

## ***6.0 Plan Implementation***

This section provides information on Plan implementation.

### ***6.1 Organizational Structure***

#### ***6.1.1 Coachella Valley Conservation Commission***

Implementation of the MSHCP will be overseen and administered by the Coachella Valley Conservation Commission (CVCC), a joint powers authority formed by the Local Permittees pursuant to the requirements of the California Government Code and other appropriate legal authorities.

CVCC shall have adequate authority to carry out its responsibilities under the Plan. CVCC shall sign the IA and shall be a Permittee under the Permits. CVCC shall be formed as a separate and independent joint powers authority, prior to issuance of the Permits. CVAG shall organize the first meeting of CVCC representatives who will formally establish CVCC and adopt its by-laws consistent with all applicable legal requirements.

For the first five years of Plan implementation, CVCC shall contract with CVAG for staff services. The CVCC Executive Director shall be the contact person for the Wildlife Agencies. Thereafter, CVCC may renew the contract with CVAG for staff services, retain its own staff, or contract for services.

##### ***6.1.1.1 Composition and Voting Requirements***

CVCC shall consist of the members of the Riverside County Board of Supervisors and an elected official from each of the Cities, CVWD, and IID. Each of these entities may also designate an alternate, who shall also be an elected official. Each voting member of CVCC shall have one vote at meetings of CVCC.

##### ***6.1.1.2 Duties and Responsibilities of CVCC***

CVCC shall provide the policy direction for the implementation of the MSHCP and will provide opportunities for public participation in the decision-making process. Duties of CVCC shall include but are not limited to the following:

1. Establish the Acquisition and Funding Coordinating Committee, the Reserve Management Oversight Committee (RMOC), and the Reserve Management Unit Committees (RMUCs), and ensure designation of the Monitoring Program Administrator (MPA).
2. Establish a Trails Management Subcommittee to the RMUC for the Santa Rosa and San Jacinto Mountains Conservation Area, as described in Section 6.3.

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3. Establish policies as appropriate under which the Acquisition and Funding Coordinating Committee will make recommendations to CVCC.
4. Identify and make decisions on Permittee MSHCP Reserve System acquisitions, except as set forth in Section 6.6.2, based on MSHCP Conservation Goals and Objectives, and recommendations from the Acquisition and Funding Coordinating Committee.
5. Ensure adequate management of locally managed Reserve Lands.
6. Contract with outside entities for specific services, such as land management and law enforcement, as needed.
7. Manage and coordinate the MSHCP local funding plan as set forth in Section 5 of this document.
8. Develop and implement financing strategies to maximize funding sources.
9. Develop an investment policy and review policy annually.
10. Adopt an annual budget, including but not limited to expenses associated with land acquisition, the Monitoring Program, the Management Program, and Adaptive Management, consistent with their respective annual work plans as described in Section 8.7.
11. Annually review Local Development Mitigation Fee remittance for compliance and accuracy.
12. Act as custodian of records for information concerning MSHCP implementation.
13. Maintain a record of the amount of Take and Habitat loss for each Local Permittee.
14. Maintain a record of the amount of Take Authorization to Participating Special Entities as set forth in Section 11.7 of the IA.
15. Extend Take coverage to Participating Special Entities and others as set forth in Section 11.7 of the IA.
16. Hold regularly scheduled public meetings.
17. Prepare or cause to be prepared an annual audit.
18. Accept and manage MSHCP Reserve System property including conservation easements that have been conveyed to it by the County, Cities or other entity, agency or individual.

***6.1.1.3 Duties and Responsibilities of the CVCC Executive Director***

Duties of the CVCC Executive Director shall include but are not limited to the following:

1. Plan, organize, coordinate, and direct CVCC staff to develop goals and annual work plans of CVCC that are then acted on by CVCC.
2. Develop and direct the implementation of goals and work activities adopted by the CVCC.
3. Coordinate implementation of the Plan by Local Permittees and the Wildlife Agencies. During the first three (3) years of implementation of the MSHCP, the CVCC Executive Director and Wildlife Agencies' representatives shall meet every ninety (90) days, at a

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minimum, to review the status of Plan implementation. Thereafter, the meetings shall occur every six months or as otherwise agreed upon. Within 30 days of Permit issuance, the Executive Director will circulate a Draft Implementation Manual to the Local Permittees and the Wildlife Agencies for review and comment. Within 30 days of circulation of the Draft, the Executive Director will arrange a meeting with the appropriate staff of the Local Permittees to discuss the Implementation Manual.

4. Ensure that conservation mechanisms are properly recorded for lands dedicated by Local Permittees.
5. Ensure that conservation mechanisms are properly recorded on existing CVFTL Preserve lands consistent with Section 6.6.1.3 of the Plan.
6. In coordination with the RMUCs, draft the MSHCP Reserve Management Unit Plans (RMUPs) for review and approval by the RMOC to define specific management actions, schedules, and responsibilities for each Reserve Management Unit (RMU).
7. Ensure an adequate exchange of information among the RMUCs, the Land Manager, and the MPA so that management takes into account the findings of the Monitoring Program and the latter reflects the needs of the former.
8. Ensure that the functions of the MPA are being satisfactorily carried out.
9. As needed, obtain the services of Independent Science Advisors to address specific issues and to provide recommendations concerning scientific aspects of the Plan based on the best available scientific information.
10. Oversee data management, including maintaining the Plan's GIS database and providing a back-up copy to the County annually. The database will also be provided to the Wildlife Agencies. The database will be updated at least annually with:
  - a. Data derived from inventory and research activities on species occurrences and Habitat distribution in the Conservation Areas.
  - b. Data on the status of land in the Conservation Areas, including lands acquired or otherwise protected and lands on which any Development has occurred.
  - c. Data derived from reports from the Local Permittees on the status of land outside the Conservation Areas, including Habitat loss, annexations and incorporations.
11. Create and maintain remote sensing database of current and historical aerial photos and/or satellite images.
12. As described in Section 4.4, maintain a list of biologists, acceptable to the Wildlife Agencies, who may be used to conduct surveys required by avoidance and minimization measures for specified Covered Species.
13. For surveys required by avoidance and minimization measures, maintain a list of survey protocols approved by CDFG and/or USFWS.
14. Maintain and provide to Permittees maps of modeled Habitat for Covered Species and a natural community map.
15. Maintain peer reviewed journal articles that provide information on siting and design of wildlife crossings for Covered Species.
16. Coordinate with State and Federal agencies on MSHCP funding.

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17. Ensure transmission of Local Development Mitigation Fees from the County and the Cities to CVCC on a monthly basis.
18. Manage and account for all Local Permittee and Participating Special Entity revenues transmitted to CVCC for Plan implementation.
19. Prepare an Annual Report as described in Sections 6.4 and 8.7 providing information and evaluating progress toward Plan implementation and attainment of the Conservation Goals and Objectives of the Plan.
20. Maintain a record of land acquired or otherwise conserved by Conservation Area.
21. Maintain a record of all Major and Minor Amendments and Like Exchanges.
22. Prepare and submit to the Wildlife Agencies all applications for Major Amendments to the MSHCP as described in Section 6.12.4 of this document.
23. Coordinate with Permittees in the preparation and submittal to the Wildlife Agencies of Minor Amendments to the MSHCP, including seeking expedited processing of such amendments and maintaining records reflecting such amendments.
24. Participate in the Joint Project Review Process and provide appropriate data and analysis to ensure consistent Plan implementation and oversight, including providing the relevant Local Permittee an analysis of how the proposed project would impact the Conservation Area Conservation Objectives, and what the status of Rough Step is in the affected Conservation Area.
25. Concurrent with any annexation or deannexation, provide to the affected Parties a revised calculation of the applicable Conservation Objectives and other relevant information to the affected Permittees.
26. Assist in resolving disputes between the Permittees and the Wildlife Agencies.
27. Coordinate the preparation and administration of CVCC's annual budget.
28. Administer CVCC'S affairs as determined by CVCC Joint Powers Agreement.
29. Serve as Secretary of CVCC or designate a Secretary.
30. Develop policies and procedures to administer CVCC functions and activities.
31. Ensure compliance with federal, state and local laws and regulations.

### ***6.1.2 Acquisition and Funding Coordinating Committee***

To assist in implementing its duties under the MSHCP, CVCC shall form an Acquisition and Funding Coordinating Committee to provide input on funding priorities and Permittee acquisitions. The Committee shall be formed within one hundred twenty (120) days of the issuance of the Permits. The Committee shall be comprised of one representative from each of the Permittees that requests membership. Each such Permittee shall designate its representative and an alternate. The Wildlife Agencies shall be *ex officio* members of the Committee.

The Acquisition and Funding Coordinating Committee shall advise CVCC on Permittee Additional Conservation Lands acquisitions and funding priorities, as requested. CVCC, however, will have the final decision-making authority in establishing and implementing these

local priorities. The Acquisition and Funding Coordinating Committee will also provide a forum to discuss Wildlife Agencies, BLM, NPS, USFS, State Parks, and CVMC land acquisition priorities and keep CVCC informed on acquisitions by non-local sources. CVCC shall establish policies, as appropriate, under which the Acquisition and Funding Coordinating Committee will make recommendations to CVCC. Such policies will include conflict of interest guidelines for the Committee members.

CVCC will acquire land and may administer a grant program to non-profit organizations and Permittees to conserve lands that contribute to MSHCP Reserve Assembly. CVCC will also coordinate conservation easement agreements with landowners, seek grants and other funding sources to assist with acquisition, and coordinate with other state and federal acquisition programs in the Plan Area to ensure efficiency and consistency among acquisition programs.

Acquisitions will be only from a willing seller. All appraisals to be used for the Local Permittees' acquisition program must be prepared to the Uniform Standards of Professional Appraisal Practice. CVCC will develop a process to resolve differences concerning the valuation of property.

### ***6.1.3 Reserve Management Oversight Committee***

The RMOC is the primary inter-agency group that will coordinate implementation of the Plan. The RMOC shall report to CVCC and shall be assembled within one hundred twenty (120) days of the issuance of the Permits. CVCC shall appoint the chair of the RMOC from among those listed below. The RMOC shall be composed of, at a minimum, one representative of each of the following:

1. Bureau of Land Management (designated by BLM)
2. California Department of Fish and Game (designated by CDFG)
3. California Department of Parks and Recreation (designated by State Parks)
4. Coachella Valley Conservation Commission (designated by CVCC)
5. U. S. Fish and Wildlife Service (designated by USFWS)
6. County of Riverside (designated by the Board of Supervisors)
7. Up to five other private or public entities that hold Reserve Lands as appointed by CVCC.

National Park Service (designated by NPS) and U. S. Forest Service (designated by USFS) will be *ex officio* members.

In the event one or more of the agencies represented on the RMOC does not at any time have a designated representative on the RMOC, the RMOC shall continue to function without that representation. CVCC may appoint additional members as deemed necessary to carry out the functions of the RMOC.

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RMOC representatives shall have the authority necessary to ensure that the RMOC's oversight and advisory duties and responsibilities are successfully executed. The duties of the RMOC shall include, but not be limited to, the following:

1. Advise CVCC on and oversee implementation of the MSHCP Reserve System Management Program and Monitoring Program as described in Section 8 of this document, including assisting in prioritizing management activities that benefit the Reserve Lands. It is recognized that each agency that owns Reserve Lands has the ultimate responsibility for managing that property pursuant to the MSHCP.
2. Provide biological, technical, and operational expertise involving oversight of the Reserve Lands, including management, adaptive management procedures, and monitoring.
3. Provide technical assistance to RMUCs and the MPA.
4. Coordinate with RMUCs regarding management activities and issues.
5. Assist fire protection entities in identifying and mapping potential fuel reduction zones or fire break locations, as well as access routes for fire equipment in the event of wildland fires that pose safety concerns.
6. Review and provide input on reports and annual work plans prepared by the Land Manager on behalf of the RMUCs and by the MPA.
7. Review the Reserve Lands management budget and make recommendations to CVCC Executive Director regarding the budget.
8. Make recommendations to CVCC Executive Director regarding the format and timing of Annual Reports as required by Section 6.4 of this document.
9. Assist CVCC in the preparation of annual written reports on the Reserve Lands, including baseline assessments of Additional Conservation Lands.
10. Assist Permittees in the implementation of the terms and conditions of the MSHCP, as requested.
11. Review and approve RMUPs and amendments thereto.

The RMOC shall meet, at a minimum, twice annually or more frequently as needed. The RMOC shall attempt to reach consensus on recommendations. If at the determination of the chairperson of the RMOC a consensus cannot be reached within a reasonable time, the action shall be by majority vote of the members. Under all circumstances, the state and federal agencies reserve their rights under the MSHCP, IA, and state and federal law to take actions as they believe appropriate with respect to the management of their lands, even if those actions are in contradiction to the majority decision.

### ***6.1.4 Reserve Management Unit Committees***

Within one hundred twenty (120) days of the issuance of the Permits, an RMUC shall be established by CVCC for each of the RMUs, which are geographic areas within the MSHCP Reserve System where coordinated management by different entities is needed to achieve the Conservation Objectives. RMUs consist of one or more Conservation Areas and were identified

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based on ownership and natural community patterns and similarities of anticipated management needs. RMUs are composed of land administered by NPS, USFS, and BLM; Wildlife Agency and Local Permittee Existing Conservation Lands; and Additional Conservation Lands. Within the RMUs, management obligations under the Plan may vary depending on land ownership or administrating agency. Six RMUs have been designated (See Figure 8-1) and are described below:

- Unit 1.** This unit consists of the following Conservation Areas: Cabazon, Stubbe and Cottonwood Canyons, Whitewater Canyon, Snow Creek/Windy Point, Highway 111/I-10, Whitewater Floodplain, Upper Mission Creek/Big Morongo Canyon, Willow Hole, Long Canyon, Edom Hill, Thousand Palms, West Deception Canyon, Indio Hills/Joshua Tree National Park Linkage, Indio Hills Palms, and East Indio Hills.
- Unit 2.** This unit consists of the Joshua Tree National Park Conservation Area.
- Unit 3.** This unit consists of the following Conservation Areas: Desert Tortoise and Linkage, and Mecca Hills/Orocopia Mountains.
- Unit 4.** This unit consists of the Dos Palmas Conservation Area.
- Unit 5.** This unit consists of the Coachella Valley Stormwater Channel and Delta Conservation Area.
- Unit 6.** This unit consists of the Santa Rosa and San Jacinto Mountains Conservation Area.

The Land Manager, as identified in Section 6.1.5, shall represent CVCC and the Local Permittees on the RMUCs. The Wildlife Agencies will also be represented on the RMUCs in RMUs in which they manage land. CVCC will also pursue MOUs with other entities that manage conservation land within an RMU whereby those entities will provide a representative to serve on the applicable RMUC. Through the Land Manager's participation in the RMUCs, CVCC will ensure that management of Local Permittee Mitigation Lands is consistent with the Plan Conservation Goals and Objectives. Through the RMUCs, CVCC will also seek to coordinate land management with the other entities that manage conservation land in the RMUs to optimize the management of all conserved land.

