the FPA 2 alternative (the Preferred Project) only conserves 50% of the remaining CSS in the City and 48% of the remaining chaparral.

CNPS-465 How could San Marcos' development-oriented approach to the assembly of the Preserve and its low levels of conservation of valuable habitat be acceptable to the Wildlife Agencies?

CNPS-466 The City of San Marcos needs to preserve more of its valuable open space within its City boundaries and sphere. A perfect example is the Highlands property in northern San Marcos, where a housing development of about 230 units is proposed. This area is in the Agua Hedionda Creek Valley, and is part of the MHCP Biological Core and Linkage Area. It should be acquired as part of the Preserve. The property owner has stated that he is willing to sell the property. Why does the City not want to acquire the property, thus adding another approximately 200 acres of CSS to its Preserve, plus valuable riparian habitat?

CNPS-467 Another example is the Cerro de las Posas ridgeline. The Subarea Plan map shows the area where the golf course is proposed as 25% conserved. This area is in the Biological Core and Linkage area and contains undisturbed chaparral. The City should conserve all of this area at the 100% level. This would add about 125 acres of chaparral to the Preserve. Why does the City not want to conserve this area at the 100% level?

CNPS-468 P. 48, 4.1.1
Objective 1: "Conserve the full range of extant vegetation communities with a focus on habitats considered sensitive, rare, or declining." Paragraph 1 states, "Vegetation communities and habitat types that are rare or ecologically important should receive special protection, including riparian habitats and coastal sage scrub. Riparian habitats should be preserved in their entirety due to their rarity, habitat value to numerous wildlife and plant species, and use as movement corridors and habitat linkages." As previously stated, it is unclear how projects such as the University Commons and San Marcos Highlands project support this objective. The University Commons project will introduce a large number of people who will bring with them pets, invasive non-native plants and animals, plus an additional road to a sensitive wetland habitat. In addition, no specifics have been given as to how air and noise pollution will be addressed in order to prevent damage to the habitat.

CNPS-465. Please see response CNPS-464.

CNPS-466. All gnatcatcher locations in the Highlands projects are 100 percent conserved. The San Marcos Highlands project proposes to place 68 percent of the total project acreage into open space to become part of the FPA, as well as provide a wildlife corridor. Of the 10.97 acres of riparian habitat, 10.10 acres are being conserved.

CNPS-467. A Development Agreement was implemented between the City of San Marcos and San Elijo Ranch. That Agreement set certain responsibilities for the City and the Ranch. An excerpt of the Development Agreement is attached to the Response to Comments as Attachment RS-1. In that Agreement, the City agreed to consider certain land uses in the Cerro de las Posas ridgeline area. The Development Agreement incorporated by reference the Specific Plan. In the Specific Plan, this area had identified *potential uses that could be developed in this area subject to a Conditional Use Permit*. One of these uses is a golf course (see RS-1). As such, the City can not deny a land use prior to an applicant making an application. For this particular issue, the City is obligated to process an application for a Conditional Use Permit for the uses listed therein, including a golf course. The City has been advised by legal counsel that if it does not process an application as set forth in these entitlements, it can be deemed to be in violation of state regulations on permit processing and other substantive and due process rights. Additionally, development agreements have been interpreted as contractual obligations, were it to refuse to process an application. Further, the City can not deny a land use prior to the submission of an application. The processing will include CEQA review of the application, and the legislative body (the City Council) must make certain findings with respect to the proposed use prior to making a decision on whether to issue the CUP. Issuance of the CUP is a *discretionary* decision – the City can approve or deny that application in accordance with its discretionary land use authority. The City can not deny the project today because there is no application before the decisionmakers.

CNPS-468. "Conserve the full range" does not imply that all extant vegetation communities should be conserved as to preclude any development. Substantial evidence is established in the EIS/EIR that adequate species points and habitat acreage is preserved. Please note that the University Commons project has received an exemption from Section 9 of the ESA through Section 7 consultation with the Corps.

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CNPS-469 The San Marcos Highlands project will place residences as well as a major road in the middle of a sensitive wetland area along Agua Hedionda Creek. This will divide two large areas of coastal sage scrub with a residential development and a road, and the excessive grading of erosive soils will destroy both wildlife and wetlands of Agua Hedionda Creek.

CNPS-470 Areas indicated in Figure 2-3, Composite Habitat Value MHCP Study Area map, as being very high quality habitat are being designated for development, further fragmenting the remaining open space. There is concern that once you apply the edge effects shown in Figure 2-4 in Volume II of the Public Review Draft MHCP to the Subarea Plan, there are insufficient areas of pristine coastal sage scrub that won't soon be degraded due to edge effects. Please site scientific studies that prove a plan that will have this amount of edge effects will make a viable preserve. How does the City plan to eradicate invasive plant and animal species in a preserve with so many edge effects? What will the cost to the public be to control edge effects? The City should consider a plan that preserves larger blocks of habitat to minimize edge effects.

CNPS-471 P. 48, Limitations
This section states that most riparian habitats in the City have lost the buffering influence of natural upland habitats. It also states "Remaining scrub habitats in the City are concentrated on steep slopes,..." Neither of these statements made in this section is true relative to the Hedionda Creek Valley in northern San Marcos. A lot of the CSS in the valley is not on steep slopes. Also, the Hedionda Creek Valley is an example of riparian habitat that has not lost the buffering influence of natural upland habitat. Although there are some agricultural land uses around the northern part of the creek (in the County), the watershed for the creek is relatively undisturbed. South of the County line, the watershed for the creek is more disturbed due to development that the City has permitted (Santa Fe Hills). However, the City has the opportunity to try preserving the relatively undisturbed slopes on the west side of the creek and some of the riparian waterway, on what is called the Murai property. This area is part of the MHCP Biological Core and Linkage Area and should be part of the Preserve. Instead, the subarea plan shows it as only 50% conserved. The City should negotiate with the owners of the Murai property to acquire it as part of the Preserve. How can the Wildlife Agencies agree that only 50% conservation of the Murai property is appropriate?

CNPS-472 Where are the riparian habitats that have lost the buffering influence and where are the riparian habitats that have not? Please explain how this was determined.

CNPS-473 Also, under "Limitations," it is stated that the chaparral dominated slopes on the undeveloped ridgeline of Cerro de las Posas, Double Peak, and Frank's Peak are part of "the focus of the Subarea Plan relative to conservation." It is ironic that the City is entertaining a proposal to construct a golf course on top of Cerro de las Posas, which will destroy about 125 acres of chaparral and sensitive plant species such as wart-stemmed ceanothus and summer holly. If this area is a focus of conservation, how can this type of development be considered?

CNPS-469. The wetlands will be essentially conserved, with the exception of impacts of less than 1 acre of riparian woodlands.

CNPS-470. It should be recognized that the entire MHCP is fragmented and that edge effects will be an issue that all conservation areas will encounter. The Management Plan implemented for each preserve will be responsible for managing exotics.

CNPS-471. DEIS/EIR #90-13 (SCH No. 9907810007) for San Marcos Highlands indicates (p. 4.2-3) that approximately 53% of the site has slopes greater than 25%. A review of the MHCP vegetation database establishes that the predominate habitat of the watershed in the County is Agriculture or developed. The Murai project will provide wildlife corridors complying with MHCP standards and significant retention of riparian areas.

CNPS-472. A review of the MHCP vegetation database reveals that a substantial amount of the City's riparian habitat is surrounded by agriculture or urban development. Many of the drainages have been modified to provide improved hydrology with the use of riprap or the edge has been hardened. Development has occurred adjacent to the riparian habitat; thus, eliminating buffers.

CNPS-473. The San Elijo Hills project contributes 891.8 acres to the preserve, the single largest contribution of any landowner. Please note that the FPA, as shown, indicates "worst case". Whereas the Development Agreement and Specific plan allow for a golf course, the City has not approved this recreational amenity.

Wart-stemmed Ceanothus

Based on the entire sample there are 2.49 million individuals occurring the Mt Whitney-Double Peak formation. 17% of this population will be impacted, leaving 83% (1,992,000 individuals) of this population extant. This is adequate conservation.

Summer Holly

Summer Holly populations are not as dense as wart-stemmed ceanothus. Based on the entire sample (page 98 SAP) there are an estimated 253,000 individuals in the study area, of which 221,000 individuals remain extant. This is adequate conservation.

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- CNPS-474 Projects such as University Commons, Highlands, the future Murai and the golf course proposed on the Cerro de las Posas ridgeline, referenced above, will further remove upland habitats, therefore further degrading riparian habitats. How will the proposed Subarea Plan prevent more loss?
- CNPS-475 P. 48, 4.1.2 Objective 2."Maintain its functional wildlife corridors and habitat linkages between critical biological resources areas." This section states, "...wildlife patches should be linked by functional corridors to minimize problems associated with habitat fragmentation. Whenever possible, corridors should be of high quality habitat and of the same habitat type as the areas they connect." How does the landfill located in the Southern FPA meet this requirement?
- CNPS-476 In addition, it states, "Existing linkages should be maintained and linkages or corridors that are currently constrained should be prioritized for acquisition enhancement." Where is this happening? Is there a priority list? What is the timetable established for acquisition? How do the design of the San Marcos Highlands project and University Commons project support the above statement?
- CNPS-477 At the top of page 49, it states, "Where habitat linkages or corridors cross City boundaries into adjoining jurisdictions, these jurisdictions should be encouraged to complete the cross border linkages in order to create a regional preserve network." In the Northern FPA, the County raised serious issues in its response to the San Marcos Highlands draft Supplemental Environmental Impact Report (DSEIR). The County stated that the implementation of the San Marcos Highlands and associated habitat loss would block a viable wildlife corridor that would have connected to the North County MSCP Subarea Plan. Furthermore the county said that bisecting the open space, as proposed in the San Marcos Highlands project, is inconsistent with Objective 2 of the San Marcos Highlands Specific Plan Amendment.
- CNPS-478 The County has recently reaffirmed its position on the San Marcos Highlands project. In his letter of April 2, 2002, Gary Pryor, Director of the County's Department of Planning and Land Use, stated, "The County believes that annexation of these lands [the Highlands property in the County] to the City of San Marcos would create a significant negative impact to the County's North County MSCP Subarea Plan associated with habitat loss and blockage of a viable wildlife corridor." (See attachment C.)
- CNPS-479 It would appear in the Northern FPA that The City of San Marcos is not following Objective 2. How will the proposed preserve design meet this objective? What steps are being taken to work with the County so that the linkages between the MHCP and MSCP preserve designs will be adequate? How will the implementation of the San Marcos Highlands project and Las Posas Road extension to Buena Creek Road provide a functional wildlife corridor? How will the implementation of the University Commons project with the realignment of San Elijo

- CNPS-474. All projects in upland areas are required to implement NPDES standards that filter all runoff. NPDES Best Management Practices (BMP) enforced by the Regional Water Quality Control Board will ensure that development of upland areas will avoid sedimentation impacts. Those same BMPs will preclude impacts from untreated road and urban runoff from reaching riparian habitats.
- CNPS-475. The landfill is required to be revegetated per a court-approved landscaping plan. This revegetated area will consist of coastal sage scrub and chaparral thereby providing an important linkage in the Southern FPA. See Figure 5 of the City's Subarea Plan illustrating the critical linkage through the closed landfill.
- CNPS-476. See Figure 5 of the City's Subarea Plan illustrating the critical linkages. Current design of University Commons accommodates linkages and/or corridors to MHCP standards.
- CNPS-477. The current land use is predominantly urbanized or agriculture. The 68% conservation of open space associated with the San Marcos Highlands and the project redesign provides adequate connectivity. Implementation of Objective 2 of the San Marcos Highlands Specific Plan Amendment is achieved through the attention of 68% of the project's open space. Please see San Marcos Highlands draft Supplemental Environmental Impact Report (DSEIR) for a response to the County's comments.
- CNPS-478. Please note that the current land use north of the project site is predominantly urbanized or agriculture. Scripps Highlands provides 68% conservation of open space.
- CNPS-479. The current land use is predominantly north of the project site is urbanized or agriculture. The 68% conservation of open space associated with the San Marcos Highlands and the project redesign provides connectivity. The University Commons project was exempted from Section 9 of the ESA through Section 7 consultation with the Corps with the realignment of San Elijo Road and the extension of Melrose. Wildlife Agency approval of the project design has ensured adequate connectivity by providing a bridge by the Melrose crossing of San Marcos Creek.

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Road and the extension of Melrose provide an adequate biological corridor between Cerro de las Posas and Carlsbad?

CNPS-480 P. 49, Limitations
Northern Linkages

The City is linking the Preserve design using a floating corridor and its exact location will be determined as the area develops. This statement is too vague. The determination of corridor and linkages is one of the main reasons why the City is developing a habitat plan. What scientific guidelines are used to support the biological principles and viability of a floating corridor? How does the City plan to direct wildlife movement around future development? In addition, the plan states, "A secondary linkage occurs along the second San Diego Aqueduct R-O-W." Since some of the area lies outside both City limits and Sphere of Influence, how will the City ensure these areas remain in their natural vegetative state? How will the City control the off-road vehicles that presently use the roadway that is part of the R-O-W?

CNPS-481 P. 49, Southern Linkages

This section discusses a corridor to "Southwest Carlsbad." Shouldn't this read "Southeast Carlsbad"? Also discussed are "three corridors to the County MHCP." Shouldn't this read "County MSCP"?

How will wildlife safely cross Rancho Santa Fe Road on its way to Carlsbad? Please discuss both the corridor to North Carlsbad and the corridor to "La Costa Meadows Open Space area."

CNPS-482 P. 51, Limitations (top of page)

What is meant by the second sentence in the first paragraph, "Some communities and are subject of adverse edge effects."?

CNPS-483 The statement in paragraph 2, that the Northern and Southern FPA effectively conserve the last remaining unfragmented blocks of Coastal Sage Scrub and Chaparral in the City is incorrect. How can this statement be made when: 1) most of the CSS in the Hedionda Creek Valley in northern San Marcos is excluded from the Northern FPA; 2) only 50% of the CSS on the Murai property is conserved; and 3) only 25% of the chaparral on Cerro de las Posas (proposed golf course area) is conserved?

CNPS-484 What is the meaning of the last sentence in this section, "Therefore, adequate conservation in the large unbroken block of habitat in the Northern and Southern FPA will result in take covered species."?

CNPS-485 P. 51, Limitations (bottom of page)

The statement that the Subarea Plan adequately conserves the remaining large unbroken blocks of habitat in the Northern and Southern FPA is incorrect. As we have pointed out

CNPS-480. The FPA maps fixes the general area in which the corridor will occur. The corridor design will be to insure adequate width to allow connectivity between the ridgeline of "P" mountain and the Twin Oaks Valley Reach of San Marcos Creek. The corridor was suggested by the Wildlife Agencies in accordance with standard practices of connecting two separated habitats. Utility access roads are utilized by wildlife as well as roads that provide fire suppression vehicles access and fuel breaks. Wildlife utilize these areas as they offer the path of least resistance. Monitoring and Maintenance documents will assure that adequate provisions are provided to ensure wildlife usage of these corridors.

CNPS-481. The revised plan will reflect a change in this verbiage. This area is already developed in terms of road infrastructure and a mixture of developed land uses. Wildlife will most likely cross the existing Rancho Santa Fe Road under the bridge spanning San Marcos Creek. The realignment of Rancho Santa Fe Road will also have a bridge spanning San Marcos Creek. There is a culvert and fencing to direct wildlife. Other opportunities to cross Rancho Santa Fe are limited for large mammals, such as deer. Smaller mammals utilize moderately sized culverts (e.g., 48 inch diameter) to cross under roads. Birds will fly over the road where native habitats occur on both sides of the road. The corridor to north Carlsbad is a "stepping stone" corridor due to the existing developed landscape north of the intersection of Melrose and Rancho Santa Fe. Large mammals may not be able to cross consistently due to existing roadways and development.

CNPS-482. A full citation of this passage is self-explanatory: "Remaining habitats have been fragmented by existing development and past agricultural patterns"

CNPS-483. A close examination of the FPA map shows that the large unfragmented block occurs on the ridgeline of "P" mountain. The Highlands is located to the west of this unfragmented block. Of the 203 acres associated with the Highlands Project, 135 acres, or 68% of the project is in open space. This open space contains the only sensitive species on the project site, the California Gnatcatcher. The contribution of 135 acres at 100% conservation combined with 100% conservation area associated with the Paloma project, the 100% conservation in the Rupe mitigation lands, plus the ridgeline at 75% conservation results in the conservation of the large unfragmented block occurring on the ridgeline of "P" mountain as well as a net acreage in the Northern FPA of over 350 acres. Agua Hedionda Creek and coastal sage scrub will be the focus of the preserved areas. The San Elijo Hills project contributes 891.81 acres to the preserve, the single largest contribution of any

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landowner. 83% (1,992,000 individuals) of the Wart-stemmed Ceanothus population will remain extant. Though Summer Holly populations are not as dense as wart-stemmed ceanothus, of an estimated 253,000 individuals in the study area, 221,000 individuals would remain extant. These numbers are adequate to sustain this population. (See page 98 of the SAP.)

CNPS-484. Please see response CNPS-483.

CNPS-485. A close examination of the FPA map shows that the large unfragmented block occurs on the ridgeline of "P" mountain. The Highlands is located to the west of this unfragmented block. Of the 203 acres associated with the Highlands Project, 135 acres, or 68% of the project is in open space. This open space contains the only sensitive species on the project site, the California Gnatcatcher. The contribution of 135 acres at 100% conservation combined with 100% conservation area associated with the Paloma project, the 100% conservation in the Rupe mitigation lands, plus the ridgeline at 75% conservation results in the conservation of the large unfragmented block occurring on the ridgeline of "P" mountain as well as a net acreage in the Northern FPA of over 350 acres. The San Elijo Hills project contributes 891.81 acres (861.8 acres ungraded) to the preserve, the single largest contribution of any landowner in the City. 83% (1,992,000 individuals) of the Wart-stemmed Ceanothus population will remain extant. Though Summer Holly populations are not as dense as wart-stemmed ceanothus, of an estimated 253,000 individuals in the study area, 221,000 individuals would remain extant. These numbers appear to be adequate to sustain this population. (See page 98 of the SAP.) Conservation levels associated with the San Elijo Hills project assure survival of sensitive species as well as the preservation of the largest block of habitat in the Subarea Plan owned by a single landowner.

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previously, the developments proposed in the Northern FPA for the Hedionda Creek Valley destroy a large part of the unbroken block of habitat, including CSS and riparian habitat, and disrupt an important wildlife corridor. The proposed golf course development on Cerro de las Posas destroys 125 acres of chaparral. The University Commons project in southern San Marcos destroys a large area of CSS south of San Elijo/Questhaven Road. How can the Wildlife Agencies concur that the Subarea Plan adequately conserves the remaining large unbroken blocks of habitat?

CNPS-486 The area that is shown in brown on the Subarea Plan Map, in the Southern FPA on the eastern side of San Marcos, is indicated in Figure 5, p. 50, as a habitat linkage to the County MSCP. On the MHCP map of vegetation communities inside the BCLA (draft MHCP Plan, Volume I, Figure 2-4), this area is shown as CSS/Chaparral Mix. This is valuable habitat. Why is the City proposing only 60% conservation in this area?

CNPS-487 P. 52, paragraph 1
In this paragraph, it says that the Northern FPA provides a northward linkage to sensitive habitat lands in the County and therefore the Subarea Plan adequately provides for this critical linkage. As previously stated, the County has been very concerned about how this linkage will occur and has been critical that the City's development plans for the Agua Hedionda Creek Valley will fragment the remaining large block of coastal sage scrub connecting the MHCP to the MSCP. Since the County has not completed its habitat plan for the area, where does this linkage occur? What evidence can be supplied that ensures connectivity between these two habitat plans in the Northern FPA?

CNPS-488 P. 52, 4.2 land use and ownership considerations
In paragraph 4, it states that a conservation bank has been approved in the Northern FPA. Where is the location of this conservation bank? In paragraph 7, it states, " Combined, the Northern and Southern FPA contribute nearly 3,000 acres of conserved lands to the preserve." Several areas within the San Marcos Subarea Plan Public Review Draft appear to refer to areas outside San Marcos' Sphere of Influence. In order to provide an adequate picture of how the Preserve design relates to the City's sphere and the MHCP study area, please answer the following:

- CNPS 489-491
- How many acres of the Preserve are located within the City limits?
 - What percentage is this of the remaining habitat (BCLA) in the City of San Marcos?
 - How many acres of the Preserve are located outside of the City limits in San Marcos' Sphere of Influence?
- CNPS-492
- How many acres of the San Marcos Preserve are outside the City's sphere? We are aware of one area in the Northern FPA where the area shown as 100% conserved in the Subarea Plan is outside San Marcos' sphere. Are there other areas? If so, where are they and what is the justification of including them in the San Marcos Subarea Plan?

CNPS-486. Please note that this area is predominately Chaparral with only a small portion of the more mesic areas supporting Coastal Sage Scrub. The area known as SPA 2 is listed as a potential acquisition site of the Subarea Plan.

CNPS-487. The single largest block of coastal sage scrub occurs along the ridgeline of "P" Mountain, rather than in the Highland Project as indicated by the commentator. A western extension of a mix of Coastal Sage Scrub and Chaparral extends northwestward from this ridgeline. Of the 203 acres associated with the Highlands Project, 135 acres, or 68% of the project is in open space. The open space contains the only sensitive species on the project site, the California Gnatcatcher.

CNPS-488. This is the Rupe Mitigation lands occurring along the ridgeline of "P" Mountain.

CNPS-489. Refer to the Table on Page 65 of the City's Subarea Plan entitled "May 2000 Habitat Acreage And Conservation Within The FPA Footprint". Of the 267.8 acres of natural habitat outside the FPA (also coterminous with the City Limits), 255.6 acres, or 95%, are conserved. This conserved acreage represents mitigation for project impacts directly adjacent to and inside of the City of San Marcos. Figure 4 of the City's Subarea Plan shows the Subarea Plan boundary and the FPA components.

CNPS-490. Please see response to CNPS-489.

CNPS-491. Refer to the Table on Page 65 of the City's Subarea Plan entitled "May 2000 Habitat Acreage And Conservation Within The FPA Footprint". Areas outside of the City limits in San Marcos' Sphere of Influence can be seen in the column Gross Acreage in FPA outside BCLA. BCLA calculation stopped at the City boundaries.

CNPS-492. Please see responses CNPS-489 through CNPS-491.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

CNPS-493 Also, in this paragraph, the statement that the City's Subarea Plan has provided a comprehensive tool guiding development away from sensitive natural habitats is not true. Several projects previously discussed in this comment letter indicate that the City has not made a sincere effort to preserve its most sensitive resources including wetlands, coastal sage scrub, and wildlife corridors. How will the City correct this problem and work towards better conservation?

CNPS-494 P. 53, Top of page
In the second paragraph at the top of the page, the statement is made, "...some private parcels will likely need to be acquired from willing sellers to meet both biological and land use goals. Furthermore, these parcels may be relatively costly to acquire due to location, zoning, and other factors."

Acquisition of land containing valuable habitat and/or functioning as a linkage area is probably the best way to assure its preservation and to avoid fragmentation. The City of San Marcos needs to acquire more of the lands containing valuable habitat and/or functioning as linkage areas -- that is, more of the land in the BCLA -- than they are currently proposing. It is recognized that these lands may be relatively expensive to acquire; however, an adequate Preserve cannot be assembled without some cost. We believe that the public is willing to bear the cost of creating an adequate Preserve. Therefore, we propose that the City of San Marcos identify land in the BCLA that can be acquired from willing sellers and make plans to acquire these lands as part of the Preserve. Please comment in detail on this proposal.

CNPS-495 Pp. 53-54, Designation of Preserve Focused Planning Areas
Northern FPA

This paragraph fails to mention that this area contains one of the last large blocks of coastal sage scrub and provides linkage to the County's MSCP habitat plan. Also missing is the importance of the area as the headwaters of Agua Hedionda Creek, which serves as a recognized wildlife corridor. Please explain why these details are missing.

Southern FPA

It is unclear why the closed landfill is considered part of the County Core, an area to be of critical conservation importance allowing for take of the gnatcatcher elsewhere in the North County. This area is disturbed habitat of low value and not part of the Biological Core and Linkage Area. Why was this area chosen to be part of the Preserve? Are there plans for restoration of viable habitat here? If so, what are the scientific bases for successful restoration?

CNPS-496 P. 54, Flood Control Infrastructure and Associated Appurtenances located:
We are unable to identify exactly where the "S" curve and the "Easy Living Mobilehome Park" are located. Please indicate these locations on a map. What flood control infrastructure and associated appurtenances are planned for these areas? How will they impact Preserve lands?

CNPS-497 P. 55, Bottom three-quarters of page

CNPS-493. Comment noted.*

CNPS-494. As stipulated in the City's Subarea Plan and the MHCP EIS/EIR, the City's conservation levels are biologically adequate to ensure connectivity in the critical gnatcatcher corridors in the southern FPA and conserve the large block of unbroken habitat in the Northern FPA.

CNPS-495. A review of the vegetation map (1" = 2000') for the MHCP shows the single largest block of coastal sage scrub occurs along the ridgeline of "P" Mountain, rather than in Agua Hedionda Creek watershed as indicated by the commentator. The area indicated by the commentator is a mix of Coastal Sage Scrub and Chaparral extends northwestward from this ridgeline. The Subarea Plan and previously approved projects provide for conserving Agua Hedionda Creek as a wildlife corridor. The landfill will be revegetated per a court-approved landscaping plan. This revegetated area, will provide an important linkage in the Southern FPA. See Figure 5 of the City's Subarea Plan illustrating the critical linkage through the closed landfill.

CNPS-496. Easy Living Mobile Home Park and the "s" curve are generally located east of Discovery, west of McMair Road, and south of San Marcos Boulevard.

CNPS-497. A graphics was to be inserted showing road alignments crossing San Marcos Creek. This graphic will be provided in the City's Final Subarea Plan.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

The bottom 3/4 of the page is blank. Is something missing? If, so what is missing?
Pp. 56, Northern Focused Planning Area Conservation Rates and Policies
Please refer to the map entitled "City of San Marcos Focused Planning Area" when
addressing the comments below.

CNPS-498

Murai SP- This area consists of coastal sage scrub, riparian habitat and seves as a buffer between two residential areas. Two canyons run through the property and channel rainfall from the surrounding hillsides to Agua Hedionda Creek. Wildlife, displaced by the Santa Fe Hills development, have been pushed up into these canyon areas where they stay during the day and forage along Agua Hedionda Creek at night. The Subarea Plan acknowledges the importance of preservation of its riparian habitat, CSS and wildlife corridors. Since this area contains all three and serves as a north-south linkage, why is only 50% considered for preservation? How will the City's development objectives of 89 residential dwelling units, as indicated in the College Area Community Plan, be obtained without filling in the canyon that now serves as a tributary to Agua Hedionda Creek? As stated in a previous comment, the San Diego aqueduct R-O-W has problems that need to be addressed. How will the City assure the public and the Wildlife Agencies that the R-O-W will adequately function as a wildlife corridor?

CNPS-499

San Marcos Highlands- In a prior comment, the question was asked why the City excluded the vacant lands proposed for development on the Highlands site from it's FPA. By excluding all areas to be developed, it appears to the public that 100% of the area is being conserved when only about 60%, mostly around the edge of the site, is being conserved. Since the whole site is located in the MHCP Biological Core and Linkage Area, please explain why this was done? Problems associated with the project's ability to link to the County lands in the north, use of the San Diego R-O-W, and the extension of Las Posas Road have previously been addressed in this comment letter.

CNPS-500

San Marcos Creek, Twin Oaks Valley Reach Mitigation Area- According to the map, this area appears to run along the Twin Oaks Valley road and lies outside the Biological Core and Linkage Area. This area is important because it contains a large amount of the wetlands along San Marcos Creek. However, it is surrounded by high-density residential, commercial and industrial uses. Who presently manages this mitigation area? If a homeowners association manages it, how will this be addressed when the area becomes part of the City's Subarea Plan?

CNPS-501

The portion of the Creek that runs adjacent to Twin Oaks Valley Road from north of La Cienega through the heart of the City contains wetlands and is heavily fragmented. This is most apparent as San Marcos Creek passes under Mission Road via a culvert under City property until it surfaces at Twin Oaks Valley Road and SR78. How large is the culvert? How long is the span from Mission to SR78? How is it designed to accommodate wildlife movement? What methods are presently used to ensure adequate wildlife movement from the northern-most area set aside for 100% preservation through to Lake San Marcos?

CNPS-498. Page 55 of the Subarea Plan lists the following conservation policies addressing the above concerns on development of the Murai property:

- Manage conserved area for preservation of Riparian and Coastal Sage Scrub habitats.
- Project design shall insure a common linkage along with San Marcos Highlands to the east.
- The required 50% project open space shall be left in native vegetation and this shall contribute habitat linking the northern FPA to the County jurisdiction to the north.
- Project design shall utilize the aqueduct R-O-W to establish a minimum 400 foot wide corridor.

No application has been submitted for development of the Murai property. Project approvals will have to implement NPDES best management practices. Additionally, all impacts to Agua Hedionda Creek must be minimized.

CNPS-499. It is unclear how the public would construe this since the FPA Map clearly shows the location of the conserved and non-conserved lands in the San Marcos Highlands Project. The FPA shows 100% habitat conservation for the undeveloped areas. The commentator makes the assumption that all BCLA lands were to be incorporated at 100% conservation into the FPA. This is not the case. The BCLA has always been a regionally planning level tool. BCLA lands were the area from which the FPA were to be assembled.

CNPS-500. This mitigation area is included in the Subarea Plan under the direction of the USFWS and CDFG to include all mitigation lands in the FPA. The final Subarea Plan will address how this will be managed.

CNPS-501. Five 10-foot by 11-foot boxes run under Mission Road for a length of approximately 55 feet.

However, please note that San Marcos Creek is not part of the Focused Planning Areas, nor is it part of the Subarea Plan other than being an area wherein "no net loss policies" apply. The MHCP has established "no net loss" policies.

Highway 78 effectively isolates the Northern FPA from the Southern FPA.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

As a reminder, Plan approval will not result in any wetland permits, nor will it alter the existing regulatory control of state and federal resource agencies over wetlands. Any future plans affecting San Marcos Creek will require independent review by the Resource Agencies.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

CNPS-502 The reversed "L" shaped property in the northern portion consists of wetlands, riparian woodlands, a large retention basin and a large amount of disturbed grassland. The grassland area appears to have been used for agriculture. Will this area be revegetated? If so, how and when?

CNPS-503 The long appendage that extends into a small pocket of homes off of Berkshire Court appears to be an isolated pocket that includes portions of the golf course. Does this area include the golf course? The above-ground Vista flume runs through this area and the habitat appears to be sparse and degraded. What is the status of the habitat in this area? If it is degraded, what measures will be introduced to revegetate the area?

CNPS-504 The area south of La Cienega that runs along Twin Oaks Valley Road appears to include paved trails, riding trails and portions of the golf course. This must be an error and needs to be corrected in the final map. Please explain exactly what is being conserved and why.

CNPS-505 The area across from the intersection of Twin Oaks Valley Road and Borden Road narrows, creating a pinch point for wildlife movement. What is the width of this corridor? How much of the width is wetlands? How will it be an adequate functioning wildlife corridor?

Rupe Family Trust Mitigation Land and Ryan Subdivision Mitigation lands- It is unclear where these areas are. Please identify these areas on a map. Also please answer the following: What habitat exists on site? What is the present quality of the habitat? When was the last monitoring of the site performed? Who presently manages the monitoring? Are these areas within the BCLA?

CNPS-506 P. 56 and comments associated with the City of San Marcos Focus Planning Area Map
Overall, it was very difficult to compare the table on page 56 in the Subarea Plan, "Area Conservation Rates and Policies," with the map. It would be helpful if the map had a key that gave the property name so that the public could compare the map with the conservation description listed in the Subarea Plan.

CNPS-507 Why was there no attempt to connect the open space land (shown in green on the map) on the eastern portion with the Escondido Preserve lands below Emerald Heights? This would have helped provide connectivity to the area adjacent to Borden road east of Vineyard that is proposed for 100% conservation. Another area, just south of the intersection of Vineyard and Twin Oaks Valley Road, was also not considered for preservation. This area, combined with the large open space area adjacent to Emerald Heights, could have provided connectivity between Escondido, San Marcos Creek (adjacent to Mission Road) and the San Marcos Creek Twin Oaks Valley Reach Mitigation area. Why were these possible connections not pursued?

CNPS-508 Why is the large area located across the midpoint of the Twin Oaks Valley Reach Mitigation Area only considered for 30% conservation? With an adequate wildlife crossing under Twin Oaks Valley Road, this area could provide a functional biological linkage between the San Marcos Creek Twin Oaks Valley Reach Mitigation Area and the San Marcos Mountains. Since

CNPS-502. The reversed "L" shaped property is the offsite mitigation area for impacts resulting from the Civic Center construction and Hwy 78 ramp construction. The disturbed grasslands lie outside the mitigation areas. There are no current plans to revegetate this area.

CNPS-503. The Biological Monitoring Program will address how all areas of the FPA will be maintained and monitored. No revegetation is proposed in this location. It is 100% conserved.

CNPS-504. A revised FPA map will distinguish between mitigation area and riding trails.

CNPS-505. The thread of San Marcos Creek scales at a width of 10 feet per the SANDAG database files. This is, however, different from the width of the riparian habitat along the Twin Oaks Valley Reach of San Marcos Creek. The riparian corridor near the intersection of Borden Road and Twin Oaks Valley Road varies between 72 feet and 97 feet. The actual thread of the creek is substantially less. The Focused Planning Area Map is based on digitized aerial photography. The constriction is caused by existing development.

Please note that San Marcos Creek is not part of the Focused Planning Areas, nor is it part of the Subarea Plan other than being an area wherein "no net loss policies" apply. The MHCP has established no net loss of wetland policies.

The revised Subarea Plan will include an exhibit verifying the Rupe Family Trust and Ryan Subdivision Mitigation Lands. Black sage dominated coastal sage scrub currently exists at this location. The quality of the habitat is considered higher quality due to its location in the proposed FPA. The Biological Monitoring Program will address how this location will be managed. Furthermore, these areas are within the BCLA.

CNPS-506. The revised Subarea Plan will include an exhibit to assist the public in comparing the above-mentioned table with corresponding maps.

CNPS-507. The intervening area in the City of San Marcos is developed as rural residential homes. Additionally, it appears the area referenced may be in the County, outside the limits of the Subarea Plan.

Please note that these two roads do not intersect. The general area is developed as residential.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

CNPS-508. The FPA maps fixes the general area in which the corridor will occur. A minimum of 30% of this area will go into a corridor. The corridor design will insure adequate width to allow connectivity between the ridgeline of "P" mountain and the Twin Oaks Valley Reach of San Marcos Creek.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

residents report that mountain lion sightings still occur in this area, connectivity is an important feature.

CNPS-509 The large area along the east side of the San Marcos Mountains is shown at 75% conservation. This area consists predominantly of steep slopes. What assurances will be given by the City that there will be adequate connectivity between this area and adjacent areas shown at 100% conservation?

CNPS-510 Three smaller fragmented areas, shown at 100% conservation, lie adjacent to development in the Santa Fe Hills community. Are these mitigation areas? What is the habitat in these areas? What is the status of the habitat? Is there a mitigation-monitoring plan for these areas? When were these areas last monitored? Who manages these areas? One of the areas within this group is believed to contain the last remaining Thread-leaved brodiaea population left within CACP. What is the status of this community of brodiaea? If any of these areas are degraded, what measures will the City use to revegetate these areas? Who will repair the damaged fencing that was installed to protect these areas from human and animal disturbance? When it be repaired?

CNPS-511 Why is Agua Hedionda Creek not considered for preservation? As previously stated, it is part of the BCLA, consists of wetlands and is a recognized north-south wildlife corridor. Considering the emphasis the MHCP places on preservation of wetlands and riparian habitat, why was this area excluded?

CNPS-512 P. 56, Vernal Pool Major Amendment Area
The vernal pools in San Marcos were identified in the 1996 Biological Resources Report for the City of San Marcos. Due to the very sensitive nature of vernal pools, they need the highest level of protection. The Wildlife Agencies should carefully review the preservation plans for vernal pools in San Marcos before giving the City permitting authority under the MHCP. How will the public be notified of annexations of properties containing vernal pools into the MHCP? Will the public have the opportunity to comment on Amendments to the MHCP to annex properties containing vernal pools?

CNPS-513 The City of San Marcos is concerned about property owner's rights. However, they seem to be giving special consideration to the owners of the properties where the vernal pools are located. For example, the statement on p. 56, "Development of those properties having narrow range endemics in the vernal pool major amendment area shall conform to the MHCP standards upon annexation as long as those standards do not result in a taking." Also, on page 71, in Sec. 5.1.4, the Subarea Plan reiterates that narrow range endemic conservation standards shall apply to properties containing vernal pools upon annexation "as long as those standards do not result in a taking of private property."

CNPS-514 Who owns the properties where the vernal pools are located? If the existence of vernal pools on any (or all) of these properties renders the economic use of the property infeasible, why

CNPS-509. Please refer to Section 4.3.2, page 55, for the eight mandatory goals that assure connectivity in this area.

CNPS-510. It appears the comment refers to the Paloma Brodiaea mitigation lands. The final Subarea Plan will address how this will be managed. Also, the City has initiated action that will result in fence repair.

CNPS-511. The Agua Hedionda Creek watershed is addressed in Section 4.3.2. Conservation policies for both Highlands and Murai address preservation of riparian habitats.

CNPS-512. The Wildlife Agencies will carefully review the preservation plans for vernal pools in San Marcos. If this area is proposed for development, the San Marcos Subarea Plan will be amended to reflect the conservation and take. Because implementing the preservation plan for the vernal pool area will require a major amendment, public notification is required under CEQA/NEPA. See page 81 of the San Marcos Draft Subarea Plan.

CNPS-513. One of the principals of the MHCP is that regulations will not result in the taking of private property. This consideration is given to all properties potentially affected by MHCP standards. Conservation standards for narrow range endemics are substantially higher for this specialized plant community than for other communities, therefore the takings caveat is more pronounced.

CNPS-514. The City does not object to adding property from willing sellers. However, it should be noted that acquisition costs for vernal pool properties are extremely expensive due to their history of the industrial zoning and the associated improvements.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

CNPS-515 would the City object to the acquisition of the property and inclusion in the MHCP preserve?
What actions are the Wildlife Agencies taking to protect the vernal pools on these properties?

CNPS-516 Pp. 58-62, Southern Focused Planning Area a. Closed Landfill Area.
There are several questions regarding this site, as indicated in previous comments. The site is outside the BCLA, degraded and would need a vegetation plan to make it acceptable habitat. What is the timetable for revegetation? In addition, the revegetation plan, Attachment E, was not supplied with this Draft Subarea Plan.

CNPS-517 San Elijo Hills Open Space Lands- There are many questions surrounding this area as well as the proposed San Elijo Hills Golf Course. How and why the Preserve boundaries took their particular shape in this area is unclear. What was set aside, its condition and for what purpose is also unclear. Residents in the area state that the original intent was to set aside the land as a regional open space park, for passive recreational use. Later, the plan changed and a large portion of the open space was considered for a public or private golf course. Money appears to have been exchanged between the developer and the City in the process and the original Development Agreement has been amended. As previously stated, it appears that the City's General Plan was amended to bring it into conformance with the San Elijo Hills development. In order to evaluate how this area fits into the Preserve structure and answer some of these questions, it was necessary to research the portion of the Development Agreement used to set aside this area for preservation. (The Development Agreement reference is the one amended in 1997. Is this the most recent version of the Development Agreement?)

Page 12 of the development agreement states,

City hereby agrees that, based on the significant benefits of the Project, the 45 acres of allowed coastal sage scrub habitat that City possesses as a result of its participation in the NCCP planning process shall be reserved for the Project from the effective date of this Amended Agreement through the date that City has adopted the BRMP and has received approval of CDFG and USF&WS for same ("BRMP Approval Date"). City agrees to use its best efforts to achieve the BRMP approval at the earliest feasible date. In the event that City, CDFG, and USF&WS cannot reach an agreement concerning the BRMP, City agrees to pursue other regulatory options that may be available to City that would accommodate development of the Project. During the period pending the BRMP Approval Date, Owner shall assist in funding the City's efforts to complete the BRMP and to secure the necessary approvals for same in an amount not to exceed Twenty-Five Thousand Dollars (\$25,000) ("Maximum Amount"). City shall submit invoices reflecting work done by consultants on the BRMP for payment to Owner, which invoices shall be paid within thirty (30) days after receipt of invoices from City provided that the Maximum Amount has not been exceeded, after which time Owner shall have no further funding obligations with respect to the BRMP.

CNPS-515. The Wildlife Agencies are currently not conducting any actions on the vernal pools.

CNPS-516. The landfill will be revegetated per a court-approved landscaping plan. This revegetated area will provide an important linkage in the Southern FPA. See Figure 5 of the City's Subarea Plan illustrating the critical linkage through the closed landfill. The Attachments to the Subarea Plan are available at City Hall.

CNPS-517. Please see response to CNPS-467.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

CNPS-518 How did this development agreement affect the San Elijo Hills mitigation area and San Marcos' Subarea Plan? What was the total acreage involved? Was some of this land "Area Q"? On same page of this agreement under "Mitigation Obligations Related to Prior Clearing of Property," it states,

Owner has been informed that a portion of the Mitigation Property may be condemned or acquired under threat of condemnation for use as a park. In the event that a portion of the Mitigation Parcel is condemned or acquired under threat of condemnation, Owner shall contribute Fifty Thousand Dollars (\$50,000) to City for habitat identification and preservation, to be used at the discretion of the Development Services Department of City, for the purpose of completing mitigation for impacts to coastal sage scrub and California gnatcatchers, as identified in the Final Environmental Impact Report for the original Specific Plan. This contribution to City, coupled with the previously acquired coastal sage scrub habitat, as reflected in the HP Agreement, shall constitute complete mitigation for impacts to coastal sage scrub and associated habitats, including impacts to California gnatcatchers, as identified in the Final Environmental Impact Report for the original Specific Plan."

CNPS-519 Was this mitigation property condemned? If so, how was the money spent? Did it or will it benefit the Subarea Plan? If so, how?

San Elijo Hills Golf Course- The above-referenced Development Agreement, on page 6 of Exhibit B, states,

Upon or before the recordation of the first final map for the Project, Owner shall grant City open space easements for eighty percent of the Double Peak Regional Park and one hundred percent of the Neighborhood Park."

CNPS-520 Who owns the remaining 20% of Double Peak Regional Park? What was the total acreage involved? Is some of this land "Area Q or golf course"?

This page of the document also states,

The following Regional Park facilities shall be completed by Owner: (1) Construction of a primitive group camping area prior to the issuance of a building permit for the 1,800th residential dwelling unit. (2) Construction of a primitive amphitheater prior to the issuance of a building permit for the 2,750th residential dwelling unit.

CNPS-521 Where are these areas located? Are they within the hard-line Preserve area of Subarea Plan? Page ES-19 of the Subarea Plan states that golf courses and camping do not meet accepted land uses within and adjacent to the Preserve. How will the City meet the guidelines for the Preserve and provide a Golf Course and camping area? Was the Golf Course part of the regional

CNPS-518. Please see Page 62 of the Subarea Plan for details on San Elijo's contribution to the Southern FPA.

CNPS-519. The mitigation property was not condemned. Rather, it was dedicated. The Development Agreement stipulated that the Developer contribute \$50,000 toward the preparation of the Subarea Plan. These funds have been spent.

CNPS-520. Yes, this land is part of the golf course. San Elijo Hills has dedicated a Neighborhood Park and granted the City an Irrevocable Offer of Dedication for the regional parks area.

CNPS-521. The regional recreational facilities will be located within Area Q along with the other listed open space areas not in the "hard-line" preserve areas. Please note that a requirement of the Golf Course is that it does not impact downslope chaparral areas as well as the FPA, as determined by the analysis associated with the Conditional Use Permit. Until plans are submitted, responses to site-specific quantification can not be ascertained.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

park? If not, will monies gained from the development of the golf course be applied to habitat acquisition and Preserve maintenance?

CNPS-522 Habitat Linkage Area SPA-2, Habitat Linkage Area to CSUSM, Habitat Linkage Area Vista Colina Drive, Huff Property, Wilern Mitigation Land, Meadowlark Estates On-site Mitigation Land, Miscellaneous Undeveloped Lands surrounding SAP-2, South Coast Asphalt (Hanson), Kaufman and Broad Mitigation Area, Village N (Rancho Coronado) Open Space Lands and Lands to the west and to the south of San Elijo Hills- It is unclear where these areas are. Please identify these areas on a map. Also please answer the following: What habitat exists on site? What is the present quality of the habitat? When was the last monitoring of the site performed? Who presently manages the monitoring? Are these areas within the BCLA?

CNPS-523 P. 63, San Marcos Creek
We previously commented on San Marcos Creek north of Highway 78 and between Highway 78 and Lake San Marcos. We also discussed the proposed Melrose Drive crossing of San Marcos Creek south of Lake San Marcos.

CNPS-524 In the Sierra Club's comment letter of Jan. 14, 2002, to the Army Corps of Engineers regarding Brookfield Homes' application for a permit for wetlands impacts to San Marcos Creek, we expressed the following concerns:

CNPS-525 Grading along the proposed realignment of San Elijo Road. Our letter stated, "It appears that grading along the proposed realignment of San Elijo Road will reach almost to San Marcos Creek, along its south side. This grading needs to be pulled away from the wetlands."

CNPS-526 What actions have been taken to pull the grading away from the wetlands and to prevent impacts to the wildlife corridor along the creek in that area?

CNPS-527 Grading along other parts of San Marcos Creek. Our letter stated, "It appears that grading will occur in other places along San Marcos Creek, due to the development, although it is difficult to tell from the maps attached to the Public Notice [of the application for the 404d permit]. All grading impacts to San Marcos Creek and the wildlife corridor need to be clearly described. They should be avoided, and the project redesigned accordingly, if necessary."

CNPS-528 What actions have been taken to clearly identify these grading impacts to San Marcos Creek due to the development and to avoid them?

CNPS-529 P. 66, Net Acreage in FPA outside BCLA and Percent Conserved
The environmental goal is to achieve the maximum level of conservation in the MHCP, as shown in Alternative 3, the Biological Core and Linkage Area (BCLA). The BCLA includes all of the highest quality remaining habitat areas, including the largest blocks of habitat and critical linkages between them, according to the MHCP EIS/EIR, p. ES-10. The table on p. 66 of

CNPS-522. The Subarea Plan will be revised to include a location map of these properties. Please refer to Section 4.3.2, pp 57- 62. Additionally, a vegetation map of the City of San Marcos is available in the Planning Department with information on the habitats in the City. Management issues will be addressed in a Biological Monitoring Program.

In general, the following information is provided for specific properties:

- Wilhern – Managed by The Environmental Trust.
- Huff Property – Will be managed by Brookfield Homes.
- Meadowlark – Managed by The Environmental Trust.
- South Coast – Permitted prior to management requests.
- Kaufman & Broad – Permitted prior to management requests.
- Village N – Subject to future permitting – will be required to be managed at that time.
- West of San Elijo Hills – Subject to future permitting – will be required to be managed at that time.
- North of San Elijo Hills – Owned by County of San Diego – is not required to be managed.

CNPS-523. Please see response to CNPS-501.

CNPS-524. This is an introduction to comments CNPS-525-528.*

CNPS-525. San Elijo Road was permitted by USACOE, USFWS, CDFG, and RWQCB.

CNPS-526. The permits were issued by USACOE, USFWS, CDFG, and RWQCB.

CNPS-527. As a reminder, Plan approval will not result in the issuance of any wetland permits, nor will alter the existing regulatory control of state and federal resource agencies over wetlands. Impacts cannot be quantified until a design is proposed. Future projects will be required to implement all site design measures and mitigation measures subject to permit conditions.

The Subarea Plan requires no net loss for wetland areas.

CNPS-528. As a reminder, Plan approval will not result in the issuance of any wetland permits, nor will alter the existing regulatory control of state and federal resource agencies over wetlands.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

Grading impacts have been required to be sufficiently set back for San Marcos Creek as well as implementation of Best Management Practices.

CNPS-529. It is incorrect to assume that no high quality habitat occurs outside the BCLA. Additionally, it is an artifact of the GIS evaluation process whereby the BCLA footprint terminates at the City boundary. It is not that the BCLA does not exist outside the City limits, but that those (BCLA lands) simply do not register in the GIS model for San Marcos. The ecological value of these lands (Huff and Highlands) is significant providing connectivity as well as high quality habitat.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

the subarea plan indicates that there are 255.6 net acres in the FPA outside the BCLA. What is the ecological value of these lands and why are they proposed for preservation in the subarea plan?

CNPS-530 P. 69, Hard-line 100% Conservation Areas
This chart indicates that 29 acres of the San Elijo Hills Open Space Lands, included in the hard-line 100% conservation area, has been graded. How does this meet the guidelines for conservation under the MHCP? Will the City revegetate these acres? If so, when? What vegetation will be used?

CNPS-531 Additional Comments on the Map of City of San Marcos Focused Planning Area
This map shows "Natural Habitats" that are not included in the Focused Planning Area but are part of the BCLA. Two of these areas are discussed below.

Jacks Pond Park- This park is already in public ownership, and contains some valuable habitat. Why are the undeveloped parts of this park not included for preservation in the MHCP?

CNPS-532 La Moree Park (site)- Is this a City-owned park site? It appears to contain valuable habitat. Why is it not included for preservation in the MHCP?

CNPS-533 Pp. 68-75, Preserve Assembly
Does the San Marcos Subarea Plan's Preserve Assembly deviate in any instances from the MHCP Plan's Preserve Assembly? If so, please describe and explain the deviations.

CNPS-534 P. 70, 5.1.3 Utility and Transportation lands and Easements
This section did not mention the San Diego Aqueduct R-O-W (SDA). How is the SDA different from other utilities? Since the Subarea Plan calls for using the SDA R-O-W, are there any restrictions that need to be considered with using the SDA R-O-W?

CNPS-535 Pp. 76-88, Plan Implementation
Does the San Marcos Subarea Plan's Implementation process deviate in any instances from the MHCP Plan's Policies and Implementation Structure? If so, please describe and explain the deviations.

CNPS-536 P. 76, 6.1 Interim Protection
As previously stated, the protection of the Slope Density Ordinance may be inadequate because it is not enforced.

CNPS-537 P. 77, 6.1.4 Plan Amendment Process
Any proposed annexation of County land should be reviewed by the County, City and Wildlife Agencies to ensure the inclusion of the area into the San Marcos Subarea Plan does not jeopardize or is in conflict with the County's MSCP plan. (See Attachment C.)

CNPS-530. The San Elijo Hills SPA EIR requires all disturbed areas within and directly adjacent to biological open space (outside of fuel mod zones) will be revegetated with native vegetation. The adjacent vegetation will determine which type of plant community would be planted -- typically either chaparral dominated by wart-stemmed ceanothus and summer holly, or coastal sage scrub dominated by either California sage brush and buckwheat or black sage.

CNPS-531. Jacks Pond Park is surrounded by urban development and has been steadily used as an active recreational site. As such, it is not a good candidate for inclusion in the Subarea Plan.

CNPS-532. The adopted Recreational Element of the General Plan states the La Moree site for development as an urban park with basketball, playground, barbecue and parking facilities.

CNPS-533. The City's Subarea Plan complies with the provisions of MHCP.

CNPS-534. SDG&E has a separate Subarea Plan dealing with their easements. The San Diego County Water Authority does not. The San Diego County Water Authority has the ability to establish control over activities on the SDCWA R-O-W. Maintenance activities along this easement are allowed. Activities not consistent with provisions of the Subarea Plan would not be allowed. SDCWA would need to obtain individual take authorization through the Wildlife Agencies or through the MHCP.

CNPS-535. The City's Subarea Plan is consistent with the MHCP.

CNPS-536. Approval and adoption of the Subarea Plan would make compliance with the Slope Density mandatory.

CNPS-537. Comment noted.*

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

CNPS-538 P77, 6.1.5 Process for Exchanges and Minor Modifications to Preserve Boundaries
How can the public be assured that the City will not swap habitat areas within the preserve any time these areas become economically attractive for development? The City of San Marcos owns, develops and leases land for profit and thus acts as a speculator and developer. There is a need for independent oversight to ensure Consulting Biologists hired by the City will not be overly influenced by development pressure within City. The potential for conflict of interest in this situation must be avoided.

CNPS-539 P. 78, 6.2.1 Assurances in the Implementing Agreement
Under Phased Implementation and Severability, it states, "Phasing means that the city may implement the Subarea Plan over time based on economic demand or land development..." What assurance will the City provide the public that it will implement the plan in a timely manner? It would not serve the public interest if the City were to wait forty years to revegetate preserve land that is degraded today. Please supply an estimated time/task/expense schedule for implementation. Show milestones and assign responsibility to tasks so that the public can monitor the plan.

CNPS-540 P. 79, 6.3.1 Interim Resource Protection
As previously stated, there is some doubt the City will follow the codes, regulations or ordinances it has in place to adequately protect habitat during this interim period. What assurance will the City supply the public and the Wildlife Services that it will comply with its own laws?

CNPS-541 P. 80, 6.3.2 Interim Resources Protection
This paragraph gives the City Manager or his designee the power to decide if clearing, brushing grubbing or grading of vacant lands conforms to the subarea plan. As previously stated, there is too much potential for conflict of interest. An independent party or a representative of Wildlife Agencies should either make the determination or be in agreement with the City Manager's decision before the action is allowed to take place.

CNPS-542 P. 82, 6.4 Subarea Plan Amendments
Please explain how, "Removal of lands from conservation or reconfiguration of project plans resulting in a decrease of the amount or quality of habitat conserved that could not be addressed by a boundary adjustment." and requires a Plan Amendment benefits the public. In addition, the City should not be allowed take authorizations to accommodate development of proposed of annexation land outside the City boundary that are part of the study area of the MSCP until that plan is complete and the public can be assured that the City's actions will not endanger the success of either the MHCP or MSCP.

CNPS-543 Pp. 83-84, 6.6 Annexations
Paragraph 5 on page 84 it states "In the case of annexations of land greater than 40 acres that require take authorizations for development, the city will work cooperatively with the County of San Diego or other entity to assure consistency between the San Marcos Subarea Plan,

CNPS-538. See Section 6.6 on page 82 of the City of San Marcos' Subarea Plan. This section provides the necessary assurances. The City's Subarea Plan Language for "Minor Modifications" is that of the MHCP framework document and is included in the City's Subarea Plan. Verbatim text follows.

"5.6 Process for Exchanges and Minor Modifications to Preserve Boundaries

Adjustments to the Preserve may be made without the need to amend either this Subarea Plan or the MHCP Plan in cases where the preserve boundary results in a Preserve area of equivalent or higher biological value. These actions are known as 'minor amendments'.

The City in accordance with the MHCP Plan will make the determination of the biological value of a proposed boundary change, with the concurrence of the Wildlife Agencies. If the City's Consulting Biologists determine that the adjustment will result in the same or higher biological value of the preserve area, no further action by the jurisdictions or wildlife agencies shall be required.

Any adjustments to the Preserve boundary will be disclosed in the environmental document (project description) prepared for the specific project. An evaluation of the proposed boundary adjustment will be provided in the biological technical report and summarized in the land use section of the environmental document.

If lands designated as FPA within the County of San Diego (or other local jurisdictions) are annexed into the City of San Marcos, these lands shall be incorporated into the City's Subarea Plan and shall be considered covered under the City's Implementing Agreement."

CNPS-539. This is not possible in the standards areas as the plan will be implemented as properties develop. The Maintenance and Monitoring Plan will stipulate these activities in "hard line" areas.

CNPS-540. The City will prepare and implement ordinances that will undergo environmental review and be available for public review.

CNPS-541. Note that the interim measures are those that exist prior to the incorporation of the approved Subarea Plan into the Conservation Element of the General Plan. During this period any clearing, brushing grubbing or grading of vacant lands

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must conform to the adopted Subarea Plan. Nothing in the MHCP or the Subarea Plan envisions the Wildlife Agencies "plan checking" every potential permit associated with clearing, brushing grubbing or grading of vacant lands. The Wildlife Agencies will review project-specific environmental documentation.

CNPS-542. Any plan amendments will only be implemented with concurrence with the Wildlife Agencies. The Subarea Plan has been prepared to implement the area with the current City limits and ultimate City boundaries. Since the General Plan and Subarea Plan are long-range planning documents, to ensure effective management, it is appropriate to plan for the ultimate expansion of the City's boundaries.

CNPS-543. Please note that the County decided to not participate in the MHCP process. Therefore, no County Subarea Plan standards are available from the County by which to compare the City's Subarea Plan. The County's letter is conclusionary, lacking an evidentiary basis. Additionally, the statement is inaccurate. A review of the MHCP vegetation database establishes that the predominate habitat in this County area is agriculture or developed. Of the 203 acres associated with the Highlands Project, 135 acres, or 68% of the project is in open space. This open space contains the only sensitive species on the project site, the California Gnatcatcher. In 1992 the City of San Marcos enrolled in the NCCP process. The enrollment letter stipulates "a collaborative planning process". Additionally, the Wildlife Agencies are required to approve both Subarea Plans and will assure consistency.

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County MSCP or other applicable conservation standards.”

These guidelines are not being used by the City to date. Pryor’s letter (attachment C) clearly demonstrates that the County opposes annexation of the portion of the San Marcos Highlands project that is being proposed within the County. The County lists three reasons for its opposition.

First, as stated in comment # 21, the annexation would “create a significant negative impact to the County’s North County MSCP Subarea Plan.”

Second, because the proposed San Marcos Highlands project density far exceeds the density allowed under the existing General Plan that currently protects steep slopes under the Resource Protection Ordinance (RPO).

Third, that the proposed project conflicts with the General Plan 2020 Process that proposes to reduce density “...due to the rugged terrain and biological sensitivity.” The County states, “...this project [San Marcos Highlands]...would interfere with the outcome of the General Plan 2020 process, threatening the integrity of the unincorporated territory.”

What assurances does the City provide the Public and the Wildlife Agencies that it will work cooperatively with the County of San Diego or other entity to assure consistency between the San Marcos Subarea Plan and the County MSCP?

CNPS-544 P. 86, 6.9 Relationship Of Subarea Plan Approval To MHCP Core Conservation
Paragraph three states, “Additionally, the City will have no specific acquisition responsibility to expend either cash or direct mitigation to secure the core. However, if the City participates in a successful regional or subregional habitat acquisition funding measure, proceeds from that may be used in part for acquisition of lands in the core.” What does this mean? It appears to be saying the City will not be required to acquire any additional CSS in the gnatcatcher core area if they participate in a successful habitat acquisition funding measure. We believe that the public will support additional funding needed to acquire new properties for preservation.

CNPS-545 Pp. 89-94, Preserve Management
Does the San Marcos Subarea Plan’s Preserve Management deviate in any instances from the MHCP Plan’s Preserve Management and Biological Monitoring Plan? If so, please describe and explain the deviations.

CNPS-546 P. 92, 7.4, Erosion Control
The City already has much of the data needed to create an erosion control plan. Many of the steep hillsides surrounding the City consist of minimal top-soil over a rocky base. For this reason the area has attracted several quarry operations. It is the grading of these hillsides that creates the greatest erosion problem. Once the thin layer of topsoil is removed, exposing an

CNPS-544. If the regional funding initiative is successful, acquisition of the gnatcatcher core can be financially assured. Some of the core gnatcatcher habitat identified by the Draft MHCP Plan for potential acquisition in the sphere-of-influence of the City of San Marcos has been acquired to mitigate development projects. If a regional funding program is adopted, then additional funds could be used to augment conservation. Please see response CNPS-81.

CNPS-545. San Marcos Subarea Plan’s Preserve Management is consistent with the MHCP Plan’s Preserve Management and Biological Monitoring Plan. Review by the Wildlife Agencies ensures conformity.

CNPS-546. A close reading of the standard, “*Ensure that no new surface drainage . . .*” (*emphasis added*) appears to address the commentators concern. Existing surface runoff patterns are unaffected by this standard. To imply that directing urban runoff way from the FPA means eliminating water from reaching wetland is incorrect. Control of urban runoff is essential so as not to alter the existing hydrologic regime in the xeriphytic and mesophytic (more dry) portions of the FPA. The City comprehensively address erosion control issues though the NPDES program. All projects are required to implement all BMPs. This will assure a comprehensive reduction in waterborne toxins and pollutants.

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impervious surface, little revegetation to control erosion can be done without installing concrete revetments and backfill. This often leaves the site with an unnatural look. Any removal of indigenous vegetation should be replaced by either the same material or noninvasive, low fire load material that complements the habitat. Of particular concern is the statement "Ensure that no new surface drainage is directed into the preserve." This is a concern because naturally occurring surface drainage feeds creeks and keeps wetland areas functioning. With development, natural surfaces are replaced by man-made impervious surfaces. This causes drainage patterns and composition of runoff to change. The flow rate increases and non-naturally occurring pollutants from residential and commercial development are carried into the creek. The problem occurs when all drainage from the development is carried away from the site and thereby eliminates normal water flows to creeks. How does the City plan to address this issue? What measures can be implemented to ensure flow rates to creeks and wetland environments are not reduced?

CNPS-547

P. 92, Fire and Brush Management

As demonstrated by the recent fire in Fallbrook, a 100-foot setback may not be adequate. Setbacks requirements should be based on several factors including but not limited to slope, draft, fuel and proximity to possible ignition source. These setbacks should not infringe into the Preserve. The statement that is of concern is "A brush management area adjacent to the setback, but within the preserve, will protect adjacent uses from fires..." Described exactly what a brushfire management area is and how will it be managed? How large an area is it? Preserve means preserve, not alter. Calculations of acreage within the Preserve should not include the brushfire management areas. What percentage of the total acres presently planned to be included into the San Marcos Preserve is brushfire management area?

This is a particular concern because of the proposed projects coming forward that will increase the likelihood of loss of life and property to fire. They may necessitate removal of the same natural vegetation now being proposed for the Preserve. How does the City plan to address this issue? What safety measures will be incorporated into the development to prevent the need for habitat removal? Who will be responsible for brush management? Subarea Plans should identify what entities (e.g., land owner, city, or homeowners' association) have responsibilities for brush management. Will the City provide the public and Wildlife Agencies assurances that development will not be placed in areas with a high fire load, adjacent to a preserve that will result in the removal of habitat within the Preserve? We are concerned that after the implementing agreement is signed the City will need to remove sensitive habitat from the Preserve areas in order to ensure public safety.

CNPS-548

P. 93, Fencing, Lighting and Signage

Edge effects from non-native species are a particular concern within the San Marcos Subarea Plan. There is little detail given under Management Recommendation in the Consultant's Working Draft to determine how fencing will be designed to allow adequate wildlife movement and still keep out people, cats and argentine ants. Please explain how edge effects will be minimized? People, cats and argentine ants are often undeterred by barriers such

CNPS-547. Please note that the areas affected by the recent Fallbrook fire were not in managed open space, nor associated with an approved FPA. Also note that a number of activities are allowed in the Preserve. To assume that no alterations will occur in an FPA is incorrect. The Management Plan may indicate, for example, that invasive weeds like black mustard be eradicated. Or, if in the case of riparian areas with a least Bell's vireo, that cowbirds be trapped.

Remember that the many areas of the FPA are in 100% conserved open space, so that the urban/wildland interface is reduced. In those areas of the FPA where the urban/wildland interface occurs options are available (such as brush thinning as opposed to brush removal) to reduce the fire threat.

Particular brush control measures for each City's FPA will be specified in the Management Plans.

CNPS-548. We acknowledge that managing for adverse edge effects and exotic species is a major challenge for reserve areas. Preserve managers will rely on their best available science via the adaptive management program. It is impossible to "prove" in advance the measures for lighting or other restrictions for adequacy to prevent any degradation of habitat value. Fencing will be evaluated on a project basis to ensure that preserves are adequately protected.

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vegetation, topography, signs or fencing. How will fencing and other measures be designed to prevent these non-natives from degrading habitat? Please be specific.

Lighting is another concern. Although lighting design is addressed in the Consultant's Working Draft of the MHCP, no studies are supplied to prove the measures outlined are adequate. Please show measures incorporated into the Preserve design will be adequate for species in the area.

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CNPS-549

P.94, 7.10 Public Education and Involvement

Educational literature addressing home owners' environmental responsibilities should be provided to every home within ¼ mile of the Preserve areas. Literature should be re-circulated to any address that changes ownership.

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CNPS-550

Pp. 97-101, Appendix A, Mt. Whitney/Double Peak Chaparral Study

The scientific methods used in this study to estimate the populations of wart-stemmed ceanothus and summer holly are difficult for the lay person to evaluate. Have the Wildlife Agencies evaluated this study from a scientific perspective? If so, what are their conclusions?

We note that on p. 98, it is stated, "Additional opportunities for conservation include the revegetation of cut and fill slopes directly adjacent to conserved chaparral habitat. This would amount to between 70 and 100 acres of restored chaparral in this portion of the Focused Planning Area." The success of restoration of degraded habitat is questionable. What evidence is there that such restoration would be successful? How long would the restoration process take?

The study concludes that both wart-stemmed ceanothus and summer holly will be adequately conserved in this area and that these species should be included in the covered species list for the San Marcos Subarea Plan. What is the Wildlife Agencies' position on this conclusion?

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CNPS-549. Comment recommends that an extensive community education program be adopted.*

CNPS-550. Please refer to page three of this document. Under the heading "Conclusions" the following wording may be found, "the level of conservation in the Mount Whitney-Double Peak area is adequate for both wart-stemmed ceanothus and summer holly." These species should be included in the covered species list for the San Marcos Subarea Plan. When the cities make a formal request for an Implementing Agreement, the final list of covered species will be determined.

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**City of San Diego Proposed Revisions
to the Biology Guidelines; Deviations Findings
(with environmental organization revisions)**

CNPS-551. Attachment 8 is referenced throughout the comment letter.*

CNPS-551

A. Essential Public Project

Purpose & Intent

It is the intent of the City of San Diego that all City of San Diego departments and public projects approved by the City fully comply with the policies, regulations and management obligations created or established as a result of the Environmentally Sensitive Lands Ordinance of the Municipal Code (ESL). However, deviation from the strict application of ESL regulations may be warranted when an essential public project serving basic infrastructure needs of the community or the region must be implemented and no feasible alternative exists which will strictly comply with the policies and regulations of ESL. The purpose of this deviation process is to provide a mechanism for relief from the strict application of wetland ESL regulations when necessary to implement an essential public infrastructure project.

Deviation from the ESL will be considered when a proposed project meets all of the following criteria:

- (1) *The project is an Essential Public Infrastructure Project as identified in the General/Community Plan; and*

The project is an essential public infrastructure project (e.g., circulation element road, trunk sewer, water main) that will service the community at large and not just a single property. The project must be identified in an adopted General Plan that envisioned the development of the project.

- (2) *The proposed development, including all less harmful alternatives deemed impracticable, are fully disclosed and analyzed in an appropriate CEQA document; and*

The CEQA document must fully analyze and describe the rationale for why project alternatives that avoid and, failing that, minimize impacts to wetlands are impracticable. Public review of the environmental document must occur pursuant to the provisions of CEQA.

- (3) *The potential impacts to wetland resources have been minimized to the maximum extent practicable; and*

The project is the least damaging practical alternative considering all the technical constraints of

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the project (e.g., roadway geometry, slope stability, geotechnical hazards, etc). Recognizing the wetland resources involved, minimization to the maximum extent practicable may include, but is not limited to, revision of community plan(s) to remove, reduce and/or re-locate new development to be served by the project, pipeline tunneling, bridging across floodways, Arizona crossings, and arch culverts. The project applicant will solicit input from the Resource Agencies prior to the first public hearing.

(4) *The proposed project has fully mitigated its impacts according to the Biology Guidelines.*

All impacts have been mitigated according to the requirements of the City's Biology Guidelines and the project would not have a significant adverse impact to the MSCP.

B. Economic Viability

Purpose & Intent

It is the intent of the City of San Diego to ensure that all private development shall fully comply with the policies, regulations and management obligations established as a result of ESL. It is also

the intention of the City to respect constitutionally protected private property rights. In rarely anticipated circumstances, it may be necessary to deviate from the strict application of ESL regulations in order to preserve a private property owner's right to have an economically viable use of property. The purpose of this deviation process is to disclose, evaluate and objectively determine the economic viability of a proposed project with and without the granting of a deviation. This process is intended to ensure that if a deviation is to be granted for economic hardship, it will only be done for circumstances not of the applicant's making. This means that a deviation should not be granted to achieve economic viability when the primary reason a project is economically unviable, absent the deviation, is because of a poor investment decision by a land owner. A deviation due to economic hardship should not be solely based on a prospective rezone or inclusion within the project of affordable housing. Any deviation for economic hardship should be the minimum necessary to achieve economic viable use of the property.

Deviation from the ESL will be considered when a proposed project meets all of the following criteria:

(1) *Applicant has disclosed and provided all information for the City to determine whether the deviation is necessary to achieve an economically viable use of the property, including all of the following required information:*

- a. The date the applicant purchased or otherwise acquired the property and from whom.

- b. The purchase price and the documentary transfer tax paid by the applicant for the property. The applicant must provide for a current appraisal to establish that the purchase price was appropriate given fair market value at the time of purchase. The appraisal shall be conducted by an outside appraiser, with no contact between the appraiser and deviation applicant. The City shall develop a list of outside appraisers to conduct appraisals. All appraisers on the list will be required to fully disclose their employment history at time of selection. Any appraisers that have worked for the project applicant within five years will not be selected. Appraisers must also agree not to work for the project applicant for an additional five years. Project information will be supplied to the City who will then transfer the information to the outside appraiser. Comparable land values used for this purpose should have similar restrictions as those on the property as identified in 1(d) below.
- c. The general plan, zoning or similar land use designations applicable to the property at the time the applicant acquired it, as well as any changes to these designations that occurred after acquisition.
- d. Any development restrictions or other restrictions on use, other than government regulatory restrictions described (c) above, that applied to the property at the time the applicant acquired it, or which have been imposed after acquisition.
- e. Any change in the size of the property since the time the applicant acquired it, including a discussion of the nature of the change, the circumstances and the relevant dates.
- f. A discussion of whether the applicant has sold, leased, or donated a portion of or interest in, the property since the time of purchase indicating the relevant dates, sales prices, rents, and nature of the portion or interests in the property that were sold or leased.
- g. Any title reports, litigation guarantees or similar documents in connection with all or a portion of the property of which the applicant is aware.
- h. Any offers to buy all or a portion of the property which the applicant solicited or received, including the approximate date of the offer and offered price.
- i. The applicant's costs associated with the ownership of the property, annualized to the extent feasible, for each of the years the applicant has owned the property, including property taxes, property assessments, debt service costs (such as mortgage and interest costs), and operation and management costs.
- j. Any rent received from the leasing of all or a portion of the property, and any income generated by the use of all or a portion of the property over years of ownership of the property. If there is any such income to report, it should be listed on an annualized basis

- along with a description of the uses that generate or has generated such income.
- k. Topographic, vegetative, hydrologic and soils information prepared by a qualified professional, which identifies the extent of the wetlands on the property.
 - l. An analysis of the economic viability of alternatives (pursuant to CEQA and/or the 404b(1) guidelines under the Clean Water Act) to the proposed project and an assessment of which of these is the least environmentally damaging alternative. One alternative shall be purchase of the property by the City from a willing seller, depending upon funding availability and acquisition priorities. The analysis of alternatives shall include an assessment of how each alternative will impact all wetlands and environmentally sensitive lands adjacent to and within the overall development plan area.
- (2) *The economic viability information has been reviewed by City staff and outside economic consultant, and the City Council makes a finding that all economic use of a property will be removed with strict application of the ESL;*

The application for an economic viability determination has been reviewed by City Staff in consultation with a professional outside economic consultant, with no contact between the deviation applicant and economic consultant. The economic consultant will provide an opinion on whether any of the CEQA and/or 404 b(1) alternatives provide economically viable use of the subject property. The City shall develop a list of outside economic consultants to review the economic viability information. All consultants on the list will be required to fully disclose their employment history at time of selection. Any consultants that have worked for the project applicant within five years will not be selected. Consultants must also agree not to work for the project applicant for an additional five years. Project information will be supplied to the City who will then transfer the information to the outside consultant. City staff's recommendation to the City Manager shall reflect the economic viability information and opinion of the economic consultant.

City staff's economic viability findings recommendation and the economic consultant's opinion, including summary documentation provided by the economic consultant that is not proprietary, shall be presented to the City Council for the discretionary hearing.

- (3) *The city has offered to compensate the property owner at fair market value for loss of economically viable property use; and*
- a. Compensation offers shall be made for properties containing wetlands not found to be "low quality" according to the Biologically Superior Alternative deviation.
 - b. City compensation offers are contingent on funding availability and acquisition priorities.
 - c. Offers of compensation at fair market value resolve any removal of economically viable property use resulting from strict application of the ESL.

- (4) *The proposed development has mitigated to the maximum extent feasible, given the economic viability of the project.*

The project mitigation must conform with the Biology guidelines or the lack of full mitigation compliance must be justified as part of the economic viability determination. The deviation process will not be used solely to reduce or eliminate mitigation as required by the City of San Diego Biology Guidelines.

C. Biologically Superior Alternative

Purpose & Intent

It is the intent of the City of San Diego to protect and manage biological resources in full accordance with the regulations of the ESL. However, in rare instances, a deviation from the strict application of the policies and regulations may be warranted if an alternative can be proposed by the project applicant that achieves a superior biological result which provides a clear net increase in quality and viability (functions and value) for the type of biological resource being impacted. The purpose of this deviation is to describe a process for disclosing, evaluating and objectively determining the appropriate circumstances for when a Biologically Superior Deviation can be granted. It is the intent that this type of deviation process should only be used to impact low quality wetlands, including vernal pools. Proper analysis under this deviation process would justify a conclusion that if the deviation is granted, the lower quality biological resource is expendable in exchange for the extraordinary mitigation offered to not only offset the loss of the resource but to also appreciably increase the overall function and value of the resource being impacted.

Deviation from the ESL will be considered when a proposed project meets all of the following criteria:

- (1) *The proposed development, including a no project alternative, a wetlands avoidance alternative and a biologically superior alternative instead of avoidance of wetland impacts, is fully disclosed and analyzed in an appropriate CEQA document; and*

The CEQA document must fully analyze and describe the rationale for why the proposed project is considered to result in the conservation of a biologically superior resource compared to strict compliance with the provisions of the ESL. Public review of the environmental document must occur pursuant to the provisions of CEQA. Projects proposing to utilize this deviation section of the ESL after initial CEQA public review must include the new information and recirculate the CEQA document.

- (2) *The wetland resources being impacted by the proposed development are of low biological quality; and*

Low biological quality will be specific to the resource type impacted (e.g. vernal pools, non-tidal salt marsh, riparian, and unvegetated channels).

Factors to determine low biological quality include: the diversity of native flora and fauna present, the rarity of the wetland community in light of the historic loss and remaining resources, the use of the wetland by endangered, sensitive, and other indigenous species, lack of proximity of the area to larger natural open spaces, (e.g. small 1 acre) isolated areas in the middle of an urban landscape), no current or potential significant hydrologic, water quality, or flood control value, and the ecological role of the wetland in the surrounding landscape. Ecological role of the wetland in surrounding landscape includes:

- a. consideration of the current functioning of the wetland in relation to historical functioning of the system,
- b. size of the wetland, and
- c. connectivity to other wetland or upland systems (including use as a stopover or stepping stone by mobile species).

Examples of low quality wetlands include unvegetated first order streams, areas containing monotypic stands of invasive (e.g. *Arundo donax*) species or opportunistic species, or an area of minor natural drainage containing only a few riparian scrub species. Only wetlands with little or no restoration potential considering its biological role in the surrounding landscape could be considered low quality. Presence of exotics is only one indicator of low biological quality.

Quality will be considered on a case-by-case basis given the following factors and best available scientific information. A determination of low quality will be made only if the wetland is considered low quality in all of the listed criteria.

A. *Vernal Pools: Determination of Low Quality*

(1) Only low quality vernal pools could be considered for impacts under the Biologically Superior Alternative. Low quality will be determined on a case-by-case basis and thoroughly analyzed in the Biology Report using the following biological and physical factors. In general, low quality will consist of pools with low biological value and low long-term viability. Note: the City does not regulate artificially-created wetlands in historically non-wetland areas.

(2) Characterizations of vernal pool flora and fauna must be accomplished during the proper seasons. Sampling must be done between December and May to ensure adequate characterization of the vernal pools. Adequate surveys should be done to determine ponding and vernal pool flora. Surveys for fairy shrimp must be done in accordance with current U.S. Fish and Wildlife Service fairy shrimp survey protocol.

(3) Timing of the first rainfall and subsequent filling of the basins should be determined during the evaluation process.

Lower quality vernal pools are deficient in all of the following values

Biological Factors	Endangered and Sensitive Species	No endangered or rare vernal pool species, as identified in the following list: Brodiaea orcuttii*, Downingia cuspidata, Eryngium aristulatum ssp. parishii, Myosurus minimus var. apus, Navarettia fossalis, Orcuttia californica, Pogogyne abramsii, Pogogyne nudiuscula *When within vernal pool basins and watersheds.
	Flora and Faunal Diversity	Low species richness of vernal pool endemic plants and/or animals. Few individuals present.
	Habitat Area	Few basins with a cumulatively small amount of habitat (basin surface area) relative to other nearby vernal pool complexes.
	Limited potential for Ecosystem Enhancement	Severe compaction of the watershed. Unable to find historic basins. Basins isolated from areas of native pollinators (i.e., intact surrounding native uplands). Hardpan or clay substrate irrevocably damaged.
Long-term Viability	Connectivity	Basin(s) not connected to MHPA or other existing or planned open space. Basin(s) and watershed(s) not providing biological connectivity (e.g. wildlife corridor).
	Status of Watershed	Watershed partially developed, irrevocably altered, or inadequate to supply water for vernal pool viability.
	Source and Quality of Water	Urban runoff from partially developed watershed. Water source is in part exclusively from the man-made runoff which could be eliminated by diversion.

B. Salt Marsh, Salt Panne, and Mudflats: Determination of Low Quality

(1) Tidally-influenced coastal salt marsh, salt panne and mudflats will never be considered low quality. A biologically superior deviations alternative must not be granted for tidally-influenced wetlands.

(2) Characterizations of flora and fauna must be accomplished during the proper season. Sampling must be done at the most appropriate time to characterize the resident and migratory species. Evaluations of the tidal range must include the highest spring and neap tides.

(3) Water and soil salinity samples should be conducted in areas of questionable tidal influence.

Lower quality tidal wetlands are deficient in all of the following values

Biological Factors	Endangered Species	No use by endangered or threatened plant or animal species.
	Habitat Function	Little or no function as coastal salt marsh, salt panne, or mudflat habitat, including habitat for migratory birds.
	Potential for Ecosystem Enhancement	Low feasibility for restoration to tidal influence (e.g., > 1/4 miles). Coastal wetlands must not be tidally influenced for three or more years.
Long-term Viability	Connectivity	Wetland not connected to MHPA or other existing or planned open space. Wetlands not providing biological connectivity (e.g. wildlife corridor).
	Hydrologic Function	No significant hydrologic, water quality or flood control value.

C. Freshwater or Brackish Wetlands: Determination of Low Quality

(1) Characterizations of freshwater and brackish wetlands flora and fauna must be accomplished during the proper season. Sampling must be done at the most appropriate time to characterize the resident and migratory species.

(2) Hydrologic evaluations of the effects of any impacts on the upstream and downstream biota and flooding must be conducted as part of the review process.

(3) Examples of low quality wetlands include unvegetated first order streams, areas containing monotypic stands of invasive species or opportunistic species within minor natural drainages containing only a few riparian scrub species, or isolated patches of mulefat scrub in primarily upland areas, but also include the factors listed below.

Lower quality freshwater or brackish wetlands are deficient in all of the following values

Biological Factors	Endangered Species	Outside of any documented occupied (breeding and non-breeding) territory of any endangered or threatened wetland plant or animal species based upon the best available scientific and project-specific information.
	Flora and Faunal diversity	Low species richness of native plants and/or animals present.
	Habitat Area	Limited function as freshwater wetland habitat, including habitat for migratory birds.
	Ecological Role of the Wetland	Development would not change or alter historic functions of the wetland in its regional context. Historical functioning of the wetland was and is low. The wetland is small and isolated from other wetlands.
	Potential for Ecosystem Enhancement	Within the context of the surrounding landscape, there is low feasibility for enhancement/restoration to significant habitat or hydrologic functioning.
Long-term Viability	Connectivity	Lack of proximity to larger natural open space areas as viewed in regional context. Wetlands not providing biological connectivity (e.g. wildlife corridor).
	Hydrologic Function	Volume and retention time of water within the wetland should not be significant enough to aid in water quality improvements. No significant ground water recharge occurs within the wetland (based on drainage study). No significant flood control value or velocity reduction function.

(3) The proposed development and proposed mitigation results in a biologically superior net gain in overall function and values for the type of wetland resource being impacted, and provides for the survival and contributes to recovery of affected endangered or threatened species; and

The project must create or restore an equal acreage of the same type of wetland resource that is being impacted. For every one acre of wetland resource being impacted at least one acre of the same type of wetland habitat must be created or restored pursuant to Section 3A and B below. Additional acreage to satisfy the mitigation obligation may consist of acquisition of high quality wetland resources or enhancement of degraded resources such as exotic species removal and native plantings.

All proposed mitigation must demonstrate an increase in the overall function and values for the type of wetland resource being impacted compared to the pre-mitigation conditions. Increased function can include an increase in the availability of habitat for native fauna, an increase in native flora diversity, a decrease in invasive species, an increase in ground water recharge, water quality improvements and sedimentation deposition rates. Success criteria using best currently available information for the particular resource being impacted will be required as part of the restoration plan.

To provide for survival of any affected threatened or endangered species, project proponents shall re-create and maintain the affected wetland species habitat, and maintain genetic material from the affected population pending success of the re-created habitat. To contribute to recovery of any affected threatened or endangered species, project proponent shall also purchase and maintain existing wetland habitat supporting the affected species.

In order to achieve a biologically superior alternative, both of the following will be required for impacts to wetlands and must be included in the revegetation/restoration plan for the mitigation area.

A. Mitigation will be provided at the following ratios for the habitats given below:

- Coastal Wetlands 8:1
- Riparian Forest or Woodland (oak, sycamore, or willow) 6:1
- Riparian Scrub 4:1
- Riparian Scrub in Coastal Overlay Zone 6:1
- Freshwater Marsh 4:1
- Freshwater Marsh in Coastal Overlay Zone 8:1
- Natural Flood Channel 4:1
- Disturbed Wetlands 4:1
- Vernal Pools 4:1 to 8:1
- Marine Habitats 4:1
- Eelgrass Beds 4:1

Mitigation must be provided within or adjacent to the MHPA.

B. For land granted in fee title to the to the City, payment of an endowment to provide for the long-term management and monitoring of the mitigation area for the term of the City's MSCP (10a) permit. The endowment will be calculated at a rate equivalent to what the City is spending per acre for similar open space areas (considering size and proximity to urban development) within the MHPA at the time of project approval. The endowment will be used to pay for the long-term management of the mitigation area and to off set any

public funding needed to manage these areas allowing public management funding to be concentrated in other areas of the MHPA.

(4) The United States Fish and Wildlife Service and California Department of Fish and Game have concurred with the Biologically Superior Alternative.

Approval shall come in the form of a written response supporting the project during the CEQA public review process in which the proposed biologically superior mitigation has been evaluated. Lack of an unequivocal concurrence is deemed to be concurrence.

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Lee Ann Carranza
2730 Laker Avenue West
Carlsbad, CA 92008
(faxed to (760) 431-9618 c/o Jim Bartel

These are comments regarding the MHCP:

- CWCC-1 I am concerned with the maintenance and protection of preserve areas. The following is what I found in the Executive Summary regarding this topic:
"Each city will be responsible (either directly or through agreements with other agencies or organizations) for the management and biological monitoring of its own public lands (including those with conservation easements)..." (ES-18)
- CWCC-2 "Guidelines for Preserve Management
Each subarea plan must include a framework management and monitoring plan that provides general direction for all preserve management issues within the subarea plan's boundaries. The cities will also develop area-specific management directives in accordance with the framework plan to address management and monitoring issues at the site-specific level." (ES-19)
- CWCC-3 "Both framework plans (generally) and area-specific management directives (specifically) will address fire management, hydrological management, removal of invasive species, nonnative predator control, species monitoring and management, and habitat restoration." (ES-20)
- CWCC-4 I have not been able to research this as extensively as I would like to have, but I have not seen what would make sure the things outlined above will actually happen. My experience with the City of Encinitas leads me to believe there will be some difficulty. I was involved as a volunteer technical advisor to an AmeriCorps project two years ago, which the City of Encinitas helped set up to remove invasive exotic plants from the chaparral at Oak Crest Park. The City's backing for the project was minimal, and when the project was left incomplete at the end of the AmeriCorps scheduled time, the City did nothing to finish removing the exotics. Also, City staff refused to allow removal of small Torrey Pines from the site, though they are not indigenous and are crowding out native species.
- CWCC-5 Invasives are a problem somewhat north of that site, in the chaparral adjacent to the recently developed Encinitas Ranch shopping center. I believe the land is owned by the developer, Caritas Corporation, but was left in open space in the Encinitas Ranch Specific Plan. We are losing the native species to exotics, not to mention the effects of dogs and cats from adjacent residential developments, it is nobody's responsibility at the City.
- CWCC-6 There is more detail to the biological monitoring program than I have had time to research, so it may be that some of my concerns are being addressed. However, I want to stress that it is crucial that there are provisions in this plan that insure that the cities and landowners keep these preserves in good condition. Because these activities do not come naturally to the cities and landowners.
- CWCC-7 According to figures from the MHCP, approximately 91% of the study area will ultimately be developed. This leaves an appallingly small amount of natural open space, not to mention permeable surfaces to allow percolation of rain. I can only implore you to do whatever possible to increase natural open space.
- Brad Roth
Cottonwood Creek Conservancy
1307 Rubenstein Avenue
Cardiff-by-the-Sea, CA 92007
(760) 436-2632

Letter 14: Cottonwood Creek Conservancy

- CWCC-1. Management and monitoring are a condition of the take authorizations. Each city that receives take authorizations will be required to conduct management and monitoring of conserved lands and provide annual reports on their activities.
- CWCC-2. The subarea plans distributed with the Public Review Draft MHCP Plan contain framework management and monitoring plans. The MHCP Biological Monitoring and Management Plan outlines additional requirements for management and monitoring that must be conducted by all cities. Each city must also develop specific management and monitoring tasks (area-specific management directives) for specific preserve areas, as they are included in the MHCP preserve. These requirements are included in the MHCP Plan and subarea plans and will be included in individual Implementing Agreements for each city.
- CWCC-3. The MHCP Plan, MHCP Biological Monitoring and Management Plan, and individual subarea plans require fire management, hydrological management, removal of invasive species, nonnative predator control, species monitoring and management, and habitat restoration. These requirements will also be included in individual Implementing Agreements for each city.
- CWCC-4. Each city must sign an Implementing Agreement with the U.S. Fish and Wildlife Service and the California Department of Fish and Game that specifies the obligations of the cities and the wildlife agencies for implementing the subarea plan. The wildlife agencies and cities must annually review the steps that have been taken to implement the plan. Failure to comply with all requirements in the subarea plan and Implementing Agreement is considered a "breach of contract" and can result in withdrawal of the take authorizations.
- CWCC-5. As part of implementing the MHCP, the city must work to control and remove invasive species from conserved MHCP lands. The city must also work with homeowners' associations and other civic groups to educate the public about the effects of domestic pets on native habitats.
- CWCC-6. Biological monitoring and management are a condition of the take authorizations to the cities. It is the cities' obligation to ensure that these conditions are met, either by city staff, the landowners, MHCP Conservancy, or other qualified organization.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

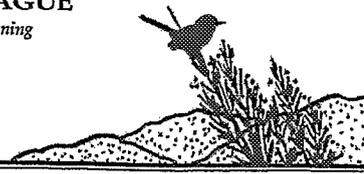
CWCC-7 Nearly 75% of the study area is already developed. Under the plan, approximately 65% of the remaining habitat would be conserved. A maximum of approximately 83% of the total study area would ultimately be developed, considering both existing and future development. Stating that 91% of the study area will be developed is not accurate. The plan has attempted to maximize conservation to the extent possible given existing legal and economic constraints.

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ENDANGERED HABITATS LEAGUE

Dedicated to Ecosystem Protection and Improved Land Use Planning

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March 8, 2002

U.S. Fish and Wildlife Service
ATTN: Lee Ann Carranza
2730 Loker Ave. West
Carlsbad, CA 92008

RE: Multiple Habitat Conservation Program (MHCP) EIS/EIR

Dear Ms. Carranza:

The Endangered Habitats League (EHL) appreciates the opportunity to comment on the MHCP EIS/EIR. For your reference, EHL is a Southern California organization dedicated to ecosystem protection, improved land use planning, and collaborative conflict resolution. We serve on the MHCP Advisory Committee.

Enclosed please find comments (dated Nov. 15, 2000) previously submitted on the Public Review Draft, which we hereby resubmit. New comments are as follows:

1. Implementation and enforcement

Assurances that the plan will be carried out are too vague. What will guarantee that there is management and monitoring and reporting per the plan requirements? How is it guaranteed that both the jurisdictions and the wildlife agencies live up to their obligations as spelled out in the plan? How will the MHCP differ from the MSCP, whose implementation and enforcement have been faulty?

The MHCP proposes a Conservancy to coordinate implementation, but there is nothing tangible in place and no MOU among the cities to carry this out or even to begin thinking about it. There is insufficient level of detail as to management, monitoring, data analysis, staffing requirements, etc.

Thus, the MHCP should begin to put in place the infrastructure for implementation prior to adoption. The cities should sign an MOU for the Conservancy, and propose contingencies for financing if the "regional funding source" doesn't appear. Also, the wildlife agencies should commit staff resources to implementation.

2. Changed circumstances and unforeseen circumstances

The text for changed circumstances and unforeseen circumstances is vague, and should be in the plan rather than deferred to the IA. It should be clarified that the cities and agencies are responsible for responding to changed circumstances through adaptive management or other means, and that they must identify changed circumstances through biological monitoring, etc.

Letter 15: Endangered Habitats League

EHL-1. Guarantees that the MHCP will be carried out as designed, and that assurances of implementation described will be provided, rely on specificity and certainty in each jurisdictions implementing agreement. The agreement is a binding contract between the wildlife agencies and jurisdictions to judiciously implement all aspects of the Plan. Non-compliance by a jurisdiction may result in suspension or revocation of take authorizations.

EHL-2. The MHCP describes creation of a local Conservancy which could enable participating jurisdictions to facilitate some aspects of implementation. These include funding, public education/information and coordination of management actions. With or without the conservancy the jurisdictions are required to coordinate their implementation actions using the structure described in MHCP Section 5.7. Additionally, each city is required to provide interim funding until a regional funding source is identified.

EHL-3. The Wildlife Agencies already manage their lands and when the Implementing Agreements are signed this will provide management consistent with the MHCP plans. The purpose of the description of the federal requirement concerning "Changed and Unforeseen Circumstances" in the subregional MHCP is to assure that individual cities are aware of responsibilities to address the issue in individual subarea plans. An NCCP subarea plan is not complete without this description, but the details of how each city would comply with the requirement is not a subject for the subregional plan. Language in the subregional MHCP will be expanded and strengthened to add a description of how subarea plans must address this requirement, and describe an expected level of specificity.

The following text has been added to Section 5.2.4 to further clarify the responsibilities of all parties:

"Each subarea plan prepared under the MHCP must comprehensively address changed and unforeseen circumstances including identifying categories of changed circumstance which are included in the subarea plan, and clear definitions of conditions or events which qualify as changed circumstances. All other conditions or events not defined as changed circumstances are by definition unforeseen.

Categories and Definitions of Changed Circumstances. The city and wildlife agencies may jointly determine which categories of changed circumstance

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should apply to an individual subarea plan. It is anticipated that these categories may vary from city to city based on resources protected by the subarea plan, and the size and composition of the preserve area. In determining categories of changed circumstances the city and wildlife agencies should use the list provided in this section, and additionally determine if any additional category should be evaluated for inclusion based on a special circumstance in an individual city.

In defining a changed circumstance the city must determine what level of impact within a changed circumstance category is a normal occurrence and what level, intensity, or extent is unforeseen. The subarea should also describe locations where some of these events would likely occur where possible. Occurrences "between" these definitions will be identified as changed circumstances and are the responsibility of the city to address through evaluation, monitoring, and potentially adaptive management actions. For example: a changed circumstance flood event could be defined as one which: "is greater than a 50-year event up to and including a 100-year event as defined by Federal Emergency Management Agency (FEMA) classification affecting the X River Valley and XYZ Creek".

It may be necessary for the city to undertake a risk analysis to aid in definition of a changed circumstance based on the historic extent of past events. This is a particular possibility in defining changed circumstances like fire or flood. It may also prove valuable to analyze preventative measures either already undertaken, or which would occur as a part of subarea plan implementation, which could limit the severity of future events. In considering appropriate categories of changed circumstances the city and wildlife agencies should evaluate:

- Wildfires which impact the preserve system;
- Flood Events;
- Climatic Drought;
- Increase of Invasive Species; and
- Future Listing of a Non-Covered Species.

Defining Planned Responses in the Event of Changed Circumstances. The subarea plan must clearly define how the city will respond to changed circumstances should they occur. Responses to changed circumstances will have been identified in the required city preserve management, monitoring, and maintenance plan, and relying on that plan, or an adaptation of its recommendations, will describe the primary response to a changed

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circumstance. Normally the annual budget set aside by a city for preserve monitoring and management will be adequate to provide an appropriate response to a changed circumstance. In defining planned responses the subarea plan should address:

- Notification of parties in the event of a changed circumstance;
- An appropriate monitoring program to determine severity of impacts;
- Adaptive management actions which could be taken if determined necessary;
- Special budgetary requirements or sources;
- Joint measures which could be taken by a city and the wildlife agencies to address a changed circumstance; and
- Administrative, and permit review actions a city could take to reduce impacts of a changed circumstance event.”

Language defining “Changed and Unforeseen Circumstances” is in fact quite specific in the Encinitas, Oceanside, and Escondido subarea plans, and definitions are provided to enable the jurisdictions and wildlife agencies to readily discern one from the other in the future event of significant fire and flood. Clearly describing these possible conditions serves all parties and makes the responsibilities of the parties clear.

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3. Locations and impacts of infrastructure to support development

EHL-4

Infrastructure to serve development will impact the preserve. Some of the subarea plans include proposed roads, but there is essentially no information on sewer, water, transmission lines, pump stations, etc. All of these impacts should be analyzed, avoided, and mitigated.

EHL-4.

The planning, analysis, avoidance, mitigation, and permitting standards are the same. The Subarea Plans have incorporated, to the extent practicable, the adopted Master Plans for public services and infrastructure. Impacts were estimated, where possible, and the Master Plans are in compliance with the Subarea Plan Policies. Additionally, all future projects (both public and private) will be required to comply with the MHCP and CEQA.

4. Specific responsibilities for management and monitoring

EHL-5

Management responsibilities should be delineated in detail at this time. For example, what management and monitoring functions are needed, and who is responsible? Examples of functions include preserve management, restoration and fire management, biological monitoring, database maintenance (including GIS), enforcement of ORV and active recreational use prohibitions, physical maintenance of preserve areas (e.g., fences, signs), biological surveys, public outreach and environmental education, and volunteer coordination. Noting that the MSCP has suffered marked deficiencies in these regards, how will these functions be assured?

EHL-5.

Management and monitoring functions are outlined in the Biological Monitoring and Management Plan. The cities are discussing a strategy for implementation that addresses all of these functions and have committed to providing all functions, either individually or as part of a group. Responsibilities for these functions may be phased by individual cities in such a way that all functions are ultimately provided by the MHCP Conservancy, that is, the functions ultimately will be shared among all the cities. Thus, it is anticipated that the organizational structure for implementation will evolve as additional coordination and data management are required and as a regional funding source is established. However, specific commitments for management, monitoring, and associated funding will be in the IA.

5. Biological and reserve design issues

a. Importance of management

EHL-6

The small fragments that comprise the preserve will be subjected to enormous edge effects from present and future development and from recreational uses. This means that intensified management and monitoring will be required to ensure meeting the species conservation goals. Have the cities and wildlife agencies committed to the funding and level of effort necessary to meet these conditions?

EHL-6.

The cities and wildlife agencies are aware of their management and monitoring obligations and have committed to the funding and level of effort necessary to meet MHCP requirements as outlined in each IA.

b. "Unincorporated gnatcatcher core area"

EHL-7

The acreage requirement for this offsite mitigation obligation is described inconsistently (e.g., p. 4-23, Vol 1: "at least 500 acres of core gnatcatcher habitat;" p. 5-16, Vol 1: "approximately 400 to 500 acres of high quality gnatcatcher habitat;" p. 5-16, Vol 1: "approximately 500 acres of unincorporated land;" p. 3-6, Vol II: "at least 400 acres of high quality gnatcatcher breeding habitat." Please clarify and make consistent that the requirement is a minimum of 500 acres of high quality gnatcatcher breeding habitat. Note that this will likely require conserving more than 500 acres of total land, because the conserved land will likely be a mix of high quality gnatcatcher breeding habitat and other habitat types.

EHL-7.

The final MHCP has been updated to remedy any inconsistencies in regard to the 400 to 500 acre core.

Offsite mitigation has an important role in assembling the core gnatcatcher habitat in the unincorporated portions of San Diego County. Much of this mitigation is assured through previous agreements or through the City of Carlsbad's Habitat Management Plan (HMP), which is currently under review by the wildlife agencies. The goal of the MHCP plan is to conserve from 400 to 500 acres of core gnatcatcher habitat through a combination of the following actions (Table 4-10):

c. Failure to include important resource lands within the FPA

EHL-8

Some large blocks of habitat inside the BCLA are not included in the FPA (e.g., in northwest Escondido and portions of San Marcos). However, given the high overall degree of habitat fragmentation in the planning area, these blocks are clearly important to reserve design and species viability. Why are these large blocks not *at least* included as "softline" FPA, with some conservation and some take?

- Conservation under the City of Carlsbad Habitat Management Plan (HMP) – a total of approximately 308 acres to be conserved through a combination of offsite mitigation and acquisition. Of the total, 12 acres of conservation occur in an area of the city previously permitted for development, and 69 acres would be acquired.

d. Water district lands

EHL-9

Water district lands north and east of Escondido are shown as "softline" (less than 90% conservation). Given their public ownership and dedication to maintaining water quality, should these not be fully protected as watershed lands, with little or no development?

e. Future roads

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- During the last several years, exclusive of parcels acquired under the Carlsbad HMP, approximately 118 acres of habitat land or easements have been purchased for conservation.
- Priority conservation areas, which may be acquired depending on funding availability. Up to 320 acres are candidates for priority conservation.
- Designation of the core gnatcatcher habitat as a recommended site for the offsite mitigation of impacts to coastal sage scrub.

If all priority conservation areas are acquired and added to the areas previously purchased for mitigation, a total of 665 acres (included 520 acres of coastal sage scrub habitat) would be conserved in the unincorporated core. Even if priority conservation areas are not acquired, onsite avoidance and offsite mitigation will likely conserve more than 400 acres of natural habitat in the unincorporated area.

Please see Section 3.3, Section 4.4.3, and Section 5.3.9 for a detailed discussion of the gnatcatcher core.

EHL-8. No specific parcels are identified in the comment, but not all lands identified in the BCLA can be included in the FPA. Some areas within the BCLA have approved development plans and cannot be hard- or soft-lined within the FPA. The idea of having mitigation ratios vary with whether impacts occur inside or outside of the BCLA (rather than FPA) was debated in the MHCP Advisory Committee. Some participating cities disagree with this policy option. Consequently, use of BCLA for setting mitigation requirements was not made an MHCP policy, although individual cities can adopt this as a policy in their subarea plans. The City of Oceanside has elected to do so. Note that assembling the reserve is not dependent solely on mitigation ratios, and that conservation is adequate for covered species based on the overall levels of conservation, regardless of how these levels are achieved--by mitigation ratios or other specific policies.

EHL-9. The "water district lands" were acquired from the Escondido Mutual Water Company in 1987. The property includes approximately 1,657 acres of property in the vicinity of Lake Wohlford and along Valley Center Road. The Lake Wohlford property surrounds approximately 79 acres of BLM land. The water district lands are currently improved with a number of public uses, such as the Lake Wohlford campgrounds and recreation areas and the police shooting range, which is approved for expansion.

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Pursuant to MHCP policies, all the wetland and riparian habitats will be preserved at 100%. The biological analysis assumes that the remaining "softline" area is proposed to preserve 80% of the existing natural habitat. This allows flexibility for the City to consider a portion of the property for new or expanded public uses which have not been identified. Given the City significant contribution to the overall preserve system, the overall conservation of 80% is deemed adequate.

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EHL-10 The relationship between the FPA and future roads is unclear. Roadways through the reserve must be avoided, given the increased fragmentation that would result in a reserve already compromised by lack of large, contiguous blocks. Are there planned regional circulation element roads that would cross proposed reserve areas, and if so, how can these be averted?

6. Mitigation of impacts

a. FPA as surrogate for habitat value (Table, page 4-18)

EHL-11 Some lands of high and very high habitat value were *not* included in the FPA, presumably for political or economic reasons. If incorporation into the FPA does not occur, shouldn't the mitigation ratios for these lands be increased over baseline ratios in order to account for their actual habitat value? *Therefore, lands within the original Biological Core and Linkage Area (BCLA) should have mitigation ratios equivalent to that assigned to the FPA.*

b. Avoidance of impacts

EHL-12 In the County of San Diego, MSCP implementation has suffered from inadequate avoidance of impacts within preserve planning areas. For example, minimum lot size requirements have repeatedly precluded the use of clustering to effectively avoid impacts. Also, *potential* density yield from underlying zoning has trumped resource protection. To some extent, the percent conservation requirements within the FPAs may mitigate these deficiencies, but it is more likely that the County experience will be repeated and problems in attaining conservation goals encountered. *For this reason, within FPAs, minimum lot size requirements should be eliminated or relaxed; density yield should be reduced in response to biological constraints; and independent fiscal analyses, performed by consultants under contract to the jurisdiction, should be employed to determine issues of economic use.*

c. On-site crediting of mitigation requirements

EHL-13 With the County of San Diego, on-site crediting has led to serious problems, particularly through allowance out-of-kind "up-tiering." For example, highly constrained on-site resources such as wetlands and riparian habitat – resources that are effectively precluded from development or subject to stringent no-net-loss requirements – are "credited" against on-site impacts to habitats such as non-native grasslands and chaparral. Similarly, occupied coastal sage scrub on-site is "credited" against impacts to resources without such characteristics. The result has been unreasonable low mitigation requirements for developers and overall inadequate mitigation of impacts.

As a result of these problems, EHL supports *no* on-site crediting for unavoidable impacts. Rather, all unavoidable impacts should be mitigated off-site. *However, at a minimum, out-of-kind or "up-tiered" on-site crediting should be prohibited.* Also, in no circumstance should an "excess" of on-site credits or "banking of unused credits" be granted due to on-site avoidance.

d. Mitigation ratios

EHL-14 The proposed mitigation ratios are generally too low. Regarding Group C habitats, 1:1 mitigation of coastal sage scrub results in a 50% net loss – far too high for this depleted resource, and especially so in light of the exclusion of much high quality habitat from the FPA. Thus, as suggested above, at a minimum, all lands originally mapped, as Biological Core and Linkage Area (BCLA) should be assigned the higher, FPA ratio. Alternatively, *all* mitigation for Group C habitats should be 2:1.

EHL-10. The MHCP and subarea plans assume that all adopted General Plan Circulation Element roads will be implemented subject to the MHCP design criteria and subsequent environmental review. Anticipated road improvements have been incorporated in the FPA design on hardlined properties. On softlined properties, future road improvements will be subject to the MHCP design criteria.

EHL-11. Please see response to comment EHL-8.

EHL-12. All General Plans allow for lot averaging or relaxation on height restrictions resulting in clustering. General Plan consistency will be addressed after adoption of the MHCP Subarea Plan.

EHL-13. Guidelines contained in the draft MHCP Plan for mitigation of unavoidable impacts (Sec. 4.3.3 and Table 4-7) were discussed and developed by the MHCP Advisory Committee. Those guidelines permit "out-of-kind" mitigation, including credit for on-site conservation of higher, (i.e., "up-tier") habitat group that is found inside a focused planning area (FPA), only for impacts to Group C, D, or E habitats (i.e., coastal sage scrub, chaparral, and annual grassland). "In-kind" mitigation is required for impacts to Group A and B habitats (wetland/riparian and rare upland habitats).

Draft MHCP Plan's analysis of future habitat loss and conservation (Sec. 4.0) indicates that the proposed preserve system may be assembled through a combination of on-site avoidance and public purchase, without recourse to off-site mitigation (draft MHCP Plan, Table 4-1), except for 50 acres of off-site mitigation for a public project. That is, the mitigation guidelines, including a limited opportunity for out-of-kind mitigation as described, are consistent with MHCP's biological objectives.

Nevertheless, a jurisdiction may, through the subarea plan or in implementation measures such as a zoning ordinance, adopt more restrictive mitigation guidelines than those contained in the MHCP Plan, for example, requirement for in-kind mitigation for some instances of Group C, D, or E habitats or prohibition against "banking" of unused credits.

EHL-14. Please refer to response to EHL-11. The analysis has demonstrated that adequate conservation can be achieved based on the tiered ratios. Requiring the same mitigation for all Group C habitat removal regardless of location would discourage the incentive to direct conservation towards the areas where the most benefit can be achieved.

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EHL-15

Also, the habitat value of both chaparral and non-native grassland is significantly underestimated in the ratios. As well described in the text, these habitats are essential components of the MHCP's severely depleted ecosystem, as well as of the proposed reserve system. The ratios should fully reflect this fact. *Therefore, ratios for non-native grassland and chaparral should be increased to a minimum of 1:1 in all cases.*

Thank you for considering these comments.

Sincerely,



Dan Silver, MD
Coordinator

cc: Calif. Dept. of Fish and Game
San Diego Assoc. of Govts.
Interested parties

EHL-15.

The MHCP proposes mitigation ratios for impacts to natural vegetation and habitat based on habitat groups that include wetland/riparian, rare upland, coastal sage scrub, chaparral, and annual grasslands. The proposed ratios are generally in excess of what is currently required by the wildlife agencies for impacts of development projects. In addition, mitigation ratios are proposed for habitat groups (chaparral and annual grasslands) that currently do not require mitigation by the wildlife agencies.

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ENDANGERED HABITATS LEAGUE

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Nov. 15, 2000

Janet Fairbanks
San Diego Assoc. of Govts.
401 B Street, Suite 800
San Diego, CA 92101

RE: Public Review Draft MHCP Plan

Dear Ms. Fairbanks:

The Endangered Habitats League (EHL) is pleased to offer comments on the Draft MHCP Plan. As you know, EHL is a Southern California organization dedicated to ecosystem protection, improved land use planning, and collaborative conflict resolution. It is our privilege to serve on the MHCP Advisory Committee.

The draft plan is well written, organized, and readable, with only occasionally unclear language. These qualities are appreciated. It also accurately captures the many years of work which the stakeholders and cities have put into the effort. Our comments are as follows:

1. 3.6.1 Wetland Avoidance and Mitigation Criteria

In the third paragraph, criteria are described for those narrow circumstances when incomplete avoidance is permitted. However, the language employed in the section on wetlands of low value is confusing. The statement that "they need not be avoided" appears in conflict with the earlier avoidance criteria, and suggests a different standard would be applied to these particular wetlands. It should be clarified that the low value provisions only apply to those impacts determined to be unavoidable on the basis of the primary procedures.

It is also not stated which agency makes the determination of low value vs. high value (only the factors in the decision are given). This determination should be sole responsibility of the wildlife agencies.

2. 4.3.4 Estimated Conservation of Privately Owned Habitat

Throughout this discussion it is not clear what assumptions are being used for the on-site avoidance yield on a project specific basis within FPAs. Perhaps this is only found within individual subarea plans. The percent of conservation within FPAs is not a surrogate, as some of this conservation is through acquisition and off site mitigation.

3. 4.5.3 Private Land Donation

The matching federal tax credit, which automatically accrues to users of the Natural Heritage Preservation Tax Credit Act, should be noted in addition to the 55% credit under

Letter 15A: Endangered Habitats League

EHL2-1. The Final MHCP provides wetland protection language in Sections 3.6.1, 4.4.2, and 5. Specifically, each Subarea Plan must provide protection to wetlands as a part of the project review and approval process. The process will evaluate wetland impact avoidance and minimization and should ensure compensatory mitigation through the Subarea Plan for unavoidable impacts to wetlands, thereby achieving no overall net loss of wetlands. As well, the final plan provides wetland mitigation ratios (Table 4-7). The ratios provide a standard for each habitat type, but may be adjusted depending on the functions and values of both the impacted wetlands as well as the wetlands mitigation proposed by the project. The City may also consider the types of wetland habitat being impacted and utilized for mitigation in establishing whether these standards have been met. The Wildlife Agencies will review the mitigation program as part of the project's CEQA public review process. Projects that document highly degraded habitat value may request a reduced mitigation ratio; the Wildlife Agencies may submit a letter of concurrence or nonconcurrence to the city.

EHL2-2. Please see response to comment EHL2-1.*

EHL2-3. The comment indicates that the MHCP is unclear as to the extent of onsite conservation for project-specific areas within FPAs. Onsite conservation is shown graphically in the alternative FPAs (EIS/EIR, Figures 2.2-1, 2.2-2, and 2.2-3), and cumulative acres of habitat anticipated to be conserved through onsite avoidance are included in the tables of conservation acreages (MHCP, Table 3-3 for FPAs 1 and 2 and Table 2-1 for FPA 3). Additional data on conservation of privately owned habitat under FPAs 1 and 2 are also provided in the MHCP (Tables 4-1 and 4-8). The individual Subarea Plans (SAPs) will show detailed FPAs with specific conservation targets expressed as percent of upland habitats to be conserved, while wetland and riparian communities are subject to the goal of no net loss. Development projects which impact habitat will be subject to these conservation targets, as well as to mitigation guidelines as discussed in the MHCP (Sec. 4.4) or in the individual SAPs, which may result in offsite mitigation obligations in addition to onsite conservation.

EHL2-4. As the commentator notes, land donation for open space and habitat conservation can result in substantial financial benefits to the donor, including a state income tax credit of up to 55% of the appraised fair market value of the donated land. For federal income tax purposes, donation of land or an

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EHL2-1

EHL2-2

EHL2-3

EHL2-4

easement for conservation may qualify as a charitable contribution which can be used to reduce the donor's adjusted gross income by up to 30% for each year for up to six years. For a donor in the highest income tax bracket, the tax benefit could total 38.6% of the fair market value (2002 tax year). In addition, if the property is subject to an estate tax, donation would result in additional tax benefits. Depending on specific circumstances, it is possible that total tax benefits could exceed revenues from sale at fair market value.

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California law. This match, I believe, is on the order of 45%, resulting in a 100% credit against the land value, but I am not certain.

4. 5.3.6 Boundary Adjustments and Equivalency

EHL2-5

The provision for "generally the same total conserved acreage" is vague and will lead to future uncertainty and contention. In addition to same or higher biological value to the preserve, there should be *equal or greater* total conserved acreage.

5. 5.3.8 Annual Implementation Coordination Meetings

EHL2-6

As there to be quantitative models for the "roughly proportional" loss and conservation provision? Such graphs were provided in the MSCP, with a 10% range of flexibility.

6. 5.3.9 Relationship of Subarea Plan Approval to MHCP Core Conservation

EHL2-7

In paragraph 2, the mere existence of a development agreement cannot obviate the requirements of state and federal law -- it only creates greater difficulties in their application. The granting by San Marcos of that level of legal entitlement is not by itself sufficient reason to consider additional preservation in San Marcos "not a viable option." Perhaps legal counsel is warranted on this point.

7. 5.7.2 MHCP Advisory Committee

EHL2-8

Presumably, city staff will comprise the Staff Subcommittee. However, city staffs have many other responsibilities, and their level of commitment to the MHCP will be very uncertain in the future. Perhaps the Land Conservancy, with its dedicated staff, should "staff" the Staff Subcommittee. Similarly, who will staff the Elected Officials Committee? Perhaps SANDAG should take on this responsibility. Who will organize meetings of the Stakeholders Subcommittee? We concur with the need for the MHCP Land Conservancy.

8. 6.2.3 Development

EHL2-9

The section on future and currently unplanned facilities is confusing. First it is stated that such facilities "will avoid" preserve areas. The next sentence states, "Any projects thus constructed ..." implying that avoidance has *not* occurred. To the contrary, all future and unplanned facilities, such as roads, can and should completely avoid the preserve. In the event such a facility is nevertheless proposed, should require a major amendment. If a major amendment is granted, it must meet all the following criteria, as determined by the wildlife agencies:

-5- There is absolutely no feasible alternative, as demonstrated by compelling factual evidence. -

6. All impacts have been minimized to the extent possible.
7. There must be a compensatory *net benefit* to the preserve, so that there is a net gain in acreage and in biological function and value for those species impacted by the project.
8. There is no net increase in edge effect or fragmentation.

The language as it now stands is a huge, open loophole for a host of public or quasipublic facilities. Unfortunately, the MHCP reserve is so small and fragmented at the outset that it cannot tolerate additional fragmentation from new roads or other facilities.

EHL2-5.

No change was made to the final MHCP on Boundary Adjustments and Equivalency based on this comment. Section 5.3.6 states that adjustments to preserve boundaries must consider biological factors such as improving the amount, configuration, or quality of conserved habitats; increasing the conservation of covered species; improving habitat connectivity, wildlife movement corridor function, management efficiency, or protection of biological resources; and not increasing the likelihood that an uncovered species will meet the criteria for listing. We feel this comment has been addressed.

EHL2-6.

The accounting process to determine "roughly proportional" loss and conservation provisions will be determined in each Subarea Plan. This information will be submitted to the wildlife agencies as part of an annual public report to demonstrate compliance with the terms and conditions of the Subarea Plan, Implementing Agreement, and Take Authorization.*

EHL2-7.

The Final MHCP provides clarification of the relationship of the MHCP gnatcatcher core to the Subarea Plans (please see Sections 3.3, 4.4.3, and 5.3.9 for a detailed discussion of the gnatcatcher core.) The development agreement referenced in the comment sets certain responsibilities for the participating City. In the agreement, the City will agree to consider certain land uses within the FPA. The City can not deny a land use prior to an applicant making an application. For this particular issue, the City is obligated to process an application for a Conditional Use Permit for the uses listed therein. The City has been advised by legal counsel that if it does not process an application as set forth in these entitlements, it can be deemed to be in violation of state regulations on permit processing and other substantive and due process rights. Additionally, development agreements have been interpreted as contractual obligations, were it to refuse to process an application. Further, the City can not deny a land use prior to the submission of an application. The processing will include CEQA review of the application, and the legislative body (the City Council) must make certain findings with respect to the proposed use prior to making a decision on whether to issue the CUP. Issuance of the CUP is a discretionary decision -- the City can approve or deny that application in accordance with its discretionary land use authority. The City can not deny the project today because there is no application before the decisionmakers.*

EHL2-8.

Establishing an MHCP Land Conservancy will be considered within one year of formation of the MHCP Elected Officials Committee. The MHCP Elected Officials Committee will be formed once two or more Cities have entered into

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Implementing Agreements with the Wildlife Agencies. The Elected Officials Committee can be organized as a subcommittee of the SANDAG Board or the committee can be independent of the SANDAG structure. The Elected Officials Committee will appoint the MHCP Advisory Committee, which will be divided into two subcommittees: the MHCP Staff Subcommittee and the Stakeholders Subcommittee. Absent a regional funding source, the Cities will staff these two subcommittees.

EHL2-9. The MHCP and Subarea Plans assume that all adopted General Plan Circulation Element roads will be implemented subject to MHCP design criteria and subsequent environmental review. Anticipated road improvements have been incorporated in the FPA design on hard lined properties. On soft lined properties, future road improvements will be subject to the MHCP design criteria.*

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9. 6.3.3 Preserve Management on Private Lands

EHL2-10.

It is unclear whether private acreage under open space easement yet not under active preserve management can be "counted" toward preserve goals. "Open space easement" lands would typically remain under private fee title yet have clearing and grading prohibited.

10. 6.3.8 Recreation and Public Access

EHL2-11

It is unclear whether "on road" or "on trail" motorized use is compatible. It should be clarified that such use, due to noise, roadkill, and other factors, is also incompatible.

11. 6.3.10 Predator and Exotic Species Control

EHL2-12

The management recommendation for feral and domestic animals is flawed. It is very difficult to "document" feral or domestic use. Are photos needed, and how many? The proximity to the preserve of residential and other human uses (such as active recreational parks) guarantees access to the preserve for domestic and feral animals – which are certain to be present. Thus, "use" in the preserve should be presumed, and proactive but humane removal methods should be immediately established.

The huge toll on birds and mammals from domestic and feral cats is well documented. Furthermore, bellling has been shown to be ineffective, as native wildlife is not conditioned to associate the tingling of bells with danger. In view of these facts, the proposed management recommendations are severely inadequate and flawed.

It is very difficult to "document" feral or domestic use, here proposed as a prerequisite to taking action. Are photos needed, and how many? In actuality, the proximity to the preserve of residential and other human uses (such as active recreational parks) *guarantees* access to the preserve for domestic and feral animals – which are certain to be present. Thus, "use" in the preserve should be presumed, and proactive but humane removal methods should be immediately established. Also, local ordinances to prohibit the outdoor release of house cats should be required as part of MHCP approval.

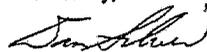
12. 7.1.1 Financing Policies and 7.3.1 Policies for Local Revenues and Sources of Funds

EHL2-13

What mechanism is proposed for the assurance of local management funds? Is it coincident with the "voter approval" provision?

Thank you for considering these comments, and we look forward to working with the cities on a successful plan.

Sincerely,



Dan Silver,
Coordinator

EHL2-10.

Open space areas associated with existing residential developments and governed by homeowners' associations (HOAs) will be maintained according to HOA guidelines. The HOAs will be responsible for controlling trash, fire, and illegal encampments. HOA open space areas may receive active biological monitoring and management pursuant to the MHCP if there is a regional funding source for biological management activities and if there are no legal (i.e., HOA) impediments. New HOA open space conserved after the Subarea Plan is adopted will be managed and monitored according to the specifications in the Subarea Plan.*

EHL2-11.

The Final MHCP has been revised to clarify that motorized use in the preserve is not compatible with MHCP goals.

EHL2-12.

The preserve manager must record locations where feral or domestic animals are consistently observed in the preserve and work with adjacent homeowners to prohibit domestic animals in the preserve. As specified in the plan, each City will develop a public outreach program to educate citizens, especially those who live adjacent to the preserves, on the potential impacts of feral and domestic animals in the preserve.

EHL2-13.

A regional funding program, subject to voter approval, would provide long-term funding for management and monitoring of habitat lands. Prior to establishment of the regional funding program, each City would provide interim financing of management and monitoring of City-owned habitat lands proposed for inclusion in the regional preserve system. Sources and assurance of interim financing will be addressed in the City's Subarea Plan and Implementing Agreement.*

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Mr. Jim Bartel
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201 N Broadway
Escondido CA 92025

The following comments pertain to the Draft MHCP EIS/EIR and Escondido Subarea Plan:

FDR-1 1. How was economic benefit of development determined? Who was identified as the beneficiary?

Cost to city (taxpayers) for maintaining preserve lands given as \$28/acre annual in 2000 dollars.
How does that cost compare to the city's cost for services and for building and maintaining infrastructure for development?

FDR-2 2. How was "balance" defined with reference to land use?

If 82% of the MHCP land is developed and 18% is preserved, the usual concept of "balance" does not seem to apply.

FDR-3 3. Daley Ranch is recognized throughout the Escondido Subarea Plan and the EIS/EIR as an important biological resource. How will the Subarea Plan and MSCP work to maintain its viability and success:

Over 400 plants of significance have been identified on conservation bank lands but only a handful of those plants, none of their associated invertebrates, and very few of other known associated fauna are included on the List of Conserved Species. How is habitat to be conserved if the species that comprise the habitat do not thrive?

FDR-4 The county has identified major wildlife corridors to the east and north of the

Letter 16: Friends of Daley Ranch

FDR-1. This comment addresses economic concerns. The draft EIS/EIR analyzed potential adverse impacts of the proposed project on the Cities' ability to accommodate future growth of population, housing, and employment. For the purposes of this planning document, economic impacts may be an indirect effect of the physical and environmental impacts which are predicted to occur in the planning area. Please note that the proposed project is the issuance of an incidental take permit under Section 2835 of the NCCP and Section 10a1(B) of the U.S. Endangered Species Act of 1973, as amended to implement the conservation plan described in the preferred alternative (Alternative 2).*

The federal Endangered Species Act ("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 prepared. The Secretary may also require other assurances that the plan will be implemented. The structure for implementing the necessary conditions is provided in the MHCP Plan and the assurances that these conditions will be implemented will be identified in the Implementing Agreement, which the public will have an opportunity to review as notified in the Federal Register.

FDR-2. This comment addresses the ratio of development to preservation. One of the objectives of the proposed project is to "Establish and maintain a balance between preservation of natural resources and regional growth and economic prosperity" (draft EIS/EIR, p. ES-5). The natural resources generally reference the biological resources in the region. To accommodate regional growth, the cities and county prepare General Plans where future growth (provision of housing and jobs) is planned to respond to the projected growth. With respect to land use, the general plans of local jurisdictions document their goals and objectives. The MHCP balanced the somewhat conflicting goals of preserving natural resources to the extent feasible while allowing housing, infrastructure, commercial, and industrial uses to serve the projected growth. The MHCP also had to respond to the constitutional rights of property owners: the government can not take property without compensation. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

FDR-3. This comment addresses the management of Daley Ranch. Management of Daley Ranch is governed by the existing Conservation Bank Agreement and the adopted Daley Ranch Master Plan. The MHCP and Subarea Plan recognize these existing requirements but in no way modify the requirements; Daley Ranch will continue to be governed by the terms of the Conservation Bank Agreement and the adopted Daley Ranch Master Plan. The County will need to consider the adjacent land uses such as Daley Ranch in the preparation of the North County Amendment to the MSCP. In the interim, the City will continue to monitor land use proposals adjacent to Daley Ranch as part of the interagency referral process and CEQA review. However it should be noted that the County has land use authority over the adjacent properties to the north, east and west.

Regarding the number of species at Daley Ranch, recent biological surveys by Merkel and Associates (July 2002) have observed over 400 floral species and over 160 faunal species on the property. The majority of these species are not on the MHCP target species list since they are not considered sensitive species; therefore inclusion on the covered species list is not necessary. However, the habitat and the associated species will be conserved at Daley Ranch through ongoing management in accordance with the Conservation Bank Agreement, approved Master Plan and anticipated preparation of a long-term management and monitoring plan (underway and anticipated for completion in Fall 2002).

FDR-4. This comment addresses wildlife corridors and habitat linkages. Valley Center Road is a County project not under the purview of the City or MHCP. The City has not received information from the County regarding wildlife corridors. Linkages in the areas east and north of Daley Ranch will be addressed in the County of San Diego's proposed North County Amendment to the MSCP. However, on property proposed for annexation to the City, potential wildlife corridors will be evaluated pursuant to policies of the City's adopted Master Plan of Parks, Trails and Open Space, and adopted standards in their Subarea Plan. Please see response CNPS-45 and CNPS-250. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

The MHCP Cities have no direct control over the County's Valley Center Road project or the MSCP-North plan. The Cities and Wildlife Agencies are working with the County to have the County MSCP and the MHCP Cities NCCP Plan be consistent. The Valley Center Road Widening project is currently under review by the Wildlife Agencies, and the County has

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committed to evaluating the wildlife corridor and ensuring that a viable wildlife movement corridor will be retained.

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Ranch yet no links to the corridors are identified or protected by the Subarea Plan.

The land that could provide such corridors is divided by the heavily traveled and soon to be widened Valley Center Rd. The road will be divided by a high concrete barrier on the median but no bridge is contemplated or included in the road widening design. How will viable linkage to those corridors across Valley Center Road be provided for Daley Ranch wildlife in the MHCP or MSCP?

FDR-5

City-owned water shed property is on both sides of the road preserved as a softline area allowing such uses as gun and archery range, yet no mention is made of how wildlife movement can safely occur through that property. How did the City decide that those lands should be designated softline instead of hardline FPA for the sake of linkage to the corridors for Daley Ranch?

FDR-6

The Ranch is bordered by county lands on the north and east yet these lands are not included in the Escondido Sphere of Influence. Development plans currently contemplated and approved contain no provision for protecting the valuable Daley Ranch Credit Area (Area III) adjacent to the county land. Given the importance of the biological resources on the Ranch, how will the city influence development on that boundary? Will the County be required to make protections part of development plans that are contemplated (Sager and Heipler properties in particular).

FDR-7

Area II of the Ranch is only afforded 35% conservation as a softline area that usually receives 50 to 80% protection. These acres could easily accommodate a greater level of conservation. Area II is omitted from the FPA Hardline. How does the lesser designation provide the best support and protection for Area III?

FDR-8

Roads, parking areas and building are to be allowed in Areas I and II, and Camping facilities in Area III. Are these park-like uses consistent with protecting natural habitats and species in NCCP?

FDR-9

Elsewhere in the Subarea Plan roads will be constrained from dividing natural habitats: Where on the Ranch would a road be built without dividing Area III?

FDR-10

A collector road is shown on the Circulation Plan at the north end of the Ranch. What protections will Area III and II at that end be given? Is the County contemplating asking for an additional entrance to the Ranch?

FDR-11

The terms "natural open space," "biological open space," "open space," and "park/open space" are used interchangeably throughout the MHCP Subarea Plan. What are the distinctions between these terms? Which term applies to

FDR-5.

Please see responses CNPS-48 and CNPS-251. Any new uses proposed on the water district lands will be evaluated pursuant to policies of the City's adopted General Plan, Subarea Plan, Master Plan of Parks, Trails and Open Space, and CEQA. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

FDR-6.

When a development application is proposed on unincorporated property within a two-mile radius of the City limit, the County of San Diego refers the application to the City for review and comment. The City monitors proposed development adjacent to Daley Ranch and provides comments to the County during the CEQA and planning processes regarding the sensitivity of the resources at Daley Ranch. Development proposed within the County will be subject to the land use authority of the County. Development proposed for annexation to the City will be evaluated pursuant to adopted City policies and ordinances. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

FDR-7.

The conservation levels were originally proposed to reflect the maximum opportunity for future uses allowable under the Daley Ranch Conservation Bank Implementation Agreement in Areas II and III. With the adoption of the Daley Ranch Master Plan, the anticipated future activities in these areas has been substantially reduced. Therefore the FPA map will be revised to indicate increased conservation of 50% (Area I) and 75% (Area II).

FDR-8.

The uses are already allowed under the approved Daley Ranch Conservation Bank Implementation Agreement. The Subarea Plan does not alter this agreement, which has been approved by CDFG and USFWS. Future proposals to establish these uses will be evaluated under CEQA.

FDR-9.

No new roads are proposed. However, as specified in the Daley Ranch Conservation Bank Implementation Agreement, any future proposals to establish a new road is subject to review by CDFG and USFWS and will be evaluated under CEQA.

FDR-10.

The City's Circulation Element designates Mountain Meadow Road/Alps Way as Collector Road. An existing segment of this road parallels the north perimeter of Daley Ranch. While the specific alignment of the road has not been determined, future improvement to Collector Road standards will not be constructed within Daley Ranch, and will be subject to review under CEQA, the General Plan, Subarea Plan and other City policies.

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While the County has not formally requested an additional entrance to Daley Ranch, the Valley Center Community Services District has requested a trail connection at the north end of the valley. The City Council directed staff to review this potential trail connection. The City is currently preparing a biological survey to use as a baseline in evaluating potential impact of such a connection. Following completion of the survey, the City anticipates reporting back to the City Council in the Fall 2002 regarding potential opportunities for new trail connections, and associated issues. Any new trail connections would require an amendment to the Daley Ranch Master Plan and CEQA review.

FDR-11. The various open space terms are used interchangeably. The Subarea Plan will be edited for greater consistency. Softline properties will convert to hardline properties as land use and conservation areas are determined on individual properties. These hardline properties are considered part of the preserve system. Properties that are incorporated into the preserve system will be required to address associated management and monitoring responsibilities to insure protection. However, active parkland (ball fields, maintained landscape areas, etc.) are not counted for biological off-site acreages.

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area afforded the greatest amount of preservation? What part of the MHCP preserve in Escondido will actually be required to adhere to that degree of protection (figures and locations are inconsistent)?

FDR-12

How will the city scientifically assess the biological success of mitigation and re-creation of preserved habitats? Who will be responsible to make adaptive management changes when species fail to thrive in mitigated or re-created circumstances? Who will bear the cost?

FDR-13

If a permittee is to be assured "no surprises," and limited obligation once mitigation requirements are met, then how can the success of mitigation and re-creation be biologically measured and substantiated before the take proceeds?

FDR-14

The "partnership" that created the Draft MHCP included developers and agency staffs, but not representatives of the community interested in ecological issues, and no "unaffiliated" scientists who could assess the complexities of the information and confirm that the provisions of the plan are adequate to do the job. What provision does the plan make to have independent scientists interpret the scientific aspects and data collections to be made?

While we are happy that the city will be involved in conservation of natural habitat, we believe that the MHCP could sing a little louder and less equivocally to accomplish that task, and a little more realistically about the true economic cost to the local citizens for increasing development at the expense of natural habitats, and the quality of life in this region.

Sincerely,



Sally Thomas, President
Friends of Daley Ranch
c/o
921 Sol Vista Glen
Escondido CA 92025

FDR-12.

The proposed biological management and monitoring requirements were addressed in the Draft MHCP Biological Monitoring Plan dated December 2001, and minor changes have been incorporated in response to comments. These will be incorporated prior to approval of an Implementation Agreement. The management entity will be responsible for adaptive management changes. Funding sources for management activities have not yet been identified; however, these sources shall be identified prior to issuance of the Implementing Agreement.

The cities will adhere to management responsibilities included in the implementing agreement. The take authorization will not occur until these responsibilities are defined and funding assured.

FDR-13.

Proposed biological mitigation measures are evaluated through the CEQA process prior to project approval. Measures such as revegetation require the preparation of revegetation plans documenting the feasibility of accomplishing the mitigation, and establish success criteria. CEQA requires mitigation monitoring to insure that mitigation measures are met. Mitigation often requires replacement at a ratio greater than 1:1 to account for temporal loss of habitat and to account for anticipated survival rates (100% survival cannot always be assured).

FDR-14.

The MHCP Advisory Committee included numerous representatives from the community interested in ecological issues, including the Sierra Club, San Dieguito River Park JPA, Endangered Habitats League, Audubon Society, Fallbrook Land Conservancy, Association of Environmental Professionals, and others (refer to Attachment A of the Public Review Draft of the MHCP Plan, Volume I for a complete list of members). Additionally, the City of Escondido worked closely with the City's Environmental Advisory Board and Coalition of Environmental Organization regarding preparation of the MHCP and Subarea Plan. Where possible, the input of these organizations and other scientific resources were incorporated.

Refer to Section 1.3 of MHCP Volume I for a discussion of the planning process and the role of the Scientific Review Panel. Independent scientists had the opportunity to review all the plans and associated environmental document during the public review period. Section 5.7 of the MHCP Volume I addresses the implementation structure, and provides an opportunity for inclusion of science advisors to participate in the MHCP implementation.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

SANDAG recognizes the value of independent scientific input and review and has obtained significant scientific guidance throughout the process. Although the plan document itself has not been subject to formal scientific review, the MHCP Biological Goals, Standards, and Guidelines document (Ogden 1998)—which formed the scientific foundation for MHCP planning and analysis—was reviewed by a respected group of independent scientists. These reviewers (and their primary areas of expertise) were as follows: Dr. Jonathan Atwood, Manomet Observatory for Conservation Sciences (California gnatcatcher, coastal cactus wren, and other songbirds); Dr. Pat Herron Baird, California State University, Long Beach (shorebirds and other birds); Peter Bloom (raptors); Dr. John Brown, Smithsonian Institute, National Museum of Natural History (butterflies and other invertebrates); Dr. Ted Case, University of California San Diego (reptiles, amphibians, and ecological communities); Kevin Crooks (medium and large mammals and wildlife movement corridors); Dr. Barbara Kus, San Diego State University (least Bell's vireo, southwestern willow flycatcher, and other birds); Karen Miner, California State Parks (bats); Dr. Paul Beier, Northern Arizona State University (mountain lion and movement corridors); Thomas Oberbauer, County of San Diego (vegetation communities and sensitive plants); and Dr. Derek Langsford, County of San Diego (vegetation). Additional scientists were consulted on an as-needed basis for particular questions and species issues, including Dr. Robert Fisher, U.S. Geological Survey (reptiles and amphibians); Stephen J. Montgomery (Stephens' kangaroo rat); Ed Ervin, U.S. Geological Survey (reptiles and amphibians); and Dr. Andrea Atkinson, U.S. Geological Survey (biological monitoring and statistics). The habitat evaluation model developed for the MSCP plan and adapted for use by the MHCP was also subject to independent scientific review by some of the above individuals as well as by Dr. J Michael Reed, University of Nevada, Reno (reserve design and population viability analysis). The MHCP's scientific foundations thus generally received more intensive scientific input and review than most other habitat conservation plans, including the MSCP. Independent scientific review is generally not appropriate for other aspects of conservation plans, including the implementation policies, economic considerations, and legal findings.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

MOUNTAIN DEFENSE LEAGUE



P.O. Box 19852, San Diego, California 92159-0852
(619) 298-3734

18 April 2002

SANDAG
401 "B" St., Suite #800
San Diego, CA 92101
Fax: 619.595.5305

Re: Multiple Habitat Conservation Program

Dear SANDAG,

The Mountain Defense League is a grassroots organization dedicated to the protection of San Diego County's mountains, wildlands, and rural communities through wise land use planning. We are writing to comment on the Multiple Habitat Conservation Program (MHCP) and its accompanying EIR/EIS.

