

**Natural Community Conservation Plan
Approval and Take Authorization**

**California Department of Fish and Game
Approval and Supporting Findings
for the
City of La Mesa 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 section 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." (Fish and G. Code § 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, Fish and Game Code section 2050, et seq. ("CESA"). (Fish and G. Code § 2810.)

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. (Fish and G. Code §§ 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. (Fish and G. Code § 2820.)

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

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

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

The City of La Mesa Subarea Plan ("Subarea Plan") was adopted by the La Mesa City Council on January 27, 1998. 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 USFWS, the CDFG and the City of La Mesa, executed concurrently with this NCCP Approval ("Implementing Agreement"). 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 MSCP identified coastal sage scrub as the only significant natural habitat within the City of La Mesa. Approximately 208 acres exist within the City limits divided into three distinct blocks. The western block contains 11 acres, the central block contains 159 acres, and the eastern block contains 38 acres. Of the total amount, 55 acres will be preserved as permanent open space and habitat area through the granting of an open space easement to the City in association with implementation of the Eastridge Specific Plan and Tentative Tract Map 90-02.

The remainder of the coastal sage scrub habitat will be removed in association with other residential development over a period of time. It was determined that this acreage is not biologically significant to the long-term preservation of coastal sage scrub habitat in the region due to its size and isolated location. However, the taking of this habitat will require off-site mitigation. Off-site acquisition of habitat land will occur within the MSCP Multi-Habitat Preserve Area, either within the City of Poway's Subarea Habitat Conservation Plan or at other locations approved by the USFWS and the CDFG.

On-site mitigation for any habitat type would occur only if it is considered appropriate for wetland impacts in the context of the Section 404 permitting process or on-site preservation is deemed necessary by the wildlife agencies for the survival of a rare species.

D. Implementing Agreement.

Each MSCP Plan subarea plan, including the City of La Mesa'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 City of La Mesa 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 CDFG 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."

A. 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 (Fish and G. Code § 2805(a)).

As described above, the MSCP area comprises 900 square miles of coastal sage and interdigitated scrub habitat. The Subarea Plan encompasses 6,200 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), Negative Declaration adopted 1/27/98 by the City of La Mesa, 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 Fish and Game Code section 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 six (6) vegetation communities targeted for preservation and/or management. Approximately 55 acres of coastal sage scrub will be preserved within the City limits as a result of a dedicated open space easement to be maintained by the private property owner. Other property owners within the City of La Mesa may mitigate the loss of habitat by acquiring and dedicating in perpetuity, property within the

City of Poway's preserve areas in conformance with Section 6, Land Use and Management, of the Poway Subarea Habitat Conservation Plan. As an alternative to the actual acquisition of land, property owners may also participate in the City of Poway's in-lieu fee program. Funding of the management and maintenance of the preserve areas is established in Section 7.6, Acquisition/Mitigation, of the Poway Subarea Plan as a one-time per acre fee to be paid by La Mesa property owners.

Property owners within the City of La Mesa may also mitigate the loss of habitat elsewhere within the boundaries of the MSCP in conformance with this Plan and/or any applicable approved subarea plan. In these cases, property owners will be required to submit a project mitigation plan outlining the required mitigation, including the management of all mitigation preserve areas and their required funding.

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 City of La Mesa existing development review and building and grading permit review processes provide protection to native vegetation habitats within the City's jurisdiction. These measures will ensure that no habitat is lost in the City before mitigation for that habitat is assured. By requiring off-site mitigation, the City of La Mesa is contributing to the preservation of habitat land identified in the MSCP as core biological resource areas and associated habitat linkages.

As a participating agency in the NCCP, the City of La Mesa is committed to cooperating with the development and implementation of regional funding mechanisms for the acquisition and maintenance of habitat within the MSCP Multi-Habitat Preserve Area.

As further described and analyzed in the MSCP Plan and the Subarea Plan, Chapters 4-6 of the EIR/EIS, 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 Fish and Game Code section 2805(a).

3. An NCCP Must Allow Compatible and Appropriate Development and Growth (Fish and G. Code § 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, 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 Fish and Game Code section 2805(a).

4. Is Consistent with NCCP Planning Agreement (Fish and G. Code § 2820).

Pursuant to Fish and Game Code section 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 City of La Mesa 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 Fish and Game section 2820.

5. Provides for the Conservation and Management of Species Subject to Take (Fish and G. Code § 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, 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 Fish and Game Code section 2835.

B. 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.

C. 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.

D. Conservation Guidelines.

The Conservation Guidelines were prepared pursuant to Fish and Game Code section 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.

E. 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 Fish and Game Code section 2825(a).

1. Defining the Scope of a Conservation Planning Area (Fish and G. Code § 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 City of La Mesa City Council adopted the City of La Mesa Subarea Habitat Conservation Plan/Natural Community Conservation Plan on January 27, 1998.

