

IMPLEMENTING AGREEMENT

by and among

UNITED STATES FISH AND WILDLIFE SERVICE

CALIFORNIA DEPARTMENT OF FISH AND GAME

CITY OF CHULA VISTA

**TO ESTABLISH A MULTIPLE SPECIES CONSERVATION PROGRAM ("MSCP")
FOR THE CONSERVATION OF THREATENED, ENDANGERED AND OTHER
SPECIES IN THE VICINITY OF CHULA VISTA, CALIFORNIA**

FEBRUARY 2003

This Implementing Agreement ("Agreement") is entered into as of the _____ day of _____, 2002, by and among the UNITED STATES FISH AND WILDLIFE SERVICE ("USFWS"), an Agency of the United States Department of the Interior; the CALIFORNIA DEPARTMENT OF FISH AND GAME ("CDFG"), a Subdivision of the California Resources Agency; and THE CITY OF CHULA VISTA ("CITY"), a municipal corporation, hereinafter collectively called the "Parties."

AGREEMENT

Based upon the recitals, definitions, mutual covenants and obligations, and other provisions set forth below, and other valuable consideration, the Parties agree as follows:

1.0 RECITALS

1.1 The Multiple Species Conservation Program ("MSCP Subregional Plan") describes a cooperative federal, state and local program of conservation for a number of "Covered Species" of plants and animals. The MSCP Subregional Plan is a product of lengthy study and negotiation by the Parties and other interested persons and entities, and represents coordination of private development and conservation interests with federal, state and local governments.

1.2 The MSCP Subregional Plan Area is depicted on the map attached to this Agreement as Exhibit A. The MSCP Subregional Area includes the territory of 12 general purpose agencies of government, listed in Exhibit B. These agencies may elect to participate in the MSCP, and upon preparing a Subarea Plan and obtaining Federal and State take authorizations, such agencies will become a "Participating Local Jurisdiction." Some regional public facility providers and special districts which operate within the MSCP Subregional Plan Area may also elect to participate in the MSCP. Upon preparing a Subarea Plan and obtaining Federal and State take authorizations, such entities will become a "Participating Special Entity."

1.3 A goal of the MSCP Subregional Plan is to conserve biodiversity in the MSCP Subregional Plan Area and to achieve certainty in the land development process for both private sector and public sector land development projects.

1.4 Pursuant to the federal Endangered Species Act ("ESA") and the California Endangered Species Act ("CESA"), the United States and the State of California, respectively, have identified certain plant and animal species which are or may be found in the MSCP Subregional Plan Area and which, pursuant to the ESA or CESA or other laws or programs, have been listed as threatened or endangered, have been proposed for listing as threatened or endangered, are candidates for listing as threatened or endangered, or which are otherwise of concern. Of such species, those which will be adequately conserved by the MSCP Subregional Plan when the MSCP Subregional Plan is fully implemented through subarea plans are referred to in this Agreement as "Covered Species." The independent and severable take authorizations issued to the CITY apply to Species Adequately Conserved (as defined herein) by the Chula Vista Subarea Plan, ("Subarea Plan") which are listed in Exhibit E. The take authorizations also apply to those species adequately conserved by the Chula Vista Subarea Plan in conjunction with other Subarea Plans currently in effect within the

MSCP Subregional Plan Area which are collectively referred to as "Chula Vista Covered Species." These species are also listed in Exhibit E. While the take authorizations are effective as to all Species Adequately Conserved so long as the CITY properly implements the Chula Vista Subarea Plan and without regard to the status of any other approved MSCP Subarea Plans, take authorizations for all other Chula Vista Covered Species shall remain effective for so long as the CITY, and all other approved MSCP subarea plans on which the conservation of the particular Chula Vista Covered Species depends, remain in effect and are properly implemented. Because take of listed plant species is not prohibited under the Federal ESA and therefore is not authorized under the Section 10(a)(1)(B) Permit issued to the CITY, plant species included on the list of Chula Vista Covered Species and Species Adequately Conserved are listed on the Section 10(a)(1)(B) Permit in recognition of the conservation measures and benefits provided for such plant species under the Chula Vista Subarea Plan. Any reference in this Agreement or in the Chula Vista Subarea Plan to Incidental Take or Take of Chula Vista Covered Species or Species Adequately Conserved shall, for the purpose of incidental take authorized under the Section 10(a)(1)(B) Permit, refer solely to species other than plants on the Chula Vista Covered Species list.

1.5 Future growth and land development within the MSCP Subregional Plan Area, including both public and private projects, may result in a reduction of Covered Species habitat and/or the taking of Covered Species incidental to the carrying out of otherwise lawful activities.

1.6 The CITY participated in the development of the MSCP Subregional Plan to meet the requirements of the ESA, the CESA, the Natural Community Conservation Planning Act of 1991 ("NCCP Act"), the National Environmental Policy Act ("NEPA") and the California Environmental Quality Act ("CEQA") with respect to public and private development in the greater San Diego area and to avoid potential obstacles posed by project-by-project review under the ESA and CESA. Consistent with the NCCP Act, the MSCP Subregional Plan is a broad-based planning effort intended to provide for effective protection and conservation of the region's wildlife and plant heritage while continuing to allow appropriate development and growth. Such planning is an effective tool in protecting the region's biodiversity while reducing conflicts between protection of wildlife and plants and the reasonable use of natural resources for economic development. The MSCP Subregional Plan has been developed through a cooperative effort involving the USFWS, CDFG, local government agencies, property owners, development interests, environmental groups, and the public within the MSCP Subregional Plan Area.

1.7 The MSCP Subregional Plan is a comprehensive, long-term habitat conservation plan for the Covered Species which addresses the needs of multiple species and the preservation of natural vegetation communities. The MSCP Subregional Plan addresses the potential impacts of urban growth, natural habitat loss and species endangerment, and creates a plan to mitigate for the potential loss of Covered Species and their habitat due to the direct, indirect, and cumulative impacts of future development of both private and public lands within the MSCP Subregional Plan Area.

1.8 The MSCP Subregional Plan as implemented through the CITY's Subarea Plan and this Agreement establishes the conditions under which the CITY, for the benefit of itself and of public and private landowners and other land development project proponents within its Subarea boundaries, will receive from the USFWS and the CDFG certain long-term take authorizations (and

an acknowledgment that the MSCP Subregional Plan satisfies the conditions established in the Section 4(d) Special Rule for the coastal California gnatcatcher) which will allow the taking of Chula Vista Covered Species and Species Adequately Conserved incidental to land development, construction of public facilities, and other lawful land uses which are authorized by the CITY.

1.9 As more particularly described in Section 1.4 of this Agreement, the take authorizations will authorize the Incidental Take of all Chula Vista Covered Species and Species Adequately Conserved, including those Chula Vista Covered Species and Species Adequately Conserved which are not presently listed as threatened, endangered or candidate species under the ESA or CESA. Conserving unlisted Chula Vista Covered Species and Species Adequately Conserved (the "taking" of which is not unlawful under the ESA or CESA) the same as listed Chula Vista Covered Species and Species Adequately Conserved (the taking of which is unlawful in the absence of a take authorization) equally in the MSCP Subregional Plan and the City of Chula Vista Subarea Plan may prevent such species from ever becoming threatened or endangered and will provide certainty regarding how the subsequent listing of such species under the ESA and CESA will affect permitting and mitigation requirements for future land development within the Chula Vista Subarea Plan.

1.10 Implementation of the MSCP Subregional Plan will allow the Participating Local Jurisdictions and Participating Special Entities to maintain development flexibility by proactively planning a regional preserve system which can meet future development project mitigation needs, while recognizing the independent land use planning and permitting authority of those entities.

1.11 Preservation of natural vegetation communities and wildlife will significantly enhance the quality of life in the MSCP Subregional Plan Area and set aside lands for the future use and enjoyment of the citizens within the MSCP Subregional Plan Area, the state and the nation.

1.12 The MSCP Subregional Plan was submitted to the USFWS and CDFG in support of, respectively, an application for a Section 10(a) Permit and a NCCP Authorization. The CDFG has approved the MSCP Subregional Plan, and the USFWS has issued written concurrence that the MSCP Subregional Plan meets the statutory criteria for issuance of a Section 10(a) Permit. The MSCP Subregional Plan is implemented through individual Subarea Plans, including the City of Chula Vista Subarea Plan, by having Participating Local Jurisdictions execute separate but coordinated agreements in a form substantially similar to this Agreement. Such agreements need not be executed at the same time. Instead, the USFWS and CDFG anticipate that implementation of the MSCP Subregional Plan will be phased in over time, through both the periodic addition of Participating Local Jurisdictions and Participating Special Entities, and the phased implementation of their respective MSCP-related obligations.

1.13 Any project approved by the CITY must be in conformance with the City of Chula Vista Subarea Plan, which incorporates the requirements of the MSCP Subregional Plan, including the habitat and species conservation goals and requirements found in Table 3-5 of the MSCP Subregional Plan (Appendix A of the City of Chula Vista Subarea Plan). In the event of any conflicts, the provisions of the City of Chula Vista Subarea Plan and this Agreement, which reflect a more particularized analysis of the conservation needs of Covered Species and their habitats within

the Chula Vista Subarea, supersede those of the MSCP Subregional Plan with respect to implementation of the City of Chula Vista Subarea Plan. The terms of this Agreement and the Subarea Plan shall be interpreted as supplementary to each other. In the event of any direct conflict between the provisions of this Agreement and the Subarea Plan, this Agreement shall control.

1.14 The purposes of this Agreement are:

- A. To ensure the implementation of the City of Chula Vista Subarea Plan;
- B. To contractually bind each of the Parties to fulfill and faithfully perform the obligations, responsibilities, and tasks assigned to it pursuant to the terms of the City of Chula Vista Subarea Plan and this Agreement; and,
- C. To provide remedies and recourse should any of the Parties fail to perform its obligations, responsibilities, and tasks as set forth in the MSCP, the City of Chula Vista Subarea Plan, and this Agreement.

2.0 DEFINITIONS

The following terms as used in this Agreement shall have the meanings set forth below:

2.1 "Additional Conservation Measures" means the conservation measures beyond those provided by the MSCP and the Subarea Plan which the USFWS and CDFG may seek from the CITY under the circumstances described in Sections 9.2(a) and 9.3 of this Agreement.

2.2 "Agreement" means this document.

2.3 "Appropriate Managing Entity" means the manager of any portion of the Preserve, including but not limited to, the CITY, a third-party under the direct control of the CITY, or the Otay Ranch Preserve Owner/Manager.

2.4 "CDFG" means the California Department of Fish and Game, a subdivision of the California Resources Agency charged with administering the California Endangered Species Act and the Natural Community Conservation Planning Act.

2.5 "CEQA" means the California Environmental Quality Act (Cal. Public Resources Code § 21000 et seq.), including all regulations promulgated pursuant to that Act.

2.6 "CESA" means the California Endangered Species Act (California Fish and Game Code § 2050 et seq.), including all regulations promulgated pursuant to that Act. CESA prohibits CDFG from authorizing any incidental take of a state-listed threatened or endangered species if that take would jeopardize the continued existence of the species.

2.7 "Changed Circumstances" means, pursuant to 50 C.F.R. 17.3, changes in

circumstances affecting a species or geographic area covered by the Chula Vista Subarea Plan that can reasonably be anticipated by plan developers, the USFWS, and CDFG and that can be planned for (e.g., the listing of new species, or a fire or other natural catastrophic event in areas prone to such events.) Changed Circumstances and planned responses to Changed Circumstances are identified in section 5.8 of the Chula Vista Subarea Plan.

2.8 "Chula Vista Covered Species" means those Covered Species adequately conserved by the Chula Vista Subarea Plan in conjunction with other approved MSCP subarea plans and for which Take is granted under the Section 10(a)(1)(B) Permit and NCCP Authorization, to the extent that take of one or more of such species is otherwise prohibited under state or federal law, for so long as the Chula Vista Subarea Plan and other MSCP subarea plans identified as necessary for the conservation of such species remain in effect. Chula Vista Covered Species include Species Adequately Conserved, as defined below, and are listed in Exhibit E of this Agreement.

2.9 "Chula Vista MSCP Planning Area" means the land within the CITY's General Plan boundaries, which includes area within the incorporated boundaries of the CITY and unincorporated areas of the County of San Diego, as depicted in Exhibit C and in Figure 1-2 of the Chula Vista Subarea Plan.

2.10 "Chula Vista Subarea" means the land within the incorporated boundary of the CITY as depicted in Exhibit C and in Figure 1-2 of the City of Chula Vista Subarea Plan, as may be modified from time to time by annexation in accordance with this Agreement.

2.11 "Chula Vista Subarea Plan" means the plan prepared by the CITY and reviewed and approved by the USFWS and CDFG, and adopted by the CITY as part of the CITY's General Plan, to implement the MSCP Subregional Plan within the Chula Vista Subarea.

2.12 "Covered Activities" means land uses, land and public infrastructure development, and conservation activities identified in the Chula Vista Subarea Plan and subject to the CITY's jurisdiction and control that may result in Incidental Take of Covered Species during the term of the Subarea Plan and for which Incidental Take coverage is provided under the take authorizations.

2.13 "Covered Project" means several specific projects involving land use development within the CITY in which hard-line Preserve boundaries have been established pursuant to the approved Chula Vista Subarea Plan, and where conservation measures consistent with the MSCP Subregional Plan and Chula Vista Subarea Plan have been or will be specified as binding conditions of approval in such Projects' plans and approvals. Covered Projects are shown on Figure 5-1 of the City of Chula Vista Subarea Plan, and are listed in Exhibit D to this Agreement. The conditions of coverage for each Covered Project are specified at 7.5.6 of the Subarea Plan.

2.14 "Covered Species" means all species within the MSCP Subregional Plan that will be adequately conserved by the MSCP and for which Take will be authorized when the MSCP is implemented through the Subarea Plans. Covered Species includes Species Adequately Conserved and Chula Vista Covered Species (for which Take Authorizations will be provided within in the Subarea), and all other MSCP Covered Species identified in the MSCP Subregional Plan, as listed in

Exhibit E and Table 4-1 of the City of Chula Vista Subarea Plan. For purposes of this Agreement, the City of Chula Vista Subarea Plan, and the Section 10(a)(1)(B) Permit and NCCP Authorization, "Covered Species" also includes the Quino checkerspot butterfly (*Euphrdryas editha quino*), even though the species is not on the MSCP Subregional Plan's list of MSCP Covered Species.

2.15 "Dependent upon" a significantly or sufficiently conserved vegetation community, as described in Section 4.2.4 of the MSCP Subregional Plan and as listed in Exhibit F to this Agreement, means that vegetation community provides the primary space for individuals of the species to feed, grow, reproduce, and/or undertake essential behavior patterns. A species is likely dependent upon a vegetation community if that vegetation community provides its primary sources of food, nutrition, substrate, cover and/or shelter, including sites for breeding, reproduction, pollination, and rearing of offspring on a continual or seasonal basis. If a species is considered dependent upon a sufficiently or significantly conserved vegetation community, then that vegetation community would provide the primary biological physical elements essential for the conservation of the species.

2.16 "Effective Date of Agreement" means the date following execution of this Agreement by all Parties, on which the last of the required take authorizations is issued.

2.17 "Effective Date of Take Authorizations" means the date upon which the Subarea Plan becomes effective through enactment of the last of the General Plan amendments and ordinances specified in the Chula Vista Subarea Plan.

2.18 "ESA" means the federal Endangered Species Act of 1973, as amended (16 U.S.C. § 1531 et seq.), including all regulations promulgated pursuant to that Act.

2.19 "Habitat Conservation Plan" and "HCP" mean the Multiple Species Conservation Program ("MSCP Subregional Plan") prepared by THE CITY OF SAN DIEGO for the MSCP Subregional Plan Area pursuant to Section 10(a) of the ESA (16 U.S.C. § 1539(a)) and the NCCP Act, and dated August 1998, and the Chula Vista Subarea Plan dated ____ as adopted by the CITY and approved by USFWS and CDFG.

2.20 "HLIT" means the Habitat Loss and Incidental Take Ordinance(s) of the CITY which establishes mitigation standards for biological resources and implements the Chula Vista Subarea Plan outside of Covered Projects. Third Party Beneficiary status will be extended to persons and entities under the jurisdiction and control of the CITY through permits issued pursuant to the HLIT.

2.21 "Incidental Take" means the Take of a species which is incidental to and not the purpose of the carrying out of an otherwise lawful activity. For purposes of the Section 10(a)(1)(B) Permit, Incidental Take refers solely to animal species.

2.22 "MBTA" means the federal Migratory Bird Treaty Act (16 U.S.C. § 701 et seq.), including all regulations promulgated pursuant to that Act.

2.23 "MSCP Subregional Plan" means the Multiple Species Conservation Program, a comprehensive habitat conservation planning program, adopted in August 1998, which addresses

multiple species habitat needs and the preservation of native vegetation for a 900-square mile area in southwestern San Diego County, California.

2.24 "MSCP Subregional Plan Area" consists of approximately 900 square miles in southwestern San Diego County, referred to in the MSCP Subregional Plan as the "MSCP Subregional Plan Study Area." The MSCP Subregional Plan Area is depicted on Exhibit A.

2.25 "Multi-Habitat Planning Area" or "MHPA" means the portion of the MSCP Subregional Plan Area, as described in Section 3.0 of the MSCP Subregional Plan, within which preserve planning is focused and within which permanent conservation of habitat lands will be accomplished through implementation of the subarea plans. Within each subarea, the MHPA is further defined by mapped boundaries and/or by quantitative targets for habitat conservation and other criteria as specified in the individual subarea plans.

