

Natural Community Conservation Plan Approval and Take Authorization

California Department of Fish and Game Approval and Supporting Findings for the County of San Diego Subarea Plan to implement the Multiple Species Conservation Program Plan

I. Introduction.

A. The Natural Community and Conservation Planning Act ("NCCP Act").

The NCCP Act, California Fish & Game Code §2800, et seq.,¹ provides for the preparation and implementation of large-scale natural resource conservation plans. A natural communities conservation plan, or "NCCP," must identify and provide for "the regional or area wide protection and perpetuation of natural wildlife diversity, while allowing compatible and appropriate development and growth." (§2805(a).) NCCPs are intended "to provide comprehensive management and conservation of multiple wildlife species" including, but not limited to, species listed pursuant to the California Endangered Species Act, §2050, et seq. (§2810.) ("CESA").

The NCCP Act promotes cooperation and coordination among public agencies, landowners, and other private interests in developing NCCPs. The California Department of Fish and Game ("CDFG") is authorized to prepare and implement NCCPs with a wide variety of private and public interests, including individuals, organizations, companies, and state and local government agencies. (§2810 and §711.2.) Natural community conservation planning may be undertaken by local, state, and federal agencies independently or in cooperation with other individuals and entities. (§2820.)

An NCCP Plan must be approved by CDFG before it is implemented. (§2820.) To be approved, an NCCP Plan must meet standards established by CDFG. (§2820.) CDFG is authorized to prepare non-regulatory guidelines to establish NCCP standards and to guide the development and implementation of NCCP Plans. (§2825(a).) NCCP Plans are also subject to review under the California Environmental Quality Act ("CEQA"), Public Resources Code §21000, et seq.

¹All further references are to the Fish and Game Code, unless otherwise indicated.

CDFG may authorize the "taking" of any identified species whose conservation and management is provided for in a CDFG approved NCCP Plan. (§2835.) Under the Fish and Game Code, "Take" means "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill." (§86.)

B. The Multiple Species Conservation Program Plan.

The Multiple Species Conservation Program Plan (Volumes I & II, as revised December, 1996) ("**MSCP Plan**"), approved by CDFG on July 16, 1997, sets forth a Multiple Species Conservation Program ("**MSCP**"). The MSCP, is a comprehensive, long-term habitat conservation planning program that addresses multiple species habitat needs and the preservation of native vegetation communities for a 900-square-mile-area in southwestern San Diego County. It is one of three subregional habitat planning efforts in San Diego county which contribute to preservation of regional biodiversity through coordination with other habitat conservation planning efforts throughout southern California. When fully implemented, the MSCP and these other subregional plans will create an interconnected habitat preserve system throughout the 4,200-square-mile county. The MSCP allows local jurisdictions to maintain land use control and development flexibility by planning a regional preserve system that can meet future public and private project mitigation needs.

The MSCP area includes the County of San Diego, eleven city jurisdictions, and several independent special districts. Local jurisdictions and special districts implement their respective portions of the MSCP Plan through subarea plans, which describe specific implementing mechanisms for the MSCP. The MSCP subarea plans contribute collectively to the conservation of vegetation communities and species in the MSCP study area. The combination of the subregional MSCP Plan and subarea plans serve as a multiple species Habitat Conservation Plan pursuant to Section 10(a)(1)(B) of the federal Endangered Species Act ("**ESA**") and as an NCCP. The MSCP is being implemented in phases as participating jurisdictions and special districts submit their subarea plans to the United States Fish and Wildlife Service ("**USFWS**") and CDFG for approval. Upon approval, the USFWS and CDFG can authorize the take of listed species and other species of concern, subject to the terms of the subarea plan and the MSCP. Conservation and management responsibilities, and implementation guarantees for each subarea plan will be set forth in implementing agreements between the entity responsible for each subarea plan and the wildlife agencies (USFWS and CDFG).

C. The County of San Diego Subarea Plan.

The County of San Diego Subarea Plan ("**Subarea Plan**") is set forth in the August, 1996 MSCP Plan, as revised December, 1996 and adopted by the San Diego County Board of Supervisors October 22, 1997. The Subarea Plan has been prepared pursuant to a general outline developed by the USFWS and CDFG to meet the requirements of the NCCP Act. The Subarea Plan is the basis of the Implementing Agreement by and between the United States Fish and Wildlife Service, the California Department of Fish and Game and the County of San Diego,

executed concurrently with this NCCP Approval. The Subarea Plan is consistent with, and implements, in part, the MSCP Plan and, in addition, qualifies as a stand alone document to implement, in part, the MSCP Preserve.

The County of San Diego Preserve, also referred to as a "Multiple Habitat Planning Area" or "MHPA," was developed by the County in cooperation with the Wildlife Agencies, property owners, developers and environmental groups. The Preserve Design Criteria contained in the MSCP Plan and the County's Biological Mitigation Ordinance were used as a guide for the development of the County's Preserve.