A RMUC shall be established for each of the RMUs with initial representation as follows:

- Unit 1.** The RMUC consists of the Land Manager, BLM, CDFG, USFWS, USFS, State Parks, TNC, and CNLM.
- Unit 2.** The RMUC consists of the Land Manager and NPS.
- Unit 3.** The RMUC consists of the Land Manager and BLM.
- Unit 4.** The RMUC consists of the Land Manager, BLM, CDFG, State Parks, and CNLM.
- Unit 5.** The RMUC consists of the Land Manager and BLM.
- Unit 6.** The RMUC consists of the Land Manager, BLM, CDFG, State Parks, CVMC, the University of California Natural Reserve System (UCNRS), and USFS. A representative of the Trails Advisory Subcommittee to the Santa Rosa and San

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Jacinto Mountains National Monument Advisory Committee (MAC) and a representative of USFWS shall be consulted as appropriate.

The composition of RMUCs may change as land is acquired or exchanged within the Plan Area.

The RMUCs have the following duties and responsibilities:

1. Manage land within the RMUs pursuant to the Plan.
2. Evaluate best available scientific data obtained from the Monitoring Program against the biological objectives in the RMUP applicable to the RMU and make recommendations on Adaptive Management to the RMOC.
3. Provide the necessary information to the Land Manager designated by CVCC for that RMU to prepare and submit an Annual Report on completed and proposed management actions to CVCC and the RMOC.
4. Coordinate with other RMUCs, the MPA, and the ISA, including attendance at annual meetings to discuss data collection methodologies and other reserve management issues.
5. The RMUC of the Santa Rosa and San Jacinto Mountains Conservation Area shall meet annually, or more often as needed, with the Trails Management Subcommittee (see Section 6.3) to review the results of the trails monitoring program and other relevant data, and shall advise the RMOC and CVCC regarding any issues identified through the monitoring.
6. Coordinate with the Land Manager in the preparation of an annual work plan for the RMU. The annual work plan will describe the conserved lands, the potential threats and proposed management prescriptions, a work schedule for management actions, and a budget.
7. Assist CVCC in the preparation of a RMUP for the RMU, in coordination with the Land Manager.

### ***6.1.5 Land Manager***

CVCC may retain or contract with a person or entity to manage Local Permittee Mitigation lands and coordinate through the RMUCs with the entities managing conservation land in the RMUs. The duties of the Land Manager include:

1. Manage the Local Permittees' Mitigation lands pursuant to the Plan.
2. Coordinate construction of fencing and barriers designed to control and manage public use of the Conservation Areas and maintain/replace those structures as needed over time.
3. Provide liaison between the RMUCs and appropriate law enforcement entities to keep trespass and illegal dumping activities under control.
4. Coordinate the construction and maintenance of public access trails and kiosks in appropriate locations approved by the RMOC, and provide current informational literature to the public.



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5. Organize and coordinate a docent/volunteer corps to help with public access, interpretation, and construction of public trails and kiosk facilities.
6. Respond to public inquiries.
7. In coordination with the agencies on whose land the control activities would occur, carry out and coordinate exotic species control activities, focusing on those exotic species with the greatest impacts on the Covered Species, conserved natural communities, and the functioning of natural processes within the Conservation Areas.
8. In coordination with the agencies on whose land the exotic species control activities would occur, carry out, coordinate and/or contract for any additional management activity called for in the MSHCP Reserve System Management Program.
9. Facilitate the exchange of information regarding all completed and proposed management and Adaptive Management actions.
10. Prepare an annual work plan, in coordination with the RMUC, to be reviewed and commented on by the RMOC, and then submitted to the CVCC for budget approval. The elements of the annual work plan are described in Section 8.7
11. Provide annual reporting to CVCC and the RMOC on all completed and proposed land management and adaptive management actions.
12. Coordinate with the MPA regarding the Monitoring Program.

### ***6.1.6 Monitoring Program Administrator (MPA)***

The CVCC is responsible for Monitoring Program administration. Final responsibility will rest with the CVCC Executive Director. The Executive Director may appoint a staff member as his or her designee for purposes of overseeing Monitoring Program administration, but ultimate responsibility will remain with the Executive Director. Day to day responsibility for Monitoring Program administration will be part of the contract for the Monitoring Program, and a specific individual will be identified by the contractor as the Monitoring Program Administrator (MPA). That individual will report to the CVCC Executive Director or his/her designee. To ensure that Monitoring Program administration is adequately addressed the CVCC shall consult with the Wildlife Agencies regarding the provisions for the MPA in developing the Request for Proposals for the Monitoring Program contract.

The MPA's duties shall include but not be limited to the following:

1. Oversee the Monitoring Program for the Reserve Lands pursuant to Section 8 of this document, including, but not limited to, updating and refining the Natural Communities Map, compiling existing scientific data on Covered Species, and conducting inventories to determine plant and animal species' distribution and abundance.
2. Design and carry out the Monitoring Program in coordination with the Wildlife Agencies and other participating scientists. Coordinate the logistics of implementing the Monitoring Program with the Land Manager.
3. Provide Annual Reports to the CVCC for distribution to the RMOC, RMUCs, and other appropriate entities.

4. Prepare and submit other reports to CVCC, the RMOC, RMUCs, and the Land Manager as required by Section 8 of this document.
5. Coordinate with RMUCs; the Land Manager; and the ISA, other agencies, and entities as appropriate, to facilitate sharing information obtained through monitoring efforts. The MPA shall attend the RMOC and RMUC meetings as needed to ensure ongoing coordination and adequate information exchange between the Monitoring Program and the Management Program. The MPA shall meet quarterly with the RMOC, or the Wildlife Agencies if the RMOC does not meet quarterly, to review the progress of the Monitoring Program. The frequency of the meetings may be changed by the RMOC to be less often if appropriate.
6. Submit an annual budget proposal to CVCC Executive Director and a 3 to 5 year projected work plan and cost estimate for implementation of the Biological Monitoring Program.
7. Track other monitoring programs and regional monitoring efforts not included in the Plan and coordinate these with the Monitoring Program as appropriate.

## ***6.2 MSHCP Reserve Management Unit Plan***

CVCC or its designee shall work with the RMUCs to develop RMUPs for review and approval by the RMOC to define specific management actions, schedules, and responsibilities for each RMU. Each RMUP shall be prepared within three (3) years after Permit issuance. Coordination with other RMUs should be reflected in the RMUP as appropriate. The RMUP shall incorporate the Management Program measures and activities in Section 8 with appropriate refinements. The RMUP shall generally contain the following elements:

1. A brief description of each RMU, including acreage, regional setting, current staffing and management efforts, existing partnerships, recreational uses, and previous land uses.
2. The MSHCP Plan Conservation Goals and Objectives for Covered Species, Essential Ecological Processes, Biological Corridors and Linkages, and conserved natural communities.
3. A physical description of each RMU including, but not limited to, distribution and abundance of Covered Species, conserved natural communities present, significant problems that may affect the RMU, and the context of the RMU with respect to the MSHCP Plan.
4. Maps of proposed future conditions, including recreational facilities, administrative facilities, special management areas, etc.
5. Identification, prioritization, and costs of specific management actions needed to implement the RMUP.
6. Identification of staffing, including law enforcement, and funding requirements to implement the RMUP.
7. Identification of potential threats to the RMU, such as toxic spills, and any preventive measures and coordinated response measures that would be Feasible to avoid or minimize impacts.

8. Identification of partnership opportunities.
9. A description of the Monitoring Program activities that will occur within the RMUs.
10. A delineation of the coordination between the Monitoring Program and the Management Program, including Adaptive Management, for the RMU.

### ***6.3 Trails Management Subcommittee***

A Trails Management Subcommittee will be established by CVCC to annually review and evaluate the Public Use and Trails Plan for the Santa Rosa and San Jacinto Mountains Conservation Area. Information to be considered yearly will include data gathered through monitoring activities and relevant information from other sources. The Subcommittee will report to both the RMOC and the MAC regarding implementation of and recommended modifications to the Public Use and Trails Plan. The RMOC or MAC may also request the Subcommittee to address other issues as needed.

The Subcommittee will consist of:

- One representative each from the cities of Palm Springs, Cathedral City, Rancho Mirage, Palm Desert, Indian Wells, Indio, and La Quinta. The city representatives shall be appointed by the respective city councils.
- One representative each from the CVMC, County Parks, the Wildlife Agencies, USFS, BLM, and the MAC. Each of these agencies shall appoint its representative.
- At least five individual representatives of trail interest organizations, environmental organizations, and independent researchers. These representatives shall be appointed by CVCC.

The CVCC may from time to time alter the composition and functions of the Trails Management Subcommittee.

Decisions on Allowable Uses will ultimately be made by the agency or jurisdiction responsible for management of those lands.

The Trails Management Subcommittee's duties shall include but not be limited to the following:

1. Complete an annual review of the effectiveness of the overall trails management program. Annual review will include an assessment of bighorn sheep population trends, recreational trail use data, and other new data.
2. Make recommendations to both the Santa Rosa and San Jacinto Mountains RMUC and the Santa Rosa and San Jacinto Mountains National Monument Advisory Committee regarding modifications to the trails management program. The RMUC will make recommendations to CVCC for the portions of trails on non-federal land; the Monument Advisory Committee will make recommendations to the Federal land management agencies.

3. Make recommendations for decommissioning and removing trails to the RMOC and Monument Advisory Committee. Final approval for trail decommissioning and removal rests with the entity having jurisdiction over the applicable lands.
4. Assist the RMUCs, the Land Manager, and the land management agencies with providing information and education to trail users about the trails management program.

## ***6.4 Annual Reporting***

To ensure that the Permittees are in compliance with the Plan, an Annual Report will be prepared by CVCC and submitted to the Wildlife Agencies and Permittees. The Annual Report for the preceding calendar year must be submitted by March 30. The report will be presented at a CVCC meeting, which will be a public workshop, and copies of the report will be made available to the public. The Annual Report will include the following information:

1. An overview of the status of the Conservation Areas.
2. Results of biological monitoring, identification of Adaptive Management actions identified, and whether or not such actions were implemented.
3. A description of Reserve Lands' management activities for the previous year.
4. An accounting of the number of acres acquired (in fee or conservation easement), conserved through MOUs for cooperative management, or otherwise protected during the previous year to achieve identified Conservation Objectives. This information will be used in conjunction with the information in 6.5 below to delineate the progress made toward achieving each of the Plan's Conservation Objectives and to demonstrate that the Species' Conservation Goals and Objectives remain achievable.
5. An accounting of the number of acres of Core Habitat, Essential Ecological Processes, Biological Corridors and Linkages, and conserved natural communities within each Conservation Area developed or impacted by Covered Activities during the previous year.
6. An accounting of the number of acres of Core Habitat and Other Conserved Habitat for the species and conserved natural communities outside the Conservation Areas developed or impacted by Covered Activities during the previous year. This will be derived from information provided by the Local Permittees based on acres calculated at the issuance of grading permits, or such other permits as may be issued to authorize the disturbance.
7. An accounting of the status of each Covered Species with respect to the Species Conservation Goals and Objectives in Sections 4 and 9.
8. An evaluation of any significant issues encountered in Plan implementation during the previous year and their proposed resolution.
9. Expenditures for acquisition and Reserve Lands management over the previous year and applicable budgets for the upcoming fiscal year.
10. Summary of compliance activities required of Permittees, such as adoption of ordinances.
11. A copy of the audit of CVCC finances for the most recent fiscal year available.

12. Summary of all unauthorized/unpermitted activities detected and enforcement actions taken during the previous year.
13. Additional technical, commercial, and scientific information and/or data that are reasonably available and necessary to evaluate performance and compliance with the commitments and objectives of the Plan shall be provided to the Wildlife Agencies upon written request.

## ***6.5 Rough Step and Rough Proportionality Analyses***

The MSHCP Reserve System will be assembled over time and, when assembly is completed, must be in a configuration and contain suitable habitats (both location and acres) that provide for the Conservation of Covered Species. Acquisition is an essential component of Reserve System Assembly. As the Additional Conservation Lands are acquired, the Parties and the public must be able to determine that:

1. Lands being conserved within the Conservation Areas achieve the Conservation Objectives for Covered Species;
2. Development on lands within the Conservation Areas is not substantially reducing the opportunity to conserve the Additional Conservation Lands and thereby protect those areas that are critical to meeting Covered Species and natural community Conservation Objectives; and
3. Acquisition priorities at any point in time are appropriately focused on conserving parcels within the Conservation Areas needed to meet Covered Species and conserved natural communities Conservation Objectives.

To assist the Parties in this evaluation, there will be an annual Rough Step analysis conducted by CVCC for each Conservation Area. Section 6.1 of Appendix I lists the Conservation Objectives for Core Habitats, Essential Ecological Process areas, Biological Corridors and Linkages, and conserved natural communities for each Conservation Area. The annual Rough Step analysis will be done for each Conservation Objective. In addition, a real-time Rough Step analysis will be prepared for a Conservation Area whenever a Development is proposed in that Conservation Area. This information will be provided to the Permittee considering the proposed Development and to the Wildlife Agencies as part of the Joint Project Review Process described in Section 6.6.1.1.

Selection of the Rough Step Analysis Units was based on several factors including:

1. The Conservation Areas are discrete units based on biological, and to a lesser extent jurisdictional considerations, and are the geographic units used in delineating Conservation Objectives.
2. The Conservation Objectives within each Conservation Area identify how many acres of different Core Habitats, Essential Ecological Processes, Biological Corridors and Linkages and conserved natural communities must be conserved.

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The rule for determining if the Plan is within the Rough Step parameters is:

$$a_t \leq r \times c_t + .1 \times [a - (r \times c_t)]$$

$$r = a/c$$

Where:

- a = total acres of a Core Habitat, Essential Ecological Process area, Biological Corridor or Linkage, or natural community in the Conservation Area that could be developed while still meeting the Conservation Area's Conservation Objectives.
- a<sub>t</sub> = the number of acres of a Core Habitat, Essential Ecological Process area, Biological Corridor or Linkage, or natural community in the Conservation Area that could be lost at a point in time (t) while being consistent with the Rough Step rule.
- c = the total number of additional acres of Core Habitat, Essential Ecological Process area, Biological Corridor or Linkage, or natural community in the Conservation Area that has to be conserved to meet the Conservation Area's Conservation Objectives.
- c<sub>t</sub> = the acres of Conservation of a Core Habitat, Essential Ecological Process area, Biological Corridor or Linkage, or natural community within the Conservation Area that have been conserved based on the definition of Additional Conservation Lands.

Rough Step analysis ensures, on an annual basis, that Conservation of Additional Conserved Lands is within 10% of the level needed to stay in balance with the level of Development.

If the Rough Step rule is not met during any analysis period, the Permittees must conserve appropriate lands necessary to meet a specific Conservation Objective within the Rough Step Analysis Unit to bring the Plan back into the parameters of the rule prior to authorizing additional loss of the Core Habitat, Essential Ecological Process area, Biological Corridor or Linkage, or natural community for which the rule was not achieved. It is anticipated that as the Additional Conservation Lands are acquired in each Conservation Area, it may be appropriate to transfer acreage Conservation Goals associated with Conservation Objectives for both specific conserved natural communities and Covered Species between Conservation Areas. Section 6.12.3 of this document addresses this situation. Section 23.5 of the IA describes the Wildlife Agencies' rights to revoke or suspend all or portions of the Permits, in accordance with the laws and regulations in force at the time, for failure to comply with the Rough Step requirements.

CVCC will include in the Annual Report habitat losses and gains associated with public and private Development projects and will track MSHCP Reserve System Assembly.