2.26 "NCCP Act" means the California Natural Community Conservation Planning Act of 1991, as amended (California Fish and Game Code § 2800 et seq.), including all regulations promulgated pursuant to the Act. Amendments to the NCCP Act effective January 1, 2003 (Chapter 4, sections 1 and 2 of California statutes 2002 (S.B. 107)) expressly provide that the Chula Vista Subarea Plan will be solely governed in accordance with the NCCP Act as it read on December 31, 2001, and not by the other substantive provisions S.B. 107.

2.27 "NCCP Authorization" means the authorization issued in accordance with this Agreement by CDFG under California Fish and Game Code § 2835. The NCCP Authorization permits the Take of Chula Vista Covered Species, including those species listed under CESA as threatened or endangered, species that are candidates for such a listing, and unlisted species except that the NCCP Authorization does not as of the Effective Date authorize Take of five fully protected birds that are listed in Fish and Game Code section 3511 (golden eagle, American peregrine falcon, bald eagle, California brown pelican and California least tern) or the mountain lion, which is protected by Fish and Game Code section 4800.

2.28 "NCCP Plan" means a plan developed in accordance with the NCCP Act which provides comprehensive management and conservation of multiple wildlife species, and which identifies and provides for the regional or area-wide protection and perpetuation of natural wildlife diversity while allowing compatible and appropriate development and growth.

2.29 "No Surprises Rule" means the rule promulgated by USFWS and currently codified at 50 C.F.R. 17.3, 17.22(b)(5) and 17.32(b)(5) that extends certain assurances regarding future mitigation obligations to permittees obtaining incidental take permits under Section 10(a) of the Federal ESA.

2.30 "Operating Conservation Program" means the totality of the conservation and management measures provided for under the Chula Vista Subarea Plan to minimize, mitigate and monitor the impacts of take of the Covered Species as described in Sections 5 through 8 of the Plan. The Operating Conservation Program includes the CITY'S reporting obligations under the Section 10(a)(1)(B) Permit and NCCP Authorization and the CITY's responses to Changed Circumstances

described in Section 5 of the Plan.

2.31 "Otay Ranch Planning Component" means all territory within the Chula Vista MSCP Planning Area which is located within the Otay Ranch General Development Plan, which includes area within the incorporated boundaries of the CITY and unincorporated areas of the County of San Diego, as depicted in Figure 2-1 of the City of Chula Vista Subarea Plan.

2.32 "Participating Local Jurisdiction" means any of the local governments identified in Exhibit B which prepares and receives USFWS and CDFG approval of a Subarea Plan, and which enters into an Implementing Agreement with the USFWS and CDFG. It is anticipated that such Implementing Agreement will be substantially similar in form to this Agreement.

2.33 "Participating Special Entity" means any regional public facility provider (such as a utility company) or special district which operates and/or owns land within the MSCP Subregional Plan Area and which enters into an Implementing Agreement with the USFWS and CDFG pursuant to and consistent with the MSCP Subregional Plan and which is substantially similar in form to this Agreement.

2.34 "Party" and "Parties" mean the signatories to this Agreement, namely the United States Fish and Wildlife Service, the California Department of Fish and Game, and the CITY.

2.35 "Preserve" means areas within the CITY incorporated limits which have been dedicated and accepted by the CITY for permanent conservation and which will be managed for their biological resources.

2.36 "Preserve Owner/Manager" means the entity responsible for overseeing the day-to-day and long-range preserve management activities within the Otay Ranch Preserve, including but not limited to management of resources, restoration of habitat, and enforcement of open space restrictions.

2.37 "Section 4(d) Special Rule" means the regulation concerning the coastal California gnatcatcher, published by the USFWS on December 10, 1993 (58 Federal Register 65088) and codified at 50 C.F.R. § 17.41(b), which describes on particular set of conditions under which the Incidental Take of the coastal California gnatcatcher in the course of certain land use activities is lawful.

2.38 "Section 10(a)(1)(B) Permit" means the permit issued by the USFWS to the CITY under section 10(a)(1)(B) of the ESA (16 U.S.C. § 1539(a)(1)(B)) to allow the Incidental Take of animal species on the list of Species Adequately Conserved and the list of Chula Vista Covered Species and which identifies plant species which are adequately conserved by the Chula Vista Subarea Plan alone or in combination with other approved MSCP Subarea Plans.

2.39 "Significantly Conserved Vegetation Communities" means those vegetation communities described in Section 4.2.4 of the MSCP Subregional Plan and as listed on Exhibit F to this Agreement, which will be significantly conserved through implementation of the MSCP Subregional Plan and the approved Chula Vista Subarea Plan.

2.40 "Species Adequately Conserved" means those species listed in Exhibit E and Table 4-1 of the City of Chula Vista Subarea Plan which are adequately conserved by the Chula Vista Subarea Plan, and the CITY shall receive Take Authorizations for them regardless of the participation or continued participation of any other Participating Local Jurisdiction.

2.41 "Subarea" means the area encompassed by the Chula Vista Subarea Plan, as depicted in Exhibit C, and those areas within the Chula Vista Planning Area that are annexed to the CITY pursuant to the terms of this Agreement and to which the Section 10(a)(1)(B) Permit and/or NCCP Authorization shall apply.

2.42 "Sufficiently Conserved Vegetation Communities" means those vegetation communities described in Section 4.2.4 of the MSCP Subregional Plan and as listed on Exhibit F to this Agreement, which will be sufficiently conserved through implementation of the MSCP Subregional Plan and the approved Chula Vista Subarea Plan.

2.43 "Take" and "Taking" have the meaning provided by the ESA and the California Fish and Game Code, including relevant regulations and case law.

2.44 "Take Authorizations" means the authority granted through the Section 10(a)(1)(B) Permit and the NCCP Authorization.

2.45 "Third Party Beneficiary" means any landowner or other public or private entity, including those undertaking Covered Projects, that obtains and maintains Third Party beneficiary status in compliance with Sections 10 and 17 of this Agreement.

2.46 "USFWS" means the United States Fish and Wildlife Service, an agency of the United States Department of the Interior charged with administering the ESA.

2.47 "Wetlands" means generally those areas that are inundated or saturated by surface or ground water at a frequency or duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions. For purposes of the Chula Vista MSCP Subarea Plan, Wetlands are those lands which contain one or more of the naturally occurring wetland communities listed on Table 5-6 of the Chula Vista MSCP Subarea Plan and further described in Appendix B of the Chula Vista MSCP Subarea Plan. Wetlands also include areas lacking wetland communities due to non-permitted filling of previously existing Wetlands.

3.0 HABITAT CONSERVATION PLAN/NCCP PLAN

3.1 Pursuant to Section 10(a) of the ESA (16 U.S.C. § 1539(a)), the City of San Diego has prepared a Habitat Conservation Plan known as the "Multiple Species Conservation Program" or "MSCP Subregional Plan." The City of Chula Vista Subarea Plan, in conjunction with the MSCP Subregional Plan, qualifies as an NCCP Plan under the NCCP Act. The MSCP Subregional Plan and Chula Vista Subarea Plan propose a program of conservation for the Covered

Species and protection of their habitat in perpetuity through land use regulation, acquisition and management.¹ The CITY has submitted its Subarea Plan to the USFWS and the CDFG, and the CITY has requested that the USFWS issue a Section 10(a) Permit and that the CDFG issue a NCCP Authorization, each of which actions will allow the Incidental Take within the Subarea of those Covered Species determined by USFWS and CDFG to be adequately conserved by the MSCP Subregional Plan and the Chula Vista Subarea Plan in accordance with this Agreement (such species are designated as Chula Vista Covered Species and Species Adequately Conserved and are listed in Exhibit E). The CITY has also requested that the USFWS acknowledge that the MSCP Subregional Plan and the Chula Vista Subarea Plan satisfy the conditions under the Section 4(d) Special Rule to allow the Incidental Take of the coastal California gnatcatcher within the Subarea.

3.2 The MSCP Subregional Plan and Chula Vista Subarea Plan and each of their provisions are intended to be and by this reference are incorporated herein. This Agreement is intended to specify, in contract language, the obligations of the Parties under the MSCP Subregional Plan and Subarea Plan, recognizing that the MSCP Subregional Plan and Chula Vista Subarea Plan set forth in planning documents the components of a conservation plan and were not drafted as contract documents. In the event of any direct contradiction, conflict or inconsistency between the MSCP Subregional Plan and the Chula Vista Subarea Plan, the Chula Vista Subarea Plan shall control with respect to issues relating to the Subarea. In the event of any direct contradiction, conflict or inconsistency between the MSCP Subregional Plan or the Chula Vista Subarea Plan on the one hand, and this Agreement on the other, the terms of this Agreement shall control with respect to issues relating to the Subarea. In all other cases, the terms of this Agreement and the terms of the MSCP Subregional Plan and Subarea Plan shall be interpreted to be consistent with and complementary to each other.

4.0 PHASED IMPLEMENTATION

The MSCP Subregional Plan Area includes land within the jurisdictional boundaries of twelve local jurisdictions listed in Exhibit B. The USFWS and CDFG recognize and agree that the entire MSCP Subregional Plan will not be implemented simultaneously. Some local jurisdictions may be prepared to implement the MSCP Subregional Plan before others. Implementation of the MSCP Subregional Plan as a whole can and may be phased, with some local jurisdictions joining as Participating Local Jurisdictions (and some regional public facility providers and special districts joining as Participating Special Entities) earlier than others. As of the Effective Date, the USFWS and CDFG recognize and acknowledge that the County of San Diego, City of San Diego, the City of La Mesa, the City of Poway, and the City of Chula Vista have approved subarea plans and are considered Participating Local Jurisdictions. Furthermore, those local jurisdictions which become Participating Local Jurisdictions will receive take authorizations and will obtain the benefits of and incur the obligations imposed by those take authorizations irrespective of whether other local jurisdictions have also joined as and/or currently serve as a Participating Local Jurisdiction. The take authorizations will cover only those covered species determined by USFWS and CDFG to be adequately covered by the Chula Vista Subarea Plan (Species Adequately Conserved) and those

^{1/} The CDFG has approved the MSCP Subregional Plan, and the USFWS has issued written concurrence that the MSCP Subregional Plan meets the statutory criteria for issuance of a Section 10(a)(1)(B) Permit.

species determined by USFWS and CDFG to be adequately conserved by the Chula Vista Subarea Plan in conjunction with other approved Subarea Plans (Chula Vista Covered Species). These species are specifically identified in Exhibit E to the Chula Vista Implementing Agreement. The USFWS and CDFG also recognize and agree that the implementation of each Participating Local Jurisdiction's Subarea Plan will likewise be phased in over time in accordance with the schedule provided in each Subarea Plan and/or Implementing Agreement.

5.0 SEVERABILITY

The USFWS and CDFG recognize and agree that the take authorizations received by the CITY with respect to Species Adequately Conserved are independent and severable from the other take authorizations which have been or will be issued to other Participating Local Jurisdictions or Participating Special Entities, except as otherwise provided in this section. Subject to other provisions of this Agreement, the CITY's take authorizations for Species Adequately Conserved will remain effective so long as the CITY fulfills its obligations under the Subarea Plan, this Agreement, and the Section 10(a)(1)(B) Permit and NCCP Authorization to implement the MSCP Subregional Plan through the Chula Vista Subarea Plan, including its obligation under Section 9.14 to enforce the terms of the Subarea Plan, this Agreement and the Section 10(a)(1)(B) Permit and NCCP Authorization as to itself and to all Third Party Beneficiaries who receive Incidental Take authorization through the CITY's Section 10(a)(1)(B) Permit and NCCP Authorization. As to all other persons and entities within the City's jurisdiction and control, the City agrees to prohibit, through enforcement of its municipal code, development or other activities contrary to the Subarea Plan, whether or not those parties receive Incidental Take authorization through the CITY's take authorizations. The CITY's take authorizations with respect to Species Adequately Conserved may not be suspended, revoked or terminated without its consent due solely to the actions or inactions of any other person or entity, including the other local jurisdictions identified in Exhibit B (whether or not they have become Participating Local Jurisdictions) unless USFWS or CDFG determine that continuation of the permitted activity would appreciably reduce the likelihood of the survival and recovery in the wild of a Species Adequately Conserved or the actions or inactions of such persons or entities renders the CITY unable to implement the Chula Vista Subarea Plan. Notwithstanding the foregoing, the CITY's Take Authorization for each Chula Vista Covered Species that is not also a Species Adequately Conserved does depend on the continued effectiveness and proper implementation of one or more of the subarea plans of other Participating Local Jurisdictions. In the event a Participating Local Jurisdiction with an approved MSCP Subarea Plan on which Take Authorization for a particular Chula Vista Covered Species depends, withdraws from the MSCP Subregional Plan or such Participating Local Jurisdiction's take authorization for such species is terminated for any reason, then the Take Authorizations for such Chula Vista Covered Species provided to the CITY shall automatically terminate unless the Chula Vista Covered Species is also a Species Adequately Conserved. The USFWS and CDFG shall immediately notify the CITY in the event the CITY's Take Authorizations terminate for any Chula Vista Covered Species due to the withdrawal, or termination of the take authorization of another Participating Local Jurisdiction.

6.0 LEGAL AUTHORITY OF THE USFWS

The USFWS enters into this Agreement pursuant to the ESA, the Fish and Wildlife Coordination Act (16 U.S.C. § 661 - 666c), and the Fish and Wildlife Act of 1956 (16 U.S.C. § 742(f) et seq.). Section 10(a)(1)(B) of the ESA, 16 U.S.C. § 1539(a)(1)(B), expressly authorizes the USFWS to issue a Section 10(a) Permit to allow the Incidental Take of animal species listed as threatened or endangered under the ESA. The legislative history of Section 10(a)(1)(B) and the No Surprises Rule codified at 50 C.F.R. 17.22(b)(5) and 17.32(b)(5) clearly indicates that Congress also contemplated that the USFWS may approve Habitat Conservation Plans that protect unlisted species as if they were listed under the ESA, and that in doing so the USFWS may provide Section 10(a)(1)(B) assurances for such unlisted species.

7.0 LEGAL AUTHORITY OF THE CDFG

The CDFG enters into this Agreement pursuant to the NCCP Act. CDFG may authorize the Take of Chula Vista Covered Species pursuant to Fish and Game Code section 2835 without respect to whether those species are listed under CESA.

8.0 SATISFACTION OF LEGAL REQUIREMENTS

In order to fulfill the legal requirements that will allow the USFWS to issue the Section 10(a)(1)(B) Permit, an HCP must provide measures that are intended to ensure that any Take occurring within the Subarea will be incidental; that the impacts of such Incidental Take will, to the maximum extent practicable, be minimized and mitigated; that adequate funding to implement the HCP will be provided; and that the Incidental Take will not appreciably reduce the likelihood of the survival and recovery of the Covered Species in the wild. The USFWS has found that the MSCP Subregional Plan and the Chula Vista Subarea Plan as implemented pursuant to this Agreement provides such measures, and satisfies the legal requirements necessary for the USFWS to issue a Section 10(a)(1)(B) Permit authorizing the Incidental Take of Chula Vista Covered Species, and to provide certainty in the form of specific assurances contained in the No Surprises Rule. Likewise, the CDFG finds that the Chula Vista Subarea Plan as implemented pursuant to this Agreement satisfies the legal requirements necessary for the CDFG to issue a NCCP Authorization authorizing the Incidental Take of Chula Vista Covered Species, and to provide certainty in the form of specific assurances contained in this Agreement.

9.0 MUTUAL ASSURANCES

9.1 Purpose. The primary purpose of this Agreement is to provide for the long-term reconciliation of new land development within the MSCP Subregional Plan Area, including the Chula Vista Subarea, with the conservation and protection of the Chula Vista Covered Species. Based on and in consideration of this Agreement, the MSCP Subregional Plan, and the Chula Vista Subarea Plan, the Parties hereby agree on and the USFWS and CDFG hereby provide assurances pursuant to their respective regulatory authorities to the CITY, other Participating Local Jurisdictions, Participating Special Entities, and Third Party Beneficiaries with regard to the following provisions contained in this Section 9.0.

9.2. 'No Surprises' Assurances of USFWS and CDFG Assurances.

(a) Unforeseen Circumstances. As provided in 50 C.F.R. 17.3, the term "Unforeseen Circumstances" shall mean changes in circumstances affecting a species or geographic area covered by the Chula Vista Subarea Plan that could not reasonably have been anticipated by the plan developers, USFWS, and CDFG at the time of the Plan's negotiation and development, and that results in a substantial and adverse change in the status of a Covered Species.

(1) "No Surprises" Assurances. Pursuant to the No Surprises Rule at 50 C.F.R. Sections 17.3, 17.22(b)(5) and 17.32(b)(5), and provided that the CITY is properly implementing the Chula Vista Subarea Plan, USFWS shall not require the CITY to provide additional land, water or other natural resources, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level provided for under the Chula Vista Subarea Plan, this Agreement and the Section 10(a)(1)(B) Permit with respect to Covered Activities without the consent of the CITY. Adaptive Management modifications and plan responses to Changed Circumstances are provided for under the Chula Vista Subarea Plan and therefore are not subject to the restrictions on additional mitigation contained in the No Surprises Rule. If USFWS makes a finding of unforeseen circumstances, during the period necessary to determine the nature and location of additional or modified mitigation, the CITY will avoid contributing to appreciably reducing the likelihood of the survival and recovery of the affected species and will exercise its enforcement authorities as provided by law as to third persons under the CITY's jurisdiction and control that are carrying out Covered Activities, to avoid such third persons contributing to appreciably reducing the likelihood of the survival and recovery of the affected species.

(2) CDFG Assurances. Except as otherwise

provided in this subsection or required by law, CDFG shall not require the CITY to provide, without its consent, additional land, water or financial compensation, or additional restrictions on the use of land, water, or other natural resources, for the purpose of conserving Chula Vista Covered Species with respect to Covered Activities in the event of Unforeseen Circumstances, provided the CITY is properly implementing this Agreement and the Chula Vista Subarea Plan. The provisions of this Agreement and the Chula Vista Subarea Plan that address adaptive management and Changed Circumstances, including changes to the legal status of fully protected species and non-covered species, are not Unforeseen Circumstances and therefore are not subject to these assurances.