The Subarea, located mostly in the unincorporated eastern part of the MSCP study area, encompasses 252,132 acres and is composed of three segments. The Lake Hodges segment located in west-central San Diego County, west of Interstate 15, covers roughly 8,874 acres of mostly vacant land, with approximately 512 acres of agricultural uses and a few scattered homes. Four major projects are located in this area that will be a mix of new urban level uses and low density residential developments with a variety of private and public support facilities. The Lake Hodges preserve consists of open space areas set aside in connection with the approved projects, properties where open space negotiations have been completed, and publicly owned lands. At build-out the preserve area for this segment will consist of 4,743 acres of six different vegetation community types. The South County segment includes about 82,767 acres that covers substantial areas around the urban fringe of southwest San Diego County. The South County segment presently covers several private development projects with natural open space areas in addition to lands owned by non-governmental entities and publicly owned lands. The proposed preserve area for the South County segment will total approximately 48,874 acres and includes much of the river bottom lands within County jurisdiction of the Otay River and Sweetwater River. Eighteen vegetation community types, including 20,969 acres of coastal sage scrub, will comprise the natural open space preserve within the South County segment. The Metro-Lakeside-Jamul ("MLJ") segment is the third component of the Subarea Plan and has a total area of 172,952 acres and is separated into north and south sections by Interstate 8. With a habitat protection goal of 44,764 acres, the MLJ segment will protect 33,200 additional acres with approximately 17,000 acres to be located north of I-8 and approximately 15,500 acres south of I-8. One-third (11,568 acres) of the total anticipated conservation level is already conserved in some form of protected status protected on lands owned and managed by the State, County and private parties.

The County's MHPA is approximately 115,701 acres. The County's MHPA comprises 60% of the regional MHPA. The conserved lands within the County's MHPA total 49% of the vacant land in the subarea (55% of total habitat land in the subarea). The County's MHPA preserves 77% of the core biological resource areas within its subarea and 79% of the habitat linkages. Lands which are outside of the biological core or linkage areas but are currently dedicated or designated as open space and provide some long term conservation value are included in the County's Preserve.

Approximately 88% of the MHPA lands (101,268 acres) within the County's subarea will

be preserved for biological purposes. This is an overall average and in some cases 98% of an area will be preserved as a result of negotiations conducted during the Subarea planning process. Almost 63,000 acres (62%) of the total anticipated conservation level are already conserved within the County subarea. The majority of local public lands (roughly 94%) will be preserved. Development within the MHPA will be directed to areas of lower quality habitat and/or areas considered less important to the long-term viability of plant and wildlife species. Documented populations of covered species within the County's portion of the MHPA will be protected to the extent feasible.

D. Implementing Agreement.

Each MSCP Plan subarea plan, including the County of San Diego's Subarea Plan, will be implemented according to an agreement between the entities or agencies responsible for implementing the subarea plan, CDFG and the USFWS. The purpose of these implementing agreements is to ensure the implementation of the MSCP and the subarea plan, to bind each party to the terms of the MSCP Plan and subarea plan, and to provide remedies and recourse for failure to adhere to the terms of the MSCP Plan or subarea plan. This NCCP Approval specifically applies to the Subarea Plan as implemented pursuant to the *Implementing Agreement by and between the USFWS, CDFG, and the County of San Diego* ("**Implementing Agreement**"), executed concurrently with this NCCP Approval.

II. Findings.

All NCCPs must contain certain substantive elements identified in the NCCP Act. In addition, the MSCP and the Subarea Plan must comply with guidelines adopted by CDFG for natural community conservation planning within the Coastal Sage Scrub Planning Area. And the Department must ensure that its approval of the MSCP and the Subarea Plan is consistent with its responsibilities as a State agency under CESA.

Because the Subarea Plan was developed as an element of the MSCP Plan, the Subarea Plan and MSCP Plan are analyzed together as an integrated NCCP in this NCCP Approval. As an integrated NCCP, the Subarea Plan is intended to be complete and independently viable. The findings herein specifically address the integrated "**MSCP Plan/Subarea Plan.**"

E. The NCCP Act.

In addressing the scope and purpose of NCCPs, the NCCP Act identifies the following essential NCCP elements:

1. An NCCP must be regional or area-wide in scope (§2805(a).)

As described above the MSCP area comprises 900 square miles of coastal sage and interdigitated scrub habitat. The Subarea Plan encompasses fully 252,132 acres within the MSCP

area. As described and analyzed in the MSCP Plan and the Subarea Plan, Chapters 4-6 of the Final Environmental Impact Report/Final Environmental Impact Statement (EIR/EIS, Clearinghouse Log No. 93121073, prepared by the City of San Diego as Lead Agency), Addendum to the EIR/EIS dated October 3, 1997, the County of San Diego CEQA Findings as a Responsible Agency ("County of San Diego CEQA Findings"), and the Implementing Agreement, Section 1 and Section 8, the MSCP Plan and the Subarea Plan address the protection and conservation of wildlife on a broad scale.