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.

2. Determining Conservation Standards, Guidelines and Objectives for The Planning Area (Fish and G. Code § 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 requires that the loss of habitat be mitigated by acquiring and dedicating in perpetuity, property within the City of Poway's preserve areas in conformance with Section 6, Land Use and Management, of the Poway Subarea Habitat Conservation Plan. The Poway 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 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.

3. 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 (Fish and G. Code §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.

4. Ensuring Compatibility with the Federal Endangered Species Act (FESA) (Fish and G. Code § 2825(a)(6).).

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

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

5. Obtaining approval of the MSCP Plan and Subarea Plan by CDFG (Fish and G. Code § 2825).

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.

6. Provisions for Implementation of the Plan (Fish and G. Code § 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.

7. 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 adheres to the CSS NCCP Guidelines provisions concerning monitoring and reporting on NCCP implementation.

8. Amending Plan Consistent with the Initial Intent of Plan
(Fish and G. Code § 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.

9. 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.) The City has not approved any interim take permits.

CDFG hereby finds that the City of La Mesa 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. (Fish and G. Code § 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. (Fish and G. Code § 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,

- ▶ The MSCP Plan/Subarea Plan meets all necessary requirements for a natural community conservation plan;
- ▶ 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 a level of mitigation or conservation that is proportional to the project's expected impacts to the southwestern San Diego County ecosystem; and
- ▶ 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 Fish and Game Code § 2820, CDFG hereby approves the City of La Mesa Subarea Plan, as an integrated part of the MSCP Plan, for implementation as an NCCP.

IV. Take Authorization

Pursuant to Fish and Game Code section 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 may 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 1). Estimated loss of coastal sage scrub is provided in the Subarea Plan as adopted by the La Mesa City Council, January, 1998. 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. Willowy monardella (*Monardella linoides* ssp. *viminea*) (endangered)
18. Aphanisma (*Aphanisma blitoides*)

19. Coast wallflower (*Erysimum ammosophilum*)
20. Del Mar manzanita (*Arctostaphylos glandulosa* var. *crassifolia*)
21. Del Mar Mesa sand aster (*Lessingia filaginifolia* var. *linifolia*)
22. Dense reed grass (*Calamogrostis 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*)

- 44. Orcutt's brodiaea (*Brodiaea orcuttii*)
- 45. Snake cholla (*Opuntia parryi* var. *serpentina*)
- 46. Wart-stemmed ceanothus (*Ceanothus verrucosus*)

Amphibians

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

Reptiles

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

Birds

- 52. American peregrine falcon (*Falco peregrinus*) (endangered)
- 53. Bald eagle (*Haliaeetus leucocephalus*) (endangered)
- 54. Belding's savannah sparrow (*Passerculus sandwichensis* ssp. *beldingi*) (endangered)
- 55. California brown pelican (*Pelecanus occidentalis* ssp. *californicus*) (endangered)
- 56. California least tern (*Sterna antillarum* ssp. *browni*) (endangered)
- 57. Least Bell's vireo (*Vireo bellii* ssp. *pusillus*) (endangered)
- 58. Light-footed clapper rail (*Rallus longirostris* ssp. *levipes*) (endangered)
- 59. Southwestern willow flycatcher (*Empidonax trailli extimus*) (endangered)
- 60. Swainson's Hawk (*Buteo swainsoni*) (threatened)
- 61. California rufous-crowned sparrow (*Aimophila ruficeps* ssp. *canescens*)
- 62. Canada goose (*Branta canadensis moffitti*)
- 63. Coastal California gnatcatcher (*Polioptila californica* ssp. *californica*)
- 64. Coastal cactus wren (*Campylorhynchus brunneicapillus* ssp. *couesi*)
- 65. Cooper's hawk (*Accipiter cooperi*)
- 66. Elegant tern (*Sterna elegans*)
- 67. Ferruginous hawk (*Buteo regalis*)
- 68. Golden eagle (*Aquila chrysaetos canadensis*)

69. Large-billed savannah sparrow (*Passerculus sandwichensis*)
 70. Long-billed curlew (*Numenius americanus*)
 71. Mountain plover (*Charadrius montanus*)
 72. Northern harrier (*Circus cyaneus*)
 73. Reddish egret (*Egretta rufescens*)
 74. Tricolored blackbird (*Agelaius tricolor*)
 75. Western bluebird (*Sialia mexicana*)
 76. Western burrowing owl (*Speotyto cunicularia ssp. hypugasa*)
 77. Western snowy plover (*Charadrius alexandrinus ssp. nivosus*)
-
78. White-faced ibis (*Plegadis chihi*)