The Annual Report will also provide this information by Conservation Objective for Core Habitats, Essential Ecological Process areas, Biological Corridors or Linkages, and conserved

natural communities, consistent with “HabiTrak” methodology. HabiTrak, an ArcView extension, was developed cooperatively by the Wildlife Agencies, local jurisdictions, special districts, and others to meet the reporting requirements for multiple species HCPs. It is designed to be an easy-to-use, stand-alone desk-top application that can be used by non-GIS staff. The tool uses common and standardized data to prepare standardized tables and maps for the Annual Reports.

Section 5.2.2.3 discusses rough proportionality, which assures that Conservation keeps pace with Development in the Plan Area.

## ***6.6 Obligations of the Participants***

### ***6.6.1 Obligations of the Local Permittees***

The Local Permittees are the cities of Cathedral City, Coachella, Indian Wells, Indio, La Quinta, Palm Desert, Palm Springs, and Rancho Mirage; the County; County Flood Control; County Parks; County Waste; CVCC, CVAG, CVWD; and IID. The Local Permittees will conserve 96,400 acres (inclusive of Caltrans’ obligation) in the Conservation Areas. Of this, 7,500 acres are already owned by Permittees and that acreage will be conserved through the Plan. The Local Permittees shall establish an endowment to fund the Monitoring and Management Programs for those lands in perpetuity. The Local Permittees must also comply with all other terms and conditions of the MSHCP and IA (See Section 13.0 of the IA), including, but not limited to:

#### **➤ *Within Conservation Areas***

- Ensure achievement of the Plan’s Conservation Goals and Objectives and Required Measures in each Conservation Area identified in Section 4.3 and attainment of the Species Conservation Goals and Objectives identified in Section 9.
- As described in Sections 4.1.2 and 4.2.2.2.1, conserve Local Permittee owned land in the Conservation Areas. Except as otherwise set forth in this section, the Local Permittees shall commit their currently not-conserved lands to conservation in perpetuity within 3 years of Permit issuance.
- Existing and future lands on which the County Flood Control has Take Authorization for construction, operation, and maintenance of facilities that are Covered Activities will be conserved only to the extent compatible with the construction, operation, and maintenance of the facilities.
- Participate in the Joint Project Review Process for projects within Conservation Areas as described in Section 6.6.1.1 and implement the Land Use Adjacency Guidelines described in Section 4.5.
- Upon request from the Wildlife Agencies, the Local Permittees shall provide (a) an analysis and determination of consistency with the Plan at the time of, and along with, certification of applicable CEQA documents for approval of Development projects within Conservation Areas and (b) a copy of the final project approval documents within 30 days.

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- Applicable Permittees will employ HANS as described in Section 6.6.1.2 as appropriate.
- Jurisdictions that received Take Authorization for the Coachella Valley fringe-toed lizard pursuant to the Incidental Take Permit issued for that species pursuant to the CVFTL HCP will relinquish the Permit and comply with Section 6.6.1.3 and IA Section 16.2.

➤ ***Within and Outside Conservation Areas***

- Ensure that habitat preservation is occurring in rough proportionality with Development and that Reserve Assembly occurs as contemplated in the MSHCP.
- Ensure compliance for public and private projects with all applicable Required Measures in Section 4.4.
- If a project shares a common boundary with a Conservation Area, require compliance with Land Use Adjacency Guidelines set forth in Section 4.5.
- Ensure compliance with Plan requirements for public projects.
- Impose adopted Local Development Mitigation Fees. The Local Permittees shall be responsible for collecting all revenues generated within their respective jurisdictional boundaries for Plan implementation and transferring those revenues to CVCC within thirty (30) days of collection.
- Adopt an appropriate Plan implementation mechanism as set forth in Section 11.1 of the IA.
- Maintain a record of total acres and location of Development within its jurisdiction and transmit this information to CVCC monthly. The undeveloped portions of parcels in Conservation Areas on which Development is approved by a Permittee shall count toward meeting the MSHCP's Conservation Objectives only when the undeveloped portion of the parcel is legally described and permanently protected through an appropriate Legal Instrument, and provision is made for the land to be monitored and managed pursuant to the MSHCP's Monitoring Program and Management Program. Review of individual Development projects will occur in accordance with the Implementation Manual.
- At the end of each calendar year, convey any changes in city boundaries or general plan land use designations to CVCC for inclusion in its Annual Report to the Wildlife Agencies.
- Take will be allocated by the relevant Permittee(s).
- On parcels approved for Development, the Permittees shall encourage the opportunity to salvage Covered sand-dependent species in accordance with the Implementation Manual.

To mitigate the impacts of the interchange and related arterial projects identified in Section 7.2.1, Caltrans, CVAG, and CVCC will acquire 1,795 acres in Conservation Areas in accordance with the mitigation matrix shown in Section 6.2 of Appendix I to contribute to Plan implementation and will contribute \$1,077,000 to the Endowment Fund for the Monitoring and



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Management Programs, including Adaptive Management of those lands. This acreage is part of the 96,400 acre Local Permittee obligation described above.

To mitigate the impacts of those transportation projects identified as Covered Activities in Section 7.2.3, CVAG shall contribute \$30 million from Measure A or other funds toward acquisition and the Monitoring Program, the Management Program, and Adaptive Management. If the Permits issued in conjunction with the Plan are ever suspended or revoked, these transportation projects will, as described in the IA, be mitigated through the establishment of a conservation bank that incorporates and recognizes the contributions made by CVAG to Plan implementation as adequate mitigation for the projects. Covered Activity transportation projects not specifically listed in Sections 7.2.1, 7.2.2, or 7.2.3 of the MSHCP would mitigate through payment of the Local Development Mitigation Fee or by other appropriate means.

Of the approximately 7,000 acres that CVWD owns in the Conservation Areas, CVWD shall cooperate with CVCC toward the conservation of those lands, as follows:

- Approximately 1,200 acres of the 7,000 acres are in the Whitewater Floodplain Conservation Area and are currently conserved pursuant to the CVFTL HCP. These lands will be permanently committed to conservation under the MSHCP.
- Lands on which CVWD has Take Authorization for O&M of facilities that are Covered Activities, will be conserved only to the extent compatible with the O&M of the facilities.
- Future facilities (Dike 4 and Martinez recharge basins and future water-related facilities) that are Covered Activities requiring a Minor Plan Amendment with criteria will be mitigated by commitment of CVWD lands within Essential Peninsular bighorn sheep Habitat to conservation at a 1:1 ratio of Conservation to Development. If, in addition to these Covered Activities, CVWD develops any of its land in a Conservation Area consistent with the Conservation Objectives, CVWD may commit an equivalent dollar value of its lands in the Conservation Areas to permanent conservation in lieu of paying the Development Mitigation fee. CVCC will continue to be responsible for ensuring that the Conservation Area Conservation Objectives are met.
- For future projects outside the Conservation Areas, CVWD may commit an equivalent dollar value of its lands in the Conservation Areas to permanent conservation in lieu of paying the Local Development Mitigation Fee. These lands are not subject to the requirement that Local Permittee-owned lands that are not currently conserved must be committed to Conservation in perpetuity within 3 years of Permit issuance.
- If before Year 50 of Plan implementation, CVWD still owns land in the Conservation Areas that has not been conserved by any of the foregoing methods, CVWD shall cooperate with CVCC in the conservation of these lands through acquisition by CVCC or other means.
- Conservation will be accomplished through conveyance of fee title to CVCC, recordation of a conservation easement, or entering into an MOU for cooperative management with CVCC.

CVWD will contribute \$3,583,400 toward the Endowment Fund for the Monitoring Program, the Management Program, and Adaptive Management. This may be paid in full the first full fiscal year after Permit issuance, or it may be paid in installments over a maximum of

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five years, beginning in the first full fiscal year after Permit issuance. Interest shall be paid by CVWD at the annual rate of 5.14% on the outstanding balance.

Additional CVWD contributions are:

1. CVWD will establish 66 acres of permanent habitat for California black rail and Yuma clapper rail in the Coachella Valley Stormwater Channel and Delta Conservation Area to replace habitat that is periodically altered by flood control and drain maintenance activities. CVWD will ensure that the water used to support the managed marsh habitat is irrigation water from the Lower Colorado River (LCR) or is other water with the same selenium concentration as water from the LCR or that meets an EPA selenium standard for protection of aquatic life that has received a No Jeopardy determination from USFWS, whichever is greatest. Within two years of Permit issuance, a plan detailing the location, water supply, monitoring and management responsibilities, and funding, shall be prepared by CVWD and submitted to the Wildlife Agencies for review and approval. The habitat will be established within three years of approval by the Wildlife Agencies of this plan to establish the habitat. As part of its Water Management Plan, CVWD will conduct monitoring of selenium concentrations in the drains and the Coachella Valley Stormwater Channel.
2. CVWD will establish permanent riparian habitat including at least 44 acres of Sonoran cottonwood-willow riparian forest in the Coachella Valley Stormwater Channel and Delta Conservation Area to replace habitat that is periodically altered by flood control maintenance activities. The habitat will contribute to the conservation of this natural community and the riparian birds covered by the Plan. Within two years of Permit issuance, a plan detailing the location, water supply, and monitoring and management responsibilities, including funding, shall be prepared by CVWD and submitted to the Wildlife Agencies for review and approval. The habitat will be established within three years of approval by the Wildlife Agencies of this plan to establish the habitat.
3. CVWD will establish at least 25 acres of managed replacement habitat on a 1:1 ratio for desert pupfish, using low selenium water, at a site or sites to be determined with concurrence from the Wildlife Agencies. It is estimated that approximately 325 acre-ft/yr of water would be required to maintain 25 acres of replacement habitat, replacing evaporation and maintaining appropriate flow-through rate. Ongoing maintenance and adjustments will be required, including vegetation control and dike and bank maintenance, to achieve desired habitat characteristics. This habitat will replace the 25 acres of habitat that is periodically altered by maintenance activities in drains and flood control channels that contain pupfish habitat. CVWD will also develop a study to evaluate the potential effect of routine drain maintenance on pupfish occupying the drains and to determine the efficacy of modifying maintenance practices to avoid or minimize potential Take. The study will include method of surveying for pupfish, effects of the direction in which drains are cleaned (upstream or downstream), the manner in which the drain is cleaned (one side at a time or both), and the timing of sediment and vegetation removal. The study proposal will be prepared and submitted to the Wildlife Agencies within two years of Permit issuance. The study will be initiated in the field season immediately following approval by the Wildlife Agencies. If the findings indicate that modification of the maintenance practices would significantly minimize impacts to pupfish, CVWD will modify its maintenance practices. As part of its Water Management

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Plan, CVWD will conduct monitoring of selenium concentrations in the drains and the Coachella Valley Stormwater Channel.

4. As described in Section 4.3.15, CVWD will enhance and manage Coachella Valley round-tailed ground squirrel habitat on land it owns in the East Indio Hills Conservation Area to offset impacts to this species from CVWD's O&M activities in the Coachella Valley Stormwater Channel and Delta Conservation Area.

Of the approximately 900 acres that IID owns in the Conservation Areas, IID shall cooperate with CVCC toward the conservation of those lands, as follows:

- Lands on which IID has Take Authorization for O&M of facilities that are Covered Activities, will be conserved only to the extent compatible with the O&M of the facilities.
- For future projects outside the Conservation Areas, IID may commit an equivalent dollar value of its lands in the Conservation Areas to permanent Conservation in lieu of paying the Local Development Mitigation Fee. These lands are not subject to the requirement that Local Permittee-owned lands that are not currently conserved must be committed to Conservation in perpetuity within 3 years of Permit issuance.
- If IID develops any of its land in a Conservation Area consistent with the Conservation Objectives, IID may commit an equivalent dollar value of its lands in the Conservation Areas to permanent conservation in lieu of paying the Local Development Mitigation Fee. CVCC will continue to be responsible for ensuring that the Conservation Area Conservation Objectives are met.
- If before Year 50 of Plan implementation, IID still owns land in the Conservation Areas that has not been conserved by any of the foregoing methods, IID shall cooperate with CVCC in the conservation of this land through acquisition by CVCC or other means.
- Conservation will be accomplished through conveyance of fee title to CVCC, recordation of a conservation easement, or entering into an MOU for cooperative management with CVCC.

IID will contribute \$525,000 toward the Endowment Fund for the Monitoring Program, the Management Program, and Adaptive Management. This may be paid in full the first full fiscal year after Permit issuance, or it may be paid in installments over a maximum of five years, beginning in the first full fiscal year after Permit issuance. Interest shall be paid by IID at the annual rate of 5.14% on the outstanding balance.

### ***6.6.1.1 Joint Project Review Process within Conservation Areas***

For purposes of overseeing compliance with the requirements of the MSHCP and the IA, a Joint Project Review Process shall be instituted by CVCC for all projects under the Local Permittees' jurisdiction in a Conservation Area that would result in disturbance to Habitat, natural communities, Biological Corridors, or Essential Ecological Processes. O&M of Covered Activities is not subject to the Joint Project Review Process. This process shall in no way limit the Local Permittees' land use authority. The purpose of the Joint Project Review Process is to allow CVCC to facilitate and monitor implementation of the MSHCP. To assist the Local Permittees in meeting the Conservation Goals and Objectives and implementing the Required

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Measures of the Plan, Local Permittees' Covered Activities identified in Tables 7-1 through 7-12 as having the potential to affect connectivity of habitat within the Conservation Areas shall consult with CVCC at the pre-design stage regarding the size, location, and configuration of wildlife undercrossings. Consultation with CVCC is needed at this early stage to ensure that alternatives are fully evaluated to achieve Conservation Area Conservation Objectives prior to public release of environmental documents prepared pursuant to CEQA.

CVCC staff shall participate in the Joint Project Review Process to ensure consistent Plan implementation and oversight. CVCC shall have neither jurisdiction over land use decisions by Permittees nor the authority to prevent a Permittee from approving a project. The application will not be deemed complete by the Permittee prior to completion of the Joint Project Review Process. The review process is as follows:

Step 1. Within thirty (30) calendar days of receipt of an application for a project in a Conservation Area, the Local Permittee shall provide CVCC with a copy of the project application. Alternatively, a potential project applicant may request a pre-application review directly with CVCC, who shall provide notice to the applicable Local Permittee. A project application or a request for a pre-application review shall include, at a minimum, a project description; a map in either electronic format compatible with CVCC's GIS or a map on a USGS 7.5 minute topographic map, indicating the location of the proposed project, including section, township, and range; and Assessors Parcel Number(s).

Step 2. Upon receipt of the project information, CVCC staff shall use a spatial data base such as GIS coverages of species habitat distribution models, Essential Ecological Process areas, and Biological Corridors and Linkages, to provide the Local Permittee an analysis of how the proposed project would impact the Conservation Area Conservation Objectives and Required Measures delineated in Section 4.3 for each Conservation Area and in Section 9 for each proposed Covered Species' Goals and Objectives, and how the project would affect the maintenance of Rough Step in the affected Conservation Area. At the discretion of the Local Permittee after submittal of an application, an initial project review meeting may be held with CVCC staff and the project applicant. Any initial project review meeting shall be scheduled by CVCC to occur within thirty (30) calendar days of the transmittal of the project information to CVCC. Within thirty (30) calendar days of receipt of the project information, or within fourteen (14) calendar days after an initial project review meeting if one is held, CVCC staff shall prepare and distribute comments that address the proposed project's consistency with the Conservation Area Conservation Objectives and Required Measures and delineate the status of Rough Step in the affected Conservation Area. The comments shall be sent to the appropriate Local Permittee, the project applicant, and the Wildlife Agencies. CVCC shall also send the Wildlife Agencies a copy of the project application. The Implementation Manual should be consulted to determine the specifics of calculating impacts of new or repowered wind energy facilities.