CDFG hereby finds that the MSCP Plan/Subarea Plan address wildlife conservation on a regional or area-wide scale, as required by §2805(a).

2. An NCCP must protect and perpetuate natural wildlife diversity (§2805(a).)

The MSCP Plan/Subarea Plan provides comprehensive management and conservation of the subregion's multiple wildlife species including but not limited to those species listed pursuant to the CESA. Consistent with the subregional MSCP framework for preserve management, the Subarea Plan identifies eighteen (18) vegetation communities targeted for preservation and management. Management of these preserve areas, as identified in the Subarea Plan and consistent with Table 3-5 of the MSCP Plan, and Section 10.9 of the Implementing Agreement, provide species and site-specific land use and management guidelines to ensure that the biological values are maintained in perpetuity. The permanent protection and management of these habitats will contribute to the long-term viability of 85 plant and wildlife species within the MSCP subregion.

The MSCP Plan/Subarea Plan provides for the assembly of a comprehensive preserve area consistent with the tenets of reserve design of the CSS NCCP Guidelines which promote biodiversity, provide for no net loss of habitat value from the present, taking into account management and enhancement. The County of San Diego will revise, adopt and implement biological mitigation and grading ordinances consistent with the subregional plan, subarea plan and Implementing Agreement in order to achieve the conservation goals set forth in the Subarea Plan. The County of San Diego commits to permanently preserve, in accordance with sections 10.3 and 10.4 of the Implementing Agreement, approximately 101,268 acres (88%) of the MHPA lands within the Subarea. The Subarea Plan provides for the conservation of a minimum of approximately 79% of the overall habitat within the core biological resources areas and approximately 76% of the habitat within wildlife corridors and linkages, as depicted in Section 1 of the County's Subarea Plan. Table 1-2 of the Subarea Plan and Table 2-1 of the EIR/EIS specifies the approximate amount and location of acreage that will be permanently conserved for each listed vegetation community within the MHPA and MSCP Plan, respectively.

The County of San Diego has committed to a comprehensive, funded, adaptive management program that provides a framework plan to ensure the needs of species and associated habitats are met. A short and long-term funding mechanism for local and regional costs for acquiring, managing and monitoring private lands within the MHPA identifies a range of

sources to satisfy the obligations. (Implementing Agreement, Section 11.0; Section 7 of the MSCP Plan, and Part A, Section IV of EIR/EIS.)

The County of San Diego will participate in an ongoing monitoring/research program which addresses each of the 6 elements of the CSS NCCP Guidelines "research agenda." (Conservation Guidelines, Section 3(b) (see "CSS NCCP Guidelines," below).) The Subarea Plan requires a continuous habitat acreage accounting model to assure that adequate progress toward implementation of the plan is being achieved. (Implementing Agreement, Section 14.1) A Biological Monitoring Plan to collect and analyze data on specific species and habitats has been prepared for the preserve area and includes specific research tasks that have been developed in accordance with the CSS NCCP Guidelines. (MSCP Plan/Subarea Plan, Section 1.6, and Implementing Agreement, Section 14.5.)

As further described and analyzed in the MSCP Plan and the Subarea Plan, Chapters 4-6 of the EIR/EIS, the County of San Diego Findings per CEQA, and the Implementing Agreement, Section 1 and Section 8, the MSCP Plan/Subarea Plan provide strong and extensive protections for plant and wildlife communities.

CDFG hereby finds that the MSCP Plan/Subarea Plan protect and perpetuate wildlife diversity, as required by §2805(a).

3. An NCCP must allow compatible and appropriate development and growth (§2805(a).)

Lands not protected pursuant to the MSCP Plan or the Subarea Plan may be developed according to local land use laws and regulations. In addition, the Implementing Agreement provides assurances to local jurisdictions and landowners concerning State and federal mitigation requirements covered by the MSCP Plan/Subarea Plan. (Implementing Agreement, Section 9 and Section 17.) These assurances will make local permitting processes for development projects and growth activities more certain and predictable. As further described and analyzed in the MSCP Plan and the Subarea Plan, Chapters 4-6 of the EIR/EIS, the County of San Diego Findings per CEQA, and the Implementing Agreement, Section 1 and Section 8, the MSCP Plan/Subarea Plan allow for development and growth.

CDFG hereby finds that the MSCP Plan/Subarea Plan allow compatible and appropriate development and growth, as required by §2805(a).

4. Is consistent with NCCP planning agreement (§2820.)

Pursuant to § 2820, the MSCP/Subarea Plan has been carried out in accordance with the Memorandum of Understanding (MOU) between CDFG and USFWS, dated December 4, 1991, and the March, 1993 Ongoing Multi-Species Plans Agreement, to which CDFG and the County of San Diego are a party, and which is incorporated in the NCCP Process Guidelines (Section 3.6) as

a means of including appropriate, ongoing species management plans within the MSCP.