Mammals

79. American badger (*Taxidea taxus*)
80. Southern mule deer (*Odocoileus hemionus fuliginata*)
81. Mountain lion (*Felis concolor*)

Invertebrates

82. Riverside fairy shrimp (*Streptocephalus woottoni*)
83. Salt marsh skipper (*Panoquina errans*)
84. San Diego fairy shrimp (*Branchinecta sandiegoensis*)
85. Thorne's hairstreak butterfly (*Mitoura thornei*)

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 City of La Mesa as specified in the Implementing Agreement between CDFG, the USFWS and the City of La Mesa.
- ▶ 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.
- ▶ The take of Covered Species that are fully protected species pursuant to Fish and Game Code § 3511, §4700, §5050, or §5515 is not authorized.

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 City of La Mesa 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 City of La Mesa 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 Section 9 of the Endangered Species Act of 1973, as amended (Act), if it results from activities conducted pursuant to the State of California's Natural Community Conservation Planning Act of 1991, 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 USFWS 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.

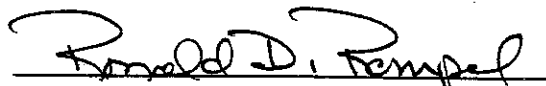
VI. Suspension and Termination

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 written below, unless suspended, terminated or extended by earlier action of the Director of CDFG.

Date: Nov 16, 1999


Ronald D. Rempel, Deputy Director
California Department of Fish and Game

**CALIFORNIA DEPARTMENT OF FISH AND GAME
CEQA FINDINGS FOR APPROVAL OF THE
CITY OF LA MESA SUBAREA PLAN TO IMPLEMENT THE
MULTIPLE SPECIES CONSERVATION PLAN IN
SOUTHWESTERN SAN DIEGO COUNTY**

Introduction:

The California Environmental Quality Act ("CEQA"; Public Resources Code § 21000, et seq.) and the State CEQA Guidelines ("CEQA Guidelines"; 14 Cal. Code Regs. § 15000, et seq.), require that no public agency shall approve or carry out a project for which an environmental impact report has been completed that identifies one or more significant effects, unless such an agency makes one or more of the following findings as to each significant effect:

- (a) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment;
- (b) Such changes or alterations are within the responsibility and jurisdiction of another public agency, and have been, or can and should be adopted by that other agency; or
- (c) Specific economic, legal, social, technological, or other considerations make infeasible the mitigation measures or alternatives identified in the environmental impact report (Public Resources Code ("PRC") § 21081 and CEQA Guidelines § 15091).

All Natural Community Conservation Plans ("NCCPs") must be approved by the California Department of Fish and Game ("CDFG"). (Fish and Game Code § 2820.) CDFG's approval of an NCCP is a discretionary action and is subject to CEQA. However, CDFG is rarely a "Lead Agency" under CEQA for the purpose of an NCCP approval; CDFG is usually a "Responsible Agency." A Responsible Agency has a more limited role than the Lead Agency in the environmental review of a project under CEQA. A CEQA Responsible Agency must review the environmental document certified by the Lead Agency for a project and make certain determinations concerning the project's potential to cause significant, adverse environmental effects. (CEQA Guidelines §15096.) However, a Responsible Agency determines only whether the document prepared by the Lead Agency is adequate with regard to those project activities which the Lead Agency is required to carry out or approve, or which will be subject to the Responsible Agency's authority. In acting as a Responsible Agency for the purpose of approving an NCCP, CDFG must ensure only that the NCCP will adequately

avoid or mitigate the direct or indirect effects on wildlife and wildlife habitat from project activities addressed in the NCCP. CDFG's findings regarding NCCP approvals are therefore more focused than the findings of the Lead Agency funding, approving, or carrying out the project activities addressed in an NCCP.

These CEQA findings pertain to CDFG's proposed approval of the City of La Mesa Natural Community Conservation Subarea Plan ("**Subarea Plan**"), issuance of a NCCP Take Authorization in conjunction with the Subarea Plan, and the execution of the *Implementing Agreement by and between the United States Fish and Wildlife Service, the California Department of Fish and Game and the City of La Mesa* ("**Implementing Agreement**"). Collectively, these actions are referred to herein as CDFG's "**NCCP Approval**." CDFG is a CEQA Responsible Agency for the purpose of the NCCP Approval.

The Subarea Plan implements the City of La Mesa's component of a much larger and comprehensive subregional program, the Multiple Species Conservation Program ("**MSCP**"), which encompasses twelve local agency jurisdictions and 582,243 acres in the southwestern part of San Diego County. The City of San Diego developed an implementation plan for the MSCP ("**MSCP Plan**"), which encompasses all twelve local jurisdictions within the MSCP planning area. The City of La Mesa's Subarea Plan implements the MSCP Plan on 6,200 acres within the City of La Mesa's jurisdiction. The MSCP Plan and the Subarea Plan together form an integrated NCCP that addresses impacts to wildlife and wildlife habitat that may result from planned development activities within the jurisdictional boundaries of the City of La Mesa.