We are concerned that the "preferred alternative" of this proposed project will not accomplish its stated goal of targeting the highest quality habitats for preservation while allowing development of less important areas. It also fails to achieve the goals and objectives of the Natural Community Conservation Planning (NCCP) Act and the requirements of the multiple species Habitat Conservation Plans as outlined in the Endangered Species Act (ESA) which it legally must do.

We recommend that SANDAG adopt Alternative 3, the Biological Core and Linkage Area, the "biologically preferred preserve" alternative, if the project is pursued. Only this alternative contains adequate grasslands habitat to protect the essential flora and fauna supported by this important habitat. Not only do grasslands offer habitat for endangered species such as Stephens kangaroo rat and Quind checkerspot butterfly, but they also offer foraging habitat for raptors and predators. Grasslands are a biologically important component of a functioning ecosystem for this area of Southern California and are the "gold" inspiring the nickname "Golden State" for California. There is no excuse for not including sufficient areas of this vital habitat in a Habitat Conservation Plan.

Letter 17: Mountain Defense League

- MDL-1. This comment identifies the organization and provides an introduction to the comment letter. No response is necessary.*
- MDL-2. The alternatives in the EIS/EIR are reasonable and feasible to implement. FPA1 does result in more significant impacts to biology, whereas BCLA reduces impacts to biological resources yet has more significant socio-economic impacts.
- MDL-3. Based upon the findings of the environmental analysis, Alternative 3 results in significant and unmitigable socio-economic impacts. The adoption of Alternative 3 may be rejected by the decision makers due to the associated socio-economic impacts; however, alternatives/mitigation measures must be evaluated where they have the opportunity to reduce impacts. The decision makers must consider significant and unmitigated impacts. To fully mitigate all impacts to below a level of significance would be infeasible. It was concluded that Alternative 2 was environmentally preferred, balancing all of the environmental issues.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

MDL-4 Only this alternative will prevent significant and unmitigable impacts to four avian grasslands species: the northern harrier, grasshopper sparrow, burrowing owl, and tricolored blackbird. Also, only this alternative will prevent significant and unmitigable impacts to the San Diego horned lizard and orange-throated whiptail and seven sensitive plant species: Nuttall's scrub oak, summer-holly, cliff spurge, Parry's tetradlea, and variegated, Blochman's, and sticky dudleya.

MDL-5 A fundamental flaw in the proposed Multiple Habitat Conservation Program is no consideration is given to provide linkages from one core area to another. Instead, each preserve stands alone as an island. Biological literature well documents that biodiversity decreases with time in areas that are not connected by wildlife corridors with other protected areas. Science has determined that with time these preserved islands of habitat will lead to the extirpation of species including those the MHCP purports to preserve.

MDL-6 A problem the MHCP shares with its sister plan, the Multiple Species Conservation Program, is that it lacks a funding program to ensure the lands allotted to be preserves will in fact be protected. Depending on mitigation purchases by developers and grants that have yet to be awarded is not adequate. Developers are required to have firm financial plans in place before their developments are approved. Surely the same requirement should be made of the cities and SANDAG before their MHCP plan is adopted especially since the real purpose of this proposed plan is to aid developers by removing the environmental hurdles of the ESA they wish to avoid.

MDL-7 The Mountain Defense League suggests that SANDAG go back to the drawing board and draft a plan that will truly protect the habitats and species the plan purports to protect and include an adequate funding program. Short of this, we suggest that SANDAG adopt Alternative 3, the Biological Core and Linkage Area alternative.

Sincerely,



Pandora Rose
Assistant Director

MDL-4. Please refer to response MDL-2 and MDL-3.

MDL-5. The County of San Diego is currently preparing its North San Diego County Subarea Plan of the MSCP, which covers all unincorporated lands adjacent to or within the MHCP study area. Camp Pendleton is currently preparing a program to manage its upland species. The MHCP has tried to conserve all regionally significant linkages and movement corridors to these adjacent planning areas within its planning boundaries. Although the MHCP cannot create linkages outside of its planning boundaries, it can safely be anticipated that the wildlife agencies will expect the County and Camp Pendleton to complete linkages on their side of the boundaries as part of their planning efforts. In the event that habitat plans are not adopted in these adjacent areas, the wildlife agencies will determine on a case-by-case basis the potential for projects to jeopardize the continued existence of species.*

MDL-6. 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 CFR, Title 40, Sec. 1508.14, and California Public Resources Code, Sec. 21100).

Implementing a preserve system for the MHCP will involve actions by local jurisdictions as well as by federal and state agencies. Some of those actions, such as commitment of public lands for habitat use, can occur without new funding. Other actions, such as management of habitat lands conserved as mitigation for project impacts, will be funded by organizations or individuals responsible for project development. Key to successful implementation of the MHCP is that important habitat areas be conserved at a rate which at minimum preserves the continued viability of target species and mitigates for impacts which occur. Since habitat loss allowed under the plan would not occur all at one once, public financing for the MHCP is not immediately required. Under the plan, implementation would be periodically monitored to insure that adequate conservation occurs over time. The Final MHCP also provides for interim funding of selected conservation actions. The need for funding of other conservation tasks will be reviewed, and if necessary supplementary actions taken, while the jurisdictions pursue a regional funding program.

The federal Endangered Species Act ("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

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

incidental take permit, among other requirements, prepare a conservation plan and ensure that adequate funding for the plan will be prepared. The Secretary may also require other assurances that the plan will be implemented. The MHCP provides the framework for the funding necessary to implement the program. The assurances of such funding will be provided in the draft implementing agreement for each city which will undergo a formal public comment period identified in the Federal Register once the wildlife agencies receive a request for a 10(a)1(B) permit and a Section 2835 permit for the subarea plan.

The MHCP envisions that habitat acquisition, habitat restoration, and management, monitoring, and administrative costs will be funded by participating local jurisdictions through a cooperative regional funding program, to be placed on a ballot for voter approval within three years of the approval of the plan (MHCP, Vol. I, Sec. 7.2 and Table 7-2). The MHCP also identifies a range of funding sources that may be used, such as property tax, Mello-Roos special tax, sales tax, and benefit assessment.

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

- Commitment of public lands owned by participating local jurisdictions to the preserve (approximately 6,430 acres).
- Management of existing state and federal lands as part of the preserve (approximately 1,480 acres).
- Interim funding of selected conservation actions as described in the Final MHCP, Subarea Plans, and Implementing Agreements.
- Recently completed acquisition of selected properties using state and local funds such as some of the stepping stone parcels in the City of Oceanside upland parcels in the City of Encinitas along the south shore of Batiquitos Lagoon, a key linkage area in the City of Carlsbad, and Bernardo Mountain in the City of Escondido.
- Requirement of mitigation of impacts from new public and private projects.

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The Wildlife Agencies (USFWS and CDFG) will, through Implementing Agreements with participating jurisdictions, "monitor plan implementation" and "ensure that habitat conservation proceeds in step with development" (MHCP, Vol. I, Sec. 5.2.3). Furthermore, "[i]f the Wildlife Agencies determine that the Subarea Plan is not being implemented as required, the wildlife agencies and the city will take the actions specified in the subarea plan and implementing agreement to remedy the situation" (MHCP, Vol. I, Sec. 5.3.8). The requirement to review will apply if a regional funding program is not approved in a timely manner, and an alternative remedy may require each jurisdiction to develop and implement a funding source adequate to meet its share of the MSCP and Subarea Plan implementation as it continues to pursue a regional funding source.

MDL-7. Please refer to response to MDL-3.*

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.



Palomar Audubon Society

P.O. Box 2483
Escondido, CA 92033

April 25, 2002

Lee Ann Carranza
US Fish and Wildlife Service
2730 Loker Avenue West
Carlsbad, California 92008

Dear Ms. Carranza:

I have reviewed the draft of the MHCP as it applies to Montreux - Derbas Specific Plan. The Draft on pages 4-12 and 5-5&6 clearly indicate approval of the site for residential development. The Palomar Audubon Society is dismayed that the Escondido City Council, when it approved the project, did not give sufficient consideration to the pair of golden eagles nesting on the site. This is the only pair in San Diego County nesting west of I 15. The proposed development will not only be disturbing to the nesting site, but will also destroy a large portion of the eagles foraging area. The 345 acre Derbas property is an integral part of the most viable remaining foraging track in the vicinity of Lake Hodges. The Elfin Forest Recreational Reserve and the Olivenhain Reservoir site are both in public ownership to be preserved as natural open space. San Diego County and the San Dieguito River Valley Conservancy are striving to purchase the Derbas parcel in order to incorporate it into this vision of a grand interconnected open space preserve. Palomar Audubon cannot accept the MHCP Draft, which sanctions the residential development of Montreux-Derbas.

Sincerely yours,

Richard L. Barber DDS

Richard L. Barber DDS
Conservation Chairman
Palomar Audubon Society
15569 Walton Heath Row
San Diego, CA 92128
Phone: (858) 451-3855

RECEIVED

APR 29 2002

US FWS
CARLSBAD FIELD OFFICE, CA

Letter 18: Palomar Audubon Society

PAS-1. Comment noted concerning the nesting area for golden eagles. As of September 30, 2002, the Escondido Creek Conservancy and the County of San Diego purchased the Montreux project site, ensuring the land is to remain as open space and be conserved in perpetuity. Therefore, no future development will occur on the Montreux property.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

PAS-1



2002 April 29

Letter 19: Preserve Calavera

PC-1. The comment provides an introduction to the collection of comments from other environmental organizations.*

To: Jim Bartel
US FWS

From: Diane Mygand

Subject: Oceanside & Carlsbad Sub-area
Plan Comments

PG-1

If the joint comment letters from the
environmental organizations are
submitted timely - please ignore
these as duplicates. (except for
the attachments)

Sorry for any inconvenience

RECEIVED

APR 29 2002
US FWS
CARLSBAD FIELD OFFICE, CA

5020 Nighthawk Way - Ocean Hills, CA 92056
www.preservecalavera.org

(760) 724-3887

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.



April 27, 2002

Jim Bartel, Field Supervisor
US Fish and Wildlife Service
2730 Loker Avenue
Carlsbad, CA-92008

RECEIVED
APR 29 2002
US FWS
CARLSBAD FIELD OFFICE, CA

Subject: Carlsbad Habitat Management Plan

Dear Mr. Bartel :

PC-2

Last July the Sierra Club sponsored a public workshop to inform interested persons about the regional planning process for habitat conservation in North County, and the expected issuance of the draft MHCP, EIR/EIS and Subarea plans for the effected cities in this region. The Habitat Management Plan for Carlsbad had been issued much earlier and had already received extensive comment. Comment letters of July 2000 by the Sierra Club and Preserve Calavera raised issues that are all still relevant. We are officially resubmitting these prior comments by attaching copies of those letters. The following additional comments are based on further information on how the Carlsbad plan relates to the rest of the north county conservation effort, and an improved understanding about the failures of current practices.

One of our objectives in this review was to determine if the Carlsbad Habitat Management Plan(Plan) meets Sierra Club policy on HCPs/NCCPs and wetlands.

Also, we reviewed the Plan to determine if additional conservation can be achieved. (The San Diego Chapter of the Sierra Club recently went on record to support the maximum level of conservation in the MHCP as reflected in the Biological Core and Linkages alternative in the draft EIR/EIS.) We have identified areas that should be included in the MHCP Preserve, and urge the Wildlife Agencies to require Carlsbad to preserve these areas. By including these areas, Carlsbad will increase its level of conservation and improve regional connectivity of the wildlife corridors.

Third, we have commented on issues in the Plan that need clarification, correction, or resolution.

Overview

PC-3

Conservation planning in north county is highly dependent upon what happens in Carlsbad. Carlsbad is the only coastal city with remaining core habitat. This core habitat, and the linkages both east/west and north/south through the city are the heart of the regional conservation plan. The regional plan will not work unless this core habitat is protected, and the critical linkages are effective. In spite of this, the level of conservation of both the core habitat, and key linkages are insufficient to assure the success of the regional plan.

PC-2.

The comment provides an introduction to the comment letter indicating review objectives for the Carlsbad Subarea Plan.*

PC-3.

Several comments stated that the preserve design of the Carlsbad HMP is inadequate due to insufficient total acres, size and shape of core areas, size and shape of linkages, edge effects, Hardline Areas, Standards Areas, preserve management, funding for implementation, or other reasons. In most cases, these comments express an opinion on the part of the commenter and are not accompanied by substantiating facts or information. The plans have been the subject of detailed biological study and analysis for over 10 years. The MHCP planning efforts have been conducted by experienced, credentialed professionals having expertise in the fields of conservation biology, botany, mammalogy, herpetology, ornithology, invertebrates, economics, and environmental law. The conservation standards utilized in the plans are those legally recognized standards stated in the U.S. Endangered Species Act, the Federal Habitat Conservation Planning Handbook, the State of California's Natural Community Conservation Planning Program Planning Process Guidelines, and other authoritative sources. The analyses have concluded that the plans, while allowing some impacts to occur, will adequately conserve the species of concern during and beyond the lifetime of the permits.

The comment recommends that the Goals and Objectives section of the plan include quantifiable goals. The Goals and Objectives section is intended to describe the overall intent and direction of the plan. Quantifiable objectives for each species are included in Appendix C.

Conservation of habitat was quantified for each habitat. The plan focused on species that were either listed or were in need of protection. It is acknowledged in the MHCP and Subarea Plans that grasslands and associated species were not adequately protected.

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Section A2 Goals and Objectives includes a list of biological, conservation, land use, and economic objectives for the Plan. These are very general statements- and nowhere is there any indication of a goal to actually change the status of a threatened/endangered species. The ultimate purpose of the entire NCCP process is to reverse the decline of species. Quantifiable, measurable goals need to be specified in order to provide any basis to evaluate plan success, and determine when corrective action is needed. The biological goals that are stated are not stated in a form that is measurable, nor is it clear who makes the determination that a goal has been met. For example, one of the goals is to "maintain functional wildlife corridors and habitat linkages within the County and to the region..." What is a functional wildlife corridor? What large mammals are included? Who determines if this is met?

It is clear that the focus of the Plan is a single species- the threatened California Coastal Gnatcatcher (CCG)-and not the entire list of 47 sensitive plants and animals shown on Table C-11. The Plan will be used as justification for take permits for all 47 species. The Plan must therefore clearly demonstrate that it protects sufficient habitat to support the populations of all of these species. The focus on coastal sage scrub in the preserve design does not assure that all of these species are adequately protected.

Core habitat will only continue to function as intended if both the core habitat and effective linkages between cores are protected. The plan allows significant degradation of both the core areas, and the connecting linkages. Reduction in size of the contiguous core, bisecting core habitat with roads, constraining of linkages all reduce the viability of the Plan.

Overall Conservation Proposed

PC-4

Carlsbad proposes to preserve 65% of the existing sensitive habitat citywide or 5,705 acres. The overall MHCP biological core and linkage area proposes to preserve 82% or 24,531 of 29,895 acres of natural habitat plus an additional 18% of other vacant land. The BCLA alternative would preserve 93% of the sensitive habitat in Carlsbad (EIR/EIS Table 2.3-1) Land in Carlsbad is preserved at a higher rate than other cities in north county because it contains the major core habitat and connecting linkages.

The low level of conservation proposed is of even greater concern because of the impacts on both the core habitat and linkages- impacts that effect the entire region. Most of the proposed land for preservation in north county will have 100% of their area subject to significant adverse edge effects. (See MHCP Figure 2-4 Focused Planning Areas Edge Effects MHCP Study Area.) Much of the preserved land in Carlsbad is in large parcels that provide much greater protection from these adverse edge effects. The result is that this land is of much greater importance for protection of species than many small fragments.

These overall numbers do not show the severity of the impact on specific habitat type and the associated species that are the real focus of this conservation effort. Coastal sage scrub (CSS) habitat preservation is at the core of the MHCP planning process. The Plan proposes to preserve only 64% of the remaining CSS- and much of this is being lost in large parcels. In contrast, the BCLA preserves 91% of the CSS.

PC-4.

Based upon the findings of the environmental analysis, Alternative 3 results in significant and unmitigable socio-economic impacts. The adoption of Alternative 3 may be rejected by the decision makers due to the associated socio-economic impacts; however, alternatives/mitigation measures must be evaluated where they have the opportunity to reduce impacts. The decision makers must consider significant and unmitigated impacts. To fully mitigate all impacts to below a level of significance would be infeasible. It was concluded that Alternative 2 was environmentally preferred, balancing all of the environmental issues.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

PC-5 Another issue with the Plan is the designation of farmland as Standards Areas with their lack of definition for how this will contribute to the overall preserve plan. The BCLA alternative will conserve 2,094 acres or 58% of the existing Important Farmland in the city. The analysis in the EIR/EIS concludes that implementation of the BCLA will preserve ongoing agricultural operations and not result in any significant impacts to this use.

PC-6 In light of the fact that San Diego county has "more rare, threatened and endangered species than any comparable land area in the United States" (MHCP Vol. 1, Section 1.2 paragraph 1) and is considered a major "hotspot" on a global scale, the biological aspects of this plan are of far greater importance than the economic growth needs for the city or the north county region. Edward O. Wilson's article "How to Save Biodiversity" defines hotspots as "habitats that are both at the greatest risk, and shelter the largest concentrations of species found nowhere else."² (1) While the city has known for years that the natural habitats being destroyed for development were unique, they chose to ignore the opportunities to be good stewards of these valuable resources- resources that belong to us all. The conservation of only 65% of these remaining native habitats is ignoring once again the important biological value of all of the remaining vegetation communities and the sensitive species that need them to survive.

PC-7 It is recommended that the Carlsbad Habitat Management Plan be amended to provide for the conservation of all of the areas identified in the BCLA. It is also essential that additional funding be provided to support these necessary increased levels of acquisition of land for conservation and for its on-going protection and management.

Specific Additional Areas Recommended for Conservation

PC-8 The Biological Core and Linkages Alternative provides for 5,906 acres of conservation within Carlsbad, as compared to only 4,955 in the Plan. It is impossible from reviewing the documents to determine exactly where these additional 951 acres are located (mapping is at too large a scale). All of the land identified in the BCLA alternative should be conserved in addition to those specified in the Plan. It is assumed that most of these parcels are already included in the BCLA, but some may not be. We urge the Wildlife agencies to include the entire BCLA. In addition, there are several sensitive species locations that are not included in the BCLA- See Figure 4.3-5 Recorded Locations of Sensitive Species MHCP Study Area and BCLA Alternative 3 from draft EIR/EIS. All of these additional locations need to be added to the proposed hardline preserve design.

Compliance With Sierra Club Policy

PC-9 Attached is a copy of the Sierra Club California NCCP/HCP Principles. The following comments summarize our concerns about where the Plan is not in compliance with these principles.

1. Recovery

There is neither a goal for recovery, or actions that are specific to address "recovery" for any of the threatened/endangered species that will be subject to take permits as a result of this plan. Recovery means that a species is no longer at risk of extirpation in this area or extinction overall.

3

PC-5. Preservation of agricultural or disturbed land is necessary in some cases to create wildlife corridors where they would not otherwise be possible due to the absence of existing habitat. Much of the native vegetation in Carlsbad has been fragmented by grazing and farming over the past 150 years. In locations such as Bressi Ranch and Robertson Ranch, the only way of providing a wildlife corridor is to preserve some of the farmland as permanent open space and revegetate it with native plants. The preservation of these farmlands would occur at the time of development of that particular property. Revegetation would occur concurrent with development, either as a condition of development or through MHCP funding sources.

PC-6. As noted in the comment, the MHCP acknowledges that the "region" is considered a major hot spot on a global scale. The goals and objectives of the MHCP (as well as regional planning to the north, east, and south) is the continued existence and viability of the sensitive resources in the region. The MHCP represents a small area of this region. Additionally, the goal is to balance the needs of biology and society, while not jeopardizing the resources. Some comments state that the biological aspects of the plan are more important than the economic or social aspects of the plan. This is a value judgment on the part of the commenter. The intent of the plans is to balance wildlife conservation and other societal values. For example, the region has pressing needs in the areas of transportation, housing, and wastewater treatment, among others. The primary purpose of the plans is to arrive at a workable accommodation between these sometimes conflicting needs. This balancing of disparate needs is not a weakness of the plans and is instead the purpose of the plans.

Some comments have stated that urban and suburban development practices over the past decades have resulted in the current situation in which native vegetation is reduced in total area and fragmented, and several species of plants and animals are in decline or considered rare, sensitive, threatened, or endangered. The plans are based on the understanding that past actions have led to the current situation and that future development, if not modified pursuant to the plans, could potentially result in extirpation of some species. However, the retrospective assignment of responsibility for past actions has no place in such a planning effort. The current plans are forward-looking and are intended to modify land use policies such that the historic decline of species in this region will be halted. The plans are not intended in any way to compensate for the effects of past actions.

PC-7. The EIS/EIR analyzed the BCLA and concluded that from a biological perspective, that alternative was preferred; however, there were significant

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

socioeconomic impacts that would result. It was concluded that FPA2 was environmentally preferred, balancing all of the environmental issues. The BCLA alternative can not be implemented at this time, because the Wildlife Agencies and Cities have approved projects that will result or have resulted in the loss of habitat in the BCLA. Additionally, land use authorities must allow for the reasonable use of private property; 100% conservation is not considered a legally viable alternative.

PC-8. Please refer to response PC-7.

PC-9. The MHCP is not seen as a component of any adopted Recovery Plans. NCCPs and HCPs are not equivalent to Recovery Plans and are not required to meet recovery standards, although they cannot preclude recovery. They are therefore designed to be and are considered compatible with species Recovery Plans to the degree feasible. The management program will be adopted as part of the Implementing Agreement and, as appropriate, any incidental take necessary to conduct the maintenance and management will be approved through that process. Responsibility lies with the USFWS to prepare Recovery Plans for species. There are no Recovery Plans for most of the species being addressed in the MHCP. Therefore, the MHCP has relied on the guidance in the HCP Handbook starting on page 3-20.

Sensitive species in the Agriculture Exclusion Zone and WCPZ including narrow endemics are addressed in Section 5.2.3, Narrow Endemic Species Standards, and other portions of Section 5 regarding preserve assembly and conservation.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

2. Stewardship

PC-10 The Standards Areas are not sufficiently integrated with the Plan to assure that all lands are managed to protect the health of both the local creeks and lands with sensitive habitat. There is significant sensitive habitat included in these areas. The habitat needs to be mapped, conservation requirements need to be specified, and there needs to be provision for public accountability for agricultural lands consistent with other land uses.

Figure 4.3-5 Recorded Locations of Sensitive Species MHCP Study Area and BCLA Alternative 3 shows significant populations of sensitive species within the proposed Standards Areas.

3. Prevention

PC-11 There is language in the text that talks about “no net loss of wetlands,” but there is inadequate provision for wetland buffers that are essential to assure the health of the riparian habitat. Furthermore that plan talks about riparian buffers of 50’ from the riparian plant banks and another 50’ of planning buffer. These buffer requirements have not been met in many areas and the result is that impacts to critical wetlands are not adequately prevented.

Water quality controls have not been integrated with the plan.

Funding levels are insufficient to support an effective prevention program.

4. Science Based Standards

PC-12 There is no scientific basis upon which to make a determination that the proposed Plan is likely to result in recovery of at-risk species. Several narrow endemic species with critical populations in Carlsbad are not even specifically addressed in the preserve assembly criteria and the land that is targeted for acquisition. There is not even an assessment of the impact on the key species that is the focus of the Plan- the California Coastal Gnatcatcher.(CCG) How many exist today and how many will exist after this plan is implemented?

6. Legal Assurances

PC-13 The impacts of global warming on natural communities is just beginning to be understood. What is clear is that ecosystems are responding to climatic changes. What was once considered an “act of God”, like a major fire, can now be a reasonable expectation. These issues have been the focus of several recent scientific panels.(2) The assurances in the Plan fail to take into account these changes, and by so doing excludes these from requirements for adaptive management. The assurances language needs to specifically identify issues related to global warming and climatic change and require adaptive management for these conditions.

7. Public Participation.

PC-14 The draft report was re-issued along with the two volume draft MHCP, and the entire EIR/EIS document. The amount of material for the public to review is overwhelming. One public open house, held April 4, 2002 when there was less than one month left to review and comment on all

PC-10. Please refer to PC-3. The plans recognize and address the fact that significant populations of some species are located in Standards Areas. The Standards proposed for these areas are intended to conserve, to the maximum extent feasible, the species.

PC-11. The comment states that protection of wetlands is inadequate due to inadequate buffers, insufficient integration with upland habitat, water quality impacts, and other reasons. The treatment of wetlands in the plan has been written consistent with the standards of the Clean Water Act (particularly Section 404 and the requirements of the Army Corps of Engineers), Section 1600 et seq. of the California Fish and Game Code, and for properties located within the Coastal Zone, the California Coastal Act. The plans are not intended to replace the existing 404 and 1600 permit processes. After approval of the plans, any impacts to wetlands for either private or public projects will still be required to obtain these permits separately. Wetland mitigation ratios have been added to the MHCP, as follows.

REPLACEMENT MITIGATION RATIOS FOR IMPACTS TO WETLAND VEGETATION COMMUNITIES [1]

Wetland Vegetation Community	Mitigation Ratio [2]
Coastal salt marsh	4:1
Alkali marsh	4:1
Estuarine	4:1
Saltpan/mudflats	4:1
Oak riparian forest	3:1
Riparian forest	3:1
Riparian woodland	3:1
Riparian scrub	1:1 to 2:1
Fresh water	1:1
Freshwater marsh	1:1 to 2:1
Flood channel	1:1 to 2:1
Disturbed wetlands	1:1 to 2:1
Vernal pool	2:1 to 4:1

Notes:

1. These communities are subject to the goal of no net loss in acreage, function, and biological value (see Sec. 3.6.1). The highest priority will be given to impact avoidance and minimization. Replacement of habitat subject to unavoidable impact will occur through restoration or creation of

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substitute habitat areas, generally of the same kind and in the vicinity of the impacted habitat.

2. Mitigation ratios applicable in areas subject to review by the California Coastal Commission will be addressed in the cities' respective subarea plans. Such ratios may differ from those noted here.

However, the plans have been designed to protect and conserve, to the maximum extent feasible, wetland species that are also species of concern. Volume I identifies guidance for buffers, standards are identified in Volume II, and other requirements are located in the Subarea Plans. These measures will provide program-level mitigation for water quality; however, site-specific measures will be required at the project level. Examples would include the Least Bell's Vireo, Arroyo Southwestern Toad, and Tidewater Goby. In addition, vernal pools receive the maximum level of protection under the plans. In the Carlsbad subarea plan, 100% of existing vernal pools and their species will be conserved.

- PC-12. The MHCP indicates the following requirements for Subarea Plans to protect biological resources:

"Both inside and outside of the FPA, impacts to narrow endemic populations shall be avoided to the maximum extent practicable while maintaining some economic or productive use of the property as supported by substantial factual evidence. Inside of FPAs, mitigation for unavoidable impacts and management practices must be designed to achieve no net loss of narrow endemic populations, occupied acreage, or population viability within the FPA. In no case shall a city permit more than 5% loss of narrow endemic populations or occupied acreage within the FPA (whichever measure is biologically most appropriate for the species based on the best available science). Outside of FPAs, subarea plans must require maximum avoidance of impacts to critical and major populations, and, in priority order, avoidance, minimization, and mitigation for impacts to any populations. In no case shall a city permit more than 20% loss of narrow endemic locations, population numbers, or occupied acreage within the city (whichever measure is biologically most appropriate for the species). Unavoidable impacts should be mitigated based on species-specific criteria defined in subarea plans. Such mitigation should be designed to minimize adverse effects to species viability and to contribute to subarea plan biological objectives. Any land conserved for mitigation that supports narrow endemic species must be added to the MHCP preserve system and managed for the continued viability of the population. Mitigation for unavoidable impacts must be designed to achieve no net loss of narrow endemic population locations, occupied acreage, or

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population viability in the MHCP subregion and preferably, but not necessarily, within each subarea. If mitigation is proposed to occur outside the subarea plan boundary, such that a net loss would result within the subarea, then the selected mitigation alternative must be demonstrated, based on substantial factual evidence, to produce greater benefit to the species than would feasible mitigation alternatives inside the subarea.

Regardless of location, populations listed as "Critical" in the MHCP Biological Goals, Standards, and Guidelines (Ogden 1998) must be totally avoided, and any populations that are later discovered and determined to meet the criteria for a critical population must be maximally avoided while allowing some economic or productive use of property as supported by substantial factual evidence. If impacts to narrow endemics cannot be avoided while retaining economic or productive use of the property, then acquisition of the property for conservation purposes shall be pursued as a high priority, but only from willing sellers."

PC-13. Adaptive management strategies will be proposed based upon findings of the monitoring. Most of the habitats in southern California have been adapted to periodic disturbance by fires. Depending upon the size of the preserve and land uses adjacent to the preserves, fire/fuel management may differ. The issues of global warming are too speculative to attempt to quantify at this time; however, as indicated earlier, the monitoring program will identify shifts or trends in population and the program implements adaptive management strategies, as appropriate. The final Subarea Plans will comprehensively address changed and unforeseen circumstances such as fires, floods, climatic drought, increase in invasive species, and future listings of noncovered species.

PC-14. The Carlsbad Subarea plan was developed with the benefit of extensive public involvement and participation beginning over 10 years ago. An Advisory Group with balanced membership was formed in March 1991 and met monthly through 1994. Numerous written comments were received and considered in the plan. The plan then went into a dormancy period until 1998. At that time, public outreach continued in the form of a Speakers Bureau which attended many public meetings. In 1999 the City of Carlsbad held public hearings on its Subarea Plan before the Planning Commission and City Council. Notice of availability of the plan was published in the Federal Register in 2000, and again many comments were received. Thus, public participation has been extensive throughout the development of the plan.

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Public participation in the implementation of the plans will be provided. The format for that participation has not yet been determined. SANDAG and the participating cities will give careful consideration of the various alternative means of providing participation.

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of the documents was not a good faith effort to get public involvement- this was the first time the public had the opportunity to see the Plan in relationship to the overall regional planning effort.

Throughout this ten year planning effort the public has been essentially ignored. City officials apparently assumed that meetings with landowners, and with other stakeholders through the MHCP Advisory Committee were sufficient.

The level of effort to educate, inform, and involve the public has not been proportional to the level of impact on the public- millions of dollars of public cost, and a fifty year plan that will determine if species can be preserved.

In addition to not being adequately involved in the process of developing this Plan, the public is not included in a meaningful way in the Plan itself. There is not one mention of public review and input in the entire section on preserve management. The public role is limited in a way that is inconsistent with the Sierra Club policies. The public is not to just be told the results of decisions- they are to be involved in a meaningful way.

8. Adaptive Management.

PC-15 Adaptive management is given lip service in the Plan- but there is no clarification of what this means, how it will be applied, what triggers the response, who is responsible for corrective action, and how this will be integrated with long term management of this land.

Furthermore, there are no provisions for adding land to the preserve or funding for any adaptive management measures included.

9. Enforcement.

PC-16 Provisions for citizen challenges must be clearly spelled out. Provisions of federal and state law for species protection are not easily accessible to the local citizen. The Plan needs to document the process for enforcement and reinforce the right of local citizen suits to enforce the provisions of the Plan.

10. Funding, Implementation, and Monitoring.

PC-17 There is not an adequate funding plan that assures implementation of the required levels of conservation, resources for adaptive management, and the permanent management of the preserved land. The currently nonexistent "regional funding source" is critical to plan implementation, but after ten years of planning effort has not been determined, and consequently there is no time frame for provision of these funds.

The federal and state share of land acquisition has not been guaranteed, and funds for local acquisition do not appear to be sufficient for the need.

Without the provision of adequate funds this plan is just a piece of paper.

The monitoring process also does not provide timely, comprehensive information.

PC-15. Under the MHCP Plan, each conservation area must be managed to maintain and enhance habitat for covered species and other natural communities within the MHCP preserve system. The MHCP goal is to "manage" the preserve by allowing natural ecological processes to continue with minimal impact from humans. This responsibility bears with it the obligation to know the locations and condition of various resources on the preserve at all times, from season to season and year to year. Management entails careful observation (monitoring) and documentation to record how the natural communities respond to different levels and types of land uses, as much as it entails taking action. The preserve monitoring and management plan and its implementation must evolve with our understanding of the resources and their responses to various environmental and man-induced conditions, i.e., management must be "adaptive". For this reason, the monitoring and management plan provides management options that may or may not be implemented, depending on the status of resources and the potential impacts of human management and adjacent land uses at any point in time.

Each city will review its monitoring and management obligations regularly with the preserve manager and decide how and where management actions should be prioritized to address threats to habitats and species. Management funds and management actions will be reallocated as necessary. In addition, each city has an annual contingency fund to address "changed circumstances". Contingency funds not used during a given year will roll over to the following year, such that there is an accumulation of funds to meet "changed circumstances".

PC-16. The plans do not and should not provide any avenues of enforcement different from what already exists in state and federal law. These will be preserve managers with the authority to enforce the law and issue violations for infractions.

PC-17. 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 CFR, Title 40, Sec. 1508.14, and California Public Resources Code, Sec. 21100).

Implementing a preserve system for the MHCP will involve actions by local jurisdictions as well as by federal and state agencies. Some of those actions, such as commitment of public lands for habitat use, can occur without new funding. Other actions, such as management of habitat lands conserved as mitigation for project impacts, will be funded by organizations or individuals

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responsible for project development. Key to successful implementation of the MHCP is that important habitat areas be conserved at a rate which at minimum preserves the continued viability of target species and mitigates for impacts which occur. Since habitat loss allowed under the plan would not occur all at one once, public financing for the MHCP is not immediately required. Under the plan, implementation would be periodically monitored to insure that adequate conservation occurs over time. Thus the need for funding of specific conservation tasks will be reviewed, and if necessary supplementary actions taken, while the jurisdictions pursue a regional funding program. Thus the need for funding of specific conservation tasks will be incremental yet assured through the City's IA, while the jurisdictions pursue a regional funding program.

The federal Endangered Species Act ("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 prepared. The Secretary may also require other assurances that the plan will be implemented. The MHCP provides the framework for the funding necessary to implement the program. The assurances of such funding will be provided in the draft Implementing Agreement for each City which will undergo a formal public comment period identified in the Federal Register once the Wildlife Agencies receive a request for a 10(a)1(B) permit and a Section 2835 permit for the Subarea Plan.

The MHCP envisions that habitat acquisition, habitat restoration, and management, monitoring, and administrative costs will be funded by participating local jurisdictions through a cooperative regional funding program, to be placed on a ballot for voter approval within three years of the approval of the plan (MHCP, Vol. I, Sec. 7.2 and Table 7-2). The MHCP also identifies a range of funding sources that may be used, such as property tax, Mello-Roos special tax, sales tax, and benefit assessment.

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

- Commitment of public lands owned by participating local jurisdictions to the preserve.
- Management of existing state and federal lands as part of the preserve.

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- Interim funding of selected conservation actions as described in the Final MHCP, Subarea Plans, and Implementing Agreements.
 - Recently completed acquisition of selected properties using state and local funds, such as some of the stepping stone parcels in the City of Oceanside, upland parcels in the City of Encinitas along the south shore of Batiquitos Lagoon, a key linkage area in the City of Carlsbad, and Bernardo Mountain in the City of Escondido.
-
- Requirement of mitigation of impacts from new public and private projects.

The Wildlife Agencies (USFWS and CDFG) will, through Implementing Agreements with participating jurisdictions, "monitor plan implementation" and "ensure that habitat conservation proceeds in step with development" (MHCP, Vol. I, Sec. 5.2.3). Furthermore, "[i]f the Wildlife Agencies determine that the subarea plan is not being implemented as required, the wildlife agencies and the city will take the actions specified in the subarea plan and implementing agreement to remedy the situation" (MHCP, Vol. I, Sec. 5.3.8). The requirement to review will apply if a regional funding program is not approved in a timely manner, and an alternative remedy may require each jurisdiction to develop and implement a funding source adequate to meet its share of the MHCP and Subarea Plan implementation as it continues to pursue a regional funding source.

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A.8 Item 2

PC-18 It is stated that " Onsite and offsite mitigation lands for the projects are treated as already conserved if the lands have been explicitly delineated...". These are major projects with hundreds of acres of mitigation. The Plan needs to clearly identify the number of onsite and offsite acres per project by habitat type. The lack of information makes it impossible to determine where there are still unallocated mitigation requirements that could be applied within the city of Carlsbad- either toward the BCLA areas, or other targeted areas for conservation.

PC-18. The statement referred to in this comment is a part of the Introduction. It is intended only to summarize the way in which the plans address four projects which have already received take authorizations. It is not intended to be a detailed explanation of the mitigation requirements of each of those projects.

A.8 Item 3

PC-19 The end of the sentence is missing- a clear statement is required about where and how many acres are being contributed by the Fieldstone HCP.

PC-19. The comment refers to a typographical error. A more thorough explanation of the mitigation requirements of the Fieldstone Habitat Conservation Plan is included on page D-71 of the subarea plan. For a complete discussion of the mitigation requirements, please refer to the Fieldstone Habitat Conservation Plan documents.

C. page C-1

PC-20 The sixth bulleted item states that in 1997 the vegetation and species maps were further updated and refined. It is assumed that Figure 3 is the updated vegetation map- but there is not map that shows location of target species by species. This lack of information makes it impossible to assess how well the plan has addressed species specific issues.

PC-20. The subarea plan does not include a map showing species locations for several reasons. Some properties have not been surveyed by the property owners, or the survey information has not been provided to the City. Where survey information was available, the data were reviewed by the MHCP biological consultants and the wildlife agencies to ensure accuracy. The data were then analyzed on a regional scale, and the results are included in the Public Review Draft MHCP Volume II and EIS/EIR (see Figure 4.3-3). Finally, the scale of maps that can be reasonably included in the subarea plan makes detailed species location maps largely unreadable. For these reasons, the City chose not to include species location maps in the subarea plan. Full-scale maps were made available during numerous public meetings and were on file at the SANDAG offices.

It is also unclear what has been updated since specific references such as that in D.2.B state the area " has not been recently surveyed. " There needs to be a better explanation about where data has been updated and where it has not been.

Item 3 states that current information is now available for the narrow endemic species- but these are not shown on any of the figures. In contrast, in the Oceanside Sub-area plan there were several figures that showed the locations for all of the key populations of narrow endemic and other targeted species. This allows a determination as to the extent of conservation by species that cannot be done with the Carlsbad Plan because of the lack of this information. Why make a point of having updated all of the maps and then include none of them in the version of the Plan submitted for public review and comment?

PC-21. The list of "covered" species for the Carlsbad subarea plan includes some species for which take authorization will only be given if other subarea plans are also approved with adequate conservation levels. Thus, these species could be considered "conditionally covered". It is anticipated that the other subarea plans will be approved as adequate for those species, and the City of Carlsbad will then request take authorization. However, if the other subarea plans are not approved, or if conservation of those species is not adequate, the City of Carlsbad will not have take authorization for those species. Species which are not known to occur in Carlsbad were included in the subarea plan because of the potential for their occurrence due to suitable habitat.

C.2 Habitat and Species

PC-21 Paragraph 2 referencing Table 2 lists 14 species that the city is not requesting coverage for at this time even though these are species covered in the MHCP. The explanation for the exclusion of these species is insufficient. Only one of the species is documented as occurring in Carlsbad, but the habitat types are and there is no assessment of the probability of occurrence. Why are these species excluded? What would trigger their inclusion?

The Draft EIS/EIR addresses species which require or benefit from grassland habitat and significant/unmitigated impacts were identified for those which had insufficient conservation.

Many of the target species require or benefit from grassland habitat for cover and foraging, yet the proposed mitigation does not assure adequate retention of this habitat type.

PC-22. Implementation of the subarea plan will include a comprehensive preserve management program as described in Section F. The preserve management

C.3 Existing Levels of Conservation

PC-22 The three categories of existing conserved land have vastly different historical monitoring. There needs to be some assessment of current condition/quality of these lands. Those that do not

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plan will address issues such as ownership, existing and past levels of management, invasive species, and maintenance of target species.

Although large-scale restoration projects are not planned nor required by the HMP, restoration is necessary to enhance linkages and disturbed habitats and should include reintroduction of native species and eradication of nonnative ones. Project-specific mitigation plans should identify where restoration is most needed. Appendix C of the Carlsbad Subarea Plan identifies restoration priorities based on the need for connectivity, territory size, and the potential to enhance habitats of sensitive species. Restoration feasibility should be based on an assessment of the level of effort required, costs, access, physical factors, biological conditions, and adjacent land uses.

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meet the standards need to have requirements for restoration. It is assumed that at least part of the dedicated open space/easements lands are managed by HOA's (or developers where land has not yet been turned over to an HOA). These lands are often not maintained to preserve habitat. For example in Phase I of the Calavera Hills dedicated open space we have previously documented areas of incursion by non-native plants, erosion from improper drainage off of new roads, habitat destruction by off-road vehicle use, and other issues that have caused, and continue to cause, habitat destruction/degradation.

The plan needs to address these issues with the condition of existing conserved land. Where there has been a loss of habitat there must be provisions that require its restoration to the levels approved in the original mitigation plan for the project. Land cannot be counted as conserved until there is verification that the acreage-by-habitat remains in acceptable condition.

C.4 Assessment of Conditions and Options

PC-23

Item 2 The city approved a less than optimum configuration of open space with the Fieldstone HCP- so while the city and wildlife agencies have no ability to require further conservation from this project- they do have the ability- and the obligation to see that the remaining mitigation requirement is used to optimize conservation. There are over 300 acres of remaining mitigation from this project. Losses in Carlsbad should be mitigated in Carlsbad- until all of the acres required for the BCLA and critical population locations have been addressed. Then excess credits can be applied to other priorities in the region. This may mean that the city has to find additional funds for land acquisition- that is the price for giving up prime habitat within the city when they had the option to retain it.

PC-24

Item 3 Carlsbad does include several large blocks of habitat- that are identified as core habitat in both the Plan and the MHCP. The plan needs to emphasize the importance of preserving these cores- as they will be less subject to edge effects and have much greater probability of remaining viable than small isolated fragment, or narrow connecting linkages.

PC-25

The wildlife corridors, referred to as linkages in the Plan, are only viable if they will support a viable population of coyotes or other predators. Too much of these corridors rely on stepping stones. This works for brief period of bird movement, but cannot sustain breeding populations in isolated patches, surrounded by development, with no access for the predator population. The Plan needs to identify the impacts of edge effects on these habitat fragments, and then determine that there are a sufficient number with connectivity for predators to assure viability.

Furthermore, it is clear from the historical record, and the discussion summarized in section 5.3.9 of the MHCP that there were, and are, better alternatives for conservation of large blocks of core habitat than what is proposed in the Plan. The Fieldstone HCP was approved in the middle of the regional planning effort and this would have provided an essential coastal area core habitat.

The Calavera area core habitat has large blocks with excellent potential for CSS restoration- in fact 183 acres of the Calavera Highlands Mitigation Bank was supposed to have been restored 7 years ago as part of the Highway #76 road widening project mitigation. Caltrans was not held accountable for their failed restoration, and this land is not now counted as CSS as it should be.

PC-23.

The comment incorrectly states that the City of Carlsbad approved the Fieldstone Habitat Conservation Plan with an inadequate level of conservation. The Fieldstone Plan was approved by the U.S. Fish and Wildlife Service and the California Department of Fish and Game after completion of all legally mandated reviews and public notification. The opinion that the plan is inadequate is not substantiated by any facts or information. The Fieldstone Plan further requires that offsite mitigation be located outside of Carlsbad in an area that contains a critical gnatcatcher population and provides a critical regional linkage. Additional conservation in Carlsbad could not accomplish both of these objectives. In any case, the Fieldstone plan is an existing take permit that was approved in 1995, and not subject to the current subarea plan.

PC-24.

The comment acknowledges the importance of the core areas that will be conserved by the subarea plan.*

PC-25.

Please see response to PC-3 and PC-23. The Draft EIS/EIR has analyzed edge effects on the preserve system, as well as the ability of mid-level predators to utilize the corridors and linkages. See Section 4.3.2 of Draft EIS/EIR. The Carlsbad Oaks North project has been approved by the City and is now in a Section 7 process with the Army Corps of Engineers and the USFWS. The unincorporated core has preserved 328 acres to date; funds to purchase the remaining core are discussed in the financing section of the MHCP, Section 7.

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The proposed regional plan essentially puts all of the eggs in one basket- the core Gnatcatcher habitat that is yet to be acquired. Meanwhile other existing land, contiguous with core habitat, with excellent restoration potential is not being preserved. It is not responsible planning to allow all viable alternatives to be lost. The core habitat at Calavera and what is left in southeastern Carlsbad both need to be retained- at least until it is demonstrated that the new Gnatcatcher core is viable and proven.

D.2.A Core 1 FPA

PC-26 There is a statement that a narrow strip of riparian habitat may function as a wildlife movement corridor, but "it is not considered a landscape level linkage." A riparian area is part of the wetlands habitat that are supposed to be 100% conserved. This area needs to be distinguished on habitat maps and its conservation needs to be assured. The intent of this exclusion is unclear and it appears to be a violation of the standards included in the MHCP. This needs further clarification.

D.2.B Core 2 and Linkage FPAs

PC-27 This area is identified as a possible major population for the Least Bell's Vireo, yet "recent survey data is lacking." Current surveys are needed for all core areas and linkages.

The linkage between Core 2 and Core 3 includes short stepping stones. Since this is the major connecting link through Oceanside the quality of this connection needs to be improved. This particularly needs to support predator population movements. Studies by Crooks and Soule support the critical needs for predator movement to protect avian species. (3)

The corridors identified do not meet the minimum standards for a wildlife corridor identified in the MHCP- 1,000 feet wide with a pinch point of at least 500' for a length of no more than 400'. The corridor- particularly between Core 2 and Core 3 because of its relationship to movement through Oceanside to Camp Pendleton must be improved to at least meet these minimum standards.

Corridor viability in this area is also compromised by major roadways. There need to be specific means to address these roadway barriers. Undercrossings are preferred in most locations, but other measures can be considered depending upon topography and other site specific conditions.

D.2.C Core 3 and Linkage FPAs

PC-28 Part of Link B is through a Standards area- the "opportunities for enhancement and restoration" need to be specified to assure a viable corridor. Link B also includes major roadway barriers that must be addressed.

D.2.D Core 4 and Linkage FPAs

PC-29 An undercrossing of Palomar Airport Rd is needed at Linkage Area F. Another undercrossing is being provided as part of the mitigation for grasslands at the Carlsbad Raceway. The corridor must protect ability for predator movement. Without an undercrossing in this area this is not a viable corridor.

PC-26.

The comment refers to a discussion of a portion of Buena Vista Creek. The area in question has already been constricted by existing development. The statement in the subarea plan was intended only to indicate that this portion of the creek will serve a limited purpose for wildlife movement, but it cannot be expanded or significantly improved due to existing constraints.

PC-27.

Surveys for species on both privately owned and publicly owned land are conducted by biologists who are retained by the owner of the property. For properties where active planning for development is taking place, surveys must be conducted and the information shared with all involved agencies. If a property owner is not planning for development, there is no legal requirement for property owners to survey their property for sensitive species. The City has neither the funds nor the legal authority to survey for species on properties without the consent of the property owner. There are numerous properties in the City of Carlsbad and the entire MHCP area that have not yet been surveyed, even though it is believed that sensitive species may be on the property.

The linkage between Core Areas 2 and 3 is largely fragmented by existing development in the Calavera Hills Area. The BCLA excluded all developed or graded areas, and the remaining undeveloped land that contains some vegetation was included in the BCLA. Although some steps can be taken to improve the quality of the habitat in the corridor, it will remain a stepping-stone linkage.

Roadway crossings for wildlife are a topic of some discussion among biologists. Studies have been conducted on the ability of large mammals to cross roads or use undercrossings, but few studies have examined these issues with respect to the species of concern to the MHCP. Undercrossings such as bridges or culverts have been used in some situations and are proposed for some future roads. However, a bridge or culvert is not reasonable or appropriate for every road. Anecdotal evidence suggests that the mid-level predators (coyote and bobcat) that would be the focus of such crossings would cross a road at grade level. It is agreed that there needs to be specific means to address roadways as barriers to wildlife movement throughout the MHCP. As a result, development guidelines in MHCP Volume I address this issue and MHCP Volume II includes more specific measures necessary for specific covered species. However, this question will be addressed on a case-by-case basis, using the best available scientific information, to determine whether an undercrossing structure would be reasonable and beneficial to the target species.

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PC-28. The linkage between Core Areas 2 and 3 is largely fragmented by existing development in the Calavera Hills Area. The BCLA excluded all developed or graded areas, and the remaining undeveloped land that contains some vegetation was included in the BCLA. Although some steps can be taken to improve the quality of the habitat in the corridor, it will remain a stepping-stone linkage.

The definition of a Standards Area means that no detailed planning has been done for the property. The Standards indicate the biological goals that must be achieved. The precise means for achieving the goals will be determined at the time development is proposed subject to the CEQA process.

PC-29. Roadway crossings for wildlife are a topic of some discussion among biologists. Studies have been conducted on the ability of large mammals to cross roads or use undercrossings, but few studies have examined these issues with respect to the species of concern to the MHCP. Undercrossings such as bridges or culverts have been used in some situations and are proposed for some future roads. However, a bridge or culvert is not reasonable or appropriate for every road. Anecdotal evidence suggests that the mid-level predators (coyote and bobcat) that would be the focus of such crossings would cross a road at grade level. It is agreed that there needs to be specific means to address roadways as barriers to wildlife movement throughout the MHCP. As a result, development guidelines in MHCP Volume I address the issue and MHCP Volume II includes more specific measures necessary for specific covered species. However, this question will be addressed on a case-by-case basis, using the best available scientific information, to determine whether an undercrossing structure would be reasonable and beneficial to the target species.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

D.2.E Core 5 and linkage FPAs

PC-30

Portions of the linkage in this area include habitats within the neighboring city of San Marcos. The purpose of doing regional planning is to assure that these locations across jurisdictional boundaries are part of an integrated plan. It is not enough for Carlsbad to put in their plan that there is potential linkage here- it needs to be fully addressed with contact with the neighboring jurisdiction and coordinated planning between the two cities.

Furthermore, portions of this linkage are also in the city of Vista. There are significant opportunities for integration of the open space and landscaped areas of the industrial park with the Carlsbad Raceway project. This is particularly important because of the constrained width of the wildlife corridor in this area.

Also the buffer for the wetlands in this area do not meet the minimum criteria for wetlands protection and must be improved.

D.2.F Core 6 and Linkage FPAs

PC-31

Linkage Areas E and F do not meet the minimum corridor standards of the MHCP. Improvements are needed to at least this minimum level.

D.2.G Core 7 and Linkage FPAs

PC-32

Where the Plan relies on "landscape linkages" landscaping criteria need to be established to assure the continued viability of this linkage.

Where golf courses are contiguous with native habitat specific criteria need to be provided to prevent adverse impacts on the native habitat from the golf course operations. Golf courses have significant and adverse impacts on the environment. These include increased run-off and run-off containing large amounts of fertilizers and pesticides. This run-off soaks into the water table and ends up in our creeks and lagoons. All of the sensitive species that depend upon this riparian habitat are impacted. Provisions need to address both existing and new golf courses. New courses especially should be required to meet the newest standards to minimize golf course impacts. (4)

D.2.H Core 8 and Linkage FPAs

PC-33

There is a break between Linkage F and Core Area 8 which significantly reduces its value as a corridor. This needs to be addressed.

D.2.I Special Resource Areas

PC-34

The three Special Resource Areas are not given boundaries nor does Table 3 show any acreage by habitat type.

SRA 2- the identified vernal pool location is critical for several species. Boundaries, buffers and protection measures need to be specified.

PC-30.

Core Area 5 adjoins the Cities of Vista and Oceanside. The MHCP has resulted in coordinated planning among the three cities to the maximum extent feasible in light of each city's local land use authorities. Wetland replacement ratios and buffer requests are found in Volume I of the MHCP and Subarea Plans. See the Public Review Draft MHCP Plan Volume II, Figure 2-4 which shows the coordination of the FPA among the cities.

PC-31.

Please see response to PC-3. Linkage Area E, which connects Core Areas 6 and 7, consists primarily of a power line corridor surrounded by existing development. There are two small finger canyons branching off the power line corridor, but aside from these areas, there is no opportunity to enlarge Linkage Area E. Despite its limited width, it is shown in the plan because it is the only remaining link between Core Areas 6 and 7.

PC-32.

The HMP includes appropriate restoration and landscaping guidelines to ensure linkage viability. Each City will provide site-specific guidelines to be implemented.

The MHCP does not have the authority to require existing golf courses to modify their operations for the protection of the preserve system unless those operations would constitute take of a listed species. Water quality issues can be addressed under the NPDES permit process. New golf courses will be required to provide adequate buffers and to employ best management practices for minimizing impacts to adjacent habitat.

PC-33.

The gap between Linkage Area F and Core Area 8 is the already developed Aviara Master Plan. It includes an existing golf course and homes.

PC-34.

Special Resources Areas were designated as part of the BCLA process. Although they were considered too small and constrained to be included as either core or linkage areas, they have some value to the preserve system and should be managed to maximize their value. Some SRAs contain populations of listed species, such as the Poinsettia vernal pools. Others represent the only remaining connectivity for wildlife in already developed areas. Further geographic analysis of these areas is not necessary because of their limited size. They will be given more detailed attention in the preserve management plans.

The locations of all documented vernal pools and watersheds have been included in the MHCP and in the subarea plan. Protection measures are identified in Volume II.

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The historic El Salto Falls is located on the boundary between Carlsbad and Oceanside. Although the falls have no documented biological importance, their cultural and hydrologic significance may merit designation as a SRA. The Cities of Carlsbad and Oceanside will consult on the question of SRA treatment prior to approval of the implementing agreement.

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There are other vernal pool locations that need to be identified as special resource areas- particularly those north of Palomar Airport Rd and at El Camino/La Costa. Vernal pools are an area for special focus in the MHCP and are supposed to be 100% protected. In order to assure this, all of the locations must be clearly identified with protection measures/buffers specified.

The historic El Salto Falls along Buena Vista Creek should also be identified as an SRA- for the combination of historical, cultural, and biological significance. This should include special consideration of buffer zones, and protection during construction.

D.3.A Existing Hardline Preserve Areas

A detailed table is needed that shows acres by project and by habitat type. In the absence of this information it is not possible to assess that this is accurate and that all mitigation requirements have been accounted for.

There are significant SDG&E easements through much of the areas identified as hardline preserve. These easements are either fee-owned right-of-way or simply rights-of-way owned by others. The distinction limits SDG&E's requirements under the NCCP as they are only required to mitigate and maintain natural habitat in the fee-owned areas. How much of these easements are fee-owned in Carlsbad?

Throughout this area most of these easements are routinely graded, both for maintenance access and for fire protection. If this practice is to be continued, then the acreage for these easements needs to be deducted from the sensitive habitat totals. If this practice will not continue, then criteria to assure habitat protection need to be specified with appropriate implementing/management agreements with SDG&E.

When these powerlines build up corrosion they build up a disturbing "humming" sound. The sound is very irritating to humans. Are there any studies that show its impacts on wildlife activity- particularly the sensitive species? Is there any verification that CCG will use such a power line corridor?

If restoration is planned within these easements who will pay for it? Who will be responsible for on-going maintenance?

There are several projects approved since this draft plan was initially prepared that resulted in revised hardline boundaries. Because we were aware of these changes we submitted a request for the list- but this should have been included as an addendum or plan update so that everyone reviewing the plan was fully aware of these changes. The city chose to re-issue a three year old report rather than making the updates that should have been part of the process to evaluate the city's plan as part of the overall regional effort. (See Attachment 2 for list of projects with changed hardline boundaries.)

D.3.B Proposed Hardline Preserve Areas

The plan needs to be updated to reflect the most recent agreements with the California Coastal Commission with respect to mitigation for the proposed municipal golf course. Since it is now reported that the environmental mitigation required for the course make it prohibitively

PC-35. Because Existing Hardline Areas have already been conserved by previous actions of federal, state or local governments, no additional benefit would derive from including a table showing the contributions of each project. That information is available for review in the City's planning files.

Fee-owned rights-of-way (ROWs) will be subject to the existing agreement between the Wildlife Agencies to manage resources. Those ROWs not owned are not subject to this agreement and will be subject to site-specific review by the Wildlife Agencies.

SDG&E is not a party to the MHCP because they have entered into an independent agreement with the Wildlife Agencies. The power line easements in some areas have the effect of providing linkages for wildlife. On the other hand, some disturbance within the powerline corridor does occur periodically due to SDG&E maintenance activities. The MHCP cannot reasonably estimate the effects of SDG&E maintenance on the preserve system, but anecdotal evidence suggests that it is likely to be minimal. Gnatcatchers and other sensitive species are routinely observed in the powerline corridors, including the key corridor linking Oceanside to Camp Pendleton. No substantiating facts or information were included in the comment to raise a fair argument that the acreage of powerline corridors should be subtracted from the total preserve system acreage.

Restoration areas have not yet been determined. Management and maintenance will be specified in the Implementing Agreement.

Following approval of the MHCP Subregional Plan, each City will submit its subarea plan for approval by the wildlife agencies. Carlsbad will be revising its subarea plan to include the new Hardline Areas and any other revisions that may be needed. The revisions will also include changes recommended by the California Coastal Commission. The net effect of these revisions will be to slightly increase the total area of the preserve system.

Projects continue to move forward concurrent with the review and approval of the MHCP Subregional Plan. It should be noted the subarea plans, Implementing Agreement, and ordinances will go out for public review before the Wildlife Agencies issue an Implementing Agreement.

PC-36. The City is proceeding with the municipal golf course project. Discussions with the Coastal Commission have led to revisions to the golf course, and it is anticipated that the Coastal Commission will now support the project. No

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PC-35

PC-36

contingency plan is required for any property addressed in the subarea plan. Additionally, please see response PC-35.

The preserve management plan which will be prepared subsequent to approval of the MHCP will include specific management controls for passive recreation (picnic areas and other public use areas) within the preserve system.

The preserve management plan will identify areas where existing fire breaks and utility access roads may be eliminated or reduced in width. In such cases, disturbed areas will be revegetated.

The City is considering other locations for the Police firing range. Although the proposed site in the Calavera Area has not been eliminated from consideration, the comment regarding potential conflicts with the preserve system has been noted.

The issue related to SDG&E ROWs was addressed in PC-35.

Mitigation areas should be distinguished from formal Mitigation Banks. The former will require monitoring by the City as part of the preserve system. The latter are subject to agreements between the property owner/operator and the wildlife agencies. In the case of the Carlsbad Highlands Conservation Bank, which is the only formal bank in Carlsbad, ownership is turned over in phases to the State of California which will be responsible for management. Reporting on the management of state owned lands will also be included in the annual monitoring of the preserve system.

Table 8 of the Carlsbad Habitat Management Plan states there are 3,315 acres of coastal sage scrub in the City. The MHCP Volume I, Table 3-4 states there are 2,298 acres of coastal sage scrub in the City. The MHCP study area does not contain areas that have been approved for take (i.e., Fieldstone) or areas that are not seeking take authorizations (i.e., County-owned property). The Carlsbad Plan includes all property within the City limits.

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expensive and it is now likely that the City will not proceed with this project- a contingency plan should be provided as part of this Plan. There are major spillover effects from the changes to this project- whichever way the city goes the response should be integrated with the regional conservation effort with full opportunity for public review and comment. The city knew this was an issue before this draft was re-circulated but chose to ignore this issue in the Plan.

Group picnic areas are proposed to be included within the preserve corridor at Hub Park. This would normally not be an accepted use in hardline preserve. If it is to be included, then specific management controls need to be added to address issues like closed trash containers, litter control, etc.

It is assumed that fire breaks are not part of preserve acreage. However, there are many areas where reducing the size of fire breaks would significantly improve the viability of what often are very constrained corridors. There is precedent in Carlsbad for allowing glass walls behind residences in exchange for a much reduced fire break. (Portions of Calavera Hills Phase II) All areas where such changes could significantly improve the preserve design should be identified, prioritized, and included within the Plan and the financing proposal for the Plan.

There is no constraint on land uses that common sense says are not consistent with the intent of the preserve system. A police shooting range is one such inappropriate land use in the middle of what is supposed to be a nature preserve. This issue is of particular concern because not only Carlsbad, but Escondido and Oceanside are also proposing to do the same thing. Such ranges do not meet exterior noise levels specified in the city ordinance. If such a use is to be allowed, then the impact of these excessive noise levels on the preserve area species needs to be evaluated.

Roads would need to be provided to access the shooting range- the acres and impacts of these roads have not been considered and must be identified and deducted from preserve land. The location adjacent to the sensitive riparian area makes this an even worse choice.

The SDG&E easements discussed previously are also an issue in the proposed hardline areas. Either these areas need to be deducted from the land preserved, or there need to be detailed agreements that assure habitat is maintained in these corridors.

Part of the ability of the public to effectively monitor preservation status is to include them in the reporting on mitigation banks- both public and private. In the past the city has taken the position that they have no role in this process- it is just between the developer and the non-profit organization contracted to manage the mitigation bank. (At Calavera Heights managed by TET through McMillin Homes). Reporting on mitigation banks needs to be included in the overall public reporting and review system.

The CSS conserved habitat shown on Table 8 at 64% in the Plan does not match the total shown on Table 3-4, Volume I of the MHCP at 71%- please clarify.

Figure 8

This needs to be updated to reflect current agreements between the city and the CA Coastal Commission.

11

PC-37.

The City will review Table 8 to reflect the increased acreage of conservation in the coastal zone.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

PC-37

PC-38

Figure 9 Bressi Ranch

In spite of the policy of no net loss of wetlands and that avoidance is the first choice, this project includes significant wetlands habitat impacts. Clarify how the wetlands criteria were addressed in the configuration of this project.

PC-39

Figure 10 Carlsbad Oaks North

The proposed road extension of Faraday is through wetlands- A critical segment of the degraded Agua Hedionda creek and watershed. Section 3.7.2 of the MHCP states that "Road or utility projects that are to be permitted under an MHCP sub-area plan will be required to demonstrate that crossings of sensitive habitat will occur at the least overall biologically sensitive location and that all feasible minimization measures have been implied." It is clear from review of the vegetation map that there are other locations that would have less impact on sensitive habitat. This roadway location and development outline have not changed in over 20 years- since the 1981 original submittal to the city for this project. There is no evidence that any effort has been put into a less environmentally damaging roadway location.

The development boundary on the southwestern portion of the site is too large for just an intersection of two roads- and is an area where a large fragment of CSS and Southern Maritime Chaparral will be impacted. The destruction of these habitats is not justified by the proposed development- what is the explanation for this?

PC-40

Figure 11 Holly Springs

One large interior portion of preserve land should be connected on both the north and south to the large contiguous open space to improve its viability.

PC-41

Figure 12 Kelly Hillman Property

This area is part of Core 3. Roadway undercrossings are an issue here to assure that this area can function as part of the core and for movement up through Oceanside.

PC-42

Figure 13 South Coast

Integration with adjacent sensitive habitat in Oceanside needs to be specified. Not all of the wetlands habitats are avoided. See prior discussion re non-compliance with MHCP standards for wetlands avoidance.

PC-43

Figure 14 Raceway

Wetlands impacts were not avoided in this project that just recently had the EIR approved. Connectivity with adjacent sensitive habitat in both San Marcos and Vista needs to be integrated into the Plan to improve the functioning of this key regional wildlife corridor.

The SDG&E easement is a key link through this area. This needs to be integrated with the recently approved wildlife undercrossing of Palomar Airport Rd.

PC-38.

The Bressi Ranch project area has already been issued a 404 permit and Section 7 Consultation to address both wetland impacts and coastal sage scrub impacts. Wetland impacts are to ephemeral drainages lined with tamarisk subspecies (an invasive plant). Temporal impacts will be mitigated by creation of southern willow scrub and other native riparian vegetation in a drainage that is likely to support a more consistent water flow. This occurred after publication of the December 1999 Draft of the subarea plan. The 404 permit and Section 7 did not alter the Hardline design as shown in the subarea plan, but it did alter the legal status of the property from being a Proposed Hardline to an Existing Hardline. When the subarea plan is revised, this change will be incorporated.

PC-39.

The alignment of Faraday Avenue east of El Camino Real and its wetland impacts are currently under review in a project level EIR and 404 application. That process will result in a determination by the appropriate agencies of the Least Environmentally Damaging Practicable Alternative. If that process significantly revises the Hardline design, it will be shown in the revised final subarea plan.

Development areas are proposed at the intersection of Faraday Avenue and El Fuerte Street.

PC-40.

Please see response to PC-3.

PC-41.

The Kelly Ranch project has been issued a 404 permit and Section 7 consultation, as well as a Local Coastal Program Amendment from the California Coastal Commission. The issue of road crossings and other conservation questions were thoroughly analyzed in those permit processes. Because the project is now fully permitted and under construction, no modifications to the project can be made. The final Subarea Plan will include this project as a hardline.

PC-42.

Please see responses PC-3 and PC-11.

PC-43.

Please see responses PC-11 and PC-30. The Raceway is now in a Section 7 process with the USACOE and USFWS.

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- Figure 15 Manzanita Partners
PC-44 El Camino Real creates a barrier that results in most of this area becoming isolated fragments. An undercrossing of the roadway should be provided in this area.
- Figure 16 Veteran's Memorial Park
PC-45 This area is part of the BCLA. A roadway undercrossing needs to be addressed to protect this linkage.
- Figure 17 Hub Park and SDG&E
PC-46 Roadway crossings for wildlife need to be addressed in this area.(probably just outside the project boundaries to the east.)
- Figure 18 Lake Calavera
PC-47 As discussed previously, the police shooting range is an inappropriate land use in the middle of a preserve, contingency plans need to be provided for the golf course mitigation, and the plan does not address the need to add roads through hardline preserve to access the shooting range or any other public facility that would be located in this area. Basic standards for mitigation of destruction of hardline preserve are at least 4:1, but this area would also require wetlands impacts that should have an even greater penalty.
- Figure 20 Hieatt
PC-48 Conservation boundaries create an isolated fragment- connection should be provided- even if this is just a landscaped area.
- Figure 21 Fox-Miller
PC-49 This is part of the BCLA linkage area. Well over 25% of the site remains for development even if all of the on-site CSS is preserved. The proposed development boundaries are not consistent with plan criteria and are not consistent with the BCLA preserve design.
- Figure 22 Calavera Heights
PC-50 Wetlands impacts have not been avoided as required in the MHCP standards. The reconfigured preserve boundaries have relocated the regional wildlife crossing. The new wildlife corridor is bisected by three roadway crossings. College Blvd. is of the greatest concern because of the width of the roadway and the volume of traffic it will be carrying. An undercrossing or other means to protect this area for a wildlife crossing needs to be provided.
- This project is an example of the impacts of this Plan failing to address habitat quality issues. Two prime CSS hillsides, currently occupied by nesting CCG, contiguous with the core habitat will be destroyed while a degraded interior village isolated by major roadways will be preserved. These qualitative differences are not apparent from just looking at lines on a piece of paper- but they are very real to the plants and animals who will now be forced onto a less desirable habitat- and many of whom will become roadkill.

- PC-44. The Manzanita Partners Project has already received a 404 permit and Section 7 consultation, which includes grading necessary for the widening of El Camino Real along the frontage of the property. Therefore, no modifications to the project or the design of the road are possible at this time. In addition, some vernal pools are located near the road.
- PC-45. Roadway undercrossings have been included in Faraday Avenue to facilitate connectivity between City owned properties north and south of the road.
- PC-46. This comment recommends a roadway undercrossing for Cannon Road to the east of the Hub Park/SDG&E property. The commenter is perhaps unaware that there is a bridge in Cannon Road over Macario Canyon Creek specifically for the purpose of providing a wildlife undercrossing. The height of the bridge is 30 ft. and its east end and 50 ft. at its west end. There are actually two separate bridge structures with a 14 ft. wide open space between them.
- PC-47. The City is considering other locations for the Police firing range. Although the proposed site in the Calavera Area has not been eliminated from consideration, the comment regarding potential conflicts with the preserve system has been noted.
- PC-48. The Hieatt property is bounded on its north and east sides by existing industrial development and on its south side by the McClelland Palomar Airport. Connectivity opportunities only exist to the west through undeveloped land to the City's proposed golf course property. A wildlife corridor has been incorporated in the golf course design to connect with the Hieatt property as much as possible.
- PC-49. The Fox-Miller property contains a significant and critical population of thread-leaved brodiaea. The Hardline design for the property conserves 80% of this population. The remainder of the population will be translocated to portions of the conserved area that have suitable soils and topography but no existing brodiaea. Coastal sage scrub on the site is fragmented and not valuable for conservation. The project design was determined by the U.S. Fish and Wildlife Service, the California Department of Fish and Game, and the City of Carlsbad to be sufficient to meet biological objectives of the MHCP.
- PC-50. The Calavera Hills project has been analyzed in a separate project level EIR. The comment incorrectly states that the wildlife corridor was "relocated". No wildlife corridor was previously designated on this property. Rather, steep slopes and powerline corridors were designated as open space because they

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are constrained and not developable. In the preparation of the subarea plan, the wildlife agencies strongly recommended a wildlife corridor across the portion of the property known as Village K. The project was designed and approved with this corridor. It is acknowledged that some existing and planned roads will cross the corridor at various points. Please see response PC-27 regarding road undercrossings. It should be noted, an undercrossing is planned for College Boulevard within the Calavera area.

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Figure 23 Shelly Property

PC-51 This figure and Figure 3 show CSS to the east of this property- but Figure 2.3-1 City of Carlsbad Habitat Management Plan in the draft EIR/EIS show this area as developed. Furthermore Figure 4.3-5 in the Draft EIR/EIS shows this area as part of the core USFWS Circle for Gnatcatcher Conservation. This area would have good potential for restoration for CSS and should be targeted for acquisition as part of the effort to assemble core habitat.

PC-51. The area east of the Shelley property is unincorporated county land. It is not specifically addressed in the MHCP or the Carlsbad subarea plan because it is outside of the study area. However, some conservation acquisitions are occurring there. The Shelley property is not currently a target for acquisition because the cost would not be justified by the marginal benefit of complete conservation as opposed to the Hardline design.

Figure 24 Cantorini

PC-52 It is unclear from the map that all of the marshland is being preserved- please clarify. This area is part of Link C between Core 3 and 5 in the Plan, and is entirely within the boundaries of the BCLA. All of this area should be targeted for conservation.

PC-52. It is not reasonable or biologically justified to require conservation of the entire Cantarini property. No substantiating facts or information are included in the comment to support the recommendation. As shown on Figure 24, the southwestern half of the property is largely agricultural land with little connectivity value. The existing habitat and the wildlife corridor alignment are on the eastern edge of the property. The cost of acquisition would not be justified by the marginal benefit of complete conservation as opposed to the Hardline design.

Figure 25 Kevane

PC-53 This property includes one of the largest remaining stands of Southern Maritime Chaparral- yet very little of it is proposed for preservation, and much more than 25% of the site is being used for development.

PC-53. The Kevane Proposed Hardline design is being reviewed as part of the discussions with the Coastal Commission. It is anticipated that the level of conservation of southern maritime chaparral will increase, but that cannot be quantified at this time. Therefore, the subarea plan and EIS/EIR take a conservative approach by showing the Hardline design as the minimum level of conservation that will occur.

The project is not named on Figure 2.3-1 in the EIR/EIS so it is impossible to determine where it is located. Where is this parcel? Is it part of the BCLA?

C. Standards Areas

PC-54 This discussion by LFMZ does not sufficiently relate back to the prior discussion of core habitat and linkages. The basis of the regional plan is to protect core habitat and linkages- the LFMZ areas have use for Carlsbad- but have no relevance to the regional conservation plan. The discussion should focus on how each area supports the core and linkages. The analysis should focus on that and the standards should relate to actions to protect the core and linkages.

PC-54. References to Local Facility Management Zones (LFMZs) in Carlsbad are intended only for convenience in locating specific properties. The LFMZs are not intended to have any particular biological significance or relationship to core habitat and linkage areas.

Only 8 of the 25 zones are identified as having areas subject to the "Standards Areas" requirements. All sensitive habitat remaining in the city should either be subject to hardline preserve, or the standards areas requirements. This would include agricultural areas at such time as these are converted to other uses- not all of these areas are identified in the current limited list of Standards Areas.

Please see response to PC-3. Properties identified as Standards Areas are only those which have sufficient habitat to merit consideration for onsite preservation. Section D.6 of the subarea plan outlines measures to minimize and mitigate impacts to habitats and species. The text indicates that these measures are applicable to all properties in the City that contain any of the vegetation types identified in the plan as sensitive. Annual grassland, agricultural land, and disturbed land are included as vegetation types requiring mitigation. They are subject to the proposed in-lieu mitigation fee.

It is not sufficient to identify "biological resource issues" and then not relate these back to a specific standard requirement. Basic standards should apply to all zones. At a minimum these should include:

- protection of core habitat and habitat contiguous with cores as a priority in determining areas for development. For example Zone 15 does not even state that protection of the core habitat is an objective.
- protection of wildlife corridor linkages as shown in the BCLA linkages alternative
- criteria to limit roadway extensions and the elimination of unnecessary roads from preserve lands consistent with MHCP policy 3.7.2. For example, the discussion for Zone 15 states that

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“sensitive design” for roadways or utilities should be used- this is much less restrictive than the MHCP policy.

- the provision of roadway undercrossings, bridges, or other appropriate means to support the wildlife corridors

- the protection of 100% of the populations of narrow endemic identified as major/critical on Table 3-7 of the MHCP.

- no net loss of riparian or wetlands habitat including requirements to first avoid impacts per section 3.6.1 of the MHCP

- a requirement for additional field surveys for sensitive species where habitat type indicates any potential for their occurrence

- protection of agricultural uses as long as there is no destruction of existing sensitive habitat on lands so designated

- specify additional protection of areas identified as SRA's

- provide full conservation of all land included in the BCLA alternative.

Figure 27 should have an overlay of the 25 LFMZ's- as was done in the EIR Figure 2.3-1 depicting the same information- but in a much more user friendly way.

PC-55 It is stated that “The standards require 100% conservation of Narrow Endemics within a focus planning area.” Focus planning area is not defined in Section B- although the map is. If it is assumed that this includes all of the core, linkages, and SRA's (with no map boundaries provided) this still leaves significant populations of narrow endemics outside of these boundaries.

Furthermore, this policy is not consistent with all of the provisions of the MHCP Appendix D Narrow Endemic Species Policy and Critical Population Policy. The complete MHCP policy should be adopted as part of the Plan.

The standards areas shown on Figure 26 do not match those shown on Figure 27- particularly for the key linkage in Zone 15.

Map should be revised to show all areas shown on the EIR/EIS as BCLA parcels as part of the Standards areas if they are not already included in hardline or proposed hardline designations.

PC-56 C.4 The Preserve System and Resulting Levels of Conservation

The combination of preserve components does not assure a minimum level of conservation of each habitat type. The Plan must include a quantified minimum acres to be conserved by habitat type.

In addition to the minimum there needs to be provisions for an additional level of conservation to allow for “adaptive management.” In other counties this has taken the form of additional buffer zones being established for a period of time- then if it is shown that a lesser level of

15

PC-55. When the subarea plan is revised, Figure 27 will be modified to include the Local Facilities Management Zones for reference.

Although some minor populations of Narrow Endemic species may occur outside of the BCLA, there are no known “significant” populations outside the BCLA. The Carlsbad subarea plan contains provision stating that if significant populations of Narrow Endemics are subsequently found outside the BCLA, those populations will be treated the same as populations inside the BCLA.

The MHCP Narrow Endemic policy applies to all subarea plans. Figure 27 is missing some Standards Areas. The final version of the subarea plan will correct this exhibit.

PC-56. The EIS/EIR has identified acreages that must be conserved. Additionally, the percentage of conserved habitat is also presented. Adaptive management will be addressed as part of the preserve management plan. Briefly, it will consist of reallocation of management funds to provide for changes in the status of a species or advances in scientific knowledge. Adaptive management does not involve additional funding or land preservation.

It is not possible to establish a time schedule for implementation of conservation measures for all properties because these requirements will be made part of development approvals. The preserve system will be built incrementally through a combination of mitigation and acquisition. Conservation activities will begin as soon as a particular property or portion of property attains conservation status. This typically occurs through dedication in fee title or conservation easement. For properties that are not currently planning development, it may be many years before dedications occur. The Wildlife Agencies will review impacts and conservation to ensure that the program is implemented in rough step proportionality.

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conservation can meet the plan goals these lands are released for development. The Plan has not provisions for adaptive management to result in additional land conserved- this needs to be built in as a contingency from the beginning or there will be no opportunity to accommodate this in the future.

It is stated that the preserve system⁷ has been designed to the maximum extent feasible, to ensure that species addressed by the HMP continue to survive in healthy and thriving populations in Carlsbad.⁷ If these species were healthy and thriving they would not be listed as threatened and endangered. This statement is completely ludicrous.

The numbers cited for preserved land include 744 acres of disturbed land that is assumed to be restored to sensitive habitat. ~~These numbers are only accurate when 100% of this land is~~ restored to a level that supports the target species. A time schedule for the restoration of this land, with specific measurable performance standards must be established.

PC-57

C.5 MHCP Participation by City

51.6 acres is included for the Municipal Golf Course, which is currently problematic. There needs to be an update to the Plan based on the current agreement with the CA Coastal Commission and a contingency plan in the event that this project does not move forward.

Based on the proposed contribution of a little over 300 acres to the core gnatcatcher habitat it is stated that this will "allow the HMP to be severable from the MHCP." Supporting acquisition of the core parcel is not sufficient to justify separation of Carlsbad from the regional MHCP. Table 3-7 in the MHCP shows the interrelationship of the cities with respect to the preservation of several key species. Carlsbad cannot be separated without impacting the regional conservation plan for these species. Specifically these impacted species include: San Diego thorn mint, Del Mar manzanita, Thread-leaved brodiaea, San Diego button-celery, Nuttall's lotus, San Diego Goldenstar, Little mouse-tail, Prostrate navarretia, California Orcutt grass, Riverside fairy shrimp, and Oblivious tiger beetle.

In addition, there is certainly the potential that adaptive management solutions for the region require some participation by Carlsbad. The MHCP was developed as a regional plan. While one city should have the option to remove themselves from the regional plan- there should be some additional conditions associated with this- such as providing bonding for compliance with plan provisions, continued funding participation for maintenance of the regional core habitat, and others that will be needed to assure the continued viability of the regional plan.

PC-58

C.6 Measures to Minimize Impact on HMP Species and Mitigation Requirements

The standard for Narrow Endemics is not sufficient. 100% of populations identified as major/critical must also be conserved.

There need to be some restrictions on the ability of the City Council to approve mitigation outside the city. This should be allowed only at the core Gnatcatcher area until such time as sufficient land has been acquired in the core area.

PC-57.

Please see response to PC-3. The City of Carlsbad will be responsible for implementing the Subarea Plan including management. The City is proceeding with the municipal golf course project. Discussions with the Coastal Commission have led to minor revisions to the golf course, and it is anticipated that the Coastal Commission will now support the project. No contingency plan is required for any property addressed in the subarea plan. Additionally, please see response CNPS-118. The MHCP has been prepared to allow severability (each City proceeding on its own timeline). If additional Cities complete the process, additional species are covered.

PC-58.

If the program did not allow for some impacts to narrow endemics, some properties would need to be acquired. While the cities generally concur with the recommendation to focus mitigation in the jurisdiction where the impact occurs, implementation of the MHCP on a regional basis may require out-of-city mitigation in some cases. For example, some cities will have few if any areas suitable for mitigation. In other cases, mitigation banks may exist or may be established in areas that are high priorities for conservation. If out-of-city mitigation is not allowed, it may not be feasible to sell out the mitigation bank using only the mitigation generated by that city. Good preserve planning suggests that the cities should be flexible about allowing out-of-city mitigation in situations where it is biologically preferred.

Some comments state that protection of wetlands is inadequate due to inadequate buffers, insufficient integration with upland habitat, water quality impacts, and other reasons. The treatment of wetlands in the plan has been written consistent with the standards of the Clean Water Act (particularly Section 404 and the requirements of the Army Corps of Engineers), Section 1600 et seq. of the California Fish and Game Code, and for properties located within the Coastal Zone, the California Coastal Act. The plans are not intended to replace the existing 404 and 1600 permit processes. After approval of the plans, any impacts to wetlands for either private or public projects will still be required to obtain these permits separately. However, the plans have been designed to protect and conserve, to the maximum extent feasible, wetland species that are also species of concern. Wetland mitigation ratios and requirements for buffers are included in the MHCP. Examples would include the Least Bell's Vireo, Arroyo Southwestern Toad, and Tidewater Goby. In addition, vernal pools receive the maximum level of protection under the plans. In the Carlsbad subarea plan, 100% of existing vernal pools and their species will be conserved.

Please see PC-11.

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Public projects are being held to a lower standard for wetlands avoidance than are private projects- there is no justification for this distinction. If anything, public projects should be held to a higher standard.

Part of the CEQA review for wetlands impacts needs to address cumulative impacts on a watershed basis- particularly in those watersheds that lead to impaired waterbodies at the coast- like the Agua Hedionda Lagoon. The recent Pew Ocean Commissions report " Coastal sprawl: The Effects of Urban Design on Aquatic Ecosystems in the United States" suggests strategies and tools that will help preserve these coastal ecosystems. These need to be incorporated into the formal project review and mitigation planning process. (5)

There are two other areas of documented vernal pools in Carlsbad as previously discussed- these need to be properly acknowledged in this Plan, mapped and protected.

Table 11 Mitigation Ratios for Impacts to HMP Habitats

PC-59 Type C - there should be no de minimus exclusions for Type C or Type D, instead these should be accumulated and all impacts should require mitigation.

Type F agricultural lands includes many sensitive habitats- mitigation must be for the habitat type- after surveying.

Type G - Hardline preserve- there should be an added requirement that impacts to hardline preserve land should require 5:1 mitigation for Types A-E and 5 times the fee requirement for Type F. It should also be required that hardline mitigation must be within the city limits except under specific conditions.

E.1 Regulatory Implementation

PC-60 A time schedule needs to be specified for when the actions identified in items B through E are completed. Since the drafts are already prepared this should be within a matter of months.

Figure 30

PC-61 Explain how this process is integrated with the EIR certification and CEQA, particularly where and how public input is provided for.

E.3 Plan Amendments

PC-62 Equivalency findings, consistency findings, and plan amendments all require public notice and opportunities for review and comment. It is not acceptable for this to function like the Section 7 consultation process with all of the dealing occurring behind closed doors. These are public resources, and the public has a right to be included in the process.

E.4 Coordination with Regional Conservation Efforts

PC-63 Add a section F. The city will participate in adaptive management efforts to support the regional plan.

PC-59. The comment addresses the "de minimus exemption" for impacts to coastal sage scrub habitat. This policy is the purview of the wildlife agencies and is not a part of the MHCP or the subarea plans.

Lands mapped as agricultural will require survey at the time development is proposed. If sensitive habitat types are observed on the property, they will be addressed pursuant to the subarea plan.

Any encroachment into the hardline preserves will be reviewed carefully to ensure that all protective measures are retained.

Please see response to PC-3.

PC-60. Implementation actions for the subarea plan will include mandated times for public review of such items as General Plan Amendments, Zone Changes, and Local Coastal Program Amendments. Some implementation actions may be appealed or otherwise challenged. A reasonable amount of time must be allowed for these actions to be completed. Flexibility is warranted when a jurisdiction is proceeding in good faith and unforeseen events delay necessary implementation actions.

PC-61. In Figure 30, the step labeled "Normal City Review" includes the CEQA review and other actions required by state law and local ordinance. Public review and comment on CEQA documents will occur as per state law.

PC-62. This comment expresses an opinion regarding public review of actions that may be taken subsequent to approval of the subarea plan. In all cases, public review will be provided as specified in state and federal law. In some instances the City will choose to provide a level of public participation that exceeds the requirements of law. No substantiating facts or information were provided in the comment to support the contention that current law provides an inadequate level of public involvement.

PC-63. The City concurs with the recommendation to add a statement regarding cooperation with regional adaptive management efforts.

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E.5 Additional Implementation Measures

PC-64 There is no discussion of public involvement in the Annual Review or the Preserve Management Plan. The public provides an essential element of program oversight, and must be included at these key points in the process.

Three years is too long a period for the Phase 2 activities- Carlsbad has had this draft plan completed for over three years already- there is no reason it should take another three years to complete these actions.

Item 2 under Phase 2 is the first place where the Plan acknowledges the need to provide for wildlife undercrossings and or bridges in certain zones. These of course are critical elements to assure the viability of the proposed wildlife corridors in several areas. This is not a potential cost- it is a known cost and needs to be included as part of the initial funding program to implement the plan. A reasonable estimate of these costs needs to be made and these costs are part of the basic funding program.

E.6 Financing

PC-65 The Municipal Golf Course is included as a key item in the overall financing plan- even though this is now very uncertain. Contingency planning needs to be included for this.

The following additional items are essential as part of the basic plan implementation and must be included in the financing plan:

- additional land acquisition to support the BCLA alternative level of conservation
- roadway undercrossings/bridges
- restoration of the 744 acres that are currently disturbed land but are being counted as part of the preserve system
- contingency funds for adaptive management actions
- public education program- this should not be left to an annual appropriation from the city's general fund

All of these issues need to be addressed both in the overall financing plan, and in the fee structure to be imposed on the developers of private projects.

PC-66 The estimated cost of \$ 75 per acre per year for habitat management and monitoring is highly suspect. Oceanside estimated a cost of \$ 86.60 per acre for upland habitats and \$ 500 per acre for wetlands. Effective control of offroad vehicles alone would probably cost \$ 75 per acre per year- and is not currently being done. Adequate funding is essential for the plan to work. Independent analysis should be made of the costs to manage this land and there should be some consistency of cost elements between the participating north county cities.

PC-67 There also need to be penalty and sanction fees included as part of the overall financing program. There is no reason to believe that things like illegal grading will stop once the Plan is

PC-64. Please see responses to PC-29, PC-62, and PC-63. Because of a variety of regulatory constraints, the time period to implement Phase 2 has been proposed as three years. The City's goal is not to take that long; however, to ensure that all issues are covered adequately, appropriate time for processing must be allocated.

PC-65. Please see response PC-36.
a. Please see response PC-3.*

b. Please see response PC-27.

c. Please see response PC-56.

d. Please see response PC-15.

e. Although the City intends to carry out some public information and education programs, there is no requirement for such a program and it is not necessary to establish a budget for it. The comment does not include any substantiating facts or information to support its recommendation.

f. See above.

PC-66. Funding of the management of the preserve is highly dependent upon the acreage, size of parcel, management requirements, adjacent land uses, and conditions of the vegetative community. The MHCP estimated the costs to implement the plan; this financing plan is presented in Chapters 4 and 7 of the Final MHCP Subregional Plan.

PC-67. Illegal activities are also subject to civil and criminal penalties. Any appeal processes will be those provided under state and federal law.

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approved. These fees should be intended as a deterrent to illegal actions, such as an illegal take, but would also provide the funds to mitigate for such actions when they occur. Currently the USFWS imposes these sanctions- but often there are no financial penalties. However, under the Plan the city is issuing the permits, then they should also be responsible for assuring compliance and imposing penalties and sanctions for violations of plan provisions. The city will have to compensate for habitat destruction or degradation as it reduces their ability to meet the objectives of the Plan.

There also needs to be an appeal process built in so that when the city is the violator there is some ability to assure that they are subject to the same sanctions.

F.1 Interim and Permanent Management

PC-68 Currently the management of preserved lands is highly fragmented, and this plan does nothing to assure that there will be any improvement in the current system. Private property owners have several different ways of managing their habitat. In some cases land easements are given to a non-profit like TET, in others the HOA is responsible, and in others, for many years as master planned communities are being built, the project developer is responsible. Only the non-profits see management of the habitat as a major responsibility. These private lands very easily get lost in the cracks, and chronic problems get worse over time. Off road vehicle users in core areas like Calavera often ride over land managed by 4 different agencies in a few hundred feet. Each has a different approach, and there is no integrated plan to address shared problems. For example, recently TET and the DF&G dumped two truckloads of boulders in interior trails of the Calavera Highlands Mitigation Bank because the city is not providing sufficient monitoring and enforcement of offroad vehicles.

PC-69 There are no criteria specified that indicate when a species is being adversely impacted. Specific standards need to be identified. Also, who is making this determination, and upon what basis?

PC-70 Figure 31 does not include all of the privately owned conserved land. For example, Calavera Hills Phase I mitigation land (exclusive of Calavera Heights) is not shown although it is managed by the HOA. It appears that most of the HOA managed open space has been excluded from this figure.

PC-71 F.1.B City of Carlsbad
As discussed previously, \$ 75 per acre per year is insufficient to provide for adequate management of this land. Furthermore reasonable cost escalation needs to be included in the financing plan.

PC-72 F.1.C Privately Owned Conserved Lands
Need to add Calavera Hills Phase I open space, exclusive of Calavera Heights. This land should be integrated with other preserved land management- particularly since it is part of a core habitat.

PC-73 Land managed under HOA's, that is identified as sensitive habitat, should be managed as part of an integrated system of preserve management. HOA's have no public accountability, and little

PC-68. Please see response to comment PC-3. The Preserve Manager will be responsible for implementing the preserve management responsibilities. After Implementing Agreements are signed, the Cities will sign a Memorandum of Agreement to work together to assure management consistency in the preserve.

PC-69. The criteria for "take" of a listed species are those stated in the U.S. and California Endangered Species Acts. The criteria for "impact" are stated in the California Environmental Quality Act. Monitoring for take of species and impacts to species will be provided as an ongoing part of preserve system management and review of individual development projects.

PC-70. Figure 31 is not intended to be a comprehensive depiction of all conserved land. Its purpose is to indicate the larger conserved lands that are owned by other governmental agencies and a few examples of private owners. The point of this discussion is to show that there currently exists a patchwork of ownerships with differing levels of management.

PC-71. Please see response to comment PC-3.

PC-72. Please see response PC-70.

PC-73. Please see response PC-22.

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interest in preserving habitat for habitat. There are numerous cases where homeowners "trim" natural vegetation that blocks their view, expand their garden into what is supposed to be protected open space, and allow herbicide or other chemicals from landscaped areas to degrade adjacent sensitive habitat. This issue will be even more important as habitat becomes more fragmented and more if it is within the boundaries of master planned communities. Leaving this land outside of an integrated preserve management system also eliminates any ability for public review or effective oversight.

The Plan should restrict any new fragmented management in favor of an integrated system of preserved land management.

F.2.A Habitat Restoration and Revegetation

PC-74

One of the initial steps is to establish performance standards for any restoration project- the monitoring plan is then designed to address these standards- this identifies performance monitoring as a step at the end of the process- it needs to be built in at the beginning.

It is stated that "large scale restoration projects are not planned nor required...". However- 744 acres of disturbed land is identified as part of the preserve and all of this will require restoration- over 700 acres sounds like a pretty significant project. Since this restoration is part of the preserve design, a specific time frame and standards for this should be included in the plan.

PC-75

F.2.B Recreation and Public Access

Hand -in-hand with public access is the need for an extensive public outreach program. In most areas volunteers are the keys to a successful program (like the San Dieguito River Park). There needs to be more of a focus on this public outreach/public involvement- particularly in light of the financing constraints on the Plan.

The statement that off-road vehicle use is not compatible in the preserve is not strong enough. It needs to be specified that off-road vehicles are prohibited in all preserve lands- and there need to be severe fines for violations, and repeat offenses.

PC-76

F.2.B.1 Follow Guidelines for Future Recreational Expansion

The prescription to locate roads and other construction "away from sensitive areas" is not sufficient. Roads are particularly onerous and any road in preserve lands must meet the full requirements of the MHCP. The acreage for all such uses shall be deducted from preserve lands and once land has been approved as part of the preserve any take must be mitigated at the 5:1 ratio.

PC-77

F.2.B.2 Develop a Recreation Plan...

The plan for trails within the preserve must be integrated with the overall city and regional system of trails. Access from primary adjacent residential neighborhood needs to be specifically planned for- the alternative is a multitude of unplanned trails that are much more damaging and do not assure that the most sensitive resources are protected.

PC-74.

Please see response PC-22. It is not possible to establish a time schedule for implementation of conservation measures for all properties because these requirements will be made part of development approvals. The preserve system will be built incrementally through a combination of mitigation and acquisition. Conservation activities will begin as soon as a particular property or portion of property attains conservation status. This typically occurs through dedication in fee title or conservation easement. For properties that are not currently planning development, it may be many years before dedications occur.

PC-75.

Regarding public outreach, please see response CNPS-178e. The City of Carlsbad intends to make use of volunteers to the extent feasible and appropriate.

The City intends to take steps to eliminate off-road vehicles from the preserve system consistent with our legal and fiscal capabilities. Enforcement, penalties and fines will be as provided in state law.

PC-76.

Please see response to comment PC-3.

PC-77.

The City concurs with the need to integrate trails planning with the preserve planning. That coordination is already occurring as part of the HMP and the Citywide Trails Plan.

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PC-78 F.2.B.3 Special Recreational Activities
 Appropriate signage indicating allowed and unallowed uses needs to be addressed.

Trail "construction" needs to be minimized- and standards for 6' width for mountain biking need to be re-looked at. The normal standards used for recreational trails are greatly in excess of what should be used in preserve areas. Furthermore the mountain biking community does not want wide smooth trails.

PC-79 F.2.B.4 Public Access
 There are many areas where the size of the habitat fragment or nature of the biological resource should result in a determination to completely restrict public access, perhaps with some exclusion for special circumstances. The UC -Dawson Reserve complete restricts access, except for reservations limited to small groups and conducted under supervision.

One of the tasks in the management plan needs to identify areas needing complete restriction and establishing procedures related to the special management needs of such areas. Vernal pools would certainly be included as part of such areas..

PC-80 F.2.C Hydrology and Flood Control
 Add provisions that standard maintenance, such as clearing and dredging of flood control channels shall not be done during the breeding season of riparian birds.

Also all new development should contain run-off on site, using detention basins or other suitable measures and prevent runoff into preserve areas.

PC-81 F.2.E Enforcement
 will be critical to the long term success of the preserve system- particularly given the low level of management and funding that is proposed. Because many of the preserved lands in Carlsbad and throughout the MHCP area cross jurisdictional boundaries there needs to be coordinated planning between local area police departments, support groups like the Senior Patrols, other enforcement agencies like the DGF Game Wardens, and local volunteers. Oftentimes an off-roader enters preserve land from one city and leaves into another- neither sees it as a priority to address this.

The entire system of monitoring and controlling such areas needs to be revamped. In Carlsbad currently the designated offroad team sets their own schedule for when and where areas are patrolled. There are no records kept of citations by area so it is impossible to determine where the greatest problems are. Nor does an officer know when he stops someone if they are a repeat violator or not. There also is no follow-up when a member of the public calls in a license number of a violator. There is no record kept of repeat violators- although it is obvious that there are a small number of repeat violators who routinely use these areas for off-roading with no consequence. Extensive outreach and working with the retail stores and organizations supporting offroad use also needs to be built into the program.

PC-78. Please see response PC-77. Final design and environmental impacts of trails will be addressed in project-specific environmental review.

PC-79. The preserve management plan will address areas where public access should not be allowed due to the sensitivity of the biological resources.

The preserve management plan will include provisions that restrict certain activities during the nesting season or in any area deemed sensitive to encroachment impacts.

PC-80. The preserve management plan will include provisions that restrict certain activities during the breeding season of riparian birds. New development projects will continue to be required to follow the appropriate local and state requirements pertaining to runoff.

PC-81. Please see response PC-75.

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And most importantly- as discussed previously, there needs to be a system of fines and penalties that would both help serve as a deterrent and provide funds for enforcement activities.

F.3.A Fire Management

PC-82

Fire is part of the natural process of maintaining a healthy native ecosystem. Not just controlled burns, but other burns as they occur should be managed to support the ecosystem and not just be routinely extinguished.

Where fuel management zones encroach into preserve lands this needs to be accounted for in the determination of preserve acres- cleared, sprinklered, brushed areas are not native habitat.

F.3.B Erosion Control

PC-83

Erosion control within the preserve has to be integrated with erosion control outside of the preserve. City-wide provisions for addressing erosion control needs to be established. Since all wetlands are preserved and water takes the lowest elevation as a practical matter it is not possible to require that no new surface drainage is directed into the preserve- it all ends up there anyway.

Other BMP's must be applied to ensure protection from siltation and pollutants.

F.3.C Landscaping Restrictions

PC-84

Landscaping materials are not just a problem at preserve edges- the natural seed dispersal process has incursions of non-native plants throughout the preserve lands. Major pockets of invasives need to be addressed as one of the first tasks after the preserve is established.

Exotic invasive plants need to be controlled everywhere- not just in preserve or public lands. There should be restrictions on their sale in local nurseries, public education encouraging removal, and the ability to take action in serious cases.

F.4 Institutional Arrangement.

PC-85

Assigning specific responsibilities can wait to the implementing agreement- but there should be some determination of levels of effort required for both initial and on-going management activities - then a cost estimate can be developed that would help determine funding needs and the fee structure for private development. There has been a completely inadequate estimate of the costs to carry out the tasks identified. Without adequate funding this plan is just a piece of paper- much more attention needs to be paid to developing reasonable staff time and cost estimates.

This also needs to address the process for reporting problems with preserve management. Perhaps something like the system now in place for storm water violations. First reports to the city would keep a log and take corrective action, with appeal to FWS if the problem is not addressed.

PC-82.

Fire management must be coordinated with the fire protection agencies. In general, brush management zones for fire protection occur within the development area. However, there are some instances in which brush management will occur in the preserve area. In these cases, brush management activities will be coordinated with the wildlife agencies.

PC-83.

Erosion control is addressed by NPDES. Non-native species will be addressed in the preserve management plan.

PC-84.

Please see response to PC-83.

PC-85.

The preserve management plan will address start-up costs and ongoing costs. Adequacy of funding for management and monitoring will be determined by the wildlife agencies as part of their approval of the implementing agreement. A mechanism similar to that recommended by the commenter will be specified as part of the preserve management plan.

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PC-86 G.1.F Severability from MHCP

See prior discussion. The interdependence of north county cities is clearly identified in the MHCP. Severability protects each city from non-compliance by others but it doesn't help the endangered species. If one city pulls out, then populations of sensitive species in another city may become more critical. There needs to be some mechanism to assure that the overall MHCP remains viable.

PC-87 G.2 Provisions for Changed and Unforeseen Circumstances and "No Surprises" Rule

These provisions as stated are not consistent with Sierra Club policy, current understanding of how ecosystems function, or the provisions for adaptive management included in other sections of the Plan.

The climactic changes associated with global warming are likely to result in circumstances that are identified in the Plan as "unforeseen" but in fact are not.

The phrase "if it is necessary to mitigate the impacts of changed circumstance..." needs to be clarified. Who makes this determination? What is the appeal process?

Other Comments

PC-88 Buffer Land

A key issue that has not been addressed in this sub-area plan nor in the overall MHCP is that there is no provision to target additional land that may be needed if it is determined that species continue to decline after the plan is put into place. Other places (for example San Joaquin County) have established "buffer lands." These are targeted areas that are not permanently hardline preserved, but are preserved until certain conditions are met and it can therefore be determined that a lesser level of conservation will meet plan objectives. In the absence of such provisions- explain how adaptive management will be able to address future problems with inadequate habitat or excessive habitat fragmentation.

PC-89 Golf Courses

Golf courses have significant and adverse impacts on the environment. Carlsbad has several existing and more golf courses proposed. Specific provisions need to be developed to protect the adjacent preserve lands from increased runoff- and from the effects of runoff containing large amounts of fertilizers and pesticides. This run off soaks into the water table and ends up in our creeks and lagoons. The sensitive species that depend upon these riparian habitats are all impacted. These provisions need to address both existing and planned new courses. New courses should be encouraged to meet the newest standards to minimize golf course impacts.(3)

PC-90 Wildlife Undercrossings

Wildlife tunnels/bridges are essential for the proposed wildlife corridors to be functional, yet they have not been included in the Plan. Wildlife movement needs to be provided for with all

PC-86. Severability is an important provision for the participating jurisdictions. The motivation to participate in a regional plan is based on the understanding that each city retains land use control within its boundaries. At the same time it is acknowledged that the actions or inaction of one agency cannot be allowed to jeopardize the continued existence of the species of concern. Therefore, in issuing take permits to each jurisdiction the wildlife agencies retain sufficient oversight and authority to safeguard the species while allowing the cities to be severable from each other. If a city were to lose its take authorization, either in total or for a given species, there would be adequate protections for the species due to Section 9 of the Endangered Species Act which prohibits take without permit. Additionally, if another City was dependent upon the City in noncompliance for coverage of one or more species, the other City would lose its coverage for that species.

PC-87. The implementing agreements for each city will specify the provisions of the "No Surprises" rule consistent with federal and state policy at that time. The MHCP and the subarea plans do not set that policy and are not proposing any modifications to that policy.

PC-88. Based upon analysis of the existing conditions and development associated with the take authorization, it was not deemed necessary to implement a buffer contingency in the North County. It should be recognized that ultimately, the preserve system will be completed; however, the impacts and mitigation will take place over an extended period. (The permit is proposed for 50 years.) Thus, the annual monitoring will ascertain the status of the species and any additional measures (adaptive management) to ensure that the species are not jeopardized.

PC-89. The MHCP does not have the authority to require existing golf courses to modify their operations for the protection of the preserve system unless those operations would constitute take of a listed species. Water quality issues can be addressed under the NPDES permit process. New golf courses will be required to provide adequate buffers and to employ best management practices for minimizing impacts to adjacent habitat.

PC-90. Please see response CNPS-99. If an outside agency such as Caltrans proposes a project that will impact sensitive habitat or species, that agency will need to comply with the California Environmental Quality Act, the Coastal Act, the Endangered Species Act, and other requirements. If the agency needs take authorizations from the wildlife agencies, it must either obtain third-party beneficiary status through the city's take permit or it must obtain its own take permit directly from the wildlife agencies. Nothing in the MHCP or subarea

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plans prohibits a property owner from applying directly to the wildlife agencies for a take permit.

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new roadway construction, and retrofits of existing roads must also be addressed when they are part of the identified linkages. The needs for these capital improvements must be surveyed and programmed into the capital improvement plans. These needs to be addressed both in the financing plan, and the implementation schedule.

Multiple agencies are often involved in major infrastructure projects like roadways or utilities. Explain how Caltrans, utility companies and other agencies projects will be evaluated and implemented in light of the provisions in the Plan and the MHCP. What role and control will the city have as the permitting agency with take authorization? Will these agencies be subject to at least the minimum mitigation requirements included in the Plan?

Core Habitat Road Density Standards

PC-91

The national parks have developed what is referred to as "Road Density Standards." These determine the density of roads allowed in sensitive areas. Studies of large mammals have shown that normal activities are adversely impacted when roads exceed specified levels- and these vary by animal. (6)(7) Roadway extensions into preserved lands are a significant issue throughout north county- but particularly in Carlsbad where at least four extensions are proposed into core habitat- including Reach 4 of Cannon Rd that will bisect the largest remaining contiguous native habitat in the coastal north county area. Specific studies are needed to identify the impacts of such roadway extensions. These should then be used as the basis for both open road and total road density standards similar to what is done in the national parks.

Schedule

PC-92

Because of the interdependence of the plans in north county, it is reasonable to require dates by which key provisions must be put into place- or subject a city to penalties for adversely impacting species conservation of the region.

Contingency Planning

PC-93

The Carlsbad Sub-Area Plan, and the entire MHCP, are seriously flawed by failing to include any provisions for contingency planning. The plans presume that Camp Pendleton will remain as core breeding habitat, consequently there is a need to develop only one additional block of core Gnatcatcher habitat. In fact, the Marine Corps has been actively lobbying for some time to reduce these requirements. Last week it was reported that "Marine Corps officials said Tuesday that they are stepping up efforts to get congressional relief from a growing number of federal laws that protect endangered or threatened species..."(8) Carlsbad gave away entitlements to their largest block of CSS (with the Fieldstone HCP) without adequate contingency plans in place. The Plan still allows the destruction of over a third of the remaining sensitive habitat- without knowing that this level will support viable populations of the target species.

Carlsbad is reported to have capital reserves of over \$ 300million. The city doesn't do their financial planning without putting something aside for a rainy day- they shouldn't do their habitat conservation planning that way either.

PC-91.

The Road density standard used for National Parks is not applicable to an urban wildlife reserve as will be created in north San Diego county. Studies of movement of large mammals are also not applicable to this subregion where the majority of species of concern are plants, birds, and reptiles. As stated in response CNPS-66, the plans are not intended to prevent all impacts to habitat and species, nor are they intended to preclude infrastructure that is needed to serve existing or future human populations of the region. Infrastructure projects will, however, be required to comply with all minimization and mitigation requirements of the plans in order to obtain the necessary take authorizations.

PC-92.

Implementation actions for the subarea plan will include mandated times for public review of such items as General Plan Amendments, Zone Changes, and Local Coastal Program Amendments. Some implementation actions may be appealed or otherwise challenged. A reasonable amount of time must be allowed for these actions to be completed. Flexibility is warranted when a jurisdiction is proceeding in good faith and unforeseen events delay necessary implementation actions.

PC-93.

This comment does not address the adequacy of the document. The City of Carlsbad has implemented a plan coordinating with all cooperating entities. The County is currently undergoing a planning process. Carlsbad can only comment on the County's plan to connect with Carlsbad's corridors. As to the military lobbying, it is speculative to conclude that endangered species planning will be voided on military lands.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

Endnotes

PC-94

- (1) Wilson, Edward O., How to Save Biodiversity, The Nature Conservancy, Spring 2002.
- (2) Excerpts from the Intergovernmental panel on Climactic Change from Goodstein, Carol "A Sea Change", the Nature Conservancy, September/October 2001.
- (3) Kuznik, Frank, Charting a New Course, National Wildlife, August/September 1993.
- (4) Crooks, K.R., and M.E. Soule.1999. Mesopredator Release and Avifaunal Extinctions in a Fragmented System. Nature 400:563-566.
- (5) From the website, Pew Oceans Commission, quoting Dana Beach from his report Coastal Sprawl: The Effects of Urban Design on Aquatic Ecosystems in the United States", final report to be issued Fall 2002, pewoceans.org .
- (6) Mace, R.D. and T.L. Manley.1993. South Fork Flathead Grizzly Bear Project:Progress Report for 1992. Montana Department Fish, Wildlife and Parks. Kalispell, MT.
- (7) Thiel, R.P. 1985 Relationship Between Road Densities and Wolf Habitat Suitability in Wisconsin. The American Naturalist: 113:404-407.
- (8) NC Times, April 24, 2002, "Pendleton Brass:Laws Constrict Training." Gidget Fuentes.

Sincerely,



Diane Nygaard on Behalf of
Preserve Calavera

Attachments

- 1 Sierra Club HCP/NCCP Policies
- 2 List of Carlsbad Projects With Hardline Boundary Changes
- 3 7/28/00 Sierra Club Comment Letter
- 4 7/28/00 Preserve Calavera Comment Letter

PC-94.

This comment provides a list of references used to prepare the comment letter.*

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

7. Public Participation. All HCP/NCCP processes must be open to early public involvement and participation and to independent scientific input. The scientific community and the public must be given meaningful opportunities to help develop these plans at the earliest stages. The current process all too often presents the public with a finished product on which to comment.

8. Adaptive Management. We recognize that science has much to learn about species and ecosystems, and therefore, that HCP/NCCP management plans must be adaptable to new information and changed circumstances. The requirement that HCP/NCCP's be adaptable is essential if these projects are to meet their objective of ensuring the long-term protection of fully functioning ecosystems. An HCP or NCCP is not a substitute for listing, designating critical habitat for federally listed species, and developing a recovery strategy for that species. HCP's and NCCP's should never undermine the statutory goals of the federal and state Endangered Species Acts.

9. Enforcement. We support strengthening existing wildlife protection laws, such as the federal and state Endangered Species Acts, and reject any and all attempts to weaken these laws. We recognize that even with the ESA and CESA, many wildlife populations and ecosystems have become extinct, that many more species are now listed, and that an even larger number of species are imperiled and eligible for protection. We assert that HCP/NCCP projects must, at a minimum, be consistent with the species recovery objectives of the ESA and CESA. Additionally, citizen suits must be authorized to enforce NCCP's and HCP's.

10. Funding, Implementation, and Monitoring. All NCCP/HCP-type plans must have an implementation component which includes secure and adequate funding for the scope of the proposed project. Additionally, there must be a monitoring component using measurable standards which regularly assesses the impacts of the plan, the efficacy of the plan, and the likely success of the plan. To the maximum extent practical, funding must come from those who seek to advance the proposed project. If land is contributed by private parties to an NCCP/HCP, it shall not be land which is contributed because of a mitigation requirement imposed by other legal requirements.



Attachment 1 Sierra Club HCP/NCCP Policies

NCCP/HCP PRINCIPLES OF SIERRA CLUB CALIFORNIA

- PC-95
1. Recovery. The bedrock principle for all HCP/NCCP projects is that they must lead to the recovery of the affected species and be based on the biological needs of the species and ecosystems which are to be protected.
 2. Stewardship. The public has a vested interest in the health and sustainability of water and wildlife. All landowners, therefore, serve as public trustees of these ecosystems and species. All landowners have a duty to ensure that their activities do not harm public trust resources. We respect the tradition of private property but believe that private property is subject to reasonable regulation in order to advance public trust responsibilities.
 3. Prevention. The most effective strategy for avoiding the biological and legal crises involving species listed under the ESA is to avoid the circumstances that lead to extinction. Preventative policies are the most ethical and biologically sound. We are highly skeptical of the effectiveness of habitat "re-creation" strategies, and consider mitigation undertaken as part of a development to be a poor substitute for conservation. For species unfortunate enough to become listed, the Sierra Club's goal is to conserve and protect what remains, with the ultimate goal being the biological recovery of the species. Large-scale regional management and development plans like HCP/NCCP's must promote that goal.
 4. Science-based Standards. All HCP's and NCCP's must be based on independent and verifiable scientific studies which conclude that the plans will likely result in the recovery of at-risk species.
 5. Growth Management. The conservation of endangered species necessarily involves the conservation of habitat. Therefore, endangered species issues are inextricably linked to local land use planning and decision-making. The Sierra Club believes that development and population growth should not occur on habitat essential for the survival of endangered species. It is a basic premise of the Sierra Club that the protection of endangered species and habitat is essential in maintaining the quality of human life as well as a sound, sustainable economy.
 6. Legal Assurances. We oppose the "no surprises" policy as currently being implemented. NCCP's and HCP's are too often touted for providing virtually ironclad "regulatory certainty" to developers and landowners in a world filled with scientific and biological uncertainty. Regulatory commitments and assurances must be commensurate with scientific knowledge and conform to the principles of adaptive management. NCCP's and HCP's must therefore be subject to periodic review and amendment, when necessary. Public participation is an essential part of the periodic review process.

PC-95. Attachment 1 has been provided indicating the NCCP/HCP Principles of the Sierra Club, California.*

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

Attachment 2 List of Carlsbad Projects with Hardline Boundary Changes

PC-96

PROJECTS REQUESTING MODIFICATIONS TO HMP HARDLINES

PROJECT	PLANNER	PHONE	STATUS
Calavera Hills	Eric Munoz	602-4608	In review
Kelly Ranch	Christer Westman	602-4614	Approved
Cantarini	Barbara Kennedy	602-4626	In review

PC-96. Attachment 2 of this comment letter provides a list of Carlsbad projects which require hardline boundary changes. This table is referenced in comment PC-35. Please see response PC-35 for further discussion.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.



Attachment 3 7/28/00 Sierra Club Letter

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San Diego and Imperial Counties
3820 Ray Street
San Diego, CA 92104-3623

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vation (619) 299-1741
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Ken S. Berg
Field Supervisor
U.S. Fish and Wildlife Service
2730 Loker Avenue West
Carlsbad, California 92008

RECEIVED

7/28/00

JUL 28 2000
US FWS
CARLSBAD FIELD OFFICE, CA

PC-97.

Attachment 3 is a letter dated July 28, 2000 from the Sierra Club stating that the HMP for the City of Carlsbad and any associated documents are in violation of the Sierra Club NCCP/HCP Policies.

PC-97

Dear Mr. Berg:

The San Diego Chapter of the Sierra Club has a long history of participating in the planning process for the preservation of biological diversity in our area. The Habitat Management Plan for Natural Communities in the City of Carlsbad (HMP) and the associated documents violate our policy in several key areas. We therefore oppose the execution of the IA with the City of Carlsbad and the issuance of an Incidental Take Permit pursuant to Section 10(a)(1)(B) of the Federal Endangered Species Act until such time as these concerns are addressed.

Our major concerns include the following:

Inadequate provisions for acquisition and preservation of wetland habitats and appropriate wetland buffers.

While the text specifies that there will be no net loss of wetlands, in fact the summary Table 8 HMP Conservation Levels shows a reduction in both riparian and marsh habitats. Only 494 of 574 existing riparian acres are conserved. Only 1,252 of 1,366 marsh acres are conserved. Furthermore, a significant portion of the wetlands that are identified as "conserved" are located within the Standards Areas where preservation locations are not specified.

This HMP as written allows wetland degradation for a wide range of nonessential uses, for example, a municipal golf course. The golf course mitigation proposed includes a combination of on-site and off-site locations. The HMP policy language specifies that avoidance is preferred. Because of the tremendous loss, and the critical importance of the resource, wetland impacts should be avoided with the exception of essential public service utilities that cannot avoid the impact. In such cases the impacts should be minimized. For example, a road should cross the stream, (rather than follow the stream) and cross at the least damaging practicable location, on a bridge rather than fill, and span the wetlands to the maximum extent that engineering will allow. Impacts should be mitigated to achieve a net benefit to the habitat type.

The HMP should have provisions for acquisition and preservation of wetland habitats (and appropriate wetland buffers) in cases where avoidance of wetland impacts is determined to be infeasible due to economic constraints. The golf course impacts clearly could be avoided.

Detailed maps for the Proposed Hardline Conservation Areas for the following sites all show loss of wetland and/or wetland buffers: City Golf Course, Bressi Ranch, Carlsbad Oaks North,

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

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Holly Springs, South Coast, Manzanita Partners, Veteran's Memorial Park, Heatt, Fox-Miller, Calavera Heights, and Cantarini.

It is also impossible to determine how much total wetland and wetland buffer is protected and how much will be lost. Habitat detail maps are provided only for the proposed hardline preserve areas- and not for land already preserved or the Standards Areas. To make a complete determination requires the use of three sets of maps on different scales. A single clear map of wetland/buffers preserved and lost should be provided.

Excessive loss of habitat for priority species

The draft MHCP identified several priority plant and animal species. The HMP includes insufficient provisions to prioritize habitat protection based on these targeted species. Review of the proposed hardline areas project boundaries indicates there is little or no relationship between these priorities and where the preservation boundaries are drawn. The end result is that there is significant loss of habitat for the priority species.

In addition, designation as a narrow endemic should include required surveys in all areas, not just the proposed hardline areas.

CEQA Review

The boundaries for proposed hardline preserve have not been subject to any meaningful project by project review. It is not clearly stated that approval in the HMP does not place any limitations on the full CEQA review process.

Insufficient specification of conservation goals or goals set too low to assure population viability

Table 9 Measures for HMP Species identifies species specific conservation goals. In the few instances where the goals are quantified, like the San Diego Thorn Mint, only 4 of 5 major populations and 9 of 13 mapped locations are even proposed for conservation. Within these an unspecified portion is within the Standards Area where there is no assurance of conservation of the specific location where the priority species is located. The Environmental Assessment provides insufficient analysis to support a conclusion that the loss of over 30% of the mapped locations would assure continuation of the species in this city.

Goals for other species are stated as an approximate percentage of the population in a general area. No detail maps are provided for the limits of the population and the size of the population is not specified. The lack of specificity will make it impossible to conduct future surveys and determine if a goal like "preserve approximately 95% of the population in the vicinity of Green Valley" has been met or not.

50 year permit period is excessive

Fifty years is too long to approve an untested plan and planning process. It will be too late to make any significant impacts on preserve boundaries. A shorter time period with clear milestones would help assure biological goals will be met.

Viability of the preserve to protect covered species

The Sierra Club is concerned about the successful functioning of the MHCP and the sub-area plans; that is, does the MHCP create a viable preserve? Even with the proposed additions to the already preserved lands, the results are significant fragmentation of habitat, loss of habitat, minimal linkages, and arbitrary boundaries that do not follow natural land forms or habitat buffers.

The fragmentation of preserve lands will exacerbate the difficulty in protecting habitat and preserving species. The City of Carlsbad has not established a good track record for preserve maintenance. For example, the Lake Calavera mitigation bank has been in effect for several years and was partially used to offset habitat takes within the coastal zone. In spite of this, the City now plans to drain the lake to repair a defective valve. Draining the lake hardly constitutes preservation. New roads adjacent to the lake for the Calavera Hills development have allowed increased off-road vehicle access that is causing erosion in the lake's watershed area. External monitoring of preserve management is required to assure management practices listed are actually in place.

Inadequate analysis of alternatives

The Carlsbad Environmental Assessment (EA) associated with their HMP analyzed four alternatives. The level of analysis is insufficient to determine either which supports the best outcomes for species within the city or within the region. Furthermore, the regional impacts cannot be adequately assessed until the adjacent jurisdictions have completed their sub-area plans and complete preserve boundaries are known. Analysis of alternatives should be redone once the remaining north county sub-area plans are completed.

Inability to evaluate Focused Planning Areas

The MHCP identified several Focused Planning Areas (FPAs). The FPAs are not overlaid on the HMP map and there is no specific discussion of how objectives of the FPAs have been integrated into the preserve plan. No specific standards have been defined relative to the FPAs. The FPA objectives and standards must be specifically identified in the HMP and be consistent with those in the MHCP.

Lack of standards for mitigation banks

The habitat that is lost and replaced with land in a mitigation bank will be lost forever. While management practices are described for the mitigation bank, there are no biological standards established.

Insufficient guidelines for Standards Areas

Large areas are identified as "Standards Areas", but only 553 of these acres will be conserved. Preservation of acreage by habitat type is identified in the goals, but since locations are not specified there is no ability to evaluate if this is integrated with the core planning areas and linkages. Further guidelines are needed to require such integration.

Inappropriate land uses adjacent to and within the preserve areas

There are several examples of inappropriate land uses adjacent to the preserve areas. For example, NAP area shown on the map between Holly Springs and Robertson Ranch is a high school. It is surrounded on almost three sides by the preserve. There are no guidelines to limit such a use, no management practices or physical barriers to protect the preserve from its impacts. Physical barriers, e.g., a berm or steep hillside, should be used to separate even relatively low intensity uses from a preserve.

Another example is the industrial park proposed for Carlsbad Oaks North., just south of the Dawson Los Monos Reserve and preserve lands. High intensity land uses adjacent to preserve lands are inappropriate and will cause degradation of the preserve habitat.

Stand - Alone Document

It was our understanding that all of the sub-area plans would be incorporated into a single plan and that the implementing agreement would be executed with each of the individual jurisdictions as part of the entire MHCP. This HMP and IA are clearly written as a stand-alone with the City of Carlsbad having no further obligation to even participate in the overall region's planning effort, or to coordinate their actions with the other north county cities in the MHCP area.

The HMP includes about 300 acres of mitigation for Carlsbad projects outside of the city limits. This mitigation was acceptable because of its contribution to a priority habitat area for the region. It is not acceptable for Carlsbad, or any of the other north county cities, to remove themselves from the joint planning effort. This IA needs to be amended to reference the MHCP and assure full participation in the regional planning process.

Annual Reviews

The EA, page 23, states that an annual meeting will be conducted by the City, Service, and Department to monitor HMP implementation. Interested members of the public should be invited to the annual meeting, and along with the Service and the Department, should be given the opportunity to analyze and comment on the progress of the preserve building annually, either at the annual meeting or in writing. The data presented at this meeting, the discussions at the meeting and any comments received in writing together with the responses of the City should be presented in an Annual Report that will be available for public review.

The National Sierra Club is on record as being opposed to a "no surprises" policy which gives assurances of no change in requirements to the land owners without equivalent assurances of species and habitat preservation. The Annual Report can provide assurances to the public that species and habitat preservation remain consistent with the HMP goals on an annual basis. A final draft of each Annual Report should delineate steps that will be taken to bring any deficiencies in preserve accumulation up to the standards described in the HMP.

Likewise, if biological surveys indicate that species specific conservation goals are not being met, this report should indicate the necessary corrective, adaptive management steps that will be taken including possible reduction in habitat and/or species take authorization. Until the adaptive management steps conceptualized above are detailed and include measurable results criteria, this Environmental Analysis must be considered inadequate.

Sincerely,

Janet A. Anderson /aw

Janet A. Anderson Ph.D.
Conservation Chair
San Diego Chapter Sierra Club
Sierra Club Representative to the MHCP

cc. Ms. Mary Clarke
San Diego Chapter Sierra Club
Alternate to the MHCP

Ms. Janet Fairbanks
San Diego Assoc. of Governments
401 B Street, Suite 800
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Mr. Bill Tippetts
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4949 Viewridge Ave.
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Mr. Don Rideout
City of Carlsbad
1635 Faraday Ave.
Carlsbad, CA 92008

file

7/28/00

Ken S. Berg
Field Supervisor
U.S. Fish and Wildlife Service
2730 Loker Avenue West
Carlsbad, California 92008

Subject: Comments on Carlsbad's HMP

Dear Mr Berg :

PC-98 Preserve Calavera is a grass roots citizen's organization of residents in the neighborhoods surrounding and users of the Calavera preserves. We are new to this process of formal planning for habitat protection, but we are not new to our concerns about the preservation and protection of our special part of Carlsbad's native habitat. The following are our comments on the Habitat Management Plan for the Natural Communities in the City of Carlsbad. While we have many concerns about the overall plan, we have limited our comments to those that impact the Calavera area only.

1. Designated High School (NAP) within preserve.

Land has been reserved for a future Carlsbad High School where it will be surrounded on three sides by the preserve. This land use is inconsistent with the goals of habitat protection. It is reasonable to assume that noise, debris, traffic, and increased encroachment will result and none of these are addressed in the management plan for the preserve. The land where the school would be located is relatively high quality habitat. There is other disturbed/degraded habitat land that is much more appropriate for this proposed land use and the alternative sites are not in the middle of a preserve.

2. Carlsbad Police Training Range Project

This project is identified as one of the proposed hardline areas in section 12.1.B.2 of the Implementing Agreement, however it is not identified in Section D.3.B on page D-14, nor is a project map included in the figures. This inappropriate land use for a preserve will require access roads and result in further loss of habitat. It also appears that the habitat acres lost from this have not been deducted from the summary tables nor are they shown on Appendix B as a public use for the mitigation bank.

3. Reduction in size of the preserved open space

The existing open space in the Calavera area is one of the largest, contiguous native habitat areas in the city. The large size and variety of habitats result in a rich diversity of plant and animal life. Appendix B lists the city projects that are expected to be mitigated by the Lake Calavera Mitigation Bank. These projects total more than the land that is available at the bank. While we understand that the bank can only mitigate up to the limits of the available land, it is clear that there is already identified public incidental takes that would exceed the limits of the bank.

PC-98.

Attachment 4 is a letter prepared by Preserve Calavera, dated July 28, 2000. The letter summarizes the concerns of residents surrounding the Calavera preserve, specifically the impacts associated with the implementation of the Carlsbad HMP.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

Establishing additional bank land adjacent to the existing preserves would both provide the actual amount of land that the city anticipates they will need, while also assuring the maximum, contiguous open space.

4. Lack of Integration with Open Space Plan

Both people and native plants and animals need open space. The HMP process includes detailed provisions for assuring some level of space for plants and animals. However, to preserve it, common open space activities by people will need to be controlled, and in many cases eliminated. This land now serves a wide variety of recreational uses. Open space to meet the recreational needs of people should not be reduced in order to implement the HMP. The total amount of open space needs to be increased, and planning for people's open space needs must be integrated with HMP planning. Currently the only references to this concept are that the Open Space Element of the City's General Plan will need to be amended to match the HMP. The HMP also needs to do a much better job of planning for people. For example, the shore around Lake Calavera is partially designated as public park and partially as habitat preserve. How will these boundaries be distinguished? What activities will be allowed to occur on each side of the boundary and how will these be enforced? A preserve with residential areas on three sides, and a long history of unlimited public access, will present additional challenges to manage. The management practices do not adequately address these issues.

5. Lack of Management Plan regarding Carlsbad Trail System

The Open Space Element of the City's General Plan identifies the proposed Carlsbad Trail System. The Trail system includes one trail around most of the perimeter of Lake Calavera, and one east/west through the proposed preserve area south of the lake. Neither the Planning Standards for Zone 15, nor the management practices for the priority species include how the trail will be integrated with preserve planning.

6. Inadequate Zone Management for Zone 15

Carlsbad has a poor history of preserving much of this land that is already part of the preserve system. The city currently plans to drain Lake Calavera in order to repair a defective valve. Draining of a wetlands, within a preserve, that is established as a mitigation bank, is not acceptable protection. The management practices need to specify standards for protection of the wetland.

Currently no posting of the land to restrict off-road vehicles can be found anywhere on the north, south, or east sides of the preserve. New roads that have been built for the Calavera Hills development have resulted in increased off-road vehicle access. When violations are reported to the police they are rarely responded to. Both increased posting and enforcement are needed, and the current levels are insufficient. Management practices should specify posting and response standards.

No time frame is specified for exotic plant removal. When city vehicles disturbed the soil to remove cars from the creek they allowed exotic plant intrusion - of artichoke thistles - in an area east of the mountain. The city was notified of the intrusion, but has taken no corrective action. Volunteers continue to remove flower heads to limit the spread, but this is an inadequate response. Standards for exotic plant monitoring and removal need to be included.

SDG & E has power lines through the preserve area. They frequently enter the preserve without the required notifications, and conduct activities detrimental to habitat protection. In the last year this has included high pressure washing of insulators, grading around high wire towers and resultant destruction of plants, excessive access grading that increases erosion and access by off-road vehicles, and operation of vehicles off of designated roads. The management plan does not adequately protect from access by such authorized users. Fines or penalties for violations also need to be addressed.

7. Standards Areas lack sufficient integration with preserve

The two adjacent standards areas do not specify how the preserved acreage will be linked with the existing and proposed hardline preserve to maximize the contiguous open space, as well as specialized plant communities.

8. Linkage to Oak Riparian Park preserve

Neither the planning standards nor management practices specify how linkages with the adjacent preserve around Oak Riparian Park will be protected and maintained.

9. 50 year time period

The proposed 50 year permitting authorization is excessive. It is highly probable that full build-out will have occurred within that time allowing no opportunity to make corrections if the size of the preserve needs to be increased based on species impacts. If the time period remains at 50 years, then contingency planning should require additional land in a temporary reserve status, pending evaluation of results.

10. Conditions for Permit Authorization Revocation

The HMP specifies an annual review, but that review does not include authority for discretionary action to suspend or revoke the permit, or take other corrective action if the biological survey or other data indicates non-compliance with the plan, or that plan actions are insufficient to meet the biological goals.

Sincerely,

Diane Nyquist
Preserve Calvaria



February 22, 2002

April 29, 2002

Jim Bartel
Field Supervisor
US Fish and Wildlife Service
2730 Loker
Carlsbad, CA 92008

RECEIVED
APR 29 2002
US FWS
CARLSBAD FIELD OFFICE, CA

Subject: Comments on Draft EIR/EIS for MHCP

Dear Mr. Bartel:

PC-99 The Draft EIR/EIS for the Multiple Habitat Conservation Program (MHCP) concludes that the Biological Core and Linkages Alternative 3 (BCLA) is the environmentally preferred alternative. It then further concludes that this alternative is "economically impractical and likely infeasible." We concur that it is the preferred alternative. However, it should also be the recommended alternative. The following discusses our specific concerns with the faulty analysis that resulted in rejecting this alternative. Following this discussion are several other issues with the Draft EIR/EIS.

Faults with BCLA Alternative Analysis

PC-100 - no evidence that any economic analysis was done

It is concluded that there will be "significant economic impacts" but there is no evidence that any kind of an economic analysis has been done. An objective analysis would identify both areas of positive and negative impacts and determine the net effect. The EIR/EIS did neither. In fact studies across the country have shown that there is a significant positive impact from increasing the amount of open space. (1) A valid analysis would have included issues like rental vacancy rates- reductions are an economic benefit, ability to attract and retain businesses in an area, another positive impact, etc.

PC-101 - no cost analysis was done on this alternative

The acquisition of larger parcels of land results in lower costs per acre. There has been no analysis of the cost of this alternative or comparison with the costs of the preferred alternative. Since cost is one of the primary factors in the rejection of the environmentally preferred alternative, an analysis of such costs is required.

PC-102 - criteria for significance findings are arbitrary

A threshold of a 10% increase in residential density or 20% loss of commercial land area was considered significant. The residential threshold was based on what was used for the San Diego MSCP. San Diego is a major city with 466,258 housing units in 1998. The five north county

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PC-99. Please refer to response PC-7.

PC-100. Section 4.6 of the draft EIS/EIR contains an analysis of potential impacts on the future population, housing and employment of the MHCP study area. Significant impacts in these areas could result in significant economic impacts, for example, with respect to housing affordability or the availability of employment opportunities.

With respect to Alternative No. 3, the draft EIS/EIR states that the alternative "represent[s] a substantial reduction in the supply of developable land, which will likely result in significant economic impacts ..." (draft EIS/EIR, Sec. 4.6.2.3). That is, reduction in the supply of developable land under this alternative would affect the ability of the MHCP cities to provide for future growth in housing and employment as forecast by SANDAG and in a manner consistent with local general plans. This is considered to be a significant economic impact and is based on an analysis of vacant land which would remain available for future development under the alternative (draft EIS/EIR, Sec. 4.6).

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, significant effects on the environment are limited to substantial, or potentially substantial, adverse changes in physical conditions which exist within the area affected by the project (Public Resources Code, Sec. 21100). In determining whether a physical change creates a significantly adverse environmental impact, economic or social changes or the economic and social effects of the physical change may be considered. Furthermore, "Evidence of economic and social impacts that do not contribute to or are not caused by physical changes in the environment is not substantial evidence that the project may have a significant effect on the environment." (State CEQA Guidelines, Sec. 15064(f)(6)). However, purely economic impacts are not required to be analyzed independently from the physical change to the environment caused by the project, and mitigation under CEQA is limited to measures which address physical environmental impacts of the project (State CEQA Guidelines, Sec. 15064(f)).

The requirements for NEPA and regulatory direction are discussed below. 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

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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 impacts 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 it 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 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).

For the MHCP project, reasonably foreseeable adverse socioeconomic impacts were identified in areas of population, housing, and employment. Analysis of these impacts was based on the latest population and housing forecast prepared by SANDAG (2020 Cities/County Forecast), adopted general plans of local jurisdictions, and information regarding ownership, existing land use, and presence or absence of natural habitat and physical constraints to development. The analysis also included observations regarding the need for and cost of land acquisition, effects on housing price, and availability of affordable housing, when standard economic theory could be

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applied to draw reasonable conclusions. The economic analysis was adequate to disclose the impacts of the program-level project description. With the low rental vacancy rate currently in existence, the financial impacts of further reduction may actually be negative if rents increase and businesses can not "house" their employees in a cost-effective manner. One indication of this lack of housing is the significant number of residents (estimated to be 18,600 in 2000) in southwest Riverside County who commute to work in San Diego County. About one in three households in the Temecula/Murrieta area has at least one person who commutes to San Diego County (from SANDAG, I-15 Interregional Partnership, Draft Existing Conditions Report, 2002).

PC-101. In the context of the MHCP study area, it is unlikely that acquisition of more land would result in a lower average cost per acre. The estimates of acquisition cost used in the MHCP assume that entire parcels would be purchased. There is nothing in local market conditions which indicates that acquisition of additional parcels would reduce the average price. In fact, the opposite is likely to occur, since a larger acquisition program would increase the market value of the remaining vacant land. In the program, not the average price of land, and the cost of land acquisition for Alternative No. 3 is likely to be very high.