CDFG hereby finds that the MSCP Plan/Subarea Plan is consistent with the NCCP Planning Agreement between CDFG and the USFWS and with the Ongoing Multi-Species Plans Agreement, as required by §2820.

5. Provides for the conservation and management of species subject to take (§2835.)

All species subject to the take authorization included as part of this NCCP Approval are addressed in the MSCP Plan/Subarea Plan. For the reasons set forth in Section D-2, above, and as further described and analyzed in the MSCP Plan and the Subarea Plan, Chapters 4-6 of the EIR/EIS, the County of San Diego Findings per CEQA, and the Implementing Agreement, Section 1 and Section 8, the MSCP Plan/Subarea Plan conserve and manage all identified species for which CDFG now issues a take authorization. CDFG has determined that implementation of the MSCP Plan/Subarea Plan pursuant to the Implementing Agreement will not result in the death of individuals of the following species: bald eagle (*Haliaeetus leucocephalus*), golden eagle (*Aquila chrysaetos canadensis*), California least tern (*Sterna antillarum ssp. browni*), American peregrine falcon (*Falco peregrinus*) and California brown pelican (*Pelecanus occidentalis ssp. californicus*). This NCCP Approval therefore is not contrary to California Fish and Game Code §3511.

CDFG hereby finds that the MSCP Plan/Subarea Plan provides for the conservation and management of all species subject to the take authorization provided as part of this NCCP Approval, as required by §2835.

- F. Coastal Sage Scrub NCCP Guidelines ("CSS NCCP Guidelines").

In 1992 CDFG, in consultation with the USFWS, developed the "Southern California Coastal Sage Scrub Natural Community Conservation Planning Process Guidelines," as amended November, 1993 ("Process Guidelines"). The Process Guidelines provided a framework for natural community conservation planning within the Regional Coastal Sage Scrub Planning Area. The Regional Coastal Sage Scrub Planning Area comprises roughly 6,000 square miles of coastal sage scrub and overlays parts of five counties: San Diego, Orange, Riverside, Los Angeles, and San Bernardino. Coastal sage scrub is an ecological community that supports a diverse assemblage of native California plants and animals, including the California gnatcatcher, the cactus wren, and the orange throated whip-tail lizard.

In 1992, CDFG also convened a Scientific Review Panel ("SRP"). The role of the SRP was to collect readily available data and to integrate the information into a region-wide scientific framework for conservation planning activities. The SRP's specific goals were to analyze field data and other research on the coastal sage scrub habitat in order to identify and develop the best scientific information available, and to develop conservation guidelines to protect and manage

coastal sage scrub habitat. In March of 1993, the SRP recommended a conservation strategy to serve as a basis for Coastal Sage Scrub NCCP Conservation Guidelines. CDFG and USFWS staff worked with the SRP to prepare draft Conservation Guidelines, which were published in June, 1993: the "Southern California Coastal Sage Scrub Natural Community Conservation Planning Conservation Guidelines," dated November 1993 ("Conservation Guidelines"). The draft Conservation Guidelines were revised and finalized in November, 1993. The final Process Guidelines include the Conservation Guidelines. Together, they comprise the CSS NCCP Guidelines.

1. Process Guidelines.

The Process Guidelines guide the preparation and implementation of NCCPs in the Regional Coastal Sage Scrub Planning Area and provide for the interaction of all of the partners involved. The Process Guidelines explain the roles of the local, state, and federal governments during the planning process and the development of regional and subregional plans. The Process Guidelines are intended to describe a process for regional and subregional natural community planning that ensures adequate participation and collaboration by all stakeholders in the Regional Coastal Sage Scrub Planning Area.

2. Conservation Guidelines.

The Conservation Guidelines were prepared pursuant to §2825(a) and represent the best available scientific information known to CDFG concerning natural community conservation planning in the Regional Coastal Sage Scrub Planning Area.

3. Specific Findings.

The Coastal Sage Scrub NCCP Guidelines are intended to provide guidance for natural community conservation planning within the Regional Coastal Sage Scrub Planning Area and do not represent specific criteria for CDFG approval. However, this NCCP adheres to provisions of the Process Guidelines and the Conservation Guidelines insofar as they address certain key natural community conservation planning elements identified in §2825(a).

a. Defining the scope of a conservation planning area (§2825(a)(1)).

The CSS NCCP Guidelines outline the five-county regional planning area of the Regional Coastal Sage Scrub Planning Area. (Conservation Guidelines, Attachment B.) Subregional and subarea planning areas are defined in the OMSP Agreement, MSCP Plan Vols. I and II, and the EIR/EIS. The County of San Diego subarea plan is detailed in the MSCP Plan, Vol II, section II as adopted by the Board of Supervisors on October 22, 1997.