As the CEQA Lead Agency for the MSCP Plan, the City of San Diego, in consultation with CDFG and other Responsible Agency agencies, including the City of La Mesa, prepared the *Recirculated Draft Joint EIR/EIS for Issuance of Take Authorizations for Threatened and Endangered Species Due To Urban Growth within the Multiple Species Conservation Program (MSCP) Planning Area*, dated August, 1996 and the *Final EIR/EIS for Issuance of Take Authorizations for Threatened and Endangered Species Due To Urban Growth within the Multiple Species Conservation Program (MSCP) Planning Area*, dated January 1997 (LDR No. 9300287, SCH No. 93121073) (collectively, the "**Joint Programmatic EIR/EIS**"). The Joint Programmatic EIR/EIS was certified and adopted by the City of San Diego on March 18, 1997. At the same time that it prepared the Joint Programmatic EIR/EIS, the City of San Diego also prepared an NCCP subarea plan to implement the MSCP Plan within the City of San Diego's boundaries. Based on the Joint Programmatic EIR/EIS, on July 16, 1997, CDFG made CEQA Findings regarding the MSCP Plan, approved the MSCP Plan, and approved the City of San Diego subarea plan.

The Joint Programmatic EIR/EIS prepared by the City of San Diego is a program Environmental Impact Report ("**EIR**") encompassing both the MSCP and the subarea plans for each of the participating local agencies. Under CEQA, a program EIR can be prepared for a series of actions that are: 1) related geographically; 2) are logical parts in a series of contemplated actions; 3) are connected with issuance of rules, regulations, plans, or other general criteria governing the conduct of a continuing program; or 4) as individual activities carried out under the same authorizing statutory or regulatory authority having generally

similar environmental effects which can be mitigated in similar ways. A program EIR may be used to evaluate the environmental effects of activities within a program that occur after the program EIR is certified as complete. However, the subsequent activities must be examined in light of the program EIR to determine if a subsequent or supplemental environmental document must be prepared. Implementation of the MSCP includes the preparation and implementation of subarea plans by the participating local agencies. The City of La Mesa's Subarea Plan is therefore a subsequent project or activity within the MSCP program and is addressed at a programmatic level in the Joint Programmatic EIR/EIS.


Under CEQA, when an EIR or program EIR has been certified for a project, a subsequent EIR cannot be required for the project unless the Lead Agency finds that substantial changes are proposed in the project, substantial changes occur with respect to the circumstances under which the project is being undertaken, or there is new information regarding potentially significant environmental effects which was not known and could not have been known at the time the EIR was certified as complete. Unless one of these circumstances occurs with regard to MSCP subarea plans, the Joint Programmatic EIR/EIS may be used for purposes of analyzing the potentially significant, adverse, environmental effects that may result from implementation of the subarea plans within the MSCP program. Each local agency which prepares a subarea plan must determine whether one of the circumstances warranting a subsequent EIR has occurred.

The City of La Mesa, as a Lead Agency under CEQA for purposes of the Subarea Plan, prepared the *Environmental Assessment and Initial Study for the Issuance of an Incidental Take Permit and Management Authorization to the City of La Mesa for the California Gnatcatcher* ("Environmental Assessment") and adopted a negative declaration on January 27, 1998. The City of La Mesa then submitted the Subarea Plan to CDFG for approval as an NCCP.

CDFG Hereby Adopts the Following Findings Regarding the Subarea Plan:

CDFG finds 1) that the La Mesa Subarea Plan is within the scope of the approved MSCP; 2) that the Joint Programmatic EIR/EIS and the City of La Mesa's Environmental Assessment and Negative Declaration adequately address the potentially significant, adverse, environmental effects of implementation of the Subarea Plan; and 3) that a subsequent or supplemental EIR is not warranted. Based on the Joint Programmatic EIR/EIS, the negative declaration, the Subarea Plan and the Implementing Agreement, CDFG finds that the NCCP Approval may result in significant adverse effects on the environment as described in the Joint Programmatic EIR/EIS. CDFG further finds that changes or alterations have been required in, or incorporated into, the Subarea Plan by CDFG and the City of La Mesa that avoid or substantially lessen the significant environmental effects, as set forth in the Joint Programmatic EIR/EIS, the negative declaration, and the Implementing Agreement.

DATE: Nov 16, 1999


RONALD D. REMPEL, Deputy Director
CA DEPARTMENT OF FISH AND GAME