Step 3. The Wildlife Agencies' comments, if any, shall be sent to CVCC and the appropriate Local Permittee within thirty (30) calendar days of receipt of CVCC's comments.

Step 4. Based on CVCC's analysis and any Wildlife Agencies' comments, if CVCC finds that the proposed project is consistent with the Conservation Area's Conservation Objectives and Required Measures as defined in Section 4.3 and Goals and Objectives for each proposed

Covered Species as defined in Section 9, the Local Permittee shall be so notified with copies to the Wildlife Agencies.

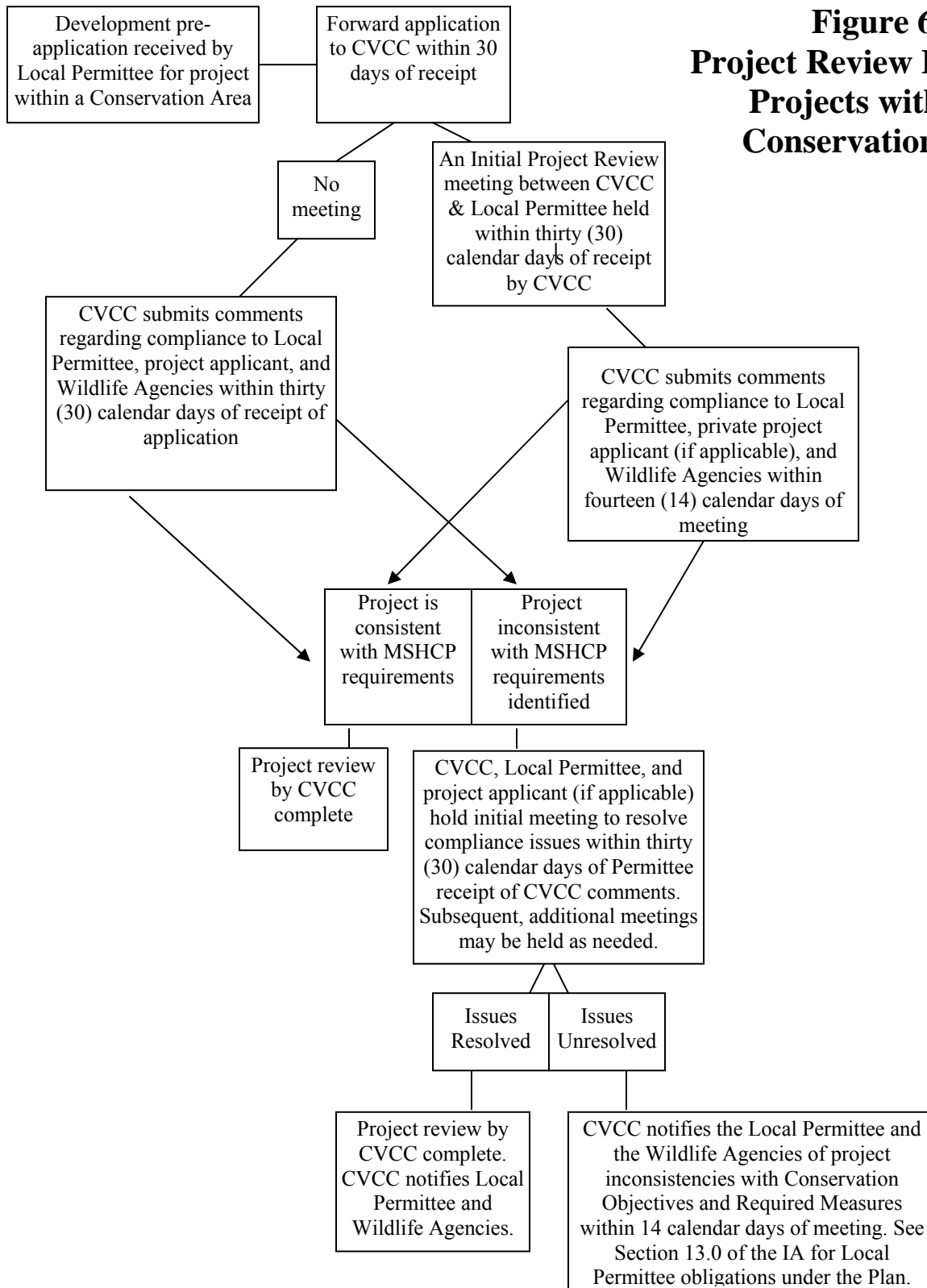
Step 5. Based on CVCC's analysis and any Wildlife Agencies' comments, in the event CVCC identifies inconsistencies between the Conservation Area Conservation Objectives and the proposed project, and/or failure to incorporate applicable Required Measures, CVCC staff and appropriate Local Permittee and project applicant representatives shall meet and confer to identify requirements necessary to achieve compliance. Alternatively, CVCC may propose acquisition of the property if the owner is a willing Seller. Section 4.2.2.2.2 describes the acquisition program. The initial meeting to resolve inconsistencies shall be held within thirty (30) calendar days following the CVCC deadline for receipt of Wildlife Agencies' comments. Additional meetings may be held as necessary. If the inconsistencies are resolved, CVCC will notify the Local Permittee and Wildlife Agencies of the resolution within fourteen (14) calendar days of the meeting. If the inconsistencies cannot be resolved, CVCC will provide written notice to the Local Permittee and the Wildlife Agencies of the Conservation Objectives and Required Measures with which the Development proposal is inconsistent within fourteen (14) calendar days of the meeting. See Sections 13.0 of the IA for the Local Permittees' obligations under the Plan and see Section 23.0 of the IA for potential remedies for failure to comply with the obligations.

#### ***6.6.1.2 Property Owner Initiated Habitat Evaluation and Acquisition Negotiation Strategy (HANS)***

The County and impacted cities will employ HANS in conjunction with the Joint Project Review Process in portions of the Santa Rosa and San Jacinto Mountains Conservation Area. A map of the area where the HANS Process will be used is shown in Section 4.3.21. HANS applies to property in the identified areas that may be needed for inclusion in the MSHCP Reserve System. HANS ensures that a determination will be made of what properties in this area are needed for the MSHCP Reserve System, that the owners of property needed for the MSHCP Conservation Area are compensated, and that owners of land not needed for the MSHCP Conservation Area shall receive Take Authorization for Covered Species through the Permits issued to the County and the Cities pursuant to the MSHCP.

The County, the Cities, CVCC, or various State and Federal Agencies may obtain interests in property needed to implement the MSHCP over time (interest may be obtained in fee, conservation easement, deed restriction, land exchange, or other type of interest acceptable to CVCC, the County, the Cities, acquiring State and/or Federal Agency, and property owner). Fee ownership of property may not be required. If it is determined that all or a portion of property is needed for inclusion in the MSHCP Reserve System, various incentives may be available to the property owner in lieu of or in addition to monetary compensation in exchange for the conveyance of a property interest. These incentives may include, but shall not be limited to, the waiver and/or reduction of certain development fees, monetary compensation for entering into an option agreement, fast track processing, density bonuses, clustering, density transfers, and property reassessment and tax credits if determined to be Feasible. The incentives are intended to provide a form of compensation to property owners who convey their property. As a property interest is obtained, it will become part of the MSHCP Reserve System.

**Figure 6-1  
Project Review Process for  
Projects within the  
Conservation Areas**



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All proposed Development projects within the area defined in Section 4.3.21 shall be subject to review under HANS. HANS will not be construed as a limitation on the County's or Cities' ability to approve or deny a Development application consistent with the Conservation Objectives and Required Measures. Applications for proposed projects which are within the area defined in Section 4.3.21 shall be subject to an initial review to determine if all or part of the property is necessary for inclusion in the MSHCP Reserve System to achieve the Conservation Objectives and Required Measures. The initial review period will be up to 45 days. This period may be extended upon the mutual consent of the parties. The applicant for a proposed project shall be required to submit the following information/documents for purposes of conducting this review:

- a. a definition of the project area,
- b. a written project description with maps as appropriate,
- c. a written description of biological information available for the project site including the results of any available mapping or surveys, and specifically information regarding the proximity of proposed Development to Peninsular bighorn sheep lambing areas and water sources, and
- d. quantification of anticipated impacts to biological resources identified for the project.

The County, Cities, CVCC, and the Wildlife Agencies shall provide the applicant with any information in their possession that would assist the applicant in preparing the aforementioned information/documents for submittal.

**Full Inclusion of Property.** In those instances where all of the property is needed for inclusion in the MSHCP Reserve System, negotiations will focus on the acquisition of the property including establishing a purchase price and the application of other non-monetary incentives which may compensate the property owner and assist with the acquisition. In no event shall the purchase price exceed the fair market value of the property. Unless otherwise agreed to by the parties, the fair market value for the property shall be determined by an appraisal ordered by the County or the Cities and conducted in accordance with the "Uniform Appraisal Standards for Federal Land Acquisitions" and the "Uniform Standards of Professional Appraisal Practice." In the event of any conflict between these standards, the "Uniform Appraisal Standards for Federal Land Acquisitions" will control. Fee title of property to be conveyed may not be required. The type of ownership to be conveyed will be taken into consideration when conducting the appraisal. Appraisal instructions shall be jointly prepared and agreed upon by the County, City, or CVCC and the property owner. Appraisal instructions will direct appraisers not to consider the MSHCP Conservation Area as relevant to the appraisal.

**Partial Inclusion of Property.** In those instances where only part of the property is needed for inclusion in the MSHCP Reserve System, negotiations will focus on incentives in exchange for the conveyance of property. Such incentives may include monetary compensation. However, property owners shall not be provided monetary compensation (but may be eligible for other incentives) for property which would normally be set aside as part of the County's or Cities' entitlement process as this process occurs throughout the County. As an incentive to convey property needed for inclusion in the MSHCP Reserve System and for which monetary compensation shall not be provided, Take Authorization may be granted upon project approval.

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In order to obtain this early authorization of Take, the conveyance must occur within 45 days after project approval. Any subsequent suspension or revocation of Permits terminating Take Authorization shall not be applicable to the Take Authorization granted upon the project's approval.

If it is determined that only part of the property is needed for inclusion in the MSHCP Reserve System, then upon completion of the initial application review, a complete application for the proposed project may be filed on that portion of the land not required for inclusion in the MSHCP Reserve System and processed concurrently during the time periods set forth below for the negotiation of terms and incentives, and, if necessary, conflict resolution. When the initial project review process identifies the need for acquisition of a portion of the property proposed for Development, the entitlement process may proceed on the portion of the property not proposed for Conservation concurrently with the acquisition process. The property owner may process a Development application on the portion of the property under negotiation for acquisition prior to the completion of the acquisition period.

**Negotiations.** When it is determined that all or part of the property is needed for inclusion in the MSHCP Reserve System, then the parties may enter into negotiations on the terms under which the property or any part thereof shall be included and conserved. The negotiation period shall be up to 120 days (following the 45-day initial application review period). If at the end of this 120-day period, agreement between the parties is not achieved, each party shall submit in writing the party's proposed resolution of terms. Thereafter, the negotiation period may be extended upon the mutual consent of the parties for a longer period.

If the parties agree on the incentives and the terms prior to the expiration of the negotiation period, appropriate legal documents shall be prepared for consideration and approval by the County, City or CVCC. Alternatively, if the parties are unable to reach agreement during the negotiation period, then the conflict resolution process (described below) may be commenced.

**Conflict Resolution Process.** In order to address in a fair and consistent manner, disputes which may arise concerning the (i) application of MSHCP Conservation Objectives, (ii) available incentives, or (iii) the valuation of property, a conflict resolution process is necessary. Conflict resolution may be initiated by the property owner or the County or City and allows for a neutral third party to assist in resolving disputes concerning the aforementioned issues. Mediation will initially be required to resolve differences between the parties over the proposed Development options for the property (including the application of incentives) as well as differences regarding the application of the Conservation Objectives. Mediation may not be used to require the County or Cities to acquire property it has determined is not necessary for inclusion in the MSHCP Reserve System. If the dispute involves the application of Conservation Objectives, the initiating party must consult with the Wildlife Agencies concerning the application of the Objectives prior to the initiation of mediation. The consultation period will be 30 days and may be extended with the consent of the initiating party.

The mediation period will be up to 90 days. This period may be extended upon the mutual consent of the parties. The parties shall also mutually agree to the appointment of a mediator. If the parties are unable to mutually agree to such an appointment, the Presiding Judge of the Riverside Superior Court shall be requested to appoint a mediator. All costs associated



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with the mediation shall be divided equally between the parties. Upon completion of the mediation, the mediated resolution shall be complied with, and where a project is proposed, then the project may continue through the normal Development review process. Alternatively, the property owner may either (i) request review of any remaining dispute by the Board of Supervisors (in the case of property within the unincorporated area of the County) or the appropriate city council, or (ii) initiate arbitration solely for disputes concerning the application of MSHCP Conservation Objectives and Required Measures (as indicated below).

**Appraisal Review.** Should a party opt to commence the conflict resolution process as a result of the parties' inability to resolve differences concerning the valuation of property, a second appraisal shall be conducted, at the expense of the property owner, in accordance with the "Uniform Appraisal Standards for Federal Land Acquisitions" and the "Uniform Standards of Professional Appraisal Practice." In the event of any conflict between these standards, the "Uniform Appraisal Standards for Federal Land Acquisitions" will control. Fee ownership of property to be conveyed may not be required. The type of ownership to be conveyed shall be taken into consideration when conducting the second appraisal. Any discrepancies between this appraisal and the appraisal previously prepared by the County or CVCC shall be reviewed by a third appraiser mutually agreed to by both parties. Review by this appraiser shall be completed within 90 days after the parties mutually agree to the selection of the appraiser. If the parties are unable to agree upon the choice of a third appraiser, the Presiding Judge of the Riverside Superior Court shall be requested to select the third appraiser.

Upon completion of this review, the appraiser shall make recommendations as to which appraisal should be approved. If such a recommendation cannot be made, the third appraiser shall within 90 days conduct an appraisal in accordance with the aforementioned standards. The third appraisal shall then establish the fair market value of the property. Any recommendations of the third/review appraiser upon completion of the third appraiser's review or if necessary any third appraisal shall be binding upon the parties solely with respect to the issue of establishing the fair market value of the property. Should any subsequent acquisition of the property involve state and/or federal monies, an update or review of the third appraisal may be necessary. The cost for conducting this review and any necessary third appraisal shall be divided equally between the parties.

**Arbitration.** If the parties are unable to resolve through mediation differences concerning the application of Conservation Objectives and Required Measures, arbitration may be initiated by either party, with the consent of the property owner. The arbitration period will be up to 180 days. This period may be extended upon the mutual consent of the parties. The parties shall also mutually agree to the appointment of an arbitrator. If the parties are unable to mutually agree to an appointment, the Presiding Judge of the Riverside Superior Court shall be requested to appoint an arbitrator. The property owner, the County, City, or CVCC may submit to the arbitrator, evidence concerning the application of the MSHCP Conservation Objectives and Required Measures to the property in question. Any cost for such evidence shall be born by the party submitting said evidence. The decision of the arbitrator shall be based solely upon the Conservation Objectives as applied to the property in question and any evidence supporting the application of the Conservation Objectives and Required Measures. The arbitrator's decision shall be binding upon both parties.