Alternative No. 3 would conserve about one-third more vacant land as Alternative No. 1 and No. 2 (draft EIS/EIR, Table ES-1). However, under Alternative No. 3, twice as much unconstrained land (free of physical constraints, such as steep slopes, that could support future development) would be removed from the vacant land supply. This reduction in land supply would increase land prices and lead to higher housing cost. The additional conservation is likely to reduce or eliminate opportunities for economic use of habitat lands for many owners in the BCLA. Thus, acquisition need for Alternative No. 3 is likely to substantially exceed that of the other alternatives. At the same time, Alternative No. 3 would permit less overall development in the study area than the other alternatives, reducing opportunities for the participating cities to obtain habitat conservation through on- and off-site mitigation as a condition of development approval and increasing the need for public funds for land acquisition.

PC-102. Reasons for proposed significance thresholds are explained in Sec. 4.6.1 of the draft EIS/EIR. Increasing residential density by more than 10% would require a change in the character of future development from that contemplated in the cities' general plans and/or a reduction in the growth of housing forecast by SANDAG. These effects are largely independent of city size.

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cities combined had less than 40% as many units.(2) . The highest population north county city is well under 200,000 and much of north county is still agricultural. North County is not comparable to the city in terms of total population, population density, build-out rate, or growth projections. It is not appropriate to arbitrarily apply the same standard.

- problems with source population data

PC-103 SANDAG recently did a major reduction in regional growth projections for the year 2020 population- and most of this reduced growth is in north county. The north county cities had not adjusted their general plans to meet the earlier population projections, and they have not revised them since the new SANDAG estimates were issued. The EIR needs to include population projections that are the basis of the analysis- and then determine if each city's general plan will even achieve those levels- general plans that in some cases have not been updated for 15 years. The population and housing needs analysis needs to balance the errors in each city's plan by using current SANDAG information on population projections, housing needs, and housing supply. Only after baseline data is corrected can there be an analysis of the data.

While it is appropriate to use each city's general plan in the analysis of impacts- it seriously distorts the analysis by using this as the only source of information. CEQA requires that projects are evaluated in a regional and area of impact context. This analysis was not in compliance with CEQA requirements.

PC-104 - faulty assumptions about residential density shifts

It is stated that " Increasing the citywide average density by 10%, while maintaining the same density in the existing residential neighborhoods, requires that the density of new development ...must increase by 30%." This conclusion might make sense if all of the land being conserved were in a single large parcel, but it is highly fragmented across five cities. Earlier it was stated that commercial land is routinely "overzoned." In fact, in Oceanside in the last year there have been four projects that resulted in rezoning of industrial/commercial land to housing. The "overzoning" of industrial commercial land can easily accommodate a significant shift to residential zoning- probably about half of the projected housing land needed would come from land currently zoned for another land use with no increase in residential density.

PC-105 Furthermore north county has experienced a major underbuilding of multi-unit housing for the last decade. This has been a major issue with SANDAG and each of the cities included in the MHCP. The region has now established a complicated formula for allocating housing units to each city for categories of very low income, low income, moderate income, and above moderate income. 61% of the projected units are in the moderate or lower income categories. (3) Achieving this requires increasing the number of multi-unit residences. A shift in the proportion of multi-unit residences will be required to meet these regional housing goals- regardless of what current city general plans say. Regional requirements are resulting in the north county cities modifying their General Plans. None of this was considered in the EIR analysis.

PC-103. Analysis of population and housing impacts (draft EIS/EIR, Sec. 4.6) utilizes SANDAG's 2020 Cities/County Forecast and the adopted general plans of the local jurisdictions. The 2020 Forecast is the current adopted forecast of the San Diego region used by SANDAG and member jurisdictions. Potential impacts are considered significant if they are not consistent either with the forecast or the local general plans. However, these are not exclusive sources of information. The analysis, which also relied on information on land ownership, existing land use, presence of natural habitat and physical constraints to development, is consistent with other analyses of socioeconomic impacts for regional open space and infrastructure projects.

PC-104. The relationship between citywide average housing density and density of new development depends on relative quantities of land area and housing units in existing and future development areas. It is independent of the number of parcels which support the future development.

Under Alternative No. 3, only one city (Escondido) would have vacant commercial or industrial land available in 2020 (75 acres; draft EIS/EIR, Table 4.6-4). Converting this land to residential use would not compensate for the loss of vacant residential land in the MHCP study area (998 acres; *ibid.*). In any event, such a conversion would itself represent a significant impact to the general plan.

PC-105. Availability of affordable housing is closely related to overall housing supply, which in turn depends on the supply of vacant, developable land. While redevelopment of existing urbanized areas at higher densities can increase housing supply, there are physical and social constraints to large-scale redevelopment. For these reasons, Alternative No. 3 would, by reducing the supply of vacant, developable land relative to the other alternatives, exacerbate the lack of affordable housing.

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PC-106 Affordable housing goals have not been met by Carlsbad, Encinitas, and San Marcos. (4) These three of the five north county cities have kept the ratio of single family detached housing to attached and/or multiple units high and by doing so kept the number of units per acre low- on developed land. Their densities will need to increase- or they will be subject to regional sanctions for not meeting their fair share of housing units, or affordable housing units. The proportion of multi-unit residences will be changing in the region- the BCLA will have very little impact on this change that is being driven by population growth, and housing cost increases that are out-pacing wage growth.

PC-107 - faulty assumptions about increased housing density

Increasing the number of acres of land conserved will not result in any overall increase in residential density. If there are 100 acres of land with 30 acres conserved, 60 acres in housing with 1,000 people and 10 acres commercial there is a residential density of 10/acre. If there are 35 acres conserved, 55 acres in housing with 1,000 people, and 10 acres commercial there is still a residential density of 10/acre. Overall residential density is different than project or neighborhood density. A valid analysis would look at the qualitative trade-offs with increased residential units/acre offset with increased open space. At what point in this trade-off is there an "adverse impact"? The EIR assumes that every shift to trade units/acre for open space is an "adverse impact." All of the Smart Growth advocates in the country would refute that argument. Such trade-offs are desirable to reduce traffic congestion, improve utilization of public transit, reduce public infrastructure costs- as well as to conserve open space. The analysis failed to consider all of these factors- factors that have led to the formal adoption of "Smart Growth" policies in the San Diego region- policies that have been adopted by all of the north county cities in the MHCP. Policies that have not yet been incorporated into each city's General Plan.

PC-108 - the analysis ignores the potential for increased density within already developed land

It is concluded that the residential density shift will result in a 30% increase in density in newly developed areas. However this completely ignores the underutilization of much of the already developed land. It would not take converting many chicken ranches in San Marcos to apartment buildings, or building a multi-story parking garage in one of Carlsbad's industrial parks instead of acres of parking lots to provide the space for the number of increased residential units needed.

PC-109 - faulty logic in evaluating significance of impacts

The two key factors of housing and employment were assessed on a city by city and region-wide basis. In the city by city analysis it was found that the employment impacts were:

Carlsbad-	1.3 %	Not significant
Encinitas	2%	Not significant
Escondido	None	No impact
Oceanside	None	No impact
San Marcos	None	No impact

PC-106. Please see response PC-105. Impact on the supply of affordable housing is likely to be greater under Alternative No. 3 than under other alternatives.

PC-107. The commentator argues that habitat conservation would not affect the gross housing density of the MHCP study area. In this context, gross density is the ratio of housing units to land area which includes non-residential land uses, such as parks and open space. Net density is the ratio of housing units to residential land area only, including local streets, but excluding non-residential land uses. The commentator argues that additional conservation would not affect the overall gross density, since the size of the study area remains the same. The appropriate measure of housing density for the analysis of socioeconomic impacts, however, is net density, since housing types (for example, single or multi-family) and neighborhood character are affected by net, not gross, density.

The draft EIS/EIR analysis of population and housing impacts examines net housing density and indicates that an increase of 10% in citywide average net density would require a substantially greater increase in the density of new developments, leading to significant impacts to community character and local general plans (draft EIS/EIR, Sec. 4.6).

The commentator also argues that local general plans do not properly incorporate the balance of open space and development or the principles of smart growth. However, it is the task of the EIS/EIR to analyze the potential impact of the proposed project and alternatives on future development as envisioned in those general plans. It is beyond the scope of this analysis to determine if those plans conform to general planning principles.

PC-108. While redevelopment at higher densities can compensate for reduction in vacant, developable land, local general plans do not anticipate such an eventuality.

The analysis of population and housing impacts takes into account potential development of agricultural lands which are designated for residential use, but not lands which are designated to remain in agricultural use. Development of the latter would require a general plan amendment.

PC-109. The figures and statements of significance cited in the comment refer to Alternatives No. 1 and No. 2. Corresponding figures for Alternative No. 3 show significant impacts for additional jurisdictions (see draft EIS/EIR, Tables 4.6-3 and 4.6-4).

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PC-110 The housing/population impacts were:

Carlsbad No significant impact
Encinitas No significant impact
Escondido No significant impact
Oceanside No significant impact
San Marcos Significant impact to housing density on a plan-to-plan basis.

One out of ten evaluations found any significant impact- and based on that it was concluded that the overall BCLA alternative had significant impacts. Even if the San Marcos finding of significance were based on a valid measure(which it is not) this should be factored into the impacts on the region which would reduce the impact to less than significant.

PC-111 Also- how serious is the residential density increase that was computed for San Marcos? It is assumed to increase from 4.5 to 4.9 units per acre. In the first place the basic math is in error as this .4 unit per acre increase was determined to be a greater than 10% increase. In fact .4/4.5 is an increase of 8.9% which is less than 10%- the threshold level for significance. The increase is not significant based on the methodology used.

Furthermore, the projected density under the BCLA for 2020 will be 5.9/acre for Carlsbad, 4.4/acre for Encinitas, 5.5/acre for Escondido, and 7.2/acre for Oceanside. Based on this comparison with the other north county cities San Marcos will still have very low density- further evidence that this is not a significant impact.

PC-112 - faulty tax impact analysis

The analysis concludes that "additional costs of habitat acquisition and management associated with a larger preserve system must be funded by a smaller tax base... requiring substantial outside funding." There is no basis for this conclusion. The same number of housing units will be built, just on less land. Other studies show that open space increases the value of land- there is no reason to assume any reduction in the tax base. In fact it is much more likely that it stays the same or increases. New housing will be lower cost than it would have been, but this reduced tax income is likely to be offset by the increase in property value for those residents now living adjacent to protected open space.

PC-113 Furthermore the regional funding system is not in place, nor are the agreements with state and federal agencies with respect to the amount of land acquisition/management funding that they will provide. With higher levels of conservation they may be willing to increase their level of participation. In fact it is likely that the public will be more willing to support a good conservation plan than a bad plan. Because the impacts of this are not known no conclusion can be drawn from this.

PC-110. The statements of significance cited in the comment refer to Alternatives No. 1 and No. 2. Corresponding figures for Alternative No. 3 show significant impacts for additional jurisdictions (see draft EIS/EIR, Tables 4.6-3 and 4.6-4).

PC-111. The figures cited in the comment (increase in housing density in the City of San Marcos from 4.5 to 4.9 units per acre) refer to comparison of Alternatives No. 1 and No. 2 to the base case (SANDAG 2020 Cities/County Forecast). For Alternative No. 3, the projected increase is 33%, from 4.5 to 6.0 units per acre. This represents a substantial and significant increase in housing density.

The figures cited in the comment for the Cities of Carlsbad, Encinitas, Escondido, and Oceanside refer to Alternatives No. 1 and No. 2. Figures for Alternative No. 3 are shown in Table 4.6-3 of the draft EIS/EIR.

PC-112. As noted in response PC-101, target conservation of natural habitat under Alternative No. 3 is 29% and 26% greater than under Alternatives No. 1 and No. 2, respectively (draft EIS/EIR, Tables 2.2-1, 2.2-2, and 2.2-3). In addition, all areas conserved under the latter alternatives would also be conserved under Alternative No. 3. Thus, acquisition need for Alternative No. 3 is likely to exceed that of Alternative No. 1. At the same time, Alternative No. 3 would permit less development on currently undeveloped land than the other alternatives, reducing opportunities for the participating cities to require habitat conservation through on- and off-site mitigation as a condition of development approval and increasing the need for and cost of public acquisition.

With respect to future tax base, single family units generally have a higher average tax value than small-lot, attached, or multifamily units. To the extent that fewer units will be developed on vacant land, Alternative No. 3 is likely to result in a mix of housing types with a lower average tax value than under the base case (SANDAG 2020 Cities/County Forecast) or under Alternatives No. 1 and No. 2. Combined with the fact that acquisition need is likely to be greater under Alternative No. 3 than under other alternatives, the net fiscal impact would also be less favorable.

PC-113. As noted in response PC-101, cost of public acquisition is likely to be greater under Alternative No. 3 than under other alternatives. It is speculative, however, whether federal or state governments would fund the additional cost or whether local tax payers would support greater funding for Alternative No. 3 than for the other alternatives.

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Other Comments on the EIR/EIS

Public Input

PC-114

While there is a long list of the items included in the public outreach effort, the effectiveness of this effort is abysmal- witness 2 speakers and 8 letters on the scoping comments. The problem is that most of this outreach was done very early in the process- when it was just public information about a process- with no results to report. It is only in the last few months when the entire set of documents was released that the public could have any idea about what was going to happen at the end of this ten year planning process- only then could they look at a map and see what would happen in their neighborhood, only then could their area or city be related to the big picture of conservation in North County.

PC-115

When these documents were released the volume of material to review was overwhelming- for all-but-the-most-committed-(or-committable-to-be-willing-to-spend-one's-time-this-way)-It requires reviewing the 2 volume MHCP, EIR/EIS, and the local city sub-area plan, plus assorted supporting documents. Thousands of pages of complex, technical information. A workshop in Encinitas and an open house in Carlsbad were the only formal public input forums after all of the material was released- and this was done with only about one month left in the comment period- hardly time for a volunteer from the community to go through over a thousand pages of text.

People in this area care very much about habitat protection. A recent survey of Carlsbad residents found that preservation of open space was the number one concern for action by their local government. But while people care, the process used to get them involved in this effort did not work. This is a fifty year plan that will cost millions of dollars. The level of effort to inform and involve the public was not in proportion to the impacts.

PC-116

Roadway Impacts

The discussion of roadway impacts is completely inadequate, inaccurate, and incomplete. The local circulation roadway network rated one figure, Figure 3.4-2 and three sentences on page 3-39 "The local circulation network is presented in Figure 3.4-2. The network has not been fully implemented, which will include expansion and extension of existing roadways."

Traffic congestion is a major issue in north county. The current 2020 Regional Transportation Plan projects an \$ 11 billion shortfall in funding for transportation projects. The updated plan that has been in process for some time will dramatically increase costs, and shift resources from roadway construction to public transit. Vista recently completed an update to their circulation element, Oceanside has been working on theirs for the last year, and the other cities have all at least done updates for key problem areas. The circulation network assumes that all projected roads are built- even though they are not funded and this hasn't been updated to reflect current information. There also has been no adjustment to this roadway plan to account for the planned shift to public transit- a shift that would be enhanced by the increased density of the BCLA alternative.

PC-114. Please see response to comments SDCo-20 and PC-14. Also, it should be noted that the MHCP Advisory Committee meetings were open to the public, and notice of meetings were mailed to a list of over 400 people. All decisions on the MHCP subregional plan were made at these meetings. The MHCP draft plan and all five subarea plans were released to the public in June 2001. The legal public review period did not begin until December 2001, with release of the EIS/EIR. Therefore, the public had 10 months to review the plans.

PC-115. Please see response PC-114.

PC-116. Each participating jurisdiction will be responsible for the preparation of project-specific environmental documents when the individual circulation element projects are proposed (designed). This EIS/EIR was responsible for analyzing the environmental impacts based upon the level of project description available. Thus, similar to land development projects proposed by private developers, the projects, when proposed, will need to conduct project-specific CEQA review.

If the MHCP were not adopted, each of the projects would still have to undergo extensive design engineering, landscape, and mitigation planning. To an extent, it can be argued that with the implementation of the MHCP, the costs will be reduced since the designers will know in advance the parameters for the approval process.

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PC-117 Roadway extensions will have a major impact on the viability of the preserve system. Proposed roadway extensions will impact most of the large blocks of habitat, and will add major barriers to existing and new wildlife corridors. Roads result in direct impacts to wildlife (roadkill) and indirect impacts from destruction of habitat, noise, water and air pollution. These roadway impacts have not been addressed in the evaluation of biological impacts, the comparative analysis of alternatives, or program costs. This is a significant flaw in the environmental analysis of the entire MHCP.

PC-118 In many cases proposed roads are not shown on the preserve maps, nor is the acreage impact from the roads deducted from preservation totals in a consistent way. Figures 2.2-1, 2.2-2, and 2.2-3 show no roadway extensions through preserve land, although many are proposed per Figure 3.4-2. The detailed city maps shown road extensions inconsistently. For example, Figure 2.3-1 for Carlsbad shows Faraday and El Fuerte, but not College Reach And B, Cannon Rd Reach 3 and 4 or Marron while Figure 3.4-2 shows Faraday, El Fuerte, and Marron- but not the others. Since these roads are not shown on the Figures it is very difficult for someone reviewing the plans to understand the impact of these roads on the proposed configuration of preserved land.

PC-119 There are criteria in the MHCP that talk about minimizing the impacts of roadway extensions on hardline preserve- but there is no evidence that there has been any response to this directive. The roadway plans shown are those developed several years ago, roadway planning and conservation land planning have not been integrated at SANDAG or at any of the cities involved in the MHCP.

Roads have significant impacts on preserve lands, and on the species that live on those lands. This factor has been taken into account in the National Park Service and BLM's system for determining roadway density standards- and adjusting these based on target populations of endangered species or indicator species.(5)(6).

The core habitat and wildlife corridors are not viable without addressing these roadway issues. The EIR analysis failed to take this factor into account in its analysis of impacts. It is likely that failing to address this issue will make all of this conservation planning meaningless. These impacts should have been identified and discussed in the EIR/EIS.

PC-120 Sanctions/Enforcement

It is clear that 10 years ago when this regional conservation planning process was initiated there were much better opportunities for conservation than what exists today. Opportunities that have been squandered during the last few years. The laws under the provisions of section 4(d) allowed the local cities to each take 5% of their allocated Coastal Sage Scrub habitat pending approval of an HCP. SANDAG and USFWS were supposed to provide monitoring of this to assure compliance. Over two years ago we requested a copy of the status report on CSS takes from USFWS and were told that they could not provide it- because the cities were not providing reports of takes as required and had not responded to their letter requesting this information. (See Attachment 1 for sample of letters sent out by USFWS.)

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PC-117. The program-level impacts of infrastructure improvements will be evaluated on a project-by-project basis. The MHCP has considered the impacts to the viability of the preserve and found that the preserve (with implementation of the mitigation management and monitoring program) will function adequately. Site-specific analysis will need to be conducted to verify the exact location and project-specific mitigation measures for all direct and indirect impacts. Preliminary engineering studies are prepared to evaluate design alternatives. Following CEQA review, the City Council decides whether to approve the project. In addition to environmental considerations, other factors considered by the City Council include General Plan policies and standards, public input, financing, and agency permitting requirements.

PC-118. Mapping and calculations were done by each City. Although the methodology may have differed, the methodology was outlined in each Subarea Plan. See response to PC-116.

PC-119. See response to PC-116.

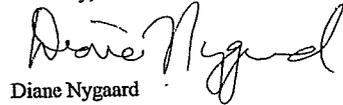
PC-120. SANDAG has no record of this request. Interim coastal sage scrub loss tables are prepared on a monthly basis and are available to the public.

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SANDAG was able to provide a report- but it was recognized as not current since most of the cities had not reported (which is why so many showed no loss of habitat during the prior year.) (See Attachment 2) An updated report was requested of SANDAG on April 1, 2002, but has not yet been received- presumably because they again do not have current information. In fact, in review of detailed records with several of the cities we have found that most in the area used 100% of their allowed take over a year ago- yet the cities and the wildlife agencies keep approving projects with more CSS takes allowed. In the past the rules to protect habitat haven't really meant much. There is nothing in the MHCP or sub-area plans that will change that- unless there are clear, meaningful, enforceable, with public accountability - provisions for penalties and sanctions for plan violations. The EIR should have addressed this issue, and added mitigation conditions with much greater, specific authority to sanction violators.

- (1) Economic Benefits of Open Space Index, 5/31/99 from the Trust for Public Land website at tpl.org.
- (2) Regional Housing Needs Statement San Diego Region, SANDAG, June 1999, Table 32.
- (3) IBID, Table 61.
- (4) IBID, Table 64.
- (5) Mace, R.D. and T.L. Manley. 1993. South Fork Flathead Grizzly Bear Project: Progress Report for 1992. Montana Department Fish, Wildlife, and Parks. Kalispell, MT.
- (6) Theil, R.P. 1985 Relationship Between Road Densities and Wolf Habitat Suitability in Wisconsin. The American Naturalist: 113:404-407.

Sincerely,



Diane Nygaard
On Behalf of
Preserve Calavera

Attachment 1 Letter from USFWS on 4(d) Takes
Attachment 2 Report from SANDAG Interim Coastal Sage Scrub Habitat Loss

Attachment 1 Letter From USFWS on 4(d) Takes



US Fish & Wildlife Service
Carlsbad Field Office
2730 Loker Avenue, West
Carlsbad, CA 92008
(760) 431-9440
FAX (760) 431-9624



CA Dept. of Fish & Game
1416 Ninth Street
PO Box 944209
Sacramento, CA 94244-2090
(916) 653-9767
FAX (916) 653-2588

City of Carlsbad
Planning Department
2075 Las Palmas Drive
Carlsbad, CA 92009-1596

JAN 1 3 2000

Attn: Mike Holzmilller

Mr. Holzmilller:

PC-121 As the U.S. Fish and Wildlife Service and California Department of Fish and Game (hereafter, Wildlife Agencies) continue to implement the 4(d) special rule for the gnatcatcher, we need your assistance in gathering specific information. The 4(d) special rule exempts take of gnatcatchers from the Endangered Species Act if such take is incidental to lawful activities under the jurisdiction of a local government agency that is enrolled and actively engaged in the preparation of a NCCP plan, and such take results from activities conducted in accordance with the NCCP Conservation Guidelines and Process Guidelines.

For you to be exempt from the prohibitions against take specified in the Endangered Species Act, we must comply with the terms and conditions set forth in the first reinitiated biological opinion as well as the additional terms and conditions that are identified in the second reinitiated biological opinion of October 7 1999. To ensure our compliance, we request the following information from participating local jurisdictions:

1. Copies of all Habitat Loss Permits (HLP), with required conditions, within 1 month of permit issuance, and a copy of the notification of habitat loss provided to SANDAG.
2. Notification of HLPs that have expired, or been withdrawn.
3. Specification (in the HLP application) of all project components, including those off-site (such as access roads, water diversions, etc.).
4. We request a meeting with planning department personnel, to jointly develop "milestones" to ensure that we're making adequate progress toward completing MHCP subarea plans. We of the Wildlife Agencies intend to develop these milestones, with input from each participating jurisdiction, within 30 days of our meeting with personnel from each local jurisdiction.
5. Discuss status toward meeting these milestones within each HLP application
6. Please provide us with an updated 4(d) project log, including:
 - names of projects

PC-121. Attachment 1 is a letter prepared by the USFWS, dated January 2000. This attachment is referenced in comment PC-120. Please see response to PC-120 for further discussion.

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- acres of coastal sage scrub impact
- acres of coastal sage scrub mitigation acquired

We appreciate your cooperation in these matters.

Sincerely,

Nancy Gilbert
Assistant Field Supervisor
USFWS, Carlsbad

William Tippetts
Habitat Conservation Supervisor
CDFG, San Diego

Attachment 2 Report From SANDAG
Interim Coastal Sage Scrub Habitat Loss

INTERIM COASTAL SAGE SCRUB HABITAT LOSS *					
Reporting Period					
March 1999 to April 2000					
City	TOTAL	Remaining Habitat Loss	Reported Loss March 1999 - April 2000	Cumulative Loss to date **	Remaining Habitat Loss
Carlsbad	3,314	1,155.7	149.1	159.8	2,158.3
Chula Vista	4,197	209.9	0.0	258.9	(19.0)
Coronado	34	0.0	0.0	0.0	0.0
Del Mar	9	0.0	0.0	0.0	0.0
El Cajon	275	156.9	1.3	35.0	182.7
Encinitas	1,125	1,019.9	0.0	45.1	105.0
Escondido	2,038	1,019.9	0.0	0.0	1,019.9
Imperial Beach	28	9.5	0.0	0.0	18.5
La Mesa	189	0.0	0.0	0.0	189.0
Lanron Grove	0	0.0	0.0	0.0	0.0
National City	11	0.0	0.0	0.0	11.0
Oceanside	1,508	61.9	0.0	50.8	1,457.1
Miramar NAS	3,685	1,019.9	0.0	0.0	2,665.1
San Marcos	2,189	1,019.9	0.0	58.4	1,109.7
SanTEE	2,788	1,019.9	0.0	11.7	1,756.4
Santee	20	0.0	0.0	0.0	20.0
Solana Beach	261	150.4	0.0	3.9	110.7
Vista	38,007	15,004.1	0.0	0.0	23,002.9
Camp Pendleton, Fallbrook Weeparts Annex	2,994	1,615.9	0.0	0.0	1,378.1
Non-MSSCP Unincorporated	59,065	16,153.9	24.8	78.5	42,886.3
TOTAL	121,437	50,711.9	179.2	702.0	70,725.8

* Habitat loss is reported in acres.
** Adjusted to reflect recent annexations and to exclude approved subarea plans.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

PC-122.
Attachment 2 indicates the interim coastal sage scrub habitat loss provided by SANDAG. This table is referenced in comment PC-120. Please see response to PC-120 for further discussion.

Mary H. Clarke
Sierra Club
1529 El Paseo Drive
San Marcos, CA 92069
April 30, 2002

Mr. Jim Bartel
Field Supervisor
U.S. Fish and Wildlife Service
2730 Loker Avenue West
Carlsbad, CA 92008

RE: Sierra Club Comment Letters on San Marcos and Escondido MHCP Subarea
Plans

Dear Mr. Bartel:

SCSD-1

Yesterday, I submitted the above comment letters, but neglected to include the attachments that are referenced in those letters. The attachments are enclosed.

I apologize for any inconvenience this oversight might cause.

Please feel free to call me at 760-510-9684 if you have any questions. Thank you very much for your assistance.

Yours truly,



Mary H. Clarke
Alternate Representative to the MHCP, Sierra Club

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Letter 20: Sierra Club, San Diego Chapter (Clarke)

SCSD-1. The comment indicates the submittal of attachments which are referenced throughout the comment letter. No response is necessary.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

Sierra Club California
Principles on Habitat Conservation Plans
and Natural Community Conservation Plans

SCSD-2

Whereas, federal Habitat Conservation Plans (HCPs) and state Natural Community Conservation Plans (NCCPs) are attempts under the respective federal and state endangered species acts to administer on a landscape basis multi-species and ecosystem management techniques, and

Whereas, these HCPs and NCCPs grant incidental take permit authority to developers and require limited mitigation planning without advancing the recovery of the protected species; and

Whereas, significant substantive and procedural problems with HCPs and NCCPs have been identified by independent scientists and biologists, Sierra Club members and activists, and discussed in published reports of other respected environmental organizations; and

Whereas, an objective of Sierra Club California is to support legislation that strengthens the scientific standards within NCCPs and public participation criteria for NCCPs;

Therefore, be it resolved, that the CNRCC calls for a moratorium on NCCPs and HCPs within California and Nevada until or unless legislation effectively resolves the issues and concerns expressed in the accompanying statement of principles that is adopted concurrently with this resolution.

It is further resolved, that Sierra Club representatives who are currently engaged in, or who may become engaged in negotiations involving a future NCCP or HCP do so in a way that adheres to the principles accompanying this resolution.

It is further resolved, that this resolution does not preclude Sierra Club support for individual HCPs or NCCPs that conform to the accompanying principles.

SCSD-3

PRINCIPLES

1. Recovery. The bedrock principle for all HCP/NCCP projects is that they must lead to the recovery of the affected species and be based on the biological needs of the species and ecosystems which are to be protected.

2. Stewardship. The public has a vested interest in the health and sustainability of water and wildlife. All landowners, therefore, serve as public trustees of these ecosystems and species. All landowners have a duty to ensure that their activities do not harm public trust resources. We respect the tradition of private property but believe that private property is subject to reasonable regulation in order to advance public trust responsibilities.

SCSD-2.

Attachment A is a list of Principles on Habitat Conservation Plans and the Natural Community Conservation Plan enforced by the Sierra Club, California. Principles do not specifically address the MHCP. It does recommend a moratorium on NCCP/HCP until certain changes in legislation occur. This project has no ability to address a state/national moratorium. It is proceeding under current legislation/regulatory authority.*

SCSD-3.

Please see response to SCSD-2.

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* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

3. Prevention. The most effective strategy for avoiding the biological and legal crises involving species listed under the ESA is to avoid the circumstances that lead to extinction. Preventative policies are the most ethical and biologically sound. We are highly skeptical of the effectiveness of habitat "re-creation" strategies, and consider mitigation undertaken as part of a development to be a poor substitute for conservation. For species unfortunate enough to become listed, the Sierra Club's goal is to conserve and protect what remains, with the ultimate goal being the biological recovery of the species. Large-scale regional management and development plans like HCP/NCCP's must promote that goal.

4. Science-based Standards. All HCP's and NCCP's must be based on independent and verifiable scientific studies which conclude that the plans will likely result in the recovery of at-risk species.

5. Growth Management. The conservation of endangered species necessarily involves the conservation of habitat. Therefore, endangered species issues are inextricably linked to local land use planning and decision-making. The Sierra Club believes that development and population growth should not occur on habitat essential for the survival of endangered species. It is a basic premise of the Sierra Club that the protection of endangered species and habitat is essential in maintaining the quality of human life as well as a sound, sustainable economy.

6. Legal Assurances. We oppose the "no surprises" policy as currently being implemented. NCCPs and HCPs are too often touted for providing virtually ironclad "regulatory certainty" to developers and landowners in a world filled with scientific and biological uncertainty. Regulatory commitments and assurances must be commensurate with scientific knowledge and conform to the principles of adaptive management. NCCPs and HCPs must therefore be subject to periodic review and amendment, when necessary. Public

participation is an essential part of the periodic review process.

7. Public Participation. All HCP/NCCP processes must be open to early public involvement and participation and to independent scientific input. The scientific community and the public must be given meaningful opportunities to help develop these plans at the earliest stages. The current process all too often presents the public with a finished product on which to comment.

Adaptive Management. We recognize that science has much to learn about species and ecosystems, and therefore, that HCP/NCCP management plans must be adaptable to new information and changed circumstances. The requirement that HCP/NCCP's be adaptable is essential if these projects are to meet their objective of ensuring the long-term protection of fully functioning ecosystems. An HCP or NCCP is not a substitute for listing, designating critical habitat for federally listed species, and developing a recovery strategy for that species. HCPs and NCCPs should never undermine the statutory goals of the federal and state Endangered Species Acts.

9. Enforcement. We support strengthening existing wildlife protection laws, such as the federal and state Endangered Species Acts, and reject any and all attempts to weaken these laws. We recognize that even with the ESA and CESA, many wildlife populations and ecosystems have become extinct, that many more species are now listed, and that an even larger number of species are imperiled and eligible for protection. We assert that HCP/NCCP projects must, at a minimum, be consistent with the species recovery objectives of the ESA and CESA. Additionally, citizen suits must be authorized to enforce NCCP's and HCP's.

10. Funding, Implementation, and Monitoring. All NCCP/HCP-type plans must have an implementation component which includes secure and adequate funding for the scope of the proposed project. Additionally, there must be a monitoring component using measurable standards which regularly assesses the impacts of the plan, the efficacy of the plan, and the likely success of the plan. To the maximum extent practical, funding must come from those who seek to advance the proposed project. If land is contributed by private parties to an NCCP/HCP, it shall not be land which is contributed because of a mitigation requirement imposed by other legal requirements.

Adopted by the Sierra Club California/Nevada Regional Conservation Committee on September 8, 1997

In addition, the land under consideration is a relatively large block of habitat containing sensitive biological resources including riparian and coastal sage scrub habitats that support a range of wildlife species. The development of a plan to protect these sensitive resources is currently underway; the Multiple Species Conservation Program (MSCP) North County Subarea Plan. The County believes that annexation of these lands to the City of San Marcos would create a significant negative impact to the County's North County MSCP Subarea Plan associated with habitat loss and blockage of a viable wildlife corridor.

For the reasons stated above, the County of San Diego cannot support the proposed annexation of these lands to the City of San Marcos.

If you should have questions or comments, please contact me at 858-694-2962.

Sincerely,



GARY L. PRYOR
Director, Department of Planning and Land Use

cc: Local Agency Formation Commission (LAFCO) Members
Michael D. Ott, LAFCO, 1600 Pacific Highway, Room 452, San Diego,
CA 92101
Nancy Gilbert, US Fish and Wildlife Service, 2730 Loker Avenue West,
Carlsbad, CA 92008
William E. Tippetts, CA Department of Fish & Game, 4949 Viewridge
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Twin Oaks Valley Sponsor Group, P.O. Box 455, San Marcos, CA
92079-0455
Mary H. Clarke, Friends of Hacienda Creek, 1529 El Paseo Drive, San
Marcos CA 92069
Michael Beck, San Diego Director, Endangered Habitats League, P.O.
Box 1509, Julian, CA 92036

From Letter from Jeffrey R. Lundstrom
to Betty Dehoney, Aug. 23, 1999,
regarding the extension of Las Posas Rd.
to the northern Kaufman and Broad
property line
(across Agua Hedionda
Creek). -MC

Attachment B
④

SCSD-4. Attachment B is referenced throughout the comment letter.*

SCSD-4 A wetland delineation was performed on site and representative wetland species were documented along transect lines at various study sites. Wetland habitat types present on and immediately offsite are shown in Table 1. Among the large, woody species present in this area were willow (*Salix* sp.), coast live oak (*Quercus agrifolia*), cottonwood (*Populus fremontii*), sycamore (*Platanus racemosa*), and California pepper (*Shinus molle*). Lower growing and understory vegetation was comprised of such species as mule fat (*Baccharis glutinosa*), cattail (*Typha* sp.), umbrella-sedge (*Cyperus* sp.), wild celery (*Apiastrum angustifolium*), yerba mansa (*Anemopsis californica*), fiddleneck (*Amsinckia* sp.), and spike rush (*Eleocharis* sp.).

Habitat Type	Acres Onsite	Acres Offsite
Southern willow riparian forest	0.15	0.54
Mulefat scrub	0.22	0.18
Freshwater marsh	0.14	1.04
Coast live oak riparian woodland	0.69	0.04
Total	1.2	1.8

One least Bell's vireo (*Vireo bellii pusillus*) was heard vocalizing within the wetland vegetation on site. It cannot be determined if this individual was mated. In addition, one California gnatcatcher (*Polioptila californica californica*) was heard offsite in the coastal sage scrub adjacent to the western boundary of the wetland area.

The federally endangered arroyo toad (*Bufo californicus*) has been shown to occur within the San Luis Rey River. The proximity of Agua Hedionda Creek to this watershed makes it possible that arroyo toads may be present in this creek as well. The likelihood of a viable population onsite is low, however. Onsite, the Agua Hedionda Creek is densely vegetated with herbaceous and woody plant species and completely lacks the open, sandy stream terraces required by this species for breeding and burrowing. Although no suitable breeding habitat is present within the impact area, toads may still use the drainage during dispersal movements from other more suitable creeks within the watershed; however, this is also unlikely due to relative isolation of this creek from these more optimal habitats. Land to the south and west of the project site consists of a large, unbroken expanse of residential and light-industrial development, essentially severing any potential recruitment of toads from downstream locations. Therefore, the lack of suitable habitat onsite coupled with the site's relative isolation from more optimal creeks or streams makes it improbable that any toads will be significantly impacted by the proposed project.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.



GARY L. PRYOR
DIRECTOR
(658) 694-2962

County of San Diego

DEPARTMENT OF PLANNING AND LAND USE

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April 2, 2002

Jerry Backoff, Director
Planning Division
Development Services Department
City of San Marcos
1 Civic Center Drive
San Marcos, CA 92069-2949

Re: **SAN MARCOS HIGHLANDS SEIR 90-13, SPECIFIC PLAN
MODIFICATION (MOD)/SP 89/16 (98MOD) AND TENTATIVE
SUBDIVISION MAP TSM408/ND 99-503**

SCSD-5 Dear Mr. Backoff:

On January 16, 2002 (3), the County of San Diego Board of Supervisors took an action for staff to investigate the proposed pending cities' annexations and any impacts on the General Plan process to ensure that (1) the proposed cities' annexations do not interfere with the outcome of the General Plan 2020 process; and (2) the County can preserve the integrity of the unincorporated territory through the completion of the General Plan process. The proposed San Marcos Highlands project requires the annexation of County lands into the City of San Marcos and therefore, is being reviewed by the County for conformance with the County's existing and proposed General Plan 2020 densities.

The current General Plan for the County of San Diego shows the density in the proposed development area of San Marcos Highlands as one dwelling unit per 2 or 4 acres depending on slope. The General Plan 2020 Process proposes a density of one dwelling unit per ten (10) acres for this area due to the rugged terrain and biological sensitivity. The proposed project far exceeds this density with a planned range of 2.9 - 5:5 dwelling units per acre. Therefore, this project is in conflict with the existing County General Plan and would interfere with the outcome of the General Plan 2020 process threatening the integrity of the unincorporated territory.

SCSD-5. Attachment C is a letter prepared by the County of San Diego addressing the annexation of County lands into the City of San Marcos and conformance with the County's existing and proposed General Plan 2020 densities.*

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

Mary H. Clarke
Sierra Club
1529 El Paseo Drive
San Marcos, CA 92069
April 29, 2002

Mr. Jim Bartel
Field Supervisor
U.S. Fish and Wildlife Service
2730 Loker Avenue West
Carlsbad, CA 92008

RE: Comment Letters on San Marcos and Escondido MHCP Subarea Plans

Dear Mr. Bartel:

SCSD-6

Attached are comment letters on the above two MHCP Subarea Plans from the Sierra Club. The "Detailed Comments" sections in each of these two letters have also been included in the Joint Comment Letter on the MHCP EIS/EIR from the Sierra Club, Audubon Society, Southwest Center for Biodiversity, Native Plant Society, etc. If that Joint Letter is submitted prior to the end of the comment period and contains detailed comments on the San Marcos and Escondido Subarea Plans, then the "Detailed Comments" sections of the attached letters will duplicate the sections in the Joint Comment Letter.

I apologize if this causes any confusion, but we feel that it is imperative that our comments on these two subarea plans be submitted, even if it means a duplication.

Please feel free to contact me at any time if you have questions. My telephone number is 760-510-9684.

Thank you very much for the opportunity to comment on these subarea plans and for your consideration of the issues and concerns that we raise.

Yours truly,



Mary H. Clarke
Alternate Representative to the MHCP, Sierra Club

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SCSD-6. The comment provides an introduction to the entities included as commenters.*

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.



SIERRA CLUB, SAN DIEGO CHAPTER
San Diego and Imperial Counties
3820 Ray Street
San Diego, CA 92104-3623

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SCSD-7. The comment identifies the organization and provides an introduction to the comments concerning the San Marcos Subarea Plan. Additionally, the comment provides a summary of the Sierra Club principles.

April 17, 2002

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CARLSBAD FIELD OFFICE, CA

Mr. Jim Bartel
Field Supervisor
U.S. Fish and Wildlife Service
2730 Loker Avenue West
Carlsbad, CA 92008

RE: Comments on Volume III of Public Review Draft MHCP, Natural Community Conservation Plan for the City of San Marcos

Dear Mr. Bartel:

Thank you for the opportunity to comment on the Public Review Draft Multiple Habitat Conservation Program (MHCP). Volume III of the MHCP Plan includes the Subarea Plan for the City of San Marcos. The purpose of this letter is to provide comments on the San Marcos Subarea Plan.

INTRODUCTION

SCSD-7 The San Diego Chapter of the Sierra Club has been represented on the MHCP Advisory Committee. The Sierra Club is vitally interested in the effectiveness of large-scale conservation programs, such as Habitat Conservation plans (HCPs) and Natural Community Conservation Plans (NCCPs). Because of concerns about the effectiveness of these programs in meeting their goals of protecting endangered, threatened and other sensitive species and their habitats, on September 8, 1997, the Sierra Club's California/Nevada Regional Conservation Committee adopted a statement of Principles on HCPs and NCCPs. The statement requires that HCPs and NCCPs conform to these Principles in order for the Sierra Club to support these plans.

The statement of Sierra Club Principles is included as Attachment A to this

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* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

comment letter. Following is a summary of the major points in the statement of Principles.

- 1) Recovery. The bedrock principle for all HCP/NCCP projects is that they must lead to the recovery of the affected species and be based on the biological needs of the species and ecosystems which are to be protected.
- 2) Prevention. The most effective strategy for avoiding the biological and legal crises involving species listed under the ESA is to avoid the circumstances that lead to extinction. Habitat "re-creation" strategies are questionable, and mitigation is a poor substitute for conservation.
- 3) Growth Management. Development and population growth should not occur on habitat essential for the survival of endangered species.
- 4) Legal Assurances. The Sierra Club opposes the "No Surprises" policy unless it meets certain requirements. These are: regulatory commitments and assurances must be commensurate with scientific knowledge and conform with the principles of adaptive management; NCCPs and HCPs must therefore be subject to periodic review and amendment, when necessary; public participation is an essential part of the periodic review process. The "No Surprises" policy is part of the draft MHCP and the subarea plans. The acceptability of the "No Surprises" policy will be discussed in other comment letters.
- 5) Funding, Implementation and Monitoring. All plans must have an implementation component which includes secure and adequate funding for the scope of the proposed project, as well as a monitoring component using measurable standards to assess the impacts, efficacy and likely success of the plan.

In addition, in 1999, the San Diego Chapter of the Sierra Club adopted a policy related to wetlands that calls for acquisition and preservation of wetland habitats (and appropriate wetland buffers) where avoidance of wetland impacts is determined to be infeasible due to economic constraints.

This review of the San Marcos Subarea Plan is based on the conservation goals and objectives articulated in the above-referenced policies.

SUMMARY AND CONCLUSIONS

The San Diego Chapter of the Sierra Club supports the maximum level of * conservation in the MHCP, such as in Alternative #3, the Biological Core and

SCSD-8.

Substantial evidence is established in the EIS/EIR that adequate species points and habitat acreage are or can be preserved for most of the resources. It is recognized that grassland species will not be adequately covered. Plan feasibility hinges on the balance between habitat preservation and acquisition costs. Please note that the EIS/EIR indicates that the BCLA would result in significant impacts to socioeconomic issues.

The landfill will be revegetated by the County of San Diego per a court-approved landscaping plan. It is correct that the landfill is not in the BCLA. This revegetated area, however, will provide an important linkage in the Southern FPA. See Figure 5 of the City's Subarea Plan illustrating the critical linkage through the closed landfill to the gnatcatcher core area.

The San Marcos Highlands project proposes to place 68 percent of the total project acreage into open space to become part of the FPA. The project has preserved all the occupied California gnatcatcher habitat. The proposed development areas are not occupied, and no take of individuals would occur.

The important areas of the Murai property, such as Agua Hedionda Creek and coastal sage scrub will be the focus of the preserved areas.

SCSD-8

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

Linkage Area (BCLA). The City of San Marcos' Subarea Plan fails to conserve valuable habitat in the BCLA. (For example, the Highlands and Murai properties in the Hedionda Creek Valley and the ridgeline at Cerro de las Posas) It also conserves areas that are not in the BCLA that have questionable habitat or linkage value. (For example, the landfill area in southern San Marcos)

SCSD-9 Table 2.3-9 on p. 2-74 of the MHCP draft EIS/EIR shows the conservation levels of the San Marcos Subarea Plan for three different alternatives. Under the Preferred Plan (FPA 2), the total conservation level for San Marcos is 47%. This is unacceptably low. The draft EIS/EIR indicates that there are 24,885 acres of valuable habitat remaining in the BCLA (p. 3-21). San Marcos has 4,243 of those acres, according to the table on p. 2-74. This is about 17% of the total. The City of San Marcos should be able to conserve much more of the remaining valuable habitat. According to the table on p. 2-74, under the BCLA alternative, the City of San Marcos could reach an 80% conservation level, which is much more appropriate. This is the conservation goal that the Sierra Club supports.

SCSD-10 We understand that in order to achieve a higher level of conservation than the Preferred Plan, it will be necessary to acquire more of the property in the BCLA. This means that more money must be available for acquisitions. We request that the MHCP financing plan include more money for acquisitions in the BCLA. The Sierra Club Principles call for the plan to have secure and adequate funding.

SCSD-11 The San Marcos Subarea Plan is contrary to the Sierra Club's Principles, as stated above, in several important areas.

First, the primary objective of the San Marcos plan is not the recovery of the affected species and the biological needs of the species and ecosystems which are to be protected, which is the bedrock Sierra Club principle. It is the development of San Marcos, with pieces of valuable habitat and linkages left over from the development process. This approach results in further fragmentation of valuable habitat and destroys important wildlife corridors, such as in the Hedionda Creek Valley. This approach is not acceptable to the Sierra Club.

SCSD-12 Second, the City of San Marcos Subarea Plan includes a significant amount of mitigation land. We were unable to determine from the information in the plan where these mitigation properties are located. Our concern is that San Marcos is proposing to acquire lands outside of the City and to develop valuable habitat areas inside the City. Also, their habitat re-creation

SCSD-9. The City's conservation levels ensure connectivity in the critical gnatcatcher corridors in the southern FPA, conserves the large block of unbroken habitat in the Northern FPA.

Conservation levels greater than 80% may result in a taking, and are therefore prohibited by the MHCP which categorically states that takings are to be avoided. The funds needed to purchase property so that 80% conservation levels could be achieved will most likely result in making the MHCP financially infeasible.

SCSD-10. The comment requests that more money be available for acquisitions. Plan feasibility hinges on the balance between habitat preservation and acquisition costs. Acquisitions by government agencies will only occur if public funds are made available.

SCSD-11. The City has worked cooperatively with the San Diego Association of Governments, The California Department of Fish and Game and the United States Wildlife Service in drafting the Subarea Plan document since the inception of the MHCP.

The City's Subarea Plan insures that critical gnatcatcher and wildlife corridors linking the City of Carlsbad and Lake Hodges are maintained.

The plan provides nearly 2,500 acres of conserved native vegetation (May 2000 numbers) and captures many of the critical species points.

SCSD-12. Mitigation for projects located in San Marcos will occur within San Marcos or in the "Unincorporated County Core" habitat. For the Subarea Plan to function, there is a requirement for conservation to occur. Some of the conservation areas are used as mitigation for impacts.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

plans, such as revegetation of cut and fill slopes on Cerro de las Posas, are questionable. Therefore, this Subarea Plan does not adhere to the second Sierra Club Principle, stated above.

SCSD-13 Third, the San Marcos plan allows and promotes development and population growth on habitat essential for the survival of endangered species. San Marcos is approving development in the core gnatcatcher area in the southern part of the City.

SCSD-14 Fourth, the San Marcos plan violates the San Diego Chapter of the Sierra Club's policies on wetlands. San Marcos is proposing development that will impact wetlands, including Agua Hedionda Creek and San Marcos Creek. Where impacts to wetlands are determined to be infeasible due to economic constraints, the wetlands should be acquired and preserved.

SCSD-15 We would also like to point out that some of the largest blocks of remaining valuable habitat in the MHCP study area are located in San Marcos. The City has the opportunity to preserve much more of these large blocks of habitat than their plan indicates. Preserving large blocks of habitat is essential to the proper functioning of the Preserve. It helps species to recover, wildlife to move along corridors, and minimizes edge effects, which are extremely damaging to the ecosystem.

In conclusion, for the above-stated reasons, the San Diego Chapter of the Sierra Club opposes the San Marcos Subarea Plan and calls for the City of San Marcos and the Wildlife Agencies to develop a Subarea Plan that conserves the remaining valuable habitat as shown in the BCLA, including adequate funding.

DETAILED COMMENTS

SCSD-16 1. Pp. 8-9, Covered Species List
This list needs to be updated to conform to the information in the MHCP Public Review Draft Volume II. For example, wart-stemmed ceanothus, summer holly, variegated Dudleya, San Diego barrel cactus, San Diego marsh elder, Harkinson's dun skipper butterfly and Hermes copper butterfly are all Federal Species of Special Concern, according to MHCP Vol. II. Have the listings changed for any of the other species on the Covered Species List, pp. 8-9? Have any species been dropped from or added to the list? If so, these changes should be reflected on the list.

SCSD-17 2. P. 18, Demographics
The statement in the second paragraph under this heading is not clear. The statement reads, "This Subarea Plan covers the City limits and portions of the sphere

SCSD-13. Please note that the "Unincorporated County Core" gnatcatcher area does not occur within the current City limits. Much misunderstanding arises from the red circle found in Figure 2.2.3 of the DEIR/EIS. The Core area occurs within the unincorporated lands found in the County's MSCP - North. The red circle merely indicates the general vicinity of the county core.

SCSD-14. Development of wetlands is predicated upon receiving the necessary permits from the ACOE, CDFG, RWQCB. Should the necessary permits be issued, then all state and federal laws pertaining to wetlands have been implemented. (The MHCP will not have any authority to issue any wetland permits.) Additionally, the Subarea Plan establishes policies of no net loss, and utilization of the least environmentally damaging alternatives for Agua Hedionda Creek and San Marcos Creek.

Specifically, the MHCP states, "Projects that propose to impact a wetland must demonstrate with substantial factual evidence that the impact is essential to maintaining some economic or productive use of the property and that no feasible alternative would eliminate or minimize the impact or otherwise result in greater biological value. If impacts to wetlands cannot be avoided while retaining economic or productive use of the property, an evaluation of biological functions and values shall be made based on the best available science...Any unavoidable impacts to wetlands must be mitigated to result in no net loss of wetland vegetation acreage and biological function and value within the MHCP subregion and preferably, but not necessarily, within the same drainage and city. Subarea plans may apply stricter avoidance standards for wetlands inside the FPA than outside the FPA. However, the no net loss standard must be achieved regardless of location."

In implementing the appropriate mitigation for wetland habitat, the following management guidelines must be incorporated:

1. For wetlands currently in or proposed for open space, each jurisdiction shall prepare a management plan to ensure maintenance and monitoring of this habitat and its species.
2. For wetlands currently in or proposed for open space, each jurisdiction shall prepare a management plan to restore disturbed portions of this habitat, including management and restoration plans for sensitive species occurring in this habitat.
3. Where conditions are appropriate, create new wetlands by converting disturbed upland habitat.

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SCSD-15. Please note the center of Northern FPA is a large unbroken block of habitat located south of the San Marcos Mountains. This ridgeline forms the western boundary of Twin Oaks Valley. Northern FPA conservation levels along the ridgeline range from 75% to 100%. This will ensure adequate conservation to this large, unbroken block of coastal sage scrub habitat.

Additionally, The City's Subarea Plan insures that critical gnatcatcher and wildlife corridors linking the City of Carlsbad and Lake Hodges are maintained. Criteria contained in the Subarea Plan ensure connectivity. The plan provides nearly 2,500 acres of conserved native vegetation based on the May 2000 numbers. Please note that the Draft EIS/EIR concludes that with the mitigation identified in the EIS/EIR, the City's Subarea Plan would result in most of the impacts being reduced to below a level of significance.

SCSD-16. The City's Covered Species list will be updated to include the current status of the covered species.

SCSD-17. The second paragraph will be reworded in the Final Plan. Rephrased, this statement refers to projects such as Huff, and Highlands. The Huff property (both inside and outside the City) has been acquired and dedicated as 100% conservation. In these developments there are portions of the projects proposed for development that occur within the City Limits. There are also portions of these developments where dedicated open space will occur outside the City limits.

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where portions of approved projects in permanent open space occur in the sphere." What is meant by "portions of approved projects in permanent open space occur in the sphere"? Please explain what projects in the sphere are approved. Note that the Highlands project in the northern sphere is not approved as of this date. What is meant by "projects that occur in permanent open space"? This seems like a contradiction in terms. How can there be a project in permanent open space?

SCSD-18 3. P. 18, Item 2 in the last paragraph
The chaparral-dominated slopes on the undeveloped ridgeline of Cerro de las Posas, Double Peak and Frank's Peak are included in the "focus of this habitat plan relative to conservation." Why is San Marcos considering a proposal from the developers of San Elijo Hills/Ranch to construct a golf course and clubhouse on this ridgeline, if it is a focus of conservation? On p. 98, it states that the golf course development is expected to destroy about 125 acres of chaparral in this area. How can the destruction of this habitat be reconciled with the focus on conservation of the ridgeline stated on p. 18? Also, the golf course would destroy about 17% of the total estimated population of wart-stemmed ceanothus and about 13% of the total estimated population of summer holly. How can the destruction of these two Federal Species of Special Concern be reconciled with the statement on p. 18 that this area is a focus of the habitat plan relative to conservation?

SCSD-19 4. P. 20, Section 2.3, General Plan, Zoning, and Local Use Regulation
The "most significant tools" that San Marcos has to use for the implementation of the MHCP are the Conservation Element of the General Plan and the Slope Density Ordinance. However, the City amends the General Plan at will to conform to developers' interests. For example, prior to the SEIR for the San Elijo Ranch project in southern San Marcos, the City of San Marcos' General Plan stated that the City wanted to protect and preserve the ridgeline (Cerro de las Posas). Then the SEIR for San Elijo Ranch mentioned a General Plan Amendment "to bring the project into conformance with this conservation and open space policy." Was the General Plan amended? If so, how was it amended; that is, what was the substance of the amendment? When was it amended? How has the General Plan been amended with relation to the preservation and protection of the ridgeline?

SCSD-20 How will the Conservation Element of the General Plan protect the MHCP Preserve? Has the Slope Density Ordinance been amended since May 23, 2000, to allow for more development on slopes? If so, how was it amended; that is, what is the substance of the amendment(s)? When was it amended?

SCSD-21 What is the meaning of the sentence on p. 21, "For example, in the A-1 Zone, a minimum lot size of one acre is required n native for slopes of 15%."?

SCSD-18. The San Elijo Hills project contributes 891.81 acres to the preserve system, which is the single largest contribution of any landowner. While the Specific Plan allows for a golf course on the ridgeline, the City has not approved the golf course, but included it as a worst-case scenario.

Wart-stemmed Ceanothus

Based on the entire sample there are 2.49 million individuals occurring in the Mt. Whitney-Double Peak formation. 17% of this population will be impacted, leaving 83% (1,992,000 individuals) of this population extant. These numbers appear to be adequate to sustain this population. This is adequate conservation.

Summer Holly

Summer Holly populations are not as dense as wart-stemmed ceanothus. Based on the entire sample (please see P. Mock and J. Rock, Page 98 of Subarea Plan) there are an estimated 253,000 individuals in the study area. 221,000 individuals remain extant. These numbers appear to be adequate to sustain this population. This is adequate conservation.

SCSD-19. The General Plan states that no residential development be allowed on the ridgeline. It also specifically allows for recreational amenities and open space. Golf courses have been located adjacent to biological open space.

SCSD-20. The Conservation Element will be amended so that development projects must adhere to the standards contained in the City's Specific Plan including establishing the preserve (FPA) and ensuring connectivity.

The Slope Density Ordinance has not been amended since it was established. The function of the Ordinance is to increase the minimum lot size as the slope of a hill increases. For example in the A-1 zone, an area having little or no slope, according to slope density will be able to generate one dwelling unit per acre. In that same zone an area having a steep slope of over 35% would be able to generate one dwelling unit per every eight acres. The slope of the area effectively reduces the number of units that can be constructed in that area.

SCSD-21. The function of the Ordinance is to increase the minimum lot size as the slope of a hill increases. For example in the A-1 zone, an area having little or no slope, according to slope density ordinance, would be able to generate one dwelling unit per acre. In that same zone an area having a steep slope of over 35%, according to slope density, would require eight acres to generate one

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dwelling unit. The slope of the area effectively reduces the number of units that can be constructed in that area.

With regards to the maximum allowable units under the General Plan, the previously adopted Specific Plan (SP 89-16) for Highlands allowed 275 single-family residences. The proposed Specific Plan reduces that number by 45 units. Open space has been increased by 138 acres (p 3-7 Highlands DEIR/EIS). Therefore, the precedent that has been set via the City's approval process, is a reduction in overall dwelling units and an increase in open space thereby minimizing impacts to biological resources, not increasing impacts as inferred by the commentator.

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An example, on a project level, that illustrates many of the above concerns is the proposed San Marcos Highlands project.

SCSD-22

San Marcos Highlands project is within the BCLA for the MHCP. This area, predominantly coastal sage scrub also contains riparian habitat and is a recognized wildlife corridor. It is also the headwaters for Agua Hedionda Creek. In Area 2 of the Highlands project, 76 dwelling units are proposed on 26 acres of steep slopes, predominantly 25% or greater. Is this a violation of the Slope Density ordinance? To accomplish this project, according to the DSEIR, the San Marcos Highlands will require cuts 100 feet high by 1,100 ft long, 60 ft high by 400 ft long, 80 ft high by 35 feet long and 75 ft. high by 450 ft long. This is a violation of the grading ordinance, so a variance is being considered. This is a key concern. The soils map, Figure 8 in the College Area Community Plan FEIR, shows that the area of the proposed Highlands project consists of Friant fine sandy loam and Escondido very fine sandy loam. These soil types have moderate to high erosion susceptibility and medium to rapid runoff potential. Runoff is especially harmful here because water from the hillsides flows into Agua Hedionda Creek. Las Posas Road, proposed to run up along Agua Hedionda Creek, will carry 11,000 to 13,000 vehicle trips per day according to SANDAG 2020 forecast maps. This will add runoff to Agua Hedionda Creek. What assurances does the public have that urban and road runoff will be adequately addressed?

SCSD-23

The San Marcos Highlands project appears to conflict with the goal stated in Section A-5.0 page 62 of the College Area Community Plan (CACP), "To encourage preservation and enhancement of canyons, mountains, and streambeds." How does the San Marcos Highlands project accomplish this?

SCSD-24

Finally, under the Subdivision Ordinance, page 21, it states, "A project can be modified or denied if it is found to cause substantial damage or substantially and unavoidably injure fish or wildlife or their habitat." If the City truly believes it will follow its Ordinances how can it allow such a project to come forward? Please show how the Highlands project supports statements made in this section of the Subarea Plan.

SCSD-25

The City of San Marcos, like the other MHCP cities, has the tools to provide protection of the MHCP Preserve. However, all of these tools – the General Plan and various ordinances – can be altered at the discretion of the City Council. How will the Wildlife Agencies monitor San Marcos' actions with regard to the General Plan and applicable ordinances to assure that they are not amended to the detriment of the MHCP Preserve? How will the Wildlife Agencies intervene if they determine that the General Plan and/or applicable

SCSD-22.

The Highlands project retains 68% of the site in natural habitat, including retention of that portion of Agua Hedionda Creek and related water bodies. Additionally, the project provides some wildlife corridors. The Specific Plan established development standards based upon the site's unique resources. Relative to erosion control, NPDES Best Management Practices (BMP) enforced by the Regional Water Quality Control Board will ensure that both construction of the road cuts and final configuration of those road cuts will avoid sedimentation impacts. Those same BMPs will preclude impacts from untreated road and urban runoff from reaching Agua Hedionda Creek. The project has been conditioned to incorporate filters throughout the project to ensure that runoff does not reach the Creek in an untreated state. The project is a Specific Plan. Specific Planning in the City allows a project to be designed with added flexibility. To provide more flexibility in implementing a design that provides added overall environmental protection, a Specific Plan does not require strict adherence to slope density or grading ordinances.

SCSD-23.

A substantial portion of the project is in open space, thereby implementing the above-stated provision of the General Plan. Of the 203 acres associated with the Highlands Project, 135 acres, or 68% of the project is in open space. The open space contains coastal sage scrub and wetlands associated with Agua Hedionda Creek.

SCSD-24.

Prior to requiring "take" authorization, the City will be required to prepare and adopt ordinances that meet the goals and objectives of the Subarea to ensure that these are implemented. The Wildlife Agencies and the public will have the opportunity to review these ordinances as they are being adopted. It should be recognized that the Highlands project will be subject to an individual Section 10a/7 process.

The City must make all necessary changes to the General Plan and implementing ordinances to ensure that the City can meet its commitments. These will be included in the legal Implementing Agreement and Take Permit. If the City fails to comply with the request, then the Wildlife Agencies will evaluate whether the permit shall be suspended or terminated while the violation is remedied.

SCSD-25.

After completion of this EIS/EIR we expect the MHCP participating Cities to request an Incidental Take Permit under Section 10 of the Act and Section 2835 of the NCCP Act for each of their Subarea Plans. When we receive these applications we will notify the public in the Federal Register and pursuant to CEQA and provide a public comment period on the respective

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Subarea Plan(s), Implementing Agreements(s), and any subsequent NEPA or CEQA requirement(s). These documents will include ordinance(s), General Plan Amendment(s), or other tools that are necessary to ensure the MHCP and Subarea Plans are implemented fully. In addition, each City is required to have an Urgency Ordinance that will be established once the permit is issued in order to fully implement the MHCP and Subarea Plan before the new ordinances and/or General Plan Amendments can be finalized.

Once the public comment period closes, comments are addressed, and the Wildlife Agencies and City(s) finalize the respective Subarea Plan(s), Implementing Agreement(s), and any subsequent NEPA or CEQA requirement(s), the Service will issue an Incident Take Permit under Section 10 of the Act concurrently with the Department's issuance of a Section 2835/NCCP permit to the City(s). The ordinances and/or General Plan Amendments will be part of the agreement between the City(s) and the Wildlife Agencies. If the agreement is not fully implemented, the Wildlife Agencies will work with the City(s) to rectify the problem and if unresolved, we can revoke the permit. The Wildlife Agencies will continue to receive notification of future project processing and meet annually with each City to review their conformance with the MHCP. If the Cities are not appropriately applying the ordinances and MHCP requirements, or propose to revise these requirements, the Wildlife Agencies will determine whether the Cities are appropriately implementing the MHCP.

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ordinances have been or are going to be amended to the detriment of the MHCP Preserve?

5. P. 22, Known and Anticipated Projects
a. Circulation Element Streets.

SCSD-26

Regarding the statement, "All circulation Element Map collector streets essential for area circulation and existing maintenance roads crossing are deemed consistent with the goals and policies of this Subarea Plan," it is not clear that all of these streets and maintenance roads are consistent with the goals, standards and guidelines for the MHCP. The "Biological Goals, Standards and Guidelines for Multiple Habitat Preserve Design," (Ogden, Feb. 1998) states on p. 6-4 that barriers such as major roads should be minimized through wildlife corridors. How will San Marcos minimize road crossings of MHCP wildlife corridors?

b. San Marcos Creek Crossings.

SCSD-27

Some of these crossings exist; some do not. The existing San Marcos Creek crossings do not meet the guidelines for roads through wildlife corridors, as stated on p. 6-4 (item 8) of the "Biological Goals, Standards and Guidelines for Multiple Habitat Preserve Design." Are improvements to these crossings that adhere to the guidelines (i.e., bridges, fences channeling the wildlife underneath the crossing, etc.) envisioned? If so, how and when will these improvements be accomplished? If not, why not? Will there be public input into the design and construction of these improvements?

Of the crossings that do not now exist, how can the public be assured that the future crossings will adhere to the MHCP Guidelines?

SCSD-28

Brookfield Homes has submitted an application to the Army Corps of Engineers for the extension of Melrose Drive across San Marcos Creek and other wetlands impacts due to residential and commercial development. On Jan. 14, 2002, the Sierra Club commented to the Army Corps on this application for wetlands impacts. Our letter stated, "... it appears that the developer is proposing a box culvert type of crossing [for Melrose Drive]." Based on the MHCP Guidelines (p. 6-4), the proposed culvert type of crossing is not adequate for this important wildlife corridor. It appears that the culvert is only 10 feet high. The MHCP Guidelines are clear that underpasses for deer movement should be at least 20 feet high. Deer are present in this area, and any road crossing the wildlife corridor must accommodate their access to and through the corridor. Of course, avoidance of road crossings like Melrose Drive through wildlife corridors, as called for in the MHCP guidelines,

SCSD-26. The Revised Subarea Plan will establish standards for road crossings including, but not limited to culverts and undercrossings. The Subarea Plan(s) and Implementing Agreement(s) will be published in the Federal Register for public comment after a permit application is completed.

SCSD-27. The Revised Subarea Plan will establish standards for road crossings. Also, future environmental review as projects go through the Resource Agencies (ACOE, RWQCB, CDFG) will ensure that impacts are minimized, since the MHCP will not result in any wetland permits. The MHCP has established wetland policies that any new project will be required to implement. Expansions or widenings of existing roads will need to incorporate BMPs, as appropriate.

SCSD-28. Project design, including details of the road crossing over Melrose Creek, has been approved by all the Resource Agencies pursuant to Section 7 of FESA. A bridge over San Marcos Creek providing for wildlife movement is a condition of approval.

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would be the most desirable outcome.

SCSD-29

What are the alternatives to the Melrose Drive crossing of San Marcos Creek? How can the Brookfield project be designed so that this road crossing can be avoided? If it is absolutely necessary to construct this road crossing, how can it be designed to adhere to the MHCP guidelines, as stated on page 6-4 of the "Biological Goals, Standards and Guidelines for Multiple Habitat Preserve Design"?

SCSD-30

Recreational crossings within the Preserve and across San Marcos Creek should be avoided as inappropriate to a wildlife corridor. The MHCP Preserve Guidelines, p. 6-4, item 7, states that corridors should have a minimum amount of human disturbance. Every crossing of the Preserve causes fragmentation and creates edge effects which diminish the functionality of the corridor for wildlife. What "recreational crossings" are planned? How can the public be assured that these crossings will adhere to the MHCP Guidelines?

SCSD-31

c. Las Posas Road Alignment Northern Extension

Figure 7 of the subarea plan shows Las Posas Road's being extended to Buena Creek Road, with what appear to be several crossings. This proposed extension of Las Posas Road should be dropped from the subarea plan. A large part of it is in the County, and the County does not support this road extension. Also, the road runs right up the wetlands that are the headwaters of Agua Hedionda Creek, an important waterway in the region. This road and its alignment as shown in Figure 7 are environmentally unacceptable. Why is this extension of Las Posas Road to Buena Creek Road shown in the San Marcos Subarea Plan? Please be specific.

To the public, the purpose of the Las Posas Road extension appears to be to open up to development the entire Hedionda Creek Valley between the existing Santa Fe Hills development and Buena Creek Road. Is this the case? What environmental impacts will result from this proposed road extension? How can these impacts be avoided?

SCSD-32

According to Volume 1, Public Review Draft of the MHCP, page 3-24 under Wetland Avoidance Mitigation Criteria, "Private projects must demonstrate the impact is essential to maintain some economic or productive use of the property and that no feasible alternative would eliminate or minimize the impact or otherwise result in greater biological value." Because the extension of Las Posas will impact wetlands along Hedionda Creek, please provide evidence that the road is needed to maintain some economic or productive use of the property. Since the Highlands and Murai

SCSD-29.

The Wildlife Agencies approved the Melrose Drive crossing once an expanded analysis indicated that the road was needed to relieve traffic from the San Elijo Road/Rancho Santa Fe Road intersection. To minimize impacts the Resource Agencies approved a bridge crossing.

SCSD-30.

The statement that every trail crossing causes fragmentation and creates edge effect appears to presume that both phenomena have consistent thresholds. Rather, both edge effect and fragmentation vary significantly by species and by vegetation type. The MHCP, the Subarea Plan, and the Wildlife Agencies allow for the inclusion of trails in the preserve. Refer to the Trails Master Plan (part of the City's Conservation Element) for the location of approved trails. Additionally, the revised FPA maps will show the location of all trails. These trails will be reviewed on a project-by-project basis. This information has been supplied to the Wildlife Agencies and will be part of a revised approved Subarea Plan.

SCSD-31.

The Las Posas Road extension is shown on the Subarea Plan since it is part of the adopted Circulation Element. This road connection is not to serve existing or future development but to provide a needed north-south road parallel to Twin Oaks Valley Road. This is especially needed to dispose of regional traffic due to the connection of the Las Posas/State Route 78 interchange. Preliminary alignment studies have been completed that indicate the road can avoid the majority of the wetland areas, except for minimum crossings.

Note: This appears to be a selective, partial quote of Section 3.6. A full citation of this Section includes the following wording, "If the wetlands to be impacted are determined to have a low biological value, then they need not be avoided so long as mitigation for impacts will result in a higher biological value than the existing condition."

In general, since the approval of the MHCP will not result in permits for wetlands, any future creek crossings must comply with the permitting requirement of California Department of Fish and Game and attendant permits from the Army Corp of Engineers, and the Regional Water Quality Control Board to ensure that the least environmentally damaging most practicable alternative is utilized.

Project specifically, project design, including details of the road crossing over Agua Hedionda Creek, will require an agreement from the California Department of Fish and Game and attendant permits from the Army Corps of

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Engineers, and the Regional Water Quality Control Board, to ensure that the least environmentally damaging, most practicable alternative is utilized.

SCSD-32. The Las Posas Road extension will be required to meet the requirements of the MHCP for no net loss of wetlands, and that the least environmentally damaging alternative is utilized.

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projects can be accessed by existing roads in the County without incurring wetland impacts, why were these alternatives not studied?

SCSD-33

The extension of Las Posas Road will require a variance to the City's Grading Ordinance because a cut of 75 ft. high by 450 ft long will be required. On page 21 of the Subarea Plan, under the Grading Ordinance, it states, "All grading, clearing, brushing, or grubbing of natural or existing grade in the City of San Marcos including sensitive habitats (e.g., coastal sage scrub) is subject to the Grading Ordinance. Permits are reviewed for compliance with established controls. Applications for a grading permit can be modified or denied to insure environmental quality. Erosion control guidelines require protection of environmentally sensitive areas such as wetlands." How does the extension of Las Posas Road meet the requirements of this Ordinance?

There is no key supplied with the map, Fig 7, that indicates the meaning of the various lines running from the current terminus of Las Posas Road to Buena Creek Road. Please explain meaning of the short dark rectangles.

SCSD-34

d. Questhaven Road/Twin Oaks Valley Road/San Elijo Road

The proposed alignment of this road cuts through the Preserve in at least two areas. It appears that these areas are wildlife corridors. Where this road crosses wildlife corridors, it must be designed in accordance to the MHCP Guidelines as stated on p. 6-4 of the "Biological Goals, Standards, and Guidelines for Multiple Habitat Preserve Design." How can the public be assured that the crossings will adhere to the MHCP Design Guidelines for wildlife corridors?

SCSD-35

e. The Rancho Santa Fe Road Alignment

The proposed alignment of Rancho Santa Fe Road crosses the MHCP Preserve at San Marcos Creek. How is it designed to allow for wildlife movement under the road? The MHCP design guidelines for wildlife corridors (p. 6-4) state that roads crossing wildlife corridors should provide underpasses allowing large mammals and other animals to cross. Also, "Roads crossing the corridor should be fenced by at least a 10-foot fence that channels animals toward the wildlife underpass. These fences should be buried at least 1 foot underground so animals cannot dig underneath. Bridges are the preferred type of wildlife underpass; box and pipe culverts are infrequently used by deer (Ogden, 1992a) but may be used by some smaller animals." Also, "Underpasses targeted for deer movement should be at least 20 feet high..." Etc. Please note that there are deer in the area.

SCSD-33. Please see response to comment SCSD-32. There is no meaning to the short dark rectangles other than to indicate approximate R-O-W. A revised map and key will be included in the final Subarea Plan.

SCSD-34. The revised Subarea Plan will contain road crossing standards consistent with the MHCP. Additionally, compliance with MHCP Design Guidelines will be assured through the permitting process of the Resource Agencies.

SCSD-35. This section of the project, including the replacement bridge, lies within the improvement plans approved by the Resource Agencies.

Rancho Santa Fe Road is being constructed with one wildlife crossing. It will be an arch culvert with a soft bottom, approximately 13 feet high at the center and approximately 300 feet long. The culvert will also have an opening in the middle to let in light and air.

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- SCSD-36 [Rancho Santa Fe Road is potentially a major barrier to wildlife movement unless it is designed to allow the wildlife to cross the road safely. What steps are being taken to assure that wildlife, including deer, will be able to safely cross Rancho Santa Fe Road?
- SCSD-37 [It appears from the City of San Marcos' Subarea Plan Map that, north of Melrose Drive and south of Lake San Marcos, Rancho Santa Fe Road will run adjacent to Preserve lands. The Preserve is on the east side of Rancho Santa Fe Road. What steps are being taken to assure that wildlife does not wander onto the roadway?
- SCSD-38 [f. Projects to be Permitted Under the City of San Marcos Subarea Plan
The statement under this heading is so vague that it is not meaningful. Please explain in detail what is meant and how the subarea plan protects the Preserve from impacts of "additional projects."
- SCSD-39 [6. P. 26, 3.1.2 Biological Surveys
It states, "These field surveys were limited due to time and also limited to areas that were easily accessible to the public." Which areas had biological field surveys and which areas relied on aerial photographs? Show and discuss where each of these individual areas is located in the proposed Preserve design.
- SCSD-40 [7. P. 31, Southern Riparian Woodlands
We note that San Marcos Creek from Lake San Marcos to Highway 78 is not in a part of a focused planning area. Why not? The report states that the largest strip of riparian woodland within the City occurs along this stretch of San Marcos Creek. We also note that this stretch of San Marcos Creek is not part of the MHCP Biological Core and Linkage Area. San Marcos Creek is a regionally significant waterway, and it should be preserved, protected and enhanced. Why is it not included in the Biological Core and Linkage Area? The thin magenta line running along this stretch of San Marcos Creek on the San Marcos Subarea Plan map appears too narrow to protect this important waterway and its flora and fauna. A wider corridor is needed, and conservation plans to protect and restore the Creek should be spelled out. What are the plans to protect and restore this stretch of San Marcos Creek?
- SCSD-41 [8. P. 31, 3.2.2 Riparian Communities
Under the heading Southern Riparian Forests, it identifies a riparian forest within the BRMP study area as "...a small patch (five acres along a tributary of Buena Creek) near the western boundary of the City." Buena Creek runs

- SCSD-36. Please see response to comment SCSD-35.
- SCSD-37. Vinyl-coated chain link fencing will be utilized to assure that wildlife does not wander onto the roadway.
- SCSD-38. This subsection of Section 2.4 (Known and Anticipated Projects) entitled "Projects to be Permitted Under the City of San Marcos Subarea Plan" will be clarified in the Final Subarea Plan.
- SCSD-39. Specific information on the vegetation and sensitive species sighting within the City was obtained from several sources including over 30 biological resource reports, the CNPS Inventory of Rare and Endangered Plants, Beauchamp's Flora of San Diego, Bauder's Vernal Pool studies, and the San Diego Biodiversity Project's Vernal Pool studies. Additionally, the consulting biologists met with experts on the local flora and fauna. This was combined with aerial photo interpretation with field truthing conducted from public right-of-ways. It should be noted that this is a program-level environmental document. CEQA review will be conducted at the project level when plans are submitted.
- SCSD-40. Specifically, the MHCP states, "Projects that propose to impact a wetland must demonstrate with substantial factual evidence that the impact is essential to maintaining some economic or productive use of the property and that no feasible alternative would eliminate or minimize the impact or otherwise result in greater biological value. If impacts to wetlands cannot be avoided while retaining economic or productive use of the property, an evaluation of biological functions and values shall be made based on the best available science...Any unavoidable impacts to wetlands must be mitigated to result in no net loss of wetland vegetation acreage and biological function and value within the MHCP subregion and preferably, but not necessarily, within the same drainage and city. Subarea plans may apply stricter avoidance standards for wetlands inside the FPA than outside the FPA. However, the no net loss standard must be achieved regardless of location."
- In implementing the appropriate mitigation for wetland habitat, the following management guidelines must be incorporated:
1. For wetlands currently in or proposed for open space, each jurisdiction shall prepare a management plan to ensure maintenance and monitoring of this habitat and its species.

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2. For wetlands currently in or proposed for open space, each jurisdiction shall prepare a management plan to restore disturbed portions of this habitat, including management and restoration plans for sensitive species occurring in this habitat.
3. Where conditions are appropriate, create new wetlands by converting disturbed upland habitat.

SCSD-41. Please note that all wetland areas and associated riparian habitat of the Subarea Plan are accorded protection under existing laws. Approval of the Subarea Plan does not result in any wetland permits or alter existing protection under state and federal law. The revised Subarea Plan will clarify this ambiguity.

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north and west of Agua Hedionda Creek and is located outside the City of San Marcos. Where is the area described in the Subarea Plan? Is this area within the FPA or BCLA? Is this Agua Hedionda Creek?

- SCSD-42 Under the heading Southern Riparian Woodlands, paragraph 3 states, "...a willow riparian woodland... occurs along the creek on San Marcos Highlands (ERCE 1990)." According to maps supplied by the Carlsbad Watershed Network and Thomas Brothers maps, this creek is Agua Hedionda Creek. The creek originates in San Marcos Highlands and terminates at Agua Hedionda Lagoon. Agua Hedionda Creek is misnamed repeatedly in the Subarea Plan. Please correct these errors. Additional examples of this misnaming is found but not limited to:
1. page 34, paragraph 4 and 5.
 2. page 39, paragraph 3

- SCSD-43 9. P. 32, Paragraph 2, Southern Riparian Woodlands
The document states, "Several other distinct patches of riparian woodlands occur throughout the city." No maps are supplied to show where these locations are. Please supply a map showing the locations of these riparian woodlands and show how these relate to the Preserve design. Are these areas within the FPA or BCLA? Not included in this section are the .15 acres along Agua Hedionda Creek on the Santa Fe Hills site (see Lundstrom & Associates letter dated Aug.1999, attachment B). Why was this area not listed? List any areas of riparian woodlands not listed in the Subarea Plan. Explain why they were not listed. Provide a map that shows the locations of the above areas as well as the "south side of Deer Canyon road; ...northeast of Country Garden Lane; within Twin Oaks Valley; ...Vista/San Marcos boarder and Linda Vista Drive...".

- SCSD-44 Paragraph 5, Riparian Scrub
This section does not include other communities of riparian scrub such as the .27 acres along Agua Hedionda Creek on the San Marcos Highlands (documented in URS Biological Report, January 8, 2001, for San Marcos Highlands DSEIR). It also does not include the .22 acres of mulefat scrub along Agua Hedionda Creek on the Santa Fe Hills site (documented in Lundstrom & Associates letter, Attachment B). Why are these areas not listed? List any areas of riparian scrub not listed in the Subarea Plan. Explain why they were not listed.

- SCSD-45 10. P. 34, 3.2.3 Marsh and Emergent Wetland Communities
Under the heading Coastal and Valley Freshwater Marsh, paragraph 2, it states, "...the Pond and creek channel on the San Marcos Highlands." This

SCSD-42. Nomenclature will be corrected in the revised draft.

SCSD-43. As the MHCP vegetation maps (1" = 2,000 ft.) are based upon aerial photographs; thresholds of scale may not allow for this detailed mapping. All riparian areas of the Subarea Plan are accorded protection under the policies of the MHCP.

SCSD-44. Please see response SCSD-43.

SCSD-45. Please see response SCSD-43.

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occurs again under the Disturbed Wetlands heading. As previously stated, this is Agua Hedionda Creek. In addition, 14 acres of freshwater marsh exist along Agua Hedionda Creek adjacent to this site in Santa Fe Hills. Additional acres exist throughout the entire length of Agua Hedionda Creek within either the City limits or its sphere of influence. Since these areas are within the BCLA, why were these areas left out of the Subarea Plan? List any areas of freshwater marsh not listed in the Subarea Plan. Explain why they were not listed.

SCSD-46 11. P. 37, 3.2.3 Non native Communities, Eucalyptus Woodland
This paragraph missed two stands of eucalyptus along Agua Hedionda Creek. One stand is on the southern edge, between San Marcos Highlands and Santa Fe Hills and the other is at the northern part of the San Marcos Highlands. Why were these areas not included?

SCSD-47 12. P. 38, 3.3.2 Lacustrine:
Why were the stream and ponds that make up Agua Hedionda Creek excluded from this description?

SCSD-48 13. P. 39, 3.3.3 Valley Foothill Riparian/Montane Riparian
This section states, "All riparian wildlife habitats are extremely significant biological resources. These habitats support the largest number and greatest diversity of wildlife by providing food, water, migration and dispersal corridors, escape, nesting and seasonal thermal cover." In the second paragraph, once again, it calls Agua Hedionda Creek "...the creek on San Marcos Highlands."

Given the issues surrounding Agua Hedionda Creek, the Hedionda Creek Valley and the proposed San Marcos Highlands project, why does the City want to propose residential development and a major road (Las Posas) for this area? Refer to Comment 4: P 20-21, 2.3 General Plan, Zoning and Local Use Regulation, when providing an explanation.

SCSD-49 14. P 40, 3.3.6 Shrublands
The Subarea Plan makes an important point when it says that shrublands, particularly the chaparral communities, are areas of extremely high biodiversity in terms of vertebrate and invertebrate species. The Merriam Mountains contain the largest undisturbed shrublands in the Northern FPA. What portion of the Merriam Mountains is within the MHCP Focus Planning Area or BCLA? According to the maps and the County's Resource Conservation Area, the area referred to in the Subarea Plan as "...the hills west of Twin Oaks Valley Road, and east of Neighborhood One of the College Area Plan" is known as the San Marcos Mountains. Is this correct?

SCSD-46. Please see response SCSD-43.

SCSD-47. Please see response SCSD-43.

SCSD-48. The referenced projects are in compliance with the adopted General Plan and Circulation Element.

SCSD-49. The commentator has chosen an edited, selective quote. The full sentence in Section 3.3.6 is as follows: "Shrublands encountered west of the Peninsular Range are either coastal sage scrub, southern mixed, chaparral, mountain chaparral, chamise chaparral, or southern maritime chaparral. Within southern California, shrublands as these exhibit high biodiversity". Note: a monotypic stand of southern mixed chaparral by itself, would not necessarily exhibit high biodiversity", and can exhibit the exact opposite characteristic. The Merriam Mountains, according to the USGS San Marcos 7.5 minute Quadrangle, parallels the east side of the Twin Oaks Valley outside the City limits. The mountainous area west of Twin Oaks Valley south of Buena Creek Road appears to be an isolated ridge south of the main branch of San Marcos Mountains lying outside the City limits according to the USGS San Marcos 7.5 minute Quadrangle.

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SCSD-50 15. Pp. 41-43, 3.4.2 Riparian and Wetland Habitats
This section of the Subarea Plan clearly identifies the importance of wetlands. It also shows how few wetlands are left within San Diego County; only 9% remained in 1991. Now, however, it is estimated that we are down to the last 3%-4% of our wetlands. With the loss of our wetlands we have experienced a loss in biodiversity and water quality. San Marcos is fortunate to be the caretaker of two important waterways that run to the ocean, San Marcos Creek and Agua Hedionda Creek.

SCSD-51 San Marcos Creek runs from the western slopes of the Merriam Mountains and discharges into the Pacific Ocean via Batiquitos Lagoon. "The Draft Carlsbad Watershed Management Plan" (CWMP), March 2002, documents the presence of highly erodible soils, agricultural land uses, grading associated with development projects and removal of native vegetation that have all contributed to significant sedimentation problems within this watershed. Page 4-95 of the CWMP states, "Lake San Marcos is experiencing regular algal blooms, likely exacerbated by urban and irrigation runoff from golf courses within the area." On page 4-95, it also states, "Habitat fragmentation within the San Marcos Creek watershed is extensive... A large area of high quality habitat, as identified in the MHCP, is present on the hills north of San Marcos and extends westward into the Agua Hedionda Creek watershed. The largest block of high quality habitat within the watershed occurs along the southern edge of the lower basin... with large areas of natural habitat to the south in the Escondido Creek and the San Dieguito River watersheds." Page 4-96 states, "Considering how valuable the central and headwater area of the watershed are to land development activities, it is necessary for the North County Subarea Plan to set aside significant portions of the San Marcos Creek Watershed as permanent open space."

SCSD-52 Along with San Marcos Creek, San Marcos is host to Agua Hedionda Creek, the third largest watershed within the Carlsbad Hydrologic Unit. Agua Hedionda Creek contains two drinking water reservoirs, Squires and Lake Calavera for the City of Carlsbad, and runs through the Dawson Los Monos Preserve. Agua Hedionda Creek originates on the southwestern slope of the San Marcos Mountains (aka San Marcos Highlands) and discharges into the Pacific Ocean via Agua Hedionda Lagoon. Although Agua Hedionda Creek is divided by South Santa Fe Road, a proposed major road improvement, due to start 2004, offers a method to re-establish connectivity between the upper and lower portions of Agua Hedionda Creek. On page 4-58 of the CWMP, it states "...the majority of soil types along the creek are categorized as severely erodible. The prevalence of erodible soil types within the watershed has contributed to significant sedimentation problems associated with agricultural land uses,

SCSD-50. Please note that the Subarea Plan includes wetland conservation polices such as "no net loss" and "least environmentally damaging alternatives".

SCSD-51. San Marcos is an active member of the NPDES program and is implementing all BMPs that assure a comprehensive reduction in waterborne pollutants. Additionally, the Subarea Plan calls for a significant portion of projects in this area to be in permanent natural open space. This being said, it appears that this comment addresses, on the whole, areas that lie outside City limits. The area identified as, "the largest block of high quality habitat within the watershed occurs along the southern edge of the lower basin... with large areas of natural habitat to the south in the Escondido Creek and the San Dieguito River watersheds", lies to the south of the City limits and therefore are not part of the Subarea Plan. The area identified as occurring "on the hills north of San Marcos and extends westward into the Agua Hedionda Creek watershed", lies to the north of the City limits and therefore are not part of the Subarea Plan.

SCSD-52. The commentator incorrectly refers to the Highlands as occurring on the western slope of the San Marcos Mountains. The Subarea Plan refers to the area, known locally as "P" Mountain, as an isolated ridge south of the San Marcos Mountain. See San Marcos 7.5 Minute Series Quadrangle prepared by the United States Geologic al Survey (Photo revised 1983). This map clearly shows that the San Marcos Mountains terminate in the urbanized flatlands east of the City of Vista. San Marcos is an active member of the NPDES program and is implementing all BMPs that assure a comprehensive reduction in waterborne pollutants. Additionally, the Subarea Plan calls for a portion of projects in this area to be in permanent natural open space to facilitate preservation of the watershed.

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grading for developments, and removal of native vegetation.”

SCSD-53 Presently, Agua Hedionda Lagoon is listed on the 303D list for sedimentation and coliform contamination. According to page 5-36 of “Plan Objectives and Action Items”, CWMP, Agua Hedionda Creek is being considered for 303D listing for Diazinon and TDS impairment. Agua Hedionda Lagoon, an important habitat area, was designated in 1973 as critical habitat for the Tidewater Goby, a federally listed endangered species.

SCSD-54 Since riparian and wetland habitats are important in ensuring wildlife connectivity and habitat quality, how will the San Marcos Highlands project and the future Murai project not further degrade Agua Hedionda Creek? How will Diazinon contamination impact wetlands habitat? What assurances does the City provide the public and the Wildlife Agencies that these projects will not degrade habitat value and add to the further degradation of Agua Hedionda Lagoon? Since this area is within the BCLA, why is much of the land near the creek being developed and not preserved? What scientific studies support your answers? Finally, if development results in either wetland or water quality loss downstream, in adjacent Cities, will the City of San Marcos pay for restoration, and if so, how?

SCSD-55 16. Pp. 44-46, Sensitive Plant and Animal Species
The least Bell’s vireo (*Vireo bellii pusillus*) should be added to this list. This endangered species was identified in the Agua Hedionda Creek area, on the Kaufman and Broad property, in the 1999 timeframe. (See Attachment B.)

SCSD-56 The report in Attachment B also discusses the possibility of the presence of the Federally endangered arroyo toad in Aqua Hedionda Creek. The report concluded that the presence of the toad was possible, but not likely. More detailed studies to determine the presence of the toad in the Agua Hedionda Creek waterway in northern San Marcos should be conducted. How can these studies be undertaken?

SCSD-57 17. Pp. 44 and 45, 3.5 Sensitive Plant and Animal Species
Brodiaea filifolia:
The chart states there are 9000 *Brodiaea filifolia* plants in the Baldwin Companies’ Mitigation Site. Where is the location of this population?

SCSD-58 *Orcutt’s brodiaea*:
It is proposed to transplant plants affected by the University Commons project. How successful is this? According to comments submitted by James Dillane to the University Commons SEIR, no translocation programs have been successful. What studies support transplantation?

SCSD-53. Comment noted.*

SCSD-54. San Marcos is active member of the this NPDES program. Both Highlands and Murai are and will be required to implement all BMPs, including onsite filtration systems. This will assure a comprehensive reduction in waterborne toxins and pollutants. Additionally, the Subarea Plan calls for a significant portion of both projects to be in permanent natural open space. Furthermore, plan approval will not result in any wetland permits, nor will the Plan alter the existing regulatory control of state and federal resource agencies over wetlands. The RWQCB enforces the implementation of BMPs to ensure minimal impacts to and minimal contamination of sensitive water resources. The RWQCB will respond on the science behind BMPs. San Marcos is active member of the this NPDES program. All projects are required to implement all BMPs.

SCSD-55. One least Bell’s vireo was noted transiting through the Kaufman and Broad property in 1999. This behavior is not unexpected during the period between March and July. This species has not been documented on the project site since 1999.

SCSD-56. The Arroyo Toad requires a particular riparian habitat not found on the project site. To survey where Toads are not likely to occur would require the program to incur unneeded expense. Additionally, since this habitat is highly regulated by both state and federal resource agencies, a biological reconnaissance would be required for any project potentially impacting wetlands that would have to address the likely occurrence of the Arroyo Toad.

As a reminder, Plan approval will not result in any wetland permits, nor will alter the existing regulatory control of state and federal resource agencies over wetlands.

SCSD-57. The population is in the fenced mitigation area of the Paloma Project.

SCSD-58. Transplantation is not the preferred mechanism for protection; however, it can be used for mitigation. The San Elijo transplant program was initiated last year; therefore it is too early to assess the success or failure of the program. There is no successful transplantation of *Brodiaea* corms that are older than five years. However, this project is permitted by Section 7 of the ESA. The Service could not regulate *Orcutt’s Brodiaea* through this process, because *Orcutt’s* is not federally listed.

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SCSD-59 Orcutt's linanthus:
It lists 50 Orcutt's linanthus individuals along the trail at the upper elevations of the north slope of Double Peak. Is this the area that the City plans to develop into a golf course? If so, how will this population be affected and will it be preserved under the Subarea Plan?

SCSD-60 Grasshopper Sparrow:
Where are the grasslands north of Palomar College? How many individual sparrows are present in the site? Has the population increased or decreased and over what time period?

SCSD-61 18. P. 47, Biological Preserve Design
The second paragraph in this section states that designing the preserve system involves balancing two major goals: biological conservation goals; and property development, property rights, and economic goals.

This is an incorrect approach. Volume I of the Public Review Draft MHCP Plan clearly states: "The overall goal of the MHCP is to maintain biodiversity and ecosystem health in the region while maintaining the quality of life and economic growth opportunities." (p. 1-1) The purpose of the MHCP is to prevent species extinction; economic growth is a constraint on the achievement of this goal. One of the by-products of creating the MHCP Preserve is that areas that do not contain valuable habitat or function as wildlife corridors are identified and may be candidates for development.

SCSD-62 The City of San Marcos has taken the approach of trying to create a Preserve through the development process. This is an inappropriate approach. The correct approach is to identify the important areas of habitat and linkages (which was done in the MHCP by the identification of the Biological Core and Linkage Area) and to determine how these areas can be conserved. As a result of San Marcos' incorrect approach to assembling the Preserve, the City has failed to include valuable habitat/linkage areas in their Subarea Plan (such as the Agua Hedionda Creek Valley in northern San Marcos and the University Commons area in southern San Marcos) and has included areas in their proposed Preserve system that are outside of the Biological Core and Linkage Area and provide questionable value to the Preserve, such as the landfill area in southern San Marcos. Also, San Marcos' Preserve system is fragmented; a major objective of the MHCP is to prevent the continuation of habitat fragmentation which is a major factor in species extinction in this region. Finally, San Marcos' subarea plan allows a totally unacceptable amount of destruction of valuable habitat such as Coastal Sage Scrub (CSS) and chaparral. According to the EIS/EIR for the MHCP, p. 2-74, San Marcos'

SCSD-59. Location is not part of Area Q. (It is not obvious from the EIS/EIR figure of San Elijo Hills SPA.) It is in the most eastern planning area of SEH. The Orcutt's linanthus population in San Elijo Hills is in open space and will be managed by the habitat manager contracted by the San Elijo Hills Homeowners Association. It will be monitored, and no trail will be allowed near it.

SCSD-60. The large grassland area is on the east side of the northern FPA. Grasshopper sparrows populations in San Marcos are not being actively monitored, so there is no data regarding variation in population size or distribution over time.

SCSD-61. The intent of the MHCP and NCCP planning process is to balance the needs of the biological resources while accommodating property development.

SCSD-62. The BCLA has always been a regional planning level tool. BCLA lands were the area from which the FPA were to be assembled. Please note, the EIS/EIR does not identify Alternative 3 (BCLA) as environmentally preferred.

The wetlands will be protected through implementation of the no net loss policies and required mitigation for any unavoidable impacts to wetlands. The sloped areas surrounding Agua Hedionda Creek are addressed in the plan. For example, San Marcos Highlands project proposes to place 68 percent of the total project acreage into open space to become part of the FPA preserved as open space.

Those lands in the City's FPA that are not in the BCLA were added because of their biological importance after consultation, and in certain cases at the request of the Wildlife Agencies.

The Subarea Plan preserves the large unbroken block of CSS habitat associated with "P" Mountain, provides a critical corridor for gnatcatcher distribution between Carlsbad and Lake Hodges.

The statement that the Plan's conservation levels are inadequate is without a basis. Substantial evidence is established in the EIS/EIR that adequate species points and habitat acreage is preserved.

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Subarea Plan under the FPA 2 alternative (the Preferred Project) only conserves 50% of the remaining CSS in the City and 48% of the remaining chaparral.

SCSD-63 How could San Marcos' development-oriented approach to the assembly of the Preserve and its low levels of conservation of valuable habitat be acceptable to the Wildlife Agencies?

SCSD-64 The City of San Marcos needs to preserve more of its valuable open space within its City boundaries and sphere. A perfect example is the Highlands property in northern San Marcos, where a housing development of about 230 units is proposed. This area is in the Agua Hedionda Creek Valley, and is part of the MHCP Biological Core and Linkage Area. It should be acquired as part of the Preserve. The property owner has stated that he is willing to sell the property. Why does the City not want to acquire the property, thus adding another approximately 200 acres of CSS to its Preserve, plus valuable riparian habitat?

SCSD-65 Another example is the Cerro de las Posas ridgeline. The Subarea Plan map shows the area where the golf course is proposed as 25% conserved. This area is in the Biological Core and Linkage area and contains undisturbed chaparral. The City should conserve all of this area at the 100% level. This would add about 125 acres of chaparral to the Preserve. Why does the City not want to conserve this area at the 100% level?

SCSD-66 19. P. 48, 4.1.1 Objective 1: Conserve the full range of extant vegetation communities with a focus on habitats considered sensitive, rare, or declining
Paragraph 1 states, "Vegetation communities and habitat types that are rare or ecologically important should receive special protection, including riparian habitats and coastal sage scrub. Riparian habitats should be preserved in their entirety due to their rarity, habitat value to numerous wildlife and plant species, and use as movement corridors and habitat linkages." As previously stated, it is unclear how projects such as the University Commons and San Marcos Highlands project support this objective. The University Commons project will introduce a large number of people who will bring with them pets, invasive non-native plants and animals, plus an additional road to a sensitive wetland habitat. In addition, no specifics have been given as to how air and noise pollution will be addressed in order to prevent damage to the habitat.

SCSD-67 The San Marcos Highlands project will place residences as well as a major road in the middle of a sensitive wetland area along Agua Hedionda Creek.

SCSD-63. Please see response to comment SCSD-62.

SCSD-64. All gnatcatcher locations in the Highlands projects are 100 conserved. The San Marcos Highlands project proposes to place 68 percent of the total project acreage into open space to become part of the FPA, as well as provide a wildlife corridor. Of the 10.97 acres of riparian habitat, 10.10 acres are being conserved.

SCSD-65. A Development Agreement was implemented between the City of San Marcos and San Elijo Ranch. That Agreement set certain responsibilities for the City and the Ranch. An excerpt of the Development Agreement is attached to the Response to Comments as Attachment RS-1. In that Agreement, the City agreed to consider certain land uses in the Cerro de las Posas ridgeline area. The Development Agreement incorporated by reference the Specific Plan. In the Specific Plan, this area had identified *potential uses that could be developed in this area subject to a Conditional Use Permit*. One of these uses is a golf course (see RS-1). As such, the City can not deny a land use prior to an applicant making an application. For this particular issue, the City is obligated to process an application for a Conditional Use Permit for the uses listed therein, including a golf course. The City has been advised by legal counsel that if it does not process an application as set forth in these entitlements, it can be deemed to be in violation of state regulations on permit processing and other substantive and due process rights. Additionally, development agreements have been interpreted as contractual obligations, were it to refuse to process an application. Further, the City can not deny a land use prior to the submission of an application. The processing will include CEQA review of the application, and the legislative body (the City Council) must make certain findings with respect to the proposed use prior to making a decision on whether to issue the CUP. Issuance of the CUP is a *discretionary* decision – the City can approve or deny that application in accordance with its discretionary land use authority. The City can not deny the project today because there is no application before the decisionmakers.

SCSD-66. "Conserve the full range" does not imply that all extant vegetation communities should be conserved as to preclude any development. Substantial evidence is established in the EIS/EIR that adequate species points and habitat acreage is preserved. Please note that the University Commons project has received an exemption from Section 9 of the ESA through Section 7 consultation with the Corps.

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SCSD-67. The wetlands will be essentially conserved, with the exception of impacts to less than 1 acre of riparian woodlands.

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This will divide two large areas of coastal sage scrub with a residential development and a road, and the excessive grading of erosive soils will destroy both wildlife and wetlands of Agua Hedionda Creek.

SCSD-68 Areas indicated in Figure 2-3, Composite Habitat Value MHCP Study Area map, as being very high quality habitat are being designated for development, further fragmenting the remaining open space. There is concern that once you apply the edge effects shown in Figure 2-4 in Volume II of the Public Review Draft MHCP to the Subarea Plan, there are insufficient areas of pristine coastal sage scrub that won't soon be degraded due to edge effects. Please site scientific studies that prove a plan with that will have this amount of edge effects will make a viable preserve. How does the City plan to eradicate invasive plant and animal species in a preserve with so many edge effects? What will the cost to the public be to control edge effects? The City should consider a plan that preserves larger blocks of habitat to minimize edge effects.

SCSD-69 20. P. 48, Limitations
This section states that most riparian habitats in the City have lost the buffering influence of natural upland habitats. It also states "Remaining scrub habitats in the City are concentrated on steep slopes, ..." Neither of these statements made in this section is true relative to the Hedionda Creek Valley in northern San Marcos. A lot of the CSS in the valley is not on steep slopes. Also, the Hedionda Creek Valley is an example of riparian habitat that has not lost the buffering influence of natural upland habitat. Although there are some agricultural land uses around the northern part of the creek (in the County), the watershed for the creek is relatively undisturbed. South of the County line, the watershed for the creek is more disturbed due to development that the City has permitted (Santa Fe Hills). However, the City has the opportunity to try preserve the relatively undisturbed slopes on the west side of the creek and some of the riparian waterway, on what is called the Murai property. This area is part of the MHCP Biological Core and Linkage Area and should be part of the Preserve. Instead, the subarea plan shows it as only 50% conserved.

SCSD-70 The City should negotiate with the owners of the Murai property to acquire it as part of the Preserve.

SCSD-71 How can the Wildlife Agencies agree that only 50% conservation of the Murai property is appropriate?

SCSD-72 Where are the riparian habitats that have lost the buffering influence and

SCSD-68. It should be recognized that the entire MHCP is fragmented and that edge effects will be an issue that all conservation areas will encounter. The Management Plan implemented for each preserve will be responsible for managing exotics.

SCSD-69. DEIR/EIS #90-13 (SCH No. 9907810007) for San Marcos Highlands indicates (p. 4.2-3) that approximately 53% of the site has slopes greater than 25%. The statement is inaccurate. A review of the MHCP vegetation database establishes that the predominate habitat of the watershed in the County is Agriculture or developed.

SCSD-70. The commentator presents no evidence that the current levels of conservation do not achieve MHCP goals, whereas substantial evidence is established in the EIS/EIR that adequate species points and habitat acreage are preserved. Please see Section 4.3.2., page 55, of the Subarea Plan that establishes Riparian and Coastal Sage Scrub conservation policies. The Murai project will provide wildlife corridors complying with MHCP standards and significant retention of riparian areas.

SCSD-71. Please see response to comment SCSD-70.

SCSD-72. A review of the MHCP vegetation database reveals that a substantial amount of the City's riparian habitat is surrounded by agriculture or urban development. Many of the drainages have been modified to provide improved hydrology with the use of riprap or the edge has been hardened. Development has occurred adjacent to the riparian habitat; thus, eliminating buffer.

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where are the riparian habitats that have not? Please explain how this was determined.

SCSD-73 Also, under "Limitations," it is stated that the chaparral dominated slopes on the undeveloped ridgeline of Cerro de las Posas, Double Peak, and Frank's Peak are part of "the focus of the Subarea Plan relative to conservation." It is ironic that the City is entertaining a proposal to construct a golf course on top of Cerro de las Posas, which will destroy about 125 acres of chaparral and sensitive plant species such as wart-stemmed ceanothus and summer holly. If this area is a focus of conservation, how can this type of development be considered?

SCSD-74 Projects such as University Commons, Highlands, the future Murai and the golf course proposed on the Cerro de las Posas ridgeline, referenced above, will further remove upland habitats, therefore further degrading riparian habitats. How will the proposed Subarea Plan prevent more loss?

SCSD-75 21. P. 48, 4.1.2, Objective 2. Maintain its functional wildlife corridors and habitat linkages between critical biological resources areas. This section states, "...wildlife patches should be linked by functional corridors to minimize problems associated with habitat fragmentation. Whenever possible, corridors should be of high quality habitat and of the same habitat type as the areas they connect." How does the landfill located in the Southern FPA meet this requirement?

SCSD-76 In addition, it states, "Existing linkages should be maintained and linkages or corridors that are currently constrained should be prioritized for acquisition enhancement." Where is this happening? Is there a priority list? What is the timetable established for acquisition? How do the design of the San Marcos Highlands project and University Commons project support the above statement?

SCSD-77 At the top of page 49, it states, "Where habitat linkages or corridors cross City boundaries into adjoining jurisdictions, these jurisdictions should be encouraged to complete the cross border linkages in order to create a regional preserve network." In the Northern FPA, the County raised serious issues in its response to the San Marcos Highlands draft Supplemental Environmental Impact Report (DSEIR). The County stated that the implementation of the San Marcos Highlands and associated habitat loss would block a viable wildlife corridor that would have connected to the North County MSCP Subarea Plan. Furthermore the county said that bisecting the open space, as proposed in the San Marcos Highlands project, is inconsistent with Objective 2 of the San Marcos Highlands Specific Plan Amendment.

SCSD-73. The San Elijo Hills project contributes 891.81 acres to the preserve -the single largest contribution of any landowner. Please note that the FPA, as shown, indicates "worst case". Whereas the Development Agreement and Specific plan allow for a golf course, the City has not approved this recreational amenity.

Wart-stemmed Ceanothus

Based on the entire sample there are 2.49 million individuals occurring on the Mt. Whitney-Double Peak formation. 17% of this population will be impacted, leaving 83% (1,992,000 individuals) of this population extant. These numbers appear to be adequate to sustain this population. This is adequate conservation.

Summer Holly

Summer Holly populations are not as dense as wart-stemmed ceanothus. Based on the entire sample (please see P. Mock and J. Rock, Page 98 of the Subarea Plan) there are an estimated 253,000 individuals in the study area, of which 221,000 individuals remain extant. This is adequate conservation.

SCSD-74. All projects in upland areas are required to implement NPDES standards. NPDES Best Management Practices (BMP) enforced by the Regional Water Quality Control Board will ensure that development of upland areas will avoid sedimentation impacts. Those same BMPs will preclude impacts from untreated road and urban runoff from reaching riparian habitats.

SCSD-75. The landfill will be revegetated per a court-approved landscaping plan. This revegetated area, will provide an important linkage in the Southern FPA. See Figure 5 of the City's Subarea Plan illustrating the critical linkage through the closed landfill.

SCSD-76. See Figure 5 of the City's Subarea Plan illustrating the critical linkages. Current design of University Commons accommodates linkages and/or corridors to MHCP standards.

SCSD-77. The current land uses are predominantly urbanized or agriculture. The 68% conservation of open space associated with the San Marcos Highlands and the project redesign provides adequate connectivity. Implantation of Objective 2 of the San Marcos Highlands Specific Plan Amendment is achieved through the attention of 68% of the project's open space. Please see San Marcos Highlands draft Supplemental Environmental Impact Report (DSEIR) for a response to the County's comments.

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- SCSD-78 The County has recently reaffirmed its position on the San Marcos Highlands project. In his letter of April 2, 2002, Gary Pryor, Director of the County's Department of Planning and Land Use, stated, "The County believes that annexation of these lands [the Highlands property in the County] to the City of San Marcos would create a significant negative impact to the County's North County MSCP Subarea Plan associated with habitat loss and blockage of a viable wildlife corridor." (See attachment C.)
- SCSD-79 It would appear in the Northern FPA that The City of San Marcos is not following Objective 2. How will the proposed preserve design meet this objective? What steps are being taken to work with the County so that the linkages between the MHCP and MSCP preserve designs will be adequate? How will the implementation of the San Marcos Highlands project and Las Posas Road extension to Buena Creek Road provide a functional wildlife corridor? How will the implementation of the University Commons project with the realignment of San Elijo Road and the extension of Melrose provide an adequate biological corridor between Cerro de las Posas and Carlsbad?
- SCSD-80 22. P. 49, Limitations
Northern Linkages: The City is linking the Preserve design using a floating corridor and its exact location will be determined as the area develops. This statement is too vague. The determination of corridor and linkages is one of the main reasons why the City is developing a habitat plan. What scientific guidelines are used to support the biological principles and viability of a floating corridor? How does the City plan to direct wildlife movement around future development? In addition, the plan states, "A secondary linkage occurs along the second San Diego Aqueduct R-O-W." Since some of the area lies outside both City limits and Sphere of Influence, how will the City ensure these areas remain in their natural/vegetative state? How will the City control the off-road vehicles that presently use the roadway that is part of the R-O-W?
- SCSD-81 23. P. 49, Southern Linkages
This section discusses a corridor to "Southwest Carlsbad." Shouldn't this read "Southeast Carlsbad"? Also discussed are "three corridors to the County MHCP." Shouldn't this read "County MSCP"?
- SCSD-82 How will wildlife will safely cross Rancho Santa Fe Road on its way to Carlsbad? Please discuss both the corridor to North Carlsbad and the corridor to "La Costa Meadows Open Space area."
- SCSD-83 24. P. 51, Limitations (top of page)
What is meant by the second sentence in the first paragraph, "Some
- SCSD-78. Please note that the current land uses north of the project site are predominantly urbanized or agriculture. Scripps Highlands provides the 68% conservation of open space.
- SCSD-79. The current land uses predominantly north of the project site are urbanized or agriculture. The 68% conservation of open space associated with the San Marcos Highlands and the project redesign provides connectivity. The University Commons project was exempted from Section 9 of the ESA through Section 7 consultation with the Corps with the realignment of San Elijo Road and the extension of Melrose. Wildlife Agency approval of the projects design has ensured adequate connectivity by providing a bridge by the Melrose crossing of San Marcos Creek.
- SCSD-80. The FPA maps fixes the general area in which the corridor will occur. The corridor design will insure adequate width to allow connectivity between the ridgeline of "P" mountain and the Twin Oaks Valley Reach of San Marcos Creek. The corridor was suggested by the Wildlife Agencies in accordance with standard practices of connecting two separated habitats. Utility access roads are utilized by wildlife as well as roads that provide fire suppression vehicles access and fuel breaks. Wildlife utilize these areas as they offer the path of least resistance. Monitoring and Maintenance documents will assure that adequate provisions are provided to ensure wildlife usage of these corridors.
- SCSD-81. The revised plan will reflect a change in this verbiage.
- SCSD-82. This area is already developed in terms of road infrastructure and a mixture of developed land uses. Wildlife will most likely cross the existing Rancho Santa Fe Road under the bridge spanning San Marcos Creek. The realignment of Rancho Santa Fe Road will also have a bridge spanning San Marcos Creek. There are a culvert and fencing to direct wildlife. Other opportunities to cross Rancho Santa Fe are limited for large mammals, such as deer. Smaller mammals utilize moderately sized culverts (e.g., 48 inch diameter) to cross under roads. Birds will fly over the road where native habitats occur on both sides of the road. The corridor to north Carlsbad is a "stepping stone" corridor due to the existing developed landscape north of the intersection of Melrose and Rancho Santa Fe. Large mammals may not be able to cross consistently due to existing roadways and development.
- SCSD-83. A full citation of this passage is self-explanatory: "Remaining habitats have been fragmented by existing development and past agricultural patterns".
- * This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

communities and are subject of adverse edge effects."?

SCSD-84 The statement in paragraph 2, that the Northern and Southern FPA effectively conserve the last remaining unfragmented blocks of Coastal Sage Scrub and Chaparral in the City is incorrect. How can this statement be made when: 1) most of the CSS in the Hedionda Creek Valley in northern San Marcos is excluded from the Northern FPA; 2) only 50% of the CSS on the Murai property is conserved; and 3) only 25% of the chaparral on Cerro de las Posas (proposed golf course area) is conserved?

SCSD-85 What is the meaning of the last sentence in this section, "Therefore, adequate conservation in the large unbroken block of habitat in the Northern and Southern FPA will result in take covered species."?

SCSD-86 25. P. 51, Limitations (bottom of page)
The statement that the Subarea Plan adequately conserves the remaining large unbroken blocks of habitat in the Northern and Southern FPA is incorrect. As we have pointed out previously, the developments proposed in the Northern FPA for the Hedionda Creek Valley destroy a large part of the unbroken block of habitat, including CSS and riparian habitat, and disrupt an important wildlife corridor. The proposed golf course development on Cerro de las Posas destroys 125 acres of chaparral. The University Commons project in southern San Marcos destroys a large area of CSS south of San Elijo/Questhaven Road. How can the Wildlife Agencies concur that the Subarea Plan adequately conserves the remaining large unbroken blocks of habitat?

SCSD-87 The area that is shown in brown on the Subarea Plan Map, in the Southern FPA on the eastern side of San Marcos, is indicated in Figure 5, p. 50, as a habitat linkage to the County MSCP. On the MHCP map of vegetation communities inside the BCLA (draft MHCP Plan, Volume I, Figure 2-4), this area is shown as CSS/Chaparral Mix. This is valuable habitat. Why is the City proposing only 60% conservation in this area?

SCSD-88 26. P. 52, paragraph 1
In this paragraph, it says that the Northern FPA provides a northward linkage to sensitive habitat lands in the County and therefore the Subarea Plan adequately provides for this critical linkage. As previously stated, the County has been very concerned about how this linkage will occur and has been critical that the City's development plans for the Agua Hedionda Creek Valley will fragment the remaining large block of coastal sage scrub connecting the MHCP to the MSCP. Since the County has not completed its habitat plan for the area, where does this linkage occur? What evidence can be supplied that ensures connectivity between these two habitat plans in the

SCSD-84. A close examination of the FPA map shows that the large unfragmented block occurs on the ridgeline of "P" mountain. The Highlands is located to the west of this unfragmented block. Of the 203 acres associated with the Highlands Project, 135 acres, or 68% of the project is in open space. This open space contains the only sensitive species on the project site, the California Gnatcatcher. The contribution of 135 acres at 100% conservation combined with 100% conservation area associated with the Paloma project, the 100% conservation in the Rupe mitigation lands, plus the ridgeline at 75% conservation results in the conservation of the large unfragmented block occurring on the ridgeline of "P" mountain as well as a net acreage in the Northern FPA of over 350 acres. Agua Hedionda Creek and coastal sage scrub will be the focus of the preserved area. The San Elijo Hills project contributes 891.81 acres (861.8 acres ungraded) to the preserve, the single largest contribution of any landowner. 83% (1,992,000 individuals) of the Wart-stemmed Ceanothus population will remain extant. Though Summer Holly populations are not as dense as wart-stemmed ceanothus, an estimated 253,000 individuals are in the study area. 221,000 individuals would remain extant. These numbers appear to be adequate to sustain this population. (See page 98 of the SAP.)

SCSD-85. Please see response to comment SCSD-84.

SCSD-86. A close examination of the FPA map shows that the large unfragmented block occurs on the ridgeline of "P" mountain. The Highlands is located to the west of this unfragmented block. Of the 203 acres associated with the Highlands Project, 135 acres, or 68% of the project is in open space. This open space contains the only sensitive species on the project site, the California Gnatcatcher. The contribution of 135 acres at 100% conservation combined with 100% conservation area associated with the Paloma project, the 100% conservation in the Rupe mitigation lands, plus ridgeline at 75% conservation results in the conservation of the large unfragmented block occurring on the ridgeline of "P" mountain as well as a net acreage in the Northern FPA of over 350 acres. The San Elijo Hills project contributes 891.81 acres (861.8 acres ungraded) to the preserve, the single largest contribution of any landowner. 83% (1,992,000 individuals) of the Wart-stemmed Ceanothus population will remain extant. Though Summer Holly populations are not as dense as wart-stemmed ceanothus, an estimated 253,000 individuals are in the study area, of which 221,000 individuals would remain. These numbers appear to be adequate to sustain this population. (See page 98 of the SAP.) Conservation levels associated with the San Elijo Hills project assure survival

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of sensitive species as well as the preservation of the largest block of habitat in the Subarea Plan owned by a single landowner.

SCSD-87. Please note that this area is predominately Chaparral with only a small portion of the more mesic areas supporting Coastal Sage Scrub. The area known as SPA 2 is listed as a potential acquisition site of the Subarea Plan.

SCSD-88. The single largest block of coastal sage scrub occurs along the ridgeline of "P" Mountain, rather than in the Highland Project as indicated by the commentator. A western extension of a mix of Coastal Sage Scrub and Chaparral extends northwestward from this ridgeline.

Of the 203 acres associated with the Highlands Project, 135 acres, or 68% of the project is in open space. (The open space contains the only sensitive species on the project site, the California Gnatcatcher.)

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Northern FPA?

SCSD-89

27. P. 52, 4.2 land use and ownership considerations

In paragraph 4, it states that a conservation bank has been approved in the Northern FPA. Where is the location of this conservation bank?

In paragraph 7, it states, " Combined, the Northern and Southern FPA contribute nearly 3,000 acres of conserved lands to the preserve." Several areas within the San Marcos Subarea Plan Public Review Draft appear to refer to areas outside San Marcos' Sphere of Influence. In order to provide an adequate picture of how the Preserve design relates to the City's sphere and the MHCP study area, please answer the following:

SCSD-90

1. How many acres of the Preserve are located within the City limits?

SCSD-91

2. What percentage is this of the remaining habitat (BCLA) in the City of San Marcos?

SCSD-92

3. How many acres of the Preserve are located outside of the City limits in San Marcos' Sphere of Influence?

SCSD-93

4. How many acres of the San Marcos Preserve are outside the City's sphere? We are aware of one area in the Northern FPA where the area shown as 100% conserved in the Subarea Plan is outside San Marcos' sphere. Are there other areas? If so, where are they and what is the justification of including them in the San Marcos Subarea Plan?

SCSD-94

Also, in this paragraph, the statement that the City's Subarea Plan has provided a comprehensive tool guiding development away from sensitive natural habitats is not true. Several projects previously discussed in this comment letter indicate that the City has not made a sincere effort to preserve its most sensitive resources including wetlands, coastal sage scrub, and wildlife corridors. How will the City correct this problem and work towards better conservation?

SCSD-95

28. P. 53, Top of page

In the second paragraph at the top of the page, the statement is made, "...some private parcels will likely need to be acquired from willing sellers to meet both biological and land use goals. Furthermore, these parcels may be relatively costly to acquire due to location, zoning, and other factors."

Acquisition of land containing valuable habitat and/or functioning as a linkage area is probably the best way to assure its preservation and to avoid fragmentation. The City of San Marcos needs to acquire more of the lands containing valuable habitat and/or functioning as linkage areas – that is, more of the land in the BCLA – than they are currently proposing. It is recognized that these lands may be relatively expensive to acquire;

SCSD-89.

This is the Rupe Mitigation lands occurring along the eastern slope of the ridgeline of "P" Mountain (Owens Peak).

SCSD-90.

Refer to the Table on Page 65 of the City's Subarea Plan entitled "May 2000 Habitat Acreage And Conservation Within The FPA Footprint". Of the 267.8 acres of natural habitat outside the FPA (also coterminous with the City limits), 255.6 acres, or 95%, are conserved. This conserved acreage represents mitigation for project impacts directly adjacent to and inside of the City of San Marcos. Figure 4 of the City's Subarea Plan shows the Subarea Plan boundary and the FPA components.

SCSD-91.

Please see response to comment SCSD-90.

SCSD-92.

Refer to the Table on Page 65 of the City's Subarea Plan entitled "May 2000 Habitat Acreage And Conservation Within The FPA Footprint". Areas outside of the City limits in San Marcos' Sphere of Influence can be seen in the column Gross Acreage in FPA outside BCLA. BCLA calculation stopped at the City boundaries.

SCSD-93.

Please see responses to comments SCSD-90 through SCSD-92.

SCSD-94.

Comment noted.*

SCSD-95.

As stipulated in the City's Subarea Plan and the MHCP EIS/EIR, the City's conservation levels are biologically adequate to assure connectivity in the critical gnatcatcher corridors in the southern FPA and conserve the large block of unbroken habitat in the Northern FPA.

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however, an adequate Preserve cannot be assembled without some cost. We believe that the public is willing to bear the cost of creating an adequate Preserve. Therefore, we propose that the City of San Marcos identify land in the BCLA that can be acquired from willing sellers and make plans to acquire these lands as part of the Preserve.

Please comment in detail on this proposal.

29. Pp. 53-54, Designation of Preserve Focused Planning Areas

SCSD-96

Northern FPA

This paragraph fails to mention that this area contains one of the last large blocks of coastal sage scrub and provides linkage to the County's MSCP habitat plan. Also missing is the importance of the area as the headwaters of Agua Hedionda Creek, which serves as a recognized wildlife corridor. Please explain why these details are missing.

SCSD-97

Southern FPA

It is unclear why the closed landfill is considered part of the County Core, an area to be of critical conservation importance allowing for take of the gnatcatcher elsewhere in the North County. This area is disturbed habitat of low value and not part of the Biological Core and Linkage Area. Why was this area chosen to be part of the Preserve?

SCSD-98

30. P. 54, Flood Control Infrastructure and Associated Appurtenances located:

We are unable to identify exactly where the "S" curve and the "Easy Living Mobilehome Park" are located. Please indicate these locations on a map. What flood control infrastructure and associated appurtenances are planned for these areas? How will they impact Preserve lands?

SCSD-99

31. P. 55, Bottom three-quarters of page

The bottom 3/4 of the page is blank. Is something missing? If, so what is missing?

SCSD-100

32. Pp. 56, Northern Focused Planning Area Conservation Rates and Policies
Please refer to the map entitled "City of San Marcos Focused Planning Area" when addressing the comments below.

a. Murai SP: This area consists of coastal sage scrub, riparian habitat and serves as a buffer between two residential areas. Two canyons run through the property and channel rainfall from the surrounding hillsides to Agua Hedionda Creek. Wildlife, displaced by the Santa Fe Hills development, have

SCSD-96. A review of the vegetation map (1" = 2000') for the MHCP shows the single largest block of coastal sage scrub occurs along the ridgeline of "P" Mountain, rather than in Agua Hedionda Creek watershed as indicated by the commentator. The area indicated by the commentator is a mix of Coastal Sage Scrub and Chaparral extends northwestward from this ridgeline. The Subarea Plan and previously approved projects provide for conserving Agua Hedionda Creek as a wildlife corridor. The landfill will be revegetated per a court-approved landscaping plan. This revegetated area, will provide an important linkage in the Southern FPA. See Figure 5 of the City's Subarea Plan illustrating the critical linkage through the closed landfill.

SCSD-97. Please see response to comment SCSD-96.

SCSD-98. The Easy Living Mobile Home Park and the "S" curve are generally located east of Discovery, west of McNair Road, and south of San Marcos Boulevard.

SCSD-99. A graphic was to be inserted showing road alignments crossing San Marcos Creek. This graphic will be provided in the City's Final Subarea Plan.

SCSD-100. Page 55 of the Subarea Plan list the following conservation policies addressing the above concerns on development of the Murai property:

- Manage conserved area for preservation of Riparian and Coastal Sage Scrub habitats.
- Project design shall insure a common linkage along with San Marcos Highlands to the east.
- The required 50% project open space shall be left in native vegetation and this shall contribute habitat linking the northern FPA to the County jurisdiction to the north.
- Project design shall utilize the aqueduct R-O-W to establish a minimum 400 foot wide corridor.

No application has been submitted for development of the Murai property. Project approvals will have to implement NPDES best management practices. Additionally, all impacts to Agua Hedionda Creek must be minimized.

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been pushed up into these canyon areas where they stay during the day and forage along Agua Hedionda Creek at night. The Subarea Plan acknowledges the importance of preservation of its riparian habitat, CSS and wildlife corridors. Since this area contains all three and serves as a north-south linkage, why is only 50% considered for preservation? How will the City's development objectives of 89 residential dwelling units, as indicated in the College Area Community Plan, be obtained without filling in the canyon that now serves as a tributary to Agua Hedionda Creek? As stated in a previous comment, the San Diego aqueduct R-O-W has problems that need to be addressed. How will the City assure the public and the Wildlife Agencies that the R-O-W will adequately function as a wildlife corridor?

SCSD-101 b. San Marcos Highlands. In a prior comment, the question was asked why the City excluded the vacant lands proposed for development on the Highlands site from its FPA. By excluding all areas to be developed, it appears to the public that 100% of the area is being conserved when only about 60%, mostly around the edge of the site, is being conserved. Since the whole site is located in the MHCP Biological Core and Linkage Area, please explain why this was done? Problems associated with the project's ability to link to the County lands in the north, use of the San Diego R-O-W, and the extension of Las Posas Road have previously been addressed in this comment letter.

SCSD-102 c. San Marcos Creek, Twin Oaks Valley Reach Mitigation Area. According to the map, this area appears to run along the Twin Oaks Valley road and lies outside the Biological Core and Linkage Area. This area is important because it contains a large amount of the wetlands along San Marcos Creek. However, it is surrounded by high-density residential, commercial and industrial uses. Who presently manages this mitigation area? If a homeowners association manages it, how will this be addressed when the area becomes part of the City's Subarea Plan?

SCSD-103 1) The portion of the Creek that runs adjacent to Twin Oaks Valley Road from north of La Cienega through the heart of the City contains wetlands and is heavily fragmented. This is most apparent as San Marcos Creek passes under Mission Road via a culvert under City property until it surfaces at Twin Oaks Valley Road and SR78. How large is the culvert? How long is the span from Mission to SR78? How is it designed to accommodate wildlife movement? What methods are presently used to ensure adequate wildlife movement from the northern-most area set aside for 100% preservation through to Lake San Marcos?

SCSD-104 2) The reversed "L" shaped property in the northern portion consists of

SCSD-101. It is unclear how the public would construe this since the FPA Map clearly shows the location of the conserved and non-conserved lands in the San Marcos Highlands Project. The commentator makes the assumption that all BCLA lands were to be incorporated at 100% conservation into the FPA. This is not the case. The BCLA has always been a regionally planning level tool. BCLA lands were the area from which the FPA were to be assembled.

SCSD-102. This mitigation area is included in the Subarea Plan under the direction of the USFWS and CDFG to include all mitigation lands in the FPA. The Final Subarea Plan will address how this will be managed.

SCSD-103. Five 10-foot by 11-foot boxes run under Mission Road for a length of approximately 55 feet.

However, please note that San Marcos Creek is not part of the Focused Planning Areas, nor is it part of the Subarea Plan other than being an area wherein "no net loss policies" apply. The MHCP has established "no net loss" policies.

Highway 78 effectively isolates the Northern FPA from the Southern FPA.

As a reminder, Plan approval will not result in any wetland permits, nor will it alter the existing regulatory control of state and federal resource agencies over wetlands. Any future plans affecting San Marcos Creek will require independent review by the Resource Agencies.

SCSD-104. The reversed "L" shaped property is the offsite mitigation area for impacts resulting from the Civic Center construction and Hwy 78 ramp construction. The disturbed grasslands lie outside the mitigation areas. There are no current plans to revegetate this area.

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wetlands, riparian woodlands, a large retention basin and a large amount of disturbed grassland. The grassland area appears to have been used for agriculture. Will this area be revegetated? If so, how and when?

SCSD-105 3) The long appendage that extends into a small pocket of homes off of Berkshire Court appears to be an isolated pocket that includes portions of the golf course. Does this area include the golf course? The above-ground Vista flume runs through this area and the habitat appears to be sparse and degraded. What is the status of the habitat in this area? If it is degraded, what measures will be introduced to revegetate the area?

SCSD-106 4) The area south of La Cienega that runs along Twin Oaks Valley Road appears to include paved trails, riding trails and portions of the golf course. This must be an error and needs to be corrected in the final map. Please explain exactly what is being conserved and why.

SCSD-107 5) The area across from the intersection of Twin Oaks Valley Road and Borden Road narrows, creating a pinch point for wildlife movement. What is the width of this corridor? How much of the width is wetlands? How will it be an adequate functioning wildlife corridor?

SCSD-108 d. Rupe Family Trust Mitigation Land and Ryan Subdivision Mitigation lands. It is unclear where these areas are. Please identify these areas on a map. Also please answer the following: What habitat exists on site? What is the present quality of the habitat? When was the last monitoring of the site performed? Who presently manages the monitoring? Are these areas within the BCLA?

SCSD-109 33. Other comments associated with the City of San Marcos Focus Planning Area Map
Overall, it was very difficult to compare the table on page 56 in the Subarea Plan, "Area Conservation Rates and Policies," with the map. It would be helpful if the map had a key that gave the property name so that the public could compare the map with the conservation description listed in the Subarea Plan.

SCSD-110 a. Why was there no attempt to connect the open space land (shown in green on the map) on the eastern portion with the Escondido Preserve lands below Emerald Heights? This would have helped provide connectivity to the area adjacent to Borden road east of Vineyard that is proposed for 100% conservation. Another area, just south of the intersection of Vineyard and Twin Oaks Valley Road, was also not considered for preservation. This area, combined with the large open space area adjacent to Emerald Heights, could have provided connectivity between Escondido, San Marcos Creek (adjacent to

SCSD-105. The Biological Monitoring Program will address how this will be managed. No revegetation is proposed in this location. It is 100% conserved.

SCSD-106. A revised FPA map will distinguish between mitigation area and riding trails.

SCSD-107. The riparian corridor along the San Marcos Creek at Borden Road and Twin Oaks Valley Road varies between 72 feet and 97 feet. The actual thread at the creek is substantially less. Utilizing the Focused Planning Area Map included in the Subarea Plan, this area scale is at 10 feet. The Focused Planning Area Map is based on digitized aerial photography. The constriction is caused by existing development.

Please note that San Marcos Creek is not part of the Focused Planning Areas, nor is it part of the Subarea Plan other than being an area wherein "no net loss policies" apply. The MHCP has established no net loss of wetland policies.

The revised Subarea Plan will include an exhibit verifying the Rupe Family Trust and Ryan Subdivision Mitigation Lands. Black sage dominated coastal sage scrub currently exists at this location. The quality of the habitat is considered higher quality due to its location in the proposed FPA. The Biological Monitoring Program will address how this location will be managed. Furthermore, these areas are within the BCLA.

SCSD-108. Please see response to comment SCSD-107.

SCSD-109. The revised Subarea Plan will include an exhibit to assist the public in comparing the above-mentioned table with corresponding maps.

SCSD-110. The intervening area in the City of San Marcos is developed as rural residential homes. Additionally, it appears the area referenced may be in the County, outside the limits of the Subarea Plan. Please note that these two roads do not intersect. The general area is developed as residential.

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Mission Road) and the San Marcos Creek Twin Oaks Valley Reach Mitigation area. Why were these possible connections not pursued?

- SCSD-111 b. Why is the large area located across the midpoint of the Twin Oaks Valley Reach Mitigation Area only considered for 30% conservation? With an adequate wildlife crossing under Twin Oaks Valley Road, this area could provide a functional biological linkage between the San Marcos Creek Twin Oaks Valley Reach Mitigation Area and the San Marcos Mountains. Since residents report that mountain lion sightings still occur in this area, connectivity is an important feature.
- SCSD-112 c. The large area along the east side of the San Marcos Mountains is shown at 75% conservation. This area is predominantly steep slopes. What assurances will be given by the City that there will be adequate connectivity between this area and adjacent areas shown at 100% conservation?
- SCSD-113 d. Three smaller fragmented areas, shown at 100% conservation, lie adjacent to development in the Santa Fe Hills community. Are these mitigation areas? What is the habitat in these areas? What is the status of the habitat? Is there a mitigation-monitoring plan for these areas? When were these areas last monitored? Who manages these areas? One of the areas within this group is believed to contain the last remaining Thread-leaved brodiaea population left within CACP. What is the status of this community of brodiaea? If any of these areas are degraded, what measures will the City use to revegetate these areas? Who will repair the damaged fencing that was installed to protect these areas from human and animal disturbance? When it be repaired?
- SCSD-114 e. Why is Agua Hedionda Creek not considered for preservation? As previously stated, it is part of the BCLA, consists of wetlands and is a recognised north-south wildlife corridor. Considering the emphasis the MHCP places on preservation of wetlands and riparian habitat, why was this area excluded?
- SCSD-115 34. P. 56, Vernal Pool Major Amendment Area

The vernal pools in San Marcos were identified in the 1996 Biological Resources Report for the City of San Marcos. Due to the very sensitive nature of vernal pools, they need the highest level of protection. The Wildlife Agencies should carefully review the preservation plans for vernal pools in San Marcos before giving the City permitting authority under the MHCP. How will the public be notified of annexations of properties

- SCSD-111. The FPA maps fixes the general area in which the corridor will occur. A minimum of 30% of this area will go into a corridor. The corridor design will insure adequate width to allow connectivity between the ridgeline of "P" mountain and the Twin Oaks Valley Reach of San Marcos Creek.
- SCSD-112. Please refer to Section 4.3.2, page 55, for the eight mandatory goals that assure connectivity in this area.
- SCSD-113. It appears the commentator refers to the Paloma Brodiaea mitigation lands. The final Subarea Plan will address how this will be managed. Also, the City has initiated action that will result in fence repair.
- SCSD-114. The Agua Hedionda Creek watershed is addressed in Section 4.3.2. Conservation policies for both Highlands and Murai address preservation of riparian habitats.
- SCSD-115. The Wildlife Agencies will carefully review the preservation plans for vernal pools in San Marcos. If this area is proposed for development, it will require annexation into the MHCP. Because annexation of the vernal pool area will require a major amendment, public notification is required under CEQA/NEPA. See page 81 of the Subarea Plan.

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containing vernal pools into the MHCP? Will the public have the opportunity to comment on Amendments to the MHCP to annex properties containing vernal pools?

SCSD-116 The City of San Marcos is concerned about property owner's rights. However, they seem to be giving special consideration to the owners of the properties where the vernal pools are located. For example, the statement on p. 56, "Development of those properties having narrow range endemics in the vernal pool major amendment area shall conform to the MHCP standards upon annexation as long as those standards do not result in a taking." Also, on page 71, in Sec. 5.1.4, the Subarea Plan reiterates that narrow range endemic conservation standards shall apply to properties containing vernal pools upon annexation "as long as those standards do not result in a taking of private property."

SCSD-117 Who owns the properties where the vernal pools are located? If the existence of vernal pools on any (or all) of these properties renders the economic use of the property infeasible, why would the City object to the acquisition of the property and inclusion in the MHCP preserve?

SCSD-118 What actions are the Wildlife Agencies taking to protect the vernal pools on these properties?

SCSD-119 35. Pp. 58-62, Southern Focused Planning Area
a. Closed Landfill Area. There are several questions regarding this site, as indicated in previous comments. The site is outside the BCLA, degraded and would need a vegetation plan to make it acceptable habitat. What is the timetable for revegetation? In addition, the revegetation plan, Attachment E, was not supplied with this Draft Subarea Plan.