CDFG hereby finds that the MSCP Plan/Subarea Plan substantially adheres to the scope and configuration of regional and subregional planning areas prescribed in the

CSS NCCP Guidelines.

- b. Determining conservation standards, guidelines and objectives for the planning area (§2825(a)(2)).

The CSS NCCP Guidelines provide guidance for the evaluation, management and restoration of coastal sage scrub habitat. (Conservation Guidelines, Sections 2-6.) The MSCP Plan prescribes methods, policies, guidelines and goals for assembling the MSCP Preserve (MSCP Plan, Vol 1, Section 4), implementing the MSCP Plan and Subarea Plans (MSCP Plan, Vol. 1, Section 5) and managing and monitoring the MSCP Preserve (MSCP Plan Vol. 1, Section 6). The Subarea Plan prescribes species and habitat-specific goals and objectives for the management of each preserve area consistent with the guidelines established in Vol. 1, Section 6 of the MSCP Plan. Activities for the County of San Diego subarea plan include management recommendations, guidelines, land use considerations and preserve design and compatibility.

CDFG hereby finds that the MSCP Plan/Subarea Plan substantially adhere to the standards, guidelines and objectives for the Regional Coastal Sage Scrub Planning Area prescribed in the CSS NCCP Guidelines.

- c. Appointing one or more advisory committees to review and make recommendations regarding the preparation and implementation of natural community conservation plans (§2825(a)(3)); coordinating with local, state, and federal agencies (§2825(a)(4)); and incorporating public input (§2825(a)(5)).

The CSS NCCP Guidelines provide for State and federal wildlife agency coordination, and for participation by and coordination with public agencies and the members of the public. (Process Guidelines, Sections 3-5.) Coordination between State and federal agencies includes the December 4, 1991 MOU between CDFG and the USFWS. The MSCP Working Group, formed in March 1991, fulfilled the advisory body role for the development, financing and implementation of the MSCP Plan. The group included representatives from state and federal wildlife agencies, local jurisdictions, public works agencies and representatives of development interests and environmental groups from various sectors of the community. Other advisory groups included the MSCP Policy Group, Science Subcommittee, Regional Conservation Coordinating Committee and a Technical Committee that focused efforts to assure the coordination of key scientific, public policy, and finance/acquisition strategy aspects. A Biological Task Force was assigned to develop the *Biological Standards and Guidelines for Multiple Species Preserve Design* using the best scientific information available. These standards and guidelines provide the frame work for development and design of the MHPA as well as other preserve design alternatives considered in the EIR/EIS. A regional habitat management technical committee for coordination of preserve management will be responsible for technical issues associated with preserve management. (Implementing Agreement, Section 14.7.)

CDFG hereby finds that the preparation of the MSCP Plan/Subarea Plan substantially adhered to the CSS NCCP Guidelines' provisions regarding the appointment of "advisory committees," coordination with local, state and federal agencies, and public participation.

d. Ensuring compatibility with the Federal Endangered Species Act (FESA) (§2825(a)(6)).

The CSS NCCP Guidelines provide for coordination between CDFG and the USFWS and address the requirements of FESA. (Process Guidelines, Sections 1, 3, 4, and 5.) Pursuant to the December 4, 1991 Memorandum of Understanding between CDFG and the U.S. Fish and Wildlife Service, the two agencies agreed to ensure that plans prepared by local governments and landowners pursuant to the NCCP Act will facilitate compliance with FESA. The MSCP Plan/Subarea Plan comprehensively addresses habitat conservation concerns pursuant to the standards established by section 10(a)(1)(B) of FESA and through the special 4(d) rule promulgated by the USFWS, is compatible and consistent with the incidental take requirements of FESA.

CDFG hereby finds that the MSCP Plan/Subarea Plan substantially adheres to the CSS NCCP Guidelines' provisions for ensuring compatibility and compliance with ESA.

e. Obtaining approval of the MSCP Plan and Subarea Plan by CDFG (§2825(7)).

The CSS NCCP Guidelines prescribe an approval process. (Process Guidelines, Section 5.4). As provided therein, concurrent with CDFG's execution of an Implementing Agreement for the MSCP Plan/Subarea Plan, CDFG will adopt this NCCP Approval and issue a take authorization for identified species whose conservation and management are provided for in the MSCP Plan/Subarea Plan. The Implementing Agreement will be executed concurrently with this NCCP Approval.

CDFG hereby finds that the approval process employed for the MSCP Plan/Subarea Plan substantially adheres to the CSS NCCP Guidelines.

f. Provisions for implementation of the plan (§2825(a)(8)).

As prescribed in the CSS NCCP Guidelines, the MSCP Plan and its subarea plans will be implemented according to the terms of implementing agreements executed by all necessary participants. The implementing agreements will obligate the participants to implement the MSCP Plan and the applicable subarea plan as necessary to assure the long-term viability of biological resources while providing for compatible economic development activities.