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**Completion of Acquisition.** Following conclusion of successful negotiations or appraisal review under the conflict resolution process and any necessary action by the Board of Supervisors or city council, the property shall be promptly purchased provided sufficient MSHCP funds are available. The General Fund of the County or the Cities shall not be obligated to fund the purchase of property for inclusion in the MSHCP Reserve System. In addition to the County, Cities, and CVCC, it is anticipated and expected that State and Federal agencies, as described in Section 4.2.2.1, may either purchase or provide funding to purchase property for inclusion in the MSHCP Reserve System.

**Completion of Acquisition or Submittal of Development Application if Funding is Not Immediately Available.** If sufficient MSHCP funds are not immediately available, several options may be pursued:

**(1) Conveyance of Property (with Purchase Price of \$100,000 or Less) and for which a Development Application is Intended to be Pursued** – If it is anticipated that the property may not be purchased within one year after a purchase or option agreement is entered into (whether due to lack of funds or otherwise), then the County or Cities shall initiate an amendment to the MSHCP Conservation Area at least nine months prior to the expiration of this one year period. The County or City shall confer with the property owner when drafting the proposed amendment to the MSHCP, and use its best efforts to insure completion of the amendment within this one year time period or any longer period of time agreed to by the parties. Because the USFWS must conduct an internal formal consultation under Section 7 of FESA for any such amendment to the MSHCP, USFWS shall provide a draft copy of its internal Biological Opinion for review and comment to the County or City prior to approval or denial of the Permit amendment. The County or City shall share the draft Biological Opinion with the property owner and provide any comments from the property owners along with the County's or City's comments to USFWS. The property owner shall have an opportunity to meet and confer with USFWS with regard to the effects of the proposed amendment. The County or City shall use its best efforts to insure completion of the amendment within this one year time period or any longer period of time agreed to by the parties. Thereafter, if the property is not purchased or removed from the Conservation Area within one year after a purchase or option agreement is entered into, then the property owner may request that the County or Cities process a Development application for the property intended to be acquired without further consideration of the Conservation Objectives and Required Measures. Such Development must comply with all other County and City requirements for that type of Development. However, payment of the Local Development Mitigation Fee shall be required as a condition of any approval. This process shall not be construed as a limitation on the County's or Cities' ability to approve or deny a Development application except that a project consistent with this Process may not be denied solely because a Development application does not comply with the Conservation Objectives and Required Measures. Prior to issuance of a grading permit which would result in ground disturbance, the CVCC, County, Cities or appropriate state or federal agency may negotiate with the property owner and enter into a new purchase or option agreement to purchase the property.

Any Development application subsequently approved by the County or Cities that precludes compliance with the Conservation Objectives shall result in suspension or revocation of the Permits terminating Third Party Take Authorization under the MSHCP and IA. Such suspension or revocation may occur entirely or only as to specified Conservation Areas, Covered

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Species, or Covered Activities, and future Development applications affected by the suspension or revocation shall no longer be subject to the Conservation Objectives and Required Measures.

In the alternative, if the property is not immediately purchased, then at the request of the property owner, the purchase agreement may be renegotiated and the property shall be placed on a priority list for acquisition. This list will be established in order to provide some level of assurance to the property owner that the property shall be purchased when funding is available. Placement on the list will be based solely upon the date a property owner requests to be placed on the list. Funding for the acquisition of properties on the priority list will be provided through a separate designated fund (percentage of MSHCP funds received will be included in this fund). This fund will provide funding solely for the acquisition of property for which a Development application is intended to be filed.

The provisions of this section shall not be applicable to conveyance of adjoining property (or property within the same subdivision) by the same owner which if considered together would exceed \$100,000. Any such conveyance shall be subject to the provisions involving the conveyance of property with a purchase price of more than \$300,000 or the total value of the lands together, whichever is less.

**(2) Conveyance of Property (with Purchase Price of \$200,000 or Less) and for which a Development Application is Intended to be Pursued** – If it is anticipated that the property may not be purchased within two years after a purchase or option agreement is entered into (whether due to lack of funds or otherwise), then the County or Cities shall initiate an amendment to the MSHCP Conservation Area at least nine months prior to the expiration of this two-year period. The County or City shall confer with the property owner when drafting the proposed amendment to the MSHCP, and use its best efforts to insure completion of the amendment within this one year time period or any longer period of time agreed to by the parties. Because the USFWS must conduct an internal formal consultation under Section 7 of FESA for any such amendment to the MSHCP, the USFWS shall provide a draft copy of its internal Biological Opinion for review and comment to the County or City prior to approval or denial of the Permit amendment. The County or City shall share the draft Biological Opinion with the property owner and provide any comments from the property owners along with the County's or City's comments to the USFWS. The property owner shall have an opportunity to meet and confer with the USFWS with regard to the effects of the proposed amendment. The County or City shall use its best efforts to insure completion of the amendment within this one year time period or any longer period of time agreed to by the parties. Thereafter, if the property is not purchased or removed from the Conservation Area within two years after a purchase or option agreement is entered into, then the property owner may request that the County or Cities process a Development application for the property intended to be acquired without further consideration of the Conservation Objectives and Required Measures. Such Development must comply with all other County and City requirements for that type of Development. However, payment of the Local Development Mitigation Fee shall be required as a condition of any approval. This process shall not be construed as a limitation on the County's or Cities' ability to approve or deny a Development application except that a project consistent with this Process may not be denied solely because a Development application does not comply with the Conservation Objectives and Required Measures. Prior to issuance of a grading permit which would result in ground disturbance, the CVCC, County, Cities or appropriate state or federal agency may negotiate with the property owner and enter into a new purchase or option agreement to purchase the property.

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Any Development application subsequently approved by the County or Cities that precludes compliance with the Conservation Objectives and Required Measures shall result in suspension or revocation of the Permits terminating Third Party Take Authorization under the MSHCP and IA. Such suspension or revocation may occur entirely or only as to specified Conservation Areas, Covered Species, or Covered Activities, and future Development applications affected by the suspension or revocation shall no longer be subject to the Conservation Objectives and Required Measures.

In the alternative, if the property is not immediately purchased, then at the request of the property owner, the purchase agreement may be renegotiated and the property shall be placed on a priority list for acquisition. This list will be established in order to provide some level of assurance to the property owner that the property shall be purchased when funding is available. Placement on the list will be based solely upon the date a property owner requests to be placed on the list. Funding for the acquisition of properties on the priority list will be provided through a separate designated fund (percentage of MSHCP funds received will be included in this fund). This fund will provide funding solely for the acquisition of property for which a Development application is intended to be filed.

The provisions of this section shall not be applicable to conveyance of adjoining property (or property within the same subdivision) by the same owner which if considered together would exceed \$200,000. Any such conveyance shall be subject to the provisions involving the conveyance of property with a purchase price of more than \$300,000 or the total value of the lands together, whichever is less.

**(3) Conveyance of Property (with Purchase Price of \$300,000 or Less) and for which a Development Application is Intended to be Pursued** – If it is anticipated that the property may not be purchased within three years after a purchase or option agreement is entered into (whether due to lack of funds or otherwise), then the County or Cities shall initiate an amendment to the MSHCP Conservation Area at least nine months prior to the expiration of this three-year period. The County or City shall confer with the property owner when drafting the proposed amendment to the MSHCP, and use its best efforts to insure completion of the amendment within this one year time period or any longer period of time agreed to by the parties. Because the USFWS must conduct an internal formal consultation under Section 7 of FESA for any such amendment to the MSHCP, the USFWS shall provide a draft copy of its internal Biological Opinion for review and comment to the County or City prior to approval or denial of the Permit amendment. The County or City shall share the draft Biological Opinion with the property owner and provide any comments from the property owners along with the County's or City's comments to the USFWS. The property owner shall have an opportunity to meet and confer with the USFWS with regard to the effects of the proposed amendment. The County or City shall use its best efforts to insure completion of the amendment within this three-year time period or any longer period of time agreed to by the parties. Thereafter, if the property is not purchased or removed from the Conservation Area within one year after a purchase or option agreement is entered into, then the property owner may request that the County or Cities process a Development application for the property intended to be acquired without further consideration of the Conservation Objectives and Required Measures. Such Development must comply with all other County and City requirements for that type of Development. However, payment of the Local Development Mitigation Fee shall be required as a condition of any approval. This process shall not be construed as a limitation on the County's or Cities' ability to approve or deny a

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Development application except that a project consistent with this Process may not be denied solely because a Development application does not comply with the Conservation Objectives and Required Measures. Prior to issuance of a grading permit which would result in ground disturbance, the CVCC, County, Cities or appropriate state or federal agency may negotiate with the property owner and enter into a new purchase or option agreement to purchase the property.

Any Development application subsequently approved by the County or Cities that precludes compliance with the Conservation Objectives shall result in suspension or revocation of the Permits terminating Third Party Take Authorization under the MSHCP and IA. Such suspension or revocation may occur entirely or only as to specified Conservation Areas, Covered Species, or Covered Activities, and future Development applications affected by the suspension or revocation shall no longer be subject to the Conservation Objectives and Required Measures.

In the alternative, if the property is not immediately purchased, then at the request of the property owner, the purchase agreement may be renegotiated and the property shall be placed on a priority list for acquisition. This list will be established in order to provide some level of assurance to the property owner that the property shall be purchased when funding is available. Placement on the list will be based solely upon the date a property owner requests to be placed on the list. Funding for the acquisition of properties on the priority list will be provided through a separate designated fund (percentage of MSHCP funds received will be included in this fund). This fund will provide funding solely for the acquisition of property for which a Development application is intended to be filed.

The provisions of this section shall not be applicable to conveyance of adjoining property (or property within the same subdivision) by the same owner which if considered together would exceed \$300,000. Any such conveyance shall be subject to the provisions involving the conveyance of property with a purchase price of more than \$300,000.

**(4) Conveyance of Property (with Purchase Price of More Than \$300,000) and for which a Development Application is Intended to be Pursued** – If it is anticipated that the property may not be purchased within four years after a purchase or option agreement is entered into (whether due to lack of funds or otherwise), then the County or Cities shall initiate an amendment to the MSHCP Conservation Area at least nine months prior to the expiration of this four-year period. The County or City shall confer with the property owner when drafting the proposed amendment to the MSHCP, and use its best efforts to insure completion of the amendment within this one year time period or any longer period of time agreed to by the parties. Because the USFWS must conduct an internal formal consultation under Section 7 of FESA for any such amendment to the MSHCP, the USFWS shall provide a draft copy of its internal Biological Opinion for review and comment to the County or City prior to approval or denial of the Permit amendment. The County or City shall share the draft Biological Opinion with the property owner and provide any comments from the property owners along with the County's or City's comments to the USFWS. The property owner shall have an opportunity to meet and confer with the USFWS with regard to the effects of the proposed amendment. The County or City shall use its best efforts to ensure completion of the amendment within this four-year time period or any longer period of time agreed to by the parties. Thereafter, if the property is not purchased or removed from the Conservation Area within four years after a purchase or option agreement is entered into, then the property owner may request that the County or Cities process a Development application for the property intended to be acquired without further consideration

of the Conservation Objectives and Required Measures. Such Development must comply with all other County and City requirements for that type of Development. However, payment of the Local Development Mitigation Fee shall be required as a condition of any approval. This process shall not be construed as a limitation on the County's or Cities' ability to approve or deny a Development application except that a project consistent with this Process may not be denied solely because a Development application does not comply with the Conservation Objectives and Required Measures. Prior to issuance of a grading permit which would result in ground disturbance, the CVCC, County, Cities or appropriate state or federal agency may negotiate with the property owner and enter into a new purchase or option agreement to purchase the property.

Any Development application subsequently approved by the County or Cities that precludes compliance with the Conservation Objectives and Required Measures shall result in suspension or revocation of the Permits terminating Third Party Take Authorization under the MSHCP and IA. Such suspension or revocation may occur entirely or only as to specified Conservation Areas, Covered Species, or Covered Activities, and future Development applications affected by the suspension or revocation shall no longer be subject to the Conservation Objectives and Required Measures.

If the property is not immediately purchased, then at the request of the property owner, the purchase agreement may be renegotiated and the property shall be placed on a priority list for acquisition. This list will be established in order to provide some level of assurance to the property owner that the property shall be purchased when funding is available. Placement on the list will be based solely upon the date a property owner requests to be placed on the list. Funding for the acquisition of properties on the priority list will be provided through a separate designated fund (percentage of MSHCP funds received will be included in this fund). This fund will provide funding solely for the acquisition of property for which a Development application is intended to be filed.

**(5) Conveyance of Property for Which a Development Application is Not Intended to be Filed** – If the property is not immediately purchased after a purchase agreement is entered into, or after expiration of an option agreement, or any longer period of time which may be agreed to by the parties (whether due to the lack of funds or otherwise), then the property will be placed on a priority list for acquisition. This list will be established in order to provide some level of assurance to the property owner that the property shall be purchased when funding is available. Placement on the list shall be based solely upon the date a purchase or option agreement was entered into or any longer period of time which may have been agreed to by the parties. Funding for the acquisition of properties on the priority list will be provided through a separate designated fund (percentage of MSHCP funds received will be included in this fund). This fund will provide funding solely for the acquisition of property for which a Development application is not intended to be filed. The property owner may at any time remove his/her property from this list.

Options or other mechanisms that would allow CVCC to make annual payments to property owners for purposes of payment of property taxes or other carrying costs during the acquisition period will be considered as part of the HANS Process. In addition, Local Permittees and the CVCC will advocate for property tax relief measures when lands are pending acquisition for conservation as appropriate.

### **6.6.1.3 Relinquishment of CVFTL Incidental Take Permit**

The CVFTL HCP required establishment of three preserves for the conservation of the CVFTL and its habitat. These are the Coachella Valley Preserve in the Thousand Palms area, the Willow Hole/Edom Hill Preserve near the west end of the Indio Hills, and the Whitewater Floodplain Preserve east of Indian Avenue in the Whitewater River area. These lands are displayed in Figure 6-2. These preserves consist of BLM, CDFG, USFWS, State Parks, CVMC, CVWD, TNC, and CNLM lands. Table 6-1 shows the ownership in the three reserves. Of the land in the reserves, approximately 1,200 acres in the Whitewater Floodplain Reserve is CVWD land, and approximately 500 acres was acquired with local CVFTL mitigation fees. The CVCC and applicable Permittees will implement the following as part of the MSHCP:

- Within six months of Permit issuance, the CVFTL Incidental Take Permit will be relinquished as described in Section 16.2 of the IA.
- Prior to relinquishment of the CVFTL Permit, CVCC shall obtain an appropriate Legal Instrument guaranteeing protection in perpetuity to the non state and federal lands in the CVFTL Preserve system acquired with CVFTL mitigation fees.
- Prior to relinquishment of the CVFTL Permit, CVWD will conserve the 1,200 acres it owns in the CVFTL HCP Whitewater Floodplain Preserve (part of the Whitewater Floodplain Conservation Area) in perpetuity as part of the MSHCP Reserve System by recording an appropriate Legal Instrument.
- CVCC will implement the Monitoring and Management Programs, on the above lands in perpetuity.
- CVCC will assume responsibility for the CVFTL endowment, which will be incorporated into the MSHCP endowment and earmarked to ensure funding for the Monitoring and Management of the CVFTL and its associate habitat in perpetuity.
- Within 3 months of Permit issuance, the applicable Local Permittees will provide a final accounting of all local mitigation funds collected pursuant to the CVFTL HCP, the Take and Conservation that occurred pursuant to the CVFTL HCP, the funds collected pursuant to the October 4, 2000 MOU between the Cities, the County, CNLM, and the Wildlife Agencies regarding measures to minimize Take of the CVFTL, and the Take and Conservation that occurred pursuant to that MOU. As part of the final report, all biological data collected over the life of the permit will be submitted.