SCSD-120 b. San Elijo Hills Open Space Lands: There are many questions surrounding this area as well as the proposed San Elijo Hills Golf Course. How and why the Preserve boundaries took their particular shape in this area is unclear. What was set aside, its condition and for what purpose is also unclear. Residents in the area state that the original intent was to set aside the land as a regional open space park, for passive recreational use. Later, the plan changed and a large portion of the open space was considered for a public or private golf course. Money appears to have been exchanged between the developer and the City in the process and the original Development Agreement has been amended. As previously stated, it appears that the City's General Plan was amended to bring it into conformance with the San Elijo Hills development. In order to evaluate how this area fits into the Preserve structure and answer some of these questions, it was necessary to

SCSD-116. One of the principals of the MHCP is that regulations will not result in the taking of private property. This consideration is given to all properties potentially affected by MHCP standards. Conservation standards for narrow range endemics are substantially higher for this specialized plant community than for other communities, therefore the takings caveat is more pronounced.

SCSD-117. The City does not object to adding property from willing sellers. However, it should be noted that acquisition costs for vernal pool properties are extremely expensive, due to their history of the industrial zoning and the associated improvements.

SCSD-118. The Wildlife Agencies are currently not conducting any actions on the vernal pools.

SCSD-119. The landfill will be revegetated per a court-approved landscaping plan. This revegetated area, conserved at 100% will provide an important linkage in the Southern FPA. See Figure 5 of the City's Subarea Plan illustrating the critical linkage through the closed landfill. The Attachments to the Subarea Plan are available at City Hall.

SCSD-120. Please see response to SCSD-65.

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research the portion of the Development Agreement used to set aside this area for preservation. (The Development Agreement reference is the one amended in 1997. Is this the most recent version of the Development Agreement?)

SCSD-121 Page 12 of the development agreement states,

City hereby agrees that, based on the significant benefits of the Project, the 45 acres of allowed coastal sage scrub habitat that City possesses as a result of its participation in the NCCP planning process shall be reserved for the Project from the effective date of this Amended Agreement through the date that City has adopted the BRMP and has received approval of CDFG and USF&WS for same ("BRMP Approval Date"). City agrees to use its best efforts to achieve the BRMP approval at the earliest feasible date. In the event that City, CDFG, and USF&WS cannot reach an agreement concerning the BRMP, City agrees to pursue other regulatory options that may be available to City that would accommodate development of the Project. During the period pending the BRMP Approval Date, Owner shall assist in funding the City's efforts to complete the BRMP and to secure the necessary approvals for same in an amount not to exceed Twenty-Five Thousand Dollars (\$25,000) ("Maximum Amount"). City shall submit invoices reflecting work done by consultants on the BRMP for payment to Owner, which invoices shall be paid within thirty (30) days after receipt of invoices from City provided that the Maximum Amount has not been exceeded, after which time Owner shall have no further funding obligations with respect to the BRMP.

SCSD-122 How did this development agreement affect the San Elijo Hills mitigation area and San Marcos' Subarea Plan? What was the total acreage involved? Was some of this land "Area Q"?

SCSD-123 On same page of this agreement under "Mitigation Obligations Related to Prior Clearing of Property," it states,

Owner has been informed that a portion of the Mitigation Property may be condemned or acquired under threat of condemnation for use as a park. In the event that a portion of the Mitigation Parcel is condemned or acquired under threat of condemnation, Owner shall contribute Fifty Thousand Dollars (\$50,000) to City for habitat identification and preservation, to be used at the discretion of the Development Services Department of City, for the purpose of completing mitigation for impacts to coastal sage scrub and California gnatcatchers, as identified in the Final Environmental Impact Report for the original Specific Plan. This contribution to City, coupled with the previously acquired coastal sage scrub habitat, as reflected in the HP Agreement, shall constitute complete mitigation for impacts to coastal

SCSD-121. Please see response to comment SCSD-120.

SCSD-122. Please see Page 62 of the Subarea Plan for details on San Elijo's contribution to the Southern FPA.

SCSD-123. Please see response to comment SCSD-122.

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sage scrub and associated habitats, including impacts to California gnatcatchers, as identified in the Final Environmental Impact Report for the original Specific Plan.”

SCSD-124 Was this mitigation property condemned? If so, how was the money spent? Did it or will it benefit the Subarea Plan? If so, how?

SCSD-125 c. San Elijo Hills Golf Course. The above-referenced Development Agreement, on page 6 of Exhibit B, states,

a. Upon or before the recordation of the first final map for the Project, Owner shall grant City open space easements for eighty percent of the Double Peak Regional Park and one hundred percent of the Neighborhood Park.” Who owns the remaining 20% of Double Peak Regional Park? What was the total acreage involved? Is some of this land “Area Q or golf course”?

SCSD-126 This page of the document also states,

The following Regional Park facilities shall be completed by Owner:

- (1) Construction of a primitive group camping area prior to the issuance of a building permit for the 1,800th residential dwelling unit.
- (2) Construction of a primitive amphitheater prior to the issuance of a building permit for the 2,750th residential dwelling unit.

Where are these areas located? Are they within the hard-line Preserve area of Subarea Plan? Page ES-19 of the Subarea Plan states that golf courses and camping do not meet accepted land uses within and adjacent to the Preserve. How will the City meet the guidelines for the Preserve and provide a Golf Course and camping area? Was the Golf Course part of the regional park? If not, will monies gained from the development of the golf course be applied to habitat acquisition and Preserve maintenance?

SCSD-127 d. Habitat Linkage Area SPA-2, Habitat Linkage Area to CSUSM, Habitat Linkage Area Vista Colina Drive, Huff Property, Wilern Mitigation Land, Meadowlark Estates On-site Mitigation Land, Miscellaneous Undeveloped Lands surrounding SAP-2, South Coast Asphalt (Hanson), Kaufman and Broad Mitigation Area, Village N (Rancho Coronado) Open Space Lands and Lands to the west and to the south of San Elijo Hills

It is unclear where these areas are. Please identify these areas on a map. Also please answer the following: What habitat exists on site? What is the present quality of the habitat? When was the last monitoring of the site performed? Who presently manages the monitoring? Are these areas within

SCSD-124. The mitigation property was not condemned. Rather, it was dedicated. The Development Agreement stipulated that the Developer contribute \$50,000 toward the preparation of the Subarea Plan. These funds have been spent.

SCSD-125. Please see response to comment SCSD-125.

SCSD-126. Yes, this land is part of the golf course. San Elijo Hills has dedicated a Neighborhood Park and granted the City an Irrevocable Offer of Dedication for the regional parks area.

The regional recreational facilities will be located within Area Q along with the other listed open space areas not in the “hard-line” preserve areas. Please note that a requirement of the Golf Course is that it does not impact downslope chaparral areas as well as the FPA, as determined by the analysis associated with the Conditional Use Permit. Until plans are submitted, responses to site-specific quantification can not be ascertained.

SCSD-127. The Subarea Plan will be revised to include a location map of these properties. Please refer to Section 4.3.2, pp 57- 62. Additionally, a vegetation map of the City of San Marcos is available in the Planning Department with information on the habitats in the City. Management issues will be addressed in a Biological Monitoring Program.

In general, the following information is provided for specific properties:

- Wilhern – Managed by The Environmental Trust.
- Huff Property – Will be managed by Brookfield Homes.
- Meadowlark – Managed by The Environmental Trust.
- South Coast – Permitted prior to management requests.
- Kaufman & Broad – Permitted prior to management requests.
- Village N – Subject to future permitting – will be required to be managed at that time.
- West of San Elijo Hills – Subject to future permitting – will be required to be managed at that time.
- North of San Elijo Hills – Owned by County of San Diego – is not required to be managed.

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the BCLA?

SCSD-128 36. P. 63, San Marcos Creek
We previously commented on San Marcos Creek north of Highway 78 and between Highway 78 and Lake San Marcos. We also discussed the proposed Melrose Drive crossing of San Marcos Creek south of Lake San Marcos.

In the Sierra Club's comment letter of Jan. 14, 2002, to the Army Corps of Engineers regarding Brookfield Homes' application for a permit for wetlands impacts to San Marcos Creek, we expressed the following concerns:

a. Grading along the proposed realignment of San Elijo Road. Our letter stated, "It appears that grading along the proposed realignment of San Elijo Road will reach almost to San Marcos Creek, along its south side. This grading needs to be pulled away from the wetlands."

What actions have been taken to pull the grading away from the wetlands and to prevent impacts to the wildlife corridor along the creek in that area?

b. Grading along other parts of San Marcos Creek. Our letter stated, "It appears that grading will occur in other places along San Marcos Creek, due to the development, although it is difficult to tell from the maps attached to the Public Notice [of the application for the 404d permit]. All grading impacts to San Marcos Creek and the wildlife corridor need to be clearly described. They should be avoided, and the project redesigned accordingly, if necessary."

What actions have been taken to clearly identify these grading impacts to San Marcos Creek due to the development and to avoid them?

SCSD-129 37. P. 66, Net Acreage in FPA outside BCLA and Percent Conserved
The Sierra Club supports the maximum level of conservation in the MHCP, which is Alternative 3, the Biological Core and Linkage Area (BCLA). The BCLA includes all of the highest quality remaining habitat areas, including the largest blocks of habitat and critical linkages between them, according to the MHCP EIS/EIR, p. ES-10. The table on p. 66 of the subarea plan indicates that there are 255.6 net acres in the FPA outside the BCLA. What is the ecological value of these lands and why are they proposed for preservation in the subarea plan?

SCSD-130 38. P. 69, Hard-line 100% Conservation Areas
This chart indicates that 29 acres of the San Elijo Hills Open Space Lands, included in the hard-line 100% conservation area, has been graded. How does this meet the

SCSD-128. San Elijo Road was permitted by USACOE, USFWS, CDFG, and RWQCB. As a reminder, Plan approval will not result in any wetland permits, nor will alter the existing regulatory control of state and federal resource agencies over wetlands. Impacts cannot be quantified until a design is proposed. Future projects will be required to implement all site design measures and mitigation measures subject to permit conditions.

The Subarea Plan requires no net loss for wetland areas.

SCSD-129. It is incorrect to assume that no high quality habitat occurs outside the BCLA. Additionally, it is an artifact of the GIS evaluation process whereby the BCLA footprint terminates at the City boundary. It is not that the BCLA doesn't exist outside the City limits, but that those (BCLA lands) simply do not register in the GIS model for San Marcos. The ecological value of these lands (Huff and Highlands) is significant providing connectivity as well as high quality habitat.

SCSD-130. The San Elijo Hills SPA EIR/EIS requires all disturbed areas within and directly adjacent to biological open space (outside of fuel mod zones) will be revegetated with native vegetation. The adjacent vegetation will determine which type of plant community would be planted – typically either chaparral dominated by wart-stemmed ceanothus and summer holly, or coastal sage scrub dominated by either California sage brush and buckwheat or black sage.

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guidelines for conservation under the MHCP? Will the City revegetate these acres? If so, when? What vegetation will be used?

SCSD-131 39. Additional Comments on the Map of City of San Marcos Focused Planning Area
This map shows "Natural Habitats" that are not included in the Focused Planning Area but are part of the BCLA. Two of these areas are discussed below.

a. Jacks Pond Park. This park is already in public ownership, and contains some valuable habitat. Why are the undeveloped parts of this park not included for preservation in the MHCP?

b. La Moree Park (site). Is this a City-owned park site? It appears to contain valuable habitat. Why is it not included for preservation in the MHCP?

SCSD-132 40. Pp. 68-75, Preserve Assembly
This section was not extensively reviewed and compared to the Public Review Draft MHCP Plan, Volume I, Section 4, Assembling the MHCP Preserve. Does the San Marcos Subarea Plan's Preserve Assembly deviate in any instances from the MHCP Plan's Preserve Assembly? If so, please describe and explain the deviations.

SCSD-133 41. P. 70, 5.1.3 Utility and Transportation lands and Easements
This section did not mention the San Diego Aqueduct R-O-W (SDA). How is the SDA different from other utilities? Since the Subarea Plan calls for using the SDA R-O-W, are there any restrictions that need to be considered with using the SDA R-O-W?

SCSD-134 42. Pp. 76-88, Plan Implementation
This section was not extensively reviewed and compared to the Public Review Draft MHCP Plan, Volume I, Section 5, Policies and Implementation Structure. Does the San Marcos Subarea Plan's Implementation process deviate in any instances from the MHCP Plan's Policies and Implementation Structure? If so, please describe and explain the deviations.

SCSD-135 43. P. 76, 6.1 Interim Protection
As previously stated, the protection of the Slope Density Ordinance may be inadequate because it is not enforced.

SCSD-136 44. P. 77, 6.1.4 Plan Amendment Process
Any annexation of County land should be reviewed by the County, City and Wildlife Agencies to ensure the inclusion of the area into the San Marcos

SCSD-131. Jacks Pond Park is surrounded by urban development and has been steadily used as an active recreational site. As such, it is not a good candidate for inclusion in the Subarea Plan.

The adopted Recreational Element of the General Plan slates the La Moree site for development as an urban park with basketball, playground, barbecue and parking facilities.

SCSD-132. The City's Subarea Plan complies with the provisions of MHCP.

SCSD-133. SDG&E has a separate Subarea Plan dealing with their easements. The San Diego County Water Authority does not. The San Diego County Water Authority has the ability to establish control over activities on the San Diego County Water Authority R-O-W. Maintenance activities along this easement are allowed. Activities not consistent with provisions of the Subarea Plan would not be allowed.

SCSD-134. The City's Subarea Plan is consistent with the MHCP.

SCSD-135. Adoption of the Subarea Plan would make the compliance with the Slope Density mandatory.

SCSD-136. Comment noted.*

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

Subarea Plan does not jeopardize or is in conflict with the County's MSCP plan. (See Attachment C.)

SCSD-137

45. P. 77, 6.1.5 Process for Exchanges and Minor Modifications to Preserve Boundaries

How can the public be assured that the City will not swap habitat areas within the preserve any time these areas become economically attractive for development? The City of San Marcos owns, develops and leases land for profit and thus acts as a speculator and developer. There is a need for independent oversight to ensure Consulting Biologists hired by the City will not be overly influenced by development pressure within City. The potential for conflict of interest in this situation must be avoided.

SCSD-138

46. P. 78, 6.2.1 Assurances in the Implementing Agreement

Under Phased Implementation and Severability, it states, "Phasing means that the city may implement the Subarea Plan over time based on economic demand or land development..." What assurance will the City provide the public that it will implement the plan in a timely manner? It would not serve the public interest if the City were to wait forty years to revegetate preserve land that is degraded today. Please supply an estimated time/task/expense schedule for implementation. Show milestones and assign responsibility to tasks so that the public can monitor the plan.

SCSD-139

47. P. 79, 6.3.1 Interim Resource Protection

As previously stated, there is some doubt the City will follow the codes, regulations or ordinances it has in place to adequately protect habitat during this interim period. What assurance will the City supply the public and the Wildlife Services that it will comply with its own laws?

SCSD-140

48. P. 80, 6.3.2 Interim Resources Protection

This paragraph gives the City Manager or his designee the power to decide if clearing, brushing grubbing or grading of vacant lands conforms to the subarea plan. As previously stated, there is too much potential for conflict of interest. An independent party or a representative of Wildlife Agencies should either make the determination or be in agreement with the City Manager's decision before the action is allowed to take place.

SCSD-141

49. P. 82, 6.4 Subarea Plan Amendments

Please explain how, "Removal of lands from conservation or reconfiguration of project plans resulting in a decrease of the amount or quality of habitat conserved that could not be addressed by a boundary adjustment.." and requires a Plan Amendment benefits the public.

SCSD-137.

See Section 6.6 on page 82 of the City of San Marcos' Subarea Plan. This section provides the necessary assurances. The City's Subarea Plan Language for "Minor Modifications" is that of the MHCP framework document and is included in the City's Subarea Plan. Verbatim text follows.

"5.6 Process for Exchanges and Minor Modifications to Preserve Boundaries

Adjustments to the Preserve may be made without the need to amend either this Subarea Plan or the MHCP Plan in cases where the preserve boundary results in a Preserve area of equivalent or higher biological value. These actions are known as 'minor amendments'.

The City in accordance with the MHCP Plan will make the determination of the biological value of a proposed boundary change, with the concurrence of the Wildlife Agencies. If the City's Consulting Biologists determine that the adjustment will result in the same or higher biological value of the preserve area, no further action by the jurisdictions or wildlife agencies shall be required.

Any adjustments to the Preserve boundary will be disclosed in the environmental document (project description) prepared for the specific project. An evaluation of the proposed boundary adjustment will be provided in the biological technical report and summarized in the land use section of the environmental document.

If lands designated as FPA within the County of San Diego (or other local jurisdictions) are annexed into the City of San Marcos, these lands shall be incorporated into the City's Subarea Plan and shall be considered covered under the City's Implementing Agreement."

SCSD-138.

This is not possible in the standards areas as the plan will be implemented as properties develop. The Maintenance and Monitoring Plan will stipulate these activities in "hard line" areas.

SCSD-139.

The City will prepare and implement ordinances that will undergo environmental review and be available for public review.

SCSD-140.

Note that the interim measures are those that exist prior to the incorporation of the approved Subarea Plan into the Conservation Element of the General Plan. During this period any clearing, brushing grubbing or grading of vacant lands

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must conform to the adopted Subarea Plan. Nothing in the MHCP or the Subarea Plan envisions the Wildlife Agencies "plan checking" every potential permit associated with clearing, brushing grubbing or grading of vacant lands. The Wildlife Agencies will review project-specific environmental documentation.

SCSD-141. The proposed project substantially occurs either in the City or in the City's Sphere of Influence as established by LAFCO. Therefore, to provide for planned, orderly and efficient patterns of land use, the property should develop under the City's regulations.

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In addition, the City should not be allowed take authorizations to accommodate development of proposed of annexation land outside the City boundary that are part of the study area of the MSCP until that plan is complete and the public can be assured that the City's actions will not endanger the success of either the MHCP or MSCP.

SCSD-142

50. Pp. 83-84, 6.6 Annexations
Paragraph 5 on page 84 it states "In the case of annexations of land greater than 40 acres that require take authorizations for development, the city will work cooperatively with the County of San Diego or other entity to assure consistency between the San Marcos Subarea Plan, County MSCP or other applicable conservation standards."

These guidelines are not being used by the City to date. Pryor's letter (attachment C) clearly demonstrates that the County opposes annexation of the portion of the San Marcos Highlands project that is being proposed within the County. The County lists three reasons for its opposition:

First, as stated in comment # 21, the annexation would "create a significant negative impact to the County's North County MSCP Subarea Plan."

Second, because the proposed San Marcos Highlands project density far exceeds the density allowed under the existing General Plan that currently protects steep slopes under the Resource Protection Ordinance (RPO).

Third, that the proposed project conflicts with the General Plan 2020 Process that proposes to reduce density "...due to the rugged terrain and biological sensitivity." The County states, "...this project [San Marcos Highlands]... would interfere with the outcome of the General Plan 2020 process, threatening the integrity of the unincorporated territory."

What assurances does the City provide the Public and the Wildlife Agencies that it will work cooperatively with the County of San Diego or other entity to assure consistency between the San Marcos Subarea Plan and the County MSCP?

SCSD-143

51. P. 86, 6.9 Relationship Of Subarea Plan Approval To MHCP Core Conservation
Paragraph three states, "Additionally, the City will have no specific acquisition responsibility to expend either cash or direct mitigation to secure the core. However, if the City participates in a successful regional or subregional habitat acquisition funding measure, proceeds from that may be used in part for acquisition of lands in the

SCSD-142. Please note that the County decided to not participate in the MHCP process. Therefore, no County Subarea Plan standards are available from the County by which to compare the City's Subarea Plan. The County's letter is conclusionary, lacking an evidentiary basis. Additionally, the statement is inaccurate. A review of the MHCP vegetation database establishes that the predominate habitat in this County area is agriculture or developed. Of the 203 acres associated with the Highlands Project, 135 acres, or 68% of the project is in open space. This open space contains the only sensitive species on the project site, the California Gnatcatcher. In 1992 the City of San Marcos enrolled in the NCCP process. The enrollment letter stipulates "a collaborative planning process". Additionally, the Wildlife Agencies are required to approve both Subarea Plans and will assure consistency.

SCSD-143. If the regional funding initiative is successful, acquisition of the gnatcatcher core can be financially assured. Some of the core gnatcatcher habitat identified by the Draft MHCP Plan for potential acquisition in the sphere-of-influence of the City of San Marcos has been acquired to mitigate development projects. If a regional funding program is adopted, then additional funds could be used to augment conservation.

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core.” What does this mean? It appears to be saying the City will not be required to acquire any additional CSS in the gnatcatcher core area if they participate in a successful habitat acquisition funding measure. We believe that the public will support additional funding needed to acquire new properties for preservation.

52. Pp. 89-94, Preserve Management

SCSD-144 This section was not extensively reviewed and compared to the Public Review Draft MHCP Plan, Volume I, Section 6, Guidelines for Compatible Land Uses, Preserve Management, and Monitoring, and the MHCP Biological Monitoring Plan, Volume I. Does the San Marcos Subarea Plan's Preserve Management deviate in any instances from the MHCP Plan's Preserve Management and Biological Monitoring Plan? If so, please describe and explain the deviations.

53. P. 92, 7.4, Erosion Control

SCSD-145 The City already has much of the data needed to create an erosion control plan. Many of the steep hillsides surrounding the City consist of minimal top-soil over a rocky base. For this reason the area has attracted several quarry operations. It is the grading of these hillsides that creates the greatest erosion problem. Once the thin layer of topsoil is removed, exposing an impervious surface, little revegetation to control erosion can be done without installing concrete revetments and backfill. This often leaves the site with an unnatural look. Any removal of indigenous vegetation should be replaced by either the same material or noninvasive, low fire load material that complements the habitat. Of particular concern is the statement “Ensure that no new surface drainage is directed into the preserve.” This is a concern because naturally occurring surface drainage feeds creeks and keeps wetland areas functioning. With development, natural surfaces are replaced by man-made impervious surfaces. This causes drainage patterns and composition of runoff to change. The flow rate increases and non-naturally occurring pollutants from residential and commercial development are carried into the creek. The problem occurs when all drainage from the development is carried away from the site and thereby eliminates normal water flows to creeks. How does the City plan to address this issue? What measures can be implemented to ensure flow rates to creeks and wetland environments are not reduced?

54. P. 92, Fire and Brush Management

SCSD-146 As demonstrated by the recent fire in Fallbrook, a 100-foot setback may not be adequate. Setback requirements should be based on several factors including but not limited to slope, draft, fuel and proximity to possible ignition source. These setbacks should not infringe into the Preserve. The statement that is of concern is “A brush management area adjacent to the setback, but within the preserve,

SCSD-144. San Marcos Subarea Plan's Preserve Management is consistent with the MHCP Plan's Preserve Management and Biological Monitoring Plan. Review by the Wildlife Agencies ensures conformity.

SCSD-145. A close reading of the standard, “Ensure that no *new surface drainage . . .*” (*emphasis added*) appears to address the commentators concern. Existing surface runoff patterns are unaffected by this standard. To imply that directing urban runoff way from the FPA means eliminating water from reaching wetlands is incorrect. Control of urban runoff is essential so as not to alter the existing hydrologic regime in the xerophytic and mesophytic (more dry) portions of the FPA. The City comprehensively address erosion control issues though the NPDES program. All projects are required to implement all BMPs. This will assure a comprehensive reduction in waterborne toxins and pollutants.

SCSD-146. Please note that the areas affected by the recent Fallbrook fire were not in managed open space, nor associated with an approved FPA. Also note that a number of activities are allowed in the Preserve. To assume that alterations will occur in an FPA is incorrect. The Management Plan may indicate, for example, that invasive weeds like black mustard be eradicated. Or, if in the case of riparian areas with a least bell's vireo, that cowbirds be trapped.

Remember that the many areas of the FPA are in 100% conserved open space, so that the urban/wildland interface is reduced. In those areas of the FPA where the urban/wildland interface occurs options are available (such as brush thinning as opposed to brush removal) to reduce the fire threat.

Particular brush control measures for each City's FPA will be specified in the Management Plans.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

will protect adjacent uses from fires..." Please describe exactly what a brushfire management area is and how it will be managed. How large an area is it?
 Preserve means preserve, not alter. Calculations of acreage within the Preserve should not include the brushfire management areas. What percentage of the total acres presently planned to be included into the San Marcos Preserve is brushfire management area?

This is a particular concern because of the proposed projects coming forward that will increase the likelihood of loss of life and property to fire. They may necessitate removal of the same natural vegetation now being proposed for the Preserve. How does the City plan to address this issue? What safety measures will be incorporated into the development to prevent the need for habitat removal? Who will be responsible for brush management? Subarea Plans should identify what entities (e.g., land owner, city, or homeowners' association) have responsibilities for brush management. Will the City provide the public and Wildlife Agencies assurances that development will not be placed in areas with a high fire load, adjacent to a preserve that will result in the removal of habitat within the Preserve? We are concerned that after the implementing agreement is signed the City will need to remove sensitive habitat from the Preserve areas in order to ensure public safety.

SCSD-147

55. P. 93, Fencing, Lighting and Signage
 Edge effects from non-native species are a particular concern within the San Marcos Subarea Plan. There is little detail given under Management Recommendation in the Consultant's Working Draft to determine how fencing will be designed to allow adequate wildlife movement and still keep out people, cats and argentine ants. Please explain how edge effects will be minimized? People, cats and argentine ants are often undeterred by barriers such vegetation, topography, signs or fencing. How will fencing and other measures be designed to prevent these non-natives from degrading habitat? Please be specific.

Lighting is another concern. Although lighting design is addressed in the Consultant's Working Draft of the MHCP, no studies are supplied to prove the measures outlined are adequate. Please show measures incorporated into the Preserve design will be adequate for species in the area.

SCSD-148

56. P. 94, 7.10 Public Education and Involvement
 Educational literature addressing home owners' environmental responsibilities should be provided to every home within ¼ mile of the Preserve areas. Literature should be re-circulated to any address that changes ownership.

SCSD-147. We acknowledge that managing for adverse edge effects and exotic species is a major challenge for reserve areas. Preserve managers will rely on their best available science via the adaptive management program. It is impossible to "prove" in advance the measures for lighting or other restrictions for adequacy to prevent any degradation of habitat value. Fencing will be evaluated on a project basis to ensure that preserves are adequately protected.

SCSD-148. Comment recommends that an extensive community education program be adopted.*

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

SCSD-149

57. Pp. 97-101, Appendix A, Mt. Whitney/Double Peak Chaparral Study
 The scientific methods used in this study to estimate the populations of wart-stemmed ceanothus and summer holly are difficult for the lay person to evaluate.
 Have the Wildlife Agencies evaluated this study from a scientific perspective? If so, what are their conclusions?

We note that on p. 98, it is stated, "Additional opportunities for conservation include the revegetation of cut and fill slopes directly adjacent to conserved chaparral habitat. This would amount to between 70 and 100 acres of restored chaparral in this portion of the Focused Planning Area." The success of restoration of degraded habitat is questionable. What evidence is there that such restoration would be successful? How long would the restoration process take?

The study concludes that both wart-stemmed ceanothus and summer holly will be adequately conserved in this area and that these species should be included in the covered species list for the San Marcos Subarea Plan. What is the Wildlife Agencies' position on this conclusion?

CLOSING STATEMENT

SCSD-150

The Sierra Club appreciates the opportunity to comment on the San Marcos Subarea Plan. We will be happy to answer any questions about our comments. Please contact Mary Clarke at (760) 510-9684.

Yours truly,



Mary Clarke,
 Alternate Representative to the MHCP



Sandra Farrell

SCSD-149. Under the heading "Conclusions" the following wording may be found, "the level of conservation in the Mount Whitney-Double Peak area is adequate for both wart-stemmed ceanothus and summer holly." These species should be included in the covered species list for the San Marcos Subarea Plan. When the cities make a formal request for an Implementing Agreement, the final list of covered species will be determined.

SCSD-150. The comment provides closure to the letter; no response is necessary.*

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.



San Diego Chapter
Serving the Environment in San Diego and Imperial Counties

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SCSD-151. The comment identifies the organization and provides an introduction to comments concerning the Escondido Subarea Plan. Additionally, the comment summarizes the Sierra Club principles.*

April 17, 2002

RECEIVED

Mr. Jim Bartel
Field Supervisor
U.S. Fish and Wildlife Service
2730 Loker Avenue West
Carlsbad, CA 92008

APR 24 2002
US FWS
CARLSBAD FIELD OFFICE, CA

RE: Comments on Volume III of Public Review Draft MHCP, Natural Community
Conservation Plan for the City of Escondido

Dear Mr. Bartel:

SCSD-151

Thank you for the opportunity to comment on the Public Review Draft Multiple Habitat Conservation Program (MHCP). Volume III of the MHCP Plan includes the Subarea Plan for the City of Escondido. The purpose of this letter is to provide comments on the Escondido Subarea Plan.

INTRODUCTION

The San Diego Chapter of the Sierra Club has been represented on the MHCP Advisory Committee. The Sierra Club is vitally interested in the effectiveness of large-scale conservation programs, such as Habitat Conservation plans (HCPs) and Natural Community Conservation Plans (NCCPs). Because of concerns about the effectiveness of these programs in meeting their goals of protecting endangered, threatened and other sensitive species and their habitats, on September 8, 1997, the Sierra Club's California/Nevada Regional Conservation Committee adopted a statement of Principles on HCPs and NCCPs. The statement requires that HCPs and NCCPs conform to these Principles in order for the Sierra Club to support these plans.

The statement of Sierra Club Principles is included as Attachment A to this comment letter. Following is a summary of the major points in the statement of Principles.

- Recovery. The bedrock principle for all HCP/NCCP projects is that they must lead to the recovery of the affected species and be based on the biological needs of the species and ecosystems which are to be protected.

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- **Prevention.** The most effective strategy for avoiding the biological and legal crises involving species listed under the ESA is to avoid the circumstances that lead to extinction. Habitat "re-creation" strategies are questionable, and mitigation is a poor substitute for conservation.
- **Growth Management.** Development and population growth should not occur on habitat essential for the survival of endangered species.
- **Legal Assurances.** The Sierra Club opposes the "No Surprises" policy unless it meets certain requirements, which will be discussed below.
- **Funding, Implementation and Monitoring.** All plans must have an implementation component which includes secure and adequate funding for the scope of the proposed project, as well as a monitoring component using measurable standards to assess the impacts, efficacy and likely success of the plan.

In addition, in 1999, the San Diego Chapter of the Sierra Club adopted a policy related to wetlands that calls for acquisition and preservation of wetland habitats (and appropriate wetland buffers) where avoidance of wetland impacts is determined to be infeasible due to economic constraints.

This review of the Escondido Subarea Plan is based on the conservation goals and objectives articulated in the above-referenced policies.

SUMMARY AND CONCLUSIONS

SCSD-152

The San Diego Chapter of the Sierra Club supports the maximum level of conservation in the MHCP, such as in Alternative #3, the Biological Core and Linkage Area (BCLA). The City of Escondido Subarea Plan fails to sufficiently conserve valuable habitat in the BCLA. (For example, in the Southwestern portion of Escondido, important sage scrub habitat at the Quail Hills Specific Plan Area supporting at least 8 pairs of California gnatcatchers is not conserved.)

SCSD-153

Table 2.3-5 on page 2-61 of the MHCP draft EIS/EIR shows the conservation levels of the Escondido Subarea Plan for three different alternatives. Under the Preferred Plan (FPA 2), the total conservation level for Escondido is 73%. This is low. The draft EIS/EIR indicates that there are 24,885 acres of valuable habitat remaining in the BCLA (p.3-21). Escondido has 7,780 of those acres, according to the table on p. 2-74. This is about 31% of the total. The City of Escondido should be able to conserve much more of the remaining valuable habitat. According to the table on p. 2-74, under the BCLA alternative, the City of Escondido could reach an 85% conservation level, which is much more appropriate. This is the conservation goal that the Sierra Club supports.

SCSD-154

We understand that in order to achieve a higher level of conservation than the Preferred Plan, it will be necessary to acquire more of the property in the BCLA. This means that more money must be available for acquisitions. We request that the MHCP financing plan include more money for acquisitions in the BCLA. The Sierra Club Principles call for the plan to have secure and adequate funding.

SCSD-152. The Quail Hills area is not within the BCLA. Subsequent biological analysis was conducted by Dudek and Associates, Inc. (DUDEK June 17, 1998) and discussed with the City staff and wildlife agencies in August and September 1999. DUDEK presented an analysis of long term conservation options for the gnatcatchers on site. Connectivity of natural habitat was identified as the major obstacle in the long-term conservation of gnatcatchers on the site due to the isolated nature of the resources, as documented in a letter by DUDEK dated September 13, 1999. Revegetation options were evaluated and deemed infeasible, based on constraints such as existing parcel sizes and development patterns, and the City's planned land use and Circulation Element improvements. The topographic constraints, road alignment design standards, and buffering requirements necessitate grading the entire site; therefore preservation of a portion of the site is infeasible and would result in an isolated fragment. Further, the City of Escondido General Plan designates the Quail Hills property for industrial development; development of the property is a high priority for the City to improve its employment base and economic health. Based on these considerations, the wildlife agencies concurred that on-site conservation was not feasible.

It should be noted that an application for a new tentative map and Specific Plan (including a proposed power plant and industrial subdivision) for this property has been submitted to the City (City Case File #ER 2001-12). The project is undergoing CEQA review.

SCSD-153. The draft EIS/EIR addressed the draft MHCP. The numbers presented in the draft EIS/EIR have been updated and reflect greater conservation. However, utilizing the numbers in the draft plans, the following is a summary of the conservation levels assumed in the draft EIS/EIR. As shown on Tables 4-5 and 4-8 of the MHCP Plan Volume I, the City of Escondido proposes to conserve 6,514 acres of the estimated 17,097 acres anticipated to be conserved under Alternative 2. This represents 38% of the anticipated conservation for the entire MHCP. Of the 6,434 acre of land owned by the seven participating cities, Escondido proposes to conserve 4,789 acres or 74.4% of the total contribution of all seven cities. The City feels this is a significant contribution to the MHCP and that additional conservation is unwarranted since it would significantly affect the City's ability to meet the long term land use and housing goals identified in the General Plan

SCSD-154. A funding source or strategy must be identified prior to approval of any implementing agreements. However, it should be noted that, given the

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proposed conservation levels described in SCSD-153 above, no property acquisitions are required for implementation of the Escondido Subarea Plan.

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Detailed Comments --
Public Review Draft- Escondido Subarea Plan: Implementation of the MHCP

Section 1: Introduction and Overview

Table 1-1, page 1-3

SCSD-155

It is difficult to tell from this table those species that are "Proposed Covered" and are actually pertinent to the analysis of the Escondido Subarea Plan. The primary focus of the Escondido Subarea Plan should be placed on species that occur in or have the potential to occur in Escondido. While Table 3-2 shows species that occur in or are likely to occur in Escondido, it does not indicate which species the MHCP will adequately conserve and will be covered by the permit. Comparing the two tables is confusing since the list of species is different with each table. We recommend that you revise Table 1-1 into one table or multiple tables that show the following:

- 1) Those "Proposed Covered Species" that occur or potentially occur in the Escondido Subarea and thus could be affected by the Escondido Subarea Plan.
- 2) Those "Proposed Covered Species" that are unlikely to occur in the Escondido Subarea (e.g., those only occurring along the immediate coast) and are covered solely by conservation in other subareas.
- 3) Those species that occur or could potentially occur in Escondido but are not considered to be "Proposed Covered Species" in the MHCP area. This table should give information on the current status of each of these species in regards to the MHCP (e.g., currently under review by wildlife agencies, insufficient information to determine plan effects, conservation goals are not met, or extirpated from the study area).

This last category would be helpful for landowners, city officials, and other interested parties. It identifies those sensitive MHCP target species that are not covered by permits pursuant to the MHCP Plan. This could be a starting point for determining which species need to undergo the traditional environmental review process, with any necessary permits issued by State and Federal agencies. What will be the environmental review process for species that are not adequately conserved by the MHCP and thus are not covered by the take permit? Can additional mitigation beyond MHCP conditions be required? We are concerned that grassland species such as Northern Harrier, Burrowing Owl, Grasshopper Sparrow, and Tricolored Blackbird will not be adequately conserved by the MHCP. Why is more grassland habitat not set aside to conserve critical locations of grassland species?

Section 2: Description of the Escondido Subarea

Sections 2.2.1 and 2.2.2

SCSD-156

The City of Escondido is to be commended for currently owning and administering 60 percent of the remaining natural habitats in the Escondido Subarea and designating 5,218 of these acres as parks and open space.

Tables 2-1 and 2-2

SCSD-155. Table 1 will be formatted to indicate Proposed Covered Species that occur or potentially occur in Escondido; by default, this will also indicate Proposed Covered Species that are unlikely to occur in Escondido. Since Table 1-1 includes only the Proposed Covered Species lists, the inclusion of other species not proposed for coverage would be confusing, and are best included in a separate table.

All sensitive MHCP target species will continue to be evaluated on a project-level basis pursuant to CEQA and applicable state and federal laws, regardless of whether they are included on the Covered Species list. The CEQA process will determine whether additional mitigation is required for species that are not on the Covered Species list.

Regarding grasslands, Table 4-1 of the Escondido SAP indicates that 81% of the grassland within the BCLA and 62% of the grassland within the study area is conserved. These figures are likely to increase with revisions to the FPA map to recognize existing conservation in Daley Ranch Areas I and II. As described in the EIR, additional conservation of grasslands is deemed infeasible due to associated impacts to population and housing.

SCSD-156. Comment provides support for Escondido's management responsibility.*

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SCSD-157

There is a discrepancy between the amount of remaining natural open space in the text and Tables 2-1 and 2-2. What is the correct number for acres of natural open space remaining in the Escondido Subarea? Footnotes in both tables do not explain how differences in data layers and methods of calculation lead to discrepancies between land use and vegetation layers. Rounding areas would not appear to account for the magnitude of these discrepancies. On Table 2-2 it is also unclear what is meant by the superscript ³ that the land use calculation for Daley Ranch is out of date. Shouldn't the acreage for Daley Ranch be put into the currently correct land use category? The number of acres of open space should be consistent between tables and text to facilitate analyses.

SCSD-158

Section 2.2.3

Caltrans, utility companies, and other agencies will be responsible for their own permitting requirements (pages 1-2 and Section 2.2.3). Explain in more detail how their projects will be evaluated and implemented in light of the MHCP. What role and control will Escondido officials have over siting of alignments and projects to avoid impacts to the preserve? Will these agencies be required to mitigate unavoidable direct impacts by purchasing or creating habitat within the Escondido preserve area? Will MHCP requirements in terms of habitat replacement ratios, mitigation measures, conservation policies and guidelines be followed by these agencies within the Escondido Subarea?

SCSD-159

Section 3: Biological Resources

It would be helpful if this document had a section on regional and local wildlife movement that explicitly showed where critical regional habitat linkages and corridors occur. Critical wildlife linkages and corridors are only briefly mentioned on page 3-5, paragraph 4. How do linkages in the MHCP analysis specifically integrate with corridors and linkages identified in the previous Master Plan for Parks, Trails and Open Space (Master Plan)? This is especially important for the east to west linkage in the northeast portion of the subarea. This is considered an important regional linkage in the MHCP, connecting open space on Daley Ranch with open space east of Valley Center Road, including habitats at Lake Wohlford. We concur that preserving large blocks of habitat on either side of Valley Center Rd is critical for this regional linkage. However, there needs to be a discussion of how this linkage will be preserved under the MHCP when Valley Center Road is widened in the near future. Will there be wildlife underpasses? Or will animals cross the road, and if so will there be physical barriers (e.g., now we have a cement divider) to successful movement across the road? The Escondido Subarea Plan should provide specific detail concerning what areas of the linkage need to be preserved and what measures are required to ensure animal movement across Valley Center Road. For example, will the fourth recommendation in Section 4, Page 4-14, be applied to the Valley Center Road Widening? What specific areas need to be conserved for a wildlife corridor in light of proposed future development for this area. An analysis of how the Escondido Subarea Plan integrates with the Master Plan for Parks, Trails and Open Space is needed in order to evaluate how well linkages and corridors will be preserved under the MHCP preserve.

Figure 3-2

SCSD-157. The discrepancy between the acreage of total natural open space in Tables 2-1 and 2-2 is two acres (9,177 acres compared to 9,179 acres), which is an insignificant amount attributable to rounding. The detailed breakdowns within each table are not intended for comparison. Table 2-1 reflects ownership, not land use. Table 2-2 reflects land use as indicated on the 1995 SANDAG layers, which preceded the Daley Ranch acquisition (as noted in the footnote). The General Plan designation for Daley Ranch has since been changed to Public Lands/Open Space.

Privately owned lands currently preserved as open space are not included in the "parks and open space" category in Table 2-2, since they are typically designated as a Specific Plan Area in the General Plan. Examples include the Rancho San Pasqual, Escondido Highlands and Lomas Del Lago Specific Plan Areas.

SCSD-158. Development activities proposed by utility companies (such as SDG&E) and other public agencies (such as the County) that have approved Incidental Take Permits will be processed in accordance with those permits. Where no such ITPs have been approved, the applicability of the City's Subarea Plan will be determined by whether any discretionary action is otherwise required from the City and whether the agency seeks to achieve third party beneficiary status from the City's ITP. If no take authorization is required by these agencies, the City will review and comment on the proposed project through the CEQA process. If the action would result in impacts/take of listed species, authorization would be required from the Service and Department.

SCSD-159. Regional wildlife corridors within the Escondido General Plan area were evaluated as part of the City's adopted Master Plan for Parks, Trails and Open Space. The master plan identifies ideal wildlife corridor characteristics (e.g., corridor width, vegetative cover, water source, connectivity / barriers) and conceptual wildlife corridor alignments. The master plan assumes a corridor that is acceptable to the three focal species (mountain lion, mule deer and bobcat) and should also be adequate for other more tolerant species. Implementation measures include the requirement for detailed biological analyses addressing wildlife corridor movements and coordination with the County to monitor proposed development in the unincorporated area to insure connectivity.

The Subarea Plan applies to property over which the City has land use authority, specifically property within the City limit and City-owned property in the unincorporated area. The Master Plan for Parks, Trails and Open Space

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addresses policies for the entire General Plan area. Properties proposed for annexation will be evaluated for conformance with the adopted City policies, including the Master Plan for Parks, Trails and Open Space. Properties proposed for development within the County (within the City's General Plan area) will continue to be evaluated through the environmental review process with opportunity for City comment; however land use authority will remain with the County in those instances. The City feels it is unnecessary to replicate the master plan policies in the Subarea plan; however, additional text will be added to the subarea plan to cross-reference the requirements of the adopted Master Plan for Parks, Trails and Open Space regarding potential wildlife corridors.

The City's Master Plan for Parks, Trails and Open Space recognizes that the existing Valley Center Road functions as a barrier to east/west wildlife corridor movement, and focuses on north/south connections. The County of San Diego is responsible for the construction of the Valley Center Road widening project from the City limits north to Valley Center, including the segment that bisects the City's watershed lands. Environmental clearance has been completed and the design engineering is underway. While no wildlife underpasses are proposed, the project will result in the removal of the existing concrete median barrier and thereby eliminate a physical barrier to wildlife movement. Further comments regarding the roadway design should be directed to the County Public Works Department. The City of Escondido is also proposing to widen Valley Center Road from the County project limits south to Bear Valley Parkway. Preparation of a draft Environmental Assessment / EIR is underway (City Case File #ER 99-33). The EA/EIR will include an analysis of potential wildlife corridors through this segment as well as the appropriateness of design features to accommodate wildlife movement.

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SCSD-160

Please show developed, agricultural, and natural areas surrounding the Escondido Subarea Plan similar to what Figure 3-3 does for sensitive species location. This would facilitate an evaluation of the BCLA in terms of preserve design and linkages with habitats outside the Escondido Subarea Plan.

SCSD-161

Section 3.2.4

Based on the Vegetation Map for MHCP (Figure 2-2 of the Draft MHCP, Vol II), the Quail Hills gnatcatcher population does not seem as poorly connected to coastal sage scrub and core gnatcatcher populations as portrayed in Section 3.2.4. The Quail Hills population is approximately 1.5 miles (straight line) from gnatcatcher locations in Del Dios. It appears connected via a fairly contiguous north-south alignment of coastal sage scrub and chaparral habitats to occupied gnatcatcher habitat in Del Dios, Mount Israel, and Lake Hodges. The Lake Hodges California Gnatcatcher population is a considered a core population in the Multiple Species Conservation Plan. According to Vol. II of the Draft MHCP (Ogden 2000, Section 4, page 4-333) California Gnatcatchers are more capable than previously thought of moving through a mosaic of natural and nonnative areas. Results of dispersal studies presented in Section 4, suggest a median dispersal of less than 2 miles in one study, with an upper end to dispersal of about 6 miles through natural and developed areas. Thus, the Quail Hills population is located less than the median distance for dispersal to another population of gnatcatchers in Del Dios that is adjacent to the core population at Lake Hodges. Figure 3-3 shows 21 California Gnatcatcher locations in the Escondido Subarea Plan, of which 6 (~29%) are in the Quail Hills area. Why isn't this population at least partially preserved?

Section 4: Preserve Design and Land Use Considerations

SCSD-162

Figure 4-1

The map shows a number of locations in light stippled green representing natural habitats. Are these the future development footprints in the Softline Focused Planning Areas? Do these natural areas also represent areas that have the potential for future development but have no current or pending Specific Area Plan?

SCSD-163

Section 4.1

The actual level of preservation could be significantly less than indicated by Table 4-1 if up to 10% of hardline preserve areas can be developed. The table appears to show the best case scenario by including all habitats within the hardline areas as being conserved. There should be a column in Table 4-1 that shows the worst case scenario also, where 10% development is assumed in these hardline areas. Specific Plans (e.g., Daley Ranch) and approved development agreements should detail what type of development will occur in these hardlined preserve areas. This potential 10% loss of preserve habitat is potentially significant in analyzing the adequacy of the Escondido Subarea Plan, especially if impacts occur in sensitive habitats or areas that support sensitive species. The text (pages 4-2 and 4-6) should also provide a discussion of the best (100% hardline areas conserved) and worst case scenarios (90% hardline areas conserved) for each habitat type and for the BCLA. This discussion should include the number and percentage of acres conserved under both scenarios.

SCSD-160. Figure 3-3 will be revised to include developed, agricultural and natural areas surrounding the SAP boundary.

SCSD-161. The Quail Hills area is not within the BCLA. Subsequent biological analysis was conducted by Dudek and Associates, Inc. (DUDEK June 17, 1998) and discussed with the City staff and wildlife agencies in August and September 1999. DUDEK presented an analysis of long term conservation options for the gnatcatchers on site. Connectivity of natural habitat was identified as the major obstacle in the long-term conservation of gnatcatchers on the site due to the isolated nature of the resources, as documented in a letter by DUDEK dated September 13, 1999. Revegetation options were evaluated and deemed infeasible, based on constraints such as existing parcel sizes and development patterns, and the City's planned land use and Circulation Element improvements. The topographic constraints, road alignment design standards, and buffering requirements necessitate grading the entire site; therefore preservation of a portion of the site is infeasible and would result in an isolated fragment. Further, the City of Escondido General Plan designates the Quail Hills property for industrial development; development of the property is a high priority for the City to improve its employment base and economic health. Based on these considerations, the wildlife agencies concurred that on-site conservation was not feasible.

It should be noted that an application for a new tentative map and Specific Plan (including a proposed power plant and industrial subdivision) for this property has been submitted to the City (City Case File #ER 2001-12). The project is undergoing CEQA review.

SCSD-162. The light stippled green areas represent natural habitats outside any Softline areas, and are thus anticipated to be developed. Some of these areas may have pending development applications.

SCSD-163. Table 4-1 represents the conservation threshold used in the biological analysis. Conservation of hardline properties varies from 90-100%, depending on the specific location. These assumptions have been mapped. Active recreation areas such as Kit Carson Park and Lake Dixon assume 90% conservation of existing habitat, to provide flexibility developing future recreational opportunities. Other hardline areas, such as Daley Ranch and private open space conserved via an approved Specific Plan, assume 100% conservation. These assumptions are reflected in the acreage of Table 4-1, and therefore represent minimum ("worst case" from the commenting organization's viewpoint) conservation. Therefore no changes are warranted.

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SCSD-164 Section 4.2
Please provide a table listing the 20 species that will be included on Escondido's initial list of covered species. This is not very clear from Tables 1-1 or 3-2.

SCSD-165 Page 4-7, Paragraph 2
The text states that "Listed species not on the covered species list will continue to be regulated under the state and federal ESAs". Does this mean that additional habitat could be required for open space preservation as mitigation for significant impacts to these listed species? Would this habitat be mitigated locally? Would it become part of the preserve? What will happen to those sensitive species that are not listed as threatened or endangered (e.g., Federal Species of Concern and California Species of Special Concern) and are not covered by the MHCP? Will there be any environmental review? Would project proponents be required to mitigate significant impacts to these species?

SCSD-166 Section 4.3.1
The introductory paragraph to this section is unclear. The second sentence is confusing and appears circular in logic. Please explain exactly what is meant. Please reference what specific policies are being referred to? How is brushing within the preserve a compatible land use to the biological objectives? How are utilities and roads compatible to biological objectives within the preserve?

Why is brushing allowed in the preserve? Shouldn't areas that are brushed be considered a buffer zone outside of the actual preserve? Are brushed areas included in the amounts of habitat acreages that are considered preserved? If so, brushed areas that are shown in Specific Plans and other environmental documents and agreements, should be excluded from calculations for total habitat acreages conserved for each habitat type.

Especially troubling is the existing land uses statement in the last bullet. What is meant by existing land uses at the time of subarea adoption? Does this mean that if motorcycles or off-road vehicles have been used on a particular parcel, that this use could continue after that parcel was placed in the preserve? Does this mean that livestock grazing and agricultural practices could continue within the preserve? Please clarify this bullet.

SCSD-167 Pages 4-8 – 4-10
Daley Ranch- To effectively assess the efficacy of the Escondido Subarea Plan, there needs to be a figure showing the footprint of the three planned use areas (e.g., Areas I, II, and III) in Daley Ranch (perhaps adopted from the Daley Ranch Specific Plan). These use areas are not clear from Figure 4-1. In Figure 4-1 the large light green and the green stippled areas in the center of the preserve appear representative of Areas I and II. If so, these areas seem much larger than the ~200 acres that are described for park development out of the 3,000+ acre total. Daley Ranch comprises such a large component of Escondido's contribution of open space to the MHCP preserve, thus, it is important to assess where park development will occur when analyzing the Escondido Subarea Plan.

SCSD-168 Page 4-10
Lake Dixon- The "dog park" was recently developed.

Page 4-10

SCSD-164. The initial list of covered species is already indicated on Table 1-1 as those species that are not contingent upon subarea plan approval in another city. Adding this information to Table 3-2 would be confusing to the reader. No changes are warranted.

SCSD-165. Please see response to SCSD-155. Mitigation is encouraged, but not required, to be accomplished locally pursuant to the policies in Escondido SAP Section 5.2.1. Project-level analysis will determine the appropriate mitigation, which may (or may not) be added to the preserve system.

SCSD-166. The text in Section 4.3.1 will be revised to clarify that "preserve" refers to hardlined FPA properties. Land uses within hardlined areas are either existing or approved and vested prior to the adoption of the subarea plan. This section recognizes that the City has no legal authority to require changes to legally-established and vested uses. Language will be added to clarify that existing *legally established* uses will be allowed to continue, and that new or expanded uses will be reviewed in accordance with the MHCP and SAP policies.

Brush management activities *for existing and approved projects* have already been factored into the conservation assumptions. The habitat has already been removed in areas where brush management is already occurring (e.g., Kit Carson Park), and is therefore not included in the acreage of existing natural habitat. Existing brush management approved for other hardline projects is already incorporated into the development footprint.

SCSD-167. The use areas at Daley Ranch are governed by the approved Conservation Bank Agreement and Master Plan, which include maps of the three areas. The Subarea Plan text and map regarding Daley Ranch reflect these approvals, and no modifications are proposed. No modifications to the text or map are warranted since the Conservation Bank agreement and master plan remain the governing documents.

SCSD-168. Comment noted. The text will be revised.

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- SCSD-169. Rancho San Pasqual Specific Plan- What amendments were made to the Rancho San Pasqual Specific Plan in 1997? Will there be increased development? From the text it appears that the project is fully developed. However, in Figure 4-1, there are natural habitats shown in stippled green that surround the edge of the Rancho San Pasqual Development and are also adjacent to hardline planning areas. In the Escondido Subarea Vegetation Map (Figure 3-1) these areas are shown as coastal sage scrub. Are these natural areas considered buffers or areas of potential further development? What types of activities will occur in these areas? From the text it appears that these areas of natural habitat are not part of the preserve and are not part of the 447 acres of natural open space. Is this interpretation correct? The text also states that there are a number of activities that can occur in the hardlined open space (e.g., firebreaks, fencing, utility lines, etc.). How much preserve acreage will be impacted by these activities?
- SCSD-170. Page 4-11
Kit Carson Park- Are impacted areas of open space (e.g., firebreaks, public art pieces, etc.) included in acres of vegetation conserved in Kit Carson Park? If so, the calculations for acres of habitat conserved in Table 4-1 and in the text (e.g., pages 4-2 and 4-6) should exclude those acres of habitat that will or have been cleared or modified.
- SCSD-171. Page 4-12
Montreux- Are impacted areas of open space (e.g., utilities, drainage and control facilities, roads) included in the acres of vegetation conserved? If so, the calculations for acres of habitat conserved in Table 4-1 and in the text (e.g., pages 4-2 and 4-6) should exclude those acres of habitat that will or have been cleared or modified.
- SCSD-172. Dorn- Are impacted areas of open space (e.g., utilities, drainage and control facilities, roads) included in the acres of vegetation conserved? If so, the calculations for acres of habitat conserved in Table 4-1 and in the text (e.g., pages 4-2 and 4-6) should exclude those acres of habitat that will or have been cleared or modified.
- SCSD-173. Is the Dorn open space area shown as a hardline area (not softline) on Figure 4-1? It is hard to tell from the text where the Dorn project is located on Figure 4-1 as it is not clear that there is a parcel northwest of the Montreux project. Is the Dorn property to the northeast? What is the softline project on Figure 4-1 that is north of the northeast corner of Montreux?
- SCSD-174. Page 4-13
Escondido Highlands- Will there be any impacts (e.g., utilities, roads, etc.) to open space in Neighborhoods 1 and 2 of the Palos Vista Specific Plan? If so, the calculations for acres of habitat conserved in Table 4-1 and in the text (e.g., pages 4-2 and 4-6) should exclude those acres of habitat that will or have been cleared or modified.
- SCSD-175. Roads and Utilities, Pages 4-13, 4-14:
How is feasibility determined when it is decided to site utility lines, facilities, roads, and other structures inside the preserve? What are the specific criteria, standards, and thresholds used to determine whether or not an alignment or development footprint is infeasible? Who ultimately determines that it is infeasible to avoid directly impacting the preserve?
- SCSD-169. The Rancho San Pasqual Specific Plan area is fully developed. The 1997 amendment approved a redesign of the residential lots in the upper valley area. No further development is allowed under the existing General and Specific Plans. The FPA map has been revised to reflect the boundary of the approved Specific Plan and the open space areas, which have been conserved in perpetuity. The uses permitted within the hardlined areas are already established, and hence have no impact on the conservation assumptions.
- SCSD-170. The FPA map for Kit Carson Park has been refined to reflect the boundary of the hardline preserve area. Firebreaks around the perimeter are preexisting, and therefore have already been accounted for in the 90% conservation figures. The public art piece is in the developed portion of the park and has no impact on the conserved area.
- Comment addresses the findings of the biological report prepared for the Montreux Specific Plan. As of September 30, 2002, the Escondido Creek Conservancy and the County of San Diego purchased the Montreux project site, ensuring the land is to remain as open space and be conserved in perpetuity. Therefore, no future development will occur on the Montreux property.
- SCSD-171. Please refer to response SCSD-170.
- SCSD-172. The FPA map show the Dorn property (northeast of Montreux) as a softline property. The biological analysis assumes 50% conservation of existing habitat on this site; brush clearing, grading, utilities and other development impacts would not be included in the conserved areas. While the subdivision map has been approved, the property is indicated as a softline property since the development entitlement is not vested.
- SCSD-173. Please refer to response SCSD-172.
- SCSD-174. The Escondido Highlands Neighborhoods 1 and 2 are fully developed pursuant to the approved Palos Vista Specific Plan. The FPA hardline area reflects the open space areas that are already conserved. Since the site is fully developed, the assumed conservation of 100% of existing natural habitat already reflects the areas disturbed by the existing improvements. No further improvements are proposed or anticipated. No changes are warranted.
- SCSD-175. The feasibility of infrastructure improvements will be evaluated on a project-by-project basis. Preliminary engineering studies are prepared to evaluate

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design alternatives. Following CEQA review, the determination of feasibility is made by the City Council. This analysis will address the conformance of the project to the standards (see MHCP Volume I) required for project-level site planning. In addition to environmental considerations, other factors considered by the City Council include General Plan policies and standards, public input, financing, and agency permitting requirements.

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SCSD-176 When roads cross the preserve, who determines whether a bridge or culvert will be used to facilitate wildlife movement under the road? What criteria are used to determine that a culvert will be used rather than a preferred bridge?

SCSD-177 Flood Control, Pages 4-14, 4-15:
Again, who determines the feasibility of preserving a floodplain upstream of the preserve? What specific criteria, standards, and thresholds are used to determine feasibility?

SCSD-178 Section 4.3.2- Land Uses Planned Adjacent to the Preserve
Who will be monitoring lands adjacent to the preserve to ensure compliance with the Adjacency Guidelines? Who will monitor and ensure compliance for private preserve lands, especially those owned by private landowner associations? Provide further details on the specifics of monitoring lands adjacent to the preserve and ensuring compliance with Escondido Subarea Adjacency Guidelines.

SCSD-179 Landscaping Restrictions, Page 4-17, 4-18
Will landscaping restrictions be imposed on existing developments adjacent to the preserve? How will landscaping restrictions be monitored and enforced in private residences?

Section 4.4- Guidelines for Preserve Design in Softlined Areas

SCSD-180 Schooler et al., pages 4-18, 4-19
What specifically does "taking" of property mean? What criteria, standards, and thresholds are used to determine whether property is being "taken"? Who determines if property is being taken?

SCSD-181 Bernardo Mountain Phase II- Pages 4-19, 4-20
Paragraph 1- See previous comments regarding "taking".
Paragraph 2- Were the 184 acres with no development entitlements set aside as dedicated open space per requirements of the tentative subdivision map in 1989? Regarding the statement that 184 acres are intended to be set aside as open space with a maximum of 25% potentially developed, is this a condition of the City of Escondido and the wildlife agencies under the approved tentative map or is it a voluntary goal of the developer? What does the statement mean that proposed development in the revised tentative map is within the same "general" building envelope? Is the development footprint in the revised tentative map larger than in the previous tentative map approved in 1989? Will there be a difference in the magnitude of impacts to natural habitats under the new tentative map compared with the approved tentative map?

SCSD-182 Lake Wohlford and Surrounding Habitats-page 4-21
Figure 4-1 is rather confusing when compared to the text describing the Lake Wolford lands owned by the city. It appears that several of the existing developed areas are not included within the boundaries of the Escondido Subarea Plan. For instance, the boat dock area, the airplane landing strip, and the existing police shooting facility do not appear as developed areas within the Escondido Subarea Boundaries. Do the specified

SCSD-176. Please refer to response SCSD-175.

SCSD-177. Please see response SCSD-175. Public agencies that have permitting authority over floodplain issues include the City of Escondido, Regional Water Quality Control Board, U.S. Army Corps of Engineers and California Department of Fish and Game, and the U.S. Fish and Wildlife Service if listed species are present.

SCSD-178. Until such time as a regional management entity is formed and funded, the City of Escondido will continue to monitor preserve lands owned by the City, and will monitor proposed new activities on adjacent properties that may affect the preserve as spelled out in the IA. Existing legally established uses and activities will be allowed to continue. Specific monitoring responsibilities are still being developed, and will be determined as part of the City's application for an Incidental Take Permit. The City of Escondido does not have the authority or financial resources to take on management and monitoring responsibilities for private open space lands. Existing private open space will continue to be managed by the property owner or homeowner association.

SCSD-179. The landscape restrictions are intended as guidelines, and information regarding appropriate landscape practices will be made available to homeowners. New development will be evaluated for compliance with the guidelines. The City of Escondido does not intend to impose new landscape restrictions on existing developments such as single family residences.

SCSD-180. Please refer to response SCSD-179.

SCSD-181. The San Dieguito River Park JPA has entered into a purchase agreement to acquire the entire Bernardo Mountain property. The City of Escondido has agreed to contribute \$1.87 million in State grant funds towards this purchase. If acquired the property will be permanently preserved as open space.

SCSD-182. The existing developed areas on City-owned property (boat dock area, police shooting facility) are within the Subarea Plan boundary, shown as softline areas. The uses are cited as exclusion areas in recognition that they are existing uses, which are allowed to remain. A portion of the existing airstrip extends offsite.

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use areas delineated as exclusion areas refer to the light green stippled areas southeast of Lake Wohlford and near Valley Center Road on Figure 4-1?

SCSD-183 We are concerned about the expansion of the police shooting facility that is to be annexed from Valley Center. This expansion should be designed and sited in such a way as to avoid any impacts to wildlife movement through this critical linkage and any impacts to sensitive habitats (e.g., oak woodlands) and species (e.g., Harbison's Dun Skipper). If there are any proposed development footprints available for this project, they should be shown on Figure 4-1. This would allow an analysis of whether MHCP standards and requirements are met, particularly in regards to ensuring wildlife movement through this critical linkage and maximal avoidance of impact to sensitive habitats (e.g., oak woodlands) and species (e.g., Harbison's Dun Skipper).

Section 5: Preserve Assembly and Conservation Actions

SCSD-184 Table 5-1, The number of acres of natural habitat should be consistent for Tables 2-1, 2-2, 4.1, 5.1, and in the text in Section 2. It would help in analyzing the Escondido Subarea Plan to have this number consistent between all tables and the text.

SCSD-185 Table 5-1 shows that only ~39% of natural habitat will be conserved on privately owned softlined lands. However, on Page 4-1, the last sentence states that "Conservation targets within these softlined areas range from 50-80%..." Please explain the discrepancy. The City of Escondido is providing the majority (74%) of natural habitat conservation as compared with private landowners. A level of only 39% preservation of softlined projects is insufficient, especially in light of the 75% requirement for conservation of natural habitats in the Schooner and Bernardo Mountain softlined properties.

SCSD-186 Other Areas, Page 5-6 Who will monitor and enforce compliance of preserve adjacency guidelines for lands that are privately owned? What type of management practices will be implemented in these areas? Who will ensure that the habitats, plants, and animals in these preserve areas are not impacted by incompatible activities within the preserve?

SCSD-187 5.2.2 Narrow Endemic Species Standards Explain what type of mitigation will result in no net loss to an endemic species if there is an allowed 5% in the FPA and 20% loss outside the FPA? The creation or restoration of habitat could eventually result in no net loss if the endemic species occupies this habitat. However, what provision is there for the circumstance where the endemic species does not successfully colonize the newly created habitat, resulting in a net loss? What if the restored or created habitat only supports a fraction of the population that was originally taken?

SCSD-188 Table 5-3 Please provide another column showing whether the species has the potential to occur in the Escondido subarea.

SCSD-183. The police shooting facility expansion is an approved project, and the property was annexed to the City on September 10, 2001. The environmental impacts of the project were assessed in the negative declaration (ER 97-02), certified on January 17, 2001. Since the project has not been constructed yet, the footprint is not shown as a hardline area. This project is incorporated by reference into the Subarea Plan as a project approved by the City.

SCSD-184. The discrepancy between the acres of natural habitats on Tables 2-1, 2-2, and 4-1 is that Table 4-1 ranges from 9,108 to 9,206 acres, which is approximately 1%. While it is ideally desirable to have all the acreages match, this is not feasible due to the differences in the data layers and methods of calculation, as noted in the footnotes. The City feels this level of accuracy is adequate, and the tables will not be revised. Further, the acreages are estimates based on the information available. Project level analysis will refine these numbers.

SCSD-185. The categories of "hardline" and "softline/standards" used in Table 5-1 are defined in footnotes 3 and 4. The "softline/standards" category includes all privately-owned habitat areas for which target conservation of upland habitat is less than 90%, including 0%. Thus, although the subset of softline areas with target conservation between 50% to 75% would result in average conservation consistent with that range, this table is intended to show the average rate of conservation for all privately owned areas, taking into account areas which may be lost to development.

On page 4-1, the conservation targets (expressed as a percent of natural habitat conserved) refer to both public and private lands. The biological analysis assumed conservation levels on specific private properties ranging from 50% – 75%. On steeper sites, the assumed conservation level is 75%, while flatter properties were generally assumed at lower levels. The 80% conservation level is only proposed on public lands. The City feels that a 75% conservation level on private lands is the maximum amount which can be required without raising a potential "taking" issue. This is consistent with the maximum conservation assumed on private lands within other approved habitat conservation plans where development plans have not been submitted. Additional conservation would also result in significant land use and housing impacts as discussed in the EIS/EIR. Further, the City feels the proposed overall conservation levels are adequate, regardless of ownership.

SCSD-186. The preserve adjacency considerations are intended as guidelines, and information regarding appropriate management practices will be made available to homeowners and homeowner associations. New development

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will be required to comply with the guidelines. The City of Escondido does not intend to impose new management restrictions on existing developed properties or homeowner associations. Private homeowner associations will continue to manage common open space lands in accordance with existing CC&Rs and conditions of project approvals.

SCSD-187. As stated on page 5-11, the mitigation options for achieving the no net loss goal for narrow endemic species is discussed in the species justifications of the MHCP Volume II. As with any mitigation requirement, monitoring will be required for any restoration. In the event that a population does not become established, remedial action is warranted.

SCSD-188. Table 5-3 will be revised to include a column indicating whether a species is likely to occur in Escondido.

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- SCSD-189 SCSD-189. Bullet 1, Pages 5-9, 5-11
Define the criteria and threshold for determining that reasonable use of the property is precluded. Who determines whether reasonable use is precluded?
The City's approval body (i.e., Director of Planning and Building, Planning Commission or City Council, as determined by the type of development application) will make a finding to determine whether reasonable use is precluded.*
- SCSD-190 SCSD-190. Bullet 4, Page 5-11
How will buffer widths and allowable activities within conserved population sites of Narrow Endemics be determined for each species at each site? Who will have final authority on these determinations?
As stated on page 5-11, the buffer widths and allowable activities will be determined on a case by case basis, through the environmental review process, based on the criteria discussed in the species justifications of the MHCP Volume II.
- SCSD-191 SCSD-191. Section 5.2.3 Wetlands Mitigation Standards
No Net Loss Policy, Page 5-12
What happens if mitigation measures implemented for unavoidable impacts to wetlands fail to achieve the no net loss policy in regards to biological value? Will additional mitigation measures be required?
The City's approval body (i.e., Director of Planning and Building, Planning Commission or City Council, as determined by the type of development application) will make a determination regarding buffer widths and allowable activities.*
- SCSD-192 SCSD-191. Section 5.3.1 Funding needs of Plan Implementation
The sentence following the three bullets on page 5-14 is redundant with the first sentence of this section.
Mitigation monitoring is required under CEQA to insure that measures are adequately implemented. Wetland impacts and mitigation will continue to be regulated by ACOE and CDFG. Section 404 permits and CDFG Streambed Alteration Agreements require management and monitoring programs, which are typically monitored for five years. If biological goals are not accomplished within that time period, additional measures may be imposed or the timeframe for compliance may be extended.
- SCSD-193 SCSD-191. Section 6: Subarea Plan Implementation Policies
Section 6.1.2 Take Authorizations
Plan Implementation Monitoring, page 6-3
There appears to be very little review of how the City of Escondido implements the Escondido Subarea Plan. Please explain specifically what mechanisms are in place to ensure that the City of Escondido complies with requirements and conditions of the Escondido Subarea Plan to ensure that habitats and species are conserved. In a number of cases, the City will be implementing its own development projects and at the same time overseeing compliance of these same projects. Who will do the monitoring? Will there be a separate department within the city government to monitor compliance and to manage habitats within the preserve? Will employees from departments that are developing projects also monitor compliance of that project? Will the City of Escondido hire biologists with the appropriate training and expertise to evaluate biological issues and to monitor compliance? Explain what role the CDFG and USFWS will play in monitoring proper implementation of the Escondido Subarea Plan, beyond the annual meeting and year end report. Are these agencies able to suspend or revoke Escondido's authority to issue take permits if the City is in noncompliance with the requirements of the MHCP and Escondido Subarea Plan? What happens if required mitigation measures are not properly implemented by a project proponent? Additional language should be included in this plan to describe the monitoring process in greater detail and to provide for an appropriate level of oversight by the wildlife agencies.
Specifically, the MHCP states, "Projects that propose to impact a wetland must demonstrate with substantial factual evidence that the impact is essential to maintaining some economic or productive use of the property and that no feasible alternative would eliminate or minimize the impact or otherwise result in greater biological value. If impacts to wetlands cannot be avoided while retaining economic or productive use of the property, an evaluation of biological functions and values shall be made based on the best available science...Any unavoidable impacts to wetlands must be mitigated to result in no net loss of wetland vegetation acreage and biological function and value within the MHCP subregion and preferably, but not necessarily, within the same drainage and city. Subarea plans may apply stricter avoidance standards for wetlands inside the FPA than outside the FPA. However, the no net loss standard must be achieved regardless of location."
- SCSD-194 SCSD-191. Section 6.3.2 Regulatory Actions
When implementing the plan, what happens when there are substantial conflicts between existing land use, zoning or other city regulations and MHCP conditions? What if the City can not amend all the laws and regulations as required by the plan? At what point would it be determined that the City was not in compliance with MHCP and thus not
In implementing the appropriate mitigation for wetland habitat, the following management guidelines must be incorporated:

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1. For wetlands currently in or proposed for open space, each jurisdiction shall prepare a management plan to ensure maintenance and monitoring of this habitat and its species.
2. For wetlands currently in or proposed for open space, each jurisdiction shall prepare a management plan to restore disturbed portions of this habitat, including management and restoration plans for sensitive species occurring in this habitat.
3. Where conditions are appropriate, create new wetlands by converting disturbed upland habitat.

SCSD-192. The redundant sentence will be deleted.

SCSD-193. The Implementing Agreement (IA) between the City and the wildlife agencies will define the monitoring responsibilities, remedies and enforcement mechanisms. The IA must be approved in order for the wildlife agencies to issue an incidental take permit. A Model IA is contained in Attachment B of the MHCP Volume I. The City will be responsible for implementing the Subarea Plan for both private and public projects, including the City's capital improvement program projects. The City will be responsible for overseeing management and monitoring responsibilities until such time as a regional entity such as a conservancy is established. The City may hire consultants, such as biologists, to assist in monitoring activities. The CDFG and USFWS will monitor plan implementation and will retain the ability to suspend, revoke or terminate the incidental take permit, as defined in the IA. Mitigation measures adopted under CEQA will be monitored in accordance with a Mitigation Monitoring Program, which defines the mitigation measures, responsible entity and timeframe for completion.

SCSD-194. The anticipated revisions to the General Plan and Zoning Code have been identified in Section 6.3.2. The timeframe for adoption of any amendments and the remedies for failure to comply will be spelled out in the IA. Approval of future ordinances must be consistent with adopted MHCP requirements, unless an amendment to the IA is approved by mutual agreement.

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covered by the take permit? What if new ordinances and regulations are adopted in the future that conflict with MHCP conditions?

SCSD-195

Bullet 9, Page 6-10

Explain what legal or enforcement measures will occur if the City of Escondido does not comply with all the terms and conditions of the subarea plan implementing agreement. Are there any criminal or monetary penalties to the city or its personnel for failure to abide by the conditions of the Escondido Subarea Plan?

SCSD-196

Section 6.3.4: Development Review and Approval Process

Wildlife Agency Consultation, Pages 6-13, 6-14

It is stated that the wildlife agencies may request voluntary consultation with the city in regards to a project undergoing CEQA review. Does this mean that the City can refuse to discuss a project with the agencies? The term "voluntary" should be removed as the wildlife agencies should be able to comment on and consult with the City on projects undergoing CEQA review whether the City agrees to the consultation or not. This should be part of the oversight process that ensures implementation of Escondido Subarea Plan conditions.

Please add me to your distribution list for all communications, updates and future notices regarding the MHCP. Please let me know if I can provide any additional information regarding these comments. Thank you.

Sincerely,

Rick Landavazo
by MC

Rick Landavazo
Sierra Club MHCP Review Committee
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SCSD-195. The implementing agreement has not yet been prepared, but will be required prior to issuance of the incidental take permit. Once an application is received from a City, the Subarea Plan and IA will be published in the Federal Register for public comment. The IA will address enforcement measures. Refer to the Model IA in the MHCP Volume I, Attachment B.

SCSD-196. The word "voluntary" will be deleted. The Subarea Plan will not alter the procedures defined under CEQA.

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San Diego Chapter
Serving the Environment in San Diego and Imperial Counties

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APR 28 2002
US FWS
CARLSBAD FIELD OFFICE, CA

Subject: Oceanside Subarea Habitat Conservation Plan

Dear Mr. Bartel :

SCSD-197

Last July the Sierra Club sponsored a public workshop to inform interested persons about the regional planning process for habitat conservation in North County, and the expected issuance of the draft MHCP, EIR/EIS and Subarea plans for the effected cities in this region. We then set up a team of volunteers in each city to review and comment on these plans as part of a coordinated effort. Our team in Oceanside conducted field inspections, reviewed background documents, and interviewed key resource persons. The results of all of this effort is reflected in the comments that follow.

One of our major objectives in this review was to determine if the Oceanside Subarea Habitat Conservation Plan(Plan) meets Sierra Club policy on HCPs/NCCPs and wetlands.

Also, and very importantly, we reviewed the Plan to determine if additional conservation can be achieved. (The San Diego Chapter of the Sierra Club recently went on record to support the maximum level of conservation in the MHCP as reflected in the Biological Core and Linkages alternative in the draft EIR/EIS.) We have identified areas that should be included in the MHCP Preserve, and urge the Wildlife Agencies to require Oceanside to preserve these areas. By including these areas, Oceanside will increase its level of conservation and improve regional connectivity of the wildlife corridors.

Third, we have commented on issues in the Plan that need clarification, correction, or resolution.

Overview

SCSD-198

Oceanside has very little sensitive habitat remaining, yet it is a critical link between core habitat to the south in Carlsbad and the large tracts of high quality native habitat right across the city border to the north in Camp Pendleton. The regional plan will not work unless linkages are provided through Oceanside, yet the level of conservation indicated in the Oceanside Subarea Plan is extremely low.

Section 1.2 indicates that concerns about the threatened California Gnatcatcher were the primary reason for Oceanside to undertake the Subarea planning process. Judging from the results of that process it is clear that the focus has been on this single species- and not the entire list of 61

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SCSD-197. The comment provides an introduction to the comment letter indicating their review objectives for the Oceanside Subarea Plan.*

SCSD-198. The City of Oceanside Subarea Plan Wildlife Corridor Planning Zone is constrained by existing development and roads. This main wildlife corridor through the City relies on habitat preservation and restoration along the SDG&E transmission corridor, which is covered by an approved NCCP/HCP as well as preservation, restoration, and acquisition of portions of key adjacent parcels. The biological analysis for the plan and wildlife corridor determined that a sufficient level of conservation and wildlife movement would occur. The goal of the plan was to contribute to the regional viability of as many species as possible, and not a single species. No city can ensure, by itself, that it can independently protect sufficient habitat to support any species of concern, which is why cooperative, regional planning is required. A primary contribution of the Oceanside plan to regional conservation is to conserve and improve north-south connectivity for California gnatcatcher populations, because this is essential to the regional viability of this species. We disagree that a more viable corridor for connecting gnatcatcher core populations exists in the eastern portion of the city. Detailed biological analyses and field studies by numerous knowledgeable biologists determined that the most viable stepping-stone corridor across the city is associated with the SDG&E transmission corridor in the central part of the city. The Jeffries Ranch area is not adequately connected to gnatcatcher core populations to the south to be considered a more viable corridor. We agree that it supports important biological resources and may contribute as a secondary corridor to the overall regional function of the preserve system. There is no need to extend boundaries of the Wildlife Corridor Planning Zone to the northern boundary of the city. Although we recognize that, biologically and functionally, the wildlife corridor connects all the way across, the purpose of the planning zone is to designate where certain guidelines are necessary to conserve key parcels. These implementation guidelines are not necessary outside the zone as currently mapped.

The goal of the plan was to contribute to the regional viability of as many species as possible, and not a single species. No city can ensure, by itself, that it can independently protect sufficient habitat to support any species of concern, which is why cooperative, regional planning is required. A primary contribution of the Oceanside plan to regional conservation is to conserve and improve north-south connectivity for California gnatcatcher populations, because this is essential to the regional viability of this species. We disagree that a more viable corridor for connecting gnatcatcher core populations exists

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sensitive plants and animals shown on Table 3-2 that have been documented in Oceanside. The Plan will be used as justification for take permits for all 61 species. The Plan must therefore clearly demonstrate that it protects sufficient habitat to support the populations of all 61 species. The focus on coastal sage scrub stepping stones in the preserve design does not assure that all of these species are adequately protected.

The entire Oceanside Plan is based on the premise that the primary wildlife corridor is through central Oceanside by El Corazon. In fact, it is likely that a much more viable, or at least a critical secondary, corridor exists further east through Jeffries Ranch and Guajome Regional Park.

The central wildlife corridor boundary also does not extend all of the way to the city limit boundary on the north. Since the specified intent is to assure movement through Oceanside, the boundaries should extend all of the way to the city limit line on the north side. Even though much of this area is in mitigation banks, it is still important to integrate this as part of the entire corridor.

Overall Conservation Proposed

SCSD-199

Oceanside proposes to preserve 58% or 2,742 of the 4,704 acres of remaining natural habitat. The overall MHCP biological core and linkage area proposes to preserve 82% or 24,531 of 29,895 acres of natural habitat plus an additional 18% of other vacant land. Oceanside proposes to preserve only 68% of the regional biological core and linkage areas within the city. Nor has Oceanside targeted vacant/disturbed land for preservation- even where this would add to contiguous habitat and the functioning of the constrained wildlife corridor.

This lower level of conservation is of even greater concern because almost all of the areas of conservation (except for the existing mitigation banks at the northern city boundary) are all small habitat fragments with 100% of their area subject to significant adverse edge effects. (See Figure 2-4 Focused Planning Areas Edge Effects MHCP Study Area.)

However, these overall numbers do not show the impact on specific habitat type and the associated species that are the real focus of this conservation effort. Coastal sage scrub (CSS) habitat preservation is at the core of the MHCP planning process. Oceanside proposes to preserve only 50% of the remaining CSS. Even within the focus of preservation efforts within the city- the Wildlife Corridor Planning Zone (WCPZ) there is less than 100% conservation.

In light of the fact that San Diego county has "more rare, threatened and endangered species than any comparable land area in the United States" (MHCP Vol. 1, Section 1.2 paragraph 1) and is considered a major "hotspot" on a global scale, the biological aspects of this plan are of far greater importance than the economic growth needs for the city of Oceanside or the north county region. Edward O Wilson's article "How to Save Biodiversity" defines hotspots as "habitats that are both at the greatest risk, and shelter the largest concentrations of species found nowhere else." (1) While the city government has known for years that the natural habitats being destroyed for development were unique, they chose to ignore the opportunities to be good stewards of these valuable resources- resources that belong to us all. The conservation of only

SCSD-199. Many areas included within the BCLA but excluded from the FPA and the proposed reserve system are isolated grasslands or disturbed habitats. Others support sensitive resources but do not contribute greatly to reserve configuration or value. Other properties that do support valuable resources and might contribute to reserve design cannot be shown as conserved due to existing legal agreements or other constraints. Development on any property supporting biological resources requires mitigation that will contribute to assembling the reserve system, including protection and restoration within the essential stepping-stone corridor. Without some allowance for development in less biologically valuable areas, the plan could not assure conservation and management on those properties considered most essential to meeting the plan's biological goals.

100% conservation is not achievable in the WCPZ given the high cost of land in this area, and legal constraints. Restoration of disturbed lands to coastal sage scrub within this zone is a key component of the plan, and will actually increase net coastal sage scrub within the WCPZ by about 145 acres relative to existing conditions. Much of the coastal sage scrub outside this zone, and excluded from the MHCP FPA, is small scraps on steep slopes that do not contribute greatly to reserve design.

The City of Oceanside has taken a pro-active approach in preserving habitat through past project development. This has occurred through adherence to the Environmental Resource Management Element of the General Plan and environmental policies in the adopted Local Coastal Program. Since 1992, the City has been an active participant in the North County Multiple Habitat Conservation Program and has coordinated closely with environmental groups, Wildlife Agencies and the public on all projects involving sensitive habitat.

The City has coordinated closely with the Wildlife Agencies and public on all projects involving sensitive habitat. In addition, all projects involving habitat impacts or take were required to obtain outside agency permits prior to grading or construction. Since 1992, coastal sage scrub impacts were processed under the Section 4(d) process or a Section 7 consultation for a 404 permit which involve review by biologists, agency staff and the public. Impacts to wetland habitat have all undergone extensive review and permitting under Sections 404 and 401 of the Federal Clean Water Act and Section 1601 and 1603 of the California State Fish and Game Code.

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The draft Subarea Plan includes provision for extensive restoration of vacant, disturbed parcels. Approximately 136 acres of land in key portions of the wildlife corridor area are planned to be restored to native habitat.

About 539 additional acres would need to be conserved for the BCLA conservation alternative. Conserving this additional acreage is not possible due to existing legal and economic constraints. Much of this additional acreage would include highly disturbed and isolated habitat areas that would not contribute greatly to reserve design or species conservation. Some of these properties are already legally entitled for development. The plan must provide a balance between biological conservation and economic development. In some cases, increasing the level of conservation would prevent any economic use of a private property and would therefore constitute a property taking. Properties having high biological value that cannot be guaranteed high conservation at this time are considered high priority for acquisition, from willing landowners, to increase the level of conservation above the minimum level guaranteed under the FPA alternative.

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58% of these remaining native habitats is ignoring once again the important biological value of all of the remaining vegetation communities and the sensitive species that need them to survive. The situation is beyond compromise.

Regrettably, Oceanside's proposed subarea plan is too little-too late. While the city of Oceanside adopted an Environmental Resource Management Element to their General Plan in 1975 with provisions for the preservation of sensitive lands, it is now evident that these provisions were inadequate. In the last 25 years, these resources have shrunk at an alarming rate. The city has opted to designate as "open space" undevelopable land (i.e. 40% slope) and disregard opportunities to acquire and set aside healthy native habitat. This lack of foresight has greatly diminished Oceanside's contribution to the regional MHCP.

In 1995, Oceanside began to assess their limited remaining resources to provide a base for their sub-area planning process. Without the SDG&E easements there would be no possibility of achieving any viable wildlife corridor through the city. Nothing less than the Biological Core and Linkages Area level of conservation alternative of 3,281 (EIR/EIS Table 2.3-6 Biological Conservation, City of Oceanside Focused Planning Area Alternative) is acceptable.

It is recommended that the Oceanside Sub-Area Plan be amended to include this additional acreage. It is also essential that additional funding be provided to support the Plan and the necessary increased levels of conservation

Specific Additional Areas Recommended for Conservation

SCSD-200

The Biological Core and Linkages Alternative provides for 3,281 acres of conservation within Oceanside, as compared to only 2,420 in the Plan. It is impossible from reviewing the documents to determine exactly where these additional 861 acres are located (mapping is at too large a scale). The following are specific recommendations for areas that should be conserved in addition to those specified in the Plan. It is assumed that most of these parcels are already included in the BCLA, but some may not be. We urge the Wildlife agencies to include the entire BCLA and any of the following parcels that have not already been included into the approved preserve design.

Marron Rd by Buena Vista Creek- wetlands impacts and connection between core habitat at Calavera and Buena Vista

Mira Costa College- wetlands area north of the security parking lot- not mapped

Oak Riparian Park- wetlands area not correctly delineated all the way up to underground channelization

Garrison Creek - area of willow riparian wetlands is not mapped.

Location A North of SR78 at proposed crossing- beginning of corridor in Oceanside with no visible CSS from the south side of the road. Open space patches available.

SCSD-200. Responses will be provided for individual parcels below. Please note that the reference to 2,420 acres of conservation in the comment omits an additional 322 acres of wetlands, for a total of 2,742 acres of guaranteed conservation within Oceanside. Thus, the BCLA alternative would add about 539, not 861 acres, relative to the FPA alternative.

The undeveloped portion of Maron Road by Buena Vista Creek is in the City of Carlsbad and is addressed in their Subarea Plan.

All wetland and upland areas south of the creek in Oak Riparian Creek are planned to be preserved per the MHCP and Oceanside no net loss policy. Garrison Creek wetlands, east of El Camino Real will be preserved as stated in the Subarea Plan. A detention basin project is approved in this area, but will only impact a small area along the perimeter of the basins.

All wetland and upland areas south of the creek in Oak Riparian Park, including Calavera Creek that bisects the park, are planned to be preserved per the MHCP and Oceanside no net loss policy. Portions of the creek and upland areas have been mapped. The new mapping will be compared to the Subarea Plan vegetation mapping and incorporated into the final Subarea Plan, if appropriate. Garrison Creek wetlands, east of El Camino Real, will be preserved as stated in the draft Subarea Plan. A detention basin project is approved in this area, but will only impact a small area along the perimeter of the basins. Recent mapping for the detention basin project will be compared to the draft Subarea Plan and incorporated into the final Subarea Plan, if appropriate.

It is not clear where the referenced parcel is located. Apparent open spaces adjacent to the golf course are not available for conservation. Restoration of CSS is recommended for disturbed slopes along the corridor north of Location A.*

Various portions of the SDGE transmission line corridor are in public ownership. SDGE has an approved NCCP/HCP – they have agreed to protect habitat and allow some restoration within their easement/ownership areas. Areas adjacent to the transmission corridor will be evaluated for protection as open space as development occurs. The areas adjacent to the transmission line through Mira Costa College are under the jurisdiction of the Community College District, and therefore not subject to city land use authority. In addition, existing improvements (buildings, tennis courts, parking lots, etc.)

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adjacent to the SDG&E easement through Mira Costa College would preclude assemblage of a 1,000-foot-wide corridor through this area.

Existing CSS adjacent to the El Camino Real Golf Course are considered a secondary corridor route in the Subarea Plan. The Subarea Plan allows onsite mitigation in this area and large portions of the existing CSS are planned to be preserved as native habitat.

There are a string of open space connections near the golf course, including the pocket park at Viscaya Way and the SDGE easement along the south side of El Camino Real. The majority of this area is not proposed for development. However, the southeastern extent of the SDGE easement in this area is highly developed (tennis courts, commercial development, SR 78, etc.) and does not provide connections to any open space areas.

The City has been working with SDGE to landscape the substation area with native plants including CSS species where appropriate.

Wildlife undercrossings can be explored where feasible, however, these transportation corridors are highly developed and sites are limited. Any development in the area will be required to comply with the MHCP standards for wildlife corridors.

This area is highly developed and it is unlikely that California gnatcatchers or other species will use this point to cross SR 78. It is more likely they will utilize the wildlife corridor connection just east of El Camino Real as shown in the Oceanside and Carlsbad Subarea Plans.

The property south of the narrow vegetated slope is zoned for commercial development. This is a very narrow connecting point that does have some native plants, however, it is too small and isolated and because of brush management needs and development patterns in the area, it will not function as a wildlife corridor.

The population of *Ambrosia pumilla* has been surveyed; no development has been proposed that will impact this population. This property has been added to the FPA.

A population of Nuttall's lotus has been identified south of the San Luis Rey River in this area. It is in an open space area between the bike trail and the river that will not be developed. Surveys in this area have not identified any

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SDG&E Easement corridor- full acquisition to meet minimum corridor width requirements of 1,000 feet per MHCP criteria. Part of this already appears to be in public ownership at Mira Costa.

East side El Camino Real Golf Course - to provide a secondary route through this constrained area.

Pocket park by Viscaya - connects to slopes along the El Camino Real Golf Course and the power line easement through Mira Costa. Provides a good alternate route.

Mesa Dr/El Camino Real up to Sub-station - landscape areas need to be restored to CSS to provide line-of-sight for the corridor.

Location G Corridor crossing of SR 76 and Mission Ave. - This is a major road kill area. Undercrossings are needed with some acquisition to provide space for wildlife access to the undercrossings on each side of the two roads.

Buena Hills/Vista Way- a good slope patch with no sound wall and good line of site from the bank behind Quarry Creek. While this doesn't have good connectivity to the north, it does provide an alternate SR78 crossing point.

West of RDO/Vista Way by strawberry stand- there is a narrow connecting corridor through housing at Paseo del Laura. Bank currently has some native and some landscaped plant materials.

South of Mission Ave. by the city boundary- location of major critical population of San Diego Ambrosia.

Coast Highway at SLR River- location of the major critical population of Nuttall's Lotus.

Location of major/critical population of San Diego Barrel Cactus- not mapped

Melrose at Oceanside Blvd - location of the major/ critical location of the burrowing owl.

Buena Vista- location of the population of the Oblivious Tiger Beetle. This is shown on Table 3-7 in the MHCP as a narrow endemic species with a critical population in Oceanside.

Sensitive Species locations not addressed in BCLA- See Figure 4.3-5 Recorded Locations of Sensitive Species MHCP Study Area and BCLA Alternative 3 from draft EIR/EIS. There are significant concentration of sensitive populations in both the Agricultural Exclusion Zone and just outside of the proposed WCPZ.

Compliance With Sierra Club Policy

Attached is a copy of the Sierra Club California NCCP/HCP Principles. The following comments summarize our concerns about where the Plan is not in compliance with these principles.

4

SCSD-201. The agricultural exclusion zone does not exempt landowners from requirements that apply to others. Development projects and clearing of natural habitats are subject to all the same requirements as on other lands, plus a requirement for restoring 50- or 100-foot buffers of natural habitat on current agricultural fields. We strongly disagree with the statement that the agricultural land area "provides significant opportunities for a much better wildlife corridor than the one that is currently proposed." Please provide supporting evidence for this statement regarding which species and ecosystem functions would be served, keeping in mind that migratory riparian birds such as least Bell's vireo and southwest willow flycatcher do not depend on linkages. Intensive study indicates this area is clearly not as functional for California gnatcatcher connectivity as the currently proposed Wildlife Corridor Planning Zone.

Sensitive species in the Agriculture Exclusion Zone and WCPZ including narrow endemics are addressed in Section 5.2.3, Narrow Endemic Species Standards, and other portions of Section 5 regarding preserve assembly and conservation.

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SCSD-201

2. Stewardship

The language that excludes agricultural land exempts one class of landowners from requirements that should apply to all- a duty to ensure that actions do not harm public trust resources. There is significant sensitive habitat included in these areas identified for agricultural exclusion. The habitat needs to be mapped, conservation requirements need to be specified, and there needs to be provision for public accountability for agricultural lands consistent with other land uses.

Figure 4.3-5 Recorded Locations of Sensitive Species MHCP Study Area and BCLA Alternative 3 shows significant populations of sensitive species within the proposed Agricultural Exclusion Zone.

Guidelines for conservation are particularly important because the agricultural land area provides significant opportunities for a much better wildlife corridor than the one that is currently proposed under the Plan- the Wildlife Corridor Planning Zone through central Oceanside.

3. Prevention

SCSD-202

There is language in the text that talks about “no net loss of wetlands,” but there are existing wetlands habitats that were not identified on the maps and summary tables, and there is inadequate provision for wetland buffers that are essential to assure the health of the riparian habitat. Furthermore that plan talks about riparian buffers of 50’ from the riparian plant banks and another 50’ of planning buffer. These buffer requirements have not been met in many areas and the result is that impacts to critical wetlands are not adequately prevented.

4. Science Based Standards

SCSD-203

There is no scientific basis upon which to make a determination that the proposed Plan is likely to result in recovery of at-risk species. Several narrow endemic species with critical populations in Oceanside are not even specifically addressed in the preserve assembly criteria and the land that is targeted for acquisition. There is not even an assessment of the impact on the key species that is the focus of the Plan- the California Coastal Gnatcatcher.(CCG) How many exist today and how many will exist after this plan is implemented?

6. Legal Assurances

SCSD-204

The impacts of global warming on natural communities is just beginning to be understood. What is clear is that ecosystems are responding to climatic changes. What was once considered an “act of God”, like a major fire, can now be a reasonable expectation. These issues have been the focus of several recent scientific panels.(2) The assurances in the Plan fail to take into account these changes, and by so doing excludes these from requirements for adaptive management. The assurances language needs to specifically identify issues related to global warming and climatic change and require adaptive management.

SCSD-202. Fine-scale inaccuracies in vegetation mapping are to be expected in large-scale maps. These are rectified by the finer-scale, project-specific mapping and surveys that are required during plan implementation.

MHCP and Subarea Plan mapping may not have shown all wetland locations due to the scale of the mapping.

As projects are processed wetlands will be mapped and appropriate permits obtained, if necessary. Wetland buffers of the size specified in the Subarea Plan were not implemented in all cases due to the lack of approved buffer guidelines, except along coastal portions of the San Luis Rey River and Buena Vista Lagoon as specified in the City’s LCP.

The plan cannot remove existing developments, some of which occurred within 50 or 100 feet of wetlands before any buffer regulations were enacted. The plan will ensure that future developments meet the minimum buffer standards, including restoration of native upland habitats within the buffer zones.

SCSD-203. MHCP Volume II provides the scientific findings and rationale requested by the comment.

SCSD-204. Adaptive management strategies will be proposed based upon findings of the monitoring. Most of the habitats in southern California have been adapted to periodic disturbance by fires. Depending upon the size of the preserve and land uses adjacent to the preserves, fire/fuel management may differ. The issues of global warming are too speculative to attempt to quantify at this time; however, as indicated earlier, the monitoring program will identify shifts or trends in population and the program implements adaptive management strategies as appropriate.

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SCSD-205

7. Public participation.

The local efforts to inform the public about this plan have been grossly inadequate. Repeated requests for public workshops in the community- at times the public can attend- have been ignored. One workshop, for the City Council members, at 10 am on a weekday, (April 3, 2002) almost at the end of a four month comment period, is clearly not intended to encourage meaningful public participation. The draft report was issued for the first time along with the two volume draft MHCP, and the entire EIR/EIS document. The amount of material for the public to review was overwhelming.

Throughout this ten year planning effort the public has been essentially ignored. City officials apparently assumed that meetings with landowners, and with other stakeholders through the MHCP Advisory Committee were sufficient.

The level of effort to educate, inform, and involve the public has not been proportional to the level of impact on the public- millions of dollars of public cost, and a fifty year plan that will determine if species can be preserved.

In addition to not being adequately involved in the process of developing this Plan, the public is not included in a meaningful way in the Plan itself. The only role for the public is described in Section 7.2.8 Public Education and Enforcement and Section 7.2 to be "briefed" on the progress of preserve assembly. This limits the public role in a way that is consistent with the Sierra Club policies. The public is not to just be told the results of decisions- they are to be involved in a meaningful way.

SCSD-206

8. Adaptive Management.

Adaptive management is given lip service in the Plan- but there is no clarification of what this means, how it will be applied, what triggers the response, who is responsible for corrective action, and how this will be integrated with long term management of this land.

SCSD-207

9. Enforcement.

Provisions for citizen challenges must be clearly spelled out. Provisions of federal and state law for species protection are not easily accessible to the local citizen. The Plan needs to document the process for enforcement and reinforce the right of local citizen suits to enforce the provisions of the Plan.

The only role for the public in enforcement is described in section 7.2.8 which is limited to those lands formally included in the preserve system. This limitation excludes the public from its legitimate function of involvement in all actions related to the Plan- not just the last step of the process.

SCSD-205.

There have been numerous opportunities for public input on development of and the City of Oceanside Public Review Draft Subarea Plan. Since its inception in 1993, MHCP Advisory Board meetings, often held monthly have been open to the public. The City of Oceanside has held various workshops at the Planning Commission, Economic Development Commission and City Council. Workshops for affected property owners have been held as well as for organizations such as the League of Women Voters. In addition, numerous one on one meetings both in the City offices and in the field have occurred with interested members of the public on an ongoing basis.

SCSD-206.

Other reporting period options may be explored in formulation of the Implementation Agreement between the City and Wildlife Agencies.

Please see response SCSD-292. Please see the draft Monitoring Plan for a more detailed description of MHCP adaptive management techniques.

SCSD-207.

Each project will be required to undergo environmental review for any discretionary actions. Thus, the public is noticed in accordance with CEQA regulations.

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SCSD-208

10. Funding, Implementation, and Monitoring.

There is not a funding plan that assures implementation of the Plan. The currently nonexistent "regional funding source" is critical to plan implementation, but after ten years of planning effort has not been determined, and consequently there is no time frame for provision of these funds.

The federal and state share of land acquisition has not been guaranteed, and funds for local acquisition do not appear to be sufficient for the need.

Without the provision of adequate funds this plan is just a piece of paper.

The monitoring process also does not provide timely, comprehensive information.

Other Specific Comments On Sub-Area Plan

Figure 2-2 Existing Land Uses

SCSD-209

There are errors in the ownership categories as shown in 1995, and there have been several changes in public land use that are not reflected on this figure. Consequently this figure and all of the related summary tables include errors that overstate public ownership, and will tend to make it more difficult and costly to achieve even the levels of conservation that are shown. This is of particular concern in the area designated as the WCPZ. The 1995 mapping shows all of El Corazon, including the 99 acre Collins property in public ownership. The Collins property was not owned by the city in 1995. It was purchased later, and in 2001 about 19 acres of it was sold. Furthermore the city has been in a three year planning process that includes giving most of this land to a developer for a private hotel and golf course. Much of this site is already sensitive habitat, and most of the rest has good potential for significant habitat restoration area.

SCSD-210

2.1 Regional Location

How does a north/south "stepping stone" linkage for coastal sage scrub satisfy the MHCP's ecosystem preserve plan. Webster's dictionary defines ecosystem as "a community of animals and plants and the environment with which it is interrelated." These fragments are not a functioning ecosystem in themselves.

SCSD-211

2.2.1 Master Plan for Parks and Recreation

The Master Plan also includes provisions for a park at El Corazon. Since this is a key site within the central wildlife corridor the Master Plan needs to specifically address the integration of the El Corazon park site with the MHCP.

SCSD-212

2.2.3 Transportation and Utility Corridors

Why haven't wildlife tunnel/overpasses been planned for these major roadways that constrain potential linkages, especially the recent SR-76 construction? The city has been aware of the need to create this wildlife corridor(Sub-area Plan) for years. Wildlife movement needs to be provided for with all new roadway construction, and retrofits of existing roads need to be prioritized and programmed into the capital improvement plans for Plan implementation.

SCSD-208.

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 CFR, Title 40, Sec. 1508.14, and California Public Resources Code, Sec. 21100).

Implementing a preserve system for the MHCP will involve actions by local jurisdictions as well as by federal and state agencies. Some of those actions, such as commitment of public lands for habitat use, can occur without new funding. Other actions, such as management of habitat lands conserved as mitigation for project impacts, will be funded by organizations or individuals responsible for project development. Key to successful implementation of the MHCP is that important habitat areas be conserved at a rate which at minimum preserves the continued viability of target species and mitigates for impacts which occur. Since habitat loss allowed under the plan would not occur all at once, public financing for the MHCP is not immediately required. Under the plan, implementation would be periodically monitored to insure that adequate conservation occurs over time. The Final MHCP also provides for interim funding of selected conservation actions. The need for funding of other conservation tasks will be reviewed, and if necessary supplementary actions taken, while the jurisdictions pursue a regional funding program.

The federal Endangered Species Act ("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 prepared. The Secretary may also require other assurances that the plan will be implemented. The MHCP provides the framework for the funding necessary to implement the program. The assurances of such funding will be provided in the draft implementing agreement for each city which will undergo a formal public comment period identified in the Federal Register once the wildlife agencies receive a request for a 10(a)1(B) permit and a Section 2835 permit for the subarea plan.

The MHCP envisions that habitat acquisition, habitat restoration, and management, monitoring, and administrative costs will be funded by participating local jurisdictions through a cooperative regional funding program, to be placed on a ballot for voter approval within three years of the approval of the plan (MHCP, Vol. I, Sec. 7.2 and Table 7-2). The MHCP also

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identifies a range of funding sources that may be used, such as property tax, Mello-Roos special tax, sales tax, and benefit assessment.

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

- Commitment of public lands owned by participating local jurisdictions to the preserve and their management for biological resources (approximately 6,430 acres).
- Management of existing state and federal lands as part of the preserve (approximately 1,480 acres).
- Interim funding of selected conservation actions as described in the Final MHCP, Subarea Plans, and Implementing Agreements.
- Recently completed acquisition of selected properties using state and local funds, such as some of the stepping stone parcels in the City of Oceanside and upland parcels in the City of Encinitas along the south shore of Batiquitos Lagoon, a key linkage area in the City of Carlsbad, and Bernardo Mountain in the City of Escondido.
- Requirement of mitigation of impacts from new public and private projects.

The Wildlife Agencies (USFWS and CDFG) will, through Implementing Agreements with participating jurisdictions, "monitor plan implementation" and "ensure that habitat conservation proceeds in step with development" (MHCP, Vol. I, Sec. 5.2.3). Furthermore, "[i]f the Wildlife Agencies determine that the Subarea Plan is not being implemented as required, the wildlife agencies and the city will take the actions specified in the subarea plan and implementing agreement to remedy the situation" (MHCP, Vol. I, Sec. 5.3.8). The requirement to review will apply if a regional funding program is not approved in a timely manner, and an alternative remedy may require each jurisdiction to develop and implement a funding source adequate to meet its share of the MHCP and Subarea Plan implementation as it continues to pursue a regional funding source.

SCSD-209. Ownership and other information and data will be updated in the final Subarea Plan.

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- SCSD-210. The plan does not state or imply that stepping stones represent a functional ecosystem by themselves. However, maintaining and restoring these stepping stones will contribute to maintaining ecosystem function at the regional scale, by ensuring that at least certain bird species can disperse between large core areas outside the study area. It is beyond the power of this or any other conservation plan to recreate predevelopment patterns and processes by removing a major city.
- SCSD-211. The City of Oceanside Subarea Plan has specific guidelines for preservation and restoration of habitat within portions of the "El Corazon" site. The City will consider including open space areas in El Corazon when it updates the Parks and Recreation Master Plan in the future.
- SCSD-212. Caltrans was the lead agency on the SR 76 Expressway project. A wildlife crossing was constructed at Guajome Regional Park, just east of North Santa Fe. The MHCP has designated standards for wildlife crossings (see Volume I). The City when appropriate will consider future crossings and undercrossings. Agencies such as Caltrans, SDGE and NCTD will take the lead on their projects and will prepare their own CEQA documents and analysis. Biological impacts will be evaluated at a project level by these agencies with public review by the City and public. Habitat restoration within the SDGE easement or ownership areas, when needed (portions of the SDGE easement already contain habitat) will need to be funded by adjacent development. The underlying property owner in SDGE easement areas will fund ongoing maintenance. Habitat in SDGE ownership will be managed in accordance with their approved Habitat Management Plan.

There is currently one wildlife crossing under SR 76 at Guajome Regional Park. An additional wildlife crossing may be proposed for the future phases of SR 76 expansion, which will be just east of Melrose Drive to I-15. Most of this stretch is in the County of San Diego's jurisdiction. The County will be establishing standards and guidelines for siting and designing road crossings for various species. This may become part of the County's NCCP plan implementation standards, and may be applied to other SAPs.

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Explain how Caltrans, utility companies and other agencies' projects will be evaluated and implemented in light of the MHCP and Oceanside Plan. What role and control will Oceanside have over things like roadway alignments in order to avoid impacts to the preserve? Will these agencies be subject to the same mitigation requirements- with a priority on mitigation within the WCPZ?

Who will make the determination that these projects are consistent with the preserve plan? Who will determine that proposed mitigation is acceptable- for example the use of a culvert instead of a bridge for a wildlife crossing?

Will revegetation take place within the SDG&E & E transmission corridor? Who will pay for the restoration? Who will manage and pay for its on-going maintenance?

2.4 Known and Anticipated Projects

SCSD-213

Figure 2-7 shows the location of the anticipated city infrastructure projects, but there is no table that summarizes the amount of take authorizations by habitat type. It is therefore unclear how these have been accounted for in the detailed habitat conservation summaries. Is the mitigation for these takes part of the hardline conservation acreage totals? If so, there should be detailed tables that identify the take/project and the mitigation acreage for each take. This is especially of concern within the WCPZ where there are a significant number of public infrastructure projects.

The private projects also require a more detailed explanation of the amount of take/habitat type and the mitigation. Several of these private projects are located within the WCPZ, or are key connectors between core habitat. These projects are of specific concern and include:

SCSD-214

Quarry Creek Shopping Center - This project is part of the regional wildlife corridor connecting core habitat in Calavera with that along Buena Vista Creek. This has not been adequately coordinated with the City of Carlsbad. The extension of Marron Rd is shown as a public project in this area- but the traffic study is just being done now and preliminary reports are that there is little justification for this road if Carlsbad revises their development plans.

SCSD-215

Wanis View Estates - This area should be identified as included within the WCPZ and should at a minimum, be subject to all of the additional conditions that are proposed for land within the corridor.

SCSD-216

Evergreen Nursery - Since this project is adjacent to Loma Alta Creek, and part of the WCPZ it is of particular concern.

Vallas Country Club Development

SCSD-217

Public comments for this 4-unit single family residential development closed on March 15, 2002. The project would impact .5 acres of CSS, requiring 1.5 acres of mitigation since it is within the WCPZ. .9 acres is proposed preserved on site and .5 acres would be within the contiguous 31.6 acre site owned by the project applicant. The concern is that this project parcel meets the “

SCSD-213.

Public infrastructure projects will be evaluated for biological impacts and mitigation under CEQA at the project level. Biological impacts will be minimized and mitigation will be implemented in conformance with the Subarea Plan, as necessary.

Detailed information on approved and planned private projects can be obtained at the City of Oceanside Planning Department. Otherwise, the new projects will have to comply with the standards identified in the MHCP and Subarea Plans.

SCSD-214.

The Quarry Creek Commercial project avoided impacts to biological resources and put the portion of Buena Vista Creek on their site under a permanent open space easement. Future development areas to the east of the Quarry Creek project are in Carlsbad and will be evaluated under their development process and Subarea Plan.

SCSD-215.

The Wanis View Estates project was approved by the City and Wildlife Agencies (e.g., 404 permit, 1601 Streambed Alteration Agreement, and 401 Certification) and is being implemented in accordance with these approvals. The MHCP/Subarea Plans will be updated to reflect the changes in project status since the time that the MHCP/Subarea Plans were proposed. See the revised figures in the FEIS/EIR.

SCSD-216.

Evergreen Nursery has placed Loma Alta Creek (including buffer areas) and CSS on the southern portion of the site in an open space easement that is being managed by a non-profit open space management firm. The permitting and open space configuration of this project was formulated in conjunction with the U.S. Fish and Wildlife Service, California Department of Fish and Game, U.S. Army Corps of Engineers, and Regional Water Quality Control Board. The approved open space plan for the nursery site are designed to facilitate wildlife movement in the east/west corridor along Loma Alta Creek.

SCSD-217.

The public projects listed as potentially being permitted after Subarea Plan approval are on-going or long-term projects. The same applies to the private projects listed in this section. This section of the Subarea Plan will be re-analyzed in the final Subarea Plan. Public as well as private projects will need to comply with the standards in the MHCP/Subarea Plan.

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deminimus "provisions of the wildlife agencies- and these provisions are still applicable to this critical WCPZ area.

SCSD-218

How many parcels within the WCPZ are potentially going to result in "deminimus" findings? If this is significant, then there should be some guidelines developed that require mitigation to be within the WCPZ. Mitigation should be configured to improve the functioning of the corridor- and not just to add more fragmented small parcels.

SCSD-219

Several Projects were identified as to be "permitted Under the City of Oceanside Sub-Area Plan." (Page 2-30. It is unclear what the distinction is in the earlier section and this section since several of these projects are now underway in advance of approval of the Plan. This includes the Master Plan of Drainage, and the Jeffrey Ranch Project. The anticipated amount/location of takes and mitigation should be specified. Again it is unclear how these have been accounted for. In the Carlsbad HMP project specific figures were provided showing the boundaries of takes by habitat type. In the absence of this kind of information it is impossible to assess the impacts of these five pages of detailed projected projects.

SCSD-220

3.1.1 and .2 Existing Information

Is the most recent data as of 1996? Clearly this needs to be updated to reflect current condition. What is the plan to provide a more complete accurate picture of existing condition, and how will this information continue to be updated?

SCSD-221

3.1.2.1 Vegetation Mapping

Slopes on the south side of Oceanside Blvd, east of El Camino Real have been developed in 2001. This data should be updated.

Since vegetation mapping is based on aerial photographs, how is the health of the vegetation community determined? What efforts have been made to take health of the native habitat into account- both for determining preservation and for restoration priorities?

SCSD-222

3.1.2.3 Habitat Linkages and Dispersal Corridors

This section addresses CCG movement only. What about terrestrial species movement in the "potential wildlife movement corridors." Avian only is not acceptable and does not make this a viable wildlife corridor.

How were the potential obstacles to CCG line-of-sight restrictions addressed? There are places in the proposed corridor with very poor line-of-sight conditions or the need to gain quite a bit of altitude to succeed in accessing the next stepping stone. As CCG are bush flitters, other than the annual dispersal of fledglings, how much dispersal is feasible given this altitude requirement?

Provide data that supports the conclusions that CCG will not have difficulty crossing the major east/west roadways that block the WCPZ.(SR -78 and 76)

SCSD-218. It is not possible to predict how many projects in the WCPZ will be processed under "de minimus" provisions. However, once the City receives a permit, 4(d) processing no longer exists. The Wildlife Agencies are responsible for any changes to this regulation.

SCSD-219. The public projects listed as potentially being permitted after Subarea Plan approval are on-going or long-term projects. The same applies to the private projects listed in this section. This section of the Subarea Plan will be re-analyzed in the final Subarea Plan. Public as well as private projects will need to comply with the standards in the MHCP/Subarea Plan.

SCSD-220. Section 3.1.1 and 2 will be updated using biological information from projects that have occurred since the mid-1990s.

SCSD-221. The monitoring program includes a process for regularly updating and refining vegetation mapping. Relative health of vegetation communities is based on proportion of nonnative and weedy species and evidence of disturbance (brushing, disking, off-road vehicle use, litter, erosion, etc.). Restoration opportunities and priorities were ranked in the field by a restoration specialist, using criteria outlined in Section 3.1.2.4 of the Subarea Plan. Site-specific preserve management plans and the monitoring program will evaluate vegetation health as a routine part of adaptive management.

SCSD-222. See response SCSD-210 concerning the role of the stepping-stone corridor. Existing conditions already preclude creating a functional north-south movement corridor for terrestrial species, such as reptiles, amphibians, and mammals. Please note that the plan did not create existing conditions; it is striving to overcome these conditions to contribute to ecosystem function and species viability in spite of these conditions. The plan cannot feasibly undue damage done for these species by development of a major urban area with multiple heavy-use roads. The plan strives, nevertheless, to improve conditions for a set of species for which it can provide a significant regional benefit. The California gnatcatcher is one of the most dispersal-limited bird species in the region; so planning a stepping-stone corridor to accommodate its inter-generational dispersal across Oceanside will benefit many other bird species (especially other scrub-living songbirds). We agree that there are areas where line-of-sight connectivity is constrained, but this is an existing condition that cannot be undone (e.g., by razing existing commercial buildings). However, detailed, on-the-ground surveys were conducted by knowledgeable biologists to ensure that the best possible combination of habitat patches, with the best possible line-of-sight connectivity and habitat

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quality, were included in the Wildlife Movement Planning Zone. Although gnatcatchers are primarily "bush flitters," ornithologists have observed adults chasing their fledglings up in spiral flights to great heights (more than 40 feet), followed by a dispersal flight by the young birds to the nearest visible habitat patch (L. Jones and J. Atwood, personal communications). Other ornithologists have observed gnatcatchers crossing major roadways, such as Interstate 5 (personal communications from J. Atwood, P. Mock, K. Preston, J. Lovio). Numerous studies in population biology and population genetics indicate that even very limited dispersal greatly enhances population viability for species with patchy distributions (for example, one successful dispersal between core populations every few generations). We reviewed evidence of gnatcatcher occupancy of habitat patches in central Oceanside and found overwhelming indirect evidence that gnatcatchers do successfully disperse between habitat patches, and do nest in habitat patches, within the WMPZ, thus facilitating inter-generational migration across the study area. The monitoring plan recommends testing this directly with a color-banded population of gnatcatchers.

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SCSD-223

3.2.1 Vegetation Mapping

Paragraph 1- undeveloped land "along slopes south of Oceanside Blvd." is outdated. Evergreen Nursery now occupies land from south of Oceanside Blvd., across Loma Alta Creek and to the top of this slope. This area is of particular concern because of the riparian corridor which constitutes one of the major east/west local wildlife corridors that bisects this piece of land. Construction is currently underway both in the creek bed, and along the upslope watershed. There are inadequate riparian buffers at this location that are not consistent with the provisions of the MHCP.

The slopes just south of Oceanside Blvd. are very steep and do not make this a high quality crossing area without substantial improvements that have not been addressed in the Plan.

Paragraph 1 states that there are 5,110 acres of natural vegetation. This is inconsistent with Table 3-1 and other text references to 4,704 acres. Footnotes 1 and 2 do not account for this discrepancy. These inconsistencies make it difficult to determine actual acreage of natural habitat remaining in Oceanside and to assess the adequacy of the conservation plan.

Table 3-1 states that approximately 18% of Oceanside is natural habitat. The proposed conservation of 2,420 is roughly half of what is left within the city. The purpose of the NCCP and MHCP is not to agree to such a low percentage of conservation because the city is already largely built out. The extent of build-out should result in a higher percentage of conservation rather than lower. Much more conservation is needed to assure some viability to an otherwise meager corridor. BCLA acreage must be added to this conservation plan. This would improve the north/south "stepping stone" corridor and should significantly improve its functioning for both avian and terrestrial wildlife.

Table 3-1 has a line item for "disturbed" acreage. Much of what is identified as native habitat is significantly disturbed. These disturbed areas all need to be documented and targeted for restoration where they are being included in the count of habitat acres.

3.2.2 Sensitive Species

SCSD-224

There are a number of concerns with Table 3-2 Sensitive Species Occurring or Potentially Occurring in Oceanside:

- the potential occurrence rate for mountain lion is identified as low- although there are two reported cases of mountain lion traffic fatalities on Highway # 76 in the last 8 months. Existing presence is higher than reported and would be even higher if adequate wildlife corridors were provided for in this Plan.

SCSD-225

- many of the listed plant and animal species require grassland habitat, yet this habitat type is not an integral part of this Plan, and the proposed mitigation rate of .5:1 or just payment of fees with no specified mitigation does not assure adequate retention of this habitat type and the species that are dependent upon it.

SCSD-223.

The steepness of these slopes is actually considered a benefit, to provide birds with an elevated view across Highway 78 to coastal sage scrub on the other side, and to allow for them to cross above traffic. Although the steepest slopes may not offer excellent nesting habitat, they are used by foraging and dispersing gnatcatchers.

The natural vegetation and other data have been re-analyzed in the final Subarea Plan to include updated information and fix discrepancies.

See responses SCSD-199 and SCSD-222.

Section 3.2.4 of the Subarea Plan discusses priority areas for restoration within the regional corridor. The sites selected for restoration were based on conservation priority. It would not benefit the wildlife corridor or sensitive species to restore all vacant disturbed parcels throughout the City. Site specific management plans will identify additional reserve areas in need of restoration.

SCSD-224.

Comment noted. Dispersing lions from Camp Pendleton or other large open areas may well wander onto roads within Oceanside, but it is unclear where wildlife corridors for mountain lions would be desirable within this highly urbanized city on the Pacific coast.

SCSD-225.

The 0.5:1 mitigation ratio was formulated through input from the MHCP Advisory Committee. Previously, no mitigation was required for impacts to nonnative grasslands. The cities believe a low ratio for these annual or nonnative grasses is warranted to encourage development on these areas relative to more sensitive habitats, such as coastal sage scrub. Grassland-dependent species were generally found to not be adequately conserved by the MHCP or Oceanside Subarea Plan, so the cities are not receiving take authorizations for those species.

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SDG&E easements are either fee-owned rights-of-way or simply rights-of-way owned by others. The distinction limits SDG&E's requirements under the NCCP. They are required to mitigate and maintain natural habitat in the fee-owned rights-of-way only. How much of the SDG&E easements is fee-owned?

The existing SDG&E easement is used as linkage between stepping-stone patches. In many areas this easement is regularly cleared of vegetation. The result is a corridor with no cover, no food, and no ability to support species. There needs to be a major modification in the way habitat conservation is integrated with the need to be able to access and maintain the power lines. As there is very little existing vegetation along the power line easement upon what evidence do you base the conclusion that the CCG will use this as a corridor?

When the SDG&E power lines build up corrosion they build up a disturbing "humming" sound. The sound is very irritating to humans. Are there any studies that show its impacts on wildlife activity- particularly the sensitive species which are planned to rely upon this corridor for their survival? Is there any verification that the CCG will use such a power line corridor?

The regional corridor is only viable if it will support a viable population of coyotes or other predators. Too much of the corridor relies on stepping stones. This works for brief periods of bird movement, but cannot sustain breeding populations in isolated patches, surrounded by development, with no access by predator population. The plan needs to identify the impacts of edge effects on these isolated habitat fragments, and then determine if there remain a sufficient number of parcels of large enough size/connectivity to assure coyote and other predator survival.

The text only describes preservation of the corridor for gnatcatchers- what about the other protected species that are all subject to take permits once this plan is approved. If a species is to be included for a take permit, then there needs to be sufficient analysis of the population, habitat, and preserve requirements to assess the potential for species survival. There is insufficient information to make this assessment for any of the other species.

The corridor crosses SR-78 on the east side of El Camino Real. There is no native vegetation on the north side of SR-78 at this location to invite any CCG crossing. As this is the beginning of the proposed corridor in Oceanside it is critical to have healthy natural habitat with good line of sight conditions. Both the habitat and the line of sight conditions are missing at this location. Given this, on what basis are you presuming that this is a viable link in the corridor?

This segment is very dependent upon the SDG&E easement. How much of the 100-500 foot corridor falls into the narrow range as it does not appear that this area meets the minimum definitions of an acceptable corridor in the MHCP. This requires verification that it either meets the minimum or, if not, what corrective action is proposed?

The alternative route needs to also be protected because of the degraded condition of what is identified as the primary route.

SCSD-226 why is the occurrence potential of plant species only addressed as "detected" and not rated as Low, Medium, or High potential like the animal species. Wouldn't more conservation of the remaining CSS and other habitat improve the likelihood of some of the species identified as not detected to occur in Oceanside?

SCSD-227 Many of the plant species listed in the CNPS column occur in grassland and CSS habitat. Wouldn't conservation of more of these habitats improve the likelihood of some of these plant species to occur in Oceanside?

SCSD-228 The San Diego Barrel Bactus is identified as both major and critical- it should be mapped and shown on Figure 3-2. It is impossible to determine if the population is located in an area proposed for preservation or not. If it has not been proposed for preservation, then this needs to be added as an additional area of conservation needed..

SCSD-229 The major /critical population of San Diego Ambrosia south of Mission Avenue by the city boundary is in an area not proposed for protection, and one with the lowest requirements for mitigation(offsite Mitigation Zone II.) The critical population requires protection. This parcel of land should be targeted for acquisition or other means should be used to assure preservation of this population.

SCSD-230 The major critical population of Nuttall's Lotus appears to be just north of the hardline preserve boundary, and is within the coastal zone. Natural resources within the coastal zone have additional protection requirements. This area also needs to be targeted for corrective action.

The burrowing owl is mapped in only one area- an area that will not be protected. There is also good potential for occurrence in some of the unmapped agricultural exclusion zone. Further surveying should be done for this species then a species specific protection plan needs to be developed.

SCSD-231 Most of the animal species listed occur in the wetlands habitats- a habitat type that is 100% percent protected. That is primarily why they do occur. If more of the "other" types of habitats were 100% conserved this list would be much longer!. It seems logical that conserving the remaining CSS, grassland, and other habitats would constitute more of the "critical locations" for "major populations" to occur in!

SCSD-232 All of the animal species listed are avian. The health of an ecosystem is not determined by avian species only. Doesn't this send up a red flag? Shouldn't more attention be paid to other terrestrial animals to ensure a viable ecosystem?

SCSD-233 3.2.3.2 California Gnatcatcher Dispersal Corridors
Regional Corridor

SCSD-234 Please show developed, agricultural and native habitats in the areas next to the city boundaries. This would facilitate an evaluation of the regional linkages.

SCSD-226. Occurrence potential was inadvertently omitted from Table 3-1 in the Draft Oceanside Subarea Plan. This has been rectified for the final.

SCSD-227. See response SCSD-225.

SCSD-228. See response SCSD-200.

SCSD-229. See response SCSD-199. Narrow endemic species, such as San Diego Ambrosia are protected under Section 5.2.3, Narrow Endemic Species Standards. Preservation of narrow endemic species is required regardless of which preservation planning zone they occur.

SCSD-230. The population of Nuttall's Lotus is in an area between the San Luis Rey River and bike trail that is not planned for development and is protected by open space zoning. Preservation of narrow endemic species is required regardless of where they occur.

The burrowing owl is not a covered species due to insufficient conservation in Oceanside and the rest of the MHCP. The location in question is unlikely to reliably support burrowing owls.

SCSD-231. The comment is correct that wetlands are 100% conserved in the MHCP, due to the no-net-loss policy. In addition, wetlands are protected under the Federal Clean Water Act and State Fish and Game Codes. Processing projects that may affect wetlands will continue to be processed through the U.S. Army Corps of Engineers, California Department of Fish and Game and Regional Water Quality Control Board under a "no net loss" mitigation policy. Upland habitats are conserved to the extent feasible, however, in order to create a north/south wildlife corridor connecting core populations of species to the south to other core population to the north, isolated habitat areas away from the main corridor will be allowed greater development potential. Mitigation from impacts in these outlying areas will be directed either to the wildlife corridor or approved mitigation areas.

SCSD-232. The comment is unclear on where it is referring to all species being "avian." If it is referring to the list of species for which Oceanside supports major and critical locations (page 3-17) it is incorrect, because butterflies and turtles are not avian. Nothing about ecosystem health was intended by this factual list. The fact is that most sensitive species of non-avian species are already extirpated from Oceanside due to previous impacts.

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SCSD-233. This heading indicates the subject area to be addressed in the following comments.

SCSD-234. The large scale Subarea Plan maps and MHCP maps show adjacent developed, agricultural and native habitat areas. San Diego County has started their North County MHCP Subarea Plan and additional information may be available on adjacent lands. Where feasible, this information will be shown in the final Subarea Plan.

SDG&E owns approximately 40 acres of transmission line and substation land inside the City of Oceanside Wildlife Corridor Planning Zone (WCPZ). It is not known how many acres are subject to easements recorded in favor of SDG&E. However, habitat lands owned in fee by SDG&E are subject to its subregional habitat conservation plan, and habitat lands with easements are subject to the MHCP and the subarea plan (SAP). In either case, the applicable plan identifies habitat areas for conservation or for potential take subject to mitigation. Thus, lands under easement to SDG&E may be subject to additional management guidelines to protect biological resource values, so long as these do not preclude SDG&E from carrying out necessary maintenance and management actions.

There are no known studies of the effects of electrical transmission noise on songbirds, but gnatcatchers have been shown to have high tolerance for highway noise. Numerous records of gnatcatchers using electrical transmission corridors exist in the study area.

The presence of predators will likely remain at current levels with implementation of the Subarea Plan. The stepping stone approach is the only viable approach given current development patterns in the WCPZ and other areas of Oceanside.

The corridor and Subarea Plan are designed to provide protection and coverage of 25 plant species and 35 animal species. MHCP Volume II presents the requested analysis for all species. The Oceanside Subarea Plan specifically analyzes the stepping-stone corridor for gnatcatchers, because of the unique importance of this corridor for this species. Conserving, restoring, and managing this land as natural habitats will benefit many of the species.

The line of site between this site and Carlsbad have been verified through site visits by biologists working on the Subarea Plan, City staff, and Wildlife Agency staff. The plan requires that the south-facing slopes on this parcel be

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revegetated with native plant species. Several meetings were held with Caltrans concerning the possibility of restoration within Caltrans right-of-way along SR 78, but this issue has not been resolved.

Although minimum wildlife corridor widths cannot be met in this area, sufficient area will be provided to allow movement between core areas.

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SCSD-235 The segment described in paragraph five states there is line-of-sight connectivity to habitat patches on the north side of Oceanside Blvd. This area of El Corazon has been the site of dump and fill operations for about the last two years. The west end of the site is highly disturbed land with steep gullies. Where exactly are the habitat patches that are assumed to be the stepping stones in this area?

The corridor between the intersection of Mesa DR and El Camino Real and the SDG&E substation is nearly devoid of natural vegetation. The substation is on an upward slope, so the habitat to the north is not visible. Why do you believe the CCG will be able to effectively use this route?

The SDG&E Substation has a very narrow western edge. There are large items stored just at the crest. It seems unreasonable to assume that the CCG would instinctively use this segment. This area could be improved by converting some of the non-native landscaping in the area to native, and restoration of CSS on part of the disturbed areas of the Substation site.

The area of the SDG&E easement to Mission Ave. at the bottom of this slope is completely bare.(Described in paragraph 7). There is nothing to invite dispersal in this area. Extensive restoration is needed in this area.

The western corridor along the southern slope of the San Luis Rey river valley are very steep and comprised of non-native grasses. Why do you assume this area will support CCG movement?

SCSD-236 Local Corridors Associated with the Regional Gnatcatcher Corridor

The east/west local corridor along the slopes of Loma Alta Creek and Oceanside Blvd between College Ave. and I-5 are cited as "feeder" corridors. Where do you think they are "feeding" from? College Blvd. heading east is a deadend into shopping centers and housing. Heading west is a deadend at I-5. New development (Evergreen Nursery) is currently under construction along these slopes. This local corridor has little significance in relation to the regional corridor. These areas are another missed opportunity that could have provided for east/west terrestrial movement.

SCSD-237 3.2.3.3 Constrained Segments of the Regional Corridor

The Location A corridor crossing has no CSS on the north side of SR78, a major obstacle with the roadway itself, and no line-of-sight vegetation. How do you suggest that this is a viable route? There are some small open spaces to the east, on the north side of Vista Way (frontage road) that if restored to CSS might increase the likelihood of CCG use of this for movement toward the alternate corridor. Revegetation along the SDG&E power line adjacent to Mira Costa College could be another alternative. Since the crossing of SR78 has to be accomplished for the corridor to be feasible these areas are critical and all possible routes should be included in this Plan.

SCSD-235. South-facing slopes on and the western portion of El Corazon, west of the SDG&E easement, are to be preserved and enhanced in accordance with the Subarea Plan criteria for this area. At least 35 acres of coastal sage scrub restoration are required in the western portion of El Corazon.

SDG&E has agreed to use native vegetation (CSS species) to the extent feasible around the substation in conjunction with present and future redevelopment of that area. A portion of the property south of the substation could be revegetated with native species in the future.

The portion of the SDG&E easement in the vicinity of Mission Avenue could be revegetated in the future. However, the area is outside the City's authority and would need to be approved by SDG&E.

It is not assumed that the southern slopes of the western portion of the San Luis Rey River will support California gnatcatchers; however, they may facilitate their movement through the area. Gnatcatchers use sparse scrub patches and fennel in crossing these areas. Without continued discing, scrub vegetation is expected to increase naturally, and portions of the area in question are to be actively restored to coastal sage scrub.

SCSD-236. Gnatcatchers currently nest in the "feeder" corridors in question. Thus, these east-west drainage slopes will provide fledgling birds that are likely to enter habitats along the main stepping stone corridor. The fact that these east-west corridors are terminated by existing development on either end is beyond control of the plan, which nevertheless recognizes their potentially important contribution to regional ecosystem function.

SCSD-237. Please see response SCSD-229. The SDG&E easement area along the south side of Mira Costa College does not provide a viable connection to areas to the south.

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SCSD-238 At location B through the El Camino Real Golf Course there is good potential to do some CSS restoration that would greatly improve the viability of this segment of the corridor. The rough areas and landscaped areas could be modified and have no adverse impact on the use of the course. There needs to be some kind of incentive or tax break that would encourage private landowners to restore habitat in key areas - especially those within the WPCZ. Without significant improvement at this location this segment is not viable and this makes Location A even less functional.

SCSD-239 At location C, given the limitations of A and B this is like a third strike. How many CCG are likely to even reach this segment of the corridor?

SCSD-240 Location D has a 1,500' swath of native habitat that is mostly grassland on the slopes with some CSS between the railroad tracks and Oceanside Blvd. Extensive revegetation will be needed to make this area viable as a corridor. On February 16, 2002 two CCG were found in the area directly east of the high school and south of Oceanside Blvd. However, this is in an area that is planned for light industry which will further constrain this segment. There is no native vegetation on the north side of Oceanside Blvd. to invite CCG to crossover into El Corazon. This section of El Corazon is very disturbed with a few non-natives (castor-bean and mustard blooming now). Development is underway on both sides of Oceanside Blvd. as a further inhibitor.

SCSD-241 Calling Location G "potentially restricted" is a gross understatement. The physical conditions at this location make its current condition completely unrealistic as a crossing location.

4.1 Biological Preserve Design and Limitations

SCSD-242 It sounds like the limitations are provided as excuses for failure. For each limitation there needs to be a specific work-around plan to address the limitation- merely describing the limitation is not enough.

The Plan does not cover 100% of the listed species- only the 61 identified. Does that mean that there may be additional preservation required for listed species not covered by the Plan? How will the environmental review and mitigation for non-covered species differ from the process that will be used for the covered species?

SCSD-243 Oceanside has not defined any core habitat areas. The San Luis Rey River, mitigation banks adjacent to Pendleton, Jeffries Ranch next to Guajome Regional Park, and El Corazon all qualify as core habitats and should be considered as such. They are large areas with significant populations of sensitive species, and with good potential for connectivity. They are shown on the MHCP as Biological Core and Linkage Areas and are areas that require special attention.

SCSD-244 There is no specific objective related to protection of wetlands, and watersheds. Wetlands and water are critical to protection of sensitive habitat and species. Watersheds connect large areas and need to be integrated with planning for habitat protection. How will protection of upland

SCSD-238. Incentives to encourage private landowners to revegetate with native species could be explored; however, under current regulations, this would only occur on a voluntary basis.

SCSD-239. The corridor is not envisioned as facilitating movement by individuals entirely across the city in a single season (although this is entirely possible, based on results of empirical studies of color-banded gnatcatchers by J. Atwood, P. Mock, and others). The stepping-stone concept envisions inter-generational dispersal across the study area: Birds breeding within the corridor, or in the core areas it connects, supply young birds that settle elsewhere along the corridor (perhaps the next available stepping stone "patch"). According to extensive literature on population biology and population genetics of fragmented populations, only one successful dispersal per generation is needed to maintain sufficient gene flow.

SCSD-240. A detention basin is planned and permitted in Loma Alta Creek east of El Camino Real and east of the Fire Station and school. A portion of this area will be preserved. As stated previously, south-facing slopes on El Corazon are proposed for revegetation with native CSS species under the plan.

SCSD-241. Location G on Figure 3-8 is similar to location A and B which involve crossing a major transportation corridor. Although, free movement of wildlife cannot be expected in these areas, it is possible that periodic movement of birds through these areas would occur. See also responses SCSD-222, 236, and 239.

SCSD-242. CEQA review will require biological surveys and mitigation for impacts to biological resources, whether or not they are covered species under the Oceanside Subarea Plan. A "no net loss" policy is included in the Subarea Plan. Wetland permitting will continue to be the responsibility of the U.S. Army Corps of Engineers, California Department of Fish and Game and Regional Water Quality Control Board.

SCSD-243. Please see response to SCSD-242.

SCSD-244. Please see response to SCSD-242.

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watershed be assured- particularly where this crosses city or other jurisdictional boundaries? What criteria, standards, and thresholds will be used to determine the adequacy of wetland and watershed protection?

SCSD-245

4.1.3 Objective 3- Maintain Viable populations of sensitive plant species.

It is not correct to state that there are no opportunities for creating large intact habitat preserves. There are 4 such areas with good potential as described above.

SCSD-246

4.2 Land Use and Ownership Considerations

The focus of acquisition is only on "willing" sellers. It is up to the city, and regional MHCP to provide a package of incentives/disincentives that would encourage everyone who owns land with sensitive habitat to support the local and regional plans for habitat preservation. Also "selling" should not be the only alternative.