CDFG hereby finds that the mechanism for implementing the MSCP Plan/Subarea Plan substantially adheres to the CSS NCCP Guidelines.

g. Provide direction for monitoring and reporting on plan implementation.

The CSS NCCP Guidelines provide for monitoring and evaluating implementation of the NCCPs. (Process Guidelines, Section 6.) In conformance with the MSCP Plan (Section 6.4) and the Subarea Plan (Section 1.5.13), the Implementing Agreement (Section 14) establishes an implementation plan to monitor species and their associated habitats. A habitat conservation accounting model and a procedure report to the USFWS and CDFG will provide for continual tracking of habitat lost and preserved in the subregion and subarea planning areas.

CDFG hereby finds that the MSCP Plan/Subarea Plan substantially adhere to the CSS NCCP Guidelines provisions concerning monitoring and reporting on NCCP implementation.

h. Amending plan consistent with the initial intent of plan (§2825(a)(10)).

The CSS NCCP Guidelines do not specifically address the amendment of NCCPs once they are finalized, so it is not necessary to find that the MSCP Plan and the Subarea Plan adhere to the Guidelines in this regard. Nonetheless, the Implementing Agreement includes amendment provisions that allow defined minor amendments, and other amendments with appropriate review and approval.

i. Interim Strategy Guidelines.

In addition to the above required elements, the CSS NCCP Guidelines included provisions addressing the destruction of coastal sage scrub habitat during the interim planning period leading up to the final preparation and implementation of NCCPs. (Process Guidelines, Section 4; Conservation Guidelines, Section 4) Interim take permits and conservation planning during this interim period have complied with the "interim strategy" requirements of the CSS NCCP Guidelines (Chapters 4 and 6 of the EIR/EIS, and County of San Diego Quarterly Reports to date) and total coastal sage scrub acreage impacted is significantly less than the 5% allowance in the CSS NCCP Guidelines.

CDFG hereby finds that the County of San Diego has substantially adhered to the CSS NCCP Guidelines provisions concerning the loss of coastal sage scrub habitat prior to preparation and implementation of the MSCP Plan and the Subarea Plan.

G. CESA.

CESA states,

The Legislature further finds and declares that it is the policy of the state that state agencies should not approve projects as proposed which would jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat essential to the continued existence of those species, if there are reasonable and prudent alternatives available consistent with conserving the species or its habitat which would prevent jeopardy.

Furthermore, it is the policy of this state and the intent of the Legislature that reasonable and prudent alternatives shall be developed by the department, together with the project proponent and the state lead agency, consistent with conserving the species, while at the same time maintaining the project purpose to the greatest extent possible. (§2053.)

CESA also requires that all state agencies, boards, and commissions shall seek to conserve endangered species and threatened species and shall utilize their authority in furtherance of the purposes of CESA. (§2055.) CDFG must ensure that its approval of the MSCP Plan and the Subarea Plan does not conflict with this responsibility.

CDFG hereby finds that the MSCP Plan and the Subarea Plan , if properly implemented, will not jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat essential to the continued existence of those species. CDFG further finds that the MSCP Plan and the Subarea Plan will assist in the conservation of endangered species, threatened species and other species of concern.

III. CDFG Approval.

Based on the foregoing analysis and findings, CDFG finds,

- ◆ that the MSCP Plan/Subarea Plan meets all necessary requirements for a natural community conservation plan;
- ◆ that the MSCP Plan/Subarea Plan prescribes a mitigation strategy under which each project covered by the MSCP Plan/Subarea Plan will be required only to provide mitigation or conservation that is proportional to the project's expected impacts to the southwestern San Diego County ecosystem; and
- ◆ that the mitigation strategy described in the MSCP Plan/Subarea Plan evidences a clear nexus between mitigation required for projects covered by the MSCP Plan/Subarea Plan and the projects' expected impacts to the southwestern San Diego County ecosystem.

Based on these findings, pursuant to §2820, CDFG hereby approves the County of San

Diego Subarea Plan, as an integrated part of the MSCP Plan, for implementation as an NCCP.

IV. Take Authorization.

Pursuant to §2835, CDFG may permit the taking of any identified species whose conservation and management is provided for in a CDFG approved natural communities conservation plan. CDFG hereby authorizes take of the species identified below incidental to development and growth activities that are subject to, and are carried out in compliance with the MSCP Plan, the Subarea Plan, and the Implementing Agreement.

A. Scope of Take Authorization.

Development and growth activities potentially subject to and covered by the MSCP Plan, Subarea Plan and the Implementing Agreement include,

1. Urban facilities, structures, and uses, without limitation,
2. Residential, commercial, facilities and infrastructure improvements,
3. Road and related transportation facilities,
4. Agricultural activities on specified lands, and
5. Development and management of permanent, multi-habitat preserves within the MHPA.