**Table 6-1: Land Ownership in the CVFTL Preserves**

<i>Entity</i>	<i>Thousand Palms Preserve (acres owned)</i>	<i>Willow Hole/Edom Hill Preserve (acres owned)</i>	<i>Whitewater Floodplain Preserve (acres owned)</i>	<i>Total</i>
BLM	9,928	1,824	24	<b>11,776</b>
CNLM	----	160	----	<b>160</b>
CVMC	----	135	----	<b>135</b>
CVWD	113	----	1,170	<b>1,283</b>
DFG	695	----	----	<b>695</b>
<i>Entity</i>	<i>Thousand Palms Preserve (acres owned)</i>	<i>Willow Hole/Edom Hill Preserve (acres owned)</i>	<i>Whitewater Floodplain Preserve (acres owned)</i>	<i>Total</i>
Private	186	167	----	<b>353</b>
State Parks	2,207	----	----	<b>2,207</b>
TNC	875	----	----	<b>875</b>
USFWS	3,616	----	----	<b>3,616</b>
<b>Total</b>	<b>17,620</b>	<b>2,286</b>	<b>1,194</b>	<b>21,100</b>

### **6.6.2 Obligations of the State Permittees**

The State Permittees are Caltrans, CVMC, and State Parks. The State Permittees’ obligations are described below.

**Caltrans.** Caltrans has the following obligations under the Plan:

- In three phases, in years 2010, 2015, and 2020, acquire and convey to CVCC or provide funding to the CVCC sufficient to acquire 5,791 acres of Additional Conservation Lands in the Conservation Areas as a contribution to Plan implementation for the Covered Activities described in Section 7.2.2. This acreage is included in the 96,400 acres described in Section 6.6.1. Not later than 2011, Caltrans will provide \$7.6 million to CVCC for the Monitoring and Management Program for the 5,791 acres, and CVCC shall monitor and manage the lands as part of the MSHCP Reserve System. As land is acquired and transferred to CVCC, the appropriate percentage of the endowment contribution will be transferred to CVCC. Within one year of Permit issuance, CVCC and Caltrans shall prepare an agreement that specifies that if the MSHCP Permits are ever revoked, a conservation bank shall be established whereby the contributed lands are conveyed to CDFG with an endowment sufficient to provide for the permanent monitoring, land management, and adaptive management of the land. CVCC, the Wildlife Agencies, and Caltrans will enter into a Conservation Bank Agreement once a portion or all of the 5,791 acres are acquired. If the Permits issued in conjunction with the Plan are ever suspended or revoked, the conservation bank will provide unused credit for lands acquired to provide mitigation for future transportation projects. Caltrans may, as



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described in the IA, utilize available credits from the bank towards meeting the mitigation requirement for a project.

- As described in Section 6.6.1, cooperate with CVAG and CVCC in the acquisition of 1,795 acres to mitigate the interchange and associated arterial projects, and the contribution of \$1,077,000 to the endowment for the Monitoring Program, Management Program, and Adaptive Management of those lands.
- With respect to its Covered Activities:
  - Implement all applicable Required Measures identified as needed in Section 4.3 for Caltrans' Covered Activities.
  - If a project shares a common boundary with a Conservation Area, comply with Land Use Adjacency Guidelines set forth in Section 4.5.

Caltrans will comply with the applicable avoidance and minimization measures described in Section 4.4 for Covered Activities. Emergency activities necessary to protect public health and safety may be conducted as needed.

**CVMC.** CVMC has the following obligations under the Plan:

- Cooperate with CVCC and other agencies as appropriate to ensure management and monitoring of the approximately 2,600 acres of CVMC Existing Conservation Lands and any additional lands CVMC acquires in the Conservation Areas.

**State Parks.** State Parks has the following obligations under the Plan:

- With respect to its land in the Conservation Areas:
  - Participate as a member of the RMUC for RMUs within which State Parks manages lands.
  - Monitor and manage State Parks lands for the benefit of Covered Species.
  - Monitor and control/eradication of invasive, exotic species.
  - Prescribed fire management and wildfire management.
  - Erosion control.
  - Ecological restoration/rehabilitation on previously damaged lands.
  - Law enforcement patrols.
- With respect to its Covered Activities:
  - Implement all applicable required avoidance, minimization, and mitigation measures for desert tortoise and burrowing owl as set forth in Section 4.4.
  - If a project shares a common boundary with a Conservation Area, comply with Land Use Adjacency Guidelines set forth in Section 4.5.
- Prior to construction of camping, trailhead, and trail facilities as a Covered Activity in the Indio Hills/Joshua Tree National Park Linkage Conservation Area, acquire a minimum of

640 acres in the Conservation Area, of which a maximum of 100 acres may be developed as the Covered Activity. Development of the camping and trailhead facility must be consistent with the Conservation Objectives for the Conservation Area. Take Authorization for the Covered Activity is contingent on the preparation of a RMUP which will reflect the scope of work and obligation of State Parks to manage and monitor State Parks land in the Conservation Area pursuant to the RMUP.

### ***6.6.2.1 Review of State Permittee Projects within the Conservation Areas***

The Wildlife Agencies and the appropriate State Permittee shall jointly review proposed State Permittee projects that are Covered Activities within the Conservation Areas. State Permittees shall submit project information to the Wildlife Agencies and CVCC, including, at a minimum, a project description, a concept map indicating the location of the proposed project, and application of MSHCP requirements. The Wildlife Agencies or State Permittee may schedule a meeting to discuss a proposed project. CVCC shall be invited to participate in this meeting.

### ***6.6.3 Actions by Federal and State Governments***

This section describes the actions to be taken by the state and federal agencies that are participating in the Plan. (See Section 4.2.2.1 for details on the federal and state commitments to land acquisition.)

**Wildlife Agencies.** The Wildlife Agencies will contribute to Plan implementation by managing their lands in the Conservation Areas in a manner consistent with achieving the Plan's Conservation Goals and Conservation Objectives. The Wildlife Agencies will participate in the Monitoring Program, and will facilitate ecological research or restoration activities by other entities on federal and state lands that benefit MSHCP resources. The Wildlife Agencies will acquire additional lands in the Conservation Areas. The Wildlife Agencies will review the Annual Report prepared by CVCC and will meet annually with Local Permittees to discuss progress in implementing the Plan. The Wildlife Agencies will expeditiously review proposed boundary adjustments and Plan or Permit amendments, and expeditiously determine Conservation measures needed and conservation responsibilities for newly Listed Species and species proposed for listing that are not on the Covered Species list.

## ***6.7 Time Frame for Implementation***

Section 2820(a)(9) of the California Fish and Game Code requires that the Plan include the estimated timeframe and process by which the MSHCP Reserve System will be assembled and other conservation measures implemented, including obligations of landowners and plan signatories and consequences of the failure to acquire lands in a timely manner.

The Permits will be for a 75 year term. This term was selected because the acquisition program is projected to require 30 years to acquire all the Permittee obligation land, and full funding of the endowment for the Monitoring Program, the Management Program, Adaptive Management, and ongoing administration costs is projected to require 75 years. The MSHCP

Reserve System will be assembled as described in Section 4.2. The non-acquisition components of MSHCP Reserve System Assembly will be ongoing for the life of the Plan. The acquisition component of Reserve System Assembly is anticipated to occur in the first 30 years of the Permits. The rate at which land in the Conservation Areas is acquired will depend on the availability of funds (See Section 5.2) and Development patterns. Section 6.5 will ensure that a rough proportionality will be maintained between Conservation and Development.

If the Local Permittees do not maintain "rough proportionality" between Development and Conservation, the Wildlife Agencies, CVCC and other applicable Local Permittees shall meet to discuss potential actions to meet the Plan's rough proportionality requirements. In the event that these Parties do not reach agreement on such potential actions, the Wildlife Agencies may initiate revocation or suspension of all or part of the Permits as set forth in Section 23.5 of the IA.

## ***6.8 Assurances for Unforeseen and Changed Circumstances***

### ***6.8.1 No Surprises Rule***

In accordance with the Habitat Conservation Plan ("No Surprises") Assurances Rule (63 Federal Register 8859, as codified in 50 C.F.R. Sections 17.3, 17.22[b] and 17.32[b]), it is acknowledged that the purpose of the Coachella Valley MSHCP is to provide for the Conservation of Covered Species and the mitigation, minimization and compensatory measures required in connection with incidental taking of the Covered Species in the course of otherwise lawful and permitted activities within the MSHCP Plan Area. Accordingly, as described below and except as otherwise required by law and/or provided under the terms of the MSHCP Plan and except for Unforeseen Circumstances, in particular as these requirements are addressed in Section 6.8.2 of this document, no further mitigation or compensation shall be required by USFWS to address impacts of Covered Activities undertaken by the Permittees, Third Parties Granted Take Authorization and Participating Special Entities, pursuant to the Federal Endangered Species Act. Pursuant to 50 Code of Federal Regulations, sections 17.22(b)(5) and 17.32(b)(5), USFWS shall not require from the Permittees, Third Parties Granted Take Authorization, Participating Special Entities, or other individuals or entities receiving Take Authorization under the Permits the commitment of additional land or financial compensation or additional restrictions on the use of land or other natural resources with regard to Covered Activities and their impact on Covered Species beyond that provided pursuant to the Coachella Valley MSHCP, provided that the Permittees are properly implementing the Plan, the IA, and the Permits. In the event that the USFWS makes a finding of Unforeseen Circumstances and such Unforeseen Circumstances warrant the requirement of additional mitigation, enhancement or compensation measures, any such additional measures shall be restricted to modification of the management of the Additional Conservation Lands, and shall be the least burdensome measures available to address the Unforeseen Circumstances.

- A. DEFINED** - "Unforeseen Circumstances" (defined in 50 C.F.R. Section 17.3) means any significant, unanticipated adverse change in the status of species covered under the MSHCP or in their Habitats or any significant unanticipated adverse change in impacts of

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the MSHCP or in other factors upon which the MSHCP is based, in accordance with 63 Federal Register 8859 (February 23, 1998). The term “Unforeseen Circumstances” as defined in the IA is intended to have the same meaning as it is used to define the limit of the Permittees’ obligation on the “No Surprises” regulations set forth in 50 Code of Federal Regulations, Sections 17.22 (b)(5) and 17.32 (b)(5).

**B. RELEVANT FACTORS** - In deciding whether Unforeseen Circumstances exist which might warrant requiring additional conservation measures, USFWS shall consider, but not be limited to, the factors identified in 50 Code of Federal Regulations, Sections 17.22(b)(5)(C) and 17.32(b)(5)(C) (the No Surprises Rule), which are:

1. The extent of the current range of the affected Covered Species;
2. The percentage of the range of the affected Covered Species and Habitat that has been adversely affected by the Covered Activities;
3. The percentage in the range of the affected Covered Species and Habitat that has been conserved by the Coachella Valley MSHCP;
4. The ecological significance of that portion of the range or Habitat of the affected Covered Species;
5. The level of knowledge about the affected Covered Species and Habitat and the degree of specificity of the conservation program for that species or Habitat under the Coachella Valley MSHCP; and
6. Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the Covered Species in the wild.

**C. BURDEN AND DOCUMENTATION** - As described in 50 Code of Federal Regulations, Sections 17.22(b)(5)(C) and 17.32(b)(5)(C), the No Surprises Rule, USFWS shall have the burden of demonstrating that Unforeseen Circumstances exist, using the best scientific and commercial data available. Any findings of Unforeseen Circumstances must be clearly documented and based upon reliable technical information regarding the biological status and Habitat requirements of the affected species.

**D. ADVANCE NOTICE** - Except where there is substantial threat of imminent, significant adverse impacts to a Covered Species, USFWS shall provide the Permittees at least sixty (60) calendar days written notice of a proposed finding of Unforeseen Circumstances, during which time USFWS shall meet with the CVCC and any affected Permittee to discuss the proposed finding, to provide the CVCC and any affected Permittee with an opportunity to submit information to rebut the proposed finding, and to consider any proposed changes to the Conservation strategies for the Additional Conservation Lands.

**E. LIMITS ON ADDITIONAL CONSERVATION MEASURES** - If USFWS makes a finding of Unforeseen Circumstances in accordance with the procedures described above, and determines that additional Conservation measures are warranted, such additional Conservation measures shall conform to the maximum extent possible to the original terms of the MSHCP. Additional Conservation measures shall be limited to those modifications, restrictions and agreements described below.

For additional discussion of No Surprises, see Section 14.11 of the IA.

## ***6.8.2 Reconciliation of the No Surprises Rule, Unforeseen Circumstances and Adaptive Management in the MSHCP***

The No Surprises Rule states, in part, that:

In negotiating Unforeseen Circumstances, USFWS shall not require without the consent of the Permittee, the commitment of additional land, water or financial compensation or additional restrictions on the use of land, water, including quantity and timing of delivery, or other natural resources beyond the level otherwise agreed upon for the species covered by the conservation plan.

If additional Conservation and mitigation measures are deemed necessary to respond to Unforeseen Circumstances, USFWS may require additional measures of the Permittee where the Conservation plan is being properly implemented, but only if such measures are limited to modifications within conserved Habitat areas, if any or to the Conservation plan's operating Conservation program for the affected species, and maintain the original terms of the Conservation plan to the maximum extent possible. Additional Conservation and mitigation measures shall not involve the commitment of additional land, water or financial compensation or restrictions on the use of land, water (including quantity and timing of delivery), or other natural resources otherwise available for Development or use under the original terms of the Conservation plan, without the consent of the Permittee.

Thus, in the event that Unforeseen Circumstances adversely affect any of the MSHCP Covered Species during the life of the Plan, the Permittees, Third Parties Granted Take Authorization, and Participating Special Entities would not be required to provide additional financial compensation, land or land restrictions beyond those required by the Plan at the time of issuance of the Section 10(a) Take Authorization without their consent, except as provided for Changed Circumstances as described in Section 6.8.3.

In light of the MSHCP's Adaptive Management Program, which allows certain changes to occur throughout the life of the Plan, it is necessary to clarify what aspects of the Conservation program are subject to the "No Surprises" Rule and for which, therefore, USFWS may not require additional mitigation as a result of Unforeseen Circumstances without the consent of the Permittees.

The Adaptive Management Program allows the MSHCP to be revised as a result of new information on the life history or ecology of Covered Species generated through continuing research or information on the effectiveness of mitigation measures, and as a result of the Monitoring Programs. As a result, revisions may be made to several of the Conservation components, including the technical aspects of mitigation land management and enhancement, implementation of Take Minimization Measures and monitoring of Covered Species. Pursuant to the "No Surprises" Rule, the Permittees and USFWS agree that the following MSHCP

components are not subject to modification as a result of the MSHCP's Adaptive Management provisions without the consent of the Permittees, except for those projects that constitute an action authorized, funded or carried out by a federal agency (i.e., have federal involvement) which are exempt from such assurances.

1. The boundaries of the Conservation Areas.
2. The measures required to implement the Plan, Land Use Adjacency Guidelines, and avoidance and minimization measures, as described in Section 4.
3. The Covered Activities described in Section 7 of this document.
4. The MSHCP funding plan described in Section 5 of this document.
5. Any other change not currently described in this Plan that would significantly increase the Plan's costs or the interests in land of the Permittees, or any landowner in the MSHCP Plan Area.
6. Additional compensation measures shall not be imposed on Third Parties Granted Take Authorization where the Permittees have already granted final project approvals unless such additional Conservation measures are agreed to by the Third Party Granted Take Authorization.