There is no constraint on land uses that common sense says are not consistent with the intent of preserve design. A key example of this is the proposed outdoor police shooting range adjacent to the Prince of Peace Abbey. While there is no CSS directly impacted by this project, there is CSS and other sensitive habitat all around the proposed shooting range. The range will require exception to the existing exterior noise limits. Since no gnatcatchers were found immediately on or adjacent to the project site they were not considered of concern. The whole idea of establishing a preserve system is to increase the numbers of each species that is now identified as threatened or endangered. These additional numbers will have to reside somewhere- presumably on the habitat being preserved. All land uses within and adjacent to preserved sensitive habitat should assume that the habitat will be occupied, even if it was not on the last (often outdated) survey.

Carlsbad and Escondido also both propose locating a police shooting range within a core habitat area. It is convenient to locate a shooting range where there are not nearby residents to complain about the noise. The impacts of this noise are also a problem on the animals of this area who should also be considered sensitive receptors. A police shooting range is a public function. There are lots of parcels of public land where this could be located without causing impacts to sensitive species.

Land uses adjacent to the preserve are also an issue. Who will be monitoring these lands to assure compliance with the Plan?

Furthermore, noise guidelines should be developed for sensitive species.

4.3.1 Designation of Preserve Planning Zones

Wildlife Corridor Planning Zone

15

SCSD-245. The referenced areas are not large enough (on a scale of thousands of acres) to be considered core areas; they are highly disturbed by ecological standards, cannot sustain natural ecological processes (e.g., fire cycles), and would not sustain viable populations in perpetuity without active management. The description in the Oceanside Subarea Plan that remaining habitats in Oceanside are greatly fragmented, subject to adverse edge effects, and do not qualify as "large, intact habitat preserves" per NCCP standards is correct as written. This does not imply they are unimportant to MHCP goals, but that the resultant reserve system must be intensively managed.

SCSD-246. Tax credits are available for properties that are dedicated as open space to a government agency. The General Plan policies, zoning, the Local Coastal Program and other land use regulations will be used to promote preservation of native habitat in conformance with the Subarea Plan. A police shooting range is no longer proposed adjacent to Tuley Canyon and coastal sage scrub habitat.

Comment noted. Please see response above.

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SCSD-247

The northern boundary of this area should go all the way to the city limits- there is no justification for arbitrarily cutting the corridor off at the San Luis Rey River. The whole intent is for this to define a corridor from the Calavera core area of Carlsbad to the core habitat at Camp Pendleton. While much of this land is already in mitigation banks or protected, it all needs to be integrated with planning for the corridor. Designation as part of the corridor provides additional protection. This protection needs to extend all of the way to the city boundary and not arbitrarily stop short.

Landscaping restrictions need to be in force everywhere, with levels of requirements depending upon the location of the parcel and its impact on the plan. For example, some invasives, like pampas grass, should not be allowed anywhere in the city.

The text indicates that "undeveloped" land that may serve as movement or dispersal corridors should be avoided. Such land needs to be specifically evaluated for its potential to add to the size of contiguous habitat or the functioning of the corridor. "Avoid" does not mean that such land is targeted for preservation. All land within the WCPZ should be considered for its potential to improve the corridor.

SCSD-248

Offsite Mitigation Zone II

The area by Jefferies Ranch provides an alternative regional wildlife corridor. This area should also be defined as a wildlife corridor- with the same conditions in effect for the WCPZ.

The options for mitigation should be prioritized as they are in the other areas.- for example the first priority should be to complete the WCPZ.

SCSD-249

4.4 Biological Preserve Criteria

The 480 acres of biological open space to be preserved within the WCPZ is not specified by habitat type, except that a minimum would be 210 acres of CSS. The text and tables need to specify existing acreage by habitat type, and the acres proposed for preservation within the WCPZ, Off site Mitigation Zone I and Offsite Mitigation Zone II. It is impossible to assess the conservation plan without a better understanding of the preservation of habitat type within each of the three areas.

It is not enough to say that 50% of the CSS acres will be conserved- it needs to be clear how much is being conserved within the WCPZ, and exactly where it is located.

In some cases the acreage conserved in the BCLA is less than the Total conservation acres as shown on Table 4-1. This needs to be clarified.

SCSD-250

4.5 Habitats Conserved

The percentage references in the second paragraph do not make sense.

SCSD-247.

See response to comment SCSD-198. The WCPZ boundary does not extend to the Camp Pendleton boundary because wildlife corridor connections from the San Luis Rey River north are shown as either protected or pre-approved mitigation areas. Landscaping or restoration plans in this area will require the use of California native plants. All land within the WCPZ will be considered for preservation in conformance with the Subarea Plan guidelines.

SCSD-248.

The option of providing a connection from the San Luis Rey River along the east side of the Jefferies Ranch project to the unnamed creek to the south is being explored by the applicant, City and Wildlife Agencies.

SCSD-249.

Most of the non-coastal sage scrub habitat in the WCPZ is disturbed habitat or annual grasslands (converted from coastal sage scrub by previous disturbances). Since the exact configuration of the final preserve is not known, the recommended calculations are not warranted.

The exact amount or configuration of vegetation communities in each zone is difficult to anticipate. The minimum criteria are spelled out in the plan. Some conservation occurs outside the BCLA, which was an early biological planning tool.

SCSD-250.

Percentages clarified in this final document.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

5.1 Preserve Assembly Components

SCSD-250A

The text on page 5-1 says 2,420 acres would be preserved, but Table 5-1 shows 2,426.

The text implies that the 105 acres of public conservation banks and 175 acres of private conservation banks are included within this total of 2,420 acres. The "Total Conservation Natural Habitat" acres on Table 5-1 does not include the conservation bank acreage.

Table 5-1 includes terms that have not been used in this plan- "hardline" and "Softline/Standards". It is impossible to relate this table to the text of the report.

5.1.1 Existing and Proposed Conservation Banks and Mitigation Areas

SCSD-251

The three existing conservation banks total 205.2 acres. This does not match the acreage shown on Table 5-1 on page 285- please clarify this discrepancy.

SCSD-251A

Provide a summary that shows that number of acres already used in each mitigation bank, as well as the number of acres still available for use.

SCSD-252

Given the available acreage in banks, how many more acres are reasonable to be acquired for private development within the WCPZ?

SCSD-253

Page 5-3 indicates that 25 acres of CSS is supposed to be restored at the Vista de la Valle Mitigation Area by TET. What is the status of this restoration- and if it has not yet been completed, what is the timeframe for its completion?

SCSD-254

Part of the ability of the public to effectively monitor preservation status is to include them on the reporting for all of these mitigation banks. In the past this information has not been made available to the public. In one recent case in Carlsbad the city stated that these reports are just between the manager of the mitigation property (in this case it was also TET) and the project developer. All mitigation bank reporting needs to be part of the overall public review process.

SCSD-255

On the proposed city mitigation banks clarify the number of acres of credit expected to be needed for city projects. Are the proposed city banks sufficient to meet the need for public projects?

SCSD-256

Specify the acres available by habitat type for both the existing and the proposed mitigation banks. Provide an assessment as to their adequacy given the anticipated need.

SCSD-257

The El Corazon site is currently in public ownership and has good potential for restoration. In fact the city has been clearing the property each year to prevent sensitive habitat from reestablishing itself naturally through much of the site. This should also be identified as a potential additional mitigation bank site.

SDSD-250A.

The three mitigation areas total 307 acres (136 + 121 + 50), of which 282 acres are natural habitat (106 + 176). The mitigation banks are a subset of the mitigation areas. Both for mitigation areas in general and for mitigation banks in particular, areas of natural habitat are less than total acres of land owned.

SDSD-251.

All acreages are recalculated and made consistent in the final plan.

SCSD-251A.

The Whelan Ranch Mitigation Bank is the only approved bank in the City of Oceanside. It would not be useful to provide the number of acres remaining as this number is constantly changing as credits are sold.

SCSD-252.

Conservation goals in the Wildlife Corridor Planning Zone (WCPZ) would be met through onsite conservation (avoidance), public acquisition, habitat restoration, and offsite mitigation. In recent years, the City of Oceanside has purchased for conservation approximately 40 acres in the WCPZ and is actively seeking funding for additional purchases. Also, the City and various property owners in WCPZ have agreed, or are in discussion, to identify conservation actions for specific parcels. At this time, it is not possible to estimate how many acres of habitat lands will be purchased by private firms or individuals in the WCPZ. However, the City intends to pursue a combination of public and private actions to achieve the conservation goals of the WCPZ.

SCSD-253.

Restoration efforts have been initiated at the Vista De La Valle Mitigation site. Removal of exotic species has been ongoing over the past 2-3 years. Seeding was delayed until later in 2002 due to the low amount of rainfall during the 2001/2002 rainy season.

SCSD-254.

Mitigation bank and mitigation area monitoring reports are placed in the project file for that particular project and may be reviewed by the public. An updated status of the mitigation banks and mitigation areas will be provided in the final Subarea Plan document.

SCSD-255.

Please see SCSD-254.

SCSD-256.

Please see SCSD-254.

SCSD-257.

Section 5.3.1 of the Subarea Plan contains development standards for future restoration and protection of habitat on the El Corazon site. Basically the Garrison Creek area, the western portion of the site (west of the SDGE

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easement) and a portion of the south-facing slopes along Oceanside Boulevard are to be preserved and enhanced as needed.

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5.1.2 Existing Public Open Space

SCSD-258 The publicly owned lands “whose management is considered compatible with preserve goals” need to be specified. Preserved land in north county has suffered because there has not been integrated management. All lands with habitat value in public ownership should be incorporated into the designated preserve management system.

SCSD-259 Who will determine if this land is compatible with the goals?

SCSD-260 A key objective should be to provide the potential for additional land acquisition in key areas if it is determined that the current plan is not working and “adaptive management” means that more habitat will be needed. Placing some conditions on additional public land- especially in areas that are contiguous with preserved habitat, within the WCPZ, or the biological core and linkage areas.

5.1.3 Private Open Space

SCSD-261 While it makes sense to include such private open space into an integrated system of preserve management- the costs of maintaining this land should be born by the private landowner/developer. The private projects benefit from the open space and they would need to be maintaining it under existing agreements. The cost to maintain habitat is much less than maintaining other landscaped areas. It is only fair that funds comparable to what they would be paying for maintenance of this land would be provided for maintenance of the land as habitat.

SCSD-262 Land managed under homeowner’s agreements, that is identified as sensitive habitat, should be managed as part of an integrated system of preserve management. Homeowner’s associations have no public accountability, and little interest in preserving habitat for the habitat. There are numerous cases where homeowners “trim” natural vegetation that blocks their view, expand their garden into what is supposed to be protected open space, and allow herbicide or other chemicals from landscaped areas to degrade adjacent sensitive habitat. This issue will be even more important as habitat becomes more fragmented and more of it is within the boundaries of master planned communities. Leaving this land outside the preserve management system also eliminates any ability for public review or effective oversight.

SCSD-263 There are some proposed private uses within what is supposed to be preserved land- like the paved golf cart paths , and nursery for hotel resort plants that are proposed at El Corazon. These uses are not allowable within the preserve.

5.1.4 SDG & E Ownerships and Easements

SCSD-264 The width of the easement corridor is not specified, but field observation in many places indicates that this is far less than the 1,000’ width for a wildlife corridor in the MHCP guidelines. Furthermore much of this area is routinely cleared- part for access by maintenance

SCSD-258. The use of public land will be determined by the various plans and programs adopted by the City. These include but are not limited to the Parks and Recreation Master Plan, the Capital Improvements Program, Master Drainage Plan, Water and Wastewater Master Plans, the General Plan, Local Coastal Program, and Harbor Precise Plan.

SCSD-259. Please see SCSD-258.

SCSD-260. Please see SCSD-258.

SCSD-261. In the past, some habitat areas were placed under the responsibility of homeowners associations. Since the mid-1990s when the City began its habitat planning effort, open space areas with native habitat or areas to be restored with native habitat were required to be placed under a conservation easement and managed by a qualified habitat management organization funded through an endowment paid by the developer. If a regional funding source is approved, it is possible that natural open space areas maintained by homeowners associations could be put under public management on a regional level.

SCSD-262. Please see SCSD-261.

SCSD-263. Please see SCSD-261.

SCSD-264. The areas adjacent to the transmission line are constrained by existing development, roads, utility lines, golf courses, and topography. To the extent feasible, new development within 1,000 feet of the SDGE corridor will be required to avoid CSS impacts and in no case shall the corridor be less than 200 feet. Please see Section 5.3.1 for WCPZ development standards.

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equipment, and part for fire control. The only reason these areas can function at all as wildlife corridors is that many private owners next to them have buffer landscaping. Specific methods need to be in place to assure minimum corridor functioning. Corridor width, type, and density of plantings need to be clearly defined.

5.1.5 Habitat Conserved in Conjunction with Private Development

SCSD-265 It is stated that "Based on a review of developable land in the city, it is estimated that application of the proposed mitigation guidelines will result in offsite conservation of approximately 263 acres directed to the WCPZ or other portions of the city." There are three big concerns with this statement :

SCSD-266 1. This is a huge risk if the "estimate" turns out to be wrong. The detailed , project by project evaluation that led to this conclusion should be provided so it is possible to assess if this can be verified, and how likely it is that this level of mitigation will be achieved.

SCSD-267 2. It is of concern that it is not even clear how many of these acres will be required within the WCPZ.

SCSD-268 3. This implies a maximum of only 263 more acres of conservation within the WCPZ. Is there any scientific basis to determine that this is sufficient to assure preservation of the species included in the take permit- and a functioning corridor?

5.2.3 Narrow Endemic Standards

SCSD-269 One of the guidelines is that " In no case shall the city permit more than 5 percent gross loss of narrow endemic populations or occupied acreage(whichever is most appropriate for the species) within preserve planning area, or more than 20 percent gross loss within the city as a whole." Since there is no comprehensive survey of populations within the city as a whole it is impossible to determine if this policy has been met, or exceeded. As a practical matter it is likely that surveys are done on a project by project basis - and when the last project site is surveyed someone will be able to determine that -OOPS we nuked too many.

SCSD-270 Good baseline data needs to be established for each of these species- then species specific plans can be developed. The plan and schedule for developing this baseline data needs to be identified.

SCSD-271 It is contradictory to say that MHCP critical populations must be totally avoided, and then to say that up to 5% can be taken with mitigation. There is no guarantee of no net loss with a take. The standard should be total avoidance with no loss, period.

SCSD-272 The Oblivious Tiger Beetle is shown on Table 5-3 as an MHCP Narrow Endemic Species. It is also listed on Table 3-7 in the MHCP as having a critical location in Oceanside at Buena Vista. This narrow endemic species critical location is not mapped in the sub-area plan figures showing

SCSD-265. The calculation of land to be developed and thereby conserved within the WCPZ was an estimate meant to show that there is sufficient developable land left to conserve open space in the corridor area. In the interim the City has received funds from State and local agencies that has been used to purchase 38 acres within the corridor and an additional 10-acre purchase is pending. In addition, conservation easements have been placed over habitat areas for projects that have developed within the last few years within the WCPZ (e.g., Evergreen Nursery). Therefore, this section of the Subarea Plan will need to be revised to reflect this recent activity.

SCSD-266. Please see response to SCSD-265.

SCSD-267. Please see response to SCSD-265.

SCSD-268. Please see response to SCSD-265.

SCSD-269. The percent conserved calculation is based on the known distribution and abundance of the species at the time it is analyzed for a project. Hence, newly discovered populations would increase the denominator in the calculation, and the scenario envisioned by the comment would not occur so long as the policy is followed.

SCSD-270. Up to 5% gross loss of a population may be taken if no feasible alternative exists to totally avoid impacts. However, such loss would only be allowed where no net loss to the population can be assured via accepted, species-specific, mitigation actions, such as captive propagation and relocation.

SCSD-271. Please see response to SCSD-270.

SCSD-272. Please see response to SCSD-270.

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other sensitive species- in spite of its status as a critical location. This location needs to be added to the figures and if it is not identified as an area for conservation this needs to be added to the list.

SCSD-273

5.2.6 Clustering Standards for New Development

This section allows increases in density or height if 50% of a parcel is not developable. In other sections restrictions occur only if less than 25% of a site is developable. Increasing densities next to preserve land will only increase the edge effects of development (things like 1.7 cats per household.) Any increase in density or height needs to only be approved if there are offsetting provisions to compensate for the increased adverse edge effects of the proposed change.

SCSD-274

5.3.1 Wildlife Corridor Planning Zone

The SDG & E transmission corridor is critical to the functioning of this zone. The information that has been provided is insufficient to assess the viability of this corridor. More detailed mapping is needed to show existing constrictions, areas where development is expected to result in constrictions, and where there are parcels that are expected to be effected by the 25% use of the property provisions.

Figures should be provided that show where the areas of steep slopes are located so it can be determined if these are adding any significant functional improvement to the preserve system or merely count as preserve lands but add nothing of value.

The proposed landscaping standards are not sufficient to protect the preserve from invasive plants or to encourage the use of natives. Invasive plants should not be allowed anywhere in the wildlife corridor- or for that matter anywhere in the city. They should be specifically prohibited in all new plantings.

The configuration for the corridor at El Corazon does not meet the minimum wildlife corridor provisions of the MHCP- it must be increased to at least meet this minimum.

Golf cart paths are not a conditionally compatible use in a preserve. All motorized vehicles are to be restricted. Any service roads remaining should be justified by need and the associated acreage shall be deducted from preserve land acreage.

It is unclear what is meant by "landscaped golf holes" shall be allowed "in the vicinity." A "golf hole" is surrounded by a green which is surrounded by a rough. All of these are part of the "development" footprint, and are not part of "preserve" land.

SCSD-275

5.3.3 Agricultural Exclusion Zone.

While it is understandable that current agricultural operations are excluded, it is not reasonable that this land is not subject to at least reasonable monitoring, and has no provisions for future

SCSD-273. These are some of the planning tools the City may use to protect habitat, however, they will be studied in greater detail and discretionary project review would consider some of these zoning techniques.

SCSD-274. Please refer to SDGE's approved NCCP Plan for details about conservation within their transmission line corridor. SDGE has agreed to coordinate with the City on habitat issues. Detailed development plans and biology reports will be evaluated as development occurs to assure conformance with the WCPZ requirements.

Figure 2-6, Development Constraints, show areas of steep slopes and other constraints.

Detailed landscape plans will be evaluated at the project level for conformance with this standard. The use of invasive plants are not allowed on new projects subject to discretionary review whether or not they are in the corridor. The City is not in a position to police landscaping by individual landowners through the participating cities.

The configuration of the wildlife corridor does meet the minimum standards of the MHCP and has been reviewed by the Wildlife Agencies.

Golf carts are typically not noisy and operate on batteries. Golf cart paths will be analyzed in detail at the project level to ensure no adverse impacts to the wildlife corridor.

This means that golf holes with landscaping may be adjacent to or within the vicinity of the wildlife corridor, but would not be counted as part of the requirement minimum 120 acres of habitat. Habitat mapping would be updated on any properties where projects require CEQA. However, the City cannot trespass on private properties to comprehensively map resources in advance of project proposals.

SCSD-275. Wetland areas in the drainages through the Agricultural Exclusion Zone provide the best corridors through this area. They are protected under the "no net loss" policy. CSS will be protected to the extent feasible, but is found in isolated patches throughout this area. Habitat mapping would be updated on any properties where projects require CEQA. However, the City cannot trespass on private properties to comprehensively map resources in advance of project proposals.

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conditions to be added. Other cities, like Carlsbad, have identified these land uses as "Standards Areas." Preserve boundaries have not been specified, but guidelines have been established for preservation that will be imposed as these areas are converted to other uses. Much of this existing agricultural land is adjacent to core habitat at Camp Pendleton, and some provides good connectivity to other core habitat east of Oceanside.

Habitat mapping is required of this land to assure that there are not unauthorized takes occurring. Furthermore, Figure 4.3-5 in the EIR/EIS shows significant populations of sensitive species in the Agricultural Exclusion Zone- another reason that these areas must be subject to reasonable protection guidelines.

5.4 Corrective Actions

SCSD-276 What is the time frame for correction of the unauthorized take south of Loma Alta Creek?

5.5.1 Estimated Program Cost

SCSD-277 Provide a definition of Category 1 and Category 2 acquisition land.

SCSD-278 Clarify if the identified 90 - 100 acres of Category 1 land acquisition plus the 136 acres of restoration will fully assure that all of the objectives of the Oceanside sub-area plan as well as the MHCP will be met.

SCSD-279 How many additional acres are needed to fully address all of the identified Biological Core and Linkages areas- and how many of these are already covered in Category 1 or Category 2 lands?

SCSD-280 Clarify where the 90 acres of Category 2 acquisition land are located and describe its significance toward achieving the objectives of the plan.

5.5.2 Financing of Implementation Costs

SCSD-281 The proposed mitigation fee for non-native grassland is \$ 4- 6,000/acre. In October of 2001 Carlsbad assessed fees for grassland at the Carlsbad Raceway Project that averaged over \$ 6,900/acre. The proposed Oceanside fees seem too low- especially as this is the primary funding source for the city's share of habitat acquisition. The fee structure should have a built-in inflation factor so it is not dependent upon local whim to authorize an increase.

SCSD-282 The fees for vacant/disturbed land should also be levied on the city or other public agencies within the city for impacts to publicly owned land.

SCSD-283 The plan includes no sanction or penalty fees for violations. Currently the USFWS imposes penalties for unauthorized habitat takes- and often there are takes with no penalty imposed. However, under the sub-area Plan the loss of habitat impacts the ability of the city to meet the objectives of its plan so it is reasonable that the city would be harmed by violations. Increasing

SCSD-276. The owner was cited and fined for clearing and grubbing without a permit at the time of the violation. The remedial action discussed in the Subarea Plan will occur with future development of the site. In the interim, some native plants are re-establishing on the site.

SCSD-277. Category 1 areas are those with habitat that is essential to meeting the biological objectives of the MHCP or a subarea plan. Category 2 areas are those where, although development subject to impact avoidance, minimization, and mitigation would be consistent with MHCP and subarea plan objectives, public acquisition would substantially enhance conservation value or help meet other open space goals of the local jurisdiction (Draft MHCP Plan, Sec. 4.1.2). In the City of Oceanside, category 1 lands are located in the Wildlife Corridor Planning Zone (Draft Oceanside Subarea Plan, Table 5-6). Category 2 lands are located mostly outside the Wildlife Corridor Planning Zone; if purchased, they would serve the City's open space goals. It should be noted that the acreage figures refer to entire parcels; important habitat areas occupy fewer acres.

It should be noted that since the Draft MHCP Plan was prepared, 36 acres of category 1 lands have been purchased using State and local funds, and additional habitat has been permanently conserved in conjunction with adjacent development. Potential need for public acquisition will be reviewed in the Final MHCP Plan.

SCSD-278. Habitat acquisition and restoration are two of a collection of actions to be undertaken by a jurisdiction to implement the biological goals of the MHCP Plan. Adequacy of the total collection of implementing actions to achieve the stated goals is analyzed in the MHCP and separately in the EIS/EIR.

SCSD-279. It is not known how many acres would need to be acquired and/or restored to implement Alternative No. 3 (Biological Core and Linkage Area). Table ES-1 of the EIS/EIR (p. ES-11) summarizes the acres of vacant land which would be impacted by the alternative FPAs. Alternative No. 3 would reserve between 5,982 and 6,349 acres of vacant land for conservation more than the other alternatives. Of these increases, between 3,149 and 3,320 are unconstrained vacant land, designated by the General Plans of participating cities for residential, employment, or institutional use. The additional conservation is likely to leave many parcels with insufficient opportunities for economic use, necessitating acquisition.

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SCSD-280. Category 2 areas are those where, although development subject to impact avoidance, minimization, and mitigation would be consistent with MHCP and subarea plan objectives, public acquisition would substantially enhance conservation value or help meet other open space goals of the local jurisdiction (Draft MHCP Plan, Sec. 4.1.2). See also response to Comment SCSD-277 above.

The purpose of Category 2 areas is to identify additional acquisition funding at the subregional level (i.e., regional funding program), in order to increase flexibility for local jurisdictions to achieve the MHCP's biological goals.

SCSD-281. The proposed mitigation fee program applies to projects which impact annual grassland in Offsite Mitigation Zone II (that is, outside of the Wildlife Corridor Planning Zone) and agricultural, disturbed, and other vacant lands Citywide. It should be noted that impact to these types of vacant land is not currently subject to mitigation requirement. The mitigation fee represents a new requirement under the MHCP and the subarea plan and a substantial source of funding for conservation.

The mitigation fee is not the "primary" funding source for acquisition in the Wildlife Corridor Planning Zone; primary sources are off-site mitigation for impacts to coastal sage scrub and State and federal acquisition grants.

SCSD-282. Please see response to comment SCSD-281.

SCSD-283. See Section 6.3.1 Regulatory Actions – City implementation actions are required within 2 years of adoption of the Subarea Plan to include revising the Grading Ordinance to include to strengthen enforcement and penalties for illegal grading, clearing and other operations within habitat or other sensitive areas.

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fees for violations is intended as a deterrent- but should also be considered as part of the project financing.

SCSD-284

It is not acceptable to defer 100% of the maintenance costs to the regional MHCP funding program. The need for management of this land exists today- and it is clear that it will take some time for the regional mechanism to be put into place. Local funds need to be allocated to cover an interim time period- perhaps with at least partial reimbursement once the regional funding program is in place.

SCSD-285

Clarify the statement "funds for ongoing management of the city-owned habitat system would need to be identified, most likely in conjunction with the San Luis Rey flood control program now under review." How is it anticipated that habitat management funding is tied to flood control funding?

6.1.2 Take Authorizations

SCSD-286

Approval of the sub-area plan alone should not allow the take permits- the plan must be funded before any additional take is authorized. Implementing agreements and an approved management plan must also be in place.

The process has the city authorizing its own take permits, and also monitoring its own compliance. What mechanisms will be in place to ensure that projects and mitigation are in compliance with the Plan and the MHCP?

The oversight mechanisms need to be clearly identified, with public review and accountability. The wildlife agencies must be able to rescind a city's ability to issue its own take permits if there are violations of the provisions of the Plan.

The oversight mechanism also must include wildlife agency consultation and comment during the CEQA review.

6.2.1 Assurances in Implementing Agreements

SCSD-287

The phased implementation and severability provisions do not provide adequate protection for species preservation. The interdependence of north county cities is clearly identified both in the MHCP and the Sub-area Plan. Severability protects each city from noncompliance by others- but it doesn't help the endangered species. If one city pulls out, then populations in another city may become more critical. There needs to be some mechanism that assures that the overall MHCP remains viable.

SCSD-288

Perhaps the regional funding mechanism could include some discretionary funds which could be used in cases where one city's removal will require additional actions in another.

SCSD-284.

Prior to adoption of a regional funding program, local funds will be used for management of various habitat areas such as the former 35-acre Myers parcel, the San Luis Rey River corridor and other native areas. Other habitat areas such as Foss Lake and the Whelan Ranch Mitigation Bank are being managed by non-profit habitat management organizations. If approved, a regional funding source will be utilized to manage some present and all future open space areas with habitat.

SCSD-285.

Some of the goals of the San Luis Rey Flood Control project is to protect surrounding areas from flooding while providing habitat for wetland species utilizing this corridor. Funding identified for this project will need to address the habitat issues.

SCSD-286.

Funding sources will be identified in the Implementing Agreement. Monitoring reports are required on periodic basis to the Wildlife Agencies who will provide some oversight for the plan. Wildlife Agencies, other agencies and the public continue to be involved in the CEQA public review process.

SCSD-287.

Severability is an important provision for the participating jurisdictions. The motivation to participate in a regional plan is based on the understanding that each city retains land use control within its boundaries. At the same time it is acknowledged that the actions or inaction of one agency cannot be allowed to jeopardize the continued existence of the species of concern. Therefore, in issuing take permits to each jurisdiction the wildlife agencies retain sufficient oversight and authority to safeguard the species while allowing the cities to be severable from each other. If a city were to lose its take authorization, either in total or for a given species, there would be adequate protections for the species due to Section 9 of the Endangered Species Act which prohibits take without permit.

SCSD-288.

Please see response to SCSD-287.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

What happens if required mitigation measures are not implemented by a project sponsor? Currently the local city has broad discretion in determining the adequacy of mitigation implementation and there is no effective appeal of their judgment- even in cases where implementation is grossly deficient. Who enforces these provisions and how exactly will this process work?

6.2.2 Changed Circumstances and Unforeseen Circumstances

SCSD-289 The climactic changes associated with global warming are likely to result in circumstances that are identified in this plan as “unforeseen” but in fact are not.

The phrase “ if it is necessary to mitigate the impacts of changed circumstance...” needs to be clarified. It is assumed that the intent here is that if it is necessary in order to protect species from any long term adverse impacts- but this needs to be clearly stated.

6.3.2 Interim Resource Protection

SCSD-290 As part of the interim protection there needs to be penalties and sanctions for any unauthorized takes , clearing brushing or grubbing of vacant land, or conversion of non-agricultural land to agricultural.

6.3.7 Annual Implementation Coordination Meetings

SCSD-291 This annual meeting needs to be publicly noticed, with summary documents available in advance for public review and comment.

7.1.1 Responsibilities on Public lands

SCSD-292 Reporting only every three years is not sufficient. Annual reporting is needed, with advance public notice and opportunities for comment. It is appropriate to establish longer term priorities, but monitoring and reporting needs to occur at least once per year. Since this also includes assessments of funding adequacy it jeopardizes the entire plan to wait three years to take corrective action.

7.2.1 Allowable Land Uses Within Preserve Areas

SCSD-293 The provisions to prohibit active recreation uses including golf courses is not consistent with other provisions of this plan (such as on page 5-20). Golf courses should be prohibited on preserve land and this would include paved golf cart paths.

7.2.4 Recreation and Public Access

SCSD-294 Penalties for off-road vehicle use in preserve land need to be specified at levels high enough to cover costs.

SCSD-289. The changed and unforeseen circumstances described in the Oceanside Subarea Plan do not include global warming. The possible impacts of this phenomenon are unknown and most potential actions to alter global warming are well beyond the scope of the City. Future impacts are entirely speculative at this time and are consequently “unforeseen”.

The phrase “if it is necessary to mitigate the impacts of a changed circumstance...” means that mitigation measures will be undertaken if the expedited analysis conducted by the appropriate wildlife agencies and the City shows that such measures are appropriate, and are required to protect listed species from impacts of a “changed circumstance” event.

SCSD-290. Please see response SCSD-283. Each City has established penalties (civil and/or criminal) for violations of their ordinances.

SCSD-291. The method for holding the annual meeting has not been formulated at this time, yet it is anticipated that the meetings will be publicly noticed, with documents available in advance of the meetings.

SCSD-292. Other reporting period options may be explored in formulation of the Implementation Agreement between the City and Wildlife Agencies.

SCSD-293. Some uses such as golf cart paths will be reviewed on a project level basis for compatibility with open space preserves, but will generally be prohibited in preserve areas.

SCSD-294. All of the ideas stated for prohibiting harmful uses within preserve areas are valid and will be implemented where appropriate upon adoption of the plan.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

SCSD-295 Fines for violation of preserve rules need to be retained as part of the preserve funding system.

Fines and penalties are meaningless unless there is enforcement. There need to be specific provisions for levels of enforcement. Enforcement plans need to be coordinated with other agencies with enforcement power such as the Department of Fish and Game with their wardens. Efforts should include a significant role for citizen volunteers, volunteer patrols like the existing Senior Patrols, as well as uniformed officers.

A key problem with trails is accessing them from adjacent residential neighborhoods. Failure to provide access results in people making their own trails which is much more damaging.

7.2.5 Predator and Exotic Species Control

SCSD-296 Several of the identified management measures should be incorporated in local ordinances- such as nursery ordinances to protect against Argentine ants in container plant stock, and run-off being directed away from preserved land. These kind of management controls need to be part of the formal program implementation with all existing ordinances reviewed for areas where they need to be updated to reflect these management controls.

7.2.9 Adaptive Management

SCSD-297 Section 7.1.1 specifies reporting only every three years, this needs to be more frequent, particularly where a problem has been identified and a corrective action plan is being implemented.

There are no criteria specified that indicate when a species is being adversely impacted. Phrases like "unacceptably slow or delayed" or "species is declining." need to be clear. Who is making this decision, and on what basis?

7.3 Area Specific Management Guidelines

SCSD-298 There needs to be public access to private land parcel specific management plans- not just those under public ownership.

El Corazon

SCSD-299 El Corazon is the most important single piece of land within the WCPZ. It is critical to the viability of the corridor. The Plan proposes to compromise the wildlife corridor in favor of a golf course and resort that do not even have their entitlements to proceed. The Plan should drive restrictions on any future golf course or other land uses on this parcel and not vice versa.

There is no justification for allowing golf cart paths within preserve land. Trail width should be limited to 4 feet as it is in the rest of preserve land.

24

SCSD-295. Please see response to comment SCSD-294.

SCSD-296. Argentine ants are already problematic in areas of suitable habitat (moisture). Storm water management is already regulated for urban development.

SCSD-297. Please see response SCSD-292 regarding golf cart paths on El Corazon. Please see the draft Monitoring Plan for a more detailed description of MHCP adaptive management techniques.

SCSD-298. Please see response to comment SCSD-274. The Eternal Hills Cemetery has submitted development plans for expansion of their facilities. A comprehensive biology report is being prepared that will be used in determining any impacts to habitat from the proposed project.

SCSD-299. Please see response SCSD-298.

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Eternal Hills Cemetery

SCSD-300

A comprehensive survey of this entire site is needed in order to determine priority areas for preservation, and restoration. The city has a recent proposal to convert part of this site to an expanded national cemetery. Any cemetery expansion plans need to be subordinate to protection of this prime property within the WCPZ.

7.4 Habitat Tracking, Reporting, and Monitoring

SCSD-301

An annual public workshop to "brief interested citizens on the progress of preserve assembly" is not a sufficient commitment to a public input process.

Individualized reporting plans need to be developed for adaptive management or other corrective action activities.

Extensive research has already been done on the edge effects of fragmented habitat. More productive research would be to track control measures like number of cats belled, coyote population by habitat fragment, coyote mortality at key roadway crossings, etc.

Other Comments

SCSD-302

A key issue that has not been addressed in this sub-area plan nor in the overall MHCP is that there is no provision to target additional land that may be needed if it is determined that species continue to decline after the plan is put into place. Other places (for example San Joaquin County) have established "buffer lands." These are targeted areas that are not permanently hardline preserved, but are preserved until certain conditions are met and it can therefor be determined that a lesser level of conservation will meet plan objectives. In the absence of such provisions- explain how adaptive management will be able to address future problems with inadequate habitat or excessive habitat fragmentation.

SCSD-303

Golf courses have significant and adverse impacts on the environment. The Oceanside Plan includes three golf courses within the WCPZ (El Camino Real, El Corazon and Emerald Isle). Specific provisions need to be developed to protect the adjacent preserve lands from increased runoff- and from the effects of runoff containing large amounts of fertilizers and pesticides. This run off soaks into the water table and ends up in our creeks and lagoons. The sensitive species that depend upon these riparian habitats are all impacted. These provisions need to address both existing and planned new courses. New courses should be encouraged to meet the newest standards to minimize golf course impacts.(3)

SCSD-304

Because of the interdependence of the plans in north county, it is reasonable to require dates by which key provisions must be put into place- or subject a city to penalties for adversely impacting species conservation of the region.

SCSD-300. Please see response SCSD-298.

SCSD-301. Habitat areas in Oceanside are fragmented and isolated for the most part. The Subarea Plan identifies key parcels or portions of parcels for preservation and/or enhancement. Lateral corridors are proposed via Loma Alta Creek, San Luis Rey River, Pilgrim Creek and Buena Vista Creek. Through this balanced approach, it is the intent of the plan to provide useable wildlife movement corridors through the City.

SCSD-302. The biological analysis concludes that the lands to be conserved at a minimum by the plan are sufficient to conserve the species for which the city is obtaining take authorizations. Additional lands may be conserved, especially as additional acquisition funds become available. The MHCP and Oceanside Subarea Plans require that conservation occur in rough step with take, as tracked by the HabiTrak process. There is therefore no need to identify "buffer lands" (as defined by the San Joaquin County HCP) to create interim protections until sufficient hardline conservation has occurred.

SCSD-303. The MHCP does not have the authority to require existing golf courses to modify their operations for the protection of the preserve system unless those operations would constitute take of a listed species. Water quality issues can be addressed under the NPDES permit process. New golf courses will be required to provide adequate buffers and to employ best management practices for minimizing impacts to adjacent habitat.

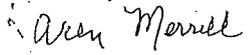
SCSD-304. The MHCP and Oceanside plans include sufficient processes for ensuring that key provisions are put in place before take of resources proceeds to where conservation options might be precluded. The city is not in a position to impose penalties on other jurisdictions for impacts to biological resources.

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Footnotes

- (1) Wilson, Edward O., How to Save Biodiversity, The Nature Conservancy, Spring 2002.
- (2) Excerpts from the Intergovernmental panel on Climactic Change from Goodstein, Carol "A Sea Change", the Nature Conservancy, September/October 2001.
- (3) Kuznik, Frank, Charting a New Course, National Wildlife, August/September 1993.

Sincerely,


Karen Merrill
San Diego Chapter
Sierra Club


Diane Nygaard

Attachment : Sierra Club HCP/NCCP Policies



NCCP/HCP PRINCIPLES OF SIERRA CLUB CALIFORNIA

SCSD-305

1. Recovery. The bedrock principle for all HCP/NCCP projects is that they must lead to the recovery of the affected species and be based on the biological needs of the species and ecosystems which are to be protected.
2. Stewardship. The public has a vested interest in the health and sustainability of water and wildlife. All landowners, therefore, serve as public trustees of these ecosystems and species. All landowners have a duty to ensure that their activities do not harm public trust resources. We respect the tradition of private property but believe that private property is subject to reasonable regulation in order to advance public trust responsibilities.
3. Prevention. The most effective strategy for avoiding the biological and legal crises involving species listed under the ESA is to avoid the circumstances that lead to extinction. Preventative policies are the most ethical and biologically sound. We are highly skeptical of the effectiveness of habitat "re-creation" strategies, and consider mitigation undertaken as part of a development to be a poor substitute for conservation. For species unfortunate enough to become listed, the Sierra Club's goal is to conserve and protect what remains, with the ultimate goal being the biological recovery of the species. Large-scale regional management and development plans like HCP/NCCP's must promote that goal.
4. Science-based Standards. All HCP's and NCCP's must be based on independent and verifiable scientific studies which conclude that the plans will likely result in the recovery of at-risk species.
5. Growth Management. The conservation of endangered species necessarily involves the conservation of habitat. Therefore, endangered species issues are inextricably linked to local land use planning and decision-making. The Sierra Club believes that development and population growth should not occur on habitat essential for the survival of endangered species. It is a basic premise of the Sierra Club that the protection of endangered species and habitat is essential in maintaining the quality of human life as well as a sound, sustainable economy.
6. Legal Assurances. We oppose the "no surprises" policy as currently being implemented. NCCP's and HCP's are too often touted for providing virtually ironclad "regulatory certainty" to developers and landowners in a world filled with scientific and biological uncertainty. Regulatory commitments and assurances must be commensurate with scientific knowledge and conform to the principles of adaptive management. NCCP's and HCP's must therefore be subject to periodic review and amendment, when necessary. Public participation is an essential part of the periodic review process.

SCSD-305. The comment is a policy paper of the Sierra Club chapter of California. It does not remark on the adequacy of the EIR/EIS for the MHCP or subarea plans, and therefore requires no response.

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7. Public Participation. All HCP/NCCP processes must be open to early public involvement and participation and to independent scientific input. The scientific community and the public must be given meaningful opportunities to help develop these plans at the earliest stages. The current process all too often presents the public with a finished product on which to comment.

8. Adaptive Management. We recognize that science has much to learn about species and ecosystems, and therefore, that HCP/NCCP management plans must be adaptable to new information and changed circumstances. The requirement that HCP/NCCP's be adaptable is essential if these projects are to meet their objective of ensuring the long-term protection of fully functioning ecosystems. An HCP or NCCP is not a substitute for listing, designating critical habitat for federally listed species, and developing a recovery strategy for that species. HCPs and NCCPs should never undermine the statutory goals of the federal and state Endangered Species Acts.

9. Enforcement. We support strengthening existing wildlife protection laws, such as the federal and state Endangered Species Acts, and reject any and all attempts to weaken these laws. We recognize that even with the ESA and CESA, many wildlife populations and ecosystems have become extinct, that many more species are now listed, and that an even larger number of species are imperiled and eligible for protection. We assert that HCP/NCCP projects must, at a minimum, be consistent with the species recovery objectives of the ESA and CESA. Additionally, citizen suits must be authorized to enforce NCCP's and HCP's.

10. Funding, Implementation, and Monitoring. All NCCP/HCP-type plans must have an implementation component which includes secure and adequate funding for the scope of the proposed project. Additionally, there must be a monitoring component using measurable standards which regularly assesses the impacts of the plan, the efficacy of the plan, and the likely success of the plan. To the maximum extent practical, funding must come from those who seek to advance the proposed project. If land is contributed by private parties to an NCCP/HCP, it shall not be land which is contributed because of a mitigation requirement imposed by other legal requirements.

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April 29, 2002

VIA HAND DELIVERY

Lee Ann Carranza
U.S. Fish and Wildlife Service
2730 Loker Avenue West
Carlsbad, CA 92008

Re: Draft Environmental Impact Statement/Report for the Multiple Habitat
Conservation Program Planning Area, SCH No. 93121073

Dear Ms. Carranza:

This letter and its attachments are submitted on behalf of the San Diego Chapter of the Sierra Club, Center for Biological Diversity, Canyons Network, San Diego Audubon Society, and California Native Plant Society to provide comments concerning the Draft Environmental Impact Statement/Draft Environmental Impact Report ("DEIS/R") for the Multiple Habitat Conservation Program Planning Area ("MHCP").

I. Introduction

The National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321 *et seq.*, requires a federal agency to prepare an Environmental Impact Statement ("EIS") for any major federal action significantly affecting the quality of the human environment. 42 U.S.C. § 4332(2)(C). Among other things, an EIS must discuss:

1. the environmental impact of the proposed action;
2. any adverse environmental effects which cannot be avoided should the proposal be implemented; and
3. alternatives to the proposed action.

Id. The EIS's discussion of impacts must include:

1. direct effects and their significance;
2. indirect effects and their significance;
3. possible conflicts between the proposed project and the objectives of Federal, regional, State and local land use plans, policies and controls for the area concerned; and
4. the environment effects of the alternatives, including the proposed action.

40 C.F.R. § 1502.16.

Letter 21: Sierra Club - Delano

SCD-1. The comment provides a listing from NEPA and CEQA indicating the statutory requirements of an EIS and EIR. Comment does not address the adequacy or accuracy of the MHCP, Subarea Plan, or EIS/EIR; therefore, no further response is necessary.*

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SCD-1

The California Environmental Quality Act ("CEQA"), Pub. Res. Code §§ 21000–21177, must be interpreted "so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." *Friends of Mammoth v. Board of Supervisors*, 8 Cal. App. 3d 247, 259 (1972). If an Environmental Impact Report ("EIR") fails to provide agency decision-makers and the public with all relevant information regarding a project that is necessary for informed decision-making and informed public participation, the EIR is legally deficient and the agency's decision must be set aside. *Kings County Farm Bureau v. City of Hanford*, 221 Cal. App. 3d 692, 712 (1990). An EIR is "aptly described as the 'heart of CEQA'" (an "environmental 'alarm bell'"); its purpose is to inform the public and its responsible officials of the environmental consequences before they are made. *Laurel Heights Improvement Assoc. v. University of California*, 47 Cal.3d 376, 392 (1988).

Among other things, an EIR must discuss:

1. All significant effects on the environment of the proposed project.
2. In a separate section:
 - (A) Any significant effect on the environment that cannot be avoided if the project is implemented.
 - (B) Any significant effect on the environment that would be irreversible if the project is implemented."
3. Mitigation measures proposed to minimize significant effects on the environment, including but not limited to, measures to reduce the wasteful, inefficient, and unnecessary consumption of energy.
4. Alternatives to the proposed project.

Pub. Res. Code § 21100(b). *See also* CEQA Guidelines § 15126.

II. There Were Several Problems Accessing the DEIS/R and Getting Information

SCD-2 The mapping contained in the DEIS/R is of a small scale and difficult to read. It is difficult if not impossible to place locations with any degree of precision. Even important vegetation mapping lacks adequate precision. *See e.g.*, EIS Figures 3.3-1 & 4.3-1. Similarly, mapping associated with the various jurisdictions' Focused Planning Areas ("FPA's") lacks adequate detail. *See id.* Figure 2.3-5 (figure provides no information on the amounts or kinds of protections afforded within the FPA's).

SCD-3 Difficulties for readers of the DEIS/R are compounded by the fact that no mapping is provided that allows for a ready comparison of vegetation to FPA's. While it is possible to hold the small scale vegetation mapping next to the small scale FPA mapping, this exercise will lead only to a rough understanding of the relationship between where important vegetation exists and where conservation is being proposed.

SCD-2. The figures in the EIS/EIS were of sufficient scale to provide the reader with the general location for the resources. This is a plan level document and not intended to be at a scale for project level quantification. The amounts and kinds of protection provided are provided in text as well as graphically. These are supplemented with data tables presenting the summary of the areas protected, as well as those areas with development potential.

SCD-3. Vegetation communities acreages for each alternative are presented in Tables 2.2-1, 2.2-2, and 2.2-3, respectively.

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SCD-4 Finally, while it is often preferable to limit the unnecessary use of more paper, the numerous troubles encountered by use of the CD-ROM technology have made review of the MHCP and DEIS/R even more difficult.

Despite these problems, we offer the following comments and critiques concerning the DEIS/R and the MHCP.

SCD-5 III. The DEIS/R Fails to Fulfill NEPA and CEQA Requirements

A. Lead Agency/Project Description/Existing Environment

The "enigmatic and unstable project description draws a red herring across the path of public input." *County of Inyo v. City of Los Angeles*, 71 Cal. App. 3d 185, 198 (1977). It is difficult to determine what agency is implementing the project at the state level and what authority they have for doing so. SANDAG does not retain land use authority or have authority over the six cities that are the subject of the DEIS/R. Should the individual cities decide to make different decisions about how they want to approach habitat conservation, SANDAG would not have any authority to compel their compliance with the MHCP or its many promises. Table 1-1 notes that SANDAG is neither getting nor issuing any permits. Additional problems include the following:

SCD-6 1. It does not appear that SANDAG is the appropriate lead agency under CEQA. As the DEIS/R notes, the California Department of Fish and Game ("CDFG") has authority over decisions concerning wildlife species in California. See DEIS/R at 2-1 - 2. As such, it would appear that CDFG is the appropriate lead agency.

SCD-7 2. Nevertheless, since SANDAG has chosen to act as lead agency, it may not evade exercising its own authority simply because authority rests with CDFG. See *Citizens for Quality Growth v. City of Mount Shasta*, 198 Cal. App. 3d 433 (1988). To the extent significant impacts are identified as unmitigated in the DEIS/R, SANDAG must utilize its power to address those issues. Those powers include the funds SANDAG has at its disposal, which need to be utilized to ensure the various mitigation measures are actually carried out. See DEIS/R § 2.1.2.

SCD-8 3. It is unclear how the MHCP relates to the promises that the City of Vista will be performing its subarea plan at some time in the future. DEIS/R at 1-13. There is no certainty that Vista will complete a habitat plan, no sense of when that plan will be completed, and no indication how that plan will affect the MHCP. See also *id.* at 2-40. Indeed, the failure of the City of Vista to have completed a subarea plan means that the DEIS/R fails to describe the existing environmental conditions and fails to consider impacts associated with habitat in the vicinity of Vista. The 77 species discussed in the DEIS/R are unaware of political boundaries.

SCD-4. The MHCP and EIS/EIR were available in three forms: hard copy reports, SANDAG's web site and CD-ROM.

SCD-5. The criteria for identifying the lead agency are specifically addressed in Section 15051. SANDAG is the lead agency which is in compliance with CEQA. CDFG is a responsible agency and has been an integral part of the CEQA process, including review of the preliminary and Draft EIS/EIR and responses to comments.

SCD-6. Please see response SCD-5.

SCD-7. SANDAG has not evaded its responsibility under CEQA. SANDAG has worked with each City, the Department and the Service to identify workable and feasible mitigation measures. Section 2.1.2 is the section describing the Biological Preserve Assembly and Operation. This is part of the Project Description /Description of Alternatives. Section 4 of the document presents the impacts/consequences and mitigation measures.

SCD-8. The EIS/EIR discloses that Vista had not completed their subarea plan (Page 2-40). Because Vista has not completed their Subarea Plan, any project located in Vista impacting a threatened or endangered species would still, as in the existing conditions, require individual take authorizations from the Service and Department, as applicable. The MHCP addressed the potential that Vista did not complete a Subarea Plan, and the results were that the MHCP could function as a whole without Vista. In fact, each City can proceed individually and a certain number of species can be authorized for each City. The City may be dependent upon other cities having completed their Subarea Plan prior to receiving coverage for certain species. This process has been incorporated into the MHCP because of the multiple jurisdictions.

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SCD-9

4. The refusal of the County of San Diego to participate in the MHCP raises similar problems. For example, without knowledge of the direction and location of the County of San Diego preserve system, informed decisions about likely project impacts are hampered. At a minimum, this means SANDAG must assume that the County of San Diego will protect all the possible linkages between its jurisdiction and the jurisdiction of affected cities. At the same time, SANDAG must assume that the County of San Diego will not do an adequate job to protect wildlife, a conservative but necessary assumption to ensure adequate species protection.

SCD-10

5. It is unclear how a "combination" of plans can and will serve as an HCP. DEIS/R at 2-1. Presumably, the various cities will receive individual permits. One "super permit" will not be issued to all of the cities.

SCD-11

6. It is unclear whether the 400 to 500 acres discussed as preserved under the MHCP are a result of this project alone, or whether this will occur in concert with other projects. DEIS/R at 2-4.

SCD-12

7. The value identified for Daley Ranch should be what Escondido paid for the property. DEIS/R at 2-19. Assigning a higher value artificially inflates the cost of habitat acquisition, thereby negatively affecting future possible acquisition. Many sellers are willing to negotiate a lower price when they know that the land will be set aside.

SCD-13

8. No rational basis is given for the exclusion of certain areas, particularly Camp Pendleton and the unincorporated county. DEIS/R at 2-26. Indeed, these areas provide rich opportunities for habitat protection and species preservation, as they contain some of the largest blocks of undisturbed land anywhere in Southern California. Excluding these areas, and the values they represent, from the DEIS/R means the analysis of possible impacts and possible opportunities for habitat protection lacks crucial information concerning the relationship between these areas and the areas actually considered.

B. Biological Resources

SCD-14

The DEIS/R must "provide clear and definite analysis of the location, extent and character" of species "possibly within and definitely adjacent to" the MHCP area. *San Joaquin Raptor/Wildlife Center v. County of Stanislaus*, 27 Cal. App. 4th 713, 729 (1994). The DEIS/R must discuss direct and indirect effects on biological resources. 40 C.F.R. § 1502.16.

SCD-9.

From a practical standpoint, species and habitat planning can not wait until all jurisdictions affecting the species or habitats are ready to prepare resource plan. The City of San Diego completed their MSCP plan, affecting a similar range of species and habitats, with the same constraints. The MHCP and other regional planning efforts, must by definition proceed with a reasonable assertion that corridors and connectivity provided by this plan will be continued off site in other plans. For the most part, the corridors and connectivity are continued when the subsequent planning efforts are completed. In some events the corridors can not be continued; however, the ramifications of those actions are addressed at that time. If the MHCP is adopted when the County completes their plan, the corridors and connectivity assurances provided by the MHCP would be an existing condition and if the County conflicts with those corridors then the impacts of the County's project will need to be addressed. This process is one typically used in infrastructure planning throughout the State.

SCD-10.

The MHCP is comprised of, at a minimum, five subarea plans. Each City upon completion of the individual processing of their plans may receive a take permit, upon which the City would be able to issue take authorization to individual projects. SANDAG will not receive a "super permit".

SCD-11.

During the preparation of the MHCP, it was determined that resources in the County core needed to be protected for the future integrity of the MHCP. Because the MHCP has been in the review and preparation stage for an extended period of time, the cities and resources agencies have been reviewing projects with the assumption that the MHCP would ultimately be approved. Thus, projects were often reviewed with an eye to consistency with the plan in regards to developable areas and areas to be preserved. Mitigation was proposed that met the requirements of the draft plan, including the acquisition of property in the County core. At this time, approximately 383 acres of the County core has already been acquired anticipating the MHCP will be adopted, in anticipation of the MHCP adoptions.

SCD-12.

The commenter is confusing the actual cash outlay with the purchase price of the Daley Ranch property. The \$21 million purchase of the Daley Ranch property involved a complicated transaction that included a \$2.5 million cash outlay and the value of water and sewer futures purchased, calculated at \$18.5 million. The appraised value of the property at the time of purchase was \$11.3 million; this appraised value was determined prior to the City's acquisition and dedication of the conservation easement over the property. The current value of Daley Ranch with the conservation easement was

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estimated by calculating the future income stream resulting from sale of conservation credits over 30 years based on an appraised value of the credits. The present value of the credits was calculated to be \$3,625,000. The EIS/EIR accurately states that the net cost of establishing the bank is determined by calculating the difference between the appraised value of the land at the time of purchase and the anticipated revenue from the sale of conservation credits. This amount is significantly less than the actual purchase price of the property and therefore does not inflate the value of lands acquired for conservation purposes.

SCD-13. The EIS/EIR clearly disclosed why Camp Pendleton and the County are not included in the MHCP. See Page 2-80, which states the following:

"2.4.5 Inclusion of Camp Pendleton, Fallbrook Weapons Station, and County Unincorporated Properties

Under this alternative, the MHCP planning area will include Camp Pendleton and the Fallbrook Weapons Station to the north and an unincorporated portion of San Diego to the east. These lands were included in the initial stages of the MHCP process.

Military lands were removed from the planning area in 1994 when the Marine Corps began work on a comprehensive habitat conservation plan for the Marine Corps Base Camp Pendleton (Base). Given the mission of defense associated with military lands, it was determined that a Base-specific HCP plan would be most prudent. The Marine Corps has continued to coordinate their planning efforts with the MHCP to ensure linkages are maintained across planning boundaries.

On July 17, 1996, the County Board of Supervisors voted to proceed with open space planning for North County as a subarea of the Multiple Species Conservation Program. The July 17, 1996 letter to the Board from Pam Slater, Third District Supervisor, states that the County must have complete control of open space planning for areas under its land use jurisdiction. It goes on to state that, biologically, it is important that the open space in this plan link up with open space planned in the MSCP. She recommends that the Board not "reinvent the wheel" on a stand-alone MHCP, but rather prepare a "Subarea Plan" which can be incorporated by amendment into the existing MSCP. She states that this approach should be less costly, because it will and should rely on the already completed materials in the MSCP; it will be more

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efficient by supplementing the existing EIS/EIR for the MSCP, rather than creating a costly new document.

Specifically, this alternative will not meet the following objectives:

- *Establish a partnership among federal, state, and local agencies of government to facilitate review and approval of public- and private-sector land development and construction projects by expediting acquisition of permits and management authorizations from federal and state wildlife agencies."*

Camp Pendleton is a federal property. SANDAG is a state governmental entity. State governments do not have the authority to force a federal government entity (US Department of Defense) to participate. The County of San Diego is a local government; however, SANDAG's charter does not give them the authority to force their member agency to participate. Thus, when the County chose not to complete their habitat planning on the same schedule of the MHCP, SANDAG can not force that to occur. As discussed in the previous comment, the impacts were addressed to the extent feasible and the County will then proceed with the knowledge of the corridors assured by the MHCP.

SCD-14. The EIS/EIR has identified the location, extent and character of species within the MHCP and those adjacent. See Section 3.1, Existing Conditions/Affected Environment. More detailed database is provided in the MHCP Volumes I and II.

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Unfortunately, the DEIS/R fails to fulfill these requirements. For example:

- SCD-15
1. The DEIS/R acknowledges that a large habitat area in south San Marcos will not be protected, and that this area "received a very high habitat value according to the composite habitat value analysis," yet it attempts to dismiss impacts by stating that the area "supports few known occurrences of sensitive species." DEIS/R at 4-50. Yet this assertion is undercut by the admission that "surveys in this area may have been limited." *Id.* In fact, Figure 4.3-2 notes sensitive species in the area. Furthermore, the vegetation mapping is inaccurate – there are greater amounts of Coastal Sage Scrub than indicated. *Id.* at Figure 3.3-1. It is apparent that adequate surveying was not accomplished and that impacts associated with the lack of protection for this area will be far greater than discussed in the DEIS/R.
 2. The DEIS/R's reliance upon off-site protections in the "gnatcatcher core" area does not support its assertion that FPA Alternative 2 somehow corrects the significant, unmitigated impacts on the California gnatcatcher associated with FPA Alternative 1. Both alternatives preserve only 62% of known occurrences of gnatcatchers in the MHCP project area. *See* DEIS/R at Table 4.3-2 (page 4-155). The additional off-site acreage contemplated by FPA Alternative 2 would provide for the protection of an area "capable of supporting 16 – 23 pairs of breeding California gnatcatchers." *Id.* at 4-73. The "total number of gnatcatcher pairs in the study area probably ranges from about 400 to 600 in any given year." *Id.* at 3-29. There is insufficient basis to assert that this off-site area, which could support roughly 4% of gnatcatcher pairs in the MHCP area, sufficiently protects the gnatcatcher population. FPA Alternative 1 does not provide sufficient protections for gnatcatchers; the reliance of FPA Alternative 2 upon the possibility of habitat for relatively minimal additional gnatcatchers fails to correct this insufficiency.
 3. Protections provided by the Carlsbad Habitat Management Plan ("Carlsbad HMP") are inadequate, and the DEIS/R acknowledges some of those shortcomings. DEIS/R at 4-103 ("the marginal level of conservation of [grasslands and coastal sage/chaparral mix] is inadequate and will have subsequent significant impacts"). Canyons Network previously commented upon these (and other) inadequacies in letters both directly to the City of Carlsbad and to the U.S. Fish and Wildlife Service, which letters are hereby incorporated by reference. *See* Attachment 1 (letter to Don Rideout, City of Carlsbad, from Everett DeLano (August 2, 1999) and letter to Bruce Babbitt and Ken Berg from Everett DeLano (July 28, 2000)). It is worthwhile noting that the City of Carlsbad responded that the Carlsbad HMP was sufficient to protect the species and that "all potentially significant adverse impacts have been mitigated

- SCD-15. The referenced habitat has been identified as chaparral (based upon prior surveys) and the conclusions in the EIS/EIR were that impacts to chaparral in San Marcos were significant and required additional mitigation at the plan level. The commenter acknowledges that the EIS/EIR has disclosed that the plan does not provide protection for the referenced habitat in San Marcos. The surveys completed are consistent and adequate for analyzing impacts at a programmatic level. The EIS/EIR did not state that there are no known sensitive species, it noted (as the commenter cited) "few known occurrences of sensitive species". Based upon surveys completed to date, there are a few populations that have been identified. The assertion that the vegetation mapping is inaccurate and there is more coastal sage scrub is unsubstantiated. It should be noted that when a project (any project) is proposed subsequent to the assumed adoption of the MHCP and Subarea Plans, full CEQA review is still necessary. A biological reconnaissance would be conducted at the project level. If additional sensitive species are identified in the surveys, those impacts will be reviewed at a project level and additional mitigation (avoidance or compensatory mitigation) will be imposed, as specified in the plans.
- SCD-16. The importance of the unincorporated gnatcatcher core to FPA Alternative 2 is not measured in acres. Its significance is in correcting deficiencies in reserve design for the California gnatcatcher that cannot be entirely addressed within the MHCP study area. Although the total number of gnatcatchers within the study area ranges from about 400 to 600 pairs, these are currently distributed amongst many small fragments of habitat that may not represent viable source breeding populations due to severe edge effects, habitat degradation, and constraints to dispersal. Addition of the adjacent core area of 400 to 500 acres of *contiguous* coastal sage scrub habitat, capable of supporting a nesting population of 16 – 23 additional pairs of gnatcatchers, would significantly increase the viability of the MHCP reserve area by ensuring a reliable source population in a critical location. Dispersing gnatcatchers from this breeding core area are expected to help continuously replenish habitats within the more fragmented MHCP area, and thereby contribute to regional viability of the gnatcatcher metapopulation. It is an oversimplification to look at acreages, percentages, or numbers of pairs alone in considering such complex issues as population dynamics in a fragmented metapopulation. *See* Page 2-27 for a more detailed discussion.
- SCD-17. Commenter is referring to previous environmental documents prepared by other agencies. This EIS/EIR does not incorporate the findings of these

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documents. It is inferred that the commenter agrees with the conclusions presented in this EIS/EIR. No further response is necessary.

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to a level of insignificance.” Attachment 2 at 10. The DEIS/R’s admissions about the Carlsbad HMP contrast sharply with the City’s prior self-serving assertions.

SCD-18

4. The DEIS/R fails to consider possible connectivity between the Quail Hills area and San Diego County lands. *See* DEIS/R at Figure 2.3-3. Failing to protect the Quail Hills area will limit options for connectivity and connections with the protections provided during habitat planning by San Diego County.

SCD-19

5. There is no discussion of estuarine, riparian and wetland areas in the undeveloped area south of San Marcos Boulevard. *See* DEIS/R Figure 4.3-1. The “no net-loss” policy does not mean that there will be no impacts to these areas, *id.* at 4-120, and the DEIS/R should address the impacts associated with plans by the City of San Marcos to develop this area for commercial and industrial use.

SCD-20

6. The DEIS/R acknowledges that the San Marcos FPA fails to adequately conserve chaparral, yet it fails to acknowledge that impacts are significant and unmitigated. DEIS/R at 4-134.

SCD-21

7. While the MHCP may not impact planned roadways, *see* DEIS/R at 4-215, the DEIS/R fails to discuss the impacts of roadways on biological resources. These include some very critical biological areas, including planned stretches of Cannon Road in Carlsbad, and Twin Oaks Valley Road and Las Posas Road in San Marcos. *See* DEIS/R Figure 4.3-1.

C. Additional Likely Impacts

SCD-22

An EIR must address an environmental impact whenever substantial evidence in the record supports a “fair argument” that significant environmental impacts may occur. Pub. Res. Code § 21080(d). If the agency “has failed to study an area of possible environmental impact, a fair argument may be based on the limited facts in the record.” *Sundstrom v. County of Mendocino*, 202 Cal. App. 3d 296, 311 (1988).

SCD-23

The DEIS/R fails to analyze several likely impacts, including aesthetics, air quality, cultural resources, hazards and hazardous materials, hydrology and water quality, noise, transportation, environmental justice, geology and soils, and recreation. DEIS/R at 7-1. To the extent that FPA Alternative 2 allows for additional development that would not be developed under the BCLA alternative, additional impacts associated with that development will occur. As a general matter, FPA Alternative 2 would allow for greater sprawl style development, which would have substantial impacts on such things as air quality, transportation and a host of other issues. Similarly, impacts upon aesthetics, recreation and other issues would occur to the extent that developed lands would limit

SCD-18.

The Quail Hills area is entirely surrounded by development and represents an island of habitat, currently not connected with other habitat areas in the County as discussed on Page 4-57 of the EIS/EIR. Although limited dispersal of birds, such as the California gnatcatcher, may occur across urbanized areas between Quail Hills and lands in the unincorporated county, Quail Hills does not significantly contribute to regional connectivity, and failing to protect this area does not limit options for connectivity. It was omitted from the Biological Core and Linkage Area due to this and due to the disturbed nature of habitat on the property. Subsequent analyses conducted by Dudek and Associates, Inc. (DUDEK June 17, 1998) and discussed with the wildlife agencies in August and September 1999, concluded that lack of connectivity was a major obstacle to the long-term conservation of gnatcatchers on the site. Revegetation options were also evaluated and deemed infeasible due to small parcel sizes and development patterns in the area, and due to the planned land use and Circulation Element improvements. Topographic constraints, road alignment design standards, and buffering requirements necessitate grading the entire site; therefore preservation of a portion of the site is infeasible and would result in an isolated fragment. Based on these considerations, the wildlife agencies concurred that on-site conservation was not feasible. It should be noted that an application for a new tentative map and Specific Plan (including a proposed power plant and industrial subdivision) for this property has been submitted to the City of Escondido (City Case File #ER 2001-12). The project has recently completed CEQA review.

SCD-19.

There are no project level plans for the commercial and industrial lands at this time. Project specific plans will need to respond to the measures in the San Marcos Subarea Plan and MHCP. The EIS/EIR states (Page 4-63): “*Obligate wetland species are those species for which all life requisites provided in the MHCP area are expected to be within open water or wetland vegetation communities, which are subject to the no net-loss policy. Inside the FPA, all points for obligate wetland species are calculated at 100% conserved. This assumes 100% conservation of the habitat and active habitat management to ensure no loss of habitat value to support the species. Areas outside the FPA will still be afforded protection by the MHCP, CDFG, and ACOE “no net-loss” policies through implementation of Section 404 of the Clean Water Act and Section 1600-1607 of the Streambed Alteration Act.*” It should be recognized that in addition to City review and approval process (including further CEQA review), any impacts to jurisdictional wetlands (US Army Corps of Engineers), “streamcourses” (California Department of Fish and Game) or waters of the state (Regional Water Quality Control Board) would require permitting approval above and beyond the City’s entitlement process.

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If the Service or Department does not concur with the City of San Marcos' enforcement of the Subarea Plan, they will withdraw take authorization.

- SCD-20. Page 4-134 of the EIS/EIR states that: "*Grasslands and chaparral are not adequately conserved by the San Marcos Subarea Plan. . . . The largest contiguous block of chaparral in the City of San Marcos which occurs along the southern portion of the City is roughly 760 acres. This chaparral habitat is part of the largest contiguous block of natural vegetation (over 1,000 acres) in the entire MHCP planning area, outside of the Daley Ranch mitigation bank in the City of Escondido. The 760 acres of chaparral are not known to support critical locations or known occurrences of sensitive species; however, the City of San Marcos is proposing 188 acres of chaparral in the center of this large contiguous block of chaparral to be 25% conserved. Thus, resulting in the loss of approximately 141 contiguous acres of chaparral (18.5%), a sixfold increase in linear feet of edge, and at least a sixfold increase in the number of areas constricting the corridor. The loss of chaparral in the center of this contiguous block of habitat is considered significant because of impacts to preserve design.*" Therefore, the EIR clearly discloses the significant impacts to grasslands and chaparral.
- SCD-21. The EIS/EIR has acknowledged and disclosed that as a result of project implementation, the project will result in impacts to resources (take of habitat and species). The Subarea Plans each recognize that the City's infrastructure (including circulation network, water, sewer and parks) will need to be developed. The EIS/EIR discusses the impacts of roads and other infrastructure in Sections 4.4 and 4.5.
- SCD-22. The EIS/EIR has discussed environmental impacts. Aesthetics, air quality, cultural resources, hazards and hazardous materials, hydrology and water quality, noise, transportation, geology and soils, and recreation were evaluated in the EIS/EIR and it was concluded that there were no significant impacts (Section 7.0). This comment is an introduction to more detailed comments that follow. Responses will be prepared for the specific issues are set forth below.
- SCD-23. The general plans for each City designates the location of growth and the density of the growth in each jurisdiction. Each of the alternatives would have similar impacts to the resources identified in the comment. Implementation of the BCLA would not reduce proposed or projected growth, in fact, the EIS/EIR concluded: "*A project that will reduce the supply of available land for housing in one area may be considered to have indirect growth-inducing*

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effects, if such a reduction will result in a shift in projected growth to an area not currently planned for such growth. Each of the alternatives (FPA 1, FPA 2, and BCLA 3), to a differing level, will result in land use implications related to the loss of developable lands. If development can not occur where it is currently proposed to be accommodated at the levels identified in the associated General Plans, this growth must be accommodated elsewhere. This demand for growth may occur in areas with an adopted habitat plan or in areas that are unincorporated. As a result of implementation of any of the alternatives, the demand for housing could be felt in the unincorporated County lands where it is not currently anticipated. Infrastructure is not available to support this growth." (Page 5-2) Thus, the BCLA could be considered to have a greater impact on proposed or projected growth, since the growth could be forced into the unincorporated County. Section 7 of the Draft EIS/EIR provides a discussion of each issue and the rationale why the impacts were considered to be less than significant.

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opportunities in these areas. Accordingly, the DEIS/R should have addressed these issues, with an objective analysis of the differences between the alternatives.

SCD-24

D. Growth Inducing Impacts

The discussion in the DEIS/R concerning growth inducing impacts is inadequate and misleading. See generally DEIS/R § 5. The DEIS/R acknowledges that the MHCP will "allow USFWS and CDFG to issue incidental take permits to each participating city. Participating cities can then proceed with public and private projects with coverage under the ESA." DEIS/R at ES-4. Issuance of those take permits will relieve the cities and developers from having to work with state and federal regulators on the development of an adequate plan for species protection. This "centralized" permitting will have growth inducing effects in the region.

SCD-25

E. Cumulative Impacts

"The full environmental impact of a proposed ... action cannot be gauged in a vacuum." *Whitman v. Board of Supervisors*, 88 Cal. App. 3d 397, 408 (1979). For the reasons stated above, the DEIS/R fails to analyze adequately numerous cumulative impacts associated with the MHCP, including numerous impacts to biological resources associated with this project and reasonably foreseeable projects. CEQA Guidelines § 15130. Furthermore, the DEIS/R fails to examine options to mitigate or avoid those effects. *Id.* § 15130(b)(3).

IV. The Analysis of Alternatives and Mitigation is Inadequate and Misleading

SCD-26

An adequate alternatives analysis is the "heart" of an EIS. 40 C.F.R. § 1502.14. It is designed to "ensure that each agency decision maker has before him [or her] and takes into proper account all possible approaches to a particular project." *Calvert Cliffs' Coordinating Committee, Inc. v. Atomic Energy Comm'n*, 449 F.2d 1109, 1114 (D.C. Cir. 1971).

"[A]lternatives and mitigation have the same function – diminishing or avoiding adverse environmental effects." *Laurel Heights Improvement Association v. Regents of the University of California*, 47 Cal. 3d 376, 403 (1988). "Environmentally superior alternatives must be examined whether or not they would impede to some degree the attainment of project objectives." *Kings County Farm Bureau v. City of Hanford*, 221 Cal. App. 3d 692, 737 (1990). See also Pub. Res. Code §§ 21002 & 21081.

The DEIS/R distorts the existing conditions of and likely impacts to population, housing and employment. This results in a skewed analysis of alternatives, inordinately predetermining that the environmentally superior alternative is disfavored. The DEIS/R lacks support in the record for its assertion that the alternatives will result in significant impacts to population, housing and employment.

SCD-24. The issuance of the take permits does not relieve the cities and developers from "having to work with state and federal regulators on the development of an adequate plan for species protection". The state and federal regulators have worked with each city to identify an adequate plan for species protection. As long as the future development is consistent with the ultimately approved plan, species protection is provided. If the future development is not consistent with the ultimately approved plan, the cities can not issue take authorization. Therefore, this element of the project can not be considered growth inducing.

SCD-25. The EIS/EIR did not address the environmental impact in a vacuum. The EIS/EIR concluded that implementation of the proposed MHCP will result in direct and significant impacts to species on the Covered Species Lists (Page 6-5 of Draft EIS/EIR) from a cumulative perspective. The cumulative section (Section 6.3 on Page 6-5) references the reader to Section 4. Section 4.3 (specifically for biology) addresses mitigation measures and feasibility of implementation.

SCD-26. The EIS/EIR disclosed the ramifications of implementing the various alternatives under consideration. Chapter 4 discusses the environmental impacts of FPA 1, FPA 2, BCLA, and No Project/No Action. This analysis includes the impacts to land use/socio-economics. Implementing the BCLA will reduce the amount of land that is available for housing and industrial land. Similar thresholds for significance were utilized in the MSCP environmental analysis and, thus, the thresholds have been scrutinized for appropriateness. It should also be recognized that the selection of the environmentally superior alternative is a balance of all environmental issues, not just biology. The EIS/EIR did analyze the impacts of the BCLA; however, due to the combined impacts, it was not concluded to be the environmentally superior.

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SCD-27

Referencing Government Code Section 65581, the DEIS/R asserts that the Biological Core and Linkage Area ("BCLA") alternative would allow for "little if any development." DEIS/R at ES-10. This is a substantial distortion of the impacts associated with the BCLA alternative, as well as a gross simplification of the requirements of State law governing the adoption of housing elements of a general plan. Even under the BCLA alternative, the most protective alternative analyzed, where biological core and linkage areas are preserved, 75% of vacant developable land would remain open to development. *Id.* at Table ES-1. This is hardly an alternative that allows for "little if any development." Furthermore, the DEIS/R uses the conservative assumptions that no additional land becomes available for development, *id.* at 4-233, and that no densification whatsoever would occur within existing developed areas, *id.* at 4-228.¹

SCD-28

Furthermore, the California Government Code does not require municipalities to accept housing under any and all circumstances. To do so would be inconsistent with other requirements, including requirements under CEQA and state and federal wildlife protection laws. Indeed, the housing element laws specifically state, in part: "The Legislature recognizes that in carrying out this responsibility, each local government also has the responsibility to consider economic, environmental, and fiscal factors and community goals set forth in the general plan." Gov. Code § 65580(e) (emphasis added).

Additional problems with the analysis include the following:

SCD-29

1. The DEIS/R asserts dire predictions for housing and significant economic impacts if the BCLA alternative were adopted. *See e.g.*, DEIS/R at 4-236 – 242. This assertion lacks support. The BCLA alternative, which conserves all of the core and linkage areas, provides for only 14% more conserved land than the preferred FPA Alternative 2. *Id.* at 4-236. This lack of developable land could be offset by increasing densities slightly in developed areas. Indeed, the BCLA alternative would result in year 2020 in the same density (6.1 units/acre) as those found of the developed acres in 1995. DEIS/R at Table 4.6-3 (bottom row). This is hardly the significant impact the DEIS/R asserts it to be.

SCD-30

2. The comparison in the DEIS/R between that development potential that might occur under existing general plan conditions and that development that might occur through the adoption of a habitat management plan is inaccurate and misleading. To paraphrase one court, "an environmental analysis based on a comparison between what was possible under the existing general plan and what [is] permitted under the [MHCP is]

¹ These assumptions are made without any support for their use. Indeed, both assumptions serve to overstate the impacts of the MHCP and, particularly, of the BCLA alternative.

SCD-27.

The EIS/EIR stated: "*BCLA 3 essentially captures all remaining undeveloped natural areas within the 175-square-mile study area. The alternative would remove from future development approximately 25% of vacant land currently forecast to be developed for urban use through 2020. (In comparison, FPA Alternative No. 1 would remove about 11% of land forecast for development; see Table 4.6-5.) This will represent a substantial reduction in the supply of developable land, which will likely result in significant economic impacts, including curtailment of forecast population and employment growth; price increasing for land and housing faster than the rate of inflation; and lack of affordable housing. Furthermore, additional costs of habitat acquisition and management associated with a larger preserve system must be funded by a smaller tax base than would be available under the other alternatives. Implementation of this alternative would therefore require substantial outside funding, for example, from federal and state grants. For these reasons, this alternative is considered to be economically impractical and likely infeasible, if it were to rely primarily on local funding sources. This would result in a significant unmitigated impact.*" FPAs 1 and 2 were not considered to result in significant impacts to population, housing, or employment because some of the vacant land would be used for development.

SCD-28.

It is recognized that environmental issues must be weighed in the City's responsibility to provide housing. It should, as has been discussed in the EIS/EIR, also be understood that if growth is not accommodated within the city boundaries, urban sprawl will occur and development will occur in the unincorporated County.

SCD-29.

The EIS/EIR has concluded significant and unmitigated impacts to socio-economic issues. This was based upon thresholds of significance. The thresholds identified a significant impact if at the MHCP level there was (1) a 10% increase in residential units between 1995-2020 that would cause a substantial change in the location and pattern of future growth, (2) an increase in residential density of 5% above the average density which is forecasted in 2020, or (3) a greater than 10% shift in future employment. Thresholds were then identified for the Subarea Plans using similar parameters (residential units, density, and employment). The commenter has indicated disagreement with the conclusions; however, the commenter has not indicated what the appropriate threshold should be.

SCD-30.

The referenced case was found to be inadequate because it did not prepare an EIR. The City of San Marcos prepared a Negative Declaration for the Christward Ministry project. For the MHCP project, an EIR (with EIS) was

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prepared. At a General Plan level, each City has adopted a General Plan with associated environmental review. During the General Planning process and associated environmental review, mitigation measures were adopted predominantly through the implementation of policies and goals that are enforced in subsequent project-level analyses and permitting. The MHCP does not intend to make modifications in those policies and goals, other than those referenced in the Land Use Analysis. Prior environmental documentation has clearly addressed the significance of those issues at a program level. The MHCP does not make changes to the requirements for project-level environmental analysis. When site-specific projects are proposed, CEQA review of these impacts will be required. The program-level analysis is adequate, while attempting to analyze those future project descriptions is speculative. This EIS/EIR used the Existing Conditions as a baseline, then extrapolated what the direct and indirect impacts (ability of the region to support anticipated growth) would be as a result of the project.

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"illusory." *Christward Ministry v. Superior Court*, 184 Cal. App. 3d 180, 190 – 91 (1986).

SCD-31

3. The figures used in the housing/population calculations do not match those figures used to consider biological impacts. DEIS/R at 4-230.

SCD-32

4. The DEIS/R provides unsupported projections for future population and housing needs. For example, it projects an almost double-fold increase in housing for the ten-year period of 2000 to 2010 over what occurred during the ten-year period of 1990 to 2000. DEIS/R at Table 3.6-2 (24,753 houses were constructed between 1990 and 2000, while 47,890 houses are projected for the period between 2000 and 2010). There is no support for this dramatic increase in the housing supply, and SANDAG's projections are without basis.²

SCD-33

5. The DEIS/R failed to consider any alternatives that avoided significant impacts to several species, including summer holly, Blochman's dudleya, variegated dudleya, sticky dudleya, Nuttall's scrub oak, Parry's tetracoccus, San Diego horned lizard, and orange-throated whiptail. See DEIS/R at 4-131. To the extent that many of these species occupy relatively small geographic areas, see MHCP Volume II §§ 4.1 & 4.2, viable alternatives for their preservation and recovery should have been considered.

SCD-34

Additionally, project proponents must "identify mitigation measures for each significant environmental effect identified in the EIR." CEQA Guidelines § 15126(c). FPA Alternative 2 would result in significant, unmitigated impacts to six sensitive plant species, four sensitive avian species, and two mammals. DEIS/R at 4-120 – 121. Yet the DEIS/R fails to consider alternatives and mitigation to reduce and/or eliminate these impacts (while simultaneously distorting impacts of the BCLA alternative).

SCD-35

Furthermore, mitigation may not be vague or fail to specify adequate criteria. *Sacramento Old City Assn. v. City Council*, 229 Cal. App. 3d 1011, 1029 (1991). Yet the mitigation discussed in the DEIS/R suffers in several respects, including the following:

² When pressed on the point during a telephone conversation, SANDAG staff asserted that the five year period of 1990 to 1995 suffered a housing slowdown associated with recession, while the 1995 to 2000 five year period was more typical of housing construction. Yet the figures show that those two periods were nearly identical. DEIS/R at Table 3.6-2 (12,411 houses between 1990 and 1995 and 12,342 houses between 1995 and 2000).

SCD-31.

The slight discrepancies between figures cited in the socioeconomic analysis and those cited in the biological analysis result from the former's use of additional GIS "data layers" (specifically, for land ownership, existing land use, and presence of physical constraints), which are not used in the latter. This effectively reduces the amount of land available for development in the future. The acreages are presented below:

	FPA Alternative 1	FPA Alternative 2	BCLA Alternative 3
Biology	19,371	19,871	25,031
Socioeconomic	18,460	18,827	24,809

SCD-32.

Chapter 3.6 provides the background for the socio-economic analysis. These numbers were based upon forecasts prepared by SANDAG. One of SANDAG's roles in the region is to provide growth forecasts to be used by the local governments in planning for future development and infrastructure needs. These are the best available data for use by the local jurisdictions.

SANDAG's regional forecasts (current 2020 Forecast is the ninth in a series) have closely tracked actual population growth. On average, forecasts before Series 8 have been 6% lower than actual. Series 8 Forecast for 2000 was 7% higher than the Census; however, this reflects the recession of the early 1990's, resulting in a temporary excess of out- over in-migration. The latest 2020 Forecast (which was prepared before the 2000 Census) projects the region's population to grow to 3.85 million in 2020. This is very close to the State Department of Finance's Interim County Projection (which uses figures from the 2000 Census) of 3.86 million for San Diego County. The draft EIS/EIR uses the 2020 Forecast.

The commentator draws the wrong conclusion from the comparison of housing growth in the two periods 1990-1995 and 1995-2000. The limited housing growth during the latter period reflects an under-supply of new housing relative to population and employment growth. Between 1990 and 1995, the region's employment declined slightly, from 1,163,900 to 1,155,300; between 1995 and 2000, the region's employment increased 18% to 1,350,900.

These trends are reflected in the cost of shelter (i.e., cost of rental housing and imputed rent of owned housing) in San Diego County, which increased by an average of 1.5% per year between 1990 and 1995 and 4.7% per year between 1995 and 2000 (U.S. Bureau of Labor Statistics, Consumer Price Index--All

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SCD-36 1. The DEIS/R indicates that "USFWS and CDFG may issue take authorization permits for individual Subarea Plans with conditions or modifications." DEIS/R at 1-14. There is no assurance that take permits will be authorized, or that those permits will result in impacts substantially similar to those discussed in the DEIS/R.

SCD-37 2. Indeed, it appears that at least with regard to grasslands impacts, take authorization may not be granted by the wildlife agencies. A table in the DEIS/R briefly mentions the need for mitigation of grassland impacts with "conservation of an additional 30% of the grasslands in a consolidated preservation program," then immediately dismisses that approach based upon an unsupported assertion of infeasibility "because of the associated impacts to population/housing." DEIS/R at Table ES-3.³ Yet the very next sentence indicates that the wildlife agencies do not intend to take authorizations for "grasslands and associated species" without such a program. Such a program, for which no evidence of "infeasibility" is demonstrated, should be a mandatory part of the MHCP and the DEIS/R.

SCD-38 3. The DEIS/R fails to discuss and adopt adequate mitigation for inadequate conservation to chaparral communities in the City of San Marcos. It discusses three possible mitigation measures, then immediately dismisses the approach based upon an unsupported assertion of infeasibility "because of previous commitments in an existing development agreement." DEIS/R at Table ES-3.⁴ There is inadequate evidence in the record to support the assertion of "infeasibility" and these measures should be required.

SCD-39 4. The DEIS/R states that 60 of 71 species will be adequately protected (meaning that 11 species will not be adequately protected) "provided that participants meet all conditions..." DEIS/R at 2-5. There is no assurance, either here or elsewhere in the document, that all the conditions will actually be met.

SCD-40 5. The DEIS/R discusses the need for funding associated with habitat acquisition, management, monitoring and administration, DEIS/R § 2.1.2,

³ This brief discussion in Table ES-3 is not found in the textual discussion of project impacts. See DEIS/R at 4-50 & 74. The DEIS/R should discuss and explain a "consolidated preservation program," as well as any supposed basis for finding such a program "infeasible."

⁴ Again, the textual discussion in the DEIS/R fails to address these possible mitigation measures and their likely impacts. See DEIS/R at 4-120 - 121. The DEIS/R should discuss and explain these important measures, as well as any supposed basis for finding them "infeasible."

Urban Consumers). In comparison, average increase in the price of all items in San Diego except shelter was 3.0% per year between 1990 and 1995 and 2.3% per year between 1995 and 2000. These data show that continued housing construction in the early 1990's, despite flat employment, kept housing cost inflation low and that relatively slow rate of housing construction in the latter 1990's has led to a substantial price increase and associated problems of housing affordability.

SCD-33. The only alternative to eliminate impacts to the referenced species would be the adoption of the No Take alternative. This was discussed in the EIS/EIR (Section 2.4.6, Page 2-81). It was concluded that this alternative was not feasible, because (1) it is infeasible to conduct biological reconnaissances on all property (private and public) to determine their location, (2) the plan would not provide preservation of unoccupied habitat, (3) no management plan would be implemented to ensure long-term conservation, and (4) an interconnected conservation area cannot be assured. The following is extracted from the EIS/EIR explaining why each species can not be mitigated, subject to allowing some development to proceed. "*Impacts to summer-holly, Blochman's dudleya, variegated dudleya, sticky dudleya, Nuttall's scrub oak, and Parry's tetradococcus were considered unavoidably significant for all of the alternatives because:*

- *These plants can not be transplanted or create new populations via seed stock, because it is not technically feasible at this time. At this time, transplantation has not been found successful; therefore, it can not be ascertained to ensure that there will be no loss of individuals.*
- *Avoidance of each of the populations is also considered infeasible, because of the overall distribution of the resources.*

Mitigation measures for San Diego horned lizards and orange-throated whiptails for all of the alternatives were also considered infeasible to ensure there is no reduction in populations (CEQA 15065) unless there are no impacts to the occupied habitat because there is no feasible way to increase the population numbers through the project." (Page 4-137)

SCD-34. Alternatives rejected discussed alternatives to avoid and/or minimize, while there are no known feasible measures that can be implemented to mitigate some species. Please see response SCD-33.

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SCD-35. The EIS/EIR provided mitigation measures for the biological resources, including performance requirements (e.g., ratios for habitat preservation, no net loss of certain species, a maximum amount of impacts for certain species, etc). The following responses address the specific issues raised.

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SCD-36. The EIS/EIR is based upon the project description (mitigation measures) presented in the MHCP and each of the Subarea Plans. The Service and Department can issue take authorizations that include *additional* measures above and beyond those described in the applicable plans. Thus, additional preservation or conservation may occur as a result of the public review process. Any reduction in the measures would require reanalysis to ensure that the significance of the impacts was not affected. The commenter is correct, the Service and Department may not issue take authorization; this would essentially result in the adoption of the No Project/No Action alternative. If this course is implemented, then each development would continue to develop in a piece meal fashion, requesting individual authorization for those resources listed as endangered or threatened. Those species not listed, or habitats not containing protected species would not be conserved or protected in a multiple habitat planning effort. The EIS/EIR has concluded that the results of adopting the No Project/No Action alternative would be greater significant impacts to biological resources (Pages 4-126 through 4-128 and Executive Summary).

SCD-37. The EIS/EIR has concluded that impacts to grasslands are significant and unmitigable for FPA 1 and 2 (Table ES-2 and Section 4.3). Based upon the conclusions reached in the MHCP, Subarea Plans and EIS/EIR coverage of grassland associated species will not be provided. However, the EIS/EIR still needed to address the direct/indirect/cumulative impacts to grasslands and associated species. Grassland habitat and species will be lost as a result of take authorizations issued and development occurring over the life of the project. Those impacts were evaluated as part of the EIS/EIR.

SCD-38. A Development Agreement was implemented between the City of San Marcos and San Elijo Ranch. That Agreement set certain responsibilities for the City and the Ranch. An excerpt of the Development Agreement is attached to the Response to Comments as Attachment RS-1. In that Agreement, the City agreed to consider certain land uses in the Cerro de las Posas ridgeline area. The Development Agreement incorporated by reference the Specific Plan. In the Specific Plan, this area had identified *potential uses that could be developed in this area subject to a Conditional Use Permit*. One of these uses is a golf course (see RS-1). As such, the City can not deny a land use prior to an applicant making an application. For this particular issue, the City is obligated to process an application for a Conditional Use Permit for the uses listed therein, including a golf course. The City has been advised by legal counsel that if it does not process an application as set forth in these entitlements, it can be deemed to be in violation of state regulations on permit

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processing and other substantive and due process rights. Additionally, development agreements have been interpreted as contractual obligations, were it to refuse to process an application. Further, the City can not deny a land use prior to the submission of an application. The processing will include CEQA review of the application, and the legislative body (the City Council) must make certain findings with respect to the proposed use prior to making a decision on whether to issue the CUP. Issuance of the CUP is a *discretionary* decision – the City can approve or deny that application in accordance with its discretionary land use authority. The City can not deny the project today because there is no application before the decisionmakers.

- SCD-39. The project includes a management and monitoring program (Volume I). As part of the program, species and habitat losses will be tracked as well as compliance with the individual management requirements. If the measures are not implemented in accordance with the plan, the Service or Department will withdraw the take authorization.
- SCD-40. Funding for project implementation is generally not a subject to be analyzed pursuant to NEPA or CEQA (unless there are issues related to impacts or feasibility of implementation). 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 CFR, Title 40, Sec. 1508.14, and California Public Resources Code, Sec. 21100).

Implementing a preserve system for the MHCP will involve actions by local jurisdictions as well as by federal and state agencies. Some of those actions, such as commitment of public lands for habitat use, can occur without new funding. Other actions, such as management of habitat lands conserved as mitigation for project impacts, will be funded by organizations or individuals responsible for project development. Key to successful implementation of the MHCP is that important habitat areas be conserved at a rate which at minimum preserves the continued viability of target species and mitigates for impacts which occur. Since habitat loss allowed under the plan would not occur all at once, public financing for the MHCP is not immediately required. Under the plan, implementation would be periodically monitored to insure that adequate conservation occurs over time. The Final MHCP also provides for interim funding of selected conservation actions. The need for funding of specific conservation tasks will be reviewed, and if necessary supplementary actions taken, while the jurisdictions pursue a regional funding program.

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The federal Endangered Species Act ("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 prepared. The Secretary may also require other assurances that the plan will be implemented. The MHCP provides the framework for the funding necessary to implement the program. The assurances of such funding will be provided in the draft implementing agreement for each city which will undergo a formal public comment period identified in the Federal Register once the wildlife agencies receive a request for a 10(a)1(B) permit and a Section 2835 permit for the subarea plan.

The MHCP envisions that habitat acquisition, habitat restoration, and management, monitoring, and administrative costs be funded by participating local jurisdictions through a cooperative regional funding program, to be placed on a ballot for voter approval within three years of the approval of the plan (Final MHCP, Vol. I, Sec. 7.2 and Table 7-2). The MHCP also identifies a range of funding sources that may be used, such as property tax, Mello-Roos special tax, sales tax, and benefit assessment.

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

- Commitment of public lands owned by participating local jurisdictions to the preserve.
- Management of existing state and federal lands as part of the preserve.
- Interim funding of selected conservation actions as described in the Final MHCP, Subarea Plans, and Implementing Agreements.
- Recently completed acquisition of selected properties using state and local funds, such as some of the stepping stone parcels in the City of Oceanside, upland parcels in the City of Encinitas along the south shore of Batiquitos Lagoon, a key linkage area in the City of Carlsbad, and Bernardo Mountain in the City of Escondido.
- Requirement of mitigation of impacts from new public and private projects.

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The Wildlife Agencies (USFWS and CDFG) will, through implementing agreements with participating jurisdictions, "monitor plan implementation" and "ensure that habitat conservation proceeds in step with development" (MHCP, Vol. I, Sec. 5.2.3). Furthermore, "[i]f the wildlife agencies determine that the subarea plan is not being implemented as required, the wildlife agencies and the city will take the actions specified in the subarea plan and implementing agreement to remedy the situation" (MHCP, Vol. I, Sec. 5.3.8). The requirement to review will apply if a regional funding program is not approved in a timely manner, and an alternative remedy may require each jurisdiction to develop and implement a funding source adequate to meet its share of the MSCP and Subarea Plan implementation as it continues to pursue a regional funding source.

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yet fails to provide concrete assurances that such funds are committed and/or will be available. *See id.*

V. The MHCP Does Not Fulfill Endangered Species Act Requirements

SCD-41 The MHCP suffers from inconsistencies with the requirements of the federal Endangered Species Act, 16 U.S.C. §§ 1531 – 1544. Attachment 3, which is hereby incorporated by reference, discusses those requirements. The DEIS/R fails to address these inconsistencies. *See* 40 C.F.R. § 1502.16; CEQA Guidelines § 15126.

A. The MHCP will appreciably reduce the likelihood of survival and recovery of the covered species

SCD-42 Strategies and measures contemplated in the MHCP unfortunately will result in an appreciable reduction in the likelihood of survival and recovery of the covered species with implementation of permitted activities. Strategies and measures in the MHCP also will not achieve ESA section 7 conservation and other section 10 standards.

SCD-43 A number of problems, listed below and discussed in greater detail in the following section, will individually and cumulatively reduce the likelihood of survival and recovery of the covered species, and eliminate the ability of the MHCP to provide for recovery of the covered species:

- SCD-44 ○ Alternative numbers 1, 2 or the “No Action / No Project Alternative” in the DEIS/R will result in significant, unacceptable losses of covered species, of already greatly reduced imperiled vegetation communities and in even greater fragmentation of remaining natural open space;
- SCD-45 ○ Conditions of coverage and baseline information for the covered species is not presented in necessary detail;
- SCD-46 ○ Important protections are not provided for all narrow endemic and wetland obligate species, other important species, and critical populations;
- SCD-47 ○ Participating cities are provided the discretion to employ ineffective regulations and mitigation methods to implement the MHCP;
- SCD-48 ○ The adaptive management program lacks essential components and details;
- SCD-49 ○ Essential, mandatory time limits are not provided for preparation of area specific management directives as new protected lands are brought into the preserve;
- SCD-50 ○ MHCP documents contain inaccurate mapping and location information

SCD-41. The MHCP will be reviewed by the Service to ensure adequacy of the plan with the requirements of the ESA; however, the Service and Department have worked closely with SANDAG and the five jurisdictions in the preparation of the plan(s). The Plan has been prepared consistent with the regulations that are set forth today. Based upon the biological analysis (MHCP Volume II), the Service can make the findings that this action will not appreciably reduce the likelihood of survival of the species. The MHCP will not affect the Section 404 process, will not impact bald or golden eagles, and with the provisions of the adaptive management provided adequate protection in the long term.

SCD-42. The EIS/EIR has provided acreages for conservation/developed, number of critical populations, mitigation measures, management requirements and monitoring the plan to ensure that the viability of the resources are maintained. Based upon the analysis in the MHCP Volume II, the Plan will not reduce the survival and recovery of species. The Service will be responsible for considering this information in regards to the issuance of the Take Authorization.

Volume II of the MHCP Plan details the effects of plan implementation on the survival and recovery of each species. The USFWS will evaluate all measures contained in the MHCP plan and the subarea plans relative to ESA Sections 7 and 10 after considering public comments.

SCD-43. Species ultimately included in the covered species list will have been reviewed and approved by the Service and Department. The covered species list will not include any species that implementation of the plan would result in precluding recovery of the species.

SCD-44. Please see response SCD-43.

SCD-45. Comment indicates that coverage and baseline information is not presented in sufficient detail. The MHCP, Subarea Plans and EIS/EIR have presented the data base for all habitats and list of species evaluated during the program at a sufficient level of detail to inform the public and decision makers of the impacts.

SCD-46. Comment has indicated that “important protections” have not been included, but the comment does not reference what needs to be provided. Based upon the analysis, the EIS/EIR has gone through the habitats and species and made conclusions as to the level of protection for each of the alternatives.

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Protections for narrow endemics, wetland obligates, and critical populations contained in MHCP policies are very stringent and go far beyond existing protections for these resources (Pages 4-62/63).

- SCD-47. The EIS/EIR has documented the applicable regulations for areas subject to conservation or to be developed, number of critical populations, mitigation measures, management requirements and monitoring the plan to ensure that the viability of the resources are maintained.
- SCD-48. Adaptive management is provided to give the managers of the preserve areas the flexibility to make minor modifications to respond to changed conditions: for the betterment of the resource.
- SCD-49. Area-specific monitoring and management plans must be developed and approved by the wildlife agencies for preserve lands no later than 2 years after lands are dedicated to the preserve and implemented immediately upon approval of the management plan. This language is reflected in the final MHCP Plan and the Biological Monitoring and Management Plan and is recommended for inclusion in all subarea plans and implementing agreements.
- SCD-50. The MHCP species database was comprehensively updated with new information from recent environmental documents and other sources, including data from the San Diego Bird Atlas project. The vegetation database will be systematically updated by the MHCP monitoring program. The MHCP database represents the best available information on biological resources in the study area. Thus, the EIS/EIR is adequate.

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SCD-51

for covered species and vegetation;

- o Species now absent in the MHCP study area are included on the list of covered species with no provision for conservation;
- o Adequate program funding is not assured;
- o Specific, measurable biological goals and objectives for each species are not provided;
- o Adequate conservation commensurate with take of covered species and vegetation is not provided;
- o Harmful land uses practices such as grazing do not appear to be prohibited on reserve system lands; and
- o Independent scientific and legal review does not appear to be provided for the program.

SCD-52

SCD-53

SCD-54

SCD-55

SCD-56

B. The MHCP will not minimize and mitigate take of covered species to the maximum extent practicable

SCD-57

The MHCP will not minimize and mitigate take of covered species to the maximum extent practicable for all of the reasons listed in section IIa above and detailed as follows.

SCD-58

1. Alternatives 1, 2 or the "No Action / No Project Alternative" will result in significant, unacceptable losses of covered species, of already greatly reduced imperiled vegetation communities and in even greater fragmentation of remaining natural open space;

It is true that the MHCP must address a dilemma of natural lands conservation in a highly fragmented landscape. Yet the program fails to meet this challenge when it unnecessarily authorizes significant additional losses of covered species and the largest remaining blocks of imperiled vegetation communities, thereby precluding the MHCP's ability and mandatory duty to minimize and mitigate take of covered species to the maximum extent practicable, among other obligations.

SCD-59

For example, anticipated losses of 34% (2,899 acres) of remaining coastal sage scrub, and 20% (198 acres) of remaining southern maritime chaparral under the preferred Alternative 2 will forfeit the program's ability to establish a viable preserve, and conserve covered species dependent on these communities. Additional losses of important coastal sage scrub will occur with loss of "coastal sage-chaparral scrub," e.g. loss of prime coastal sage scrub on the Carlsbad Oaks North property. Anticipated impacts are spread throughout the study area instead of targeting relatively small and fragmented areas, and

SCD-51.

In the event that species on the covered species list are found in the MHCP area, the cities will be able to issue take authorization as long as the projects comply with the requirements in the MHCP. Potential suitable habitats for these species, as well as species specific mitigation, have been incorporated. Occupied and suitable habitat will be preserved, managed, and enhanced as a result of implementation of the MHCP.

SCD-52.

Please see response to comment SCD-40 above.

SCD-53.

Biological goals and objectives have been included for each species. Volume II details those goals specifically.

SCD-54.

The EIS/EIR has documented the loss of habitat and the preservation of resources. See Section 4.3. See also response SCD-42.

SCD-55.

Each reserve will be managed to provide protection for the targeted species. If grazing does not harm the resources in a particular reserve, grazing would be allowed to continue. Due to the lack of specificity in the comment, the exact parameters can not be discussed in this response.

SCD-56.

SANDAG recognizes the value of independent scientific input and review and has obtained significant scientific guidance throughout the process. The MHCP Biological Goals, Standards, and Guidelines document (Ogden 1998)—which formed the scientific foundation for MHCP planning and analysis—was reviewed by a respected group of independent scientists. These reviewers (and their primary areas of expertise) were as follows: Dr. Jonathan Atwood, Manomet Observatory for Conservation Sciences (California gnatcatcher, coastal cactus wren, and other songbirds); Dr. Pat Herron Baird, California State University, Long Beach (shorebirds and other birds); Peter Bloom (raptors); Dr. John Brown, Smithsonian Institute, National Museum of Natural History (butterflies and other invertebrates); Dr. Ted Case, University of California San Diego (reptiles, amphibians, and ecological communities); Kevin Crooks (medium and large mammals and wildlife movement corridors); Dr. Barbara Kus, San Diego State University (least Bell's vireo, southwestern willow flycatcher, and other birds); Karen Miner, California State Parks (bats); Dr. Paul Beier, Northern Arizona State University (mountain lion and movement corridors); Thomas Oberbauer, County of San Diego (vegetation communities and sensitive plants); and Dr. Derek Langsford, County of San Diego (vegetation). Additional scientists were consulted on an as-needed basis for particular questions and species issues, including Dr. Robert Fisher, U.S. Geological Survey (reptiles and

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amphibians); Stephen J. Montgomery (Stephens' kangaroo rat); Ed Ervin, U.S. Geological Survey (reptiles and amphibians); and Dr. Andrea Atkinson, U.S. Geological Survey (biological monitoring and statistics). The habitat evaluation model developed for the MSCP plan and adapted for use by the MHCP was also subject to independent scientific review by some of the above individuals as well as by Dr. J Michael Reed, University of Nevada, Reno (reserve design and population viability analysis). The MHCP's scientific foundations thus generally received more intensive scientific input and review than most other habitat conservation plans, including the MSCP. Independent scientific review is generally not appropriate for other aspects of conservation plans, including the implementation policies, economic considerations, and legal findings.

- SCD-57. The MHCP does not avoid all impacts to resources. The MHCP and associated Subarea Plans have minimized the impacts to the extent feasible. This balancing between the various needs has been extensively discussed in the EIS/EIR, and specifics have been addressed in responses SCD-42 through SCD-56. Comments to the specific issues are referenced in B and presented below. Many of the following comments address the merits of the project. These comments, as well as all of the other comments, will be forwarded to the decision makers for their consideration.
- SCD-58. Please see response SCD-57.
- SCD-59. Most of the CSS areas designated for take are the result of existing development agreements, prior entitlements, or privately owned properties that have some economic use allowed. Specifically referencing the Carlsbad Oaks site, it has been fully approved by the City and is now in the Section 7 process with the U.S. Corps of Engineers and U.S. Fish and Wildlife Service.

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will greatly reduce the largest remaining blocks of these communities. These significant losses cannot legitimately be characterized as minimization and mitigation to the maximum extent practicable.

SCD-60 Prime examples of unreasonable impacts to the largest remaining and most important blocks of coastal sage scrub and southern maritime chaparral include the Calavera Heights, Carlsbad Oaks North, Holly Springs and Kevane properties in Carlsbad, the La Costa and Perkins/Moses properties in Encinitas, and Schooler et al., Bernardo Mountain and Montreux properties in Escondido and a number of others in San Marcos. These properties are critically important to conservation of covered species and should only be provided the absolute minimum viable economic use so as to ensure program-wide take will be minimized and mitigated to the maximum extent practicable.

2. Conditions of coverage and baseline information for the covered species is not presented in necessary detail;

SCD-61 The MHCP fails to provide essential baseline data regarding the location and number of populations and individuals of covered species and vegetation communities. It is impossible to determine whether purported conservation measures will actually result in minimization and mitigation to the maximum extent practicable in the absence of this data. Without this data, anticipated and/or allowable losses such as the 5% allowable loss of narrow endemic species within Focus Planning Areas are an incalculable moving target, and therefore essentially meaningless. This lack of detail illustrates the MHCP's failure to provide firm, detailed assurances for conservation of covered species and vegetation consistent with those clear, sophisticated and absolutely mandatory assurances provided participating cities and beneficiaries.

SCD-62 Mandatory conditions of coverage are not clearly presented due to their location in the depths of MHCP Volume II. These should be clearly referenced in section 3.4 of Volume I, and in the subarea plans to reduce confusion over specific mandatory duties of the cities to conserve these species.

SCD-63 The MHCP also fails to provide essential details regarding those circumstances when impacts will proceed despite provisions for, as described variously, "avoidance to the maximum extent practicable" and "total avoidance" of narrow endemic and obligate wetland species and critical locations.

SCD-64 Absent definition of these terms of "avoidance," participating cities may interpret these according to political whim. For example, nearly identical, undefined terminology was grossly interpreted by the City of San Diego to allow destruction of 66 out of 67 important vernal pools on the Cousins Market Center property, prompting a major lawsuit against the San Diego MSCP by 13 environmental organizations. This mistake should not be repeated by the MHCP.

SCD-60. Please see response to comment SCD-59.

SCD-61. The EIS/EIR has quantified the acreage of take of each of the habitats and compared/contrasted that with the amount available. A review was made of corridors and connectivity and presence/absence of sensitive species within the blocks preserve/impacted. The EIS/EIR provides that analysis in text and tabular forms. See Sections 3.3.1 and 4.3 for detailed analysis, and the Executive Summary for a synopsis of the analysis. It also refers the reader to MHCP and the Subarea Plans where more detail is provided.

MHCP Volume II presents all available information on the location and number of populations and individuals in the study area. We disagree that allowable losses, such as up to 5% loss of narrow endemics in the FPA, are incalculable and meaningless. The allowable loss would be based on the best current estimate of abundance at the time of take. This provides a conservative allowance given that any additional locations found in the future would increase baseline abundance estimates and therefore decrease the percent take that has already occurred.

SCD-62. Volume II represents a portion of the MHCP. The fact that the "conditions" are located in Volume II does not alter their applicability. Mandatory conditions of coverage will be clearly presented in the Implementation Agreements for each Subarea Plan.*

SCD-63. The protections for narrow endemics, wetlands, and critical populations are fully described in Sections 3.6 and 3.7 of MHCP Volume I and further detailed in Appendices D and E of Volume II. Violation of these policies would be grounds for terminating permits. These policies are not "described variously," but consistently require maximum avoidance, followed by strict minimization and mitigation procedures. Some unavoidable impacts may occur to narrow endemics or wetlands, but these impacts must be offset via no net loss mitigation actions. Inside the FPA, such unavoidable (but mitigated) impacts can affect no more than 5% of the population or occupied acreage of a narrow endemic species; outside the FPA, such unavoidable impacts can affect no more than 20% of the total population or occupied acreage within a city. Regardless of location, total avoidance is required for critical populations listed in Table 3-7. The procedure for dealing with newly discovered, critical populations are also outlined in Section 3.7.*

SCD-64. The MHCP is not responsible for lapses in implementation by the MSCP cities, and is striving to avoid such instances through its cooperative

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implementation structure and the implementation monitoring program defined in Section 5.

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SCD-65

The DEIS/R does provide some discussion of necessary disclosure and analysis for findings of unavoidable impacts to wetlands, but it is unclear why this is not similarly provided under discussion of narrow endemic species or critical locations in the DEIS/R when these are subject to similar avoidance standards, or anywhere within MHCP Volume I.

SCD-66

Aside from apparent inconsistent application of this language, the DEIS/R wetlands language itself is inadequate to provide avoidance to the maximum extent practicable according to interpretation by any reasonable person. The City of San Diego has taken steps to remedy this problem under the MSCP by improving its Environmentally Sensitive Lands code description of reasonable exemptions from total avoidance, a.k.a. deviations. This problem should be resolved long before approval of the MHCP by including a detailed and limited exemption from avoidance in the **MHCP Volume I document**, not by leaving this problem to be solely addressed in the subarea plans, implementing agreement or local implementing regulations. We strongly encourage inclusion of avoidance exemption language in all MHCP implementation documents, including MHCP Volume I, subarea plans, implementing agreements and local implementing regulations.

SCD-67

Finally, the MHCP fails to provide essential details regarding the specific number and location of populations or individuals of narrow endemic and wetland obligate species that will be lost with application of allowable impacts such as the 5% allowable loss of narrow endemics within Focus Planning Areas. Minimization and mitigation to the maximum extent practicable is not possible without a determination of where this allowable loss will occur. For example, this 5% figure is not equated to actual individuals or populations, thereby possibly providing for an extremely damaging scenario whereby much of the allowable loss might occur at the site of an important remaining population, instead of a more reasonable application of the loss to small or isolated population.

3. Important protections are not provided for all narrow endemic and wetland obligate species, other important species, and critical populations

SCD-68

The MHCP inconsistently, and apparently arbitrarily applies the terms “avoidance to the maximum extent practicable” of narrow endemic and obligate wetland species, and “total avoidance” of “critical locations” of narrow endemic species. These distinctions will not provide for minimization and mitigation to the maximum extent practicable because these species are clearly in need of total avoidance, and the differing terms will inevitably result in confused and no doubt politically motivated, harmful implementation by the participating cities.

SCD-69

Considering these problems, the MHCP should be revised to simply provide “avoidance to the maximum extent practicable” for all narrow endemic species, wetland obligate species and critical locations of narrow endemics, consistent with the San Diego

SCD-65.

The same provisions for analyzing and disclosing findings of unavoidable impacts, as defined for wetlands, have been added to the narrow endemic and critical location policies. This requirement does not alter the requirements specified for “take” of narrow endemics or critical locations. This requirement provides added documentation, but does not change the conservation levels or impacts allowed under the Plan.

SCD-66.

The MHCP and each of the Subarea Plans have no net loss policies for wetlands, and measures specifically addressing avoidance/minimization for narrow endemics. The policies regarding narrow endemics are very specific. It should be recognized that the adoption and implementation of the MHCP will not supercede Federal, State, and local requirements for wetlands. The MHCP has been revised to incorporate new wetland ratios on Page 4-22, Table 4-7 of the MHCP. They are as follows:

REPLACEMENT MITIGATION RATIOS FOR IMPACTS TO WETLAND VEGETATION COMMUNITIES [1]

Wetland Vegetation Community	Mitigation Ratio [2]
Coastal salt marsh	4:1
Alkali marsh	4:1
Estuarine	4:1
Saltpan/mudflats	4:1
Oak riparian forest	3:1
Riparian forest	3:1
Riparian woodland	3:1
Riparian scrub	1:1 to 2:1
Fresh water	1:1
Freshwater marsh	1:1 to 2:1
Flood channel	1:1 to 2:1
Disturbed wetlands	1:1 to 2:1
Vernal pool	2:1 to 4:1

Notes:

1. These communities are subject to the goal of no net loss in acreage, function, and biological value (see Sec. 3.6.1). The highest priority will be given to impact avoidance and minimization. Replacement of habitat subject to unavoidable impact will occur through restoration or creation of substitute habitat areas, generally of the same kind and in the vicinity of the impacted habitat.

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2. Mitigation ratios applicable in areas subject to review by the California Coastal Commission will be addressed in the cities' respective subarea plans. Such ratios may differ from those noted here.

Since the EIS/EIR specified no net loss policies and these ratios clarify the ratios, the conclusions in the EIS/EIR remain the same.

SCD-67. It is not possible to have precise knowledge about all population locations or numbers of individuals in advance. Surveys performed for CEQA projects and for the monitoring program will be required during plan implementation. A project would need to demonstrate that it is not exceeding the allowable level of take (e.g., 5% of documented individuals in the FPA or 20% in the city) at the time of project approval, based on the known number of locations and individuals at that time. Thus, the scenario envisioned in the comment would not occur. A project proposing more than the threshold take at a particular time would first need to scientifically demonstrate the existence of sufficient additional individuals outside the project area to allow for the take. In no case shall a City permit more than 5% gross cumulative loss or allowable loss indicated in each City's FPA.

SCD-68. Please see response to SCD-63.

SCD-69. Please see response to SCD-63 and SCD-66. Generally, an occurrence of narrow endemic species affects only a portion of a property, leaving sufficient opportunities for economic use elsewhere on site. In the unusual instance where avoidance of impacts to narrow endemic species would preclude any economic use of the property, the Draft MHCP Plan identifies three categories of acquisition needs (Draft MHCP Plan, Section 4.1.2), of which Category 2 is similar to a "contingency fund". Under this category, funding to acquire up to 350 acres of habitat would be established, in addition to funding for Category 1 acquisition.

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MSCP. The term "avoidance to the maximum extent practicable" should be carefully defined in MHCP Volume I, subarea plans and other implementing documents as discussed in section II(b)2 above to allow only very limited exemptions, and a contingency fund should be established for compensation of property owners where all economically viable property use has been removed.

SCD-70 "Required Conservation and Management Actions" identified in the MHCP Volume II section *Species-Specific Conservation Analyses and Conditions for Coverage* really are not "required" according to their non-binding descriptive language, so these are unlikely to be carried out by participating cities. All of these measures are necessary to provide for survival and recovery of covered species, so failure to make these mandatory elements of MHCP implementation removes the ability of the program to minimize and mitigated take of covered species to the maximum extent practicable.

SCD-71 Location information presented in Table 3-7 of MHCP Volume 1 and in Volume II species-specific "conditions" for coverage for "critical locations" of narrow endemic species to be "totally avoided" is extremely vague and subject to misinterpretation or misunderstanding by participating cities.

SCD-72 Important species are excluded from the list of narrow endemics. Minimization and mitigation to the maximum extent practicable of these cannot occur absent inclusion of these on the list of narrow endemic species, including Blochman's dudleya, Quino checkerspot and Stephen's kangaroo rat.

SCD-73 Important existing and potential narrow endemic species populations are excluded from the list of "critical locations" for narrow endemics. Minimization and mitigation to the maximum extent practicable of these cannot occur absent inclusion in Table 3-7 of the MHCP Volume I of all critical locations identified in Volume II, section 4, as well as the following examples.

SCD-74 For example, Volume II of the MHCP identifies two major / critical locations of Southwestern willow flycatcher on the San Luis Rey River and Pilgrim Creek, yet Table 3-7 identifies neither of these locations; Volume II identifies major / critical locations of the Coastal cactus wren in the "San Pasqual Valley and Lake Hodges," yet Table 3-7 identifies only the much more vague "San Pasqual Valley, southern Escondido;" Volume II identifies major / critical locations of Harbison's dun skipper in "north and east Escondido," yet Table 3-7 only lists critical locations in "Daley Ranch."

SCD-75 Table 3-7 should also include language identifying critical locations to include any newly discovered populations in the study area of San Diego ambrosia, Orcutt's spineflower, Orcutt's hazienda, Quino checkerspot, Coastal cactus wren, Pacific pocket mouse, and Stephen's kangaroo rat. Vernal pools on the Palomar airport and Heatt properties in Carlsbad should be identified as critical locations for the San Diego fairy shrimp, consistent with designated critical habitat for the species. And vernal pools on the manzanita partners property east of El Camino Real should be identified as critical

SCD-70. The conditions include certain, known, binding actions that must be performed, plus others that may only be necessary based on monitoring or based on impacts of particular projects. These conditions are clarified in Section 4.0 in the Final MHCP Volume II. The adaptive management requirements, coupled with the monitoring requirements and overall conservation levels, provide adequate measures to ensure survival and recovery of the covered species.

SCD-71. Please see response to comment SCD-6. Also, location information has been updated and more explicitly mapped to avoid confusion.

SCD-72. Blochman's dudleya, Quino checkerspot, and Stephens' kangaroo rat do not meet the definition of narrow endemics: "Those species that are highly restricted by their habitat affinities, edaphic (soil) requirements, or other ecological factors, and that have limited but important populations within the MHCP area, such that substantial loss of these populations or their habitat within the MHCP area might jeopardize the continued existence or recovery of that species (Ogden. 1998. Biological Goals, Standards, and Guidelines for Multiple Habitat Preserve Design. Prepared for SANDAG. February)." The MHCP study area is not essential to regional conservation or recovery of Quino checkerspot or Stephens' kangaroo rat, since neither species is currently known to occur in the study area or is likely to occur in sustainable numbers in the future. Blochman's dudleya is distributed from San Luis Obispo County into Baja, California, Mexico. Although populations of Blochman's dudleya within the MHCP study area are important to the species' conservation, loss of these populations would not likely "jeopardize the continued existence or recovery of that species" and therefore do not meet the definition of narrow endemic.

The Public Review Draft species conditions prepared by the Wildlife Agencies did impose the Narrow Endemics Policy on some species, including the Stephens' kangaroo rat, that are not Narrow Endemics. For these species, Final Draft of MHCP Volume II clarifies that, although this species is not listed as a Narrow Endemic, it will be treated "consistent with requirements of the Narrow Endemics Policy, including the following: (a) maximum avoidance of impacts, to the degree feasible while maintaining reasonable use of the property; (b) for unavoidable impacts, species-specific mitigation designed to minimize adverse effects to species viability and to contribute to species recovery; and (c) no more than 5% gross cumulative loss inside the FPA or 20% gross cumulative loss outside the FPA."

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- SCD-73. All known critical locations of MHCP narrow endemics are listed in Table 3-7 of the MHCP. These locations are based upon the most current information at the time of the preparation of the Plan.
- SCD-74. All known critical locations of MHCP narrow endemics are listed in Table 3-7 of the MHCP. Note that the names provided for some critical populations represent collections of multiple points in the database, so each point does not necessarily have a unique place name. This has been clarified in the revised species maps included in Volume II. The southwestern willow flycatcher is not a narrow endemic. Table 3-7 has been revised to clarify locations of Harbison's dun skipper and coastal cactus wren critical locations.
- SCD-75. It is impossible to know in advance if any newly discovered populations of the species listed in the comment would necessarily meet the definition of critical locations.

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locations for the San Diego button-celery due to the former presence of this species on this mesa.

SCD-76 Greater protections are necessary for critical locations that should be avoided for species that may not be considered "narrow endemic," yet which may still be rare throughout their larger ranges and in need of improved conservation attention within the MHCP study area. Take minimization and mitigation to the maximum extent practicable of these species cannot occur absent inclusion of important populations on the list of "critical locations," including as-yet unidentified-populations, including Sticky dudleya, Nuttall's scrub oak, Engelmann oak, Salt marsh skipper, Arroyo southwestern toad, Southwestern pond turtle, Least tern, Southwestern willow flycatcher, California gnatcatcher, Least Bell's vireo, Belding's savannah sparrow and Large-billed savannah sparrow.

SCD-77 Finally, essential surveys are not required for all narrow endemic and other important species in any suitable habitat. The lack of required surveys is a particularly significant problem for the rarest and/or narrowest range covered animals and plants, and especially the rarest species not known from the study area or a particular property but where there remains suitable and important recovery habitat. Surveys are not required for narrow endemic species like Encinitas baccharis, Thread-leaved brodiaea and Orcutt's hazardia despite the importance of any newly discovered population and the presence of significant suitable habitat in the study area. By not requiring surveys for all of these, the MHCP eliminates necessary opportunities to minimize and mitigate take, thereby limiting take minimization and mitigation to only those populations known at the time of program approval or discovered accidentally. The MHCP cannot ensure that specific projects will be located or designed to minimize take of all covered species absent mandatory surveys.

4. Participating cities are provided the discretion to employ ineffective regulations and mitigation methods to implement the MHCP

SCD-78 Take of covered species cannot be minimized and mitigated to the maximum extent practicable when participating cities are provided the option of utilizing non-binding policies or other regulatory guidance for implementation of MHCP obligations (Page 4-13 MHCP Volume I), when participating cities are provided the option to allow out-of-kind or out-of-group mitigation (Page 4-23 MHCP Volume I), and when participating cities readily apply an in-lieu mitigation fee option (Pages 4-19 and 23 MHCP Volume I; Pages E-7 and D-95 Carlsbad Habitat Management Plan; Page 71 San Marcos NCCP).

SCD-79 Shifting political winds in participating cities will undoubtedly limit the effectiveness of any non-binding resource protection policies, to the detriment of covered species and vegetation. The availability of these non-binding implementation regulations and likely resulting lack of assured conservation is highly ironic in light of the clear,

SCD-76. Volume II identifies critical locations for all species, regardless of whether or not they are narrow endemics. At this time, we are unable to provide a list of "yet undiscovered species and critical locations."

SCD-77. The revised MHCP Biological Monitoring and Management Plan requires baseline surveys for all covered species on conserved lands. Lands proposed for development will be surveyed for MHCP covered species and other sensitive species as part of the CEQA process. Adoption of the MHCP does not alter the requirements for all discretionary projects to undergo CEQA review.

SCD-78. There are no "non-binding requirements" for jurisdictions in implementing the MHCP. The implementing agreements that will be developed between the wildlife agencies and jurisdictions are fully binding on all parties. There are cases where flexibility is allowed in implementation of the MHCP, but in each case any resulting conservation action must be of "equal or greater biological value." Levels of conservation and take for covered species are not dependent on any particular implementing mechanism, but are based on outcomes of all actions taken together. In-lieu mitigation fees provide an alternative method for projects to satisfy mitigation requirements efficiently and for the Cities to direct conservation actions (e.g., acquisition, management) to areas of identified need. Accordingly, the draft MHCP Plan has retained in-lieu mitigation fees as an optional source of funding for conservation actions.

SCD-79. Comment speculates about "shifting political winds," which requires no response. The MHCP contains no "non-binding resource protection policies."

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sophisticated and absolutely mandatory assurances that will be provided to the cities and beneficiaries in the implementing agreement.

SCD-80 Out-of-kind mitigation can in no way be interpreted as minimization and mitigation of take of any particular species or vegetation, especially the rarest and narrowest range species and rarest vegetation, to the maximum extent practicable.

SCD-81 In-lieu mitigation fees have consistently been shown to fail to fully minimize and mitigate take of targeted species and vegetation as fees are inadequate to purchase target species or vegetation in areas of high land value, or when land values outpace available funding from fees among other factors. The City of San Diego's vernal pool mitigation fee from the early 80's was a dismal failure. San Diego's existing in-lieu mitigation fee has largely failed to acquire any high value coastal properties containing southern maritime chaparral when fees have been collected for losses of this vegetation.

5. The adaptive management program lacks essential components and details

SCD-82 The MHCP appears to neglect planning for and funding of protective management and monitoring of covered species and vegetation on existing private open space, in apparent disregard of the Secretary's Five-point policy. Instead, the program seems to under-emphasize the importance of maintaining and enhancing the ecological integrity of these areas, and stands in unfortunate contrast to the program's eagerness to count these areas towards program preserve totals.

SCD-83 This failure is particularly significant given the location of many known covered species populations inside existing private open space and the MHCP's resulting questionable claims of coverage. The MHCP commits to preparation of management plans for only those areas preserved in the future through implementation of the program, apparently disregarding necessary immediate and increased protective management and monitoring of existing open space. The program also fails to provide essential enforcement of existing biological open space protective management and monitoring obligations.

SCD-84 The MHCP cannot minimize and mitigate take of covered species to the maximum extent practicable when covered species and vegetation in existing private open space counted towards preservation totals, but with no provision for essential protective management or monitoring or enforcement of existing obligations. For example, important stands of southern maritime chaparral are located on private open space in the City of Encinitas. These areas are subject to significant, harmful edge effects, yet the plan inexplicably and unreasonably relies on protective management of these areas by homeowners associations run by individuals nearly always untrained in resource conservation and often outright hostile to necessary conservation measures such as removal of feral cats and others. How many acres of Encinitas' 481 allegedly

SCD-80. Out-of-kind mitigation is not allowed for "the rarest and narrowest range species." Out-of-kind mitigation is, in fact, a useful tool to help prioritize conservation of these rare resources over other, less rare resources.

SCD-81. The MHCP is not responsible for past failures of in-lieu fees by other jurisdictions. In-lieu fees are proposed in some subarea plans as one option where other mitigation mechanisms may not meet MHCP goals.

SCD-82. The comment incorrectly speculates on a lack of attention to management and monitoring on existing reserve areas. All reserve areas, whether existing or added in the future, are subject to the MHCP management and monitoring program.

SCD-83. Please see response to SCD-82.

SCD-84. Certain portions of the City of Encinitas preserve area have already been permanently reserved as open space and are in private ownership, much of which is homeowners associations where no active biological management and monitoring was required or is occurring. As a part of the ongoing responsibilities associated with the future issuance of an IA, it is anticipated that the City will need to attempt to acquire access rights to actively manage and monitor these areas. While this might not be entirely successful, it is important to recognize the existing biological value of these existing private open space areas and seek to actively manage and monitor these areas in the future.

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preserved southern maritime chaparral vegetation will actually languish or be harmed under supervision or by activities of homeowners associations?

SCD-85

In another example, no management is provided under the Carlsbad Habitat Management Plan for riparian habitat located in existing open space behind Costco on Palomar Airport Road. This area has been almost totally invaded by pampas grass, and will remain virtually useless for conservation of riparian dependent covered species absent removal of exotics and restoration of native riparian species.

SCD-86

Full minimization and mitigation cannot be provided absent preparation of detailed, area specific management directives for all existing open space counted towards promised preservation totals. Covered species populations and vegetation area should be removed from calculations of preservation totals when the MHCP will provide no benefits to these areas. Lands should be removed from the preserve if benefits in the form of fully funded professional protective management and monitoring of homeowners association private open space, for example, will not be provided.

SCD-87

The MHCP identifies a time frame for preparation by the cities of framework management and monitoring plans, all of which are apparently already provided by the cities, yet entirely neglects to establish mandatory time limits for preparation of the far more important area specific management directives as new lands are brought into the preserve through the development or other processes. Minimization and mitigation of take cannot occur absent preparation, funding and immediate implementation of area specific management directives for all lands as they are brought into the preserve.

6. MHCP documents contain inaccurate mapping and location information for covered species and vegetation

SCD-88

MHCP maps and descriptive text contain a number of important errors regarding the location and extent of covered species populations and vegetation communities. These errors could result in unsupported findings of the program's ability to minimize and mitigate take of covered species.

The La Costa property on the southeast corner of La Costa Avenue and Interstate 5 contains southern maritime chaparral, but this is incorrectly identified as chaparral in Figure 2-1 of the MHCP Volume I, and Figure 3-2 of the Encinitas Subarea Plan.

SCD-89

Coastal sage scrub on the Carlsbad Oaks North property is incorrectly identified as "coastal sage - chaparral scrub" in Figure 10 of the Carlsbad Habitat Management Plan, in contrast to its label as coastal sage scrub in Figure 3.

SCD-90

Important vernal pools on the Palomar Airport, Hieatt and Manzanita partners properties are seemingly downplayed in the MHCP Volume I when these are referred to as "a few other vernal pools . . . scattered in central Carlsbad." All vernal pools within

SCD-85.

The open space adjacent to the Costco store in Carlsbad has been invaded by pampas grass, and a major restoration effort is required. The City of Carlsbad is presently undertaking the planning for a comprehensive, City-wide invasive species removal program. When the Carlsbad subarea plan is approved, it will include provisions dealing with the removal of invasive exotic species.

SCD-86.

Preserves will need to have site-specific management plans prepared for each site. One plan will not work for all sites and must be tailored to specific site conditions. It should be recognized that existing HOA preserve areas will continue to be maintained. They will not be used for additional mitigation for future impacts. The benefit of implementing management on HOAs will be improved biological conditions. Additionally, the monitoring program will assess the ongoing viability of the species on HOA and other land. Finally, the MHCP integrated a process that these areas that could not be effectively managed were excluded from the plan. Also please see response to comment CNPS-211.

SCD-87.

Please see response SCD-86.

SCD-88.

Since some projects have been permitted by the wildlife agencies (including additional hardline conservation), this has resulted in updated conservation acreages. Attempts to follow-up on comments concerning errors, inaccuracies, or missing data failed to find significant missing information. Nevertheless, new information was obtained from other sources, including the new San Diego Bird Atlas data and recent data obtained from U.S. Fish and Wildlife Service and California Department of Fish and Game. This updated information has not resulted in the identification of any new impacts or changes in the significance of impacts noted in the EIS/EIR. Vegetation maps will be comprehensively updated as an initial task of the monitoring program.

SCD-89.

The database will be updated as an initial task of the monitoring plan, including updating the Carlsbad Oaks North property.

SCD-90.

The MHCP does not "downplay" vernal pools as important resources. The pools mentioned are, in fact "few" and "scattered," yet receive the full protection afforded per wetlands and narrow endemic policies. This issue was considered in the EIS/EIR as well as the MHCP Volume II.

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the study area are important and should be clearly identified in MHCP and subarea plan figures.

SCD-91 Table 3-7 and other sections of MHCP Volumes I and II and the Oceanside Subarea HCP / NCCP should identify the Darwin Thread-leaved brodiaea population. This is apparently a major population, is likely a critical population and it is difficult analyze conservation effectiveness and location inside or outside of the preserve without it being represented.

SCD-92 Several other populations of Thread-leaved brodiaea in northwestern San Marcos are not represented on the maps or in discussion. These occur east of Mission Road north of the junction of Rancho Santa Fe Road, about 1.3km northwest of Palomar College. About 5,600 individuals were reported in April 2000. This population apparently is not within a preserve area.

SCD-93 Perhaps as few as half of all Nuttall's scrub oak populations are represented on MHCP maps. Additionally, it is difficult to represent this species by a geographic symbol as it tends to have a broader area of occupation than many rare species. For example, the populations north of Loker Avenue in Carlsbad are represented by two points while in fact the population in this area is actually represented by a nearly continuous stand of individuals that connect to two points and extend somewhat eastward. While the two "points" representing this population are within a preserve, portions of the population are not. The major population south of Palomar Airport Road and west of El Camino is also better represented by a polygon. The historically large population at Evans Point is not represented at all. Although a large portion of this population was destroyed by development after 1995, portions of the population remain and are easily visible from El Camino Road. Large populations east of Business Park on Palomar Airport Road are also missing on the map. Some of this population is within a preserve area, other portions are not. Like Evans Point, large portions of this population have been removed over the last 7 years.

7. Species now absent in the MHCP study area are included on the list of covered species with no provision for conservation

SCD-94 Many species now extirpated or nearly so from the MHCP study area are included on the list of covered species with little regard for important area specific management directives addressing re-introduction, management and monitoring, and in some cases important mandatory surveys.

SCD-95 MHCP Volume II conditions inexplicably exclude mandatory surveys for Quino checkerspot west of Interstate 15. No mandatory conditions are included for re-introduction and subsequent protective management and monitoring of Orcutt's spineflower, Quino checkerspot, Arroyo southwestern toad, Coastal cactus wren, Pacific pocket mouse and others. Recovery cannot be provided, and these species should not be

SCD-91. The population of *Brodiaea filifolia* on the Darwin Estates property has been added as part of the recent comprehensive database update. This species is listed as a Narrow Endemic and is afforded the protection of this status upon adoption of the MHCP and issuance of Take Authorizations. Therefore, the identification of new populations does not alter the analysis in the EIS/EIR.

SCD-92. The referenced populations of *Brodiaea filifolia* have been added as part of the recent comprehensive database update. This species is listed as a Narrow Endemic and is afforded the protection of this status upon adoption of the MHCP and issuance of Take Authorizations. Therefore, the identification of new populations does not alter the analysis in the EIS/EIR.

SCD-93. Unfortunately biological technical reports did not traditionally map populations of Nuttall's scrub oak, and the point database is not very accurate for this species. Some points have been added for the final analysis. We agree that it is difficult to represent species like this with point data, and that polygons showing geographical distributions might be better, but such information is not currently available for this species. Uncertainties about levels of conservation and take for all species are acknowledged in Volume II of the MHCP, and will be addressed through mandatory CEQA surveys for each project and via the monitoring program.

SCD-94. The comment does not list those species it is addressing as "extirpated or nearly so from the MHCP study area." However, the MHCP comprehensively reviewed all sensitive species known or likely to occur in the study area in recent as well as historic times. Covered species only include those that are likely to be affected by the plan and for which the plan can recommend feasible actions to benefit them. Species known to be extirpated from the area are highly unlikely to be affected, positively or negatively, by the plan. Extensive literature supports IUCN guidelines for species reintroductions, which state that reintroductions should only be considered where the factors leading to extirpation in the first place have been identified and removed. The MHCP study area is far too developed and fragmented to serve as a reintroduction site for the vast majority of already extirpated species. Because the comment does not list those species for which it says specific management directives or surveys are omitted, we cannot respond directly. See pages 4-51 through 4-61 for more discussion. However, biological surveys are required under CEQA for all projects in the study area.

SCD-95. Reintroduction into the MHCP study area is not a biologically reasonable option for Quino checkerspot, Arroyo southwestern toad, or coastal cactus

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wren. Allowing for reintroduction of Pacific pocket mouse and Orcutt's spineflower into appropriate habitats is already a coverage condition for these species. Surveys are already required for all species listed in the comment, and appropriate management and monitoring activities would be required if and when the species are found.

Despite the presence of well known historic population centers (ex. Lake Hodges) within the MHCP geographic boundaries, most of the historic habitat for the Quino checkerspot butterfly (Quino) no longer exists due to existing development. There is minimal potential habitat that the Service finds suitable for Quino reintroduction within MHCP boundaries because of isolation and small patch size due to existing development. Thus, the Draft Final Recovery Plan for Quino does not have any "Possible Future Recovery Units" identified for this area. In addition, 99% of the land within the MHCP boundaries does not overlap the area currently recommended by the Service to be surveyed for Quino. Due to the existing low probability of Quino being located within the MHCP, surveys are not required.

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considered covered absent mandatory conditions for reintroduction and surveys in all suitable habitat.

8. Specific, measurable biological goals and objectives for each species are not provided

SCD-96

"Conservation Goals" are provided for each species in MHCP Volume II, yet these are extremely vague and do not live up to the mandatory duty of all HCPs to provide specific, measurable biological goals and objectives for each covered species so as to fully minimize and mitigate take, according to the Secretary's five-point policy. For example, what percentage of Del Mar manzanita plants does the MHCP plan to preserve, at what important locations, and under what species-specific management and monitoring regime? It will be impossible for independent parties to judge success of MHCP efforts and compliance with ESA sections 7 and 10 absent a clear statement of species-specific biological goals and objectives.

SCD-97

Biological goals for the MHCP should be prepared by an independent body of scientists with proven expertise with the target species, made available for public review and comment, and subsequently finalized prior to finalizing the MHCP so as to serve as the basis for MHCP implementation. The MHCP's current lack of species-specific biological goals and objectives is another example of the program's inconsistency in provision of firm assurances for participating cities and beneficiaries, but not covered species and vegetation.