(3) Unforeseen Circumstances Finding. In the event that USFWS, CDFG or the CITY believes that Unforeseen Circumstances may exist in accordance with the "No Surprises" rule, it shall immediately notify the other Parties. Within 30 days of such notice, if USFWS believes an Unforeseen Circumstance exists, it shall provide written notice of its proposed finding of Unforeseen Circumstances to the other Parties. USFWS shall clearly document the basis for the proposed finding regarding the existence of Unforeseen Circumstances pursuant to the requirements of 50 CFR §17.22(b)(5)(iii)(C) and 17.32(b)(5)(iii)(C). Within fifteen (15) days of receiving such notice, the CITY, USFWS and CDFG shall meet or confer to consider the facts cited in the notice and potential changes to the Chula Vista Subarea Plan's Operating Conservation Program or management and operation of the Preserve lands. Pursuant to 50 C.F.R. 17.22(b)(5)(iii)(C) and 50 C.F.R. 17.32(b)(5)(iii)(C) USFWS shall make an Unforeseen Circumstances finding based on the best scientific evidence available, after considering any responses submitted by the CITY pursuant to this section, and USFWS and /or CDFG shall have the burden of demonstrating that Unforeseen Circumstances exist.

(4) Effect of Unforeseen Circumstances Finding. Pursuant to 50 C.F.R. 17.22(b)(5) and 17.32(b)(5), in the event that USFWS makes a finding of Unforeseen Circumstances and additional conservation and mitigation measures are deemed necessary to respond to such Unforeseen Circumstances, USFWS may require Additional Conservation Measures from the CITY where the Chula Vista Subarea Plan is being properly implemented, but only if such measures are limited to modifications within the Preserve lands and the Chula Vista Subarea Plan's Operating Conservation Program for the affected species and maintain the original terms of the Chula Vista Subarea Plan to the maximum extent possible. Additional conservation and mitigation measures shall not involve the

commitment of additional land, water or financial compensation or additional restrictions on the use of land, water or other natural resources without the consent of the CITY.

(5) Interim Obligations Upon a Finding of Unforeseen Circumstances. If USFWS makes a finding of Unforeseen Circumstances, during the period necessary to determine the nature and extent of additional measures required and available, if any, to address the unforeseen circumstances, the CITY will avoid appreciably reducing the likelihood of the survival and recovery of the affected species and will exercise its enforcement authorities as provided by law as to third persons under the CITY's jurisdiction and control that are carrying out Covered Activities, to avoid such third persons contributing to appreciably reducing the likelihood of the survival and recovery of the affected species.

(b) Changed Circumstances.

(1) Changed Circumstances Defined. As provided in 50 C.F.R. 17.3, the term "Changed Circumstances" means changes in circumstances affecting a species or the geographic area covered by the Chula Vista Subarea Plan that can reasonably be anticipated by CITY, USFWS, and CDFG and that can be planned for in the Chula Vista Subarea Plan (e.g. the listing of a new non-covered species, or a fire or other natural catastrophic event in areas prone to such events.) Changed circumstances and planned responses to those circumstances are described in Section 5 of the Chula Vista Subarea Plan.

(2) CITY- Initiated Response to Changed Circumstances. The CITY will immediately notify USFWS and CDFG upon learning that any of the Changed Circumstances listed in Section 5 of the Chula Vista Subarea Plan has occurred, and shall provide written notice within seven (7) days. Within 30 days, the CITY shall modify its activities and shall require affected third persons under its direct control to modify their activities, as appropriate, in accordance with Chapter 5 of the Chula Vista Subarea Plan, to the extent necessary to minimize and mitigate the effects of the Changed Circumstances. The CITY shall report to USFWS and CDFG on its actions. Such modifications will be initiated without awaiting notice from USFWS or CDFG. Such modifications are provided for in the Chula Vista Subarea Plan and do not constitute Unforeseen Circumstances or require amendment of the Section 10(a)(1)(B) Permit, NCCP Authorization, or the Chula Vista Subarea Plan.

(3) USFWS-Initiated or CDFG-Initiated Response to Changed Circumstances. If USFWS or CDFG determines that Changed Circumstances have occurred and that the CITY has not responded in accordance with Section 5 of the Chula Vista Subarea Plan, the USFWS or CDFG will so notify the CITY and, as appropriate, direct the CITY to make the required changes. Within thirty (30) days after receiving such notice, the CITY, will make the required changes and report to USFWS and CDFG on its action. Such changes are provided for in the Chula Vista Subarea Plan, and do not constitute Unforeseen Circumstances or require amendment of the Section 10(a)(1)(B) Permit, NCCP Authorization, or the Chula Vista Subarea Plan. The USFWS may extend the period of time in which to implement the CITY's planned responses upon the CITY's showing of good cause, which extension will not be unreasonably withheld.

9.3. Future Listings.

A. Consideration of the MSCP Subregional Plan and Similar Plans. To the extent required and permitted by the ESA, the CESA and the NCCP Act, the USFWS and CDFG shall take into account the species and habitat conservation provided under the MSCP Subregional Plan, the Chula Vista Subarea Plan, this Agreement, and the species and habitat conservation provided through all other existing conservation efforts (including, but not limited to, other plans approved under the ESA, CESA, or NCCP Act, and any relevant conservation agreements), as well as all information and data developed in the course of these efforts which is made available to them, in any future determinations, and in any future recommendations from the CDFG to the California Fish and Game Commission, concerning the potential listing as threatened or endangered of any Chula Vista Covered Species or any other species which is not so listed as of the Effective Date, or the potential designation of any critical habitat for any species.

B. Chula Vista Covered Species. If a Chula Vista Covered Species is not listed as threatened or endangered under the ESA as of the Effective Date, and becomes so listed during the term of this Agreement, then the Section 10(a)(1)(B) Permit shall become effective with respect to such species concurrent with its listing as threatened or endangered. The NCCP Authorization authorizes incidental take of all Chula Vista Covered Species except five fully protected species from the Effective Date of Take Authorizations; for that reason, the subsequent CESA listing or candidate status of a Chula Vista Covered Species will have no effect on the scope of the NCCP Authorization.

C. Non-Covered Species. If a species which is not a Chula Vista Covered Species is subsequently proposed for listing as threatened or endangered under the ESA or CESA or is accepted by the California Fish and Game Commission as a candidate for listing under CESA after the Effective Date, and it is determined by the USFWS or CDFG based on reliable scientific evidence that such species occurs in the Subarea, the USFWS and CDFG will (1) work with the CITY to identify, within six (6) months, the conservation measures, if any, that are necessary to adequately protect the species, and (2) determine whether such conservation measures are beyond those

prescribed by the MSCP Subregional Plan and/or the City of Chula Vista Subarea Plan. Although such conservation measures may be identified after such species is proposed for listing, the CITY may choose not to approve and implement such measures until the species is actually listed. Upon application by the CITY which meets the requirements of the ESA and the NCCP Act, and following compliance with applicable procedures, Incidental Take of a non-covered, listed species shall be authorized provided the legal standards for such authorization have been met.

1. Adequate Conservation Measures Already in the MSCP Subregional Plan. If the conservation measures already contained in the MSCP Subregional Plan, as implemented through the Chula Vista Subarea Plan and other approved Subarea Plans, are adequate to fulfill the conservation measures identified pursuant to subsection 9.3.C above, then upon application by the CITY for Take Authorization for such species and following satisfaction of applicable review procedures as required by the ESA and the NCCP Act, the Parties will amend this Agreement to add such species to the list of Chula Vista Covered Species and, if appropriate, to the list of Species Adequately Conserved and, following compliance with all applicable statutory and regulatory requirements, the USFWS and CDFG shall issue Section 10(a)(1)(B) Permit and NCCP Authorization for such species effective for the remaining term of this Agreement.

2. Inadequate Conservation Measures in the MSCP Subregional Plan.

a. Additional Conservation Measure Priorities. If the conservation measures already contained in the MSCP Subregional Plan, the Chula Vista Subarea Plan, this Agreement, and other approved Subarea Plans do not adequately fulfill the conservation measures identified pursuant to subsection 9.3.C above, then the USFWS and CDFG will work with the CITY and other Participating Local Jurisdictions to identify and jointly implement the Additional Conservation Measures necessary to add such species to the list of Chula Vista Covered Species or the list of Species Adequately Conserved. In developing a set of Additional Conservation Measures, the Parties will look to the following, in order of preference:

i. Habitat management practices and enhancement opportunities within the MHPA using existing management resources, provided the redirection of such resources does not adversely affect any Covered Species.

ii. Habitat acquisition through the reallocation of Federal, State, regional and/or local funds identified for MSCP Subregional Plan implementation, provided such reallocation does not adversely affect any Covered Species.

b. Developing Additional Conservation Measures. If the foregoing options are not adequate to fulfill the conservation measures identified pursuant to subsection 9.3.C above, then the USFWS and CDFG will work with the CITY to identify, consistent with the ESA and the NCCP Act, the Additional Conservation Measures necessary to add such species to the list of Chula Vista Covered Species and, if appropriate, to the list of Species Adequately Conserved, including measures beyond those required by the MSCP Subregional Plan. Preference

will be given by the USFWS and CDFG to Additional Conservation Measures that do not require additional mitigation or dedications of land. Although the Additional Conservation Measures necessary to add such species to the list of Chula Vista Covered Species and the list of Species Adequately Conserved may be identified at or after the time the species is proposed for listing, the CITY will not be required to approve or implement these Additional Conservation Measures until such time as the species is actually listed and take authorization for such species is granted to the CITY.

c. Significantly Conserved Vegetation Communities. If any species described in subsection 9.3.C, above, is dependent upon a Significantly Conserved Vegetation Community listed on Exhibit F to this Agreement, and if the Subarea Plans for the City of San Diego, County of San Diego, and the CITY are in effect and are being implemented consistent with their terms, then the USFWS and CDFG will, subject to the availability of appropriated funds, contribute in partnership, to the same extent committed within the MSCP Subregional Plan for Covered Species, with the CITY toward the land acquisition, management, and monitoring required to achieve the level of conservation necessary within the Significantly Conserved Vegetation Communities, for such species to be added to the list of Chula Vista Covered Species or list of Species Adequately Conserved once such species become listed under the ESA or CESA. The commitment of the USFWS and CDFG to contribute their proportionate share(s) to the conservation of the species shall be contingent on the CITY's commitment of its proportionate share. In addition, if the USFWS or CDFG fail to provide their proportionate contributory share(s), neither the CITY nor Third Party Beneficiaries will be obligated to provide the USFWS and/or CDFG share(s), in which case the species would not be added to the list of Chula Vista Covered Species or list of Species Adequately Conserved.

d. Sufficiently Conserved Vegetation Communities. If any species described in subsection 9.3.C, above, is dependent upon a Sufficiently Conserved Vegetation Community listed on Exhibit F to this Agreement, and if the take authorizations for the City of San Diego, the County of San Diego, the City of Poway, and the CITY are in effect and are being implemented consistent with their respective Subarea Plans, then the USFWS and CDFG will use all of their legal authorities to provide for the conservation and management, maintenance and monitoring of the habitat of such species, within the Sufficiently Conserved Vegetation Communities, sufficient to enable the addition of such species to the list of Chula Vista Covered Species or list of Species Adequately Conserved, and to enable the issuance of the Section 10(a)(1)(B) Permit and NCCP Authorization take authorizations for such species in the event they become listed under the ESA or CESA. For purposes of this paragraph, steps within the legal authority of USFWS include, but are not limited to, USFWS-funded habitat acquisition, USFWS-funded species relocation, and land exchanges to secure necessary habitat. For purposes of this paragraph, steps within the legal authority of CDFG include, but are not limited to, CDFG-funded acquisition, CDFG-funded species management and CDFG-funded species relocation. Consequently, the CITY shall not be required, without its consent, to provide any conservation or management, maintenance and monitoring for such species beyond that provided in the MSCP Subregional Plan and the Chula Vista Subarea Plan.

e. Application for Take Authorization. The CITY makes no representation or commitment to pursue a Section 10(a)(1)(B) Permit from the USFWS or a NCCP Authorization from the CDFG for such non-covered species. Upon the listing of a non-covered

species and until such non-covered species is added to the list of Chula Vista Covered Species and, if appropriate, to the list of Species Adequately Conserved, the CITY shall comply with the no take/no adverse modification/no jeopardy measures identified pursuant to Section 5.8.5 of the Chula Vista Subarea Plan with respect to such non-covered species. The USFWS and CDFG shall process any applications for take authorization which may be submitted for such species in accordance with the requirements of the ESA, CESA and/or the NCCP Act.

f. Applicability of Significantly and Sufficiently Conserved Vegetation Communities Assurances. The assurances provided under subsections c and d above are not applicable to the Pacific pocket mouse as a currently listed species, and shall not apply to evaluated species identified in Table 3-5 of the MSCP Subregional Plan which are not Chula Vista Covered Species or Species Adequately Conserved and which are not dependent on Significantly or Sufficiently Conserved Vegetation Communities. Those species are:

Dean's milk vetch	<i>Astragalus deanei</i>
Orcutt's spineflower	<i>Chorizanthe orcuttiana</i>
Mexican flannelbush	<i>Fremontodendron mexicanum</i>
Mission Canyon bluecup	<i>Githopsis diffusa</i> ssp. <i>Filicaulis</i>
Tecate tarplant	<i>Hemizonia floribunda</i>
Little mousetail	<i>Myosurus minimus</i> ssp. <i>Apus</i>
Hermes copper butterfly	<i>Lycaena thornei</i>
Grasshopper sparrow	<i>Ammodramus savannarum</i>

The following evaluated species identified in Table 3-5 of the MSCP Subregional Plan are covered by the assurances in subsection c, above (Significantly Conserved Vegetation Communities), and are not covered by the assurances in subsection d, above (Sufficiently Conserved Vegetation Communities):

Harbison's dun skipper	<i>Euphyes vestris harbisoni</i>
Townsend's western big-eared bat	<i>Plecotus townsendii</i>
California mastiff bat	<i>Eumops perotis californicus</i>

9.4. Migratory Bird Treaty Act.

A. Migratory Birds other than Bald Eagle. The Section 10(a)(1)(B) Permit issued pursuant to this Agreement also constitutes a Special Purpose Permit under 50 C.F.R. § 21.27 for the Take of Chula Vista Covered Species and Species Adequately Conserved which are listed as threatened or endangered under the ESA and which are also protected by the Migratory Bird Treaty Act, except for the Bald Eagle. The Take of such species in conjunction with any public or private land development project authorized and approved by the CITY in accordance with this Agreement, the Chula Vista Subarea Plan and the Section 10(a)(1)(B) Permit will not constitute a violation of the MBTA. Such Special Purpose Permit shall be valid for a period of three years from the Effective Date, provided the Section 10(a)(1)(B) Permit remains in effect for such period. Such Special Purpose Permit shall be renewed, provided that the CITY continues to fulfill its obligations under this

Agreement. Each such renewal shall be valid for the maximum period of time allowed by 50 C.F.R. § 21.27 or its successor at the time of renewal.

B. Bald Eagle. Should the Take of the Bald Eagle occur incidental to any public or private land development project authorized and approved by the CITY in accordance with this Agreement, the USFWS will not refer such Take for prosecution under either the MBTA or the Bald Eagle Protection Act of 1940, as amended (16 U.S.C. §§ 668 - 668d).

C. Future Environmental Documentation. In issuing any permits or other approvals pertaining to land development activities within the CITY for any Chula Vista Covered Species, and subject to all of the requirements of NEPA, the USFWS shall rely on and shall utilize the EIR/EIS prepared in conjunction with the MSCP and Subarea Plan as the NEPA environmental document for such permits and approvals and for any other approval process subject to its jurisdiction or involvement with regard to potential impacts on Chula Vista Covered Species. To the maximum extent possible under CEQA, CDFG shall rely on and shall utilize the EIR/EIS prepared in conjunction with the MSCP Subregional Plan and Chula Vista Subarea Plan as appropriate CEQA documentation for any future approvals regarding potential impacts to Chula Vista Covered Species related to land development within the Subarea. Subsequent activities will be examined in light of the program EIR/EIS to determine whether additional environmental documentation is required under NEPA or CEQA.

D. Use of EIR/EIS as "Program EIR/EIS". The Parties understand and intend that the EIR/EIS prepared in conjunction with the MSCP Subregional Plan and Chula Vista Subarea Plan will operate as a "program" EIS and EIR to the extent such use is consistent with applicable provisions of the NEPA and CEQA, including the Council on Environmental Quality's NEPA regulations (40 C.F.R. § 1500 et seq.) and the CEQA Guidelines (14 C.C.R. § 15000 et seq.). Accordingly, the CITY shall, consistent with the provisions of CEQA, rely on and utilize the EIR prepared in conjunction with the MSCP Subregional Plan and Chula Vista Subarea Plan in evaluating future land use decisions, and in issuing any permits or other approvals within the Subarea. Subsequent activities will be examined in light of the program EIR/EIS to determine whether additional environmental documentation is required under NEPA or CEQA.

9.5. Federal and State Contributions. The USFWS and CDFG shall apply their best efforts to contribute public lands and funds to the acquisition and management, maintenance and monitoring of habitat lands within the MHPA. Habitat land acquired and added to the Preserve through such means shall not be counted as mitigation for any public or private project but will be counted towards the conservation goals of the Chula Vista Subarea Plan. To the maximum extent appropriate after considering the location of the impacts, the USFWS and CDFG shall direct that the acquisition of land for offsite mitigation of impacts from federal and state projects within the MSCP Subregional Plan Area, and lands banked for such projects, be located within the MHPA.