### ***6.8.3 Changed Circumstances***

Changed Circumstances are defined under the Federal “No Surprises” rule as “changes in circumstances affecting a Covered Species or geographic area covered by a conservation plan, including the MSHCP, or agreement that can reasonably be anticipated by plan or agreement developers and USFWS and that can be planned for.” Changed Circumstances potentially affecting the Reserve Lands are defined as future events for which it is reasonably foreseeable that such an event may occur during the life of the MSHCP Permit, and that such an event may negatively affect the Covered Species and/or their associated habitat within the Reserve Lands. Changed Circumstances addressed by the MSHCP include the following:

- Drought
- Fire
- Invasion by new exotic species
- Lowering of the water table
- New Listings of Species Not Covered by the MSHCP

#### ***6.8.3.1 Drought***

For the purpose of defining Changed Circumstances, drought is defined as climatic drought at least three years in length, as declared by the California Department of Water Resources.

### ***Risk Assessment***

Drought is a cyclical weather phenomenon that is beyond human control. Drought is not uncommon in Southern California, and it is a phenomenon to which local natural communities and species have adapted over time. Drought occurs slowly over a multi-year period, differing from the catastrophic events of fire and flood, which occur rapidly and afford little time for preparing for disaster response. Drought conditions may adversely affect Covered Species if the species and/or conserved natural communities are unable to adapt to the challenging conditions. Rainfall data assembled by the County over the past 120 years indicates a general eight year periodicity in wet and dry conditions with more infrequent occurrences of dry years extending for more than a one to two year period. Based on these data, and the fact that drought is an expected occurrence in Southern California, a drought event significantly affecting Covered Species is not anticipated to occur during the life of the Permit. Nevertheless, measures will be taken to monitor the effects of drought, as defined above, on Covered Species.

### ***Preventive Measures***

No measures are available to prevent climatic drought within the Reserve Lands. Measures to ameliorate the effects of drought may involve providing artificial water sources for Covered Species such as Peninsular bighorn sheep adversely affected by drought.

### ***Planned Response to Drought***

If a climatic drought occurs within the MSHCP Plan Area as defined by this section, the CVCC Executive Director will notify the Wildlife Agencies of this Changed Circumstance, or the Wildlife Agencies may notify the CVCC Executive Director. The Executive Director will assess the damage caused by the drought and initiate the following actions:

- Prepare a damage assessment report.
- Recommend actions to ameliorate the effects of the climatic drought on Covered Species; such actions may include provision of temporary artificial water sources for the benefit of Covered Species adversely affected by drought.
- Implement measures through Adaptive Management.

### ***6.8.3.2 Fire***

For the purpose of defining Changed Circumstances, a fire event that may adversely affect Covered Species and conserved natural communities is fire in a natural community that is not typically subjected to fire and is not adapted to it. The natural communities within the Plan Area that are fire-adapted include chamise chaparral, redshank chaparral, semi-desert chaparral, interior live oak chaparral, Mojavean pinyon-juniper woodland, and peninsular juniper woodland and scrub. A high density of exotic plants can facilitate wildfires in desert habitats where vegetation would be otherwise too sparse to carry fires. Such fires can dramatically alter habitats that have no adaptations to survive being burned. There are no data to indicate the sensitivity of species living on the alluvial fans to exotic species invasions. Clearly, the habitat alterations resulting from wildfire would have impacts across trophic levels that could last decades or longer.

***Risk Assessment***

As documented in the Safety Element of the Riverside County General Plan on file with the County of Riverside, the higher elevation portions of MSHCP Plan Area support highly flammable native vegetation and are rated as potential wildland fire areas by the State of California Department of Forestry and Fire Prevention (CDF) and the General Plan Safety Element. Fire potential within the MSHCP Plan Area is typically greatest in the months of August, September and October when dry vegetation co-occurs with hot, dry Santa Ana winds.

Generally, the vegetation communities within the Reserve Lands where fires are a normal occurrence are adapted to the existing fire regime and will naturally recover from fire. The type of fire event that is defined as a Changed Circumstance is fire in a desert ecosystem where fire is not a normal event, but where increasing exotic plant invasion is creating the potential for fire. Landscape level monitoring will attempt to explore the relationship between areas occupied by exotic plants, including grasses, and historical fire sites. Habitat and natural community level vegetation monitoring will directly measure exotic plant species richness and abundance.

***Preventive Measures***

For specific types of fire that are damaging to biological resources within the Reserve Lands, the cause of the fire will be reviewed and preventive measures such as the following will be developed:

- Redesign, reconfigure, and/or review fuel breaks.
- Work with local fire agencies to improve fire suppression preparedness.
- Develop a public education program.

For desert ecosystem fires, the challenge will be to develop effective tools to control the exotic species, as those tools that are currently available may be insufficient. Monitoring will enable managers to evaluate the efficacy of whatever control tools are employed. Unless effective exotic plant control tools are developed, fuel modification zones (firebreaks) may need to be maintained in areas where public roads abut Conservation Areas, in order to inhibit the spread of wildfires. An additional measure is:

- Contact fire-fighting authorities to identify appropriate strategies to fight fires to minimize habitat damage.

***Planned Response to Fire***

If a fire occurs within the Reserve Lands as defined above, the CVCC Executive Director will notify the Wildlife Agencies of this Changed Circumstance, or the Wildlife Agencies may notify the CVCC Executive Director. The Executive Director will assess the damage caused by the fire and initiate the following actions:

- Develop and implement a monitoring program to monitor natural re-growth within the damage area for an appropriate period.



- If it is determined that natural re-growth is not occurring and that such absence of natural re-growth will adversely affect Covered Species, an action plan will be developed and implemented; the action plan will involve efforts to improve habitat conditions
- Implement response measures through Adaptive Management.

### ***6.8.3.3 Invasion by New Exotic Species***

For the purpose of defining Changed Circumstance, invasion by exotic species is defined as an unanticipated occurrence of a new exotic species within the Reserve Lands.

#### ***Risk Assessment***

Invasive and exotic species are currently present within areas identified for Conservation in the Reserve Lands, and monitoring of and research into their effects as described in Section 8 and appropriate management and Adaptive Management will occur as needed. The monitoring and research will be used to identify existing exotic species on Reserve Lands so that new exotic species can be identified if one occurs.

#### ***Preventive Measures***

Section 8 describes monitoring programs to assess the spread of exotic and invasive species and their impacts on Covered Species and conserved natural communities. Monitoring will also enable managers to evaluate the efficacy of whatever control tools are employed. This monitoring program increases the probability of early detection of a new exotic species. Early detection improves the chances of successfully addressing any threat posed by the new exotic species.

#### ***Planned Response to Invasion by Exotic Species***

Responses to anticipated invasion by exotic species are incorporated in the Monitoring and Management Programs presented in Section 8 of this document. If an unanticipated invasion by a new exotic species occurs in the Reserve Lands, the CVCC Executive Director will notify the Wildlife Agencies of this Changed Circumstance, or the Wildlife Agencies may notify the CVCC Executive Director. The Executive Director will assess the damage caused by the unanticipated invasion by a new exotic species and initiate the following actions:

- Prepare a damage assessment report.
- Recommend actions to address the threat(s) resulting from the unanticipated invasion by a new exotic species.
- Implement response through Adaptive Management.

### ***6.8.3.4 Lowering of the Water Table***

For the purpose of defining Changed Circumstances, lowering of the water table is defined as an increase in the depth to groundwater that significantly affects water availability to mesquite plants in the Willow Hole, East Indio Hills, or Thousand Palms Conservation Areas.

***Risk Assessment***

Substantial lowering of the water table in areas that could significantly affect mesquite hummocks and associated Covered Species in the Willow Hole, East Indio Hills, or Thousand Palms Conservation Area could result from groundwater withdrawals. As described in Section 10.2.7.2, CVCC will ensure monitoring of the hydrological regimes that support mesquite hummocks.

***Preventive Measures***

Sections 8.1.2 and 10.2.7.2 describe monitoring programs to determine whether substantial lowering of the water table occurs. Monitoring will also enable managers to evaluate the efficacy of the control tools that are employed. This monitoring program increases the probability of early detection of a substantial lowering of the water table. Early detection improves the chances of successfully addressing any threat posed by a substantial lowering of the water table. Should monitoring detect such a substantial lowering, appropriate Adaptive Management actions will be taken.

***Planned Response to Lowering of the Water Table***

As discussed in Section 8, the Monitoring Program will include the use of appropriate methods and technology (which may change over time) to monitor groundwater levels in the Willow Hole, East Indio Hills, and Thousand Palms Conservation Areas where a substantial lowering of the water table could significantly adversely impact mesquite hummocks and associated Covered Species. Should monitoring detect a substantial lowering or a decline in mesquite health, the following actions will be taken.

- Evaluate the results of the monitoring.
- Prepare a damage assessment report.
- Develop Feasible measures to ameliorate the effects of substantial lowering of the water table on mesquite hummocks and associated Covered Species.
- Implement measures through Adaptive Management.

***6.8.3.5 New Listings of Species Not Covered by the MSHCP***

USFWS may list additional species under FESA as Threatened or Endangered, delist species that are currently listed, or declare Listed Species as extinct. In the event of a new listing of one or more species not covered by the MSHCP, USFWS and the Permittee(s) will identify actions that may cause Take, jeopardy or adverse modification of Critical Habitat, and the Permittee(s) will avoid such actions in the implementation of their Covered Activities until approval of an amendment to the MSHCP to address the newly-listed species in accordance with the modifications and amendments procedures described in Section 6.12. Such avoidance measures will include the following:

- (1) Evaluation of applications for Covered Activities with respect to potential effects on the newly-listed species; such evaluations will include assessment of the presence of suitable

habitat for the newly-listed species within the areas potentially affected by the proposed Covered Activity and surveys for the newly-listed species, as appropriate, using accepted protocols; and

- (2) Implementation of measures to avoid impacts to the newly-listed species based on the results of the data collected in Item 1 above and the evaluation of those data in the context of the design of the proposed Covered Activity.

### ***6.8.4 Changed Circumstances Not Provided for in the Plan***

Pursuant to the No Surprises Rule at 50 C.F.R. 17.22(b)(5)(ii), the USFWS may not require (1) any Conservation or mitigation measures in addition to those provided for under Section 6.8.3 in response to a Changed Circumstance; or (2) additional Conservation or mitigation measures for any Changed Circumstance that is not identified in Section 6.8.3 without the consent of the Permittees, provided the Permittees are properly implementing the MSHCP Plan.

As recognized in the No Surprises Rule at 50 C.F.R. 17.22(b)(6) and 17.32(b)(6), the USFWS, any Federal, State or local agency, or a private entity may take additional actions at their own expense to protect or conserve a Covered Species within the MSHCP Plan Area.

## ***6.9 Application of Certain FESA Requirements***

### **Critical Habitat Designation for Covered Species**

The USFWS has adopted designations for the following species within the MSHCP Plan Area:

- Coachella Valley fringe-toed lizard
- Peninsular bighorn sheep

The USFWS acknowledges and agrees that the MSHCP and the IA provide a comprehensive, habitat-based approach to the protection of Covered Species by focusing on the lands essential for the long-term Conservation of the Covered Species and appropriate management for those lands. This approach is consistent with the overall purposes of FESA to provide a means whereby the ecosystems upon which Endangered and Threatened Species depend may be conserved. FESA regulations specify that the criteria to be used in designating Critical Habitat include “those physical and biological features that are essential to the conservation of a given species and that may require special management considerations or protection.” (50 C.F.R. § 424.12(b).)

The MSHCP and the IA provide for the protection of “those physical and biological features essential to the conservation” of the Covered Species in a manner consistent with USFWS regulations concerning the designation of Critical Habitat. The USFWS agrees that, to the maximum extent allowable after public review and comment, in the event that a Critical Habitat determination is made for any Covered Species, and unless the USFWS finds that the

MSHCP is not being implemented, lands within the boundaries of the MSHCP will not be designated as Critical Habitat. In addition, if Critical Habitat is designated within the MSHCP boundaries, pursuant to Section 14.9 of the IA and except as expressly provided in Section 14.11 of the IA and Section 6.8.2 of this document regarding Unforeseen Circumstances, no subsequent evaluation of the Covered Species, nor any mitigation, compensation, conservation enhancement or other protective measures other than those set forth in the MSHCP will be required. Moreover, to the maximum extent allowable after public review and comment, the USFWS agrees to reassess and revise the boundaries of existing designated and proposed Critical Habitat of Covered Species within the MSHCP boundaries after its approval, although the Parties recognize that funding constraints may influence the timing of such regulatory action.

### **Future Recovery Plans**

Recovery plans under FESA delineate actions necessary to recover and protect federally-listed species. These plans frequently include information, or may lead to the development of information, that can contribute to Adaptive Management. However, recovery plans do not obligate any Permittee, individual or entity to undertake specific tasks.

The Parties acknowledge that FESA recovery plans have no effect on the implementation of this MSHCP, except to the extent that they may contribute information to, or assist in achieving the goals of, Adaptive Management. Any recovery plan applicable to any Covered Species within the MSHCP Plan Area that is developed after the Effective Date shall:

1. Not require any additional land or financial compensation by Permittees;
2. Be finalized only after the USFWS has consulted with and requested input from CVCC on the preparation of the recovery plan; and
3. Not in any way diminish the Take Authorization for Covered Species granted to Permittees pursuant to the MSHCP, this Agreement, or the Section 10(a) Permit.

### **Section 7 Consultations**

USFWS shall evaluate the direct, indirect, and cumulative effects of the Covered Activities in its internal FESA Biological Opinion issued in connection with the MSHCP and issuance of the Section 10(a) Permit. As a result, and to the maximum extent allowable, in any consultation under Section 7 of FESA subsequent to the Effective Date involving the Permittee(s) or entity with Third Party Take Authorization with regard to Covered Species and Covered Activities, USFWS shall ensure that the FESA Biological Opinion issued in connection with the proposed project that is the subject of the consultation is consistent with the internal FESA Biological Opinion. Such project must be consistent with the terms and conditions of the MSHCP and the IA. Any reasonable and prudent measures included under the terms and conditions of a FESA Biological Opinion issued subsequent to the Effective Date with regard to the Covered Species and Covered Activities shall, to the maximum extent appropriate, be consistent with the implementation measures of the MSHCP and the IA. USFWS shall not impose measures in excess of those that have been or will be required by the Permittee(s) or entity with Third Party Take Authorization pursuant to the MSHCP and this Agreement. USFWS shall process subsequent FESA consultations for Covered Activities in accordance with the process and time periods set forth in 50 C.F.R. § 402.14. An extension of the time periods in 50

C.F.R. § 402.14 may be sought as set forth in Section 402.14(e). The Parties agree that this section does not create an independent cause of action.

## ***6.10 State Assurances***

Pursuant to California Fish and Game Code Section 2820(f), CDFG "may provide assurances for plan participants commensurate with long-term conservation assurances and associated implementation measures pursuant to the approved plan".

Further, in accordance with California Fish and Game Code Section 2820(f)(2), if there are Unforeseen Circumstances, CDFG shall not require additional land, water or financial compensation or additional restrictions on the use of land, water or other natural resources for the life of the NCCP Permit without the consent of the Permittees, unless CDFG determines that continued implementation of this Agreement, the MSHCP, and/or the Permits would jeopardize the continued existence of a Covered Species, or as required by law and would therefore lead to NCCP Permit revocation or suspension. (See Section 15.3 of the IA for additional details.)