9. Adequate conservation commensurate with take of covered species and vegetation is not provided

SCD-98

Supposedly mandatory MHCP conservation measures such as land acquisition may be carried out far in the future or even not at all while take of covered species is allowed to proceed. For example, species coverage is conditioned upon provision of \$18.8 million dollars by the state and federal governments. Participating cities will begin to take covered species and vegetation as soon as implementing agreements are signed and take permits issued, yet much of the state and federal funding will not be provided for years, and cannot be assured due to anti-deficiency provisions. Take cannot be fully minimized and mitigated under this scheme when important covered species and vegetation targeted for acquisition and restoration may be lost prior to allocation of state or federal funding, perhaps decades from now or even never. Instead, take must not proceed at a pace exceeding implementation of promised conservation conditions.

SCD-99

10. Harmful land uses practices such as grazing do not appear to be prohibited on reserve system lands

MHCP documents clearly identify some incompatible uses, such as off-highway vehicle use within the preserve, yet appear to remain silent on the issue of whether similarly harmful activities such as general livestock grazing will be prohibited. Many

SCD-96.

The Conservation Goals that open each species account in Volume II represent the overarching goals that the MHCP should strive to achieve in order to make a positive conservation contribution for that species. They were not necessarily meant to represent quantitative goals, although they are all "measurable." The type of quantitative, measurable goals referred to in the comment, to demonstrate that the plan minimizes and fully mitigates take for each species, are contained in the mandatory terms and conditions in the Biological Opinion and implementing agreements for subarea plans.

SCD-97.

Please see response to comment SCD-56.

SCD-98.

MHCP implementation requires "rough step" accounting of levels of conservation and take on an annual basis, and each project must demonstrate full mitigation in advance of take. MHCP implementation does not rely on the program being fully funded at the beginning, so long as resource protection policies are being followed.

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 CFR, Title 40, Sec. 1508.14, and California Public Resources Code, Sec. 21100).

Implementing a preserve system for the MHCP will involve actions by local jurisdictions as well as by federal and state agencies. Some of those actions, such as commitment of public lands for habitat use, can occur without new funding. Other actions, such as management of habitat lands conserved as mitigation for project impacts, will be funded by organizations or individuals responsible for project development. Key to successful implementation of the MHCP is that important habitat areas be conserved at a rate which at minimum preserves the continued viability of target species and mitigates for impacts which occur. Since habitat loss allowed under the plan would not occur all at once, public financing for the MHCP is not immediately required. Under the plan, implementation would be periodically monitored to insure that adequate conservation occurs over time. Thus the need for funding of specific conservation tasks will be reviewed, and if necessary supplementary actions taken, while the jurisdictions pursue a regional funding program. Thus the need for funding of specific conservation tasks will be incremental yet assured through the City's IA, while the jurisdictions pursue a regional funding program.

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The federal Endangered Species Act ("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 prepared. The Secretary may also require other assurances that the plan will be implemented. The MHCP Plan provides the necessary assurances that these conditions will be met.

The MHCP envisions that habitat acquisition, habitat restoration, and management, monitoring, and administrative costs will be funded by participating local jurisdictions through a cooperative regional funding program, to be placed on a ballot for voter approval within three years of the approval of the plan (MHCP, Vol. I, Sec. 7.2 and Table 7-2). The MHCP also identifies a range of funding sources that may be used, such as property tax, Mello-Roos special tax, sales tax, and benefit assessment.

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

- Commitment of public lands owned by participating local jurisdictions to the preserve.
- Management of existing state and federal lands as part of the preserve.
- Interim funding of selected conservation actions as described in the Final MHCP, Subarea Plans, and Implementing Agreements.
- Recently completed acquisition of selected properties using state and local funds, such as some of the stepping stone parcels in the City of Oceanside and upland parcels in the City of Encinitas along the south shore of Batiquitos Lagoon.
- Requirement of mitigation of impacts from new public and private projects.

The Wildlife Agencies (USFWS and CDFG) will, through Implementing Agreements with participating jurisdictions, "monitor plan implementation" and "ensure that habitat conservation proceeds in step with development" (MHCP, Vol. I, Sec. 5.2.3). Furthermore, "[i]f the wildlife agencies determine

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that the subarea plan is not being implemented as required, the wildlife agencies and the city will take the actions specified in the subarea plan and implementing agreement to remedy the situation" (MHCP, Vol. I, Sec. 5.3.8). The requirement to review will apply if a regional funding program is not approved in a timely manner, and an alternative remedy may require each jurisdiction to develop and implement a funding source adequate to meet its share of the MSCP and subarea plan implementation as it continues to pursue a regional funding source.

SCD-99. Livestock grazing in native habitats is currently extremely limited to non-existent within the MHCP study area. Reserve management plans will identify compatible and incompatible uses of each reserve based on biological conditions, including the potential, focused use of grazing where it might help achieve biological goals.

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covered species are or would be greatly harmed by general livestock grazing, and full minimization and mitigation of take of these species cannot occur absent a prohibition on this activity in the preserve. However, limited and highly targeted grazing for the purposes of management of specific plant populations may be useful, such as short-term use of livestock within a fenced enclosure to remove non-native grasses competing with an endangered plant population.

SCD-100

11. Independent scientific and legal review does not appear to be provided for the program

The MHCP does not appear to provide independent scientific and legal peer review, thereby missing an important opportunity to build public confidence in the program's ability to minimize and mitigate take of covered species to the maximum extent practicable and other program goals.

C. Adequate program funding is not assured

SCD-101

One of the grossest flaws in the MHCP is its clear failure to provide an assured funding source for promised conservation actions, consistent with ESA obligations. According to MHCP Volume I,

Implementation of the MHCP will require funding for the acquisition, restoration, and management of natural habitat areas; biological monitoring; and administration, legal and other costs associated habitat acquisition and management.

SCD-102

MHCP Volume II page 7-1 (emphasis added). The program anticipates that this required funding will take the form of \$37.6 million dollars to be provided 50-50% by the state / federal governments, and local jurisdictions. Yet state / federal funding cannot be considered assured according to ESA standards due to anti-deficiency obligations. And the MHCP only identifies "potential" and "optional" local revenues and sources of funds for program implementation. **At no point does the draft plan provide and commit to a crucial and legally mandated specific proposal for generation of local funding.**

SCD-103

The MHCP also fails to meet its assured funding obligation when it does not identify the need or provide funding for a contingency fund to compensate property owners in the event avoidance of narrow endemic and wetland obligate species or critical locations removes all viable economic property use. Nor does the program identify the need or provide essential funding for program implementation monitoring by the wildlife agencies, and for enforcement of existing private land open space management obligations.

SCD-100. Please see response SCD-56.

SCD-101. Please see response SCD-40.

SCD-102. Please see response SCD-40.

SCD-103. Please see response SCD-40.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

Comments re MHCP DEIS/R
April 29, 2002
Page 22 of 22

VI. Conclusion

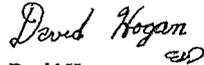
SCD-104

For the foregoing reasons, the San Diego Chapter of the Sierra Club, Center for Biological Diversity, Canyons Network, San Diego Audubon Society, and California Native Plant Society request revision of the DEIS/R, giving greater consideration to reasonably foreseeable impacts and greater attention to environmentally preferable alternatives. Thank you for your consideration of these comments.

Sincerely,



Everett DeLano, Esq.



David Hogan
Center for Biological Diversity

Attachments

cc (via U.S. Mail):

Janet Fairbanks, AICP
Senior Regional Planner
San Diego Association of Governments
401 B Street, Suite 800
San Diego, CA 92101-4231

SCD-104. The Section 2.2 of the EIS/EIR has addressed a reasonable range of alternatives. It has disclosed the reasonably foreseeable impacts from a direct, indirect, and cumulative perspective.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

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SCD-105

August 2, 1999

RECEIVED

AUG 02 1999
**CITY OF CARLSBAD
PLANNING DEPT.**

VIA HAND DELIVERY

Don Rideout
City of Carlsbad Planning Department
2075 Las Palmas Drive
Carlsbad, CA 92009

Re: City of Carlsbad Habitat Management Plan, Mitigated Negative Declaration; Case No. EIA 99-04

Dear Mr. Rideout:

This letter is submitted on behalf of Canyons Network and the San Diego BayKeeper to provide comments upon the Mitigated Negative Declaration ("MND") for the Habitat Management Plan ("HMP") for Natural Communities in the City of Carlsbad ("City"), dated April 1999. Canyons Network is a grass-roots group of individuals concerned about the natural environment of Northern San Diego County and the effects of "urban sprawl." The San Diego BayKeeper is a non-profit membership organization with over 200 members, including several members in Northern San Diego County. It is actively involved in a variety of water quality issues, including watershed protection and wetland preservation.

I. Introduction

The lands within and between the small coastal and inland communities in Northern San Diego County provide some of the last locations between San Diego and Los Angeles where undisturbed and disturbed-but-undeveloped areas can be found (with the notable exception of the U.S. Marine base at Camp Pendleton). This area, locally referred to as "North County," is habitat to numerous plants and animals, many of which are endangered, threatened, or otherwise of special concern. To name but a few, vegetative habitats include Coastal Sage Scrub, Chaparral, Southern Maritime Chaparral, Oak Woodland, and Riparian, while animal species include the San Diego Fairy Shrimp, American Peregrine Falcon, Burrowing Owl, California Brown Pelican, California Least Tern, Coastal California Gnatcatcher, Cooper's Hawk, Least Bell's Vireo, Osprey, Southwestern Willow Flycatcher, Arroyo Southwestern Toad, San Diego Horned Lizard, Mountain Lion, and the San Diego Black-tailed Jackrabbit.

The federal and state Endangered Species Acts ("ESAs") can help keep a check on uncontrolled growth and protect plants and animals. By prohibiting the "take" of listed species, the ESA puts a brake on the rampant obliteration of the natural

SCD-105. Comment is a prior letter transmitted to City of Carlsbad on Mitigated Negative Declaration. This letter recommended the preparation of an EIR on the City of Carlsbad HMP. This EIS/EIR addresses the MHCP and Subarea Plans (including City of Carlsbad). SANDAG is the CEQA lead for this project. A summary of the significance of impacts for Carlsbad's Subarea Plan (copy of ES-3) is attached. Other issues identified in the comment letter were evaluated and the EIS/EIR concluded that there were no significant impacts. (See Section 7 of the EIS/EIR for a detailed discussion.)*

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

EXECUTIVE SUMMARY

Table ES-3, Summary of Mitigation Measures for Significant Impacts (continued)

Impact	Alternatives				No Action/no Project	Mitigation Measures					
	FA 1	FA 2	SCA 3	NA		Charlottesville	Richmond	Sherman Park Zoned	OceanSide	San Marino	
Inadequate (significant) conservation of coastal sage scrub/chaparral mix	NA	NA	NA	NA	Prepare an integrated habitat conservation plan, providing for the conservation of sensitive riparian, riparian, and riparian species.	Preservation of 400-500 acres of contiguous coastal sage scrub in the area referred to as the undeveloped County	NA	NA	NA	NA	Provision of 150 acres of riparian habitat through preservation or restoration to achieve a 50% conservation ratio with the San Marino riparian habitat. This will partially mitigate impacts to chaparral (but to below a level of significance).
Inadequate (significant) conservation of grasslands	Provide conservation of an additional 30% of the grasslands in a consolidated preservation program. This mitigation is deemed infeasible, because of the associated impacts to population/density. Alternative 1, USFWS/ODFG cannot issue the authorizations for grasslands and associated species.	NA	NA	Prepare an integrated habitat conservation plan, providing for the conservation of sensitive riparian, riparian, and riparian species.	Provision of 400-500 acres of contiguous coastal sage scrub in the area referred to as the undeveloped County	NA	NA	NA	NA	Provision of 150 acres of riparian habitat through preservation or restoration to achieve a 50% conservation ratio with the San Marino riparian habitat. This will partially mitigate impacts to chaparral (but to below a level of significance).	

Table DS-3, Summary of Mitigation Measures for Significant Impacts (continued)

Impact	Alternatives					Mitigation Measures									
	FEA 1	FEA 2	SCIA 3	No Action's Project		Crucial	Essential	Subsist Plans	Optional	San Marcos					
	ALTERNATIVE 3 (LDSO DESIGN)														
Reduce the number of the following species defined as endangered, threatened, or rare (LDSO DESIGN) naturally occurring populations or populations that are in jeopardy of extirpation or extinction at this time.	The only mitigation is avoidance of impacts, since transplantation or revegetation is speculative at this time.					Prepare an integrated habitat conservation plan, providing for the conservation of sensitive communities, habitats, and species.					The only mitigation is avoidance of impacts, since transplantation or revegetation is speculative at this time.				
Blackburn's shalbyn	The only mitigation is avoidance of impacts, since transplantation or revegetation is speculative at this time.					Prepare an integrated habitat conservation plan, providing for the conservation of sensitive communities, habitats, and species.					The only mitigation is avoidance of impacts, since transplantation or revegetation is speculative at this time.				
Sticky cholla	The only mitigation is avoidance of impacts, since transplantation or revegetation is speculative at this time.					Prepare an integrated habitat conservation plan, providing for the conservation of sensitive communities, habitats, and species.					The only mitigation is avoidance of impacts, since transplantation or revegetation is speculative at this time.				
Nuttall's scrub oak	The only mitigation is avoidance of impacts, since transplantation or revegetation is speculative at this time.					Prepare an integrated habitat conservation plan, providing for the conservation of sensitive communities, habitats, and species.					The only mitigation is avoidance of impacts, since transplantation or revegetation is speculative at this time.				
Pinyon's kit fox	The only mitigation is avoidance of impacts, since transplantation or revegetation is speculative at this time.					Prepare an integrated habitat conservation plan, providing for the conservation of sensitive communities, habitats, and species.					The only mitigation is avoidance of impacts, since transplantation or revegetation is speculative at this time.				
San Diego horned lizard	The only mitigation is avoidance of impacts, since there is no known measure to increase the population numbers of this species.					Prepare an integrated habitat conservation plan, providing for the conservation of sensitive communities, habitats, and species.					The only mitigation is avoidance of impacts, since transplantation or revegetation is speculative at this time.				
Orange-shanked woodrat	The only mitigation is avoidance, since there is no known measure to increase the population numbers of this species.					Prepare an integrated habitat conservation plan, providing for the conservation of sensitive communities, habitats, and species.					The only mitigation is avoidance of impacts, since transplantation or revegetation is speculative at this time.				

Table ES-3, Summary of Mitigation Measures for Significant Impacts (continued)

Impact	Alternatives				Mitigation Measures				
	FA 1	FA 2	RELA 3	NA	Chiriquí	Eschiline	Suwaya Plains	Ozorella	San Marcos
Resident Avian	Preservation of grassland habitats in areas that support this species is considered infeasible due to the associated impacts to population and housing.	Preservation of grassland habitats in areas that support this species is considered infeasible due to the associated impacts to population and housing.	NA	NA	NA	NA	NA	NA	NA
Downy Woodpecker	Preservation of grassland habitat in areas that support this species is considered infeasible due to the associated impacts to population and housing.	Preservation of grassland habitat in areas that support this species is considered infeasible due to the associated impacts to population and housing.	NA	NA	Prepare an integrated habitat conservation plan, providing for the conservation of resident avian species, including grassland birds, in the project area.	Preservation of grassland habitats in areas that support this species is considered infeasible due to the associated impacts to population and housing.	Preservation of grassland habitats in areas that support this species is considered infeasible due to the associated impacts to population and housing.	Preservation of grassland habitats in areas that support this species is considered infeasible due to the associated impacts to population and housing.	Preservation of grassland habitats in areas that support this species is considered infeasible due to the associated impacts to population and housing.
Coastal California gnatcatcher	Preservation of 400-500 acres of contiguous coastal sage scrub in the unincorporated County of Contra Costa.	NA	NA	NA	Prepare an integrated habitat conservation plan, providing for the conservation of grassland birds, including the coastal California gnatcatcher, in the project area.	NA	NA	NA	NA
Gambel's quail	Preservation of grassland habitats in areas that support this species is considered infeasible due to the associated impacts to population and housing.	Preservation of grassland habitats in areas that support this species is considered infeasible due to the associated impacts to population and housing.	NA	NA	Prepare an integrated habitat conservation plan, providing for the conservation of grassland birds, including Gambel's quail, in the project area.	Preservation of grassland habitats in areas that support this species is considered infeasible due to the associated impacts to population and housing.	Preservation of grassland habitats in areas that support this species is considered infeasible due to the associated impacts to population and housing.	Preservation of grassland habitats in areas that support this species is considered infeasible due to the associated impacts to population and housing.	Preservation of grassland habitats in areas that support this species is considered infeasible due to the associated impacts to population and housing.
Thick-knee blackbird	Preservation of grassland habitats in areas that support this species is considered infeasible due to the associated impacts to population and housing.	Preservation of grassland habitats in areas that support this species is considered infeasible due to the associated impacts to population and housing.	NA	NA	Prepare an integrated habitat conservation plan, providing for the conservation of grassland birds, including thick-knee blackbirds, in the project area.	Preservation of grassland habitats in areas that support this species is considered infeasible due to the associated impacts to population and housing.	Preservation of grassland habitats in areas that support this species is considered infeasible due to the associated impacts to population and housing.	Preservation of grassland habitats in areas that support this species is considered infeasible due to the associated impacts to population and housing.	Preservation of grassland habitats in areas that support this species is considered infeasible due to the associated impacts to population and housing.

Table ES-3. Summary of Mitigation Measures for Significant Impacts (continued)

Impact	Alternatives			Mitigation Measures					
	EPA 1	EPA 2	BCLA 3	No Action/No Project	Carlsbad	Encinitas	San Marcos	Oceanside	San Marcos
Significant increase in average density of 2% in MRCR (10% within Subarea 700)	NA	NA	Provide for the lost residential uses through adoption of General Plan densities, which would result in significant increase. DR reduces the concentration level below a 5% increase. Implementation of this mitigation is reasonably assured for the proposed project.	NA	NA	NA	NA	NA	Provide for the lost residential uses through adoption of General Plan densities, which would result in significant increase. DR reduces the concentration level below a 10% increase. Reducing the density from a small result in greater impacts so biological resources. DR does not meet the objectives of the proposed project.
Significant shift (10%) of future employment in MRCR (20% within Subarea 700)	NA	NA	Provide for the lost employment through adoption of General Plan densities, which would result in impacts to housing, land use, and reduce the concentration level to below 10%. Implementation of this mitigation is reasonably assured for the proposed project.	NA	NA	NA	NA	NA	NA

(1) Many of the impacts to biological resources have been avoided through project design features. As such, these measures are not identified as mitigation.
 (2) NA, Not Applicable, indicates that no significant impacts were identified for that alternative, so mitigation was required.
 (3) Significant impacts were identified for all sensitive communities, habitats, and most species. The "Impacted Habitat Conservation Plan" would be applicable to all of these impacts.

environment. Realizing that the ESA could lead to the sort of "environmental trainwreck" experienced over the Spotted Owl in the Northwest, the State of California has pursued the Natural Community Conservation Plan ("NCCP") effort in Southern California to address habitat planning and the adequate preservation of important locales. U.S. Interior Secretary Bruce Babbitt has heralded the NCCP as "a triumph of communities over conflict.... a model for the nation of how to plan for and balance the needs of man and nature, and how to do the job right."

The North County Multiple Habitat Conservation Program ("MHCP") is a subregional NCCP planning effort that encompasses land within the seven North County cities and County of San Diego. It is supposed to be North County's "triumph of communities over conflict," but it is currently a work in progress involving continued studies, meetings and wide-ranging discussion on appropriate habitat planning.

By promoting the HMP, the City of Carlsbad hopes to secure ESA "take" authorization, thereby allowing the "take" of several listed species without further approval (and the consequent delay) of federal and state wildlife agencies. Its "one-stop permit shopping" approach would open the door to rushed development and could close the door to meaningful participation in the MHCP effort.

Further rushing the process, the City is claiming that it need not prepare an Environmental Impact Report ("EIR") to address the numerous significant impacts associated with adoption and implementation of the HMP. Without the public input and thorough analysis developed through the EIR process, the City's hasty decision making will lack the appropriate and required scrutiny. The HMP's impacts, both the positive and the negative, will not find the light of day. Canyons Network and the San Diego BayKeeper are opposed to the City's rush and its inadequate steps to protect our region's precious environmental resources.

II. The City's Description of the Project is Inadequate

CEQA documents must "be organized and written in a manner that will be meaningful and useful to decision-makers and the public." Pub. Res. Code § 21003(b). See County of Inyo v. City of Los Angeles, 71 Cal.App.3d 185, 198 (1977) (an "enigmatic and unstable project description draws a red herring across the path of public input").

Unfortunately, the City has prepared a convoluted, confusing and even contradictory document to address the HMP. The MND is rife with misleading information. For example, it is difficult to determine just what the HMP entails, which agency has what responsibility, what are the likely impacts from HMP implementation, and how the HMP's impacts will be mitigated.

The City has described the HMP as "a comprehensive, citywide program to identify how the City, in cooperation with federal and state wildlife agencies, can

preserve the diversity of habitats and protect sensitive biological resources within the City while allowing for additional development consistent with the City's General Plan and its Growth Management Plan." MND at 3. Furthermore, "the [HMP] is intended to meet federal and state standards for issuance of citywide permits and authorizations for the incidental take of sensitive species in conjunction with private development projects, public projects, and other activities which are consistent with the Plan." *Id.* In other words, the HMP is designed to "set aside and protect" certain lands and habitats and, thereby, "release" other lands from requirements associated with the federal and state Endangered Species Acts ("ESA"), including the issuance of a permit for the incidental "take" of federally-protected Coastal California Gnatcatchers. 16 U.S.C. § 1539(a).¹

In essence, if adopted the HMP will allow virtually "one-stop permit shopping" for many major developments. That is, so long as proposed development project is "consistent with" the HMP, and so long as additional matters do not arise (such as the listing of a species not addressed by the HMP), developers (and even the City itself) will be granted by the City a permit to "take" protected species. See MND at 3 ("specific functions" of the HMP include allowing "the City to construct public facility and infrastructure projects" and allowing "projects in the City to fulfill their federal and state ... ESA requirements"); HMP at G-1 ("Projects covered by the HMP will be allowed to take California Gnatcatchers and the other species included on the HMP species list"). Indeed, major "selling points" for adoption of the HMP are three "economic objectives": (1) "Minimize ESA-related mitigation costs to public and private projects"; (2) "Allow continued economic growth and development in the City"; and (3) "Minimize the overall cost of HMP implementation to the City and its residents." MND at 6.

Were the City not to adopt the HMP, costs and delays associated with habitat protection and ESA requirements would continue. Proposed development projects would need to address species and habitat issues on a case-by-case basis, through, among other things, environmental studies, oversight by federal and state wildlife agency staff, and an ESA-required Biological Opinion and permit. Recent projects within the City that took this more time-consuming approach have included Rancho Carrillo, Rancho Verde, and Arroyo La Costa. The MND is not honest about this state of affairs.

Yet despite these facts, the MND often describes the HMP as if it were of little significance at all to Carlsbad development.² The phrase "The HMP will not permit any specific development" is used like a blanket to ward off the cold stares of public scrutiny. And the MND's project description suffers in other respects:

• California Department of Fish and Game is mentioned as a "responsible agency under CEQA for these actions" without further discussion or analysis, MND at 4;

¹ By its own admission, the City of Carlsbad is a "critical link" in the population of threatened species like the Coastal California Gnatcatcher. Current (limited) information puts estimates of Gnatcatcher pairs at 100 to 150 in this community of 37 square miles. The birds are supported by some 3,377 acres of Coastal Sage Scrub, Maritime Succulent Scrub, and Coastal Sage/Chaparral habitats within the City.

² The MND's failures to address significant HMP impacts are discussed more fully below.

- Numbers and percentages are floated without consideration of the existing environment, MND Table 1 – for example, it is misleading to include acres outside the City in the figure of total conserved acres, especially since “non-conserved” acres outside the City are not included in that figure;
- The Habitat Conservation Plan for the Villages of La Costa project is treated as separate from the City, MND at 7, when, in fact, the conservation levels are what they are, regardless of the mechanisms involved; and
- The City carelessly presumes that the U.S. Fish and Wildlife Service (“FWS”) will prepare an Environmental Assessment for its role in considering and approving the HMP, MND at 5, despite the fact that FWS personnel have declared publicly during meetings on the HMP that they may prepare an Environmental Impact Statement.³

Accordingly, the City’s project description is inadequate.

III. The City Should Prepare an Environmental Impact Report Addressing All Likely and Potential Impacts Upon the Environment

A. The City Has Failed to Acknowledge or Analyze Numerous Significant Impacts, Including Impacts to Population, Water, Air Quality, Traffic, Biological Resources, Noise, Public Services, and Aesthetics

The California Environmental Quality Act (“CEQA”), Public Resources Code § 21000 *et seq.*, requires the preparation of an Environmental Impact Report (“EIR”) whenever substantial evidence in the record supports a “fair argument” that significant environmental impacts may occur. Pub. Res. Code § 21080(d); No Oil, Inc. v. City of Los Angeles, 13 Cal.3d 68 (1975). If there is “substantial evidence that the project might have [a significant impact on the environment], but the agency failed to secure preparation of the required EIR, the agency’s action is to be set aside because the agency abused its discretion by failing to proceed in a ‘manner required by law.’” Friends of “B” Street v. City of Hayward, 106 Cal.App.3d 988, 1002 (1980). An EIR is “aptly described as the ‘heart of CEQA’ – an “environmental alarm bell” whose purpose is to inform the public and responsible officials of the environmental consequences of their decisions before they are made. Laurel Heights Improvement Association v. University of California, 47 Cal.3d 376, 392 (1988).

1. The HMP Will Significantly Impact Biological Resources

Although the City has recognized impacts upon biological resources, its analysis is inadequate. First, the City has failed to analyze impacts upon species not protected by the HMP. The City reasons that impacts upon these species “would require either an amendment to the HMP or a separate permit from the” wildlife agencies. MND at 82.

³ FWS personnel have stated publicly that they will be influenced in their decision whether to prepare an EIS by the level and nature of comments the City receives upon the MND. Of course, to the extent these comments apply, the rationale for preparing an EIS is remarkably similar to the reasons stated herein for preparing an EIR.

However, the City's rationale fails to account for species that may not be listed, even at some future time, yet are still likely to experience an impact from the development on non-HMP protected parcels. These species, including the Mountain Lion and Southern Mule Deer, are likely to be greatly impacted by the expedited development allowed by the HMP, yet the City has failed to analyze or even acknowledge these impacts.

Similarly, the City's analysis fails to account for impacts to non-HMP protected areas. The MND discusses indirect impacts to Preserve Areas, but does not discuss the areas outside the preserves for which the HMP will allow expedited development and the incidental "take" of numerous species. MND at 85.⁴ Again, this constitutes a major flaw in the analysis and requires the preparation of an EIR.

Additionally, the City's analysis fails to account for several important species noted in various areas of the City. For example, during a July 1, 1999 meeting concerning the HMP, public participants noted the presence of San Diego Black-tailed jackrabbit, Southern Mule Deer, and the Southern California Rufous-crowned sparrow in LFMZ 11 and Ospreys and the California Gnatcatcher in LFMZ 18. The City has failed to acknowledge or analyze these species and their presence in these locations. See e.g., MND Table 5.

The City's analysis also fails to adequately analyze impacts to migration corridors and the movement of species. The maintenance of adequate corridors (referred to as linkages by the City, MND at Figure 8) is extremely important to adequate protection of species. For example, in issuing a "take" permit for the listed California Gnatcatcher on the Rancho Carrillo Project in the City, the U.S. Fish and Wildlife Service noted in part as follows:

Dispersal is vital in maintaining species diversity and preventing inbreeding which can cause a high level of infertility and juvenile mortality, causing an eventual decrease in the population []. The supply and necessary recruitment rate of breeders, to maintain viable population level of some species, may decrease over the long-term without the opportunity for dispersal. This may be particularly true with the major gnatcatcher populations in the Carlsbad HMP area, as they are effectively isolated with the exception of one linkage through Rancho Carrillo and a minor linkage through the Batiquitos Lagoon area.

Long-term conservation of the coastal California gnatcatcher will require that adequate sage scrub habitat be preserved in the proper configuration. The NCCP Scientific Review Panel has recommended that the target width for wildlife corridors be approximately 1200 feet.

⁴ In a different section of the MND, however, the City admits that "[i]mplementation of the HMP [will] contribute to the decline of native plant and animal species within the county and region in association with loss due to incidental take outside the preserve." MND at 99.

Letter to Michal Robinson from Gail Kobetich at 14 (February 22, 1996) ("Rancho Carrillo Take Letter") (citations omitted).⁵ Unfortunately, the HMP's corridors are narrow and contorted in many locations, making it difficult for animals to travel and further reducing chances of survival. Nevertheless, the MND fails to recognize the significant impacts. MND at 90.

For example, in discussing HMP Preserve Planning Area ("PPA") 5 (now referred to in the HMP as part of Core #6, MND at Figure 8), the U.S. FWS noted that the "area is, by nature of its location, very important. It is situated between the two largest core gnatcatcher populations in the City (in PPAs 2 and 7)." Rancho Carrillo Take Letter at 10. PPA 2 is now referred to in the HMP as Cores ## 3 and 5, while PPA 7 is now referred to as Core # 7. MND at Figure 8.

The FWS cautioned about the importance of maintaining a viable connection between these two critical areas:

Since the majority of the gnatcatcher habitat on the project site is proposed for development, the value of the easternmost (San Marcos) connection is largely dependent on a continuous linkage northward from the eastern portion of the project site to PPA 7. In order to achieve such a linkage, coastal sage scrub preservation along the eastern edge of the proposed property should be maximized and an uninterrupted linkage is maintained from the eastern edge of the property through the Carlsbad Raceway property.

Rancho Carrillo Take Letter at 10.⁶ However, the City has not maintained maximized and uninterrupted linkages. A review of the map in the MND reveals that Link D and Link E are narrow and contorted. MND at Figure 8. Furthermore, the map included in the HMP, which differs significantly from the map in the MND, reveals even more fragmentation. HMP at Figure 23.⁷ The MND admits that Link E will be as narrow as 80 feet and that "[s]ome areas ... are less than the width specified in regional standards." MND at 89.⁸ The City further admits Linkages A, D and E are "highly constrained" and "would not meet the regional guidelines." *Id.* at 89 - 90. Nevertheless, without support in the record, the City concludes "it is not anticipated that loss of habitat associated with

⁵ The Rancho Carrillo Take Letter is hereby incorporated by reference.

⁶ The HMP itself acknowledges the importance of Core Areas 3 and 7. HMP at C-41. The biological analysis associated with the MHCP planning effort also revealed important habitats in these locations. See e.g., Biological Goals, Standards, and Guidelines for Multiple Habitat Preserve Design at 5-3 (February 1998 (noting "major stands" and "critical locations" of coastal sage scrub and coastal sage scrub/chaparral in Carlsbad, including "south of Alga Road [and] adjacent to Rancho Santa Fe Road").

⁷ The inconsistencies in the maps constitute an additional flaw, since it precludes the public from commenting upon the nature of the project at hand. CEQA documents must "be organized and written in a manner that will be meaningful and useful to decision-makers and the public." Pub. Res. Code § 21003(b). See *County of Inyo v. City of Los Angeles*, 71 Cal.App3d 185, 198 (1977) (an "enigmatic and unstable project description draws a red herring across the path of public input").

⁸ Of course, the widths described by the City are far less than the 1,200-foot width recommended by the NCCP Scientific Review Panel. Rancho Carrillo Take Letter at 14.

incidental take in areas outside the preserve would result in significant adverse impacts to wildlife movement." Id. at 90.

It is difficult to comprehend how wildlife corridors more than ten times narrower than the width determined appropriate by a scientific panel are not likely to have a significant impact upon animal species. The City contends that "the linkages in question are already limited in width by existing development, and the HMP will not further reduce their width." MND at 90. Even if that is correct, it is beside the point. CEQA requires evaluation of the "impacts of the project on the environment, defined as the existing physical conditions in the affected area." Environmental Planning and Information Council of Western El Dorado County v. County of El Dorado, 131 Cal.App.3d 350, 354 (1982). If the HMP is constrained by prior development projects, it is necessary for the City to acknowledge and analyze the impacts of those constraints. Furthermore, the City must analyze cumulative impacts: "A cumulative impact analysis which understates information concerning the severity and significance of cumulative impacts impedes meaningful public discussion and skews decisionmaker's perspective concerning the environmental consequences of a project, the necessity for mitigation measures, and the appropriateness of project approval." Citizens to Preserve the Ojai v. County of Ventura, 176 Cal.App.3d 421, 431 (1985) (citation omitted).

2. The HMP Will Significantly Impact Resource Planning Efforts

The City is currently one of many participants in the MHCP efforts. These efforts involve seven North County cities and the San Diego Association of Governments ("SANDAG"). The MHCP is part of the NCCP planning process to address important habitats and biological resources in the region. The effort is proceeding, and much about species diversity and habitats has been learned. For example, Carlsbad currently maintains major stands and critical locations of Maritime Succulent Scrub, Coastal Sage Scrub, and Coastal Sage Scrub/Chaparral. Biological Goals, Standards, and Guidelines for Multiple Habitat Preserve Design at 5-2 – 5-3 (February 1998). Similarly, it contains major populations and critical locations of animal species, including the San Diego Fairy Shrimp and the Belding's Savannah Sparrow. Id. at 8-2 & 8-47 – 8-48.

If the HMP proceeds without adequate environmental review, options may be lost for the further efforts of the parties working on the MHCP. The City indicates a goal of the HMP is to "[c]onstitute Carlsbad's Subarea plan within the North County [MHCP]." HMP at A-1. Furthermore, the City indicates that its purchase of certain lands under the HMP "shall ... constitute the full participation of the City in any MHCP land acquisitions in the core area." Id. at D-59 (emphasis added).

In other words, the City is essentially precluding any further efforts. Once the HMP is complete, the City may portray to the other participants of the MHCP that its work is done and there is no more ability to protect natural communities in Carlsbad. This will certainly have a significant impact upon the planning and other activities of the MHCP process, yet nowhere does the City acknowledge or analyze these impacts.

Finally, an EIR must be prepared if there is "serious public controversy" over the environmental effects of a project. CEQA Guidelines § 15064. There is substantial public controversy, as evidenced by the numbers of comments received by the City on this issue.

3. The HMP Will Significantly Impact Water Resources

Unfortunately, the City is not honest about the HMP's goals. In fact, with the exception of biological resources, the MND largely dismisses potential environmental impacts. For example, in discussing whether the HMP would affect water issues (such as the rate and amount of surface runoff), the City concludes that no impact would occur because "[t]he HMP does not specifically permit any development." MND at 71. Yet this statement, even if technically true, is utterly beside the point. As discussed above, the HMP will reduce the hurdles necessary to develop within the City. It will increase the likelihood that more development will occur more quickly and without the detailed environmental analysis currently required. Since expedited development leads to increased impervious areas and differing landscapes, changing absorption rates, drainage patterns, and the rate and amount of surface runoff, the City should acknowledge the impact and analyze these issues.

Similarly disingenuous statements can be found in discussions about impacts to water quality. The City concludes that the HMP will provide a "beneficial impact to water quality" without acknowledging the numerous harmful impacts from the expedited development provided for by the HMP. MND at 71. The City rests much of its position, in this area and elsewhere, on the argument that the development will be consistent with the General Plan; however, the fact that a proposed project is consistent with a general plan does not mean that it has no potential to cause significant impacts. City of Antioch v. City Council, 187 Cal.App.3d 1325, 1331 (1986). Again, the City should analyze the HMP's "real world" implications upon water quality, including increasing urban runoff, reducing lagoons and other fresh water bodies, and degrading ocean water quality through increased likelihood of sewer spills and overflows.⁹

4. The HMP Will Have Numerous Additional Significant Impacts

Unfortunately, the phrase "The HMP does not specifically permit any development" is repeated like a mantra throughout much of the MND. Yet its repetition does not obviate the requirement to address potential environmental impacts. "If the local agency has failed to study an area of possible environmental impact, a fair argument may be based on the limited facts in the record." Sundstrom v. County of Mendocino, 202 Cal. App. 3d 296, 311 (1988). Other areas in which the City fails to identify and analyze significant impacts include:

⁹ The City is no stranger to sewer spills, having experienced major spills in the recent past, including spills into Buena Vista Lagoon and Agua Hedionda Lagoon. Indeed, the latter is the subject of a multi-party investigation as to the cause of high pollutant levels, which includes staff from the City of Carlsbad.

- population and housing, MND at 68 – 69, even though the HMP will assist in the rapid expansion of the City's population and expedited increases in housing;
- air quality, id. at 72 – 73, even though the HMP will affect air quality by allowing the expedited increase of cars and other vehicles in the City;
- transportation/circulation, id. at 73 – 74, even though the HMP will increase, at least in the short term, the numbers of roads and vehicles in the City;
- noise, id. at 94, even though the HMP will expedite increased traffic, construction, and other noise problems;
- public services, id. at 94 – 95, even though the HMP will expedite the demands placed upon public services; and
- aesthetics, id. at 96, even though the HMP will allow for the development of areas currently off limits as a result of existing habitat protection barriers.

Accordingly, the City should prepare an EIR.

B. The City Has Failed to Adequately Address Mandatory Findings of Significance

The MND briefly addresses mandatory findings of significance, yet again it fails to acknowledge or address the actual impacts associated with implementation of the HMP. An EIR is mandated where any of the following conditions are present. CEQA Guidelines § 15065. In this instance, many if not all of these conditions are present.

- The project has the potential to substantially degrade the quality of the environment. Id. § 15065(a). The HMP will degrade the quality of the environment in the ways discussed above.
- The project has the potential to substantially reduce the habitat of a fish or wildlife species. Id. The HMP will reduce the habitat of numerous species. Indeed, the City has admitted as much. MND at 99. The "significant effects on the environment identified in the environmental checklist have not been mitigated into insignificance." San Bernardino Valley Audubon Society v. Metropolitan Water District, 71 Cal.App.4th 382, 401 (1999).
- The project has the potential to cause a fish or wildlife population below self-sustaining levels. CEQA Guidelines § 15065(a). In this case, qualified biologists and other experts have stated that the HMP is likely to result in the elimination of the San Diego Horner lizard, as well as possibly other species.
- The project has the potential to eliminate a plant or animal community, as discussed above. Id.
- The project has the potential to reduce the number or restrict the range of a rare or endangered plant or animal. Id. There is no question but that the HMP will do so, since its allowance of take will affect species both within and outside the preserve areas. MND at 99.

• The project has the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals. CEQA Guidelines § 15065(b). Implementation of the HMP will provide environmental benefit to those areas of the City protected by the preserve and, at least in the short term, plant and animal species will be protected in these locales while being largely undisturbed in non-preserve areas where specific development projects have yet to begin. However, development in non-preserve areas will occur in due course and, when it does, species and habitats will be lost. Furthermore, the City is engaged with six other North County cities and the County of San Diego in studies and discussions concerning the MHCP. The MHCP is supposed to serve as a model of habitat and species protection, yet the City has indicated that the HMP will “[c]onstitute Carlsbad’s subarea plan within the [MHCP].” MND at 3. Accordingly, an important long-term environmental benefit – the development of an adequate MHCP – will be hampered by the City’s pre-determination of applicable areas for protection.

• The project has possible environmental effects which are individually limited but cumulative considerable. CEQA Guidelines § 15065(c). Even if the numerous impacts identified in the MND, identified in this comment letter, and identified by other commenters, were insignificant, their impacts are cumulatively considerable when viewed in concert with other projects. Carlsbad is and has been for several years in the midst of a tremendous development boom. In the past few years alone, Carlsbad has approved numerous development permits resulting in, among other things, many new homes and office complexes. The HMP, when viewed in concert with other projects and the rapid pace of development in the City, will result in tremendous cumulative impacts.

Accordingly, the City should prepare an EIR.

C. The City’s Proposed Mitigation is Entirely Inadequate to Obviate the Need for an EIR

As discussed above, the impacts from the HMP will be significant in numerous respects. The City’s proposed mitigation is inadequate to reduce the impacts to below a level of significance. See San Bernardino Valley Audubon, 71 Cal.App.4th at 401 (Agencies’ proposed mitigation was inadequate to reduce impacts from proposed habitat conservation plan to below a level of significance). The only “mitigation” of HMP impacts on vegetation communities the City refers to is the land the HMP itself sets aside, yet this circular reasoning is inadequate on its face. MND at 100; see San Bernardino Valley Audubon, 71 Cal.App.4th at 400 (“it is confusing and circular to refer to the mitigation bank established by the Project as being mitigation for the potentially significant effects on the environment of establishing the mitigation bank itself”).

The mitigation for the HMP’s impacts to species is also inadequate. First, the City’s rationale for reducing the number of covered species is non-sensible. The City claims that it reduced the numbers of covered species “in order to mitigate impacts to species which were not adequately provided coverage by the Plan.” MND at 100. Clearly, removing species from protection does not serve to mitigate impacts from the

HMP. It may lead to better protection of those "removed" species, but only to the extent such species are well protected by other laws and requirements. Since the removed species are not listed under the state ESA or the federal ESA, there is inadequate basis to conclude these species will be adequately protected. And, in fact, their "removal" from the list of HMP-protected species is likely more a function of the City's desire to have to have less territory in which to protect species than it is a function of the City's care for such species. Indeed, the City points to no protection of such "removed" species.

Second, the measures listed by the City are essentially directed towards protection of species within, or at most adjacent to, the HMP preserve areas. MND at 101 and Table 6. Mitigation is lacking for species in the rest of the City. Reducing the size and extent of the habitat in the City by limiting protections to Preserve areas and areas in their close proximity will not suffice to mitigate impacts to harmed or killed species. "[A]llowing actual take to be mitigated by potential habitat is insufficient." San Bernardino Valley Audubon, 71 Cal.App.4th at 401.

Third, the specified measures are inadequate in that they illegally defer assessment. See e.g., MND at 101 ("Where opportunities arise, restoration and enhancement of habitats such as coastal sage scrub coastal dune habitat"). "By deferring environmental assessment to a future date, the conditions run counter to that policy of CEQA which requires environmental review at the earliest feasible stage in the planning process." Sundstrom v. County of Mendocino, 202 Cal.App.3d 296, 307 (1st Dist. 1988). Similarly problematic is the effect of any change in proposed hardline areas, since there is no guarantee that the proposed locations will result in actual hardline areas.

Finally, despite impacts in several areas, as discussed above, the City has provided no mitigation. MND at 101. The City's brief discussion of mitigation to land use and zoning impacts is inadequate and suffers from being too vague to consider. See Sundstrom, 202 Cal.App.3d at 307.

Accordingly, the City should prepare an EIR.

D. The City May Not Rely Upon Prior Studies to Hide Behind the Requirement to Prepare an EIR for This Project

The City rests much of its decision not to prepare an EIR upon the existence of earlier analyses, particularly the Master EIR for the City's General Plan ("MEIR"). MND at 49 (The MEIR "is a primary resource used in this document and a primary basis for preparing a mitigated negative declaration for the HMP"). However, the City's reliance upon the MEIR is mistaken. Even if the HMP is consistent with the MEIR (and there is good reason to conclude that it is not), the fact of such consistency is an insufficient basis to conclude that impacts are insignificant. Oro Fino Gold Mining Corporation v. County of El Dorado, 225 Cal.App.3d 872, 881-82 (1990); City of Antioch v. City Council, 187 Cal.App.3d 1325, 1331 (1986).

To paraphrase one court, "an environmental analysis based on a comparison between what was possible under the existing general plan and what [is] permitted under the [HMP is] 'illusory.'" Christward Ministry v. Superior Court, 184 Cal.App.3d 180, 190 - 91 (1986). The MEIR was prepared in March 1994, while the biological resource analyses upon which the MEIR relied were prepared in August and September 1992. MEIR Appendices D & E. Of course, several things have changed between that time and the present, including the understanding of species' habitat and needs and the nature of development in Carlsbad. The MEIR's analysis of impacts is not adequate for the purposes the City would like to rely upon it.

For example, the MEIR discussed the presence of 2,028 acres of Chaparral/Disturbed Chaparral, MEIR Table 5.4-1 at 5.4-3, while the MND discusses 1,371 acres of Chaparral and Southern Maritime Chaparral (970 + 401), MND at Table 1. The MEIR also discussed 357 acres of Saltwater/Freshwater Marsh, MEIR Table 5.4-1, while the MND discusses 1,382 acres of marsh, MND Table 1. Similarly, the MEIR discussed the presence within the City of species such as the Least Bell's Vireo, Orange-Throated Whiptail, and the San Diego Horned Lizard, MEIR Table 5.4-5 at 5.4-14, while the MND indicates none of these species are present, MND Table 5 at 29 - 30. Many other significant differences in species presence and abundance are discernable by comparing the MEIR and its biological analyses with the MND and the HMP. As such, these are differences that need to be analyzed and they detract from the value of the biological information in the MEIR.

Indeed, the biological analysis concerning the draft HMP at the time the MEIR was prepared noted that "the fundamental biological information needed to specify the minimum areas required by key species is lacking." MEIR Appendix D at 56. This is not the kind of support the City can rely upon under CEQA to evade the preparation of an EIR to consider the impacts of the HMP. Even a cursory review of the biological impact section of the MEIR reveals that information concerning impacts from the HMP was lacking at the time the MEIR was prepared. See e.g., MEIR at 5.4-16 - 4-21. Much of the discussion is centered on the adoption of a trail system, and not concerning the HMP. Id. A comparison of the maps reveals that much changed between adoption of the MEIR and preparation of the HMP. Compare MEIR Map 5.4-3 at 5.4-12 with MND Figure 1.¹⁰

Even the specific habitat protections contemplated in the documents accompanying the MEIR differ substantially from the HMP. For example, the biological analysis stated as follows:

It is recommended that the City consider acquisition of at least two or three additional habitat areas to develop a complete preserve system. The best remaining habitat areas in the City are located around the western edge of Lake Calavera and the riparian scrub running south from the lake, the Agua Hedionda

¹⁰ The HMP itself recognizes "major differences" between the HMP and a 1994 draft. HMP at C-1.

Creek area south of Squires Dam, the western portion of PPA5, and the central portion of PPA4.

MEIR Appendix D at 72. However, with the exception of the Lake Calavera property (which the City intends to use as a mitigation bank for other public projects, HMP at D-14), the HMP does not provide for substantial additional City-owned habitat. See HMP at F-2. In fact, the City has stated that "[i]t is not anticipated that the HMP will require any public acquisition of privately owned habitat lands within the City." *Id.* at E-6. In this and other respects, the HMP differs substantially from the issues analyzed during preparation of the MEIR. Perhaps recognizing that the MEIR would not suffice for further environmental analysis, the City included a mitigation condition in the MEIR to "[r]equire comprehensive environmental review in accordance with [CEQA] for all projects that have the potential to impact natural resources or environmental features." MEIR at 5.4-23.

Additionally, the City's reliance upon CEQA Guidelines § 15063(c)(3)(D) is misplaced. MND at 49. Section 15063 addresses requirements for the Initial Study, while section 15063(c)(3)(D) refers specifically to using the Initial Study to identify "whether a program EIR, tiering, or another appropriate process can be used for analysis of the project's environmental effects." As discussed herein, none of the prior EIR's obviates the requirement to prepare an EIR to address the HMP's significant effects.¹¹

Although the City has not discussed it, CEQA § 21157 addresses the appropriate use of a Master EIR. It limits the use of a mitigated negative declaration prepared after a Master EIR to, among other things, situations in which "[f]easible mitigation measures or alternatives will be incorporated to revise the proposed subsequent project, before the negative declaration is released for public review, in order to avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment will occur." Pub. Res. Code § 21157.5(a)(2) (emphasis added). As discussed herein, there will be significant unmitigated impacts from the City's adoption of the HMP. These impacts were not analyzed in the MEIR. The City has not demonstrated, nor can it demonstrate, that clearly no effects will occur.

Accordingly, the City should prepare an EIR.

IV. The City Has Failed to Follow the Proper CEQA Procedures and Has Failed to Provide Adequately for Public Involvement and Input

CEQA should be interpreted "so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." *Friends of Mammoth v. Board of Supervisors*, 8 Cal.App.3d 247, 259 (1972). A principle purpose of CEQA is to ensure informed public participation. *Laurel Heights*, 47 Cal.3d at 392.

¹¹ CEQA Guidelines § 15064 discusses how to determine whether a project will have a significant effect.

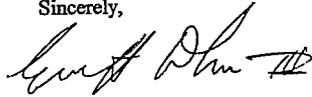
Comments re HMP
August 2, 1999
Page 14 of 14

Accordingly, CEQA requires a lead agency preparing a document to provide adequate public notice and participation.

Unfortunately, the City has failed to provide adequate public notice. By letter to Michael Holzmilller dated July 22, 1999, I identified inadequacies in the City's public notification. I hereby incorporate that letter by reference. I further explain those concerns in a letter today, which is also incorporated by reference. Copies of both letters are enclosed for your convenience.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in cursive script, appearing to read "Everett DeLano".

Everett DeLano, Esq.

Enclosures (2)

LAW OFFICES OF EVERETT L. DELANO III

197 Woodland Pkwy, Suite 104-272
San Marcos, California 92069
(760) 510-1562
(760) 510-1565 (fax)

July 22, 1999

VIA FACSIMILE & U.S. MAIL

Michael J. Holzmilller
Planning Director
City of Carlsbad
2075 Las Palmas Drive
Carlsbad, CA 92009

Re: Mitigated Negative Declaration: Carlsbad Habitat Management Plan ("HMP")

Dear Mr. Holzmilller:

The California Environmental Quality Act ("CEQA") requires a lead agency preparing an EIR or negative declaration to provide public notice. Among other things:

"The notice shall specify the period during which comments will be received on the draft environmental report or negative declaration, and shall include the date, time, and place of any public meetings or hearings on the proposed project and its location, the significant effects on the environment, if any, anticipated as a result of the project, and the address where copies of the draft environmental impact report or negative declaration, and all documents referenced in the draft environmental report or negative declaration, are available for review."

Public Resources Code § 21092(b)(1).

Although I appeared and spoke at a meeting you chaired concerning the draft mitigated negative declaration for the HMP, and although I have discussed the matter with you in person, I am unaware of the existence of such notice(s). I submitted to you a Public Records Act request seeking the documents upon which the City intends to rely. I continue to await receipt of copies from that request.

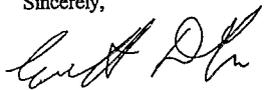
Today I learned that the City's Planning Commission met last night and discussed the HMP. I understand that the commission's intent to discuss the HMP was not noticed prior to last night's meeting.

Please ensure the City's full compliance with CEQA's public notice requirements. Additionally, please provide me copies of any notice relating to the HMP, including notice of any public meetings or hearings. If you believe the City previously complied with CEQA's notice requirements, please provide me with such notice(s).

Michael J. Holzmilller
July 22, 1999
Page 2

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Everett DeLano".

Everett DeLano, Esq.

LAW OFFICES OF EVERETT L. DELANO III

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SCD-106

August 2, 1999

VIA HAND DELIVERY

Michael J. Holzmillner
Planning Director
City of Carlsbad
2075 Las Palmas Drive
Carlsbad, CA 92009

Re: Carlsbad Habitat Management Plan ("HMP")

Dear Mr. Holzmillner:

I received your July 30 letter responding to my letter of July 22. While I respectfully disagree with your characterization that my earlier letter contained inaccurate statements, I will respond here to only a few specific issues. If after reading this letter you feel you need additional information or would like to discuss the matter, I would invite you to call me at the number listed above.

Public Records Act Request

I should note that the City's response to my June 16, 1999 Public Records Act request was and remains inadequate and incomplete. The letter from Mr. Wayne was both beyond the statutory ten-day period and unresponsive to my request. Although Mr. Wayne's letter is dated June 25, the envelope reveals it was not mailed until June 28. More importantly, Mr. Wayne's letter professes ignorance over the documents requested despite the fact that my request specifically quoted the City's own language. The "supportive documents" requested were and remain the very "supportive documents" the City referred to in its own notice (a copy of which was enclosed for your convenience).

I approached you at the July 1, 1999 meeting because, as I explained at the time, I believe it is helpful to discuss these matters in person. At no time have I "narrowed down" my request. It was and it remains a request for all the documents the City believes form the "record" for the Habitat Management Plan ("HMP"). During my visit to your offices on July 14, I reviewed the listing of documents you had prepared and I requested copies of some of those documents. I was under the impression that the documents in your list constituted all the documents that were responsive to my request. Apparently, that is not the case. Accordingly, please provide a listing of any additional documents that are responsive to my June 16 request.

SCD-106. Comment is prior letter transmitted regarding Carlsbad's HMP. This comment addresses public records act request dated 1999. This issue is not reflective of the project. Any information requested by the public in relation to this EIS/EIR was available at SANDAG's offices during standard business hours.*

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

Michael J. Holzmler
August 2, 1999
Page 2

You are correct that I tendered \$240.00 for the documents I received. It is unclear how the City arrived at this figure. Demanding a rate above the actual cost of reproduction constitutes a violation of the Public Records Act. See North County Parents Organization for Children with Special Needs v. Department of Educ., 28 Cal.Rptr.2d 359 (4th Dist. 1994). Accordingly, I request that you return that portion of the amount I tendered that is above the actual cost of reproduction.

Public Notice

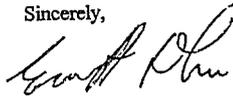
Based upon the information I have received, including your July 30 letter, I believe the City has not complied with CEQA's public notice requirements concerning the HMP. I should note that the notice I provided with my June 16 Public Records Act contains a "Dated" line and a "Publish Date" line, yet both lines are entirely blank. Of course, I provided a copy of that notice as a courtesy and to assist you in determining the documents responsive to my request. You are correct that I could have come into City offices and requested documents; however, it is unclear how I would know which documents to request. Indeed, as discussed above, I have yet to learn of all the documents the City considers to constitute the HMP "record."

I will note that the very fact of our correspondence reveals the difficulty for the public to understand the City's activities concerning the HMP. If a person must go through the steps I have done in order to understand what constitutes the "record," the City is hardly doing a good job of informing the public about its activities.

Additionally, contrary to CEQA, the notice you provided with your July 30 letter does not contain "the date, time and place of any public meetings or hearings." Pub. Res. Code § 21092(b)(1). Your explanation that the Carlsbad Planning Commission, a public body, held a meeting on July 21 instead of a public hearing is irrelevant. CEQA does not limit its requirement to public hearings in which public comments are accepted. Furthermore, the agenda you referred to did not contain notice of a discussion of the HMP. Accordingly, I repeat my request that you provide any notice(s) you believe serve to satisfy CEQA's public notice requirements.

I trust I will receive your cooperation in these matters.

Sincerely,



Everett DeLano, Esq.

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SCD-107

July 28, 2000

Bruce Babbitt (via U.S. Mail)
Secretary of the Interior
U.S. Department of the Interior
18th and C Streets, N.W.
Washington, D.C. 20240

Ken Berg (via Facsimile and U.S. Mail)
Field Supervisor
U.S. Fish and Wildlife Service
Carlsbad Field Office
2730 Loker Ave. West
Carlsbad, CA 92008

Re: Habitat Conservation Plan, Environmental Assessment, Implementing Agreement, and Application for an Endangered Species Act Incidental Take Permit for the Habitat Management Plan for Natural Communities in the City of Carlsbad, California

Dear Messrs. Babbitt and Berg:

This letter is submitted on behalf of Canyons Network to provide comments on a proposed Habitat Management Plan ("HMP"), and related actions, concerning species and future development in the City of Carlsbad ("City").¹ Canyons Network is a grass-roots organization of individuals concerned about the natural environment in northern San Diego County and the effects of "urban sprawl."

I. Introduction

The U.S. Fish and Wildlife Service ("Service") is proposing to take several actions to approve the HMP and to allow the City to decide for itself whether future development activities within the City are consistent with the mandates of the Endangered Species Act ("ESA"), 16 U.S.C. § 1531 *et seq.* If adopted, the HMP will allow virtually "one-stop permit shopping" for developments within the City. Indeed, the City itself has identified three different "economic objectives" served by adoption of the HMP: (1) "Minimize ESA-related mitigation costs to public and private projects"; (2) "Allow continued economic growth and development in the City"; and (3) "Minimize the overall cost of HMP implementation to the City and its residents." Mitigated Negative

¹ Reference herein to the HMP includes reference to all related actions, as proposed by the U.S. Fish and Wildlife Service.

SCD-107. Comment is prior letter to USFWS regarding Carlsbad's HCP, EA, etc. The comment contends that the USFWS should prepare an EIS on the City of Carlsbad HMP. This EIS/EIR addresses the MHCP and Subarea Plans (including the City of Carlsbad) in accordance with NEPA. The USFWS is the NEPA lead for this project. See response SCD-105.*

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

Declaration for the Habitat Management Plan for Natural Communities in the City of Carlsbad at 6.²

The HMP will cover 47 species throughout the entire City. It will apply as essentially the only ESA-related protection for those species for the next 50 years. It will allow for impacts on almost 2,900 acres of upland habitats and almost 200 acres of riparian and wetland habitat. These areas include some of the last coastal canyons in Southern California, and contain natural water bodies, waterfalls, and tremendous natural habitat. Despite this, and the numerous impacts inherent in the HMP's adoption, the Service is claiming that there will be no significant unmitigated impacts and has refused to prepare an Environmental Impact Statement ("EIS"). For the reasons discussed herein, Canyons Network is opposed to the Service's actions and requests the preparation of a careful and thorough EIS.

II. The Service is Required to Prepare an EIS

The National Environmental Policy Act ("NEPA") requires a federal agency to prepare an EIS for any major federal action significantly affecting the quality of the human environment. 42 U.S.C. § 4332(2)(C); Kleppe v. Sierra Club, 427 U.S. 390, 394 (1976). NEPA's implementing regulations outline the factors to be considered in determining whether an action "significantly" affects the environment. 40 C.F.R. § 1508.27(b); Sierra Club v. U.S. Forest Service, 843 F.2d 1190, 1193 (9th Cir. 1988). "If substantial questions are raised whether a project may have a significant effect upon the human environment, an EIS must be prepared." Sierra Club v. U.S. Forest Service, 843 F.2d at 1193 (citation omitted). In this instance, several factors point to the need to prepare an EIS.

A. There are Both Beneficial and Adverse Impacts

Federal regulations require the preparation of an EIS "even if the Federal agency believes that on balance the effect will be beneficial." 40 C.F.R. § 1508.27(b)(1). In preparing an Environmental Assessment ("EA") for the project (June 21, 2000), the Service repeatedly acknowledges direct and indirect impacts to several species, yet concludes that the impacts will be mitigated by the protection of certain lands within the City. See, e.g., EA at 43 - 61. This conclusion is arbitrary and capricious. Its circular reasoning is akin to telling a person caught in an underwater tank that they should not worry you have taken away five hours worth of their air supply because you mitigated that effect by still leaving them four hours worth of air.

Even if the Service's conclusion (that, on balance, the effect of the HMP is beneficial) was supportable, the beneficial and adverse impacts still require preparation of

² Canyons Network previously commented on the City's failure to prepare an Environmental Impact Report pursuant to the California Environmental Quality Act. Those comments, which are applicable to the Service's consideration of the HMP and the EA, are hereby incorporated by reference. Copies of two such letters, dated August 2 and September 21, 1999, are attached for your convenience.

an EIS. The effects from the Service's approval and execution of the HMP will be substantial.

The HMP will be of very long duration. The Incidental Take Permit will be in effect for 50 years. EA at 10. This is a startling length of time, particularly since new information and knowledge about species is gathered at a rapid rate – for example, in just the last five years, a great deal more has been learned about the listed California gnatcatcher, as well as several other species.

The HMP will have very broad effects on species. There are currently approximately 8,758 acres of natural habitats and 12,749 acres of developed land in the City. EA at 33. The HMP will disturb or eliminate approximately 3,051 acres of various habitat types. EA at 12, Table 2. For example, 36 percent of the California gnatcatcher's habitat and 41 percent of gnatcatcher populations will be adversely affected or destroyed. EA at 46. Additionally, approximately 80 percent of the Burrowing Owl's habitat will be adversely affected or destroyed. *Id.* Furthermore, the HMP's protection of 308 acres outside of the City's boundaries provides absolutely no benefit for the species within the City that will be adversely affected by the development it allows. EA at 15.

The HMP will have several additional effects, most of which the EA ignores. For example, the HMP will adversely affect air quality, traffic, water quality, and several other environmental considerations. The EA focuses its discussion on the preserved areas within the City, yet it is the non-protected areas and the rush to develop those areas that will lead to significant impacts. For example, the fact that parties will no longer need to go to the wildlife agencies for consultation, studies and permits prior to proceeding with development activities will lead to faster-paced development, increased traffic, air and water quality problems, land use difficulties and a host of other problems. These and other issues should be addressed in an EIS.

B. The City has Unique Characteristics

An EIS should be prepared where there are unique characteristics of the geographic area, "such as proximity to historic and cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas." 40 C.F.R. § 1508.27(b)(3). The City, which prides itself on its unique geographic setting, contains most of these attributes. For example, the City has a long history of agriculture, which will be adversely affected by the HMP. The EA attempts to skirt this issue by claiming that farm lands would not be included within the HMP until such time as they were proposed for development, EA at 65, yet that fails to account for the effect the HMP has upon the agricultural opportunities of that locale. Additionally, the City has several wetland areas, which will be affected by the HMP's designation of preserve areas, and the consequent release of non-protected areas. Furthermore, the City has several ecologically critical areas, as identified during the MHCP planning efforts. See Biological Goals, Standards, and Guidelines for Multiple Habitat Preserve Design (February 1998) at 5-3 (noting "major stands" and "critical locations" of coastal sage

scrub and coastal sage scrub/chaparral "south of Alga Road [and] adjacent to Rancho Santa Fe Road") and 8-40 (noting "major populations" and "critical locations" of California gnatcatcher in "La Costa (southeast Carlsbad)"). These and other issues should be addressed in an EIS.

C. The HMP is Highly Controversial

An EIS should be prepared where a project's effects "are likely to be highly controversial." 40 C.F.R. § 1508.27(b)(4). During the City's consideration of the HMP, it became clear that several parties had various concerns with its problems and failures. By this letter and additional comments on this proposal, it is clear that the HMP was and remains highly controversial. These and other issues should be addressed in an EIS.

D. Impacts are Uncertain and the HMP Involves Unique and Unknown Risks

An EIS should be prepared where impacts "are highly uncertain or involve unique or unknown risks." 40 C.F.R. § 1508.27(b)(5). By its very nature, an HCP involves uncertain impacts and unknown risks. As recently as 1993, there were only 14 HCPs covering a few thousand acres in the whole country; today there are over 240 HCPs covering more than 11 million acres and another 200 or so are under development. J. Hughes, Science Missing in Habitat Plans, Researchers Say, THE REGISTER GUARD (Eugene, Or.), Feb. 15, 1999. Independent scientists and other experts have expressed major concerns about scientific shortcuts taken in many of the recent HCPs and about whether HCPs are undermining the ESA's goal of species recovery. Id.

It is questionable whether the HMP, allowing the "take" of several species and the destruction and adverse modification of numerous acres of natural habitat over the course of the next 50 years, will meet the ESA's requirement -- to not "appreciably reduce the likelihood of survival and recovery of the species in the wild." 16 U.S.C. § 1539(a)(2)(B)(iv). Among other things, scientists and other experts are in the process of developing information on many of these species. Even when a species is studied as relatively intensively as has been the case for the California gnatcatcher, new information continues to emerge. For example, the Service's recent proposal to designate critical habitat for the gnatcatcher revealed studies within the last couple years had provided additional information on their activities. See 65 Fed.Reg. 5947. Certainly, information will continue to be developed, yet the protections in the HMP will remain largely stagnant for the next 50 years. The impacts of this approach are uncertain and the risks unknown.

Additional uncertainty stems from the funding mechanisms associated with the HMP. The Service claims that a habitat impact fee will be used for administration. EA at 22. Yet in public meetings concerning the HMP, the City's director of planning, Michael Holzmilller, has stated that the issue of the impact fee remains in question and it is unclear whether such a fee will ever be imposed. These and other issues should be addressed in an EIS.

E. The HMP May Establish a Precedent for Future Actions and Represents a Decision in Principle About a Future Consideration

An EIS should be prepared when the "action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration." 40 C.F.R. § 1508.27(b)(6). The HMP involves both aspects. There are several jurisdictions in northern San Diego County considering some sort of HCP. Most of them are a part of the MHCP planning efforts. The City is the first area jurisdiction to adopt an HCP.³ As such, it will establish a precedent for the region and is likely to be relied upon heavily by other North County jurisdictions in their considerations of ESA-related requirements.

Additionally, the City views the HMP as the full extent of their commitment under the MHCP. The HMP specifically states that its prospective land purchase constitutes "the full participation of the City in any MHCP land acquisitions in the core area." HMP at D-59. In other words, the City views the HMP as its decision in principle about how to proceed with discussions and participation in the MHCP. These and other issues should be addressed in an EIS.

F. There Are Several Related Actions with Cumulatively Significant Impacts

An EIS is required where "the action is related to other actions with individually insignificant but cumulatively significant impacts." 40 C.F.R. § 1508.27(b)(7). There are numerous related actions with cumulatively significant impacts. These include many of the issues discussed elsewhere in this letter. Additionally, the Service's approval of the HMP will be one of many actions that have led to the rapid, extensive development of the North County area. A simple drive out of the Service's Carlsbad offices, in both directions on Palomar Airport Road, reveals massive development projects either in the works or recently completed. With these have come grading, building of homes, walls, roads, malls and other facilities, and the general destruction of once beneficial habitat. These projects are the results of approvals by numerous agencies and jurisdictions, including North County cities, the County of San Diego, the Regional Water Quality Control Board, the U.S. Army Corps of Engineers, and the Service. These and other actions will lead to cumulatively significant impacts, including impacts to biological resources, traffic and circulation, air quality, land use, aesthetics, noise, water quality, hydrology, and agriculture. These and other issues should be addressed in an EIS.

G. The HMP Threatens Violations of Other Laws

An EIS is required where "the action threatens a violation of Federal, State or local law or requirements imposed for the protection of the environment." 40 C.F.R.

³ The Service has approved the adoption of an HCP for the City of San Diego. In that instance, an EIR/EIS was prepared.

§ 1508.27(b)(10). As discussed previously, HCPs are relatively recent phenomena. Their legality is questionable. This is particularly so where, as here, the plan is intended to apply for many years and cover many species. The HMP will not meet the ESA's requirement -- to not "appreciably reduce the likelihood of survival and recovery of the species in the wild." 16 U.S.C. § 1539(a)(2)(B)(iv). Nor does the Service's consideration and approval of the HMP meet with the ESA's requirements to conserve listed species and to ensure that any action "is not likely to jeopardize the continued existence of" listed species. 16 U.S.C. § 1536(a)(1) & (2). The HMP's circular reasoning (i.e., that preservation of some habitats is mitigation for destruction of others) is not likely to withstand the ESA's strict species protection requirements.

Additionally, the "no surprises" provisions are not consistent with the ESA. Among other things, these provisions hold that the City will not have to provide additional land, water or financial compensation even if there is a substantial and adverse change to the status of a species. HMP at G-2. There is simply no way to reconcile these provisions with the ESA's requirements to ensure the survivability and recovery of the species. An HCP, meant to be effective for 50 years, *per se* cannot address adequately the preservation of species, particularly when not all is known about what can or should be done to effect such preservation.

The Service is required to "articulate[] a rational connection between the facts found and the choice made." Friends of Endangered Species v. Jantzen, 760 F.2d 976, 982 (9th Cir. 1985). The Service cannot do so here. The HMP will result in the destruction of numerous acres of quality habitat. It will result in impacts and, in some cases, death of certain species. It is not supportable under the ESA. See Resources Limited v. Robertson, 35 F.3d 1300 (9th Cir. 1994) (overturning forest plan due to agency's failure to explain how authorized habitat loss would avoid jeopardizing grizzly bear); Conner v. Burford, 848 F.2d 1441 (9th Cir. 1988) (overturning Service's biological opinion allowing oil and gas development in grizzly bear habitat), cert. denied sub nom., 489 U.S. 1012 (1989); Sierra Club v. Marsh, 816 F.2d 1379 (9th Cir. 1987) (U.S. Army Corps violated jeopardy protection by failing to insure that refuge needed to mitigate habitat loss would be acquired).

Additionally, the HMP threatens violation of Section 404 of the federal Clean Water Act. 33 U.S.C. § 1344. The Service has indicated that the measures in the HMP will be the mitigation measures pursuant to Section 404. EA at 1. Such a prospective approval, without consideration of additional issues at the time a particular Section 404 permit application is pending, is on its face invalid as it fails to articulate a rational connection between the facts associated with a particular permit and the choices made. Baltimore Gas and Elec. Co. v. Natural Resources Defense Council, 462 U.S. 87, 105 (1983).

The HMP also threatens violation of the Bald and Golden Eagle Protection Act. 16 U.S.C. § 668. The Act prohibits the harm to Bald and Golden Eagles, yet the City is proposing to impact numerous acres over the course of many years. There is no

indication that consideration has been given to the effects such actions will have upon these eagles. These and other issues should be addressed in an EIS.

III. The EA Fails to Consider an Adequate Range of Alternatives

NEPA requires the Service to "study, develop, and describe appropriate alternatives to recommend courses of action." 42 U.S.C. § 4332(2)(E). The Service is required to consider a reasonable range of alternatives, which must include a consideration of full protection of the resources in question. Oregon Natural Desert Ass'n v. Singleton, No. C98-97-RE, 1998 WL 1048180 (D. Or. Nov. 3, 1998). The EA's consideration of alternatives is inadequate.

The Service has rejected considering alternative strategies to protect species. EA at 28. Its rationale is unconvincing. The Service acknowledges that conservation of lands that have agency-approved plans but have not been developed (particularly the Villages of La Costa property in southeast Carlsbad) "could be attained through some means acceptable to the landowners." Id. Yet the Service refuses to consider this alternative further, claiming that "the environmental effects of the approved plans and permits had already been evaluated." Id. This latter statement is actually highly misleading. The effects previously considered involved approval of an HCP for the Villages of La Costa project.⁴ It is only now, in the context of the HMP, that the Service has the opportunity to evaluate how a different strategy could protect more natural habitats for the entire City. Additionally, a great deal more is known now about the needs of several impacted species than was known at the time of the approval of the Villages of La Costa HCP, and there is far more developed and developing land now (and, therefore, far less natural habitat) than there was when that HCP was approved. It is also disingenuous to claim on the one hand that there is no need to consider more protective alternatives while on the other hand claiming that additional mitigation for the impacts associated with the HMP is precluded because of "already approved plans." EA at 51.

Additionally, the Service's evaluation of alternatives is essentially worthless. The EA repeatedly claims that the Expanded System alternative would lead to the same impacts as under the HMP "except more of these habitats would be managed and preserved." EA at 62; see also id. at 59 & 60. The Service should acknowledge that an Expanded System alternative would be far better than the HMP, and, therefore, the impacts would be significantly different. See EA at 51 (acknowledging that more birds would be preserved by the Expanded System alternative). These and other issues should be addressed in an EIS.

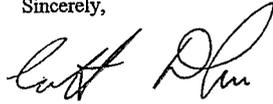
⁴ The HCP for the Villages of La Costa was accompanied by an EA. No EIS was prepared and no "hard look" at alternatives was developed at that time.

IV. Conclusion

Accordingly, Canyons Network states its opposition to the Service's proposal to approve the HMP. The Service should not proceed with such approval and should immediately begin preparation of an EIS, so that the full extent of issues associated with the HMP can be analyzed and considered.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Everett DeLano". The signature is written in a cursive style with a large, looping initial "E".

Everett DeLano, Esq.

Attachment: (1) Letter to Don Rideout, City of Carlsbad, from Everett DeLano (August 2, 1999); (2) Letter to Michael Holzmilller, City of Carlsbad, from Everett DeLano (September 21, 1999)

LAW OFFICES OF EVERETT L. DELANO III

197 Woodland Pkwy, Suite 104-272
San Marcos, California 92069
(760) 510-1582
(760) 510-1585 (fax)

SGD-108

September 21, 1999

VIA HAND DELIVERY

Michael Holzmilller
Planning Director
City of Carlsbad Planning Department
2075 Las Palmas Drive
Carlsbad, CA 92009

Re: Responses to Comments re: City of Carlsbad Habitat Management Plan,
Mitigated Negative Declaration: Case No. EIA 99-04

Dear Mr. Holzmilller:

At public meetings and in writing, several residents and concerned parties have provided the City critical comments upon its intended approach to land use planning and biological resource protection. Unfortunately, the City's responses have been principally dismissive, often rejecting the comments and sometimes accusing the commentators of lacking "expertise." Not only are the City's responses poor models of public participation and contrary to law, they are often factually inaccurate and misleading. A more appropriate response would have recognized the value of the comments expressed and should have responded with substantive changes to the actions proposed.

The City's September 1, 1999 document ("City's Position Paper") addresses public comments concerning the proposed Habitat Management Plan ("HMP") and Mitigated Negative Declaration ("MND"). It principally concerns the City's rationale for refusing to prepare an Environmental Impact Report ("EIR") to address the numerous significant impacts of the HMP. The 12-page document is largely unresponsive to and generally misrepresents the contents of the public comments in question. Although the City tries desperately to support its refusal to prepare an EIR with any argument that might "stick to the wall," its positions are without merit and even a cursory review reveals their many flaws. Put simply, the City's refusal to comply with the California Environmental Quality Act ("CEQA") seems routed more in a desire for expediency and an outright distaste for public input and concern.

This letter is intended to provide the City with a brief reply to some of the important issues raised in the City's Position Paper. It is not intended to be a comprehensive reply and it does not supplant other public comments concerning the HMP and the MND. However, because the issues discussed herein address key matters of public policy and compliance with CEQA, I respectfully request that you provide copies of this letter to all City Council members prior to tonight's hearing.

SCD-108. Comment is prior letter to response to comments. Comment requests the preparation of an EIR on the City of Carlsbad HMP. The EIS/EIR addresses the MHCP and Subarea Plans (including City of Carlsbad). SANDAG is the CEQA lead for the project. See response SCD-105.*

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

Introduction

As discussed in August 2, 1999 comments submitted on behalf of Canyons Network and the San Diego BayKeeper ("Canyons Network Comments"), CEQA requires the City to prepare an EIR. The City is not left with discretion in the matter. Where, as here, substantial evidence in the record supports a "fair argument" that significant impacts may occur, CEQA requires the preparation of an EIR. Pub. Res. Code § 21080(d). Even if other substantial evidence supports the opposite conclusion, the City must prepare an EIR. No Oil, Inc. v. City of Los Angeles, 13 Cal.3d 68, 75 (1975).

Past City studies and plans do not eviscerate the requirement to prepare an EIR concerning the HMP. See Canyons Network Comments at 11 – 13. Although the HMP may be a "blueprint for conservation," its unmitigated environmental effects require the preparation of an EIR. The public comments presented to the City identify and describe more than enough substantial evidence to support the preparation of an EIR.

Impacts to Habitat outside Preserve System

The City's Position Paper is non-responsive to public comments and misleading. Although they were not required to do so, the City decries commentators for failing to cite "any experts or any authoritative sources" and for failing to provide "biological data or reports." City's Position Paper at 3 – 4. Nevertheless, public comments cite to numerous "authoritative sources," including U.S. Fish and Wildlife Service and MHCP Panel documents. See e.g., Canyons Network Comments at 4 – 7. Indeed, in pointing out that impacts will occur outside the preserve system, the comments quote directly from the City itself. See e.g., *id.* at 5 n.4. Numerous comments also point out instances in which the City failed to account for certain species, thereby entirely failing to address the impacts outside the preserve system to those species. See e.g., *id.* at 5.

Of course, it appears necessary to remind the City that substantial evidence includes "facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." Pub. Res. Code § 21080(e). CEQA does not require the public to submit "quantitative environmental studies definitely establishing the existence of the claimed environmental impacts." Stanislaus Audubon Society v. County of Stanislaus, 33 Cal.App.4th 144, 152 (1995). Accordingly, the City's repeated critique of public comments is groundless.

Nor can the City contend with support that impacts outside the preserve system will not occur. In fact, the City takes an alternative approach by arguing that additional review will be available at a future time to address "effects on specific habitats and species." City's Position Paper at 4. But future review will not suffice to address the impacts of the current HMP's "set aside" of certain protected locations and the effects that will have upon its consequent "release" of other lands. Nor do the City's mitigation

measures reduce its impacts below a level of significance. See Canyons Network Comments at 10 - 11.

Impacts to Non-Covered Species

Again, the City's Position Paper is non-responsive to public comments and its rationale fails for the same reasons discussed above. Furthermore, the City's assertion that "species were removed from the list in order to provide them greater protection," City's Position Paper at 4, should call the City's entire analysis into question. If a species is provided "greater protection" by being off the HMP Covered Species List, as the City asserts, then the City is to be faulted further for not analyzing the impacts of the "lessor protection" provided to species found on the list.

Width of Corridor Linkages

The City's rationale for dismissing the impacts of the HMP's narrow migration corridors is also unsupported by the record. The City interprets the NCCP Scientific Review Panel's recommendation that a "target width for wildlife corridors [should] be approximately 1200 feet," see Canyons Network Comments at 5 - 7, as "an 'ideal' guideline or goal when planning for corridors in unconstrained areas where existing conditions and development do not preclude it." City's Position Paper at 5. Not only is the City's interpretation not supported by the substantial evidence in the record, the issue of how to interpret the panel's recommendations is beside the point.¹

The appropriate question is whether the narrow migration corridors are likely to have a significant impact. A comparison of the HMP's corridor widths with that recommended by the panel indicates they will have a significant impact. It may be the case that the U.S. Fish and Wildlife Service has "approved" development within the City that provides for narrower corridors, but this does not reduce the likelihood that the narrow corridors contemplated by the HMP will have a significant effect upon wildlife movement.

Expedited Processing of Development

Perhaps nowhere is the City more disingenuous than in its response to public comments on the issue of increased impacts as a result of development freed to move forward as a result of adoption and implementation of the HMP. No "expert opinion" is necessary. The City itself has acknowledged the HMP's "advantages" to include "economic growth and development in the City." See Canyons Network Comments at 3.

¹ It is noteworthy that during a September 15, 1999 public meeting concerning the HMP, you and City planner Don Rideout acknowledged that at least one area of the City was not constrained by existing development and that the choice of a 500-foot wide corridor in that location was a compromise designed to address concerns about the "taking" of property without just compensation. Again, City staff has made a decision about migration corridors without accounting for the significant biological effects that decision will have.

The City's issuance of "take" authorization will relieve developers from having to work with state and federal wildlife agencies on the development of an adequate plan for species protection.

The City's other policies and plans have little relevance to a consideration of the effects of the HMP. Without the HMP, development must comply with the requirements of the Endangered Species Act. With the HMP, development must comply with the HMP's requirements and, as the City itself acknowledges, it results in "centralize[d] processing with the local government agency." City's Position Paper at 7. As such, the City must analyze the HMP's significant impacts. See Canyons Network Comments at 8 - 9.

Public Notice

Despite its tortured analysis of public noticing requirements, the City's rationale ultimately fails because it directly conflicts with CEQA. See Canyons Network Comments at 13 - 14 and Enclosures. The City's notice did not contain "the date, time and place" of several public meetings and/or hearings, including the July 21, 1999 City Planning Commission meeting, the September 15, 1999 meeting with City staff, and the September 21, 1999 City Council hearing.

Furthermore, it is extremely disconcerting that the City purports to have received no requests for notice in writing despite the following: my June 16, 1999 letter to you (requesting "all public records relating to a proposed Habitat Management Plan ("HMP") for the City of Carlsbad and a draft Mitigated Negative Declaration concerning the HMP"); my July 22, 1999 letter to you (requesting "copies of any notice relating to the HMP, including notice of any public meetings or hearings"); and my August 2, 1999 to you (requesting "any notice(s) you believe serve to satisfy CEQA's public notice requirements").

Public Controversy

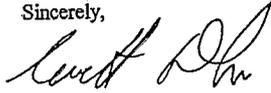
There should be no question but that the City's proposed actions have engendered substantial public controversy. The controversy is not the narrow one the City would have it portrayed - "objections to the use of a MND," City's Position Paper at 11. Rather, the controversy is over whether the project at issue should go ahead as planned. Numerous letters and comments during public meetings and hearings reflect the level of public controversy on this issue.

Michael Holzmilller
September 21, 1999
Page 5 of 5

Conclusion

Despite the City's best effort to portray the situation otherwise, the City remains under the requirement to prepare an EIR for its consideration of the HMP.

Sincerely,

A handwritten signature in black ink, appearing to read "Everett DeLano". The signature is fluid and cursive, with a large initial "E" and "D".

Everett DeLano, Esq.

cc: Ron Ball, Carlsbad City Attorney



City of Carlsbad

Planning Department

September 1, 1999

**RE: MITIGATED NEGATIVE DECLARATION FOR CARLSBAD HABITAT
MANAGEMENT PLAN**

The Planning Department of the City of Carlsbad has completed its review of the Draft Mitigated Negative Declaration (MND) for the Habitat Management Plan (HMP). Thirty-seven comment letters were received addressing various aspects of the MND and HMP. Three of these letters recommended that the City prepare an Environmental Impact Report. The purpose of this letter is to transmit to you the City's responses to those three comment letters. The City will respond separately to those comments on the HMP that did not address the MND.

Your participation in this process is appreciated. The next step will be a public hearing before the City Council to consider both the HMP and the MND. The hearing is scheduled as follows:

Date: Tuesday, September 21, 1999
Time: 6:00 p.m.
Location: City Council Chambers
1200 Carlsbad Village Drive

A copy of the Notice of Public Hearing is attached. If you have any questions regarding this matter, please contact Don Rideout at (760) 438-1161; extension 4212.

SCD-109. Comment references additional attachments. This is a copy of a public notice for a previous action by the City of Carlsbad. See response SCD-105.*

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN to you, because your interest may be affected, that the City Council of the City of Carlsbad will hold a public hearing at the Council Chambers, 1200 Carlsbad Village Drive, Carlsbad, California, at 6:00 p.m. on Tuesday, September 21, 1999, to consider the HABITAT MANAGEMENT PLAN and a MITIGATED NEGATIVE DECLARATION.

Those persons wishing to speak on this proposal are cordially invited to attend the public hearing. Copies of the staff report will be available on and after September 17, 1999. If you have any questions, please call Don Rideout in the Planning Department at (760) 438-1161, extension 4212.

The time within which you may judicially challenge the Habitat Management Plan and/or Mitigated Negative Declaration, if approved, is established by state law and/or city ordinance, and is very short. If you challenge the Habitat Management Plan and/or Mitigated Negative Declaration in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice or in written correspondence delivered to the City of Carlsbad at or prior to the public hearing.

CASE FILE: EIA 99-04

CASE NAME: CARLSBAD HABITAT MANAGEMENT PLAN

PUBLISH: SEPTEMBER 10, 1999

CITY OF CARLSBAD
CITY COUNCIL

RESPONSES TO COMMENTS REGARDING MITIGATED NEGATIVE DECLARATION FOR HABITAT MANAGEMENT PLAN

1. Introduction

The following constitutes the City of Carlsbad's responses to comments received on the draft Mitigated Negative Declaration (MND) for the Habitat Management Plan (HMP). The MND was prepared by the City and released to the public on June 18, 1999. A 45 day period was allowed for the general public and responsible/trustee agencies to provide comments on the HMP and the MND. A public meeting to describe the MND and accept comments was held on July 1, 1999.

Thirty-seven comment letters were received. Three of these addressed the MND. Although most of these comments only contained opinions about the HMP, the level of environmental documentation was questioned. The three letters suggested that the City should prepare an Environmental Impact Report (EIR) rather than a MND. The Planning Department of the City of Carlsbad has carefully reviewed the three letters and examined the various arguments for preparation of an EIR and has concluded that a MND is the most appropriate level of environmental document for adoption of the HMP. Section 15074(b) of the California Environmental Quality Act (CEQA) states: *"The decisionmaking body shall adopt the proposed negative declaration or mitigated negative declaration only if it finds on the basis of the whole record before it (including the initial study and any comment received) that there is no substantial evidence the project will have a significant effect on the environment and that the negative declaration or mitigated negative declaration reflects the lead agency's independent judgment and analysis."* The Planning Department is prepared to recommend to the City Council that these findings can be made.

Although the California Environmental Quality Act (CEQA) does not require formal responses to comments for a MND, the City is providing these responses in a voluntary effort to maximize opportunities for public input. The City has elected to provide "theme" responses that group together and summarize several comments directed toward the same issue. In doing so, the City's intent is to make the response more readable and to eliminate duplicate responses.

As background to the responses, the HMP should be viewed in the context of the full scope of development regulations utilized by the City of Carlsbad, including the General Plan, Zoning Code, and various implementing policies and procedures. The HMP is an implementing measure for the General Plan, specifically implementing the biological mitigation recommended in the Master Environmental Impact Report that was done for the General Plan Update. While the General Plan outlines the locations and types of development in the City of Carlsbad, the HMP organizes and directs the mitigation for impacts to wildlife and habitat. Stated another way, the General Plan is a blueprint for development, while the HMP is a blueprint for conservation.

2. Adequacy of the Project Description

This issue was raised by 1 commentor. The comment expresses the opinion that the Project Description of the HMP provided in the MND is inadequate, confusing, or

misleading or that it does not make clear which agencies would be using the document and for what purposes. The commentors do not cite the opinions of any experts or any authoritative sources regarding the adequacy of the Project Description.

Section 15124 of the CEQA Guidelines specifies the required contents of a Project Description. Although the section refers to EIRs, the guidance is equally applicable to a Mitigated Negative Declaration. The Project Description must provide the precise location and boundaries of the project; a statement of the objectives of the project, including the underlying purpose of the project; a general description of the project's technical, economic, and environmental characteristics; the intended uses of the environmental document; a list of the agencies that are expected to use the document in their decision-making, and a list of the permits and other approvals required to implement the project.

The project Description included in the Mitigated Negative Declaration for the HMP contains all of the items required by CEQA Section 15124. The location and boundaries of the project are clearly the entire City of Carlsbad. The Background discussion (page 5) states "The Habitat Management Plan for Natural Communities in the City of Carlsbad (Carlsbad HMP, 'the Plan') proposes a comprehensive *citywide program*..." Figure 1 (page 9) of the MND is a map showing that the project is the entire City of Carlsbad. Page 6 of the MND is a statement of the objectives of the project and its underlying purpose. Pages 7 through 48 are a complete discussion of the HMP's technical, economic, and environmental characteristics. In addition, the City's participation in the conveyance of land in the MHCP core area is also addressed in the HMP and the MND.

Pages 3-5 of the MND describe the intended uses of the document, the agencies that are expected to use the document in their decision-making, and a list of the permits and other approvals required to implement the plan. Further, the uses, agencies, and required permits and approvals identified in the MND are the same as those stated in Sections A and E of the HMP. Because the MND is intended to be used by the Department of Fish and Game for issuance of 2081 Permits, the following table is provided to further describe the relationship between the HMP, the MND, and the 2081 requirements:

2081 Permit Requirement (as stated in Section 783.2 of CESA Implementing Regulations)	Habitat Management Plan (April 1999)	Mitigated Negative Declaration (April 1999)
Common and scientific names of the species and species' status under CESA, including whether the species is subject to Section 2112 and 2114 of Fish and Game Code.	Table 2 and Appendix C	Table 5
Complete description of the project or activity for which the permit is sought.	Sections A.1, A.2, and G.1; species-by-species consideration in Appendix C.	Section A.1-A.13
Location of project or activity.	Figure 1 and Section C.1	Figures 1 and 5
Analysis of whether and to what extent the project or activity could result in the taking of covered species.	Species-by-species consideration in Appendix C;	Section E.VII and E.XVI; Section F.VII.
Analysis of the impacts of the proposed taking on the species.	Species-by-species consideration in Appendix C	Section E.VII and E.XVI; Section F.VII.
Analysis of whether issuance of the permit would jeopardize the continued existence of a species.	Species-by-species consideration in Appendix C	Section E.VII and E.XVI; Section F.VII.
Proposed measures to minimize and fully mitigate the impacts of the proposed taking.	Sections D, E, and F; Appendix B, and species-by-species consideration in Appendix C	Table 6, Section A.11, and Section G.1
Proposed plan to monitor compliance with the compliance with and effectiveness of the measures.	Section E.5 and Appendix B	Encompassed by City actions in Section A.2; HMP measures incorporated by reference.
Description of funding source and level of funding available for implementation of the measures.	Section E.6	Section A.12

Every effort was made in the preparation of the MND to make it clear, concise, and understandable to readers. In conclusion, the Project Description of the HMP as set out in the MND meets all of the requirements of CEQA.

3. Impacts to habitat outside preserve system

This issue was raised by 3 commentors. The comments express the opinion that the MND does not adequately describe or analyze the potential impacts of the HMP to habitats that will lie outside the designated preserve system. The commentors do not

cite the opinions of any experts or any authoritative sources regarding the issue of impacts to habitat outside the HMP preserve system. No biological data or reports are provided in support of the comment; rather the commentors offer non-expert opinions that impacts may occur.

Potential effects on habitats and species outside of the proposed preserve system are addressed in the MND primarily as part of the project description. The project overall is designed to ensure the ongoing survivability of listed and non-listed species through protected preserves. The project description takes account of what will be protected inside the preserves and what will be protected outside the preserve areas through future CEQA and ESA applications. This approach is appropriate in the MND because the HMP document provides substantial detail regarding the occurrence of species and habitats in the City, the preservation of such resources in areas that will maintain their biological value over the long-term, and conversely, the loss of habitat and species over time as a result of otherwise lawful development. Additional detail and analysis of effects on specific habitats and species will be provided under the HMP through the CEQA review process that will continue to apply to individual public and private projects. As part of CEQA review and HMP implementation, biological surveys for species will be required depending on the vegetation present on a site and the potential for species to be present, and impact avoidance and mitigation measures for covered species will be required.

Pages 74 through 90 discuss the potential impacts outside of the preserve system and the mitigation that will offset those impacts. Table 16 on page 83 lists habitat types and species that are likely to be significantly impacted by incidental take outside of the preserve system unless mitigation is provided. Pages 85-86 contain the mitigation measures that have been incorporated into the HMP to reduce and offset impacts to species and habitats outside of the preserve system. These mitigation measures will be applied to all future development projects in the City of Carlsbad in order to reduce impacts to below significance.

4. Impacts to Non-Covered Species

This issue was raised by 3 commentors. The comments express the opinion that the MND does not adequately address the impacts of the HMP to non-covered species, i.e. species for which the City will not receive take authorization.

The HMP Covered Species List (Table 5, pages 29-31 of Mitigated Negative Declaration) originally included additional species for which the Plan was proposing coverage (take authorization). At the request of the Wildlife Agencies, a number of species were deleted from the list. In other words, the City is not requesting and will not be given authorization to take these species under the HMP. These species may be included back on the list at a later time as a formal amendment to the Plan if additional information becomes available or if coverage is permitted upon adoption of the MHCP. These species were removed from the list in order to provide them greater protection. Even after approval of the HMP, all future proposals for development will be required to do a detailed biological analysis (see response to Comment #2). If that analysis identifies any of the species that were deleted from the covered list, the City would not have the authority to issue a take permit for the development. The applicant for the

development, instead would have to meet with the Wildlife Agencies who would determine how to address or mitigate any impact on the species. This may involve obtaining separate permits from the wildlife agencies for species that are outside of the authority of the HMP.

5. Width of Corridor Linkages

This issue was raised by 3 commentors. The comments express the opinion that some wildlife corridors in the HMP will be narrower than the minimum preferred width stated by the wildlife agencies. One commentor cites information from a scientific review panel regarding a "target" width of 1200 feet for adequate corridors. This "target" width is not a standard but an "ideal" guideline or goal when planning for corridors in unconstrained areas where existing conditions and development do not preclude it. There are numerous locations in the City where existing development precludes wide corridors and it is better to have a narrow corridor than no corridor at all. The wildlife agencies have not indicated that the corridors proposed in these situations is inadequate.

Pages 87 through 90 of the MND discuss the issue of corridor width. This comment applies primarily to Existing and Proposed Hardline Areas. Standards Areas, by definition, have not yet determined the precise location or width of corridors. Where the narrowest linkages occur in Existing Hardline Areas, their width is already constrained by existing development. The HMP cannot improve upon the width of these corridors, and it would not be feasible or reasonable to expect that any plan could do so. The HMP can only acknowledge these constrained corridors as existing conditions. In Proposed Hardline Areas, corridor width has been negotiated and conceptually agreed upon with the wildlife agencies, keeping in mind the need to balance the needs of species with property rights and other considerations. Although the wildlife agencies have not yet had the opportunity to formally approve the plan, their conceptual concurrence with the City regarding Proposed Hardline Areas indicates that corridor widths are adequate overall and satisfactory to the wildlife agencies for wildlife dispersal and migration and that certainly, preservation of the wildlife corridors will be much more beneficial to habitat and species for the future than would be the "no project" alternative.

One example of the corridor issue cited by a commentor refers to the Rancho Carrillo project. This project received a Section 7 consultation and approval, and the commentor quotes several paragraphs from the Biological Opinion for that consultation. However, the commentor does not acknowledge two important facts. First, the corridor in question on Rancho Carrillo was enlarged in response to the Biological Opinion which addressed site specific conditions to provide a wider coastal sage scrub corridor on the eastern boundary of the project. This corridor combines with a similar one on the adjacent Meadowlark Estate project in San Marcos to provide an average width of approximately 500 ft. Secondly, in approving the corridor on Rancho Carrillo, the wildlife agencies were required to make Findings pursuant to the Endangered Species Act and the Special Rule for the California Gnatcatcher that approval of the Section 7 consultation and approval would not jeopardize the continued survival of the species in the wild and would not preclude preparation of a regional plan. In other words, the wildlife agencies found that the corridor was adequate to provide for the survival of the gnatcatcher and to allow completion of the HMP and MHCP. In conclusion, the HMP

corridors, given site specific conditions, are as good as, or better than, the Rancho Carrillo corridor which the wildlife agencies have already approved.

6. Expedited Processing of Development

This issue was raised by 1 commentator. The comment expresses the opinion that the authorization for incidental take of certain species under the HMP will result in "expedited" processing of development. The comment implies, but does not actually state, that such expedited processing would result in greater impacts to the environment than were analyzed by the MND.

The term "expedited" is not defined by the commentator but is understood in this context to mean streamlining or providing faster processing of development applications than would be the case without the HMP. In other words, expedited processing deals with the length of time required to process permits, rather than the impacts that may result from the development. It is not clear from the comment how faster processing of development might result in an impact to the environment. No expert opinions are cited to indicate that expedited processing results in greater or different impacts, and no data is provided. Therefore, the comment is not relevant to the question of whether an EIR should be prepared.

The timing of development in the City of Carlsbad is regulated largely by the City's Growth Management Program. Under this program, in addition to compliance with environmental and other requirements, development is contingent on the adequacy of public facilities. Due to the need to plan, finance, and construct major infrastructure, processing of development applications typically precedes construction by several years. The HMP will not alter the Growth Management Program or the timing of development. With or without the HMP, development will proceed at a pace allowed and dictated by the General Plan and the Growth Management Plan. Proper environmental review of all such development, including surface water management and increases in runoff, will be required and no increases in environmental impacts will occur as a result of the project over what is anticipated without the HMP project. The General Plan and Growth Management Plan govern the pace of growth not the presence or absence of the HMP.

One commentator expresses the opinion that "expedited" development will result in increased water pollution. This argument appears to be based on the notion that more rapid development will create more impervious surface, leading to increased runoff and thus increased pollution. However, as noted above, the HMP does not affect the timing of development. In addition, the rate or timing of development has no relationship to the magnitude of impacts. In the case of water quality, impacts are determined by site-specific design features, which are addressed by the City's Master Drainage and Stormwater Management Plan. The HMP has no impact on stormwater quality.

As stated in the Project Description, the HMP is intended to provide for the continued survival of sensitive species while allowing development as envisioned by the City's General Plan. Upon approval of the HMP by the wildlife agencies, the City would receive permits to take listed species in accordance with the terms of the plan. Individual project applicants would then apply directly to the City of Carlsbad to be

covered by the Incidental Take Permits, instead of making separate application to the wildlife agencies as they are presently required to do. The authorization for take under the HMP would be approved by the City in conjunction with other discretionary permits that may be needed for the project, and only after proper environmental review pursuant to CEQA. Thus, the HMP could be said to centralize processing with the local government agency, as intended by the Natural Community Conservation Planning Act. Centralization of processing does not necessarily result in expedited or streamlined processing as suggested by the commentor, and in any case there are no data or facts presented to indicate that centralization of processing results in greater impacts.

7. Impacts from Future Development

This issue was raised by 3 commentors. The comments express the opinion that the MND does not adequately describe or analyze the impacts of future development. The commentors do not cite the opinions of any experts or any authoritative sources regarding the issue. No biological data or reports are provided in support of the comments.

As stated in response #6, the HMP does not approve any development project. The City's General Plan and Zoning, as well as state and federal law, are the mechanisms for authorizing development. The HMP will ultimately modify the current General Plan by replacing development designations (residential, commercial, or industrial) with an Open Space designation for the protection of species and habitats. On the portions of properties that retain a development designation, the General Plan and Zoning will remain the controlling authorities. The HMP does not allow any development that was not already envisioned by the General Plan and Zoning and for which the cumulative impacts were addressed in the MEIR. Thus, the net effect of the HMP is to allow implementation of the existing General Plan and Zoning. Table 9 on page 63 and Table 10 on page 66 indicate the acreage of land in various Zoning designations that will become open space under the HMP.

8. Use of MEIR

This issue is raised by 1 commentor. The comment expresses the opinion that the City may not utilize the MEIR previously prepared and certified for the update of the General Plan.

The MND utilizes the MEIR in two ways. First, it is a valuable background resource document regarding the probable cumulative impacts to wildlife and habitat of development of the City consistent with the General Plan. In so doing, it was not intended to take the place of individual project environmental review, nor was it intended to serve as the sole environmental or resource document for the HMP. Rather, its intent was to outline in advance the most likely conservation issues that would need to be addressed by subsequent projects. By anticipating development of the HMP, the MEIR indicated that a comprehensive, Citywide plan would be preferred to the earlier project-by-project approach. In fact, the MEIR included a potentially reduced level of development under the HMP as an Alternative Project and described it as the Environmentally Superior Alternative.

The second basis for referring to the MEIR is that it fully analyzed the cumulative effects of future development on other environmental issues (as previously addressed in response #6), including water, air quality, transportation, energy, noise, public services, utilities, aesthetics, cultural resources, and recreation. The commentator faults the MND for not analyzing the impacts of the HMP on these non-biological issues. However, it is not the HMP but implementation of the General Plan that will produce these impacts, as the MEIR clearly states. The MEIR provides mitigation measures for potentially significant impacts, and subsequent projects are conditioned to implement the mitigation measures. The MEIR included a Statement of Overriding Considerations for Air Quality and Transportation. In short, the MEIR has adequately addressed the cumulative impacts due to development in the areas that will not be part of the HMP preserve system.

9. Impacts on MHCP

This issue was raised by 2 commentators. The comment expresses the opinion that adoption of the HMP will reduce the City's flexibility to cooperate with other North County jurisdictions in development of the MHCP. The commentators do not cite the opinions of any experts or any authoritative sources regarding the inter-relationship of the HMP and the MHCP.

The City of Carlsbad and the HMP have been instrumental in development of the MHCP since its inception. The HMP has always been intended to serve as a component of the MHCP and to be fully coordinated and consistent with it. The HMP has utilized the MHCP's methodology of Focused Planning Areas as well as the conservation recommendations in the MHCP's *Biological Goals Standards and Guidelines*. Most recently, when the MHCP identified the need for a large "core area" of approximately 500 acres for the California gnatcatcher, the HMP has proposed an acquisition program that will conserve approximately 300 acres within the targeted area. Although commentators suggest that the HMP limits future conservation options, the opposite is true; if the HMP is not approved, acquisition of 300 acres in the "core area" will not occur, future conservation options could be permanently lost, and it would be doubtful if the MHCP would be a viable conservation plan.

Comments were also made regarding the fact that the USFWS is about to designate critical habitat for the California Gnatcatcher and whether approval of the HMP will further restrict conservation planning opportunities based on the critical habitat designation. No comments were provided by the commentator on specifically why or how the approval of the HMP would impact the designation. However, the designation only affects federally-related projects (e.g. federal land and projects with federal dollars). Also, because the USFWS has been closely involved with the development of the HMP and knows how it will effect Gnatcatcher habitat, the critical habitat designation will not have any impact on approval of the HMP.

10. Public Notice

This issue is raised by 2 commentator. The comments express the opinion that the City's public noticing regarding the MND was inadequate. In particular, the commentators object to the lack of notice of a Carlsbad Planning Commission meeting held on July 21, 1999, at which the HMP was discussed.

The commentors cite Public Resources Code Section 21092(b)(1). The notice required by this section and by Section 15072 of the CEQA Guidelines is mailing of a notice for consideration of a Negative Declaration to individuals and organizations that have previously requested such notice in writing and publication in a newspaper of general circulation. No individuals or organizations had requested such notice in writing, and therefore the notice requirement was met by publication in a newspaper. The notice appeared in the North County Times on June 18, 1999. The notice included a brief description of the project and its location, the fact the project could potentially have significant impacts on its environment unless mitigation measures were applied, the date, time and place of any public meetings to discuss the matter known to the City at that time and the location where information regarding the matter could be reviewed.

Although the commentors do not state so specifically, the apparent concern is that the notice published in the North County Times did not indicate that the Planning Commission would be discussing the HMP on July 21, 1999. Just prior to publication of the notice, the HMP had been scheduled for discussion by the Planning Commission on June 16, 1999, at which time City staff provided a general overview of the HMP. This meeting was not required to be a public hearing but just a discussion item. Subsequently, the Planning Commission members indicated that they wanted to schedule the HMP again at a future meeting in order to provide their comments and observations. No specific date was set. Therefore, it would not be possible for the notice in the North County Times to have referred to a possible future meeting of the Planning Commission when it was not known when that might occur.

On or about July 11, 1999, it was decided to schedule the follow-up discussion regarding the HMP with the Planning Commission on July 21. Again, no written requests for notification had been received, and the item was not a public hearing. The purpose of the meeting was to allow Planning Commissioners to provide their individual comments on the HMP because the Planning Commission would not be taking formal action on it. Notification was provided by posting of the Planning Commission Agenda 72 hours in advance of the meeting as required by law.

Per Section 15073 of the CEQA Guidelines, the City sent a copy of the MND and supporting documentation to the State Clearinghouse for distribution to state agencies. Acknowledgment of receipt from the Clearinghouse was received on June 29, 1999, and on July 22, 1999, the Clearinghouse notified the City that no state agencies had submitted comments during the review period provided by the state.

In conclusion, the City has followed all of the public noticing requirements of the law and, in fact, has provided for public notice and involvement that goes beyond what is required by law. For example, the City held a Scoping Meeting, which is not a requirement for a MND. The City held the comment period open for 45 days, rather than the 30 days legally required for a MND. The City is providing these written responses to comments on the MND, which is not a legal requirement.

11. Adequacy of Mitigation

This issue was raised by 3 commentors. The comments express the opinion that the MND does not provide adequate mitigation to reduce impacts to species and habitats to below significance. The commentors do not cite the opinions of any experts or any authoritative sources regarding the adequacy of the mitigation provided by the HMP. No biological data or reports are provided in support of the comment.

A number of mitigation measures have been incorporated into the HMP as a result of review of previous drafts of the Plan. A Wildlife Agency Review Draft of the Plan was prepared in December 1998, and submitted to the Agencies. As a result of the review, numerous revisions were made to the Plan which mitigate its impact on sensitive habitat, species and the environment. These mitigating measures, which were not part of the previous draft include:

- A) Revising and upgrading the standards that apply to all properties located in the proposed "Standards Areas" of the preserve system.
- B) "Proposed Hardline" boundaries of the preserve system were enhanced and expanded.
- C) A number of species were removed from the covered list in order to eliminate take authorization and provide them greater protection.
- D) Overall conservation levels were increased and increased acreage was added to the proposed preserve system.
- E) "Measures for HMP Species" (Table 6 of MND) was added to provide additional mitigation for covered species and increase the conditions for take authorization.
- F) Mitigation ratios for impacted habitat were incorporated into the Plan.
- G) The proposal for a possible habitat take permit fee was added to the Plan.
- H) A proposal for the City to effect the conveyance of 296 acres in the MHCP Core Area was included.
- I) The City agreed to do part of its mitigation for the proposed City Golf Course in the MHCP Core Area.

All of the above revisions are mitigation measures to reduce potential impacts associated with the approval of the HMP. They serve as the basis for the adoption of a MND because the Plan has been revised to incorporate the mitigation measures. This is entirely consistent with CEQA regarding the use of a Mitigated Negative Declaration. CEQA Guidelines 15070 states "A public agency shall prepare a proposed negative declaration or mitigated negative declaration for a project subject to CEQA when revisions in the project plans or proposals made by or agreed to by the applicant before proposed mitigated negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur."

The HMP is, overall, a mitigation program. The City, assuming it approves the HMP and the MND, will have concluded, based on its independent judgment and review of all the facts and documents, including the comments on the MND and these responses, that all potentially significant adverse impacts have been mitigated to a level of insignificance. The adequacy of the mitigation measures and of the HMP as a whole will be independently judged again by the California Department of Fish and Game, and

again by the U.S. Fish and Wildlife Service, which are the entities legally authorized and required to approve the HMP, and which are technically competent to make determinations on such issues. If the wildlife agencies determine that the HMP mitigation is adequate to meet the standards for issuance of take permits and the MND is adequate for their decision-making purposes, they can approve the plan. The federal approval agencies will do so based on their own environmental review under NEPA. The City believes, based on numerous meetings with these agencies, that the HMP and the MND are in fact adequate to meet the requirements of the agencies.

As noted, in addition to this MND, the HMP will be subject to analysis under the National Environmental Policy Act (NEPA). In short, there will be substantial, expert review of the adequacy of the HMP's mitigation before final action is taken. There has been no factual information submitted with the comment letters to indicate that the mitigation provided is not adequate.

12. Public Controversy

This issue was raised by 1 commentor. The comment expresses the opinion that an EIR should be prepared because of the substantial public controversy surrounding the HMP. No documentation or supporting facts are provided.

No significant public controversy has been identified with respect to the adoption of a Mitigated Negative Declaration (MND) for the HMP. Of the 37 written comment letters submitted during the public review period for the HMP, only 3 contained objections to the use of a MND. One letter cited the existence of serious public controversy as a reason for preparing an EIR rather than a MND. This is not the case in that only 3 comments were received concerning the need for an EIR. In addition, CEQA Guidelines 15064 states *"The existence of public controversy over the environmental effects of a project will not require preparation of an EIR if there is no substantial evidence before the agency that the project may have a significant effect on the environment."* No substantial evidence has been submitted which indicates that a MND is not appropriate. CEQA Guidelines 15064 also states *"Argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion support by facts."*

13. Mandatory Findings of Significance

This issue is raised by 1 commentor. The comment expresses the opinion that the City has failed to adequately address mandatory findings of significance. The commentor suggests that an EIR must be prepared if any mandatory finding of significance is potentially applicable.

The MND pages 98-100 discuss mandatory findings of significance. It acknowledges that the HMP has the potential to reduce the habitat of wildlife species and that this impact would be significant unless mitigated. It also acknowledges that there may be cumulative impacts that would be significant unless mitigated. However, mitigation measures are provided on pages 100-101 that reduce the impact to below significance. In addition, the HMP itself includes numerous standards, requirements, and mitigation

measures that will be applied to subsequent development projects to further reduce impacts. The adequacy and efficacy of these mitigation measures is discussed in response #10. An EIR need not be prepared despite the potential for mandatory findings of significance when revisions in the project proposals have been made which avoid the effects or mitigate the potential adverse impacts to a point where clearly no significant effect on the environment would occur and there is no substantial evidence in light of the whole record before the public agency that the project, as revised may have a significant effect on the environment (CEQA Section 15064(g)(2)).

Statutory and legal background; Endangered Species Act

Section 10 of the Endangered Species Act, 16 U.S.C. §§ 1531 et seq. ("ESA") authorizes the Secretary of the Interior or the Secretary of Commerce ("Secretary") to permit activities otherwise prohibited under the ESA's Section 9 "take" provisions under certain very limited circumstances.

Take may be authorized under Section 10 through issuance of an incidental take permit for activities carried out in accord with an approved habitat conservation plan ("HCP"). 16 U.S.C. § 1539(a). Before issuing a take permit, the Secretary must make findings including: (1) the taking will be incidental to an otherwise lawful activity; (2) the applicant will, to the maximum extent practicable, minimize and mitigate the impact of such taking; (3) the applicant will insure that adequate funding for the conservation plan will be provided; (4) the taking will not appreciably reduce the likelihood of the survival and recovery in the wild, (5) any and all other measures required by the Secretary have been met; (6) the Secretary has received the necessary assurances that the Plan will be implemented. 16 § U.S.C. 1539(a)(2)(B); 50 C.F.R. 17.22(b)(2). The Secretary must also prepare a biological opinion for any HCP to ensure that issuance of an take permit will not jeopardize listed species or adversely modify critical habitat, and will actually conserve affected listed species. 16 § U.S.C. 1536(a)(1); 1536(a)(2).

It should be noted that liability for take of listed species on private land is not limited to the landowner. Local, state or federal agencies and others are also liable when they regulate private land or other activities resulting in take. The ESA prohibits any "person" from "taking" threatened and endangered species. 16 U.S.C. § 1538, 50 C.F.R. § 17.31. The definition of "take", found at 16 U.S.C. § 1532(19), states,

The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

The term "person" is defined in the ESA to include "any officer, employee, agent, department, or instrumentality... of any State, municipality, or political subdivision of a State... (or) any State, municipality, or political subdivision of a State..." 16 U.S.C. § 1532(13). Numerous cases have confirmed that entities such as the California Department of Fish and Game and the California Fish and Game Commission are responsible and liable for violations of the ESA, including Sierra Club v. Yeutter,¹ Defenders of Wildlife v. EPA,² Palila v. Hawaii Department of Land and Natural Resources,³ and Loggerhead Turtle, et. al. v County Council of Volusia County, Florida.⁴ In another relevant case dealing with state regulated fisheries, the Court ruled

¹ 926 F.2d 429, 43-39 (5th Cir. 1991)

² 882 F.2d 1294, 1301 (8th Cir. 1989)

³ 639 F.2d 495, 497-98 (9th Cir. 1981)

⁴ (11th Cir. 1998)

...the statute not only prohibits the acts of those parties that directly exact the taking, but also bans those acts of a third party that bring about the acts exacting a taking. We believe that...a governmental third party pursuant to whose authority an actor directly exacts a taking of an endangered species may be deemed to have violated the provisions of the ESA.

Strahan v. Cox, et al.⁵

The preceding requirements, along with agency regulations, policy guidance, and case law interpreting them, provide the basis for the Secretary's obligation to apply the following principles when assisting in preparation or considering approval of any HCP. While the body of case law interpreting the requirements for take permits and HCP's is still relatively small, the case law that exists strongly supports a strict interpretation of the requirements in favor of conservation of covered species.

a. **HCPs must minimize and mitigate take of covered species to the maximum extent practicable**

Perhaps the most important requirement of ESA Section 10 is that HCPs must identify steps to both minimize and mitigate take of covered species. (See 16 U.S.C. § 1539(a)(2)(B)(ii): "the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking.") Courts have struck down HCPs and take permits for failing to ensure that their effects had been minimized and mitigated to the maximum extent practical. National Wildlife Federation, et al. v. Babbitt,⁶ Sierra Club et al. v. Bruce Babbitt et al.⁷ In National Wildlife Federation, the Court stated "...the statutory phrase "maximum extent practicable" nonetheless requires the Service to consider an alternative involving greater mitigation.... The plain language of the [statute]...is not satisfied by a fee set, as here, at the minimum amount necessary to meet the minimum biological necessities of the covered species."⁸

Certain principles must be followed to ensure the harmful effects of take are minimized and mitigated to the maximum extent practicable. Adherence to these principles is also necessary to ensure no appreciable reduction in the likelihood of survival and recovery, or "conservation" of HCP covered species, as discussed under section b below.

⁵ 127 F.3d 155 (1st Cir. 1997)

⁶ 128 F. Supp. 2d 1274 (E.D.Cal. 2000)

⁷ 15 F. Supp. 2d 1274 (S.D.Ala.1998)

⁸ 128 F. Supp. 2d 1292-93

b. HCPs must ensure survival and contribute to recovery of covered species

HCPs must not appreciably reduce the likelihood of the survival and recovery of covered species in the wild. 16 U.S.C. §1539(a)(2)(B)(iv). The Secretary is obligated to comply with ESA Section 7 conservation standards for all affected listed species when approving the HCP and issuing an incidental take permit. Congress titled Section 10 "conservation plans" consistent with the ESA Section 3 definition of the term "conservation" to include all measures necessary to bring federally listed species to a point at which ESA protections are no longer necessary. 16 U.S.C. §1532(3). "[A]ll measures necessary..." includes consistency with any recovery plans prepared pursuant to Section 4(f) of the ESA. HCPs must therefore at least be consistent with available recovery plans, and move beyond the status quo to actively improve the conservation status of all covered species, especially the rarest and/or narrowest range species. HCPs must also ensure survival and contribute to recovery for plants for these same reasons.

HCP must abide by the following principles to minimize and mitigate take of covered species to the maximum extent practicable, and to ensure the program will not appreciably reduce the likelihood of survival and recovery of covered species.

1. HCPs must minimize and mitigate take

HCPs must identify steps to both minimize and mitigate take of covered species. Despite this, HCPs often greatly emphasize mitigation instead of minimization by establishing mitigation standards while excluding politically unpopular standards for avoidance.

Mitigation is an important component of HCPs, but this must be coupled with earlier, project-level steps to minimize permitted take, including measures such as consideration of less harmful alternative projects, project redesign, project re-location and reduction of project footprint among others.

In-kind, on-the-ground mitigation is also necessary to mitigate take of covered species to the maximum extent practicable. Some HCPs have unwisely authorized out-of-kind mitigation, whereby destruction of one type of vegetation or species is allowed in exchange for conservation of an entirely different type of vegetation or species. Some HCPs have also unwisely authorized substitution of monetary compensation for actual land acquisition.

In examples of these, the San Diego Multiple Species Conservation Program allows developers to mitigate the loss of imperiled southern maritime chaparral vegetation with compensation elsewhere of native grasslands or oak woodlands and others, or the payment of a compensation fee that need not be spent on acquisition or other protection of southern maritime chaparral. The fee is regularly utilized due to the individually small, yet cumulatively significant size of project impacts. Fees charged are far below the amount necessary to purchase compensation southern maritime chaparral due to extremely high costs for coastal property.

These techniques remove the ability of the San Diego MSCP to minimize and mitigate take to the maximum extent practicable, and to ensure that permitted activities will not appreciably reduce the likelihood of survival and recovery of southern maritime chaparral-dependent covered species.

2. **HCPs must include measurable biological goals and objectives for all covered species**

Biological goals and objectives for each covered species are essential to ensure HCPs will minimize and mitigate take to the maximum extent practicable and ensure that permitted activities will not appreciably reduce the likelihood of survival and recovery of covered species.

HCPs must contain biological goals and objectives according to the Secretary's Final Addendum to the Handbook for Habitat Conservation Planning and Incidental Take Permitting Process ("Five-point policy"). Federal Register 65 at 35250-35252, June 1, 2000. According to the policy,

Determination of the biological goals and objectives is integral to the development of the operating conservation program.

Id. at 35251. Biological goals and objectives are central to meeting the take permit applicant's obligation that the HCP minimize and mitigate the harmful effects of take to the maximum extent practicable, and to ensure that permitted activities will not appreciably reduce the likelihood of survival and recovery of covered species.

[Biological goals and objectives] are the rationale behind the minimization and mitigation strategies. ...the biological goals and objectives of HCPs covering [species with recovery plan goals] should support the recovery goals and conservation.

Id. at 35251. Biological goals and objectives must address each species covered by a HCP.

...each covered species must be addressed as if it were listed and named on the permit. Although the goals and objectives may be stated in habitat terms, each covered species that falls under that goal or objective must be accounted for individually as it relates to that habitat.

Id. at 35251.

A clearly articulated set of biological goals and objectives for the overall program and each covered species are essential to the success of HCPs. Biological goals and objectives are necessary to guide both implementation of the HCP, and to provide a transparent process of HCP planning and implementation to maintain public trust.

HCP biological goals should be prepared by an independent body of scientists with proven expertise with the covered species, made available for public review and comment, and

subsequently finalized prior to finalizing the HCP. Biological goals should be established in consideration of the rarity, endemism, population viability and connectivity needs for each covered species.

3. **The rarest and/or narrowest range covered species require a higher standard of conservation than more common, wider ranging covered species**

There is a tendency among HCPs to treat all covered species as if they are of identical conservation status. Yet the rarest and/or narrowest-range covered species will inevitably need greater and more specific protective measures than others, and so should be provided more rigorous biological goals and objectives and HCP standards to ensure minimization and mitigation and no appreciable reduction of survival and recovery.

The rarest and/or narrowest range covered species include those often referred to as "narrow endemic species" in some HCPs. But these species may also include sensitive, wider-range species with important populations in need of conservation within the HCP study area.

Some HCPs operate under the mistaken assumption that general habitat protection will automatically result in conservation of all covered species. This may be true for more common, wider ranging species, but general habitat protection alone will not make a successful HCP. Special population- and habitat-specific biological goals and objectives are necessary to ensure conservation and success of the HCP, and should be prepared for each of the rarest and/or narrowest range covered species. Biological objectives should include species- and reserve area-specific protective management and monitoring measures, as discussed in the Secretary's Five-point policy. Federal Register 65 at 35251.

The rarest and/or narrowest range covered species should also be subject to rigorous biological objectives or HCP implementation standards for protection. These should include not only objectives and standards for how many populations, or the amount of habitat that will be protected over the life of the permit, but also a clear articulation of those limited circumstances under which un-avoidable impacts will be authorized as permitted activities proceed, e.g. definition of the term "... avoided to the maximum extent practicable."

The range and distribution of the rarest and/or narrowest range covered species may be so reduced that protection and management biological objectives should provide total avoidance of all known population locations, including those discovered through future project-level surveys, at least until such time that restoration and enhancement measures under the HCP have greatly improved the species' status. All impacts to these species should be avoided, and criteria should be crafted identifying the very narrow circumstances when impacts will be authorized, such as in the case of removal of all economic property use or essential public health and safety projects.

For these covered species, all known populations should be included within reserve system boundaries. In the alternative, protection and management biological objectives and HCP implementation standards should apply to these species both inside and outside of the reserve

system, as was the case with all wetland and "narrow endemic" species under the San Diego Multiple Species Conservation Program.

The rarest and/or narrowest range covered species should also be the subject of intensive, seasonally appropriate surveys either through the planning process for single / few-property- or multiple species HCPs, or as projects come forward over the life of the permit for multiple species HCPs. Either way, there must be a concerted effort to improve the knowledge of the range and distribution of such species and to ensure conservation of important populations be they known now or discovered in the future.

4. HCPs must include an adaptive management program

An adaptive management program is an essential components of any HCP, and is indispensable in ensuring full minimization and mitigation of all impacts from permitted activities and that permitted activities will not appreciably reduce the likelihood of survival and recovery of covered species. Species- and reserve area-specific protective management planning is essential to success of HCPs. Monitoring also is a mandatory element of all HCPs (See 50 C.F.R. 17.22, 17.32, and 222.307)." Federal Register 65 at 35251.

The monitoring program plays as essential role of determining whether the chosen strategy(ies) is providing the desired outcome (i.e. achieving the biological goals of the HCP).

Id. at 35253. The monitoring plan should be a component of the HCP adaptive management program.

Many HCPs lack detailed protective management biological objectives or monitoring plans as part of an adaptive management program at the time of approval, despite their importance and in violation of the ESA and implementing regulations.

The adaptive management plan must provide many of the essential HCP implementation details. The plans should address conservation of all known covered species populations and each sub-area of the reserve for the life of the permit, with an amendment process as new populations are discovered and additional reserve lands acquired. Management and monitoring plans should provide extensive detail on the following topics and others:

- | | |
|---|--|
| HCP compliance | Public access points, if any |
| Fire management, including emergency-response and prescribed fire | Reserve staff duties |
| Fencing | Education, including neighborhood- and school programs |
| Signing | Monitoring of the condition of covered-species populations |
| Exotic species control | Monitoring of annual condition of the-sub-areas of the reserve |
| Restoration | |
| Seed banking | |
| Uses to be allowed in the reserve | |

The adaptive management plan should be prepared early, prior to approval of the program and distributed for public review and comment as a part of the total draft HCP package. The benefits of early preparation – sound science, certainty and public trust – by far outweigh the burden of increased HCP preparation costs.

Of course early preparation of the adaptive management plan means it will only specifically address known covered species populations and existing reserve lands, with a general outline of how later-discovered populations or acquired reserve areas will be managed and monitored. The plan should therefore be revisited periodically over the life of the permit, with a process for public and agency review and comment.

Funding for implementation of protective management biological objectives and monitoring under the adaptive management plan should be assured for all HCPs as discussed in section c below. Funding should also be assured for staff time and other resources for implementation, as well as for implementation oversight and compliance monitoring by the U.S. Fish and Wildlife Service and state fish and game agencies.

5. **Take of covered species must be commensurate with implementation of promised conservation**

The purpose of HCPs is to ensure conservation of covered species while allowing otherwise harmful activities to proceed. Yet harmful activities and resulting take are often permitted by participating agencies at a rate far exceeding promised conservation measures, under many HCPs.

Take of covered species under HCPs should be commensurate with funding and implementation of conservation commitments – that is take of covered species and habitat should only proceed as conservation commitments are fulfilled, including land acquisitions per mitigation ratios or other HCP standards, protective management and monitoring, and others.

6. **Existing reserve lands must not count towards HCP conservation goals absent improved conservation management and monitoring**

The establishment of a reserve lands system is an often-used conservation tool under HCPs. In many cases, participating agencies in multiple species HCPs seek to reduce expenses and property-rights backlash by counting existing reserves towards the total amount of land “protected” under the new HCP – previously established private land open space easements, local and state parks, national wildlife refuges and others. Take permit applicants will also often bulk up HCP reserve system acreage with roadside easements, previously disturbed public works land and other areas of dubious conservation value in a public relations maneuver intended to downplay the loss elsewhere of important habitat and open space.

It is essential that all lands included in any HCP reserve actually be important for the covered species so as to further the biological goals and objectives and maintain public trust. Further, existing reserves should only be counted towards HCP conservation goals when

substantial new protective management and monitoring is provided for these areas. This means that detailed reserve- and species-specific adaptive management plans – often referred to as area specific management directives – must be in place with a commitment to necessary yearly implementation budgets for all such lands at the time of program approval, subject to amendment as additional lands are brought into the reserve.

7. **HCP reserve lands must include a hard-line component**

In some multiple species HCPs, land is set aside for the reserve system as individual properties come forward for development. Yet this balancing of development and conservation on each individual property is really only a soft-line reserve system and will greatly fragment those lands identified as most important to success of the program.

Hard boundary lines for some portion of HCP land conservation reserves – whereby protection of all land within the reserve boundary is assured – are necessary to conserve covered species, focus and increase the efficiency of reserve and covered species management and especially to minimize harmful edge effects. Willing sellers must be located, or assured funding must be identified at the time of program approval for compensation of any total losses of reasonable economic use for properties located within the hard-line reserve.

8. **HCP reserve lands must be free from all harmful land use**

Conservation of covered species should be the primary purpose of any reserves established under HCPs. Activities harmful to covered species such as grazing, mining, and others should be excluded from HCP reserve lands. Compatible, low-impact uses like hiking, bird-watching and photography may be appropriate on reserve lands. But these lands should not be managed for multiple use, such as that practiced by the U.S. Bureau of Land Management or Forest Service whose mission throughout the entirety of their non-wilderness holdings is to balance resource conservation with continuing exploitation. A balance between conservation of covered species and urban development or other permitted activities should be struck under HCPs, but by a different means whereby reserve areas are off-limits to harmful uses, and conservation restrictions are reduced on remaining lands.

9. **HCPs and related documents must be subject to independent scientific and legal review**

HCPs must minimize and mitigate take, and ensure survival and consistency with recovery of covered species, among other ESA section 10 and 7 mandates. Yet HCPs often fall short of these and other legal standards because they are prepared by one consulting firm and attorneys in the employ of take permit applicants that may lack the expertise or political independence necessary to craft a complex and sound conservation plan.

Take permit applicants should consent to and fund independent scientific and legal review of important HCP documents, such as those addressing biological goals and objectives,

reserve design, adaptive management of covered species and the reserve system, the draft biological opinion, Section 10 findings and implementing agreement among others.

Independent scientific and legal review of an HCP is likely to contribute significantly to the building of public trust and support – especially important for multiple species HCPs – by ensuring the program has followed a rigorous scientific and legal process and will accomplish stated goals. The results of the independent scientific and legal review should be provided as part of the public review package of the draft HCP and related documents.

10. Biological opinions, Section 10 findings and implementing agreements should be released for public review and comment

The Secretary must prepare a ESA Section 7 biological opinion for any HCP to ensure that the granting of an incidental take permit will not jeopardize listed species or adversely modify critical habitat. The Secretary must also prepare a set of findings on whether the HCP meets all ESA Section 10 standards. Finally, the Secretary and take permit applicant(s) must craft an implementing agreement whereby participants enter into a formal contract to carry out HCP obligations.

In considering whether to issue a take permit, the Secretary must balance this with consideration of whether the take permit will actually conserve the covered species. Fish and Wildlife Service staff responsible for writing the biological opinion, Section 10 findings or reviewing the applicant's implementing agreement often have little prior knowledge of a given HCP strategy, only general knowledge of covered species biology and may not recognize a failure of a complicated, legalistic implementing agreement to ensure the applicant remains responsible for all HCP conservation commitments. For example, the San Diego MSCP clearly states that all narrow endemic species must be avoided to the maximum extent practicable, yet that program's implementing agreement ultimately and mistakenly only specified avoidance of narrow endemics inside the preserve.

Draft HCP biological opinions and Section 10 findings are sometimes released to permit applicants, but almost never to the public or expert scientists. Public and expert review of these documents and involvement in preparation of the implementing agreement will greatly improve these documents and is in no way prohibited by the ESA.

Take permit applicants and the Service should consent to public and independent scientific review of the Service's draft biological opinion, Section 10 findings and invite involvement in preparation of the implementing agreement to maintain sound science, certainty and public trust. HCPs often involve very complex conservation strategies, addressing numerous covered species with widely varying conservation needs. Because of this, HCPs will only benefit from broad public and independent scientific review of these draft documents.

c. **HCP implementation funding must be assured**

HCPs must include an assured funding source for program implementation. 16 U.S.C. §1539(a)(2)(A)(iii). This requirement is obviously central to the success of the conservation strategy, as courts have recognized. In National Wildlife Federation, the Court invalidated a take permit for failing to ensure that promised conservation actions would be funded.⁹ Yet many HCPs rely on uncertain funding sources such as allocations in future state or federal budgets, grants and future bond measures. HCPs also often fail to articulate specific funding needs.

It is essential that all funding needs, including the cost of promised land acquisition, adaptive management for the reserve and covered species, scientific and compliance monitoring and all other measures be clearly and specifically identified in HCP documents so that the amount of funding necessary to carry out promised measures may be assured.

For multiple species HCPs, the burden of funding should be shared by all parties who will benefit from the program – property owners and others benefitting from expedited take permits, the local public who enjoys HCP open space, and taxpayers nationwide who support federal endangered species protection.

For single or few-property HCPs, funding must be provided up-front for all planned conservation measures, prior to program approval. Where the amount of funding necessary for conservation obligations exceeds that available at the time of permitting, funding may be tiered to phases of development, with funding provided ahead of construction of each phase. Funding for any longer-term conservation obligations should be placed in a trust for that specific purpose.

Multiple species HCPs should make a substantial down payment on promised conservation measures at the time of approval of the program, with conservation land acquisitions for a hard-line reserve, establishment of a trust for implementation of new or expanded reserve- and species-specific protective management, monitoring and other measures. The remainder of funding necessary to implement multiple species HCPs over the life of the permit need not necessarily be in the bank, but a process for how this funding will be assured should be disclosed as part of the draft HCP and its adequacy independently analyzed. Agencies participating in multiple species HCPs should establish a policy at the time of HCP approval to provide yearly budgets necessary to carry out conservation obligations.

d. **HCPs must specify any harmful effects of permitted take**

HCPs must specify all harmful impacts which will likely result from permitted take of covered species. 16 U.S.C. § 1539(a)(2)(A)(i). Currently, however, even the most detailed multiple species HCPs only include percentages of the amount of habitat which will be saved for a particular covered species. A few multiple species HCPs go so far as to include a rough estimate of the amount of covered species habitat which will be lost under the plan, but few

⁹ 128 F. Supp. 2d 1293-95

present specific information on the number of covered species' populations or individuals to be lost.

Quantifying the extent of take of covered species under HCPs can be difficult. But it is entirely possible to specify the amount of take that will occur on single or few-property HCPs, as required by the ESA. For multiple species programs where quantifying take may be most difficult, HCPs should identify the amount of habitat which will be saved for each species, but should also clearly identify the worst case take scenario, e.g. what is the maximum amount of habitat for each covered species which could be lost, how many major known populations and roosting sites could be lost, etc? A clear articulation of those limited circumstances under which un-avoidable impacts will be authorized as permitted activities proceed should also be included. This information is essential as land development will inevitably proceed in some sensitive areas, possibly in a manner not contemplated by drafters of the HCP.

e. **HCP compliance must be monitored and the take permit revoked in the event of non-compliance**

The Secretary has a mandatory, non-discretionary duty to revoke any take permit where the terms and conditions of the permit have not been met. 16 U.S.C. § 1539(2)(C). This is a vital part of the Secretary's obligation to ensure conservation of the covered species.

A clear, enforceable, mechanism for monitoring compliance – funded by the permit applicant as part of HCP implementation – should be established and provided for public review as part of the draft HCP. Compliance monitoring is somewhat different from implementation and biological monitoring as generally presented in HCPs and should include a legal analysis of whether the HCP is living up to its implementation obligations.

Part of the compliance monitoring process should include a free flow of information to the interested public. Nonetheless, the ultimate responsibility for implementation of compliance monitoring falls solely with the Secretary. The Secretary should discontinue issuance of take permits if the level of compliance monitoring for existing permits exceeds available resources.

f. **The permitted activity must be incidental to an otherwise lawful activity**

Take permits can only be issued for activities that are incidental to an otherwise lawful activity. 16 U.S.C. § 1539(a)(1)(B). This means that the Secretary cannot issue a take permit for any activity that is in violation of any other law, including, but not limited to, the National Environmental Policy Act, Clean Water Act, Clean Air Act, Migratory Bird Treaty Act, Porter-Cologne Water Quality Act or any state statutes. The Secretary and take permit applicant should carefully review the legality of the permitted action to ensure that this requirement is met. If at any point the permitted activity violates the provision of any law, the Secretary has a non-discretionary duty to revoke the take permit. 16 U.S.C. § 1539(2)(C).

RECEIVED

APR 25 2002 April 25, 2002

US FWS
CARLSBAD FIELD OFFICE, CA

Mr. Jim Bartel, Field Supervisor
U.S. Fish and Wildlife Service
2730 Loker Ave. West
Carlsbad, CA 92008

Subject: Draft EIS, Multiple Habitat Conservation Plan, and Oceanside Subarea Plan

Dear Mr. Bartel:

BRK-1

I would like to provide the following comments to the draft City of Oceansides Subarea Conservation Plan (Plan), the Multiple Habitat Conservation Plan (MHCP) and Environmental Impact Statement (EIS). Mainly, I am concerned that the plan does not include the area of Jeffries Ranch as part of the overall conservation strategy for the City. The undeveloped lands at Jeffries Ranch is located along the north east boundary of the City and connects Vista, Camp Pendleton (via the San Luis Rey and agricultural lands), and Guajome Park. The MHCP habitat evaluation model determined that the undeveloped lands of Jeffries Ranch are of "very high value", and included it in the Biological Core and Linkage Area (draft MHCP, Vol I, Figure 2-3). The Jeffries Ranch land supports a number of MHCP "target species" (California gnatcatcher, rufous-crowned sparrow, orange-throated whiptail, yellow-breasted chat) and habitats such as coastal sage scrub that are not shown on the data maps figures 3-5, 3-6 and 3-7 of the Plan. The biological data for the Plan should be updated to reflect the most recent biological information collected for the Jeffries Ranch area which is available from the City of Oceanside for the proposed Jeffries Ranch Development Project and the Marlborough Estates development (documents associated with this latter project state that areas of coastal sage scrub and along a stream connecting Jeffries Ranch with Guajome Park would be set aside for conservation, and the biological report (Westec 1988) speaks to the inter-relatedness of gnatcatchers between Guajome Park and Jeffries Ranch). Because of its very high biological value, the undeveloped lands of Jeffries Ranch should be conserved instead of being included in the offsite mitigation zone II.