9.6. Public Facility Provider and Special Districts. The Parties shall cooperate to encourage regional public facility providers, and local special districts such as water districts and sewer districts, to become Participating Special Entities. However, the Parties acknowledge that regional public facility providers and special districts may apply for separate incidental take authorization from the USFWS and CDFG separate and apart from the MSCP Subregional Plan.

9.7. Special Rules Under Section 4(d). In the event that the USFWS promulgates a new special rule for a Covered Species pursuant to Section 4(d) of the ESA (16 U.S.C. § 1533(d), as implemented by 50 C.F.R. § 17.31(c)), the USFWS shall consider the MSCP Subregional Plan and Chula Vista Subarea Plan in developing the special rule, and shall ensure that the special rule will not affect the validity or alter the terms of any take authorization for Covered Species issued in accordance with an approved subarea plan.

9.8. Contribution and Banking of Excess Conservation. Lands contributed to the Preserve by persons or public or private entities in excess of the conservation requirements imposed by the CITY in accordance with Section 10 of this Agreement may either be used by such owner as mitigation for that owner's subsequent development project(s), or it may be "banked" by those owners in accordance with Section 9.9 of this Agreement. Such banked lands can later be used to provide mitigation for future development projects of other owners within the Subarea subject to the provisions of an approved conservation bank.

9.9. Conservation Banks. The USFWS and CDFG agree that the CITY is authorized to enter into agreements with the USFWS, CDFG and other third parties to establish and implement Conservation Banks for land contributed in perpetuity to the Preserve in excess of any conservation requirement imposed by the CITY in accordance with Section 10 of this Agreement. These Conservation Banks shall be consistent with the Chula Vista Subarea Plan and shall comply with all applicable laws, policies and procedures existing at the time of bank approval, including but not limited to the "Official Policy on Conservation Banks" issued by the California Resources Agency (April 7, 1995) and the "Supplemental Policy Regarding Conservation Banks Within the NCCP Area of Southern California" issued by the USFWS and CDFG (January 24, 1996), as they may be modified. The Parties agree that existing Conservation Bank agreements approved by the USFWS and CDFG prior to the Effective Date shall remain in full force and effect and be honored by the Parties after execution of this Agreement. This Section 9.9 shall apply to any public lands within the Preserve banked as mitigation for future development by the CITY, in accordance with this Agreement.

9.10. Habitat Conservation Measures. Habitat conservation measures provided for in the Chula Vista Subarea Plan, including habitat management within the Preserve, shall be consistent with the MSCP Subregional Plan and shall be implemented through the policies and local regulations established by the CITY pursuant to Section 10.0 of this Agreement. Such policies and local regulations may differ as between the CITY and other Participating Local Jurisdictions, and as between different MHPA habitat types within the Subarea.

9.11. Growth Inducing Impacts. Because the MSCP Subregional Plan as implemented through the Chula Vista Subarea Plan and other approved Subarea Plans is designed to mitigate for the direct, indirect and cumulative impacts of development within the MSCP Subregional Plan Area, including within the Subarea, once mitigation has been imposed upon the CITY or a Third Party Beneficiary for a proposed land development project in conformance with Sections 10 and 17.1.A of this Agreement, the CITY or a Third Party Beneficiary shall not be required by USFWS or CDFG to provide any additional mitigation for any growth inducing impacts such project may have

on a Chula Vista Covered Species and its habitats within that portion of the MSCP Subregional Plan Area covered by approved Subarea Plans.

9.12. Assurances for Covered Projects. For Covered Projects set forth in Table 5-1 of the Chula Vista Subarea Plan and Exhibit D to this Agreement, the Parties have determined that both the design of such projects and the mitigation related to Chula Vista Covered Species conforms to the MSCP Subregional Plan and the Chula Vista Subarea Plan. Consequently, as long as the Covered Projects comply with their respective conditions of coverage, and any additional measures as may be imposed on the projects pursuant to the Chula Vista Subarea Plan and this Agreement, and maintain their status as Third Party Beneficiaries in accordance with Section 17 of this Agreement, Additional Conservation Measures will not be required of those projects for purposes of Incidental Take of Chula Vista Covered Species, and the Parties shall not seek further mitigation related to such species for these projects except as specifically provided for under the Subarea Plan and this Agreement. Incidental Take shall be granted for such projects by the CITY through the land development approval process and associated land development or clearing/grubbing permit issued to each Covered Project prior to the start of land development on the site.

9.13. Critical Habitat. The USFWS agrees that it will consider the Chula Vista Subarea Plan in its preparation of any proposed designation of critical habitat concerning any Covered Species and agrees that, consistent with 50 C.F.R. 424.12, the Chula Vista Subarea Plan incorporates those special management considerations necessary to manage the Covered Species and their habitats in a manner that will provide "for the conservation of the species involved" within the Chula Vista Subarea. Consistent with the No Surprises Rule set forth in Section 9.2 of this Agreement in the event that a critical habitat designation is made for any Chula Vista Covered Species upon a determination by USFWS that CITY is properly implementing the Chula Vista Subarea Plan, no additional mitigation in the form of land, land restrictions or financial compensation, beyond that provided for under the Chula Vista Subarea Plan, shall be required of the CITY or Third Party Beneficiaries to mitigate for the impacts of Take resulting from a Covered Activity within the Chula Vista Subarea as a result of such critical habitat designation without the consent of the CITY.

9.14. Duty to Enforce. The CITY agrees to take all available and feasible actions within its legal authority to enforce the terms of the Section 10(a)(1)(B) Permit and NCCP Authorization, the Subarea Plan, and this Agreement as to itself and to all persons or entities subject to the requirements of the Chula Vista Subarea Plan, this Agreement and the Section 10(a)(1)(B) Permit and NCCP Authorization, specifically including the land development permitting and approval requirements set forth in Section 10 of this Agreement. The CITY shall reasonably exercise its legal authority to ensure that its local share of lands identified for preservation under the Chula Vista Subarea Plan are conserved in perpetuity. Notwithstanding any other provision of this Agreement, if at any time following the expiration, termination, or any other end of this Agreement the CITY proposes to exercise its discretionary authority to modify the regulatory protections or legal encumbrances provided for such lands under the Chula Vista Subarea Plan, the proposed modifications must be accomplished through a public process in which the public, the USFWS and CDFG receive advance notice and the opportunity to comment, and must be consistent with the MSCP Subregional Plan and the Chula Vista Subarea Plan such that there is no net loss of habitat value or acreage for the Covered Species. The CITY must promptly notify USFWS and CDFG or their respective successor agencies of such proposed modifications in advance, and explain how they

achieve such consistency.

9.15. Annexation of Lands. To the extent permitted by law, the CITY shall enforce, as set forth in this Agreement, the terms of the Section 10(a)(1)(B) Permit and NCCP Authorization, Chula Vista Subarea Plan, and this Agreement as to all persons or entities owning or developing land within the Chula Vista MSCP Planning Area that become subject to the CITY's jurisdictional authority in the event of annexation or reorganization of such land from another jurisdiction, provided an annexation agreement is reached as described herein and approved by the Wildlife Agencies and provided further, that if the lands are annexed from another Participating Local Jurisdiction, that Local Participating Jurisdiction's take authorization for the annexed lands is transferred to the CITY. In all other cases, Take shall not be authorized on any lands that are the subject of an annexation proposal unless and until an annexation agreement is reached between the CITY, USFWS, CDFG and the other affected jurisdiction, as may be appropriate, as part of the annexation process, and the Section 10(a)(1)(B) Permit and NCCP Authorization, Subarea Plan and, if necessary, this Agreement are amended to include the annexed lands to ensure that any development of the annexed lands proceeds in accordance with the conservation goals of the MSCP Subregional Plan and the Chula Vista Subarea Plan. Such annexation agreement shall set forth the resulting responsibilities pursuant to the MSCP Subregional Plan for the ongoing maintenance and enforcement of the terms of this Agreement and the MSCP Subregional Plan as it relates to the annexed lands.

10.0 IMPLEMENTATION RESPONSIBILITIES OF THE CITY

10.1 Introduction. The MSCP Subregional Plan establishes a plan to conserve the Covered Species by ultimately providing permanent protection for such species' habitat through implementation of individual subarea plans. The USFWS and CDFG agree to phased implementation of the CITY's portion of the MSCP Subregional Plan based on the Agreement of the CITY to comply with and implement the MSCP Subregional Plan through the Chula Vista Subarea Plan with respect to all lands within the Subarea over which it has land use authority. In particular, the CITY agrees to take the following specific actions:

10.2 Compliance and Implementation.

A. Lands to be Preserved. As provided in Section 3 of the City of Chula Vista Subarea Plan and Section 22 of this Agreement, the CITY commits to preserve and manage in perpetuity for the benefit of the Covered Species and their habitats approximately 4,993 acres placed into the Preserve as the result of development pursuant to the take authorizations and designated as habitat on Figure 2-1 of the MSCP Subregional Plan (Vegetation Communities for MSCP Study Area) within the CITY's current jurisdictional boundaries. The CITY further commits to preserve and manage in perpetuity for the benefit of the Covered Species and their habitats approximately 4,250 additional acres that are currently outside the Subarea within the jurisdiction of the County of San Diego (if certain approved development occurs within the CITY Subarea), unless such lands are owned or managed by the state or federal government.

B. Habitat Conservation Accounting Model. The CITY agrees that the habitat conservation accounting system known as "Habitrak" shall be used by the CITY, the USFWS,

and CDFG as a tool to assess whether the CITY is meeting its obligation to ensure that habitat preservation is proceeding in rough step with development, within the context of the acreage accounting and annual reporting process set forth in Section 14 of this Agreement.

10.3 Preserve Management.

A. Lands to be Managed. The CITY agrees to be responsible, either directly or through an Appropriate Managing Entity under the direct control of the CITY, for managing the Preserve in accordance with Section 7 of the City of Chula Vista Subarea Plan.

B. Preserve Management Program. The Chula Vista Subarea Plan incorporates Framework Management Plans for the Central and North City Preserve Management Areas (Section 7.5 of the Chula Vista Subarea Plan) and the Otay Ranch Preserve Management Area (Section 7.6 of the Chula Vista Subarea Plan). The Framework Management Plans have been prepared consistent with the framework management guidelines of the MSCP Subregional Plan. The Framework Management Plans outline principal Preserve maintenance activities and requirements, provide specifications to limit "edge effects" and impacts from adjacent development, furnish a framework to address potential impacts to the Preserve from invasive, exotic species, and create a blueprint for managing public access, trails and recreational uses within the Preserve. Because each area of the Preserve will be unique in terms of existing conditions, Preserve configuration, ownership of land, the existence and location of sensitive species and management needs, area-specific management directives for logical and discreet areas of land within the Preserve have been or will be prepared, pursuant to Section 7.3 and Table 7-1 of the Subarea Plan. Pursuant to Section 7.3 of the Subarea Plan, area-specific management directives must incorporate requirements of the Framework Management Plan and species-specific management actions set forth in Table 3-5 of the MSCP Subregional Plan, as appropriate.

10.4 Preserve Boundary Adjustments. Adjustments to the CITY's Preserve boundaries may be made in limited circumstances as set forth in Section 5.4 of the City of Chula Vista Subarea Plan. This Agreement need not be amended to reflect such adjustments.

10.5 Assembly and Protection of the Preserve.

A. General Conservation Methods. In general, Preserve lands will be conserved by the following methods, consistent with Section 5.2 of the Chula Vista Subarea Plan: (1) dedication of 100% Conservation Areas associated with Covered Projects in accordance with Section 5.1 of the Subarea Plan; (2) conservation of private property located within the MHPA using the Chula Vista Excavation, Grading and Fills Ordinance as specified in the Subarea Plan, Section 5.2.1, the HLIT Ordinance as specified in the Subarea Plan, Section 5.2.2, and the Otay Ranch Grazing Ordinance as specified in the Subarea Plan, Section 5.2.5; and (3) conservation of existing public lands.

B. Conserved Habitat Acreage. Within its portion of the MHPA, the CITY shall permanently conserve an estimated 4,993 acres in approximately the amount of habitat acreage of listed vegetation communities specified in Table 3-5 of the Chula Vista Subarea Plan.

C. Amendment of Chula Vista Excavation, Grading and Fills Ordinance.

The CITY shall, after any necessary environmental documentation, amend and implement the Chula Vista Excavation, Grading and Fills Ordinance as set forth in Section 5.2.1 of the Chula Vista Subarea Plan.

D. Adoption of HLIT Ordinance. The CITY shall, after any necessary environmental documentation, adopt and implement the HLIT Ordinance as set forth in Section 5.2.2 of the Chula Vista Subarea Plan.

E. Adoption of Otay Ranch Grazing Ordinance. The CITY shall, after any necessary environmental documentation, adopt and implement the Otay Ranch Grazing Ordinance as set forth in Section 5.2.5 of the Chula Vista Subarea Plan.

F. Covered Projects. The CITY will ensure that all Conditions of Coverage specified in Section 7.5.6 of the Chula Vista Subarea Plan are included as enforceable conditions of the CITY's approvals of Covered Projects. If the CITY identifies site specific physical conditions including but not limited to geology, slope, or location of infrastructure that make goals, criteria or other requirements in the Chula Vista Subarea Plan infeasible, but the project could be constructed without compromising conservation of species and habitats pursuant to the Subarea Plan, the CITY may approve a deviation from the Chula Vista Subarea Plan requirements for the project with the concurrence of the USFWS and CDFG in accordance with the procedures set forth in Section 5 of the Chula Vista Subarea Plan. The deviation shall be the minimum necessary to afford relief and accommodate the Covered Project.

G. Amendments to General Plan. The CITY acknowledges that it has chosen to implement several of the commitments made by it under the Chula Vista Subarea Plan through the exercise of its land use authorities. In particular, the CITY shall adopt the Subarea Plan as a new element of the CITY's General Plan, in order to make that plan consistent with the MSCP Subregional Plan and the Chula Vista Subarea Plan.

H. Habitat Conservation and Upland Mitigation Ratios. The classifications of habitat types and associated mitigation ratios into tiers shall be as set forth in Exhibit G and Section 5.2 of the Chula Vista Subarea Plan. Modifications to these ratios may be made upon mutual agreement of the Parties following all legally required public hearings and environmental review, without the need to amend the Subarea Plan, the Section 10(a)(1)(B) Permit and NCCP Authorization or this Agreement, provided that USFWS and CDFG concur that such modifications provide for the same or higher levels of conservation and are consistent with the MSCP Subregional Plan and the Subarea Plan. The City acknowledges that if USFWS and CDFG conclude that the modifications will not provide the same or higher levels of conservation, or are not otherwise consistent with the MSCP Subregional Plan and the Chula Vista Subarea Plan, then this Agreement and potentially the Section 10(a)(1)(B) Permit and NCCP Authorization may have to be amended or reevaluated in accordance with Sections 16.2 and 16.3 of this Agreement. The CITY shall apply the mitigation ratios shown in Exhibit G to development project impacts in the manner set forth in Section 5.2.2 of the Chula Vista Subarea Plan.

I. Protection of Narrow Endemic Species. For certain species identified as "narrow endemic species" in the Chula Vista Subarea Plan and listed on Exhibit H to this Agreement, impacts will be avoided to the maximum extent practicable as set forth in Section 5.2.3 of the Chula Vista Subarea Plan. Impacts that cannot be avoided shall be minimized and mitigated in accordance with the Subarea Plan and implementing regulations consistent with this Agreement.

J. Wetlands Protection Program. For Wetlands, impacts will be avoided to the maximum extent practicable as set forth in Section 5.2.4 of the Chula Vista Subarea Plan. Impacts that cannot be avoided shall be minimized and mitigated in accordance with the wetland mitigation ratios set forth on Table 5-6 of the Chula Vista Subarea Plan. Mitigation consistent with the Chula Vista Subarea Plan will be identified through environmental review documents prepared pursuant to CEQA and associated mitigation monitoring and reporting programs, and required by the City as legally enforceable conditions of approval (i.e., tentative maps, HLIT permits, and the CITY's Excavation, Grading and Fills Ordinance require compliance with wetlands mitigation prior to issuance of grading permits).

10.6 CITY Compliance with Subarea Plan Provisions. The City Manager of the CITY will take all actions within his authority to ensure that all CITY departments comply with the policies, regulations and management obligations established as a result of the Chula Vista Subarea Plan on all CITY projects and day-to-day operations.

11.0 FUNDING RESPONSIBILITIES OF THE CITY

11.1 Introduction. The MSCP Subregional Plan contains estimates for the costs of habitat acquisition, management and monitoring on a regional basis. To fully implement the MSCP Subregional Plan and the Chula Vista Subarea Plan, private property must be added to the Preserve within the MHPA. Assembly of the Chula Vista Preserve does not rely on public acquisition of private property: 100% of the Preserve will be acquired through the entitlement process and/or pursuant to agreements between landowners, the CITY, and the wildlife agencies, as provided in Section 5.1 of the Chula Vista Subarea Plan.

11.2 Funding. The CITY commits to funding Preserve maintenance, management and monitoring as provided in Section 8.0 of the Chula Vista Subarea Plan, including: (1) Covered Project Conditions of Coverage (short-term management); (2) Open Space Management Financing Mechanisms (long-term management); (3) Central City Biological Enhancement Program (BEP) (long-term management); and (4) North City/Otay Ranch Preserve Management Endowment Fund (PMEF) (long-term management). Combined, these four financing programs are intended to ensure that the CITY will meet the maintenance, management and monitoring requirements of Sections 7.5 and 7.6 of the Subarea Plan, and Planned Responses to Changed Circumstances identified in Section 5.8 of the Subarea Plan.