B. Identified Species.

The following 85 species will be affected by public and private projects and activities covered by the Subarea Plan. While the Subarea Plan provides benefits for these species, it may also subject them to direct and indirect adverse impacts associated with public and private projects and activities covered by the Subarea Plan. Species evaluations and findings are described in the MSCP Plan (Volume I). Estimated habitat loss, by vegetation community, is detailed in the Subarea Plan as approved by the Board of Supervisors on October 22, 1997. This list constitutes the list of "Covered Species Subject to Incidental Take," pursuant to the Implementing Agreement. Species listed under CESA are underlined.

Plants

1. California orcutt grass (*Orcuttia californica*) (endangered)
2. Coastal dunes milk vetch (*Astragalus tener* var. *titi*) (endangered)
3. Dehesa bear-grass (*Nolina interrata*) (endangered)
4. Dunn's mariposa lily (*Calochortus dunnii*) (rare)

5. Encinitas baccharis (*Baccharis vanessae*) (endangered)
6. Gander's butterweed (*Senecio ganderi*) (rare)
7. Nevin's barberry (*Berberis nevinii*) (endangered)
8. Otay mesa mint (*Pogogyne nudiuscula*) (endangered)
9. Otay tar plant (*Hemizonia conjugens*) (endangered)
10. Salt marsh bird's beak (*Cordylanthus maritimus* spp. *maritimus*) (endangered)
11. San Diego button-celery (*Eryngium aristulatum* spp. *parishii*) (endangered)
12. San Diego mesa mint (*Pogogyne abramsii*) (endangered)
13. San Diego thorn-mint (*Acanthomintha ilicifolia*) (endangered)
14. Short-leaved dudleya (*Dudleya blochmaniae* ssp. *brevifolia*) (endangered)
15. Small-leaved rose (*Rosa minutifolia*) (endangered)
16. Thread-leaf brodiaea (*Brodiaea filifolia*) (endangered)
17. Willow monardella (*Monardella linoides* ssp. *viminea*) (endangered)
18. Aphanisma (*Aphanisma blitoides*)
19. Coast wallflower (*Erysimum ammodophilum*)
20. Del Mar manzanita (*Arctostaphylos glandulosa* var. *crassifolia*)
21. Del Mar Mesa sand aster (*Lessingia filaginifolia* var. *linifolia*)
22. Dense reed grass (*Calamagrostis koelerioides*)
23. Felt-leaved monardella (*Monardella hypoleuca* ssp. *lanata*)
24. Gander's pitcher sage (*Lepechinia ganderi*)
25. Heart-leaved pitcher sage (*Lepechinia cardiophylla*)
26. Lakeside ceanothus (*Ceanothus cyaneus*)
27. Narrow-leaved nightshade (*Solanum tenuilobatum*)
28. Nuttall's lotus (*Lotus nuttallianus*)
29. Orcutt's bird beak (*Cordylanthus orcuttianus*)
30. Otay manzanita (*Arctostaphylos otayensis*)
31. Palmer's ericameria (*Ericameria palmeri* ssp. *palmeri*)
32. Parry's tetracoccus (*Tetracoccus dioicus*)
33. Protstrate navarretia (*Navarretia fossalis*)
34. San Diego ambrosia (*Ambrosia pumila*)
35. San Diego barrel cactus (*Ferocactus viridescens*)
36. San Diego Golden star (*Muilla clevelandii*)
37. San Miguel savory (*Satureja chandleri*)
38. Shaw's agave (*Agave shawii*)
39. Slender-pod jewelflower (*Caulanthus stenocarpus*)
40. Sticky dudleya (*Dudleya viscida*)
41. Tecate cypress (*Cupressus forbesii*)
42. Torrey pine (*Pinus torreyana* ssp. *torreyana*)
43. Variegated dudleya (*Dudleya variegata*)

Amphibians

- 44. Arroyo southwestern toad (*Bufo microscaphus californicus*)
- 45. California red-legged frog (*Rana aurora draytonii*)

Reptiles

- 46. Orange-throated whiptail (*Cnemidophorus hyperythrus beldingi*)
- 47. San Diego horned lizard (*Phrynosoma coronatum blainvillei*)
- 48. Southwestern pond turtle (*Clemmys marmorata ssp. pallida*)