BRK-2

Conservation of existing habitats in the north eastern portion of the City such as those in Jeffries Ranch and the agricultural lands would maintain an existing connection to Camp Pendleton, Fallbrook, Guajome Park, and Vista, and should be seriously considered and evaluated. Although not all these lands are included as part of the MHCP planing area, the effects of not conserving lands around other biologically valuable lands should be assessed in the EIS. For instance if no conservation occurs in the Jeffries Ranch area, Guajome Park will become disconnected by development and that will affect the

Letter 22: Brooks

BRK-1. The City of Oceanside has established biological preserve criteria to meet objectives and goals of the NCCP and the MSCP. The Oceanside Subarea Plan intends to conserve a total of 2,420 acres of natural habitats within the proposed preserve, which is 51% of the natural habitats in the study area. The preserves retain important sensitive vegetation communities in the subregion, including 100% of wetlands, 95% of coast live oak woodland, and 50% of coastal sage scrub in Oceanside.

Impacts to biological resources within areas designated "Offsite Mitigation Zone II" will be mitigated at any appropriate mitigation area within the City, including existing mitigation banks, preapproved mitigation areas, or vacant lands within the designated Wildlife Corridor Planning Zone. Although Jeffries Ranch was omitted from the MHCP Focused Planning Area (FPA) in the Public Review Draft of that plan, it is included in the FPA for the final plan, and hence must abide by appropriate policies. Note that regardless of the property being inside or outside of the FPA, city resource protection policies, including the Narrow Endemics Policy and Wetlands No Net Loss Policy, would be enforced.

BRK-2. Currently, the Oceanside Subarea Plan designates the northeastern portion of the City north of the San Luis Rey River at the "Agricultural Exclusion Zone". Ongoing agricultural practices may continue in this area as long as they do not remove existing natural habitats. Any removal of these habitats will require mitigation. The Jeffries Ranch property is currently included in the MHCP FPA and must abide by appropriate resource protection and mitigation policies. At least 50% of the property will be conserved.

The City of Oceanside understands the importance of undeveloped lands which provide regional habitat connectivity and species conservation. Section 3.2.3 of the Oceanside Subarea Plan describes the distribution of key undeveloped areas and their role in facilitating regional habitat connectivity and animal movement.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

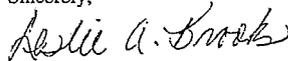
biological resources within the park. Also, how will native habitats in Oceanside connect to Vista? In addition, your agency designated the undeveloped lands of Jeffries Ranch along with the land immediately adjacent to the east (Vista) as critical habitat for the gnatcatcher. The evaluation used to make this designation should be included in the EIS to support including the undeveloped lands of Jeffries Ranch as conserved lands in the Plan.

BRK-3

I am concerned that the Plan proposes to include "take authorization" for several projects that would have significant biological impacts that are not fully evaluated in the draft documents or mitigated by the Plan. The Jeffries Ranch development, the Melrose Drive extension, and the storm drain improvements (Figure 2-7 The storm drain improvements would impact the tributary connecting Jeffries Ranch and Guajome Park -portions of this drainage are already to be conserved for impacts to the Marlborough Estates Project) would cause the loss of one of the few remaining wildlife corridors. These projects and their impacts need to be specifically assessed in the EIS for the Plan.

Thank-you for your consideration of my comments.

Sincerely,



Oceanside Resident
1524 Belmont Park Road
Oceanside CA 92057

BRK-3.

The MHCP Plan does not override the necessity for further environmental review for individual actions at the project level. A take authorization will not automatically be granted to individual projects; rather, each discretionary action will be subject to further environmental review.

The Implementing Agreement (IA) between the City and the wildlife agencies will define the monitoring responsibilities, remedies, and enforcement mechanisms. The IA must be approved in order for the wildlife agencies to issue an incidental take permit. A Model IA is contained in Attachment B of the MHCP Volume I. The City will be responsible for implementing the Subarea Plan for both private and public projects, including the City's capital improvement program projects. The City will be responsible for overseeing management and monitoring responsibilities until such time as a regional entity such as a conservancy is established. The City may hire consultants, such as biologists, to assist in monitoring activities. The CDFG and USFWS will monitor plan implementation and will retain the ability to suspend, revoke, or terminate the incidental take permit, as defined in the IA. Mitigation measures adopted under CEQA will be monitored in accordance with a Mitigation Monitoring Program, which defines the mitigation measures, responsible entity, and timeframe for completion.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

**MHCP EIS/EIR
COMMENT SHEET**

CAR-1 First concern - information from the Rancho del Oro/EIR is ^{excerpts from} incorporated into the MHCP. Also the Carlsbad Wetland Network Report is finished. There is valuable information, it should be incorporated into the MHCP.

CAR-2 Another concern is the wetland area of the flyway ~~from~~ ^{located in} Lane 2 in the City of Carlsbad. The Carlsbad Greenway Element shows Marron Road connecting from El Camino Real to College Blvd. I am concerned that this connection does not serve the protection of the wetland and the flyway. It will only promote growth. This area has wetlands, woodlands, a wetland, a creek, ponds, ^{artesian} numerous plants and animals, cultural and archeological resources. Given all of these resources, this area should be an acquisition priority. Also in this area is a family of bobcats.

CAR-3 The MHCP does not identify all the grates/tubs in Lane 2. Please reference the Rancho del Oro/78 EIR.

Shelley Hayes Caron
SIGNATURE

Shelley Hayes Caron
NAME

PO Box 1502, Carlsbad, Ca.
ADDRESS

92016

The public review comment period closes April 29, 2002 at 5:00 pm

Letter 23: Shelley Hayes Caron

CAR-1. Comment concerns information from the Rancho Del Oro/State Route 78 interchange project which will be required to be consistent with the Carlsbad and Oceanside Subarea Plans. An environmental document is currently under preparation that will address potential biological and other impacts associated with this proposed transportation project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

CAR-2. The area located along the proposed Marron Road right of way is an acquisition priority, yet funds have not been identified. If this property is not acquired, at least 75% of the site must be conserved. Any proposed development, including the extension of Marron Road, must prepare a biological opinion, and will be subject to wetland regulations and the policies of the MHCP.

CAR-3. The MHCP database has been updated to include additional species location data. The State Route 78/Rancho Del Oro Interchange Project EIR was not available for public review at the time of database update.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

Claudia and Richard Foster
9731 Sunnyslope Lane
Escondido, CA 92029

Lee Ann Carranza
US Fish and Wildlife Service
1635 Faraday Avenue
Carlsbad, California

re: How the Montreux Parcel is addressed in the MHCP
April 25, 2002

FOS-1

To all whom it may concern:

I feel that, at the very least, more time should be given for review of the MHCP document, as such a large number of interested persons, including myself, have not been given sufficient time to review it.

I'd surely like to address the intrinsic value of this property and the importance of it remaining pristine and undeveloped. We have the opportunity for this acreage to be retained as wild space with trails linking the already-existing San Dieguito River Park with the Elfin Forest Reserve. Leaving this space as both a migratory corridor for wildlife and for trails maximizes the value of each of these unique natural parks. It would also be a terrible mistake to destroy the view-shed of the San Dieguito River Park, forever affecting its value as a unique refuge for fishermen, bird-watchers, mountain bikers, hikers, equestrians, and even for commuters who, as they drive by on the Del Dios Highway, have a moment of reprieve as they appreciate the unusual solace and serenity that this area has to offer. Any future development of this land's watershed could adversely affect Lake Hodges, as pesticides and runoff pose a possible detriment to its popular sportfishing industry. In 1999, Lake Hodges became the first site in California to be recognized as a Globally Important Bird Area by the Audubon Society, and the presence of golden eagles roosting on the Derbas property is now well-known. The presence of the rare Encinitas Baccaris which only grows in specialized areas, indicates the uniqueness of this environment. There are lots of places that can be made available for building homes. But some areas, such as this one, are more inherently valuable if left pristine. Whatever the future of these 345 acres, we hope it is to be preserved for all, and for all generations.

Sincerely,

Richard S. Foster
Claudia Foster

Claudia and Richard Foster

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APR 30 2002

US FWS
CARLSBAD FIELD OFFICE, CA

Letter 24: Foster

FOS-1. According to the State of California Environmental Quality Act, Section 15105(a), the public review period for a draft EIR should not be less than 30 days nor longer than 60 days, except in unusual circumstances. NEPA also requires a minimum of 45 days for public review. The Draft EIS/EIR was circulated out for public review in December 2001. SANDAG and USFWS implemented a 90-day review period to provide interested parties an opportunity to sufficiently review the documents.

As of September 30, 2002, the Escondido Creek Conservancy and the County of San Diego purchased the Montreux project site, ensuring the land is to remain as open space and be conserved in perpetuity. Therefore, no future development will occur on the Montreux property.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

GATZKE DILLON & BALLANCE LLP

ATTORNEYS & COUNSELORS AT LAW
1021 PALOMAR OAKS WAY, SUITE 200
CARLSBAD, CALIFORNIA 92008
TELEPHONE 760.431.9501
FACSIMILE 760.431.9512

Letter 25: Gatzke Dillon & Balance LLP

General Comments

GD&B-1. The comment identifies the interested party which Gatzke Dillon & Balance represents and the comment provides an introduction to comments presented in more detail.*

April 26, 2002

By Golden State Overnight

Lee Ann Carranza
United States Fish and Wildlife Service
2730 Loker Avenue West
Carlsbad, California 92008

Janet Fairbanks
San Diego Association of Governments
401 B Street, Suite 800
San Diego, California 92101

Re: *Comments of Encinitas Country Day School on the Draft Environmental Impact Statement/Environmental Impact Report (SCH No. 93121073), Draft Multiple Habitat Conservation Program and Draft Encinitas Subarea Plan*

Dear Ms. Carranza and Ms. Fairbanks:

GD&B-1

We represent Encinitas Country Day School ("ECDS" or "the School"), which has an approved project for an elementary school on the eastern portion of a parcel of property located on Manchester Avenue in the City of Encinitas ("the City"). The School has asked us to submit written comments on its behalf to the Draft Environmental Impact Statement/Environmental Impact Report ("Draft EIS/EIR") for Threatened and Endangered Species Due to the Urban Growth Within the Multiple Habitat Conservation Program Planning Area (SCH No. 93121073), the Draft Multiple Habitat Conservation Program (November 2000) ("Draft MHCP"), and the Draft Encinitas Subarea Plan (June 2001) ("Draft ESP").

We appreciate this opportunity to comment on the Draft EIS/EIR, Draft MHCP and Draft ESP as they relate to the ECDS project. Although it appears that these documents generally analyze the potential environmental effects associated with the MCHP project, the following comments identify a number of deficiencies with respect to the legal adequacy of these documents as they relate to the ECDS project. The comments provided below on the Draft

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EIS/EIR will require a written response from the San Diego Association of Governments ("SANDAG") and United States Fish and Wildlife Service ("USFWS") in accordance with the CALIFORNIA ENVIRONMENTAL QUALITY ACT ("CEQA") (CAL.PUB.RES. CODE §§21000 *et seq.*) and the CEQA Guidelines (14 CAL.CODE REGS. §§15000 *et seq.*). We understand that the Draft MHCP and Draft ESP will be "finalized" in response to comments on the Draft EIS/EIR; therefore, we also request that USFWS and SANDAG staff separately respond to specific comments on the Draft MCHP and Draft ESP as provided below.

Our comments to the Draft ESP, Draft MCHP and Draft EIS/EIR (collectively "the referenced documents") are organized as follows: First, this letter provides a brief introduction and background discussion of the ECDS project in order to provide the appropriate context for our comments. Second, this letter provides general comments that reflect concerns germane to the Draft EIS/EIR as well as the Draft MCHP and Draft ESP. Third, and finally, this letter provides specific comments on each of the referenced documents. Please respond in writing to all of the comments presented below.

INTRODUCTION AND BACKGROUND

GD&B-2 ECDS is an educational institution which, since 1988, has operated from facilities on Encinitas Boulevard in Encinitas, California. To accommodate anticipated growth of its student population, and to provide a more comprehensive educational environment for the children, ECDS prepared plans to build a new school on 12 acres of a 20-acre parcel of property, located at 3616 Manchester Avenue, east of the Manchester Avenue/El Camino Real intersection in the City of Encinitas and approximately three miles east of Pacific Coast Highway.

The Project's design and development plan were specifically formed to avoid impacts on the environment and include the following:

- (i) A state-of-the-art storm water collection and recycling system, which intercepts and recycles one hundred percent (100%) of storm runoff from the Project, preventing any of the runoff from reaching the San Elijo Lagoon;
- (ii) A no net loss of habitat area, which presents opportunities for new wetland creation in the Lux Canyon Creek area, and which will provide a Conservation Center for students;
- (iii) The provision for improvement of the City of Encinitas' master plan of trails and the dedication of all required easements for those trails;

GD&B-2. The comment provides a project description of and background information regarding Encinitas Country Day School. The comment does not address the adequacy or accuracy of the MHCP, Subarea Plan, or EIS/EIR.*

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

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- (iv) A one-hundred (100) foot buffer from the Project surrounding the two wetland areas on site, the Lux Canyon Creek and an unnamed alkali marsh, and preservation of the wetland areas in perpetuity with an open space easement. Trail connections to the easements are provided in approved plans should the City desire alternate access to San Elijo Lagoon across the Project;
- (v) An architectural design based upon the Frank Lloyd Wright model, requiring that the buildings be low-rise, single-story structures, which blend into the natural backdrop and do not obstruct public view; and
- (vi) Assistance in the funding and widening of Manchester Avenue by the City, a City project that was incorporated in the City's Circulation Element of the Encinitas Local Coastal Plan ("LCP"). The City's road widening will unavoidably impact a remnant willow wetland (.09 acres), which resides in an ditch excavated for agricultural purposes adjacent to the road. As mitigation for these unavoidable impacts, the Project incorporates a riparian creation and revegetation program, which will create 0.1 acre of new riparian habitat and restore 0.4 acres of degraded streambed habitat in Lux Canyon Creek.

In short, significant resources were expended by ECDS to design a plan for the School that has been praised by both project proponents and opponents.

On November 19, 1998, the City Council of the City of Encinitas ("the City") unanimously certified a mitigated negative declaration for the Project, pursuant to CEQA and the CEQA Guidelines, and approved a coastal development permit pursuant to numerous specific findings of consistency with the City's certified Local Coastal Program ("LCP"). In connection with these project approvals, the City also approved a 4(d) take permit for 2.8 acres of low quality, non-connected coastal sage scrub on the site. In connection with this project approval, and in order to mitigate biological impacts of the project, the School was required to purchase 5.6 multi-species conservation credits at the Manchester Avenue Conservation Bank in the amount of \$105,400. These conservation credits have been purchased, and have completely satisfied the mitigation requirements for environmental impacts at the School project site.

Despite these City approval actions, the School has been blocked from exercising its rights under the City's permits by appeals to the California Coastal Commission by the Commission and the San Elijo Lagoon Conservancy. Honorable Judge Quinn of the San Diego Superior Court has already concluded that these appeals were illegal because the Commission had no jurisdiction over the project. This case is currently on appeal. The School has repeatedly made efforts to exercise its permits during the course of its litigation against the Coastal Commission. In fact, the School asked the City to issue the permits necessary to begin construction of the project (e.g., grading and 4(d) permits), while the California Coastal

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Commission litigation was pending, in order to make sure that it could exercise those rights. However, the City has, to date, refused to issue the permits.

GENERAL COMMENTS

GD&B-3

1. The Draft EIS/EIR, Draft MHCP and Draft ESP provide an inconsistent analysis of the School project. This inconsistency is found both internally within each document and externally between each of the documents, with respect to the characterization of the School property as "undeveloped" and as either "softlined" or "hardlined." Revisions should be made to each of these documents, as more specifically identified below, in order to accurately characterize the School property as a "hardline" property, which has obtained development approvals and is not subject to further discretionary review or approval. As discussed above, the ECDS project already has obtained all necessary project approvals from the City and the wildlife agencies, including a 4(d) take permit and environmental clearance. Nothing more should be required for this project prior to construction.

GD&B-4

2. The referenced documents appear to propose requirements that could be viewed as additional mitigation measures that exceed the impacts resulting from the School project. In considering the imposition of such requirements, an agency must carefully ensure that the measures actually relate to the impacts caused by a specific project. Otherwise, significant and substantial inverse condemnation issues will be presented. *See, Nollan v. California Coastal Commission* (1987) 483 U.S. 825 (setting forth the standards governing conditions imposed by a public agency in connection with the issuance of discretionary land use entitlements). To ensure that these standards are not violated, SANDAG and the USFWS must not impose additional requirements on the Project through the MHCP that seek to create general public benefits rather than to offset project-specific impacts. The ECDS Project has obtained all necessary project approvals. No further discretionary review and approval should be required in connection with the MHCP process for this project and no further requirements should be placed on the project in connection with the MHCP process.

GD&B-5

3. The referenced documents are intended to provide ". . . regulatory certainty to landowners within the City of Encinitas . . ." In order to provide this "certainty," however, it is essential that the referenced documents accurately and consistently refer to and depict private property within the City's jurisdiction, including the ECDS property. Many of the maps provided depict the School property in various forms. Often the markings on the property are too difficult to read with any certainty. As indicated above, it appears that the property has been characterized as "Not a Part" or as "Softlined" or "Hardlined," depending on the map, the key and the reader reviewing the map. This inconsistency cannot be resolved definitively without specific text relative to the ECDS property. Revision is required. The referenced documents, in particular, the final ESP, must show with certainty the ECDS property and accurately

GD&B-3. The 20 acre parcel which includes the 12 acre ECDS site has been shown in the Encinitas Subarea Plan FPA as a "softlined" area where mitigation ratios would be applied, based on a site specific biological report and specific identified habitat types, to determine "hardline" preserve boundaries at the time of development. In developing the Encinitas FPA, "hardlined" boundaries were consistently only indicated for properties that had already been developed, graded, built, etc., such that development approvals had been exercised and the actual preserve boundaries were in place. At the time of the release of the draft Encinitas FPA, the ECDS approvals were still valid, but had not been implemented or exercised, and thus, actual preserve boundaries were not in place. The ECDS approvals can expire and would expire over time if not implemented, and thus the site is not shown as "hardlined". There are no known inconsistencies in implementing the City's Subarea Plan (and applicable criteria) and the ECDS project.

GD&B-4. While the ECDS has received its local discretionary approvals, these approvals have not been exercised. If they were to expire and the Encinitas Subarea Plan were to be approved, any new, revised or resubmitted project on the site would be subject to the requirements of the Encinitas Subarea Plan. At the time of discretionary review of a new, revised or resubmitted project on the ECDS site, the City of Encinitas would complete its review and make all necessary findings in relation to the standards governing conditions imposed by a public agency in connection with the issuance of discretionary land use entitlements.

GD&B-5. Please see response GD&B-3.

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characterize the property as "developed," or as having received "final and complete approval for development."

GD&B-6 4. There are numerous discussions in the referenced documents regarding anticipated public projects. Any comparable discussion of private projects that are "anticipated" or "approved for development" is notably absent. These documents must be revised to provide information regarding these private projects, including the ECDS project, in order to adequately protect the property rights of not only public agencies, but also private developers.

GD&B-7 5. A number of the specific comments provided below relate to all the referenced documents. Where appropriate, revisions should be made to all documents in order to maintain internal and external consistency.

SPECIFIC COMMENTS

DRAFT ENCINITAS SUBAREA PLAN

GD&B-8 1. Table 2-1 provides a summary of the generalized land ownership in Encinitas. Does the "Developed" column include acreage values from projects, such as the ECDS project, that have obtained necessary City approvals for development but have not yet been developed? If not, why not? Where are these projects currently listed? Revision is required. The "developed" column should be either revised to include projects that have obtained necessary development approvals, including the ECDS project, or an additional column should be added to this Table to accurately show the acreage values of projects, including the ECDS project, that have obtained approvals for development but have not yet been developed. These properties should not be shown as "undeveloped."

GD&B-9 2. Table 2-2 provides a summary of the City's existing land uses. What land uses are classified as "undeveloped" in this Table? Where are projects like ECDS classified, those with City approval, but not yet developed? Clarification is required. Land uses that are undeveloped, but that have received approval from the City for development should not be classified as undeveloped. The ECDS property should be classified as private educational.

GD&B-10 3. Figure 2-4 again references "undeveloped" property. It appears that the ECDS property is located within one of the undeveloped areas identified on the Figure. Again, the ECDS property has received all necessary approvals from the City for development. Therefore, this property should be identified as "education" consistent with the project approvals for the site.

GD&B-6. Comment addresses lack of discussion of anticipated private projects. The Planning Commission and City Council can consider this comment in their review and consideration of the Encinitas Subarea Plan and consider the issue of how the Plan should address approved, but not yet implemented, private developments.*

Specific Comments, Draft Encinitas Subarea Plan

GD&B-7. Comment provides an introduction to the latter comments presented in more detail.*

GD&B-8. Table 2-1 provides information on the "generalized" land ownership in Encinitas. The identified source of the information is "SANDAG Generalized Land Ownership Database, 1995". The table, given the source of the data, would not include the ECDS site within the "Developed" column. In 1995, the ECDS project was not yet approved and since the time its local discretionary approvals were granted (1998), it has not yet developed. The Planning Commission and City Council can consider this comment in their review and consideration of the Encinitas Subarea Plan and consider the issue of how the Plan should address approved, but not yet implemented, private developments.

GD&B-9. Please see response GD&B-8.

GD&B-10. Please see response GD&B-6.

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GD&B-11 4. Table 2-3 identifies Encinitas planned land uses. Where is the ECDS property acreage accounted for in this Table? The School site should be classified as either "developed" or a new column should be added for "approved for development" property.

GD&B-12 5. Table 2-4 identifies the Manchester Sports Park Development as a public project that could directly impact the Focused Planning Area ("FPA"). The Sports Park Development, however, has not been approved by the Coastal Commission. Why is SANDAG recognizing impacts of a project that has not yet obtained final approval and not recognizing the identifiable impacts of ECDS, a project which has obtained all final approvals?

GD&B-13 6. This document should provide a table similar to Table 2-4 that identifies private instead of public projects, which are anticipated to be developed consistent with project approvals.

GD&B-14 7. Table 3-1 provides a summary of the acreage of Encinitas vegetation communities within the MHCP study area. Does this Table include acreage that has been provided a 4(d) take permit but which has not yet been graded such as is the case with the ECDS property? The School project has an approved 4(d) take permit and has purchased off-site mitigation. Once the School is able to pull its grading permit, 2.8 acres of coastal sage scrub will be impacted by the grading for the school. If this Table includes the coastal sage scrub on the ECDS property, this Table should be revised to eliminate this acreage.

GD&B-15 8. Figure 3-2 provides a map of the vegetation communities inside the biological core and linkage area ("BCLA"). This map is extremely difficult to read. It is unclear from the map how the ECDS property is being characterized. Please clarify. In addition, it is unclear what is characterized as "disturbed land." How is the ECDS property site characterized? The ECDS property was used as a farm in the recent past and should therefore be characterized as "disturbed land."

GD&B-16 9. Figure 3-4 provides gnatcatcher locations in the City of Encinitas. It appears that there are two locations of gnatcatchers in the general vicinity of the ECDS property. Information must be provided regarding where and by whom these sightings were made. This information should be based upon existing environmental studies that have been prepared for existing sites, including the ECDS Environmental Impact Assessment ("EIA"), which was prepared in July 1998 and is enclosed for your review. To the extent the data provided in the SANDAG documents differs from the EIA information, any inconsistencies must be corrected in favor of the School's EIA.

GD&B-17 10. Section 4 of the Draft ESP discusses the preserve design and land use considerations. According to this Section, "hardlined" areas include properties that have approved "development agreements" showing designated development and biological open space

GD&B-11. The existing General Land Use Description for the ECDS site is Rural Residential based on the sites current General Plan Land Use Designation and it is included in the 1,259 acres of Natural Habitats in Table 2-3 MHCP Vegetation mapping of 1999, found in Figure 3-1 of the Subarea Plan. The Planning Commission and City Council can consider this comment in their review and consideration of the Encinitas Subarea Plan and consider the issue of how the Plan should address approved, but not yet implemented, private developments.

GD&B-12. Table 2-4 has been included in the Encinitas Subarea Plan for informational purposes only, and includes all anticipated (not approved, implemented, etc.) public projects that were identified in the City of Encinitas Capital Improvement Program at the time the Subarea Plan was drafted. The acres of impact are estimated for informational purposes only and the inclusion of the table in the Plan does not imply any approval of the projects identified in the table.

GD&B-13. Please see response GD&B-6.

GD&B-14. Table 3-1 includes the vegetation communities that were identified on the ECDS site as of the date of the data source (1999). The 4(d) permit for the ECDS site has not yet been exercised and can and would expire if not exercised or extended.

GD&B-15. The vegetation communities identified for ECDS site in Figure 3-2 are the same as the vegetation communities identified in Figure 3-1, with the addition of crosshatching to indicate inclusion in the BCLA.

GD&B-16. The data used in the compilation of the MHCP and Subarea Plans were obtained from a variety of sources. These are on file at SANDAG. The commenter is referred to SANDAG for additional information on the database.

GD&B-17. Please see responses GD&B-3 and GD&B-6.

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areas, and "softlined" areas, which do not have development approvals. How are properties that have been approved for development, but do not have statutory, signed "development agreements" classified? The definition of "hardlined" areas should be revised to include not only those properties that have approved statutory "development agreements," but also those properties that have been approved for development. Any property that has been approved for development, including the ECDS property, should be designated as a hardline area and should be placed outside the proposed preserve. If the document will not be revised as requested, please provide a detailed response, which explains the basis for your decision.

GD&B-18 11. Figures 4-1 and 4-2 should be revised to accurately indicate that the ECDS property (which has been approved for development) is within the hardline focused planning area and that this property falls outside of the proposed preserve.

GD&B-19 12. The ECDS property has been approved for a take of 2.8 acres of coastal sage scrub. This approved take should be included in the "total outside FPA acres" provided in Table 4-1a.

GD&B-20 13. Section 4.2.1 provides a summary of the land uses and public projects expected to impact habitat within the preserve. As previously indicated, the ECDS property should be shown as a "hardline" project and shown as a property approved for development outside of the proposed preserve. If any of the property is designated as within the preserve, Section 4.2.1 should be revised to indicate that the ECDS property will be developed as an elementary school.

This section also lists the Manchester Sports Park property as active park and recreation fields. Why is this section making such a clear statement on a project that has not received necessary approval from the Coastal Commission and has not mentioned the ECDS project, which has received all of the necessary permits and is simply defending against an illegal assertion of jurisdiction by the Coastal Commission?

GD&B-21 14. Table 4-4 should be revised to include a footnote that specifies that the mitigation standards do not apply to those properties that have already been approved for development.

GD&B-22 15. Figure 4-3 provides a list of softlined properties requiring site-specific standards. This list is out of date and should be updated.

GD&B-23 16. Page 4-31 provides a list of parcels which are shown as "hardline" properties. The ECDS property (the Mavis parcel) should be added to this list. If this list is not going to be revised, please explain, in detail, the basis for that decision.

GD&B-24 17. Where is the ECDS property included in Table 5-1? This property should be shown as private lands which are hardlined.

GD&B-18. Please see response GD&B-6.

GD&B-19. Please see responses GD&B-6 and GD&B-14.

GD&B-20. Please see responses GD&B-3, GD&B-6, and GD&B-12.

GD&B-21. Please see response GD&B-6.

GD&B-22. Comment addresses the list of softlined property on Figure 4-3. Please see response GD&B-16.

GD&B-23. Please see response GD&B-3. List will be revised to be completely eliminated, as all identified projects have recently been updated as "hardlined" in the MHCP/Encinitas Subarea Plan FPA due to the actual development of the sites or the purchase of the City property by the County of San Diego since the time of the drafting of the Plan.

GD&B-24. The ECDS site is included in the Private Lands – Softline/Standards row. Please see response GD&B-3.

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GD&B-31 24. Section 7.3.2 refers to "future development" in the Lux Canyon area. This section should be revised to refer to future development of property that has already obtained approval for development such as the ECDS property. Essentially, property that has obtained approval for development should be treated in the same manner as property already developed. The requirements in this section should not be imposed on the ECDS property, property which has already obtained all necessary project approvals. To do otherwise would subject projects like the ECDS project to a type of double jeopardy.

DRAFT MHCP

GD&B-32 1. Section 1 of the Draft MHCP indicates that participating cities prepared focused planning areas ("FPA") and that FPAs were refined through direct negotiation with landowners regarding likely development and open space configurations on their properties. ECDS has obtained development approvals from the City of Encinitas. Despite these approvals, the Draft MHCP has mischaracterized the School property. Certainly, actual project approvals are more certain than "likely development." Despite the City's apparent failure to provide SANDAG and the USFWS with accurate information regarding the ECDS property, the MHCP should be revised to accurately indicate the status of the project site as an approved development.

GD&B-33 2. Table 2-1 provides a summary of the acreage of vegetation communities within the MHCP study area. Where is the ECDS property accounted for in the Table? This project site should be provided as "developed" or, in the alternative, a new column should be provided for "approved for development" projects such as the ECDS school project.

GD&B-34 3. Figures 2-3 and 2-4 classify the habitat value and vegetation communities inside the MHCP study area and the BCLA. These figures are difficult to read. How is the ECDS project currently classified on these figures? The ECDS project site should be classified as "developed" or, in the alternative, a new classification should be included for properties "approved for development."

GD&B-35 4. Figure 2-7 provides pie charts depicting existing land uses and planned land uses. Please indicate where the ECDS property has been placed in these charts and correct the classification as discussed herein, if necessary.

GD&B-36 5. Figure 2-8 depicts the existing land uses within the MHCP study area. It appears that the ECDS site has been classified as "undeveloped." The ECDS site should be depicted as either education or as approved for development.

GD&B-37 6. Please confirm that Figure 3-1 accurately depicts the ECDS site as "developed" or as a "project already permitted." Please revise accordingly, if necessary.

GD&B-31. Please see response GD&B-6.

Draft MHCP

GD&B-32. The 20 acre parcel which includes the 12 acre ECDS site has been shown in the MHCP Plan FPA as a "softlined" area where mitigation ratios would be applied, based on a site specific biological report and specific identified habitat types, to determine "hardline" preserve boundaries at the time of development. In developing the Encinitas portion of the MHCP FPA "hardlined" boundaries were consistently only indicated for properties that had already been developed, graded, built, etc., such that development approvals had been exercised and the actual preserve boundaries were in place. At the time of the release of the draft MHCP Plan, the ECDS approvals were still valid, but had not been implemented or exercised, and thus, actual preserve boundaries were not in place. The ECDS approvals can expire and would expire over time if not implemented, and thus the site is not shown as "hardlined".

GD&B-33. The ECDS site acreage falls within the Habitat Subtotal, based on the vegetation communities identified on the ECDS site as of July, 2000 (Figure 2-1 and Table 2-1). The Encinitas Planning Commission and City Council and the SANDAG Board can consider this comment in their review and consideration of the MHCP Plan.

GD&B-34. MHCP Plan Figure 2-3 classifies the habitat value of the ECDS site as "very high" (Source: MHCP Habitat Evaluation Model, July, 2000). MHCP Plan Figure 2-4 indicates that the ECDS site is "privately owned lands". The Encinitas Planning Commission and City Council and the SANDAG Board can consider this comment in their review and consideration of the MHCP Plan.

GD&B-35. MHCP Figure 2-7 indicates the Existing Land Use as undeveloped, and the Planned Land Use as Residential. This is correct, given the site's current undeveloped status and its existing GP Land Use Designation.

GD&B-36. MHCP Figure 2-6 (not 2-8 as indicated in comment letter) depicts existing land uses and indicates the ECDS site as undeveloped. Please see response GD&B-35.

GD&B-37. MHCP Plan Figure 3-1 depicts the ECDS site as a "softline" area. The Encinitas Planning Commission and City Council and the SANDAG Board

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can consider this comment in their review and consideration of the MHCP Plan.

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GD&B-38 7. On page 3-23, the Plan discusses preserve configuration. This section indicates that the MHCP will conserve as contiguous and functional a preserve system as possible given all of the legal, financial, and physical constraints to preserve design. This section should be revised to include existing permitted developments as a constraint to preserve design.

GD&B-39 8. Table 4-1 provides a summary of preserve assembly. Please confirm that the ECDS project site has been included in the acreage that is conserved through offsite mitigation, consistent with the 5.6 acres of off-site mitigation purchased by the property owner for the development of the project site.

GD&B-40 9. Table 4-2 provides a summary of the conservation of habitat lands by ownership in the MHCP preserve. Has the ECDS site been identified for "public acquisition?" If so, this Table must be revised to indicate that the ECDS site is not available for public acquisition. This revision is consistent with the Plan requirement that public acquisition will be accomplished only with the cooperation of the private property owner and only from willing sellers. The ECDS property is not for sale through public acquisition or otherwise.

GD&B-41 10. Table 4-5 provides that the City of Encinitas will conserve 47 acres in the MHCP preserve. Please identify all acreage that the City will conserve.

GD&B-42 11. Table 4-8 provides a summary of the natural habitat on private lands in the MHCP study area that are to be included in the MHCP preserve. How has the ECDS property been designated on this Table? The School property should be characterized as a hardline property which has obtained all necessary development approvals and which is not subject to further discretionary review or approval.

GD&B-43 12. Page 4-25 references the Manchester Avenue Conservation Bank. Please revise this section to provide reference to the ECDS acquisition of 5.6 acres of this conservation bank's credits.

GD&B-44 13. Beginning at page 5-3, Section 5.2.2, the Draft MHCP discusses take authorizations for covered species. This section indicates that: "[a]mong other benefits, completion and approval of a subarea plan eliminates the 5% limit on interim take of coastal sage scrub applied under special rule 4(d) as a part of the NCCP planning agreement." What happens to 4(d) take permits that have been approved during the "interim plan" but that have not been issued at the time of completion and approval of the Subarea Plan? This section should be revised to clearly indicate that any take authorization approved during the interim plan remains in place and will not be altered at the time of completion and approval of the Subarea Plan unless all pending projects are deemed in conformance at the time of completion and approval.

GD&B-38. The Encinitas Planning Commission and City Council and the SANDAG Board can consider this comment in their review and consideration of the MHCP Plan.*

GD&B-39. The acreage of the preserve that could result from the ECDS site is accounted for in the Private Landowners/Development section, bullet 2 (9,109 acres). The site is "softlined" Please see response GD&B-32.

GD&B-40. The ECDS has not been identified by the City of Encinitas for public acquisition. The ECDS acreage is accounted for in Table 4-2 as Private Ownership.

GD&B-41. The 47 acres of habitat to be preserved by the City of Encinitas in Table 4-5 would all take place on existing, City-owned lands that contain habitat, such as Indian Head Canyon, Oak Crest Park, ESD Park Site, etc. Please see also Section 5.1.1 of the Encinitas Subarea Plan.

GD&B-42. The ECDS site is accounted for in the "softline area" column. Please see response GD&B-32.

GD&B-43. Comment requests additional information be added to the description of the Manchester Avenue Conservation Bank. The text provides a brief and correct description of the Manchester Avenue Conservation Bank. No change to text, based on the comment received is warranted.

GD&B-44. Please see response GD&B-38. If a project has already received all entitlement permits [inclusive of either a 4(d), 7, or 10(a)], then the project would proceed. It would not be necessary to obtain a take authorization, since one was already obtained.

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GD&B-45 14. Section 5.2.3 provides a discussion of new development. This section should be revised to include a discussion of development which has obtained all necessary approvals for construction but that has yet to initiate construction.

GD&B-46 15. Page 5-11 discusses the development review and approval process. This discussion indicates that: "[S]ubarea [P]lans may incorporate or reference hardlined project plans on specific properties within their jurisdiction. Such hardlined project plans include a map showing where conservation and development will occur on a project site, along with specific project design guidelines that must be met under plan implementation." The Draft MHCP and Draft ESP should include the ECDS project as a hardlined project.

GD&B-47 16. This discussion further indicates that Subarea Plan requirements must be met before granting approvals for project development. This section should be revised to include information regarding projects that have already obtained final approval for construction. Specifically, these projects should be "grandfathered" from any further discretionary review and approval by the City.

GD&B-48 17. Section 6.2.3 provides general guidelines to be followed for development within the preserve. This section should be revised to clearly indicate that all projects that have obtained necessary permits and related approvals prior to approval of the IA and other related documents are "grandfathered" from any additional requirements including, but not limited to, the requirements set forth in Section 6.2.3.

DRAFT MHCP PLAN - Biological Analysis and Permitting Conditions

GD&B-49 1. Section 2.2' provides as follows: "Hardline areas generally represent existing preserve areas, or areas where planning and landowner negotiations have progressed sufficiently that lines depicting ultimate preserve versus development areas can be confidently drawn at this time." Projects, including the ECDS project, which have obtained City approval for construction fall within this definition and therefore should be characterized as hardline areas outside the preserve.

GD&B-50 2. A number of tables in Section 3.0 provide information regarding conservation acreage in the MHCP study area, including in the City. Please provide the number of acres that are included in *each* of these tables for the ECDS property. Are these numbers based upon the 5.6 multi-species conservation credits that the School purchased at the Manchester Avenue Conservation Bank? Acreage that will be preserved on-site after construction? This information is critical in order to understand whether the MHCP accurately depicts the School property and the status of project approvals. Revision may be necessary.

GD&B-45. Please see response GD&B-38.

GD&B-46. Please see responses GD&B-32 and GD&B-38.

GD&B-47. Please see response GD&B-38.

GD&B-48. Please see response GD&B-38.

Draft MHCP Plan – Biological Analysis and Permitting Conditions

GD&B-49. Please see responses GD&B-32 and GD&B-38.

GD&B-50. The tables in Section 3.0 account for the ECDS site acreage based on the vegetation communities identified on the ECDS site as of May, 1999.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

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GD&B-51 3. Section 4 provides information regarding the California Gnatcatcher. This information appears to provide several sightings of gnatcatchers near the ECDS property. This information must be revised consistent with the EIA that was prepared for the project site. A copy of this EIA has been enclosed.

GD&B-52 4. Section 4 should be revised to clearly indicate that the requirements and conservation goals do not apply retroactively to projects which have already obtained development approvals. Rather, these projects, including the ECDS project, are "grandfathered" and not subject to further discretionary review and approval requirements.

GD&B-53 5. Appendix E provides conditions for estuarine species within and adjacent to the San Elijo Lagoon. Again, these conditions should not be applied retroactively to projects that have already obtained development approvals, including, but not limited to, the ECDS project.

GD&B-54 6. Appendix F provides a definition of "disturbed land." This definition should include land that has obtained approvals for construction permits, but for which the permits have not yet been issued.

DRAFT EIS/EIR

GD&B-55 1. Beginning at page ES-5, the Draft EIS/EIR discusses project objectives. The third bullet indicates that the take authorizations will replace the 5% restriction on clearing of coastal sage scrub habitat currently imposed under Section 4(d) of the federal Endangered Species Act. As requested earlier, please clarify what happens to Section 4(d) take permits that have been approved but have not been issued at the time of approval of the take authorizations under the MHCP. Any Section 4(d) take permit holder must be provided the benefits of its take authorization even after the MHCP has been approved. The City of Encinitas has apparently over committed to property owners in connection with its 4(d) take authorization. How will this be dealt with in connection with the MHCP? Will all property owners that have an approved 4(d) take authorization be provided the take authorization under the MHCP regardless of whether the City authorized more than the 5% restriction on clearing of coastal sage scrub habitat? If anyone is detrimentally impacted by this over authorization, it should be the City, not the individual property owners.

GD&B-56 2. At Page ES-9, the Draft EIS/EIR references the identification by cities of property that is a priority for acquisition in order to increase overall conservation of the sage scrub-dominated areas. Has the City identified the ECDS project site for acquisition? As previously indicated, the ECDS property is not available for public acquisition and should not be identified for acquisition in this, or in any other document. Any attempt by the City or any other public entity to acquire the property will be rejected.

GD&B-51. Comment addresses inconsistencies between location of gnatcatcher sightings discussed in Section 4 and locations noted in the EIA prepared for the ECSD project site.

GD&B-52. Please see response GD&B-38.

GD&B-53. Please see response GD&B-38.

GD&B-54. Please see response GD&B-38.

Draft EIS/EIR

GD&B-55. As per adopted City Council policy, the City of Encinitas 4(d) Interim Take Permit issuance process is on a first-come, first-served basis - "The actual 4(d) permit is not issued until the habitat loss is imminent. That is, the 4(d) permit shall be issued in conjunction with a grading, construction or improvement permit, or other improvement authorization. For that reason, discretionary approvals received from the City are not a guarantee of subsequent 4(d) permit issuance. At any such time as the City's cumulative 5% habitat loss limitation is reached, no additional 4(d) permits may be issued regardless of any prior discretionary approvals." It should also be recognized that 4(d) approvals are valid for one year, after which they expire. The Encinitas Planning Commission and City Council and the SANDAG Board can consider this comment in their review and consideration of the MHCP Plan.

GD&B-56. Please see response GD&B-40.

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GD&B-57 3. At page 2-25, the Draft EIS/EIR discusses project proponent rights. Clarification is necessary regarding the rights of ECDS, a project proponent that has an approved 4(d) take permit but, despite repeated attempts, has been unable to have the permit issued by the City due to pending litigation. It appears that ECDS should become a third-party beneficiary to the City's authorizations under the MHCP (*i.e.*, ECDS should be authorized to take consistent with its previously approved 4(d) take permit). Please respond.

GD&B-58 4. Figure 3.2-1 provides a map of the existing land use MHCP study area. How has the ECDS property been classified on this Figure? This School property should be classified as either education or a new designation should be added that indicates that the property has been approved for development.

GD&B-59 5. Figure 3.2-2 provides a map of the planned land use MHCP study area. How has the ECDS property been classified on this Figure? Again, this School property should be classified as either education & institutions or a new designation should be added that indicates that the property has been approved for development.

GD&B-60 6. Page 4-11 of the Draft EIS/EIR discusses the impacts of FPA Alternative 1 related to land use compatibility in the City of Encinitas. As previously stated, clarification is required to appropriately indicate that the guidelines for land uses adjacent to the preserve will not be applied retroactively to projects that have already obtained development approvals.

GD&B-61 7. The paragraph on page 4-11 relating to the City of Encinitas states in part: "The preserve will not result in any new impacts to adjacent land uses, because no new development will occur within the areas that are proposed to be preserved for habitat." How is "new development" defined for purposes of this impact analysis? Did this impact analysis take into account the impacts of developments, such as the ECDS project, that have obtained project approval and have completed the environmental review process but that have not yet been developed? Is the ECDS property proposed to be included within the MHCP preserve? If so, revision and reticulation of the document is required. The impact analysis must accurately take into account the approved development that will take place on the ECDS property and any impacts this development will have on the adjacent land uses.

GD&B-62 8. Figure 4.3-3 depicts the recorded locations of gnatcatchers. This Figure is difficult to read. Please verify that there are no recorded locations of gnatcatchers on the ECDS property.

GD&B-63 9. In addition, Figure 4.3-3 indicates those areas that have already been permitted for take. Is the ECDS property identified as an area that has already been permitted for take? If not, why not? Revision is required to accurately indicate that this School property has a 4(d) take

GD&B-57. Section 2.1.3 addresses "take authorizations" consistent with an adopted Implementing Agreement (IA), not with a 4(d) Interim Take Permit. The City of Encinitas will not receive "take authorization" until the MHCP Subregional Plan, the City's Subarea Plan, and an Implementing Agreement is approved between the City and the Resource Agencies. Please see responses GD&B-38.

GD&B-58. Figure 3.2-1 classifies the ECDS site as "undeveloped" (1998), which is correct, given the sites current undeveloped status.

GD&B-59. Figure 3.2-2 classifies the ECDS site as "spaced rural" (1998), which is correct, given the sites current GP Land Use designation.

GD&B-60. Please see response GD&B-38.

GD&B-61. The "preserve" consists of the total lands that will ultimately be set aside for habitat purposes. This section is stating that within the preserve area itself, that is the open space habitat area, no new development will occur and thus new impacts to adjacent land uses are possible. Please see response GD&B-38.

GD&B-62. Comment addresses the readability and accuracy of Figure 4.3-3 of the EIS/EIR. See GD&B-16.

GD&B-63. The actual 4(d) Interim Take Permit for the ECDS site has not been issued and take of habitat has not occurred. As such, Figure 4.3-3 does not depict the ECDS site as a site with a project already permitted.

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permit and the impact has been mitigated and is an unavoidable impact because the mitigation is not within the scope of the Draft EIS/EIR.

GD&B-64 10. Page 4-89 of the Draft EIS/EIR discusses the coastal gnatcatcher based upon findings in Ogden 2000a and 2000b. Please verify what this information indicates with respect to location points for gnatcatchers on the ECDS project site and ensure that the information is compatible with the information provided in the 1998 EIA that was prepared for the project site, a copy of which is enclosed.

GD&B-65 11. Page 4-132 discusses the City of Encinitas and indicates that there will be no significant impacts to the vegetation communities under the City's Subarea Plan. Does this Plan take into account the 2.8 acres of take that will occur through the development of the ECDS property? If not, why not? Revision and reticulation is required.

GD&B-66 12. This discussion also indicates that any impacts to the coastal sage scrub will be avoided through the additional conservation of coastal sage scrub supporting gnatcatchers. Please identify the exact acreage that has been identified by the City for conservation. Does this acreage include the ECDS property? As previously indicated, the ECDS property is not available for public acquisition and conservation. Please revise the City's Subarea Plan as necessary consistent with this information.

GD&B-67 13. Table 4.3-3 provides information regarding the monitoring efforts for the gnatcatcher. What areas have been identified as "high priority for restoration" within the City of Encinitas?

GD&B-68 14. Table 4.3-4 provides a summary of the conservation of vegetation communities in the Subarea Plans. Has any acreage from the ECDS property been included in the Draft ESP numbers? If so, revision is required consistent with the approved development permits for the site.

GD&B-69 15. Section 4.4.3.2 should be revised to include a discussion of not only the projects that are planned within the City as part of the City's General Circulation Plan Element, but also those projects that have obtained approvals for development, including, but not limited to, the ECDS project. Any impacts of these projects that have not already been analyzed in the Draft EIS/EIR should be analyzed in the Final EIS/EIR. Recirculation may be required.

GD&B-70 16. Section 4.5.3.2 discusses a number of anticipated public projects that could potentially impact the FPA that have been identified by the City of Encinitas. This section should be revised to also include a discussion of anticipated private projects that could potentially impact the FPA, including, but not limited to, the ECDS project. Specificity should be provided that implementation of the Subarea Plan will not preclude construction of those

GD&B-64. Please see response GD&B-62.

GD&B-65. Please see responses GD&B-32 and GD&B-38.

GD&B-66. See Table 2.3-4 of the EIS/EIR, page 2-55. Any habitat on the ECDS site that would contribute to the ultimate MCHP preserve would occur through the development review and exaction process and not through acquisition or purchase. Please see responses GD&B-32 and GD&B-40.

GD&B-67. Refer to and review EIS/EIR Table 4.3-5, page 4-199. No restoration of gnatcatcher habitat is identified in the City of Encinitas.

GD&B-68. Please see responses GD&B-32, GD&B-38, and GD&B-66.

GD&B-69. EIS/EIR Section 4.4 Regional Transportation/Circulation deals with determining the significance of impact of the MHCP on the regional transportation/circulation plans of the region. Including a discussion of the ECDS project in this Section is not relevant. Please see response GD&B-38.

GD&B-70. EIS/EIR Section 4.5 Public Services and Utilities, deals with determining the significance of impact of the MHCP on public services and utilities. Including a discussion of the ECDS project in this Section is not relevant. Please see response GD&B-38.

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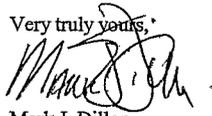
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private projects that have obtained development approvals, as is the case with the ECDS project. The environmental impact analysis should take these private projects into account in connection with its impact determinations.

Thank you again for providing us with the opportunity to present our comments on the Draft MHCP, the Draft ESP, and the Draft EIS/EIR for the MCHP project. If you have any questions regarding the issues addressed in this letter, please do not hesitate to contact us. We look forward to receiving a response to the comments provided in this letter and appropriate revisions to the MHCP, ESP and EIS/EIR that accurately reflect our concerns and comments.

Very truly yours,



Mark J. Dillon
of
Gatzke Dillon & Ballance LLP

MJD/lgh
Enclosure

cc (w/enclosure):

Christy Guerin, Mayor, City of Encinitas
James Bond, Deputy Mayor, City of Encinitas
Dennis Holz, City Council Member
Maggie Houlihan, City Council Member
Jerome Stocks, City Council Member
Kerry Miller, City Manager
Glenn Sabine, City Attorney
Bill Weedman, City Planner
Kathleen Porterfield
Martin Mullen
Michael Larsen

By First Class U.S. Mail

Ms. Janet Fairbanks
C/O SANDAG
401 B St., Suite 800
San Diego, Ca 92101

April 23, 2002

Letter 26: Kim Hunter

Kim Hunter (760) 744-0670
20032 Questhaven Rd.
Elfin Forest, Ca 92029

Re: Multiple Habitat Conservation Program Draft EIS/EIR, five draft Subarea Plans

The following comments are specifically referring to San Marcos, and more particularly to San Elijo Hills Planning Area Q (also known as the Regional Park Area), and identified for 25% conservation within SM's subarea plan.

HUN-1

1) Executive Table, pages ES-17,18 recommends increasing this 25% conservation to 75-100% etc. as mitigation, but then claims that any increase above 25% is infeasible due to pre-existing Developer Agreement entitlements to actively develop this area. This infeasibility excuse is NOT true. To the contrary, the San Elijo Ranch Developer Agreement obligates the Developer to provide non-habitat impacting, passive use, Regional Park improvements within Area Q that consist of hiking trails, primitive campsite, viewpoints etc.. These specified primitive type improvements are consistent with high conservation of natural open space. The Developer Agreement also calls for an immediate Regional Park open space easement to be given San Marcos, followed by fee title once these passive use, primitive improvements are in. NO WHERE does the Developer Agreement say that the Regional Park cannot be natural open space. NO WHERE does the Developer Agreement say that San Elijo has rights to more impactive development of Area Q. Especially there is no mention of entitlements to a golf course or any other possible conditional use. NO WHERE does the Developer Agreement say that only 25% of the Regional Park can go to conservation. Instead San Elijo's obligation to provide non-impactive trails etc. and public access to these non-impactive uses IS specified in the Developer Agreement. Thus the terms of the Developer Agreement, are in fact, consistent with 100% conservation of Area Q.

Furthermore, the San Elijo supplemental EIR covering the Developer Agreement and San Elijo Specific Plan make it quite clear that passive Regional Park use in an open space area is the Area Q use analyzed for environmental impact. While the San Elijo EIR does mention that San Marcos may wish to consider more impactive active uses at a later date, the EIR is also quite clear that any such active uses would not only require additional entitlements (via CUP/ major use permit) but additionally any active use would also necessitate additional environmental review. Thus active use of Area Q was not the use analyzed in San Elijo's EIR which analyzed both the SP and Developer Agreement. Again, active uses within Area Q are NOT a developer entitlement. Thus the EIS/EIR statement that it is infeasible to preserve this area due to previous commitments in the Developer Agreement is simply NOT true.

HUN-2

2) Developer wishes and hard and fast developer entitlements are two worlds apart. Surely San Marcos knows the difference! San Elijo has only recently applied for a major use permit

HUN-1. A Development Agreement was implemented between the City of San Marcos and San Elijo Ranch. That Agreement set certain responsibilities for the City and the Ranch. An excerpt of the Development Agreement is attached to the Response to Comments as Attachment RS-1. In that Agreement, the City agreed to consider certain land uses in the Cerro de las Posas ridgeline area. The Development Agreement incorporated by reference the Specific Plan. In the Specific Plan, this area had identified *potential uses that could be developed in this area subject to a Conditional Use Permit*. One of these uses is a golf course (see RS-1). As such, the City can not deny a land use prior to an applicant making an application. For this particular issue, the City is obligated to process an application for a Conditional Use Permit for the uses listed therein, including a golf course. The City has been advised by legal counsel that if it does not process an application as set forth in these entitlements, it can be deemed to be in violation of state regulations on permit processing and other substantive and due process rights. Additionally, development agreements have been interpreted as contractual obligations, were it to refuse to process an application. Further, the City can not deny a land use prior to the submission of an application. The processing will include CEQA review of the application, and the legislative body (the City Council) must make certain findings with respect to the proposed use prior to making a decision on whether to issue the CUP. Issuance of the CUP is a *discretionary* decision – the City can approve or deny that application in accordance with its discretionary land use authority. The City can not deny the project today because there is no application before the decisionmakers.

It should be clarified that construction and subsequent activities identified for a "passive park", such as hiking and camping, do have some impacts to habitat through habitat clearing and disturbance associated with people in the vicinity. It is recognized that further entitlement will be necessary if a more intensive use is proposed (e.g., golf course); however, nearly all of the future projects included in the MHCP will require future entitlement process (and CEQA review at the time of entitlement approval). The City of San Marcos has concluded that in the preparation of the MHCP, this area be conserved at a 25% rate. The EIS/EIR has appropriately concluded that additional mitigation would reduce environmental impacts.

HUN-2. It is recognized that the CUP for the golf course has not been approved; however, this EIS/EIR must address the MHCP as proposed. The City of San Marcos has proposed this area for 25% conservation. The EIS/EIR has

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addressed the environmental ramifications of conserving 25% of the property. As stated in response HUN-1, many of the projects anticipated in the MHCP and associated Subarea Plans have not been "approved"; however, the EIS/EIR must address the likely scenario that they will be proposed and entitled as designated in the plan.

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requesting permission to develop an extremely controversial golf course in Area Q, (even though they have already dedicated this land to San Marcos and are contractually obligated to pass the underlying fee title to San Marcos.) If San Elijo already had entitlements for this active use, they wouldn't be asking the City to consider approving it again as a CUP! And if San Marcos had already completed environmental review of switching from passive to active use in Area Q, they would not be preparing a new supplemental EIR to analyze the impacts of active use! San Elijo's currently pending major use permit application reconfirms that they do not have entitlements to actively develop Area Q.

HUN-3

During SP public hearings and in numerous docs., San Marcos repeatedly emphasized deletion of golf course use to gain approval of San Elijo's higher density SP. San Elijo's current CUP application to now add back the deleted golf course use (relocated to protected ridgeline land that has historically been off limits and outside the developable envelope) has raised a lot of public outcry. The City is highly aware of the abundant opposition that has been expressed through letters, e-mails, phone calls and a workshop. Certainly they are well aware that this highly controversial application has not yet started public hearings. For San Marcos to pretend in the EIS/EIR that this pending CUP application (or any active development) has already been entitled, magnifies their dishonesty. I find it abhorrent that the current EIS/EIR wording aids San Marcos in such deceit. Please correct the EIS/EIR to reflect the City's entitlement to develop a passive use Regional Park on City owned open space land that can be conserved for the benefit of the MSCP. Add the information that additionally the City has an obligation to preserve the primary ridgeline. Delete all statements that erroneously state/or imply that San Elijo has entitlements to active development of Area Q. If the EIS/EIR chooses to discuss the pending CUP application it should be quite clear to the readers that San Marcos most certainly can and in fact has mitigation duties to deny any and all permits for "special" uses that interfere with conservation of this prime habitat land and the highly visible ridgeline San Marcos is obligated to preserve.

HUN-4

3) CEQA says that feasible mitigation measures cannot be rejected. At this point in time San Marcos has received an irrevocable offer to dedicate this Regional Park (Area Q) as open space land via recorded map on the San Elijo SP. (I haven't pulled the map myself to read the exact verbiage, but 2 San Marcos planners have confirmed the City received the IOD.) At the Carlsbad MHCP public presentation, Jerry Backoff, head planner for San Marcos, indicated to me that the IOD received by San Marcos was for conservation. Thus San Marcos most certainly is able to accept this open space/ and or conservation dedication. San Marcos most certainly can conserve 100% of this land. In fact low impact trails consistent with conservation is what the Developer Agreement obligates San Elijo to provide. Again, nothing prevents San Marcos from accepting the existing offer of dedication and conserving all of Area Q (especially the DA). As conservation is undoubtedly feasible, this mitigation measure cannot be falsely rejected as infeasible. Please correct the EIS/EIR to include 100% conservation of San Elijo Planning Area Q as a feasible mitigation measure.

HUN-5

4) Jerry Backoff also mumbled to me his reasoning that since The City has not yet accepted the IOD, he figures San Elijo still "owns" Area Q and therefore San Elijo, as owner, can apply for a major use permit. Jerry and I disagreed on the significance of how dedicated easements affect ownership rights. We also disagree on the significance of contractual title obligations. No

HUN-3.

Please see response to comment HUN-2.

HUN-4.

Please see responses HUN-1 and HUN-2. Feasible mitigation, by definition, must be a mitigation that can legally be implemented. Because of the previous development agreement with the property owner that allows development on that parcel; therefore, the designation of that land as 100% conservation is not feasible.

HUN-5.

Until the City accepts an Irrevocable Offer of Dedication (IOD) on a piece of land, the property is still owned by that property owner. If the City actually owned this property, the City would be shown on the County Assessor's assessment roles and this is not the case. San Elijo Hills has the right to apply for a CUP as allowed for under the San Elijo Hills Specific Plan. The City will not accept the IOD until regional park improvements are ready to be put in.

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matter what propaganda anyone mumbles, the fact remains that The City of San Marcos, not only can exercise unilateral control of this land via recorded dedicated easement, but as The San Elijo Developer Agreement contractually obligates San Elijo to also pass fee title of this land to San Marcos, San Marcos in fact has full ownership rights. I'm truly annoyed that this draft EIS/EIR significantly minimizes the true extent of public open space lands under San Marcos ownership and/or control.

HUN-6

San Marcos' attempt to deny their control of prime MSCP land, underscores their contempt for Regional cooperative planning and environmental welfare. No amount of San Marcos mumble jumble can negate the fact that this land has irrevocably been dedicated to San Marcos. The dedication is done. The contract insuring San Marcos will receive fee title is done. San Elijo cannot revoke it. San Marcos has the ability to perfect their ownership at any time. Today tomorrow, the City's unilateral entitlements will not change. They are permanent, running with the land. Thus it is the City of San Marcos who has executed and recorded entitlements to this land, not San Elijo. Please correct this in the EIS/EIR.

HUN-7

5) CEQA requires responsible agencies to do their very best in honestly discussing environmental impacts and available mitigation. CEQA frowns when those responsible put out misleading or untrue reports. The misrepresentations surrounding the untrue claim that conserving more than 25% of Area Q is infeasibility, calls into question the integrity of the entire EIR document. I've only glanced at the Executive summary, but I cannot help wondering what other untruths abound.

HUN-8

6) CEQA gets particularly angry when untruths are purposely included by agencies who figure they can waltz around California law by only correcting untruths if and when they are absolutely pushed and shoved. San Marcos is one of those who requires additional scrutiny and analysis in verifying facts about their jurisdiction. It is bad enough that the draft was released with untruths. I trust that the final will not also rely on public comment to correct its contents. I do hope that before this process ends, someone responsible goes back and actually reads original or certified copies of the Documents referenced in the EIS/EIR. IT IS NOT the public's duty to put them in front of you, nor read them for you, nor point out your comprehension mistakes. But it is mandatory that you, as lead agency, verify and substantiate every statement your final EIS/EIR makes.

HUN-9

I enclose the following pertinent sections of documents supporting the feasibility of conserving San Elijo Planning Area Q. However, in giving you these relevant sections, I by no means wish to imply that only these pages are important or that you do not have an obligation to read and understand all documents you cite and/or reference in the final EIS/EIR.

Enclosed please find:

- 1) Pages 6&7 of Exhibit B to the San Elijo Developer Agreement .
- 2) Exhibits F1 & F2 regarding passive trail use as referenced in the Dev. Agreement
- 3) Exhibit 111.10 to the SP approved simultaneously with the Developer which clearly shows the subject area Q as Natural open space.
- 4) Response to Carlsbad comments on San Elijo's Draft SEIR in which San Marcos reiterates low passive use of Area Q in natural open space.
- 5) Misc. excerpts from the San Elijo public record.

HUN-6.

Please see response to comment HUN-5.

HUN-7.

The EIS/EIR has clearly disclosed the environmental ramifications of the project, which is the responsibility of the CEQA (and NEPA) process. It is the responsibility of the decision makers to decide whether they will require project modifications.

HUN-8.

Comment indicates a general disagreement to the findings in the EIS/EIR. This represents a conclusion to the correspondence. See responses HUN-1 through HUN-7.

HUN-9.

Comment references the attachments.*

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- 6) Copy of letter urging San Marcos to prepare an environmental impact report before considering a CUP within Area R
- 7) Misc notes

Thank you for this opportunity to comment.
Sincerely,

Kim Hunter

Pages 6+7 of Exhibit B to
First amended and restated Developer Agreement

made during the second year after Owner obtains a building permit for a residential dwelling unit.

- (4) A payment of \$500,000.00, paid in equal quarterly installments at the beginning of each quarter, shall be made during the third year after Owner obtains a building permit for a residential dwelling unit.
- (5) A payment of \$400,000.00, paid in equal quarterly installments at the beginning of each quarter, shall be made during the fourth year after Owner obtains a building permit for a residential dwelling unit.
- (6) A payment of \$300,000.00, paid in equal quarterly installments at the beginning of each quarter, shall be made during the fifth year after Owner obtains a building permit for a residential dwelling unit.

- b. Pursuant to the terms of the Q/TOV Corridor Plan, prior to the approval of any final map which will create lots upon which residential units or commercial structures may be constructed or sold, a new community facilities district or improvement area of CFD 91-02 encompassing the Property shall be established and authorized to levy a special tax for police and fire services.
- c. All residential dwelling units in Planning Areas O and T shall be fire sprinklered. No other detached residential dwelling units within the Project shall be required to be sprinklered. Because of the above fire mitigation measures which Owner is providing, section 17.64.200(6) of the Code of Ordinances of City shall not apply to the Project.

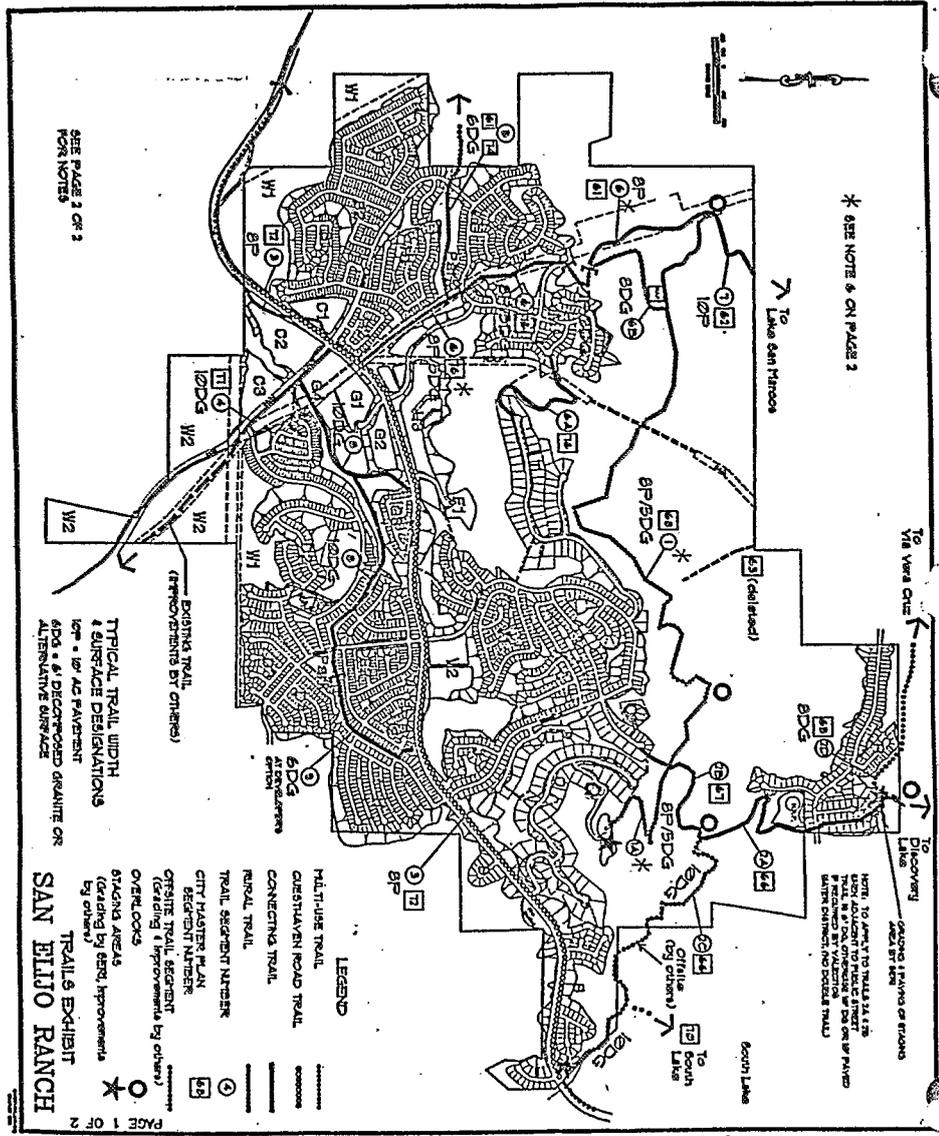
4. Parks/Recreation

- a. Upon or before the recordation of the first final map for the Project, Owner shall grant City open space easements for eighty percent of the Double Peak Regional Park and one hundred percent of the Neighborhood Park. City shall provide for reasonable boundary adjustments to the open space easements during Project buildout as necessary to accommodate final engineering for improvement plans and final maps. Upon their completion and acceptance by City, Owner shall convey the Double Peak Regional Park and the Neighborhood Park to City.

- ↙
- b. All trail segments shall be constructed and dedicated consistent with the location, standards, and phasing specified in Exhibits F-1 and F-2 of Specific Plan Amendment Ordinance No. _____, except that applicant/developer may elect to construct and dedicate such trails at an earlier date.
 - c. The Neighborhood Park (Project Planning Area G4) shall be constructed consistent with Exhibit G of Specific Plan Amendment Ordinance No. _____, and completed according to the following schedule:
 - (1) All facilities north of the Copper Creek drainage corridor shall be completed prior to the issuance of a building permit for the 750th residential dwelling unit.
 - (2) All facilities south of the Copper Creek drainage corridor shall be completed prior to the issuance of a building permit for the 1500th residential dwelling unit.
 - d. The following Regional Park facilities shall be completed by Owner:
 - (1) Construction of a primitive group camping area prior to the issuance of a building permit for the 1,800th residential dwelling unit.
 - (2) Construction of a primitive amphitheater prior to the issuance of a building permit for the 2,750th residential dwelling unit.

B. City Improvements

- 1. City shall develop a Congestion Management Plan Corridor Deficiency Plans ("CDPs") for Rancho Santa Fe Road and San Marcos Boulevard within one year after each road is affected by Project traffic and operates at a deficient level of service as defined under state law. Owner shall pay its fair share contribution to City for the preparation of the CDPs.
- 2. Prior to the issuance of a building permit for a building that generates the 10,000 ADT of the Project, the following shall be accomplished:
 - a. City shall initiate construction of dual northbound left turn lanes



* SEE NOTE & ON PAGE 2

TO DISCOVERY LAKES
 TO SOUTH LAKE
 TO VISTA CRUZ (ISLAND)
 TO LAKE SAN MARCOS

SEE PAGE 2 OF 2 FOR NOTES

LEGEND

- MULTI-USE TRAIL
- CRISTALLEN ROAD TRAIL
- CONNECTING TRAIL
- RURAL TRAIL
- TRAIL SEGMENT NUMBER
- CITY PLASTER PLAN SEGMENT NUMBER
- OPPOSITE TRAIL SEGMENT (existing & improvements by others)
- OVERLOOKS
- DRIVING AREAS (existing by user, improvements by others)

TYPICAL TRAIL WIDTH & SURFACE DESIGNATIONS

- 10P = 10' AC PAVEMENT
- ADP = 4' DISCOMPOUND GRANITE OR ALTERNATIVE SURFACE

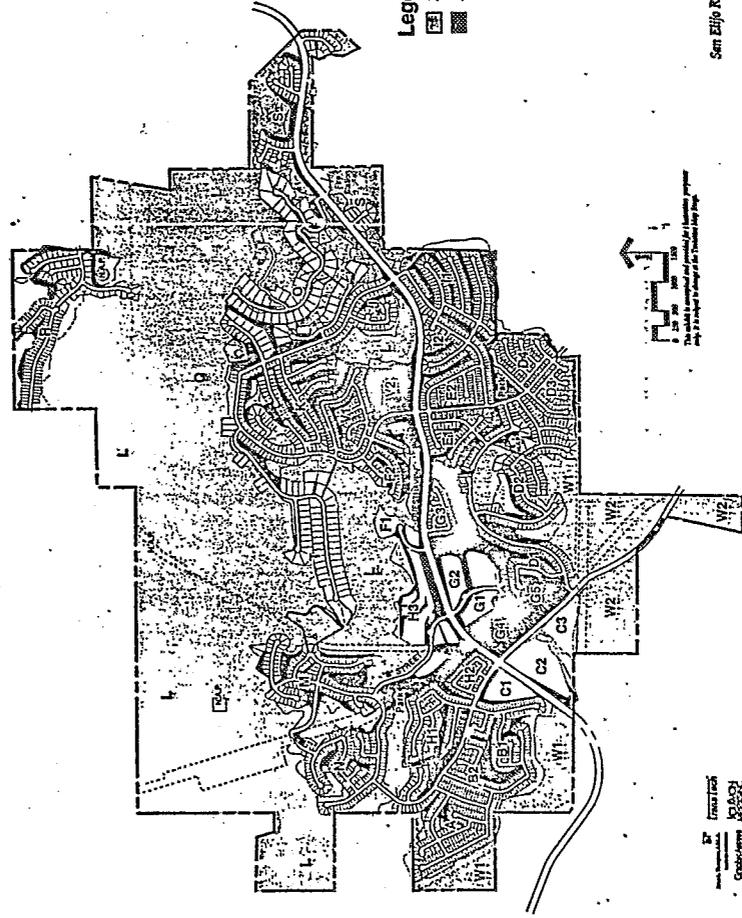
TRAILS & EXHIBIT SAN ELIJO RANCH

NOTES:

1. SAFETY RAILINGS TO BE PROVIDED AS FOLLOWS:
 - A. ALONG QUESTHAVEN ROAD
 - B. WHEN THE TRAIL ADJONS A DOWN SLOPE OF GREATER THAN 2:1 AND HIGHER THAN 15 FEET, UNLESS THERE IS HEAVY VEGETATION.
 - C. TRAIL HEADS AS EFFICIENTLY AS POSSIBLE.
- SAFETY RAILINGS WOULD EITHER BE TUD-RAIL, LODGEPOLE FENCING ALONG QUESTHAVEN ROAD, 6" DIA. POSTS AND 4" DIA RAILS, ALL PRESURE TREATED, OR AS OTHERWISE APPROVED IN THE QUESTHAVEN ROAD CORRIDOR LANDSCAPING GUIDELINES; OR WOOD POST AND GALVANIZED STEEL CABLE (SINGLE STRAND 1/2" CABLE, 4" ROUNG SAW, PRESURE TREATED 4"x4" POSTS, 6" ON CENTER), IN AREAS OF EXCESSIVE ROCK. AN ALTERNATE FOR STEEL POSTS WILL BE ALLOWED.
2. ANY CULTRANS GRANTS FOR COUNTER TRAIL S ALONG QUESTHAVEN ROAD WILL BE CONTRIBUTED TO LOWER THE COST OF CONSTRUCTING THE TRAIL IN THAT LOCATION OR TO REIMBURSE FOR GRADING & RELATED COSTS OF DEVELOPING THE ROLL SECTION.
3. TEN FOOT WIDE TRAIL SEGMENTS WILL BE PROVIDED WITHIN A 12-FOOT WIDE GRADED SECTION. GRADED SECTIONS WILL NOT EXCEED THE TRAIL WIDTHS BY MORE THAN TWO FEET.
4. DRAINAGE CONTROL NECESSARY TO PREVENT EXCESSIVE TRAIL EROSION WILL BE ENGINEERED AND INSTALLED DURING TRAIL CONSTRUCTION, IN THE MOST COST EFFECTIVE MANNER AVAILABLE TO THE SATISFACTION OF THE CITY ENGINEER.
5. TRAIL GRADIENTS SHALL BE IMPLEMENTED AS FOLLOWS:
 - A. NEW TRAIL CONSTRUCTION
 - A. 0-15 PERCENT UNLIMITED
 - B. 15-20 PERCENT, 750 FEET
 - C. 21 PERCENT PLUS, SPECIAL CIRCUMSTANCES
 - B. CONSTRUCTION ON EXISTING TRAILS
 - A. EXISTING TRAIL GRADIENTS WILL BE USED EXCEPT AS FOLLOWS:
 1. EXISTING PAVED TRAIL - TO BE RECONSTRUCTED OR REALIGNED IF EXISTING TRAIL GRADIENT EXCEEDS 20 PERCENT.
 2. EXISTING DIRT TRAILS - TO BE RECONSTRUCTED OR REALIGNED IF EXISTING TRAIL GRADIENT EXCEEDS 25 PERCENT.
 - B. SEGMENT 1, 1A AND 6 - IN AREAS THAT REQUIRE NEW GRADING FOR TRAIL ALIGNMENT OR TO MEET GRADIENT REQUIREMENTS, THE GRADED SEGMENT FOR THE TRAIL WOULD TRANSITION TO A 1 FT. PAVED / 3 FT. DG TRAIL WITHIN A 12 FT. GRADED SECTION.

TRAIL S EXHIBIT
SAN ILIJO RAN

010342



Legend

-  National Open Space
-  Refined Open Space

North Arrow

This map is prepared and printed for the information of the public. It is subject to change without notice.

Open Space Plan
 San Diego Ranch Specific Plan Amendment
 Exhibit D-39

City of San Diego
 Planning Department



City of Carlsbad
ENGINEERING DEPARTMENT

December 14, 1995

RECEIVED
DEC 19 1995
CITY OF SAN MARCOS
PLANNING DIVISION

Mr. Jerry Beckoff
City of San Marcos Planning Division
City Hall
1 Civic Center Drive
San Marcos, CA 92069-2949

Please note San Marcos
response # 3 -
particularly the 2nd
paragraph of 3

CITY OF CARLSBAD COMMENTS TO THE DRAFT SUBSEQUENT ENVIRONMENTAL IMPACT
REPORT (DSER) FOR THE SAN ELIJO RANCHO SEEPIC PLAN AMENDMENT
The City of Carlsbad has reviewed the San Elijo Ranch Specific Plan Amendment DSER (State
Clearing House No. 95051064) and submit the following comments to be addressed and
included in the final DSER.

DATA/ANALYSIS/ISSUES

1. The DSER Hydrology and Cumulative Effects sections (sections 3.14 and 4, respectively) indicate that this project will have cumulatively significant effect on regional hydrology caused by increased runoff velocities and degradation of water quality, including potential degradation to Baliquitos Lagoon. Various potential mitigation measures are identified in the Hydrology section of the DSER "it determined necessary by a detailed hydrology study." At this stage of EIR analysis, some level of hydrologic analysis should have already been conducted. This has not been done and is being relegated to future analysis. There are a number of hydroquacies associated with this approach, as follows:
 - a. Carlsbad has undertaken a lagoon enhancement project for Baliquitos Lagoon. A major issue with this enhancement project is increased sedimentation in the lagoon and the Baliquitos Lagoon Enhancement project for the San Elijo DSER indicates that this situation should be addressed in the Hydrology section of the project. However, the degradation of the lagoon due to project construction, sedimentation, water quality is a major issue, necessary for the local lagoons, and must be addressed at this stage of the DSER so that appropriate mitigation measures can be identified at this time and incorporated into the project's environmental analysis.

1

1. The Draft SER recognizes that the proposed project impacts could have a significant effect on the region, including the potential degradation to Baliquitos Lagoon. The project would be mitigated to a level of insignificance through the implementation of the mitigation measures on page 3.14.4 of the Draft SER.

The proposed project will implement the discharge and erosion control measures as specified by the City of San Marcos Ordinance and San Elijo Ranch Specific Plan. In addition, the project will implement the Storm Water Pollution Prevention System (SWPPS). The SWPPS permit requires development and implementation of a Storm Water Pollution and Prevention Plan (SWPPP), emphasizing storm water erosion control plan has two objectives through the use of (1) best management practices (BMP) to describe and ensure polutants that affect the quality of storm water discharges and (2) to describe and ensure the implementation of practices to reduce sediment and other pollutants in storm water discharges. The SWPPP must include BMP's which address source reduction.

Throughout the planning process and the preparation of the Master Tentative Map and final maps for San Elijo Ranch, careful attention was given to the identification of the sources of urban and construction runoff. The conditions of approval for the San Elijo Ranch project incorporate these findings and provide the guidelines for the implementation of source controls, drainage facilities and treatment controls. It is necessary to include the discharge of pollutants in the storm water to the maximum extent practicable (BMP Handbook).

b. In accordance with the California Storm Water Best Management Practices (BMP) Handbook, land development and urban runoff are major contributors to water pollution. The Mitigation Measures of the Hydrology section in the DSEIR indicate that a National Pollutant Discharge Elimination System permit (NPDES) will have to be obtained at the tentative map implementation stage of the project. As indicated in the BMP Handbook, however, it is a high priority to address potential pollution. At a minimum, potential impacts should be analyzed at this stage of the EIR process to determine the water quality needs as they relate to land uses so that the mitigation measures can be developed and analyzed in the final EIR.

6. A major downstream facility exists in the City of Carlsbad immediately to the west of this proposed project, this being the bridge structure along Rancho Santa Fe Road (RSFR) north of Quetswain Road. Although the DSEIR indicates that an increase in runoff will occur due to implementation of the project, separately no analysis was conducted at this time to determine any potential impacts due to an increase in runoff. The existing hydrology analysis was limited to be inadequate to handle this project can only worsen this condition. It should be noted that failure of the bridge will interrupt traffic flow on this important regional route. Again, at this stage in the EIR process quantifiable increased flows and increases in water surface elevations (WSEL) should be analyzed and mitigation measures identified. For example, will there be a substantial increase in the WSE of San Marcos Creek? A HEC II analysis should be conducted to analyze any potential impacts due to increased WSE to downstream facilities in accordance with the following:

- What effect will increased runoff flows and WSE's have on the existing RSFR bridge structure and what types of mitigation measures are required (e.g., widening of the underpass of the bridge structure, etc.?) (Also see traffic comment No. 6.)
- What effect will increased runoff flows and WSE's have on other downstream facilities? Will off-site drainage facility implementation be necessary for this project?
- What measures are being investigated to retain on-site surficial runoff velocities? Sizing of detention basins or channel attenuation facilities should be investigated at this stage of the project so that the analysis can determine the types of facilities which may be required.

The second objective will be obtained through the design, detailed hydrologic calculations, and implementation of water quality objectives, as required by the mitigation measures. The mitigation program will assess the effectiveness of the storm water management plan.

The development of the tentative map will include a more detailed analysis and planning for the anticipated potential pollution factors to water quality. These procedures will include not only the design of detention basins, settling with addition of mulch or mulch, sediment traps and filters, brush barriers, sandbagging, silt fencing, sediment trap basins, energy dissipation techniques, and water quality practices. State of California's Storm Water BMP design standards and practices maintenance program and performance bonding will be required. A component of the development of the project for the erosion control and drainage facilities as required by the City of San Marcos's Grading Ordinance. Refer to Section 3 of the Final SEIR for additional discussion on runoff quantities.

Figure 3.14-1 has been revised to depict the three major drainage basins and the current drainage patterns onsite. Refer to Section 3 of the Final SEIR.

The cumulative impacts to hydrology (page 4-16 of the Draft SEIR) are related to the unavoidable changes in water quality associated with urban development. The magnitude of each project's impact, including flows of San Diego Road, is expected to be similar. The surface water quality would be minimized but would still likely occur.

- The DSER indicates that there are three drainage basins associated with this proposed project, however Figure 3.14-1 is very difficult to read to determine these drainage basins and the drainage patterns associated with them. This figure should be legible and drainage patterns should be indicated.
- In the Cumulative Effects section of the DSER, the last sentence under the hydrology section states: "Arid mitigation cannot be implemented until a final mitigation corridor is identified. This is not a broad statement and should be addressed further. How would cumulative impacts remain significant? If these cumulative impacts remain significant and are not mitigable, then should reduction of the project be investigated as a mitigation measure? Again, additional analysis should be conducted with regards to this issue."

Traffic Issues

1. The Cumulative Effects section for traffic indicates that "cumulative impacts should remain significant" for RSP between Madros Drive and State Street and the intersection of RSP with Madros Drive and project participation with the City of San Marcos. In the preparation of a Congestion Management Plan (CMP) Deficiency Plan "is required to minimize cumulative impacts, to the extent feasible." The City of Carlsbad is very concerned over this issue. For example, RSP has been clearly identified as a major regional route which requires preparation of a CMP deficiency plan, which the DSER states will be conducted. However, the DSER states that it will be conducted in the future at some unspecified date. Carlsbad believes that such planning activity and mitigation measures should be included with the final EIR for this project to meet CEQA guidelines. If cumulative impacts of the above referenced road segments and intersections are unmitigable, then potential reduction of the project should also be investigated and included in the final EIR, as an option for project implementation.
2. Table 3.5-5 indicates a trip generation rate of 28 trips/acre, and 2.5 trips/acre, for neighborhood and regional park, respectively. The San Diego Association of Governments (SANDAG) Trip Generation Table indicates trip generation rates of 5 trips/acre, and 20 trips/acre, for neighborhood and regional park, respectively. The SANDAG trip generation rates are generally used for the region. What overall effect does revising these park trip generation figures have on overall LOS for the various intersection and road segments analyzed in the study?
3. The traffic section of the DSER discusses buildout of roadway infrastructure in accordance with various "scenarios." These scenarios, however, are not associated with the project phasing plans anywhere in the traffic section.

2. The City of San Marcos has in place a Transportation Demand Management Plan intended to accomplish a diversion of trips to alternate modes of transportation or to avoid the peak hour of the traditional peak travel hours of the weekdays. Trip diversion is based on the distribution assumptions of the San Elijo project have not been calibrated to reflect the implications of the City's TDM program, but instead reflect the worst case situation, anticipating no peak hour trip diversion, no diversion of trips programs. The San and no trip reduction due to telecommuting, teleworking and TDM program implemented in San Diego County. The TDM program is currently in place, it can be anticipated that the SANDAG trip generation rates utilized in this study overstate the amount of traffic which will be loaded onto the surrounding street network over the many years of project development.
3. The San Elijo Ranch project will participate in the TDM program of the City of San Marcos. The anticipated program measures due to project participation in the TDM program will be an important component of the project's transportation mitigation program.
4. A portion of the TDM program is to specifically identify and quantify the TDM measures, scheduled implementation and mitigation monitoring program (CMP) principal of traffic upon the two programs, San Marcos Boulevard. The program to identify the alternate, Rancho San Marcos on these corridors is referred to as Corridor Deficiency Plan. The Draft SIER identifies a mitigation measure that would require the San Elijo Ranch project to assist the City of San Marcos to prepare and implement the San Elijo Deficiency Plan for each of the CMP areas as been made pursuant to state law. The adjustments in traffic volume from the project participate with the City of San Marcos in mitigation measure Corridor Deficiency Plans within the time frame specified in SANDAG's 1994 Congestion Management Program Update, which is within one year after the actual deficiency occurs.
5. In response to this comment, Table 3.5-5 "Scenario 6 Trip Generation for San Elijo Ranch" has been revised and is included in Section 3 of the Final SIER. Table 3.5-5 identifies parks into three categories: Regional Park, Neighborhood Park, Active and Neighborhood Park is further broken down into two sub-categories identified with the passive. The Active portion of the neighborhood SANDAG's Traffic Generator Manual category "Regional (developed) as in generation rate of 20 trips per acre the Traffic Generator Manual for the active uses of the neighborhood park. The passive uses are which is 2.5 trips per acre for the active uses of the neighborhood park. The "undeveloped" neighborhood park has been assigned a trip generation rate of 2.5 trips per acre, consistent with the Traffic Generator Manual. Height is expected to contribute the category. Thus, the neighborhood per active uses at 25 ADT per acre or 200 ADT, following traffic generation ADT per acre or 75 ADT for a total of 515 ADT, 15 acres of passive uses at 2.5 ADT per acre or 75 ADT for a total of 515 ADT.
6. Table 3.5-5 has been corrected to reflect the appropriate number of acres associated with the Regional Park, e.g., 206 vs. 240 as previously indicated. As Manual is 5 trips per acre, for "Regional Parks (undeveloped)" in the Traffic Generator Manual will largely remain as However, the 206 acre regional park which will be inaccessible. Based on this and the undeveloped, steeply sloping, and blinding trail usage, a trip generation rate of regional parks is 2.5 ADT was applied, for total of 515 ADT.
7. The final classification of parks within the project is Mini-parks which will total approximately 18 acres and consist primarily of the uses in two nodes accessible along the project trail corridor. One passive park use which will be enhanced with native tree to include an additionally noted trails connection. The trip generation assignative uses planning is 5 trips per acre which reflects the local pedestrian assignative uses planning. Total project ADT from the Mini-parks as identified on Table 3.5-5 in Section 3 of the Final SIER is 90 ADT.

Although not in response to your comments, Table 3.5-5 was also revised to present the correct number of employees at the fire station. The number of employees is now 300, which is 10 more than 20 which was previously shown. The corresponding volume of traffic to be 0 rather than 20.

Therefore, it is difficult to verify exactly how much traffic could be generated and what roadway infrastructure could be implemented for a specific scenario in accordance with the project phasing (i.e. how many phases are included in Scenario 1 or 2 or 3, etc.)

4. A major factor that is included in the traffic analysis is the reduction of the overall project traffic by up to 40% in accordance with the various scenarios. Trip reduction is a standard traffic engineering analytical practice; however, it does not indicate a "worst case" analysis of a project. City of Carlsbad policy is not to use any reduction factors for trip generation for any site project within the City. This results in a "worst case" analysis which helps to preclude over development within the City, thereby resulting in decreasing the impacts to local area residents. The San Elijo final EIR should conduct a "worst case" analysis for the project. This type of analysis will then result in a "worst case" examination of various road segments and intersections so that additional mitigation that may be required will be identified, or perhaps reduction of the proposed project can be investigated. Also, with regards to the 25 and 40% reduction factors utilized in the report, the SANDAG Trip Generation Table indicates regional guidelines regarding trip reduction percentages, which are broken down into various categories (i.e. pass-by trips, redirected trips, etc.). Do the "blinker" reduction factors utilized in the report summate to complete to the regional factors established by SANDAG, and if not, what are the potential differences in LOS analysis?

5. Another major issue of concern is that area cumulative projects were not included in the traffic analysis until Scenario 6 (additional). Different phases of area cumulative projects should be included in applicable scenarios and analyzed in the traffic section of the final EIR. The addition of cumulative projects throughout the various development years will have an effect on road segment and intersection LOS and may indicate the need for additional mitigation measures or for earlier implementation of proposed mitigation measures.

6. For Scenario 1, the intersection of RSF with Quetstaven Road is indicated as having falling LOS. The mitigation is indicated as adding one (1) additional northbound and southbound lane on RSF, a southbound left turn lane on RSF, and a westbound left turn lane on Quetstaven Road. At this level of analysis, this is generally thought of as being acceptable. However, with regards to this segment of RSF, additional analysis must be conducted in accordance with the following:

- a. In accordance with the University Commons project, located to the east of San Elijo Ranch, the RSF/Quetstaven intersection is planned to be relocated to the south. Therefore, any improvement to the intersection in its current location will have to be demolished in the future. This is an unacceptable to Carlsbad.

4.

Phasing for the project has been structured as depicted in Table 2-2 of the Draft SEIR. However, the proposed traffic scenarios do not directly reflect the proposed phasing. Instead, each scenario represents the specific project impacts at stages of trip generation, at projected points in time. The generated traffic levels at stages of trip generation to the project serve as one of the base variables assigned to each interim project development scenario. The ADT for Scenario 1 is 10,000, it is 20,000 for ADT Scenario 2, it is 30,000 in both Scenarios 3 and 4, it is 40,000 for ADT Scenario 5 and 6. Other than Scenarios 5 and 6, the ADT generation has had no basis other than to provide a reference assumption of generation level at/affiliated with a point in time. Scenario 1 is set at the year 2000, Scenario 2 at 2005, Scenario 3 at 2010, and Scenarios 5 and 6 at 2015. The development of intermediate scenarios was needed in the Draft SEIR with the purpose of providing data relating to operating conditions of the street network as assumed by trip generation enhancements are realized. The traffic analysis identified for each level. Because of this, the volume, with the proposed ADT will be the engine which triggers transportation system mitigation, and not the phasing of land uses within the project.

5. It is not considered a realistic portrayal of future conditions to assume that all of the trips generated by the project with the multiplicity of land uses will attract trip characteristic parameters would load onto the trip length and trip purpose. A considerable portion of trips will originate and terminate within the immediate vicinity of the proposed project. The primary uses causing this type of driving behavior are schools, parks, and commercial retail developments whereby more home to store or school and work patterns occur. Specific land uses of the project which will result in significant level of commercial activity will be the neighborhood park, the first school building, and the neighborhood retail and commercial retail during scenario 5. A model generating these demonstrated trip characteristics would not produce data which could be meaningfully applied to the surrounding street network.

Regarding the "blinker" reduction factors mentioned in this comment, the Draft SEIR employed a computerized travel forecast model that, based upon the existing regional travel demand model employed by the San Diego Association of Governments, broke the area into distinct Traffic Area Zones (TAZ). Each TAZ was assigned its own land uses, densities, street network, and trip loading assignments. The model was not structured to make specific determinations relating to trip generation reductions at the specific project boundary, but to reflect the relationships between interdependent TAZ trip generation attractions. The trip assignments delineation of the model algorithms, which are based on the common "variety" formulae acknowledge the natural preference toward trip-charts as proximate as practical to origin. The Draft SEIR utilized model output in its discussions of this phenomenon, which approximate only a 25% rate of internal - internal TAZ trip ends in the earlier stages of project development, when diverse internal trip ends were approximately 40% as described in the Draft SEIR for later stages of project development. The rates were estimated from model data and presented as information in the Draft SEIR to demonstrate the internal capture aspect of the large project. However, a true calculation of travel demand was maintained internal to the model. Throughout the development of project scenario, the trip capture rate stages of project development, and project were observed to approximate 25% during early stages of project development, and 40% during later stages of project

SANDAG has not established guidelines relating to trip generation reduction factors attributable to trip length or project magnitude. Recently, SANDAG has offered its initial attempt to provide guidelines on pass-by trip and trip purpose with the rationale travel behavior an effort to temper site-specific SANDAG trip generation factors not yet produced recommendations on trip generation calculations due to the more natural gravity factors associated with trip length on projects or subregions covering a large geographic area. The SANDAG models remedy the total loading of a large project at the perimeter of project boundaries by assigning internally-generated trips to TAZ contained within the project. This is the same methodology utilized in the Draft SEIR. The traffic forecast models are not intended to be used to identify the most proximate land use which is anticipated trip purpose. "Blinker" generations were not employed in the Draft SEIR model, but rather, the generation/loading

- b. Currently, sub-standard radius curves exist for the northbound and westbound approaches to the intersection. Regarding RSF, the City of Carlsbad will not permit improvements to occur to a sub-standard roadway, especially a roadway which is planned to be realigned and relocated. Please be advised, this is a major issue for Carlsbad and directly affects the initial phases of development of San Ejilio Ranch.
- c. Also with regards to the RSF/Quaesthaven Road intersection, the DSER indicates that prior to any construction of San Ejilio Ranch a traffic signal must be installed at this intersection to facilitate construction traffic. Again, this is unacceptable and Carlsbad will not permit improvements to this intersection. Improvements can be made to the intersection. The DSER indicates that approximately 50% of the construction traffic will travel south on RSF. Generally, there is a lot of truck traffic associated with construction activity. Within the City of Carlsbad, trucks are prohibited from traveling south on RSF. Again, this directly affects initial development of San Ejilio Ranch and alternative routes for construction traffic should be investigated and included in the final EIR.
- d. The Scenario 1 mitigation measures require the addition of one southbound lane to RSF. Analysis should be conducted to determine how far this lane must be extended. Carlsbad uses the California Department of Transportation's design. Also, will this lane approach into the previously discussed RSF bridge structure over San Marcos Creek? If this lane does encroach into the bridge structure, how will any widening of the bridge structure affect WSE's of the 100 year flood? Also, how will any widening of RSF to accommodate another lane effect the existing habitat along the roadway and in the riparian area along the creek?
7. The Cumulative Effects section of the DSER indicates that under Scenario 4 impacts to area road segments and intersections are unmitigable. Does a reduction in the scope of the project provide relief on roadways and why has this option not been investigated?

7
8

8. Finally, it is anticipated that no heavy construction trucks will utilize Rancho Santa Fe Road south of the intersection with Quaesthaven Road. There is a weight restriction of 7 tons on this road segment in place at the present time. Trucks which exceed this tonnage will typically include concrete delivery mixers and cement trucks. If these trucks are used, there is no need to have these heavy trucks travel this route. Sources of these materials are readily available along the SR-78 corridor. The 20% construction traffic projected south of Rancho Santa Fe Road is for other construction-related traffic which does not exceed the 7 ton weight restriction.
- The Draft SEIR identifies that the segment of Rancho Santa Fe Road between Melrose Drive and Lakewood Drive will operate deficiently with the addition of traffic levels associated with buildout of scenario 1. In order to mitigate this anticipated condition, it has been identified that a second southbound lane throughout this segment would be required of the proposed project. The bridge structure over San Marcos Creek is south of Melrose Drive, and therefore south of the road segment which is anticipated to require the mitigation of a second southbound lane. The bridge structure over San Marcos Creek is the only bridge structure over San Marcos Creek. For additional information regarding the planned improvements of the segment of Rancho Santa Fe Road adjacent to the San Marcos Creek, please refer to the Environmental Impact Report prepared for the proposed Rancho Santa Fe Road improvement project in the City of Carlsbad.
- The cumulative impact analysis provided in Section 4 of the Draft SEIR summarizes the impacts under Scenario 6, not Scenario 4. As noted in Section 3.5 of the Draft SEIR, Scenario 4 does not produce roadway segments or intersections that are unmitigable. No reduction in the project is therefore warranted in response to Scenario 4 impacts.

J. BACKOFFICITY OF SAN MARCOS LETTER
DECEMBER 14, 1995

With projects of this size and caliber, and with the many interjurisdictional entities that may be required to implement this project, as well as other area projects, Carlsbad staff and I will be required to implement this project. We will initiate a dialog to address areas of mutual concern. There are indeed regional and interjurisdictional issues associated with major development at the boundaries of the agencies and discussion of impacts and the potential for study and mitigation responsibilities should begin at the earliest stage possible.

If you have any questions, please contact me at telephone 760-438-1181, extension 4388.

Respectfully submitted,



MICHAEL J. SAPP
Associate Engineer - Land Use Review

c: City Engineer
Assistant City Engineer
Principal Civil Engineer - Land Use Review

EXERPTS FROM THE SAN ELIJO PROJECT PUBLIC RECORD:

Project Findings:

3.1 overview; pg. 7 The SPA requests "the removal of the golfcourse/resort uses;"
Land form Alteration /visual Quality Mitigation Measure 3.2.13: Landscaping within Planning Area Q shall be restricted to low-lying native species that blend with existing chaparral habitat in open space.
The 1995 NOP's project description says "In general the proposed amendment to the Specific Plan requests.....removal of the golf course/resort uses....."
"Elimination of the golf course would leave much of the natural riparian drainage intact within open space."

The January 22,1997 Staff Report for project EIR certification Says:

"San Elijo Ranch has redesigned the project to eliminate the golf course and resort components"
"The project also proposes several hundred additional acres of designated natural open space."
"While the Cerro de Las Posas/Double Peak primary ridgeline will be preserved....."

The 1995 San Elijo EIR says is :

- page 3.1-19 "open space design was developed to avoid biologically sensitive habitats & retain as much natural open space along the ridgeline as possible."
- pg. 3.2-23 "Despite avoiding the primary ridgeline....."
- pg. 3.11-4 "The area will appear as a large, NATURAL, open space area...."
- pg. 3.2-25 "Preservation of the primary ridgeline in open space by SPA would avoid potential conflicts with City visual resource goals.grading would be a significant impact....."
- pg. 3.14-4 suggests that further runoff will increase Lake San Marcos overflow & could create capacity problems downstream. I.E. flooding, erosion (This site will also affect tributaries to Escondido and Copper Creek)
- pg. 3.3-22 one of the mitigation measures is to minimize impacts to NATURAL vegetation when designing parks for G4 and Q during any CUP review. Also they have to (pg. 3.3-25 divert storm water away from natural vegetation.
- Traffic Table 3.5-5 gave Regional park 2.5 ADTs per acre X 206 ac. for total of 515 daily trips. Carlsbad and others questioned the low 515 ADT assigned to Area Q. The City's response as printed in the front of the EIR was that "undeveloped Regional Park is 5 trips per acre, however the City only used 2.5 because the regional Park "will largely remain undisturbed, steeply sloping open space which will be inaccessible. Based on this and the regional park's orientation to hiking and biking trail usage, a trip generation rate of 2.5 AD was applied, for a total of 515 ADT."

SAN MARCOS GENERAL PLAN

- land use element, Goal1 Objective B policy 2
"....ensure preservation of open space nature of its hills and ridgelines."
- Conservation and open space element, Goal1. Policy 1 "Preserve prominent landforms, such as.....Cerro de las Posas....."

The Finding for the San Elijo Specific Plan Amendment
and current project state:

- pg. 7 That the Amendment which hence was approved requested "removal of the golfcourse/resort uses" from San Elijo's plan.
- pg. 18 that impacts to views of the ridgeline will be minimized by the preservation of the primary ridgeline features as open space.
- pg. 42 that the area will appear as a large, natural, open space area. (key word here is NATURAL)
- Mitigation measures 3.2.13 pg. 20 Landscaping within Planning Area Q shall be restricted to low-lying native species that blend with existing chaparral habitat in open space.
- Mitigation measure 3.2.14 requires San Elijo to demonstrate that visual impacts to the mountain and hillsides have been minimized to insignificance.

Public Hearing Transcript for June 10, 1997

- Backoff said the major changes from the 1990 San Elijo Plan to the current Plan were "elimination of the golf course" and "first and foremost an increase in open space, aprox. 847 natural acres are now being provided for...."
- Backoff "The primary ridgeline as a result of project implementation would not alter the ridgeline feature or the silhouette we view."
- Backoff "As indicated in your packet there was an increase of 680 housing units...." (due to elimination of golf)
- Fishman "the proposed plan calls for preservation of sensitive habitat to reduce biological impacts, particularly in the ridgeline area." & "Preservation of the ridgeline feature and silhouette."
- Backoff "There is a decrease in project traffic by 2281 ADTs. It is primarily the result of the elimination of the Hotel and Golf Course."
- Darnell of San Elijo "Our new plan provides for several hundred acres of additional designated Natural open space and widens wildlife corridors. Aprox 1050 acres will be reserved as permanent open space of which 770 will be incorporated into the City's proposed Biological Resource Management Program."

San Elijo's web says "At San Elijo Hills the preservation of nature, wildlife and open space are just as important as the birth of the community, which is why a large portion of the natural surroundings and gorgeous hillsides will remain in their native environment."

One of San Elijo's promotional mailers says "The City of San Marcos has proposed a 207-acre regional park emphasizing native habitats and natural resources. Much of this expanse will provide links to important wildlife corridors in the area and be part of the city of San Marcos' Biological Resource Management Plan. The Cerro de Las Posas/Double Peak Ridge which runs the length of our community, will make up a majority of the reserve area."

COPY

This was sent ago - many months ago - Maybe Jan 2002

Kim Hunter (760) 744-0670
20032 Questhaven Rd.
Elfin Forest, Ca. 92029

Mr. Jerry Backoff, Planning Director
City of San Marcos
1 Civic Center Drive
San Marcos, Ca. 92069

Dear Mr. Backoff,

I am writing regarding San Elijo's Conditional Use Permit (CUP) proposal for golf/resort use within Planning Area Q of the San Elijo Specific Plan.

Please include this letter in the project's public record, and any subsequent staff packets for its approval. And please inform me of all upcoming workshops and hearings.

While this letter centers on biological, I want to remind you that the 1995 EIR reiterated in multiple sections (from traffic, to landform alteration, to land use, to compatibility, and on and on etc.,) that if later proposed, any CUP for intense active use in Area Q, would be subject to further environmental review.

The review should include a current biological, habitat and wildlife survey that quantifies species populations present today and a biological impact analysis before the CUP request can be considered. A spring time survey should be included. The impact study needs to address not only wildlife and habitat loss, but consequences to the NCCP subarea plan and San Marcos' Biological Resource Management Plan.

HISTORY.

The previous San Elijo project biological surveys that included this Planning Area site were performed in 1989 and prior, and even those were biologically compromised by either fire or lack of focus on Area Q. Although the 1987 and 1989 surveys noted extremely high quality habitat on Cerro de Las Posas, the biological information is outdated, incomplete and lacking for today's use.

Biological surveys of areas within the San Elijo site were done in 1987, 88, 89, 91, 92 and 95. None are acceptable for this CUP proposal because:

1987 is too old and additional habitat and increased numbers of endangered species were later documented.

1988 focused only on Franks Peak, which sheds light on the riches to be found on contiguous Cerro, but does not reach Cerro de las Posas in scope.

1989 is conducted after a major burn destroys habitat and does not consider Area Q as a developable area in its analysis.

1990 EIR Appendix B focuses on buildable project area impacts. Area Q is outside of "the development zone" analyzed.

1991 was a spring time survey that limited itself to developable area grassland and coastal sage.

1992 does not include Area Q within the limits of survey.

1995 does minute spot surveys of which Area Q is not included.

Summary:

The 1995 Biological studies for the Draft 1995 EIR only surveyed the new Questhaven roadway alignment changes from the 1990 EIR project and a small 80 acre triangle below the ridgeline. (Ogden 6/95). The Draft 1995 EIR then attempted to briefly analyze the true bulk of the property (unsurveyed in 1995) from 1990 EIR documents, and a 1992 Mitigation status report (Ogden' 3/30/92). The information of current species populations and status, as well as many important biological details, were missing from the 1995 Draft EIR biological statements.

Multiple Agency comments on the 1995 Draft requested updated and more specific biological/wildlife information. The October 1996 Harmony Grove/Elfin Forest fire burned all of San Elijo 10 months later. The Final 1995 EIR simply said "the property is presently devoid of habitat" due to the 1996 Harmony Grove Fire.

Area Q has had almost 5 years to recover from that 1996 fire and its current habitats and species populations can and should be documented and surveyed.

The City cannot claim that biological impacts to Area Q were adequately studied or analyzed in the 1990 or 1995 EIR for the following reasons:

1) The 1989 Biological survey (Beauchamp) is the most current survey that includes Area Q. It is not only 12 years old, but it was conducted following a large fire and major burn. (Imagine that!) It specifically notes the recent fire several times and states that the fire decreased habitat and that species populations should increase once regrowth took place. Furthermore it says it is not conclusive and recommends that a spring time survey be done. This became a condition of approval, however the subsequent 1991 spring time survey did not encompass Area Q, which was outside of the project's buildable area.

2) Page 9 of Appendix B to the 1990 EIR "Biological Resources Report" (Scheidt, 1989) specifically says "This impact assessment assumes that all areas not within the "development" zone will be fully protected as biological open space easements or otherwise preserved in some similar manner. In the absence of such protection, many additional significant impacts, not discussed in this document, would be incurred." Again, Area Q in that EIR was not only outside of the "development" zone, but proposed to be preservation open space. In keeping with Appendix B, the "many additional significant impacts" of this 2001 proposed CUP development need to be assessed.

Ogden' 3/30/92 status report on San Elijo's Biological Mitigation Monitoring program for the 1990 EIR project confirms that "the large biological open space area on Cerro de Las Posas" was a "wildlife dispersal route". Furthermore Area Q is **not** on the attached Limits of Survey Map.

3) Even though Area Q was not a focus in the 3/30/92 report, Ogden makes some statements worth mentioning here. The Ogden 3/30/92 report assessed Gnatcatcher habitat for the south side "Buildable Envelope" and found that 386 of the available 516 acres were Gnatcatcher occupied. 15 pairs or 30 Gnatcatchers were detected, of which 2 pairs (4 birds) were found in black sage-dominated habitat. I mention this for 3 reasons. 1) This represents an increase of 21 Gnatcatchers (on just the south side) within 2 years following the 89 fire. 2) Ogden, himself, documents that 2 pairs of Gnatcatcher were occupying black sage-dominated habitat, contrary to the 1995 EIR statement that sage scrub has to be free of black sage to be viable Gnatcatcher habitat. And 3) Ogden documented that the vast majority of sage within San Elijo was occupied. Area Q does contain some sage acreage.

4) Lastly, Area Q was not surveyed for the 1995 EIR.

Conclusion:

There is no current or complete survey of Area Q's biology, wildlife, and/or species population. There is no existing spring time survey of Area Q. There is no existing biological impact study for development within Area Q.

I do hope you will do the proper thing and get updated and accurate biological information before consideration of this CUP. And I certainly hope there will be no further fires "brush clearing," or lost bulldozers up there preceding surveys.

Sincerely,

Kim Hunter

MISC. NOTES ON AREA Q

Biology: San Marcos has never surveyed the San Elijo site in an unburned state. Both the previous 1990 and 1997 biological surveys were conducted right after major fires when all habitat had recently burned. Additionally Area Q was never considered a developable area of focus in either.

As the City does not have any 4D permits left, how can additional coastal sage be taken for the golf course? How is the course biologically feasible or permissible?

BRMP: San Elijo helped fund proposed plan.

Existing SP project made commitments to provide wildlife links, preserves, natural habitat and biological mitigation (I.E. Benefits of the San Elijo project cited as outweighing the project's unavoidable adverse environmental effects include the designation of 840 acres for preservation as natural open space which will also contribute wildlife and preserve area to the BRMP. Since the County took San Elijo's wildlife preserve area W2 through eminent domain prior to the yr. 2000 certification of the SP, 840 acres still need to be preserved to keep this finding true. Is the 840 still there?

How has the loss of W2 been replaced?

How was the \$50,000 used that San Elijo paid San Marcos to compensate for the loss of mitigation land that was later condemned by another City for Park?

Tentative Map 400 - Resolution No
98-5025 -
also reiterates dedication + fee title to
San Marcos of Area Q w/ passive use
trails -

4/29/02
Nancy G. MS Yorkton
Lee Ann _____

To: Jim Bartel

Fax # 760-431-9618

From Stacy McCline

phone 760-741-3533

of pages 7

Klein-Edwards Professional Services



April 4, 2001

Dr. Wayne D. Spencer
Conservation Biology Institute
815 Madison Avenue
San Diego, CA 92116

Subject: Comments to the Public Review Draft MHCP Plan

Dr. Spencer,

Here are my comments to the Public Review Draft MHCP Plan. My comments will be primarily to Volume II – Biological Analysis & Permitting because that is where my expertise lies. I am a biologist for Klein-Edwards Professional Services with over four years experience focusing on invertebrates and birds. I am also the Land Use Conservation Chair to the San Diego Audubon Society but I am acting independently of the Society's position. Since Buena Vista Audubon Society is and has been at the table and part of the Advisory Committee, I will let them comment on the Audubon position in their letter.

I was pleased to hear that the north county cities were taking an approach of habitats versus species specific conservation in general. It is my opinion that preserving habitats will be more inclusive of species diversity and therefore providing the chance of ecological stability. I am also pleased to see though that the Advisory Committee has identified certain species that will require more management than the habitat approach.

Comments and Questions:

KE-1

(1) Table 3-1 Conservation Acreages Of Natural Vegetation Communities In The MHCP Study Area Focused Planning Area (FPA), Grasslands are not broken out as to non-native versus native. This should be corrected. 98% of San Diego county's native grasslands are now gone and conserving 31% appears to be inadequate for conservation. If the public knew the amount of native grassland conserved, it would make the information more meaningful. Although conserving only 31% of grasslands in general is inadequate due the removal of raptor foraging habitat. The other point to this is mapping the proposed preserved grasslands and their relation to raptor roosts or nesting areas. This becomes an important aspect to quality of preservation.

KE-2

(2) Table 3-1 Conservation Acreages Of Natural Vegetation Communities In The MHCP Study Area Focused Planning Area (FPA), Coastal Sage Scrub conserved at only 60%. Outside of riparian and wetland areas, Coastal Sage Scrub contains some of the most species diversity we have in San Diego County. Especially that Coastal Sage scrub with a coastal influence versus a more inland influence, i.e. Carlsbad versus Escondido. Even the Multiple Species

Letter 27: Klein-Edwards Professional Services

KE-1. The EIS/EIR has concluded that grasslands are inadequately conserved as part of the MHCP. Even though the EIS/EIR has included non-native and native grasslands in one group, the conclusion remains the same: inadequate conservation.

KE-2. Conservation of the coastal sage scrub in the MHCP has been focused on the larger tracts of lands that provide more important biological value. The areas not proposed for conservation are either smaller, in-fill type of parcels or areas where 100% conservation can not be committed due to takings issues of private lands. Additionally, many of the properties that contain coastal sage scrub have permits issued by the Cites, CDFG, and USFWS (as applicable). Thus, these properties can be developed as hard-lined approved projects.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

*Klein-Edwards Professional Services, a division of F.L.I.T.E. Tours, Inc. P. O. Box 4326, San Diego, CA 92164-4326
619-282-8687 toll free 877-763-5483 fax: 619-282-8687 e-mail: fieldlectures@fite-tours.com web: www.fite-tours.com*

Conservation Plan (MSCP) is conserving 62%. This should be re-looked at and considered for larger conservation.

- KE-3 (3) Table 3-1 Conservation Acreages Of Natural Vegetation Communities In The MHCP Study Area Focused Planning Area (FPA), Vernal Pools are not identified in the Table and should be noted as such. With more than 99% of San Diego's vernal pools now gone, this is one that should continue to have visibility not only in this Plan but any other future Habitat Conservation Plans.
- KE-4 (4) Page 3-5 at the top of the page, "Note that 100% conservation of wetland habitat does not necessarily mean 100% avoidance of impacts." Please clarify what is meant by this.
- KE-5 (5) Section 4, page 4-183, Sandy Beach Tiger Beetle: Based on known historical populations in San Diego County, i.e. south Silver Strand in the City of Coronado (researched collection at the San Diego Natural History Museum), the required conservation and management actions is probably the best until more is known about this species biology. A full range of monitoring protocols should be implemented during the beetle's adult stage, which would be but not limited to; most active time of its day, food sought after, nighttime resting areas, larval activities and ovipositioning.
- KE-6 (6) Section 4, page 4-185, Oblivious Tiger Beetle: Based on known historical populations in San Diego County, i.e. south Silver Strand in the City of Coronado, mouth of the Tijuana River and Tijuana Estuary (researched the collection at the San Diego Natural History Museum), the required conservation and management actions is probably the best until more is known about this species biology. A full range of monitoring protocols should be implemented during the beetle's adult stage, which would be but not limited to; most active time of its day, food sought after, nighttime resting areas, larval activities and ovipositioning.
- KE-7 (7) Section 4, page 4-188, Globose Dune Beetle: Based on known historical populations in San Diego County, i.e. south Silver Strand in the City of Coronado, and dunes adjacent to the Tijuana Estuary off of Seacoast Drive in the City of Imperial Beach (researched the collection at the San Diego Natural History Museum), the required conservation and management actions is probably the best until more is known about this species biology. A full range of monitoring protocols should be implemented during the beetle's adult stage, which would be but not limited to; most active time of its day, food sought after, nighttime resting areas, larval activities and ovipositioning.
- KE-8 (8) Section 4, page 4-195, Harbison's Dun Skipper: Top of the page under Threats and Limiting Factors, please illuminate that the pollutants can be chemical or trash, i.e. tire, etc. It is important that high quality of the riparian areas be maintained for sustaining the skipper.
- KE-9 (9) Section 4, page 4-197, Harbison's Dun Skipper: Required Conservation and Management Actions point 2 should be enhanced to note the threats as to waters quality, reductions in water, stream alterations, water shed management (especially if the occupied areas are downstream), and predators.
- KE-10 (10) Section 4, page 4-197, Harbison's Dun Skipper: Required Conservation and Management Actions point 3 should be added to identify nectary plants for the skipper since the male's territory takes it into adjacent habitats such as coastal sage scrub and chaparral. This will be important in maintaining quality of the 'buffer zone' for the skipper.
- KE-11 (11) Section 4, page 4-198, Salt Marsh Skipper, Threats and Limiting Factors part should also add invasion of exotic grasses and other non-native vegetation. This is one of the observations I have had of this skipper in the Tijuana Estuary. Also, trampling and vehicular

- KE-3. Vernal pools are not considered a vegetation community, but are mapped separately as an overlay, as noted in the footnote on Table 3-1.
- KE-4. Comment is correct. The MHCP allows for development that will impact wetland habitats; however, the MHCP requires that no net loss of wetland resources result. The MHCP no net loss policy will result in 100% conservation of wetlands, even though a small acreage of extant wetlands may be impacted by projects. Such unavoidable impacts must be mitigated by creation of new wetlands to result in no net loss of acreage or habitat value.
- KE-5. The biological analysis found that it is impossible to determine adequacy of conservation for the sandy beach tiger beetle due to lack of sufficient data. No specific management or monitoring obligations can be imposed for a non-covered species.
- KE-6. The biological analysis found that it is impossible to determine adequacy of conservation for the oblivious tiger beetle due to lack of sufficient data. No specific management or monitoring obligations can be imposed for a non-covered species.
- KE-7. The biological analysis found that it is impossible to determine adequacy of conservation for the globose dune beetle due to lack of sufficient data. No specific management or monitoring obligations can be imposed for a non-covered species.
- KE-8. The recommended clarification regarding threats due to litter (such as automobile tires) has been added.
- KE-9. Requested clarification has been added.
- KE-10. Requested clarification has been added.
- KE-11. Requested clarification has been added.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

- traffic at night can have a significant impact on populations at night because the caterpillar is a nocturnal feeder. Therefore emphasis on nighttime monitoring should be included.
- KE-12 (12) Section 4, page 4-200, Salt Marsh Skipper, Required Conservation and Management Actions point #1 should emphasize the importance of maintaining tidal flushing for the success of the host plant. Being a salt marsh plant its sustainability is dependent on proper tidal flushing. When lagoon mouths are closed due to sediment buildup from the ocean, salt marsh habitat declines and therefore effects salt grass production.
- KE-13 (13) Section 4, page 4-203, Hermes Copper Butterfly, Threats and Limiting Factors, destruction of colonies by wildfire should be emphasized more than urban development. I agree that both are a threat but fire is by far much more of a factor in the butterfly's decline than development.
- KE-14A (14) Section 4, page 4-204, Hermes Copper Butterfly, Distribution, Conservation Analysis, you do not show the amount of mixed chaparral that the butterfly may use instead of the coastal sage scrub. This will be important when designing preserved areas for this butterfly. Noting earlier that 60% conserved for CSS is not going to be enough for sustaining not only the California gnatcatcher but also this butterfly. Also, it is important to note the habitat conditions for optimum conditions for the butterfly. Its only host plant is spiny redberry and 90-95% of its nectary plant is flat-top buckwheat (*Eriogonum fasciculatum*). Optimum conditions are for the redberry and buckwheat to usually be next to each other. If the buckwheat and redberry are too far apart (not scientifically determined, would theorize 50 feet), conditions usually are not the best for sustaining the butterfly.
- KE-15 (15) Section 4, page 4-204, Hermes Copper Butterfly, Adaptive Management Program, Conservation and Management Actions point 1 should also include any fire management practices in suitable Hermes habitat. It is not only wildfires that are disastrous for the butterfly but any controlled burns for weed management. Caution should be adhered to when promoting controlled burns around Hermes habitat.
- KE-16 (16) Section 4, page 4-204, Hermes Copper Butterfly, Adaptive Management Program, Conservation and Management Actions point 2 should focus on those areas through Escondido (Daley Ranch), eastern Vista, San Marcos and Carlsbad.
- KE-17 (17) Section 4, page 4-266, Osprey MHCP Database Records. There is a resident Osprey at the Daley Ranch / Dixon Lake area that is regularly observed. The mapped should be updated to reflect this.

Respectfully submitted,

Michael W. Klein Sr.
Principal

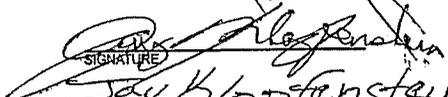
- KE-12. Requested clarification has been added.
- KE-13. Requested clarification has been added.
- KE-14. No data are available on the distribution, abundance, or spatial relations of redberry and flat-topped buckwheat within vegetation communities in the study area, so more detailed conservation analyses are not possible. However, the useful information contained in the comment has been added to the species account for consideration during plan implementation.
- KE-15. Requested clarification has been added.
- KE-16. Requested clarification has been added.
- KE-17. Database has been updated to show resident osprey at Dixon Lake.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

MHCP EIS/EIR
COMMENT SHEET

KLOP-1

I'm building a Website for the Carlsbad Watershed Network (Carlsbad Hydrologic Unit). We have recently completed a \$100,000 grant study of the Carlsbad Hydrologic Unit. This study is on CD and completed by the Regional Conservation District. Parts of our grant study will be put on the Website for educational outreach and community participation. We would like to use data from your MHCP EIS/EIR on our Website for extended access to information for our viewers and Network volunteers. The Website forms would be to encourage participation by all of the coastal conservation foundations and nature centers to meet on a regular basis to support in-kind issues and needs. To recognize individuals and agencies for their efforts in coastal watershed protection and restoration.


SIGNATURE
Jay Klopfenstein
NAME
3511 Trieste Drive
ADDRESS
Carlsbad, CA 92008
760 727-3398

The public review comment period closes April 29, 2002 at 5:00 pm,

Letter 28: Jay Klopfenstein

KLOP-1. Comment requests data from MHCP to be used in a website established for the Carlsbad Watershed Network. Commenter would like to use data from the MHCP EIS/EIR. This data is on SANDAG's web site for use by the public.*

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

Ladwig Design Group, Inc.

April 29, 2002

Janet Fairbanks
Senior Regional Planner
City of San Diego
401 B Street, Suite 800
San Diego, CA 92101-4231

RE: MHCP EIS/EIR AND BIOLOGICAL MONITORING PLAN
(LADWIG DESIGN GROUP, INC. JOB NO. L-1061)

Dear Janet:

Thank you for sending me a copy of the Draft Environmental Impact Statement (SCH #93121073). In reviewing the document I have very few comments.

LDG-1

My first comment refers to the Executive Summary Table ES2 as it applies to the preferred alternative which is FPA Alternate 2. On page ES21, the mitigation measures starting with the Summer Holly and continuing on to the end of the table suggests that the only mitigation is the avoidance of impacts since transplantation or re-vegetation is speculative at this time. I would suggest that that language be changed to say "the only mitigation is conservation of the species". This would allow for minor impacts where avoidance is not practicable and yet allow for permanent conservation of the same species in an appropriate location to be determined by the local agency.

LDG-2

My next comment also has to do with the same table. I would suggest that even though your table does talk about the subarea plans for the various cities, it would be helpful to make reference to the specific subarea plans in your appendix and highlight the appropriate person or department.

Again, thank you for a chance to respond to your Draft EIR, and I look forward to further action which will be taken with this plan.

Sincerely,

LADWIG DESIGN GROUP, INC.



Robert C. Ladwig, President

RCL:slh

703 Palomar Airport Road ♦ Suite 300 ♦ Carlsbad, California 92009
(760) 438-3182 FAX (760) 438-0173

Letter 29: Ladwig Design Group

- LDG-1. For significant impacts, mitigation measures are proposed. The performance standards for those mitigation measures have been established. Further environmental review will be necessary at the time that the refinement to the GP, LCP and local ordinances are prepared.
- LDG-2. Section 2.3 of the Draft EIS/EIR provide a summary of each of the Draft Subarea Plans. Table 4.3-4 and 4.3-5 indicate the conservation of vegetation communities and sensitive species for each Subarea plan. Furthermore, Section 10.0 is a list of persons consulted from each of the agencies who provided assistance during the preparation of the MHCP.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

April 25, 2002

San Diego Association of Governments
401 B Street, Suite 800
San Diego, CA 92101
Attn.: Janet Fairbanks

U.S. Fish & Wildlife Service
2730 W. Loker Avenue
Carlsbad, CA 92008
Attn: Ms. Lee Ann Carranza

Re: Comments to Draft EIR/EIS MHCP (SCH No. 93121073)

Dear Ms. Fairbanks and Ms. Carranza:

I am writing on behalf of San Elijo Hills Development Company, LLC ("San Elijo"), the owner and developer of the San Elijo Ranch Specific Plan, consisting of approximately 2,000 acres in the City of San Marcos. We appreciate the opportunity to comment upon the Draft EIR/EIS.

In connection with the discussion of impacts to chaparral in the City of San Marcos Subarea Plan Southern FPA, the Draft EIR/EIS cites an "existing development agreement" at page 4-136. The contract referenced is the "First Amended and Restated Development Agreement and Owner Participation Agreement" between the City of San Marcos, the San Marcos Redevelopment Agency, and San Elijo Ranch, Inc., dated August 15, 1997 (the "Development Agreement"). Pursuant to the Development Agreement, San Elijo has acquired vested rights to develop the subject property in accordance with the rules and policies in effect at the time of the project approval. Accordingly, any mitigation measure proposed through the MHCP process or otherwise inconsistent with the vested rights acquired by San Elijo to develop its property in accordance with the San Elijo Ranch Specific Plan and related entitlements must be rejected as legally infeasible. We therefore concur with the conclusion reached in the Draft EIR/EIS in this regard.

Letter 30: Luce Forward

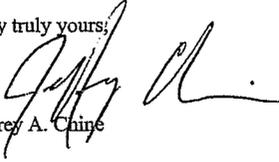
LUCE-1. This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

San Diego Association of Governments
April 25, 2002
Page 2

Thank you again for the opportunity to comment upon the Draft EIR/EIS. Please do not hesitate to contact me with any questions.

Very truly yours:



Jeffrey A. Chipe
of
LUCE, FORWARD, HAMILTON & SCRIPPS LLP

JAC/mfm

cc: Mr. Curt Noland, San Elijo Hills General Manager
Mr. Jerry Backoff, San Marcos Director of Planning
Helen Peak, Esq., San Marcos City Attorney

US Fish and Wildlife Services
2730 Loker Ave West
Carlsbad, CA 92008

April 25, 2002

Dear Mr. Bartel

I have reviewed the proposed MHCP for the Escondido Sub area plan and have the following comments:

MCC-1 Table 3-2: I have reviewed the Technical Appendices from the proposed Montreux Specific Plan DEIR (Tract 781, 91-02-SF/PZ, ER-92-13). Based on the biological sections, there are many sensitive species that have been reported for the Montreux parcel that must be added to the MHCP.

On the property the following plant species were found:
Summer Holly, Engelmann oak, Pygmy spike-moss, Palmer's sagebrush, ceonothus verrococus, and Encinitas baccharis.

The following animals were reported:
San Diego banded gecko, San Diego horned lizards, two striped garter snakes, orange-throated whiptail, coastal rosy boa, black-shouldered kites, turkey vulture, Cooper's hawk, blue grosbeak and golden eagle. Ringtails were not spotted but suggested.

Section 3.3.2: Golden Eagles are now nesting on the Montreux property. Not just using the area as foraging habitat. Dave Bittner, of the Wildlife Research Institute has the details on the Del Dios Eagles.

MCC-2 Figure 3-3 Add Encinitas baccharis to narrow endemic, Palmer's sagebrush is also on the Montreux property, and a narrow endemic as well.

MCC-3 Section 5.1.3: Potential Habitat Acquisition:
The Derbas property is a potential habitat acquisition. San Diego County is currently in negotiation with Adian Derbas, owner of the Montreux property. He is a willing seller. The Board of Supervisors has to date approved an appraisal of the property. All indications are that this process is moving forward, and will ultimately result in the purchase of the 345-acre parcel for parkland.

Letter 31: McCline

MCC-1. Comment addresses the findings of the biological report prepared for the Montreux Specific Plan. As of September 30, 2002, the Escondido Creek Conservancy and the County of San Diego purchased the Montreux project site, ensuring the land is to remain as open space and be conserved in perpetuity. Therefore, no future development will occur on the Montreux property.

MCC-2. Comment requests changes to Figure 3-3. Figure 3-3 of the Escondido Subarea Plan will be revised to show Encinitas baccharis as a Narrow Endemic on the Montreux property. Palmer's sagebrush was identified on the Montreux property, but is not considered a Narrow Endemic.

MCC-3. Comment addresses the status of the Montreux site. Please see response to MCC-1.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

MCC-4 Table 5-3: *Baccharis vanessae* is found on the Montreux property. 121+ individuals were documented to US Fish and Wildlife in January 2002. There is every indication, including a letter from Mitch Beauchamp, that more individuals are in the area, but have not yet been documented. Both authors suggest there is a need for further study of the Montreux parcel. Attached are letters from John Messina of EDAW and Mitch Beauchamp of Pacific Southwest Biological Services.

MCC-5 Section 5.2.2 Needs to be modified to reflect the existence of the *Encinitas baccharis* on the Montreux site.

MCC-6 Section 5.3.2: Add the purchase of the Montreux property as a property deserving regional or subregional funding source.

MCC-7 Appendix A:
SC1375 is not on the Escondido Circulation Plan and should not be on this list. How can the MHCP Subarea Plan include a proposed project to build a road in Escondido that currently is not on the Escondido Circulation Plan?

Thank you for reviewing these comments and adding these items to the Escondido Sub area plan.



Stacy McCline
20024 Lake Drive
Escondido, CA 92029
760-741-3533

MCC-4. Comment addresses new biological information related to the Montreaux site. New biological information documenting the presence of *Baccharis vanessae* (*Encinitas baccharis*) on the Montreux property will be incorporated into the Subarea plan maps and text.

MCC-5. Comment requests addition of *Encinitas baccharis* to Section 5.2.2. *Encinitas baccharis* is listed on Table 5-3 as a Narrow Endemic species. However, the table will be revised to show a known locality of *Encinitas baccharis* in Escondido. The text in Section 5.2.2 includes standards for narrow endemic species, and does not cite specific properties since the standards will apply to all properties where these species are identified. No changes to Section 5.2.2 are warranted.

MCC-6. Comment suggests adding Montreaux site as a site for acquisition. Please see response to MCC-1.

MCC-7. SC 1375 is designated as a Collector Road on the County of San Diego Circulation Element, but is not designated on the City of Escondido Circulation Element. Appendix A of the Escondido Subarea Plan lists anticipated capital improvement projects within or adjacent to the Escondido FPA. The previously approved Specific Plan, subdivision map, and development agreement for the Montreux property were conditioned to provide an access easement along the SC 1375 alignment, as requested at the time by the County of San Diego. Subsequent approval of a subdivision map for the Dorn/Rogers property to the north (Tract 761) was also conditioned to reserve right-of-way for this alignment, and relies upon the access through the Montreux property for emergency access along the SC 1375 alignment.

The Subarea Plan does not propose to build roads. The future improvement of SC 1375 is listed in Appendix A since the approved subdivision for the Montreux property (Tract 781) is within the City's FPA and was conditioned to provide an access easement along the SC 1375 alignment; these conditions are incorporated into the approved development agreement which vests the development entitlements and conditions. Section 1 of Appendix A will be labeled as "Road Improvements" to clarify that the list includes all anticipated road projects within or adjacent to the proposed FPA, based on approved projects and General Plan Circulation Element designations.

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Pacific Southwest Biological Services, Inc.

Post Office Box 985, National City, California 91951-0985 • (619) 477-5333 • FAX (619) 477-5380

Charles D. Grimm
Director, Planning and Building
City of Escondido
210 North Broadway
Escondido CA 92025

27 February 2002

Dear Mr. Grimm,

I was faxed a copy of John Messina's letter of 21 February 2002 to you regarding the Encinitas Baccharis at the Montreaux property by Stacey McCline of the Del Dios Town Council. She asked me to comment on the letter since I was asked by the press about this issue without having the letter as a source document. My firm has been involved with surveys in the Mount Israel area since 1977. I vaguely recall this name as a project of ours or just a bid to work on the site. I cannot place my hands on the file at this moment however.

I was the botanist that discovered and described the Encinitas Baccharis (*Baccharis vanessae*) in 1977. Employees of my firm were the first firm to locate this plant in the Mt. Israel - Rancho Cielo area. My firm also have had a native plant nursery where we propagated this species.

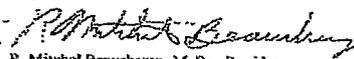
Mr. Messina's letter is accurate from my perspective in most of its content. The portion that is not consistent with my observations is that statement in the second paragraph relating to the abundance of the plant following fire. The species is not a fire-following annual but, as the associated impenetrable chaparral vegetation is removed and this species and other resprout in a more open setting, the plants are more obvious following fire. I have seen a similar situation with regards to the Malibu Baccharis (*Baccharis malibuensis*) another species that I later discovered in the Los Angeles area and which has similar growth characteristics of the Encinitas Baccharis.

Since the species is a state and federally-listed Endangered plant species, it appears to me that prior to CEQA approval, a field survey of the project site, including proposed open space area, would be needed, especially since the last survey is over 10 years past and an intervening fire has opened opportunities to view the area more readily.

As you know, I am a biological consultant and it has been my experience that old documents of this nature require updating field observations. Mr. Messina's letter infers that plants may be present at the site, so the issue of doubt has been raised already. A "take" of this plant by development of the site is generally not an issue at the federal level, but if any Corps of Engineers permits or Federal Housing Administration loans are involved, the take issue is relevant and can only be resolved by an up to date field survey.

It is my opinion that the entire project parcel should be examined by a qualified botanist to ascertain the facts regarding the distribution of this endemic plant and any resulting impacts from the proposed project.

Regards,


R. Mitchell Beauchamp, M. Sc., President

~~Att: Beth Tippetts~~

~~Fax to 477-5339~~

MCC-8. Please see responses MCC-1, MCC-2, MCC-4, and MCC-5.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

MCC-8



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MCC-9

February 21, 2002

Charles D. Grimm
Director of Planning and Building
City of Escondido
210 North Broadway
Escondido, CA 92025

Subject: Encinitas baccharis on the Derbas Property

Dear Mr. Grimm:

In 1992, I conducted a limited survey of the Montroux property. The focus of this survey was to verify that the site conditions had not significantly changed since 1990 when RECON had conducted surveys of the site. I was on the site for only one day and my survey was limited to areas that were proposed for development. Four individuals of Encinitas baccharis (*Baccharis vanessae*) were observed during the 1992 survey, but as mentioned in the SEB report, when the vegetation is mature one usually needs to be in very close proximity to individuals of this species to detect them.

Since 1992, I have conducted numerous surveys for this species in the Mount Israel/Del Dios area including a survey along the southern boundary of the Derbas property where a couple of hundred individuals were observed late last year (Letter to Kathleen Brubaker from John Messina January 8, 2002). Encinitas baccharis is a species that is generally restricted to an area in the corridor from Encinitas/Carlsbad east to Mount Israel/Del Dios, though there are disjunct, i.e., discontinuous, populations outside of this corridor. The species occurs in southern mixed chaparral in inland areas and southern maritime chaparral along the coast. The general belief is that this species is most prevalent in the years following a fire when the chaparral community is rather open. As the community matures and the chaparral shrubs become rather large, Encinitas baccharis seems to "disappear." The species may be outcompeted by larger shrubs or it may just become less conspicuous and harder to detect amidst the larger, denser chaparral shrubs. Most of my observations of this species occur along ridgelines where the surrounding vegetation is generally more open.

Many chaparral species have seeds that require fire, called scarification, in order to germinate. Many chaparral species, especially annuals, are "fire followers" in that they are extremely dependent on

fire and can colonize large areas. However, within a few years as the canopy closes, they either disappear or are just too difficult to relocate. Encinitas baccharis does not appear to regularly produce viable seed. One year, I collected a large amount of seed for a particular project and had these seeds analyzed for viability. None of the seeds I collected were viable and in conversations with several researchers, they too have never encountered viable seeds of Encinitas baccharis. This species does, however, readily reproduce vegetatively from cuttings or rootstock.

I have also had the opportunity to relocate populations of this species in the Mount Israel/Del Dios area that had been mapped prior to the Del Dios fire. These populations occurred in the same locations as were mapped pre-fire. Though large areas adjacent to these populations were obviously suitable habitat (identical soil, aspect, and topography), this species still had a very patchy and limited distribution. If this species did reproduce by seed, one would expect that new, large populations would have been present, germinating from the dormant seed pool in the soil. Though new populations were discovered after the Del Dios fire, they were in areas that were either not previously intensively surveyed, or the populations were so small, consisting of only several individuals each, that they could have been easily missed during prior surveys.

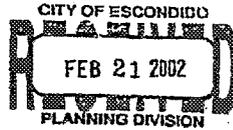
UNITED STATES

EUROPE

AUSTRALIA

ASIA

DESIGN, PLANNING AND ENVIRONMENTS WORLDWIDE



MCC-9. Please see responses MCC-1, MCC-2, MCC-4, and MCC-5.