11.3 Regional Funding. Notwithstanding that the Chula Vista Preserve will be fully assembled pursuant to 11.1 of this Agreement and as described further in Section 5.1 of the Chula Vista Subarea Plan, and funding for short term and long term maintenance, management and

monitoring of the Preserve will be assured pursuant to Section 11.2 of this Agreement and as described further in Section 8.0 of the Chula Vista Subarea Plan, the CITY will continue to support and participate with the other Participating Local Jurisdictions and the County of San Diego in efforts to secure a regional funding source consistent with the MSCP Plan. It is anticipated that any regional funding method will require voter approval. If regional funds are approved, an equitable portion of such funds will be made available to the City to offset anticipated implementation costs.

11.4 Effect of Inadequate Funding on Take Authorizations. In the event that adequate funding to implement the MSCP Subregional Plan through the Chula Vista Subarea Plan is not provided by the CITY, the USFWS and CDFG will assess the impact of the funding deficiency on the scope and validity of the take authorizations. Unless the CITY exercises its authority to terminate pursuant to Section 22.0 of this Agreement, the Parties agree that they will then meet and confer to cooperatively develop a strategy to address the funding shortfall, and to undertake all practicable efforts to maintain the level of conservation and Incidental Take authorization afforded by the Section 10(a)(1)(B) Permit and NCCP Authorization until the funding situation can be remedied. Should CITY elect to terminate the Section 10(a)(1)(B) Permit and NCCP Authorization, CITY shall remain obligated to mitigate fully in accordance with the Subarea Plan for all Incidental Take authorized prior to termination of the Section 10(a)(1)(B) Permit and NCCP Authorization, including management of Preserve lands in perpetuity in accordance with the Plan.

12.0 ISSUANCE OF THE TAKE AUTHORIZATIONS

12.1 Findings - USFWS - Covered Species. The USFWS has found, following opportunity for public comment, that (a) the taking of Covered Species within the MSCP Subregional Plan Area in accordance with the MSCP Plan as implemented by the subarea plans will be incidental to the carrying out of otherwise lawful activities; (b) the MSCP Subregional Plan as implemented by the Chula Vista Subarea Plan will, to the maximum extent practicable, minimize and mitigate the impacts of such incidental taking; (c) the funding sources identified and provided for herein will ensure that adequate funding for the MSCP Subregional Plan and the Chula Vista Subarea Plan will be provided; (d) the requested taking of Covered Species will not appreciably reduce the likelihood of the survival and recovery of such species in the wild; and (e) the MSCP Subregional Plan as implemented through the Chula Vista Subarea Plan will satisfy and fulfill all measures required by the USFWS as being necessary or appropriate for the purposes of the MSCP Subregional Plan (including procedures determined by the USFWS to be necessary to address Unforeseen Circumstances).

12.2 Findings - USFWS - Species Adequately Conserved and Chula Vista Covered Species. In addition to the findings in Section 12.1 above, the USFWS has found that the Species Adequately Conserved will be adequately conserved in the Subarea through implementation of the Chula Vista Subarea Plan and this Agreement and that the Chula Vista Covered Species will be adequately conserved in the Subarea through implementation of the Chula Vista Subarea Plan, other approved MSCP Subarea Plans, and this Agreement. Accordingly, concurrent with the Effective Date and consistent with the Subarea Plan and the terms of this Agreement, the USFWS shall issue the Section 10(a)(1)(B) Permit to the CITY authorizing the Incidental Take of the Species Adequately Conserved and Chula Vista Covered Species. The Section 10(a)(1)(B) Permit will become effective

with adoption of the HLIT, and other Ordinances specified in Section 10.5 of this Agreement, will be effective for 50 years, and may be renewed subject to and in accordance with the ESA statutory and regulatory requirements in effect at the time of renewal.

12.3 Section 10(a) Permit and Future Listings. As to any Chula Vista Covered Species or Species Adequately Conserved that is not listed as threatened or endangered under the ESA as of the Effective Date, the Section 10(a)(1)(B) Permit shall become effective with respect to such species concurrent with its listing as threatened or endangered under the ESA.

12.4 Findings - CDFG. The CDFG has found, following opportunity for public comment, that the MSCP Subregional Plan, the Chula Vista Subarea Plan and this Agreement (1) adequately provide for the conservation and management of the Chula Vista Covered Species and Species Adequately Conserved and their habitat within the MSCP Subregional Plan Area and the Subarea, (2) satisfy all legal requirements under the NCCP Act necessary for the CDFG to issue a NCCP Authorization for such species, and (3) are consistent with the NCCP Process and Conservation Guidelines. The CDFG has found that the Chula Vista Subarea Plan, in combination with the MSCP Subregional Plan, meets the requirements of the NCCP Act for an NCCP Plan, and has approved the Chula Vista Subarea Plan as an NCCP Plan. The CDFG has found further that the MSCP Subregional Plan, the Chula Vista Subarea Plan and this Agreement provide adequately for the mitigation of potential "significant effects on the environment" (as defined in California Public Resources Code § 21068) which may result to Chula Vista Covered Species and Species Adequately Conserved and their habitat (pursuant to California Government Code § 66474) that may result from the land development activities in the Subarea.

12.5 Issuance of NCCP Authorization. CDFG will approve the Chula Vista Subarea Plan and issue a NCCP Authorization that authorizes the Take of Chula Vista Covered Species and Species Adequately Conserved in the Subarea, subject to the terms of, and consistent with, the MSCP Subregional Plan, the Chula Vista Subarea Plan and this Agreement. The NCCP Authorization will take effect on the Effective Date and be effective for 50 years unless it is terminated, suspended or revoked sooner. The NCCP Authorization will be renewable utilizing the applicable procedures in effect at the time of renewal.

12.6 Findings - Section 4(d) Special Rule. The USFWS has found that the MSCP Subregional Plan meets the standards set forth in 50 C.F.R. § 17.32(b)(2). Accordingly, the USFWS finds that the MSCP Subregional Plan and the Chula Vista Subarea Plan are consistent with and satisfy the conditions under the Section 4(d) Special Rule, and therefore the Incidental Take of the coastal California gnatcatcher resulting from Covered Activities under the jurisdiction and control of the CITY within that portion of the MSCP Subregional Plan Area covered by approved the Chula Vista Subarea Plan is lawful.

12.7 State Fully Protected Species. California law does not authorize CDFG to permit the Take of six Chula Vista Covered Species: Fish and Game Code section 3511 prohibits Take of the golden eagle, American peregrine falcon, bald eagle, California brown pelican and California least tern. Although these species are included as Chula Vista Covered Species, Take of these species is not authorized by the NCCP Authorization as of the Effective Date. CDFG acknowledges and agrees that if the measures set forth in this Agreement and the Chula Vista Subarea Plan are complied with,

Covered Activities are not anticipated to result in unauthorized Take of these species. If CDFG determines during the term of this Agreement that existing measures are inadequate to prevent the Take of a Chula Vista Covered Species for which Take is not authorized under the NCCP Authorization, CDFG shall notify the City in writing of that determination and propose new, modified or alternative conservation measures that it believes are necessary to avoid Take of these species. The City shall implement either the measures proposed by CDFG or other measures agreed to by the Parties as adequate to avoid Take of the fully protected species resulting from Covered Activities.

CDFG has determined that the Chula Vista Subarea Plan provides for the conservation of all Chula Vista Covered Species, including the five species of fully protected birds that are Chula Vista Covered Species. The NCCP Authorization therefore provides that Take of golden eagle, American peregrine falcon, bald eagle, California brown pelican and California least tern will be automatically authorized upon a written legal determination by CDFG that changes in California law provide CDFG the authority to permit the Take of these birds. The determination will only assess whether newly enacted statutes provide CDFG the legal authority to authorize Take of these species as part of an NCCP plan. CDFG will provide its legal determination promptly after enactment of any relevant legislation; the determination will be attached to the NCCP Authorization.

13.0 CONSULTATIONS WITH OTHER PUBLIC AGENCIES

13.1 Section 7 Consultations. Nothing in this agreement is intended to eliminate or modify the obligation of a federal agency to consult with the USFWS pursuant to section 7(a) of the ESA (16 U.S.C. Section 1536(a)). To the maximum extent appropriate, in any consultation under said provision involving CITY or a prospective or existing Third Party Beneficiary with regard to Chula Vista Covered Species or Species Adequately Conserved which are listed or proposed for listing under the ESA, the USFWS shall ensure that the biological opinion issued in connection with the proposed public or private development project which is the subject of the consultation is consistent with the biological opinions issued in connection with the MSCP Subregional Plan and the Chula Vista Subarea Plan, provided that the proposed public or private development project is consistent with the MSCP Subregional Plan and Chula Vista Subarea Plan. Any take avoidance and take minimization measures included under the terms and conditions of the Section 7 biological opinion shall, to the maximum extent appropriate, be consistent with the requirements imposed on the development project under the City of Chula Vista's Subarea Plan, provided that, unless otherwise required by law, the USFWS shall not impose measures on the prospective or existing Third Party Beneficiary in excess of those that have been or will be required by the CITY pursuant to the MSCP Subregional Plan, the Chula Vista Subarea Plan, this Agreement and the Section 10(a)(1)(B) Permit and NCCP Authorization except in accordance with the No Surprises Rule.

13.2 Consultations by CDFG. Except as otherwise required by law, CDFG shall not recommend or otherwise seek to impose through consultation with other public agencies any mitigation, compensation or habitat enhancement requirements regarding impacts of Covered Activities on Chula Vista Covered Species within the Subarea that are in excess of the requirements prescribed in and pursuant to the MSCP Subregional Plan, the Chula Vista Subarea Plan and this Agreement.

14.0 REPORTING, BIOLOGICAL MONITORING AND PRESERVE MANAGEMENT

14.1 Habitrak. So long as this Agreement and the take authorizations remain in effect, the CITY will continually account, by project and cumulatively, for the amount and location of habitat acreage (by habitat type) lost and preserved within the Subarea, including acres conserved within the MHPA and acres committed to land development both within and outside of the MHPA. The results of such accounting will be applied to Habitrak to assure that adequate progress toward implementation of the MSCP Subregional Plan and the Chula Vista Subarea Plan is being achieved and that habitat preservation is proceeding in rough step with development.

14.2 Annual Reporting and Public Workshop. In accordance with Section 6.4.1 of the MSCP Subregional Plan, the CITY shall prepare and submit to the USFWS and the CDFG by February 15 of each year a public report containing an annual accounting, by project and cumulatively, of habitat acreage lost and conserved within the Subarea during the previous calendar year. This accounting shall specify acres conserved within the MHPA by habitat type, as well as acres committed to land development both within and outside of the MHPA, and compare these figures with results obtained utilizing Habitrak. This report shall also describe how habitat preservation is proceeding in rough step with development. The report will be used by the USFWS and CDFG to evaluate whether adequate progress toward implementation of the MSCP Subregional Plan and the Chula Vista Subarea Plan is being achieved. A public workshop or meeting will be jointly conducted on an annual basis by staff from the USFWS, the CDFG and the CITY to disseminate and discuss the annual report.

14.3 Annual Implementation Meeting. Once each year, the CITY shall meet with the USFWS and the CDFG to review and coordinate implementation of the Chula Vista Subarea Plan. The Parties will review the Annual Report described in Section 14.2 above for the purposes of evaluating the implementation of the MSCP Subregional Plan during the preceding year and the adequacy of the overall progress being made towards reaching the conservation goals of the MSCP Subregional Plan and the Chula Vista Subarea Plan, utilizing Habitrak. Items to be considered in the evaluation include, but are not limited to, all contributions towards the preservation of habitat lands, such as public lands, private mitigation lands, land donations, land acquisitions, and management activities undertaken or proposed on habitat lands. Habitat management issues will also be discussed. No Participating Local Jurisdiction or Participating Special Entity will be subject to any annual, quantitative habitat preservation requirement, given the uncertainties created by natural economic and land development fluctuations. If the USFWS and the CDFG determine that adequate progress towards implementation of the Chula Vista Subarea Plan is not being achieved, CDFG and USFWS shall set forth their findings and the basis for such findings in writing; and the USFWS, the CDFG, and the CITY will take the actions specified in the Chula Vista Subarea Plan and this Agreement to remedy that situation. If the USFWS and CDFG determine that adequate progress towards implementation of the Chula Vista Subarea Plan is being achieved, but the Subarea Plan is nevertheless not providing sufficient protection to Chula Vista Covered Species, CDFG and USFWS shall set forth their findings and the basis for such findings in writing; and then the Parties shall work cooperatively and take appropriate actions consistent with the MSCP Subregional Plan and Chula Vista Subarea Plan (such as altering management activities or redirecting mitigation and acquisition)

in order to address the situation.

14.4 Public Report/Hearing. Every three years the CITY, in conjunction with the other Participating Local Jurisdictions, shall prepare a public report on the status of the MSCP Subregional Plan and shall hold a public hearing in conjunction with the issuance of the report. The report shall incorporate information on the amount of land preserved within the MHPA and otherwise to date, the amount of land added to the MHPA or otherwise preserved within the previous three years, and the total expenditures made toward habitat acquisition to date and over the preceding three years. This report shall also include a subarea by subarea accounting of all funds received and expended during the previous three years to implement the subarea plans, including the amounts received and expended on habitat acquisition, management and monitoring.

14.5 Biological Monitoring. The Parties agree that biological monitoring, which involves the collection and analysis of data on specific species and habitats, is necessary to determine whether Covered Species and their habitats are being maintained by the MSCP Subregional Plan as expected. Biological monitoring will be jointly funded by the federal and state governments and the Participating Local Jurisdictions and Participating Special Entities through the federal, state and regional funding programs. As described in the Subarea Plan, the CITY will be responsible for the biological monitoring of its own, specified public lands, as well as mitigation lands obtained by it in fee title or easement, and lands acquired by it for the MSCP Subregional Plan using the regional funding program or other local sources. The federal and state agencies will monitor their present identified lands and those acquired for the MSCP Subregional Plan with federal and state funds, as described in the MSCP Subregional Plan. Proper management of the MHPA will require ongoing and detailed analysis of the data collected through biological monitoring activities. To ensure uniformity in data gathering and analysis, the USFWS and CDFG will assume primary responsibility for coordinating the monitoring program, analyzing data, and providing information and technical assistance to the Participating Local Jurisdictions and Participating Special Entities. Biological monitoring will focus on selected Covered Species and representative habitats. The USFWS and CDFG will prioritize specific monitoring activities based on available budget and specific needs of individual species and habitats, and will produce a summary report on monitoring activities every three years at the same time as the report described in Section 14.4, above.

14.6 Audit. Once every three or more years, as needed, the USFWS and CDFG may conduct an audit of (1) all development approvals and mitigation imposed through land use regulations or otherwise within approved subareas; (2) all lands acquired by each Participating Local Jurisdiction toward meeting its habitat acquisition obligation under the MSCP Subregional Plan; and (3) all monies received, invested and expended on acquisition, management and monitoring activities within approved Subareas during the previous three years or other applicable time period. The CITY shall cooperate fully with USFWS and CDFG to insure a complete and accurate audit.

14.7 Coordination of Preserve Management.

A. Regional Habitat Management Technical Committee. Within 120 days of the Effective Date, the CITY will join a regional habitat management technical committee to serve as a coordination forum for technical issues associated with MHPA management. The USFWS and

CDFG will work with this committee to furnish information and advice on habitat management. The committee will have the responsibilities identified in Section 5.8.3 of the MSCP Subregional Plan.

B. Federal and State Obligations. Federal and state agencies will manage, maintain and monitor all lands they contribute to the MSCP Subregional Plan (whether owned or administered by them as of the Effective Date or later acquired) consistent with the MSCP Subregional Plan.

C. Private Owners of Land Within the MHPA. This Agreement, the MSCP Subregional Plan and the Chula Vista Subarea Plan do not impose upon private owners of land within the MHPA who are not Third-Party Beneficiaries any additional obligations for the management or maintenance of their land.

15.0 USFWS AND CDFG OBLIGATIONS

15.1 USFWS. The USFWS shall include in its annual budget requests for sufficient funds to fulfill its obligations under the MSCP Subregional Plan, this Agreement, and all Section 10(a)(1)(B) Permits it issues pursuant to the MSCP Subregional Plan.

15.2 CDFG. The CDFG shall include in its annual budget requests for sufficient funds to fulfill its obligations under the MSCP Subregional Plan, this Agreement, and all NCCP Authorizations it issues pursuant to the MSCP Subregional Plan.

15.3 Failure to Provide State or Federal Contribution. The USFWS and CDFG acknowledge that the MSCP Subregional Plan is long-term in nature and that the MHPA will be established over a 50-year period. Contributions of the USFWS and CDFG will be made at varying levels throughout the life of the program, with contributions to habitat acquisition to occur within the first 30 years of the program. State and federal contributions may include, but are not limited to, state and federally funded habitat acquisitions, land exchanges, personnel, and habitat restoration and enhancement. If, following the exercise of all available authority and utilization of all available resources, the state and/or federal contribution committed to the MSCP Subregional Plan cannot be provided, the MSCP will be reevaluated by the USFWS and CDFG in consultation with the CITY to consider possible adjustments to the take authorizations of Participating Local Jurisdictions and Participating Special Entities, in light of the extent of the state and federal contribution. Prior to such reevaluation of the MSCP Subregional Plan, the USFWS and CDFG shall first attempt to address the shortfall in the state and/or federal contribution through (1) habitat management practices and enhancement opportunities within the MHPA using existing management resources, provided the redirection of such resources does not adversely affect any Covered Species, and (2) habitat acquisition through the reallocation of existing state, federal and/or regional funds identified for MSCP Subregional Plan implementation, provided such reallocation does not adversely affect any Covered Species.