Birds

- 49. American peregrine falcon (*Falco peregrinus*) (endangered)
- 50. Bald eagle (*Haliaeetus leucocephalus*) (endangered)
- 51. Belding's savannah sparrow (*Passerculus sandwichensis ssp. beldingi*) (endangered)
- 52. California brown pelican (*Pelecanus occidentalis ssp. californicus*) (endangered)
- 53. California least tern (*Sterna antillarum ssp. browni*) (endangered)
- 54. Least Bell's vireo (*Vireo bellii ssp. pusillus*) (endangered)
- 55. Light-footed clapper rail (*Rallus longirostris ssp. levipes*) (endangered)
- 56. Southwestern willow flycatcher (*Empidonax trailli extimus*) (endangered)
- 57. Swainson's Hawk (*Buteo swainsoni*) (threatened)
- 58. California rufous-crowned sparrow (*Aimophila ruficeps ssp. canescens*)
- 59. Canada goose (*Branta canadensis moffitti*)
- 60. Coastal California gnatcatcher (*Polioptila californica ssp. californica*)
- 61. Coastal cactus wren (*Campylorhynchus brunneicapillus ssp. couesi*)
- 62. Cooper's hawk (*Accipiter cooperi*)
- 63. Elegant tern (*Sterna elegans*)
- 64. Ferruginous hawk (*Buteo regalis*)
- 65. Golden eagle (*Aquila chrysaetos canadensis*)
- 66. Large-billed savannah sparrow (*Passerculus sandwichensis*)
- 67. Long-billed curlew (*Numenius americanus*)
- 68. Mountain plover (*Charadrius montanus*)
- 69. Northern harrier (*Circus cyaneus*)
- 70. Reddish egret (*Egretta rufescens*)
- 71. Tricolored blackbird (*Agelaius tricolor*)
- 72. Western bluebird (*Sialia mexicana*)
- 73. Western burrowing owl (*Speotyto cunicularia ssp. hypugasa*)
- 74. Western snowy plover (*Charadrius alexandrinus ssp. nivosus*)
- 75. White-faced ibis (*Plegadis chihi*)

Mammals

- 76. American Badger (*Taxidea taxus*)
- 77. Southern mule deer (*Odocoileus hemionus fuliginata*)
- 78. Mountain Lion (*Felis concolor*)

Invertebrates

- 79. Riverside fairy shrimp (*Streptocephalus woottoni*)
- 80. Salt marsh skipper (*Panoquina errans*)
- 81. San Diego fairy shrimp (*Branchinecta sandiegoensis*)
- 82. Thorne's hairstreak butterfly (*Mitoura thornei*)

Plants

- 83. Orcutt's brodiaea (*Brodiaea orcuttii*)
- 84. Snake cholla (*Opuntia parryi* var. *serpentina*)
- 85. Wart-stemmed ceanothus (*Ceanothus verrucosus*)

C. Conservation and Management Measures.

This take authorization is specifically contingent on the following:

- ◆ All requirements detailed in the MSCP Plan and the Subarea Plan shall be implemented by the County of San Diego as specified in the Implementing Agreement between the Department, the USFWS and the County of San Diego.
- ◆ This take authorization shall commence on the date of this NCCP Approval and shall remain effective, subject to the Implementing Agreement, for so long as this NCCP Approval is effective.

D. Additional Species.

In the event that a species not identified in this take authorization is listed as endangered or threatened pursuant Fish and Game Code Section 2070, or is a candidate for such listing pursuant to Fish and Game Code Section 2074.2, the Department shall consider, and if appropriate, expeditiously act to negotiate and execute, a memorandum of understanding with the County of San Diego providing for the conservation and management of the species in order to extend this take authorization to the species.

In determining whether any further mitigation measures are required to amend this take authorization to include an additional species, the Department shall follow the process described in the MSCP Plan.

E. Limitations.

This take authorization does not constitute or imply compliance with, or entitlement to proceed with any project under laws and regulations beyond the authority and jurisdiction of the Department. The County of San Diego has independent responsibility for compliance with any and all applicable laws and regulations.

V. Federal 4(d) Rule.

The special 4(d) Rule for the California gnatcatcher, adopted by USFWS on December 10, 1993, provides, in part:

Incidental take of the coastal California gnatcatcher will not be considered a violation of § 9 of the Endangered Species Act of 1973, as amended (Act), if it results from activities conducted pursuant to the State of California's Natural Community Conservation Planning Act of 1991, and in accordance with a NCCP plan for the protection of CSS habitat, prepared consistent with the State's NCCP Conservation and Process Guidelines, provided that:

(I) The NCCP plan has been prepared, approved, and implemented pursuant to Fish & Game Code §§ 2800 - 2840; and

(ii) The Fish and Wildlife Service has issued written concurrence that the NCCP plan meets the standards set forth in 50 CFR 17.32(b)(2).

CDFG's findings herein are intended to demonstrate that the MSCP Plan/Subarea Plan has been prepared, approved and implemented in compliance with subsection (I) above.

VI. Suspension and Termination.

This NCCP Approval is subject to suspension or termination by action of the Director of CDFG.

VII. Duration.

This NCCP Approval shall remain effective for 50 years from the effective date below, unless suspended, terminated or extended by earlier action of the Director of CDFG.

Signed: Jacqueline E. Schafer Date: March 17, 1998
Jacqueline E. Schafer, Director
California Department of Fish and Game