Pursuant to Section 15.7 of the IA, 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 to Covered Species that exceed the requirements prescribed in and pursuant to the MSHCP and the IA, including, without limitation, in the form of comments offered by CDFG in the context of any CEQA process associated with approvals for Covered Activities, with regard to effects on Covered Species.

## ***6.11 Relationship to Existing Wetland Regulations***

Projects that affect wetland natural communities shall be required to comply with the applicable regulatory standards related to wetlands functions and values. The purpose of this discussion is to identify current regulatory processes and indicate their relationship to the process set forth in the MSHCP. It should be noted that current wetland regulatory processes beyond the process described in this section are not relied upon for coverage of species addressed in the MSHCP. Many wetland communities (*e.g.*, freshwater marsh, riparian forests, riparian woodlands, open water, flood channel, river and stream beds) within the Plan Area include areas subject to California Fish and Game Code (CFG Code) Section 1600 et seq. and the federal Clean Water Act (Sections 401, 402 and 404). Such areas will continue to be regulated by state and federal agencies. The U.S. Army Corps of Engineers (ACOE) shall continue to consult with the USFWS pursuant to Section 7 of the FESA on projects that may affect federally listed species within ACOE jurisdictional wetlands and waters. Section 23.6 of the IA describes "meet and confer" provisions between USFWS and affected Permittees. The CDFG shall continue to work closely with the ACOE, USFWS, and local jurisdictions to ensure that the CFG Code Section 1600 et seq. agreements are consistent with the mitigation required for Covered Species. In addition, other existing regulations related to wetland Habitats, such as the Porter-Cologne Act shall continue to apply.

## ***6.12 Modifications, Like Exchanges to Conservation Areas, and Amendments to the MSHCP***

MSHCP modifications, Like Exchanges to Conservation Areas, and amendments are not anticipated on a regular basis. However, certain events may trigger modifications, Like Exchanges to Conservation Areas, or Minor or Major Amendments to the MSHCP. Any signatory to the IA may seek a modification, Like Exchanges to Conservation Area Boundary Adjustment, or amendment to the MSHCP.

### ***6.12.1 Modifications***

#### **Clerical Changes**

Clerical changes to the MSHCP shall be made by the CVCC on its own initiative or in response to a written request submitted by any Permittee or Wildlife Agency, which includes documentation supporting the proposed clerical change. Clerical changes shall not require any amendment to the MSHCP, the Permits, or the IA. Clerical changes include corrections of typographical, grammatical, and similar editing errors that do not change the intended meaning and corrections of any maps or exhibits to correct insignificant errors in mapping. The Parties anticipate that most clerical changes to the MSHCP will occur during the first ten (10) years of the Permits. Annual Reports shall include a summary of clerical changes made to the MSHCP in the preceding calendar year.

#### **Land Use Changes**

The Parties agree that the adoption and amendment of general plans, specific plans, community plans, zoning ordinances and similar land use ordinances, and the granting of implementing land use entitlements by the County and the Cities are matters within the sole discretion of the County and Cities and shall not require amendments to the IA, MSHCP, or the Permits, or the approval of other Parties to the IA. However, the Parties agree that: (1) no such action by the County or the Cities shall in any way alter or diminish their obligations under the IA, the MSHCP, or the Management and Monitoring Programs; and (2) approval of certain projects may lead to revocation or suspension of the Permits pursuant to Section 23.5 of the IA.

#### **Adaptive Management Changes**

Except as otherwise provided, changes to avoidance, minimization, compensation and MSHCP Conservation Area management strategies developed through and consistent with the Adaptive Management Program described in Section 8 of this document shall not require any amendment to the MSHCP, the IA, or the Permits.

### ***6.12.2 Like Exchanges to Conservation Areas***

The design of the Conservation Areas focused on natural communities, Core Habitat for Covered Species, Essential Ecological Processes, Biological Corridors and Linkages. The natural communities and Covered Species also occur outside of the Conservation Areas. In some

instances it may be possible to achieve the Plan's Conservation Goals while not increasing the level of Take analyzed in the Plan through a different configuration of one or more Conservation Areas.

Like Exchanges are changes proposed by a Permittee to modify the boundary of one or more Conservation Areas in exchange for reducing or modifying the boundary of a Conservation Area. A Like Exchange must result in equal or greater benefits to Covered Species and conserved natural communities as compared to those benefits analyzed in the Plan. In addition, the level of Take of Covered Species must be no greater than that analyzed in the Plan.

When a Like Exchange is proposed, the applicable Permittee(s) shall meet and confer with the Wildlife Agencies prior to submittal of Like Exchange analysis to the CVCC. The Permittee will prepare an equivalency analysis. Upon submittal of a completed equivalency analysis, the Wildlife Agencies shall respond in writing within 60 days (of acknowledged receipt) as to their concurrence with the Like Exchange. If the Wildlife Agencies do not concur the action shall require an Amendment to the MSHCP. Like Exchanges must also be submitted to applicable Permittees for approval.

The Like Exchange analysis shall include assembly of necessary project information and completion of an equivalency analysis as described below:

➤ **Like Exchange Information and Analysis Requirements**

The following information shall be included in the analysis:

1. Maps clearly and precisely delineating the proposed Boundary Adjustment, showing land to be removed from the Conservation Area in the context of the entire Conservation Area, and land to be added to this or another Conservation Area;
2. Narrative and graphic description of the proposed project;
3. Narrative and graphic description of biological information available for the Boundary Adjustment sites (land to be removed and land to be added) including current project-specific vegetation mapping, modeled habitat and appropriate species surveys, land identified as part of a Biological Corridor or Linkage, and land identified as part of an Essential Ecological Process area;
4. Narrative and graphic description of the project's efforts to be consistent with the Conservation Area Conservation Objectives and explanation of the rationale why consistency has been determined to be infeasible;
5. Quantification and characterization of effects/benefits of the proposed Boundary Adjustment on Habitats for Covered Species, natural communities, Biological Corridors and Linkages, Essential Ecological Processes, and Conservation Area reserve design and manageability; and
6. Any other information deemed necessary by the Permittee to make the appropriate findings.

➤ **Analysis**

Based on the assembled information, an equivalency analysis shall be provided by the applicable Permittee(s) to the CVCC and the Wildlife Agencies in narrative and graphic form comparing the effects/benefits of the proposed Like Exchange. The equivalency analysis shall address the following categories:

1. Effects on the level of Take of Covered Species;
2. Effects on Habitats of Covered Species, including Core Habitat; potential habitat fragmentation, reduction in size of Core Habitat patches, and increase in edge effects;
3. Effects on natural communities, including potential fragmentation, reduction in patch size, and increase in edge effects;
4. Effects on Biological Corridors and Linkages;
5. Effects on Essential Ecological Processes;
6. Effects on Conservation Area configuration and management (such as increases or decreases in edge);
7. Effects on ecotones (defined as areas of adjoining natural communities, generally characterized by greater biological diversity) and other conditions affecting species diversity (such as invasion by exotics);
8. Equivalent or greater acreage contributed to the Conservation Areas;
9. Applicant must demonstrate agreements or control over mitigation property being offered under the equivalency analysis.

The equivalency analysis shall draw conclusions regarding the degree to which the proposed project incorporating Boundary Adjustments is considered to be biologically equivalent or superior to a project on the same site not deviating from the Conservation Area Conservation Objectives. Projects determined to be biologically equivalent or superior shall be determined to be acceptable refinements to the MSHCP Conservation Area boundaries and amendment to the MSHCP shall not be required prior to approval of such projects. Projects not determined to be biologically equivalent or superior shall be determined to be unacceptable deviations from the Conservation Area Conservation Objectives and an amendment to the MSHCP would be required prior to approval of such projects.

In 2006, the Citrus Ranch, Indio Water Authority Water Reservoir Sites, Lumkes Family Trust/Ruthersford, and Nott Family Trust Like Exchanges were approved. The acreages of these exchanges are reflected in the Conservation Area descriptions in Section 4.0. The Like Exchange agreements are included in *Appendix V*. In addition, a transfer of take from the County of Riverside to the City of Indio for the Indio Trails development project and a transfer of take from the County of Riverside to the City of Palm Springs for the Shadowrock development project have been approved. These agreements are included in *Appendix V*.



### ***6.12.3 Minor Amendments***

Minor Amendments are amendments to the MSHCP of a minor or technical nature where the effect on Covered Species, level of Take, and Permittees' ability to implement the MSHCP are not significantly different than those described in the MSHCP as originally adopted. Minor Amendments to the MSHCP shall not require amendments to the IA or the Permits.

#### **Minor Amendments Not Requiring Wildlife Agencies' Concurrence**

1. Minor corrections to land ownership.
2. Adjustment of land ownership and conservation acreages in the Santa Rosa and San Jacinto Mountains Conservation Area upon completion of a land exchange between the Agua Caliente Band of Cahuilla Indians and BLM. See Section 4.2.1.1 for additional information.
3. Minor revisions to survey, monitoring, reporting and/or management protocols that clearly do not affect Covered Species or overall MSHCP Conservation Area functions and values.
4. Application of Take Authorization to Development within Cities incorporated within the MSHCP boundaries after the Effective Date of the IA, pursuant to Section 11.5 of the IA provided such inclusion does not preclude Reserve Assembly, significantly increase the cost of MSHCP Additional Conservation Lands management or MSHCP Reserve System Assembly, or preclude achieving Conservation Area Conservation Objectives and Species Conservation Goals.
5. Annexation or deannexation of property pursuant to Section 11.4 of the IA, provided such inclusion does not preclude MSHCP Reserve System Assembly, significantly increase the cost of MSHCP Additional Conservation Lands management or MSHCP Reserve System Assembly, or preclude achieving Conservation Area Conservation Objectives and Species Conservation Goals.
6. Updates/corrections to the conserved natural communities map and/or species occurrence data.
7. Changes to the RMU boundaries.

#### **Minor Amendments Requiring Wildlife Agencies' Concurrence**

1. As described in Section 6.12.2, proposed Like Exchanges not determined to be biologically equivalent or superior to the existing Conservation Areas would require an amendment to the MSHCP.
2. Construction and operation of CVWD water recharge and storage and other water related facilities as described in Section 7.3 of the MSHCP.
3. Modification of the alignment of the Palm Desert to La Quinta Connector Trail from the alignment in the Trails Plan in the Final MSHCP.
4. Transfer of Conservation Objectives for conserved natural communities and/or identified Covered Species between Conservation Areas or between Recovery Zones in the Santa

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Rosa and San Jacinto Mountains Conservation Area may occur if the following is demonstrated:

- The transfer does not reduce the number of acres anticipated by the Plan of the natural community or the species' habitat conserved.
  - The transfer does not reduce the conservation value of the lands that will be conserved based on natural community patch size, configuration, and juxtaposition within the matrix of Conserved Habitat and is of greater or equal habitat value.
  - There is no reduction in conservation and no increase in Take.
  - Transfers must be within kind (for a Covered Species or natural community). Any shifts must be species-specific and meet the above criteria.
5. Changes to the list of exotic species in Table 4-112.
  6. Future proposals for new trails on Reserve Lands in the Santa Rosa and San Jacinto Mountains Conservation Area, other than the identified new trails (including perimeter trails).
  7. Construction of the Morongo Wash Flood Control Facility as described in Section 7.3.1.

### **Procedure**

Any Party may propose Minor Amendments to the MSHCP or the IA by providing written notice to all affected Parties. Such notice shall include a description of the proposed Minor Amendment, an explanation of the reason for the proposed Minor Amendment, an analysis of its environmental effects including any impacts to the Conservation of Covered Species, and a description of why that Party believes the effects of the proposed Minor Amendment: (1) are not significantly different from, and are biologically equivalent to, the terms in the MSHCP as originally adopted; (2) substantially conform to the terms in the MSHCP as originally adopted; and (3) will not significantly reduce the ability to acquire the Additional Conservation Lands. The Wildlife Agencies and affected Parties shall submit any comments on the proposed Minor Amendments in writing within sixty (60) days of receipt of such notice. Any Party can institute the informal meet and confer process set forth in Section 20.4.4 of the IA to resolve disagreements concerning Minor Amendments.

For the Minor Amendments requiring Wildlife Agencies' concurrence, any non-concurrence must occur within 60 days of receipt of written notice as referenced above. If the Wildlife Agencies concur, or if they fail to respond within the 60-day period, the Minor Amendment may be approved.

### ***6.12.4 Major Amendments***

Major Amendments are those proposed changes to the MSHCP and the Permits that are not modifications as described in Section 6.12.1 or Minor Amendments. Major Amendments to the MSHCP shall require a subsequent amendment to the IA and the Permits, and public notice as required by applicable laws and regulations. The CVCC shall submit any proposed Major Amendments to the Wildlife Agencies.

## **Major Amendments**

Major amendments include, but are not limited to, the following:

1. All amendments not contemplated in the IA as modifications or Minor Amendments to the MSHCP, except subsequent minor changes which are not specifically listed as a Minor Amendment in the IA that the Wildlife Agencies have determined to be insubstantial and appropriate for implementation as a Minor Amendment.
2. Changes to the boundary of the MSHCP Plan Area.
3. Addition of species to the Covered Species list.
4. Changes in anticipated MSHCP Reserve Assembly or funding strategies and schedules that would have substantial adverse effects on the Covered Species.

## **Procedure**

Major Amendments shall require the same process followed for the original MSHCP approval. A Major Amendment will require an amendment to the MSHCP and the IA addressing the new circumstances, subsequent publication and public notification, CEQA/NEPA compliance and intra-Service Section 7 Consultation, if one is deemed necessary. Major Amendments shall be subject to review and approval by the CVCC and other Permittees as appropriate, at a noticed public hearing. The Wildlife Agencies shall use reasonable efforts to process proposed Major Amendments within one hundred twenty (120) days after approval by the Permittee(s).

## ***6.13 Annexations***

Each of the Permittees shall enforce the terms of the Plan and the IA with respect to all individuals or entities subject to its jurisdiction, including lands in the Plan Area annexed into the Permittee's jurisdiction after Plan approval. Any land annexed within the MSHCP Plan Area shall receive Take Authorization pursuant to the Permits provided the Minor Amendment requirements of Section 20.4 of the IA have been met. If the Minor Amendment requirements cannot be met, a Major Amendment will be required.

In the event of the deannexation of any land within the Plan Area to another jurisdiction that is not a Permittee, the parties shall seek to enter into an agreement among the Permittees, the Local Agency Formation Commission ("LAFCO"), the annexing jurisdiction, and the Wildlife Agencies as part of the annexation process to ensure that any Development of the annexed lands proceeds in accordance with the Conservation Objectives of all affected Conservation Areas. If an agreement can be reached, that jurisdiction shall become a Permittee after executing an addendum to the IA. If agreement cannot be reached, or if the MSHCP requirements are not imposed by LAFCO, then the deannexed land will not receive Take Authorization pursuant to the Permits. Additionally, such deannexation may result in the revocation or suspension of the Permits pursuant to Section 23.5 of the IA. Parties with deannexed land that qualify as Participating Special Entities may receive Take Authorization as set forth in Section 11.7.1 of the IA.

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Concurrent with the annexation or deannexation, CVCC shall provide to the affected Parties a revised calculation of the applicable Conservation Objectives and other relevant information to the affected Permittees.