16.0 REMEDIES AND ENFORCEMENT

16.1 Remedies in General. Except as set forth below each Party shall have all of the remedies available in equity (including specific performance and injunctive relief) and at law to enforce the terms of this Agreement and the Section 10(a)(1)(B) Permit and NCCP Authorization, and to seek remedies and compensation for any breach or violation thereof, consistent with and subject to the following:

A. None of the Parties shall be liable in damages to the other Parties or to any other person or entity, including Third Party Beneficiaries, for any breach of this Agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement, or any other cause of action arising from this Agreement. Notwithstanding the foregoing, each Party shall retain whatever liability it would possess for its present and future acts or failure to act apart from and independent of, this Agreement.

B. The Parties acknowledge that the Covered Species are unique and that their loss as species would be irreparable and that therefore injunctive and temporary relief may be appropriate in certain instances involving a breach of this Agreement.

16.2 Federal Take Authorization.

A. Permit Suspension. The Service may suspend the Section 10(a)(1)(B) Permit, in whole or in part, for cause in accordance with the laws and regulations in force at the time of such suspension. (See 50 C.F.R. §§ 1327-29, 17.22(b) and 17.32(b)). However, except where the USFWS determines that emergency action is necessary to avoid irreparable harm to a Covered Species, it will not suspend the Section 10(a)(1)(B) Permit without first (1) requesting the CITY to take appropriate remedial actions, and (2) providing the CITY with written notice of the facts or conduct which may warrant the suspension and an adequate and reasonable opportunity for the CITY to demonstrate why suspension is not warranted.

B. Reinstatement of Suspended Permit. In the event the USFWS suspends the Section 10(a)(1)(B) Permit, in whole or in part, as soon as possible but no later than ten (10) days after such suspension, the USFWS shall confer with the CITY concerning how the suspension can be lifted. At the conclusion of any such conference, the USFWS shall identify reasonable specific actions, if any, necessary to effectively redress the suspension. In making this determination the USFWS shall consider the requirements of the ESA, regulations issued thereunder, the conservation needs of the Covered Species, the terms of the Section 10(a)(1)(B) Permit and of this Agreement and any comments or recommendations received during the meet and confer process. As soon as possible, but not later than thirty (30) days after the conference, the USFWS shall send the CITY written notice of any available, reasonable actions, necessary to effectively redress the suspension. Upon performance of such actions, the Service shall immediately reinstate the federal Section 10(a)(1)(B) Permit. It is the intent of the Parties that in the event of any total or partial suspension of the Section 10(a)(1)(B) Permit all Parties shall act expeditiously and cooperatively to reinstate the Section 10(a)(1)(B) Permit.

C. Permit Revocation or Termination

1. Pursuant to 50 C.F.R. section 13.28-13.29 and 50 C.F.R. 17.22(b)(8) and 17.32(b)(8), the USFWS agrees that it will revoke or terminate the Section 10(a)(1)(B) Permit, in whole or in part only (a) for a material violation of the Section 10(a)(1)(B) Permit or material breach of this Agreement by the CITY where (1) the CITY fails to cure the violation or breach after receiving actual notice of it from the USFWS and a reasonable opportunity to cure it, or (2) the USFWS determines in writing that such violation or breach cannot be effectively redressed by other remedies or enforcement action; or (b) where revocation of the Section 10(a)(1)(B) Permit, in whole or in part, is necessary to avoid the likelihood of jeopardy to a listed species.

2. The USFWS agrees that it will not revoke or terminate the Section 10(a)(1)(B) Permit, in whole or in part, for a material violation of the Section 10(a)(1)(B) Permit or a material breach of this Agreement without first (a) requesting the CITY take appropriate remedial action, and (b) providing the CITY with notice in writing of the facts or conduct which warrant the partial or total revocation or termination and a reasonable opportunity (but not less than sixty (60) days) to demonstrate or achieve compliance with the ESA, the Section 10(a)(1)(B) Permit and this Agreement. The USFWS agrees that it will not revoke or terminate the Section 10(a)(1)(B) Permit, in whole or in part, to avoid the likelihood of jeopardy to a listed species, without first notifying the CITY of those measures, if any, that the CITY may undertake to prevent jeopardy to the listed species and maintain the Section 10(a)(1)(B) Permit and a reasonable opportunity, consistent with section 16.5 of this Agreement, to implement such measures.

16.3 The NCCP Authorization.

A. Authorization Suspension. In the event of any material violation of the NCCP Authorization or material breach of this Agreement by the CITY the CDFG may suspend the NCCP Authorization in whole or in part; provided, however, that it may not suspend the NCCP Authorization without first (1) requesting the CITY take appropriate remedial actions, and (2) providing the CITY with written notice of the facts or conduct which may warrant the suspension and an adequate and reasonable opportunity for the CITY to demonstrate why suspension is not warranted or to take steps necessary to cure the violation or breach.

B. Reinstatement of Suspended Authorization. In the event the CDFG suspends the NCCP Authorization, as soon as possible but no later than ten (10) days after such suspension, the CDFG shall confer with the CITY concerning how the violation or breach that led to the suspension can be remedied. At the conclusion of any such conference, the CDFG shall identify reasonable specific actions necessary to effectively redress the violation or breach. In making this determination the CDFG shall consider the requirements of the NCCP Act, any regulations issued thereunder, the conservation needs of the Chula Vista Covered Species, the terms of the NCCP Authorization and of this Agreement and any comments or recommendations received during the meet and confer process. As soon as possible, but not later than thirty (30) days after the conference, the CDFG shall send the CITY written notice of the reasonable actions necessary to effectively redress the violation or breach. Upon full or substantial performance of such necessary actions, the CDFG shall immediately reinstate the NCCP Authorization. It is the intent of the Parties that in the

event of any suspension of the NCCP Authorization all Parties shall act expeditiously and cooperatively to reinstate the NCCP Authorization.

C. Authorization Revocation or Termination.

1. CDFG may revoke or terminate the NCCP Authorization for a material violation of the NCCP Authorization or material breach of this Agreement by the CITY, if the CDFG determines in writing that (a) such violation or breach cannot be effectively redressed by other remedies or enforcement action, or (b) revocation or termination is required to avoid jeopardizing the continued existence of a Covered Species and to fulfill a legal obligation of the CDFG under the CESA and/or the NCCP Act.

2. CDFG agrees that it will not revoke or terminate the NCCP Authorization without first (a) requesting the CITY take appropriate remedial action, and (b) providing the CITY with notice in writing of the facts or conduct which warrant the revocation or termination and a reasonable opportunity (but not less than sixty (60) days) to demonstrate or achieve compliance with the CESA, the NCCP Act, the NCCP Authorization and this Agreement.

16.4 Circumstances Likely to Constitute Jeopardy to Species. In the event of circumstances which appreciably reduce the likelihood of survival and recovery of a species in the wild, USFWS or CDFG may suspend the take authorizations, in whole or in part, without resorting to the procedures specified above. The period of such emergency suspension shall not last longer than 90 days. During such 90 day period, FWS shall comply with 50 C.F.R. 13.27 and Section 16.2 A and B.

16.5 The CITY's Obligations In The Event of Suspension or Revocation. In the event that the USFWS and/or CDFG suspend or revoke the Section 10(a)(1)(B) Permit and NCCP Authorization issued to the CITY under this Agreement, the CITY will remain obligated to fulfill its mitigation, enforcement management, and monitoring obligations, and its other MSCP Subregional Plan and Subarea Plan obligations, in accordance with this Agreement and applicable statutory and regulatory requirements for all land development activities authorized for Take prior to the breach which led to the suspension or revocation.

17.0 THIRD PARTY BENEFICIARIES

17.1 Authorization. Upon execution of this Agreement by the Parties and the issuance of take authorizations by USFWS and CDFG, the CITY may allow within the Subarea the Incidental Take of Chula Vista Covered Species by Third Party Beneficiaries under the direct control of the CITY, specifically including landowners and public and private entities undertaking land development activities in conformance with an approval granted by the CITY in compliance with this Agreement.

A. Creation of Third-Party Beneficiary Status. The creation of Third-Party Beneficiary status shall occur during the CITY's permitting process at the point in time when (1)

review of the project's impacts on biological resources and a determination of necessary mitigation has occurred in compliance with this Agreement and the Chula Vista Subarea Plan and other applicable law (e.g. CEQA), (2) the determined mitigation includes an immediately-effective requirement to maintain the biological values of the land committed for mitigation, and (3) the mitigation has been imposed through a condition of development (such as a development agreement or a tentative map condition) that is recorded and runs with the land and is enforceable against and binding upon the Third-Party Beneficiary and any successor-in-interest to the Third-Party Beneficiary, provided that within regard to projects with a federal nexus that are required to undergo consultation under Section 7 of the ESA, Third Party Beneficiary status shall not attach until the Section 7 consultation is also completed. Third-Party Beneficiary status may be attained for a project as a whole, or for a discrete phase(s) of a project so long as the mitigation for the discrete phase(s) is not functionally dependent in the context of the MSCP Subregional Plan and Chula Vista Subarea Plan upon the mitigation proposed for subsequent phases.

B. Maintenance of Third-Party Beneficiary Status. Third-Party Beneficiary status will remain in effect unless, prior to the issuance of take authorization in accordance with paragraph 17.1.D below, the Third-Party Beneficiary alters the project in a manner that increases or substantially alters impacts to biological resources evaluated pursuant to Paragraph 17.1.A above or fails to maintain the biological values of the land committed for mitigation pursuant to Paragraph 17.1.A above. In such circumstance, the Third-Party Beneficiary status is automatically extinguished, and the subsequent creation of Third-Party Beneficiary status will require biological review and imposition of mitigation for the increased or altered impacts pursuant to Paragraph 17.1.A above. However, Third-Party Beneficiary status shall not be extinguished as a result of impacts to biological values resulting from natural or other causes beyond the Third-Party Beneficiary's control, as determined by the USFWS and CDFG, including fire, flood, storm, and earth movement, or from any prudent action taken by the Third-Party Beneficiary to prevent, abate, or mitigate significant injury to the land evaluated pursuant to Paragraph 17.1.A above resulting from such causes.

C. Assurances to Third-Party Beneficiaries. For a project or portion thereof where Third-Party Beneficiary status has been attained and is effective, the Parties shall not alter existing mitigation obligations imposed by the CITY on the Third-Party Beneficiary, except as otherwise specifically allowed under this Agreement or the Subarea Plan, provided that the Third-Party Beneficiary satisfies all mitigation obligations imposed by the CITY in conformance with this Agreement. These assurances do not apply to circumstances under which this Agreement provides that USFWS or CDFG may require additional mitigation or conservation measures from the CITY; under such circumstances, the Parties may require Third Party Beneficiaries to provide any additional mitigation or conservation that is required.

D. Authorization for Take Conferred by Local Jurisdiction to Third-Party Beneficiary. The authorization for incidental take issued by the CITY to the Third-Party Beneficiary shall be for the length of time and run concurrent with the specific land development approval granted by the CITY. However, no grading, clearing and/or grubbing activities may be commenced by the Third-Party Beneficiary pursuant to the CITY's development approval until the mitigation established pursuant to paragraph 17.1.A above has been fully satisfied (via conservation easement, transfer of fee title, etc.) or is guaranteed (via irrevocable offer of dedication, mitigation bond, letter of credit, pledged savings account or other equivalent mechanism) to occur within a time frame approved by

the CITY, which time frame shall not under any circumstance exceed one year from the date the permit for grading, clearing and/or grubbing is issued.

17.2 Effect of Take Authorization Revocation, Termination or Suspension. In the event that the USFWS and/or CDFG revoke, terminate or suspend the Section 10(a)(1)(B) Permit and NCCP Authorization issued to the CITY in connection with this Agreement and provided the CITY continues to carry out its obligation under the Subarea Plan, this Agreement and the Take Authorizations with regard to Third Party Beneficiaries, the assurances provided to Third Party Beneficiaries under this Agreement and the right to Take Chula Vista Covered Species and Species Adequately Conserved extended by the CITY to the Third Party Beneficiaries under the Permit and/or NCCP Authorization, will remain in effect as to every individual Third Party Beneficiary which fulfills the mitigation obligations imposed on it by the CITY in compliance with this Section and Section 10 of this Agreement unless USFWS or CDFG determines that continuation of the City's Permit and/or NCCP Authorization with regard to Take by Third Party Beneficiaries would likely jeopardize the continued existence of a listed species.

17.3 Enforcement. The Parties reserve the right to enforce all applicable federal, state or local laws against persons or entities which engage in unlawful land development activity without obtaining proper permits and approvals from the Parties. Also, the Parties reserve the right to enforce all applicable federal, state or local laws against Third-Party Beneficiaries that conduct land development activities in the Subarea which are not in compliance with land development approvals granted by the CITY in conformance with this Agreement and the Chula Vista Subarea Plan.

17.4 No Right to Sue Under this Agreement. Notwithstanding the use of the term "Third-Party Beneficiary" or any other provision of this Agreement, this Agreement shall confer no right upon Third-Party Beneficiaries or any other person or entity to sue the USFWS, the CDFG, or the CITY.

18.0 ENVIRONMENTAL REVIEW

18.1 Federal Law - NEPA. Issuance of a Section 10(a) (1)(B) Permit to the CITY by USFWS is an action subject to NEPA review. USFWS is a lead agency under NEPA. The Chula Vista Subarea Plan has been evaluated pursuant to NEPA under the MSCP Subregional Plan Final EIR/EIS (1997); the Addendum to the Final EIR/EIS (2000); and the Supplemental EIR and EA (2002).

18.2 State Law - CEQA. Implementation and approval of the MSCP Subregional Plan and each of the subarea plans are actions subject to CEQA review. The CITY is the lead agency for the Chula Vista Subarea Plan, which has been evaluated pursuant to CEQA under the MSCP Subregional Plan Final EIR/EIS (1997); the Addendum to the Final EIR/EIS (2000); and the Supplemental EIR and EA (2002). CDFG is a responsible agency under CEQA for purposes of approving the Chula Vista Subarea Plan and issuing the NCCP Authorization under the NCCP Act.

19.0 COOPERATIVE EFFORT

In order that each of the legal requirements summarized in Section 8.0 of this

Agreement are fulfilled, each of the Parties to this Agreement must perform certain specific tasks. The MSCP Subregional Plan thus describes a cooperative program by federal, state and local agencies to conserve the Covered Species.

20.0 TERMS USED

Terms defined and utilized in the MSCP Subregional Plan, the ESA, the CESA, and the NCCP Act shall have the same meaning when utilized in this Agreement, except as specifically noted.

21.0 TERM

21.1 Fifty-year Agreement. This Agreement takes effect on the Effective Date, and shall remain in full force and effect for a period of 50 years, or until revocation or termination of the Section 10(a)(1)(B) Permit and NCCP Authorization pursuant to Section 16 or Section 22 of this Agreement, whichever occurs sooner.

21.2 Fifty-year Take Authorizations. The Section 10(a)(1)(B) Permit and NCCP Authorization issued to the CITY shall be issued for a period of 50 years from the Effective Date, unless revoked or terminated sooner in accordance with applicable laws and regulations.

21.3 Permanent Preservation. Notwithstanding the stated term as herein set forth, the Parties agree and recognize that once Take of a Covered Species has occurred and/or their habitat modified within the Subarea, such Take and habitat modification will be permanent. The Parties, therefore, agree that the preservation and maintenance of the habitat provided for under this Agreement is likewise intended to be permanent and to extend beyond the term of this Agreement.

22.0 TERMINATION

A. Upon 90 days written notice to USFWS and CDFG and all other Participating Local Jurisdictions, the CITY may unilaterally withdraw from this Agreement provided: (1) the CITY and all Third Party Beneficiaries have complied with all mitigation obligations incurred under the Section 10(a)(1)(B) Permit and NCCP Authorization, the MSCP Subregional Plan, Chula Vista Subarea Plan and this Agreement up to the date of withdrawal; the City has complied with its obligation to record all habitat losses and gains in Habittrak; and the CITY provides written evidence of such compliance to USFWS and CDFG; and (2) the CITY and Third Party Beneficiaries shall remain obligated to carry out all of their long term management and monitoring obligations assumed under the MSCP Subregional Plan, Chula Vista Subarea Plan and this Agreement with respect to habitat conservation lands included in, or required to be included in, the Preserve as a result of Incidental Take associated with land development projects authorized for Take by the CITY prior to withdrawal from the Agreement.

B. Any Incidental Take associated with land development projects approved by the CITY for which mitigation has been assured as provided in Section 17 shall, subject to the limitations in Section 17, continue to be authorized under the terms of the Section 10(a)(1)(B) Permit and NCCP Authorization provided the CITY continues to carry out its obligations under this Agreement. Except as provided in this Section 22.B, the Take Authorizations may not qualify for Incidental Take authorization under Section 17.0 after that date.

C. Withdrawal of the CITY from this Agreement shall be deemed to constitute a surrender of the CITY's take authorizations issued pursuant to this Agreement.

23.0 AMENDMENTS

23.1 Standard Amendments and Modifications. Standard amendments to the Section 10(a)(1)(B) Permit and NCCP Authorization and this Agreement and modifications to the Subarea Plan may be proposed by any Party to this Agreement. The Party proposing the amendment or modification shall provide to each other Party a written statement of the reasons for the amendment or modification and an analysis of the effect of the amendment or modification on the environment, including the effects on Covered Species and the implementation of the Subarea Plan. Any amendment shall comply with all applicable laws, including but not limited to the ESA and implementing regulations, NEPA, the NCCP Act and any implementing regulations, and CEQA. All modifications to the Subarea Plan and all amendments to this Agreement, except those described in Sections 5.1.3.1, 5.3.1, and 5.4 of the Chula Vista Subarea Plan, shall be processed as standard amendments and modifications pursuant to this paragraph.

23.2 Minor Modifications and Amendments Any Party may propose a minor modification to the Subarea Plan or amendment to this Agreement for the changes described in Sections 5.1.3.1, 5.3.1, and 5.4 of the Chula Vista Subarea Plan using the amendment procedures contained in those sections. All other modifications or amendments shall be standard amendments and modifications governed by Section 23.1. It is contemplated that minor modifications to the Chula Vista Subarea Plan and minor amendments to this Agreement may be agreed to by the Parties in writing without the need for amending the Section 10(a)(1)(B) Permit and NCCP Authorization.