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EDAW

Charles D. Grimm
City of Escondido
February 21, 2002
Page 2

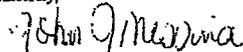
Given the relatively "stable" locations of these populations and the fact that the production of viable seed seems to be a rather rare phenomenon, it is my opinion that the *Encinitas baccharis* generally, regenerates from its rootstock after a fire. If this is true, and again very little is known about the biology and ecology of this species, colonization of previously unoccupied habitat may be a very rare event. Though population numbers may seem to proliferate after a fire, the location of that population may be relatively fixed. This could explain why the populations seem to occur in the same locations with few, new populations being discovered in areas that had previously been surveyed. And it would also explain why large areas of suitable habitat are unoccupied following a fire even if there are populations close by. The species just cannot colonize new areas because there is no dispersal mechanism, i.e., seed, to reach these areas. There is certainly an abundance of species that only produce viable seed as a rare event. In other words, in most years they do not produce viable seed but every few years produce an abundance of viable seeds. This is called a mast year. *Encinitas baccharis* may be one of these species; however, limited research has been conducted on this species to confirm this assessment.

I cannot accurately recall many of the details of my survey of the Montreux site. I was only on the site for one day almost 10 years ago and that survey was not exhaustive, as our scope was to only verify that conditions had not significantly changed since the previous survey(s). I do not recall if the previous surveys detected this species. It is my opinion that the most likely areas to support populations of the *Encinitas baccharis* on the Derbas property occur on the steep slopes along the southern boundary of the site. This is where most of the populations on adjoining properties are located.

As explained below, I cannot preclude the possibility of previously undetected populations of this species occurring within the proposed area of development. However, I would not expect this species to occur in large numbers in this area. As mentioned in the SEB report, a fire may reveal new individuals. As I recall, a good portion of the proposed development area had some historical land use associated with it (e.g., a residence, dirt roads, a pond, etc). These areas, as I recall, are in the flatter portion of the site. Given the lack of substantial numbers of *Encinitas baccharis* detected within the proposed area of development by the previous surveys, the observations I have made regarding this species, and the historical use of this area (i.e., portions were previously disturbed) it is my opinion that if present in this area, the *Encinitas baccharis* would occur in relatively low numbers. Since there are large areas of high quality, suitable habitat in the Mount Israel/Del Dios area, adjacent to relatively large populations of *Encinitas baccharis*, that were not colonized by this species after the Del Dios fire, I do not feel that a significant number of *Encinitas baccharis* would occur over most of the proposed development area of the Derbas site, as this area is of lower quality habitat.

If you have any questions, please do not hesitate to call me.

Sincerely,



John J. Messina
Senior Botanist

cc: David Ferguson

DESIGN, PLANNING AND ENVIRONMENTS WORLDWIDE



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January 8, 2002

Kathleen Erubaker
U.S. Fish and Wildlife Service
Carlsbad Field Office
2730 Loker Avenue West
Carlsbad, CA 92008

SUBJECT: Encinitas Baccharis Mitigation Acquisition Area

Dear Kathleen,

This correspondence is to update you on the status of the *Encinitas baccharis* (*Baccharis vanasseae*) mitigation for the San Diego County Water Authority's (SDCWA) Emergency Storage Project (ESP). At our last meeting, with you, Dave Lawhead of California Department of Fish and Game (CDFG), Tim Cass and Bill Busch of SDCWA and Sarah Connolly and myself, we discussed the status of the *Encinitas baccharis* population on the Derbae property along the northeastern boundary of the Elin Forest Recreational Reserve (EFRR). The SDCWA was given approval by Dave and yourself to pursue acquisition of a portion of the Derbae Property, which supports a large sub-population of *Encinitas baccharis*, as compensation for impacts to this species on the Bradley parcels.

The Proposed Acquisition Area, as depicted on Figure 1 (attached), measures 350 feet by 550 feet (4.4 acres). The area supports at least 121 individuals of *Encinitas baccharis*. This sub-population is buffered by an area ranging in width from 180 to 225 feet on three sides and 45 feet on the south side. Along the southern boundary of this area is a SDG&E transmission line easement of 44 feet in width which also contributes to the buffer. The buffer area most likely supports additional *Encinitas baccharis* individuals. During the course of my surveys, additional individuals were observed in the area along the northern boundary of the Proposed Acquisition Area. Additional individuals were observed by other EDAW staff in the area along the eastern boundary of the Proposed Acquisition Area.

The SDCWA is currently preparing a legal description of the Proposed Acquisition Area and will continue to actively pursue acquisition of this property. We will keep both you and Dave informed as to the SDCWA's progress. If you have any questions, please do not hesitate to call me.

Sincerely,

John Messina
John Messina

cc David Lawhead
Tim Cass
Mary Putnam
Jacques Schoenecker
Sarah Connolly

UNITED STATES

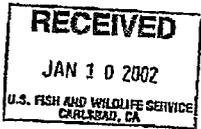
EUROPE

AUSTRALIA

ASIA

DESIGN, PLANNING AND ENVIRONMENT WORLDWIDE

FWS-CARLSBAD FWO @1002 KLD
To: Kevin Johnson
re: Monterey
From: Stacy [unclear]
795-1142



Karen Merrill
4743 Live Oak Court
Oceanside, CA 92056

Jim Bartel
Field Supervisor
US Fish and Wildlife Service
2730 Loker Avenue
Carlsbad, CA 92008

RECEIVED

APR 28 2002
US FWS
CARLSBAD FIELD OFFICE, CA

RE: Comments on Draft MHCP Biological Monitoring Plan, Volume 1

Dear Mr. Bartel,

I have read the Draft MHCP Biological Monitoring Plan, Volume 1. There are several questions/issues I wish to have clarified:

Draft MHCP Biological Monitoring Plan, Volume 1

MER-1 1.3.2 Compliance and Effectiveness Monitoring
What are the legal consequences of non-compliance?

MER-2 2.1 Preserve-Level Monitoring at all Preserves
Monitoring 'covered species in all conserved habitats where they occur' needs to add 'and are likely to occur.' Otherwise, it isn't clear that any new sites (nesting, new groups, etc.) will be detected and monitored.

MER-3 2.1.2 Preserve Area Field Monitoring-Baseline Surveys
The last paragraph in this section talks about the management requirements of the MHCP Plan permitting conditions. If the management requirements are spelled out in Vol. II of the MHCP Plan, why would the cities be given two years to develop management directives?

MER-4 2.2.2 Coastal Sage Scrub Birds
Avian Community Monitoring-Please explain why you feel an annual monitoring at selected locations will give a true picture of the status of the bird community. I think there are too many variables to think going out once a year to a selected location and check on the presence/absence constitutes enough evidence for tracking status and trends.

California Gnatcatcher Dispersal-What happens if you find these "stepping stones" are not effective for dispersal? It will certainly be too late to modify the configuration of the preserve design by the time enough data is collected and analyzed.

MER-5 2.2.4 Wildlife Corridors
1. How long will it take to compile enough data on "road kill" to realize wildlife tunnels etc. SHOULD HAVE been a more integral part of this plan. Why wait for results that will inevitably prove "road kill" of these larger

Letter 32: Merrill

MER-1. Each city must sign an Implementing Agreement with the U.S. Fish and Wildlife Service and the California Department of Fish and Game that specifies all obligations of the cities and the wildlife agencies for implementing the subarea plan including monitoring and management requirements. The wildlife agencies and cities must annually review the steps that have been taken to implement the plan. Failure to comply with all requirements in the subarea plan and Implementing Agreement, including those obligations related to monitoring and management, is considered a "breach of contract" and can result in withdrawal of the take authorizations.

MER-2. The biological monitoring plan has been revised to include surveys in areas of potential habitat.

MER-3. Volume II includes the general management requirements. Site-specific management directives must be prepared for each preserve area.

MER-4. Monitoring of the avian coastal sage scrub community will not be based on presence/absence surveys, but rather will be conducted using standardized point-count surveys, according to the methods used by the Point Reyes Bird Observatory and the U.S. Forest Service. The purpose of the monitoring will be to test the increased use/persistence of the stepping stones to document how the abundance of coastal sage scrub bird species varies across the MHCP preserve and how the abundance changes over time. In addition, standardized point-count surveys will allow comparison of species richness in different part of the preserve and tracking of changes in species richness over time.

The purpose of the gnatcatcher dispersal monitoring is to determine if gnatcatchers continue to use and breed in the stepping-stone patches of coastal sage scrub over time and the frequency of use over time. Development patterns had fragmented coastal sage scrub habitat before MHCP planning began, and there were no preserve design alternatives for coastal sage scrub in western Oceanside other than conserving the stepping stones. However, breeding pairs of gnatcatchers have been regularly documented in these habitat patches for the past decade or so, and our hypothesis is that they will continue to use these patches if they are appropriately managed, as these are the only patches of sage scrub along the coast. Gnatcatchers on the Palos Verdes peninsula continue to disperse through urban areas using small patches of coastal sage scrub (Atwood pers. comm.). The habitat patches in Oceanside may be used regularly, as they appear to be used now, or

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irregularly (e.g., once every 4 or 5 generations) by gnatcatchers. Even if they are used irregularly, our hypothesis is that multi-generational gene flow could still be maintained between gnatcatcher populations to the north and south of the MHCP planning area. Habitat in the eastern portion of the MHCP planning area and unincorporated county may also be used for gnatcatcher dispersal, but gnatcatcher numbers decrease in density with distance from the coast. If the monitoring demonstrates that gnatcatchers completely discontinue use of these stepping stones over time, Ms. Merrill is correct in assuming it will be too late to modify the preserve design. However, the monitoring will contribute to our understanding of gnatcatcher use relative to patch size. Future genetic monitoring of populations at Camp Pendleton, MHCP, and MSCP may further our understanding of gnatcatcher population dynamics.

MER-5. Data on historic roadkill have not been compiled and reviewed. As part of MHCP monitoring, the cities will require collection, tracking, and mapping of roadkill data for specific roads. These records will be available and organized for MHCP monitoring. The specific methodology will be included in the MHCP Monitoring Plan. These data will be used as part of the review for adaptive management.

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Karen Merrill
4743 Live Oak Court
Oceanside, CA 92056

predators does increase at major road crossings as more habitat is developed and traffic volume increases.

MER-6

2. How do you propose to compile this data on "road kill"? Is there already historical data to compare? Animal Control informed me they keep a daily log, but are not required to report to any agencies. They do notify Ca. Dept. of Fish & Game if mountain lion are killed on the roadway. There have been 2 recent reports of mountain lion deaths in the vicinity of the new Route 76 in Oceanside. I was told they already feel that road has lead to a major increase in wildlife "road kill". Animal Control records are not open to public review.

MER-7

3.2 Preserve Monitoring

Will there be any safeguards to insure the monitoring data collected by the cities are accurate? I believe the practice of developers hiring their own biologists to report on sensitive species (often none to report!) before they begin construction, leads to some concern if the cities are reporting on themselves. Will there be an outside group (public volunteers ?) that can verify this data collection?

Thank you for the opportunity to participate in this important conservation plan.

Sincerely,



Karen Merrill

MER-6. Please see response MER-5.

MER-7. The agencies and cities will work together to establish a process for data collection, data review, and analysis. The agencies may choose to involve scientists from academic institutions to assist in reviewing the data collection and review process.

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Received: from staff2.cso.uiuc.edu (root@staff2.cso.uiuc.edu [128.174.5.53])
by capricorn.sandag.cog.ca.us (8.12.1/8.12.1) with ESMTP id g395LoaH012413
for <jfa@sandag.org>; Mon, 8 Apr 2002 22:21:51 -0700 (PDT)
Received: from jax.ux1.cso.uiuc.edu (arboria-82.slip.uiuc.edu [130.126.25.178])
by staff2.cso.uiuc.edu (8.11.0/8.11.0) with ESMTP id g395Lag25916;
Tue, 9 Apr 2002 00:21:37 -0500 (CDT)
Message-Id: <4.3.2.7.2.20020408105420.00b8a3e0@ux1.cso.uiuc.edu>
X-Sender: j-paxton@ux1.cso.uiuc.edu
X-Mailer: QUALCOMM Windows Eudora Version 4.3.2
Date: Mon, 08 Apr 2002 22:24:51 -0800
To: Janet Fairbanks <jfa@sandag.org>
From: Jack Paxton <j-paxton@ux1.cso.uiuc.edu>
Subject: DEIR response on MHCP
Mime-Version: 1.0
Content-Type: text/plain; charset="us-ascii"; format=flowed
X-UIDL: ?bH!!!Ma!B-!!"Q*h!"

Janet,

I am mailing my response but I send you this copy too because we will be out of town until May 1.

This is my response to the Draft EIR for the MHCP.

After reviewing the DEIR I find it short on details to carefully evaluate. I am willing to comment once details are available.

Specifically:

- PAX-1 1-How will fire be managed in MHCP areas, for fire-dependant plants and animals?
 - PAX-2 2-How will the public be excluded from these areas, especially during breeding seasons for T&E species; and in general, destruction of habitat by dumping, dogs, cats, ORV use etc.?
 - PAX-3 3-How will invasive animal and plant species be controlled? e.g. Argentine ants, Erhardta grass, etc.
 - PAX-4 4-My home area, San Marcos, hasn't even approved their subarea plan. What I see from them is very sketchy and subject to modification such as the proposed SEH golf course. Are we supposed to buy a "pig in a poke"?
 - PAX-5 5-Are citizens afforded the same protections as developers?
I insist that there be NO SURPRISES in the MHCP. The MHCP must be completely purchased, assembled, managed and monitored BEFORE any take permits or building permits are issued!
- Sincerely, Dr Jack Paxton
Dr and Mrs Jack Paxton, Professor emeritus, University of Illinois.
Summer address: 506 E. Oregon, Urbana, IL 61801 phone 217-367-6554
Winter address:1615 La Tierra Lane, Lake San Marcos,CA 92069 phone 760-744-3282

Letter 33: Paxton

PAX-1. Fire management plans are to be prepared for specific reserve areas as they are added to the reserve system. Managing for fire-dependent species and communities will be extremely challenging due to human safety issues in these small, urban reserve areas. The adaptive management and monitoring program should address appropriate management actions on a site-specific and species-specific basis, guided by research, as available.

PAX-2. Access control and other restrictions within the preserve will be strictly enforced. The jurisdictions and preserve managers will work together on a public education program to explain goals and regulations as well as educate the public on the area's resources. The ultimate level of enforcement lies in the implementing agreement with the wildlife agencies, because degradation of resources could result in loss or revocation of federal and state take authorizations. Reserve managers will have responsibility for enforcing public access restrictions.

PAX-3. Exotic species invasions are an extremely challenging issue for reserve areas. The adaptive management and monitoring program should use best management practices or research and monitoring to guide control efforts. In some cases, control may not be possible. However, control is more possible with the plan than without the plan, due to coordinated and funded monitoring and management efforts.

PAX-4. The San Marcos Subarea Plan has established preserve and standard areas. The referenced golf course is part of a standards area. Besides the standards contained in the Subarea Plan, all impacts caused by the San Elijo Hills Golf Course shall be self mitigating pursuant to the mitigation measures of the adopted EIR and the Mitigation and Monitoring Program. The Golf Course area shall be managed as a corridor. The project provides 25% conservation levels in the golf course as well as an adjacent corridor designed to MHCP standards.

A Development Agreement was implemented in the City of San Marcos setting certain responsibilities for the City. As such, the City can not deny a land use prior to an applicant making an application. For this particular issue, the City is obligated to process an application for a Conditional Use Permit for the uses listed therein, including a golf course. The City has been advised by legal counsel that if it does not process an application as set forth in these entitlements, it can be deemed to be in violation of state regulations on permit

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processing and other substantive and due process rights. Additionally, development agreements have been interpreted as contractual obligations, were it to refuse to process an application. Further, the City can not deny a land use prior to the submission of an application. The processing will include CEQA review of the application, and the legislative body (the City Council) must make certain findings with respect to the proposed use prior to making a decision on whether to issue the CUP. Issuance of the CUP is a *discretionary* decision – the City can approve or deny that application in accordance with its discretionary land use authority. The City can not deny the project today because there is no application before the decisionmakers.

PAX-5. The preserve system can only be assembled over time through mitigation actions and public purchases. Some of these actions have already occurred; land has been purchased by the public to mitigate public projects or to conserve land as open space. The private sector has purchased land to mitigate development projects. Mitigation is a requirement of CEQA; as public and private projects are approved land acquisition will occur to mitigate the impacts of the project. Land management and biological monitoring are requirements of the MHCP.

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8 Apr 2002

Dear Janet,

This is my response to the Draft EIR for the MHCP.

After reviewing the DEIR I find it short on details to carefully evaluate. I am willing to comment once details are available.

Specifically:

1) How will fire be managed in MHCP areas for fire-dependant plants and animals?

2) How will the public be excluded from these areas, especially during breeding seasons for T $\frac{1}{2}$ E species and in general destruction of habitat by dumping, dogs, cats, ORV use?

3) How will invasive animal and plant species be controlled? e.g. Argentine ants, Erhardto grass, etc.

4) My home area, San Marcos, hasn't even approved a subarea plan. What I see from them is very sketchy. Are we supposed to buy a "pig-in-a-poke"?

5) Are citizens afforded the same protections as developers? I insist that there be NO SURPRISES. The MHCP must be completely purchased, assembled and monitored BEFORE any take permits or building permits are issued. Sincerely,
Dr. Jack Paxton

Virginia L. Perkins, 3451 Bumann Road, Encinitas, California 92024
April 26, 2002
Comments Regarding
DRAFT ENVIRONMENTAL IMPACT STATEMENT/ENVIRONMENTAL IMPACT REPORT

Letter 34: Perkins

For Threatened and Endangered Species Due to the Urban Growth within
the Multiple Habitat Conservation Program Planning Area

PRK-1. Comment is an overview of disagreement regarding the MHCP, Subarea Plan, and process associated with the MHCP. The comment does not address the adequacy or accuracy of the MHCP, Subarea Plan, or EIS/EIR; therefore, no further response is necessary.

SO# NO. 93121073

Lead agencies: United States Fish and Wildlife Service
San Diego Association of Governments

PRK-1

The Multiple Habitat Conservation Program is a seven-city planning program designed to create, manage and monitor an ecosystem preserve in northwestern San Diego County. The seven incorporated cities encompass about 111,865 acres with about 27% vacant lands remaining that will support natural vegetation communities. The MHCP preserve system is intended to protect viable populations of native plant and animal species and their habitats in perpetuity. The goal of the MHCP is to target the highest quality habitats for preservation, while allowing development of less important habitat areas (Ogden 1998).⁴ One project objective is "to provide a plan for general public benefit ...access to natural preserves for passive recreation." The original study area expanded outside their city boundaries to include 400-500 acres in the unincorporated County of San Diego east of the cities of Carlsbad and Encinitas and south of the City of San Marcos. The additional 400-500 acres of coastal sage scrub habitat is called the "gnatcatcher core" that will supposedly support 16-23 pairs of breeding coastal California gnatcatchers. It is only with the addition of the 400-500 acres, that the seven cities may state that 66% will be conserved in the total MHCP study area - as no city will designate additional habitat lands within its boundaries though they could.

I am addressing this plan for the following reasons:

I have lived and owned property within the potential 400-500 acres of "gnatcatcher core" for some 50 years.

I am intimately familiar with the habitat and biology within the "gnatcatcher core" area. In fact, my family has preserved much of that habitat but not for the benefit of the public as I believe they are not good caretakers!

I have attended nearly all MHCP Advisory Committee meetings in the past few years and nearly all my comments were ignored though given constructively.

I have read the voluminous MHCP Draft document and the Draft Encinitas Subarea plan.

Many inaccuracies exist within the plans that I believe constitute fraud.

The methodology of developing this plan did not honor checks and balances, the basis of our system of government.

There are great inequities and biases included in the plan.

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Advisory Committee/Public Interaction/Outreach

Since all public outreach and input was so restricted, I would appreciate explanation/comments on the following:

- PRK-2 1. Attendance was taken and a sign up sheet was circulated at each monthly meeting. Provide a compilation of all attendance records for the years 1993-2001 indicating:
- committee member attendance
 - public attendance
2. It is stated within the document that a substantial amount of public input was involved and the committee provided a forum for public discussion and consensus building. In actuality, there was very limited public input including attendance at any meetings.
- Do you define "public" as members of the committee or members of public at large?
 - The "audience" public was only very infrequently allowed to give input during meetings and then if the discussion turned controversial, all public input was terminated. The public audience could if time allowed (infrequently) at the end of the meetings comment.
 - There were items left out of meeting minutes if they were counter to information presented by staff. i.e. In 1991 the County of San Diego offered \$50,000/acre for land located within the "gnatcatcher core" area.
 - Who on the Advisory Committee or SANDAG staff has land that is included in this MHCP plan?
 - Who on the advisory committee for the 1993-2001 years represented "backyard" property owners?
 - Environmental Representation
 - What environmental groups were represented on the committee?
 - What is the number of members of each environmental group?
 - Do any of these memberships overlap?
 - Dr. Dan Silver of Los Angeles represented an environmental group on the committee.
 - What was that group?
 - How was he appointed to the committee since he resides in LA?
 - Has he participated in other Habitat Plans in California?
 - What are the names of those plans?
 - A vote by the advisory committee was postponed because Dr. Silver was not in attendance;
 - What was the subject of that vote?
 - Why was the vote postponed?
 - Why was Dr. Silver's vote so important?
- PRK-3
- PRK-4
- PRK-5
- PRK-6
- PRK-7
- PRK-2. Public outreach information is on file with SANDAG. Compilation of these data are extraneous and does not affect the adequacy of the MHCP, Subarea Plan, nor EIS/EIR.
- PRK-3. The meeting minutes are as accurate as possible and were reviewed and approved by the Advisory Committee at the subsequent meeting in every case. The minutes were revised and corrected based on comments before being approved.
- PRK-4. Financial/land ownership disclosure is not a requirement for participating on a voluntary public advisory committee of this type. It is unknown who, if anyone, participating in the Advisory Committee is a property owner in the MHCP planning area. Presumably at minimum many of the participants, own homes and/or businesses in the area.
- PRK-5. This comment cannot be addressed. No definition of a "backyard property owner" is provided.
- PRK-6. The membership of the MHCP Advisory Committee is described in Attachment A to the Final MHCP dated March 2003. Any readers may judge for themselves which among these are "environmental groups".
- The numbers of members of groups represented on the Advisory Committee, and any overlap of membership is unknown and inconsequential. There is no requirement for a public advisory body that relates to this issue.
- PRK-7. Dr. Silver represents the Endangered Habitats League (EHL); his alternate is Michael Beck from the same organization.
- There is no residence location requirement for service on a public advisory body of this type.
 - The EHL has participated in development of NCCP/HCP plans in San Diego, Riverside, Los Angeles, and Orange Counties; and perhaps in other locations.
 - The Advisory Committee did not take votes on particular issues; instead, the committee worked on an issue until consensus was reached. In some cases subcommittees were formed to provide opportunities for further and more in-depth discussion on an issue; the subcommittee then reported their

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conclusions at the Advisory Committee. It is possible that a discussion was postponed pending attendance of the subcommittee members.

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PRK-8 3. During the Oceanside TV MHCP presentation and at the Encinitas MHCP workshop, only written questions were allowed to be submitted to a panel for responses. All questions were screened by Moderator and MHCP Committee Chairperson Colleen O'Hara who also tightly controlled all public input at the monthly MHCP Advisory Committee meetings. Controversial questions were not addressed or responded to by the panel. Why was the public always so controlled and limited in their interaction?

PRK-9 4. Property owners and their best interests are referred to in the draft document:
 A. How were private property owner interests being looked after?
 B. How were all property owners notified of this plan?
 C. How were property owners, who will be providing their property for preservation, in this habitat conservation program notified?
 D. How were individual property owners, who will be providing property for preservation, in this habitat conservation program involved in the planning?

MAPS/FIGURES

PRK-10 The maps and their data do not accurately reflect what is on the ground. Maps show/depict natural habitat that does not exist.

PRK-11 The entire document is built upon inaccurate data, therefore, all assumptions and percentages etc. are inaccurate.

PRK-12 I wrote a letter to the City of Encinitas that was forwarded to SANDAG stating these facts and indicating areas of correction. No changes were made.

Knowing these facts but continuing with inaccuracies that greatly impact people's lives is fraud. Fraud in law—intentional deception to cause a person to give up property or some lawful right.

FINANCIAL

PRK-13 Page 2-20 Generally, unconstrained vacant land in the study area is valued at \$2.00 to \$5.00 per square foot, depending upon location and allowable use."

What is the value per acre of the 400-500 acres within the gnatcatcher core?

Past published prices have been far below market prices in the area.

In the area of the gnatcatcher core, recent sales prices:
 2 lots including 1 house on 8 acres \$3.3 million
 5 raw acres 1.2 million

However, off Fortuna Ranch Road the City of Encinitas allowed 1 landowner to mitigate 1 acre of coastal sage scrub from an Oceanside mitigation bank for \$30,000/acre.

PRK-8. The Voices of Oceanside Program was viewed by a live studio audience who were asked to submit questions to the panel. There was not enough time to answer all the questions; the moderator tried to select questions that were general in nature, could be answered in the time allowed, and could be understood by the television audience.

PRK-9. Private property owners were directly represented by several members of the Advisory Committee.

Property owners were informed about the plan through notices, workshops, public hearings, city council discussions and actions, publications, flyers, public service announcements, public circulation of plan documents, and by other means. Further notification will occur when cities consider actions to adopt MHCP subarea plans and implementing agreements.

PRK-10. The vegetation community data and associated maps were originally developed in 1992 from existing information, technical reports, and aerial photography. In 1997, the vegetation layer was systematically updated based on 1995 aerial photography. In some areas, limited field reconnaissance contributed to the vegetation data layer. The methods for the MHCP data collection are described in MHCP Volume I Section 2.3 and in MHCP Volume II Section 2.1. The MHCP database is a regional database and may not accurately capture the details of individual parcels. In addition, more recent changes or modifications to vegetation on the ground will not be reflected by the MHCP database. The MHCP database is a "snapshot" of the existing vegetation conditions at the time of the database development. Vegetation and species mapping will be updated as part of the project approval process and reserve monitoring.

PRK-11. The MHCP database is a "snapshot" of the existing biological resources at the time of the database development. All analyses based on this "snapshot" acknowledge this limitation. Although there are certainly some inaccuracies, they are not severe enough to significantly alter findings.

PRK-12. The referenced letter included qualitative "observations" about the amount and quality of habitat present on the property owned by the individual commentator, but did not contain any documented quantitative biological data. The letter was forwarded to SANDAG. The Encinitas Planning Commission and City Council can consider this comment in their review and consideration of the Encinitas Subarea Plan.

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PRK-13. It is anticipated that a purchaser of core gnatcatcher habitat in the unincorporated portion of San Diego County will prepare an appraisal to determine market value. Such a study is beyond the scope of the draft EIS/EIR or the MHCP.

Since 1999, however, approximately 400 acres of core gnatcatcher habitat have been purchased, or agreed to be purchased, by various parties. Total of reported prices is \$7.6 million, or average price of about \$19,000 per acre.

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GNATCATCHER CORE

400-500 acres 16-23 pairs of gnatcatchers

- PRK-14 1. Explain evolution of the gnatcatcher core area
When was it introduced?
Then it was eliminated and then reintroduced
The acreage demands were also changed
- PRK-15 2. Publish the scientific findings for the 400-500 acres
1. Necessity of the 400-500 acres
2. Justification to place 66% conservation acreage outside the seven city boundaries when each city could mitigate within its own boundaries. i.e. San Marcos preserves only 25% for a golf course etc.
3. habitat quality with dates of survey
4. numbers of gnatcatchers with survey dates
5. names and numbers of sensitive plants and survey dates
6. names and numbers of birds with survey dates
7. specific location of 400-500 acres to be set aside for core
8. specific location of acreage already acquired for core
A. what is its habitat quality?
B. what are gnatcatcher numbers and survey dates?
C. names and numbers of sensitive plants and survey dates
D. names and numbers of birds with survey dates
9. Comparison of habitat quality within the gnatcatcher core with San Marcos golf course, Carlsbad golf course, Villages of La Costa.
- PRK-16 A gnatcatcher survey was completed on 269 acres within the potential 400-500 acres and only 3 individual gnatcatchers were located. How might this impact the core area planning?
- PRK-17 What is being done to monitor the clearing of land?
Those who have cleared illegally should be subsidizing for those who have preserved.
- PRK-18 How does the MHCP reward those who have preserved habitat?
- MAINTAINING INDIVIDUAL PROPERTY RIGHTS
- PRK-19 1. How has the MHCP maintained individual property rights as it states in the document?
- PRK-20 2. It is stated, "Provide a plan for general public benefit through habitat conservation and access to natural preserves for passive recreation." In actuality, the government is acquiring parkland without paying for it riding on the coattails of the Endangered Species Act. Does the ESA require trails?

If this habitat land is so sensitive and limited then the public should not be using it for recreation. Discuss the plan's justification.

- PRK-14. In 1997, the wildlife agencies determined that a 400-to 500-acre area of contiguous, high-quality gnatcatcher habitat capable of supporting 16 to 23 pairs of gnatcatchers must be conserved in the general vicinity of the circle thus inscribed around Southwest San Marcos, Southeast Carlsbad, and the adjacent unincorporated County. This determination was not eliminated. Acreage demands have always remained between 400 to 500 acres.
- PRK-15. Please see responses PRK-10, PRK-14, and SDCo-5.
- PRK-16. The core requirement is based on the potential carrying capacity of habitat for gnatcatchers, not on survey results performed at any given time. Gnatcatcher population numbers naturally vary from year to year and season to season. The core area was burned in 1996 and is gradually recovering as coastal sage scrub capable of supporting denser gnatcatcher populations.
- PRK-17. If there is any illegal clearing, the applicable cities or county have the authority to issue criminal or civil penalties with the individual. If an endangered species is involved, USFWS and CDFG have criminal and civil authority.
- PRK-18. Preservation of habitats by private parties or public entities is a requirement for project approval and to be a "third party beneficiary" of take authorizations held by the jurisdictions. There is no specific "reward" for preserving, or simply not having destroyed, habitat in the past.
- PRK-19. The MHCP intends that each jurisdiction will maintain private property rights by assuring that if any land is acquired by a public agency that it be purchased at an independently determined fair market value from willing sellers. The MHCP cannot be responsible for perceived loss of property rights or value which is thought to occur based on the enforcement of state or federal environmental laws. The Plan can however facilitate compliance by private property owners with those laws.
- PRK-20. Some forms of recreation, generally passive, are consistent with the goals of preserve system management and wildlife conservation. If land is acquired with public funds, or as the result of laws and regulations intended to benefit the overall citizenry; including the USESA, these lands should also be considered for public use, as appropriate. But there is no requirements in the ESA to have recreational access.

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NONNATIVE GRASSLANDS

PRK-21

Nonnative grasslands are assumed to be of benefit for foraging. Many nonnative grasses are hazardous to wildlife and can be life threatening. My experience has been that neither wild or domestic animals will enter these lands unless they are forced to. For example, my horses would not graze in nonnative grasslands and always went to the natural undisturbed areas. Rip gut brome can be lethal and not many animals will eat mustard.

To demand preservation of nonnative grasslands is simply a land grab by the government.

MONITORING/MANAGING

PRK-22

The 110 acres put into a preserve by the Villages of La Costa have nearly daily trespassers mostly on motorcycles. If just a few acres need to be managed and are not being then I question the ability or the sources of monies to manage hundreds of acres.

Why is this preserve so inadequately being monitored today?

SUMMARY

PRK-23

The seven cities within the MHCP are shirking their responsibility of preservation within their cities. Each city has an agenda so each justifies the transfer of its responsibility to preserve to the "gnatcatcher core". Little or no scientific data is available to validate the preservation of the 16-23 pairs of gnatcatchers. Each city knows it is easy to put their burden (or 66% extortion) on a few individual land owners who often know nothing of the MHCP program because they have not been notified outside of a small blip in a local newspaper.

PRK-24

There were no checks and balances of any kind on this Advisory Committee. The MHCP document is flawed and if approved must be challenged in a court of law.

PRK-21.

Conservation of nonnative grasslands through the MHCP provides both direct and indirect benefit to maintaining viable populations of sensitive plant and animal species. Nonnative grasslands provide forage for a number of covered raptor species and are known to support covered plant, reptile, and small mammal species. Nonnative grasslands often link together various habitat types including coastal sage scrub, chaparral, native grassland, and oak woodland. This natural mosaic of habitat types should be maintained in the development of the MHCP preserve system.

PRK-22.

Public access and permitted uses of the MHCP preserves are discussed in Section 6.0 of the MHCP Plan Volume I and the MHCP Monitoring and Management Plan. Currently, the MHCP requirements and guidelines for management and monitoring of the preserve lands are not being implemented. Preserves set aside as mitigation for developments prior to approval of the MHCP are not necessarily required to comply with MHCP policies. Once MHCP is approved and these lands come under the MHCP preserve network, the approved management and monitoring guidelines and requirements will be implemented, either as a requirement of the developer or as a requirement of the city. This will include enforcement and funding as identified in each City's Implementing Agreement. Since the Villages of La Costa Project is not a part of the MHCP, this issue will not be addressed by this response to comments.

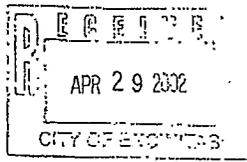
PRK-23.

The scientific viability of the "gnatcatcher core" area was established and verified on several occasions during the process. Public acquisitions to mitigate private actions have proceeded in advance of final actions on the MHCP subarea plans. In each case, land acquisition has been from willing sellers for prices which were independently determined without consultation or interference from any government agency. Future public acquisitions will only occur from willing sellers.

PRK-24.

The Advisory Committee, and the entire implementation structure described in MHCP Section 5.7, is a creation of, and the responsibility of local general purpose agencies of government. These cities are strictly governed by state and federal laws, and are served by elected City Councils who are directly accountable to the citizens of their community.

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To: Gary Barberio
City of Encinitas
Community Development Department
505 South Valcan
Encinitas, California 92024

From: Virginia L. Perkins
3451 Bumann Road
Encinitas, California 92024

Re: Public Review Draft Encinitas Subarea Plan
Multiple Habitat Conservation Program

Virginia L. Perkins 3451 Bumann Road, Encinitas, Ca. 92024
April 26, 2002

Comments Regarding: Public Review Draft Encinitas Subarea Plan
Multiple Habitat Conservation Plan

- PRK-25 Superficially reading the Draft Encinitas Subarea Plan of the MHCP one could think of utopia....a plan that will resolve all concerns and problems of preserving habitat! But when one scratches the surface, politics and agendas rear their ugly heads in the name of preservation under the Endangered Species Act.
- PRK-26 The City of Encinitas' agenda of very limited growth, unlimited area of parkland and unlimited miles of recreation trails is satisfied through the MHCP document by requiring massive preservation standards and ratios for mitigation i.e. coastal sage scrub 72%
Chaparral 75%
Southern maritime chaparral 85%
Wetlands 100%
- PRK-27 This is equal to 84% preservation within the Biological Core Linkage area. On page 4-27, about 15 property owners are listed by name that will provide the entire City of Encinitas, a population of 61,000, with all the remaining preserved habitat for the Encinitas preserve. Not only will these 15 property owners be required to provide that habitat land at no cost to the city but those owners must also maintain and support those preserves. No public contribution of monies was offered. Discrimination and punishment are unwritten words within the document.
- PRK-28 Coastal sage scrub and gnatcatcher habitat are apparently limited so that biologists justified adding the requirement of 400-500 acres outside city boundaries. Yet these lands add to the Encinitas trails system.
- PRK-29 additionally, page 7-4, "Passive recreational activities, e.g. hiking and bird watching, and limited active recreational activities, e.g. horse-back riding and mountain biking, are anticipated within all areas of the Encinitas preserve." The MHCP is providing Encinitas with free parkland under the guise of the Endangered Species Act requirements. This is essentially a land grab by Encinitas and actions have shown that the plants and animals are not a particularly significant consideration.
- PRK-30 The above is based on the following facts:
1. The City and landowners are encroaching into wetlands
2. Sensitive habitat lands are constantly being cleared without apparent permission or city interference
3. The City Council recently approved a master trails plan that ignored public input to discourage locating trails in sensitive areas. Many trails were removed in densely populated areas due to citizen screaming yet many miles of trails were located through the sphere of influence-gnatcatcher core, along riparian-stream corridors, through deep, steep terrain.

- PRK-25. Comment noted.*
- PRK-26. Table 4-4 of the Plan details the mitigation ratios proposed for each habitat group.
- PRK-27. Figure 4-3 portrays 14 softline properties that would require site-specific standards because they support resources of particular importance to biological conservation. They do not represent the entire Focused Planning Area within the City of Encinitas. Moreover, the Encinitas Subarea Plan contains no provisions that require transfer of these properties to the city. Funding and financing of the plan is described in Section 5.2.
- PRK-28. The gnatcatcher core area was proposed by the Resource Agencies in order to add the gnatcatcher to the covered species take list. Comment noted. The Encinitas Planning Commission and City Council can consider this comment in their review and consideration of the Encinitas Subarea Plan.
- PRK-29. Page 7-5 of the Encinitas Subarea Plan provides management measures that would reduce any effects of passive recreational activities within the proposed preserve area.
- PRK-30. Please see response PRK-29.

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4. There is mention of wildlife corridors and preservation along Copper Creek. Encroachment and altering these areas is taking place apparently without any city concern or monitoring.
5. One of the most sensitive areas on Copper Creek is an historic natural spring area at the ne corner of Lone Jack and Lone Hill. Only a small area was preserved in open space. Discrimination!

I would appreciate responses to the following:

- PRK-31 1. Why is the city eliminating all flexibility by stating, "must conserve onsite?"
- PRK-32 2. What is the scientific data to justify Encinitas to require 66% take of coastal sage scrub?
- PRK-31 3. Who determined the 66% take? Explain
- PRK-33 4. Is this the same standard within the other 6 cities in the plan? Explain
- PRK-34 5. San Marcos will only preserve 25% for the San Elijo golf course. Discuss discrepancies among cities
- PRK-35 6. How do the take authorizations benefit the Perkins family and their property if Encinitas requires them to place a minimum of 66% in a preserve?
- PRK-36 7. What is the justification of placing miles of trails through preserves and up steep hillsides with the possibility of erosion?
- PRK-37 8. What reference does the Endangered Species act make regarding trails?
- PRK-38 9. How does the city justify removing trails in populated Leucadia and placing trails into the sphere of influence and into sensitive habitat?
- PRK-39 10. It is stated a habitat linkage/wildlife corridor will be maintained along Copper Creek yet property owners have erected fences and altered those areas. Discuss
- PRK-40 11. What is the justification of requiring less than 66% of the highly sensitive wetlands at the corner of Lone Jack and Lone Hill to be preserved next to an area totally shaded requiring site-specific standards
- PRK-41 12. Escondido Creek has been massively altered, grading, filling, planting. What has the city done about the Mayo property?
- PRK-42 13. Wetlands have been altered and encroached into by property owners and the city on Lone Jack. Is this permissible? Explain
- PRK-43 14. The plan states, "Mitigation is generally required to be within Encinitas Subarea." In the past few months, my neighbor mitigated for coastal sage scrub 70 miles away in Oceanside for 430,000 acre, a fraction of the value of the land in Olivenhain. Please explain
- PRK-44 15. The Encinitas plan states, page 5-4, that not only will land owners provide 2/3 of their property for preserve but they will establish funds for management. What is the justification for this since these documents state the preserve benefits everyone?

PRK-31. Section 4.3.1.5 of the Encinitas Subarea Plan prioritizes options for mitigation sites. In addition, Section 4.3.2 and Figure 4-3 address specific "softline" properties that would require site-specific standards because they support resources of particular importance to biological conservation.

PRK-32. The basis for mitigation ratio requirements are provided in the Final MHCP Plan.

PRK-33. Please see response PRK-32.

PRK-34. The five cities currently preparing subarea plans have mitigation ratios based on habitat type. Please refer to each Subarea Plan for a listing of mitigation ratios by habitat type.

PRK-35. The conservation of 25% of the proposed golf course site is only part of the project's conservation obligation. In the City's Southern FPA, San Elijo Hills contributes 891.81 acres of 100% conserved open space (861.87 acres ungraded). The proposed golf course contributes 47.14 acres of 100% conserved open space.

Conserved within this project open space is approximately 70% of the wart-stemmed ceanothus and summer holly populations associated with the Mount Whitney Double Peak area. Therefore, adequate conservation of sensitive chaparral species occurring in the golf course is provided.

PRK-36. Approval of the Encinitas Subarea Plan would allow future projects to take listed species covered under the Plan as long as a project proposal was consistent with the Plan. If the Plan is not implemented, individual projects resulting in the take of listed species would be subject to the Section 10(a) federal permitting process under the Endangered Species Act and would need to negotiate individually with the Resource Agencies.

PRK-37. Please see response PRK-29.

PRK-38. The U.S. Endangered Species Act of 1973, as amended (Act), does not reference or discuss trails specifically. The Act provides the legal requirements as they relate to Federal actions which "may affect" a listed species or non-Federal actions which "take" a listed or covered species. It outlines the consultation process necessary to either exempt such actions under section 7 of the Act or permit such actions under section 10 of the Act. Creation of new trails and use of existing trails can have adverse effects on

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covered species. Such effects are addressed in section 6.2.1 of MHCP Volume I. After completion of this EIS/EIR USFWS expects the MHCP participating Cities to request an Incidental Take Permit under section 10 of the Act for each of their subarea plans. When the USFWS receives these applications, USFWS notifies the public in the Federal Register and provide a public comment period. Once the public comment period closes, comments are addressed, and the Wildlife Agencies and City(s) finalize the respective subarea plan(s), Implementing Agreement(s), and any subsequent NEPA or CEQA requirement(s), the Service will issue an Incidental Take Permit under section 10 of the Act to the City(s) for such activities in their subarea plan(s) as trails.

- PRK-39. This comment does not specifically address the adequacy of the Encinitas Subarea Plan. The Encinitas Planning Commission and City Council can consider this comment in their review and consideration of the Encinitas Subarea Plan.
- PRK-40. Site-specific standards contained in the Encinitas Subarea Plan would be implemented as properties are proposed for development.
- PRK-41. The Encinitas Subarea Plan proposes a “no net loss” policy of both wetland acreage and wetland biological value to ensure a 100% conservation ratio of these habitat areas. The property referenced addresses a project approved and implemented prior to the adoption of the Plan.
- PRK-42. Please see response PRK-41.
- PRK-43. The prioritized options for mitigation sites contained in Section 4.3.1.5 of the Encinitas Subarea Plan would be implemented with adoption of the Plan.
- PRK-44. Page 5-4 of the Encinitas Subarea Plan indicates that when the regional funding program is established, funds from the program will be used to supplement the management of habitat lands set aside as mitigation for impacts from land development. It is common, under currently established mitigation standards in place today, to require project proponents to not only set-aside habitat lands, but to provide an endowment for the perpetual maintenance of these lands.

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- PRK-45 16. How are landowners who preserve habitat rewarded?
- PRK-46 17. My family has owned and lived on acreage for 50 years and preserved a good deal of habitat while others all around us have destroyed theirs. What special consideration is given us if we want to use our property? Explain
- PRK-47 18. What role did Encinitas have in determining the gnatcatcher core area. Volunteer, support, oppose? Explain
- PRK-48 19. How would locating the gnatcatcher core preserve on the Perkins property benefit them?
- PRK-49 20. With respect to location of the gnatcatcher core and the 66% take, what consideration was given to the fact the 269 acres has been lived on, farmed, grazed, disturbed for over 100 years?
- PRK-50 21. Locate the gnatcatcher core area on a map. Identify areas of core acquisition.
- PRK-51 22. The laws of supply and demand determine prices in a free market. Discuss prices in the area for habitat lands compared to land without habitat.
For information: 1. 5 acres, raw land Bumann Rd. \$1.2 million
2. 8 acres, 2 lots, 1 house \$3.3 million
(near corner Lone Jack & Lone Hill)
- PRK-52 23. Five cities in their plans use the gnatcatcher core as justification they have met requirements for 16-23 pairs of birds. (On our 269 acres only 3 birds were found.) Discuss

This obviously was determined without scientific basis!
- PRK-53 24. What role did Encinitas have in locating the core area?
- PRK-54 25. Reference to "high quality coastal sage scrub" existing on the Perkins property. What scientific data was used to determine this? That land is essentially a rock pile which photos after the Harmony Grove fire indicate. Little soil to support plants or wildlife.
- PRK-55 26. How were individual property owners of habitat land informed of this program?
- PRK-56 27. What has been the reaction of landowners who have habitat that they must mitigate?
- PRK-57 28. How is Encinitas currently monitoring preserves, clearing, encroachments?
- PRK-58 26. The Encinitas Fire Dept. would not enter the fire area to protect homeowners, animals or plants during the Harmony Grove fire. Would that change if a gnatcatcher core or preserve area is created? Explain
- PRK-59 29. Why were local landowners who know the area far better than anyone else not consulted in preparation of this Subarea plan?
- PRK-60 30. What scientific data base was used upon which to base this plan? What onsite data was collected? What methods/sources/data were used site specific for the Perkins property?
- PRK-61 31. A letter to Mr. Barberio, City of Encinitas, stated maps/figures were inaccurate. No changes were ever made; therefore, a faulty data base invalidates the plan and the statistics within. Comment

- PRK-45. Please see response PRK-19.
- PRK-46. Please see response PRK-19.
- PRK-47. The basis for establishing the "General Area for Core Gnatcatcher Conservation" is described in Section 3.3.3 of the Draft MHCP Plan (Volume I). Section 6.9 of the Encinitas Subarea Plan describes the relationship of Plan approval to MHCP Core.
- PRK-48. Please see responses PRK-36 and PRK-48.
- PRK-49. Please see response PRK-48.
- PRK-50. Please see response PRK-48.
- PRK-51. This comment does not specifically address the adequacy of the Encinitas Subarea Plan. The Encinitas Planning Commission and City Council can consider this comment in their review and consideration of the Encinitas Subarea Plan.
- PRK-52. Please see response PRK-48.
- PRK-53. Please see response PRK-48.
- PRK-54. Page 4-33 of the Encinitas Subarea Plan states that vegetation on the Perkins/Moses parcels includes coastal sage scrub in upland areas. This conclusion is based upon the regional MHCP Vegetation Inventory (Figure 2-1 and Table 2-1 of the MHCP Plan, Volume I) developed by the San Diego Association of Governments. See also Section 2.4 of the MHCP Plan, Volume I, for a discussion of the GIS-based habitat evaluation model designed and used to rank the relative biological value of lands within the MHCP study area.
- PRK-55. Legal noticing for the Draft EIR/EIS was conducted in compliance with the CEQA and NEPA regulations. All MHCP Advisory Committee meetings were noticed and open to the public and were generally held at the City of Encinitas. The City of Encinitas held a public workshop on February 21, 2002, in which every owner of property within the proposed Encinitas FPA was notified. See also Section 1.5.1 of the draft EIS/EIR for the MHCP.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

- PRK-56. This comment does not specifically address the adequacy of the Encinitas Subarea Plan. The Encinitas Planning Commission and City Council can consider this comment in their review and consideration of the Encinitas Subarea Plan.
- PRK-57. Please see response PRK-57.
- PRK-58. Fire management policies of the Encinitas Subarea Plan are provided in Section 4.3.1.7. Please see response PRK-57.
- PRK-59. Please see response PRK-56.
- PRK-60. See Section 2 of the Draft MHCP Plan (Volume I) and Section 3 of the Encinitas Subarea Plan.
- PRK-61. Please see response PRK-12.

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- PRK-62 32. I am requesting a data base be compiled beginning 10 years ago depicting all natural habitat and type to be identified on all lots. Follow that through to what exists on each lot today. To punish those who have preserved while others destroyed seems unlawful. Comment
- PRK-63 33. What is being done to monitor and control clearing without permits? However, there is very little habitat remaining.
- PRK-64 34. Will the loss of density for these habitat lands be transferred elsewhere- perhaps along the transportation corridor to accommodate "smart growth?"
- PRK-65 In summary, this plan discriminates, does not present scientific data to justify findings, contains inaccurate information on which statistical information is based- thus it is fraudulent!
- PRK-66 The Encinitas Subarea Plan should be denied as written.
- PRK-62. Please see response PRK-57.
- PRK-63. See Sections 6.3.2 and 6.3.3 of the Encinitas Subarea Plan. See also City of Encinitas Municipal Code Chapter 23.24, Grading, Erosion, and Sediment Control.
- PRK-64. Each city will be responsible for amending General Plans and Ordinances to assure implementation of the MHCP.
- PRK-65. The Encinitas Planning Commission and City Council can consider this comment in their review and consideration of the Encinitas Subarea Plan.
- PRK-66. Please see response PRK-66.

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MHCP EIS/EIR
COMMENT SHEET

Letter 35: Joan B. Perron

PER-1 ① I do not believe you have an adequate fire management plan. There has been much research showing fire is a necessary component of every ecosystem & that some species will not survive without it. Brush cutting will not replace it & brush cutting will only delay fire happening naturally at which time there will be a much bigger, hotter, more destructive burn. There should be some sort of framework set up for fire departments to follow.

PER-2 ② Recreational areas tend to frighten off the more timid creatures -- the very ones we are trying to save, especially, during breeding season. I see no plan for restricted or off limits use at least during this most critical period.

PER-3 ③ Enforcement needs the help of many trained volunteers

PER-4 ④ There should be no building permits issued on bordering property until this plan is in full effect.

PER-5 ⑤ Also property bordering these preserves should be assessed since they will increase in value because of the preserves so should pay appropriate fees to help buy & manage these preserves.

PER-6 ⑥ Seems like part of our local sales tax should be diverted back to us for these preserves.

PER-7 ⑦ These corridors of preserved land, being quite narrow are going to be under great pressure from invasive species, such as Argentinian ants, wind blow seed from neighborhood yard, and these carried by pets fur, people's feet, seeds birds have eaten, etc. not to mention things like San Marcos ridge line golf course which would drain right into the preserve. How can you prevent that?

SIGNATURE
Joan B Perron
NAME
1972 Bienvenido Ln
Escondido, CA 92026
ADDRESS

The public review comment period closes April 29, 2002 at 5:00 pm

PER-1. Each preserve area will have a management plan prepared to ensure the viability of the habitat. It should be recognized that fire management (controlled burns) may be extremely problematic, due to the proximity of urban development.

PER-2. Recreational uses will only be allowed where they can be accommodated without adversely affecting the resources. The MHCP includes a variety of measures to reduce impacts to breeding species. The following measures are designed to protect the biological resources in the MHCP preserve area:

- Retain a biologist to review grading plans (e.g., all access routes and staging areas), oversee all aspects of construction monitoring, educate contractors about the biological sensitivities associated with the area, and ensure compliance with mitigation measures.
- Design placement of new development in lower quality or disturbed areas. Avoid areas that have the potential to be used as wildlife movement corridors or habitat linkages.
- Avoid landform alteration of major natural features. Configure development to existing topography to minimize grading and land alteration.
- Restrict heavy equipment and construction activities, including disposal of excess fill, to designated areas.
- Locate staging areas in disturbed habitat, to the degree feasible.
- Designate no-fueling zones a minimum distance of 10 meters (33 feet) from all drainages and away from fire-sensitive areas.
- Schedule construction through sensitive areas to minimize potential impacts to biological resources. Construction adjacent to drainages should occur during periods of minimum flow (i.e., summer through the first significant rain of fall) to avoid excessive sedimentation and erosion and to avoid impacts to drainage-dependent species. Construction near riparian areas or other sensitive habitats should also be scheduled to avoid the breeding season (March - September) and potential impacts to breeding bird species.
- Noise impacts are a concern around areas supporting breeding bird habitat. To avoid or minimize noise impacts, limit construction activities during the breeding season (March - September) to those that will not produce significant noise impacts (i.e., noise levels greater than 60 dB L_{eq} (decibels, equivalent sound level) at the edge of the habitat of concern). Conduct preconstruction surveys at potential impact areas between mid-May and mid-June. If no sensitive breeding birds are detected by this

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date, it can be assumed that they will not nest in that location for that year, and construction can proceed if there are no other constraints.

- Require setback limitations from sensitive habitat areas, including a minimum setback outside the root protection zone for all trees to be preserved. Require special construction techniques such as concrete pumping to the site and on-grade construction to protect tree roots.
- Construct noise barriers for short sections of road that may impact wildlife breeding.
- Minimize any materials sidestepping during road construction and maintenance.
- Site traffic controls such as stoplights and stop signs away from sensitive habitat to reduce the concentration of emissions and noise levels.

PER-3. Access control and other restrictions within the preserve will be strictly enforced. The jurisdictions and preserve managers will work together on a public education program to explain goals and regulations as well as educate the public on the area's resources. The ultimate level of enforcement lies in the implementing agreement with the wildlife agencies, because degradation of resources could result in loss or revocation of federal and state take authorization. The management plan will establish appropriate restrictions and enforcement monitoring.

PER-4. It is impossible to preclude individual permitting of projects until implementation of the plan for a variety of issues: (1) It may be perceived by the courts as a takings; (2) development including needed infrastructure can not wait until project implementation (the plan has been in process for 10 years); and (3) the uncertainty of final adoption.

PER-5. If there are increases in house values due to proximity to the open space preserve system, such increases will be reflected in sales prices (when sold) and in subsequent tax assessment. Although only a fraction of all houses are sold each year, it can be anticipated that most residential properties in the study area will be sold at least once during the term of the MHCP. Thus, if house values increase due to the program's open space benefits, those increases will be subject to taxation after assessed values are adjusted.

PER-6. Increase in sales tax is one of the optional sources for funding the implementation of the MHCP (see MHCP, Section 7.3.3).

PER-7. As part of implementing the MHCP, the city must work to control and remove invasive species from conserved MHCP lands. The city must also work with

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homeowners' associations and other civic groups to educate the public about the effects of domestic pets on native habitats.

Biological monitoring and management are a condition of the take authorizations to the cities. It is the cities' obligation to ensure that these conditions are met, either by city staff, the landowners, MHCP Conservancy, or other qualified organization.

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LAND USE / COASTAL PLANNING
 LANDSCAPE ARCHITECTURE • LAJRO
 POLICY AND PROCESSING
 ENVIRONMENTAL MITIGATION

April 29, 2002

Lee Ann Carranza
 U.S. FISH & WILDLIFE SERVICE
 2730 Loker Ave. West
 Carlsbad, CA 92008

Janet Fairbanks

SANDAG
 401 B Street, Suite 800
 San Diego, CA 92101

RE: COMMENT ON DRAFT EIR/EIS; MHCP PLANNING AREA
 SCH NO. 93121073

PS-1

Planning Systems represents the Corky McMillin Company on planning matters in Carlsbad. The Corky McMillin Company has a partnership interest in two properties located within Carlsbad; Calavera Hills Phase II and the eastern portion of the Robertson Ranch.

Figure 2.3.1 in the draft EIR/EIS for the MHCP accurately depicts the development/preservation of the Calavera Hills Phase II project and reflects the current status of Robertson Ranch as a proposed "standards area". However, elsewhere in the draft EIR/EIS (Figures 2.2-1 and 2.2-2, for example) Calavera Hills Phase II is not accurately depicted. In addition, the extensions of College boulevard and Cannon Road in the city of Carlsbad that have been authorized to date should also be reflected in exhibits.

Thank you for the opportunity to review the EIR/EIS. Please contact me if you have any questions regarding this comment.

Sincerely,

Paul J. Klukas
 Director of Planning

cc: Brian Milich

1530 FARADAY AVENUE • SUITE 100 • CARLSBAD, CA 92008 • (760) 931-0780 • FAX (760) 931-5744 • planningsystems@nctimes.net

Letter 36: Planning Systems

PS-1. The comment notes the accuracy of Figure 2.3-1 depicting the development/preservation areas within the City of Carlsbad. Figures 2.2-1 and 2.2-2 show the Proposed Alternatives 1 and 2 for the entire focused planning area. Each figure is used in the EIS/EIR to show the proposed development/preservation areas under the proposed and alternative plans; therefore, these maps appear to be inconsistent for this reason. As noted on these figures, Subarea Plans will determine the ultimate preserve boundaries and conservation levels, along with the land use regulations and other measures to assemble the preserve.

The exhibits will be updated to reflect the extension of College Boulevard and Cannon Road.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

Alan Thum
1392 Peachwood Drive
Encinitas, CA 92024

Mr. Jim Bartel, Field Supervisor
Ms Lee Ann Carranza
U.S. Fish and Wildlife Service
2730 Loker Ave., West
Carlsbad, CA 92008

Ms Janet Fairbanks
San Diego Association of Governments
401B Street, Suite 800
San Diego, CA 92101

RE: REQUEST FOR COMMENTS ON THE DRAFT EIS/EIR FOR THE MHCP
AND THE MHCP SUBAREA PLANS (February 21, 2002).

Dear Mr. Bartel and Ms. Davenport,

April 29, 2002

THUM-1

I appreciate the opportunity to comment on the draft EIS/EIR (Dec. 2001), draft MHCP, and on the draft City of Encinitas Subarea Plan (ESP) (June 2001). I recognize that considerable effort, cooperation, and compromise has gone into the preparation of this plan, and I support the fundamental rationale of the MHCP. I also understand and concur with the necessity and urgency for its implementation. However, due to this urgency, it is not a perfect plan, and you have not had enough time to generate all the data that are really needed to provide a stronger foundation for the MHCP. Nonetheless, due to the 50-year commitment of the MHCP, and to the ecological consequences of what is at stake, there is still room for improvement in the MHCP. In fact, the MHCP, as proposed, will have some serious unintended consequences. My primary concern is that the framework of the MHCP, and underlining assumptions are overly simplistic, and there is a serious absence of data in the presentation. You have also selected the wrong alternative to be the Preferred Alternative. Alternative No. 2 – Focused Planning Area No. 2 – the Preferred Alternative is seriously flawed because you do not know the consequences (impacts) of how the “take authorized” growth will be played out. *Alternative No. 3 – Biological Core and Linkage Area – the Biologically Preferred Alternative should be the selected MHCP Preferred Alternative, because it maximizes conservation of natural habitats and minimizes the increase in impervious cover!* I have attached a number of General Comments on the MHCP, but first I would like to make the following Key Points:

THUM-2

1. SANDAG (1999) has projected that the population of each of the cities comprising the MHCP and each of the Subarea Plans are projected to grow substantially by the year 2020 [i.e. Oceanside (39%), Vista (30%), Carlsbad (97%), Escondido (22%), San Marcos (93%), Encinitas (25%), and Solana Beach (19%)], and several of these cities occur within the same watershed (e.g. Carlsbad and San Marcos occupy the San Marcos Creek Watershed. *This growth will overwhelm the viability of many of the habitats the MHCP is attempting to conserve.* This growth will increase the amount of impervious cover by a similar percentage and, therefore, increase the flow of year round urban runoff, which will consequently degrade the ecological performance of the creeks even further. Most of

RECEIVED

APR 29 2002

US FWS
CARLSBAD FIELD OFFICE, CA

Letter 37: Thum

THUM-1. The comment provides an introduction of the letter indicating concern with the framework of the MHCP. Additionally, the commenter addresses concern with the selected preferred alternative.

The alternatives in the EIS/EIR are reasonable and feasible to implement. FPA1 does result in more significant impacts to biology, whereas BCLA reduces impacts to biological resources yet has more significant socio-economic impacts.

Based upon the findings of the environmental analysis, Alternative 3 results in significant and unmitigable socio-economic impacts. The adoption of Alternative 3 may be rejected by the decision makers due to the associated socio-economic impacts; however, alternatives/mitigation measures must be evaluated where they have the opportunity to reduce impacts. (The decision makers must weigh the two significant and unmitigated impacts.) It was concluded that FPA2 was environmentally preferred, balancing all of the environmental issues.

THUM-2. Projected growth is independent of habitat planning and is not expected to change with or without the MHCP. The comment also is conclusionary in stating that planning on watershed and subwatershed bases is critical to the viability of the MHCP. Although in many cases, watershed planning makes good sense for conservation planning, it is not a viable approach for a multi-jurisdictional effort such as the MHCP, which must be implemented by multiple cities, each with its own General Plan, ordinances, and implementing policies. It is unclear how watershed planning would alter resource protections relative to the current approach. The MHCP monitoring plan includes provisions for monitoring water quality and plan effects on watersheds and riparian species.

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the creeks within the MHCP are already designated by the SDRWQCB (2002) as Category 1 Impaired Waterbodies. The MHCP actually facilitates that growth by conserving some natural habitat and writing off other natural habitats, based on a qualitative assessment of which habitats are sufficiently fragmented or thought to be too small to function as viable habitat for animals, but not for plants. That assessment is based on a mapped plan view of the types and distribution of plant communities present. It needs to be redone on a basis of subwatersheds! The MHCP and each of the Subarea Plans must map and plan at the subwatershed level, and then summed and presented by individual whole watersheds. This is absolutely critical to the viability of this MHCP!

THUM-3

2. The following two MHCP objectives can not be achieved because of fatal errors:
- *Establish and maintain a balance between preservation of natural resources and regional growth and economic prosperity.*
 - *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 with the MHCP study area.*

There is a significant linear relationship between the amount of impervious cover in a subwatershed and stream condition. If the impervious cover within a subwatershed is less than 10%, then the adjacent stream should be in relatively good condition, if it measures between 10 – 25% the adjacent stream should be degraded, and if above 25%, the stream should be in serious trouble. We must know the existing percent impervious cover in each of the subwatersheds within the MHCP and each Subarea Plan to determine where each segment (i.e. subwatershed) of the cities is on this scale, and to identify where the future permitted growth should take place. The MHCP is silent on this fundamental matter. *The current MHCP strategy, while simplistically attractive, will enable growth and create more impervious cover, but it is critical where that growth will take place. The Growth should be accommodated in areas that already have high percentages of impervious cover, and strongly discouraged in areas that have low impervious cover.* In other words, future growth should not take place in the so-called small fragmented natural habitats, it should take place in areas that already exhibit high impervious cover values. The problem is that the cities do not know where these areas are located, because they have not mapped them. The future growth that the proposed MHCP accommodates will cause additional urban runoff and further load the adjacent stream. This is why the current MHCP city boundary based mapping must be redone and acreage data tables redone on a subwatershed basis to facilitate this critical analysis. *If the MHCP is sanctioned as it is currently proposed, you will conserve natural habitat in selected areas (great!), but you will facilitate development and increase impervious cover in other areas (bad!), and the urban runoff from that new development will impact the riparian community in the conserved habitats! This is guaranteed!*

THUM-4

3. A Biological Preserve Design Checklist is given in the MHCP (Sec. 3.8, p. 3-29) that identifies the information that is needed to prepare a Subarea Plan and a Habitat Management Plan. Most of the 8 information items specified are, for example, not provided in the Encinitas Subarea Plan (ESP).

THUM-3.

The comment is conclusionary in stating that the MHCP is fatally flawed, because it will facilitate development and increase impervious surfaces resulting in impacts to riparian communities due to urban runoff. Many MHCP species would not be affected by the changes in runoff discussed in the comment. The MHCP monitoring plan will monitor changes in runoff and water quality in watersheds, and the adaptive management plan will strive to offset any negative effects on water quality or riparian communities and species.

THUM-4.

The Biological Preserve Design Checklist was used as a tool to direct and support the preparation of the Encinitas Subarea Plan in general, and the FPA map-in-specific-and-will-be-used-to-develop-a-future-management-plan. The Encinitas Subarea Plan preparation is consistent with the checklist and the MHCP plan. More detailed information will be provided in the IA and permit application which will go out for public review.

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THUM-5

4. The difference in acreage of natural habitat preserved between 66% (Alternative 2 – MHCP Preferred Alternative) and 84% (Alternative 3 – Preferred Biological Alternative) is significant! *The hidden cost of selecting Alternative 2 is that the cities and public will incur the cost of increased year-round urban runoff from the increased impervious cover generated by the development forever.* This year round urban runoff facilitates colonization and dispersal of invasive exotic plants, degradation of riparian communities, impaired water quality, contaminant/nutrient loading, lagoon degradation, and beach closures.

THUM-6

5. We do not know enough about the structure and function of natural communities to support the habitat mapping, mitigation protocols, and ecological assumptions being made at the scale proposed in this plan. *The MHCP mapping is based on simplistic aerial surveys with minimal or no ground truth, and promises of future data acquisition.* Consequently, how can the proposed monitoring program, to track the status of population abundances of sensitive species and effectiveness of management efforts, measure changes in habitat condition if the initial measurements are so weak or absent?

THUM-7

6. The proposed MHCP Subarea Plans are written to implement Alternative No. 2. Focused Planning Area No. 2 – the Preferred Alternative only. They are not written to implement Alternative No. 3. Biological Core and Linkage Areas – the Biologically Preferred Alternative. This burdens each of the cities with the task of trying to figure out what their individual Subarea Plan would look like if the Biologically Preferred Alternative had been written, etc. *Hence, the cities and the local public are really only given one alternative to evaluate ... the MHCP Preferred Alternative.*

THUM-8

As currently drafted, I believe that the proposed draft EIS/EIR, the proposed MHCP and Subarea Plans are inadequate and need to be revised. Just responding to public comments will not work. These documents are heavy on land use jargon, planning and management verbiage, and weak on presentation of real data.

Sincerely,

Alan B. Thum

THUM-5.

Selection of Alternative 3, relative to the City of Encinitas, would require extensive outright acquisition of properties. One of the basic tenets of the MHCP involves the concept that land will only be purchased at fair market value from willing sellers. MHCP cities will not utilize condemnation in implementing individual subarea plans. Implementation of Alternative 3 would have significant impacts on the region's abilities to house and provide services for the projected population growth, meet general plan goals, and provide needed infrastructure systems.

THUM-6.

We acknowledge that not enough is known about the structure and function of natural communities and that mapping methods are imperfect. The monitoring and adaptive management program is designed to help answer critical questions and improve knowledge and management efforts. An initial step in this process is to improve mapping of all reserve areas. The MHCP is a regional plan that cannot answer all site-specific details. However, more will be found out about the species and communities, and how to monitor and manage them, with the plan than would occur without the plan.

THUM-7.

Each city reviewed the possibility of incorporating the BCLA as their Subarea Plan. However, since the BCLA was originally designed, the Wildlife Agencies and Cities have permitted projects that were originally part of the BCLA. Some projects included in the BCLA have been developed, thus eliminating biological resources. Other properties within the BCLA have been designated for a conservation level of 75%. If additional conservation is proposed, these properties would need to be purchased. Some sites (e.g., Montreux) have been acquired and are now in public ownership.

THUM-8.

Comment provides a global disagreement with the MHCP, Subarea Plans, and EIS/EIR.*

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GENERAL COMMENTS

THUM-9 1. **The MHCP Plan Subarea Plans Need to be Revised.** The plan needs to be constructed on the basis of whole watersheds, not artificial City boundaries. Even though approval and implementation of the land plan requires land use authority, the fundamental objective of the plan is to protect endangered species and their habitats. The proper functioning of these habitats is watershed based not city boundary based. Instead of dividing up habitats by cities, the cities need to work together at the whole watershed level. Subarea plans should be watershed plans! This is no different than the strategy adopted by the SDRWQCB for the New Urban Runoff Permit.

THUM-10 2. **The Rationale for Selecting the Wildlife Corridors Needs to Include Function, Not Just Linking Acreage of Habitats.** Beier and Loë (Wildl. Soc. Bull. 20(4): 434-440, 1992) describe the functions of wildlife corridors to include: a. Wide-ranging animals can travel, migrate, and meet mates. b. Plants can propagate. c. Genetic interchange can occur. d. Populations can move in response to environmental changes and natural disasters. e. Individuals can recolonize habitats from which populations have been locally extirpated. "These functions (rather than some minimum width) should be used to evaluate the suitability of land as a wildlife corridor." The authors also recommend a the following Checklist for Evaluating Corridors: a. Identify the Habitat Areas the Corridor is Designed to Connect. b. Select Several Species of Interest from the Species Present in the Area. c. Evaluate the Relevant Needs of Each Selected Species. d. For Each Potential Corridor, Evaluate How the Area Will Accommodate Movement by Each Species of Interest. e. Draw the Corridors on a Map. Other than just linking large patches of habitats, please, explain the how the corridors were selected. I am concerned that the MHCP looked at the patches of open land that were left, connected the patches, and just called it a "corridor." What do we really know about the large patches structurally and functionally?

THUM-11 3. **Do Ecological Core Areas Exist in Urbanized Landscapes?** Channel and Lomolino (Nature Vol. 403, 6 January 2000) have suggested that anthropocentric extinction forces, (e.g. habitat degradation, biocides, and introduced species), may have so impacted the distributions of populations of endangered species, that the populations that may be the most persistent may be at the fringe or edge of their ranges. It is very possible that the habitats evaluated in the MHCP are indeed "fringe habitats" for some or most of the species discussed in the MHCP and that optimal population core habitat conditions do not exist in the area at all. Hence, all habitat maybe be critical, and none can be impacted. Optimal ecological conditions for many of the species listed in the MHCP may not exist within our local watersheds or anywhere in San Diego County. The abstract of their paper follows:

"As one moves from the core to the periphery of a species' geographical range, populations occupy less favorable habitats and exhibit lower and more variable densities. Populations along the periphery of the range tend to be more fragmented, and, as a result, are less likely to receive immigrants from other populations. A population's probability of extinction is directly correlated with its variability and

THUM-9. The geographic boundaries of the MHCP or Subarea Plans were established so that the jurisdiction could implement the plan. Species are not restricted to watersheds, so the fact that the planning process does not adhere to watershed boundaries does not affect the viability of plan implementation.

THUM-10. The consultants involved in MHCP planning and analysis are deeply familiar with the literature on wildlife corridors and landscape linkages, and in fact have worked with Dr. Paul Beier and other experts on linkage planning, monitoring, and design. The MHCP Biological Goals, Standards, and Guidelines document summarizes pertinent information on linkage functionality and design as applied to the MHCP. That document was subject to extensive scientific peer review (see response SDCo-26), including by Dr. Paul Beier for linkages and movement corridors. The comment's speculation about the process used to identify corridors is incorrect: The MHCP followed essentially the idealized process outlined by Beier and Loe (1992) and referenced in the comment. However, it must be noted that idealized linkage design is no longer an option for most of the MHCP study area, because most of the functional linkages have already been largely fragmented or lost to development. Where no other option exists, the MHCP did strive to protect whatever connectivity still exists between larger habitat patches, or to at least conserve "stepping stones" for birds. It is unrealistic to believe that the MHCP could reconstruct functional linkages for all species through highly urbanized cities; but it would be defeatist to therefore ignore possibilities for maintaining functional linkages for selected groups of species wherever possible.

THUM-11. Comment noted. The issue as to whether habitats in the MHCP constitute "fringe habitats" is speculative. Habitat for the entire list of covered species can be found to the north and south of the MHCP. Due to the coastal influence, some habitats are not located east of the MHCP; however, regional planning efforts have taken place to the south (MSCP) and to the north (Orange County), and are or will be taking place in the unincorporated County and Camp Pendleton. The MHCP strives to protect as much habitat in the study area as possible. It is not possible to prevent all impacts within the study area.

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inversely correlated with density and immigration rate. This has led to the prediction that, when a species becomes endangered, its geographical range should contract inwards, with the core populations persisting until the final stages of decline. Convinced by these logical but untested deductions, conservation biologists and wildlife managers have been instructed to avoid the range periphery when planning conservation strategies or allocating resources for endangered species. We have analyzed range contraction in 245 species from a broad range of taxonomic groups and geographical regions. Here we report that observed patterns of range contraction do not support the above predictions and that most species examined persist in the periphery of their historical geographical ranges.”

THUM-12

4. The effectiveness of the MHCP depends on our ability to monitor the results! How will the MHCP monitoring program document how well the mitigation/preserve areas are functioning? How will “adaptive management” be applied? If a monitoring program demonstrated that incidental take had occurred, how would the loss be accounted for if the “50-year no surprises” policy constrains any reassessment?

THUM-13

5. What Are Viable Population Sizes For the Species Discussed in the ESP? This kind of information is needed in order to monitor the future performance of the ESP and to document if the targeted population abundances are being sustained, expanding, or crashing. If they are remaining stable, what ESP procedures would enable a shift to population expansion, and if they are crashing, what is the ability of the ESP to correct the problem? Specifically, what monitoring will occur to document population status of each of the sensitive species. Please provide a detailed description of the proposed monitoring methodology. MHCP Biological Monitoring Plan Vol. 2 was not included in the distributed CD of MHCP documents.

THUM-14

7. Impaired Waterbodies. Most of the preserve areas (i.e. creeks and lagoons) have already been determined to be Category 1 Impaired Waterbodies by the SDRWQCB (2002)! What data do you have on the population abundances of the sensitive species in these stressed habitats?

THUM-15

8. Protecting Species Does Not Protect Communities. Just setting aside prescribed acreage that is presumed to protect specific species, does not protect whole communities.

THUM-16

9. Acreage Based Protection Not Does Assure that Ecological Functions are Sustained. The MHCP is based on acreage, which has absolutely nothing to do with function and the ecological performance of that acreage. If the plant communities were performing optimally and the referenced endangered species were not endangered we would not need an MHCP. Much of the acreage discussed in the MHCP is already under substantial stress, both natural and man-made. Indicators of plant community and endangered species population(s) performance need to be identified and included in a meaningful monitoring program. Urban runoff will continue to increase within the watershed, and may even dominate stream flows. The MHCP does not address the water quality conditions within the creeks that sustain the corridors identified.

THUM-12. Questions about how the monitoring program will document MHCP effects, apply adaptive management, and account for changes under the “no surprises policy” are all addressed in the MHCP Monitoring Plan.

THUM-13. The emerging consensus of conservation biologists and population ecologists is that it is a simplistic mistake to attempt to define “minimum viable population sizes”. Refer to Section 7 of the Encinitas Subarea Plan for specifics on preserve management, adaptive management, and monitoring within the Plan area. The MHCP Monitoring Plan addresses how populations will be tracked.

THUM-14. Impaired water bodies are defined by the RWQCB as “water bodies that cannot reasonably be expected to attain or maintain applicable water quality standards”. Water quality standards have been established by the Board to maintain and protect the defined beneficial uses of the water bodies. Beneficial uses include an assortment of various services and functions provided by the water body, in addition to supporting populations of sensitive species. The classification of a water body as impaired may be the result of various pressures; however, this designation does not necessarily imply that its ability to support covered species has diminished. The known distribution of sensitive species is found in MHCP Volume II and Subarea Plans. This information will be systematically updated and refined via the MHCP Monitoring Plan.

THUM-15. An analysis of the conservation of vegetation communities and ecological communities is provided in MHCP Volume II, Sections 3.1 and 3.2. This analysis was conducted to ensure conservation was adequate at the community level, not just at the species level. It is acknowledged that species protection does not necessarily result in functioning communities. That is why the program is a “multiple habitat” program incorporating linkages among the preserves, as well as an adaptive management program designed to maintain functional communities to the degree feasible in this highly fragmented ecosystem. Contrary to the comment, the MHCP does far more than “just setting aside prescribed acreage”. With the management and monitoring as integral parts of the plan, the potential for these species to persist and expand over the life of the plan is enhanced.

THUM-16. Please see response THUM-15. The comment is incorrect in speculating that the “MHCP is based on acreage.” MHCP Volume II documents known threats and constraints on ecosystem function and plan effects on the viability of all species addressed by the plan. The comment is correct in pointing out that the acreage being conserved is substantially stressed, which is why

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intensive adaptive management is required. Water quality is under the auspices of the Clean Water Act, USEPA, RWQCB, and local jurisdictions, among other agencies and regulations.

Acreages provide one measure of the adequacy of the conservation within the MHCP study area. Other measures of the conservation adequacy will include biological monitoring and management of species, communities, and habitat function.

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THUM-17 **10. Why is There No Contingency Plan if Mitigation Efforts Fail.** The entire MHCP is banking on the efficacy of mitigation banks. Will you continue to use mitigation banks even if there are fires within the banks, invasion of exotic species, or a disease problem? Clearly, additional mitigation bank sites need to be identified in the MHCP and elsewhere. Based on the 50 year duration of the proposed MHCP, fires are guaranteed to occur within the conserved areas and offsite mitigation bank lands.

THUM-18 **11. How Can You Justify the Assumption That Agency Monitoring Will Work?** The MHCP Biological Monitoring Plan Vol. 2 should have been developed and included in this document for the public to review and critique. Completion of Vol. 2 at some future date is too late. The integrity of the long term monitoring program will be compromised by the wide diversity of ownership of natural habitats and how all that will be monitored and reported. In other words, will there be a mechanism for the public to conduct an environmental audit of the paper trail of the land developed, the acreage mitigated and where, and its status.

THUM-19 **12. The MHCP Enables Take in Already Residual Areas.** What is the current level of "take" that has already occurred within the MHCP area by city?

THUM-20 **13. The MHCP May Be Based on Identifying Leftover Areas and Calling it Preservation.** A discussion of the quality of habitat that is being preserved needs to be included in order to evaluate the merit of the proposed plan.

THUM-21 **14. The Proposed Buffer Zones May be Inadequate.** The MHCP describes a 50 ft buffer in connection with projects affecting riparian habitats or 100 ft for protecting salt marsh habitats. Please, explain the rationale behind selection of these buffer widths. No discussion addresses buffers around any of the other habitats that are being preserved. Where buildings are located adjacent to preserved habitat, where is the buffer located; in the developed property or in the preserved habitat? In addition, how does "clearing brush for fire protection fit into the buffer zone?"

THUM-22 **15. Regional Implications of Subarea Plans.** The EIS/EIR states that "*The MHCP contains the overall conservation strategy for the subregion and documents the conservation actions that collectively will guarantee the protection of species covered by individual Subarea Plans.*" The strategy of allowing species loss in one area by mitigating and preserving species habitat elsewhere does not *guarantee* that the species will be really protected, let alone thrive and be taken off of the sensitive list. How will the anticipated level of local habitat loss (i.e. authorized take) impact the viability of the species overall regional population? No real data are presented in any of the documents. All that we are given are maps and words. What is the status of each of the sensitive species? Since ownership of much of the natural habitat acreage is held by a wide variety of government agencies and by private interests, how can you effectively monitor the true status of sensitive species, and therefore, whether the MHCP is really working.

THUM-23 **16. 100% Participation by all cities is needed for the MHCP to be successful.** Success of the ESP is dependent upon 100% commitment of all of the cities within the

THUM-17. The management program will monitor and manage the mitigation banks/preserves. Fire is a natural element of the southern California natural environment. The preserve has been established with stepping stones and corridors to allow the reestablishment of species in the event of a catastrophic event in an area.

The comment's contention that the MHCP relies entirely on mitigation banking for building the reserve system is incorrect. All reserve areas (including mitigation banks) will be monitored and managed using the best available science via the adaptive management program. This will include addressing fires, exotic species invasions, and other changed circumstances.

THUM-18. Comment addresses the process. The mosaic ownership pattern and fragmented nature of the preserve system is acknowledged as a challenge in implementing the monitoring and management functions; however, without the MHCP, there will be no concerted monitoring or management. The biological resources without the MHCP will be more adversely affected. The monitoring and management is intended to ensure adequate conservation of the species ultimately covered by this plan. The cities, as a function of their Implementing Agreements, are responsible for tracking the acreage permitted, as well as preparing monitoring/management reports to be submitted to the Wildlife Agencies.*

THUM-19. Various tables in Chapter 2 depict the "developed acreage". These areas have been developed previously. There are other categories designating disturbance levels. These are available at the MHCP or Subarea Plan levels.

The "current level of take that has already occurred within the MHCP areas by city" is not quantifiable without providing a time period and the specific species in question. With regard to listed species that occur with coastal sage scrub, a 5 percent limit on interim take of coastal sage scrub is applied to each city under the 4(d) rule as part of the NCCP planning agreement. The individual jurisdictions and wildlife agencies monitor CSS loss such that no more than the 5 percent of coastal sage scrub can be taken through the 4(d) process prior to approval of the MHCP.

THUM-20. The MHCP has acknowledged the existing fragmented and disturbed nature of the project area. It should be recognized that the existing conditions cannot be "fixed" to result in a biological community found in the pre-European context. The purpose of the MHCP is to address the take, conservation, and management of these resources from this time forward.

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An analysis of the quality of habitat conserved by the MHCP is provided in Section 2 of MHCP Volume I and Section 3 of MHCP Volume II. Several measures of habitat quality, including vegetation type, raw acreage, preserve configuration, species occurrences, are provided to demonstrate quality. This information was collected through field surveys, aerial photo interpretation, literature review, and professional knowledge. At the regional level, these measures represent the best information available to estimate habitat quality.

THUM-21. The MHCP did not set specific development setback or buffer distances. Some subarea plans have established minimum upland buffer widths for development near wetland habitats, which may vary from 50 to 100 feet depending on the nature and location (coastal vs. inland; major vs. minor drainages, etc.) of the wetland habitat, and which may include restoring upland habitats on lands that currently do not support natural vegetation. These widths are consistent with current precedents for development setbacks from wetlands as required under existing resource protection ordinances. Buffers around upland habitat areas are generally irrelevant in the MHCP, because in most cases every portion of a property not included in the development footprint will be added to the reserve. Firebreaks around new developments must be accommodated on the development side of the boundary, outside the reserve area.

THUM-22. The viability of the species and ability of these species to survive is presented in detail in the MHCP, Subarea Plans, and EIS/EIR. The status of each species is clearly designated (federal or state status, or lack of listing status). Please see MHCP Volume II, Section 4 for summaries of species population and distribution information.

The objective the MHCP preserve design effort was to identify the most biologically important areas in the study area. Seventy-two percent of these areas eventually became the FPA for the MHCP. In order to meet the objective of persistence of covered species while also meeting the objective of allowing continued economic development, conservation is favored within the FPA and development is favored outside the FPA. When development occurs under the MHCP, mitigation will be focused within the FPA to maximize the likelihood that the viable populations of covered species will be maintained. The adaptive management program is designed to ensure that biological resources are managed to maximize viability across the regional reserve system, regardless of which agency or interest owns the land.

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THUM-23. The Encinitas Subarea Plan has been prepared to receive take authorization independently and in context with other cities. In the event that no other city receives a take authorization, the covered species list for Encinitas will differ more than if more cities are approved. See Table 4.3-5 for a list of species proposed to be covered in the Encinitas plan.

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MHCP. Since several of the ESPs have not been completed, and may not be, this is a problem. Also, Carlsbad's HCP may not correspond to the proposed ESPs.

THUM-24

17. The Rationale for Selection of Habitats to be Preserved (wildlife corridors) is not Justifiable. Substantial MHCP effort was devoted to mapping the remaining natural plant communities, identifying the acreage that could be most effectively linked as wildlife corridors, and writing off the so-called fragmented plant community acreage. In this process you have made a big leap from plant communities to animals and permitted loss of "fragmented plant habitat." If this strategy were adopted important plant species could be lost. For example:

THUM-25

- **Lux Canyon.** "Major populations and critical locations of San Diego thorn-mint, Del Mar manzanita, San Diego barrel cactus (*Ferocactus viridescens*), Orcutt's hazardia (*Hazardia orcutti*), and Nuttall's scrub oak occur in the vicinity of Lux Canyon. This location comprises the only known locality for Orcutt's hazardia in the United States."

THUM-26

- **Oak Crest Park.** "Oak Crest Park supports major populations and critical locations of Del Mar manzanita and Orcutt's spineflower (*Chorizanthe orcuttiana*). This location represents the only documented, extant occurrence of Orcutt's spineflower in the MHCP study area."

THUM-27

While these particular sites might be conserved, other sites that have not been surveyed may support extremely valuable sensitive species. We have not seen the maps of all the candidate plant community acreage, so that we can assess if we concur with the corridors that are being proposed or would propose a different mix, or that we would identify property that should be purchased and protected for the public good, hence, other linkages than those being proposed. A single fire in one of the few proposed corridors could be a catastrophe for recovery of some plant communities. Additional plant community refugia are needed beyond the corridors that are being proposed. Wildlife mobility, although important, should not take precedence over preserving plant communities. In fact, new research by John Weins (Colorado) indicates that we need to change the way we think about habitat fragmentation away from viewing fragments as habitat islands, because some animal populations may actually travel large distances across perceived barriers. "We need to shift our thinking away from isolated areas in the midst of inhospitable human development. They are not oceanic islands." Finally, the maps provided are based on using dominant/conspicuous plants based on aerial photography. Only ground truth surveys would reveal presence of rare, threatened, or endangered plant species.

THUM-28

18. Does the Concept of Biological Core Linkage Areas Have Any Ecological Basis?

The terms Biological Core and Linkage Area, Core Areas, Hardline and Softline Conservation Areas, Standards Areas, and Linkages may be acceptable in land use planning, but they are not in ecology. Ecologists refer to "core areas" of the distribution of a species as areas exhibiting optimal conditions. Clearly, use of the term Core Area in the MHCP does not mean optimal ecological conditions. This must be clarified and explained to the public. The MHCP has not investigated nor is it preserving optimal ecological habitats for the MHCP species. Similarly, the mitigation sites are not providing optimal ecological conditions either. Since the listed sensitive species are

THUM-24. See THUM-10. The two competing objectives of the MHCP (see response to THUM-22) are to maintain viable populations of sensitive plant and animal species while allowing economic development to continue. In identifying the most biologically important areas, other areas not considered as biologically important may be lost to development. Although this program will not conserve every covered plant and animal individual, it is a compromise that aims to meet both defined program objectives. The rationale for including or excluding fragmented areas is clearly laid out in the MHCP document.

THUM-25. The area and plant populations referenced in the comment are protected by MHCP policies and the Encinitas Subarea Plan. Lux Canyon is designated as a hardline FPA area (90-100 % conservation). Therefore, the majority of the canyon will be conserved. Additionally, critical locations of narrow endemic species, regardless of location, must be totally avoided. Of the species mentioned in this comment, San Diego thorn-mint, Del Mar manzanita, and Orcutt's hazardia are designated as narrow endemics in the MHCP and Encinitas Subarea Plan and will be protected as such in Lux Canyon.

THUM-26. The area and plant populations referenced in the comment are protected by MHCP policies and the Encinitas Subarea Plan. Oak Crest Park is designated as a hardline FPA area (90-100 % conservation). Orcutt's spineflower and Del Mar manzanita are listed as narrow endemics in the MHCP and Encinitas Subarea Plan. All of the populations of these species within Oak Crest Park will be protected as critical locations.

THUM-27. Future development will need to survey for sensitive species. In the event that sensitive species are identified, there are mitigation requirements (ranging from avoidance to restoration) that will be required. See also responses to THUM-10 and THUM-14.

In addition, total avoidance of critical locations of narrow endemic species regardless of location, newly discovered localities of narrow endemic species defined as a critical population also must be maximally avoided, while allowing some economic or productive use of the property. Small and isolated preserve areas have been considered in the analysis and are included as part of the FPA system, and are discussed in MHCP Volume II, Section 3.1.2. As discussed in the responses above, the FPA originated from the best, most current biological resource information available and is designed to meet the multiple competing objectives of this regional program.

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THUM-28. The terms Core and Linkage are clearly defined in MHCP Volume II and the MHCP Biological Goals, Standards, and Guidelines, which was intensively peer reviewed. We disagree that Core must be defined based on "optimal ecological conditions," and submit that such terms must be defined relative to existing regional conditions in order to establish conservation priorities. Conservation of core habitat areas in the MHCP is based on the basic conservation planning tenets that larger preserves are better than smaller preserves and connected preserves are better than isolated preserves for maintaining viable populations of species. It has been acknowledged that the study area is extremely fragmented and fewer large blocks of habitat remain. A discussion of core habitat areas is provided in MHCP Volume II, Section 3.1.2.

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already rare, threatened, or endangered, environmental support conditions are already marginal, not optimal.

THUM-29 **19. Cumulative Impacts Are Trivialized.** Based on the information provided in the MHCP and the ESP, it is not possible to determine how the ESP is actually linked up with the MHCP. It is not possible to determine if the proposed corridors are indeed connected to something beyond the border of the City of Encinitas. Provision of additional mapping would help. Similarly, since little data and interpretation are presented on the acreage of plant communities at the regional level it is not possible to evaluate if the rationale or priorities for preservation of plant communities within the ESP makes sense at a regional level. What plant communities are in shortest supply?

THUM-30 **20. Why Aren't the MHCP and ESPs Based on Whole Watersheds?** The proposed ESP lacks a watershed context. The City of Encinitas is actually comprised of 5 separate subwatersheds, which drain into 3 separate whole watersheds. Hence, the ESP, while attempting to sound ecologically based, is still based on artificial City boundaries, not functional boundaries. Habitats that appear to be fragmented within the City limits, may in fact exhibit greater value when considered beyond Encinitas's city limits, but still within the whole Watersheds. These artificial boundaries, constrain the effectiveness of the plan. Although, cities may balk at planning beyond their individual boundaries, the ESP is supposed to be rooted on accepted ecological principles. At this point, it is not.

THUM-31 **21. Why Are Designated Critical Habitats Not Discussed and Identified in the MHCP and ESP?** If Critical Habitats exist within the MHCP and ESP areas they need to be identified, so that the public can see how the proposed conservation areas and habitat corridors relate to areas designated as Critical Habitat.

THUM-32 **22. Why Aren't Recovery Plans Referenced in the MHCP and ESP?** For those species in which Recovery Plans have been prepared, those plans should be referenced so that the public can determine which species lack such plans.

THUM-29. Regional level mapping and vegetation community acreage data are provided in the MHCP plan, which serves as an "umbrella" document for the individual subarea plans. MHCP Volume II summarizes all known information on distribution and abundance of rare species in the study area. Linkages between subareas are clearly shown on the MHCP maps. However, it is acknowledged that the linkages with the unincorporated County of San Diego are unspecified at this time.

THUM-30. Please see response THUM-2 regarding mapping at the jurisdictional level versus at the sub- and whole watershed level. Each individual city's land-use authority and ability to regulate development and thus build and manage a preserve is limited legally by each city's jurisdictional boundary. Taken together, each jurisdiction's efforts collectively result in a regionally sound approach.

THUM-31. Critical habitat designations are discussed in section 5.4.2 of the MHCP (Volume I). Critical habitat designations are referenced, for those species where critical habitat has been designated, in the species accounts in Volume II. Very few critical habitat designations existed for MHCP species at the time the Public Review Draft was prepared.

THUM-32. Recovery plans are referenced, for those species where they exist, in the species accounts in Volume II. Very few recovery plans existed for MHCP species at the time the Public Review Draft was prepared.

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Balancing the needs of the environment with those of business.

April 29, 2002

Ms. Janet Fairbanks
San Diego Association of Governments
401 B Street
San Diego, CA 92101

RE: Comments on Draft EIR/EIS for MHCP

Dear Janet:

Thank you for this opportunity to comment on the Draft EIR/EIS for the Multiple Habitat Conservation Program (MHCP). This firm represents a number of landowners in the MHCP plan area and we will comment in this letter for all of them. Having been a long time supporter of the NCCP program in all of its incarnations in the San Diego region, we feel strongly that for the program to be of lasting value to the regulated community, the plan assurances must be comprehensive and without significant risk of erosion of the plan's benefits over time. The MHCP EIR should establish two key objectives: 1) impacts to covered species need to be "less than significant" under CEQA; and 2) covered species and habitats need to be adequately conserved to provide for the issuance of take permits. Unfortunately, for reasons not clear, these thresholds have not been fully attained and the draft EIR/EIS reflects this. We feel the EIR as it is currently written is deficient in a number of areas, including an incomplete project description, a lack of adequate significance criteria, a flawed analysis of project impacts, and infeasible or deferred mitigation measures. Please see our more detailed comments below.

General Comments

The following comments are on specific sections of the plan. We request a response to each of them, particularly if the responders have a problem with the requested changes.

Page ES-5, Project Objectives, 4th bullet:

Add "...and contribute to the recovery of the listed MHCP covered species." More broadly, the EIR is silent on the impacts of critical habitat designation to property owners within the plan area. Recent court decisions in New Mexico indicate that, contrary to the long-standing

Letter 38: J. Whalen Associates

JWA-1. The comment introduces the contents of the letter and summarizes deficiencies in the Draft EIS/EIR. Detailed responses are provided for each comment below.

JWA-2. It is neither the intent nor responsibility of the EIS/EIR to comment on the critical habitat designation. However, critical habitat designation is addressed in Section 5.4.2 of the MHCP (Volume I). Critical habitat designations are referenced, for those species where critical habitat has been designated in the species accounts in Volume II. Very few critical habitat designations existed for MHCP species at the time the Public Review Draft was prepared. Cities with approved subarea plans and incidental take permits for species having designated critical habitat should not be affected by existing or new designations.

The wildlife agencies will provide technical assistance and work closely with applicants with respect to HCPs currently under development and future HCPs to identify lands essential for the long-term conservation of the species and appropriate management for those lands. The minimization and mitigation measures provided under these HCPs are expected to protect the essential habitat lands designated as critical habitat for these species. If an HCP that addresses species that have a critical habitat designation is ultimately approved, a reassessment will be conducted on the critical habitat boundaries in light of the HCP. The wildlife agencies intend to undertake this review when the HCP is approved, but funding and priority constraints may influence the timing of such a review.

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JWA-1

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JWA-2

stance of the U.S. Fish & Wildlife, critical habitat designation does have a financial effect. The MHCP plan area is substantially covered by critical habitat for the California gnatcatcher, as well, as for the arroyo toad, tidewater goby, and other species. The EIR need not address speculative issues, but how the MHCP addresses critical habitat needs to be spelled out. For example, what measures is the MHCP taking to get critical habitat designation removed once the plan is approved? If that does not occur, what will be the effects of those designations on the granting of take authorizations?

Page ES-7, Alternatives, first paragraph, 4th sentence:

"The MHCP is ...a comprehensive and complete Conservation Program..." The MHCP cannot be a start point, it needs to be the end point of financial and land obligations for property owners. It is not clear that the plan will have the same level of assurances as its sister plan to the south, the Multiple Species Conservation Plan (MSCP). Is this the case?

Page ES-9, Alternative No. 2:

The cost of and funding for the 338 acres of CSS restoration do not appear to be discussed in the EIS/EIR. Restoration (and its concomitant funding) could be seen as a deferred mitigation measure that needs to be defined and discussed in the document.

The addition of 400 to 500 acres of CAGN core area in the unincorporated area of the County seems to necessitate the involvement of the County of San Diego in the planning process, yet it is stated in the document that the County is not involved because they are preparing their own NCCP Plan for the North County. This apparent conflict needs to be resolved. The cost of acquiring and managing this CAGN core acreage should be fully discussed in Section 4 (Environmental Impacts/Environmental Consequences) of the document since it is a mitigation measure.

In general, the requirement that "the preserve...be managed and monitored in perpetuity, and financing responsibilities...be identified and assigned" should be fully discussed in Section 4 (Environmental Impacts/Environmental Consequences) as mitigation for the plan's impacts.

Section 2.1.1 Overall Plan Description, Wetlands, Page 2-14, 2nd Paragraph, 2nd to last sentence:

"The determination of relative biological value with and without the project shall require USFWS and CDFG written concurrence within 30

JWA-3. The MHCP meets the requirements of the NCCP Act: signing of the implementing agreements will provide assurances to all parties involved.

JWA-4. The cost of habitat restoration is discussed in the draft EIS/EIR (Sec. 2.1.2). The cost is estimated to be \$3.4 million.

JWA-5. Several comments reference the 400 to 500 acre Gnatcatcher core proposed for the unincorporated portion of the County. The final MHCP plan will be modified to clarify the intent of the core and reflect land acquisition activity that has taken place since the draft plan was written.

The U.S. Fish and Wildlife Service and the California Department of Fish and Game (the wildlife agencies) have stated that a 400 to 500 acre area of contiguous, high quality gnatcatcher habitat must be conserved in the general vicinity of the circle they inscribed around southwest San Marcos, southeast Carlsbad, and the adjacent unincorporated county. A core breeding habitat area in this general location is considered necessary for reserve design reasons, to assure the viability of the coastal California gnatcatcher stepping-stone corridor across the MHCP study area and therefore gnatcatcher population viability in the region. This core requirement is in addition to conservation already occurring within the incorporated cities in this vicinity. Large contiguous blocks of habitat currently on the ground in the City of Carlsbad have already been permitted for take by the wildlife agencies, thus making infeasible conservation of the core breeding area totally within MHCP city boundaries. Meeting this core breeding habitat requirement therefore requires conserving land in adjacent portions of the unincorporated county, generally within the spheres of influence of the Cities of Encinitas and San Marcos.

The wildlife agencies are therefore requiring the MHCP cities to "cause" the conservation of this acreage in the unincorporated county. "Cause" can mean purchase, direct mitigation to, or regulate if the property is annexed to a city. Cities have the authority to prepare plans for their spheres in preparation for future annexations. The wildlife agencies, the cities, and SANDAG recognize that land use authority rests with the County of San Diego until the property is annexed. The wildlife agencies, the cities, and SANDAG understand that the MHCP can only "cause" conservation under certain circumstances. If the County proposes to develop or take coastal sage scrub before the cities purchase, direct mitigation to, or annex the property, then the County would negotiate take permits with the wildlife agencies.

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Over the past several years developers in the Cities of Carlsbad and San Marcos have negotiated mitigation requirements with the wildlife agencies and purchased properties from willing sellers in this gnatcatcher core area. To date, approximately 383 acres have been purchased, conservation easements acquired, or annexations occurred. These lands will be managed in perpetuity for conservation purposes, as will any additional acres caused to be conserved by the MHCP in this area.

The City of Encinitas Subarea Plan requires 67% conservation of coastal sage scrub on any property that chooses to annex to their city. If all the property annexes, a 67% conservation ratio will yield approximately 183 acres of conservation.

Since the draft MHCP plan was written, the City of Carlsbad has increased coastal sage scrub conservation within the wildlife agencies red circle. The final plan will reflect this additional conservation and will be counted towards the 400 to 500 acre requirement.

Since conservation occurred due to mitigation requirements, management and monitoring responsibilities rests with the mitigator. It was never the intent of the MHCP, nor does the plan state, that mitigation and monitoring requirements are the responsibility of the County of San Diego.

JWA-6. The requirement has been discussed in Chapter 4. Without the management and monitoring program, in perpetuity, many of the impacts would not be considered reduced to below a level of significance.

JWA-7. If USFWS and CDFG do not concur with the determination of relative biological value, USFWS and CDFG will provide nonconcurrency in a jointly written letter to the applicant within 30 days which will provide the rationale for nonconcurrency and the necessary corrective measures including any additional information as necessary. If the applicant responds with a commitment to apply the necessary corrective measures for concurrence, USFWS and CDFG will provide concurrence in writing that the City can proceed in permitting the project provided that the conditions outlined are incorporated into any permit issued. If the applicant does not commit to the necessary corrective measures, they must notify the City, USFWS, CDFG and any other appropriate agency such as the Army Corps of Engineers or Regional Water Quality Control Board, to meet within 30 days to resolve the differences in an effort to reach concurrence. Until such concurrence is met,

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the City can not issue the permit. It is the intent of the wildlife agencies to resolve such issues expeditiously.

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days of receipt of written request for concurrence by the local jurisdiction.”

This requirement does not address the possibility that the wildlife agencies may not concur with the determination of relative biological value. What process exists for this possibility? What are the necessary steps to resolve a situation where the wildlife agencies do not concur? This EIR/EIS needs to discuss the process that would be necessitated by the situation where the wildlife agencies do not concur. Otherwise, additional land use impacts could occur without mitigating steps.

Section 2.1.2 Biological Preserve Assembly, Financing Plan, Page 2-17:

This section refers to the policies and assumptions local jurisdictions participating in the MHCP are utilizing to determine the financing of plan implementation. It is not adequate to simply establish policies and assumptions to finance the MHCP, particularly when the funding of such is mitigation in the form of acquisition of core areas, restoration of areas to native habitat, and management and monitoring of preserve areas and the covered species. The costs and funding sources of such need to be fully specified and described in Section 4 (Environmental Impacts/ Environmental Consequences).

Sections 3.2 (Land Use) and 3.6 (Housing):

“Average density under the 2020 forecast is 5.5 units per acre, about 10 percent lower density than in 1995.” (Page 3-50)

Given that population growth and demand for housing continue to outpace housing supply and that the MHCP is expected to increase conservation levels within the study area, thereby decreasing the amount of developable land, this figure raises alarm. In fact, if the amendments to the General Plans and associated ordinances referred to in Section 4.2.5 (Mitigation Measures for Impacts to Land Use) are to fully mitigate impacts to land use from the MHCP, the opposite should be true. Logically, average densities should increase.

It is possible that the 2020 figure, defined as “the ratio of total housing units to developed residential land” is deceiving if it is to account for preserve, open space and unusable lot areas as well. If this is the case, then this needs to be clarified. A more accurate figure would account for the ratio of housing units to land falling within usable lot area, possibly usable open space and/or common areas, and residential (non-circulation element) roads.

JWA-8.

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 CFR, Title 40, Sec. 1508.14, and California Public Resources Code, Sec. 21100).

Implementing a preserve system for the MHCP will involve actions by local jurisdictions as well as by federal and state agencies. Some of those actions, such as commitment of public lands for habitat use, can occur without new funding. Other actions, such as management of habitat lands conserved as mitigation for project impacts, will be funded by organizations or individuals responsible for project development. Key to successful implementation of the MHCP is that important habitat areas be conserved at a rate which at minimum preserves the continued viability of target species and mitigates for impacts which occur. The costs to fund the MHCP are presented in Section 7.0 of the MHCP Volume I. Under the plan, implementation would be periodically monitored to insure that adequate conservation occurs over time. The Final MHCP also provides for interim funding of selected conservation actions. The need for funding of other conservation tasks will be reviewed, and if necessary supplementary actions taken, while the jurisdictions pursue a regional funding program.

The federal Endangered Species Act (“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 prepared. The Secretary may also require other assurances that the plan will be implemented. The MHCP provides the framework for the funding necessary to implement the program. The assurances of such funding will be provided in the draft implementing agreement for each city which will undergo a formal public comment period identified in the Federal Register once the wildlife agencies receive a request for a 10(a)1(B) permit and a Section 2835 permit for the subarea plan.

The MHCP envisions that habitat acquisition, habitat restoration, and management, monitoring, and administrative costs will be funded by participating local jurisdictions through a cooperative regional funding program, to be placed on a ballot for voter approval within three years of the approval of the plan (MHCP, Vol. I, Sec. 7.2 and Table 7-2). The MHCP also

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JWA-8

JWA-9A

JWA-9B

identifies a range of funding sources that may be used, such as property tax, Mello-Roos special tax, sales tax, and benefit assessment.

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

- Commitment of public lands owned by participating local jurisdictions to the preserve (approximately 6,430 acres).
- Management of existing state and federal lands as part of the preserve (approximately 1,480 acres).
- Interim funding of selected conservation actions as described in the Final MHCP, Subarea Plans, and Implementing Agreements.
- Recently completed acquisition of selected properties using state and local funds, such as some of the stepping stone parcels in the City of Oceanside, upland parcels in the City of Encinitas along the south shore of Batiquitos Lagoon, a key linkage area in the City of Carlsbad, and Bernardo Mountain in the City of Escondido.
- Requirement of mitigation of impacts from new public and private projects.

The Wildlife Agencies (USFWS and CDFG) will, through Implementing Agreements with participating jurisdictions, "monitor plan implementation" and "ensure that habitat conservation proceeds in step with development" (MHCP, Vol. I, Sec. 5.2.3). Furthermore, "[i]f the Wildlife Agencies determine that the Subarea Plan is not being implemented as required, the wildlife agencies and the city will take the actions specified in the subarea plan and implementing agreement to remedy the situation" (MHCP, Vol. I, Sec. 5.3.8). The requirement to review will apply if a regional funding program is not approved in a timely manner, and an alternative remedy may require each jurisdiction to develop and implement a funding source adequate to meet its share of the MSCP and Subarea Plan implementation as it continues to pursue a regional funding source.

JWA-9. The proposed project (Alternative 2) does not impact existing densities. The figures for residential density cited in the draft EIS/EIR and the comment exclude non-residential land uses, such as the proposed habitat preserve

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system, parks, and areas which cannot be developed due to physical constraints. The reduction in average housing density between the base and target years of SANDAG's 2020 Forecast is due to many factors, including the general plans of the local jurisdictions. SANDAG and its member jurisdictions have identified this as an important regional issue and have proposed policies and actions to promote "Smart Growth" in the region (see, for example, the work of the SANDAG Regional Planning Committee, which is currently preparing a Regional Comprehensive Plan).

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Otherwise, the reason for the decrease in density should be explained within the context that impacts to land use (housing) are apparently fully mitigated.

JWA-10

If impacts to Housing are being treated as entirely distinct from Land Use, this is an incorrect distinction and the document needs to be rectified to better account for the impacts to Housing in the context of impacts to Land Use. Land use impacts to commercial, industrial and other non-residential uses need to be analyzed and mitigated if possible.

JWA-11

In any event, the document needs to be more specific about the type of amendments to General Plans and associated ordinances that would be necessary to mitigate impacts to Housing; primarily that minimum lot size standards should be reduced to account for the loss in developable land that, under the current General Plans and ordinances, would translate into a loss of residential yields, thereby impacting both land use and housing negatively. Allowing for smaller lot sizes is an essential mitigation measure. Do the jurisdictions intend to provide for this allowance?

Sections 3.4:

JWA-12

This section only generally discusses the Regional Transportation Plan but does not discuss any of the specific circulation element projects planned within the MHCP Subarea Plans. The planned and proposed road projects for the different cities should be discussed in this section of the document unless the participating jurisdictions plan to do additional CEQA review for their cities.

Pages 4-8 and 4-9:

JWA-13

The expectation that the "CCC will generally support the technical aspects of the plan" (page 4-8, 3rd Paragraph, last sentence) does not seem to account for either the effects of the Coastal Commission's federal consistency determination on the Carlsbad HMP (with an over two-year moratorium on its final approval and the associated requirement for significant plan changes) or their interpretation of the Coastal Act with regard to Environmentally Sensitive Habitat Areas. The current CCC policy is that impacts to ESHA's are largely prohibited. This clearly conflicts with the MHCP allowances for impacts to what would be considered ESHA's.

JWA-14

Therefore, of the four basic principles as listed at the bottom of page 4-9, two appear to be unsupported by the facts at this time. It cannot be assumed that state, federal and local agencies will cooperate and that the adoption of the MHCP will not result in significant impacts to coastal issues. Please discuss this in the document.

JWA-10.

Section 4.2 (Land Use) of the draft EIS/EIR discusses relationship of the proposed project to adopted land use plans of local jurisdictions (including areas designated for residential and employment uses) and to areas of important farmland or extractive resources. Section 4.6 (Population, Housing and Employment) analyzes the indirect effects of the proposed project, with emphasis on the study area's capacity to provide housing for the forecast growth in population and land for construction of commercial and industrial buildings. Thus, it was felt that the analysis would be more readable if the two sections were separated.

JWA-11.

As indicated in Section 4.2 of the EIS/EIR, "each City may need to make modifications to their individual General Plans (and associated ordinances and plans) to make their plans consistent with the MHCP." Potential impacts for each city are discussed in the document and addressed in the Subarea Plans. Upon approval of the plan, a complete analysis of General Plan consistency will be conducted while permanent regulatory measures are being drafted. These regulatory measures will undergo environmental review prior to adoption.

JWA-12.

Each participating jurisdiction will be responsible for the preparation of project-specific environmental documents when the individual circulation element projects are proposed (designed). Each Subarea Plan has a list of infrastructure needs that have been anticipated and has been conceptually reviewed in the MHCP. This EIS/EIR was responsible for analyzing the environmental impacts based upon the level of project description available. Thus, similar to land development projects proposed by private developers, the projects, when proposed, will need to conduct project-specific CEQA review.

If the MHCP were not adopted, each of the projects would still have to undergo extensive design engineering, landscape, and mitigation planning. To an extent, it can be argued that with the implementation of the MHCP, the costs will be reduced since the designers will know in advance the parameters for the approval process.

The feasibility of infrastructure improvements will be evaluated on a project-by-project basis. Preliminary engineering studies are prepared to evaluate design alternatives. Following CEQA review, the determination of feasibility is made by the City Council. In addition to environmental considerations, other factors considered by the City Council include General Plan policies and standards, public input, financing, and agency permitting requirements.

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JWA-13. Comment indicates concern related to future regulatory oversight by a State Agency.*

JWA-14. Comment indicates concern related to future regulatory oversight by Federal and State agencies. At this time, the analysis must assume that the state, federal, and local agencies will cooperate. If the state, federal, and local agencies do not cooperate, the MHCP will not be adopted (see No Project discussion) or the MHCP will be substantially revised that will require supplemental environmental review.*

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Pages 4-55 (3rd Paragraph, 7th Sentence) and 4-112 (2nd Paragraph, 2nd Sentence):

JWA-15

It appears that the EIR is suggesting that surveys in areas planned for development were biased or potentially biased, presumably due to some sort of dishonesty on the part of the consultants doing the surveys. Without any evidence or substantiation of such statements, particularly in a public document of this nature, language of this nature must be removed from the document. In fact, if this statement were true, the same bias claim could be made of the EIR, since the EIR preparers themselves did biological resource surveys in the plan area.

JWA-16

Page 4-115:

What is the basis of the CSS mitigation ratio of 3:1 for the Oceanside Subarea Plan? Is the Oceanside plan different from all of the other plans in the San Diego region? If so, why? There is no basis for the increased ratio other than arbitrariness.

Page 4-117 (1st Paragraph, last sentence):

JWA-17

The sentence beginning "There are a few sensitive plant species..." should be the start of the second paragraph on this page.

Section 4.4 Regional Transportation/Circulation

Although it is true that the RTP has undergone existing environmental review both on a regional and local level (page 4-215, Sec. 4.4.2, last paragraph), it has not undergone environmental review under the project processing circumstances that would be created by the MHCP. It is also not entirely correct to assume that threshold for significance of impact is based on whether the MHCP "would result in the elimination or reconfiguration of...facilities." Simply subjecting the circulation and transportation projects to the standards of the MHCP will result in a significant impact.

JWA-18

The standard conclusion for the Subsections under Section 4.4.3 (Subarea Plans) that "no significant impacts...will result" is therefore incorrect. These sections should consider the additional design, engineering, landscaping and mitigation costs of having projects comply with the MHCP Subarea Plans compatibility guidelines. Although it is stated on page 4-216 that "impacts regarding the ability of the jurisdiction to implement public facilities within each Subarea Plan are analyzed below", section 4.4 in fact provides no analysis with regard to any of the Subarea Plans, except to say that "implementation of the Subarea Plan(s)

JWA-19

JWA-15.

There is no "protocol" survey methodology required for the two herptiles, at this time. Surveys for these two species conducted to date generally include those parcels proposed for development. Thus, the data base is biased (lands not proposed for development have not been surveyed for these species). It is also recognized that over the past years, the type and intensity of surveys for these species have increased.

JWA-16.

A 3:1 mitigation ratio for coastal sage scrub impacts is only required in the Wildlife Corridor Planning Zone and Pre-Approved mitigation areas. The basis for this requirement is that preservation of coastal sage is a key factor in these areas that are critical for species preservation and proposed wildlife corridors.

JWA-17.

Typographical recommendation will be incorporated.*

JWA-18.

If the MHCP were not adopted, each of the projects would still have to undergo extensive design engineering, landscape and mitigation planning. To an extent, it can be argued that with the implementation of the MHCP, the costs will be reduced since the designers will know in advance the parameters for the approval process.

JWA-19.

Please see response to comment JWA-18.

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will not preclude implementation of the circulation projects" and, therefore, "no significant impacts...will result". Just because a project or plan can be fully implemented under the existing regulations versus new regulations does not mean that there are no impacts under the new regulations versus the old.

Section 4.4 needs to discuss these impacts to transportation and circulation from implementation of the MHCP.

Section 4.5 Public Services and Utilities

The same conclusion as stated above regarding no significant impacts reappears in the analysis for Public Services and Utilities, and the same comments as stated above apply.

Specific Project Comments

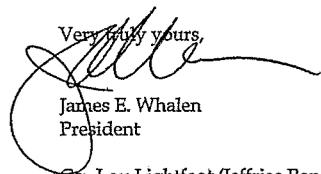
Oceanside: The Jeffries Ranch project is consistent with the draft Oceanside Subarea Plan as currently drafted. Unfortunately, the wildlife agencies have withdrawn their support for the original plan proposal so the Oceanside plan needs to contain an alternative for Jeffries Ranch with a significant portion of onsite preservation. On a larger level, the wildlife agencies and the City need to complete their negotiations before the EIR is finalized.

Carlsbad: The Summit at Carlsbad (Kelly-Bartman) project is depicted incorrectly in the plan as a Standards project. In reality, agreement between the property owner, the City of Carlsbad, and the wildlife agencies was reached. Please depict the proper project footprint per the City of Carlsbad HMP.

There are other issues with respect to specific landowners' projects, but they are covered in the preceding text on general comments.

We appreciate this opportunity to comment and would be pleased to clarify any questions on the document.

Very truly yours,



James E. Whalen
President

Cc: Lou Lightfoot (Jeffries Ranch)
Lucia Sippel (Holly Springs)
Jim Franklin (Summit at Carlsbad)

JWA-20. Please see response to comment JWA-18.

JWA-21. Based upon recent discussion with the Wildlife Agencies regarding Jeffries Ranch, the site should be able to be hard-lined with a clear delineation between open space and developed areas. Onsite conservation and restoration of coastal sage scrub is being considered.

JWA-22. The exhibit will be updated as part of the Carlsbad Subarea Plan.

JWA-20

JWA-21

JWA-22

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Ruth Love (San Diego Gas & Electric)
Mike O'Hara (Wilson/Kirgis)
Chris Dahrling (Gateway)

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FAX to JANET FAIRBANIS 619 595 5305

204

Subject: MHCP Comments
From: Richard <otter9@simplyweb.net>
Date: Tue, 30 Apr 2002 11:16:40 -0700
To: Isabelle Kay <ikay@ucsd.edu>

Jim Bartell FAX 760 431 9626
US Fish & Wildlife Service
2037 Locker
Carlsbad, CA 92009

April 25, 2002

----- Re: Comments on MHCP

YOD-1 Sandag has no land use authority...least of all in city jurisdictions. Therefore Sandag is dependent on each jurisdiction to agree to do what's best for the San Diego region. The policies and practices of each jurisdiction are automatically incorporated in regional activities of the County such as the MHCP. For the twenty years in which I have been involved in Carlsbad's Open Space issues an intolerable flaw has persisted. In policy and practice the Open Space Element of the City's Gen'l Plan defines Open Space to include ball fields and tennis courts (perhaps lighted) including structures, schoolyards, parking areas and road shoulders, golf courses, water bodies with recreational use, equestrian and human trails.

YOD-2 One recent example is the State Lands mandated buffer zone on the north shore of Bati- quitos Lagoon (meant to protect the lagoon's wildlife). The center and length of this buffer was chosen (and approved) for a human trail with leashing of dogs the concession to wildlife protection. Even a \$55 million "Enhancement" Plan to convert Batiqitos Lagoon from brackish and fresh water to tidally flushed salt water received, concurrently, a permit for recreational use.

YOD-3 The Carlsbad Open Space Element should clearly state the purpose and value for which the designated land is intended. Proper, useful designations (resisted for over 20 years) would be:

- YOD-4 Active Recreation Open Space
- Passive Recreation Open Space
- Natural Open Space (maintained for wildlife and its habitat)
- Resource Protection Open Space (maintained in natural state)

YOD-5 The Gen'l Plan's 15% "Open Space" required to be set aside in every Master Plan is judicious planning and of value to new residents. But that does not serve the general public's needs. Any Carlsbad Habitat Management Plan incorporated in or supplement to a Multi-species Habitat Conservation Plan must take into account the shortage of natural Open Space with undisturbed habitat and the City's practices.

Inez Yoder
7304 Borla Place
Carlsbad, CA 92009

Letter 39: Yoder

YOD-1. Comment introduces concern for responsibility of SANDAG over land use policies and Open Space policies within City jurisdiction. For this plan, SANDAG has collaborated with the participating City's of North County to create a program that will protect viable populations of native plant and animal species.*

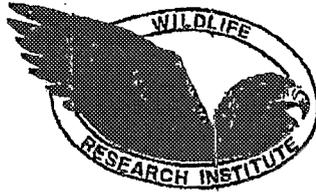
YOD-2. Implementation of the MHCP will require each city to amend existing General Plans, Local Coastal Programs, Ordinances, and Growth Management Plans. The plans are based on the understanding that past actions have led to current situation and that future development, if not modified pursuant to the plan, could potentially result in extirpation of some species. However, the retrospective assignment of responsibility for past actions has no place in such a planning effort. The plans are intended to modify land use policies such that the historic decline of species in this region will be halted. The plans are not intended in any way to compensate for the effects of past actions.

YOD-3. The comment provides recommendations for the City of Carlsbad Open Space and Conservation Element. Currently the Open Space and Conservation Element of the General Plan have established five categories of open space. These categories of open space are divided for preservation of natural resources, managed production of resources, outdoor recreation, aesthetic, cultural and educational purposes, and public health and safety.*

YOD-4. Please see response to YOD-3.

YOD-5. As indicated in the EIS/EIR, "the MHCP Plan is a comprehensive multiple-jurisdictional planning program designed to create, manage, and monitor an ecosystem preserve in the northwestern San Diego County." Furthermore, the plan is intended to protect viable populations of native plant and animal species and their habitats while still accommodating to continued economic development within each of the participating cities.

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Ms. Janet Fairbanks, AICP
 SANDAG
 401 B Street, Ste. 800
 San Diego, CA
 92101-4231

April 26, 2003

Dear Ms. Fairbanks:

WRI, Inc. is a non-profit, tax-exempt corporation whose mission is: "To conduct wildlife research, provide education in wildlife conservation, and conserve wildlife by habitat protection and land preservation. In addition, we utilize our wildlife expertise to inform public officials of potential consequences of their actions that might adversely affect wildlife." In keeping with this mission, we would like to offer the following comments on the "Draft EIS/EIR for Threatened and Endangered Species due to the Urban Growth within the MHCP Planning Area."

I, personally, have over 30 years experience in the wildlife profession, including 15 years working for local government and know how important meaningful input can be at this juncture in the EIS/EIR review process. I am going to focus my comments at the substantive issue level, which is where I feel considerations will be most challenging but also most productive.

WRI-1 I am, particularly, concerned that the Biological Core and Linkage Areas (BCLA) Alternative may not have received adequate consideration for the wrong reasons. Our planning started earlier in the development process, therefore, we should have more options for conservation (in many cases) than fewer. The following speaks to some of the issues and concerns that come to mind.

1. One of the reasons I often heard at our MHCP meetings for not choosing the BCLA alternative was that housing would be too dense. First of all, denser housing has greater potential for leaving more open areas (vs. urban/suburban sprawl) if correctly planned. Secondly, the BCLA Alternative provided a housing density that would be similar to, not greater than, the existing density.
- WRI-2 2. Another criticism that I heard, which doesn't seem to stand on its own merit, is that the BCLA Alternative would require more land acquisition and "...there just isn't enough money to purchase that land." I think the MSCP has taught us a lot, including the fact that if we set our sights high, we can accomplish a great deal, even if we don't reach all of our highest goals. If we set our sights low, we will have no problem accomplishing mediocrity.
- WRI-3 3. The so-called preferred alternative (Focus Planning Areas plus CSS) falls short with respect to raptors and other grassland species. If this is to be a truly "multi-species" HCP, how can we fall so short for the grassland species? One of the many things that the BCLA Alternative provides is greater protection for these grassland species. It was commendable that when the preferred alternative was seen to be clearly lacking in its protection of CSS, steps were taken to remedy the situation by calling on the county to

Letter 40: Wildlife Research Institute

WRI-1. The commenter is correct that using a base number of dwellings and distributing that number of units over less area can result in more open space. However, in the case of north San Diego County, the affected cities have General Plans prepared guiding the future of the city. These cities have utilized a concept that the inner cores of the cities are more dense and that outlying rings are less dense. Thus, development that has already occurred is in the planned-for and constructed inner cores higher density areas. The areas that have not been developed are generally the outer rings that have been proposed at less density. Thus, the modification of those outer rings to higher density will result in conflicts with the General Plans and visions of these cities.

WRI-2. Target conservation of natural habitat under Alternative No. 3 is 29% and 26% greater than under Alternatives No. 1 and No. 2, respectively (draft EIS/EIR, Tables 2.2-1, 2.2-2, and 2.2-3). In addition, all areas conserved under the latter alternatives would also be conserved under Alternative No. 3. Thus, acquisition need for Alternative No. 3 will exceed that of Alternative No. 1. At the same time, Alternative No. 3 would permit less development on currently undeveloped land than the other alternatives, reducing opportunities for the participating cities to require habitat conservation through on- and off-site mitigation as a condition of development approval and increasing the need for and cost of public acquisition.

The EIS/EIR analyzed the BCLA and concluded that from a biological perspective, that alternative was preferred; however, there were significant socioeconomic impacts that would result. It was concluded that FPA2 was environmentally preferred, balancing all of the environmental issues.

It should be recognized that since the BCLA was originally designed, the Cities and Wildlife Agencies have approved projects or projects have been constructed that will remove habitat identified in the BCLA. Additionally, to plan property for 100% conservation compared to the 75% conservation rates will require acquisition by outside entities.

WRI-3. Previously, no mitigation was required by MHCP cities for impacts to nonnative grasslands. The cities believe a low ratio for these annual or nonnative grasslands is warranted to encourage development on these areas relative to more sensitive habitats, such as coastal sage scrub. Grassland dependent species were generally found to not be adequately conserved by the

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MHCP or Oceanside Subarea Plans, so the cities are not receiving take authorizations for these species. Conservation of habitat was quantified for each habitat. The plan focused on species that were either listed or were in need of protection. It is acknowledged in the MHCP and Subarea Plans that grasslands and associated species were not adequately protected.

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step up to the plate and contribute the necessary CSS. Why wouldn't we demand a similar provision for the grasslands? It's logical, workable, and consistent with the overall HCP goals. Some have said that there are so few grasslands left, why bother? Even if we don't have a lot of grasslands left to protect, we should be taking advantage of every reasonable opportunity to do just that, not using their scarceness as a reason to ignore them.

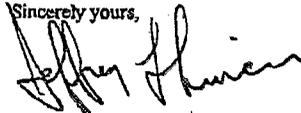
WRI-4

4. All the HCPs that will, ultimately, guide development throughout the county will have to work together. Now is the time to make sure that they're going to work synergistically. Each HCP has to do its part and, if the MHCP doesn't do its fair share to protect the grassland species, it puts an unnecessary and unfair burden on those that do. We can't just hope that the Ramona Grasslands, if they are adequately protected by the North County MSCP, will provide all the protection necessary for those grassland species throughout the north county area.
5. Finally, I have always felt that agricultural lands have been underestimated in terms of their potential wildlife habitat. By not requiring a reasonable mitigation for agricultural land conversion (to development or other more intense land uses), we once again miss potential opportunities to protect wildlife. In my opinion, we need to look a lot closer at the value of ruderal areas to wildlife, especially grassland species. It can be substantial, especially for raptors and the prey base, upon which they depend. In many cases, the value of a so-called "ruderal" area is equal to or greater than that of a patch of habitat which, through regulation, is termed "grassland." With respect to protecting and properly managing grassland raptors, one of the things that we should be looking at is the potential for its prey base (vs. simply, what percent is native or exotic grass species).

WRI-5

Thank you very much for all the good work you and your colleagues have put into the subject MHCP. I look forward to seeing our learning from previous HCPs and the MHCP evolving into a meaningful, clear, and strong planning document that allows for both a strong economy and forward-looking conservation.

Sincerely yours,



Jeffrey L. Lincer, Ph.D.

Director of Research

WRI-4.

As indicated in the Draft EIS/EIR, "the MHCP is a comprehensive multiple-jurisdictional planning program designed to create, managed, and monitor an ecosystem preserve in northwestern San Diego County." Each City will guarantee implementation of the Subarea Plan through interim and permanent regulatory measures, including codes, ordinances, and policies contained in the General Plan, Local Coastal Plan, and other city policy documents. As to the North County MSCP, that is a plan that is being prepared by the County.

Please see response to comment WRI-3.

WRI-5.

Lands mapped as agricultural will require survey at the time development is proposed. If sensitive habitat types are observed on the property, they will be addressed pursuant to the subarea plan. Preservation of agricultural or disturbed land is necessary in some cases to create wildlife corridors where they would not otherwise be possible due to the absence of existing habitat. It should be recognized that the cities will not be receiving take authorization for grassland species. Protection of these species will continue to be addressed on a project-by-project basis.

* This comment does not raise a significant environmental issue. This comment will, however, be forwarded to the decision makers for consideration when they consider the project. No changes were made to the MHCP, Subarea Plans, or EIS/EIR based on this comment.

Attachment RS-1

**Excerpt from San Elijo Ranch Development Agreement with the
City of San Marcos and Specific Plan**

7ST
DOC # 1997-0395018
AUG 15, 1997 4:06 PM

OFFICIAL RECORDS
SAN DIEGO COUNTY RECORDER'S OFFICE
GREGORY J. SMITH, COUNTY RECORDER
FEES: 239.00

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Office of the City Clerk
City of San Marcos
1 Civic Center Drive
San Marcos, CA 92069

258



FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT AND OWNER
PARTICIPATION AGREEMENT
BETWEEN THE CITY OF SAN MARCOS,
THE SAN MARCOS REDEVELOPMENT AGENCY,
AND SAN ELIJO RANCH, INC.

DOC.#13,125
MLB

- 2.3 "Owner" means the person, persons, or entity having a legal and equitable interest in the Property or parts thereof and includes Owner's assigns or successors in interest.
- 2.4 "Property" means the real property described in Exhibit "A," attached hereto and incorporated herein.
- 2.5 "Council" means the San Marcos City Council.
- 2.6 "Planning Commission" means the San Marcos Planning Commission.
- 2.7 "Redevelopment Plan" means the Redevelopment Plan for Project Area No. 3 in City as of the effective date of this Amended Agreement.
- 2.8 "General Plan" means the General Plan as of the effective date of this Amended Agreement.
- 2.9 "Specific Plan Amendment" means the San Elijo Ranch Specific-Plan Amendment approved concurrent with this Amended Agreement.
- 2.10 "Development Plan" means the discretionary approvals for the Property that are being approved by City concurrent with the approval of this Amended Agreement or have been approved previously, which include, but are not limited to, an amendment of the General Plan, the Specific Plan Amendment, the Conditional Use Permit for rock crushing operations, which was approved on January 28, 1997, pursuant to Resolution No. 97-4795, and future discretionary approvals, which include, but are not limited to, a tentative map, vesting tentative map, parcel map, or other map permitted pursuant to the State Subdivision Map Act, and public facilities financing mechanisms and districts, provided such approvals are consistent with the General Plan and Specific Plan Amendment. All of the above discretionary approvals will permit the Project to include a maximum of 3,398 dwelling units, of which 272 dwelling units will be affordable units, a site for neighborhood commercial uses, two elementary school sites, a site for institutional uses, a neighborhood park, a regional park for passive/active recreational use, natural open space, a fire station site, up to five new water storage tanks, and other on and off-site public and private facilities.
- 2.11 "Project" means the development of the Property as set forth in the Development Plan.
- 2.12 "Schedule of Performance" means the schedule agreed to by City, Agency, and Owner, as more fully described in Exhibit "B," attached hereto and incorporated herein. The Schedule of Performance provides a general description of the phasing of construction and allocation of costs with respect to required private and public facilities.
- 2.13 "City Municipal Code" means the Municipal Code for the City of San Marcos as of the effective date of this Amended Agreement.

4.7 Relationship of City, Agency, and Owner. The contractual relationship between City, Agency, and Owner arising out of this Amended Agreement is one of independent contractor and not agency. This Amended Agreement does not create any third-party beneficiary rights.

4.8 Notices. All notices, demands, and correspondence required or permitted by this Amended Agreement shall be in writing and delivered in person or mailed by first class or certified mail, postage prepaid, addressed as follows:

If to City or Agency, to:

The City of San Marcos
1 Civic Center Drive
San Marcos, California 92069-2949

Attention: City Manager

If to Owner, to:

CDS Devco, Inc.
c/o Leucadia National Corporation
315 Park Avenue South
New York, New York 10010-3679

Attention: Paul J. Borden

and

San Elijo Ranch, Inc.
380 Stevens Avenue, Suite 307
Solana Beach, California 92075

Attention: R. Randy Goodson

City, Agency, and Owner may change their address by giving notice in writing to the others. Thereafter, notices, demands, and correspondence shall be addressed and transmitted to the new address. Notice shall be deemed given upon personal delivery or, if mailed, two (2) business days following deposit in the United states mail.

5.0 DEVELOPMENT OF THE PROPERTY.

5.1 Rules, Regulations and Policies. Owner shall have the vested right, to the fullest extent allowed under California Development Agreement legislation, California Government Code sections 65864 *et seq.*, and except as expressly restricted in this Amended Agreement, to develop the Property in accordance with the Development Plan and the rules, regulations, ordinances, policies, conditions, environmental regulations, exactions, entitlements, assessments, and fees applicable to and governing development

of the Property which are in effect as of the effective date of this Amended Agreement, except that Owner may in its sole and absolute discretion agree that the Project will be subject to later enacted or amended rules, regulations, ordinances, policies, conditions, environmental regulations, exactions, entitlements, assessments, fees, increases in fees, or phasing controls governing development of the Property which are adopted after the effective date of this Amended Agreement.

5.2 Permitted Use, Density, Intensity of Use, Phasing. This Amended Agreement shall vest the right to develop the Property to the fullest extent allowed under California Development Agreement legislation, California Government Code sections 65864 et seq., and except as expressly restricted in this Amended Agreement, with respect to the permitted use(s) of land, density, and intensity of use(s), and timing and phasing of development as described in the Schedule of Performance. The permitted use(s) of land, density, and intensity of use(s) shall be those specifically set forth in the Development Plan, which includes a maximum of 3,398 dwelling units, of which 272 dwelling units will be affordable units, a site for neighborhood commercial uses, two elementary school sites, a site for institutional uses, a neighborhood park, a regional park for passive/active recreational use, natural open space, a fire station site, up to five new water storage tanks, and other on and off-site public and private facilities as described in the Schedule of Performance. It is the express intention of the parties that Owner has the right to develop the Property in accordance with the Development Plan and this Amended Agreement. Owner shall have the right to develop the Property in such order, and at such rate, and at such times as Owner deems appropriate subject only to the provisions of the Development Plan and this Amended Agreement. Unless this Amended Agreement is amended pursuant to paragraph 4.4 of this Amended Agreement, the Property shall not be subject to any subsequently enacted amendment of the General Plan, zoning, subdivision ordinances, or the City's Public Facilities Financing Plan which alters, or is in conflict with, the Development Plan or this Amended Agreement. Owner shall be exempt from any increase in the City's Public Facilities Fee and other similar development exactions other than as specifically provided for in the Development Plan and this Amended Agreement. To the extent that City retains discretion in the Development Plan concerning future permitted use(s) of land, density, and intensity of use(s), City agrees, absent health and safety concerns, not to exercise that discretion in such a way as to reduce the allowed number of residential units or alter the timing and phasing of development as described in the Schedule of Performance.

5.3 Maximum Height and Size of Structures. The maximum height and size for all structures shall be as provided in the Development Plan, unless the Development Plan does not specify the height and size of a particular structure, in which case the City's zoning ordinances in effect as of the effective date of this Amended Agreement shall control.

SAN ELIJO RANCH
SPECIFIC PLAN AMENDMENT
SP 89-18 (2000 MOD)
Adopted by the San Marcos
City Council on October 10, 2000

Prepared For:
City of San Marcos
1 Civic Center Drive
San Marcos, California 92069

Applicant/Owner
San Elijo Hills Development Co., LLC
1903 Wright Place, Suite 220
Carlsbad, California 92008
Telephone: (760) 918-8200
Fax: (760) 918-8210

Prepared By:
Project Design Consultants
701 B Street, Suite 800
San Diego, CA 92101
Telephone: (619) 235-6471
Fax: (619) 234-0349

Planning Area Q - Active/Recreational/Regional Park

(1) Description

Planning Area Q is an open space area along the Cerro de las Posas and Double Peak ridgeline of San Elijo Ranch. The area includes approximately 234 acres and is accessed via "C" Street and by the multipurpose trail system.

(2) Permitted Uses

Active and passive recreational uses are allowed in Planning Area Q, including a portion of the Double Peak regional park, which also falls into a portion of Planning Area L.

(3) Conditional Uses Permitted*

- (a) Equestrian facilities
- (b) Golf Course
- (c) Churches, temples, and other places of worship
- (d) Private clubhouses, recreation and conference centers
- (e) Child care center

(4) Temporary Uses & Structures Permitted

Residential or commercial construction activities, including necessary construction offices and materials and equipment storage, residential or commercial sales or leasing offices, sales information centers, and sales pavilions.

(5) Accessory Uses and Structures Permitted

Accessory uses and structures determined by the City to be normally incidental to a permitted principal or conditional use.

(6) Building Height

No buildings shall exceed one-story. Rooflines are to be designed to work with the natural slope contours. Earth tone shades of building materials is encouraged.

* Limited to the flatter portions of Cerro de las Posas