24.0 FORCE MAJEURE

In the event that the CITY is wholly or partially prevented from performing obligations under this Agreement because of unforeseeable causes beyond the reasonable control of and without the fault or negligence of the CITY ("force majeure"), including but not limited to acts of God, labor disputes, sudden actions of the elements, or actions of federal or state agencies or other local jurisdictions, the CITY shall be excused from whatever performance is affected by such unforeseeable cause to the extent so affected, and such failure to perform shall not be considered a material violation or breach, provided that nothing in this Section shall be deemed to authorize any Party to violate ESA or CESA, and provided further that:

A. The suspension of performance is of no greater scope and no longer duration than is required by the force majeure;

B. Within two weeks after the occurrence of the force majeure the CITY gives the USFWS and CDFG written notice describing the particulars of the occurrence;

C. The CITY uses its best efforts to remedy its inability to perform (however, this paragraph shall not require the settlement of any strike, walk-out, lock-out or other labor dispute on terms which in the sole judgment of the CITY are contrary to its interest); and

D. When the CITY is able to resume performance of its obligations, the CITY shall give USFWS and CDFG written notice to that effect.

E. Changed Circumstances not Subject to Force Majeure. Events or causes identified as Changed Circumstances in the Subarea Plan and this Agreement are not considered unforeseeable events or Acts of God within the meaning of this Section 24 and the CITY shall be responsible for implementing the responses to Changed Circumstances provided for in Section 9.2 (b) of this Agreement.

25.0 MISCELLANEOUS PROVISIONS

25.1 No Partnership. Except as otherwise expressly set forth herein, neither this Agreement nor the Chula Vista Subarea Plan shall make or be deemed to make any Party to this Agreement the agent for or the partner of any other Party.

25.2 Successors and Assigns. This Agreement and each of its covenants and conditions shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns. The CITY may only assign its rights and obligations under this Agreement with the approval of the USFWS and CDFG, which approval shall not be unreasonably withheld. Assignment or other transfer of the Section 10(a)(1)(B) Permit or NCCP Authorization shall be governed, respectively, by then-current USFWS regulations and any applicable NCCP regulations.

25.3 Notice. Any notice permitted or required by this Agreement shall be delivered personally to the persons set forth below or shall be deemed given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested and addressed as follows or at such other address as any Party may from time to time specify to the other Parties in writing:

United States Fish and Wildlife Service
Operations Manager
California/Nevada Operations Office
2800 Cottage Way, Room W-2606
Sacramento, California 95825

United States Fish and Wildlife Service

Field Supervisor, Carlsbad Field Office
2730 Loker Avenue West
Carlsbad, California 92008

Director, California Department of Fish and Game
1416 9th Street, 12th Floor
Sacramento, California 95814

Regional Manager
South Coast Region
California Department of Fish and Game
4949 Viewridge Avenue
San Diego, California 92123

The City of Chula Vista
Office of the City Manager
276 Fourth Avenue
Chula Vista, California 91910

25.4 Entire Agreement. This Agreement supersedes any and all prior agreements, either oral or in writing, among the Parties with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters; and each Party acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by the other Party or anyone acting on behalf of the other party that is not embodied herein.

25.5 Attorneys' Fees. If any action at law or equity, including any action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, each Party to the litigation shall bear its own attorneys' fees and costs.

25.6 Duplicate Originals. This Agreement may be executed in any number of duplicate originals. A complete original of this Agreement shall be maintained in the official records of each of the Parties.

25.7 Federal and State Appropriations. The duty of the USFWS and CDFG to carry out its obligations under the MSCP Subregional Plan, the Chula Vista Subarea Plan and this Agreement shall be subject to the federal Anti-Deficiency Act and the availability of appropriated funds. Nothing in this Agreement shall be construed by the Parties to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury. The Parties acknowledge that USFWS will not be required under this Agreement to expend any federal agency's appropriated funds unless and until an authorized officer of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

The duty of CDFG to carry out its obligations under the MSCP Subregional Plan, the Chula Vista Subarea Plan and this Agreement shall be subject to the availability of appropriated funds. Nothing in this Agreement shall be construed by the Parties to require the obligation, appropriation, or expenditure of any money from the Treasury of the State of California. The Parties acknowledge that CDFG will not be required under this Agreement to expend any State of California agency's appropriated funds unless and until an authorized officer of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

25.8 Elected Officials. No member of Congress shall be entitled to any share or part of this Agreement, or to any benefit that may arise from it.

25.9 Governing Law. This Agreement shall be governed by and construed in a manner consistent with the statutory and regulatory authority of the USFWS under the ESA, its implementing regulations and other applicable federal laws, and of the CDFG under the CESA, the NCCP Act and other applicable state laws and regulations. Nothing in this Agreement is intended to nor shall be construed to limit or compromise the authority of the USFWS to fulfill its responsibilities under the ESA or CDFG under CESA and the NCCP Act, including but not limited to seeking penalties against the CITY. Further, nothing in this Agreement is intended or shall be construed to limit or diminish the responsibility of the USFWS as an agency of the federal government or CDFG as an agency of the State or California.

25.10 Counterparts. This Agreement may be executed in counterparts. This Agreement shall become operative as soon as one counterpart hereof has been executed by each member. The counterparts so executed shall constitute one Agreement notwithstanding that the signatures of all members do not appear on the same page.


25.11 References to Regulations. Any reference in this Agreement, the MSCP Subregional Plan, the Chula Vista Subarea Plan or the Section 10(a)(1)(B) Permit and NCCP Authorization to any regulation or rule of USFWS or CDFG, shall be deemed to be a reference to such regulation or rule in existence at the time an action is taken.

25.12 Applicable laws. Notwithstanding any other provisions of this Agreement, all activities covered under the MSCP Subregional Plan, Chula Vista Subarea Plan, this Agreement and the Section 10(a)(1)(B) Permit and NCCP Authorization must be in compliance with all applicable state or federal laws and regulations including CESA (including § 2080) and the ESA (including the provisions of §§ 7 and 10).

25.13 Due Authorization. Each Party warrants that the signatory is authorized to execute this Agreement on behalf of that Party.

SIGNATURE PAGE TO IMPLEMENTING AGREEMENT BY AND AMONG
UNITED STATES FISH AND WILDLIFE SERVICE, CALIFORNIA DEPARTMENT OF
FISH AND GAME, AND CITY OF CHULA VISTA

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Implementing
Agreement to be in effect as of the date last signed below.


BY:  Date 1/11/05

Acting

Deputy Manager, California/Nevada Operations Office
United States Fish and Wildlife Service
Sacramento, California

BY:  Date 1/13/05

Acting Deputy Director, Habitat Conservation Division
California Department of Fish and Game
Sacramento, California

BY:  Date 11/21/03

Mayor
The City of Chula Vista
Chula Vista, California

LIST OF EXHIBITS

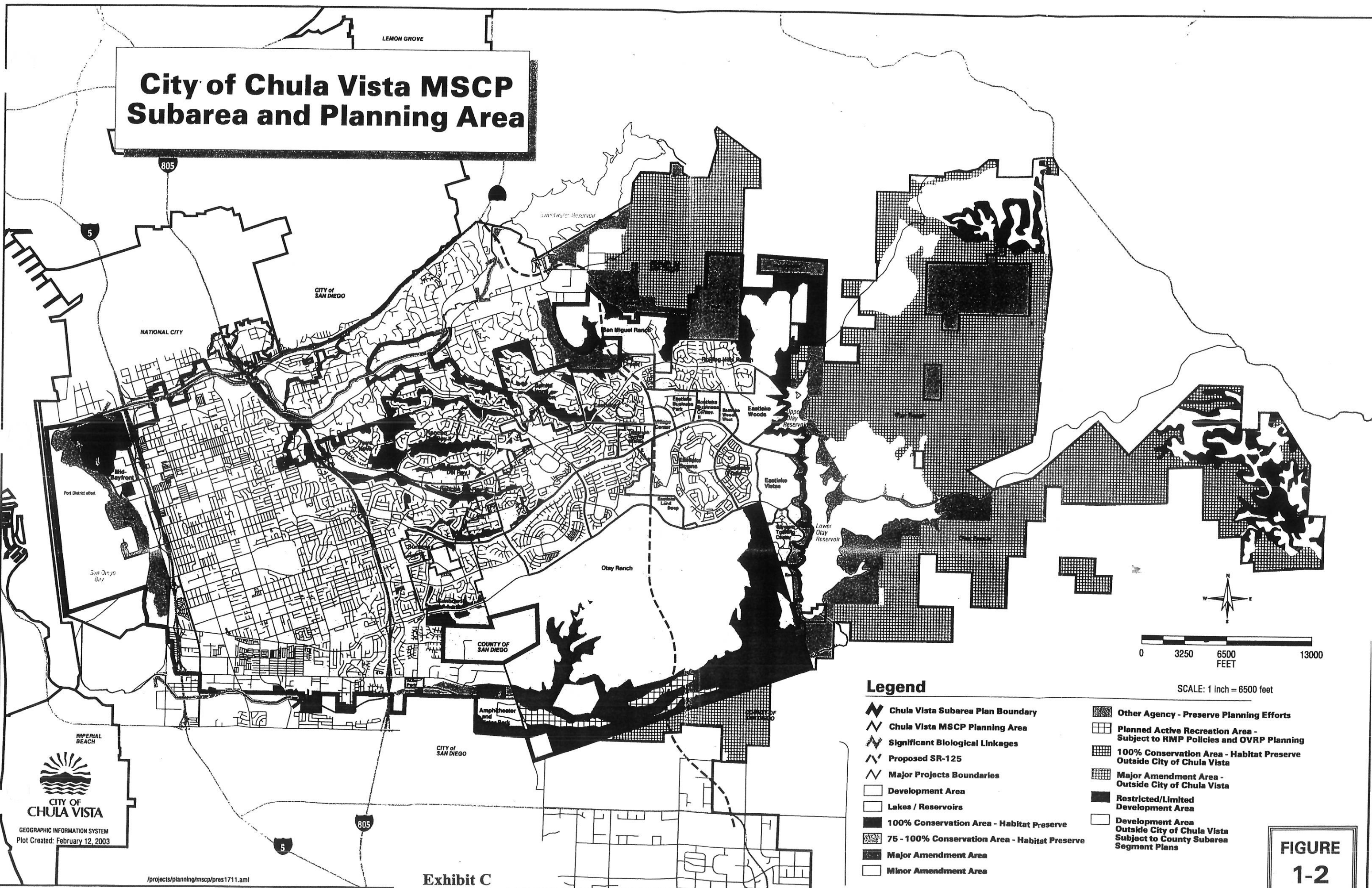
Exhibit A	MSCP Subregional Plan Area Map
Exhibit B	List of 12 Agencies in MSCP Subregional Plan Area
Exhibit C	Chula Vista Subarea Plan Area Map
Exhibit D	Covered Projects
Exhibit E	Covered Species List – By Category and By Other Subarea Plans
Exhibit F	Significantly Conserved Vegetation Communities Sufficiently Conserved Vegetation Communities
Exhibit G	Upland Mitigation Ratios
Exhibit H	Narrow Endemic Species for Chula Vista Subarea

LIST OF 12 AGENCIES IN MSCP PLAN AREA

**County of San Diego
City of Chula Vista
City of San Diego
City of Coronado
City of Del Mar
City of El Cajon
City of Imperial Beach
City of La Mesa
City of Lemon Grove
City of National City
City of Poway
City of Santee**

EXHIBIT B

City of Chula Vista MSCP Subarea and Planning Area



LIST OF COVERED PROJECTS

Covered Projects
San Miguel Ranch
Rolling Hills Ranch (Salt Creek Ranch)
Bella Lago
Otay Ranch
University Project

EXHIBIT D

Chula Vista Covered Species

Plants

<i>Acanthomintha ilicifolia</i>	San Diego thorn-mint
<i>Agave shawii</i>	Shaw's agave
<i>Ambrosia pumila</i>	San Diego ambrosia
<i>Aphanisma blitoides</i>	Aphanisma
<i>Arctostaphylos glandulosa</i> var. <i>crassifolia</i>	Del Mar manzanita
<i>Arctostaphylos otayensis</i>	Otay manzanita
<i>Astragalus tener</i> var. <i>titi</i>	Coastal dunes milk vetch
<i>Baccharis vanessae</i>	Encinitas baccharis
<i>Berberis nevinii</i>	Nevin's barberry
<i>Brodiaea filifolia</i>	Thread-leaved brodiaea
<i>Brodiaea orcuttii</i>	Orcutt's brodiaea
<i>Calamagrostis densa</i>	Dense reed grass
<i>Calochortus dunnii</i>	Dunn's mariposa lily
<i>Caulanthus stenocarpus</i>	Slender-pod jewelflower
<i>Ceanothus cyaneus</i>	Lakeside ceanothus
<i>Ceanothus verrucosus</i>	Wart-stemmed ceanothus
<i>Cordylanthus maritimus</i> ssp. <i>maritimus</i>	Salt marsh bird's-beak
<i>Cordylanthus orcuttianus</i>	Orcutt's bird's-beak
<i>Corethrogyne filaginifolia</i> var. <i>linifolia</i>	Del Mar Mesa sand aster
<i>Cupressus forbesii</i>	Tecate cypress
<i>Deinandra [Hemizonia] conjugens</i>	Otay tarplant
<i>Dudleya blochmaniae</i> ssp. <i>brevifolia</i>	Short-leaved dudleya
<i>Dudleya variegata</i>	Variegated dudleya
<i>Dudleya viscida</i>	Sticky dudleya
<i>Ericameria palmeri</i> ssp. <i>palmeri</i>	Palmer's ericameria
<i>Eryngium aristulatum</i> var. <i>parishii</i>	San Diego button-celery
<i>Erysimum ammophilum</i>	Coast wallflower
<i>Ferocactus viridescens</i>	San Diego barrel cactus
<i>Lepechinia cardiophylla</i>	Heart-leaved pitcher sage
<i>Lepechinia ganderi</i>	Gander's pitcher sage
<i>Lotus nuttallianus</i>	Nuttall's lotus

Chula Vista Covered Species

Plants (continued)	
<i>Monardella hypoleuca</i> ssp. <i>lanata</i>	Felt-leaved monardella
<i>Monardella linoidea</i> ssp. <i>viminea</i>	Willowy monardella
<i>Muilla clevelandii</i>	San Diego goldenstar
<i>Navarretia fossalis</i>	Spreading navarretia
<i>Nolina interrata</i>	Dehesa bear-grass
<i>Opuntia parryi</i> var. <i>serpentina</i>	Snake cholla
<i>Orcuttia californica</i>	California Orcutt grass
<i>Pinus torreyana</i>	Torrey pine
<i>Pogogyne abramsii</i>	San Diego mesa mint
<i>Pogogyne nudiuscula</i>	Otay Mesa mint
<i>Rosa minutifolia</i>	Small-leaved rose
<i>Satureja chandleri</i>	San Miguel savory
<i>Senecio ganderi</i>	Gander's butterweed
<i>Solanum tenuilobatum</i>	Narrow-leaved nightshade
<i>Tetracoccus dioicus</i>	Parry's tetracoccus
Invertebrates, Amphibians and Reptiles	
<i>Branchinecta sandiegoensis</i>	San Diego fairy shrimp
<i>Bufo microscaphus californicus</i>	Arroyo southwestern toad
<i>Clemmys marmorata pallida</i>	Southwestern pond turtle
<i>Cnemidophorus hyperythrus beldingi</i>	Orange-throated whiptail
<i>Euphydryas editha quino</i>	Quino checkerspot butterfly
<i>Mitoura thornei</i>	Thorne's hairstreak butterfly
<i>Panoquina errans</i>	Salt marsh skipper
<i>Phrynosoma coronatum blainvillei</i>	San Diego horned lizard
<i>Rana aurora draytoni</i>	California red-legged frog
<i>Streptocephalus woottoni</i>	Riverside fairy shrimp

Chula Vista Covered Species

Birds	
<i>Accipiter cooperii</i>	Cooper's hawk
<i>Agelaius tricolor</i>	Tricolored blackbird
<i>Aimophila ruficeps canescens</i>	California rufous-crowned sparrow
<i>Aquila chrysaetos</i>	Golden eagle
<i>Branta canadensis</i>	Canada goose
<i>Buteo regalis</i>	Ferruginous hawk
<i>Buteo swainsoni</i>	Swainson's hawk
<i>Campylorhynchus brunneicapillus couesi</i>	Coastal cactus wren
<i>Charadrius alexandrinus nivosus</i>	Western snowy plover
<i>Charadrius montanus</i>	Mountain plover
<i>Circus cyaneus</i>	Northern harrier
<i>Egretta rufescens</i>	Reddish egret
<i>Empidonax traillii extimus</i>	Southwestern willow flycatcher
<i>Falco peregrinus anatum</i>	American peregrine falcon
<i>Haliaeetus leucocephalus</i>	Bald eagle
<i>Numenius americanus</i>	Long-billed curlew
<i>Passerculus sandwichensis beldingi</i>	Belding's Savannah sparrow
<i>Passerculus sandwichensis rostratus</i>	Large-billed Savannah sparrow
<i>Pelecanus occidentalis californicus</i>	California brown pelican
<i>Plegadis chihi</i>	White-faced ibis
<i>Polioptila californica californica</i>	California gnatcatcher
<i>Rallus longirostris levipes</i>	Light-footed clapper rail
<i>Speotyto cunicularia hypugaea</i>	Burrowing owl
<i>Sialia mexicana</i>	Western bluebird
<i>Sterna antillarum browni</i>	California least tern
<i>Sterna elegans</i>	Elegant tern
<i>Vireo bellii pusillus</i>	Least Bell's vireo
Animals	
<i>Felis concolor</i>	Mountain lion
<i>Odocoileus hemionus fuliginata</i>	Southern mule deer
<i>Taxidea taxus</i>	American badger

Species Adequately Conserved by the Chula Vista Subarea Plan

Plants	
<i>Cordylanthus maritimus</i> ssp. <i>maritimus</i>	Salt marsh bird's-beak
<i>Cordylanthus orcuttianus</i>	Orcutt's bird's-beak
<i>Deinandra [Hemizonia] conjugens</i>	Otay tarplant
<i>Dudleya variegata</i>	Variegated dudleya
<i>Ferocactus viridescens</i>	San Diego barrel cactus
<i>Opuntia parryi</i> var. <i>serpentina</i>	Snake cholla
Invertebrates	
<i>Euphydryas editha quino</i>	Quino checkerspot butterfly
<i>Panoquina errans</i>	Salt marsh skipper
Birds	
<i>Aimophila ruficeps canescens</i>	California rufous-crowned sparrow
<i>Campylorhynchus brunneicapillus couesi</i>	Coastal cactus wren
<i>Charadrius alexandrinus nivosus</i>	Western snowy plover
<i>Numenius americanus</i>	Long-billed curlew
<i>Passerculus sandwichensis beldingi</i>	Belding's Savannah sparrow
<i>Passerculus sandwichensis rostratus</i>	Large-billed Savannah sparrow
<i>Polioptila californica californica</i>	California gnatcatcher
<i>Rallus longirostris levipes</i>	Light-footed clapper rail
<i>Speotyto cunicularia hypugaea</i>	Burrowing owl
<i>Sterna antillarum browni</i>	California least tern
<i>Vireo bellii pusillus</i>	Least Bell's vireo

Species Adequately Conserved by the Chula Vista Subarea Plan in Conjunction with the City of San Diego Subarea Plan

Plants	
<i>Acanthomintha ilicifolia</i>	San Diego thorn-mint
<i>Agave shawii</i>	Shaw's agave
<i>Ambrosia pumila</i>	San Diego ambrosia
<i>Aphanisma blitoides</i>	Aphanisma
<i>Arctostaphylos glandulosa</i> var. <i>crassifolia</i>	Del Mar manzanita
<i>Arctostaphylos otayensis</i>	Otay manzanita
<i>Astragalus tener</i> var. <i>titi</i>	Coastal dunes milk vetch
<i>Baccharis vanessae</i>	Encinitas baccharis
<i>Berberis nevinii</i>	Nevin's barberry
<i>Brodiaea filifolia</i>	Thread-leaved brodiaea
<i>Calamagrostis densa</i>	Dense reed grass
<i>Calochortus dunnii</i>	Dunn's mariposa lily
<i>Caulanthus stenocarpus</i>	Slender-pod jewelflower
<i>Ceanothus cyaneus</i>	Lakeside ceanothus
<i>Cordylanthus maritimus</i> ssp. <i>maritimus</i>	Salt marsh bird's-beak
<i>Cordylanthus orcuttianus</i>	Orcutt's bird's-beak
<i>Corethrogyne filaginifolia</i> var. <i>linifolia</i>	Del Mar Mesa sand aster
<i>Cupressus forbesii</i>	Tecate cypress
<i>Deinandra [Hemizonia] conjugens</i>	Otay tarplant
<i>Dudleya blochmaniae</i> ssp. <i>brevifolia</i>	Short-leaved dudleya
<i>Dudleya variegata</i>	Variegated dudleya
<i>Dudleya viscida</i>	Sticky dudleya
<i>Ericameria palmeri</i> ssp. <i>palmeri</i>	Palmer's ericameria
<i>Eryngium aristulatum</i> var. <i>parishii</i>	San Diego button-celery
<i>Erysimum ammophilum</i>	Coast wallflower
<i>Ferocactus viridescens</i>	San Diego barrel cactus
<i>Lepechinia cardiophylla</i>	Heart-leaved pitcher sage
<i>Lepechinia ganderi</i>	Gander's pitcher sage
<i>Lotus nuttallianus</i>	Nuttall's lotus

**Species Adequately Conserved by the Chula Vista Subarea Plan in
Conjunction with the City of San Diego Subarea Plan**

Plants (continued)	
<i>Monardella hypoleuca</i> ssp. <i>lanata</i>	Felt-leaved monardella
<i>Monardella linoides</i> ssp. <i>viminea</i>	Willow monardella
<i>Muilla clevelandii</i>	San Diego goldenstar
<i>Navarretia fossalis</i>	Spreading navarretia
<i>Nolina interrata</i>	Dehesa bear-grass
<i>Opuntia parryi</i> var. <i>serpentina</i>	Snake cholla
<i>Orcuttia californica</i>	California Orcutt grass
<i>Pinus torreyana</i>	Torrey pine
<i>Pogogyne abramsii</i>	San Diego mesa mint
<i>Pogogyne nudiuscula</i>	Otay Mesa mint
<i>Rosa minutifolia</i>	Small-leaved rose
<i>Satureja chandleri</i>	San Miguel savory
<i>Senecio ganderi</i>	Gander's butterweed
<i>Solanum tenuilobatum</i>	Narrow-leaved nightshade
<i>Tetracoccus dioicus</i>	Parry's tetracoccus
Invertebrates	
<i>Branchinecta sandiegoensis</i>	San Diego fairy shrimp
<i>Bufo microscaphus californicus</i>	Arroyo southwestern toad
<i>Clemmys marmorata pallida</i>	Southwestern pond turtle
<i>Cnemidophorus hyperythrus beldingi</i>	Orange-throated whiptail
<i>Euphydryas editha quino</i>	Quino checkerspot butterfly
<i>Mitoura thornei</i>	Thorne's hairstreak butterfly
<i>Panoquina errans</i>	Salt marsh skipper
<i>Phrynosoma coronatum blainvillei</i>	San Diego horned lizard
<i>Rana aurora draytoni</i>	California red-legged frog
<i>Streptocephalus woottoni</i>	Riverside fairy shrimp

Species Adequately Conserved by the Chula Vista Subarea Plan in Conjunction with the City of San Diego Subarea Plan

Birds	
<i>Accipiter cooperii</i>	Cooper's hawk
<i>Agelaius tricolor</i>	Tricolored blackbird
<i>Aimophila ruficeps canescens</i>	California rufous-crowned sparrow
<i>Aquila chrysaetos</i>	Golden eagle
<i>Branta canadensis</i>	Canada goose
<i>Buteo swainsoni</i>	Swainson's hawk
<i>Buteo regalis</i>	Ferruginous hawk
<i>Campylorhynchus brunneicapillus couesi</i>	Coastal cactus wren
<i>Charadrius alexandrinus nivosus</i>	Western snowy plover
<i>Charadrius montanus</i>	Mountain plover
<i>Circus cyaneus</i>	Northern harrier
<i>Egretta rufescens</i>	Reddish egret
<i>Empidonax traillii extimus</i>	Southwestern willow flycatcher
<i>Falco peregrinus anatum</i>	American peregrine falcon
<i>Haliaeetus leucocephalus</i>	Bald eagle
<i>Numenius americanus</i>	Long-billed curlew
<i>Passerculus sandwichensis beldingi</i>	Belding's Savannah sparrow
<i>Passerculus sandwichensis rostratus</i>	Large-billed Savannah sparrow
<i>Pelecanus occidentalis californicus</i>	California brown pelican
<i>Plegadis chihi</i>	White-faced ibis
<i>Poliophtila californica californica</i>	California gnatcatcher
<i>Rallus longirostris levipes</i>	Light-footed clapper rail
<i>Speotyto cunicularia hypugaea</i>	Burrowing owl
<i>Sterna antillarum browni</i>	California least tern
<i>Sterna elegans</i>	Elegant tern
<i>Sialia mexicana</i>	Western bluebird
<i>Vireo bellii pusillus</i>	Least Bell's vireo
Animals	
<i>Taxidea taxus</i>	American badger
<i>Felis concolor</i>	Mountain lion
<i>Odocoileus hemionus fuliginata</i>	Southern mule deer

Species Adequately Conserved by the Chula Vista Subarea Plan in Conjunction with the County of San Diego Subarea Plan

Plants	
<i>Acanthomintha ilicifolia</i>	San Diego thorn-mint
<i>Agave shawii</i>	Shaw's agave
<i>Ambrosia pumila</i>	San Diego ambrosia
<i>Aphanisma blitoides</i>	Aphanisma
<i>Arctostaphylos glandulosa</i> var. <i>crassifolia</i>	Del Mar manzanita
<i>Arctostaphylos otayensis</i>	Otay manzanita
<i>Astragalus tener</i> var. <i>titiv</i>	Coastal dunes milk vetch
<i>Baccharis vanessae</i>	Encinitas baccharis
<i>Berberis nevinii</i>	Nevin's barberry
<i>Brodiaea filifolia</i>	Thread-leaved brodiaea
<i>Brodiaea orcuttii</i>	Orcutt's brodiaea
<i>Calamagrostis densa</i>	Dense reed grass
<i>Calochortus dunnii</i>	Dunn's mariposa lily
<i>Caulanthus stenocarpus</i>	Slender-pod jewelflower
<i>Ceanothus cyaneus</i>	Lakeside ceanothus
<i>Ceanothus verrucosus</i>	Wart-stemmed ceanothus
<i>Cordylanthus maritimus</i> ssp. <i>maritimus</i>	Salt marsh bird's-beak
<i>Cordylanthus orcuttianus</i>	Orcutt's bird's-beak
<i>Cupressus forbesii</i>	Tecate cypress
<i>Deinandra [Hemizonia] conjugens</i>	Otay tarplant
<i>Dudleya blochmaniae</i> ssp. <i>brevifolia</i>	Short-leaved dudleya
<i>Dudleya variegata</i>	Variegated dudleya
<i>Dudleya viscida</i>	Sticky dudleya
<i>Ericameria palmeri</i> ssp. <i>palmeri</i>	Palmer's ericameria
<i>Eryngium aristulatum</i> var. <i>parishii</i>	San Diego button-celery
<i>Erysimum ammophilum</i>	Coast wallflower
<i>Ferocactus viridescens</i>	San Diego barrel cactus
<i>Lepechinia cardiophylla</i>	Heart-leaved pitcher sage
<i>Lepechinia ganderi</i>	Gander's pitcher sage
<i>Lotus nuttallianus</i>	Nuttall's lotus

Species Adequately Conserved by the Chula Vista Subarea Plan in Conjunction with the County of San Diego Subarea Plan

Plants (continued)	
<i>Monardella hypoleuca</i> ssp. <i>lanata</i>	Felt-leaved monardella
<i>Monardella linoides</i> ssp. <i>viminea</i>	Willow monardella
<i>Muilla clevelandii</i>	San Diego goldenstar
<i>Navarretia fossalis</i>	Spreading navarretia
<i>Nolina interrata</i>	Dehesa bear-grass
<i>Opuntia parryi</i> var. <i>serpentina</i>	Snake cholla
<i>Orcuttia californica</i>	California Orcutt grass
<i>Pinus torreyana</i>	Torrey pine
<i>Pogogyne abramsii</i>	San Diego mesa mint
<i>Pogogyne nudiuscula</i>	Otay Mesa mint
<i>Rosa minutifolia</i>	Small-leaved rose
<i>Satureja chandleri</i>	San Miguel savory
<i>Senecio ganderi</i>	Gander's butterweed
<i>Solanum tenuilobatum</i>	Narrow-leaved nightshade
<i>Tetracoccus dioicus</i>	Parry's tetracoccus
Invertebrates	
<i>Branchinecta sandiegoensis</i>	San Diego fairy shrimp
<i>Bufo microscaphus californicus</i>	Arroyo southwestern toad
<i>Clemmys marmorata pallida</i>	Southwestern pond turtle
<i>Cnemidophorus hyperythrus beldingi</i>	Orange-throated whiptail
<i>Euphydryas editha quino</i>	Quino checkerspot butterfly
<i>Mitoura thornei</i>	Thorne's hairstreak butterfly
<i>Panoquina errans</i>	Salt marsh skipper
<i>Phrynosoma coronatum blainvillei</i>	San Diego horned lizard
<i>Rana aurora draytoni</i>	California red-legged frog

Species Adequately Conserved by the Chula Vista Subarea Plan in Conjunction with the County of San Diego Subarea Plan

Birds	
<i>Accipiter cooperii</i>	Cooper's hawk
<i>Agelaius tricolor</i>	Tricolored blackbird
<i>Aimophila ruficeps canescens</i>	California rufous-crowned sparrow
<i>Aquila chrysaetos</i>	Golden eagle
<i>Branta canadensis</i>	Canada goose
<i>Buteo swainsoni</i>	Swainson's hawk
<i>Buteo regalis</i>	Ferruginous hawk
<i>Campylorhynchus brunneicapillus couesi</i>	Coastal cactus wren
<i>Charadrius alexandrinus nivosus</i>	Western snowy plover
<i>Charadrius montanus</i>	Mountain plover
<i>Circus cyaneus</i>	Northern harrier
<i>Egretta rufescens</i>	Reddish egret
<i>Empidonax traillii extimus</i>	Southwestern willow flycatcher
<i>Falco peregrinus anatum</i>	American peregrine falcon
<i>Haliaeetus leucocephalus</i>	Bald eagle
<i>Numenius americanus</i>	Long-billed curlew
<i>Passerculus sandwichensis beldingi</i>	Belding's Savannah sparrow
<i>Passerculus sandwichensis rostratus</i>	Large-billed Savannah sparrow
<i>Plegadis chihi</i>	White-faced ibis
<i>Polioptila californica californica</i>	California gnatcatcher
<i>Rallus longirostris levipes</i>	Light-footed clapper rail
<i>Speotyto cunicularia hypugaea</i>	Burrowing owl
<i>Sterna antillarum browni</i>	California least tern
<i>Sterna elegans</i>	Elegant tern
<i>Sialia mexicana</i>	Western bluebird
<i>Vireo bellii pusillus</i>	Least Bell's vireo
Animals	
<i>Taxidea taxus</i>	American badger
<i>Felis concolor</i>	Mountain lion
<i>Odocoileus hemionus fuliginata</i>	Southern mule deer

Sufficiently Conserved Vegetation Communities

Southern coastal bluff scrub
Riparian scrub
Disturbed wetlands
Riparian forest
Southern coastal saltmarsh
Saltpan
Coastal sage scrub (that portion of coastal sage scrub
that comprises the range of the California gnatcatcher)
Southern foredunes
Riparian woodland
Torrey pine forest
Natural flood channel
Tecate cypress forest

Significantly Conserved Vegetation Communities

Beach
Oak riparian forest
Freshwater marsh
Coastal sage scrub
Maritime succulent scrub
Southern maritime chaparral
Open water

EXHIBIT F

MITIGATION RATIOS

Upland Habitat Mitigation Ratios

Tier	Habitat Type	Location of Impact	Location of Preservation	
			Inside Preserve	Outside Preserve
TIER I: (rare uplands)	Southern Foredunes Coastal Bluff Scrub Maritime Succulent Scrub Native Grasslands Oak Woodlands	Inside Preserve	2:1	3:1
		Outside Preserve	1:1	2:1
TIER II: (uncommon uplands)	Coastal Sage Scrub CSS/Chaparral	Inside Preserve	1.5:1	2:1
		Outside Preserve	1:1	1.5:1
TIER III: (common uplands)	Mixed Chaparral Chamise Chaparral Non-native Grassland ScrubOak/Chaparral ¹³	Inside Preserve	1:1	1.5:1
		Outside Preserve	0.5:1	1:1
TIER IV: (other uplands)	Disturbed Lands Agricultural Lands Eucalyptus	Inside Preserve	No Mitigation Required	No Mitigation Required
		Outside Preserve	No Mitigation Required	No Mitigation Required
Covered Narrow Endemic Species	Listed on Table 5-4 of Subarea Plan	N/A	1:1 to 3:1	1:1 to 3:1

EXHIBIT G

NARROW ENDEMIC SPECIES FOR CHULA VISTA SUBAREA

Common Name	Scientific Name
Species that occur in <i>Chula Vista Subarea</i> and for which Subarea Plan provides a significant contribution to subregional conservation	
Salt marsh bird's-beak	<i>Cordylanthus maritimus</i> ssp. <i>maritimus</i>
Variegated dudleya	<i>Dudleya variegata</i>
Otay tarplant	<i>Deinandra [Hemizonia] conjugens</i>
Snake cholla	<i>Opuntia parryi</i> var. <i>serpentina</i>
Species with known occurrences or suitable habitat within the <i>Chula Vista Subarea</i>	
San Diego thorn-mint	<i>Acanthomintha ilicifolia</i>
San Diego ambrosia	<i>Ambrosia pumila</i>
Orcutt's brodiaea	<i>Brodiaea orcutti</i>
Palmer's ericameria	<i>Ericameria palmeri</i> ssp. <i>palmeri</i>
Species not likely to occur within the <i>Chula Vista Subarea</i>	
Shaw's agave	<i>Agave shawii</i>
Encinitas baccharis	<i>Baccharis vanessae</i>
Nevin's barberry	<i>Berberis nevinii</i>
Thread-leaved brodiaea	<i>Brodiaea filifolia</i>
Dunn's mariposa lily	<i>Calochortus dunnii</i>
Lakeside ceanothus	<i>Ceanothus cyaneus</i>
Short-leaved dudleya	<i>Dudleya blochmaniae</i> ssp. <i>brevifolia</i>
Gander's pitcher sage	<i>Lepechinia ganderi</i>
Felt-leaved monardella	<i>Monardella hypoleuca</i> spp. <i>lanata</i>
Willow monardella	<i>Monardella linoides</i> var. <i>viminea</i>
Dehesa bear-grass	<i>Nolina interrata</i>

EXHIBIT H